



NATIONAL
FOUNDATION
FOR AUSTRALIAN
WOMEN

Submission to Senate Community Affairs Legislation Committee

[Therapeutic Goods Amendment \(Repeal of Ministerial responsibility for approval of RU486\) Bill 2005](#)

The NFAW (www.nfaw.org) has a considered and well developed policy on reproductive health and access to relevant services, including counselling, contraception and termination of pregnancy services.

In the light of the potential for this legislation to be introduced, the NFAW wrote to the Prime Minister on 24 November, 2005, expressing support for a conscience vote, and noting our view that the current issue is essentially a governance matter.

The letter to the Prime Minister is at Attachment A.

Previously, the Foundation developed a policy statement (Attachment B), and in addition, commissioned a position paper by an ethicist (Attachment C), and contributed to the cost of editing and updating the information kit on abortion of the Australian Public Health Association. That kit may be found at http://www.nfaw.org/p_r_abortion.pdf

The NFAW holds the view that the nation is well served by the professional competence and integrity of the Therapeutic Goods Administration (TGA), and considers that the TGA is the appropriate body to address the safety and efficacy of all drugs to be used in Australia. We note that there is a separate process for determining whether an approved drug may be subsidised through the Pharmaceutical Benefits Scheme, and similarly consider it appropriate that this process should be followed for decisions on Government subsidy of drugs. We see no reason to have a separate process for the one drug, RU 486.

Marie Coleman
Chair
NFAW Social Policy Committee
14 December 2005.

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ATTACHMENT A

The Hon John Howard MP
Prime Minister
Parliament House
Canberra.

Dear Mr Howard,

The National Foundation for Australian Women welcomes your support for a conscience vote of the Parliament on the issue relating to the re-structuring of the processes for the approval of the drug RU486.

We understand that there may still be alternative proposals before the Senate, and hence at this point we do not wish to endorse any particular form of words.

However, we fully support the principle that approval or otherwise of a particular drug intended for use on human subjects ought to be in the hands of an arms-length technically and professionally qualified entity such as the Therapeutic Goods Administration and its panels of professional advisers.

We believe this should be the over-riding principle, regardless of the particular drug or of the proposed use of the drug in question.

Separately, we have previously supported studies on the various issues surrounding termination of pregnancy (these may be found on our web-site, www.nfaw.org under Social Policy).

We support the position that a pregnancy termination should be a matter to be decided between a woman and her doctor, and that access to terminations ought to be medically safe, legal, and rare. In that last sense, we urge wider provisions of access to fertility control techniques, and to expanded programs for better education of boys and girls on responsible human relationships.

Yours faithfully

Marie Coleman
Chair
Social Policy Committee.
24 November 2005.

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ATTACHMENT B

NFAW POLICY Statement on

SEXUAL AND REPRODUCTIVE HEALTH, INCLUDING ACCESS TO SERVICES FOR THE TERMINATION OF PREGNANCY.

Recognising that State and Territory Governments in Australia have the constitutional powers to enact laws regarding the registration of medical and health establishments such as hospitals and day hospitals, the registration of health professionals thus giving them rights to practice, or which allow or disallow the sale of certain pharmaceutical products and related health products such as contraceptive devices, or to enact laws relating to the legality or otherwise of actions by health professionals which affect individual patients, and

Noting that States and Territories also have the constitutional powers to make laws relating to the provision of public health education programs as well as to regulate the establishment and the curriculum of educational institutions, and

Recognising that the Commonwealth Parliament has enacted laws providing for the provision of monies to the States and Territory Governments for specific purposes bearing on the financing of public hospitals, of public health programs, and of public and private schools, including through the Commonwealth-State Hospitals Agreement, and

Recognising that the Commonwealth Parliament has enacted laws to provide for the provision of financial subsidies to individuals to defray the costs to the individual of purchase of approved pharmaceutical products, through the Pharmaceutical Benefits Scheme, as well as of the costs to the individual of medical consultations, through the Medical Benefits Schedule of the National Health Insurance Act, and

Taking account of the current discussion within the Parliament of the Commonwealth of Australia and elsewhere concerning the desirability of modification of its policies and programs bearing on the management of women's fertility and the termination of pregnancy,

