THE EDGE OF LIFE
THE EDGE OF LIFE
HUMAN DIGNITY AND
CONTEMPORARY BIOETHICS

by
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Springer
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Acknowledgements</th>
<th>vii</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 1</td>
<td>1</td>
</tr>
<tr>
<td>Introduction</td>
<td></td>
</tr>
<tr>
<td>Chapter 2</td>
<td>5</td>
</tr>
<tr>
<td>When Does a Human Being Become a Person?</td>
<td></td>
</tr>
<tr>
<td>Chapter 3</td>
<td>41</td>
</tr>
<tr>
<td>All Human Beings are Persons</td>
<td></td>
</tr>
<tr>
<td>Chapter 4</td>
<td></td>
</tr>
<tr>
<td>How is the Dignity of the Person as Agent Recognized? Distinguishing Intention from Foresight</td>
<td>67</td>
</tr>
<tr>
<td>Chapter 5</td>
<td></td>
</tr>
<tr>
<td>An Ethical Assessment of Bush’s Guidelines for Stem Cell Research</td>
<td>83</td>
</tr>
<tr>
<td>Chapter 6</td>
<td></td>
</tr>
<tr>
<td>Moral Absolutism and Ectopic Pregnancy</td>
<td>97</td>
</tr>
<tr>
<td>Chapter 7</td>
<td></td>
</tr>
<tr>
<td>Could Artificial Wombs End the Abortion Debate?</td>
<td>105</td>
</tr>
<tr>
<td>Chapter 8</td>
<td></td>
</tr>
<tr>
<td>Solomon’s Dilemma: Should Conjoined Twins Jodie and Mary Have Been Separated?</td>
<td>123</td>
</tr>
<tr>
<td>Chapter 9</td>
<td></td>
</tr>
<tr>
<td>Capital Punishment and the Catholic Tradition: Contradiction, Circumstantial Application, or Development of Doctrine?</td>
<td>133</td>
</tr>
</tbody>
</table>
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INTRODUCTION

The Edge of Life: Human Dignity and Contemporary Bioethics treats a number of distinct moral questions and finds their answer in the dignity of the person, both as an agent and as a patient (in the sense of the recipient of action). Characteristically one’s view of the human being ultimately shapes one’s outlook on these matters. This book addresses questions that divide a culture of life from a culture of death as well as a number of questions debated within the Catholic tradition itself. The Edge of Life offers a critique of the new bio-ethic, represented by such notable authors as Peter Singer; it also attempts to shore up some of the difficulties leveled by critics against the traditional ethic as well as to answer some questions disputed by those within the tradition. This book does not treat the basic principles of morality but rather many of their applications and suppositions. (For an account of contemporary debates within the Catholic tradition on these matters, see Kaczor 2002). Rather, The Edge of Life seeks to address a number of disputed contemporary questions touching upon human dignity at what has been called “the margins of life.”

The first section of the book treats the dignity of the human person as recipient of action and as agent. Chapter two examines various accounts of when a human being becomes a person. Some, like Peter Singer and Michael Tooley, hold that a human being becomes a person sometime after birth. Others, like Mary Anne Warren and Tristram Engelhardt, hold that birth marks the decisive transition from merely being a human being to being a person. Other theorists, David Boonin and Ronald Green, hold that during the process of gestation a human being becomes a person. This chapter criticizes all these views, and a number of other alternatives, as inadequate accounts of personhood.

Chapter three argues that every human being is indeed a person, and that most human beings begin at conception. Here I argue that an “ontological” conception of personhood overcomes all the difficulties presented by various “functional” conceptions of personhood explored in the previous chapter, namely the episodic problem, the problem of degree, and various kinds of over-inclusivity and under-inclusivity. This chapter treats many objections to this view, including the high rate of embryo mortality, a cost-benefit analysis of personhood, twinning and embryo fusion.

Chapter four concerns the dignity of the human person also but not considered as a recipient of action but rather as an agent. The distinction between foresight and intention underlies many of the discussions in this book including the treatment of ectopic pregnancy, the separation of conjoined twins, stem cell and fetal tissue research, and physician-assisted suicide. In considering the human person as agent, this chapter first brings forward some failed attempts to distinguish the intended and/or chosen from the foreseen, failed at least if one takes for granted certain paradigmatic cases. Secondly,
I suggest four characteristics that differentiate the intended or chosen from the foreseen, thereby determining what is included in a means to an end. These differentiating characteristics allow us to distinguish a number of similar but essentially (that is, considered as human acts) different cases from one another.

