PRENATAL HARM AND PREEMPTIVE ABORTION IN A TWO-TIERED MORALITY

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In Chapter 4 of *The Ethics of Killing*, 'Beginnings', Jeff McMahan provides an extraordinarily rich and illuminating account of the complex interplay of interests in abortion. My interest is in seeing whether his account can shed light on one of the more vexing problems about abortion in moral philosophy and public policy; one that divides proponents of a woman's right to choose. Most who support a woman's right to abort a foetus at a stage when McMahan would regard it as numerically identical to the child and adult it would likely become if not aborted, i.e., towards the end of the second trimester, believe that a woman has not merely the legal right, but the moral prerogative, to do so for almost any reason, and to change her mind about whether to do so up to that point for almost any reason. McMahan's account suggests some moral limits, ones that will rarely be breached in practice (p. 276). A woman who is truly in equipoise about whether to carry that late foetus should probably do so, since its time-relative interests in becoming a child and adult, however slight, are greater than nothing; thus McMahan might agree that it was morally wrong for a woman to resolve her indifference with a coin toss. She may also have interests in having an abortion so slight or trifling as to be outweighed morally by the foetus's interests in surviving, or a 'pro-abortion' balance of strong but conflicting interests so slight as to be outweighed. But these will be rare, if not fanciful, cases, and they would require a fine calculus of interests best left to the woman's own conscience.

I am more interested in a different class of cases—those in which a woman, fully intending to have a child, does unavoidable, reckless or deliberate injury to the foetus and alters, or equivocates about, her intention to carry it to term. On McMahan's account, as I understand it, the injury to the foetus, and the woman's role in causing it, may provide her with any number of reasons for changing her mind, from the additional expense to the profound guilt (whether warranted or not) of raising the impaired child she injured *in utero*. Since the foetus still has only a weak time-relative interest in surviving—surely no stronger for the injury it received—these new reasons may well tip the balance, giving the mother a greater time-relative interest in aborting than the foetus has in surviving, and making her change of intention and her decision to abort morally acceptable. But this may not be a fully adequate account, because it seems to let the woman off the hook too easily in cases where her injury to a foetus she intended to bear was reckless or deliberate. Many of us have a stubborn conviction that, if doctors should not be able to bury their mistakes, pregnant women and their partners should not be able to abort their reckless or gratuitous prenatal torts with moral impunity.

In the remainder of this essay, I will examine difficulties in the moral appraisal of such maternal-foetal injury cases. I will suggest that McMahan's 'two-tiered' account of the morality of killing (p. 276) offers a valuable framework for addressing these difficulties but does not provide a satisfactory resolution for them. It is not clear to me, however, whether this is any reproach to his analysis, or whether it merely suggests the need for further pluralism and complexity in moral evaluation—a suggestion McMahan should find congenial.

I

First, however, it will be useful to give a brief account of why McMahan finds "standard" abortion, abortion, for example, following an accidental pregnancy, to be morally unproblematic, and what he finds morally problematic about the prenatal infliction of injuries suffered post-natally. In his account of the former (pp. 276–278), McMahan tracks the approach introduced by Don Marquis, though with greater depth and an opposing conclusion: he asks what the evil is in dying as a grown child or adult, then asks if that evil is present in standard cases of abortion. For Marquis, the evil in both cases is the loss of a future, a generally longer future in the case of abortion. McMahan qualifies this in a critical way—the evil of death does lie, at least in part, in the loss of a future, but to be a morally significant loss, that future must belong to the deceased in a stronger sense than its merely being the future of a single numerical object (and even that, for McMahan, would only be the case in later abortions, as the foetus only becomes numerically identical with the child when it develops the neurological structure to support consciousness (pp. 267–269)); it must be a future to which it is attached in specific ways: by desire, expectation, intention, planning, etc. "[Death] is bad primarily because it involves the loss of future goods to which one would have been related in the right way (that is, by the relations that are the basis of rational egoistic concern)" (p. 292). Even a late, or 'developed', foetus has only the most rudimentary attachment to its own future. In McMahan's terms, its "time-relevant" interests in survival are very weak, far weaker than an older child's or adult's, and, although growing stronger as it develops, generally far weaker than the interests a woman has in avoiding the burdens of an unwanted pregnancy and maternal project.

