Chapter one: Abortion, personhood and rights

“Too many people in America believe that if you are pro-choice that means pro-abortion. It doesn’t. I don’t want abortion. Abortion should be the rarest thing in the world. I am actually personally opposed to abortion. But I don’t believe that I have a right to take what is an article of faith to me and legislate it to other people. That’s not how it works in America.”

Senator John Kerry (American Senator)

This Chapter will detail the main aspects of the philosophical and ethical arguments for and against abortions. It attempts to explore briefly what is at stake in the ongoing debate about personhood, when personhood begins (and thus when the rights that go with it begin), what value we attach to person status and how this value compares with other rights. I look at briefly some of the medical-biological grounds used by proponents of arguments on both sides and also examine and comment on the Catholic perspective with regard to most of these questions. The central and interconnected points I wish to establish in this chapter are as follows: First, as will become clear, arguments underpinning both sides of the abortion debate (broadly understood) are highly complex and draw from both philosophical and scientific bases; Second, each side of the debate is grounded in different and highly incompatible views of the concept of personhood that, depending on which is used, lead to the conferral of different rights to the fetus; Third, because of this complexity and incompatibility, it is highly difficult (for any political community regardless of which side of the debate it supports) to identify where to draw the line in making the laws that regulate abortion.

There are many general remarks made about abortion: that it is murder, it is dangerous, that only irresponsible women have them. But these comments fail to explain why so many women get abortions even when in some countries it is considered illegal and
even when certain religions, specifically the Catholic religion, prohibit it. In fact, the Allan Guttmacher Institute cites that “[e]ach year, women have an estimated 46 million abortions worldwide. Of these, 20 million are clandestine abortions and are generally unsafe. More than three-quarters of all abortions occur in developing countries.” ¹ Although in countries where abortion is considered illegal, women are exposed to a very risky procedure and even though it usually expensive and performed secretly, abortions still take place.² Dixon-Mueller suggests that legalization of abortion services might prevent women from death from pregnancy-related causes. Indeed, his article has interesting findings on the subject,

[unsafe clandestine abortion is responsible for an estimated 100-200,000 deaths among women in developing countries each year and accounts for 25-50% of all maternal deaths in some regions, especially Latin America. A third of the population of the Third World lives in countries where abortion is illegal or permitted only in extreme cases. Mortality from clandestine abortions in developing countries may be as high as 400/100,000 procedures compared with 6/200,000 in situations where abortion is legal.³]

While statistics on the matter of women ‘wanting’ to have abortions are not available, it seems fair to aver that most women neither enjoy making the difficult decision of having an abortion nor consider abortion a natural consequence of an unwanted pregnancy. More often that not, abortion is the last resort in a desperate situation. One does not have to be irresponsible, ignorant or evil to eventually decide upon this course of action. I hope to demonstrate throughout this thesis that bringing a pregnancy to term or having an abortion are both equally respectable decisions, and in doing so, provide valid arguments supporting the pro-choice approach on abortion.

This chapter contemplates two central arguments. First, using the concept of personhood, I explore the link between abortion and general arguments about rights and how to prioritize them. One’s understanding of personhood is determinant in the position one takes on the abortion debate, and subsequently, the rights this position invokes or denies. The second argument of this chapter seeks to establish that the concept of personhood is linked to our sense of belonging to a community, while rights are usually an expression of individuality. If this notion on personhood and rights is correct, it will have a large impact on the stakes in the abortion debate for two reasons. First, because it is, perhaps, the most important contemporary debate that lies at the epicenter of the clash between being an individual and being a member of the community. And two, it will mean that our arguments over abortion are actually arguments over what collective identity is or should be. This chapter aims to establish the theoretical groundwork for the practical and legal aspects of the following chapters. In doing so, it seeks to provide an idea of the wider context of the abortion debate.

This first chapter is important to the central argument of the thesis as a whole because it exposes some of the finer details that lie behind the moral and ethical arguments behind the whole abortion debate. And therefore, it relates directly with the main argument of the thesis as a whole: *Mexican laws seem to suggest that there are exceptions to who is part of the moral community. For example a fetus that is conceived after rape—but by law this fetus does not necessarily have to remain as a member of the community. However, as reality demonstrates, this is often not the case, because authorities and officials introduce their own beliefs and opinions in to the process, often impeding pregnant rape victims’ access to legal abortion.*
Nevertheless, the central hypothesis of the thesis, that México has inadequate legal framework for prevention, protection and punishment of sexual violence and a lax implementation of the existing laws, focusing specifically in regard to abortion after rape, cannot be fully validated without being broken in to certain steps. This chapter will deal with the initial steps of introducing the main points of the debate.

I will begin by showing that the reason why the abortion debate is difficult to negotiate both legally and morally is because the stakes are so high. The stakes center around the concept of personhood, or determining who belongs to our moral community and who does not. Thus, the different sides of the ethical arguments for and against abortion rest on different conceptions of personhood, or on different conceptions of our moral community and who ought to be admitted.

