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Moral disagreement concerning abortion

MUZEUM HISTORII POLSKI

MORAL DISAGREEMENT CONCERNING ABORTION[1]

- Bernard Gert -

Introduction

Even though it is seldom explicitly stated, it seems to be a common philosophical view that either every moral question has a unique correct answer or that none of them do. Since it is obvious that some moral questions, e.g., "Is it morally acceptable to torture a person for the enjoyment of sadists?" have unique correct answers, some philosophers seem to hold that even the most controversial moral questions have unique correct answers. This may explain why some philosophers think that they can resolve the question about the moral acceptability of abortion. Many philosophers do not even consider the view that although most moral questions have unique correct answers some do not. Our common morality does not resolve every moral problem, for not every moral problem can be resolved. A moral theory should describe our common morality and try to justify it by showing that all equally informed rational persons would support it. The proper tasks for a moral theory are to explain both why there is moral agreement about the answers to the overwhelming majority of moral questions, and why there is moral disagreement concerning the answers to a small but important number of moral questions. The overwhelming agreement on most moral matters is obscured by the fact that there is very little discussion of these uncontroversial matters and a great deal of discussion about the small number of controversial issues. But that there is agreement on the answers to most moral questions does not support the view that there are unique correct answers to every moral question. However, it is not sufficient simply to claim that no moral theory can resolve every moral problem; it is necessary to explain why a particular controversial problem such as abortion is unresolvable.

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[1] This paper is a revision of Chapter 3, "Moral Disagreement," of *Bioethics: A Systematic Approach*, Oxford University Press, 2006, by Bernard Gert, Charles M. Culver, and K. Danner Clouser, (Polish translation, stowo/obraz terytoria, 2009, *Bioetyka. Ujecie systematyczne*, translated by Marek Chojnacki) and of "Moral Disagreement and Abortion" *Australian Journal of Professional and Applied Ethics* Volume 6, Number 1, June 2004 by Bernard Gert.

Moral Realism

Moral realism is the name for the philosophical position that empirical facts about the world, not hypotheticals about the attitudes of suitably situated rational persons, completely determine the answer to every moral question. According to this view, these empirical facts determine whether an act is morally right, morally wrong, or morally indifferent.[2] On this view, moral disagreements, like scientific disagreements, are always disagreements about the empirical facts. If there is agreement on all the facts then there is a unique correct answer to every moral question. On this view, insofar as people are equally informed, impartial, and rational, they will agree in their moral decisions, evaluations, and judgments. However, why anyone would think that all equally informed rational persons would agree on the answer to every moral question when they do not even agree about who is the best hitter in the history of baseball, or about a host of other simpler matters, is an interesting question.

Interpreted as hedonistic act consequentialists, Classical Utilitarians are the paradigm of moral realists; they hold that an act is right if it results in as great a balance of pleasure over pain (happiness over unhappiness) for everyone affected by the act as by any alternative. All other acts are wrong. If two acts would result in the same balance of pleasure over pain overall, it is morally indifferent which act is performed. Modifications of this view can take into account the distribution of the pleasure and pain, but on this or any other modification, given the facts, the theory comes up with a unique answer, morally right, morally wrong, or morally indifferent.

Of course, there are serious problems in using such a utilitarian theory as a guide for one's behavior. There is no universally accepted procedure for weighing and comparing either pleasures or pains. Even more serious, there is no universally accepted procedure for weighing pleasures against pains, or for deciding which is worst, a larger number of people experiencing a pain of less intensity or a smaller number experiencing a pain of greater intensity. The problems are even more daunting for those versions of consequentialism that do not limit the relevant consequences to pleasure and pain but also include ability, freedom, and consciousness as goods, and death, disability and loss of freedom as evils.

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[2] This way of putting the matter presupposes a certain kind of utilitarian or consequentialist view that there is no important distinction between actions related to a moral rule and those related to a moral ideal. Those holding this view deny that there are any actions that are not morally wrong not to do, but are morally good to do. They also deny that some acts are morally bad, but not morally wrong. The argument against moral realism is also an argument against more sophisticated accounts of morality, but it is simpler to concentrate on the most common kind of moral realism, which is this kind of consequentialist view.

In light of these problems, many consequentialists claim only to be providing a purely theoretical moral theory. However, the claim that the relevant consequences of an action and of all of its alternatives provide all that is needed to determine whether that act is right, wrong, or indifferent does not by itself guarantee that there is a unique correct answer to every moral problem. (Consequentialists mistakenly take "right," "wrong," and "indifferent" to mean the same as "morally right," "morally wrong," and "morally indifferent.") This is because there is no reason to believe that all rational persons will agree in their ranking of different pleasures (goods) and pains (evils), or in how to weigh pleasures (goods) against pains (evils), or in how to balance intensity versus extent of pain. If utilitarianism is only a theoretical moral theory lack of agreement concerning these matters is simply a theoretical problem. Utilitarians are no longer required discover the unique correct answer to a moral question before making a moral decision, evaluation, or judgment.

Moral Constructivism

Moral realism is not the only source of support for the claim that there is a unique correct answer to every moral question. Some versions of *moral constructivism* also support this claim. *Moral constructivism* is the view that hypothetical statements about the answers that would be given by suitably qualified and situated rational persons provide the correct answers to all moral problems and questions. Some *moral constructivists*, e.g., John Rawls, also hold that there are unique correct answers to every moral question because they hold that all suitably qualified and situated rational person will always agree. In *A Theory of Justice*, Rawls claims that all rational persons under the veil of ignorance in his original position will always give identical answers.[3] However, a moral constructivist need not hold that all suitably qualified and situated rational persons always agree. Indeed, on any plausible account of suitably qualified and situated rational persons, they will not always agree. However, strict Kantians, who can be viewed as moral constructivists, also hold that purely rational persons, i.e., those that are not influenced by non-rational considerations, always agree. This is because, insofar as they are purely rational beings, they have no desires that differentiate them from one another and so they have no basis for disagreeing.

