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The volume continues to be of great value as both a textbook and reference work, suitable not only for students of philosophy and moral theology, but for doctors, nurses, sociologists, lawyers, and others working in health care and the biomedical sciences.

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# BIOETHICS



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## AN ANTHOLOGY

THIRD EDITION

EDITED BY HELGA KUHSE, UDO SCHÜKLENK,  
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# Bioethics

## *An Anthology*

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Edited by

Helga Kuhse, Udo Schüklenk, and Peter Singer

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# Contents

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Acknowledgments	xii
Introduction	1
<b>Part I Abortion</b>	<b>9</b>
Introduction	11
1 Abortion and Health Care Ethics <i>John Finnis</i>	15
2 Abortion and Infanticide <i>Michael Tooley</i>	23
3 A Defense of Abortion <i>Judith Jarvis Thomson</i>	38
4 Why Abortion Is Immoral <i>Don Marquis</i>	49
<b>Part II Issues in Reproduction</b>	<b>61</b>
Introduction	63
<b>Assisted Reproduction</b>	<b>69</b>
5 Multiple Gestation and Damaged Babies: God's Will or Human Choice? <i>Gregory Pence</i>	71
6 Assisted Reproduction in Same Sex Couples <i>Dorothy A. Greenfeld and Emre Seli</i>	74
7 Rights, Interests, and Possible People <i>Derek Parfit</i>	86
8 The Ethics of Uterus Transplantation <i>Ruby Catsanos, Wendy Rogers, and Mianna Lotz</i>	91
<b>Prenatal Screening, Sex Selection, and Cloning</b>	<b>103</b>
9 Genetics and Reproductive Risk: Can Having Children Be Immoral? <i>Laura M. Purdy</i>	105

10	Prenatal Diagnosis and Selective Abortion: A Challenge to Practice and Policy <i>Adrienne Asch</i>	112
11	Genetic Technology: A Threat to Deafness <i>Ruth Chadwick and Mairi Levitt</i>	127
12	Sex Selection and Preimplantation Genetic Diagnosis <i>The Ethics Committee of the American Society of Reproductive Medicine</i>	136
13	Sex Selection and Preimplantation Diagnosis: A Response to the Ethics Committee of the American Society of Reproductive Medicine <i>Julian Savulescu and Edgar Dahl</i>	141
14	Conception to Obtain Hematopoietic Stem Cells <i>John A. Robertson, Jeffrey P. Kahn, and John E. Wagner</i>	144
15	Why We Should Not Permit Embryos to Be Selected as Tissue Donors <i>David King</i>	152
16	The Moral Status of the Cloning of Humans <i>Michael Tooley</i>	156
	<b>Part III Genetic Manipulation</b>	<b>173</b>
	Introduction	175
17	Questions about Some Uses of Genetic Engineering <i>Jonathan Glover</i>	177
18	The Moral Significance of the Therapy–Enhancement Distinction in Human Genetics <i>David B. Resnik</i>	189
19	Should We Undertake Genetic Research on Intelligence? <i>Ainsley Newson and Robert Williamson</i>	199
20	In Defense of Posthuman Dignity <i>Nick Bostrom</i>	208
	<b>Part IV Life and Death Issues</b>	<b>215</b>
	Introduction	217
21	The Sanctity of Life <i>Jonathan Glover</i>	225
22	Declaration on Euthanasia <i>Sacred Congregation for the Doctrine of the Faith</i>	235
	<b>Killing and Letting Die</b>	<b>241</b>
23	The Morality of Killing: A Traditional View <i>Germain Grisez and Joseph M. Boyle, Jr.</i>	243
24	Active and Passive Euthanasia <i>James Rachels</i>	248
25	Is Killing No Worse Than Letting Die? <i>Winston Nesbitt</i>	252

26	Why Killing is Not Always Worse – and Sometimes Better – Than Letting Die <i>Helga Kuhse</i>	257
27	Moral Fictions and Medical Ethics <i>Franklin G. Miller, Robert D. Truog, and Dan W. Brock</i>	261
	<b>Severely Disabled Newborns</b>	<b>271</b>
28	When Care Cannot Cure: Medical Problems in Seriously Ill Babies <i>Neil Campbell</i>	273
29	The Abnormal Child: Moral Dilemmas of Doctors and Parents <i>R. M. Hare</i>	285
30	Right to Life of Handicapped <i>Alison Davis</i>	290
31	Conjoined Twins, Embodied Personhood, and Surgical Separation <i>Christine Overall</i>	292
	<b>Brain Death</b>	<b>305</b>
32	A Definition of Irreversible Coma <i>Report of the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death</i>	307
33	Are Recent Defences of the Brain Death Concept Adequate? <i>Ari Joffe</i>	312
34	Is the Sanctity of Life Ethic Terminally Ill? <i>Peter Singer</i>	321
	<b>Advance Directives</b>	<b>331</b>
35	Life Past Reason <i>Ronald Dworkin</i>	333
36	Dworkin on Dementia: Elegant Theory, Questionable Policy <i>Rebecca Dresser</i>	341
	<b>Voluntary Euthanasia and Medically Assisted Suicide</b>	<b>351</b>
37	The Note <i>Chris Hill</i>	353
38	When Self-Determination Runs Amok <i>Daniel Callahan</i>	357
39	When Abstract Moralizing Runs Amok <i>John Lachs</i>	362
40	Trends in End-of-Life Practices Before and After the Enactment of the Euthanasia Law in the Netherlands from 1990 to 2010: A Repeated Cross-Sectional Survey <i>Bregje D. Onwuteaka-Philipsen, Arianne Brinkman-Stoppelenburg, Corine Penning, Gwen J. F. de Jong-Kruij, Johannes J. M. van Delden, and Agnes van der Heide</i>	366
41	Euthanasia in the Netherlands: What Lessons for Elsewhere? <i>Bernard Lo</i>	377



<b>Part V</b>	<b>Resource Allocation</b>	<b>381</b>
	Introduction	383
42	Rescuing Lives: Can't We Count? <i>Paul T. Menzel</i>	387
43	Should Alcoholics Compete Equally for Liver Transplantation? <i>Alvin H. Moss and Mark Siegler</i>	390
44	The Value of Life <i>John Harris</i>	397
45	Bubbles under the Wallpaper: Healthcare Rationing and Discrimination <i>Nick Beckstead and Toby Ord</i>	406
<b>Part VI</b>	<b>Obtaining Organs</b>	<b>413</b>
	Introduction	415
46	Organ Donation and Retrieval: Whose Body Is It Anyway? <i>Eike-Henner W. Kluge</i>	417
47	The Case for Allowing Kidney Sales <i>Janet Radcliffe-Richards, A. S. Daar, R. D. Guttman, R. Hoffenberg, I. Kennedy, M. Lock, R. A. Sells, N. Tilney, and for the International Forum for Transplant Ethics</i>	421
48	Ethical Issues in the Supply and Demand of Human Kidneys <i>Debra Satz</i>	425
49	The Survival Lottery <i>John Harris</i>	437
<b>Part VII</b>	<b>Experimentation with Human Participants</b>	<b>443</b>
	Introduction	445
	<b>Human Participants</b>	<b>449</b>
50	Ethics and Clinical Research <i>Henry K. Beecher</i>	451
51	Equipoise and the Ethics of Clinical Research <i>Benjamin Freedman</i>	459
52	The Patient and the Public Good <i>Samuel Hellman</i>	466
53	Scientific Research Is a Moral Duty <i>John Harris</i>	471
54	Participation in Biomedical Research Is an Imperfect Moral Duty: A Response to John Harris <i>Sandra Shapshay and Kenneth D. Pimple</i>	483

55	Unethical Trials of Interventions to Reduce Perinatal Transmission of the Human Immunodeficiency Virus in Developing Countries <i>Peter Lurie and Sidney M. Wolfe</i>	489
56	We're Trying to Help Our Sickest People, Not Exploit Them <i>Danstan Bagenda and Philippa Musoke-Mudido</i>	495
57	Medical Researchers' Ancillary Clinical Care Responsibilities <i>Leah Belsky and Henry S. Richardson</i>	497
	<b>Human Embryos – Stem Cells</b>	<b>503</b>
58	President Discusses Stem Cell Research <i>George W. Bush</i>	505
59	Killing Embryos for Stem Cell Research <i>Jeff McMahan</i>	508
	<b>Part VIII Experimentation with Animals</b>	<b>521</b>
	Introduction	523
60	Duties towards Animals <i>Immanuel Kant</i>	527
61	A Utilitarian View <i>Jeremy Bentham</i>	529
62	All Animals Are Equal <i>Peter Singer</i>	530
63	Vivisection, Morals and Medicine: An Exchange <i>R. G. Frey and Sir William Paton</i>	540
	<b>Part IX Public Health Issues</b>	<b>551</b>
	Introduction	553
64	Ethics and Infectious Disease <i>Michael J. Selgelid</i>	555
65	Rethinking Mandatory HIV Testing during Pregnancy in Areas with High HIV Prevalence Rates: Ethical and Policy Issues <i>Udo Schüklenk and Anita Kleinsmidt</i>	565
66	Mandatory HIV Testing in Pregnancy: Is There Ever a Time? <i>Russell Armstrong</i>	572
67	XDR-TB in South Africa: No Time for Denial or Complacency <i>Jerome Amir Singh, Ross Upshur, and Nesri Padayatchi</i>	582

<b>Part X Ethical Issues in the Practice of Healthcare</b>	<b>591</b>
Introduction	593
<b>Confidentiality</b>	<b>597</b>
68 Confidentiality in Medicine: A Decrepit Concept <i>Mark Siegler</i>	599
69 The Duty to Warn and Clinical Ethics: Legal and Ethical Aspects of Confidentiality and HIV/AIDS <i>Christian Säfken and Andreas Frewer</i>	603
<b>Truth-Telling</b>	<b>611</b>
70 On a Supposed Right to Lie from Altruistic Motives <i>Immanuel Kant</i>	613
71 Should Doctors Tell the Truth? <i>Joseph Collins</i>	615
72 On Telling Patients the Truth <i>Roger Higgs</i>	621
<b>Informed Consent and Patient Autonomy</b>	<b>629</b>
73 On Liberty <i>John Stuart Mill</i>	631
74 From <i>Schloendorff v. New York Hospital</i> <i>Justice Benjamin N. Cardozo</i>	634
75 Informed Consent: Its History, Meaning, and Present Challenges <i>Tom L. Beauchamp</i>	635
76 The Doctor–Patient Relationship in Different Cultures <i>Ruth Macklin</i>	642
77 Amputees by Choice <i>Carl Elliott</i>	654
78 Rational Desires and the Limitation of Life-Sustaining Treatment <i>Julian Savulescu</i>	665
79 The Nocebo Effect of Informed Consent <i>Shlomo Cohen</i>	683
<b>Part XI Special Issues Facing Nurses</b>	<b>693</b>
Introduction	695
80 The Relation of the Nurse to the Doctor and the Doctor to the Nurse <i>Sarah E. Dock</i>	699
81 In Defense of the Traditional Nurse <i>Lisa H. Newton</i>	700

82	Patient Autonomy and Medical Paternity: Can Nurses Help Doctors to Listen to Patients? <i>Sarah Breier</i>	708
83	Health and Human Rights Advocacy: Perspectives from a Rwandan Refugee Camp <i>Carol Pavlish, Anita Ho, and Ann-Marie Rounkle</i>	718
<b>Part XII Neuroethics</b>		<b>729</b>
	Introduction	731
84	Neuroethics: An Agenda for Neuroscience and Society <i>Jonathan D. Moreno</i>	733
85	How Electrical Brain Stimulation Can Change the Way We Think <i>Sally Adee</i>	741
86	Neuroethics: Ethics and the Sciences of the Mind <i>Neil Levy</i>	744
87	Freedom of Memory Today <i>Adam Kolber</i>	749
88	Towards Responsible Use of Cognitive-Enhancing Drugs by the Healthy <i>Henry Greely, Barbara Sahakian, John Harris, Ronald C. Kessler, Michael Gazzaniga, Philip Campbell, and Martha J. Farah</i>	753
89	Engineering Love <i>Julian Savulescu and Anders Sandberg</i>	760
	Index	762

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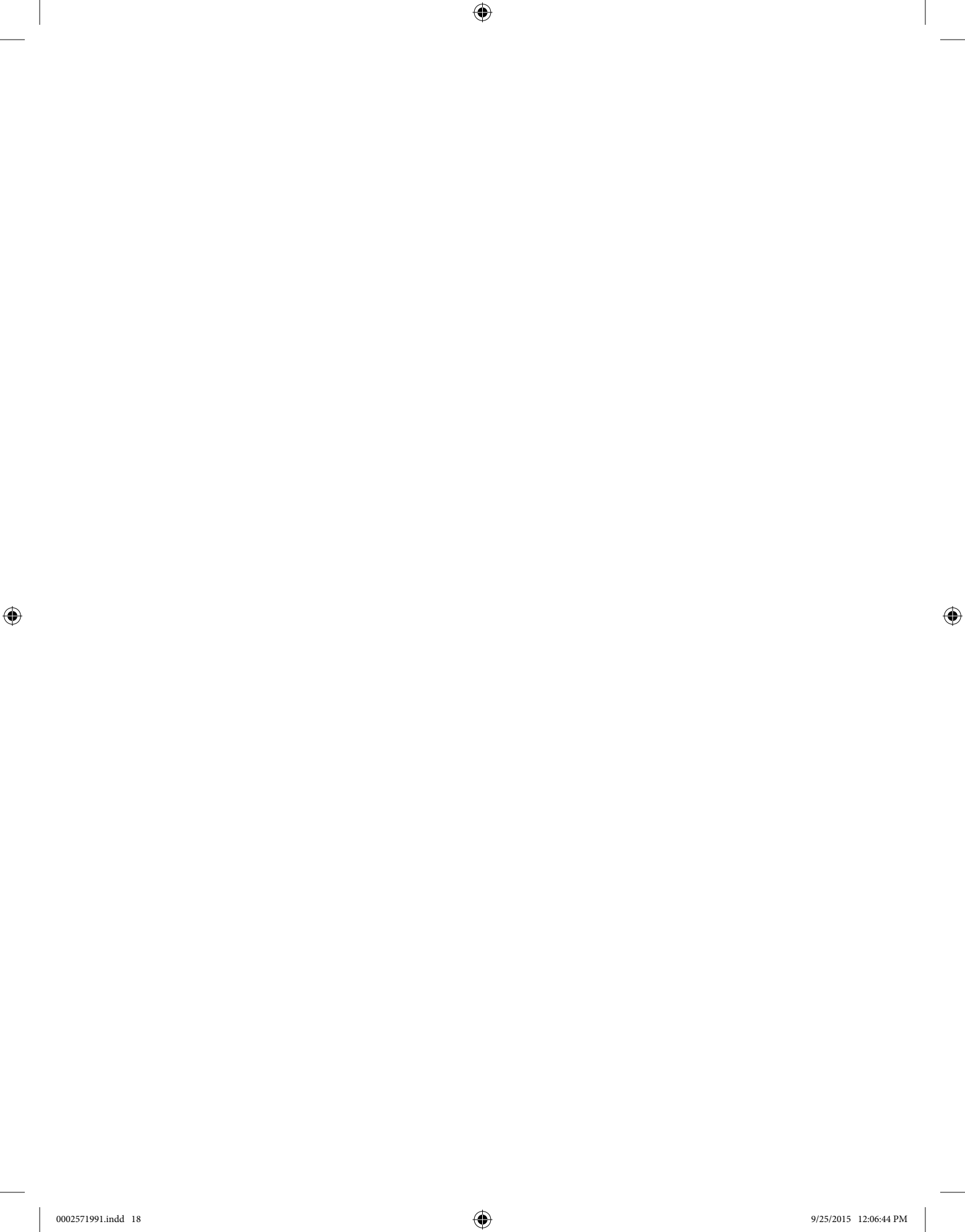
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- 33 Ari Joffe, “Are Recent Defences of the Brain Death Concept Adequate?,” pp. 47–53 from *Bioethics* 24: 2 (February 2010). Reproduced with permission from John Wiley & Sons.
  - 34 Peter Singer, “Is the Sanctity of Life Ethic Terminally Ill?,” pp. 307–43 from *Bioethics* 9: 3/4 (1995). Reproduced with permission from John Wiley & Sons.
  - 35 Ronald Dworkin, “Life Past Reason,” pp. 218–29 from *Life’s Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom*, New York: Knopf, 1993. Copyright © 1993 by Ronald Dworkin. Used by permission of Alfred A. Knopf, an imprint of the Knopf Doubleday Publishing Group, a division of Random House LLC. All rights reserved.
  - 36 Rebecca Dresser, “Dworkin on Dementia: Elegant Theory, Questionable Policy,” pp. 32–8 from *Hastings Center Report* 25: 6 (November/December 1995). Reproduced with permission from John Wiley & Sons.
  - 37 Chris Hill, “The Note,” pp. 9–17 from Helga Kuhse (ed.), *Willing to Listen, Wanting to Die*, Ringwood, Australia: Penguin Books, 1994.
  - 38 Daniel Callahan, “When Self-Determination Runs Amok,” pp. 52–5 from *Hastings Center Report* 22: 2 (March/April 1992). Reproduced with permission from John Wiley & Sons.
  - 39 John Lachs, “When Abstract Moralizing Runs Amok,” pp. 10–13 from *The Journal of Clinical Ethics* 5: 1 (Spring 1994). Copyright, JCE.
  - 40 Bregje D. Onwuteaka-Philipsen et al., “Trends in End-Of-Life Practices Before and After the Enactment of the Euthanasia Law in the Netherlands from 1990 to 2010: A Repeated Cross-Sectional Survey,” pp. 908–15 from *The Lancet* 380: 9845 (2012). Reprinted from *The Lancet* with permission from Elsevier.
  - 41 Bernard Lo, “Euthanasia in the Netherlands: What Lessons for Elsewhere?,” pp. 869–70 from *The Lancet* 380 (September 8, 2012). Copyright 2012. Reprinted from *The Lancet* with permission from Elsevier.
  - 42 Paul T. Menzel, “Rescuing Lives: Can’t We Count?,” pp. 22–3 from *Hastings Center Report* 24: 1 (1994). Reproduced with permission from John Wiley & Sons.
  - 43 Alvin H. Moss and Mark Siegler, “Should Alcoholics Compete Equally for Liver Transplantation?,” pp. 1295–8 from *Journal of the American Medical Association* 265: 10 (1991). Copyright © 1991 American Medical Association. All rights reserved.
  - 44 John Harris, “The Value of Life,” pp. 87–102 from *The Value of Life*, London: Routledge, 1985. Copyright 1985, Routledge. Reproduced by permission of Taylor & Francis Books UK.
  - 45 Nick Beckstead and Toby Ord, “Bubbles under the Wallpaper: Healthcare Rationing and Discrimination,” a paper presented to the conference “Valuing Lives” New York University, March 5, 2011, © Nick Beckstead and Toby Ord, reprinted by permission of the authors. This paper is published here for the first time, but draws on Nick Beckstead and Toby Ord, “Rationing and Rationality: The Cost of Avoiding Discrimination,” in N. Eyal et al. (eds.), *Inequalities in Health: Concepts, Measures, and Ethics*, Oxford: Oxford University Press, 2013, pp. 232–9. By permission of Oxford University Press.
  - 46 Eike-Henner W. Kluge, “Organ Donation and Retrieval: Whose Body Is It Anyway?” © 1999 by Eike-Henner W. Kluge.
  - 47 Janet Radcliffe-Richards et al., “The Case for Allowing Kidney Sales,” pp. 1950–2 from *The Lancet* 351: 9120 (June 27, 1998). Reprinted with permission from Elsevier.
  - 48 Debra Satz, “Ethical Issues in the Supply and Demand of Human Kidneys,” pp. 189–206 from *Why Some Things Should Not Be for Sale: The Moral Limits of Markets*, New York: Oxford University Press, 2010, ch. 9, based on an article from *Proceedings of the Aristotelian Society*. Reprinted by courtesy of the Editor of *Proceedings of the Aristotelian Society*: © 2010.
  - 49 John Harris, “The Survival Lottery,” pp. 81–7 from *Philosophy* 50 (1975). © Royal Institute of Philosophy, published by Cambridge University Press. Reproduced with permission.