It is necessary to address these issues because the personhood argument is deep and complex and not often understood outside the philosophical literature on the subject. It is especially important because of how personhood is used as the basis for our system of rights in a conscious way. This system of rights starts at the state and national level and continues through to be used in international legal standards such as human rights conventions, but it is still difficult for policy makers to reach on agreement since the abortion debate, has different approaches or notions of where a full righted person begins. Kuhn\(^4\) and many others have said, the debate is *incommensurable*, meaning, non measurable on the same grounds,\(^5\) following a similar argument to MacIntyre,\(^6\) of the very incommensurable nature of the grounds for the arguments on both sides of the debate. The


two conceptions of personhood that ground each side of the debate are, to quote, following
a similar argument to MacIntyre, of the very incommensurable nature of the grounds for the
arguments on both sides of the debate. The two conceptions of personhood that ground
each side of the debate are, to quote, “neither true nor false” but rather they are the
incommensurable.

1.1 Personhood

A very important concept to address in the abortion debate is that one of
personhood. Who, as a community, do we consider a person that has rights and is a
member of our community? Because the concept of personhood is important to the
conferring of rights in a society, it is important to define this concept. Doing so, however, is
a notoriously difficult for philosophers and legalists alike. Yet despite the differences of
opinion, different specific criteria and different arguments supporting them, it is
nevertheless possible to sketch those things that form a person on which most academics
can agree. The concept of ‘person’ is defined by philosophers such as Locke,7 Kant,8
Hume,9 Henley,10 Williams,11 among others as a,

…[b]eing who has a range of psychological capacities that are regarded as both necessary
and sufficient to fulfill the requirements of personhood, where there is a collection of
biological and non-biological attributes. These attributes are, in general, that the person is

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7 John Locke, “Book II,” in An Essay Concerning Human Understanding, ed. Peter H. Nidditch (Oxford:
University Press, 1979), 109. Also available online: “Of identity and diversity,” Lester Pearson
College Philosophy (cited 20 Jan. 2007): available from
http://peernet.lbpc.ca/Philosophy/JohnLockeidentity.htm
8 Immanuel Kant, Kant: The Metaphysics of Morals, Mary J. Gregor ed. (Cambridge: Cambridge University
9 David Hume, "Of Personal Identity" Selection from Book I, Part 4, Section 6 of A Treatise of Human
online “David Hume Of Personal Identity,” Department of Philosophy St. Anselm College (cited on 20 Jan.
10 Kenneth Henley, “The Value of Individuals,” Philosophy and Phenomenological Research Vol. 37, No. 3
(Mar., 1977), 345-352.
capable of reasoning, that it is self-conscious, and that it has an identity that persists through time.\textsuperscript{12}

John Locke defined a person as "a thinking intelligent Being, that has reason and reflection, and can consider it self as it self, the same thinking thing in different times and places; which it does only by that consciousness, which is inseparable from thinking, and as it seems to me essential to it."\textsuperscript{13} Even though the terms ‘human being’ and ‘person’ differ remarkably, “human being is a semi-biological, semi-normative term whereas person is purely normative.”\textsuperscript{14} This means that the term human being is somewhat a more biological term, and the person concept is more normative, has more moral content and this moral content involves membership of a community or “club,” and the rights and privileges conferred upon members of that club. Therefore, because a fetus is ‘human’ does not necessarily mean that it inherently enjoys full rights as a person. Consequently, the argument that the fetus should be granted equal protection by law as “any other human being” falls apart. Clearly, if a fetus has human DNA, then it is biologically human and, if it survives gestation, a member of our species. However, just because it is human does not lead immediately to the claim that it is fully a member of our moral community.

Charles Taylor, argues that the moral community is the one that defines who is person, and therefore draws the boundaries on who is accepted and who is not in the moral community. He also states that in order to be a person one must earn this status to the eyes of the moral community, by individual moral achievements. The duties and rights that an

\textsuperscript{12} “Person” as defined by \textit{opentopia} (cited 18 Dec. 2006): available from http://encycl.opentopia.com/term/Person
\textsuperscript{13} John Locke, “Book II,” in \textit{An Essay Concerning Human Understanding}, [My emphasis].
individual is given by the community are earned. So, if this is true, fetuses have to earn their place in the moral community.\textsuperscript{15}

But why is it that “person” and not “human” is the category by which we confer rights? This rests on some of the more detailed parts of arguments debating personhood criteria.\textsuperscript{16} First, children and young teenagers are undoubtedly human, and are undoubtedly part of our moral community, but they are not members who have full person status. In consequence, they are not conferred all rights. Why? The most important reason is because full persons need to demonstrate that they have \textit{the capacity to be fully morally responsible},\textsuperscript{17} in their behaviour toward others. This is a hugely important criterion in the list of personhood qualities and a condition on which the whole idea of rights rests, if those rights are to function properly in a society.

Since Aristotle, philosophers have argued for centuries\textsuperscript{18} that rights go together with duties or responsibilities – the most important of which is the capacity to respect the rights of others, and to put one’s own self-interest second where pursuing it would violate the rights of others. Clearly children, and in some states even animals, have some rights. But they do not have the capacity to exercise \textit{all} the moral responsibilities of adults until they attain majority. Indeed, as the different laws for, and sentences awarded to, juvenile offenders suggest, children are not expected to shoulder all the moral responsibilities associated with curbing self interest or considering the rights of others until they “come of


\textsuperscript{16} Given the definition of John Locke of person as an intelligent being and capable of reasoning, this is why the rights are given to a ‘persons’ and not just to ‘humans.’ John Locke, “Book II,” in \textit{An Essay Concerning Human Understanding}.