If the foetus suffers only a slight loss in being aborted, why should the 'lesser' injuries that can be inflicted on it without killing it be regarded as, at least potentially (so to speak), more serious morally? The reason McMahan gives is that it will suffer those injuries if and when it becomes a being with a far stronger connection with its future than the late foetus has (pp. 282–283). A generation ago, Joel Feinberg introduced the example of an individual who puts a bomb in the closet of a new elementary school, set to go off in 30 years.[1]

1. Feinberg, 'Wrongful Life and The Counterfactual Element In Harming', *Social Philosophy and Policy*, 4 (1982), pp. 145–178.

Clearly, the children injured or killed by the explosion would have a serious grievance against the bomber, even though he acted at a time when they did not even exist. But if the notion of causing future harm is not puzzling, the possibility of pre-empting it by abortion certainly is. We usually think of death as a worse harm, and killing as a greater wrong, than almost any injury, but things seem to get reversed prenatally. To adapt an old saying, an injury that doesn't kill the foetus only makes the injurer more culpable.

Among the differences between Feinberg's school bomber and the pregnant woman who injures her foetus is this: the former lacks, or can be stipulated to lack, any means of controlling who will be injured once he sets up the bomb, while the latter retains, at least for a brief while, just such control. The pregnant woman who injures her foetus can then abort it, making it the case that no child or adult is the victim of the injury. While the school bomber may end up injuring no one, because of shifting class schedules or changing demographics, he cannot, so to speak, empty the room in the direct way the pregnant woman can. Indeed, the pregnant woman can injure the foetus so severely as to assure that there is no child or adult to bear the injury, and in so doing, pre-empt the frustration of any strong time-relevant interests that might in the future have been thwarted by the injury.

This presents a special difficulty for an account like McMahan's, that imposes a different standard of moral appraisal for killing or injuring a being that passes a threshold of self-awareness and cognitive development. The death or injury of a developed foetus is to be judged only by the frustration of its present time-relevant interests, which will almost always be slight, while the death or injury of an older child or adult is judged by the much more stringent morality of respect, which places more emphasis on the rights of the injured party than its interests. But by aborting, a woman in effect decides which morality will govern the appraisal of her actions towards the developed foetus. If she opts for abortion, her actions will be appraised by a morality of time-relevant interests, which will generally be quite permissive, given that her interests are likely to be much stronger than those of her foetus. If, however, she opts to bear and raise the child, her actions will be appraised by the morality of respect.

If the woman has done anything that may cause harm to the developed foetus when it becomes a child or adult, the morally safer course of action appears to be abortion. Even though that abortion is constrained by the morality of time-relevant interests, and even if her own time-relevant interest in avoiding guilt and reproach cannot be weighed in the balance, she will commit at most a minor wrong in aborting, no greater than that of unjustifiably killing any being who has only the weak time-relevant interests in survival of a developed foetus, for example a mouse. On the other hand, if she does not abort, she will be accountable for any harm her previous actions end up doing to her child under the far stricter morality of respect. Yet, as I will suggest, if she opts for the safer haven, the more lenient jurisdiction, she may well appear to act in a more cowardly or contemptible way than if she chooses the jurisdiction where she will be judged more harshly. There is a further, perhaps related, complication in appraising her course of action:

her intentions towards the foetus at the earlier time of injury seem to play a critical role in our moral appraisal.

