

Rethinking Abortion, Ectogenesis, and Fetal Death

Christine Overall

In this article I explore two main questions: (1) does a woman who has an abortion (which I will initially define as the medical termination of pregnancy) also have a right to the death of her fetus? and (2) is ectogenesis (gestation via an artificial uterus) a “solution” to the abortion debate (by providing an alternative location for the fetus if it can be removed alive from the uterus)?¹ How these questions are answered has implications for our understanding of the moral and metaphysical status of the fetus, for prenatal and neonatal care, and for the rights and responsibilities of pregnant women.

Over the years in which I have been thinking about them, my answers to these questions have changed. In this article, I hope to provide some insight into the issues by describing my original thoughts, indicating two important criticisms of problems contained in them, and explaining my current views, along with the reasons that motivated my rethinking of them.

My aim is not to give a defense of abortion. I will assume that the anti-abortion viewpoint has been successfully shown not to be morally defensible. Instead I am interested in what abortion involves with respect to the fate of the fetus, and what rights women hold with respect to the outcome of abortion. I write from a feminist perspective, with a concern for women’s experiences, needs, and well-being, and I am, in part, responding to arguments on these topics from some feminist philosophers.

The Maternal-Fetal Relationship

Because pregnancy and the maternal–fetal relationship² are unique it is difficult both to describe them and to compare them to other human events and relationships. Pregnancy involves an experience of both union and division. As Margaret Little puts it, “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” (Little 1999, 301, her emphasis). It could be said that to be pregnant, especially (but not only) against one’s will, is to be physically possessed, to be colonized by something that both is and is not oneself. To regard the fetus, during gestation, as being isolated from and independent of the woman is therefore an ontological and moral error. The fetus cannot be regarded as a merely inert “clump of cells”; it is an entity that is developing, growing, and

moving within the pregnant woman. At the same time, pregnancy is such a demanding, all-enveloping, potentially transformative physical and psychological process that no woman should ever have to go through it against her will.

For me, then, a crucial philosophical project has been to imagine social policies that would fully recognize the nature of the maternal–fetal relationship. In *Ethics and Human Reproduction: A Feminist Analysis*, a monograph published several decades ago, I attempted to put forward and justify such a policy with respect to abortion (Overall 1987, 2013, 68–87). My proposal was deeply influenced by Judith Jarvis Thomson’s landmark article, “A Defense of Abortion” (1975).

Thomson assumes, for the sake of argument, that the fetus is a person from conception and that it has a right to life. She then creates a thought experiment in which she urges the reader to imagine being connected, via the kidneys, to a famous and unconscious violinist who will die if disconnected. She uses this experiment to argue that “having 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” (Thomson 1975, 97). The reason is that “if a human being has any just, prior claim to anything at all, he has a just, prior claim to his own body” (Thomson 1975, 95). (This claim, I suggest, is the foundation of bodily autonomy, the entitlement to control one’s own body.) Thus, even if it is assumed, for the sake of argument, that the fetus is a person and has a right to life, the fetus nevertheless does not have a right to the use of the pregnant woman’s body. The pregnant woman and the fetus “are not like two tenants in a small house which has, by an unfortunate mistake, been rented to both: the mother *owns* the house” (Thomson 1975, 95, her emphasis).

Nonetheless, Thomson also adds:

[W]hile I am arguing for the permissibility of abortion in some cases, I am not arguing for the right to secure the death of the unborn child. It is easy to confuse these two things in that up to a certain point in the life of the fetus it is not able to survive outside the mother’s body; hence removing it from her body guarantees its death. But they are importantly different. I have argued that you are not morally required to spend nine months in bed, sustaining the life of that violinist, but to say this is by no means to say that if, when you unplug yourself, there is a miracle and he survives, you then have a right to turn round and slit his throat. You may detach yourself even if this costs him his life; you have no right to be guaranteed his death, by some other means, if unplugging yourself does not kill him. (Thomson 1975, 105–6).

Much impressed by Thomson’s powerful arguments, I adopted two claims derived from her article: first, the fetus does not occupy the body of the woman by virtue of a right; the fetus does not have a *right* to the use of the woman’s uterus, and therefore, ending its occupation is not always wrong. And second, the woman does not have the *right* to the death of the fetus if it is capable of survival outside of her body.

