

KUITH MACKLIN: TO BE PUBLISHED IN  
THE ENCYCLOPEDIA OF BIOETHICS, 2<sup>ND</sup> EDITION<sup>1</sup>  
(NEW YORK: MACMILLAN PUBLISHING CO., FORTHCOMING).

(PK200) ABORTION: V. CONTEMPORARY ETHICAL ISSUES

DRAFT

00886

27.01

BISY

There is probably no issue in bioethics more controversial and more difficult to resolve than that of abortion. There are several reasons for this. The first is that unlike many ethical issues in biology and medicine, the abortion debate is not limited to scholars and practitioners but has engulfed the entire society in the United States. Candidates for public office feel compelled to take a stand on abortion. In the legal and regulatory sphere, there is constant activity in state and federal courts, in bills introduced into legislatures, and in regulations promulgated by the Department of Health and Human Services and other governmental agencies. Media coverage of opponents of abortion actively picketing and blocking access to clinics keeps the issue before the public eye.

A second reason for the intractability of the abortion issue is that at the extremes, both proponents and opponents of the right to abortion hold views more akin to an ideology than to a rationally held position. Opponents at one extreme defend an absolute prohibition of abortion while proponents at the opposite extreme support the absolute right of women to procure an abortion on demand. The rhetoric used by both sides reveals the ideological character of the debate. Spokespersons for opponents of abortion adopted for their side the label "pro-life,"

"PROGRAMA UNIVERSITARIO DE  
ESTUDIOS DE GÉNERO" - U.N.A.M.

↓ aborto  
4/55

thereby implying that anyone willing to allow abortion is "anti-life." Since no one wants to be characterized as being against life, supporters of the right of women to have an abortion could not readily refer to themselves as "pro-abortion." Instead, they selected a label that reflects the cherished American value of freedom to choose, calling themselves "pro-choice." The ideological battle lines of the controversy are thus drawn with one side charging the other with being against life in slogans that proclaim: "abortion is murder"; and the other side contending that foes of abortion are against free choice and the right of women to control their own bodies. When ethical positions assume the characteristics of an ideology, rational argumentation is no longer possible.

A third reason for the impossibility of reaching agreement about the ethics of abortion stems from the religious roots of the pro-life position. Religious beliefs are matters of faith, not reason. Although opponents of abortion do not always identify the religious underpinnings of their views, a demographic analysis links the anti-abortion movement with particular religions and denominations. If it is impossible to argue about the rightness or wrongness of fundamental religious convictions, so too will it be impossible to mount a rational argument about an ethical position that is deeply rooted in a religious world view.

In between these extremes, however, is a range of moderate positions on the morality of abortion. These positions acknowledge that abortion is ethically problematic, yet can be justified. The capability of diagnosing numerous abnormalities *in utero* has provided the option of aborting a fetus found to have a genetic disease or anatomical defect. All but the extreme pro-life faction agree that abortion is ethically justifiable in cases of serious, uncorrectable disorders detected by amniocentesis, chorionic villus sampling, sonography, and other diagnostic techniques. Less agreement exists regarding minor abnormalities or cases in which the genetic disease is eventually lethal but the affected individual could live for many years. However, profound disagreement surrounds the practice of prenatal diagnosis followed by abortion for the purpose of selecting the sex of the child. Advances in knowledge of human genetics continue to increase the number and kinds of different genetic abnormalities that can be detected *in utero*, thus giving rise to worries that the sheer number of abortions will multiply as more and more information becomes available.

The contemporary controversy surrounding abortion focuses on three central ethical issues: the moral standing of embryonic and fetal life; the conflict of "rights" between the pregnant woman and her fetus; and whether the harmful consequences for women likely to result from

restricting their right to an abortion outweigh the negative consequences of terminating fetal life.

Somewhat less prominent in the overall debate, but related to those major issues is a question of social justice. Ample evidence exists to show that restrictive policies on abortion adversely affect more women of color and poor women than white, middle-class or wealthy women. The most prominent disagreements in the abortion controversy focus on the rights of the individual woman and the permissible role of government in restricting those rights. Nevertheless, questions of social justice are also ethical concerns, whether they involve women's access to information about abortion services, having access to the services themselves, or government funding for abortions for poor women.

#### **Personhood and the Abortion Debate**

Many scholars seem to agree that the question of the personhood of the fetus is widely perceived to be the single central question in the abortion controversy (Garfield and Hennessy, 1984, p. 55). However, one feminist line of thought contends that too much emphasis has been placed on that question, to the detriment of concerns about women, including their physical and mental health and their prospects for social equality and independence (Sherwin, 1992).

