

ABORTION AND PUBLIC POLICY: A RESPONSE TO SOME ARGUMENTS

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In a recent article Virginia Ramey Mollenkott defends the proposition that the pro-choice position on abortion is more consistent with Christian ethics than the pro-life position.¹ I define the pro-life position in the following way: Full humanness begins at conception, and hence the unborn child has a right to life unless his life must be forfeited in order to save the life of his mother, since it is better that one human should die rather than two. I define the pro-choice position in the following way: The woman who has conceived has an absolute right to terminate her pregnancy from the moment of conception until the ninth month of pregnancy for any reason she deems fit. Although some in both camps may not entirely agree with these definitions, in terms of the popular debate we observe on the evening news the definitions seem for the most part accurate.

My strategy in this paper is to respond to the pro-choice position by using Mollenkott's article as my point of departure, although I will deal with arguments I believe Mollenkott alludes to but does not specifically present: (1) I will briefly deal with a number of popular arguments. (2) I will critique some philosophical arguments. (3) I will deal with some theological arguments. (4) I will concern myself with an argument against the public policy of prohibiting abortion-on-demand.

I. POPULAR ARGUMENTS²

There are a number of popular arguments that are put forth by people in the pro-choice movement and that seem to be implied, although not specifically articulated, in Mollenkott's article. Unfortunately the popular pro-life camp has not adequately responded to these arguments but has settled for putting forth arguments of similar logical weakness. Space does not permit me to cover all the pro-choice arguments, so I have selected the ones that seem to be the most popular and that the pastor or

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¹ V. R. Mollenkott, "Reproductive Choice: Basic to Justice for Women," *Christian Scholars' Review* 12 (March 1988) 286-293. All references to page numbers in this article will be cited in the text in parentheses.

² I would like to thank Mark Wiegand for the countless nights in which we analyzed and discussed these and other popular arguments.

teacher will most likely face when questioned by the media at pro-life rallies.

1. *Are you going to take care of the child after it is born?* This bit of rhetoric can be distilled into the following assertion: Unless the pro-lifer is willing to help bring up the children she does not want aborted, she has no right to prevent a woman from having an abortion. As a principle of moral action, this seems to be a rather bizarre assertion. Think of all the unusual precepts that would result: Unless I am willing to marry my neighbor's wife, I cannot prevent her husband from beating her; unless I am willing to adopt my neighbor's daughter, I cannot prevent her mother from abusing her; unless I am willing to hire ex-slaves for my business, I cannot say that the slaveowner should not own slaves.

By illegitimately shifting the discussion from the morality of abortion to the moral character of the pro-lifer, this argument avoids the point at issue. Although a clever move, it has nothing to do with the validity of either the pro-life or pro-choice positions. In fact the argument commits the *argumentum ad hominem* fallacy, which occurs when one attacks the person who is defending an argument rather than the argument that the person is defending.

2. *If abortion is made illegal, then we will return to the day of coat-hanger and back-alley abortions.* This emotionally charged argument has little going for it logically. It commits the fallacy of begging the question, which occurs when one assumes what one is trying to prove. For if abortion results in the death of the unborn (and no one in the pro-choice camp denies this), this argument is successful only if the arguer assumes that the unborn are not fully human. But if the unborn are fully human, this argument is tantamount to saying that because people die while killing other persons the state should make it safe for them to do so. And since it is obvious that the pro-choice advocate by using this argument does not approve of the needless death of human persons, it follows that he cannot use this argument unless he assumes that the unborn are not fully human. Therefore only by assuming that legal abortion does not result in the needless death of human persons does the pro-choicer's argument work. Hence the abortion question hinges on the status of the unborn, not on emotional and question-begging appeals to coat hangers and back alleys.

3. *Prohibiting abortion will not prevent rich women from having abortions by traveling to countries where it is legal.* This argument of course assumes either one of two things if abortion-on-demand is made illegal: (1) Abortion is a moral good that poor women will be denied and to which rich women will have access, or (2) childbirth is a moral burden that rich women can avoid but poor women will have foisted upon them. In any event, the argument is asserting that if abortion is made illegal there will be an unfair distribution of either goods or burdens. But since the morality of permitting abortion is the point under question, the arguer assumes

what he is trying to prove and therefore begs the question. For would we not consider it bizarre if while debating over the morality and legality of snorting cocaine someone argued that cocaine should be legalized because if it remained illegal only rich people would be able to afford it and have privileged access to it? One is putting the cart before the horse when one appeals to the possible unfairness of not having equal access to abortion prior to sufficiently defending the view that possessing the choice to have an abortion is in fact a moral good. For this is the crux of the entire debate. In other words, the question of whether it is fair that certain rich people will have privileged access to abortion if it is made illegal must be answered after we answer the question of whether abortion is in fact the killing of an innocent human person. To bypass this question by appealing to fairness is simply silly.

