

ABORTION:
A LIBERAL CONSERVATIVE APPROACH

by

MARKUS JOHANN WOLF

Submitted in fulfilment of the requirements for
the degree of

MASTERS OF ARTS

in the subject

PHILOSOPHY

at the

UNIVERSITY OF SOUTH AFRICA.

SUPERVISOR: DR PAUL VOICE

NOVEMBER 1998

SUMMARY

This dissertation deals with the moral permissibility of abortion. It is argued that abortion is morally justifiable when the pregnancy is a result of rape (but only during the first trimester of pregnancy), when the pregnancy threatens the woman's life or long-term health, or when tests indicate to a high degree of scientific certainty that the foetus will be abnormal to such an extent, so as never to be capable of acquiring any human characteristics other than basic biological properties.

Potential is adopted as a suitable criterion by which a being acquires a serious right to life. Rationality is examined closely, but shown to be inadequate since it leads to inconsistencies and does not accord with our general beliefs and sentiments.

It is argued that all living beings have some right to life, but that sentient beings have more moral standing than nonsentient ones. Potential is argued to be the suitable comparison criterion when comparing beings of different species, and sentience when comparing beings of the same species.

The dissertation is rights-oriented and reasons are given why this approach was adopted in favour of a virtue-oriented one. It is argued that a rights-oriented approach is more precise.

KEY TERMS

rationality
potential
serious right to life
moral standing
sentience
inclusion criterion
comparison criterion
personhood
hostile pregnancy
value of life
rights-oriented

ACKNOWLEDGEMENTS AND DEDICATION

Many thanks go to Dr Paul Voice for supervising my dissertation. I thank him for his assistance, encouragement, and where necessary, kind criticism. I am honoured to have had him as my supervisor.

I am indebted to Marika Tucker (subject librarian at UNISA) for the literature searches she conducted, and for the books and articles she sent me.

Recordings for the Blind & Dyslexic in the United States deserve special thanks for their invaluable services. Without their assistance my studies, including this dissertation, would not have progressed as they have done, and would have certainly been more onerous.

Special thanks go to my parents for assisting me in every way possible, for their ever-present support, encouragement and love, and for their incessant belief in my success, even in times where I may have doubted.

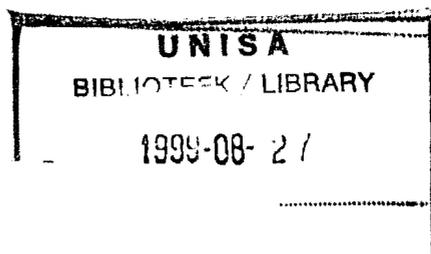
I thank my beloved Maria with whom I discussed many of the issues in this dissertation, and whose intuitive criticism often made me aware of hitherto not examined possibilities. Above all, I thank her for her exceptional love, which has

added a special dimension of meaning to everything I do, including this dissertation, which I dedicate to her.

Finally, I thank all those I have not mention by name, but who encouraged and helped me over the years. Your kindness is not forgotten.

Markus Wolf

November 1998



179.76 WOLF



0001729433

CONTENTS

SUMMARY AND KEY TERMS, 1

ACKNOWLEDGEMENTS AND DEDICATION, 3

CHAPTER 1: INTRODUCTION, 8

CHAPTER 2: REJECTION OF RATIONALITY AS THE DETERMINING
CRITERION, 16

2.1 Introduction, 16

2.2 Michael Tooley's defence of abortion and
infanticide, 19

2.3 Tooley qualifies a premise, 23

2.4 Implication of Tooley's argument, 24

2.5 Tooley's qualifications deserve criticism, 25

2.6 The rationality criterion leads to
inconsistency, 26

2.7 Rationality as a criterion would lead to
unacceptable consequences, 33

2.8 Summary and perspective, 34

CHAPTER 3: A DEFENCE OF POTENTIAL, 36

- 3.1 Introduction, 36
- 3.2 Noonan's defence of potential, 38
- 3.3 Evaluation and criticism, 44
- 3.4 A defence of potential with an added distinction, 51
- 3.5 Summary and perspective, 58

CHAPTER 4: DEFENDING ABORTIONS OF HOSTILE PREGNANCIES, 60

- 4.1 Introduction, 60
- 4.2 English and the self-defence model, 62
- 4.3 Thomson's defence of abortion, 63
- 4.4 The extreme antiabortion view, 65
- 4.5 Intervention on behalf of a third party, 66
- 4.6 Subtler cases, 68
- 4.7 What is entailed in having a right to life? 69
- 4.8 The right to use the mother's body, 70
- 4.9 Rights and their limits, 72
- 4.10 Evaluation and criticism of the foregoing, 74
- 4.11 The rights of nonpersons, 87
- 4.12 Summary and perspective, 91

CHAPTER 5: ABORTIONS OF RAPE PREGNANCIES ARE NOT MORALLY DEFENSIBLE THROUGHOUT PREGNANCY, 93

- 5.1 Introduction, 93
- 5.2 Sumner's defence of sentience, 95
- 5.3 The criterion of intrinsic value, 96
- 5.4 The criterion of being alive, 97
- 5.5 When are moral questions pertinent? 99
- 5.6 The criterion of rationality and the moral community, 100
- 5.7 The criterion of sentience, 103
- 5.8 Implications for abortion of Sumner's views, 104
- 5.9 Evaluation and criticism of the foregoing, 106
- 5.10 Defending a multi-criterion approach, 108

5.11 Summary and perspective, 111

CHAPTER 6: ABORTIONS OF SEVERELY RETARDED
INDIVIDUALS, 113

6.1 Introduction, 113

6.2 Life, death and suffering, 114

6.3 Can suffering have value? 116

6.4 Is life always worth living? 118

6.5 The rational perspective and life's value, 121

6.6 Aborting severely retarded fetuses, 127

6.7 Summary and perspective, 130

CHAPTER 7: VIRTUE ETHICS AND ABORTION, 133

7.1 Introduction, 133

7.2 Background to virtue ethics, 134

7.3 What is a virtue? 137

7.4 Why are virtues important? 146

7.5 Advantages of virtue ethics, 149

7.6 Shortcomings of virtue ethics, 154

7.7 Virtue ethics and abortion, 157

7.8 Evaluation of virtue ethics regarding
abortion, 162

7.9 Defending the choice of a rights-oriented
perspective, 166

CHAPTER 8: SUMMARY, 168

APPENDIX A: ABORTION: FROM THE PAST TO THE PRESENT, 173

APPENDIX B: THIS MORAL TREATMENT SHOULD NOT BECOME A LEGAL
FRAMEWORK, 185

NOTES, 187

BIBLIOGRAPHY, 196

CHAPTER 1

INTRODUCTION

The problem of abortion has been intensely debated, resulting in the conceptual issues being fairly well laid out. There have been interesting attempts to solve the normative and practical disagreements remaining. Almost everyone agrees that the fundamental issue in justifying abortion is the moral status of the foetus, although considerable disagreement exists as to what this status is. Extreme conservatives on the abortion issue, such as Don Marquis,¹ contend that from conception a human being has full moral standing and hence has a serious right to life. On the other side of the abortion continuum are extreme liberals, such as Mary Anne Warren,² who argue that at least until birth the foetus has almost no moral standing and lacks a serious right to life. Moderates on the issue adopt some position between these two extremes. Still others, such as Judith Jarvis Thomson,³ adopt either the conservative or liberal view, and then endeavour to show that

such a view does not lead to the consequences its proponents assume.

The central concern of this dissertation will be the moral permissibility, the moral justification of an abortion. Can the practice of abortion be morally justified? If so, is this justification restricted by certain qualifications? Is it, for instance, only permissible when the foetus⁴ has not yet developed beyond a specific stage or the pregnancy is the result of rape?

The position I shall adopt and defend may concisely be formulated as follows:

(1) By voluntarily engaging in sexual intercourse, a couple either explicitly, or implicitly, accept responsibility for a resulting pregnancy, even if the pregnancy was not planned.

(2) If the pregnancy did not come about by voluntary sexual intercourse (such as through rape), the pregnant woman is not compelled to accept the pregnancy and bear the child, since she neither implicitly nor explicitly consented to becoming pregnant. Abortions resulting from rape are, therefore, morally justifiable if the restrictions under point 3 are fulfilled.

(3) All living beings have a right to life, but sentient beings have a stronger right to life than nonsentient ones. Scientific evidence indicates that a foetus becomes sentient soon after the end of the first trimester of pregnancy. An early-term foetus⁵ is therefore not yet sentient thus giving it a weaker right to life than a more developed foetus. An abortion consequent to rape should be undertaken during the least objectionable stage (when the developing foetus has a relatively weak right to life), which is before its becoming sentient.

(4) A woman consenting to a pregnancy consents to a relatively normal pregnancy. A "normal" pregnancy is one

that has a fairly normal course of development, i.e. does not threaten her life nor her long-term health. Should the pregnant woman's life or long-term health be seriously threatened, she also has a right to an abortion. She has this right, even if she willingly initiated her pregnancy. She, however, did not willingly initiate an "abnormal" pregnancy, and thus has the right to terminate it at any stage of pregnancy; but this should be undertaken as early as possible after the difficulties have arisen.

(5) I shall further argue that an abortion is justified when it becomes evident that the child will be severely mentally retarded. This is, however, only justifiable when the being will never attain any human characteristics other than the biological and will probably have a life filled with only pain and suffering.

As should be clear from the foregoing points, my treatment and defence of abortion shall be rights-oriented. This means that I shall investigate and establish criteria by which a being may attain a right to life or may be regarded as a moral person. For this reason I shall begin by examining the criterion of rationality. It has often been assumed that only a rational being can have a right to life, only a rational being can be a moral person. I shall examine rationality as a possible criterion determining a being's right to life, paying special attention to the arguments put forward by Michael Tooley.⁶ He, among others, argues that a being has a right to life only if it desires to have a continued existence. In order to desire a continued existence, it must be conscious and possess the concepts involving this desire, conditions that are not satisfied by fetuses. He concludes from this that fetuses do not have a right to life and hence abortion is always morally permissible. Were Tooley's arguments to be acceptable, then abortion would always be morally justifiable, not only when

the pregnancy is a result of rape, when the pregnancy is a threat towards the mother, or when the developing being is severely malformed. I shall reject Tooley's arguments, showing that his position cannot be consistently held, therefore, a position adopting rationality as the criterion determining a being's right to life is inconsistent.

On the opposite side of the abortion spectrum we find philosophers arguing that abortion is not morally defensible, or only defensible under rare conditions, such as when the life of the mother is endangered by the pregnancy and a continuation of the pregnancy is likely to result in the death of both mother and child. These philosophers may argue that even though a foetus is not yet a person, it has the potential for becoming one, and therefore already has a right to life. I shall turn to John Noonan's⁷ arguments as they are often regarded as an adequate defence of a being's intrinsic worth based on its potentiality. Most of his arguments can be rebutted, even the dramatic shift in potential between a spermatozoon and a zygote (on which basis his argument rests) if the potential of the female egg cell is taken into account. Having shown the difficulties Noonan runs into in employing potential to reject the moral permissibility of abortion, I shall introduce an important distinction, namely between "possible persons," "potential persons," "beings having the capacity for personhood," and "actual persons." I shall not reject potentiality as a suitable criterion determining whether or not a being has a right to life. In order to be capable of defending potentiality, I shall employ the distinction between potential, possible, and actual persons, and having the capacity for personhood. In order to do so, I shall employ Langerak's⁸ "Potentiality principle," which states:

"If, in the normal course of its development, a being will acquire a person's claim to life, then by virtue of that fact, it already has some claim to life."

Once the potentiality principle has been explained, I shall examine whether an abortion can be justified under normal circumstances. I shall argue that once a relationship has been established between the mother and the zygote, even though this relationship is initially only a physical one, an abortion is not morally justifiable. I shall therefore argue that once implantation of the fertilised egg has taken place, terminating the new life is under normal circumstances not morally justifiable.

Once I have rejected rationality and adopted potential as the criterion determining a being's right to life, I shall examine specific cases in which a pregnancy may be terminated. These are cases in which the pregnancy did not come about by mutual consent (implicit or explicit), or the pregnancy does not proceed normally (posing a serious threat to the mother), or it is determined that the foetus will be abnormal to such a degree as to attain no human characteristics other than the biological. In that chapter I shall also argue point 1 above, that a couple voluntarily engaging in sexual intercourse, explicitly or implicitly consent taking responsibility for a possible pregnancy that may occur.

In Chapter 4 I shall focus on the arguments put forward by Judith Jarvis Thomson pertaining to points 2 and 4 above. Thomson endeavours to argue that even if the foetus is a person,⁹ it cannot override the rights of the mother to determine what happens in and to her body. She states, however, at the end of her article, that a foetus is not a person and hence abortion is always morally permissible. I shall turn to the arguments by Jane English,¹⁰ showing that it is not the case that nonpersons have no rights. In some instances they even have a right to life.

In Chapter 5, I shall turn to the issue of sentience to defend the claim that sentient beings have a stronger right to life than nonsentient ones. The arguments of L.W. Sumner¹¹ will be elucidated. Contrary to Sumner, however, I shall argue that sentience cannot serve both as an inclusion and a comparison criterion. I shall argue that "being alive" ought to be adopted as the criterion of inclusion, "sentience" as the criterion of comparison within a given species, and "potential" as a comparison criterion between different species. Theories attempting to employ only one criterion run the risk of oversimplification, purchasing simplicity at the price of accuracy. Turning to abortion, I shall agree with Sumner that a late-term abortion is more serious than an early-term one, a phenomenon that may be explained by employing "sentience." Unlike Sumner, however, I shall not argue that abortions are always permissible if the foetus is still pre-sentient. Since I shall already have argued that abortion due to rape is morally defensible, I shall then qualify this permission by arguing that an abortion due to rape ought to be performed during the morally least objectionable period (when the foetus has the weakest right to life), which is during the pre-sentient period.

In order to defend point 5 above, it will be necessary for me to first examine whether life is always meaningful. Is it morally defensible to abort a foetus that will never acquire any personhood status, such as an anencephalic infant? I shall argue that life is not to be sustained under all circumstances, that there are lives filled with nothing but pain and suffering. I shall defend the stance that abortion is permissible, even during the late stages of pregnancy, if it becomes evident that the child will be severely mentally retarded, so as never to be capable of acquiring any significant human characteristics other than the biological. Anencephalics¹² are an example. My arguments shall not, however, morally justify the abortion of all foetuses with

congenital problems. Even many children with Down's Syndrome, for instance, can live meaningful, although (by comparison) simple lives.

As I have already stated, I have adopted a rights-oriented approach to deal with the issue of abortion. In recent decades, however, a growing number of philosophers have questioned the adequacy of such an approach, claiming that the traditional approaches of modern ethics are incapable of providing adequate descriptions, explanations, and guidelines of ethical conduct. They argue that these shortcomings can be overcome by returning to a virtue-oriented approach. In Chapter 7 I shall examine virtue ethics, its nature, advantages and disadvantages, as well as the arguments by Rosalind Hursthouse,¹³ who applies virtue ethics to the issue of abortion. I shall then also explain why I have adopted a rights-oriented approach to deal with the issue of abortion.

Before beginning with a rejection of rationality, I wish to mention a few points regarding the literature I have used. The reader will become aware that I have used a substantial amount of literature from the 1970s as the basis of my arguments. Examples are Tooley (1972), Noonan (1970), and Thomson (1971). The reason for my doing so can be defended. In my opinion they can be seen as paradigms representing their respective approaches towards abortion. Philosophers still frequently refer to Plato and Aristotle, Descartes, Hume, Kant and Mill, to mention only a few. There is hardly a book dealing with depth psychology that does not refer to Freud, Jung, or Adler, and zoologists still frequently refer to Darwin. Although much has been written on abortion since the 1970s, I believe that no writer has surpassed the ones I have chosen in their respective approaches. Tooley's text is undoubtedly the most important in attempting to establish a being's right to life on the basis of rationality. Noonan's text is paradigmatic in arguing against abortion on the basis of probability. Using such texts as paradigms should not create the opinion that these texts are beyond criticism.

Psychology may again serve as an example, where Freud's, Jung's or Adler's views are hardly ever used without at least some modifications. Similarly, Tooley's, Noonan's and Thomson's views are rejected or modified by the views of Gensler (1986), Singer (1993), Langerak (1979), Levin (1985), and Marquis (1989), to mention only a few. A look at the bibliography shows that less than a third of the texts consulted were from the 1970s, slightly more than a third from the 1980s, and approximately a third from the 1990s. From the foregoing I also do not wish to give the impression that all paradigmatic texts are from the 1970s. Sumner's (1985) and Hursthouse's (1991) texts are also paradigmatic, which is also reflected in this dissertation.

CHAPTER 2

REJECTION OF RATIONALITY AS THE DETERMINING CRITERION

2.1 INTRODUCTION

In this chapter I shall examine rationality as a possible criterion determining a being's right to life. It is often assumed that we humans are distinguished from other living beings by our rationality. And this rationality, this ability to reason, gives us a right to life. Were this simply to be the case, many humans at both ends of life's continuum, fetuses, infants, the comatose, the senile, and the mentally deranged, would not qualify as beings with a right to life. Influential philosophers, however, such as Michael Tooley and Peter Singer,¹ to mention only two, have attempted to defend the criterion of rationality as the determining criterion determining a being's right to life.

The standard conservative argument against abortion may concisely be stated as follows:

Premise 1: It is wrong to kill an innocent human being.

Premise 2: The foetus is an innocent human being.

Conclusion: Therefore, it is wrong to kill a foetus.

Attempts at dismissing this argument have assumed different forms: often the validity of one of the premises is denied, very often the second one. Sometimes both premises are accepted, but it is denied that the conclusion follows from them.

It is often assumed that the term "human" is beyond dispute, that it has only one possible meaning. This is, however, not the case. Let us suppose we were visited by beings from another planet that exhibit characteristics that would allow us to label them as rational beings. Would they be humans? Some would assert their humanity on the grounds of their rationality, while others would deny that they are humans because they are not members of the species *Homo sapiens*. Perhaps we may say that the aliens are human in one sense, while not in another. What about the foetus? The foetus is not yet capable of exhibiting rationality, but is a member of the species *Homo sapiens*. In a biology laboratory clear distinctions are made between human fetuses and, for instance, cat fetuses. In the genetic sense, therefore, the foetus is human. In a census, fetuses are not counted as being part of the population. In the population census sense then, the foetus is not human.

A human² life has been claimed to begin at various points. Various points have been put forward at which a being receives rights, especially the right to life. I shall use the term "person" to stand for a being possessing a right to life. When then does a human being become a person? Here too, various points on the continuum of development have been proposed - conception, implantation of the zygote, quickening, birth, and when the being becomes self-conscious and rational, to name only

a few. How are we to determine which criterion to adopt? This is a conceptual problem, one that cannot be resolved by scientific investigations. Scientific findings can determine whether a specific individual is a person in some specified sense, for example, that a being is rational, but cannot assist us in determining which criterion, or set of criteria to employ. If, for this investigation, we assume that only persons have a serious right to life, then the above standard conservative argument can be restated as follows:

Premise 1: It is wrong to kill an innocent person.

Premise 2: The foetus is an innocent person.

Conclusion: Therefore, it is wrong to kill a foetus.

In this chapter I shall be primarily concerned with the criterion of rationality, especially with the arguments put forward by Michael Tooley (1972a). Tooley attempts to argue for a moral justification of abortion, as well as infanticide, by denying the validity of the second premise (denying that the foetus is a person), and thereby dismissing the conclusion. I shall argue that Tooley's views, the acceptance of abortion under normal circumstances, cannot be consistently held. In order to do so, the universalisability principle, the prescriptivity principle, and a version of the Golden Rule will be employed. Subsequent to this I shall provide two examples of murder to illustrate that Tooley's arguments would compel us to endorse such conduct as morally acceptable, since it would not be the killing of a rational being, a being with the capacity to desire a continuous existence. Adopting rationality as the criterion determining a being's right to life would not only be inconsistent, but would also not accord with our general feelings, sentiments and attitudes.

Section 2.2 begins with a detailed exposition of Tooley's arguments. Tooley deemed it necessary to qualify a premise of his argument (2.3), and in 2.4 the implications of Tooley's argument are presented. I then turn to an evaluation and

criticism of Tooley's argument, showing in 2.5 that a weakness of his argument is that one premise requires qualifications. I argue that more qualifications can be given than Tooley claims. In section 2.6 I argue that arguing for a being's right to life by employing rationality as the suitable criterion leads to inconsistency, and in 2.7 I show that even if it were not to lead to inconsistency, it would still lead to unacceptable consequences.

2.2 TOOLEY'S DEFENCE OF ABORTION AND INFANTICIDE

Michael Tooley endeavours to discover a condition that any organism must satisfy to have a right to life. It will become evident that the condition he settles upon is not met by fetuses and infants, which leads him to the conclusion that fetuses and infants do not have a right to life. Therefore, unless there are objections other than claiming that fetuses and infants have a right to life, the practices of abortion and infanticide are morally justified.

It is very difficult, if not impossible, Tooley maintains, to formulate an acceptable liberal position on abortion without simultaneously examining the question of infanticide. At what stage in the development of a human being is it permissible to destroy it? At what point on the continuum of development can a line be drawn that is justifiable and does not appear arbitrary? Tooley clearly points out that the conservative's objection is not that since there is a continuous development from conception to birth, one is compelled to conclude that if it is morally unjustifiable to kill a new-born baby, then it is similarly morally unjustifiable to destroy a zygote, or a being at any intermediate stage. Rather, the conservative insists that if we judge the killing of a new-born baby as morally unjustifiable, but justify the killing of a zygote, or a human being at any

intermediate stage, then a clear, nonarbitrary difference must be shown between a new-born baby and a zygote, or a being at any intermediate stage (Tooley 1972a: 221). The conservative raises a similar point when confronting someone defending the practice of infanticide, asking what relevant difference between an adult human being and a new-born baby can be pointed out that gives the former a right to life, but not the latter.

In the case of abortion, Tooley denies that any of numerous events, such as quickening, can be taken as relevant cut-off points, since he denies that any of these points represents a morally significant change in the being's development. On the other hand, if one wishes to defend infanticide, one needs to gain a clear view of what makes a being a person, what gives a being a right to life (Tooley 1972a: 221). If every foetus is a person, maintains Tooley, then abortion would be justified only under very extreme circumstances, such as to save the life of the mother. But, he further argues, if the foetus is not a person, then there can be no plausible moral objection to killing it.

For the purposes of his argument, Tooley uses the term "person" synonymously with "X has a serious moral right to life." He believes that for a being to have rights, it does not automatically follow that it also has a right to life. He grounds this claim by maintaining that given the choice of being tortured for an hour, or being killed, almost all people would choose the former. Thus, it seems correct to say that it is worse to kill an adult human being than to torture one for an hour. On the other hand, he denies that it is seriously wrong to kill a new-born kitten, but believes it seriously wrong morally to torture one for an hour. This suggests that new-born kittens may have a right to not being tortured for an hour, without having a serious right to life. It seems to be the case that an individual has a right to something if he wants that thing, and it would be wrong for others to deprive him of it. Therefore, if a kitten does not want to have a series of sensations inflicted on it, does not want to be tortured, then

that kitten has a right not to have those sensations inflicted on it, has a right not to be tortured. Tooley hereby maintains to have given a basis for the claim that it does not automatically follow that every being that has rights also has a right to life (Tooley 1972a: 223). He also distinguishes between the terms "person" and "human being," arguing that these terms are not synonymous, and therefore not interchangeable. Certainly a new-born baby, a foetus, and even an embryo are all human beings, i.e. they all belong to the human species. However, this does not necessarily mean that they are also persons. A being's qualifying as a person depends on whether or not the being in question has a right to life. Having made this distinction, it needs to be stressed that the dispute regarding abortion can be a factual or a moral question. It may be occupied with whether a given being has the properties in question, or the dispute may focus on the properties a being must have in order to be a person, in order to have a right to life. The disagreement, therefore, need not be a factual one (Tooley 1972a: 224).

Proceeding to the central question, what properties should a being have in order to have a right to life? At what stage in the development of an organism belonging to the species *Homo sapiens* does it exhibit these properties, thereby having a right to life, and hence qualify as a person? The first question raises a moral issue. By answering it one lays down the principles one ought to accept when conferring the right to life upon a being. The second question is factual. By answering it the identification of the properties decided upon is merely a descriptive matter.

Tooley claims that an organism has a serious right to life "only if it possesses the concept of a self as a continuing subject of experiences and other mental states, and believes that it is itself such a continuing entity" (Tooley 1972a: 225). Now, to ascribe a right to an individual is to assert some *prima facie* obligations of other individuals to act, or to refrain from acting in certain ways. These obligations are conditional

however, being dependent on the individual to whom the right is ascribed, depending on the individual's having certain desires pertaining to that right. Therefore, "A has a right to X" means "A desires X, and others are under an obligation to refrain from actions that would deprive A of X." Let us examine for the moment, whether a being, such as a machine, that lacks consciousness can have desires, and hence possess rights. The answer depends on the definition we are prepared to adopt. If we interpret desires in solely behaviouristic terms, then a machine may indeed have desires. A chess computer, such as the now famous "Deep Blue" makes moves and adopts strategies that, according to its computational abilities, give it the best chances of defeating its opponent. Behaviouristically we may say, "Deep Blue has the desire to win." With this definition of "desire," an object that lacks consciousness can have rights. If desires are states necessarily standing in relation to certain states of consciousness, however, then computers or machines lacking consciousness can by definition not have rights. Tooley adopts the latter definition (Tooley 1972a: 225-226). The above formulation may now be restated as follows: "A has a right to X" is roughly synonymous with "A is a subject of experiences and other mental states, A is capable of desiring X, and if A does so, then others are under a prima facie obligation to refrain from actions that would deprive A of X." This formulation is then applied to the concept of a "right to life."

When one speaks of a right to life, Tooley argues, one speaks of more than just the right to a continued biological existence, one speaks of a right to continue having experiences and other mental states. He illustrates this with an example. If medical technology should at some time in the future make it possible to reprogram a being's brain, giving him a new set of attitudes, memories and behavioural responses, most people would believe that a person will have been destroyed, even though no biological element will have been harmed in the process.

The final stage in the argument is merely to question what characteristics a being must have in order to be capable of

desiring to continue existing as a subject of experiences and other mental states. Fundamental to this is the fact that the things a being can desire are limited by the concepts it possesses. One can only desire a proposition to be true if one understands the proposition, but in order to understand a proposition, one needs to understand the concepts involved. Thus one's range of possible desires is limited by the concepts one possesses. An entity, therefore, cannot desire that continued experiences and other mental states exist unless that entity possesses the concepts involved. An entity also cannot desire that it itself continue existing as a subject of experiences and other mental states unless it believes that it is presently such a subject. A necessary condition for a being having a right to life is, therefore, for that being to have the concept of a "self" as a continuous subject of experiences, and that it believes that it is itself such an entity (Tooley 1972a: 226-227). Tooley therefore argued, a being can only have a right to X if it desires that X, and in order to do so, it must possess the concepts involved. Foetuses and infants do not possess the concepts to desire a continued existence. Therefore, foetuses and infants do not have a right to life, and abortion and infanticide are morally acceptable practices.

2.3 TOOLEY QUALIFIES A PREMISE

Having drawn his conclusion, Tooley feels compelled to qualify a number of claims made in order for his theory to stand up to anticipated criticisms. It may be objected that if a person does not desire something then one cannot violate his right to it. This may firstly occur when a person's desires are incongruent as a result of emotional disturbance. For example, an adult may fall into a temporal state of depression during which he expresses the wish that he were dead. In such a case one would violate that person's right to life if one were to

kill him or her. Secondly, a previously conscious individual who is temporarily unconscious still has a right to life. Tooley insists that it can be argued that the person would have certain desires if he or she now were conscious, and thus still has a right to life. Thirdly, when a person's desires have been distorted by indoctrination or conditioning, he does not lose his right to life. A person brainwashed in such a manner in order for him to believe that he would be rewarded if he were sacrificially offered, still has a right to life, even though he may not presently express the appropriate desire. Here too it may be said that the person would desire to live if he were not indoctrinated or conditioned. Thus, an individual's right to life cannot only be violated if the being now desires to live, but also if the being would desire to live if it were not for (1) his present state of emotional imbalance, (2) temporal unconsciousness, or (3) his having been conditioned (Tooley 1972a: 227). But, Tooley maintains that these exceptions do not weaken his argument of a being's being capable of possessing the concepts in order to have the desire. He insists that his argument does not require the desire to be present in order for a being to have a right to life, but rather the capability of possessing the concepts involved (Tooley 1972a: 228).

2.4 IMPLICATION OF TOOLEY'S ARGUMENT

The implication of Tooley's argument for fetuses and infants is clear. Neither fetuses nor infants are capable of possessing the concepts involved in a right to life, and thus cannot desire to have a continued existence. Tooley claims to have given a moral justification of both abortion and infanticide.

2.5 TOOLEY'S QUALIFICATIONS DESERVE

CRITICISM

Tooley recognises that persons have a right to life. But only beings that are rational can be persons, and hence have such a right. The human foetus, even though it may develop into a rational being, is not classified as a person by Tooley, and therefore has no right to life; it currently has no more rights than the foetus of a rat, or any other animal. A foetus cannot have a right to life because rights are conceptually linked to desires, therefore a being is only capable of having rights if it has desires. Tooley argues:

Premise 1: A being can have a right to X only if that being desires X.

Premise 2: No foetus desires continuous existence because for this the foetus would have to possess the concept of a continuous self (a concept it cannot yet have).

Conclusion: Therefore, no foetus has a right to a continued existence, i.e. no foetus has a right to life.

In order to make the first premise accord with our general attitudes towards rights, Tooley deems it necessary to add qualifications. A being has a right to X only if it desires X, or else it would desire X if it were not for (1) emotional imbalance, (2) temporal unconsciousness, or (3) conditioning to desire otherwise.

Gensler³ (1986: 97) correctly points out that we need further qualifications if the first premise is to harmonise with our general intuitions. If we maintain that the dead have certain rights, for instance, the right to have their wills carried out, then we must add (4) the being did desire X when it was alive. If we believe that an infant has the right not to be given a disease, then we must add, or (5) the being would desire

X, if it had the necessary concepts. If we accept this latter point, then we cannot agree with Tooley that a being can only desire something of which it possesses the concepts. Now if we believe that fetuses and infants have a right to life, then we might add (6) or if a being has the potential of growing into a rational being and then would desire to have had X.⁴

The problem of Tooley's argument is that the first premise needs qualifications. Which qualifications to accept is itself a conceptual issue, and may vary with our present desires, intuitions and beliefs.

2.6 THE RATIONALITY CRITERION LEADS TO INCONSISTENCY

Gensler (1986: 99) has successfully argued for consistency when arguing about abortion, showing that Tooley's views may not be consistent. He employs the universalisability principle and the prescriptivity principle, and a third consistency requirement derived from these two principles - a version of the Golden Rule. An example is used to illustrate these principles, as well as how the third follows from the other two:

(1) If you are consistent and think that it would be acceptable to do action A to X, then you would think that it would be appropriate for action A to be done to you in relevantly similar circumstances.

(2) If you are consistent and think that it would be acceptable for someone to do A to you in relevantly similar circumstances, then you will consent to someone doing A to you in relevantly similar circumstances.

(3) Therefore, if you are consistent and think that it would be acceptable to do A to X, then you will consent to

someone doing A to you in relevantly similar circumstances.
(GR).

The first premise is justified by the universalisability principle, which demands that we make similar moral judgements about similar situations, regardless of the people involved. Thus, if I believe that it is acceptable for someone to assault Smith, but do not believe that it is acceptable for someone to assault me in relevantly similar circumstances, I am inconsistent and violate the universalisability principle. The second premise is justified by the prescriptivity principle, which demands that our ethical beliefs are kept in harmony with the rest of our lives. Thus, if I believe that an action would be acceptable, but deny that it ought to be done, then I violate the prescriptivity principle and am inconsistent. The conclusion is a form of the Golden Rule (GR). If I think it would be acceptable to assault Smith, but I do not consent or approve being assaulted in similar circumstances, I am inconsistent and violate GR (Gensler 1986: 99-100).

Most people do not consent to being assaulted under normal circumstances, and therefore would not be consistent if they held that assaulting under normal circumstances is permissible, because thereby they would violate the consistency principle (GR). This argument illustrates that one would be inconsistent if one held a certain desire or belief and formulated an ethical view that would not accord with the given belief or desire. A person could escape the conclusion if he did not care whether he were assaulted or not. In such a case the second premise would not hold. This investigation will assume that the reader does not desire to be assaulted, blinded or killed. If the contrary should be the case, then the conclusions drawn will not apply to him or her.

A similar argument may be given pertaining to abortion. Imagine for a moment that you were aborted as a foetus. If you do not like the idea, then you cannot consistently hold that abortions ought to be permissible. Or we could say, as Tooley

would like us to do, that as an ignorant foetus you did not know enough, did not possess the relevant concepts, in order to have been against the abortion. In the latter case the argument would not hold. Before proceeding to abortion, it is necessary to examine the workings of GR more closely.

GR is concerned with my present reaction to a hypothetical case, and not how I would react if I were in the hypothetical situation (Gensler 1986: 100). The following examples will add clarity:

(1a)Issue: Do I think it permissible to assault X while X is asleep?

(1b)Right question: Do I now consent to my being assaulted while asleep?

(1c)Wrong question: If I were assaulted while asleep, would I consent to the action while asleep?

(2a)Issue: Do I think it permissible to violate X's will after his death?

(2b)Right question: Do I now consent to my will being violated after my death?

(2c)Wrong question: If my will is violated after my death, would I then, when dead, consent to this action?

The point I here wish to make is that in order to be consistent in answering "yes" to the issue, I must also answer "yes" to the right question. I must also be willing to answer "no" to the wrong question. It must be kept in mind that GR is concerned with my present reaction towards a hypothetical case, and not my actual reaction in the hypothetical situation. GR is not concerned with the "wrong question." Let us examine a case with a foetus.

(3a)Issue: Do I think it permissible to blind X while X is a foetus?

(3b)Right question: Do I now consent to the idea of having been blinded while I was a foetus?

(3c)Wrong question: If I were blinded while a foetus, would I then, while a foetus, have consented to my having been blinded.

Gensler asks us to imagine that a sadistic mother injected herself with a substance that would cause blindness in her developing foetus, but would do no harm to herself. Could this be acceptable? Could you assent to your mother having done this to you? The answer is almost certainly an emphatic "no!" The "no" is equally as emphatic regardless of the stage of pregnancy at which the injection would have been administered. If you are consistent and believe that blinding a foetus is permissible, then you will equally believe that blinding you while you were a foetus would have been permissible. But you do not believe, under normal circumstances, that blinding you while you were a foetus would have been permissible, therefore, you do not believe that blinding a foetus under normal circumstances is permissible. It may be assumed that for most people the second premise will be true - most people can be presumed not to have assented or approved of this act having been done to them. Applying the Golden Rule to the foetus poses no special difficulties. It may be applied to any stage of our development.

Critics may respond that the above argument presumes that my present self and my foetus are identical. This need not be the case. The questions could be reworded in order not to presuppose this, without any detriment being done to the argument. "Do I now consent to having been blinded while a foetus?" can be rewritten as "do I now consent to the foetus having been destroyed from which I developed?" (Gensler 1986: 102).⁵ I cannot will the destruction of any component in the chain of events that lead to my existence. To be consistent, therefore, I cannot also not be indifferent to the existence of

my ancestors, since I would not now exist if they had not existed.

In the case of abortion we need merely substitute the blindness drug with a lethal drug to arrive at a similar conclusion when applying GR. The sadistic mother of our example could have killed the foetus by using the lethal injection, or other method of abortion. Do we think that this would have been acceptable? Can we assent to this having been done? Could you have approved of the action, or assented to it in your own case? Again the answer is normally an emphatic "no!" This "no" does not vary in emphasis depending on when the abortion is performed. It is equally emphatic when considering any stage after development has begun (Gensler 1986: 103).

If you believe that abortion is permissible under normal circumstances, and wish to be consistent, you must believe that it would have been acceptable for you to have been aborted under normal circumstances.

(4a) If you are consistent and believe that abortion ought to be permissible under normal circumstances, then you will consent to the idea of your having been aborted under normal circumstances (GR).

(4b) You do not consent to your having been aborted under normal circumstances.

(4c) Therefore, if you are consistent, you will not hold abortion to be permissible under normal circumstances.

It may again be presumed that for most people the second premise is true. Most people will not consent or agree to the idea of an abortion having been done to them. Most people who are consistent will therefore not agree that abortion is morally permissible.

The question that needs to be answered is whether a person opposed to infanticide and the blindness drug can consistently hold that under normal circumstances it would have been acceptable if he had been aborted. Such a person could be

consistent, but the consistency would have unusual consequences. Imagine someone with the following beliefs:

(5a) It is wrong to blind an adult, child, infant, or foetus.

(5b) It is wrong to kill an adult, child, or infant; but it is permissible to kill a foetus.

To be consistent the person would have to answer the following questions as follows:

"Do you consent to being blinded now?"

"No."

"Do you consent to the idea of having been blinded as a child?"

"No."

"Do you consent to the idea of having been blinded as an infant?"

"No."

"Do you consent to the idea of having been blinded as a foetus?"

"No."

"Do you consent to your being killed now?"

"No."

"Do you consent to having been killed as a child?"

"No."

"Do you consent to having been killed as an infant?"

"No."

"Do you consent to having been killed as a foetus?"

"Yes."

Is it not odd that the person disapproves of being blinded at the various times, and disapproves of being killed at the first three times, but is indifferent to being killed at the last? He opposes the blinding at each time because the effect would be

the same, he would be blind. He opposes killing at the first three times because the effect would be the same, he would not be alive. But nor would he be alive if he were killed at the fourth time, as a foetus. The "yes" here is somewhat strange. A person who does not believe his life to be worth living could well answer "yes" at any of the other stages as well (Gensler 1986: 104).

Gensler (1986: 105) anticipates another line of criticism. If you believe that it would have been wrong for you to have been aborted, would it not be equally wrong if you would not have been conceived, if your actual development would not have been allowed to initiate? The result would have been the same, you would not now be alive, there would be no you. If we are against abortion, ought we not also to be against any prevention of conception? Gensler admits that his first reaction to his parents not having allowed his development by practising contraception, for instance, is negative at the outset. Subsequent to reflection, however, the universalising requirement forces him to change his reaction. If I maintain that it had been wrong for an abortion to have been done in my case, then I must also maintain that it is wrong for an abortion to be performed in any relevantly similar situation. I can maintain that in general it is wrong to perform an abortion. Similarly, if I maintain that it is wrong to prevent conception by abstinence or contraception, then I would have to maintain that it is wrong in all relevantly similar circumstances. I cannot hold, however, that in general it is wrong to prevent a new human life to begin developing. The consequences would be over population of a yet inconceivable extent. It should therefore be evident that one cannot will as a universal law a general prohibition against abortion, but not one against initiation of human life.

The above has shown that defending rationality as the criterion determining a being's right to life generally comes into conflict with consistency.

