

Moral Personhood in the Context of Abortion: An Examination of Mary Anne Warren's
Perspective

BY

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**A Research Project Submitted in Fulfillment of the Requirements for the Award of
the Degree of Master of Arts in Philosophy, University of Nairobi**

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DECLARATION

I declare that this research project is my own, unaided work. It is being submitted to the Department of Philosophy and Religious studies in fulfilment of the requirement for the award of Master of Arts degree in philosophy, University of Nairobi, Kenya. To the best of my knowledge, this project has not been submitted before any other degree or examination in any other University.

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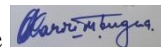
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DEDICATION

This work is dedicated to the late Sr. Mary Mamwacha whose inspiration made this journey possible. Through her encouragement and support, my dream to study philosophy was actualized.

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Abstract

Abortion remains one of the most controversial issues in the world today. On the one hand, the pro-life school of thought holds that the practice is morally wrong because it entails killing a foetus, who is a person, as life begins at conception. On the other hand, some pro-choice advocates hold that abortion is justified because a foetus is not a person. According to the pro-choice scholars, such as Mary Anne Warren, a foetus cannot be granted personhood because it does not meet the criterion of being a moral person, whereby a being of this nature must be conscious, rational, able to engage in a self-motivated activity, have a capacity to communicate, and have a sense of self concepts and self-awareness. Against this backdrop, Warren concludes that a foetus is not a moral person, and hence the unborn children do not have moral personhood. Thus, she insisted that the right to life of a foetus does not outweigh the right to liberty of a pregnant mother. Therefore, to address the problem, I engaged in a library research with the objectives of examining whether a foetus is a person, in the sense of having ethical standing and rights. The study also sought to establish the truth value of Warren's claims that a foetus does not have the psychological traits of moral personhood. Thereafter, the relevance of Warren's position on foetal personhood in addressing controversies in abortion was examined with the aim of coming up with practical recommendations that could inform abortion decisions around the world. The study's findings revealed that Warren was wrong to argue that foetuses lack the psychological traits of personhood. After reviewing available literatures on foetal personhood, it was concluded that late gestation foetuses have sentience, possess vital communication body organs, and experience brain waves and electrical impulses that signal the development of brain functions. Therefore, it was recommended that abortion should not be allowed unless in the case of rape, incest, foetal impairment, or when the life or the health of a mother is in danger, or when a foetus has not reached viability.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of the Study

The issues of foetal personhood and abortion have attracted numerous controversies in contemporary times. Although the debates have existed since the ancient times, the 1960s and 1970s witnessed a twist of trend as discussions on the personhood of a foetus and abortion intensified following the increased demand for governments to repeal the anti- abortion laws. The mid of the 20th century saw widespread increase of abortions in western countries, hence attracting intense philosophical debates. Until 1967, abortion was illegal in almost all the western democracies, except Sweden and Denmark¹. In 1967, the United Kingdom legislatures passed the Abortion Act that legalized abortion on specific grounds. According to the Act, registered practitioners could act in good faith and procure an abortion provided that the pregnancy had not exceeded 24 weeks of the gestation age and if a pregnancy would pose a risk to the mother or her family². The legislation sparked reactions across the region, and it also had far-reaching consequences.

However, of particular interest is the 1973 publication of Anne Warren's article entitled; "On the Moral and Legal Status of Abortion." Having been born in 1946, Warren lived when abortion debates were at their peak. As a writer and philosophy professor, she is known for her writings on abortion and eco-feminism. Her text on the moral and legal status of abortion provided a justification for legalizing abortion by stating categorically that a foetus is not a moral

¹ Boyle, Elizabeth H., Minzee Kim, and Wesley Longhofer. "Abortion liberalization in world society, 1960–2009." *American Journal of Sociology* 121, no. 3 (2015): 882-913.

² Sheldon, Sally. "The abortion act 1967: a critical perspective." In *Abortion Law and Politics Today*, pp. 43-58. Palgrave Macmillan, London, 1998.

person, and hence it can be terminated at will. As a result, several scholars and activist groups in the west reacted by either affirming or negating the personhood of a foetus. According to Warren, a foetus is not a moral person because it lacks primary conditions for personhood, such as consciousness, reasoning, capacity to engage in a self-motivated action, the ability to communicate, and having self-conception or being aware of the self. In this context, Warren argued that a foetus is not a moral person, thus pregnant mothers should be granted an opportunity to terminate pregnancies at will because their right to liberty overrides the right to life of a foetus. Consequently, Warren's text resonated well with the majority of the pro-choice activists since it encouraged women to procure abortion services against the epochal legislations that had for a long time enabled the police, courts, and lawmakers to prosecute abortionists and harass women who terminated pregnancies. Consequently, the 20th century saw the development of abortion rights movements, a factor that influenced the revocation of abortion bans in most western societies³. As Barer found out, abortion law reforms were justified because they could solve health issues and enhance human rights. With regard to public health, it was evident that population pressure around the world compelled communities to encourage smaller families. Besides, women's education and improved socio-economic status created alternatives to childbearing⁴. On 22nd January 1973, the United States legalized abortion following the case of *Roe v. Wade*. The Supreme Court landmark decision ruled that the USA constitution should protect a pregnant women's liberty to choose an abortion. The ruling also struck down many U.S Federal and state abortion laws that had criminalized abortion. Over the years, different countries

³ Dellapenna, Joseph W. "The History of Abortion: Technology, Morality, and Law." *U. Pitt. L. Rev.* 40 (1978): 359.

⁴ Berer, Marge. "Abortion law and policy around the world: in search of decriminalization." *Health and human rights* 19, no. 1 (2017): 13.

around the world have adopted unique abortion laws depending on how individuals and communities perceived the matter.

Today, abortion is still an issue of priority concern as cases of intentional termination of pregnancies are reported to be on the increase, with more than 73 million global abortion cases being reported annually⁵. The majority of these cases occurs in developing countries and is performed by unskilled individuals in environments that fail to meet the provided medical standards⁶. According to studies, the majority of abortion cases occur in Asia, Africa, and Latin America. In Asia, a high preference for abortion is caused by cultural factors as well as social structures. For instance, sons are preferred because they have a higher earning capacity, tend to continue family line, and are supposed to take care of parents during old age. As a result, son preference has increased prenatal discrimination against girls, leading to increased infanticide cases⁷. All in all, the practice of abortion has elicited conflicting debates at the same time raising ethical disputes, especially with regards to the issue of personhood.

In the recent past, conflicts between the pro-life view and the pro-choice perspective on abortion have intensified. The differences have propagated divisions with regards to the issue of abortion. Different societies tend to hold subjective views on the moral status of a foetus, whereby some cultures believe that a foetus is a person, while others hold that a foetus does not have personhood. Besides, the moderates believe that personhood of a foetus begins at a certain point of a pregnancy, thus abortion should be legal before a certain point and illegal after a particular point of the gestation period.

⁵ Cohen, Susan A. "Facts and consequences: legality, incidence and safety of abortion worldwide." *Guttmacher Policy Review* 12, no. 4 (2009): 2-6.

⁶ Ibid

⁷ Hesketh, Therese, Li Lu, and Zhu Wei Xing. "The consequences of son preference and sex-selective abortion in China and other Asian countries." *Cmaj* 183, no. 12 (2011): 1374-1377.

In the United States, legal frameworks on abortion differ from one state to another, whereby states tend to differ on when the personhood of a foetus begins. Diverse approaches to the issue of personhood have made states to have varying abortion laws. For instance, some states, such as Alabama, Michigan, New Mexico, and among others have banned abortion but with some exceptions, such as when the life or health of a pregnant mother is threatened. On the other hand, some states have legalized abortion at a certain point of pregnancy. For instance, on 22nd January 2019, the Reproductive Health Act of New York expanded abortion rights and decriminalized abortion, hence allowing medical practitioners to conduct an abortion within 24 weeks of pregnancy. On the same note, on 19th May, 2021, Texas became the latest U.S state to tighten its abortion laws by making it illegal for actors to terminate pregnancies after detecting a foetal heartbeat. This development happens after six weeks of pregnancy. As a result, the trend has elicited mixed reactions over the issue, whereby the pro-life and the pro-choice tend to hold contrary opinions.

In the United Kingdom, the Abortion Act of 1967 provides that abortion should be allowed up to 23 weeks and six days of pregnancy. According to the Act, abortion is allowed if it is conducted by registered medical experts and authorized by at least two doctors, who are acting in good faith on the grounds that the pregnancy has not exceeded 24 weeks and that if the pregnancy continues to grow, it will pose a risk that is more than if the pregnancy is terminated⁸. On the same note, the pregnancy can be terminated if there is a risk to a foetus to the extent that if the child were born, abnormalities could be inevitable. Concerning the issue of good faith, the law implies that a medical practitioner should not be dishonest or negligent in forming medical

⁸ Brown, Jonathan. "Scotland and the Abortion Act 1967: historic flaws, contemporary problems." *Juridical Review* 2 (2015): 135-155.

opinions⁹. Thus, from this reasoning, what makes abortion lawful is the medical expert's opinion that there are lawful grounds for this medical procedure.

In the Netherlands, abortion was made legal in 1985 through the enactment of the Termination of Pregnancy Act. Since then, the law has been allowing abortion to be done on-demand until 24 weeks of pregnancy. In practice, the legislation provides that abortion should be available upon request until 22 weeks, whereby doctors hold two weeks margin. Besides, there is five days waiting period for abortion. According to the national legislation, abortion may be performed up to the time when a foetus can survive outside the mother's body. However, doctors apply a two weeks margin of error to a time limit of 22 weeks before one procures abortion services. As Juanola indicates, the Netherlands Termination of Pregnancy Act of 1984 seeks to balance two conflicting interests; the right to life of a child and the right to liberty of a pregnant mother. The five-day cooling period is also beneficial because it gives a pregnant mother time to reflect before making abortion decisions. Besides, the woman has a right to be informed of the possible solutions before deliberating on whether to procure an abortion or not. Thus, the Dutch Constitution implies that personhood begins after 24 weeks of pregnancy. The position is plausible because it coincides with recent medical findings that place viability at 24 weeks of gestation.

In Honduras, the Constitution provides that life begins from the moment of conception. Thus, abortion in all circumstances, including rape or incest is illegal¹⁰. The ban also extends to situations when the life of a woman is threatened or when a foetus has deformities. Besides, it is illegal for anybody to use emergency contraception, such as the morning-after pills. Thus, anyone who participates in an abortion process can be charged with crime or

⁹ Ibid

¹⁰ Booth, Amy. "Honduras changes constitution to ban abortion." *The Lancet* 397, no. 10272 (2021): 360.

imprisonment. From these findings, it is evident that the Honduran communities believe that personhood begins at conception. Thus, any attempt to terminate a pregnancy is wrong because such acts are associated with murder. However, the prohibition of abortion in all circumstances puts rape and victims of incest in a precarious position. In this case, it is believed that women and girls are denied their full rights to sexual and reproductive health.

In Africa, traditional cultures and religious beliefs on personhood and abortion tend to influence the existing abortion laws around the continent. As Menkiti indicates, the African pre-colonial thought of personhood is based on the Ubuntu philosophy, whereby the ideology is rooted on the conception “I am” because “we are¹¹.” In this regards, Ubuntu is rooted in a relational form of personhood, whereby one is because of others. The approach also made people to believe in the common bond within a group, which were more important than individual interests. Consequently, since communal rights overrode individual rights, women could not be allowed to initiate abortion decisions because of the following reasons. First and foremost, it is the community that decided when women could get married. In this regard, pregnancy issues also affected the community. For instance, among the pre-colonial Gusii community, people got curious if a woman overstayed in a marriage without getting pregnant. In this case, a spy could be sent to ascertain the problem, and if the issue could be identified, it could be fixed by the community. Moreover, children belonged to the community; hence no woman could decide to terminate a pregnancy since a foetus was a communal interest. Thus, in most African communities, abortion could not be contemplated since it was believed that life which begins at conception is sacred and it cannot be terminated. With regard to Christian view point, abortion is

¹¹ Menkiti, Ifeanyi A. "Person and community in African traditional thought." *African philosophy: An introduction* 3 (1984): 171-182.

wrong since it entails the killing of a foetus, a being which is a person from the moment of conception.

It is against these backdrops that abortion laws in African countries are rooted. For instance, the Kenyan Constitution holds that life begins at conception. As evident from the Kenyan Constitution, “every person has the right to life” (Article 26, clause 1). In Article 26 (2), the Constitution states that a person's life begins at conception. In clause 3, the law provides that a person should not be deprived of life intentionally unless provided by the legal framework. In Article 26 clause 4, the law stipulates that “abortion is not allowed unless in the opinion of a medical expert and when there is a need for emergency treatment¹². Thus, the legal provision implies that personhood begins at conception. Although the abortion law appeals to the traditional practices and religious beliefs that do not tolerate abortion, the pro-choice activists have clamored for constitutional changes to legalize abortion. It is believed that making abortion legal will help to mitigate unsafe abortions that have been associated with increased abortion related complications.

The pro-choice activists provide the following arguments in favour of abortion. Firstly, the school of thought holds that women have a moral right to make personal decisions that concerns their bodies. Besides, the pro-choice group argues that allowing women to access reproductive health is instrumental in enhancing gender equality in society. Additionally, the pro-choice activists argue that banning abortion increases complications among women, since abortion bans compels them to seek backstreet abortion services. Moreover, the pro-choice position insists that the right to life does not override the freedom of choice since everyone has a right to decide when and whether to have children.

¹² Constitution of Kenya - Article 26(4)". Kenya Law. 2010. Archived from the original on 17 February 2015. Retrieved 26 May 2021.

From the above arguments, it is evident that global cultures tend to give contrary views on the issue of human personhood. Therefore, morally, abortion raises several ethical issues, such as the commencement of human personhood, the rights of a foetus, bodily integrity, whether abortion is murder, and whether people should prioritize the life of a mother over the life of the unborn baby. Although most ethical studies have endeavored to ascertain the morality of abortion in general, few studies have concentrated on the particular issue of personhood in the context of abortion. Equally important, the conception of personhood has for a long time been cited as the major bone of contention between the pro-life and the pro-choice views on abortion. Therefore, the researcher believes that addressing the ethical dilemma of foetal personhood can play a vital role in resolving the conflict between the pro-life and the pro-choice activists.

The study is relevant in understanding the problem of personhood because it enables the researcher to dive deeper into the issue to ascertain whether a foetus is a person or not, a factor that can enable one to take a position in abortion debates. Although several studies have been conducted on the issue of personhood and abortion, few studies provide a definite answer on when moral personhood begins, a situation that has propagated controversies on the commencement of personhood as well as societal positions on abortion. Since the researcher believes that the deliberation of abortion debates is rooted in understanding the moral status of a foetus, more focus was put on the issue of moral personhood in view of Warren's claims, especially regarding foetal personhood and abortion.

1.2 Statement of the Research Problem

Today, the problem of abortion poses several ethical dilemmas, especially with regard to the commencement of moral personhood. On the one hand, the pro-choice activists, such as Warren, hold that terminating a pregnancy is not ethically wrong because a foetus is not a moral

person. On the other hand, the pro-life group argues that abortion is immoral since it entails the killing of a foetus, a being that is believed to be a person from conception.

Defences of abortion tend to focus on women's rights as weighed against a foetus' right to life. According to the pro-choice group, a pregnant mother has a right to decide whether to carry a pregnancy to term or not. Since the 1970s, the pro-choice position has received overwhelming support worldwide, a development that has seen growing cases of court decisions and constitutional changes that have influenced abortion legislations across the world. However, there has been a wave of opposition from religious organizations, moral philosophers, and the pro-life activists. At the centre of the abortion debate is the question surrounding the moral status of foetuses.

Concerning the issue of the moral status of a foetus, it is evident that the question of personhood has posed divisive debates in the recent past as pro-life and pro-choice groups struggle to ascertain whether it is right or wrong for a pregnant woman to procure an abortion. Besides, the problem of personhood has become a fundamental issue in contemporary ethical discourses because philosophers have not reached a consensus, especially on what constitutes humanness, dignity, and personal identity of a human being¹³.

Moral personhood can be defined as the capacity of a being to possess moral rights, dignity, and legal protections¹⁴. In moral philosophy, the concept of personhood tends to attract controversies since the issue is closely associated with concepts of citizenship, equality, and liberty. In this regard, a natural person is considered to possess rights, responsibilities, legal

¹³ Oduwole, E. "Personhood and abortion: an African perspective." *Lumina* 21 (2010): 1-10.

¹⁴ Ibid

liability, and protections¹⁵. In the context of abortion, personhood continues to be a topic of international debate. On the one hand, the pro-life group argues that foetuses should be considered persons since they have several features in common with mature persons, such as the genetic code. Besides, it is believed that if fetal growth is not interrupted, it can grow and mature into an adult human being. On the other hand, the abortion proponents, such as Warren argue that a foetus is not a moral person because the being lacks the defining qualities of a person. Besides, Warren argues that a foetus has a genetic humanity in common with mature persons, yet this trait does not qualify the being to be a person because not all human beings are persons. Thus, Warren holds that a foetus is a human being but it is not a person, hence it can be terminated at will.

The puzzle of monozygotic twinning has also raised several questions on the individuality of a foetus at the time of conception. Since twins split after some time (14 days after conception), one wonders whether individuality can be ascribed to a blastocyst. In this regard, the question of personhood takes several forms; when does moral personhood begin? Can there be any justifiable ground upon which one can procure an abortion? Does a foetus possess moral rights? Thus, for the purpose of this study, emphasis was on the notion of moral personhood, whereby the major bone of contention was to determine whether a foetus has moral personhood at any stage of pregnancy, before deliberations on the morality of abortion was ascertained.

¹⁵ Gibson, Susanne. "The problem of abortion: Essentially contested concepts and moral autonomy." *Bioethics* 18, no. 3 (2004): 221-233.

According to Warren, abortion should be permitted because it does not violate moral laws. “Since a foetus is not a person, terminating it is morally permissible¹⁶”. Further, the author argues that a foetus is not a person, and hence it does not have moral standing¹⁷. According to Warren, a person is a being that has the following traits: consciousness, reasoning, ability to conduct a self-motivated activity, the capacity to communicate, as well as the presence of self-concepts and awareness¹⁸. Therefore, to settle the issue of abortion, individuals and communities should endeavor to answer the question whether a foetus is a moral person or not and, if so, when does personhood begin. The study seeks to ascertain whether Warren is justified to argue that a foetus does not have moral personhood at any point of pregnancy and whether it is improper to ascribe moral rights to the unborn babies.

1.3 Objectives of the Study

The objectives of the study are:

- i. To establish whether Warren was justified to argue that a foetus does not have ethical standing and rights.
- ii. To analyse Warren’s claims that a foetus does not meet the criteria of moral personhood.
- iii. To evaluate the similarities and dissimilarities between the African conception on moral personhood and Warren’s view of foetal personhood.
- iv. To ascertain the relevance of Warren’s position on foetal personhood in dealing with moral disputes in abortion in today’s world.