At the most fundamental level, the "personhood" question is whether an entity resulting from fertilization

of a human egg by human sperm at any point during the nine-month gestational period can properly said to have rights, in particular, a right to life. This question gives rise to the related, yet different question: "What is a person?" or "When does personhood begin?" The two questions are joined because of the underlying premise that persons are legitimate bearers of rights. Therefore, it is argued, if an embryo or fetus can be termed a "person" then it can be said to have rights. However, the problem of arriving at a consensus on criteria for personhood has proved as difficult as resolving the abortion issue itself.

That difficulty was acknowledged by the United States Supreme Court in its landmark decision in 1973 in the case of *Roe v. Wade*. The Court decided that a fetus is not a person for the purposes of the Fourteenth Amendment to the Constitution, but declined to embark on the task of defining 'personhood': "We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer." There is little controversy about the beginning of human life in a strictly biological sense. Disagreements begin over the point at which human life acquires moral standing, a point typically characterized as the beginning of personhood.

2. Reasoning (the developed capacity to solve new and relatively complex problems);

3. Self-motivated activity (activity which is relatively independent of either genetic or direct external control);

4. The capacity to communicate, by whatever means, messages of an indefinite variety of types, that is, not just with an indefinite number of possible contents, but on many indefinite, possible topics;

5. The presence of self-concepts and self-awareness, either individual or racial, or both.

Warren recognizes the likelihood that newborn infants probably do not meet these criteria for personhood. If neonates are not persons, then infanticide would be morally permissible. But rather than weaken her proposed criteria for personhood, Warren argues that although killing a newborn infant would not be murder, infanticide is nevertheless not permissible for two reasons. Firstly, it would be wrong because even if the infant's parents did not want it, other people would probably want to have the infant and would be deprived of a great deal of pleasure were it to be destroyed; and secondly, most people value infants and would prefer to see them preserved rather than destroyed. To accept Warren's criteria for personhood is to adopt a high standard, with the result that neither fetuses or newborn infants would count as persons. What would make it morally wrong to kill an infant is not the infant's right to

life, but rather the consequences to others, such as the unhappiness it would cause.

At the opposite end of the spectrum, the criterion for a very low standard of personhood is also value-laden, resting on a traditional set of religious values. John T. Noonan, arguing that personhood begins at conception, identifies this as "the Christian position as it originated" (Noonan, 1983, p. 304), a position that did not depend on a narrow theological or philosophical concept. This criterion for personhood is "simple and all-embracing: if you are conceived by human parents, you are human" (p. 304).

Although Noonan refers to "humanity" rather than to "personhood," it is clear that he takes these two concepts to be equivalent since the moral question related to when a being is human is "When is it lawful to kill?" Noonan and others who draw on the traditional Christian religion, such as the Protestant theologian, Paul Ramsey, have thus adopted a very low standard of personhood, which they further buttress with modern scientific findings. Conception is the "decisive moment of humanization" because that is when the new being receives the genetic code; "a being with a human genetic code is man" (Noonan, 1983, p. 307).

In between these two extremes lies a range of other criteria for personhood, some of which are matters of traditional belief, while others have been explicitly proposed in the bioethics literature. An example of the former is "quickenings," the time at which a pregnant woman

first feels fetal movement. Another example is "animation," the time at which the embryo or fetus supposedly becomes infused with a soul. An example of the latter is the presence of electroencephalographic (brain-wave) activity. This criterion, defended by the philosopher, Baruch Brody, has the interesting feature of being able to be used consistently as a determinant of the beginning and the end of "human life." The onset of encephalographic activity marks the time when the fetus becomes a person (about six weeks gestational age), while the cessation of brain wave activity serves as a determination of death, even if other vital functions are sustained by artificial life supports.

The other point between conception and birth that many people hold to be the time at which the fetus acquires moral standing is viability. Despite the fact that the U.S. Supreme Court declined to define personhood, the importance accorded to viability in *Roe v. Wade* appears to have contributed to a widespread tendency to consider that to be the point at which the fetus becomes a person. Yet it is important to recall that the Supreme Court's decision did not prohibit abortion, the termination of fetal life, after viability. Instead, the Court used viability as a place to draw a line beyond which the state may interfere with a woman's "right to privacy":

"With respect to the State's important and legitimate interest in potential life, the 'compelling' point is at viability. This is so because the fetus



then presumably has the capability of meaningful life outside the mother's womb....If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period, except with it is necessary to preserve the life or health of the mother."