II

Consider three women, each late in their second trimester with a thus-far healthy foetus. The first loves contact sports, and continues to participate despite her intention to bear the foetus and her knowledge that those sports place it at grave risk of impairment. (I have deliberately avoided the more familiar case of maternal alcohol abuse, because the strength of the addiction may be powerfully mitigating, far more than the desire not to interrupt a favourite activity.) She smashes into an opponent in a particularly rough game, severely injuring her foetus. The second woman has decided she no longer wants to carry the foetus to term, say because her partner has just abandoned her. She quickly arranges an abortion and, from a mix of relief and regret, gets drunk the night before, knowing that is likely to cause severe injury to the foetus. The third woman is like the second, except that she agrees to have her doctor inflict the injury in order to facilitate the abortion. Virtually all of us who support a woman's right to choose would be untroubled by the woman's role in injuring the foetus in the second two cases, where it is, respectively, incidental and instrumental to a decision to abort that has already been made.

The case of the first, reckless women is more difficult. We may not think her wrong for choosing an abortion, and we would certainly not condemn her reckless injury of her foetus as severely as we would condemn her for an equally reckless injury of her four-year-old child. But many of us would feel that she faced a moral dilemma. It is clearly in the time-relevant (and life-) interests of the injured foetus that she hold firm to her intention to bear it, despite the injury it has received. Its life will still be well worth living, far better than its truncated existence *in utero* if she opts for abortion. And yet, if she holds firm to her intention, she will make it the case that she has severely injured her own child, for no better reason than that she wouldn't take a 9- or 10-month break from contact sports.

There are two ways of denying that the reckless woman faces a dilemma, though only one appears open to McMahan. We might argue that she will have done no wrong to the child in inflicting prenatal injury, because, given the large sacrifice she was already making in carrying him to term, she had no additional obligation to make even the small sacrifice involved in giving up contact sports to protect him from injury.[2] McMahan rejects the claim that the woman has no such obligation even if the foetus has the moral status of a person (pp. 362–398). Although he does not address the weaker claim that she has such no such obligation if the foetus does not yet have that status, his reasons for rejecting the stronger claim would probably apply to the weaker

2. Frances Kamm considers such arguments in *Creation and Abortion: A Study in Moral and Legal Philosophy* (Oxford University Press, 1992), pp. 199–203.

as well. Nor would McMahan claim that the woman, before or after the injury, could strike a 'Kavkaesque' bargain with the future child—birth in return for absolution.[3] Such a bargain, given the parties' respective positions, would be exploitative and disrespectful.

On the other hand, McMahan might find nothing morally problematic about aborting the injured foetus. After all, on his view, which I accept, the developed foetus still has only a weak time-relative interest in its survival. Moreover, it is not yet, on his view, the sort of being to whom she could have made a morally-binding commitment to gestate, however firm her intention to bear it had been. For the same reason, she has no obligation to that foetus, as opposed to the child it may become, to act with the care and self-restraint needed to preserve its health. McMahan might find my characterisation of the woman's previous actions as reckless to be tendentious, since she owes little or no duty of care to the foetus. Yet she was surely reckless in some sense, relative to her then-firm plan to bear the foetus. Further, McMahan recognises that it would be better for the injured foetus if the woman bore it, even if she would not act wrongfully or contemptibly in failing to do so. I concede that that further claim that she would act badly by aborting is largely intuitive, but I believe the intuitions that support it are strong ones.

This case, then, seems to fracture our moral appraisal: if the woman does what is better for the foetus, she will have done something wrong; and worse than what she would do if she did what was worse for the foetus and aborted. We can bar any makeweights on the side of bearing the foetus by eliminating any 'expectant' spouse, partner, or parents. (We can also assume that the woman is wealthy, and can easily cover any extra medical, rehabilitative, or educational costs associated with the injury.) How can she be condemned for doing what is better for one entity, and worse for no one but herself? Surely, it is not wrong for her to sacrifice her own interests in avoiding guilt, disapproval, and expense for the sake of the foetus. But if she makes that choice, then she will make it the case that her previous actions injured, and wronged, a being governed by the morality of respect.