2.7 RATIONALITY AS A CRITERION WOULD LEAD TO UNACCEPTABLE CONSEQUENCES

As we have seen, Tooley argues for rationality as the criterion by which a being receives personhood status, receives a right to life. It has been shown that such a stance can, under normal circumstances, not usually be consistently held. But let us once again assume for the moment that rationality is a suitable criterion for conferring the right to life on a being, and that therefore, abortion and infanticide are acceptable practices. For the moment, I shall only be concerned with infanticide. Could we get used to such practices under normal circumstances, seeing them as "normal" behaviour? I quote two striking examples by Michel Foucault:

"In Paris in 1827, Henriette Cornier, a servant, goes to the neighbour of her employers and insists that the neighbour leaves her daughter with her for a time. The neighbour hesitates, agrees, then, when she returns for the child, Henriette Cornier has just killed her and has cut off her head which she had thrown out the window.

In Vienna, Catherine Ziegler kills her illegitimate child. On the stand, she explains that her act was the result of an irresistible force. She is acquitted on grounds of insanity. She is released from prison. But she declares that it would be better if she were kept there, for she will do it again. Ten months later, she gives birth to a child which she kills immediately, and she declares at the trial that she became pregnant for the sole purpose of killing her child. She is condemned to death and executed" (Philp 1994: 71).

If we were to accept Tooley's definition of personhood, as well as the implications of his theory, then neither Henriette

Cornier nor Catherine Ziegler could be convicted or condemned for any serious offence. Henriette Cornier may be charged with destruction of property, but certainly not for murder. It could not be murder, since the being was not yet a person, was not yet rational. Catherine Ziegler too would not be guilty of any serious offence. Indeed, in her case it may be argued that she is not even guilty of any crime, since the infants she killed were her own, therefore she did not even violate a property offence against another. Such would be the implications of Tooley's theory. Surely we cannot will such practices to become universally acceptable? I am convinced that the conclusions drawn from ethical theories must always be in balance with our feelings and sentiments. Accepting rationality as the criterion determining a being's right to life has consequences that are normally not congruent with our feelings and sentiments. Social contract theories, especially the theory formulated by John Rawls⁶ (1971), stress this point. Rawls maintains, if we were to draw up a set of rules from behind a veil of ignorance for a society, we would decide in such a manner that our decisions would not conflict with our general beliefs and attitudes.

2.8 SUMMARY AND PERSPECTIVE

In this chapter rationality was examined as a criterion determining a being's right to life. Special focus was thereby taken on the arguments of Michael Tooley. Tooley argued, a being can only have a right to X if it desires that X, and in order to do so it must possess the concepts involved. Foetuses and infants do not possess the concepts to desire a continued existence. Therefore, foetuses and infants do not have a right to life, and abortion and infanticide are morally acceptable practices.

In order to silence possible criticisms, Tooley deemed it necessary to qualify the first premise of his argument. He did

so by maintaining that a being does not only have a right to X if it presently desires X, but still has a right to X if the being would desire X, were it not for his or her being asleep, temporarily unconscious, or conditioned to desire otherwise. I showed that a weakness in Tooley's argument is that his first premise requires qualifications, and other qualifications, other than Tooley's may be added. For instance, a being has a right to X if, in the normal course of its development, it will acquire the capability to desire X.

It has also been argued that to defend the practice of abortion (and infanticide), is to be inconsistent. The universalisability principle, the prescriptivity principle, and a version of the Golden rule were applied. If I find the practice of abortion acceptable, I must, if I wish to be consistent, believe that it would have been acceptable if I were to have been aborted.

Finally, I showed that Tooley's defence of abortion and infanticide would have practical consequences we would normally label absolutely unacceptable. A theory dealing with applied ethics should have conclusions that accord with our general beliefs, feelings, and sentiments.

Having rejected rationality as a suitable criterion determining a being's right to life, it is necessary to examine potential. In the next chapter, I shall defend potential as a suitable criterion. If we return to the qualifications necessary for Tooley's first premise, it was shown that a possible qualification could also be that a being has a right to X if, in the normal course of its development, it would attain the concepts for desiring X. To endorse this qualification is to endorse a being's potential regarding rationality.

CHAPTER 3

A DEFENCE OF POTENTIAL

3.1 INTRODUCTION

Let us now focus our attention on potential. The question that needs to be answered is, whether potential can be suitably employed to defend a being's serious right to life. I shall argue in a later chapter that all living beings have some right to life, but the issue currently under investigation is, when does a being have a serious right to life. By "serious right" is meant "cannot be overridden without significant justification." Is the claim that a foetus has a serious right to life in virtue of its potential to develop into a person defensible? Before proceeding any further, let us first ask what potential is. What do we mean by "potentiality?" "Potentiality," or "latent ability," is a second-order capacity of an object or being to acquire, develop, or regain another (first-order) capacity. A normal new-born infant has the potentiality to speak English, meaning that it has the capacity to acquire the ability to speak English. Dogs, chimpanzees, or

dolphins, for example, do not have this potential (Honderich 1995). In this chapter, when speaking of the potential of a foetus, reference is made to the being's inherent ability to develop into a person (a human being that can reason, communicate, participate in the social community of humans, etc.).

In this chapter I shall defend potential, arguing that it is a suitable criterion determining a being's serious right to life.

I shall first turn to the arguments of John Noonan¹ (1970a), who made a laudable effort to defend potential, and is often cited as having given a theory defending a being's right based on potential. A detailed exposition of his arguments is given in 3.2. Noonan's achievements will be highlighted (3.3), but I shall also argue that most of his arguments can be rebutted, even the dramatic shift in potential from a spermatozoon and a zygote (which forms the core of his argument), if the potential of the female egg cell is taken into account. Having shown the difficulties Noonan failed to confront, I shall make an important distinction (3.4), namely between "possible persons," "potential persons," "beings having the capacity for personhood," and "actual persons." An important principle, the potentiality principle, will also be introduced. Based on these arguments, I shall argue that an abortion is under normal circumstances not morally defensible. Once implantation has taken place the developing foetus has a serious right to life based on its inherent potential. Abortion prior to implantation, such as by using a morning-after pill, or an intrauterine device (IUD), will be shown to be morally acceptable, since the potential of the being is not yet activated, the genetic plan has not yet begun to unfold. In later chapters I shall argue that the foetus's serious right to life can be overridden by the right of the mother to determine what happens in and to her body if the pregnancy is a result of rape (did not come about by a voluntary act), or does not develop "normally" (poses a threat to the mother's life or long-

term health). I shall also argue that if the foetus does not have the potential to acquire any human characteristics other than the mere biological, an abortion is also acceptable. But these latter points shall be defended later. Let us now turn to Noonan's arguments.

3.2 Noonan's DEFENCE OF POTENTIAL

John T. Noonan (1970a) identifies "how to determine the humanity of a being" as the most fundamental question concerning abortion. He examines several criteria (viability,² experience, the sentiments of adults, communication), rejecting them in favour of the criterion of probability.

Noonan points out that viability is often considered as the threshold prior to which a being is not considered human, while beyond it is. In this regard the life of the foetus is absolutely dependent on the life of the mother. As long as this dependence exists, the being is denied human status. One difficulty regarding this approach is that advances in applied medical science may increase the viability of a foetus at ever earlier periods. It is not inconceivable for a foetus to become viable at any stage in its development - being capable of developing normally within an incubator. Successful experiments in this regard have already been undertaken with some animals. This elasticity of viability poses a real problem. Mere length of existence does not determine viability. The viability of a foetus depends on its anatomical and functional development. Weight and length are more reliable guides to its development than age, but weight and length vary from foetus to foetus. In addition, foetuses of different racial groups vary in viability. There is evidence suggesting that some foetuses of black races reach viability sooner than some white foetuses.³ If viability is therefore to be the determining criterion, then a being's right to life would vary with race and many other variables.

The most important objection to this approach is that dependence is not ended by viability. Even a five-year-old child is still completely dependent on the care of another if it is to survive. A young child or an old foetus will surely die if left without care, just as the young foetus would if detached from the mother (Noonan 1970a: 215-216). Therefore, Noonan rejects the criterion of viability for determining the humanity of a being.

A second distinction frequently employed is experience. A being who has experienced, who knows joy and suffering and has memories, is regarded more human than a being who has not. This distinction also does not furnish us with an adequate standard of differentiation. An eight-week-old embryo responds to stimulation, and hence is capable of experiencing, even if only in a very basic manner. At an earlier stage the zygote is also alive and responsive to its environment. If experience were to be the standard for determining human status, we would be compelled to withdraw or at least reduce the level of humanity of a person with sudden memory-loss (Noonan 1970a: 216). Furthermore, this distinction would leave an older foetus, or a young child, with the status of being an "unformed inhuman thing." If experience is to be the criterion determining a being's humanity, then different degrees of experience might serve to distinguish different levels of humanity. A person who has learned and loved may then be regarded as more human than one who has not.

A third distinction between human and nonhuman beings is sometimes made by appealing to the sentiments of adults. Adults do not usually mourn over the death of their foetus to the same degree as they would over their five-year-old child. The foetus is an unnamed "it" until birth, and does not have a distinct personality until at least the fourth month of existence, when its presence becomes noticeable through movements in the womb. But feeling is also not a reliable, universal guide for identifying humanity. People of other races and cultures have often been seen as subhuman due to their superficial differences, for example of skin colour, language, and religion.

Moreover, the death of an adolescent is generally mourned to a greater extent than the death of a neonate, or a very old person (Noonan 1970a: 216). The difference in loss felt, or the intensity of the grief experienced, depends on the potentialities destroyed, or the experiences terminated. There seems not to be any marked difference between an infant, young child, adolescent or grandfather.

A distinction is also made in terms of sensation experienced by the parents. The embryo is felt only after about the fourth month after conception, and is seen only at birth. Needless to say, what can be neither seen nor felt is different to what is tangible. If the foetus cannot be perceived or touched at all, it cannot be perceived as human. Experience shows, however, that sight is less reliable than feeling in establishing human status. The evil of racial discrimination was given foundation when by sight colour became an appropriate index for declaring who is human. Noonan appropriately points out that touch furnishes similar difficulties; a person who is confined out of touch through sickness is not thereby considered any less human (Noonan 1970a, 216-217).

The final distinction Noonan rejects is that of social visibility. The foetus is not perceived as communicating with others, and therefore cannot be said to be a member of the social community. As moral rules are made to apply between members of a society interacting with one another, moral rules do not apply to foetuses, since they do not interact with members of society. This argument maintains that because the foetus is excluded from the society of humans, it is also excluded from the humanity of humans. If such an argument were to be sound, the precarious potential would be created in which large groups could be dehumanised by denying them any status in their society (Noonan 1970a: 217). This has unfortunately been the fate of many people, and is well portrayed in "Nineteen-eighty-four" by George Orwell.⁴ In the Roman Empire, slaves were denied almost all human rights. The most appalling example can

be found in Germany under Hitler. All Jews were categorically labelled as subhuman, thus leaving them with no human rights.

Having rejected the appeals to viability, experience, visibility, and feeling, Noonan puts forward the following consideration. "Moral judgements often rest on distinctions, but if these are not to appear arbitrary, fiat, they should relate to some difference in probability" (Noonan 1970a: 218). Life may be regarded as a continuity, of which the early stages have a far lower probability of developing further than do the later ones. In every normal ejaculation, for instance, there are at least 200-million spermatozoa, only one of which may unite with an ovum to form a zygote. Once sperm and ovum have united at conception, the likelihood of spontaneous abortion occurring is about one in five. At conception there is hence a huge leap in probability, accompanied by an immense surge in potentiality in a being's life. Noonan emphasises that the argument based on probability does not seek to establish humanity, but that it may establish an objective discontinuity that may be considered in moral discourse. In everyday activities we generally base our actions and decisions on probabilities, and in law and morals accountability is often established by taking the probabilities of negligence or prudence into account. If you shoot at a movement in a forest, knowing that the chance of hitting a person is 200-million to one, no reasonable person will hold you accountable for negligence. If the chance is four out of five, few will be willing to acquit you from blame. The probabilities as they exist, do not show the humanity of the embryo, just as the probability of the movement in the trees being a person is not absolutely certain. The argument focuses on the decisional element in any moral judgement and assumes that part of the task of the moralist is drawing lines. The difference in probability on either side of the line is evidence for the nonarbitrariness of the line drawn. By destroying a spermatozoon, one destroys a being that had less than a one in 200-million chance of developing into a being with a human genetic code, with a heart

and functioning nervous system, with the ability to reason and experience pleasure and pain. If one destroys a foetus, one destroys a being already endowed with the genetic human code, able to respond to stimuli, possessing a heart and central nervous system, and one that had a roughly eighty percent chance of developing further into a being capable of being sustained outside the womb, and developing further into a reasoning being. The positive argument for drawing the line at conception, beyond which destruction would be reckless behaviour, is that at conception the being receives the genetic code. "It is this genetic information, which determines his or her characteristics, which is the biological carrier of the possibility of human wisdom, which makes him or her a self-evolving being" (Noonan 1970a: 219). A being with a human genetic code is man.

To regard the foetus as having equal rights with other human beings is not to decide every instance in which abortions may be undertaken. To assert that the foetus is human is to assert the foetus's right to choose its own destiny, which could not be taken from it by another person's decision. Human beings with equal rights often come into conflict with one another, and some decision must be made as to whose interests ought to enjoy preference. Noonan maintains that cases of conflict involving the foetus are different only in two respects, namely, that the foetus is totally unable to defend its own interests, and the fact that the right of the foetus regularly at stake is the right to life itself (Noonan 1970a: 219). Catholic doctrine approved of abortions only if they were not a direct result of the action performed. An example is removing a cancerous uterus. The theologians employed the terms "direct" and "indirect." Therefore the principle of "Double effect" was employed, which demands

(1) an action ought only to be performed if it is good in itself, or at least indifferent;

(2) only the good consequences of the act are intended;

(3) the good consequences are not the effect of the evil; and

(4) the good consequences are commensurate with the evil consequences (Sterba 1997: 118).

They used these spatial metaphors to draw lines, or balance values. Noonan maintains that the metaphors point out that for the moral questions at issue, comparisons were necessary. "The principle of double effect was no doctrine fallen from heaven, but a method of analysis valid where two relative values were being compared" (Noonan 1970a: 219). Not even Catholic teachings gave the life of the innocent an absolute value. The infant's life was always given a value greater than zero, independent and separate from the lives of the parents. Even though the foetus is human, the interests of the mother could override its interests if her life was at stake. Her interests were only regarded as overriding in the case of an ectopic pregnancy or a cancerous uterus. In both cases the chance of the foetus surviving is extremely small. Here too, abortion may be seen to have been justified on the basis of probability (Noonan 1970a: 219-220).

Noonan has therefore argued against abortion on the basis of the being's probability. Only when the mother's life is endangered by the pregnancy does he acknowledge the moral permissibility of performing an abortion. Without the abortion the foetus would also only have a very slight chance of surviving. Noonan's views are therefore commensurate with the doctrine of double effect.

To summarise Noonan's arguments: He challenges defenders of abortion to draw any line after conception that would not be arbitrary in determining a human being's serious right to life. He employs the criterion of probability to argue for conception as the point at which a human being receives its serious right to life. At this point the being receives its full genetic code, the code that determines his humanity and controls the unique development of the being.

3.3 EVALUATION AND CRITICISM

Noonan is correct in rejecting an arbitrary point on the line of development of a human being, such as viability, since such a line may vary depending on the extent of medical technology, methods and techniques available, and from foetus to foetus. If viability were adopted as the criterion, as has indeed been done by some legal systems,⁵ then we are left with the strange position, wherein a foetus of six months today would have a serious right to life in most medically advanced countries, while three decades ago such a being would not have had such a right. Such a criterion could also not have universal relevance today, since medical equipment would make a foetus viable at six months in one country, whereas the lack of such equipment would render it not viable in another. Consistent reasoning in such a case would compel us to grant a six-month-old foetus a serious right to life in one country, while not in another, depending on the state of medical care in the country in question. The location of the mother does not change the nature of the foetus, so why should it affect its right to life? The liberal response may be that the nonviable foetus is totally dependent on the mother, and the mother has the right to decide over the life of the developing child. Such an argument is also not acceptable, and must be rebutted, since a being that is totally dependent on another has not forfeited all his rights to the other. A hiker seriously injured in the mountains may be totally dependent on his companion to get help. An aged mother may be totally dependent on her daughter. A baby is totally dependent on its mother, if no other person is there to give assistance. I am sure that almost everyone will agree that none of these relationships involving dependence would justify killing the dependent person on the grounds of his or her dependence.

If viability is not appropriate, then quickening (the time at which the foetus's movements first become perceptible) is equally inappropriate. Quickening is merely the time at which

the foetus is first felt to move of its own accord. Scientifically speaking, however, it does not mark any significant change in the foetus's development. Ultrasound studies have shown that the foetus moves long before the mother is able to feel its movements. In addition, the capacity for physical movement ought never to be a criterion employed for determining a person's serious right to life. We do not usually believe that paralysed people no longer have a right to go on living.

On the basis of only its actual characteristics, many opponents of abortion will agree that the foetus compares unfavourably with nonhuman animals. A contemporary philosopher, Peter Singer, arguing on similar lines to Michael Tooley, writes:

"... For on any fair comparison of morally relevant characteristics, like rationality, self-consciousness, awareness, autonomy, pleasure and pain, and so on, the calf, the pig, and the much derided chicken, come out well ahead of the foetus at any stage of pregnancy. While if we make the comparison with a foetus of less than three months, a fish would show more signs of consciousness. My suggestion then is that we accord the life of a foetus no greater value than the life of a nonhuman animal at a similar level of rationality, self-consciousness, awareness, capacity to feel, etc. Since no foetus is a person, no foetus has the same claim to life as a person" (Singer 1993: 151).

When we consider the potential of a foetus to become a human being, however, membership of the species *Homo sapiens* is important. Seen in this light, even Singer admits that the foetus "surpasses any chicken, pig, or calf" (Singer 1993: 151).

Examining the argument pertaining to potential, which Noonan employs, its main elements may be stated as follows:

Premise 1: It is wrong to kill a potential person.

Premise 2: The foetus is a potential person.

Conclusion: Therefore, it is wrong to perform an abortion.

The second premise of this argument is stronger than the second premise of the argument dealing with actual persons because, whereas it can and has frequently been questioned, and denied by some that the foetus is a person, it cannot be denied that the foetus is a potential person. This second premise is true, whether by person we mean "member of the species Homo sapiens," "being capable of rational thought," "being capable of sentience," or any other characteristic, or set of characteristics persons generally acquire during their development. Critics of the argument from potential contend, however, that the stronger second premise of this argument is acquired only by a weakening of the first premise. They challenge the contention that the killing of a potential person is just or almost as wrong as killing an actual person.

"It is of course true that the potential rationality, self-consciousness, and so on, of a foetal Homo sapiens surpasses that of a cow or pig, but it does not follow that the foetus has a stronger claim to life" (Singer 1993: 153).

Critics such as Singer deny that there is a rule that grants any potential X the same rights as an actual X, and they substantiate their objections with numerous examples. To pull out a sprouting acorn is not equivalent to cutting down a fully grown oak. Dropping a live chicken into a pot of boiling water is not tantamount to dropping its egg into the same water. Your being a potential president of your country does not now give you the same rights as the president. As a medical student, you do not now have the same rights as a doctor. When faced with a potential X, the critics demand that specific reasons be given

why this potential X should now be granted the same rights as an actual X.

Opponents of abortion sometimes counter the refutation of the argument from potential by arguing that the potential of a foetus does not give it certain rights, but that to destroy such a foetus is to deprive the world of a future rational and self-conscious being. If rational and self-conscious beings are intrinsically valuable, then to deprive the world of such beings is wrong. Not much deliberation is needed to see that this argument does not argue against the performing of all abortions, or even to abort a pregnancy that is inconveniently timed. Not all abortions deprive the world of rational and self-conscious beings. Suppose a woman learns that she is pregnant six months before she is to go on a long-awaited trip to Greece. She is married, has no children at present, and firmly intends to have a child soon after returning from her long-awaited trip. The pregnancy is unwanted only because it is inconveniently timed. Opponents of abortion would judge an abortion under such circumstances particularly outrageous, since neither the life nor the health of the mother is at stake, only her trip to Greece. If abortion is wrong only because it deprives the world of a future rational, self-conscious person, then this abortion is not wrong. It would do no more than delay the entry of a rational, self-conscious person into the world. This argument against abortion would also compel us to condemn other practices, such as contraception and abstinence on days when the woman is likely to be fertile, and celibacy, if we wish to be consistent.

With the argument from potential it is sometimes argued that modern genetics has determined that the fusion of sperm and ovum creates a never to be repeated informational speck, and therefore all destruction of foetal life is to be classified as murder. Why should this, this alone, lead us to this conclusion? A canine foetus is also absolutely unique, with a genetic makeup that is never again to be repeated. This argument implies that it is as wrong to abort a canine foetus as

a human one. When identical twins are conceived the genetic code is exactly repeated. Yet the value of twins is not less due to their genetic duplicity. The first successful cloning of a sheep, "Dolly," in Scotland, and subsequent success with a higher primate in the USA, has brought the once considered fictional reality of human cloning to a possibly near reality. If a person were to be cloned, surely we would not value him or her less, accord him or her less rights, because of his or her scientifically induced duplicity. Surely, the existence of identical twins and the possibility of human cloning do not diminish the seriousness of abortion. Cloning could make it possible for the woman wishing to travel to Greece to abort the foetus, have a cell-sample taken from the aborted foetus, and have a cell re-implanted after her return. Surely, this cannot satisfy the opponents of abortion, who argue that abortion destroys a genetically unique individual.

Although I have here pointed out some problems involved in arguing against abortion on the grounds of the developing person having a unique, or at least very special genetic constitution, I do believe that the human genetic constitution can serve as a basis for arguing against most abortions. The fact that the actualised genetic code gives us a potential for developing into a person is important. Before I give my arguments for this position, however, further objections need to be considered to Noonan's line of reasoning.

As we have seen, Noonan argues for our moral reasoning to be based on the difference in probabilities before and after conception. If a spermatozoon is destroyed, one destroys a being that had a chance of no more than one in 200-million of developing into a rational being, possessing the human genetic code, a heart, central nervous system, and capable of experiencing pleasure and pain. If an embryo is destroyed, one destroys a being already possessing the human genetic code, which had a four in five likelihood of developing further into a baby outside the womb, and who in time would exhibit rationality. Peter Singer (1993: 161-163) attempts to dismiss

Noonan's arguments on factual grounds. Singer states that Noonan's figures for embryo survival are no longer accurate. This is confirmed by Louw:

"It is estimated that up to 50 % of all fertilised egg cells are spontaneously aborted during the first few weeks, usually without the mother ever knowing that she was pregnant. Of the zygotes that survive the first three to four weeks after fertilisation, a further 10 to 25 % are spontaneously aborted, an occurrence known in lay terms as a "miscarriage"" (Louw 1991: 101-102).

If pregnancy is diagnosed within fourteen days of fertilisation, the probability of a birth resulting is 25 to 30 percent. Only at about six weeks after fertilisation does the probability increase to above 80 percent. Singer claims:

"... once we substitute the real probabilities of embryos, at various stages of their existence, becoming persons, Noonan's argument no longer supports the moment of fertilisation as the time at which the embryo gains a significantly different moral status. Indeed, if we were to require an 80 percent probability of further development into a baby (the figure Noonan himself mentions), we would have to wait until nearly six weeks after fertilisation, before the embryo would have the significance Noonan wants to claim for it" (singer 1993: 161-162).

It here needs to be pointed out that Singer's argument against Noonan is not as significant as he claims. Even if at conception the embryo has a probability of only 25 to 30 percent of developing further into a baby, and become a feeling, thinking, rational human being, the shift in probability at conception is still most impressive, if we keep in mind that a spermatozoon has only an approximate chance of at most one in 200-million. Even if, to return to Noonan's example, the

probability of my random shot into the bushes has a one in four (25 percent) probability of killing a person, I would most certainly be held accountable for my action, while at one in 200-million I would almost certainly be acquitted from blame.

Noonan neglects considering the female contribution in fertilisation. In contrast to the 200-million to 500-million sperms released by the male in every ejaculation, the woman usually only releases one egg cell per month. At birth the female has approximately 400000 rudimentary egg cells, many of which will, however, atrophy before she reaches puberty. At the beginning of puberty she has only about 150 000 egg cells left, and only about 400 will reach maturity between puberty and the menopause. During ovulation, which takes place about every 28 days in reproductive females, an egg cell is released when a mature follicle (a sac surrounding the egg cell) bursts (Louw 1991: 101). It thus becomes evident that the female egg cell does not compete with others for fertilisation, since usually only one is released per month, and even if more than one is released, they do not compete with each other, and may both be fertilised, in which case nonidentical twins may develop. If we adopt Noonan's line of reasoning about potentiality, then the female egg cell must have a significantly higher moral value than a male spermatozoon, since the female egg cell has a much higher probability of developing further. In the case of the female egg cell, no significant shift in probability occurs at conception. Before conception only one egg cell is in the running, just as after conception. The implications of Noonan's argument lead us to conclude that the destruction of a female egg cell is morally more serious than destroying a male sperm cell. Why should there be a difference? Neither has the capacity of developing further if not involved in a highly significant event - the fusing with an opposite sex cell.

Peter Singer (1993: 162) illustrates one further difficulty in Noonan's reasoning. Medical science has developed a means of overcoming male infertility resulting from a low sperm count. The female egg cell is removed from the woman's body. A single

spermatozoon is then micro-injected under the outer layer of the egg. If we now compare the probability of the embryo becoming a person, together with the egg and single spermatozoon, picked up by the needle, about to be injected into the egg becoming a person, it is not possible to make any sharp distinction between the two. Once the scientist picks up a single spermatozoon, its probability of developing further is already significantly increased. Must we therefore conclude that it would be wrong to stop the procedure once the spermatozoon has been picked up? I am sure that almost no one will answer in the affirmative.

3.4 A DEFENCE OF POTENTIAL WITH AN ADDED DISTINCTION

Although the foregoing has shown that arguing from probability, as Noonan has done, poses difficulties not easily overcome, I shall claim that the argument based on probability has significance if it is not used as a comparison between pre-conception and post-conception. In doing so it is necessary to make added distinctions.

Edward A. Langerak⁶ (1979: 287) formulates the potentiality principle as follows:

"If, in the normal course of its development, a being will acquire a person's claim to life, then by virtue of that fact, it already has some claim to life."

To clarify this principle it is necessary to distinguish between "possible persons," "potential persons," "beings having the capacity for personhood," and "actual persons."

An "actual person" is a being fulfilling a necessary condition, or set of necessary conditions for personhood, whatever that may be. Thereby, his claim to personhood, his

serious right to life, is as strong as that of normal adult persons.

A being has a "capacity for personhood," if it presently does not exhibit that capacity, but has previously undergone sufficient development to be capable of presently exhibiting such a capacity. A temporarily unconscious person, or a person asleep can be described as having a "capacity for personhood."

A "potential person" is a being that is not yet an actual person, but will become one in the normal course of its development. Infants, foetuses, and a fertilised egg already implanted in the mother's womb can be labelled "potential persons," because if their development proceeds normally, they will become actual persons. By "normal development" is here meant the teleological function, not the statistical probability. If the natural function of "a" is to become "A", then it is highly probable that without interference "a" will become "A".

A "possible person" is a being that could, if certain causally possible conditions are realised, become an actual person. Female egg cells and male spermatozoa are possible persons. They will only be able to develop towards, and ultimately become an actual person, if a specific possible causal event is realised, namely their fusion at conception and implantation.

It is important to distinguish between the class of potential and possible persons on the one hand, and future persons on the other. "Future persons" are persons that do not now exist, but will be actual persons in the future. Possible and potential persons need not necessarily become actual persons (in fact many do not).

The distinction between a "possible person" and a "potential person" is of utmost importance, since the potentiality principle asserts that the latter, but not the former, has a claim to life. The principle is consistent in granting full personhood to beings with a capacity for personhood. Potential persons and actual persons are not on a

par. People asleep are not endangered by the category of "potential persons," since they are not potential persons but have the capacity for personhood.

The potentiality principle asserts that a potential person has a claim to life, even if it is one weaker than that of an actual person. The unique status of the potential person has to do with its predetermined tendency, its inherent thrust. A potential person is more than just a set of blueprints, it is an organism, a being that will itself develop into an actual person, towards which it is already developing. Its predetermined tendency does, however, not already give it the rights it will have in the future, rights it will have as an actual person. In addition, I agree with Langerak (1979: 289), maintaining that those agreeing with the potentiality principle assert some derivative relationship between the rights⁷ a being will have in the normal course of its development, and those that it has in the present. As actual persons we are oriented to our past and our future by our self-consciousness so that we may be described as being our past as well as our present. From an internal perspective, a law student may now already see himself as the lawyer he strives to become, not just as a law student. This is also true from an external point of view, a point of view that extends to humans that are not yet actual persons. When we see a young child, for instance, we may see within that child something of the adult it will, in the normal course of its development, become, as well as something of the infant or baby that it once was (Langerak 1979: 289). It may be assumed that in this temporal perception an explanation is to be found for the respect we feel towards former persons, for example, the respect we feel towards the dead, as well as former presidents, and the like. The respect we have for former persons, presidents, and the like, is not equal to the respect we have for actual persons and presidents, but is proportional to, and derivative from the latter. Similarly, perceiving humans in a temporal context accounts for the respect many feel humans deserve by virtue of their potential. A potential

president, for instance, is not merely a possible president. He or she has already won the election, but has not yet been sworn in on some arbitrarily determined date. He or she is not yet Commander in Chief of the armed forces, but in the course of normal developments "will," not "could," be. The potential president receives much of the respect shown the actual president, and this respect is derivative from the high office he will attain in the normal course of developments. Now, those who argue that presidents are not to be respected merely by virtue of their high office, should agree that some respect granted persons derives from their "office of personhood," apart from their achievements. Langerak points out that traditionally the respect involving a claim to life derives from what persons are, rather than what they achieve or fail to achieve. Therefore, perceiving humans in a temporal context should elicit some respect for former and potential persons, respect that is derivative from and proportional to, though not identical with, the respect elicited by the actual persons they were or will become (Langerak 1979: 289).

Many may endorse this argument, feeling that it accounts for our repulsion from keeping former persons alive to use their organs when they are needed. Whatever we may assert about former persons, one thing is absolutely clear, they were once actual persons. Potential persons, however, are not yet actual persons, and there is no guarantee that they will become actual persons. Even when we do perceive persons in a temporal context, the contingency of the "not yet" makes the class of potential persons asymmetrical with the class of former persons. This realisation necessitates our questioning what the moral significance of the predetermined tendency of potential persons is. Although potential persons are not guaranteed personhood, they are distinguished from possible persons by a dramatic shift in probability. As Langerak points out (1979: 289), this difference is similar to that between a possible president and a potential president. In a democracy, everyone is a possible president, but only few of us ever become potential presidents.

"The potentiality principle asks us to respect the potential person by virtue not of what it could be, but what it will be in the normal course of its development" (Langerak 1979: 289).

Let us for the moment consider people in an irreversible coma. Most people will agree that the irreversibility of the coma is seldom, if ever, absolutely certain. We generally believe, however, that it is morally irresponsible to allow the rare, miraculous recovery to prevent one from acting on the best medical prognosis when no reasonable hope of recovery is present. To shut off a respirator when there is an even chance, or even a chance of only one in fifty of recovery, may be seen as morally wrong, but not when the probability of recovery tends to zero. Judgements of high probability are often the only kind we have in an uncertain world. Therefore, dramatic shifts in probability are morally significant. In this regard, Noonan is correct, although he is incorrect in arguing that an abortion has a high probability of killing a person. As should be clear from the argument, it rather kills a human being that has a high probability of becoming an actual person, but is still a potential person. I therefore maintain that the high probability of potential persons becoming actual persons is morally significant for those of us perceiving humans in a temporal context.

With the potentiality principle it has been argued that the unborn human being, by virtue of its potentiality to become a person in the normal course of developments, deserves respect and has a serious right to life. It is important to mention that the genetic code gives potential persons their value. The genetic code will, in the normal course of developments, bring forth an actual person. It is not the genetic code itself that is of value, but the potential with which it endows the being. Human cancer cells, for instance, also have the human genetic code, yet we do not believe it immoral to destroy such cells

potential person, is irresponsible if no significant reasons are available. The significance between the implanted and the not yet implanted zygote is that the former has bonded with the mother, and thereby established a relationship with the mother, a relationship that enables the developing organism to unfold its potential.

3.5 SUMMARY AND PERSPECTIVE

This chapter began by examining the arguments expounded by John T. Noonan in an effort to establish a foetus's serious right to life based on its potential. His reasons for rejecting the criteria of viability, experience, the sentiments of adults, and communication were elucidated. In favour of these criteria, Noonan attempted to defend the criterion of potential. The core of his argument was found to depend on the dramatic shift in potential of a spermatozoon at conception. It was shown, however, that Noonan's claim is not as significant as he claimed it to be, because he failed to take the female egg cell into account. The female egg cell does not experience such a shift in potential. Halting the procedure of micro-injecting a sperm into a female egg cell was also shown not to be immoral, although the sperm cell now already had experienced a dramatic shift in potential, if seen from Noonan's perspective.

The argument put forward by opponents of abortion, claiming that the abortion of a human foetus is to deprive the world of a unique, rational being, also cannot be upheld. I argued that genetic duplicity, as in mono-zygotic twins or cloned individuals, would not diminish the value of an individual. In addition, removing the genetic code from a foetus to be cloned later also does not satisfy the proponents of the above argument.

Despite numerous criticisms directed at the initial attempts to defend potential, I argued that the criterion of

developed a dependency relationship with the mother (Louw 1991: 119).

Until the developing being has established this relationship of dependence with its mother, it is not morally wrong to employ measures that will avoid an implantation. Even contraceptives that act as abortive agents in the strict sense, such as the morning after pill or the intrauterine device (IUD), are morally acceptable. Why are these acceptable? Why is it permissible to prevent the implantation of a fertilised ovum? As is by now clear, the potentiality principle demands that a human being be respected and granted a serious right to life when it becomes a potential person. But when does a being become a potential person? When does the genetic code become activated towards developing into a person? As has already been mentioned, fertilisation alone is not sufficient for the ovum to actualise its potential; implantation is necessary. It is well-known that cell division begins soon after sperm and ovum fuse. Scientific evidence suggests, however, that prior to implantation the cells of the zygote are not activated towards becoming a person. Every higher animal starts life as a fertilised ovum, the process of fertilisation and implantation initiates the process by which a new individual develops (Callahan 1970: 380).

Abortion before implantation, before development is properly activated, as is the case with a morning-after pill, or by using an intrauterine device (IUD), would therefore not necessarily be the destruction of a potential person, but only a possible person, and can therefore be seen as morally unobjectionable.

Although it is likely that less than half of all fertilised egg cells develop into babies, the implanted zygote already deserves respect and has a serious right to life. This statistical bias in favour of potential life is not irrational. As has been previously mentioned, turning off the respirator of a comatose patient that had an even chance, or even only a one in fifty chance of recovering, is morally irresponsible and indefensible. Similarly, aborting the implanted zygote, a

because their potential is not directed towards a positive result. Therefore, it cannot be argued that a fertilised ovum has a special value merely because it possesses the human genetic code. Such a code alone is not sufficient. This point can be illustrated with another example. Suppose an ovum is externally fertilised in a laboratory, as is now routinely done, before implanting the fertilised egg back into the woman's body. If the scientist were accidentally to drop one such fertilised ovum, would we accuse him of having accidentally destroyed a potential person? I believe not. Fertilisation is a necessary condition for potential personhood, but is not a sufficient condition. In order for the fertilised ovum to be able to develop further in a systematic manner, implantation is imperative.

But now, it needs to be asked, how strong is a foetus's serious right to life? I presume that most people will agree (even those arguing for the permissibility of abortion at any stage of pregnancy) that late-term abortions are more difficult to justify than early-term ones. Although the potentiality principle accounts for the unborn human deserving respect and having rights, it is not able to account for the difference perceived between a young foetus and an almost mature one. The criterion of sentience, explaining the difference, will be discussed in a later chapter.

Approximately 24 to 36 hours after a spermatozoon and an egg cell unite, cell division begins. While cell division takes place, the cell mass travels along the Fallopian tube and reaches the uterus after three to four days. After the zygote has reached the uterus it floats freely for two to three days in the fluid of the uterine cavity before attaching itself to the wall of the uterus - a process known as implantation, which lasts for about 24 hours. It has now established a connection to the mother, enabling it to be nourished by her body and thereby develop further. The new individual is no longer an independent and free-floating organism, but has instead

potential can successfully be defended. The potentiality principle was introduced, specifying that a being has a potential to develop into an X, if, in the course of its normal development, it will become an X. In virtue of its potential, it derives its value from the value it will have as an actual X. The distinctions between "possible persons," "potential persons," "beings having the capacity for personhood," and "actual persons" was made. The potentiality principle asserts that a foetus has a serious right to life, even if it is weaker than the right of an actual person.

Having established that foetuses possess a serious right to life in virtue of their potential, in virtue of their being potential persons, the question was necessarily asked, at what stage they become potential persons, at what point their genetic potential becomes actualised. Scientific findings indicated that only after implantation, not immediately after conception, the genetic plan begins to unfold.⁸ Therefore, a fertilised egg prior to implantation cannot yet be considered as a potential person, but only as a possible one, and hence the use of devices or pills that prohibit implantation of a fertilised egg are morally unobjectionable. Although potential is a suitable criterion for conferring a serious right to life upon a potential person, this criterion is not capable of adequately explaining why we believe a late-term abortion, for instance, to be morally more serious than an early-term one. In Chapter 4 I shall argue that sentience is the criterion explaining this belief, and is the suitable criterion for comparing beings of the same species at different levels of development.

Having established a foetus's serious right to life, the task of arguing for the permissibility of abortions under specific conditions now lies ahead. For instance, I claim that it is morally acceptable to perform an abortion when the pregnancy is the result of rape, or when the pregnancy seriously threatens the long-term well-being of the mother. I shall defend these claims in the next chapter.

CHAPTER 4

DEFENDING ABORTIONS OF HOSTILE PREGNANCIES

4.1 INTRODUCTION

Having established the foetus's serious right to life in virtue of its potential, I am now faced with defending the position that abortion is sometimes justified. In this chapter I shall argue that an abortion is morally justifiable when the pregnancy threatens the life or long-term health of the pregnant woman, or when the pregnancy is the result of rape.

I shall first turn to the arguments of Jane English (1975) and Judith Jarvis Thomson (1971a), both arguing for the permissibility of abortion under certain circumstances. English employs the self-defence model to abortion, while Thomson argues from numerous analogies, especially a now famous violinist analogy.

The main focus of this chapter will be pregnancies I regard as hostile. By "hostile" I mean pregnancies that are the result of rape, or pregnancies that threaten the life or long-term health of the mother. The former are hostile because they are an intrusion, i.e. the pregnancy was in no way consented to by the woman. The latter are hostile because even if the woman willed the pregnancy, she willed a normal pregnancy, and not a threatening one.

