

1-1-1968

# On Humanity and Abortion;Note

John O'Connor

Follow this and additional works at: [http://scholarship.law.nd.edu/nd\\_naturallaw\\_forum](http://scholarship.law.nd.edu/nd_naturallaw_forum)



Part of the [Law Commons](#)

---

## Recommended Citation

O'Connor, John, "On Humanity and Abortion;Note" (1968). *Natural Law Forum*. Paper 141.  
[http://scholarship.law.nd.edu/nd\\_naturallaw\\_forum/141](http://scholarship.law.nd.edu/nd_naturallaw_forum/141)

This Note is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Natural Law Forum by an authorized administrator of NDLScholarship. For more information, please contact [lawdr@nd.edu](mailto:lawdr@nd.edu).

## ON HUMANITY AND ABORTION

In his interesting and informative paper, "Abortion and the Catholic Church: A Summary History,"<sup>1</sup> John T. Noonan, Jr., presents a history of the views of the Roman Catholic Church on abortion and goes on to argue in behalf of the position that abortion is morally wrong. Noonan's argument, however, is open to question on a number of grounds. In what follows I shall present a sketch of his position, point out certain defects in his discussion, and then go on to offer some suggestions aimed at solving the question of the moral status of abortion. Since Noonan's argument is found in the concluding section of his paper, I will limit my discussion to those pages.

Noonan's procedure is this: He assumes that, barring special circumstances, it is morally wrong to take the life of a human being. The question concerning the moral status of abortion becomes one of determining whether or not a fetus in the womb is a human being; and if so, at what point he becomes a human being. This leads him to take as the central question: "How do you determine the humanity of a being?" (p. 125)

Next Noonan proposes that what has man's potential is human and concludes that: "If you are conceived by human parents, you are human." (p. 126) According to this criterion, the fetus is a human being from the moment of conception, and therefore abortion is morally wrong. Noonan defends his position, first, by considering and finding defects in a number of alternative criteria, and then by presenting some positive considerations in behalf of his own view.

To begin, let us consider Noonan's arguments against criteria alternative to the one he proposes. His arguments against these five proposed criteria are of different sorts, and it is worthwhile noting them. Some of the arguments are quite effective, others less so. Yet the reader has the feeling that, in one sense, Noonan wins easily in each case; in fact, almost too easily. This should make one suspicious about the entire dispute. (Later it will be suggested that the reason for this feeling is that Noonan's arguments rest upon certain assumptions which make his task easier. Once these assumptions are disclosed, as they are once one asks not "How do you determine the humanity of a being?" but "What sort of process is the proper one to use to determine the proper criterion of humanity?" it becomes clear that much of what Noonan says must be supplemented before it can hope to be put forward as an adequate account of the moral status of abortion.)

Noonan considers five alternative criteria:

First, viability. He points out a number of facts concerning viability, among them that even after a child has been removed from the womb it cannot live without care. He concludes that its being able to exist outside the womb, since it marks no special lessening of dependence, "does not seem to signify any special acquisition of humanity." (p. 126) This last phrase suggests that Noonan considers humanity to be some sort of property or attribute which all and only human beings possess and which is acquired at some definite time. (This point will be returned to below.)

---

<sup>1</sup> 12 NATURAL LAW FORUM 85-131 (1967).

His strategy is now a bit clearer: He assumes that the criterion of humanity can be determined when we find the moment at which the fetus acquires this attribute called "humanity." (Although Noonan intends to drop traditional theological categories, it is important to note that he has not dropped the metaphysical picture upon which many traditional theological views were based.) Presumably, then, unless one can find a moment of acquisition between conception and birth, he should conclude that the fetus has acquired its humanity at the moment of conception. As will become clear below, Noonan's model of an attribute acquired by a fetus in the real order of things at a given moment is not the only, nor is it the most satisfactory, model of how human beings are human.

The second alternative criterion Noonan considers is couched in terms of experience: Humanity requires experience; to be human is to have had experience. Noonan, after pointing out that in a sense the embryo does have experience, goes on to argue that "it is not clear why experience confers humanity." (p. 127) Here, it seems, is an argument reminiscent of G. E. Moore's open-question argument: Humanity is one thing; experience is another. Therefore it is a mistake to think that to acquire one is to acquire the other. (Although Noonan does at one point refer to rationality as the universal characteristic of man [p. 129], one has the feeling that humanity for Noonan is, as good was for Moore, unanalyzable.)