The second half of the book examines a variety of debated issues. The work unifies the account concerning many disparate issues regarding life issues and shows the coherence, plausibility, and principled differences among various cases: federal funding for stem cell research, treatment of ectopic pregnancy, ectogenesis, separating conjoined twins, and capital punishment. I have attempted to make each chapter as complete in itself as possible, since each deals with different topics. However, there is some overlap among them, in particular the application of double effect reasoning, and some intentional repetition has been included to secure that each chapter could be understood on its own.

Building on the conclusions of chapter three that every newly conceived human being should be accorded the dignity granted other human persons, the fifth chapter focuses on the stem cell research guidelines proposed by President George W. Bush. Many questions arise from these guidelines. Some have criticized the assumption that there are many workable stem cell lines available. Others have questioned Bush’s political judgment. I focus on the ethical questions. Could funding stem cell research be justified even if the human embryo is a person? Are Bush’s guidelines too lenient or too strict?

If one accepts the version of absolutism suggested at the end of chapter two that excludes the intentional killing of any innocent human person from conception to natural death, ectopic pregnancy, the subject of the next chapter, poses vexing difficulties. Given that the embryonic life almost certainly will die anyway, how can one retain one’s moral principle and yet adequately respond to a situation that gravely threatens the life of the mother and her future fertility? The four options of treatment most often discussed in the literature are non-intervention, salpingectomy (removal of tube with embryo), salpingostomy (removal of embryo alone), and use of methotrexate (MXT). In this chapter, I review these four options and also introduce a fifth (the milking technique). Based on the account of the intention/foresight distinction offered in a previous chapter, as well as on the clinical evidence in treating ectopic pregnancies requiring intervention, I conclude that salpingectomy, salpingostomy, and the milking technique are compatible with absolutist presuppositions, but not the use of methotrexate.

Cases of ectopic pregnancy are not the only ones that seem to pit fetal and maternal interests against one another. The next chapter proposes a possibility that could overcome all such possible conflict. Imagine that one could remove a developing human being in utero from the earliest stages of pregnancy and place the human embryo or fetus in an affordable artificial womb to develop normally until removal at “birth.” What difference would this development make for the abortion debate? Some choose abortion because they want a child not to exist but others choose it because they do not wish to be pregnant and the alternative of bonding with the child for nine months and then placing the child in another family through adoption is too difficult. However, some Catholic authors view embryo adoption as problematic and so would presumably view use of artificial wombs as wrong. Others who approve embryo adoption in a natural womb might nevertheless object to adoption in an artificial womb. This essay explores one possible end to the abortion debate through dialogue with Mary Anne Warren, Judith Jarvis Thomson, Bernard Nathanson and others.
Problematic cases are not of course limited to the time before birth where the mother’s life can be threatened by pregnancy. The next chapter treats the case of Jodie and Mary. Born in Manchester, England on August 8, 2000, Jodie and Mary were joined at the lower abdomen and shared a spine. Though both twins had nearly a full complement of organs, Jodie’s heart and lungs maintained both of their lives since Mary’s were not sufficiently developed to pump oxygenated blood. Doctors predicted that Jodie’s circulatory system would give out in a matter of weeks under the strain of supporting both girls. A decision to rival Solomon’s: Should one twin be sacrificed in order to save the other or should both be allowed to perish? The case of Jodie and Mary prompts many questions, and I have tried to answer only three in this chapter. Was the separation intentional killing? Was the separation intentional mutilation? Was the separation obligatory?

The final chapter treats the issue of capital punishment and the Catholic tradition. Many people see a contradiction between a stringent defense of human life, in the cases of abortion and infanticide, and a willingness to allow the state to take human life in the case of the death penalty. Other questions arise about the relationship between the teaching of Pope John Paul II on this issue and the teaching of previous popes and Church councils. This chapter will explore these issues in an attempt to show a consistency in approaches to various life issues.

Of course, my remarks on all these topics will not be the final word on these matters, but hopefully they will serve as the beginning of a search for wisdom in the use of contemporary technology and a recognition of human dignity for all.
CHAPTER 2

WHEN DOES A HUMAN BEING BECOME A PERSON?