In 4.2 and 4.3 I introduce the approaches of Jane English and Judith Jarvis Thomson respectively. These approaches are then applied to different situations. In 4.4 the extreme anti-abortion view is discussed. This is the view that abortion is never morally justifiable, not even to save the life of the pregnant woman. In 4.5 Thomson's and English's views regarding the performing of an abortion on behalf of a third party are discussed. The issue is important, because if we hold that a woman is entitled to an abortion, it also needs to be clear whether someone may perform it for her. It will become evident that intervention on behalf of a third party is fully justified, and often even required. The focus is then shifted to subtler cases in which the life of the pregnant woman is not endangered, but only her long-term health may be affected. Thomson also asks, what is involved in having a right to life. Does the right to life entail being given the bare minimum to survive? What if one has no right to be given what is needed to survive? This is examined in 4.7. Following this, in 4.8, Thomson asks whether the foetus has a right to use the mother's body. She argues that it does not. In 4.9 I make clear that Thomson argues that there are conceivable cases in which it would be indecent to abort a foetus, but it would never violate its rights. Section 4.10 deals with criticism of the foregoing sections. I do agree with the foregoing, however, that an abortion is justifiable when the life or long-term health of the pregnant woman is endangered, or when the pregnancy is the result of rape. At the end of her argument, Thomson reminds us that she only assumed the personhood status of foetuses for the

purpose of her investigation, but that she regards foetuses as nonpersons, and hence their abortion is never morally problematic. In 4.11 it is therefore necessary to examine the validity of her assumption, and I shall argue that nonpersons have rights too, and sometimes even a right to life.

4.2 ENGLISH AND THE SELF-DEFENCE MODEL

What makes a person? Jane English¹ (1975: 249) lists numerous factors constituting a person. To be a person is to be descended of humans, to have a specific genetic makeup typical of humans, human limbs and bodily organs, being capable of locomotion, breathing, eating, sleeping, i.e. biological factors. Sentience, consciousness, having the concept of a self, having interests and desires, the ability to learn a language, use tools, to joke, to be angry, to love and to enjoy, i.e. psychological factors. There are factors of rationality, namely to reason and draw conclusions, the ability to learn from past experiences, to be able to generalise, and to act prudentially. Social factors are identifiable, such as the ability to work in groups, to adapt to the needs and demands of others, to recognise the interests of others, to see oneself as one among many, and the ability to give and evoke sympathy, encouragement, and love from others. Being subject to the law and being protected by it, having the ability to claim legal rights and enter contracts, having a name and citizenship are examples of legal factors. We cannot identify a specific core of factors that needs to be present in order for a being to qualify as a person. Persons generally exhibit rationality, but a being that fails to do so may still be considered a person. On the other hand, a being exhibiting most of the factors named might still not be recognised as a person, as an advanced robot might. This is not to assert that no necessary or sufficient conditions can be given. Being alive is certainly a necessary

condition for being a person, but not a sufficient one. Being a supreme court judge is a sufficient condition, but not a necessary one. English (1975: 250) maintains that the foetus lies in a position in which it is not as simple to assert or deny personhood.

What would the assertion of personhood of a foetus entail? English (1975: 251) explains that if the foetus is held to be an innocent person, and killing it is always wrong, then we need to elaborate this assertion with qualifications in order to give it credence. To attain such a conclusion, the proposition "killing of an innocent person is always wrong" would need to be asserted. But this is not the case. Killing in self-defence is justified. English elaborates her point by asking us to imagine a mad scientist who hypnotises people into hiding in bushes and attacking passers by with knives. If killing the attacker is the only way of avoiding being killed, or avoiding serious injury, then killing in self-defence is fully justified. The fact that the attacker is not driven to his actions by his own free volitions seems to make no difference in this case.

4.3 THOMSON'S DEFENCE OF ABORTION

In her well-known article, "A Defence of Abortion" (1971a), Judith Jarvis Thomson,² for the purpose of her investigation, accepts the conservative claim that a foetus is a person. In doing so she wishes to show that even if the foetus is a person, it does not follow that abortion is always impermissible. She points out that most antiabortion arguments rely on the premise that the foetus is a person from the moment of conception. This, she believes, is a premise not well argued for. We are asked to notice, for instance, that the development from conception through birth into childhood is a continuous process. To draw a line at any point on this continuum is arbitrary,

having no sufficient reason to do so. The conclusion then drawn is that the foetus is a person from the moment of conception. Thomson rejects this conclusion, pointing out that the development of an oak tree is also continuous, but acorns are not oaks. She concedes, however, that it is likely to be very difficult, if not impossible, to draw a reliable cut-off point. Although she does not agree with the initial premise, she assumes its soundness for the purpose of her investigation. She therefore assumes that foetuses are persons, asking, however, how we get from this premise to the conclusion that abortion is morally impermissible (Thomson 1971b: 188-189). If we again return to the standard argument against abortion:

Premise 1: It is wrong to kill an innocent person.

Premise 2: The foetus is an innocent person.

Conclusion: Therefore, it is wrong to abort a foetus.

She challenges the conclusion of this argument by challenging the validity of the first premise.

Fundamental to Thomson's argument are two assumptions, namely that every person has a right to life, - therefore, if foetuses are persons, then they too have a right to life -, and that every person has the right to determine what happens in and to her body (Thomson 1971b: 189).

Thomson employs a well-known analogy for the purposes of her argument. You are asked to imagine that you wake up one morning and find yourself in bed connected to a famous violinist, afflicted with a serious kidney ailment. The medical records show that you alone have the right blood-type to help. A society of music lovers organised your kidnapping, and last night the violinist was connected to you. If the violinist is unplugged from you, he will certainly die. But, you are assured that in nine months he will have recovered from his ailment and can then safely be unplugged. Are you morally required to accept the situation? Of course you have a right to decide what happens in and to your body. But the violinist also has a right

to life. If a person's right to life always exceeds another person's right to determine what happens to his body, then you do not morally have the right to unplug yourself. I am sure that you too will agree with Thomson that we would feel highly uncomfortable with such a decision.

Granted, in this case you were kidnapped. Should we therefore by analogy permit abortions resulting from rape? Thomson states that opponents of abortion may here say that all persons have a right to life, but those coming into existence as a result of rape have less, if this argument is accepted. But why should your right to life depend on how you came into existence? Moreover, opponents of abortion do not make this distinction. Some opponents of abortion would not even make an exception if the continuation of the pregnancy would shorten the mother's life. This position is now rare, but Thomson deems it necessary to examine it (Thomson 1971b: 189-190).

4.4 THE EXTREME ANTIABORTION VIEW

Thomson asks us to imagine a pregnant woman with a serious cardiac condition who will die if she carries the baby to term. The foetus, being a person, has a right to life; but the mother, also being a person, also has such a right. Suppose again that you are hooked up to the violinist, and the director of the hospital says to you, your being connected to the violinist is a severe strain on your system, and that you will be dead within a month. Surely, it is not murder if you unplug yourself to save your life, even if the violinist has an equal right to life (Thomson 1971b: 190).

Turning to the self-defence model again, English asks, how severe an injury inflicted in self-defence may be, pointing out that it would clearly be unacceptable to shoot someone merely to avoid having one's clothes torn. This does not mean, however, that the force applied in defence may only equal the force used

by the attacker. She maintains that it is generally accepted that one may inflict an injury slightly, but not much greater than the one intended. "To fend off an attack whose outcome would be as serious as rape, a severe beating, or the loss of a finger, you may shoot. To avoid having your clothes torn, you may blacken an eye" (English 1975: 251). Moreover, the injury inflicted in self-defence should be the minimum necessary to deter the attacker. Even if you know that he intends to kill you, you are not justified in killing him if you could equally well save yourself by running away. The intended purpose of self-defence ought to be to avoid, not equalise harms. In the case of abortion, parallels may sometimes be discovered. The foetus may pose a threat to the woman's well-being, physical or psychological health, or life prospects, although it may itself be innocent. The magnitude of the threat posed by the foetus determines the nature and extent of the justifiable actions. If the threat is slight, then abortion is not justifiable according to self defence. If the threat is great, however, an abortion may be justifiable, even though the foetus is an innocent being. English argues that the woman has a right to be freed from the foetus, and not to demand the foetus's death. Unfortunately, in most cases, the two seem to be inextricably linked (English 1975: 251-252).

4.5 INTERVENTION ON BEHALF OF A THIRD PARTY

But does a third party also have a right, or even a duty, to intervene? Again, Thomson asks you to imagine that you are in a very small house with a rapidly growing child. There will not be room for both of you, and you are already forced against the wall, and will be crushed if you do not do something soon. Of course you have the right to kill the child in self-defence, but is a third party allowed to intervene on your behalf? The house is yours, and if you do not do anything, then you will die and

the child will break out free. Surely a bystander saying, he cannot intervene because he cannot save one life by killing another is not being impartial. If Jones needs a coat to save him from freezing, and Smith needs a coat too to save him from freezing, then Jones is entitled to the coat if it belongs to him. Allocating the coat by the flip of a coin, or leaving the two to struggle over it, is not to be impartial (Thomson 1971b: 191). Smith has a good reason for feeling quite indignant if I say to him, "Yes, it is your coat, but I cannot choose between you and Jones."

Thomson understands that we are sometimes not willing to intervene, even if doing so would be right. Our reason for refraining to act is explained by our right to refuse to intervene, even when doing so would be right. She argues, however, that we have a right to refuse to intervene, but we do not have a right to hinder others from intervening. In addition, people in authority, whose duty it is to intervene in the interests of justice, do not have a right to refuse (Thomson 1971b: 191).

English's self-defence model supports Thomson's position. Does a doctor have the right to choose between the life of the woman and the life of the foetus? Perhaps someone will contend that if you are a passer-by witnessing the struggle between the hypnotised attacker and an innocent victim, you do not have the right to kill either in defence of the other. Drawing parallels to abortion, it would mean that a doctor has no right to assist a woman in having an abortion. English maintains that the case of the third party is more complex. We generally feel inclined to intervene on behalf of the victim against the attacker, other things being equal. She holds that if the attacker is a close relative, however, one would probably intervene on behalf of the relative, even if he is the attacker. The doctor's involvement may be justified as an agent hired to do a job, which one is not capable of performing successfully by oneself. An analogy is a person who hires a bodyguard for protection against attackers.

Should the person be attacked, the bodyguard has the right, indeed the duty, to intervene.

Even most conservatives will consent to abortion if the life of the woman is endangered by the pregnancy, and the only way to save her would be to perform an abortion. This is the analogy that has heretofore been given with the self-defence model.

4.6 SUBTLER CASES

Not all attackers, however, intend to kill. Does the self-defence model have explanatory value for subtler cases too? By "subtler" I mean cases in which one's life is not endangered, but one's general well-being. Imagine you are a philosopher who has invested a great deal of time and effort to study and contribute to the subject of your choice. You are abducted by the hypnotised person who has no intention of harming you, but merely to take you back to the mad scientist, who wishes to experiment on you. These experiments would most likely bring about a mental block that will cause your forgetting all you have learned in the last ten years. In such a case, if killing the hypnotised person is the only way of avoiding this calamity, then doing so is perfectly justified. You would defend yourself against the possible loss of life-prospects. Pregnancies have similar consequences in some cases, for example, many unwanted teenage pregnancies have profound effects on the life-prospects of the pregnant woman.

WHAT IS ENTAILED IN HAVING A RIGHT TO LIFE?

Thomson also asks, what is entailed in having a right to life. Is having a right to life, the right to be given the bare minimum in order to live? Let us suppose that the bare minimum here is something one has no right to be given.

"If I am sick unto death, and the only thing that would save my life is the touch of Henry Fonder's cool hand on my fevered brow, then all the same, I have no right to be given the touch of Henry Fonder's cool hand on my fevered brow" (Thomson 1971b: 191-192).

Returning to the example with the violinist, the fact that he needs continuous use of your kidneys to stay alive does not confer on him the right to use your kidneys.

"He certainly has no right against you that you should give him continuous use of your kidneys. For nobody has any right to use your kidneys, unless you give him such a right. And nobody has the right against you that you shall give him this right" (Thomson 1971b: 192).

Others claim that the right to life does not entail being given anything, but only that everyone refrains from actions that would kill one. If this definition of rights is applied, then in the case of the violinist, many people must refrain from many things: shooting the violinist, strangling him, and unplugging him from you, to mention only a few. Granting him this right amounts to granting him the continuous use of your kidneys.

4.8 THE RIGHT TO USE THE MOTHER'S BODY

Thomson attempts to add clarity to the previous case with another approach. Basically, to deprive someone of something to which he has a right is to treat him unjustly. We are asked to imagine a boy and his brother who are given a box of chocolates for Christmas. If the older boy refuses to give his brother any of the chocolates, then he is unjust to him because the brother has been given a right to half of them. Unplugging yourself from the violinist, however, is not being unjust to him, since you gave him no right to use your kidneys. By unplugging yourself, however, you are killing him, and violinists, like all other persons, have a right to life. He has a right not to be killed, but by unplugging yourself you are killing him. But by doing so, you are not being unjust to him. From this then we may amend a person's right to life, saying that a person with a right to life has the right not to be killed unjustly. If you do not kill the violinist unjustly, then you do not violate his right to life. Once again turning to abortion, it is not enough to show that the foetus is a person, and to remind us that all persons have a right to life. We need also be shown that to kill the foetus is to violate its right to life, showing that abortion is unjust killing (Thomson 1971b: 192).

In the case of rape, we may safely assume that the woman has not given the unborn person a right to use her body. In which pregnancy, Thomson then asks, can it be clearly said that the woman has given the unborn person such a right. Thomson again requests us to imagine a woman voluntarily engaging in sexual intercourse, being fully aware that this may result in pregnancy, and then she does become pregnant. Surely in such a case she is at least partly responsible for the person's presence, even existence, within her. She did not invite it in. But, Thomson asks, doesn't her partial responsibility for its being there give it a right to the use of her body? Doing so would be depriving it of something to which it has a right, and

thereby doing it an injustice. Thomson then further asks, whether the mother has a right to kill it, even in self-defence, if she herself is responsible for calling it into existence (Thomson 1971b: 193).

Thomson points out that opponents of abortion have been preoccupied with establishing the independent existence of the foetus in order to argue for its right to life. They have failed to see the advantage in arguing for a dependence of the foetus on the mother, thereby arguing that she has a special responsibility for it. This responsibility gives it rights against her that are not possessed by any independent person, such as an ailing violinist who is a stranger to her. The argument would give the unborn person a right to the mother's body, only if the pregnancy is a result of a voluntary act, undertaken in full knowledge that a pregnancy might result. The argument in this form then would leave persons who come into existence as a result of rape with no right to life. Aborting them would not be depriving them of anything they have a right to, and therefore is not unjust killing (Thomson 1971b: 193).

Thomson employs more analogies for her argument. If a burglar climbs through an open window of a house, it would be absurd to claim that the burglar has a right to stay, he has been given a right to the use of the house because the person who opened the window is partially responsible for his presence there, having voluntarily done what enabled him to get in, knowing that there are burglars, and that burglars burgle. This claim would even be more absurd if bars had been fitted to the windows in order to keep out burglars, and a burglar got in because of a defect in the bars. It would be equally absurd if not a burglar got in, but an innocent person falls in (Thomson 1971b: 193).

Now again, Thomson asks us to imagine that people seeds drift about in the air like pollen. If you open your windows, one may drift in and take root in your carpets or upholstery. Because you do not want any children, you install the best mesh screens to your windows. Very rarely, however, as in this case,

one of the screens is defective and a seed drifts in and takes root. Does the person plant that now develops have a right to the use of your house? You knowingly kept upholstered carpets and furniture, and you knew that screens are sometimes defective. Your opening the window allowed the seed to drift in and take root. Someone may argue that you are responsible for its rooting, and that it now does have a right to your house. You could have lived without upholstered furniture and carpets, and you could have kept the windows shut. Applying this analogy to the abortion issue, Thomson maintains that this is on a par to arguing that a person could have avoided pregnancy due to rape by having a hysterectomy (Thomson 1971b: 193).

4.9 RIGHTS AND THEIR LIMITS

Thomson proceeds to illustrate that there are cases in which it would be morally indecent to detach a person from your body at the cost of his life. If the violinist would need to stay attached to your body for only one hour, and his being attached to you for that hour would have no adverse consequences towards your health, then you ought to let him use your kidneys for that hour, it would be morally indecent to refuse, even if you had been kidnapped. Thomson further adds that we should imagine that pregnancy lasts only for an hour, and a woman becomes pregnant as a result of rape. The one hour of pregnancy would have no adverse consequences towards her health. Surely, Thomson concludes, it would be indecent to terminate the pregnancy (Thomson 1971b: 194).

Terminating the pregnancy in such a case would be indecent, but not unjust. Again Thomson illustrates. If the box of chocolates had been given only to the older boy, and he was eating them alone, enviously watched by his younger brother, we may say that the older boy is indecent if he does not share with

his brother. He may be indecent, but he is not unjust (Thomson 1971b: 194).

Thomson claims that if a couple take no precautions against preventing a pregnancy, and the woman becomes pregnant, and they take the child home with them, then they have assumed responsibility for the child and have given it rights. If, however, a mother brings a child into the world, she is then in no way justified in wishing the life of the child to be terminated. The person who is detached from the violinist, for instance, once the violinist has recovered, also has no right to turn around and stab him. "You may detach yourself, even if this costs him his life. You have no right to be guaranteed his death by some other means, if unplugging yourself does not kill him" (Thomson 1971b: 195). Thomson therefore argues that a woman has the right to be separated from the foetus, but does not have the right to have it killed. Levin (1985: 121-126) points out that since foetuses can be kept alive at ever earlier stages of gestation, this argument entails that foetuses have an ever earlier right to life - if right to life is understood as being kept alive through medical technology.

In contrast to Tooley's³ theory, the self-defence model also brings to the fore a significant difference between abortion and infanticide, even if a human is held to be a person from conception. Tooley merely looks at the characteristics of the developing human, not at the relationship between it and its mother. If after birth the presence of the infant poses a serious threat to the woman, for example, to her psychological balance, or her overall life-prospects, then she is not justified in killing the infant, since she could remove herself from the threat, (run away from the attacker), by, for example, putting the baby up for adoption, or into foster care. A solution that does not involve the death of the infant is available, unlike prior to birth, when the foetus is still biologically dependent on the mother. English therefore sees birth as the crucial point, not because the infant suddenly acquires certain characteristics, but because the relationship

between the child and its mother changes - the child no longer being absolutely dependent on its mother (English 1975: 254). The self-defence model, therefore, can only justify abortion, not infanticide.

4.10 EVALUATION AND CRITICISM OF THE FOREGOING

Let us begin with the self-defence model. It manages to clarify a number of points (such as that it is permissible to kill an innocent person in self-defence, or that the intervention of a third party is appropriate), but it fails to give clear guidelines on abortion. We are requested by English to imagine that the attackers operate only at night. The danger can therefore be avoided by refusing to go out at night. A possible criticism is that if you do go out at night, you have no right to kill your attacker, since you chose to leave the house in spite of having prior knowledge of the danger. An analogy would be that the only justified and certain way to avoid pregnancy is to abstain from sexual intercourse. It may be argued, however, that you ought to take along some protection that would deter the attacker. If this defence fails, however, you are obliged to accept the resulting injury, regardless of its severity. This parallels the view that contraception is always acceptable, but abortion is always wrong, even if the contraception fails. A third objection may be that you are entitled to kill the attacker only if he intends killing, not just injuring you. This parallels the conservative view on abortion, namely, that abortion is only morally justifiable in cases where the pregnancy threatens the life of the mother. Finally, we have the view that killing the attacker is justified, even if only to avoid a slight inconvenience, and even if one knowingly walked down the street in which all the attacks were taking place without taking any protection or precaution. If the foetus is

held to be a person, then this analogy serves to justify the liberal position of abortion on demand (English 1975: 253).

English gives an example in which your abduction would seriously threaten your life-prospects. In such a case, I agree with her, killing the attacker would be justified, even if he is actually innocent. But is this analogous to an abortion? As should be clear from my arguments, the answer is in the negative. A woman engaging in sexual intercourse is not morally justified in having an abortion, even if her pregnancy would be a serious disruption in her life. Surely, the woman knew this before having sexual intercourse. If she nevertheless took the chance, believing the likelihood of becoming pregnant to be sufficiently small, because she practices contraception, for instance, then she is still morally responsible for the pregnancy, because it was a voluntary act. A person may take all precautions not to have an accident on the roads, but despite taking care of one's vehicle, having it serviced regularly, one may still have an accident for which one is responsible. If a person is thereby injured, the driver has a moral responsibility to care for the injured. In this regard, I cannot agree with English that an abortion is justified on the grounds that a pregnancy would seriously disrupt one's life prospects. This is not to say that I have no understanding of the reasons for an abortion that is performed in such a case. In some situations, such as when a girl is too young to have a child, or a pregnancy will seriously threaten a student's successful completion of her studies, there may well be significant reasons to abort a pregnancy, but by doing so, one should always keep in mind that a virtuous act is not being performed. One's original choice, engaging in sexual intercourse, got one into the difficulties in the first place, and dealing with the problem may often leave one in a situation described by psychologists as a "double avoidance conflict," i.e. whichever solution is chosen, one is faced with an undesirable state of affairs. If abortion should turn out to be the psychologically less undesirable of the possible choices,

then it would still not mean that abortion in such circumstances is the morally correct choice to make. In such cases, however, mitigating circumstances can certainly be identified, and should be taken into account.

Thomson's arguments have also received much criticism. For instance, Don Marquis (1989: 129-133) considers Thomson's assumption that fetuses have the same moral status as adult human beings. From this he claims that the presumption that any abortion is immoral is extremely strong. He wishes to defend the extreme conservative position, namely that fetuses enjoy the same moral status as adult humans. He argues that what makes killing adults wrong is that it deprives them of all the experiences, activities, projects, plans, and pleasures that would otherwise have constituted their future. Because abortion also deprives a normal foetus of a future like ours, the moral presumption against abortion is equally as strong as the presumption against killing adults.

Marquis's arguments, however, also pose two clear problems. Firstly, his argument seems to suggest that killing an older person is less wrong than killing a younger one, and that it may hardly be wrong to kill a person who only has a short time left to live, such as a few months. Secondly, he tries to distinguish abortion from contraception by claiming that only abortion deprives something of a future like ours. But it is not clear, why, if both abortion and contraception deprive an X of a future like ours, why only abortion is to be prohibited (Sterba 1997: 118).

Thomson argues from very imaginative hypothetical examples - being connected to a violinist for nine months, for example -, claiming that these are analogous to being pregnant. Is this really the case? Can we not contend that Thomson is guilty of using false analogies? To be connected to a strange violinist is not analogous to being pregnant. A pregnancy is a relationship between a mother and her child, perhaps potentially the most intimate relationship possible.

"Clearly, the violinist has a right to life; but Thomson thinks that we should agree, in this case, that your right to do as you please with your body outweighs the violinist's right to life. So one would not do the wrong thing, everything being considered, by unplugging you from the violinist if you so wished it.

One can agree with her conclusion in this case but still reject her suggestion that the case is analogous to that of a pregnant woman's decision to have an abortion.

A more fitting analogy is one in which you are partly responsible for an accident in which an innocent bystander is seriously hurt and will die unless you, with your rare blood type, agree to give him a series of blood transfusions over the next nine months and also agree to a special diet and program of exercise to insure that both you and the victim remain healthy. It seems to me that in this case you do owe the accident victim the use of your body and blood, because you are partly responsible for the fix that he is in, and only you can get him out of it. Is not this case morally similar to the normal case of pregnancy, and do we not think that a prospective mother should show moral concern for the continued existence of the conscious life, which she is partly responsible for creating? If this is an analogous case, it shows that far more weighty considerations than liberty and privacy must be adduced in order to sanction the abortion of an individual who has come to possess the right to life" (Carrier 1975: 398-399).

Carrier's example is more analogous than Thomson's. If one is partially responsible for an accident, one is under a moral obligation to take care of those harmed. If I am kidnapped and connected to a violinist, I am not partially responsible for being in that situation. If I use the roads, however, it is a different matter. I use the roads voluntarily, and if I injure someone, I am morally obliged to assist appropriately.

With respect to a pregnancy where the mother's life is endangered, Thomson argues, an abortion is morally justified because a prohibition in such an instance would be equivalent to one's being connected to a violinist, knowing that this connection will kill one, but nevertheless denying that one has the right to disconnect oneself, because the violinist also has a right to life. Baruch Brody,⁴ for one, argues that it is not morally permissible to kill another person in self-defence, if the pursuer does not intentionally harm the victim. An abortion, he argues, is not morally justified if the mother's life is endangered, because the foetus does not willingly attack the mother. According to Brody, a person A is only justified in killing an attacker B, if B intentionally attacks A. He identifies three conditions in a paradigm case of pursuit:

(1) The continued existence of B poses a threat to the life of A, a threat that can only be met by the taking of B's life (condition of danger).

(2) B is unjustly attempting to take A's life (condition of attempt).

(3) B is responsible for his attempt to take A's life (condition of guilt) (Brody 1975b: 199).

Brody maintains that at least the first two conditions must be satisfied. He believes that abortion is justified only if it is evident that if an abortion were not performed, mother and child would both die. Is Brody correct? Has he not perhaps oversimplified the matter?

Brody denies that one is justified in aborting a foetus to save the life of the mother because only the "condition of danger," neither the "condition of attempt" nor the "condition of guilt" is satisfied. What would it be like here for the "condition of attempt" to be satisfied? The foetus does not yet have an autonomous will, cannot will an action or state of affairs outside itself in any psychological sense. Psychologically speaking, the foetus can intend neither

something positive nor negative, and therefore an attempt cannot be identified in psychological terms. Behaviourally or biologically speaking, however, a foetus's development may be described in positive or negative terms - positive when its development proceeds normally and brings about no complications, and negative when its development is hostile towards its normal development, or to the well-being of its mother. If its development causes its mother's suffering, then biologically speaking, we may say that it is the cause of its mother's suffering. If removing the cause is the only way of eliminating the hostility, then doing so is surely morally justified, even if the foetus cannot have any psychological intent, either positive or negative, and an attempt cannot be described in psychological terms.

Thomson⁵ also provides a useful analogy to indicate that a condition of danger may be sufficient to justify one's killing of the innocent. She asks us to imagine that a violent aggressor nation has threatened us with death unless we allow ourselves to be enslaved by it. It has developed a monster missile launcher, which it will use on us unless we surrender. For technical reasons the missiles have to be triggered by a human hand, and the tunnels leading to the launcher had for technical reasons to be built very narrowly, enabling only small children to get through. Unfortunately, by bombing the missile launcher, we kill the children. Some people may say that we may not bomb the missile launcher, because by doing so we kill the innocent children. Others will say, as does Thomson, that we may bomb the launcher, since it was the violent aggressor nation that imposed the risk on the children. Thomson maintains that the most likely response is, "those children are not really innocent in the sense intended in the principle "Direct killing of the innocent is always impermissible"" (Thomson 1973: 154). Here "innocent" does not mean "free of guilt," but has a technical sense, such as "not currently doing harm," or "about to do harm in the immediate future," perhaps "not part of the threat directed at others." The children on the launching team

are free of guilt, meaning no one any harm, but they are part of the threat to us, because they are the ones who will launch the missiles against us (Thomson 1973: 154).

To return to Thomson's violinist example, suppose you too were a member of the society of music-lovers. Your violinist, a friend and admired musician, develops this severe kidney ailment. You are not kidnapped, but volunteer being connected after no other suitable person could be found. Would you volunteer without stipulating any condition under which you were to be permitted to be disconnected? Suppose that the responsible physicians inform you prior to your consenting that if you are connected, a slight chance of complications arising will exist that may endanger your life, or severely threaten to compromise your long-term health. Would you still agree unconditionally? Would not almost all persons agree to being connected only if they have a right to be disconnected, should such threatening complications arise? I believe so. Even if one has voluntarily agreed to being connected to the violinist, one does so with the presumption that the procedure will occur normally, i.e. the procedure will not encompass adverse consequences for one's health. In effect, one is making a contract with the violinist, if one voluntarily concedes to being connected to him, a contract stipulating that a "normal" course of developments is present throughout the duration of the procedure.

As argued in the previous chapter, by voluntarily engaging in sexual intercourse, a couple either explicitly or implicitly consent to procreation, consent to becoming parents. They moreover consent, however, to a normal pregnancy. A normal pregnancy commences once the fertilised egg implants in the uterus. A pregnancy following a "normal course of developments" is one in which the genetic code steers the development of the zygote from being a potential person towards becoming an actual person.⁶ If the development of the potential person becomes hostile towards the mother, thereby endangering her life, or threatening to seriously compromise her long-term health, the mother is fully justified in terminating the pregnancy, since

the pregnancy no longer proceeds along a "normal course of developments," no longer proceeds according to the conditions under which the woman consented to becoming pregnant. Surely it must be agreed that no woman would willingly consent to a pregnancy, if prior to her becoming pregnant she already has absolute certainty that the pregnancy will endanger her life, or seriously harm her long-term health. Of course the question may be posed, how far from normal a pregnancy must be in order to justify an abortion. If the mother's life is threatened, it is clearly no longer normal. A case in which her long-term health is threatened is more difficult to decide, but a general guide might be, if the pregnancy would bring about a serious medical condition, such as the loss of her kidney functions, from which a recovery is not expected, based on scientific judgement, then that is also clearly abnormal. If the pregnancy only brings about a temporary depression, an abortion is not justified, since the woman is expected to recover from this condition within a not too lengthy duration.

Thomson claims that if the woman's life is not at stake, the foetus still has no right to use her body. Even if one's right to life entails being given a bare minimum, one does not have a right to this minimum, if the satisfying of one's right infringes on the rights of another. Again she uses an imaginative example. If you are sick in bed, and the only thing that will save you is the touch of a specific film star, then you do not by virtue of this fact have a right to be touched by him. Again, I must accuse Thomson of employing a false analogy. As I have already stated, by voluntarily engaging in sexual intercourse, a couple is explicitly or implicitly consenting to parenthood, the woman consents to pregnancy, and they do so even if they practice contraception. Every informed adult knows that contraception does still very occasionally fail, and if such failure should occur, then under normal circumstances they are morally obliged to accept responsibility for the pregnancy and the developing foetus.

Thomson is correct in arguing that it is not sufficient to show that the foetus has a right to life, but that it needs to be shown that killing it would be unjust killing. Again, an analogy is employed. The elder brother is not being unjust if he does not share his chocolates with his younger brother, if they were given only to the elder one. He may be unkind, spiteful, or something of the sort, but he is not unjust. The younger brother has no "right" to the chocolates. In the case of the violinist, too, where you were kidnapped, you are not being unjust, if you detach yourself, even if this does bring about certain death for him. The violinist does not have a right to be provided with the bare minimum required for his survival, if this would be an infringement on your rights, and you have not consented to this being done in this case. Thomson argues, however, that an unwanted pregnancy is an analogous case. If a woman engages in sexual intercourse, and carefully practices contraception, then, Thomson believes, the woman has not given the foetus a right to use her body. As should already be expected from the foregoing, I differ from Thomson in this regard. By practising contraception, every informed person knows that she is not totally eliminating the possibility of becoming pregnant. The possibility still exists, even if it is already very slight. A couple is always morally required to take responsibility for its actions. If they willingly engage in sexual intercourse, they are morally required to accept the responsibility of procreation, if contraception should fail. By accidental conception, a couple has given implicit consent to procreation, by virtue of their sexual intercourse. The reader will recall that I have argued that a couple gives implicit consent to a pregnancy when they engage in sexual intercourse. Unlike Thomson, therefore, I argue that an unplanned pregnancy is still the moral responsibility of the couple. I here wish to stress "of the couple," since most articles on abortion focus only on the role of the woman. Her partner is equally responsible, it is equally his responsibility, whether they practice contraception or not, and in the case of an unplanned

pregnancy, he is equally morally obliged to support his partner, and take responsibility for her pregnancy.

Both Thomson and English fail to distinguish between possible, potential, and actual persons. As I established in the previous chapter, the foetus is a potential person, giving it a right to life, in virtue of its potential. I argued that an abortion is not justifiable, under normal circumstances, once implantation has taken place. Subsequent to implantation, the genetic code becomes activated towards developing into a new person. If, however, the pregnancy is not the result of voluntary sexual intercourse (if it is as a result of rape), then the foetus has not been given permission to use the woman's body (it has not been invited in). It has a right to life, but this right cannot override the right of the woman to determine whether or not to permit a pregnancy to go ahead. The abortion of such a being is then also not the termination of a person's life, but only of a potential person's. In this regard, Thomson clearly understands the issue. Her analogy of a burglar climbing through an open window aptly serves the purpose of pointing out that an intruder has no right to be there. If the person is not a burglar, but someone who accidentally falls in, Thomson points out, the same conclusion holds, he still has no right to use the house. Anti-abortion advocates, however, such as Brody, argue that although the pregnancy came about through a terrible crime, one has no right to abort the foetus because it is not responsible for the crime, it is not the cause of the misery. Let us return to the house described by Thomson. Imagine that a burglar does not climb in, nor does an innocent person accidentally fall in, but someone (a homeless person) is thrown in by another. Does he now have a right to stay in your house? He is not responsible for being there. Surely, you will not give him a right to stay? The important point here is, it makes no difference to the intruder's rights, whether he is or is not responsible for his intrusion, i.e. in either case he has no right to be there. He has a right to be there only if he has been invited in.

Regarding abortion when the pregnancy poses a threat to the woman's life or long-term health, I am also in agreement with Thomson. By voluntarily engaging in sexual intercourse, the woman explicitly or implicitly consents taking responsibility for a normal pregnancy. It is important to stress "normal pregnancy." A foetus that becomes hostile towards the mother, threatening her life or long-term health, may be expelled, even if it was initially invited in. When inviting someone into your house, you expect him to behave in a fairly civilised manner. As long as he does so, you may grant him the right to stay. If, however, he becomes hostile to you, you may retract his right to stay and throw him out. In such a case the use of the house does not occur according to the conditions explicitly or implicitly stated. Similarly, a hostile pregnancy does not follow a "normal course of developments," does not occur according to the conditions one explicitly or implicitly consented to.

It is necessary to distinguish between the taking of X's life, and the saving of X's life. We generally have a duty not to do the former, and a duty to do the latter. The latter duty is usually perceived as a much weaker duty than the former one. I may, for instance, be relieved from the duty of saving X's life, if my saving X has serious disruptive consequences for my life. At such a cost, it may be "decent" (to use the term Thomson employed) to save X's life, but I have no duty to do that. This is because X has no right to be saved by me.

Thomson's argument runs as follows:

(1) Let us assume that the foetus's right to life includes the right not to be killed by the woman carrying it.

(2) But to refrain from killing it is to allow its continued use of the woman's body.

(3) Our first assumption entails that the foetus's right to life includes its right to the continued use of the woman's body.

(4) But we all grant that the foetus's right does not include the continued right to the use of the woman's body.

(5) Therefore, the foetus's right to life cannot include the right not to be killed by the woman in question.

Thomson has failed to distinguish between the duty not to kill and the duty to save a life. Point 4 is correct if we see it in terms of the duty to save someone from dying, but not in terms of the duty not to kill someone. In the example of the violinist, point 4 has relevance, i.e. we do not have the duty to save his life. In the case of abortion, however, it is a different matter. The mother has the duty not to kill the child if she has implicitly given it a right to life by voluntarily engaging in sexual intercourse, and therefore point 4 is invalid in the case of abortion. If a woman becomes pregnant through voluntary sexual intercourse, and the pregnancy proceeds normally, i.e. does not threaten her life or long-term health, she has a moral obligation to continue with the pregnancy.

Thomson maintains that a couple is only responsible for a resulting pregnancy if they engaged in sexual intercourse without taking any precautions (such as using contraceptions). She also maintains that only if they take the child home with them do they accept responsibility for it and give it rights.

As was already contended, voluntary sexual intercourse is at least an implicit willingness to accept responsibility for an unplanned pregnancy. In the case of rape, where abortion is morally justifiable, Thomson is correct in arguing that the mother has no right to be assured of the foetus's death. If the foetus should survive prematurely, she has no right to kill it, or demand its death. The kidnapped person, who detaches herself from the violinist, also has no right to demand the violinist's death, if he were miraculously to survive the premature detachment.

It is important to point out again that Thomson fails to make an important distinction, namely between taking of X's

life, and the saving of X's life. We generally have a duty not to do the former, and a duty to do the latter. The latter duty is usually perceived as a much weaker duty than the former one (Gensler 1986: 98).

Perhaps the reader might wish to object (as Thomson almost certainly would), how one can defend the position that by voluntarily engaging in sexual intercourse with contraception, one is still responsible for an unwanted pregnancy. Thomson argues:

Premise 1: One who has not voluntarily assumed any special obligation towards another person has no obligation to do anything requiring great personal cost to preserve the life of the other.

Premise 2: Often a pregnant woman has assumed no special obligation towards the foetus, and to preserve its life by continuing to bear the unborn child would require great personal cost.

Conclusion: Therefore, a pregnant woman often has no obligation to continue to bear the unborn child.

The first premise seems *prima facie* to be acceptable; normally you do not have an obligation to save a stranger. If you risk your life in doing so, you do more than duty obliges you to do. It is different, however, if you have assumed an obligation. If you are a volunteer lifeguard, you have an obligation to save a drowning stranger, even at the risk of losing your life.

Thomson believes that a woman getting pregnant is voluntarily accepting an obligation towards the child. However, if the pregnancy is not voluntary, such as through contraceptive failure or rape, then the woman does not accept an obligation towards the foetus. If a continuation of the pregnancy would require great personal cost, then the woman has no obligation to continue with the pregnancy, and is entitled to an abortion. If she continues with the pregnancy, despite great personal cost, then she is doing something beyond what duty requires, something

heroic. Thomson's first premise is, however, not sound. A motorist involved in an accident is under an obligation to help the injured, even though he did not voluntarily cause the accident. The fact that he voluntarily used the roads puts him under an obligation to help anyone he injures. Not all special obligations towards others are voluntarily assumed (Gensler 1986: 98). Similarly, a couple voluntarily engaging in sexual intercourse is obliged to accept a pregnancy, even if the pregnancy was unplanned or unintended.

4.11 THE RIGHTS OF NONPERSONS

At the end of her article, Thomson once again reminds us that she has only assumed the personhood status of foetuses from the moment of conception for the purpose of her investigation. She believes that a very early abortion is not the killing of a person, and therefore is not affected by anything she has argued. For Thomson, therefore, abortion in the early stages of pregnancy is always morally acceptable, since it is not the killing of a person. Let us assume for the moment that Thomson is correct. Let us assume that foetuses are not persons, nor potential persons (as I maintain). Does it then unquestioningly follow that an abortion is, by virtue of this fact, always morally unobjectionable? Do nonpersons never have a right to life? Is it never morally objectionable to kill nonpersons?

