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MORAL RIGHTS TO LIVE AND DECISIONS ABOUT DEATH

DISSERTATION

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By

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CHAPTER I

This dissertation concerns itself with the moral justification of decisions about life and death. Particular attention will be paid to the clusters of issues revolving around the notions of abortion and euthanasia. I hope to construct a philosophically defensible strategy that will enable one to present and defend a consistent pair of positions with regard to life and death rights. More specifically, I hope to supply plausible answers to a number of questions, including the following: What is the range of the various rights, such as those to live and to die, to let die and to kill? What is their proper extent, what limits do they have, and what sorts of considerations might count either for them or against them? What justifies them? What do they presuppose? In what sorts of circumstances, if any, are such decisions morally justifiable and capable of being safeguarded against mistake and abuse? Some of the concepts of great importance for these discussions are those of mentation, potentiality, personhood, humanity, self-determination.
dignity, killing, letting die, life, death, sentience, mind, independence, suffering and actuality.

Obviously, this is no small undertaking. The theory presented will have to do justice to a number of areas and fields. First, it should acknowledge the present state of knowledge in the disciplines of psychology, biology and anthropology. It would be helpful if it were sensible and applicable for those concerned with law and the formation of public policy. Physicians and other health professionals, it is to be hoped, would find it from their professional point of view, illuminating. Finally, the theory has to be sound philosophically.

There are a number of areas and issues of philosophy at stake here. They include theory of knowledge, metaphysics, philosophy of mind, philosophy of science, and ethics. The issues include the metaphysics of natural kinds, the nature of human nature, the concept of a person, the metaphysical grounds of rights, the mind-body problem, the moral rights of non-human animals, the role of potentiality, and, of course, the moral justifiability of some types of abortion and euthanasia.
The discussion of abortion will span three chapters. The first of these—Chapter II—surveys most of the standard views about the morality of abortion. That chapter begins with an overview—section (A)—of the main reasons given in favor of abortion choice. First there are arguments from rights and freedoms, both legal and moral. It appeals to notions such as privacy, bodily autonomy, therapeutic "indication", the medical nature of the decision and pluralism of opinions. "Reproductive rights" and the need for tolerance are put forth as further justifications. Next, so-called "societal reasons" are enumerated. The elimination of "abortion mills", of discrimination against various groups and of the problem of overpopulation are cited. Public health benefits as well as the Supreme Court's 1973 decision are further reasons. Then, there are presented a number of ethical and metaphysical reasons. Cases of permissible taking of lives are suggested. We focus on the priorities of actuality, independence and good health, and of "quality of life" in general. It is often claimed by proponents of choice that personhood does not occur until viability or after. A slippery slope has been applied to the notion of potentiality. I.e., if
potential after conception, then potential before it. Distinctness, externality and independence, it is contended, are necessary for rights. Furthermore, merely potential persons do not have the same rights as actual persons. Non-doctrinal, non-emotionalistic reasons must be presented, it is said. Finally we shall examine the view that from a medical point of view, pregnancy is (or is like) an illness.

The second main part of the first chapter—section (B)—about abortion surveys the principal reasons usually put forth for opposing most or all abortion! It is held that abortion is usually wrong because taking innocent human life is morally wrong, and human fetuses are biologically (and perhaps in other ways as well) living human beings. Such persons claim the human being begins its life at conception. They also maintain that humans have a right to live, and that life has intrinsic value. We should, anti-abortionists say, take into consideration a sufficiently wide scope of beings whose rights we respect. These include potential persons, beings that will probably develop into persons, dependent human beings, so-called "defectives", and those of all ages, sexes,
nationalities, and so forth. Fetuses are often neglected because of several reasons that are listed. Life is a most important priority. "Convenience", health and prosperity are of comparatively secondary importance, when compared with life.

It is sometimes argued that ethical subjectivism is mistaken, including when it is proffered by those who claim that "wanting" a baby is necessary and sufficient for its right to live. Adoption, they say, is a preferable alternative to killing the fetus or forcing people to raise unwanted children, in many cases. Casual "wedges" and "logical" or "conceptual" slippery slopes purport to show that permitting abortion would have harmful results for one's other judgments about life and death or for the way society treats people. Finally, we will recognize an assortment of miscellaneous types of other reasons for opposing abortion. In section (C), I consider a possible future basis for reconciling the two sides.

The first chapter about abortion concludes with a review--section (D)--of some interesting and important beliefs about when life begins. These, it will be seen, usually are, connected with beliefs about when rights--especially the right to live--begin.
The second chapter about abortion--Chapter III--consists of my own approach to the question of the morality of abortion. I begin with a six step line of reasoning about abortion. First, I contend that it would be *prima facie* wrong to kill a newborn human, but less wrong to kill a cat, dog, or other animal. That is, the human neonate has a stronger *prima facie* right to live than does a non-human animal. Second, I try to show that moral rights are grounded by (morally relevant) characteristics. Third, I argue that the difference between the rights of the human neonate and those of other beings is a function of some characteristic possessed either to a greater extent by the human neonate or possessed by the human neonate and not possessed by the other animals. Fourth, a consideration of the candidates for the morally relevant characteristic possessed by the human neonate that grounds its stronger rights (especially the right to live) leads to an elimination of all but one: potentiality. Specifically, it is the potentiality for personhood, where this is elucidated in terms of what I call "mentations". Fifth, I present a discussion of the temporal bounds of
person-potentiality that, it is argued, shows that conception is the most plausible beginning point for that attribute. This requires criticising the views which maintain that potentiality exist before conception and the views that potentiality only begins to exist sometime after conception, as well as providing reasons for believing that it is just at conception that "strong" or "active" potentiality begins. Sixth, I discuss a number of "quality of life" considerations that might override the human potential person's right to live. It is claimed that some of these are adequate to override the right to live and that others are not. At the stage of potential personhood, the being has a weaker (prima facie) right to live than it possesses once it is an actual person; but a comparatively weaker right is a right nonetheless.

Chapter IV is the third of the chapters about abortion. In the first section, I point out that one's moral judgments about the fetus follow from his or her view of its metaphysical status. We can, however, distinguish among at least five distinct views of the fetus' metaphysical status: as a full-fledged person; as being similar to a non-human animal; as being like
an organ or mass of tissue; as changing statuses during gestation (the "transitional view"); and as being a potential person. I argue that all but the last of these are incorrect.

One's view of the fetus' internality, dependence or non-actuality often governs one's view of its rights. I assess the extents and the senses in which each of these can be correctly ascribed to fetuses, and then what should be inferred concerning its moral rights as a consequence. The conclusion of these reinforces the claim that the fetus, individuated at conception, does not significantly change its metaphysical status at any subsequent fetal stage, such as when it comes to resemble persons, at viability, or at birth. Only during the (gradual) acquisition of personhood does its metaphysical (and hence its moral) status change. Finally, I spell out a number of objections to my theory about abortion and then I respond to them.

During the times both around the beginning of human life and around the end of human life, the organism has some similarity to non-human beings. Our judgments about fetuses, neonates, full-fledged
persons, non-human animals and other kinds of beings as well should be consistent. Whatever criteria or standards we utilize in forming moral judgments about them should be applicable also to humans in their final stage of existence. Accordingly, it is important to attempt to formulate some central concepts and beliefs that guide our judgments, to see if we can come up with a plausible, consistent set of them, and to see what their consequences are. That is the task of the next chapter.

In that chapter, Chapter V, I begin with a discussion of the nature of moral rights. I defend a version of a natural rights theory, but claim that moral rights are defeasible and are grounded by morally relevant characteristics. A rule is put forth, and it holds that different characteristics are required to ground different rights if all other morally relevant factors are similar. Some questions are raised about the natures, moral rights and "mentations" of humans and non-humans. I consider a number of possible approaches to thinking about the interconnections among species (or groups), morally relevant characteristics and moral rights, and then
eliminate all but one or two of them. Of the candidates for the sort of characteristics that grounds so called "human rights"—especially the right to live—it turns out that mentation-level is the most acceptable. I then attempt to clarify the roles of the concepts of mentation, mentation-level, and mentation-level-categories. A principle (P) emerges, to the effect that, other things being equal, moral rights are a function of actual and/or potential mentation-level-category. Some examples of the principle's explanatory scope are elicited, and its meaning and ramifications are then discussed. The concept of potentiality has proved to be important, and so it is further explained and defended. The final task of the chapter is to render clear some of the consequences of what has preceded it. I do this by presenting a discussion of rights, interests, values and mentation. There, I compare human and non-human animals' rights, and tie them in with their interests, needs, preferences and other mentations. I argue that many of the fundamental "human rights" are applicable as well. mutatis mutandis, to non-humans.
In light of the theory that has been evolving in the dissertation, we have acquired some of the conceptual tools for arriving at rational decisions about death. In the final chapter, Chapter VI, I suggest some strategies for applying them, and I add a number of further criteria for thinking about death-decisions. The euthanasia issue(s) is (are) re-cast, and I formulate what seem to be the correct ways to view questions about its moral justifiability. A number of so-called "intrinsic" criteria are laid out and evaluated. These include potentiality, mentation, dignity, minimal suffering, personhood, rationality, memory, cognition, intellect and a number of other possible standards or criteria. Then we take up what are termed "extrinsic" criteria--essentially criteria of social utility and relationships to others and these are assessed for their relevance, or lack of it, to justified death-decisions. Next, there occurs a discussion of some issues about problems of consent, subjective beliefs, and "deciding who should decide". I explain and criticize a number of approaches to these problems, and finally endorse several ideas, including having a questionnaire to supplement the Living Will and a Committee of the Person.
I list the main standard objections to euthanasia and respond to them. In particular I concentrate on the merits and weaknesses of various forms of the "wedge", or slippery slope, argument, and on what I term the "moral-legal block", an objection to legalizing some types of conduct even if they are morally justifiable in individual cases.

I will not, of course, attempt to justify all the decisions made concerning ethical theory, developmental and comparative psychology, sociology, and any of the other fields touched upon in the dissertation. Where the position taken is controversial this will be noted, along with the sorts of considerations that led me to adopt the standpoint. Usually, though, I shall attempt to minimize the theoretical assumptions—ethical and otherwise—when discussing specific topics such as abortion. Such assumptions might otherwise detract from the usefulness of the subsequent inquiry.
In contrast, I shall assume the senses of the moral notions indicated in this chapter except where those assumptions are crucial to a particular argument. I turn next, therefore, to survey of the notions, theories and views that I am going to use in this dissertation. I will also say, briefly, why they will be used.

Before discussing normative ethics, I want to indicate some areas of interest that may be distinguished from it. The first of these consists of various empirical views about morality. These include (1) descriptive aspects of theories of "human nature", (2) "moral sociology", (3) "moral linguistics", (4) "moral psychology", (5) "moral history", and (6) "moral biology". Moral sociology presents theories about the realm of phenomena that consists of groups' moral attitudes. Moral linguistics sets forth (purported) facts about the structures and functions of moral discourse. Moral psychology is concerned with the nature and dynamics of moral beliefs--including their development--and moral feelings and thinking. It may be casual or introspective in methodology. Moral history traces the history of ideas and
opinions about morality, and it includes the history of ideas, the history of ethics and the history of societies. Moral biology (which might also be termed "Ethicobiology") supplies causal explanations of the biological aspects of moral beliefs and of conduct. Theories of human nature are very important. They often determine, dialectically and/or causally, a specific normative theory or a context and limits for what is to be considered as acceptable or correct normative theories. These theories usually offer explanations of human conduct, especially of its motivation. They more generally present views of the scientific and metaphysical "constitution" of humans. Some examples of such theories are Platonism, Aristotelianism, Christianity, Marxism, Darwinism, Freudianism, Hobbesianism, Pragmatism, Behaviorism and Sociobiology. The descriptive aspects of these theories, however, may be understood as making different sorts of claims from their normative aspects.

Metaethics is not always distinct from normative ethics. As the word 'metaethics' indicates, that area is concerned with the nature of ethics. One issue in metaethics arises from efforts to answer the question, "Why be moral?" That is, what is the justification of
morality as such? There are many other issues and areas that are considered metaethical. The metaphysics of morals, for example, formulates necessary and/or sufficient conditions for the truth or acceptability of moral judgments. It tries to explicate the natures of moral attributes, facts, and truths, assuming there to be such. Epistemology of ethics deals with moral justification (its nature), evidence and reasoning. The debates between the Intuitionists and Naturalists were, at least in part, conducted in the area of epistemology of ethics. Another metaethical area is that which investigates the language of morality. As was mentioned earlier, there is an empirical study of "moral linguistics", and some of the metaethical inquiries into the language of morals overlaps with that empirical area. In the language of morality, people think about the functions of moral language and sometimes attempt to formulate definitions of moral expressions, when they feel that such an enterprise would be possible and fruitful. There is a logical side to metaethics also. Discussions of the structure of moral and practical reasonings fall into this area of inquiry. Philosophical treatments of issues about determinism, freedom, voluntary action and agency are
another set of issues that may be viewed in the framework of metaethics. Theories of "human nature", discussed a bit earlier, constitute yet another possible subject matter partially included within metaethics. Discussions of the relevance of religion to morality, and of the societal roles of moral institutions and concepts are also sometimes metaethical subjects. While they sometimes have normative or empirical facets, discussions about the correctness or incorrectness of ethical skepticism, ethical nihilism, ethical relativism, ethical irrationalism, ethical voluntarism, non-cognitivism and cognitivism, and ethical subjectivism all may be included within the purview of metaethics.

The primary focus of the arguments in this dissertation, however, is normative ethics, and to that we turn now. Normative ethical views involve putting forth standards and (good) reasons for value and conduct; they also involve justifications, assessments of judgments, are concerned with practical and ideal realms, and presuppose impartiality, universality (of some sort), and prescriptions—the evaluative dimension of thought, action and discourse. Now there are some normative views that are not within the scope of ethics proper, although some of them have ethical
presuppositions. These include evaluative facets of economic, social and political theories; esthetics; evaluative aspects of law and public policy; etiquette and prudence, including "professional ethics"; and decision theory and game theory. Of the five areas enumerated above, all except esthetics and decision-theory/game-theory have some ethical presuppositions, and some might justifiably be included within the list of normative ethical views.

Normative ethical views may be subdivided into the sub-areas of what is sometimes called "casuistry", which is the consideration of specified issues. When people argue about the rightness, wrongness, goodness, badness, obligatoriness, justness, etc., as applied to particular cases, they are doing casuistry. (The term 'casuistry' often is given disparaging connotations, and is used in those instances with a sense somewhat like that of 'sophistry'. I hope that that use of the term as an epithet of contempt will not be applicable to the parts of this dissertation that consist of non-theoretical normative ethical arguments.)

I have indicated that empirical views about morality are not always or completely distinguishable
from metaethical views, nor are metaethical views
totally distinct from normative ethical views, nor
"non-ethical" normative views from normative ethical
views. So, too, are views in casuistry sometimes
indistinguishable from ethical theories. One of the
reasons for this is the epistemological phenomenon
that our beliefs are interwoven into a (hopefully
coherent) system. Beliefs and concepts presuppose and
entail other beliefs and concepts in our conceptual-
belief systems.

It is now time to say something about normative
ethical theories. It is helpful to categorize these
as theories of value, theories of rightness (and obli-
gation) of conduct, theories of justice, of virtue and
of rights. There are also some theories about partic-
ular ranges of "moral phenomena", such as theories
about "moral scopes" and theories about moral rules.
(Discussions of moral rules, by the way, are in that
area, mentioned above, that overlaps both normative
ethics and metaethics.)

Treatments of value theory usually begin by dis-
tinguishing between moral goodness and "non-moral good-
ness". Non-moral goodness is a concept of appraisal of
any sort of entity according to which its goodness is a function of the extent to which it is "good of a kind" when it fulfills the standards or criteria which exist for that type of entity. One application of this is in terms of an object's utility, so that a device is good to the extent that it performs its function well, or is efficient. But the notion of "goodness of a kind" is more general than just applying to efficiency. For example, one might be a good villain, or something might be a good rose, if he or she or it satisfies the standards or criteria that we have for villains or roses.

It is useful to next distinguish intrinsic value from other sorts of value, such as extrinsic value. Something or someone has intrinsic just in case it has value in and of itself, independently of what its consequences are. Objects having intrinsic value are the unconditioned goals, aims and objects of our actions. Extrinsic value, on the other hand, is possessed by "things" (in a metaphysically neutral sense of that word) which are valuable or good as a means to something else. According to a different sense of 'extrinsic value'; something has extrinsic value just in case it is a means—or a good means—to something having
intrinsic value. Among the objects possessing intrinsic value, it has variously been claimed, are one or more of "things" such as happiness, freedom, justice, virtue, knowledge, dignity, pleasure and absence of pain, power, self-interest, salvation and contemplation of beautiful objects. This is, of course, an incomplete list of things that have been claimed to have intrinsic value. Monistic theories of value are those that claim that there is exactly one kind of object of intrinsic value. Pluralistic value theories assert that more than one kind of thing has intrinsic value. Nihilistic value theories maintain that nothing has intrinsic value.

Normative ethical theories of rightness (and obligation) of conduct make up another important part of ethical theory. As often understood, the structure of the moral concepts within the system of this theory is as follows: There are right actions, wrong actions and morally neutral actions. The morally neutral acts are neither right nor wrong. There are degrees of rightness and wrongness. Among right acts, there are two main sorts, the obligatory and the supererogatory. Supererogatory actions, such as acts of charity, are right but not morally required of individuals. (There
is some disagreement about the existence of "suberoga-
tory" acts, that is, acts which are morally wrong but
which we are not morally forbidden to perform.)
Theories of rightness (and obligation) are usually sub-
divided into two kinds: teleological and deontological
theories.

Teleological theories assert that rightness and
wrongness are determined as functions of the acts' con-
sequences. (Using a value-neutral sense of 'utility',
these views are sometimes termed "utilitarian". This
tends to confuse some people, however, since, tradi-
tionally, 'Utilitarianism' has referred to those tele-
ological theories which have hedonistic theories of
value--that is, happiness, or pleasure and the absence
of pain, when maximized for the greatest number of
those concerned, was that theory's standard of value.)
Deontological theories of rightness and obligation
claim that considerations other than consequences of
actions can be relevant in determining the rightness
or wrongness of the actions. Another way of saying
this is that, at least sometimes, it is the nature of
the act itself, rather than what ensues from the act,
that determines its rightness or wrongness. Another
very important distinction in theory of rightness is
that between rule theories and act theories (also termed contextualist, situational, and antinomian theories). This distinction, which, by the way, also applies (mutatis mutandis) to theories of value, reflects the difference between holding, on the one hand, that actions are justified by being instances of (correct) moral rules, and saying, on the other hand, that it is the specific (morally relevant) circumstances that determine a specific act's rightness or wrongness. Rule theories may be either teleological or deontological, as may act theories.

There are several categories of ethical concepts which do not seem to fit neatly into either theory of value or theory of rightness and obligation, although they are often subsumed within one or the other of those areas, and they have important interconnections with each. They are theory of justice, theory of virtue and theory of (moral) rights. Within the scope of theory of justice, there seem to be two principal types: social or distributive justice and retributive or punitive justice. The first functions to provide us with ways of understanding how to judge the well-being of a society and its members, while the latter attempts to cultivate our beliefs about the suitable ways to treat
individuals for the acts that they have done. Theories of virtue (and vice) undertake to supply answers to such questions as "What is the nature of virtue and vice?", "Which actions (or dispositions) are the vices, and which are the vices?", and "How do people acquire the virtues and the vices?" Two of the main theories of the nature of rights are the positive view, which interprets rights as a special subclass of acts, permissions or claims accepted within a legal framework, and the natural rights theory, which holds that rights are a pre-legal or extra-legal set of protected interests, claims or latitudes of conduct. According to the natural rights theorist, actually existing legal systems can be judged, in part, by their success or failure to recognize and respect natural moral rights. (The contrasting approaches to rights reflects the ancient disagreement between the Sophists, who believed in norms as conventions, and the Platonists, who thought that there were objective, universal ideals and norms subsisting independently of any actual beliefs.) Rights-theorists are concerned, also, with the connections between rights and values, and rights with right actions, especially obligatory right actions. For example, some theorists have found it illuminating
that rights "generate" obligations to respect the opportunities of the rights-possessors (or claimants) to pursue or to have the objects of the rights. Thus, if person A has a right (or a right to) R, then one or more persons other than A have an obligation to permit or ensure A's actions or acquisitions within the sphere delineated by R. Rights theories also try to enumerate what rights there are--or should be.

The problem of "moral scopes" is of great importance. The discussion of moral scopes should first recognize a distinction between the scope of agents—that is, of those who have moral responsibility—and the moral scope of "recipients", those acted for, identified with, or worthy of consideration in moral judgment. It seems that the scope of recipients is larger than that of agents.

Now, there are numerous views about the proper scope of moral recipients, and of how to determine it. I will list some of them here. It might be said that the correct scope of moral recipients is "transhuman", that is, it includes all sentient beings, or all rational beings, or all living things. An alternative view holds that the scope includes all and only humans
(or all and only persons). A third approach claims that only members of one's society should be included. According to a different standard, some sub-groups other than one's society comprise the membership of the recipients. A fifth theory asserts that only those that one (or "we"--whoever "we" are) in fact identifies with, or with whom one in fact empathizes, are the proper members of the scope of moral concern. A sixth view, Ethical Egoism, contends that only (or primarily) oneself constitutes the proper scope of moral recipient(s).

Moral judgment—whether about goodness, rightness, justice, virtue, rights, or anything else—appears to involve, in some role or other, moral rules. An adequate theory of morality should give a good account of them. Thus, for example, moral rules seem to be defeasible, that is, to have prima facie force, in that they conflict and have exceptions. How, then, are we to account for the justificatory function of such rules? How can and should we order the rules? What are the metaphysical and causal statuses of moral rules?

(D) At some points in this dissertation, I will be opting for particular moral and ethical claims. In other places, what I will be arguing presupposes only
that some of the theories (such as Ethical Relativism and Ethical Egoism) are false, but not that any particular theory (e.g., of value or of rightness) is the correct one. In still other comments, what is argued will be neutral with respect to ethical views. I shall opt for specific theories only when it seems necessary to the reasoning.

I want now to mention some of the notions and theories that will be of particular importance in what follows. Findings in biology and psychology will furnish evidence to support some of my claims. Information about the structure and behavior of various organisms proves relevant to much of what is said. Although I shall not put forth a comprehensive theory of "human nature", I will be saying some things that would correspond to elements of such a theory. In the area of metaethics, what emerges will assume, it seems to me, that Nihilism, Irrationalism, and Subjectivism are all mistaken views about morality; although it is at least possible that much of what I say will even be consistent with some forms of these doctrines. Some of the arguments will concern themselves with issues in the metaphysics of morality, such as where
I discuss the connections among species, morally relevant characteristics and moral rights.

Turning to normative views, there should be a significant portion of the discussion that will be germane to evaluative aspects of law and public policy, such as the suggestions for casting into a socially acceptable form the consequences of the moral judgments about abortion and the proposals for providing a reasonably safe, reliable method for deciding who should decide about possible justified death-decisions. Some concepts and methods of game- and decision-theory will be utilized in the discussion of the responses to the standard objections to euthanasia.

I have already said that much of the dissertation will consist of casuistry (in the non-pejorative sense). But I will be using a pluralistic value theory and a theory of rightness that exhibits both teleological and deontological emphases at various times. In the area of theory of rights, the argument will concentrate upon a position that is in the tradition of natural rights views. I will there clarify what variant of natural moral rights theory I hold.
With regard to the question of the scope of what I have termed "moral recipients", I argue for a "mixed" view. That is, in one sense, more than humans deserve to be given moral consideration. And yet, for some purposes, only persons need to be counted within the scope of other moral decisions. This will, of course, be explained at length in the relevant passages.

When I formulate moral judgments, I will usually pack into them a number of qualifications and factors. Typically, they will be stated in some such form as, "In (morally relevant) circumstances $C$, and other things being equal (i.e., ceteris paribus), act $A$ (or object $O$, or rule $R$, or act- or object-kind $K$) is, to extent (or degree, or strength) $X$, prima facie morally justifiable (or right, or obligatory, or good, or a right, or just, etc., as the case may be); because $J$" (where 'J' represents justifications, of one of the sorts enumerated in the previous survey of normative ethical theories).
A proper understanding of the discussions about the morality of abortion involves an acquaintance with the range on reasons that are presented by the advocates of both sides. The purpose of this chapter is to provide an overview of the most important and influential of those reasons. Equipped with this background information, one will then be more able to assess not only those concepts and arguments, but also the theory that is presented in the following chapters. This chapter will be divided into four main sections: After some preliminary remarks, it will consist of (A) reasons for permitting abortion on request, (B) reasons for opposing most abortions, (C) some comments about an alternative prospect, and (D) a review of a number of noteworthy beliefs about the beginning of a human's life or the beginning of the right to live.

Before the arguments of either side are given, we should get clear about what is being debated. We can, perhaps (albeit with some artificiality) distinguish among the following three sorts of claims. First, there is what might be termed a "purely moral" claim. It asserts that abortion (or abortion-choice) is, as such,
morally justifiable or unjustifiable. Secondly, what I shall call the "moral-legal", or "ideal legal" sort of claim asserts something about the moral justifiability of having a legal sanction permitting abortion (or abortion-choice) or prohibiting abortions (or abortion-choice). Thirdly, there are what can be termed "purely legal" claims. One of these would hold that abortion (or abortion-choice) is legally justifiable; that is, within an actual, positive legal system, it is permitted or forbidden.

It may have been observed that I mentioned the (moral and/or legal) justifiability of, on the one hand, abortion itself and, on the other hand, abortion-choice. I did this because questions about the one are sometimes separable from questions about the other. Some people, for example, apparently believe that most abortions are wrong but that abortion-choice is morally justified. Such a view, however, usually represents a slide from a "purely moral" claim to an "ideal legal" claim. Sometimes, also, it is another way of saying that abortions tend to be morally unjustified, but that they are not as unjustified as depriving women of their rights, freedoms or well-being. On such views, fetuses have weaker rights to live than women have to choose.
In light of the distinctions among the different sorts of claims, we can now formulate the following distinguishable questions.

(1) Would the "ideal legal" permissibility of abortions (or of abortion-choice) entail its "purely moral" permissibility?

(2) Would its "ideal legal" impermissibility entail its "purely moral" impermissibility?

(3) Would its "purely moral" permissibility entail its "ideal legal" permissibility?

(4) Would its "purely moral" impermissibility entail its "ideal legal" impermissibility?

I have neglected the seemingly less unclear set of four questions about the possible entailment-connections that may hold between "purely legal" permissibility (or impermissibility) and "ideal legal" permissibility (or impermissibility). I have also omitted consideration, for what are, I hope obvious reasons, of the four questions concerning possible entailments between "purely moral" and "purely legal" permissibilities (or impermissibilities).

This isn't yet all of the confusions that should be sorted out before stating the arguments pro and con. It should also be pointed out that the sort of moral
(and legal) categories utilized tend to vary. In other words, sometimes the discussions are couched in terms of rightness and wrongness, sometimes in terms of desirability or undesirability, sometimes in terms of permissibility or impermissibility, and sometimes in terms of justifiability or unjustifiability. There are yet others. The statements about obligation, for example, seem often to be translatable into statements about what is permissible or impermissible, with the appropriate use of negations. Furthermore, some of the debates ("purely legal" ones, usually) are conducted in terms of what is legal or illegal, and some in terms of what is constitutional or unconstitutional. These, too, seem to be reducible to ("purely legal") forms of statements about what is permissible or impermissible. This is not even to begin to include the more emotionally-charged terms, such as "barbaric", "cruel", "monstrous", "inhumane", "unfeeling", "murderous", "sinful", and "benighted".

If what I have been saying about the distinctions and moral categories is correct, then the combinatorial possibilities of possible claims that could be argued is considerable in number.

(A) More often than not, those who believe abortions to be morally justifiable are for abortion-choice, and
for non-restrictive abortion legislation; and those who believe that abortions are morally wrong oppose non-restrictive policies and legislation and are for restrictive legislation and policies. Now it is certainly possible that a person can believe that abortions are usually morally justifiable but that abortion-choice should not be legally permitted or encouraged. It is also possible that one may believe both that abortions are morally wrong and that abortion-choice (via non-restrictive legislation) should be legally permitted. These two latter approaches to the moral and legal statuses of abortion are in a small minority, though. Most people who are convinced of the moral acceptability or unacceptability of abortion believe that the reasons are so good on their side and so bad on the opposite side, and that the principles involved are so important (e.g., fundamental rights and freedoms, or the value of human life), that the law should enforce or protect the morally correct side of the issue. Discussion of the "mixed" views, as well as of those opting for moderately restrictive legislation and policies, and beliefs that abortion-choice should be permitted within specific sorts of circumstances, as well as other "intermediate" suggestions about moral and legal
issues of abortion, will be held in abeyance until the next two chapters.