The ethics of abortion, including attempts to specify when a fetus acquires moral standing, must be kept distinct from Supreme Court rulings and other legal developments. After a period of increasing liberalization of abortion laws in the United States, the 1980s and 1990s saw a tightening of restrictions. Nevertheless, despite wide variations in state laws regulating abortion, fetal viability remains the point where many people draw a moral line. Beyond that point, the fetus is thought to be a person or, what amounts to the same thing in these ethical arguments, acquires rights. Even outside the abortion context, arguments that pit maternal rights against fetal rights invoke viability, for example, the issue of whether a pregnant woman has the right to refuse a medical procedure. Medical professionals frequently argue that before viability, they are obligated to accept a pregnant woman's refusal of treatment but once the fetus becomes viable, their obligation shifts to the second "patient" and requires them to act to preserve fetal life or health. Thus the concept of fetal viability, used in a 1973 Supreme Court decision to mark the point at which the state acquires an interest in potential life, has been

elevated to a criterion for according moral standing to the fetus.

An additional strategy for defining personhood makes use of the potentiality principle. This strategy typically takes the moment of conception as marking the beginning of personhood because of the potential of the fertilized ovum to develop into a full-fledged adult human being. Noonan (1983) embraces this argument explicitly, while Tooley, Brody, and Warren argue directly against it. Thomson does not offer an argument against using the potentiality principle, but observes that similar things might be said about the development of an acorn into an oak tree: "...it does not follow that acorns are oak trees, or that we had better say they are....A newly fertilized ovum, a newly implanted clump of cells, is no more a person than an acorn is an oak tree" (Thomson, 1978, p. 199).

The wide range of criteria proposed for defining personhood should serve to demonstrate the impossibility of using this strategy to resolve the abortion controversy. Yet despite the apparent futility of attempts to arrive at criteria that could be agreed upon, appeals to the concept of personhood persist in the abortion debate. In the bioethics literature, three different positions can be distinguished on the importance of personhood for efforts to resolve moral debates about abortion.

The first position holds that settling the abortion issue once and for all depends crucially on coming to some

agreement about whether the fetus is a person and if so, when in its development personhood begins (Engelhardt, 1976; Tooley, 1983; Noonan, 1983; Brody, 1978; Warren, 1978). A second position holds that settling the abortion issue has little or nothing to do with when personhood begins since abortion may be morally justified even if it is acknowledged that the fetus is a person from the moment of conception (Thomson, 1978). The third view admits that it is impossible to provide a set of necessary and sufficient conditions for personhood, and concludes that therefore, personhood must be treated as entirely irrelevant to arriving at a solution to the abortion controversy (English, 1975). More generally, a feminist approach to abortion rejects questions about what sort of being a fetus is, and focuses instead on the broader social framework and on the actual concerns that particular women have in deciding about whether to seek an abortion (Sherwin, 1992).

The futility of trying to resolve the abortion controversy by appealing to the concept of a person can best be shown by noting that proponents of both extreme standards believe that agreement about personhood is crucial for settling the abortion issue. Mary Anne Warren and Michael Tooley propose criteria for personhood that a newborn infant cannot meet, while John T. Noonan adopts a criterion that a newly fertilized ovum can meet. The questionable utility of defining personhood is further demonstrated by the argument offered by Thomson that abortion may be morally justified

even if it is acknowledged that the fetus is a person from the moment of conception. The reason why the task of trying to arrive at objective criteria for personhood is bound to fail is that the values people already hold about abortion are imported into the debate over when personhood begins. Nevertheless, appeals to the personhood of the fetus are understandable in the context of abortion since the contention that the fetus is a person is the basis for ascribing rights, including the right to life.

### **Rights and the Abortion Controversy**

Ascribing rights to the fetus poses two profound problems: first, whether the fetus is a type of entity to which rights can properly be assigned; and second, how to resolve conflicts of rights assigned to the fetus with those ascribed to the pregnant woman.

The initially promising path of trying to ascertain whether a fetus is a person and therefore possesses rights is evidently of little use. It is no less controversial to bypass the intermediate step of defining personhood and go directly to ascribing rights to an embryo or fetus. The position that human life acquires moral standing from the moment of conception is an article of religious faith for some people and an absurd proposition for others. The latter group finds it impossible to construct a rational defense of the assertion that a cluster of cells attached to the lining of the womb should be granted the rights normally accorded living children and adult human beings. Yet

despite the lack of any similarity between the properties of a conceptus and those of a woman, man, or child, opponents of abortion contend that human life deserves protection from the moment of conception.

Nor is any progress made toward a resolution when analogies are used to buttress a rights-based argument. Some foes of abortion argue that refusal to recognize the rights of embryos or fetuses has historical analogues in refusal to recognize the rights of blacks who were enslaved or Jews who were killed in the Holocaust. One theologian, Richard John Neuhaus, uses this analogy when he asks: "If one believes that 20 million abortions are equivalent to 20 million instances of the taking of innocent human life, does not the analogy with the Holocaust become more appropriate? Perhaps even inevitable?" (Neuhaus, 1992, p. 222). Neuhaus does believe that abortion is the taking of innocent human life, so for him the analogy is apt. As he notes, however, supporters of the right to abortion are "understandably outraged" when those abortions are compared with the Holocaust. No one who does not already subscribe to the view that embryos and fetuses have rights will be convinced by an argument from analogy citing the doctrine of the Third Reich that Jews, gypsies, homosexuals, Slavs, and others were not human beings in the full meaning of the term. By using this analogy, Neuhaus attempts to show that like those people then, fetuses today are not included in the community of legal rights, protections, and entitlements.