Scholars have answered this question, so central to contemporary bioethical debates, in numerous and contradictory ways. In common speech, we often use the words “person” and “human being” interchangeably. We might even be tempted to think that all human beings, all members of the biological species *homo sapiens*, are persons and all persons are human beings. Tooley wants to use terms more precisely than this, and he designates “person” as a moral concept meaning someone who has a serious right to life, that is, a right not to be killed (Tooley 1999, 22). It could turn out then that there are beings who are not human beings, but nevertheless have a right to life. In fact, many people believe that there are categories of non-human persons. For example, some animal rights activists hold that intelligent animals such as dolphins and baboons are persons and many people of faith believe in the existence of non-human persons such as Gabriel and other angels, Lucifer and other demons, and the divine Persons of the Trinity: Father, Son, and Holy Spirit. If an alien like ET were to arrive from another planet, promising peace and presenting plans for human-alien cooperation, such a being, though not human, would be a person, the kind of being with a right to life. For this reason, when encountering fictional beings such as ET, the Iron Giant, or Shrek, we instinctively recoil when they are the objects of murderous intent. Tooley observes, therefore, that biology or animal make-up is not essential in determining whether a being has a right to life. After all,

what do physiological characteristics have to do with questions of whether an organism is a person? (Tooley 1999, 23).

Now, it may turn out that there are no non-human persons, no space aliens, no deities, no angelic beings, no demons, and therefore, it may be that all persons are human. But just as it doesn’t necessarily follow that all humans are men even though all men are humans, so it doesn’t necessarily follow that all humans are persons even if all persons are human. Thus, even granting that all persons are human (though how exactly this could be demonstrated is far from clear), another question remains, the question which drives much of the abortion debate (Thompson’s violinist and its variations being exceptions to the rule) and is at the heart of Tooley’s article. Are all members of the species *homo sapiens* also beings deserving of respect? Let us consider a range of views beginning with those that posit personhood as beginning relatively late in human development and moving towards those that posit personhood as beginning earlier in human development.
1. NOT ALL HUMAN BEINGS ARE PERSONS

Biologically, it is fairly simple to determine which beings should be scientifically classified as *homo sapiens* and which ones should not. Human beings have distinctive blood, DNA, and tissue. Even if the untrained eye cannot easily tell the difference, scientists can clearly differentiate a human embryo from a horse embryo or rabbit embryo. In terms of biological classification, there is no doubt that a human embryo, a human fetus, a human infant, a human toddler, and so on through advanced old age are all various stages of life for a human being. So, although the popular discussion is often couched in terms of a debate about the “humanity” of the fetus or a newborn, from a scientific point of view such questions are definitively answered. If the question is whether a fetus or newborn conceived by human parents is also genetically, biologically, and scientifically to be classified as a member of *homo sapiens*, a human being, the answer is beyond serious debate. Informed people, both those who would call themselves pro-life and those who would call themselves pro-choice, agree. Any being, at whatever stage of maturity, conceived by a human mother and a human father must also be human. Thus, all such fetuses or infants are also indubitably human beings, members of *homo sapiens*. As Tooley and Laura Purdy remark:

The first part of the claim [of those who oppose abortion] is uncontroversial. A fetus developing inside a human mother is certainly an organism belonging to *homo sapiens* (Purdy and Tooley 1974, 140).

However, admitting that what is being killed is a human fetus or a human infant, does not settle the abortion/infanticide debate in one way or the other for an important question remains: Are all human beings also persons? Might there be some *homo sapiens*, sharing human blood, DNA and so forth with the rest of us, who nevertheless do not possess a serious right to life? This chapter explores and critically responds to the answers given by those who believe personhood begins either after birth or sometime during gestation.

**Tooley and Singer’s Conception of a Person**

Tooley suggests this fundamental principle to distinguish persons from mere human beings:

An organism possesses a serious right to life only if it possesses the concept of self as a continuing subject of experiences and other mental states and believes that it is itself such a continuing entity (Tooley 1999, 24).

In support of Tooley, and retrieving a definition of person suggested by John Locke, Singer defines a person as

a being with awareness of his or her own existence, and the capacity to have wants and plans for the future (Singer 1994, 218).

This definition of personhood, arising from Locke and amplified by Singer, has several elements: a being is a person if and only if the being has (1) an awareness of his or her own existence (2) over time and in different places with (3) the capacity to have wants and (4) plans for the future.
Descartes famously said “Cogito ergo sum”: “I think, therefore I am.” Tooley replaces the metaphysical question of existence with the ethical question of personhood: “I think, therefore I am a person.” Without concepts, there is no personhood; without personhood, there is no right to life. On Tooley’s view, rights arise from desires. One can only desire to live, if one has a concept of oneself as a living being. Thus, if one has no concept of oneself as a living being, then one cannot desire to live, and consequently one does not have a right to life and is not a person. Given this understanding of personhood, what follows for debates about respect for human life?