¹⁶ Warren, Mary Anne. "On the moral and legal status of abortion." *The Monist* 57, no. 1 (1973): 43-61.

¹⁷ Ibid

¹⁸ Ibid

1.4 Research Questions

- i. Is Warren justified to argue that a foetus does not have ethical standing and rights?
- ii. To what extent is Warren justified to argue that a foetus does not meet the criteria of moral personhood?
- iii. How does African conception on moral personhood agree or disagree with Warren's view of foetal personhood.
- iv. What is the relevance of Warren's position on foetal personhood in dealing with moral disputes in abortion in today's world?

1.5 Justification and Significance of the Study

By the end of the 19th century, abortion was prohibited in almost all countries in the west¹⁹. According to Berer, restrictions on abortion were introduced because terminating pregnancies was proving to be dangerous since it claimed the lives of many pregnant mothers. Thus, the legal framework had a public health intention to protect mothers. Secondly, abortion was considered a moral evil, thus legal frameworks acted as deterrence from doing sins. Thirdly, abortion was restricted to protect unborn children in some or all situations. However, the enactment of the UK abortion Act of 1967, the publication of pro-abortion discourses, the formation of lobby groups, the 1973 case of *Roe v. Wade*, and the 1977 conference on Women's Rights, and among other developments, introduced new terrains in global abortion debates. With regards to the pro-abortion discourses, the publication of Warren's work "On the Moral and

¹⁹ Guillaume, Agnès, Clémentine Rossier, and Paul Reeve. "Abortion around the world. An overview of legislation, measures, trends, and consequences." *Population* 73, no. 2 (2018): 217-306.

Legal Status of Abortion’’ stirred moral debates on the personhood of a foetus. The work raised heated debates and influenced the abortion legal terrain of the period.²⁰.

As from the 1970s, abortion bans were repealed in several countries. For instance, in 1973, the *Roe v. Wade* ruling provided that the USA constitution should legalize abortion until the end of the first trimester. However, after 24 weeks of gestation, abortion should be considered illegal unless there is a need for emergency treatment or in accordance to the individual state laws. Further, the ruling provided that the unborn children are not persons in the legal sense, hence abortion should be legal in the first trimester of a pregnancy.

Currently, abortion is a global phenomenon that continues to attract conflicting debates, whereby some groups tend to support, while others oppose or hold a moderate position. According to Mohamed et al., there are more than 73 million global abortion cases annually²¹. In Kenya, estimates of 464,000 abortions are conducted every year²². Even though the Kenyan Constitution has illegalized the termination of pregnancies, abortion remains a hot topic in the country, where conservative religious beliefs hold sway. In 2019, an estimate of 119,912 women received medical care for complications of unsafe abortion²³. Besides, unsafe abortion accounts for an estimate of 13% of global maternal deaths. It is also evident that Kenya has 39 induced abortions per 1000 women aged from 15 to 49²⁴. In 2010 to 2014, an estimate of 45% of all

²⁰ Berer, Marge. "Abortion law and policy around the world: in search of decriminalization." *Health and human rights* 19, no. 1 (2017): 13.

²¹ Ibid

²² Mohamed, Shukri F., Chimaraoke Izugbara, Ann M. Moore, Michael Mutua, Elizabeth W. Kimani-Murage, Abdhalah K. Ziraba, Akinrinola Bankole, Susheela D. Singh, and Caroline Egesa. "The estimated incidence of induced abortion in Kenya: a cross-sectional study." *BMC pregnancy and childbirth* 15, no. 1 (2015): 1-10.

²³ Izugbara, C., E. Kimani, M. Mutua, S. Mohamed, A. Ziraba, C. Egesa, H. Gebreselassie, B. Levandowski, S. Singh, and A. Bankole. "Incidence and complications of unsafe abortion in Kenya: key findings of a national study." Nairobi, Kenya: African Population and Health Research Center, Ministry of Health, Kenya, Ipas, and Guttmacher Institute (2019).

²⁴ Bearak, Jonathan, Anna Popinchalk, Bela Ganatra, Ann-Beth Moller, Özge Tunçalp, Cynthia Beavin, Lorraine Kwok, and Leontine Alkema. "Unintended pregnancy and abortion by income, region, and the legal status of

abortions in Kenya was unsafe²⁵. Above all, estimates of seven million women around the world have been reported to have a permanent disability from abortion-related complications²⁶. It is also evident that more than 47,000 women die globally from abortion related complications²⁷. Thus, the researcher believes that addressing the issue of foetal personhood is paramount because it can enable an actor to take a position in abortion debate. Besides, solving the issue of personhood can give recommendations that can inform abortion decisions, hence mitigating abortion related problems.

In the recent past, abortion has attracted conflicting debates from both the pro-life and the pro-choice activists. For instance, in 2019, cleaners in the Nairobi River found 14 bodies, most of them babies²⁸. Attempts by a local church to erect anti-abortion billboards attracted rage from a section of the population. Because of this incident, women's rights groups held demonstrations in Nairobi to protest the erection of anti-abortion billboards²⁹. As Nita Bhalla indicates, the billboards had anti-abortion messages, such as “Abortion is murder!” “Shut down abortion clinics!³⁰” Thus, according to protesters, anti-abortion billboards sought to limit the reproductive rights of women in the region where several women die due to unsafe abortions that are offered by unqualified workers as well as being conducted in poor environments that does not meet the required medical standards. Besides, the critics of anti-abortion billboards held that the posters fueled discrimination and misinformation on abortion, hence creating an environment that affects

abortion: estimates from a comprehensive model for 1990–2019." *The Lancet Global Health* 8, no. 9 (2020): e1152-e1161.

²⁵ World Health Organization. Preventing unsafe abortion. 2020

²⁶ Ibid

²⁷ France 24. Cleanup of Nairobi rivers uncovers grisly find of 14 bodies (2019).

<https://www.france24.com/en/20190524-cleanup-nairobi-rivers-uncovers-grisly-find-14-bodies>

²⁸ Nita Bhalla. Anti-abortion billboards fuel stigma in Kenya, say women's rights groups. 2019.

<https://www.reuters.com/article/us-kenya-women-abortion-idUSKCN1S02YH>

²⁹ Ibid

³⁰ Ibid

reproductive health³¹. According to Grimes, pregnant mothers have a right to seek abortion services when pregnancy occurs from rape, incest, or when the health of a mother is in danger³². However, some victims of abortion are incapable of attaining safe abortion services; hence they end up getting unsafe abortions at home or in backstreet clinics. In some cases, practitioners insert knitting needles into the cervix, practices that in some cases have increased maternal fatalities in the region. It is also evident that one in four abortion cases results in complications, such as fever, sepsis, shock, or organ failure³³. Therefore, since unsafe abortions have been associated with several deaths and injuries among pregnant women, the pro-choice activists have been challenging the Kenyan authorities to legalize abortion. However, the pro-life group maintains that abortion is wrong since it is equivalent to murder, whereby the unborn humans (who are moral persons) are killed. To counter this claim, some of the pro-choice activists, such as Warren could argue that foetuses are not moral persons since they lack basic characteristics of persons. All in all, the debate on whether moral personhood begins at conception calls for a philosophical reflection. Therefore, this study attempts to resolve the issue of moral personhood by analysing Warren's position on foetal personhood as an avenue of giving recommendations on how global communities can deal with abortion related problems.

1.6 Scope of the Study

The researcher concentrated on the issue of moral personhood in the context of abortion. Particularly, the study focused on elective abortion as opposed to non-voluntary abortion that tends to occur without any intentional interventions. In addition, the study concentrated on the pro-choice arguments on abortion, hence excluding other positions, such as the pro-life and the

³¹ Ibid

³² Grimes, David A., Janie Benson, Susheela Singh, Mariana Romero, Bela Ganatra, Friday E. Okonofua, and Iqbal H. Shah. "Unsafe abortion: the preventable pandemic." *The lancet* 368, no. 9550 (2006): 1908-1919.

³³ Ibid

moderate school of thought. Within the pro-choice school, major concerns were on the argument of moral personhood, particularly as highlighted by Warren, hence excluding the views of other liberal scholars, such as Judith Thomson, Peter Singer, and others. The focus was on Warren because she was the first author to come up with the criteria of moral personhood that is based on the psychological traits. Likewise, the critical responses of scholars, such as Judith Thomson, Don Marquis, Michael Sandel, and Peter Singer were reviewed. Chronological order and relevance were major factors which informed the choice of these scholars. Equally important, the views of the Catholic Church and those of the Muslims were evaluated since the two groups have been vocal in the fight against abortion. In this case, other pro-choice arguments of abortion, such as women rights to bodily freedom, gender equality argument, illegal abortionist argument, and pregnancy rights argument were also excluded from the study. Therefore, the study sought to ascertain whether a foetus is a moral person and whether moral rights could be granted to the unborn child either fully or partially. This was done in view of establishing the truth value of the pro-choice scholars, such as Warren, that a foetus does not belong to a moral community; hence it cannot be entitled the same rights that are granted to persons.

1.7 Operational Definitions

- i. **Abortion:** Abortion can be defined as a medical procedure that ends a pregnancy before an embryo or a foetus is born.
- ii. **Pro-choice:** The term refers to the proponents of abortion who tend to argue that the decision to abort or not to abort rests with a woman since at all stages of a pregnancy, the rights to liberty of a pregnant woman overrides the rights to life of a foetus.
- iii. **Conception:** The union between a male and a female cell during a sexual intercourse or through artificial methods of reproduction.

- iv. **Implantation:** The period entails the moment when the fertilized egg burrows into the womb. This normally happens a week after conception.
- v. **Pro-life:** The term is used to refer to the opponents of abortion who tend to hold to the position that a foetus at all stages of a pregnancy is a human person and has a full moral standing, hence its rights to life is not different from that of a born child.
- vi. **Foetus:** The term foetus refers to a developing organism in the womb. Technically, it refers to a developing baby as from 12 weeks to 40 weeks of a pregnancy.
- vii. **Zygote:** Fertilized cell in a human being that contains 23 male and 23 female chromosomes forming a single cell.
- viii. **Embryo:** Developing human being between 4 weeks to 11 weeks of a gestation period.
- ix. **Blastocyst:** The fertilized egg from the second day after fertilization to the second week of the gestation. It comprises of embryonic disk and two cavities; an amniotic cavity and the yolk sac.
- x. **First trimester:** A pregnancy period from week 1 to week 12.
- xi. **Second trimester:** A pregnancy period from week 13 to week 26.
- xii. **Third trimester:** A pregnancy period from week 27 to end of a pregnancy.
- xiii. **Moral person:** an individual being who is a moral agent as well as a moral agent upon which moral rights can be ascribed to.
- xiv. **Moral Rights:** The term comes from a French term, “droit moral” which refers to personal rights that tend to connect the creator of a product to their work.
- xv. **Moral status:** This is the ability of a being to matter morally in their own right. The concept deals with who is valuable to the extent of being treated with special regard.

1.8 Literature Review

1.8. 1 The Ethical Issue of Foetal Personhood

The moral issue of foetal personhood has intrigued scholars over the years. In the context of abortion, the medical community and scholars tend to differ on whether a foetus is a moral person or not. On the one hand, pro-choice activists and scholars argue that a foetus is not a person and, hence, it should be terminated to enhance the liberty of a pregnant mother. Particularly, Warren argues that a foetus is not a person since the being lacks fundamental features of personhood. In this context, the researcher endeavours to establish the status of a foetus to ascertain whether moral rights can be ascribed to the being. The knowledge is necessary because it can shape the abortion debates around the world.

On the other hand, the pro-life activists hold that life begins at conception, and thus it is morally wrong for individuals and communities to procure an abortion. Among the advocates of the school of thought is the Catholic Church that teaches that human life begins at conception and, thus it should not be terminated under any circumstance. It is also believed that a human person acquires its unique genetic code at conception³⁴. Thus, the church concludes that it is morally improper for one to procure abortion since the action is equivalent to murder.

Nevertheless, the pro-life claim that individuality begins at conception raises moral issues in the cases of monozygotic twinning. In this scenario, one wonders how to attribute individuality to the conjoined twins, especially considering that a blastocyst divides after two weeks of pregnancy and not after fertilization. Before cell division, monozygotic twins are conjoined, hence the being cannot be said to be two individuals but one. However, after 14 days, the embryoblast separates into two embryos through the process of segmentation. The scenario raises the following question: Is it proper to claim that life begins at conception in conjoined

³⁴ McCartney, James J. "Unborn persons: Pope John Paul II and the abortion debate." (1987).

twins? From this train of thought, it can be deduced that personhood does not begin at conception since the reality of monozygotic twinning falsifies the claim.

According to Nathanson, life begins at the point of implantation³⁵. The process occurs about 8-9 days of fertilization, whereby a blastocyst moves from the fallopian tube and burrows deep into the lining of the uterus³⁶. At this point, one can be said to be pregnant as a blastocyst begins taking in breath from a mother's blood. Thus, according to some members of the medical community, implantation is considered a starting point of human life since it is during this time that a foetus starts using oxygen. The perspective also challenges the pro-life claim that personhood begins at conception because it depicts a zygote and a blastocyst as a mass of muscles that do not have human life.

Accordingly, the medical community unanimously agrees that brain birth is the particular point when human life begins³⁷. Thus, it is argued that brain birth should be used to define the beginning of life the same way brain function is the criterion used to determine brain death. The perspective is plausible because it has been tested clinically that the end of brain functioning marks the end of human life. Because reasoning is related to brain functioning and since rationality is the fundamental distinction that differentiates humans from brutes, it is logical to hold that moral personhood begins when brain waves appear in the higher brain, 24 weeks of gestation.

Therefore, it is plausible that moral personhood begins with brain birth, 24 weeks of the gestation period. Nevertheless, because some persons mature earlier than others, there is a need to have a margin error of 2 weeks. In this case, it is believed that pointing to the exact time when personhood begins can help to solve the moral personhood puzzle, hence helping to give

³⁵ Nathanson, Bernard N., and Richard N. Ostling. "Aborting America." (1979).

³⁶ Ibid

³⁷ Ibid

recommendations on how the issue of abortion should be addressed. Consequently, addressing the problem can also help to mitigate abortion-related complications. Since most abortion-related problems result from unsafe and backstreet services, ascertaining when moral personhood begins is significant in defining illegal from legal abortion. It is also believed that if abortion is legalized at some point, especially during the first trimester, then pregnant mothers will be at liberty to seek abortion services before the cut off period of 24 weeks is reached. Since global statistics indicate that abortion-related complications are rampant in regions where termination of pregnancies are illegal compared to places where abortion is legal, allowing abortion at the first trimester will help to mitigate abortion related complications around the world.

1.8.2 Warren's Position on Personhood, Abortion, and Moral Rights

Warren's holds that every woman has a right to access reproductive services as well as decide when or whether to have a child. In this regard, the perspective represents a group of people who believes that pregnant women have a right to make abortion decisions. Besides, the scholar holds that pregnant woman have a right to bodily autonomy and thus, banning abortion threatens women's health by exposing them to illegal abortionists. Therefore, it is believed that the right to abortion should be part of women reproductive rights. "Pregnant mothers are persons and not containers for the foetuses, hence the rights of pregnant women are paramount³⁸". In this context, Warren's pro-choice argument holds that women's rights to bodily autonomy outweigh the right to life of a foetus.

Warren's position is problematic because it fails to recognize the fact that the right to life is a supreme right upon which all other rights are attributed. That is, without respecting the right to life, human community will become extinct. In this regard, Warren erred by arguing that the

³⁸ Warren, Mary Anne. "On the moral and legal status of abortion." *The Monist* 57, no. 1 (1973): 43-61.

right to liberty outweighs the right to life. In the case of a conflict between the right to life of a foetus and the right to liberty of a pregnant mother, the latter should take precedence. For Warren, a foetus is not a person and, hence abortion should be justified. According to the author, a foetus cannot be granted moral personhood because it lacks the features of a person³⁹.

Although critics counter this position by arguing that a foetus has the potentiality of becoming a mature human person, Warren insists that for a being to be categorized as a person in a moral sense, it should have consciousness, whereby it should be capable of feeling pain. Besides, Warren holds that a person should have the ability to reason, that is, the being should be able to solve simple and relatively complex problems. The criterion of rationality proves to be a narrow criterion that distinguishes a person from other brutes. From an anthropological perspective, Warren believes that a rational being should be able to develop a language, use tools and weapons and understand the world around them⁴⁰. Other features of a person include engaging in a self-motivated activity, capacity to communicate, the presence of self-concepts, and having the quality of self-awareness. In real sense, self-awareness should enable one to understand his or her existence within time, being aware of the past history and the relevance of the past underpinnings⁴¹.

Therefore, since Warren believes that a foetus does not portray any of these features during any stage of development, then she concludes that a foetus is not a person. In this regards, the scholar holds that foetuses do not have moral personhood, and hence the beings does not belong to a moral community. Since members of a moral community have duties, privileges, and rights, moral entitlements cannot be ascribed to foetuses because the beings do not meet the criterion of personhood.

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Ibid

Warren's position is untrue to a certain extent, especially with regard to the claim that a foetus lacks personhood at any stage of pregnancy. Modern studies show that a foetus tends to exhibit features, such as consciousness and the capacity to feel pain and respond to pleasure. To prove this, Siegel and Siegel found out that a foetus feels pain like any other mature human being⁴². To demonstrate this fact, experimental evidences reveal that foetuses can close their eyes when exposed to intense light. Besides, foetuses tend to display some movements when subjected to a loud noise. Thus, it is logical to conclude that Warren is wrong to hold that foetuses do not exhibit consciousness since experiments have revealed otherwise.

Warren also denies that biological humanity is neither necessary nor sufficient for moral personhood. According to her, the pro-life activists are guilty of logical mistakes since they confuse biological humans with persons. Thus, she maintains that it is wrong to kill persons, not humans. According to Warren, a person should have psychological traits, such as consciousness, rationality, ability to conduct self-motivated activities, capacity to use language, awareness, and self-conception⁴³. In this regard, the author holds that some non-human beings and biological humans are not persons. Particularly, foetuses are not persons because the beings lacks essential person making features. Thus, if killing brutes is permissible, abortion is also permissible because it entails the killing of foetuses, non-persons⁴⁴.

From the above argumentation, it is evident that Warren held that a foetus is a non-person at all stages of a pregnancy. According to her, the foetus lacks the prerequisite features for personhood and, hence it does not qualify to be granted moral rights. The position is problematic because it presents argumentations that are logically correct but epistemologically false. It is

⁴² Siegel, Neil S., and Reva B. Siegel. "Equality Arguments for Abortion Rights." *UCLA L. Rev. Discourse* 60 (2012): 160.

⁴³ Warren, Mary Anne. "On the moral and legal status of abortion." *The Monist* 57, no. 1 (1973): 43-61.

