

## 6 WHAT'S WRONG WITH THE SANCTITY OF LIFE DOCTRINE?

### About this chapter

In this chapter we argue that the sanctity of life principle cannot rationally be defended. If we are right about this, the principle cannot be used as a ground for objecting to euthanasia for severely handicapped new-borns—or at least, it cannot be used by those who wish to persuade all reasonable people independently of their religious beliefs. It may still be possible to defend the principle within the framework of some religions—but that will not impress those who do not happen to adhere to those particular religions.

Because this chapter puts up philosophical arguments against the sanctity of life principle, it is more abstract than the other chapters in this book. This is unavoidable if we are to show by rigorous argument that the sanctity of life principle is unsound. Perhaps what we have said in earlier chapters will have already persuaded some of our readers of this conclusion; but we have a more ambitious aim than the persuasion of those already sympathetic to our views on these questions. The argument we shall present is so clear-cut that henceforth the onus will be on those who invoke the sanctity of life principle to show where our refutation goes wrong. If they cannot do so, they will not be justified in appealing to the sanctity of life principle, for they will be appealing to a principle that has been shown to be philosophically unsound.

### Sanctity of life or sanctity of human life?

People opposed to abortion or euthanasia often say that they believe in the sanctity of life. They almost never mean what they

say. They do not mean, as their words seem to imply, that *all* life is sacred. If they did they would, presumably, make at least as much fuss about the daily slaughter of pigs, cattle, and chickens as they do about the much smaller number of fetuses killed by abortions. Yet most of those who say they believe in the sanctity of life are not vegetarians. Even if they were, to cut a living lettuce would still be contrary to a belief in 'the sanctity of life', taken literally. When people talk of their belief in the sanctity of life, it is the sanctity of *human* life that they really have in mind.

So in this chapter we shall discuss the view that all human life is sacred. People who hold this belief may differ in the way they state it. Many make exceptions for killing those who are not 'innocent', so as to allow capital punishment, or killing in wartime. Other differences relate to the way in which the principle is stated: some, as we saw in Chapter 2, claim that all human life is of infinite value; others make their claim not in terms of the concept of value, but in terms of an absolute prohibition on taking innocent human life. These differences are of interest to philosophers, but we need not discuss them here. All sanctity of life supporters agree upon the central claim: the killing of a human being is of unique moral significance.

Let us spell out one implication of this key claim. In saying that the killing of a human being is of unique moral significance, proponents of the sanctity of life principle are saying that to take the life of a human being—any human being—is in itself, and further consequences apart, far more momentous than taking the life of some other kind of being, for instance a chicken, pig, or cow. The principle of the sanctity of human life is a principle which serves to separate humans from non-human animals, and mark out human life for special attention. By comparison with the taking of human life, to take the life of a non-human animal is of relatively minor significance. The difference between killing a human and a non-human animal, according to this view, is not one of degree but of kind.

What could justify a sharp distinction in moral significance between taking human life and taking animal life? Only some relevant difference between the two groups. Many possible relevant differences might be suggested. Joseph Fletcher, a Protestant theologian, has listed some 'indicators of humanhood'.

His list includes self-awareness, self-control, a sense of the future, a sense of the past, the capacity to relate to others, concern for others, communication, and curiosity. Other writers have emphasized rationality, the use of language, and autonomy. For our purposes it is not necessary to discuss which of these characteristics serve best to distinguish our own species from others. Many of them are related to others—one could not, for instance, have a sense of the past and future without at least some minimal degree of self-awareness and some capacity for rational thought. Taken as a cluster, these characteristics have undeniable moral significance. It is entirely reasonable to suggest that it is much more serious to take the life of a being possessing all or most of these characteristics than it would be to take the life of a being possessing none of them.

Various grounds could be offered for saying that these characteristics are relevant to the seriousness of killing. Some people regard it as self-evident that the life of a rational, autonomous being is of greater value than the life of a being lacking these characteristics. Others focus especially on the capacity for self-awareness, and on the sense of the future. A self-aware being with a sense of the future can have hopes and desires about what might or might not happen to it in the future. To kill it is to prevent the fulfilment of these hopes and desires. This is a wrong which we cannot possibly do to a being that does not even understand that it exists as a separate being, with a past and a future.

Michael Tooley, an American philosopher now living in Australia, has developed this argument more systematically than anyone else. Tooley argues that only 'continuing selves' have a right to life. To be a continuing self it is not enough to have merely momentary desires or interests. Instead one must, at some time, be able to see oneself as existing over time. Thus only beings with a degree of self-awareness and a sense of the future can have a right to life.

