The case of Medea – a view of fetal-maternal conflict

Matthew C Reid and Grant Gillett University of Otago Medical School, New Zealand

Abstract

Medea killed her children to take away the smile from her husband's face, according to Euripides, an offence against nature and morality. What if Medea had still been carrying her two children, perhaps due to give birth within a week or so, and had done the same? If this would also have been morally reprehensible, would that be a judgment based on her motives or on her action? We argue that the act has multiple and holistic moral features and that, in fact, there is no absolute principle, such as the right of the fetus to life, which governs our moral judgments about fetal-maternal conflicts. We suggest that they illustrate a pervasive feature of human moral discourse and can only be addressed by attending to a range of negotiable moral considerations which depend on particular features of each situation.

Introduction

The issue of “fetal-maternal conflicts”¹ is debated in relation to both clinical practice and social or public policy. We will explore the debate about fetal-maternal conflicts through a series of scenarios, including the classical tale of Medea. We argue that a focus on rights fails to capture the essential features of the moral problem. We therefore suggest a wider focus that includes: the agent's reasons or motives for relevant actions; the significance of the life of the moral patient, and the rights of each of the moral participants. We will argue that these three moral aspects of fetal-maternal conflicts should be held in a reflective equilibrium² and suggest how one might resolve situations of fetal-maternal conflict.

1) Medea

Medea by Euripides raises issues that are as poignant today as they were when the play was first performed in 431 BC.

Medea is a young princess who falls in love with the Greek hero, Jason, and because of that love betrays her own father, helps Jason to steal the

Golden Fleece and flees her homeland. They settle in Corinth and have two children. However, Jason scorns and abandons Medea in order to marry (for political motives) Glauce, the daughter of Creon, King of Corinth. Stateless and alone Medea wreaks a terrible revenge. To repay Jason for his betrayal and cold-hearted defection, the incensed Medea, having made a pact with Aegeus, King of Athens for safe refuge, poisons Glauce, Jason's newly-wed wife, and her father, Creon. Finally Medea kills her own children crying, “I who gave them life will kill them”.³

Medea's act is shocking and violent. We can perhaps, imagine reasons which would mitigate her moral transgression; for instance she might have thought her children could share only shame and suffering as unwanted and embarrassing cast-offs of a powerful political figure. These do not seem to be part of Euripides's account, although her sense of dishonour and betrayal almost create sympathy for her as a woman who has given everything to help her husband. Despite this sympathy, the motive for the act and its intrinsic barbarity warrant our condemnation. Even if Medea is justified in her outrage, the destruction of her children as an act of revenge against Jason seems plainly to be wrong. Euripides himself recognises the injury to Medea, yet his moral assessment of her is harsh. The chorus sings:

“O miserable mother, to destroy your own increase, Murder the babes of your body! . . . What wickedness, what sorrow you have caused on the earth!”⁴

In Jason's speeches, Medea is a polluter, a vile, savage, abhorrent child destroyer, an abomination, possessed, and crazy.

If the case of Medea occurred today it would certainly provoke widespread moral outrage and might be used to fuel the debate against the mother in cases of fetal-maternal conflict. However, other related scenarios are less clearcut and bring out other moral factors which make it harder to marry our intuitions and clearly stated moral arguments and principles.⁵ Consider three more fictional sketches.

Key words

Fetal-maternal conflict; abortion

2) Melissa

Melissa is thirty weeks pregnant with twins and is abandoned by her partner, James, whom she has supported for several years while he has studied law. James leaves her to marry the daughter of a senior partner in a major law firm. Melissa, like Medea, is infuriated, and seeks revenge on James by ending her pregnancy.

3) Nada

Nada, twenty-four weeks pregnant, has hypertension-of-pregnancy (HOP) syndrome. This is a life-threatening condition in which the pregnant woman's blood pressure rises to a dangerous level with a high risk of brain haemorrhage or seizures. The only way to protect Nada from these risks is to abort the fetus. Nada is deeply upset but as there is no alternative a termination is arranged.

4) Olga

Olga is twenty-two weeks pregnant. She has been fairly ambivalent about the pregnancy but has not sought an abortion, nor shown any aversion towards her fetus. However, she now begins to see the pregnancy as too great a burden and would prefer not to continue with it any more. She has the attitude of: "I'd rather not bother".