In accepting the second claim, I was implicitly adopting a criterion for human beings' independent moral status: the *achievement of independence of the body of the woman* in which they are gestated.³ That is, I did not (and do not) accept, even provisionally, Thomson's for-the-sake-of-argument assumption that the fetus is a person.⁴ In this respect my views coincide with those that are enshrined in the *Criminal Code of Canada*, which defines "human being"—by which it means an individual with legal and moral status, that is, a person—in Section 223(1):

- (1) A child becomes a human being within the meaning of this Act when it has completely proceeded, in a living state, from the body of its mother, whether or not
- (a) it has breathed;
 - (b) it has an independent circulation; or
 - (c) the navel string is severed.⁵

Emergence from the woman's body, whether vaginally or surgically, provides a clear boundary for the attainment by the neonate of independent moral status.

Treating the fetus as if it had independent moral status while it is still located in the woman's uterus could result in actions that fail to recognize the woman's moral status. It would violate women's bodily autonomy by making the female body a mere instrument to be used by the fetus. As Mary Anne Warren writes, in the course of defending birth as the point at which a fetus acquires moral status, "It is impossible to treat fetuses *in utero* as if they were persons without treating women as if they were something less than persons. The extension of equal rights to sentient fetuses would inevitably license severe violations of women's basic rights to personal autonomy and physical security" (Warren 1989, 59). What happens to the woman happens to the fetus, and the fetus cannot be treated without treating the woman. The woman is not dependent on the fetus, yet the fetus is dependent on the woman. Granting the fetus independent moral status before it emerges from the woman's body is unjustified because the fetus is part of the woman's body, inside the woman's body, and sustained by the woman's body.

Hence, if the fetus is not independent of the woman's body, then the fetus does not have *independent* moral status: it is not entitled to moral consideration independent of the woman. This is not to say that the fetus has no moral status; just that its status is constituted as a part of and in relation to the woman who is gestating it. As Catriona Mackenzie puts it, the fetus's "moral status is dependent on the relational properties it has with others" (Mackenzie 1992, 143). Soren Reader writes, "If the pregnant woman takes on the relationship [during gestation] as 'mother-child,' this constitutes the fetus as an enormously valuable being In contrast, if the pregnant woman experiences the relationship as [merely] that of 'occupied-occupier,' the fetus is thereby constituted as not a valuable being at all" (Reader 2008, 135). The fetus's moral status changes according to how the pregnant woman relates and is related to it because the

fetus is both within her and of her: it is her project and it is created out of her physical being.⁶

Given the relational status of the fetus, the responsibility of other people—including medical caregivers, employers and the state—is to the pregnant woman (woman-gestating-fetus), not to the fetus by itself. The fetus is entitled to care by such persons and institutions if in fact the woman wants it and continues to gestate it, because the fetus is in her body and it is her project. And for the most part, during pregnancy, what is good for the woman is good for the fetus.

Regarding emergence from the woman's body as the starting point for independent human moral status respects the bodily autonomy of the women who create new human beings. Thus, both location and relationship are essential to understanding the status of the fetus and its relationship to the woman who gestates it, and both change significantly when gestation is over.⁷

My Original Views and Two Important Criticisms of Them

I continue to believe that the views I have just described are correct. But I drew some further implications from them that I now think are mistaken.

In my 1987 work, I distinguished between two potential types of abortion: (1) the evacuation of the uterus and (2) the evacuation of the uterus *and* the death of the fetus. I regarded the recognition of abortion of the first type as essential to respecting women's bodily autonomy. I argued that women are always entitled to uterine evacuation (because the fetus has no right to occupancy of the woman's body), but not necessarily to the second type of abortion, involving fetal death (because the woman, I thought, had no right to the death of the fetus if it could survive evacuation). As a consequence, I believed, people (whether the woman herself or her healthcare providers) are not *entitled* to kill the fetus if it has the potential to survive the evacuation (although if it is so sick, impaired, or immature that it cannot survive, then it may be better not to engage in "heroic" actions to save it).

