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# When Is Killing the Unborn a Homicidal Action?

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It is well known that many "pro-lifers" believe any killing of unborn life from fertilization onward to be a homicidal action. The strongest argument that has been made in support of this belief is based upon a philosophical concept of human life which is rooted in a metaphysics of existence and derived from an analysis of undisputed instances of human life, adult human beings.<sup>1</sup> In this concept all the proper functions of a human adult—cognition, sensation, volition, affection, and vegetation—exist through a unified dynamic tendential act. This existential act is the adult's basic intrinsic principle of being. He exists through it, rather than not at all, and through it he is oriented to function as humans do, rather than as some other kind of thing. The human life of any adult began (understanding life in the ontological and most complete sense) when his basic existential principle first came into being. Thus any act of killing which excises from the world an entity existing through this type of human principle, regardless of the fulfillment or development

achieved, is a homicidal action in the moral sense of the term, which gives one good reason why it should be considered homicidal in a valid legal institution.

Many "pro-lifers" insist that any killing of unborn human life from fertilization onward is a homicidal action, then, because sufficient reasons exist for designating that process as the time when an adult's principle of existence first came into being. Obviously, they argue, there is no good reason for locating the principle's beginning in something prior to fertilization, since no adult is known to have come from a male sperm or female ovum alone. Secondly, there is no compelling reason for designating the beginning at some point or time after fertilization. This is true, the argument continues, because there is at least a *prima facie* continuity in any adult's life from fertilization to the present moment, and no sufficient logical or empirical difficulties exist which make it unreasonable to claim that the basic human life of any adult began at fertilization.

This line of argument, however, has been challenged recently in a study<sup>2</sup> by Dr. James Diamond, a diplomate of the American Board of Surgery, and Chief

of head and neck Surgery at St. Joseph's Hospital, Reading, Pennsylvania. Diamond argues that any killing of unborn human life can be considered homicidal only if the killing took place at or beyond implantation. Acts which kill human fertilized ova prior to implantation may be immoral, Diamond allows, but he thinks that such acts should be named anti-conceptive rather than homicidal. Diamond's argument is based on two claims. The first stipulates that biological information alone provides the substrate for all moral and legal thinking about when a new *home* truly comes into being, thus, for all moral and legal thinking about when killing the unborn becomes homicidal. The second is his claim that the biological facts about early human life clearly show that life existing prior to implantation cannot reasonably be understood as an actual or possible subject of homicidal action.

Diamond's study is especially significant for pro-lifers because his sentiments obviously are with the anti-abortionists, in the current abortion controversy, and his argument is addressed specifically to those in the pro-life movement who support the adoption of a constitutional amendment that gives equal protection against unjustified killing to all human life from fertilization onward. There has been support for the position Diamond takes on the beginning of human life among some theological ethicists,<sup>3</sup>

but their opinions generally tend to support the position's plausibility, not its compellingness. Diamond, however, argues from his position on the beginning of human life to the definite wrong-headedness of those who seek the adoption of a constitutional amendment that gives equal protection to all human life from fertilization onward. In Diamond's view the biological data on the vital activity and totipotentiality of human zygotes along with facts about the relatively large numbers of blighted ova which abort spontaneously shortly after fertilization clearly tips the scale and shows the unreasonableness in the claim that the killing of unborn human life prior to implantation is homicidal.<sup>4</sup>

To admit that the killing of early unborn human life is contraceptive rather than homicidal implies significant practical consequences for amendment seeking pro-lifers. It would not be a trivial concession. As pro-abortionists have maintained all along, surgical procedures, mechanical devices, and chemicals currently used to kill fertilized ova would then be properly understood as anti-implantation agents rather than abortifacients. In addition to this, it is surely plausible to presume, if an amendment were adopted which protected the lives of only the unborn who had achieved implantation, large efforts would be made to develop better techniques both for detecting the presence of young unborn life and for preventing its im-

plantation. Moreover, the admission would surely deny a basic moral objection to "in vitro" fertilization research experiments, namely, that no human subject from fertilization onward may be treated as a means alone. The critical question for the pro-lifer under discussion, then, is whether or not Diamond's argument is sufficiently compelling to cause him to change his mind about when a bona fide *homo* begins to be.