4. *Pro-lifers are trying to force their religious beliefs on others.* Unfortunately, this argument is fueled by well-meaning Christian pro-lifers who argue strictly from the Bible. Although this may be helpful in convincing those in the Christian community, it is not very convincing for those outside it. In terms of political strategy it is not a good idea to give the appearance to the opposition that the basis of the pro-life position is strictly theological. For this reason I suggest that pro-life leaders put greater emphasis on philosophical and scientific arguments when engaging in public debate. In this way, by emphasizing that there is nontheological support for their position (and there is plenty), they will be able to undercut the pro-choicer's intellectually irresponsible claim that the pro-life movement is trying to force its "religious" views on others.

The pro-life movement could then argue from the fact that just because a philosophically plausible position may also be found in religious literature, such as the Bible, that in itself does not make such a position exclusively religious. For if it did, then we would have to dispense with laws forbidding murder, robbery, and so forth, simply because such actions are prohibited by the God of the Hebrew-Christian Scriptures. Furthermore public policies, such as civil-rights legislation, elimination of nuclear testing, and increase of welfare, which are supported by many clergymen who find these policies in agreement with and supported by their doctrinal beliefs, would have to be abolished simply because they are believed by some to have religious support. Hence the pro-life position is a legitimate public-policy option and does not violate the separation of Church and state.

II. PHILOSOPHICAL ARGUMENTS

More sophisticated pro-choicers have fine-tuned their position by presenting more detailed philosophical arguments. For instance, Mollenkott begins her article by pointing out the perils of being a woman in today's society. She cites the fact that even if a sexually active married woman

uses the most effective contraceptives available, failure could occur and she could still get pregnant. She then asks: "How is a married woman able to plan schooling or commit herself to a career or vocation as long as her life is continually open to the disruption of unplanned pregnancies?" She concludes: "Unless, of course, she can fall back on an abortion when all else fails" (p. 269). I think it is reasonable to outline Mollenkott's argument (A) in the following way: (1a) A woman's schooling and career are of maximal importance. (2a) An unwanted pregnancy would prevent (1a). (3a) The only way to prevent an unwanted pregnancy after conception is to have an abortion. (4a) Therefore abortion is justified.

(1a) can be called into question. It does not seem obvious to me that anyone's schooling and career, whether it be a man's or a woman's, are of maximal importance. For example, if a mother (or a father, for that matter) murders her five-year-old son because he interferes with her ability to advance in her occupation, we would consider such an act morally reprehensible. I am not saying that the termination of a pregnancy—that is, the killing of the unborn—is morally equivalent to murdering a child. Rather, I am merely pointing out that (1a) is not obviously true. Therefore since (1a) is incorrect (A) is not a sound argument.

In order to strengthen her argument Mollenkott could rewrite (A) in the following way (B): (1b) A woman's schooling and career are important relative to other moral goods (i.e. some moral goods are of greater and lesser value). (2b) A child is of greater value than a woman's schooling and career. (3b) An unborn human is not of greater value than a woman's schooling and career. (4b) An unwanted pregnancy can disrupt a woman's schooling and career. (5b) Therefore abortion is justified.

The pro-life advocate does not agree with (3b), for she believes that the unborn human is just as much a part of the human family as a child. Of course Mollenkott disputes this point (p. 291), to which we will return below. The point I am trying to make, however, is that (B) stands or falls on Mollenkott's ability to show the plausibility of (3b), which really is based on the assumed proposition (3b₁): The unborn human is not a person. Hence the argument from a woman's schooling and career is superfluous without (3b₁) being plausible.

This brings us to Mollenkott's defense of (3b₁), her arguments against the personhood of the unborn. Let me quote her at length (p. 291):

Kay Coles James of the National Right to Life Committee claimed that fetal personhood is a biological fact rather than a theological perception. But in all truthfulness, the most that biology can claim is that the fetus is genetically human, in the same way that a severed human hand or foot or other body part is human. The issue of *personhood* is one that must be addressed through religious reasoning. Hence, the Lutheran Church in America makes "a qualitative distinction" between the claims of the fetus and "the rights of a responsible person made in God's image who is in living relationships with God and other human beings." Except in the most materialistic of philosophies, human *personhood* has a great deal to do with feelings, awareness, and interactive experience.

There are actually two arguments in the above quotation. The first goes something like this (C): (1c) Unborn humans are genetically human. (2c) Severed limbs and body parts are genetically human. (3c) Therefore genetic humanness cannot be a criterion of personhood.