These four scenarios – Medea, Melissa, Nada and Olga – provoke a range of moral judgments which embrace multiple conflicting considerations. We will try to outline an analysis of such conflicts resting on three major features:

- (i) the reason for the act;
- (ii) the life of the moral patients;
- (iii) the rights of the moral participants.

These are both holistic and interactive so that variations in one affect the moral significance of the others.

Actions: reasons, lives, and rights

1) REASON FOR ACTION

The reasons for an action are one of its principal morally relevant features. Imagine that I am rounding a corner in my car, on a busy road, and I hit a person who is crossing at the intersection. In world 1, I want to injure him because he made me look foolish in front of some friends. In world 2, I hit him because I could not see him behind a parked truck. Now, even though I have done the same thing in world 1 and world 2, and the results are identical, there is considerable moral difference between the two. A further graphic example concerns the sadistic surgeon. Surgeon 1 and surgeon 2 both make a cut in the abdomen of a patient to remove an appendix. Surgeon 1 always hates cutting the skin but surgeon

2 relishes it, and enjoys both the damage and the pain that will result. Even if both surgeons are equally competent, surgeon 2 seems morally deficient solely because of the reasoning and reactions that accompany her act.

In general, there are a range of reasons that are inherently vicious – cruelty, hatred, jealousy, vindictiveness, callousness, and greed all come to mind. There is also range of reasons that tend morally to commend an act – kindness, consideration, compassion, respect, patience, friendship, generosity, courage, and so on. That is not to say that any action springing from these reasons is right, nor that only actions motivated in this way are right, but to indicate a set of characteristically good reasons for action. Any character who typically acts in this way is likely to meet the demands of morality.

Finally, there are acts which are morally neutral in respect of motives even if they are tragic in effect because they are accidental or there is no morally assessable choice made by the agent. Consider Baldr of Norse mythology, also known as Baldr the Good and Baldr the Beautiful.

So widely loved was Baldr that Frigg his mother obtained an oath "from fire and water, iron and all kinds of metals, stones, earth, trees, ailments, beasts, birds, poison, and serpents that they would not harm [him]"⁶. This rendered him invulnerable to all evidently harmful things. To amuse the other gods, Baldr would stand up and let them throw things at him: "No matter what was done he was never hurt, and everyone thought that a fine thing".⁶

In this case the action of casting a stone, throwing a dart, or striking at Baldr was not vicious because his invulnerability to these things changed the significance of those actions in a way directly relevant to the agents' intentions.

However, if one of the gods had cast a burning fragment of lava at Baldr, believing that it would harm him, that god would still have acted viciously despite the act being harmless. In the story the opposite happened: an evil god, Loki, found out that Frigg had not exacted the oath from the mistletoe bush. Loki took a dart of mistletoe to Baldr's blind brother Hoder.

Loki asked him: "Why aren't you throwing darts at Baldr?" [Hoder] replied: "Because I can't see where Baldr is, and, another thing, I have no weapon." Then Loki said: "You go and do as the others are doing and show Baldr honour like other men. I will show you where he is standing: throw this twig at him." [Hoder] took the mistletoe and aimed at Baldr as directed by Loki. The dart went right through him and he fell dead to the ground.⁷

Hoder cast the twig believing that Baldr was invulnerable to it but was blameless due to the innocuousness of his intentions (there is agent-evil here but it is in Loki, the instigator, or "killer by plan" rather than Hoder the "killer by hand").

Arguably, a good act might come from vicious

motives – such as a curative intervention by our sadistic surgeon. However, it seems clear that vicious reasons mean that any act that has vicious motivations cannot be good in an unalloyed way, whatever rights or entitlements exist. Thus, by appealing to the agent's reasons, we can identify one morally relevant feature of the act quite apart from its outcome. But is this a relevant consideration in fetal-maternal conflicts? In general, even if pregnant women have strong interests that must be protected (we return to this topic for discussion in greater depth below), an act arising from purely vicious motives, is not acceptable. However, it seems unlikely that a pregnant woman would act with vicious motives toward her fetus and it is far more plausible that any decision to terminate a pregnancy arises out of genuine moral conflict.

