

A KANTIAN DEFENSE OF ABORTION RIGHTS WITH RESPECT FOR INTRAUTERINE LIFE

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Abstract. In this paper, I appeal to two aspects of Immanuel Kant’s philosophy – his metaphysics and ethics – in defense of abortion rights. Many Kantian pro-life philosophers argue that Kant’s second principle formulation of the categorical imperative, which proscribes treating persons as mere means, applies to human embryos and fetuses. Kant is clear, however, that he means his imperatives to apply to persons, individuals of a rational nature. It is important to determine, therefore, whether there is anything in Kant’s philosophy that permits regarding embryos and fetuses as persons, since they lack the capacity for sentience (at least until mid-gestation), let alone rational thought. In the first part of the paper, I will illustrate why there are difficulties maintaining, from a Kantian perspective, that conception marks the genesis of a new person. Even granting that embryos and fetuses are persons, however, this alone would not entail the moral impermissibility of abortion rights, mainly because prohibiting abortion, and compelling women to gestate, violates the formula of humanity against them. Developing this thesis encompasses the second part of my essay. Finally, although I argue that Kant’s philosophy lends strong support to abortion rights, this does not thereby entail that it allows for the complete dehumanization of the human fetus. By appealing to the writings of Kantian scholar Allen Wood, I will argue that a fetus’ status as a potential person does render it worthy of some degree of respect and moral value.

Keywords: abortion, pro-choice, Kant, second categorical imperative, formula of humanity, respect for fetal life, potential personhood.

Introduction

In this paper, I appeal to two aspects of Immanuel Kant’s philosophy – his metaphysics and ethics – in defense of abortion rights. Many Kantian pro-life philosophers argue that Kant’s second principle formulation of the categorical imperative, which proscribes treating persons as mere means, applies to human embryos and fetuses. If so, it would be wrong to either abort them or destroy them for research purposes, since doing so relegates them to the status of easily disposable objects. Kant is clear, however, that he means his imperatives to apply to persons, individuals of a rational nature; consequently, for example, he maintains that the imperatives are inapplicable to nonhuman animals. It is

important to determine, therefore, whether there is anything in Kant's philosophy that permits regarding embryos and fetuses as persons, since they lack the capacity for sentience (at least until mid-gestation), let alone rational thought. In the first part of the paper, I will illustrate why there are difficulties maintaining, from a Kantian perspective, that conception marks the genesis of a new person.

Even granting that embryos and fetuses are persons, however, this alone would not entail the moral impermissibility of abortion rights, mainly because prohibiting abortion, and compelling women to gestate, violates the formula of humanity against them. Although Judith Jarvis Thomson does not utilize Kantian language, her thesis in the seminal article "A Defense of Abortion," that no one person's right to life entails the right to forcibly use another's body as a method of sustenance, has Kantian overtones that I will develop in the second part of this essay.

Lastly, although I will argue that Kant's philosophy lends strong support to abortion rights, this does not thereby entail that it allows for the complete dehumanization of the human fetus. By appealing to the writings of Kantian scholar Allen Wood, I will argue that a fetus' status as a potential person does render it worthy of some degree of respect and moral value. While this is insufficient to justify compelling a woman to gestate, it does present her (and men as well) with a moral responsibility to be careful with sexual acts that could bring an unwanted fetus into existence. It also entails that any decision to abort be approached in a careful, caring, and judicious manner; in the end, nascent human life is being destroyed and therefore it is an occasion that should be approached with the gravity it warrants.

Can conception cause a person to come into existence?

In his *Groundwork for the Metaphysics of Morals*, Kant presents us with three formulations of the categorical imperative. The second one – commonly called the formula of humanity – reads as follows:

[R]ational nature exists as an end in itself... [a]ct in such a way that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.¹

According to Kant, persons, given their rational nature, moral agency, and ability to follow self-imposed ends, are worthy of inherent dignity and respect. This means that they ought not to be instrumentalized – to be reduced to nothing more

¹ Kant [1785] pp. 37-38.

than mere tools for the ends of some other person. Rather, persons ought to be treated as ends in themselves. And, because this is a *categorical* imperative, rather than a hypothetical or *prima facie* one, this dignity must be unconditionally respected.

Many pro-life philosophers have invoked the formula of humanity in order to argue that embryos and fetuses are worthy of the same level of dignity and respect Kant would ascribe to any other person. As a result, human conceptuses cannot be used for destructive research (since this kills the embryo in order to obtain scientific knowledge) and they certainly cannot be aborted (since this kills the embryo or fetus as a means to fulfill a woman's desires or goals). Michael Novak writes:

[The grounds for opposing the destruction of embryos for research is] a philosophical one, not a theological one, a ground born of reason rather than of faith. One of its classic articulators was Immanuel Kant... You must never use a human being as a means, only as an end. To use stem cells obtained by killing living human beings in their embryonic stage is still using them as a means. It is not enough to say that the wicked deed has already been done – that the embryos have already been killed. The purpose of that killing was to obtain the stem cells. One ought not to implicate oneself in that process, not even for the noblest and most beautiful ends.²

Philosopher Fuat S. Oduncu offers a similar argument against embryonic stem cell research:

According to Kant, human dignity forbids and even condemns instrumentalization and reduction of a human being to a mere means and object. Human beings are persons and as such they are ends in themselves... [h]ence, the principle of human dignity forbids the use of surplus embryos or the creation of new embryos in order to isolate ES cells... [t]he mere membership of humanity creates and preserves the fundamental value of human dignity until death...³

Oduncu argues that it is at conception, when the sperm fertilizes the ovum, that the human person comes into existence: "The human embryo is looked upon as a human being from the moment of its conception and thus attributed the fundamental principle of human dignity that guarantees the right to life of

² Novak [2003] pp. 102-103.