Assuming this distinction between uterine evacuation and fetal killing, and looking ahead to future technological developments, I argued for a moral responsibility to use ectogenesis. If fetal survival were predictably sustainable through a form of ectogenesis, then, I suggested, a pregnant woman seeking abortion *should* undergo a form of pregnancy termination that would permit the survival of the fetus, so that the fetus could then be transferred, for further gestation, to an artificial uterus. (I had in mind potential cases where the fetus would not merely survive but would have the capacity to become a person capable of living a reasonably full human life.) In a recent article Jennifer Bard remarks, "It seems a short leap from the ability to continue a pregnancy in an artificial womb to the *requirement* that every unwanted pregnancy must be completed in an artificial womb" (Bard 2006, 152, my

emphasis). And that is exactly what I was aiming toward: that, given the availability of ectogenesis, there would be a moral obligation to gestate a fetus that survived the termination of pregnancy. I thought I had provided a “solution” to the abortion debate, one that would satisfy both the proponents of women’s bodily autonomy, and those who were concerned about the killing of the fetus.

In several responses to my earlier work, however, it has now become evident to me that the ostensible “solution” to the abortion debate that I offered is vulnerable to two powerful criticisms.⁸

First Criticism

The first significant criticism of my “solution” to the abortion debate is that it makes the very procedure itself of terminating pregnancy nonconsensual, in two respects. First, rather than performing the pregnancy termination in a way that best meets the healthcare needs of the woman, such a termination would necessitate either forcing a particular type of surgery on her (perhaps like a mini-caesarean), which would be a type of assault, or compelling her to go through induced labour to increase the chances that the fetus would survive. In either case the woman would be required to undergo, without her consent, a procedure that would not be in her own best interests, but instead would be aimed at fetal survival.

Second, such a termination procedure would also involve taking something from the woman’s body without her consent. It would be analogous, on the part of healthcare workers and the state, to deliberately stealing a body part, although arguably worse in its long-term effects. No one else has a right to seize one’s own body parts (blood, bone marrow, organs, gametes, DNA) or body products (including embryos and fetuses) against one’s will.

A fetus is, of course, *empirically* unlike body parts such as blood and organs, because the former, but not the latter, can, under the right biological circumstances, develop into an independent human being. And a fetus is *morally* unlike body parts such as blood and organs because it attains independent moral status if it exits the pregnant woman’s body alive, thereby ceasing to be a fetus. Whether or not the pregnant woman owns the fetus in the same way in which she owns her blood and organs, it is clear that no one else owns or can own it when it is in her body. And its value is a matter of its relationship to the pregnant woman; its value is not determined by its relationship to other people. Just as healthcare workers are not entitled, against the woman’s will, to remove blood or organs from her body to use them to keep someone else alive, they are also not entitled to take advantage of the empirical potential of the fetus by removing it alive from the woman’s body against her will, and thus permitting it to attain independent moral status.

I accept this criticism. I now believe that respect for the woman’s bodily autonomy requires that she both be entitled to choose how her pregnancy

termination is performed (within the boundaries of what is medically reasonable for her own optimal healthcare), and be entitled not to have healthcare workers remove something from her body, against her will, with the goal of keeping it alive for purposes that are not her own.

Second Criticism

The second criticism of my “solution” to the abortion debate is that a woman who seeks a termination of pregnancy does not *want* an individual related to herself out there, being raised by someone else. She is choosing that her future child not exist at all. Thus, Catriona Mackenzie points out, “In choosing an abortion . . . a woman is not merely choosing not to allow the foetus occupancy of her uterus. Nor is she merely choosing not to undertake responsibility for a particular future child. Rather . . . she is choosing that there be *no being at all* in relation to whom she is in a situation of such responsibility” (Mackenzie 1992, 137, her emphasis). Soren Reader notes that a view like mine is problematic because it falls short of a right to choose not to be a mother. The pregnant woman whose aborted fetus is “saved” will always be the biological mother of the person who was her fetus. It will always be a fact of both lives that the fetus was rejected. Residual moral responsibilities toward the fetus, child, and adult who develops, and the fact of dereliction of the central maternal duty of care, will be ineradicable and significant moral facts of the two related lives (Reader 2008, 135–36).