Jane English (1975: 253-254) answers with an emphatic "no." Nonpersons do receive attention in our moral code, although their rights are not as extensive as those of persons. Nonpersons do not have moral responsibilities, and their interests may be overridden by the interests of persons, but one is not morally justified in treating them any way at all. To torture chimpanzees for fun, or the killing of dogs without any significant reason is wrong. It is wrong, even though chimpanzees and dogs are not persons. To use chimpanzees, or

any of the other higher primates for experimental purposes, even though these experiments may cause them much discomfort, pain and harm, is usually regarded as acceptable if the benefits gained from the experiments are substantial for people. People's rights are different to those of animals. It is not morally acceptable to experiment on persons, even if substantial benefits would thereby be gained. Of course, people may volunteer to serve as experimental subjects, but no person should be forced into experiment against his or her will. She expresses a perceived difficulty in deciding how to treat nonpersons in order not to violate their rights. Torturing animals can simply not be judged to be right, simply because the sum of the consequences of the torturing is positive for persons, i.e. a simple utilitarian decision is not defensible. If this were the case, she points out, it would be right for a person to torture a dog if he were to gain pleasure from doing so, and his actions were to have no bearing on anyone else.

English (1975: 254) maintains that an ethical theory must operate by evoking a set of sympathies towards others, and thereby reinforce the principles of the system. We feel strong compassion towards others, but we also have compassion towards personlike nonpersons. Many theories of psychology have offered adequate explanations for this, behaviourism being just one example. Behaviourism has found that organisms are capable of, and indeed do, generalising among similar stimuli. An organism may, therefore, produce a response to a stimulus that is different, yet relevantly similar to a different stimulus, to which the response was usually evoked. In a similar sense people may feel compassion, sympathy, and feelings of warmth towards a nonperson that has a similarity to persons. It is beyond doubt that psychological factors play a significant role in our attitudes towards others. English maintains, if a set of principles were to permit the treatment of any nonperson, resembling persons to a significant degree, in any way we wish, the sympathies and compassion necessary for the adequate functioning of our ethical system would be undermined. For this

reason the mistreatment of animals would be wrong, regardless of the utilitarian value. English accordingly maintains that it makes sense that those animals that have the greatest similarity to people enjoy the highest consideration in our moral deliberations. She applies this argument to the issue of abortion (English 1975: 255).

The similarity between an almost mature foetus and a new-born baby is so great that hardly any difference in the amount of sympathy and compassion for the two beings is worth mentioning. These beings are so alike that no justification can be given for treating them differently. In the early weeks of a human being's development, by contrast, the being hardly exhibits any similarity to a new-born. Indeed, in the first weeks of its development, the human being is visually not distinguishable from other mammals, such as pigs. Psychologically, an early abortion can hardly be equated to murder on the basis of similarity, while a late abortion can hardly be distinguished from it. Bodily continuity of the developing human also has explanatory value for our respect towards foetuses. English (1975: 255) mentions that even after death, when a human body is no longer held to be a person, we still pay respects towards it. Similarly, she claims, even though a foetus may not yet be a person, it is bound to develop into one, and thereby deserves our respect.

The conclusions English draws from her arguments are:

"In the early months of pregnancy, when the foetus hardly resembles a baby at all, abortion is permissible whenever it is in the interests of the pregnant woman or her family. The reasons would only have to outweigh the pain and inconvenience of the abortion itself. In the middle months, when the foetus comes to resemble a person, abortion would only be acceptable if the continuation of the pregnancy, or the birth of the child, would cause harm (physical, psychological, economic, or social) to the woman. In the late months of pregnancy, even in our

present assumption that the foetus is not a person, abortion seems to be wrong, except to save a woman from significant injury or death" (English 1975: 256).

English is not correct in claiming that animals having a high degree of similarity to humans enjoy most sympathy from us. Dolphins and whales, for instance, have a lower overall degree of similarity to people than do mice, for example, yet most people are more sympathetic towards the former than towards the latter. Her claim that a late abortion is hardly distinguishable from murder, due to the similarity between an almost mature foetus and an infant, while an early abortion is psychologically justifiable because there is hardly any similarity between an early foetus and a person is dangerous to say the least. If visual similarity is to be the criterion by which a being is to be accorded personhood status, or the right to life, then where are we to draw the line. The evils of racial prejudice and discrimination are based almost entirely on the differences in appearance between different peoples. It is correct to say, however, that infants are usually accorded personhood status, they are given a right to life. If an infant is killed in our society, the agent is accused of homicide. Why? Even though an infant may not yet exhibit rationality, its resemblance to a grown person is exceptionally large. A more important factor, however, is that from birth it has become part of our social community. We are able to interact with it from birth in an infinite variety of ways. In many respects an almost mature foetus has a similar degree of resemblance to adults, but its social interaction with others is still lacking. For this reason one does not mourn over a late miscarriage to the same degree as over the death of a neonate. This is true even if comparing the death of a neonate born two months prematurely and a fatal miscarriage occurring in the eighth month. Resemblance alone does not account for our difference in emotional response, but the capacity for social interaction does.

4.12 SUMMARY AND PERSPECTIVE

In this chapter, I examined and defended the right to an abortion when the pregnancy is hostile, i.e. when it came about due to rape, or when it threatens the life or long-term health of the mother. In the case of rape, it was argued that although the foetus does have a right to life in virtue of its being a potential person, the mother neither explicitly nor implicitly consented to the pregnancy, and thus has a right to refuse the foetus the use of her body. She did not invite it in. In cases where the woman voluntarily engaged in sexual intercourse, and perhaps even willed the pregnancy, but the pregnancy then threatens her life or long-term health, she is not morally compelled to continue with the pregnancy. She then has a right to an abortion. She willed a pregnancy, but she willed a normal pregnancy. If the pregnancy does not proceed under conditions she implicitly agreed to, she has a right to terminate it.

In cases of mere contraceptive failure, however, abortion is not morally justifiable, even though the pregnancy was not explicitly consented to.

Let me briefly explain what I mean by "implicit" and "explicit" consent. A couple engaging in sexual intercourse with the desire to conceive are explicitly consenting to a pregnancy. Pregnancy is the intended outcome of their sexual intercourse. A couple engaging in sexual intercourse, without the present desire to conceive a child, are consenting implicitly. They are not primarily engaging in sexual intercourse to conceive, but they know that their actions could lead to pregnancy, even if precautions, such as using contraception, are used. A raped woman did not consent to the act in any way, and therefore neither implicitly nor explicitly consented to a pregnancy.

By virtue of voluntarily engaging in sexual intercourse, one has implicitly accepted responsibility for a resulting pregnancy, one is morally obliged to carry the foetus to term.

Mere contraceptive failure cannot override the potential person's right to life.

Having argued that pregnancy due to rape is a sufficient reason to procure an abortion, I shall argue in the next chapter that abortion in such an instance is not morally justifiable throughout pregnancy, but only during the initial stages when the foetus is still pre-sentient.

CHAPTER 5

ABORTIONS OF RAPE PREGNANCIES ARE NOT MORALLY DEFENSIBLE THROUGHOUT PREGNANCY

5.1 INTRODUCTION

In the previous chapter I argued that a woman becoming pregnant as a result of rape is morally justified in procuring an abortion. In this chapter I shall argue that the woman is not morally entitled, in such an instance, to obtain an abortion at any stage of the pregnancy. I shall argue that only during the initial stages, only prior to the foetus becoming sentient, is an abortion in such an instance morally justifiable.

I shall turn to the arguments of L.W. Sumner¹ (1985), who argues for sentience as the appropriate criterion determining a being's right to life. I shall point out the advantages of adopting sentience, but shall also criticise the limitations of an approach adopting sentience as the sole criterion determining a being's right to life. It will become evident that Sumner argues for sentience as both a criterion of inclusion, as well as comparison. I shall reject this approach, arguing that by doing so, a theory deviates from our commonly held beliefs and sentiments, and its simplicity is purchased at the price of accuracy. I shall argue that "being alive" ought to be the inclusion criterion, i.e. all living beings have some right to life. Potential is to be the comparison criterion when comparing beings of different species, i.e. the being with the greater potential has a greater right to life, even if it is still less developed than the other. Sentience is to be the comparison criterion when comparing beings of the same species, because potential cannot explain why, for instance, we believe a late-term abortion to be considerably more serious than an early-term one. Beings with roughly the same potential are differentiated by their degrees of sentience.

In sections 5.2 to 5.8 I give a detailed account of Sumner's arguments. He examines the criteria of intrinsic value (5.3), and being alive (5.4). In 5.5 he examines when moral questions are pertinent, before proceeding to the criterion of rationality and the moral community in 5.6, and the criterion of sentience in 5.7. In 5.8 the implications of Sumner's views are elucidated, and an evaluation and criticism of his arguments follows in 5.9. In 5.10 I argue for a multi-criterion approach.

5.2 SUMNER'S DEFENCE OF SENTIENCE

L.W. Sumner has developed a set of arguments that attempts to defend a position between the extreme conservative one of Noonan's,² and Tooley's³ extreme liberal one. I shall briefly outline Sumner's arguments in the following.

Sumner identifies the moral standing of the foetus as the central question pertaining to abortion. For the purposes of his discussion, Sumner stipulates that the term "moral standing" refers to a being regarded to be in its own right in the process of moral decision making. To count for nothing is to have no moral standing. To count for as much as possible is to have full moral standing. For the purposes of his discussion, he further assumes that to have some moral standing is to have some right to life, therefore equating the terms "moral standing" and "a right to life." A being with moral standing has a right to life. The strength of the claim on a right to life stands in direct proportion to that being's moral standing. This means that a being with full moral standing has the greatest right to life. The question that is then relevant for the issue of abortion is whether foetuses have some moral standing, and hence have some right to life. A being with moral standing imposes duties on moral agents. Such duties may be positive or negative - not to deprive, or to support (Sumner 1985: 232).

On which creatures should we bestow some degree of moral standing, and thereby acknowledge their right to life? Which criteria should we employ in order to reach such a decision? The paradigm case of a being with moral standing is an adult human being with normal capacities of intellect, emotion, perception, sensation, decision, action, etc. Selecting a specific property, or set of properties, is to define the class of beings with moral standing, i.e. all and only those that exhibit that property, or those properties. Sumner points out at the outset that a criterion that is found to be too narrow will exclude beings with moral standing, and hence would not be a necessary

condition for moral standing; a too broad criterion, on the other hand, would include beings not having moral standing, and hence would not be a sufficient condition for moral standing. Four criteria, he maintains, need to be seriously investigated in respect to moral standing namely, beings that are (1) intrinsically valuable; (2) alive; (3) sentient; or (4) rational.

5.3 THE CRITERION OF INTRINSIC VALUE

The scope of the first criterion, Sumner maintains, already poses a problem. If everything that has an intrinsic value were to have a right to life, then almost everything could be included in this category, even inanimate objects, such as rocks, landscapes, the moon, or even entire galaxies. Of course nonliving things cannot have a right to life, but in such cases one might speak of a right to continued existence, where such a right entails a right not to be destroyed, and a right to receive treatment upholding its existence. Thus a landscape may be ascribed a right not to be destroyed, as well as a right to receive treatment upholding its present beauty. The criterion of intrinsic value also differs from the remaining three in one important respect, namely, the criterion itself is not empirically verifiable. Without being told which things have intrinsic value, we could not, if this criterion were to be determinate, establish the right to life of a being without first being told which beings have intrinsic value.

A criterion of intrinsic value must be objectively verifiable, being capable of being confirmed or denied on the basis of certain properties being present or absent. The criterion of intrinsic value cannot be applied without a theory of intrinsic value. Such a theory would point out the natural properties a being would need in order to have such a value. Sumner points out that if a being has moral standing in virtue of having

intrinsic value, but this intrinsic value is dependent on certain specified natural properties, then moral standing is reducible to the specified properties without having to mention intrinsic value. The theory of intrinsic value may, therefore, entail moral standing, but intrinsic value cannot itself serve as that criterion (Sumner 1985: 234).

The remaining three criteria all fulfil the demand of being verifiable, since they all rest on empirical properties of things. Sumner sees rationality as a subset of sentience, which in turn is a subset of being alive. The class of rational beings, therefore, is the strongest criterion, marking the narrowest sphere, while living beings is the weakest, and defines the broadest sphere. He concedes, however, that it is imaginable to create artificial intelligence before creating artificial sentience, or artificial life.

5.4 THE CRITERION OF BEING ALIVE

Sumner (1985: 234) mentions that K.E. Goodpaster has proposed that on all living beings be conferred moral standing simply because they are alive. Let us assume that all forms of life, no matter how primitive, can be clearly distinguished from all inanimate things. All living beings share the properties of being teleological systems, having functions, ends, needs, etc. In order for their needs to be met, all living beings require certain conditions to be fulfilled. Since they all have needs, they can all be benefited and harmed. It thus makes sense to say that such entities have a "good," i.e. conditions that benefit them are good, conditions to the contrary are bad. If morality is to apply to all beings that have a good, then moral standing must be conferred on all living creatures. Sumner (1985: 235) claims that we are usually not comfortable with conferring moral standing on beings such as plants and micro-organisms. How ought we to live if we ought to confer moral

standing on every living being? Sumner continues, however, that Goodpaster makes a distinction between a criterion of inclusion and a criterion of comparison (Sumner 1985: 235-236). The former criterion determines the boundary of the criterion of moral standing in question, while the latter is concerned with distinguishing between the differences in degree of moral standing within the inclusion criterion. Thus the comparison criterion allows for variations in amount of moral standing a being may have. All beings are presumably equally alive, therefore, being alive cannot serve as a comparison criterion. This allows for the stance that all living creatures have moral standing, but not to an equal degree. We are then left with the problem, however, how much moral standing to confer on different species. Even if we do agree on some standard of comparison (for example, sentience), Sumner maintains, we may then ask why this standard should not also serve as the inclusion criterion. Adopting sentience as the comparison criterion and being alive as the inclusion criterion leaves us with two different criteria operating simultaneously. This is not necessarily a problem, as Sumner correctly realises. For Mill, for instance, every value has some value merely in virtue of being a pleasure (inclusion), but its relative value is determined by its quality or kind (comparison). However, Sumner asks whether a plausible situation could be conceived in which sentience might serve as the comparison criterion, but not simultaneously also adequately serve as the inclusion criterion. A problem arises, however, if the inclusion and the comparison criteria are not of equal scope. This is the case if being alive is the inclusion criterion, and being sentient the comparison criterion, since not all living beings are sentient. Another objection to conferring moral standing on all beings that are alive (because they have needs, function teleologically, and can be harmed or benefited) is that some nonliving entities also exhibit such characteristics in order to function effectively. Computers, for instance, can be harmed if not treated appropriately, and require proper maintenance to function efficiently. Life is

thus an inadequate indicator for indicating teleology, and the capacity for being benefited and harmed. Therefore, being alive cannot be consistently employed as a criterion by which to confer moral standing (Sumner 1985: 236-237).

5.5 WHEN ARE MORAL QUESTIONS PERTINENT?

When are moral questions pertinent? Sumner replies that they are pertinent whenever the actions of an agent threaten to harm a being with moral standing. Duties and rights are closely connected to benefits and harms. If we take the paradigm case of moral standing and ask what counts as a benefit or harm towards a human being, Sumner maintains, the usual answers take one of two forms. The desire model maintains that human beings are benefited if their desires are satisfied, and harmed if they are frustrated. The experience model holds that human beings are benefited if they are brought to have experiences that they like or find agreeable, and harmed if brought to have experiences that they dislike or find disagreeable. Both models interpret benefits and harms in terms of psychological states of the beings in question, i.e. in terms of their interests or welfare. Such models have reference only to beings that are conscious or sentient. Therefore, Sumner (1985: 237-238) concludes, if morality is concerned only with the promotion of interests and welfare, then it is concerned only with beings that are conscious or sentient. Goodpaster, however, also ascribes interests to nonsentient beings, maintaining that they also may have needs, a good, and the capacity to be benefited and harmed. Sumner finds it odd to ascribe interests and welfare to beings such as plants. He maintains that morality does not have to do with benefits and harms as such, but only with a specific category of benefits and harms:

"Leaving my lawn mower out in the rain is bad for the mower, pulling weeds is bad for the weeds, and swatting mosquitoes is bad for the mosquitoes, but there are no moral dimensions to any of these acts, unless the interests or welfare of some sentient creature is at stake" (Sumner 1985: 238).

5.6 THE CRITERION OF RATIONALITY AND THE MORAL COMMUNITY

Sumner continues by investigating the criterion of rationality for moral standing before proceeding to sentience. A being is rational if it is able to communicate, has foresight, has memory, etc. Moreover, the fact that such a capacity is not presently exhibited does not mean that the being in question does not possess such faculties. A person capable of speaking still has the capacity to communicate, though he may now be silent. A person able to do calculations still has this ability, even though he may now be asleep. "The capacity remains as long as the appropriate response could be elicited by the appropriate stimuli" (Sumner 1985: 238). It is lost only when an appropriate stimulus no longer is able to evoke an appropriate response. It is not essential for an individual to possess all faculties in order to be classified as rational. A person not able to speak may still possess all or most other faculties and hence be labelled rational. Seeing rationality as a sufficient condition for having moral standing poses no difficulty, but if it is to serve as a necessary condition, then most nonhuman creatures, and even a significant number of human beings would fail to have moral standing, such as infants, the mentally deranged, and comatose patients. Why then should rationality serve as the criterion of moral standing? Sumner contends that it is not a matter of controversy for rationality

to be a sufficient condition for moral standing, disregarding cases of artificial intelligence. However, if rationality is to be the necessary condition for moral standing, then many sentient creatures would fall outside this sphere, which precisely would depend on the stringency of the rationality criterion employed. This would not mean that non-rational beings lack all rights. As Tooley has already argued, to deny a being the right to life is not necessarily also to deny it other rights. A kitten may lack the right to life, but has a right not to be tortured (Tooley 1972a: 223). If rationality is adopted to serve as the criterion by which moral standing is established, another criterion, such as sentience, may be adopted to determine other rights, such as the right not to be tortured. The question Sumner poses in response is, if sentience is adopted to serve that function, why can it not also be adopted to serve as the criterion measuring the right to life? We often kill nonhuman animals, but the reason given is usually that the benefits gained from their killing outweighs the negative weight of the action itself. It is nevertheless clear that the killing of animals usually calls for justification, and therefore they do have a right to life, although this right may be fairly restricted. If rationality were to be the determining criterion (necessary condition) for moral standing, then the killing of animals would only call for justification if their killing impinges on the rights of some or other rational being. If we deny rationality of horses and cats, for instance, and if the rationality criterion is to be determinate for ascribing moral standing, then the killing of a horse or a cat would be no more morally objectionable than swatting a mosquito or weeding a garden. Furthermore, if the criterion of rationality were stringently enforced, many members of our own species, such as infants, the senile, the mentally retarded, psychotics, to name just a few, would have no right to life. Killing them would then entail doing no moral injustice to them. I presume, this is a position most people would be uncomfortable with. Needless to say, such members are sentient,

and most are capable of leading pleasurable and comfortable, though often simple lives. To kill them would be to deprive them of lives that would be of value to them (Sumner 1985: 239-240).

Whether only beings that are capable of moral agency ought to have moral standing is also a relevant question when dealing with rationality. Should only beings that have the capacity of moral agency be retained within the category of beings having moral standing? A.I. Melden⁴ defends such a position in his book "Rights and persons." Only beings participating in a moral community, acknowledging moral rules, and recognising one another's integrity are held to have moral agency. Rights can therefore only be attributed to members that have moral intercourse, that care for one another, and that regulate their behaviours in accordance with the behaviours of others. It should be obvious that a prerequisite for being a moral agent is to be rational. The class of moral agency will therefore not extend beyond the sphere of rational beings. Rationality is a necessary condition for moral agency, but not a sufficient condition. Sumner also contends that not only humans are capable of moral agency. Depending on how the term is defined, many higher primates, birds, dolphins, and other higher mammals exhibit behaviours that may be labelled altruistic. Sumner, however, correctly points out that the criterion of moral agency may be applied in two ways to a moral community. It may be a community of moral agents, i.e. the bearers of moral duty. To be a member of such a community one would need to be capable of moral agency. Alternatively, a moral community may be thought of as a community of beings to whom all beings owe duties, i.e. the bearers of moral rights. The class of members having moral duties need not necessarily be coextensive with the class of members having moral rights. Some members, such as infants, animals, and the mentally deranged, may have moral rights, without having moral duties because they lack moral agency. Sumner argues that a higher standard may be employed for adjudicating moral duties than for moral rights. Rationality

appears to be appropriate when determining moral agency, but a criterion less demanding, such as sentience, is more appropriate for determining moral rights (Sumner 1985: 240-241).

5.7 THE CRITERION OF SENTIENCE

Sumner contends that the criterion of being alive is too weak, as has already been made evident, admitting teleological classes of beings, both animate and inanimate, that are not suitable for moral rights. Being alive is necessary, but not sufficient, for having moral standing. The criterion of rationality is too strong, excluding beings, both human and nonhuman, that are suitable loci for moral standing. Being rational is sufficient, but not necessary, for having moral standing. Sumner (1985: 241) proposes sentience as a suitable criterion, lying between the two extremes of being alive and being rational. Sentience is basically the capacity to have feelings or affect, the capacity to experience pleasure and pain, the capacity to suffer and enjoy. At a more developed level sentience includes the ability to have wants and desires (and therefore the ability to be satisfied and frustrated), have attitudes and values, moods, sentiments, emotions and passions. Consciousness, at least to some degree, is a prerequisite for sentience. It is, however, not a sufficient condition for sentience. It is not inconceivable that a conscious being, even a rational being, lacks all feelings and affects, and is incapable of suffering and experiencing joy. Such a being would not be sentient. It is the quality of being sentient that determines a being's desires or preferences, moulded by what the being has experienced as enjoyable or agreeable. If morality is concerned with the protection and promotion of interests, then it should be concerned with all beings that are capable of having interests. This includes all sentient creatures. It makes sense to see sentience as being present in varying degrees.

More developed creatures, usually the more rational ones, have a higher degree of consciousness, and a higher degree of experiencing the world, and therefore more ways of being affected by it. Higher, more developed creatures, are therefore also capable of having a more fulfilling existence. Sentience can therefore serve both as a criterion of inclusion as well as of comparison (Sumner 1985: 241). Nonsentient beings have no moral standing, and among sentient beings, the more developed have greater moral standing. A fully functioning adult human being is currently the paradigm of the upper limit. In Sumner's own words:

"... In our moral reasoning paramecia and horseflies count for nothing, dogs and cats count for something, chimpanzees and dolphins count for more, and human beings count for most of all, the most sentient also being most rational" (Sumner 1985: 242).

5.8 IMPLICATIONS FOR ABORTION OF SUMNER'S VIEWS

The foregoing has made evident that Sumner differentiates between degrees of sentience and therefore also degrees of moral standing. Since the most developed are most sentient, the least developed least sentient, we may argue that the development of sentience is a gradual development, just as the development of an organism, or the development of a species is a gradual process. Sumner rightly maintains that one cannot precisely identify a specific point in the development of any organism as the threshold between sentience and nonsentience (Sumner 1985: 243).

The implication this carries for abortion is that in the development of a human being we too cannot point to a precise point at which sentience is attained. Zygotes and

embryos are clearly not sentient, not yet possessing a functioning central nervous system, a prerequisite for being sentient. A foetus in its third trimester of gestation, however, has a well functioning central nervous system, and is most certainly already sentient to some degree. The transition from nonsentience to sentience hence lies somewhere in the second trimester of an unborn child's development. Performing abortions during the first trimester of pregnancy does not raise a moral issue, since the foetus does at that stage not yet have any moral standing, according to the sentience criterion. (In section 5.10 I shall argue that it does raise a moral issue in virtue of being alive.) Abortions performed during the third trimester of pregnancy, however, warrant moral justification, since foetuses at that stage are already quite sentient, and therefore have moral standing. The threshold between sentience and nonsentience in the development of a human being, therefore, is located somewhere in the second trimester of pregnancy. Sumner (1985: 246) defines an early abortion as one carried out during the first, or early in the second trimester. Its moral significance is held to be on a par with contraception, i.e. it prevents the emergence of a new being with moral standing. A late abortion is defined as one carried out in the third, or late in the second trimester. Such an abortion is held to be on a par with infanticide, i.e. terminating the life of a human being with moral standing. The only relevant difference between late abortions and infanticide is that the foetus in late pregnancy is still dependent on the mother, while the infant is not. Sumner therefore permits abortions in the third trimester, but a case by case analysis is necessary, and ought only to be carried out in exceptional cases, such as when the life of the mother is endangered, and especially when that risk becomes evident only in the third trimester. Sumner also defends abortions carried out

during the third trimester after a severe defect has been detected in the infant, especially if the defect has become evident only during the third trimester (Sumner 1985: 247).

5.9 EVALUATION AND CRITICISM OF THE FOREGOING

Sumner is correct in maintaining that the criterion of intrinsic value depends on a theory of intrinsic value to indicate which objects or beings have intrinsic value. In themselves, it may be added, such inanimate beings cannot have value. Why might we assert the value of a Rembrandt painting, for instance? Because we enjoy beholding it, because it gives us positive experiences. Destroying such a painting may be held to be immoral because it would deprive many people of the experiencing pleasure. Of course, we may say, it ought not to be destroyed because it causes the dishonouring of its creator by such an action. Such reasons may be given for other inanimate objects too. Many of us believe that we ought to take special care of many natural sights, such as landscapes, glaciers, or the Antarctic, to mention only a few. We believe it would be immoral to destroy them, not only because they might have some instrumental value for humanity, or other living beings, either now or in the future, but because we would deprive future generations from pleasurable experiencing them. Of course, the argument may be posed, such natural sights could only have been created by a marvellous creator, and destroying them would be dishonourable. One may thereby be referring to a deity, a creator, or teleologically functioning nature. Nature produces environments that man might never be able to create.

Sumner correctly realises that it need not be a problem if two criteria are employed, one as the inclusion, the other as the comparison criterion. He believes, however, that it is a problem if the two criteria are not coextensive. This need not

necessarily be the case. If we assert that all living beings have some moral standing, but that sentient beings have more, then this problem does not arise. It would mean that nonsentient beings have moral standing with a value greater than zero, and sentient beings have a value greater by their degree of sentience. This would make it understandable why some people, of which I am one, believe it immoral to needlessly cut down a magnificent tree such as an oak. Our belief is neither grounded in its value to others nor is a tree sentient. Of course, nonsentient living beings have a moral standing less than sentient beings - the rights of the former often being overridden by those of the latter. Sumner finds it odd to ascribe moral standing to nonsentient beings such as plants. Why? He states that swatting mosquitoes is bad for the mosquitoes, but there is no moral dimension to this action. This would mean that no matter what I do to a mosquito, it can never be immoral. If I deliberately torture a mosquito for fun, pulling off one wing, or slowly burning a bee with a magnifying glass, are my actions then morally neutral? I believe not. Of course we are justified in swatting a mosquito if it is near us and might bite us, but this is not because the mosquito has no moral standing, but only because our rights by far override its rights. Sumner is therefore not correct in asserting that moral standing depends only on sentience. Nonsentient beings have a value of moral standing greater than zero, they cannot be equated to nonliving things. Indeed, I believe Sumner's position is one that is in opposition to our general attitudes and sentiments. I fully agree, however, that a sentient being has more moral standing than a being without. Ranked on a continuum, therefore, I argue that we should not place the least sentient at one end and most sentient at the other, but rather nonsentient living beings at one end, passing through the least sentient to the most sentient at the other end. I agree with Sumner that it is desirable to keep the number of criteria as low as possible, i.e. if it is possible adequately to employ a criterion as both one of inclusion and of comparison, then one

should do so. When theorising, simplicity should always be an objective, but simplicity should not be purchased at the price of accuracy. In this case, therefore, I maintain, a criterion establishing moral standing of a being cannot comprehensively function as both an inclusion as well as a comparison criterion.

5.10 DEFENDING A MULTI-CRITERION APPROACH

The position I shall defend is briefly the following:

(1) All living beings have some right to life. That is, all living beings have some degree of moral standing. "Being alive" is therefore to be the inclusion criterion.

(2) "Sentience" is to be the comparison criterion when comparing beings of the same species.

(3) "Potential" is to be the comparison criterion when comparing beings of different species.

I shall now explain why I find it necessary to employ three dimensions of criteria.

I assume that most people will agree that all living beings have some right to life, have some moral standing. Cutting down a three-hundred-year-old tree just for a bit of fun, for no significant reason, is morally not acceptable. Why not? It is because the tree has a right to life. It has a right to life even though it is not sentient. Sumner maintains that swatting a mosquito may be bad for the mosquito, but by doing so, I am not acting immorally. As previously mentioned, my burning a bee with a magnifier, or pulling off one wing of a mosquito cannot be morally neutral acts. These creatures have a right to life, even though they are nonsentient. Nonliving beings, on the other hand, cannot be directly wronged morally. By destroying a painting, or a landscape, I might be acting immorally because I am depriving future generations of their existence, or am dishonouring someone by their destruction. Intrinsically, however, nonliving things have no moral value. For this reason,

I argue that "being alive" ought to be the criterion of inclusion in our moral system. Sumner is therefore not correct in asserting that an abortion in the pre-sentient period is always unobjectionable because it does not yet have any right to life. It does have a right to life in virtue of its being alive, and it is already a potential person.

Being alive, however, cannot also serve as a criterion of comparison, since presumably all living beings are equally alive. For this reason I argue that "sentience" ought to be the comparison criterion when comparing beings of the same species. Most of us would agree with Langerak⁵ in asserting that a late-term abortion is morally more problematic than an early-term one. Why? The explanation lies in the late-term foetus's attainment of sentience. During the first trimester of pregnancy the foetus is not yet sentient, since it does not yet have an intact central nervous system (a prerequisite for being sentient). Beings that can feel, experience, suffer, enjoy, etc., are more developed than those that cannot. The foetus's potential (the probability that it will develop into an actual person) does not change dramatically during its prenatal development. Certainly it has a greater probability of developing further during the later stages, since most miscarriages occur during the initial stages of pregnancy (Low 1991: 101-102). The shift in probability is, however, gradual, and drawing the line during the prenatal period based on potential is arbitrary. In addition, measuring the potential of a specific being at any given time is not possible. We may base the calculation on a statistical average, but a given individual may deviate substantially from the norm. Employing sentience as a suitable comparison criterion when comparing beings of the same species is meaningful, since the more sentient have greater moral standing (have a greater right to life) than the less sentient. If we assume that abortion in the early stages of pregnancy is less problematic than in the later stages, our assumption is explained by the being's degree of sentience. Both an early foetus and an almost mature foetus are not

rational, therefore rationality cannot explain the difference. Both the early and the almost mature foetus are potential persons, and their potentials are not significantly different. Therefore, potential can also not serve as an explanation. The early foetus is, however, not yet able to feel and suffer, while the late foetus is. Sentience explains the difference.

Sentience is a suitable criterion for comparing beings within a given species, but not for comparing beings of different species. How are we to compare, for instance, the moral standing of a new-born chimpanzee with that of a human foetus in the fourth month of its development? Does the chimpanzee have greater moral standing and thereby also a greater right to life because it is much more sentient? The answer is clearly "no." Answering yes to the question would be answering against our general sentiments. A new-born chimpanzee has a high probability of developing into an adult chimpanzee, but no probability of attaining an equal measure of rationality and sentience as an adult human being.⁶ A developing foetus, in contrast, has the potential of developing into a human adult with a high degree of sentience and rationality. For this reason potential should be the overriding criterion when comparing beings of different species, but sentience should be the comparison criterion when comparing beings of the same species. This conclusion also serves as an explanation why we might find it morally acceptable to implant an organ, such as a heart, from a new-born chimpanzee in to a seven-month-old foetus, but not to destroy a young foetus to save an adult chimpanzee, even if this were to be the only possibility of saving the chimpanzee.⁷ This hypothetical example clearly indicates that potential is to serve as the comparison criterion when comparing different species.

5.11 SUMMARY AND PERSPECTIVE

In this chapter the difference in moral seriousness between an early-term and a late-term abortion was discussed. The arguments of L.W. Sumner were elucidated, evaluated, and criticised. He argued for sentience as the criterion by which a being has a right to life, arguing that sentience can serve both as an inclusion and comparison criterion. I argued that Sumner is guilty of oversimplification, and that nonsentient living beings also have a right to life. They have a right to life, but less than sentient ones. I argued for "being alive" as the inclusion criterion (all living beings having at least some right to life), sentience as the comparison criterion within a given species, and potential as the comparison criterion when comparing beings of different species.

In the previous chapter I defended a woman's right to an abortion if the pregnancy is the result of rape. The reasons concisely stated are that the woman did not voluntarily engage in sexual intercourse, i.e. neither explicitly nor implicitly consented to pregnancy. The foetus is an intruder, was not invited in, and therefore she may refuse it the use of her body, even if it means the death of the foetus. We have established that aborting a late-term foetus is more serious than aborting an early-term one. Therefore, I here argue that a woman is only morally justified in procuring an abortion of a pregnancy resulting from rape while the foetus is still pre-sentient. Sumner clearly points out that the foetus in the third trimester is already clearly sentient; while in the first it is not. The attainment of sentience, therefore, occurs somewhere in the second trimester. In order to be safe on this matter, it is appropriate to permit abortions due to rape up to the end of the first trimester. This is not unreasonable, since it leaves the woman sufficient time to deliberate over and procure an abortion, after having discovered that she is pregnant as a result of the crime. A woman who does not abort a rape

pregnancy during the first trimester has implicitly accepted the pregnancy and is then morally compelled to bring the child to term.

In the previous chapter a defence of the abortion of hostile pregnancies was given (rape pregnancies and pregnancies threatening the life or long-term health of the mother). It was also argued that abortion is not acceptable when sexual intercourse was voluntary, even if contraceptive failure occurred, as long as the pregnancy is not hostile. In this chapter I argued that an early abortion is less objectionable than a late abortion, and thus rape pregnancies ought only to be aborted during the first trimester. The position I must now still defend is that abortion is also defensible (in relatively rare cases), when the foetus is retarded to such a degree as to have no potential of acquiring any personhood characteristics other than the biological. This position will be defended in the next chapter. To do so, it will be necessary to examine the issue of life's value.

CHAPTER 6

ABORTIONS OF SEVERELY RETARDED INDIVIDUALS

6.1 INTRODUCTION

In this chapter I shall defend the belief that it is morally acceptable to abort a foetus even in late pregnancy, if scientific tests indicate that the individual will be severely retarded (retarded to such an extent that no personhood characteristics, other than the biological, will ever be attained). In order to defend this belief, I shall first examine life's value in general before proceeding to late-term abortions. I shall argue that if a human being does not have the potential to develop into an actual person, i.e. is not a potential person, then it cannot enjoy the same moral status as potential persons. Such beings are morally more on a par with animals, and hence have rights similar to animals. This does not mean that they do not have any rights, but only that their

rights can more easily be overridden by actual persons (as discussed in 4.11).

In 6.2 I begin the discussion by examining the relationship between life, death and suffering. This question warrants examination, since it is sometimes held that it is better to suffer than to die. Following this in 6.3, the question, whether suffering can have value, is posed, and in 6.4, whether life always has meaning. An important distinction between life in general, and individual lives is made. In 6.5 it is then asked, whether it is only rational to consider things from a cosmic perspective. It will be pointed out that the cosmic perspective may sometimes be irrational and a personal perspective rational. In 6.6 I turn to the abortion of severely retarded fetuses. I argue that even though all human fetuses are endowed with the human genetic code, not all human beings have the potential of developing into actual persons. Only beings that have the potential of developing into actual persons may be regarded as potential persons, and hence enjoy the moral status of potential persons. Aborting fetuses that lack the potential to become actual persons is morally justified, especially if their abortion would spare them from continuous pain and suffering.

6.2 LIFE, DEATH AND SUFFERING

If a given life does not have meaning, and all indications are that it will never be capable of attaining any meaning or purpose, is it justifiable to terminate it? Jean de la Fontaine remarked in the seventeenth century that it is better to suffer than to die (Donnelly 1978: 163). Donnelly¹ believes that many philosophers of the late twentieth century would reverse this statement to assert that it is better to die than to suffer. He believes that many philosophers have adopted the prevention of suffering as a higher value claim than the preservation of life.

If a life is nothing but meaningless and filled with suffering, would it not perhaps be moral to terminate it? Might we not be accused of being callous in striving with extraordinary means to sustain a life that perhaps has no value? Donnelly argues (1978: 164) that the proposition "suffering is evil" is not necessarily true. He believes it not even to be contingently true in all instances. An infant suffering from some currently incurable physiological ailment as well as his guardians, may be thankful for his or her hardship, which facilitates their developing certain character traits and mental sets not as readily manifested in a healthy body or less stressful situation. It is a fact that we all suffer at some point in life, if by "suffer" we mean having some form of pain, displeasure, or mental anguish.

The quality of life of an infant with a birth-defect is established long before conception. Society's attitude towards diseased, disabled or malformed individuals reflects its attitude towards life and death. The psychosocial aspects regarding the birth of an infant with a birth-defect are directly related to the issue of life and death. The events of birth and death directly confront us with the meaning of human life. A malformed or handicapped individual reminds us of life's vulnerability, of which death is the ultimate realisation. Many perceive the birth of a defective infant as a biological mistake, one they wish to negate. Such a desire is often present, although there exists a reasonable probability that the defective infant will develop intellectually. Death becomes desirable as a means for escaping suffering of the infant (Metzler 1978: 172).²

Our society, which idealises strong, healthy, well-formed individuals, feels threatened by members not capable of living up to this ideal. The handicapped are often seen as unable to attain success and a good life, an attitude readily reinforced by prejudice and discrimination. Usually those who are most emotionally insecure are most ready to practice discrimination and prejudice towards those they find inferior in any respect.

But even the most secure individuals often react annoyingly by feeling nothing but the degrading feelings of pity, rather than empathy or a compassionate understanding. When confronted by a handicapped individual, it is natural for one to feel that one hopes neither one nor any of one's loved ones will ever befall the same fate. Disability is, however, always a possibility. There is no guarantee that a given individual will be born without any disease, disability or disfigurement, nor any assurance that one will not suffer such a fate during one's life. Road accidents, or free time activities (such as working with power tools, horse riding, or diving) may result in sudden accidents that may leave the victim disfigured or paralysed.

The question we are faced with, however, is whether we ought to abort a foetus that is developing abnormally to a high degree. If the resulting child will only suffer, will experience nothing but agony, would it not be better to abort it? Or should suffering sometimes be accepted, can suffering sometimes be positive? If suffering is sometimes positive, and a developing child will almost certainly have a life filled with suffering, the call for such a foetus's abortion is not an obvious course to take.