2) THE LIFE OF THE MORAL PATIENT

Where a moral agent acts on a moral patient the nature of the patient's life and the effect the act has on it are both morally relevant. For instance, we use cat-worming tablets to kill thousands of worms and save one cat solely because we believe that the cat, as moral patient, is worth more than the worms in a morally important way. Cases in which patient factors are crucial might also arise in relation to a ventilator-dependent patient in an irreversible coma. If it is permissible to cease ventilating such a patient it is solely because she has irreversibly lost the capacity for a worthwhile level of human life. Therefore there are factors such as the nature and significance of the effect on the moral patient which are morally relevant in assessing any act. This is particularly important in the case of an embryo or fetus.

Most people would echo Euripides's judgment and condemn the killing of a child and in all developed societies infanticide is a punishable crime (it is not punished as harshly as murder for a variety of reasons.⁸) However, the perceived evil of infanticide does not, for most of us, extend to earlier prenatal life. The closer we get to conception, the more ambiguous are our intuitions about the moral judgments concerned, for instance:

- (i) we do not mourn the biologically commonplace failure of the fertilised ovum to implant in the uterus nor do we uniformly condemn "the morning after pill";
- (ii) constraints are thought necessary on the treatment of human embryos, for instance in research.

We favour a gradualist account of the moral importance of the fetus which views gestation as a continuum, where the "human form" (in the Aristotelian sense) becomes more and more fully realised both developmentally and in terms of moral worth.⁹ On this account it is misleading to search for a single point in the development of the fetus when a line is crossed which changes its intrinsic moral value. Such

lines are usually drawn to try and capture the presence or absence of some favoured human property, such as the possession of self-awareness¹⁰ (which may well not occur until sometime after birth), viability,¹¹ or sentience.¹² The gradualist view shares with these a conception that there are features of a human life which confer special moral value on it but does not ask for metaphysically and empirically problematic lines to be drawn.

We take the view, as argued by one of us elsewhere, that our moral judgments about creatures depend on the way we react or respond to them.¹³ In outline, the thesis is that reciprocal, even if asymmetrical, responses and reactions to others create the awareness that others are beings to whom certain things matter in the same way that they do to oneself. This view implies that moral discourse arises within an interactional context as our actions become informed by the needs, intentions, and vulnerabilities of others. But how is the posited link (between moral discourse and relational aspects of human life) applied to the fetus? Where there is full reciprocity and a resulting strong sensitivity to how things are with the other then we confer full moral equality on that other. But where the interaction is attenuated, so, to some extent, are our moral ascriptions. It follows that as our contact with another kind of being approximates our normal interaction with fully reciprocating beings we would ascribe greater moral weight to that being's life.

It has been argued that the fetus is not regarded as an individual in itself distinct from the pregnant woman.¹⁴ Thus Gallagher claims that punishment for the destruction of a fetus can be viewed primarily in relation to the interests of the pregnant woman (ie to be protected from serious assault and the pain and loss suffered through losing a future child).¹⁵ Other commentators espouse the opposing view that the fetus is an entity separate from the woman and, although contained within the pregnant woman's body, is only connected for the purposes of nutrition. Gallagher mentions the idea that fetuses are in "intra-uterine exile" from the outside world or "children nestled within" the pregnant woman who can be seen as a "uterine capsule"¹⁶ or "fetal container".¹⁷ On this view women could (arguably) be submitted to risky or harmful procedures if there were a strong argument for safeguarding the rights of the fetus.¹⁸

We argue, contra both extremes, that the fetus is part of the (Aristotelian) *form* of a human: "On this view, the process of becoming a person is a progression through a series of linked developmental stages. Because each stage is an essential component of the whole, the form of humanity involves a life with a characteristic longitudinal 'shape'".¹⁹ This view suggests a gradual increase in the moral value of the life of the patient from conception to birth, and allows modification of that value depending on the engagement between the fetus and others. Thus the real and potential engagement of a late fetus with our

human community (an expected new member, a soon-to-arrive object of care and nurture) creates a moral value independent of the mother. And the more undeveloped the capacity for interaction is, the less weight ought to be put on the life of the fetus as moral patient.²⁰

