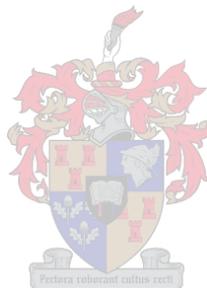


# **POSTSTRUCTURAL APPROACH TO THE ABORTION DILEMMA**

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## **DECLARATION**

I, the undersigned, hereby declare that the work contained in this assignment is my own original work and that I have not previously in its entirety or in part submitted it at any university for a degree.

Signature:

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## **ABSTRACT**

Moral theories often view the problem of abortion as oppositional: either fiercely “pro-life” or adamantly “pro-choice”. A closer view at their respective arguments suggests that extreme polar views are hardly tenable. The principle of the sanctity of life has its limits, and the liberal view on abortion leading to the logical conclusion that even infanticide is permissible is counterintuitive and at loggerheads with common morality. Softer views on both polar positions are more appealing and more acceptable. The soft “pro-life” stance has serious limitations for it appeals to the doctrine of double effect or to a secular but similar position, the doctrine of self-defence, which would allow abortion only in cases of rape or incest. The soft “pro-choice” position appeals to the concept of sentience: only the abortion of a pre-sentient embryo/fetus is permissible. The difficulty, however, is that we know little about the sentience of the unborn and its occurrence during intra-uterine development. Both extreme and softer views are basically oppositional (either/or). The postmodern mind aims at deconstructing oppositions in order to highlight the ideologies underscoring the advocacy of either view. In a poststructural perspective that takes into account the complexity of life, it becomes possible to understand and to accept the view that a “pro-choice” stance is far from being “pro-death”. This is the position which is argued for in the present essay.

## ABSTRAK

Die probleem van aborsie word dikwels deur morele teorieë beskou as een van oposisies: “pro-lewe” aan die een kant of “pro-keuse” aan die ander. Wanneer die onderskeie argumente van naderby beskou word, word dit duidelik dat hierdie uiters polêre sieninge skaars geregverdig is. Die beginsel van die heiligheid en onskendbaarheid van lewe het sy beperkinge, en die liberale standpunt oor aborsie, wat onvermydelik en op ’n logiese wyse lei na die konklusie dat selfs kindermoord geregverdig kan word, is kontra-intuïtief en gaan die algemene moraliteit teen. Standpunte wat ’n minder radikale blik op beide die polêre posisies het is beide meer aantreklik en meer aanvaarbaar. Die sagte “pro-lewe” uitgangspunt het belangrike beperkinge, omdat dit sigself beroep op die doktrine van dubbele-effek, of op ’n sekulêre, maar soortgelyke posisie, die doktrine van selfverdediging, wat aborsie sou wou toelaat in die geval van verkragting of bloedskanie. Die sagte “pro-keuse” posisie beroep sigself op die konsep van waarnemingsvermoë: slegs die aborsie van die embryo/fetus wat nog nie oor waarnemingsvermoë beskik nie is toelaatbaar. Hierdie standpunt word egter bemoelik deur die feit dat ons nie oor veel kennis beskik aangaande die waarnemingsvermoë van die ongebore, of van die voorkoms van waarnemingsvermoë gedurende intra-uterinêre ontwikkeling nie. Beide die uiterste en die sagter uitgangspunte is uiteinelik oposisioneel. Postmoderne denke stel hom ten doel om oposisies te dekonstrueer, ten einde lig te werp op die ideologieë wat die aanhang van enige posisie onderskraag. In ’n poststrukturele perspektief wat die kompleksiteit van lewe in ag neem, word dit moontlik om die siening dat ’n “pro-keuse” uitgangspunt ver verwyderd is daarvan om “pro-die dood” te wees, te aanvaar. Dit is die posisie waarvoor daar in hierdie opstel geargumenteer word.

Dedication

To Donna, most precious and dearest life companion,

I TRY NOT TO LAUGH AT HUMAN ACTIONS NEITHER TO  
MOURN ABOUT THEM OR TO DETEST THEM, BUT TO  
UNDERSTAND THEM.

Benedictus Spinoza Amstelodamensis, *Tractatus Theologico-Politicus* (1670, i.4)

THE ENDEAVOUR TO UNDERSTAND IS THE FIRST AND ONLY  
FOUNDATION OF VIRTUE, AND IT IS NOT FOR SOME FURTHER  
PURPOSE THAT WE ENDEAVOUR TO UNDERSTAND THINGS.

Benedictus Spinoza Amstelodamensis, *Ethics, Of Human Bondage* (1672, Part 4, p.26)

## POSTSTRUCTURAL APPROACH TO THE ABORTION DILEMMA

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## *Preface*

The abortion debate is often posited in terms of an insurmountable opposition between two radical and mutually exclusive views. One extreme view, held by the absolute “pro-lifers” is that life is sacrosanct. Therefore, abortion is *never* permissible. At the other end of the spectrum one finds the opposition, that is, the “pro-choicers” view that not only abortion but also infanticide is *always* permissible. In between, soft views on abortion claim that there are exceptions to the rule “thou shalt not kill”, either in cases where the doctrine of double effect makes allowance for specific exceptions, or when it involves the principle of self-defence. In a very different perspective, the presence or absence of “sentience” is appealed to in order to prohibit or allow abortion. The thesis argued for in this essay is that oppositional views are flawed because they do not pay attention to the complexity of abortion. Instead, most moral theories on abortion appeal to a single aspect of the problem. I will argue that not a single moral theory can “solve” the *aporia* of abortion. My main argument will appeal to the concept of complexity and the ethics of complexity. In order to make my point I will borrow from the theory of deconstruction to show that the *binary (op-) positions* and their ensuing moral stances fail to address the complexity of abortion and, therefore, cannot be helpful.

Chapter one explores the binary oppositions on abortion. The absolute pro-life position argues that life is absolutely inviolable. The Divine Command theorists base their argument on the assumption that a soul is infused at the moment of conception. Therefore, God only can dispose of human life. I will argue that religious views are respectable but not *per se* philosophical. The secular prolife view invokes the principle of sanctity of life to prohibit abortion. More specifically, they argue that *human* life is inviolable. As far as the unborn is concerned, its right to life is related to the fact that it is a person. To be a person ascribes moral standing and hence an inviolable right to life. I will argue that none of the extreme positions is defensible. Even the most fanatic pro-lifers admit of exceptions (*viz.* in case of rape or incest). I will argue that the extreme pro-choice position is not only counterintuitive and at loggerheads with common morality, but also that it rests on scientifically largely yet unsubstantiated assumptions.

Chapter two examines the soft binary positions on abortion. The soft prolife stance claims that fetal rights are not absolute, or that the principle of sanctity of life admits of some (though rare) exceptions. In order to justify these exceptions appeal is made to two different doctrines: the doctrine of double effect, and the doctrine of self-defence. In both cases abortion is permissible on the grounds that the pregnancy threatens the pregnant woman’s life

(or even in some cases only her health). I will argue that the two doctrines overlap and that they are of no real help in the problem of abortion. At the other end of the soft spectrum is the claim that women have a right to bodily integrity. This is a step taking us from a moral quandary to a conflict of rights; what is legal may not be moral. The soft pro-choice position claims that the unborn's moral standing is acquired gradually. Two schools of thought argue for this position. One claims that "sentience" is the criterion of moral standing, whereas the other claims that "potentiality" endows the unborn with moral significance. Both schools share a similarity in the sense that the morality of abortion is viewed to some extent as a matter of degree. Early abortion is easier to justify, or more acceptable, or less evil than late abortion. I will argue that the concept of sentience attributes a moral value to a purely anatomico-physiological or functional bodily property of unsure significance, and that potentiality principle is flawed in its logic.

Chapter three is an introduction to postmodern thinking and poststructuralism, with an overview of complexity and of its implications in ethics. The difference between skeptical and constructive postmodern thinking is explored. The Derridean concept of *différance* and Cillier's concept of complexity will be borrowed and applied to the problem of abortion. A suggestion will be made that, because of the complexity of the abortion issue, the morality of abortion cannot be addressed in a simple manner. Like ethics in general, I will argue that the ethics of abortion is inescapably *aporetic*.

Chapter four examines whether the paradigm theory in medical ethics helps in addressing the abortion dilemma. I will argue that the basic tenets of the paradigm theory – autonomy, beneficence (or non-maleficence), and justice - cannot apply at the same time to the unborn and to the pregnant woman. Therefore, I will argue that the only alternative, then, is to adopt a poststructural ethical attitude of responsibility (in a Derridean perspective) taking into account the specific context in which the request for abortion has arisen (in a microethical perspective), as well as the consequences arising from keeping alive or not an uninvited unborn.

## ***Chapter 1. Binary Oppositions on Abortion: Two Strong Views.***

*The demon of pro-life people is guilt, and,  
the demon of pro-choice people is anxiety.*  
Kristin Luker (1984: 186)

*The logic of binary oppositions is also a  
logic of subordination and domination.*  
Seyla Benhabib (1992: 15).

### **1. Introduction**

In a broad sense, views on abortion are (arguably) seen as two basically opposed and unreconcilable positions: pro-life and pro-choice.<sup>1</sup> In this perspective, pro-lifers are fundamentally opposed to *any* exception to the rule ‘thou shalt not kill’, whereas pro-choicers claim that the termination of a pregnancy is *always* permissible. Moreover, the extreme liberal approach, epitomised by Michael Tooley, goes as far as to say that not only there is no moral wrongness with abortion at any stage of pregnancy, but, by pushing the argument to its extreme logical consequences, neither is there any moral wrongness with infanticide.

In the following section I shall examine the arguments presented by both of the extreme positions on abortion. This will be accompanied by an enquiry into the plausibility of either an absolute pro-life or an extreme liberal pro-choice stance. I will argue that neither can be held as such.

### **2. The Absolute ‘pro-life’ position: abortion is *never* permissible.**

In order to maintain that abortion is never permissible one has to provide a valid argument that proves that life is absolutely inviolable, or, in other words, one has to show that the principle of the sanctity of life is irrefutable. The concept of sanctity of life immediately raises the question: whose life? Is it any life: vegetable, animal, or human? If it is animal life, does it encompass so-called lower animals like the invertebrates? If it is human life, does it encompass brain-dead humans and early stage fetuses with a rudimentary central nervous system?

If it is assumed (as it seems to be the case with the absolute pro-life position) that the sanctity of life principle applies only to humans, what is it that makes life inviolable? Is it merely because it is *human*, or because it is a *person's* life, or is it rather because it belongs to a human person that possesses a *soul* infused by God at the time of conception?

Many secular moral theories would object to restricting the right to life only to humans, because it would be a case of *speciesism*<sup>2</sup> – that is, the attribution of a moral weight to the mere fact that one is a member of a species, more specifically, a member of the species *Homo sapiens*. Other moral theories on abortion would argue that a fetus<sup>3</sup> is not a person and, therefore, has no moral standing that entitles to the right to life. Hence, the sanctity of life theorists need a valid argument that shows that the unborn has an *intrinsic value* independent of his or her humanity and ‘personhood’. Divine-command theorists claim that the intrinsic value that justifies the sanctity of life principle is the presence of a soul infused by God at the time of conception. Secular versions of the extreme conservative view, on the other hand, ascribe the principle of sanctity of life to the unborn on account of his or her humanity and/ or ‘personhood’.

## **2.1. Abortion and the concept of ensoulment.**

The absolute pro-life position is mainly, although not solely, held by the Roman Catholic Church, and more particularly by the pre-Reformation Christians (Murphy 1995:105). The sixth commandment (thou shalt not kill) is a divine commandment, an expression of God’s will for Christians and Jews alike (Scott 1993:61). Although it absolutely prohibits the killing of people, the question arises whether the prohibition is exceptionless. The killing of innocents is morally wrong, whereas the killing of aggressors is morally acceptable even in commonsense morality. These principles belong to the natural law and need not the support of a divine commandment. When it comes to the sanctity of life of the unborn one could say that the fetus is innocent; the killing of an innocent is morally wrong. Abortion is always wrong. If there is little, if any, doubt that a fetus is innocent (although some ethicists such as Judith Jarvis Thomson<sup>4</sup> might argue, but not that convincingly though, that the fetus may be an aggressor), is it a moral person with full moral rights, including the right to life?

Divine-command theorists attribute an intrinsic value to all human beings from the time of conception in view of the fact that an eternal soul is infused at that very moment. Their argument hinges on the concept of ensoulment, and that makes abortion never permissible; God only has the right to decide when earthly life has to come to an end. What are the Scriptural roots of the Church's teaching? References are used from Exodus (21:22-25), Deuteronomy (30:15), and Jeremiah (1:4-5).<sup>5</sup> They are, however, ambiguous, especially when taken out of context, as it is usually the case (Mensch & Freeman 1993:17, 36; Rachels 1993:17). With regards to the Gospels, they are totally silent on the topic. Historically, the Church has been in line with Aristotle's views on abortion through both St. Augustine and St. Thomas by adopting his concept of *empsychon*, something possessing a *psychê*. For Aristotle, the *psychê* is an animating principle in the sense of what allows a living being to move; translated in Latin *psychê* becomes *anima*, and *anima* is translated into *soul*. In Aristotle's *Peri Psychês* or *De Anima*, as well as in *The Theory of Human Generation and Reproduction*, *animation* (later translated as *ensoulment*) did not occur before the fortieth day after conception in male fetuses, and before the eightieth day in female fetuses. Aquinas, in his great consideration for *The Philosopher*, took it for granted that Aristotle could only be right. In late medieval times and after, animation became equivalent to *quickening* (the first perception of fetal movement by a pregnant woman).<sup>6</sup> Abortion before quickening was, prior to the nineteenth-century, never considered being the destruction of human life (Katz Rothman 1997:104). It was a sin against marriage, but not homicide (Shannon & Wolter 1993:47-48). St. Augustine was the first to propose the concept of sin against marriage. We also have to go back to Augustine in order to understand why abortion became impermissible only in the second half of the nineteenth century.

As already mentioned, the core argument of the divine-command theorists for the sanctity of life is that the intrinsic value of all human beings, from the time of conception, results from the fact that they are the recipients of the divine gift of an eternal soul. The Scriptures do not provide valuable information to substantiate the claim. The Church is indebted to Augustine for the theory of ensoulment that was deeply influenced by Plotinus's neoplatonist theory of emanation.<sup>7</sup> According to Augustine, God creates the human soul in His image; through God's illumination of the soul *man* shares with the divine mind (Solomon & Higgins 1996:123). In this view, the Christian self is a rational soul using a corporeal body

(Young- Eisendrath & Hall 1987:10). It is this participation to the divine that gives human beings their intrinsic value, and, therefore, the sanctity of their life. It was also Augustine who argued in favour of limiting sexual relations to within marriage and with the intention of procreation. This still remains the official teaching of the Roman Catholic Church to date: extramarital sex and contraception are not permissible and sinful.<sup>8</sup>

The question of when the so-called ensoulment takes place has given rise to two theories on *animation*: the theory of immediate animation and the theory of delayed animation. The theory of immediate animation – that is, that the soul is infused at the moment of conception – goes hand in hand with *traducianism*, the theory that the soul is transmitted to the unborn (by God) together with the original sin (the parents' contribution). Traducianism was needed to oppose the theory of creationism – the theory that the soul is created afresh with each conception but free of sin – in order to justify the “Immaculate Conception of the Virgin Mary”, which could only apply to this exception.

The theory of immediate animation was introduced in 1620 by the Flemish physician Thomas Feyens, *alias* Fienus, a professor of medicine at the Catholic University of Louvain. Under the influence of the Italian physician Paolo Zacchias, and with the blessing of Pope Innocent X, the theory of immediate animation received strong support from the Roman Catholic Church. Although Fienus' theory was based on scientifically erroneous claims (understandable in view of the limited scientific knowledge of the times), it became the official doctrine of the Church as declared by Pope Pius IX in 1869. It was only then that abortion became immoral, absolutely impermissible, and penalised by excommunication. The same Pope, one year later at the First Vatican Council, declared the pontifical pronouncements *ex cathedra* to be infallible. The historical facts clearly show that the concept of the absolute sanctity of life was never a part of the Church's tradition before the second half of the nineteenth-century (Luker 1987:25). Furthermore, the strict interdict on abortion was not originated by theologians, but rather by physicians.<sup>9</sup> The theological establishment followed the opposition to abortion that had been initiated by the medical corporation in the middle of the nineteenth-century (Tivnan 1995:12).

Progress in embryology during the second half of the twentieth-century brought about a new debate about animation: delayed versus immediate animation. In theological as well as in philosophical terms only a single individual can be a person; theologically speaking, then,

only a *person* can be ensouled. Recent developments in embryology have shown that the *pre-embryo*<sup>10</sup> – that is, the embryonic stage between day one and day fourteen from conception – can divide (twinning) and that pre-embryonic twins can unite. At the pre-embryonic stage there is no firmly established individuality, and, therefore, there is no person yet (McCormick 1993:101). If there is no person, there could be no soul either. Hence, ensoulment has to be delayed till the appearance of the “primitive streak” of the *embryo proper* (Donceel 1970:76) – that is, on day fourteen after fertilisation. If the pre-embryo has no soul, or, rather, since the pre-embryo cannot be ensouled, it has no intrinsic value. If it has no intrinsic value it is morally permissible to abort a pre-embryo; therefore, abortion is permissible till day 14 after conception (Warnock 1998:396).<sup>11</sup>

It is now clear that the absolute prolife position, when based on the theory of immediate animation, suffers from a major flaw. It is unable to bridge the gap between a biological human entity (nobody could deny the fact that a zygote and a pre-embryo are genetically human and biologically alive) and a human being in the moral sense (be it endowed with a soul or with personhood). To belong to a biological category is not equal to belonging to a moral category (Marquis 1997:26). The “fetal gift” view on pregnancy<sup>12</sup> sees a divine intervention in human reproduction (Schrage 1994:68). It only can answer Glover’s (1990:84) question: “can any moral reason be given for saying that we have a right to life, or is it an ultimate belief, admitting no further argument?” To claim that a zygote’s life is inviolable requires a leap of faith (Callahan 1993:30). Leaps of faith do not belong to philosophical arguments. Therefore, I will now turn to the concept of personhood and ask of its possible use in the abortion debate.

## **2.2. Abortion and the concept of personhood.**

In this section I will examine whether the ascription of personhood fares better than the ascription of ensoulment. It is generally accepted that being a *person* is what gives moral worth. It is, however, not generally accepted that only persons (in the sense of human persons) have a *right to life*. This then raises the question of what properties a thing or an entity must possess to claim a serious right to life. Assuming that personhood is the property that gives human beings the intrinsic value or moral weight that entitles them with the right to

life, I will now turn to the unborn and investigate whether he or she qualifies as a person in the philosophical sense. If a fetus *is not* a person, then “abortion is closer to being a morally neutral act”(Warren 1997:65). On the other hand, if the fetus *is* a person, then abortion equals homicide. Let us now examine the two opposite positions. Since it may sometimes be easier to understand a concept by the analysis of its contrary or opposite, the thesis that denies personhood to the unborn will be first examined. This, hopefully, will help to understand what it really means to ascribe personhood to the unborn entity.

### **2.2.1. The fetus *is not* a person.**

Marie Anne Warren and Michael Tooley are the two most prominent advocates of the thesis that a fetus is not a person. Warren’s *On the Moral and Legal Status of Abortion*, and Tooley’s *Abortion and Infanticide* have acquired the status of classics in the literature on abortion and personhood.

Warren’s paper, first published in 1973, centers on the question: what characteristics entitle an entity to be considered a person? She presents what she calls “a rough and approximate list of the most basic criteria of personhood, and some idea of which, or how many, of these an entity must satisfy in order to properly be considered a person”(Warren 1997:66). The list is as follows: (1) consciousness, and sentience; (2) reasoning; (3) self-motivated activity; (4) the capacity to communicate; and (5) the presence of self-concepts and self-awareness. Any being which satisfies *none* of (1)-(5) is certainly not a person, she says (68). Warren further claims “[that a fetus is not a person is] so obvious that I think anyone who denied it...would thereby demonstrate that he had no notion at all of what a person is”(68). She then concludes that “a fetus is a human being which is not yet a person, and which therefore cannot coherently be said to have full moral rights”(68). Warren’s final statement is that “a woman’s right to protect her health, happiness, freedom, and even her life, by terminating an unwanted pregnancy, will always override whatever right to life it may be appropriate to ascribe to a fetus, even a fully developed one”(71).

From the list of criteria of personhood proposed by Warren it is quite obvious that a fetus does not meet them, except, perhaps, sentience. Even the ascription of sentience, as we will see later, cannot apply to the entire fetal life.