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[3] Rawls [1971] took it to be one of the great strengths of consequentialism that it supplied a unique correct answer to every moral question and this is one reason why he requires that the attitudes of suitably qualified and situated rational persons have to be identical in the "original position."

Examples of One Kind of Unresolvable Moral Disagreement

The plausibility of holding that there are unique correct solutions to every moral problem stems from a failure to consider the wide variety of moral problems. If all moral problems had the form: "Should I do X?" it may seem plausible to hold that there will be no disagreement. Of course, even with questions formulated in this way, it is sometimes the case that two equally informed impartial rational persons will disagree on the answer and there will be no way to resolve the disagreement. However, for some questions, unless the facts are quite different from what is generally accepted, it is not even plausible to claim that there is a unique correct answer. Consider setting the speed limit for highways and the alternatives are 100, 110, and 120 kilometers per hour (kph). Setting speed limits is an important moral problem. Any speed limit deprives many people of some freedom, and the lower the speed limit, the more freedom is taken away, but there may be a correlation between a higher speed limit and some increase in the number of serious accidents.

Suppose, however, that the facts are that a 120-kph speed limit results in greater uniformity of speed and that this results in fewer accidents and less injuries and death than either a 100 or 110-kph speed limit. Then 120-kph is the unique right answer, for the 120-kph speed limit deprives people of less freedom than the lower limits and also results in the smallest amount of injuries and death. Unfortunately, studies show that among the alternatives listed, the lower the speed limit, the lower the number of accidents, and correspondingly the lower the number of injuries and death due to accidents. Given this correlation, with a higher speed limit resulting in a greater number of accidents, there is a classic confrontation between freedom and welfare. A lower speed limit deprives people of more freedom, and has other economic costs associated with it, but it results in fewer accidents and so results in fewer injuries and deaths. However, oversimplifying in a way that is standard for philosophers, I shall consider the increased loss of freedom to be the only cost of a lower speed limit and the increased number of deaths to be the only cost of a higher speed limit. This oversimplification allows us to pose the simple question, 'How many deaths avoided is worth the loss of freedom to go 10-kph faster for millions of people?'

Given our three alternative speed limits, consider the following four scenarios: the evidence shows that for every 10-kph increase in the speed limit there is an increase of (1) ten deaths in the country per year, (2) 100 deaths, (3) 1000 deaths, (4) 10,000 deaths. In which of these scenarios is there a unique right answer to the question as to the best speed limit? I would think that scenario (4) 10,000 deaths would be large enough that it would result in all equally informed rational per-

sons agreeing to the lowest speed limit, so that there would be a unique right answer. Theoretically, no increase in the number of deaths would be small enough that all equally informed rational persons would agree on the highest speed limit, for some people claim that life in infinitely precious. It should be clear that there is some level of increase in the number of lives lost with an increase of 10-kph in the speed limit that equally informed rational persons will disagree about the best speed limit. This disagreement occurs because equally informed impartial rational persons rank lives lost versus freedom lost in different ways.

Some consequentialists might claim that there is a unique correct answer to the question of how a small loss of freedom for millions should be weighed against the loss of a few lives, but there is no reason to believe that any answer would be accepted by all equally informed impartial rational persons. Some might claim that any rational person would prefer the certain loss of a small amount of freedom in order to avoid even an extremely small chance of being killed, but some might claim the opposite. According to the maximin strategy that John Rawls put forward to guide the choice of basic principles in *A Theory of Justice*, all impartial rational persons would choose minimizing their own very small chances of accidental death over maximizing their freedom to drive faster. Indeed, even if, contrary to fact, it could be determined what counted as the best overall balance of goods over evils, the maximin strategy would still favor minimizing one's already very small chances of accidental death to promoting the best overall balance of goods over evils Although this is a plausible strategy, it is not the only plausible strategy.[4] Although there are clearly some irrational rankings, there is no unique rational way to rank the various evils or weigh them against each other and against some goods. Equally informed impartial rational persons can choose several different alternatives in deciding on the speed limit.

Rational persons agree on the basic harms or evils: death, pain, disability, loss of freedom, and loss of pleasure. There is even complete agreement on some of the rankings of these harms that would count as irrational because, except for death, there are varying degrees of all of the other harms. It is irrational to die in order to avoid the pain normally involved in having a tooth filled. Although there is no precise way to say how great the pain and suffering must be for it to be ra-

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[4] This strategy also results in adopting policies that provide the greatest benefits for the worst off, even if far more people would be helped if the policy assisted those who are not so badly off. This is not a position that is held by many in the field of health care. Sweden has a policy of not resuscitating neonates weighing less than 750 grams even though one percent of these infants might develop into normal children, because the overall cost of such a policy is so great that spending that money on other aspects of health care could prevent far greater overall harm.

tional for a person to prefer to die rather than suffer, in most cases it is clear whether it is rational to choose to die. For people suffering from terminal maladies, it is rational for them to choose either to die earlier to avoid the continuing suffering that their malady involves or to try to live as long as possible, even though this results in continuing suffering.

