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**Philosophy and Theology: Birth, Viability, and Bestowing Meaning**

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The topic of artificial wombs continues to spark scholarly discussion. In her essay “Abortion & ‘Artificial Wombs,’” Elizabeth Chloe Romanis offers the following claim, “Denying abortion effectively demeans those with the capacity to gestate and birth to nothing more than that capacity to gestate and birth.”¹ Is it plausible that Mary Ann Glendon of Harvard Law School demeans herself (and all other women) to being nothing more than their capacity to gestate and birth?² You might with equal (im)plausibility argue that forcing men to provide child support for their unwanted sons and daughters demeans those with the capacity to impregnate to nothing more than that capacity to impregnate.

Romanis exaggerates in a similar way elsewhere in her essay: “If the fetus were a ward of court, its interests would be paramount, because of how ‘child protection’ is prioritized in the exercise of the inherent jurisdiction resulting in a pregnant person being forced to forfeit all their basic freedoms” (28). We have no reason to think that if abortion were outlawed, the free speech of women or their right to vote or to drive would be outlawed. Indeed, all the basic freedoms of women would remain exactly as they are. If Romanis’s claim were true, then in virtue of not being able to get an abortion, women had no basic freedom or rights at all until 1973 when abortion was made legal throughout the United States. So, according to this


logic, it was not a violation of basic rights to murder a woman in 1970. Abortion
does lead to the loss of all basic rights and freedoms—not for the woman denied
abortion but rather for the one who is aborted. She or he loses not only life but all
other rights and freedoms, which cease to exist as soon as she or he is killed.

According to Romanis, birth is the pivotal point at which a human being
gains basic rights: “One of the primary differences between a fetus before birth and
a child after birth is its ‘natality’ in that the born child is in the world in the sense
of coming ‘into the world with and as a specific body, and in a given place, set of
relationships, [and] situation in society’, essentially a child is usually interacting with
a broader range of others that it is dependent upon.”3 Natality is just a synonym for
birth. But describing birth using a synonym does nothing to answer the question,
Why is birth (or natality) morally relevant? “Coming into the world” is another
synonym for birth, so it also cannot, via its uninformative circularity, explain the
significance of birth.

In truth, birth is not actually the “coming into the world” of the individual in
question, who is already existing in our world as is evident from the fact that he or
she is male or female, he or she can die, and he or she has a heartbeat that can be
monitored by doctors. Prior to conception, this individual did not exist. At concep-
tion a new individual comes into our world. Similarly, the individual prior to birth
has an individual body different from the mother’s, a male or female body of his
or her own. Likewise, this individual’s body is “in a given place” within his or her
mother’s body, which is itself in various places at various times during pregnancy.

Romanis would perhaps respond to by noting, “While a fetus is in utero its
existence is mediated through the pregnant person as it is not ‘in the world,’ in the
sense that it does not have relationships with others” (18). What is meant here by
relationship? The individual in utero is physically touching only one other human
being (unless there are twins or triplets who may be touching each other in utero).
But surely individuals can have relationships with others without physically touch-
ing them. As Romanis notes, the newborn baby has a relationship with his or her
father, and this relationship does not depend on the father’s physically touching the
newborn. Nor does this relationship depend upon the father’s knowing about his
baby. Indeed, many fathers have been informed that they are fathers years after the
birth of their children. This lack of knowledge did not change the reality of father-
hood. Indeed, the father has a relationship as biological progenitor of this human
being equally both before and after birth. In fact, this prenatal individual already
has a set of relationships (whether acknowledged or unacknowledged, known or
unknow) to his or her mother, father, grandparents, and any siblings.

Romanis holds that “there is a meaningful developmental difference between
a fetus no longer necessarily in need of being created because it could survive after
gestation with conventional care and a fetus that cannot be sustained outside of
gestation. Though questionable, if the state has an interest in potential life, it seems
intuitive that this interest would be directed only towards those fetuses that could
live in the external environment rather than those human entities still dependent on

being created (whether in utero or an ‘artificial womb’)” (21, emphasis original). This argument appears to be circular reasoning. There is a meaningful developmental difference between a viable fetus and a nonviable fetus because the viable fetus is viable (“could survive after gestation with conventional care”) and the nonviable fetus is not viable (“cannot be sustained outside gestation”). Roe v. Wade offered similar circular reasoning: “With respect to the State’s important and legitimate interest in potential life, the ‘compelling’ point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother’s womb.”

