

The Prenatal Person

Ethics from Conception to Birth

Norman M. Ford SDB

Director

Caroline Chisholm Centre for Health Ethics

East Melbourne

Australia

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First published 2002 by Blackwell Publishers Ltd,
a Blackwell Publishing company.

Transferred to digital print 2006

Library of Congress Cataloging-in-Publication Data

Ford, Norman M.

The prenatal person: ethics from conception to birth / Norman M. Ford.
p. cm.

Includes bibliographical references and index.

ISBN 0-631-23491-8 (alk. paper) – ISBN 0-631-23492-6
(pbk. : alk. paper)

1. Human reproductive technology – Moral and ethical aspects.
2. Human reproductive technology – Religious aspects – Catholic Church.
I. Title.

RG133.5. F66 2002

176 – dc21

2002066415

A catalogue record for this title is available from the British Library.

Set in 10/12¹/₂ pt Sabon
by SNP Best-set Typesetter Ltd., Hong Kong
Printed and bound in Great Britain by
Marston Book Services Limited, Oxford

For further information on
Blackwell Publishers, visit our website:
www.blackwellpublishers.co.uk

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Preface

Why Did I Write This Book?

The human reproductive revolution, coupled with the recent therapeutic advances made from conception to birth, have raised new practical ethical questions to which health professionals and informed lay persons seek answers. This book offers some responses from an ethical perspective that is consistent with the Catholic Christian tradition. Secular ethicists may agree with some of the suggested answers but they will differ sharply on others. The underlying reasons for these differences need to be carefully explored for the benefit of Catholic and secular scholars and healthcare professionals. Philosophical reasoning will be very much part of this dialogue between the views of Christian and secular ethicists on the practical ethical issues raised. It is necessary that discussions on health ethics be held in the context of the relevant medical and scientific facts as well the basic religious and secular belief systems of the participants, be they health professionals, scientists, ethicists, or interested members of the community. It would be unrealistic to engage in debates on health ethics unaware of others' views if they are to be relevant in today's world.

The Bible has shaped Western culture over the centuries and has made significant ethical contributions to medical decision-making for the preservation of human life and restoration of health. The beliefs that Christians hold not only enlighten their understanding of the meaning of human existence but they also powerfully influence how many Christians live and behave. While the Bible provides a focal point of unity for Christians, disagreements exist on some difficult matters in the area of health ethics from conception to birth. My views derive from the

Catholic tradition but at times I make suggestions for developing and refining this living tradition. While Catholics and other Christians differ on ethical issues in areas like reproductive technology and the termination of pregnancy, there are many other areas where there is substantial agreement.

Secular thinkers may not accept the Bible as God's Word, but many admire the Bible's portrait of how a *good person* should behave and live. The Bible does not give answers to specific problems in healthcare ethics but, along with the Christian tradition, it provides a broad blueprint of what it means to be an authentic human person, in the light of which moral principles may be formulated. These may then be used as guidelines for the responses by health professionals as issues arise in clinical practice. I explain the underpinnings of ethical principles based on the Catholic Christian tradition for the consideration of health professionals and informed lay readers. The reasons for treating the human embryo as a person from conception onwards in practice are discussed in Part I of the book. Likewise the same applies to other moral values, such as the reasons given for the importance of autonomy and its ethical implications. These reasons will not be repeated in Part II of the book: they will be taken for granted. The reasons for other ethical views on many issues are also discussed. Readers in their turn will make their own ethical evaluation of positions presented. I believe these discussions and clarifications will be helpful for Christian and secular healthcare professionals who work side by side in delivering health services. It will also help them learn why their Catholic patients may hold certain practical ethical views, say, in relation to reproductive technology.

At the same time it is important to explain to Christians and other theists why it is that so many morally upright health professionals and philosophers hold ethical opinions that are quite different from typical Christian views. A metaphysical conceptual framework that only allows for material entities and a world without God profoundly alters one's concept of the human person and of ethics. A mutual understanding of the reasons underlying certain ethical views of Catholics and non-Catholics will likewise be beneficial for healthcare professionals and scientists. This avoids misleading, and possibly hurtful, stereotypes being applied to colleagues. For our mental health it is important to recall that not all ethical issues are equally important. It is also true that not all the reasons given to support the ethical positions of Christians or secular humanists carry the same weight.