In the abortion debate, the rights of the fetus are typically pitted against the rights of the pregnant woman. In the political debate carried on first in the United States and later in other countries, feminists adopted the phrase "a woman's right to control her own body," thus identifying a right that could presumably override the right to life of the fetus. "The right to control one's own body" is another way of describing the right to self-determination.

In the international sphere, the basic right to control reproduction has been ascribed both to couples and to individuals. In 1974 in Bucharest, a fundamental right was agreed upon as part of the World Population Plan of Action. Representatives of 136 governments stated that "All couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have the information, education and means to do so." In order for this potential right to become an actual right, individuals, groups, and governments would have to refrain from interfering with the freedom of women or couples to make and carry out family planning decisions, including the decision to have an abortion. Despite the efforts of some religious and political groups in various countries to curtail this basic right, it has been reaffirmed by statements such as the Convention on the Elimination of All Forms of Discrimination Against Women.

The underlying basis for this reproductive right is the right to liberty. The principle of liberty dictates that individuals have a right to freedom of decision and action, to the extent that their actions do not interfere with the rights of others. Opponents in the abortion controversy do not disagree on the soundness of that fundamental ethical principle itself. Yet they disagree profoundly over its application: Foes of abortion claim that the act of terminating a pregnancy does interfere with the rights of another (the fetus), while advocates of a woman's right to procure an abortion deny that killing a fetus is a violation of rights.

As is true of any conflict of rights, this one might be resolved in favor of either party--the woman or the fetus. If a right to life is ascribed to fetuses and a right to terminate a pregnancy is assigned to women, a higher priority could be given to the rights of the woman. However, as important as the value of liberty is in Western philosophical and political thought, only rarely is it held to outweigh the value of human life when the two values conflict. Therefore, the most reasonable way to resolve this apparent conflict of rights in favor of the woman is to deny that the fetus can properly be considered an entity having rights.

Still, an argument in support of assigning the right to choice a higher priority than the right to life has been put forward. Judith Jarvis Thomson constructs an argument using

a fanciful analogy that has become well-known among readers of the abortion literature. Thomson posits that you awake one morning to find yourself hooked up to the body of a famous violinist, who needs the help of your kidneys to sustain his own life for a period of nine months. After that, the violinist will have recovered. The violinist is a person, and so he has a right to life. Your life is not endangered, but your freedom to move about for nine months is drastically inhibited. The analogy invites us to consider the violinist as an analogue to a fetus, and you and your kidneys as analogous to a pregnant woman and her life supports for the fetus. If your right to liberty, that is, to disconnect yourself from the violinist overrides his right to life, the argument goes, should it not follow that a woman's right to terminate her pregnancy overrides the fetus's right to life? That conclusion rests on an appeal to the intuition that no one should have to remain involuntarily hooked up to another person, even in order to sustain that person's life.

Thomson's philosophical imagination notwithstanding, the soundness of her analogy has been rejected by both opponents and proponents of the right to abortion. Arguing in general against the use of artificial cases in the abortion debate, John T. Noonan decries this one, in particular, claiming that "the similitude to pregnancy is grotesque" (Noonan, 1978, p. 210). Taking the opposite side from Noonan in the abortion debate, Mary Anne Warren



criticizes Thomson's analogy on the grounds that it is too weak to do the work required for defending women's right to abortion: "...the Thomson analogy can provide a clear and persuasive defense of an abortion only with respect to those cases in which the woman is in no way responsible for her pregnancy, e.g., where it is due to rape" (Warren, 1978, p. 221). The trouble with philosophical arguments that rely on the use of analogies is that they stand or fall with the strength of the analogy.

Liberal feminists, like Mary Anne Warren, rest their defense of a right to abortion on the premise that the fetus is not a person and therefore lacks a right to life. In contrast, a more radical line of feminist thought defends the moral rightness of abortion itself. Catharine MacKinnon contends that "the abortion choice should be available and must be women's, but not because the fetus is not a form of life. In the usual argument, the abortion decision is made contingent on whether the fetus is a form of life. I cannot follow that. Why should not women make life or death decisions?" (MacKinnon, 1984, p. 46).

