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ABSTRACT

This thesis is about potentiality theory and the right to life. It is an attempt to distill the potentiality position into its strongest incarnation in order to see what it has to offer. In Chapter I various attempts to discredit potentiality theory are examined. Particular emphasis is placed on Michael Tooley’s defense of abortion and infanticide and his critique of potentiality theory. It is concluded that a well articulated potentiality position need not lead to any obvious absurdity, and can resist the charge of philosophical arbitrariness. Thus, the potentiality position is a legitimate contender in the right to life dispute.

In Chapter II, we ask the question whether the potential to become a person is sufficient for the right to life, or is actual personhood necessary? Various attempted resolutions are considered and rejected. It is concluded that the issue is still quite debateable but that some support for the potentiality position can be found in a Rawls-type validation procedure.
# TABLE OF CONTENTS

**INTRODUCTION** .................................................. 1

**CHAPTER I. THE INTEGRITY OF POTENTIALITY** ................. 5

  A. Definitions, premises and basic concepts .......... 5
  B. Persons and the right to life ...................... 7
  C. Potential persons and the right to life .......... 9
  D. Tooley's program and strategy ..................... 11
  E. Systems ......................................................... 15
     1. The macro-view of systems ....................... 15
     2. Potentiality and possibility ..................... 19
     3. The micro-view of systems ....................... 24
  F. Potentiality for personhood: why conception? .... 32
  G. Preventative acts ............................................ 39
  H. Tooley's moral symmetry principle ................. 43
  I. Rights and desires .......................................... 49

**CHAPTER II. POTENTIALITY OR ACTUALITY?** .................... 57

  A. The Feinberg/Benn analysis ............................. 57
  B. Developed or undeveloped capacity? ................. 62
     1. Potentiality in focus .................................. 66
  C. Rational methods ............................................ 78
  D. Abortion and the Golden Rule ........................... 89
  E. Closing remarks ............................................. 94

**NOTES** .................................................................. 96

**BIBLIOGRAPHY** ..................................................... 104
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INTRODUCTION

There is a position taken by many philosophers concerned with the abortion issue that is generally known as the potentiality position. This thesis is about the potentiality position and the challenge that it poses to much of the current philosophical thought about abortion. It attempts to distill the potentiality position into its strongest incarnation in order to see what it has to offer. There will be no attempt to conduct a survey of the various influential potentiality theorists. As the title of the thesis indicates, the focus of the discussion will be on the right to life. However, there will be no extensive discourse on rights theory. Rights will be introduced in a general way without any special or precise analysis of the meaning of this concept, except as follows: If A has a right to x, then others have an obligation not to deprive A of x unless A waives or forfeits that right.

The approach concentrating on the right to life is distinguished from two other approaches that are commonly taken in this area. To say that A has the right to life is to say something stronger than that it is morally wrong to kill A. For example, it is commonly held that it is wrong to lie; however, in only a few (carefully circumscribed) situations is it held that it is one's right not to be lied to. To say that human fetuses do not have the right to life
is to say something stronger and substantially different from saying that abortions should be permitted as a matter of social policy. It is open for someone to embrace the moral right yet deny the social/legal right to life. For example, A may have the right to own his property, yet A's property may nevertheless be expropriated for overriding social/legal policy considerations. Similarly, even if it turns out that prenates have a right to life, the abortion issue remains disputable for those who would argue that the maternal right to bodily self-determination or integrity outweighs the prenatal right to life. It will not be part of the task of this thesis to assess abortion from a social policy viewpoint. We are concerned with the moral right to life in the first instance, not with the competition of rights and their consequent moral dilemmas.

It will be my strategy to explore rather than to present. That is, I will seek as much as possible to illustrate strengths and important features of a well articulated potentiality position by defending it against influential critiques, rather than by presenting some definitive formulation of the potentiality position and proceeding to elaborate on it. This format, I realize, carries with it the danger of disorganization and digression which I hope to have minimized. The demeanor of the narrative is neither that of a proponent nor opponent of the potentiality position, but rather one of investigation and
exploration. The spirit of the thesis is, in a nutshell, what would the ideal, rational, sensitive, well-informed person have to say about a well articulated potentiality position and the challenges it presents to theoreticians on the morality of abortion?

The inspiration for this thesis derived from doubt I had about a paper written by Michael Tooley. My entire first chapter and much of my second could be viewed as a polemic to that paper.

In Chapter One we examine various attempts to assail potentiality theory as leading to absurdity or philosophical arbitrariness. In particular, we examine Michael Tooley's attempt to show:

1) that a potentiality theorist must, out of consistency, support the prohibition of artificial contraception;

2) the moral equivalence of abortion and abstinence from procreative sexual relations; and

3) that the potentiality theorist's use of the concept of potentiality is philosophically arbitrary.

We undertake an inquiry as to the historical meaning of the concept of potentiality in philosophy. We examine the notion that, when talking about the potential for personhood, we can only properly talk in terms of varying degrees of potentiality.

We present a resolution to the problems encountered with the concept of potentiality, as applied to the abortion issue, which shows the potentiality theorist's claims about
potentiality to be fundamentally sound. It is concluded that the integrity of a well articulated potentiality position can be secured, and thus that the position is eminently tenable.

In Chapter Two, we ask the question whether the potential to become a person is sufficient for the right to life or, alternatively, whether actual personhood is necessary? It is suggested that much of the confusion surrounding the potentiality position derives from the various and diverse interpretations of "potentiality". The question of concern is narrowed to whether undeveloped or developed genetic capacity for valued states of consciousness is necessary for the right to life. It is concluded that the issue is still quite debateable but that some support for the potentiality position can be found in a Rawls-type validation procedure.
CHAPTER I
THE INTEGRITY OF POTENTIALITY

A. Definitions, premises, and basic concepts

Abortion refers to the deliberate killing of the human fetus. The fetus, unless otherwise specified, refers to any human being in either the fetal, embryonic, or zygotal stages of human development. A human being refers to a member of the species homo sapiens.²

'Person' refers to a being which displays higher-order states of consciousness such as self-consciousness, rationality, and moral agency. Note, we are here entertaining a somewhat nonanthropocentric view of 'person'. Consequently, persons could be intelligent beings from other planets, genetically engineered offshoots of human beings, or even perhaps some higher-order animals.³ However, on this definition, human fetuses, neonates, and some infants are clearly not persons.

Persons undoubtedly have the right to life. Whether any non-persons have the right to life is a matter for dispute. Any distinction which purports to separate beings having the right to life from those which do not must be based on morally relevant differences. A difference in species is not per se a morally relevant difference. Consequently, if for example, viability of the fetus is
proposed as a sufficient condition for the right to life, then it must also count for cat fetuses, dog fetuses etc., as well as for human fetuses. Similarly, the colour of one’s skin is clearly not a morally relevant difference, merely a physical difference. Physical differences per se, unless shown to constitute, or to be correlated with, properties of moral import, are not normally sufficient to ground a case for the denial of moral rights.
B. Persons and the right to life

Some philosophers, notably Michael Tooley, argue that the very properties which distinguish persons from non-persons constitute the morally relevant differences needed to separate those beings which have the right to life from those which do not. That is, only persons have the right to life. On this view, the constituting condition for being a person is the ability to conceive of oneself as a continuing subject of experience i.e., self-consciousness. Without self-consciousness a host of moral notions become pointless to attribute. There can be no responsibility for one's actions, no fulfillment of obligations towards others. In the words of Larry L. Thomas—"...a self-conscious being is one which has the capacity (a) to identify with the past, present, and future stages of itself, (b) to make dated judgment, and (c) to form intentions. And a being must have these capacities in order to be a moral agent...". The possibility of moral agency depends entirely on the existence of a reflexive self. What sense does it make to attribute agency to a rock, plant, or frog?

Only persons can conceive of what a "life" is and the misfortune of death. Therefore, what sense can there be in granting the right to life to others incapable of respecting the very thing they are to be graced with? The underpinning of any right to life must be the capacity to know what a life as a continuing subject of experiences is,
and consequently to understand what the termination of life implies for oneself and other 'selves'.

This then is the extreme liberal position. Most liberals on abortion, however, modify their positions (make exceptions) in such a way so as to extend the right to life to the comatose, the debilitated old etc. We will consider Michael Tooley's exceptions at some length later on.
C. Potential persons and the right to life

The potentiality theorist, when he looks at the successive developmental stages that human beings undergo, finds no morally relevant differences between consecutive stages which could account for a right to life where none existed before. Human beings do not in one great sweep come to possess the valuable higher-order states of consciousness defining personhood; rather, they undergo a gradual, continuous process of fulfillment of their human potential. 8

The potentiality theorist points to the commonly held view that the tragedy of infantile death lies in the unfulfillment of human potential. He asserts that the wrongness of murder lies not in the quality of the individual killed but in the potential denied. Thus he points to another commonly held view that death when it comes to individuals at the end of their natural lifespan who have "lived their lives to the fullest" is no great tragedy. The potentiality theorist claims that the formation of the human zygote (conception) marks the beginning of the potential to become a person. This potentiality constitutes the morally relevant difference which accounts for the right to life where none existed before. Consequently, many potentiality theorists hold as a basic tenet that killing a being which has the potential to become a person is of the same level of moral seriousness as that of killing an actual person. 9
The potentiality position has come under attack from many quarters. First, we will examine the line of attack which consists in questioning the basic integrity of the potentiality position. Opponents from this quarter argue that the concept of potentiality as applied to the abortion issue is philosophically arbitrary and leads to absurdity. An influential and instructive critique along these lines is contained in Michael Tooley's "In Defense of Abortion and Infanticide".¹⁰
D. Tooley's program and strategy

Potentiality Principle (P.P.): There is a property, even if one is unable to specify what it is, that (i) is possessed by adult humans, and, (ii) endows any organism possessing it with a serious right to life. If there are properties which satisfy (i) and (ii) above, at least one of those properties will be such that any organism potentially possessing that property has a serious right to life even now, simply by virtue of that potentiality, where an organism possesses a property potentially if it will come to have that property in the normal course of its development.

Modified Potentiality Principle (M.P.P.): If there are properties possessed by normal adult human beings which endow any organism possessing them with a right to life, then at least one of those properties is such that it is seriously wrong to kill any organism that potentially possesses that property, simply in virtue of that potentiality.

Generalized Potentiality Principle (G.P.P.): If there are any properties possessed by normal adult human beings which endow any organism possessing them with a right to life, then at least one of those properties is such that it is seriously wrong to perform any action that will prevent some system, which otherwise would have developed the property, from developing the property in question.

It is Tooley's strategy to force anyone who accepts P.P. to accept, in turn, both M.P.P. and G.P.P. Once he maneuvers us into accepting G.P.P., Tooley's broader argument for abortion and infanticide is greatly strengthened. Let us first examine the step from P.P. to M.P.P.

At first glance, there does not seem to be much of a difference between P.P. and M.P.P. M.P.P. is weaker than P.P. and is (as one might expect) easier to defend. M.P.P. enables the proponent to circumvent the complex problem of giving an account of the rights of organisms which are not
persons. Note, P.P. claims a right to life where M.P.P. claims the wrongness of killing organisms which possess the potentiality for whichever properties endow an organism with the right to life. Hence, one could abandon the claim that the fetus has a right to life, but still maintain that it is seriously wrong to kill it. Moreover, one could still maintain a concept of personhood which requires a high level of mental development without giving ground to the pro-abortion position. Frightened by the prospect of infanticide, there is a temptation among many philosophers to "bend over backwards" to accommodate low-level notions of personhood. Tooley argues that P.P. cannot be correct unless M.P.P. is. For our purposes, Tooley's claim in this regard will not be contested.

Tooley claims that if one accepts M.P.P. one "ought" also to accept G.P.P. It becomes a matter of philosophical consistency for a potentiality theorist to accept G.P.P., according to Tooley. In Tooley's mind there are only two substantial differences between M.P.P. and G.P.P. First, G.P.P. deals with systems rather than single organisms. Secondly, G.P.P. deals not only with actions which involve the physical destruction of actual organisms produced by systems, but actions which involve preventing systems from producing such organisms. It is important to recognize how much turns on these two differences, for the consequences of this modification are momentous. For example, the practice
of contraception and perhaps even masturbation now become morally equivalent to murder. The tactic is to reduce the potentiality position to an absurdity. However, it should be constantly kept in mind throughout the following pages that it is Tooley who must demonstrate that the modifications he proposes to the potentiality position are reasonable—ones that someone persuaded of M.P.P. would in consistency have to accept.

Since the passage which contains Tooley's argument for accepting the above modifications of M.P.P. plays such a pivotal role in the development of this chapter, I present it in its entirety:

This generalized potentiality principle differs from the original and the modified potentiality principles in two respects. First, it applies to systems of objects, and not merely to organisms. I think that this first generalization is one that ought to be accepted by anyone who accepts either the original or the modified principle. For why should it make any difference whether the potentiality resides in a single organism, or in a system of organisms that are so interrelated that they will in the normal course of affairs, due to the operation of natural laws, causally give rise to something that possesses the property in question? Surely it is only the potentiality for a certain outcome that matters, and not whether there are one or more objects interacting and developing in a predetermined way to produce that outcome.

The second difference is that the original and modified potentiality principles deal only with the destruction of organisms, while the generalized principle deals with any action that prevents an organism, or a system from developing the relevant property. I think that the conservative on abortion would certainly want to accept this generalization. For suppose that by exposing a human zygote to appropriate radiation one could transform it into a frog zygote. A woman could then enjoy a two-step abortion: first the human zygote would be transformed into a frog zygote, and then the frog zygote would be destroyed. Assuming that one does not view the destruction of a frog
zygote as seriously wrong, one must either hold that it is seriously wrong or else conclude that the two-step abortion technique is morally permissible. The latter option would not appear to be a viable one for the conservative. For why should it be morally permissible to destroy a human organism in two steps, one which limits its potentialities, and the other of which destroys the resulting organism, but seriously wrong to collapse these to steps into one, limiting its potentialities and destroying it by a single action? I think that an advocate of the extreme conservative view of abortion would agree that there is not significant moral distinction here, and thus would accept the second generalization involved in the expanded potentiality principle.