6.3 CAN SUFFERING HAVE VALUE?

Donnelly questions whether the proposition "suffering is evil" is necessarily or contingently true. If we mean "instrumentally evil," then our answer is clearly in the negative. If we mean "contingently evil," then some philosophers, such as Kierkegaard, would also reply in the negative. Kierkegaard believes that suffering is blessed. Donnelly correctly questions, whether Kierkegaard held suffering to be intrinsically good, because by denying that it is intrinsically evil, he does not necessarily assert its intrinsic goodness. He did believe, however, that some forms of suffering were

instrumentally good, and finds value therein: "there truly is a fellowship of suffering with God, a pact of tears, which is intrinsically very beautiful" (Donnelly 1978: 166). He also believed that people ought to value such suffering, even without any religious motivation. Poets, artists, and religious individuals are examples of great values facilitated in their coming about by suffering and pain. Without these sufferings, they would not have become great. Kierkegaard believes, if one were to take away their sufferings, give them an easy life, and grant them what they desire, it would be all over with greatness (Donnelly 1978: 166). Kierkegaard adds that one ought to rejoice in suffering, but that these individuals are beyond suffering, and wonders whether an individual in such a situation could really understand this (Donnelly 1978: 166). What he is really suggesting is that the suffering leads to something great, as though something great could only be achieved through anguish and dismay. It is though he were using the analogy of water flowing upwards, in order to do so, there must be pressure.

Kierkegaard maintained that if one were free of suffering and anguish, one would readily yield to one's passions and pride, accordingly, although suffering may be a burden, it is a beneficial one. He denies that it would be possible for anyone physically and mentally completely healthy, free from any distress, to live a truly spiritual life (Donnelly 1978: 167). He is saying that a spiritual life, or one of moral integrity, entails a love for, and commitment to the virtues. The pursuit of virtues in our hostile world necessarily strains the physical and mental well-being of even healthy individuals. He goes so far as to maintain that the virtuous person actively seek suffering. If one does not have such strength within oneself, then one should hope that God will help one to suffer (Donnelly 1978: 167). This is truly a radical outlook. A child afflicted with severe Down's Syndrome, for instance, does not actively will its illness, but those who care for him or her might freely choose to accept it. Kierkegaard does not believe suffering to

be an end in itself, but rather as a means for achieving the compassionate and humble dispositions of the spirit. In the moral order suffering is tolerated primarily for its instrumental worth, while in the religious order it is relished as a necessary condition of faithful witness. From a religious perspective, he is saying that the meaning of life is contained in suffering (Donnelly 1978: 167). Seen from a Christian perspective, Kierkegaard writes that if one does not suffer, then one has nothing to do with God, and that those who are not willing to suffer will have alienated themselves from God's love. Donnelly points out that it is questionable whether it is true that the closer to God, the greater the extent of suffering. He does not doubt, however, that closeness to God is necessarily accompanied with suffering in our hostile and vicious world (Donnelly 1978: 169).

6.4 IS LIFE ALWAYS WORTH LIVING?

Joseph Margolis³ (1978: 180-191) examines the question, when life is no longer worthwhile, no longer worth living. Considering capital punishment, it is not the case that the sentenced person's life be no longer worthwhile, be no longer worth living for the punishment to be carried out. A surgeon who terminates the life of a severely malformed, almost viable foetus in the late stages of development, employs a principle of some sort that assigns to that life a counterfactual rationality. He might think that if that being were allowed to come into the world, it would like any rational person choose rather to die than to live. The question that needs to be answered is, at what point are we, as fully rational beings, willing to end our own lives, or honour the explicit wishes of others in this regard (Margolis 1978: 181)?

To hold that God or nature has given us our lives, and therefore hold it to be impermissible to deliberately end them,

is not capable of being independently verified. Let us assume that we were created by God, and were given a set of values by Him. This would still not mean that I have to accept these values. I may still be free to question them and choose my own. It is a given fact that though we are interested in when and how we shall die, there is no way of discovering the appropriate moment, either for the species, or for individual persons. To favour ending one's or another's life is not to assert that the life in question utterly lacks value. If all medical estimates indicate that to a high degree of scientific certainty, an infant will die, and that its life will be filled with nothing but pain and suffering until its death, would it not be more humane to expedite its dying?

What is the value of life? How do we assess life's value? Is its value intrinsic, that every life is valuable, or is its value conditional, that in some circumstances a life may have no value at all? These questions are inevitably thrust upon us when faced with making life and death decisions. Steven Nathanson⁴ (1978: 192-205) examines the view that life itself has no value at all, in the hope to establish life's value.

The following argument is often put forward:

Premise 1: The real nature of things is that which is seen from a cosmic or ultimate perspective.

Premise 2: To view things rationally is to view them from the cosmic point of view.

Premise 3: When things are viewed rationally, that is from a cosmic point of view, they seem to be lacking in value.

Conclusion: Therefore, to attribute value to something is irrational (Nathanson 1978: 193).

This nihilistic argument has nothing in particular to do with life, it is completely general. Life is simply one of the many things that seems to be lacking value. Nathanson correctly mentions that the argument seems to be more forceful if we are

considering life, rather than some other matter. We seldom feel inclined to adopt a cosmic point of view when considering the value of free speech, or the right to own private property. Many people assume, however, that the value of life needs to be established from a cosmic point of view. Therefore, many people believe that life is without value if, for instance, our souls do not have eternal existence or our achievements are forgotten (Nathanson 1978: 194).

It is important to distinguish between "life" and "individual lives." "Life" in its abstract singular form refers to the totality of life that now exists, has existed, and will exist, and is to be differentiated from particular lives of particular individuals. A second distinction needs to be made between two kinds of value or purpose. Something has value if it fits into some overall cosmic scheme or design that applies to the totality of reality; something may also be said to have value if it is useful in achieving the aims of particular agents. Having made these distinctions, the nihilist claims can be clearly stated as follows:

(1) Because life has no cosmic purpose, individual lives have no purpose, and therefore no value.

(2) The value of individual lives depends on life having a cosmic purpose.

If life has no purpose because there is no overall scheme or design for it to serve, then individual lives will lack cosmic purpose because they will serve no overall scheme. It does not follow, however, that individuals cannot follow their own goals that give their own lives meaning, purpose, and value. Nor does it follow that if life has an overall purpose or value, then individual lives too have value or purpose. If life were to have the overall purpose of entertaining a demonic being, individual lives would thereby diminish in value or purpose. Nathanson asserts that the basic criterion for evaluating life has to be a worldly one (Nathanson 1978: 195). A cosmic purpose

can only give meaning to individual lives if individuals are aware of the cosmic scheme, and are capable of participating in it. In this respect, cosmic purpose seems to be irrelevant for worldly life, or at least subsidiary to it.

6.5 THE RATIONAL PERSPECTIVE AND LIFE'S VALUE

Why then, Nathanson asks, is the attraction of the cosmic perspective so great? He proceeds by examining whether to view things rationally is to view things from a cosmic point of view. What are we doing if we request someone to consider something rationally? One answer is that we are asking him or her to consider the given matter unemotionally. We are urging the person to overcome one of the subjective factors that may influence one, i.e. to lay aside one's attitudes, emotions or beliefs. We are asking him to be objective. Contingencies of background and upbringing also often stand in the way of rational deliberation. By urging someone to be objective, we are urging him or her not to be influenced by the contingent aspects of his character, personality, emotions, moods, feelings, or situations. We recognise a description as conforming to reality, if it is verifiable by a number of observers with different natures (Nathanson 1978: 195-196). To refer to the "cosmic point of view" is to refer to the view any rational being could arrive at, a position one may consider as objective reality.

In making decisions we sometimes are irrational, i.e. when we give precedence to our present desires, desires that override our awareness of long-term interests or future desires. Prudence requires that we do not give priority to the present, but rather overcome the irrational influences of presently felt desires in order to survey longer portions of our lives, and rationally compare the values of presently desired objects with

those we may desire or require in the future. However, if we view all of our needs and desires from a long-term perspective, we may well fall victim to Jacob Horner's "malady cosmopsis" (Nathanson 1978: 197). This entails that the prudential view may help us to realise that currently strongly felt desires may not be important in the long-run - no matter what we choose, the end result will be the same, death. If we do put ourselves into a position in which only cognitive powers play a role, where desires, goals, and preferences are left aside, if we register the properties and characteristics of the world, but are indifferent to them, it seems that we will find no value properties that constitute objective reality. On this basis we may be led to the conclusion that there is no ultimate reason for valuing anything (Nathanson 1978: 197). It is sometimes argued, however, that this need not be the case, since God perceives the world benevolently from a cosmic viewpoint.

Nathanson asks, whether it is possible to reject this nihilistic view of cosmic reality without rejecting rationality. It must first be noted that the cosmic point of view is irrelevant to the practical decisions confronting us daily. To elucidate this, let us imagine that I am faced with having lemon or milk in my tea. If the cosmic point of view requires that I ignore my tastes and preferences, then it can provide no assistance. On the contrary, it would be irrational to adopt this point of view because the factors it requires me to leave out are precisely those that are relevant for making a decision in this instance. To demand that one choose involving taste by ignoring the taste factor is to be arbitrary and irrational. This example is indicative of the fact that the rational point of view and the cosmic point of view do not coincide (Nathanson 1978: 197-198).

When I choose lemon instead of milk, my choice is guided not only by taste and felt desires, but also by adherence to the following rational principle:

Given a choice between A and B, where X prefers A to B, it is rational (all things being equal) for X to choose A (Nathanson 1978: 198).

This is a principle of rational choice that could be acknowledged by an indifferent being to both A and B. Therefore, to recognise this principle is not to express one's own irrational preferences. Kohl⁵ (1978: 206-207) denies the cosmic perspective's validity for determining the value of life, claiming that it confuses the issues of finding meaning in one's life with finding a meaning or purpose of the universe. He maintains that purposes can only be assigned to sentient beings, and consequently, if one does not believe that there is sufficient evidence for maintaining that the universe is governed by a sentient being, then one can only recognise the separate purposes of men and animals. Furthermore, he denies that it follows from the proposition that nothing has intrinsic value, that nothing is of value. We are free to choose the values in our lives.

Nathanson states, to adopt the cosmic point of view as a test for values is to overlook the difference between the following two questions:

(1) Would a purely rational being, one possessing only cognitive powers, necessarily choose A over B?

(2) Would a rational being, with such traits as particular goals, preferences, needs, or desires, necessarily choose A over B? (Nathanson 1978: 198).

The former question yields the nihilistic answer because it is indifferent to A and B, and has no ground for choosing between them. The latter question, on the other hand, refers to the contingent features of the being making the choice, thereby allowing for judgements of rationality. To ignore one's own preferences, leave one's own needs unmet, and thwart one's own goals, is under normal circumstances regarded as irrational.

Seen from this perspective it becomes clear that rationality is linked to prudent satisfaction of desires and preferences.

We usually describe something as "good," rather than "good for X," only when particular interests or circumstances are shared to a large degree, such as when they are aspects of human nature. What can we assert about the value of life? Seen in this light, the value of life is not unconditional. A life with properties rational for a person to want in his life (with certain aims, desires, preferences, and so on) will be a good life. A life lacking such properties will have no good, will have no value. In this respect it is even possible for a life to be positively bad, and Nathanson believes that it may be appropriate for a person to end his or her life in such circumstances. Even if one believes that suicide is immoral, one may nevertheless also believe that it would not be irrational for a person to commit suicide if the future held nothing but torture and suffering. An alternative view may insist that such a life still had value. One would thereby be distinguishing between the life of the person in itself, and the conditions under which the person would live. The latter would be seen as evil, while the former would still be seen as having value (Nathanson 1978: 200).

Nathanson does not conclude that life has value only if value is attributed to it. His conclusion is that the value of life is relative because it is conditional on what other things and persons happen to value, and on their evaluation of life itself. It is not irrational to value what one prefers, and given that something is preferred, it is rational for one to value it. To return to my previous preferences, my lemon preference may be an irrational preference, but it is not irrational for me to act in accordance with this preference. The value of life is objective in a further respect, namely that one can be mistaken about one's evaluations of one's life. A person may, for instance, be dejected because he failed in achieving a particular goal, and therefore judge his life to be meaningless, while many other aims he values are still available

to him. Therefore, his overall negative evaluation of his life may be mistaken, and ceasing to attribute value to it would be irrational. This indicates that attributing value to life is not totally subjective (Nathanson 1978: 202-203).

Those who believe that one has the right to terminate one's life, believe that to expedite one's death is essentially an exercise and expression of one's freedom. They may argue that since a person's life belongs to himself, he does not only have the right to terminate his present life, but need not even have an extraordinary reason for doing so. Seneca⁶ maintained, for instance, as long as one departed from one's life nobly, one's life as a whole was positive; and that often one must leave bravely, and one's reasons for doing so need not be substantial, since our reasons for remaining alive are also not substantial. He also believed that living long is not a good, but living well; and that the wise person will therefore not cling onto life, but only live as long as he ought. The quality, and not the quantity of one's life determines its value. He maintained, when one is plagued by misfortune, one has the right to free oneself from this life (Kohl 1978: 207-208). Thinkers such as Seneca recognise that there are differing degrees of quality of life, and that some reasons for dying are better than others. Ultimately, however, any reason is sufficient as long as it is not the result of external coercion.

Countering this, one may say that this view fails to distinguish between relevant and irrelevant reasons. To end one's life as soon as one encounters grave misfortune may not be a sufficient reason to do so, and may be irrational. Certainly, one may often risk losing one's life to achieve a significant good, such as to save others, but thereby one is not performing the action for the primary purpose of ending one's life. This position carries with it the difficulty, however, that no matter how benevolently motivated one's intentions may be, one is never morally justified in deliberately terminating a person's life. Another difficulty is, why are we sometimes justified in sacrificing one's life to assist others, but are never justified

in terminating one's life to help oneself? The right not to be killed, the right to subsistence, the right to health care, and the right to self-defence are instances of a person's fundamental human rights. The right to die is usually the other side of the coin. It entails the right to choose how, when, and where to die, or how we would choose if capable of doing so. The question here is no longer whether we want voluntary death, but how much, and under what circumstances it ought to be allowed. This position is usually advocated by those who believe that there are cases in which one ought to terminate a life if that life would be utterly meaningless and filled with irremediable suffering, for example, patients who can no longer live a meaningful existence due to terminal illness filled with suffering, or humans in the initial stages of life, born retarded to such an extent as never to have the capacity to find any meaning in life.

I am sure most people will agree that to live a meaningless life is an intrinsically undesirable state of affairs. I therefore argue that to end a life that is irrevocably meaningless is a morally correct action. The critic may object with the question, whether it ought then not to be accepted that all meaningless lives be ended. Let us imagine a person who develops the inability to derive satisfaction from anything. His lethargy may lead to his giving up all life-plans or system of aims. Even though such a person might not be suffering, we may describe his life as having no value. Having nothing to live for, such a person may well be indifferent to the decision between life and death, and given even only a slight motivation to end life, his action would not appear irrational. If we know that his condition is permanent, then he has no life-plan that allows him to establish that life is better than death. His or her life may be described as devoid of value because he or she wants to do nothing with it. This is not to assert that death would be the rational decision, since given a state of indifference, the decision to continue living is just as rational. Such a state may be attributed to beings in

irreversible comas, or the case primarily under discussion in this chapter - an infant born with such extreme mental retardation as never to be capable of developing any life-plan. A person with consciousness, perceiving his life to be meaningless is not one we could ever classify as having an irremediable meaningless condition. He may suddenly experience something wonderful, develop an interest, or fall in love. His life would thereby suddenly become meaningful.

6.6 ABORTING SEVERELY RETARDED FOETUSES

At the centre of this discussion are beings that lack consciousness, or that are incapable of meaningfully classifying, storing, and retrieving sensory information, and thereby incapable of integrating experiences to give meaning to them, or develop any life-plan. Nathanson suggests that the correct question to ask is whether a rational person would choose life or death given such circumstances (Nathanson 1978: 201). With this view I strongly disagree. Many healthy persons could not imagine being blind or deaf, believing that they would rather be dead. Yet many blind and deaf persons live very fulfilling lives. Helen Keller (1880-1968) lived a fulfilling life despite being both deaf and blind. Many people often express that they would rather die than live a life in a wheelchair. Steven Hawking, one of the world's leading scientists in the fields of physics and cosmology, is paralysed and unable to speak. Yet his contribution to science is invaluable. Christopher Reeve, known for his acting roles as Superman, was paralysed from the neck down subsequent to falling off his horse. His injuries were of such a nature that even his respiratory system no longer functioned autonomously, necessitating his constant connection to a respirator. Is this a life many would still consider as minimally decent? Judging

from their utterances, many people would probably rather choose death. Perhaps, prior to Christopher Reeve's accident, he also believed that he would rather die than be in such a state. In a televised interview, however, he explicitly stated that death was only a possibility in his mind for a few minutes after waking from coma. Seeing his wife and children made him realise that there is still so much to live for. Despite his physical disability, he again lives a very active life, and by his own account, a meaningful one. Strongly disagreeing with Nathanson, I argue that a life's quality cannot be determined by asking whether we would choose life or death in a given situation, since such a belief may change from one time to another, and from prior to being in that situation to being in it, i.e. the decision depends entirely on subjective preferences that may vary.

When arguing for the significance of potential, I argued that the value of a potential person is proportionate to, and derivative from the value he or she will have as an actual person. A being that through some serious defect will never attain personhood status cannot be considered a potential person. A potential person is a being that will in the normal course of its development develop into a person. If a being's development is retarded to such a severe degree that it will never attain any significant personhood characteristics, then abortion even in the late stages of pregnancy, and even infanticide in very severe cases, is morally defensible. Which beings would we so define? An anencephalic infant for instance (one whose brain and spinal column did not form) who will never attain any properties other than a few biological ones usually attributed to persons. Mary Anne Warren⁷ (1996: 204-211) mentions a number of characteristics usually attributed to persons: consciousness (especially the capacity to feel pain), a developed capacity to reason, self-motivated activity (relatively independent from genetic or external control), the capacity to communicate complex messages, and self awareness (the presence of a self-concept). A severely retarded

individual may develop at most the ability to feel pain, and has no potential for developing the rest. In arguing for abortion in cases of severe mental retardation, I am stressing "mental retardation." I have frequently used the term "normal course of developments" to refer to a pregnancy, or to the development of an infant. If the foetus's development is abnormal to such a degree that it will never attain even the most rudimentary level of personhood, then its development cannot be described as a "normal course of development." For many healthy parents the prospect of having a blind or deaf child is one too dreadful to imagine. Under no circumstance, however, can I morally defend the aborting of a foetus because it is physically handicapped or deformed. People with physical handicaps are often able to compensate their shortcomings, are often able to transcend their handicaps, and can certainly live meaningful and fulfilling lives, as the examples of Helen Keller, Steven Hawking and Christopher Reeve have attested.

"In creating one's own life, a person can establish new standards of value, can go beyond his own limitations and even a little beyond the previous limitations of mankind as a whole. For this reason we all thrill to examples of human greatness, for those who have been great inspire us with hope that we may yet not only do what they did, but also do what they did not - that as they became what man before them had not been, so we too may become what man before us has not been. Our heroes inspire us not to relive their lives but to live our lives with a touch of their heroism" (Grisez 1972: 295).

I am also not arguing for the moral permissibility of abortion in all cases of mental retardation. Many people with Down's Syndrome (a congenital disorder involving moderate to severe mental retardation), for instance, are capable of living comfortable though simple lives. As many parents of such children testify, being a parent to such a child can also be

rewarding and fulfilling. When deliberating whether to abort, the severity of the mental disorder must primarily be carefully considered, and the potential of the child's development be evaluated. If the findings show that the child will, to a reasonable degree of scientific certainty, never develop much beyond a vegetative level, then abortion is surely morally justifiable. But if the child has a chance of attaining cognitive abilities (even if these might be very slight), an abortion is not morally defensible. Aborting severely retarded individuals is morally less objectionable in virtue of their potential. They lack the potential to become "actual persons." It must be kept in mind that the value of a potential person is proportionate to and derivative from the value it will have as an actual person. If a human being (a being endowed with the human genetic code) does not have the potential of developing into an actual person, then it cannot assume the status of a potential person, and hence aborting such a being is morally less objectionable. The aborting of such a being may morally be equated to the killing of an animal, keeping in mind that animals have rights too, but that their rights can be more easily overridden than of potential or actual persons.

6.7 SUMMARY AND PERSPECTIVE

In this chapter, I endeavoured to argue for the moral permissibility of abortion if it becomes evident that the developing child will be mentally retarded to such a degree as to never attain any significant characteristic of personhood. Aborting such a foetus often means performing an abortion in the advanced stages of pregnancy because the anomaly can seldom be detected earlier. Since the foetus is already clearly sentient, performing such an abortion requires very significant reasons.

It was, therefore, imperative to take a look at the value of life in general, as well as at its relation to suffering.

Donnelly argued that suffering is not always evil. In some cases it helps one, or those around one, to develop as a person. Nevertheless, many people wish to abrogate the handicapped, even if this would mean letting them die. Society generally feels threatened by the handicapped.

Kierkegaard believed that suffering had great instrumental value, enabling us to develop desirable traits that could otherwise not be attained. Suffering should therefore be seen as a virtue. He held suffering to be a beneficial burden. For him spirituality without suffering is inconceivable.

In determining life's value, it had to be determined whether its value is intrinsic, or conditional. Steven Nathanson argued that if one beholds life from a universal viewpoint, one is incapable of attributing value to it. Its value has to be attributed to it from a worldly standpoint, i.e. we have to give individual lives their meaning. The universal viewpoint is also not always the rational viewpoint, nor is the worldly viewpoint necessarily irrational. Sometimes the opposite is the case. Nathanson does not conclude that life has value only if value is attributed to it. His conclusion is that the value of life is relative because it is conditional on what other things and persons happen to value, and on their evaluation of life itself. It was also argued that if one presently believes a life to be meaningless, it is not necessarily appropriate to end the life in question, since a turn in events could bring a significant change and give that life meaning.

Turning to the abortion of severely retarded individuals, Nathanson suggested that the correct question to ask is whether a rational person would choose life or death given such circumstances. I rejected this suggestion, since people sometimes believe a situation to be meaningless, but once they themselves are actually in that situation, they too find meaning.

Regarding abortion of severely retarded individuals, I argued that such abortions are only morally justifiable when the foetus does not have the potential of acquiring significant personhood characteristics. If a foetus will be retarded, but will still have the potential of attaining basic cognitive abilities, then an abortion is not morally defensible.

In this and the foregoing chapters, I have defended all positions I initially set out to defend regarding abortion. To do so, I adopted a rights oriented perspective. In recent decades, numerous philosophers have argued for a return to a virtue-oriented approach in ethics, claiming that it avoids the shortcomings of a rights-oriented perspective. In the next chapter, I shall examine virtue ethics, and explain why I have chosen a rights-oriented perspective.

CHAPTER 7

VIRTUE ETHICS AND ABORTION

7.1 INTRODUCTION

In dealing with the issue of abortion, I was primarily concerned with the rightness or wrongness of performing an abortion. I thereby concentrated on a being's rights. A number of philosophers have in recent decades, however, expressed their concerns about the limitations of a rights-oriented perspective and argued for a return to a virtue-oriented perspective. In this chapter I shall examine virtue ethics, pointing out the advantages and disadvantages of the approach. I shall then turn to a virtue philosopher, Rosalind Hursthouse, who concerned herself with the issue of abortion. In the final section of this chapter, I shall point out that my approach led me to conclusions that ought to be acceptable to many virtue philosophers and shall also explain why I chose and prefer a rights-oriented perspective to a virtue-oriented one.

In 7.2, virtue ethics is briefly introduced and its origin and development discussed. This whole ethical approach focuses on virtues. In 7.3 it is, therefore, imperative to ask what a virtue is, followed by why virtues are important (7.4). Advantages and shortcomings of virtue ethics are discussed in 7.5 and 7.6 respectively. In 7.7 I turn to a virtue philosopher who dealt with the issue of abortion, and in 7.8 an evaluation of virtue ethics regarding abortion is made. It will become clear that the normative conclusions of virtue oriented and rights oriented approaches need not necessarily differ, but that at a metaethical level the justifications of the conclusions will differ radically. Finally, in 7.9, I defend the choice of a rights-oriented perspective.

7.2 BACKGROUND TO VIRTUE ETHICS

In dealing with any subject, the question we begin with is determinative for the answers we give. Aristotle's¹ ethics is about a person's character. He asks, what it is to be a good person, and answers, to be a good person is to live a virtuous life. To understand ethics, we must therefore understand what makes a person virtuous. For Aristotle, the good person is the one with a virtuous character, therefore, for him, the virtuous are the central focus of ethics (Rachels 1986: 345). Male points out that the classical philosophers did not lay down principles of moral behaviour, but rather concentrated on the character of the moral person. He contends that classical moral theory is superior to an ethics of duty. The fundamental moral question for Aristotle is not "What shall I do?" but "What shall I be?" The morality of doing is relatively simple - we decide what we ought to do by determining which actions will maximise utility, or are universalisable. The morality of being entails another kind of simplicity, which Male calls "unity of character." Persons of character do not only provide us with

principles, but more importantly, examples to follow. Male contends that an ethics of character is more flexible than an ethics of rules, since we can find more than one way of following a good example. For Aristotle, telling the truth was not as for Kant, fulfilling an obligation, but rather a quality of character, or a range of qualities of character. Aristotle's ethics does not deal with principles (although he must have adopted some principles, such as that one ought not to commit adultery), but rather focuses on character traits of virtuous individuals.

Aristotle lists numerous virtuous means between extremes, of which a few are mentioned. Courage is the mean between cowardice and foolhardiness, liberality between prodigality and illiberality, magnificence between vulgarity and meanness, pride between vanity and humility, friendliness between obsequiousness and sulkingness, and justice between the two extremes of injustice (Sommers & Sommers 1997: 194).

Although virtue centred ethics is often attributed to Aristotle, other ancient thinkers such as Socrates and Plato are also identified with it. They all approach the subject of ethics by posing the question, what characteristics, what traits of character make one a good person. Plato speaks of virtues and vices, and of certain types of human character, but says nothing about principles, rules or laws, except when dealing with politics. The central issue in ancient moral philosophy is not duty, but virtue (Male 1997: 310). For Christian philosophers, being a good person means obeying God's commandments. St Augustine sees happiness as the enjoyment of the highest good. This good cannot be lost by accident or misfortune, since then we would not be able to enjoy it confidently. Therefore, it must be of the soul. The highest good must be something greater than the soul itself, otherwise the soul would become worse by pursuing it. St Augustine concludes that the highest good is the possession of virtue. The virtuous Christian follows God, avoids sin, and obeys His will (Augustine 1997: 305-309). Reason was the source of

practical wisdom for the Greeks, i.e. the virtuous life for them was inseparable from the life of reason. St Augustine mistrusted reason, and defended the subordination of reason to the will of God. Medieval philosophers, therefore, discussed the virtues in the context of divine law, of which faith, hope, charity, and obedience were the central focus (Rachels 1986: 345-346).

Although philosophy again became secularised after the Renaissance, there was no return to the Greek way of thinking. The divine law was replaced by the moral law. The moral law was a system of rules drawn up through reason, determining right or moral action. Instead of asking, "What character traits designate a moral person?" the focus shifted to "What is it to perform a moral action?" or "What is it to act morally?" This new approach led them no longer to develop theories of virtue, but rather of right action and obligation. The theories that dominated moral philosophy since the seventeenth century, were ethical egoism maintaining that one ought to do whatever will promote one's own interests; utilitarianism, that one ought to act as to maximise overall happiness or well-being; Kantianism, that we follow rules that we could will to become universal principles; and social contract theory, maintaining that we ought to follow rules that rational, self-interested people can follow and agree to establish in the interest of mutual benefit (Rachels 1986: 346).

Recently, several philosophers have maintained that the approaches of modern moral philosophy are inadequate and that we should return to Aristotle's way of philosophising. This stance was first put forward by Elizabeth Anscombe in 1958. She suggested that modern moral philosophy is incoherent, resting on the assumption of a law without a law giver. The notions of obligation, duty and rightness, she maintained, are inextricably linked to this idea. She suggested that we give up focusing on these notions and again let the concept of "virtue" be the focal notion. Since 1958, some philosophers have followed Anscombe in rejecting the approaches of modern moral philosophy.

Nevertheless, virtue ethics is still in a relatively undeveloped state, although philosophers such as Philippa Foot, Rosalind Hursthouse, John McDowell, Martha Nussbaum, Michael Stocker, and Michael Slote are agreed that a radical reorientation of the subject is needed (Rachels 1986: 346-347).

Rachels² lists five components that a theory of virtues should have: (1) there should be an explanation of what a virtue is, (2) there should be a list specifying which character traits are virtues, (3) it should be explained what these virtues consist in, (4) there should be an explanation why these qualities are good ones for a person to have, and (5) the theory should clarify whether these virtues are the same for all people, or whether they differ from person to person, or from culture to culture (Rachels 1986: 347).

7.3 WHAT IS A VIRTUE?

Several acorns fall from a tree. One is eaten by a squirrel, another decays on the ground, a third grows into an oak tree. We maintain that the third acorn's fate is appropriate to it, that it succeeds where the other two fail. We believe that the appropriate purpose of an acorn is to develop into an oak tree. By doing so it reaches its goal. To speak of a "goal" here, however, is anthropomorphic. An acorn is not a conscious being, pursuing a happy outcome of its development. Moreover, the happy outcome is hardly more natural than the unhappy outcomes - more acorns decay on the ground, or are eaten by squirrels, than develop into oaks. Nevertheless, our contention that the appropriate goal of an acorn is to develop into an oak is justified. Any organic matter can decay on the ground, any nut can serve a squirrel fodder, but only an acorn can develop into an oak tree (Sommers & Sommers 1997: 290).

The Greeks defined the function or natural purpose of a thing as an activity that is specific to it, one that only it performs, or one that it is capable of best performing. In this sense the acorn's development into an oak tree is the "happy" or "proper" one. The Greeks employed the term "eudaimonia" to refer to a self-functioning, self-fulfilling activity. The characteristics that enable a being to fulfil its function or functions the Greeks termed "virtues." A virtue may be described as any trait or capacity that enables a being to fulfil its appropriate function. Virtues also refer to a special kind of excellence that only humans possess or lack. In this latter sense the virtues are moral excellences that contribute to a life of human fulfilment, and in this sense we refer to them in contrast to "vices" (Sommers & Sommers 1997: 290).

The question that now needs to be answered is, "What goal or purpose is appropriate for human beings?" The Greeks audaciously confronted this question. Aristotle maintained that human beings are rational and social animals. They naturally fulfil themselves as rational and social beings. He maintained that a virtue is a character trait manifested in habitual actions. A person who only occasionally tells the truth does not possess the virtue of honesty. The honest person is habitually truthful, telling the truth not only when so doing is convenient to him. Rachels rightly points out, however, that this is not enough. Vices are also character traits manifested in habitual behaviour. Rachels redefines a virtue as "a trait manifested in habitual action that is good for a person to have" (Rachels 1986: 348).

The question that immediately arises is, what the virtues then really are. Which character traits could be fostered in human beings that we would agree to be labelled as virtues? Rachels suggests a list, cautioning, however, that this list need in no way be complete. He mentions benevolence, civility, compassion, conscientiousness, cooperativeness, courage, courteousness, dependability, fairness, friendliness,

generosity, honesty, industriousness, justice, loyalty, moderation, reasonableness, self-confidence, self-control, self-discipline, self-reliance, tactfulness, thoughtfulness, and tolerance (Rachels 1986: 348). But what do these character traits consist in? It is one thing to say that we ought to be conscientious, courteous, dependable and thoughtful, but what are these virtues? Each virtue has its own features and raises its own problems. Rachels (1986: 349) examines four of these more closely, namely courage, generosity, honesty, and loyalty to family and friends.

Aristotle held courage to be the mean between the two excesses of cowardice and foolhardiness - it is cowardly to flee from all dangers, but it is foolhardy to risk too much. Courage is needed by anyone facing danger, this includes all of us at different times. We all need courage because we all face situations in which we are vulnerable. If we consider only the normal circumstances of life, then the virtue of courage poses no extraordinary problem, but when we examine more unusual circumstances, the matter is no longer as clear. Does a soldier possess the virtue of courage when courageously fighting for an evil cause? Some may hold that he does not, that courage in an unworthy cause is not a virtue. Calling such a soldier courageous seems to praise his conduct, but we do not wish to praise it. However, it does not seem right to say that he is not courageous.

Foot³ (1978: 340) believes that most people do not find any difficulty in believing that virtues are sometimes displayed in immoral actions. Industriousness and courage may, for instance, assist an immoral person in his immoral actions. The UNA⁴ bomber, for instance, used his industriousness to construct parcel bombs that killed three people and injured twenty-nine, over a period of more than seventeen years in the United States. Foot maintains that it seems wrong to connect a characteristic such as industriousness equally to good and bad actions. She proposes that one way of evaluating usually virtuous actions, when employed for the attainment of bad ends, is to deny that

these characteristics serve as virtues in those people. Firstly, she cautions that we should not draw this conclusion from seeing a person employ a usually virtuous property towards an unworthy end on one occasion. For instance, if a person is generally courageous, using his or her courage in laudable situations, but is courageous on one occasion in pursuit of an unworthy end, we cannot conclude that courage is not a virtue in that person. Just as "poison," "solvent," and "corrosive" are properties of physical things, virtue words refer to the power to produce good actions and good desires. But poisons, solvents, and corrosives also do not always act characteristically; similarly, properties usually regarded as virtues do not always function characteristically. If arsenic is a poison, it does not follow that it acts as a poison wherever it is present. Sometimes it is acceptable to state that arsenic is a poison, but does not act as a poison in this case. Similarly, Foot concludes, virtues such as courage are not virtues in some instances, although in general they are (Foot 1978: 341-342). Rachels is correct in suggesting that we should avoid this problem by asserting that he exhibits two qualities of character - one that is admirable (bravely facing danger), and one that is not (willing to fight for an evil cause). On the whole, courage is admirable, but when it is employed in despicable causes, it is not (Rachels 1986: 349-350).

Generosity is the willingness to use one's resources to assist others. It is also a mean between two extremes, somewhere between stinginess and extravagance - the former person gives too little, the latter too much. How much is enough? The answer to this question depends on the ethical view we accept. Jesus said that we must give all we have to save the poor. Many regarded, and still regard this as a hard teaching, and even many considering themselves His followers are unwilling to accept it. Mother Teresa of Calcutta was perhaps one of the few who completely did so. The modern utilitarians closely follow this teaching. They maintain that one ought always to

act in such a manner as to increase the overall happiness of all concerned. This means that one ought to support the poor until further giving would diminish rather than increase the general level of preference satisfaction. Why do people generally reject this idea? Part of the answer may be selfishness, but adopting such a policy would also prevent us from living normal lives (we would not only have to provide financial support, but also give much of our time, which would drastically change many of our lives). Rachels therefore suggests an amendment to the definition of generosity to state that "we should be as generous with our resources, as is consistent with conducting our ordinary lives in a minimally satisfying way" (Rachels 1986: 350). But some rich persons would consider an ordinary life as one others would evaluate as extravagant.

An honest person is one who does not lie. But there are many ways of misleading people, other than by lying. Should we maintain that an honest person is one who never lies, or one that only lies in exceptional circumstances when it is considered the appropriate thing to do? Most people would adopt the latter view. Why? Our ability to live together in societies depends on our ability to communicate. We talk to one another, read one another's writings, exchange information and opinions, express our desires, beliefs, wants, needs and preferences, make promises, ask and answer questions, debate and discuss issues, and much more. Without communication, social living would be impossible. In order for communicative interactions to be successful, certain rules of communication must exist. We must be able to rely upon one another to be honest. By accepting someone's words, we make ourselves vulnerable by modifying our beliefs in accordance with what we are told by others, we place our welfare in their hands. If they lie, we may acquire false beliefs, and if we act on those beliefs, we may do foolish things. We trusted them, and they deceived us. For this reason lying is offensive; it is a violation of trust. This does not mean, however, that we ought to be honest with everyone. If we know that we are living under a despicable regime, and know that

the authorities are unjustly arresting, detaining and torturing citizens, we need not tell them the truth when asked the location of a certain person of whose hideout we are aware. Justice is considered a virtue, therefore, if people wish to use our information against the interests of justice, we are not obliged to be honest. People forfeit their right to the truth from us if they wish to employ our information for the attainment of some unjust end (Rachels 1986: 351-352).

In Plato's "Euthyphro," Socrates learns that Euthyphro is prosecuting his father for murder. Socrates questions whether it is proper for a son to bring charges against his father. For Euthyphro, murder is murder, seeing no wrongdoing in his prosecution. Normally, however, we do not treat family and friends as we would strangers. We would do things for them that we would not do for strangers, and are bound to them by love and affection. An explanation for the difference in treatment is not based merely on the fact that we treat those people we like differently from those we do not. Our duties and responsibilities are different to them. The essence of friendship is that we have special duties and responsibilities towards friends. Friends help one another, but the benefits of friendship by far exceed the benefits of mutual assistance. Without a friend, life would be empty. Even Aristotle maintained that no one would wish to be without friends, even if he could have everything else. "By returning our affection they confirm our worthiness as human beings" (Rachels 1986: 353). To have friends, we must also have the qualities of character that enable us to be a friend, of which loyalty is very important. Friends are reliable, they will stand by one even when times are hard, and even when, objectively speaking, the person would deserve to be abandoned. They make allowances for each other, forgive offences, and refrain from making harsh judgements. Sometimes it is necessary for a friend to tell his or her friend an unpleasant truth about himself, but in doing so he or she will not embarrass the friend in front of others. This does not entail that we do not have duties to strangers, but these duties

are different. Beneficence is a virtue, but it does not require the same treatment for strangers and friends. Justice also requires impartiality, but because friends are loyal, the demands of justice apply less stringently between them. This is why Socrates is surprised at Euthyphro's prosecution of his father. The relationship between loved ones is even closer than between friends, a reason why in many countries a person cannot be compelled to testify in court against his or her spouse (Rachels 1986: 352-354).

It seems clear that virtues are beneficial, but it is appropriate to ask, whether they are beneficial to the person having the virtues, or to those dealing with him or her. The answer depends on the virtue in question. Courage, temperance, and wisdom benefit both the possessor of these virtues and others. Charity and justice, on the other hand, are primarily concerned with the welfare of others, and with what is owed to them. If we define virtues as character traits a person needs to live well, being both beneficial to her and others, many properties immediately come to mind that are not virtues, but are beneficial to oneself or others. Health, physical strength, concentration and intelligence are examples. To distinguish between virtues and other beneficial characteristics, Foot suggests that virtues are traits connected to a person's will. Our moral dispositions are usually judged with reference to our intentions. A person doing something unintentionally is usually not thereby judged on his virtues. There is an exception to this, however, when the lack of an intention is held to be a malady of character, such as when a person does harm to others through his unintentional or inconsiderate neglect. A virtuous person does not only do good where it is in his power to do so, but also intends to do good, and finds pleasure in the well-being of others. Foot is using "will" in its wider sense to stand not only for what is sought, but also what is wished for (Foot 1978: 330-331).