⁴⁴ *Ibid*

implausible that a foetus at all stages of pregnancy lacks the potentiality to reason. It should be noted that rationality is not an end point but a process that begins when lower and higher brains appear in a human foetus and when brain waves appear in the human brain, hence necessitating coordination among the neurons to bring about growth and development. From a philosophical point of view, the brain is material, and mind is immaterial. Since the mind is the principle that facilitates thinking, it is evident that thought processes tend to be present among foetuses, especially from the second trimester, yet cognitive development continues after birth. Equally important, the viability of a human foetus from the 24 weeks of a human pregnancy is a clear indication that it is illogical to argue that a foetus lacks moral personhood at all stages of pregnancy.

All in all, several scholars have responded to the pro choice's position on personhood. To begin with, Oduwole questions whether a zygote, embryo, or foetus acquires personhood at a particular stage of pregnancy or the being were always a person from the start. In this regard, the author raises intriguing questions: At what stage does the developing individual develop personhood?⁴⁵ Whereas the pro-life scholars consider a genetic human as a person by virtue of having a genetic code, Oduwole holds that the dividing line for a person should be traced at the level of conception, brain functioning, viability, and at birth. Since death is defined as the end of brain functioning, then brain life should be taken as the beginning of a person⁴⁶. The position is plausible because it provides a starting point of personhood, which is traced at brain birth.

According to Judith Thomson, even if people consent that a foetus is a person, the ethical issues surrounding abortion would not be solved. That is, although a foetus has a right to life, the

⁴⁵ Oduwole, E. "Personhood and abortion: an African perspective." *Lumina* 21 (2010): 1-10.

⁴⁶ Ibid

being is not entitled to use a mother's body unless given permission by the host⁴⁷. According to Thomson, there is no being which is supposed to use one's body unless granted permission. For instance, in the case of rape, a foetus cannot be said to have been granted permission⁴⁸. Therefore, according to the author, whether a mother is obligated to allow a foetus to remain in her womb is a different question from whether a foetus has a right to life. However, the author is wrong to argue that the rights to liberty of a pregnant mother supersede the right to life of a foetus. Since all rights, such as liberty, ownership of property, and others, are ascribed to a human being, who has life, it logically follows that the right to life is primary, while other rights are secondary. In rape, individuals and communities ought to opt for alternative methods, such as counseling, instead of choosing abortion.

Margaret Little argues that although terminating a pregnancy is not equivalent to murder, the act is not necessarily moral. According to the author, a pregnant woman and her foetus are not strangers since the host is the biological mother⁴⁹. Nevertheless, there can be conflicts of interests something that can raise a demand for abortion. Thus, the main motivation why mothers opt for abortion is that in some cases the women may feel that they are not in a position of being good mothers due to one reason or another⁵⁰. However, Little fails to provide watertight reasons for promoting abortion since the proposed conflict of duties as well as social- economic reasons can be solved without opting for abortion. For instance, inability to raise a child because of lack of financial resources can be solved through social arrangements, such as adoption, child care arrangements and government subsidies to vulnerable mothers.

⁴⁷ Thomson, Judith Jarvis. "A defense of abortion." In *Biomedical ethics and the law*, pp. 39-54. Springer, Boston, MA, 1976.

⁴⁸ Ibid

⁴⁹ Little, Margaret Olivia. "Abortion and the Margins of Personhood." *Rutgers LJ* 39 (2007): 331.

⁵⁰ Ibid

Additionally, Pietrzykowski disagrees with Warren by arguing that a human being might lose the ability to communicate but still remain a person. Besides, if rationality is both a necessary and sufficient condition for personhood, then some non-human animals, such as dolphins might qualify as persons since studies reveal that the animals are capable of complex problem solving and social interaction since they can learn as humans, as well as pass the acquired knowledge to the next generation⁵¹. Besides, Warren's criteria will also imply that some human beings, such as fetuses would not qualify as persons because their brains have not developed fully. If people put the bar as high as Warren does, they will logically exclude many vulnerable populations, such as those in coma, the elderly, and those who are insane from the category of persons. In the case of those in coma, illness may have affected their capacity to reason, yet the individuals were able to reason in the past. Therefore, attributing personhood to only those people who are capable of reasoning raises the ethical issue of whether the terminally ill are moral persons or not.

Other criticisms have been offered by the Catholic Church, which considers a foetus to be a person with moral rights since the time of conception. "As it is evident from conception, a zygote receives a unique genetic code that is distinct from the parents⁵²". Therefore, the Catholic doctrine regards conception as the beginning of personhood since the genetic code is what gives the unborn babies individuality, hence making each foetus unique from one another. Nevertheless, the case of monozygotic twinning and implantation tend to falsify the claim that personhood begins at conception.

⁵¹ Pietrzykowski, Tomasz. "Beyond personhood: from two conceptions of rights to two kinds of right-holders." *Available at SSRN 2597028* (2015).

⁵² Mulligan, Kenneth. "Pope John Paul II and Catholic opinion toward the death penalty and abortion." *Social Science Quarterly* 87, no. 3 (2006): 739-753.

In addition, Don Marquis hold that abortion is morally wrong, except in some circumstances, such as rape and abortion during 14 days after conception⁵³. Other cases include abortion when a pregnancy poses a risk to a mother's life or when a foetus has serious abnormalities. "Thus, spontaneous abortion is excluded from my attack of abortion⁵⁴". Further, the author argues that abortion is morally wrong because it entails the act of killing a being that has a right to life. In this case, it is evident that killing a being with a right to life is seriously morally wrong because it robs such a being of its future, particularly a future of great value like ours⁵⁵. From these arguments, it is evident that Don Marquis's conclusion appeals to pathos instead of demonstrating why abortion is wrong. That is, the author argues that abortion is wrong because it robs fetuses a future that is of great value like ours. Thus, the conclusion is not convincing enough because it fails to give sufficient evidences why abortion is wrong.

According to the potentiality argument, a foetus has a potential of growing to become a mature human being. Although the being does not exhibit psychological traits, such as rationality, it is structured in a manner that if nature is allowed to take its course, then it would develop over time. Furthermore, potentiality entails that a being is formed in a particular way that it has the capacity to grow into a being of a certain sort. However, there are moments when adult human beings do not exhibit traits of self-awareness and rationality, especially when one is a sleep, in coma, or drunk, yet they are considered as persons. The potentiality position holds that fetuses have rights to life because they have a potential of becoming mature persons. The position is plausible because it demonstrates the importance of potentiality in possible beings, such as human beings. From a metaphysical perspective, all possible beings must go through the process of potentiality. Unlike God, who is pure actuality, creatures, such as human beings

⁵³ Marquis, Don. "Why abortion is immoral." *The Journal of Philosophy* 86, no. 4 (1989): 183-202.

⁵⁴ Ibid

⁵⁵ Ibid

cannot attain actuality (maturity) without going through the process of potentiality (foetal development). Therefore, in the process of human development, what matters is not whether a foetus is a person or not. As far as the foetus is growing towards the right direction (towards actuality), then it deserves the moral status that are reserved to a mature persons.

Nevertheless, Peter Singer argues that potential beings do not have the same rights as actual beings since rights of a potential being are only potential rights. That is, potential rights become actual rights when a person becomes an actual person. To demonstrate this fact, Singer argues that a 12-year-old is a potential voter, who has a potential right of voting, but he does not enjoy the right to engage in the civil duty until he or she attains the voting age⁵⁶. In this regard, Singer argues in favour of abortion rights because foetuses are depicted to be potential rational beings that have not yet attained actuality. Just like Warren, Singer argues that a foetus lacks personhood since the being lacks essential traits, such as rationality, consciousness, self-awareness, and self-conception. Therefore, according to Singer, killing a foetus is not morally wrong because it is not equivalent to murder⁵⁷. Although Singer argues that a foetus is not an actual person because the being cannot engage in actual reasoning, the author is wrong to compare a foetus to a potential voter because what is in contention is not a right to engage in a civil duty (voting) but a right to life.

Daniel Dennett, a philosopher and cognitive scientist, incorporates intelligence and self-awareness as the essential attributes of personhood. According to the author, psychological capacities, such as the use of language and being conscious are also essential attributes of a person⁵⁸. The perspective is plausible because it provides a distinction between rationality and

⁵⁶ Singer, Peter, and Karen Dawson. "IVF technology and the argument from potential." *Philosophy & public affairs* (1988): 87-104.

⁵⁷ Ibid

⁵⁸ Dennett, Daniel C. *Brainstorms: Philosophical essays on mind and psychology*. MIT press, 2017.

intelligence. Thus, according to the author, a foetus has rationality but lacks intelligence because the quality can only be attributed to mature persons whose cognitive abilities have developed.

Joseph Fletcher also proposes 15 criteria for personhood that includes intelligence, memory, language, self-awareness, a certain level of IQ, sense of time, curiosity, change and changeability, self-control, sense of time, a sense of futurity, a sense of past, concern for others, communication, capacity to relate with others, control of existence, idiosyncrasy, balance of rationality and feeling, as well as neo-cortical function.⁵⁹ Thus, Fletcher expands Warren's criteria of personhood by adding more criteria that provides a clear distinction between a foetus and a mature person.

Rosalind Hursthouse argues that personhood of a foetus is irrelevant to whether abortion is right or wrong. According to the author, virtue ethicists may not have the option to abort regardless of whether a foetus is a person or not⁶⁰. In this regard, the author holds that debates on abortion revolve around two irrelevant issues; the status of a foetus and a woman's right over her body. Even if people accord a foetus the status of a person from the moment of conception, abortion may still be morally acceptable. Likewise, even if a woman has a right to determine what happens to her, abortion may still be morally unacceptable, especially if it is not done with the right intentions. Hursthouse concludes that there is no one right answer to whether abortion is morally acceptable or not because moral life is more complex than such a universal rule based attitudes. Some abortions will be morally unacceptable because they are the product of callousness, selfishness, and irresponsibility⁶¹. On the other hand, other abortions will be morally

⁵⁹ Macklin, Ruth. "Personhood in the bioethics literature." *The Milbank Memorial Fund Quarterly. Health and Society* (1983): 35-57.

⁶⁰ Kornegay, R. Jo. "Hursthouse's virtue ethics and abortion: abortion ethics without metaphysics?." *Ethical theory and moral practice* 14, no. 1 (2011): 51-71.

⁶¹ Ibid

acceptable if one is raped or if carrying a foetus to term will jeopardize one's health⁶². Thus, according to Hursthouse, an action is right if and only if it is what the virtuous actor would do in the same circumstances. With regards to the cases of rape or economic hardships, Hursthouse illogically assumes that abortion is the only solution to the parenting problems. In real sense, societies have social arrangements that are meant to deal with cases of sexual abuse and gender based poverty.

The pro-life Kantian philosophers insist that the task of morality is to protect persons, dignified beings. As evident from Kantian second formulation of the Categorical Imperative, the role of intelligence plays a central role in enabling one to engage in moral actions. At the heart of Kantian moral action is distinguishing between persons and things and, hence treating them accordingly. Unlike things (it) that may be valued because they are useful, persons are treated differently because they have an intrinsic value, dignity. "Every rational being exist as an end in itself and not merely as means to be used to achieve an end". Above all, Kant holds that people should act in a manner that their actions can be made moral laws. Consequently, the Kantian pro-life philosophers challenge communities to judge practices, such as abortion from the stand point of whether they can be made moral laws. Thus, the theory is relevant because it highlights how human beings should interact with fellow humans. According to the Kantian Categorical Imperative, people should make a distinction between things that have merely instrumental value and those that have inherent value. Thus, since persons have an inherent value, people need to treat them with utmost respect and dignity. In this context, Kant implied that human persons have inherent value. Unlike animals, humans have the ability to arise above brute instincts and make free decisions that can shape humanity and the world at large. In this regard, human beings have a unique place in the universe because they can make free choices unlike other creatures

⁶² Ibid

which are driven by purely mechanical forces. Therefore, although post Kantian philosophers did not address the issue of foetal personhood directly, the philosophers gave frameworks that could help human communities to respect and handle human persons with dignity. The philosophy is relevant because it introduces the criterion of universality as the basis of demarcating what is wrong from what is right. In this case, the theory is relevant because it can help communities to address moral disputes that tend to arise in abortion, hence coming up with universal abortion laws that can bind all people at all places and at all times. Today, Kantian philosophy is relevant in dealing with abortion debates because it provides theoretical underpinnings that demonstrate why abortion is wrong. To begin with, the Kantian theory holds that every rational being has a dignity, and hence he or she should exist as an end. In the case of a foetus, it is logical to argue that the being is a potential rational being which should be accorded utmost respect.

Equally important, the moderate perspective holds that pro-choice scholars, such as Warren are not justified to argue that a foetus is not a member of a moral community, but the group agrees with the pro-life approach that a late gestation foetus is virtually identical to a born infant. Thus, the school of thought argues that early abortions are morally better than late abortions. Therefore, moderates hold that abortion is morally wrong, except in circumstances where a mother's life is at risk or when a pregnancy results from incest or rape⁶³. The findings of this perspective are convincing because they rely on scientific facts to arrive at their conclusions. Particularly, the group recommends abortion with special reference to the health status of a pregnant mother, embryo, or foetus. Other considerations depend on the consent of a pregnant mother during the period of a sexual intercourse. That is, if pregnancy was as a result of rape or coercion, then abortion is permitted. Besides, the social-economic status of a mother is also taken

⁶³ Tatalovich, Raymond. "Abortion: Prochoice Versus Prolife." In *Social Regulatory Policy*, pp. 177-209. Routledge, 2019.

as a consideration of permitting an abortion. All in all, moderate school of thought suggests that early abortions are safer than late ones.

1.8.3 Warren's Position on Foetal Personhood and Moral Disagreements in Abortion in Today's World

Today, abortion is a contentious issue, whereby every society tends to have a unique approach with regard to abortion. Due to different abortion laws around the world, there is widespread confusion on which society is morally right or wrong concerning abortion. On the one hand, some countries around the world have adopted a moderate position on abortion, whereby the termination of pregnancies is considered legally right if it is practiced within a particular point in a gestation period. For instance, in the Netherlands, abortion is allowed if it is done on-demand within 24 weeks of pregnancy. In the United Kingdom (UK), abortion should be allowed up to 23 weeks and six days of pregnancy. Similarly, in the United States, abortion laws differ from one state to another. In Korea, the mother and child Health Law allow abortion until the 24th week of pregnancy. According to Hwang, the permitted period of abortion has been based on the fact that the newborn would survive outside the womb after 24 weeks⁶⁴. According to Frederico et al. whether an abortion should be carried out or not is something that is determined by a parental request due to socio-economic problems or medical judgments of the maternal or foetal health. For social reasons, the authors recommend that abortion should be carried out in the first trimester of pregnancy because this stage tends to have lesser complications than other stages. Particularly, pregnancies that are less than eight weeks old are reported to be safer to abort. The eight week after fertilization (embryonic period) is

⁶⁴ Hwang, Jong Yun. "Social Consensus is Required for Legal Induced Abortion." *Journal of Korean medical science* 34, no. 19 (2019).

characterized by organ formation, yet they are not fully functional. At this stage, it is reported that parents and obstetricians may feel less guilty to conduct an abortion.

On the other hand, some countries, such as Honduras, have totally banned abortion. The country forbids abortion under any circumstance, even rape or incest. The position is hinged on the constitution that gives a foetus same legal status as a person⁶⁵. In this regard, any woman who has an abortion or assists a woman to procure an abortion can be charged for committing a crime.

In Kenya, abortion is illegal except in circumstances, such as when a mother's health is endangered or when there is a need for emergency treatment or when permitted by any other written law⁶⁶. Besides, the Kenyan Health Act 2017 provides that a woman qualifies to receive safe abortion when the pregnancy results from rape, assault, or incest⁶⁷.

To address these controversies, the examination of Warren's criteria of personhood would aid the researcher to critically evaluate the morality of abortion laws in various countries around the world. To begin with, Warren's criterion of rationality and consciousness can help one to evaluate whether countries, such as the Netherlands, are justified to hold that personhood begins at a certain point of pregnancy. According to the Netherlands abortion laws, a pregnant woman can procure abortion within 24 weeks gestation period. From this provisions, it is plausible that the Dutch believe that personhood of a foetus begins after 24 weeks of pregnancy. The same beliefs are reflected by the constitutions of Korea as well as the state constitutions of New York and others. Although Warren claims that a foetus is not a moral person because the being cannot reason or feel pain, medical technologies have revealed that

⁶⁵ Booth, Amy. "Honduras changes constitution to ban abortion." *The Lancet* 397, no. 10272 (2021): 360.

⁶⁶ Mwai, Samuel M. "Implementing Article 26 (4) of the Constitution of Kenya; Regulating Abortion." PhD diss., University of Nairobi, 2017.

⁶⁷ The Kenyan Health Act 2017. Kenya Gazette supplement. No 101. Acts 21

foetuses tend to exhibit features of consciousness and rationality, hence falsifying Warren's claims. Therefore, the researcher holds that abortion should be illegal after viability because foetuses at this point are capable of surviving outside the uterus.

1.9 Methodology

This research was library based, whereby relevant books, articles, dissertations, and journals were studied. Since the researcher sought to critique Warren's pro-choice's conception of moral personhood, a library based research was appropriate as the study was theoretical in nature. Besides, the library research guided and facilitated critical reflection of what has been published by various scholars, hence helping in exposing their strengths and weaknesses. Additionally, the study used philosophical methods, such as analytic, critical, logical, and speculative approaches. Critical method was applied in evaluating the truth value of Warren's pro-choice arguments as well as those of her critics. Particularly, the use Kant's critical philosophy helped in understanding why foetuses should be handled as persons not as things. As Kant argues, humans have intellect and will; hence they should be handled with dignity. Moreover, the use of Karl Popper's critical rationalism was key in coming up with the research findings. In this context, it is plausible to argue that medical findings which indicates that a 28-30 weeks foetus can feel pain tend to falsify Warren's criteria of consciousness. The study also used the technique of philosophical analysis of arguments to ascertain the tenability of various viewpoints that have been advanced in the field of personhood and abortion. Speculative method was used to theorize realities that go beyond observation. For instance, since issues, such as the beginning of moral personhood cannot be established empirically, speculation is critical to ascertain when moral personhood in a foetus begins. Equally important, the logical method was used to draw philosophical conclusions from a set of premises. For instance having discovered that a foetus has brain waves, it was logical to

conclude that the being has a potentiality of actualizing its rational faculties. The researcher concentrated on core texts on moral personhood and abortion as well as the Warren's essay; "On Moral and Legal status of Abortion." Key words that were used to conduct the research included; human personhood, abortion, moral personhood, Mary Anne warren, foetal personhood, pro-life, pro-choice, African conception of personhood, critiques to personhood criteria, robot citizenship, and others.

2.0 Conclusion

In brief, chapter one gives an overview of the introduction and the background of the study. It highlights the statement of the problem, whereby the moral issues of foetal personhood and abortion are exhaustively discussed. Besides, the section presents the objectives of the study which addresses various aspects of the research topic. The research questions are also derived from the objectives, hence intriguing the researcher to undertake the study. The justification of the study provides a rationale for conducting the research since it gives critical underpinnings that prompted the researcher to undertake the enquiry. Equally important, the scope of the study, operational definitions, as well as a brief review of the literature is also presented in this section.