Although this personal decision about how soon to die may not be a moral decision it is clearly a moral matter whether to legalize physician-assisted suicide. The evidence supports the view that legalizing physician-assisted suicide results in people experiencing significantly less unwanted pain and suffering, but the evidence also supports the view that it results in some people feeling pressure to die earlier than they really want to die. Impartial rational persons will not all agree on how many people avoiding how much pain and suffering justifies how many unwanted earlier deaths. However, this is a situation in which, because of an overlooked alternative, the amount of pain and suffering avoided by legalizing physician-assisted suicide is considerably less than that claimed by most proponents of legalization. Refusal of foods and fluids, as well as refusal of life-prolonging medical treatments, is already available to those for whom physician-assisted suicide would be available. Publicizing these alternatives and educating people that refusing food and fluids can result in a death that is a quick and that involves as little pain as legalized physician-assisted suicide, means that legalizing physician-assisted suicide prevents far less pain and suffering than is sometimes claimed for it.[5]

Although many moral theories claim that there is a unique correct answer to every moral question, democratic political theory takes it for granted that, within limits, equally informed rational persons can disagree about what laws should be enacted. That is why Plato, who holds that there is a unique correct answer to every moral question, does not advocate democracy but rather a philosopher king. If there is a unique correct answer to every moral question, then because political decisions are moral decisions, theoretically that person or group of persons who is most likely to know the correct answer should be the person or group that makes the political decisions. But often there is no unique correct answer to some moral questions, so it is most appropriate to have all citizens participate, either directly, or through a representative, in making decisions about which there is legitimate disagreement. Only a moral theory that realizes that there is no

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[5] Many discussions of legalizing physician suicide ignore the alternative of patient refusal of life prolonging treatment, including refusal of food and fluids. The Philosopher's Brief to the Supreme Court was an embarrassment because it neglected to mention this option. For further discussion of this topic see Bernat, Gert, Mogielnicki [1993].

unique correct answer to every moral question provides support for a democratic political process. Admitting that there is not a unique correct answer to every moral question, although often regarded as a defect in a moral theory, is actually a significant virtue.

Other Sources of Unresolvable Moral Disagreement

The unresolvable moral disagreements that have been discussed in the previous sections stem from a different ranking of the basic evils of death, pain, disability, loss of freedom, and loss of pleasure. A second source of unresolvable moral disagreements is a difference in the estimates of the consequences of everyone knowing that they are allowed to violate a moral rule in the circumstances under consideration. This second source, which is usually not subject to empirical verification, arises from ideological differences about human nature and society. It may be closely related to the first source, as it is likely that those who have a more optimistic view of human nature value freedom higher than those who have a more pessimistic view.

A third source of unresolvable moral disagreement is a disagreement about the interpretation of a moral rule. Do some polite expressions like "So pleased to see you." count as deceiving if you are not pleased to see the person? Does wearing a wig, or coloring your hair, or wearing make-up count as deceiving? Does dressing or talking in a way that one knows will upset many people count as violating the rule against causing pain or unpleasant feelings? More importantly, when do acts of discontinuing life-preserving treatment count as killing? The answers to these questions often turn on the conventions that have been adopted by the society. When these conventions are clear, some of these questions may have clear unique answers. However in some cases, the situation has not arisen before so there is no settled convention, or the conventions of the society are in flux and there is no unique interpretation accepted by all equally informed, qualified rational persons. In these cases there may be unresolvable moral disagreement.

The fourth source of moral disagreement concerns the scope of morality but it is not only about whether some being is in the group fully protected by the moral rules. It is also about how much any of those not in this group are protected, it at all, and if so, by which rules are they protected. People generally agree that fetuses and non-human mammals are not protected by the rule prohibiting breaking promises because valid promises cannot be made to them. Although it may be possible to deceive mammals, it does not seem that it is possible to deceive fetuses, so fetuses are not protected by that rule. It is clearly possible to break any of the first five rules prohibiting causing any of the harms with regard to all adult

mammals, but it is not clear that it is possible to violate the rule against causing pain to embryos and early fetuses. Somewhat surprisingly, the rule about which there is the most controversy is different when discussing fetuses than when discussing mammals. The rule about which there is most controversy concerning mammals is the rule prohibiting causing pain. Most moral agents, even those who are not vegetarians, hold that mammals and other animals are at least partially protected by this rule. However, although some hold that they are impartially protected most hold that they are protected less than moral agents, i.e., that a reason that is not adequate to justify causing pain to a non-consenting moral agent may be adequate to justify causing the same amount of pain to a non-consenting animal, e.g., in medical experimentation.

With regard to fetuses the rule about which there is most controversy is the rule that prohibits killing. Some people hold that fetuses have no protection from this rule; others hold that the degree to which they are protected depends upon their stage of development. Some hold that they are never protected as much as a moral agent, viz., the pregnant woman, whereas others hold that, no matter at what stage, they are always protected as much as any moral agent. There is also disagreement about whether the stage of development of the fetus determines whether it should be fully protected, partially protected, or not protected at all. Obviously, the source of moral disagreement concerning the scope of morality is the one that is most relevant to moral disagreement about abortion. However, it is important to note that the claim that there are unresolvable moral disagreements is not an ad hoc response to the controversy concerning abortion. Disagreement about the scope of morality not only leads to disagreements about abortion, but also about the morally acceptable treatment of animals.

