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thesis entitled

A PRAGMATIC-FEMINIST, MEDICAL, SOCIO-PSYCHOLOGIC APPROACH TO SUBSTANCE ABUSE IN PREGNANT WOMEN

presented by

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has been accepted towards fulfillment
of the requirements for

M.A. degree in Interdisciplinary Programs in Health and Humanities

Major professor

Date August 21, 1996

A PRAGMATIC-FEMINIST, MEDICAL, SOCIO-PSYCHOLOGIC APPROACH TO SUBSTANCE ABUSE IN PREGNANT WOMEN

By

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A THESIS

Submitted to
Michigan State University
in partial fulfillment of the requirements of
for the degree of

MASTER OF ARTS

Interdisciplinary Programs in Health and Humanities

1996

ABSTRACT

A PRAGMATIC-FEMINIST, MEDICAL, SOCIO-PSYCHOLOGIC APPROACH TO SUBSTANCE ABUSE IN PREGNANT WOMEN

By

Shira Michelle Greenbaum

There is general agreement that once a woman has decided to carry her pregnancy to term, she is morally obligated to ensure that her child is born as healthy as possible. However, some women engage in activities which may compromise the well-being of their fetuses (e.g. substance abuse). When a woman neglects her moral obligation, some argue that society should protect the fetus. Approaches to the problem of substance abuse and pregnancy include attempts to criminalize maternal behaviors. I will demonstrate how four distinct perspectives, that is, feminism, pragmatism, medicine, and sociology/psychology together can enable one to more adequately address these problems. I contend that the most fruitful alternative course of action to take in dealing with these problems is to probe more deeply into the evolution of these problems and to use the knowledge gained to seek out creative, effective and morally sound ways to prevent these problems from arising in the first place.

To Mom and Dad, Alex and Ilana,
For all your loving support and encouragement.
I love you all dearly.

Acknowledgments

This thesis is a product composed, in part, by the contributions and encouragement provided by numerous important people over an extended period of time. I will express my appreciation to a selected few in the passages which follow.

I am grateful to Dr. Martin Benjamin who served as my thesis director and my mentor in the field of philosophy and medical ethics for the past four years. Dr. Benjamin's willingness to share his expertise in philosophical ethics through his gentle teachings and patience in all of our interactions is greatly appreciated.

I am also grateful to Dr. Howard Teitelbaum who served as one of the committee members for my thesis. His expertise in medicine, philosophy, substance abuse treatment programs, teaching, and computer skills made him a tremendous asset to my committee. His dedication to helping me achieve my goals is greatly appreciated. I am thankful for all the time Dr. Teitelbaum has allotted to advising and counseling me throughout the past few years.

I'd like to express my thanks to Dr. Judy Andre who also served on my committee. Her expertise in the field of feminist philosophy and her willingness to aid me in my

thesis are greatly appreciated.

I would also like to acknowledge Dr. Bruce Miller who served as one of my thesis committee members. Dr. Miller's advice, comments, and criticisms encouraged me to strengthen my arguments and improve my thesis.

Finally, I would like to acknowledge my mother who edited my thesis. The time and effort she put into this project will always be remembered.

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INTRODUCTION

Problem Statement

After identifying the ethical and medical problems generated by substance-abusing pregnant women, I will show that conventional approaches to these problems are inadequate. More promising, I will argue, is an approach that blends insights of philosophical pragmatism and feminist ethics together with medical and socio-psychologic understandings. In what follows, I will expand on this.

Organization of the Thesis

My thesis is organized into five sections. In the first section, I present a brief survey of "the problem," that is, substance abuse in pregnant women. In addition, I provide an analysis of the ethical/moral and legal issues surrounding cases of substance abuse in pregnant women (specifically, those women who have decided to carry the pregnancy to term).

The second section consists of an analysis and critique of the traditional approaches to ethics. In this section, I examine two standard philosophical approaches to normative ethical theory: utilitarianism and Kantianism. These philosophical methods of inquiry and problem-solving with

respect to moral dilemmas are, in this context, insufficient. They are not capable of addressing all the relevant details of such a complex, uniquely human, and contemporary issue. While the utilitarian will have us performing lengthy calculations, in a misconceived effort to discover which alternative course of action will maximize happiness, the Kantian will lead us into a battle between the rights of the mother and those of the fetus. The legal system, guided by traditional theories of punishment, has failed miserably, in its attempts to deal with women who are currently abusing or have previously abused substances during their pregnancies.

The Kantian approach treats the pregnant woman and the fetus as two separate entities. Kantian ethics work effectively for contractual relationships between independent, self-sufficient individuals. But, that is not a true representation of the interdependent relationship which exists between a woman and the fetus within her body. Even their circulation is intertwined by the umbilical cord, through which the fetus receives all its metabolic and nutritional needs. The relationship between a pregnant woman and her fetus is not contractual, and certainly does not involve two self-sufficient, autonomously acting agents. Even if it can be shown that the fetus does have a unique set of "contingent rights," that are, "contingent on being born" (Feinberg, p. 350), the pregnant woman and her child

are not two separate individuals. To treat this intimate relationship otherwise, is an insult to all pregnant women. Both the utilitarian and the Kantian approaches are overly reductionistic and, at the end of their analyses, leave us searching for a more realistic and practical approach - one which is relevant to our actual experiences and applicable to our everyday lives. The ethics of utilitarian and Kantian philosophy do not suffice when it comes to dealing with the problem of pregnant substance abusers and questions of how to effectively deal with them in a morally acceptable manner.

In the third section, I discuss feminist ethics and its relevance to this issue. In this section, I argue that feminist ethics provides us with some tools with which to challenge the perceived male bias which pervades traditional ethical theories. Moreover, feminist ethics provides a richer understanding of the experience of women. Though feminist philosophers may disagree on the basic principles and goals of feminist ethics, they all share the assumptions that: (1) the subordination of women is morally wrong; and, (2) the moral experience of women deserves an equal amount of respect as that of men. Basically, feminist ethics maintains that women and women's experiences are worthy of and ought to be given serious consideration. I will be

borrowing some basic notions expressed in a vast amount of works in feminist ethics, and applying them to the issue of pregnant substance abusers.

In the fourth section, I discuss pragmatic ethics and its relevance to this issue. Pragmatist philosophy, I argue, will suggest that we are defining the problem simplistically. To speak of "the problem" is misleading, because it focuses the reader on one particular article of consideration, that is, "the problem," distracting her from the holistic nature of the problem. As I show in this section, pragmatism insists that we probe into the problem, as it is so defined, and ask important subsidiary questions concerning its nature and evolution.

Finally, in the last section, I argue that a combination of pragmatism and feminism, along with medical and socio-psychologic understandings, offers us a more fruitful alternative than traditional ethical theory with which to approach this issue. Although, there have been some contemporary efforts to integrate pragmatism and feminism in order to approach philosophical questions in the context of applied ethics, there has been little effort made to combine a pragmatic-feministic approach with a medical, psychological and social-scientific focus, and to use this approach to deal with the problem of substance abuse in pregnant women. I will demonstrate how four distinct perspectives, that is, pragmatism, feminism, medicine, and

sociology/psychology, together, can provide us with the valuable tools necessary to more adequately address this particular problem. An interdisciplinary approach will offer theoretical as well as practical modes of inquiry to examine more thoroughly the evolution, consequences, and moral questions inherent in this dilemma. In this section, I claim that the most fruitful alternative action to take in dealing with this issue, from a pragmatic-feminist, medical, socio-psychologic standpoint, is to probe more deeply into the history of the problem, and to use the knowledge gained to seek out new and more effective ways to reduce the number of women who abuse substances during pregnancy, so that these problems do not arise in the first place.

SECTION I. THE PROBLEM

Survey of "The Problem"

The majority of pregnant women attempt to protect their unborn children from unnecessary harm. Unfortunately, some pregnant women do engage in behaviors that compromise the well-being of their fetuses. The ingestion of harmful substances, such as alcohol, cocaine, and nicotine has been shown not only to harm the abuser herself, but also to place the unborn child at risk for developing neurological and/or developmental defects. Babies with Fetal Alcohol Syndrome may suffer growth retardation, microcephaly, facial abnormalities, and/or malformations of the extremities and organs. Smoking may lead to premature birth and/or low birth weight. Maternal cocaine use may lead to low birth weight, growth retardation, microcephaly, neonatal seizures, and addiction in the newborn. Studies suggest that Fetal Alcohol Syndrome occurs once in every 750 to 1000 births in the United States (Risemberg, p. 150). We do not know exactly how many babies are harmed by pre-natal exposure to drugs, only that at least eleven percent of babies born in the U.S. (375,000 annually) are exposed to drugs during fetal development (Baquet, p. B3).

Although substance abuse has been shown to cause damaging effects in some babies, the effects vary. This

variation in effect may be due to several different factors including the amount of substance ingested, the timing of intake with respect to the fetus' stage of development and the woman's metabolism. However, there is, at present, no concrete method which enables us to determine how much of a particular substance is necessary to cause damage. Only ten percent of the babies born to women who consumed moderate amounts of alcohol prior to and during their pregnancies were afflicted with fetal alcohol syndrome. In addition, it appears that only sixty to seventy percent of the babies born to "the heavy drinkers" were harmed (Fleischman and Macklin, p. 140). Some babies will suffer severe handicaps and others will suffer minor developmental setbacks. Still, others will experience no negative consequences whatsoever, while many will die before, during, or after birth. Also, it seems that the effects differ among women who have abused substances to the same extent, adding even more mystery to the way in which these substances react within each woman's body. For these reasons, it is recommended that physicians advise all their pregnant patients to abstain from any amount of alcohol consumption, illicit drug use, and cigarette smoking. This ensures that the baby's risks of preventable harm are decreased.

Not much about the timing of harm is certain, except for the fact that the first trimester is most critical. During this crucial developmental period, high levels of

alcohol may damage fetal cells and tissues. It is within this time frame that most substances are likely to have their most dramatic effects (Risemberg, p. 149 and Jamieson and Schabot, p. 103). Unfortunately, some women may not find out that they are pregnant or seek prenatal care until after the first trimester. For instance, women of color are more likely to enter prenatal care later than white women. Studies support that 10.7 percent of African American women do not even enter prenatal care until their last trimester as compared to 4.7 percent of Caucasian women (Livizzo-Mourey and Grisso, p. 52).

Of particular relevance to the issue of substance abuse in pregnant women is the topic of substance abuse in the entire population of women. Although I will be making comparisons between men and women, and women of different sub-groups, one must keep in mind that there are many more variations within each of these sub-populations than there are between the different sub-populations. Substance abuse in any individual is a multi-faceted phenomenon, and that which drives one woman to drink, may not drive another, even if both are exposed to the same situational factors (e.g. sexual abuse as a child). There is evidence to suggest that genes may even play a role in the development of alcoholism. Therefore, one must refrain from making generalizations about women, or certain groups of women, from the data I present. For instance, the current data supports that

differences in substance abuse behaviors do exist across subgroup populations of women, according to race and ethnicity, socio-demographic/socioeconomic factors. Some studies have concluded that women of color are more likely than Caucasian women to abstain from alcohol, but equal proportions of black and Caucasian women drink heavily. Hispanic and Jewish women have high rates of abstention as well, but alcoholism is still prevalent in these groups (Blume, Counts, and Tornbull, p. 142). It is interesting to note the influence of acculturation on the drug behaviors of women of different ethnicities. For example, Hispanic women that become more acculturated are more likely to smoke than their less adapted counterparts. Certainly, this does not reflect the behaviors of all women in each subgroup. However, statistics are sometimes helpful in illustrating existing consistencies (or inconsistencies), though one must use a critical eye when interpreting the data.

Motivating Forces on the Substance Abuser

Stress

There can be many factors which motivate a woman to drink heavily, and for most heavy drinkers it is most likely a combination of factors. Stress "stems from the perception that one's demands outweigh one's resources" (Weisensee, p. 25). When one's resources for dealing with stressful

situations are limited, one may choose substance abuse as an alternative coping mechanism, which, in reality, only helps to obscure the stressor temporarily and leads to an exacerbation of the stress in the future. Frequent stressors, which are not unique to women, include low self-esteem and sense of self-worth, depression, childhood sexual and/or physical abuse, unhappy marriage, dual roles, vulnerability to assault, home and/or economically-related problems, single parenting, loss of a loved one, and single parenting. I will discuss in more detail a few of the aforementioned stressors.