For the moment we shall merely note that there are reasons for holding that the characteristics mentioned are relevant to the significance of taking life. Further discussion of these views we shall put off until later, because we must return to the issue of the distinction between taking human life and taking animal life.

## The crucial mistake

We have seen that the doctrine of the sanctity of life is really a doctrine about the sanctity of human life. We must now look at a crucial ambiguity in the term 'human'. When Joseph Fletcher called his list of characteristics 'indicators of humanhood', he meant that these characteristics were distinctive of human beings—the kind of things that mark out humans from all other animals. This is the sense given by the *Oxford English Dictionary* when it says that 'human' means 'having or showing the qualities or attributes proper to or distinctive of man'. It is the sense we have in mind when we say that an infant born without a brain is more like a vegetable than like a human being. There is, however, another sense of the term 'human' in which the infant born without a brain is, undeniably, a human being. This is the sense of 'human' which means, in effect, 'member of the species *homo sapiens*'. In every cell of their bodies, the most grossly deformed infants born of human parents still possess the human genetic code. They are obviously not members of any other species. Therefore in the strict biological sense of the term they are human beings.

We have already seen that the first of these two senses of the term 'human' does refer to characteristics which are relevant to the moral significance of taking life; but what of the second sense, which draws the distinction between humans and others in terms of species membership alone? This distinction cannot be relevant to the moral significance of taking life. To claim that it is relevant is to make precisely the kind of claim made by the crude white racist who asserts that the killing of a black is less morally significant than the killing of a member of his own race. Like race or sex, species is not in itself a morally relevant characteristic.

Species might be indirectly morally relevant if it were a reliable indication of the possession of other, directly relevant capacities, such as those listed by Joseph Fletcher. But a moment's thought shows that this is not the case. We saw in Chapter 2 that there are some infants who are human in the biological sense, but do not and never will possess any of Fletcher's 'indicators of humanhood'. Anencephalics—infants born with most of their

brain missing—are in this category; so are infants who have suffered massive brain haemorrhages. Thus there are some who are humans in the sense of being members of the species *Homo sapiens* but not in the morally significant sense of having the distinctively human characteristics we have mentioned.

Is the converse also true? Are there some beings who possess the distinctive characteristics but are not members of the species *Homo sapiens*? This is more controversial. Certainly chimpanzees and gorillas show some degree of self-awareness. Washoe, the first chimpanzee to be taught sign language, was asked, as she was looking into a mirror, 'Who is that?' She made the signs for: 'Me, Washoe'. There is also good evidence that chimpanzees plan for the future. Jane Goodall, observing wild chimpanzees in Uganda, has given an account of how a lower-ranking chimpanzee who noticed a banana in a tree did not move directly towards the fruit, but instead went elsewhere until a higher-ranking chimpanzee had left the area; only then, some fifteen minutes later, did the first chimpanzee return and take the fruit.

Just as some members of the species *Homo sapiens* do not possess the characteristics usually regarded as distinctive of our species, so there are some beings who are not members of our species who do appear to possess, at least to some degree, these characteristics. If we were simply to compare the characteristics of different individuals, irrespective of species, it is clear that we would have to go much further down the evolutionary scale before we reached a point at which non-human animals had capacities as limited as the most severely retarded humans. Not just chimpanzees, but also the animals we commonly kill for food—pigs, cows, and chickens—would compare favourably with anencephalic infants, or those who have suffered massive brain haemorrhages.

Many people consider any such comparison of humans and animals to be offensive, but the facts cannot be denied and we gain nothing by pretending otherwise. Pigs, cows, and chickens have a greater capacity to relate to others, better ability to communicate, and far more curiosity, than the most severely retarded humans. Obviously there are gradations between the normal members of different species. Equally obviously, there are gradings within species, and especially within the human species. There is no clear-cut distinction between humans and other

animals in respect of capacities like self-awareness, a sense of the past and future, or rationality. Instead there is an overlap: the best-endowed non-human animals rank well above those members of our species whose capacities are most limited.

Since the boundary of our species does not run in tandem with the possession of the morally significant capacities, the species boundary cannot be used as the basis for important moral distinctions. If we are prepared to give less weight to the killing of a being simply because it is not a member of our own species, despite its having capacities equal or superior to those of a member of our own species, how can we object to racists discriminating against those who are not of their own race, although these others have capacities equal or superior to those of members of that race?

Now we can see what is wrong with the traditional principle of the sanctity of human life. Those who hold this principle invariably take 'human' in the strictly biological sense. They include within the scope of the principle all members of the species *Homo sapiens* and no members of any other species. The principle is 'speciesist'; it is indefensible for the same reason that racism or sexism are indefensible. Those who hold the principle are giving great weight to something which is morally irrelevant—the species to which the being belongs. The traditional principle of the sanctity of human life elevates a morally insignificant characteristic into something of the utmost importance.