This is clearly a kind of potentiality thesis in that the potential for the kind of interaction that characterises moral beings confers moral weight on the life of the developing human. What is more, on the longitudinal form view, this is an intrinsic property, and not contingent on what happens to the individual concerned. Thus we seem to have a view whereby there is a gradually increasing moral value to the fetus as it approximates the state of a child who has the capacity to be morally engaged with us. This view allows certain points to be important but argues that it is mistaken to focus solely on any one of them. Birth, in particular, makes an important difference to the value of the fetus,²¹ because of what occurs in our interactions with the fetus.²² Birth also allows a fetus/child's interests to be considered separately from those of the mother, in that those interests are no longer inextricable from the bodily integrity, autonomy, and privacy of the mother.²³

Note that this view need not define the fetus as a "person" (possessing *full* moral and legal status) to justify protecting it. Even if *only* persons have full moral status, moral regard for fetuses rests on the fact that they are (intrinsically) potential persons.

3) RIGHTS OF THE MORAL AGENT

We must now consider the rights of the agent. Let us say I have a loud, rusty, but still road-legal motorcycle of which I am deeply ashamed. A friend visits me and decides that I should be free of this ugly, noisy bike and dumps it. Now I may agree with what he does, approve of his motives, and yet still say he acted wrongly because he had no *right* to do it. A person is usually credited with both negative rights, such as the right not to be subject to violence, and positive rights, such as the right to dispose of my own belongings, more or less, as I wish. If this is so then, *prima facie*, actions in accordance with those rights are morally right. The case of the motorcycle is relevant to the case of pregnant women and their fetuses. Any woman would seem to have a right to choose, as far as possible what goes on in, and happens to, her body. Women increasingly have legal rights to autonomy, privacy, and equal treatment under the law. Some commentators argue that these rights are under threat in the case of abortion.^{24 25} The moral considerations here cannot be separated from those important in fetal-maternal conflicts and the reality of women's lives.

Moral arguments about rights, because of their focus on general claims, often neglect facts which alter our moral perception of a particular situation. Consider, for instance, Thomson's famous case in which a woman, call her Pipa, is connected without

her consent to the life-support system of a famous, kidney-diseased violinist. She is aware that a decision to unhook herself means death for him, but nevertheless claims a right not to be so imposed upon.²⁶ The case is important in that the dependent party is clearly a person, and yet Pipa's rights seem unassailable. However, the rights-based conclusion looks less secure if the person needing life-support through the kidney connection is an eight-year-old girl and the one who can save her is her father.²⁷ In the modified version it seems that, even if the father still has a right to refuse, he also has a conflicting duty to his daughter.²⁸ The modified Thomson case suggests that the moral force of rights-talk is affected by relational facts. The case of Medea also shows how heavily our judgments in this area are loaded with relational and other norms. This feature of moral judgements has marked all three of the factors we have picked out:

- (i) the relevant reasons for action characteristically involve the effects of our actions on, and our relationships to, others;
- (ii) the lives of moral patients reflect their actual and potential capacities for meaningful relationships; and
- (iii) the rights that can be exercised in any situation are sensitive to relational features of that situation.

These considerations suggest considerable particularity in the moral judgements surrounding fetal-maternal conflicts.

Medea, Melissa, Nada, and Olga revisited

MEDEA

Medea's reasons are clear. She wanted revenge for her husband's betrayal and demeaning of her. However understandable this is it does not justify her actions. The desire for revenge (*simpliciter*) cannot be endorsed because it is inherently vicious. But Medea raises other issues central to women's reality. Early Greece was both sexist and racist and Medea was both a woman and a foreigner in Corinth. There is therefore more to her state of mind than sexual jealousy (which is Jason's narcissistic view).

"I brought you from your palace in a land of savages

Into a Greek home - you, a living curse, already
A traitor both to your father and your native land.
The vengeance due for your sins the gods have cast on me.

You had already murdered your brother at his own hearth

When first you stepped on board my lovely Argo's hull.