\textsuperscript{17} Charles Taylor, “The Person” M. Carrithers, et al.

age”: i.e. until they warrant full person status. The basic point to retrieve from all of this is that belonging to a species community only requires biological similarity. Belonging to a moral community requires the exercise of non-biological attributes that moderate behaviour by first stimulating and then rewarding with rights a moral awareness of the other members of the community.

Moreover, a persistent strand in many arguments about the criteria of full person status is that moral responsibility and moral awareness of other persons needs to be continually demonstrated in order to maintain one's full person status. In addition to the capacity for morally responsible behaviour, this involves, among other things, self-consciousness, continuity of identity, advanced methods of communication (language, though not necessarily verbal), and long-term memory recall, according to Taylor,

\[w\]e are not selves in the way we are organisms, or we don’t have selves in the way we have hearts and livers. We are living beings [humans] with these organs quite independently of our self-understandings or interpretations, or the meanings things have for us. But we are only selves insofar as we move in a certain space of questions, as we seek and find an orientation of the good.\[19\]

An individual who is in a coma, or a patient diagnosed with multiple personality disorder (MPD), or one with an advanced case of Alzheimer's disease, no longer has all the rights that apply to full persons - even if they possessed full person status before their debilitation. This is purely because in each case, the individual lacks an ability to demonstrate one or more of the requisite criteria, and that this lack is considered to be permanent unless proven otherwise. Most rights, other than some political rights, do not, of course, cease to apply. However, they are in most cases exercised by proxy. The family of the coma victim (or in their absence, the state) adopts the right to decide whether to turn off

the ventilator. The family of the Alzheimer’s patient, or the state in cases of MPD and other serious personality disorders, adopts the right to incarcerate the individual, and prohibit other freedoms and choices. No one would contest the human being of these individuals, but their personhood status is only partial.

The point here is that questions of full personhood are questions of persons-in-time. This does suggest, for the abortion debate, that since all fetuses are even less able to demonstrate moral responsibility than young children, they are very clearly not yet full members of our moral community. They are not full persons. However, the argument over the moral status of abortion obviously goes much deeper than this. No reasonable person would argue that just because children or young teenagers are not full persons, we have less moral responsibility toward the way they are treated. Indeed, many arguments exist to say we have *more* responsibility toward children or the elderly than toward full persons precisely because they cannot fully look after themselves. It would, on the surface, seem that this argument applies equally to fetuses and leads logically to a pro-life position. Yet, as I hope to show shortly, this is not necessarily the case. Both positions require further complexity and detail in order to unravel more satisfactorily and both rest on drawing the line of whether personhood, potential or otherwise, is thought to begin at the same time as humanity begins. To draw that line we need to examine the difficult question of whether biological life (concept of human) equals valuable life (concept of person, whether full or partial).

The reality of negotiating the abortion debate both legally and morally is captured very candidly by the Alan Guttmacher Institute, which claims that “[a]bortion is one of the most divisive and emotional issues facing U.S. policymakers today. This should not be surprising, given that individuals' attitudes about abortion are shaped by their convictions
regarding religion, morality, human rights, public health and the status of women in society.”20 The abortion subject is deeply rooted in moral beliefs and these beliefs change within societies as the value they adjudicate to life and where personhood starts varies across time, space and cultures. Ian Kennedy points out that Medical Law is an extremely sensitive subject area in law-making because it involves policy-making from a bioethical perspective.21 In fact, abortion is one of the most sensitive subjects in bioethics and policy guiding next to euthanasia.22 It is very difficult to negotiate about these subjects because the value attached to life of the fetus and the value of the choice of the mother are very discretionary, and it is difficult to gain a unique and universal view on this subject, because they are incommensurable subjects.

The reason for the difficulty in obtaining common ground or finding consensus on the abortion debate relies primarily in discerning when life begins to matter morally, and negotiating laws from this point. Joseph Seifert,23 John Harris,24 and Ronald Dworkin,25 argue similarly that “the disagreement that actually divides people is a markedly less polar disagreement about how best to respect a fundamental idea we almost all share in some form: that individual human life is sacred.”26 Yet, the question extends beyond whether the fetus is merely a person or not; the point at which personal and individual rights are adjudicated must be determined. Therefore, it is now clear that what we need to know is not

21 For further reading: Ian Kennedy, Treat me Right: Essays in Medical Law and Ethics (New York: Oxford University Press, 1991), 8.
23 Joseph Seifert, What is life? The Originality, Irreducibility and, Value of Life (Amsterdam: Rodopi, 1997), 105.
when life begins; because we know it begins from the moment of conception,\textsuperscript{27} rather when life begins to matter in a moral sense. Ronald Dworkin sheds light on these difficult questions by commenting,

…it would be wise…to set aside the question of whether a fetus is a person, not because the question is unanswerable or metaphysical…but because it is too ambiguous to be helpful… Does a fetus have interests that should be protected by rights, including the right to life? Should we treat the life of a fetus as sacred whether a fetus has interests or not? Once again, we do not need to decide whether the fetus is a person in order to answer these questions, and these are the questions that count.\textsuperscript{28}