The most common cause of moral disagreement is disagreement about the facts; it is even the most common source of unresolvable moral disagreement. Indeed, this source of unresolvable moral disagreement is probably far greater than all of the other sources of unresolvable moral disagreement combined. However, because it does not give rise to any philosophical problems, it is not much discussed by philosophers. Those involved in real moral discussions, for example, those who serve on ethics committees in hospitals, know that disagreements about the facts, including disagreements about prognoses, cause almost all of the disagreement concerning what morally ought to be done. Agreement on all the facts generally results in the end of any controversy about what to do, although sometimes agreement on the facts cannot be reached and so the controversy remains unresolved. However, in this paper I am concerned with the four sources of moral disagreement discussed above, which do not involve disagreement about the facts,

because the unresolvable disagreements that arise from these sources are denied or neglected by many philosophers.

Morality as an Informal Public System

Although all impartial rational persons agree that our common moral system does rule out some actions as morally unacceptable, they do not agree on all of the actions they regard as morally unacceptable. For example, some hold that abortion, contraception, and homosexual behavior are morally unacceptable, while others hold that that they are not even moral matters. Some of this moral disagreement, e.g., concerning contraception and homosexual behavior is based on failing to distinguish between morality and religion. Neither contraception nor homosexual behavior between consenting adults violates any moral rule. However, even though many hold that abortion is not morally acceptable because of their religious beliefs, an impartial rational person can hold that fetuses are impartially protected by the moral rule that prohibits killing even when morality is clearly distinguished from religion.

One of the tasks of a moral theory is to explain why sometimes, even when there is complete agreement on the facts, genuine moral disagreement cannot be eliminated, but the theory must also explain why all moral disagreement has legitimate limits. It is very easy, as noted above, to overlook that unresolvable moral disagreement on some important issues, e.g., abortion, is compatible with total agreement in the overwhelming number of cases about which moral decisions must be made or on which moral judgments are made. This agreement is based on agreement about the nature of morality, that it is a public system with the goal of reducing the amount of harm suffered by those protected by it. Everyone agrees that morality prohibits some kinds of actions (e.g., killing and breaking promises), and encourages certain kinds of actions (e.g., relieving pain). But it is acknowledged that it is sometimes morally justified to do a prohibited kind of action even when it does not conflict with another prohibition, e.g., when it conflicts with what is morally encouraged. Everyone agrees that it is morally acceptable to break a trivial promise in order to aid an injured person.

Sometimes, however, people disagree about whether a particular act counts as a prohibited kind of action like killing or deceiving.[6] People sometimes disagree on when not feeding counts as killing, or when not telling counts as deceiving.

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[6] There are clear paradigms or prototypes of killing, e.g., stabbing or shooting a person, but cases involving cessation of treatment are not so clear. This topic is very important in the discussion of euthanasia.

Although these disagreements in interpretation are occasionally unresolvable, if it is agreed that an action is of a certain kind, e.g., killing or deceiving, all impartial rational persons agree that it needs moral justification. Further, everyone agrees that intentionally killing or deceiving needs moral justification. Similarly, everyone agrees that some actions, e.g., relieving pain and suffering, should be encouraged unless it involves violating a moral rule. Even when relieving pain and suffering does violate a rule, many hold that one should relieve pain. This means that doing what is not required, but only encouraged by morality, what I call following moral ideals, can sometime justify doing what is prohibited by morality, that is, violating a moral rule.

Although morality is a public system, one that all rational persons know and understand and which it is not irrational for any of them to follow, this does not mean that there are no unresolvable moral disagreements. Morality is an informal public system, i.e., a system that has no authoritative judges or procedures that always determines the correct answer. A formal system such as law, or a formal public system, such as a game of a professional sport, does have ways of arriving at a unique correct answer within that system by granting final authority to judges, referees, or umpires. But most games, including sports, are informal public systems. When people get together to play a game of cards, or backyard basketball, they are involved in an informal public system. For the game even to get started, there must be overwhelming agreement on most aspects of the game, but disagreements can arise which have no agreed upon way to be resolved. These unresolvable disagreements are either settled in an ad hoc fashion (e.g., flipping a coin or asking a passerby), or are not settled at all, e.g., the game is disbanded.

Morality, like all informal public systems, presupposes overwhelming agreement on most matters that are likely to arise. However, like all informal public systems, it has no established procedures or authorities that can resolve every moral disagreement. There is no equivalent in morality to the United States Supreme Court in deciding legal disputes, or the Pope in deciding some religious matters for Roman Catholics. When there is no unique right answer within morality and a decision has to be made, the decision is often made in an ad hoc fashion, e.g., people may ask a friend for advice. If the moral disagreement is on some important social issue, e.g., abortion, the problem is transferred from the moral system to the political or legal system. Abortion is an unresolvable moral question. Since it has to be decided whether or not abortions are to be allowed and in what circumstances, the question is transferred to the legal and political system. They resolve the question on a practical level, but they do not resolve the moral question, as is shown by the continuing intense moral debate on the matter.

Failure to appreciate that morality is an informal public system has caused considerable confusion when talking about legal and political decision in many areas besides abortion. Some claim that even if morality does not directly provide a unique correct solution to a problem, it can always provide an indirect solution by means of an appropriate voting procedure. It is sometime mistakenly said that a just solution, by which I mean a morally acceptable solution, is one that is arrived at by a democratic voting procedure. The justness or moral acceptability of a solution to a problem cannot be determined by any voting procedure, because a majority can vote to unjustifiably deprive members of a minority group of freedom. The moral acceptability of a solution is determined by the moral system; all that the voting procedure does is to determine which solution will be adopted. This democratic voting procedure may be the morally best way to determine which morally acceptable solution will be adopted, but it does not *make* that solution either morally acceptable or the morally best solution.