³ Oduncu [2003] pp. 11-12.

the embryo.”⁴ Lina Papadaki acknowledges that no embryo or fetuses can be regarded as a rational agent, but that, nevertheless, the formula of humanity can indeed apply to them in virtue of their potential for rational thought.

...even if it does not have humanity and rationality, the fetus has, however, the potential to become a being with humanity. But the fetus develops this potential only if the pregnant woman gives birth to it. In having an abortion, the woman irrevocably destroys this potential...⁵

Although Papadaki acknowledges that respecting a woman’s actual personhood is more pressing than respecting a fetus’ potential personhood (this will be developed below), it nevertheless remains the case that “if the pregnant woman aborts the fetus, she treats it (and its potential for humanity) merely as a means for her ends.”⁶ Typically, then, Kantian critics of abortion will argue that the formula of humanity applies to all members of the species *Homo sapiens*.⁷

However, there are grave problems equating the Kantian concept of a person with a biological (species dependent) category. In order to see why, we must explore his metaphysical writings and tie them in with his ethical ones. In the *Metaphysics of Morals*, Kant clearly defines “person” as a moral agent; as a being with certain cognitive capacities, “a subject whose actions can be *imputed* to him. *Moral* personality is therefore nothing other than the freedom of a rational being under moral laws.”⁸ In his *Religion within the Bounds of Mere Reason*, Kant argues that the human capacity of “personality” is the source of our dignity as rational creatures, and he defines it as “the susceptibility to respect for the moral law as of itself a sufficient incentive of the power of choice.”⁹ And, once again in the *Metaphysics of Morals*, Kant specifically defines the term “humanity” as “the capacity to set oneself an end – any end whatsoever.”¹⁰ It is clear from these passages that Kant correlated the capacity for free choice and moral agency with humanity and personhood. The problem for Kantian pro-life philosophers who argue that conception is the moment when a new human person first comes into existence is not just that embryos and fetuses lack moral agency and free will, but that Kant was clear that it was impossible to correlate the acquisition of freedom, and therefore humanity, to a physical or biological event.

⁴ Ibidem.

⁵ Papadaki [2012] p. 161.

⁶ Ibidem, p. 164.

⁷ See, for example: Kain [2009].

⁸ Kant [1791] p. 16.

⁹ Kant [1793] p. 27.

¹⁰ Kant [1797] p. 154.

In his “Third Antinomy” in the *Critique of Pure Reason*, Kant writes:

Suppose there were a freedom in the transcendental sense, as a special kind of causality in accordance with which the occurrences of the world could follow, namely a faculty of absolutely beginning a state, and hence also a series of consequences; then not only will a series begin absolutely through this spontaneity, but the determination of this spontaneity itself to produce the series, i.e., its causality, will begin absolutely, so that nothing precedes it through which this occurring action is determined in accordance with constant laws. Every beginning action, however, presupposes a state of the not yet acting cause, and a dynamically first beginning of action presupposes a state that has no causal connections at all with the cause of the previous one, i.e., in no way follows from it. Thus transcendental freedom is contrary to the causal law.¹¹

According to Kant, human agency and free will cannot be connected in any way with any physical or empirical event, for all events of such sort unavoidably follow a necessary causal chain, whereas free will, by its very essence, cannot be subject to any such causation. Because of its liberation from any physical phenomena, Kant refers to human agency and free will as “transcendental freedom.” According to Kant, free will and moral agency must exist, for if not persons would lose the fundamental basis of their dignity. Moreover, the fact that persons recognize the value and the authority of the moral law serves as further evidence that the freedom to follow such laws must exist. Kant, therefore, draws a distinction between the phenomenal self (the component of human nature that is subject to physical causal laws) and the noumenal self (the component of human nature that exists independently of causal laws – the purely intelligible self). Our noumenal selves, by definition, cannot be subject to any empirical or causal phenomenon, and it is *this* part of ourselves that accounts for our free will and agency. Since the source of our personhood/humanity, and therefore our dignity, is our free agency, and because that agency is transcendental, this means that we cannot render our personhood dependent on any biological or empirical phenomena. Mark Sagoff explains this thusly:

It is impossible to attribute moral status to a [human embryo] on grounds of its physical characteristics alone – even when its potential is considered – because there is no point in the process of ontogeny at which a scientific finding can be made, as it were, that a glob of protoplasm is now sufficiently endowed with

¹¹ Kant [1781] p. 314.

moral freedom that it has become a responsible agent or sufficiently endowed with cultural, aesthetic, and ethical capacities that it has become a human being.¹²

In other words, any attempt to tie the genesis of a Kantian person to a biological event (such as conception) would run counter to Kant's claim that personhood is purely noumenal or transcendental. Personhood, then, would be an empirical occurrence, subject to the causal laws of nature, and therefore there would be no genuine free moral agency. Indeed, Kant himself is very explicit about this in his *Metaphysics of Morals*: "it is impossible to form a concept of the production of a being endowed with freedom through a physical operation."¹³

This presents a formidable challenge to Kantian pro-life arguments that rely on the embryo or fetus's species membership as grounds for the attribution of personhood, and that traces the beginning of a person to a biological event (conception). Unless these philosophers can show that embryos or fetuses possess a transcendental self (which will be difficult to do given that Kant clearly correlates the possession of such a self to certain cognitive capacities), or that it is at conception where the transcendental self somehow merges with the empirical self (a kind of Kantian immediate animation), then they cannot maintain that embryos and fetuses are persons in the same way you and I are persons. Consequently, they have not provided an argument concerning why the formula of humanity applies to embryos and fetuses, and so they lose this theoretical grounds against abortion or embryo experimentation.