- 50 Henry K. Beecher, "Ethics and Clinical Research," pp. 1354–60 from *New England Journal of Medicine* 274: 24 (June 1966). Copyright © 1996 Massachusetts Medical Society. Reprinted with permission from Massachusetts Medical Society.
- 51 Benjamin Freedman, "Equipoise and the Ethics of Clinical Research," pp. 141–5 from *New England Journal of Medicine* 317: 3 (July 1987). Copyright © 1987 Massachusetts Medical Society. Reprinted with permission from Massachusetts Medical Society.
- 52 Samuel Hellman, "The Patient and the Public Good," pp. 400–2 from *Nature Medicine* 1:5 (1995). Reprinted by permission from Macmillan Publishers Ltd.
- 53 John Harris, "Scientific Research Is a Moral Duty," pp. 242–8 from *Journal of Medical Ethics* 31: 4 (2005). Reproduced with permission from BMJ Publishing Group.
- 54 Sandra Shapshay and Kenneth D. Pimple, "Participation in Research Is an Imperfect Moral Duty: A Response to John Harris," pp. 414–17 from *Journal of Medical Ethics* 33 (2007). Reproduced with permission from BMJ Publishing Group.
- 55 Peter Lurie and Sidney M. Wolfe, "Unethical Trials of Interventions to Reduce Perinatal Transmission of the Human Immunodeficiency Virus in Developing Countries," pp. 853–6 from *New England Journal of Medicine* 337: 12 (September 1997). Copyright © 1997 Massachusetts Medical Society. Reprinted with permission from Massachusetts Medical Society.
- 56 Danstan Bageda and Philippa Musoke-Mudido, "We're Trying to Help Our Sickest People, Not Exploit Them," from *The Washington Post*, September 28, 1997. © 1997 Washington Post Company. All rights reserved. Used by permission and protected by the Copyright Laws of the United States. The printing, copying, redistribution, or retransmission of this Content without express written permission is prohibited.
- 57 Leah Belsky and Henry S. Richardson, "Medical Researchers' Ancillary Clinical Care Responsibilities," pp. 1494–6 from *British Medical Journal* 328 (June, 19, 2004). Reproduced with permission from BMJ Publishing Group.
- 58 George W. Bush, "President Discusses Stem Cell Research," Office of the Press Secretary, White House, August 9, 2001.
- 59 Jeff McMahan, "Killing Embryos for Stem Cell Research," pp. 170–89 from *Metaphilosophy* 38: 2/3 (2007). Reproduced with permission from John Wiley & Sons.
- 60 Immanuel Kant, "Duties towards Animals," pp. 239–41 from *Lectures on Ethics*, trans. Louis Infield, London: Methuen, 1930. Copyright 1930 Methuen, reproduced by permission of Taylor & Francis Books UK.
- 61 Jeremy Bentham, "A Utilitarian View," section XVIII, IV from *An Introduction to the Principles of Morals and Legislation*, First published c.1820.
- 62 Peter Singer, "All Animals are Equal," pp. 103–16 from *Philosophic Exchange* 1: 5 (1974). Center for Philosophic Exchange, State University of New York, Brockford, NY, 1974.
- 63 R. G. Frey and Sir William Paton, "Vivisection, Morals and Medicine: An Exchange," pp. 94–7 and 102–4 from *Journal of Medical Ethics* 9 (1983). Reproduced with permission from BMJ Publishing Group.
- 64 Michael J. Selgelid, "Ethics and Infectious Disease," pp. 272–89 from *Bioethics* 19:3 (2005). Reproduced with permission from John Wiley & Sons.
- 65 Udo Schüklenk and Anita Kleinsmidt, "Rethinking Mandatory HIV Testing during Pregnancy in Areas with High HIV Prevalence Rates: Ethical and Policy Issues," pp. 1179–83 from *American Journal of Public Health* 97: 7 (2007). Reproduced with permission from American Public Health Association.
- 66 Russell Armstrong, "Mandatory HIV Testing in Pregnancy: Is There Ever a Time?," pp. 1–10 from *Developing World Bioethics* 8: 1 (2008). Reproduced with permission from John Wiley & Sons.
- 67 Jerome Amir Singh, Ross Upshur, and Nesri Padayatchi, "XDR-TB in South Africa: No Time for Denial or Complacency," *PLoS Med* 4: 1 (2007): e50. doi:10.1371/journal.pmed.0040050. Copyright: © 2007 Singh et al.

- 68 Mark Siegler, "Confidentiality in Medicine: A Decrepit Concept," pp. 1518–21 from *New England Journal of Medicine* 307: 24 (December 1982). Copyright © 1982 Massachusetts Medical Society. Reprinted with permission from Massachusetts Medical Society.
- 69 Christian Säfen and Andreas Frewer, "The Duty to Warn and Clinical Ethics: Legal and Ethical Aspects of Confidentiality and HIV/AIDS," pp. 313–326 from *HEC Forum* 19: 4 (2007). With kind permission from Springer Science+Business Media.
- 70 Immanuel Kant, "On a Supposed Right to Lie from Altruistic Motives," pp. 361–3 from *Critique of Practical Reason and Other Works on the Theory of Ethics*, 6th edition, trans. T. K. Abbott, London, 1909. This essay was first published in a Berlin periodical in 1797.
- 71 Joseph Collins, "Should Doctors Tell the Truth?," pp. 320–6 from *Harper's Monthly Magazine* 155 (August 1927). Copyright © 1927 Harper's Magazine. All rights reserved. Reproduced from the August issue by special permission.
- 72 Roger Higgs, "On Telling Patients the Truth," pp. 186–202 and 232–3 from Michael Lockwood (ed.), *Moral Dilemmas in Modern Medicine*, Oxford: Oxford University Press, 1985. By permission of Oxford University Press.
- 73 John Stuart Mill, "On Liberty," first published in 1859.
- 74 Justice Benjamin N. Cardozo, Judgment from *Schloendorff v. New York Hospital* (1914), p. 526 from Jay Katz (ed.), *Experimentation with Human Beings: The Authority of the Investigator, Subject, Professions, and State in the Human Experimentation Process*, New York: Russell Sage Foundation, 1972. Reproduced with permission of Russell Sage Foundation.
- 75 Tom L. Beauchamp, "Informed Consent: Its History, Meaning, and Present Challenges," pp. 515–23 from *Cambridge Quarterly of Health Care Ethics* 20: 4 (2011). © Royal Institute of Philosophy, published by Cambridge University Press. Reproduced with permission from Cambridge University Press and T. Beauchamp.
- 76 Ruth Macklin, "The Doctor–Patient Relationship in Different Cultures," pp. 86–107 from *Against Relativism: Cultural Diversity and the Search of Ethical Universals in Medicine*, © 1999 by Oxford University Press, Inc. By permission of Oxford University Press, USA.
- 77 Carl Elliott, "Amputees by Choice," pp. 208–10, 210–15, 219–23, 227–31, 234–6, 323–6 from *Better Than Well: American Medicine Meets the American Dream*, New York and London: W.W. Norton, 2003. Copyright © 2003 by Carl Elliott. Used by permission of W. W. Norton & Company, Inc.
- 78 Julian Savulescu, "Rational Desires and the Limitation of Life-Sustaining Treatment," pp. 191–222 from *Bioethics* 8: 3 (1994). Reproduced with permission from John Wiley & Sons.
- 79 Shlomo Cohen, "The Nocebo Effect of Informed Consent," pp. 147–54 from *Bioethics* 28: 3 (2014). Reproduced with permission from John Wiley & Sons.
- 80 Sarah E. Dock, "The Relation of the Nurse to the Doctor and the Doctor to the Nurse," p. 394 (extract) from *The American Journal of Nursing* 17: 5 (1917).
- 81 Lisa H. Newton, "In Defense of the Traditional Nurse," pp. 348–54 from *Nursing Outlook* 29: 6 (1981). Copyright Elsevier 1981.
- 82 Sarah Breier, "Patient Autonomy and Medical Paternity: Can Nurses Help Doctors to Listen to Patients?," pp. 510–21 from *Nursing Ethics* 8: 6 (2001). Reproduced with permission from Sage and S. Breier.
- 83 Carol Pavlish, Anita Ho, and Ann-Marie Rourke, "Health and Human Rights Advocacy: Perspectives from a Rwandan Refugee Camp," pp. 538–49 from *Nursing Ethics* 19: 4 (2012). Copyright © 2012 by SAGE Publications. Reprinted by Permission of SAGE.
- 84 Jonathan D. Moreno, "Neuroethics: An Agenda for Neuroscience and Society," pp. 149–53 from *Nature Reviews* 4 (February 2003). Reprinted by permission from Macmillan Publishers Ltd.
- 85 Sally Adee, "How Electrical Brain Stimulation Can Change the Way We Think," *The Week*, March 30, 2012.
- 86 Neil Levy, "Neuroethics: Ethics and the Sciences of the Mind," pp. 69–74 (extract) from *Philosophy*

- Compass* 4: 10 (2009), pp. 69–81. Reproduced with permission from John Wiley & Sons.
- 87 Adam Kolber, “Freedom of Memory Today,” pp. 145–8 from *Neuroethics* 1 (2008). With kind permission from Springer Science+Business Media.
- 88 Henry Greely and Colleagues, “Towards Responsible Use of Cognitive-Enhancing Drugs by the Healthy,” pp. 702–5 from *Nature* 456 (December 11, 2008). Reprinted by permission from Macmillan Publishers Ltd.
- 89 Julian Savulescu and Anders Sandberg, “Engineering Love”/“Love Machine: Engineering Lifelong Romance,” pp. 28–9 from *New Scientist* 2864. © 2012 Reed Business Information – UK. All rights reserved. Distributed by Tribune Content Agency.





# Introduction

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The term “bioethics” was coined by Van Rensselaer Potter, who used it to describe his proposal that we need an ethic that can incorporate our obligations, not just to other humans, but to the biosphere as a whole.<sup>1</sup> Although the term is still occasionally used in this sense of an ecological ethic, it is now much more commonly used in the narrower sense of the study of ethical issues arising from the biological and medical sciences. So understood, bioethics has become a specialized, although interdisciplinary, area of study. The essays included in this book give an indication of the range of issues which fall within its scope – but it is only an indication. There are many other issues that we simply have not had the space to cover.

Bioethics can be seen as a branch of ethics, or, more specifically, of applied ethics. For this reason some understanding of the nature of ethics is an essential preliminary to any serious study of bioethics. The remainder of this introduction will seek to provide that understanding.

One question about the nature of ethics is especially relevant to bioethics: to what extent is reasoning or argument possible in ethics? Many people assume without much thought that ethics is subjective. The subjectivist holds that what ethical view we take is a matter of opinion or taste that is not amenable to argument. But if ethics were a matter of taste, why would we even attempt to argue about it? If Helen says “I like my coffee sweetened,” whereas Paul says

“I like my coffee unsweetened,” there is not much point in Helen and Paul arguing about it. The two statements do not contradict each other. They can both be true. But if Helen says “Doctors should never assist their patients to die” whereas Paul says “Sometimes doctors should assist their patients to die,” then Helen and Paul are disagreeing, and there does seem to be a point in their trying to argue about the issue of physician-assisted suicide.

It seems clear that there is some scope for argument in ethics. If I say “It is always wrong to kill a human being” and “Abortion is not always wrong” then I am committed to denying that abortion kills a human being. Otherwise I have contradicted myself, and in doing so I have not stated a coherent position at all. So consistency, at least, is a requirement of any defensible ethical position, and thus sets a limit to the subjectivity of ethical judgments. The requirement of factual accuracy sets another limit. In discussing issues in bioethics, the facts are often complex. But we cannot reach the right ethical decisions unless we are well-informed about the relevant facts. In this respect ethical decisions are unlike decisions of taste. We can enjoy a taste without knowing what we are eating; but if we assume that it is wrong to resuscitate a terminally ill patient against her wishes, then we cannot know whether an instance of resuscitation was morally right or wrong without knowing something about the patient’s prognosis and whether the patient

has expressed any wishes about being resuscitated. In that sense, there is no equivalent in ethics to the immediacy of taste.

Ethical relativism, sometimes also known as cultural relativism, is one step away from ethical subjectivism, but it also severely limits the scope of ethical argument. The ethical relativist holds that it is not individual attitudes that determine what is right or wrong, but the attitudes of the culture in which one lives. Herodotus tells how Darius, King of Persia, summoned the Greeks from the western shores of his kingdom before him, and asked them how much he would have to pay them to eat their fathers' dead bodies. They were horrified by the idea and said they would not do it for any amount of money, for it was their custom to cremate their dead. Then Darius called upon Indians from the eastern frontiers of his kingdom, and asked them what would make them willing to burn their fathers' bodies. They cried out and asked the King to refrain from mentioning so shocking an act. Herodotus comments that each nation thinks its own customs best. From here it is only a short step to the view that there can be no objective right or wrong, beyond the bounds of one's own culture. This view found increased support in the nineteenth century as Western anthropologists came to know many different cultures, and were impressed by ethical views very different from those that were standardly taken for granted in European society. As a defense against the automatic assumption that Western morality is superior and should be imposed on "savages," many anthropologists argued that, since morality is relative to culture, no culture can have any basis for regarding its morality as superior to any other culture.

Although the motives with which anthropologists put this view forward were admirable, they may not have appreciated the implications of the position they were taking. The ethical relativist maintains that a statement like "It is good to enslave people from another tribe if they are captured in war" means simply "In my society, the custom is to enslave people from another tribe if they are captured in war." Hence if one member of the society were to question whether it really was good to enslave people in these circumstances, she could be

answered simply by demonstrating that this was indeed the custom – for example, by showing that for many generations it had been done after every war in which prisoners were captured. Thus there is no way for moral reformers to say that an accepted custom is wrong – "wrong" just means "in accordance with an accepted custom."

On the other hand, when people from two different cultures disagree about an ethical issue, then according to the ethical relativist there can be no resolution of the disagreement. Indeed, strictly there is no disagreement. If the apparent dispute were over the issue just mentioned, then one person would be saying "In my country it is the custom to enslave people from another tribe if they are captured in war" and the other person would be saying "In my country it is not the custom to allow one human being to enslave another." This is no more a disagreement than such statements as "In my country people greet each other by rubbing noses" and "In my country people greet each other by shaking hands." If ethical relativism is true, then it is impossible to say that one culture is right and the other is wrong. Bearing in mind that some cultures have practiced slavery, or the burning of widows on the funeral pyre of their husbands, this is hard to accept.