Moral Disagreement Concerning Abortion

Abortion is a topic that philosophers and others bring to bear all of the arguments, intuitions, and theories that they think will persuade others to adopt the position that they favor. Abortion is almost never discussed as an example that shows the inadequacy of some standard views about morality, or about the proper role of moral theories. However, that is what I now intend to do. I shall not be arguing for the view that abortion is morally unacceptable or for the view that because it is morally acceptable is it morally unacceptable to legally prohibit it. Rather, I hope to show that all of the standard positions concerning abortion are morally acceptable. My primary purpose is theoretical. I intend to show that there are no arguments that provide conclusive support for the view that abortion is prima facie morally wrong or for the view that it is morally wrong to legally prohibit abortion.

I am using abortion as an example of an unresolvable moral issue. Holding that you have the unique correct solution to this problem and that all conflicting answers are mistaken is an example of moral arrogance. If you believe that any fully informed impartial rational person would agree with you, you must hold that anyone who disagrees is not fully informed, not impartial, or not rational. This does not lead to civil and fruitful discussion. Accepting that a fully informed impartial rational person can disagree with you concerning the moral status of abortion does not mean that you should cease to try to persuade others to adopt your own views, or that you should cease to try to have the government and the

courts support your position, but it does limit the morally acceptable ways of doing this.

Common morality does not provide a unique correct answer to questions about the moral acceptability of abortion. Neither the claim that women almost never ought not to have an abortion nor the claim that women ought to be allowed to have abortions at any time, are in conflict with common morality. Of course, many people on both sides of the abortion issue claim that common morality supports their position. However, most people recognize that some otherwise competent moral agents, i.e., those who know what kinds of actions morality prohibits, requires, discourages, encourages, and allows, hold an opposing view. Unlike the attitudes that people take with regard to most moral judgments, e.g., that it is morally wrong to lie, cheat, or steal, those who make moral judgments concerning abortion realize that they need to provide arguments to support their judgments. Many also believe that they need to show that those who make opposing judgments are mistaken.

Those who hold that judgments about abortion are personal, meaning by this that it is inappropriate to make moral judgments about abortion, are also mistaken. Abortion is not like contraception or homosexual behavior in that respect. People who think that contraception or homosexual behavior are moral matters are mistaken; they are solely personal or religious matters. There is no plausible interpretation of any justified moral rule such that contraception or homosexual behavior between consenting adults violates that rule. However, it is not a mistake to regard abortion as a moral matter, even though it is also a personal and religious matter. Impartial rational persons, even those with no religious beliefs, can disagree about whether fetuses are members of the group that is impartially protected by the moral rule that prohibits killing. To hold that there is no correct answer about whether abortion is morally acceptable does not involve accepting ethical relativism. Although accepting common morality entails accepting that it provides unique correct answers to most moral questions, it also requires accepting that it usually does not provide unique correct answers to controversial moral questions. People who understand common morality realize that the abortion issue is one of these controversial moral questions for which there is no unique correct answer.

It is appropriate to present arguments both for and against the moral acceptability of abortion. It is even appropriate to try to use a moral theory to persuade opponents to change their moral views about abortion. However, abortion is an issue that shows the futility of offering philosophical arguments, or any kind of moral theory, in order to resolve a genuinely controversial moral issue. The

facts about abortion have been known for quite some time, and none of the arguments, either pro or con, have persuaded many of those on the other side to change their position. Neither side can support their claim that common morality conflicts with the position of the other side. Moral theories that attempt to revise or supplant common morality often claim to provide decisive support for one or the other side of the controversy. However, most people's judgments about abortion are more firmly held than their views about the correctness of any revisionist moral theory. If such a moral theory results in a judgment about abortion that conflicts with their own moral judgment concerning abortion, that moral theory will be rejected. The preceding comments would simply count as deploring the intellectual integrity of most people and be of little philosophical significance unless it could be shown that any moral theory that purports to resolve the abortion question is mistaken. I will try to show this by examining two well-regarded philosophical arguments.

The Views of Don Marquis and Mary Anne Warren

It shall concentrate on two articles, one claiming to show that abortion is always prima facie immoral, and the other claiming to show that abortion is never immoral and should therefore always be legally allowed. I have picked these two articles for several reasons. Both of them are widely anthologized and many regard them as providing the strongest arguments for the positions they support. Both of them assume a philosophical view about moral theories that is widely used and assumed. It would be philosophically significant to show that this widely accepted philosophical view is mistaken. This significance would extend far beyond these two articles, indeed beyond the subject of abortion, in fact, beyond bioethics more generally conceived. The two articles are *Why Abortion Is Immoral* by Don Marquis and *On the Moral and Legal Status of Abortion* by Mary Anne Warren.[7] We shall refer to other articles only insofar as they provide further evidence of the kinds of mistakes with which we are concerned.

Don Marquis ends his article with this paragraph.

> Finally, this analysis can be viewed as resolving a standard problem--indeed, *the* standard problem--concerning the ethics of abortion. Clearly, it is wrong to kill adult human beings. Clearly, it is not wrong to end the life of some arbitrarily chosen single human cell. Fetuses seem to be like arbitrarily chosen single human cells in some respects and like adult human beings in other respects. The problem of the

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[7] Both are contained in Feinberg, Dwyer [1997] pp. 24-39, 59-74.

ethics of abortion is the problem of determining the fetal property that settles this moral controversy. The thesis of this essay is that the problem of abortion, so understood, is solvable. (Feinberg, Dwyer [1997] p. 39)

The following are the final sentences of Mary Anne Warren's 1982 postscript to her article.