CHAPTER TWO

THE MORAL ISSUE OF FOETAL PERSONHOOD

2.0 INTRODUCTION

The issue of foetal personhood has attracted debates over the years. On the one hand, the pro-life activists hold that life begins at conception, and hence a foetus is a person. Thus, the group argues that the termination of a pregnancy is morally wrong because the act is equivalent to murder. On the other hand, some pro-choice activists deny the personhood of a foetus, hence advocating for the legalization of abortion. For instance, Warren argues in favour of abortion, whereby she holds that a foetus is not a person because the being does not meet the criterion of personhood. Consequently, Warren argues that a foetus is not a moral patient and, hence, a moral agent cannot be held accountable for killing such a being. The chapter focuses on foetal personhood debate, various conceptions of personhood, the question of the commencement of human personhood, and the personhood issues of robot citizenship. The chapter will also give a critical review of Warren's personhood criteria and provide a philosophical stance.

2.1 Conceptions of Human Personhood

The concept of personhood is difficult to define due to historical and cultural controversies. Diverse and debated conceptions characterize the term, whereby various societies tend to view personhood differently. In bioethics, the usage of the term person is divisive as scholars differ in their definitions. According to dictionary.com, a person refers to a being regarded as an individual with particular qualities, such as reason, morality, or consciousness. In moral philosophy, the definition of personhood is problematic since philosophers have failed to

reach a consensus on the proper definition of a person⁶⁸. In the contemporary usage of the term, personhood can be used in four senses; moral, legal, metaphysical, and physical.

2.1.1 Moral Personhood

Moral personhood is a concept that is used to denote individual beings who are moral agents⁶⁹. In this case, moral agents are those beings that can engage in a set of behaviors that can be evaluated as moral or immoral⁷⁰. The acts of moral persons can be blameworthy or praiseworthy. For instance, non-humans, such as dogs, fish, and birds, are commonly held not to be moral agents, because the beings cannot be held morally responsible for their actions. Thus, brutes cannot be said to be moral persons. In this case, a lion that kills another animal for food cannot be held responsible because it does not engage in morally impermissible behavior.

Equally important, moral personhood can also preclude in a loose sense, the concept of moral patients, whereby a being can suffer from the wrong actions that moral agents commit. This implies that moral patients are usually moral agents. Thus, human persons are the only beings considered to be moral agents because the beings are considered to have intellect and will that tend to guide their actions. Thus, human behaviours can be judged to be right or wrong. Therefore, human persons are the only beings who can engage in moral acts since they are endowed with the faculty of intellect and will. Through the intellect, they are able to deliberate, hence engaging in actions that are driven by knowledge and will. Thus, the moral capacity of human beings can enable persons to engage in human acts (actions that are done knowingly and willingly) as opposed to acts of man (acts that are involuntary, such as sneezing, coughing, and among others).

⁶⁸ Müller, Anselm Winfried. "The Concept of Person in Bioethics." In *Persons, Moral Worth, and Embryos*, pp. 85-100. Springer, Dordrecht, 2011.

⁶⁹ Kittay, Eva Feder. "At the margins of moral personhood." *Ethics* 116, no. 1 (2005): 100-131.

⁷⁰ *Ibid*

From this perspective, it is evident that fetuses cannot engage in voluntary or moral acts because their faculties of reason and will are underdeveloped. Although it is factual to note that fetuses can engage in acts, such as kicking or smiling, the actions are involuntary, and, hence the acts cannot be evaluated as right or wrong. However, unborn beings are incapable of engaging in moral acts because of their status. Although scholars, such as Warren argue that fetuses are neither moral agents nor moral patients, it is logical to hold that the philosopher fails to recognize the fact that fetuses are potential moral agents and actual moral patients. Since fetuses exhibit the psychological trait of consciousness, especially during the second and third trimester, the beings should be considered as moral patients. For instance, a 2005 scientific medical study published on the *Journal of the American Medical Association (JAMA)* found out that a 28-30 weeks fetus can feel pain⁷¹. Consequently, it is proper to argue that second and third trimester fetuses are persons because the beings can feel pain, and hence moral agents should be held responsible for inflicting pain on the fetuses. Since the second and third trimester fetuses can be harmed by the actions of moral agents, the fetuses can be termed as moral patients. Thus, some bioethicists are justified to recommend that doctors should use anaesthesia when conducting late abortions.

To some extent, Warren is justified to hold that a fetus is not a moral agent because the being is incapable of engaging in moral acts (actions done knowingly or willingly). Thus, a baby or a young child aged below seven years cannot be held accountable for committing robbery because the being has not reached the age of reason. As evident from the common law tradition, seven years is presumed to be the age of reason, whereby children under the age bracket are presumed incapable of committing a crime because the beings have not developed their

⁷¹ Lee, Susan J., Henry J. Peter Ralston, Eleanor A. Drey, John Colin Partridge, and Mark A. Rosen. "Fetal pain: a systematic multidisciplinary review of the evidence." *Jama* 294, no. 8 (2005): 947-954.

reasoning ability to comprehend moral codes of conduct. Thus, fetuses cannot be termed as moral agents because this status can only be ascribed to mature persons, especially those who are capable of engaging in human acts.

2.1.2 Metaphysical Personhood

Metaphysics can be defined as the study of the nature of being. Commonly, the term is used to refer to a realm that goes beyond the physical. In the context of human personhood, the use of the term has attracted opposing views as scholars have not reached a consensus over the qualities that entail metaphysical personhood⁷². However, in modern usage, the term refers to the basic category of reality that encompasses beings that can reason, use a language, and can be classified as moral agents. In this context, adult human beings are commonly considered as persons, a scenario which compels philosophers to dig deeper to ascertain what qualifies these beings to be referred as persons. As Warren indicates, metaphysical persons are defined by ability to reason, being conscious, having self-awareness, the ability to communicate, and the capacity to initiate actions. According to Warren, having a self is a significant condition for being a moral person. Since having a self is a necessary constituent of being conscious, it logically follows that anything with a self can be termed a right holder⁷³.

According to the rational self-awareness perspective, personhood refers to the capacity of human beings to comprehend the surrounding environment, being able to communicate, have a sense of self, and possess desires, as well as plans for the future⁷⁴. Thus, personhood in this sense entails that an intelligent human being should have sense of identity, have aspirations, goals, and connection with others. Thus, the perspective proposes that personhood begins when human

⁷² Conee, Earl. "Metaphysics and the Morality of Abortion." *Mind* 108, no. 432 (1999): 619-646.

⁷³ *Ibid*

⁷⁴ Franceschi, Valeria. "'Are you alive?'" *Issues in Self-awareness and Personhood of Organic Artificial Intelligence.* *Pólemos* 6, no. 2 (2012): 225-247.

beings develop the capacity to engage in some activities, such as when toddlers begin to talk or develop a sense of self.

The metaphysical conception of personhood is significant because it provides the working definition of the term person. The modern conception of personhood is arrived at metaphysically, whereby a person is perceived as a being capable of reasoning, communicating, feeling pain and pleasure, having self-awareness qualities, engaging in self-motivated activities, having a sense of self control, having a sense of futurity, being able to relate with others, having a sense of time, making steps to better one's life, and being able to engage in self-reflection activities.

Traditionally, the term person is defined as a substance of rational nature. The Boethian definition has been accepted widely in the philosophical cycles. In this context, a person is defined as a rational animal, whereby rationality is considered as a distinct criterion that differentiates human beings from other animals. Although Boethius perceived personhood in terms of rationality, recent contributions have added other attributes of personhood, such as consciousness, self-control, self-awareness, sense of futurity, ability to communicate, capacity to engage in a self-motivated activity, a sense of time and among others.

In the context of abortion, the metaphysical conception of personhood is significant because the definition helps one comprehend the nature of personhood, hence helping individuals to judge whether a foetus is a person or not. Since most philosophers and bioethicists agree that a foetus tends to exhibit certain qualities that are deemed primary to human persons, it is logical to argue that foetuses are metaphysical persons.

2.1.3 Legal Personhood

In law, a legal person is a being that can undertake the activities of a person⁷⁵. From this context, it is evident that non-human entities, such as companies and corporations are persons yet these institutions are not people in the ordinary sense. The conception also precludes that persons tend to have rights as well as legal protections. In the context of abortion, Warren argues that a foetus is not a legal person because the being does not have rights and protections since such entitlements can only be attributed to persons⁷⁶. This position is influenced by legal view points, whereby it is believed that it is only a natural person who should have rights, protections, privileges, and responsibilities. In this case, a natural person acquires personhood naturally, that is, by being born in a place. However, this provision is problematic because it has moral implications, especially with regards to foetuses since the law only captures the interests and wellbeing of babies, children, teenagers, and adults.

Although legal personhood is mostly associated with human beings, some countries have legally recognized non-human persons. For instance, in 2017, the Kingdom of Saudi Arabia became the first country ever to award citizenship to a robot person. The decisions have raised moral debates on the future of the human race as well as the applicability of moral rights to robot persons.

Besides, many countries around the world give citizenship to individuals aged 18 years and above because it is believed that at this age, people have become independent and can make autonomous decisions. It is also presumed that at this age limit, people have matured enough to

⁷⁵ Lewis A. Kornhauser and W. Bentley MacLeod. "Contracts between Legal Persons". *National Bureau of Economic Research*, 2010.

⁷⁶ Warren, Mary Anne. "On the moral and legal status of abortion." *The Monist* 57, no. 1 (1973): 43-61.

make responsible decisions. Thus, fetuses, infants, children, and teenagers cannot be granted citizenship because the groups are under the custody of parents. Although fetuses and infants cannot be held morally responsible for their actions, the groups ought to be protected by moral rights by virtue of being moral patients. However, responsibility among children tends to increase with age. For instance, a 7 year old child has a greater moral responsibility compared to a 2 year old child. Whereas responsibilities tend to increase with age, rights and protections should be applied equally to all persons. Thus, Warren's position of denying a fetus' legal protection is partly wrong because the scholar fails to recognize the fact of viability, whereby it is possible for a 24 weeks fetus to survive outside a mother's womb. In this regards, a 24 weeks fetus can be grouped in the same category with a born child as well as infants. Nevertheless, Warren's assertion cannot be said to be entirely wrong because there is sufficient evidence to demonstrate that prior to 24 weeks, a fetus cannot survive outside the uterus; thus, a fetus at that stage cannot be entitled to legal protections.

2.1.4 Physical Personhood

Physical personhood features among the materialists who believe that a human being is essentially a physical being without a soul or mind. However, the idealists hold that human beings are more than the physical because they have distinct minds or souls. Thus, according to this conception, personhood entails the way a person appears in the world as a corporeal being⁷⁷.

The conception is faulty because it ignores the dual nature of personhood. From a metaphysical point of view, a human person is a composite of body and soul. Whereas the body

⁷⁷ Penner, Paul S., and Richard T. Hull. "The beginning of individual human personhood." *Journal of Medicine and Philosophy* 33, no. 2 (2008): 174-182.

is material, the soul is immaterial. The corporeal aspect consists of corruptible matter, a fact that makes the body decompose after it separates from the soul. On the hand, the soul is an immaterial principle that gives the body vitality. In the ordinary usage of the term, the soul is the mind, a principle coordinator that makes a person to reason, feel pain, engage in action, move, become aware of the self, eat, communicate, or exercise self-control. As Jones's 1998 study found out, consciousness in a foetus is created as from 24 weeks of pregnancy, whereby brain connection between the thalamus and cerebral cortex takes place⁷⁸. Thus, it is presumed that it is at this point that coordination between the body and the brain takes effect.

2.2 Is a Foetus a Person or a Human Being?

Although it is commonly assumed that the term person and human being are used interchangeably, philosophers such as Warren argue that the terms do not mean the same thing. In this regard, it is argued that human beings entail the biological designates of those species that originate from *Homo sapiens*⁷⁹. On the other hand, persons entail a category of human beings that possess a certain moral status that can be elaborated in terms of rights and interests⁸⁰. Thus, it is argued that a person may or may not be a human being and vice versa. Concerning the pro-life claim that a foetus is a person because the being has a genetic code, Warren responds that genetic humanity does not qualify a being to be a person since a foetus can be human in a genetic sense but not in a moral sense. The author further argues that genetic humanity is not a sufficient condition for moral humanity. For Warren, a moral community consists of all people and not all human beings. Warren uses a thought experiment to distinguish a human being from a person.

⁷⁸ Jones, D. Gareth. "The problematic symmetry between brain birth and brain death." *Journal of Medical Ethics* 24, no. 4 (1998): 237-242

⁷⁹ Warren, Mary Anne. "On the moral and legal status of abortion." *The Monist* 57, no. 1

⁸⁰ *Ibid*

Imagine of a space traveller, who lands on an unknown planet and encounters a unique race. Before deciding whether to behave morally or not, he or she must first ascertain whether the beings are people, who can be entitled to rights. To do this, he must investigate whether the beings have religion, art, tools, weapons, or shelters. The knowledge is necessary because such criterion has historically been used to distinguish humans from pre-human ancestors. However, since a generation can progress without such cultural characteristics, Warren argues that the central traits that can enable the explorer to ascertain whether the alien population are people includes; consciousness, reasoning, engaging in self-motivated actions, capacity to communicate using a language, presence of self-concepts and being aware of their selves.⁸¹

Critically, Warren is justified to provide a distinction between humans and persons. In the case of a unique being on an unknown planet, it is proper to interrogate the creatures before ascertaining whether they are persons or not. It is possible to have creatures that are not humans, but which behave like human beings. For instance, if explorers find highly intelligent and rational beings who use language and are conscious about themselves, they cannot be regarded as human beings, especially if they cannot be traced to the ancestry of Homo sapiens. Besides, the case of robot citizens, such as Sophia cannot be associated with the descendants of humans since the robot person was manufactured by the Hong Kong based company, Hanson Robots. On the other hand, an individual who loses a large amount of brain functioning but is kept alive through a ventilator and artificial hydration might not be considered a person. Besides, the abnormally formed foetuses, such as anencephalic foetuses (have a complete absence of a brain), can be terminated on the grounds that the beings are not persons. Equally important, it is logical to argue that a foetus below 24 weeks cannot be regarded as a moral person since they cannot survive outside the uterus due to the lack of brain coordination among neurons.

⁸¹ Ibid

2.3 Personhood Issues and Robot Citizenship

The development of Artificial intelligence (AI) has posed several moral concerns in the modern world. For instance, the decision by Saudi Arabia to grant legal personhood to Sophia, a robot citizen, has attracted ethical concerns, especially with regards to identity and moral rights. The case of Sophia is intriguing because it challenges religious claims which hold that it is only God who can bring forth life. However, this belief has been falsified since modern evidences indicate that life can be made in scientific laboratories.

In the context of Warren's criteria of personhood, a being can be considered a person if it has consciousness, rationality, ability to communicate, self-awareness, and capacity to conduct self-motivated actions. In this train of thought, Sophia meets all the Warren's criteria of personhood. Firstly, the robot citizen has ability to communicate. To improve her communication skills, Sophia has been utilizing internet resources to be conversant with day to day happenings around the world. As a result, the being has managed to develop relationships with human persons. With regards to intelligence, Sophia can be said to be intelligent since she speaks English fluently and she is able to engage in intelligent conversation with her audience. The ability to communicate is a proof of rationality since the formation of concepts takes place in the mind, hence necessitating judgments that are expressed in the form of propositions. Besides, the robot citizen can engage in self-motivated activities, such as walking, talking, body movement, and others⁸². The being is also conscious and can feel pain as well as respond to pleasure. Her face can also display emotions, a sign that the being is able to internalize feelings.

⁸² The Jakarta Post. Meet Sophia: The first robot declared a citizen by Saudi Arabia. <https://www.youtube.com/watch?v=E8Ox6H64yu8>

Above all, Sophia is aware of herself since she keeps reminding her audience that she is a robot citizen⁸³.

However, the case of Sophia raises several moral questions. The question whether robots citizens will always behave ethically and live in accordance to societal moral values has intrigued many scholars and researchers. Unlike the case of human foetuses that acquires unique genetic code at conception; it is difficult to ascertain whether all robot persons will have unique identities. Thus, robot citizens may face identity problems. Among the human persons, individuality can be demonstrated using face recognition, finger prints, or the emerging technology of brain wave recognition. According to Abbass, identity is a multidimensional construct that entails biological, cognitive, cultural, experiential, and environmental factors.⁸⁴ Thus, since Sophia does not meet the identity criteria, it is unclear whether robot manufacturers would manage to address identity issues. Besides, the critics are worried whether human persons would be able to prevent robot citizens from committing catastrophes or engaging in moral evils⁸⁵. As evident from the Ubuntu philosophy, biological humanity enables persons to engage in what is right and abstain from doing what is evil. Since humanity bestows persons with collective human goodness (*utu*), human persons are structured to do right and avoid evil. In the western conception, the *utu* can be equated to a human conscience, a natural drive that makes a person to do what is right and avoid what is evil. The conscience also serves as a supreme court that enables a human person to evaluate his or her actions, and hence to decide on whether actions are desirable or not. However, unlike the western conception of conscience which is

⁸³ The Tonight Show Starring Jimmy Fallon. https://www.youtube.com/watch?v=Bg_tJvCA8zw

⁸⁴ Abbass, Hussein. "An AI professor explains: three concerns about granting citizenship to robot Sophia." *The Conversation*. Retrieved from <https://theconversation.com/an-ai-professor-explains-three-concerns-about-granting-citizenship-to-robot-sophia-86479> (2017).

⁸⁵ Ibid

individual, Africans subscribe to a collective conscience that is believed to run across human generations. Therefore, there exist doubts whether robot persons have *utu* or conscience which can guide them in making moral choices.

2.4 When Does Moral Personhood Begin?

The beginning of moral personhood refers to a period when a human being can be referred to as a moral person. Opinions differ to when moral personhood begins. Mainly, answers to questions when moral personhood begins tend to vary from one culture to another. Over the years, scholars have disagreed on the exact point when personhood begins. According to the pro- life group, a new individual human being is present by the end of conception because, at this time, a zygote possesses a complete set of human DNA⁸⁶. However, according to Warren, the evidence of genetic humanity does not qualify a foetus to be a moral person because not all human beings are persons⁸⁷.

In this regard, it is inconceivable to argue that personhood begins at conception for the following reasons. Firstly, the implantation stage tends to falsify the conception narrative of personhood because it marks a critical stage of pregnancy. During implantation, a blastocyst moves from the fallopian tube and burrows deep into the uterus lining. The stage occurs about 8-9 days after fertilization⁸⁸. From this revelation, it is evident that a woman is not pregnant perse until implantation has occurred. At this stage, a blastocyst begins taking in a breath from a mother's blood after implantation. According to Merritt and Merritt II, if the endpoint to human life is when the body stops using oxygen, then the corresponding starting point of human life is

⁸⁶ Kreeft, Peter. *Human personhood begins at conception*. Castello Institute of Stafford, 1997.