A more promising alternative to both ethical subjectivism and cultural relativism is universal prescriptivism, an approach to ethics developed by the Oxford philosopher R. M. Hare. Hare argues that the distinctive property of ethical judgments is that they are universalizable. In saying this, he means that if I make an ethical judgment, I must be prepared to state it in universal terms, and apply it to all relevantly similar situations. By "universal terms" Hare means those terms that do not refer to a particular individual. Thus a proper name cannot be a universal term. If, for example, I were to say "Everyone should do what is in the interests of Mick Jagger" I would not be making a universal judgment, because I have used a proper name. The same would be true if I were to say that everyone must do what is in *my* interests, because the personal pronoun "my" is here used to refer to a particular individual, myself.

It might seem that ruling out particular terms in this way does not take us very far. After all, one can always describe oneself in universal terms. Perhaps

I can't say that everyone should do what is in my interests, but I could say that everyone must do whatever is in the interests of people who ... and then give a minutely detailed description of myself, including the precise location of all my freckles. The effect would be the same as saying that everyone should do what is in my interests, because there would be no one except me who matches that description. But Hare meets this problem very effectively by saying that to prescribe an ethical judgment universally means being prepared to prescribe it for all possible circumstances, including hypothetical ones. So if I were to say that everyone should do what is in the interests of a person with a particular pattern of freckles, I must be prepared to prescribe that in the hypothetical situation in which I do not have this pattern of freckles, but someone else does, I should do what is in the interests of that person. Now of course I may *say* that I should do that, since I am confident that I shall never be in such a situation, but this simply means that I am being dishonest. I am not genuinely prescribing the principle universally.

The effect of saying that an ethical judgment must be universalizable for hypothetical as well as actual circumstances is that whenever I make an ethical judgment, I can be challenged to put myself in the position of the parties affected, and see if I would still be able to accept that judgment. Suppose, for example, that I own a small factory and the cheapest way for me to get rid of some waste is to pour it into a nearby river. I do not take water from this river, but I know that some villagers living downstream do and the waste may make them ill. The requirement that ethical judgments should be universalizable will make it difficult for me to justify my conduct, because if I imagine myself in the hypothetical situation of being one of the villagers, rather than the factory-owner, I would not accept that the profits of the factory-owner should outweigh the risk of adverse effects on my health and that of my children. In this way Hare's approach requires us to take into account the interests and preferences of all others affected by our actions. Hence it allows for an element of reasoning in ethical deliberation.

Since the rightness or wrongness of our actions will, on this view, depend on the way in which they

affect others, Hare's universal prescriptivism leads to a form of consequentialism – that is, the view that the rightness of an action depends on its consequences. The best-known form of consequentialism is the classical utilitarianism developed in the late eighteenth century by Jeremy Bentham and popularized in the nineteenth century by John Stuart Mill. They held that an action is right if it leads to a greater surplus of happiness over misery than any possible alternative, and wrong if it does not. By “greater surplus of happiness,” the classical utilitarians had in mind the idea of adding up all the pleasure or happiness that resulted from the action and subtracting from that total all the pain or misery to which the action gave rise. Naturally, in some circumstances, it might be possible only to reduce misery, and then the right action should be understood as the one that will result in less misery than any possible alternative.

The utilitarian view is striking in many ways. It puts forward a single principle that it claims can provide the right answer to all ethical dilemmas, if only we can predict what the consequences of our actions will be. It takes ethics out of the mysterious realm of duties and rules, and bases ethical decisions on something that almost everyone understands and values. Moreover, utilitarianism's single principle is applied universally, without fear or favor. Bentham said: “Each to count for one and none for more than one,” by which he meant that the happiness of a common tramp counted for as much as that of a noble, and the happiness of an African was no less important than that of a European.

Many contemporary consequentialists agree with Bentham to the extent that they think the rightness or wrongness of an action must depend on its consequences, but they have abandoned the idea that maximizing net happiness is the ultimate goal. Instead they argue that we should seek to bring about whatever will satisfy the greatest number of desires or preference. This variation, which is known as “preference utilitarianism,” does not regard anything as good, except in so far as it is wanted or desired. More intense or strongly held preferences would get more weight than weak preferences.

Consequentialism offers one important answer to the question of how we should decide what is right and what is wrong, but many ethicists reject it. The

denial of this view was dramatically presented by Dostoevsky in *The Karamazov Brothers*:

imagine that you are charged with building the edifice of human destiny, the ultimate aim of which is to bring people happiness, to give them peace and contentment at last, but that in order to achieve this it is essential and unavoidable to torture just one little speck of creation, that same little child beating her chest with her little fists, and imagine that this edifice has to be erected on her unexpiated tears. Would you agree to be the architect under those conditions? Tell me honestly!<sup>12</sup>

The passage suggests that some things are always wrong, no matter what their consequences. This has, for most of Western history, been the prevailing approach to morality, at least at the level of what has been officially taught and approved by the institutions of Church and State. The ten commandments of the Hebrew scriptures served as a model for much of the Christian era, and the Roman Catholic Church built up an elaborate system of morality based on rules to which no exceptions were allowed.

Another example of an ethic of rules is that of Immanuel Kant. Kant's ethic is based on his "categorical imperative," which he states in several distinct formulations. One is that we must always act so that we can will the maxim of our action to be a universal law. This can be interpreted as a form of Hare's idea of universalizability, which we have already encountered. Another is that we must always treat other people as ends, never as means. While these formulations of the categorical imperative might be applied in various ways, in Kant's hands they lead to inviolable rules, for example, against making promises that we do not intend to keep. Kant also thought that it was always wrong to tell a lie. In response to a critic who suggested that this rule has exceptions, Kant said that it would be wrong to lie even if someone had taken refuge in your house, and a person seeking to murder him came to your door and asked if you knew where he was. Modern Kantians often reject this hard-line approach to rules, and claim that Kant's categorical imperative did not require him to hold so strictly to the rule against lying.

How would a consequentialist – for example, a classical utilitarian – answer Dostoevsky's challenge? If answering honestly – and if one really could be certain

that this was a sure way, and the only way, of bringing lasting happiness to all the people of the world – utilitarians would have to say yes, they would accept the task of being the architect of the happiness of the world at the cost of the child's unexpiated tears. For they would point out that the suffering of that child, wholly undeserved as it is, will be repeated a million-fold over the next century, for other children, just as innocent, who are victims of starvation, disease, and brutality. So if this one child must be sacrificed to stop all this suffering then, terrible as it is, the child must be sacrificed.

Fantasy apart, there can be no architect of the happiness of the world. The world is too big and complex a place for that. But we may attempt to bring about less suffering and more happiness, or satisfaction of preferences, for people or sentient beings in specific places and circumstances. Alternatively, we might follow a set of principles or rules – which could be of varying degrees of rigidity or flexibility. Where would such rules come from? Kant tried to deduce them from his categorical imperative, which in turn he had reached by insisting that the moral law must be based on reason alone, without any content from our wants or desires. But the problem with trying to deduce morality from reason alone has always been that it becomes an empty formalism that cannot tell us what to do. To make it practical, it needs to have some additional content, and Kant's own attempts to deduce rules of conduct from his categorical imperative are unconvincing.

Others, following Aristotle, have tried to draw on human nature as a source of moral rules. What is good, they say, is what is natural to human beings. They then contend that it is natural and right for us to seek certain goods, such as knowledge, friendship, health, love, and procreation, and unnatural and wrong for us to act contrary to these goods. This "natural law" ethic is open to criticism on several points. The word "natural" can be used both descriptively and evaluatively, and the two senses are often mixed together so that value judgments may be smuggled in under the guise of a description. The picture of human nature presented by proponents of natural law ethics usually selects only those characteristics of our nature that the proponent considers desirable. The fact that our species, especially its male members, frequently go to war, and



are also prone to commit individual acts of violence against others, is no doubt just as much part of our nature as our desire for knowledge, but no natural law theorist therefore views these activities as good. More generally, natural law theory has its origins in an Aristotelian idea of the cosmos, in which everything has a goal or “end,” which can be deduced from its nature. The “end” of a knife is to cut; the assumption is that human beings also have an “end,” and we will flourish when we live in accordance with the end for which we are suited. But this is a pre-Darwinian view of nature. Since Darwin, we know that we do not exist for any purpose, but are the result of natural selection operating on random mutations over millions of years. Hence there is no reason to believe that living according to nature will produce a harmonious society, let alone the best possible state of affairs for human beings.

Another way in which it has been claimed that we can come to know what moral principles or rules we should follow is through our intuition. In practice this usually means that we adopt conventionally accepted moral principles or rules, perhaps with some adjustments in order to avoid inconsistency or arbitrariness. On this view, a moral theory should, like a scientific theory, try to match the data; and the data that a moral theory must match is provided by our moral intuitions. As in science, if a plausible theory matches most, but not all, of the data, then the anomalous data might be rejected on the grounds that it is more likely that there was an error in the procedures for gathering that particular set of data than that the theory as a whole is mistaken. But ultimately the test of a theory is its ability to explain the data. The problem with applying this model of scientific justification to ethics is that the “data” of our moral intuitions is unreliable, not just at one or two specific points, but as a whole. Here the facts that cultural relativists draw upon are relevant (even if they do not establish that cultural relativism is the correct response to it). Since we know that our intuitions are strongly influenced by such things as culture and religion, they are ill-suited to serve as the fixed points against which an ethical theory must be tested. Even where there is cross-cultural agreement, there may be some aspects of our intuitions on which *all* cultures unjustifiably favor our own interests over those of others. For

example, simply because we are all human beings, we may have a systematic bias that leads us to give an unjustifiably low moral status to nonhuman animals. Or, because, in virtually all known human societies, men have taken a greater leadership role than women, the moral intuitions of all societies may not adequately reflect the interests of females.

Some philosophers think that it is a mistake to base ethics on principles or rules. Instead they focus on what it is to be a good person – or, in the case of the problems with which this book is concerned, perhaps on what it is to be a good nurse or doctor or researcher. They seek to describe the virtues that a good person, or a good member of the relevant profession, should possess. Moral education then consists of teaching these virtues and discussing how a virtuous person would act in specific situations. The question is, however, whether we can have a notion of what a virtuous person would do in a specific situation without making a prior decision about what it is right to do. After all, in any particular moral dilemma, different virtues may be applicable, and even a particular virtue will not always give unequivocal guidance. For instance, if a terminally ill patient repeatedly asks a nurse or doctor for assistance in dying, what response best exemplifies the virtues of a healthcare professional? There seems no answer to this question, short of an inquiry into whether it is right or wrong to help a patient in such circumstances to die. But in that case we seem bound, in the end, to come back to discussing such issues as whether it is right to follow moral rules or principles, or to do what will have the best consequences.

In the late twentieth century, some feminists offered new criticisms of conventional thought about ethics. They argued that the approaches to ethics taken by the influential philosophers of the past – all of whom have been male – give too much emphasis to abstract principles and the role of reason, and give too little attention to personal relationships and the part played by emotion. One outcome of these criticisms has been the development of an “ethic of care,” which is not so much a single ethical theory as a cluster of ways of looking at ethics which put an attitude of caring for others at the center, and seek to avoid reliance on abstract ethical principles. The ethic of care has seemed especially applicable to the work of those

involved in direct patient care, and has recently been taken up by a number of nursing theorists as offering a more suitable alternative to other ideas of ethics. Not all feminists, however, support this development. Some worry that the adoption of a “care” approach by nurses may reflect, and even reinforce, stereotypes of women as more emotional and less rational than men. They also fear that it could lead to women continuing to carry a disproportionate burden of caring for others, to the exclusion of adequately caring for themselves.

In this discussion of ethics we have not mentioned anything about religion. This may seem odd, in view of the close connection that has often been made between religion and ethics, but it reflects our belief that, despite this historical connection, ethics and religion are fundamentally independent. Logically, ethics is prior to religion. If religious believers wish to say that a deity is good, or praise her or his creation or deeds, they must have a notion of goodness that is independent of their conception of the deity and what she or he does. Otherwise they will be saying that the deity is good, and when asked what they mean by “good,” they will have to refer back to the deity, saying perhaps that “good” means “in accordance with the wishes of the deity.” In that case, sentences such as “God is good” would be a meaningless tautology. “God is good” could mean no more than “God is in accordance with God’s wishes.” As we have already seen, there are ideas of what it is for something to be “good” that are not rooted in any religious belief. While religions typically encourage or instruct their followers to obey a particular ethical code, it is obvious that others who do not follow any religion can also think and act ethically.

To say that ethics is independent of religion is not to deny that theologians or other religious believers may have a role to play in bioethics. Religious traditions often have long histories of dealing with ethical dilemmas, and the accumulation of wisdom and experience that they represent can give us valuable insights into particular problems. But these insights should be subject to criticism in the way that any other proposals would be. If in the end we accept them, it is because we have judged them sound, not because they are the utterances of a pope, a rabbi, a mullah, or a holy person.

Ethics is also independent of the law, in the sense that the rightness or wrongness of an act cannot be

settled by its legality or illegality. Whether an act is legal or illegal may often be relevant to whether it is right or wrong, because it is arguably wrong to break the law, other things being equal. Many people have thought that this is especially so in a democracy, in which everyone has a say in making the law. Another reason why the fact that an act is illegal may be a reason against doing it is that the legality of an act may affect the consequences that are likely to flow from it. If active voluntary euthanasia is illegal, then doctors who practice it risk going to jail, which will cause them and their families to suffer, and also mean that they will no longer be able to help other patients. This can be a powerful reason for not practicing voluntary euthanasia when it is against the law, but if there is only a very small chance of the offense becoming known or being proved, then the weight of this consequentialist reason against breaking the law is reduced accordingly. Whether we have an ethical obligation to obey the law, and, if so, how much weight should be given to it, is itself an issue for ethical argument.

Though ethics is independent of the law, in the sense just specified, laws are subject to evaluation from an ethical perspective. Many debates in bioethics focus on questions about what practices should be allowed – for example, should we allow research on stem cells taken from human embryos, sex selection, or cloning? – and committees set up to advise on the ethical, social, and legal aspects of these questions often recommend legislation to prohibit the activity in question, or to allow it to be practiced under some form of regulation. Discussing a question at the level of law and public policy, however, raises somewhat different considerations than a discussion of personal ethics, because the consequences of adopting a public policy generally have much wider ramifications than the consequences of a personal choice. That is why some healthcare professionals feel justified in assisting a terminally ill patient to die, while at the same time opposing the legalization of physician-assisted suicide. Paradoxical as this position may appear – and it is certainly open to criticism – it is not straightforwardly inconsistent.

Naturally, many of the essays we have selected reflect the times in which they were written. Since bioethics often comments on developments in fast-moving

areas of medicine and the biological sciences, the factual content of articles in bioethics can become obsolete quite rapidly. In preparing this revised edition, we have taken the opportunity to cover some new issues and to include some more recent writings. We have, for example, included new material on genetic enhancement, as well as on the use of embryonic human stem cells. This edition of the anthology also includes new sections on ethical issues in public health and in the neurosciences. Nevertheless, an article that has dated in regard to its facts often makes ethical points that are still valid,

or worth considering, so we have not excluded older articles for this reason.

Other articles are dated in a different way. During the past few decades we have become more sensitive about the ways in which our language may exclude women, or reflect our prejudices regarding race or sexuality. We see no merit in trying to disguise past practices on such matters, so we have not excluded otherwise valuable works in bioethics on these grounds. If they are jarring to the modern reader, that may be a salutary reminder of the extent to which we all are subject to the conventions and prejudices of our times.

