

How Should We Live?

Everyday ethics in Aotearoa New Zealand

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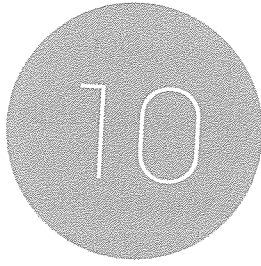
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Abortion

GERALD K. HARRISON

Introduction

It comes as a great surprise to many — including myself and all of those I have spoken to who have had abortions — that apart from under very exceptional circumstances, abortion is actually illegal in New Zealand.

According to section 187A(1) of the 1961 Crimes Act, abortions under 20 weeks' gestation are criminal unless two consultants sincerely believe that one of the following conditions applies:

(a) that the continuance of the pregnancy would result in serious danger (not being danger normally attendant upon childbirth) to the life, or to the physical or mental health, of the woman or girl; or

(aa) that there is a substantial risk that the child, if born, would be so physically or mentally abnormal as to be seriously handicapped;
or

(b) that the pregnancy is the result of sexual intercourse between —
a parent and child; or
a brother and sister, whether of the whole blood or of the half blood; or
a grandparent and grandchild; or

(c) that the pregnancy is the result of sexual intercourse [with a guardian] or

(d) that the woman or girl is severely subnormal . . .

Yet despite this, New Zealand has a rate of abortion comparable to that found in countries in which there is a right to an abortion, such as the United States and Canada. This is because in the vast majority of cases (98 per cent) consultants deem that condition (a) is met, because they believe — or say they believe — that continuing the pregnancy would pose a serious danger to the mental health of the pregnant person of a kind that would normally not be attendant upon childbirth. So, note, risks to the mental (and physical) health of the woman — even very serious ones — that normally attend childbirth do not count. New Zealand law (rather astonishingly) insists that a pregnant woman *must* run those risks, no matter how great they may be or become.

It would seem, then, that where abortion is concerned there is a significant mismatch in New Zealand between the law and practice. This was certainly the view of His Honour Miller J, who said in 2008 that ‘there is reason to doubt the lawfulness of many abortions authorised by certifying consultants’.¹ That is, the spirit of the abortion law seems not to be being upheld. Why might this be?

Normally when this happens it is because the moral values and norms to which the law in question is attempting to give expression are not, in fact, endorsed by those charged with upholding the law (in this case, the certifying consultants). The purpose of the law was, as Dixon puts it, ‘to respect the rights of the unborn child’.² The law, then, gives expression to the idea that fetuses have a significant moral status, and that as a result their destruction is morally bad, and thus its occurrence requires justification. And the law expresses, as well, the idea that no such justification will exist unless the woman’s situation

satisfies one of the elements set out in section 187A(1). By contrast, it would seem most certifying consultants believe either that the fetus does not have a significant moral status (and thus the demand for justification is misguided), or else that, despite its significant moral status, a woman does not, in fact, have to satisfy conditions set out in section 187A(1) in order to be justified in aborting.

Who is right? Does the fetus have a significant moral status such that its destruction is morally bad? And even if it does have a significant moral status, does its destruction require the kind of weighty justification the law in New Zealand supposes it to? This chapter will explore these philosophical issues.

We will see that there is good reason to believe that the fetus probably does acquire a significant moral status at some point, although there seems no way of establishing beyond any reasonable doubt exactly where this point may be. There is a case for believing it begins at conception, but there is also a case for believing it begins at some other point prior to birth. We will also see that even if the fetus does have a significant moral status — indeed, if it has a moral status equivalent to our own and from conception — it is highly unlikely that its destruction requires satisfying the conditions laid down in New Zealand law.

Method

When it comes to an emotionally charged and very personal issue such as abortion, there is a risk that an analytic philosopher's armchair-based approach will come across as almost offensively detached. It 'rips it out of the context of women's lives' as American philosopher Kathryn Addelson has put it.³ To some extent this is unavoidable. But I would want to stress before I begin that I believe there is a limit to how far the kinds of reflection I am about to engage in can take us. In most ethical matters there is, I think, a role for intuition and judgement that will normally trump the deliverances of our best theorising.

For an analogy: my house needs painting, and I am wondering what colour to have it painted. In trying to reach an informed judgement, I engage in thought experiments — I do my best to imagine it painted different colours and see how it looks in my mind's eye, so to speak. When I imagine it painted black, it seems to look horrible. That, I think, is good evidence that it will probably look horrible (and it is why I am not going to have it painted that colour). However, if someone were secretly to paint my house black and I found that, much to my surprise, it looked very nice, this would be trumping evidence that it doesn't look horrible after all. It would — I think quite obviously — be misguided for me to defer to my earlier theory that it would look horrible, in defiance of how it is actually looking. Reality, we might say, always beats theory.

Applying this to the ethics of abortion: the reflections that follow can be compared to my thought experiments about the colour of my house. I will be imagining a variety of cases — and inviting you to imagine them as well — and forming judgements about them. But reality is always going to win. And in this case it is those who actually find themselves pregnant and confronting the issue of abortion who constitute reality. As such, I believe the intuitions and judgements of people so situated have the power to trump the deliverances of any and all of the reflections that follow.