Low Self-esteem and Sense of Self-worth

Female substance abusers commonly have a low self-concept and sense of self-worth. Many factors contribute to this low self-esteem shared amongst women who abuse substances. One demonstrable factor, is childhood sexual abuse. In 1992, studies showed that "alcoholism [was] three times more common and other substance abuse about four and a half times more common" in those women who had been sexually assaulted as a child relative to the general population(Blume, Counts, and Tornbull, p. 144). Another factor contributing to low self-esteem in women is adult physical and emotional abuse. Studies suggest that women who experience emotional abuse are especially prone to feelings of self-doubt, helplessness, and powerlessness

(Aquilar and Nightingale, p. 44). Thus, battered women (including victims of emotional abuse) are at a relatively greater risk for alcohol and/or drug abuse. In fact, the research indicates that drug addicted pregnant women are likely to be in battering relationships as adults (Kilpatrick, 1990). Also, the realization that one cannot control one's drinking lowers one's self-confidence. Thus, we cannot be sure, in most circumstances, which factor acted as the stimulus for the existing condition. In other words, it is sometimes difficult to determine whether a woman's low self-esteem stimulated her drinking behaviors or whether the perception of not having the self-control to stop drinking decreased her self-esteem. Some studies have concluded that women with multiple roles (e.g. married and employed) have higher self-esteem, leading to the lower rates of alcoholism observed in this sub-population (Jamieson and Schabot, p. 102). This conclusion seems contrary to the results of other studies which have suggested that "dual roles" contribute to perceived stress and may stimulate drinking or drug use as a stress reliever (see sub-section on dual roles). Unequal treatment in the work place can cause a woman to feel insecure with her position of employment (e.g. fear of losing "recent employment gains" leads many women to a decision not to enter into a treatment program for a drug problem),(Tornbull, p. 141). A feeling of inequality or

inferiority lowers one's self-concept and may lead a woman to doubt her abilities. Women also tend to be more critical of themselves than men. These factors contribute to a woman's perception of herself and sometimes to a belief that she must prove herself to be a man's equal.

Depression

Depression is another crucial influential factor, even though in many cases it is unclear whether the depression began before or after the substance dependence/abuse developed. Research has shown that depression develops before alcoholism in two-thirds of women who display depression with alcohol abuse (Tornbull, p. 144). Depression is commonly linked to a low self-concept and sense of self-worth. It is also linked with stress, and physical, sexual, and/or emotional or mental abuse. It is difficult to determine which factor causes another, and most likely, they are all interrelated through some vicious cycle, which is only exacerbated even more so by substance abuse. In addition, much of the contemporary research in depression seems to support a primarily biochemical basis for its evolution within the human body. The broad use and effectiveness of drugs, in particular serotonin-uptake inhibitors (e.g. Prozac), provide evidence for a link between biochemical processes and depression symptomatology.

Marital Status

Marital status also seems to have an effect on the behavior of some women. Some studies show that unmarried, separated, divorced, or unemployed women are more likely to drink heavily and experience more adverse consequences than married women or widows. However, women married to alcoholics tend to display higher rates of drinking problems as opposed to women who are not intimately involved with an alcoholic or drug addict (Tornbull, p. 142).

Dual Roles

The Women's movement, which began in the late sixties and early seventies was a primary motivating force driving a social transition in which we began to see women fighting for greater independence, autonomy, self-realization, and control over their bodies and health care. With this movement, women began to seek out additional roles outside of the home. This movement continues today, and we can see women employed in fields that were closed off to them in our recent history. However, this movement is accompanied by the stress of coping with older role expectations. Even in the nineties, women are still expected to be the primary caretaker within the home. This may be the reason why studies report that women perceive dual roles (e.g. parent-employee) as more stressful than men. One must not conclude from this data, that women with dual roles, are

more likely to drink than those without dual roles. In fact, the literature seems to prove the opposite to be true (Jamieson and Schabot, p. 102). Depending on the relationship between one's dual roles and the amount of satisfaction one perceives (due to roles in the context of one's life), dual roles contribute to the amount of stress perceived and level of mental health. In addition, more women than men are single parents with primary responsibility for the children. The stress of the single mother is usually a result of feelings of anger, loneliness, guilt, economic despair, and helplessness (Weisensee, p. 25).

The "Enablers"

A "Double Standard"

I have provided the reader with some of the factors which contribute to substance abuse in women. At this point, I would like to focus on the many "enablers," that is, those aspects of our society which allow substance abuse to occur for longer periods of time in women without detection by family, society, or the health care and legal systems. In our contemporary society, there is a double standard with respect to men and women alcoholics. For example, the drunken behavior of a man is often comical, and drinking is viewed as a sign of masculinity. In contrast,

the drunken woman is revolting, and sometimes referred to as a "fallen woman," viewed as one who is sexually promiscuous or a hopeless housewife, and a disgrace to women (Jamieson and Schabot, p. 96). This attaches a greater stigma to the woman alcoholic. Subsequently, society will protect its women from this stigmatization and itself from this realization, through a process of denial.

The shame associated with her behavior leads the woman to conceal her drinking (Blume, Counts, and Tornbull, p. 141). Thus, it is not surprising that women have more discrete drinking patterns, and thus, are more likely than men to drink at home. In fact, most women alcoholics tend to drink primarily within their homes. We can see that society has helped push the woman alcoholic into the closet in an effort to conceal her addiction. This phenomenon has been called the "secret addiction," and it enables women to drink longer and to progress to more advanced stages of alcoholism and drug addiction before or if ever they are detected (Jamieson and Schabot, p. 96).

The Health Care System

In addition to encouraging more independence and autonomy in women, the Women's Movement uncovered and brought attention to the vast differences between the treatment of men and women in the health care arena. It recognized that symptoms that would be followed up when

presented by men were often dismissed in women. It also brought attention to the fact that physicians had a tendency to over-prescribe drugs to women as compared to men, even when men would present with emotional disturbances similar to women. In today's health care system, women still receive a disproportionate percentage of psychoactive drug prescriptions. In contrast to women, when presenting to a physician for similar emotional disturbances, men are about half as likely to receive a drug prescription and more likely to receive a non-pharmacological therapy. In addition, the 1970's witnessed the rise of the Natural Childbirth Movement with its goal to counter the medicalization of childbirth. Its aim was to put this "natural process" back into the hands and under the control of women and midwives (Eagan, p. 18). Unfortunately, many of these problems persist in the present day health care arena, and have had a tremendous impact on women's health care.

As discussed earlier, there is a differential treatment of women and men by the health care system, such that women alcoholics go unrecognized longer than male alcoholics. Women fear rejection not only by society in general, but also from their physicians. Women tend to be more sensitive to their physicians' perceptions of them. Therefore, they must perceive that their physicians will be empathic and helpful, in order for them to discuss their substance abuse/dependence. Physicians often do not delve deeply

enough into the alcohol history of female patients, assuming that alcoholism is a man's problem (Tornbull, p. 142).

The health care system enables women to continue their deleterious behavior in other ways, as well. For instance, the detection methods and treatment centers for substance abusers are male-oriented. This allows us to understand why women constitute merely a fourth of the patients in alcohol treatment programs, when the number of female alcoholics and alcohol abusers now number about five million in this country, accounting for about one-third of all alcoholics (Bloom, Counts, and Tornbull, p. 142). Some studies suggest that chemical dependency, is shared equally among men and women [there are different sets of criteria that distinguish substance abuse from dependency but most of the studies are non-specific and seem to use these words interchangeably]. Employee-assistance programs are more successful in identifying and treating men who abuse. Moreover, there is less access to employment-associated programs for women. Many women who work part-time are not eligible for these types of benefits. In addition, more women than men are uninsured or underinsured. In many states, Medicaid will not even cover the expense of drug treatment for members of either sex (Bloom, Counts, and Tornbull, p. 154).

The Criminal Justice System

The criminal justice system has also had an enabling effect on substance abuse in women. The criminal justice system has the power to force individuals into treatment, but the male to female proportion (for those that are actually forced into treatment) is nine to one (Bloom, Counts, and Tornbull, p. 154). This fact is perplexing since women, for the most part, are more severely impaired by the same amount of alcohol intake than men.

Maternal-Fetal Conflict

Medical ethics has recently broadened its scope. It now encompasses many new and important issues. One of these falls under the general title of maternal-fetal conflict. Basically, these problems arise when the rights and interests of the pregnant woman are seen as conflicting with the "rights" and "interests" of her unborn child. One of the oldest of these issues is abortion. Problems of maternal-fetal conflict, however, now extend to situations in which: (1) pregnant women refuse to undergo surgery that is likely to benefit the fetus (e.g. fetal therapy, caesarean section); (2) diabetic pregnant women fail to comply with dietary recommendations; and (3) pregnant women work in environments that are potentially hazardous to the

fetus. In my thesis, I have chosen one particular problem of maternal-fetal conflict on which to focus -- the problem of substance abuse in pregnant women.

Maternal Rights and Obligations

For the sake of moral/ethical and legal debate, it is important to delineate the relevant maternal rights and obligations in the majority of cases of maternal-fetal conflict. With respect to the abortion issue, a woman's right to privacy is viewed as a fundamental constitutional right, because the court recognizes that:

> there are decisions that are so personal and private, and that so profoundly affect the individuals who must live with the consequences, that the state has no power to interfere. . . which preserves a sphere of individual decision-making from governmental compulsion (Annas, p. 32).

However, the U.S. Supreme Court established, in the Roe v. Wade decision, that there is a "compelling state interest" in the welfare of the viable fetus (Balisy, p. 1209). This decision was made, in reference to the issue of abortion. However, it has been argued by some people that there is a "compelling state interest" in cases in which a pregnant woman who has decided to carry her pregnancy to term, engages in activities that may harm the fetus within her body (Balisy, p. 1237). Yet, once the fetus reaches viability, damage from substance abuse to the developing cells probably has already occurred. Thus, this focus on

the viability of the fetus is inappropriate for addressing this issue. As I mentioned earlier, the fetus is most vulnerable during the first trimester, prior to viability.

One must remember that we are not dealing with the issue of abortion here, in which the mother is the sole individual who will be living with the consequences of her decision. We are discussing an issue which will impact the lives of two individual human beings, because this fetus, it has been decided, will become a human being. The child (and, possibly, the father and society) must live with the consequences of its mother's behaviors, and so one can argue that there is more than one individual who "must live with the consequences" of the pregnant woman's decisions (Annas, 1994, p. 32). Therefore, some people claim that fetuses have certain "contingent rights," that are "conditional upon their eventually being born alive" (Feinberg, p. 350).[1] It is also argued by some that, in cases of maternal-fetal conflict, the fetus is a potentially autonomous agent. Thus, some will argue that the fetus is an individual with "diminished autonomy" (Fleischman and Macklin, p. 124) [I will postpone a discussion of "diminished autonomy" with respect to this issue, until section II].

There is general agreement that the pregnant woman has a moral obligation to ensure that her fetus is born without any preventable handicaps. In addition, some will argue that in situations in which a mother neglects this moral

obligation, it is society's moral obligation to protect the unborn child from a mother's risky behaviors, in order to ensure the health status of future offspring. Sam S. Balisy argues that:

> In the case of a viable fetus or a previable fetus that will be carried to term, the state has a compelling interest in ensuring that the fetus is born with a healthy mind and body. This interest is sufficient to justify proscription of the mother's injurious conduct. . . (1987, p. 1237).

In opposition to the previous argument, some insist that society must accept and honor a woman's decisions, in order to preserve her bodily integrity and her capacity for autonomous decision-making. Ethical debates arise out of the concern that the fetus is a silent patient[2] that cannot speak for itself. It cannot protect its own "interests" and "rights." Thus, some will argue that another party must speak for the fetus (Fleischman and Macklin, p. 121).

Maternal-fetal conflict can be exemplified by cases in which a pregnant woman refuses to undergo surgery that is likely to benefit the fetus, with little maternal benefit, or even a risk to the woman's health (e.g. fetal therapy, caesarean section). The opportunity afforded to us by our advancements in technology now allow us to perform invasive procedures into the body of the pregnant woman for the sake of her fetus' welfare. Under such circumstances the fetus is viewed as a patient who is a separate individual. Since I am limiting my discussion to cases in which the woman has

decided to carry the fetus to term, it is argued by some that the fetus has potential interests and/or rights. Thus, cases, in which the pregnant woman, for whatever reason, does not agree to undergo surgery or other invasive procedure for the sake of her fetus's well-being, are viewed as cases of maternal-fetal conflict, in which the rights and/or interests of the mother conflict with the "rights" and/or "interests" of her fetus (Fleischman and Macklin, p. 121).

Parties of Interests

The title of maternal-fetal conflict should not obscure the fact that there are many different parties with potential interests in this issue, including maternal, fetal, paternal, public, physician, and other health care professionals. The fetus, it may be argued, has potential or "future-oriented" interests, based on the idea that it has been decided that this fetus will be brought to term and, thus, has an interest in its own welfare (Fleischman and Macklin, p. 141). I will postpone the discussion of fetal "future-oriented interests" for section II. Quite often, the interests of one or more of the aforementioned parties are not considered. For example, in their decision-making, physicians may neglect to consider the interests of the public and future generations. Also, the interests of the father are often overlooked, since his role

is viewed as more indirect or secondary to the role of the pregnant woman. However, I will argue, that the interests of all parties must be considered in order to appreciate the complexity of each situation.

