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## **Abortion and Virtue Ethics**

By Mathew Lu

### Introduction

My goal here is to consider what contemporary virtue ethics can say about the problem of abortion. I begin by outlining virtue ethics in comparison to the two other dominant approaches in normative ethics. I then consider what some important virtue ethicists have said about abortion, especially the work of Rosalind Hursthouse. After recognizing the many contributions her analysis offers, I also note some of the deficiencies in her approach, particularly in her attempt to bracket the problems of fetal status and women's rights. Finally, in light of these criticisms I attempt to extend a virtue ethics analysis to embrace a more robust recognition of the humanity of the fetus and the attendant demand of a near absolute prohibition on abortion.

### Outline of Virtue Ethics

Nearly every survey of contemporary virtue ethics traces its origin to G. E. M. Anscombe's seminal essay "Modern Moral Philosophy," in which she levies harsh criticisms of the dominant theories of normative ethics and espouses the need for a return to the tradition of the virtues. Nonetheless, the development of virtue ethics as a full-fledged "third way" in normative ethics has primarily been the work of others, such as Philippa Foot, Rosalind Hursthouse, and Michael

Slote.<sup>1</sup> Fifty years after “Modern Moral Philosophy” virtue ethicists can reasonably claim a seat at the table in ethical discussions.

Until the rise of virtue ethics the dominant paradigms in 20<sup>th</sup> century normative ethics were utilitarianism and deontological ethics, with the latter showing a strong Kantian influence in the last few decades. While these two ethical theories differ radically both in how they conceive of right action and the nature of moral goodness, they nonetheless share an emphasis on *right action*. In contrast, virtue ethics is generally said to be focused on *good character*. As such, by general consent virtue ethics accounts must work harder to explain how to act in specific situations. On the other hand, with its more holistic approach to the moral situation virtue ethics can better effectively take stock of certain salient features of the moral life that action-focused moral theories tend to ignore.

Utilitarian moral theories offer an account of moral value that places the greatest weight on achieving a certain outcome, most often understood as an optimal state of affairs in which the greatest overall happiness (understood as pleasure and the absence or avoidance of pain) obtains for all relevant moral patients. On a practical level, utilitarians are often forced to act in ignorance of many of the things they would need to know in order to make an effective moral calculation. Still, at least in abstract terms, the utilitarian’s course is fairly straightforward. Moral goodness is understood in terms of an optimal outcome and right action is understood in terms of bringing about that outcome.<sup>2</sup> As such, it is fairly clear what the utilitarian is trying to bring about, and given perfect information, it would be fairly clear what he ought to do. I think it is this great clarity and fundamental conceptual simplicity that appeals to many of the theory’s

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<sup>1</sup> See, for example, Foot 1978, 2001; Hursthouse 1999; Slote 2001; Crisp and Slote 1997.

<sup>2</sup> This is true even with some more developed forms of utilitarianism (e.g. Peter Railton’s notion of “sophisticated consequentialism” developed in Railton 1984) where the moral agent’s proximate or immediate choice might insulated from an act-utilitarian calculus.

adherents, and it is this transparency that it is often contrasted with the putative obscurity of virtue ethics.

Deontological ethics claims similar advantage of clarity in providing guidance for right action. Unlike utilitarianism, a deontological ethics is not focused on outcomes, but instead on adherence to a set of rules encompassing the duties incumbent on the moral agent. The dominant deontological outlook in contemporary philosophy has been strongly influenced by Kant's ethical thought and focuses on the duties that attach to the agent in virtue of a particular conception of practical rationality.

For this sort of deontological ethics it is of primary concern to understand what a rational agent is, and how practical reason ought to move him to act in accord with its maxims. Moral duties are binding on all rational agents equally and ultimately derive their authority from our shared rational nature. This in turn generates a demand of respect that each rational agent owes to all other rational agents in virtue of their also possessing such a nature.

A key putative advantage of this ethical outlook lies in how it finds the binding force of moral obligation in reason itself. Moral duties become precepts of practical reason with an objective force analogous to that which attends the conclusion of a geometrical demonstration in theoretical reason. Since it is reason itself that makes these demands on me, and since I am a rational creature, I cannot deny my moral duties without essentially betraying my own rational nature. To fail to obey moral duties understood as the dictates of practical reason is simply to manifest irrationality.

As with utilitarianism, there is much more that would need to be articulated to have a tolerably complete account of a deontological virtue ethics, including account of the nature of practical reason itself, the nature of the rational agent, and especially the way in which practical reason generates concrete moral duties. What is needful for our present purposes, however, is

simply to see that the basic structure of the deontological option in normative ethics is predicated on the priority of duties or rules which ought to be, in principle at least, relatively clear, even if their application in actual concrete cases (much like the maximizing principle behind utilitarianism) remains potentially difficult and unclear.

While these two competing accounts of normative ethics are fundamentally incompatible, as I've already suggested they are commonly thought to share a putative advantage over virtue ethics. Each is supposed to be clear about the general goal of morality and the abstract means for achieving it. By contrast, virtue ethics is commonly held to be at a disadvantage because its central moral concepts are accounted vague and obscure largely because they cannot be adequately captured in terms of rules or laws. Rather than offering a maximizing principle like utilitarianism, or a decision filter like Kant's Categorical Imperative, virtue ethics begins with the virtues, which aim at a conception of human flourishing (*eudaimonia*) grounded in a substantive account of human nature.<sup>3</sup> At the heart of the theory is the general principle that a good individual is one that best or most completely realizes the nature (*telos*) of the kind of thing it is. Since human beings possess an intrinsically rational nature, the virtues are essentially the way in which that rational nature is manifested with respect to different objects (e.g. one's passions) and in different circumstances.

Instead of giving rules that can determine right action in an algorithmic way, virtue ethics instead concentrates on the question of what makes for a virtuous man (or woman).<sup>4</sup>

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<sup>3</sup> Certainly the tradition of virtue ethics is dominated by an ethical naturalism. However, it seems that there is some development in virtue ethics of views that are not so explicitly naturalistic such as some of Michael Slote's "agent-based" approach in Slote 2001, and even some work at the intersection with a revived interest in Kant's Doctrine of Virtue. Whether these are fruitful developments remains to be seen.

<sup>4</sup> While there will be considerable overlap considering that both men and women possess a rational nature, there may still be some differences in the virtues between them precisely owing both the unique biology of each sex, and perhaps even other natural differences stemming from that biology such as women's capacity to gestate children. Hursthouse writes: "Men and women are not born 'equal'; though the differences between them are irrelevant in many areas, they are not irrelevant to moral questions about abortion, pregnancy, child-bearing and having

Traditionally these virtues have been understood as something like stable dispositions (which can be formed by habit) and which are expressive of a rational human nature. Right action is understood derivatively as how the virtuous man would act in some particular set of circumstances in expressing the virtues of his character.

As in my sketches of the other two approaches, there are many details that must be supplied to give a reasonably complete account of virtue ethics, including a specification of what human nature is, and especially how the virtues represent the perfection of different aspects of that nature. Nonetheless, the general outline of the virtue ethics approach should now be clear, and in particular the radically different way in which the virtue ethicist approaches morality. When faced with a concrete moral choice the utilitarian's ultimate concern is what will promote the optimal state of affairs. For the deontologist, the question is what duties are relevant and what they demand in these particular circumstances. For the virtue ethicist, however, the important task is to determine what the virtuous man or woman would do in these circumstances. And this is determined by discerning what relevant virtue(s) ought to come into play (remembering that the virtues are distinguished by their objects) and how those virtue(s) can be prudently applied.