As Dworkin posits, the questions that count are very difficult to answer. The stakes are so high because any answers to them define the limits of our moral community. They are life and death questions, therefore, not only in respect to the fetus, but with respect to the way we understand our collective identity. The answers, if any are to be forthcoming, rest in an excursion into the concept of personhood that lies at the heart of moral arguments for and against personhood. This is why people in different countries get very upset, sometimes to the point that they are willing to terrorize threaten and even kill to demonstrate their views against abortion.\textsuperscript{29} They are willing to do shocking protests for their cause, mainly because their cause involves the issue of personhood at its core. This is why people get so agitated and upset, and there are many documented cases of violence against abortion clinics or doctors who perform abortion. The Center for Reproductive Rights declares that “[e]xtremist anti-abortion activists have waged an ongoing campaign of intimidation, harassment, and violence against abortion providers, clinic staff, their patients, and their

\textsuperscript{27} For further reading, James Porter and Norman Geisler, Life and Death debate: Moral Issues of our Time (Westport, CT: Praeger/Greenwood, 1990), 34.
\textsuperscript{28} Ronald Dworkin, Life’s Dominion, 23.
families.”30 These issues of violence happen because the stakes on the personhood debate are very high.

It is relevant to remark that there is a difference between the ‘pro-life’ and the ‘anti-abortion’ movements. The difference is in that the means for achieving their objectives rest in violence. The religious tolerance organization states that “[i]n recent years, the term "anti-abortion" has been used to identify individuals and groups which employ violence and murder to attain their political ends.”31 The ‘pro-life’ movement discards employing violence to achieve its purposes, although both movements engage the same concept of personhood “that human personhood begins at the instant of conception.”32

The National Abortion Federation has a broad database that provides statistics on the violence and disorders against abortion providers since 1977.33 The information and data included in Annex 1 is from the National Abortion Federation and it was completed by reports sent by the member clinics, the news media and ‘pro-choice’ organizations.

Determining personhood involves conferring rights within a society,34 or deciding when we confer full personhood status to someone we are drawing the boundaries of who belongs to our moral community and who does not. In today’s modern societies the value of the fetus varies among religions and cultures, which can lead to, “at least three views of the moral status of the fetus appear in contemporary discourse- the fetus is mere tissue, is

32 “Violence and Harrassment at U.S. abortion clinics,” Religious Tolerance
potential human life, or is full human life.” Susan Gibson takes a similar stance on abortion, asserting that there are three basic positions that can be outlined when approaching abortion: the ‘conservative’, ‘moderate’, and the ‘liberal’ views. According to Gibson, the conservative view states that the fetus comes into possession of life from the moment of conception and therefore has the right to life; the moderate view argues that the fetus comes into possession of the right to life at some stage during pregnancy; and the liberal, or libertarian, view argues that the fetus does not at any stage of gestation have the right to life. Therefore, it is mainly how we understand personhood, or the point at which individual rights are adjudicated to an individual, that determines our position on abortion and the rights we invoke or deny to the fetus.

1.2 The rights conferred upon a fetus

How does the value of life compare with other rights? Are the rights of the mother and the choices that she makes more important than the value of life of the fetus? I will argue that the right of the mother to choose as a full right individual prevails over the potentiality of full human status of the embryo. Interestingly, it is on this point that most contemporary debate occurs. The conflict is between being an individual, who exercises individual rights against individual rights-holders, and being a member of the moral community. There is no doubt that the fetus has great value as a potential human life, which certainly makes the pro-life argument a strong one. Nevertheless, the rights of the mother as an autonomous individual appear to me to warrant more support when it comes to a

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decision being made. Therefore, we are establishing our identity as a group on a basis other than what it is to be biologically human.

1.3 Perspectives on personhood and abortion

In many countries, abortions are permissible for limited reasons, but some countries are stricter than others on the laws imposed against abortion.\(^{37}\) In many modern democracies abortion is permitted “without restriction to reason.”\(^{38}\) But still some of these modern democracies still place restrictions on the gestational limits of the women who are seeking the abortion. For example, France and Denmark is 12 weeks, contrastingly, Canada has no gestational limit. Although there are different guidelines in the time to have an abortion in each country, they still share the view that the woman as the one that makes the decision to get an abortion for any reason.\(^{39}\)

The first argument against abortion is that the fetus is a human life and therefore it should enjoy the same rights as a full right individual. Yes, the fetus is a human life in the sense that it is biologically meant to become a full grown human at some point in time. But because a fetus has the potential of becoming a full right person does not mean it is, at the time it is a fetus, a full person. Therefore, as it cannot exercise the same rights and obligations as a full right individual, these rights should not be invoked if they go against the choice of the mother, who is a full person with attendant rights.

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The importance of personhood and the status of rights is the central question in the arguments for and against abortion. It is an integral part in the abortion debate because it encompasses the fetal rights debate, of when exactly the fetus achieves personhood. However, due to the conflicting meanings of the word ‘person’, within the fetal rights debate, the issue appears to have no clear answer. In the United States, credence would be lent to the point the fetus gains the rights described in the Constitution.\(^{40}\) Under British and United States common law, the conferrement of rights has long been regarded as coming into being at the moment of live birth. In United Kingdom, the 1989 case of \textit{R v Tait}\(^{41}\) confirmed this legal view. The people that support the ‘pro-choice’ view on abortion believe the fetus should not have rights until it is considered ‘viable’ such as in the cases of the United Kingdom where it is 24 weeks.\(^{42}\) Viability is still a controversial subject. This point is important to the moral argument because, as previously mentioned, personhood status (whether full or partial) is about acceptance into the community, who is accepted to the community and who forms part of the person club.