A quick word about terminology: *conception* marks the point at which the spermatozoon combines with the ovum to produce a single cell *zygote*. This *zygote* contains the full genetic code. After the cell begins its process of division, it officially becomes known as an *embryo*. After eight weeks, the embryo is designated a *fetus*. However, for ease it has become commonplace in discussions of the morality of abortion for the term 'fetus' to be used as the general term for the developing entity throughout all its stages up to birth. I will follow that convention in this chapter.

What makes us morally valuable?

When it comes to any debate over a controversial issue, it is useful to find some common ground from where to begin. In respect of the debate over abortion, disputants on all sides are going to agree that we — fully grown adult humans, that is — possess moral value, and that destroying one of us would be a bad thing. If we can get clearer about why we have moral value, this will give us some insight into whether and why a fetus does.

USEFULNESS

Most of us are useful to others and to our communities. Is our usefulness to others the source of our moral value? It does not seem to be, for I can easily imagine discovering that I am useless yet my reason assures me that I would still be morally valuable under those circumstances. Similarly, I can imagine encountering someone who has no useful skills, and once more my reason tells me that I still owe this person respect and a degree of goodwill, and that it would be bad, other things being equal, to destroy them.

If your reason concurs, then it would seem we are morally valuable *irrespective* of our usefulness to others, rather than because of it. This is not to deny the moral importance of being useful to others and one's community — these are obviously morally important in their own right — it is just to deny that our moral value is grounded in such matters. This is significant where fetuses are concerned, for they cannot put up shelves, tarmac drives, write entertaining books or educate anyone. They are, in relevant respects, useless. Yet it would seem we cannot on this basis conclude that they lack moral value.

RELATIONSHIPS

We are embedded in a network of relationships of one sort or another. We are liked and valued. Are these relationships the source of our

moral value? Again, it does not seem to be so, for I can easily imagine not being liked or valued by anyone yet my reason assures me that I would still be morally valuable. Similarly, when I imagine encountering someone who is not liked or valued by anyone — a hermit, say — my reason tells me that I still owe this person a degree of goodwill and respect, and that destroying them would be bad.

If your reason concurs, then it would seem we are morally valuable *irrespective* of the relationships we stand in to others, rather than because of them. Once more, this is not to deny the moral importance of the relationships we stand in; far from it — they can dramatically alter what we are morally entitled to do to someone, as we shall see later. It is just to note that the moral value of *us* does not seem to be grounded in these relationships. Again, applied to the fetus this means that the fact a fetus may be valued by no one — indeed, may even be positively disvalued — does not, in and of itself, entail that the fetus lacks moral value.

SHAPE, SIZE AND APPEARANCE

What about our physical features? Are any of these responsible for our possession of moral value? It does not seem so. I can easily conceive of having radically different physical features, and it seems to make no difference to my moral value. With apologies to Kafka, I can imagine waking one morning from uneasy dreams to find myself transformed into a giant insect. And when I do, my reason assures me that I would still be owed respect and goodwill, and it would still be bad — other things being equal — to destroy me, despite my radically altered physical form. In fact, I can go one step further and imagine that I have no physical features whatsoever — that I am a disembodied immaterial entity — and my reason assures me that, even under these circumstances, I would be morally valuable and my destruction would be bad. (Yes, it is hard to see *how* I could be destroyed if I am an

immaterial entity, but that's beside the point, for it remains clear that my destruction — however it might be achieved — would be bad.)

If your reason concurs, then it would seem that we are morally valuable *irrespective* of any and all of our physical features. Indeed, we seem to be morally valuable irrespective of whether we even have any. Applied to a fetus, this means that the many ways in which it is radically physically dissimilar to one of us does nothing, in and of itself, to imply that it lacks the same moral value as one of us.

BEING HUMAN

What about our status as humans? Is that, perhaps, why we are morally valuable? Once more, it does not seem so. I currently believe I am genetically human, although I have never had this officially verified. But I can imagine finding out that I am actually genetically something else — an alien species maybe, or a curious kind of giraffe. My reason assures me that this, too, would make no difference to my moral value. I am sure yours does, too. (Just imagine that genetic tests reveal that *you* are not a human — is it now okay to destroy you?) Similarly, I can imagine encountering someone who, it turns out, is genetically not human — a real Dr Spock, say — yet my reason assures me that this person is owed respect and goodwill, and that it would be bad, other things being equal, to destroy him.

If your reason concurs, then it would seem that we are morally valuable irrespective of our human status, rather than because of it. Applied to the fetus, all too often it is thought that all one needs to do to establish the moral value of a fetus is to demonstrate that it qualifies as a human. The above reflections imply that this is a mistake (one noted by many of those who write on this topic, for instance see Marquis⁴ and Tooley⁵). We are morally valuable, it would seem, *irrespective* of whether we are genetically human, rather than because we are genetically human.

HISTORY

What about our histories? As Annette Baier puts it, 'a person has a life *history*, and that a people collectively have a history depends upon the humbler fact that each person has a childhood in which a cultural heritage is transmitted'.⁶ This is true, yet I can imagine it not being: I can imagine I popped into existence a few moments ago and all my memories to the contrary are false. As Bertrand Russell famously noted, 'there is no logical impossibility in the hypothesis that the world sprang into being five minutes ago, exactly as it then was, with a population that "remembered" a wholly unreal past'.⁷ And when I imagine this possibility, my reason once more assures me that I would still matter morally under such circumstances. It would still be bad to destroy me, despite my lack of a history. Similarly, when I imagine encountering someone who has popped into existence, fully formed, a moment or two ago, my reason tells me that I owe this person a degree of respect and goodwill, and that destroying them would be bad.