Ethical/Moral and Legal Obligations of the Physician

Much discussion focuses on the ethical/moral and legal obligations of the physician to her patient. Generally, there is universal agreement that the physician has an obligation to respect the wishes of her patient, even if the patient does not comply with the medical advice offered. Under circumstances in which it may undermine the physician's personal integrity to continue the relationship, some physicians may opt to refer a noncompliant patient to another physician. The American Medical Association (AMA) states that "the physician's duty is to provide appropriate information, such that the pregnant woman may make an informed and thoughtful decision, not to dictate the woman's decision" (1987, p. 2670).[3] The AMA's statement does not acknowledge the problems generated by physicians who are strongly opposed to providing full information to patients on the basis of personal conscience or integrity.[4] The degree to which a pregnant patient's decision is "informed" is due, in part, to the quality and quantity of information provided by her physician. Hence, one can imagine the many ways through which the physician's personal beliefs and

biases may taint the information related to the patient.

Under the Bush administration, it was suggested that physician's present patients who are seeking abortions, with a "parade of horrors." This would involve presenting the patient with over dramatic and often graphic consequences of their actions. This method of informing patients about their substance-abusing behavior during pregnancy has been proposed, but is controversial due to the extent to which it interferes with the physician's ability to communicate freely and honestly with her patient. Moreover, it neglects to respect the intelligence of the pregnant woman and her ability to formulate a decision based on her own values and beliefs. The American College of Obstetricians and Gynecologists (ACOG) advocates counseling and education to persuade a woman to follow her doctor's advice and condemns the use of coercion on a pregnant woman, as this threatens the physician-patient relationship (ACOG, p. 2). On the contrary, some argue that it is the physician's duty to protect the vulnerable fetus, even if this would entail restricting a pregnant woman's autonomy (Balisy, p. 1210).

Legalization of Morality

Physician, Herman Risemberg claims that:

> Once a woman decides to conceive and chooses not to abort the conceptus but to continue the pregnancy, she becomes legally and morally obligated to bring the child into the world as healthy as possible . . . (1989, p. 148).

Most people will support Risemberg's latter claim, that the woman has a moral obligation to ensure that her child is born without any avoidable disadvantages. However, his former claim of legal obligation is incorrect. Though, there may be laws making a person liable for injuries sustained to the fetus, in the course of injuring the pregnant woman, these laws apply to the actions of a third party, not the pregnant woman. A woman is not, in all actuality, "legally . . . obligated to bring her child into the world as healthy as possible." There are no laws specifically restricting the autonomy of pregnant women for the sake of their fetuses' welfare. Although, there have been many attempts made by the legal system to punish substance abusing pregnant women for posing unnecessary risks to their developing fetuses, these efforts have failed miserably due to their attempts to apply statutes which have been created for purposes other than these types of cases. Due to these technical difficulties, the majority of cases are eventually dismissed. It is conceivable that such technical difficulties could be avoided through the creation of new laws specifically directed at maternal behaviors during pregnancy. However, I will argue that punishment by the legal system is not an effective or morally sound alternative to these situations. I have provided the following cases to exemplify the ways in which the legal

system treats pregnant women and their fetuses, not as integrated wholes, but as separate individuals, "weighing the claims and interests of the one against those of the other and then declaring a winner" (Johnson, p. 35).

Relevant Cases

1. California. San Diego. Municipal Court. *People v. Stewart*, (Docket No. Mf08197), California, 26 Feb, 1987.

Pamela Rae Stewart Monson was the first woman criminally prosecuted under a California child support law after the death of her newborn. She was arrested and charged on September 26, 1986, with child abuse under the California Penal Code, following the death of her new and severely brain-damaged baby. She had allegedly engaged in activities against which her physician specifically warned because of their potential to harm her unborn child (e.g. drugs, sexual intercourse). The case was dismissed by the judge on the grounds that the statute was not intended to penalize a woman's activities during pregnancy (Coutts, p. 4). Dawn Johnson provides some of the relevant information that was not taken into account by the legal system.

> Ms. Stewart had little money. During her pregnancy, she lived with and cared for her husband and two daughters under age six, first in a single hotel room and then with her mother-in-law in a mobile home. There is evidence that Ms. Stewart was a battered woman. Her neighbors reported that the police had been called between ten and fifteen times in the course of

> one year due to her husband's 'beatings [and] violence towards Pam or his mother.' Ms. Stewart's pregnancy was complicated by a dangerous condition called placenta previa, which can result in excessive bleeding that threatens the life of the woman and the fetus. Although according to the prosecution, Ms. Stewart delayed in seeking medical help when she began to hemorrhage, her husband stated that she had sought medical advice when she began to hemorrhage on two occasions before she gave birth and that both times the physician told her 'everything was fine'(1987, p. 36-37).

I have not included this information to absolve Ms. Stewart of all responsibility. I merely offer it as an example of the types of contextual information the legal system may ignore.

2. District of Columbia. Superior Court Criminal Division. *U.S. v. Vaughan* (Case No. F-2172-88B), 23 Aug, 1988.

After pleading guilty to the charge of forgery of illegal checks, Brenda Vaughn's drug test showed that she had recently used cocaine. Since she was pregnant, Vaughn was detained until twelve weeks prior to the birth of her child (Coutts, p. 4). This is despite the fact that a first time offense for forgery usually necessitates probation, not incarceration. The Judge's rationale for his final decision involved a weighing of Ms. Vaughan's rights against his duty to protect the public. He decided that the interests of the taxpaying public weighed more heavily, since the public would (from his perspective) probably be financially responsible for the care of the child who was likely to

suffer severe handicaps, such as cocaine addiction at birth, as a result of the mother's behavior. Though he felt it was the mother's responsibility to protect her fetus, he felt "compelled to intervene" when she abrogated this responsibility (Wolf, p. C8).

3. Florida. Seminole County Circuit Court. Criminal Division. *Florida v. Johnson* (Case No. E-89-890-CFA), 13 July, 1989.

   Florida. Supreme Court of Florida. Johnson v. State (No. 77831), 23 July, 1992.

   Jennifer Johnson was the nation's first mother sentenced to jail for endangering the health of her fetus. Newborn Jessica Johnson's urine test was positive for cocaine. On these grounds, the twenty-three year old mother, Jennifer, was charged with child abuse and delivering illegal substances to a minor. She was convicted on the basis of the latter. In trial, the prosecution claimed that Ms. Johnson had passed the cocaine in her system on to her daughter during the sixty to ninety seconds following the child's birth, but prior to the cutting of the umbilical cord. The case was subsequently appealed. In 1992, the Supreme court of Florida held that passing cocaine through the umbilical cord after birth, but prior to severing the cord, did not violate the statutory prohibition against adult delivery of controlled substances to a minor (Coutts, p. 4).

4. Arizona. Court of Appeals of Arizona. Reinesto v. Superior Court of the State In And For County of Navajo (No. 1 CA-SA94-0348), 2 May, 1995.

Teresa Reinesto petitioned the Arizona court of appeals, to drop charges of child abuse which were filed against her on the basis of the use of heroin during pregnancy. The court held that Reinesto could not be prosecuted under the child abuse statute, which was not designed to address the prenatal conduct of women which resulted in subsequent harm to a child after birth.

The Government's Quandary

Although there is quite general agreement about the moral wrongness of placing one's fetus at risk for harm, the legal enforcement of morality is controversial. The legal system, painfully cautious in its approach to the issue of drug abuse in pregnant women has produced no specific laws regarding the behavior of pregnant women. Historically, judges and prosecutors apply statutes intended for other circumstances to these cases in which the charge of "fetal neglect" or "fetal abuse," based on statutes prohibiting child abuse and neglect, is made. The majority of prosecutions involve allegations of illegal drug activity. However, it is conceivable that some pregnant women could be prosecuted for engaging in what is normally considered, a legal activity, such as alcohol use, since many legal activities can potentially harm the developing fetus

(Paltrow, p. 42). Since Americans over the age of twenty-one years are legally allowed to drink alcohol and smoke cigarettes, enforcing a law against women who drink alcohol during their pregnancies would certainly be in violation of their rights. However, Sam S. Balisy argues that restricting maternal autonomy is necessary because he believes that "the states's primary responsibility is to the fetus and the prevention of harm to the fetus in the first instance" (1987, p. 1210). In New York City, the admission of prenatal drug use is enough for law enforcers in New York city to ask for a Family Court hearing on child neglect (Baquet, p. B3). Annas warns that the criminalization of "fetal neglect" could have serious ramifications for pregnant women who may, as a result, lose their rights, freedoms, and suffer from invasion of privacy (1986, p. 13). It is argued that the legal enforcement of this moral prohibition is one of the most intrusive methods implemented for protecting the life of a fetus, and therefore, ought not to be used. It is argued that such interference may lead "inevitably down a slippery slope" in which many legal activities will be deemed illegal for pregnant women (e.g. uncontrolled diabetes, women with cancer who need radiation treatment, women with poor nutrition, etc.), (Paltrow, p. 42) The AMA agrees that "criminal sanctions or civil liability for harmful behavior by the pregnant woman toward her fetus, are inappropriate (1988, p. 2670). This approach

is strongly supported by the ACOG (1987, p. 2). Most people tend to agree with these positions in opposition to the criminalization of a pregnant woman's behavior regarding her fetus, because it infringes a woman's rights. Moreover, the criminalization of "fetal abuse" may be counterproductive with respect to the goal of producing both healthier babies and healthier women (Zimmerman, p. 6-7).

The quandary in which the government finds itself becomes apparent. There is agreement that it is morally wrong for a pregnant woman to place her fetus at risk for potential harm. Yet, it is argued that "depriving pregnant women of control over their own lives violates the deeply cherished notion of privacy and individual autonomy that provide the very foundation of our society (Johnson, p. 37)." The legal system already shows a ". . . clear trend . . . to expand 'fetal rights' at the expense of pregnant women (Johnson, p. 35). In opposition to these claims, attorney Paul A. Logli argues that "... prosecutors have a legitimate roll in responding to the increasing problem of drug abusing pregnant women and their drug affected children" (Logli, p. 28). Physician-attorney Margery Shaw admits that a woman's right to privacy enables her to abuse her body. However, she believes this right, should not be misconstrued as a right to deliver those harmful substances to her fetus. Shaw argues in favor of using criminal sanctions and seeking punitive damages on

behalf of children exposed to drugs in utero (Shaw, 1984). Some argue that in cases in which maternal-fetal conflict arises, public awareness, mandatory rehabilitation programs, criminal sanctions, and even a tort for diminished life are all acceptable options for restriction of maternal autonomy.

Drug Testing of Pregnant Women

One alternative intervention whose popularity is increasing but remains extremely controversial, is drug testing of pregnant women. Depending on the results of such tests, hearings concerning the issue of neglect may follow and mothers may lose their newborn babies if found guilty. This raises questions concerning the accuracy of the test results which is undetermined at this point in time, and questions regarding the actual benefits derived from taking newborns away from their natural mothers and placing them in foster care on the basis of such results (Moss,1990). Drug testing is perhaps, most adamantly argued against because of the concerns it raises about the violation of a woman's rights of privacy, liberty, equal protection and freedom from unwarranted government interference.

Preventive Detention

Preventive detention of negligent pregnant women is also a growing practice. An analogy has been drawn between this type of policy of detainment of pregnant women and a

debate over the preventive detention of persons who are believed to be very prone to violence. Both legislations are being argued against because they may "violate due process without clear and unequivocal enough gains in public safety" (Zimmerman, p. 7).

Public Policy

The majority of Public Policy discussions focus on the extent to which a woman's decision is dependent on her experiences as a member of society. Society must examine itself to see how it has enabled women to abuse substances for long periods of time, without detection, even prior to becoming pregnant. Some of these enablers were discussed in the beginning of this analysis. It is argued that society's desire to help its future offspring begin life without any health problems would best be achieved, by helping pregnant women to make more informed, less constrained choices, rather than through coercion or deprivation of their capacity for autonomous decision-making. Constraints on the pregnant woman's choice may include lack of medical insurance, single parenting, treatment centers designed for men, and stigmatization of drug behavior.

Studies show that there is a remarkable gap between women of color and Caucasian women, in terms of access to health care, prenatal care, utilization of health care services, and quality of care received. Studies show that

women of color have less access to health care and utilize health care services less, as well as enter the prenatal care services later than white women. A complex interaction among economic, cultural and historical factors, seem to contribute to the width of this gap. Women of color also have more limited access to health insurance. Since, there appears to be a significant correlation between having medical insurance and having had more than one prenatal visit, this situation deserves attention. Women of color have less access to prenatal care, and tend to utilize health services less than white women (Livizzo-Mourey and Grisso, p. 52). These facts must be taken into consideration when making decisions regarding the creation of public policies to address these problems. Low income negligent women are more likely to be detained than middle class negligent women, because they lack the educational and financial resources to defend themselves. Studies show that the majority of women subjected to "court-ordered obstetrical interventions" have been poor and/or minorities (Kolder, Gallagher and Parsons, p. 1195). Thus, we must be conscious of the ability of programs and/or policies to encourage discrimination of minority group members.

Long-term Goals for Public Policy and Law

The major concern regarding state intervention in the pregnant woman's behavior is that, whether it is in the form

of detention, criminal sanctions, forced rehabilitation, or coercion, it will have detrimental effects on the long-term, overall health status of both women and future offspring, and thus, be counterproductive. It is argued that attempts to protect the fetus from exposure to drugs through the criminalization of "fetal neglect" and other charges brought against the pregnant woman is not a prudent alternative, because it will serve only to push pregnant women who abuse substances, away from prenatal care services out of fear of the consequences. Philosopher David Zimmerman argues:

> [the] loss of liberty is certain, while the gains to individual babies in the aggregate is uncertain . . . though individual babies may suffer or die without a policy of apprehension, instituting one would probably produce worse consequences overall than no such policy, as well as compound pervasive injustices that already tax the poor and marginal women most vulnerable to apprehension (1987, p. 6).