## Virtue Ethics and Abortion

Now that we have a sketch of the special character of the virtue ethics approach, let us consider our specific topic of abortion. In this section I want to survey several important discussions of abortion and shed some light on how contemporary virtue ethicists have analyzed the moral

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children. Women, even young girls, *are* faced with a greater liability to act wrongly than men are, if abortion is wrong; but this is in virtue of the capacity they have to do something intrinsically worthwhile, *viz.* bear children, which men lack. Women, even young girls, are faced with a greater opportunity to act well and to do something with their lives" (Hursthouse 1987, 330).

significance of abortion. Rosalind Hursthouse's justly famous "Virtue Theory and Abortion" is a touchstone in this field, to which (along with her book *Beginning Lives*) we will need to return at some length in what follows. However, let us begin with Judith Jarvis Thomson's seminal paper "A Defense of Abortion" with which nearly every commentator on the issue in the last 30 years has had to come to terms. For while Thomson does not adopt a virtue approach, and indeed argues on the basis of a conception of rights that is in some ways deeply antithetical to the virtues tradition, the virtues nevertheless make a strange kind of appearance. Furthermore, it is very important for us to consider how a virtues approach can respond to Thomson's concerns.

Thomson

There can be little doubt that Thomson's "A Defense of Abortion" has importantly shaped the structure of the debate on the abortion issue in nearly 40 years since its original appearance. Part of what makes Thomson's pro-abortion argument seem so powerful is her concession at the very beginning that she is willing to grant (for the sake of argument) that the fetus is a person and thus possesses a right to life. In a fell swoop she seemingly obviates much of the previous debate, which focused on the establishing whether or not the fetus is a person. By basically granting what many on the pro-life side had conceived of as the only really controversial premise in their argument against abortion, Thomson turned the debate on its head and largely redirected the focus away from the controversy about the status of the fetus and instead pointed it towards a contest of rights between the mother and her fetus.

Thomson's central claim is that one person's right to life does not automatically generate a corresponding duty on others to provide that person with the means to sustain his life. In particular, even if the fetus is a person with a corresponding right to life, that right does not

thereby generate a duty on the part of his mother to provide him with a nutritive environment within her own body. Rather, she possesses a right to control her own body that she may legitimately uphold against the fetus' needs, even if doing so will result in the fetus' death. The right to life is primarily a right not to be unjustly killed; it is not a right to be given whatever is necessary to maintain one's life.

To sustain her central claim, Thomson offers her famous violinist analogy, in which she compares a pregnancy resulting from rape to being kidnapped, drugged, and plugged into a famous violinist (a full-fledged person with a right to life) who needs the use of someone else's kidneys to remain alive. She thinks it is more or less obvious that anyone would conclude that in these circumstances you would have the right to be unplugged even if it results in the violinist's death.<sup>5</sup> Here is a counter-example to the principle that one person's unambiguous right to life includes the right to the use of another's body without her permission.

While the violinist analogy is supposed to be comparable to impregnation by rape, she quickly extends the same general principle to other cases of unintended pregnancy (failure of contraception, negligence, etc.). What really matters to Thomson is not the means by which the pregnancy began, but whether or not, once the zygote-embryo-fetus exists, it has a right to the use of the mother's body against her wishes. And since she takes it is as obvious that one is not morally obliged to supply the an (innocent) adult person with the use of one's body, so similarly the mother of an unwanted fetus is not obliged to supply the fetus with the use of her body.

I want to draw attention to the way in which Thomson's argument turns the question of abortion into a contest of rights between a mother and her offspring. Even if the fetus possesses a right to life, it is not entitled to the use of the mother's body because her right to control her own

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<sup>5</sup> In his *Applied Ethics* David Oderberg actually bites the bullet here and argues on double-effect grounds that you would be morally required to remain plugged into the violinist. Nonetheless, I think most people have the intuition that Thomson wants here.



body is paramount. What is important to Thomson is adjudicating between the various rights-claims that arise, and it is this that determines the moral rightness or wrongness of the act of abortion, at least insofar as can be legitimately regulated by the law.<sup>6</sup>

In making these judgments, Thomson's key strategy is to distinguish between what is strictly owed as a matter of rights and other considerations that might very well affect the way we see the moral situation. Duncan Richter draws attention to this aspect of Thomson's treatment where she considers a hypothetical scenario where pregnancy lasts only an hour. In such a case of such limited inconvenience, ought a woman allow the fetus the use of her body? Thomson writes, "we should not conclude that [the fetus] has a right to [use the woman's body]; we should conclude that she is self-centered, callous, indecent, but not unjust, if she refuses. The complaints are no less grave; they are just different" (Thomson 1971, 17)

Here Thomson introduces a new category of wrong-making properties to the discussion. Even in this case of limited inconvenience the fetus still does not have a claim of *right* against his mother such that she has a duty to give him what he needs. However, a woman who refused to do so would likely be "self-centered, callous, indecent." Interestingly, these terms name something like vices: traits that manifest a bad character.

What is perhaps most surprising is Thomson allowance that these "complaints are no less grave" than a complaint of injustice. Richter tries to make sense of this by drawing an important distinction: "Thomson's position is that the only moral requirement concerning the exercise of [action under] our control is that we respect moral rights. So there could be two actions, one callous and one unjust, each of which we *ought* not to do, each of which is equally *grave*, where we

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<sup>6</sup> There is the additional complication here that what Thomson and others advocating a "women's rights" position primarily want is legalized abortion. They don't necessarily need it to be the case that abortion is always morally good; just that it is not so evil as to merit legal abolition. We might note an analogy to lying; even if you think it is morally wrong to lie, you may not think that it should always and everywhere be against the law (though, as in perjury, it may be in some cases).

are only *required* not to do the unjust action” (Richter 1998, 384). Naturally one might wonder whether this actually makes sense, that equally grave wrongs are treated differently, with our being required to avoid only those that violate rights. In what sense, indeed, can such wrongs be *equally grave*?

In the end, Richter is content to point out that Thomson is simply not taking viciousness seriously enough.

Where Thomson goes wrong is to go no further than arguing that abortion in some cases is not unjust. As she recognizes, there are questions of selfishness, callousness, and decency to consider as well, at least in some cases. Even if abortion is not unjust, it may be “self-centered, callous, indecent” to have one. If such charges are really no less grave than that of being unjust, had not we better consider them? (389-90)

This distinction between what is merely gravely wrong (e.g. as manifesting self-centeredness, callousness, indecency, etc.) and what we are forbidden to do as a violation of some trumping right rests on the assumption that, at least with respect to what can be legally regulated, only rights really count. Actions that manifest a vicious character, while contrary to morality in some sense, are not strictly speaking unjust, and thus cannot be regulated by law.