Now it is time to turn to the arguments themselves. In the following sections, I shall attempt to survey most of the principal arguments, concepts and reasons presented by "both" sides of the abortion issue(s). An adequate evaluation of just these arguments would require a book in itself. But they are being presented here largely for purposes of providing background information, and as a prelude to the statement of my own theory about abortion. So, for the most part, they will just be stated as their proponents present them (with some reconstruction on my part), with only a minimum of comments and criticisms. This next section will review the main "standard" reasons for the moral permissibility of abortion-choice, and the section after it will review the standard reasons for opposing most abortions.

(A) The reasons for the moral justifiability or permissibility of abortion-choice may be put into several categories.

(1) The first category of such reasons appeals to various rights and freedoms. Some of these rights and freedoms are moral and some of them are legal; and sometimes there are blurrings of the "purely
moral", the "ideal legal" and the "purely legal" claims. But their interconnections will become evident before long.

The first of these arguments from rights and freedoms maintains that the abortion issue concerns a medical decision, one that belongs within the province of what is termed "private morality". That is, an abortion-decision is an individual and private personal matter, and so of no proper public, societal or governmental concern. Government has no place interfering in matters that concern oneself only. Pregnancy is not an area that warrants paternalistic governmental intervention, for it is only—or primarily—the woman's interests that are at issue. This line of reasoning assumes, of course, that the fetus does not possess sufficient rights or interests that might serve to counterbalance those of the pregnant woman.

A second approach to abortion in terms of rights and freedoms argues that a pluralistic society (such as ours) should tolerate and respect women's choices about abortion. No group's beliefs about reproduction or religion should prevail over the individual's rights in such a matter. Advocates of abortion-choice often feel that they are under siege by a group of zealots who seek
to impose their beliefs about morality upon those who sincerely disagree with them. The abortion-choice proponents believe that, just as they would not force anyone opposed to abortion to have one, similarly, opponents of abortion should not attempt to coerce the actions of women who do want abortions. They say that permitting a healthy latitude of choice is characteristic of the tolerance encouraged by democratic governments, the opposite of totalitarianism, which would enforce a monolithic view upon everyone.

Third, it is often said that women should have autonomy over their own bodies. They are not mere "baby-producing machines" who may be forced into pregnancy and childbearing. Women have reproductive rights, they assert. Historically, women have been denied the right to determine their own fates, and one of the principal means of oppressing women has been to persuade or force them to assume a set of restrictive roles regarding their sexuality and reproductive capacities. One of the keys to eliminating this traditional alleged dehumanization of women is to give them rightful control over their own bodies.
Some extreme feminist abortion-choice advocates go so far as to say that it is inappropriate for males to argue, lobby, legislate or adjudicate against females' rights. This is truly an instance of the *ad hominem*, an argument "against the man*. (Some questions that might arise: Would they permit males to vote for abortion-choice? Should women disqualify themselves from taking a stand when males' rights are involved? Is it possible for men to be "enlightened" about the abortion issues? Does abortion concern only the well-being, freedoms and rights of women?)

The fourth sort of arguments from rights and freedoms are primarily legal. In 1973, the United States Supreme Court found--in its *Roe v. Wade* decision--that the freedom to choose to have an abortion is a non-coercive Constitutional right. The freedom exists especially during the first trimester of pregnancy, but for all intents and purposes could not be tampered with until the fetus reached viability. No woman who opposes abortion would be compelled to have one. The right was said to be guaranteed by the First, Ninth and Fourteenth Amendments of the Constitution. It was maintained by the Court that citizens (which legally excludes those not yet born) have a "tacit" right of privacy.
Furthermore, the First Amendment protects us from religious imposition. It was also argued that it is not within the states' proper power, except in certain specific sorts of circumstances, to prevent women and their physicians from deciding whether or not to have an abortion. The majority opinion said that the point of the inception of life, a matter about which experts disagree, would not be something about which they would take sides. At the same time, the opinion declares that the states may restrict some abortions during the third trimester, both to protect the pregnant woman and for the sake of what it terms the "compelling interests" of "potential life" during that stage.

Yet another viewpoint has it that abortions may be construed as being similar to actions taken in self defense. It is granted that this sense of "self-defense" is one in which the "threatener" is innocent; and that the woman's life, or even her health, need not be in jeopardy. It's just that people need not have their bodies intruded, for any length of time, unless they so wish. As the risk to the pregnant woman decreases in seriousness from being life-threatening to being merely unwanted, the simile changes from one who is assaulted by a murderer (or perhaps by a wild animal) to that of
a landlord exercising property-rights over her domain by evicting an unwanted tenant.

Even before the non-restrictive ("permissive") abortion policies were enacted, many states had "moderately restrictive" abortion statutes. That is, they permitted so-called "therapeutic abortions", the appropriateness of which was decided according to what were called medical and juridical "indications". For the most part, these were of three kinds: (a) when the woman's life of health (physical or mental health) is endangered; (b) when the child will have a "congenital anomaly", i.e., a birth defect (defects being detectable or predictable by amniocentesis and other methods of pre-natal diagnosis, and being either mental or physical); and (c) when pregnancy resulted from "felonious intercourse", such as rape or incest. It was felt that these kinds of circumstances justified granting a woman the right--because of its advisability--of having an abortion.

(2) The second category of reasons for justifying abortion-choice may be termed "societal". The first such societal reason holds that women will seek abortions whether they are legal or not, and so we ought to provide them with the best, safest means for having them.
Prohibition of abortion results in the havoc wrought by "back alley" "abortion mills", which used to be responsible for the maimings and deaths of thousands of women annually. Thus, concern for women's health, well-being and safety dictates providing them with the best circumstances possible. (This argument appears to assume that the harm done to women when abortion is illegal outweighs the harm done to the fetuses.)

A related argument points to a wealth of public health statistics which corroborate improvements in women's and children's health and well-being since non-restrictive legislation went into effect in this and other countries. For example, infant mortality and deaths from childbirth decreased.

An influential argument appeals to our sense of equality. It says that proscribing abortion works a hardship on various segments of society. First, there are those who are economically disadvantaged. To the extent that this is so, we must come to terms with the economic discrimination that results, for the affluent will be able to find safe and good treatment anyway. Proscription discriminates also, however, against the young and unmarried, who, it is said, are "stigmatized" for their pregnancies.
It is sometimes said that abortion is an important means of controlling population growth. It is, in other words, a "back-up" form of birth control that supplements contraception. Some doctors and public health experts, in fact, recommend that women not use the "pill" or intrauterine devices, but use safer, although less effective contraceptive methods, supplemented by first trimester abortions, as the birth control system that is optimal for women's health. Considering the cost to society, then, and the value of women's health, it is contended that it is "immoral" to oppose abortion-choice.

(3) The third category of reasons for favoring abortion-choice consists of ethical and metaphysical considerations. It is often observed, by those who are criticizing anti-abortionists, that the assertion that it is always wrong to kill is a gross oversimplification. Taking life is sometimes morally—and legally justifiable. First of all, there are the lives of non-human species. We need have no compunctions about killing disease germs and (most) insects. We kill plants for food. Indeed, we even kill other animals, if our diet is carnivorous, or if the non-human animals endanger or seriously inconvenience humans. But even human lives may be taken: during wartime, in
self-defense, and (according to some people) in cases of capital punishment. In order to avoid these points, it is sometimes said by opponents of abortion (e.g., by the Catholic Church) that it is only "innocent human life" that may not be taken. But at that point, the claim that life itself has intrinsic value, and the commandment "Thou shalt not kill", have become qualified significantly.

Having established that the supposed "absolute" prohibition of the taking of life is specious, the next move for the abortion-choice advocate might be to suggest an enlightened ordering of our priorities: there is and should be, they claim, a preference for the actually existing, for the independently existing, and for happiness, soundness and health. They are saying thereby that mere possible, or potential, existence should be secondary in our concerns to actual existence, as should (physical) independence be to dependence, happiness to unhappiness, soundness to defect, and good health to ill health. Sometimes they add to this another, similar, principle: quality of life, not quantity of lives (or life itself) is of the greatest importance. Children should be wanted and properly cared for economically and psychologically if they are
to be brought into the world. This, it is said, exhibits the opposite of the callous attitude that proponents of abortion-choice are accused of in the anti-abortionists' "wedge" arguments and charges of mere "self-interestedness."

A crucial metaphysical-moral consideration claims that until birth (or viability: or quickening; or brain activity; or acquisition of a personality; etc.), a fetus is not a person, and so lacks sufficiently "compelling" rights—legally or morally—that would preclude the permissibility of abortion. There are several variations on this theme that should be noted.

First of all, we can distinguish between a potential being and an actual being, and we are not justified in ascribing to the potential (or possible, or future) being all the attributes that we would be justified in ascribing to it once it is actual. So, even if a fetus were a human, biologically, or a potential person, it would still not automatically possess the rights of actual persons.

A second point about fetuses as potential persons is the following. With regard to appeals to "potentiality", one may compare contraception (as well as "onanism"
and abstention) with abortion, in that each involves the deliberate prevention of a "potential" human being or person. Obviously, though, abstention, "onanism" and contraception are not considered murder. The argument (a "slippery-slope") concludes that it is likewise inappropriate to view abortion as murder. This slippery slope purports to establish that the reliance on "potentiality" is mistaken, in that our actions affect potentiality before conception as well as after it.

In its Roe v. Wade decision, the Court held that there is no legal precedent for construing fetuses as persons, or citizens. It has been argued elsewhere that legal and practical problems could arise from construing fetuses as citizens: Would they be counted in the census? Would (unknowingly) causing a fetus' death, e.g., by a bumpy airplane ride leading to a miscarriage, subject one to murder or manslaughter charges? Could fetuses count as income-tax exemptions? Would they be eligible for welfare? (Most of the abortion debates, unfortunately are more serious and difficult than those that occupy themselves with such worries as over whether to count fetuses in the census.)

A principle that plays an important role in the beliefs of many abortion-choice advocates maintains that
a being (here, a human being) must exist distinctly and independently, or be capable of such existence, to justify ascribing rights to it. It would not be an exaggeration, in fact, to say that the claims of the fetus' lack of actuality, its distinctness, and its independence are central to most of the abortion-choice defenders' assumptions about what justifies them in not ascribing to fetuses a right, or a sufficiently weighty right, to live.

(4) I will conclude this brief survey of some central defenses of abortion-choice with a rather unusual argument. While not widely recognized, it has, I have found, a curiously persuasive effect on medical personnel, especially physicians who perform abortions. According to that line of reasoning, pregnancy is--or is essentially similar to--an illness, from the medical point of view. It is treatable and preventable, and not a normal state of health. Pregnancy has "illness parameters": (1) etiology, (2) pathogenesis, (3) pathophysiology, (4) clinical manifestations, including diagnostic signs and symptoms, (5) laboratory findings, (6) complications, (7) differential diagnosis, (8) treatment, (9) prognosis, (10) epidemiology, (11) prevention, and (12) behavioral aspects. The fetus is,
medically speaking, not unlike a parasite or tumor that may be removed from its host (in this case, "hostess") for the health of the patient.

(8) Those opposing most abortions believe that abortion is usually wrong because taking (innocent) human life is morally wrong, and human fetuses are biologically, and perhaps in other ways as well, living human beings. Fetuses are, if not actual, then at least potential persons. Abortion-opponents usually claim that the human being begins its live at, or around the time of, conception. They also maintain that humans have a right to live, and/or that human life has intrinsic value. As was the case with the reasons for abortion-choice, I will present most of the "standard" reasons for opposing most abortions within several, interconnected, categories.

(1) A first category of reasons may be collected together loosely under the rubric of "pluralistic ethical considerations". To begin with, it is sometimes said that life, especially (innocent) human life, deserves reverence. That is, it has much intrinsic value. This is sometimes expressed by saying that life is "sacred", or "sacrosanct". It is claimed that from that great value of life, we can recognize that taking
life, especially (innocent) human life, is very wrong. Sometimes it is added that all living things, such as non-human animals, have a *prima facie* right to live. The Humane Society, for example, exists not only to prevent suffering among non-humans, but also—as far as is practical—to prevent needless deaths among them. Indeed, the strength of feeling about life is manifested in the abortion-opponents' widespread use of the (apparently question-begging) epithet, "murder", for the killing of a fetus.

It is important to abortion-opponents to argue that fetuses are existing, living humans, and potential (if not actual) persons. Human life, they say, *qua* individuality and genetic structure, begins at conception (*i.e.*, fertilization). Human life does not begin at viability or birth.

Another important claim within the category of what I have termed "pluralistic ethical considerations" holds that we should recognize a sufficient scope of beings whose rights and worth we respect. This point requires some explanation. First of all, we should acknowledge the rights and worth of potential beings, particularly humans. (This is of vital importance, and can be tied in with an argument emphasizing the future-orientation
of many moral characteristics. It is bolstered by the acceptance of teleological explanations. Moreover, while we may not want to accept a teleological ethical theory tout court, it should be admitted that at least a great amount of any correct ethical theory will take into account teleological factors, i.e., considerations of utility.) Indeed, potentiality is even acknowledged—to some extent—by the Supreme Court in its Roe v. Wade decision, where the majority opinion alludes to the "compelling interests" in the protection of what it terms "potential life". (For the Supreme Court, though, the potentiality only becomes of legally overriding force subsequent to viability.) It would be difficult to overemphasize the crucial role of the concept of potentiality in the reasonings of the opponents of abortion.

Some people may be uncomfortable with the terminology of potentialities. But, we can recast much of it into probabilistic language. Once conception occurs, there is, approximately, a 75% likelihood that the conceptus would naturally be brought to term. (It will remain for the abortion opponent to explain how the probability of an event can affect its rightness or wrongness.) They sometimes attempt to bolster their theory with what I call the "coma-analogy argument".
According to that argument, we would wait seven months for a person to be revived from a coma, if we knew that he or she had a 75% chance of full recovery. The usual response to such a claim is that there is a critical difference between the comatose patient and the fetus, viz., that the patient was and may yet be a person. The counter-response is then that life is not the sort of thing that we should have to "establish" a right to, by having previously lived. Their view may be put as follows: It is not longevity, but rather human potentiality, that confers the right to live.

Apart from potential and probable beings, there are other kinds whose rights and worth we should countenance, they say. One of these is dependent beings. We can compare fetuses with diabetics, who are dependent upon their insulin, or with those who are dependent upon their iron lungs, respirators or incubators. To those who say that pregnancy is an illness and that the fetus is just a parasite, it is replied that tapeworms don't become persons and that dependency is distinct from parasitism.

Another class of beings that are said to warrant consideration consists of the so-called "defective" beings. In so saying, the opponents of abortion take one of several tacks. Some of them point out that there
are many people throughout history who have led worthwhile lives even though some viewed them as "defective." They cite cases such as Helen Keller, Lord Byron, Henri Toulouse-Lautrec and Charles Proteus Steinmetz. An alternative approach is to say that it is certainly better to be alive and "defective" than to be dead and non-defective (or—if I may be permitted the blasphemy of combining Anselm and Nietzsche—better to be imperfect and existing than to be "That Than Which None Greater Can Be Thought", but dead; (indeed, even Anselm proclaimed that to exist is better than not to exist, and it would seem that most non-suicidal people would usually assent to that). A different, and more questionable, approach claims that disabilities and deformities enrich the world and our lives. Such a viewpoint, however, is adequately dispatched in discussions of the Problem of Evil, when some claim that "natural evils" are good because they build character or enable us to appreciate good. A world with disabled people is not the best of all possible worlds; the main question here should be, Is it a morally preferable world than one in which deformity is diminished by destroying fetuses? Abortion-opponents say that it is not.
So far, the opponents of most abortions have been claiming that there are various classes of beings (especially human beings) whose worth and rights are sometimes insufficiently appreciated. Some of them, in fact, are inclined to compare the situation of the fetuses, with that of numerous other "oppressed minorities" whose rights have only recently been acknowledged and protected. They say something to the effect that: Now that we have decided to give due consideration and equal rights to those of all races, sexes, sexual preferences, nationalities, creeds, and--within some limits--ages, why not just extend our scope just a bit farther to those (literally) of all ages; that is, to those of all stages of human development? In the present day intellectual and moral climate, in which is stressed an individualistic acquisitive, competitive ethos, they suggest, it is hard to argue that beings who seem to have so little to offer and so much to demand of us should have rights. But, that is not unlike the status of the underprivileged in many parts of our country and the rest of the world.

This leads to to the next group of reasons in defense of those hitherto not granted rights. Advocates of fetal rights point to several causes of our often
neglecting fetuses when thinking about rights. First of all, we have no recollection of that stage of our development. Second, fetuses do not resemble us much—at first, anyway. Third, we are not acquainted with them. Finally, we find it difficult to empathize with fetuses because they play no societal role. These do seem to be telling psychological points. They reveal some very significant facts about what prompts us, without our "veil of ignorance", to feel—and hence, to act—as we do toward fetuses.

(2) The second category of anti-abortion reasons may be called "non-consequentialist ethical considerations." While the teleological nature of much ethical justification was emphasized earlier (p. II-12), some anti-abortion spokespersons prefer to concentrate on some deontological reasons. These individuals endorse the Kantian point that not all value and obligation can be determined merely in terms of "price", i.e., merely as a means. And yet, a number of arguments of abortion-choice advocates seem to emphasize just that: they say that unwanted babies are a "social liability", or an "inconvenience". Inconvenience, abortion-opponents like to point out (sometimes ad nauseam) is not a sufficient reason to override the fetus' right to live.
They often proceed to consider another case where a fetus' life is traded off for something else, and where its death thereby becomes a mere means to an end. This is the case of when the pregnant woman's health or happiness may be somewhat harmed. Now, presumably, the abortion-opponents do not intend to claim that all objects of value ought not to be viewed only as ends and never merely as means. Kant, of course, had intended the good or rational will to be the only such object. The very different claim that (innocent) human life—at all its stages—should be so thought of requires substantiation. This was attempted earlier (see p. II-11) when it was asserted that (innocent) human life deserves reverence, and is an object of the highest value. It is viewed as a precondition for all other values. Further, it is occasionally pointed out that survival is the strongest natural tendency of living things. Those with a religious perspective frequently maintain also that "life is a gift from God"; and that the taking of life is forbidden in the Sixth Commandment, among other places in scriptures, doctrines, decrees and traditions. (Technically, the Catholic Church prohibits what it terms the "direct" taking of innocent human life, where directness is a function of the intention. What is (subjectively) thought of as the aim, or desired
consequences, of the act constitute the direct element, while whatever other consequences ensue from the act, which are not themselves desired (but unavoidable means or additional consequences), are said to be only "indirectly intended". This is explained in Aquinas' doctrine of "the double effect". Sometimes it is even claimed that the indirectly intended events are "unforeseen", which seems to imply that they are in fact unintended, rather than only "indirectly" intended. This can, I believe, be somewhat simplified. The concept applied to abortions in the few, narrowly circumscribed sorts of cases, such as ectopic pregnancy or uterine cancer--when the fetus would in all likelihood die anyway--that the Catholic Church declares as permissible only when indirectly intended, according to the Doctrine of the Double Effect, might be captured, in some current, mixed-metaphor barbarisms, as "biting the bullet in a no-win situation.") In a particularly strong form, the non-consequentialist who holds human life as the main priority sometimes says that all the arguments from (women's) rights and freedoms, and all the "societal" reasons are just plain "inconsistent"--in some sense of 'inconsistent'--with the statement that most abortion is the unjustified or wrongful killing of a human, the denying to it of its "right to life".
A third category of reasons put forward by opponents of abortion deals with alternatives to abortion. It is often underemphasized, these people say, that there is another option open to pregnant women besides the two distasteful choices of either destroying the fetus ("terminating the pregnancy") or being stuck with raising and providing for an unwanted child. The third option of which women can avail themselves is to give the child up for adoption when it is born. It might then have a chance for a decent life. With some drama, anti-abortionists occasionally add that people should be more willing to surrender a baby than to have a fetus destroyed. (This, of course, still doesn't address the question of how much inconvenience, discomfort, or even suffering a woman should be expected to endure because she has become pregnant. But that, it seems, is answered by the assertion that it is a burden that must be borne in preference to committing what they sometimes call "feticide". The reproductive rights that seem to arise from the suitability of family planning in no way entails a license to destroy fetuses any more than the competitive "rights" that appear to follow from the supposed value of the free enterprise system entails a permission to enslave people or to kill one's
competitors in order to thrive. Abortion-opponents present similar analogies to support their case.

(4) A fourth category of reasons that occurs often in the arguments of abortion-opponents are a species of slippery slopes termed "wedge arguments" in the literature. These arguments typically involve a claim that accepting abortion "cheapens" respect for humanity. We should distinguish at least two sorts of wedge-arguments. What may be called the "causal wedge" predicts that permissive attitudes and policies toward abortion will eventually lead--causally--to other "devaluations" of human life. Proponents of the causal wedge cite as examples of these (probable or certain) devaluations the elimination of the "defective", the retarded and mentally ill, the aged and the incorrigible. The "logical, or conceptual slippery slope", on the other hand, holds that if one permits abortion, the next "logical" step that must be granted is infanticide, or perhaps euthanasia, and/or the killing of "defective" children and adults, then finally whoever those in power deem "unfit", "dangerous", or "undesirable", as societal well-being, convenience, or even whim dictates. To repeat, the causal wedge predicts harmful, even catastrophic, results of a liberalized policy and/or public
attitude toward abortion; while the logical (conceptual) slippery slope contends that, in terms of justifications, once one is prepared to trade off human life for anything less important than human life (that is, for anything else in the world) then one can no longer draw a line between justified and unjustified killings of humans other than fetuses. Although I shall be assessing the wedge and slippery slope arguments in a later chapter, it should be pointed out here that the causal wedge depends upon an empirical claim that requires empirical evidence; and the logical (slippery slope) poses a daring challenge, in the form of an attempted reductio ad absurdum, to anyone who believes that clear distinctions and justifications can be supplied that will permit abortions without opening the floodgates to all manner of seemingly unjustifiable acts.

(5) In a fifth category, I shall group together a number of miscellaneous reasons that are found in the popular literature and in technical, including philosophical, discussions of those who oppose most abortions. First, it was claimed several years ago (e.g., by Dick Gregory) that abortion-law liberalization is a racist and genocidal scheme, a plan devised to prevent non-white women from reproducing to their full capacity in order
to keep the numbers of non-whites manageable small. This idea no longer has much currency. All too often, abortion-opponents resort to *ad hominem*. For example, some put forth the claim that it is hypocritical to oppose capital punishment while favoring abortion. This is the counterpart of those who claim that people who did not oppose the Vietnam war are being hypocritical in opposing abortion in the name of the "right to life". (Of course, the reasons for opposing capital punishment or the Vietnam war are not the same as those for opposing abortion; and besides, even if someone is hypocritical, or even inconsistent, in his or her beliefs, it does not follow that his or her beliefs in question are all thereby incorrect.)

In response to charges that opposition to abortion is merely a reflection of some doctrines of a few conservative religions, it is pointed out that arguments about abortion may—and indeed should—be stated in secular and moral terms, without having to make any reference to what may or may not be interpreted as being within a particular religious framework. There is, of course, some diversity of opinion about this matter; but, in general, responsible and sophisticated abortion opponents so couch their arguments that they are
designed to appeal to a universal audience, rather than just the dogmatic followers of a few authoritarian creeds.

Another regrettable, even counterproductive assertion that sometimes emerges in a burst of emotion is the anti-abortionists' accusation that those who favor abortion-choice, or who choose to have abortions, take "the easy way out" by arguing from the women's (or "society's") own self-interested good, while overlooking others' (viz., the fetusus'). Insulting people, alas, is no way to win arguments: it is an unwise tactical move in a dialogue about abortion. A more temperate way of putting a similar point might be to distinguish between act-morality and agent-morality, such that one might claim that even if abortions tend to be morally wrong, it does not follow that those who have had abortions are bad people.

In terms of traditional "medical ethics", it seems clear that in giving abortions, physicians violate the ostensibly sacred Hippocratic Oath, which affirms "... I will not give to a woman a pessary to produce abortion." (The normal reply to this point is to say that what may have seemed right in Hippocrates' time, or what may have been an important measure to protect
Opponents of most abortions argue that it is unfair of abortion-choice advocates to compare abortion with an act of self-defense, because (a) in the vast majority of cases, the woman's life, health or safety is not in danger; (b) the fetus is innocent; and (c) even where the law permits one to harm another in self-defense, it specifies that only "reasonable force" may be used.

Another reason that is occasionally mentioned consists of claims about harmful effects of abortions. It is said that a number of studies have shown that abortions (especially for women who have had repeated abortions) results in an increased frequency of premature births in subsequent pregnancies, and there is a notably higher incidence of anomalies (defects) among prematurely delivered children.

An interesting point, often made during discussions about the ethics of genetic counseling, might have been appropriated by the cause of abortion-opposition. As it happens, pre-natal diagnosis (e.g., by amniocentesis) enables doctors to discover the sex of the fetus. But genetic counselors, who are otherwise some of the most vigorous proponents of abortion-choice, seem unanimously
to agree that it would be wrong to advise prospective parents of the sex of their child-to-be, if there is any likelihood that they would "abuse" this information by having an abortion because they want a child of the opposite sex to that of the fetus. But since it seems (or is) wrong to abort solely for reasons of sex choice of one's children, then why should that seem to be (or be) the case, if it is also supposed to be the case that we should be indifferent about the reasons for abortions--particularly in the first two trimesters of pregnancy? Are we then to say that people should be free to choose to have an abortion for any reason whatsoever that they happen to have, except in order to choose the sex of their children? This seems to present another opening wedge, for once it is granted that at least one reason is unacceptable, the abortion-choice case seems seriously weakened. Shall we now concede that the fetus has some right to live after all? Aren't other reasons that prompt people to have abortions at least as questionable as sex-choice of one's offspring? If so, then it follows that we may not grant people carte blanche permission to choose to have an abortion no what their reasons; instead, they would have to at least show that their reasons are not frivolous or capricious.
Then, however, the only viable positions would be moderately restrictive legislation or restrictive legislation.

Zealots at both extremes of the abortion debate put forth emotionalistic appeals. Those favoring abortion choice thrust with "horror stories" of overpopulation and of women maimed and killed by unscrupulous and incompetent abortionists; the anti-abortionists are likewise prone to parry with equally emotionalistic horror stories of suctioned fetus-parts that have been casually dumped into operating room garbage cans. A prudent judgment might conclude that these two sorts of question-begging emotionalistic appeals cancel each other out.

(C) For all their polarization of the abortion issue(s), and considering the antagonisms, sometimes bordering on the vicious, between the enthusiasts of both extremes, it is all the more remarkable that they should have a significant issue on which they seem to agree. I want now to discuss this common ground. But before I do so, I should mention the fact that it is, at this stage of science and medicine, still largely a hypothetical type of situation. Thoughtful individuals of various persuasions about abortion have made
strikingly similar conjectures, and therein might lie a partial eventual solution, at least, to the vexing problems about abortion. It is this. Suppose we could, at some more or less distant point of technological development, have pregnancy-termination (abortion) without bringing about the death of the fetus: then both sides would be—or should be—happy. In a number of provocative articles, in publications ranging from The New England Journal of Medicine to Good Housekeeping, Dr. Bernard Nathanson has issued a set of proposals and predictions. Dr. Nathanson—formerly the director of the nation's largest abortion clinic and now a specialist in fetal medicine and neonatology since he became disillusioned after witnessing what he felt was the wholesale, unthinking destruction of pre-natal life—advocates improving contraceptive methods, contraception education and motivation to use effective means of contraception. This could take place within a few years, by which time "abortion without 'feticide'" will also be possible. This latter notion is the "life-support" approach to sustaining fetuses (babies?) ex utero, similar to the use of incubators for premature babies, whereby fetuses would be gestated in "artificial wombs". Several such devices have already been constructed, and have been used for gestating
fetuses that were grown in vitro. With the practical development and manufacture of artificial wombs--perhaps supplemented by the re-implanting of fetuses in the uteruses of "surrogate mothers"--abortion will be, in principle, at least, available on demand, but there would be far fewer requests for abortions because there would be far fewer unwanted pregnancies. And the abortions would be unobjectionable to all, since it would preserve women's freedom while at the same time giving no one cause to object that the fetuses' lives were being "nipped in the bud".