The National Foundation for Australian Women calls upon members of the Parliament of the Commonwealth of Australia to

1. ensure that no changes are enacted or made by Regulation or by Ministerial discretion to the Medical Benefits Schedule which would in any way restrict the current access of women and girls to the existing



- Commonwealth subsidy of the costs of legal and medically conducted terminations of pregnancy;
2. take immediate steps to bring the rebates provided for relevant procedures in the Medical Benefits Schedule into consistency with the contemporary costs of provision of such procedures, and maintain that consistency into the future; and
 3. develop and provide funds, in consultation with the governments of States and Territories, health professionals, education professionals and representatives of women's organisations, for a national program of sexual health education which includes relationships counselling, ready affordable access to appropriate means of contraception including emergency contraception, an appropriate range of independent professional counselling for girls and women considering termination of a pregnancy, counselling after a termination, and counselling for relinquishing mothers.

The National Foundation for Australian Women further draws to the attention of legislators that it is inappropriate to assume inability on the part of individual women to make informed decisions, as well as a proven ineffective intervention, to require women seeking a termination of a pregnancy to view ultrasound scans of their foetus.

The National Foundation for Australian Women asserts that the issue of when and whether a medical procedure is required and appropriate is a decision which involves exclusively the woman and her medical adviser.

Further, the National Foundation for Australian Women calls on the Commonwealth of Australia to ensure that the principles outlined above are reflected in Australian policies on overseas aid, so that women and girls in developing nations are not denied access to appropriate holistic sexual and reproductive health services.

19/12/2005

ATTACHMENT C



Ethical Arguments Concerning the Moral Permissibility of Abortion

Introduction

With the re-igniting of the abortion debate in Australian politics in late 2004 and early 2005, calls for an inquiry into the number and nature of abortions in Australia, and the formation of a new church-led anti-abortion lobby group planning to campaign, “as a starting point”, for a ban on late-term abortions, it is timely to canvass the ethical arguments concerning the moral permissibility of abortion. The enduringly controversial nature of the topic has generated a rich variety of philosophical responses and accounts. This paper presents an overview of some of the most commonly encountered philosophical views. It does not aim to be exhaustive in scope, nor to defend a particular ethical position, but rather to draw attention to the key concerns and ethical issues raised by philosophers, and to portray something of the manner in which the academic debate over abortion typically proceeds.

Two broad kinds of arguments have dominated the Anglo-American tradition of philosophical debate over the moral permissibility of deliberate abortion (also referred to here as Termination of Pregnancy [TOP]).¹ One kind takes as its primary concern the question of the moral status of the foetus, and this kind of argument plays a central role in debates concerning the stage (if any) at which a pregnancy may be terminated. The other kind of argument claims that even if we could settle the question of the moral status of the foetus, we will not thereby have settled the question of the moral permissibility of TOP. Arguments of the second kind treat the autonomy and rights of women as the central consideration. Much of the philosophical debate has focused on the first question – the moral status question – and it is a useful starting point for a survey of abortion ethics.

1. The moral status of the foetus

For many philosophers, whether or not it is morally permissible to terminate a pregnancy, and at what stage termination may occur, depends entirely upon the nature and moral status of the foetus itself. It is claimed that the moral status of the foetus must be determined before we can resolve the alleged conflict that lies at the core of the abortion debate: between the woman seeking the abortion – her desires, preferences, interests and rights – and the foetus, with whatever interests and rights it possesses. Thus the question is posed: does a foetus have the moral status of a human being? Is it a being of *equivalent* moral significance to the woman in whose body it resides? If it does not possess equivalent moral status, does it instead possess some form of *partial* moral status, perhaps based on its *potential* to be a fully-fledged moral agent? Alternatively, does a foetus have no moral status at all?



The main argument against abortion maintains that a foetus does have moral status, and perhaps even moral rights, and on those grounds TOP is morally impermissible. This argument is based on the widely held assumption of the sanctity of human life. However, the view that human life is of special value is a moral rather than a factual judgment, and as such, requires moral justification.