The virtue of wisdom, however, does not fit in with this initial definition by Foot. It also seems to be a property of

the intellect, such as concentration and intelligence, rather than the will. Wisdom is associated with knowledge, but knowledge is not associated with intention or will. What do we mean by "wisdom?" Foot maintains that wisdom has two parts, the first being knowledge of means towards certain ends, and the second is knowledge of a particular end's worth. Wisdom may thus be distinguished from cleverness, as Aristotle and Thomas Aquinas insisted. Cleverness is the ability to take the right steps to any end, while wisdom is the ability to take the right steps only to good ends, and pertaining to human life in general, rather than to the ends of particular arts. Furthermore, Foot states that wisdom is associated only with knowledge attainable by any ordinary adult human being, i.e. it does not require training or special intelligence. Knowledge that is attained only by training or requires special intelligence would not be considered as wisdom, even if it had the same ends. Some people are wise without being clever or well informed. Wisdom is connected to the will in that the wise person knows how to achieve a good end, and wants to attain it. Wisdom is also the capacity to distinguish between the values of different ends. A wise person will not strive incessantly towards unworthy ends (Foot 1978: 331-332). On this point we may question Foot's contention. Does a wise person have knowledge of worthy ends and the means towards them, or is a wise person also one who is capable of pursuing those ends he chooses as worthy?

A further important distinction between virtues on the one hand, and skills and arts on the other, is that voluntary mistakes are usually preferred to involuntary ones in the latter, while the opposite is the case with the former. Therefore too, virtue is more than just a mere capacity, it is imperative that it engages the will. Saying, "I did it deliberately," is not seen as an excuse when a virtue is in question. With a skill or ability, such as spelling, however, such an excuse is acceptable (Foot 1978: 333-334).

Another characteristic of the virtues identified by Foot is their corrective capacity. By this she means that each virtue has some temptation to be resisted, or deficiency in motivation to overcome. It may be asserted that only because temptations of fear and intemperance exist, the virtues of courage and temperance exist at all. We often experience fear and wish to flee, even when doing so is inappropriate behaviour, or we desire pleasures when attaining them may be unseemly. If fear and pleasure were not sometimes inappropriate, virtues of courage and temperance would not exist as correctives. The corrective function is applicable for many other virtues as well, cooperativeness, industriousness, reasonableness, and tolerance, because uncooperative behaviour, idleness, unreasonableness, and intolerance are encountered temptations. Justice, unfriendliness, and benevolence are slightly different because they are not correctives to unwanted temptations, but rather to a lack in motivation. If people were as concerned with the well-being of others as they are with themselves, there would be no need for a virtue of benevolence (Foot 1978: 334-336).

If we accept the thesis that virtues are correctives, a related question arises: Is it the case that the more effort a person must exert to act virtuously, the more virtue is needed to act virtuously? Or is difficulty in acting virtuously an indication that the agent is lacking in virtue? Aristotle believed the person finding pleasure in virtue superior to one experiencing difficulty in being virtuous. Who is more courageous, the one who wants to flee but does not, or the one who does not even want to flee? Who shows more justice, the one who finds it easy to act for what is right and proper, or the one who does not? Who shows more benevolence, the one experiencing difficulties in working for the well-being of others, or the one who does not? Foot argues that virtues are correctives to dispositions or tendencies in human nature in general. This does not mean that if a virtue is not a corrective for a specific person, then he or she is not

virtuous. A person overcoming great fear is regarded as courageous, but a person in a similar situation also facing the danger without experiencing any fear is similarly judged. Foot provides an example regarding honesty. A person tempted to steal is regarded less virtuous than one who never even considered such an action (Foot 1978: 336-338).

7.4 WHY ARE VIRTUES IMPORTANT?

Why are virtues desirable? Why is it good for a person to be courageous, generous, honest, or loyal? The answer may depend on the virtue in question. Courage is good because life is filled with dangers, and without it we would not be able to function optimally. Generosity is desirable because there will always be disadvantaged people needing help. Without honesty the relations between people could not function adequately and reliably. Loyalty is essential for friendship, and friendship is needed to find esteem as a human being. From these answers it appears that the answer is different from virtue to virtue.

Aristotle maintained that we can give a general answer to the question, stating that the virtuous person fares better in life, i.e. the virtues are needed to live a good life. We are rational and social beings, desiring and requiring the company and affection of others. We therefore live in communities with friends, families, and fellow citizens. In social interactions, characteristics of benevolence, civility, compassion, conscientiousness, cooperativeness, courteousness, dependability, fairness, friendliness, generosity, honesty, industriousness, justice, loyalty, etc. are needed to interact successfully with other people. A person lacking these qualities is incapable of functioning adequately, and depending on the degree of his inability, may be regarded as an antisocial personality.

"Antisocial personality, ... is a personality disorder in which the outstanding characteristics are a marked lack of ethical or moral development and an apparent inability of the individual to follow approved models of behavior. Basically, these individuals are unsocialized and seemingly incapable of significant loyalty to other persons, groups, or social values. These characteristics often bring them into repeated conflict with society...

Typically intelligent, spontaneous, and usually very likeable on first acquaintance, antisocial personalities are deceitful and manipulative, callously using others to achieve their own ends. Often they seem to live in a series of present moments, without consideration for the past or future" (Carson, Butcher & Coleman 1988: 237-238).

On a more individual level, characteristics of courage, industriousness, loyalty, self-confidence, self-control, self-discipline, and self-reliance are needed to successfully attain the goals one strives towards and fulfil the social roles we occupy. Despite their differences, it is contended, the virtues have the same general sort of value. They are qualities needed for successful human living in all societies and in all ages (Rachels 1986: 354-355).

Other virtue philosophers, however, maintain that virtues are society or culture specific. Societies provide values, institutions, and ways of life that determine individual ways of life. The traits needed to occupy these roles will differ, therefore the character traits needed to live successfully will differ; hence the virtues will be different. It is therefore contended that which traits are considered as virtues will differ from society to society, depending on which traits are conducive to successful living in a given society. Macintyre⁵ maintains, to adequately understand a person's actions, it is imperative that the context in which the action is performed is understood. For an action to be indicative of a person's

possessing a specific virtue, the type of behaviour must be observable in different roles, unlike many skills, which are specific to certain roles. For a person to possess the virtue of honesty, for instance, it is not sufficient for him or her to be honest at work, while not being completely honest at home. The behavioural response must be observable in all roles. Therefore, Macintyre argues for the importance of taking a person's life as a whole into account (Macintyre 1984c: 318). He deems it important to understand the context in which an action is performed, because by only focusing on the action, no insight is obtainable about the motivation of the person performing the action. A person's jogging, for instance, may be explained in different ways. If his motivation is to get exercise, then we have one explanation. This may have positive secondary consequences, such as to benefit his health, and to relieve tension. If his motive for jogging is to relieve tension, we have a different explanation. The behaviour may thus take place in a setting that is primarily a health oriented one, or in a recreational one, to name only two. To fully understand his behaviour, we need to understand the whole context in which the behaviour arises. Macintyre therefore argues, we cannot characterise behaviour independently from the intention leading to it, and cannot understand an intention independently from the setting in which it is situated. He uses the term "settings" relatively inconclusively. A social setting may be an institution, a practice, or a milieu of another human kind (Macintyre 1984c: 319). To understand a behaviour we need to identify the primary intention behind it. Thus, if we know that Jones is jogging because he believes it to be good exercise, relieves tension, and his wife admires his commitment, we have not yet identified the primary intention. Would Jones still jog if his wife were indifferent to it? If it did not relieve tension? If it neither relieved his tension nor benefitted his health. Only once these questions are answered can an adequate explanation of his behaviour be attained. A situation's setting, Macintyre maintains, is inextricably linked

to its historical and cultural backgrounds. Therefore, to understand a person's behaviour in a specific setting, to understand his role, it is imperative that the historical and cultural values of his role be understood. Macintyre also believes that the virtues enable us to attain the good life. Since settings are different, since life roles vary, virtues will be different too. "What the good life is for a fifth century Athenian general will not be the same as what it was for a medieval nun, or a seventeenth century farmer" (Macintyre 1984c: 324). This is not merely because we live in different social settings, but because we approach our circumstances with different social identities. According to Macintyre, therefore, virtues vary from culture to culture, from setting to setting, and can only be understood from the setting's perspective.

This view may be challenged, maintaining that there are virtues that will be needed in all societies and in all eras. Aristotle maintained that the basic values, such as friendship, loyalty, honesty, benevolence, etc., are universal, since all people need friends, no society can function without adequate communication, in every society there will be people worse off than others, and so on. Rachels rightly states that it may be a fact that the virtues are given different interpretations in different societies, and because individuals live particular sorts of lives in particular circumstances, they will value certain traits more than others, but it cannot be correct to maintain that whether any particular character trait is a virtue is never anything more than social convention. "The basic virtues are mandated not by social convention, but by basic facts about our human condition" (Rachels 1986: 355-356).

7.5 ADVANTAGES OF VIRTUE ETHICS

Three main points are identifiable why virtue ethics is appealing: (1) it provides a natural account of moral

motivation, (2) it is capable of dealing with the problem of impartiality, and (3) it evades many objections of modern moral philosophy made by feminist philosophers. Virtue ethics seems to have a clear advantage over the other theories of ethics in regard to human motivation. Certainly, there are connections between being and doing - a man can only be what he is, by doing what he does (Male 1997: 312). His moral qualities are ascribed to him because of his actions, which are described as exhibiting those qualities. An ethics of being must entail doing, while an ethics of doing often looks no further than doing. A morality of principles is concerned solely with what people do or fail to do, since that is what rules are for. Male states that according to such an ethics; people need possess no character at all, only moral principles and a will to live according to them. The philosophy of duty takes no account of what people are, but only how they should conduct their actions. Justice for Plato does not mean "acting according to law," it is a quality of character, and a just action is one a just character would perform (Male 1997: 311). Kantians and utilitarians, according to Male, have difficulties in accounting for motives because they only focus on actions, not on the person behind the actions. Male contends that a utilitarian, for instance, is only able to commend a courageous character by stating that his or her action is one a courageous person is likely to perform, which in turn is an indication of a courageous character. For Aristotelians, on the other hand, a courageous action is one that manifests a courageous character and springs therefrom. Male (1997: 313) rejects a morality based on rules, since we may not yet have rules to guide all behaviour. When I am faced with a situation in which I am to make a moral decision, such as whether to permit an abortion, I first have to adopt a moral principle. Suppose now that I adopt a principle permitting abortion due to rape, then this principle may be opposing another of my principles, namely, not to kill an innocent human being. What is required, Male maintains, is not a new

principle, but a whole set of rules, one manifested in a virtuous character.

The shortcomings of two modern ethical theories are illustrated in the following. Donaldson (1990: 1-15) asks us to consider a fictional society in which the degree of affection people have for one another is homogeneous. It is not that these people are not fond of one another, or show a lack of interest for interpersonal relationships. On the contrary, these people value them, but they are equally fond of everyone. No one is preferred to another - strangers are appreciated to the same degree as spouses or children. In such a society, every person counts as one and no more than one - a utilitarian ideal. Would we feel inclined to immigrate to that society? Most of us would probably decline the offer. We would probably still be very hesitant even if the overall amount of friendship, love and interpersonal commitment were higher than in our present society. A society with absolute equals would not contain friends, lovers, or family relationships as we know them, since all would have equal status. People of that society would rather save two strangers than an own child, and even when faced with saving either a child or a stranger, the decision would be randomly decided, since none is to enjoy preferential treatment. Although utilitarianism would prefer the imagined society to our own, why are most people not inclined to agree? Sommers offers insight to this question.

According to Sommers (1988: 439-456), universal and impartial theories of morality are based on the assumption of equal pull (EP) among all members. She argues that an investigation into personal relationships yields no evidence that EP actually exists. We are differentially attracted to different members of society; Sommers calls this "differential pull" (DP). There are certain institutions and relationships that we are unwilling to give up. She argues that whether we would be willing to give up an institution depends on the nature of that institution - whether it has a predominantly intrinsic or extrinsic value. We would be willing to give up institutions

such as the nation state that have predominantly extrinsic value, i.e. their main functions, such as patriotism and security, could also be achieved within another social establishment. We would, however, not readily give up institutions and relationships of intrinsic value, such as friendship and the family, since the companionship, love, intimacy, mutual commitment and comfort could not be substituted by other institutions or relationships to a greater or equal degree. A society or social community in which all relationships are equal, in which all people are valued equally, is not appealing to us. Not only is it not appealing, we would not admire a person who conducted all his behaviours according to a principle of equality. If he were to give a stranger just as much interest as a friend, lover, child, or spouse, when faced with a situation in which he could only help one (their situations being otherwise relevantly similar), he would not only fail to attract admiration from everyone besides utilitarians, he would also receive a great deal of criticism, and perhaps even scorn.

Kant's theory of morality, with its insistence that to act morally is to act out of duty is no more appealing. Stocker (1976: 462) illustrates a situation in which a person receives a loyal visitor in a hospital. The patient appreciates the visitor's engagement under difficult conditions. He comes to realise that his visitor has not done this out of love or friendship, but merely out of duty - believing it to be his duty to visit a sick acquaintance, not doing this out of love, friendship, or other similar commitment. How would the patient feel? Surely the visit would be of greater value if it were done out of love or friendship, rather than mere duty. Another example will strengthen the argument. Suppose a person rescues his child from drowning. Would we not assume the action to have sprung out of love? If we are then honestly told by the rescuer that his only consideration was duty, how would we react? Even if the drowning person were a stranger, we would assume the rescuer to act out of care for others, to be motivated by

affection towards beings in distress. An action out of mere duty is similar to seeing it as a job to fulfil. Surely, moral actions cannot spring out of duty, but should be done out of love, care for other beings, or similar motivations.

The insensitivity of Kant's ethics becomes visible in his reaction to Maria von Herbert. Von Herbert was an Austrian who admired Kant's philosophy. She contemplated suicide after having told her lover about a previous relationship. She wrote to Kant for advice. He replied that she did the right thing by telling the truth, that she need never regret having done her moral duty, and that she should live with the consequences with composure. Unable to come to terms with her situation, she again wrote to Kant, who believed her to be mentally deranged. Von Herbert finally committed suicide. Kant's response to Herbert is indicative of his unwillingness, or inability to sympathise with von Herbert (Langton 1992: 175-192).

We want our relationships to be based on mutual regard. Acting from a utilitarian motive (the desire to do the right thing), or from a Kantian duty (from an abstract sense of duty), is not to act from such a motive. We do not wish to live in a community acting only from such motives, nor would we like to be such persons. Therefore, it is argued that theories of ethics focusing only on morally right action will fail to give a comprehensive account of the moral life. A theory emphasising personal qualities (such as friendship, loyalty, personal commitment) is needed to give an adequate account, i.e. a theory of the virtues.

Both Kantian and utilitarian ethics stress impartiality. It is emphasised that we ought to consider all persons as equals, being totally impartial. Of the modern theories, only ethical egoism disregards impartiality.

Feminist philosophers argue that modern ethical theories contain a subtle male bias. The bias is more than that the vast majority of philosophers have been men, and that their comments about women have often been degrading. Traditionally, social life has been divided into private and social segments, with men

dominating social affairs, and women being repressed to private affairs to a large degree. Men have dominated politics and economics, while women have been confined to the home and family. The concerns of the public and private realms are naturally different. In politics and business, relations are generally impersonal and contractual, very often affecting people one does not even know. In such a realm it may be appropriate to make one's decisions, and conduct one's behaviour, according to which decisions and measures will cause the highest level of benefit for all. In the private realm, however, this impartiality does not apply. Here we are dealing mainly with family and friends, with intimate relationships. Bargaining and calculating play a minor role, while love and care are preponderant. If we keep this distinction in mind, it is not difficult to understand why the modern theories drawn up by men (Kantianism, utilitarianism, and social contract theory), place emphasis on abstract impartiality and universalisability, characteristics traditionally required in the male realm. These incomplete theories are therefore incapable of giving explanations and guidance for our private, familial relationships. Virtue ethics is capable of undoing the imbalance. Virtues such as friendship, personal commitment, and compassion, to mention only a few, may be of paramount importance in the private domain, while virtues of benevolence, cooperation, and tolerance may be predominant in the social realm (Rachels 1986: 357-358).

7.6 SHORTCOMINGS OF VIRTUE ETHICS

Some virtue theorists have suggested that the modern approaches of ethics should be rejected altogether, replacing them with a theory entirely committed to virtue ethics. Virtue ethics is not to be seen as a supplement to the other theories, but as a preferable alternative. Is such an approach plausible?

As shown in the previous section, traditional theories of right action are incomplete, failing to consider the agent's character. Virtue ethics makes the issue of character its central concern, but thereby runs the risk of being incomplete in the opposite direction. Moral problems are frequently problems of how we ought to act, how we ought to behave, what we ought to do, and not what we ought to be. Virtue ethics fails to provide answers to such questions. If a virtue ethical theory is to be complete in itself, it will have to provide some explanation of right action. Some virtue philosophers, such as Anscombe, have suggested that we refrain from using moral terms such as "right" altogether, describing human conduct only in terms of character traits. A morally right action would then be described as just, honourable, considerate, or the like, and a wrong action as unjust, dishonourable, or malevolent (Rachels 1986: 360).

Rachels suggests that it is not necessary, however, for terms such as "right" and "wrong" to be dispelled, they could be given a new interpretation within a virtue ethical theory. Actions could be described as right or wrong in the familiar manner, with references that can be given for or against them. The reasons cited will, however, all be connected to the virtue or virtues in question. The reason for performing an action will be that it is honest, just, or benevolent, while the reasons against it will be that it is dishonest, unjust, malevolent, and the like. In summary we could then say that the right thing to do is what a virtuous person would do (Rachels 1986: 360).

Would an exclusively virtue ethical theory be capable of giving us an adequate explanation of moral conduct? Rachels (1986: 360) asks us to imagine what this would mean in terms of a typical virtue such as honesty. The reason a person should not lie, according to the exclusive virtue approach, is merely that by doing so one would be dishonest. The question "What does it mean to be honest?" is justified. Surely an honest person is one that follows the rule "do not lie!" It is

difficult to provide an explanation of what honesty consists in without referring to the disposition to follow such rules. It is important to ask, however, why such rules are important. Why should one not lie, especially when an advantage is to be attained by doing so? Merely commending or censuring conduct by referring to certain character traits is insufficient. We need to explain why certain character traits are desirable (considered as virtues), and not their opposites (considered as vices). A possible answer may be that a policy of truth-telling is advantageous in the long-term (an egoist's explanation), or that it promotes the general welfare (utilitarianism), or that people living together, relying on one another, need it (a version of social contract theory). Such explanations take us beyond exclusive virtue theory. Virtue theory also gives no explanation of how to resolve moral conflicts. If you have to choose between two actions, the first being honest but unkind, the second kind but dishonest, which are you to choose? An example is telling someone a painful truth about himself. Both honesty and kindness are virtues, but you cannot do both in this instance. In such cases we are in need of guidance that must be obtained beyond the domain of exclusive virtue ethics.

According to virtue ethics, the reasons for performing an action must always be located in one or more virtues. This means that for every good reason there is for performing an action, there must be a corresponding virtue to accept and act on that reason. This, however, does not seem to be the case. A legislator deliberating over which research to fund from limited resources may choose the project that may help the most people. May we say that he has a virtue that matches the disposition to do so? Perhaps it would be called "acting like a utilitarian?" Perhaps the ability to choose between virtues in conflict situations is matched by the virtue called "wisdom?" Surely, we cannot allocate virtues to cover all kinds of behaviour merely to save the theory (Rachels 1986: 361-362).

This section has shown that virtue ethics on its own is also incapable of comprehensively explaining and guiding all

aspects of moral life. Virtue ethics should therefore not be seen as a complete theory in itself, but rather a theory within the overall theory of ethical conduct.

7.7 VIRTUE ETHICS AND ABORTION

Virtue ethics is concerned with "human flourishing," or "living well" (Hursthouse 1991: 204). Rosalind Hursthouse⁶ defines a virtue as:

"a character trait a human being needs to flourish, or live well" (Hursthouse 1991: 204).

A virtuous agent is a person who "has and exercises virtues" and defines a right action as "what a virtuous agent would do in the circumstances" (Hursthouse 1991: 204).

Hursthouse examines several situations in which a woman might consider having an abortion. In each case she questions whether a virtuous woman would decide to undertake an abortion. Fundamental to her answers are two points: aborting a foetus is a serious matter that must be taken seriously, and being a parent constitutes in part a flourishing human life.

She examines women's rights. It is important to point out, as Hursthouse does, that she is not concerned with the laws permitting or prohibiting abortion, but merely with the morality thereof. She maintains, if one assumes that women have the right to determine what will happen with their own bodies, or the right to terminate the life of a foetus, then no conclusion can be drawn from this fact. According to virtue theory, by exercising a moral right, one can do something "cruel, or callous, or selfish, light-minded, self-righteous, stupid, inconsiderate, disloyal, dishonest, that is act viciously" (Hursthouse 1991: 205). She maintains that love and friendship can neither survive, nor can people live well, when the main

concern of people is the assertion of their own rights. Hursthouse therefore declares that whether women have a right to an abortion is irrelevant to virtue theory, because it is irrelevant to the question, whether an agent would be acting virtuously, viciously, or neither, in having an abortion (Hursthouse 1991: 205).

Regarding the moral status of the foetus, Hursthouse claims that this is an issue falling outside any moral theory, declaring it to be a very difficult metaphysical question. If the status of the foetus is relevant to the issue of abortion, then its status must be known to the wise and virtuous person. This is so because virtue is said to involve knowledge, and part of this knowledge involves having the right attitude to things. "Right" is here not used in the sense of "morally right," or "proper," but rather means "accurate truth." One cannot have the right attitude to something if one's attitude is based on inaccurate or false beliefs. Hursthouse declares, however, that the status of the foetus is not relevant to the rightness or wrongness of abortion. The only sense in which it is relevant is insofar as the familiar biological facts are relevant. By familiar biological facts is meant no more than that pregnancy is the result of sexual intercourse, pregnancy usually lasts approximately nine months, that a baby is born at the end of a term of pregnancy, and that this is how every human being comes into this world (Hursthouse 1991: 205). If we go beyond these "familiar biological facts," deriving some sort of conclusion from them (such as that the foetus has rights, or is or is not a person), we go beyond what is relevant to virtue theory. The central question to virtue theory is not what the familiar biological facts show, and what can be derived from them about the status of the foetus, but rather, how these facts influence practical reasoning, actions, thoughts and reactions of the virtuous and the non-virtuous. What is having the right attitude towards these facts, and what is the wrong attitude? This orientation not only accentuates the relevance of the familiar biological facts, but also our psychological facts, and

our emotions, such as that both males and females tend to care passionately for their offspring, and that family relationships are among the deepest and strongest in our lives (Hursthouse 1991: 206). She rightly claims that these facts make it evident that pregnancy is not just a thing among others, or an event comparable to others; those who declare an abortion to be on a par with a hair cut or appendectomy are mistaken. Abortion is a serious matter because the premature termination of a pregnancy is in a sense the cutting off of a new human life, and connects with all our thoughts about a new human life and death, parenthood and family relationships. To see abortion as the killing of something that does not matter, or the mere exercising of some right one has, "is to do something callous and light-minded, the sort of thing no virtuous person would do" (Hursthouse 1991: 206). It is not only to have the wrong attitude to fetuses, but also to life and family relationships in general. She poignantly illustrates this by pointing out that even the most ardent supporters of abortion, believing that abortion is no different in status to an appendectomy or a hair cut, seldom maintain this in the case of a miscarriage. Is it not unusual for one to remark over the grief of someone's miscarriage, "what a fuss about nothing," while to laugh at an appendectomy scar or a failed hair cut would not be? The assertion that every termination of a human life is a serious matter, as virtue ethics does, does not overlook the fact that the termination of life at different stages has differing degrees of moral significance, nor that no precise line can be drawn between the different stages. Our emotions and attitudes towards the foetus change as it develops, and this is why abortion in the late stages, Hursthouse maintains, is more problematic than in the early stages of pregnancy. Therefore, also, deep grief over a miscarriage in a late stage is more appropriate than a similar degree of grief over one during early pregnancy, under normal circumstances. Hursthouse maintains that the application of "tragic" to describe a miscarriage becomes more appropriate as the foetus grows, because one has

lived with it for longer, and was conscious of its existence for longer (Hursthouse 1991: 207).

Hursthouse argues, however, that although pregnancy is not merely a physical condition among others, this does not entail that one can never regard it as such without manifesting a vice. If women seek abortions to avoid the physical conditions because they are compelled to do strenuous physical work, are worn out from childbearing, or are in poor physical health, then they cannot be described as light-minded, callous, or irresponsible. To bear children under such circumstances may be described as heroic, and people who are not heroic are not necessarily vicious. That such women can regard pregnancy only as months of misery, ending sometimes in days of agony, is not an indication of any serious disrespect for human life, or a shallow attitude to motherhood. What it does show, Hursthouse insists, is that something is terribly wrong in their lives, which makes it so difficult for them to recognise pregnancy and childbearing as the good which they can be (Hursthouse 1991: 207).

Hursthouse attacks moral theories of abortion that focus on the rights of women to determine what happens in and to their bodies. A theory that focuses on rights, she maintains, fails to deal with pregnancy itself, and that the woman will have the child if the pregnancy is not terminated, i.e. a theory of rights does not deal with the familiar physiological and psychological facts, and their connection to having the right attitude to family relationships and parenthood. Responding to the claim that the woman too has a right to determine what happens in and to her body, the virtue theorist replies that this is not the place to stop. Virtue theory is concerned with more than merely what rights a person has, is concerned with what the good, virtuous life really is. The question the virtue theorist therefore is compelled to ask is "Does she have a good life? Is she living well?" To give an answer in the context of abortion, the virtue theorist brings in love and the value of family life. Hursthouse asserts that it is a familiar fact that family relationships and motherhood in particular are

intrinsically valuable, and constitute in part components of a good or virtuous life (Hursthouse 1991: 208). If this is correct, then a woman who chooses not being a mother, or decides to have an abortion, may have a distorted view of what a good life is about. Hursthouse stresses, however, that this need not necessarily be so. A woman who already has several children, and fears that having another will severely compromise her capacity for being a good mother to those she already has, does not, Hursthouse maintains, show a diminished respect for human life by deciding to have an abortion; nor does a woman who is advanced in age and looking forward to being a grandmother; nor does a woman who learns that another pregnancy may kill her. But nor does a woman who finds that motherhood would compete with another intrinsically valuable role. Many of us are fortunate to have more intrinsically valuable things to do than can possibly fit into one lifetime, some of which may compete with parenthood. Parenthood, and motherhood in particular, take up a lot of time in one's life, resulting in one's not having time for many other desired intrinsically valuable things to do. Unfortunately, however, many women who choose abortion to avoid having their first child, and many men who encourage their partners to do so, are not avoiding parenthood in order to pursue other intrinsically valuable roles.

However, Hursthouse maintains, in circumstances in which an abortion would be the "right" decision, one a virtuous person could agree to or recommend, the decision or action is not void of any wrong. Because a human life has deliberately been prematurely terminated, some evil has probably come about. Guilt is almost inevitable if the decision to bring about this "evil" is a result of circumstances for which one is responsible. What gets one into such circumstances, except in the case of rape, is one's sexual behaviour, and one's choice of contraception. The virtuous woman has such character traits as "strength, independence, resoluteness, decisiveness, self-confidence, responsibility, serious-mindedness and determination" (Hursthouse 1991: 209). Hursthouse believes it

indubitable that anyone can deny that most women have unwanted pregnancies because they lack one or more of these character traits. Therefore, even in cases where abortion is judged to be the "right" decision, it can still be seen as a moral failing in another sense. This is so because the lack of one or more virtuous character traits initially landed one in the unwanted situation.

Although the abortion decision, in the final instance, is the woman's, the man involved is equally responsible. Just as women, men can exhibit light-mindedness, egocentricity, and callousness about life and parenthood in relation to abortion. They need to take responsibility for their own actions, and life in relation to fatherhood. Hursthouse concludes by stating that just as motherhood is intrinsically valuable to women, fatherhood is equally intrinsically valuable to men, and therefore those who pretend that they have many more important things to do are being immature and irresponsible (Hursthouse 1991: 209).

7.8 EVALUATION OF VIRTUE ETHICS REGARDING ABORTION

In addition to the shortcomings regarding virtue ethics already discussed previously, Hursthouse's approach deserves further criticism. She maintains, by asserting one's rights, one does not necessarily act virtuously, one can also be vicious. Although I have taken a rights-oriented approach to abortion, I deny that a virtue theorist has any ground for accusing me of being vicious in any way. If a woman's life is threatened, or her long-term health is seriously compromised by her pregnancy, denying her the right to an abortion may be described as callous or inconsiderate, i.e. certainly not as responding virtuously. In this case, therefore, it would be safe to assume that Hursthouse would agree with me in that having an abortion in

such a case is the best possible alternative, the only truly virtuous one, in virtue-ethical terms.

Would Hursthouse agree with my conclusions regarding a pregnancy resulting from rape? I believe so. Forcing a woman to continue with a pregnancy she neither implicitly nor explicitly consented to could again be described as callous or inconsiderate, but certainly not compassionate. Those pointing to the right of the unwanted foetus may be accused of being callous, inconsiderate, disloyal, certainly vicious; since though we may assert an unborn being's right to life, we cannot seriously hold that its rights override the woman's in circumstances where she has no responsibility for bringing it about. Certainly, if such a woman does choose by her own volition to go ahead with the pregnancy, she may be admired, and praised for doing so. In virtue ethical terms, continuing with the pregnancy would be evidence of a virtuous character, but deciding to do the opposite; deciding to terminate the pregnancy cannot be described as evidence of a vicious one. We may here have found an instance where the opposite of a virtuous action may not be a vicious one. Furthermore, I am certain the virtue theorist will agree that should the raped woman decide to have an abortion, she should do so before the foetus has developed beyond a certain stage. Virtue theory, however, is incapable of drawing a line beyond which an abortion would be non-virtuous, because establishing criteria, other than character traits, falls outside the domain of virtue ethics.

Regarding late-term abortions, I argued, such abortions are only morally defensible if the individual, to a high degree of scientific certainty, has no potential of attaining any degree of personhood besides the basic biological. On this point, Hursthouse might disagree with my precise stipulation. Perhaps she would be willing to defend abortions if the foetus is moderately mentally retarded, or its additional care would severely strain the family's financial and human resources. According to her philosophy, having such a child may not be part of what one considers as having a good life.

Hursthouse argues that the biological facts of the foetus are relevant only insofar as these facts influence practical reasoning, as well as actions, thoughts, and reactions of the virtuous and the non-virtuous. What is having the right attitude towards these facts, and what is the wrong attitude? Hursthouse's approach is deficient because it focuses only on the person having the abortion. How is she affected by her being pregnant? How is the family affected thereby? She fails to consider the other party to the problem, the foetus. Does it not have rights too, even a right to life? Hursthouse's preoccupation with the agent neglects the object of the behaviour.

Hursthouse maintains that if women seek abortions to avoid the physical conditions of pregnancy because they are compelled to do strenuous physical work, are worn out from childbearing, or are in poor physical health, they cannot be described as light-minded, callous, or irresponsible. Can they not be so described? Is a woman voluntarily engaging in sexual intercourse, becoming pregnant, and then seeking an abortion not irresponsible, callous, or light-minded? I agree with Hursthouse that bearing children under such circumstances may be described as heroic, and that people who are not heroic are not necessarily vicious. Nevertheless, she is at least partially responsible for becoming pregnant, a fact that obliges her to accept the responsibilities for her actions. I do not wish to create the impression that I do not understand such women's motivations for having an abortion, or have no compassion for their difficult situation, but regardless thereof, such an action is still not morally defensible. Certainly, abortions performed under such difficult circumstances receive a degree of understanding, that abortions undertaken without significant reasons do not. A woman in such difficult circumstances also elicits compassion, even though she may decide to perform an abortion (a morally indefensible act). I agree with Hursthouse in asserting that something is terribly wrong in their lives, which makes it so difficult for them to recognise pregnancy and

childbearing as the good they can be, yet this does still not make the abortion right.

Hursthouse maintains that a woman who already has several children, and fears that having another will severely compromise her capacity for being a good mother to those she already has, does not show a diminished respect for human life by deciding to have an abortion; nor does a woman who is advanced in age and looking forward to being a grandmother; nor does a woman who learns that another pregnancy may kill her. But nor does a woman who finds that motherhood would compete with another intrinsically valuable role. Again, I must respond to Hursthouse that reasons may be given why a pregnancy is undesirable, and why a woman might opt to have an abortion, but unlike Hursthouse, I cannot agree that one is thereby acting virtuously. If we take another virtue, honesty, for instance, a person who lies (even if he has a good reason for doing so) cannot be described as being honest, although his honesty may have been laid aside to achieve another virtue, perhaps self-preservation. Similarly, a person opting for an abortion lays the virtue of having respect for human life aside (at least temporarily), though only few virtues can be said to be able to have precedence, self-preservation, for instance. Hursthouse is aware of this, however, although she only briefly mentions it towards the end of her article. She mentions that even if an abortion would be the "right" decision, one which a virtuous person could agree to or recommend, it does not mean, however, that the decision or action is void of any wrong. Because a human life has deliberately been prematurely terminated, some evil has probably come about. Guilt is almost inevitable if the decision to bring about this "evil" is a result of circumstances for which one is responsible. What gets one into such circumstances, except in the case of rape, is one's sexual behaviour, and one's choice of contraception. The virtuous woman has such character traits as "strength, independence, resoluteness, decisiveness, self-confidence, responsibility, serious-mindedness and determination" (Hursthouse 1991: 209).

With this I can readily agree. Hursthouse is correct in asserting that most women having unwanted pregnancies lack one or more of these character traits. Therefore, even in cases where an abortion is judged to be the "right" decision, it can still be seen as a moral failing in another sense. This is so because the lack of one or more virtuous character traits initially landed one in the unwanted situation.

7.9 DEFENDING THE CHOICE OF A RIGHTS-ORIENTED PERSPECTIVE

Normative conclusions of rights based and virtue based approaches may coincide, but at a metaethical level the justifications for normative conclusions may differ radically. My reason for adopting a rights-oriented approach is not because I believe virtue ethics to be incapable of providing any insights on this issue. As should now be clear, the conclusions arrived at need not be in opposition to those one would attain when employing a virtue ethical approach. The main advantage of a rights-oriented approach, however, is its clarity, due to the precise nature of approaching an issue. If we examine any rights oriented approach on abortion, the permissibility or impermissibility of the practice is beyond dispute. Tooley argues that only beings having consciousness, possessing the concept of a continuous self have a right to life. Therefore, he concludes that abortion is always permissible. Noonan employs potentiality. If there exists a high probability that a being will develop into a person, then destroying it is irresponsible. He concludes that abortions are under normal circumstances morally indefensible. Warren argues that a foetus possesses none of the characteristics usually ascribed to persons, therefore, it is not a person and abortion is always permissible. Thomson argues that even if the foetus is a person, abortion is permissible in most instances, since the

rights of the foetus do not override the rights of the mother to determine what happens in and to her body. Sumner argues for sentience as the criterion by which moral standing is conferred. He argues that abortion is permissible if the foetus is still pre-sentient, and not when it is already sentient, unless weighty reasons are present. Many more could be mentioned. None of these theories leave any doubt about whether an abortion is or is not permissible in a given situation. The same is true for my treatment of abortion. I have also elucidated clear principles determining the moral permissibility or impermissibility of abortion, depending on the means by which the pregnancy came about, the stage of the pregnancy, and the development of the foetus. Virtue ethics is useful for testing one's principles. I can always ask, whether the conclusions drawn from my principles are in accordance with what is considered as a compassionate, understanding, and sensitive conclusion, i.e. are the principles arrived at evidence of a virtuous approach to the subject. I believe, and hope, that my theory does this. An exclusive virtue ethical approach, such as Hursthouse's, however, lacks this clarity. Is the woman entitled to an abortion because the career she pursues is a more worthwhile pursuit? How are we to determine whether it is more worthwhile, if no principles are employed?

CHAPTER 8

SUMMARY

In this dissertation I began the investigation by examining rationality as a suitable criterion for conferring personhood. Michael Tooley argued that a being can only have a right to something if it is capable of desiring that something, i.e. A has a right to X only if A is capable of desiring X. A being only has a right to life if it is capable of desiring a continued existence. Foetuses lack the concepts involved in desiring a continued existence. Therefore, Tooley concludes, foetuses do not have a right to life. In order to avoid criticism regarding persons that temporarily lose the ability to desire a right to life, Tooley added qualifications to his premise, namely that only beings capable of desiring a right to life have such a right. The problem of Tooley's argument is that his premise needs qualifications, but which qualifications to accept is itself a conceptual issue, and would vary with our present desires, intuitions and beliefs. I pointed out that Gensler successfully argued against Tooley's position by

employing the universalisability principle, the prescriptivity principle, and a third consistency requirement derived from these two principles - a version of the Golden Rule. Tooley's inconsistency was shown to arise from his failure to distinguish between a being's present reaction to a hypothetical situation, and a being's reaction within the hypothetical situation. The Golden rule, and therefore consistency, is only valid in the former instance. It was argued:

(a) If you are consistent and believe that abortion ought to be permissible under normal circumstances, then you will consent to the idea of your having been aborted under normal circumstances (GR).

(b) You do not consent to your having been aborted under normal circumstances.

(c) Therefore, if you are consistent, you will not hold abortion to be permissible under normal circumstances.

It was shown that a being arguing for the permissibility of abortion under normal circumstances runs the risk of being inconsistent. Tooley's argument in favour of rationality as the criterion determining personhood was similarly rejected due to inconsistency. I then showed that even if it were not inconsistent to argue for rationality determining personhood, this would lead to, and allow for practices we would almost certainly not be able to accept. Therefore, I dismissed rationality as a suitable criterion determining a being's right to life.

In Chapter 3 I defended potential as the criterion by which persons receive a significant right to life. Viability, dependence, and quickening were dismissed as unsuitable criteria. The value of a being was also shown to lie not in its uniqueness, for example, by showing that identical twins (genetically identical beings) are not considered less valuable. The shortcomings of Noonan's arguments were illuminated. I did not, however, dismiss the argument from potential regarding

abortion. An important distinction was made between possible persons, potential persons, having the capacity for personhood, and actual persons. The potentiality principle was also introduced. Noonan's argument fails in part because he failed to distinguish between possible and potential persons. It was shown, unlike possible persons, potential persons do indeed have a right to life, proportionate to, and derivative from the value they will have as actual persons. I argued that fetuses are potential persons from the moment of implantation, and therefore, have a serious right to life from then on.

In Chapter 4 I defended a woman's right to an abortion if the pregnancy is hostile, i.e. came about as a result of rape, or poses a serious threat to the mother. Jane English's self-defence model and arguments formulated by Judith Jarvis Thomson were examined. The ambiguous conclusions of English's model were pointed out. Although I criticised Thomson on many points, I agreed with her regarding the right of a woman to an abortion when her pregnancy is the result of rape, or when it is a serious threat to her. A pregnancy resulting from rape was not in any way consented to by the woman. She gave the foetus no right to use her body, did not invite it in. In such an instance, therefore, she is morally fully justified in having an abortion. If the pregnancy becomes threatening, the woman is also morally justified in terminating it because it does not proceed according to conditions implicitly agreed to by the woman. At the end of her article, Thomson reminded us that she only assumed the personhood status of the foetus for the purpose of her investigation. Since she does not actually consider fetuses to be persons, however, she maintained that abortion is always permissible. It was, therefore, necessary to examine whether a being has no right to life in virtue of its being a nonperson. It was argued that Thomson's assumption is invalid. Nonpersons have rights too, and in not infrequent instances even a right to life.