It is here that the virtue ethicist can raise serious questions. How viable is Thomson’s distinction between these two sorts of grave wrongs? And must injustice be understood exclusively in terms of rights? To be fair, Richter notes that Thomson was entering into an existing dialectic focused on rights. Furthermore, we can note that Thomson only applies these “vicious” epithets in a hypothetical case where the inconvenience is quite small (just allowing the fetus the use of the mother’s body for an hour). Of course, in actual pregnancies (given the present state of technology) the inconvenience to the mother would be much greater and so it seems unlikely that

Thomson would even grant that choosing an abortion in our present circumstances would manifest these “vices.” Nonetheless, the door is opened here to including the virtues and vices within the proper moral analysis of abortion, if we reject Thomson excluding them from a concern with justice.

## Hursthouse

Let us now turn to Rosalind Hursthouse’s famous treatment of abortion from a virtue ethics perspective, “Virtue Theory and Abortion.” This paper follows on and reiterates many of the conclusions Hursthouse advanced in her 1987 book, *Beginning Lives*, which features a much more extensive examination of a variety of issues surrounding abortion. The purpose of the later paper is primarily to introduce the structure of “virtue theory” in contradistinction to utilitarianism and deontology, and the treatment of abortion proper is primarily meant as an example of how virtue ethics can help us make progress in advancing a discussion that had become weighed down in interminable debates about personhood and the contest of rights.

After laying out the structure of virtue ethics in the first part of her paper, Hursthouse turns explicitly to the abortion question. She notes that most of the discussion on the question of the morality of abortion had hitherto focused on two issues: “the status of the fetus and whether or not it is the sort of thing they may or may not be innocuously or justifiably killed” and secondly “women’s rights” (Hursthouse 1991, 233-4). She then makes a surprising claim: “virtue theory quite transforms the discussion of abortion by dismissing the two familiar dominating considerations as, in a way, fundamentally irrelevant” (234). Much as Thomson turned the tables on the pro-life camp by granting and dismissing their central claim, so Hursthouse attempts to transform the debate again by sidelining most of her contemporaries’ arguments on the issue.

In the discussion that follows Hursthouse adopts a distinction similar to the one Richter provides Thomson, in that Hursthouse makes clear that her analysis of the “morality of abortion” is distinct from a question about whether women “have a moral right to terminate their pregnancies” precisely because “in exercising a moral right I can do something cruel, or callous, or selfish, light-minded, self-righteous, stupid, inconsiderate, disloyal, dishonest—that is, act viciously” (235). In other words, one can act within one’s rights and still be acting wrongly or viciously. Thus, these are separate questions.

Regarding the status of the fetus, she claims that “it is a metaphysical question” and so it is unreasonable to demand an answer to it as a precondition for a proper moral analysis of abortion. The reason for this is the explicitly undefended assumption that “the sort of knowledge that the fully virtuous person has is not supposed to be *recondite*” (235).<sup>7</sup> In other words, since the “fully virtuous person” should be able to make moral judgments on the basis of reasonably common knowledge, it simply cannot be the case that a moral judgment about abortion would have to await an answer to an opaque metaphysical question.<sup>8</sup> Rather, she says that a reasonable judgment ought to be made on the basis of “familiar biological facts” which are “the facts that most human societies are and have been familiar with...” (236).<sup>9</sup>

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<sup>7</sup> I say it is “explicitly undefended” because Hursthouse herself says as much in her footnote 11 (235).

<sup>8</sup> Note that there is a clearly contestable assumption at work here. She seems to be arguing something like as follows:

- (1) fully virtuous agents do not require *recondite* knowledge to make moral judgments
- (2) the status of the fetus counts as *recondite* knowledge
- (3) Therefore, the fully virtuous agent does not require knowledge of the status of the fetus.

There is obviously a suppressed premise here: that her fully virtuous person is able to make a (true) moral judgment about abortion. In other words, her argument against the necessity of *recondite* knowledge only works insofar as we can be confident that her fully virtuous person is actually making true moral judgments about abortion, which frankly seems rather question-begging.

<sup>9</sup> She goes on to give examples of the sort of facts she has in mind: “standardly (but not invariably), pregnancy occurs as the result of sexual intercourse, that it lasts about nine months, during which time the foetus grows and develops, that standardly it terminates in the birth of a living baby, and that this is how we all come to be” (Ibid.)

Once she has set aside these two “dominating considerations” she proceeds to offer an analysis of abortion according to her conception of virtue ethics. She turns to the question: “How do these [familiar biological] facts figure in the practical reasoning, actions and passions, thoughts and reactions, of the virtuous and the non-virtuous? What is the mark to having the right attitude to these facts and what manifests having the wrong attitude to them?” (237).

Her starting point is to emphasize that abortion is a *serious* matter simply because it concerns “in some sense, the cutting off of a new human life.” To treat it as if it were of little importance reflects a fundamental misunderstanding of what is at stake. Accordingly, “to think of abortion as nothing but the killing of something that does not matter, or as nothing but the exercise of some right... or as the incidental means to some desirable state of affairs, is to do something callous and light-minded, the sort of thing that no virtuous and wise person would do” (237-8). As is apparent from her reference to some of the central features of the deontological and utilitarian approaches, she considers those approaches inadequate to appreciating the seriousness or gravity of just what is at stake in abortion.<sup>10</sup>

This recognition of the seriousness of abortion is central to her analysis. Anyone who realizes that it is an intrinsically important matter will realize that “by virtue of the fact that a human life has been cut short, some evil has probably been brought about” (242). That does not mean, however, that abortion is *always* wrong. Rather a choice in favor of a abortion in a particular case must realistically weigh the real goods that abortion cuts off against any putative goods that it might make possible. These real goods include the value of the human life that is cut off and the value of motherhood / parenthood, including their contribution towards living a

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<sup>10</sup> Hursthouse doesn't develop the point, but this idea of the proper seriousness of a virtuous man is a central aspect of Aristotle's *phronimos* (one possessed of *phronesis* / practical wisdom, i.e. a “fully virtuous person”), who ought to be *spoudaios*. To be *spoudaios* is (among other things) to give appropriate attention to the right kind of things. It is analogous to a kind of maturity, not merely in age, but in giving more of one's attention to the sorts of things that legitimately demand it. So politics in its original sense—the proper pursuit of the common good within the *polis*—is a proper subject of concern for an adult in the way that it is not for a child or adolescent.

good human life overall. Therefore, in order to be legitimate, a choice for abortion in a particular case must be motivated by a desire to obtain or preserve goods of a similar order of importance as those that abortion cuts off.

We should note here that we won't be able to generate "some general rule such as 'You ought not to kill anything with a right to life but may kill anything else'" (236). In other words, a virtues-based analysis necessarily involves the particularities of specific contexts and circumstances. Hursthouse thinks we cannot derive some abstract principle that will always allow us accurately to pick out which are the legitimate abortions from those which are not. Rather we must approach each case individually and ask whether in *this* case the goods being pursued are commensurate with the ones that abortion cuts off.

We can know that abortion will nearly always involve the sacrifice of some important goods.<sup>11</sup> Therefore, for a particular abortion to be justified it must be done in pursuit of some real good or to avoid some real evil. Hursthouse gives several examples of justified abortions: a mother of several children who "fears that to have another will seriously affect her capacity to be a good mother to the ones she has," "a woman who has been a good mother and is approaching the age at which she may be looking forward to being a good grandmother," "a woman who discovers that her pregnancy may well kill her" or even "a woman who has decided to lead a life centered around some other worthwhile activity or activities with which motherhood would compete" (241-2).