Proposed criteria for moral status

On what grounds, and at which point, might a foetus be accorded moral status? At one end of the spectrum of possible answers to this question are accounts of the foetus as having moral status from the very moment of its conception; according to accounts at the extreme opposite end of the spectrum it has none until after its birth, even well into infancy. Several distinct positions occupy the considerable space in between these two views. Let us briefly survey the most prevalent of these.

The earliest point at which to attribute moral status is of course at the point of conception, or very close to it. Traditional religious perspectives hold that moral status is acquired at conception because that is the point of ensoulment, when the soul enters the 'body'.ⁱⁱ Accepting this argument requires accepting the religious views that underlie it, in particular concerning the existence of souls. An alternative secular version has been proposed by writers like John Noonan.ⁱⁱⁱ Noonan proposed that the process of human genetic coding, in which the zygote receives the full 23 pairs of chromosomes that make up its human genetic code, should be considered the point at which a human being with a right to life comes into existence. However, many are unable to accept the view that a zygote – a single cell – is a human being with full moral status and a right to life. As critics have pointed out, any human cell has the full genetic coding of a human being, yet surely we would not want to say that any human cell has the full moral status of a human being. The view that full humanity and consequently moral status is established at the point of conception faces some significant challenges.

Other accounts locate the threshold for moral status at a point following conception. For some, the demarcation point has been the *quickening* – the first time a pregnant woman feels the independent movement of the foetus. However this is a highly variable event, both between women and between pregnancies, and may be experienced any time between twelve and eighteen weeks gestation and even beyond. For others the key point has been the emergence of brainwaves, at about 8 weeks of gestation, since the presence of brainwaves is thought to mark the beginning of the development of consciousness and the ability to feel pain, or at least the *pre-conditions* for such. We will return to this idea presently.



Another proposed threshold for moral status is *viability*, the time at which the foetus becomes capable of surviving outside of the woman's body (*ex utero*). However, a number of points must be kept in mind. First, the point of viability is hotly debated – as reached at between twenty and twenty-eight weeks of pregnancy – and shifting as neo-natal medical technology and knowledge develops. Technological advancement in artificial incubation (*ectogenesis*) may in due course make *ex utero* survival of a foetus possible significantly earlier than is currently the case. Furthermore, it is claimed that a foetus' point of viability depends upon other factors and circumstances, such as its weight and perhaps even its ethnic origins.^{iv} Finally, care needs to be taken with any notion of 'capacity for independent survival', since that term relies upon a stark contrast being drawn between dependence upon uterine support and dependence upon technological support. A foetus born at 24 weeks gestation is in no real sense capable of surviving independently, unless by 'independently' we simply mean 'outside the uterine environment' (and this would reduce the argument to the empty and redundant claim that a foetus should be accorded moral status once it can survive outside the uterine environment because it can survive outside the uterine environment).^v Furthermore, a more meaningful conception of the point at which a being acquires a capacity for genuinely independent survival would be the point at which it becomes possible to honour its basic rights without thereby violating anyone else's basic rights. Such a point is reached at birth, however, rather than at mere viability; and such considerations, amongst others, comprise the grounds on which philosophers sometimes advocate birth as the threshold for moral status.

8 Sentience

One influential argument maintains that it is the emergence of actual consciousness and sentience (and not merely their pre-conditions) that marks the dividing line between beings with moral status and those without. Only a being that is conscious and capable of experiencing pleasure and pain can be said to have interests – in pleasure and the avoidance of pain, for example – and may on that basis be accorded rights to protect those interests.^{vi}

Science does not yet permit an exact identification of the point at which consciousness and sentience is manifested in human beings. Many neurophysiologists believe that the normal human foetus begins to possess a rudimentary capacity for sentience at some stage in the second trimester of pregnancy.^{vii} It is widely believed that prior to that stage the foetus manifests only unconscious reflexes and not the behaviours and responses suggestive of sentience.



There are important implications of the sentience criterion for the question of the moral permissibility of TOPs. On the one hand, TOP at an early stage of fetal development presents no serious moral problem in terms of the impact upon the foetus itself. According to this view, an early term foetus is not a being with an interest in its own continued life. If left to develop normally, it will develop into a sentient being and therefore a morally significant being, one with an interest in continued life and perhaps a right to life. However, until it has become sentient it does not have such an interest, and cannot therefore have such a right either.