The third criterion he considers is feeling. He points out, however, that the feelings of people about the deaths of others vary tremendously, depending upon circumstances, and argues that lack of feeling about an embryo does not establish lack of humanity. He does not, however, consider whether humans might come to develop strong feelings about the death of embryos, and what effect this would have on their moral outlook. More importantly, he fails to mention a related criterion: Supposedly when we discover an adult has been murdered we feel some strong moral outrage or disapproval toward the murderer, but many people feel no such thing toward an abortionist or the woman who obtains an abortion. (This point will be considered below.)

The fourth criterion Noonan discusses is whether or not we can see or feel the embryo. He dismisses this on the basis that to distinguish human beings by sight might lead to discrimination on the basis of color and on the grounds that one out of touch with others is not thereby deprived of his humanity. His arguments here, if they can be called arguments at all, are certainly very weak. Yet it is not clear that the criterion can be saved from the same sort of charge Noonan made against the second criterion: What do seeing and touching have to do with humanity?

Perhaps the most interesting of the criteria Noonan considers is that of social visibility: recognition by society as a member of the society or as a human being. He rejects this on the ground that "any attempt to limit humanity to exclude some group runs the risk of furnishing authority and precedent for excluding other groups in the name of the consciousness or perception of the controlling group in the society." (p. 129) Noonan's view is that "humanity is an attribute," the acquisition of which is a "a real event in the objective order." He feels it is conferred by conception by a man and a woman. (pp. 128-29)

Once again, we find Noonan's metaphysics determining his rejection of a criterion. Since humanity is a real attribute objectively and independently of whether or not it is recognized, any attempt to give society or other men the power to determine who has humanity is very dangerous, for they may well err. More importantly, to be human is to possess an attribute, not merely (or even) to be recognized in a certain way by society.

Hence, Noonan's presuppositions can be seen fairly clearly now: Human beings who have been born have some attribute called "humanity" which makes them human. If one accepts these presuppositions, one must, in order to argue against Noonan's view concerning abortion, accept the burden of proof. That is, such a one must accept the burden of showing that the fetus when conceived lacks the attribute known as humanity, or at the very least that it acquires it at some point between conception and birth. As noted above, Noonan's arguments against the various alternative criteria often embody the following moves: "Well, that change is not great and important enough to mark the acquisition of humanity," and "Why should that other change mark humanity at all?" While many of his arguments are effective even if one does not accept Noonan's presuppositions, they are almost too effective if one does accept the presuppositions. Certainly most people would grant that an entity does not all of a sudden acquire an attribute called humanity, in large part because many probably don't believe in attributes, and would grant that no one change in the development of an embryo marks the acquisition of humanity. But given Noonan's presuppositions, these two admissions seem to be sufficient to prove his case about abortion. This suggests quite strongly that his presuppositions need airing and examination.

However, before turning to an examination of them and the fundamental question which underlies the issue of the moral status of abortion, let us consider briefly Noonan's arguments on behalf of his view.

A. He realizes that his argument may be pushed further than he desires: Since at the moment of conception a fetus has humanity, why not push the process back to the stage before conception and rule out contraception, since given that some spermatozoon and some ovum will produce a fetus, they are potentially human, and therefore human. Noonan argues on this point that since the probability that a spermatozoon or an ovum will develop is very small, while the probability that a child will result, once conception occurs, is four out of five, we should draw the line at the moment of conception. He defends this view by an unusual and not terribly clear principle: "Moral judgments often rest on distinctions, but if the distinctions are not to appear arbitrary fiat, they should relate to some real difference in probabilities." (p. 129)

At least two comments should be made:

- 1) If in a given tribe, conception produces a child in only one out of ten cases, is Noonan prepared to sanction abortion for this society? What if these statistics were correct for the human race in general? Noonan's argument needs amplification to take into account the weight of these possibilities.
- 2) What does a shift in probabilities, from an event being very unlikely to an event being quite likely, have to do with humanity? This is of course the same sort of argument Noonan used against experience as a criterion for human-

ity. Certainly humanity has much more to do with experience, say, than with biological statistics. This is not to claim that this argument is especially effective. It is just that if one feels, as Noonan apparently does, that only a characteristic which is clearly and intimately associated with humanity can be a mark of the presence of humanity, he is open to this charge.