And in a footnote Tooley remarks--

It is important here not to confuse potentialities with mere possibilities. The generalized potentiality principle does not deal with collections of objects that merely have the capacity to develop in certain ways. The objects must already be interrelated in such a way that in the absence of external interference the laws governing their future interaction and development will bring it about that the system will develop the property in question.
E. Systems

1. The macro-view of systems

Before we can evaluate the reasonableness of Tooley's argument for expanding the scope of M.P.P. to include systems, we must first gain a proper understanding of what exactly constitutes a 'system'. Unfortunately, we run into difficulty immediately in this regard. For, Tooley uses 'system' ambiguously. The ambiguity arises in the relationship between 'the system' and 'the property in question'. At times Tooley talks about "the system developing the property in question", and at other times he talks about "the system causally giving rise to something which will develop the property in question". There is an important difference between the two. In the former case it is the system itself which develops the property in question and in the latter case it is something that the system produces which has the property in question (hereafter referred to as P). 17

The following analogy will, I hope, further illuminate the ambiguity. Consider an automobile manufacturing plant, its workers, its machinery, and the automobiles produced by the workers and the machinery. Let Q be the property of 'having been driven 50,000 kms.'. The plant is the system composed of workers and machinery which produce things which have the potential to have Q. The plant can not properly be said to have Q, nor can the workers or machinery be properly
said to have Q.

Of course, this example is not completely analogous to the issue at hand. For, the parents of a child can be said to individually possess the property P. But does it make sense to speak of the system composed of both parents having or developing P? To better illustrate the difficulty here consider the following. Consider my parents before my conception, just after my conception, and myself at this moment. Now, presumably, we can consider my parents before my conception a system, call it Sb. Clearly, each one of my parents, considered individually, has P. Does the system Sb have P? Let us assume for the moment that Sb has P? If Sb has P then the issue at hand seems to dissolve, i.e. if Sb has P(before my conception), then, clearly, my parents could not have been found guilty of violating G.P.P. even if they had used artificial contraception. For, quite obviously, the contraception would not have prevented Sb from acquiring P-- it already had P. Hence, we must conclude then that Sb did not have P(before my conception). Then we should ask--how and when did Sb acquire P? Consider the system composed of my parents and myself just after my conception, call it Sa. First we must ask-- are Sb and Sa the same system? If not, then it seems as if a system that lacks P can never acquire P. Hence, Sa and Sb are the same system-- or, more properly, different stages of the same system S. Further more, I, the fetus, am part of the system S(but only when
stage Sa began of course). Clearly, Sa does not yet have P. Consider the system composed of my parents and myself now, call it Sn. Now we must ask— is Sn, along with Sa and Sb, a stage of the same system S? If not, then, once again, it seems as if a system that lacks P can never acquire P. Hence Sa, Sb, and Sn are stages of the same system S. Surely now, at stage Sn, we must be able to say that S has P. But, let us carefully consider what is being claimed here. At Sb, my parents, two adult human beings, could not properly be said to have P when considered as a collection of two persons. However, at Sn, my parents and I, three adult human beings can now properly be said to have P when considered as a collection of three persons? Surely there is something amiss here. It does not seem to make sense to speak of any collection of two or more persons as having P. Clearly, it will not do to talk loosely about systems as, I believe, Tooley is guilty of doing. When considered in the light of our past discussion, G.P.P. does not make sense. It is not the system which develops P; rather, it is the organism which the system produces that develops P.

Now we are in a better position to assess Tooley's argument for expanding the scope of M.P.P. to include systems. Recall, Tooley's argument for systems was that: i) it is only the potentiality for a certain outcome that matters-- i.e. for an organism that has P; ii) a system as well as a fetus can be characterized as an object developing
in a predetermined way to produce that outcome; iii)
whether the potentiality for P resides in a single organism
or in a system, does not amount to a morally significant
difference; hence, iv) M.P.P. should be expanded to apply to
systems. At first glance this seems a persuasive argument
indeed. However, we should begin our evaluation of this
argument by inquiring whether the potentiality of
"potentiality for a certain outcome" is the same
potentiality that is predicated of existent things, i.e. a
potentiality which inheres in an actual organism and is
realized through causal process. In short, is Tooley guilty
of an equivocation on "potentiality"? Regarding this
question I am reminded of an anecdote: John and Joe are
standing on a bridge. Joe is showing John a lottery ticket
which he had purchased earlier. John, having never seen a
lottery ticket before, grabs the ticket to take a closer
look, but just as he grabs it a sudden gust of wind blows
the ticket into the water below, Joe yells at John-- "You
just lost me a million dollars!". The point is that
individual procreative acts of sexual intercourse are(in a
sense) like buying lottery tickets. The potential outcome
of buying the lottery ticket is winning a million dollars.
The potential outcome of the sex act is the creation of a
person. Whether this potentiality can be realized is
dependent on some future event beyond the control of the
participants. In the case of the lottery ticket, this event
is having one's number picked. If John's number had already been picked then we would not think him unreasonable for treating his ticket like a million dollars. Note, even if his number has been picked the ticket may be lost, stolen, etc., hence the ticket still only represents a potentiality for getting a million dollars but, once picked, the potentiality is such that in the normal course of affairs it will be realized. In the case of a procreative sex act, the event is conception. However, even if a child is conceived, clearly there are things that can happen which will prevent it from becoming a person, but the potentiality is such that in the normal course of events, without external interference, its potential will be realized.

The lottery analogy suggests that it only becomes reasonable to treat a thing as having some of the rights of a person when an event occurs such that that thing in the normal course of affairs will come to be a person.  

2. Potentiality and possibility

The concept of potentiality quite naturally deserves careful attention and scrutiny. Tooley's attempt to maneuver the potentiality theorist into expanding the scope of any potentiality principle or position to include systems calls into question our usual intuitions about potentiality, for it is intuitively clear what it means for a fetus or neonate to have the potential for personhood. But when the
potential for personhood is predicated of something other than an individual organism we, quite naturally, must feel uneasy.

Tooley wants to force the potentiality theorist to say that any action which prevents the conception of a child is morally equivalent to aborting a fetus or killing an infant. They are morally equivalent because both their intention and outcome is the same--they prevent a person from coming onstream. On this account, just because we can point to a fetus or an infant does not necessarily mean that the only relevant or significant kind of potentiality for personhood is the kind which inheres in existent things.

At this stage in our discussion it will be useful to briefly investigate the traditional usage of 'potentiality' in philosophy. What emerges is that 'potentiality' has historically been viewed as a special kind of 'possibility'. The Encyclopedia of Philosophy distinguishes five kinds of possibility: absolute, relative, epistemic, minimal probability, and possibility as ability. The latter has traditionally been called potentiality.

Possibility as ability. Possibility as ability, which corresponds to Aristotle's potentiality, is perplexing mainly to the extent that the notion of a subjunctive conditional is in mind when we wonder what a man can do under certain conditions--can he do twenty push-ups after that big meal? Is it possible for him to do so many? Here the notion of possibility is bound up with the notion of an ability, a capacity, or a capability of doing something under certain circumstances. And, roughly speaking, to have
such an ability, capacity, or capability is to be such that if in certain circumstances one were to want, will, intend, or so on to perform the action in question, one would be successful in performing it. Similarly, for inanimate things to have a certain ability, capacity, or even disposition is to be such that if under certain circumstances some specific thing were to happen or be done to it, a particular result (termed the manifestation of the capacity or disposition in question) would occur. In general, then, abilities, capacities, and dispositions, though there are important differences among them, may be said to be definable by sentences having the form of subjunctive conditionals. Accordingly, to the extent that the logic of sentences of this kind is well understood, the notion of possibility as capacity, ability, or propensity (either generally or in certain circumstances) may be said to be one of the least problematic categories of possibility.

It will be noticed that the above account of potentiality does not bear directly on the sorts of questions we are concerned with here, for the fetus is not really an inanimate object nor can it want, will, or intend to perform actions. Fortunately, we have recourse to Aristotle. The kind of potentiality relevant to our discussion was extensively discussed by Aristotle in his Metaphysics Book ⑨. As we shall see, it is quite possible that the concept of potentiality which potentiality theorists traditionally utilize derives directly from Aristotle.

(1048b36–1049a3) We must now specify when something is potentially another thing and when it is not; for it is not potentially another at any time. For example, is earth potentially a man? No, but rather when it has already become a seed, and perhaps not even then.
1. See later, 1049all-17

(1049all-1049a17) It is likewise with the others if the principle of generation is external, or even if this principle is in that which is potential and nothing external obstructs it from becoming by itself what it can be. For example, the seed is not yet potentially a man; for it must be placed in something else and change. And when it is already such that it can be moved by its own principle, it is then potentially a man; but prior to this it has need of another principle. It is like the earth, which is not yet potentially a statue, for it needs to be changed and become bronze.

5. That is, the moving cause.
6. In health and a house, which are products of art, the moving cause of what is potentially healthy or a house is art, which is external; but in what is by nature, the moving cause is in that which is potentially something else, as in the case of seed, which has the moving cause in itself.
7. "By itself" in the sense of moving cause, acting on the matter in which it exists, like a doctor healing himself.
8. Combine with the female material part.
10. That is, prior to this the seed needs another moving principle, the male must deposit it; and it needs the material principle in the female.

(1046a32-1046a36) But "privation" has many senses; for a thing is said to be deprived (1) if it does not have something, or (2) if it does not have what it should by nature have, either (a) not at all, or (b) not when by nature it should have it, whether in a certain way (for example, if it lacks it entirely) or in any way at all. In some cases, we say that things are deprived if by nature they would have something but by force they do not have it.

11. In this sense, a stone as well as a man may be said to be deprived of sight.
12. In this sense, a man may be said to be deprived of sight, but a stone is not said to be deprived of (or to have) sight.

Recall Tooley's delineation of potentiality:
For why should it make any difference whether the potentiality resides in a single organism, or in a system of organisms that are so interrelated that they will in the normal course of affairs, due to the operation of natural laws, causally give rise to something that possesses the property in question? Surely it is only the potentiality for a certain outcome that matters, and not whether there are one or more objects interacting and developing in a predetermined way to produce that outcome.

And again his footnote--

It is important here not to confuse potentialities with mere possibilities. The generalized potentiality principle does not deal with collections of objects that merely have the capacity to develop in certain ways. The objects must already be interrelated in such a way that in the absence of external interference the laws governing their future interaction and development will bring it about that the system will develop the property in question.

As we discovered earlier, it does not make sense to predicate potentiality for personhood of macro-systems. In the above, we see Tooley initially talking about inherent-potentiality with respect to systems. Then suddenly he invokes outcome-potentiality. And finally, he totally confuses us by talking about "mere possibilities" in his footnote. It is often the case that 'potentiality' and 'possibility' are used interchangeably. This is unfortunate for my purposes, because I hope to demonstrate that the potentiality theorist can successfully defend a notion of potentiality that relegates outcome-potentiality to the realm of mere possibility. This result, combined with the failure of inherent-potentiality for systems, will have the consequence that the potentiality theorist is not forced to accept systems as bearers of potentiality.
The traditional view of potentiality leaves no room for doubt on the matter of what kinds of things potentiality can be predicated of—only existent things. Tooley's idea of outcome-potentiality is foreign to the traditional view of potentiality. When Tooley frames his G.P.P. in terms of inherent-potentiality and advances his argument with statements like, "surely it is only the potentiality for a certain outcome that matters.", then clearly Tooley is equivocating. The 'potentiality' for certain outcomes or events is more properly characterized as the possibility of these outcomes or events. Consequently, not only can the potentiality theorist now respond to Tooley by insisting that his potentiality principle need not be expanded to admit possibilities, but he may legitimately resist the charge that in so doing he is being somehow inconsistent or philosophically arbitrary.

3. The micro-view of systems

We will now consider some modified Tooleyean formulations. Tooley might well accept as conclusive the demonstration here put forth that his argument for systems (on the macro-view) does not go through, and consequently he might reformulate his G.P.P. and the supporting argument to avoid the problems raised to this point. Thus, we might have a modified G.P.P. (M.G.P.P.), something like—
If there are any properties possessed by normal adult human beings which endow any organism possessing them with a right to life, then at least one of those properties is such that it is seriously wrong to perform any action that will prevent some system of entities, that are so interrelated that they will in the normal course of affairs causally give rise to something that possesses the property in question, from giving rise to that thing.

We must first ask, what collection of entities comprises a system? If we have one ovum and three hundred million spermatozoa in close proximity (as in intercourse after ejaculation), do we have one system or three hundred million systems? The latter alternative must be rejected since on no account would it be the normal course of affairs for such systems to develop personhood. Recall, Tooley himself stresses the importance of maintaining a distinction between potentiality and mere possibility. 'Systems' on this alternative would represent mere possibilities. Consequently, we are left to consider the former alternative.

There are many troubling aspects to the notion that it is a sensible attribution to make of a system composed of one ovum and three hundred million spermatozoa that it is a potential person. For one thing, when such a system succeeds in forming a zygote, so much of the original system (ie. 299,999,999 spermatozoa) is left out of what eventually becomes a person. But let us for the moment put this difficulty aside.

Consider the fact that individual acts of procreative
sexual intercourse have on average only something like a one in eight chance of resulting in conception. Thus it would seem that it is not the case that such a system (i.e., one composed of the ovum and the spermatozoa in its proximity subsequent to ejaculation) is one in which its constituent entities are so interrelated that they will in the normal course of affairs due to the operation of natural laws causally give rise to a person.