This line of feminist analysis emphasizes the interests and experiences of women. Susan Sherwin identifies as the central moral feature of pregnancy the fact that it takes place in women's bodies and has profound effects on women's lives: "Unlike nonfeminist accounts, feminist ethics demands that the effects of abortion policies on the oppression of women be of principal consideration in our ethical

evaluation" (Sherwin, 1992, pp. 104-105). This feminist approach seeks to avoid an exclusive focus on rights and other "masculinist conceptions of freedom (such as privacy, individual choice, and individuals' property rights with respect to their own bodies" (Sherwin, 1992, p. 100).

There is another, quite different problem underlying the abortion debate framed as a conflict of rights between the pregnant woman and the fetus. This is a moral inconsistency, which only a few pro-life advocates acknowledge to be a problem. Many opponents of abortion, holding that a right to life outweighs a right to choose, are nonetheless prepared to grant exceptions in the case of pregnancies resulting from rape and incest. But why should such exceptions be permitted? If the fetus has a genuine right to life in virtue of the type of entity it is, why should the circumstances that led to its existence alter that right? A thoroughly consistent opposition to abortion that rests on the right to life of the fetus would not grant the priority of the right of the woman to choose simply because the pregnancy occurred as the result of rape or incest.

This conclusion becomes evident when we reflect on what is ethically permissible in the case of individuals whose right to life is unquestioned and undisputed. If it were discovered that the mother of a five-year-old child, or even a one-year-old infant, was a victim of rape or incest, that would not grant the woman (or anyone else) moral license to

kill the child. The fact that in the latter cases the child is no longer in the womb, but in the case of pregnancy the fetus is part of the woman's body, should make no moral difference if a fetal right to life is the basic premise of the anti-abortion position. Dr. and Mrs. J.C. Willke state their disagreement with those who "would return the violence of killing an innocent baby for the violence of rape," (Willke, 1988, p. 151) and ask, regarding the case of incest: "Isn't it a Twisted Logic that would Kill an Innocent Unborn Baby for the Crime of his Father?" (p. 155).

Opponents of abortion who are prepared to grant exceptions to the priority of the right to life of fetuses in the case of rape and incest can thus be charged with moral inconsistency. Either they must explain why a fetus that results from rape or incest has a lower moral status or less of a right to life than other fetuses; or else they must adopt the more restrictive but consistent position that all fetuses have a right to life, regardless of the way they came into being.

Another right sometimes brought into discussions about abortion is the right to privacy. References to this right mostly occur in the legal context, stemming from the U.S. Supreme Court's ruling in *Roe v. Wade* that grounded a woman's right to have an abortion in the Constitution's protection of privacy. In ethical arguments carried on outside the political sphere, the right to privacy is rarely mentioned in support of women's right to procure an

abortion. As already noted, some radical feminists attack the right to privacy as being an abstract construct that serves the predominant male ideology. Catharine MacKinnon contends that "This right to privacy is a right of men 'to be let alone' to oppress women one at a time" (MacKinnon, 1984, p. 53).

### **Consequentialist Arguments**

Both in the bioethics literature and in the political arena, the abortion debate in the United States has been carried out almost exclusively in the language of rights. Yet consequentialist ethical arguments, those that appeal to the good and bad results of actions or social practices, provide an alternative mode of ethical analysis. The long history of women's death and disease from self-induced abortions, along with data about the persistence of morbidity and mortality resulting from clandestine abortions, are well-documented harmful consequences of antiabortion policies. Although those consequences are unlikely to sway people who assess outcomes only in terms of fetal deaths, the negative consequences for women of restricting access to safe abortions are a compelling factor to consider in an ethical weighing.

Since safe, legal abortions have been available to the majority of women in the United States at least since 1973 and in some states even before *Roe vs. Wade*, the consequences of a prohibitionist or highly restrictive policy on abortion as a contemporary issue can best be

evaluated by looking at less developed countries. An estimated 200,000 or more Third World women die every year as a result of botched abortions (Germain, 1989, p. 1). In Bangladesh alone, reports indicate that at least 7800 women die each year due to abortion complications (Kabir, 1989, p. 10). In most African countries, where safe abortion is either not available or is legally restricted, illegal abortion is the only solution for women with unwanted pregnancies. Complications of these abortions include hemorrhage, infection, abdominal perforations, and secondary infertility (Mashalaba, 1989, p. 17). Infertility itself produces catastrophic consequences in Africa, and is almost always blamed on the woman, especially in rural areas (Mashalaba, 1989, p. 17). Similar reports from Latin American countries document that most abortions are performed in sordid and clandestine conditions and that physicians use medicines such as hormone shots to induce menses, or unsafe curettage that can be harmful to women's health (Toro, 1989, p. 122).