If your reason concurs, then it seems that our histories are not the source of our moral value. Applied to the fetus, this means that its history is not going to affect its moral value either. For instance, a fetus that came into being as a result of an act of rape is going to be no more or less valuable than one that did not.

LOCATION

What about our location? I am located in Palmerston North, in New Zealand, on the planet Earth. Does this have anything to do with my possession of moral value? Am I morally valuable *because* I am in New Zealand? I think the answer is clear enough: no. It is morally bad for me to be destroyed in Palmerston North, and it is just as morally bad for me to be destroyed in Port Moresby, or on the Moon.

If your reason concurs, then it would seem we are morally valuable *irrespective* of our geographical location, rather than because of it.

Applied to the fetus, this means that the fact it is located inside a person does not, in and of itself, have any bearing on its moral worth.

REASON

What about our capacity to reason? Might this be responsible for our moral value? Virtually all of us possess reason. If you are reading this book, you certainly do. We can also note that our reason confers on us an important kind of free will. For our reason allows us to recognise and weigh reasons for action and make decisions on this basis. That is, we can follow reason rather than be mere victims of whatever desires arise in us. This kind of free will is almost universally — and perhaps inescapably — recognised to be morally valuable. And this has resulted in some philosophers, most famously Immanuel Kant, thinking that it is possession of this kind of free will that transforms us from mere things into morally valuable persons who are now entitled to respect and goodwill and whose destruction would be bad.

If Kant and others are right about this, then it is significant where the moral value of the fetus is concerned. For fetuses fairly obviously lack the power of reason. However, it seems to me that possession of reason, valuable though it is, is not necessary for possession of moral value. For I can imagine the possibility that one day I will lack reason, and when I do my current reason assures me that I would still have moral value under those circumstances. Similarly, I can imagine encountering someone who lacks all reason — someone with advanced dementia, say — and when I do my reason tells me that I would still owe that person a degree of respect and goodwill, and that it would be bad to destroy them. If your reason concurs, then we have good evidence we are morally valuable *irrespective* of our possession of reason, rather than because of it.

PREFERENCES

What about the fact that we have preferences? There are things I want to do and be, projects I want to bring to fruition, places I want to go, states I wish to be in, and so forth. These are all preferences. Perhaps it is these that make me morally valuable? Again, there are some philosophers who think this is indeed the case. Contemporary philosopher Michael Tooley, for instance, believes that something can only be said to have a 'right to life' if it 'is capable of desiring to continue existing as a subject of experiences and other mental states'.⁸

Perhaps these philosophers are correct, in which case it would follow that if fetuses lack preferences (as seems likely), then they lack moral value. (And Tooley does conclude that fetuses — and even babies — lack a right to life.) But personally, I have my doubts. For I can imagine coming to lack any preferences; that is, I can imagine coming to be in the kind of state that Buddhists seek to achieve, a state of inner calm free from desire. And when I imagine this possibility, my reason assures me that I would still be morally valuable under those circumstances. And I think it would be bad to destroy meditating Buddhists who, because they are meditating, lack any preferences.

If your reason concurs, then it would seem that we are morally valuable *irrespective* of whether we have any preferences, rather than because we do. Again, this is not to deny the moral significance of our preferences, or to deny that they can affect dramatically what we are entitled to do to someone. It is just to note that our moral value does not seem to be due to our having preferences.

PLEASURE AND PAIN

What about our capacity to feel pain and pleasure? Is this the basis of our moral value? This view has had some important defenders. As the great Jeremy Bentham memorably expressed it: "The question is not, Can they reason? Nor Can they *talk*? But, *Can they suffer?*"

If Bentham is right, then this has important implications regarding the moral status of fetuses. For if it can be established that, at some point in their development, fetuses can feel pain, then this would be sufficient to establish their moral worth at that point.

But without denying the moral importance of pleasures and pains themselves, they do not seem to be the source of our moral value. For when I imagine being incapable of feeling pleasure or pain, my reason continues to tell me I would be morally valuable under those circumstances. I imagine your reason will tell you the same about you. Just imagine that the boffins invent a drug that, upon ingestion, makes one incapable of feeling pain or pleasure. Would taking it render you value-less such that destroying you would now not be bad? No, obviously not. So, we appear to be morally valuable *irrespective* of whether we can feel pleasure and pain, rather than because we can.

CONSCIOUSNESS

What about raw consciousness itself? After all, it is in virtue of being conscious that there is 'something it is like' to be me. And it is because you are conscious that there is something it is like to be you.¹⁰ Our consciousness gives us a perspective onto the world that we, and we alone, occupy. Is it this profoundly strange feature of us that is responsible for our moral value?

Some would say so. But I am suspicious. I believe I am often unconscious (when I am asleep but not dreaming, for instance). Yet my reason assures me that I am still morally valuable during these times. Likewise, I believe others are often unconscious, yet my reason tells me it would still be bad to destroy them during these times. If your reason concurs, then we have good grounds for believing that our consciousness is not the ground of our moral value.