The artificial womb utilized for "life-support" functions would not only bring in its wake a revolution in our concept of abortion; it would also further complicate already existing problems about the notion of viability. With the recent developments in prenatal and neonatal care (especially since about 1950), the practical and the limiting points of viability have moved back successively earlier. For example, as of 1952, no fetus weighing less than 1000 grams--about 2.2 pounds--and less than 28 weeks of gestation had ever survived. By 1975, however, four per cent of fetuses weighing 800 grams (24 weeks gestation), and other cases, including some reportedly weighing as little as
550-600 grams, have survived without any observable resulting harm. In fact, it is now probable that a 1250 gram fetus, if given the proper care, will survive unimpaired. A serious problem that arises from these technological feats is the following: As viability moves back earlier and earlier, how will this affect our moral obligations? If, in the year 2010, some or most fetuses that weigh 50 grams can be successfully sustained in their "wombs with a view", will the destruction of a 75 gram fetus be as serious a wrong as infanticide (usually) is now? There is still time to debate and disagree about this.

There are a number of topics that I have not considered, but which are presupposed by or are consequences of the discussions of the morality of abortion. Limitations of the scope of this dissertation prevent full discussion of them here, so I will just indicate some of them. (1) One important set of issues that is intertwined with the abortion-concepts and beliefs is that dealing with fetal experimentation. (2) Also, it may have been observed that I treated the issue of abortion choice within the supposition that the choice would properly belong to the pregnant woman alone. There is nowadays, however, much debate about consent and
authorization of abortion procedures which focuses on determining the proper role of the male partner (the father or father-to-be). Thus, we have such questions as: (a) Should the man's consent be necessary? (b) Should the woman's consent be necessary? (c) Should the man's consent be sufficient? (d) Should the woman's consent be sufficient? (e) Should either the man or the woman be able to veto the proposed procedure? (f) Should there be joint consent required?

(3) Apart from these questions, there are also problems of deciding exactly what moral (as well as legal) rights, and of what strength, to ascribe to fetuses. For example, it seems that everyone agrees that fetuses have a right not to suffer. Whether they have a right to live (and if they do, how strong it is and what circumstances can override it) is, of course, still moot. But there are other issues, such as whether they have rights to health care, (presumably they do, to the extent that they have a right to live and to the extent that "full-fledged persons" have a right to health care); whether, and in what circumstances, they have a right to be protected from risks that are not (immediately or demonstrably) pain-causing; and in what sense or senses they can be correctly said to have
rights grounded on their "future interests" or on their potential development.

(4) There is another sort of circumstance that can be relevant to the abortion-decision's justifiability. Societal conditions might militate for more abortions in some extreme cases, such as in India and other areas where starvation situations coexist with widespread inability to inculcate effective contraceptive measures.

(D) Some views about the beginning of life. Discussions about the morality of abortion have been clouded by a number of confusions. It seems to me, for example, that we should sort out several questions that tend to be run together, much to the detriment of the possible progress in this area. A first question might be when a human—or what will become a human—begins its existence. A second question is when a human's life begins. A third question is when a human begins (or acquires) his or her or its personhood. Fourth, we may inquire as to the inception of a human's (or a person's) right to live. Finally, one might raise questions about balancing rights: How should we balance the justifiability of a pregnant woman's rights or claims against the rights or claims of the fetus? How strong are the respective rights of the woman and the fetus? What
possible factors might justify overriding a woman's rights, freedoms, interests and claims, or the fetus' rights interests and claims? An appreciable amount of the obfuscation that has occurred thus far in abortion debates has resulted from conflating some or all of these when they should have been kept distinct. Even though this is so, it should nevertheless be helpful to have some idea of what some of the most important and interesting theories have been, at various times in history, concerning the first four of the above questions (and, indirectly, the fifth question as well). Accordingly, I shall now present a brief listing of ten such theories, but I will withhold evaluating most of them for the next chapter.

(1) Human life begins at conception (fertilization), according to the Roman Catholic doctrine since Pope Pius IX so decreed in 1869. The conception criterion has many advocates independently of its doctrinal status. There are several reasons in favor of conception. First, at conception there occurs the major qualitatively significant change in the human. After fertilization, there ensues a gradual, continuous development of the human organism until it matures or dies. Second, conception is the point at which--unless aborted--live
birth becomes about 75% probable. Third, at the moment of conception, the conceptus can (unless identical fetuses form—a rare occurrence) be metaphysically and biologically individuated from either of its parents. It is at that point different, in fact, not only from its parents, but also from the sperm from the egg that merged to form it, and it is distinct genetically (as well as metaphysically) from every other organism in the universe, as far as science enables us to know. Moreover, it then has within it all of the genetic information necessary for it to grow and develop into a mature human being.

(2) Some people, such as Paul Ramsey, believe that individual human life begins at segmentation or implantation. When and if these events occur, it is at about six to twelve days after fertilization. After segmentation, it is determined whether the zygote will develop into one fetus or twins, triplets, etc. Thus, at that time, individual identity is positively established. Also, most spontaneous abortions ("miscarriages") take place prior to implantation. So, the probability of the fetus' being brought to term (barring induced abortion becomes more than 90 per cent, after that point.
Most of the remaining views focus upon when certain human abilities or structures emerge. For them, then a human's life, or whatever justifies our ascribing to it a right to live, begins at some moment or stage after implantation.

(3) A number of people used to emphasize the transition from what was termed the "embryo" to what they called a "fetus". (Recently, the word 'fetus' has become applicable also to the stage that used to be considered embryonic.) This happens approximately eight weeks after fertilization. At that transitional phase, morphological individuation, or differentiation, has been almost completed, and some organs are beginning to function. The differentiated human then "appears human"; that is, it then appears similar to what we expect normal humans that we encounter to look like. Something else significant transpires at about eight weeks after conception; it will be discussed in the next few paragraphs.

(4) (Measurable) brain activity begins at about that time. In his book about abortion, Baruch Brody argues for that point as the beginning of a human's life and, consequently, the beginning of its (or his or
her) right to live. (It should be observed that the extent of brain functioning at that stage is only minimal, and it occurs only in the comparatively primitive, autonomic control centers of the brain. Thus, it would seem that Brody is claiming that the fetus acquires its right to live based on a concept of the beginning of human life when the human fetus' central nervous system is functioning at a level comparable to that of a frog.)

Brody points out that medical science has refined its venerable criteria, signs and definitions of death. Before the 1960's cessation of cardiopulmonary functions enabled doctors to pronounce someone dead. For several reasons--including development of sophisticated life support systems and the utility of living organs for transplantation), following the August, 1968, publication of the "Report of the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death: A Definition of Irreversible Coma", death came to be assessed more precisely in terms of irreversible cessation of central nervous system activity. (For most cases, in fact, though, physicians find the traditional standards of irreversible cessation of circulatory and respiratory systems to be perfectly adequate.) Brody suggests that it would be a good idea to use the criterion
for a new purpose: *mutatis mutandis*, the standard of the end of human life should likewise apply to the beginning of a human's life.

Now, it was not only the symmetry of the criterion that appealed to Brody; as most people who have an inclination toward materialistic, epiphenomenalistic or even some dualistic theories of mind—as well as most neurophysiologists and physiological psychologists—will affirm, there is no meaningful human existence (personal existence) without brain function. Brain function is at least a *necessary* condition for personhood. With brain function there is possible the capacity for conscious processes. (Again, though, Brody might have concentrated on the functioning of the cerebral cortex, which doesn't begin until comparatively late in the gestational period, if he had been concerned with providing more than a *necessary* condition for the substratum of the "capacity for conscious processes".)

(5) An odd-sounding disjunction of criteria which was accepted for thousands of years is 40 days after conception (for a male) or 80-90 days (for a female). This apparently derives from the reliance on an Aristotelian doctrine of when the rational soul emerges to
complement the vegetative soul. The 40-or-80 day standard was maintained in Roman Catholic Canon law until the 19th Century, when, as was mentioned earlier, a Papal decree shifted the standard to conception. But some Orthodox Jewish authorities still accept a 40-day criterion for even potential (partial) personhood. It is said to be "mere fluid" until then, and it becomes a full-fledged person only at birth.

(6) "Quickening" is a historically important criterion. Quickening is the first fetal movement noticed by the pregnant woman. It occurs between the 13th and 20th weeks; usually between the 16th and 18th weeks. This seems traceable to the Thomistic notion of "mediate animation". At quickening, the fetus was judged to be formed, "ensouled", to have personhood. In common law and English statutory law this was the prevailing standard until the last century.

(7) The standard accepted by many nowadays is viability. A fetus is viable when it is (independently) capable of sustaining extrauterine life. This is at about 24-28 weeks. The development of elaborate "life-support" machines has created some confusion about the notion of viability, in the sense that fetuses will soon be able to exist outside the womb, with the aid of
life-support systems, almost from the time of conception. To reinforce the concept of viability, some people tend to invoke the distinction between "ordinary" and "extraordinary" measures.

(8) A first reaction of many people is to opt for the criterion of the moment of birth. There are several reasons for this. First, the baby is then considered to be independent of the mother, at least in the physical sense. The placenta has detached from the endometrium, or uterine wall; the baby is external to the mother after delivery; the umbilical cord is cut, and the baby must derive sustenance from the external world. Certain autonomic responses are triggered, and the baby ceases respiring by osmosis through liquids and begins breathing air spontaneously. He or she then becomes visible and audible to all, accessible, responsive to the external environment and a new member of the social world. The law then considers the baby a citizen.

(9) It has recently been argued, by Michael Tooley and others, that the right to live geins only with the acquisition of something like personhood, and that that happens months after birth. Having ruled out the relevance of potentiality—with a far-fetched counter-example or two—Tooley contends that, in order
to have a right to live, a being must both: (a) possess the concept of a self as a continuing subject of experiences and other mental states, and (b) have the belief that it is itself such an entity. (Tooley thus has little difficulty countenancing infanticide and the (painless) killing of non-"person" animals.)

(10) A number of contemporary philosophers say that the beginning of humanity, or of personhood, or of the right to live occurs at no given moment or stage. As mentioned earlier, there is a gradual, continuous development of the being from fertilization until maturity or death. The right to live is apportioned, in their views, somewhat as a function of the extent of development of the fetus. Accordingly, although it may be judged bad form", or "distasteful" or "unfortunate" when a first trimester abortion is performed, it really isn't wrong enough to warrant its prohibition. On the other hand, third trimester fetuses have by that time become "human" enough to have their claim to live taken much more seriously.

The advocates of this viewpoint often argue that it is somewhat arbitrary and indeterminate whether we decide to call the fetus a person--or a human--or not.
This kind of point is frequently adumbrated in the light of Wittgenstein's later writings. Examples are put forward to illustrate the notion of such "borderline cases": Viruses may be considered as living organisms, yet they also seem to be non-living chemical compounds; the Euglena seems to have some attributes of plants and also some characteristics of member of the animal kingdom. These are decisions, not of fact, but rather of (some would say arbitrary) decisions about how to use language in such cases. Thus, whether we choose to call the fetus a human or a non-human, and whether we choose to say that it is alive or not alive is unimportant, it is said: what is important is the issue of what rights can be justifiably ascribed to it. (There remains a further question, though. If it isn't in virtue of being alive or being human that the fetus has or lacks a right to live at some particular stage, then what is there about it that can and should justify our ascription of a right to live to it? In the next chapter, we shall be considering a number of possible answers to this question.)
CHAPTER III

This is the first of two chapters in which I present my own views about morality and abortion. In this chapter, I will give a six step sequence of arguments that provides the main features of my theory. Here is a short outline of those steps. In the first step, I claim that newborn humans have stronger rights to live than do members of other species. The second step contends that moral rights are grounded or justified by morally relevant characteristics. The third step maintains that, other things being equal, differences of strengths of rights are grounded or justified by differences in their grounding or justifying characteristics. Fourth, I argue that in the case of the human newborn it is person-potentiality that constitutes this essential grounding or justifying characteristic. Fifth, the bounds of the possession of this characteristic are placed at conception and the acquisition of actual personhood. The sixth step considers various factors that can override the potential person's right to live.
Most people's opinions about abortion are substantiated, they feel, by one of the reasons that I presented in the preceding chapter. When their primary reason is challenged, they mobilize several more of those arguments. For the most part, though, these reasons are not themselves overwhelming. While some of the arguments seem particularly ludicrous, neither side has a monopoly on question-begging, non sequiturs or otherwise fallacious arguments. The abortion controversy does, however, possess some elements of considerable philosophical significance and difficulty.

I want to further preface the statement of the six-step argument sequence by making some observations about the abortion controversy. There can be little doubt that it used to be much easier to think about the morality of abortion. A generation ago, abortion was just not discussed. It was widely disapproved, dangerous and illegal.

Then there occurred a shift of opinion and law. As of the 1960's and early '70's, the opponents of abortion choice could be portrayed as a group of religious zealots who wanted to impose their outdated doctrines
on others in such a way that women were victimized. Increasing numbers of progressive societies accepted non-restrictive abortion legislation. Poor people all over the world had been having babies they didn't want and couldn't raise properly. Women who sought to exercise some control over their childbearing capacities no longer needed to be put in legal and medical jeopardy. The fetus was, indeed, considered to be a mere parasitic mass of protoplasm.

But then new circumstances began to emerge. Medical personnel admitted to feeling reservations about turning their skills toward the destruction of life; in many areas, after all, abortions had begun to outnumber live births. Fetal medicine developed methods that brought with them the accessibility of the fetus. Moral philosophers' debates turned toward more specific matters and their critical powers began challenging the assumptions of both extremes in the abortion controversy.

As political and religious beliefs clashed, emotionalism and irrationality proliferated. People argued at cross purposes. The one side declared that the woman's rights are what matter; that the fetus'
rights are irrelevant, non-existent, or could be overridden. The other side decreed that the fetus' right to life almost invariably takes precedence over any other sort of consideration. A careful study reveals that whichever side is correct, abortion is not an issue allowing a facile resolution. Anyone who thinks that it is easily decidable has just not thought enough about this complicated, disturbing problem.

Here is an overview of some of the conclusions for which I will be arguing. Both extremes in the abortion controversy are mistaken, for various reasons that will be explained. Most of the "intermediate" views are mistaken, as well. Because of their person-potentiality most fetuses have a medium strength, presumptive (or prima facie), right to live from the time of conception. (Nothing fancy is intended by the use of the expression 'medium strength' here; this is not a technical term.) The reasons that would justify a significant change in the strength of the claim that they have a right not to be killed do not alter much until months after they are born. It is only then that they have turned into full-fledged persons. The clearest kind of reason that can justify abortion (as contrasted with adoption) is, paradigmatically, when evidence has shown that the
fetus will be severely retarded and have a serious disease or disability. Such a being has minimum potential for any personal quality of life.

The standpoint that I defend is determinate in the sense of excluding most of the traditional sorts of reasons; but it is, I regret, indeterminate in that it does not presume to set forth a very specific procedure for deciding which abortions are justified and which ones are not.

Before I state the first of the six steps, let me issue a "promissory note". Some of the concepts included in this discussion (such as (the nature and justification of) moral rights, natural kinds, potentiality, personhood, (morally relevant) characteristics and mentation) will be discussed at greater length in Chapter V. It seems to me that they are sufficiently clear now to carry the weight of the discussion, but some of you may not think so. However, if they seem crucially unclear to you at this point, you might want to look ahead to see how they fit into the picture. Now it is time to turn to the six steps.
(1) The first step contends that it would be *prima facie* more wrong to kill a newborn human than to kill a cat, dog, or other non-human animal. We might put this another way by saying that the human neonate has a stronger *prima facie* right to live than does a non-human animal. This moral belief (or opinion, "intuition", feeling, or judgment) will be taken as a starting-point because almost everyone agrees about it and it has, as will be shown, very important consequences for others of our beliefs that are relevant to the moral justifiability of abortion. The belief in question seems to be generalizable to the claim that the human neonate's moral rights (in general) are stronger than are the moral rights--assuming there to be such--of non-human animals. These judgments about non-humans pertain not only to their neonates but in fact to members of their species that are of any age. Our judgment, then, says that infanticide is more wrong than is "felicide", "canicide", "bovicide", "equicide", and so forth. (I will eventually suggest some possible qualifications and exceptions to this judgment, but for the present purposes, we can accept it as it stands.)
(2) The second step maintains that moral rights are grounded (metaphysically) and justified (epistemologically) by morally relevant characteristics. There are moral rights, and they are grounded or justified by circumstances of the situations that obtain related to the possessors of the rights. These natural rights, as they will be called (q.v. Chapter V), are possessed by individuals when and only when, and in virtue of the fact that, there are the justifying factors or grounding characteristics.

(3) The third step is a consequence of the second. It will be expanded upon (as "Rule (R)") in Chapter V. It says that differences of rights are solely the result of differences among the grounding or justifying characteristics—other things being equal. More specifically, we are here concerned with the difference between the respective rights to live of the human neonate and the non-human animal. The human neonate possesses some characteristic(s) that is (or are) either not possessed, or else is (or are) possessed, to a significantly lesser extent, by the non-human. This "difference that makes a difference" is some characteristic(s) that is (or are) morally relevant to the right to live and is (or are) found in newborn humans
but not found, or found to a significantly lesser extent, in other animals.

(4) When we consider what characteristics might be the one or ones in question, it will turn out that one particular sort of characteristic is plausible and other possible characteristics are not. The plausible characteristic, as I shall suggest, is person-potentiality.

At this point, I wish to examine a number of candidates for the morally relevant characteristic(s) that might ground the human neonate's comparatively stronger right to live. (Most of the rest of this chapter will contain facts and arguments designed to clarify and substantiate the analysis of these putative rights-grounding characteristics.)

Morphology. Some theories claim that a fetus must have developed to some physiological or anatomical stage (such as brain-function, viability, or recognizably human appearance) in order to have "established" its right to live. It isn't clear, though, why the differentiation or the functioning-capacities of any physical systems confer the right to live. We would need a further justificatory statement for our
criterion or criteria, something to the effect that
"attaining such-and-such a stage of development or
of functioning (-capacity) suffices for ascribing
the right to live to a being." A principle of this
sort must be understood in such a way that it illu­
minates why an organism prior to that stage should not
be judged as being entitled to that right. The point
or stage must be such that it can carry the weight of
moral relevance to abortion decisions. It must make
clear that and why our life-or-death judgments sud­
denly acquire a decisive new factor. But, as I have
indicated, morphological facts seem unable to bear
that burden.

Birth. Parturition, as it is called, is a widely
accepted standard of rights acquisition and of the
beginning of life. Birth, though, doesn't seem to make
a morally crucial difference to the situation of the
fetus-infant. While birth is perceptually dramatic,
the fetus' internality or externality doesn't obvi­
ously alter its right to live. If it does, we must
determine how and why it does so. We should decide
what attributes the infant has immediately after birth
that it lacked just prior to birth. The acquisition of
citizenship is a matter of legal convention and stipulation, surely not a ground for the important moral right in question. Public visibility, audibility and tactile accessibility also do not suffice to ground the right to live. Furthermore, the obstetric, neurological and pulmonary facts (noted in Chapter II) of birth likewise have no obvious bearing on the right to live. If anything might imaginably constitute a justification for a morally significant change, it is the attainment of physical independence from the mother. Although I will later (in the third section of this chapter) address the concept of independence as the basis of the right to live, for now I will just say that it isn't self-evident that physical—or any other sort—of dependence can justify taking a life that otherwise would be entitled to continue. (In saying that it "isn't self-evident", I realize that I deny what Judith Jarvis Thomson and her followers think is a moral intuition.) Further criticism of the views discussed above, along with other views, will be held off until the second and third sections of this chapter.
For the moment, I would like to maintain the flow of the argument by saying something about the role of potential personhood for the attribution of the newborn human's stronger right to live. Let's compare the situations of the human neonate with the dog, horse or pet monkey. The non-human quite possibly has a better developed central nervous system, since most of the human neuron development occurs very late in pregnancy and in the first years after birth, occasioned by the infant's exposure to experiences (or stimuli) from the environment. People might often feel stronger attachments to their pets than to their newborns. Sometimes, in fact, the human newborn is viewed with more than a little resentment. The non-humans can have more complex interactions with humans than can the human neonates. The non-humans are equally independent physically, and more independent in other ways, from their human companions than the human neonate is from its parents or guardians.

While these considerations are not "proof", they indicate that the justification for the human neonate's stronger right(s) consist of something that makes
reference to its being human, being a person, or being a potential human or person. If we use other standards, the non-human, it seems, contrary to step one, should have at least as strong a right as the human.

The human neonate is surely a human, but then it has been human, biologically, since conception. It has been a member of the species *Homo sapiens sapiens* since that time. Its physical attributes have been gradually forming, and its resemblance to our paradigm of what a human or person looks like has increased during gestation—although there have been few detectable changes, other than of size, since about twelve weeks of gestation. However, to declare that it is just in virtue of being human that the human neonate has its stronger right(s) is to exhibit a form of speciesism that I reject (in Chapter V). What is there, though, about the human that justifies our ascribing the right to it? What is there about humans such that they deserve to be ascribed the right?

As has been observed, the human neonate apparently possesses no traits that could serve as a reasonable, consistent ground for ascribing to it a right that we would not ascribe to a number of non-humans. In the
clearest sense, the human possesses its morally crucial features when, and after, it first becomes a full-fledged person. But until that stage—which takes months, or even years— it still has the potentiality to be or to become a person. It is that person-potentiality, I suggest, that morally distinguishes the human neonate from the non-humans that are more developed physically, mentally and behaviorally. Because the human neonate is on a nomic "track" which will, in all probability, bring it to a point when it become a person, we protect its probable "future interests" by ascribing to it a right to live that is stronger than that of the non-humans that lack person-potentiality. Therefore, my recommendation is that person potentiality is the characteristic to choose to ground or justify the newborns human's stronger right to live.

(5) The fifth step of this approach to abortion requires a specification of the temporal bounds of person-potentiality. That potentiality, it was just argued, provides the ground for the prima facie right to live that is possessed by the human neonate. It was claimed also that the strongest primary rights are
ascribed to full-fledged persons. It is not my view that potential persons merit the same strength rights as actual persons; and so, in the absence of any evidence that would justify the equation of rights of potential persons with the rights of actual persons, we may only judge that they possess a prima facie right that is of moderate strength; as contrasted with the much stronger prima facie right of full fledged (actual) persons.

Each of the currently suggested purported differences between conception and personhood is refutable, for purposes of being a morally relevant characteristic that would suffice as a ground for the right to live. The times before conception and after acquisition of personhood can also be effectively criticized. More about these in a moment.

Conception. The most plausible point for fixing the beginning of person-potentiality is conception. When fertilization occurs, a unique, individual being is formed which, from that point, will most probably develop into a full-fledged, actual person. Moments before, there had been a haploid ovum, containing the female's genetic information (in fact, only about
half of it) and a swarm of hundreds of millions of haploid spermatozoa, each containing genes from the male only. The likelihood that any particular sperm cell will fertilize the ovum is of the order of magnitude of $10^{-9}$. But suddenly, everything changes. Upon the occurrence of fertilization, there comes into existence an organism, the zygote, that possesses its own genotype. At that point, there is a better than 75% chance that—if not aborted—it will be born and turn into a full-fledged person. It has suddenly become a member of our species, albeit still a very undeveloped one. We can then individuate it from its parents, from their gametes, and from any other organism in the universe (as far as we know).

The concept of "active potentiality", or "strong potentiality", is very important. It involves causal, lawlike, or nomological elements. In a weaker sense, 'potentiality' can be used to get at phenomena that are merely possible. In a somewhat stronger sense, people speak of "potentialities" as abilities or capacities, which may or may not be "triggered". This is a dispositional sense. But in the sense applied to the conceptus-fetus-neonate-early infant, a potentiality is something stronger. In the normal course of events
the potentiality will be actualized. The understanding of this idea does not presuppose either a teleological ("vitalistic") or a mechanistic mode of explanation: it is explainable by either type.

In subsequent sections of this chapter I provide reasons, over and above what has been said thus far, for discounting views that locate the inception of "active" person-potentiality--insofar as they have such an idea at all--either earlier or later than conception. I also rebut the views according to which actuality or personhood is placed earlier than at least a few months after birth. For the time being, I shall simply summarize what this section's five steps have argued thus far: At conception, there comes into existence a human being possessing "active potentiality" (step 5), and it is this potentiality for personhood (step 4) that is the "difference that makes a difference" as a morally relevant characteristic (step 3) which, since characteristics ground moral rights (step 2), grounds the (prima facie) right to live that the human neonate possesses to a greater extent than do non-human animals (step 1).
(6) The sixth step introduces some complications into what might otherwise be thought of as a relatively straightforward way of viewing the moral status of fetuses and neonates. For example, I have claimed that the fetal-neonatal right to live is a prima facie right. Furthermore, I qualified that by saying that it was of medium or moderate strength (although of greater strength than the right to live of non-humans). The complications are circumstances that can serve to counterbalance, outweigh, or override the early human's moderate-strength, prima facie right to live. Most of these considerations are sometimes referred to as "quality of life" considerations.

Let's inquire about some specific such factors. First of all, how should we judge about the rights of those who (or which) will not be able to become actual, full-fledged persons, for example because they have a genetic structure that will be expressed as severe retardation? What about those with gross abnormalities of the parts of the brain that enable one to acquire, and to keep, personhood? What about those who will be afflicted with Tay-Sachs disease (an inherited disease technically known as amaurotic familial idiocy,
and caused by a defect in metabolizing fats)--babies destined to die before the age of five, progressively suffering and going blind and deaf, and undergoing brain deterioration until they die?

There are other sorts of possible factors to reckon with in judging about the strength of the early human's right to live. Suppose that the baby would suffer greatly from hemophilia, or from spina bifida/meningomyelocele, or from Marfan's Syndrome: aren't there some cases where such a life would bring into the world an unacceptable balance of suffering to other sorts of experiences to the child such that it could conceivably warrant preventing its further existence? There are many cases of multiple serious physical birth defects, either hereditary or congenital, such that the (e.g.) blind, limbless, hydrocephalic might be justifiably prevented from further existing.

So far, the cases mentioned have concerned the well-being of the fetus-child. There might also, however, be life-counterbalancing factors in the rights, freedoms, interests and well-being of others. The obvious sort of case usually raised in discussions of this sort is when the pregnant woman's life is
endangered by the continued presence, growth or birth of the fetus. All but the most hard-line anti-abortion extremists would agree that this is a case where abortion is justified. (Problems might be raised even in these cases. Thus, suppose there is only a 25% chance that the woman will die? What if there is only a 5% chance, or a 1% chance of it? At some point, the probabilities of jeopardy to the woman's life become the same as the statistical norm for childbirth mortality.) Not only the woman's life, but also her health, may be important factors. Some women are just not constitutionally capable--e.g., because of the heart problems--of bringing a pregnancy to term without seriously endangering their health. Then there is the still more difficult issue of how much a woman's psychological well-being or health should count in possibly outweighing the potential person's right to live. It seems to me that if there is clear, forceful evidence that a woman would not be able to endure the stresses of pregnancy and delivery without serious harm being done to her, even with extensive psychiatric counseling, then it is an instance where abortion is justifiable. (Once again, obtaining reliable evidence and determining the
appropriate level of psychological dysfunction that would result from the pregnancy and birth are matters requiring much discussion and considered judgment. We would have to eventually offer some guidelines to help draw the line between the seemingly insufficient cases where the woman would be a bit upset to the evidently sufficient cases where she would become permanently catatonic or psychotic in some other way.

There is another class of cases that are troubling. These are the ones where the pregnancy has resulted from incest or rape, particularly the rape cases. It is my (very tentative) judgment that the primary justification for abortion in rape cases is the psychological havoc that that crime causes. So, by virtue of endangering the woman's psychological well being or mental health, many rape cases can be cases of justified abortions. (In Chapter IV I bring in the additional factor of the involuntariness of the sex act that results in the pregnancy.) There can be no doubt that the resulting fetuses are unwanted and often strongly resented as reminders of the traumatic experience the woman has undergone. But it is well known that the majority of pregnancies are unplanned and, to that extent, unwanted. So, though it
may sound strange when put this way, it seems to be the connection between rape and psychological trauma that is the decisive reason for the justifiability of abortion in such cases. This is definitely not to say that the thoroughly distasteful crime of rape should be at all sanctioned. On the other hand, there is no reason to believe that a policy about abortion in rape cases has any effect on the incidence of rapes, either increasing them or decreasing them.

Socio-economic factors are frequently mentioned as considerations that justify abortions, but it is not clear that such factors justify abortion rather than giving up the baby for adoption. The rest of the socio-economic factors might well be manageable by means of a program which supported pregnant women, thereby removing financial pressures that might create further problems during pregnancy.¹

To summarize the sixth step of this section: A number of so-called "quality of life" considerations, both the potential person's and his or her mother's, seem to furnish sufficient justification for overriding the potential person's prima facie right to live,
and thereby to justify permitting abortions in those sorts of cases. (See the next two chapters for discussions of the sorts of other circumstances in which abortions might or might not be considered morally justifiable.)
CHAPTER IV

In the last chapter, I argued that, between conception and personhood, potential persons have a moderate strength, *prima facie* right to live. This right can be overridden, though, by various sorts of factors. I want now to elaborate and defend that view. This chapter consists of several sections. Section one contains a discussion of various views of the metaphysical-moral status of the fetus. After criticism, I opt for one of these; this one is consistent with the view presented in the previous chapter. In section two, there is an examination of the significance for the fetus' moral rights of its internality, dependence and non-actuality, along with some related concepts. The conclusions drawn there reinforce what had been said earlier. Finally, in section three, I spell out a number of objections to and questions about my theory of abortion, and then I respond to them.