Relevance of Scientific and Medical Facts

A proper discussion of the wide range of ethical issues from conception to birth could not proceed without sufficient understanding of the relevant scientific, medical, and clinical facts. This information is given to the extent that it is needed by nonclinicians for a proper ethical analysis and evaluation of the issues under consideration. The scientific and medical data given are generally relevant for the developed world whether they are taken from Europe, North America, or Australia. A health professional's ideology or ethical views should not distort scientific facts nor their proper relevance to clinical practice. This is necessary if the appropriate ethical principle is to be employed in each case. At times it is necessary to do one's utmost to preserve life, at another time it is morally permissible to withdraw treatment and simply provide comfort care. Christian and secular ethicists should agree on the scientific and medical facts of a case before making a judgment on the ethics of treatment procedures in medical practice. At other times ethical disputes boil down to differences in the interpretation of the relevant facts and their correct clinical implications for treatment options.

The use of slogans and uncritically formulated guidelines may be useful for the purposes of mass inculturation, but they are inadequate to serve as ethical guidelines for making right clinical decisions in complex cases. The documentation of sources given in endnotes enables additional information to be sought by readers and researchers. The relevant scientific and medical facts given need to be kept in mind as they are presupposed in the sections where ethical analysis and evaluations are considered.

For Whom Will This Book Be Useful?

One need not be an academic, professionally trained in philosophy, theology, the Bible, medicine, or physiology to understand, and benefit from, reading this book. All that is needed is an interest in ethical issues from conception to birth – issues discussed in the media for the benefit of interested lay people in the wider community. It will interest doctors, nurses, midwives, healthcare professionals generally, members of clinical ethics committees, medical and nursing students, health reporters, ethicists,

students, hospital chaplains, moral philosophers and theologians, and government advisers.

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Acknowledgments

I am indebted to many persons for their assistance in writing this book. I thank Catholic Theological College and Cabrini Hospital in Melbourne for the financial contribution made towards the visiting fellowship I was awarded at Clare Hall, Cambridge, UK, to research and write most of the first draft of this book from September 1993 to March 1994. I would like to thank Dr. David Allen, Rev. Bill Uren SJ, and Professor Peter Singer for their encouragement and valuable comments on an earlier draft of the entire book. I have very much appreciated the support and advice received from the following academics who read earlier drafts of at least one chapter of the book: Professor Francis Moloney SDB, Rev. Dr. Mark Coleridge, Professor John Hearn, Professor Alan Trounson, Professor Roger Short, Dr. Janet Gross-Hanning, Dr. Cormac Nagle OFM, Dr. Mackenzie Talbot, Lesley Freemann, Dr. Jane Halliday, Dr. Karen Dawson, Professor Bob MacMahon, Professor Tony d'Apice and Dr. Andrew Watkins.

I would like to thank Deirdre Fetherstonhaugh and Tracey Phelan, researchers of the Caroline Chisholm Centre for Health Ethics, for their many helpful suggestions made on several chapters. I also thank Margaret Casey, the Centre's administrative assistant, for diligently proofreading the entire text. Finally I would like to thank Laura Barry and Rebecca Harkin of Blackwell Publishers for their advice in finalizing the book for publication. In spite of all the assistance received, I assume responsibility for any errors and inelegancies that may have slipped into the text.

I am grateful to the Academic Press for permission to use modified parts of my article under the entry *Fetus* in chapters entitled "Human Embryo"

and “Fetus.” The article *Fetus* was published in *The Encyclopedia of Applied Ethics*, vol. 2 (San Diego: Academic Press, 1998).

I acknowledge that an earlier version of much of the chapter on “Prenatal Screening and Diagnosis” was read as a paper in a Conference on Genetics and Ethics organized by the Center for Health Care Ethics, St. Louis University, St. Louis, on October 30, 1999. This original paper has been included in the conference proceedings that will be published as follows: *Genetics and Ethics: An Interdisciplinary Study*, ed. Gerard Magill, St. Louis: Saint Louis University Press, 2002.