### Restructuring the Argument

Before considering the question directly some excising must be performed on Diamond's argument and some reconstruction of it made. First, concerning the excising, it is appropriate to delete from the argument inferences which are based upon blighted ova<sup>7</sup> since this fact does not really challenge the basis for the pro-life claim that the killing of human life from fertilization onward should be considered homicidal. According to Diamond the natural deficiencies in the zygotes which abort spontaneously shortly after fertilization indicates a lack in them of any real capacity to be truly human. Diamond's interpretation here may be plausible but not at all necessary since other plausible hypotheses are also available,<sup>6</sup> but that is not to the present point. Even if Diamond's interpretation were compelling it establishes no necessary connection between the blighted ova and the pro-life concept of human life drawn from adult humans, because no human adult

comes from a blighted ova. If Diamond's interpretation were recognized by the pro-lifer the latter could continue supporting his position by simply admitting to at least two different kinds of entities among human zygotes, those which exist through a basic tendential existential principle of human life and those which do not. And this admission warrants no change in the judgment that killing fertilized ova is a homicidal action. Since the truly human zygotes are indistinguishable from the others, a point incidentally that Diamond implicitly accepts,<sup>7</sup> it is the safer and obligatory course from both the moral and legal points of view, at least in matters of life and death, to treat all zygotes as if they existed through the basic principle.

Some reconstruction of Diamond's argument is required because whatever challenge it presents to an amendment-seeker comes from biological evidence about vital activity and totipotentiality and not from his stipulation about the primacy of biology for all moral and legal thinking about the homicidal character of the killing of unborn human life.<sup>8</sup> As far as I can discern Diamond offers no good reason for accepting the stipulation, while there does exist, I believe, much good reason for rejecting it. The disvalue in any indisputed instance of homicide surely does not reduce to a loss of biological life. That loss is part of the disvalue, but the total dis-

value also includes a loss from this world of many other discernible perspectives of human life, the specifically personal aspects of knowing and loving for example. In fact many pro-abortionists<sup>9</sup> in focusing upon one or another of these discernible aspects (psychological or interpersonal, for example) have, in effect, replaced Diamond's preferred biological substrate with their own partial perspective and equally arbitrary stipulation.

This I believe indicates the propriety in approaching the question of homicide and the killing of the unborn through a well developed philosophical concept of human life derived from adult human life rather than through a construct derived from factual information about early human zygotes, which is the approach Diamond takes. As illustrated in the existential concept of human life outlined earlier in the paper, a plausible philosophical concept is complete. It excludes nothing significant to the homicide question from other legitimate partial perspectives, such as biology or psychology, but also includes basic aspects (e.g., intrinsic tendential principle of human life) incapable of being manifested in other perspectives. Nothing from the other perspectives is excluded because a philosophical concept is rendered implausible and invalid in so far as it conflicts with, and cannot accommodate, data about human life proper to any legitimate partial perspective. Reinhold Niebuhr has put this

validating point succinctly in explaining how experience can invalidate presuppositions held by faith.

Guiding presuppositions do indeed color the evidence accumulated by experience. Presuppositions are like spectacles worn by a nearsighted or myopic man. He cannot see without his spectacles. But if evidence other than that gathered by his sight persuades him that his spectacles are inadequate to help him see what he ought to see, he will change his spectacles.<sup>10</sup>

The basic challenge Diamond advances really comes to this: the biological data about the early zygote's vital activity and totipotentiality simply renders implausible *any* philosophical concept of human life which allows the killing of early unborn human life to be considered homicidal. And the specific challenge he raises for amendment-seeking pro-lifers, whose position rests upon a philosophical concept of human life outlined at the beginning of the paper, is whether or not applying their concept to fertilized ova conflicts with the nature of the vital activity and totipotentiality present in early human zygotes.<sup>11</sup> If there is substantial conflict then the application of the concept to fertilized ova, if not the very concept itself, is rendered invalid. If, however, the pro-life concept can adequately accommodate these biological facts, Diamond's objection will be met and his challenge will be null.

The basic biological fact about the vital activity of the early

zygote is that the zygote sustains itself through a self-cannibalization process,<sup>12</sup> similar to the nutrient process in sperm and fertilized ova. Furthermore the intrinsic supply of nutrients in these zygotes becomes exhausted at about the same time their cardiocirculatory system becomes functional. The extrinsic source of nutritive supply, necessary for their continued survival, then, is delivered when and if the zygote achieves a successful implantation,<sup>13</sup> and the embryo makes a functional entry into the maternal circulatory system. Other biological changes similar to this are also operative in early zygotes. The directedness of the zygote's internal activity, for example, is a maternal donation initially, and it is only at some later time that it elaborates its own RNA.<sup>14</sup> These kinds of changes, according to Diamond, indicates clearly that the early fertilizatum is not yet a genuine human entity that could be the subject of homicide in a moral or legal sense. Rather, he continues, "it is defined most accurately as intervital (like that of sperm and ovum) and either pre-organismal or inter-organismal."<sup>15</sup> Although Diamond's construct explaining these facts also may be plausible it is not a compelling hypothesis; for the facts, in themselves, do not imply any conflict with the amendment-seekers' concept of human life rooted in a tendential principle. Perhaps a conflict would exist if something completely novel appeared in the zygote when its

nutritive process changed or when it became directed through RNA instead of a "maternal donation." If that were the case it might be implausible to maintain that the same existential entity was subtending the changes. But nothing completely novel is indicated. On the contrary, the facts suggest that a capacity to receive an external nutritive supply arises from within the zygote, and the facts do not deny that both the "maternal donation" and the RNA are grounded in a tendential principle of human life which makes it exist, and exist with an orientation to further human development and completion.