It might be argued that a further modification of G.P.P. is in order, i.e., one that operates over time in such a way that repeated use of contraceptive methods concomitant with acts of sexual intercourse must be viewed as a violation of such a modified G.P.P. Accordingly, even though it may be the case that isolated single acts, per se, involving contraception may not breach such a principle, the practice of contraception would be viewed as a breach. That is, for some spermatozoon and some ovum (although we can never know which ones) it would have been the case that conception would have occurred, if not for the use of contraception.

An immediate problem with this proposal arises in the following way. What then is "the system"? Is the system two sexual partners, or is it the 2.4 billion spermatozoa and one ovum involved in eight consecutive acts of sexual intercourse between the same sexual partners? The former alternative was considered and rejected under our treatment.
of the macroview of systems. The latter alternative presents further difficulties. There is no point in time at which all the 2.4 billion spermatozoa (of a system) exist together as a collection of entities. The system here must necessarily be composed of constituents, at any given time, some of which currently exist, some no longer exist, and some of which have not yet come into existence.24

The fact that our system is a spatio-temporal object should not in principle be a cause for concern. Everyone should agree that a fetus is no less a potential person just prior to birth than at conception just because most of the constituent molecules of the conceptus may no longer be there.

Let us for the moment grant the claim that a system of 2.4 billion ejaculated spermatozoa in close proximity with ova during intercourse over time can have the requisite potentiality to constitute a potential person. What about a similar system composed of sperm in the testes during intercourse just prior to ejaculation? Surely such a system must be deemed to have the requisite potentiality under the Tooleyan scheme. What then about a similar system composed of sperm in the testes just prior to intercourse? What about a similar system composed of sperm in the process of formation, i.e. spermatogenesis? What about all the food sexual partners ate which formed the molecules which formed the sperm and ova? Should not this food be considered a
potential person? Surely we now end up saying that just about every combination of molecules imaginable is a potential person. Extending the concept of potentiality to systems of entities (which might produce individual objects which then develop in certain ways) reduces the concept of potentiality to absurdity.

The potentiality theorist may conclude that the Tooleyean conceptual scheme is a perversion of our conventional notions about 'potentiality'. He may insist that the proper account is to view the system of separated spermatozoon and ovum as presenting the possibility of a potential person. And accordingly, the potentiality theorist will feel that he is in no way required to extend the right to life to merely possible future potential persons. And I believe, in this respect, we must side with the potentiality theorist.

One last modification to Tooley's argument here must be considered, and that is to simply omit talk of systems and altogether rid from 'potentiality' the notion of 'normal course of affairs'. So here we would understand Tooley to be disputing the historical view of potentiality, but from a different angle. From this point of view, Tooley's argument would proceed by characterizing any individual human spermatozoon as having very weak potential for personhood; any individual human ovum as having simply a weak potential for personhood. The argument would be couched in the
language of probability and statistics. Recall, the traditional view of potentiality in regard to the issue at hand is that only when conception occurs can we predicate of something that it is self-evolving— that it will (in the normal course of events and without external interference), as a result of a causal process set in motion by the genetic structure completed at conception, develop into a person. Tooley would then be construed as claiming that the capacity for self-evolution and the completed genetic structure are only a sufficient condition, not a necessary condition, for the presence of potentiality for personhood. Clearly, once conception has occurred, the zygote has a strong potentiality for personhood, but why refuse to look for potentiality at earlier stages in the causal process? Take for example gametogenesis, why not consider it as the initial stage of the causal process? The tactical move being made here is to argue that the traditional demarcation between potentiality and mere possibility based on self-evolution and complete genetic structure is philosophically arbitrary. Only probability and statistics can determine how strong the potentiality for any given entity is. Studies have revealed that roughly twenty percent of all human zygotes undergo spontaneous abortion. Hence, development to maturation of every zygote is by no means assured even without external interference.

Some potentiality theorists are willing to accept this
delineation of potentiality. They point out that the differences in probability are so great between the zygote on the one hand and individual ova and spermatozoa on the other that a potentiality principle framed in terms of 'strong potentiality' will, in practice, present them with no great problems. However, an opponent would ask why should the degree of potentiality make any difference? What would the potentiality theorist have to say if fifty percent of all zygotes underwent spontaneous abortion? Or even ninety-five percent? J.T. Noonan responds to this maneuver in the following way:

It may be asked, what does a change in biological probabilities have to do with establishing humanity? The argument from probabilities is not aimed at establishing humanity but at establishing an objective discontinuity which may be taken into account in moral discourse. As life itself is a matter of probabilities, so it seems in accord with the structure of reality and the nature of moral thought to found a moral judgment on the change in probabilities at conception. The appeal to probabilities is the most commonsensical of arguments, to a greater or smaller degree all of us base our actions on probabilities, and in morals, as in law, prudence and negligence are often measured by the account one has taken of the probabilities. If the chance is 200,000,000 to one that the movement in the bushes into which you shoot is a man's, I doubt if many persons would hold you careless in shooting; but if the chances are 4 out of 5 that the movement is a human being's, few would acquit you of blame. Would the argument be different if only one out of ten children conceived came to term? Of course this argument would be different. This argument is an appeal to probabilities that actually exist, not to any and all state of affairs which may be imagined. The probabilities as they do exist do not show the humanity of the embryo in the sense of a demonstration in logic any more than the probabilities of the movement in the bush being a man demonstrate beyond all doubt that the being is a man. The appeal is a "buttressing" consideration, showing the plausibility of the standard adopted. The argument focuses on the decisional factor in any moral
judgment and assumes that part of the business of a moralist is drawing lines. One evidence of the nonarbitrary character of the line drawn is the differences of probabilities on either side of it. If a spermatozoon is destroyed, one destroys a being which had a chance of far less than 1 in 200 million of developing into a reasoning being, possessed of the genetic code, a heart and other organs, and capable of pain. If a fetus is destroyed, one destroys a being already possessed of the genetic code, organs, and sensitivity to pain, and one which had an 80 percent chance of developing further into a baby outside the womb who, in time, would reason.

It seems to me that Noonan's bush argument does not do the work he thinks it does. The situation for contraception is substantially different in that such a practice virtually guarantees the prevention of the coming about of several progeny for conjugal mates over a long period of time. Would Noonan excuse the agent of the practice of shooting into the bush once a day for thirty years if such a practice normally resulted in the death of say ten individuals. Surely he would not. The potentiality theorist perhaps forgets too easily the force of the challenge issued by his opponents. If he can not satisfactorily demonstrate that conception is the demarcation point for the potentiality of personhood in the causal process of reproduction, then he is open to the charge that the practice of contraception is morally equivalent to the practice of murder.
F. Potentiality for personhood: why conception?

I believe the potentiality theorist can satisfactorily settle the potentiality demarcation question in the following way. Spontaneous abortions do not occur without reason or cause. A fetus doesn't just decide to eject itself from its mother's womb. Some of the causes of spontaneous abortions that have been brought to my attention are: psychological or physical trauma sustained by the mother (car accidents etc.); severe debilitating disease or poisoning sustained by the mother; and fetal death by disease, poisoning, or because of severe genetic defect. The following suggests itself. Unless the fetus was genetically doomed at conception, all the various causes of spontaneous abortions must be viewed as external interferences to the fetus' development. Just because there may not be any culpability (no person to blame for the abortion), this does not diminish the externality of the interference. When we evaluate a genetically normal, newly-formed zygote for potentiality for personhood it may seem to us if we come from a position of ignorance that it is fair to compare the randomness evidenced at the level of spermatozoa and ova to the chances of zygotes developing to full-term. But what emerges, from a position of knowledge of the biological principles involved, is that such comparisons are extremely misleading and misguided. A fetus that was genetically doomed at conception simply never had
any potentiality for personhood. All other fetuses had 100% full-fledged potentiality for personhood at the moment of conception. So we see now that the fact that one out of five zygotes will undergo spontaneous abortion can be no objection to a well articulated potentiality position. Just as an already existing person's potentiality for future personhood is not diminished by the fact that such and such a percent of all persons are killed by lightning every year (spontaneous annihilation), so must we evaluate "acts of God" as they affect potential persons.

The general strategy here is to deny the opponent his claim that a potentiality position can only talk about varying degrees of potentiality based on probability and statistics until the potentiality is realized. Such opponents are, once again, injecting the macro-view of outcome into their notions of potentiality. They refuse to view future capacity for psychological states in fetuses as they would for adults. For example, we do not say of someone that is asleep that he has merely a strong potential to become conscious, we simply say that he is potentially conscious. It is true that the outcome or event that he become conscious is not necessary-- he may die in his sleep or become comatose. The proposition 'so and so will become conscious' is not a necessary truth. However, it must be pointed out that if we knew enough facts about someone's health, we would be in a position to know whether or not he
would die say of a heart attack in his sleep, and so on, and consequently whether or not he will, without external interference, become conscious. The situation is very similar for consciousness in the fetus. If we know enough facts about its health (genetic and otherwise) we can determine whether, without external interference (and with nurture and succour), it will become conscious.

A possible objection to the foregoing argument should be considered as follows. It seems that the theory of 100% full-fledged potentiality outlined above is based on knowledge. Suppose we are in a position to know whether, without external interference, a particular sperm and ovum will unite to form a zygote. If we can give an affirmative answer in a particular case, does this not mean that the sperm and ovum while separated (considered together) form a potential person? Whether we call the separated sperm and ovum a system or an entity should be irrelevant.

My response to this objection is two-fold. First, the kind of knowledge involved in coming to know whether a newly formed zygote has the potential to become a person, and the kind of knowledge involved in coming to know whether a particular sperm and ovum will unite and therefore have at the preconception stage the potential to become a person, are, I submit, significantly different kinds of knowledge. The former kind of knowledge involves merely looking at the existing properties (i.e., genetic and cellular make-up) of a
candidate to ascertain whether it is in its nature to become a person. The latter kind of knowledge involves nothing less than omniscience, ie. sufficient knowledge to predict the outcome of countless forces and events impacting on spermatozoa and ova prior to conception. The latter kind of knowledge based potentiality can result in the truth of claims such as-- the system composed of two sandwiches consumed by sexual partners some time before intercourse is a potential person. It is the kind of potentiality that inclines us to trace back in time every atom of every molecule which ends up in a newly formed zygote enabling us to create, at every further step back in time, an ever-widening net of entities which collectively have the potential to become a person, until eventually we must say that almost every collection of entities imaginable is a potential person.

The potentiality theorist, once again, asserts that this is a perversion of the concept of potentiality. If potentiality is to mean more than 'everything is potentially everything else', then the latter kind of knowledge based potentiality must be rejected.

Often it is necessary in philosophy to draw lines in the foundations of important concepts like potentiality. Clearly, my account of potentiality is a line drawing of a kind. The question arises, why is my line drawing sensible and philosophically non-arbitrary?
I am drawing a line in the causal process of the reproduction of living things. I am saying that until conception is reached there is no potentiality for personhood. One answer to the above question is that drawing the line at any earlier juncture results in the absurdity of the concept of potentiality. More importantly, conception marks a discrete point in the causal process of reproduction unlike any other. Once the genetic structure is complete, the resulting entity (the zygote) has the capacity for self-generation in a way significantly unlike earlier junctures in the causal process. From the moment of conception, the process leading to the formation of a person is more of an unfolding of events in accordance with a fixed internal design. Whereas before conception, the process is more random-like and in no comparably significant way can the design of unfolding events be attributed to the system of entities in question. Furthermore, zygotes are the kinds of things for which the future ordinarily holds personhood— it is part of their normal development. Whereas this can not be said of subjects at earlier junctures (sperm, ova, sandwiches, etc.), i.e. that they are the kinds of things that normally develop into a person. To be sure, subjects, or "systems", at earlier junctures, to varying degrees, sometimes do give rise to persons. Intrinsically to the concept of potentiality is the notion that the subject has achieved a state of being at which it will,
without external interference, become something which is in its nature to become. Sperm, ova etc. have not reached the state of being where it can be said for any given subject that it is part of its normal development to become a person.

Some philosophers may remain unconvinced by the potentiality theorist's line drawing, and at this point might argue that the concept of potentiality must be irretrievably absurd. That is, the result earlier obtained that everything is potentially everything else, points to the absolute absurdity of the concept of potentiality and no amount of maneuvering by the potentiality theorist to rescue a concept of potentiality from absurdity can succeed without becoming absurd. If this is true, then much is lost in the way we can talk about the world. In particular the concept of an undeveloped capacity is lost (as well probably the concept of a capacity itself). However, one must wonder how many metaphysical concepts could withstand as severe scrutiny as 'potentiality' has here undergone and survive.

It perhaps would be useful now to briefly summarize our progress to this point. We discovered first that it does not make sense to predicate personhood of systems as Tooley actually does in his statement of G.P.P. We then discovered that in Tooley's supporting argument for the extension of M.P.P. to include systems, he used two fundamentally different concepts of potentiality. The manner in which he
made use of these two different concepts arguably constitutes an equivocation. In any case, it was found that a suitably comprehensive, non-arbitrary, and philosophically sound concept of potentiality could be adopted by a potentiality theorist which would enable him to successfully resist the imposition of systems on his potentiality principle.
G. Preventative acts

Recall that G.P.P. differed from M.P.P. in two respects. First, G.P.P. talked about systems where M.P.P. talked about single organisms. And secondly, G.P.P. talked about preventative acts where M.P.P. talked about destructive acts. We have already disposed of the former modification of M.P.P.; the latter modification remains to be dealt with. Accordingly, we must understand Tooley to be arguing for something like the following:

If there are any properties possessed by normal adult human beings which endow any organism possessing them with a right to life, then at least one of those properties is such that it is seriously wrong to perform any action that will prevent an organism, which otherwise would have developed the property, from developing the property in question.

Now, since gametes are not, strictly speaking, organisms, I am sure that a potentiality theorist would have no qualms with such a modification. However, I am also sure that Tooley would wish to substitute something like "biological entity" for "organism" in the above. In such a way Tooley would be seen to be arguing the point that the practice of contraception is a violation of the above principle, because it prevents individual ova or spermatozoa from developing into persons. However, as we saw in our discussion about systems (in particular the arguments concerned with the micro-view of spermatozoa and ova), a potentiality theorist can successfully defend a notion of potentiality which enables him to legitimately resist the
charge that in all consistency he must view contraception to be a violation of his potentiality principle.