POTENTIAL

What about potential? Anything I actually have, I can potentially have. Perhaps I am morally valuable because I am *potentially* conscious, *potentially* rational, *potentially* useful, *potentially* valued, and so on. If so, then as a fetus also has all of these potentialities, it, too, would be morally valuable.

But on reflection I find this quite implausible. (See Mary Anne Warren, who thinks so, too.)¹¹ Not because potential cannot confer value on something — I think it can — but rather because it does not seem to be responsible for the degree of moral value we actually possess. Consider a beautiful oak tree and an acorn. The beautiful oak tree is plausibly a morally valuable thing, and wantonly destroying it would be bad. An acorn is a potential beautiful oak tree. Now, perhaps wantonly destroying an acorn is bad, too, but any badness it has pales by comparison to the badness of destroying the tree. So, the moral value of the oak tree cannot plausibly be said to reside in its 'potential' to be an oak tree, for that is something it has in common with the acorn.

Or consider a wonderful painting and a canvas and some pots of paint. The wonderful painting plausibly has some moral value such that wantonly destroying it would be bad. The blank canvas and the pots of paint are potentially a wonderful painting. Yet destroying them seems nothing like as bad as destroying the painting.

Note, as well, that I am potentially many bad things. I am potentially a cruel and heartless murderer (as are you). I am potentially someone who deserves to come to great harm. But clearly my potential to be these things does not mean that I actually have the worth of a cruel and heartless murderer, or actually deserve to come to great harm. So when it comes to the moral value I actually appear to possess, I do not believe that my potentials are its source.

IMMANENT VALUE

Your reason may not have concurred with mine all the way to this point. But if it has, then I think the conclusion we should draw is that our moral value appears not to be grounded in any of our features. Rather, our moral value is something we seem to possess immanently or intrinsically. That is, it is I, the object that bears all of the features listed above, who is morally valuable. The features themselves may, in many cases, have moral value in their own right and may even add to mine. But they are not the ultimate source of my value (not all of it anyway) any more than they are the source of me.

To be clearer, note that I myself do not appear to be reducible to any of the features listed above. (And the same, I think, is going to be true of you as well.) That is, although I have uses, I am not a set of uses; I have relationships, but I am not a set of relationships; I have a set of physical features, but I am not a set of physical features; I have a history, but I am not a history; I have preferences, but I am not a set of preferences; I have conscious states, but I am not a bundle of conscious states; and I have potential, but I am not my potentials. These are all things I have, but none of them compose me.

It is this mysterious *I* — this *I* who has the features above yet who is not to be confused with any of them — who has moral value. This value can therefore be said to be *immanent* or *intrinsic*, because it does not derive from anything about me, but inheres in me. To put it more colloquially: I am morally valuable because I am morally valuable, and that's that. And the same, I think, is true of you as well.

Some may find this an unsatisfying conclusion. But note, if you think that our moral value derives from, say, our consciousness or some other feature, then to the question 'Why does consciousness (or whatever) have moral value?', you too will have to say, 'It just does, and that's that.' That is, you will have to insist that the moral value of consciousness (or whatever you ground our value in) is intrinsic.

So the notion of intrinsic value seems indispensable. The question is not, then, *whether* anything has intrinsic value, but *what* has intrinsic value. My own reflections above — and yours, too, if your reason has concurred — implies that *we* ourselves are among the things possessing intrinsic value.

The moral value of a fetus

So we — fully fledged adult humans — appear to possess our moral value intrinsically or immanently. Let's assume that is true, anyway. What does it imply where the value of a fetus is concerned? Well, it depends on what we, these bearers of immanent moral value, are. If we are our physical bodies (not a view I hold), then because our physical bodies were once fetuses, we would have to conclude that fetuses possess intrinsic moral value and that they possess it from conception. For it was at conception that there came into being an identifiable object, with a full genetic code, that developed into our present bodies. Our fetus was just our present body in its earliest stage. To insist we came into being at some other point would seem arbitrary. So, in the absence of good reason to think otherwise, if we are intrinsically valuable — and it seems we are — and are identifiable with our physical bodies, then fetuses have intrinsic moral value from the moment of conception.

Note, this would not follow if our moral value derived from our being conscious, or from our having preferences, or from being able to feel pleasure and pain. For then, although it would still be true to say that our physical bodies came into being at conception, it would *not* be true to say that our moral value began at that point. Our moral value would begin at the point at which we acquired the value-grounding attributes (something about which there is no consensus at present).

It would also not follow if, rather than being our physical bodies, we are something else entirely — an immaterial soul, say. Historically, this

has been the most common view about what we are (and it probably remains the most common view among people generally, now and for time immemorial). Among philosophers it is known as 'substance dualism', because it is the view that there are two fundamentally different kinds of substance in the universe. There are physical substances, which have features such as size, shape, location, colour. These are investigated by the natural sciences. But then there are also size-less, shapeless, location-less, colour-less objects such as, well, *us*. These cannot be studied by the natural sciences. On this view, I am an immaterial entity and not my body at all. It is *my* body in that it is the material entity with which I am directly interacting. I am seeing, hearing, touching, smelling and tasting through it. But I am not identical with it any more than I am identical with my car when I am driving it.