Also, fearing forced detention, women would, avoid health care facilities. Despite the deterrent that criminalization may provide, the benefits would be undermined by the deleterious effects these sanctions would hold for women's access to health care. It would create the illusion of helping to improve infant health when improved women's health care and prenatal care may be the more sensible alternative.

SECTION II. TRADITIONAL ETHICAL THEORIES

In this section, I present a brief summary of the prevailing ethical theories of our time, utilitarianism and Kantianism. For each theory, I address three important questions. First, what is the theory? Second, how would it be applied to problems of "maternal-fetal conflict"? And, finally, what are the problems with such an approach? Upon completion of this section, I hope to have shown the reader that each of these ethical theories is inadequate to resolve the questions of "maternal-fetal conflict." With this in mind, I begin this section with a discussion of the first of the two primary ethical theories - utilitarianism.

Utilitarianism: An Overview

The Principle of Utility

Jeremy Bentham (1748-1832) was the first to emphasize the principle of utility as the foundation for the creation of public policy and institutional reform.

> The principle of utility is . . . that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words, to promote or to oppose that happiness. I say of every action whatsoever; and therefore not only of every action of a private individual, but of every measure of government (1961, p. 17-18).

Following Bentham's introduction of utilitarianism into the political and economic community, John Stuart Mill (1806-1873), refined and defended utilitarianism as well (Mill, 1961). Utilitarianism is the philosophical endeavor committed to an over-arching principle of utility.

Utilitarians and Consequences

Today, Utilitarianism is the most popular variant of so-called consequentialist theories, all of which are "dedicated to the promotion of good consequences" (Lyons, p. 1264). These theories hold that the value of an action, policy, or institution can be determined by its consequences. In other words, consequentialist theories find a common ground in their shared teleological point of view, that is, the notion that the rightness of an action, policy, or institution can be determined solely by the goodness of its consequences. Scheffler distinguishes between utilitarianism and Kantianism, by the way in which they order notions of the "good," and "rightness." For utilitarianism, the "good," is always prior to the "right." In other words, consequentialist theories first determine what is "good," (e.g. happiness, pleasure, preference satisfaction) from an impersonal standpoint, and then define the rightness of actions in terms of the maximization of the "good" (e.g. happiness, pleasure, maximization of preference satisfaction). The right thing to do, then, is to maximize

the aggregate good, even if, by doing so, an individual may have to alienate herself (e.g. may have to relinquish personal projects for the sake of the overall good.) (Scheffler, p. 1-2). If, for instance, it can be shown that, by humiliating one person, a greater sum total of pleasure can be brought to ten other people, utilitarianism would actually require us to humiliate the one for the sake of bringing pleasure to the many. Indeed, if mildly humiliating ten people were to bring an enormous amount of pleasure to one person (so much that it would bring about the greatest sum total of pleasure), utilitarianism would require us to humiliate the many for the sake of bringing pleasure to the one.

Consequentialist theories differ with respect to what they define as the particular "good." For Bentham, pleasure was the particular "good" which, he believed, we ought to strive to maximize in our moral deliberations. Calculations involving pleasure over pain equations were all part of Bentham's so-called hedonistic utilitarianism. For Mill, personal happiness was the "good" to be maximized (Lyons, 1992). For some contemporary utilitarians like Hare, the good is identified with aggregate preference satisfaction. In moral problem-solving, the utilitarian will seek to maximize total happiness, and decrease total suffering and misery.

The Impersonal Perspective

Utilitarianism has been criticized for the extent to which it can undermine an individual's personal integrity, by alienating the person from her projects, actions, and/or plans. Since a utilitarian bases all her decisions on the principle of utility, it may, indeed require the sacrifice of personal projects for the sake of the greater overall good. The consequentialist theories require "agents always to produce the best state of affairs," which is impartially defined. In other words, utilitarianism does not take into consideration, the personal point of view in its calculations. It does not allow an individual to pursue her personal projects unless they will lead to "the best outcome overall" (Scheffler, p. 37). According to this theory, everything an individual does is dictated from an impersonal standpoint, at the cost of ignoring an individual's particular point of view. The utilitarian claims to utilize an impartial, distanced view of the world, or the "the view from nowhere"(Nagel, 1986), while engaging in moral problem-solving. Utilitarianism requires the moral agent to assume an impersonal perspective, which is rational, unemotional, unbiased, and distanced, in the process of moral decision-making. I will illustrate this basic tenet of utilitarianism in the following example. Amy Belle is a single mother who lives on the second story of an apartment building with her four year old daughter, Robin. Today, Ms.

Belle has left Robin with a babysitter, so that she can finish her Christmas shopping. A couple hours after having left the apartment, she arrives back, only to realize that her apartment building is engulfed in flames. No fire engines are in sight. She is shocked to find her distraught babysitter, without her daughter. Robin, is still in the building! Without delay, Ms. Belle makes her way towards the entrance of the building. Just before entering, a frantic elderly woman grabs her by the arm. The old woman is crying, and begs Ms. Belle to save her five grandchildren, who she believes, are trapped on the first floor. Ms. Belle realizes that it would be a relatively simpler task to reach the five children (on the first floor), than to reach her daughter (who is all the way on the second floor). However, she feels compelled to save her daughter, even if it may result in the death of the other children, and/or herself. If the utilitarian decides (based on his calculations) that saving the five children rather than the one will result in the greater sum total of happiness (e.g. to the family members of the five children), then Ms. Belle will be required to sacrifice her daughter's life for the sake of the five strangers. As this example demonstrates, utilitarianism has difficulty taking into account intimate relationships, such as the one between a mother and her child. It does not even take into account her uniquely personal point of view and special

relationships, and, thus, cannot account for her emotions and feelings for her daughter. As an aside, I will mention that utilitarianism will, at times, attempt to account for such intimate relationships (e.g. the bond between a mother/father and her/his child), through a complex set of calculations. At the end of these calculations, utilitarians will argue that special concern for friends, lovers, and family does, in fact, maximize overall utility (Hare, p. 137). But, must Ms. Belle go through a series of calculations in order to justify her actions, that is, prove the moral value of saving her daughter, over five strangers? I assert that the answer to this question is no. The fact that utilitarianism has no way of directly accounting for such personal relationships (e.g. family, friends, lovers) proves to be one of its most serious drawbacks.

Hare's depiction of an "archangel," exemplifies this utilitarian emphasis on impartiality in moral problem-solving. The "archangel," or the "ideal prescriber" is an all-knowing impersonal spectator of moral dilemmas, ". . . a being with superhuman powers of thought, superhuman knowledge, and no human weaknesses" (Hare, p. 44). This impersonal perspective is not only inappropriate and unrealistic in dealing with real-world, human situations, but also, I will argue, it is an undesirable position to assume.

> When presented with a novel situation, he will be able at once to scan all its properties, including the consequences of alternative actions, and frame a universal principle (perhaps a highly specific one) which he can accept for action in that situation, no matter what role he himself were to occupy in it. Lacking, among other human weaknesses, that of partiality to self, he will act on that principle, if it bids him to act. The same will apply to other partialities (e.g. to our own friends and relations) which are hardly weaknesses, but which are, . . . excluded from critical thinking (Hare, p. 44).

Ought we to address human concerns and dilemmas with such an inhuman approach? If this were even possible to accomplish, it certainly would be an undesirable approach to take toward actual moral dilemmas, in which the characters are human beings, whose relationships are, typically, far more than contractual and impersonal in nature.

Certainly, it is imperative for individuals to assume an impersonal view of their situations at given times throughout the course of their lives. This is not only possible to do, but is, in fact, what we actually have been doing throughout our lifetimes. A good physician, for example, must sometimes distance herself from her situation, and alternate between her personal and impersonal perspective, perhaps unconsciously, in order to be effective in her field. The physician that gets too emotionally involved with her patients' lives will, most certainly, not succeed either professionally and/or personally. One can imagine a situation in which a physician mourns over the loss of every patient that dies, as if the individual were

her close relative or friend. It is conceivable that this particular physician will, in turn, neglect the needs of her other patients as well as the needs of her own family and self. Even the physician, must accept the reality of her personal perspective, biases, and emotions.

Everything we do and everything we see, is colored by our own personal point of view. It is impossible for the physician, or any human being (even the scientist), to assume a completely impersonal stance. Our predispositions, biases, emotions, and thoughts determine, for the most part, what we see. Only through sincere conscious effort can one, in a sense, step outside oneself and analyze the predispositions and emotions that are driving one's actions and/or feelings at any moment. A person who has nurtured her capacity to do so, may be said to have a higher degree of emotional intelligence than a person who does not have this capacity for self-reflection. But, the capacity for self-reflection does not imply the capacity to completely step outside one's self, into the role of a pure observer.

Reduction of moral dilemmas

Traditional philosophers, both utilitarians and Kantians, have a tendency to reduce moral problems to smaller components (e.g. a hedonistic utilitarian will "reduce" everything to happiness and its maximization). In the course of reducing moral dilemmas, the problems lose

their complexity, including many important contributing factors (e.g. personal values, multiple perspectives, emotions). This reductionistic approach, typical of traditional philosophy, molds the original problem into something which may only remotely resemble the original problem. Once everything has been reduced to maximizing pleasure, happiness or preference satisfaction, it lends itself conveniently to the simple calculations and formulas, provided by utilitarians. And, as a result, the utilitarian is able to formulate but one solution to the problem. For example, Hare discusses a utilitarian approach to moral conflicts, or cases in which a conflict of duties exists. He claims that we are required to "resolve the conflict" (Hare, p. 27). This requirement to resolve conflicts, motivates utilitarians to reduce problems to simpler components. This reductionistic approach may serve the purpose of resolving conflicts arising in hypothetical situations, but, certainly not in our complex actual situations. In *Moral Thinking* , Hare provides examples of how utilitarianism attacks problems involving conflicts of duties. He presents one such example, in which a man must choose between keeping a promise to his family to go on a picnic "on the river at Oxford," or spending the day with an old friend from Australia who is "in Oxford for the day" (Hare, p. 27). This may seem like a complex moral dilemma for the intellectuals in Oxford. However, in our actual

situations, problems are more complex and their consequences more profound, and long-lasting.

According to Hare, all moral dilemmas have but one answer, which can be discovered, if only we express everything in terms of preferences and place ourselves in the position of the "archangel."

> . . . archangels, at the end of their critical thinking, will all say the same thing, on all questions on which moral argument is possible; and so shall we, to the extent that we manage to think like archangels (Hare, p. 46).

A recurrent theme throughout much of traditional philosophy is that the answers to our moral dilemmas currently exist, yet remain to be discovered. Thus, it is our duty as seekers of the truth, to uncover these answers. The all-knowing "archangel" works well in the simple hypothetical situations provided by Hare. However, in the actual world in which we live, in which our moral dilemmas are more complex and not all values can be expressed in terms of preferences, the "archangel" offers little assistance. Utilitarianism, and consequentialist theories in general are criticized because they base their decisions on the knowledge of facts and all possible consequences for any particular situation. With all the relevant knowledge and facts, they subsequently enter themselves into a series of calculations, in order to determine the one solution to the problem which must maximize total happiness and well-being. These calculations, as one may guess, are often

impossible to perform in real life. It is not humanly possible to master the power of prediction, necessary to know every possible solution. There is an element of uncertainty present in any solution to any given problem. Utilitarians, are extremely perturbed by the presence of uncertainty in moral problem-solving. Rather than appreciating the complex nature of our situations, utilitarianism seeks to reduce problems to their smallest elements, at which point, they are sometimes no longer the same, complex, multi-valued human problems. In today's society, there are many questions for which we do not yet have the answers. There are many of us who would like to believe that our present situation is not as complex as it seems, and that there is a perfect solution to any of our given problems. To discover this answer, this perfect solution, merely requires time, patience, and perhaps the help of some outside source, such as God, a preacher, or a therapist. This is one reason why theories, like utilitarianism, are appealing to many who do not want to work through such complex dilemmas and prefer to have a simple solution. This phenomenon can be likened to a situation in which a person, feeling burdened by the complexities of daily life and troubled by making decisions, begins associating with a religious sect or cult, as a more favorable alternative. The religious group or cult may provide, through the promise of one simple method, the

guidance and structure this particular individual feels is absent from her life.

An "Ethic of Justice"

Utilitarians believe that justice is an important principle in so far as it contributes to the maximization of utility. For John Stuart Mill, decisions based on an ethic of justice always serve to maximize utility. I will postpone the discussion of the utilitarian conception of justice until the section on Kantian ethics.