III

We might attempt to argue by partial analogy that the woman cannot commit a lesser wrong now to make it the case that she will not have committed a greater wrong by her previous actions. For many deontologists, an action A may be permitted as the lesser evil to B when the two are concurrent options, but not be permitted to prevent B once B has been chosen, or set in motion. If you have a choice between throwing five strangers into the lion's den to be devoured, or one other stranger, you should throw in the one as the lesser evil. But if you have *already* thrown the five in, you should not *now* throw the one

3. This is roughly analogous to the bargain Gregory Kavka rejects in non-identity cases, which would confer moral immunity on parents who produced children with restricted but worthwhile lives for their own profit; see 'The Paradox Of Future Individuals', *Philosophy and Public Affairs*, 9 (1982), pp. 93–111.

in to be devoured, even if that is the only way to keep the five from being devoured. You should not prevent the greater evil you chose then by now committing a lesser one, even if you could have chosen the lesser evil when it was a concurrent option.

Similarly, it might be argued, even if it would be acceptable, as the lesser evil, for the woman to abort rather than to injure, it would not be acceptable for her to choose the greater evil, the injury, then to prevent its occurrence by aborting. But the situations are not analogous, even if we assume that abortion would be the lesser evil, despite the foetus's interest in survival. In contrast to the one person hurled to the lions to save five others who are already endangered, the foetus, or so we've been assuming, lacks a right not be killed, even if it has a morally cognisable interest in surviving. If the woman can't avoid the arguably greater evil of injuring the child by killing the foetus, it is only because of her responsibility for causing the injury and her motivation to absolve herself of that responsibility.

But why should her responsibility or motivation constrain her? There may be a slight temptation to say that the woman, by her reckless conduct, forfeits the prerogative to change her mind that she would still have if she acquired reasonable or unreasonable second thoughts about the prospect of becoming a mother. Such forfeiture, however, seems ad hoc, or mysterious. Why should the still morally-negligible injury of the foetus limit her options, unless her intention to bear the foetus somehow conferred a moral status it would not otherwise have, even against her, and a status that it would lose if she changed her intentions for other reasons?

Given the foetus's lack of moral status or right to gestation, why should its abortion in these circumstances be any worse than its abortion in circumstances where there's no wrong to be averted, but the foetus has slightly stronger interests in surviving than the woman has in aborting—if, for example, a woman previously intending to carry the foetus wakes up one mid-term morning and decides that a baby would just put too much of a crimp in her travel plans? Although we might regard the woman in the latter case as acting selfishly, we would not feel that she was getting away with a serious moral offence. Maybe we should not think that of the woman who has recklessly injured her foetus, either.

IV

Perhaps it is misleading to focus on the reckless woman's decision to abort. That decision may not be blameworthy or contemptible; rather, it may merely be ineffective in undoing the wrong of her previous actions. In recklessly injuring the foetus, the woman was guilty of a reckless 'attempt' to harm her future child—had things gone as she had reason to expect at the time the foetus was injured, she would have 'succeeded' in causing severe injury to the child she intended to bear. This should be treated, morally, like an attempt, whether it 'fails' because the woman gets an abortion, or because, more happily, a new form of foetal surgery is developed that fixes the injury *in utero*.

The claim is not that the abortion is wrong, or seriously wrong, but rather that, like the (commendable) surgery, it simply cannot purge the taint of the earlier recklessness—the woman remains guilty of a reckless attempt at maiming. Still, by ensuring the absence of a victim with high moral status, she does appear to mitigate her offence—the near maiming or attempted maiming of a person is generally regarded as less wrongful than his actual maiming.

Yet the claim that the mother can mitigate her offence of maiming by aborting the foetus coexists with a widely, if not universally, shared intuition that she does something praiseworthy in deciding to have the baby that she has, or will have, wrongfully injured, even if she could abort and start over. This intuition would not be shared by a utilitarian, who would urge her to start over if she would end up with the same number of children in either case: apart from any guilt or responsibility, the world would be a better place for the replacement of an impaired child for a healthy one. But for non-utilitarians, there may be considerable appeal in the claim that even if the mother is permitted to abort the foetus, perhaps reducing but not eliminating the wrong of her previous reckless injury, it is better or more commendable if she decides to bear the unmitigated guilt and have the child.