Substance dualism is not a very popular view among contemporary philosophers. But that may change — it used to be the dominant view, and has enjoyed support from, among others, Plato, Descartes and Locke — and it has never been decisively refuted. It is, then, possibly true. And in fact, one of the reflections in the previous section seems to imply its truth. For if we are morally valuable irrespective of whether we have a physical body — as seems to be the case — then the simplest explanation of this is that it is because we, the bearers of moral value, are not our physical bodies.

But anyway, let us imagine that substance dualism is true and that we are immaterial entities temporarily residing in physical bodies. Well, then it is our souls that bear intrinsic value, not our physical bodies. And so the fact that our physical bodies began to exist at conception would not entail that our souls came into being at that time. In turn, this would mean that fetuses are not necessarily intrinsically valuable from conception, unless, that is, the soul enters at that point. That is to say, the relevant question where the value of the fetus is concerned, if substance dualism is true, is when the soul enters it.

On this matter, just as with the matter of when the fetus acquires consciousness or can begin to feel pain, there is no consensus. For instance, in the medieval period *quickenning* — the point at which the woman can feel the independent movements of the fetus — was thought to indicate the arrival of the soul. But that is a crude guide, and is hardly conclusive evidence either way, for it seems entirely possible that a fetus could move by itself without there being a soul present, and entirely possible for a soul to be present in an unmoving fetus.

The fact is, detecting when a soul is present in a physical body is going to be as fraught with difficulties as detecting when consciousness is present or when pain can be felt. For just as there is no scientific instrument that can detect souls, there is no scientific instrument that can detect consciousness — or conscious states such as pain — either. The best we can do is simply infer their presence on the basis of the presence of certain physical states or systems. Whatever indirect evidence there may be for the presence of consciousness in a fetus — detectable brain waves, for instance — will also be indirect evidence for the presence of a soul. So, if we are souls rather than bodies, then the question of when the fetus possesses moral value becomes relevantly analogous to the question of when the fetus possesses other features, such as consciousness. These, unfortunately, seem to be matters that are destined to remain unresolved.

So, where the moral value of fetuses is concerned we are in a rather unhappy and frustrating situation. If the above reflections are right, we can reach no certain conclusion about when fetuses come to have moral value. If we are our physical bodies, then if we are intrinsically valuable the fetus will have intrinsic value from conception. However, it is at present an open question whether we *are* our bodies. Substance dualism — the view that we are not our bodies, but are immaterial souls — has not been refuted. Indeed it has not even been established with certainty that the view that we are our bodies is coherent: some

philosophers deny that it is even possible that conscious states could be states of a physical thing. So, the fact is that at present we cannot reliably conclude that the fetus has moral value from conception.

Perhaps, instead, moral value arises with consciousness or the capacity to feel pain, or the capacity to form preferences — possibilities that I personally find dubious, but that many endorse. Well, in that case the fetus will possess moral value at the point in its development when it acquires these features. But again, it is at present an open question when exactly this is, for the features in question are not ones we can reliably detect.

Finally, perhaps we — the bearers of intrinsic moral value — are immaterial souls temporarily resident in our bodies. In that case fetuses will have moral value from the point at which the soul is present. However, we cannot at present establish with certainty when this is the case, any more than we can reliably establish when consciousness arises. Thus, frustratingly it looks as if we are going to have to conclude that it is simply unclear when, in the process of fetal development, a fetus acquires intrinsic moral value.

Note, however, we probably do have to conclude that fetuses acquire intrinsic value at some point in their development. This is because otherwise the irrelevance of location means that we will be forced to conclude that newly born babies lack intrinsic moral value. If you agree that newly born babies have moral value — and it seems self-evident to me that they do — then the irrelevance of location means that you should agree that a fetus that is just about to become a newly born baby has intrinsic moral value as well. Thus, fetuses must acquire moral value at *some* point. The problem is that there is little prospect of us being able to determine with any reliability exactly when.

Given the indeterminate nature of this conclusion, what should we do? Well, for the sake of argument — and it really is only for the sake of argument, for only *one* view canvassed above has this upshot

— let us assume that fetuses have moral status from the moment of conception. In other words, let us assume that from conception a fetus has the same basic intrinsic moral worth as one of us. What follows? Does it follow — as New Zealand law currently seems to assume — that abortions are almost always immoral and are only justified under the most extreme circumstances?

Thomson's violinist

We are now assuming — purely for the sake of argument — that from conception the fetus has the same intrinsic moral value as one of us. Surely, if fetuses have the same intrinsic moral value as you and me, then their destruction is only going to be justified under the most extreme circumstances — circumstances in which another person's physical and mental health are in jeopardy?