A Utilitarian Approach to the Problems Provided by Pregnant Substance Abusers

The utilitarian must take into consideration all of the facts for any given situation. She must account for the consequences of any particular decision for all parties involved in a particular situation. For example, with respect to these situations, she will want to take into consideration the interests of and consequences for the pregnant woman, the father, the fetus (future child), siblings of future child (if any), physician, society, and future generations. She must weigh all the possible consequences that he foresees, and make the choice which brings about the greatest amount of net pleasure over pain.

In what follows, I will provide a specific utilitarian approach to dealing with the problems generated by pregnant substance abusers.

The utilitarian must consider the interests of the pregnant woman and the consequences that any decisions may hold for her. The utilitarian will take into consideration a woman's fundamental (negative) rights (e.g. right to bodily integrity). For instance, a woman has the right to do as she pleases to her body. In other words, it is her right to harm herself if it is her autonomous decision to do so. Utilitarianism does not ignore the fundamental rights of human beings. It considers them worthy of consideration in moral problem-solving. However, rights do not take precedence over the principle of utility (this will be distinguished from a Kantian approach later in this section). For the utilitarian, the principle of utility is the over-arching rule. Thus, if the utilitarian demonstrates that the sum total amount of happiness will be maximized by overriding an individual's rights (e.g. the pregnant woman's right not to be interfered with), then utilitarianism requires us to do so. If, however, the utilitarian demonstrates that the psychological/emotional trauma to the woman or, more likely, the future consequences for society of overriding an individual's constitutional rights, will produce more pain than pleasure, then, utilitarianism requires us not to override her rights.

The utilitarian may consider the effects on the father of the child, that is, if the father is or will be involved in raising the child. A woman's "choice" to abuse substances during her pregnancy and the subsequent birth of a damaged child, may be emotionally, psychologically, and financially damaging to the father.

The utilitarian will also consider the bad consequences for the particular babies born to mothers that use alcohol, and/or other drugs during their pregnancies. As I mentioned in section I, there are many possible consequences for babies born to women who choose to continue using substances throughout their pregnancies (especially within the first trimester). Alcohol can cause fetal alcohol syndrome, which may cause a significant handicap for a child that is, for the most part, irreversible. Cocaine can lead to low birth weight babies, who may experience complications such as decreased learning capacity. Smoking cigarettes can also give rise to a baby with a low birth weight.

The utilitarian must also consider the short-term bad consequences for society that may result from a pregnant woman's "choice" to abuse substances (e.g. drugs and/or alcohol) during her pregnancy, including the burden of raising these damaged children. The utilitarian will want to consider the relevant facts including the current research which shows that drug-exposed infants are an immense financial burden on society. For instance, the cost

of treating a severely affected drug-exposed newborn in the Intensive Care Unit (ICU) may be up to $1,768 per day. Hospital care for a "crack baby" may average up to about $367 per day (Tague, 1991). The preparation of a "crack baby" for school is estimated at $40,000 (Treutler, 1990). Foster care, including the necessary medical equipment, costs $2,870 per month (Kresnack, 1990). Michigan Medicaid paid $1.05 million for medical bills for a single infant who was exposed in utero to cocaine and, subsequently, was born three to four months prematurely with severely underdeveloped lungs, and an addiction to cocaine (Jessica, April, 1989, Hutzel Hospital, Detroit). The utilitarian would realize that the costs for sustaining and maintaining the health of this baby may fall on the shoulders of other members in society.

Finally, the utilitarian must also consider the long-term bad consequences for society, that may result from any program, policy, or law which acts to restrict the autonomy of pregnant women who have chosen to abuse substances. The threat of incarceration for women who engage in activities viewed as harmful to their fetuses may scare women away from the health care system. Fearing the possibility of punishment for "crimes" they may have committed before the knowledge of their pregnant condition, women may hesitate before entering into prenatal care. As I mentioned earlier, many women do not even realize that they

are pregnant until the end of the first or beginning of the second trimester. And, the majority of the damage caused by drugs and/or alcohol occurs during the first trimester of fetal life. It is plausible that women would fear the possibility of punishment for their particular lifestyle which may involve detainment for the duration of their pregnancies (or longer), and/or the loss of their children to foster care. In the long-run, both women and children may suffer due to inadequate prenatal care and health care in general. Thus, the utilitarian may decide that the more beneficial alternative for the overall health care for women and children will not violate the rights of today's women.

The utilitarian must take into account everyone involved and all the consequences mentioned above. He must choose whatever brings about the greatest amount of good overall. How does he make such determinations? This is one of the difficulties with utilitarianism. It journeys into a midst of facts and formulas. It calls on the "archangel" residing within the decision-maker, to calculate and crank out one absolute solution to any given problem. What decision will lead to the overall greatest amount of pleasure? The answer lies not only in the facts, but also within the decision-maker. Whichever course of action he perceives to bring about the net greatest amount of happiness (in other words, whichever way the pendulum swings), that is the course of action he will choose.

He may choose to override the rights of a pregnant substance abuser in an attempt to protect her fetus from unnecessary harm, and save society from the unnecessary burden of supporting the needs of a physically or mentally damaged child. A child who is mentally, emotionally, and physically healthy has the potential to benefit others by being a relatively productive member of society, as compared to the child born with some form of a defect. He may decide that by not incarcerating the pregnant women who are presently abusing substances, women would be more likely to continue to seek prenatal health care. Thus, the utilitarian may support a move to sacrifice the individual woman and fetus, by not putting her in jail, in order to achieve the greater good in the future, that is, a greater number of happy and healthy babies.

Alan Fleischman and Ruth Macklin distinguish between a Kantian or "rights-based" approach and a utilitarian approach to issues of maternal-fetal conflict. The issues with which they deal most specifically are fetal therapies and those cases in which the pregnant woman's behaviors pose an unnecessary risk for her fetus (e.g. alcohol, smoking, and/or other drug use). They provide an adequate account of the applications and limits of these two approaches. I will postpone the analysis of a "rights-based" approach for the next section on Kantian ethics. For my purposes at this point in the thesis, I will say that at the end of their

analysis they choose a consequentialist approach to these types of issues, seeing it as the better alternative of the two approaches. After claiming that the "rights-based" approach offers no resolution to maternal-fetal conflicts, Fleischman and Macklin are unable to agree on a resolution to these problems while utilizing a consequentialist approach. Fleischman and Macklin analyze the interest of the parties involved including, what they refer to as, the "future-oriented interests" of the fetus. In these cases, assuming that it will eventually be born, they claim that the fetus has the potential to have interests in its own welfare. Fleischman and Macklin (and Kantians) agree that the pregnant woman has a moral obligation to protect her fetus from unnecessary harm.

> The benefits to the mother include the pleasure and satisfactions she derives from the use of intoxicating substances. The risks of harm to the fetus and, for that matter, to her own health, weigh much more heavily, yielding a clear balance of risks over benefits by way of moral conclusion (1987, p. 141).

In addition, they agree that her moral obligation does not necessitate a legal obligation, as well. Fleischman and Macklin claim that:

> Although a consequentialist analysis yields the judgment that a pregnant woman is under a moral obligation to abstain from behavior that risks the health or normal development of her fetus, no corresponding legal obligation should be put in place (1987, p. 141).

They provide three reasons for the above conclusion. First, they claim that the uncertainty involved in these situations (concerning the effects of alcohol, nicotine and other substances on the developing fetus), makes us unable to predict which fetuses will be effected and which will not. To restrict the activities and freedoms of all women, "would result in many more women being restricted than the number of fetuses that would actually be affected" (Fleischman and Macklin, p. 141). Second, Macklin and Fleischman claim that incarcerating women for fetal abuse (even if it could be shown that their fetuses would be harmed) would be unacceptable, because of the degree to which it would restrict the freedoms of women.

> Although the birth of infants with abnormalities that could have been prevented is sad and may even be tragic, it is outweighed by the greater harm done by systematic interference with the freedom and autonomy of competent, adult women in our society (1987, p. 141).

Third, Macklin and Fleischman claim that legal sanctions will force women to lie to their health care professionals and others in order to avoid punishment. It is important that the reader realize that the reasoning behind their conclusion is based solely on determinations about the total amount of happiness or pleasure achieved. Although, their conclusion may be ethically sound, the process through which they achieved such a conclusion is consequentialist in nature. Macklin and Fleischman are restricted to the limits

imposed by their dedication to an over-arching principle of utility. In their final analyses, they perform calculations of the risk and benefits and seek to maximize overall "good".

As I mentioned earlier, Fleischman and Macklin while using a consequentialist approach, are unable to agree on a resolution to problems in which maternal behaviors place the fetus at unnecessary risk for harm. The source of their disagreement stems from their individual perceptions of the potential consequences. For one [either Macklin or Fleischman], the relevant consequences are restricted to the effects on the woman and the fetus. And, for the other, the consequences extend to the effects for society in addition to effects for the woman and the fetus (1987).

Problems with a Utilitarian Approach to this Issue

The consequentialist approach provided by Fleishman and Macklin does appear to be more realistic than the ethical analyses of Hare. Their broadened scope and appreciation of the complex, uncertain nature of these problems is commendable. They have filled in some of the gaps that have been left by classical utilitarians. However, they remain deeply committed to an over-arching principle and conception of the "good". The principle of utility is an extremely valuable tool with which to approach moral dilemmas. Just like your toothbrush, the principle of utility is only part

of a complete collection of tools with which to approach the world. The fact that one uses the principle of utility does not necessarily mean that that individual is a utilitarian. For utilitarians, the principle of utility is the over-arching rule, which in the end of their analyses must override all other principles and values in all situations. Fleischman and Macklin exhibit the same reductionistic tendencies as they perform calculations involving risk-benefit assessments in their search for absolute resolution to each individual problem as it arises.

In general, there are two major categories of objections to utilitarianism. I will describe these two categories and, then, show how they apply to the utilitarian approaches to this problem, discussed in the previous section. The first category consists of internal (theoretical) objections to utilitarianism. These objections hold that utilitarianism does not work on its own terms. For example, in the previous section, I mentioned that utilitarianism requires us to know all the facts relative to a given moral dilemma in order to make a decision. In most situations, it is impossible to know all the relevant facts. This is quite apparent in medicine. There are many circumstances under which a physician must make a decision regarding the treatment of a patient without the knowledge of all the relevant facts. Any delay may mean harm or death of the patient. Even when all the information regarding a patient

is available, many times a patient will experience an idiosyncratic response to a particular drug. And, in certain situations, it is impossible to predict who will experience an abnormal response. This has been seen in certain children who go in for a routine surgery (e.g. tonsillectomy), yet have an abnormal fatal reaction to the anesthesia, and die in the operating room. With respect to the problem of pregnant women abusing substances, we do not know all the relevant facts in every case. For instance, we do not know all the consequences of drugs and/or alcohol on the developing fetus. The complexity of these situations, in general, does not lend itself easily to utilitarian analyses. There is a great deal of uncertainty involved in these situations concerning the actual consequences of alcohol, nicotine, and other substances on the fetus. Even with all the scientific support that drugs and alcohol do cause defects in the developing fetus, especially during the first trimester, scientists and physicians cannot explain why some babies suffer bad consequences and others do not. The degree of damage does not correlate well with the amount ingested by the mother. One pregnant woman who ingests a given amount of substances during the first trimester of her pregnancy may produce a damaged baby while, another women who ingests the same amount during the same time frame may produce a less severely damaged, or even a healthy baby. The utilitarian the reality of certain situations and base

moral decisions on the known probabilities, rather than absolute facts. However, appreciations of uncertainty and complexity are not intrinsic features of utilitarianism.

In addition, the long-term consequences for any given policy are usually not clear enough to rest everything on them. With respect to the issue of pregnant women who engage in activities that place their fetuses at unnecessary risks, there are a multitude of questions and consequences which must be considered. Should the legal system continue to prosecute women on the basis of statutes which have been created to deal with different problems (e.g. child abuse)? Should we create new laws which will punish women for engaging in activities which may harm their unborn children? Will putting women in jail decrease the number of women who engage in similar harmful activities? Will incarcerating women increase the happiness of future generations of both women and children? Or, will incarcerating women deter women away from the health care system, and subsequently, result in worsened health care for women and babies? What should we do with women who engage in harmful activities prior to the knowledge of their pregnancies? This issue is extremely complex, and it is impossible to know exactly how a particular policy will effect the health status of women and children in the future. I am not proposing that this is an issue with which it is too complex to be dealt but, I am attempting to show one of the drawbacks in attempting to

address this issue with a utilitarian approach. There is an element of uncertainty inherent in promoting any particular policy, law, or program which creates problems for a utilitarian approach to moral problem-solving which places so much emphasis on future consequences. Utilitarians often find themselves in the midst of a complex set of calculations, in which they feel forced to predict the future accurately. Furthermore, a limitation is provided by utilitarianism's dependence on the impersonal perspective for determining consequences. This impartial stance ignores the attachments and commitments of the agents involved.

Hare has posed a response to this type of criticism. He argues that there are two levels of moral thinking, such that no individual acts, all the time, as an "archangel." At one level (level 1), an individual acts in accordance with moral intuitive thought. At the other level (level 2), an individual acts in accordance with critical moral thought. These two level of thinking are not "rivals," and neither exist as the sole mode of thinking within individuals (Hare, p. 44). According to Hare, the "archangel," exemplifies the supreme critical moral thinker. When one acts at level 2, one is acting as an "archangel." On the other hand, the "prole," exemplifies intuitive moral thinking. Prima facie principles guide moral thinking at level 1. However, it is the job of the "archangel" to choose amongst those prima facie principles at level 2.