It is a philosopher's task to criticize mistaken beliefs which stand in the way of moral understanding, even when--perhaps especially when--those beliefs are popular and widespread. The belief that moral strictures against killing should apply equally to all genetically human entities, and *only* to genetically human entities, is such an error. The overcoming of this error will undoubtedly require long and often painful struggle; but it must be done. (*ibidem*, pp. 73-74)

Both Marquis and Warren hold that there is a unique correct answer to the question of the moral status of abortion. Marquis says, "This essay sets out an argument that purports to show, as well as any argument in ethics can show, that abortion is, except possibly in rare cases, seriously immoral, that it is in the same category as killing an innocent adult human being." Marquis admits that his argument is based on a major assumption. He states.

Many of the most insightful and careful writers on the ethics of abortion--such as Joel Feinberg, Michael Tooley, Mary Anne Warren, H. Tristam Englehardt, Jr. L.W. Sumner, John T. Noonan, Jr., and Philip Devine-- believe that whether or not abortion is morally permissible stands or falls on whether or not a fetus is the sort of being whose life it is seriously wrong to end. The argument of this essay will assume but not argue, that they are correct. (*ibidem*, p. 24)

Mary Anne Warren confirms that she belongs in the group that Marquis characterizes by the following remark. "It is possible to show that, on the basis of intuitions which we may expect even the opponents of abortion to share, a fetus is not a person, and hence not the sort of entity to which it is proper to ascribe full human rights." (*ibidem*, p. 59) It is clear that Marquis and Warren, as well as most other writers on the problem of abortion, share the common assumption that facts about the fetus, "whether or not a fetus is the sort of being whose life it is seriously wrong to end" or whether or not a fetus is "the sort of entity to which it is proper to ascribe full human rights" determine the moral status of abortion.[8] This is an

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[8] Thomson [1997] argues that the status of the fetus does not completely determine the moral status of abortion, but she does not dispute that there is a unique correct answer to the question.

example of the larger assumption that, even for this controversial moral issue, there is a unique correct solution.

Don Marquis claims that this disagreement is the result of people not realizing what characteristic is responsible for the fact that it is morally wrong to kill moral agents, or as he says, people like us. According to Marquis, what makes killing us wrong is that it deprives us of our futures. He contends, correctly, that killing normal fetuses, including embryos once twinning is no longer possible, also deprives them of a future like ours. Although Marquis admits that it is also wrong to kill people who do not have a future like ours, if they do not want to be killed, he claims that having a future like ours is sufficient to make killing someone at least prima facie morally wrong. Marquis claims to have discovered the characteristic that makes killing moral agents wrong; it is that it deprives them of a certain kind of future. He correctly points out that killing fetuses or even embryos has the same characteristic. For Marquis, it is irrelevant what other characteristics fetuses have; whether they are persons, or potential persons, or even whether they are conscious, abortion deprives normal fetuses of a future like ours.

Mary Ann Warren claims that the disagreement about the morality of abortion is due to confusion between persons in the morally relevant sense, and persons in the biological sense. She claims that morality protects only persons in the morally relevant sense, not persons in the biological sense. Those having all of the characteristics of persons that Warren lists as morally relevant, turn out to be moral agents, those beings who are held responsible for their action. Everyone agrees that it is wrong to kill moral agents, those who are themselves required to obey the moral rules. But Warren is prepared to admit some beings that do not have all these characteristics may still count as persons or belong to the moral community.

Warren presents a list of five characteristics, 1) consciousness, 2) reasoning, 3) self-motivated activity, 4) the capacity to communicate (linguistically), and 5) self-concepts and self-awareness. Someone having all five, as all moral agents have, is clearly a person and within the moral community. She is willing to admit that "(1) and (2) alone may be sufficient for personhood," but she insists that a being who has none of these characteristics cannot be part of the moral community. She claims correctly that early fetuses have none of these characteristics, and that even late fetuses have only one, which she does not consider sufficient.[9]

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[9] She has a problem with this view, for it seems to result in the conclusion that there is nothing wrong with infanticide. However, she claims "neonates are so very close to being persons that to kill them requires a very strong moral justification – as does the killing of dolphins, whales, chimpanzees, and other highly personlike creatures." "Postscript on Infanticide, February 26, 1982," p. 71.

Although both Marquis and Warren agree that it is morally wrong to kill moral agents, they disagree on why it is morally wrong to do so. Marquis says that it is morally wrong because killing deprives these persons of a future like ours. Warren says that it is morally wrong because moral agents are persons and belong to the moral community. In a certain sense, both of them are correct. But the way in which they put their claims suggests that it follows directly from the facts they cite, that it is morally wrong to kill moral agents. The conclusion that it is morally wrong to kill moral agents is correct, however this conclusion does not simply follow from the facts cited by either author. Morality is not some straightforward empirical feature of the world such that, given some facts, a moral conclusion always follows with no intervening steps. When these intervening steps are put in, it becomes clear that the conclusions about abortion that both of them draw do not follow directly from the facts that they cite.