### **What went wrong?**

Why is so central a part of our ethics based on a morally irrelevant distinction? One might be tempted to say that it is simply an instinct for any creature to regard the lives of members of its own species as far more valuable than the lives of any other species. To say that this is instinctive—we might have said 'natural'—would not be to justify it. The preference for those whose skin colour and facial features are like our own may also be instinctive or 'natural', but this does not mean that racism is justifiable. In any case, we saw in the previous chapter that belief in the sanctity of human life is very far from being a universal human trait. There are other societies which do not attribute

great significance to the killing of an infant. Unlike Western thought, Eastern ways of thinking place humans and non-human animals on a similar level. The first precept of Buddhist ethics, for instance, is simply 'to avoid taking life'. Jains, too, treat all forms of animal life with respect, and go to considerable trouble to avoid harming even insects. Although both Buddhists and Jains will normally consider the killing of a human being to be much more serious than the killing of a non-human animal, the difference is one of degree rather than of kind, and human life is not inherently more sacred than animal life.

The preceding chapter explained the roots of the distinctively Judaeo-Christian doctrine of the sanctity of human life. In traditional Christian theology, membership of the species *Homo sapiens* is a reliable indication of three other morally relevant characteristics: having an immortal soul, being made in the image of God, and being a creature over whom God has retained His dominion. For those who believe that all and only members of the species *Homo sapiens* have an immortal soul, species membership is no arbitrary line, but a mark of an eternal being who will live forever in heaven or hell (or maybe in limbo). One might, of course, ask why Christians believe that God should have given immortal souls to all members of the species *Homo sapiens* (even to those on whom, in His wisdom, He did not bestow a brain); but the answer would be unlikely to satisfy non-believers.

A similar point can be made about the belief that all humans are made in the image of God, or that only God has the right to take the life of a human being, whereas He has given us dominion over the other animals and allows us to kill them as we see fit. If you believe this, and believe that by 'human being' God meant 'member of the species *Homo sapiens*', species membership serves to indicate those Godlike creatures whom you may not kill without 'playing God' and thus presumably incurring His displeasure. Again, however, an inquiring sceptic would wonder why an anencephalic infant more closely resembles God than, say, a pig. The question may seem blasphemous, but it is meant only to draw attention to the fact that God has no physical body. So when Genesis tells us that we are made in the image of God, it cannot mean that we resemble God in our physique or our facial features. If the resemblance is rather in our intellect, our reason,

or our moral sense, however, many non-human animals would seem to be more like God than the anencephalic infant.

So far as the alleged usurpation of God's rights over human life is concerned, the sceptic would want to know why God should have chosen to reserve His rights over life for all members of our species, but not for any members of other species. Here, too, we are unlikely to get an answer that will persuade those who do not already accept the tenets of Judaeo-Christian religion.

Now we can see why Western thought has ended up with a fundamental ethical principle which is impossible to defend in rational, non-religious terms. The principle of the sanctity of human life is a legacy of the days when religion was the accepted source of all ethical wisdom. Within the framework of Judaeo-Christian religious belief, it makes some sense (although even within that framework an inquiring mind will soon come up with questions that have no answers). Now that religion is no longer accepted as the source of moral authority in public life, however, the principle has been removed from the framework in which it developed. We are just discovering that without this framework it cannot stand up.

### **Ethics without religion**

In the preceding sections of this chapter we have suggested that the traditional principle of the sanctity of human life is the outcome of some seventeen centuries of Christian domination of Western thought and cannot rationally be defended. From previous occasions on which we have outlined this position, we know that different readers will react in widely differing ways. Some people have always regarded the traditional sanctity of life principle as a religious doctrine, and have seen its gradual erosion and replacement as merely a matter of time. For these readers, what we have been saying will at best be a more rigorous articulation of what they have long sensed; at worst it will be a tiresome labouring of the obvious. For a different group of readers, however, our views will be a shocking attack on the Judaeo-Christian ethic, which for them is the core not only of their world-view, but of any ethical position at all. For this latter group, to reject the religious view of the world is to reject the foundations of all morality.