Although Tooley's move from the concept of killing to the concept of 'preventing the development of personhood' is one a potentiality theorist should not in principle object to (as qualified above), Tooley's supporting argument for preventative acts is somewhat flawed. Recall Tooley's supporting argument for the expansion of M.P.P. to include preventative acts--

The second difference is that the original and modified potentiality principles deal only with the destruction of organisms, while the generalized principle deals with any action that prevents an organism, or a system from developing the relevant property. I think that the conservative on abortion would certainly want to accept this generalization. For suppose that by exposing a human zygote to appropriate radiation one could transform it into a frog zygote. A woman could then enjoy a two-step abortion: first the human zygote would be transformed into a frog zygote, and then the frog zygote would be destroyed. Assuming that one does not view the destruction of a frog zygote as seriously wrong, one must either hold that it is seriously wrong to prevent a human zygote from developing its potentialities, or else conclude that the two-step abortion technique is morally permissible. The latter option would not appear to be a viable one for the conservative. For why should it be morally permissible to destroy a human organism in two steps, one which limits its potentialities and the other of which destroys the resulting organism, but seriously wrong to collapse these two steps into one, limiting its potentialities and destroying it by a single action? I think that an advocate of the extreme conservative view of abortion would agree that there is no significant moral distinction here, and thus would accept the second generalization involved in the expanded potentiality principle.

In G.P.P., the concept of killing\textsuperscript{31} is replaced by preventing from developing. But in the above passage Tooley talks about destruction not killing. The problem here is
that Tooley has confused the concepts of killing and destroying. Destruction, in so far as it includes in its ambit the processes of change and transformation, does not necessarily involve killing. Moreover, when a potential person changes into an actual person there is a sense in which the potential person is destroyed. Consequently, since the potentiality theorist does not want it to come out under his principle that acts which facilitate the bringing about of the actual person from a state of potentiality are morally wrong, he must resist the insinuation of the concept of destruction into his potentiality principle.

There seems to me to be a mistake in Tooley's characterization of the two-step abortion. The first step (radiating the human zygote into a frog zygote) is more than a simple transformation—it is the destruction of a potential person. The second step is more than a destruction, it is a killing. My point here is simply that Tooley's two-step abortion argument does not do the work for him that he thinks it does. That is, Tooley's first step (radiating the human zygote) destroys the potential person in a way that the potentiality theorist is entitled to reject. Consequently, Tooley's two-step abortion argument does not persuade the potentiality theorist to accept 'preventing from developing'.

In conclusion, I believe the potentiality theorist would give limited approval to the inclusion of preventative
acts into his potentiality principle. For example, radiating a human zygote in such a way as to frustrate the development of all higher-order mentation— to create a human "vegetable". However, the potentiality theorist would certainly reject any proposal to apply this modification to subjects at earlier junctures in the reproductive process, such as human ova or spermatozoa, and, as we have seen, he is fully entitled to such a rejection. Tooley's attempt to maneuver the potentiality theorist to accept G.P.P. has been clearly demonstrated to be a failure. The potentiality theorist need not accept G.P.P. on the basis of M.P.P. We turn to Tooley's second attempt to assail M.P.P.
H. Tooley's moral symmetry principle

Tooley's second and final argument against M.P.P. is his now famous "kitten argument". Tooley's kitten argument begins by establishing what Tooley calls his moral symmetry principle with respect to action and inaction. By means of a series of maneuvers and applications of this principle Tooley obtains the result that the act of abortion is morally equivalent to refraining from engaging in procreative sexual intercourse. However, the crucial thing for Tooley is to get us to accept his moral symmetry principle (hereafter M.S.P.):

Let C be a causal process that normally leads to outcome E. Let A be an action that initiates process C, and let B be an action, involving no risk and a minimal expenditure of energy, which stops process C before outcome E occurs. Assume further that actions A and B do not have any other consequences, and that E is the only part or outcome of C which is morally significant in itself. Then there is no moral difference between intentionally performing action B and intentionally refraining from performing action A, assuming identical motivation in both cases.

As Tooley correctly points out, philosophers have traditionally drawn a distinction between "positive duties" and "negative duties". That is, the difference between what we owe people in terms of noninterference (refraining from killing for example) and what we owe people in terms of aid (saving somebody's life). The abrogation of negative duties has generally been considered by philosophers to be morally most serious, whereas the breaching of positive duties has been generally considered to be relatively less
serious. Tooley presents the following example to illustrate his argument:

(1) Jones sees that Smith will be killed by a bomb unless he warns him. Jones' reaction is: "How lucky, it will save me the trouble of killing Smith myself." So Jones allows Smith to be killed by the bomb, even though he could easily have warned him. (2) Jones wants Smith dead, and therefore shoots him. Is one to say there is a significant difference between the wrongness of Jones' behaviour in these two cases? Surely not. This shows the mistake of drawing a distinction between positive duties and negative duties and holding that the latter impose stricter obligations than the former.

Tooley's example seems intuitively plausible, but suspiciously contrived (Jones announces his former intention to (actively) kill Smith). Consider the following counterexample. (1) A friend of mine, M, asks me to have sexual relations with her in order that she become pregnant and obtain a baby for which she will be totally responsible. I agree. Six months into her pregnancy I shoot her in the abdomen and kill her baby because I feel that she would make a terrible mother. (2) M makes the same proposition but I turn her down because I believe that M would make a terrible mother. Tooley might object that my example as it is framed does not fall within the restrictions he has laid out. In particular, that in my example the outcome—no person being actualized, is not the only morally significant outcome of the process. The action of shooting M is morally significant in itself in that it constitutes a grave assault with the possible consequence of serious harm to M. Furthermore, there is M's trauma associated with the forced
loss of her baby. Recall, Tooley has specified that the initiating action (A) and the interfering action (B) must have no other consequences and that the outcome (E) indicated must be the only morally significant outcome of the causal process (C). Clearly, my example as framed falls outside the ambit of such a principle. However, we must ask, as far as an abortion (a B-type interfering action) is concerned, is the prevention of a person from being actualized the only morally significant part of the process? Or, put in another way, is a person coming onstream the only morally significant part or outcome of the causal process of reproduction? A potentiality theorist would claim that the formation of a human zygote is a morally significant outcome in itself which suffices to distinguish 'refraining to engage in procreative sex' from 'conceiving a child and then aborting it'. But, of course, Tooley would deny that the formation of a human zygote constitutes a morally significant outcome and assert that, since their motivations are identical, the inaction of refraining to conceive and the action of abortion are morally equivalent (by the M.S.P.).

It seems strange that Tooley does not anticipate what would seem to be the natural response of a potentiality theorist here, and consequently we have no indication of how Tooley would go about denying the moral significance of the creation of a potential person. In any case, since it is
Tooley who has taken it upon himself to persuade the potentiality theorist of the unacceptable consequences of M.P.P., the onus is on Tooley to address this issue.35

Another problem with the M.S.P. is the requirement of identical motivation. Consider the following example by Richard Louis Trammell:

(1) Jones sees that Smith will be killed unless he warns him. But Jones is apathetic. So Smith is killed by the bomb even though Jones could have warned him. (2) Jones is practicing shooting his gun. Smith accidentally walks in the path and Jones sees Smith; but Jones' reaction is apathy. Jones pulls the trigger and Smith is killed.

Although Jones' apathy in (1) may be wrong, his action in (2) is clearly more seriously wrong. This points to, I believe, the conclusion that there is a stronger connection between wrongness and the consequences of one's actions than between wrongness and the consequences of one's omissions. This moral difference is probably rooted in our concept of responsibility. There is a clearer link between responsibility and the consequences of one's actions than between responsibility and one's omissions. The more it can be said that one is responsible for someone needing to be saved the greater the moral compulsion to so act. In the above example, we say that because Jones is engaging in an activity (shooting his gun) which has potentially dangerous consequences he has a greater responsibility to take care than if he was simply standing around doing nothing. Jones' apathy in (2) is probably morally equivalent to murder.
Jones' apathy in (1), though morally serious, is less so than in (2) because Jones is not responsible for Smith needing to be saved. The conclusion from all this must be, I believe, that one has greater responsibility to foresee the consequences of one's actions and to take care that no one is thereby harmed than to foresee the consequences of one's omissions and take such care.

One commits a finite number of actions in any given day; however, one "commits" an infinite number of omissions. Clearly, to hold individuals responsible for their omissions, without careful circumscription, is to invite disaster. Although, there may be cases where moral symmetry between action and inaction may seem appropriate, to extrapolate from such cases as Tooley has done with his M.S.P. is unwarranted. 37

As we have seen, various attempts to assail M.P.P. have met with no substantial success. However, we must not forget that M.P.P. does not claim that the fetus has a right to life (as P.P. does), but rather that it is morally wrong to kill it. To claim that the fetus has a right to life is to say something much stronger than that it is morally wrong to kill it.

We must conclude, I believe, on the basis of our endeavour so far, that the integrity of potentiality theory can be secured when well articulated principles are framed in terms of the moral wrongness of abortion. Put simply,
such principles are consistent and tenable. We now turn to the right to life question and we will use, once again, Michael Tooley's commentary as a departure point for our examination.
I. Rights and desires

Tooley's basic claim in regard to rights is as follows:

...there is a conceptual connection between, on the one hand, the rights an individual can have and the circumstances under which they can be violated, and, on the other, the existence in him of the corresponding desires. The basic intuition is that a right is something that can be violated and that, in general, violation of an individual's right to something involves frustrating the corresponding desire.

In so far as the right to life is concerned, Tooley argues that in order for someone to desire to continue to live, he must first be able to conceive of himself as a continuing subject of experiences and other mental states. That is, he must be self-conscious. Of course, one consequence of this view is that neonates and young infants can not have the right to life (because they lack the concept of their own lives). Tooley, and others, remain undaunted by this result. Furthermore, the Tooleyean view suggests that it is unlikely that neonates and young infants can have any rights whatsoever. It can be argued that, under the Tooleyean view, in order for desires to translate into prima facie rights, we must first presuppose that a person is doing the desiring. Take for example the right to bodily security. Is it not necessary in order for someone to desire not to have his bodily security violated that he have a concept of his 'self' existing in a body of spatio-temporal continuity? Surely any proposed Tooleyean right can be, and perhaps must be, construed in this way? It
seems that 'desires' may not be simple things. It would seem that desires are necessarily 'self' centered things. If I desire such and such for myself, then must I not have a concept of my self as a continuing subject of experiences and other mental states?

Tooley might object to the sweeping generalization about rights (i.e. self-consciousness as a prerequisite for rights) which I suggest his general claim concerning rights leads to. Elsewhere he mentions that kittens can have the right not to be tortured and, presumably, we can conclude that fetuses could have the right not to be subjected to unnecessary pain when abortions are to be performed on them. Tooley's explanation for this exception is that—

...the desire not to suffer pain can be ascribed to something without assuming that it is capable of envisaging a future for itself, or of forming the concept of a self, or of being self-conscious. For while something that is incapable of possessing the concept of a self cannot desire that a self not suffer, it can desire that a given sensation not exist. The state desired—the absence of a particular sensation—can be described in a purely phenomenalistic language, and hence without the concept of a continuing self. So long as the newborn kitten possesses the relevant phenomenal concepts, it can truly be said to desire that a certain sensation not exist.

One might wonder why it is that the desire not to suffer pain can be the only rudimentary type of desire. Why not include the desire to continue to experience pleasure? If such a desire were granted fetuses (at least late-term), then could not one infer from the desire to continue to experience pleasure a desire to continue to live in order to
experience continued pleasure, at least on a rudimentary level? That is, is not the desire to continue to experience pleasure an expression of the desire to live?

Some would argue that any attempt to derive a right to life from rudimentary desires amounts to granting animals the right to life on the basis of their instinctual desire for survival. Only persons can have both instinctual desires (for example withdrawing one's hand from accidental contact with a hot stove) and conceptual desires (having a concept of the relation between pain and one's $self$). And, it only makes practical sense to limit rights to those capable of the latter. Otherwise, we would be placing ourselves in the untenable position of attempting to ascertain the "desires" of our animal population.

The conclusion here must be, I believe, that the Tooleyean view of rights can not embrace both conceptual and rudimentary desires and still consistently maintain that only persons have the right to life. Of course, one consequence of this end-result is that, in principle at least, animals and young infants could be tortured (because they lack the right not to be tortured). Clearly, this must be seen to detract from the Tooleyean theory of rights.

To be sure, Tooley's account of rights is not as simplistic and rigid as I have portrayed. Tooley sets out four conditions under which rights can be violated:
(1) An action is performed at time t that prevents state of affairs S from obtaining at time t*, and individual A desires at time t that state of affairs S obtain at time t*.

(2) An action is performed at time t that prevents state of affairs S from obtaining at time t*, and although individual A is not capable at time t of desiring either that S obtain at time t*, (a) there is some time interval, immediately preceding that in which A is incapable of desiring either that S obtain or that S not obtain at time t*, during which A did desire that S obtain at time t*, and (b) it is possible that there will be some later time t' at which A would, if A were to exist at that time, desire that state of affairs S obtain at time t*.  

(3) An action is performed at time t' that prevents state of affairs S from obtaining at time t'*; and although individual A does not desire at time t' that S obtain at time t'*; either because A is incapable of having that desire, or because there is some relevant information that A does not possess at that time, there is some later time t at which A will exist and at which he will desire that state of affairs S obtain at time t*. And finally, the action that prevented S from obtaining at time t'* also prevents S from obtaining at time t*.  