Late term TOPs, on the other hand, do pose a moral problem according to the sentience account. However, it is important to note that the sentience criterion does not entail that late stage TOP is morally impermissible. Mary Ann Warren points out that it does not follow that late term abortion is morally equivalent to murder of an existing person. As she says, “the principle of respect for the interests of sentient beings does not imply that all sentient beings have an equal right to life”.^{viii} Indeed, the view that all sentient beings have equal moral status, or an equal right to life, would impose a very demanding set of ethical obligations, since it entails that all beings with a central nervous system – the main precondition for sentience – must be treated with equal respect. Given that the category of sentient beings would most likely extend beyond vertebrates to some invertebrate animals, such as insects and spiders, the demands of an ‘equalizing’ ethic would make it morally problematic even to kill a spider. This view is widely (though not universally) regarded as imposing an overly demanding ethic, one that offers insufficient guidance in the really difficult cases in which fundamental interests, or rights to life, are in serious conflict.

For those wanting to retain the sentience criterion, an alternative to the ‘equal moral status’ view is to distinguish between different sentient beings on the grounds of differing degrees or intensities of experiences such as suffering. For example, it might be claimed that while mice and human beings are both sentient, and therefore both have moral status, a human being’s capacity to suffer is greater than a mouse’s. Since human beings possess capacities such as foreknowledge, fear, anticipation, and fuller recognition of dangers and of their own interests, the prospect of death and dying is a more intense experience for a human being than for a mouse, and human beings therefore suffer more. The fact that human beings typically have more projects, aspirations and plans than many other sentient beings, also means that they have a richer set of interests than many other sentient beings, and this in turn means that they have a greater capacity for having their interests frustrated and for suffering. Considerations such as these have led some philosophers to posit a kind of hierarchy of moral status, still based firmly



upon the sentience criterion, but which avoids some of the serious problems faced by an equalizing sentience ethic.

The implication of this for the abortion debate, especially concerning late TOPs, is that a sentient foetus may be accorded lesser moral significance than the sentient adult human being in whose body it gestates, on the grounds that it lacks the equivalent capacity to suffer and have interests thwarted. It may be claimed that the suffering experienced by a sentient late term foetus terminated through abortion, would be less than the suffering experienced by the pregnant woman were she forced to continue with the pregnancy. This will be a more straightforward calculation in some cases than in others. For example, if the woman's own life is endangered by the pregnancy, or would be by carrying the child to full term and birth, it may not be too difficult to assess the suffering and possible death of the woman as a greater evil than the suffering and death of the foetus. However, in other cases, the calculation will be more difficult. How, for example, are we to compare the emotional, psychological and physical suffering of a woman who is forced to bear, give birth to, and rear or adopt an unwanted child, with the suffering of a late term sentient foetus terminated by abortion?

Problems such as this have motivated some philosophers to move beyond the sentience criterion for moral status, rejecting the idea that sentience is the key condition for moral status and opting instead for a distinct criterion to narrow the field of beings whose interests deserve moral consideration.

9 Personhood

The most influential alternative account of moral status is based on the notion of *personhood*. Certain beings typically possess not only a capacity for sentience but also for more complex mental activities like reasoning, self-awareness, social interaction and sense of responsibility. Personhood is generally defined in terms of the possession of characteristics and capacities such as consciousness, ability to reason, self-motivated activity, communication, and possession of a concept of the self.^{ix} The personhood argument in defense of abortion starts from the view that because persons possess these morally significant characteristics and capacities, they are able to value their own lives, and the lives of other persons, to a greater extent than those beings who lack these mental and social capacities. For these reasons it is more seriously wrong to kill a person than a non-person, even a sentient non-person.