The present section is addressed to those who believe that without religion there can be no basis for ethics. For many people the possibility of ethics without religion needs no defence, since they make ethical choices daily without any reference to religion. Philosophers and even moral theologians generally agree that ethics does not need religion. Yet others cling to the belief that the two are linked. When one of us wrote a brief article on 'Sanctity of Life or Quality of Life' for the American medical journal *Pediatrics*, the editor received dozens of letters from paediatricians protesting against the rejection of the religious underpinnings of the sanctity of life doctrine. One doctor wrote that the rejection of the traditional Judaeo-Christian heritage would make 'morality a matter of subjective taste'. Another said the article implied that 'man as a moral agent is dead' and went on to ask: 'How can [Peter Singer] explain mankind's perception of moral qualities or his capacity to love, apart from believing we are made in the image of God?' Because we want our position to be rigorously convincing to the widest possible audience, we shall answer these objections.

It is sometimes thought that ethics cannot do without religion because the very meaning of the word 'good' is 'what God wills'. This thought is an old one, discussed by Plato more than two thousand years ago. Plato rejected it because he could see that if the gods approve of an action, it must be because the action is good—in which case it cannot be the approval of the gods that makes the action good. To take any other view is to make divine approval entirely arbitrary: if the gods had happened to approve of torture and disapprove of helping our neighbours, then torture would be good and helping our neighbours would be bad.

Some modern theists have tried to get out of the dilemma set by Plato. They have said that God is necessarily good, and so could not possibly approve of torture. This defence does not work, because if 'good' means 'what God wills', what can it mean to say that 'God is good'? That God is willed by God? But surely this tautology is not what theists want to say when they say that God is good.

Plato's argument proves that words like 'good' and 'bad', 'right' and 'wrong' must have a meaning that is independent of beliefs about what God or the gods approve. The next question is

how we find out which acts are good and which are not. At this point attempts to base ethics on religion become appeals to the need for an authority. 'Without the scriptures . . .' people say, or 'Without God's revelation . . .', or even 'Without the authority of the Church . . .' there can be no ethics. But it is notorious that the words of Jesus, as presented in the gospels, in their most literal and obvious sense, they would all give up their riches, since otherwise they are as unlikely to go to heaven as a camel is to pass through the eye of a needle; and none of them would retaliate when struck upon the cheek. Now maybe these words were not meant to be taken in their most literal and obvious sense. We shall not try to instruct Christians in the interpretation of scripture; we merely point out that once the possibility of a non-literal interpretation is allowed, we must all use our own judgement. The authority and objectivity of scripture as a source of moral knowledge has disappeared.

The same point applies to religious revelation: those who claim to have received it are not in agreement about its content. Even the authority of that once monolithic structure, the Roman Catholic Church, has broken down, and many people who consider themselves good Catholics disagree with the teachings of the Church on matters like contraception. There is even an American organization, 'Catholics for a Free Choice', which dissents from the usual Roman Catholic view on abortion. If we broaden our gaze to consider not just one Christian denomination, but Christianity as a whole, the diversity of ethical teaching is immense. And what if we widen the view still further, so that we take in not just Christians, but all religious believers? Can anyone then think that religion as such is a source of moral knowledge?

As this last question suggests, religious believers are not likely to claim that religion in the widest sense is a source of moral knowledge; they will rather argue that their own religion is a source of moral knowledge because it is the only true religion. Clearly we cannot assess that kind of claim here. We content ourselves with pointing out that nowadays religious belief normally rests on faith, rather than reason (a development that arose, as Bertrand Russell noted in his *History of Western Philosophy*, after the traditional scholastic arguments for the existence of God

had been generally agreed to be invalid). Since we are concerned only with what is rationally defensible, objections based on religious faith are not a challenge to our position. We shall say more shortly about the proper role in a pluralist society of ethical positions based on religious faith.

There is still one question that troubles many who are not religious at all. If we grant that religion provides no satisfactory basis for ethics, on what *is* ethics to be based? Is it perhaps, after all, 'a matter of subjective taste'?

This question has occupied moral philosophers for a long time. While philosophers continue to disagree about the ultimate foundations of ethics, there is increasing agreement that reason and argument have a role to play in ethics. Even if no ethical judgement can, in the end, be shown to be objectively true, some ethical positions can be conclusively refuted. Consistency is a minimal requirement for all rational thought. An ethical position which fails to be consistent must be rejected.

To say that something is a matter of 'subjective taste' is to say that it is pointless to argue about it. If someone doesn't like avocado, there isn't much scope for rational debate; when people disagree about ethics, however, there is plenty of scope for rational debate, as the preceding pages have shown. In that sense, ethics without religion will not become a matter of subjective taste. (For those interested in further probing of the role of reason in ethics, one of us has written elsewhere on this topic, and there is a wealth of other literature available.)