(4) All of the following things are true:
1. An action is performed at time t' which prevents state of affairs S from obtaining at time t'*;
2. Individual A does not desire at time t' that state of affairs S obtain at time t'* because one or more of the following things is the case:
   (i) Individual A is incapable of having such a desire at time t';
   (ii) Individual A lacks certain relevant information;
   (iii) Individual A has been subjected either to psychological conditioning or to physiological treatment that has made it the case that he does not desire at time t' that state of affairs S obtain at time t'.
3. There is some time t, either identical with t' or later than t', at which all of the following conditions will obtain:
   (i) Individual A will exist at time t;
   (ii) A will be capable at time t of desiring that state of affairs S obtain at time t*;
   (iii) Individual A would desire at time t that state of affairs S obtain at time t* if he
had not been subjected either to psychological conditioning or to physiological treatment to bring it about that he not desire that state of affairs \( S \) obtain at time \( t^* \);

4. The action that prevented state of affairs \( S \) from obtaining at time \( t'^* \) also prevents \( S \) from obtaining at time \( t^* \).

Condition (2) allows one to say that persons who are temporarily unconscious presently have rights that can be violated (clause (a)), but persons in an irreversible coma do not (clause (b)). Tooley asserts that the correct account of condition (3) is that an action may be wrong now "because it violates a right that the person will later have." 46 Consequently, fetuses and neonates do not get present rights out of condition (3). Condition (3) also allows one to say that a person can have a right to \( S \) without having, or having had, the corresponding desire for \( S \) due to his having a lack of the relevant information, so long as he will later come to desire \( S \). A possible objection to (3) is the situation where the action at time \( t' \) effectively frustrates the capacity of the subject to ever desire \( S \). For example, deliberately destroying the parts of the brain in a neonate responsible for higher order mentation. One might wonder—why the requirement that \( S \) be desired some time in the future? Surely, it is clear that had such a neonate been allowed to develop higher order mentation it would have found such mentation desirable.

Condition (4) allows one to say that subjects whose
desires have been "warped" by psychological or physiological means not to desire S, may nevertheless have the right to S violated if there is some time at which the subject is or will be capable of wishing that the S-depriving action had not occurred, and at which he would so wish had he not been so "warped". Once again, we see in condition (4) the requirement that the subject acquire personhood (clauses 3.(1) and 3.(2)), without which no right to S can be violated. Thus, if one were to deliberately undertake a program of "warping" a neonate's desires, as long as the child died (even by murder) before it acquired personhood, no rights (of the child) would thereby be violated.

A consistent thread in Tooley's rights theory is that in order for a subject to have rights we must know that the subject either is or was a person, or will acquire personhood some time in the future.

In (1) the subject must presently be a person. In (2) the subject must previously have been a person. In (3) and (4) the subject must become a person some time in the future. In Tooley's own words "one is not to consider the desires that an individual would have if he were to exist at certain times at which he in fact will not exist". We will consider in detail Tooley's justification for this stipulation in Chapter II. What follows in the remainder of this Chapter is intended to serve as a preliminary rejoinder to Tooley's basic idea about the necessary
connection between rights and desires.

Self-consciousness as an attribute is certainly a morally relevant difference which could serve to form the basis of the distinction between those individuals who can be considered to be moral agents, from those who cannot. A potentiality theorist need not quarrel with this. However, Tooleyean rights theory fails to show more than this. A desire, or at least an absence of desire for a particular thing, may at times be relevant when individuals wish to forego their right to a thing (the giving of gifts, foregoing options to buy etc.). However, there is a fundamental sense in which desires have no bearing on rights. Can any one really waive his/her fundamental human rights? There is a sense in which we believe that people have fundamental human rights (especially the right to life) regardless of the nature of their own desires with respect to them. Do we really care, of someone that has been murdered, that he did not really desire to continue to live? I think not. When fundamental human rights are involved, we tend to view violations of them as an affront to all of us in a society (or even to mankind as a whole). The right to life, our concern here, can arguably be considered to be the most fundamental of human moral rights and hence what has been said must be all the more persuasive.

We have seen that the integrity of a well articulated potentiality principle framed in terms of the right to life
can be secured. This is to say that a potentiality theorist can grant the fetus a right to life without thereby committing himself to obvious absurdities, contradictions, or inconsistencies. Moreover, he can not thereby be shown to be philosophically arbitrary.

The potentiality theorist can legitimately claim, I believe, that his position is tenable. But what can he say to the dispassionate and non-partisan observer to recommend his position over his opponents'. We now turn to this question.
CHAPTER II

POTENTIALITY OR ACTUALITY?

A. The Feinberg/Benn analysis

We have seen that a well articulated potentiality position can adequately answer objections which impugn it on the basis of unworkability or arbitrariness. We now turn to a further avenue of criticism, one which is encapsulated by Joel Feinberg and Stanley Benn. This will serve, moreover, as a departure point for further exploration and clarification of important features of a well-defined potentiality position.

The remaining difficulty for the strict potentiality criterion is much more serious. It is a logical error, some have charged, to deduce actual rights from merely potential (but not yet actual) qualification for those rights. What follows from potential qualification, it is said, is potential not actual, rights; what entails actual rights is actual, not potential, qualification. As the Australian philosopher Stanley Benn puts it, "A potential president of the United States is not on that account Commander-in-Chief (of the U.S. Army and Navy)." This simple point can be called "the logical point about potentiality". Taken on its own terms, I don't see how it can be answered as an objection to the strict potentiality criterion. It is still open to an anti-abortionist to argue that merely potential common sense personhood is a ground for duties we may have toward the potential person. But he cannot argue that it is the ground for the potential person's rights without committing a logical error.

On a certain reading of the above passage, it appears that Feinberg is making a rather trivial and obvious point. That is, given that the fetus is only potentially qualified for the right to life, it would be illogical to conclude from this potential qualification that the fetus has a right
to life. However, the whole tenor of the passage (especially the first sentence and last two sentences) suggests that Feinberg is making a number of implicit claims and arguments which go far beyond the trivial and obvious point.

The Feinberg/Benn analysis assumes that a potential person is only potentially qualified for any of the rights of actual person: "It is a logical error... to deduce actual rights from merely potential (but not yet actual) qualification for those rights." The president of the U.S. analogy is touted as a decisive instantiation of the "logical point about potentiality". However, there is a fundamental disanalogy between the right to life issue and the right to exercise supreme command over the U.S. Army and Navy. Everybody agrees in the latter case that the requisite qualification for right ascription is actually being the U.S. president. In the right to life issue it is exactly what the requisite qualifications are for this right which forms the basis of the dispute. To assume that a potential person is only potentially qualified for the right to life is to beg the question. 52

The so-called "logical point about potentiality" itself implicitly contains a logical error. To illustrate this consider the following: all actual persons have eyes, therefore all potential persons can only potentially have eyes. The latter argument fallaciously presumes that actual
and potential persons can not share common traits or properties. Is it necessarily absurd that actual persons and potential persons have some rights in common? Consider the right not to be subjected to cruel and unusual punishment or treatment. These are rights under the Canadian Charter of Rights assigned to neonates (potential persons) as well as persons. Moreover, it may even be true that some non-persons such as dogs, say, have a right in common with persons (possibly the right not to be tortured). Clearly, it is illogical to conclude from the fact that persons have the right to life that therefore potential persons can only be potentially qualified for the right to life. For, such a conclusion would require the presumption that potential persons can not have any rights in common with actual persons. And surely such a presumption can not be permitted without extensive and rather formidable argumentation.

The 'potentiality' of 'a potential president of the U.S.' and 'potentiality' of 'potential person' are improperly equated as one and the same in the Feinberg/Benn analysis. As delineated earlier, when a potentiality theorist talks about potential for personhood he means the genetic capacity for the valued states of consciousness—of what will come about through the normal physiological development of a human being. To say that I am a potential pilot or teacher, for example, is to talk about what is
within my power or ability to do if I make certain decisions and meet certain qualifications—fulfil certain educational requirements. Such potentiality is fundamentally about intentional behaviour. To say that one is a potential president, although somewhat related to one's powers and decisions, is more like saying that it is possible that one may become president if certain events, largely outside one's control, occur. Such potentiality is fundamentally about the possibility of certain events. Unfortunately, yet clearly, potentiality has many meanings. I suggest that it is an equivocation to argue that since a potential president is only potentially entitled to the rights of a president then it must be the case that a potential person is only potentially entitled to the rights of a person.

The Feinberg/Benn analysis, though seductive at first glance, proves unsound. However, I believe that it points to the lesson that the potentiality theorist may do better to alter his vocabulary in order to clarify the confusion about 'potentiality'. Many commentators on the abortion issue have already done so. They no longer speak exclusively in terms of potential/actual persons, but in terms of developed/undeveloped genetic capacities for valued states of consciousness. I believe this more precise vocabulary will serve to bring the dispute into sharper focus and circumvent the ambiguities of the language of
potentiality. Under this scheme, the potentiality theorist is understood to claim that with conception a human being has the right to life because from that moment on it has the genetic capacity, though undeveloped, for the valued states of consciousness. The opponents of potentiality assert that fully developed genetic capacity for the valued states is required for the right to life. The dispute then is largely about what kind of capacity is required—developed or undeveloped. In order to avoid possible problems about the concept of capacity, I should note that I am here simply using 'undeveloped capacity' to denote 'potentiality' as delineated earlier and 'developed capacity' to denote 'actuality'.
B. Developed or undeveloped capacity?

In order to resolve the dispute in his favour, the potentiality theorist resorts to a further refinement of his argument. Is it the prior presence of the valued states of consciousness combined with their expected existence in the future that is necessary and sufficient for a right to life, or is it merely their expected existence in the future that is necessary and sufficient. The potentiality theorist argues for the latter position and his opponents incline toward the former.

Let us consider some of the various possible combinations of past, present and future capacities for valued states of consciousness. It is clear that the present existence of valued states is not necessary for the right to life, otherwise temporarily unconscious persons would lose their right to life. It is also clear that the prior existence of valued states alone is not sufficient for a right to life, otherwise dead human corpses would retain a right to life. Although one might be prepared to say that present combined with prior possession of valued states is sufficient for the right to life, the combination is not necessary as the case of temporary unconsciousness demonstrates. The case of present combined with future possession of valued states is rather interesting. Again, one might be prepared to say that present combined with future possession of valued states is sufficient for the
right to life, but the combination is not necessary. However, this case would then suggest that the prior possession of valued states is not necessary to the right to life, a conclusion that many opponents of potentiality theory almost certainly would wish to avoid.

The question remains, however, whether the prior existence of valued states is necessary for the right to life. Michael Tooley's Frankenstein example will serve as a useful starting point in our analysis of this crucial issue:

Let us suppose that technology has advanced to the point, first, where it is possible to construct humans in the laboratory from inorganic compounds. Second, that it is possible to freeze animals, including humans, and then to thaw them out without damaging them. Third, that it is possible to program beliefs, desires, personality traits, and so on into an organism by bringing about certain brain states. Given these technological advances, suppose that we put together an adult human in the laboratory, carrying out the construction at a temperature at which the organism is frozen. We program in some happy set of beliefs, desires, and personality traits. If we now thaw out the organism, we will have a conscious, adult human with beliefs, desires, and a distinct personality. But what if, as a result of all this work, we have developed ravenous appetites, and rather than thawing out the organism, we grind it up for hamburgers? Our action might be economically unwise and subject to culinary objections, but would it be open to moral criticism? In particular, would we be guilty of murdering an innocent person? I think most people would agree that the answer is no. Until the organism has been brought to consciousness, and until it envisages a future for itself, and has hopes and desires about such a future, one does not violate anyone's right to life by destroying the organism.

First off, we should see that Tooley has muddled the issue somewhat. That is, he asks if one would be guilty of murdering an innocent person by destroying the frozen
Frankenstein and infers from the negative answer that no one's right to life would thereby be violated. Tooley forgets that a potentiality theorist might well agree that no innocent person had been killed, but a right to life had been violated nevertheless.

Tooley's invocation of "what most people" would think should make us feel uneasy in view of the rather fantastic nature of his example. It appears then that his argument for the prior necessity of valued states of consciousness depends almost exclusively on this rather dubious appeal to intuition.

There are three important disanalogies which should be noted between the abortion issue and Tooley's Frankenstein example. First, just as in the case of the terminally ill or the reversibly comatose, we may not always have a duty to take extraordinary measures to bring about life in our frozen Frankenstein even if he was entitled to the right to life. That is, although the terminally ill and the reversibly comatose may have the right to life, this right does not necessarily impose a corresponding duty to take every possible measure to ensure continued existence. The allocation of scarce medical resources is a difficult and controversial topic itself, and I will say no more about it. The fetus, however, is in a completely different position. There is no question here, at least in the standard case, of a duty to take measures to ensure continued life, but rather
a duty to refrain from taking measures which terminate life. Although, I realize that Tooley has framed his example so as to avoid the possible problems of the active/passive distinction, I believe the distinction I have drawn is important nonetheless in view of Tooley's broad appeal to our intuitions about the frozen Frankenstein's situation.

Secondly, the frozen Frankenstein is not and never has been a living being. There are radically different intuitive responses involved here, i.e. between one's response to the destruction of inanimate and animate objects. I am sure that Tooley would argue that the difference stems from the absence of prior valued states of consciousness. That is, if instead of our Frankenstein we substituted a person who had become frozen in a chance mishap of some kind then our intuitions about his destruction would be radically different. This difference would be accounted for by the prior presence of valued states combined with the expectation of future states (in virtue of the advanced technological methods).