Part I

Foundations

Morality for Persons

One who wishes to understand more deeply their own ethical views ought to consider those of their major critics. By paying attention to criticisms of one's own ethical positions, one is forced to rethink the pre-suppositions and foundations of those ethical beliefs. For the purposes of this book there is no need to consider the ethical views of many philosophers individually. It suffices to focus attention on a prominent philosopher like Professor Peter Singer who has been conspicuous in contemporary bioethical debates. His outspoken views are representative of many others who do not articulate their thoughts as clearly as he does. His views are important and his claims warrant critical analysis. Some of his views shock, but Singer is an honest philosopher who is consistent with his fundamental assumptions, which differ in many important ways from my own and those of the Christian tradition.

Peter Singer has recently dismissed traditional ethics: "After ruling our thoughts and our decisions about life and death for nearly two thousand years, the traditional western ethic has collapsed."¹ He goes further and bluntly says "modern medical practice has become incompatible with belief in the equal value of all human life."² He says "the fact that a being is human, and alive, does not in itself tell us whether it is wrong to take that being's life."³ He adds:

Thousands of years of lip-service to the Christian ethic have not succeeded in suppressing entirely the earlier ethical attitude that newborn infants, especially if unwanted, are not yet full members of the moral community.⁴

He is convinced that the western ethic fails because the "traditional view that all human life is sacrosanct is simply not able to cope with the array of issues that we face" and because it assumes "that we are responsible

for what we intentionally do in a way that we are not responsible for what we deliberately fail to prevent.”⁵ He suggests secular utilitarian ethics can succeed.

In keeping with the scope of this book, I will first give a brief account of Singer’s *utilitarian* ethical theory and his concept of person, held also by other secular contemporary philosophers. I will then outline my own ethical theory, beginning with the traditional concept of the human person and how this influences my own ethical and bioethical views. All this will throw some light on whether there is any justification for the criticisms made against the traditional western ethic and whether it is possible for it to survive and continue to be applied consistently in the modern world of medicine by refining, without denying, its basic philosophical and ethical principles. At least the exercise will serve to pinpoint where the real differences lie between both approaches to ethical issues from conception to birth.

1.1 Utilitarianism

Singer says that people

who hold unconventional ethical beliefs are still living according to ethical standards *if they believe, for any reason, that it is right to do as they are doing.*⁶

I take this to mean it is enough for them to be prepared to justify what they are doing for their conduct to be ethical, in the sense opposed to non-ethical, rather than unethical. He requires, however, that justifying reasons for conduct must go beyond self-interest if it is to qualify as ethical conduct. This is because it is unanimously agreed by philosophers that ethical conduct must be acceptable from a universal point of view. Going beyond the self must be inbuilt into any ethical perspective. It encapsulates the insight of the equality of all persons. Singer is quick to point out this does not imply that a particular ethical judgment must be universally applicable because circumstances differ and these make a difference. Any ethical point of view must go beyond one’s likes and dislikes “to the universal law, the standpoint of the impartial spectator or ideal observer.”⁷

Singer admits a practical ethical theory cannot be deduced from the notion of universality from which, however, several bare and formal

ethical theories could be derived – and some of these could be inconsistent with each other. But if universality were to be loaded with a particular ethical theory, one could only deduce ethical views that were consistent with the theory one had already incorporated in the definition of universality. That aside, he believes the universality of ethics “does provide a persuasive, although not conclusive, reason for taking a broadly utilitarian position.”⁸

For the purposes of this book I need not go beyond Singer’s own brief account of his view of utilitarianism. It is a form of consequentialism according to which the morality of actions generally depends on their consequences. It is very persuasive and extremely influential in contemporary western culture and public life. It is hard to fault it as far as it goes. *Classical utilitarianism* broadly holds that whatever promotes the greatest utility or pleasure for the greatest number would be the morally right thing to do. Richard Hare succinctly sums up this position: “we should choose the action which maximises the welfare (i.e. maximally promotes the interests) of all *in sum*, or *in aggregate*.”⁹