While some conservative thinkers have sought to claim that since the foetus is a person, abortion must be morally wrong, such an argument is based on a misuse of the term 'person'. It is widely accepted that the full



capacities and characteristics necessary for personhood are not manifest in the fetal stages of human development. An early-stage foetus possesses little – if anything – in the way of consciousness, self-conceptualization, reasoning and communication abilities. Even late-stage foetuses fail to meet the full conditions for personhood, and for that reason the permissibility of abortion on the personhood account is not significantly altered by the stage in a pregnancy at which a termination would take place. The personhood argument is therefore most effective when used to defend, rather than oppose, TOPs.

The strongest form of the personhood argument claims that since foetuses are not persons, they cannot possess interests or rights, including the right to life, and it is therefore not morally impermissible to kill them. Indeed, this perspective withholds personhood status even from neonates and early infants, since on most philosophical and psychological accounts the capacities for personhood do not really manifest themselves until well into infancy. This is of course a controversial and unpalatable implication for many, since it might appear to permit infanticide as well as abortion. It is vital to note, however, that on all but the most extreme versions of this view the personhood criterion would only permit infanticide in the rare and extremely difficult cases in which killing an infant non-person was the only alternative to killing a full-fledged person. It would not permit the wanton killing or mistreatment of infants for any or no reason whatsoever. To advocate the personhood criterion for moral status is not necessarily to advocate that all non-persons have no moral status whatsoever, or that there are no independent moral reasons or obligations requiring that we treat non-persons with care and respect as far as we are able.

Hence more moderate versions of the personhood view claim that since they are not (yet) persons their interests and rights – to whatever extent that they possess those – cannot outweigh the interests and rights of actually existing full-fledged persons. Greatest moral consideration and weight must be accorded to persons over non-persons. Thus the interests, preferences and rights of the biological mother must take precedence in determining whether abortion is morally permissible.

10 The potentiality argument

It is sometimes argued that we should extend the status of personhood to human foetuses and infants. An attempt is made to base moral status on the possession of *potential* rather than *actual*, full-fledged personhood, enabling the claim that foetuses are potential persons to be used in an argument against abortion. After all, if left to follow a normal path of physiological and psychological development, a foetus will become a person in due course.

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Surely this is pertinent to the moral status of a foetus and to whether killing it is morally permissible?

Despite its strong intuitive appeal for many, there are at least three serious problems that beset the potentiality view of moral status. First, some philosophers (e.g. Warren) have objected that in no other cases do we treat a being's *potential* to reach a particular status as sufficient for establishing the rights that go along with *actually* reaching the status. Thus, for example, although they are potential drivers, in Australia we do not on the basis of that potentiality grant persons under the age of 17 the right to a driving license.

A second problem concerns where to draw the line for potentiality. If a foetus is a potential person, then a fertilized ovum ought perhaps also to be regarded as a potential person, and possibly an unfertilized ovum and viable spermatozoon. Yet, as Warren points out, few would suggest that these entities ought to have moral status equivalent to that of full-fledged human beings. It would be difficult to find a basis on which to extent the potential personhood account to include foetuses but exclude fertilized and unfertilized ova and spermatozoa.

The third serious problem for use of the potentiality argument against abortion is that of how to weigh the interests and possible rights of merely potential persons against those of actual full-fledged persons. It would be exceedingly difficult to claim that the future interests and rights of currently merely potential persons should outweigh the present interests and rights of actually existing persons. Yet it seems the potentiality argument against abortion could succeed only by defending just that view, since it would suggest that a foetus' future interests and rights should be given precedence over a pregnant woman's current interests and rights in relation to TOP. Most philosophers regard this to be implausible, and its implications for other aspects of life and morality to be undesirable and unreasonable. Fully-fledged persons, it is contended, with their actual interests and rights, ought always to be accorded greater moral significance than merely potential persons and non-persons.

A more moderate version of the argument that personhood potential is morally significant might concede that a foetus is not the moral equivalent of a full-fledged person, but maintain that neither is it an organism with no moral status whatsoever. Rather, due to its special potential, the foetus has a unique kind of *partial* moral status. While much more would need to be said in order to explain what partial moral status might amount to, in the context of the abortion debate the key point to note is that this argument is likely to lead to the same moral quandary encountered above: if we grant partial moral status to foetuses, it will be difficult to justify according greater moral consideration and weight to a being with partial moral status, when their alleged interests and rights are in conflict with those of a being with full moral



status. Nevertheless, the granting of partial moral status may provide a basis for a moral requirement not to cause death or harm to the being in question unless there is an overriding moral reason to justify doing so.