In Roman times the \textit{patria potestas} was when the newborn child was laid at the feet of its father.\(^{43}\) If he picked up the baby, it was accepted into the community with the rights

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\(^{40}\) For further information on United States Supreme Court decisions, Ian Shapiro, \textit{Abortion: Supreme Court Decisions 1965-2000} (Indiana: Hackett Publishing, 2001).

\(^{41}\) In this case the defendant was charged with threatening to kill a five month old fetus during a burglary and was initially convicted. However, the Court later reversed the decision, determining that the fetus was not a distinct entity from its mother. Therefore, under the UK Offences Against the Person Act, 1961, the threat of a miscarriage presented by the burglary was not an offense under the act. In addition, although no such information had been revealed throughout the case, the court ruled that had a threat to the fetus after birth existed it would be considered an offense under the Act.

\(^{42}\) During Parliamentary negotiations and debate in the UK, on the Human Fertilisation and Embryology Bill in the1980s there was controversy on the gestational timing at which a fetus was considered viable. This is when the 24 week limit was included in the current legislation of the United Kingdom. Today, “one of the arguments for reviewing the time limits for abortion is the belief that due to advances in medical technology fetuses are now viable before 24 weeks’ gestation.” In “Abortion time limits,” \textit{British Medical Association} (May 2005 [31 Jan. 2005]): available from http://www.bma.org.uk/ap.nsf/Content/AbortionTimeLimits–Factors–viability

(which were in those days more like privileges than modern rights) that went with that acceptance. If not, the baby was not accepted and was either exposed to die on a mountainside or considered to be illegitimate, which meant fewer rights, certainly no property rights, and less acceptance into the community. This is why a clear conception of personhood is so difficult to achieve, because the question relies on when a person or a potential person is formally accepted into the community and given the rights that go with that.

Proponents of ‘Pro-life’ use the potentiality argument to counter the personhood argument. They argue that having the potential for personhood endows the fetus with rights just as having personhood does. As David Boonin argues, “[p]otential possession of a right entails actual possession of a right. If an individual is such that is developing into a being that clearly has a given right then this fact about justifies conferring the right on it already.” Boonin’s argument does not work, however, because it follows a circular logic. There might exist certain properties of a thing that would make it unethical to destroy it. These particular properties could be, for example, personhood or membership in the homo sapiens community. While Boonin states the potentiality argument, he contends that the potential to possess property means that there is such possession of that property. That proposal continues infinitely into the past because it implies that the potential for the

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46 David Boonin, A Defense of Abortion, 45.
potential to possess a certain property confers the right to possess it as well, and so on. If that were the case, it will take a couple regressions to argue that a fingernail has rights.\footnote{Jane English, “Abortion and the Concept of a Person,” in The Ethics of Abortion, ed. R.M. Baird and S.E. Rosenbaum (Buffalo, NY: Prometeus 1989), 83-92, and Joel Feinberg, "Abortion," in Matters of Life and Death, ed. Tom Regan, 2d ed. (New York: Random House, 1986), pp. 256-293 in Andrew Chrucky, “Concepts of Person and Morality,” (1992 [cited 31 Jan. 2007]): available at \url{http://www.ditext.com/chrucky/decelles.html}}

The point to be seen in all of this is that, while the potentiality argument appears on the surface to be extremely persuasive, it is problematic because it rests on first a confusion between person and human, and second an illogical relation between ethics and time. The actual properties of the fetus are, in fact, not of personhood, but of human being. Whether it has a potential to develop into a person in the future, may not be as relevant as some prolifers argue, because a potential is not, in fact, a property. Thus we find arguments based on a marked distinction between potential and actual properties\footnote{See Peter Millican, “Abortion,” p. 3. (cited 30 Jan. 2007): available from \url{http://www.etext.leeds.ac.uk/peter/papers/2000AbortionOCCT.rtf}} which does not really help us either accept or reject the potentiality argument.

Another argument rests again on the time factor and concerns the claim that rights are conferred in order to protect interests. A proponent of the potentiality argument might defend anti-abortion laws because the interests of the fetus (i.e. it is in the interest of the fetus to not be aborted and to realize its potential to become a full person) are contravened if it is aborted. However, Ronald Dworkin\footnote{R. Dworkin, \textit{Life's Dominion}, Chapter 1 “The edges of Life and Chapter 2 “The morality of Abortion,” 3-67.} provides an interesting perspective that suggests this argument is problematic because it is based not on circular logic, but backward logic. We tend, in Dworkin’s view, to use retrospection to make these kinds of arguments and so we assume that, given you and I \textit{now} have a clear interest in not being killed, when we look back to the time when we were a fetus, it is in our current interest not
to have been aborted then. Dworkin argues that our interests now cannot be used to argue for the existence of the interests of a fetus or that any action then would contravene those interests. You or I did not have a consciousness when we were fetuses, so there was then little to distinguish us from any other small collection of cells then. It is, therefore, only when interests are actual interests that they matter morally.