Warren wrote a *Postscript on Infanticide* in 1982 that follows her original article and is reprinted in the third edition of *The Problem of Abortion* (1997:71-74). She recognises that the logic of her argument includes the permissibility of infanticide. She then argues that in the current state of affairs of the civil society infanticide should be viewed in a broader perspective and with emphasis on women's rights. This, however, constitutes a leap from the moral value of a fetus or an infant to women's rights, which is altogether another issue

Tooley's *Abortion and Infanticide*, first published as an article in 1972, and brought to completion in a book with the same title in 1983, had paved the way for Warren's argument that abortion and infanticide are morally permissible. According to Tooley (1998:117), "in ethics 'person' refers to individuals who enjoy something comparable, in relevant respects, to the type of mental life that characterises normal adult human beings". For Tooley (1997:44), two questions are central. First, what properties are necessary to be a person with a serious right to life (a moral issue); and, second, at what stage in the development of a member of the species *Homo sapiens*, does a human organism possess the properties that make it a person (a factual issue). For Tooley, to have a serious right to life requires from an entity to be "a subject of experiences and other mental states to continue to exist... This in turn presupposes that one has the concept of such continuing entity and that one believes that one is oneself such an entity"(46-48). Basic to Tooley's (1983:102) theory is the concept he calls the "modified particular interest principle"<sup>13</sup>:

The right to a continued existence...implies a capability of "having a desire to continue to exist." And this requires to have conscious experiences and to possess self-consciousness, of identity of things over time, the concept of a continuing self.

Personhood is defined by Tooley as "having a continuing mental substance, a non-momentary interest is sufficient to make something a person"(1983:146); and "to enjoy a mental life that is temporarily unified... this is a nonpotential property that makes an individual a person"(294, 333).

What Tooley is saying is that one must be a person to have a right to life, and that that person must be actual, not potential. The least that is needed to be a bearer of rights is to have to ability to desire what one has the right to. This desire, linked to a right, should be enduring

and nonpotential. On this account, Tooley reaches the logical conclusion that since a desire of continued existence is not actualised in a fetus or a newborn (at least during the two first months of extra-uterine life), these entities cannot be attributed the right to continued existence.

Jane English (1999:455) has argued that no single criterion can capture the concept of person and, therefore, that no sharp line can be drawn. Thus, she says, “the concept of person does not solve anything”.

### **2.2.2. The fetus is a person**

It is a major tenet of the absolute pro-life position that the unborn is a person with a full moral standing entitled to an inalienable right to life. In order to scrutinise the extreme pro-life position we have to expand on the concept of person.

The concept of personhood has two interrelated aspects: the metaphysical person and the moral person. The metaphysical investigation into personhood attempts to provide us with the necessary criteria to qualify as a person; the normative investigation into personhood focuses on the ways a person *qua* person ought to behave and ought to be treated. Once the metaphysical criteria of personhood have been established, the task remains to determine which, if any, of the metaphysical properties has an ethical content. In other words, what about a metaphysical person makes him or her a moral person?

The metaphysical study of personhood deals with the relations between body and mind, personal identity and the necessary criteria to qualify as a person. Different theories have their advocates. Materialism identifies a person with a particular biological entity: an animal, a body, or a brain (Noonan 1989:261). For the brain theory, a person is a conglomerate of connected cells, which is the seat of mental life (Garrett 1989:9). Personal identity is, according to Locke, something different from physical identity. The consciousness we have of ourselves as enduring subjects depends on the memories that link who we now are with who we were in the past (Cottingham 1996:187). In other words, Locke’s criteria of personhood and of personal identity concern the *continuity* of consciousness (including memory), and the identity of the self (McCall 1990:11). For Locke, two conditions must be satisfied to be a person: first, one has to be a self-conscious, and, two, a mental being. A

Lockean person is an entity whose identity is ensured through the possession of the memory of past actions. In this view, strictly speaking, an adult suffering from Alzheimer's disease (where memory of the past is totally erased) would cease to be a person; a fetus and an infant have not yet reached personhood.

McCall (1990:7-17) has argued that when we refer to an individual, we, in fact, use three interrelated concepts: person, self, and human being. Personhood refers to agency, accountability, responsibility for action, ability to plan for the future, and consistency in decision-making. Personhood, in this view, operates in a social framework; it is the *normative* aspect of an individual human being. Selfhood then refers to self-consciousness, the ability to reflect upon actions, thoughts, intentions, and so on. Selfhood, in this view, is the experiencing individual; it is the *metaphysical* aspect of an individual human being. Personhood and selfhood are inseparable and constitute the human being.

What may be a confusing factor is that sometimes the concept of "the same person" is used ambiguously or ambivalently to refer to personality changes as opposed to personal identity or the concept of continued identity. Although both concepts are interrelated and intertwined, in ontological terms, personhood (what it is to be a person) is not the same as selfhood (personal identity).

The difficulty with most approaches is that they give in into the temptation to reduce the self, the person, to a kind of essential mind detached from the contingencies to which the body is subjected to (Cilliers & de Villiers 2000). This tendency then results in a clearly designated subject "cordoned off from the world". The traditional discourses about the self lack the flexibility that is inherent to complex systems.

There is the Cartesian self, the epitome of solipsism, where an essential mind with a universal structure is isolated from the outside world, and only contingently linked to a particular body. And there is the relational self, a being that exists in a web of relations, a self that cannot be separated from its body neither from its context (Cilliers & de Villiers 2000). Or, in Honi Haber's (1994:124) words, "there is no autonomous, wholly self-creating, or coherent *in the sense of single-minded or one-track self*. The self can be many subjects". In the context of complexity theory, the individual self is to be placed in a connectionist model, that is, understood in terms of a "fabric of relations" (Cilliers 1995:127). In other words (Cilliers and de Villiers 2000):

We, as subjects, become who we are, having meaning in terms of a set of relationships with others...The self is dependent upon its world/environment and cannot be separated from the body...A self cannot be meaningful in isolation.

This means that, in the complexity theory, the self, the individual, or the person is fully immersed in a local narrative, in a *petit récit*. He or she is a “node in a network”. He or she is “defined within the rich and shifting patterns of social interaction” (Cilliers 1995:127).

The unborn is undoubtedly an existing entity in the sense of genetically human (i.e. *Homo sapiens*) and biologically alive, be it in a dependent way. The unborn has definitely an identity in the sense that his or her genetic code is *unique*. But that does not make of the unborn an “I”, since its ‘mind’ does not have the anatomical substrate needed for self-knowledge, neither the ‘body’ necessary to interact with the world. It could only be said that the ‘personhood’ of the unborn is at most an expression of the emotional relationship between the pregnant woman and her ‘invited’ fetus. One could say that the personhood of the unborn is a Derridean *trace* – that is, that its meaning lies in the relationship between the two elements constituting the pregnant state. This issue will receive more attention in Chapter 3.

Returning to the question of fetal personhood, it is quite clear that Warren’s criteria of personhood, as set in her first publication, do not apply to the unborn. Either one should conclude that the fetus is not a person, or that Warren’s criteria are too strict and lead to an unacceptable conclusion. Moral philosophers have explored the latter view. For instance, deCharms (1987:31) claims that self-consciousness or a concept of self-identity with intentionality are two sufficient but necessary conditions of personhood. Even Warren, in a later paper (1984:220), stated that a psychological capacity of self-awareness and the ability to communicate would be a “minimum requirement”. From five *necessary* conditions, the criteria of personhood can be thus downscaled to two.

The importance of personhood (or whatever one wishes to call it) is its relation to a basic moral or intrinsic value: the right to life. This applies both to the beginning of life – whenever it may be<sup>14</sup> – and to the end of some lives (e.g. irreversible brain damage). If having a moral standing, as it is defined by Sumner (1981:30), is to consist in having at least the moral right to life, (and this is basically the point in question with regards to the unborn) one has to define what Sumner (1997:99) calls “serious candidates” for moral standing. To have a

moral standing, says Sumner, a creature needs to have intrinsic value, to be alive, and to be sentient or rational. He further argues (142) that “rationality appears to be the right criterion for the possession of *moral duties*, but something less demanding (such as sentience) is better suited to the possession of *moral rights*” (emphasis added).

And so goes the downscaling of the necessary criteria of personhood. Starting with Warren’s five necessary criteria which she claims all to be absent in a fetus (hence, the fetus is not a person), we have reached Sumner’s thesis that the only feature that is required to have the right to life (to possess a moral standing) is the possession of sentience. From a position requiring ‘full personhood’ to possess moral value and the attached right to life, we have, at the other extreme, a position that does no longer require metaphysical personhood in order to possess normative personhood. Even the normative personhood is, in this view, amputated of one of its legs, moral agency.

If Rosalind Hursthouse (1999:474) is right when she writes that “the status of the fetus is not in the province of any moral theory; it is a metaphysical question, and an extremely difficult one at that”, then we have reduced personhood to the metaphysical person. A further reduction goes from personhood to sentience (Sumner 1981:142). Now, if the latter argument is taken to its extreme, one should include *all* sentient beings – that is, not only human animals (and we do not know how far down the evolutionary scale that should go) – and one has to exclude *all* non-sentient beings – that is, the comatose and the fetuses before the acquisition of sentience (Regan 1993:23). In a philosophical sense, the word person is used in the sense of a self-conscious rational being (Singer 1993:295-296): “philosophically, self-consciousness is self-awareness, as existing over some period of time as a distinct entity...[this] includes a minimal of rational understanding of the world and the capability of feeling pleasure and pain”. The point, then, is to establish a link between sentience and a sort of self-consciousness, as just defined by Peter Singer. This view will be examined in the second chapter of this essay.

### **2.2.3. The fetus is a *potential* person**

The argument from potential does acknowledge that personhood cannot really be ascribed to the unborn as an actuality. In order to rescue the argument on the impermissibility of

abortion on account of the principle of the sanctity of life, the advocates of the argument from potential claim that since the unborn is a potential person it deserves the same respect as an actual person. The *strict potentiality criterion* states that “all and only those creatures who either actually *or* potentially possess [person-making characteristics that are a condition of being a person in the common sense, descriptive sense of ‘person’] are moral persons *now*” (Feinberg & Levenbook 1993:205). From the time of conception the zygote has in its chromosomal equipment and genetic code a blueprint of the future person he or she will become (that is, if every thing goes well and undisturbed)(Noonan 1989:23). And, because of the continuity in development from zygote to pre-embryo, embryo proper, fetus, infant, and child to adulthood, there is no “marker event” – that is, no discontinuity between the stages of evolution. Therefore, the zygote is a potential adult person and has the same moral standing and the same right to life.

The argument from potential is not convincing because it rests on a false premise – that is, that there is continuity. Recent developments in embryology, however, indicate that there is discontinuity rather than continuity.<sup>10</sup> Another reason why the argument from potential is unconvincing is that it rests on a logical error: it deduces actual rights from merely potential qualifications to that right (Feinberg & Levenbook 1993:205).

In view of these difficulties, attempts have been made to modify the strict potentiality criterion into a more workable criterion, such as the “gradualist potentiality criterion”. It says that potentiality “confers not a right, but only a *claim*, to life, but that claim keeps growing stronger”(209). In other words, in early pregnancy the claim to life is weak or immature (and can be overridden), whereas later in pregnancy the claim to life grows stronger (and can no longer be easily overridden). A modification of the gradualist potentiality criterion has been proposed by van Niekerk & van Zyl (1996) in the context of supernumerary embryos produced *in vitro*. These embryos, as potential human beings, they argue, have a claim to be protected.

The strict potentiality criterion leads to the conclusion that abortion is impermissible. The actual personhood criterion, as we have seen, while logically sound, leads to Tooley’s argument that abortion and infanticide are permissible. The modified potentiality criterion is a compromise akin to the gradualist approach that will be explored in Chapter 2.

### 3. The absolute 'pro-choice' position: abortion is *always* permissible.

The extreme liberal position claims that abortion, and even infanticide is always permissible and is morally neutral. The two basic tenets of this stance are: (1) the fetus is not a person (therefore, it has no moral significance nor a right to life); and (2) even if one would ascribe a right to life to the unborn, the pregnant women's right to bodily integrity always override the fetus' alleged rights. From the outset it can be seen that one is dealing with two very different arguments. The first makes reference to a metaphysical concept (the personhood of the fetus); from the claim that a metaphysical property is missing from an entity it is concluded that a moral property is missing. The second claim has to do with conflicting rights.

Since Michael Tooley is the main defender of the position that abortion and infanticide are both morally permissible, we need a closer look at his argument. He (1983:34) sets the stage by asking three questions which are central to the problem of abortion: (1) what makes something a person; (2) is it intrinsically wrong to destroy a potential person; and (3) at what point in time does potentiality end?

From the outset Tooley (34) makes it clear that, in his view, "a *person* is, by *definition*, an entity that has the right to life in view of *actual* properties", and that the properties that make a person – self-consciousness, rationality – have no ethical content. To be a person, he says, a minimum requirement is to have a concept of 'continuing self' (87), to be a subject of non-momentary interest. And this needs at least two conditions: "the ability of having desires, the ability of having thoughts other than the present, a concept of self as a continuing subject of mental states" (303). Contrary to Mary Anne Warren, Tooley (136-137, 163) sees no absolute necessity of rationality to be a person:

It does not seem plausible that possession of a capacity of reasoning is a necessary condition for being a person...[rationality] even when accompanied by consciousness together with rudimentary desires, cannot be a sufficient condition of something being a person....Once one introduces reference to specific [brain] functions, one is confronted with the very difficult question of which functions are the morally relevant ones.

What ascribes an entity the right to continued existence according to Tooley's 'modified particular-interests principle' is the capability of "having a desire to continue to exist", and this requires, says Tooley, "to have conscious experiences and to possess self-consciousness, a concept of identity of things over time, the concept of a continuing self" (102). Hence, something cannot have a right to continued existence unless it is capable of having a desire to continue to exist. And this requires a capacity of self-awareness as a subject of experience; otherwise there is no way that a being could enjoy some mental life that is temporarily unified. To qualify as a bearer of rights one must have at least the capacity to desire what the right entails. To have the right to life one must at least be able to desire to continue to exist (333). Now, that desire requires a minimum of brain development and brain function, which, according to Tooley, does not appear before at least the end of the second month of life after birth.<sup>15</sup> It follows, says Tooley, that abortion and infanticide are both permissible.

The other premise of the extreme liberal position – that is, women's right to decide about their body- follows from Warren's argument against the moral standing of the unborn, which appeared in the section "the fetus is not a person".

#### **4. Difficulties with the extreme positions.**

##### **4.1. The absolute 'pro-life' position is problematic.**

In order to assess the extreme conservative view that life is absolutely inviolable, we must examine the validity of its premises. The first premise states that a zygote merits the same protection as an infant, and that both have the same moral weight and right to life as any adult. From there follows the so-called *derivative* objection to abortion (Dworkin 1997:127). In other words, and in a secular perspective, the moral status of the fetus derives from its rights and interests. The fetus' right is the right to life, and the fetus' interest is to continue to exist. The basic interest of the unborn has been called the possession of "a future like ours" (Marquis 1999: 465) or the possession of a "particular interest" (Tooley 1983:102). The second premise states that life is *per se* sacrosanct, regardless of rights and interests. From this follows what Dworkin (1997:127) calls the *detached* objection to abortion. In other words, and still in a secular perspective, human life has an intrinsic value by the mere fact that it

exists, should flourish, and should not be wasted. The reason is that human life is the product of two creative investments: a natural investment (deriving from the process of evolution), and a human investment (the genitors' labour). The advocates of a theologically inspired pro-life position invoke the two same premises, with the only difference being the assumption that life, at all of its stages, is God-given. That is what makes it an intrinsic and inalienable value with which no one has the right to tamper with.

There is, in fact, no general agreement on the basic tenets of the conservative argument. For example, in Steinbock's (1992:46) view, the first conservative premise is that the fetus is indisputably genetically human and that fertilisation marks its beginning. While this is, in fact, Noonan's (1967: 85) argument, we have seen that within the Catholic Church, for instance, there is an ongoing debate on immediate versus delayed animation based on newly acquired knowledge in embryology. Secular views, presented by the Warnock Commission<sup>11</sup>, have adopted the motion that early abortion (before day-14 after fertilisation) is permissible because of the lack of personhood at that stage. For the advocates of delayed animation this is a morally acceptable position. Now, if this argument is pushed to its logical extreme, one might wonder why there would be a moral problem with the disposal of supernumerary embryos resulting from in vitro fertilisation (IVF).<sup>16</sup>

The second conservative premise, still according to Steinbock (1992:46), is that there is a continuum of humanity from conception to death. Now, it all depends on what one means by humanity: is it genetic humanity (Noonan's above-mentioned position), is it personhood, rationality, and/or self-consciousness? In another perspective, the argument of continuity makes appeal to the argument from potentiality. As Tooley (1997:53) said: "the conservative view is acceptable if and only if the potentiality principle is acceptable and sound." The difficulty is to prove or disprove the validity of the potentiality principle. And, "the potentiality argument holds only if one argues against the moral symmetry argument" –that is, the negative versus the positive duties (57).<sup>17</sup> Baruch Brody, who is considered to be a moderately conservative moral philosopher, maintains that the "fetus comes into humanity" when its brain begins to function. Although there is quite a problem with Brody's concept (or rather misconception<sup>18</sup>) of brain function, it nevertheless raises another objection: Can we ascribe a moral significance to the mere possession of a 'functioning' brain?

Thomson's (1997:77) account of what she calls the "extreme view" of the absolute pro-lifers is somehow different. She sees the two main premises as (1) the direct killing of an innocent person as an end in itself or as a means to some end is always impermissible, and (2) the duty to refrain from directly killing an innocent is more stringent than one's duty to keep a person from dying. Applied to a pregnant woman, this would mean that abortion is never morally justifiable, not even in self-defence.

Susan Dwyer (1997:4) has argued that the so-called first premise – that is, a right to life from conception – is not valid as such, unless supplemented by specifications such as "What does the right to life consist in?" Donald Marquis (1997:26), a self-confessed anti-abortionist, holds the same view. The main premise, he says, that life is present from conception is obvious; it does not follow, however, that abortion is always murder. Even if it is generally accepted that killing an innocent person is morally wrong, one has to prove that a human embryo/fetus is a person and not merely a biological entity. As we have seen, a number of moral philosophers have argued that the unborn is not a person; extreme pro-lifers, however, have not succeeded in proving them wrong. The only argument of the pro-lifers that has shown to be somehow more successful is the argument from potentiality. But the latter argument is not part of the absolute conservatives' thesis. The argument from potentiality will be considered in chapter 2.

The second objection against the absolute pro-lifers is directed at the second premise. According to Dwyer (1997:4) the so-called *detached* view on abortion – that is, that life is sacrosanct regardless of fetal rights or interests – makes exception for cases where the pregnancy results from rape or incest (where a number of ultra-conservatives would make an exception), and for cases where the pregnancy is a threat to the woman's health or life. These exceptions, she says, appeal to factors alien to the moral status of the unborn to justify the termination of pregnancy. By saying this, however, Dwyer makes reference to the doctrine of double effect, which, although recognised by the Catholic Church as a justification of specific cases of termination of pregnancy and endorsed by Christian-inspired medical ethics, should not be considered to fall under the absolute pro-life doctrine. The latter will be analysed in chapter 2.

Hence, for the sake of consistency an ultra-conservative or absolute pro-lifer should be an unconditional pacifist who would not make exception even for killing in self-defence, and

who would have no trouble with the death of his pregnant wife whose heart disease results in her death in pregnancy. Not to make any allowance for a “middle ground” position is an untenable procrustean and inhumane stance. As Murphy (1995:119) put it:

Just as the ethical absolute of life cannot be generalised, neither can the goods of change, appearance, or rational ascetism. To attempt to do so is, invariably, to create oppressive universals.

#### **4.2.The absolute ‘pro-choice’ position is problematic.**

As much as the extreme pro-life stance is in need of specifications (e.g. what exactly is a right to life), the absolute pro-choice position is in need of specifications, more specifically, about the criteria of personhood (Marquis 1997:26). Steinbock (1992:53-54) has argued against Warren’s ambiguous use of the word *person*. There are two senses to the concept of person: one is descriptive and the other is normative. The descriptive sense of person relates to a being with certain psychological features such as consciousness, self-consciousness, and rationality. The normative aspect of personhood is what gives a person a full moral standing, and, in particular, a right to life. For Steinbock, both Warren and Tooley make the mistake of dissociating the two senses, and to retain only the descriptive aspect of a person. It is precisely in the connection of the descriptive and of the normative aspects of personhood, she says, that we base moral agency and moral responsibility. It must be said, however, that if Steinbock is right with regards to Warren’s argument against the personhood of the fetus, she is mistaken with regards to Tooley. Tooley (1997:44) clearly states the centrality of two questions: (1) the *moral* (or normative) issue of what properties are required to be a person to whom a right to life can be ascribed; and (2) the *factual* (or descriptive) properties necessary to make an entity a person. Even if one disagrees with Tooley, one has to admit to the justice of his entire argument to avoid the fallacy of the strawman. Now, speaking of fetuses and of their contentious personhood, to say the least, one can hardly ascribe them the ability of moral agency and moral responsibility. Hence, Steinbock’s argument (viz. that one cannot dissociate the descriptive and the normative aspects of a person) fails unless, as she recognises, one resorts to the argument from potentiality (viz. the fetus is a potential person with equal rights

to a real person). Remember that the same argument – that is that an extreme position, either way, is not tenable without the appeal to potentiality – was used to refute the absolute pro-life position.