Let us test that thesis. Imagine the following scenario conceived of by philosopher Judith Jarvis Thomson:

You wake up one morning and find yourself back to back in bed with an unconscious violinist. A famous unconscious violinist. He has been found to have a fatal kidney ailment, and the Society of Music Lovers has canvassed all the available medical records and found that you alone have the right blood type to help. They have therefore kidnapped you, and last night the violinist's circulatory system was plugged into yours, so that your kidneys can be used to extract poisons from his blood as well as your own. The director of the hospital now tells you, 'Look, we're sorry that the Society of Music Lovers did this to you — we would never have permitted it if we had known. But still, they did it, and the violinist now is plugged into you. To unplug you would be to kill him. But never mind, it's only for nine months. By then he will have recovered from his ailment, and can safely be unplugged from you.'¹²

Is it not obvious that you may unplug yourself? It would, as Thomson says, be 'very nice of you' if you stayed.¹³ But the idea that you are morally obliged to stay and would be doing something very immoral if you left just seems, well, incorrect. Certainly my reason says, and says loud and clear, that you are perfectly within your rights to unplug yourself, even though this means that the needy violinist — someone who is as intrinsically valuable as the next person and is wholly innocent — will die.

Note, there is no suggestion that the violinist lacks intrinsic value, or that your value exceeds that of the violinist. No, the violinist has intrinsic moral value and his death will be a very bad thing. The point, though, is that, bad though it is, it does not entail an obligation for you to give him nine months of your life.

We can now apply this lesson to fetuses. Fetuses are intrinsically morally valuable (we are assuming). And they need the use of a woman's womb if they are not to die, something that would be very bad. Nevertheless, this does *not* entail that the woman is morally obliged — at nine months of great inconvenience and pain to herself — to grant the fetus the use of her womb for that time. True, it is not the fetus's fault that it depends on a woman's womb for its survival. But then it was not the violinist's fault that he depends on your kidneys for his survival. If you are morally entitled to unplug yourself from the violinist, then it would seem that women *are* entitled to abort fetuses from their wombs, *even if the fetus has the same intrinsic moral value as one of us*.

Note as well, you do not have to show that your physical or mental health is seriously jeopardised by your staying for nine months before you are entitled to unplug yourself from the violinist. Indeed, to make such a demand would be utterly unreasonable. Even if staying plugged into the violinist for nine months would in no way jeopardise your health — mental or otherwise — you are clearly still entitled to leave,

and it would be those who might try to prevent you doing so who would be in the wrong.

It might be objected that this analogy is not perfect, for in Thomson's violinist case you have been kidnapped. Thomson's violinist case is, then, more closely analogous to a case of pregnancy by rape, in which one is forcibly impregnated, rather than the more usual case of voluntary sexual relations that happen to result in impregnation. This is true. But it still implies that it can be morally permissible for a person to abort a fetus if rape is responsible for its presence in you. Plus we can easily adjust the scenario so that it becomes more closely analogous to the more usual cases of pregnancy. And when we do, unplugging seems to remain something one is quite obviously entitled to do.

Imagine, for instance, that you are on your way out to what you believe will be a fun evening at the cinema. You are running late, however, and need to take a short-cut down an alley way if you are to arrive at the cinema on time. You know that the alley in question is one in which the Society of Music Lovers hang out, and that they occasionally kidnap people who walk down it and plug their kidneys into those of a needy musician. You decide, nevertheless, to take this risk. You get unlucky, and wake up to find yourself plugged into a needy violinist. Once again, the doctor explains the nature of your situation. May you unplug yourself?

Well, speaking personally, my intuitions are clear: yes, of course you may. Again, very generous of you if you stay for nine months, but there is no moral obligation for you to do so. And certainly it would be the doctor — and not you — who would be being unreasonable and immoral if he insisted that you must stay unless or until you can show that your staying will seriously jeopardise your mental and physical health beyond the ways in which this kind of procedure can normally be expected to jeopardise them. Yet this case seems

relevantly analogous to a case in which someone wanted to have sex, but found themselves without protection and decided to run the risk of pregnancy and got unlucky.

If that is correct — that is, if the analogy holds up — then it seems that in the vast bulk of cases of pregnancy for which abortions are sought, there would be nothing immoral about these abortions. Indeed, the case implies that New Zealand law is seriously immoral in insisting that those who wish to abort under these circumstances must demonstrate that their mental and physical health is seriously in jeopardy (beyond what could normally be expected in a pregnancy) before they are allowed to do so.

Another variation: imagine you find out that there is a violinist who, for blood-type reasons, needs the use of your kidneys (no one else's will do) for nine months if he is to live. You positively decide to give him the use of them. However, after you arrive and get plugged in, you have a change of heart and decide you would rather leave. Now, my own intuitions say that you are perfectly within your rights to do so. Indeed, even if you have a change of heart after, say, eight months of being plugged into him, I think you are entitled to leave. (Although at this point it seems a little unseemly to do so, but not so much that you must stay.) After all, it was generous of you to plug yourself in *at all*. Certainly, it strikes me as immoral to insist that you stay unless or until you can demonstrate that staying would jeopardise your mental or physical health more than could normally be expected in the course of this kind of procedure. Again, if your intuitions are anything like mine, then it would seem that New Zealand law is currently immoral, and that the consultants are therefore right not to adhere to the spirit of it.

Perhaps my intuitions about some of the cases above are not shared by everyone. Thomson herself thinks her thought experiment — and numerous others she provides — leaves open that 'there are *some*

cases in which the unborn person has a right to the use of its mother's body, and therefore *some* cases in which abortion is unjust killing'.¹⁴ I think that may be correct. However, I am inclined to think that given the burdensome nature of pregnancy and birth, very few abortions are going to qualify as unjust killings, or at least as unjust killings that anyone is entitled to prevent from occurring. For there seems to be a real limit to how much altruism morality can demand from us, and hours of torturous pain seems to be beyond that limit under most circumstances.