Prohibiting abortion as a violation of the formula of humanity

In her influential article "A Defense of Abortion," Judith Jarvis Thomson argues that, even if we fully grant fetuses the status of persons, akin to that of any other person, this alone does not necessitate the moral impermissibility of abortion. This is because no one person's right to life entails that another person must forcibly submit to unwanted bodily intrusion with the goal of sustaining the former's life. She presents the following thought-experiment to illustrate her point. Imagine that an ailing violinist needs to stay hooked up to your kidneys for a certain amount of time in order to survive a rare affliction. If you choose to unplug yourself, the violinist will surely die. According to Thomson, if you have not consented to this dependency relation, you are free to terminate it, even if doing so results in the violinist's death. Thomson does not deny that the violinist is a person with rights, including the right to life. Rather, she questions what

¹² Sagoff [2005] p. 53.

¹³ Kant [1797] p. 64.

obligations such a right imposes upon other human beings. It is not the case, she argues, that the violinist's right to life necessitates that another person has an obligation to provide him with whatever he needs to survive. Analogously, even if the human fetus were considered a person from conception, it does not follow from this alone that others, particularly a pregnant woman, have an obligation to provide the fetus with whatever it needs to survive, especially when this entails the unwilling use of someone's body. Thomson writes:

I am not arguing that people do not have a right to life... I am arguing only that a right to life does not guarantee having either a right to be given the use of or a right to be allowed continued use of another person's body – even if one needs it for life itself. So the right to life will not serve the opponents of abortion in the very simple and clear way in which they seem to have thought it would.¹⁴

Thomson's insistence that no one human being may be reduced to the status of a mere instrument in order to serve the needs of another human being is a clear application of the formula of humanity. When it comes to abortion, as Susan Bordo writes, to force a woman to gestate means to treat her as a "fleshy incubator." Bordo also points to pro-life writings that regard the womb as a prison, where the fetus is "held captive" or "bricked in."¹⁵ In other words, some pro-life advocates, in their focus on fetal rights and welfare, consequently reduce the woman to, quite literally, an aggressive object that presents an obstacle against the fetus' well-being.

The reduction of women to mere objects in exchange for elevating the fetus to the status of a full person extends even beyond abortion. Monica Casper's book *The Making of the Unborn Patient* presents a thorough history of the evolution of fetal surgery. She argues that viewing fetuses as patients independently of the women who carry them correlates with the increased dehumanization of those same women by "transforming them into environments or containers for the unborn patient."¹⁶ Casper compares two sketches meant to illustrate the position in which a female is supposed to be placed while undergoing fetal surgery: one sketch illustrates a human female, while the other features a nonhuman primate. What is telling in these sketches is that both females, human and nonhuman, are drawn in a similar manner, in similar positions, with similar instruments attached to their bodies. The images portray "women and monkeys... as interchangeable

¹⁴ Thomson [1971] p. 56.

¹⁵ Bordo [1993] pp. 84–85.

¹⁶ Casper [1998] p. 89.

work objects.”¹⁷ Casper quotes a fetal surgeon who admits his lack of concern for the pregnant woman: “We tend to view the fetus as independent. We’re not looking at the mother; we see her as a carrier for the fetus.” The federal guidelines that apply to fetal surgery distinguish between procedures done onto the woman and procedures done onto the fetus – as if the latter involves only the fetus and excludes the woman altogether. More concerning is that “nowhere does the [federal guidelines] section on fetal research cite maternal safety as a consideration.”¹⁸ Clearly, the consequence of elevating the fetus to the status of an independent person is to demote the woman’s own humanity and personhood.

From my experience, many pro-life advocates tend to either disregard, or downplay, the physical perils and the mental and emotional intimacy of pregnancy. Gestating a fetus is not equivalent to simply renting out a guest room for nine months. Constitutional scholar Donald Regan writes:

Carrying a fetus and giving birth are burdensome, disruptive, uncomfortable, and usually to some extent painful activities. Among complaints not merely uncomfortable but painful, some of which can be very painful indeed, we find: backache; costal-marginal pain (caused by the enlarged uterus pushing against the lower ribs); abdominal “round ligament” pain; abdominal muscle pain; pelvic ache; pelvic shooting pain (as the fetus bumps a nerve at the rim of the pelvis); foot and leg cramps; the different pain and leg cramps associated with varicose veins; hemorrhoids; pain and pins-and-needles in the wrist (carpal-tunnel syndrome); and mastitis. Finally, as a result of the general softening of ligaments during pregnancy, along with the extra weight and the loss of balance, there is an increased susceptibility to sprains and to aching feet... After the period of pregnancy, there is the actual delivery of the fetus. The days when a woman had a reasonable chance of spending twelve hours or more in sweaty agony are happily gone. But it is still true that for many women parturition is a thoroughly unpleasant and significantly painful experience. It can also involve a major operation, with all the added risk and discomfort that entails, if the fetus is delivered by cesarean section. I shall say nothing of the rare and dangerous complications of a pregnancy and delivery, except to note that in all probability full-term pregnancy and childbirth involve greater risks of death to the mother than early abortion.¹⁹

¹⁷ *Ibidem*, p. 97.