The problem with this argument is that it shows a gross misunderstanding of the pro-life position and probably commits the informal fallacy of equivocation. (1) When a pro-life advocate argues for the unborn's personhood from its genetic code, he is not arguing that anything at all with a human genetic code is a person. Nobody defends such an absurdity. Rather, he is arguing that the unborn human is a living human organism in a certain stage of development. And we know this organism to be such an entity because it has, among other characteristics, a human genetic code. In other words, possessing a human genetic code is a necessary but not a sufficient condition for human personhood. (2) It seems that the phrase "genetically human" has a different meaning in (1c) than in (2c). In (1c) a fetus *in utero* is genetically human in the sense that it is a living and developing organism that is part of the human family. On the other hand, a severed limb is obviously a dead part of a former or current living and developing organism and is only genetically human insofar as it possesses the identical genetic code of its owner. No severed limb ever developed into a basketball star, a pianist, or a philosopher, but every basketball star, pianist and philosopher was at one stage in her development an unborn human with a unique human genetic code. Therefore because (C) equivocates on the phrase "genetic code" it is logically fallacious.

Let us now turn to Mollenkott's second argument, which I believe is the cornerstone of her position. A more detailed presentation of a similar argument is presented by philosopher Mary Anne Warren.³ I believe that the following outline of Mollenkott's argument, however, adequately represents Warren's position also (D): (1d) A person can be defined as a living being with feelings, awareness, and interactive experience (I assume she means some sort of consciousness). (2d) A fetus does not possess the characteristics of a person in (1d). (3d) Therefore a fetus does not possess personhood.

This seems to be the pro-abortionist's strongest argument. Nevertheless I believe that it has several flaws. (1d) can be questioned on both philosophical and theological grounds. Concerning the former, several points can be made.

(1) It does not seem to follow from the assumption that an unborn human is not a person that abortion is always morally justified. Jane English has pointed out that "non-persons do get some consideration in our moral code, though of course they do not have the same rights as persons have (and in general they do not have moral responsibilities), and though their interests may be overridden by the interests of persons.

³ M. A. Warren, "On the Moral and Legal Status of Abortion," in *Biomedical Ethics* (ed. T. A. Mappes and J. S. Zembatty; New York: McGraw-Hill, 1981) 417-423.

Still, we cannot just treat them in any way at all."⁴ English goes on to write that we consider it morally wrong to torture beings that are non-persons, such as dogs or birds, although we do not say that these beings have the same rights as persons. And though she considers it problematic as to how we are to decide what one may or may not do to nonpersons, she nevertheless draws the conclusion that "if our moral rules allowed people to treat some person-like non-persons in ways we do not want people to be treated, this would undermine the system of sympathies and attitudes that makes the ethical system work."⁵ Based on this reasoning, English makes the important observation that "a fetus one week before birth is so much like a newborn baby in our psychological space that we cannot allow any cavalier treatment of the former while expecting full sympathy and nurturative support for the latter."⁶ She agrees that "an early horror story from New York about nurses who were expected to alternate between caring for six-week premature infants and disposing of viable 24-week aborted fetuses is just that—a horror story. These beings are so much alike that no one can be asked to draw a distinction and treat them so very differently."⁷

(2) One can question Mollenkott as to why one must accept a functional definition of personhood to exclude the unborn. It is not obvious that functional definitions always succeed. For example, when Larry Bird is kissing his wife does he cease to be a basketball player because he is not functioning as one? Of course not. He does not become a basketball player when he functions as a basketball player. Rather, he functions as a basketball player because he is a basketball player. Similarly when a person is asleep, unconscious or comatose he is not functioning as a person as defined in (1d), but nevertheless no reasonable person would say that this individual is not a person while in this state. Therefore since a person functions as a person because she is a person and is not a person because she functions as a person, defining personhood in terms of function seems inadequate.

Of course the pro-abortionist may want to argue that the analogy between sleeping/unconscious/comatose persons and the unborn breaks down because the former possess the capacity to function as persons while the latter only possess the potential to function as persons. Although the pro-abortionist makes an important point, he nevertheless begs the question as to the personhood of the unborn—that is, he assumes that a functional definition is correct, which is the very issue under question. For the pro-lifer could simply respond by pointing out that precisely because the unborn human has the capacity to have the capacity to function as a person, she should be regarded as an actual person at a particular stage of development whose life is significant and worth protecting. In other words, the very essence of humanness that the unborn

⁴ J. English, "Abortion and the Concept of a Person," in *Biomedical Ethics* 429.

⁵ *Ibid.* 430.

⁶ *Ibid.*

⁷ *Ibid.*

now possesses is the reason why in the near future this individual can fully function as a person (of course as the fetus matures its functional capacity increases).

In order to give a positive philosophical ground to the above notion, the following is offered. In a recent critique of James Rachels' position on euthanasia, philosopher J. P. Moreland discusses Rachels' distinction between biographical and biological life.⁸ This distinction roughly corresponds to Mollenkott's distinction between person and human being. According to Moreland, Rachels argues that "the mere fact that something has biological life . . . , whether human or non-human, is relatively unimportant." It is biographical life that is important. Quoting Rachels, Moreland writes that one's biographical life is "'the sum of one's aspirations, decisions, activities, projects, and human relationships.'" ⁹ For Mollenkott a person can be defined as a living being with feelings, awareness and interactive experience. Hence it seems reasonable to assert that Mollenkott would agree with Rachels that a person is a living being who possesses biographical life, and the unborn are therefore not persons.