Indeed, Leslie Cannold claims that her empirical study of forty-five Australian women⁹ shows that women who support abortion rights see it not just as the end of pregnancy but as the end of the life of the fetus. They seek the death of the fetus as a way of ending the creation of a future child to whom they would otherwise have responsibilities if it were gestated (either by themselves or ectogenetically) and then adopted (Cannold 1995, 60).

I now believe that these critics make an important point that I previously failed to recognize. I agree that women who seek pregnancy termination are usually choosing that there be no being at all who is their genetic offspring. They are choosing not only not to be social mothers, but also not to be biological mothers. In other words, they are claiming *a right not to reproduce*. My former proposal, that pregnancy termination should involve only uterine evacuation and not the death of the fetus, would unjustifiably override the goals of women themselves and deny them the reproductive freedom they are legitimately seeking.¹⁰ Despite my commitment to feminism, I had understood abortion as merely the exercise of bodily autonomy; I had failed to understand it as also a matter of controlling one’s reproductive future. When women obtain a termination of pregnancy, they are not only engaging in a legitimate exercise of their bodily autonomy; they are also acting upon their legitimate reproductive right not to become a biological parent.

Nonetheless, I want to note two serious flaws in Reader's version¹¹ of this criticism, a criticism that I otherwise take to heart. The first flaw is that Reader's argument is unconscionably negative about adoption as an alternative to abortion, construing it repeatedly in terms of "abandonment," and seeing it as potentially "harmful" to the woman who gives up her child and to the child himself. Indeed, to Reader, adoption is so bad that "You can justifiably end your fetus's life, but you cannot justifiably abandon it" (Reader 2008, 144). Her reason is that "[a]t the heart of our concept of motherhood is the creation of a person. If one creates something, one is in an important sense responsible for it. If one creates a person, one is thereby responsible for that person, then, until the person becomes responsible for herself" (Reader 2008, 143). The women in Cannold's study apparently agreed. They also saw adoption as the "irresponsible abdication[] by women of their maternal responsibilities"¹² (Cannold 1995, 60).

I do not have the space here to fully discuss the moral justification for adoption. (Some have even argued that adoption is morally preferable to procreating one's own child; see Jamil and Theixos (2012) and Rulli (2014).) However, it must at least be said that in the context of present-day western culture, where there are plenty of potential adoptive parents who will be dedicated, competent, supportive, and loving, it is simply a mistake to see the transfer of parental responsibilities, through a conscientious and thorough adoption procedure, as mere abandonment of maternal responsibility. Reader is correct to suppose that we are responsible, once they are born, for the children we create, but she is surely wrong to think one cannot justifiably transfer that responsibility to other persons.

Furthermore, although some may find it painful to surrender a child for adoption, it is against women's interests to presume, just because of what Reader calls "the unity of motherhood" (Reader 2008, 144) and what Cannold cites as the belief that "a good mother [is] one who accepts responsibility for the care of her fetus/child" (Cannold 1995, 61), that adoption is inevitably a bad practice. Such a belief unfairly burdens women with a moral responsibility that cannot be terminated for any child who survives birth and admits of no moral process by which it may be transferred. But genetic motherhood does not always morally require a woman to assume social motherhood.

The second flaw in Reader's criticism of my original view of abortion is related to the first. She believes that because adoption is abandonment, and abandonment is morally unjustified, women who are unwilling or unable to raise a child have the right to kill any fetus who survives the termination of pregnancy. Thus, she says that women have "a moral right to secure the death of the fetus *once it is out of their body*" (Reader 2008, 134, my emphasis). In other words, for Reader, if a woman is not willing or able to be a social mother to her biological child after gestation, then she must have the right to ensure that she has no biological child.

But mandating the deliberate and active killing of a fetus who survives pregnancy termination and has achieved independence of the woman's body,

regardless of its condition, is hard to justify. Decisions about the treatment of neonates that survive pregnancy termination should be based upon their own best interests, because they are entitled to independent moral consideration. Indeed, if adoption were as bad as Reader interprets it, we would even have a potential argument for killing full-term newborns unwanted by their mothers in order to avoid adoption. Surely this implication indicates an error in Reader's claim. Wanting a being dead when that being lives inside one's body and is entirely dependent on it is one thing; wanting that being dead when it is outside one's body and, although still vulnerable, can be transferred to the care of another person, is another thing entirely. Acting on the first desire is morally justifiable; acting on the second is not.