The claim is not that by satisfying the foetus's time-relevant interests in survival, the woman gains absolution for the injury that made the abortion an appealing option. She cannot. It is rather that the very fact that she cannot absolve herself makes her willingness to bear the child, and her guilt, a praiseworthy sacrifice. It is in the foetus's interests to be born, and it is admirable if she acts out of an attachment to that foetus despite the moral and psychological consequences for her. The intuition may be even stronger: that if she instead aborts, she is subordinating her love of the foetus to the mitigation of her guilt, and doing something contemptible, if not wrong. But how can it be contemptible, and still mitigate her culpability for the initial injury?

A similar complication emerges if we compare the woman who recklessly injures her foetus with one who does so blamelessly: for example, where an equally severe injury is caused by the woman's consumption of a food not even suspected of being harmful to foetuses. If we compare the decision to abort made by these two women, it does seem that the reckless injurer has time-relevant interests in abortion at least as strong as the blameless injurer; stronger if her interest in avoiding guilt and reproach are taken into account. Since the foetus's time-relevant interests are the same in the two cases, the abortion by the reckless injurer would seem at least as easy to justify. Yet that decision seems more problematic, cowardly or contemptible than the decision of the reckless woman, even if we regard it as unwise or wrong. We appear to have different standards of moral appraisal at work.

V

In assessing these cases, McMahan might find the language of reckless attempts strained, and argue that the woman who recklessly injures a foetus she intends to bear has merely revealed a flawed character, deficient in concern

for a being whose mother she intends to become (or already is). We can even imagine that this character flaw is offset by a strong sense of duty; that if her children were born, and acquired a strong attachment to their futures, she would give their interests all the weight they warranted. On this view, a woman who decides she cannot abort the foetus she has recklessly injured because she wants it to have the good life it can still enjoy displays a better character than she would if she remained unmoved by the foetus's future and acted only to reduce her responsibility and guilt. Yet she would be guilty of a moral wrong in the former case she would avoid in the latter; her better character would be revealed in her very willingness to incur that wrong. This moral appraisal, it might be argued, will seem contradictory or incoherent only to those 'monists' who insist that there can be only one basis for moral appraisal. Pluralists should embrace the complexity.

This pluralism might also aid in the analysis of the 'non-identity' problem, which has some affinity to the problem of prenatal injury. In Derek Parfit's case of a woman unwilling to postpone conceiving for a month so as to avoid a condition that causes foetal injury,[4] we can say that her refusal to wait, in the absence of any reason not to, displays a deficient regard for the well-being of her child, although 'her child' would be a different being if she waited. She wrongs no one in refusing to wait, but she displays a flawed character; if she waited, she would not avoid wronging anyone, but she would display a better character. If a woman can display a better character in making identity-affecting choices that harm no one, perhaps she can display a better character in making identity-preserving choices that result in harm being suffered by a being with full moral standing.

But someone convinced that the reckless woman faced a real moral dilemma might doubt the adequacy of this characterisation (so to speak) of her choices. He might feel that her reckless injury of the foetus was more than a display of flawed character; that calling it an attempt identifies, however imprecisely, a discrete wrong, and, in contrast to the non-identity cases, a wrong with an identifiable victim. The existence of such a wrong can be seen by contrasting the case of reckless injury I have been describing with one in which the woman, fully intending to engage in the contact sport that will place the foetus at grave risk of injury, suffers a miscarriage en route to the playing field. If we assume that her resolve to play was no less before the miscarriage, and would not have waned had it not occurred, then her character seems no less flawed. But she has not in fact injured a foetus she intends to bear, and she seems to have avoided the wrong she would have committed if she had injured the foetus, then aborted, as well as the arguably greater wrong she would have committed had she injured and given birth to the foetus. (In the idiom of the criminal law, she would be less culpable for

4. Parfit, *Reasons and Persons*, (Clarendon Press, 1984). I've argued elsewhere that if she has some reason, however weak, to want the child who would come into being if she conceived now rather than later, she exempts herself from any reproach if either child would have a life worth living; see Wasserman, 'Personal Identity and the Moral Appraisal of Prenatal Genetic Therapy,' in Lisa Parker and Rachel Ankeny (eds.), *Mutating Concepts, Evolving Disciplines: Genetics, Medicine, and Society* (Kluwer, 2002).

mere preparation than for the complete, if ultimately 'unsuccessful', reckless attempt to injure the foetus.)