B. Noonan argues that at the moment of conception the new being receives the genetic code, which makes him then potentially human. Noonan then goes on to say that since man is always in the process of learning, no one is fully human. So the adult as well as the fetus is potentially human. Therefore, supposedly, they should be treated alike.

If this is meant as a proof of some sort, it is fallacious. Presumably, Noonan's interest in humanity arose because he was interested in determining the scope of the moral principle that it is wrong to take human life. Even if one grants the perhaps dubious assumption that a fetus and an adult are potentially human in the same sense (are acorns and full-grown trees potentially oaks in the same sense?), Noonan's procedure fails. His argument is this:

- a) All A's (humans) are B's (potential humans).
- b) All C's (fetuses) are B's (potential humans).
- c) It is morally wrong to kill A's.
- d) It is morally wrong to kill C's.

This is like arguing that since it is wrong to kill humans, it is equally wrong to kill kangaroos, since both humans and kangaroos are bipeds. While, of course, a fetus and an adult of the same species are in a sense more closely related than members of two different species, nothing Noonan says shows the relevance of this relation. Hence, as a purported proof, Noonan's attempt fails.

It appears, therefore, that Noonan's own criterion is subject to the same sorts of attack that he subjects alternative criteria to. The effectiveness of all of these attacks exemplifies what was noted before: Noonan's attacks are almost too successful. The reason is now clear. Noonan has presupposed a certain account of the facts to which the proper criterion of humanity must relate: Humanity is an attribute which is acquired at some definite time. Since there seems to be no "jump" in the development of a fetus into a human being, and further since there is no special feature which seems an intuitively correct indicator of the presence of humanity, we must assume that the fetus is human at conception.

However, the metaphysical assumptions contained in this view are open to serious question. For example, it is very difficult to give a coherent and clear account of attributes, especially when the presence of such attributes is supposed to qualify a being as within the scope of a moral judgment. Hence, Noonan's argument, if it is to be effective and persuasive to a great number of philosophers, must be freed from its metaphysical underpinnings.

This leads to a question noted above: "What sort of process is the proper one to use to determine the proper criterion of humanity?" That is, how does one set about answering Noonan's question "How do you determine the humanity of a being?" Noonan seems to assume that the criteria are to be discovered,

because whether or not a being is human is a fact independent of our recognition of it. However, it is possible to agree with Noonan that, in a sense, it is certainly an objective matter whether or not a being is human, but point out that it becomes objective only when human beings have decided what the criterion of humanity is. Noonan assumes that there are a right and a wrong in the matter of a criterion. Either the criterion picks out human beings or it doesn't, and whether or not it does is independent of human beings thinking it does. However, Noonan cannot argue that the criterion is correct only if it yields the result that fetuses are human, since the point of seeking the criterion was to determine whether or not fetuses are human. In Noonan's article, then, we fail to find, apart from a brief reference to rationality, which is insufficiently elaborated (p. 129), any standards by which to evaluate the proposed criteria of humanity, except negative ones. Since these negative ones seem to rule out, given Noonan's "objectivist" metaphysics, all candidates (including his own), it appears that if the question of humanity is to be settled in a way that throws light on the moral status of abortion, a new approach to the question is needed.

I suggest that the fundamental defect in Noonan's account is his assumption that the criterion of humanity needs to be discovered. Rather I suggest that we must *decide* what the criterion is to be.<sup>2</sup> This is not, of course, to say that it is a subjective matter. Rather, there are good and bad reasons for deciding in the way we do. It would be impossible, of course, in a paper such as this to work out a complete account of the grounds upon which we should decide criteria of humanity. Indeed there may never be total agreement on such grounds, let alone on a choice of criterion. The possibility of disagreement here may be unfortunate at times, but the same possibility exists with respect to science or any human activity. Still some comments will be offered.