Finally, so far as this discussion of ethics and religion is concerned, what is the proper role of religion in a pluralist, democratic society? The separation of Church and State is now a widely accepted principle, written into the constitution of many democratic societies. Even where, as in Britain, Church and State are not formally separated—the Queen is also the Head of the Church of England—no one would seriously propose that the State should prevent people from holding other religious beliefs, or from holding no religious beliefs at all.

The separation of Church and State implies not only that the State does not insist on some particular form of religious worship, but also that the State does not require that its citizens follow the ethical precepts of some particular form of religion. In many

cases this is so obvious that it does not need to be said. Can one imagine an American or British government attempting to outlaw sexual intercourse outside marriage because many religions hold it to be sinful? Can one imagine these governments prohibiting divorce, or the use of contraceptives? The fact that such proposals, if made, would not be taken seriously is testimony to the importance we place on the idea that the State should not enforce religious beliefs or the ethical doctrines that flow from them. We accept this view even if, as in the case of sex outside marriage, the ethical doctrine is quite widely shared among different Christian denominations and some non-Christian religions as well.

We have argued that the traditional doctrine of the sanctity of human life is rationally indefensible, and that its widespread acceptance stems from religious teachings. The principle of the separation of Church and State therefore implies that the State should not enforce the traditional sanctity of life doctrine. Religious believers should be quite free to follow the teachings of their religion on such matters as sex outside marriage or the use of contraception, and to urge others to follow these teachings; no religious believers, however, should expect the State to compel others who do not share their beliefs to act in accordance with religiously motivated views.

### **In place of the traditional view**

We have rejected the traditional principle of the sanctity of human life because the principle gives immense significance to something—biological species—which really has no intrinsic moral significance at all. A more defensible view about the wrongness of killing would need to select a characteristic or set of characteristics which does have moral significance in relation to killing.

Let us begin with the simplest possible characteristics, and move to the more complex ones only if the simpler ones prove unsatisfactory. Since it is logically impossible to kill something that has never been alive, the simplest possible characteristic is life itself. Is it wrong to kill any living thing? A few sensitive people may worry about the ethics of weeding one's garden, but it

is hard to see how killing a dandelion can be seriously wrong. The dandelion, we presume, has no conscious experiences. Hence there is no sense in which it suffers, or is missing out on anything, when it dies. To take the life of something that is not even conscious is not, other things being equal, seriously wrong. (We add the 'other things being equal' clause here because it might, for instance, be very seriously wrong to cut down a beautiful old tree, or to kill the last remaining specimens of a rare orchid. The wrong here is not done to the tree or the orchid, but to those who can appreciate them.)

Does consciousness make the difference? It certainly makes *some* difference. Once a being is conscious, there are certain things we ought not to do to it. We ought not to cause it to suffer, or at least not without a sufficient reason. It is also true that to kill a conscious being is to prevent it from having any future experiences. If these experiences might have been pleasurable ones, this may be enough ground to say that it would have been better not to kill. Of course, if the future experiences of the conscious being were likely to consist of unredeemed suffering, that would be a reason for killing.

All this tallies quite well with the way in which we commonly react to killings. Idly plucking plants as we lie in the meadow on a summer's day is not a habit we deplore; idly shooting sparrows from the same meadow would, for many of us, not be acceptable. To put a sick and dying bird out of its misery, on the other hand, is quite proper.

Still, while we may object to killing sparrows as an idle whim, we do not treat the killing of such beings as a matter of great moral significance. We kill animals for food, although we could be well nourished without doing so. Although we do often treat the lives of non-human animals far too lightly, it would be a mistake to equate the killing of a sparrow with the killing of a normal, mature human being. So we still need to press on, and find another characteristic, or set of characteristics, which serves to distinguish the sparrow from such a human being.

We have already looked at some characteristics which are far stronger candidates for this role than species membership: Joseph Fletcher's 'indicators of humanhood', which are, we may recall: self-awareness, self-control, a sense of the future, a sense of the

past, the capacity to relate to others, concern for others, communication, and curiosity. There were also three other characteristics emphasized by other writers: rationality, the use of language, and autonomy. We noted earlier that some of these characteristics imply each other, in that one could not have a sense of the past and future without at least some degree of self-awareness and some capacity for rational thought. We also noted some plausible grounds on which it can be held that it is much worse to kill a being with self-awareness and a sense of the future than to kill a being utterly incapable of entertaining any hopes or desires about what might or might not happen to it in the future. We saw that Michael Tooley has suggested that the ability to see oneself as existing over time is a necessary condition for the possession of a right to life.