In response to Rachels, Moreland argues that "his understanding of biographical life, far from rendering biological life morally insignificant, presupposes the importance of biological life."¹⁰ That is to say, an unborn human being develops into a functioning person precisely because of what it essentially is. Employing the Aristotelian/Thomistic notion of secondary substance (natural kind, essence), Moreland points out that "it is because an entity has an essence and falls within a natural kind that it can possess a unity of dispositions, capacities, parts and properties at a given time and can maintain identity through change." Moreover "it is the natural kind that determines what kinds of activities are appropriate and natural for that entity."¹¹ Moreland goes on to write:

Further, an organism *qua* essentially characterized particulars has second-order capacities to have first-order capacities that may or may not obtain (through some sort of lack). These second-order capacities are grounded in the nature of the organism. For example, a child may not have the first-order capacity to speak English due to a lack of education. But because the child has humanness it has the capacity to develop the capacity to speak English. The very idea of a defect presupposes these second-order capacities. Now the natural kind "human being" or "human person" (I do not distinguish between these) is not to be understood as a mere biological concept. It is a metaphysical concept that grounds both biological functions and moral intuitions. . . . In sum, if we ask why biographical life is both possible and morally important, the answer will be that such a life is grounded in the kind of entity, a human person in this case, that typically can have that life.¹²

⁸ J. P. Moreland, "James Rachels and the Active Euthanasia Debate," *JETS* 31 (March 1988) 81-90.

⁹ *Ibid.* 85.

¹⁰ *Ibid.* 86.

¹¹ *Ibid.*

¹² *Ibid.* 87. See also R. Pentz, "Potentiality, Possibility, and Persons," *APA Newsletter on Philosophy and Medicine* (November 1988) 38-39.

Along the same lines, A. Chadwick Ray has made the observation that the view of human person as a natural kind rather than as an emergent property of a human organism is more consistent with our general moral intuitions. For "the recognition of the rights of the young is less dependent on their actual, current capacities than on their species and potential." For example, no one doubts that day-old human children have fewer actual capacities than day-old calves. Human infants, in terms of environmental awareness, mobility, and so forth are rather unimpressive in comparison to the calves, especially if one calculates their ages from conception. But this comparison does not persuade us in believing that the calves have greater intrinsic worth and an inherent right to life. For if human infants were sold to butchers (let us suppose for the high market value of their body parts) in the same way that farmers sell calves to humane butchers, we would find such a practice deeply disturbing. Yet if intrinsic worth is really contingent upon current capacities, we should have no problem with the selling of human infants to butchers. But Ray points out why we do find such a practice morally repugnant: "The wrongness would consist not merely in ignoring the interest that society might have in the children, but in violating the children's own rights. Yet if those rights are grounded in current capacities alone, the calves should enjoy at least the same moral status as the children, and probably higher status." What follows is that "the difference in status is plausibly explained . . . only with reference to the children's humanity, their natural kind."¹³

Therefore since the functions of personhood (first-order capacities) are grounded in the essential nature of humanness (second-order capacities), it follows that the unborn are human persons of great worth and should be treated with the utmost in human dignity. No doubt much more can be said about the problem of what constitutes personhood,¹⁴ but what is important in this immediate discussion is that we have seen that a functional definition of personhood is riddled with serious problems and that the pro-life advocate has been given no compelling reason to dispense with his belief that the unborn are human persons. In fact there are plausible arguments for the human personhood of the unborn (e.g. arguments by Moreland and Ray).

Since Mollenkott is arguing that her position is consistent with Christian theism, (1d) can also be questioned on theological grounds. Although Mollenkott writes that the Bible does not speak about abortion, her claim is simply untrue if one recognizes that the Bible's statements on some other matters can be used to draw an inference consistent with a pro-life position. For instance the Bible teaches that individuals such as Jeremiah,

¹³ A. C. Ray, "Humanity, Personhood and Abortion," *International Philosophical Quarterly* 25 (1985) 240-241.

¹⁴ See the fourteen articles in section B ("Persons and Their Lives") of part 2 of *Bioethics: Readings and Cases* (ed. B. A. Brody and H. T. Englehardt, Jr.; Englewood Cliffs: Prentice-Hall, 1987) 132-184.

David, Jesus and John the Baptist were referred to as persons prior to their births.¹⁵ Appealing to the fact that God could be speaking in terms of his foreknowledge, as some pro-choice advocates may, is both textually unwarranted and question-begging. Mollenkott makes the rather stupendous claim that "*nowhere does the Bible prohibit abortion*" (p. 291). In one sense she is correct: Just as the Bible does not forbid murdering people with submachine guns, the Bible does not forbid abortion. But since one can infer that murdering persons with submachine guns is wrong from the fact that the Bible forbids murdering in general, one can also infer that the Bible teaches that abortion is not justified from the fact that the Bible treats certain unborn beings as persons and forbids the murdering of persons in general. If one accepts Mollenkott's hermeneutical principle that whatever the Bible does not specifically mention it does not forbid, one would be in the horrible position of sanctioning everything from slavery to nuclear warfare to computer vandalism.