She also gives examples of women in circumstances that are sufficiently unfortunate to make a decision in favor of abortion the "right" one. "To go through a pregnancy when one is

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<sup>11</sup> She claims that human life is generally a good, but that there are a few circumstances in which it is not. She notes two such circumstances: "(a) where death is actually a benefit, because the baby that would come to be if the life were not cut short would be better off dead than alive, and (b) where death, though not a good, is not an evil either, because the life that would be led (e.g., in a state of permanent coma) would not be a good" (242, n. 15).

utterly exhausted, or when one's job consists of crawling along tunnels hauling coal... is perhaps heroic, but people who do not achieve heroism are not necessarily vicious" (239-40). At the same time, she is quick to emphasize that "this does not make everything all right... it shows that there is something amiss with the conditions of [these women's] lives, which are making it impossible for them to live well" (Ibid.). Such women are to be pitied (and perhaps this even creates a demand to ameliorate their condition); however, Hursthouse thinks that such circumstances can justify an abortion because a woman who chooses to abort in such bad circumstances can still manifest "the right attitude to human life and death."

Hursthouse contrasts this with women who choose abortion for "worthless" goals such as "having a good time' or for the pursuit of some false vision of the ideals of freedom or self-realization." She criticizes those motivated by an unreasonable dream "of having two perfect children, a girl and a boy, within a perfect marriage, in financially secure circumstances, with an interesting job of one's own" (242). Choosing abortion in pursuit of unrealistic and false visions of the good is vicious precisely because a woman who acts in such a way posits chimerical goods against the real goods of motherhood and child rearing. As such, a woman who thinks in the way and acts accordingly manifests a vicious character; she is light-minded and fundamentally unserious.

It should now be more clear why Hursthouse is able to make such seemingly radical claims that the status of the fetus and the issue of women's rights are "in a way, fundamentally irrelevant" according to her virtue analysis. According to this approach, the central issue in evaluating whether or not to choose an abortion turns on whether or not the woman adequately appreciates the nature of the real goods that abortion generally sacrifices. If she is knowingly sacrificing these goods in order to attain "other worthwhile pursuits" incompatible with having this child, or because a pregnancy would place excessive burdens on her (especially in light of

difficult circumstances) she is not thereby manifesting a vicious character, and thus her choice may be the “right decision.”

Critics often complain that virtue ethics is inherently vague, and this is not without warrant. We get no algorithm that allows us to calculate the proper outcome by assigning some numerical value to motherhood, etc. to be measured against the values some other goods (or the avoidance of some evils). There is no maximizing calculation as in utilitarianism. Rather, in a way largely dictated by her circumstances, only some of which are under her control and only some of which she may be responsible for, a woman can correctly choose an abortion insofar as she acts in a way consistent with the recognition of the value of the human life she is cutting short.

Hursthouse’s analysis is a genuine contribution to the abortion debate, precisely because it brings much needed emphasis to the *seriousness* of abortion. She helps us to understand what goods are sacrificed in abortion and the way in which parenthood / motherhood contributes greatly to a genuinely fulfilling human life. By turning attention away from “recondite” metaphysical questions about the status of the fetus and the nasty contest of competing rights, she allows us to consider anew the real gravity of the matter, and we cannot but admire her sensitivity to the wide array of difficult and complex circumstances that might face a pregnant woman. Even in those cases where she thinks abortion is the “right” choice, she recognizes that “some evil has probably been brought about.” She can make sense of legitimately doing evil, because she views certain situations in human life as fundamentally “tragic.”<sup>12</sup> Thus, she’s

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<sup>12</sup> See her discussion of the sometimes fundamentally tragic nature of some moral choices in Hursthouse 1999, chapters 2 and 3.



prepared to acknowledge that sometimes the cutting off a human life is deeply unfortunate, but nonetheless justifiable in light of the alternatives.

For all of these legitimate contributions, however, I think some real concerns remain. While we can embrace Hursthouse's achievement in bringing much needed moral seriousness to the abortion issue, her attempt to bracket both the moral status and women's rights issues must leave us dissatisfied. Furthermore, when we look more closely at her position, I think we might have reason to suspect that assumptions affecting both of these issues get smuggled in to some degree.

Jo Kornegay<sup>13</sup> has recently argued that despite Hursthouse's insistence that we move beyond these two issues, she nonetheless implicitly adopts a view on the moral status of the fetus. Essentially, Kornegay claims that if we systematically try to make sense of the examples that Hursthouse gives in both *Beginning Lives* and "Virtue Theory and Abortion" we will see that Hursthouse implicitly employs a relatively concrete view on the moral status of the fetus.

Kornegay argues that Hursthouse's examples of justified cases of abortion "presuppose views about fetal moral status. Clearly, for Hursthouse, the status of the fetus is lower than that of a typical adult or an infant. Her examples of reasons needed to justify an abortion would not be adequate to justify homicide or infanticide" (5). In other words, many of the examples we considered above (e.g. the woman inadvertently pregnant who is of an age to be looking forward to being a grandmother) would be patently absurd if applied to the killing of an infant. As such, it seems that Hursthouse believes that, at least in some stages of its development, the zygote-embryo-fetus simply does not possess the moral status of an infant or adult.

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<sup>13</sup> Kornegay 2010. As of this writing Kornegay's article is available in electronic form, but has not yet gone to press and is lacking final page numbers. As such, my references are to the ordinal page number of the typeset electronic pdf file.

In considering the cases, Kornegay concludes that Hursthouse “must attribute a sufficiently low status to the fetus to avoid the implication that abortion is *prima facie* an unjust killing (i.e. it violates a robust fetal right to life), which a just woman *ceteris paribus* would not seek” (7). Kornegay thinks that Hursthouse’s claim that fetal status is largely irrelevant comes from her desire “to contrast her approach with that of many ethicists who... overemphasize fetal nature and status at the expense of other vital considerations. Her contention is actually that fetal ontology and status are not *solely* relevant” (6). Thus, it can be relevant as one issue among others. As we have already seen, Hursthouse is willing to say that an abortion is generally speaking the cutting off of a human life and therefore an evil. Thus, while the status of the zygote-embryo-fetus is lower than that of an infant or adult, nonetheless it does possess some value; indeed enough value that it can only be killed for serious reasons.

In trying to specify just how much value the fetus has for Hursthouse, Kornegay notes that Hursthouse embraces distinctions within the gestational development of the fetus. It is true that Hursthouse makes mention of “the well-worn point that clear boundary lines cannot be drawn” (Hursthouse 1991, 238); however, as Kornegay maintains, Hursthouse’s examples show that she clearly distinguishes late term abortions from earlier ones and regards the former as extremely problematic.