Section One: The fetus' moral status. In this section, I want to consider various views about the moral status of the fetus. I shall assume that I am
justified, as a result of the previous chapter, in making claims about the importance and role of person-potentiality as it was described. One's view of the fetus' moral status affects, perhaps even determines, one's moral judgment about the justifiability of abortion. The 1976 HEW report on fetal experimentation produced by the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research contains a paper by Richard Wasserstrom in which he proposes a categorization of various views about the moral status of the fetus.¹ I have found Wasserstrom's categorization, when supplemented somewhat, to be very illuminating. Virtually all the current points of view about the moral justification of abortion either state or presuppose one of the following five.

For moral purposes, we may view the fetus as:
(a) a normal, full-fledged person; or
(b) like a non-human animal, such as a cat or dog; or
(c) like an organ or mass of tissue; or
(d) changing statuses during its development (for example, progressing from stage (c) to stage (b) to stage (a)); or
(e) being a potential person (not comparable with any such pre-existing class of entities, but most like the status of a human neonate).

Categories (a), (b), (c) and (e) are adapted from Wasserstrom.

Some explanation is in order at this point. Advocates of the "right-to-life" stance usually argue from the assumption that the fetus is a living, human, actual, full-fledged person from conception (the Roman Catholic belief) or from implantation. Spokespersons for abortion-choice typically contend that the fetus is, for moral purposes, not yet an actual human, and so it can best be understood as having a moral status not unlike protoplasm organized into tissues, organs, or perhaps like some of the non-human animals. Some sophisticated abortion-choice proponents opt for construal of the fetal moral status as transitional, the fetus acquiring greater rights as it grows and develops. Thus, for them, early abortions are comparatively acceptable, whereas late abortions are reprehensible.

**Humans and Persons.** There is nowadays a considerable body of philosophical literature in which there is recognized a distinction between *humans* and *persons*.
Humans, or member of the species *Homo sapiens* (sometimes particularized to the subspecies *Homo sapiens sapiens*, or "Modern Man"), are members of the biological species named by the great taxonomist Linnaeus. They have distinguishing genetic patterns and recognizable physical features and behavior at particular stages of development. Physical anthropologists trace the evolutionary emergence of humans to now-extinct primates of the genus *Ramapithecus* (10 to 20 million years ago); perhaps through *Australopithecus africanus* (two to three million ago) and for *Homo* (or *Australopithecus*) *habilis*; and then *Sinanthropus*, *Meganthropus*, and *Pithecanthropus*, which are sometimes interpreted as early members of the genus *Homo*. Among those clearly of of genus, there was *Homo erectus* (about one million to 200,000 years ago). Finally, sometime between 100,000 and 50,000 years ago, the so-called "Modern Man" evolved. The point or stage when the hominids acquired sufficient attributes to justify classifying them as *humans* is moot. To some extent, this is just a question of convention. Nonetheless, *Homo sapiens sapiens* is the only extant subspecies of the hominid family and the genus *Homo*. Interestingly, we tend to take a stronger interest in those life-forms that we evolved from as contrasted with those, such as
Giganopithecus, which became pongids, like the gorilla. A possible conjecture is that they had the evolutionary potential to become us. (Or, we might view it as a quasi-genealogical yearning for "roots").

Now some believe that persons are the same beings as humans, while other think that persons are distinguishable from humans. Defenders of the first of these views point to what they see as a virtual coextensiveness of the two expressions 'person' and 'human' in ordinary usage. Advocates of the contrasting hypothesis, however, argue that it is possible to cite instances of beings that are—or would justifiable be called—persons but not humans, as well as cases of human non-persons. As I use the term, persons are beings with, among other things, psychological attributes of great complexity. Something lacking consciousness, rationality, a sense of self-identity, a capacity (granted the motor skills) to communicate profusely and flexibly, ability to interact socially, and autonomy (including some capacity to direct, judge and motivate one's own behavior) is not a person. A being might, conceivably, lack one or more of these attributes and still be a person, but something would not be a person if it lacked most or all of them. I have not attempted to provide a definition of 'person';
I claim only to have supplied some of the central criteria, some of the most important attributes, of personhood.

According to the human-persons who believe in the distinction, fetuses and human "vegetables" and the profoundly retarded are human but are not persons, whereas aliens from other worlds which (who?) possess all of the above attributes, as well as terrestrial robots possessing such characteristics, could be termed non-human persons. In response, it might be claimed that such beings are merely so-called "persons", but not persons proper. Fortunately, we may still hold that some humans aren't persons without having to maintain that there are—or could be--some non-human persons.

The fetus. Having distinguished humans from persons, we are much less inclined to attribute personhood to fetuses. (When I speak of "fetuses", here, I mean "human fetuses.") Viewing the fetus as a full-fledged person is a mistake; we have no reason to think of it as such. Those who are influenced by archaic ensoulment doctrines may think that the fetus suddenly becomes a person, but even Aristotle held that the rational soul emerges gradually.
The belief that the fetus is, for moral purposes, essentially similar to a non-human animal overlooks the fetus' potentiality.

The organ-or-tissue perspective also ignores the potentiality factor, as well as the fetus' characteristically human organizational unity.

The "transitional view", as I term it, may be formulated either with or without acknowledging potentiality. If it doesn't recognize potentiality. If it does recognize it, then the transition-theories must explain why potentiality isn't present--and crucial--from conception. I will consider the transitional view at greater length in a moment, after I make an observation.

In his fine defense of the rights and interests of non-human animals, Peter Singer draws some comparisons between these organisms and fetuses. We accept the death and suffering of creatures much more intelligent and socialized than human neonates, while we recoil with horror at the suggestion that a newborn human life possesses less than absolute value. What morally relevant differences, except for person-potentiality, are there between the human neonate and the dog or sheep about
which our attitudes are so casual? The potentiality, though, as Singer recognizes, existed from conception.

The "Transitional View." Let's consider the "transitional", or "changing-status view". It maintains that, as the pregnancy progresses, abortion becomes increasingly wrong. A simplified form of the judgments following from one such view might be as follows. During the first trimester of the pregnancy, abortion is distasteful but not so wrong as to warrant restricting it. In other words, the fetus' prima facie right to live exists, but is easily defeasible, because it is a very weak prima facie right. During the second trimester, the fetus' right to live has become stronger and requires more compelling reasons to override it. After viability, only the most drastic circumstances can justify the taking of fetal life. The "transitional view" may assume a number of different forms, many with more gradual passage between stages of rights. But the general nature of the transitional view is, I believe, understandable by means of the simplified example sketched above.

The standard criticism of the transitional view is that potentiality exists from conception and that all distinctions between conception and birth (or later) are arbitrary. Can such a theory escape this criticism?
There are at least two types of attempts to establish non-arbitrary distinctions: what I shall call the "resemblance view" and the "actuality view".

The resemblance-variant of the transitional view says that as the fetus develops, it increasingly resembles full-fledged persons (in the physical sense). Thus during the first forty to sixty days, the main differentiation of systems takes place. During the first few weeks, while in that stage of morphogenesis, as the ontogeny is busy recapitulating the phylogeny, the organism goes from an unindividuated (except within the cell) unicellular state to one of trillions of cells, all components of systems with specialized functions. These systems together form a minute, recognizably human creature. As is well known, we are conditioned in such a way that we tend to identify and empathize more with beings that look like and behave as we do. (Hence the comparative ease of perpetuating racism, cultural biases, and even "speciesism".) It is easier, then, for us to be prone to protect the rights of a "homunculus" than of a form of human life that resembles a fish or a lizard. All of this is so, in spite of the fact that we know full well that within several weeks—if not aborted that "fish" or "lizard" will be a "homunculus". To be
sure, it is easier to take the life of a being that doesn't (yet) resemble us, but this doesn't appear to justify it. And yet, that is exactly what is at issue.

The actuality-variant of the transitional view maintains that the fetus' right to live becomes more compelling as it becomes "more actual" (and hence, I assume, "less potential"). It is mainly in the physical sense that it is more actual, though. For until some months after birth, it doesn't possess the psychological attributes that would justify our judgment that it is a person. Until that time, with respect to clearly human types of actions, it might as well be any other mammal, with similar rights to those of cats, dogs, cattle and horses.

At this point, the actuality-view theorist might contend that the human fetus possesses more rights than does a dog fetus or even a postpartum dog because the human fetus has something additional. That additional something, as far as I can discern, is—if not human resemblance—potentiality. But it had that potentiality, the potentiality to become a person, from the time of conception.
The actuality-view theorist seems to have arrived at the following point. He or she might want to say that actuality determines the strength of the fetus' right to live. Unfortunately, it seems that—except for physical resemblance to persons—the fetus really isn't very actualized as a person, for most of the person—"actualization" occurs after birth. An alternative move might hold that actuality is a temporal notion, that the fetus is, at later stages, temporally closer to personhood. It is then almost ready to assume the attributes of personhood. But its claims are still predicated on a decision of how soon it will be a person. The analogy might again be made (see Chapter II) with the lot of the comatose patient. We wouldn't, I assume, want to claim that we may (with only a few regrets) pull the plugs from a patient who will be comatose for nine months but that it would be very wrong to do that to a patient when the patient will be comatose for only three months. Surely there must be more to it than the length of time before the acquisition (or the resumption) of personhood.

To sum up, the second section of this chapter has focused on five different ways of viewing the fetus' moral status. It was claimed that virtually all theories about the morality of abortion presuppose one of these
five models of the metaphysical-moral status of the fetus. I tried to show that the four views not construing the fetus *sui generis*, as a potential person, in a somewhat similar moral situation to that of the human neonate, are incorrect. The criticisms of the four mistaken views required a close scrutiny of such ideas as the distinction between persons and humans and the "resemblance" and "actuality" variants of the view that the fetus undergoes a transition in its moral statuses.

Section Two: Internality, Non-actuality and Dependence. While the previous section was principally concerned with the fetus' (non-relational) properties, there are some theories which approach the justifiability of abortion in terms of the relation of the fetus to the pregnant woman. Discussion of these views in this section will return us also to some further discussion of some forms of the concept of actuality, as well as to some other attributes of the fetus that have been mentioned at various points in this chapter and Chapter II.

There may be a number of reasons for maintaining that the fetus is not "actual", or is different from persons, or from other humans. It isn't always clear, though, how 'non-actuality' is to be interpreted. It
might mean that the non-actual being is just non-existent, or that it is possible, or "only probable", or even that it has potentiality. Further ambiguities arise among those interpretations of the "non-actual" fetus as not a determinate being or entity, or as not an actual human, or as not an actual person. In most instances that I have so far discovered, the fetus is claimed to be non-actual--or to possess its rights-status--in virtue of one of the following purported features. Before I assess them, I shall simply give a list of them.

(1) It is internal; contained within another being.
(2) It is dependent; not a distinct being physically.
(3) It has no social interactions.
(4) It lacks consciousness or self-consciousness.
(5) It has no "vital signs".
(6) It is amorphous, both physically and psychologically.
(7) It lacks wants, beliefs or intentions.
(8) It is "invisible", "hidden", inaccessible.
(9) It has little or no resemblance to adult humans.
(10) It is virtually inanimate.
In order to justify destroying a fetus at will ("on demand"), we must, given step two of the argument-sequence of Chapter III, account for the relevant difference or differences between the fetus and "full-fledged persons" or full-fledged bearers of moral rights, such as the right to live by some difference in characteristics. For the proponents of abortion-choice, one or more of the above ten characteristics, in conjunction with either the "tissue-", "non-human-", or "transitional-" model of the metaphysical-moral status, is usually decisive. So we should examine the ten suggestions listed above for whether they allow the moral difference claimed.

*Internality* is not the same as lack of actuality, but it is believed by many to be a circumstance that can play an important role in defeating claims of a right to live. At the risk of setting up a cariacture, I shall examine this notion by rephrasing it in a revealing way. It seems that the "externality theory" of rights is asserting or assuming something like the following: "Something can't occupy part of my somatic space without my permission; it has no right to continue its existence unless I so decide." Now, it doesn't seem that being the "container" rather than the "contents"
would, as such, deprive the "contents" of the right to live. Neither would it sound plausible to say that the older has the right to choose to "terminate" the younger, or the larger to eliminate the smaller, or those above to liquidate those below. Unless I am mistaken, in fact, the internality-externality criterion is actually a form of the dependence-independence standard. (Of course, principles precluding unconsenting bodily "intrusion", or "violation" of one's "bodily integrity" play an important role in the standards of good medical practice. But the present case is different. First of all, the fetus is not someone who can choose not to intrude. Secondly, the fetus does not purport to be acting solely in accordance with the wishes and interests of the mother. Thirdly, we shouldn't beg the question against the fetus and assume that its moral rights-claims are, at best, contingent upon the woman granting them validity.)

Only in the sense of formal causation does dependence ostensibly deprive something of actuality or value. Although we can accept the arguments that people—or things—may not infringe on a person's bodily autonomy, those arguments should be qualified by a ceteris paribus clause. The right to bodily self-determination, in
other words, only a *prima facie* right, not a categorical one. It is a useful generalization but is not applicable without exception. For example, it seems that it would clearly be wrong to destroy an eight-month fetus, so that a woman can thereby punish her husband. The relationship between a pregnant woman and her fetus is a *unique* kind of dependency-relationship. People's bodily autonomy or integrity does not, after all, usually involve a conflict with the continued existence of another human life (albeit not in this case another actual person's life). Even if someone were to grant that we have no duty to let another life be dependent on us at our inconvenience and discomfort (which I do *not* grant), I think that we would nonetheless believe that to let die a being the life of which (or of whom) we could save would be morally distressing.

*Some digressions.* Another factor is germane to this point. To what extent is, or was, the woman responsible for having the fetus become dependent upon her? And how should this be weighed in deciding the justifiability of abortion? Did she try to become pregnant: plan to have a baby and then change her mind; act negligently in becoming pregnant (*e.g.*, by refraining from using contraception, maybe in order to "take a chance", in the phrase
of strong abortion-choice advocate Kristin Luker); knowingly use unreliable methods of contraception; act because of ignorance of reproductive biology or of effective contraceptive means; was she conscientiously practicing optimal contraceptive methods, and become pregnant "by a mere, highly improbable chance"; or was she raped? These complex, difficult questions appear to have some possible bearing on the acceptability of the woman's claim to have autonomy over her body and freedom from dependency upon it by "unwanted intruders". (Please note, though: This aggregate of issues about responsibility for becoming pregnant should not be confined to the context of the discussion of the woman's claim to a moral priority of independence over dependence. Other than those instances where it is discussed in an absolutist or inchoate manner, it has been largely neglected in the literature about the morality of abortion.) (A second note: Although I mentioned it briefly in the last part of Chapter II, I have, for the most part, ignored the role of the male in my treatment of abortion issues. Now some people might be inclined to assert that the male (the woman's husband, or other partner) should have no voice in the abortion-decision; but few would deny that the male almost always does, and
should, share equal responsibility in the activity which results in the pregnancy. Thus, it should be abundantly clear, although it is too often unappreciated, that males ought to share and cooperate in the responsibility of practicing safe, dependable contraception. I believe strongly that discussions about the morality of abortion or of abortion-choice ought to recognize that, **whether one is for choice or against abortion**, issues about effective, informed, motivated use of contraception are necessarily part of adequate judgments of rights and responsibilities and of any constructive proposals for laws and/or public policies in this area.

Most of the other reasons for withholding rights from the fetus can be disposed of more easily. With regard to the third claim on the list, for example, it should be pointed out that while social interactions are important to almost all persons, it just isn't clear that the right to live should be a function of them. Also, it might be inquired whether it is the actual interacting, or merely the capacity for interactions, that counts. What about the hermit, for instance, who goes to live in a cave by himself or herself for nine months or for many years? What about the Robinson Crusoes of the world who
are involuntarily cut off from other people for months or years? Moreover, we can make analogous points here to those we put forth earlier, viz., don't many non-humans have more complex interactions with persons than do human neonates, and doesn't the fetus possess the potentiality for interacting (as part of his or her person-potentiality) from conception? Also should a human who is, because of physical impairment of psychological disability, incapable of socially interacting, whereby be relegated to a rights status like the fetus? 

Concerning the fifth and sixth claims, they are just empirically false, particularly after the first few weeks of pregnancy. The fetus exhibits measurable "vital signs" after about eight weeks of gestation. And it has a very highly organized form from the time of fertilization. Actually, it goes through a number of highly organized physical forms during gestation, and these flow smoothly the one into the other with development. Now if by "amorphous", what was meant was that it doesn't yet resemble one's single paradigm of what a human should look like--that is, like a human after parturition--then they are at least partly right. The physical form standard hearkens us back to the discussion in the previous section about the "resemblance
view". To use as one's central standard of life and death whether a being, on gross inspection, sufficiently resembles some pre-conceived paradigm or what a being at a different stage of development looks like, seems extremely questionable. This pertains also to the ninth claim.

*Psychological "amorphousness" is another dubious standard.* As I observed earlier, most of the neuronal "substratum" for person-like psychological capacities develops either in the last two months of pregnancy or in the first few years subsequent to birth. Besides, some (primitive) psychological attributes seem to be present as early as the second trimester. As with physical form, its extent is a matter of degree, although almost all of the physical complexity of form emerges early in pregnancy and almost all of the complexity of psychological form is acquired long after birth.

The specific psychological or mental states (or dispositions) mentioned in the seventh claim are, of course, absent in the fetus. But the existence of **wants, beliefs or intentions**—or of any particular, specific wants, beliefs or intentions—do not ground the right to live. They aren't even necessary conditions for a right
to live. I shall be arguing in the next chapter that these and other "mentational" states or capacities important for the primary right to live, which is ascribable to full-fledged persons; but as I argue both there and in the first section of this chapter, moral rights and in particular the right to live can be present in virtue of the potentiality for the wants, believes, intentions, and other mentations that are constituents of persons.

What about the eighth claim? Well, the lack of visibility is not absolute, as the existence of a number of pre-natal diagnostic methods and procedures, now utilized in fetal medicine, shows. So its accessibility is now a fact, given modern technological developments. Besides, if the abortion occurs and the fetus suddenly becomes visible and accessible, would it suddenly acquire a right to live that it until then lacked? Surely, morality has transcended the crudity of the "out of sight, out of mind" dictum.

To the tenth claim, which says that the fetus is virtually inanimate, perhaps part of the issue rides on what force the "virtually" is to have. But more importantly, the fetus does in fact move about quite a bit,
even before quickening, and moreover, motion--some Thomists to the contrary seems to have little relevance to a right to live.

More about fetal dependence. For some of those who hold a viability or birth criterion of the right to live, dependence is quite probably a characteristic which justifies, to them, the withholding of that right. The importance of dependence, to them, accounts for their stances about abortion without "feticide" (discussed toward the end of the previous chapter) as acceptable while they separate the rights and interests of the fetus from those of the woman. (It is, by the way, noteworthy that in discussions of fetal experimentation, abortion-choice advocates express an almost universal concern for the living abortus--that it not be harmed, "violated", or caused to suffer if it is possible to avoid doing so.)

Consider the cloned fetus, or any other fetus produced and nurtured in vitro: it should thereby have a right to live to the extent that it didn't infringe on personal autonomy or independence. Surely, it wouldn't be as immediately dependent in the physical respect. It seems to follow, though, that, except for that dependency factor, fetuses should be believed by those abortion
choice advocates to have a right to live. For them, it is merely a matter of the woman's right or rights over-riding the right or rights of the fetus. It isn't however, that the fetus completely lacks rights, i.e., lacks even a weak *prima facie* right to live, until viability or birth. To put the matter somewhat dramatically, they appear to be claiming that seven or nine months of being physically free of the dependent being is more morally valuable than is the prospective live-time of the fetus, since it overrides it in their moral judgment. We might view a contrasting claim in the following way: The good \( G_f \) that would accrue to the fetus during its prospective future (generating a *prima facie* right to live \( R_L \) (and hence a right not to be aborted)) outweighs the good \( G_w \) that would accrue to the mother by performing the abortion (which generates a--weaker--*prima facie* right to abort \( R_A \)). We might symbolize this: \( G_f > G_w / R_L > R_A \).

Section Three: Objections and Responses. In the portions of this chapter that precede this section, I have been limning a theory about the sorts of circumstances in which abortions, and abortion-choices, are morally justifiable and when they seem to be not morally
justified. I have given a number of reasons for believing such a view, and many other reasons for rejecting any alternative view, especially the two somewhat extreme views of which most people seem to accept one or the other. I have attempted to give a plausible grounding for the judgments that ensue from my theory, and this gounding is a metaphysical-cum-moral one. Hopefully, what is said in the next chapter will further clarify this moral-metaphysical view. So, although I submit that my approach is more adequate than any other theory about the morality of abortion (choice) that I have encountered, it would be intellectually dishonest—and, for this kind of issue, would thereby also be morally questionable—if I did not address possible objections to my theory about abortion. That will be the task of this section. Although my wording of them may not be exactly as when the objections were originally formulated, I hope that I have done no one an injustice. I have stated the questions and objections in a way that seems to me to be their strongest form consistent with succinctness. I have put the objections into five categories, some categories containing just one question or objection.
(1) Leslie Francis has inquired why it is claimed that there is a *(prima facie)* right to live. That is, how can I ascribe that particular right to fetuses rather than a more generally agreed upon evident right or rights, such as a right not to suffer?

Were it not for the important first step of the six-step argument-sequence spelled out in Chapter III, Professor Francis' question would have more force. But I began the argument at a particular point in order to insure from the outset that the argument would clearly involve that particular right—the right to live. Thus, although I might have stated the first step as a comparison of the human neonate's with some non-human animal's rights, not to suffer, say, I did not in fact do so. The first step would, I felt, be generally acceptable and would also have interesting consequences. Instead, I concentrated upon the respective strengths of their rights to live. And I see no reason to believe that at any subsequent step of the argument any fallacy or oversight occurred that would water down the claims such that they would no longer apply at least to the right to live, and probably also to various other rights, such as the right not to suffer.
(2) Several interconnected questions were posed by Dan Farrell. These are (a) Why is person-potentiality the ground of the right to live? (b) What other possible grounds might there be? and (c) Have I eliminated or precluded all of them?

Part of the answer(s) to these questions will be given in the next two chapters. But, so that it won't seem that my replies consist of all promissory notes and no payments, I will indicate in the course of responding to these questions some of what will be said there.

First of all, person-potentiality seems to be the only morally relevant characteristic I am aware of which accounts for the difference between the rights of the human pre-persons and the rights of non-humans. The non-humans that otherwise have an ample variety of traits that we might have assumed would have sufficed for those same rights or even for more and stronger rights. What attributes do the human neonates have, apart from their physical appearance or human physical attributes, that the non-humans lack? To just say that humanity per se grounds the right seems speciesist. Humans, as such, must possess some characteristic or characteristics that justify the rights-ascriptio. To say that it is actual, or "full-fledged" personhood, as
many people do, leaves one without any way of accounting for our belief that the killing of a pre-person human is wrong.

Another tack, taken by some philosophers such as Tristram Engelhardt and Mary Anne Warren, says that people's emotional feelings of affection for or affinity with the pre-person, after birth, justifies our giving him or her a right to live. Such a view is actually a cousin of the claim of some abortion-choice spokespeople who say that a fetus has a right to live if and only if it is "wanted" by the pregnant woman, and that it is the wanting of it that gives it the right to live; while the decision to abort it thereby deprives it of whatever right it would have acquired had the decision been to not abort. It seems to me that Daniel Callahan provided a basis, in his excellent book about abortion, for refuting all such views when he pointed out that those latter claims are strikingly similar to the "interest theory of value". (Callahan discusses Ralph Barton Perry's interest theory of value as the principal statement of such a theory. There seems to be some disagreement among moral philosophers about whether Perry's view is a form of ethical subjectivism.)
Let me put this in the wider context of ethical subjectivism. Not only are values not to be identified with (or even judged coextensive with) valuings; but similarly, moral rightness and justice are not identifiable with, coextensive with, or functions of, (mere) beliefs that "things" or acts are right or just—as Socrates argued so well against the Sophists. And the same is true of moral rights: they do not exist when and only when people decide to confer them or to recognize them. They do not arise as a function of or as a result of people believing that some being should be accorded them, particularly when this is interpreted as meaning that it is what one wants for oneself. To illustrate what I have been saying, consider what our reaction would be if someone said that some other moral right (especially a so-called "human right") were claimed to be creatable or defeasible by the willings or wantings of those other than the possessors of the rights. It would be ludicrous to say, for example, that a pregnant woman could defeat her fetus' right not to suffer by dint of her wanting the child to suffer, or to "grant" it the right not to suffer because she happened to be consternated at the thought of its suffering. Abortion is an amazing anomaly in the sense that in no other sort of moral situation would we be the least inclined to
contend that an individual is entitled to have decided his or her fundamental "human rights" by proxy, particularly when it would result in great harm befalling the individual. The reason that I have seemed to belabor my treatment of this cluster of views is that they were not dealt with in the preceding chapters and yet they seem to be quite pervasive in the belief systems of many people. Also, they constitute the final alternative sort of attempt to provide a ground for pre-persons' right to live other than the characteristic of person-potentiality.

(3) This category of possible objections to my theory is made up of several questions, and a number of counter-examples. Some of the counter-examples are from the literature, and one of them was proposed in conversation. A general question that might be asked is the following: Why does the right to live begin exactly at conception, and not considerably earlier or later? A modification of this question would ask whether my reasons about individuation, probability and the concept of strong (or active) potentiality suffice to block a "temporal slippery slope".

Let's consider the counter-examples to see if we can answer these questions (and perhaps also discover some
things about our moral "intuitions", or "pre-analytic beliefs").

(i) The first counter-example is adapted (with some alterations) from one proposed by Judith Jarvis Thomson. Consider a species or race of creatures that were disposed to fly in one's house windows and make residency-claims thereupon. Suppose, further, that these beings would develop from seeds into full-fledged persons after residing there for a while. Wouldn't the landlord have a clear right to evict these squatters, even if it meant their death? And wouldn't he or she have that right even if he or she had negligently left the window open, or even if they had been invited in?

This last hypothetical condition shows that we ordinarily would be inclined to judge, at least in part, the justifiability of such "evictions" on the basis of the kind of circumstances in which they obtained their ingress. For it is surely much more dubious whether the landlord should have that right which could be exercised solely on the basis of his or her whim. Beyond that, though, I find objectionable and misleading the unfortunate analogy with (positive) legal rights, particularly property rights. Fetuses are just not "property" or "tenants". To grant arbitrary power over human life,
death, potentiality and other moral rights (suppose, e.g.,
the eviction would cause not only their death but great
suffering as well?) in the name of some purported moral
correlate of legal property-rights strikes me as
extremely dubious moral judgment. In fact, I am inclined
to say that members of that "species" who had developed
from squatters to full-fledged persons—with lifetime
rights to decent housing granted to them upon their
acquisition of personhood—would be very well advised to
form a "tenant's union" to guarantee that in the future
other individuals of their species will be enabled to
grow into persons as well without arbitrary or capri-
cious wholesale "evictions" being permitted. Landlords,
after all, have only limited rights. They are required
to "show cause" before evicting tenants. 7

(ii) A second counter-example derives from two arti-
cles by Michael Tooley. Consider what we might judge if
we had the technological ability to create a full-fledged
person by means of combining certain chemicals, in a test-
tube, which would immediately react in such a way that
soon a full-fledged person would spring into existence.
Alternatively, suppose we could, by injecting normal
kittens with a chemical substance, transform them fairly
promptly into full-fledged persons with the bodies of
cats. (These examples bring to mind beings with the same abilities and states as persons, although the legend of Cadmus and the story of Frankenstein. Tooley's suggestion is that not only would it be morally permissible to refrain from combining the chemicals or injecting the kittens; but also, indeed, it would not be wrong to halt the developmental process at any time after that up until the persons came into existence. (Interestingly, a storm of controversy arose a few years ago from the work of a number of biomedical scientists such as Daniele Petrucci, Robert Edwards, Colin Austin and Patrick Steptoe when it was disclosed that they had flushed down their laboratory sinks the unsatisfactory human embryonic results of their experiments in fertilizing and growing fetuses in vitro.)