Concerning Tooley's 'modified particular-interests principle'<sup>13</sup>, it should be noted that he rejected Warren's necessary criteria of personhood, and in particular, the claim that rationality is required. The argument was that rationality is a specific brain function, and that it would be problematic to ascribe a moral value to a brain function. It seems then that Tooley is inconsistent: he cannot refute Warren and at the same time use a brain function to support his own main thesis. At the end of his book, Tooley investigates the 'state of the art' knowledge on fetal and neonatal neuro-physiology and neuro-anatomy to make his point. Since then, however, major advances in neuro-sciences have been made that indicate the amazing complexity of brain function and the limitations of our knowledge of fetal brain function.<sup>18</sup> Therefore, in order not to misrepresent Tooley's argument, it would be fair to quote what he says at the end of his book when he talks about the complexity of personhood (409):

The properties of a complex system often change in radical and discontinuous fashion, even when they depend entirely upon properties of parts of the system, and the latter are changing in a gradual continuous fashion. Continuity of an individual physiological development could, therefore, be accompanied by discontinuous changes in the individual's psychological capacities, and this could be so even if the mind turns out to be identical with the brain. Continuity at the physiological level provides no reason, then, for thinking that morally significant changes in the developing individual will necessarily be by degrees.

## **5. Discussion**

In his introductory comments on the most cited and often reprinted papers on abortion Curzer (1999:435-443) summarises and discusses the six common attributes ascribing a right to life to fetuses, as well as five syllogisms concluding that abortion is wrong. The six

attributes are the possession of (1) a soul, (2) humanity, (3) sentience, (4) rationality, (5) a future like ours, and (6) the fact that one fits into a network of relationships. Curzer argues against each of these attributes by saying that (1) we have no “soul detector”; (2) is speciesism; (3) clashes with common sense; (4) which rationality, actual or potential, low or high?; (5) is as speciocentric as (2); and (6) which membership, actual or potential?

In this section of the present essay only the two extreme views on abortion have been addressed. It should be quite clear, at this stage, that the absolute pro-life stance appeals to only one single criterion possessed by the unborn. There is a God-given soul from conception, and that is sufficient to ascribe an unalienable right to life to any genetically or biologically human entity. In a secular perspective, humanity is what ascribes that same right from the onset of genetic and biologic life. Criteria (3)-(6) belong to the “softer” positions on the morality of abortion; they will be discussed in the next section.

Curzer then analyses five moral arguments against abortion: (1) the utilitarian (the slippery slope argument); (2) and (3) the deontological; (4) the aretaic; and (5) the feminist argument. Let us briefly unpack these. The utilitarian argument claims that the practice of abortion would erode people’s motivation to act morally. This is a mere assumption that is not substantiated by empirical facts. It is widely agreed upon that the utilitarian problematic is that we don’t know how people will act. The first deontological argument states that it is always wrong to kill a creature with a right to life; as such the argument is unacceptable because it assumes that the fetus has a right to life (this remains to be proven), and because it makes no exception for killing in self-defence. The second deontological argument maintains that promise breaking is always wrong. In this line of moral thinking it is assumed that sexual intercourse carries the implicit consequence of a pregnancy, which in turn carries an implicit promise to keep alive the ensuing embryo. This argument, says Curzer, fails because some promises can be broken, and because one should not establish an undissociable link between causal responsibility (to decide to have sexual intercourse) and moral responsibility (to bear the moral consequences of sexual intercourse). The aretaic argument refers to Thomson’s *Minimally Decent Samaritan*: it is indecent to let die an entity with a right to life if it is at little cost. What is indecent is, however, not *per se* morally wrong. Within a secular aretaic morality, the status of the fetus is irrelevant to the rightness or wrongness of abortion. Finally, the ethics of care (which is *a* feminist’s position but not *the* feminist stance) claims that the

wrongness of abortion consists in severing an innocent member of the pregnant woman's immediate family. It should be noted that feminism is usually pro-life, but does not appeal to a precise definition of the moral status of the fetus. One can agree with Curzer when he labels all of the above arguments "line-drawing approaches" which obscure broader questions. Rosalyn Diprose (1995:204), the author of *A 'Genethics' that makes sense*, has articulated a similar view when she wrote:

Taking the pregnant body to be two bodies, the ethical issue becomes a problem of competing claims between two individuals....This leads to two problems: (1) the legitimacy of the division, and (2) the priority of rights....As we are never without a body, a notion of an individual where the body is given the secondary status of an appendage subjected to property rights would seem to assume much while explaining little.

The deontological arguments are part of the absolute pro-life morality against abortion. They have been rejected as untenable. The utilitarian argument, as presented by Curzer, does not make justice to consequentialism. It cannot be denied that sentience is the main argument of utilitarians against abortion; however, since sentience is a gradually acquired property, utilitarianism is neither absolutely pro-life nor absolutely pro-choice. The aretaic argument against abortion, as presented by Curzer, also falls short of specifications. Virtue ethics is not an absolute antiabortion position; the decision to have or not to have an abortion needs to be justified by the character of the pregnant woman. Futile motives are unacceptable; serious motives to abort are to be taken into consideration. Finally, feminists are either pro-choice or pro-life; it is not feminism as such that tips the balance.

## **6. Concluding remarks**

A critical appraisal of both the extreme liberal and the extreme conservative positions on abortion leads to the conclusion that neither is tenable as such. Abortion is neither always permissible nor always impermissible. The defence of an absolute pro-choice stance is based on a negative and a positive premise. The negative premise denies that any moral value is

attributable to the unborn. The difficulty with this premise is that the concept of personhood, applied to the unborn, should not (or cannot) be reduced to its metaphysical component of rationality and self-awareness. Although it can be argued that the unborn does not possess *full* moral personhood – that is, rights *and* duties – one could hardly negate that, in most instances, the unborn does possess a right to be protected. Therefore, the negative premise of the absolute liberals is not acceptable as it stands. The positive premise of the extreme pro-choicers claims that women have the right to decide about their body. This claim can only be accepted if the first premise is true. Since we have seen that the first premise is not true, it does not follow that abortion is always permissible.

The claim of the absolute pro-life position is that human life is sacrosanct and inviolable. This positive premise holds both for religious and secular pro-lifers. For believers, each human life is from conception a God-given gift and participation into the divine. Recent advances in embryology have shown that the concept of ensoulment at the time of conception is problematic, and that one should make allowance for a “window period”. In addition, theological intuitions, although highly respectable, should not replace philosophical arguments. The principle of sanctity of life, if it were to be rigorously applied, would lead to the denial of a fundamental human right: the right of self-defence.

Since none of the extreme positions is actually tenable, one has to investigate whether a *softening* of the polar oppositions would be morally acceptable. This is the task to which we are now turning.

## ***Chapter 2. Binary Positions on Abortion: Two Soft Views***

*The question is not, Can they reason?  
nor Can they talk? But, Can they suffer?*

Jeremy Bentham (1789)

### **1. Introduction**

The two strong views on abortion are mutually exclusive, and, as such, leave no room for debate. Since ethics is essentially a matter of addressing, and sometimes of settling conflicts, dogmatism on either end of the spectrum is to be avoided. The question of abortion should remain open to debate while realising that sometimes there is no single right or definite answer. The conversation is possible only if both contenders soften their position to accommodate mutual understanding and respect.

In this section I will present and discuss the soft pro-life and the soft pro-choice positions. The soft pro-life stance is represented by the Roman Catholic doctrine of double effect on the one hand, and by Judith Jarvis Thomson's secular position on women's right to *some* bodily integrity, on the other hand. The soft pro-choice stance is held on two different accounts: L. Wayne Sumner's "third way" and Peter Singer's concept of sentience.

I will argue that the doctrine of double effect is an oxymoron, and that women's right to bodily integrity is a category mistake. In regard to both Sumner's and Singer's position, I will argue that it is doubtful to ascribe a moral weight to an anatomical or to a physiological property.

### **2. The Soft 'pro-life' positions: abortion is *sometimes* permissible.**

In order to defend the view that abortion is sometimes permissible, one must show that the sanctity of life principle is not absolute. In other words, according to Sikora (1993:94), one must argue successfully that:

[k]illing fetuses is permissible even though it is wrong to kill innocent individuals who are rational or have been rational in the past. This needs to show (1) that the reasons forbidding the killing of persons do not apply to fetuses; and (2) that there is no other reason to justify banning of abortion.

The first part of Sikora's argument has been addressed in chapter one. Our task now is to find out whether there are circumstances where the "killing of fetuses" is morally permissible.

## **2.1. The Doctrine of Double Effect.**

In its earliest form the doctrine of double effect (DDE) was developed by Aquinas as a means of distinguishing between direct and indirect intentions (Gillon 1996:134) – that is, a means of judging the moral acceptability of risks and harms (Shannon 1993:6). The DDE is one of the basic principles of Catholic medical ethics (Brock 1997:384), although, as Smith (1993:9) says, "[the DDE] is also *intuited* by many others not members of the Roman Catholic Church". The main reason for the appeal of the DDE is that it is often linked to the principle of the "sanctity of life" (Glover 1990:155-156). And because of this association, the DDE, says Nancy Davis (1994:298), "is often employed by those whose moral principles take the form of absolute prohibitions". The other reason for the appeal of the DDE is its emphasis on the fact that actions cannot be judged solely with respect to their consequences, but that intentions are vital to the moral assessment of an act (Gillon 1996:134).

### **2.1.1. What does the DDE actually say?**

One of the most traditional contexts in which appeal is made to the DDE in medical practice is that of the so-called overdose of morphine to alleviate the pain of a terminally ill person. The direct intention is the relief of pain; because of the intensity of the pain and the fragile balance between the side effects of morphine (cardio-respiratory depression) and the analgesic effect, death may ensue (the foreseeable but unintended effect).

The DDE is used to judge the moral permissibility of an act that might have foreseeable bad consequences. In Philippa Foot's (1976:267) words, "the DDE states that

sometimes it makes a difference to the permissibility of an action that involves foreseeable harm to others if the harm is not directly intended". And in Beauchamp & Childress's (1994:206) words, the DDE is "a venerable attempt to specify the principle of nonmaleficence...for situations in which an agent cannot avoid all harms and still achieve important goods". These two views already indicate that some emphasise the intentions, and that others focus on the consequences.

In order for the act to be permissible, the DDE sets four conditions, which must be met:

- (1) The action must be good in itself – that is, not inherently morally wrong or evil – or, at least, morally neutral (not evil or wrong).
- (2) Only the good effect is intended – that is, the foreseen evil or harm must not be used as a means to produce the good effect.
- (3) The good is not achieved through the bad effected – that is, the harm or evil is not intended but is only tolerated.
- (4) The reason for undertaking the good action must be valid – that is, the probability of the bad effect must be low (the proportionality or balancing clause).

The DDE's main thrust is to establish distinctions between: (a) the intended end and the intended means to that end; (b) between the intended result of an action and its unintended but foreseen side effects; (c) between desired results and intended results; and (d) between the overall results and the individual components of the overall results (Gillon 1996:137).

### **2.1.2.How is the DDE interpreted?**

The DDE can be interpreted in terms of the principle of proportionality – that is, one should be guided by the size of the harm or evil (a consequentialist approach) – or in terms of precedence to be given to intentionality (a deontological approach). For Jonathan Glover (1990:88), the DDE is unacceptable for utilitarian based five objections. First, there is an almost insurmountable difficulty in drawing a clear line between the intended means and a foreseen but (almost always) inevitable consequence. Two, one may wonder if there is any way other than an appeal to authority to define *bad* actions that can *never* be justified. Three, what is in general undesirable may not be absolutely prohibited. Four, it is not clear what is

meant by foreseen but unintended consequences that are justified by the DDE. And, finally, it is not clear whether one can really draw a line between an act and its consequences. For all these reasons, Glover (90-91) concludes:

The DDE forbids nothing *unless* we set some limit to the re-description of acts in terms of their consequences...To have any content the DDE must stipulate that some very *specific* acts may never be judged morally without their *full specification*.

For Foot (1976:267), on the contrary, the crux of the matter is the intentionality. What are important, she says, are the distinction between *direct* intention (what we *do*) and *oblique* intentions (what we *allow*), rather than the balance of good and evil. In other words, what we do (positive agency) is to remove an obstacle that is withholding a train of events; what we allow (an omission or negative agency) is to abstain from preventing. Hence, for Foot, one has to give precedence to the principle of the priority of avoiding harm – that is, that our obligation not to harm (non-maleficence) is more stringent than the obligation to benefit (beneficence).

For Brock (1997:385), the DDE, with its emphasis on the distinction between direct and indirect intention, fails because there is “no fully adequate analysis of the concept of intention”. Furthermore, he says (385):

The difference in intention is of causal and temporal structure...with no moral importance...[The] difference is in the risk of a bad outcome and not of intentions.

Beauchamp & Childress (1994:208) reach a similar teleological conclusion:

No agent desires a bad result (the fetus' death) for its own sake, and no one would have tolerated the bad result if its avoidance were morally preferable. Each party accepts the bad effect only because it cannot be eliminated without losing the good effect...[Therefore, we should rather speak of] an outcome more than an unwanted and unintended consequence...[But], the DDE is unable to reach this conclusion on its own.

James Sterba (1998:154-155) suggests what he calls the *counterfactual test* to distinguish between foreseen and intended consequences. The test would consist in asking two questions: (1) would you perform the action if only the good consequences would result?; and (2) would you perform the action if only the evil consequences resulted? This, he says, works only if the evil outweighs the good. If, on the contrary, the good outweighs the evil an additional test is required: the *non-explanation test*. The non-explanation test then asks the question: Does the evil consequence explain why the action was undertaken in order to obtain the good? If it does not, the evil consequences are merely foreseen. If, on the contrary, the evil consequences do explain the undertaking the evil is intended as a means to a good end.

Quinn (1994:355), who calls the DDE the DDA (doctrine of doing and allowing), is of the opinion that the issue is not about the difference between positive and negative agency, but “between two relations an agent can have to a sequence of events that leads to harm”. What he means is that, when an action has been initiated or kept going, one may allow it to complete itself.

The DDE is thus quite clear in its content, but its interpretation goes into two directions. Some argue that the DDE should be seen as a guide in the balancing of good and evil: the act is morally permissible if the good produced is greater than the inevitable evil (a sort of utilitarian calculus). Others argue that the DDE should be seen as a guide of our intentions; the consequences are not action-guiding (a deontological view).

### **2.1.3. The DDE and the problem of abortion**

Four medical conditions related to pregnancy are the classical test-grounds for the DDE, as seen by Roman Catholic medical ethics: cancer of the cervix, ectopic pregnancy, heart disease, and obstructed labour.<sup>1</sup> In the two first conditions, abortion is permissible, whereas in the two latter conditions abortion is not permissible. This is because in the two first instances the death of the fetus is an unavoidable “side effect” of the means to save the woman's life, while in the two latter cases “killing” is said to be intentional (a means to an end)(Beauchamp & Childress 1994:207).

Put in terms of intentionality, in all of the four circumstances, the direct intention is to save the woman's life. Now, if that were the case, the oblique intention would be the "killing" of the fetus. But that makes no sense, since one would rather save the fetus whenever possible. Nobody has the intention, direct or oblique, to kill the fetus in the circumstances under consideration. The fetus' death is a foreseen and unavoidable consequence. Therefore, the DDE, in the medical conditions where it is supposed to apply, cannot be seen in terms of direct versus oblique intentions. In the clinical practice, where said situations arise, there is little doubt that common sense morality gives precedence to the woman's life or health. The consequentialist approach prevails. The intentionality view, if it were implemented in common medical practice, would clearly be counterintuitive.

It thus appears that the DDE is open to two opposing interpretations: one supports the view that intentions should be action guiding, and the other argues that the morality of the same action should be judged in terms of its best consequences. Therefore, the DDE is of little help in the abortion debate. Its only merit might be that it is a softer stance on the sanctity of life principle. Let us now turn to the second soft prolife position: the right to *some* bodily integrity.

## **2.2. The right to *some* bodily integrity: the 'uninvited' fetus.**

The right to *some* bodily integrity, as Judith Jarvis Thomson claims it, has some similarity with the DDE. When the fetus is an aggressor, or when the fetus has not been "invited", women have the right to decide to end the pregnancy, says Thomson. Although one could argue whether the fetus is innocent by definition or if it can sometimes be a threat (an *innocent aggressor*), the reality is that in the conditions defined by the DDE the mere fact of the presence of a fetus *does* threaten the woman's health and/or life. Even if the pregnancy was desired and welcomed (the *invited* fetus), her bodily integrity is jeopardised, and this, in some views including the DDE, suffices to justify the termination of the pregnancy. Now, when the fetus is "uninvited", he or she may well be "innocent". Does the lack of *invitation* make abortion permissible?

### 2.2.1. Thomson's violinist.

One of the most famous *Gedanken Experimenten* on the problem of abortion is Thomson's violinist story (1971). The story goes as follows. A famous virtuoso violinist suffers from irreversible and terminal kidney failure (presumably, before renal dialysis and kidney transplant became available!). His friends, the members of the Society of Music Lovers, in an ultimate attempt to save his life, irrupt into the bedroom of a sleeping woman. During the woman's sleep, the musician is hooked to her blood circulation. When she wakes up, she realises that she became unwillingly the life support of the violinist. If she unhooks him, the violinist will die. The question is: Does she have the right to unhook? Thomson uses this allegory to discuss the problem of abortion, especially when the fetus is uninvited. What is women's moral duty to provide life support? In what circumstances, if any, can women decide to abort, make decisions about their own body? What are women's rights to bodily integrity?

Thomson's conclusion is that the *uninvited* fetus can be aborted. Who then is an uninvited fetus? Any pregnancy resulting from rape or incest, says Thomson. What Thomson's argument concerns is the fact that the right to life does not entail the right to use another person's body without that very person's consent. The violinist has no right as such to demand to remain hooked to the life support; it would be from the part of the woman merely an act of a "minimally decent Samaritan" to keep the violinist hooked.

Thomson's thought experiment is variably interpreted as being an argument for self-defence, or an argument in favour of the right to bodily integrity (English 1999:457). If it was merely an argument to justify abortion in the case of rape or incest, Thomson's thought experiment would be of little help in the debate (few people, even among the extreme conservatives, would object to abortion in these conditions). If Thomson's story is taken in the context of self-defence or of conflicting rights (women's right to decide about their body), the discussion is more promising.

### 2.2.2. Abortion in Self-defence.

According to the *natural law rule*, it is always wrong (1) to kill directly (2) an innocent creature (3) who possesses a moral standing (Sumner 1981:87). Therefore, abortion can be justified only when (1) the fetus is *not* innocent (i.e. self-defence), and (2) when the killing is not direct (i.e. double effect)(106).

The argument of self-defence runs as follows (Brody 1984:208-211):

- (a) The continued existence of Y poses a threat to the life of X, a threat that can only be met by taking Y's life.
- (b) Y is unjustly attempting to take X's life.
- (c) Y is responsible for his attempts to take X's life and is therefore guilty of attempting to take X's life.

For Brody, even if premise (a) is true, abortion is only permissible if and only if Y is going to die anyway in a relatively short time – that is, were abortion not performed, both the woman and the fetus would die soon. In practical terms, Brody's argument would apply only to the case of an ectopic pregnancy and to the condition of obstructed labour mentioned in the discussion on the DDE. In these two instances, the woman and the fetus would die soon. It would not apply to the case of a pregnant woman suffering from cervix cancer or from heart disease, because the woman's death would be delayed. The permissibility of abortion would, according to Brody's criteria, depend on the time needed for the woman to die. That sounds absurd. One might also object to Brody that there is no need to appeal to the doctrine of self-defence, where the DDE has already taken care of these situations.

An objection against the doctrine of self-defence and abortion is the 'innocence' of the fetus. In order to be justified, self-defence can be invoked only against an aggressor, and an aggressor is, by definition, not innocent. Kristin Luker (1984:232) asks the question: Are embryos/fetuses not inherently innocent? Sumner (1981:110) argues that the fetus is "technically innocent" if it is no threat. He further argues (111) that rather than by the fetus, the threat is constituted by the life support system (in other words, the placenta). Disconnecting the life support, he says, is permissible because it removes the threat!