To invoke the language of 'rights', as Tooley does, is not always conducive to clarity of thought. Too often there is a tendency to treat rights as somehow 'innate' or 'natural' or 'self-evident' and to use claims about rights to block off any further discussion. We often make better progress in understanding moral arguments by dropping the terminology of rights, and dealing directly with the underlying moral considerations by which the claims about rights are supported. So, in the case of Tooley's argument, it might be safer not to talk of being a 'continuing self' as a necessary condition for a right to life, but simply to say that to kill a continuing self is to do something of much greater moral significance than to kill a being who is unable to see itself as existing over time. The philosophical simplicity thus obtained is, however, achieved at the cost of a good deal of clumsiness in expression; and since the language of rights is now so widely used in debates about the treatment of severely handicapped infants we shall make use of it ourselves—always bearing in mind that the expression is no more than a convenient shorthand for the moral considerations on which the right is based.

With this proviso, Tooley's argument is basically sound. Its underlying principle is that the wrongness of an action is related to the extent to which the action prevents some interests, desires or preferences from being fulfilled. This basic principle explains both why it is wrong, other things being equal, to inflict pain, and why it is wrong, other things being equal, to kill a being with a

desire to go on living. Any being capable of feeling pain can have a desire that the pain stop, but only a being capable of understanding that it has a prospect of future existence can have a desire to go on living, and only a continuing self can have an interest in continued life.

Tooley suggests that we reserve the term 'person' for those beings who are capable of understanding that they are continuing selves. In this he follows the seventeenth-century British philosopher John Locke, who defined a 'person' as

A thinking intelligent being that has reason and reflection and can consider itself as itself, the same thinking thing, in different times and places.

This definition makes 'person' close to what Fletcher would call 'human', except that it singles out self-awareness and the sense of the past and future as the core of the concept. It is clear that on Locke's and Tooley's definition, 'person' is not identical with 'member of the species *Homo sapiens*'. Neither human foetuses, nor human infants, nor humans with very severe retardation or brain damage would be persons. On the other hand chimpanzees might be, and so might some other non-human animals as well. Thus the notion of a person, as employed by Tooley, reflects no arbitrary, species-based boundary, but characteristics of obvious relevance to the wrongness of killing.

Some will find Tooley's position more shocking than anything we have said so far. In Tooley's view, after all, an infant does not have to be severely handicapped for it to lack a right to life. *No* infant is born with self-awareness or a sense of the future. If Tooley is right, no new-born infant has a right to life. Just when normal human infants acquire some minimal degree of self-awareness is difficult to say—almost certainly not in the first month of life, perhaps not in the first three months, but quite probably within the first year. Whichever way we decide this difficult factual question, infants will be deemed not to have a right to life at birth, nor for some time afterwards.

But what of potential? A normal new-born infant has good prospects of a worthwhile, happy, and fulfilling life, a life with many of the experiences which we think of as making our own lives rewarding and satisfying. Does not this potential distinguish

the normal infant from the severely handicapped infant, and give the former, at least, a right to life?

Tooley argues that a right to life cannot be based on potential. His argument is based on a rejection of the moral significance of the distinction between acts and omissions—a distinction we also rejected in Chapter 4. The relevance of the distinction here is as follows: if one holds that it is wrong to kill a new-born infant (or foetus) because that infant (or foetus) will eventually become a person with a worthwhile life, then why is it not also wrong to omit to do an act which would have the consequence that a person with a worthwhile life comes into existence? In other words, if it is wrong to kill, why is it not also wrong to abstain from sexual intercourse that would lead to procreation? Both the omission and the killing have the same consequence: there will not be a person who might otherwise have had a worthwhile life. If the killing does not violate an actual right to life, and is said to be wrong only because of the person who will now not exist, why is it worse than abstinence? We could only regard it as worse if an act was worse than an omission with the same consequences. But this is the mistake we rejected in Chapter 4.

Admittedly, when we refrain from reproducing, there is no being whose life has already begun. Intuitively, this makes a difference. We must recall, however, that when we kill a new-born infant there is no *person* whose life has begun. When I think of myself as the person I now am, I realize that I did not come into existence until some time after my birth. At birth I had no sense of the future, and no experiences which I can now remember as 'mine'. It is the beginning of the life of the person, rather than of the physical organism, that is crucial so far as the right to life is concerned.

Rejecting the distinction between acts and omissions leads us to see that so far as the prevention of the existence of a future person is concerned, killing and not reproducing are similar. Most people hold that there is no moral obligation to reproduce. The world has enough people, and too many future persons are being created already. Even Roman Catholics who oppose the use of artificial methods of birth control do not disapprove of refraining from sexual intercourse during a woman's fertile periods.