Putting this together, Kornegay argues that Hursthouse’s considered view “would be some (coherent) combination of... (1) the zygote-embryo-early stage fetus is a potential human being with a unique and significant moral status and... (2) the late-stage fetus from around 7 months is an actual human being with the same high moral status of an infant” (Kornegay, 11). This would allow Hursthouse to hold that an early stage fetus is a “potential” human being with enough value that killing it is a serious matter (and that producing embryos for research purposes is immoral, a view that Hursthouse upholds in *Beginning Lives* (Hursthouse 1987, 86-87)), while at

the same time holding that early stage abortion is not tantamount to murder.<sup>14</sup> On the other hand, the late-stage fetus is an “actual” human being such that the killing of it would be comparable to the killing of an infant.<sup>15</sup>

The question now arises whether this combination is, in fact, “coherent.” Kornegay goes on to argue that Hursthouse’s implicit position is defensible within the context of the present state of knowledge about fetal development. In particular, “actuality [as a human being] consists in inherent features or capacities that emerge in the approximately 24-week old fetus.” These include “the various capacities for conscious experience, social responsiveness, appetites, emotions (including pain and preferential, behavioural responses), memory, learning as well as the foundations for focusing on, and understanding, language” (14). In other words, by that point in its physical and cognitive development the fetus actually possesses enough of these capacities to justify the claim that it is an “actual” human being, as opposed to being merely a “potential” human being as it is earlier in its development.

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<sup>14</sup> It is Kornegay who introduces these terms ‘potential’ and ‘actual human being,’ but she does so out of Hursthouse’s discussion in chapters 2 and 3 of *Beginning Lives*.

<sup>15</sup> There is an interesting complication here because much of Hursthouse’s language about the disparity between early and late abortions, which Kornegay uses to generate her distinction in fetal status, focuses primarily on the attitudes or emotions of the adults. For example, Hursthouse writes: “To shrug off an early abortion is understandable just because it is very hard to be fully conscious of the fetus’s existence in the early stages and hence hard to appreciate that an early abortion is the destruction of life. It is particularly hard for the young and inexperienced to appreciate this, because appreciation of it usually comes only with experience” (Hursthouse 1991, 239). In other words, the focus is not on fetal status, but the mother’s (mis-)perception of it. Thus, Hursthouse might claim that a certain level of ignorance has an exculpatory effect, particularly with respect to accusations of callousness. However, as Kornegay points out, “Hursthouse should also insist that there is something quite problematic about the abortion of an *actual* human being. An evaluation in terms of typical attitudes to older fetuses would seem to be less than penetrating. Moreover, to differentiate between justifiable typical attitudes and mere prejudices, one would need to resort to specific facts about the fetus and status in addition to typical maternal psychology” (Kornegay, 19). An analogy might serve to illustrate. We would not consider a deeply held belief that people of a certain race are sub-human as exculpatory for a murderer who possessed such a belief. In other words, the racist could not plausibly claim that the mere fact he (wrongly) believed his victim to be sub-human means that his killing was not murder. In point of fact, he has killed an *actual* human being, whether he understands that or not. The same, Kornegay might say, holds for the woman who procures a late-term abortion.

If Hursthouse does implicitly hold a capacities view of this sort, I think we should have some doubts. Traditionally, the language of “potentiality” and “actuality” was tied to an Aristotelian metaphysics, and in this particular case we would analyze fetal status in terms of natural kinds. The fetus is (actually) a human being from the moment of its ontogenesis (at conception) because it is (actually) a member of that natural kind. It is true that it is an *immature* member of that kind, and lacks some capacities commonly associated (or even essential to) that kind, such as rationality. However, the same can be said of an infant (or young child). In this particular individual the essential capacities of its kind are in potentiality; the salient point is that this is so only in virtue of the fact that it (already) *is* a member of this kind.

David Oderberg has very usefully distinguished between intrinsic potentiality and extrinsic factors.<sup>16</sup> Extrinsic “potentiality” is exhibited by something like the ingredients of a cake (flour, sugar, eggs) that might reside in my kitchen. Although if treated in the right way they might potentially become a cake, left to themselves they will not. Intrinsic potentiality, however, is the true sense of *potentiality* because it is the unfolding (or maturing) of what lies (incipiently) in the nature of a thing. The mature capacities of an adult human being are intrinsically potential within the fetus in the same way that they are intrinsically potential within the infant or small child. And this is true, even if those capacities are never realized for whatever reason (e.g. premature death by accident or some developmental defect like Down’s Syndrome).

It is membership in a kind that determines what a particular living thing essentially is, and only members of that kind can properly be said to have the potentiality characteristic of that kind. Therefore, a zygote-embryo-fetus is as much a human being as an infant or adult in virtue of the fact that it (fully) possesses a human nature. Hursthouse herself recognizes this to some

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<sup>16</sup> Oderberg 2000a, p. 21. Much of the following analysis follows Oderberg.

degree in *Beginning Lives* when she speaks of the zygote-embryo-fetus as an organism that will develop “of its own accord” into a mature member of its kind.

It is membership in a kind, and not the possession of some sort of capacity, that determines what this thing is. It may help to see this if we focus on an infant. While a newborn does possess more capacities than an early stage fetus, it still lacks almost all of the physical and psychological capacities that we normally think are essentially characteristic of mature human beings. A newborn cannot really control its own body, nor does it exhibit any meaningful rationality. While a newborn does exhibit some of the characteristics that Kornegay mentions (conscious experience, social responsiveness, emotions, etc.), so do other non-human animals, as some utilitarians are so fond of pointing out. If we are serious about considering newborns to be “actual human beings,” while excluding other creatures that may possess similar or even superior capacities (e.g. mature chimpanzees, etc.) then I think we have to see that it is not the possession of these capacities that qualify the newborns for moral status, but rather that they are members of a certain natural kind.

The point could be further extended by considering older individuals that are somehow incapacitated by trauma or severe congenital defect. In such cases, an adult might lack many or most of the essential capacities we associate with a human being, both physical (e.g. having a bipedal, upright posture) and especially psychological (e.g. possessing rationality and language). Nonetheless, such people are just that: human beings. They may be grossly defective (in the literal sense: lacking in form); they may never actualize the potentialities intrinsic to their nature, but they are nonetheless fully human in virtue of their possessing that nature.<sup>17</sup>

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<sup>17</sup> Strictly speaking, we ought not speak of a “potential human being” unless by that we mean only extrinsic potentiality, as the flour, eggs, and sugar are a *potential cake*. Of course, the only thing that would answer to that description is the set of an ovum and a spermatozoa. Rather from the moment of conception a new being (of the natural kind *human being*) comes into existence (out of the dissolution of the parental gametes), which fully possesses the potentialities associated with that kind. As such, a zygote-embryo-fetus might be (loosely-speaking) a potential

Of course, the foregoing analysis assumes a traditional (Aristotelian) metaphysics. However, I think at this point we should be able to recognize that this is no more problematic than Hursthouse's implicit assumptions about fetal status as reconstructed by Kornegay. In other words, Hursthouse's analysis, despite her protestation that "recondite" metaphysical speculation about the status of the infant is not necessary, nonetheless makes key assumptions about fetal status. And that is true, even if Kornegay's particular reconstruction of Hursthouse's implicit view is incorrect (that is, is not actually held by Hursthouse). For Hursthouse does want to make distinctions between early and late abortions, and it would seem necessary for her to have some sort of view about fetal status (and indeed changes in fetal status over the course of gestation) to make this distinction reasonable.