Dworkin’s example is that, similarly, it is now in the interest of all human beings alive that a large meteorite did not hit the Earth 30 million years ago, destroying the planet and making our lives in the present impossible through an occurrence in the past. But 30 million years ago, since there were no human beings on the planet at that time, there was no human around whose interests could be contravened if the meteorite hit. Likewise, if my father’s boss had required him to take an extended business trip away from my mother the very evening before my conception, this action cannot be seen to damage my interests then, for even though I can look back and consider it very much against my current interests if this action, or omission, had occurred, there was no one for whom any interests existed then to be contravened. Dworkin’s argument is interesting, but does not entirely dispense with the potentiality argument, for fetuses do, in fact, exist regardless of whether one can argue their interests as fetuses are actual or potential. Even if it is correct that a fetus does not have interests like we have interests, it can still be argued that it has potential interests that ought to be protected by rights. But if it is accepted that a fetus has a moral status attached to its potential interests or potential properties, this does nothing to help us determine where and when that moral status begins and how it develops along with the realization of potential interests or properties into actual ones.

The difficulty of drawing a line or deciding when exactly a person or potential person is accepted into the moral community and hence has rights is at the forefront of the
abortion debate. While science is increasingly being called upon to help in the difficult moral and legal decision of where to draw the line, in other places and at other times, such as Ancient Rome, the line was drawn by other means. How it is drawn, nevertheless, is less important than the fact that it is drawn somehow, as the old practice of patria potestas shows, there is a moment in which a person starts being a person and therefore has certain rights in the eyes of the community. While science can add support to questions of personhood and rights, on when exactly biological life begins, it does not help to answer the why would the fetus have rights questions. The moral and ethical question of why precedes the when (and is therefore more important). This question is best answered through moral argument and moral reasons for believing one thing rather than another.

On one hand, in the United Kingdom the fetus is generally considered viable 24 weeks after conception. The libertarian, or individualist view on abortion would argue that the fetus is no different from an appendage of the mother, because, like a finger or a gall bladder, the fetus cannot survive (in a mere biological way) if removed. On the other hand, proponents of "pro-life", such as Deirdre McQuade, David Wendler, Joe Scheidler and, Catholic and Christian groups, advocate the belief that all fetuses at all stages of development are human beings with the potential to have rights, and therefore they must be assigned these rights.

The debate is not focused on whether the fetus is living per se, but on the value of that life, and the rights donated to represent and protect that value. Personhood is about the value of human life in certain stages and in certain contexts. That value cannot be

described, legitimated or even suggested by science—only moral arguments can tell us what value human life has at what stage and why. Science merely provides a more detailed context within which these moral arguments can be developed and defended; rights are not conferred as a result of biology.

The conferral of rights to a person is based primarily on what value a community decides that a given life is entitled to. Our moral community, then, draws a boundary around those to whom we confer rights. And even in some cases moral communities are not exclusively or necessarily human. In many parts of the world, some animals are partially admitted into that community and are given rights that show their lives and the conditions in which they are have a moral value, as Tom Regan for example,\textsuperscript{54} argues in his work. Yet even where rights are given to some non-human animals, they are not given to all. Why is it, for instance, that the British give dogs lots of rights,\textsuperscript{55} but earthworms no rights? Depending on the tradition one is reading, the answer can either involve questions of similarity or questions of ability to feel pain. We feel dogs are closer to us in appearance, behaviour and, indeed, \textit{personality}, than earthworms. Many arguments exploring animal rights make this point,\textsuperscript{56} which can also be extended to the personhood-abortion argument. The more a fetus looks and behaves like the other members of the moral community, the more inclined we are to accept it as having similar moral value—or the potential to develop it, which should not be thwarted. The main question nevertheless remains unresolved, ‘when does \textit{valuable} human life begin?’

\textsuperscript{54} Tom Regan, \textit{The Case for Animal Rights} (California, University of California Press, 2004).

\textsuperscript{55} If a motorist hits a dog with her car, for example, British law requires her to report this to the police immediately, just as one would do if a human being were hit. This law does not apply if a motorist hits a cat or a wild animal, like a deer. Likewise, lost and found dogs must also be reported to the police, and dog ownership needs to be legally registered, whereas lost and found cats are not covered in any way under British law.

\textsuperscript{56} James E. White, \textit{Contemporary Moral Problems} (Boston: Thomson Wadsworth, 2005).
We know when *life* begins; the question is whether all human life is valuable simply because it is human\(^{57}\) (this is the religious view, which is linked to a moral view of human, not a biological view of human which is scientifically detached from moral arguments). Scientific arguments\(^{58}\) are used only because they can be introduced to help the moral arguments concerning time and value. How and when to value it, whether to value it in the present, or for what it could become in the future, and how that value is equal or less than the value of the mother carrying it and her wishes as to whether she wants to continue carrying it. For example, Daniel Oliver states in a rather shallow argument,

…neither ‘life’ nor ‘choice’, therefore, is really the issue on the abortion dispute. And when we talk about ‘life’ or ‘human life’ we really mean ‘human being’ or ‘person’, as in Mother Theresa or Yasser Arafat- or ‘personhood’- i.e., the nature of someone essentially like us and entitled to the same protection of the law…So the central issue in this debate is whether the fetus is or not a person. Maybe it is part of the body of the woman in which it resides until it can be autonomous…what is life and where does it begin?\(^{59}\)