Important moral questions remain unanswered and controversial. Foremost is the question of how we are to balance the interests and rights of the woman seeking an abortion with those of the foetus who, while not a person and therefore not in possession of moral rights or interests, is nevertheless a living entity worthy of some moral consideration, and whose life would be ended by a TOP. In some cases the competing moral considerations are comparatively easy to balance. These include cases in which the woman's life or wellbeing would be seriously compromised or threatened by the pregnancy or birth of a child, or perhaps by the adoption of a child (for we must acknowledge that to relinquish even an unwanted child is often far from psychologically easy for women, their partners and families). A challenging question concerns how, in cases where there are no serious medical or psychological risks attendant, we are to weigh a woman's preference not to give birth to a child against the loss of life of a foetus.

For most philosophers from a personhood- or rights-based tradition, the view that a foetus is not a person and cannot properly be said to have interests, autonomy or rights resolves the most difficult question: there exists only one being with interests, preferences and rights, including a right to autonomy, to take account of. We may have duties and obligations towards the foetus, even though it is a non-person; but whatever those duties and obligations are, they are unlikely to impose stronger obligations on us than the obligation to respect the interests, autonomy and rights of the person involved, namely the woman.

Alternatively, for philosophers committed to a *consequentialist* or *utilitarian* moral theory, a person's interests and preferences should be overridden only in order to prevent the occurrence of even greater moral harms or wrongs.^x For such philosophers the key question is whether permitting abortion would bring about worse consequences than prohibiting abortion. The consequences to be taken into account include the harm and suffering of the woman and foetus as well as wider consequences such as societal impact, both of permitting and of prohibiting abortion.

2. The autonomy and rights of women

Arguments of this nature bring us closer to the second broad kind of argument introduced at the outset, a kind of argument that does not treat the question of the moral status of the foetus as the decisive moral question in abortion ethics. According to this view, moral status arguments overlook a feature that is absolutely crucial to the rightness or wrongness of abortion: namely, that the woman involved has interests, preferences and rights that must be given



proper weight in determining whether abortion is ethically justified. This argument claims that even if we were to grant that a foetus *is* equivalent to a fully-fledged person, this would not mean that abortion is never morally justifiable.

The argument was made famous by philosopher Judith Jarvis Thomson in her influential article 'A Defense of Abortion'.^{xi} Thomson presents a thought experiment in which you are asked to imagine finding yourself connected by medical equipment to a famous but unconscious violinist with a kidney disease. The only way he can survive is for his circulatory system to be connected to someone with the same blood type. As you are the only person available, a society of music lovers has kidnapped you, had the connecting operation performed, and had you placed in hospital. You can, if you choose, order a doctor to disconnect you from the violinist, but if you do so the violinist will certainly die. On the other hand, if you remain connected for nine months, the violinist will have recovered and you can be unplugged without endangering him or yourself.^{xii}

The central question posed by the thought experiment is whether you have a right to unplug yourself from the violinist, or instead an obligation to remain connected for the nine months necessary to prevent his death. Important points to note are that the violinist is a fully-fledged person with moral status equivalent to your own; and that you became attached to the violinist by no decision or intended action of your own. To be analogous to a case involving abortion, then, we need to imagine that the foetus is likewise granted full personhood status and a full right to life, and that the pregnancy is not intended (is, in other words, equivalent to a case of rape and possibly, though more controversially, contraceptive failure, inadequate family planning support, sex education and availability of contraception).

Our intuitions in the violinist case are supposed to indicate the moral conclusion to be drawn in the case of abortion. While intuitions differ, most reject the idea that you are morally *required* to make the substantial sacrifice to your freedom and bodily integrity that keeping the violinist alive would require. While the violinist has a *need* to be connected to you, his need does not entail that he has a *right* to be connected to you, or that you have a *duty* to remain connected to him. As Thomson suggests, in law as well as morality innocent individuals (who have not been convicted of any crime) are generally not required to make substantial sacrifices of their liberty, self-determination, and bodily integrity in order to preserve the lives of others. You have a right to refuse to make such a sacrifice. While it might be morally kind and generous of you to volunteer to make the sacrifice, it would not be immoral of you to refuse to do so, and suggesting otherwise imposes unreasonable moral demands.