III. THEOLOGICAL ARGUMENTS

Mollenkott repeats an argument she had presented at a national gathering of scholars.¹⁶ She basically argues that because God created us as free moral agents, to use public policy to make abortion illegal would be to rob the pregnant woman of the opportunity to be a responsible moral agent. Mollenkott's argument can be put in the following form (E): (1e) God created human persons as free moral agents. (2e) Any public policy that limits free moral agency is against God's will. (3e) Public policy forbidding abortion would limit the free moral agency of the pregnant woman. (4e) Therefore forbidding abortion is against God's will.

The problem with this argument lies with (2e). It does not seem obvious that "any public policy that limits free moral agency is against God's will." For example, laws against drunk driving, murdering, smoking crack, robbery, and child molesting are all intended to limit free moral agency, yet it seems counter-intuitive—not to mention un-Biblical—to assert that God does not approve of these laws. And the reason why such laws are instituted is because the acts they are intended to limit often obstruct the free agency of other human persons (e.g. a person killed by a drunk driver is prevented from exercising his free agency). Hence it would seem consistent with Biblical faith to say that God probably approves of a public policy that seeks to maintain a just and orderly society by limiting some free moral agency (e.g. drunk driving, murdering, etc.), which in the long run increases free moral agency for a greater number

¹⁵ Jer 1:5; Luke 1:26-57; Ps 139:13, 15, 16. See especially M. J. Gorman, *Abortion and the Early Church* (Downers Grove: Inter-Varsity, 1982); H. T. Krimmel and M. J. Foley, "Abortion and Human Life: A Christian Perspective," in *Simon Greenleaf Law Review* 5 (1985-86) 5-21; J. W. Montgomery, "The Christian View of the Fetus," in *Jurisprudence: A Book of Readings* (ed. Montgomery; Strasbourg: International Scholarly Publishers, 1974); B. K. Waltke, "Reflections From the Old Testament on Abortion," *JETS* 19 (1976) 5-13.

¹⁶ "Sanctity of Life" held at Eastern College, June 3-5, 1987.

(e.g. less people will be killed by drunk drivers and murderers, and hence there will be a greater number who will be able to act as free moral agents). In fact Mollenkott herself advocates public policy that limits the moral free agency of those who do not believe it is their moral obligation to use their tax dollars to help the poor pay for abortions. She believes that "if Christians truly care about justice for women" we will "work to assure the availability of legal, medically safe abortion services for those who need them—including the public funding without which the impoverished women cannot exert their creative responsibility" (p. 293).

From our analysis of (E) it seems clear that only if the act of abortion does not limit the free agency of another would a law forbidding abortions unjustly limit free moral agency. In our analysis of argument (D), however, we saw that there are good reasons to think of the unborn as human persons. Hence a public policy forbidding abortions would not be against the will of God as Mollenkott defines it.

Mollenkott puts forth a second theological argument, which was originally presented by an assistant district attorney at the national gathering of scholars I mentioned earlier. It is popular among Biblical scholars. Mollenkott's argument can be put in the following outline (F): (1f) In Exodus 21 a person who murders a pregnant woman is given the death penalty. (2f) In Exodus 21 a person who murders an unborn human is only fined for the crime. (3f) Therefore Exodus 21 teaches both that the pregnant woman is of greater value than the unborn human she carries and that the unborn human does not have the status of a person. (4f) Therefore abortion is justified.

This argument can be criticized on three counts. (1) Assuming that Mollenkott's interpretation of Exodus 21 is correct, does it logically follow that abortion-on-demand is morally justified? After all, the passage is saying that the unborn are worth something. In stark contrast, contemporary abortionists seem to be saying that the unborn are worth only the value that their mothers place on them. Hence Exodus 21 does not seem to support the subjectively grounded value of the unborn assumed by the pro-choice movement. Furthermore even if Mollenkott is correct Exodus 21 is not teaching that the pregnant woman can willfully kill the human contents of her womb. It is merely teaching that there is a lesser penalty for killing an unborn human than there is for killing her mother. To move from this truth to the conclusion that abortion-on-demand is justified is a *non sequitur*.¹⁷ So I do not see how saying that the unborn

¹⁷ Waltke makes a similar observation when he writes that "it does not necessarily follow that because the law did not apply the principle of *lex talionis*, that is 'person for person,' when the fetus was aborted through fighting that therefore the fetus is less than a human being." For "in the preceding case, the judgment did not apply the principle of *lex talionis* in the case of a debatable death of a servant at the hands of his master. But it does not follow that since 'life for life' was not exacted here that therefore the slave was less than a fully human life" ("Reflections" 3). Although accepting Mollenkott's interpretation of the Exodus passage, Waltke takes a strong pro-life position and denies Mollenkott's inference that this passage somehow supports legalized abortion-on-demand.

are not worth as much as the born justifies contemporary abortion-on-demand.