That was your beginning. Then you became my wife, and bore

My children; now, out of mere sexual jealousy,
You murder them!"²⁹

Jason reprimands Medea for the crimes she committed partly for his sake and regards her as having obtained status by marrying him. But Medea may have acted to reclaim her personhood, or to exercise the only power she had in a situation where she, her family, and her people had been dishonoured. She may also have had an interest in saving her children from a vicious life with a weak father and a suspect step-family who would perhaps not have their best interests at heart. These reasons for Medea's action tend towards virtue, but other features of her terrible act seem to outweigh any possible justifications.

The lives of her victims are of value in themselves and, even if Creon and his daughter might "deserve to die" (in terms of ancient Greek conceptions of desert), her children are innocent and have equal moral status to other persons).³⁰ Medea as a mother surely has certain rights not to be estranged from her children if she goes into exile leaving them behind. However, the fact that she is their mother suggests that none of her possible motives justifies her killing them. The parental relationship also suggests that we should recognise Jason's responsibility in the tragedy.

Euripides's opinion is that *Medea* must be mad or possessed by some demon. We agree that her action is vicious and in such profound conflict with fundamental features of human relatedness and caring that her rights and defensible reasons are insufficient to justify her. That judgment combines, in a reflective equilibrium, our intuitions and the morally significant features arrived at in the preceding analysis.³¹ But how does this approach fare in our other cases?

MELISSA

Melissa has similar motives to Medea, but her fetuses are not yet born. Therefore, even though her reasons are the same as those of Medea (she also wants to harm her faithless partner at the cost of two human lives) her act is morally different. The status of her victims, the fetal twins, is more uncertain, legally and morally, than that of born children. The gradualist view grants considerable moral weight to fetuses of this age, in accordance with the position that seems to be developing in US law. Several US cases in which there appears to be a conflict between the interests of the pregnant woman and the interests of her fetus, have been resolved in favour of the fetus or a child-to-be. These decisions place considerable weight on the similarity between the well-developed fetus and a child. However, similarity is not identity and that difference gives more space to our other considerations.

Melissa, if her choice is denied, suffers an even greater infringement of her rights than Medea. Melissa would have to carry her fetuses for another six to ten weeks and then go through a difficult labour and birth. Her fetuses therefore intrude significantly into her life. However, the fetuses are quite viable apart from her if adequate neonatal care is available so we must ask to what extent she should have the right to determine their fate.

A parent's rights rest on the fact that she/he has the best interests of her/his (born) child at heart - but this is not true of Melissa. However, it seems unfair to deprive her of any say in the lives of her fetuses in that she has an unenviable choice between having to raise her children by herself or being estranged from them and knowing that they are being parented by others. But even if she has some rights, neither her rights nor her reasons seem sufficient to justify ending two human lives.

NADA

What of Nada, twenty-four weeks pregnant with severe HOP syndrome? Nada's case seems morally unassailable: either Nada lives and the fetus is sacrificed or Nada dies, most probably also ending the life of her fetus. No civilian could be expected to end her own life so that another might live and, even though parents often show such heroism, martyrdom should never be a moral requisite of pregnancy.

What is more, the life of the moral patient, the twenty-four week fetus, is of even more uncertain moral status than the lives of Melissa's later-term fetuses. This follows from the gradualist view of fetal life, where moral status diminishes earlier in fetal development. This view cannot generate quantifiable values at each point in gestation and need not for our purposes. It is, as Aristotle might say, as precise as it can be given the uncertain metaphysics with which it must work.

The rights of the agent, Nada, in this case would be lethally impinged upon if she were not given the option of termination. They are not separable from the fate of her fetus even though we can recognise the negative moral weight involved in a late and reluctant termination of pregnancy. Thus it seems clear that a balanced moral judgment supports termination and saving Nada's life.

OLGA

Olga is in the twenty-second week of pregnancy, seeking a termination because she does not want to carry on with the pregnancy, nor to deal with the child once it is born.

Olga's reasons reflect the fact that pregnancy is a genuine burden but they pay little regard to her fetus. Her alleged reasons for termination seem a little lightweight to count in issues of human life and death (not necessarily the life or death of a born person). What is more, the life of the child once born need not be such a burden for Olga, as feasible options are open other than caring for it herself.

The gradualist accords fetal life some value, even as early as the embryonic stage. Its value may be uncertain - physically, legally, and morally - but it is not negligible. The fetus counts as something and if Olga's reasons do not count as enough to outweigh that something, then we should remain to be convinced about her decision.