There are problems with the analogy, such as that pregnant women are generally not required to be hospitalized or bedridden while pregnant, and can still continue with many of their important projects such as careers and social contact while pregnant; but the thought experiment could easily be modified so as to make the attached violinist portable in some way comparable to the realities of pregnancy. If you are not morally required to remain connected to the violinist, then by analogy you are not morally required to continue with an unwanted and unintended pregnancy. Abortion would not be wrong, therefore, at least not in the kinds of cases referred to above.

In this argument the focus has shifted from the moral status of the foetus to the rights of the pregnant woman. Even if we assume that the foetus is a person with a right to life (just as the violinist is) it does not follow that abortions are never morally justified. The central claim of the argument is that respect for the rights of the pregnant woman – most importantly her right to control what happens in and to her body – justifies abortion in cases like rape, contraceptive failure, and also where there would be considerable risk of harm to the woman resulting from a continuation of the pregnancy. Consideration of the woman's right to autonomy and liberty also suggests that in cases of serious fetal impairment and potential disability of the future child, abortion may be justified if the woman wishes. To force a woman to give birth to an unwanted child with a disability would infringe her right to refuse to consent to substantial sacrifice of her liberty, autonomy and bodily integrity.

This argument has gained considerable support amongst philosophers, including feminist philosophers. While many do not actually agree that a foetus is a person, what is important here is that the argument shows that *even if* everyone agreed that foetuses are persons, that would not establish the immorality of abortion, despite the fact that abortion would amount to the killing of a person. In some cases, it is argued, the killing of persons is morally justifiable (such as in just war, or self-defense, for example.) The foetus may be a person, but abortion involves a conflict between *two* persons, the woman and the foetus. Appealing to the different capacities of the two persons in question, most agree that there are scant grounds for according greater moral consideration to the foetus than to the woman. Unlike a woman, a foetus does not yet possess autonomy, a desire and interest in continued existence, a right to make decisions about its own body and the like; and it is difficult to argue that the mere potential for such capacities outweighs actual possession of them.^{xiii}

It is interesting to note that in arguing that a woman does not have an obligation to continue with an unwanted and unintended pregnancy, Thomson stops short of arguing that the woman's right to end her pregnancy is a right to secure the death of the foetus. If ectogenesis were to become an effective



way of sustaining the lives of premature neo-nates, Thomson's account appears vulnerable to the suggestion that a woman who wishes to terminate her pregnancy has an obligation to opt for ectogenesis, rather than the killing of the foetus. A woman's right to abortion is a right to control what happens in and to her body, and as such is a right only to have the foetus removed from her body and not a right to secure its death. A similar conclusion might be reached by the consequentialist reasoning that overall happiness is maximised, and overall suffering minimised, if the death of the foetus can be avoided while still enabling an unwillingly pregnant woman to be freed from the pregnancy.^{xiv}

While this debate cannot be adjudicated here, one final point to consider is that it is unlikely that women seeking TOPs are seeking simply to end their pregnancies. More plausibly, the request for TOP in the case of unwanted and unintended pregnancy expresses a desire that there not exist that being in the world to whom you would be related as biological mother. (This was the issue referred to earlier in the discussion of viability as the basis for moral status). Even if we avoid assuming that any moral responsibility flows from the fact of biological relationship, many women express serious concerns about relinquishing a child knowing that they will continue to survive in the world, and may desire, if not actually seek, communication and contact with their biological mother. In a social welfare context that favours "open" forms of adoption as ours currently does, a woman's desire to not be subject to this unintended biological relationship must be given due weight, and the conclusion that ectogenesis presents a "perfect" solution is not warranted. Full consideration of the autonomy, rights and preferences of women therefore forces us to consider more closely exactly what is sought by women seeking abortion.