To be quite clear, I am *not* saying that every pregnant woman who does not want to be a social mother must complete the gestation and put the child up for adoption. Any woman who wants neither to raise her potential child nor surrender it for adoption should have the opportunity to choose abortion. The obligation to surrender her child for adoption should never be imposed on an unwilling woman. But I am saying that adoption is not so terrible that deliberately killing every fetus who survives the termination of pregnancy is always preferable. It can be entirely morally justified, under the appropriate circumstances, for a genetic mother to assign the role of social parenting to another person.

A Revised Concept of Abortion

At this point it may appear as if I have simply reinstated the view that I want to repudiate: that women who do not want to be pregnant are entitled to uterine evacuation but not to the death of their fetus. But there is a way both to acknowledge the important criticisms of my original "solution" to the abortion debate and to avoid morally legitimating the deliberate killing of all fetuses that survive the termination of pregnancy. I propose a revised concept of abortion: the medical termination of pregnancy, *including the deliberate killing of the fetus in utero*, and its removal from the woman's body.

During pregnancy, I suggest, a woman is entitled to choose abortion in this revised sense. She is entitled to the death of the fetus *in utero* because the fetus is her project and is created from her own physical being. It is in her body, and what happens in her body is her prerogative.¹³ For the reasons previously discussed, she has no moral obligation to have the fetus removed from her uterus in a way that permits it to live, nor to allow it to be seized by others against her will. Abortion in this sense also enables her to avoid being a genetic mother, avoid becoming a social mother, and avoid having any relationship to, and hence responsibilities for, a future person.¹⁴ Therefore, it meets the concerns raised by Mackenzie and Reader and the anonymous women in Cannold's study (although of course I do not agree with Reader on the alleged badness of adoption). Thus, according to women a right to abortion in this revised sense respects both women's bodily autonomy and women's right not to reproduce. If, as I believe, women

have a right to such an abortion, then there is an obligation on the part of the healthcare system of her society to provide that service.

“After-Birth Abortion”

However, I am opposed to what Alberto Giubilini and Francesca Minerva call “after-birth abortion.” They argue, “[T]he same reasons which justify abortion should also justify the killing of the potential person when it is at the stage of a newborn” (Giubilini and Minerva 2012, 3). Interestingly, Reader agrees with Giubilini and Minerva, in part. She says that, at least in some cases, “[M]others do indeed, and of necessity, have the moral authority to decide the fate not just of fetuses, but also of born babies and children” (Reader 2008, 145).¹⁵ Giubilini and Minerva give two main reasons. First, “the moral status of an infant is equivalent to that of a fetus . . . [in that] neither is a ‘person’ in the sense of ‘subject of a moral right to life.’” Second, “the interests of the actual people involved matter,” and in particular, the mother “might suffer psychological distress from giving her child up for adoption” (Giubilini and Minerva 2012, 3).

I submit that “after-birth abortion” should be rejected. Even given Giubilini and Minerva’s claims about personhood, there would be serious difficulties in distinguishing between “justified” and “unjustified” killing in “after-birth abortion,” along with the slippery slope dangers of those difficulties, as well as questions about who plays the role of the killer, how the killing would be carried out, and who has the final authority to mandate the decision to kill.

But the personhood claim can be set aside because, as I suggested earlier, the emergence of the fetus, alive, from the woman’s body provides a clear and decisive criterion for its attainment of legitimate independent moral consideration. With that criterion in mind, it should be evident that the harmful consequences of accepting “after-birth abortion” would be enormous. They include the pain and suffering of the infants killed, the violation of its right not to be killed, the negative psychological outcomes for those who would have to do the killing, and the potential deleterious effects on general social attitudes toward and relationships with babies.¹⁶

Moreover, with the availability of abortion in my sense, “after-birth abortion” would be unnecessary. Women’s bodily autonomy and their right not to be reproduce would be respected: any woman would have the opportunity to end the life of her fetus, and hence her relationship to and felt responsibility for it, before it is removed from her body.