For Feinberg & Levenbook (1993:219) as well as for Jane English (1999:457), the issue is not whether the fetus is innocent or not; the issue is rather the necessity of saving the

woman's life or of preventing serious bodily injury. Here again one can see the interconnections of the DDE and the doctrine of self-defence. One of the major difficulties is that "none of the examples of self-defence [when used as a model for abortion rights] makes an exact analogy to the abortion situation" (Feinberg & Levenbook 1993:220). Thomson seems to have been well aware of the difficulty, so much so that she came up with another thought experiment designed at improving her former argument in favour of self-defence against an aggressor. Thus goes the story:

Aggressor is driving a tank at you. But he has taken care to arrange that a baby is strapped to the front of the tank so that if you use your anti-tank gun, you will not only kill Aggressor, you will kill the baby. Now, Aggressor, admittedly, is in the process of trying to kill you; but that baby isn't. Yet you can presumably go ahead and use the gun, even though this involves killing the baby as well as Aggressor.<sup>2</sup>

The argument of self-defence needs an aggressor in order to be justified. The advocates of the theory seem to be aware of the difficulty of applying the concept of aggression to the fetus. To salvage the theory they need to twist the concept of aggressor and call the fetus "uninvited" (Thomson), "technically innocent" (Sumner), or "excused but unjustified aggressor" (Feinberg & Levenbook). There is no doubt that, even in the case of rape or incest the fetus is innocent; the fact of being uninvited does not make it an aggressor. The issue at stake is that the fetus either is uninvited (but none the less innocent), or that it is invited (still innocent) but, for reasons independent from its status, a threat to the mother's health or life. None of these conditions satisfies the doctrine of self-defence.

### **2.2.3. Abortion and women's right to bodily integrity.**

Thomson's thought experiment has been viewed as an argument in favour of women's right to bodily integrity in the sense that women should have the right to decide whether to keep a pregnancy or not. If the burden is excessive, the life support can be disconnected from the violinist. It seems that this interpretation should be taken in the context of the time.

Remember that the *Roe v. Wade* case was settled by the Supreme Court in 1973 (two years after Thomson's paper was published). *Roe v. Wade* has been a major event in the US legal and moral debate on abortion. In response to *Roe v. Wade*, the antiabortion movement has sought to establish the "rights of the fetus" (Roth 2000:20). This gave rise to three novel claims: (1) that the fetus is a person; (2) that abortion is immoral because of the moral status of the fetus; and (3) that the fetal rights override the maternal rights (Feinberg & Levenbook 1993:195).

The Court's decision was that abortion during the first trimester was a private matter because the right to "privacy" – the legal equivalent of "personal liberty" – is a Constitutional right. The latter right, however, was not unqualified. It was balanced against the rights of the fetus, and these rights become weightier with the progression of pregnancy. In the second trimester, for rather medical reasons though, the Court decided that the law should regulate abortion.<sup>3</sup> A third trimester termination of pregnancy is permissible only if the woman's health is at stake (Annas 1988:145).

The salient points in the *Roe v. Wade* case were that, according to the Supreme Court of the US, (1) a first trimester abortion is a woman's legal right, (2) the fetus is not a legal person and hence has no rights recognised by the Constitution, and (3) the viable fetus (after the 24<sup>th</sup> week of gestation) has a *potentiality* of survival outside the uterus. This highlights the shift in the abortion debate from a moral issue to a conflict of rights issue.

The *Roe v. Wade* Supreme Court's decision did not put an end to the debate. In 1989, Chief Justice William Rehnquist, the "loser" in the *Roe v. Wade* case, made a significant retreat from abortion rights in *Webster v. Reproductive Health Services*. The verdict was that the Government has an interest in protecting life from conception. In 1992, *Planned Parenthood v. Casey* reaffirmed the essential points affirmed in *Roe v. Wade*. The legal to and fro has been used as a political platform more than a serious moral debate.<sup>4</sup> Rachel Roth (2000:192) states that "the creation of fetal rights has moral implications...[for] it does not help women to fulfill the moral responsibilities they have". She, however, does not articulate what she means by the fulfillment of those moral implications. As a matter of fact, her entire book is more a plea against the tendency in the American judiciary and medical practice to "designate fetuses as 'innocent third parties'...[depicting them] as distinct patients trapped

within women's bodies and trapped by women's selfish and irrational decisions". She further argues (188,189,194):

Defeating fetal rights is necessary literally to make women whole. Inferior legal status is the cost women bear when fetuses are given rights: two equal rights-bearing subjects cannot exist in one body ...The only thing fetal rights does effectively is penalise women...the effort to codify rights for fetuses is all about subordination of women.

The last sentence of her book (196) states: "For a society that promises equality, these costs are too high. We can't afford fetal rights". This view shows that the debate between pro-lifers and pro-choicers, as it has evolved during the three last decades in the US, has been more about constitutional rights than about the morality of abortion.

### **3.The Soft 'pro-choice' Positions: *early* abortion is always permissible.**

The soft pro-choice positions appeal to the gradual acquisition of a property by the fetus. With L. Wayne Sumner's *gradualist* approach, he calls the "third way", the fetus acquires a gradually more functional and better-structured central nervous system (CNS). Before that stage is reached, abortion is morally neutral and thus permissible. Peter Singer's argument has some affinity with Sumner, but has wider implications. For Singer, what ascribes moral weight is the ability to feel, or sentience. Sentience needs a neurological equipment that is also acquired in a progressive fashion. Before the stage of sentience, abortion is permissible. Let us turn first to Sumner's argument.

#### **3.1. L. Wayne Sumner's 'third way'.**

In *Abortion and Moral Theory* (1981), Sumner argues that "moral standing" is a property with degrees: it can be absent, partially or fully present (26). Full moral standing can be attributed only to the paradigm person – that is, an adult human being with normal

intellectual abilities, emotions, perceptions, sensations, decisions, and actions. The person with full moral standing is alive, sentient, rational, and intrinsically valuable (129).

Now, beings at the beginning of life (and those at the end of life who have lost the attributes of the paradigm person) depart from the paradigm because they have not yet acquired the attributes of a paradigm person. In addition, to possess full moral standing a paradigm person has rights and duties. Since the fetus, he says, is not yet a paradigm person, and since it is incapable of being a duty-bearer, full moral standing cannot be ascribed.

Because of their incapacity of moral agency, some beings can conceivably have rights without duties (141). A paradigm person has full moral standing as he or she has, in virtue of his or her rationality, the ability of moral agency. In the absence of rationality there could be no moral agency and no moral duties. Therefore, in the case of fetuses, “something less demanding should be required for the possession of moral rights”(142). What is that “something less demanding”, and what are those rights?

To the question about the nature of those rights, Sumner (30-31) contends that for incompetent beings (children, infants, and fetuses) the concept of right must be narrowed to the only right of incompetent beings: the right to life. And, the right to life means “the right to have one’s life supported, nurtured, enhanced by others”, in other words, a welfare-right. That “something less demanding” required to the ascription of a right to life is *sentience* (142). Now, what is sentience? As Sumner (142) puts it:

Sentience is the capacity for feeling or affect. In its most primitive form it is the ability to experience sensations of pleasure and pain, and thus the ability to enjoy and suffer.

The question then is: What is needed to be a sentient being? For Sumner (142):

Consciousness is a necessary condition of sentience, for feelings are states of mind of which their owner is aware. But it is not sufficient; it is at least possible in principle for beings to be conscious (percipient, for instance, or even rational) while utterly lacking of feelings. . . It is in virtue of being sentient that creatures have interests, which are compounded either out of their desires or out of the experiences they find agreeable (or both). If morality has to do with the protection and promotion of

interests, it is a plausible conjecture that we owe moral duties to all those beings capable of having interests. But this will include all sentient creatures.

One difficulty with the concept of sentience including all living creatures able to feel is that we know very little about the sentience of lower animals like invertebrates. What is the sentience of an oyster or of a mosquito? In the revised version of *The Third Way* (1997:footnote p.109), Sumner mentions that even very simple organisms produce endorphins, a chemical transmitter of pleasure. Hence, this discovery should commit us to “extending (some) moral standing to invertebrates as well”. Another difficulty with this argument is that feelings, in the above quoted passage, are given two different meanings. Sentience, the capacity for sensory feeling (pain, sound, light, etc.) is not equal to the ability of feeling love, compassion, hatred, etc. Furthermore, the next question should be: What is needed for consciousness, as it is *a necessary condition of sentience*? Sumner does not address this point. What he addresses is the question of when sentience first emerges. Referring to some limited notions on the ontogeny and phylogeny of the brain, he states that “at the conclusion of the first trimester virtually all of the major neural components can be clearly differentiated and EEG activity is detectable”(148). And: “the threshold of sentience appears to fall in the second trimester...probably towards the end of the second trimester”(149-150). For Steinbock (1992:85), sentience is problematic in the sense that it is not possible before eight weeks of gestation, and becomes only very likely after twenty-eight weeks. On the other hand, she says: “the neo-cortex first begins producing EEG waves between the twenty-second and twenty-fourth weeks of gestation”, that is the so-called “brain birth”. Since brain birth and viability roughly coincide, says Steinbock, it is a more objective criterion or landmark than sentience.

Sumner then argues that his “third way” is a differential view that accommodates liberals and conservatives alike. It accommodates the liberals by allowing early abortion (before the acquisition of sentience abortion is “morally innocent” and a private matter), and it accommodates the conservatives by prohibiting late abortions (after the acquisition of sentience abortion is no longer morally innocent, and should be regulated by law case-by-case)(126). Furthermore, Sumner confers his theory four virtues: (1) it is gradual (because it locates a threshold *stage* rather than a point, and allows for moral standing to be acquired

incrementally); (2) it is differential (because the moral status differs for early and late pregnancy); (3) it is developmental (because moral standing is a value that develops together with the organic and functional development of the fetus); and (4) it is moderate (because it takes account of the various stages of pregnancy).

Sumner's "third way" has the benefit of opening the debate on abortion and of trying to accommodate the two binary oppositions or strong views exposed in chapter one. It also has the quality of expanding the concept of "moral standing" beyond the boundaries of speciesism. Although Sumner makes no reference to Albert Schweitzer<sup>5</sup>, his views on the moral standing of nonhuman animals sound familiar to those aware of Schweitzer's concept of "reverence for life". Another interesting point in Sumner's expose is the avoidance of the limitations of a precise point in time where the fetus all of a sudden acquires a moral weight, be it conception (in the Christian tradition) or birth (in the Jewish tradition).<sup>6</sup>

The weakness, however, of the "third way" is that it seems to base the argument of sentience (the core of the argument) on scientifically shaky grounds (e.g. the presence of EEG waves indicates that a certain electrical activity is present, which may very well be only the translation of *reflex* neurological reactions rather than reactions to nociceptive stimuli). Although our intuitions support the view that it is wrong to inflict pain to any living animal, ethical arguments cannot be made on the sole basis of intuitions. On the other hand, the complexity of brain function is far from being unravelled. Therefore, it is imprudent, to say the least, to base a philosophical argument on incomplete scientific evidence, if at all.

### 3.2. Peter Singer on 'Sentience'.

Peter Singer (1977) has undoubtedly been pivotal in the crusade in favour of animal rights. His basic argument is that moral standing must be ascribed beyond the boundaries of the species *Homo sapiens* to all "animals" – that is, human and non-human animals – to avoid the charge of *speciesism*.<sup>7</sup> In *All Animals are Equal* (1997), he writes: "The principle of the equality of human beings is not a description of an alleged equality among humans: it is a prescription of how we should treat animals".

Why should we treat non-human animals equally to humans? Because of their moral standing. And, what is the property that ascribes moral standing? Sentience. Now, what is

sentience? Singer (120) defines sentience as “a convenient, if not strictly accurate, shorthand for the capacity to suffer or experience enjoyment or happiness”. The next question then is: What is the minimum requirement to possess sentience? To be sentient, an animal needs to be self-conscious – that is, “[to be] aware of itself as a distinct entity from others...over a period of time”. And: “[self-consciousness] needs a minimally rational understanding of the world, and the capability of feeling pleasure and pain”(1993:296). Finally, why is sentience of such an importance? Because, says Singer (1997:119), “the capacity of sentience is a prerequisite for having interests”.

In a nutshell, my understanding of Singer’s argument is that it is morally wrong to inflict pain to any living being endowed with the ability to feel, for it is in the best interest of all living beings not to suffer. Every one can or at least should agree with this view.<sup>8</sup> The question is whether it follows from Singer’s argument that killing is always morally wrong. He writes (1993:282): “are [animal experiments] wrong because they involve their needless death, or are they permissible because they do not cause suffering?”. If the gist of the argument is that the infliction of pain is morally wrong, painless killing should be permissible because of its moral neutrality. In *Suffering and Moral Responsibility*, Jamie Mayerfield (1999:159) writes:

I am sure that it is wrong to seek the destruction of sentient life, even if it could be done painlessly. I am not sure I know how to defend this conviction. Or should I say: I do not think I could articulate the defence it deserves. The right defence may rule out the thought that the world is not worth having.

What is the relevance to abortion? If sentience is *the* ultimate criterion of moral standing, abortion of any sentient being is wrong and abortion of a pre-sentient being is permissible. This is, as seen earlier, Sumner’s position. The logic of the argument then should allow the conclusion that *painless killing* of a fetus should be permissible. Note that it is technically possible.<sup>9</sup>

The difficulty with sentience as a sort of threshold in the ontogenesis of the human embryo/fetus is that it can be (and is) used both as a pro-life and as a pro-choice argument. Before the acquisition of sentience abortion is morally neutral and, therefore, permissible

(pro-choice). After the acquisition of sentience abortion is morally wrong and, therefore, impermissible (pro-life). But sentience does not mushroom all of a sudden. There is a gray area of uncertainty.

The other difficulty with sentience is the problem of *qualia*. Qualia, says Nobel Prize laureate neurobiologist Gerald M Edelman (1999:81,84):

[are] the subjective experiencing of the sensory modalities of touch, sight, hearing...And, of course, there are what might be called the 'super qualia' – the philosopher's exemplary companions, pleasure and pain...To explain qualia we must *assume* their existence...(emphasis added).

Edelman's point raises the question of whether we should base philosophical arguments on mere assumptions. The super qualia are so far only the subject of assumptions with no scientific prove.

#### 4. Discussion

In an interesting and concise manner, Susan Dwyer (1997:4-8) has summarised some of the main arguments that have been elaborated either in favour or against abortion, which have been discussed in chapters one and two of this essay. She highlights for each of them how the missing premise shows the weakness of each argument. I will now borrow from Dwyer in the presentation of said arguments.

The first argument (absolute 'pro-life'): the unborn *is* a person from the outset.

- Premise: a fetus is a person from the moment of conception.
- *Therefore*, abortion is always morally wrong.

The missing premise is: it is always morally impermissible to kill a person. Now if the missing (or hidden) premise were true, even killing in self-defence would be impermissible. Since the missing premise is false, the conclusion does not follow and the argument fails.

The second argument (absolute 'pro-choice'): the unborn *is not* a person.

- Premise: a fetus is not a person at any stage of its intra-uterine development.
- *Therefore*, abortion is morally neutral and always permissible.

The missing premise is: if and only if the fetus was not a person, abortion would be permissible. Now if the missing premise were true, only personhood would be a criterion of moral standing and of the correlated right to life. Never the less, even if personhood in its strictest sense is not applicable to the unborn, most moral philosophers do ascribe at least some moral standing to the unborn, which does not requires actual personhood (argument from potential), or which requires something less demanding than personhood (sentience). Hence, since the missing premise is not acceptable without further specifications, the conclusion does not follow.

The third argument (the gradualist view): only *early* abortion is permissible.

- Premise: a fetus acquires some moral standing at  $n$  weeks of gestational age.
- *Therefore*, prior to the acquisition of moral standing abortion is permissible.

The missing premise of this argument is a statement concerning the degree of moral standing that, once reached, makes abortion impermissible. If moral standing is a matter of degree what is the threshold? This view cannot escape from a gray area where there might be or not some moral standing but not enough to prohibit abortion.

The fourth argument (women's right to bodily integrity): abortion is always permissible.

- Premise (a): pregnancy is a state of a woman's body.
- Premise (b): a pregnant woman has the right to decide about her body.
- *Therefore*, abortion is always permissible.

As the argument stands, it has two premises. It also has two missing premises: (1) the right to bodily integrity is stronger than the fetus' right to life; and (2) the fetus has no moral standing. Since none of the missing premises can be definitely established as being either true or false, and since premise (b) is a matter of rights rather than ethics, the conclusion does not follow.

The fifth argument (not addressed specifically by Dwyer) (the argument from potentiality): abortion is never permissible.

- Premise: the unborn is a potential person.

- *Therefore*, abortion is never permissible.

The missing premise is: a potential person has the same moral rights as a real person. But, on the one hand, one cannot be something potential (not yet the real thing) and at the same time demand the benefits of the real thing. On the other hand, there is no assurance that the potential will ever be effectively realised. Hence, the argument, in its logic, fails.

## 5. Concluding remarks

The DDE has been shown to have the advantage over the extreme conservative pro-life position to allow a limited number of exceptions to the Sixth Commandment. In some cases, provided that the intention is right and the bad consequences as minimal as possible, it is permissible to terminate a pregnancy. A major objection to the DDE and its application to pregnancy, is that it is no longer relevant to current medical practices (save in the case of maternal illness). Another objection to the DDE is that the core principle of the moral theory can be interpreted in two hardly compatible ways: deontological and teleological.

The doctrine of self-defence against an embryo or fetus shares some similarities, and hence problems, with the DDE. Abortion in self-defence, however, would require *stricto sensu* that the embryo or fetus as such is threatening the woman's health and/or life. It is, however, very difficult, if not impossible, to prove that the embryo or fetus is *per se* an aggressor, even if it was not invited. Therefore, unless the concept of aggression by an embryo or fetus is twisted, the doctrine of self-defence fails. Hence, in that perspective, abortion has to be viewed as a conflict of rights; but this leads away from a genuine ethical problem.

At the other end of the spectrum of the binary soft positions is the soft pro-choice stance. The soft pro-choice positions, while intuitively appealing and acceptable, lack solid and uncontroversial grounds. Both Sumner and Singer base their argument on the concept of sentience. What distinguishes them is that Singer puts more emphasis on expanding the concept to non-human animals, whereas Sumner (even if he accepts the logic of Singer's conclusion) concentrates on sentience and the morality of abortion. Any "animal" that is able to feel has a moral standing that ascribes at least the right not to be inflicted suffering. Sentience, however, is in fact more used as a property that ascribes the right to life (it seems

difficult to depart from the problem of conflicting rights). Two objections are raised against the moral weight of sentience. One objection is that it does not follow that killing of a sentient being is immoral, for killing can be painless. The other objection is that we know little, or not enough, about the boundaries of sentience (e.g. are lower animals like invertebrates sentient?) and about neuro-physiology and neuro-development before birth. Therefore, it might be premature to ascribe a moral weight to an ill-defined anatomico-physiological property, if at all such a physical property could ever bear a moral significance.

As a general conclusion on chapters one and two no single argument, either pro or con abortion, is really convincing or able to withstand the rules of logic. A fundamental reason for this is that pregnancy is unique and cannot be compared to any other matter of moral enquiry.

Before turning to the next chapter it might be appropriate to quote Albert Schweitzer (1953:88):

However seriously man undertakes to abstain from killing and damaging, he cannot entirely avoid it. He is under the law of necessity, which compels him to kill and to damage without his knowledge. In many ways it may happen that by slavish adherence to the commandment not to kill compassion is less served than by breaking it. When the suffering of a creature cannot be alleviated, it is more ethical to end its life by killing it mercifully than it is to stand aloof.

And, "Where life is harmful to other life a choice must be made" (quoted in Brabazon 1976:255).

Schweitzer (1953:124) further says about *Reverence for Life*:

Affirmation of life is the spiritual act by which man ceases to live unreflectively and begins to devote himself to his life with reverence in order to raise it to its true value. To affirm life is to deepen, to make more inward, and to exalt the will-to-live...He accepts as being evil: to destroy life, to injure life, *to repress life which is capable of development* (emphasis added).