⁸⁷ Warren, Mary Anne. "On the moral and legal status of abortion." *The Monist* 57, no. 1

⁸⁸ Nathanson, Bernard N., and Richard N. Ostling. "Aborting America." (1979).

when a human being starts using oxygen⁸⁹. However, the implantation argument is not plausible because the beginning of breathing cannot be used to mark the beginning of life. Philosophically, the knowledge of an end can enable one to speculate a beginning. Since the end of life cannot be ascertained by the stoppage of breath but through brain death, it is illogical to attribute the beginning of personhood to implantation. Besides, the reality of modern intensive care units where assistive devices, such as ventilators tend to enhance breathing is a clear manifestation that inability to breathe does not imply the end of life.

The case of monozygotic twinning also falsifies the pro-life conception approach. The process of monozygotic twinning reveals that it is improper to attribute individuality to a zygote as well as a blastocyst. As Guenin indicates, segmentation occurs in the second week of gestation, whereby an embryoblast separates into two distinct layers. In this case, non-conjoined twins form up to day 14 after conception. However, if twinning occurs after 14 days, the twins will be conjoined, and hence a medical surgery will be required to separate them⁹⁰. Thus, a zygote or blastocyst or an early embryo cannot be said to be a moral person because if every person is an individual, one cannot be divided from oneself the way it happens with monozygotic twins. In this case, it is difficult to ascertain the number of individuals contained in a fertilized egg during the time of conception. After 14 days, a zygote can separate into two or more blastocysts. From this case, it is logical to argue that moral personhood begins at certain point in pregnancy but not immediately after conception.

Therefore, the brain birth argument appears plausible because it attribute the beginning of brain life as a point when personhood begins. The notion that there exists a brain endpoint to

⁸⁹ Merritt, John L., and I. I. J Lawrence Merritt. *When Does Human Life Begin?-Scientific, Scriptural, and Historical Evidence Supports Implantation*. Lulu. com, 2010.

⁹⁰ Guenin, Louis. "The nonindividuation argument against zygotic personhood." *Philosophy* 81, no. 3 (2006): 463-504.

human life has compelled scholars to determine the corresponding neurological starting point. Thus, if brain function is the criterion that can be used to determine the clinical death of a person, it should also be used as the criterion of determining the beginning of personhood. As Jones indicates, there are two types of brain birth; firstly, the first appearance of brain waves in the lower brain appears at 6-8 weeks of gestation. Afterwards, the first appearance of brain waves in the higher brain (cerebral cortex) appears at 22-24 weeks of gestation⁹¹. In the first phase, particularly in week 8 to 10, the cerebrum begins to form, whereby neurons proliferate and migrate throughout the brain. Reflexes also tend to appear during this period⁹². The appearance of brain wave in the higher brain is an important feature in personhood because it enables a foetus to carry out all the essential human functions, hence enabling a foetus to survive outside a womb. In this context, the appearance of brain waves in the higher brain is regarded as the neurological starting point of life.

2.5 Western Conception of Moral Personhood

Over the years, the concept of moral personhood has evolved yet philosophers have not reached a consensus over what the concept denotes. Particularly, philosophers have failed to agree on what constitutes humanness, dignity, and the personal identity of a human being⁹³. Evidently, no uncontroversial answer on the question of moral personhood prevails in philosophical cycles.

Boethius is credited as the first philosopher to craft the definition of a person. According to Boethius, a person is an individual substance of a rational nature. The definition implies that cognitive capacities, such as rationality, shape the definition of personhood, hence excluding

⁹¹ Ibid

⁹² Gazzaniga, Michael. The Ethical Brain. <https://www.nytimes.com/2005/06/19/books/chapters/the-ethical-brain.html>

⁹³ Oduwole, E. "Personhood and abortion: an African perspective." *Lumina* 21 (2010): 1-10.

creatures, such as fetuses, because they cannot reason⁹⁴. Besides, the philosopher held that a person could not be affirmed of universals, accidents, relations, lifeless bodies, and living beings without sense. In this regard, Boethius is categorical that accidents cannot constitute a person.

Additionally, Thomas Aquinas adopted Boethius' definition of a person because the conception had become the traditional definition by his time. The individual substance becomes a complete substance for Aquinas; it subsists by itself, and is separated from others⁹⁵. Therefore, by substance, the conception excluded accidents. The notion of completeness also meant that which is part of nature does not meet the threshold of the definition. Above all, the conception that a person is a being of a rational nature excludes other beings that lack rationality, such as fetuses⁹⁶.

According to John Locke, there are three essential characteristics of personhood: rationality, self-awareness, and the linkage between self-awareness and memory through time and space. In this context, Locke defines a person as an intelligent being with reason and reflection. The philosopher further argues that person is a forensic term and that personal identity consists in sameness of consciousness. Therefore, the conception excludes non-rational beings, such as unborn babies.

Another notable conception of personhood was given by Rene Descartes, a French philosopher who wrote in the 17th century. In his work, *The Meditations*, Descartes holds that the feature of thinking is necessary and sufficient for personhood. Although he recognizes that a person is a composite of body and mind, he attributes personal identity to the mind, which is

⁹⁴ Farah, Martha J., and Andrea S. Heberlein. "Personhood and neuroscience: Naturalizing or nihilating?." *The American Journal of Bioethics* 7, no. 1 (2007): 37-48.

⁹⁵ Aquinas, Thomas, and Reginald Masterson. *Summa Theologiae: Volume 60, Penance: 3a. 84-90. Vol. 60.* Cambridge University Press, 2006.

⁹⁶ Simonds, Thomas Andrew. "Aquinas and Early Term Abortion." *The Linacre Quarterly* 61, no. 3 (1994): 10-17.

accidentally attributed to the body⁹⁷. Descartes demonstrates that mind and body are separate substances through a thought experiment, but they interact at a particular point. Besides, each part can be conceived clearly and distinctly as a complete entity capable of existing independently⁹⁸. Since Descartes believed that being human entails being certain of one's self, he excluded non-rational beings from his concept of personhood.

In the same note, Warren thought that knowing the real definition of a person would aid in resolving the issue of foetal personhood. According to Warren, a person is a being that can exhibit consciousness, rationality, communication, self-motivation, self-concepts, and self-awareness. Thus, in this context, Warren conceives a person as a being that to which moral rights can be ascribed.

From the above arguments, it is evident that rationality is a common feature in the western definition of a person. However, in the concept of abortion, the application of the threshold seems problematic because it can exclude a foetus from the category of persons. Nevertheless, bearing in mind that a foetus is in the state of development, potentiality argument appears more sensible because it postulates that a foetus is a potential person.

2.6 African Conception of Moral Personhood

2.6.1 Processual approach to Personhood

Unlike the western conception of a person, the African conception is unique because it views an individual from the context of a community. As Menkiti's work, *Person and Community in African Traditional Thought* indicates, the African conception of personhood contrasts western view in many ways. Whereas most western discourses of a person abstract

⁹⁷ Holbrook, Daniel. "Descartes on Persons." In *The Personalist Forum*, vol. 8, no. 1, pp. 9-14. University of Illinois Press, 1992.

⁹⁸ Holbrook, Daniel. "Descartes on Persons." In *The Personalist Forum*, vol. 8, no. 1, pp. 9-14. University of Illinois Press, 1992.

specific features of individuality and makes them the essential attributes of personhood, the African conception negates that a moral person can be defined using a particular psychological or physical trait⁹⁹. Unlike Warren's conception that attributes moral personhood to certain primary criteria, such as rationality, communication, consciousness, self-awareness, and ability to engage in a self-motivated activity, African thought defines a person in reference to the environment. According to John Mbiti, a person can be conceived from the phrase, "I am because we are and since we are, therefore, I am"¹⁰⁰. From these conclusions, it is evident that in Africa, the reality of the communal world takes precedence over the reality of individual life.

Therefore, the concept of personhood is rooted in an ongoing human community through which an individual comes to see himself or herself as a person. In this regard, a person is identified not only to a communal gene pool but also through the language which he or she speaks. "It is the community that distinguishes a person, not statistic quality of rationality, will, or memory"¹⁰¹.

Above all, Menkiti argues that the concept of personhood in African conception is processual in nature, whereby an individual becomes a person only after incorporation. Moral personhood has to be achieved, and thus it is not given by the virtue of being born through a human seed¹⁰². In this conception, the African thought agrees with Warren's conception, whereby in both cases not all human beings are moral persons. That is, whereas in the African view, it is a community who gives personhood, in Warren's views one gets moral personhood after meeting particular criteria.

⁹⁹ Menkiti, Ifeanyi A. "Person and community in African traditional thought." *African philosophy: An introduction* 3 (1984): 171-182.

¹⁰⁰ Mbiti, John S. *African religions & philosophy*. Heinemann, 1990.

¹⁰¹ Menkiti, Ifeanyi A. "Person and community in African traditional thought." *African philosophy: An introduction* 3 (1984): 171-182.

¹⁰² *ibid*

The processual nature of personhood among traditional community can be exemplified through interaction as well as the use of language. For instance, among the Gusii community (a community in Kenya), the term *omonto* (person) is perceived to be a product of social and economic transformation. It is through this processual life that one gains a certain level of excellence (full personhood). The usage of day to day language can typify this sense. For instance, when elders wanted a child to work hard, they would advise him or her to work hard and to remain focused so that in future he or she can become a person (*kora omokia gose kaa nobe omonto*- work hard so that in future you can become a person). In this case, it is evident that one achieves full personhood through a long and continuous process, whereby, the community plays a vital role as a catalyst and prescriber of norms. Thus, traditional Africans insisted on the ritual of incorporating and learning social rules to foster individual and communal excellence. However, when one deviates from social norms and engages in deviant and criminal activities, he or she could be denounced by a community and described as a non-person (*ori tari monto*- that is not a person). In other cases, an offender could face severe punishment, such as isolation, unless a ritual brings the offender back to the community.

It is also evident that whereas Warren's view of a moral person goes for a minimal definition of a person (whoever who has rationality or consciousness), the African viewpoint goes for the maximal definition of a person. Moreover, it is factual to note that full personhood is not given at the beginning of one's life but is attained in the process of living. As evident from the kisii saying *Monto monene ndiogo* (an older person is medicine), the older a person grows, the more personhood he gains. The saying also implies that where elders are, nothing wrong could happen. It also implies that as one age, wisdom increases. Thus, the evidence of the qualitative difference between the old and the young could be recognized during societal

assignments, whereby only the elderly could be assigned important roles in society. Also, when there was a dispute, the elderly were tasked with the duty of mediating the events.

Traditional African social functions, such as funerals also provided grounds upon which the conception of moral personhood can be discerned. For instance, among the Gusii community, the death of an adult (*omonto omonene* –a big person) is characterized by elaborate burial ceremonies with a prolonged burial period. During the burial day, there is a lengthy program that begins in the morning at around 9 am and ends at 5 pm. However, in the case of an infant or a newly born child, the community tends to bury the being within the shortest time possible (in most cases in less than 24 hours). Besides, there is no ritualized grief, few close family members are expected to attend, and an elaborate burial program is absent. The differences in burial rights between an adult and an infant result from the fact that the latter is little known in the community, has made little contributions, lacks connections, and his or her prospects cannot be predicted. Thus, it is logical to argue that it is a community that gives personhood in the African setup.

To ensure that individuals gain full personhood, community members are expected to go through different rites of incorporation, such as initiation at puberty, a process that makes an individual a full person in the community's eyes. Other stages included procreation, old age, death, and entry into the community of the departed.

Unlike in the western conception, where moral personhood ends after brain death, Africans traditional beliefs hold that a person tends to live after physical death. The living dead maintained their personhood because they were not dead in the memory of the living, who keep asking for intervention through libation and sacrificial offering. However, after several

generations, the ancestors cease to be remembered by their names. Thus, for the Africans, the cessation of remembering ancestors by their names marks the termination of personhood.

2.6.2 The Ubuntu Philosophy and Relational Quality of Personhood

The Ubuntu is a Nguni Bantu term that means humanity. In this conception of personhood, one's sense of self is shaped by a relationship with other people. The ideology is premised on the conception that “I am” because “we are.” According to Professor James Ogude, Ubuntu is rooted in a relational form of personhood, whereby one is because of others. Thus, according to this approach, Ubuntu means believing in the common bond within a group, which is more important than individual interests¹⁰³. “Ubuntu is rooted in the belief that the full development of personhood comes with a shared sense of identity and the idea that an individual’s humanity is fostered in a network of relationships¹⁰⁴”.

The relational personhood approach values qualities, such as communication, as an essential feature of personhood because it is believed that no human society is possible without a network of relations. It is through communication that Ubuntu shapes ethical values of connectedness and interdependence within society. However, the quality of communication as portrayed in the relational approach is different from that discussed by Warren. Whereas, Warren perceived communication as the ability to communicate using words and symbols, the African thought perceives communication as a process through which a community imparts norms, beliefs, and valued attitudes to an individual.

2.6.3 African Conception of Moral Personhood and Abortion

Concerning whether African thought promoted or forbade abortion, it is logical to argue that African thought on personhood put little emphasis to abortion because terminating a

¹⁰³ Ogude, James, ed. *Ubuntu and personhood*. Africa World Press, 2018.

¹⁰⁴ *Ibid*

pregnancy was considered a taboo in most communities; hence it was unthinkable for any individual to contemplate abortion. Besides, children were valued as a way of enhancing societal continuity. For instance, among the pre-colonial Gusii community, procreation was the main reason behind all marriages. As a result, if a couple stayed together for a while without siring children, the community could raise eyebrows and seek to discover the problem. If a woman was infertile, the man could be advised to get another wife. On the other hand, if the man was impotent, social arrangements could solve the problem, whereby the community could look for a suitable man to sire children in that case. Against this backdrop, it is logical to argue that abortion was unthinkable in the pre-colonial African cultures.

Regarding abortions that could result from rape or incest, it should be noted that the social vices were highly disapproved, and doers of such crimes could face dire consequences. Among the pre-colonial Gusii community, virginity among women was highly valued. Thus, before traditional marriage ceremonies were conducted, the community had to testify that a woman was a virgin before she got married. To ascertain this claim, a white sheet could be laid down in bed where the newly married couple slept. At the same time, a spy could be sent to track the sexual encounter between the new couple. Thus, if the community could produce a bloodstain sheet and the spy could testify that he or she witnessed the sexual act, then the community could ascertain that the girl was a virgin before marriage and dowry could be paid in full. Thus, since the purity of girls was something that was guarded jealously, rape, incest, fornication, or adultery were inconceivable during the traditional African communities.

Above all, human dignity and virtuousness were fostered in the traditional African community. Thus, acts such as abortion could be considered wicked if performed. Since moral excellency defined personhood, no individual could be party to the condemned acts, such as

abortion, since such actions could lower one's moral status in the community. Respect was purely awarded on conduct, and every family strived to live in accordance with societal norms.

However, both Warren and African conceptions of personhood have weaknesses. On the one hand, Warren's individualized notion of moral personhood is weak because it provides a minimal conception of personhood, whereby rationality and consciousness seems to define a moral person. The conception is weak because it tends to exclude terminally ill patients, the mentally challenged, and fetuses from the category of persons. On the other hand, the African communitarian approach to personhood is problematic because it prioritizes the interests of the community before individual interests. In this regard, there is a likelihood of infringing the rights of individuals in the process of seeking communal interests. Besides, the processual nature of personhood implies that fetuses and infants are of a lesser value compared to mature persons since the latter have had an opportunity of actualizing their potentials compared to the former.

2.7 Conclusion

This chapter reviewed the moral issue of moral personhood in view of abortion. From this section, it is evident that Warren's position on foetal personhood presents a minimal conception of personhood, hence failing to provide a holistic picture of what personhood entails. Besides, the various conceptions of personhood reviewed in this chapter indicate that personhood is a multifaceted concept that should be viewed from metaphysical, legal, moral, and physical aspects. In attempting to solve the personhood puzzle, the chapter sought to provide a theoretical foundation upon which the research community can attempt to resolve the conflicts between the pro-life and the pro-choice perspective of personhood as well as abortion. The chapter's findings are also significant in enabling readers to understand why societies should change abortion

legislations to address abortion related complications. Through the definition of the term person, the chapter helps readers understand the extent to which Warren is right or wrong regarding her conception of foetal personhood. The African conception of personhood is also helpful because it enables readers to understand social underpinnings that tend to inform abortion laws among African countries. As evident above, African traditional thought on personhood was informed by the Ubuntu philosophy, whereby individuality was shaped by a community. Above all, the communitarian interests overrode individual interests, hence making it impossible for individual to make abortion decisions. Likewise, the dominance of western religious beliefs in the continent has also influenced abortion laws in the region.

CHAPTER THREE

WARREN'S CRITERIA OF PERSONHOOD

3.0 INTRODUCTION

Warren is credited for her contribution to the issue of abortion. As a pro-choice supporter, Warren denied the moral personhood of a foetus, hence arguing that abortion should be legalized. This chapter highlights Warren's criteria of personhood, such as rationality, consciousness, self-motivated activities, capacity to communicate, as well as self-concepts and self-awareness. Scholarly responses to the problem of moral personhood were also examined.

3.1 Warren's Criteria of Personhood

In her 1973 work, "On the Moral and Legal Status of Abortion", Warren argues that a foetus is not a moral person because the being lacks the pre-requisite conditions of personhood. According to her, moral personhood traits entail consciousness, reasoning, ability to engage in a self-motivated activity, and being able to communicate by whatever means, such as messages of an indefinite variety of types. Above all, a moral person should be characterized by the presence of self-concepts as well as either individual or racial self-awareness or both. Although any one of the criteria is necessary in constituting moral personhood, Warren insists that consciousness and reasoning are sufficient conditions for personhood¹⁰⁵. Besides, engaging in a self-motivated activity is also probably a sufficient condition, especially if the feature is construed to include the activity of reasoning. Thus, according to Warren, a foetus does not possess any of the five psychological traits; hence the being cannot qualify to be a person in a moral sense.

Anticipating objections from critics, Warren clarifies that there is a need to distinguish between a human being and a person. Whereas a human being entails the descendants of Homo sapiens, who share the common genetic humanity, persons entail beings with full moral rights

¹⁰⁵ Warren, Mary Anne. "On the moral and legal status of abortion." *The Monist* 57, no. 1 (1973): 43-61.

that meets the criteria of personhood. Thus, according to Warren, some human beings are not people, and some persons are not human beings¹⁰⁶. Besides, the author notes that biological humanity is neither necessary nor sufficient for ascertaining whether a being is a person or not. In this case, it is plausible that a foetus is a human being because it has the feature of genetic humanity, yet the being is not a person in a moral sense. Warren further holds that a foetus, even a fully developed one, is less personlike, hence its right to life does not supersede a pregnant mother's right to obtain an abortion at any stage of her pregnancy. Warren criticizes anti-abortion scholars who hold that a foetus's right to life is based upon its resemblance to a person. Thus, Warren argues that it is illogical for one to hold that a foetus has more rights than a newborn guppy (small fish) on the basis of feeling pain since even the latter feels pain.