Furthermore, we see that Hursthouse often makes appeal to common sense. She takes it more or less for granted that infants are "actual human beings" and killing them is generally murder. However, if this claim is predicated on a capacities analysis then it's unclear that it is justified. As we see from theorists like Mary Anne Warren and Peter Singer, a focus on capacities often leads to an embrace of the permissibility of infanticide.<sup>18</sup> In this case, of course, Hursthouse might make appeal to the capacities that Kornegay outlines (which even a late term fetus possesses), but then the burden of proof shifts to her to defend why those particular capacities ground moral status. It is not enough to start with the infant and work your way backwards, so to speak, precisely because you need a non-*ad hoc* way of picking out the relevant features. On the

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infant / child / adult / football player / ballet dancer, but it is not a "potential human being"; it is an actual human being that (contingently) has yet to realize its intrinsic potentialities, and which may (contingently) never do so.

<sup>18</sup> See Warren 1973, 1975 and Singer 1999; they have radically different conceptions of moral status (because they have radically different conceptions of morality), and thus they focus on different capacities (Warren, chiefly on rationality, and Singer on the capacity to feel pleasure and pain). What they share, however, is a conviction that is the capacities an individual has (or lacks) which give him whatever moral status he has. It is no accident that a utilitarian capacities theorist like Singer is also keen to decry "speciesism." A natural kinds analysis is speciesist; but far from running from this fact it embraces it, precisely because it is only in terms of the natural kind that genuine human moral status is to be found.

other hand, if Hursthouse does not hold a capacities view, then we're left to wonder how she grounds the distinctions she wants to make between early and late abortions. The natural kinds analysis requires us to find no shining line within gestational development, and even regards birth as of no more particular consequence than a 7<sup>th</sup>, 18<sup>th</sup>, or 21<sup>st</sup> birthday.

The natural kinds analysis also fits with similar general common sense intuitions about disabled children and adults, which may lack some or all of the capacities typical of human beings and yet still remain "actual human beings." Similarly it makes sense of special cases like sleep, coma, or suspended animation, where a subject's latent capacities are not exercised, and yet the subject still obviously possess moral status. Finally, in addition to being properly inclusive of individuals that contingently fail to express characteristic capacities, it also excludes non-human creatures that may possess some of the relevant capacities (especially those on Kornegay's list), but which common sense excludes.

We can appreciate how Hursthouse's virtue theoretic approach makes a serious contribution to the abortion debate by bringing us to focus on just how much is at stake and also how the actual motives behind so many actual abortions are almost laughably unserious. We can fully embrace this achievement while at the same time acknowledging that Hursthouse is overhasty in ruling the issues of moral status and women's rights as "in a way, fundamentally irrelevant." Although her analysis leaves this issue mostly unexplored, a serious attempt to bring consistency to her examples reveals that she implicitly accepts a view about fetal status.

Furthermore, on the issue of women's rights she seems to accept, again implicitly, that the morality of abortion can be meaningfully separated from the question of the justice of the laws regulating it. In this, if nothing else, she is far from the virtues tradition. For Aristotle, it was an important part of the purpose of the state (*polis*) to provide moral instruction to its citizens through the laws. The laws ought to help the citizen to advance in virtue; indeed that is what

makes those laws just. Accordingly, there are no good grounds for laws that allow for, much less promote, vice. If, as Hursthouse allows, abortion is generally speaking an “evil,” we should expect a well-ordered polity organized within the virtues tradition to outlaw it.<sup>19</sup> Accordingly, Hursthouse’s apparent willingness to separate the morality of abortion from the laws permitting it is out of sync with the broader tradition.

Along similar lines it is surprising that for all the complexity Hursthouse recognizes in an individual woman’s decision about abortion, she does not give more consideration to the ways in which broader social circumstances and mores must affect the question of the legal status of abortion. Surely, insofar as abortion involves a real evil, it cannot be just a private choice of women. It will implicate broader social concerns regarding the regulation of things like contraception, family life and structure (e.g. China’s infamous “one child” policy), not to mention social norms if matters like pornography, prostitution, sexual promiscuity, and adultery, which also have legal implications. Indeed, the tradition embraces the specific virtue of chastity that radically impacts almost all of these matters and which does little work in Hursthouse’s analysis.

None of these criticisms take away from the value of Hursthouse’s concern to show that many, if not most, actual abortions are procured in a fundamentally callous and light-minded way. We can fully accept her conclusions along those lines, while striving to articulate an account of fetal status and women’s rights that gives adequate concern for finding the truth about these

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<sup>19</sup> It is perhaps worth noting that Aristotle himself explicitly allows for abortion in Book VII of the *Politics*. After discussing regulations on the number of children he writes, “if any people have a child as a result of intercourse in contravention of these regulations, abortion must be practiced on it before it has developed sensation (αἴσθησιν) and life (ζωήν); for the line between lawful and unlawful abortion will be marked by the fact of having sensation and being alive” (1335b24-5). Note that Aristotle’s distinction between lawful and unlawful abortion turns on the “fact of having sensation and being alive.” These are the same terms he uses in the Book I, Chapter 7 of the *Nicomachean Ethics* (1098a1-2) when referring to the characteristic powers of the vegetative and animal souls. In other words, what he’s saying in the *Politics* is that it is unlawful to kill a zygote-embryo-fetus once it has an animal soul. Of course, we know that Aristotle’s embryology is fundamentally wrong; he simply held false views about what a fetus is and when it is alive. Contemporary research shows beyond a doubt that the zygote-embryo-fetus is an independent, living organism (i.e. a creature possessed of an animal soul). Faced with the results of modern embryology, I think Aristotle would be compelled by his own (implicit) principle to extend the unlawfulness abortion to the moment of conception.



two issues. Accordingly, we can develop a virtue ethics approach to abortion that encompasses Hursthouse's insights, while nonetheless taking a stronger, explicit position on both fetal status and the rights issue.

### Towards a Virtue Ethics of Life

How might we develop a virtue ethics approach that nonetheless embraces a stronger view about fetal status, enough to generate something like an absolute moral condemnation generally equivalent to homicide? Virtue ethics has sometimes been accused of being unable to sustain absolute prohibitions. The charge might seem sensible on the surface. After all, an absolute prohibition can take the form of a rule: *don't do x*, while virtue ethics is supposed to be opposed to moral rules, which are properly the province of deontological forms of ethics. Furthermore, virtue ethics involves an exercise of *phronesis* in which a virtuous person must make judgments that go beyond calculation or the following of an algorithm.

While this misconception is understandable, this view of virtue ethics is mistaken. As Hursthouse has pointed out, the virtues themselves generate a certain kind of rule: act courageously, act temperately, act justly, etc. Of course, one might object that since these rules simply contain the virtues, they are too vague to be action guiding in concrete cases. The virtue ethicist will not necessarily disagree, if what is meant is that just anyone can follow these rules. Rather, these virtue rules do require *phronesis* to apply them in the proper circumstances and to determine the actions appropriate to them. Nonetheless, these virtue rules can and do generate prohibitions. *Act courageously* generates a prohibition on acting in either a cowardly or rash

manner.<sup>20</sup> All the virtue rules thus generate prohibitions against manifesting the corresponding vices.