This question can only be answered by a determination of when a human being is able to have concepts, for obviously without concepts there cannot be a concept of the self. Clearly, however, no human fetus has a concept of himself or herself. However, the same thing holds true for a newborn. Just as no one violates my property rights when taking my property if I no longer desire to have whatever it is as my property, so too no wrong is done to a newborn or a human fetus in killing him or her because he or she does not have a concept of himself or herself and thus, has no rights to violate. Thus, Tooley’s argument leads to the conclusion that abortion is permissible throughout all nine months of pregnancy and infanticide is also permissible until the baby has concepts. When does a human child begin to have concepts?

There is some debate about this question. Many philosophers, probably most in both the analytic and continental philosophical traditions, believe that all concepts presuppose language, so that one cannot have concepts until language has developed. In the words of Donald Davidson,

(a creature cannot have thoughts unless it is an interpreter of the speech of another (Davidson 1984, 157, see too Malcolm 1977, Stich 1983, Derrida 1973).)

If this view of the relationship of concepts and language is taken, then termination of young human beings is permissible until speech develops, which varies rather widely among children but begins on average from approximately 9 months of age until two and a half, and for some children even later. On this view, not just infanticide but putting older children to death would then be permissible until the being could use verbal expression (Tooley 1999, 33). If and only if you can say “I have a right to life,” do you have a right to life. It happens that some children are deprived of the chance to learn language at all, such as Genie, an American girl found at 13 years of age who, isolated from human contact for years, never learned to speak. On this account, she is not a person. And since she is not a person, her isolation in this fashion could not have violated her rights.

Tooley, however, believes that one could have concepts before acquiring language. This renders the acquisition of personhood by a young human being more difficult to determine. Although Tooley worries whether we, on his account of personhood, mistreat non-human animals who are in fact persons, Tooley suggests that

[The lesser worry is where the line is to be drawn in the case of infanticide. It is not troubling because there is no serious need to know the exact point at which a human infant acquires a right to life. For in the vast majority of cases in which infanticide is desirable, its desirability will be apparent within a short time after birth. Since it is virtually certain that an infant at such a stage of its development does not possess the concept of a continuing self, and thus does not possess a serious right to life, there is excellent reason to believe that infanticide is morally permissible in most cases where it is otherwise desirable (Tooley 1999, 33).]
In other words, there would in all likelihood be very little problem determining when personhood begins since most parents, not having chosen abortion and infanticide shortly after birth, wouldn’t want to eliminate their children later. So, Tooley suggests that the practical moral problem can be handled by choosing a period of time following birth, up to one week, during which time infanticide is permitted (Tooley 1999, 33).

Singer recognizes the same problem:

\[\text{It would, of course, be difficult to say at what age children begin to see themselves as distinct entities existing over time. Even when we talk with two- and three-year-old children, it is usually very difficult to elicit any coherent conception of death, or of the possibility that someone—let alone the child herself—might cease to exist. No doubt children vary greatly in the age at which they begin to understand these matters, as they do most things (Singer 2000, 162).}\]

Where does Singer draw the line?

\[\text{[T]here should be at least some circumstances in which a full legal right to life comes into force not at birth, but only a short time after birth—perhaps a month (Singer 2000, 163).}\]

A Critique of Singer’s Conception of Personhood

This leads to a reconsideration of Tooley and Singer’s definition of personhood. According to Singer a being is a person if and only if the being has (1) an awareness of his or her own existence (2) over time and in different places with (3) the capacity to have wants and (4) plans for the future (Singer 1994, 218).

Singer’s definition of personhood raises serious questions. With respect to the first condition, if you sleep deeply, when you go to sleep tonight, you will be a being with no awareness of your own existence. If you are rushed into surgery tonight and put under anesthesia, you will certainly be a being with no awareness of your own existence. Taken as stated, Singer’s definition would imply that we cease being persons each time we lose consciousness. One solution would be to say that such beings have the potential for self awareness, but of course the same thing could be said of a human embryo. Another solution to the sleeper problem (episodic personhood) is to say that once a being becomes a person that being does not lose this status until it no longer exists. In addition to being ad hoc, it is unclear why this should be important. Is personhood a reward for being conscious a short time? Why should a being who achieved consciousness but has permanently lost it be more valuable than a being who is about to achieve consciousness which will be enjoyed over the course of a long life?