Thirdly and finally, the frozen Frankenstein is not a potential person in accordance with the delineation of potentiality' laid-out in our preceding chapter. This dissimilarity is fatal to Tooley's ostensible aims here. That is, the potentiality theorist is not required out of consistency to support the right to life of the frozen Frankenstein as Tooley seems to suggest. Recall, Aristotle
wrote that not until the efficient cause (that by which change is wrought) of generation is internal to a thing can it be considered a potential person (see p. 22). Clearly our frozen Frankenstein is not such a thing. The frozen Frankenstein quite obviously requires considerable human intervention (the "thawing-out" process) until its body can be said to be self-generative or alive. Of course, since Tooley's account of how exactly a frozen Frankenstein would hypothetically go from the frozen state to the actualized person stage is conveniently omitted, we can only speculate on the specifics of this point. However, it is unlikely that such a process would be as simple as leaving a frozen package of hamburger on the counter to thaw-out. But even if it were that simple, it would still require some positive act (flipping the defrost switch?; taking the Frankenstein out of the freezer?).

1. Potentiality in focus

Before returning to our original question (the prior necessity of valued states of consciousness), it would perhaps be useful to clarify some loose ends about 'potential persons' that Tooley's Frankenstein example indirectly elicits. For example, are test-tube zygotes (as in in vitro fertilized test-tube babies) potential persons? Recall, the potentiality theorist is already committed to the view that in vivo fertilized zygotes are potential
persons, and hence, the use of the I.U.D. (prevents implantation of the zygote on the intra-uterine wall), which prevents the zygote's development into a person, constitutes a violation of the right to life of such a zygote. Therefore, for the potentiality theorist to deny a right to life to in vitro fertilized zygotes might seem arbitrary. Moreover, there is no doubt that the in vitro zygote meets the Aristotelian criterion of internal generation.

The question of concern here is whether the genetically normal non-implanted in vitro fertilized zygote can be said to be such that, without external interference, it can be expected to develop into a person. Recall, in general, it is not considered to be a violation of some endangered person's right to life to refrain from saving him. However, if one is directly responsible for someone needing to be saved it is a generally accepted principle that one must undertake actions to do so. Therefore, if it turns out that test-tube zygotes are potential persons, a compelling case can be made that the potentiality theorist must support the notion that the gamete donors, and perhaps even the medical doctors involved, are collectively responsible for ensuring the continued existence of such zygotes. However, if such a case can not be successfully made, the potentiality theorist need not be committed to the view that failure to provide systems of support (namely intra-uterine implantation of in vitro zygotes) violates a right to life. In any case, to
deliberately undertake acts which destroy in vitro zygotes or in some active (as opposed to passive) way interfere with their development may be morally equivalent to murder (given such zygotes have a right to life in the first place). Therefore, we must first endeavour to answer the question—must a candidate for the status of potential person be in a position whereby absent only external interference it can be expected to develop into a person, or, absent both external interference and supportive intervention it can be expected to develop into a person?

Let us examine the former view of 'potentiality'. With supportive intervention, in vivo prenates, neonates and young infants all can be expected in the normal course of affairs to develop into persons; hence, under this view they would all be potential persons. But can it truly be said, in view of the current imperfect technology involved, that in vitro prenates, with supportive intervention (medical doctors, female recipients), can be expected in the normal course of affairs to develop into persons? That is, it is a fact that in vitro fertilized zygotes often do not "take" upon implantation. Does this diminished expectation of development impact on their potentiality? I believe an answer here can be found in the parallel with severely premature babies. The prospects of many premature babies are poor with current incubation technology. Are such babies therefore not to be considered potential persons? I
believe the common intuition would be to the contrary. Intuitions aside, recall in our preceding chapter, in our consideration of spontaneous abortions, we discovered that it made good sense to give broad scope to the notion of "external interference". External interference is simply anything that prevents something from becoming what by nature it can be. Just as a fetus' potentiality for personhood is not diminished because twenty percent of all fetuses will undergo spontaneous abortions, so too must we view the failure to "take" of in vitro fertilized zygotes and the death of premature babies. What ultimately matters then, is a thing's internal or inherent capacities, not its external circumstances. Therefore, under the former view of 'potentiality' in vitro prenates are potential persons and a potentiality theorist would be committed to their having a right to life.

Under the latter view of 'potentiality' it is clear that both in vivo and in vitro prenates, neonates, and young infants all would not have the right to life. That is, without supportive intervention these types of individuals would simply die. It is highly unlikely that potentiality theorists would want to endorse this version of 'potentiality'. And, in view of Aristotle's writings, it would seem that the potentiality theorist would be on firm ground in rejecting it. That is, it is clear that Aristotle envisioned a concept of potentiality under which it would
Now that we have determined that in vitro prenates are potential persons, we must ask whether the potentiality theorist must view the failure to provide systems of support (intra-uterine implantation) as a violation of such a prenate's rights. There are two ways under which a possible demonstration of right violation could be undertaken.

First, one could argue that failure to provide systems of support is a violation of an in vitro prenate's right to life in the same way as the failure to save an endangered person's life, by those directly responsible for him needing to be saved, is a violation of such a person's right to life. For example, if Bob pushes Bill (who can not swim) off a raft into deep water, then Bob must attempt to save Bill's life. For Bob to simply shrug his shoulders and say—"I can't help it if Bill can't swim"—is unacceptable. Bob may not in general have an obligation to save endangered lives, but if he is directly responsible for someone needing to be saved, then he must do so.

The analogy to in vitro prenates could be framed in the following way. To deliberately create, in vitro, a zygote, incapable of being sustained throughout its development in the environment provided, is morally equivalent to Bob pushing Bill into the water. To simply let the in vitro zygote die is morally equivalent to Bob letting Bill drown. The only morally acceptable recourse for Bob is to rescue
Bill. Therefore, the morally proper course is to take measures to ensure, as best as possible, the in vitro zygote's continued existence (under the limitations of current medical technology). And consequently, to refrain from intra-uterine implantation of in vitro zygotes is to violate their right to life.

However, it can be counter argued that there is a fundamental disanalogy between the type of case represented by the example of Bob and Bill and the situation of in vitro zygotes. How can it be that the act of in vitro fertilization can simultaneously be viewed as life-giving and life-endangering? A proper analogue to the act of in vitro fertilization would be if Bob were to toss a collection of inorganic compounds into the water, which somehow miraculously transformed themselves into a fetus. Now, would Bob really be obligated to rescue this fetus? Should he be liable for culpable homicide should he refrain?

To further see the folly of applying a life-endangering analysis to in vitro zygotes consider the following: Bob deliberately throws Bill off the raft, knowing that Bill cannot swim, knowing that Bill will die without Bob's help, and knowing that Bob himself is a marginal swimmer at best. Bob realizes before he throws Bill off the raft that there is a very good chance that he, Bob, will be unable to rescue Bill. It turns out that Bill drowns in spite of Bob's rescue attempt. Now, clearly, in these circumstances Bob
violated Bill's right to life notwithstanding Bob's rescue attempt. It is culpable homicide. Now consider the case of a failed implantation of an in vitro fertilized zygote (i.e., where the zygote does not "take"). It is known that there is a very good chance under the current imperfect technology that in vitro zygote implantation might not succeed, resulting in death for such zygotes. If the application of the life-endangering analysis is a proper one, then, following the modified Bill and Bob example above, it seems that those individuals responsible for the in vitro fertilization are guilty of culpable homicide when such zygotes do not "take" after implantation attempts. Surely this patently absurd result points to the inapplicability of the life-endangering analysis to in vitro fertilization. In vitro fertilization, at least in the standard case, creates a life which would not otherwise have existed. We are being asked to imagine that the act which has created a being with a right to life simultaneously threatens to violate that right to life. To view such an act as life-endangering, calling for obligations which, if not successfully met, result in the life-givers becoming guilty of culpable homicide, is surely a perversion of the life-endangering analysis. 61

We have seen that it is unlikely that a potentiality theorist must be committed to the view that refraining to take measures to ensure an in vitro zygote's continued
existence is a violation of its right to life. However, there is a second strategy that could be taken here. That is, to argue for a separate right—the right to nurture and succour. It might be argued that nonimplanted in vitro fertilized zygotes should have the same right to supportive intervention as that of neonates and young infants. That is, even if one can not derive a right to supportive intervention to save life in general, one may be able to do so in special circumstances such as parent/child relationships. Does not a neonate have a right to the nurture and succour of its parents, and if so, should not consistency require that this right extend to nonimplanted in vitro fertilized zygotes? My intuition is that a compelling case could be made in this way. However, to attempt a comprehensive investigation here would be too much of a digression for the purposes of this thesis. We have our hands full with the right to life, and perhaps we would do well to avoid complicating matters by discussing the right to nurture and succour.

In summary, a potentiality theorist will most likely be committed to the following. Once an individual becomes a self-generating living being, such that with supportive intervention he may come to be a person, such an individual is a potential person and has a right to life. However, unless a separate right to supportive intervention can somehow be sustained, to refrain from providing nurture and
succour is not a violation of its rights.

In view of the above analysis, the question arises, is the successful use of an I.U.D. killing or letting die? That is, it could be argued that the use of an I.U.D. does not interfere with any established form of support (placental inception has not yet occurred). Is this a case of failure to provide systems of support or withdrawing systems of support?

Consider the following two examples. 1) A desperately ill diabetic, D, needs to get to his personal dialysis machine or he will die. He barely gets to it in time. I come around immediately thereafter and disconnect him from it and watch him die. 2) The same diabetic, but this time I deliberately nail shut the door to the room containing the machine in consequence of which D dies.

Clearly, my actions in both examples constitute active as opposed to passive interference with D's continued existence. The fact that in 2) D had not yet reached the life-saving machine does not detract from the culpability of my action-- I have killed him, it is not a case of letting die.

This analysis points to the idea that it is a mistake to focus on placental inception in isolation. From the time of conception until birth, nature provides in the maternal body a manifold of systems of support. To deliberately impair the functioning of this process such that the normal
systems of support become unavailable to the prenate must be viewed as active interference. Therefore, the successful use of an I.U.D. must be viewed as a case of killing, not letting die.

In conclusion, returning to Tooley's original Frankenstein example, to grind up a frozen Frankenstein for hamburger is not a morally serious act. However, if such a Frankenstein had been brought to a living but preconscious state, he would have become a potential person with, according to the potentiality theorist, a consequent right to life. Grinding up such a Frankenstein would constitute culpable homicide.

Let us now return to our original question—does Tooley's Frankenstein argument establish the prior necessity of valued states of consciousness? Consider first, a version of Grant Cosby's rejoinder to Tooley's Frankenstein argument. Although I believe Cosby fails in his attempt to establish potentiality for valued states of consciousness as a sufficient condition for the right to life, the failure is instructive.

Recall that our frozen Frankenstein was put together with a complete set of beliefs, desires, and personality traits. Consider a situation whereby a temporary laboratory malfunction has led to our frozen Frankenstein being thawed out one night. During this interval, he becomes conscious for a few minutes, feels chilly, and wishes that he was
lying on the sunny beaches of Hawaii. The laboratory malfunction corrects itself and he becomes frozen again. Clearly, he became self-conscious, for in order for him to have such a desire he must have been able to imagine himself as a continuing subject of experiences. Has he become a person with a consequent right to life? Cosby argues that even if so, it is not because of the prior presence of a valued state of consciousness. That "minor" moment of self-consciousness does not make a moral difference. Can it really be that if our frozen Frankenstein had been destroyed after his desire to be on the beach it would have been a murderous act, but if destroyed before the onset of the desire, it would be an act morally equivalent to grinding up hamburger? Cosby concludes that it could not be so and that the only sound explanation for a right to life for our Frankenstein is his capacity for future valued states of consciousness.

The thing to note about Cosby's argument is that he does not give an account of why the "minor" moment of self-consciousness does not make a moral difference. He simply asserts that it does not as if it is intuitively obvious. I submit that this is highly questionable. On the one hand, it may strike us as incredible that something as frivolous as a desire to lie on the beach could establish a right to life where there was none before. However, on the other hand, perhaps the appeal to such a highly contrived example
masks what surely must be significant—the onset of self-consciousness. Perhaps because our frozen Frankenstein did not arrive at his personality traits in the normal way, gradually through life experience, it is too easy to view his desires as somehow artificial and robot-like—thus incapable of amounting to a moral difference. To argue a crucial point solely by appeal to our intuitions is often unconvincing and unwise. Given that intuitions do in fact vary wildly in the abortion controversy, I believe, we must view Cosby's argument here a failure. But recall, Tooley's Frankenstein argument is itself based solely on a dubious appeal to intuitions. As J.T. Noonan has poignantly stated—"...to decide who is human on the basis of the sentiment of a given society has led to consequences which rational men would characterize as monstrous."63

What then can we conclude about the force of Tooley's Frankenstein argument? I believe we must view it, in the absence of more substantial moral argument, to represent a failed attempt to establish the necessity of prior valued states of consciousness for the right to life.
C. Rational methods

Some philosophers have resorted to forms of utilitarianism to resolve the abortion issue. Many conclude that abortions should be permitted unless there prevailed a severe labour shortage. The maximizing of average expectable utility would not be served by a general prohibition on abortion. The main problem with this principle is that it begs the question—maximize expectable utility for whom? If human fetuses are to be included in the scope of those whose average utility is being calculated, then surely the principle points to a general prohibition on abortion. Those who would wish to dispute this point must explain how their position would differ from the pre-Civil War U.S. slaveholders who argued that black slavery maximized average expectable utility. Purely economic measures of utility may well permit discrimination (and even genocide) against minority classes, but surely no one now wants to seriously defend the employment of such a narrow-minded gauge of utility. As Earl Winkler pointedly states—"... it is not normally sufficient grounds for the exclusion of a certain class from favoured moral status that their inclusion does not benefit those who are centrally and undoubtedly included." If the scope of a utilitarian principle is to include only humans with fully developed capacities then the principle will permit abortions in general. And conversely,
if its scope is broadened to include humans with undeveloped capacities, then the principle will disallow abortions in general. Other principles will face the same kind of problem. As Grant Cosby points out—"...we cannot resolve differences of opinion about what class of beings should count when applying moral rules by appealing to any of those rules whose applicability is being questioned."^66

R.B. Brandt's way of dealing with this conundrum is to employ a Rawls-type validation procedure. This type of rational decision-making procedure has been used with notable success to show why the principle of maximizing average expectable utility should be accepted. Brandt's version is as follows:

The explication of "A is prima facie morally wrong" is roughly as follows:

A would be prohibited by a rule of the moral code which would be preferred, as a code to be current in their society, by all persons who

(A) expected to live a lifetime in that society,
(B) were rational at least in the sense that their preferences were fully guided by all relevant knowledge, and
(C) were impartial in the sense that (and this is a restriction on (B)) their preference was uninfluenced by information which would enable them to choose a system which would specially advantage them as compared with any other person or group. 68

Brandt favours this scheme for three reasons:

(1) If moral terms are construed as the explication proposes, then intelligent persons must regard moral
principles not just as traditional prejudices or commitments but as restrictions or requirements with real point in terms of the welfare of sentient beings. They will tend to respect and support morality, to use a term I like, they will be "disalienated" from morality. (2) If moral principles are construed in the way suggested, intelligent people will be generally disposed to adjudicate conflicts by appeal to them, and must recognize that they cannot in decency argue publicly that a claim of theirs deserves public support if it does not comport with such principles. (3) If we identify right and wrong actions in the way the principle indicates, then it is in principle possible to find out, by methods of ordinary reasoning and evidence, which actions are right or wrong.