Now these counter-examples, supplemented with brief conjectures about what they ostensibly show (except for the temporal reductio) constitute the heart of Tooley's supposed "refutation" of the applicability of potentiality to determining the right to live. But they seem inconclusive. One reason for this is that they do not seem nearly as effective against, say, an "actuality-" variant of the transition view as they are against the view that somehow conflates rights of potential persons with those
of actual persons. Also, the proposed counter-examples are much less plausible when applied to a theory, such as mine, that argues that the pre-person does not possess a right to live that is of as great strength as does the actual person. But suppose we change the counter-examples a bit and stipulate that "natural" (as opposed to "artificial") conception no longer was possible and persons came into existence only in that way? Might that not alter our judgments somewhat once we got accustomed to recognizing the developmental process?

A methodological digression. What I am getting at here is that it seems that much of the force of the purported counter-examples (and this seems to me to be true of many "science fiction"-type counter-examples) stems from the fact that Tooley is playing on some of our opposing "intuitions" by packing in circumstances that will have a certain effect. Let me see if I can make this point clearer. An advantage of counter-examples is that, properly used, they enable one to isolate out irrelevant or inessential factors often found associated with a kind of situation that might tend to incorrectly influence one's judgment. Such thought experiments, as they are sometimes termed, thus make it possible for us to judge with increased acuity. But if the proposer of
the thought-experiment includes circumstances that tend to count independently toward a judgment opposite to that we would otherwise make, then to that extent he or she is destroying the "objectivity" of the "experiment" and rendering it subject to being considered invalid.

Perhaps some bizarre hypothetical counter-examples of my own might illustrate the kind of phenomenon I have been trying to explain.

**Case (a):** We usually believe that sadistically torturing sentient beings is monstrously wrong. But suppose that there were a world in which sadistic torture was instrumental in building character, and having a good character was of inestimable value. We have thus shown that sadistic torture really isn't as wrong as we had thought.

**Case (b):** Gratuitous killing strikes most people as very wrong. But it needn't be so viewed; for, lo and behold, we can conjure up an imaginary universe in which being gratuitously killed is a sufficient condition for getting into a blissful afterlife and all those not gratuitously killed wind up in an eternal inferno. We have thereby established that gratuitous
killing not only needn't be bad; it might, in fact, turn out that to be gratuitously killed is a blessing much to be sought after.

Now no sensible person would believe on the basis of such wildly implausible hypothetical universes that we should alter our sentiments about sadistic torture or gratuitous killing. And it should be granted in all fairness to Tooley that his proposed counter-examples do not twist things as much as do the two crazy cases I have dreamed up. But there is an important similarity between my cases and Tooley's: they both use as leverage "morally loaded" circumstances. As far as our experience guides our judgment, chemicals combined in test-tubes just yield more chemicals and kittens don't ordinarily become persons. Once we changed our way of viewing the world, though, some of the moral-attitudinal freight that is conveyed by our present-day concepts might alter significantly. It seems to me that once we came to associate certain combinations of chemicals, or kittens injected with specific substances, with being potential persons--if this seemed normal--then we should and would change our attitudes about those particular chemical combinations or injected kittens, especially if the arguments of Chapter III are effective.
Here is a bit of irony: what I am claiming about changes of moral attitudes and moral judgments consequent upon a conceptual change is itself only a mere conjecture.

(iii) Bill Lycan has formulated a possible future world where computer science has attained a wondrous state of sophistication. He bids us to imagine a situation in which robots have become capable of constructing fully programmed computers, possessing some crucial human-like organic systems. Assume that these "second generation" computers possessed all the psychological capacities that human full-fledged persons possess. The new robots, insofar as they have all the requisite attributes of persons, are entitled to be called persons. But as one such new robot, named Harry, is gradually being assembled and programmed, it would be increasingly more wrong to "terminate" the person-construction process at increasingly later stages of construction. This case is apparently designed to present a clear, one-instance confirmation of what I have termed the transitional view of the potential person's moral status.

While Professor Lycan's case is less counter-intuitive than Tooley's cases, it may be criticized on other grounds. Although the concept of potential
Personhood is acknowledged, by Lycan and a notion of "active potentiality" is also articulated by him, the application of this latter notion seems to be mistaken. Lycan and I have both claimed that the notion of strong, or active, potentiality is linked to information about how things will, in the course of nature, grow, or evolve). What determines this in humans is, naturally, the genetic instructions encoded in the organism's DNA, and the instructions are there from conception. As applied to the Lycan case, it would be like saying that Harry's mechanical "father" designated a unique non-randomly unique program for Harry and had just imparted the developmental "blueprint" to, say, a silicon chip. The silicon chip would remain immersed in a mineral bath until is "grew", as a result of the informational "blueprint" in the appropriate causal circumstances, the requisite hardware. The software, or program that would generate the psychological attributes, would come later. Now at what stage in the crystal-growth of Harry's hardware should we disapprove the recycling of Harry's body's minerals? Well, to maintain the analogy correctly, we would have to assume that there was a time gap between the realization of the unique hardware blueprint and the introduction of the input information, including
"perceptions" that occasion the acquisition of Harry's person-like, or personal, attributes.

My moral judgments about such a case would be something like the following. At any time between the imparting of the informational "blueprint" to the speck of silicon and the gap which exists between the completion of the hardware and the effects of the external input, it would be somewhat wrong to recycle the hardware, but it would be equally wrong at all points until the "gap", and it would be wrong because it irretrievably removed from the world the blueprint for Harry's uniquely organized hardware—not because it would be a waste of silicon or because the project was nearer completion. We should remember that the "actualization" of Harry's hardware, or his coming to look like robots should look is distinct from, and secondary in importance to, the "actualized" Harry-person (plugged in, conceptualizing and feeling to his maximum robotic capacitance), as well as to the value of the unique blueprint.

2 David Pilbeam, The Ascent of Man: An Introduction to Human Evolution (N.Y.: Macmillan, 1972). Some recent findings and hypotheses of Richard Leakey are also taken into account here.


6 Let me pose some rhetorical questions. How strong and absolute is any "non-interference right?" Why does the necessity for continued live never counterbalance such rights? How much can one, in the name of a "right," withhold from one in dire need without transforming such rights into codified rationales for pure immorality?

7 According to Thomson, bodily self-determination is always a more fundamental right than is any life-claim (which isn't even deemed worthy of being a right). Symptomatic of Thomson's view is the consequence that 'You ought to repay Jones the 25¢' is rights-grounded and hence has more of a claim on us than the non-rights-grounded 'You (champion swimmer) ought to save that drowning person in the swimming pool.' Thomson's
defense of the sanctity of the "use" of one's own body, no matter what the circumstances, is highly dubious. Bodily autonomy, like all other worthwhile things, has reasonable limits and exceptions.


The following premise might be added: "Only the sadists can do the torturing without harming their own characters."

CHAPTER V

Moral rights. Moral rights ought not to be equated with positive legal rights, or de jure legal rights as accepted at some moment. They can more accurately be identified with what is termed "natural rights". In this dissertation they will not be interpreted as has been conceived by many traditional natural rights theorists. Several differences between my view and these traditional views should be noted. On my view:

First, they are not inalienable or indefeasible. Stated as generalizations, they can conflict and have exceptions.

Second, they arise not by divine fiat but rather as a function of human concerns, values, needs and interests.

Third, they are not universally and immediately recognized as such, and sometimes require lengthy thought and argument before being apprehended or appreciated.

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Fourth, they transcend mere exigencies required to maximize individual material acquisition without interference from the state or from other "competitors".

Fifth, they are not restricted in scope to all and only humans.

Moral rights are grounded by (morally relevant) characteristics. Moral values, both intrinsic and extrinsic, are evidenced by needs (actual and merely believed; desirable and desired) and with interests. These are exhibited in preferences. Some of our values, needs and interests are so fundamental to a decent existence that they are enshrouded with the halo of "right(s)-hood". Moral rights represent a set of needs, interests and values, and of latitudes for pursuing them, that is a sine qua non of any morally acceptable mode of living. They present us with, in a manner of speaking, a "floor" of goods, utilities, justice, freedoms and dignity that individuals and societies are morally required--to the best of their abilities--to recognize, establish and protect.

Rights entail ("generate"; "give rise to") duties incumbent upon individuals and societies.
The Rules (R) and (R'). What I call "The Morally Relevant Difference Rule", and hereafter refer to as 
"(R)", or "Rule (R)", has been held, in some form or other, by a number of contemporary philosophers, 
including Singer, Tooley and Feinberg. It may be formulated as follows.

\( (R): (S)(S')(x>y) \iff (\exists C(Cx\land Cy, x\gtrsim y)) \)

\( x,y \) range over beings

\( S, S' \) range over species, groups, classes, kinds

\( R \) ranges over functions which assign right-strength

\( C \) ranges over functions which assign extents of morally relevant characteristics

\( \gtrsim \phi \) indicates the mathematical relationship of being larger (or greater or more) than with respect to \( \phi \).

The Rule (R) says, then, that:

In all instances where the rights (or rights-strengths) of members of one species, group or class of beings are stronger than the rights of the members of some other species, group or class, there is at least one morally relevant characteristic possessed by the members of the first species (or group or class) but either not possessed, or possessed to a lesser extent, by the members of the other species (or group or class).
The Rule (R) can be formulated in a somewhat more specific way, so that it enables us to think about the rights of humans as contrasted with the rights of non-humans. Letting 'H' range over humans and 'H' over species, groups or classes of non-humans, we would come up with a revised rule.

\[(R') \quad (H)(\sim H)(x)(y)(x \in H \land y \in \sim H \land x \geq y \rightarrow (\exists c)(c \in c \land c \in y \lor x \geq y))\]

- \(H\) ranges over humans
- \(\sim H\) ranges over non-humans

A number of questions suggest themselves if we reflect on Rule (R'). The answers to them will emerge in later parts of this chapter. For the time being, I shall merely list some of the central questions that demand answers.

1. How are humans different from non-human life-forms?
   (a) How are humans different from non-humans mentationally (or psychologically, or neuro-physiologically)?
   (b) How are humans different from non-humans in morally relevant respects?
(2) What grounds the difference, if there is one, between the rights of humans and those of non-humans?

(a) Do all humans have, and keep, the same rights no matter how few (mentational) attributes or how weak (mentational) attributes they possess?

(b) Can non-human animals possess no ("human") moral rights no matter how many or how strong (mentational) attributes they possess?

(3) Do some humans in fact possess fewer or weaker (mentational) attributes than some non-human animals?

(a) Should their respective rights-situations take these facts into account?

(4) What is there about human life, such that we ascribe to it a strong right to continue as long as possible?

(a) What are the specific attributes of humans that justify this ascription?

(b) Are there attributes—including some or all of these mentioned in (4(a))—such that when they are absent a human has a questionable, or diminished,
or no right to live any longer? If there are such attributes, what are they?

(5) Is being-a-member-of-species-∅ a morally relevant characteristic? Why or why not?

Species, Characteristics and Rights. Views about the relations among (or between) (1) species—or their members—, (2) morally relevant grounding characteristics, and (3) moral rights may be of many forms. Each of these views attempts to adequately characterize that relation or relations which obtain in a correct answer to a question about what attribute(s) are, other things being equal, necessary and/or sufficient for the possession of moral rights. Before listing a number of such views, I want to draw an initial, important distinction between two types of such views. The distinction contrasts what I call C-unmediated views and C-mediated views. The former sort asserts a direct connection between species and rights, while the latter maintains that species, characteristics and rights are connected either by a triadic relation or else by dyadic relations involving, first, species and characteristics and, second, characteristics and rights. For reasons to be given later, I believe that C-unmediated
views are false and that the relation(s) connecting species with rights is (are) C-mediated. At this point, though, I want to present a partial inventory of some possible views concerning species ("♂'s"), morally relevant grounding characteristics ("C's"), I have placed them into four categories.

**Category (1): Species membership as necessary and sufficient for rights.** (Numbers 1 and 2)

(a) **C-unmediated.** All and only members of species ♂ have right (or rights) R, *simpliciter.* In other words, ♂-ness itself is both necessary and sufficient for R. This is a straightforward speciesism. It does not mediate the (♂,R) relation with any further morally relevant characteristic(s), C, possessed by all members of ♂, which is in turn what is responsible for R. Rather, ♂-ness or ♂-membership is itself the ground of R. (This is view number 1.)

(b) **C-mediated.** All and only members of species ♂ have R, in virtue of characteristic C, possessed by all and only members of ♂. A number of such C's might be, and in fact have been, proposed as the ground of an exclusive right possessed universally by members of some species. A bit later in this chapter, I shall
consider a number of such "candidates" for C. It should be observed that such views attribute to the members of Ø what I describe as exclusive and universal ("only" and "all") possession of the R-grounding characteristic C. That is, no non-Ø's can (or do) have C, and no Ø's can (or do) lack C. I will soon claim that exclusivity and universality each tend to be faults of a proposed view of (Ø, C, R) relations. (This is view number 2.)

Category (2): Species-membership as necessary or as sufficient for rights. This is a disjunction of two main types of views, and includes views numbered 3 through 6.

(a) Species-membership as sufficient for rights. All members of species Ø have R, but other members of other species might or do also have R. That is, Ø is sufficient, but not necessary, for R. This view exhibits the property of universality, which, as I have already suggested, seems to be a flaw.

(i) C-unmediated, Ø itself suffices for R, simpliciter. (This is view number 3.)
(ii) **C-mediated.** Ø suffices for C, which, in turn, suffices for R. (One of these relations of sufficiency might also be a relation of being both necessary and sufficient, as long as both are not.)

(This is view number 4.)

(b) **Species-membership as necessary for rights.** Only members of species Ø can (or do) have R, although it is possible that not all Ø's have R. Thus, Ø is necessary, but not sufficient, for R. This view represents the property of **exclusivity**, a property which, I will claim, tends to detract from a rights view.

(i) **C-unmediated.** Ø itself is necessary for R, **simpliciter.** (View number 5.)

(ii) **C-mediated.** Ø is necessary for C, which, in turn, is necessary for R. (Thus, everything having R has C, and everything having C is a member of Ø.) One of these relations, of being necessary might also be a relation of being both necessary and sufficient, as long as both are not.) (This is view number 6.)

**Category (3):** "Qualified", or "Plurative" views. This category consists of some fifteen distinct views.
There are three sub-categories here, each with (at least) five forms. The sub-categories will claim either that (a) most Ø's have R; or that (b) normal Ø's have R; or that (c) "good" Ø's have R (and this should be understood as "good of a kind" in the Aristotelian sense, whereby good Ø's need not be morally good, but, rather satisfy some standard or standards of acceptability for being a Ø). (Category (3) includes views numbered 7 through 21.)

(a) Forms of "Most Ø's have R".

(i) Most Ø's have R, simpliciter.
(View number 7.)

(ii) Both (Most Ø's have C) and (Most C's have R). (This is view number 8.)

(iii) Both (Ø is sufficient for C) and (Most C's have R). (View number 9.)

(iv) Both (Ø is both necessary and sufficient for C) and (Most C's have R). (View number 10.)

(v) Both (Most Ø's have C) and (C is both necessary and sufficient for R). (View number 11.)
(b) Forms of "Normal Ø's have R".

(i) Normal Ø's have R, simpliciter. (View number 12.)

(ii) Both (Normal Ø's have C) and (C is sufficient for R). (View number 13.)

(iii) Both (Ø is sufficient for C) and (Normal C's have R). (View number 14.)

(iv) Both (Ø is both necessary and sufficient for C) and (Normal C's have R). (View number 15.)

(v) Both (Normal Ø's have C) and (C is both necessary and sufficient for R). (View number 16.)

(c) Forms of "'Good' Ø's have R".

(i) "Good" Ø's have R, simpliciter. (View number 17.)

(ii) Both ("Good" Ø's have C) and (C is sufficient for R). (View number 18.)

(iii) Both (Ø is sufficient for C) and ("Good" C's have R). (View number 19.)
(iv) Both (Ø is both necessary and sufficient for C) and ("Good" C's have R). (View number 20.)

(v) Both ("Good" Ø's have C) and (C is both necessary and sufficient for R). (View number 21.)

Category (4): "Extension" views. This last category, consisting of views numbered 22 through 25, is made up of approaches that extend the scope of those who are to possess a right or rights beyond what would otherwise seem justified by the grounding characteristic(s). This is done for a number of reasons, as we shall soon see. It appears that there are at least four sorts of these approaches, which I have termed "extension" views.

(a) If any Ø's have R, then all Ø's have R. (This is view number 22.)

(b) If most Ø's have R, then all Ø's have R. (View number 23.)

(c) If normal Ø's have R, then all Ø's have R. (View number 24.)
(d) If "good" $\emptyset$'s have $R$, then all $\emptyset$'s have $R$. (View number 25.)

"Extension" views seem to offer to a subclass of members of the species $\emptyset$ a right or rights from a "benefit of the doubt" rule of some sort. I should clarify this point. It seems to me that extension views are proffered with one of two types of justificatory principles in mind. The first of these is a Principle of Non-Discrimination, which holds that it would be inequitable and unfairly discriminatory to deny to some individuals (here, individuals of species $\emptyset$) rights that should be recognized and accepted as "universal". For them, of course, 'universal' means universal within the closed membership of $\emptyset$.

A second type of justificatory principle invokes the risk of distinguishing among $\emptyset$'s. Some wedge-argument proponents, for example, adhere to such a rule. Their idea is that it is unsafe, rather than unfair, to exclude any $\emptyset$'s from membership in the $R$ club. That is, exclusion of any $\emptyset$'s would--or might--have the effect of denying or violating the rights of other $\emptyset$'s who should be entitled to them. As a prediction, it appears to be an empirical claim,
that might be decidable with the aid of empirical means.

A few pages ago, I indicated that I find C-unmediated views mistaken. I wish to clarify that claim here. C-unmediated views of species-rights strikes me as mistaken because, among other reasons, they turn out to be arbitrary. They are less than rational, in the same way that so-called "voluntaristic" and subjectivistic theories of morality--theories which determine rightness or value in terms of what is in fact willed, desired or believed--are non-rational or irrational. They provide us with no answer to the question of why we should ascribe rights to one species rather than to another. For example, if we compare the claim "All and only humans have a propagation right" with the claim "All and only dogs have a whelping right", it is difficult to see why one is acceptable and the other is not, if no justification of either claim is capable of being supplied. Now it seems that what would be needed to enable us to justify the first claim (even though it is as it happens a dubious claim) is one or more morally relevant, grounding characteristics that humans have and that dogs lack.
The need to present such a characteristic shows the unacceptability of the C-unmediated view.

Accordingly, my inclination is to concentrate the majority of my discussion on C-mediated theories. Such views at least accept that there must be a ground, a sound justification, of moral rights, such that we can account for our judgments with reasons rather than sheer assertions. I have in mind here a ground other than mere species-membership. We don't just happen to correlate particular rights with particular classes of beings; we do so because we assume that there is some reason for doing so. We assume that it is not purely arbitrary, and that we are not dealing with a basic moral judgment (one that is not further justifiable), when we correlate members of class A, but not members of class B, with right R. We presuppose that class A possesses the correct (morally relevant) characteristics, while class B does not.

This is not merely an abstruse epistemological claim; it is a consequence of what I claimed earlier about moral rights and of what was said in Rule (R), The Rule of Morally Relevant Difference. Furthermore, it should be clear that it has important results for
the sorts of moral judgments we can find to be acceptable. Here is an illustration of what I am getting at. Consider a possible form of racism. (Interestingly, many people have actually advanced such a line of reasoning, but I am discussing it here solely as a hypothetical, illustrative case that might better enable us to grasp the possible ramifications of C-unmediated judgment.) In this hypothetical, racist view, its proponent might put forward any of the following C-unmediated assertions as "justifications" of his or her moral judgment about rights:

(A) Being a member of race 0 (in order to avoid offending anyone here, I shall call it the "Trapezoid" race) is both necessary and sufficient for having right(s) R (say, the right to live)---simpliciter.

(B) Being a member of the Trapezoid race is sufficient, although not necessary, for having the right to live. That is, all Trapezoids have the right to live, just in virtue of their being Trapezoids.

(C) Being a member of the Trapezoid race is necessary for having the right to live. In other words, only Trapezoids have the right to live, and it is their
Trapezoidness as such that constitutes a sine qua non of having the right to live.

Statement (A) asserted both exclusivity and universality, statement (B) maintained universality, and statement (C) claimed exclusivity. Such claims may or may not be correct, but how might one go about assessing them? Are we not entitled to inquire why Trapezoids universally and/or exclusively possess the right to live? Of course we are. What is there about Trapezoids such that all and/or only Trapezoids have the right to live? For that matter, we must ask an even more fundamental question, viz., What is there about Trapezoids such that any of them has the right to live? And another vital question is the following: Among the non-Trapezoids, does any of them have the right to live? If so, then in virtue of what? How does it happen that we can or should pick out Trapezoids rather than non-Trapezoids as the Privileged race? Is there any reason for doing so?

Let's complicate the situation further. Suppose that there is, among the non-Trapezoid races, a strong undercurrent of anti-Trapezoid sentiment. This feeling is particularly strong among a vocal group of members
of the Spheroid race. These Spheroids are convinced that all and only Spheroids have the right to live.

Now let's imagine a part of the world where a race crisis is imminent: In that region, militants of the Trapezoid and Spheroid races have armed cadres, suitably imbued with disregard for the lives of the "opposite" race. Representatives of both races are engaged in some disingenuous last-minute negotiations, the breakdown of which will ensue in a bloody race war. How might an impartial observer decide whether either--or both--of the races have members with a right to live? In this example, we are confronted with a dramatic instance of the need to give reasons for asserting rights-claims, especially when we are concerned with a right as important as the right to live.

In the next few pages, I hope to trim down to one or two the list of views about the nature of the relationship or relationships among species, characteristics and rights. By showing that several classes of these views are mistaken, the way will be cleared for an explanation of a plausible approach.

(1) C-unmediated views of species-rights are incorrect, for the reasons that I have just been
indicating. If this is so, then of the twenty-five views listed above, we can eliminate numbers 1, 3, 5, 7, 12, and 17.

(2) "Exclusivity" views ("Only $0$'s have . . . .") are also mistaken. These are of two varieties:

(a) The claim that $(C \rightarrow \emptyset)$ puts forth a doctrine of superior species-nature, where $C$ is one or more morally relevant characteristics. Each of these views seems to be factually false, or else to posit a $C$ which is not obviously morally relevant. The views in question here are numbers 2 and 6.

(b) The claim that $(R \rightarrow \emptyset)$ is $C$-unmediated, as was mentioned above. But it is also a doctrine of superiority of moral consideration. Without proof or justification, though, it is a mere assertion. These views are numbered 1 and 5.

(3) "Universality" views ("All $0$'s have . . . .") are another collection of erroneous views. Ten of the twenty-five views belong in this class. They are numbers 1, 2, 3, 4, 9, 10, 14, 15, 19 and 20. Universality views are also of two sorts.
(a) The claim that ($\emptyset \rightarrow C$) asserts that no $\emptyset$'s are lacking in $C$; and there seem to be counterexamples to all such views, where the interpretation of $C$ is at all plausible. But these are numbers 2, 4, 9, 10, 14, 15, 19 and 20.

(b) The claim that ($\emptyset \rightarrow R$) is $C$-unmediated. These are numbers 1 and 3.

(4) Views asserting both universality and exclusivity ("All and only $\emptyset$'s have . . . .") are yet another class of false beliefs. Among these, we may distinguish two kinds:

(a) The claim that ($\emptyset \leftrightarrow C$) maintains something that is subject to the problems of both the universality views and the exclusivity views. Number 2 is of this form.

(b) The claim that ($\emptyset \leftrightarrow R$) is $C$-unmediated, and hence unlikely. Moreover, it also puts forth dubious claims of universality and exclusivity. These are views number 1, 10, 15 and 20.

So far, it seems that the only remaining possible views are those numbered 8, 11, 13, 16, 18, and 21.
through 25. I want next, however, to eliminate numbers 22 through 25.

(5) "Extension" views are so denominated because they extend the scope of those who have a right or rights beyond those that possess the morally relevant grounding characteristic(s). These were discussed several pages ago. Let me review the four sorts that were spelled out there.

(a) The claim that \((\text{If any } \emptyset's\ have\ R--)\ for\ whatever\ reason--\text{then all } \emptyset's\ have\ R)\ is\ an\ extreme\ form\ of\ such\ a\ view.

(b) The claim that \((\text{If most } \emptyset's\ have\ R--)\ for\ whatever\ reason--\text{then all } \emptyset's\ have\ R)\ is\ a\ somewhat\ weaker\ doctrine.

(c) The claim that \((\text{If normal } \emptyset's\ have\ R--)\ for\ whatever\ reason--\text{then all } \emptyset's\ have\ R)\ is\ another\ extension\ approach.

(d) The claim that \((\text{If } "\text{good}" \emptyset's\ have\ R--)\ for\ whatever\ reason--\text{then all } \emptyset's\ have\ R)\ is\ an\ alternative\ type\ of\ extension\ view.
All forms of the extension approach are guilty of conferring rights for extraneous reasons, that is for reasons independent of whether such a rights-ascription is itself justified. In the cases where there is no appropriate justifying characteristic C, it becomes more or less arbitrary where to draw the line of the beings to which or to whom the right is to be extended. In any such case, we may inquire why it is just the favored species (or race, or group, or kind) that is entitled to have otherwise undeserved rights ascribed to it, to the exclusion of others. These views are those numbered 22, 23, 24 and 25.

(6) An indeterminate view does not pick out the members of the species or group that are entitled to the right(s) in question. This eliminates view number 8.

(7) A ("mere") empirical generalization may correctly characterize the approximate extent, statistically, of those possessing a right, but they do not give an adequate identification procedure, and they also neglect to indicate what it is about that proper subclass of the membership of the species that enables those members to have the characteristic C. Although
such a view is not, in and of itself, completely adequate, it might turn out to be part of a correct view. This is view number 11.

(8) Views that are not morally relevant focus upon some feature that does not suffice for understanding why those members should have the right(s) in question, or the characteristic(s) connected with the right. These are views number 13 and 16.

(9) An "incomplete" view may be on the right track, but it ultimately proves inadequate to supply a full characterization of the logical interconnections of the species, characteristics and rights. Number 18 is such a view.

In light of the sorts of criticisms that have been suggested over the past few pages, it appears that only one—and perhaps two—of the views has remained relatively intact. The view that, so far, seems least assailable is number 21, one of the category of "qualified views. It depicts the relationship(s) as being of the form, Both ("Good" Ø's have C) and (C is both necessary and sufficient for R).
While I am not completely satisfied with this formula, it seems to me to be at least as defensible as any of the alternatives. I shall therefore defend it a bit more (apart from criticizing its competitors), and I will also suggest how it might be less than a perfect account of the link that we are pursuing.

Now that I have presented a tentative statement of the kind of view I believe to be in the vicinity of the truth, it is incumbent upon me to clarify what I am claiming and some of the reasons for preferring it to other views. I expect an adequate view of the matters under discussion to do justice to a number of facts, or "phenomena".

First of all, since C-unmediated views have been claimed to be unacceptable, we should seek a view that affirms, if possible, the following:

\[(C\rightarrow R)\], where the arrow designates a relation of grounding, or morally justifying.

Next, it should be the case that:

\[(R\rightarrow C)\], where this is interpreted as saying that any right has as a necessary condition one or more (morally relevant) characteristics, C.
Moreover, we should avoid a point of view of species as discrete natural kinds, each of which possesses unique, mutually exclusive (morally relevant, rights-grounding) characteristics; and where the (fallacious) view supposes that these natural kinds are such that all the members of any kind (species) possess all the morally relevant, rights-grounding differentia-characteristics; and that they possess them to an adequate extent to suffice for ascription of the right(s) in question. This sort of erroneous essentialism seems to claim, characteristically, for example, that it is just not possible for something to have sufficient attributes to be a human and yet to lack adequate characteristics for ascription of any of the basic rights. Another incorrect belief that should be rejected maintains that it is impossible for any non-human (or non-Ø) to possess a C of such a kind or to such an extent that it might generate a human-like right. These views, in other words, would refuse to grant a "separate but equal" rights-situation; they demand a priori that species be segregated in terms of their rights.

An adequate theory would take into account the present state of scientific knowledge and belief. Thus,
if a speciesist theory flies in the face of accepted scientific evidence, that should be viewed as some evidence against the speciesist view. And if a proposed theory of rights opts for a particular view of what constitutes the right(s)-grounding characteristic(s) C, such a hypothesis must be able to stand up to criticism and must be more plausible than any alternative view of the R-grounding C.

My theory emphasizes the connection between the C and the R more than it stresses the connection between particular Ø's and C's or Ø's and R's. This is justified by my belief that our standards of moral judgment should not be established by first deciding what beings those standards apply to and what result we wish as an outcome. I am advocating the utilization of at least a partial "veil of ignorance" (i.e., of impartiality) regarding the scope of the beings to whom rights are to be accorded. If it turns out that all and only members of the human species, regardless of their other attributes or their conditions, have the characteristic(s) C, that would be well and good; but if matters do not prove so easily decidable, then we should admit that fact and judge accordingly.
A significant problem remains. I must still elucidate and justify the first of the two conjuncts of the proposed analysis of the species-characteristics-rights relation(s), viz., the statement that "good" (of a kind) Φ's have C. To this task I now set myself.