Hare leaves it up to us, as to which position we feel we must assume in the process of our moral thinking (Hare, p. 45). He poses an interesting, but unconvincing argument. First, he assumes that individuals can assume such a position, as the "archangel." As I mentioned, this character is unrealistic and undesirable as the critical moral thinker. Even the physician that attempts to distance herself from her patients, must take into account the perspectives and values of others. Moreover, even if such a position were possible to attain, its detachment from reality would serve as a handicap when attempting to understand our actual situaitons. Second, Hare has conveniently divided up our thought processes, as if we just switch back and forth between "prole" mode and "archangel" mode as the situation warrants. This is not a realistic representation of our actual moral thinking. We cannot and should not fool ourselves into believing that this type of moral thinking is actually possible.

Second, there are external (practical) objections to utilitarianism. This group of objections holds that, even if utilitarianism could work out on its own terms, its results would be unacceptable. For the utilitarian, the over-arching goal is to produce the greatest amount of net pleasure over pain. Principles of justice and fairness are even hostage to the greatest amount of happiness. In any given situation, if the utilitarian's calculations

demonstrate that a greater amount of pleasure could be produced by overriding principles of justice and/or fairness, then utilitarianism would *require* those principles (of justice and/or fairness) to be overridden for the sake of overall happiness. For example, a common criticism of utilitarianism is that utilitarianism could conceivably *require* us to commit such cruel deeds against humanity as slavery. If, for instance, the utilitarian could show that a greater amount of pleasure could be achieved overall, by enslaving others, utilitarianism would actually *require* such inhumane acts (this will be contrasted against Kantianism later in this section). Hare retaliates and argues that utilitarianism would not in actuality, require slavery. However, he does not argue that slavery is immoral because it is inhumane and disregards the rights of human beings. Hare argues:

> . . . no society is going to be better off with a system of slavery But my reasons for these judgments are beliefs about contingent matters of fact. If these were shown to be false, then the same philosophical views about the nature of the moral argument involved might make me advocate slavery and tyranny (Hare, p. 167).

In other words, utilitarianism would not allow slavery because it would not maximize preference satisfaction. But, according to Hare, if it could be shown that a greater amount of preference satisfaction could be achieved by allowing slavery, then utilitarianism would *require* slavery to occur as a rule of proper moral conduct. With respect to

the problem of pregnant substance abusers, utilitarianism may "generate obligations that violate human rights" (Marquis, p. 351). These rights have been formulated in order to protect persons from certain forms of treatment (e.g. the right to bodily integrity, right to procreative freedom) even when that treatment has the potential to benefit the aggregate good. It is plausible that utilitarianism may override a woman's bodily integrity if it can be determined that the fetus' life is of greater value than the life of the woman. A utilitarian argument may look something like this: A healthy fetus will produce more goods and services for society, than a woman who is an alcoholic or a drug addict, and has not been a significantly productive member of society. This moral calculation would justify policies that could potentially ignore the rights of pregnant women for the sake of ensuring the health of the unborn child. Utilitarians, such as Hare, may argue that utilitarianism would not require us to override the rights pregnant women. For instance, if the utilitarian perceived the sum total amount of preference satisfaction to be best achieved by not overriding a woman's rights, then he would claim that utilitarianism requires us not to override her rights.

Kantianism: An Overview

Kantian Ethics and Intentions

Kant's ethics are included among the so-called deontological theories. These theories, in contrast to utilitarianism are not primarily concerned with the consequences of actions. For Kant, it is the "intentions" of the moral agent, rather than the consequences of a particular action or policy, that determine the moral character of an action of policy. While the consequentialist theories begin with determining what is "good," deontological theories begin with a determination about what is "right." The primary focus for Kant's ethics centers around the categorical imperative. One interpretation of the categorical imperative is that "a rule of conduct is morally permissible if and only if one could rationally will that such a rule of conduct be adopted by everyone" (Marquis, p. 343). This formulation generates negative duties, or duties of non-interference (Marquis, p. 343). Negative duties include rules, such as not to kill or not to lie. These have also been referred to as "perfect duties," meaning that they are to be obeyed without exception. The duty of benevolence is an example of an "imperfect" duty, since it is not exceptionless. Certainly, one cannot act benevolently toward everyone, all of the time. Even if it were possible to do so, it would undermine

one's personal integrity. Kant does not offer us a method of determining degrees of benevolence (Marquis, p. 344). Imagine a situation in which you are outside, standing on your front porch. Suddenly, a young woman appears in front of you. She looks scared, frazzled, and is covered with blood. She seems to be looking for a place to hide. She notices the thick brush on one side of the house and quickly hides within it. A moment later, a large man appears in front of your house. He looks strong, upset, and is carrying a knife that is stained with blood. He shouts over at you. "Have you seen a young woman run past here in the last few minutes?" he asks. Kant's ethics may *require* you to tell the truth at all times. Thus, you would be required to inform the man as to the whereabouts of the young woman, even if this would result in the eventual death of the woman.

The Principle of "Respect For Persons"

Ethical decision-making for Kantians is guided by a system of rules. One of the major rules guiding Kantian ethics is a "respect for persons" rule, which holds that one must not use others merely as a means to an end (Marshall, p. 674). This rule "incorporates two ethical convictions: that individuals should be treated as autonomous agents and that persons with diminished autonomy are entitled to protection" (Fleischman and Macklin, p. 124). In other

words, a "respect for persons" rule insists that all persons must be treated as ends in themselves. The moral character of an action or decision depends on the intentions of the moral agent. For instance, slavery would not be allowed by Kantian standards, because it treats other human beings as mere means to an end. It violates the "respect for persons" rule and thus, is impermissable. This can be contrasted with the utilitarian focus on consequences, rather than intentions. Utilitarianism may require us to treat individuals as mere means to an end if that end results in the production of the greatest overall amount of pleasure.

For example, we can imagine a situation in which a young man has suffered a severe head injury from an auto accident, and as a result, is presently in a coma. The man has been in a coma for twenty-four hours, and the attending physicians are uncertain about his chances for regaining consciousness. The physician most involved with the case has a son who has been suffering from a congenital heart disease, and will die without a new heart. The physician notices that the comatose man's blood type matches his son's and that the comatose man's heart is healthy. When asked for information by the young man's family, the physician informs the family that their son's condition is deteriorating and that he will, most likely, never regain consciousness. In addition, he tells them that their son may be suffering severe pain. He deceives them into

believing that the removal of aggressive medical treatment modalities would most likely bring about "brain death" and be in their son's best interests. Then, he advises them that, if they should decide to end life-supporting measures for their son resulting in "brain death," another young boy would have a chance to lead a healthy and happy life. The bringing about of "brain death" by deceiving the family, in this particular case, is a mere means to promoting the physician's own personal ends, that is, to prolong the life of his son. By keeping the other family's "brain dead" son on life support the physician can maintain the man's organs so that he can be used as a donor for his own son.

The Principle of Beneficence

In addition to a "respect for persons" rule, Kant's ethics emphasize a principle of beneficence. This principle correlates with duties of benevolence. Thus, in addition to respecting the autonomy of others, one must also promote and foster the capacities of other individuals so that they may become fully autonomous agents.

> Persons are treated in an ethical manner not only by respecting their decisions and protecting them from harm, but also by making efforts to secure their well being (Fleischman and Macklin, p. 124).

An "Ethic of Justice"

Traditional philosophy typically emphasizes an "ethic of justice," which guides the actions of self-sufficient,

independent agents, as they voluntarily enter into contracts with one another. Relationships, according to these traditional models, are completely voluntary and devoid of emotional bonds. The individual's right to liberty and privacy are central to these theories (but, as I will soon show, are or little benefit to the infant, who has no interest in a right to be left alone). Both Utilitarianism and Kantianism take justice into account in their moral analyses. However, for utilitarians justice is a secondary value. That is, justice is valued in so far as it serves to achieve the greatest sum total amount of pleasure, happiness, or preference satisfaction. For Kantians, an "ethic of justice," is generated through the rule of equal "respect for persons." For some utilitarians, an "ethic of justice," may appear to generate the greatest sum total amount of pleasure in most cases. For other utilitarians, an "ethic of justice" will not always produce the greatest amount of pleasure overall.

A Kantian Approach to the Problems Provided by Pregnant Substance Abusers

In cases in which it has been decided that the fetus will be carried to term, Kant would, most likely, support the notion of a fetus as a "rational being," or as a "potentially rational being." In other words, the fetus is one who has the potential to be an autonomous human being.

From this assumption, it follows that women and society have the same obligations toward these potential human beings as they do toward other human beings.

> The principle of beneficence applies as well to the decisions and actions of the pregnant woman. She has a moral obligation to act in the best interest of her fetus, at least insofar as she has decided to allow the fetus to come to term as a wanted offspring. In this situation, the interests of the fetus do not stem from its moral status as an independent entity but derive from its future standing as an infant and child, a full member of the moral community (Fleischman and Macklin, p. 124).

Thus, both utilitarians and Kantians agree that a woman has a moral obligation to protect and promote the well-being of her fetus so long as she has decided that it will be born. On the basis of this principle, the Kantian is likely to focus on a woman's duty to foster the capacities of the fetus so that it may become an autonomous being, capable of pursuing its own ends.

Kantians are likely to imagine these situations as conflicts of rights. Unarguably, the woman has fundamental rights. These rights protect her from being interfered with by others. They allow her to do as she pleases with her body. However, it may be argued, that the fetus has "diminished autonomy," and, thus, must be protected in accordance with the "respect for persons" rule.[5] In fact, some people have gone so far as to claim that the fetus' rights to be born with the potential to become a fully

autonomous agent, take precedence over a woman's rights to bodily integrity (Balisy, 1987). Past approaches to pregnant substance abusers have been widely criticized for treating women as mere "fetal containers" (Annas, p. 13). As such, a woman is viewed as a baby-making machine, whose sole purpose, once pregnant, is to care for the fetus within her body. Thus, she will (supposedly) assure that her baby will be born healthy. One can imagine that the Kantian approach has the potential to create an adversarial relationship between a woman and her fetus (Johnson, p. 36). It is conceivable that a Kantian approach could enforce a policy to invoke prenatal contracts in situations of maternal-fetal conflict. In a prenatal contract, the mother would choose an attorney, while the state would assign a lawyer to the fetus. A contract would be signed, in which the pregnant woman would agree that she would not partake in any behavior which could possibly harm the unborn child within her body. If it could be proven that, subsequently, she had engaged in risky behaviors, the state would assume custody of the fetus or child. Thus, the pregnant woman could be detained for the remainder of her pregnancy, or held liable for any damages incurred by her child. As well as giving the state custody of her child, this situation could lead to placement in foster care. Conceivably, such a contract could foster injustices to women, including the loss of certain fundamental rights, such as the loss of

bodily integrity and privacy for women. It may deter women away from the health care setting altogether. Setting the rights of fetuses (or children) against those of the mother simply ignores the complexity of these situations, placing the two at opposite corners of a boxing ring, when their connection is much more intimate and personal, both physically and emotionally.

According to Kant's ethics, we must treat each woman and fetus as ends in themselves, rather than as a mere means to an end. Thus, it would be inappropriate to disregard this woman's situation in order to ensure the well-being of future generations of women and children. A Kantian may see as the most appropriate alternative, a policy which treats particular women in their present situations, in accordance with what he decides is appropriate treatment without determining how this will affect the overall well-being of women and children in the future.

Dealing with "Diminished Autonomy"

Kantians hold that actions performed with the intent to deceive others are inconsistent with the "respect for persons" rule. Deception is a tool used to control the thought, action, and/or feeling of others. As I demonstrated in the example of the comatose young man, deception may be utilized to treat people as mere means to a particular end. For Kant, the intent to deceive or

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manipulate another rational human being is morally unsound. But, Kant's rules for moral conduct are limited, in that they do not address directly the actions of those human beings who appear to be acting irrationally or without full autonomy. According to the "respect for persons" rule, we are justified in protecting those with "diminished autonomy." But, how are we best able to proceed in such a determination? I will be addressing this issue in the following section on the limitations of Kant's approach to this problem. For now, it is safe to assume that, for Kant, in dealing with women who appear to be acting irrationally, the use of paternalistic intervention would not be inappropriate. It would, then, be society's duty to interfere with her actions in the most effective way consistent with trying to restore her rationality. However, there is only a thin line differentiating that which falls under the category of extreme paternalistic intervention and/or coercion and that which falls under the category of deception. I will expand on this concept in section V.

Problems with a Kantian Approach to this Issue

Kant's theory is not useful in governing relationships between pregnant women and their fetuses. Duties of justice are not helpful with regards to these personal, and truly intimate relationships. For example, the physician has a duty to protect the unborn child, yet the physician also has

a duty to fully inform the mother, without the use of manipulation or deception, while respecting doctor-patient confidentiality. However, in order to protect the fetus (duty #1), the physician may see the use of deception or manipulation (defying duty #2) as the best option. This mode of action would use the woman as a means to achieving an end, that is, producing a healthy baby.