These intervening steps involve recognition that morality is an informal public system governing the behavior of all moral agents, that is endorsed by all moral agents who use only those beliefs that are shared by all moral agents, and who seek agreement with these other moral agents. Moral agents recognize that they are vulnerable and fallible, and so put forward a system of moral rules and moral ideals, and a two-step procedure for deciding whether they favor violating a moral rule in these circumstances. This moral system requires people not to harm others and encourages them to help others in need. This public system has other features in addition to the moral rules and moral ideals and the two-step procedure, but for present purposes, we shall be concerned only with the moral rules. Why do the moral rules have the content they do? How are these rules to be interpreted? Most relevant to the topic at hand, who are the moral rules supposed to protect?

As long as their futures do not involve prolonged pain and suffering, no moral agent wants to be deprived of her future. Marquis correctly assumes that *people regard being deprived of their future as one of the worst things that can happen to them*. According to Marquis this important fact explains why being deprived of their futures is sufficient to make killing people like us, prima facie wrong and also explains why the rule against killing is a very important, if not the most important, moral rule. Warren correctly assumes that moral agents want to protect *themselves*, so it is not surprising that the moral rules protect moral agents from being killed. Marquis is correct in explaining why *moral agents regard killing as mor-*

This remarkable concession creates problems for the kind of moral realism that she seems to be espousing in her original article.

ally wrong, and Warren is correct in explaining *why moral agents agree that morality protects moral agents from being killed*.

However, Marquis neglects to consider whom the moral agents want to protect from being deprived of a future like ours. He simply takes it to be a fact that being deprived of a future like ours, is a feature that, on its own, makes killing wrong, just as, being deprived of oxygen for a given amount of time, is a feature, that on its own, makes a person dead. But this is a misleading way of looking at the matter. Common morality contains a moral rule against killing because all moral agents want to be protected from being deprived of their futures. But they need not be against all killing, or against depriving anyone of futures like ours, all that they must agree on is that no moral agents be killed or deprived of their futures. Marquis treats "depriving of a future like ours" as a fact that makes killing wrong independent of the agreement of moral agents. But moral agents need not agree that the public system that is common morality contain a rule against killing that protects all beings that have a future like ours from being deprived of it. Once it is clear that moral agents need only agree that moral agents be protected, it is clear that the moral controversy about abortion has not been settled, but only seemed to be.

Warren recognizes that the morality fully protects all moral agents but, with no argument, also claims that it fully protects only those beings who have the characteristics such as consciousness and reasoning that make them very like moral agents. In a postscript, she later claims that morality protects to some degree, but not with the same protection as it provides to moral agents, those beings that are like, but not very like moral agents. Warren does not explicitly support her view by noting that moral agents put forward the rule against killing in order to protect moral agents, and those very like moral agents from being killed. Nor does she explain why some moral agents take the moral rules to protect, even if not fully, beings that resemble moral agents in what moral agents would take to be their important features. It may seem too obvious to her to point out explicitly that moral agents are more likely to be concerned with beings with characteristics that resemble their own. However, Warren's claims have force only because all moral agents want to protect moral agents from being killed and many moral agents also want to protect, although not necessarily fully, beings that resemble moral agents in their important features. She does not seem to recognize that some moral agents may be concerned with, and hence want to protect, beings that presently have none of the important characteristics of a person, if those beings would have all of these features at some future time. Some moral agents may even want to fully protect these beings.

Once one realizes that some moral agents may want future moral agents to be protected as much as present moral agents are protected, it is clear that Warren has provided no argument for her claim that nonpersons are not fully protected, or not protected at all, by the moral rules. Like Marquis, Warren simply makes some claim about the group of beings protected by morality, as if all moral agents agree on this matter. But it is quite obvious that they do not all agree. Although some moral agents want morality to protect only moral agents, other moral agents want morality to protect beings that presently have none of the characteristics of a person, but will have them, if they are not killed.[10] Hence, Warren, like Marquis, has provided no argument to which all moral agents must agree. Moral agents differ from one another about the scope of morality. They differ not only about who is fully protected by morality, but also about who is protected at all. The only point on which all moral agents agree is that the minimal group that is fully protected by the moral rules includes all moral agents and former moral agents who are still conscious. That this is the only point of agreement makes it clear that there is no unique right answer to the question about the morality of abortion.

Warren also seems to be making another mistaken claim, namely, that if people legitimately disagree about whether an act is immoral, that act ought not to be legally prohibited. Put in that extreme form, it should be clear that the claim is mistaken, for it would entail that there could be no laws about morally controversial subjects. Some people hold that dolphins and the higher primates are fully protected by the moral rules, but most people do not. Very few hold that other non-human animals are fully protected by the moral rules, but many hold that they are protected to some degree. However, many also hold that morality does not protect animals at all. This disagreement about the scope of morality does not entail that there should be no laws prohibiting cruelty to animals. Disagreement about whether embryos and fetuses are fully protected, or protected at all by morality, does not entail that there should no laws prohibiting abortion, either entirely, or at some stage of pregnancy.

It is true that every increase in the size of the group fully protected by morality, or protected at all, decreases the freedom of moral agents. No enlargement of the scope of morality is cost free. Although the freedom to catch dolphins is mo-

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[10] Former moral agents who are still conscious have the full protection of the moral rules even though they may not have more than one of the characteristics that Warren lists as essential for being a person. This difference between former moral agents and potential moral agents can be explained only by regarding common morality as if it were based on the agreement of moral agents concerned about protecting themselves if they lose the characteristics of a moral agent, but still remain conscious.

re important to those who fish, including dolphins in the group protected by morality decreases everyone's freedom. However, including fetuses in the group that is fully protected restricts the freedom of only one group of moral agents, pregnant women. Everyone other than the pregnant woman is already prohibited from harming a fetus that the pregnant woman does not want harmed. Harming a fetus of a pregnant woman who does not want her fetus harmed, counts as harming the woman, and because she is a moral agent, that is already prohibited. Given that enlargements of the group that is impartially protected are due to moral agents being concerned about this kind of being, it is somewhat odd to enlarge the group by protecting the fetus from that person who is most intimately related to the fetus. One might think that if a pregnant woman does not want her fetus protected, people who are not related to that fetus at all should not restrict her freedom. She is clearly a moral agent and the fetus clearly is not.