Why is viability compellingly important? Viability is important because at that point, the potential life is viable (capable of life outside the mother’s womb). In addition, if the fetus is only potential life, then how can he or she die? Death is the end of an actual life not a potential life. A potential life, like my great-great-great granddaughter, cannot die now, but an actual fetus can actually die now.

Despite the shared misleading rhetoric about potential life, there is an important difference between the Supreme Court’s view and Romanis’s view. In Roe, viability refers to the point when the human being in utero is “potentially able to live outside the mother’s womb, albeit with artificial aid.” The Court drew no distinction between various kinds of artificial aid, be it a conventional intensive care unit or an advanced artificial womb. And this makes sense. What ethical difference could it possibly make that the ICU is technologically advanced (artificial womb) or technologically primitive (1970s preemie unit)?

In her essay “Pregnant People, Inseminators and Tissues of Human Origin,” Evie Kendal offers another take on these issues. She writes, “Viability is already a problematic method of assigning rights to the foetus, as the survival of an infant born prematurely depends heavily on the location in which the birth takes place and whether access to sophisticated neonatal incubation technology is available. Viability is not an intrinsic trait of a foetus once it reaches a certain point in development, but is rather the result of a complex interplay of situational factors, of which advanced technology represents just one.” Contra Roe, Kendal does not think that viability is the compelling point for moral status; rather, “foetuses lack the fundamental characteristics required to establish full moral status or personhood. It is typically understood that foetuses have no desires, interests, conscious awareness, or rationality, and are devoid of moral responsibility or agency.” Such assertions do not go far in establishing the desired conclusion that prenatal human beings are definitely not persons. What is asserted without justification can be rejected by saying, Foetuses have the fundamental characteristics required to establish full moral status or personhood.

5. Roe, 410 U.S. at 160.
human beings and that desires, interests, conscious awareness, and rationality are not necessary conditions for individual human beings to have personhood, as cases of adults who are severely mental handicapped indicate.

Kendal continues, “In addition to lacking moral personhood, foetuses typically lack legal personhood; since they cannot be (legally) wronged in the way an autonomous human being can be, any maternal-foetal conflict must logically be resolved in favour of the party possessing legal personhood.” 9 This claim is also not in accordance with the truth. Aside from abortion, the law recognizes that prenatal human beings can be wronged. As Gerard Bradley points out, “The unborn are recognized as persons with a right not to be killed in 38 American states, as well as in federal law. These statutes—commonly described as ‘feticide prohibitions’—accord the unborn the same right to life as others, except when they are targeted in legal abortion.” 10 In the murder of pregnant Laci Peterson, her husband was charged and convicted of double murder in California.

US law is inconsistent. Intentionally killing the prenatal human being is illegal save in the case of abortion. By contrast, Kendal’s understanding of prenatal human beings involves a consistent denial of all rights to them: “I argue that foetuses are most accurately classified as tissues of human origin that are dependent on a pregnant woman’s body for life, possessing varying statistical probabilities of becoming persons that take into account increasing gestational age and the presence of any abnormalities. Despite this potential, such tissues do not possess rights or interests while they remain in the womb, and thus cannot be said to have a right to be transferred into an artificial womb, even if this might promote its survival.” 11 A prenatal human being can be described as tissues of human origin, but you and I can also be described as tissues of human origin. The dependency of the individual on a pregnant woman’s body for life could be another way of talking about viability, for at viability the prenatal human being is not necessarily dependent on the pregnant woman’s body. For reasons already discussed above, as well as reasons I have talked about in The Ethics of Abortion, viability is irrelevant for moral status. On the other hand, dependency could be understood as existing in utero regardless of viability. In this case, the prenatal human being has no rights until born. But then the question is, Why should birth be the magic moment transforming mere tissues of human origin into persons with inherent dignity and human rights? My answer is that birth is not ethically decisive for the status of the young human being. 12 In any case, Kendal’s argument that the prenatal human being is not a person is based on unjustified (and I think unjustifiable) assertions.