Questions concerning abortion and personhood do not rest centrally on questions of what life (per se) is, or when life begins because scientific evidence shows that life begins at the moment of conception. What matters most, as I hope to have established earlier, is what we consider to be valuable life. We already know when life begins biologically, at the moment of conception.\(^{60}\) But just like other questions of political philosophy which centre around to what extent we can do what we want with our life, the biological beginnings and endings of human life are only half the story.\(^{61}\) Can we commit murder if we want? Our moral community has decided no. Nevertheless, under some circumstances some moral communities (e.g., in the United States or in the international community in cases of war

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\(^{57}\) James E. White, *Contemporary Moral Problems*.


crimes, crimes against humanity or genocide, such as the recent execution of Saddam Hussein) have said that capital punishment forms of killing can be used and are just.62

Abortion questions, in the long run, end up pointing to even deeper questions that ask if we can or ought to use other people indiscriminately to further our own desires, interests and benefits. For example, can we use slaves to do all our work? Our moral community says no, because “[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”63 Again, this kind of argument is time-specific. A few hundred years ago, other views prevailed on the issue of slavery. When the Spanish conquest came to Mexico, they had to deliberate what status of personhood the Indians would have and whether they had souls or not. In the United States slaves were not considered full-righted persons before 1865.64

Other related questions include can we torture or abuse children (or, in some places, animals or the environment) just because we have the physical power to do so? The answer is usually no,65 because we have agreed upon the value of a child’s life, and so conferred rights to the child. What we consider to be a valuable life includes respect for other members of our moral community in the same way we expect that respect to be returned.

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1.3 The Catholic Perspective on Abortion

In this part of the chapter I discuss the role of the Catholic Church and its position in the debate about personhood and its stance on abortion. I believe that it is important to address this perspective, as Mexico is a predominantly Catholic country, with Catholic beliefs. This analysis rests upon the Vatican’s stance on this particular subject. Scientific advances and our knowledge about reproduction have been used on both sides of the abortion debate to justify in a more complex, detailed form the different views over where the value of human life begins and what it involves. The Catholic perspective on abortion has remained consistent throughout time, but the Church has had to reaffirm its position on a number of issues with the dawn of scientific advances such as in vitro fertilization, stem cell research, and the innovations on reproduction. The main argument of the Catholic Church is that “[t]he human being must be respected- as a person- from the very first instance of existence.” These documents do not address, however, the problem of personhood, because personhood is a secular term, and Catholics believe in the idea of ensoulment: the moment where body and soul come together, and the moment where human life takes on its special moral value.

Catholics use a sacral concept in its place that carries some, but not all, of the ideas encapsulated in personhood. Catholics use the concept of ensoulment and hominzation.68 Ensoulment is to have a soul on Earth, and therefore requires that there be a moment in

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time when a body and soul come together. Souls can live without bodies in eternity with God, but all bodies require souls. In the eyes of the Church the disembodied soul enters the body at conception.\textsuperscript{69} The eternal soul then leaves the body at physical death. This kind of view does seem to have enormous moral, and sometimes practically problematic, consequences “given the discovery that a high proportion of fertilised ova are spontaneously aborted in early pregnancy, often owing to chromosomal abnormalities.”\textsuperscript{70} Millican points out the general problem when he mentions that,

[s]uch wastage seems in some tension with the view that the human soul is created at conception, but it also makes any absolutist prohibition on abortion crucially dependent on the controversial distinction between acts and omissions which has featured prominently in debates on euthanasia – without this distinction, anyone who places an absolute value on human life from conception seems committed to the saving of millions of prenatal lives whose maintenance would be prohibitively costly.\textsuperscript{71}

While the Church considers that human life begins at the moment of conception, this argument also rests upon the DNA formation in the embryo that starts with fecundation. Eliza Loucaidou, citing Coughlan, gives us a summarized analysis in which the genetic humanity of a new individual is equivalent to a person:

1. As the life of the fertilised ovum is neither that of the father nor that of the mother, it is a new life.
2. This new life is a human life, for it could not be made human if it were not human already.
3. This new human life is the life of an individual, for its identity is established from the first instant.
4. This new human individual, which comes into existence at the moment of conception, must surely be a person.\textsuperscript{72}

\textsuperscript{70} Millican, “Abortion,” 3. Available at http://www.etext.leeds.ac.uk/peter/papers/2000AbortionOCCT.rtf
\textsuperscript{71} Millican, “Abortion,” 3.
This confirms that, for Catholicism, human life begins in the potentiality of a human person and that genetic humanity is of very little importance. The embryo’s genetic code is sufficient scientific evidence for the Catholic Church to consider it a person with intrinsic moral value that demands respect and the behaviours that stem from this.

Since the goal of this thesis is not to study the essence of religion and beliefs, I suggest that people should have their own guidelines in deciding what stance they want to take regarding the personhood of the embryo. Nevertheless, it does seem valid to say that religious perspectives may no longer be appropriate for guiding policy and law in modern democracies, particularly, given Millican’s point about the practical costs of some such views. Not everyone living in democracy necessarily has to believe the religious dogmas on top of which that democracy may have been built. Laws, should not be guided in these beliefs. Laws should permit abortions, specifically in cases of pregnancy after rape, mainly because abortion is a public concern, rather than a private one. It is a matter of public concern because, according to the World Health Organization, unsafe abortions take place at an alarming rate\(^\text{73}\) – endangering the life of the mother who is already a full person, a full member of the moral community with the rights (including reproductive rights and the rights that accompany the value of autonomy) that go with such membership. Therefore, safe, legal abortion services should be available to all women in a modern democratic government because it has an impact on women’s rights as well as in women’s health.\(^\text{74}\)

Even then, when the laws are enacted where abortion after rape is legal in all jurisdictions, it happens that many times women do not have accurate information about the laws and


may seek unsafe abortions because they do not know they are eligible for the abortion service or do not know the legal requirements for obtaining an abortion.