### Two Dimensions

There are two distinct but related dimensions to the biological facts in Diamond's argument pertaining to the totipotentiality of the early zygote or morula. First, each of the cells in the morula appears capable of differentiating into any type of subsequent cell — bone, brain, or blood. Cells do not become differentiated into different organ systems until what is called the primary organizer or primitive streak appears on the posterior lip of the blastopore. Moreover, if the primary organizer of one blastula is grafted onto another, further differentiation of the cells in the first will cease, but differentiation of the cells in the second will recommence. This, states Diamond, gives the scientist "an almost insuperable inclination to identify hominization as being positable no earlier than the blastocyst



stage."<sup>16</sup> The second dimension of the biological evidence related to totipotentiality is the fact that the biological unity of the individual zygote is irrevocably established only when the primary organizer appears on the blastocyst. From that time onward neither twinning nor the reconnection of a twinned or split morula can possibly occur.<sup>17</sup> But since twinning and reconnection may occur anytime prior to the appearance of the primary organizer<sup>18</sup> Diamond contends "we can justifiably hold that at fertilization is laid down *only* the character of the subsequently hominizable entity (ies), the hominization and individuation of which cannot be posited until the late-second or early-third week after fertilization."<sup>19</sup>

Contrary to Diamond's opinion the facts in both of these dimensions do not invalidate the amendment-seeker's move in which he applies his concept of human life to fertilized ova. Concerning the first dimension, the transition which takes place between the undifferentiated cells in the morula and the cells in the blastula which are undergoing differentiation can be explained in the following way. The basic tendential act making the fertilized ovum a human being requires a definite amount of initial cell matter in order for the specific organ systems in the zygote to develop. Once sufficient cell matter becomes available, the basic tendency's orientation to

develop the vegetative structure of the zygote's human life becomes operative. The primary organizer is then formed and begins to function, and the vegetative structure in the unborn begins to develop as the process of specific differentiation continues. This interpretation is given substantive empirical validation from the fact that the primary organizer appears to develop and form within the zygote. In like manner, it is not difficult to use the amendment-seeker's concept for explaining what occurs when a primary organizer is taken from one blastula and grafted upon another one. The organizer is simply understood as a factor or condition, rooted in the basic tendency yet necessary for its continued fulfillment, that is also transplantable from one blastula to another. Thus the organizer is similar to the cornea of the eyeball. It too is a necessary condition for seeing and also capable of being transplanted from one eyeball to another.

In moving to consider the facts in the other dimension of totipotentiality reconnection offers little difficulty, given our present knowledge of the human zygote, and may be deleted from Diamond's argument for much the same reasons which permit deleting the fact of blighted ova from it. So few human adults can be traced back to alleged reconnected zygotes that virtually no substantial relation between reconnected zygotes and adult hu-

mans has yet been established. To claim that the successful experiments involving reconjoined lower morulae (e.g. mice) establishes that relation is also unwarranted, since there is no guarantee that biological facts pertaining to morulae in lower animals will not conflict with what does or does not occur in human zygotes. The same rubella virus which crosses the placenta and infects the fetus in pregnant women, for example, does not cross the placenta in pregnant monkeys.<sup>20</sup> Even if the relation between certain human adults and reconjoined zygotes had been established it would warrant no change in the amendment-seeker's position on the relation between homicide and the killing of fertilized ova. For this fact would indicate nothing about the relation other human adults have with the fertilized ova from which they appear to have developed. Nor would it even deny that the principle of life in the adult and reconjoined zygote was also present in the original fertilized ovum prior to twinning.