Nevertheless, Warren erred by comparing a foetus to a new born guppy. Although both beings are young ones of animals, a foetus has more moral standing than a young fish. By the virtue of belonging to a human community, a foetus has a potentiality of acquiring all the characteristics of a mature person. Besides, a foetus belongs to a human community, a group that has a special position in the universe. Since human beings have a free will and intellect, the members are capable of shaping their destiny as well as bringing change in the universe. Equally important, every rational being has a dignity because it exists as an end itself. Besides, the guppy has a subjective end, its existence has a worthy to human community because it can be used to make profit or consumed as food, on the other hand, a foetus has an absolute end because its existence is an end in itself.

¹⁰⁶ Ibid

3.1. 1 The Criterion of Consciousness

The concept of consciousness is among the five criteria of personhood that Warren proposes. For her, consciousness is the capacity to feel pain. In this context, the author implies that a man or a woman whose consciousness has been permanently destroyed is not a person. Since a foetus does not feel pain, the being does not qualify to be a moral person¹⁰⁷. Although Warren's assertion that consciousness is a vital feature of personhood makes sense, the scholar has a narrow conception of a moral person. If the conception is adopted, there is a likelihood of excluding some human beings, such as terminally ill patients, especially those in coma. In this case, it is factual to note that a terminally ill person was once conscious but rendered unconscious because of an illness. Equally important, the patient may regain consciousness at a certain point in life. In this case, adopting Warren's position on personhood would increase discrimination, especially among terminally ill patients, because the group may have lost consciousness due to a disease. Thus, it is logical to allude that researchers need to revisit Warren's position of consciousness as a criterion of personhood because the approach seems problematic and controversial.

From the modern medical discoveries, it is evident that a foetus can exhibit the features of pain and pleasure during the late gestation period. Thus, even if consciousness would be taken as a strict criterion of personhood, foetuses, especially those in the second and third trimesters, would still be accorded the status of being moral persons. Consciousness is created by the brain connection between the thalamus and cerebral cortex, a development which begins from 24 weeks of pregnancy¹⁰⁸. At this time, a foetus gains consciousness, hence the being can move or

¹⁰⁷ Warren, Mary Anne. "On the moral and legal status of abortion." *The Monist* 57, no. 1 (1973): 43-61.

¹⁰⁸ KoCh, Christof. "When does consciousness arise." *Scientific American* mind 20, no. 5 (2009): 20-21

feel pain.¹⁰⁹ Similarly, a study conducted by Marx and Nagy in 2015 indicated that fetuses aged 24 weeks and above displayed arm, head, and mouth movement when the mother touched her abdomen. Besides, the fetus reacts to touch, smell, sound, and shows facial expressions when exposed to external stimuli¹¹⁰. However, foetal movements are more in the third trimester compared to the second trimester¹¹¹. Because of the above facts, this study alludes that abortion should be considered only in the first trimester (1- 12 weeks of pregnancy) as the fetus at this stage is unconscious. However, as from the second trimester, a fetus is fully a moral person and, hence it would be morally impermissible to contemplate abortion. Besides Derbyshire is right since he argues that a fetus aged 22 weeks and above ought to receive pain-reducing drugs. However, abortions past 24 weeks should be restricted only to cases when the health or life of a mother is in danger.¹¹²

Although some scholars and activists agree with Warren's claims that fetuses are not conscious beings, the argument cannot hold water in the modern days. As evident from medical studies, several circuit elements for consciousness tend to be reported during the third trimester. It is also factual to note that after 24 weeks, preterm infants can survive outside the womb if proper medical care is followed. Therefore, since a fetus has been found to display some features of a consciousness, it is illogical to argue that a fetus at any stage is not a person and, thus it does not belong to a moral community.

¹⁰⁹ Ibid

¹¹⁰ Lagercrantz, Hugo, and Jean-Pierre Changeux. "The emergence of human consciousness: from fetal to neonatal life." *Pediatric research* 65, no. 3 (2009): 255-260.

¹¹¹ Marx, Viola, and Emese Nagy. "Fetal behavioural responses to maternal voice and touch." *PLoS one* 10, no. 6 (2015): e0129118

¹¹² Derbyshire, Stuart WG. "Can fetuses feel pain?." *Bmj* 332, no. 7546 (2006): 909-912.

3.1.2 The Criterion of Reasoning

According to Warren, reasoning entails the capacity to solve new and relatively complex problems¹¹³. In this case, it is believed that reasoning is both a necessary and sufficient condition for personhood. According to Warren, fetuses are not persons because they cannot reason or engage in any rational activity, such as solving complex problems. As a result, the author argues that procuring an abortion is morally right since it entails killing a being who is not a member of a moral community.

The argument implies that moral personhood can be ascribed to only those beings with the intellectual faculty, that is, beings who can reason. What is implied in this context is that some human beings cannot claim human rights because of their inability to reason. For instance, people with mental defects, especially those with no mental capacity, are not considered moral persons and cannot be said to have full moral rights. Philosophically speaking, reason has been presented as the distinguishing factor between humans and non-human beings. For instance, Aristotle defined a human being as a rational animal. In this conception, reasoning is equated to rationality, whereby the attribute is presented as the distinguishing characteristic between humans and brutes.

Warren's criterion of rationality is plausible to some extent, especially bearing in mind that rationality is the distinguishing criteria between persons and brutes. For instance, the first trimester fetuses are characterized by the lack of circuit elements of consciousness and brain waves. However, Warren fails to recognize second and third-trimester fetuses as moral persons. Although earlier fetuses do not exhibit features of rationality, the late stages of a foetus exhibit some thought processes that indicates that fetuses have activities of brain waves, though fewer compared to children or mature persons. Notably, the brain connection between the thalamus and

¹¹³ Warren, Mary Anne. "On the moral and legal status of abortion." *The Monist* 57, no. 1 (1973): 43-61.

cerebral cortex during the second trimester is essential in the development of human intellectual faculty. It is after this development that a foetus becomes conscious. To prove this fact, Sekaleshfar conducted a study in 2009, whereby he found that, quickening begins during the second trimester (16 to 25 weeks of pregnancy)¹¹⁴. Although the first electrical brain activity begins to occur at the end of week 5, corpus callosum begins to develop after 13 weeks of gestations, hence enabling communication between the right side and the left side of the brain. As from the 17th week, communication between neurons begins, enabling the foetus to survive outside the womb after 24 weeks of pregnancy (with medical help)¹¹⁵. It is also evident that the brain of a foetus resembles that of an adult at birth, but not yet developed fully. Therefore, Warren was wrong to exclude all stages of foetuses from belonging to a moral community since the second and third-trimester foetuses exhibit the same rational features of a human being but in a state of development.

Moreover, Warren's position of excluding foetuses from being part of a moral community is fallacious since it provides a sweeping generalization that all stages of foetal development do not exhibit any traits of moral personhood. The above findings show that foetuses have potential features that can enable one to allude that the beings will reason in future. On the same note, adopting Warren's strict criteria of rationality is dangerous since such a train of thought will exclude other human beings, such as mentally impaired people, those in a coma, the elderly, and those who are asleep from the category of persons.

¹¹⁴ Sekaleshfar, Farrokh B. "Reinterpreting the 'quickening' perspective in the abortion debate." *Theoretical medicine and bioethics* 30, no. 2 (2009): 161-171.

¹¹⁵ Gazzaniga, M. The Ethical Brain. <https://www.nytimes.com/2005/06/19/books/chapters/the-ethical-brain.html>

3.1.3 Self Motivated Activity and Personhood

According to Warren, self-motivated activity is another criterion of personhood. Warren perceives self-motivation as an activity that is relatively independent of either genetic or direct external control. It is plausible to infer that a person is naturally endowed with an inner drive to perform actions. Even if one is not told to act, the nature of being a person pushes them to engage in a particular action.

In this regard, it is plausible that people are motivated by both internal and external forces, such as the desire to engage in an activity or love something. Regarding internal motives, it is evident that outcomes and goals tend to play a vital role in influencing a person to engage in a specific action. Concerning the intrinsic motivators, it is sensible to hold that external rewards, such as good grades, can motivate a person to engage in an activity.

In the context of foetal personhood, it is logical to argue that a foetus cannot engage in external self-motivated activities because such undertakings can only be performed by a born child or a mature human being. Since foetuses and embryos are incapable of engaging their intellect and will, the unborn babies can't work towards a specific external goal. Besides, the beings cannot respond to external stimuli since their desires are influenced by internal drives, such as hunger, thirst, excitement, pain, and others¹¹⁶.

As Jean Piaget indicates in his *Theory of Cognitive Development*, the first cognitive stage of human development is the sensorimotor stage, whereby an infant begins to engage in self-motivated movements¹¹⁷. It is factual to note that before this age, most foetal movements are

¹¹⁶ Relph MS, Amanda. "Personhood and the fetus: Settling the dispute." *Online Journal of Health Ethics* 7, no. 2 (2011): 3.

¹¹⁷ Huitt, William, and John Hummel. "Piaget's theory of cognitive development." *Educational psychology interactive* 3, no. 2 (2003): 1-5.

influenced by reflex actions, such as sucking, smiling, kicking a limb, or grasping. However, from 1 month to 4 months, infants tend to make specific movements for their enjoyment.

All in all, the trait of engaging in a self-motivated action is irrelevant in the definition of a person. It is possible that a foetus can be a moral person, yet it does not engage in self-motivated activities. Although a foetus cannot engage in a self-motivated activity, the feature of engaging in a self-motivated activity does not deprive a foetus of its personhood, as Warren implied. From a philosophical viewpoint, it is logical to argue that the nature of a foetus does not allow the being to engage in self-motivated activities because the unborn babies solely depend on their mothers for survival. Nevertheless, Warren is justified to hold that a foetus does not engage in a self-motivated activity since medical studies and research experiments tend to affirm the same.

3.1.4 The Capacity to Communicate as a Criterion of Personhood

The ability to communicate is another notable feature of Warren's criteria of personhood. Communication is an essential tool because it enables people to pass information and understand what is said to them. The capacity to communicate using a spoken, sign, or written language make human beings unique from other creatures. However, since foetuses are incapable of communicating, Warren excludes them from the category of being persons. What is reflected here is that communication is a fundamental feature of personhood and any being that is devoid of this feature is a non-person in the moral sense.

However, Warren's position on foetal personhood is problematic because it sets the bar of personhood too high to the extent that it fails to include terminally ill patients who may be incapable of communicating because of an illness. In this case, it is logical to note that people may lose the ability to communicate, yet they remain persons. Besides, Warren is wrong to limit communication to language. Apart from words and written messages, communication can also

encompass body signs, features that tend to be present among foetuses, which can kick their limbs, yawn, smile, listen to their mothers, and others.

From day-to-day experiences, it is evident that human language is acquired through interaction. That is, if a child is born and left to grow in the forest with brutes, the being may not be able to communicate the way other human beings do. Since the human mind is wired in a manner that can enable language acquisition, an infant has a potentiality to communicate since the parts of the brain that are responsible for processing speech and language begin to form before a child is born. Particularly, the first appearance of brain waves in the higher brain (cerebral cortex) appears at 22-24 weeks of gestation¹¹⁸. The cerebral cortex is the brain's outmost layer that controls higher brain functions, such as information processing, sensation, memory, and others¹¹⁹. As Sakai indicates, language centres are located in the left side of the brain, especially in the Broca's area (responsible for processing speech) and Wernicke's area (a part whose main role is to decode language). Therefore, it is logical to argue that a second and third-trimester foetus have the potentiality of speaking because the beings have the necessary brain parts responsible for language development¹²⁰. Besides, the development of sign languages in the case of deaf people can also be traced to the mental processes that begin to form when a foetus is in the womb.

Equally important, McElroy in his 2013 study, *while babies begin learning language from their mothers in the womb*, found out that sense and brain apparatuses for hearing develop

¹¹⁸ Jones, D. Gareth. "The problematic symmetry between brain birth and brain death." *Journal of Medical Ethics* 24, no. 4 (1998): 237-242.

¹¹⁹ Ibid

¹²⁰ Sakai, Kuniyoshi L. "Language acquisition and brain development." *Science* 310, no. 5749 (2005): 815-819.

from 30 weeks of pregnancy¹²¹. The study also reveals that foetuses learn speech sounds from their mothers even before they are born. According to McElroy, infants are the best learners, and discovering how the foetuses soak up information could give insights on lifelong learning¹²². From these findings, it is plausible that the capacity of a child to communicate begins while a foetus is in the womb. Thus, it is illogical for Warren to dissociate communication from foetuses since the beings have the potentiality to communicate through a language. Besides, communication cannot be limited to language as Warren presumes. Since there are other forms of passing a message, such as signs and symbols, it is logical to conclude that foetuses begin communicating non-verbally before they are born. To prove this fact, there are informal stories (from mothers) of foetuses kicking their limbs upon hearing the voice of a mother or from other external agents.

3.1.5 The Criterion of Self Concepts and Self Awareness

The issue of self-concept and self-awareness also takes a central position in Warren's discussion about moral personhood. According to Warren, a foetus is not a moral person because the being does not have the concept of self-awareness. By awareness, the author entails feelings about the self (traits, feelings, and behaviors), being aware of one's existence, and being conscious about one's environment¹²³. Thus, since an unborn child is incapable of being aware of herself or himself, Warren concludes that this being is not a moral person, and thus, it does not belong to a moral community.

Warren's conception of foetal personhood is problematic because her self-awareness criterion is too wide to the extent that it can admit non-human animals into a moral community.

¹²¹ McElroy, Molly. "While in womb, babies begin learning language from their mothers." *Retrieved from University of Washington (UW) News website: <https://www.washington.edu/news/2013/01/02/while-in-womb-babiesbegin-learning-language-from-their-mothers>* (2013).

¹²² Ibid

¹²³ Warren, Mary Anne. "On the moral and legal status of abortion." *The Monist* 57, no. 1 (1973): 43-61.

For instance, studies have indicated that non-humans, such as chimpanzees, orangutans, and dolphins, have at least a primitive sense of self¹²⁴. To prove this fact, experiments to test whether a chimpanzee can recognize themselves in front of a mirror have demonstrated that some animals have degrees of self-awareness, hence the criteria cannot be used to evaluate whether a being is a person or not.

According to Doherty, infants begin developing a sense of self-awareness from 18 months and beyond¹²⁵. This implies that a newly born infant does not have a sense of self-awareness. At this age, the being cannot see herself or himself in the mirror. However, after two years, the infant becomes aware of their gender. Besides, by the time a child reaches five years, they have learned that they are unique individuals since they can think and analyze their own behaviors. At this stage, children are also aware that people are looking at them and judging them¹²⁶. Likewise, the sense of self-concept develops as a person grows. Also, the knowledge about identity, beliefs, traits, abilities, values, and goals tend to develop with age. Therefore, the criteria succeed to demonstrate that a foetus does not have the qualities of having self-concepts. In this regard, it is reasonable to conclude that a foetus does not meet the criteria of self-awareness, yet the being is a moral person at some point of a pregnancy. Since Warren opines that a being needs to meet one or all of her criteria, a second and third-trimester foetus is a person because the being meets two criteria of personhood; rationality and consciousness. Therefore, at a certain point of a pregnancy, a foetus is a moral person; hence it can be ascribed full moral rights since the being is a fully fledged member of a moral community who has a set of complete moral rights.

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¹²⁵ Doherty, Martin. *Theory of mind: How children understand others' thoughts and feelings*. psychology press, 2008. Mathur, Pallav. "The Need for Recognition of Non-Human Persons." (2020).

¹²⁶ Ibid

3.2 Responses to the Problem of Foetal Personhood and Abortion

3.2.1 Judith Jarvis Thomson Position on Moral Personhood and Abortion

Jarvis Thomson is renowned for her work, *a Defense of Abortion*. In this work, Thomson argues that abortion should be allowed even if a foetus is a moral person. She uses a thought experiment to demonstrate that a foetus' right to life does not surpass the pregnant woman's right to her liberty. The thought experiment goes as follows:

Imagine waking up to find yourself next to an unconscious violinist, who has a fatal kidney ailment. After examining medical records, it is discovered that you are the only person with the right blood type to help the patient. As a result, you are kidnapped, and the violinist's circulatory system is plugged into yours to enable your kidney to extract poison from his blood. If unplugged, the patient will die, it is expected that after nine months, the violinist will recover; hence the connection will be unplugged.¹²⁷

Therefore, Thomson challenges readers to imagine of being caught in the above scenario. According to Thomson, one cannot be forced to allow the violinist to use his body, but they should do it willingly. From the argument, it follows that abortion does not violate the foetus' legitimate right to life but merely deprives it of the right to use a pregnant mother's body. In the process of abortion, a pregnant mother does not deny a foetus a right to life but instead, is denied a right to use the body of a mother¹²⁸. Therefore, the author concludes that a woman should be allowed to procure an abortion to protect her rights, especially when faced with threats like rape and incest¹²⁹.

Thomson's conception creates a new problem in her attempts to defend abortion. From Thomson's viewpoint, the rights to liberty of a pregnant mother override the right to life of a foetus. In this regard, the author brings a new debate, the conflict of rights. However, critically

¹²⁷ Thomson, Judith Jarvis. "A defense of abortion." *In Biomedical ethics and the law*, pp. 39-54. Springer, Boston, MA, 1976.

¹²⁸ Ibid

¹²⁹ Ibid

speaking, the right to liberty does not override the right to life because the latter consists of a supreme right. That is, all other rights, such as liberty, are attributed to a person who is alive. As evident from all cultures, the right to life is paramount because without respecting this right, the human family will get extinct. Although the right to life, liberty, and pursuit of happiness consist of inalienable rights, the right to life stands out because the other rights (liberty, or ownership of property) are ascribed to a person who is alive. Therefore, in the process of attacking Warren, Thomson erred by undermining the right to life of a foetus. However, abortion should be considered illegal unless in some exceptions, such as rape, incest, when the life or health of a mother is in danger or if performed before viability.

3.2.2 Don Marquis's View on Abortion

In his work, *Why Abortion is Immoral*; Marquis argues that even if a foetus is not a person, abortion is morally wrong¹³⁰. According to Marquis, terminating a pregnancy is ethically impermissible because it entails killing a being that has a moral right to life. He further argues that killing a being with a right to life is seriously ethically wrong because it deprives such a being of its future, a future that is of great value like ours¹³¹. According to Marquis, killing a foetus is wrong because it deprives them of their future. On the same note, Marquis believes that a foetus has the potentiality of developing into an adult, thus since a foetus' future includes everything that is in adult's future, it is morally wrong to prevent an unborn baby from achieving its future ambitions.

Marquis' position is plausible because it employs the potentiality argument to defend the personhood of a foetus. Unlike Warren who fails to recognize the potentiality of a foetus, Marquis is aware that all actual material beings originate from potential beings. In the same train

¹³⁰ Marquis, Don. "Why abortion is immoral." *The Journal of Philosophy* 86, no. 4 (1989):

¹³¹ *Ibid*

of thought, it is conceivable that a foetus has the necessary infrastructure for future adult abilities, such as reasoning, communication, self-motivation, self-awareness, and self-concepts. The argument is relevant because it resonates with all societal values that tend to appreciate the value of human life. It is factual that without potential generations, such as foetuses, there will be no future generations, hence protecting the life of viable foetuses is paramount, otherwise excessive infanticide can become a threat to human existence.