All this would suggest that we should give no weight to the potential of the new-born infant. That is the conclusion we must reach if we think that there is no value in bringing extra new people into the world. There is, however, another possible view. We might hold that, other things being equal, it is good to bring more people into the world. We might say that the reason we do not object to people refraining from reproducing, is that other things are usually not equal. For one thing, there is the global problem of overpopulation; but let us put this issue aside, and assume we are considering bringing people into the world in a situation in which there is no population problem. There would then still be strong personal reasons which a woman might have for not wishing to go through pregnancy and childbirth. Because we respect a woman's right to control her reproduction, we would leave that decision entirely to her. Once an infant is born, however, as long as there are people willing to adopt it and look after it, reasons of this kind will not apply. Hence some reasons which justify refraining from reproducing will not justify killing a new-born infant, as long as others are prepared to take responsibility for the infant's care.

This means that rejecting the distinction between acts and omissions does not, after all, necessarily lead to the conclusion that *no* weight can be given to the potential of the new-born infant. We can agree that a decision to kill a new-born infant is no more—and no less—the prevention of the existence of an additional person than is a decision not to produce. We can add, however, that women will often have strong reasons against reproducing, much stronger reasons than anyone is likely to have in favour of killing an infant for whom others are willing to care. Unless we are prepared to hold that people ought to reproduce whenever possible, we cannot give *overriding* value to the creation of additional life; but we can give *some* value to it, so that it counts as an important factor in decisions about killing new-born infants. The value of creating additional life would then still be a factor in decisions about reproducing, but it would be much less significant, because it would often be outweighed by reasons which point in the opposite direction.

Whether there is value in bringing additional people into the world is an extremely complex philosophical issue—too complex

to deal with in this book. We will, however, touch on it again in the next chapter and draw out some further implications. What we have shown so far is that the potential of an infant can be a reason against killing it. Obviously the greater the infant's potential for a happy and worthwhile life, the stronger this reason is. Thus there may still be good reason to protect the lives of new-born infants even if, strictly speaking, they do not have a right to life. This is a modification of Tooley's position which makes it less shocking than it at first appeared.

There are other reasons why the view we are taking is less radical than it may seem to be. A second reason is that most babies are, fortunately, much wanted and loved by their parents. Anyone who killed a wanted baby would therefore do a terrible wrong to the baby's parents, irrespective of whether the baby has a right to life.

A third reason is that even if a baby were not wanted by its parents, there might well be someone else, or another couple, who very much wants to cherish that child and bring it up as their own. So once again, independently of the rights or interests of the infant itself, to kill the baby would be to harm the person or couple wanting to adopt the child.

A fourth reason is that to say that an infant has no right to life is not to say that it has no rights at all. People sometimes mistakenly assume this to be the case, reasoning that if we are dead we cannot have a right to anything. This may be so, but it does not refute the view that, as long as we are alive, we may have some rights without having a right to life. Consider how differently we think about someone who tortures stray cats, and someone who humanely kills them.

For Tooley, we can have rights only if we are capable of having the requisite desires or interests. If new-born infants are not continuing selves, they cannot have a right to continued life; but it is plausible to suppose that new-born infants can feel pain and prefer not to be in pain; that they can feel cold, and desire not to be cold; that they can feel hungry, and desire not to be hungry. It is therefore plausible to suppose that new-born infants have rights to have their pain relieved, and to be kept warm and fed. These rights are not absolute but they indicate what we ought not to do to infants except for overriding reasons.

These four reasons serve to limit the cases in which killing an infant would be defensible. The fifth reason why our position is less radical than it appears is different. This fifth reason does not restrict the cases in which killing an infant would be defensible: it points out how close we already are to the kind of killing which we are suggesting might be permitted. Recall the now-standard procedure, described in Chapter 3, of finding out during pregnancy whether the foetus is abnormal and allowing—even recommending—an abortion if the test should prove positive. This is not a case of sacrificing the foetus to save the life or health of the pregnant woman. It is, quite straightforwardly, a decision to end at an early stage a life which does not have the usual prospects for a full human existence. The difference between this decision and infanticide is that abortion kills the unseen foetus in the womb, while infanticide kills the new-born infant. In neither case, however, has the life of the *person* begun.

Quite often a defect which would have warranted abortion during pregnancy is not discovered until birth. Has the situation then changed so critically that it is now horrific to contemplate ending a life which three months previously could have been ended with little controversy?