¹⁸ *Ibidem*, pp. 144–146.

¹⁹ Regan [1979] pp. 1580–1581.

My personal experiences with pregnancy and child birth includes: recurring instances of backache, memory loss, months of debilitating morning sickness, bouts of urinary incontinence, extreme exhaustion, circulation difficulties, and invasive abdominal surgery. A colleague of mine lost a lot of sensation in her left leg after a difficult birth, and my niece suffered from hyperemesis gravidarum (extreme and persistent nausea and vomiting during pregnancy) during both of her pregnancies, the second one being so incapacitating that she endured many hospital stays during her first two trimesters. If a pregnant woman experiences placental abruption, she will likely bleed excessively, which may prove lethal. In other words, even the most uneventful pregnancies can carry with it extreme, sometimes permanent, physical consequences.

The psychological and emotional intimacy of pregnancy, also, cannot be ignored. As Margaret Olivia Little writes, pregnancy represents a time of:

... *extraordinary* physical enmeshment with another – a person whose blood is being oxygenated by another’s lungs, a person whose hormonal activity in turn affects another’s brain and metabolism, a person whose growing size enlarges another’s physical boundaries... To be pregnant is to be inhabited. It is to be occupied. It is to be in a state of physical intimacy of a particularly thorough-going nature.²⁰

Christine Overall relays a similar impression of the phenomenology of pregnancy: “the experience of being ‘with child’ was sufficiently engrossing, disturbing, even overpowering at times, to persuade me that no woman should ever have to go through this experience – an experience that philosopher Caroline Whitbeck has suggested is akin to literally being possessed or taken over by another being – against her will.”²¹ It is this extreme physical, mental, and emotional enmeshment that can render pregnancy a wondrous and awe-full time for women. However, it is that same intimacy that can render pregnancy traumatic for someone who does not wish to undergo it. In her book *S.: a Novel about the Balkans*, Slavenka Draculic offers a fictionalized account of the crimes committed against women during the Bosnian war. In the beginning pages, Draculic describes the emotions and thoughts of the title character. S. is a woman who was chosen to be an inmate in a “woman’s camp”; a brothel to service the soldiers of the war. She becomes pregnant after a particularly horrendous rape,

²⁰ Little [1999] pp. 299–301.

²¹ Overall [1993] pp. 1–2.

just one of many that she endures, and the reader is allowed to peer into the mind of a woman who must carry the pregnancy of her rapist to term:

... to her, this is not a child, it is a burden she is carrying in her stomach. Because she has been forced to do so. It is something that is stealing her cells and reproducing, feeding on her blood, on the air that she breathes... she can feel it move and that disturbs her. The thrashing of a trapped animal striving for release keeps her awake. In the middle of the night she is alone with this unfamiliar hungry being residing in her womb.²²

There are, of course, relevant disanalogies. Because S. was brutally raped, this adds a traumatic dimension to the experience of compelled pregnancy that does not exist for women who engage in voluntary intercourse. Nevertheless, the book gives readers an idea of what it must be like to undergo a pregnancy against one's will.

Article 5 of the European Convention on Human Rights and Article 3 of the Universal Declaration of Human Rights emphasizes that "everyone has the right to life, liberty and security of person." "Security of person" can best be understood as the right of the individual to live in safety; to not have to constantly worry about such things as murder, rape, or assault. Because of the intimate relationship between the person and her body, preservation of bodily autonomy is a key aspect of respecting the "security of person." No matter what philosophical perspective we take on the mind-body problem, whether we are dualists or monists, or any sub-category therein, it cannot be denied that the human body has an intimate relationship with the human mind, and, therefore, to the human herself. Violating my body is not analogous to violating my house or violating my car; a violation of my body is a violation of *me*. Human beings "don't *own* their bodies... they *are* their bodies."²³

Taking all this into account, we can understand why forcing a woman to gestate would be a grave violation of Kant's formula of humanity. It would entail ignoring her rational and autonomous decision in regards to a very personal issue that will have a deep impact on the rest of her life. To do this is to ignore her own goals, her own ends for her own life, and her own moral agency. A vital aspect of fulfilling the formula of humanity is to respect the ends rational agents have set for themselves. Papadaki puts this well when she writes:

²² Drakulic [1999] p. 178.

²³ Cannold [1998] p. 42.

An autonomous agent is free to decide in which ways and for which reasons she will act.

If a woman's life is spent thinking that her body is subject to use by others without her consent, she is unlikely to think of herself as possessing agency. And, if a person does not think of herself as having agency, she will most likely not conceive of herself under the idea of freedom.²⁴

To compel a woman to gestate also entails forcing her into a state of psychological and physical intimacy (the latter of which can pose grave, and possibly permanent, risks to her health) in order to benefit another human being. As Thomson stresses, violating a human being's bodily integrity and security of person is a grave thing, and one that requires a compelling argument in order to justify.