It is left to twinning, then, to be the critical evidence which could make Diamond's argument a serious challenge to the amendment-seeker's position. Certain aspects of twinning (and any other set of multiple instances of identical human life) do give it the appearance of being a formidable fact. For it is clear that identical twins exist among the class of adult human beings. It is equally clear that the fertilization process to which any twin is related bio-

logically involves the initial conjunction of one ovum with one spermatozoon. Father Donceel has put the challenging point in these facts succinctly, "one human being splitting up into two or more human beings is, metaphysically speaking, hard to take."<sup>21</sup>

Donceel's point is well taken. To my knowledge there is no argument available which can show the plausibility of claiming that the basic tendential principle in both adult members of a set of identical twins began in the same fertilized ovum. But to allow this does not deny that the principle of one twin may have begun at fertilization,-- nor does it deny that the basic existential principle of human life in the other twin may have begun when twinning occurred, i.e. when he first began to exist as an individual entity. Moreover, twinning in no way decreases the plausibility in the claim that the basic principle of life in any non-identical human adult began in the fertilized ovum from which that adult developed. Thus, although twinning indicates that the principle of human life in some adults cannot be traced back to a fertilized ovum, twinning does not deny that the principle exists in each process of fertilization, nor does it deny that the principle was present when any human adult began to exist, even if that was at the morula stage of development. Consequently, twinning does not make Diamond's argument credible, and the amendment-seekers'



claim that no killing of unborn human life from fertilization onward has not been invalidated by it.

As a final point it should be mentioned that, although amendment-seekers can adequately meet Diamond's objection to their position, it is probably unrealistic to deny the political difficulty, if not practical impossibility, of having an amendment passed which would protect the life of the unborn from fertilization onward. Perhaps in the United States today the best pro-lifers can realistically expect is the establishment of an amendment giving the unborn protection against unjust homicides from the end of the first trimester onward. If this is the case, then, the establishment of such an amendment should be understood only as a political legislative action, and not as a morally justified one. Moreover, pro-lifers who actively support the passage of this kind of amendment, because it is the least evil moral alternative really available in the political order, should make it perfectly clear that the base for their support is political rather than moral. Otherwise their support for an amendment which may be morally excusable, since it is the least evil of the feasible political alternatives, could readily be interpreted as support for an amendment having moral justification. That would be false and, in the long run, counterproductive to the moral life of the community.

## REFERENCES

1. Cf. Francis Wade, S.J., "Potentiality in the Abortion Discussion," *Journal of Metaphysics* (December, 1975).
2. "Abortion, Animation, and Biological Hominization," *Theological Studies*, vol. 36, no. 2 (June, 1975), 305-324.
3. Cf., for example, Charles Curran, "Abortion: Law and Morality in Catholic Theology," *The Jurist*, 33 (Spring, 1973), p. 180; also, Paul Ramsey, "The Morality of Abortion," in *Life or Death*, edited by D. Labby (Seattle: University of Washington Press, 1968), p. 63.
4. Although Diamond's argument includes a section titled "Nonbiological Considerations," whatever challenge the argument makes is really based upon his interpretation of these biological facts.
5. Diamond, pp. 312-313.
6. It is also plausible to suggest, for example, that ova are blighted simply because there is insufficient matter available for their basic tendential life principles to develop or be sustained. This type of situation is common in later stages of life, when men, plants, and animals become stunted. The difference between being stunted and ceasing to live at all could easily be explained this way: the deficiency of matter in the former context results only in a lack of completeness or integrity of the life principle, while the deficiency in the latter results in the loss of the life principle from this world.
7. Diamond, p. 317.
8. *Ibid.*, pp. 307, 323.
9. Cf., for example, Glanville Williams, *The Sanctity of Life and The Criminal Law* (London: Faber and Faber, 1958), p. 113.
10. Reinhold Niebuhr, "Intellectual Autobiography," in *Reinhold Niebuhr: His Religious, Social and Political Thought*, edited by C. Kegley and R. Bretall (New York: Macmillan, 1956), p. 16.

11. It should be noted that strictly philosophical objections can be made against the concept of life stipulated in this paper. In fact one recent objection has been made by Sissela Bok in her paper "Who shall count as a human being," in *Abortion: Pro and Con*, edited by Robert Perkins (Cambridge, Mass.: Schenkman Press, 1974), 91-105. The validity of this type of objection, however, is not the concern of this paper, since it is not at all pertinent to Diamond's challenge.

12. Diamond, pp. 308-310.

13. *Ibid.*, p. 316.

14. *Ibid.*, p. 310.

15. *Ibid.*, p. 323.

16. *Ibid.*, p. 315.

17. *Ibid.*

18. *Ibid.*, pp. 311-312.

19. *Ibid.*, p. 315.

20. Cf., *Federal Register*, vol. 40, no. 154 (Aug. 8, 1975), pp. 33534-33535.

21. Donceel, Joseph, S.J., "Abortion: Mediate v. Immediate Animation," *Continuum*, V (1967), p. 171.

22. Cf. Rudolph J. Gerber's interesting theological point on this in his article "When is the Human Soul Infused?", *Laval théologique et philosophique*, 22 (1966), p. 342.

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