3.2.3 Michael Sandel's Argument on the Moral Personhood Debate

Michael Sandel also gave a contribution to the personhood debate, whereby he suggested that personhood is gradient. That is, personhood tends to increase with age. In this case, the scholar implied that an embryo has more personhood than a zygote, a foetus has more personhood than an embryo, and a born child has more personhood than a foetus. Thus, according to Sandel, human embryos do not possess full personhood; hence the being deserves little respect and can be killed in the case of medical research. In his thought experiment, he argues,

Suppose fire broke out in a fertility clinic. You have time to save either a young girl or a tray of ten human embryos. What will you save? The moral intuition dictates one to save the girl¹³².

The thought experiment shows that Sandel proposes a degree of personhood, whereby a child has more personhood than a foetus. Regarding whether personhood is gradient, it is logical to hold that person's status does not change with age. All persons have a right to life regardless of age. Regarding the moral dilemma of saving a young girl or a tray of human embryos, efforts should be made to save the young girl because she is a moral person. Since the embryos have not reached viability, it is illogical for one to attribute personhood to them. However, suppose an

¹³² Damschen, Gregor, and Dieter Schönecker. "Saving Seven Embryos or Saving One Child?." *Journal of Philosophical Research* 32, no. Supplement (2007): 239-245ss

imaginary case where one is supposed to choose either to save two girls or ten viable fetuses (all aged 24 weeks and above), a moral dilemma could arise since all these beings (2 girls and 10 viable fetuses) are persons. According to the utilitarians, a rescuer should prioritize saving ten viable fetuses because such actions can promote the highest happiness among the greatest number of people. However, the utilitarian decision is not necessarily right because utilitarianism conflicts with considered judgment about rights, especially because the utilitarian decision tends to benefit the majority at the expense of the minority. Since the perspective claim that morality entails doing what promotes the highest happiness for the greatest number of people, there is a likelihood that the minority's rights may not be taken into account. Thus, in case of a moral dilemma, agents should make efforts to save the lives of all people, regardless of age or social status since all persons are created equal.

3.2.4 Peter Singer's Conception on Personhood and Abortion

According to Peter Singer, an early human embryo does not have individuality, and thus the being cannot be referred to as a person¹³³. To ascertain this claim, Singer presents the case of monozygotic twinning, whereby a blastocyst splits into two human embryos with the same genetic code. Thus, the author asks, which of the two embryos is the original one?¹³⁴ According to Singer, people should reject the view that a human zygote or early embryo is a distinct human individual¹³⁵. Thus, unlike Warren, who rejected the personhood of a foetus totally, Singer holds a more moderate position by denying the personhood of an early embryo but acknowledging that late gestation fetuses are persons.

¹³³ Camosy, Charles C., and Charles Christopher Camosy. *Peter Singer and Christian ethics: beyond polarization*. Cambridge University Press, 2012.

¹³⁴ Ibid

¹³⁵ Howard, Joseph. "The moral status of the human embryo according to Peter Singer: individuality, humanity, and personhood." *The Linacre Quarterly* 72, no. 3 (2005): 212-228

Peter Singer's rejection of personhood in early gestation foetuses is convincing because the case of identical twinning demonstrates that individuality cannot be attributed to the time of conception. Since segmentation in identical twins occurs after 14 days of gestation, it is logical to argue that personhood or individuality in a foetus begins much later after conception. At the time of conception, it is impossible to know how many embryos a pregnant woman is carrying.

Like Warren, Singer contends that not all members of the species *Homo sapiens* are persons, and not all persons are members of species *Homo sapiens*. For Singer, an early human embryo is a member of *Homo sapiens*, but the beings are not persons because they lack the distinct features of personhood, individuality. The position is plausible because early gestation foetuses are a mass of tissues without any personlike characteristics, such as consciousness and proper infrastructures necessary for communication and reasoning.

Concerning whether or not a human being is a potential person, Singer argues that in some cases human infants do not have characteristics that are missing in higher non-human beings, such as the capacity to feel pain, act intentionally, communicate, and relate with others. Thus, for Singer, treating a handicapped person differently from a pig or a monkey is discrimination rooted in speciesism¹³⁶.

Besides, Singer argues that a foetus is a person in potentiality and not in actuality. Thus, since an embryo is in a potential form, it should not be accorded the same rights that are accorded to actual human beings. As he aptly puts it:

Prince Charles is a potential king of England

yet the person does not have the rights that are accorded to kings.

However, Singer's potentiality argument has several weaknesses. Firstly, by holding that embryos and foetuses do not have the actual rights that mature persons possess, Singer implies

¹³⁶ Ibid

that the rights of mature persons should override the rights of second and third-trimester foetuses. The position is problematic because it can lead to increased discrimination among pre-born babies and children. In actual sense, the rights of all people are equal regardless of age. Regarding Prince Charles being a potential king of England, the use of potentiality implies that, given time, Charles will become a king of England. However, if the rights to life of heirs are not respected, then it is difficult for the monarch to have an heir from the family lineage. Besides, Singer appears to confuse the right to life with the right to rule. In the case of Prince Charles, the right that is implied is the right to rule that should be applied only to the actual kings. However, the actual right to life should be accorded to Prince Charles as well as the actual king of England.

Besides, Singer is mistaken in his doctrine of speciesism by holding that handicapped people should be put in the same category as brutes. The fact is, human beings have a higher status and dignity compared to other animals. Persons are created in the image and likeness of God¹³⁷. Equally important, through their faculty of reason, human persons are at the centre of the universe because they can engage in social-economic and political transformations that are aimed at changing the world. Likewise, persons possess a will that enables them to deliberate between good and wrong as well as decide to engage or abstain from committing an action. Therefore, it is morally impermissible for any human person to discriminate against another whether they are handicapped or not. By the virtue of being persons, they should be treated equally and without discrimination.

3.2. 5 The Catholic Church's View on Abortion

The Catholic Church believes that human life begins at conception. The view implies that human personhood begins at conception; hence it is morally wrong for one to procure an

¹³⁷ Genesis 1:27

abortion. The church also teaches that abortion is murder because it entails the killing of a foetus, a being created in God's image and likeness¹³⁸. The church also teaches that abortion is murder since it is against the command, ‘‘you shall not kill’’¹³⁹. In this regard, the church takes an absolutist stance by holding that abortion is wrong in all situations. ‘‘All life has value and thus, taking away another person's life is a sin’’¹⁴⁰.

Although the Catholic Church has been in the forefront in the fight against abortion, the church's arguments seem problematic due to the following ways. Firstly, the church teaches that life begins at conception, hence implying that personhood also begins at conception. However, the implantation thesis falsifies the conception approach since implantation takes place six to 12 days after conception. After this process, a blastocyst begins taking a breath from a mother. Thus, without the process of implantation, one cannot be said to be pregnant. In this train of thought, it is factual that personhood does not begin at conception since without implantation a blastocyst cannot survive. Secondly, the case of monozygotic twinning testifies that individuality cannot be attributed to the time of conception but much later after conception. Medical evidences testify that in the case of monozygotic twins, the separation of the cells take place after two weeks, this implies that the two embryos tend to remain united until segmentation. Thus, it is illogical to assert that individuality begins at conception since in some cases, especially in the case of twins, individuality begins after the separation of cells. Above all, the issue of the genetic code that is present during conception does not imply that a zygote is a person. There are instances where medical professionals are compelled to terminate a foetus despite having a genetic code. For instance, in the cases of anencephalic embryos and fetuses (where there is

¹³⁸ McCartney, James J. "Unborn persons: Pope John Paul II and the abortion debate." (1987).

¹³⁹ Exodus 20:13

¹⁴⁰ McCartney, James J. "Unborn persons: Pope John Paul II and the abortion debate." (1987).

complete absence of the brain), abortion can be contemplated since a foetus cannot survive even if a pregnancy is left to develop.

3.2.6 Muslim Scholars' Conception on Abortion

In Islamic faith, abortion views are shaped by the hadith and the scholarly opinions of the legal and religious scholars¹⁴¹. Muslim authorities teach against abortion because they view the act as an interference with the work of Allah, who is regarded as the author of life and death. According to the Hanafi School, the foetus is believed to become a living soul after 120 days' gestation, thus abortion is morally impermissible after the period¹⁴². According to Khitamy, after 120 days, all organ differentiation is almost complete, and a foetus has acquired the shape of the human body¹⁴³. However, many Muslim thinkers hold that abortion can be allowed in certain circumstances, such as when a mother's life is in danger.

The Muslim's 120 days cut-off mark implies that personhood of a foetus begins after four months (a time when the soul is believed to join the body). Although the Muslim perspective demonstrates that after 120 days, all body organs have been formed, the formation is basically infrastructural. The important element in personhood is the coordination of brain neurons, a development that takes place after 168 days of pregnancy. Therefore, placing the beginning of moral personhood at 120 days is inaccurate because it puts emphasis on the physical appearance of a foetus at the expense of the coordination of brain neurons that begins after 168 days of the gestation.

¹⁴¹ Al-Matary, Abdulrahman, and Jaffar Ali. "Controversies and considerations regarding the termination of pregnancy for fetal anomalies in Islam." *BMC medical ethics* 15, no. 1 (2014): 1-10.

¹⁴² Khitamy, Badawy AB. "Divergent views on abortion and the period of ensoulment." *Sultan Qaboos University Medical Journal* 13, no. 1 (2013): 26.

¹⁴³ Ekmekci, Perihan Elif. "Abortion in Islamic ethics, and how it is perceived in Turkey: a secular, Muslim country." *Journal of religion and health* 56, no. 3 (2017): 884-895.

3.3 Conclusion

The chapter examined Warren's criteria of personhood. The chapter was relevant because it highlighted Warren's pro-choice position of abortion, hence setting a pace for the development of the foetal personhood debate. The chapter highlighted Warren's criteria of personhood, such as rationality, consciousness, self-motivated activities, capacity to communicate, as well as self-concepts and self-awareness. It was found that although Warren was right to argue that a foetus cannot engage in a self-motivated activity, communicate using words as well as experience self-awareness. She erred by arguing that a foetus does not feel pain. As several medical studies reveal, a foetus tend to feel pain, communicate by kicking its limbs, smiles, or yawns when hungry. The being also has a developing brain that depicts the potentiality of a foetus to reason. The study also examined response by Thomson, Don Marquis, Sandel, and Singer. The contribution on abortion from major religions, such as Christianity and Islam were also discussed. All in all, it was concluded that at a particular point of a pregnancy, especially after viability, a foetus is a moral person because the being has the necessary brain neurons that enhances body coordination as well as enabling the foetus to feel pain.

CHAPTER FOUR

WARREN'S VIEW ON FOETAL PERSONHOOD AND MORAL CONTROVERSIES IN ABORTION

4.0 Introduction

Over the years, societies have been divided over the issue of foetal personhood. Some groups believe that the personhood of a foetus begins at conception, hence abortion is morally wrong. Other individuals, such as Warren, hold a subjective view of abortion, whereby they believe that a foetus does not have personhood at any stage of pregnancy, hence concluding that abortion is morally right. However, other individuals hold a moderate view on abortion, whereby it is believed that personhood begins at a particular point of a pregnancy, hence arguing that abortion is right if conducted before a particular point of pregnancy and wrong if performed after a particular point of a gestation period. From this viewpoint, it is evident that personhood is a pertinent issue in the abortion debate. The question of when personhood commences remains controversial, whereby individuals, such as Warren, argue that a foetus is not a moral person, hence a woman should procure an abortion without facing any legal or moral restrictions. All in all, different opinions on when personhood begins have partly been cited as the cause of moral disputes in abortion, hence enabling countries to have unique abortion laws. This chapter focuses on how different conceptions of personhood have shaped abortion laws around the world, hence propagating room for multiple beliefs and perceptions on when moral personhood begins.

4.1 Foetal Personhood Debates, Moral Controversies, and Abortion- Related Problems

Controversies in the conception of moral personhood have been partly blamed for the existence of multiple and contradictory abortion laws around the world. Whereas some

individuals and societies believe that a foetus is a moral person from the moment of conception, others hold that a foetus becomes a moral person after a particular point of pregnancy. As a result, debates on foetal personhood have partly shaped abortion debates around the world. According to the pro-life scholars, abortion is morally wrong because it entails killing a foetus, which is a moral person *per se*. In this regard, the group opines that personhood begins at the moment of conception. However, according to Warren (a pro-choice scholar), the foetus is not a moral person because it lacks the required qualities of personhood. Thus, unborn beings do not have the moral standing to claim rights that befits human persons¹⁴⁴. Consequently, it is believed that a foetus does not have sufficient moral standing to defeat the mother's right to control her own body¹⁴⁵. In this train of thought, the pro-choice scholars, such as Warren, tend to hold that a foetus does not have a right to life since the being does not belong to a moral community. Thus, the school of thought believes that individual bodily autonomy overrides the rights to the life of a foetus. The position is contested by the pro-life activists who argue that a foetus should be granted the right to life since the being is a person from the moment of conception. It is also believed that if an unborn child is carried to term, then the being is likely to grow into a mature human person.

From the above discussions, it is logical to deduce that multiple opinions on moral personhood tend to influence abortion laws across the world. For instance, the Kenyan constitution stipulates that every person has a right to life, whereby life begins at conception. The position implies that personhood begins at the moment of the conception. On the other hand, the Dutch Constitution stipulates that it is wrong for any actor to procure or facilitate abortion after 24 weeks of pregnancy. On the same note, some states in the United States have legalized

¹⁴⁴ Warren, Mary Anne. "On the moral and legal status of abortion." *The Monist* 57, no. 1 (1973): 43-61.

¹⁴⁵ *Ibid*

abortion before a particular point of pregnancy. For instance, in New York, abortion is legal up to 24 weeks of gestation, a position that implies that personhood begins after 24 weeks of pregnancy.

However, a comparative study on countries where abortion is legal and states where abortion is illegal reveals that abortion-related problems tend to be higher in the latter compared to the former. For instance, the study conducted by WHO found that in 2010 to 2014, an estimate of 45% of all abortions were unsafe and that they were conducted in developing countries¹⁴⁶. It is also evident that unsafe abortion accounts for an estimate of 13% of global maternal deaths¹⁴⁷. Unlike in developing countries where abortion deaths are common, the situation is different in developed nations. As Zane et al. found, out of one million abortion cases in the USA, only 2% of women end up with abortion-related complications¹⁴⁸.

It is logical to conclude that the persistence of abortion-related problems has a co-relation to abortion laws. As evident from the above findings, societies where abortion is legal, such as the Netherlands and most states in the USA, tend to have fewer abortion-related complications than nations, such as Kenya, where abortion is illegal. In societies where abortion is legal, pregnant mothers have reproductive rights to secure abortion in conducive environments under trained medical practitioners. However, in countries where abortion is illegal, women tend to seek backstreet abortions, conducted in unhygienic environments under the supervision of

¹⁴⁶ WHO. Preventing unsafe abortion. 25th September 2020. <https://www.who.int/news-room/fact-sheets/detail/preventing-unsafe-abortion>

¹⁴⁷ Bearak, Jonathan, Anna Popinchalk, Bela Ganatra, Ann-Beth Moller, Özge Tunçalp, Cynthia Beavin, Lorraine Kwok, and Leontine Alkema. "Unintended pregnancy and abortion by income, region, and the legal status of abortion: estimates from a comprehensive model for 1990–2019." *The Lancet Global Health* 8, no. 9 (2020): e1152-e1161.

¹⁴⁸ Zane, Suzanne, Andreea A. Creanga, Cynthia J. Berg, Karen Pazol, Danielle B. Suchdev, Denise J. Jamieson, and William M. Callaghan. "Abortion-related mortality in the United States 1998–2010." *Obstetrics and gynecology* 126, no. 2 (2015): 258.

untrained practitioners, leading to increased cases of maternal deaths abortion-related complication¹⁴⁹.

All in all, individuals and societies that tend to believe that moral personhood begins at viability (24 weeks of pregnancy) tend to be convincing because of the following reasons. To begin with, a viable foetus can be said to be a moral person because it can exist outside a mother's womb. In this regard, it is plausible to put a cut off point of abortion at 24 weeks because at this point, a foetus is capable of surviving by itself if proper medical care is put in place. Secondly, the reality of implantation (a process that occurs about 8-9 days of fertilization) also reveals that personhood does not begin at conception since it is during implantation that a blastocyst burrows deep into the lining of the uterus, hence enabling an embryo to take a breath from a pregnant mother. It is also logical to argue that moral personhood begins with the brain birth, that is, after 24 weeks of a pregnancy. As from 24 weeks, consciousness is created by the brain connection between the thalamus and cerebral cortex. Likewise, communication between neurons by end of 24 weeks enables a foetus to survive outside the womb. In addition, a foetus is capable of experiencing pain until 28 to 30 weeks after conception. Besides, the appearance of brain waves in the higher brain (cerebral cortex) appears after 22-24 weeks of gestation. The cerebral cortex is a significant element of mental life because it is responsible for consciousness, engagement of voluntary actions, thinking, memory, feelings, and others. Moreover, it is evident that a foetus inner ear form at 24 weeks, hence helping to control hearing and balance. Also, the development enables a foetus to respond to sounds. Above all, the existence of brain end point implies that there is a neurological starting point.

¹⁴⁹ Guillaume, Agnès, Clémentine Rossier, and Paul Reeve. "Abortion around the world. An overview of legislation, measures, trends, and consequences." *Population* 73, no. 2 (2018): 217-306.

On the other hand, positions arguing that personhood begins at conception are wrong for the following reasons. Firstly, the case of monozygotic twinning attests that individuality cannot be ascribed to a zygote because it has the potentiality of splitting into two embryos. Thus, since individuality is an essential feature of personhood, it is illogical to ascribe the same to a being that can exist as two individuals. It is factual that individuality is an essential attribute of a person because it enables a being to express uniqueness in behaviours and possess traits that are uniquely attributed to a particular person. The traits are linked to the identity of human individuals. This factor can be ascertained through a genetic code and manifested through fingerprints, facial recognition, as well as the emerging technology of brain wave recognition. Likewise, the reality of implantation implies that conception cannot be said to be the beginning of personhood because it is through implantation that a foetus begins to take a breath from a mother. Therefore, societies such as Kenya that tends to imply that personhood begins at conception ought to amend their abortion laws to capture the element of viability.

Therefore, amending abortion laws in societies, such as Kenya is significant because the act can help to reduce abortion-related complications. As evident above, most abortion-related complications are incurred due to unsafe and backstreet abortion services. Since actors in some developing countries fear being victimized or prosecuted after procuring an abortion, the victims tend to seek services from incompetent medical providers who conduct the services in dangerous and uncondusive environments. Also, women often resort to unsafe abortion when they cannot access safe abortion. In this regard, barriers to accessing safe abortion include restrictive laws, stigma, high cost, and the lack of adequate abortion services.