VI

In considering the cases I've been discussing, it may be useful to contrast McMahan's account, which treats the moral status of the foetus as fixed by its present neurological and cognitive development, with a recent account of prenatal harm developed by Elizabeth Harman, on which the moral status of the foetus depends on its contingent future—on whether it in fact survives to become a person.[5] Harman's account has the unsettling implication that not only the mother, but any third party with the means to induce an abortion, can determine at t_2 whether the foetus was a morally significant being at t_1.

For the reckless mother, this implies not only that she bears no fault for aborting the foetus she has recklessly injured, but that as long as she can be confident of a successful abortion, she need not fret much over her decision. Harman discusses only early foetuses, who currently lack any status-conferring features; she might well permit some fretting about the decision to abort the developed foetuses that McMahan considers. But whatever status their development confers, it is negligible compared to the status Harman claims they acquire retroactively by surviving. Unless they will survive, they have no greater moral status than a mouse, and a woman can abort them with no more consideration than she would require to set a mousetrap. McMahan's view, which requires only a balancing of the woman's and foetus's time-relevant interests, is broadly consistent with Harman's in this respect, but different in moral tenor. McMahan appears to regard that balancing as a morally serious exercise, even if the woman's interests will typically outweigh the foetus's by a wide margin.

In cases where the injured foetus survives long enough, then, the implications of Harman's account overlap with McMahan's, which places the injured being under the morality of respect if he becomes a person. On both Harman's and McMahan's accounts, the child has a grievance against the woman who recklessly injured him; the difference is that for Harman, the grievance arose at the time of injury. In deciding to bear the child, the woman makes it the case that she has already gravely wronged the foetus, which will enjoy retrospectively-conferred moral status as a result of her decision. In bearing the child, she makes herself guilty of a culpable assault on the foetus. She would be guilty of that wrong even if some breakthrough in prenatal surgery averted any harm to the child. This would not be so on McMahan's account: although the physical injury occurred when the child was a still a foetus, that injury did not become morally significant until he acquired, well after birth, a strong connection to a future that was limited by his injury. In the case of a prenatal cure, no one would have a serious grievance: the foetus would lack the moral status to complain, despite his later birth, while the

5. Harman, 'Creation Ethics: the Moral Status of Early Foetuses and the Ethics of Abortion, *Philosophy and Public Affairs*, 28 (2000), pp. 310–324.

uninjured child could only complain about a reckless injury inflicted on him at a time when he lacked any right against it.

I think that the central difference between the two accounts, suggested in the last paragraph, can be made even clearer by considering the imposition of a *risk* of injury on a foetus no one has plans to gestate, a risk which does not result in actual injury. McMahan, I believe, would find nothing for the child to complain about in a risk to which he had been harmlessly subject as a developed foetus, while Harman, in contrast, would recognise a serious grievance. As an example will suggest, Harman's position seems implausible.

Thus, imagine a doctor doing extremely valuable research with frozen embryos. The research involves a slight risk of physical injury to the foetus, and no physical benefit. He uses embryos A and B, which, as it turns out, are neither injured nor benefited. He puts them in the 'out' bin when he is done, having no idea if either or both will be discarded or gestated: the protocol is to discard all research-embryos with any evidence of physical injury and re-freeze the rest for possible implantation, discarding all those not implanted within ten years. In fact, A is gestated, while B is eventually discarded.