First of all, the method of judging goodness-of-a-kind in the case of such beings as humans must be such that it is not circular. That is, it must not have a moral action packed into its specification of the determination of C. I believe that the spectre of circularity need not constitute an insuperable obstacle, however. This point is made clear, I hope, in the discussion of mentation and mentation-levels that will occur in a few pages.

As an anticipation of that discussion, I will indicate just a few examples of some reasonably "value neutral" mentational standards. First, it is possible to judge the level of perception of an organism in terms of a number of "dimensions", such as experiential "intensity", "richness" of information "processed", concept- (and/or theory-) ladenness, range of perceptions, number of perceptual faculties and sensitivity to perceptions. Sophistication of development and
extent of functioning of the central nervous system are also important criteria. Distinguishable, individual, constant personality (or behavior) traits should count as well. So too should the extent of power and complexity of the memory. Cognitive development constitutes yet another relevant factor: A being capable of complex inferences, of a high level of abstraction and with a well-developed battery of recognitional capacities probably has a comparatively high mentation-level. Complexity and plasticity of behavior to fit suitable situations are yet other indicators.

Although the emphasis in this section has so far been on more procedural, methodological and formal questions, I want to turn now to a more substantive matter. That matter is the nature of C. Among the C-mediated views of moral rights, there have been suggested a number of alternate candidates for C. My own view, of course, is that there is some connection between strengths of rights and categories of mentation-level. Before I explain my view, though, I want to consider some other views about the nature of C's. Some of the beliefs most often encountered are these. The morally relevant characteristics possessed by humans that
grounds or justifies their claims to moral rights are variously claimed to be:

(1) The capacity for suffering.
(2) Being made by God in His Own Image.
(3) Having been given the rights by God (exclusively and, perhaps, also universally).
(4) Having a soul, or an immortal soul.
(5) Having rationality or the capacity for rationality exclusively.
(6) Possessing consciousness.
(7) Possessing intelligence.
(8) Having the power of speech (exclusively).
(9) Having apperception.
(10) Possessing power over other species.
(11) Having an instinct to protect "one's own kind".
(12) Finding it prudentially necessary to protect "one's own kind".
(13) Desiring or wanting the objects of the rights, such as life, liberty and happiness.
(14) Having the ability to assert rights-claims.

Several observations should suffice for evaluating most of the above.
(A) Some of them are supernaturalistic and unilluminating about the connection between God's behavior and moral justification. These include "candidates" (2), (3), and, perhaps, (4).

(B) Some of them are just forms of mentation. This pertains to numbers (1), (4), (5), (6), (7), and (9).

(C) Others are factually or empirically false. These are (2) through (9), (12), (13) and (14).

(D) Still others seem not to be morally relevant. This seems true of (2), (10), (11), (12), and even (13) and (14).

(E) Furthermore, of each we may ask the two following questions:

(i) Is the characteristic in fact possessed exclusively by members of the species in question? (The species, not surprisingly, is humans.) Also,

(ii) Is the characteristic in fact possessed universally by members of the species in question? Where the answer to either of these is no, then, as I said above in observation (C), the proposed view which
defines, determines or delineates rights of a species is thereby weakened.

Mentation. Of all the creatures we know about, the strongest primary rights, especially rights to live, are possessed by persons. The context of this discussion is present knowledge; should we discover that some species possesses states or capacities hitherto unappreciated (e.g., that fur seals are extraordinarily intelligent, self-directed beings from a distant galaxy), then particular claims about those beings would have to be revised accordingly. Or if intelligence should turn out to be a function of body size rather than of the size, neuron complexity and organization of the brain—as neural scientists today suppose—, then other claims might have to be modified. (A few years ago, some scientists hypothesized that intelligence varied as a function of the ratio of brain weight to body weight, until it was pointed out that birds should therefore be about 50% more intelligent than humans.)

Persons possess, among other features, some very complicated mental and psychological states and abilities. I shall refer to these as states, activities and dispositions of mentation. To enumerate, mentation
states and capacities include such (variously overlapping) examples as rationality, perception, imagination, emotions, moods, consciousness, self-consciousness, intellect, personality, desires, the having of goals and values, a sense of identity (and of self-identity through time), beliefs, memories, thought, judgment, cognitive abilities (including powers to abstract and generalize, to infer, and to have a set or system of concepts which include recognitional capacities), volition, deliberation, plasticity of conduct (being able to respond appropriately in a number of circumstances), choice, intentionality, and self-control (including some element of autonomy). Humans and creatures other than humans possess these in varying degrees. One may, however, make some qualitative distinctions among levels of mentation and its forms. (Scientifically, it seems clear that mentation is dependent upon neuronal, especially central nervous system, functioning—or functioning-capacities. In humans, the "higher" mentations are associated with the neocortex, particularly the so-called "association areas", which are found in the parietal lobe of the brain; parts of the frontal lobe and temporal lobe are also vital for some higher mentational functionings,
such as inhibition of drives, foresight and some aspects of language use.

The term 'mentation' is not a new one, though it is not widely used today. It has a history of a hundred years of use, principally by psychologists and neurological investigators. I have not attempted to furnish a principle of organizing the things that fall under the heading of mentation states; it seems to be a cluster of phenomena. It is not necessary to offer a theory or analysis of consciousness or memory in order to be able to talk about these as instances of mentation states or capacities. I shall assume that these and the other instances are clear enough for me to talk about.

In contrast with what is clear about the notion of mentation, it has to be understood that the notion of a mentation level may not at first seem clear. In particular, it may sound unclear to talk about mentation levels that cut across species so that we can claim that the mentation levels of arachnids, generally, are higher than those of the amoeba. It is this latter kind of claim that will be important when we talk about the rights of non-human animals or the lack of rights
of certain mentationally disabled humans. As this chapter develops, however, I intend to provide explanations that will make this notion of a mentation level more clear.

Let me begin that explanatory process here. It appears that we have several sorts of criteria for judging mentation-levels. First of all, from a behavioral point of view, we can say that the behaviors of some organisms are much more complex, sophisticated, and flexible than the behaviors of other sorts of organisms. Comparative psychologists study these phenomena, and have for some time distinguished between, for example, mere reflex movements, controllable by the most primitive (phylogenetically, morphologically and ontogenetically) neuron-systems and behavior that is considered "skilled", "selective", subject to "operant conditioning". This latter sort is assumed, by cognitive psychologists, to be made possible by "cognitive maps", rather than mere "blind" stimulus-response mechanisms. Perceptual discrimination and motor-skill differentiation are subjects of vast bodies of literature, both for psychologists studying humans and for those who study other animals. Rates of learning and complexity of information processed by organisms are
central areas of study for many psychologists. What is termed "integration"—whether it be of sensory messages, of conceptualization, or of locomotor coordination, is yet another important type of phenomena that is studied. Psychologists who rely totally upon behavioral evidence are caught in a methodological bind, though: they believe that it would be unjustified to project animal behavioral patterns upon humans, and likewise presumptuous to anthropomorphize the non-human beings; and yet they feel it important (and frequently not unwarranted) to do so, although sometimes it requires a theoretical "act of faith". Without venturing to compare humans and non-humans, their work would be of little interest or value; but they have no empirically verifiable way at their disposal for doing so.

So far, I have been discussing a few of the behavioral facets of establishing and comparing "mentation levels". But there is, as luck would have it, an independent way of checking on and corroborating behavioral evidence for mentation-level-claims. This independent means consists of studying the neuroanatomy and neurophysiology of the organisms in question. It works out nicely—and of course not coincidentally—that the
kinds of organisms with the most highly developed nervous systems are also the kinds of organisms that exhibit the most sophisticated sorts of behavior. While there is something of a continuum of degrees of complexity of behavior, as well as of degrees of development of the nervous systems or organisms, it doesn't seem too unjustified to observe some points at which we might postulate, non-arbitrarily, that there is a qualitative jump in the level of development and behavior. One of these, frequently accepted by scientists, is the jump from invertebrates to vertebrates. (Note: at that point, the cortex of the brain begins to possess convolutions, thereby significantly extending its available "work-space"). Other jumps suggestive of qualitative alterations in category of mentation-level will be discussed later in this chapter. These tend to be correlated with organisms' phylogenetic statuses.

The Principle (P). Toward the beginning of this chapter, I posed a number of questions, the answers to which were (hopefully) to be assessed partly in term of Rule (R) and Rule (R'). Since that point, I have attempted to establish a number of things about species, kinds, (morally relevant) characteristics, justified
judgments about moral rights, mentation and mentation levels. I want now to begin the discussion of a very important part of this dissertation (viz., Principle (P) and its ramifications) with a few prefatory observations.

At various times in human history, one's nationality or tribe was thought to determine the extent of one's rights. Only Greeks or Englishmen, say, were believed capable of self-government, only white men were to be given the right to vote, and only Aryans could be German citizens. (Such an attitude is manifest in the statement of the aristocratic uncle of a British friend of mine. One of the uncle's maxims was "Wogs begin at Calais." (Calais, of course is just across the English Channel from the coast of England.)) Almost all now recognize that human beings do not differ enough among races and nations to justify, on that sort of basis, granting rights to some while denying them to others. As I have already begun to indicate, though, speciesist individuals are prone to commit similar sorts of "tribalist" and "C-unmediated" errors in their rights judgments when they say that all and only humans have moral rights.
During the past hundred years or so, it has come to be generally acknowledged that humans are members of the animal kingdom and that humans evolved from other animals. Simultaneously, scientists and philosophers have realized that other animals (once called "brutes") have many of the attributes—such as problem-solving, language-learning, social "roles", etc.—that had been reserved for humans. Categorial and qualitative differences have, in many cases, dissolved into differences of extent. Concurrently, and especially during the past hundred years, people have begun to grant more moral consideration to members of other species, as well as to humans that they viewed as sub-normal or abnormal.

In light of what has been argued so far in this chapter, and considering also what was argued in previous chapters, it seems that we at last have a way of accounting for our moral convictions and reasonings as well as what scientists have given us reason to believe. In its initial formulation, we might be inclined to adopt a principle that, other things being equal (ceteris paribus), equivalence of moral rights is a function of equivalence of the category or mentation level. But such a principle requires some modification. A potentiality-concept should be taken into account.
also. With this done, we can now state the (modified) principle:

\[ \text{Ceteris paribus, equivalence of rights is a function of equivalent category of mentation-level and/or equivalent category of mentation-level-potentiality.} \]

This prima facie canon or moral judgment about moral rights that I have called "Principle (P)" is justifiable, not only by the considerations mentioned above, but also by several other reasons. First of all, it follows from a theory of value according to which much of mentation has intrinsic value. This point is explained later in the chapter. Secondly, mentation can be seen to be, as I shall argue, at the core of what most of the classical and contemporary thinkers have thought of as (at least) a necessary condition of rights, viz., "human nature" or personhood. Third, as I shall also argue, Principle (P) gains further support in virtue of its extensive explanatory power. I shall discuss the last of these three points first.

There is a great range of phenomena to which the principle applies, including:
clarification of what was said about the beings classified in categories (a) through (e) on the previous page, I shall now give some further points about those beings (with (a') corresponding to (a), and so on). We can now account for the rights status of beings:

(a') lacking a highly enough developed central nervous system (CNS) with its corresponding level of mentation;

(b') whose CNS or type of mentation is severely defective and without potentiality for improvement; and those

(c') lacking any potentiality for future mentation at an improved level.

They contrast with:

(d') the (problematic) situation of those beings having strong "active" potentiality but lacking any previous or actual CNS-development or any mentation yet; and

(e') the beings possessing (other things being equal) full moral rights.
Now, there are a number of possible misunderstandings about Principle (P) and its applications that should be cleared up.

At first blush, it might appear to some people—particularly if they were unaware of the framework in which the principle has been placed—that (P) espouses a form of intellectual elitism. But there are a number of reasons why such an impression would be mistaken. Among them are the following points.

(1) Although the theory does confer higher and stronger moral rights to persons than to other known beings, it does not do so arbitrarily or capriciously. It assumes that rights would be of no avail to beings that could not want them or appreciate their objects. My theory, including Principle (P), is not guilty of speciesism. I agree with Peter Singer, Tom Regan, James Rachels, Michael Tooley, Joel Feinberg and all the others who have made such a forceful case for believing that differences of rights must be predicated upon morally relevant differences in the beings that have the rights. The fact that we ought to recognize that members of other species have some moral rights heretofore not granted to them does not, however,
entail that non-persons (or non-humans) must be elevated to personhood with all the rights thereof. Nor does it entail that persons should have their rights diminished to those of the lowest common denominator or possessor of rights. Rights are, after all, functions of the morally relevant characteristics, sometimes including those characteristics' extent, that justify the rights' ascription.

(2) Category of mentation can't usually be established by differences of a few points on existing I.Q. tests such as the Stanford-Binet. There is more to mentation than whatever it is that existing standardized I.Q. tests measure. Such tests provide, at best, indications of some sorts of skills as they have been taught within a particular cultural and conceptual context. My notion of what might be termed a "mentation quotient" would consider far more than what "intelligence quotient" tests even purport to establish. For example, affective states also count. Furthermore, mentation judgments would take into account potentiality as well as the level of mentation as it has in fact developed when the judgment is made.
Let's see what some possible applications of my view are. An educable or trainable mentally retarded person would have stronger rights than an uneducable and untrainable one. An individual whose retardation can be reversed has more potential for mentations than does one without such a feasibility for having reversed his or her retardation. Thus, if the retardation is caused by a vitamin or mineral deficiency and the situation could be altered by giving him or her that substance, we should do so and recognize his or her rights as stronger than they might have been otherwise.

In speaking of mental retardation, I don't have in mind someone with a 50 I.Q. But an individual with an I.Q. of less than 20 or 15--to the extent that "I.Q." is a workable, measurable concept--with no likelihood of ever transcending that level, in all likelihood lacks sufficient mentations to be judged a full-fledged person. Such humans, after all, seem to possess no mentations that are not also possessed by a dog, cat or sheep. Once again, then, the question arises: What morally relevant characteristics do they have that would justify us in ascribing stronger rights to them than to the cat, dog or sheep? It isn't what one looks like or what species one happens to belong to
that determines one's rights; rather, it's what (or who) one is. This is no revolutionary ethical breakthrough; it's one of the first moral insights that children learn from their parents and in grade school. Some people have found it convenient to forget it, though.

(3) Human-appearing body or external form should not be confused with personhood or with being a possessor of a capacity for any specific level of mentation. Normal-appearing human form or physical attributes are neither necessary nor sufficient for something to be a subject of moral rights. Thus, defects, deformities and disabilities not affecting mentation-level category are irrelevant to such fundamental rights as the right to live, although they may increase such rights as rights to treatment. And beings capable of perception, consciousness, feeling and what some behavioral scientists term "plasticity" of behavior ought not to be discriminated against arbitrarily, i.e., for speciesist reasons.

(4) As was mentioned in the previous paragraph, the retarded usually possess "special rights" not possessed by those lacking that disability. They have
"special needs" that society recognizes. If their parents or guardians can't afford it, they are institutionalized at society's expense. The chimpanzees and gorillas that (or who) are institutionalized in zoos and research facilities are usually also committed non-voluntarily or involuntarily, but must depend upon private benefactors who contribute to their maintenance. Of course, the primates would usually be able to survive in their natural habitats, while there is some doubt about some of the severely retarded. I'll be saying more about the moral rights of non-humans in a few pages.

(5) It isn't being claimed that the retarded may or should ipso facto be killed, just as it isn't being said that chimps, gorillas, or dolphins should be killed. They shouldn't be killed. They should be saved, whenever possible. It is a consequence of Principle (P), though, that those humans that are so profoundly retarded as to lack person-category mentation levels, or the potential for such levels, have a right to live that is equal only to that of any other being with a similar category of mentation-level. There is nothing about the creatures themselves in virtue of which we can justify performing risky experimentation on other
primates but not on humans with mentation-levels and potential mentation-levels that are approximately similar. We must decide, then: Either we may experiment on both the profoundly retarded and on other higher primates or else we may experiment on neither. I am inclined to opt for the latter of these.

(6) Of course, there are many other determinants of moral rights besides actual or potential mentation-capacity. That was packed into the "ceteris paribus" clause of Principle (P). Such determinants include merit, justice, promises, and contractual arrangements. Mentation is only put forth as a necessary condition and as a metaphysical ground of moral rights. But there may be other grounds or justifications as well. I am not, then, purporting to have given a complete, definitive decision-procedure that would enable us to crank out easy decisions to all the difficult problems concerning the ascription of moral rights.

(7) Death-decisions (killing or letting die; oneself or others) can be judged to be wrong, at least partly, to the extent that they deprive beings of their future mentations.² These mentations include:

(a) choices and actions,
(b) attainments of (desired) goals, and
(c) awarenesses and (valuable) experiences,
especially if these experiences are not painful.

(8) I am not saying that mentations confer moral
virtue upon the beings that have them, or that having
some particular sort of mentation or mentations makes
it a morally praiseworthy being. Moral rights are not
moral virtues or grounds for being morally prais­
worthy. Their justifications are distinct. For a be­
ing to have a (prima facie) moral right to live, or to
have a right to freedom of movement, or a right to have
some comforts with minimum unnecessary pains, it is not
required that that being be morally good, virtuous or
praiseworthy. These rights are presumptive, while
moral goodness or virtue is not.

When we say that a person has a right to live, what
is it that we are—and are not—asserting? Life itself
may be distinguished from personal existence. Life,
bio logically, involves an interconnected system of phys­
ical systems, each of which performs a type of function.
Howard Brody, among others, has made this clear. In
humans, life processes include: specific kinds of
electrostatic forces, chemical bonds and reactions,
ionic equilibria, activation and repression of genes and enzymes, fluid flows, permeations and active transports, hormonal and neural activities. Thus far, however, we are only considering humans qua atoms, molecules, organelles, cells, tissues, organs and systems. It is only when we ascend to the level of mentation, though, that these life-functions come to have value, to oneself or to others. That is, until we consider Homo sapiens at the levels of conduct, experience, goal-attainment and cognition, we don't yet have a good reason for preserving the biological life-functions that provide the substratum of personhood or of any other forms of mentation. This gives us some very provisional reason for claiming that the right to live is more properly understood as the right to present and future mentations. Biological life-functionings are only necessary conditions for being a subject of rights; they are not, as such, sufficient. To put what is said above somewhat more dramatically, we might say: A potato with high enough mentations would have a stronger right to live than a "living dead", hyman-embodied zombie with irreversibly vegetative level of mentation.
Rights of Non-humans. In this discussion I am not trying to show that non-humans are, for all intents and purposes, psychologically and mentally equivalent to human persons. There are, indeed, a number of important differences between person-mentations and the mentations of other known species. (Those creatures are, it seems to me, for the most part "lower", not only in the evolutionary and developmental senses, but specifically in the mentational sense.)

Other species—as far as we can ascertain—have only rudimentary skills at language use (to date, at least). We lack sufficient evidence to attribute to them any more than an *ur*-conscious system of concepts, goals and activities. They lack culture and civilization, although they do have social organization, in some cases. They are, at best, capable of only simple technological feats. The range of flexibility or plasticity of responses to various situations is quite limited.

To be sure, we have only just begun to understand and appreciate the mentation-growth capacities of such beings as dolphins and the rest of the primates, but scientists have some *provisional* reason to believe that
the potentials of even these animals are considerably less than those of most humans. It's still somewhat early to judge this conclusively, though.

A belief in non-human mentation, in various of its forms and of varying extents, has several things to be said in its favor.

(1) I will begin with a methodological-epistemological line of argument. Many people who disbelieve in non-human mentation do so from a combination of Cartesian skepticism, essentialism, and a Twentieth Century Behaviorism. Other factors occasionally operative include religious, speciesist and misplaced "humanistic" beliefs. Now Descartes was a behaviorist and mechanist about non-human psychology; but then, with his epistemology and assumptions, it even required a God-certified argument to establish the existence of any minds outside his own. It seems to me that it would need a position as strong as a Cartesian sort of skepticism to deny the existence of many non-human mentations. Of course, this is not yet to provide the positive evidence for such mentations.

Non-verbal behavioristic criteria of non-human mentations are quite acceptable evidentially. We use
such criteria of necessity, since by their natures—so far, anyway—few animals can or do communicate in anything like human languages.

(2) Animal psychology, as it is called, and in particular comparative psychology, is a legitimate area of inquiry. Let us consider for a moment the activities of behavioristic learning theorists, of ethologists and of sociobiologists. If there was not an assumed similarity between human psychology and that of other species there would be much less value to and interest in those enterprises. Many of them assume, though, that the similarities are, as it were, only "skin deep". The question remains: How similar are the human and non-human psychologies if the behaviors of their respective subjects are viewed as otherwise so very similar? (Recall the earlier discussion, in this chapter, of mentation comparisons.)

(3) There exists a vast amount of evidence to support the belief in a psychology of non-humans that is in many respects extremely similar to human psychology. One of the clearest illustrations of this is the breakdown of both psychologies into the normal and the
abnormal. Let's consider dogs, for example, although what I say will be applicable to numerous other species.

Dogs have distinctive personalities and temperaments. (Incidentally, it is not always completely obvious when the use of scare-quotes is called for to point to an extended, dubious or analogous sense of an expression such as 'personality' as applied to non-persons. But then, I wouldn't want a decision to use or to refrain from using a notation to take on a decisive importance that would overshadow the arguments themselves.) Dogs have honest-to-goodness neuroses and psychoses—although the dogs may not be able to know that they have them. Moreover, dogs have been known to suffer from hysteria, emotional stress and trauma, loneliness, jealousy, hallucinations, phobias (including claustrophobia), anxieties, psychosomatic ailments (such as pseudopregnancy), introversion and extroversion.

At this point, the dyed-in-the-wool skeptic might still profess to have doubts. "Those dogs' behavior," they might conceivably object, "is merely similar-seeming to that of humans, who are the only beings capable of having bona fide psychoses, neuroses, and whatever else."
I certainly don't want to put forth a question-begging argument in favor of non-human mentation, so at this point I would invite the skeptical speciesist to perform the following thought-experiment. Consider the situation of a feral human who had been raised in the wilderness (by wolves, of course). Our Romulus or Mowgli has never been humanly acculturated: accordingly, he has never been exposed to any human natural language. Let us further suppose that he has, due to a birth defect, non-functional vocal chords (or, worse yet, aphasia). The human has acquired a severe personality disorder as a result of witnessing his adoptive mother committing bestiality. We would probably give assent to the judgment that he has an emotional illness (a form of "mental illness"). Suppose there were a whole tribe of such beings? We would not have any good reason for making different judgments about the wild child and a chimp or a dog. After all, each manifests the same symptoms and signs: episodes of withdrawal, whimpering, sudden loss of appetite, cringing, urinary incontinence, jumping at objects which aren't there, compulsive chewing of his hindleg (or leg, as the case may be), and so on. I submit that veterinarians, when treating psychological afflictions, are in a situation
similar to that of a pediatrician diagnosing an infant, or to that of a physician attempting to treat the feral human's psychic disorder.

(4) If we consider the scope of moral rights, we find it not unreasonable to believe that those rights are almost always (what Rudolf von Jhering and other teleologists claimed more than a century ago, and Feinberg and others claim today) functions of interests or values, to be acknowledged by and protected by society. Sometimes, also, they are protections of the means or the conditions of the attainment of interests or values. A question might arise at this point about the distinction between "desired" and "desirable" interests, that is, between what people happen to (subjectively) value and what has objective value. But rights seem to encompass both: Objective values should be protected, and yet at the same time people should have protected some latitude for autonomous, independent, independent choices of their individual goals.

Even if we do not believe Mill, that the best "proof" that something is valuable is that it is valued, we would most likely agree that valuing is in most instances good evidence for what is valuable. We might
also agree with Mill that good evidence that something is valued is to discover the preferences of those doing the valuing. Mill was insightful enough to include all sentient beings within the scope of valuers. (One may, it should be observed, explain preference-behavior by means of quite a variety of teleological and/or mechanistic factors.)

Non-human animals have needs and preferential tendencies. To that extent, they have interests and priority- (or value-) aggregates, albeit non-systematic, atomized ones. Just as not all objects of value to (or for) humans are actually items of objective, universal, intrinsic value, so too, other animals may pursue a number of goals. An important point: Human goals and values need not be conscious--they may be "internalized"--; this is the case for non-human animals as well.

Let's extend our investigation of the needs and preferences of non-human animals. Now, the needs and preferences may be formed in a number of ways. As with other types of behavior:

(a) some (instincts are determined by genetic factors; and (b) some are molded by environmental influences.
(i) Of these, some are customarily acquired from parents or other members of one's own species;

(ii) and sometimes they are ingrained because humans have so intended.

So far, I have been discussing needs and preferences without giving many specifics. To those I shall now turn. What are some of the needs and preferences of non-humans, such that they might serve to ground corresponding rights? Obvious ones include procreation and survival. But even these are complicated. Procreation involves, among other things, mating and (often) rearing of the offspring—particularly in many of the higher organisms. Survival-needs may include, directly or indirectly, many phenomena, including selection of foods, moving about with some freedom, minimizing pain and discomfort, breathing, and maintaining a reasonable state of health—with minimal illness and injury.

Many species of non-human animals need, and sometimes even enjoy, the company of others—they are social animals, although they don't typically live in a polis. Non-humans frequently play. The skeptic might again protest, this time to the effect that human play is completely different from the play of other beings.
But some, at least, of the principal features of play seem essentially the same for humans and non-humans alike: it is often done for exercise, results in enjoyment, is somewhat "rule-governed" (although it sometimes gets out of hand), and many of the games involve simulations of combat-situations. Non-humans sometimes romp, bask, bathe for comfort, and in general require a variety of stimuli to remain stable. They (except sharks) need rest and relaxation. And, as Mill pointed out, non-human animals can experience contentment. Furthermore, they seem capable of giving love, although maybe not Romantic Love.

I have thus far presented an incomplete listing of some of the needs and preferences that non-humans display. To properly explain them, we should, I believe, steer a course between the Scylla of Pyrrhonian Behaviorism-cum-Cartesian mechanism and the Charybdis of uncritical anthropomorphism.

I intend now to draw on the kinds of preferences and other mentation states, in order to compare the possible prima facie rights claims of these different sorts of beings: humans and non-human animals. We should initially assume the appropriate circumstances
and allow for some limitations of the rights (such as not harming others, if possible). Human persons are believed to have a number of prima facie moral rights that in some way are functions of their basic needs. Among these prima facie rights are those to:

(a) a decent standard of living,
(b) adequate health care (both mental and physical health),
(c) freedom of movement,
(d) freedom of association,
(e) happiness—or at least its pursuit,
(f) fair and equal treatment,
(g) good and shelter,
(h) privacy,
(i) security of self and home,
(j) live as long as possible,
(k) freedom from torture (or from cruel and unusual treatment, in general), and to
(l) raise a family.

It seems to me that few, if any of these "human" rights are such that we would find acceptable an infringement of them, except, as is true of prima facie rights, in specifically circumscribed sorts of
defeating circumstances. Perhaps I should have said that we would not accept their violation in cases where humans are involved. Both so-called "domesticated" and "wild" animals non-humans, however, undergo extensive and discernible infringements of these. These creatures display marked distress, to put it mildly, when they are deprived of the opportunity to possess the goods referred to in the above list of rights. 

(Let me anticipate a possible objection, here. I am not saying that the rights of persons and those of non-humans are identical. Of course, it would sound absurd to extend to, say, cats and dogs, such rights as those to suffrage, to an eleventh-grade education, or to freedom of religious exercise or freedom of the press.) I do believe, though, that we can recognize instances of violations of at least the twelve sorts of rights listed on the previous pages, and I hope that it can be seen that they are instances of moral wrongs.

Let us consider instances of each, in an order corresponding to that of the previous list.

(a') The encouraging (or permitting) of uncontrolled reproduction of one's household pets, resulting in large numbers of homeless cats and dogs scavenging through city streets and alleys.
(b') The denying to creatures of an acceptable level of veterinary care, including treatment of their psychological problems.

(c') Confinement of beings in cages or in one-room apartments.

(d') Non-human animals with social natures isolated from others of their species for the duration of their lifetimes.

(e') Most of the preceding and the following examples.

(f') The permitting or perpetuation of arbitrary and societally uncontrolled maltreatment of some animals, while others lead pampered lives.

(g') Permitting domesticated animals to starve and to remain homeless.

(h') Housing animals in cages in zoos, laboratories and vast, open buildings packed with tens of thousands of fowl.