What of the rights of the agent in this case? Some

would say that a woman has the right to do whatever she wants with her body and the fetus within. Melissa's case suggests that that is wrong. Others would argue that Olga has passed the stage where she can have a termination on demand (before twenty weeks),³² and that therefore the fetus deserves independent consideration. Some argue that she must in some way have chosen to be pregnant. But even if Olga has made some poor choices should we be rigidly tied to the unwanted outcomes of bad choices? However, Olga is now in a relationship with her fetus that involves responsibilities and obligations. If the hypothetical case of the father and his life-support dependent daughter is at all analogous, then Olga might have significant moral, if not legal, duties.

In Olga's case, her rights are essentially inseparable from the life of the fetus. We therefore need to hold them in balance with the uncertain status of the life of the patient and her reasons in order to strike a reflective equilibrium between the moral factors concerned. Olga's case, as outlined is perhaps the weakest of our scenarios in that it disregards commonly reported features of women's experience in pregnancy which involve far more conflict and distress than common arguments about rights and the sanctity of life ever capture. These factors mean that we are not claiming that it is absolutely wrong to kill any fetus. It is unlikely that we would want to be strongly prescriptive towards Olga, although rather than regarding her preference as definitive we might want to explore with her the real conflicts she is experiencing about her situation.

Reflective equilibrium and other considerations

Fetal-maternal conflicts necessitate reflective moral equilibrium. The reflective equilibrium focuses on the reasons for the pregnant woman's choices, the relative weightiness of the life of the particular fetus (according to the gradualist view), and the rights of the woman making the decision.

Rawls's concept of reflective equilibrium applies when a moral principle must be reconciled with our intuitive judgments as to what is right; it is reflective because "we know to what principles our judgments conform and the premises of their derivation".³³ There is an inherent flexibility involved since at any time, in the light of cases we encounter, we can re-evaluate our conclusions and principles and revise the judgments we have made.

In the case of Medea, we tend to agree with Euripides's assessment (which has been built into legal constraints on parenting). This assessment applies in part to maternal actions towards fetuses. But, in each case there is a reflective equilibrium which embodies the features we have identified – a sense of the woman's reasons, the harm to the fetus, and the rights of the mother. Similar considerations

should apply to unwelcome and invasive medical procedures in the pregnant woman. Thus, "[p]rohibiting intentional destruction of a viable fetus differs significantly from mandating major surgery in order to save it".³⁴

Furthermore, moral arguments cannot easily be translated into recommendations for public policy, or legislation. Nelson and Milliken³⁵ remark in relation to the duty to care for a fetus:

"we are convinced that such an ethical obligation exists and that women should behave accordingly. . . . Nevertheless, it is quite another matter to transform this ethical obligation into a legal duty by enforcing it with the coercive power of the law."

Our actions towards fetuses can have sources which are less virtuous than a commitment to respect a woman's bodily integrity, privacy, and self-control. These include such things as the desire for revenge, jealousy, the wish to do clever medical procedures, or an attitude that women are fetal containers. Any of these would modify our moral attitudes towards the exercise of what we might otherwise regard as soundly based rights. Some commentators suggest that we should always err on the side of the pregnant woman but this seems wrong where the lives of the moral patients are a major factor in the decision. However, a stress on women's rights is almost certainly an important safeguard which ensures the non-subordination of women. These rights must count for a great deal in any situation where our reasons for intervention on the fetus are suspect (on medical or moral grounds) or where the fetus itself is affected in some way that alters the moral nature of life-preserving treatment (for instance it might have a poor prognosis in terms of perinatal mortality).³⁷ Also, as in Nada's case where the pregnant woman's life was in danger, the moral scales should clearly be weighted in her favour.

Conclusion

We have argued that the problem of fetal-maternal conflict reflects the inherent holism and multiplicity of moral thought and cannot be resolved by appeal to any unitary principle. For instance, a method based solely on rights cannot do justice to complexities involving the moral relevance of the life of the fetus, the reasons, life choices and rights of the pregnant woman, and the way in which these impinge on each other. Our analysis embraces the inseparability of individuals and their interwoven lives. It is only within such a framework that we can achieve the kind of reflective equilibrium that does justice to what "in social and personal life counts as something".³⁸

Matthew C Reid, MBChB, is a doctor. Grant Gillett, DPhil, is Professor of Medical Ethics in the University of Otago Medical School, New Zealand.

