

Abortion and Health Care Ethics

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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.¹

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.²⁻⁴

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,

Original publication details: John Finnis, "Abortion and Health Care Ethics," pp. 547-57 from Raanan Gillon (ed.), *Principles of Health Care Ethics*, Chichester: John Wiley, 1994. Reproduced with permission from John Wiley & Sons.

Bioethics: An Anthology, Third Edition. Edited by Helga Kuhse, Udo Schüklenk, and Peter Singer.
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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.⁵ (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.^{3, 6, 7} 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.⁸ 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.⁹ 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.¹⁰ 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 reflects¹¹ (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.¹⁴ 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.^{15–17} 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.¹⁸
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.^{19, 20} 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.²¹ (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.^{22,23}

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.²⁴

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.²⁵ 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.^{26–28}

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.

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