## Notes

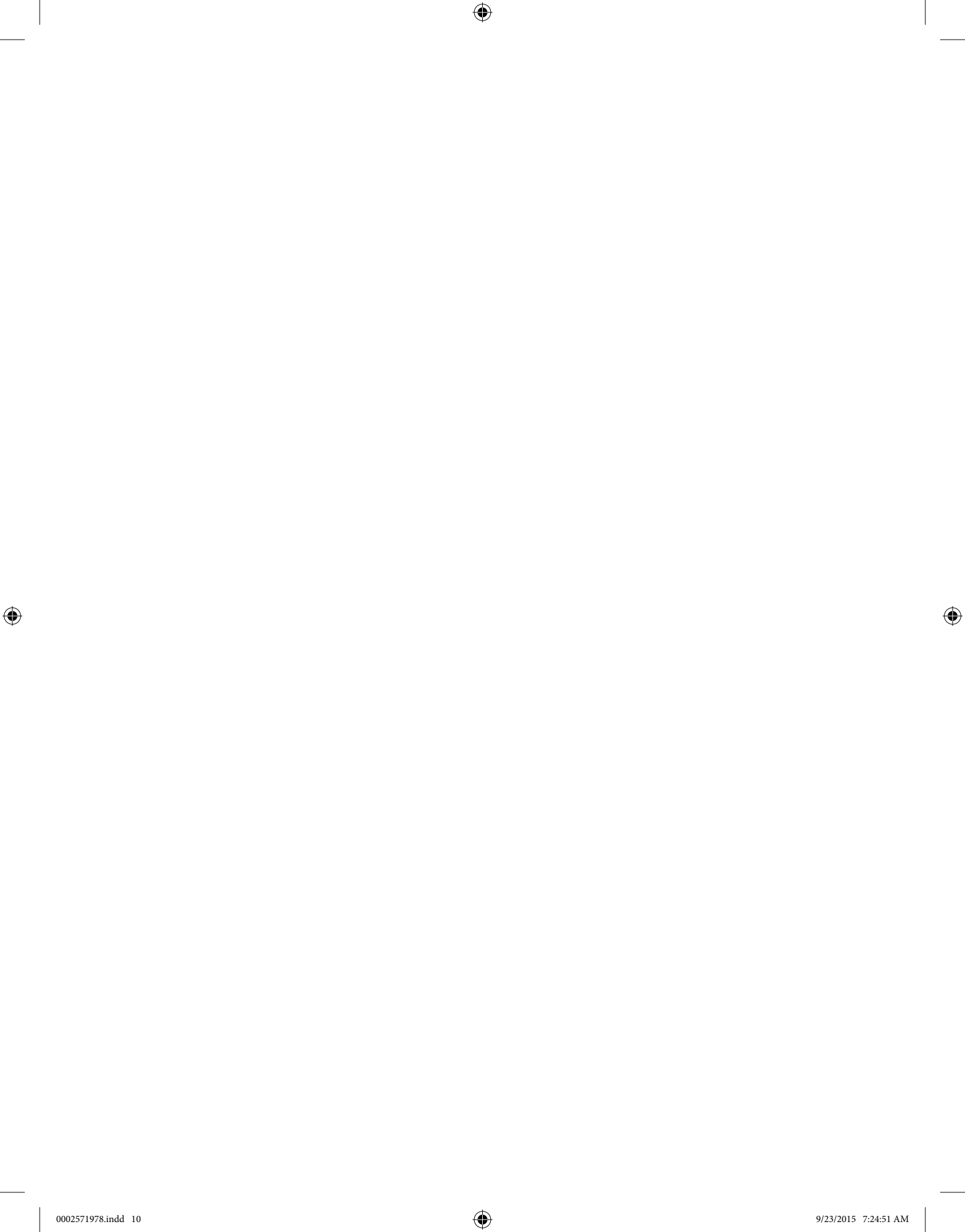
- 1 See Van Rensselaer Potter, *Bioethics: Bridge to the Future* (Englewood Cliffs, NJ: Prentice-Hall, 1971).
- 2 *The Karamazov Brothers*, trans. Ignat Avsey (Oxford: Oxford University Press, 1994), vol. I, part 2, bk. 5, ch. 4. First published in 1879.



# Part I

## Abortion

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# Introduction

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The view that human life has special value is deeply rooted in most people's thinking and no serious ethical theory allows a person to be killed without strong moral justification. Abortions terminate the lives of fetuses. Given that these fetuses are human, and of course innocent of any wrongdoing, it is easy to see why some people consider abortion to be unjustifiable homicide. In some respects fetuses are like persons; but in other respects they are very different. Therefore we need to ask whether they have the same moral status as those human beings we think of as persons.

In the first article in this section, John Finnis ("Abortion and Health Care Ethics") defends what other writers call a conservative view. On this view, personhood begins at conception and "direct abortions," that is, procedures intended to end the life of the fetus, are impermissible, even if the pregnancy is the result of rape, or if an abortion is necessary to save the woman's life.

Finnis defends a position that is consistent with a Roman Catholic perspective, but he maintains that his argument is based not on faith but on reason and hence should be decisive for everyone. He offers a vigorous defense of the view that even the one-cell zygote already has the capacity – found in its genetic structure – for supporting specifically human functions such as self-consciousness, rationality and choice. The earliest human embryo, he says, "*already* has the biological capacity appropriate to supporting the specifically human operations such as self-consciousness,

rationality and choice ..." On account of this unexercised, but "active potentiality or capacity," Finnis holds, even the zygote is *already* a person and not merely a potential person.

This does point to an apparent limit to the universality of the prohibition of abortion. If it is the biological capacity to develop "specific human operations" that endows embryos and fetuses with personhood, this leaves some embryos and fetuses – those that are damaged and lack the capacity to develop the requisite human operations – outside the circle of protection. At the very least, defenders of a position like Finnis's need to explain why this is not the case. With these exceptions, however, if Finnis's argument does establish that zygotes, embryos and fetuses are persons, killing a one-cell human organism is killing a person. It would therefore have the same moral significance as killing an adult person.

Finnis is aware that "our imagination balks at equating the intelligent adult with a one-cell zygote smaller than a full stop," but holds that "*reason* can find no event or principle or criterion by which to judge that the typical adult or newborn child ... is anything other than one and the same individual human being – human person – as the one-cell 46-chromosome zygote whose emergence was the beginning of the personal history of that same child and adult."

Michael Tooley provided a challenge to the conservative view that fetuses are persons. In his 1972 landmark article "Abortion and Infanticide," included



here as the second reading, he seeks to articulate and defend an ethically significant criterion that confers personhood and a right to life. To have a right to life, Tooley argues, an entity needs to possess a concept of self, that is, be “capable of desiring to continue existing as a subject of experiences and other mental states.” An entity that has this capability is a person, whereas one that lacks it is not. This view has implications that enable us to defend abortion, but also challenge the moral views of most people who accept abortion; for on this view neither fetuses nor newborn infants are persons, whereas some nonhuman animals, such as chimpanzees and elephants, do seem to be persons.

In opposition to Finnis, Tooley thus holds that the *potential* – even in Finnis’s sense of active potential or capacity – to become a person is not sufficient to give fetuses a right to life. Here it is important to take a closer look at the notions of potentiality and capacity. Sleeping persons – unable to exercise the capacity to desire their own continued existence while asleep – are, according to Tooley, still persons because they *possess* the relevant capacity in a sense in which fetuses do not. A person who is asleep was self-conscious before she went to sleep and will be the same self-conscious person when she wakes up; a fetus, on the other hand, has never been awake and self-conscious.

As we have seen, both Finnis and Tooley take the issue of personhood to be central. Judith Jarvis Thomson, in “A Defense of Abortion,” takes a very different approach. For the purposes of her argument, Thomson accepts the conservative position that the fetus is a person, but argues that *even if* one grants this premise, the conclusion that every person has a right to life – in the sense that would make abortion wrong – does not follow. She then uses an ingenious analogy to support her view that one person’s right to life does not always outweigh another person’s rights to something less than life. This general view applies, Thomson holds, in the case of pregnancy and abortion. A woman has a right to control her body, and a fetus only has the right to use a woman’s body if she has implicitly given it that right. This would be the case if the woman is responsible, in some sense of the term, for its presence in her body. In many cases – certainly in the case of a pregnancy resulting from rape, and arguably, if more doubtfully, when contraception has failed – the woman bears little or no responsibility for

the presence of the fetus in her body and would thus, according to Thomson, be justified in having an abortion. She would not be killing the fetus unjustly.

Thomson reminds us that any complete assessment of the ethics of abortion must focus not only on the purported rights or interests of fetuses, but also on the rights of women. But her argument has been criticized as incomplete. One of the strongest objections focuses on her narrow understanding of the right to life. It has, for example, been argued that a right to life, properly understood, also entails the provision of positive aid. If this is correct, then Thomson’s argument on abortion is inconclusive, as long as the conservative view that the fetus is a person is accepted.

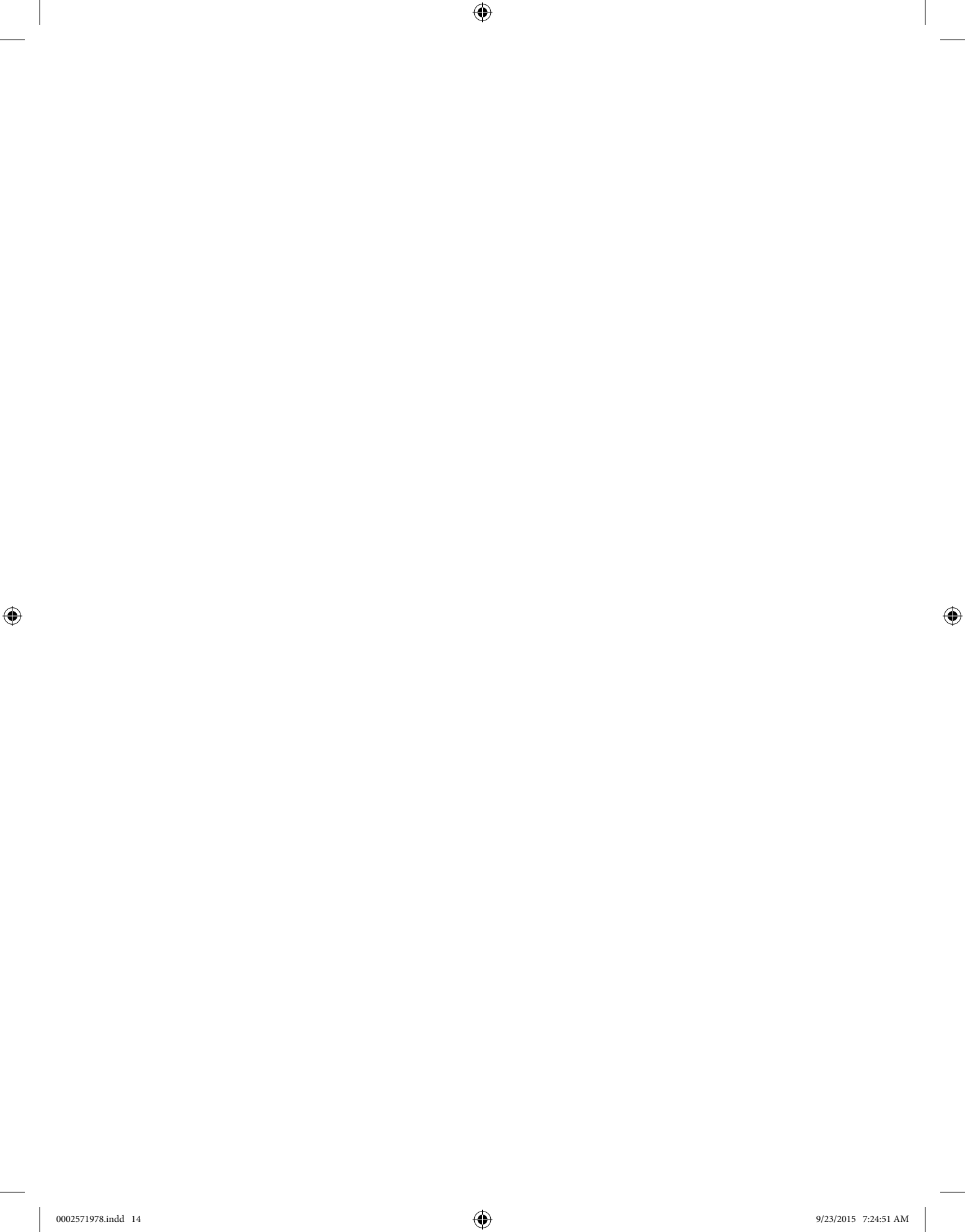
In the final article of Part I, Don Marquis adopts yet another approach to explain, as the title of his article indicates, “Why Abortion Is Immoral.” Like Finnis and Tooley, he assumes that the morality of abortion depends on whether or not the fetus is the kind of being whose life it is seriously wrong to end. According to Marquis, abortion is immoral for the same reason that it is wrong to kill you or me – not because the fetus is a person or a potential person, but rather because killing the fetus deprives it of its future. The loss of one’s life is one of the greatest losses one can suffer; it deprives the victim of all the projects, experiences, enjoyments and so on that would otherwise have constituted that individual’s future. This, Marquis holds, is what makes killing, other things being equal, wrong – regardless of whether one is a fetus, child, or adult.

Marquis argues that his position must not be confused with a conservative or sanctity of human life view. It does not, for example, rule out euthanasia. Killing a person who wants to die when she is seriously ill and faces a life of pain and suffering does not deprive that person of a valuable future. Nor is his theory, he claims, speciesist (see Peter Singer in Part VIII). The view that killing is wrong because it is the loss to the victim of the victim’s future is, Marquis points out, straightforwardly incompatible with the view that it is wrong to kill only beings that are biologically human. It would be equally wrong to kill nonhuman animals and species from other planets, if these beings have futures relevantly like ours. Similarly, it would not be wrong to kill a human fetus with a

genetic abnormality that precludes any possibility of a life that is worth living.

These features of his theory, Marquis claims, avoid some of the problems faced both by proponents of a conservative view, and by adherents of a personhood view. Those who deny that fetuses are persons find themselves in the embarrassing position of having to accept that their theory will, in principle, not only allow the killing of fetuses, but also the killing of infants. Conservatives, on the other hand, often rely

on what Marquis calls the “invalid inference” that it is wrong to kill fetuses because they are potential persons. But is Marquis’s own account really so different from the argument from potential? Does it, like that argument, face the further criticism that such accounts make abortion and contraception equally wrong: if it is wrong to kill a one-cell zygote because doing so deprives the zygote of a valuable future, why is it not equally wrong to deprive an egg and a sperm, still separate but considered jointly, of a valuable future?



# Abortion and Health Care Ethics

*John Finnis*

If the unborn are human persons, the principles of justice and non-maleficence (rightly understood) prohibit every abortion; that is, every procedure or technical process carried out with the intention of killing an unborn child or terminating its development. In the first part of this chapter I argue that the only reasonable judgement is that the unborn are indeed human persons. In the second I explore the ways in which the principles of justice and non-maleficence bear on various actions and procedures which harm or may well harm the unborn. The right understanding of those principles, in the context of 'the four principles' [i.e. autonomy, beneficence, non-maleficence and justice], is sketched in an earlier chapter, 'Theology and the Four Principles: A Roman Catholic View I' but the considerations which I set out in the present chapter in no way depend on Catholic faith; they are philosophical and natural-scientific considerations valid and, in my view, properly decisive for everyone, quite independently of any religious premises.

## Most People Begin at Fertilization

Leaving aside real or supposed divine, angelic and extraterrestrial beings, the one thing common to all who, in common thought and speech, are regarded as

*persons* is that they are *living human individuals*. This being so, anyone who claims that some set of living, whole, bodily human individuals are not persons, and ought not to be regarded and treated as persons, must demonstrate that the ordinary notion of a person is misguided and should be replaced by a different notion. Otherwise the claim will be mere arbitrary discrimination. But no such demonstration has ever been provided, and none is in prospect.

Among the most serious attempts to provide a demonstration is Michael Tooley's argument that personhood is gradually acquired by development; it concludes that not only the unborn but also newborn babies are not persons.<sup>1</sup>

But Tooley's argument begs the question by simply *assuming* two basic but unargued premises: (a) that abortion is morally acceptable, and (b) that an active potentiality or capacity which is not being actually exercised cannot be the defining property of personhood even when it is a capacity really possessed by an individual.<sup>2-4</sup>

Some contemporary neo-Aristotelians, notably Joseph Donceel, have argued that personhood is dependent on sense organs and a brain, and that the early embryo, though a living human individual, is only a pre-personal entity which changes into a person (is 'ensouled'), not gradually but by a sudden,

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substantial change that occurs when the brain first begins to develop; *thereafter*, the personal soul shapes the development of the whole entity.<sup>5</sup> (By 'substantial change' is meant the change which occurs when an individual entity of one kind changes into an individual entity of a different kind, as typically occurs, for example, in a chemical reaction.) But Donceel's view, like its mediaeval predecessors, is inconsistent with the biological data and with itself.<sup>3, 6, 7</sup> The beginning of the brain's development does not yet provide a bodily basis for intellectual activities, but provides only the precursor of such a basis; so if this precursor is sufficient for 'ensoulment', there is no reason why earlier precursors should fail to suffice. In fact each embryonic human individual has from the outset a specific developmental tendency (involving a high degree of organization) which includes the epigenetic primordia of all its organs. The hypothesis of a substantial change by ensoulment at some time after the forming of the zygote is an unnecessary multiplication of entities, to be eliminated by Occam's razor, i.e. the scientific principle of economy in explanations.

The biological basis for the mediaeval view that specifically human ensoulment takes place some weeks after conception has completely disappeared. Mediaeval Aristotelians such as Thomas Aquinas depended upon the biology then current, which taught that life originates from semen and menstrual blood, that neither of these is alive, and that the very limited active instrumental power in the semen organizes the blood into a body which can begin to grow and nourish itself first in a plant-like way and then in an animal-like way. If the mediaeval Aristotelians had known about the organic life which organizes the roughly one billion items of molecular information in the one-cell conceptus with a self-directing dynamic integration that will remain continuously and identifiably identical until death, they would have concurred with the view of their successors (and almost everyone else) since the eighteenth century.<sup>8</sup> On this later view the fertilized human ovum is specifically human (not merely vegetable), and even the youngest human embryo already has a body which in its already specified (but quite undeveloped) capacities, its epigenetic primordia, is apt for understanding, knowing and

choosing. Rather as you or I have the capacity to speak Tibetan or Icelandic, though we lack the ability to do so, so even the youngest human embryo *already* has the biological capacity appropriate to supporting specifically human operations such as self-consciousness, rationality and choice (given only time and metabolic transformations of air, water and other sustenance). The active potential which he or she already has includes the very capacities which are distinctive of persons.<sup>9</sup> So he or she is a human being and human person with potential, not a merely potential human person or potential human being.