Some hold that certain types of action are so harmful to the community that they could never be justified. This is *rule utilitarianism*. Others contend that a certain type of act might generally be harmful to the community, but in particular cases it might be better to make an exception, e.g. torturing members of a terrorist organization to obtain information to prevent an attack on innocent civilians. This is *act utilitarianism*. In any case, utilitarianism goes beyond selfish individualism. Singer says utilitarianism

requires me to weigh up all those interests and adopt the course of action most likely to maximise the interests of those affected. Thus at least at some level in my moral reasoning I must choose the course of action that has the best consequences, on balance, for all affected.¹⁰

He thinks this scarcely differs from classical utilitarianism if “pleasure” is interpreted broadly to include interests or desires and “pain” whatever is contrary to these. Yet Singer does not claim utilitarianism is the only ethical theory consistent with a typically universal ethical point of view. One based on justice or the sanctity of life would be universal but neither of these would be compatible with utilitarianism. He believes utilitarianism represents the minimum – the first step one must take to avoid being locked into a selfish and egoistic perspective.¹¹

Singer, rightly in my view, argues against the Kantian conception of ethics of doing one’s duty for duty’s sake by staunchly defending the legit-

imacy of self-interest in ethics. He does not mean one should daily think in terms of self-interest in deciding to do the ethically right thing. This would not be realistic.¹² At the same time he does not believe there is any factual evidence in human nature always linking ethics and self-interest. There may be cases where a connection can be traced between some character traits, self-actualization, and happiness, but this is far from universally true. He believes human nature is too diverse for this to be so and he illustrates his point by citing the example of a psychopath.¹³ He admits believers, who accept God and a divine purpose in creation, may find meaning in life. But, he equally contends, atheists may find a meaning in life in what evolution and natural selection have randomly provided, i.e. beings who do have preferences. Because of this “it may be possible for particular lives to be meaningful” even though life as a whole may have no meaning, certainly not a “preordained meaning.”¹⁴

Singer comments that most people who seek happiness for its own sake do not become happy, while others find it in pursuing other goals. Though this cannot be empirically verified, it does match our common experience of people who become happy and fulfilled by working for, and achieving, their chosen goals.¹⁵ He suggests living by the ethical point of view is one way of transcending narrow selfish interests. He holds those who do not go this far and simply live to further their own quality of life are neither irrational nor in error, but his own preferred view is clear. He implies that when we act ethically day by day, we further our long-term interests of a happy and meaningful life, even if we do not think of this at the time. For him happiness is the fruit of trying to achieve chosen goals – goals one will not tire of, including living an ethical life.¹⁶ Indeed, happiness is not found by those who daily seek it from within, but by those who live with an outward gaze for broader purposes than their own self-interests.

There is no denying that we often have to judge ethically along the lines of Singer’s version of utilitarianism. The consequences of our actions and how they impact on our own and others’ interests certainly have great ethical importance in decision-making. It would be generally unethical to give more weight to one person’s preferences of the same order than another’s, whether one acts in a private or public capacity. I dare say most ethical decisions in healthcare would be utilitarian in nature, and rightly so. Governments should follow utilitarian criteria to administer public services for the common good. Hence it would be unethical to locate a hospital where it would be electorally advantageous for government rather than where it would best serve the interest of all

concerned. However, whether utilitarianism alone suffices as an ethical theory for persons remains to be seen.

1.2 Contemporary Concept of Person

My main interest is in philosophers whose concept of the human person has been employed in bioethics. I'll start with Singer, who when explaining his utilitarian views, speaks of himself, or anybody else for that matter, as a person. He uses the term person "in the sense of a rational and self-conscious being" and thereby excludes members of the species *Homo sapiens* who lack these characteristics.¹⁷ His definition of person is crucial for interpreting his meaning of interests, understood broadly to include whatever people desire. Newborn babies have some interests, but because they cannot think or have desires, Singer holds they do not count as persons nor have the interests of persons: "Since no fetus is a person, no fetus has the same claim to life as a person."¹⁸ For public policy, Singer suggests that a newborn's full legal right to life in some cases could begin a week or a month after birth.¹⁹ He shares these views with other contemporary philosophers, especially his colleague Helga Kuhse. They were quite unambiguous when they wrote:

We must recall, however, that when we kill a new-born infant there is no *person* whose life has begun. When I think of myself as the person I now am, I realise that I did not come into existence until sometime after my birth.²⁰

Mary Anne Warren holds a similar view. For her the human fetus could not be a person because:

it seems safe to say that it is not fully conscious, in the way that an infant of a few months is, and that it cannot reason, or communicate messages of indefinitely many sorts, does not engage in self-motivated activity, and has no self-awareness.²¹

Michael Tooley requires a person to be a "subject of nonmomentary interests," though he admits a theoretical possibility of a person existing once a relevant capacity, e.g. for thought, is acquired and not only later when this capacity is exercised.²² Michael Lockwood does not believe that sentience suffices to count as a person:

A person is a being that is conscious, in the sense of having the capacity for conscious thought and experiences, but not only that: it must have the capacity for reflective consciousness and self-consciousness . . . Mere sentience is not enough to qualify a being as a person.²³

For these secular philosophers, babies could not be persons until they had acquired the capacity to exercise some minimal rationally self-conscious acts after birth. Singer thinks “some nonhuman animals are persons.”²⁴ He goes so far as to say

The evidence for personhood is at present most conclusive for the great apes, but whales, dolphins, elephants, monkeys, dogs, pigs and other animals may eventually also be shown to be aware of their own existence over time and capable of reasoning.²⁵

Consistent with his definition of a person, Singer concludes “the life of a new born baby is of less value to it than the life of a pig, a dog, or a chimpanzee is to the nonhuman animal.”²⁶ If some animals were to be deemed to be persons with a right to life, this would radically change our western ethic and human-centered culture which gives preference to humans over animals.

Lockwood introduces the concept of “human being” which comes between that of person and “human organism,” understood in the purely biological sense of a complete living organism of the species *Homo sapiens*.²⁷ He says:

we need a term for whatever it is that you and I are essentially, what we can neither become nor cease to be, without ceasing to exist. I use the term *human being* to fill this slot.²⁸

This implies a human being may become a person without ceasing to be a human being. For him a fetus, as a nonpersonal human being, could become a person. There is continuity of identity between a human being and a person, but not between a living biological organism of the human species and the human being and person. For Lockwood a week-old human embryo is an organism that is biologically human but not a human being nor a person.²⁹ A human being could not come into existence before the brain structures required for sustaining awareness of identity were developed. Their continuity in time constitutes the underpinning for the ongoing identity of the human being:

When I came into existence is a matter of how far back the relevant neurophysiological continuity can be traced. Presumably, then, my life began somewhere between conception and birth.³⁰

Walter Glannon holds a similar view:

A person begins to exist when the fetal stage of the organism develops the structure and function of the brain necessary to generate and support consciousness and mental life. This is when the fetus becomes sentient, at around 23–24 weeks of gestation.³¹

This challenge to the traditional Christian view is not new. The English philosopher John Locke (d. 1704) considered that to be a person one must be able to exercise rational acts:

We must consider what *person* stands for: – which I think is a thinking intelligent being, that has reason and reflection, and can consider itself as itself, the same thinking thing, in different times and places.³²

What is new, is the wider diffusion of this concept of person in secular academic circles and how it is used to undermine respect for the lives of human individuals who do not qualify as persons by this restricted definition of person. Singer's conclusions may be consistent with his premises and be acceptable in many quarters, but that does not put them beyond challenge. The claim that a newborn baby is not a person clashes with the broadly accepted view of most people in the community and this may be a sign some of his assumptions are faulty. The problem hinges on the concept of person employed and which I will now address.

1.3 Traditional Concept of Person

Ethical theories presuppose at least an implicit philosophical concept of the human person which underpins them and of which they are an expression. An ethical theory has sense only for persons. A long tradition dating back to Boethius (d. 524) broadly defined a person philosophically, not legally, as “an individual substance in a rational nature” which may be simply put as *a living individual with a rational human nature*.³³ In an ontological sense the person exists as the subject of human existence even if they exist in virtue of their human nature which is also