## ***Chapter 3. On Postmodernism and Poststructuralism.***

*Postmodernism is, itself, a story*

S. Krippner & M. Winkler (1996:165)

*It is not easy to narrate postmodernity*

Z. Bauman (1992:xxiv)

### **1.Introduction**

Moral philosophy and ethics are not independent or dissociated from first philosophy, neither are applied ethics such as biomedical ethics or bioethics. Contemporary views and debates in philosophy are still under the strong influence of both the Greek and the European Enlightenment. For instance, aretaic theory, deontological theory, and teleological theory remain for many the pillars of moral theory, even if they may be given a more contemporary flavour (e.g. neo-Kantianism). What they have in common is the quest for an overarching principle or rule to guide our actions and to justify their morality. This is the legacy of modernity with its characteristic meta-narratives. Modernity's major preoccupation was to find "the *last word* on truth, justice, rightness, etc"(Cornell 1992:11). What is currently considered by many to be *the* "Bible" in bioethics, Tom Beauchamp and James Childress' *Principles of Biomedical Ethics*, is a good example of the pervasiveness of modernist thinking. It is the coming together of a consequentialist and of a deontologist in an attempt to define the overarching *principles* that should guide medical decision-making- autonomy, beneficence, etc.<sup>1</sup>

What is called the postmodern way of thinking, or *mood*, with its "incredulity towards meta-narratives"(Lyotard 1984:xxiv), clearly is no longer satisfied with the rules and overarching principles of modern thinking. This implies that modern ethics does not fit either in the postmodern mind set. In view of the title of my dissertation, *Poststructural Approach to the Abortion Debate*, I feel it necessary to try to encapsulate the basic concepts of

structuralism, poststructuralism and postmodernism, even if it is a modernist thing to try define postmodernism (Cilliers 1995:124).

## 2. What is Postmodernism?

There is post-modernism and postmodernism. The use of the hyphen indicates the opponents, whereas the supporters of the way of thinking delete the hyphen. The prefix *post* is supposed to indicate that postmodernism is what follows modernism. In some ways it is true that postmodernism follows modernism, and in other ways, not as a rule though, it also means the rejection of modernist thinking.

A way to illustrate postmodern thinking is to highlight two of its mainstreams, that is, what Pauline Rosenau (1992:53-57) calls the affirmative and the skeptical post-modernists. In her view, the affirmative post-modernist “proposes the return of the subject...[s/he] rejects logocentric, totalistic explanations...[and favours] a decentered subject...with a new nonidentity focused on daily life at the margins”. In the opposite camp, or on the “dark site of post-modernism”, Rosenau (1996:104) places what she calls the “merely skeptics”, those who are talking about “the immediacy of death, the demise of the subject, the end of the author, the impossibility of truth, and the abrogation of the Order of Representation”. Rosenau’s dualistic view on postmodern thinking illustrates what Charles Jencks (1996:27) has to say, namely, that “postmodernism [is] that paradoxical dualism, or double coding, which its hybrid name entails: the continuation of Modernism and its transcendence”.

There is no doubt that the postmodern thought rejects totalistic explanations, resituates the subject, especially the one marginalised by modernism, and acknowledges the difficulty of finding *the* truth. And this leaves those still clinging to metanarratives with a sense of fragmentation, anarchy, and vertigo (Cilliers 1998:114). But this does not mean that anything goes. The affirmative postmodern thinker reacts against modernism because, says Stephen White (1996:2), it has severed human beings’ relation to the world through the promotion of solipsism into a world governed by will and reason, and progressing to a universal world order. In this perspective then postmodern thinking has in poststructuralism<sup>2</sup> an *opposition wing*, says White, characterised by a “perpetual criticism that cuts deeply and broadly into the foundations of modernity”.

For Seyla Benhabib (1992:1),

The many *postisms* are indications of deep and irreversible transformations... The present [postmodernism/poststructuralism] harbours many ironies, contradictions, and perplexities...Some values of the project of modernity [moral autonomy, justice, liberties] need to be *reconstructed*.

In order to reconstruct one has first to deconstruct. Deconstruction is one of the main philosophical tools of poststructuralism. To try to understand poststructuralism let us first have a brief look at what preceded poststructuralism.

## 2.1 On Structuralism

Structuralism finds its origins in the work of French anthropologist Claude Lévi-Strauss, who's basic thesis was to demonstrate the formal similarity between kinship systems and the linguistic systems described by Ferdinand de Saussure in the *Cours de linguistique générale* (1916). For Saussure, signs (or concepts) have their value in virtue of their place in a network of other possible choices. They are the product of "systems of differences" (Blackburn 1996:340). French psychoanalyst Jacques Lacan reinterpreted Freud in the perspective of Saussure's structural approach to linguistics. For Lacan, the child becomes aware of loss and of difference when it starts assuming its place in a network of linguistic and social roles (210).

In brief, structuralism claims that "the phenomena of human life can be understood and explained only through their interrelations which constitute a structure, or constant laws" (364-365). In other words, as Jonathan Culler (1994:22) put it: "[structuralism is] a series of systemic, scientific projects...systematic inventories of elements and their possibilities of combinations". By its focus on finding objective laws governing human activities, structuralism has attempted to dispense with both meaning and with the subject, and so has substituted, in Dreyfus & Rabinow's (1983:xix, xxiii) words, "a formal model of human behaviour as rule-governed transformations of meaningless elements". In this manner

structuralism ended up in “the death of the subject”. The subject became a “missing person” removed from the constraints of science, reason, and rationality (Rosenau 1992:46).

Therefore, structuralism can be perceived in two perspectives: either as a violation of previous assumptions about literature and criticism (Culler 1994:21), or as a “closed” or “simultaneous” system that denies the complexity and the dynamics of a system of relationships (Cilliers & de Villiers 2000). Either way, structuralism triggered off poststructuralism in a way similar to the transition of modernity to postmodern thinking.

## **2.2. On Poststructuralism and Deconstruction**

In line with the view that post-modernism is divided into two camps, some are of the opinion that poststructuralism is also subdivided into oppositional parties. For instance, Robert Holub (1991:152) rightly claims that poststructuralism derives its inspiration from the German philosophical tradition of Nietzsche and Heidegger. As a neo-Kantian Habermasian, however, he sees poststructuralism in the following manner:

Common to deconstruction, negative dialectics and genealogy is their equivocal position between philosophy and literature. While they implicitly make claims about the validity of their arguments, they simultaneously deny these very claims as propositions (158).

In other words, for Holub, poststructuralism is seen as a philosophical school of thought that promotes doubt about reason, logic, and autonomous subjectivity. It thrives on contradiction. If one wishes to see it that way, poststructuralism is a manifestation of the so-called skeptical postmodernism. But that would be only one part of the reality. And, as White (1996:140) admonishes us, let us keep in mind that “any brief characterisation of poststructuralism is highly contestable”.

Jonathan Culler (1994:25), on the other hand, sees in poststructuralism “the vigilant critique of prior delusions of mastery”. Honi Haber (1994:7) has adopted an intermediate position. In her view, one need not be postmodern to be poststructuralist. The positive aspect she sees in poststructuralism is its “concern with the Other” (6).

One of the major tools of post-structuralism is *deconstruction*, which “aspires to both rigorous argument and displacement of philosophical attempts at mastery...[and aspires] to reverse hierarchies”(85). Deconstruction is an approach initiated by the French philosopher Jacques Derrida. He presented deconstruction for the first time in the Introduction to his 1962 translation of Husserl’s *Origin of Geometry*, and in a more elaborated fashion in *De la grammatologie* (1976). The main task of deconstruction, as Derrida sees it, is “to point out the contradictions that result from fixing the boundaries from one perspective” (Cilliers 1998:81). In *Positions* Derrida (1972) writes about deconstruction as follows:

To ‘deconstruct’ philosophy is thus to work through the structured genealogy of its concepts in the most scrupulous and immanent fashion, but at the same time to determine, from a certain external perspective that it cannot name or describe, what this history may have concealed or concluded, constituting itself as history through this repression in which it has a stake (15-16).

In a traditional philosophical opposition we have not a peaceful coexistence of facing terms but a violent hierarchy. One of the terms dominates the other (axiologically, logically, etc.), occupies the commanding position. To deconstruct the opposition is above all, at a particular moment, to reverse the hierarchy.

Deconstruction must through a double gesture, a double science, a double writing, put into practice a *reversal* of the classical opposition *and* a general *displacement* of the system. It is on that condition alone that deconstruction will provide the means of *intervening* in the field of oppositions it criticises and which is also a field of non-discursive forces (56-57).

Deconstruction “dedicates itself to the disruption of dualistic hierarchy, not to its acceptance”(Cornell 1992:59). In the process of deconstructing binary oppositions one disrupts the logic of subordination and domination (Benhabib 1992:15). To deconstruct an opposition is not to destroy it and to leave us with only absence; it is rather to situate it differently (Culler 1994:150). Where there is opposition, the aim of deconstruction is to “identify what is at stake in our desire to repress the second term”(160). The first term of the

opposition delimits the ambit of what is privileged and foundational; the other term is what is the “Other” – what is marginal, suspicious, seditious (White 1996:15).

What seems to be a consensus among poststructuralists is that the approach focuses on the deconstruction of binary oppositions by showing that when they are thought through the foundations of the oppositions collapse. The method has to be careful not to reintroduce in the argument the assumption that is put in question by the project (111).

Consider, for instance, an opposition such as presence/absence and apply it to the binary opposition in the debate on abortion: personhood is present/personhood is absent. The pro-lifer maintains that the unborn *is* a person (presence), be it because it has a soul or because life as such is sacrosanct. The pro-choicer, on the other hand, maintains that the unborn is not a person (absence), be it because it cannot reason or because it has no functional brain. The pro-lifers (much more than the pro-choicers though) show a strong tendency to dominate by imposing their view and by going out of their way to prevent doctors/women from performing/seeking abortions. Nobody in the opposing camps tries or is willing to understand the ideology of his or her opponents. In this perspective, the extreme liberals will always oppose the extreme conservatives. Both camps rest on their position.

Now if one tries to deconstruct the binary oppositions can one possibly “situate them differently”? To do that each opposition should examine what is at stake in the repression of the second term – that is, the unborn *is* a person for the pro-lifer, and the unborn *is not* a person for the pro-choicer. This would be possible only if “instead of defining absence in terms of presence, as its negation, we can treat presence as the effect of... a *différance*” (95).

Jacques Derrida reacted to Ferdinand de Saussure’s attempt to establish firm linguistic foundations, where meaning is “something somewhere present”. Derrida wants to undermine the endeavour “to found a theory of language on positive entities which might be present in the speech event or in the system”(Culler 1994:99). Derrida suggests rather to “penser le présent à partir du temps comme *différance*” (think the present starting from time and in relation to time as difference, differing, and deferral). He also presents the idea that “presence is a determination and effect within a system that is no longer that of presence but of *différance*” (both quotations in Culler 1994:95).

Derrida’s concept of *différance* “refers to the description of language as a system of differences that generate meaning, but the meaning is continuously deferred”(Cilliers

1998:42). In French, Derrida's neologism *différance* sounds phonetically exactly the same as *différence* (difference in English). The French verb *différer* means either to differ (to be at variance) or to defer (to postpone). The English verb *to defer* has also the meaning of yielding or making concessions; the French verb for this meaning is *déferer*. As Cilliers (1998:44) puts it: Derrida's *différance* refers to "language as a system of differences, when the play of differences generates meaning; that meaning is never final, but postponed and suspended between the active and the passive". The passive is, as Culler (1994:97) describes it, "a difference already in place as the condition of signification and an act of differing which produces differences". What this basically means, says Culler, is that:

Every event is itself already determined and made possible by prior structures... which themselves assume a prior organisation and differentiation... Time as differing and deferral undermines presence by making it a construct rather than a given, [but] time is no foundation (95,129).

The problem Derrida sees with Saussure's language system is its linearity – it assumes that each word has its place and meaning. Derrida does not accept that. The meaning of a word is not univocal, simply "there"; it has multiple interpretations. There must be some "open" space allowing meaning to result from the interaction of "traces" (Cilliers 2000).<sup>3</sup> Meaning is never final. Meaning is suspended between the active and the passive. The passive is what is already in place as the condition of signification; the active is the act of differing that produces differences (Culler 1994:96). "*Différance*" says Derrida "is a structure and a movement that cannot be conceived on the basis of the opposition presence/absence". The resistance to the concept of presence leads to the necessary rupture of the distinction between "inside" and "outside" (Cilliers 1998:43).

Although Derrida's concept of *différance* refers to language, it can also be used to describe other *complex* systems (Cilliers 1998:46,105).

### 2.3. On Complexity

*Complexity* relates to intricacy, multiplicity, ramification, entanglement (Collins Reference Thesaurus 1993:84). The adjective *complex* relates to what is composite, consisting of related parts, or to what is complicated, intricate (Oxford Dictionary 1995:271). Complexity is a condition suspended between the passive and the active, as is *différance*.

It may be said that a characteristic of affirmative postmodernism is to show a keen interest in the complexity of phenomena such as knowledge, ethics and justice, the self (Cilliers 1995; Cilliers & de Villiers 2000), and all types of social interaction. Complexity theory stands in opposition to essentialism and foundationalism and their elimination of what is contingent or accidental (Anderson 1996:245). It would be beyond the scope of this essay to provide a comprehensive analysis of complexity.<sup>4</sup> In order to remain within the scope of the “abortion dilemma”, I wish to borrow from Cillier’s contribution to complexity theory to highlight the complexity of the abortion issue, and to underscore the concept that only the ethics of complexity will help to address the morality of abortion.

It is my suggestion that the characteristics of complex systems do apply to the pregnant state. Let us see in what fashion.

- A “large” number of elements are involved in the pregnant state: the unborn, the woman, the male partner, the close relatives (brothers, sisters, grandparents, uncles, and aunts) and friends, the health care providers, the local community, and the community at large. Pregnancy is not an isolated event. It is not about a single entity, the unborn, detached from the outside world and society. In a broader context, at a planetary level, each birth should raise concerns. Is the world not becoming overpopulated? How are we going to cope? What about child labour? What about State regulation of the permissible number of off-springs? In contrast, what is the quality of life of a sterile couple? Can distributive justice justify the cost of reproduction technology? Is it futility?
- The elements interact in a dynamic fashion: the unborn is wanted, anticipated, planned for, *invited*, as well as it might not be invited. Either way, it enters the *agonistics of the network*.
- The interaction is rich: pregnancy is rich in emotions. Quickening is a major emotional event for the pregnant woman. The birth event of a desired child, especially in the

presence and with the psychological support of the father is rich in emotions. Emotions run also high when the unborn is uninvited. Can abortion ever be morally justified? And, on the other hand, it is well known that restrictive legislation on abortion results in backstreet abortions and maternal death. Is that morally more acceptable? Is adoption an alternative?

- The interaction is non-linear: the components cannot be simply added. Pregnancy is not simply one sperm plus one egg equals one zygote. Even when a sperm and an egg “meet” *in vitro* the resulting zygote becomes something special, not to be messed around with. With the advances in reproductive technology new moral issues arise almost daily. What shall we do with so-called supernumerary embryos? Is so-called embryo experimentation ethical? Is fetal selective reduction morally justifiable? What if surrogacy goes out of hand? What about cloning?
- The interaction has a short range. A lot could be said about the intimate bodily interactions and close mental and affective connections between a pregnant woman and the future child she bears. The range is so short that outsiders fail to grasp its richness. The same applies to the uninvited unborn. Outsiders who have never been really and closely involved in the relationship with a woman seeking abortion cannot understand the stress, despair, and loneliness. Understanding the problem of abortion requires a short-range interaction to ponder the “tyranny of the real” against the “tyranny of the principles”.
- There are loops in the interaction, that is, positive and negative feedbacks. These loops can be seen at an anatomic and physiological level, as well as at a psychosocial level. In spite of the good intentions some apparently positive feedbacks might have negative results. For instance, a new trend in what is now called *feto-maternal medicine* (instead of the traditional obstetrics) is to view “the fetus as a person”. In other words, the fetus is treated as an autonomous entity, with all the rights attached. If the pregnant woman *behaves badly* (e.g. a substance abuser), the practitioner of feto-maternal medicine will obtain a court order to force the pregnant woman to grant all the rights of protection and medical care to his or her patient, that is, the fetus.
- The system is open, not in equilibrium. Pregnancy is an ongoing process of development from zygote, to pre-embryo, embryo proper, and fetus. Equilibrium could only be reached with the death of the unborn (miscarriage, or stillbirth). The process does not end at birth.

The task is not yet finished. Even if the choice is abortion the system does not close down. The psychological trauma often will remain.

- The system operates under conditions far from equilibrium. There is asymmetry in the relation between the unborn and the pregnant woman, as there is asymmetry in gender relationships. The unborn depends on the life-support provided by the pregnant woman, and only women are, by nature, able to become pregnant.
- The system has a history. Each pregnancy is a *petit récit*. No complex system, says Cilliers (1998:107) whether biological or social (and pregnancy is clearly both a biological system within a social system) can be understood without considering its history. One pregnancy is *invited*, and another (or the following) may not. Two similar systems placed in identical conditions (a fetus inside of a woman's womb) may respond in vastly different ways (birth or abortion) if they have different histories (invited and uninvited).
- The pattern of interaction is complex. As we have seen, some attribute a soul, or personhood, or simply sentience to the unborn, whereas others deny it. Some attribute rights to the unborn, whereas others claim that maternal rights are overriding. The State claims to have a vested interest in the protection of the unborn, and the State also claims that abortion is a constitutional right (under State control though). The medical profession requests Court orders to impose procedures on the pregnant woman because the "fetus is a patient", as though it was a suspended entity imprisoned in a live incubator. Others advocate eugenics. Reproductive technology brings a host of ethical quandaries: so-called embryo *experimentation* on supernumerary embryos, surrogacy, cloning, fetal tissue transplants, etc.

Synchronous with the complex process of organo-genesis and development of the unborn, the pregnant woman is involved in a network of connections, bodily and mentally with the unborn, as well as socio-culturally. She is single or a spouse, a mother-to-be or already a mother, a professional or not, a citizen, she is healthy or not, she has the economic and the mental capacity to care for a child or not. One can add to the list *ad libitum*. The point is that we are not talking about a homunculus in an incubator. We are talking about a *petit récit* while trying to avoid the "tyranny of the real". But can the tyranny of the real be avoided? Can we overcome the cliché of pregnancy as Drucilla Cornell (1992:171) ironically

illustrates it: “the very symbol of the subject burdened by her responsibility is the pregnant mother who joyously gives birth to a baby *boy*”. The physiological, anatomical, psychological, and relational complexity of pregnancy is a fact that cannot be denied nor compressed into simplicity. It is unfortunately the tendency of most positions on abortion, permissive or not, to simplify the issue to being pro or con. Even the soft positions, with all due respect for their endeavours, do not escape from the temptation of dualism. A *node* gets inputs from many different sites.<sup>5</sup> The unborn is a node in a network of social and personal intricacies. A node is nothing as such. A node has meaning only as an integral part of a network.

What is the link between post-structuralism/deconstruction, *différance*, and complexity? On Ortega y Gasset’s (1960:46) view, under the influence of scientific progress, philosophers became overwhelmed by the superiority of the natural sciences and decided that the only philosophical theme worth of investigation was merely epistemology. Ortega attributed to Kant the responsibility of having put an end to twenty-six centuries of metaphysical thought by saying “let all philosophising remain suspended until this question is answered: How are synthetic judgements possible *a priori*?” The modernist state of mind was obsessed with universally applicable rules. In moral philosophy, says Bauman (1992:201), moral behaviour became a “legally prescribed conduct” alienating from moral evaluation a large sector of human action. Modernism believed in the possibility of a non-ambivalent, non-aporetic ethical code, an ethics that is universal and objectively founded (1996:9). Modernity thrived on binary oppositions: right/wrong, good/bad, pleasure/pain, is/ought, object/subject, pragmatic/principled, either/or. Poststructuralism deconstructs binary opposition to escape from exclusion, marginalisation, suppression and repression of the Other (Bernstein 1991:239). *Différance* suspends meaning between active and passive. Aporia<sup>6</sup> acknowledges that neither not all conflicts can be solved nor contradictions are overcome. Reason alone is not the sole answer. Moral responsibility is not merely a blind obedience to universally established rules. To follow rules is to shy away from responsibility. To shy away from responsibility is immoral. Moral life is complex. Autonomy and freedom of the will are not sufficient to solve moral conflicts. Postmodernism looks to *différance*, to the uniqueness of the parts, rather than to the unity of the theoretical whole. Theory is just an invitation to discussion (Rosenau 1992:81-82).

Consider the problem of abortion. In a modernist perspective sexual intercourse should be an act in which both partners engage with their full free will after having considered rationally its consequences. If the act results in a pregnancy the duty is to maintain it whatever the costs may be (psychological, socio-economical, etc.). Reason dictates that sex and pregnancy are inevitably related. The *baby* there in the womb is an autonomous person, fully endowed with rights. Thou shalt not kill. End of discussion. Not so sure, says the postmodernist. Amative sex does not aim at making babies. Women more often than not are in an asymmetrical situation and do not exercise their free will in a sexual encounter. Not all babies are wanted. Unwanted children are often abused (and will become abusers themselves). Many pregnancies threaten women's life or health. A number of babies are born with abnormalities.