Human persons have a mother and a father, but tissues of human origin have neither, so Kendal endorses the use of a new term, inseminator, “to refer to the male genetic progenitor of a developing foetus. This term highlights a relationship

12. On the irrelevance of birth and viability for the rights of prenatal human beings, see Christopher Kaczor, The Ethics of Abortion, 41–58, 70–73.
with the pregnant woman, rather than the foetus she is carrying, and may be more appropriate than ‘partner’ in cases where the relevant parties are not together.” Is inseminator the best word to describe the person in question? This word suggests a connection with artificial insemination involving a sperm donor. But sperm donors voluntarily give sperm to women who want to be pregnant. Women seeking abortions do not want to be pregnant. Of course, there is overlap of cases in which women started off wanting to be pregnant and used sperm donation but later changed their minds. *Inseminator* is a euphemism useful for concealing the reality revealed by our ordinary language. Pregnant women have been asked for millennia, Who is the father? Note the present tense. They are not asked, Who will the father be? In every pregnancy, there is a father because there is a son or daughter. Defenders of abortion try at all turns to obscure this reality.

A notable exception to this obfuscation is the work of David Boonin. In his book *A Defense of Abortion*, he writes,

> On the desk in my office where most of this book was written and revised, there are several pictures of my son, Eli. … In the top drawer of my desk, I keep another picture of Eli. This picture was taken on September 7, 1993, 24 weeks before he was born. The sonogram image is murky, but it reveals clearly enough a small head tilted backward slightly, and an arm raised up and bent, with the hand pointing back toward the face and the thumb extended out toward the mouth. There is no doubt in my mind that this picture, too, shows the same little boy at a very early stage in his physical development. And there is no question that the position I defend in this book entails that it would have been morally permissible to end his life at this point.14

The picture is of his son Eli not of mere tissues of human origin. Aside from abortion, everyone recognizes this. Does anyone post pictures of biopsies on social media? But how many people post ultrasound photos of their son or daughter? Without evasion into euphemism, Boonin is honest enough to face the fact that abortion would have ended the life of his own son Eli, not merely a collection of cells having no father–son relationship.

Such candid speech about the reality of family relationships is not on display when Kendal writes,

> I further argue that the provision of life-sustaining gestational processes gives the pregnant woman the ability to bestow meaning onto the existence of the foetus, e.g. to bring it into relationship with others. As such, the pregnant woman gets to decide whether the life she carries should be treated as a future family member, or whether it represents a collection of cells to be removed from her body. At least until the point of independent viability, the foetus cannot be considered a separate being, and thus its identity is justifiably dependent on the intended choices of the pregnant woman. This claim is not intended to imply such choices are made without reference to social and cultural influences, but rather that the ultimate decision rests with the pregnant woman.15

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If Kendal’s argument is correct, what was the human fetus prior to the bestowal of meaning? What happens if neither choice is made as in the case of cryptic pregnancy?\(^\text{16}\) Why is the prenatal human being only a potential family member? In terms of biology, such a view is false. The prenatal human being is a mammal, and all mammals have a biological father and mother, two grandmothers, and two grandfathers, as well as any siblings and aunts and uncles they may have.

The idea that the pregnant woman bestows meaning is also problematic for other reasons. Pregnant women do sometimes change their minds about whether they want to be pregnant. So, are we to understand that the potential family member turns into a clump of cells and then turns back into a potential family member (losing and gaining human rights each time) as often as a mind is changed? The personhood of an individual cannot be gained and lost in this way.

Moreover, the claim that “at least until the point of independent viability, the foetus cannot be considered a separate being” is demonstrably false. The prenatal human being may have one blood type and the mother another blood type. The prenatal human being may be one race and the mother a different race. The prenatal human being may be male, but the pregnant woman is never male. The prenatal human being can die, and the mother can live, or vice versa. All available scientific evidence points to the reality that there are two individual human beings involved as indicated by the existence of two separate hearts and two separate brains in two distinct bodies. Just as the human embryo in a glass petri dish is not simply a part of the glass petri dish, so too the human fetus in his or her mother is not simply part of the mother. A prenatal human being is an individual human being in his or her own right. To deny this reality is to deny the clarity of contemporary science and to retreat into the fog of euphemism.

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