(2) One can also raise the more general hermeneutical question, as John Warwick Montgomery has pointed out, "as to whether a statement of penalty in the legislation God gave to ancient Israel ought to establish the context of interpretation for the total biblical attitude to the value of the unborn child (including not only specific and non-phenomenological Old Testament assertions such as Ps. 51:5, but the general New Testament valuation of the *brephos*, as illustrated especially in Luke 1:41, 44)." Montgomery goes on to ask: "Should a passage such as Exod. 21 properly outweigh the analogy of the Incarnation itself, in which God became man at the moment when 'conception by the Holy Ghost' occurred—not at a later time as the universally condemned and heretical adoptionists alleged?"¹⁸ The point is that if Mollenkott is indeed correct in her interpretation of Exodus 21 she still has to deal with the grander context of Scripture itself, which does seem in other texts to treat the unborn as persons (see n. 15).

(3) Although she casually dispenses with interpretations of Exodus 21 that do not agree with her own, I believe that one can show at most that (2f) is false—or at least that there is no scholarly consensus as to whether it is true. Let us first take a look at Exod 21:22–25 (RSV):

When men strive together, and hurt a woman with child, so that there is a miscarriage, and yet no harm follows, the one who hurt her shall be fined, according as the woman's husband shall lay upon him; and he shall pay as the judges determine. If any harm follows, then you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe.

The ambiguity of this passage is sufficient to neatly divide commentators into two camps. One camp, in which Mollenkott belongs, holds that the passage is teaching that the woman and the unborn child are of different value.¹⁹ According to this group the passage is saying that if a fetus is accidentally killed there is only a fine, but if the pregnant woman is accidentally killed it is a much more serious offense. Therefore the death of the fetus is not considered the same as the death of a person. Some translations interpret the verse in this way (*JB*):

If, when men come to blows, they hurt a woman who is pregnant and she suffers a miscarriage, though she does not die of it, the man responsible must pay the compensation demanded of him by the woman's master; he shall hand it over, after arbitration. But should she die, you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, strike for strike.

¹⁸ Montgomery, "Christian View" 585.

¹⁹ See e.g. R. E. Clements, *Exodus* (Cambridge: Cambridge University, 1972) 138; J. P. Hyatt, *Exodus* (NCB; London: Oliphants, 1971) 233; M. Noth, *Exodus: A Commentary* (Philadelphia: Westminster, 1962) 181; J. C. Rylaarsdam, "Exodus," in *IB*, 1. 999; B. K. Waltke, "Old Testament Texts Bearing on Abortion," *Christianity Today* (November 8, 1968) 99–105.

This interpretation, however, has been called into question by many critics.²⁰ They argue that the *JB* translation and others like it (e.g. *TEV*) are a mistranslation and that the passage is really saying (in the Hebrew) that the mother and the unborn are to receive equal judicial treatment—that is, the mother and the unborn are both covered by the *lex talionis* (law of retribution). One such critic is Umberto Cassuto, who offers the following interpretation:

The statute commences, *And when men strive together*, etc., in order to give an example of accidental injury to a pregnant woman, and . . . the law presents the case realistically. Details follow: *and they hurt unintentionally a woman with child*—the sense is, that one of the combatants, whichever of them it be (for this reason the verb translated “and they hurt” is in the plural) is responsible—and *her children come forth* (i.e., there is a miscarriage) on account of the hurt she suffers (irrespective of the nature of the fetus, be it male or female, one or two; hence here, too, there is a generic plural as in the case of the verb “they hurt”), *but no mischief happens*—that is, the woman and the children do not die—the one who hurt her *shall surely be punished* by a fine, *according as the woman’s husband shall lay*—impose—the special circumstances of the accident; *and he* who caused the hurt *shall pay* the amount of the fine to the woman’s husband *with judges*, in accordance with the decision of the court that will confirm the husband’s claim and compel the offender to pay compensation, for it is impossible to leave the determination of the amount of the fine to the husband, and, on the other hand, it is not within the husband’s power to compel the assailant to pay if he refuses. But if *any mischief happen*, that is, if the woman dies or the children die, *then you shall give life for life, eye for eye, etc.*: you, O judge (or you, O Israel, through the judge who represents you) shall adopt the principle of “life for life,” etc.²¹

Gleason Archer points out that a major reason why Cassuto’s rendering is an appropriate interpretation is because the portion of the Hebrew translated in the *NASB* as “so that she has a miscarriage” (*wěyāšē’û yēlādēhā*) does not necessarily entail the death of the unborn but can also mean the expulsion of a premature infant from his mother’s womb regardless of whether his expulsion results in death.²² Hence Exodus 21 is saying that if the incident in question results in only a premature birth, the perpetrator should be fined. If, however, “harm follows” (that is, if either the mother or the child is injured or killed), the same should be inflicted upon the perpetrator.