Contemporary Welfare States, a product of Modernity, have made reproductive matters public matters. The liberal model of the public sphere has resulted in a "patriarchal-capitalist-disciplinary bureaucracy" putting excessive emphasis on "a juridical discourse about basic rights and liberties" (Benhabib 1992:113). The postmodern mind aims at disengaging itself from normative dualism between norms and values. It distantiates itself from its own position "to generate norms of coexistence and conduct which would be acceptable to all" (44). The question is then what could be postmodern ethics, and what could be a postmodern/poststructural ethics of abortion?

#### **2.4. On Postmodern Ethics**

In Bauman's (1992:xii, xviii) view, during the brief interlude of the Renaissance, "swiftly condemned as a Pyrrhonian crisis", however, "freedom was a chance pregnant with obligation". With regards to postmodernity he wonders whether it is "the twilight or the renaissance of morality"(1996:3). In spite of the general anti-modernist mood of postmodernism, the question remains whether universalism is still a viable option – that is, whether concepts like Kant's categorical imperative still do have a place in morality. If not, how can we escape from moral relativism, or even worse, from nihilism?

For Seyla Benhabib (1992:2-3), some universal values of the project of the Enlightenment, such as the moral autonomy of the individual, socio-economic justice and

equality, and civil and political liberties, should still be viable if properly reconstructed. In her words, “such universalism would be *interactive* not legislative, cognisant of gender difference not gender blind, contextually sensitive and not situation indifferent”. In *Philosophy of the Limit* (a rename for deconstruction), Drucilla Cornell (1992:11) suggests that postmodern ethics “represents an ethical insistence on the limit to ‘positive’ descriptions of the principles of modernity long-elaborated as the ‘last word’ on ‘truth’, ‘justice’, ‘rightness’, etc.”. What goes wrong with universal truths, principles, and certitudes, she says

[is] that it turns against the generous impulse to open oneself up to the Other, and to truly listen, to risk the chance that we might be wrong. The move to nonenclosure, then, can and should be understood ethically (57).

The ethical project of postmodernism is to repersonalise morality through “a return of moral responsibility from the finishing line to the starting point of the ethical process” (Bauman 1996:34). In the name of the great principles of modernity – the rule of reason, of better order, and greater happiness, says Bauman (238), “the greatest crimes against humanity (and by humanity) have been perpetrated”. And:

Reason cannot help the moral self without depriving the self of what makes the self moral: that unfounded, non-rational, un-arguable, no-excuses-given and non-calculable urge to stretch towards the other, to caress, to be for, to live for, happen what may.

Let us then examine with Bauman (1996:10-15) why we need a new look at morality. To understand this need, Bauman takes us through what he calls the “marks of moral condition”:

- Because people are morally ambivalent, neither essentially good or bad, no logically coherent moral code can fit.
- Moral events in need of a moral decision do not fit into any coherent and pre-established scheme such as utility, means-to-an-end, or reason.

- No moral situation escapes ambivalence and ambiguity. If there were no moral conflicts and dilemmas there would be no moral responsibility. Morality is inescapably aporetic.
- Moral capacities and moral impulses cannot be simply channeled at the fulfillment of socially designed targets, which may have immoral purposes.
- Morality will never escape from a certain degree of irrationality.
- The thrust and the origin of morality are personal responsibility, rather than obedience to socially constructed rules.
- Heteronomy (action that is guided by concern for the Other) is more important than autonomy (action that is guided by pure reason and free will).

On this view, then, postmodern ethics moves away from an ethics where the individual isolates him- or her-self in an ivory tower to contemplate behind a “veil of ignorance” and from a “view from nowhere” what pure rationality dictates to be the right thing to do, what is his or her duty, regardless of the consequences. Postmodern ethics claims that this type of calculus has nothing to do with ethical conduct. Postmodern ethics acknowledges that “human reality is messy and ambiguous- and so moral decisions, unlike ethical principles, are ambivalent” (32). Postmodernism is a challenge opposing paralogy<sup>7</sup> to homology.

Postmodern theory does not imply an unavoidable fall into relativism or an absolute rejection of rationality (Cilliers 2000). The postmodern principle of universalisability should be that our actions should be guided by reasons “of such a nature that they would convince others to act similarly under similar circumstances” (5). In other words, universal rules should “be re-evaluated each time they are applied” (11). And this puts the agent in the “ethical paradox” of his or her full responsibility for the moral choices deprived from “the comfort of the universal guidance that modern self-confidence once promised” (Bauman 1992:xxii). This does not mean that *anything goes* or that anything should be tolerated. Postmodern *tolerance*<sup>8</sup> is the choice between indifference and solidarity (xxiii). The ethics of deconstruction, says Cornell (1992:81-82), “embodies the promise to be faithful to Otherness”, and “it is an exercise of responsibility to Otherness” which “does not leave the subject free to do what he would”. This is the choice of solidarity rather than of indifference.

Postmodern ethics has to come to terms with, or at least to acknowledge the *pluralism* of authority, and the centrality of *choice* of the autonomous agent (Bauman 1996:201). What this means, says Bauman, is that pluralism of authority entails two aspects: (1) moral action is something different from selfishness on the one hand, and from blind adherence to universally binding norms and rules, on the other hand; and (2) the agent must not only take full responsibility for his or her actions, but he or she must also justify them “through reference to principles wide enough to command authority of the sort that belongs solely to ethical values” (201-202). The centrality of choice of the autonomous agent also entails two aspects: (1) the agent must make informed and conscious moral choices of “life-purposes and values”; and (2) the agent must set boundaries to autonomy (203). In short, to be ethical the agent has to assume the responsibility of his or her choices. And that is not to do as we like (Cilliers 1998:138). The condition to be met in order to act ethically is that one makes a responsible judgement to guide our actions. This responsible judgement involves: (1) to respect difference and otherness as intrinsically valuable; (2) to gather sufficient information to highlight the issue at stake; (3) to foresee to the best of ones abilities the future consequences of the act that is undertaken; and (4) to be always ready to revisit ones judgement if it proves to have been wrong (Cilliers 1998:138). To act ethically is to enter into an ethical relation, “a nonviolent relationship to the Other, and to otherness more generally, that assumes the responsibility to guard the Other against the appropriation that would deny her difference and singularity” (Cornell 1992:62). Now is that at all possible? To quote Cornell once more:

The possibility of the ethical lies in its impossibility; otherwise the ethical would be reduced to the actual, to the totality of what is. This paradoxical formulation, in other words, is necessary if we are to respect the otherness of the Other...[the] ethical relation cannot be enacted in the sense of actualised but only adhered to as an aspiration (83-84).

### **3. Concluding remarks**

Seen in a positive perspective, postmodern thinking is not a Pyrrhonian crisis where anything goes, but rather a reaction against modernist dogmatism. It acknowledges

complexity as an inescapable reality, in contrast to the modernist reductionist and essentialist attempts. Constructive or affirmative postmodern thinking is interested in the reversal of modernist hierarchies in order to give space to *différance* and to situate differently what was oppositional. Postmodern thinking reintroduces flexibility and dissent where the modernist discourse harbours rigidity and homology. Postmodern thinking leads to *aporia*, not a paralysis of thinking but a challenge to re-think. Affirmative postmodern thinking does not have any claim of final answers and truth, it rather calls attention to the dangers of such claims.

The postmodern *mood* is not without risks, difficulties and ambushes. The most obvious that comes to mind is to 'universalise' differences. Because this could lead into two directions: the absolute relativism and nihilism of the so-called skeptical postmodernists, or a return to a kind of modernism in disguise. If we feel left without fixed points of reference, anything will go. If we build new points of reference we put ourselves at risk of returning to universal, fixed, and dogmatic rules and principles. The postmodern concern with the Other, as opposed to modernist solipsism, has undoubtedly a great appeal in a world of selfishness and liberal capitalism, where the individual's autonomy, liberty, and rights are so paramount. The challenge, however, is to find out how much of that autonomy must be given up to meet the Other's claims, and to what extent the Other's claim are legitimate and impose on us. Solidarity is one thing. To say that to be ethical is to make choices but to take responsibility is another thing when the Other's claims might be morally questionable. That is the *aporia* of the problem of abortion.

Quoting Albert Schweitzer again (in Seaver 1947: 288):

There is no objective code of moral behaviour to guide man; he must deal with each concrete situation as it arises, guided only by the reflection. Is this particular injury or destruction to life necessary to the preservation of life, which is more valuable?

## **Chapter 4. THE APORIA OF ABORTION**

*A moral theory that is not terribly complicated is probably wrong.*

L. Wayne Sumner (1981:201)

*The plausibility of ad hoc theories seems to be a function of how desperately one wants them to work.*

Donald Marquis (1993:140)

### **1. Introduction**

With an obviously provocative intention feminist pro-choice moral philosopher Annette Baier (1993:27-28) writes:

The great moral theorists in our tradition not only are all men, they are mostly men who had minimal adult dealings with (and so were minimally influenced by) women. With a few significant exceptions (Hume, Hegel, JS Mill, Sidgwick and maybe Bradley) they are a collection of gays, clerics, misogynists, and puritan bachelors.

What Baier is trying to say is that when fundamental values conflict (as they obviously do as far as abortion is concerned), “both rootedness and unrootedness is a desideratum”(1993:139). Or, as Catriona Mackenzie (1995:38) puts it, most attempts to deal with the morality of abortion fail to “give us an adequate understanding of the moral complexities...because they *overlook the context out of which these complexities arise*”(emphasis added).

As it has been shown, most moral theories on abortion tend to focus on one specific concept: personhood, soul, potentiality, sentience, right to life, right to bodily integrity, etc. In any of these perspectives, the fetus is considered as “a free-floating entity” (Mackenzie 1997:175), and the pregnant women as “just vessels for fetuses, or worse, a form of solitary

confinement for the fetus” (Roth 2000:25). These positions have the unfortunate flaw of ignoring Gail Weiss’ (1999:168) important point: “the maternal/fetal dyad where the intercorporeal exchanges between mother and fetus are too striking to be ignored”.

Having highlighted in the previous chapters the difficulties related to the extreme polar views as well as with the softer positions, I will, in this section, examine mainstream contemporary ethical theories: the paradigm theory and microethics. My aim is not to map out all the ethical nuances of these controversies and try to settle the debate; on the contrary, my aim is to present these controversies from a perspective that will broaden the historical and conceptual context and expand the terms of the debate.

## **2. Bio-/Medical Ethics**

What shall we call the discourse: bioethics, medical ethics, or biomedical ethics? According to Boyd *et al* (1997:23), medical ethics refers to “traditional medical ethics”, that is, the doctor-patient relationship, and the matters of self-regulation in the profession (157). It is, say Edmund Pellegrino and David Thomasma (1981:174), “a conversation between competing value systems in the doctor-patient relationship”. The first important English text on the topic was Thomas Percival’s *Medical Ethics*, published in 1803. “Bioethics” refers to the larger domain of the life sciences as well as to their implications on policy making. Joseph Fletcher, an English Episcopalian theologian, in his book *Morals and Medicine* published in 1954, coined the term bioethics.

The morality of abortion, or moral theories on abortion, falls more into the domain of bioethics in the sense that it involves the moral, legal, and social aspects of reproduction and reproductive technologies (artificial insemination, *in vitro* fertilisation, surrogacy, and eugenics). The morality of abortion also touches on medical ethics, i.e. in the doctor-patient relationship, and the involvement of institutional ethics committees with regards to certain decisions concerning pregnant women.

This essay is more concerned with bioethics than with medical ethics. None the less, in order to have a better insight on the morality of abortion it is necessary to highlight some fundamental aspects of medical ethics. This should help to understand whether medical ethics, as defined, is helpful in addressing the reality of the problem of abortion.

## 2.1. The Paradigm Theory

The paradigm theory in medical ethics is currently one of the most influential action-guiding and decision-making tools for problem-solving in clinical medicine.<sup>1</sup> Three principles or rules, each appealing to a different moral theory, are the corner-stones of the theory: (1) autonomy (a deontological foundation); (2) beneficence (a classical utilitarian foundation); and (3) justice (a contractarian foundation).

The principle of beneficence, or of non-maleficence – *noli nocere* (do no harm), or *neminem laede* (do not inflict unnecessary suffering) – has been for 2500 years the most important action-guiding principle of the Hippocratic tradition. During the second half of the twentieth-century, however, “autonomy has superceded beneficence” (Pellegrino 1990:3). This shift, says Pellegrino, has gradually resulted in a sort of moral minimalism, where the doctor-patient relationship is viewed as a mere contract, at the expense of beneficence (deemed by some to have too much of paternalistic overtones). He further argues that autonomy and beneficence should not be seen as mutually exclusive, but that, on the contrary “to be beneficent, respect for the patient’s values and choices is essential”(15). Autonomy, claims Tivnan (1995:31), is not the ultimate model of responsibility.

When it concerns abortion, it becomes difficult to adjudicate whose autonomy comes first: the unborn, the pregnant woman, or the physician’s? All three of these autonomies may conflict in the case of abortion, assuming that one attributes autonomy to the unborn. For instance, when a pro-choice pregnant woman seeks abortion from her pro-life physician, how should the conflict be resolved? To what extent does the physician have the duty of beneficence at the expense of his or her autonomy? What is the moral duty and responsibility of acceding to what may be considered an immoral request?

For Ronald Christie and Barry Hoffmaster (1986:143), “the doctor’s ultimate commitment is to the patient even if that entails to partake in an action violating ones own moral views”, because “a physician’s role is to subordinate moral beliefs to moral obligations”(132). Now, if that is the case (and the facts indicate that quite a number of health care providers do find this principle unacceptable<sup>2</sup>), does it not lead to a sort of reverse paternalism in disguise? In such a situation, the patient knows best and has the right to impose

his or her views on the physician. The patient sets the rules, a reversal of the dominant and the dominated, a reversal of the traditional so-called paternalistic asymmetry. Or could this reversal not possibly lead to a situation where the physician adopts a sort of Milgram<sup>4</sup> type of “agentic state”, a situation where responsibility is shifted away from the actor who acts out someone else’s wishes, “an executor with no authorship” as Bauman (1995:196) calls him or her. This could then result in what Bauman (149) calls “adiaphorisation”, “insensitisation”, or ethical indifference, that is, splitting the action from its moral significance (151).<sup>3</sup>

The third tenet of the paradigm theory, justice, is as equivocal as the two others insofar as abortion is concerned. Whose rights, what justice? Some are of the opinion that the unborn has a right to life, whereas others claim that the pregnant woman has the right to decide what to do with her body, not to mention the third-party’s rights to refuse to partake in an abortion.

The paradigm theory is thus deeply problematic. It aims at bridging the logical gap between abstract normative ethics and the complexities of actual situations. It is, in Pellegrino & Thomasma’s (1981:131) words, “an eclectic amalgamation of opposing ethical theories”. Since, say Elisabeth Mensch and Alan Freeman (1993:3), one has to make “the choice between owls and people”, the paradigm theory is not of great help. In an even more derogatory way, Jeffrey Stout (1988:105) has called the paradigm theory “moral Esperanto”.

The attempts to implement the paradigm theory to the abortion dilemma highlight its shortcomings. The question is: To whom exactly do the three principles apply? If the fundamental question is whether the unborn has a right to life, one should first provide a satisfactory answer to the question: What is the moral status of the unborn? And the answers to the latter question are mutually exclusive. Therefore, the three principles of the paradigm theory cannot be applied simultaneously to the pregnant woman and to the unborn. A choice must be made. Either they apply to the unborn or they apply to the pregnant woman. In the former case one joins the camp of the absolute pro-lifers, and in the latter case one joins the opposition, the pro-choicers. But this does not help in a quest for an honorable compromise. Rights and principles are abstract foundations of moral theories, but they “do not take adequate account of the complexities and interplay between our understanding of practical issues and our understanding of principles”(Winkler 1993:354). As Benjamin (1990:104) suggests, the Kantian principle of respect for persons is of no help in the resolution of the problem of abortion; its applicability to the unborn depends on one’s worldview and way of

life. And, in Bauman's (1995:55) words, "in a rule-governed encounter...the true relationship is between the actor and the rule, while the other person...is but a pawn moved around the chessboard of rights and duties".

For all these reasons, says Winkler (1993:352), "the skeptical bioethicist in the clinic is working and thinking along contextualist lines, while all around him or her there is heard nothing but invocation of autonomy, beneficence, and justice". Rosalyn Diprose (1995:217) adopts a similar stance by saying "for the most part, biomedical ethics' intent on locating external restrictions to freedom and autonomy misses much of the work of biomedical sciences in the reproduction of asymmetrical power relations". Diprose's aim is to replace disembodied universalism by a return to the primacy of embodiment. She argues that "insofar as it contributes to a fragmentation of one's being-in-the-world (through perpetuation of the self/body dualism and so weighing competing claims for sovereignty over a body), *biomedical ethics is unethical*" (emphasis added).

## **2.2.The Contextualist Approach**

With the postmodern tendency of distrusting justificatory grand narratives, the *petit récits* have taken over. This trend can be seen in medical ethics with the emphasis on *microethics*, that is, the contextualisation of moral dilemmas. The traditional religious dogmatic views have gradually also been relinquished, at least by some among the leading theologians.

### **2.2.1.Secular views**

It appears that in most theories and ratiocination on abortion pregnancy *per se* is regarded as something detached from the blood and guts issue it really is, whether the condition is invited or not. One talks about rights, personhood, soul, potentiality, sentience, the State's interests, *criminal* abortion, abortion mills, and women's callousness. Clean judgements are passed. Where are the men? Where are the physicians? Is abortion just a woman's issue? In real life, pregnancy does not result from parthenogenesis. And in real life, abortion usually involves a third party. As Rosalind Hursthouse (1997:156) put it:

Abortion is a bloody and distressing thing to contemplate. But one cannot talk about intelligently without being willing to look concretely at the act itself.

And Annette Baier (1993:139) further writes:

Those who write as moral philosophers about...abortion in reason owe the readers a brief account of what...abortions they have themselves been involved in, so that we can be in a position to discern bias, self-serving rationalisation, or disqualifying “innocence”...Both rootedness and unrootedness is a desideratum.

Drucilla Cornell (1992:177) claims:

No man can know or fully imagine what it is like to have an abortion, although he can clearly wonder about it and respect the suffering entailed if that right to abortion is denied to women.

Although these quotations are all from female writers, it does not mean that feminists are *per se* pro-choicers.<sup>5</sup> Feminism is putting some human issues into a different perspective. To quote Diprose again:

The ecstatic habitual body (the body’s self-concealment in unimpeded activity)[should be distinguished from] the broken body (the disruption to the texture of subjectivity that occurs when the body’s integrity is altered)(211)... If pregnant women are to be considered as embodied selves with the same mode of agency as others and at the same time spared the charge of participating in an unethical reproduction of patriarchal social relations, then it is necessary to re-think our model of social relations and its understanding of ethics (217).

Female writers have a problem with the disembodiment of the pregnant woman and the disembodiment of the unborn. Fetuses are disembodied in order to endow them with independence (Roth 2000:188). Pregnant women are “just vessels for fetuses, or worse, a

form of solitary confinement for the fetus”(25). In Catriona Mackenzie’s (1995:45) words, “a fetus is not a free-floating entity about whom questions of potentiality and personhood arise as though in a vacuum”. The focus on personhood, rights, potentiality, sentience, and so forth, as well as the most creative thought experiments cannot give us an adequate understanding of the moral complexities, for they give no consideration to the context out of which these complexities arise (58). In a broader perspective, but applicable to abortion, Edmund Pellegrino (1990:24) writes: “[the patients] are under an ontological assault on the unity of life and self”. When a pregnancy is not welcomed, uninvited, the pregnant woman’s body is not ecstatic but broken. She is under ontological assault. She is in a “state of wounded humanity”.

### 2.2.2. Religious views

Although the Sixth Commandment remains exceptionless in the official teaching of the Roman Catholic Church, dissenting voices have made themselves heard. For instance, Catholic theologian Bernard Häring (quoted in Mensch & Freeman 1993:112) claims “the Church’s condemnation of abortion is only fully credible if at the same time all possible effort is made to eliminate the chief causes of abortion”. The same view is shared by Daniel Callahan (1976:233): “The humane society would be one in which women were neither coerced to go through with pregnancies they do not want, nor coerced by social, economic or psychological circumstances into abortion”. Catholic theologian Hans Küng<sup>6</sup> (1995:29) has argued that “for a Christian at any rate there must not be just an ethic of prohibitions and sanctions, but an ethic of the responsible shaping of life from beginning to end”. And “We should avoid the party-political and church-political polarisations that made the question of abortion such a fanatical one”. Karl Barth, a Platonist and Calvinist theologian, challenged the Catholic tradition of absolutism, calling it “horribly respectable” and “never sparing in its extreme demands on women”. He further claims that there is no absolute “No”, but a “No” engaged dialectically by human freedom and conscience (quoted in Mensch & Freeman 1993:64).