The negative consequences of enforcing restrictive policies on abortion are not limited to risks to the lives and health of women, but extend also to the infants and children they bear. Close spacing of children produces more high-risk pregnancies, premature births, and low-birthweight infants. The very large number of "street children" (millions in Brazil alone) is a clear testimony to another dramatic consequences of unwanted pregnancies (Pinotti and

Faundes, 1989, p. 99). Reports from developed as well as less developed countries, and assessments by experts in the field of reproductive health throughout the world leave no room for doubt that women will continue to seek to end unwanted pregnancies regardless of legal or religious prohibitions.

It is instructive to compare the consequences for women's lives and health in countries that have changed their abortion laws in the past few decades. Legalization of abortion has tended to reduce maternal mortality, while making laws more restrictive has had the opposite effect. For example, in Czechoslovakia abortion laws were made less restrictive during the 1950s, and abortion-related mortality fell by 56% and 38% in the periods 1953-57 and 1958-62, respectively. In contrast, in Romania a restrictive abortion law was enacted in 1966, resulting in a sevenfold increase in deaths from abortion. The abortion mortality per million women aged 15-44 rose from 14.3 in 1965 to 97.5 in 1978 (Hagenfeldt, 1989, p. 194).

Compared with the rights-based framework in which the debate is typically cast in the United States, the discussion in many nations is carried on in terms of the consequences of permitting or prohibiting abortion. This point was emphasized by Fred T. Sai, an African scholar who is one of the leading world authorities on reproductive health, and Karen Newman, working at International Planned Parenthood Federation in London:

"The ethical arguments about abortion are complex, although often presented simplistically. Often debated is a woman's 'right' to control over her body and to refuse to carry to term a pregnancy she does not want. However, not often considered is the ethics of withholding the benefits of a technology which is less hazardous than carrying a pregnancy to term.

Nineteenth-century anti-abortion laws were generally designed to save women from the dangerous, and often experimental, surgical procedures of the time.

However, this reason is no longer valid, and today the effect of applying anti-abortion laws is to increase rather than reduce risk to women's lives and health" (Sai and Newman, 1989, p. 162).

Even in places where abortion is a legally available option, anti-abortion feelings and behavior can violate the rights and harm the interests of women. Both within and outside the United States, some women who seek abortions are denied information about their options, while others who succeed in procuring abortions are treated punitively by physicians or other health care workers. Whether the punitive behavior consists of failure to give adequate pain medication, delaying treatment, or simply being rude, women can still suffer indignities despite the availability of safe, legal abortions.

**Abortion and the Issue of Justice**

A principle of social justice holds that all persons within a given society deserve equal access to goods and services that fulfill basic human needs. A country might have liberal laws pertaining to abortion services, such as those in developed countries that enable most women the right to procure an abortion up to the time of fetal viability. But if a government does not provide financial assistance to poor women who seek an abortion, a legally guaranteed right to abortion services will be a right in name only. Many rights presuppose the existence of corresponding obligations on the part of persons, agencies, or governments to act in ways that enable those rights to be realized. The principle of justice is violated when health services are available only to those with the ability to pay. Feminists emphasize the broader issues of the accessibility and delivery of abortion services in their ethical analysis of abortion (Sherwin, 1992).

Equally problematic from the standpoint of justice are proposals that would deny government-sponsored assistance to family planning clinics providing information to clients about abortion. If some women are denied access to information about the availability of abortions and the means to procure them, then they will lack access to services that are available to women who are better educated or financially better off. This same conclusion holds for population assistance programs that cross national boundaries. For wealthier donor nations to restrict or deny



funds to recipient countries that provide abortion services as a component of their family planning programs is to violate this principle of justice.

The principle of justice mandates that all individuals who need them should have equitable access to health services, including the means to procure an abortion. "Equitable access" means that use of these services should not be based on an ability to pay for them. And a precondition for access is information about the existence and nature of the services. To fulfill the requirements of justice, it is necessary to have the widest possible distribution of reproductive health services, thus ensuring equitable access for everyone.

These conclusions apply both to developed and to less developed countries. Poor women disproportionately bear the burden of restrictive abortion laws and inadequate or nonexistent public services. Describing the situation in Africa, Sai and Newman identify a form of injustice that exists world-wide: "Wealthy women, who can afford private doctors or travel to countries where abortion is legal and safe, can get abortions almost free of risk; but poor women often pay for abortions with their health, their future fertility and possibly their lives" (Sai and Newman, 1989, p. 162).

Whether motivated by political or religious concerns, opponents of abortion erect obstacles that are difficult for providers of abortion services as well as for women seeking

those services to surmount. An example is the problem women may face in obtaining abortions even in countries with liberal abortion laws. In the United States, a strong, vocal minority not only maintains an opposition to abortion for members of their own religious group, but seeks to change existing laws to prohibit abortions altogether. These groups disrupt political speeches and heckle candidates for elected office. In the extreme, some antiabortion groups resort to violence, bombing abortion clinics and using physical force to prevent women from entering physicians' offices.