In summary, since the interpretation of Exod 21:22-25 is at best divided, and since the Bible’s larger context teaches that the unborn are

²⁰ See e.g. G. Archer, *Encyclopedia of Bible Difficulties* (Grand Rapids: Zondervan, 1982) 246-249; U. Cassuto, *A Commentary on the Book of Exodus* (Jerusalem: Magnes, 1967) 275; C. F. Keil and F. Delitzsch, *The Second Book of Moses: Exodus*, in *The Pentateuch* (Grand Rapids: Eerdmans, 1980 [1864-1901]), 1. 135; M. G. Kline, “*Lex Talionis* and the Human Fetus,” *Simon Greenleaf Law Review* 5 (1985-86) 73-89; Montgomery, “Christian View” 585-587.

²¹ Cassuto, *Commentary* 275.

²² Archer, *Encyclopedia* 247.

persons (see n. 15), it is not a good idea to have one's case for abortion hinge on such a dubious passage.²³

Mollenkott's third theological argument attempts to show that the pregnant woman has no moral obligation to carry her fetus to term. Unlike the other arguments we have analyzed, it seems that the soundness of this one does not depend on whether the unborn are persons. Mollenkott argues that childbirth is an act that is not morally obligatory on the part of the mother, since it is statistically more dangerous than abortion. This is a theological argument because she attempts to ground her argument in Scripture by arguing that Jesus asserted that risking one's life constituted exceptional love, not obligatory love (see John 15:13). Hence one is not obligated to carry the fetus to term since childbirth would be an act of exceptional love and is therefore not morally obligatory. Mollenkott's argument can be put in the following way (G): (1g) Among moral acts one is not morally obligated to perform are those that can endanger one's life (e.g. the man who dove into the Potomac in the middle of winter to save the survivors of a plane crash). (2g) Childbirth is more life-threatening than having an abortion. (3g) Therefore childbirth is an act one is not morally obligated to perform. (4g) Therefore abortion is justified.

The problem with (G) lies in the inference from (2g) to (3g). (1) Assuming that childbirth is on the average more life-threatening than abortion, it does not follow that abortion is justified in every case. For example, it is probably on the average less life-threatening to stay at home than to leave home and buy groceries (e.g. one can be killed in a car crash, purchase and take tainted Tylenol, or be murdered by a mugger). Yet it seems foolish, not to mention counter-intuitive, to always act in every instance on the basis of that average. This is a form of the informal fallacy of division, which occurs when someone erroneously argues that what is true of a whole must also be true of its parts. One would commit this fallacy if one argued that because Beverly Hills is a wealthy city everyone who lives in Beverly Hills is wealthy. In order to avoid this fallacy, Mollenkott could change (G) in the following way (H): (1h) Among moral acts one is not morally obligated to perform are those that can endanger one's life. (2h) A particular instance of childbirth, X, is more life-threatening to the pregnant woman than having an abortion. (3h) Therefore X is an act one is not morally obligated to perform. (4h) Therefore not-X via abortion is justified.

Although it avoids the fallacy (G) commits, (H) does not support Mollenkott's position on abortion. In fact it is perfectly consistent with the pro-life assertion that abortion is justified if it is employed in order to save the life of the mother. Therefore whether abortion is statistically safer than childbirth is irrelevant to whether abortion is justified in particular cases where sound medical diagnosis indicates that childbirth will pose no threat to the mother's life.

²³ A portion of R. N. Wennberg (*Life in the Balance: Exploring the Abortion Controversy* [Grand Rapids: Eerdmans, 1985] 63-66) was instrumental in my discovery of the differing views on Exod 21:22-25.

(2) One can also challenge the inference from (2g) to (3g) by pointing out that just because an act X is "more dangerous" relative to another act Y does not mean that one is not morally obligated to perform X. For example, it would be statistically "more dangerous" for me to dive into a swimming pool to save my wife from drowning than it would be for me to abstain from acting. Yet this does not mean that I am not morally obligated to save my wife's life. Sometimes my moral obligation is such that it outweighs the relative danger I avoid by not acting. One could then argue that although childbirth may be "more dangerous" than abortion, the special moral obligation one has to one's offspring far outweighs the relative danger one avoids by not acting on that moral obligation.

(3) One can challenge (2g) on empirical grounds. David C. Reardon points out that claims that abortion is safer than childbirth are based on dubious statistical studies, simply because "accurate statistics are scarce because the reporting of complications is almost entirely at the option of abortion providers. In other words, abortionists are in the privileged position of being able to hide any information which might damage their reputation or trade." And since "federal court rulings have sheltered the practice of abortion in a 'zone of privacy,'" therefore "any laws which attempt to require that deaths and complications resulting from abortion are recorded, much less reported, are unconstitutional." This means that the "only information available on abortion complications is the result of data which is *voluntarily* reported."²⁴ From these and other factors²⁵ Reardon concludes that

complication records from outpatient clinics are virtually inaccessible, or non-existent, even though these clinics provide the vast majority of all abortions. Even in Britain where reporting requirements are much better than the United States, medical experts believe that less than 10 percent of abortion complications are actually reported to government health agencies.²⁶

Reardon's study indicates that it may be more true to say that the opposite of (2g) is the case—namely, that abortion is more dangerous than childbirth. His work deals with the physical risks and psychological impact of abortion in addition to the impact of abortion on later children.