Consider an analogous case: although there exists a shortage of organs available for donation, our society should not adopt a practice where persons are compelled to donate non-vital organs to save the lives of others. Indeed, even after a person has died, her sovereignty over her body is heeded, as organs are only removed for donation if the patient conceded to it before her death (or, if the patient did not voice a preference, if the next-of-kin consents), even if this means that people die as a result of organ shortage. Indeed, we do not, as a society, compel individuals to donate blood or bone marrow, even if this means people will die as a result of not getting these vital bodily fluids, and certainly nine months of pregnancy is a greater bodily sacrifice than donating blood or bone marrow. There is no denying that sick individuals, in dire need of organ donations or blood transfusions, are persons, and there is no lack of sympathy for their situation. But, as a society, we recognize the moral imperative to treat all persons as ends in themselves and that all persons are worthy of intrinsic respect. And we recognize that this imperative applies even if respecting it in one person entails the death of another. Therefore, even if we grant that embryos and fetuses are indeed Kantian persons (again, which is difficult to do given the abovementioned arguments), this alone does not entail that abortions should be prohibited. People who oppose abortion choice would have to argue that, *unlike any other person*, a human fetus has a moral right to instrumentalize a person for sustenance even against the latter's wishes. In effect, they would have to contend that Kant's formula of humanity does not apply to pregnant women in this regard, that they

²⁴ Papadaki [2012] p. 160.

may be objectified and instrumentalized in a manner that diminishes their agency and places them in potential physical peril.

Respecting fetal life from in the context of abortion choice

Clearly a pregnant woman meets the Kantian definition of personhood. As I have shown, there is much difficulty in maintaining the same for human embryos and fetuses. Moreover, even if we grant conceptuses Kantian personhood, it is difficult to argue that a woman's body, and thus the woman herself, can be instrumentalized in order to serve their welfare. It is true that, as Papadaki notes, *if* we consider fetuses persons, they too are being instrumentalized to some extent, since their lives are being extinguished to serve the (often legitimate) ends of the pregnant woman. This is one of the factors about pregnancy and abortion that renders it such a *suis generis* issue - it is inevitable that *some* human being will be used as a mere means to another's ends. Typically, however, the person who is in need of aid, especially when it entails an enormous sacrifice on behalf of another, is subordinate to the choices made by that other. In terms of legalities, Regan puts this well when he writes:

When I suggest that the woman should not be compelled to subordinate her interests to those of the fetus, I sometimes meet with the response: "But if she is allowed to have an abortion, the fetus is subordinated. It is just a question of who shall be subordinated to whom." In a sense, of course, this is correct. There is a conflict of interest between the woman and the fetus, and someone is going to lose. But that is true in every Samaritan situation. There is a conflict between the distressed party's need for aid and the potential rescuer's desire not to give it. The point is that our law generally resolves this conflict in favor of the potential Samaritan.²⁵

While the fetus is, of course, a potential Kantian person, the interests of a potential person cannot trump the free and autonomous decisions of an actual person, especially if those choices involve a path towards self-improvement. Indeed, Kant argues that all human beings have a duty to the self "to cultivate his natural powers (powers of spirit, mind, and body), as a means to all sorts of possible ends. He owes it to himself (as a rational being) not to leave idle and, as it were, rusting away the natural predispositions and capacities that his reason can someday use."²⁶ Given the correlation between single motherhood and poverty, it is quite

²⁵ Regan [1979] p. 1610.

²⁶ Kant [1797] p. 194.

understandable that this is a lifestyle to which women would choose to not be tethered, especially since it presents a formidable obstacle to growth and self-improvement.²⁷

Nevertheless, the fetus is nascent human life, and its potential for personhood cannot be ignored. Many pro-choice philosophers acknowledge that the fetus is indeed a being worthy of respect and some degree of moral consideration, and that abortion, although a procedure women have a right to obtain, is nevertheless a somber occasion inasmuch as it constitutes the loss of human life. For example, pro-choice philosopher Margaret Olivia Little writes:

... burgeoning human life, we might put it, is *respect-worthy*. Abortion involves loss. Not just loss of the hope that various parties might have invested, but loss of something valuable in its own right. To respect something is to appreciate fully the value it has and the claims it presents to us; someone who aborts and never gives it a second thought hasn't exhibited genuine appreciation of the value and moral status of that which is now gone.²⁸

Ronald Dworkin, who spends much of his book *Life's Dominion* defending the right to an abortion on the grounds that early to mid-term fetuses lack interests because they are nonsentient, nevertheless regards an abortion as "a waste of a human life and is, therefore, in itself, a bad thing to happen, a shame."²⁹ Rosalind Hursthouse argues that there is a moral dimension to abortion choice that extends beyond the language of rights.

The fact that the premature termination of a pregnancy is, in some sense, the cutting off of a new human life, and thereby, like the procreation of a new human life, connects with all our thoughts about human life and death, parenthood, and family relationships, must make it a serious matter. To disregard this fact about it, to think of abortion as nothing but the killing of something that does not matter, or as nothing but the exercise of some right or rights one has, or as the incidental means to some desirable states of affairs, is to do something callous and light-minded, the sort of thing that no virtuous or wise person would do. It is to have the wrong attitude not only to fetuses, but more generally to human life and death, parenthood, and family relationships.³⁰

²⁷ For an argument along these lines, see: Feldman [1998].

²⁸ Little [2002] p. 581.

²⁹ Dworkin [1993] p. 84.

³⁰ Hursthouse [1991] p. 235.

Like all our rights, there are morally acceptable and unacceptable ways of exercising them. While we all have a right to free speech, for example, there is a marked moral difference between the person who uses that free speech to spread messages of love and tolerance (e.g., Martin Luther King Jr.) and the person who uses it to spread messages of ignorance and hate (e.g., the members of the Westboro Baptist Church).