(i') Capturing, restraining, penning and finally killing animals.
(j') "Putting away" (also called "putting down" or "putting to sleep") millions of animals each year and killing hundreds of millions of mammals each year for food, research or sport.

(k') How might one begin to inventory the myriad of tortures of every variety? Some principal perpetrators are agribusiness, some scientific researchers, children too young to treat sentient beings as anything but "toys", adults who, out of ignorance, frustration, sadism or any of a number of other causes, cause untold quantities of suffering.

(l') Separation of mothers from their young at birth, or soon thereafter, while the dependency feelings are still powerful.4

In light of what has been said thus far, I hope that it has begun to emerge that non-human animals have a wide variety of moral rights, many of them corresponding to basic human rights. I have attempted to establish also that there is a close connection between these rights and the mentations, including needs and preferences, of these beings. Moreover, it should now seem less than plausible to assert that non-human
animals are incapable of anything more than the external appearance of mentation.
FOOTNOTES

1 We might, of course, have another source of obligation that gives us an obligation not to treat such a person as we treat a chicken or centipede. It might be that so treating humans would lead to bad consequences for many others. This, though, and not a life right or a "human right" would be the source of obligation for differential treatment.


3 Howard Brody, Ethical Decisions in Medicine, (Boston: Little, Brown, 1976), passim.

4 Many of these are derived from Peter Singer, Animal Liberation (N.Y.: Avon Discus, 1977).
A number of concepts and themes that have been running through previous chapters will recur in this one. Although its main concern is decisions about the moral justifiability of euthanasia and letting die, we will find once again applied such notions as the right to live, mentations, personhood, potentiality, and the scope of rights-possessors. In this chapter, I will begin by providing some background in the form of some distinctions among possible issues. It is claimed that sorting out these various questions is an important first step toward clarification and providing some answers about whether and when euthanasia might be morally justified. In the next section, I survey some possible "intrinsic" factors of individuals about whom these decisions would be made. Some evaluation of each of these proposed "intrinsic" factors is suggested. The next section deals with some "extrinsic" factors that are generally believed to be relevant to "death-decisions". Extrinsic factors are, essentially, considerations of the individual's utility and relationships. I provide a critique of
views advocating use of extrinsic factors. The following section concentrates on the cluster of issues about the proper role of consent, the first-person, or "subjective" component in evidence gathering for death-decisions, and ten different methods that have been proposed for "deciding who should decide" about death. Finally, I examine three sorts of objections to euthanasia.

I believe that, in the appropriate circumstances, euthanasia is morally justified. This includes passive and active euthanasia, as well as voluntary, non-voluntary and (occasionally) involuntary euthanasia. I also believe that, in the correct circumstances, both the euthanasia of others and the taking of one's own life--suicide--are justified. Such a viewpoint goes beyond most of the traditional theories, although quite recently, some people have begun to put forth views that are in varying degrees in accordance with mine. (These include Richard Brandt, Baruch Brody, Howard Brody, Joseph Fletcher, Philippa Foot, Sidney Hook, Marvin Kohl, Paul Kurtz, Daniel Maguire, L. S. Sumner, Michael Walzer, and Glanville Williams.)
The word 'euthanasia' derives from the Greek terms meaning "good death". For many years, it has been defined, however, as "mercy killing", "quick and painless death", "the action of putting to death persons suffering from incurable diseases", and so on. I propose to return to something more like the original sense. Accordingly, I shall define euthanasia as death-ensuring action from a morally justified decision, for a being's benefit, that he or she die. This is not, of course, to defend euthanasia by means of a definition. For the question remains which such death-ensuring actions, or what kinds of death-ensuring actions, if any, are indeed morally justified.

Active euthanasia is euthanasia that involves killing the individual.

Passive euthanasia is euthanasia that involves letting the individual die.

Voluntary euthanasia is performed with expressed consent, request, wish or want.

Non-voluntary euthanasia is performed in circumstances where some evidence is lacking because it is unavailable or insufficient.

Involuntary euthanasia is performed contrary to the individual's wishes, wants or requests.
Quality of life (QOL) is the level of the kinds of goods attainable by action and/or by experience.

Acceptable standard of quality of life is a level, at or above minimal value, of attainable goods to or for a being.

Extraordinary means (to sustain or prolong life) consists of care or treatment exceeding the normally acceptable procedures (in an area, at that period, and given the available knowledge and resources).

Ordinary means (to sustain or prolong life) is care or treatment within the normal scope of acceptable procedures (in an area, at that period, and given the available knowledge and resources).

Killing is the act of taking an organism's life; putting him or her or it to death; inducing or causing the organism's death.

Letting die is action permitting a dying organism's life to end by withholding, or by omitting to provide, means (or conditions) required for his/her /its continued living; refraining from performing actions necessary to prevent a dying organism from dying. (So stated, we can distinguish between letting an organism die and letting him/her/it be killed.)
Opponents of euthanasia usually derive their opposition to that act from a presumed right to live. But it is not clear whether the right to live, or right to life, should be understood as being of a specific form. That is, we should decide whether to interpret the right to live (RTL) as a right not to be killed, a right not to be killed against one's wishes, a right not to be permitted to die, a right not to be permitted to die against one's wishes, a right to have "ordinary means" used, a right to have "extraordinary means" used, a right to live as a person, or a right to live at some acceptable standard (perhaps a standard of quality of life). Or is there something else that is intended? Of course, it depends upon the spokesperson of the anti-euthanasia position to explain which, if any, of these is the intended interpretation.

It is my belief that if we accept the existence of a RTL, and interpret it as involving a prima facie right to live only at some acceptable standard of quality of life, then any a priori prohibition of euthanasia is incorrect. This does not deny the importance of much of the conventional "wisdom" embodied--unfortunately, too categorically and inflexibly--in a number of the standard rules of thumb. For example, it does seem
correct to affirm that, other things being equal, passive euthanasia is preferable to active euthanasia, voluntary euthanasia is preferable to involuntary and even to non-voluntary euthanasia, and we should feel less obligated to "extraordinary" means than to use "ordinary" means to maintain life.

**Some Questions About Euthanasia's Justifiability.**

I agree with opponents of euthanasia that people possess a very strong right to live. Accepting that fact does not, however, as such, entail that euthanasia is morally forbidden or even that it is always wrong.

To begin with, I assume that the right to live is a *prima facie* right, albeit a powerful *prima facie* right. In order to gain a clearer understanding of the right to live, we should find the answers to a number of questions.

(1) Since rights "generate" obligations, exactly what obligation or obligations does the right to live generate?

(2) How "strong" is the right to live?

(3) What conditions, if any, are presupposed to obtain when there is a right to live?
(4) What qualifications, if any, does the right to live (RTL) have?

(5) What exceptions, if any, can there be to the RTL?

(6) What kinds of counterbalancing factors, if any, might be sufficient to "override" or "outweigh" the RTL?

Before I answer these questions, I want first to raise some further questions. These involve a different focus, or at least a different set of concepts.

(7) In what sorts of circumstances (if any) would euthanasia be morally justified?

(8) What justifiable exceptions (if any) are there to the obligation not to kill, or to the obligation not to let people die, if possible?

(9) Assuming that euthanasia involves killing—or letting die—someone for his or her benefit, in what sorts of cases (if any) would:

(a) the harm occurring to him or her, from being allowed to remain alive, sufficiently outweigh the harm done to that person, from facilitating his or her death, to justify euthanasia?

or (b) the benefit to the person, from having his or her life span shortened, sufficiently outweigh the
benefit of having a longer life span; to justify euthanasia?

(10) When (if any) would the benefit of dying be great enough that it would no longer be wrong for that person to be killed or allowed to die?

(11) When (if any) would the rightness of killing or letting die exceed its wrongness?

The above questions should be given satisfactory answers if euthanasia can, to that extent and in those forms, be made understandable.

I submit that euthanasia should be re-interpreted. The moment, and often the circumstances and cause(s) of death is (are) within people's power and responsibility to determine. Since this is the case, we might put the euthanasia question as follows. When, and in what circumstances, would it be a morally justifiable decision for a person's life to end, i.e., for the person to die? Part of the deciding process involves a determination of who should be entitled and empowered to judge. This will be taken up later in the chapter.

Some "Intrinsic" Factors. Euthanasia is sometimes defined as "mercy killing". But it is unsatisfactory
from a moral point of view. Mercy is a kind of motive. Good intentions do not suffice for good acts, though, although they are necessary for praiseworthy persons. To be sure, it is to be hoped and expected that those who are to decide about deaths should be merciful; but they must also be enlightened and informed. It was argued in the last chapter that mentations and potentiality are very important factors, other things being equal, in determining the strength of an individual's prima facie right to live. In this section, we find some additional applications of what was said there. This section concerns itself with what sorts of "intrinsic" personal and mentational features seem to be very important (I am tempted to say "necessary") for an individual to have a right to live. Without them, it is difficult to imagine life possessing any value either to or for an individual; without some of them, in fact, we might even be justified in saying that there no longer is an individual person.

A human, or "person" lacking brain function, if that functioning is irreversibly lost (and granting prediction-reliability problems) no longer has a right to live. What would be the subject of such a right,
if he/she/it did exist? It would be a subject without subjectivity. (Consider, for a moment, such a case on life-support machinery. The machinery has become a more integral part of the functioning being than the brain. The corpse-machine aggregate, in such a case, would have to be the entity that could be ascribed a "right", and it would have to be termed a "right to function", not a right to live.)

Matters should be put in proper perspective when talking about euthanasia. For every Karen Anne Quinlan, there are and have been hundreds of thousands of aged cases in nursing homes. The number of individuals on exotic life-support machinery is insignificant when compared with the number of cases of aged and dying humans who have lost all meaning for living, and who want to have some control over their death as well as over their life.

Minimizing suffering is a very important factor. This is, of course, different from judging in terms of such mentational factors as cognitive development, rationality or autonomy. Different people may have different pain tolerances and thresholds. And there are various types of irritation, discomfort, pain,
suffering, anguish and agony. Unless we have reason to believe otherwise, though, we have no justification for assuming that a life is worthwhile if filled with intense pain and when not counterbalanced with any rewards. Some religious world-views disagree with this way of understanding the significance of suffering, as do some masochists. The religious ideologies apparently maintain that suffering adds positive value to life. Indeed, some seem to hold that such suffering has intrinsic value. In the absence of strong evidence to the contrary, however, I shall continue to assume that suffering has intrinsic disvalue.

**Potentiality** is a metaphysical concept that has appeared at various crucial points in this dissertation. Its significance for the abortion problem was emphasized in Chapters III and IV, and its more general role in the determination of moral rights was discussed in Chapter V. In its adjectival form, the word 'potential' may be used to modify a number of quality of life terms, such as 'longerity', 'happiness', 'awareness', 'dignity', 'autonomy', and 'personhood'. Potentiality seems to be a necessary condition for a right to live: We would not be denying anything to an individual lacking
potentiality, specifically potentiality of mentation. By deciding for such an individual's biological death, it is hard to imagine how we could be doing him or her or it any wrong, or any deprivation.

People should be able to determine their own lives as much as is possible. This is autonomy, or self-determination. Without the ability to judge and to govern one's behavior by norms arrived at without undue pressure, life loses much of its meaning.

Dignity, like autonomy, is a nebulous, fascinating and important concept. It is much appealed to by influential proponents of voluntary euthanasia. If we think of dignity as a feeling of self-respect, then it appears to be a psychological attribute. But there is more to it than that. Dignity involves an attribute that inspires others. In that sense, it isn't purely subjective. Furthermore, it is considered a virtue. It is a virtue, state or condition to which we seem to have a right, whenever possible; especially in such cases as death. To that extent, it is a trait possessing positive moral value. It thus seems to be a state that bridges several "gaps", viz., the
subjective-objective and the fact-value distinctions. It may well be, though, that the catch-phrase, "death with dignity" is a misnomer. If we grant that most people don't want to die, perhaps we should instead speak of "death with a minimum of indignity". Strict prohibitions of euthanasia are often defended by those who fear abuses and a "cheapening" of human life. On the other hand, those who favor what I call "death with a minimum of indignity" are for an increased valuing of meaningful human life, including human choice and a rejection of the degradation and indignity that so often accompany the dying process. One aspect of a meaningful personal life is rationality.

Although it is an oversimplification to think of humanity as consisting merely of "rational animals", rationality is extremely significant to human existence. Let us consider a human being devoid of rationality in any of its forms. It isn't clear what grounds we would have for ascribing rights to him/her/it that would be much higher than the other mammals—as I was indicating in the last chapter. The only other sources of such rights, it seems, would be other distinctively human levels of mentation.
Karen Anne Quinlan lacked any potential for "congnizance and sapience", according to the decision of the New Jersey Suprem Court. The reasoning behind that decision was that a being without the capacity for future consciousness, comprehension, or powers of thought need not have exercised for him/her/it any meaningful right to live. The Court was, I believe, mobilizing something like the standards that I put forth in Principle (P), in Chapter V, although they wouldn't necessarily agree with all of its applications.

Intellect is an extraordinarily difficult factor to evaluate in terms of moral importance. It seems that we associate measures of consciousness, to some extent, with intellect, as well as rationality, insight, ability to perform some sorts of problem-solving mental functions and other attributes. Unfortunately, intellect is frequently associated with "I.Q. tests", such as the Stanford-Binet, and the concept of I.Q. is the source of much unjustified discrimination and suppression of human growth potential. As in other areas, though, we ought not to permit past (and even present) abuses of a concept to constitute conclusive evidence against its applicability. The lessons of history should
enable us to refine our judgments, not to reject ideas wholesale because of their misappropriations.

So far, the factors that I have been discussing have largely been mental or otherwise psychological. There are other standards that have sometimes been proposed by others as criteria for deciding about euthanasia. These include physical soundness and social behavior. We should consider these now. Physical soundness—a criterion I am inclined to reject—is a relative matter. For example, rehabilitation can enable restoration to disabled people of equivalent or compensatory abilities. This is what is meant by saying that a disability need not be a handicap. Some important considerations are the following: the seriousness how irreversible it is and extent of being uncompensatable is the disability. Also, we should consider how the individual does, and can, view the disability. In other words, not only the physical prognosis but also the disabled person's ability to accept his or her condition are of importance. Blindness, paralysis, multiple amputations and aphasia may or may not be perceived to be unacceptable to a person. These are areas where it should be the person's own choice that
determines the desirability of living, and it must be a choice held to consistently, with steadiness or constancy of will, before we even consider taking action on it (if the person's decision is against living).

While social behavior is of some importance, it may have various forms. Paralysis may render one a cognizant perceiver only. Hospitalization may severely restrict one's interactions, as can immobilization. Aphasia represents yet another debilitating affliction. But I would not consider social behavior to be necessary condition for a right to live, just as physical soundness need not exist for one to have a decent personal existence.

Some "Extrinsic" Factors: Some considerations that are important in death-decisions I call intrinsic. These include such factors as personhood, autonomy, cognizance, and rationality. They pertain to the wholeness, well being, interests, abilities and other features of the individual. There is another, contrasting, sort of consideration that some people believe to be relevant in making death-decisions. These I term
Extrinsic factors. They include resources, contributions, family and utility for donating body parts. I want now to discuss the extrinsic considerations, and to assess their proper place in the decision process.

Resources may be of various sorts, including financial, emotional and medical. There is much discomfort about the role of resources in the death-decision process. On the one hand, we want to affirm that resources (barring triage, or emergency shortage, situations) never are, and never should be, of any relevance in deciding morally about whether to let a person live. Resources are means. People should not be permitted to die as a result of being felt to constitute a burden to others. To paraphrase Kant, everyone should always be treated as an end and never merely as a means. It would be a monstrous, tragic injustice to have to attribute the cause of someone's death to poverty.

On the other hand, medicine nowadays has the capability of sustaining life—or some semblance of it—beyond the point when it could be meaningful for
anyone. There are finite quantities of resources, albeit very sophisticated ones. People don't save for a lifetime just in order to have all the money transferred away by the maintenance of a suffering, demented, or comatose terminally ill relative. The problem of resources could be alleviated in part by an adequate system of health insurance. But the problem still wouldn't be eliminated.

In the preceding, it emerged that the extrinsic factor of resources has problematic aspects in the death-decision process. There seemed to arise a tension: resources seem to be both morally irrelevant and yet quite significant in the overall picture of the decision process. Let's consider a few more sorts of cases wherein arise the tension between the moral relevance and the moral similarities between the dialectic about resources and that about contributions to society or to humanity. The past or prospective contributions of a person would seem to be factors that are extrinsic. They have nothing to do with one's right to live, a right that all people presumably possess regardless of societal status. It would, of course, be unrealistic to deny that the President of
the United States receives better medical care than a derelict. But is, or is not, the President entitled to better care? I don't purport to have an easy answer to that question.

A digression: If contributions do justify prolongation of life, then, by some sort of parity of reasoning, it might be contended that detractions from society or from humanity would warrant shortening of life. Indeed, this seems to be a possible approach toward a rationale of capital punishment. While the inference from detraction to capital punishment may be fallacious, I mention it here because it appears to involve a similar sort of ostensible justification for altering a person's life span.

A related problem to that of assessing the importance of contributions arises in the case of one's ties to others. Should the hermit who has no family or friends receive all the same efforts to prolong life as the beloved and needed family person with many friends? If not, we would have what might be termed a "relational" standard of rightness.
It should be noted, by the way, that the "extrinsic" factors that are not conclusively of moral relevance to justified death-decisions are as a matter of fact very central to the deliberations of sincere and dedicated decision-makers: physicians, family members, and anyone else who finds himself or herself in the unenviable position of having to make such decisions. It is extremely difficult to say how weighty such "extrinsic" factors should be in making those decisions. We can, I suppose, agree that extrinsic factors ought not to have any bearing on death-decisions; but that seems a very remote ideal.

Consent; the "First-Person" Component; and Deciding Who Should Decide: Consent, wish, request and desire are similar factors in regard to the decision-making processes we are considering. Although it would simplify matters, we can't truly claim that any of them is either necessary or sufficient for determining rights to live or to die. But we can affirm that such factors are as important as almost any of the other considerations. While it is extremely important that we let the individuals judge for themselves, I shall argue that it isn't conclusive. One reason why this is so is that no
one is omniscient, even about oneself or one's own interests. At times, indeed, we're not even the best authority about our own interests. If doctors aren't gods, neither are patients. Furthermore, it is possible that a person might want treatment beyond a reasonable point. E.g., some dying people refuse to accept their situations, and demand exotic treatments that have no chance of reversing the dying-process.

In most cases, a person is the best judge of the quality of his or her own life. But not always. Of course, one may not be rational or competent, or may feel something while in a particular phase that he or she would not agree with later. While in pain from a non-terminal illness, people may wish for release in the form of death, but when they have recovered, they are usually glad that they were not then killed. This is true of other facets of value in our lives. One's life may have value without one recognizing it.

If we call a person's "input" in the form of requests, etc., the "first person" component, we find a problem about weighing or balancing them in a decision process. The problem arises from two facts. First
there is the fact that one's own wishes and beliefs must be recognized to be of profound importance in determining a person's future. Secondly, though, we must accept the likewise important facts that people don't always know what is in their own interest or have correct beliefs that affect their perspectives of reality. Also it might even be argued that it is unjustifiably selfish to drain too many resources to sustain a "person's" life if one lacks any potentiality for personal existence and if it would not benefit others.

For the individual's prior subjective component(s), we might give each person a questionnaire that could be viewed as being as binding or as defeasible as is the specific form of the Living Will proposed by Sissela Bok. In their responses to these questionnaires, people would indicate how they feel (perhaps in terms of weighted preferences) that they would want to be treated in various contingencies. The completed questionnaires would constitute an important bit of evidence, supplemented by the individual's subsequently expressed wishes and other factors soon to be discussed, for the subjective component in the decision process.
The subjective component(s) provide information only about those factors having first-person access and authority. Others' judgment is also brought to bear in the "third-person" component(s). Among other things, the judgment would take into account information about the patient's psychological states. The third-person component(s) involve judgment of each patient's situation in terms of his or her personness, quality of life potential, perhaps "extrinsic" factors such as contributions and family, and other considerations. These criteria may be assessed differently from those that are totally dependent on and accessible in terms of the individual's wishes and beliefs. Since they don't involve "privileged access", we may more readily criticize them.

So far, I have only briefly touched upon the dialectic of consent as it has been traditionally treated. Accordingly, I shall now discuss these issues.

It has often been pointed out that it is difficult to ascertain how voluntary an individual's consent is. One must be uncoerced, rational, informed and competent in order to give truly voluntary consent. And yet, each of these preconditions is more an ideal than an
actuality in most medical procedures. Persons in stress situations are frequently more open to suggestions and advice than they would be otherwise, and patients who have serious illnesses are obviously under great stress. Furthermore, the opinions of physicians carry much more weight than the beliefs of others. This is as it should be, for purely medical decisions, but for situations with extra-medical factors, the doctor's attitude should not be taken as definitive. It is exceedingly difficult to be rational when one's existence is at stake. Also, many patients are children, have some mental illness or are under any of a number of other pressures from family, friends, acquaintances, public opinion, drugs or medical personnel. Any of these influences might decrease a person's ability to reason.

How informed can and should consent be? Can one truly judge freely with less than full information about one's situation and the alternative courses of treatment that are open? Physicians frequently point out that giving the patient "too much" information about these matters just confuses the patient, and some patients prefer not to choose. They place
themselves in the presumably benevolent hands of the doctors. Issues about paternalism rear their heads here. They need discussion elsewhere. Nevertheless, it might be said for now that doctors, nurses, social workers, psychiatrists and others trained in what is nowadays termed "human interaction" might (indeed should) press more of their efforts toward educating the patient in as many as possible and feasible of the salient facts. Patients should be encouraged to make up their minds about the disposition of their cases in light of as much information as it is possible to communicate to them.

Apart from the question of whose decision it should be to let a person die or to kill him or her (these will soon be discussed), still other problems and questions about consent must be dealt with. One of these is the problem of what safeguards there should be. It isn't obvious that a hospital committee or a court will ensure that the decisions will invariably be the wisest. Should death-decisions be limited to legally circumscribed circumstances? Again, there seems to be no easy answer. The "Living Will", now accepted as binding (although revocable at any time)
in California and elsewhere, is only a beginning. Its scope is limited to situations where one's case is obviously hopeless, and it is quite vague about what sorts of disabilities would justify the judgement. Insofar as it only directs the medical personnel not to initiate or continue "extraordinary means", it does not go very far. It seems to acknowledge cognizance and minimal suffering as constituents in an existence of sufficient "dignity" to be sustained. But there is more than that to dignity, and there is more to life-or-death decisions than just considerations of "dignity", whatever that may mean.

An adversarial procedure has been proposed, wherein there would be advocates for each side. This suggestion should be explored further, but sometimes such a procedure would not be optimal, because of time-limitations, or because it might place the decision-making in the hands of judicial bodies not obviously capable of judging such matters.

Sometimes, consent of people other than the patient might be desirable or necessary, for example when the patient is no longer fully conscious, or is for other not mentally competent.
Two interesting notions are **counterfactual consent** and the **Golden Rule test**. It is not always possible to seek consent from the patient. In such cases, those who are charged with the decision might exercise "counterfactual consent", that is, to give or withhold consent in just those instances where, in light of all the relevant, available evidence, the patient would have given (or withheld) consent for a mode of treatment or procedure, if he or she had been able to decide. Problems could arise concerning evidence, certainty, and verification. This is obviously an area in which it would be easy for the decision-maker's own beliefs, lack of data, attitudes or predispositions to intrude; the utmost of good intentions, information and trustworthiness must be assumed. The so-called "Golden Rule test" subjects each proposed decision to the following test: How would the decision-maker want to be treated in similar circumstances? Again, a minimum of self-deceit and a maximum reliable, capable judgment is called for. Of course, wants tend to vary among individuals, so the decider's (hypothetical) wants wouldn't necessarily coincide with the patient's.
The discussion has gradually been moving toward issues concerning whose decisions these should be. We must now confront them. For reasons already mentioned above, the claim that medical decisions, especially decisions about death, should be made always and only by the patient is inadequate. The "first person" component should not suffice.

A second proposal about who should make the decisions is that it be the attending physician. But this too will not do. First of all, it seems that it would be a good idea to have the opinions of the patient (whenever possible), of other physicians, family members and others count as much as the judgment or decision or the physician. Secondly, we have no reason to believe either that the attending physician is more capable of making or is particularly willing to assume the burden of, a death-decision. It has been argued, in fact, that there would be something questionable about giving the attending physician responsibility for making a death decision for a patient whose well-being the doctor has been committed to preserving.

A third view proposes that there be a committee of physicians who would be charged with the task of
deciding about death. There already exist, at some hospitals, such committees. But, once again, the decisions aren't always purely medical, and the doctors themselves often feel uncomfortable in the role of one who should do anything other than maintain the human organism.

At some medical centers, a fourth system is in effect. It consists of a heterogeneous group of decision-makers, a committee comprise of members of not only physicians, but also nurses, psychiatrists, clergy, sometimes philosophers, and other members of various segments of "the community" outside the medical establishment. When the decision is placed in the hands of these people, questions arise about why they are any more qualified than any other group of individuals.

A fifth proposal is put forth by some fatalists and religious fundamentalists. It advocates letting only Nature or God judge when a human life shall end. Besides being based on questionable theories, such a viewpoint should counsel quiescence about any medical treatment. Other than Christian Scientists and some cultists, few would accept such a fatalistic or
laissez-faire rule about health care in general.
Indeed, we might further generalize, as Hume points out in his "Essay On Suicide", to infer that any human action to alter the course of nature or "God's plan" is wrong (if not illusory about its efficacity). Some Eastern world views, in fact, do seem to inculcate just such an attitude. For those, however, who will grant that people's conduct can, and sometimes should, make a difference in how things are, they should likewise grant, not only the plausibility of at least some technology, but in particular of medical intervention. Once all of this is accepted, it is but the next reasonable step to grant that death-decisions, qua medical decisions, are permissible. Qua moral decisions, death-decisions may be subsumed within the larger scope of human conduct in general.

A sixth point of view says that the choice belongs to the patient's relatives. This view usually maintains that the relatives should decide only when the patient cannot do so. There are difficulties with such a proposal, though. First of all, it is not clear what relatives should have the responsibility. Should it be the spouse only, or the spouse with the
children who are not minors, or the parents, of all of these, or the unanimous decision of some or all of these, or some other class of relatives? A second problem is the following: According to those who have observed many situations of medical decisions--especially situations that have involved death-decisions--it is the general opinion that relatives are often "too conscientious", not able or willing to draw lines of what are reasonable and what are unreasonable measures to take to preserve some semblance of human life. Sometimes they do this out of a misguided sense of love and devotion, sometimes because they fear the prospect of feeling guilt over the responsibility for the death of a loved one. Much less frequently, another sort of motive is operative. Relatives might be impatient to reap the benefits of the death: material rewards from wills or peace of mind from not having "that burden" any more.

Other points of view advocate either an ombudsman ("person"?) or a judicial proceeding might be decided by a judge or by a jury. The ombudsman-suggestion isn't immediately plausible, in that it seems too much responsibility to place upon one person. Who would
qualify as such an Ultimate Judge? The jury-hearing seems somewhat meritorious, but who would sit on such a jury? What would qualify them to decide? What guidelines would they be given? This notion, while less implausible than most, still requires some clarification.

Apart from saying that the death-decisions should be ad hoc, made by physicians in consultations with relatives, patients, and subject to review of committees and/or courts--the present system--there remains an alternative solution to the problem of who should decide about death. It is an adaptation of the concept of the Committee of the Person. The Committee of the Person is an institution established, in 1966, by the Mental Hygiene Act in the State of New York.\(^5\) Thus far, it has only been applied toward the method of disposition of people's estates. But it could be altered in such a way that it applies to death-decisions. The idea is this: the patient him or herself should be permitted to designate on or more individuals who would constitute the patient's Committee of the Person; not necessarily of any particular profession or kinship, the Committee's members are those whom the
patient most trusts to make such decisions, if such decisions are ever necessary. The Committee, like an insurance policy, will or Living Will, may be revoked at any time by the person whose Committee it is. There is an added safeguard against faulty or malevolent Committee decisions: the decisions are subject to judicial review. The Committee of the Person, particularly when combined with a specific, detailed Living Will, seems to be the best of the methods proposed thus far for deciding about death. If such a situation arose, who would we want to decide for us? Even if it is worthwhile, however, it still shouldn't take away responsibility from the patient, if he or she is capable of deciding about his or her fate. And, as was noted earlier, there remain some problems inherent in the notion of permitting the individual to make his or her own death-decisions.