If, however, the fetus somehow survives its removal from her uterus (as a premature neonate), the woman is not then *entitled* to have it dead, although heroic actions to keep it alive, if severely injured, may not be warranted. I will not engage with the euthanasia debate here, since it is far beyond the scope of this article, but it is worth remarking that there could be ethical questions about who is most appropriate to serve as the substitute decision-maker for a neonate

who survives pregnancy termination. In any case, because it is outside the woman's body and therefore has moral status, such decision making should serve the best interests of the neonate, and its interests may or may not include continued existence.

Implications for Ectogenesis

Given my arguments, I now think that no pregnant woman should ever be compelled, when the fetus is *in utero*, to have it transferred to an artificial uterus for any reason. Instead, she should always have the choice to continue to gestate and give birth to it or to have an abortion in my sense.

It might be argued that if ectogenesis were available, then transferring the fetus to an artificial uterus should be among the choices of a woman who wants to end her pregnancy. However, I have reservations about resorting to ectogenesis, even—or perhaps especially—in a case where the pregnant woman chooses it for her fetus as an alternative to having it killed *in utero*. For at that point, because it is no longer inside the body of the woman, the neonate is, I have suggested, entitled to independent moral consideration. It would, therefore, be necessary to answer some serious questions of responsibility and rights insofar as they affect the interests of the ectogenetically gestated neonate. For example, there would be crucial questions about the woman's intentions, responsibilities, and rights, as well as those of the genetic father. Has the woman, in effect, abandoned the fetus? Would she, or the genetic father, have any responsibilities for it? Do they have any remaining rights over it? Are any obligations with respect to care for the neonate owed to the genetic parents? Who exactly has authority over a neonate surrendered for ectogenesis?

More broadly, although I cannot offer a full assessment of ectogenesis here, I would also ask whether the practice of ectogenesis is desirable or morally justifiable, especially given competing needs for resources that would support prenatal, neonatal, and postnatal care, as well as services for those who are infertile. Interestingly, Cannold says that in her study, both women who favor and women who oppose abortion rights also “agree on the moral unacceptability of ectogenesis” (Cannold 1995, 58).

Anne Donchin provides some important reasons for being skeptical about ectogenesis in the context of “solving” the abortion issue. Many feminists, she says,

are likely to see in the development of technologies for maintaining fetal life outside women's bodies distrust of women as bearers of children. For, on what ground can we assume that laboratory technicians are likely to do a more competent job of gestation than pregnant women? And if extrauterine gestation were to become an established practice, would not many women be pressured to adopt it—“for the good of their baby”? To look to such a technological ‘fix’ as a *solution* to the moral ambiguities involved in abortion only misconceptualizes the real problem and diverts attention from the urgent need for social programs: for a workplace structured to meet the demands of women's lives and

for new patterns of family life that do not depend on advancing patriarchal and capitalistic interests. . . . Though abortion may count as a harm to the fetus, laboratory gestation would as well—not only to particular ‘unwanted’ fetuses but to *all* future fetuses. For, within the prevailing social framework, once the practice was established it is unlikely that only intentionally aborted fetuses would be nourished in laboratories. Any other fetus considered ‘at risk’ for any reason would count as a potential beneficiary of laboratory observation and intervention. (Donchin 1989, 144, her emphasis)

Thus, far from being a “solution” to the abortion issue, ectogenesis creates more problems, including precisely those that feminists such as I should be wary of, such as distrust of women’s bodies, pressure to take away women’s fetuses, and potential harm to women’s future children.

Indeed, the development of ectogenesis could contribute to creating even more premature, medically vulnerable babies than exist today—babies who barely hang onto life, who may have suffered many impairments, and who may not be much helped by technology, beyond merely having their sheer existence sustained. On a more sinister level, the availability of ectogenesis could even offer the potential for keeping fetuses discarded through uterine evacuation alive to serve as sources of “donor” body parts. For these reasons, I can no longer regard ectogenesis as a desirable potential destination for the fetuses of women who end their pregnancies.