The most serious contemporary effort to show that there is no lasting human *individual* (and therefore no person) until about two weeks after conception, is by Norman Ford.<sup>10</sup> Unlike Tooley and Donceel, Ford holds that personhood begins when an individual with a truly human nature emerges. But the conclusions of his argument are so radically opposed to any biological understanding of human development that they turn out to offer no serious alternative to the standard view: an individual with a truly human nature begins at fertilization. (For detailed analysis, refutations and bibliography, see references 3, 11–13.) Still, Ford's argument is worth tracing, because it attempts to take seriously certain claims often unreflectively uttered, such as that until implantation, or the formation of the primitive streak, or the loss of toti- or pluri-potentiality among the embryo's cells, or the end of the period during which twinning may naturally occur, the conceptus is 'not individuated'.

Ford proposes that at fertilization an ontologically individual and biologically human entity, the zygote, begins, but that (whatever biologists may think) this is never the same individual as the one which (with the same genetic constitution and gender) will begin about 16 days later and will thereafter survive as one and the same individual until death perhaps many decades later. For, according to Ford, the ontologically individual and human zygote is replaced at the first mitotic division by two ontologically individual beings, which in turn are replaced by four, the four by eight, the eight by 12 and 16, these by 32 and 64, and so forth, until by day 14 there are many thousands of ontologically entirely distinct individual human beings (even though all biologists think there is still, unless there has been twinning, only one individual

human being). Then these thousands of individuals all suddenly cease to exist when God forms them into 'one living body'.

What drives Ford towards this remarkable conclusion is, on the one hand, his imagination, which finds nothing that looks human in shape until the spatial axes of future somatic development emerge around day 15, and on the other hand the classic puzzle about twinning and mosaics (hypothetical combination of two embryos into one). However, his own theory makes twinning unintelligible, since it occurs at a time, around day six or seven, when, on his view, there is not one individual to become two, but hundreds to become... how many? (Ford does not even try to apply his theory to the facts about twinning, facts which he has earlier treated as decisive against the standard view.)

What, then, should be said about twinning, and about the assumed possibility of human mosaics? Simply that, biologically, one always finds just individuals. If these split, or combine to form a mosaic, one then simply finds one or more different individuals. Twinning is an unusual way of being generated; the relationship between the earlier and the later generated individuals is an unusual form of parentage. Being absorbed into a mosaic would presumably be an unusual way of dying. Common thought and language has not had to categorize these events, but there is little or no intrinsic difficulty in doing so.

Nor should one here substitute one's imagination for one's reason. Domination of thought and argument by imagination and conventional associations occurs at various places in the debate. Many people, for example, allow themselves to be dominated by the assumption that no single organ can be larger than all the other organs of an animal, and/or that no major organ can be transient and disposable; they therefore refuse to take seriously the biological data and philosophical considerations which establish that the placenta is an organ of the embryo. Or again, many people (not least some theologians) argue that personhood or ensoulment cannot begin at conception, because they feel it intolerable to suppose that a high proportion of human persons never get beyond the earliest stage of existence as persons. Now that supposition may indeed challenge the imagination. But it is not intolerable to reason, for (a) in every era hitherto, *infant* mortality has been very high, often as

high as the rate of pregnancy losses in modern western society; (b) many pregnancy losses are due to chromosomal defects so severe that the losses are not of human beings, but only of beings which (like hydatidiform moles) had a human genome but lacked the epigenetic primordia of a human body normal enough to be the organic basis of at least some intellectual act; and (c) as Ford himself reflects<sup>11</sup> (p. 181), it is presumptuous to suppose that we know how God provides for those who never have any intellectual life, and what are the limits of his provision.

Any entity which, remaining the same individual, will develop into a paradigmatic instance of a substantial kind already is an instance of that kind. The one-cell human organism originating with the substantial change which occurs upon the penetration of a human ovum by a human sperm typically develops, as one and the same individual, into a paradigmatic instance of the rational bodily person, the human person; in every such case, therefore, it is already an actual instance of the human person. In the atypical case where a *genetically* human zygote lacks the epigenetic primordia needed to develop any brain, there is no human being and so no human person, no unborn child.<sup>14</sup> And there is another atypical range of cases: some people, including some or all identical twins, were never activated ova, because their life began during the two or three weeks after fertilization, by others dividing or perhaps also others combining.

In all this, what is decisive is not the possession of a unique human genome, but rather the organic integration of a single, whole bodily individual organism. That organic integration, whether the developing organism has one cell or many and whether those cells are toti-potential, pluri-potential or fully specialized, is found from the inception of fertilization. On all biologically and philosophically pertinent criteria that event marks substantial change (in the sense explained above), and no subsequent development or event can be identified plausibly as a genuine substantial change. If there remain biologically and/or philosophically unresolved questions about identity (individuation) in the exceptional cases of embryos which are about to twin, this no more affects the identity of the remaining 97 per cent of embryos than the puzzles about the identity of some adult Siamese twins affect the identity of the rest of us.

Of course, our imagination balks at equating the intelligent adult with a one-cell zygote smaller than a full stop and weighing only 2 mg. But imagination also balks at differentiating between a full-term child just before and just after birth. And *reason* can find no event or principle or criterion by which to judge that the typical adult or newborn child or full-term or mid-term unborn child is anything other than one and the same individual human being – human person – as the one-cell, 46-chromosome zygote whose emergence was the beginning of the personal history of that same child and adult.

In short, science and philosophy concur in the conclusion: every living human individual must be regarded as a person.

## Justice, Beneficence and Non-maleficence for Mother and Child

Every attempt to harm an innocent human person violates the principles of non-maleficence and justice, and is always wrong. Every procedure adopted with the intention of killing an unborn child, or of terminating its development, is an attempt to harm, even if it is adopted only as a means to some beneficent end (purpose) and even if it is carried out with very great reluctance and regret. Such procedures are often called ‘direct abortions’. But here ‘direct’ does not refer to physical or temporal immediacy, but to the reasons for the procedure: whatever is chosen as an end or (however reluctantly) as a means is ‘directly’ willed.<sup>15–17</sup> What is only an unintended side-effect is ‘indirectly’ willed. Using this terminology, one can rightly say that ‘direct abortion’ is always wrong, while ‘indirect abortion’ is not always wrong. But it would be clearer to reserve the word ‘abortion’ (or ‘induced abortion’ or ‘therapeutic abortion’) for procedures adopted with the intent to kill or terminate the development of the fetus, and to call by their own proper names any therapeutic procedures which have amongst their foreseen but unintended results the termination of pregnancy and death of the fetus.

The ethics governing therapeutic procedures which impact fatally on the unborn can be summarized as follows:

1. The direct killing of the innocent – that is, killing either as an end or as a chosen means to some other end – is always gravely wrong. This moral norm excludes even the choice to kill one innocent person as a means of saving another or others, or even as a means of preventing the murder of another or others.
2. Every living human individual is equal to every other human person in respect of the right to life. Since universal propositions are true equally of every instance which falls under them, *equality in right to life* is entailed by the truth of two universal propositions: (a) every living human individual must be regarded and treated as a person, and (b) every innocent human person has the right never to be directly killed.
3. The unborn can never be considered as aggressors, still less as unjust aggressors. For the concept of aggression involves action. But it is only the very existence and the vegetative functioning of the unborn (and not its animal activities, its movements, its sensitive reactions to pain, etc., real as these are) that can give rise to problems for the life or health of the mother. So the concept of aggression extends only by metaphor to the unborn. Moreover, the unborn child, being in its natural place through no initiative and no breach of duty of its own, cannot be reasonably regarded as intruder, predator or aggressor; its relation to its mother is just that: mother and child.<sup>18</sup>
4. Provided that bringing about death or injury is not chosen as a means of preserving life, an action which is necessary to preserve the life of one person can be permissible even if it is certain also to bring about the death or injury of another or others.
5. Not every indirect killing is permissible; sometimes, though indirect, it is unjust, e.g. because there is a non-deadly alternative to the deadly procedure which could be used for preserving life.

A just law and a decent medical ethic forbidding the killing of the unborn cannot admit an exception ‘to save the life of the mother’. Many of the laws in Christian nations used to include exactly that exception (and no others), but there are two decisive reasons why a fully just law and medical ethic cannot include a provision formulated in that sort of way.



First, that sort of formulation implies that, in this case at least, killing may rightly be chosen as a means to an end. Second, by referring only to the mother, any such formulation implies that her life should *always* be preferred, which is unfair.

However, a just law and a decent medical ethic cannot delimit permissible killing by limiting its prohibition to 'direct killing' (or 'direct abortion'). For this would leave unprohibited the cases where indirect killing is unjust (e.g. because it could have been delayed until the time when the unborn child would survive the operation; or because it was done to relieve the mother of a condition which did not threaten her life).

Where the life of mother or of the unborn child is at stake, the requirements both of a decent medical ethic (including the four principles) and of just law can be expressed in the following proposition:

If the life of either the mother or the child can be saved only by some medical procedure which will adversely affect the other, then it is permissible to undertake such a procedure with the intention of saving life, provided that the procedure is the most effective available to increase the overall probability that one or the other (or both) will survive, i.e. to increase the *average probability* of their survival.

This proposition does not say or imply that killing as a means can be permissible. It does not give an unfair priority to either the mother or the child. It excludes any indirect killing which would be unfair.

Nevertheless, it may seem at first glance that the proposition would admit direct abortion in certain cases. For people often assume, and many Catholic theologians argue, that any procedure is direct abortion if in the process of cause and effect it *at once or first* brings about the damage to the unborn child.

But even amongst Catholic theologians who reject every kind of compromise with secular consequentialism and proportionalism, there are some who propose an alternative understanding of direct killing, using the framework of Thomas Aquinas's analysis of acts with two effects and of Pope Pius XII's interpretation of 'direct killing' as an action which aims at the destruction of an innocent human life either as an end or as a means.<sup>19, 20</sup> The directness which is in choosing a means is to be understood,

according to these theologians, not by reference to immediacy or priority in the process of cause and effect, as such, but by reference to the intelligible content of a choice to do something inherently suited to bring about intended benefit.

The proposition I have set out above requires that any procedure which adversely affects the life of either the mother or the unborn child be intended *and inherently suited* to preserving life (both lives) so far as is possible. It thus falls within an acceptable understanding of Catholic teaching on direct abortion. At the same time it demands that any such procedure satisfy the requirements of justice (fairness) which are conditions for the moral permissibility of indirect abortion. The most obvious and likely application of the proposition is in cases where four conditions are satisfied: some pathology threatens the lives of both the pregnant woman and her child; it is not safe to wait, or waiting will very probably result in the death of both; there is no way to save the child; and an operation that can save the mother's life will result in the child's death. Of these cases the example most likely to be met in modern health care is that of ectopic pregnancy (assuming that the embryo cannot be successfully transplanted from the tube to the uterus).

Abortion to 'save the life of the mother' because she is threatening to commit suicide (or because her relatives are threatening to kill her) obviously falls outside the proposition and is a case of direct, impermissible killing. It is neither the only means of saving her life (guarding or restraining her or her relatives is another means), nor is it a means suited of its nature to saving life; of itself, indeed, the abortion in such a case does nothing but kill.

## Rape

A woman who is the victim of rape is entitled to defend herself against the continuing effects of such an attack and to seek immediate medical assistance with a view to preventing conception.<sup>21</sup> (Such efforts to prevent conception are not necessarily acts of contraception, for they seek to prevent conception not *as* the coming to be of a new human life but rather *as* the invasion of her ovum as a final incident in the invasion of her body by her assailant's bodily substances.)

But the possible presence of an unborn child changes the moral situation notably. Even if a procedure for terminating pregnancy were undertaken without any intention, even partly, to terminate the development and life of the unborn child, but *solely* to relieve the mother of the continued bodily effects of the rape, that procedure would be unjust to the unborn child, who is wholly innocent of the father's wrongdoing. For people are generally willing to accept, and expect their close friends and relatives to accept, grave burdens short of loss of life or moral integrity in order to avert certain death. So imposing certain or even probable death on the unborn child in these circumstances is an unfair discrimination against the child.

However, if a procedure such as the administration of the 'post-coital pill' is undertaken for the purpose only of *preventing* conception after rape but involves some *risk* of causing abortion as a *side-effect* (because it is not known at what stage of her cycle the woman is), there can be no universal judgement that the adoption of such a procedure is unjust to the unborn. For there are many legitimate activities which foreseeably cause some risk of serious or even fatal harm, a risk which in many cases is rightly accepted by upright and informed people as a possible side-effect of their choices to engage in those activities.<sup>22,23</sup>

## Prenatal Screening and Genetic Counselling

Examinations and tests done with the intention of, if need be, treating the unborn or preparing for a safe pregnancy and delivery are desirable and right when undertaken on the same criteria as other medical procedures. Examinations and tests done to allay anxiety or curiosity are justifiable only if they involve no significant risk to the child. But anyone who does or accepts a test or examination with the thought of perhaps suggesting or arranging or carrying out an abortion if the results show something undesirable, is already willing, conditionally, abortion, and so is already making himself or herself into a violator of the principles of non-maleficence and justice.

Health care personnel who respect those principles have a responsibility not only to refrain from recommending or conducting tests or examinations with a view to seeing whether or not abortion is

'medically indicated', but also the responsibility of telling a woman within their care which of the various tests she may be offered by others are done only or mainly for that immoral (but widely accepted) purpose and which are done to safeguard the health of the unborn child.<sup>24</sup>

## Participation

Anyone who commands, directs, advises, encourages, prescribes, approves, or actively defends doing something immoral is a cooperator in it if it is done and, even if it is not in the event done, has already willed it to be done and thus already participates in its immorality. So a doctor who does not perform abortions but refers pregnant women to consultant obstetricians with a view to abortion wills the immorality of abortion.

On the other hand, some people whose activity contributes to the carrying out of an immoral act need not will the accomplishment of the immoral act; their cooperation in the evil is not a participation in the immorality as such. Their cooperation is often called 'material', to distinguish it from the so-called 'formal' (intended) cooperation of those who (for whatever reason and with whatever enthusiasm or reluctance) will the successful doing of the immoral act. Formal cooperation in immoral acts is always wrong; material cooperation is not always wrong, but will be wrong if it is unfair or a needless failure to witness to the truth about the immorality or a needless giving of a bad example. So a nurse in a general hospital who is unwilling to participate in abortions but is required by the terms of her employment to prepare patients for surgical operations (cleaning, shaving, etc.) may prepare patients for abortion without ever willing the killing or harming of the unborn child; she does only whatever she does towards any morally good operation; so her cooperation can be morally permissible *if* in all the circumstances it is not unfair and a needless occasion of scandal (morally corrupting example to others). The surgeon, on the other hand, must will the harm to the unborn, since that is the point of the immoral abortion and he or she must will the operation's success; so he or she is a participant, indeed a primary participant, in immorality, even if he or she too is doing so only in order to retain employment or gain medical qualifications.<sup>25</sup> Hospital managers who want every patient

to give written and full consent to operations must want women who come to the hospital for abortions to consent precisely to abortion; so these managers willy-nilly encourage the women's immoral willing of abortion; indeed, the managers' immoral commitment of will may well be greater than that of women whose consent is given in a state of emotional upheaval and distress.

All health care personnel have a moral right (and duty) of non-participation in wrongdoing. This right is not in essence one of 'conscientious objection', since it is founded not on the sheer fact of having made a good-faith judgement of conscience – which might be mistaken – but on the basic human duty and corresponding right not to participate in what really is a moral evil. But where the state recognizes a legal right of 'conscientious objection' to participation in abortion, health care personnel have the moral right and duty to avail themselves of that legal right wherever they would otherwise incur any kind of legal obligation or institutional responsibility to cooperate 'formally' (i.e. intentionally) in abortion. They should take the appropriate steps in good time (but even if they have culpably failed to take those steps, should still refuse all formal cooperation in any of the immoral activities now so widespread in the practice of health care).

## Embryo Experimentation

What has been said above about abortion applies, of course to embryos living *in vitro* – understanding by 'embryo' any human individual from the beginning of fertilization. Any form of experimentation on or observation of an embryo which is likely to damage that embryo (or any other embryo which it might engender by twinning), or to endanger it by delaying the time of its transfer and implantation, is maleficent or unjust or both, unless the procedures are intended to benefit that individual itself. Any form of freezing

or other storage done without genuine and definite prospect of a subsequent transfer, unimpaired, to the proper mother is unjust unless done as a measure to save the embryo in an unexpected emergency. Any procedure whereby embryos are brought into being with a view to selecting among them the fittest or most desirable for transfer and implantation involves a radically unjust and maleficent intention, however good its further motivations.<sup>26–28</sup>

## Benevolence and Autonomy

The open acceptance of abortion into reputable medical practice during the past quarter of a century – an ethical and civilization collapse of historic magnitude and far-reaching effects – creates a profound challenge for all who remain willing to adhere to the proper meaning of non-maleficence and justice. They need a proper sense of their own autonomy, as upright moral subjects who preserve and respect the truth amid a social fabric of untruths and rationalizations. They also need to retain and live out a full respect for the principle of beneficence. By refusing their participation in abortion they show beneficence to the unborn (even though these will almost certainly be killed by others); and to the mothers of the unborn (however little they appreciate it at the time); and to all whose lives are endangered by the spread of an ethos of 'ethical killing' in the name of compassion or autonomy. They retain a full responsibility for the compassionate care of pregnant women and for women whose pregnancy was terminated by abortion, no less than of women threatened by or suffering in or after miscarriage or stillbirth. They should be aware of the very real special needs and vulnerabilities of those who have had an induced abortion, even though those needs and sequelae are widely denied by those who promote abortion and produce rationalizations for doing and undergoing it.