Kant presupposes relationships to be consisting of autonomous, freely-acting agents. These agents are independent and choose to enter into contractual relationships with one another. Kant's ethics may work well for these types of self-sufficient persons. However, Kant's ethics offer little guidance for dependent persons, that is, those who have essential needs which they themselves cannot support. I will postpone my discussion of the notion of providing for dependent persons until section III.

Kantian ethics emphasizes intentions (maxims) rather than consequences. However, good intentions may lead to bad results (O'Neill, p. 293). For instance, policy makers may have good intentions guiding their actions of placing women in jail, but this may produce bad consequences in the long run. There are many more examples of situations in which people have acted with good intentions (e.g. in the "best interests" of another person), yet created results that do not fully reflect those good intentions. Kantians hold to the belief that actions are always in accordance with one's

"true" intentions. However, there are many times when one's intentions do not appear to coincide with the actions she displays. For example, a woman may never "intend" to bring harm to her fetus. Yet, her actions may lead us to an alternative conclusion. That is, if the way in which a woman behaves appears to contradict her proclaimed intentions, we may be led to believe that she is not professing her "true" intentions, if we are a Kantian. An important question is, how would Kant deal with the truly ignorant woman or the woman whose intentions are truly good, but whose addiction overrides her good intentions, rendering her actions unintentional? Or, would Kant assume that she was still acting intentionally? I will refer back to these question concerning autonomy, intentional behavior, and responsibility in section V due to their critical nature in deciding how we ought to deal with pregnant substance abusers.

As may already be apparent, Kant presupposes a degree of freedom of autonomy. He assumes that all one must do is intend to act morally, and then, one will indeed act morally. For Kant, the act performed is a reflection on the intention (discussed above). A question which has been raised in the past, is whether or not pregnant alcoholics/drug addicts are making an autonomous decision to continue use of a substance during pregnancy. However, a more appropriate question one may ask is, in what sense does

a particular pregnant alcoholic's and/or drug addicts's decision to abuse during pregnancy fail to be autonomous? I have found it extremely helpful to refer to the four senses of autonomy presented by Bruce L. Miller with respect to this question (Miller, 1991). This will be discussed in more detail in section V.

Traditional Philosophy and the Experience of Men

Traditionally, women and children have been left out of the realm of philosophical inquiries, both Kantian and utilitarian. However, I will postpone the development of this idea until the next section.

SECTION III. FEMINIST PERSPECTIVES ON PREGNANT SUBSTANCE ABUSERS

Feminist Ethics: An Introduction

In this section, I will not attempt to provide a comprehensive account of the current conceptions of feminist ethics. Feminist ethics cannot be neatly and comprehensively summarized. Such a summary would obscure the diversity of feminist ethics, which Alison Jaggar has accurately described as "a ferment of ideas and controversy, many of them echoing and deepening debates in non-feminist ethics" (Jaggar, 1993, p. 87). I will not defend or draw on feminist ethics as a whole. Rather, I will draw on certain aspects of it which are pertinent to my thesis. These will include (1) the male bias present in traditional ethics, (2) the male domination in social/cultural structures and the subsequent subordination of women, (3) the importance and value for ethics in women's moral experiences, and (4) an "ethic of care" (Held, 1993, and Reich, 1995). Certainly, not all the above notions are unique to feminist ethics. However, taken together, they help to define feminist ethics and to provide much of the core around which feminist ethics has evolved. Feminist ethics must be interpreted with caution. That is, we must ask ourselves, what is the hidden agenda behind different definitions of feminism? Certain definitions can be dangerous and can enhance the already

existing marginalization of women. For example, feminists that emphasize an "ethic of care" are criticized by other feminists who feel that by emphasizing care, mothering and other "feminine" characteristics, feminists are reinforcing societal structures which serve to oppress and subordinate women (Jecker and Reich, p. 339). To be suspicious of such definitions is appropriate. However, to disregard the value of such characteristics for women, as well as men, is not. This particular section of my thesis is divided into four sub-sections. In the first sub-section (beginning with the paragraphs immediately following this one), I briefly introduce contemporary feminist ethics. In the second sub-section, I describe how certain well-established insights in feminist ethics pertain to my thesis. In the third sub-section, I discuss the limitations of feminist ethics with respect to the problem of pregnant substance abusers. Finally, in the fourth sub-section, I describe the ways in which feminist ethics may approach this problem.

The Male Bias Present in Traditional Ethics

A primary concern underlying much of feminist ethics is its commitment to challenging what is perceived as a masculine bias pervading such traditional ethical theories as utilitarianism and Kantianism (Jaggar, p. 361). Philosophical ethics has, traditionally, been a male-dominated discipline. Annette Baier (along with other

more contemporary philosophers) has pointed out that the paradigm of the man has worked as the model of human life, thereby leading to a conception of the human being as a man (Held, p. 48), throughout much of moral discourse (and I am quite skeptical as to the extent to which these philosophers have provided us with an accurate depiction of the male species). Utilitarianism, a leader of traditional theories of philosophy and morality displays this obsession with the experience of men. Whether this phenomenon was due to women not being uninterested in the field of philosophy, or to the voices of women philosophers not being heard (or listened to) by an unwelcome discipline, or a combination of the two, I am unsure. I believe the latter may have driven the former. Annette Baier notes that philosophical accounts of morality were not actually based on human experiences, but rather on the experiences of men within their contractual relations, thereby leaving out the idea of human development, reproduction, and intimate relationships from much of philosophy. Both Held and Baier attribute the absence of critical characteristics of personal relationships from traditional moral theory to the fact that the field has been so male-dominated and blind to those experiences occurring within the private realm (Held, p. 54). Virginia Held also notes that, typically, women have been ignored and, thus, particular relationships between pregnant women and their fetuses have been absent

from the bulk of philosophy. As I discussed in the previous section, traditional ethics appears to have been largely designed to guide the market-like exchanges of independent, self-sufficient, rational, mutually disinterested agents. According to feminists, this emphasis on contractual relationships reflects the fascination of a male-dominated society on such qualities as independence and self-sufficiency. Feminists do not disregard the importance of such characteristics. However, feminist Virginia Held criticizes traditional moral philosophy for presupposing a model of the practices of "economic man," entering voluntarily into contractual relationships (Held, p. 56). According to Held, this model assumes that man simply exists, ahistorically evolved, and neglects to realize that all human beings, even men, were at one time fetuses (carried by women), babies (delivered by women), and children (raised by caretakers). In addition, at each of these stages, the individual was dependent on others for nurturance and protection. Feminist ethics challenges the scope of the contractual model of human interaction, and claims that it is not applicable to all types of relationships.

Male Domination in Social/Cultural Structures and The Subsequent Subordination of Women

Though feminist philosophers may disagree on the basic principles and goals of feminist ethics, they all share the assumptions that (1) the subordination of women is morally wrong, and (2) the moral experiences of women deserve an equal amount of respect as those of men. On the basis of the former assumption, feminist ethics is committed to a constant articulation and correction of those practices that have acted to reinforce the systematic subordination of women. In fact, one of the primary goals of feminist ethics is to afford us with both the appropriate theoretical dialogue and the practical guidance with which to approach ethics and ethical theory in the absence of the subordination of women and the neglect of women's experiences.

One of our most oppressive structures is an invisible one. It is a wall, consisting of socially-constructed gender stereotypes, which acts to divide the two sexes. These gender stereotypes have been used to create labels that, supposedly, separate the two sexes based on certain societal expectations. These labels carry the social/cultural definition of what it means to be female or male. However, one's sex is a biologically determined phenomenon. With few exceptions, an individual who is female has the chromosomal type of XX, and has specific

primary and secondary sexual characteristics. And, an individual who is male has the chromosomal type of XY, and has certain specific primary and secondary sexual characteristics [Genetic variations do occur and may provide us with some exceptions]. However, society has constructed its own definitions, as I mentioned earlier, and these contribute to one's gender type, and manifest themselves in society's perceptions of which characteristics are "feminine" and which are "masculine." Examples of "feminine" values are commitment, sharing, caring, tenderness, community, interdependence, connection, and nature. These can be contrasted to "masculine" values, such as independence, domination, autonomy, detachment, and will. These labels have been provided by the society and culture in which they have arisen. They may differ amongst societies and cultures. However, they serve the purpose, in any society, of labeling what characteristics are "normal" for a given individual of a given gender. To label a characteristic as "feminine" implies that that particular trait is a unique and necessary quality to be a woman. Thus, a woman that does not exhibit such a characteristic does not fit into society's construction of femininity. Moreover, a man that displays "feminine" qualities may be teased for being a "sissy" or said to be effeminate.

According to Jaggar:

> ... the central insight of contemporary feminism ... has been the recognition of gender as ... always [a] pervasive system of social norms that regulates the activity of individuals according to their biological sex (1993, p. 80)

A common and serious misinterpretation of feminist ethics is made when one does not fully understand the difference between the terms "feminist" and "feminine" (Jecker and Reich, p. 338). Feminine ethics emphasize the "moral experience" of women, as a phenomenon distinct from the experiences of men. For example, Carol Gilligan, in her book, *In A Different Voice*,(1982) claims that women and men make moral decisions based on a different set of values. Based on her observations, Gilligan claims that female children make decisions based on an "ethic of care," while male children, make decisions based on an "ethic of justice." That is, the female children emphasize the maintenance of their relationships, while the male children emphasize rules of equality and fairness. On the other hand, feminist ethics emphasizes the oppression and subordination of women through the structures set forth by the male-dominated society in which we live (Jecker and Reich, p. 338). Feminist ethics is not a synonym for a system of ethics based on that which has been labeled as "feminine." Nor does feminist ethics strive to replace "masculine" values with "feminine" values as guiding forces in moral debates. That which is said to be "feminine," has

been labeled as such only within the framework of a male-dominated society. Thus, it is argued, that a system of ethics based on the "feminine" may serve only to enable or to encourage the continuing subordination of women. However, to ignore that which has been labeled as "feminine," to reject such labels or characteristics as not applicable to women or men, and accept those characteristics labeled as "masculine," will not benefit women. Feminist ethics should incorporate "feminine" values in its discussions. To admit that the notion of caring has, historically, been labeled as a "feminine" value is correct. However, this value is not restricted to women. It is a mistake to assume that feminist ethics incorporates only "feminine" values. But, feminist ethics should not be ashamed to utilize the notion of care and other "feminine" values in its discourse. Many women are assertive, aggressive, independent, and self-sufficient. Yet, to neglect asserting that women, as with and all human beings, are beings capable of love, compassion, emotions, sympathy, and caring, is absurd. Or, to claim that human beings are able to completely escape their emotions and assume a perfectly rational, objective point of view, is equally as absurd. To make moral decisions based, solely, on an "ethic of justice" will not suffice in all cases, and, thus, will not suffice as the paradigm for moral decision-making.

The Importance of Women's Moral Experiences

On the basis of the latter assumption, that is, that the moral experience of women deserves an equal amount of respect as that of men, feminist ethics maintains that ethics and ethical theory must give serious, but not exclusive, attention to women and women's experiences. Traditional philosophers' inability to effectively apply their "ethic of justice" to domestic relationships devalues the moral relevance of issues existing within the private realm and thus, devalues much of women's experiences. Relationships with intimate others typically exist within the private sphere of life, and thus, are left untouched by the moral inquiries of traditional ethicists. Traditional ethics, with its focus on contractual relationships in the public realm, ignores those relationships that have typically been associated with domestic or private life. However, it is in this realm that, historically, women have found themselves. And, it is within this realm, that such intimate relationships typically exist. Thus moral dilemmas arising within the domestic realm are either misconceived by ethics of justice or not dealt with at all. As a result, the moral dimensions of pregnancy are not fully recognized. Since feminist ethics is concerned with the experience of women, it is concerned with what has traditionally been characterized as the private sector of life. This concern with the private sector is neither unique to feminist

ethics, nor a requirement demanded by feminist ethics. However, those relationships and concerns denoted as "private," as opposed to "public," have historically been associated with women. Thus, it is important that feminist ethicists do address those private issues, for to wait for traditional philosophers to do so, may not prove effective.

An Ethic of Care

When feminists began looking at the moral experiences of women, some feminists (most specifically Carol Gilligan) perceived women to be making moral decisions based on an "ethic of care"[6] (Gilligan, 1982). Though, Gilligan's work is controversial, the methods and results of which are often looked at with much skepticism, other feminists saw the value in the concept of an "ethic of care," and expanded on this idea. Since Gilligan, an "ethic of care," or a moral outlook based on caring, has become a salient feature of the discourse in much of feminist, as well as other branches of ethics. Although other branches of philosophy do at times utilize the notion of an "ethic of care" in their discourse, an "ethic of care" plays a large role in feminist ethics. However, it is not accepted as a paradigm for moral behavior by all feminists. It is neither a requirement for feminist ethics, nor a sufficient feature, in and of itself, for a feminist conception of ethics. From an "ethic of care," stemmed criticism of traditional ethics' emphasis on rights,

rationality, objectivity, and impersonal principles. Some feminists suggest that an "ethic of justice" is:

> ...characteristically masculine insofar as it obscures human difference by abstracting from the particularity and uniqueness of concrete people in their specific situations and seeks to resolve conflicting interests by applying an abstract rule rather than by responding directly to needs that are immediately perceived (Jaggar, 1993, p. 83).