Consider the situation in which Peggy Stinson found herself in December 1976. She was 24 weeks pregnant, but the pregnancy was going seriously wrong. The placenta was in the wrong position and threatening to detach altogether, causing a major haemorrhage that would put her life at risk as well as that of the baby. There was also a possibility of the baby's surviving, but with serious damage. Weighing up these difficulties on 15 December, Peggy and her husband Robert contemplated terminating the pregnancy. This would have reduced the risk to Peggy, and also ensured that they would not end up with a damaged baby. After the abortion, Peggy could have started on another pregnancy, with a high probability that it would develop normally. At 24 weeks, an abortion is legal in the United States; it would remain possible for Peggy to have an abortion for another two weeks.

In a single day, everything changed. On 16 December Peggy went into premature labour. The baby was born alive, but on the margins of viability. The Stinsons emphasized that they did not

want any heroic measures taken. Nevertheless they gradually lost control of their child. Doctors threatened to take out court orders if the parents did not consent to treatment. The baby developed all sorts of complications. He was put on a respirator nonetheless. At one point there appeared to be a very real prospect that the hospital would hand over to the reluctant parents a living but grossly impaired child. This led Peggy to some ethical reflections. As she wrote in her diary:

A woman can terminate a perfectly healthy pregnancy by abortion at 24½ weeks and that is legal. Nature can terminate a problem pregnancy by miscarriage at 24½ weeks and the baby must be saved at all cost; anything less is illegal and immoral. That's what they say at Pediatric Hospital, anyway.

Peggy Stinson was quite right to point out the oddity of this situation. After all, the mere location of the foetus or infant, whether inside or outside the womb, cannot make a crucial difference to its moral status. If the foetus at 24½ weeks does not have a right to life, why should we attribute such a right to the new-born baby at the same gestational age?

Opponents of abortion stress the similarities between the foetus and the infant, and urge that since the latter is clearly a human being, with the same right to life as any other human being, so the foetus should also be recognized as a human being with the same right to life as any other. We are not impressed, however, by the fact that both the infant and the foetus are clearly human beings. This is only true in the sense that they are members of the species *Homo sapiens*. Neither ranks as 'human' if judged against Fletcher's 'indicators of humanhood'. Neither is a person, as Locke and Tooley define the term. The new-born infant should therefore be regarded as we now regard the foetus, rather than the other way around.

In accepting abortion, as so many Western nations have now done, we have already taken a major step away from the traditional principle of the sanctity of human life. We have, however, come to place great weight on a boundary line—the moment of birth—that, while clear and precise, is not really crucial from the point of view of the moral status of the foetus or infant. The move to a less precise, but more significant

boundary—the point at which there is self-awareness and a sense of the future—is therefore not as big a step as one might at first think.

There is one further point about the dividing line we are proposing. It is sometimes said that if we start to kill severely handicapped infants we will end up threatening disabled adults as well. To allow infanticide before the onset of self-awareness, however, cannot threaten anyone who is in a position to worry about it. Anyone able to understand what it is to live or die must already be a person and has the same right to life as all the rest of us. Disability which does not rule out self-awareness and a sense of the future is totally irrelevant to the possession of the right to life.

Unlike many other forms of homicide, infanticide carried out by parents or with their consent poses no threat to anyone in the community who is capable of grasping what is happening. This fact goes a long way towards accounting for the equanimity with which many other cultures have accepted it. Nor is it only in other cultures that this point has been recognized. Jeremy Bentham, the founder of the reforming school of Utilitarians, criticized the severity with which infanticide was punished in his day, and remarked that the crime is 'of a nature not to give the slightest inquietude to the most timid imagination'. Infanticide threatens none of us, for once we are aware of it, we are not infants.

But doesn't Tooley's view of rights have implications which threaten us all? Wouldn't we still have to worry about the prospect that at some stage, by accident or infirmity, we might lose our ability to be self-aware, and our sense of the future? Would we not then also lose, according to the proposed theory of rights, our right to life? This fear is based on a misunderstanding of the theory of rights. Once a being with a sense of the future exists, that being can have an interest in her or his future existence. This interest should be respected. Obviously no plausible theory could condone the random killing of people while they are asleep. On Tooley's view the interests we have before we go to sleep are enough to give us a continuing right to life during the period of unconsciousness.

Tooley's theory of rights is bound to be controversial,

notwithstanding the reasons why its impact may not be quite so radical as one might at first think. There may be other alternatives which are also worth discussing. That there is a need for some alternative view, however, should be clear. Without the religious framework in which it developed, the traditional principle lacks philosophically sound foundations. Something needs to be put in its place. In this chapter we have suggested a coherent and defensible alternative. It is one thing to have a defensible philosophical theory, however, and another thing to decide what to do in practice. In our final chapters we shall bring the discussion back to the practical choices that confront parents and doctors.