The second condition of Singer’s definition of personhood—self-awareness over time and in different places—also raises difficulties. If Kant is right that space and time are products of human perception, then we should not expect all rational beings to be “in” space and time and therefore not all persons would reason at different times and places. If certain theists are right in affirming that a personal God exists beyond space and time, then again this definition of person is arbitrarily restrictive. Or consider another possible case, a being who has self-awareness but never moves to a different place. Perhaps the being is a space alien perfectly suited to his or her present environment and therefore having no need or desire to move. Galen Strawson in his book Mental Reality imagines “weather watchers,” stone-like creatures who have minds but exhibit no motion, nor any other behavior, whatsoever. They just sit on the coast and watch...
the weather. Why would such a being, perhaps much more rational than ourselves, not be a person? How much does one have to move? Is a beating heart enough movement or must one actually travel (abroad)? If a being is killed immediately after achieving self-awareness, is no person killed since self-awareness was not enjoyed over time?

The third condition—the capacity to have wants—may include too much or, depending on how capacity is defined, may make arbitrary exclusions. If “capacity” means a potentiality not realizable here and now but sometime in the future, then the human fetus would fulfill this element. If “capacity” means a potentiality realizable immediately, then a human being in a temporary coma would not be a person. Secondly, if unhappiness is not having your wants or desires fulfilled, then there is a powerful incentive either to satisfy your given desires or to minimize your desires as much as possible. Buddhism proposes this latter course of action. If Buddhists are right that the Buddha as well as other spiritual masters have reached a state of Nirvana—no longer desiring anything whatsoever and even extinguishing the capacity for desire—then either such mystics are no longer persons or Singer’s definition is mistaken. One could also imagine highly advanced aliens genetically engineered never to “want” precisely in order to realize the Buddhist dream. Or perhaps, if theists of a certain kind are right, then there is a divine being having all perfections, including the highest possible level of rationality, but entirely lacking the capacity to desire, since the divine being already enjoys and will always enjoy all perfection. If we drop “capacity” in favor of actually having wants or desires, the same problems arise as with human beings sleeping, under the influence of drugs, or in temporary comas. None of these human beings, though clearly persons, has occurrent wants or desires.

The fourth condition—planning for the future—also faces difficulties. One can easily imagine beings so powerfully rational that they do not “plan.” To plan by definition involves discursive reasoning, the considering of premises and the working out of likely conclusions, rather than understanding intuitively and immediately, and therefore without planning, all that is entailed by any ‘direction of travel.’ The difference between human reasoning and the reasoning of these beings could be compared to the difference between a child learning to read and a sophisticated adult reader. Children learning to read must sound out each letter, piece together syllables, and then finally, slowly pronounce the entire word. Often, this laborious process is so slow, and takes so much effort, that beginning readers forget the words at the beginning of a sentence by the time they get to the end of the sentence. In contrast, an advanced reader can read and understand not only entire words at a glance but many phrases and even short sentences. They read. They don’t sound out. The difference between discursive human reasoning and intuitive reasoning of the beings we are imagining here would be even more pronounced. Even though such beings having intuitive reasoning can act, they do not plan for the future since this implies gathering bits of information, trying to understand how various bits of information relate to one another, and then finally, formulating a plan for the future based on the information gathered and collated and weighed in a prudential judgment. Rather, such beings would immediately see and understand all the implications not only of reality, but also of what reality would be if they choose one course of action or another. Such beings wouldn’t plan, but they are clearly persons, and if they are clearly persons, then Singer’s definition of person is incorrect.

Ironically, Singer’s definition of personhood fails in part because it is deeply anthropocentric. It is a ‘speciesist’ account of personhood that assumes that the norms of
psychology, practical reasoning, and time-space experience of animal species on earth, human and non-human, must apply to all persons.

All these difficulties are compounded by the final uncertainty of Singer and Tooley's argument. They assume that in most cases in which infanticide is desirable it will be apparent shortly after birth. (Tooley 1999, 33, see also Singer 2000, 162). However, in many cases the extent of medical disabilities of handicapped children are not understood within a short time after birth. A severely disabled child and a normal newborn may not display notable differences at birth or in the first few months of life outside the womb. Only as the months and even years go on, as the handicapped child does not show signs of developing even slowly, can the extent of neurological damage be plumbed. So the capricious limit of one week, proposed by Tooley, or one month, proposed by Singer, would not even accomplish the goal of sparing the parents of disabled offspring the difficulties of raising a disabled child. Sometimes parents only discover the depth of such illnesses later, when it would be “too late” according to Tooley’s or Singer’s standards, to terminate the child.