Having established a woman's right to abort a rape pregnancy, I deemed it necessary in Chapter 5 to argue that such

abortions ought only to be permitted during the initial stages of pregnancy. In this regard, it was necessary to find a suitable criterion, which explains our belief that a late abortion is significantly more serious morally than an early abortion. The answer was found in sentience. The arguments of L.W. Sumner were examined and evaluated. I argued that Sumner's insistence that sentience serves both as the inclusion and comparison criterion, purchases simplicity at the price of accuracy. Instead, I argued that three criteria are necessary, namely (1) "Being alive" as the inclusion criterion, (2) "sentience" as the comparison criterion within a species, and (3) "potential" as the comparison criterion between different species. If we apply this to the foetus, we see that it has greater moral standing than any other creature of a different species, because it has a potential to develop into a being having full personhood, while no other known species has such a potential. However, an early foetus has less moral standing than an almost mature foetus or infant, because the former has at least a much smaller degree of sentience. For this reason it is morally more serious to abort a late-term foetus than an early-term one. Having previously established that abortion is permissible in the case of a rape pregnancy, I was then able to argue that such abortions ought only to be performed during the least objectionable period, i.e. before the foetus becomes sentient. For this reason such abortions ought to be performed before the end of the first trimester. A woman who does not terminate a rape pregnancy during the first trimester has implicitly accepted the pregnancy, and has a moral obligation to continue with it.

In Chapter 6 I then turned to late-term abortions. In the introduction to this dissertation I stated that I believe an abortion is also morally justified at any stage of pregnancy (even when the foetus is almost mature), if it becomes evident that the foetus is so severely retarded as to have no potential of developing into a person. The question that then needed to be answered is whether we are justified in aborting severely

retarded individuals. The answer we give to this question depends on our judgement of life's value. It was necessary to examine whether life is always meaningful, whether life is always worthwhile. I argued that there are instances in which it would be morally acceptable to abort a severely retarded individual. However, this is never acceptable when the child would be only physically handicapped, or mildly or moderately mentally handicapped. Such people are also often capable of living meaningful lives. In cases of severe mental retardation, when the being would never be capable of attaining any significant degree of personhood characteristics besides the biological, abortion is morally defensible. Beings such as anencephalics would fall into this category, never attaining personhood status, and living a usually very short life filled with nothing but hardship and misery.

Having argued for a liberal conservative defence of abortion, I deemed it necessary to explain in Chapter 7, why I adopted a rights-oriented perspective when dealing with abortion. In recent decades, several philosophers have argued for the adoption of a virtue-oriented approach when dealing with moral issues. The nature, advantages, and shortcomings of virtue ethics were discussed, and I explained why I believe a rights-oriented approach to be superior when dealing with issues such as abortion. Its main value lies in its precise nature of approaching and defining a problem. I furthermore pointed out that the conclusions I argued for are commensurate with those a virtue philosopher might give.

APPENDIX A

ABORTION: FROM THE PAST TO THE PRESENT

It is widely agreed among anthropologists that abortion has been practised in almost all human societies. Contrary to popular opinion, it is not just a problem of the modern world. It has been a problem throughout the ages. Laws concerning it range from the restrictive to the permissive. In either case, it is clear that abortion was a reality. Earliest references to it have been found in Ancient China, dating back more than 4600 years. The Chinese environment was probably permissive. Other societies were more restrictive. The Semitic Code of 2000 BC, the Assyrian Code of 1500 BC, the Hammurabic and Hittite Codes of 1300 BC, and the Persian Code of 600 BC all prohibited abortion (Simmons 1983: 67).

Our Western society, as we know it, has its roots in three main cultural sources, namely those of the Greeks, the Hebrews, and the Romans. There are many indications that abortion was a common and accepted phenomenon among the Greeks and Romans, but the Old Testament has only one reference to it, (Exodus 21: 22) suggesting that it was not common among the Hebrews (Mace 1972: 51).

If we examine the Greeks, we find that Plato and Aristotle referred to abortions. In his "Republic," and in his "Laws," Plato mentions abortions, seeing the practice as a method of population control in the ideal state. However, he also mentions the possibility of sending surplus citizens abroad to found new colonies, indicating that Plato was not to rely on abortions for population control. Aristotle too, in his "Politics," advocated abortion for a couple that already has as many children as it can manage. However, for him this only was defensible in the early periods of pregnancy. He was only prepared to sanction abortion prior to forty days of development

of a male, and ninety for a female (Mace 1972: 52-55). He believed that the developing person at first only developed a vegetative soul, and at this time it was still permissible to perform abortions. Once the person was in possession of an animal soul, and thus able to have sensations, abortion was no longer to be approved.

Population control is not likely to have been a significant motivator for abortion. Mace (1972: 53) gives three main reasons for abortion: to remove the evidence of adultery, to maintain feminine beauty, and for medical reasons, if the womb of the woman was too small to carry a child.

Among the wealthy Roman families, abortion was practised to keep down the number of heirs, among whom the family fortune would be divided. Mace (1972: 53) states that evidence indicates that abortion in ancient Rome was a common phenomenon. Roman law explicitly gave the father control of life and death over his children, and a woman could only be punished for having an abortion if it was carried out without his consent.

Not only was abortion an accepted practice in Ancient Greece and Rome, but also infanticide. In his "Republic," Plato argues that the well-being of society was to be maintained by killing deformed or inferior infants. Aristotle too argued for a law that would allow no deformed child to live. The opinions of these philosophers seem accurately to reflect the attitudes of their society in general. Athenian and Spartan laws as well as those of Rome, prescribed the killing of deformed infants (Kuhse & Singer 1985: 111).

The divine command, "be fruitful and multiply," inculcated in the Hebrews a profound respect for life, seeing it as a special gift from God. Genesis tells us that God created Adam and Eve and blessed them, and then gave them his first command, "Be fruitful and increase. Fill the earth and subdue it." The command was repeated to Noah after the flood, and Jacob too was told to be fruitful and found a nation (Genesis 2: 17). It can thus be stated that a strong emphasis was laid on procreation. God put Abraham to the test by asking him to sacrifice his only son. He was about to do so, when God told him to take a ram instead. His reward is the characteristic one, in which God promised to make his descendants as numerous as the stars in the sky and the grains of sand on the sea shore. References to child sacrifice can be found in Leviticus 18: 21, and Isaiah 57: 5. Such a practice was strictly forbidden, but the fact that it is mentioned in the Old Testament indicates that it was not unknown to the Hebrews. The Christian church certainly adopted its views from the Hebrews; generally voicing stern opposition towards abortion. "You shall not kill a child by abortion, you shall not slay what is generated," clearly expresses the teaching of the Twelve Apostles in one of their early writings outside the New Testament (Mace 1972: 54). A consistent message of the church is that life is only created by God, and, therefore, may not be destroyed. This stance sharply opposed the attitude of the pagans who regarded the lives of slaves or of infants as of inferior value. The Jewish teaching, that man was created when God breathed life into him, became a premise

for the argument that a person only received a soul at birth, and thus abortion is permissible in situations such as when a pregnancy endangers the life of the mother (Mace 1972: 55). The Roman Catholic church, however, firmly clung to the extreme position that abortion, regardless of the circumstances, is the taking of another's life and hence homicide. There were times, however, when the Catholic church examined the Aristotelian philosophy, that there may be a time in the early stages of a person's development when he is not yet in possession of a human soul, and consequently may not be regarded as completely human. St. Augustine, for instance, contended that it cannot be said that there is a live soul in a body that lacks sensation. He did not support abortion, but claimed that the practice in the early stages was less sinful than in later stages and not equivalent to murder. The question, when the human foetus received a human soul, kept reappearing throughout the ages. The only point on which the authorities were agreed was that once the foetus is in possession of a rational soul, it could no longer be denied that the being must be classified as a living person, and thus the taking of its life subsequent to rational ensoulment is comparable to homicide. Not only the Roman Catholic Church was opposed to abortion. Both Luther and Calvin were ardent opponents of the practice. The Lutheran Church has maintained this conservative position until recently. Only in 1952 did the American Lutheran church warrant the performing of abortions in cases of medical complications, such as to save the life of the mother. In recent years, however, some of the more liberal Protestant churches and Jewish groups have adopted more liberal stances towards the issue of abortion (Mace 1972: 58). Because the church played such a dominant role in Western society until the end of the Middle-Ages, a closer look at their positions regarding abortion is useful since it facilitates understanding how many of the views now still prevalent, or being reacted against, came about.

Harrison insists that in the extent writings of the ascetic fathers of the Christian Church, abortion was generally placed in the same category as sex without creation, adultery, and contraception (because it enables sex without procreative intentions). All were similarly condemned. Prostitution was often linked to contraception and abortion, considering all as violations against the God-given blessing of procreation. Almost all early Christian objections to abortion based their moral objections either on want in women (those who would seek to avoid pregnancy), or denounced the triad of pleasure-oriented sex, contraception and abortion (Harrison 1983: 131).

The basic view held by the celibate Christian fathers was that the essentially pious and virtuous woman was also to be celibate. Any married woman, however, that refused childbearing was thereby a murderer. The reason for this extreme asceticism on sexuality was that Christians were frequently accused of being licentious. In reaction to this, some Christians advocated extreme asceticism, even encouraging the youth to be castrated, rather than be licentious. Harrison maintains, however, that these writings are too limited in number to be

considered an accurate depiction of general attitudes and practices of the time. She points out that much Christian writing of that period makes no mention of abortion, which raises the question, why abortion failed to receive greater attention by those concerned with regulating and determining moral practices. Harrison believes that the answer is that abortion was a minor episodic matter until the nineteenth century. She also adds that she failed to find any evidence that attitudes expressed prior to the nineteenth century against the practice of abortion were greatly concerned with the well-being of the unborn child. When attacks against abortion were made, these were usually accompanied by disapproval of all sexual activities other than for procreation (Harrison 1983: 131).

The foetus's human status was not discussed, but only assumed, since conception was held to be a direct act from God - conception was always an instance of divine intervention. Only once the connection between abortion and homicide had been firmly established, and reinforced by continuous rhetoric denouncing all non-creative sex as murder, did the focus begin to shift to the question, when the prohibition against abortion ought to be applied. At what stage, prior to or after animation, should abortion be prohibited? Pope Pius IX entrenched the position that humanity is fully present at conception. Abortion was explicitly declared to be homicide and particularly evil since it involves the taking of an innocent human life. This view was, however, not only limited to abortion, but was held to an equal degree of contraception, or sexual activity not intended for procreation. During the tenth and eleventh centuries, a letter by Bishop Caesarius, a sixth century bishop, was taken up and enforced by the most ascetic groups. Caesarius reasoned as follows:

"If someone is to satisfy his lust, or in deliberate hatred does something to a man or a woman, so that no children be born of him or her, or gives him drink so that he cannot generate or she conceive, let it be held as homicide" (Harrison 1983: 132).

Today, even the most conservative opinions make a distinction between contraception and homicide, and therefore also a distinction between contraception and abortion.

"Therefore, from the moment of its conception, life must be guarded with the greatest of care, while abortion and infanticide are unspeakable crimes" (Harrison 1983: 132).

The first Christian texts on abortion are the Didache, as well as the Epistle of Barnabas - a secondary text of the Didache. Attention is paid to the Didache because it is one of the few extant Christian writings from the second century. In it the writer stipulates rules a person must uphold in order to follow the Christian ways of life. Among these is: "You shall not kill an unborn child or murder an infant" (Beach & Niebuhr

1955: 58-59). Besides this text, explicit denunciation of abortion is rare, apart from rules laid out for procreation.

John Noonan maintains that by 450 AD the teachings on abortion had been clearly set out with consistency and coherence (Noonan 1970b: 18). Harrison is doubtful of this claim, however, arguing that the fragmentary evidence available makes it impossible to identify dogmatism of any kind (Harrison 1983: 133).

If, as is widely believed, abortion was a common practice in Imperial Rome, then it is to be assumed that the practice of abortion would have received heightened attention from abortion opponents. If as is often assumed, the Christian church fervently opposed abortion from the beginning, then the widespread silence on the topic in early Christian writings calls for an explanation. Harrison maintains that the first elaborate denunciation of abortion after the Didache, in Christian writings, appears to have had the purpose of defending Christians against the accusation that they were antisocial and immoral. She maintains that Christians were accused of eating the body and drinking the blood of their Leader, and perhaps therefore were also sometimes accused of infanticide (Harrison 1983: 134). Christians were often accused of moral permissiveness, against which many reacted by adopting stringent moral conduct. Tertullian, a third-century theologian, denounced the accusations of such immorality, referring to Christian attitudes towards abortion as an example of the strong opposition among Christians towards homicide. He believed that the whole human is actually already present within the sperm, i.e. the man provided the seed, while the woman only provided the place for the seed to germinate. For this reason, any waste of semen was considered a homicidal act by some Christians, but not by Tertullian. He believed abortion to be permissible if it is necessary to save the mother's life, seeing it as a necessary evil in such cases (Harrison 1983: 134-135). Tertullian's writings are, however, not only significant for their consistent denunciations of abortion, but also for holding that body and soul coexist from the moment of conception ("traducianism"). He did not formulate this view, but accepted the prevalent belief of his time, that spirit unites with matter to form human life.

Harrison (1983: 135) asserts that the theory of traducianism did not have much influence on the theologians of the first centuries, and the question of how body and spirit united was still debated strongly at the time of the Reformation. Early Christian theologians, Origen and Clement of Alexandria, to mention only two, were hostile towards women. Clement maintained that abortion was a grave sin for two reasons; firstly, because it wasted the seed God meant to come to fruition, and secondly, because it was invariably practised by women to hide sexual infidelity. Although Tertullian was marked anti-sexual during his later years, his views on abortion can be described as relatively moderate. Nevertheless, he qualifies as one of the early antiabortion writers in the Christian tradition (Harrison 1983: 135).

Most subsequent theorising within the Christian sphere was not primarily concerned with determining the meaning of abortion, but rather when and how human responsibility for sin and evil arose. They were also preoccupied with the discrepancy of divine ensoulment and the fall of man. By the time of St Augustine (354-430) Christians were fairly divided over how human sinfulness was related to divine salvation. They opposed Tertullian's traducianist view, maintaining that it was unspiritual (Augustine 1955: 165-203). Augustine denied the simultaneity of the ensoulment of a rational soul (an entirely spiritual phenomenon), and conception (a material phenomenon). He nevertheless firmly opposed the abortion of a formed foetus, and was strongly opposed to any sexual intercourse other than for procreation within marriage.

"This ... cruel lust comes to this: that they even procure poisons of sterility, and if these do not work, extinguish and destroy the foetus in some way in the womb, preferring that their offspring dies before it lives, or if it was already alive in the womb, to kill it before it is born. Assuredly, if both husband and wife are alike in this, they are not married, and if they were like this from the beginning, they came together not in matrimony, but in seduction. If both are not like this, I dare to say, that either the wife is in a fashion the harlot of her husband, or he is an adulterer of his own wife" (Harrison 1983: 137).

Harrison (1983: 137) asserts that Augustine's teachings did not have a profound effect on subsequent Catholic theology. His "fall of mankind" only again became the centre of discussions during the Reformation. The Protestant reformers, especially Luther and Calvin, believed that innocence was no longer a possibility since sin had entered the world in such a drastic manner. Roman Catholic thinkers still maintained the innocence of natural existence. Augustine still agreed with Tertullian's belief that the man provided the seed for human development, while the woman provided the germinative space. He further believed that the woman provided some of her menstrual blood for development. As has already been indicated, Augustine distinguished between a formed and an unformed foetus. The abortion of the latter was not necessarily sinful. Moreover, sympathies for the life of the woman may be found, since he maintained that the removal of an embryo to save the life of the mother would not diminish a foetus's prospects for participating in the resurrection of the dead. Harrison, (1983: 138) affirms that it has never been the dominant Christian view that an abortion is wrong performed to save the life of the mother. St. Jerome too believed that the truly Christian person would refrain from all sexual activities and not marry, but he accepted marriage as a necessary evil for procreation without fear (Harrison 1983: 138; Connery 1978: 53). Jerome believed that woman's fallen state could be undone, if she accepted a life of asceticism, and he commended those who abandoned their

children for a monastic life (Clark 1979: 51). Harrison (1983: 138) argues that Augustine's views should not be seen as an accurate indication of the attitudes of his time, describing him as holding a minority position. She defends her claim by referring to repeated criticisms by Augustine against various groups, notably the Pelagians, for moral practices that were too permissive for his standards. Jerome too was seen as an extreme moralist by his contemporaries.

Contrary to common opinion, abortion and sexual matters do not seem to have occupied a prominent place on the list of concerns of the early church. The reason for this claim is that abortion is not found as a major topic in their writings nor is this issue strongly reflected in developing church disciplines, as laid down at church councils. In 309, the Council of Elvira laid down various degrees of penance according to the magnitude of the sin committed. This council did not specifically point to abortion, but considered all sexual activities as sinful. Abortion in itself was not condemned, but rather abortion undertaken by a baptised woman to conceal adultery:

"If a woman, while her husband is away, conceives by adultery, and after that crime commits abortion, she shall not be given communion even at the end, since she has doubled her crime" (Samuel 1972: 133).

Abortion was not set apart from other crimes, but was considered as homicide only because all non-creative sexual activity was judged as homicide. This serves as another indication that the early church did not consider the well-being of the foetus as a significant matter, but only the motive of the woman. The Council of Elvira laid down the principles of the early Western Church. In 314, the Council of Ancrya similarly did so for the Eastern Church. It is not absolutely clear from the still extant texts, whether this council even dealt with the issue of abortion, but if it did, then it was considered together with adultery. Adultery and abortion to conceal adultery were conferred lesser penances than at the Council of Elvira (Connery 1978: 48). It may be suggested that the fairly moderate penances prescribed for abortion at these councils is not an indication of the church's normative position of that time, but rather compassion with the moral weakness of people. Harrison (1983: 140-141) does not accept this view, claiming that it is an indication of the disinterestedness of the church towards abortion, apart from sexual sin. The evidence shows that the strongest denunciations of abortion came from those also most strongly opposed to all non-creative sexual activities.

The Decretum, formulated in around 1140, became the authoritative source for Roman Catholic theology up to the modern period. It adopted the views of St Augustine, making no significant distinction between abortion and other sexual sins. Its compiler accepted the distinction between the unformed and formed foetus. He did not prescribe penances for the sins of abortion. Harrison points out that Connery believes that he dropped the penances for abortion because it was "certainly

simpler to do this, than to attempt to reconcile a confusing mass of prescriptions from the past" (Harrison 1983: 141).

Sexuality, clerical celibacy, and sexual mores were highly disputed issues within the church during the Middle-Ages. A few centuries elapsed until the group most opposed to sexuality attained victory. This naturally also cemented the most vivacious criticism of abortion. Harrison (1983: 142) asserts that it took several centuries before clerical celibacy became the norm, and Christian practices seldom strictly followed canonical prescriptions. The victory of the sex-negative theologians entrenched the belief that contraception and non-creative sexuality are equated with homicide. Pope Gregory IX used the term "homicide" to refer to abortion, other canonists used the term to refer to contraception and non-creative sex as well.

Most theologians during the Middle-Ages accepted the distinction between a formed and an unformed foetus. Various distinctions were made, but there was no widespread consensus on this issue. It was only in the fourteenth century that Aristotle's philosophy began to have a profound influence on Roman catholic theology. As has already been mentioned, Aristotle distinguished between the vegetative, the animal and the rational soul. Only when full integration of all three components had occurred, did full humanisation take place. He maintained that the male foetus integrated the rational component at forty days after conception, but the female foetus took longer because it did not fully integrate the third element, and thus was only fully ensouled after ninety days. Thomas Aquinas (1225-74), a scholar and admirer of Aristotle, reintroduced the distinction into Christian theology. However, he did not have much to say on abortion, but denounced abortion of a formed foetus, and declared the act to be homicide. It should again be asked, as is often claimed, that if abortion was a central issue within the medieval church, why did one of the most prominent theologians of the middle-Ages mention it only marginally? Aquinas distinguished between natural and unnatural sexual acts. A fact most people will find surprising and difficult to understand is that Aquinas considered rape a natural sexual act, whereas masturbation and oral and anal intercourse were unnatural sexual acts. All noncoital sexual acts were considered unnatural, and all coital acts natural (Harrison 1983: 294).

Only in the fourteenth century did theologians become increasingly concerned with clarifying the then already widely accepted denunciations of abortion. It was held to be a fundamental wrong, but the discussions revolved around whether this applied to a formed, or also to an unformed foetus. In the sixteenth century, controversy arose over the question under which circumstances a therapeutic abortion could be justified. The trend from the thirteenth century was clearly to denounce the practice of abortion, but to simultaneously search for exceptional circumstances under which the practice may be permissible. Harrison points out, however, that the quest in search of acceptable exceptions was not a continuous process,

but rather appeared sporadically when attempts at reform were undertaken. In 1588, Sixtus V, one of the reforming popes, decreed excommunication for any woman undergoing an abortion, as well as for anyone assisting in such an act. Sixtus no longer recognised the distinction between a formed and an unformed foetus, and equated sterilisation with abortion. His decrees did not enjoy unchallenged support. Evidence for this may be found in the fact that his successor again reintroduced the distinction between a formed and unformed foetus, and demanded excommunication only for the abortion of a formed foetus (Harrison 1983: 143-144).

During the seventeenth century, a further distinction, namely between a direct and an indirect abortion, was also made. A direct abortion is one performed to kill the foetus, while an indirect abortion is one performed to save the life of the mother with the involuntary death of the foetus. This distinction is still prevalent in Roman Catholic theology today, and still is the central issue determining whether an abortion is acceptable or not.

Turning to Protestant theology, it is immediately evident that Martin Luther reinstated the traducianist view, i.e. that body and soul coexist from the moment of conception. The reformers emphasised the centrality of the family, and concerned themselves with stressing the procreative function of sexuality. Harrison points out that Williams maintains that Luther's adoption of the view that spirit united with body at conception, was not motivated by the abortion issue, but rather because he was determined to involve both body and soul in the issue of original sin. Luther's views departed from that of the Roman Catholic Church in one important respect: he did not believe that God willed the birth or life of badly deformed infants. This opened the door for believers to interpret God's influence in natural processes in new ways (Simmons 1983: 69). Calvin interpreted Exodus 21: 22 to mean that abortion ought not to be a capital offence, if either the woman or the unborn child were killed:

"If some men are fighting and hurt a pregnant woman, so that she loses her child, but she is not injured in any other way, the one who hurt her is to be fined whatever amount the woman's husband demands, subject to the approval of the judges" (Exodus 21: 22).

Williams further maintains that due to Luther's stance on this matter and Calvin's determined views on this issue, the Roman Catholic Church saw itself compelled to adapt its doctrine in a similar manner, and that by the nineteenth century the Roman Catholic Church had also fully adopted a view that there is no period in the development of a human being in which not both body and soul are present. Harrison is doubtful of Williams's claims, arguing that most Catholic theologians were not well acquainted with Luther's and Calvin's teachings, and their later attitudes towards abortion seem to have little bearing on Reformation theological thinking. She concedes that there is

evidence that Catholic thinking did shift to the position claimed by Williams, but denies that there is any evidence that this shift is a result of Protestant theology (Harrison 1983: 145-146). As has already been mentioned, Reformation theologians were concerned with the issue of ensoulment, because they were concerned with the nature of man's position with regard to original sin, and not because they wished to clarify the implications for abortion. Neither Luther nor Calvin was directly concerned with the issue of abortion. Both denounced abortions summarily. Luther was well acquainted with the views holding all non-creative sex as sinful, having studied the Decretum. Lutheran Protestantism, however, also did not proclaim a consistent message regarding ensoulment. For instance, not all accepted the traducian view, claiming that God's grace cannot be equated with the "simple quickening of beasts." Although Calvin clearly denounced all abortion practices, equating them with murder, there are reasons for refusing to label him as a strong anti-abortionist. He was only marginally concerned with the issue, and since he not only laid down the theological position, but also the legal position of Geneva, one would expect the laws or legal practices to reflect a strong prohibition of abortion, if he were to have considered it as a central issue. Sexual offences were punished, but abortion itself was not mentioned.

From the foregoing it is evident that neither the Roman Catholic Church nor Reformation theologians based their denunciations of abortion on the basis of the life of a foetus. It was not foetal development, but rather the divine purpose of sexual activity, and the divine ensoulment of a person, that conferred personhood status upon fetuses. Although an antiabortion ethic was accepted, it was accepted that abortions in exceptional circumstances are acceptable. Therefore, reasons on when the abortion of a foetus might be justified were undertaken to clarify the acceptability of the exceptions. In the seventeenth century, Catholic theology clearly distinguished itself from Aristotelian assumptions on ensoulment by maintaining that ensoulment takes place on the third day after conception (Harrison 1983: 144-146). At the Second Vatican council it was, however, again proclaimed that life and ensoulment both begin at conception. This proclamation was based on scientific evidence that clearly shows that at the time of conception, a new and unique individual comes into being. The council insisted, "life from its conception is to be guarded with the greatest care, abortion and infanticide are horrible crimes." This was proclaimed as official Catholic doctrine by Pope Paul in December 1965 (Mace 1972: 57-58).

The present pope, John-Paul II, defends the intimate connection between procreation and sex within marriage and the condemnation of abortion. On November 2, 1982, he publicly denounced both abortion and divorce, demanding that Christians live in indissoluble unions. He quoted Paul VI, insisting that every conjugal act must be left open to the transmission of life. He further said:

"I speak on the absolute respect for human life ... therefore, whoever denies defence to the frailest and most innocent human person, to the human person conceived but not yet born, commits a most grave violation of the moral order" (Kamm 1982: A3).

It was shown that Luther and Calvin were also strongly opposed to abortion. The Protestant churches maintained this conservative position until very recently. The American Lutheran Conference adopted a resolution in 1952 that maintains: "Abortion must be regarded as the destruction of a living being, and, except as a medical measure to save the mother's life, will not be used by a Christian to avoid an unwanted birth" (Mace 1972: 58). Mace maintains that this accurately depicts the attitude adopted by the more conservative Protestant churches, and maintains that other Protestant churches tended to take no formal position on the subject, rather leaving each to follow his or her own conscience. More recently, however, The American Baptist Convention, the Lutheran Church in America, the Presbyterian Church in the US, the United Church of Christ, the United Church in the US, and the United Presbyterian Church in the USA have adopted more liberal positions (Mace 1972: 58-59).

Regarding the church's policy on abortion, it is appropriate to shortly mention its stance regarding baptism and fate. It was consistently held that baptism is the means towards eternal happiness, therefore, infants that die unbaptized cannot enjoy supernatural happiness. The doctrine of the Catholic church maintains that such infants go into Limbo, rather than to heaven. Pope Pius XII reaffirmed this position in 1951, when he stated that only baptised infants are imparted a life with Christ (Kuhse & Singer 1985: 116). It would seem obvious that no difference is here made between a new-born infant and an ensouled foetus. It is difficult to say precisely which influence the different aspects of Judaic-Christian belief had, i.e. that one should be fruitful and multiply, the belief that human life is in God's hands and is only his to take the belief that every human being has an immortal soul, and the belief that unbaptized infants (and therefore also fetuses) go into Limbo. It is appropriate to ask, how much weight the latter doctrine carries since it is difficult to believe that a benevolent God would condemn innocent infants. This point is especially valid, since a continual message in the Bible is that God is abounding in love. The Christian influence changed roman attitudes to slaves, gladiators, and infants, though later slaves and savages at the mercy of Christians all over the world might have wondered about this. Christian theologians still object to suicide, voluntary euthanasia, infanticide and abortion. In this too, they differ from the Romans and other cultures. It thus seems that beliefs about immortality, as well as that God has absolute authority over our lives, had a greater influence than the special fears over the fate of unbaptized infants. A central message of Christianity is that all human life has special value (Kuhse & Singer 1985: 117).

Besides religious opinions, laws passed on the issue give us a fairly clear indication regarding the general attitude held on the matter. For present purposes it will suffice merely to mention that laws passed on abortion may conveniently be classified into seven groups, namely: (1) laws absolutely prohibiting abortion; (2) laws prohibiting abortion unless the pregnancy poses a threat to the woman's life; (3) laws prohibiting abortion unless the woman's physical well-being is severely compromised; (4) laws prohibiting abortion unless the woman's physical or psychological well-being is severely compromised; (5) laws prohibiting abortion unless the woman's physical or psychological well-being is severely compromised, or the pregnancy is the result of a crime such as rape or incest; (6) laws accepting abortion sanctioning the conditions mentioned in 5, as well as when the mother's social environment is not conducive towards furthering the prospective child's well-being; and (7) laws liberally permitting abortion on request (Mace 1972: 70-84).

Having now given the official positions on abortion, it is important to mention that theologians and officials do not have absolute power to control the practices of people. For almost two millennia the church vehemently opposed the practice of abortion, but abortions were still being performed. They could call them immoral and make them illegal, but they could not stop them. Theories on abortion were almost exclusively made by men, and very often by celibate priests, and laws too were predominantly written by men. The reality of abortion, however, primarily concerns women, and they were hardly ever consulted.

The twentieth century has witnessed a dramatic shift in attitudes towards abortion and sexual matters in general. At the turn of this century, the psychology of Sigmund Freud already brought the discussion of sexual matters out into the open, but the liberalisation of whole societies, together with their laws, gained momentum only in the second half of this century. The rapidity with which laws changed from extremely conservative, to moderate, to liberal in some societies is astonishing to say the least. Mace (1972: 63) holds that four main streams of interest groups lobbying for the legalisation of abortions are identifiable: the movement for greater sexual freedom; (2) movements advocating abortion as a population control method; (3) the women's liberation movements (advocating laws imparting women with the right to freely make decisions on their own sexuality, particularly their procreative ability); and (4) the medical lobby. It has seldom, if ever, been thoroughly investigated rationally by these groups under what conditions it can or may be morally right to terminate a pregnancy. The question has usually been side-stepped by maintaining that the woman has the right to decide on the issue of abortion in consultation with her physician; and thereby society has generally refused to responsibly look at the matter. Almost all Western societies have given the women more freedom to choose, but have failed to assist the women in making this choice.

APPENDIX B

THIS MORAL TREATMENT SHOULD NOT BECOME A LEGAL FRAMEWORK

Having argued in this dissertation that abortion is morally justified only when (1) the pregnancy seriously threatens the woman's life or long-term health, (2) if the pregnancy is a result of rape, but only prior to the foetus's attaining sentience, i.e. prior to the end of the first trimester, and (3) if the foetus is abnormal to such a degree that, to a high degree of scientific certainty, it will not be capable of attaining any personhood characteristics besides the basic biological, it is pertinent to pose the question, whether this moral defence should also serve as the basis for a law on abortion. The answer I am now about to give may surprise many readers, but I shall give reasons for holding this position. This restricted moral defence of abortion should only partially be the basis of a legal framework.

If a law were to be written that would follow this moral approach to the letter, it would lead to a fairly restricted legal position. Women would, for instance, not be allowed to procure an abortion, if, for instance, their contraceptive failed, or they disapprove of an abortion after voluntary sexual intercourse. If such a law could be upheld without any violations, there may be strong grounds for arguing that the moral approach should become law. No country, however, not even where an extremely restrictive law was in force, has managed to eliminate the practice of abortion completely.

Daniel Callahan, in his book published in 1970, "Abortion: law, choice and morality," examined numerous countries with restrictive, moderate, or permissive abortion laws. Under the restrictive laws he studied the United States, Great Britain before and after 1967 (in 1967 their law was liberalised), India, Columbia, Mexico, and Chile (Callahan 1970: 126-183). Under moderate legal codes Callahan (1970: 184-217) examined Sweden, Denmark, Finland and Norway. In the cases of Sweden and Denmark, a comparison was made between the differences prior and following 1965 (in that year their laws also were further

liberalised). Countries examined with liberal abortion laws were the Soviet Union, Yugoslavia, Hungary, Czechoslovakia, Poland, Rumania, Bulgaria, East Germany, and Japan (Callahan 1970: 218-283). Clear differences in the carrying out of abortions, but also the overall rate of abortions were found among the three groups. Countries with restrictive abortion laws generally had a high rate of nonprofessionally done abortions compared to the moderate or permissive countries, but a relatively low rate of overall abortions. Countries with moderate laws had a higher overall rate of abortions, but a significantly lower rate of abortions done by non-professionals. The liberal abortion law countries had a high rate of overall abortions, but a very low rate of abortions done nonprofessionally. Deaths and serious injuries from abortions were most frequent in restrictive countries, less so in moderate countries, and very low in permissive countries. The reason for this can mainly be found in the fact that when women are legally permitted to seek professionally done abortions, they will do so in preference to back-street abortions. Professionally done abortions pose only a minimal risk to the woman, whereas back-street abortions pose a fairly high risk.

If women will seek abortions, and men will encourage their partners to do so, whether we legally permit or prohibit them, whether we morally tolerate or censure them, then I believe it to be the state's duty to ensure that abortions are performed with as low a risk as possible to the pregnant woman. With permissive abortion laws, one can encourage women seeking abortions (whether they are moral or not) to have their abortions carried out in suitably equipped clinics, with appropriate medical care. Certainly, it could be possible to allow such abortions only during the first trimester, i.e. only during the fetus's pre-sentient existence. Women proceeding beyond this period may be described as having accepted the pregnancy. Most women voluntarily having an abortion will do so at the earliest possible time, and this is almost always in the first trimester.

To reiterate, I do not advocate that my moral treatment of abortion serves as a basis of a law on abortion. The reason is, no matter what law is laid down, abortions will not be eliminated, and therefore a permissive law should be in force since thereby the lowest death rate of actual persons, and the lowest injury rate can be attained. Any woman procuring an abortion, and any man encouraging his partner to do so, should realise that they may be legally justified in attaining an abortion, but their act is not morally justified, unless the exceptions argued for in this dissertation pertain. People should be encouraged to act according to the moral viewpoint I have here defended, but this ideal should not be rigidly enforced by law.

NOTES

CHAPTER 1

1. In his 1989 article, "Why abortion is immoral," Don Marquis argues that abortion is just as wrong as killing an adult human being, because both killings deprive the being of a future.

2. In her article, "On the moral and legal status of abortion" (1973), Mary Anne Warren also sees the status of the foetus as central to the issue of abortion. She makes a distinction between a biological human being and the moral community, whose members enjoy full and equal human rights. Merely being a member of the species *Homo sapiens* is not, she argues, sufficient to qualify as a member of the moral community. She suggests that the traits most central to moral personhood are: (1) consciousness, (2) reasoning, (3) self-motivated activity, (4) the capacity to communicate by whatever means with an indefinite variety of messages, and (5) the presence of a self-concept and self-awareness. Not all these features need be present, but Warren claims that fetuses fail to exhibit any of these traits. She thus does not classify them as moral persons, and hence she grants them no moral right to life. In an appendix she attempts to dismiss the claim that her theory would also permit infanticide by employing a utilitarian approach to the problem. The killing of infants would deprive childless couples who want children of the pleasures of adopting children.

3. In her 1971 article, "A defence of abortion," Judith Jarvis Thomson attempts to avoid what is usually considered as the central issue in the abortion controversy, namely, the status of the foetus. She argues for a defence of abortion, even if it is assumed that the foetus has the same moral status as a child. It is often claimed that the morality of abortion depends entirely on when a developing human is alive, or becomes a person. Thomson disputes this, employing a set of analogies, including one about a violinist who requires the use of your kidneys for nine months. She argues that a mother's right over

her body allows her to "unplug" herself from the foetus, even if the foetus is a person.

4. If not otherwise specified, I use the term "foetus" to refer to prenatal development from conception to birth. The term therefore also refers to zygotes and embryos.

5. An "early-term" foetus is a foetus prior to the end of its third month of development from conception. It is distinguished from a "mid-term" foetus and a "late-term" foetus, the former being from the beginning of the fourth to the end of the sixth month of its development, and the latter from the end of the sixth month to birth.

6. In his 1972 article, "Abortion and Infanticide," Michael Tooley argues that a being has a right to X, only if it desires that X. For a being to have a right to life, therefore, the being must desire to have a continuous existence. A being can only understand and hence desire something of which it possesses the relevant concepts. Foetuses and infants do not possess the concepts of having a continued existence, and therefore cannot desire a continued existence, and thus do not have a right to life. He claims to have morally defended the practices of abortion and infanticide.

7. John Noonan, in his 1970 article, "An almost absolute value in history," defends a conservative stance on abortion, denying the permissibility thereof, unless the mother's life is endangered, by arguing from probability.

8. Edward A. Langerak, in his 1979 article, "Abortion: listening to the middle," expresses the beliefs that there is something about the foetus itself that makes abortion problematic (and late-term abortions significantly more problematic than early-term ones), and Potential persons have a right to life that is derived from and proportional to their future claims as actual persons. He defends the second belief through a theory of conferred claims of personhood, a theory based on the bad social consequences of killing foetuses at various stages of development. He argues that even if foetuses are not complete persons with full claims to life, we should treat them as persons if the social stakes are sufficiently high.

9. The term "person" is used to stand for any being with moral rights.

10. In her 1975 article, "Abortion and the concept of a person," Jane English investigates whether it is personhood that gives a being a right to life. She aptly points out that many nonpersons have some moral standing, and that even beings that do not have an absolute right to life have a right not to be killed without significant reason.

11. In his 1981 book, "Abortion and moral theory," L.W. Sumner argues for sentience as the criterion by which beings receive moral standing, and hence have a right to life. The implication for abortion is made clear: fetuses in the first trimester are not sentient, while in the third they certainly are. The line between permissibility of abortion, under normal circumstances thus lies somewhere in the second trimester of pregnancy.

12. Anencephaly is a congenital absence of the brain or spinal cord, or large portions thereof. Some anencephalic infants, for instance, are born without the higher brain structures. Almost all die within a few months.

13. Rosalind Hursthouse, in her interesting 1991 article, "Virtue theory and abortion," claims that the central question concerning abortion is not the status of the fetus, nor whether the fetus or the mother has rights, but rather, how one is to live a righteous and virtuous life.

CHAPTER 2

1. "Practical ethics" (1993), a concise book by Peter Singer, deals with a number of ethical issues: equality and its implications; equality for animals; why it is wrong to kill; taking the life of animals, of the embryo, and of humans; rich and poor; in-groups and out-groups; the environment; ends and means; and why we should act morally. Chapters 4 to 6 raise issues and arguments pertinent to the issue of abortion. On this latter issue, Singer defends abortion in a similar manner to Michael Tooley.

2. I shall henceforth use the term "human" to stand for any being having the genetic code of the species *Homo sapiens*.

3. In his 1986 article, "An appeal for consistency," H.J. Gensler rejects utilitarian and Tooley's arguments against abortion, claiming that they lead to inconsistencies. He argues that only a rejection of abortion in the traditional sense can be consistently argued for.