For example, imagine once again you have tried taking the shortcut to the cinema and, being unlucky again, you awake to find yourself plugged into another violinist. This time the doctor informs you that you are needed for only a short while — a matter of hours, not months. However, the violinist will die unless either your stomach is slit open or you push something the size of a melon through your vagina (or, if you do not have one of those, imagine that preserving the violinist's life requires that something the size of an apple needs to be forced down your penile urethra). What now? Are you morally obliged to agree to one of those things happening? Would it be okay to insist that you do these things unless or until you can show that they will jeopardise your physical and mental health beyond what they could normally be expected to do? Well, I do not think so. I think you are perfectly entitled to unplug yourself and run away under those circumstances. If your intuitions concur, then I think this gives us good reason to think virtually all abortions are ones it is morally permissible for a person to have.

Now imagine that because of the way you have been hooked up to the violinist you are unable to unplug yourself. Indeed, you need the help of someone who specialises in unhooking people from violinists, otherwise you will almost certainly do yourself a serious injury. Should such third parties be prevented from being able to

offer you their assistance unless or until they certify that they believe your mental or physical health is seriously at risk, beyond what could normally be expected in the course of being plugged up to a violinist? Well, I think quite obviously that would be outrageous. *Of course* a third party should be allowed to help you, even if neither your physical nor your mental health was in jeopardy. Indeed, it seems to me plain enough that it would be positively immoral to prevent them from offering their help. If that is correct, then this just underlines that the laws on abortion currently on the books in New Zealand are positively immoral.

Relationships

I noted earlier that, although we are embedded in networks of relationships to others, these relationships are not plausibly the basis of our moral value. Nevertheless, relationships can be morally valuable, and can also dramatically affect what we are morally entitled to do to another. Here's another example to illustrate, this time one originally conceived by the philosopher Robert Nozick.¹⁵

I am temporarily stuck at the bottom of a deep and narrow well, and an innocent person is falling towards me. I have in my possession a vaporiser. I know that if I do nothing, then the person will land on me, killing me. However, my body will break their fall and they will survive unscathed. On the other hand, I could vaporise them before they reach me.

It is clear enough to my reason that I am morally entitled to vaporise them. It would be very nice of me to lay down my life for theirs, but I am under no moral obligation to do so. It is not that I think I am intrinsically more valuable than they are. After all, I believe they would be morally entitled to vaporise me if our roles were reversed. It

is just that they have come to stand in a life-threatening relationship to me, and this has generated in me an entitlement to vaporise them. (An entitlement I would not have in other situations — vaporising people is seriously wrong in the main, of course.)

The same would be true, I think, if a crate containing, say, 10 tiny innocent people was falling towards me. I could lay down my life, knowing that my body will cushion the crate sufficiently that the 10 tiny people will survive unscathed, or I could vaporise the crate. I think — and I suspect your intuitions will agree — I am entitled to vaporise the crate. Again, it is not that I think I am morally more important than 10 tiny people, for again I think that if I was in the crate with nine others falling towards a person, that person would be entitled to vaporise the crate. It is the life-threatening relationship that is doing the moral work and rendering permissible something — the destruction of 10 innocent lives — that would be extremely wrong in other contexts.

But what if it is my partner who is falling towards me, and I know this? What now? Well, now I think I probably ought to take the hit. She's my partner; I owe her that. I am not, in this scenario, entitled to vaporise her. Legally, I may be. Morally, I am not. And clearly, in this case, it is the relationship in which I stand with her that is making this difference, for there is no other difference between this case and the others. There is no difference in her intrinsic value and mine, or anyone else's. I certainly do not believe her moral value eclipses that of 10 people. And if she was falling towards someone else, then they would be entitled to vaporise her. It is because — and only because — she is falling towards me, her partner, that I am morally obliged to take the hit. So, the relationships we stand in relation to others can alter — and alter dramatically — what we are morally entitled to do.

▶ Returning to fetuses. Those who conceive fetuses are causally responsible for the existence of the fetuses in question. That is a kind

of relationship, one of production. Plus, the fetus is *in* someone, and that person — the woman — comes thereby to develop a relationship with the fetus that is inside her. If relationships can affect what we are morally entitled to do to another, might not these relationships affect what the woman may do to the fetus?

Without denying the possibility that they may do so, I think further reflection on variations of Thomson's violinist case implies that they do not actually do so — or do so sufficiently — in the relevant cases. For instance, imagine once more that you wake up plugged into the violinist. This time, however, the doctor informs you that he is your long-lost son whom you put up for adoption several decades ago and have had no contact with since. Are you entitled to unplug? Or is the doctor now entitled to make you stay — and have you ultimately pass a melon through your vagina or slit open your stomach — until or unless you can show that staying will imperil your mental or physical wellbeing beyond what could normally be expected?