Brandt begins by supposing that his rational chooser among moral systems is self-interested (he later considers altruistic), in the sense that, within the restrictions of (A), (B), and (C), he will select the moral rule which will maximize expectable average long-range utility. Since no chooser will be in a position to give special advantage to himself, the chooser's best strategy is to improve the lot of the average individual. The chooser will opt for the greatest average utility and not the greatest total utility because he is self-interested. In order that our rational chooser comply with (C), the impartiality provision, we specify that our rational chooser is suffering temporary amnesia—about his social and economic status, the generation to which he belongs, and the talents which he possesses (I would add ignorance of one's sex; Brandt omits to do so). We do so in order that our chooser may not advantage himself and because such knowledge is not relevant to a rational evaluation of the abortion issue (hence, does
not violate (B), the rationality provision). Now, someone might ask, if our rational chooser is to be knowledgeable about fetuses, then how can he be strictly impartial, when he is able to deduce that he is not himself a fetus? That is, it seems that informed rationality rules out impartiality and vice versa—"I think therefore I am not a fetus." Brandt circumvents this problem by supposing that our chooser is in doubt as to whether he is a fetus or not. 

"...our suppositious chooser must, if he is to take seriously the view that he might be a fetus, assume that his thinking might be somehow connected with--produced in or by the brain of--some fetus." That is, he believes that his thoughts are somehow connected to the brain of a fetus, however, he believes that his memories will not survive as the fetus grows to maturation. There will be a complete break between the rational chooser's thoughts as a fetus, and the mentation of the fetus at some subsequent point in time. Although Brandt does not make this clear, presumably the rational chooser believes that the break occurs very soon in the immediate future, otherwise the rational chooser might be motivated to preserve his pre-memory gap incarnation by supporting a prohibition of abortion. Brandt then asks, would the rational chooser among moral systems prefer a system which prohibits abortion? Brandt suggests that our rational chooser would be indifferent, indifferent since the "I" of later life has no mentation connection to
the "I" of the rational chooser. The "I" of later life will not interest him because he is self-interested. His attitude is: "I" will no longer exist anyway, so who cares?

Although I can see what Brandt hoped to accomplish by this contrivance, I believe Brandt's endeavour must be viewed as a failure. For it is hard to see what a rational chooser, as Brandt has framed him, would be interested in at all. The expected absence of continuity would just as likely produce complete moral apathy towards everything. The problem here, I believe, results from Brandt's failure to properly describe a situation in which the rational chooser believes that he is subject to a rule about abortion. Brandt has unsuccessfully tried to reconcile the need for the self-interested rational chooser to be subjected (or at least believe that he is) to a rule about abortion, with the fact that fetuses do not think. The stipulation of self-interest becomes the overriding factor in the rational chooser's decision-- not the impartiality and rationality Brandt attempted to inject into the decision-making process.

Without too much further thought, it can be seen that the outcome of any successful attempt to describe a situation in which the self-interested rational chooser really came to believe that he was or might be subject to a rule on abortion would be to favour a general prohibition of abortion. It is hard to believe that any self-interested
person no matter how rational or impartial could come to any other decision. It seems that Brandt failed to see this point.

It is hard to know what exactly to make of this conclusion. Presumably, most people find their lives valuable and prefer life to death, and prefer having lived to not having been given the opportunity to live. Therefore, I suppose, it should not seem surprising that considerations of self-interest would push rationality and impartiality aside in matters of life and death, or existence and total non-existence. I will have more to say about the consequences of this result later.

Brandt also considers the case of the altruistic rational chooser; however, Brandt admits he has not given the case as much consideration as it deserves. Presumably, Brandt's purpose in considering the case of the altruistic rational chooser is to rid ideal decision-making of the self-serving motivations which "spoil" the decision-making process in the self-interested case.

The altruistic person is devoted to the pursuit of the good for others. Of course we must ask: who are the others? Brandt proposes that the others are those who the altruistic rational person would take a sympathetic interest in. Brandt's discussion devolves into a determination of what minimally would engage a rational and sensitive person. He concludes that the ability to feel pain, reactive
movement, and other aspects of rudimentary sentience would do so. Brandt's ultimate conclusion is that since late-term fetuses display this rudimentary sentience it is wrong to abort them. Abortion prior to the onset of sentience presumably are to be permitted.

One immediate difficulty with this point of view is its implications regarding sentient species other than homo sapiens. Although I realize there are many philosophers (perhaps including Brandt himself) who are not unwilling to entertain moral protections of various degrees approaching a right to life for sentient animals, I will not pursue the subject of protections short of the right to life.

The potentiality theorist should not have any objections to chimpanzees, for example, having the right to life, if chimpanzees display in their normative psychological development the requisite states of consciousness which give human beings in the central undoubted case the right to life. Although the potentiality theorist hints at what those requisite valued states are (usually rationality, self-consciousness, agency), he does not claim to know exactly what they are, or at least to what degree such abilities must normally be attainable. However, for the potentiality theorist, and many other commentators on this issue, the attainment of sentience alone, without a concomitant genetic capacity for the kind
of higher-order states enumerated earlier, is not a sufficient condition for the right to life.

Having said this, the question remains concerning the force of arguments based on a determination of what kinds of living beings a rational altruist would take a sympathetic interest in. We may well be prepared to accept that the ideal rational altruist would promote the good of non-human sentient beings by supporting restrictions on their treatment by man (ban the leg hold trap, humane butchering, prevention of cruelty to animals laws, etc.), but it is an unlikely proposition at best that a rational altruist would extend sanctity to beings simply on the basis of sentience. What this points to, I believe, is that even though the 'others' for which the rational altruist promotes the good may include or even entirely compose the class of sentient beings, the rational altruist need not feel compelled to treat all equally in regards to the type of protection afforded them. Why?--because she is not only altruistic, she also is rational. Her rationality, I believe, would lead her to the conclusion that the actual presence of personhood, or the genetic capacity for it, are the only two possible bases for the bestowal of a right to life.

What beings a rational, sensitive, imaginative, and informed person would take a sympathetic interest in is such an unwieldy notion that it is hard to believe that any real consensus could develop in its application to the issue at
hand. Consider Roger Wertheimer's transparent uterus example. Wertheimer asks the liberal on abortion what his reaction to the fetus would be if the fetus could be viewed throughout its development. Furthermore, what would be our reaction if the fetus could be plucked from the womb, observed and fondled, and then replaced? Wertheimer asks us to consider how much of our natural response to the fetus derives from its lack of visibility or availability to be handled? Clearly, as far as any discrepancy in natural response between the late-term fetus and the neonate is concerned, Wertheimer has located a powerful argument against the moral force of the liberal's intuition. Human reaction and intuition is always interesting and sometimes helpful in the evaluation of moral dilemmas, but it all too often masks long-held biases and human shortcomings. What then is the proper attitude to be taken by the rational altruist in regard to first and second trimester fetuses? Brandt's sympathetic-interest argument would dictate that the lack of sentience in such fetuses would result in a lack of sympathy. Philip Devine has pointed out that even sympathy where there is lack of sentience is not so "radically inappropriate as to be humanly unintelligible." Would a rational altruist, operating in Wertheimer's transparent uterus world, take a sympathetic interest in first and/or second trimester fetuses? The question, I believe, is unanswerable until such a world obtains. This
result points to a fundamental weakness in the sympathetic-interest argument in its application to the abortion issue.

As we have seen, Brandt's endeavour has not met with much success. However, I believe some modification of Brandt's program may yet yield progress. Note, it was as a result of clause (C) (the impartiality provision) that Brandt was forced to resort to the contrivance of a fetal mind/brain connection. That is, Brandt was concerned that the self-interested rational chooser would be able to specially advantage himself if he knew that he was not a fetus. However, in the case of the altruistic rational chooser, we need not be concerned, by definition, with strong, self-serving motivations in decision-making, thus eliminating the need to resort to such a bizarre and unworkable conception as fetal mind/brain connection. Furthermore, there is no logically compelling reason why we must require the rational altruist to be exclusively interested in the well-being of those who he takes a sympathetic interest in. That is, there is no inherent contradiction in the ideal rational altruist making a moral judgment against abortion for early-term fetuses even though he does not, or should not, feel sympathy for such fetuses. This is a point that many who advance the sympathetic interest argument fail to see. An injustice may still exist in the absence of sympathetic interest. Independent moral considerations may dictate that aborting early-term fetuses
is wrong. Surely 'altruism' need not preclude a rational altruist from coming to such a decision. The whole reason for considering the case of the rational altruist was to rid ideal decision making of self-serving motivations, not to thereby settle the issue on the basis of the nature of altruism. To be overly focussed on 'sympathy' here, I submit, runs the danger of reducing the abortion issue into a determination of the true nature of altruism, which would be just to substitute one problem for another with no real gain.
D. Abortion and the Golden Rule

The rational altruist might consider the following argument which I partially derive from R.M. Hare's 'Abortion and the Golden Rule'. We should do to others what we are glad was done to us. Presumably, the vast majority of persons prefer existence to total non-existence no matter how unfortunate their circumstances. Even though it may be true that many persons commit suicide, it would be rather presumptuous for someone to claim that such and such a fetus should be aborted because if left to develop into a person such a person would come to believe that he would rather have been aborted. In point of fact, many if not most people who have lived in extreme misery or human privation prefer life to death.

The strength of this argument lies in the undeniable fact that existing persons, in general, not only are glad that they were not aborted, but given a choice of moral rules on abortion, arguably must support a conservative position in order to be consistent with the idea that abortion is something they themselves would not wish to have been subjected to. This argument lends some substance to the oft heard anti-abortionist sentiment--"I've noticed all those for abortion have already been born". That is, it is being suggested that it is tantamount to moral hypocrisy to support abortion on demand, for, presumably, no existing person would have been prepared to allow themselves to be
aborted for trivial reasons.

The weakness of this argument lies in two areas. First, the Golden Rule leads to many instances of clearly unacceptable behaviour. For example, should I lie in court for someone because someone else did so for me? Clearly, everyone may not be the type of person whose gratification should stand as a model for reciprocation. There are other problems with the Golden Rule which are not particularly relevant to the discussion here.

The second problem area is the ambit of 'others' in the Rule. The Rule argument makes use of the Rule in a way which presumes what it is supposed to demonstrate. That is, it very well may be true that I am glad that I was not aborted as a fetus, but how do I know that the 'others' referred to in the Rule includes fetuses? Presumably, the ambit of 'others' does not include cattle, fish and flowers. But the Rule itself does not tell us why, nor does it help us determine the universe of objects to which it does apply. One might reply that the 'others' are simply things like 'us'. But then we must ask does 'us' include fetuses? Any further attempt to specify 'us', such as—'any homo sapiens from conception to adulthood', merely assumes that which the Rule argument is to demonstrate.

I should consider one more reply in support of the Rule argument. The focus on 'others' and 'us' is misguided in the above objection. That is, for example, if I consider
myself at the fetal or neonatal stage to be an extension of myself, then this fact should supply the necessary guidance to determine what kinds of things the 'others' are. An argument could be formulated in the following way. It is an undeniable fact that people in general consider themselves to be identity-related to the neonates that they once were. There is no morally relevant difference between the fetus and the neonate. Therefore, because they are things like we once were, fetuses are to be included in the 'others'. As we shall see, I believe this argument could be viewed favourably by our rational altruist. However, the argument is open to the objection that just because most people feel identity-related to the neonates they once were, why should this settle the issue for those who do not feel so identity-related? For example, if I believed that I can only be identity-related to the person I once was, that is that I do not extend backwards in my development beyond the time I became a person, then, in view of the rather egocentric way the Rule is phrased, why should not abortion be permissible in my case? In such a way, the rational altruist might be tempted to favour a policy of individual choice in the matter of abortions. However, in question here is not the kind of choice envisioned by pro-choice advocates, but rather, in practical terms, abortion committees attempting to ascertain a candidate's concepts of personhood and identity. A rather bizarre result indeed.
Since we are in no position here to determine whether the ideal rational altruist would feel identity-related to himself as a neonate (the problem of self-identity being complex and the subject-matter of a thesis in itself), what, in the final analysis, for our purposes, would the rational altruist say about the Rule argument? I believe it would be something like the following. There is no question that the Rule, as a general prescription for behaviour, is too flawed and incomplete to be taken seriously. However, in matters of life and death and bodily security (probably the original intent of its application) it warrants our attention. After all, the Rule is probably at the root of mankind's traditional sanctions against murder, assault, and theft.

The Rule argument's fundamental thrust is that the ambit of the 'others' is determinable by a deduction from our notions about neonates. If we look at a particular society such as ours we notice the following things: i) we do in fact treat neonates and persons the same, in so far as the right to life is concerned; ii) persons are in fact glad that they were given the opportunity as neonates to become persons; iii) persons would not, if it were possible to "turn back the hands of time", sacrifice such an opportunity for trivial reasons let alone many substantial reasons; and iv) the killing of neonates is often viewed as the most heinous of crimes.