In *Situation Ethics. The New Morality* (1966), Episcopalian theologian Joseph Fletcher has introduced the concept of *moral nuance*: What is the loving thing to do? (Quoted in Luker

1984:185)<sup>7</sup>. A similar view is suggested by Joseph Cardinal Bernardin, Archbishop of Chicago, in his *consistent ethic of life*, where “abortion should be seen within the larger context of other life-and-death issues” (quoted in McCormick 1998:63). In *The Consistent Ethics: What Sort of Framework?*, Bernardin (1988) writes: “If Catholics were serious about ‘respecting life’, then they must extend that respect from fetus to the poor, the criminal, and the victims of war and other forms of violence”. Jesuit theologian Richard McCormick (1998:60-66) acknowledges that “abortion is often a coerced decision” and that a “middle ground” has to be considered.

It can thus be said with Glenn Graber (1998:14) that “because the fetus holds so uncertain a place in the moral community, many (among them many are deeply devoted to fetal well-being) consider that *act of mercy* to fall in quite a different moral category than a similar act performed on an already human being of whatever age”.<sup>8</sup>

### **2.2.3. The dangers of unrootedness and rootedness**

The postmodern rootedness as well as the modernist unrootedness is not without risks and dangers. The tyranny of principles, the “view from nowhere” “behind a veil of ignorance”, the final words and “final vocabularies” have shown to be unable to help to solve real life problems when values are in conflict. Although some flexibility has been introduced in the action-guiding and decision-making principles with W.D. Ross’s (1930) concept of *prima facie* obligations, the unrootedness of medical ethics is under attack by the advocates of microethics. It is because their “stubborn acontextuality”, says Barry Hoffmaster (1993:366), that moral philosophy and applied ethics have run into trouble. Seyla Benhabib (1992:2) is of the opinion that “we must rethink the inability to deal with context”, in order “to reach an interactive, gender-sensitive, context-sensitive universalism”.

In turn, postmodern ethics, and microethics by association, is charged with excessive rootedness and, consequently, of relativism. Relativism is, in Pauline Rosenau’s (1992:6) opinion, an inescapable consequence, even the preferred choice of postmodernism. Moral relativism, in turn, leads either to moral nihilism (the claim that nothing is morally right or wrong) or to moral subjectivism. However, is that really so? It cannot be denied that some postmodern thinkers have become nihilists or, at best, relativists. This, however, does not

mean that either nihilism or relativism is the inescapable end-points of postmodern thinking. Much emphasis is placed on responsibility. Contextuality calls for personal involvement and responsibility. To put a moral dilemma into context does not mean that any thing is permissible. Contextualisation, or microethics, is far from being equal to relativism. Relativism did not make its appearance with postmodernity. Remember Protagoras of Abdera (c.490-c.420 BCE): “man is the measure of all things”. Rootedness is a concept we owe in part to Giambattista Vico’s *Scienza Nova* (1725). History has its *corsi e recorsi*, as Vico said.

Moral relativism has three components: descriptive, normative, and meta-ethical (Kainz 1988:8-29). Descriptive moral relativism is the description of moral norms prevailing in different types of culture. Normative moral relativism states that what is right or wrong is determined by the norms adopted by each culture. Meta-ethical relativism is the view that because different cultures have different and often conflicting norms, one cannot reach any conclusion about what is right or wrong. In other words, anybody’s moral opinion is as good as anybody else’s. In Rome do as Rome does (Olen & Barry 1996:4-5). In brief, there is no single moral truth (Wong 1991:444). This is not to say that moral relativism is the same as pluralism, or pragmatism, or even skepticism. Pluralism says that in a world of many truths, all of them may be equally wrong (Tivnan 1995:236). Pragmatism, on the other hand, is the view that truth is the way a particular society describes how it justifies certain ways of doing things (237). For instance, Richard Rorty, who calls himself a Deweyan pragmatist, sees the North American type of liberal democracy as the best way of life for the American citizens. That’s just how it is. No other explanation is needed. Rorty seeks to show that it is pointless to argue about the truth or falsity of controversial theories (Bernstein 1991:236).

Contextualism is based on and inspired by John Dewey’s *Human Nature and Conduct*, published in 1922 (Wallace 1988:54). Contextualism rejects the absolutist thesis that moral considerations are fixed from times immemorial. It is the view that the best solution to a particular problem results from the attention given to the consideration of the complexity of human life and the variety of problems ensuing from that complexity (93). It is a practical moral decision-making that takes into account free and informed consensus of all the parties involved (Winkler & Coombs 1993:5).

For Pellegrino & Thomasma (1981:46), three possible errors may result from excessive rootedness or unrootedness: intuitivism (or the tyranny of the real) from excessive

rootedness, and ethical backlash (or the tyranny of the principles) or idealism from excessive unrootedness.

Intuitionism is associated with George Edward Moore's *Principia Ethica* (1903), where he advocated the view that goodness is a simple, unanalysable quality, fortunately known by intuition, that is, an immediate awareness. On this view, says Richard Hare (1991:453), "moral judgements are *sui generis* statements about moral facts discernable by intuition or appeal to convictions".

On the other hand, ethical backlash or ethical idealism would lead to *moral purity*. In Jeffrie Murphy's (1994:199) words, "if moral purity means never choosing anything which one will have to regard as in some sense wrong and regret for all one's days, then moral purity may be impossible in a complex world". Or in Stephen Toulmin's (1981:39) words, "In our desire to avoid laxity, we will create instead a rigid and legalistic 'tyranny of principles' that tramples not only mercy but also equity".

Does all of this lead us into an *aporia*, an absence of path? Or does it force us to be tolerant? Can we rest the case in a Rawlsian kind of "reflective equilibrium"? Is it at all possible to be ethical without universal principles? If not, what then would be a universal or the universal principles that make allowance for the *agony of choice* and a Derridian type of *aporia* of responsibility?

### **3. The Quest for an Alternative to the Paradigm Theory**

The three basic tenets of the paradigm theory in medical ethics are autonomy, beneficence/non-maleficence, and justice. Autonomy, as contended by Pellegrino, has taken precedence over beneficence. John Stuart Mill, in *On Liberty*, has defined the principle of autonomy as follows: "over himself, over his own body and mind the individual is sovereign". Along this line, then, autonomy implies the freedom to decide how to dispose of one's body so long as others are not harmed by that decision. This concept of autonomy rejoins Isaiah Berlin's concept of negative freedom, a market economy concept of the absence of external constraints. In opposition, then, is the concept of positive freedom, the absence of internal constraints, "a restoration of one's embodied being-in-the-world" (Diprose 1995:211).

The abortion issue, seen from the latter point of view, then, becomes a matter of women's autonomy "in a phenomenological perspective on pregnant embodiment" (Mackenzie 1995:39), rather than a matter of conflicting autonomies or "a divorce of women's bodies from their subjectivities, from their mode of being-in-the-world" (51). On this view, the principle of autonomy is not "a matter of preserving the integrity of one's body boundaries...a property right" (39). As Rosalyn Diprose (1995:207) suggests, "If it is necessary to abandon the principles of autonomy and justice to deal with the maternal body, then perhaps it is the principles rather than the different bodies that require further scrutiny". The different bodies she is referring to are what some phenomenologists have called the distinction between the *ecstatic* and the *broken* body. The ecstatic body is the habitual body one is not explicitly aware of, it is the body "where the self is at home with its body in the world" (209). The broken body, on the other hand, is the body whose integrity is altered (210). The alteration may result from illness as it may result from pregnancy. But this distinction, says Diprose (213), leaves us with a problem as to where to place the work of bioethics and of biomedicine. Should the job be only to restore the self, to reconstitute positive freedom with its absence of internal constraints, to restore one's embodied-being-in-the-world that has been deprived by the breakdown of the body? This option, she says, would result in a "notion of an autonomous self distinct from the values that make up the 'common good', as if individual decisions are uncontaminated by those values"(213). In other words, this would locate medicine and related ethics outside of the world in which we live, a body-repair workshop. Abortion then would be just the removal of an unwanted bodily growth, with no more moral significance than a haircut.<sup>9</sup> The right option would be to restore our embodied-being-in-the-world in the context of *all* that determines our wellbeing. Abortion would then have a moral dimension.

The decision to abort, when seen in the perspective of autonomy, ignores the fact that much more is at stake than the misconceived demand to dispose of or use one's own body parts as one sees fit. In Mackenzie's (1995:43) words, "pregnancy is never simply a biological process; it is always an active process of shaping for oneself a bodily and moral perspective". The moral significance of the fetus, she says, is in part bound up with its significance to the woman (60 n.27). What Mackenzie means is that the moral standing of the fetus is a *decision responsibility*; it is a moral guardianship the pregnant woman assumes for the fetus' future

well being (45,49). She argues that “deciding against assuming parental responsibility does not mean that one has relinquished moral responsibility”, but rather that “the decision to abort is often the most morally responsible course of action”(44). She further maintains that abortion “is rather a matter of not wanting there to *be* a future child, so intimately related to oneself, for which one either has to take responsibility or give up to another”(54).

When the pregnancy is *invited* the assumption of responsibility comes spontaneously and the woman’s body is both ecstatic and broken (in the sense of changed). On the other hand, if the pregnancy is uninvited, unwelcome, forced, or cannot be carried through (for psychological, socio-economic, or whatever reason) the woman’s body is broken. Then comes the agony of choice, the *aporia* of responsibility.

#### 4. The *Aporia* of Responsibility

The noun *aporia* is commonly encountered in the postmodern discourse. It is mostly used in the sense of an unsolvable contradiction, a conflict that cannot be overcome (Bauman 1996:8), a serious perplexity (Blackburn 1996:21). *Aporia* in the sense of “absence of a path” (from the Greek *poria*, path or a direction to follow, and the alpha privativum *a*) is then to reach a limit beyond which there is no path (Cornell 1992:70). Taken in this sense of a dead end, *aporia* could lead to paralysis and silence. Not inevitably so, says Cornell (71). *Aporia* should rather be viewed as a challenge, as an invitation to re-think.

The Greek noun *aporia* also means a question. It derives from the Greek verb *απορω* (*aporô*), meaning I ask myself, I wonder. The expression ‘I wonder’ indicates that I am asking myself a question to which I have no clear and definite answer. If ‘I wonder’, that is, if my question is open-ended, I am ready to ponder all possible answers without prejudice.

The ethical *aporia*, the *aporia* of responsibility, arises when we are faced with a moral decision about conflicting values while we are in a situation where we cannot possibly know the future consequences of that decision. But the decision cannot wait. The decision has to be made now. This is a situation leading to three possible attitudes (Cilliers 1998:139). The first is the typical modernist attitude of turning to the principles, the universal rules. Just follow the rule! The second option is the choice of relativism: whatever choice is fine. Now, affirmative postmodern thinking claims that ethics is about responsible choices, whatever the agony they

may entail. In other words, it rejects *option one* as being an agent-rule relationship that has no real bearing with an ethically responsible attitude. It also rejects *option two* because ethical relativism shuns moral responsibility. This is not to say that the postmodern attitude is intolerant. In Bauman's (1992:xxi-xxii) opinion, there is room for tolerance provided it is not equated with permissiveness, or the simple ability to accept the existence of differences. Postmodern tolerance is rather about the rejection of monologism in favour of dialogue (84). Dialogical tolerance recognises the validity and the legitimacy of the Other's difference, and rejects indifference. The affirmative postmodern thought is paralogical – that is, sensitive to difference – and interested in heteronomy (concern for the Other is action guiding) rather than in autonomy (pure reason and free will are action guiding). The third answer to *aporia* is the postmodern ethical choice. It acknowledges the value of principles *and* it has an understanding of how and when they should apply.

Responsibility is to make autonomous decisions. To make decisions requires choices. As Sidney Hook (1977:305) put it:

No matter how we choose, we must either betray the ideal of the greater good or the ideal of right or justice. In this lies *the agony of choice* (emphasis added).

In *The Gift of Death*<sup>10</sup>, and more specifically in chapter three, entitled *When to Give to (Knowing Not to Know)*, Jacques Derrida (1995:60) refers to Abraham's sacrifice of Isaac to illustrate the "scandal and paradox" of responsibility. He argues that "far from ensuring responsibility, the generality of ethics incites to irresponsibility" (61). Derrida writes:

Such is the *aporia* of responsibility: one always risks not managing to accede to the concept of responsibility in the process of *forming* it. For responsibility (we would no longer dare speak of the "universal concept of responsibility") demands on the one hand an accounting, a general answering-for-oneself with respect to the general and before the generality, hence the idea of substitution, and on the other hand, uniqueness, absolute singularity, hence nonsubstitution, nonrepetition, silence, and secrecy. What I am saying here about responsibility can also be said about decision (61).

The message Derrida is trying to convey is that one must resist the temptation of the *ethical* (understood as the universal moral rules) in order to act and to be responsible, because “the ethical can end up making us irresponsible” (61). Derrida rephrases what he means by saying “In a word, ethics must be sacrificed in the name of duty... in the name of absolute duty” (67).

Having said that, Derrida goes on to explain what he means by responsibility. It is, he says, my ties to the other as other which “propel me into the space or risk of absolute sacrifice” (68). And:

As a result, the concept of responsibility, of decision, or of duty, are condemned a priori to paradox, scandal, and aporia...As soon as I enter into a relation with the other, with the gaze, look, request, love, command, or call of the other, I know that I can respond only by sacrificing ethics (68)...this is Abraham’s hyper-ethical sacrifice (71)...Abraham’s decision is absolutely responsible because it answers for itself before the absolute other. Paradoxically, it is also irresponsible because it is guided neither by reason nor by an ethics justifiable before the law of some universal tribunal (77)...He doesn’t make us shed tears and doesn’t inspire admiration: rather stupefied horror (79).

Matters of life and death have preoccupied mankind from times immemorial, and so has the question of responsibility. The story of Abraham and Isaac, as it appears in *Genesis*, has always troubled the followers of the religions of the *Book*. Abraham is ready to sacrifice his beloved son. This is sheer scandal. Likewise, how can women consider the killing of an innocent? How can doctors partake in the act of killing? Life is sacred. Thou shalt not kill. But God asks Abraham to kill his innocent son. How is that compatible? Can one be pro-choice without being *pro-death*? Zygmunt Bauman (1992:xxii) calls this the ethical paradox, which calls for the restoration “to agents [of] the fullness of moral choice and responsibility”. The autonomous agent, he says, has to make the choice

[b]etween life-purposes and values, not between the means serving the already set, uncontroversial ends (202)...The choice always means the assumption of responsibility, and for this reason bears the character of a moral agent (203).

The agony of choice and the aporia of responsibility of the pro-choicer lie in the fact that, as paradoxical as it may appear, *pro-choicers are pro-life* in their own right. The choice is not between life and death, but rather between a life with quality and nonexistence. The pro-choicer sees life as being respectable, not as being sacrosanct. As mentioned earlier in quoting Mackenzie, the choice of abortion is that there *be* not a being. This has a very different connotation from killing.<sup>11</sup>

As Iris Murdoch writes in *The Sovereignty of Good* (1970), “The morally significant process may not be in the actual choice, but rather in the development of the moral awareness which leads to the choice” (quoted in Harding 1985: 65).

## 5. Concluding Remarks

It would be a modernist thing to end with a conclusion, to come up with *the* final word, where the whole idea is to keep the *aporia* going. By keeping the *aporia* going, I suggest that the whole issue of abortion deserves to be re-thought. One should have full respect for those who, *in their own life*, are inspired and guided by the principle of *the sanctity of life*. The same pro-lifers, in turn, should make an effort to understand, instead of interfering forcefully with those facing the agony of choice. Pro-lifers should refrain from passing harsh and final judgements on those who, in the name of *reverence for life*, make the agonising decision “that there *be* not a being”. Pro-lifers should try to understand and accept the fact that “to be pro-choice is not to be pro-death”. To be pro-choice rather means that in the given circumstances, having given all my thoughts to the pros and cons of my decision, I take full responsibility of my act. And this does not mean that the consequences do not matter. I am stupefied at their sight. In spite of my doubts, I am ready to give away the comfort of following the Categorical Imperative. In matters of abortion, it is easy to impose an unwanted pregnancy on account of *my* views on the sanctity of life, paying no attention to the

consequences for the woman and the future child. It is much more difficult to live with the agony, the anxiety, not to mention the guilt feelings, of a pro-choice decision.

It is quite interesting to consider how pro-choicers have been trying to escape from this agony by using what might be called “tricks” and “twists” to *justify* their choice. The unborn is not a person. The early fetus is not sentient. Only sentient beings have a moral significance and hence a right to life. Unborn entities have no rights, or, if they have any, women’s rights take precedence. Dualism and dichotomies are still alive and well. Either/Or. Rights/No Rights. Sentience/No Sentience. Personhood/No Personhood. Moral Standing/No Moral Standing. Pro-life/Pro-choice. Autonomy/Heteronomy. Grand narratives/*petit récits*. Homology/Paralogy. The pro-choicer has to make a choice!

If there is to be a final word, I will give it to Hans Jonas (1996):

Act so that the effects of your action are compatible with the permanence of *genuine* human life. If in doubt do not.

## *Afterword*

*Man is but a network of relations*

*And these alone count for him.*

Antoine de Saint Exupéry

I have argued in chapter 1 that the absolute prolife position based either on the concept of ensoulment (Divine Command theory) or on the concept of personhood (metaphysical theory) is not defensible. Even if the unborn has a God-given soul, ensoulment could not possibly occur before day-14 after fertilisation. The assertion that the fetus is a person is not acceptable unless the concept of person is oversimplified in a procrustean fashion to fit into the argument. In order to avoid a *reductio ad absurdum* of the concept of personhood, some appeal rather to the concept of a potential personhood. The argument from potential has two weaknesses. First, it suffers from a logical error. Second, it can only lead to the conclusion that the unborn has a claim (not a right) to be protected. This then becomes a matter of Good Samaritanism, and not of moral obligation. The extreme liberal stance rests on two different arguments: that the fetus is not a person, and that women have the right to bodily integrity. The argument denying personhood is logically sound, but leads to the inescapable conclusion that infanticide is as permissible as abortion. But that is emotionally difficult to accept. On the other hand, if the unborn is not a person it also has no rights or moral weight. Therefore, women may decide to abort; it is their right. But rights belong to a different realm.

In chapter 2, I have envisaged the soft positions on abortion, and argued against. At one end of the spectrum we find the advocates of the doctrine of double effect (DDE) and the advocates of the doctrine of self-defence (DSD). They show similarities and are open to the same criticism. The DDE is diversely interpreted in a deontological or in a consequentialist perspective. In the medical conditions where the DDE is being appealed to, the real action-guiding principle is to save the woman; the demise of the unborn is unintended but unavoidable. The DDE is of no help to the debate. The DSD's debate is about the "innocence" of the unborn; it ends up in an inextricable sophistry. The debate is not really more promising when it opposes the "uninvited" to the "invited" pregnancy, because it only results in the permissibility of abortion in case of rape or incest. This does not really help to widen the

debate. Finally, when the DSD is interpreted in terms of women's rights, it turns out to become a legal rather than a moral issue.

At the other end of the soft spectrum we find the "gradualist approach" that, basically, says that the right to life is progressively acquired. According to the "third way", the unborn, as an incompetent being, possesses only a moral right to life (a welfare-right) on account of its sentience. The difficulty with sentience is that it is not only the ability to feel pain/pleasure, but also the capacity of having feelings/emotions. Where do you draw the line? What level of consciousness/self-consciousness is needed? We know very little about that. The other view on sentience is that it is a prerequisite for having interests, at least the interest not to suffer. It does not follow that painless killing would be unethical. The difficulty and the appeal of the argument of sentience are that it can be used both ways: pro-life (after sentience) and pro-choice (before sentience).

Chapter 3 puts the abortion debate into the context of postmodern and poststructural thinking. Skeptical postmodernism has a tendency to let anything go, that is, to lapse into moral relativism, isolation, and nihilism. Affirmative postmodern thinking, on the contrary, sees poststructuralism as the "philosophy of the limit", not in the sense that we have reached the end, but rather in the sense of a challenge to re-think. Deconstruction looks at modernist binary oppositions in order to unravel the underlying ideologies. The aim is not to destroy the oppositions or to vindicate any one of them. The goal is to displace the oppositions and to relocate them in a different perspective through the use of the concept of *différance*. It has been shown that the concept of *différance* is useful in order to understand the complexity of pregnancy.

Postmodern theory does not shy away from ethics. Its greatest challenge is to reconcile some sort of interactive universalism and openness to the Other with ethical behaviour and responsibility. Postmodern ethics emphasises its aporetic character. Like *différance*, postmodern ethics is suspended between the active and the passive. There is no final word but an imperative to face the Other in a responsible manner. This is a challenge that may lead either way: the twilight or the renaissance of morality.