## References

- 1 Tooley, M. 1983. *Abortion and Infanticide*. Oxford: Clarendon Press.
- 2 Hurst, G. 1977. *Beginning Lives*, pp. 107–11. Oxford: Basil Blackwell/Open University.
- 3 Grisez, G. 1989. When do people begin? *Proceedings of the American Catholic Philosophical Association*, 63: 27–47.
- 4 Atkinson, G. M. 1977. Persons in the whole sense. *American Journal of Jurisprudence*, 22: 86–117.

- 5 Donceel, J. F. 1970. Immediate animation and delayed hominization. *Theological Studies*, 31: 76–105.
- 6 Ashley, B. 1976. A critique of the theory of delayed hominization, pp. 113–33, in McCarthy, D. G. and Moraczewski, A. S. (eds), *An Ethical Evaluation of Fetal Experimentation: an interdisciplinary study*. Pope John XXIII Medical-Moral Research and Education Center, St Louis, MO.
- 7 Gallagher, J. 1985. Is the human embryo a person? *Human Life Institute Reports*, No. 4, pp. 22–6. Human Life Research Institute, Toronto.
- 8 Heaney, S. J. 1992. Aquinas and the presence of the human rational soul in the early embryo. *Thomist*, 56: 19–48.
- 9 Wade, F. C. 1975. Potentiality in the abortion discussion. *Review of Metaphysics*, 29: 239–55.
- 10 Ford, N. M. 1988. *When did I begin?* Cambridge: Cambridge University Press.
- 11 Fisher, A. O. P. 1991. Individuogenesis and a recent book by Fr. Norman Ford. *Rivista di Studi sulla Persona e la Famiglia Anthropotes*, 2: 199–244.
- 12 Fisher, A. 1991. ‘When did I begin?’ revisited. *Linacre Quarterly*, August, pp. 59–68.
- 13 Tonti-Filippini, N. 1989. A critical note. *Linacre Quarterly*, 56: 36–50.
- 14 Suarez, A. 1990. Hydatidiform moles and teratomas confirm the human identity of the preimplantation embryo. *Journal of Medicine and Philosophy*, 15: 627–35.
- 15 Pius XII, Pope. 1944. Address of 12 November 1944. *Discorsi & Radiomessaggi*, 6: 191–2.
- 16 Congregation for the Doctrine of the Faith. 1974. *De abortu procurato*, para. 7. Declaration on Abortion of 18 November. London: Catholic Truth Society.
- 17 Finnis, J. 1991. *Moral Absolutes*, pp. 40, 67–77. Washington, DC: Catholic University of America Press.
- 18 Finnis, J. 1973. The rights and wrongs of abortion: a reply to Judith Thomson. *Philosophy and Public Affairs*, 2: 117 at 138–43; reprinted in Dworkin, R. 1977. *The Philosophy of Law*. Oxford: Clarendon Press.
- 19 Zalba, M. 1977. ‘Nihil prohibet unius actus esse duos effectus’ (Summa theologia 2-2, q.64, a.7) Numquid applicari potest principium in abortu terapeutico? Atti del Congresso Internazionale (Roma-Napoli, 17/24 Aprile 1974), *Tommaso d’Aquino nel suo Settimo Centenario*, vol. 5, *L’Agire Morale*, pp. 557–68, esp. 567–8. Naples: Edizioni Domenicane Italiane.
- 20 Grisez, G. and Boyle, J. M. 1979. *Life and Death with Liberty and Justice*, pp. 404–7. South Bend, IN, and London: Notre Dame University Press.
- 21 Catholic Archbishops of Great Britain. 1980. *Abortion and the Right to Live*, para. 21. London: Catholic Truth Society.
- 22 Catholic Bishops’ Joint Committee on Bio-ethical Issues. 1986. The morning-after pill: some practical and moral questions about post-coital ‘contraception’. *Briefing*, 16: 33–9.
- 23 Catholic Bishops’ Joint Committee on Bio-ethical Issues. 1986. The morning-after pill – a reply. *Briefing*, 16: 254–5.
- 24 Sutton, A. 1990. *Prenatal Diagnosis: Confronting the Ethical Issues*, pp. 1–188. London: Linacre Centre.
- 25 Grisez, G. 1984. *Christian Moral Principles*, pp. 300–3. Chicago, IL: Franciscan Herald Press.
- 26 Fisher, A. O. P. 1989. *IVF: The Critical Issues*. Melbourne: Collins Dove.
- 27 Catholic Bishops’ Joint Committee on Bioethical Issues. 1983. *In Vitro Fertilisation: Morality and Public Policy*, part II. Abingdon: Joint Committee on Bioethical Issues.
- 28 Congregation for the Doctrine of the Faith. 1987. *Donum Vitae. Instruction on respect for human life in its origin and the dignity of procreation*. London: Catholic Truth Society.

# Abortion and Infanticide

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This essay deals with the question of the morality of abortion and infanticide. The fundamental ethical objection traditionally advanced against these practices rests on the contention that human fetuses and infants have a right to life. It is this claim which will be the focus of attention here. The basic issue to be discussed, then, is what properties a thing must possess in order to have a serious right to life. My approach will be to set out and defend a basic moral principle specifying a condition an organism must satisfy if it is to have a serious right to life. It will be seen that this condition is not satisfied by human fetuses and infants, and thus that they do not have a right to life. So unless there are other substantial objections to abortion and infanticide, one is forced to conclude that these practices are morally acceptable ones. In contrast, it may turn out that our treatment of adult members of other species – cats, dogs, polar bears – is morally indefensible. For it is quite possible that such animals do possess properties that endow them with a right to life.

## I Abortion and Infanticide

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One reason the question of the morality of infanticide is worth examining is that it seems very difficult to formulate a completely satisfactory liberal

position on abortion without coming to grips with the infanticide issue. The problem the liberal encounters is essentially that of specifying a cutoff point which is not arbitrary: at what stage in the development of a human being does it cease to be morally permissible to destroy it? It is important to be clear about the difficulty here. The conservative's objection is not that since there is a continuous line of development from a zygote to a newborn baby, one must conclude that if it is seriously wrong to destroy a newborn baby it is also seriously wrong to destroy a zygote or any intermediate stage in the development of a human being. His point is rather that if one says it is wrong to destroy a newborn baby but not a zygote or some intermediate stage in the development of a human being, one should be prepared to point to a *morally relevant* difference between a newborn baby and the earlier stage in the development of a human being.

Precisely the same difficulty can, of course, be raised for a person who holds that infanticide is morally permissible. The conservative will ask what morally relevant differences there are between an adult human being and a newborn baby. What makes it morally permissible to destroy a baby, but wrong to kill an adult? So the challenge remains. But I will argue that in this case there is an extremely plausible answer.

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Reflecting on the morality of infanticide forces one to face up to this challenge. In the case of abortion a number of events – quickening or viability, for instance – might be taken as cutoff points, and it is easy to overlook the fact that none of these events involves any morally significant change in the developing human. In contrast, if one is going to defend infanticide, one has to get very clear about what makes something a person, what gives something a right to life.

One of the interesting ways in which the abortion issue differs from most other moral issues is that the plausible positions on abortion appear to be extreme positions. For if a human fetus is a person, one is inclined to say that, in general, one would be justified in killing it only to save the life of the mother.<sup>2</sup> Such is the extreme conservative position.<sup>3</sup> On the other hand, if the fetus is not a person, how can it be seriously wrong to destroy it? Why would one need to point to special circumstances to justify such action? The upshot is that there is no room for a moderate position on the issue of abortion such as one finds, for example, in the Model Penal Code recommendations.<sup>4</sup>

Aside from the light it may shed on the abortion question, the issue of infanticide is both interesting and important in its own right. The theoretical interest has been mentioned: it forces one to face up to the question of what makes something a person. The practical importance need not be labored. Most people would prefer to raise children who do not suffer from gross deformities or from severe physical, emotional, or intellectual handicaps. If it could be shown that there is no moral objection to infanticide the happiness of society could be significantly and justifiably increased.

Infanticide is also of interest because of the strong emotions it arouses. The typical reaction to infanticide is like the reaction to incest or cannibalism, or the reaction of previous generations to masturbation or oral sex. The response, rather than appealing to carefully formulated moral principles, is primarily visceral. When philosophers themselves respond in this way, offering no arguments, and dismissing infanticide out of hand it is reasonable to suspect that one is dealing with a taboo rather than with a rational prohibition.<sup>5</sup> I shall attempt to show that this is in fact the case.

## II Terminology: “Person” versus “Human Being”

How is the term “person” to be interpreted? I shall treat the concept of a person as a purely moral concept, free of all descriptive content. Specifically, in my usage the sentence “X is a person” will be synonymous with the sentence “X has a (serious) moral right to life.”

This usage diverges slightly from what is perhaps the more common way of interpreting the term “person” when it is employed as a purely moral term, where to say that X is a person is to say that X has rights. If everything that had rights had a right to life, these interpretations would be extensionally equivalent. But I am inclined to think that it does not follow from acceptable moral principles that whatever has any rights at all has a right to life. My reason is this. Given the choice between being killed and being tortured for an hour, most adult humans would surely choose the latter. So it seems plausible to say it is worse to kill an adult human being than it is to torture him for an hour. In contrast, it seems to me that while it is not seriously wrong to kill a newborn kitten, it is seriously wrong to torture one for an hour. This suggests that newborn kittens may have a right not to be tortured without having a serious right to life. For it seems to be true that an individual has a right to something whenever it is the case that, if he wants that thing, it would be wrong for others to deprive him of it. Then if it is wrong to inflict a certain sensation upon a kitten if it doesn’t want to experience that sensation, it will follow that the kitten has a right not to have sensation inflicted upon it.<sup>6</sup> I shall return to this example later. My point here is merely that it provides some reason for holding that it does not follow from acceptable moral principles that if something has any rights at all, it has a serious right to life.

There has been a tendency in recent discussions of abortion to use expressions such as “person” and “human being” interchangeably. B. A. Brody, for example, refers to the difficulty of determining “whether destroying the foetus constitutes the taking of a human life,” and suggests it is very plausible that “the taking of a human life is an action that has bad consequences for him whose life is being taken.”<sup>7</sup>



When Brody refers to something as a human life he apparently construes this as entailing that the thing is a person. For if every living organism belonging to the species *Homo sapiens* counted as a human life, there would be no difficulty in determining whether a fetus inside a human mother was a human life.

The same tendency is found in Judith Jarvis Thomson's article, which opens with the statement: "Most opposition to abortion relies on the premise that the fetus is a human being, a person, from the moment of conception."<sup>8</sup> The same is true of Roger Wertheimer, who explicitly says: "First off I should note that the expressions 'a human life,' 'a human being,' 'a person' are virtually interchangeable in this context."<sup>9</sup>

The tendency to use expressions like "person" and "human being" interchangeably is an unfortunate one. For one thing, it tends to lend covert support to antiabortionist positions. Given such usage, one who holds a liberal view of abortion is put in the position of maintaining that fetuses, at least up to a certain point, are not human beings. Even philosophers are led astray by this usage. Thus Wertheimer says that "except for monstrosities, every member of our species is indubitably a person, a human being, at the very latest at birth."<sup>10</sup> Is it really *indubitable* that newborn babies are persons? Surely this is a wild contention. Wertheimer is falling prey to the confusion naturally engendered by the practice of using "person" and "human being" interchangeably. Another example of this is provided by Thomson: "I am inclined to think also that we shall probably have to agree that the fetus has already become a human person well before birth. Indeed, it comes as a surprise when one first learns how early in its life it begins to acquire human characteristics. By the tenth week, for example, it already has a face, arms and legs, fingers and toes; it has internal organs, and brain activity is detectable."<sup>11</sup> But what do such physiological characteristics have to do with the question of whether the organism is a person? Thomson, partly, I think, because of the unfortunate use of terminology, does not even raise this question. As a result she virtually takes it for granted that there are some cases in which abortion is "positively indecent."<sup>12</sup>

There is a second reason why using "person" and "human being" interchangeably is unhappy

philosophically. If one says that the dispute between pro- and anti-abortionists centers on whether the fetus is a human, it is natural to conclude that it is essentially a disagreement about certain facts, a disagreement about what properties a fetus possesses. Thus Wertheimer says that "if one insists on using the raggy fact-value distinction, then one ought to say that the dispute is over a matter of fact in the sense in which it is a fact that the Negro slaves were human beings."<sup>13</sup> I shall argue that the two cases are not parallel, and that in the case of abortion what is primarily at stake is what moral principles one should accept. If one says that the central issue between conservatives and liberals in the abortion question is whether the fetus is a person, it is clear that the dispute may be either about what properties a thing must have in order to be a person, in order to have a right to life – a moral question – or about whether a fetus at a given stage of development as a matter of fact possesses the properties in question. The temptation to suppose that the disagreement must be a factual one is removed.

It should now be clear why the common practice of using expressions such as "person" and "human being" interchangeably in discussions of abortion is unfortunate. It would perhaps be best to avoid the term "human" altogether, employing instead some expression that is more naturally interpreted as referring to a certain type of biological organism characterized in physiological terms, such as "member of the species *Homo sapiens*." My own approach will be to use the term "human" only in contexts where it is not philosophically dangerous.

### III The Basic Issue: When is a Member of the Species *Homo sapiens* a Person?

Settling the issue of the morality of abortion and infanticide will involve answering the following questions: What properties must something have to be a person, i.e., to have a serious right to life? At what point in the development of a member of the species *Homo sapiens* does the organism possess the properties that make it a person? The first question raises a moral issue. To answer it is to decide what basic<sup>14</sup> moral



principles involving the ascription of a right to life one ought to accept. The second question raises a purely factual issue, since the properties in question are properties of a purely descriptive sort.

Some writers seem quite pessimistic about the possibility of resolving the question of the morality of abortion. Indeed, some have gone so far as to suggest that the question of whether the fetus is a person is in principle unanswerable: “we seem to be stuck with the indeterminateness of the fetus’ humanity.”<sup>15</sup> An understanding of some of the sources of this pessimism will, I think, help us to tackle the problem. Let us begin by considering the similarity a number of people have noted between the issue of abortion and the issue of Negro slavery. The question here is why it should be more difficult to decide whether abortion and infanticide are acceptable than it was to decide whether slavery was acceptable. The answer seems to be that in the case of slavery there are moral principles of a quite uncontroversial sort that settle the issue. Thus most people would agree to some such principle as the following: No organism that has experiences, that is capable of thought and of using language, and that has harmed no one, should be made a slave. In the case of abortion, on the other hand, conditions that are generally agreed to be sufficient grounds for ascribing a right to life to something do not suffice to settle the issue. It is easy to specify other, purportedly sufficient conditions that will settle the issue, but no one has been successful in putting forward considerations that will convince others to accept those additional moral principles.

I do not share the general pessimism about the possibility of resolving the issue of abortion and infanticide because I believe it is possible to point to a very plausible moral principle dealing with the question of *necessary* conditions for something’s having a right to life, where the conditions in question will provide an answer to the question of the permissibility of abortion and infanticide.

There is a second cause of pessimism that should be noted before proceeding. It is tied up with the fact that the development of an organism is one of gradual and continuous change. Given this continuity, how is one to draw a line at one point and declare it permissible to destroy a member of *Homo sapiens* up to, but not beyond, that point? Won’t there be an arbitrariness

about any point that is chosen? I will return to this worry shortly. It does not present a serious difficulty once the basic moral principles relevant to the ascription of a right to life to an individual are established.

Let us turn now to the first and most fundamental question: What properties must something have in order to be a person, i.e., to have a serious right to life? The claim I wish to defend is this: An organism possesses 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.

My basic argument in support of this claim, which I will call the self-consciousness requirement, will be clearest, I think, if I first offer a simplified version of the argument, and then consider a modification that seems desirable. The simplified version of my argument is this. To ascribe a right to an individual is to assert something about the *prima facie* obligations of other individuals to act, or to refrain from acting, in certain ways. However, the obligations in question are conditional ones, being dependent upon the existence of certain desires of the individual to whom the right is ascribed. Thus if an individual asks one to destroy something to which he has a right, one does not violate his right to that thing if one proceeds to destroy it. This suggests the following analysis: “A has a right to X” is roughly synonymous with “If A desires X, then others are under a *prima facie* obligation to refrain from actions that would deprive him of it.”<sup>16</sup>

Although this analysis is initially plausible, there are reasons for thinking it not entirely correct. I will consider these later. Even here, however, some expansion is necessary, since there are features of the concept of a right that are important in the present context, and that ought to be dealt with more explicitly. In particular, it seems to be a conceptual truth that things that lack consciousness, such as ordinary machines, cannot have rights. Does this conceptual truth follow from the above analysis of the concept of a right? The answer depends on how the term “desire” is interpreted. If one adopts a completely behavioristic interpretation of “desire,” so that a machine that searches for an electrical outlet in order to get its batteries recharged is described as having a desire to be recharged, then it will not follow from this analysis that objects that lack consciousness cannot have rights.