²⁴ D. C. Reardon, *Aborted Women: Silent No More* (Westchester: Crossway, 1987) 90. Reardon (p. 343) cites a *Chicago Sun Times* piece ("The Abortion Profiteers," November 12, 1978) in which writers P. Zekman and P. Warrick "reveal how undercover investigators in abortion clinics found that clinic employees routinely checked 'no complications' before the abortion was even performed."

²⁵ Some other possible reasons for underreporting: (1) Few outpatient clinics provide follow-up examinations; (2) there could be long-term complications that may develop (e.g. sterility, incompetent uterus) that cannot be detected without prolonged surveillance; (3) of the women who require emergency treatment after an outpatient abortion over sixty percent go to a local hospital rather than returning to the abortion clinic; (4) some women who are receiving treatment for such long-term complications as infertility may either hide their abortion or not be cognizant of the fact that it is relevant (Reardon, *Aborted Women* 91).

²⁶ *Ibid.*

He concludes that the harm caused by abortion to the woman and her children is grossly understated by pro-choice advocates.²⁷

In conclusion, although I am sure that there are other ways to attack (G) I believe that this analysis is sufficient to show that it is not a compelling theological argument for the pro-choice position.

IV. ARGUMENT AGAINST A PUBLIC POLICY FORBIDDING ABORTION

The final argument we will analyze is Mollenkott's argument that it is not wise to make a public policy decision in one direction when there is wide diversity of opinion within society. This argument can be outlined in the following form (I): (1i) There can never be a just law requiring uniformity of behavior on any issue X on which there is widespread disagreement. (2i) There is widespread disagreement on the issue of forbidding abortion-on-demand. (3i) Therefore any law that forbids people to have abortions is unjust.

The only way to successfully attack this argument is to show that (1i) is false. There are several reasons to believe this is the case. (1) If (1i) is true, then the United States Supreme Court's abortion decision, *Roe v. Wade*, is an unjust decision. The court ruled that the states that make up the United States, whose statutes prior to the ruling widely disagreed on the abortion issue, must behave uniformly in accordance with the Court's decision. (2) If (1i) is true, then the abolition of slavery was unjust because there was a widespread disagreement of opinion among Americans in the nineteenth century. Yet nobody would say that slavery should have remained as an institution. (3) If (1i) is true, then much of civil rights legislation, about which there was much disagreement, would be unjust. (4) If (1i) is true, Mollenkott's own public policy proposal is unjust. She believes that the state should use the tax dollars of the American people to fund the abortions of poor women (p. 293). There are large numbers of Americans, however, some of whom are pro-choice, who do not want their tax dollars used in this way. (5) If (1i) is true, then laws forbidding pro-life advocates from preventing their unborn neighbors from being aborted would be unjust (one cannot say that there is not widespread disagreement concerning this issue). But these are the very laws Mollenkott defends. Hence her argument is self-refuting.

Maybe Mollenkott is making the more subtle point that because there is widespread disagreement on the abortion issue enforcement of any laws prohibiting abortion would be difficult. Pro-life advocates do not deny that this may initially be the case. They believe, however, that the changing of the law itself will help create a climate of opinion in which people's attitudes concerning abortion will become more sympathetic toward the pro-life position, just as public opinion became more sympathetic toward the pro-choice position after abortion was legalized. For the function of law is not always to reflect the attitudes and behavior of

²⁷ See Reardon, *Aborted Women*.

society. Sometimes laws "are also a mechanism by which people are encouraged to do what they know is right, even when it is difficult to do so."²⁸ Reardon points out that "studies in the psychology of morality reveal that the law is truly the teacher. One of the most significant conclusions of these studies shows that existing laws and customs are *the most* important criteria for deciding what is right or wrong for most adults in a given culture."²⁹ Citing legal philosopher John Finnis, Bernard Nathanson writes that "sometimes the law is ahead of public morality. Laws against dueling and racial bias preceded popular support for these attitudes."³⁰

There is no doubt that the problem of enforcing laws prohibiting abortion is extremely important and complex, but a detailed analysis of this problem falls outside the scope of this paper. In my analysis of (I) my intention was merely to show that (1i) is false, which I believe is necessary prior to discussing the public policy question. I believe that I have been successful.

²⁸ Ibid. 319.

²⁹ Ibid. 319-320. For studies showing the plausibility of this view see the works cited by Reardon.

³⁰ B. Nathanson, *Aborting America* (Garden City: Doubleday, 1979) 267.