In chapter 4, the aporia of abortion, the first argument shows that the so-called "paradigm theory" of biomedical ethics is not in a position to address the incompressibility of the complexity of the abortion dilemma. It underpins the arguments given against the single

perspectives on abortion in chapters 1 and 2. Derrida's concept of aporia of responsibility is borrowed to illustrate the agony of a responsible choice "there not to *be* a being".

## Notes to Chapter 1

1. H.J. Gert (1997:125) has pointed out that each side defines itself in positive terms (*pro* life or choice), in terms of what it values (life or choice). Neither claims to want the opposite of what the other wants; each insists on the upholding of a value or right that is unfortunately in conflict with the value or right insisted upon by the other side.
2. Speciesism: a term coined by Richard Ryder (1975) relates to attitudes like racism and sexism. Peter Singer, in *Animals and the Value of Life*, made the term popular (1993:280-321). See also note 6 to chapter 2.
3. Some clarity about vocabulary and terminology is in order. A *conceptus* is the result of the fertilisation of an egg cell by a sperm cell. The human embryo is defined as a *conceptus* up to eight weeks of age after fertilisation (see also note 10); beyond eight weeks it becomes a fetus till birth. After birth, and in medical terms, during the first year of life one speaks of an infant. Depending on the position adopted by a speaker or writer, people will use the terms *baby* for the unborn, and *mother* for the pregnant woman. In order to remain neutral it is appropriate to talk about fetus and pregnant woman. In the context of the morality of abortion, or the lack thereof, it seems appropriate to qualify the embryo/fetus as *unborn*.
4. Thomson's view will be elaborated upon in Chapter 2.
5. Exodus (21:22-25) says: "if a pregnant woman is caused to have a miscarriage the penalty is only a fine to be paid by her husband". This is simply an application of the *lex talionis*, a compensation for a loss of property. Deuteronomy (30:15) says: "I call heaven and earth to witness against you this day, that I have set before you life and death, blessing and curse; therefore choose life, that you and your descendants may live, loving the Lord your God". This passage is about obedience that produces blessing and life, and disobedience producing curse and death. Jeremiah (1:4-5) reads as follows: "before I formed in the womb I knew you, and before you were born I consecrated you". Rachels (1993:58) claims that the quote from Jeremiah does not refer to the sanctity of life but rather to the fact that God established Jeremiah as his prophet even before birth.
6. Quickening is one of the three so-called *milestones* still used by obstetricians in order to estimate the duration of gestation (estimated gestational age). The two others are the date

of the last menstrual period, and *lightening* (the relief experienced by the pregnant woman when the fetus descends into the pelvis by the end of pregnancy). Quickening is the time when a pregnant woman first experiences the fetal movements. Quickening is felt between the eighteenth and the twentieth week of a first pregnancy, and about two weeks earlier in subsequent pregnancies. The difference in time is attributed to the fact that a multigravid woman recognises quickening earlier than the primigravid. This does not mean that the fetus does not move earlier; it only means that the fetus must reach a certain size before its movements can be perceived. For centuries, however, it was believed that the fetus was not alive before quickening; therefore, abortion was permissible before quickening. During the first half of the seventeenth-century, for instance, abortion was “a great misprision and no murder” (Brock & Crawford 1994:37).

7. Emanationism (Blackburn 1996:117): is a Platonic inspired understanding of “creation as an overflow, radiating out from the supreme principle or God”. For Plotinus (c 205-270 CE), the One, the absolutely transcendental and unknowable object of worship and desire or cosmic Soul ‘emanates’ into individual souls (ibid.290).
8. See the Pontifical Encyclicals: *Casti Coniubii* (The Chaste Marriage), and *Humanae Vitae*, for instance.
9. Kristin Luker (1984) and E. Tivnan (1995) have shown that it was under the pressure of the American Medical Association (AMA) that abortion, in 1857, from a private and permissible matter, became a public and impermissible issue. The official claim made by the AMA was to protect women from the health hazards resulting from abortion. The reality, however, was that the medical profession was eager to be in control of all health matters. James Rachels (1993:115) believes that the criminalisation of abortion was part of the Victorian morality that considered extra-marital sexuality to be illicit. It is also interesting to note that the AMA was founded by the medical establishment as an attempt to curb the rising success of homeopathic medicine, and to remain in control of the practice of medicine. The same happened in England. On June 14, 1938, Aleck Bourne aborted 14-years old Miss H. “for reasons of ‘mental health’”, who had been gang-raped by guardsmen in a London barracks. Bourne made it as a test case to reform the law. He was indicted the same day. The Abortion Act was finally enacted only in 1967. (Brookes & Roth 1994:314-343).

10. The concept of pre-embryo is new. The embryonic stage is now subdivided into two stages: the pre-embryo and the embryo proper. The pre-embryonic stage goes from conception till day-14 after conception; the proper embryonic stage goes from the second till the eighth week after fertilisation. This subdivision comes from the recognition that before the appearance of the neural ridge or primitive streak at the caudal end of the embryo (what will become the central nervous system) the pre-embryo is not yet individualised. It has the ability to divide (twinning) or, when there are two pre-embryos, they can still unite. After day-14 the embryo proper loses this ability; there will be either one or multiple embryos.
11. The Warnock Commission (1985), named after philosopher Baroness Mary Warnock, the chair of the committee of enquiry on human fertilisation and embryology, was established in 1984 at the request of the British Government in order to shed light on the ethical and medico-legal implications of new reproductive technologies. One of the motions adopted by the Warnock Commission was that early abortion – that is, of a pre-embryo – should be considered morally neutral.
12. The ‘fetal gift’ theory, presented by Laurie Schrage (1994:73-74) is to be opposed to the ‘fetal seedling’ theory. The fetal seedling account holds that a human fetus is the result of the combination and germination of two seeds. The more human labour is invested in it, the more likely it will possess the human qualities we value. This means that the qualities we most admire in a human being are not present in the raw material, that is, the unnurtured seedling-fetus.
13. Tooley’s modified interest principle is inspired by Joel Feinberg’s “interest principle” (1974:43-68). The interest principle states that the sorts of beings who *can* have rights are precisely those who have (or can have) interests, i.e. a right holder must be capable of being represented and of being a beneficiary in his own person. For Tooley (1983:96), however, Feinberg’s interest principle does not say that those beings do have interests; therefore, Tooley’s interest principle is a modified one.
14. The process of fertilisation takes on average 24 hours. The fusion of the two genetic codes is called syngamy, and produces a zygote, or Day 1 pre-embryo. There is thus no evidence of a “moment of conception” as a flash.

15. In a 35 pages long section, entitled *The Scientific Evidence: Human Neurophysiological Development*, Tooley (1983:372-407) presents the scientific evidence (of the time!) that allegedly supports his thesis that the unborn and the newborns are no human persons (and perhaps only *quasi-persons*). This is because (1) “the networks located in the upper layers of the cerebral cortex, that are thought to underlie higher mental functions, are not present, and (2) because “the bioelectric changes take place after birth” (407)(see also note 18)
16. According to Allen Trounson (1993:14-25), current research is limited to the pre-embryonic stage. If one agrees with the motion of the Warnock Commission experimentation on pre-embryos should be morally neutral.
17. The moral symmetry argument says, “an act that prevents a certain outcome is as wrong as an act that prevents the initiation of a causal process” (Tooley 1983:184). It concerns the question of negative versus positive duties, such as failure to save someone’s life versus killing. According to Tom Regan (1993:21), liberty rights (to be at liberty to act as one chooses) and claim rights (to have a valid claim to be treated in a certain way) both correlate with negative duties. Negative duties prescribe what one should not do in view of the fact that others have liberty and claim rights. Positive duties correlate with welfare rights, or positive rights; they prescribe duties to help because the other owes it. For Jonathan Glover (1990:134), positive duties of assistance, support, and life saving should not be restricted to people one voluntarily assumes a special responsibility. There are negative duties (refraining from harming), he says, one has towards everyone. For L.Wayne Sumner (1981:41), fetal rights are welfare-rights ascribed to it like by a Good Samaritan; the pregnant woman’s rights are liberty rights (they apply only to private acts).
18. According to Brody’s paper *Against an Absolute Right to Abortion*, first published in 1975 and reproduced in *The Problem of Abortion* (1997:88-97), the embryonic brain becomes *functional* (that is, exhibits waves detected by electro-encephalo-gram) at the end of the sixth week. This makes of it a *human being*; therefore, abortion is not permissible. Two outstanding neuroscientists, GM Edelman (1999:68-89) of the MIT, and PT Rakic (1999:90-106) of Yale, have stated that “even at the present state our knowledge of the fetal brain is largely incomplete”. According to the *Protomap hypothesis of embryonic brain development*, it is only after birth, in humans, that the “synaptic density increases rapidly until it reaches a peak in early childhood”. According to M.E. Raichle (1999:115-

116), “the non-automatic processing system [for more difficult and novel tasks] is subverted largely by the frontal cortex, and it takes that area of the brain some time *to develop fully after birth*...The child’s immature brain finds it difficult to make an adaptation and to change a habitual response” (emphasis added). For Nathanielsz (1996:43), “the hook-up to the nervous system and the full functional development may not be completed until after birth...The sense organs may not have too much a role to play while the fetus is in the uterus”. In this perspective it appears that Michael Tooley’s hypothesis might be correct (at least, in the biological sense); Brody’s claims, however, can hardly be accepted.

## Notes to Chapter 2

1. The question related to cancer of the cervix is whether a hysterectomy (surgical removal of the uterus) is permissible in case of pregnancy. In reality, one should take into account the fact that cervix cancer evolves through progressive stages, from a “pre-invasive” stage (that does not need a hysterectomy) to a local or distant advanced invasive stage (where hysterectomy comes too late). Hysterectomy is indicated in the early stages of invasion. It makes medically no sense to talk of cervix cancer without these specifications. Therefore, the DDE is misleading in this regard. In case of ectopic pregnancy, the most common scenario is that of a pregnancy in a Fallopian tube. After a certain time, the size of the conceptus becomes too large to be accommodated inside of the tube. The tube ruptures and nature severs the life-support. The embryo or early fetus dies. There is no need to “kill” it. The case of obstructed labour refers to the times when Caesarean sections had a high morbidity and mortality rate. In those conditions, it was medically speaking safer for the mother to proceed with fetal destructive maneuvers. These maneuvers are no longer practiced. Out of the four conditions stipulated by the DDE only one remains: a maternal disease (such as but not only heart diseases) that is worsened by pregnancy.
2. Quoted in Feinberg & Levenbook (1993:219).
3. At that time, second trimester abortion were mostly performed by injection of hypertonic saline (i.e. a concentrated solution of cooking salt) into the uterine cavity. The procedure was risky. Since the availability of misoprostol the injection of saline is no longer

practised. A possible problem with misoprostol and second trimester abortion is the delivery of an alive fetus, with the ensuing ethical dilemma.

4. According to Rachel Roth (2000:21) President Bill Clinton's victory in 1992 was partly due to the fact that he reversed the Reagan-Bush policies limiting access to abortion.
5. Albert Schweitzer, in his chapter entitled *Ethics of Reverence for Life* (1987:312) wrote: "The world is a ghastly drama of will-to-live divided against itself. One existence makes its way at the cost of another; one destroys the other". And (317): "The ethics of reverence for life ...do not abolish for him all ethical conflicts, but compel him to decide for himself in each case how far he can remain ethical and how far he must submit himself to the necessity for destruction of and injury to life, and herewith incur guilt".
6. See Aaron Scott (1993:62).
7. Speciesism. A term borrowed by P. Singer from Richard Ryder (1975), which could be replaced by the more cumbersome "species chauvinism"(Singer 1993:293). It means basically that mere membership of the species *Homo sapiens* justifies either different treatment or the attribution of a different value of life (Frey 1997:145). Some (Fox 1997:135) justify speciesism, as they believe that as a member of the species *Homo sapiens* we have special obligations to our species. Opposed to speciesism is what Hans Jonas (1996:18,37) calls 'biotic egalitarianism' or 'radical non-anthropocentrism'. It claims that the amount of moral regard organisms deserve as individuals does not depend upon the quality of their individuality in the psychophysical hierarchy. Biotic egalitarianism, says Jonas, "helps us to acknowledge the continuity and kinship among life-forms and to appreciate what we lose when we cut ourselves off from them".
8. The United Nations declaration on Human Rights retains as the only single unalienable human right the right not to be tortured.
9. Fetal selective reduction (in case of multiple gestation where the large number of fetuses poses a threat to the evolution of pregnancy) and fetal selective termination (in case one of the fetuses is diagnosed in utero as having a genetic or structural defect) is practiced through transabdominal injection of Potassium chloride into the chest or the umbilical cord. The same chemical is used in veterinary practice for euthanasia. The death is instantaneous and apparently painless.

### Notes to Chapter 3

1. More will be said about the “paradigm theory” in chapter 4.
2. Post-structuralism and post-modernism, although not identical, overlap considerably, says Rosenau (1992:3). In her view, what distinguishes the one from the other is a question of emphasis rather than substance. The post-modernist, she argues, is more of a cultural critic, whereas the post-structuralist is more interested in methods and in epistemology.
3. A Derridean *trace* refers to the relationship between two elements in a system. Each trace is different, and contributes to a different meaning in a different context – that is, each trace receives its meaning depending on the context in which it operates. The interaction between traces results in a continuing deferral, postponement, of a meaning (Cilliers & de Villiers 2000).
4. For more on complexity see Paul Cilliers’s *Complexity & Postmodernism* (1998).
5. For more details on nodes see ref. Note 4.(pp.16-17). In brief, a node is a multi-directional connection or processor of information in a network; it receives inputs and generates outputs
6. More will be said about *aporia* in chapter 4.
7. According to Blackburn (1996:277), *paralogy* is any fallacy or error in reasoning. For Lyotard, however, *paralogy* is a form of dissent. If consensus is a function of forcing conformity where diversity would be the rule, says Haber (1994:137 n.18), then there is good reason to make the goal of dialogue *paralogy* rather than consensus. For Lyotard, says Cilliers (1998:112), “*paralogy* is a driving force”, and it is “a move played in the pragmatics of knowledge”. In the *Postmodern Condition* (1984:xxv), Lyotard opposes *paralogy* to *homology*. *Paralogy* is a dissent, the denial of the legitimacy of grand narratives, a challenge of the consensus of dominant paradigms. *Paralogy* “promotes the inventiveness of free spirits... it makes us sensitive to, and tolerant of, difference” (Haber 22,23,25). It carries also the inherent risk of universalisation of difference, which, in turn, might become “the grand narrative of the postmodern age” (123). This danger, however, could be obviated if the richness of diversity prompts us to “self-organised criticality” (Cilliers 1995).

8. Postmodern tolerance is not simply forbearance, permissiveness, or the ability to tolerate or to allow the existence of differences. Postmodern tolerance is rather a “practical recognition of the *relevance*”, the legitimacy and validity of the other’s difference, interests and right to have “these interests respected and, if possible, gratified” (Bauman 1992:xxi-xxii). Tolerance is dialogical and stands in opposition to monologism (84). Postmodern tolerance could be seen as the fight against “adiaphorisation”, indifference, the making of human relationship “morally irrelevant” (133). Postmodern tolerance, however, may breed intolerance (191).

#### Notes to Chapter 4

1. Contemporary examples of popular textbooks of medical ethics are Beauchamp & Childress, Buchanan & Brock, and Robert M. Veatch’s *Medical Ethics* (1997). Out of the 15 references to abortion listed in Beauchamp & Childress none is of any help in the abortion controversy.
2. According to a recent survey in the *International Journal of Gynecology and Obstetrics* (2000; 69(2): 198), half of pregnancies in the US are unintended at the time of conception. See also *Abortion on Trial, Again* by Viveca Novak (*Time*, May 1, 2000, p.25). In South Africa, close to two-thirds of the designated institutions refuse to perform abortions (see *Medics Refuse to Perform Abortions. Backstreet Operations Rife as 166 Clinics Take Moral Stand*, by Laurice Taitz, *Sunday Times*, June 2, 2000, p.1). Since the implementation of the Termination of Pregnancy Act, it is estimated that over 3 years 150 000 legal abortions have been performed in South Africa. It is also estimated that the number of ‘illegal’ abortions is as high or even higher. It is thought that maternal deaths resulting from ‘avoidable’ causes (ranking first among the avoidable deaths, viz. 30.0% of them) are the consequence of the unavailability of TOP services (From the *South African Journal of Medicine* 2000; 90:367-373).
3. It was noticed by surprise in the late 80s that pregnant women suffering from peptic ulcer did abort when treated with the gastric protector misoprostol (Cytotec®), a prostaglandin E1 analog. Cytotec is now the “drug of choice” to induce uterine contractions, either for a normal delivery, or for abortion. The drug is self-administered by the woman seeking

abortion. The role of the “third-party doctor” is to prescribe; the role of the “third-party nurse” is to hand over the tablets to the woman for self-administration. The question is: Who is now the “abortionist”? And who is in an “agentic state”? Once the process of abortion has been initiated, the third party – that is the doctor if the pregnancy is more than 12 weeks, or the trained midwife if the pregnancy is less than 12 weeks – completes the job exactly in the same way as if it was a spontaneous miscarriage (viz. evacuation of the so-called retained products of conception, or in hospital jargon EVAC of RPOC).

4. From Stanley Milgram (1974). The subjects of the experiment thought that when they were given an order to press a button, a victim (seen dimly through a silvered window) was inflicted an increasingly severe electric shock. When the victim could not be seen nor heard the subjects were more readily obeying orders. This was to show that distancing influenced people’s willingness to obey orders to inflict pain (Glover 1990:287-288).
5. For instance, Sidney Callahan, the wife of pro-choice Daniel Callahan founder of the Hastings Center, claims that true feminism is antiabortion. Mary Meehan is a member of *Feminists for Life* and of the peace pro-life group *Prolifers for Survival* (Tivnan 1995:30).
6. Hans Küng was a key-advisor to Pope John XXIII during Vatican Council II. He later was prohibited from teaching theology in his capacity of a Roman Catholic priest because he was openly critical of what he considered a lack of true evangelical behaviour of the Church’s establishment. He is still teaching theology at a pluralist Christian theological institution in Germany.
7. According to Kristin Luker (1984:183), situation ethics is an expression of a pro-choice attitude. It means, she says, that morality consists of weighing a number of competing situations and rights and trying to reconcile them under general moral principles rather than specific moral rules.
8. This view is reflected in the *uncertainty* of the vocabulary used by some moral philosophers. For instance, “abortion is a *pre-moral* evil” (Shannon & Wolter 1993:50), or, “early abortion is morally *preferable*, late abortion is morally more *troubling*” (Warren 1998:133), or “late abortion is *indecent* not immoral (Judith Jarvis Thomson). And, “the deliberate destruction of a potential person would, by reason of its biologically human life, be *immoral, but not technically homicide*” (Ford 1991:99).
9. The comparison with a hair cut is borrowed from Mary Anne Warren.

10. The French title is *Donner la Mort*. The translator, David Wills, explains in the Preface that the French title plays on the ordinary sense of *donner* (to give), and the idiomatic sense, which is “to put to death”. Hence a play of words: to offer a gift and to offer death.
11. A dissertation on an ethical topic is not an autobiography. However, some pro-choice feminists (see 2.2.1. Secular Views) challenge those writing on abortion (mainly men) to come out of the closet, that is, to tell the reader whether or not they have personally be involved or faced point-blank with abortion. This is not really a challenge as far as I am concerned. Attributable, I believe, to my Judeo-Christian education, I have been during the first half of my professional life as an obstetrician-gynaecologist a convinced pro-lifer. It was not until I witnessed hopelessly the death of a young woman from uncontrollable sepsis after a botched back-street abortion, that I started wondering whether a dogmatic and inflexible antiabortion attitude was morally defensible. This was a turning point in my life. Since the TOP Act has been implemented, the hospital where I am in charge of the department of Obstetrics & Gynaecology admits weekly 12 women for TOP. This is not to say that abortion is morally neutral, it is a lesser evil but nonetheless regrettable. Abortion, however, is unavoidable for many reasons. One (and in my opinion it is the main reason) is male domination. Another reason is (to a much lesser extent) what some would call women’s callousness, which I would rather call lightheadedness. Another reason is that sex is an instinctive drive, where “instrumental rationality” has little if any place (see note 2). To complete the picture, it should be added that an obstetrician-gynaecologist’s job is mainly to help women to control what is now called their “reproductive rights”, that is, to help them to become pregnant (e.g. reproductive technologies) as well as to help them to prevent pregnancy (viz. contraception). And this is professionally much more rewarding than to deal with abortion. Contrary to the view sometimes expressed by anti-abortionists, we don’t *like killing babies*.

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