Public opinion can also directly affect access to legal and safe abortion services. In communities where the dominant attitude toward abortion is conservative, medical providers are often unwilling to perform these abortions,\textsuperscript{75} and spouses or other family members may forbid a woman to seek an abortion if they hold strong negative opinions about the practice.\textsuperscript{76} Conservative opinion may also influence women's own views. Women seeking induced abortion may feel guilty about doing so. These feelings may lead them to seek clandestine, unsafe services rather than legal, safe ones because even if they do seek legal and safe abortions, as the next chapter of this thesis will show, they may suffer intimidation by the authorities and conservative groups.

\subsection*{1.4 Abortion as a Woman’s Right}

More than the Pro-life, the Pro-choice ideology is strongly linked with women’s rights, and so, with the western way of thinking. The rights of women, specifically women’s reproductive rights, set the basis for the Pro-choice argument. If we part from the definition of reproductive rights that states that, “[…] the reproductive rights are guarantees that every person enjoys […] and are based on dignity and equality principles.”\textsuperscript{77}, then we are able to link the reproductive rights to the liberal thinking. The equality principle between genders is merely a western idea; and from here, derives women’s autonomy, that

\begin{footnotesize}
\textsuperscript{75} The Second Assault: Obstructing Access to Legal Abortion after Rape in Mexico. Human Rights Watch. Vol 18. No. 1(B), New York: March 2006


\textsuperscript{77} “Los derechos reproductivos en los compromisos internacionales del Gobierno de México”, GIRE (2005), 1. [My translation].
\end{footnotesize}
leads us to women’s reproductive rights. Now, we can easily draw the connection between the abortion debate and women’s rights. Specifically, when arguing on Pro-choice ideology.

In order to give support to the Pro-choice argument, I state the following. First of all, that the right to make decisions over their reproductive choices should allow women to choose on whether or not they would like to exercise their right to abortion in the legal cases; and that this decision must be respected by all means of law. In second place, any woman is a full righted person already, and for this only reason, her rights trump the rights of any potential person. Therefore, a woman has the right to make a decision when it comes to her reproductive rights, even when involving a potential person and its future in her decision.

International legal support for a woman’s right to safe and legal abortion can be found in a number of treaties. The right to choose has support in human rights guarantees such as, the right to life and health; the right to freedom from discrimination; and the right of autonomy in reproductive decision-making. But before we discuss the international legal standards and rights of the women it is necessary to go into descriptive detail about the philosophical work on the subject. All of this information will be addressed in Chapter two. I hope that by now I have established that the personhood argument is deep and complex and not often understood outside the philosophical literature on the subject.

78 For a fuller definition of reproductive rights see: Pillai, Vijayan K., Guang-zhen Wang, “Women’s reproductive rights and social equality in developing countries,” Social Science Journal 36, no. 3 (1999), 1.
1.5 Conclusions of Chapter One

This chapter has argued that personhood, whether understood in terms of moral argument, or in practical terms of rights provision, and the group identity issues it involves is one of the core reasons why the abortion debate is so difficult to resolve in both a moral and legal sense. It is not just a question of our community as a species being “biologically human.” It is a question of how we see our moral community and where we draw its boundaries. Different views on who should belong, at what point they belong fully and consequently, how we should regulate behaviour and actions towards members produce different positions on the legal and moral status of abortion. One conclusion I offer is that abortion is perhaps more important than other issues like suicide, euthanasia or capital punishment. The answer to the abortion question establishes where we consider the beginning of personhood to be, and thus where one important boundary of group belonging is thought to reside. Therefore, the abortion question is not just about fetuses, or, indeed, about women’s reproductive and other rights. It is about the community as a whole and how it affects everyone within it, whether they are involved in abortion issues politically, personally or not at all.

If women’s reproductive rights are to be taken seriously at a national and international level, demonstrate the need of international legal standards and countries to comply by them. Moreover, if blatant “human” rights violations are to be minimized and if moral communities are to interact coherently with each other across national divides, women’s rights need to be clearly established and practiced.

Finally, it is essential to go way beyond just a species definition in our understanding of the concept of “human” in “human rights.” As has been established, biological issues are not those being debated here. Rather, what is at issue are morality and
community and how they intersect with individuality and autonomy when we are discussing abortion. Therefore, it is doubly important to have a common belief because *how* we see personhood is the basis for our system of rights. If Mexico complies with international legal standards and conventions on women’s reproductive rights, that is how Mexico and its society views the concept of personhood. If we wish our collective identity to be one in which women’s rights are taken seriously and in which equality is of utmost importance, then it is crucial to resolve these issues surrounding abortion.

Abortion is not a single-issue political problem. It is a moral problem that lies at the intersection of many important political and legal issues at the heart of modern democracies. In Mexico’s case it is doubly crucial, at least if we are to believe what the newly democratically elected politicians have been saying over the last six years about how serious they are to turn Mexico into a legitimate, democratic nation who respects international standards on women’s rights.