Evaluating Three Objections to Euthanasia: Some of the standard objections to permitting euthanasia appeal to the possibility of unacceptable consequences. Similar arguments are often used in opposition to abortion. Among these are what I shall call "the causal slippery slope" (or causal wedge), "the
conceptual slippery slope", and "the moral-legal block". The **causal wedge** asserts that it is probable (or at any rate **too** probable) that permitting euthanasia would in fact have the effect of leading to unjustified killings on a large scale, somewhat as happened in Nazi Germany or Stalinist Russia. The conceptual slippery slope concerns justification. It holds that if one were to grant a first, justified form of euthanasia, then we would be on a slippery slope to unjustified killings that cannot be conceptually distinguished sufficiently from the (supposedly) justifiable cases. The **moral-legal block** claims that even if it were **morally** justified—in some supposed "pure", non-legal form of morality—to perform euthanasia, it nevertheless should not be made a **legally** permitted practice, or advocated as an acceptable social policy. Proponents of the moral-legal block say that it is just too risky and (perhaps) unenforceable. I will now state a number of counter-arguments to, and questions about, these three sorts of objections.

(1) Would acceptance of my theory and proposals in fact lead to morally unacceptable or undesirable consequences? To answer this question, we should recognize the **empirical** elements and issues that are involved. We should determine, among other things, **how many** satisfactory and **how many** unsatisfactory instances we can find of
societies which accept euthanasia policies in order to acquire sufficient evidence one way or the other. Could one instance of a society that has had euthanasia safely practiced constitute conclusive evidence that the slippery slopes or block are incorrect? Could one instance of a society that has failed to ensure adequate safeguards constitute conclusive evidence that one or both of the slippery slopes or the block is correct? Would two instances of societies provide adequate or conclusive evidence to enable us to infer either the correctness or the incorrectness of any of the three arguments being considered? Perhaps the questions might be a bit more specific. Let us, therefore, consider these issues.

(a) What types of societies should these be? For instance, how similar to the United States of America in 1977 should they be to provide relevant, reliable indications about the likely outcomes of permitting euthanasia? To begin to decide about such a question, we might focus upon some current social conditions and policies. We might compare and contrast factors such as the emphasis on justness and the ability to safeguard applications of principles, policies and laws. The extent of due process should be taken into account.
There are other societal factors that could also be compared and contrasted. Although it seems that it would be exceedingly difficult to determine, the extent of the trustworthiness and scrupulousness of physicians and nurses should be considered, as well as the extent of information that the health-professionals have at their disposal to make correct or enlightened judgments about diagnoses and prognoses. The measure of trustworthiness and of moral sensitivity of legislators and judges might be another set of factors. The societal beliefs and attitudes about a number of factors should also be factors brought into the reckoning. Among these factors are death, mentation (or some similar notion), religion, suffering, choice, dignity, living, the kinds of things having intrinsic value, the legal system, and personhood. To what extent is there a pervasive societal respect or "reverence" for life, self-determination, personhood, the law and individual dignity? All the above are at least partly empirical--albeit not easily discoverable--considerations.

(b) How similar to the sorts of conditions that I specified earlier ought the "samplecases" to be if they are to furnish good or relevant evidence? That is what criteria or guidelines, and what methods of safeguards,
should the sample cases include in order to be considered sufficiently similar to what I have proposed? It would be unfair to compare the actual or possible consequences of a society that permits any army officer to kill people for reasons such as religion or race with a carefully delineated set of guidelines, subject to judicial review and appeal, that are formulated in order to emphasize such values as individual choice, personhood, dignity, minimal suffering from terminal disease, potentiality and trust. Both the letters and the spirits of the policies are vastly different.

(c) If a ratio or formula of "confirming" to "disconfirming" instances is sought, we should seek an appropriate ratio or formula. We should also try to determine their limits. We also would want to decide (at least) how large a "sampling" of cases would be needed. In part (2) of this section, I consider other possible quantitative standards.

(d) Next, we might attempt to fix a time period (at least) over which these sample evidential cases should have been in effect. Perhaps it would be a year, ten years, or even five generations. Presumably, the more time that is would have been in effect, the more opportunity we
would have to observe the results of more particular applications and their long-range consequences.

(e) In the sample cases, we should determine how consistently and humanely the policies were administered. How frequent were the mistakes? How frequent were the abuses? Were those circumstances by their nature unavoidable and uneliminable?

(2) What would constitute an acceptable "risk-benefit" ratio? (This, of course, assumes that it would be possible and helpful to compute such a ratio.) How might we go about performing such a computation?

(a) One method that seems fairly straightforward would calculate the arithmetical quotient of the benefits divided by the risks. There would remain a problem of deciding what numerical values to assign to the various variables, though. Let's consider one such method. Probabilities range between the limits of 0 and 1: benefits and risks each have values assigned between 1 and 10. Quotients below, say, .5 would indicate undesirable policies, and quotients above (perhaps) 2 might indicate desirable policies, with the range between .5 and 2 justifying some degree of ambivalence greater than the that justified by quotients less than .5 or greater than 2.
Admittedly, this may all sound like an effort to render precise with numbers that which is too indeterminate or intractable. An I am not advocating this, or any other, particular quantitative method here. But I see no reason why, in principle, it should be impossible to decide upon or devise such a method. Let's consider an alternative method.

(b) There are other methods, drawn from decision theory, that could conceivably be brought to bear upon the decision-problem. Bayesian "weighted preferences" are one such. The method involves multiplying the probabilities by the desirabilities (or the "utilities"). If a particular choice is made, instead of its alternative, it might possibly have any of a number of results. The method considers each of the foreseeable consequences, and assigns it a probability value and desirability (or "utility") value. The "correct" choice is then disclosed by a comparison of the possible courses of action and opting for the one with the largest numerical value. There are other methods available in normative decision theory besides the Bayesian and Bernouillian, although most of them seem to be heavily indebted to those 18th Century mathematicians.
(c) Apart from the difficulties of finding an acceptable decision-method, and of assigning numerical values to the variables, other questions must be answered as well. One is this: How much should the calculation be modified—and in what way—by the factors of fallibility, uncertainty and the desirability of tolerance? Should the benefit of any doubts be in favor of, or in opposition to, a proposed euthanasia policy? What should we do when the probabilities, the types of consequences and the extent of desirability or undesirability is underdetermined by the evidence presently available?

(d) A conservative might be inclined to say that, given what is at stake, any non-zero risks are unacceptable. How might we go about deciding such a claim: An analogue exists in the current debates about recombinant DNA experimentation. Some conservatives in that debate say that since it is at least possible that evil consequences could ensue from accidental or intentional escape of new organisms from the research facilities, we should prudently apply a judgment of "guilty until proven innocent" to research proposals in that area. They might modify their judgments some if evidence were forthcoming of clear and uncounter-balanced benefit, or of compelling need for such research. But in the absence of such
evidence, the burden of proof lies on the proposed experimenters to demonstrate that no harm will in fact occur. The conservative about euthanasia proposals might, then, demand evidence that the benefits are "clear and uncounterbalanced", or that there is (still using the legal notions) "compelling need" for any policy that would permit euthanasia before they will entertain the thought of accepting it as permissible. These people should by no means be dismissed. Although these factors may seem imponderable, we might be forced to decide whether the relief of ten individuals' sufferings are worth the risk of prematurely taking the live of one individual whose prognosis has been misjudged by a year or ten years. Most of the questions to this point have dealt with problems involving the accumulation of sufficient evidence and the determination of the extent of relevancy of evidence. There are other issues, though, in the dialogue between the proponents and the opponents of the slippery slopes and moral-legal block with their opponents.

(3) The role of philosophy and theorizing about morality are bound up with a different type of question about the correctness of the slippery slopes and the moral-legal block. This might be clarified by means of a distinction. It seems that we ought to distinguish between
(a) the correctness or desirability of believing something about, say, euthanasia or human nature; and
(b) the correctness or desirability of advocating something, at a particular time and in a particular set of circumstances, about, e.g., euthanasia or human nature.

Thus, we might say that some view, such as Plato's Republic or Marx's classless society, might be worthwhile as a moral ideal or goal (if we accept it), but that it is not yet feasible in our society today. We can say that, in some cases, arguments and proposals can be assessed independently of beliefs, and of facts, about the nature and limitations of the society in which one presently lives. Moreover, it is among the philosopher's central tasks to clarify and to challenge basic beliefs about human life, morality and society.

(4) One form of the "conceptual slippery slope" asserts that permitting some death-decisions would obliterate all judgmental distinctions between justified death-decisions--assuming there to be such—and unjustified ones. This form of slippery slope holds that claiming that

(a) some being has less than a full-fledged person's presumptive, prima facie right to live is tantamount to maintaining that
(a) some being has less than a full-fledged person's presumptive, prima facie right to live is tantamount to maintaining that

(b) society has an obligation to kill that being.

But the inference from (a) to (b) is totally unwarranted. To say that one individual has less property-rights, or (virtually) any other sort of rights, than another individual is not to say that we should take the first opportunity to deprive the individual with the weaker rights of all his or her property (or whatever it is that that individual has a moral right to). It is not even to say that we would be morally justified if we deprived the individual with the weaker rights of whatever it is that he, she or it has right to.

Furthermore, to say that an individual has a weaker or a diminished right to some particular object or activity can sometimes also mean, not only that others' rights or interests can more easily override it, but also that other interests of that very individual may then count more heavily in the determination of what is justified. If we believe, then, that a dog's right to live is weaker than a person's, or that it is diminished by its extensive brain damage which has irreversibly reduced it
to the level (the mentation-level, according to my view) of an insect, it seems that two sorts of things could follow. One of them is that the person's right to live should be respected above the dog's. The second is that such considerations as the dog's other rights e.g., not to suffer, can then become more important than they were before, when balanced against its right to live. But once again, it simply does not follow, either from (1) the fact that a dog has a weaker right to live than some other being, or from (2) the fact that its right to live has been diminished somehow, that it therefore ought to be dispatched posthaste without any further justification.
This sentence must not be misinterpreted. Surely, if we can do anything to improve the "quality of life" of, say, someone in a concentration camp, then we should do so. It would be terribly wrong to deprive one of his or her potential to have a valuable life as well as to actually cause "momentary" suffering. The point I am getting at is that once a being has reached, as it were, the point of no return in his/her/its existence, it is a parody of kindness to pretend that one can benefit the being by maintaining his/her/its biological functions.

The reader is reminded that there might very well be sources of obligation other than the RTL that oblige us not to let the person die (or not to kill the person).

'Subjectivity' here means a condition in which there is a sense of self, or at least a modicum of consciousness.


Section 100-A of the 1966 Mental Hygiene Law, State of New York. It would apply only in the event of the patient becoming mentally incompetent, and the executor would be appointed by the court, as is already done with wills.

See Howard Brody, Ethical Decisions in Medicine, (Boston: Little, Brown, 1976), 204-207. I am indebted to Professor Sidney Pressey for calling my attention to the merits of the idea of a Committee of the Person.
APPENDIX A

Ranking Preferences About Euthanasia: Our moral intuitions about the comparative rightness or wrongness of various forms of euthanasia are not very determinate. As evidence of this, I propose an inventory of the comparative measures of our attitudes about the prima facie rightness or wrongness of several possible forms of euthanasia.

Consider first the three alternatives of "voluntary" (authorized or requested) vs. non-voluntary (consent not available) vs. involuntary (consent denied or wish expressed to remain alive) euthanasia. Next, draw a distinction between active and passive euthanasia. Although there are many more complicating factors that might be introduced, let us for now concentrate upon the six possible combinations of these five factors. How should they be ordered in terms of degree of wrongness or rightness?
Our initial move seems to involve the following beliefs:

(A) Other things being equal passive euthanasia is preferable to active euthanasia; and

(B) Other things being equal, voluntary is preferable to non-voluntary, which is in turn preferable to involuntary euthanasia.

If, then, we order our attitudes by designating the most preferable as (1) and the least preferable as (6), we can state that voluntary, passive euthanasia would be (1) and involuntary, active euthanasia would be (6). The preferability-rankings of (2) through (5), however, are much less clear. I suggest, very tentatively, the following ranking.

(1) voluntary, passive euthanasia,
(2) non-voluntary, passive euthanasia,
(3) voluntary, active euthanasia,
(4) involuntary, passive euthanasia,
(5) non-voluntary, active euthanasia,
(6) involuntary, active euthanasia.

We should admit, though, that our preferences about these seem to be underdetermined by sound evidence.
For example, some people argue that the parameter of "voluntariness" is immeasurably more important than the measure of "activeness" (activity). Permit me to introduce an abbreviated notation for the concepts. I will just use the first letter of each of the crucial words. The voluntariness-emphasizers, then, might maintain something like the following ranking.

(1) VPE
(2) VAE
(3) NPE
(4) NAE
(5) IPE
(6) IAE

Depending upon the nature and strength of their convictions, in fact, they might even refuse to countenance as non-(6)'s--i.e., as at all acceptable--anything except VPE and VAE.

For other individuals, the moral differences between active and passive is far more important than is the moral significance of the degree of voluntariness. Such a view might yield the following.

(1) VPE
(2) NPE
(3) IPE  
(4) VAE  
(5) NAE  
(6) IAE

And, of course, the anti-active euthanasia zealot might even conflate (4), (5) and (6), just as the strong voluntariness advocate conflated all the options except VPE and VAE.

There are more complications yet. First of all, the distinction between not initiating a mode of treatment and discontinuing a treatment-modality could further skew the rankings, as could the distinction between the use of ordinary means and that of extraordinary means (if that is a viable distinction). Other possible complicating factors exist in the form of the distinctions between: (a) suicide vs. homicide, and (b) committing suicide (or homicide) vs. assisting suicide by providing its means. Each new factor or set of factors seems to add to the confusion encountered in attempting to establish priorities of the forms of euthanasia.
APPENDIX B

My beliefs about a number of topics have much in common with some features of the views of numerous well-contemporary moral philosophers, including Peter Singer, Joel Feinberg, Michael Tooley, Richard Wasserstrom, Baruch Brody, Daniel Callahan, Joseph Fletcher, Philippa Foot and Richard Brandt.

Peter Singer (along with James Rachels, Tom Regan and others) has advocated the rights of non-human animals and criticized speciesism. Singer also suggests comparisons of non-humans' rights situations with humans' on the basis of judging morally relevant characteristics. He speaks of judging by comparing "mental levels" of different individuals and of different species; and says that potentiality is the only ground that can justify infant rights, but that that characteristic exists during its fetal existence as well.

Joel Feinberg has defended the rights of (non-human) animals on the basis of their interests, these interests having as a necessary condition various forms of conative and cognitive development. He holds that fetuses
have moral rights grounded by their potentiality. He explains and defends the nomological concept of potentiality that is involved. He says that, although it may sound shocking, humans without any potentiality for a minimal mental life have lost their right to live. Both Singer and Feinberg tie moral rights to the interests of their possessors.

Michael Tooley argues that only full-fledged persons, (which he identifies in terms of a having a certain kind of desires, beliefs, awarenesses and capacities) have complete rights. He argues that the most serious alternative view to his is that which depends upon potentiality. He points out that the human neonate has no "morally relevant characteristics" that differentiate it from a fetus at any stage.

Richard Wasserstrom emphasizes the importance of one's view of the fetus' moral status for one's moral judgments about abortion. He articulates a perspective of the fetus' status that avoids the traditional extremes, takes into consideration its potentiality, and compares its situation to that of the newborn.

Baruch Brody rejects most of the traditional reasons given in abortion arguments, and maintains that a proper
view of the fetus' moral status is crucial. He constructs an elaborate critique of the moral-legal block.

Daniel Callahan argues for a theory about abortion that takes into account the well-being of society, the freedom of women—tempered by their responsibilities—and the potentiality of fetuses. He refutes most of the arguments of both extremes.

Joseph Fletcher connects the right to live with a number of criteria of personhood, including mental level. He contends that theories about abortion and those about euthanasia are closely interconnected. For twenty-five years, he has argued persuasively against absolutist views and has advocated revised attitudes about death and euthanasia.

Philippa Foot reasons that active euthanasia and involuntary euthanasia are, in the appropriate circumstances, morally justifiable.

Richard Brandt has been claiming, since the 1950's, that we should reject the "sanctity of life" views and recognize the prima facie nature of moral rights, including the right to live. He recognizes that several sorts of circumstances can justify euthanasia.
I am not attempting to present these as arguments from authority. Nor am I pretending to agree with every aspect of each of their theories or arguments; no one could consistently do so. Some of these people especially Singer, Wasserstrom, and Callahan have influenced my theory. The others have views that happen to coincide, to a greater or lesser extent, with mine. It should be pointed out, though, that my views are not completely novel or unusual. Indeed, they seem to represent a systematic coalescence of various facets of theories held by numerous contemporary mainstream thinkers in bio-medical ethics.
In this section, I shall consider some criticisms of my theory that have been formulated by Professor Oldenquist. I will attempt to respond to them in a way that is consistent with the theory and that seems to me to be correct.

First, though, I would like to review several points that were made in the dissertation. I argued there that there are a number of prima facie principles that guide our moral judgments about what is good and bad, right and wrong, justified and unjustified, and a right or not a right. These principles enable us to perform moral reasoning in such a way that we can decide in specific cases what is or would be right, wrong, and so on.

Among the criteria that enable us to judge what is justifiable in specific cases (and in general) are mentation level categories and the goodness or badness of consequences. Mentation-level is one, but not the only, relevant factor that "determines" justified decisions about abortion and euthanasia.
I have, in the dissertation, considered at length a number of alternative principles and factors. Some of them I found to be applicable and some were argued to be mistaken.

With regard to basic principles, I argued that there are a number of them, but that they are prima facie in nature, and not "categorical" (i.e., exceptionless). I agree with John Stuart Mill's point that basic moral principles can not be proved within (the) a given system of morality. We can, however, do something in the way of justification. For example, we can, to the best of our abilities, make sense of our moral intuitions. Furthermore, some principles and theories can be judged according to their fruitfulness in other areas, such as medicine. We should also want principles that are coherent with our other principles. Another consideration consists of the "explanatory" (Actually justificatory) power of the set of principles put forward. Let me turn now to the specific questions, and my responses to them.

(1) My theory proposes a "covariance" between mentation-levels and rights-strengths. But since there are virtually infinite number of differentiations
along the scale of mentation-levels, there must, accord-
ingly, be a virtually infinite number of rights-
strengths. This, though, would be unfortunate, since it
would mean that someone with a lower (even slightly
lower) mentation level has a more "expendable" life than
those with higher mentation-levels. Consider the follow-
ing diagram(s).

\[ \begin{align*}
\text{Mentation-level} & \quad \text{Strength of Right (to live)} \\
\infty & \rightarrow \text{P} \\
& \quad \text{P} \\
& \quad \text{?} \\
& \quad \neg \text{P}
\end{align*} \]

'P' stands for persons, "P" for non-persons, and '?' for
questionable cases, i.e., borderline cases, of personhood.
The infinity-sign with the arrows indicates that for any
segment of the line, there are infinitely (or virtually
infinitely) many possible extents of mentation-level that
may exist within its bounds. On the right-hand side,
though, there are only the distinctions among persons,
borderline cases of personhood, and non-persons. It
would seem, though, that if the units on the right-hand
side are a function of those on the left-hand side,
then I should grant that person-hood, and consequently
the right to live, must likewise admit of an infinite (or virtually infinite) number of degrees. This would have the consequence mentioned earlier.

Response. (a) To say that one factor, X, is a condition, *ceteris paribus*, for another factor, Y, is not to say everything true of X must be true of Y. For example, even though the presence of oxygen in, *ceteris paribus*, a condition of life, it is not the case that life is an element that bonds with hydrogen to form water.

(b) Furthermore, there are clear instances of qualitative distinctions that are justifiably drawn among things that admit of variation along a continuum. For example, there are judgments about whether one is bald or hirsute (as well as of the extent to which one has either of these properties). Also, there are judgments about happiness and unhappiness, blackness and whiteness, and educability or lack of educability. While we grant that judgment about some matters tends to be complicated and that there are borderline cases, we can nevertheless affirm that there are indeed clear cases of each of the opposites.

There are various ways of accounting for these, of course. We might speak of universals and particulars, of extents of similarity in varying extents, of family
resemblances, of theory-laden warranted assertions, of semantical rules, concepts and recognitional capacities, and so on. But the point is that we can often draw qualitative distinctions even when there are a potentially infinite number of variations along a continuum between what Aristotle called "contraries".

(c) Let's consider the right to receive an education, as enunciated in the United Nation's 1948 Universal Declaration of Human Rights. Now, some humans are not educable; and we don't believe that they have a right to be educated. Thus, although it is said to be a "universal", "human" right, some humans do not possess it because they lack a condition of its object's realization. In this case, the condition is a high enough mentation to enable the person to be educated. And yet, even though there are a virtually infinite number of possible degrees of mentation-level and of degrees of educability, we believe ourselves justified in drawing a line. In other words, we have a clear case of a moral right that is a function of mentation-level (or of some condition), and where the mentation-level (or the condition) is capable of virtually infinite variance along a continuum; but where the right only exists for those who are capable of making use of it. There are borderline cases, to be
sure, and we should give them the benefit of the doubt. (This is because people, in their fallibility, might tend to make mistaken judgments and the consequences might be bad. In a footnote I mentioned this principle.) Except for reasonably clear instances of uneducability, we can, then, therefore grant the prima facie moral right to be educated. If there are questions that remain about the empirical issue of how we would it would be to withhold the right from some, I refer the reader to the Appendix which discusses the complexities of the Wedge arguments.

(2) In decisions about life and death, what else counts besides category of mentation-level?

Response. In Chapter VI, I devoted little space to the discussion of mentation-levels. Instead, what I did there was to put forth a number of types of factors that are involved in the making of justified death decisions. One classic sort of case frequently cited is that of a patient, terminally ill with rapidly metastasizing bone-cancer, and who has consistently and rationally requested "release" from his or her suffering.

(3) Isn't my use of the word 'person' circular? That is, isn't it "just a label conventionally applied on the basis of the mentation scale?"
Response. This is, at least in part, a question about the "cutoff points" of mentation levels. Now, I wanted my theory to do some justice to, among other things, our pre-theoretical beliefs, that is, the pre-analytic "data" or "phenomena", or "intuitions" that we seem to have. I wanted to account for the range of phenomena which includes, among other things, our belief that it is usually less wrong to kill a mosquito than to kill a dog and usually less wrong to kill a dog than to kill a person. I wanted to account for the prima facie aspect of moral rights and to suggest that physicians and non-physicians alike utilize a way of deciding. Among the conditions are mentation-levels.

Many contemporary philosophers have used the word 'person' in much the same way as I have. But no matter what expression I happen to choose, I still want to be able to account for the same phenomena. Indeed, it might even be a good idea to use a new word other than 'person' so that we can thereby better appreciate the rights situations of robots, chimpanzees, gorillas, anecephalic humans, and other kinds of beings.

I don't want to discriminate against humans--I just want to make sense of the judgments I and others make about them. I am pro-human by inclination, but I hope that
my inclination is tempered by my understanding of what it is that justifies my moral preference for most humans over most members of most other species. This is where mentation comes in.

(4) In Chapter V, I criticize "C-unmediated" speciesism as being arbitrary. In counter-criticism to this, it is claimed that the disagreement is actually one of differing "ultimate (or basic) moral principles", and that therefore neither side can be more or less arbitrary than the other.

Response. I explained, in that chapter, the sense in which my Principle (P) could itself be justified; and in which C-unmediated speciesism was arbitrary in the way that racism and sexism are. Also, the species principle is not ultimate within my system. It is accounted for in terms of the (somewhat inductive) connection between being human and having a mentation-level-category, actual and/or possible, of a certain sort; not the converse. I argued (I didn't merely assert as a basic truth) that my interpretation was the most plausible. I was speaking there not only of the content, but also of the form, of our reasoning about species, morally relevant characteristics, and prima facie moral rights.
(5) A counter-example is proposed. Wouldn't it be more wrong to experiment on low-mentation-level humans than on, e.g., members of other primate species possessing higher mentation-levels than those humans?

Response. There are several points to be made here.

(a) As I pointed out in the footnote on page if a practice would have harmful consequences, that is some reason not to allow it. It should be remembered, once again, that I was speaking only of prima facie principles.

(b) I also said on that page that, from something's being less wrong than something else, it does not follow that it is morally permissible; and it certainly doesn't follow that it is morally obligatory.

(c) I added there that in such cases I am inclined to favor experimenting on neither.

(d) There are very few cases where other kinds of "animal models" can't be used.

(e) Indeed, if it were the case that there was no alternative model we could utilize, we would and should still seek consenting people ("subjects") on whom to
experiment. One of the reasons for not using retarded individuals is that they can't give voluntary, informed consent. But, of course, neither can chimpanzees. The purported counter-example, then, does not get at a situation that would ever have to exist. Professor Oldenquist and I agree that mentation-level-category is not the sole determinant of our moral judgments when it comes to experimentation or the right to live.

(6) In Chapter VI, I say that involuntary euthanasia is not always wrong. Isn't that a dangerous assertion?

Response. It might be dangerous if misunderstood or misapplied. I said that, other things being equal, it is less preferable than voluntary or non-voluntary euthanasia. I did not say that it should be practiced extensively. There would be very few cases where it would arise, given my list of intrinsic factors (such as self-determination or autonomy, and dignity), as well as the lengthy discussions of consent, the Living Will, the Committee of the Person, trust, and the need for safeguards, such as judicial review. I also addressed the "safety" issue in the Appendix about the Wedge argument.

To say that something is not invariably wrong (in an absolutistic or "categorical" sense) is not to say
that it is often justified. If someone chose to make that inference, however, he or she would no doubt arrive at the conclusion no matter what the premises. To encourage moral flexibility is not to encourage immorality. I at no time advocated the legalization of involuntary euthanasia.

(7) It the right to live something that has to be "earned" (viz., by having a suitably high mentation-level)? Why not just say that every member of our species possesses it? Does this entitle us to kill for convenience?

Response. It does not have to be earned, in any normal sense of that term. I claimed that rights are grounded by morally relevant characteristics, and that mere membership in some species or other, independently of what its members' characteristics are, does not justify us in ascribing to them any particular rights. See the arguments of Chapter V. I do not believe that anything I said commits me to the view that mere convenience constitutes a justification for killing. I argue (1) against "convenience" as a justification for abortion, as well as (2) against the desirability of using mere "extrinsic" factors as primary reasons in euthanasia decisions. (Chapter VI,
in the section titled "Some Extrinsic Factors".) Euthanasia involves the individual's benefit; in that respect, convenience is not relevant. It is worth reminding the reader that mentation-level is not the only morally relevant characteristic.

(8) What about situations when the individual is not irreversibly comatose? For example, if someone is severely retarded, does the low measure of actual and/or potential mentation justify our killing him or her?

Response. Consider first an anencephalic child, born without any brain--or at least without a forebrain. Consider also a human who has undergone severe, extensive brain damage in an accident, a human who is not, however, comatose. Consider as well a child who, as a result of a hereditary disorder, has become a permanent mentational neonate.

These are not the borderline cases of the semi-functional victims of Down's Syndrome. They are tragic cases in which beings possess the external resemblance to most humans but lack something very important. I argued, in Chapter V, that rights are dependent on needs, wants interests, values, preferences, choice-latitudes, and dignity. Such humans as are mentioned above lack a
condition for the possession of any of these. They need not be killed, but they also need not have the same efforts devoted toward their survival as do most humans. We would deprive them of nothing by letting them die. We would not be wronging them in the way that we would wrong most humans if we deprived them of their futures.
APPENDIX D

Some Theories About Abortion Diagrammed
Figure 1. "Extreme" Transitional View
Figure 2. "Moderate" Transitional View
Figure 3. "Right-to-Life" View
Figure 4. Supreme Court's (1973) View
Figure 5. My View
Figure 6. "Extreme" Women's-rights-and-Fetus'-non-rights View
Figure 7. Tooley's View
Figure 8. Fetus' RTL grounded (justified) by QOL factors
Figure 9. "Moderately Restrictive" View of Strengths of W's choice-justifications

KEY

F = Fetus
W = Woman
C = Conception
V = Viability
B = Birth
P = Personhood
ch = choice
R = Right
RTL = Right to live
QOL = Quality of life
Figure 1. "Extreme" Transitional View

Figure 2. "Moderate" Transitional View

Figure 3. "Right-to-Life" View

Figure 4. Supreme Court's (1973) View
W's ch-justif. dependent on many factors (cf. Fig. 9, next page)

Figure 5. My View

Figure 6. "Extreme" Women's-rights-and-Fetus'-non-rights View

Figure 7. Tooley's View
Figure 8. F's RTL grounded (justified) by QOL factors

Figure 9. "Moderately Restrictive" View of Strengths of W's ch-justifications

Other possible factors:
(1) Societal conditions
(2) The man's situation
(3) The fetus' prospective QOL:
    (a) if adoption is not possible
    (b) if it will be "defective"