Respecting the potential for personhood in children, and perhaps even fetuses, is an extension of the formula of humanity. Kantian scholar Allen Wood acknowledges that “a Kantian position on this issue would have to begin with the acknowledgment that fetuses are not literally persons, while the women in whose bodies they are growing are literally persons.”³¹ Nevertheless, it would be disrespectful to rational nature “to be indifferent to its potentiality in children, and to treat children as mere things or as mere means to the end of those beings in whom rational nature is presently actual... similar points might be made about respecting rational nature in people who have temporarily lost it through disease or injury. It would show contempt for rational nature not to care about them, and to do nothing to help them recover their rational abilities.”³² Kant himself acknowledges that parents have a moral obligation to care for their children and “to manage and develop the child, as long as he has not yet mastered the use of his members or of his understanding.”³³ As Wood notes, there are differences between a child and a fetus insofar as a child has a mind and therefore “rational nature has already begun its development.”³⁴ Nevertheless, there are ways we can respect fetal life, even if, ultimately, we agree that we cannot compel women to gestate. The two are not mutually exclusive (again, I can grieve the lives lost as a result of bone marrow or blood shortage and get still maintain that donations must be voluntary - that no one can be strapped down and have their marrow or blood forcibly extracted). In what follows I would like to explore three possible ways fetal life can be respected even within the confines of abortion choice.

First, respect for intrauterine life, given the knowledge that one would be unable to care for a child were it to come into being, entails taking a responsible approach towards sexual activity and procreation. We should try to avoid, as much as possible, bringing into existence a morally valuable being who one is likely to opt to destroy. Although Kant insists, once again, in the *Metaphysics of Morals* that no empirical event can be identified as the moment a free being comes

³¹ Wood [1998] pp. 208-209.

³² *Ibidem*, p. 198.

³³ Kant [1797] p. 65.

³⁴ Wood [1998] p. 209.

into existence, (since if it did, it would mean that “all their future actions would have to be predetermined by that first act, included in the chain of natural necessity and therefore not free”) the act of procreation brings into existence an entity who will one day (barring any unfortunate accident) acquire transcendental freedom. As such it is proper to regard procreation as an act “by which we have brought a person into the world”³⁵ (there is an important logical distinction here between pointing to conception as the exact physical event when a person begins to exist, which Kant does *not* do (and indeed *cannot* do given his metaphysics of free will), and saying that procreation is the beginning of a being who will someday be a person). Consider the words of 22-year-old Courtney, who obtained an abortion while still a university student:

I am a student in college and I got pregnant the summer of my freshman year. With no money to my name and no one to help take care for the baby once it came, I opted for an abortion. It was hard for me to save up enough money to pay for that but I knew that I did not want to bring a baby into the world that I could not take care of. There are already so many neglected children I didn't want to add to that population. I will one day begin a family, but I will be prepared. Until then, I am abstaining from sex because I feel that I owe that to the child I gave up and the children I hope to have in the future...³⁶

Of course, adopting abstinence is not the only way to practice sexual responsibility, but the upshot is that Courtney recognized the need to modify her sexual practices so that she wouldn't find herself again in a situation where she would have to choose to extinguish the life of a burgeoning human being. Recognizing the consequences of repetitive unprotected sexual intercourse and taking steps to remedy that behavior through abstinence or the consistent and careful use of contraception helps to avoid being placed in a position where abortion may be chosen (and this applies to both women and men). Granted, no modification of sexual behavior precludes the possibility of an unplanned pregnancy - contraception can fail even if perfectly used and women are always in danger of being victims of sexual violence - but it certainly lowers its likelihood. Moreover, really appreciating the procreative power of sexual intercourse may encourage open discussion amongst men and women before they engage in physical intimacy, and may even result in more conscientious decisions regarding with whom one chooses to be sexually active.

³⁵ Kant [1797] p. 64.

³⁶ Feldt, Jennings [2002] pp. 105–106.

Leslie Cannold's research into the attitudes and concerns of both pro-choice and pro-life women found that members of both groups agree that a woman's intentions and motivations for obtaining an abortion were of paramount importance in assessing the moral dimensions of individual abortion decisions.

Almost all the women I interviewed saw the abortion issue as revolving around the pregnant woman's decision-making process. An abortion decision that did not reflect a woman's "feelings" and "love" for her could-be child and other significant people in her life, and that was not motivated by care and protective concern for all those she loves, was just plain wrong.³⁷

Cannold's book is permeated with women who argue in favor of abortion rights, but also in favor of exercising that right in certain ways. A fetus, many of these women claim, is an entity worthy of profound respect, and pregnancy should be honored as the "the phenomenal creation of life."³⁸ If a woman does choose to abort, it is a decision that should be reached with care, judiciousness, and ideally in situations where the woman has other moral obligations that parenthood would render it difficult or impossible to fulfill (for example, if having another child would compromise one's capacity to care for existing children, or to continue in one's educational endeavors). For example, all of the pro-choice women Cannold interviews condemn the practice of "abortion-doping" – the rumored practice amongst Olympian female runners to deliberately get pregnant in order to abort right before a competition; the added hormones produced by the recently terminated pregnancy are said to enhance performance. They did so for very Kantian reasons, for the "vast majority of women found the idea of using pregnancy as a means to another end completely repugnant." Even though they were in favor of abortion choice, many of these women maintained that the fetus ought to be regarded as "a vulnerable and dependent creature who had the capacity to become her child."³⁹ Hence, the second way to illustrate respect for fetal life even in the face of an abortion is to not regard its death lightly, to approach it in a manner that expresses care and concern for the would-be child, in addition to other individuals in one's life (including one's self) to whom one has moral obligations.