I think the fact the violinist is your son does make a moral difference. That is my intuition, anyway. Yet not so much of one that you are not entitled to unplug. Plus the differences cut both ways. The violinist — unlike a fetus — is already invested in a life. The violinist is analogous, in some ways, to a person who is partway through watching a film. They are invested in the plot and want to know what is going to happen next. By contrast, the fetus is analogous to someone who is, at best, watching the trailers. The main feature has yet to start, and they are in no way invested in it. If the main feature does not start, this is not of a piece with stopping the film that the violinist is partway through viewing. The latter is much worse than the former.

To put it another way, the violinist's life is up and running, and is therefore something he has an interest in continuing. The fetus's life, by contrast, has not really started yet. This is not to deny that depriving it of its life is still bad. It is just to note that if — as my intuitions say

is the case — one is entitled to unplug from the violinist who is your long-lost son and is invested in a life, then *a fortiori* one is entitled to unplug from a fetus who is your son but has yet to become invested in a life.

One more observation. I was once a fetus and I am someone's son, and speaking on behalf of the fetus I once was, I would *never* want my mother to be made to go through nine months of great discomfort and hours of torturous pain in order to bestow a life upon it — a life it had yet to start really living, a life yet to be *this* life — if she had at any point not wished to. I think that is going to be true of most of us. Just imagine *you* need the use of someone else's kidneys and you awake one morning to find that someone has taken it upon themselves to plug you into your mother's kidneys and is now insisting that your mother must stay where she is — and ultimately have her stomach slit open or a melon passed through her vagina — so long as you remain hooked up to her. Wouldn't you be outraged at their temerity and insist they leave your poor mother alone and unhook you from her? And that's *now*, when you are invested in a life that you, hopefully, very much wish to continue.

This, I think, just underscores the ethically unobjectionable nature of virtually all abortions. After all, on one view of respect, we respect another when we treat them in ways to which they would have consented were they rational and fully informed. Well, I am now rational (to some degree) and far more informed than I was as a fetus. In this more rational and informed state I approve, retrospectively, of my mother aborting the fetus version of me, had she ever wanted to (and disapprove — in the strongest terms — of anyone having the effrontery to deprive her of that choice). If that is true of you, too, then chances are most abortions are likely to be precisely what the person who otherwise would have been brought into existence would have wanted. This suggests — and this will come as a surprise to many

— that *not* allowing the woman the choice to abort fails not only to respect her, it also fails to respect the fetus.

What about the ongoing relationship that woman may come to have with the fetus developing within her? Well, although it may be a very important and valuable relationship, I believe there are good grounds for being suspicious that it is of a sort capable of affecting radically what one's obligations and permissions are in respect of it. Return once more to the violinist. This time, imagine that it is a violinist you have read about in magazines and such like. Although you have never met at a personal level, you have seen him on TV. You are, then, abundantly well aware of his existence; however, he is totally unaware of yours. You have feelings and beliefs about him, but he has none about you. And now you have woken up to find yourself plugged into him. He is now physically present to you — he is lying on the bed next to yours and his kidney is now joined to yours — but he is unconscious, so you still cannot make him aware of your existence or interact with him at a personal level. Now, in some sense you have a relationship with the violinist. And it may even be said to be a very important and significant relationship. But does the existence of this relationship mean that you are now obliged to stay hooked up? Well, again my intuitions are clear: no, of course you may leave.

Perhaps it would be different if the relationship was not so asymmetric. For instance, when I imagine that the violinist was my close friend or partner, then, I think, the relationship I stand in relation to them does operate to make my staying morally obligatory. (Although even now I still think I would be *entitled* to leave — and that others are permitted to help me do so.) But if he is not yet my friend or partner, then, even if I know that he could become my friend or partner were he to live, my reason says that the absence of the actual relationship makes it morally permissible for me to unplug.

I stress again, this is not to deny the significance of asymmetrical

relationships. There is no suggestion in what I have just said that the asymmetrical relationship a woman may come to have with a fetus is irrational, or morally unimportant. It is just to note that such relationships do not yet seem capable of generating obligations and permissions in the way that symmetrical relationships do.

Dangers normally attendant upon childbirth

Finally, I want to look at the 'not being danger normally attendant upon childbirth' clause in the current law. It means that whatever dangers — no matter how great they may be — that are normally attendant upon childbirth are not ones that can serve to make an abortion legal. I think that upon a bit of reflection it becomes clear that this clause is radically unfair on those who are pregnant. As should be clear by now, I think the whole law on abortion is unfair — indeed, seriously immoral — but this clause is especially worrying. For note, there is no limit to the dangers normally attendant upon childbirth.

Historically, the risk of dying due to pregnancy was estimated to be approximately 1 in 100. But advances in medicine have meant that childbirth is nothing like as dangerous as it used to be, at least in New Zealand. (Needless to say, in many parts of the world it is as dangerous as ever.) Yet it is entirely possible that this could be reversed. That is, it is entirely possible for pregnancy to become incredibly dangerous. As the current law stands, this will not matter. For instance, if it became normal for, say, 90 per cent of pregnancies to result in maternal death, then the 90 per cent risk of death that you are running by being pregnant would not be allowed to serve as a justification for an abortion, for it would now be a risk 'normally attendant upon childbirth'. That, I suggest, is wholly unreasonable and makes no real sense.

It means that at present — where the normal risk of dying attendant upon childbirth is very low — if your pregnancy posed a 90 per cent chance of killing you, an abortion would be permitted (for now the risk