However, just as some moral agents want animals to be at least partially protected by the moral rules, some moral agents want beings that will become moral agents, or to use Marquis's phrase, will have futures like ours, to be in the fully protected group. This is not an irrational position. It is not irrational to favor a variation of the moral system that values the life of a being who would become a moral agent as much as the freedom of someone who is already a moral agent. It is also not irrational to favor a variation of the moral system which values even the trivial freedom of a moral agent more than the life of a being that is not a moral agent. Common morality allows for the fully protected group to include fetuses, or for it to be limited to moral agents, former moral agents, and children who can interact with moral agents. Within limits, common morality allows the scope of morality to be determined by the concerns of moral agents, as long as these concerns are possible using only beliefs shared by all moral agents. Beliefs not shared by all moral agents cannot be used as reasons for determining the scope of morality. Therefore neither religious beliefs nor scientific beliefs can count as moral reasons for the fetus to be included in or excluded from the fully protected group.

Everyone agrees that all moral agents are in the fully protected group. Not everyone agrees about whether fetuses, no matter at what stage of development, should be included in this group. Marquis claims that all beings with a future like ours belong in the fully protected group. Mary Anne Warren holds not only that no fetuses belong in the fully protected group; she claims that early fetuses are not protected by morality at all. But equally informed impartial rational persons do not agree about whether fetuses belong in the fully protected group, or in a group that is not protected at all. There is no unknown fact that, were it discovered, would resolve this disagreement. No biological discovery about an embryo or fe-

tus will make them into moral agents. Also, no biological discovery will make it irrational for a moral agent to want to include fetuses in the fully protected group. Thus we have a classic unresolvable moral problem. There is not even any conclusive moral argument for legally allowing each pregnant woman to make a decision with regard to her own fetus.

It may thus seem that moral theory is useless in dealing with the problem of abortion. However, that is not true. It is with regard to unresolvable moral problems that a moral theory that provides an accurate account of common morality is most useful. Showing that a problem is unresolvable, should promote moral humility or tolerance in people on both sides of the issue. It should make clear that the position a person takes on abortion does not show her to be uninformed, irrational, or not to be impartial with regard to that group that all moral agents agree morality fully protects. There is no conclusive argument that the group with regard to which morality requires impartiality should not include more than present and former moral agents or that it should include more. The problem of abortion also shows the need for a political or legal solution to unresolvable moral problems. Each side may use all morally acceptable means to persuade the courts or the legislature to adopt their position, but, very significantly, it prohibits either side from using morally unacceptable means to achieve their goal.

With regard to abortion, it is important to realize that no one is in favor of abortions in the sense that they hold that there should be as many abortions as possible. No one thinks that women should get pregnant in order to have abortions. Indeed, everyone thinks that the fewer the number of abortions, the better, if that can be done without placing any restrictions on the freedom of pregnant women. The obvious method for reducing the number of abortions without placing any restrictions on the freedom of pregnant women is to reduce the number of unwanted pregnancies. Thus, it would seem that, on moral grounds, everyone would agree to a program that reduces the number of unwanted pregnancies if that program did not itself violate any moral rules, or cause serious harm.

Neither sex education, nor providing birth control devices, violates any moral rule. Therefore if either of these, or some combination of them, are shown to significantly reduce the number of unwanted pregnancies, then unless it can be shown that doing these things cause serious harm, all impartial rational persons would agree that they should be done. Contraception is not a moral issue. The only arguments against contraception are religious, not moral. Thus, recognition that abortion is an unresolvable moral issue should lead those on both sides of the issue to favor any morally acceptable means for reducing the number of unwanted

pregnancies, including, if shown to be affective and without serious harmful consequences, both sex education and providing of birth control devices.

This account of the abortion controversy will not satisfy those on either side of the issue. Moral agents disagree about whether embryos and fetuses at any stage of development should be included in the group of being fully protected by morality. Therefore abortion is a moral as well as a personal and religious issue. Abortion is a moral issue and therefore one about which some moral agents would favor having a law. It is also an unresolvable matter whether there should be any laws restricting abortion; whether there should be any such laws is a matter that is properly decided by the political system. Impartial rational persons also disagree about whether embryos and fetuses at any stage of development are full members of the moral community and therefore must be accorded the full protection of the moral rules. Whether they should be accorded the full protection of morality is a matter to be decided by the political system. Moral agents do not agree about whether embryos and fetuses at any stage of development are members of the moral community, or whether they should be fully or partly protected by the moral system.

I realize that it is unlikely that any one on either side of the abortion debate will accept the arguments presented in this paper. This does not show any weakness in these arguments, but rather the truth of Hobbes's view that if our interests were as affected by geometry as they are by morality, there would be no more agreement in geometry than there is in morality. It is therefore relevant to point out that these arguments for moral humility or tolerance does not place any restriction on the morally acceptable means that either side can use to have their position adopted by their society.

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