Finally, language often used to dehumanize the fetus ought to be avoided. Some pro-choice advocates sometimes refer to intrauterine life as "material,"

³⁷ Cannold [1998] pp. xix-xx.

³⁸ Ibidem, p. 91.

³⁹ Ibidem, p. 92.

“products of conception” or “tissue.” This, for example, is how Dr. Susan Poppema, an abortion provider, consistently refers to embryos and fetuses throughout her writings.

... this is a bowl of tissue that has resulted from an abortion operation. It's tissue not unlike the stuff leftover from any operation. It contains organic material that once was living but now it not living. It was tissue contained in a woman who made a conscious decision that she no longer wanted this tissue in her body.⁴⁰

For Poppema the destruction of fetal life is no more morally significant than the removal of an appendix. Mary Anne Warren, in her seminal article “On the Moral and Legal Status of Abortion,” argues that because neither the embryo nor fetus (nor infants!) possesses the cognitive traits of personhood, they are akin in moral value to a fish and have no more moral rights than a newborn guppy.⁴¹ In the abovementioned citation, Sagoff's use of the term “glob of protoplasm” to describe fetuses also contains dehumanizing overtones.

One cannot underestimate the emotional and mental consequences of using dehumanizing language; several studies have illustrated the negative cognitive effects that come with such use, which typically results in failing to regard the “other” as worthy of moral consideration or care.⁴² When debating the abortion issue, advocates on both sides commit similar mistakes in this regard. Just as fetuses are derided as unimportant polyps, women who abort are disparaged as sluts or whores who callously murder their children. Doing so has the predicted effect of not empathizing with either one. Writing aborting women off with these terms means we don't have to struggle with a woman as she makes the very real, life-altering, decision to either continue her education or build a place in society for herself, or to become a mother – and we don't have to question the moral dimensions of our societal practices that impose such a decision onto her. We don't have to face the inconsistency of telling women that they cannot abort and must bear a child in a society where single motherhood is correlated with poverty then also simultaneously admonish them as “welfare mothers” when they must rely on public funds to care for the infants those fetuses become. Similarly, writing fetuses off as “clumps of cells” or mere “tissue” means that we don't have to think too much about the being we are killing. Such language facilitates viewing

⁴⁰ Poppema [1996] p. 165.

⁴¹ Warren [1973] p. 58. It should be noted that Warren softened her view on the moral status of the fetus, and was willing to grant it some degree of moral status after the fetus had acquired sentience. However, while living, she still held to a generally pro-choice position.

⁴² See, for example: Myer, Williamson [2001] and Steuter, Wills [2010].

abortion solely as a medical, rather than moral, issue. If fetuses are simply “tissue” akin to any other organic material in the body, then they can be as easily removed as an appendix. If they are mere “products of conception,” then, like all products, they can be disposed of according to the whims of their “owner” without a second thought. Regarding fetuses this way means we do not have to deal with the accurate statement that many pro-life advocates often repeat: that abortion really does stop a beating heart and does destroy a potential child. While we can legitimately debate what all this means for ascribing rights onto fetuses, we should at least honestly acknowledge that abortion involves killing a being very much unlike all the terms that are typically used to dehumanize it.

Because language can serve as a powerful dehumanizing force, Kant’s position on the role of moral sentiments is relevant here. He argues that part of being a moral agent who strives towards the fulfillment of duty is cultivating the appropriate emotions that will aid us in this endeavor. For example, one such sentiment is the “inward feeling for the beauty and dignity of human nature and a self-composure and strength of mind to relate all of one’s actions to this as a general ground.”⁴³ Developing certain emotions renders one more likely to regard all persons with the dignity they deserve in virtue of their humanity, and therefore makes it less likely one will act in ways that violates this dignity: “when universal affection toward the human race has become a principle in you to which you always subordinate yours actions, then love toward one who is needy still remains; but now, from a higher standpoint, it has been placed in its true relation to your total duty”⁴⁴ In the *Metaphysics of Morals*, Kant writes the following concerning the role moral sentiments play in helping us fulfill our duties:

But while it is not in itself a duty to share the sufferings (as well as the joys) of others, it is a duty to sympathize actively in their fate; and to this end it is therefore an indirect duty to cultivate the compassionate natural (aesthetic) feelings in us, and to make use of them as so many means to sympathy based on moral principles and the feeling appropriate to them... For this is still one of the impulses that nature has implanted in us to do what the representation of duty alone might not accomplish.⁴⁵

The constant use of dehumanizing language to describe both aborting women and fetuses renders it more likely that we will grow callous and dismissive of them

⁴³ Kant [1799] p. 26.

⁴⁴ Ibidem, p. 23.

⁴⁵ Ibidem, p. 205.

and less likely that we will treat them with the varying degrees of esteem they deserve in virtue of their actual and potential personhood, respectively. As such, it is important that we stay away from the use of such terms (for similar reasons, we should opt to never use racial slurs).