References and notes

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- 4 See reference 3: 56.
- 5 Gillett G. The pause and the principles. In: Gillon R, Lloyd A, eds. *Principles of health care ethics*. Chichester, Sussex: John Wiley & Sons, 1993.
- 6 Quoted in Dumezil G. *Gods of the ancient Northmen*. Berkeley, California: University of California Press, 1973: 59.
- 7 See reference 6: 60.
- 8 On this see Skegg P. *Law, ethics and medicine* Oxford: Clarendon, 1988.
- 9 This view is discussed in Poplawski N, Gillett G. Ethics and embryos. *Journal of Medical Ethics*. 1991; 17: 62–9. The form is that of a rational social being who has a longitudinal continuity (from potentiality to actuality of that form) through the process of bio-psycho-social development.
- 10 Tooley M. Abortion and infanticide. *Philosophy and Public Affairs*. 1972; 2: 37–65. Tooley states “[a]n organism possesses a serious right to life only if it possesses the concept of a self as a continuing subject of experiences and other mental states, and believes that it is itself such a continuing entity”.
- 11 For example, in American law (*Rowe v Wade*, 410 US 113, at 164–165 (quoted in Gallagher J. Fetus as patient. In: Cohen S, Taub N, eds. *Reproductive Laws for the 1990s*. Clifton, New Jersey: Humana Press, 1989: 195).
- 12 Singer P. Embryo experimentation and the moral status of the embryo. In: Matthews E, Menlowe M, eds. *Philosophy and health care*. Hampshire: Ashgate Publishing Limited, 1992: 81–91. Singer states “[t]he minimal characteristic which is needed to give the embryo [or fetus] a claim to consideration is sentience, or the capacity to feel pain or pleasure”.
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- 28 Gillon R. *Philosophical medical ethics*. Chichester: John Wiley & Sons for the *British Medical Journal*, 1985: 50.
- 29 See reference 3: 58.
- 30 This has been argued in Gillett G. Young human lives In: Laing J, Oderburg D, eds. *Human lives*. London: Macmillan, 1996.
- 31 See reference 2: 48–51.
- 32 An investigation of New Zealand law relating to abortion reveals, according to section 187 A of the Crimes Act 1961, that an abortion will not be unlawful 1) before 20 weeks, if “the continuance of the pregnancy would result in serious danger . . . to the life, or to the physical or mental health, of the woman or girl”, there is substantial risk of severe abnormality of the fetus, the pregnancy was the result of incest or rape, or the woman is severely subnormal; 2) after 20 weeks, if the abortion is “necessary to save the life of the woman or girl or to prevent serious permanent injury to her physical or mental health”. In practice this generally means that an abortion can be obtained fairly much on request early in gestation (the earlier the better) and becomes increasingly more difficult both to justify and to obtain later in gestation.
- 33 See reference 2: 20.
- 34 Rhoden B. The judge in the delivery room: the emergence of court-ordered caesareans. *California Law Review* 1986; 74: 1951, 1956.
- 35 Nelson M. Compelled medical treatment of pregnant women – life, liberty, and law in conflict. *Journal of the American Medical Association*. 1988; 259: 1061.
- 36 Noble-Allgire AM. Court ordered caesarean sections – a judicial standard for resolving the conflict between fetal interests and maternal rights. *Journal of Legal Medicine*. 1989; 10, 1: 211–249.
- 37 This is supported by the state of New Zealand and US law. Section 187 A of the New Zealand Crimes Act 1961 states that abortion may be performed where “there is a substantial risk that the child, if born, would be so physically or mentally abnormal as to be seriously handicapped” (albeit before 20 weeks). Indeed in the United States the negligent failure to prevent a child being born has been considered an actionable wrong. In one case (*Carlander v Bio Science Laboratories*) a judge indicated that a child would be able to sue its parents for not preventing its birth where they had prior knowledge of the probability of it being born defective.
- 38 Williams B. *Ethics and the limits of philosophy*. London: Fontana, 1985: 201.