10.3

10.4 Concluding comments

It is vital to acknowledge that a woman's request for abortion almost never expresses a wanton, frivolous, uncaring or unqualified desire (especially given the physical invasiveness, discomfort and risk associated with the medical procedure). Rather it is a request borne most typically out of an earnest and well-intentioned process of self-appraisal, and an assessment of the ethical pros and cons of terminating or continuing with an unwanted pregnancy which strives to take account of the welfare of both the woman herself and the possible future child. Finally, debate over the moral permissibility of abortion will only do justice to the concerns and position of women when it acknowledges that a truly moral solution will not result from denying abortion to women who unwillingly become pregnant, or who find themselves – even late in pregnancy (as occurs in a very small number of cases) – carrying a



child who may be viable but who is affected by serious abnormalities. A truly moral solution will include efforts aimed at reducing the rate of unwanted and unintended pregnancies, namely through the provision of adequate family planning support and sex education as well as safe, effective and accessible contraception.^{xv}

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ⁱ Philosophers working within the European Continental tradition bring distinct arguments and points of view to bear on the abortion question. Despite their considerable interest, space limitations prevent me from discussing those arguments here.

ⁱⁱ For an interesting and helpful discussion of historical and contemporary abortion debates within the Catholic church see Tony Coady, 'Catholic Identity and the abortion debate' in *Eureka Street: A Magazine of Public Affairs, The Arts and Theology*, Vol 12, No 1 (January-February 2002): pp. 33-37.

ⁱⁱⁱ John Noonan Jr, 'An Almost Absolute Value in History'. In James E. White (ed) 1991, *Contemporary Moral Problems*, 3rd Edition, (St. Paul, MN.: West Publishing): p. 60.

^{iv} James E. White, 'Introduction' in James E. White (ed) 1991, *Contemporary Moral Problems*, 3rd Edition, (West Publishing: St. Paul MN.): p. 50.

^v It might be claimed that the foetus's dependency after a certain point is not a dependency upon the biological mother in particular, and that this is the decisive matter for whether the mother should be permitted to end its life via TOP. However, the argument rarely takes that form, and it is unclear whether this is what the opponents of abortion are suggesting.

^{vi} See also Joel Feinberg, 1984; Peter Singer and Helge Kuhse, 1986; Bonnie Steinbock, 1992.

^{vii} Mary Anne Warren, 'Abortion', in Peter Singer (ed) 1993, *A Companion to Ethics*, (Cambridge, MA: Blackwell): pp. 308-9.

^{viii} *Ibid*: p. 309.

^{ix} For discussions of personhood see, for example, Michael Tooley, 'Abortion and Infanticide', *Philosophy and Public Affairs*, 1972, revised version in Feinberg (ed.) 1973, *The Problem of Abortion*, Belmont, CA; and 'Personhood' in *A Companion to Bioethics*, Edited by Helga Kuhse and Peter Singer, 2001, (Oxford: Blackwell Publishing): pp. 117-126.

^x See for example Peter Singer, 1993, *Practical Ethics*, 2nd Edition (Cambridge: Cambridge University Press), especially Chapter 6, 'Taking Life: The Embryo and the Fetus'.

^{xi} In *Philosophy and Public Affairs*, I: I (Fall 1971): pp. 47-66.

^{xii} Modified from Peter Singer, *Practical Ethics*, *op. Cit*: p. 146.

^{xiii} Some philosophers have questioned the analogy between the violinist and abortion by claiming that it overlooks the unique and significant relationship between the woman and foetus, a relationship not had to the violinist. It is claimed that this distinct relationship establishes a special moral responsibility on the part of the woman, and makes it justifiable to demand considerable sacrifices of her. For Thompson and others, however, the presence of a biological relationship is not sufficient to establish moral responsibility, and in cases of



unwanted and unintended pregnancy a woman may justifiably refuse to assume a moral responsibility towards the foetus.

^{xiv} More will be said presently about consequentialist views on abortion.

^{xv} A similar point was recently (and popularly) made by Senator Hillary Rodham Clinton in a speech reported in an editorial in *The New York Times*, January 30, 2005; sourced at <http://www.nytimes.com/2005/01/30/opinion/30sun2.html?ex=1108098000&en=643cca242bf2babd&ei=5070>

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