If certain uses of language breeds callousness in us in regards to our fellows, engaging in certain actions can help cultivate care and compassion, which would, in Kantian terms, aid us in regarding the formula of humanity as a key motivator in our moral behavior.⁴⁶ Engaging in certain rituals of care after an abortion, for both the woman and the fetus, helps to cultivate positive sentiments towards them both which, in turn, serves to treat them with appropriate respect. For example, Japan's Buddhist-themed *mizuko kuyo* (meaning "water child") rituals, memorial rites to honor miscarried and aborted fetuses, helps to develop these kinds of sentiments. The rituals may take place in large temples designed specifically for the practice (often in big cities), or in small temples situated in villages. The content of the service can vary:

Certain ritual objects common to funeral and ancestral rites reappear here such as incense, flowers, and food offerings. A posthumous name for the child may be inscribed on a tablet which is kept either in the temple or the family *butsudan*; in other versions a thick wooden slat bearing information about the family and an inscription for the *mizuko* may be placed at the grave site and later ritually burned. *Emas* (votive tablets) are also available for parents to write messages – apologies and petitions – which are then carried to their *mizuko* as part of the ritual.⁴⁷

One common denominator in these services is the invocation of the bodhisattva Jizo, who is "traditionally associated with the care of travelers in the six realms of birth, and also known as the special protector of children."⁴⁸ Statues of Jizo are often adorned with baby clothes and toys, and prayers to the aborted fetus are typically attached. Many scholars who study the *mizuko kuyo* services focus

⁴⁶ It is important to make clear that, ultimately, what matters for Kant is that our actions are motivated from duty, rather than from sentiments. In fact, Kant makes clear that actions motivated by sentiments alone have no moral worth (mostly because our sentiments are constantly in flux and unreliable, and thus cannot be the basis of our *categorical* imperatives). The role of sentiments is *not* to motivate our actions, but to render it more likely that we will act with the moral law as our primary motivator. So, for example, we ought to be beneficent not because we feel compassion, but because beneficence is an imperfect duty we should strive to fulfill whenever possible, and it is that fact alone that should motivate us. However, developing proper sentiments, like compassion, renders it more likely that we will be motivated to act from our duty of beneficence.

⁴⁷ Underwood [1999] p. 742.

⁴⁸ Ibidem.

on the therapeutic role the rites serve for women who have aborted, as well as for a society that largely regards abortion as “a painful social necessity.”⁴⁹

Despite the general societal consensus that abortion must remain legal and available, one role of the *mizuko kuyo* rituals in Japan is to remind people that abortion does constitute the taking of a human life and that, therefore, it should not be regarded wantonly (indeed, the debate in the U.S. regarding the fetus’ personhood and moral status is largely absent in Japan. As one Buddhist bishop, presiding over a *mizuko kuyo*, puts it: “*Mizuko* is not a different kind of life – your life and the *mizuko* life are the same, same nature”⁵⁰). Reminiscent of Kant’s view of the role of moral sentiments, many regard the practice of these rituals as cultivating empathy for fetal life and to help in not regarding abortions as trivial occurrences. As William LaFleur writes:

[One of the concerns amongst Buddhist clergy] is that people not become inured to abortion and trivialize it. Many Buddhists are worried that, especially if there is no real grief and ritual a kind of personal degradation becomes the pattern: from repeated abortions to a flippant acceptance of the practice and from there to a deterioration of a person’s capacity for generalized sensitivity.⁵¹

Bardwell Smith focuses on the therapeutic aspects of the rites for women who have chosen abortions, as well as how the ritual itself affirms respect for the life that was lost:

At a still deeper level there is the unexpected awareness that one’s need to mourn this loss is very real and not unnatural. This is not simply because Buddhism teaches that human life begins at the instant of conception. Actually, it is more likely the reverse: Buddhism’s teaching may be the endorsement of a profoundly human experience, namely that nothing less than a human life is at issue... whenever ambivalence exists in the decision to abort, mourning becomes the acknowledgement that something of consequence has occurred, that one is never the same again. It is thus to acknowledge death, even a death which one has willed.⁵²

⁴⁹ LaFleur [1990] p. 534. Also see: LaFleur [1992].

⁵⁰ Wilson [2009] p. 37.

⁵¹ LaFleur [1990] p. 537.

⁵² Smith [1988] p. 9.

One of the most helpful aspects of *mizuko kuyo* is that it gives women a public forum to express their emotions, and that the “public” aspect is vitally important in order to legitimize their experiences and help them feel valued and respected by their society.

If the formula of humanity entails respecting both actual and potential persons, to the appropriate degree required by their approximation to the cognitive traits essential to humanity, then it is our categorical moral obligation to do so. We must, therefore, cultivate the right kind of sentiments conducive to fulfilling this obligation. Avoiding the use of dehumanizing language, which would otherwise make us more susceptible to erasing the humanity of the “other,” and adopting rituals of care and respect both towards the fetus and pregnant women, will help us in attaining this goal.

Conclusion

In the end, Kant’s philosophy and his metaphysics of persons can tell us a lot about how to regard the morality of abortion, not just in terms of whether women have a right to obtain one, but also concerning how we ought to treat both pregnant women and the life that grows within them. While it is clear to me that, for the reasons I have argued, the formula of humanity precludes compelled gestation, it is equally clear to me that respect for the potential personhood of the fetus requires that we treat it with appropriate care and esteem. A thorough application of Kant’s philosophy, then, not only supports pro-choice ideology, but renders it a much more humane and compassionate position to hold – one that does not sacrifice the respect for the fetus in favor of women’s rights. For the same reasons, it can have a like effect on pro-life ideology, which often sacrifices the respect owed to women’s welfare and their actual personhood in exchange for prizing the fetus’ potential personhood. While we may never agree on whether abortion is a (moral and legal) right women possess, taking to heart Kant’s formula of humanity, and all its implications, may help to move us away from the stagnate abortion polemics that leads to so much violence and vitriol.

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