If we return to Aristotle, we find another way in which absolute prohibitions make an appearance within a virtues approach. In Book II, Chapter 7 of the *Nic. Ethics* he notes that

not every action or feeling admits of the mean. For the names of some automatically include baseness—for instance, spite, shamelessness, envy [among feelings], and adultery, theft, murder among actions. For all of these and similar things are called by these names because they themselves, not their excesses or deficiencies, are base. Hence in doing these things we can never be correct, but must invariably be in error. We cannot do them well or not well—by committing adultery, for instance, with the right woman at the right time in the right way. On the contrary, it is true without qualification that to do any of them is to be in error. (1107a10-18)

For Aristotle there are certain actions (and feelings) whose very names “automatically include baseness” hence “doing these things can never be correct.” Unfortunately, Aristotle does not develop the point as much as we might like, and we do not get a clear principle with which to pick out this type of action.<sup>21</sup> At any rate, he thinks that absolute prohibitions are compatible with a virtues outlook in general and the demands of *phronesis* in particular.

Since Hursthouse thinks that at least some abortions are morally justifiable, it’s clear that she would not include abortion among the actions whose names “automatically includes baseness.” The question is: why not? Presumably, the answer is what we have already discovered;

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<sup>20</sup> Since, as Aristotle says, virtues are an intermediate between two extreme, one can miss the mark of virtue on a variety of ways. With respect to the virtue of courage, one can miss the mark not only by being a coward (failing to stand firm for the sake of the fine), but also by being rash or overly hasty.

<sup>21</sup> In fact, I think this is essentially related to his claim in Book I, Chapter 4 of the *Nic. Ethics* that the study of ethics requires us “to have been well brought up in fine habits if we are to be adequate students of fine and just things, and of political questions generally” (1095b5-8). In other words, his ethical investigations presuppose a certain kind of moral upbringing which is a necessary precondition for moral reflection. Thus mature ethical reflection presupposes a social and political situation that is largely in accord with the demands of morality. It goes almost without saying that the social and political situation we inhabit is not one in which most people are “well brought up in fine habits.”

she has an implicit view about fetal status that rates the zygote-embryo-early stage fetus lower than a late stage fetus-infant. As we've seen above we have real reason to doubt this distinction. In any case, it should be clear that fetal status has to matter in order to make this kind of judgment.

If the natural kinds analysis is correct, then killing the fetus will not count as the killing of a potential human being, but the killing of an actual one. Of course, by itself that doesn't settle the matter. Most of us think that there are at least some cases of justified killing: self-defense, killing in a just war, etc. Thus, establishing the fetus as an actual human being will not determine the case against abortion by itself. It will be necessary to show as well that there are no relevant other conditions that justify the killing. And with this we are returned to Thomson and other similar women's rights arguments. What we need to address is Thomson's central contention that another's need does not create a duty to supply that need.

Can a virtue ethics do this? I think that it can, but what we have to do is reject Thomson's assumption that justice can be separated from a virtues outlook. As Hursthouse points out, in a certain way Thomson is almost a proto-virtue ethicist in her recognition that being "self-centered, callous, indecent" is morally defective. However, she remains keen to distinguish these sorts of "vice" considerations from the demands of justice proper. For Thomas, justice is a matter of rights and even if the fetus has a right to life, it does not have a right to the use of the mother's body to sustain that life.

Thomson makes this distinction particularly clear in another example in which she asks us to consider a case in which one of two brothers is given a box of chocolates as a particular gift and then refuses to share them with his brother. She is even willing to accept that there is sense admonishing the boy: "You ought not to be so mean. You ought to give your brother some of those chocolates" (Thomson 1971, 60). However, she thinks that "it just does not follow from the

truth of this that the [second] brother has any right to any of the chocolates. If the boy refuses to give his brother any, he is greedy, stingy, callous—but not unjust.”

Thomson is interpreting justice entirely in terms of rights, and indeed a rather strong form of property rights. The one boy owns the chocolates, and while it is in some sense vicious of him to refuse to share, properly speaking that is his right as derived from his ordinary property right of ownership. Ownership rights intrinsically include a right to determine how that property is disposed. And while in disposing of that property one may act (to borrow Hursthouse’s words) in manner that is “cruel, or callous, or selfish, light-minded, self-righteous, stupid, inconsiderate, disloyal, dishonest” that does not change the fact of the ordinary right.

With respect to the abortion case, Thomson is implicitly thinking about the mother’s body in terms of something like property rights. The mother has title to her own body, and included within that is the right to dispose of it how she pleases, even in a vicious way. Thus, even if another person requires only what is of very minor inconvenience to her, there is no demand of justice (pursuant to a rights-claim) for her to satisfy that need. Much less is there a need for her to satisfy the demand if it is far more than a minor inconvenience, but nine months of not inconsiderable work.

There are at least two deeply contestable assumptions at work here. First, she assumes that the mother owns her body in a way akin to other disposable property. Leon Kass has powerfully argued that the notion of self-ownership is actually incoherent and rests on an untenable understanding of personal autonomy.<sup>22</sup> Beyond that, however, we commonly accept restrictions on how we may dispose of our own bodies. For instance, at least certain forms of bodily mutilation are prohibited (e.g. limb amputation for merely cosmetic reasons). We also prevent a market in body parts like kidneys that would have considerable value in an open

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<sup>22</sup> See Kass 1993.

market. In short, both for theoretical reasons and in actual practice we do not accept an unlimited right of bodily self-ownership with attendant self-disposability.

As we've already seen, the second assumption is Thomson's conviction that justice is only to be understood in terms of rights, and particularly in analogy to, or perhaps even expressive of, property rights. The virtues tradition has a competing conception of justice. This conception of justice as a virtue is tied together intimately with the other virtues as partially constitutive of *eudaimonia*. As such, the virtues tradition would adamantly reject Thomson's bifurcation of morality between a trumping concern for rights and this other weaker virtues-based normativity.

Instead, the virtue of justice requires giving things what is due to them. John Hacker-Wright has argued for a conception of justice within contemporary virtue ethics along these lines, which "is not based on resolving the conflicting claims of rights-bearing agents who engage in reciprocal contractual relations" (Hacker-Wright 2007, 461). Rather...

this alternative conception of justice applies to non-reciprocal relations among unequally situated creatures, as between strong and weak, eloquent and stammering, wealthy and poor. The demands of justice, in this sense, fall exclusively on the former of each pair. The latter of each pair are defined by their vulnerability; they are, in a given situation, powerless and in the thrall of the former of each pair. Vulnerability is not a stand-in for sentience, since I am not talking only about susceptibility to physical or psychological pain. It is a susceptibility to being damaged or wronged, as well as possibly being harmed.... Vulnerability does not confer a right, and yet clearly an injustice is committed against the vulnerable when their powerlessness is exploited for its own sake or for the sake of some further benefit. (462)

What is at stake here is a conception of justice not bound to rights (which are, in turn, contingent upon capacities of one sort or another), but instead upon a vulnerability to being damaged or harmed. This normative vulnerability is itself grounded in some sort of objective moral value.<sup>23</sup>

Objective value creates a demand for a certain kind of respect or care to which we are duty-bound in justice to attend. As Hacker-Wright makes clear, this does not depend on some particular capacity. Rather, even inanimate objects like works of art or delicate features of the natural environment can generate this demand of justice. In those cases, their value is grounded in their beauty. In other cases, like dead bodies, their value is grounded in a respect for the deceased. In any case, genuine value or status creates a demand in justice to give to them what is their due. Something is owed to these things, and it is a violation of justice to fail in obeisance to that legitimate demand.