On the other hand, if “desire” is interpreted in such a way that desires are states necessarily standing in some sort of relationship to states of consciousness, it will follow from the analysis that a machine that is not capable of being conscious, and consequently of having desires, cannot have any rights. I think those who defend analyses of the concept of a right along the lines of this one do have in mind an interpretation of the term “desire” that involves reference to something more than behavioral dispositions. However, rather than relying on this, it seems preferable to make such an interpretation explicit. The following analysis is a natural way of doing that: “A has a right to X” is roughly synonymous with “A is the sort of thing that is a subject of experiences and other mental states, A is capable of desiring X, and if A does desire X, then others are under a prima facie obligation to refrain from actions that would deprive him of it.”

The next step in the argument is basically a matter of applying this analysis to the concept of a right to life. Unfortunately the expression “right to life” is not entirely a happy one, since it suggests that the right in question concerns the continued existence of a biological organism. That this is incorrect can be brought out by considering possible ways of violating an individual’s right to life. Suppose, for example, that by some technology of the future the brain of an adult human were to be completely reprogrammed, so that the organism wound up with memories (or rather, apparent memories), beliefs, attitudes, and personality traits completely different from those associated with it before it was subjected to reprogramming. In such a case one would surely say that an individual had been destroyed, that an adult human’s right to life had been violated, even though no biological organism had been killed. This example shows that the expression “right to life” is misleading, since what one is really concerned about is not just the continued existence of a biological organism, but the right of a subject of experiences and other mental states to continue to exist.

Given this more precise description of the right with which we are here concerned, we are now in a position to apply the analysis of the concept of a right stated above. When we do so we find that the statement “A has a right to continue to exist as a subject of experiences and other mental states” is roughly synonymous with the statement “A is a subject of experiences and other

mental states, A is capable of desiring to continue to exist as a subject of experiences and other mental states, and if A does desire to continue to exist as such an entity, then others are under a prima facie obligation not to prevent him from doing so.”

The final stage in the argument is simply a matter of asking what must be the case if something is to be capable of having a desire to continue existing as a subject of experiences and other mental states. The basic point here is that the desires a thing can have are limited by the concepts it possesses. For the fundamental way of describing a given desire is as a desire that a certain proposition be true.<sup>17</sup> Then, since one cannot desire that a certain proposition be true unless one understands it, and since one cannot understand it without possessing the concepts involved in it, it follows that the desires one can have are limited by the concepts one possesses. Applying this to the present case results in the conclusion that an entity cannot be the sort of thing that can desire that a subject of experiences and other mental states exist unless it possesses the concept of such a subject. Moreover, an entity cannot desire that it itself *continue* existing as a subject of experiences and other mental states unless it believes that it is now such a subject. This completes the justification of the claim that it is a necessary condition of something’s having a serious right to life that it possess the concept of a self as a continuing subject of experiences, and that it believe that it is itself such an entity.

Let us now consider a modification in the above argument that seems desirable. This modification concerns the crucial conceptual claim advanced about the relationship between ascription of rights and ascription of the corresponding desires. Certain situations suggest that there may be exceptions to the claim that if a person doesn’t desire something, one cannot violate his right to it. There are three types of situations that call this claim into question: (i) situations in which an individual’s desires reflect a state of emotional disturbance; (ii) situations in which a previously conscious individual is temporarily unconscious; (iii) situations in which an individual’s desires have been distorted by conditioning or by indoctrination.

As an example of the first, consider a case in which an adult human falls into a state of depression which his psychiatrist recognizes as temporary. While in the

state he tells people he wishes he were dead. His psychiatrist, accepting the view that there can be no violation of an individual's right to life unless the individual has a desire to live, decides to let his patient have his way and kills him. Or consider a related case in which one person gives another a drug that produces a state of temporary depression; the recipient expresses a wish that he were dead. The person who administered the drug then kills him. Doesn't one want to say in both these cases that the agent did something seriously wrong in killing the other person? And isn't the reason the action was seriously wrong in each case the fact that it violated the individual's right to life? If so, the right to life cannot be linked with a desire to live in the way claimed above.

The second set of situations are ones in which an individual is unconscious for some reason – that is, he is sleeping, or drugged, or in a temporary coma. Does an individual in such a state have any desires? People do sometimes say that an unconscious individual wants something, but it might be argued that if such talk is not to be simply false it must be interpreted as actually referring to the desires the individual *would* have if he were now conscious. Consequently, if the analysis of the concept of a right proposed above were correct, it would follow that one does not violate an individual's right if one takes his car, or kills him, while he is asleep.

Finally, consider situations in which an individual's desires have been distorted, either by inculcation of irrational beliefs or by direct conditioning. Thus an individual may permit someone to kill him because he has been convinced that if he allows himself to be sacrificed to the gods he will be gloriously rewarded in a life to come. Or an individual may be enslaved after first having been conditioned to desire a life of slavery. Doesn't one want to say that in the former case an individual's right to life has been violated, and in the latter his right to freedom?

Situations such as these strongly suggest that even if an individual doesn't want something, it is still possible to violate his right to it. Some modification of the earlier account of the concept of a right thus seems in order. The analysis given covers, I believe, the paradigmatic cases of violation of an individual's rights, but there are other, secondary cases where one also wants to say that someone's right has been violated which are not included.

Precisely how the revised analysis should be formulated is unclear. Here it will be sufficient merely to say that, in view of the above, an individual's right to X can be violated not only when he desires X, but also when he *would* now desire X were it not for one of the following: (i) he is in an emotionally unbalanced state; (ii) he is temporarily unconscious; (iii) he has been conditioned to desire the absence of X.

The critical point now is that, even given this extension of the conditions under which an individual's right to something can be violated, it is still true that one's right to something can be violated only when one has the conceptual capability of desiring the thing in question. For example, an individual who would now desire not to be a slave if he weren't emotionally unbalanced, or if he weren't temporarily unconscious, or if he hadn't previously been conditioned to want to be a slave, must possess the concepts involved in the desire not to be a slave. Since it is really only the conceptual capability presupposed by the desire to continue existing as a subject of experiences and other mental states, and not the desire itself, that enters into the above argument, the modification required in the account of the conditions under which an individual's rights can be violated does not undercut my defense of the self-consciousness requirement.<sup>18</sup>

To sum up, my argument has been that having a right to life presupposes that one is capable of desiring to continue existing as a subject of experiences and other mental states. This in turn presupposes both that one has the concept of such a continuing entity and that one believes that one is oneself such an entity. So an entity that lacks such a consciousness of itself as a continuing subject of mental states does not have a right to life.

It would be natural to ask at this point whether satisfaction of this requirement is not only necessary but also sufficient to ensure that a thing has a right to life. I am inclined to an affirmative answer. However, the issue is not urgent in the present context, since as long as the requirement is in fact a necessary one we have the basis of an adequate defense of abortion and infanticide. If an organism must satisfy some other condition before it has a serious right to life, the result will merely be that the interval during which infanticide is morally permissible may be somewhat longer.

Although the point at which an organism first achieves self-consciousness and hence the capacity of desiring to continue existing as a subject of experiences and other mental states may be a theoretically incorrect cutoff point, it is at least a morally safe one: any error it involves is on the side of caution.

#### IV Some Critical Comments on Alternative Proposals

I now want to compare the line of demarcation I am proposing with the cutoff points traditionally advanced in discussions of abortion. My fundamental claim will be that none of these cutoff points can be defended by appeal to plausible, basic moral principles. The main suggestions as to the point past which it is seriously wrong to destroy something that will develop into an adult member of the species *Homo sapiens* are these: (a) conception; (b) the attainment of human form; (c) the achievement of the ability to move about spontaneously; (d) viability; (e) birth.<sup>19</sup> The corresponding moral principles suggested by these cutoff points are as follows. (1) It is seriously wrong to kill an organism, from a zygote on, that belongs to the species *Homo sapiens*. (2) It is seriously wrong to kill an organism that belongs to *Homo sapiens* and that has achieved human form. (3) It is seriously wrong to kill an organism that is a member of *Homo sapiens* and that is capable of spontaneous movement. (4) It is seriously wrong to kill an organism that belongs to *Homo sapiens* and that is capable of existing outside the womb. (5) It is seriously wrong to kill an organism that is a member of *Homo sapiens* that is no longer in the womb.

My first comment is that it would not do *simply* to omit the reference to membership in the species *Homo sapiens* from the above principles, with the exception of principle (2). For then the principles would be applicable to animals in general, and one would be forced to conclude that it was seriously wrong to abort a cat fetus, or that it was seriously wrong to abort a motile cat fetus, and so on.

The second and crucial comment is that none of the five principles given above can plausibly be viewed as a *basic* moral principle. To accept any of them as such would be akin to accepting as a basic moral principle

the proposition that it is morally permissible to enslave black members of the species *Homo sapiens* but not white members. Why should it be seriously wrong to kill an unborn member of the species *Homo sapiens* but not seriously wrong to kill an unborn kitten? Difference in species is not per se a morally relevant difference. If one holds that it is seriously wrong to kill an unborn member of the species *Homo sapiens* but not an unborn kitten, one should be prepared to point to some property that is morally significant and that is possessed by unborn members of *Homo sapiens* but not by unborn kittens. Similarly, such a property must be identified if one believes it seriously wrong to kill unborn members of *Homo sapiens* that have achieved viability but not seriously wrong to kill unborn kittens that have achieved that state.

What property might account for such a difference? That is to say, what *basic* moral principles might a person who accepts one of these five principles appeal to in support of his secondary moral judgment? Why should events such as the achievement of human form, or the achievement of the ability to move about, or the achievement of viability, or birth serve to endow something with a right to life? What the liberal must do is to show that these events involve changes, or are associated with changes, that are morally relevant.

Let us now consider reasons why the events involved in cutoff points (b) through (e) are not morally relevant, beginning with the last two: viability and birth. The fact that an organism is not physiologically dependent upon another organism, or is capable of such physiological independence, is surely irrelevant to whether the organism has a right to life. In defense of this contention, consider a speculative case where a fetus is able to learn a language while in the womb. One would surely not say that the fetus had no right to life until it emerged from the womb, or until it was capable of existing outside the womb. A less speculative example is the case of Siamese twins who have learned to speak. One doesn't want to say that since one of the twins would die were the two to be separated, it therefore has no right to life. Consequently it seems difficult to disagree with the conservative's claim that an organism which lacks a right to life before birth or before becoming viable cannot acquire this right immediately upon birth or upon becoming viable.

This does not, however, completely rule out viability as a line of demarcation. For instead of defending viability as a cutoff point on the ground that only then does a fetus acquire a right to life, it is possible to argue rather that when one organism is physiologically dependent upon another, the former's right to life may conflict with the latter's right to use its body as it will, and moreover, that the latter's right to do what it wants with its body may often take precedence over the other organism's right to life. Thomson has defended this view: "I am arguing only that having a right to life does not guarantee having either a right to the use of or a right to be allowed continued use of another person's body – even if one needs it for life itself. So the right to life will not serve the opponents of abortion in the very simple and clear way in which they seem to have thought it would."<sup>20</sup> I believe that Thomson is right in contending that philosophers have been altogether too casual in assuming that if one grants the fetus a serious right to life, one must accept a conservative position on abortion.<sup>21</sup> I also think the only defense of viability as a cutoff point which has any hope of success at all is one based on the considerations she advances. I doubt very much, however, that this defense of abortion is ultimately tenable. I think that one can grant even stronger assumptions than those made by Thomson and still argue persuasively for a semiconservative view. What I have in mind is this. Let it be granted, for the sake of argument, that a woman's right to free her body of parasites which will inhibit her freedom of action and possibly impair her health is stronger than the parasite's right to life, and is so even if the parasite has as much right to life as an adult human. One can still argue that abortion ought not to be permitted. For if A's right is stronger than B's, and it is impossible to satisfy both, it does not follow that A's should be satisfied rather than B's. It may be possible to compensate A if his right isn't satisfied, but impossible to compensate B if his right isn't satisfied. In such a case the best thing to do may be to satisfy B's claim and to compensate A. Abortion may be a case in point. If the fetus has a right to life and the right is not satisfied, there is certainly no way the fetus can be compensated. On the other hand, if the woman's right to rid her body of harmful and annoying parasites is not satisfied, she can be compensated. Thus it would seem that the just

thing to do would be to prohibit abortion, but to compensate women for the burden of carrying a parasite to term. Then, however, we are back at a (modified) conservative position.<sup>22</sup> Our conclusion must be that it appears unlikely there is any satisfactory defense either of viability or of birth as cutoff points.

Let us now consider the third suggested line of demarcation, the achievement of the power to move about spontaneously. It might be argued that acquiring this power is a morally relevant event on the grounds that there is a connection between the concept of an agent and the concept of a person, and being motile is an indication that a thing is an agent.<sup>23</sup>

It is difficult to respond to this suggestion unless it is made more specific. Given that one's interest here is in defending a certain cutoff point, it is natural to interpret the proposal as suggesting that motility is a necessary condition of an organism's having a right to life. But this won't do, because one certainly wants to ascribe a right to life to adult humans who are completely paralyzed. Maybe the suggestion is rather that motility is a sufficient condition of something's having a right to life. However, it is clear that motility alone is not sufficient, since this would imply that all animals, and also certain machines, have a right to life. Perhaps, then, the most reasonable interpretation of the claim is that motility together with some other property is a sufficient condition of something's having a right to life, where the other property will have to be a property possessed by unborn members of the species *Homo sapiens* but not by unborn members of other familiar species.

The central question, then, is what this other property is. Until one is told, it is very difficult to evaluate either the moral claim that motility together with that property is a sufficient basis for ascribing to an organism a right to life or the factual claim that a motile human fetus possesses that property while a motile fetus belonging to some other species does not. A conservative would presumably reject motility as a cutoff point by arguing that whether an organism has a right to life depends only upon its potentialities, which are of course not changed by its becoming motile. If, on the other hand, one favors a liberal view of abortion, I think that one can attack this third suggested cutoff point, in its unspecified form, only by determining what properties are necessary, or what

properties sufficient, for an individual to have a right to life. Thus I would base my rejection of motility as a cutoff point on my claim, defended above, that a necessary condition of an organism's possessing a right to life is that it conceive of itself as a continuing subject of experiences and other mental states.

The second suggested cutoff point – the development of a recognizably human form – can be dismissed fairly quickly. I have already remarked that membership in a particular species is not itself a morally relevant property. For it is obvious that if we encountered other “rational animals,” such as Martians, the fact that their physiological makeup was very different from our own would not be grounds for denying them a right to life.<sup>24</sup> Similarly, it is clear that the development of human form is not in itself a morally relevant event. Nor do there seem to be any grounds for holding that there is some other change, associated with this event, that is morally relevant. The appeal of this second cutoff point is, I think, purely emotional.

The overall conclusion seems to be that it is very difficult to defend the cutoff points traditionally advanced by those who advocate either a moderate or a liberal position on abortion. The reason is that there do not seem to be any basic moral principles one can appeal to in support of the cutoff points in question. We must now consider whether the conservative is any better off.

## V Refutation of the Conservative Position

Many have felt that the conservative's position is more defensible than the liberal's because the conservative can point to the gradual and continuous development of an organism as it changes from a zygote to an adult human being. He is then in a position to argue that it is morally arbitrary for the liberal to draw a line at some point in this continuous process and to say that abortion is permissible before, but not after, that particular point. The liberal's reply would presumably be that the emphasis upon the continuity of the process is misleading. What the conservative is really doing is simply challenging the liberal to specify the properties a thing must have in order to be a person, and to show that the developing organism does acquire the properties at the point selected by the lib-

eral. The liberal may then reply that the difficulty he has meeting this challenge should not be taken as grounds for rejecting his position. For the conservative cannot meet this challenge either; the conservative is equally unable to say what properties something must have if it is to have a right to life.

Although this rejoinder does not dispose of the conservative's argument, it is not without bite. For defenders of the view that abortion is always wrong have failed to face up to the question of the basic moral principles on which their position rests. They have been content to assert the wrongness of killing any organism, from a zygote on, if that organism is a member of the species *Homo sapiens*. But they have overlooked the point that this cannot be an acceptable *basic* moral principle, since difference in species is not in itself a morally relevant difference. The conservative can reply, however, that it is possible to defend his position – but not the liberal's – *without* getting clear about the properties a thing must possess if it is to have a right to life. The conservative's defense will rest upon the following two claims: first, that there is a property, even if one is unable to specify what it is, that (i) is possessed by adult humans, and (ii) endows any organism possessing it with a serious right to life. Second, that if there are properties which satisfy (i) and (ii) above, at least one of those properties will be such that any organism potentially possessing that property has a serious right to life even now, simply by virtue of that potentiality, where an organism possesses a property potentially if it will come to have that property in the normal course of its development. The second claim – which I shall refer to as the potentiality principle – is critical to the conservative's defense. Because of it he is able to defend his position without deciding what properties a thing must possess in order to have a right to life. It is enough to know that adult members of *Homo sapiens* do have such a right. For then one can conclude that any organism which belongs to the species *Homo sapiens*, from a zygote on, must also have a right to life by virtue of the potentiality principle.