Whatever one thinks of the ethics of such an embryo researcher, the question for Harman is whether the researcher has done anything worse to A than B. If A had been injured, then he would, however unintentionally, have injured the actual future person whom A becomes. But he has not injured A, who has no psychological or physical scars from his days as an embryo-subject (assuming, as Harman does and I will, that 'he' is the same being). But if A, having become a person, had the moral status of a person when the research was done, he was wronged by being subject to risk without possibility of benefit. B, who lacked such moral status when the research was done, was not wronged. This seems absurd—the researcher who subjected A and B to risk that turned out to produce no lasting harm, having no idea of either's prospects for being gestated, acted no more wrongly towards one than the other, in contrast to the case where he in fact injured the one who survived. This strongly suggests that A and B, despite their different fates, do not have different moral status as embryos at the time of the research.

Harman's account does not fare as badly with prenatally-inflicted injury to which the child fully adapts, a source of considerable worry for McMahan (pp. 294–302). Assume that the injury caused by the contact sport engaged in by the reckless woman is the loss of an arm. The woman, aware of the injury from sonograms, gets early intervention for her child that leaves him extraordinarily adept at operating with one arm. The child is raised with many one-armed peers, experiences only the occasional teasing and rejection that most children experience at one time or another, and—to put the icing on the cake—is recognised as a musical prodigy for his precocious facility with one-armed piano pieces. While he is aware that with two arms, he might have been an even greater prodigy, with a far greater repertoire, he is also aware that the he is now a very big fish in a much smaller pond, and he enjoys every minute of celebrity and acclaim.

On Harman's view, he still has a strong complaint against his mother—despite the happy outcome, she treated him with disrespect when she recklessly

injured him, since he was at that time in fact a being with high moral status. Her good luck, and his, that the injury proved so beneficial (if not harmless, in the sense of that term Harman adopts), do not negate the disrespect, and the wrong, even if the mother's post-natal efforts on behalf of the child mitigate or compensate for it—those efforts have a restitutionary character that presupposes wrongdoing. McMahan might deny that the woman did anything wrong at the time she injured the foetus, and argue that her post-natal efforts are wrong-avoiding, rather than mitigating or restitutionary. Or he could find some wrong in the reckless act, even if it did not succeed in limiting the existence of the future child. The child, despite his flourishing, might complain to the mother: 'You could have made my life miserable by your reckless actions, and while your effort and luck prevented that from happening, it doesn't absolve you completely.' I am unsure whether Harman's or McMahan's account has the more plausible implications in this case.

VII

I have been following McMahan in assuming that even a developed foetus does not have the moral status of a person by virtue of its identity (with the future child and adult), its humanity or its potentiality. For those who reject that assumption, and regard the foetus as a person, or as having the moral status of a person, foetal injury is an even more serious problem, and its mitigation by abortion even more problematic. McMahan argues, against Judith Thomson,[6] Frances Kamm,[7] and others, that once that assumption is granted, it becomes difficult to defend the permissibility of abortion in cases where pregnancy, even if unintended, results from voluntary sex. For reasons similar to those McMahan adduces, it would also be a serious wrong on that assumption to injure one's foetus if one could avoid doing so without extreme hardship. And it would compound, rather than mitigate, that wrong to abort the foetus one injured. McMahan concludes that his own arguments against that assumption about the moral status of the developed foetus can be combined with weaker arguments about the lack of an obligation to make great sacrifices for foetal welfare to be "wholly decisive" in establishing the moral permissibility of late as well as early abortions.

I am inclined to agree; my modest caveat is that lowering the moral status of the foetus does not eliminate the perplexities of prenatal harm, or the moral dilemma of a woman deciding whether to abort a foetus she intended to bear but recklessly injured. It may be that I have exaggerated that dilemma, because I have not fully appreciated the implications of denying the foetus the moral status of a person. Perhaps a woman who carelessly injures the foetus she intends to bear shows disrespect only for her own, and her partner's, project, and would be well advised to limit the damage by aborting. But I have trouble convincing myself that she can cut her moral losses this way.

6. Thomson, 'A Defense of Abortion,' *Philosophy and Public Affairs*, 1 (1971), pp. 47–66.
7. Kamm, *Creation and Abortion*, p. 126.