The reason that humanity is of interest to a person concerned with the moral status of abortion is that he wants a way to decide the scope of the moral principle to the effect that the taking of human life is wrong. Hence humanity should be characterized in terms of those features which are in fact related to the moral sensibility of human beings. There may of course be reason to adopt criteria of humanity for other purposes, e.g., for biological purposes. There is no need to assume, however, that all criteria of humanity will be the same. It will do little good to couch the criterion of humanity in such a way that the moral judgments we now make concerning human beings would be felt to have no moral force when applied to the "newly qualified" humans, whose humanity was first recognized only by the new criterion of humanity. To take a trivial case, it would be pointless to set up a criterion of humanity, to be used in a moral context, according to which trees were human, for no one in our society at least feels that killing a tree is anything like killing a human being. This is not to say that one's society is to determine who is human, in the sense that some dictator has the power to set up the criterion. It is rather to say that psychological features of human beings, especially those that relate to value

<sup>2</sup> For a similar point, in the context of a discussion concerning robots, see Hilary Putnam, *Robots: Machines or Artificially Created Life?* 61 THE JOURNAL OF PHILOSOPHY 668-91 (1964).

judgments in general and moral judgments more particularly, must be taken into account in framing any such criterion if it is to be morally effective.

This point was indicated earlier, when it was noted that Noonan failed to include among the alternative criteria that which would distinguish humans from nonhumans by determining the moral reaction men have to the one who takes the life of the being in question. One who intentionally kills an adult or a child, except in special circumstances, is usually held to be morally reprehensible. Perhaps also one who intentionally kills a child in the womb at seven months. However, many do not feel that a person who performs an abortion on a woman who is one or two months pregnant is morally reprehensible in the way that one often considers the killer of an adult to be. Here is a psychological difference which may be taken to have a moral dimension and therefore may be taken to be relevant to the moral status of abortion.

Assuming this account of moral sentiment as roughly correct (from a psychological point of view), one might go further and ask why for many a seven-month-old embryo is considered to be a possible victim of murder, while a two-month-old one is not. The reason might be found in the fact that the seven-month-old looks like a human being (we would recognize it as one), and if born prematurely could, without strangeness, be held to be an object of love on the part of the parents. A two-month-old fetus, however, does not look or behave like a child or adult and therefore would probably not be a possible object of parental love.<sup>3</sup>

Of course, if people began to see their "children" at one and two months as a matter of course (due perhaps to certain artificial incubation techniques becoming widespread) this might change, and the range of human feelings and emotions become extended to include fetuses in early stages of development in their scope. This is an empirical question and one which someday might be answered. Again, after becoming aware of the complexity of the fetus's makeup — including such things as its possession of a complicated and sophisticated genetic code — people might come to look upon a fetus as not so completely different from them, and therefore begin to regard it as human. Hence Noonan's mention of genetic code, though ineffective if construed as an argument, is perfectly valid if taken as an attempt to make adult humans realize the great affinity between them and human fetuses at the moment of conception.

Up to this point I have neglected what some claim is the justification of abortion on the basis of the need for population control. This is not to say that this issue is irrelevant. I have been concerned, however, to focus on the issue of abortion in a more limited context, as Noonan does, in an attempt to clarify certain moral issues. Indeed the correctness or incorrectness of Noonan's view will determine to what extent and in what way the pressures of population will constitute a legitimate justification for abortion.

I conclude, then, that only as human adults come to be familiar with and feel similar to fetuses will abortion be thought of as a form of murder by the great majority of people. This attempt to extend the notion of humanity to

<sup>3</sup> This point was raised by Miss G. E. M. Anscombe in a seminar led by Professor Noonan at The Catholic University of America, June 25, 1968.

fetuses at the moment of conception is not unsound or incorrect or misguided *per se*. However, to be effective it must be based on the realization that what men consider to be human is very closely tied up with what humans take themselves to be. They decide the criterion for humanity; they do not discover it. The decision is based upon what the deciders consider to be enough like them to count as human. The decision therefore can be an informed one, to the extent that it is based upon thorough and accurate knowledge by men of themselves. Once the need for this knowledge is recognized, discussions of the moral status of abortion can be freed from metaphysical quarreling and moral dogmatizing. To the extent that a human being recognizes another being as like him, to that extent he will treat him as human. Whether or not this could ever be true or will ever be true of fetuses in the early stages of development, whether in utero or not, is an open question. Professor Noonan's discussion, at the very least, makes us consider and reflect upon the issue.

JOHN O'CONNOR