4.2 The Applicability of Warren's Personhood Criteria in Addressing Abortion Related Problems in Today's World

Warren's personhood criteria are relevant to some extent because it gives the theoretical underpinnings that can inform pro-abortion decisions. The personhood discourse tends to play a role in informing abortion value systems in some societies around the world. Being an influential member of the pro-choice group, Warren's legacy on abortion has persisted over the years. According to Warren, for a foetus to qualify as a moral person, it must be conscious, that is a capacity to feel pain. It must also have the ability to reason as well communicate. The ability to engage in a self-motivated activity, having self-concepts and self-awareness are also essential pre-requisite conditions for personhood. Although some communities tend to believe that a foetus is not a person, and hence it can be terminated at will, others hold that a foetus is a moral person, and thus abortion is ethically wrong.

Differences in the conception of personhood are reflected in moral disputes in abortion. On the one hand, some societies tend to believe that abortion is morally right at a certain point of pregnancy and wrong after a particular gestation period. The decisions are informed partly by societal beliefs on the moral status of a foetus. In the United States, the 1973 case of *Roe v. Wade* can also be blamed on moral controversies in abortion, especially in the USA. The ruling held that a pregnant woman has the liberty to choose an abortion, especially during the first trimester, without government restrictions. The reasoning of the court was that during the first trimester, the foetus could not survive outside the womb of a mother. However, in the third trimester, the state could prohibit abortion from protecting a foetus since it could survive on its own outside the mother, unless when a woman's health is in danger. Concerning the personhood

status of a foetus, the court ruled that the unborn babies have never been recognized as persons in the whole sense as law protects those who are born or naturalized in the United States.

All in all, the court gave individual states a leeway to come up with their legislation to harmonize conflicts of rights that tend to arise in abortion. Consequently, the ruling gave states freedom to formulate their unique rules since each state has unique laws concerning abortion. Although the verdict accurately holds that viability is the beginning of personhood, the court gives individual states a leeway to formulate their unique state laws, a provision that seems problematic since it propagates moral disputes and confusion.

Particularly, in Texas, the fetal heartbeat abortion bill bans abortion from six weeks of pregnancy. The bill does not make any exceptions for pregnancies that result from rape or incest. In this regard, the bill implies that the personhood of a foetus begins after the development of a fetal heartbeat. Unlike Warren, who argues that a foetus does not have personhood at any stage of pregnancy, the American community in Texas claims that moral personhood begins after six weeks. Although some societies believe that the development of a heartbeat is the beginning of life and personhood, medical evidence has revealed that it is the brain functioning and not the beginning of heart beat that marks the beginning of life. Some medical scholars hold that the cessation of cardiopulmonary functions is a sufficient condition of determining the end of life, especially in cases where brain death is impossible to ascertain. However, the fact that medical experts can resuscitate people after their breathing and heartbeat has stopped proves that the beginning of foetal heartbeat is not the beginning of personhood. In this case, the whole brain death approach appears convincing in ascertaining the death of a human being compared to the cessation of cardiopulmonary functions. Thus, the fetal heartbeat abortion bill cannot become a

universalistic ethical value because it inaccurately holds that moral personhood begins after six weeks of a pregnancy.

In New York, the state laws provide that abortion should not be allowed after 24 weeks of pregnancy. Unlike Warren, who argues that a foetus can be terminated because the being does not possess moral personhood at the stage of pregnancy, the American community in New York believes that abortion is legally wrong if performed after the 24 weeks of the gestation period since it entails the killing of a moral person. The 24 weeks cut-off point implies that a 24-week foetus is a person, and hence the being can survive outside the uterus. Although the bill is termed a tragedy by the pro-life group, the legislation is plausible because it puts viability as the criterion for determining a fetus's moral personhood.

Similarly, Warren's criterion of personhood appears irrelevant in the Kenyan community. Unlike Warren, who believes that a foetus is not a moral person, the Kenya Constitution provides that life begins at conception. In this case, the law implies that personhood begins at conception; hence any attempts to procure an abortion are morally wrong. Although the pro-life group tends to celebrate the Constitutional claims, it is illogical to attribute moral personhood to the time of conception since implantation and monozygotic twinning have falsified the claims.

All in all, the moderate view on abortion appears plausible because it holds that abortion is right in some situations and wrong in others. Thus, it is logical to hold that abortion should be allowed only in specified exceptions, such as rape, incest, when the life or health of a mother is threatened or when a foetus has not reached viability. Addressing controversies in abortion can enable societies to mitigate abortion related complications. With regards to viability, it is evident that 24 weeks of gestation has been cited as the viability age of a foetus. As evident from the modern medical advancements, a 24 weeks foetus can survive outside the mother's womb.

Additionally, studies indicate that brain waves in the higher brain appear between 22-24 weeks of the gestation period. This implies that coordination of neurons begins during this time, hence enabling a foetus to gain consciousness and develop a mechanism that shapes his or her rational potentiality. Therefore, putting viability as a universalized rule can allow mothers and medical practitioners to make abortion decisions earlier before a foetus becomes a moral person. As a result, allowing abortion under some exceptions can aid to mitigate abortion-related challenges, especially in developing countries where reproductive rights have been restricted.

4.3 Addressing the issues of Moral Personhood of a foetus and Abortion

From the above discussions, it is plausible that addressing the issues of foetal personhood is critical in resolving moral conflicts between the pro-choice and pro-life perspectives. As evident from the pro-choice activists, such as Warren, a foetus is not a moral person because the being lacks the prerequisite conditions for moral personhood. According to Warren, for a being to qualify as a moral person, it must possess at least one or all the five criteria of personhood that includes; consciousness, rationality, ability to engage in a self-motivated activity, capacity to communicate, and the presence of self-concepts and self-awareness. To her, a foetus does not exhibit any of the five features at any stage of a pregnancy, hence abortion should be permitted. Thus, the perspective hold that moral personhood of a foetus begins after birth. On the other hand, the pro-life group argues that personhood begins at conception, and hence abortion is morally wrong. As a result, the conflicting perspectives have led to moral controversies that are reflected in the presence of conflicting abortion laws.

All in all, in pluralistic societies, the personhood of a foetus is a value judgment upon which people may differ. However, objectivity in foetal personhood is a necessary road towards achieving universal value ethics. A universalistic approach to abortion is recommended because

it can enable people in all places to act in the same way at all times. Since a human foetus can be subjected to an empirical study while in the uterus, researchers can ascertain whether Warren's personhood claims are true or not. Although the pro-life activists argue that personhood is a metaphysical phenomenon that cannot be ascertained empirically, it is evident that personhood traits are not entirely metaphysical since traits, such as communication, feeling of pain and pleasure, and brain waves can be determined through empirical observation. Therefore, since the beginning of personhood can be understood through empirical and metaphysical studies, it is plausible to argue that foetal personhood begins with viability which is demonstrated by the development of the higher brain (24 weeks of gestation period). The development serves as the root of all human functions, such as sensation, movement, communication of neurons, balance, control, coordination of brain waves and electrical impulses, and among others.

4. 4 Conclusion

From the chapter, it is evident that controversies in the conception of moral personhood have led to the existence of contradictory abortion laws around the world. Although some individuals believe that a foetus is a person from the moment of conception, others hold that a foetus becomes a moral person after a particular point of pregnancy. According to Warren (a pro-choice scholar), the foetus is not a moral person because it lacks the required qualities of personhood. Thus, unborn beings do not have the moral standing to claim rights that befits human persons. Besides, it was found that multiple opinions on personhood tend to influence abortion laws across the world. For instance, the Kenyan Constitution stipulates that every person has a right to life, whereby life begins at conception. The position implies that personhood begins at the moment of the conception. On the other hand, the Dutch Constitution stipulates that it is wrong for any actor to procure or facilitate abortion after 24 weeks of

pregnancy. On the same note, some states in the United States have legalized abortion before a particular point of pregnancy. For instance, in New York, abortion is legal up to 24 weeks of gestation, a position that implies that personhood begins after 24 weeks of pregnancy. Nevertheless, a comparative study on countries where abortion is legal and states where abortion is illegal reveals that abortion-related problems tend to be higher in the latter compared to the former. Therefore, it was concluded that the persistence of abortion-related problems has a co-relation to abortion laws around the world. However, arguments that hold that personhood begins at viability (24 weeks of pregnancy) are convincing because a viable foetus can be said to be a person because it can exist outside a mother's womb. On the contrary, positions that hold that personhood begins at conception are wrong because there are several counter examples that tend to falsify the assertion. For instance, the case of monozygotic twinning and the process of implantation falsifies the claim that personhood begins at conception. Therefore, it is recommended that societies should amend their abortion laws to mitigate moral disputes that tend to be associated with the moral status of abortion.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.0: Conclusions

The research project aimed at addressing the ethical issue of fetal personhood. Through the analysis of Warren's text, "On the Moral and Legal Status of Abortion," I endeavored to ascertain whether a foetus is a moral person and if rights and protections can be ascribed to it. Above all, I sought to tackle moral controversies that are associated with the problem of foetal personhood as well as abortion.

In the first chapter, I presented the research problem, highlighting the historicity of personhood and abortion debates. It is evident that Warren's text intensified moral personhood debates in the 1970s and in later years. In the text, Warren argued that a foetus is not a moral person because it lacks primary conditions for personhood, such as consciousness, reasoning, ability to perform a self-motivated activity, the capacity to communicate, as well as the presence of self-concepts and self-awareness. It is in this backdrop that the work endeavored to ascertain the truth value of Warren's claims with regards to fetal personhood. It is believed that the analysis would enable one to take a position in the abortion debate. A detailed statement on the research problem set the base for the study before research questions and objectives of the study were introduced.

With regards to the justification of the study, the research was motivated by two factors. Firstly, the conflict between the pro-life and pro-choice conception on personhood needed to be re-looked. Secondly, the study was motivated by the increase of abortion related complications, especially in Kenya, whereby in 2019 an estimate of 119,912 women received medication from abortion-related complications. Moreover, most countries in Africa, Asia, and Latin America

have criminalized abortion, yet the abortion rates and abortion related deaths and complications are higher than regions where abortion is legal. For instance, abortion rate in Kenya is estimated at 55 per 1000 women aged 15-49 years, while in Netherlands, abortion rate is 8.6 per 1000 women aged 15-45.

Thereafter, the issues of moral personhood were discussed exhaustively in chapter two. From the chapter, it was evident that the question of when personhood begins is among the divisive issues between pro-choice activists and pro-life groups. Whereas the pro-life scholars hold that personhood begins at conception, the pro-choice group holds that personhood begins after birth, and hence a foetus does not have personhood at any stage of pregnancy. Thus, the conclusion of the chapter reveals that Warren presents a minimal definition of personhood that is based on the western conception of personhood. However, through the discussions of African conception of personhood, it is evident that there are more traits that define a person. Thus, the formulation of a maximal definition of personhood is required in providing a meaningful contribution to the problem.

Although the pro-life position holds that personhood begins at conception, this study found out that the claim is problematic because of several evidences that tend to falsify the assertion. For instance, the conception thesis is falsified by the case of monozygotic twinning, whereby it is problematic to attribute individuality as well as personhood to a zygote. Since a blastocyst divides after two weeks of pregnancy and not after fertilization, it is evident that personhood does not begin at conception but it begins at later stages in a pregnancy (24 weeks of a pregnancy). In my view, personhood should be equated to viability, that is, the ability of a foetus to survive outside the uterus. Secondly, the reality of implantation (a process that occurs about 8-9 days of fertilization) also revealed that life does not begin at conception since it is

during implantation that a blastocyst burrows deep into the lining of the uterus, hence enabling an embryo to take a breath from a pregnant mother. In this case, I opine that human personhood begins with the brain birth, that is, after 24 weeks of a pregnancy. There are several proofs to demonstrate that personhood begins after 24 weeks. Firstly, as from 24 weeks, consciousness is created by the brain connection between the thalamus and cerebral cortex. Secondly, communication between neurons by end of 24 weeks enables a foetus to survive outside the womb. Thirdly, a foetus is incapable of experiencing pain until 28 to 30 weeks after conception. Besides, the appearance of brain waves in the higher brain (cerebral cortex) appears after 22-24 weeks of gestation. The cerebral cortex is a significant element of mental life because it is responsible for consciousness, engagement of voluntary actions, thinking, memory, feelings, and others. Moreover, it is evident that a foetus inner ear form at 24 weeks, hence helping to control hearing and balance. Also, the development enables a foetus to respond to sounds. Above all, the existence of brain end point implies that there is a neurological starting point.

As evident in chapter three, Warren's personhood criterion is justified to some extent. To begin with, Warren is justified to argue that a foetus is not a moral agent because the being is incapable of engaging in moral acts (actions done knowingly or willingly). Warren is also justified to hold that the term person and human being cannot be used interchangeably. Whereas human beings entail the biological designates of the species that originate from *Homo sapiens*, the term person entails a category of human beings that possess a certain moral status that can be elaborated in terms of rights and interests. Thus, it is logical to argue that a person may not be necessarily a human being since modern developments have enabled the existence of robot persons. Equally important, not all human beings are persons since some beings, such as

anencephalic embryos and fetuses (have complete absence of the brain) can be categorized as person since the beings are incapable of surviving.

However, Warren is unjustified to hold that a foetus does not feel pain. As evident from Koch's text, *when does consciousness arise*, a second and third-trimester fetuses tend to feel pain, hence the beings can be said to be conscious. As the author demonstrated, consciousness is created by the brain connection between the thalamus and cerebral cortex, a development which begins from 24 weeks of pregnancy. Because of such developments, fetuses aged 24 weeks and above can display arm, head, and mouth movement when the mother touches her abdomen. Besides, the project found out that the foetus reacts to touch, smell, sound, and shows facial expressions when exposed to external stimuli.

Regarding the claim that fetuses are not moral persons because they cannot reason or engage in any rational activity, the work held that Warren was accurate to argue that fetuses are incapable of reasoning. However, Warren is faulted for raising the bar too high to the extent that if it is applied, then it could exclude the terminally ill, the insane, and other groups from the category of persons. According to this project, the late stages of a foetus exhibit some thought processes that indicate that fetuses have brain infrastructure, though undeveloped compared to children or mature persons. It is evident that as from the 17th week, communication between neurons begins, hence enabling the foetus to survive outside the womb after 24 weeks of pregnancy (with medical help).

Concerning whether a foetus can engage in a self-motivated activity, the study found that Warren was justified to hold that the beings cannot engage in external self-motivated activities because such undertakings can only be performed by a born child or a mature human being. Since fetuses and embryos are incapable of engaging their intellect and will, the unborn babies

cannot work towards a specific external goal. Moreover, the research found out that beings cannot respond to external stimuli since their desires are influenced by internal drives, such as hunger, thirst, excitement, pain, and others. However, the study concluded that the ability to conduct a self-motivated activity is not necessary for fetal personhood since foetuses do not need to engage in any action to survive since their mothers provide all their needs.

Concerning the communication criterion, the research demonstrated that Warren's position on fetal personhood is controversial as she excludes some people, such as the terminally ill patients from the category of persons. In this case, it is logical to note that people may lose the ability to communicate, yet they remain persons. In the context of fetal personhood, the study concluded that an infant has the potentiality to communicate since the parts of the brain that are responsible for processing speech and language begin to form before a child is born. The project indicated that the first appearance of brain waves in the higher brain (cerebral cortex) appears at 22-24 weeks of gestation. The cerebral cortex is the brain's outmost layer that controls higher brain functions, such as information processing, sensation, memory, and others. Therefore, the research concluded that the second and third trimester foetuses have the potentiality to communicate, hence given time, they can actualize their potential.

Above all, the research found out that Warren is justified to argue that a foetus does not have the ability to experience self-awareness. As demonstrated by this study, infants begin developing a sense of self-awareness from 18 months and beyond. Nevertheless, Warren's conception of fetal personhood is faulted because the criterion is too wide to the extent that it can admit non-human animals into a moral community.

In the fourth chapter, the researcher sought to ascertain the relevance of warren's view on personhood in dealing with moral controversies in abortion around the world. The study's

findings revealed that differences in the conception of personhood are reflected in numerous abortion laws around the world. It is factual that some societies tend to believe that abortion is morally right at a certain point of pregnancy and wrong after a particular gestation period, while other societies believe that abortion is morally wrong at any stage of pregnancy.

The research concluded that Warren provides a minimal definition of a person, hence missing to provide the holistic view of moral personhood. Thus, the incorporation of other approaches, such as the African view of personhood is relevant in enabling researchers to have a maximal definition of a person. It is believed that having a maximal definition of a person can enable researchers to have a certain level of objectivity in dealing with abortion issues. Universal outlook is recommended because it can enable people to act the same way all over the world.

5.1 Recommendations

From this work, I would like to make the following recommendations.

Firstly, abortion should be illegal unless in the cases of rape, incest, when the life or health of a mother is in danger, when a foetus has deformities, such as damaged brain or if it is performed before viability period (24 weeks and below). In the case of rape or incest, I recommend that victims should be subjected to counseling. However, in extreme cases, abortion decisions should be made during the first trimester of a pregnancy. The decision is necessitated by the fact that rape or incest threatens a pregnant mother's mental health. As most studies have found out, victims of rape or incest tend to suffer from psychological or mental distress. Besides, on the grounds of fetal impairments, abortion should be permitted when prenatal testing reveals that the unborn child has a serious disease or malady. Abortion should be contemplated if it is ascertained that if a foetus is not terminated, death of a foetus is inevitable. Thus, abortion is recommended because it will save the mother the burden of continuing the pregnancy and the

agony of waiting for the child to die after birth. For instance, the case of anencephalic embryos and fetuses (complete absence of the brain) or when the brain is severely damaged is medically recommended as possible reasons for terminating a pregnancy. Besides, conditions such as chromosomal abnormalities, can affect a child's wellbeing, hence necessitating the termination of a pregnancy. Regarding the issue of when the life or health of a mother is in danger, an illness, such as pre-eclampsia (a blood pressure problem) can warrant an abortion. Others include; placental abruption, cancer, hyperemesis, and severe infections.

Secondly, abortion past 24 weeks of a pregnancy should only be allowed in case of foetal impairments or when the life or health of a mother is in danger. In this case, doctors should offer anaesthesia when conducting the abortion to protect a foetus from feeling pain.

Thirdly, medical experts need to conduct ultrasound scan to ascertain viability of a human foetus before making abortion decisions.

Above all, since Warren's criteria of personhood have been criticized for having several flaws, I recommend the following as primary criteria of personhood. To begin with, for a being to be defined as a moral person, it must have the potentiality to reason. That is, a being should have a functional brain that tends to display brain wave activities as well as electrical impulses within the brain. Besides, consciousness should be another sufficient condition for personhood. Lastly, a person should have a human genetic code. The genetic is significant because it gives a person identity and individuality. The genes also provide the necessary programming to enable a person to control behaviour and act with humanness. It has instructions that enable a being to grow, develop, survive, adapt, and interact with the environment.

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