4. In Chapter 3 potential will be defended as the criterion determining a being's right to life.

5. R.M. Hare, in his article, "A Kantian approach to abortion" (1995), rejects arguments in the abortion debate that appeal to the right of the fetus or of the woman. The important question is, Hare maintains, whether there is anything about the fetus that gives us a reason not to kill it. He argues that the fetus's potential provides one reason. Pregnancies ought not to be terminated because the beings would later be glad they were not aborted. He gives Kantian and utilitarian arguments for this claim.

6. The American philosopher, John Rawls, has probably attracted more attention in the form of commentaries and criticism with his book published in 1971, "A theory of justice," than any other social theorist since World War II (Flew 1979). Ryan (1994: 101) mentions, that in the book's first major review, which appeared in 1972, Hampshire considered it to be the most significant work in more than a century to have been produced in moral and political philosophy. Rawls was initially attracted to the utilitarian theory of ethics, but became convinced of its shortcomings in respect of justice and rights. His own theory is an attempt to explain justice in terms of rational self-interest, linking it to the idea of a social contract (Raphael 1991: 145).

CHAPTER 3

1. In his 1970 treatment of abortion, "An almost absolute value in history," John T. Noonan defends a conservative stance on abortion by arguing from the probability of a being to develop further into a person. He concludes that only abortions to save the life of the mother are permissible, such as to remove a cancerous uterus, or terminate an ectopic pregnancy.

2. The term "viability" refers to the foetus's ability to survive when detached from its mother.

3. John T. Noonan makes these claims in his 1970 article, "An almost absolute value in history."

4. "Nineteen-eighty-four" is a horrifying imaginative story of life in some future time by George Orwell. The world is divided up by three great powers between which there is perpetual warfare. One of these powers, Oceania, is ruled by "Big Brother" and the "Party" that comprise 15% of the population. The remaining 85% are "Proles", the despised masses.

5. In the now famous 1973 US Supreme Court decision of "Row vs Wade," a woman's right to an abortion was legally granted up to the end of the second trimester. The court's decision was based to a large degree on the foetus's viability. It laid down that no law may prohibit a woman's right to an abortion during the first three months of pregnancy. During the second trimester of pregnancy, abortion may be regulated only insofar as it is related to the preservation and protection of maternal health. When the foetus becomes viable (not before the beginning of the third trimester), abortion may be prohibited, but only subject to the exception that an abortion may always be performed to preserve the pregnant woman's life or health.

6. Edward A. Langerak, in his 1979 article, "Abortion: listening to the middle," expresses the beliefs that there is

something about the fetus itself that makes abortion problematic (and late-term abortions significantly more problematic than early-term ones), and Potential persons have a right to life that is derived from and proportional to their future claims as actual persons. He defends the second belief through a theory of conferred claims of personhood, a theory based on the bad social consequences of killing fetuses at various stages of development. He argues that even if fetuses are not complete persons with full claims to life, we should treat them as persons if the social stakes are sufficiently high.

7. Langerak uses the term "claims."

8. For scientific evidence of this, see Daniel Callahan's book, "Abortion: law, choice and morality" (1970).

CHAPTER 4

1. In her 1975 article, "Abortion and the concept of a person," Jane English applies a self-defence model to the issue of abortion. She also investigates whether it is personhood that gives a being a right to life. She aptly points out that many criteria are involved in personhood, and that even beings that do not have an absolute right to life have a right not to be killed without significant reason.

2. With her now famous 1971 article, "A defence of abortion," Judith Jarvis Thomson attempts to avoid what is usually considered as the central issue in the abortion controversy, namely, the status of the fetus. She argues for a defence of abortion, even if it is assumed that the fetus has the same moral status as a child. It is often claimed that the morality of abortion depends entirely on when a developing human is alive, or becomes a person. Thomson disputes this, employing a set of analogies, including one about a violinist who requires the use of your kidneys for nine months. She argues that a mother's right over her body allows her to "unplug" herself from the fetus, even if the fetus is a person.

3. The theory of Michael Tooley was discussed, evaluated and criticised in Chapter 2.

4. In his book, "Abortion and the sanctity of human life" (1975), Baruch Brody argues for an extreme conservative defence of abortion, arguing that abortion is only permissible when a continuation of the pregnancy would result in the death of both the mother and child. Merely to save the life of the mother, he maintains, is not sufficient.

5. In her 1973 article, "Rights and deaths," Thomson argues that being innocent does not always mean being free from guilt. Her views therefore strongly oppose those of Brody.

6. This point was argued and explained in Chapter 3.

CHAPTER 5

1. In his 1981 book, "Abortion and moral theory," L.W. Sumner defends sentience as a suitable criterion by which a being acquires moral standing, and hence a right to life. The implication for abortion is made clear: fetuses in the first trimester are not sentient, while in the third they certainly are. The line between permissibility of abortion, under normal circumstances, thus lies somewhere in the second trimester of pregnancy.

2. The theory of John Noonan was dealt with in Chapter 3.

3. The theory of Michael Tooley was examined and criticised in Chapter 2.

4. A.I. Melden argues in his 1977 book, "Rights and persons," that only beings possessing moral agency possess moral standing, and hence have a right to life.

5. In Chapter 3 his potentiality principle was elucidated.

6. Sumner also sees rationality as a subset of sentience, although it is likely that artificial rationality, or artificial intelligence, be created before artificial sentience.

7. In "Speciesism and the idea of equality" (1978), Steinbock rejects Peter Singer's arguments against speciesism. She argues that membership of the human species is in itself important. Human beings have important characteristics that call for treating them differently from nonhuman animals, even though she admits, animal suffering is also morally important.

Peter Singer argued in "All animals are equal" (1977) that equality applies to animals as well as to humans. Nonhuman attitudes towards animals is bias toward our species, similar to the attitudes of a racist or sexist. Our eating habits, as well as our use of animals in scientific experiments are morally wrong.

CHAPTER 6

1. In his 1978 article, "Suffering: a Christian view," Donnelly suggests that the term "suffering" be distinguished from the term "pain." He argues that suffering often has significant instrumental value. The meaning of life is contained in suffering.

2. In her 1978 essay, "If there is life, make it worth living: the quality of life of an infant born with a birth-defect," C.M. Metzler maintains that because we abhor suffering, we have a tendency to kill defective children. We deprive them of love, care and concern, the fundamentals of a quality life. She urges us to change our attitudes and become more loving, and thereby enhance the quality of life of the handicapped.

3. Joseph Margolis, in his 1978 essay, "Human life: its worth and bringing it to an end," argues that we are not able to determine whether it ought to be forbidden to end life; judging that it is better to die than continue living does not mean that life is no longer worth living; criteria justifying suicide, infanticide, abortion, and the like must be based on moral principles, not on empirical investigations.

4. Steven Nathanson examines the relationship between rationality and the value of life in his 1978 article, "Nihilism, reason, and the value of life."

5. Kohl examines whether it is permissible to terminate a human life, if that life is judged to be meaningless in "Voluntary death and meaningless existence" (1978). Where and when are we to permit the termination of a life? He argues that death may be the best thing when life is too awful.

Purdy, in "Can having children be immoral?" (1989), argues that having children with the prior knowledge that they will have a high probability of suffering from a serious congenital defect is immoral. He argues that it is not only morally justified to abort such fetuses, but also immoral not to do so.

Arthur Asch, in "Can aborting imperfect children be immoral?" (1989), supports the legal justification for all abortions, but questions their moral defence. Sex selection, for instance, is morally wrong, because it suggests to others that being of the wrong sex gives someone the right to make a life or death decision over the being. Abortion for foetal defects is similar, especially when the defect is not life-threatening, or is not very severe. Many people can live fulfilling lives with their disabilities. Many of their problems stem from social barriers to equal treatment and access to the handicapped, rather than biological handicaps. Parenthood is not a controlled activity, and parents should accept and love the children they bear.

Richard Brandt does not regard personhood or the right to life as the fundamental issue to the problem. In "Defective newborns and the morality of termination" (1978), he discusses various problems for morality, including duty, consent and quality of life. He concludes that if the lives of some defective new-borns will be bad on the whole, it would be a favour to them if their lives were terminated. Infanticide and abortion are thus justified if severe abnormality is evident.

J. Fletcher discusses the relation between suicide, euthanasia, and infanticide in "Infanticide and the ethics of loving concern" (1978). He holds a utilitarian view, arguing

that abortion and infanticide can be justified if the good results outweigh the bad. He maintains that neither abortion nor infanticide are immoral. A.A. Morris also holds in "Law, morality and euthanasia for the defective child" (1978) that laws prohibiting infanticide to alleviate continuous suffering are not required and often harmful. G. Williams already expressed similar views in "Legal evaluation of infanticide" (1957).

6. For evidence of Seneca's views I have relied on the article by Kohl, "Voluntary death and meaningless existence" (1978).

7. In her article, "On the moral and legal status of abortion" (1973), Mary Anne Warren also sees the status of the foetus as central to the issue of abortion. She makes a distinction between a biological human being and the moral community, whose members enjoy full and equal human rights. Merely being a member of the species *Homo sapiens* is not, she argues, sufficient to qualify as a member of the moral community. She suggests that the traits most central to moral personhood are: (1) consciousness, (2) reasoning, (3) self-motivated activity, (4) the capacity to communicate by whatever means with an indefinite variety of messages, and (5) the presence of a self-concept and self-awareness. Not all these features need be present, but Warren asserts that fetuses fail to exhibit any of these traits. She thus does not classify them as moral persons, and hence she grants them no moral right to life. In an appendix she attempts to dismiss the claim that her theory would also permit infanticide by employing a utilitarian approach to the problem. The killing of infants would deprive childless couples who want children of the pleasures of adopting children.

CHAPTER 7

1. In an article titled "Happiness and the virtues," appearing in a 1997 book by C. Sommers and F. Sommers, "Vice and virtue in everyday life: introductory readings in ethics," Aristotle defines happiness as functioning well. The function of human beings is to exercise their capacity to reason. Reason directs us to moderation.

2. In "The ethics of virtue" (1986), James Rachels compares virtue based theories of ethics, such as by Aristotle, with duty or action based theories, by Kant or Mill. He considers the suggestion that moral philosophers should return to an exclusively virtue based approach. He rejects it, arguing that such a morality must always be incomplete, since it could not by itself explain why certain character traits are good. Rachels concludes that a combined approach, one encompassing both virtue and duty based approaches, is necessary for a comprehensive theory of ethics.

3. In her 1978 article, "Virtues and vices," Philippa Foot distinguishes between virtues and other beneficial traits, such as health or good memory. She denies that these are virtues, since they do not engage a person's will or character. A generous or courageous person has virtues in wanting the good fortune of others, and in having the strength of character to act. Wisdom poses a difficulty. Foot maintains that the wise person wants the proper ends. This engages the will. The virtues are also correctives, by inhibiting the tendency to yield to temptations.

4. The bomber was so named because universities and airlines were the targets of his parcel bombs.

5. Macintyre argues in his 1984 article, "The virtues, the unity of a human life, and the concept of a tradition," that impartiality and universality (elements of traditional liberal moral theories) are inadequate, since they fail to take into account the unique values and interests of a society.

6. In her article, "Virtue theory and abortion" (1991), Rosalind Hursthouse claims that the central question concerning abortion is not the status of the foetus, nor on whether the foetus or the mother has rights, but rather how one is to live a righteous and virtuous life.

BIBLIOGRAPHY

1. "RFB&D" stands for "Recording for the Blind and Dyslexic." Due to my blindness, I consulted many sources in audio format, where this was available. Where I exclusively used the audio edition, I indicated this in the bibliography.

BIBLIOGRAPHY

- Abelson, R. 1991. Ethics for modern life, 4th ed. RFB&D,¹ St. Martin's Press.
- Ackrill, J.L. 1981. Aristotle the philosopher. Oxford: Oxford University Press.
- Addelson, K.P. 1991. Impure thoughts: essays on philosophy, feminism & ethics. Temple University Press.
- Albert, E.M. 1988. Great traditions in ethics. RFB&D, Wadsworth Pub.
- Annis, D. 1975. Self-consciousness and the right to life. South-Western Journal of Philosophy, vol. 6: 123-128.
- Aristotle. 1963. The philosophy of Aristotle. RFB&D, New American Library.
- Aristotle. Happiness and the virtues, in C. Sommers & F. Sommers (ed.), Vice & virtue in everyday life: introductory readings in ethics, 4th ed. Harcourt Brace College Publishers. 1997: 293-305.
- Aristotle. 1996. Nicomachean ethics, in J. Arthur (ed.), Morality and moral controversies, 4th ed. RFB&D, Prentice Hall. 1996: 30-36.
- Arras, J.D. & Rhoden, N.K. (ed.) 1989. Ethical issues in modern medicine. RFB&D, Mayfield Publishers Co.
- Art, B. 1993. What is the best life?: an introduction of ethics. RFB&D, Wadsworth Pub.
- Arthur, J. (ed.) 1996. Morality and moral controversies, 4th ed. RFB&D, Prentice Hall.
- Asch, A. 1986. Can aborting imperfect children be immoral? in J.D. Arras & N.K. Rhoden (ed.), Ethical issues in modern medicine. RFB&D, Mayfield Publishers Co. 1989: 317-320.
- Augenstein, L.G. 1969. Come, let us play God. RFB&D, Harper & Row.
- Augustine, A. Of the morals of the Catholic Church, in C. Sommers & F. Sommers (ed.), Vice & virtue in everyday life: introductory readings in ethics, 4th ed. Harcourt Brace College Publishers. 1997: 305-309.
- Augustine, A. 1955. Letters, vol. 4. New York: Fathers of the Church.

- Baehr, N. 1990. Abortion without apology: a radical history for the 1990s. South End Press.
- Baird, R.M. & Rosenbaum, S.E. 1989. The ethics of abortion: pro-life vs. pro-choice. Prometheus Books.
- Baker, R. 1986. Eugenics and human rights, in E.L. Bandman & B. Bandman (ed.), Bioethics and human rights. University Press of America. 1986: 98-100.
- Bandman, B. 1973. Rights and claims, in E.L. Bandman & B. Bandman (ed.), Bioethics and human rights. University Press of America. 1986: 35-43.
- Bandman, B. 1986. Option rights and subsistence rights, in E.L. Bandman & B. Bandman (ed.), Bioethics and human rights. University Press of America. 1986: 51-61.
- Bandman, E.L. & Bandman, B. (ed.) 1986. Bioethics and human rights. University Press of America.
- Barnet, S., & Bedau, H. (ed.) 1993. Current issues and enduring questions: a guide to critical thinking and argument with readings. RFB&D, Bedford Books of St. Martin's Press.
- Baumrinde, B.H. 1986. Toward unravelling the abortion problem, in E.L. Bandman & B. Bandman (ed.), Bioethics and human rights. University Press of America. 1986: 109-112.
- Battin, M.P. 1994. The least worst death. New York: Oxford.
- Beach, W. & Niebuhr, H.R. (ed.) 1955. The Didache, in Sources of the living tradition. New York: Roland Press.
- Beauchamp, T.L. 1982. Philosophical ethics. McGraw-Hill.
- Beauchamp, T.L. & Walters, L. (ed.) 1994. Contemporary issues in bioethics, 4th ed. RFB&D, Wadsworth Pub. Co.
- Beauvoir de, S. 1948. The ethics of ambiguity. RFB&D, Citadel Press.
- Black, P. Killing and allowing to die, in M. Kohl, Infanticide and the value of life. RFB&D, Prometheus Books. 1978: 86-95.
- Boonin-Vail, D. 1997. A defence of "A defence of abortion": on the responsibility objection to Thomson's argument. Ethics, vol. 107(2): 286-313.
- Boswell, J. 1980. Christianity, social tolerance and homosexuality: gay people in Western Europe from the beginning of the Christian era to the beginning of the fourteenth century. Chicago: Chicago University Press.
- Brandt, R. Defective newborns and the morality of termination, in M. Kohl, Infanticide and the value of life. RFB&D, Prometheus Books. 1978: 46-57
- Brett, N. 1996. Euthanasia, an individual freedom. Canadian Journal of Philosophy, vol. 26(1): 149-164.
- Brody, B. 1973. Abortion and the sanctity of human life. American Philosophical Quarterly, vol. 10. 1973: 133-140.
- Brody, B. 1975a. Abortion and the sanctity of human life: a philosophical view. Cambridge Massachusetts: The Mit Press.
- Brody, B. 1975b. Opposition to abortion: a human rights approach, in J. Arthur (ed.), Morality and moral controversies, 4th ed. RFB&D, Prentice Hall. 1996: 196-203.
- Browne, A. 1986. Is abortion a pseudo-problem? Philosophy Research Archives, vol. 12: 101-124.

- Callahan, D. 1970. Abortion: law, choice and morality. London: Collier Macmillan.
- Callahan, D & Callahan, S.C. (ed.) 1984. Abortion: understanding differences. RFB&D, Plenum Press.
- Callahan, S.C. 1986. Abortion and the sexual agenda: a case for pro-life feminism, in R.M. & S.E. Rosenbaum, The ethics of abortion: pro-life vs. pro-choice. Prometheus Books. 1989: 131-142.
- Callahan, D. 1990. What kind of life: the limits of medical progress. RFB&D, Simon & Schuster.
- Carrier, L.S. 1975. Abortion and the right to life. Social Theory and Practice, vol. 3: 381-401.
- Clark, E.L. 1979. Jerome, Chrisostom and friends. New York Melan.
- Carson, R.C., Butcher, J.N. & Coleman, J.C. 1988. Abnormal psychology and modern life, 8th ed. Glenview: Scott Foresman.
- Connery, J.R. 1978. Abortion: Roman Catholic perspectives, in Encyclopaedia of bioethics, vol. 1.
- Darwin, C. 1875. The origin of the moral sense, in C. Sommers & F. Sommers (ed.), Vice & virtue in everyday life: introductory readings in ethics, 4th ed. Harcourt Brace College Publishers. 1997: 373-379.
- David, H.P. (ed.) 1988. Born unwanted: developmental effects of denied abortion. RFB&D, Springer Pub. Co.
- Digby, F. 1996. Abortion is the issue from hell. Free Inquiry, vol. 16(3): 24-25.
- Donaldson, T. (ed.) 1986. Issues in moral philosophy. RFB&D, McGraw-Hill.
- Donaldson, T. 1990. Morally privileged relationships. The Journal of Value Inquiry, vol. 24: 1-15.
- Donnelly, J. Suffering: a Christian view, in M. Kohl, Infanticide and the value of life. RFB&D, Prometheus Books. 1978: 163-171.
- Dubler, N.N. 1993. Ethics on call: taking charge of life-and-death choices in today's health care system. RFB&D, Vintage Books.
- Duff, R.S. Deciding the care of defective infants, in M. Kohl, Infanticide and the value of life. RFB&D, Prometheus Books. 1978: 96-101.
- Dworkin, R. 1990. Taking rights seriously in abortion case. Ratio Juris, 68-80.
- Dworkin, R.M. 1993. Life's dominion: an argument about abortion, euthanasia, and individual freedom. RFB&D, Alfred A. Knopf.
- Ehrman, L. 1986. Genetics and the right to plan future generations, in E.L. Bandman & B. Bandman (ed.), Bioethics and human rights. University Press of America. 1986: 77-83.
- Elliot, R. 1995. Personal identity, potentiality and abortion. Philosophical Papers, vol. 24(2): 141-149.
- Engelhardt, J.R. & Tristram, H. 1993. Personhood, moral strangers, and the evil of abortion: the painful experience of post-modernity. Journal of Medical Philosophy, vol. 18(4): 419-421.

- English, J. 1975. Abortion and the concept of a person, in T. Donaldson, Issues in moral philosophy. New York: McGraw-Hill. 1986: 248-256.
- Feinberg, J. 1970. The nature and value of rights, in E.L. Bandman & B. Bandman (ed.), Bioethics and human rights. University Press of America. 1986: 19-31.
- Feinberg, J. 1973. The problem of abortion. RFB&D, Wadsworth Pub. Co.
- Feinberg, J. 1977. A postscript to "The nature and value of rights," in E.L. Bandman & B. Bandman (ed.), Bioethics and human rights. University Press of America. 1986: 32-34.
- Fischer, J.M. 1991. Abortion and self-determination. Journal of Social Philosophy, vol. 22(2): 5-13.
- Fletcher, J. Infanticide and the ethics of loving concern, in M. Kohl, Infanticide and the value of life. RFB&D, Prometheus Books. 1978: 13-22.
- Flew, A. (ed.) 1979. A dictionary of philosophy. London: Pan books.
- Foot, F. 1978. Virtues and vices, in C. Sommers & F. Sommers (ed.), Vice & virtue in everyday life: introductory readings in ethics, 4th ed. Harcourt Brace College Publishers. 1997: 329-344.
- Francoeur, R.T. (ed.) 1987. Taking sides: clashing views on controversial issues in human sexuality. RFB&D, Dushkin Publishing Group.
- Freud, S. 1955. The complete psychological works of Sigmund Freud, vol. 1. London: Hogarth.
- Grobstein, C. 1988. Science and the unborn. RFB&D, Basic Books.
- Gass, M. 1993. Abortion and moral character: a critique of Smith. International Philosophical Quarterly, vol. 33(1): 101-108.
- Gensler, H.J. 1986. An appeal for consistency, in R.M. Baird, & S.E. Rosenbaum, The ethics of abortion: pro-life vs. pro-choice. Prometheus Books. 1989: 93-107.
- Goldberg, D.T. 1995. Ethical theory and social issues: historical texts and contemporary readings, 2nd ed. RFB&D, Holt Rinehart & Winston.
- Golding, M.P. 1986. The concept of rights: a historical sketch, in E.L. Bandman & B. Bandman (ed.), Bioethics and human rights. University Press of America. 1986: 44-50.
- Grisez, G. 1972. Abortion: the myths, the realities, and the arguments, 2nd ed. New York: Corpus Books.
- Hare, R.M. A Kantian approach to abortion, in D.T. Goldberg, Ethical theory and social issues: historical texts and contemporary readings, 2nd ed. RFB&D, Holt Rinehart & Winston. 1995: 435-445.
- Harrison, B.W. 1983. Our right to choose: toward a new ethic of abortion. RFB&D, Beacon Press.
- Held, V. 1986. Abortion and the rights to life, in E.L. Bandman & B. Bandman (ed.), Bioethics and human rights. University Press of America. 1986: 103-108.

Hobbes, T. 1996. Leviathan, in J Arthur (ed.), Morality and moral controversies, 4th ed. RFB&D, Prentice Hall. 1996: 37-43.

Honderich, T. 1995. The Oxford companion to philosophy. Oxford: Oxford University Press.

Hudson, H. & Feinberg 1996. On the criterion of moral personhood. Journal of Applied Philosophy, vol. 13(3): 311-317.

Hudson, W.D. 1983. Modern moral philosophy, 2nd ed. London: Macmillan.

Huffman, T.L. 1993. Abortion, moral responsibility and self-defence. Public Affairs Quarterly, vol. 7(4): 287-302.

Hume, D. 1996. An inquiry concerning the principles of morals, in J. Arthur (ed.) Morality and moral controversies, 4th ed. RFB&D, Prentice Hall. 1996: 44-54.

Hursthouse, R. 1991. Virtue theory and abortion, in J. Olen, Applying ethics: a text with readings, 5th ed. RFB&D, Wadsworth Pub. Co. 1996: 204-210.

Jaggar, A.M. 1989. Feminist ethics: some issues for the nineties, in J. Arthur (ed.), Morality and moral controversies, 4th ed. RFB&D, Prentice Hall. 1996: 85-91.

Jakobavits, I. Jewish views on infanticide, in M. Kohl, Infanticide and the value of life. RFB&D, Prometheus Books. 1978: 23-31.

Kamm, H. 1982. Pope in Spain condemns all abortions. New York Times. November 2, 1982: A3.

Kant, I. 1969. Foundations of the metaphysics of morals. RFB&D, Bobbs-Merrill.

King, P. 1989. Should mom be constrained in the best interests of the foetus? in T.L. Beauchamp & L. Walters (ed.) Contemporary issues in bioethics. RFB&D, Wadsworth Pub. Co. 1994: 343-348.

Kluge, E.H.W. 1975. The practice of death. New Haven and London: Yale University Press.

Kluge, E.H.W. Infanticide as the murder of persons, in M. Kohl, Infanticide and the value of life. RFB&D, Prometheus Books. 1978: 32-45.

Kohl, M. (ed.) 1978a. Infanticide and the value of life. RFB&D, Prometheus Books.

Kohl, M. 1978b, Voluntary death and meaningless existence, in M. Kohl, Infanticide and the value of life. RFB&D, Prometheus Books. 1978: 206-218.

Kuhse, H. & Singer, P. 1985. Should the baby live?: The problem of handicapped infants. Oxford: Oxford University Press.

Langerak, EA. 1979. Abortion: listening to the middle, in J.D. Arras & N.K. Rhoden (ed.), Ethical issues in modern medicine. RFB&D, Mayfield Publishers Co. 1989: 286-292.

Langton, R. 1992. Maria von Herbert's challenge to Kant, in C. Sommers & F. Sommers (ed.), Vice & virtue in everyday life: introductory readings in ethics, 4th ed. Harcourt Brace College Publishers. 1997: 175-192.

Levi, D.S. 1987. Hypothetical cases and abortion. Social Theory and Practice, vol. 13: 17-48.

- Levin, D.S. 1985. Thomson and the current state of the abortion controversy. Applied Philosophy, vol. 2: 121-126.
- Levine, C. 1993. Taking sides: clashing views on controversial bioethical issues, 5th ed. RFB&D, Dushkin Publishing Group.
- Li, C. 1992. The fallacy of the slippery slope argument on abortion. Journal of Applied Philosophy, 9(2): 233-237.
- Li, H-L. 1997. Abortion and degrees of personhood: understanding why the abortion problem (and the animal rights problem) are irresolvable. Public Affairs Quarterly, vol. 11(1): 1-19.
- Louw, D.A. (ed.) 1991. Human development. Pretoria: Haum.
- Louw, D.A. 1991. Prenatal development and the birth process, in D.A. Louw (ed.), Human development. Pretoria: Haum. 1991: 99-147.
- Mace, D.R. 1972. Abortion: the agonizing decision. RFB&D, Abingdon Press.
- Macintyre, A. 1984a. Is patriotism a virtue?, in J. Arthur (ed.), Morality and moral controversies, 4th ed. RFB&D, Prentice Hall. 1996: 92-99.
- Macintyre, A. 1984b. Tradition and the virtues, in C. Sommers & F. Sommers (ed.), Vice & virtue in everyday life: introductory readings in ethics, 4th ed. Harcourt Brace College Publishers. 1997: 316-328.
- Macintyre, A. 1984c. The virtues, the unity of a human life, and the concept of a tradition, in D.T. Goldberg, Ethical theory and social issues: historical texts and contemporary readings, 2nd ed. RFB&D, Holt Rinehart & Winston. 1995: 189-197.
- Mackenzie, C. 1992. Abortion and embodiment. Australasian Journal of Philosophy, vol. 70(2): 136-155.
- Mackie, J. 1980a. Can there be a right based moral theory? in D.T. Goldberg, Ethical theory and social issues: historical texts and contemporary readings, 2nd ed. RFB&D, Holt Rinehart & Winston. 1995: 171-179.
- Mackie, J. 1980b. Ethics: inventing right and wrong. London: Penguin Books.
- Male, B. Virtue or duty? in C. Sommers & F. Sommers (ed.), Vice & virtue in everyday life: introductory readings in ethics, 4th ed. Harcourt Brace College Publishers. 1997: 310-315.
- Margolis, J. Human life: its worth and bringing it to an end, in M. Kohl, Infanticide and the value of life. RFB&D, Prometheus Books. 1978: 180-191.
- Markovitz, S. 1990. Feminist views on abortion, in J.P. Sterba, Morality in practice, 5th ed. RFB&D, Wadsworth Pub. Co. 1997: 143-150.
- Marquis, D. 1989. Why abortion is immoral, in J.P. Sterba, Morality in practice, 5th ed. RFB&D, Wadsworth Pub. Co. 1997: 129-133.
- Mason, J.K. 1988. Human life and medical practice. Edinburgh: Edinburgh University Press.

McConnell, T.C. 1997. Moral issues in health care: an introduction to medical ethics, 2nd ed. RFB&D, Wadsworth Pub. Co.

McMahan, J. 1993. The right to choose an abortion. Philosophy of Public Affairs, vol. 22(4): 331-348.

Melden, A.I. 1977. Rights and persons. Basil Blackwell.

Metzler, C.M. If there is life, make it worth living: the quality of life for the infant born with a birth-defect, in M. Kohl, Infanticide and the value of life. RFB&D, Prometheus Books. 1978: 172-179.

Meyers, C. 1992. Maintaining the violinist: a mother's obligation to the fetus she decides to keep. Journal of Social Philosophy, vol. 23(2): 52-64.

Morris, A.A. Law, morality and euthanasia for the defective child, in M. Kohl, Infanticide and the value of life. RFB&D, Prometheus Books. 1978: 137-161.

Murray, T.H. & Caplan, A.L. 1985. Which babies shall live?: humanistic dimensions of the care of imperiled newborns. RFB&D, Humana Press.

Narveson, J. 1975. Semantics, future generations and the abortion problem. Social Theory and Practice, vol. 3: 461-485.

Nathanson, S. Nihilism, reason, and the value of life, in M. Kohl, Infanticide and the value of life. RFB&D, Prometheus Books. 1978: 192-205.

Newton, L.H. 1986. No rights at all: an interpretation of the abortion issue, in E.L. Bandman & B. Bandman (ed.), Bioethics and human rights. University Press of America. 1986: 113-118.

Nietzsche, F. 1996. The genealogy of amorals: an attack, in J. Arthur (ed.), Morality and moral controversies, 4th ed. RFB&D, Prentice Hall. 1996: 75-82.

Noonan, J. 1966. Contraception: a history of its treatment by the Catholic theologians and cannonists. Cambridge: Harvard University Press.

Noonan, J.T. 1970a. An almost absolute value in history, in T. Donaldson, Issues in moral philosophy. New York: McGraw-Hill. 1986: 215-220.

Noonan, J.T. (ed.) 1970b. An almost absolute value in history, in J. Noonan, The morality of abortion: legal and historical perspectives. Harvard University Press.

Nozick, R. 1974. The entitlement theory, in D.T. Goldberg, Ethical theory and social issues: historical texts and contemporary readings, 2nd ed. RFB&D, Holt Rinehart & Winston. 1995: 158-169.

O'Connor, D.J. (ed.) 1974. A critical history of Western philosophy. New York: Free Press of Glencoe.

Orwell, G. 1963. Nineteen eighty-four. New York: Harcourt, Brace & World.

Pavlicsek, K.J. 1993. Abortion, logic and paternal responsibility: one more look at Judith Thomson's "A defence of abortion." Public Affairs Quarterly, vol. 7(4): 341-361.

Petchesky, R.P. 1984. Abortion and women's choice. Longman.

- Philp, M. 1994. Michel Foucault, in Q. Skinner, A return to grand theory in the human sciences. Cambridge University Press. 1994: 65-82.
- Pieper, J. 1957. The silence of St. Thomas. Chicago Henry Ragnery.
- Plato. 1938. Portrait of Socrates. Oxford: Oxford University Press.
- Plato. 1961. The last days of Socrates. Translated by H. Tredennick. RFB&D, Penguin Classics: Harmondsworth.
- Plato. 1975. The laws. RFB&D, Penguin Books.
- Plato. 1987. The republic, 3rd ed. London: Penguin.
- Pole, N. 1973. To respect human life. Philosophy in Context, vol. 2: 16-22.
- Post, S.G. & Leisey, R.G. 1995. Analogy, evaluation and moral disagreement. Journal of Value Inquiry, vol. 29(1): 45-55.
- Powell, J.S.J. 1981. Abortion: the silent holocaust. RFB&D, Argus Communications.
- Powers, M. 1993. Contractualist impartiality and personal commitments. American Philosophical Quarterly, vol. 30: 63-72.
- Purdy, L.M. 1978. Can having children be immoral? in J.D. Arras & N.K. Rhoden (ed.), Ethical issues in modern medicine. RFB&D, Mayfield Publishers Co. 1989: 311-316.
- Rachels, J. 1979. Euthanasia: killing and letting die, in J.P. Sterba, Morality in practice, 5th ed. RFB&D, Wadsworth Pub. Co. 1997: 150-159.
- Rachels, J. 1986. The ethics of virtue, in C. Sommers & F. Sommers (ed.), Vice & virtue in everyday life: introductory readings in ethics, 4th ed. Harcourt Brace College Publishers. 1997: 344-363.
- Ramsey, P. 1975. The morality of abortion, in J. Rachels. Moral problems: a collection of philosophical essays, 2nd ed. New York: Harper & Row. 1975: 37-258.
- Raphael, D.D. 1991. Problems of political philosophy, 2nd ed. London: Macmillan.
- Rawls, J. 1971. A theory of justice. Cambridge Massachusetts.
- Regan, T. (ed.) 1993. Matters of life and death: new introductory essays in moral philosophy, 3rd ed. RFB&D, McGraw-Hill.
- Reiman, J. 1997. Infanticide, and the asymmetric value of human life. Journal of Social Philosophy, vol. 27(3): 181-200.
- Rhoden, N.K. 1987. Caesarians and Samaritans, in T.L. Beauchamp & L. Walters (ed.) Contemporary issues in bioethics. RFB&D, Wadsworth Pub. Co. 1994: 337-343.
- Right, R. 1994. The moral animal, in C. Sommers & F. Sommers (ed.), Vice & virtue in everyday life: introductory readings in ethics, 4th ed. Harcourt Brace College Publishers. 1997: 379-394.
- Rorty, R. 1985. Post-modernist bourgeois liberalism, in D.T. Goldberg, Ethical theory and social issues: historical texts and contemporary readings, 2nd ed. RFB&D, Holt Rinehart & Winston. 1995: 180-185.

- Roupas, T.G. 1978. The value of life. Philosophy and Public Affairs, vol. 7: 154-183.
- Ryan, A. 1994. John Rawls, in Q. Skinner, The return of grand theory in the human sciences. Cambridge: Cambridge University Press. 1994: 101-120.
- Samuel, L. 1972. Power and sexuality: the emergence of canon law at the Senate of Elvira. Philadelphia: Temple University Press.
- Saugstad, J. 1995. The relevance of personhood: a critique of Dworkin. Set Philosophy Forsch, vol. 49(4): 571-583.
- Shaw, A. Who should die and who should decide, in M. Kohl, Infanticide and the value of life. RFB&D, Prometheus Books. 1978: 102-113.
- Shaw, W.H. 1996. Social and personal ethics, 2nd ed. RFB&D, Wadsworth Pub. Co.
- Shelt, E.E. 1986. Born to die: deciding the fate of critically ill newborns. RFB&D, The Free Press.
- Shirley, E.S. 1995. Marquis' argument against abortion: a critique. South Western Philosophical Review, vol. 11(1): 79-89.
- Simmons, P.D. 1983. Birth and death: bioethical decision making. Philadelphia: Westminster Press.
- Singer, P. 1977. All animals are equal, in J. Arthur (ed.), Morality and moral controversies, 4th ed. RFB&D, Prentice Hall. 1996: 127-137.
- Singer, P. 1993. Practical ethics. New York: Cambridge University Press.
- Smith, A. Of justice and beneficence, in C. Sommers & F. Sommers (ed.), Vice & virtue in everyday life: introductory readings in ethics, 4th ed. Harcourt Brace College Publishers. 1997: 363-372.
- Smith, H.L. 1970. Ethics and the new medicine. RFB&D, Avingdon Press.
- Smith, M.B.E. 1992. Review essay: the best intuitionistic theory yet! Thomson on rights. Criminal Justice Ethics, vol. 11(2): 85-97.
- Sommers, C.H. 1986. Filial morality. The Journal of Philosophy, vol. 83: 439-456.
- Steele, B.W. Psychology of infanticide resulting from maltreatment, in M. Kohl, Infanticide and the value of life. RFB&D, Prometheus Books. 1978: 76-85.
- Steinbock, B. 1978. Speciesism and the idea of equality, in J. Arthur (ed.), Morality and moral controversies, 4th ed. RFB&D, Prentice Hall. 1996: 137-143.
- Steinbock, B. 1994. Reproductive rights and responsibilities. Hastings Centre Report, vol. 24(3): 15-16.
- Steinbock, B. The intentional termination of life, in J.P. Sterba, Morality in practice, 5th ed. RFB&D, Wadsworth Pub. Co. 1997: 159-165.
- Sterba, J.P. (ed.) 1997. Morality in practice, 5th ed. RFB&D, Wadsworth Pub. Co.
- Stocker, M. 1976. The schizophrenia of modern ethical theories. The Journal of Philosophy, vol. 73: 453-466.

- Stroud, S. 1996. Dworkin and Casey on abortion. Philosophy and Public Affairs, vol. 25(2): 140-170.
- Sumner, L.W. 1981. Abortion and moral theory. Princeton: Princeton University Press.
- Sumner, L.W. 1985. A third way, in T. Donaldson, Issues in moral philosophy. New York: McGraw-Hill. 1986: 231-248.
- Tivnan, E. 1996. The moral imagination: confronting the ethical issues of our day. RFB&D, Simon & Schuster.
- Thomson, J.J. 1971a. A defence of abortion. Philosophy and Public Affairs, vol. 1: 47-66.
- Thomson, J.J. 1971b. A defence of abortion, in J. Arthur, Morality and moral controversies, 4th ed. RFB&D, Prentice Hall. 1996: 188-195.
- Thomson, J.J. 1973. Rights and deaths. Philosophy and Public Affairs, winter vol. 2: 146-159.
- Tooley, M. 1972a. Abortion and infanticide, in T. Donaldson, Issues in moral philosophy. New York: McGraw-Hill. 1986: 220-230.
- Tooley, M. 1972b. Abortion and infanticide. Philosophy and Public Affairs, vol. 2: 37-65.
- Tribe, L. 1990. Abortion: the clash of absolutes. New York: Norton.
- Vetterling-Braggin, M. 1985. Feminism and philosophy. RFB&D, Rowman & Allanheld.
- Warren, M.A. 1973. On the moral and legal status of abortion, in J. Arthur, Morality and moral controversies, 4th ed. RFB&D, Prentice Hall. 1996: 204-211.
- Weber, L.J. In defence of a legal prohibition of infanticide, in M. Kohl, Infanticide and the value of life. RFB&D, Prometheus Books. 1978: 130-136.
- Williams, B. 1993. Ethics and the limits of philosophy. London: Harper Collins.
- Williams, G. 1957. The legal evaluation of infanticide, in M. Kohl, Infanticide and the value of life. RFB&D, Prometheus Books. 1978: 115-129
- Williamson, L. Infanticide: anthropological review, in M. Kohl, Infanticide and the value of life. RFB&D, Prometheus Books. 1978: 61-75.
- Wilkenson, J. 1995. A defence of abortion: beyond viability to imitation and invention. Journal of Social Philosophy, vol. 26(3): 33-48.
- Wolf, N. Our bodies, our souls, in C. Sommers & F. Sommers (ed.), Vice & virtue in everyday life: introductory readings in ethics, 4th ed. Harcourt Brace College Publishers. 1997: 843-860.
- Wreen, M.J. 1992. Abortion and pregnancy due to rape. Philosophia (Israel), vol. 21(3-4): 201-220.