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tial problems for precise definition of this view are posed, however, by new embryological data that purport to indicate that conception is a "process" over time, rather than an event, and by new medical techniques such as menstrual extraction, the "morning-after" pill, implantation of embryos, artificial insemination, and even artificial wombs.⁶²

In areas other than criminal abortion, the law has been reluctant to endorse any theory that life, as we recognize it, begins before live birth or to accord legal rights to the unborn except in narrowly defined situations and except when the rights are contingent upon live birth. For example, the traditional rule of tort law denied recovery for prenatal injuries even though the child was born alive.⁶³ That rule has been changed in almost every jurisdiction. In most States, recovery is said to be permitted only if the fetus was viable, or at least quick, when the injuries were 1162 sustained, though few 1 courts have squarely so held.⁶⁴ In a recent development, generally opposed by the commentators, some States permit the parents of a stillborn child to maintain an action for wrongful death because of prenatal injuries.⁶⁵ Such an action, however, would appear to be one to vindicate the parents' interest and is thus consistent with the view that the fetus, at most, represents only the potentiality of life. Similarly, unborn children have been

recognized as acquiring rights or interests by way of inheritance or other devolution of property, and have been represented by guardians *ad litem*.⁶⁶ Perfection of the interests involved, again, has generally been contingent upon live birth. In short, the unborn have never been recognized in the law as persons in the whole sense.

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In view of all this, we do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman that are at stake. We repeat, however, that the State does have an important and legitimate interest in preserving and protecting the health of the pregnant woman, whether she be a resident of the State or a non-resident who seeks medical consultation and treatment there, and that it has still *another* important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grows in substantiality as the woman approaches 1163 term and, at a point during pregnancy, each becomes "compelling."

[13, 14] With respect to the State's important and legitimate interest in the health of the mother, the "compelling" point, in the light of present medical knowledge, is at approximately the end of the first trimester. This is so because of the now-established medical

62. See Brodie, *The New Biology and the Prenatal Child*, 9 *J.Family L.* 391, 397 (1970); Gorney, *The New Biology and the Future of Man*, 15 *U.C.L.A.L.Rev.* 273 (1968); Note, *Criminal Law—Abortion—The "Morning-After Pill" and Other Pre-Implantation Birth-Control Methods and the Law*, 46 *Ore.L.Rev.* 211 (1967); G. Taylor, *The Biological Time Bomb* 32 (1968); A. Rosenfeld, *The Second Genesis* 138-139 (1969); Smith, *Through a Test Tube Darkly: Artificial Insemination and the Law*, 67 *Mich.L.Rev.* 127 (1968); Note, *Artificial Insemination and the Law*, 1968 *U.Ill.L.F.* 203.

63. W. Prosser, *The Law of Torts* 335-338 (4th ed. 1971); 2 *F. Harper & F.*

James, *The Law of Torts* 1028-1031 (1956); Note, 63 *Harv.L.Rev.* 173 (1949).

64. See cases cited in Prosser, *supra*, n. 63, at 336-338; Annotation, *Action for Death of Unborn Child*, 15 *A.L.R.3d* 992 (1967).

65. Prosser, *supra*, n. 63, at 338; Note, *The Law and the Unborn Child: The Legal and Logical Inconsistencies*, 46 *Notre Dame Law.* 349, 354-360 (1971).

66. Louisell, *Abortion, The Practice of Medicine and the Due Process of Law*, 16 *U.C.L.A.L.Rev.* 233, 235-238 (1969); Note, 56 *Iowa L.Rev.* 994, 999-1000 (1971); Note, *The Law and the Unborn Child*, 46 *Notre Dame Law.* 349, 351-354 (1971).