The above rather incontrovertible facts, combined with
the point about the absence of a morally relevant difference between the neonate and the fetus, must lead a rational altruist to accept the Rule argument as a forceful challenge to the morality of abortion. However, the argument turns completely on how we actually do treat neonates in general. If in fact something like the Tooleyean view of infanticide became prevalent in our society, the Rule argument would seem to lose all its force.

Our rational altruist would conclude, I believe, that all that any modified Golden Rule argument can ever demonstrate is that fetuses should have the right to life if neonates do. But as an ultimate guide for deciding between potentiality and actuality of states of consciousness for the right to life, the Rule argument is unhelpful.
E. Closing remarks

Clearly, I have by no means presented all or even sufficiently many of the arguments which might be considered by our chooser among moral systems, and consequently my conclusions are necessarily somewhat indeterminate and provisional. I have endeavoured to show that a strong case can be made for the idea that if the right to life is granted to neonates and young infants, then out of consistency and a reasonable presumption that prior desires are morally irrelevant to fundamental rights (until demonstrated otherwise), the rational altruist would grant the right to life to prenates.

Recall, we earlier obtained the result that a self-interested rational chooser among moral systems, within the restrictions of a rational decision-making method, would support the general prohibition of abortions. Since it is undeniable that much of moral philosophy (especially the utilitarian variety) derives its inspiration from the notion of enlightened self-interest, this result must be seen to be significant. It is a basic and common intuition that one must be prepared to be subject to the moral rules one wishes to prevail. The abortion issue is unique, in that the ordinary framework of its debate seems to ignore or even preclude this vital feature of general moral discourse. This is why I chose to present and consider at such great length Brandt's admirable attempt to remedy this shortcoming.
of the ordinary debate.

I do not claim to have shown that the potentiality theorist can demonstrate definitively the sufficiency of potentiality for personhood for the right to life. It has not been the aim of this thesis to undertake such an ambitious and formidable task. Rather, the enterprise has been to distill the potentiality position into its strongest incarnation, to see if it can withstand a variety of assaults, and finally to see if it has something to recommend itself.
NOTES


2 These are merely intended as stipulative definitions.

3 Since there will be no undertaking to provide a comprehensive account of the concept of personhood in this thesis, it would be presumptuous to exclude the possibility that some animals are persons. That is, in view of the undoubted capability of some primates to behave rationally.

4 Of course, one could hold that viability is a necessary but not a sufficient condition for the right to life. However, such a position has a number of difficulties which have not been satisfactorily overcome. Say the proposal is that viability and some other property, A, each constitute only necessary conditions but when combined are sufficient for the right to life. It then must be explained how the absence of viability in a being possessing A is of such moral significance as to make the difference between having a right to life or not. The concept of viability is inextricably connected with the notion of 'capable of independent existence'. I suggest that the latter concept admits only degrees. That is, for example, a neonate may be morphologically separate or independent from its mother but it can be just as dependent on its mother as the fetus for its existence. Moreover, the prospect that medical technology may one day render all fetuses viable creates a further difficulty for those who would advance the viability criterion in that the question of a right to life in the fetal case is then determined by considerations external to the candidate (such as the current state of incubation technology) rather than the candidate's inherent nature or value. A somewhat counterintuitive result, I believe.

5 Of course if the mind/brain identity thesis is correct, physical differences can amount to moral differences. That is, whatever properties possessed by persons that give them a right to life may well be reducible to complex physiochemical brain processes. However, the discourse of this thesis will generally follow the traditional dualism of physical and mental properties.


7 Are natural rights granted or simply possessed? I do not here mean to claim either. In the context of the
abortion issue, it seems more natural to talk of "granting" or "denying" a right to life rather than "discovering" whether the fetus "possesses" a right to life.

8 I do not mean to imply that all opponents of potentiality theory must necessarily hold that human beings in one great sweep come to possess the valuable higher-order states of consciousness defining personhood. Some philosophers (now known as "gradualists") hold that whatever grounds a right to life develops gradually; in which case there won't be any precise point when the right to life is suddenly gained.

9 The possession of a right to life, in itself, does not logically guarantee the fetus equal protections (of its life) with that of a person. It can be argued that the mother's right to bodily self-determination outweighs a fetus' right to life. A potentiality theorist need not treat abortion and the murder of a person as equal in moral seriousness.

10 Tooley, op. cit., pp. 51-91.
11 Tooley, op. cit., pp. 78-79.
12 Tooley, op. cit., p. 81.
13 Tooley, op. cit., p. 82.

14 That is, I am assuming the claim that persons have rights is much less problematic (or at least less controversial) than that non-persons have rights and that, in general, with respect to non-persons, it is easier to defend the position that it is wrong to kill them than that a right to life has thereby been violated.

15 I am using 'contraception' in the narrow sense of methods which prevents the formation of a zygote (conception). Of course a potentiality theorist, in any case, must view use of the I.U.D. (which prevents implantation of the zygote onto the intra-uterine wall) and other post-conception methods as morally equivalent to abortion. How this result is obtained will be explained later in Chapter Two in the section entitled "Potentiality in Focus".

16 Tooley, op. cit., pp. 82-83.
17 We shall consider two views about what Tooley may have intended systems to be composed of. One, the micro-view, sees systems as constituted of collections of spermatozoa and ova. The other, the macro-view, sees systems as
composed of fertile sexual partners. Tooley's reference to "systems of organisms" suggests that Tooley had in mind the macro-view, since gametes, in a strict biological sense, are not organisms. However, the micro-view is a legitimate and interesting proposition and we shall consider it at some length later on.

18 But of course the lottery example is not strictly analogous to the issue of concern here. For, we do not even treat neonates as persons even though "their number has been picked". But we would tend to treat a lottery ticket which had just been picked like a million dollars.


21 Ibid., p. 147; footnotes 11 and 12 are Apostle's (p. 354).

22 That is, on the macro-view of systems, we shall soon consider systems on the micro-view.

23 Note, the term "entities" is here used instead of "organism" because gametes are not, strictly speaking, organisms.

24 I am here alluding to the process of spermatogenesis and the fact that spermatozoa have a relatively short life span after ejaculation.

25 The general term for oogenesis in females (the production of ova in the ovaries) and spermatogenesis in males (the production of spermatozoa in the testes).


27 In particular, this is J.T. Noonan's view; ibid., pp. 14-15.

28 Loc. cit.

29 For a more comprehensive account of the causes of spontaneous abortion see Potts, Malcolm, Abortion, Cambridge, Cambridge University Press, 1977, pp. 45-64.
30 For example, take the characteristic of having blue eyes. The ovum does not on its own initiative seek out sperm with the gene complement necessary to produce a blue-eyed person. However, once conception has occurred, it can be within the zygote's nature and design to produce a blue-eyed person.

31 M.P.P. says "... it is seriously wrong to kill any organism...".

32 Tooley, op. cit., p. 84.

33 Tooley, op. cit., p. 85.

34 In the same way a potentiality theorist would disallow step 2 of Tooley's kitten argument (where Tooley claims that, by the M.S.P., injecting a kitten, which had just previously been injected with the "special" chemical, with a "neutralizing" chemical is not more seriously wrong than intentionally refraining from injecting a second kitten with the special chemical). That is, because the A-type action (injecting the kitten with the special chemical) of the process is morally significant in itself (because such a kitten has become a potential person).

35 In fact Tooley would have great difficulty defending himself in this matter since he has elsewhere (Tooley, op. cit., p. 63) committed himself to the view that where potential for self-consciousness exists in the comatose, such individuals can still have the right to life. The implication is clear, the potentiality for self-consciousness must be morally relevant to the right to life, for, according to Tooley, if a particular comatose individual did not have the potential for self-consciousness (i.e. irreversible coma) then this fact would foreclose on his right to life. Therefore, once we have that the potential for self-consciousness is morally relevant to the right to life, it is a simple matter to infer from this that the creation of the human zygote is a morally significant outcome of the causal process of reproduction, that is, since the newly-formed human zygote marks the beginning of the potential for self-consciousness.


37 It is my intuition, as well as Trammell's, that any successful endeavour to formulate a moral symmetry principle with respect to action and inaction would involve so many restrictions and qualifications as to render it practically useless. For a more thorough discussion of the defects of
Tooley's M.S.P. I refer the reader to Trammell's article cited above.

38 Tooley, *op. cit.*, p. 73.

39 Usually proponents of the Tooleyean concept of rights qualify their views with respect to the right to life and young children. They argue that protected status can and should be given young children in accordance with other moral principles. The utilitarian respect for persons argument is one example. However, Tooley himself does not ostensibly argue in this way.

40 Tooley, *op. cit.*, p. 73.

41 Have we not all heard of the laboratory rats with electrodes attached to their brain pleasure centers who continue to choose pleasure over food and eventually starve to death?


43 *Loc. cit.*

44 Tooley, *op. cit.*, p. 64.


48 When we consider Tooley's Frankenstein argument.

49 To be sure, some would argue that equating the killing of early term fetuses by abortion or the use of an I.U.D. with murder is absurd. I believe the correct response to this is first, it is not an obvious absurdity and, secondly, it is not necessary for the potentiality theorist to view, in all cases, as murder, the killing of beings with a right to life. Some philosophers would argue that the applicability of 'murder' to deliberate acts of killing is appropriate only when the killer's rights in the circumstances do not outweigh the other party's right to life (consider the case of self-defense). Therefore, it is open to argue that even though the fetus may have a right to life, the mother's right to bodily self-determination outweighs this right. Where abortion is concerned, this argument becomes less persuasive the closer the fetus comes to full-term. However, a full discussion of this matter is outside the ambit of this thesis. We are here only
concerned with the right to life in the first instance and not the competition of rights and their consequent moral dilemmas.


51 *Loc. cit.*

52 Earl Winkler has made similar points in his "Abortion and Victimizability", *Journal of Applied Philosophy* 1, 1984, p. 305.

53 See section 9 and 12 of the Canadian Charter of Rights.

54 Grant Cosby and Ruth Cigman for example.

55 I here mean to exclude future possession of valued states as in the case of a person who is about to die.

56 I here mean to exclude prior possession of valued states, as in the onset of personhood or self-consciousness in a child.

57 In fact Tooley uses his Frankenstein argument to justify the requirement of prior valued states in his conditions (2), (3) and (4). See Tooley, *op. cit.*, p. 63 and p. 67.

58 Tooley, *op. cit.*, pp. 63-64.

59 That is, since the frozen Frankenstein is not alive, there is no question of a duty to ensure continued existence, as well as no question of a duty to refrain from terminating life. Hence, the active/passive distinction does not apply here.

60 Furthermore, linking 'potentiality' with a thing's ability to independently survive seems an inappropriate constraint. If one were to give broad scope to 'supportive intervention' it would be hard to see how any living thing could be potentially anything else. We want to be able to say things like "a seed is potentially a tree". We do not want to have to deny that a seed has the potential to become a tree because of its dependence on the ecosystem.

61 If this type of life-endangering analysis were allowed to go through, then a good argument could be made that whenever parents failed to secure the continued existence of their children (i.e. they died for whatever reason), they could be held liable for culpable homicide. That is because
as givers of life to their children they could be viewed as being directly responsible for subjecting their children to the "perils of a brutal world".


65 Winkler, op. cit., p. 308.

66 Cosby, op. cit., p. 116. Note, that we later examine an instantiation of how this type of intrinsic inadequacy manifests itself in the section entitled 'Abortion and the Golden Rule'.

67 Brandt, op. cit., p. 513.

68 Loc. cit.

69 Brandt, op. cit., p. 514. It should be noted that it is Brandt's overall strategy to defend sentience as the cut-off point after which abortions are morally wrong.

70 I question Brandt's claim that the greatest average utility would be the preferred state of affairs. One can imagine worlds in which the average utility is lower than in others but the distribution is fairer. The rational chooser might well prefer such a world.

71 Brandt, op. cit., p. 523.

72 I am not as sure about this as Brandt seems to be. If I somehow knew that I was about to become permanently amnesic, would I be totally disinterested at the prospect of being murdered in such a state?

73 Brandt, op. cit., p. 518.

74 I will later dispute this claim that the rational altruist would necessarily base his decision predominantly on reactive intuition.

75 It should be noted that Brandt does not claim that late-term fetuses have the right to life, but rather that it is morally wrong to abort them. The distinction is an important one for our purposes. That is, for example, it may be prima facie morally wrong to lie; however, unless one
commits perjury, slander, or libel, there is no violation of
a legal right. Brandt leaves the door open, as do many
"moderates", to permit abortions as a matter of social
policy in the case of late-term fetuses even though such
abortions are viewed as morally wrong.

76 Roger Wertheimer, "Understanding the Abortion
Argument", The Problem of Abortion, ed. Joel Feinberg,

77 Phillip Devine, "Abortion", Contemporary Issues in
Bioethics, ed. Tom L. Beauchamp, Belmont, Wadsworth

78 In Philosophy and Public Affairs 4, 1975, pp. 201-222.

79 Hare believes that the "others" to which this principle
applies includes not only potential persons(fetuses and
neonates), but also possible persons(spermatozoa, ova,
future generations). He thus, quite naturally, arrives at
very different conclusions from mine. I am not prepared to
give an account of Hare's formulations and will refer the
reader to what was said about possible persons in my first
chapter.

80 See Tooley's point about morally relevant differences
at op. cit., pp. 52 and 74.

81 A result which, I believe, can be easily arrived at by
other arguments.

82 Any successful such an undertaking would probably
require extensive discussion of classic and contemporary
rights theory. I have purposely steered away from rights
theory as I believe that any substantial benefit to my
thesis thereby derived would necessarily involve too great
an expansion of the scope and length of the thesis.
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