In developed as well as in less developed countries, the tactics used by extreme opponents of abortion have a disproportionate impact on poor women, thus compounding the existing injustice of the gap between rich and poor. In some countries with liberal abortion laws, lack of medical personnel and facilities or the behavior of physicians and hospital administrators has the effect of curtailing access to abortion services especially for economically or socially deprived women. Examples include parts of Austria, France, India, Italy and the United States (Tietze and Kenshaw, 1986, p. 14). This serves as a reminder that the mere existence of laws on the books is not sufficient to ensure ethically just practices.

#### **Ethical Issues Related to Medical Methods of Abortion**

Until the late 1980s, the only available methods for performing abortions were surgical, involving instruments to

remove the products of conception from the uterus. The development of a medical abortifacient, antiprogesterin drugs (for example, the French "abortion pill" RU-486) accompanied by the hormone prostaglandin, has stimulated some new features in the debate. Although a careful analysis reveals that for the most part, the ethical issues are not new or different, the politics of abortion have led to suggestions that antiprogesterins bear ethical hazards of a novel sort.

A central ethical issue regarding the introduction of any new technology is the assessment of its risks and benefits. It is important not to overstate the comparative benefits of this medical method over the traditional surgical alternatives. On the one hand, unlike vacuum aspiration or curettage, RU-486 does not involve insertion of instruments into the uterus and thus poses lower risks of accidental perforation and infection from unclean instruments. It does not require the same degree of technical skill as the surgical techniques used to terminate pregnancy, so in this respect a medical method of abortion poses less risk to women than existing alternatives. On the other hand, RU-486 requires a follow-up visit to the clinic 48 hours later for administration of prostaglandin. Failure to follow the antiprogesterin with prostaglandin could lead to greater risks than surgical methods for those women, who may suffer the complications of incomplete abortion and lack proper medical supervision.

In making these comparative risk-benefit assessments it is important to use appropriate data for the locale in which the technology is to be used, since data about risks and benefits gathered about women in developed countries may not be strictly applicable to women in less developed countries. Other local or regional differences can also affect the risk-benefit ratios. Consider two examples.

First, in a society that has an adequate number of properly trained health care workers, the risks of septic abortion and other complications of termination of pregnancy are much lower than they will be in countries with too few or inadequately trained workers. To take a second example, in regions where adequate follow-up is difficult to attain, a method like RU-486, which requires a second visit at a prescribed interval to the clinic, may well have lower safety and efficacy than elsewhere.

Risk-benefit assessments have a built-in relativity. Depending on the characteristics of the providers, the nature of the service delivery systems, and the demographic and cultural features of a country or region, the benefit-risk ratio of a particular method of abortion may vary. The risks include not only the medical and psychological risks of the method itself, but also the risk of not having safe, effective, or otherwise acceptable methods available, including backup services to offer surgical abortions in case the medical method fails.

One feature of antiprogestins does raise a novel ethical issue. Antiprogestins work by preventing implantation of the fertilized ovum. Etienne-Emile Baulieu, the French scientist responsible for the research leading to development of RU-486, has proposed the term "contragestion," (a contraction of "contra-gestation") to emphasize that it falls somewhere between contraception and abortion (Baulieu, 1989, p. 1813). Construed as a "contragestive," RU-486 could thus be acceptable from a religious or ideological perspective that prohibits abortion.

Women who have religious reasons for avoiding or restricting termination of pregnancy can use RU-486 after fertilization has occurred but before implantation of the embryo. At that point, the woman is arguably not yet pregnant. Once the embryo is implanted in a woman's uterus, she is pregnant and removal of the embryo terminates that pregnancy. However, in the brief time before implantation, there is debate over whether a woman whose egg has been fertilized should be considered pregnant. Based on current medical knowledge, it is widely held that "conception" is a process that properly includes both fertilization and implantation (Baulieu, 1989). The plausibility of this view is heightened by the recently established technology of in vitro fertilization. A woman's egg can be fertilized in a dish, but she is not pregnant until the "preembryo" (before implantation) becomes attached to her uterus.

The prospect of this method becoming widely available has produced a new slant in the political debate surrounding abortion. Two worries have been expressed: that a medical method will make abortion too easy to procure; and that it will make it psychologically easier for women to choose to have abortions. Both worries stem from the concern that introduction of antiprogestins will lead to more abortions being performed. As is true of any arguments that rest on probable consequences, this one must be subjected to empirical scrutiny.