The application to abortion should be obvious. If the fetus is objectively valuable, then a certain kind of respect is owed to it in justice. I've already suggested why a fetus possesses a value comparable to an infant or adult human being in virtue of being a member of the same natural kind. Justice demands that like things be treated alike. If a zygote-embryo-fetus is actually a human being and fully possesses a human nature, even though it has yet to realize many of the potentialities implicit within that nature it is still owed a respect in justice.

If we can recognize that justice properly goes beyond an abstract conception of rights, particularly a conception grounded in property rights, we can bring to bear these normative concepts of value, vulnerability, and justice as what is owed. We can set them over against Thomson's strict property-rights claims of the woman's bodily self-ownership. Accordingly we can come to see how this richer conception of justice can make legitimate demands on a mother

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<sup>23</sup> Of course, not everything that is subject to destruction generates a demand of justice. The happenstance structure of my garbage pile is fragile in a certain sense but lacks genuine value and thus is not vulnerable in the sense relevant to create a demand of justice.

to give succor to her fetus which are no more surprising than the way justice can make legitimate demands on my private resources by way of taxation or my life and body in conscription.<sup>24</sup>

We must also resist Hursthouse's willingness to concede the distinction between the morality of abortion as grounded in virtue and the issue of women's rights informing the laws concerning abortion and political justice more generally. As I noted above, the tradition from Aristotle makes no such concession and deeply connects the laws (as part of justice) to the promotion of virtue in the citizen. With this more substantive account of justice, we can again connect the personal morality of abortion with the political morality that the laws ought to embody.

It is interesting to note that Hursthouse often evinces something like defensiveness when talking about justice. In the introduction to *On Virtue Ethics*, she writes "[w]hat is wrong with killing, when it is wrong, may not be so much that it is unjust, violating the right to life, but, frequently that it is callous and contrary to the virtue of charity" (Hursthouse 1999, 6). She immediately ties injustice to a violation of a "right to life," pulling in the sort of rights talk that is unhelpful and misleading. As we've already seen, justice does not have to be considered simply in terms of well-defined rights, but is properly concerned more broadly with a certain kind of care that is owed to something of value.

Christopher Miles Coope has similarly remarked that justice as a virtue has been "sidelined in modern virtue ethics" (Coope 2006, 47), especially in the work of Hursthouse, and particularly in her consideration of abortion. Regarding "Virtue Theory and Abortion" he writes, "what has gone missing in this article is the thought that if an action is unjust then it must

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<sup>24</sup> Of course many libertarians will object to these demands as well, but again common sense views them as uncontroversial. The grounds to objecting to them would again be a radical view of personal autonomy which is straightforwardly incompatible with *eudaimonia* (as Hursthouse herself argues). As I noted above, Thomson's view is greatly weakened insofar as it seems to presuppose this untenable account of autonomy. Unfortunately, exploring this issue is beyond the scope of our concern here; see Kass 1993.

be bad, *whatever* else, good or bad, can be said about it.” Concerning Hursthouse’s bracketing of fetal status as “in a way, fundamentally irrelevant” he avers that “[o]ne of these ‘dominating considerations’ is of course whether abortion is murder under the description: the killing of a child. If that can be dismissed as irrelevant, if only ‘in a way,’ this sort of virtue theory is surely bankrupt” (Ibid.).

I think Hursthouse’s approach can be legitimately criticized at this point. When she directs our attention away from asking the basic question about fetal status, she is also basically removing abortion from the realm of justice. What Coope is rightly pointing out is that there are some actions whose very names “automatically include baseness.” If abortion is the unjust killing of a human being, then it is one of those actions, and the only way to determine that is to fix just what kind of thing the zygote-embryo-fetus is. If the natural kinds analysis I’ve offered above is correct, then the zygote-embryo-fetus is an actual human being and is owed, as a matter of justice, a certain kind of care and concern. That does not necessarily mean the fetus’ interests always trump; there may be cases in which its interests can be legitimately sacrificed to save the life of the mother.<sup>25</sup> Nonetheless, it does have interests, and justice requires that we give them heed just as justice would require me (potentially a great inconvenience) to attend to an abandoned infant on my doorstep.<sup>26</sup>

It is also natural to observe that the traditional prohibition on abortion and, indeed, murder in general was not grounded in a direct connection to the virtues and *eudaimonia*, but

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<sup>25</sup> In this very difficult (and reasonably rare) cases, we would have recourse to a Double Effect analysis that would sometimes allow the fetus to be sacrificed to save the mother’s life (that is genuinely at risk), so long as the death of the fetus is not aimed at.

<sup>26</sup> It may be that Hursthouse herself has opened another line of reflection on these matters with her talk of the virtue of charity. Perhaps something like a strong prohibition against abortion as the (generally unjust) killing of an actual human being could be constructed out of Hursthouse’s virtue of charity. However, there are considerable difficulties here, not least of which is the specification of charity as a natural virtue. Obviously, such a prohibition against abortion could be constructed out of the understanding of charity as a supernatural infused virtue, but the complete absence of charity as a (natural) virtue in the tradition (both in Aristotle and the medievals) makes it far from obvious how this might be done. Obviously, this goes far beyond the scope of our present concern.



instead to the Natural Law. Of course, the virtue of justice was itself oriented to the Natural Law and the medieval tradition finds in human reason the necessary cognitive faculties to gain access to the Natural Law. It is precisely in the Natural Law that we can make sense of Aristotle's claim that the very names of some actions "automatically include baseness"; these are precisely the sorts of things that the Natural Law forbids. Thus, it is somewhat surprising that contemporary virtue ethics very seldom makes connections to the Natural Law tradition.

## Conclusion

In closing, we might observe that contemporary virtue ethics, for all the genuine insights it brings to the barren field of contemporary moral discourse, remains in an important way incomplete. In fact, we might observe that the hesitancy many of its practitioners have shown towards tying together a personal account of moral goodness to a political conception of virtue grounded in a substantive metaphysical analysis of the nature of the human person manifests something like a lack of intellectual courage. In Aristotle and the tradition that not only took up his ethical thought but substantively developed and refined it, there is a comprehensive philosophical project that embraces not only a certain account of practical reason, but how practical reason is grounded in human nature and, ultimately, man's place within the cosmos. In a way, contemporary virtue ethics tries to skim the practical reason cream off the top, without fully buying into the metaphysical and anthropological grounds that sustain the entire project. As such, while philosophers like Hursthouse can offer us genuine moral insights, they will also sometimes be blinded to certain truths that can only be fully sustained in light of the properly accompanying anthropological, political, and metaphysical commitments.

I fear that with abortion issue, Hursthouse has fallen into this trap. Abortion is, in my view, unambiguously the killing of an innocent human being. There may, occasionally, be times when the death of the fetus is justified in defense of other innocent human lives. But it is never permissible to be directly aimed at, and it is certainly not justified by many of the sorts of reasons that Hursthouse gives, any more than infanticide would be. By attempting to bracket the issue of moral status (while seeming implicitly to assume a false view) Hursthouse has allowed herself to justify what “can never be correct, but must invariably be in error.” Let us appreciate her work for the real insights that it can offer us, but in her own spirit let us take abortion truly seriously, recognize it for what it truly is, and not shrink away from both the demands metaphysics and justice.<sup>27</sup>

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