A Final Remark

You might now wonder why I did not previously see the importance of defining abortion in the way I have now proposed, and why I was so enthusiastic about saving aborted fetuses and making use of ectogenesis. I do of course take complete responsibility for my earlier views, even though I now think some of them are mistaken, but it may be worth mentioning at least part of the reason for which my thinking went wrong. I suspect it may be because Thomson’s violinist thought experiment does not allow for any analogy to the concept of abortion that I have put forward in this article. The violinist in Thomson’s thought experiment is simply either attached to or detached from the person sustaining him, because he is always *outside* of the body of the person providing use of the kidneys. There can be no possibility of killing the violinist, because the violinist does not occupy the body of the person sustaining him.

By contrast, in the case of pregnancy the fetus is obviously inside the woman’s body. That is what makes pregnancy unique, and renders the woman/fetus relationship incomparable in any literal way to any other relationship. What the fetus is, and what is morally legitimate to do for and to the fetus during pregnancy, depends on the pregnant woman’s relationship to it. Hence, the pregnant woman is entitled to have the fetus killed while inside her, although, I believe, she loses that entitlement once it is removed, alive, from her body.

As Margaret Olivia Little puts it, in a somewhat different discussion, “In not highlighting the fact that gestation happens inside of bodies, we can end up

thinking of fetuses, not just as persons, but as persons *atomistically situated*, as physically individuated and separate” (Little 1999, 299, her emphasis)—just as the violinist in Thomson’s thought experiment is. To borrow a Wittgensteinian phrase: in my original work “a picture held [me] captive” (Wittgenstein 1968, par. 115, his emphasis)—a picture of the violinist, physically individuated and separate. And that picture is not adequate to represent the fetus, even though the image of the relationship between the violinist and the person who sustains him is a metaphor that has been highly useful and productive in its own way.

Given my commitment to honoring women’s experiences of procreation, it is disconcerting to realize that I was so influenced by a metaphor for pregnancy that is and can be only partially illuminating. Recognizing that I was so easily “held captive” by a picture reminds me of how challenging it is to philosophize well about the issues raised by procreation, and how easy it is to go wrong.

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Notes

¹ There are many interesting and important philosophical questions that could be raised about ectogenesis (see, for example, Gelfand and Shook, 2006). I am not by any means trying to confront all of them here. For the purposes of this article, I discuss ectogenesis only as a purported destination for fetuses that survive their deliberate removal from the uterus.

² I have some reluctance to use the qualifier “maternal–fetal” because I think it can be inappropriate to refer to the pregnant woman as a mother unless and until she gives birth. Using terms related to maternity before that time run the risk of begging several questions about the pregnant woman’s roles and responsibilities. Hence, I usually eschew the word “mother” for a pregnant woman—but I am unable to think of a noncumbersome equivalent for “maternal” in “maternal–fetal.”

³ There may be a few minutes after birth in which the baby is still connected to the umbilical cord, but (although some advocate waiting to cut it until after it stops pulsing), the cord can be cut immediately, and the baby is no longer dependent on the woman’s body in the way it was as a fetus.