Tooley’s and Singer’s conception of personhood also leads them to posit arbitrary deadlines to separate who may live from who may be killed. Indeed setting the age for voting or driving at 18 or 16 is arbitrary, for many people are ready for these activities earlier and some not until later. However in matters of life and death we must do better than picking a random length of time. Former abortionist Bernard Nathanson writes:

> The implications of all this go well beyond Tooley’s one week free-fire zone. If self-consciousness is required, we can just as easily dispense with a comatose adult, the severe psychotic, and the retardate with an I.Q. of 25, or the catatonic schizophrenic with an I.Q. of 180. This is not the Slippery Slope devised by name-calling Right-to-Lifers, but a slope that is explicitly greased by certain pro-abortion intellectuals themselves (Nathanson 1979, 225).

Life itself is at stake, the existence of innocent human beings, and so a vision of personhood that rests on the arbitrary decisions of the powerful against the weak cannot be in conformity with the demands of justice or equality.

**Does Personhood Begin with Birth?**

Mary Anne Warren’s conception of personhood would also exclude newborn babies, and so on the basis of this reasoning it should be concluded that killing a newborn infant is not murder, since infanticide is not killing a person, but only a human being (Warren 2000, 266). Nevertheless, Warren differs from advocates of infanticide such as Tooley in coming to the conclusion that although newborns are not persons strictly speaking, infanticide is nevertheless wrong. Why? Infanticide is wrong according to Warren because even if biological parents don’t want the child, other people do (Warren 2000, 266). In 2002, for example, there were more than 1.5 million couples waiting to adopt children in the United States alone. Given the increasing fertility problems of Western societies, due to a variety of cultural and possibly environmental causes, infants of all races are in great demand. Now, since it is generally wrong to destroy something that another person greatly wants, even if you don’t happen to greatly want it, it is wrong to destroy a newborn who is wanted by others. Secondly,
Warren notes that most people don’t want infants destroyed (Warren 2000, 266). If people want to protect newborn babies, and are willing to pay for orphanages or other needed care, then infants ought not be destroyed but rather protected. Thus, not just various individuals but society as a whole desires that newborns be not destroyed but protected by law and welcomed in life. However, Warren holds that killing unwanted or defective infants born into a society that doesn’t value newborns would be permissible. The rationale appears to be that in such a society others would not want the newborns (Warren 2000, 267). However, our society does value newborns and so killing newborns in our context would be impermissible.

For Warren, there is a key difference between abortion and infanticide:

so long as the fetus is unborn, its preservation, contrary to the wishes of the pregnant woman, violates her rights to freedom, happiness, and self-determination. [However, the moment of birth] does mark the end of its mother’s right to determine its fate. Indeed, if abortion could be performed without killing the fetus, she would never possess the right to have the fetus destroyed, for the same reasons she has no right to have an infant destroyed (Warren 2000, 267).

Taking a similar position, and offering further reasons to distinguish between infants and human fetuses, H. Tristram Engelhardt in his article, “Sanctity of Life and the Concept of a Person,” follows Warren in marking the distinction between persons and mere human beings in such a way that renders newborn human beings non-persons. Engelhardt speaks of a “social concept of person.” He invokes this social concept of a person in some instances where a human being is not strictly speaking a person but should be accorded the social status of personhood anyway. Why grant such status to newborns? Engelhardt offers several reasons (Engelhardt 2000, 81). First, the infant is biologically human and so deserves a modicum of respect. Second, newborns are also able to engage in a minimum of social interaction. Third, a human fetus can survive regardless of social recognition; a newborn cannot survive regardless of social recognition. Fourth, forbidding infanticide helps preserve trust in families, nurtures important virtues of care and solicitude towards the weak, and assures the healthy development of children. Fifth, Engelhardt notes that there is considerable value in protecting anything that looks and acts in a reasonably human fashion (Engelhardt 2000, 82).

Finally, human infants,

with luck … will become persons strictly, and … actions taken against infants could injure the persons they will eventually become (Engelhardt 2000, 82).

Why not include human beings in utero as persons in this social sense? Engelhardt provides several answers. Abortion aids the convenience of women and families, prevents the birth of infants with serious genetic diseases, helps control population growth, secures a woman’s right to choose freely concerning her body, as well as secures a woman’s freedom to determine whether she will become a mother. Thus, for both Warren and Engelhardt, although neither a human fetus nor a newborn are strictly speaking persons, newborns should not be killed, but abortion is permissible.