One question is whether nonsurgical abortions are "easier" for women to undergo; a second, quite different question is whether less discomfort from the procedure is likely to induce more women to procure abortions. With regard to the empirical likelihood that introduction of medical methods will lead to an increase in the number of abortions, there seems to be no factual basis for that prediction. As one international authority on abortion observes:

There is no evidence that access to non-surgical abortion encourages abortions that would not otherwise occur, or leads to an increase in abortions....Indeed, the Netherlands, with publicly funded abortion services widely available, has the lowest abortion rate in the industrialized world. That's because the Dutch also have access to sex education and information as well as

contraceptive and voluntary sterilization services (Cook, 1991).

Evidence from one set of clinical trials indicates that women who used RU-486 found it "far less violent" than surgical methods they had previously undergone (Grimes, 1991). Although this psychological evidence clearly counts as a benefit of RU-486 over other methods, opponents of abortion have argued that pain and suffering are just deserts for women who choose to have abortions. According to the calculation of those who argue that it is a good thing when the method itself has punishing consequences for women who choose abortion, the lesser side effects that are judged to be advantageous on the usual weighing of risks versus benefits are claimed to be a *disadvantage*. There is no reasonable reply to an argument that construes increased pain and suffering as a benefit rather than a harm. Irrational weighings of benefits and harms do not admit of ethical analysis.

In addition to "more readily procurable," "easier" can also mean "psychologically more acceptable." One opponent of abortion has argued that the "moral ambiguity" of RU-486 makes it psychologically easier for women to choose abortion. "This ambiguity is present if the woman taking a 'morning-after pill' or a pill like RU-486 that produces an 'overdue period' is not sure whether she is aborting a fertilized embryo (Callahan, 1991). The possibility that this "ambiguity" may make it emotionally easier for some

women to choose abortion does not count as a moral advantage of RU-486 for foes of abortion, despite the evident benefits to women of decreased psychological stress. This is because they believe that "taking a human life that has already begun" is morally unacceptable (Callahan, 1991). Inability to agree on that fundamental premise--the moral status of a fertilized ovum--is what prevents any compromise in the intractable abortion debate, regardless of the method of pregnancy termination. It also leads to a perverse transformation of what are normally counted as risks into benefits, and to the reverse.

A similar twist has occurred with respect to the value of privacy, a key ingredient in the abortion debate. As a drug that can be prescribed by physicians and taken by women in the doctor's office or even in their own homes, RU-486 clearly offers the opportunity for greater privacy than methods that require a visit to a clinic. It has been surmised that if abortions with RU-486 become widely available in physicians' offices, "opponents of abortion might lose their targets for picketing, harassment, and violence. For example, since 1977, 110 abortion clinics have been burned or bombed in this country" (Grimes, 1991). Opponents of abortion view the greater privacy afforded to women who have access to RU-486 as a harm rather than an ethical benefit. But to view a decreased incidence of disruption and violence as a *disadvantage* is another irrational weighing of harms and benefits. On any rational



calculation of harms and benefits, lowering the potential loss of lives, dignity, or property can only reasonably be viewed as a benefit.

### **Is Abortion an Insoluble Moral Problem?**

It is reasonable to wonder whether abortion poses an insoluble moral problem. As a political issue in a pluralistic society, abortion does appear to be unresolvable. Political compromise, the usual mode of settling disagreements in a pluralistic society, is not a satisfactory method for resolving deep moral controversy. Those who believe that a fetus is truly a person, with a right to life equivalent to that of a child or an adult, cannot permit some abortions, under some circumstances, without compromising their moral integrity. Similarly, those who deny that a fetus has moral standing, and affirm that women's right to liberty grants them the right to terminate an unwanted pregnancy, see no reason to compromise that principle.

As a matter of individual moral choice, however, the question of whether to have an abortion is taken seriously and has been decided by millions of women. Some women will choose to abort only a fetus discovered by antenatal diagnosis to be abnormal. Other women decide to seek an abortion following failed contraception, after determining that they cannot, for financial or emotional reasons, have more children. Within marriage, that choice is typically made by the couple, not by the woman alone. Couples who

choose to abort for the purpose of selecting the sex of their child are reflective about their decision but are nonetheless criticized by those who find their reason frivolous or otherwise morally unacceptable.

Few people have argued that abortion poses no moral issues whatsoever. However, even if it is acknowledged that a morally preferable alternative would be to prevent a large number of abortions from taking place, there will always be unwanted pregnancies and women in those circumstances will risk their lives and their health, if necessary, to have an abortion. It is evident that neither the Supreme Court's 1973 abortion ruling that granted women Constitutional protection, nor subsequent laws and judicial decisions that have increasingly eroded that protection, have silenced the ethical and political debate surrounding abortion. According to one contemporary line of thought, as long as the moral status of the embryo and fetus cannot be resolved, the abortion debate will not be laid to rest. And according to a feminist critique, as long as oppression of women is ignored or tolerated, abortion will remain one among many social problems whose resolution can only be achieved by increasing the power of women and freeing them from domination based on their sex.

Ruth Macklin