- ⁴Thomson herself rejects the assumption, at least with respect to early stages of fetal development. At the end of her article she notes that “we have only been pretending throughout that the fetus is a human being from the moment of conception. A very early abortion is surely not the killing of a person” (Thomson 1975, 106).
- ⁵Section 223(1) of the Criminal Code is sufficiently germane to abortion rights in Canada that anti-abortion politicians are motivated to overturn it. For example, in 2012 Conservative Member of Parliament Steven Woodsworth put forward the following Private Member’s bill (Motion 312):
- That a special committee of the House be appointed and directed to review the declaration in Subsection 223(1) of the Criminal Code of Canada which states that a child becomes a human being only at the moment of complete birth and to answer the questions hereinafter set forth:
- (i) what medical evidence exists to demonstrate that a child is or is not a human being before the moment of complete birth?,
 - (ii) is the preponderance of medical evidence consistent with the declaration in Subsection 223(1) that a child is only a human being at the moment of complete birth?,
 - (iii) what are the legal impact and consequences of Subsection 223(1) on the fundamental human rights of a child before the moment of complete birth?,
 - (iv) what are the options available to Parliament in the exercise of its legislative authority in accordance with the Constitution and decisions of the Supreme Court of Canada to affirm, amend, or replace Subsection 223(1)?
- Motion 312 was defeated in Canada’s House of Commons on September 26, 2012, by a vote of 203 to 91.
- ⁶The extent to which the pregnant woman values her fetus may be partly a function of how she understands and values the being that it could become, once gestation is complete. In some cases, her valuing of it may well reflect the existence of systematic inequalities in her society. For example, in an ableist culture, a woman may reject a fetus diagnosed with impairments. She may feel incapable of caring for the person it could become, and she may recognize that her society provides little or no support for parenting a child with impairments. Or she may simply have a deep-set bias against persons with certain impairments. While in the former case she is not responsible for the social conditions that make parenting a disabled child difficult, in the latter case she may deserve criticism for her attitudes: she may have a responsibility to educate herself about impairments and to rid herself of her bias. Nonetheless, she would remain entitled, I suggest, to reject a relationship with her fetus, whether or not it is impaired, because the fetus is a part of her, dependent on her, and created by her.
- ⁷Frozen embryos do not have the moral status that neonates have; they have not been gestated and they have not then achieved independence from the body of a woman who gestated them.
- ⁸The first criticism was pointed out to me by several of my graduate students when I discussed this issue with them. In this article, I elaborate on their criticism to bring out its full impact. The second criticism has been developed in published work by several feminist philosophers.
- ⁹Unfortunately, Cannold does not describe her methodology or provide an analysis of her results.
- ¹⁰Some may worry that a man who has participated in creating an unwanted and/or unplanned pregnancy does not have the right not to reproduce—a right that I am explicitly ascribing to women. I have addressed this concern at length in my recent book (Overall 2012, 40–9). Briefly, my view is this: Men, like women, have a right not to reproduce. But because men’s and women’s bodies and biological roles in procreation are very different, the material enactment of that right is inevitably different for members of the two groups. Women can act on their right not to reproduce by using contraceptives and by controlling the outcome of their pregnancies and the disposition of their ova, embryos, and fetuses. Men can act on their right not to reproduce by using contraceptives and controlling the disposition of their sperm.
- ¹¹Mackenzie’s version of the criticism does not share these flaws. Mackenzie neither rejects adoption nor advocates any right to kill a fetus that survives abortion.

- ¹²Some of Cannold's subjects were opposed to abortion. Presumably, for them, "maternal responsibilities" would begin at conception. Others were not opposed to abortion; presumably, for them, "maternal responsibilities" arise in connection with the person that the fetus becomes after it is born.
- ¹³The idea of deliberately killing an in utero late-term fetus may be troubling for some people. However, in a society dedicated to providing good access to high-quality abortions in my revised sense, late-term feticide would likely be very rare, and would usually result from concerns about extreme fetal impairment, danger to the woman herself, or incapacity on the part of the woman. And one may have a right to do something, without its always being right to do it.
- ¹⁴Without the pregnant woman's autonomous and free choice, of course, no one is entitled to kill her fetus in utero; doing so would be a grave assault upon her.
- ¹⁵But to be fair, Reader qualifies this claim: only gestational mothers can do this; they will rarely make such a decision; and they may do so only when "circumstances are objectively terrible, when the mother is in a good position epistemically, and when she judges it would be best for the child's life to end" (Reader 2008, 145 and 146). Hence, Reader's reasons are different from those of Giubilini and Minerva.
- ¹⁶It might be argued that at least the first of these consequences also militates against late-term terminations of pregnancy. But in a late-term termination, if the woman wants the fetus dead, then its death should be ensured at the beginning of the process, in which case the fetus would not suffer. In the less likely case of a woman who wants a termination of pregnancy but does not desire the death of her fetus (who is able to survive evacuation), then the procedure would be very different and presumably intended to spare suffering to the fetus. My view in any case is that the right of the gestating woman to bodily autonomy must be respected, but I know of no evidence that women who are fully informed and have access to good reproductive care deliberately seek late-term terminations if they have access to early ones.

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