The liberal, by contrast, cannot mount a comparable argument. He cannot defend his position without offering at least a partial answer to the question of what properties a thing must possess in order to have a right to life.



The importance of the potentiality principle, however, goes beyond the fact that it provides support for the conservative's position. If the principle is unacceptable, then so is his position. For if the conservative cannot defend the view that an organism's having certain potentialities is sufficient grounds for ascribing to it a right to life, his claim that a fetus which is a member of *Homo sapiens* has a right to life can be attacked as follows. The reason an adult member of *Homo sapiens* has a right to life, but an infant ape does not, is that there are certain psychological properties which the former possesses and the latter lacks. Now, even if one is unsure exactly what these psychological properties are, it is clear that an organism in the early stages of development from a zygote into an adult member of *Homo sapiens* does not possess these properties. One need merely compare a human fetus with an ape fetus. What mental states does the former enjoy that the latter does not? Surely it is reasonable to hold that there are no significant differences in their respective mental lives – assuming that one wishes to ascribe any mental states at all to such organisms. (Does a zygote have a mental life? Does it have experiences? Or beliefs? Or desires?) There are, of course, physiological differences, but these are not in themselves morally significant. If one held that potentialities were relevant to the ascription of a right to life, one could argue that the physiological differences, though not morally significant in themselves, are morally significant by virtue of their causal consequences: they will lead to later psychological differences that are morally relevant, and for this reason the physiological differences are themselves morally significant. But if the potentiality principle is not available, this line of argument cannot be used, and there will then be no differences between a human fetus and an ape fetus that the conservative can use as grounds for ascribing a serious right to life to the former but not to the latter.

It is therefore tempting to conclude that the conservative view of abortion is acceptable if and only if the potentiality principle is acceptable. But to say that the conservative position can be defended if the potentiality principle is acceptable is to assume that the argument is over once it is granted that the fetus has a right to life, and, as was noted above, Thomson has shown that there are serious grounds for questioning this assumption. In any case, the important point here

is that the conservative position on abortion is acceptable *only if* the potentiality principle is sound.

One way to attack the potentiality principle is simply to argue in support of the self-consciousness requirement – the claim that only an organism that conceives of itself as a continuing subject of experiences has a right to life. For this requirement, when taken together with the claim that there is at least one property, possessed by adult humans, such that any organism possessing it has a serious right to life, entails the denial of the potentiality principle. Or at least this is so if we add the uncontroversial empirical claim that an organism that will in the normal course of events develop into an adult human does not from the very beginning of its existence possess a concept of a continuing subject of experiences together with a belief that it is itself such an entity.

I think it best, however, to scrutinize the potentiality principle itself, and not to base one's case against it simply on the self-consciousness requirement. Perhaps the first point to note is that the potentiality principle should not be confused with principles such as the following: the value of an object is related to the value of the things into which it can develop. This "valuation principle" is rather vague. There are ways of making it more precise, but we need not consider these here. Suppose now that one were to speak not of a right to life, but of the value of life. It would then be easy to make the mistake of thinking that the valuation principle was relevant to the potentiality principle – indeed, that it entailed it. But an individual's right to life is not based on the value of his life. To say that the world would be better off if it contained fewer people is not to say that it would be right to achieve such a better world by killing some of the present inhabitants. If having a right to life were a matter of a thing's value, then a thing's potentialities, being connected with its expected value, would clearly be relevant to the question of what rights it had. Conversely, once one realizes that a thing's rights are not a matter of its value, I think it becomes clear that an organism's potentialities are irrelevant to the question of whether it has a right to life.

But let us now turn to the task of finding a direct refutation of the potentiality principle. The basic issue is this. Is there any property J which satisfies the following conditions: (1) There is a property K such that any individual possessing property K has a right



to life, and there is a scientific law *L* to the effect that any organism possessing property *J* will in the normal course of events come to possess property *K* at some later time. (2) Given the relationship between property *J* and property *K* just described, anything possessing property *J* has a right to life. (3) If property *J* were not related to property *K* in the way indicated, it would not be the case that anything possessing property *J* thereby had a right to life. In short, the question is whether there is a property *J* that bestows a right to life on an organism *only because* *J* stands in a certain causal relationship to a second property *K*, which is such that anything possessing that property *ipso facto* has a right to life.

My argument turns upon the following critical principle: Let *C* be a causal process that normally leads to outcome *E*. Let *A* be an action that initiates process *C*, and *B* be an action involving a minimal expenditure of energy that stops process *C* before outcome *E* occurs. Assume further that actions *A* and *B* do not have any other consequences, and that *E* is the only morally significant outcome of process *C*. Then there is no moral difference between intentionally performing action *B* and intentionally refraining from performing action *A*, assuming identical motivation in both cases. This principle, which I shall refer to as the moral symmetry principle with respect to action and inaction, would be rejected by some philosophers. They would argue that there is an important distinction to be drawn between “what we owe people in the form of aid and what we owe them in the way of non-interference,”<sup>25</sup> and that the latter, “negative duties,” are duties that it is more serious to neglect than the former, “positive” ones. This view arises from an intuitive response to examples such as the following. Even if it is wrong not to send food to starving people in other parts of the world, it is more wrong still to kill someone. And isn’t the conclusion, then, that one’s obligation to refrain from killing someone is a more serious obligation than one’s obligation to save lives?

I want to argue that this is not the correct conclusion. I think it is tempting to draw this conclusion if one fails to consider the motivation that is likely to be associated with the respective actions. If someone performs an action he knows will kill someone else, this will usually be grounds for concluding that he

wanted to kill the person in question. In contrast, failing to help someone may indicate only apathy, laziness, selfishness, or an amoral outlook: the fact that a person knowingly allows another to die will not normally be grounds for concluding that he desired that person’s death. Someone who knowingly kills another is more likely to be seriously defective from a moral point of view than someone who fails to save another’s life.

If we are not to be led to false conclusions by our intuitions about certain cases, we must explicitly assume identical motivations in the two situations. Compare, for example, the following: (1) Jones sees that Smith will be killed by a bomb unless he warns him. Jones’s reaction is: “How lucky, it will save me the trouble of killing Smith myself.” So Jones allows Smith to be killed by the bomb, even though he could easily have warned him. (2) Jones wants Smith dead, and therefore shoots him. Is one to say there is a significant difference between the wrongness of Jones’s behavior in these two cases? Surely not. This shows the mistake of drawing a distinction between positive duties and negative duties and holding that the latter impose stricter obligations than the former. The difference in our intuitions about situations that involve giving aid to others and corresponding situations that involve not interfering with others is to be explained by reference to probable differences in the motivations operating in the two situations, and not by reference to a distinction between positive and negative duties. For once it is specified that the motivation is the same in the two situations, we realize that inaction is as wrong in the one case as action is in the other.

There is another point that may be relevant. Action involves effort, while inaction usually does not. It usually does not require any effort on my part to refrain from killing someone, but saving someone’s life will require an expenditure of energy. One must then ask how large a sacrifice a person is morally required to make to save the life of another. If the sacrifice of time and energy is quite large it may be that one is not morally obliged to save the life of another in that situation. Superficial reflection upon such cases might easily lead us to introduce the distinction between positive and negative duties, but again it is clear that this would be a mistake. The point is not that one has a greater duty to refrain from killing others than to perform positive actions that

will save them. It is rather that positive actions require effort, and this means that in deciding what to do a person has to take into account his own right to do what he wants with his life, and not only the other person's right to life. To avoid this confusion, we should confine ourselves to comparisons between situations in which the positive action involves minimal effort.

The moral symmetry principle, as formulated above, explicitly takes these two factors into account. It applies only to pairs of situations in which the motivations are identical and the positive action involves minimal effort. Without these restrictions, the principle would be open to serious objection; with them, it seems perfectly acceptable. For the central objection to it rests on the claim that we must distinguish positive from negative duties and recognize that negative duties impose stronger obligations than positive ones. I have tried to show how this claim derives from an unsound account of our moral intuitions about certain situations.

My argument against the potentiality principle can now be stated. Suppose at some future time a chemical were to be discovered which when injected into the brain of a kitten would cause the kitten to develop into a cat possessing a brain of the sort possessed by humans, and consequently into a cat having all the psychological capabilities characteristic of adult humans. Such cats would be able to think, to use language, and so on. Now it would surely be morally indefensible in such a situation to ascribe a serious right to life to members of the species *Homo sapiens* without also ascribing it to cats that have undergone such a process of development: there would be no morally significant differences.

Secondly, it would not be seriously wrong to refrain from injecting a newborn kitten with the special chemical, and to kill it instead. The fact that one could initiate a causal process that would transform a kitten into an entity that would eventually possess properties such that anything possessing them *ipso facto* has a serious right to life does not mean that the kitten has a serious right to life even before it has been subjected to the process of injection and transformation. The possibility of transforming kittens into persons will not make it any more wrong to kill newborn kittens than it is now.

Thirdly, in view of the symmetry principle, if it is not seriously wrong to refrain from initiating such a causal process, neither is it seriously wrong to interfere with such a process. Suppose a kitten is accidentally injected with the chemical. As long as it has not yet developed those properties that in themselves endow something with a right to life, there cannot be anything wrong with interfering with the causal process and preventing the development of the properties in question. Such interference might be accomplished either by injecting the kitten with some "neutralizing" chemical or simply by killing it.

But if it is not seriously wrong to destroy an injected kitten which will naturally develop the properties that bestow a right to life, neither can it be seriously wrong to destroy a member of *Homo sapiens* which lacks such properties, but will naturally come to have them. The potentialities are the same in both cases. The only difference is that in the case of a human fetus the potentialities have been present from the beginning of the organism's development, while in the case of the kitten they have been present only from the time it was injected with the special chemical. This difference in the time at which the potentialities were acquired is a morally irrelevant difference.

It should be emphasized that I am not here assuming that a human fetus does not possess properties which in themselves, and irrespective of their causal relationships to other properties, provide grounds for ascribing a right to life to whatever possesses them. The point is merely that if it is seriously wrong to kill something, the reason cannot be that the thing will later acquire properties that in themselves provide something with a right to life.

Finally, it is reasonable to believe that there are properties possessed by adult members of *Homo sapiens* which establish their right to life, and also that any normal human fetus will come to possess those properties shared by adult humans. But it has just been shown that if it is wrong to kill a human fetus, it cannot be because of its potentialities. One is therefore forced to conclude that the conservative's potentiality principle is false.

In short, anyone who wants to defend the potentiality principle must either argue against the moral symmetry principle or hold that in a world in which kittens could be transformed into "rational animals" it

would be seriously wrong to kill newborn kittens. It is hard to believe there is much to be said for the latter moral claim. Consequently one expects the conservative's rejoinder to be directed against the symmetry principle. While I have not attempted to provide a thorough defense of that principle, I have tried to show that what seems to be the most important objection to it – the one that appeals to a distinction between positive and negative duties – is based on a superficial analysis of our moral intuitions. I believe that a more thorough examination of the symmetry principle would show it to be sound. If so, we should reject the potentiality principle, and the conservative position on abortion as well.

## VI Summary and Conclusions

Let us return now to my basic claim, the self-consciousness requirement: An organism possesses 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. My defense of this claim has been twofold. I have offered a direct argument in support of it, and I have tried to show that traditional conservative and liberal views on abortion and infanticide, which involve a rejection of it, are unsound. I now want to mention one final reason why my claim should be accepted. Consider the example mentioned in section II – that of killing, as opposed to torturing, newborn kittens. I suggested there that while in the case of adult humans most people would consider it worse to kill an individual than to torture him for an hour, we do not usually view the killing of a newborn kitten as morally outrageous, although we would regard someone who tortured a newborn kitten for an hour as heinously evil. I pointed out that a possible conclusion that might be drawn from this is that newborn kittens have a right not to be tortured, but do not have a serious right to life. If this is the correct conclusion, how is one to explain it? One merit of the self-consciousness requirement is that it provides an explanation of this situation. The reason a newborn kitten does not have a right to life is explained by the fact that it does not possess the concept of a self. But how is one to explain the kitten's having a right not

to be tortured? The answer is that a desire not to suffer pain can be ascribed to something without assuming that it has any concept of a continuing self. For while something that lacks the concept of a self cannot desire that a self not suffer, it can desire that a given sensation not exist. The state desired – the absence of a particular sensation, or of sensations of a certain sort – can be described in a purely phenomenalist language, and hence without the concept of a continuing self. So long as the newborn kitten possesses the relevant phenomenal concepts, it can truly be said to desire that a certain sensation not exist. So we can ascribe to it a right not to be tortured even though, since it lacks the concept of a continuing self, we cannot ascribe to it a right to life.

This completes my discussion of the basic moral principles involved in the issue of abortion and infanticide. But I want to comment upon an important factual question, namely, at what point an organism comes to possess the concept of a self as a continuing subject of experiences and other mental states, together with the belief that it is itself such a continuing entity. This is obviously a matter for detailed psychological investigation, but everyday observation makes it perfectly clear, I believe, that a newborn baby does not possess the concept of a continuing self, any more than a newborn kitten possesses such a concept. If so, infanticide during a time interval shortly after birth must be morally acceptable.

But where is the line to be drawn? What is the cutoff point? If one maintained, as some philosophers have, that an individual possesses concepts only if he can express these concepts in language, it would be a matter of everyday observation whether or not a given organism possessed the concept of a continuing self. Infanticide would then be permissible up to the time an organism learned how to use certain expressions. However, I think the claim that acquisition of concepts is dependent on acquisition of language is mistaken. For example, one wants to ascribe mental states of a conceptual sort – such as beliefs and desires – to organisms that are incapable of learning a language. This issue of prelinguistic understanding is clearly outside the scope of this discussion. My point is simply that *if* an organism can acquire concepts without thereby acquiring a way of expressing those concepts linguistically, the question of whether a

given organism possesses the concept of a self as a continuing subject of experiences and other mental states, together with the belief that it is itself such a continuing entity, may be a question that requires fairly subtle experimental techniques to answer.

If this view of the matter is roughly correct, there are two worries one is left with at the level of practical moral decisions, one of which may turn out to be deeply disturbing. The lesser worry is where the line is to be drawn in the case of infanticide. It is not troubling because there is no serious need to know the exact point at which a human infant acquires a right to life. For in the vast majority of cases in which infanticide is desirable, its desirability will be apparent within a short time after birth. Since it is virtually certain that an infant at such a stage of its development does not possess the concept of a continuing self, and thus does not possess a serious right to life, there is excellent reason to believe that infanticide is morally permissible in most cases where it is otherwise desirable. The practical moral problem can thus be satisfactorily handled by choosing some period of time, such as a week after birth, as the interval during which infanticide will be permitted. This interval

could then be modified once psychologists have established the point at which a human organism comes to believe that it is a continuing subject of experiences and other mental states.

The troubling worry is whether adult animals belonging to species other than *Homo sapiens* may not also possess a serious right to life. For once one says that an organism can possess the concept of a continuing self, together with the belief that it is itself such an entity, without having any way of expressing that concept and that belief linguistically, one has to face up to the question of whether animals may not possess properties that bestow a serious right to life upon them. The suggestion itself is a familiar one, and one that most of us are accustomed to dismiss very casually. The line of thought advanced here suggests that this attitude may turn out to be tragically mistaken. Once one reflects upon the question of the *basic* moral principles involved in the ascription of a right to life to organisms, one may find himself driven to conclude that our everyday treatment of animals is morally indefensible, and that we are in fact murdering innocent persons.

## Notes

- 1 I am grateful to a number of people, particularly the editors of *Philosophy & Public Affairs*, Rodelia Hapke and Walter Kaufmann, for their helpful comments. It should not, of course, be inferred that they share the views expressed in this paper.
- 2 Judith Jarvis Thomson, in her article "A Defense of Abortion," *Philosophy & Public Affairs*, I, no. I (Fall 1971): 47–66 [see chapter 3 in this volume], has argued with great force and ingenuity that this conclusion is mistaken. I will comment on her argument later in this paper.
- 3 While this is the position conservatives tend to hold, it is not clear that it is the position they ought to hold. For if the fetus is a person it is far from clear that it is permissible to destroy it to save the mother. Two moral principles lend support to the view that it is the fetus which should live. First, other things being equal, should not one give something to a person who has had less rather than to a person who has had more? The mother has had a chance to live, while the fetus has not. The choice is thus between giving the mother

more of an opportunity to enjoy life while giving the fetus none at all and giving the fetus an opportunity to enjoy life while not giving the mother a further opportunity to do so. Surely fairness requires the latter. Secondly, since the fetus has a greater life expectancy than the mother, one is in effect distributing more goods by choosing the life of the fetus over the life of the mother.

The position I am here recommending to the conservative should not be confused with the official Catholic position. The Catholic Church holds that it is seriously wrong to kill a fetus directly even if failure to do so will result in the death of *both* the mother and the fetus. This perverse value judgment is not part of the conservative's position.

- 4 Section 230.3 of the American Law Institute's *Model Penal Code* (Philadelphia, 1962). There is some interesting, though at times confused, discussion of the proposed code in *Model Penal Code – Tentative Draft No. 9* (Philadelphia, 1959), pp. 146–62.