These critics insist that traditional ethics attempts to justify their claims by appeals to a universal, impartial reason, is an impossible task. In contrast, an "ethic of care" emphasizes intimate relationships, responsibilities, the notion of "positive rights" (in addition to negative rights) and the subjective experience of the moral agent (rather than the impartial, objective, spectator, which predominates traditional ethics).

In general, feminists do not argue that an "ethic of care" ought to be the paradigm for moral behavior in all relationships. They agree that, in certain situations, an "ethic of justice" is a much more fruitful paradigm for interaction. However, traditional ethics has systematically denied the importance of personal relationships that are outside of contractual ones existing between mutually disinterested, independent individuals. Thus, feminist ethics has chosen to stress aspects of human life that have been given short shrift by traditional ethics.

Well Established Insights in Feminist Ethics Related to Thesis

Feminist Ethics and Relationships

Held does not disregard the need for contractual relationships but does argue that they are neither adequate, nor realistic models, to serve as the ideal paradigm for relationships in a post-patriarchal society. Held, as well as other feminists, emphasizes the importance of the "relational self," that is, the relationship of the self with intimate others such as family, friends, and loved ones. Both past and present relationships play a crucial role in determining how one perceives herself and others. Past relationships can influence the level of self-esteem one can eventually attain. Childhood sexual abuse, for example, diminishes the potential a child has for developing a high level of self-esteem. It provides a serious impediment to the development of one's self-esteem and self-confidence, which is a common contributor to future alcohol/drug abuse. Consequently, a woman who was sexually molested as a child is at a much higher risk of abusing substances as an adult than a woman who was never sexually abused. In fact, studies show that alcoholism is three times more common in women who were sexually abused as children than in the general female population (Tornbull, p. 141). Present relationships also play a crucial role in a woman's perception of herself. For example, many times a

woman's sense of identity and self-worth is dependent upon the nature of her relationships with intimate others, such as her spouse. Her level of self-esteem may depend on the status of her relationship with her partner. If the quality of this intimate relationship is perceived as being poor, a woman may be more inclined to abuse substances as an escape from the stress of her situation. By considering relationships and emotions as useful and necessary tools with which to approach moral inquiry and theory, this perspective differs from the more rationalistic, self-seeking, unemotional, impersonal perspective of traditional ethics.

Feminist Ethics and an "Ethic of Care"

An "ethic of care" can be extended to others outside of our intimate relationships, to those to whom I will refer to as non-intimate persons. In doing so, it may offer guidance in caring for all children, more specifically for my purposes, young and adolescent girls. Beginning at the most infantile stages of development, we may be able to prevent substance abuse and addictive behaviors from occurring in the first place. This idea will be expanded on in section V of this thesis paper. An extension of an "ethic of care" to our young girls and adolescents may help to endow our young women with a greater amount of self-esteem and love for themselves, so as to decrease the potential for

self-destructive behaviors (e.g. substance abuse). This may require us to focus on and fulfill our responsibilities to our young girls. I will postpone the discussion of these responsibilities until section V.

Feminist Ethics and the Notion of Rights and Responsibilities

One can argue that society does, in fact, look favorably upon its young girls and its pregnant women. Certainly, for the most part, society views pregnancy and children in a positive light. However, this positive feeling for pregnant women and children is more of a matter of sentiment than a feeling of responsibility, which would engender obligations toward dependent others. Not only are children dependents, but also both women and men may be considered dependents. Some individuals are more dependent than others. For example, the educated, young girl who is supported by her wealthy parents is less dependent than the man who was abandoned by his parents at a young age, never goes to school, and is homeless. This young man will have to depend more on society for help than the young woman.

It can be argued that all women share a common dependency, due to their oppression throughout history. Throughout our history, the constitutional right to liberty and the pursuit of happiness have more or less been systematically limited and/or denied to women. This has

been most apparent in our social, political, economic, and familial institutions. The right to freedom is a negative right that endows the bearer with a right to pursue his interests and personal projects in the absence of interference from others (I use the pronoun "he" to emphasize how this right has traditionally been interpreted, that is, as a right held by independent, rational, self-sufficient males). Much of the earlier works in feminist ethics were concerned with making people aware of the vast differences in the treatment of, and opportunities for, men and women. They struggled to point out the existing social structures which serve to oppress women. And, it truly was a struggle in the past, and remains a struggle even today. Those who were the most adamant in exposing these systematic barriers were the most at risk for criticism and name-calling by other members of society, both men and women. The struggle continues today. But, as a result, people are more conscious today of the plight of women to gain equal status in society. Now that the professions are expected to provide equal opportunity for both sexes, problems have not dissolved. The effects of previous discriminatory practices persist and feminists claim that the traditional negative right to noninterference alone or, in addition to, the opening up of professional fields which were previously closed to women, are not sufficient.

By negative rights, I am referring to those fundamental rights which have been granted to us either in the words of the constitution, or in their subsequent interpretations, and include the rights to liberty, property, privacy, bodily integrity, procreation, contraception, and education. Quite simply, they are rights to be left alone, or rights not to be interfered with by others. Negative rights correlate to negative duties, that is, duties not to interfere with others' rights. Negative duties require one to merely leave others alone. They don't cost a person anything to fulfill. On the other hand, positive rights correlate to positive duties, that is, duties which require one to provide for others. These types of duties may be costly, in contrast to negative duties. The Canadian health care system exemplifies the notion of positive rights and their correlated positive duties. All Canadians have a positive right to health care. The government, then, insures that all Canadians receive a basic minimum of health care (of course, the Canadians do have problems with this type of health care system, but I am not arguing for or against their system in my thesis. I have chosen their system of health care only as an example of the notion of positive rights and duties). In the United States, in contrast to Canada, the right to health care is conceived as a negative right. Thus, if an individual is not provided with health care coverage through her employer, or if she cannot afford

to buy health care out-of-pocket, she may not have access to health care. A classic criticism of the notion of positive rights is often posed by libertarians. Libertarians reject the positive rights because such rights have the potential to "infringe on the freedom of individuals to spend their time and money as they choose" (Arras, p. 24). In other words, positive rights may conflict with the negative rights of others. If the right to an education or the right to health care were acknowledged as positive rights, we would have to implement a system of taxation to provide for the needs of others. All of the aforementioned rights are of utmost importance to us as American citizens. And, our legal system protects those most basic rights and freedoms, so that all individuals may act without interference from others, including the government. These negative rights do not, however, require others (e.g. the government) to provide education, health care, food, shelter, clothing and other resources for individual Americans. Thus, it is conceivable that many Americans do not have the capacity to obtain that which is afforded to them through their fundamental (negative) rights. For example, many individuals are born into poverty and require assistance, financial and/or emotional, in order to have the same potential for achievement and success as those individuals who are born into a middle class or wealthy family.

In addition to these negative rights to noninterference,

it is plausible that everyone including women and minorities, needs to be acknowledged as having "positive rights." This is especially true at this point in history because of past and present discrimination. For example, the single mother who needs to work, and whose hours are irregular, ought to be provided with affordable child care services and perhaps on-site child care at her place of employment. Women ought to be acknowledged as having "positive rights," in order to truly obtain equal status in a traditionally male-dominated culture. The pregnant woman requires not only adequate prenatal care, but also adequate compensation in the work force. Not all women feel the need to take time off during or following their pregnancies. However, those women that are confined to bed rest or have an otherwise difficult pregnancy should not be burdened further by the fear that they will lose their jobs or be demoted. Also, women need time off to bond with their newborns and, perhaps, breast feed, as well (I would also argue that fathers need time off from work to bond with their newborns, as well, but this discussion must be saved for another essay, outside of the scope of this thesis). To say that women should be afforded with special positive enablements,

> . . . continues to be fraught with dangers for women as it was earlier in the century when the existence of protective legislation was used as an excuse for excluding women from many of the more prestigious and better paid occupations. For instance, mandating

> special leaves for disability on account of pregnancy or childbirth promotes the perception that women are less reliable workers than men; recognizing 'premenstrual syndrome' or postpartum depression as periodically disabling condition encourages the perception that women are less responsible than men. . . In all these cases, attempts to achieve equality between the sexes by responding to perceived differences between men and women seem likely to reinforce rather than reduce existing differences even differences that are acknowledged to be social rather than biological in origin (1993, p. 82).

In other words, the notion of sexual equality is based on the conceptual tools provided by a male-dominated society. The ideal provided by such a society is that of the ideal male. Relative to this standard, women will, for the most part, appear to reside in a level inferior to that of most men. Jaggar claims:

> Sooner or later, most feminist attempts to formulate an adequate conception of sexual equality run up against the recognition that the baseline for discussions of equality typically has been a male standard. . . Having once reached this recognition, some feminist theorists have . . . begun speculating about the kinds of far-reaching social transformation that would make sex differences 'costless' (1993, p. 82).

Feminists would, most likely, agree with communitarians that the notion of rights is confused with the notion of rightness. William Galston, a communitarian activist, has argued that "rights do not equal rightness" (Galston, 1983). In other words, rights do not give one sufficient reason to do something. This seems contrary to popular American beliefs, which focus primarily on protecting the (negative) rights of all Americans. Although, our rights must be

protected, they are not sufficient. In addition to rights, we must consider our responsibilities to others. These responsibilities must be reinforced along with our rights. For example, the pregnant woman has a right to procreative freedom and a right to privacy, which includes a right to do harm to her body. However, this right should not mean that she has a sufficient reason to do harm to her body, or that to do harm to her body is the right thing to do. The pregnant woman should feel a responsibility to her future child.

Feminist Ethics and the Notion of Autonomy

There are a variety of opinions in feminist ethics concerning the notion of moral autonomy. Some feminists argue that women and men are equally autonomous in the moral and intellectual sense. Others argue that the definition of an ideal of autonomy reflects the interests of a male-dominated society. Jaggar insists:

> Feminist ethics in the nineties must find ways of conceptualizing moral agency, choice and consent that are compatible with the feminist recognition of . . . the gendered social construction of the psyche, and the historical constraints on our options (1993, p. 85).

The question of moral autonomy is central to this thesis, in the sense that the effects of alcohol and drug addiction on an individual's degree of autonomous decision-making

capacity is unknown. This approach to the notion of moral autonomy is pragmatic in nature, and will be discussed in more detail in Section V.

Feminist Ethics' Limitations With Respect to The Problems Provided by Substance Abusing Pregnant Women

A common critique of feminist ethics is that, traditionally, its major focus has been white middle class women. This is a well-founded criticism which stems from the fact that feminist ethics' primary contributors have been, for the most part, white middle class women. Thus, the point of view is narrowed and not representative of all women. In addition, the application of feminist ethicists' recommendations to other sub-populations of women, is uncertain. Since differences in addictive behavior and reproductive health (e.g. access to prenatal care, time of entry into prenatal care facilities) have been noted with respect to race and ethnic background, this limitation of feminist ethics is a potential obstacle to its usefulness in this undertaking (Though there have been some more recent works in black feminist ethics, at the present time, it is limited). Although I have mentioned some of the important differences between women of different ethnic and racial backgrounds, we need more empirical research in order to

obtain more well-grounded evidence and agreement. What I ultimately recommend is contingent on factual answers (that are not yet known) to many important empirical questions.

What Feminists Insights Suggest With Respect to the Problems Provided by Substance-Abusing Pregnant Women

It is conceivable that feminist ethics can help in the analysis of the present situation, and eventually in the creation of new approaches to these problems. A frequently heard critique of social structures is that women's contributions to society, particularly mothering and childbirth, have been devalued. Society perceives pregnancy as a "biological" or "natural" process, rather than as a distinctly human undertaking. The devaluation of pregnancy becomes more apparent when one looks closely at the existing social structures which tend to place pregnant women at a disadvantage (e.g. rigid work hours, no compensation for days off). These factors may engender a feeling of resentment within the pregnant woman towards her fetus. Consequently, these negative feelings may harm the relationship between the pregnant woman and her unborn child. Thus, a society which is truly interested in the flourishing of children, must take an interest in the physical, mental, and emotional well-being of its pregnant women.

An "ethic of care," such as the one presented by

Virginia Held, would be more responsive to the needs of the child through its emphasis on relationships, care, and responsibilities. If we agree that infants and pregnant women require "positive enablements" from intimate as well as non-intimate others (e.g. health care providers, government funding), then, it follows that they bear certain "positive rights," in addition to negative rights. Individual rights (e.g. right to liberty, right to privacy), are protected by our constitution and are of utmost concern to Kantianism. However, an individual's right to liberty and privacy is of little benefit to the infant who has no use for the right to be left alone. The young infant requires food, shelter, medical care, love and attention. It is solely dependent on others for its physical, mental, emotional, and psychological well-being. Noninterference at this stage in its life will lead to starvation and ultimately death. Children do have a right to privacy, specifically, a right to bodily integrity, in the sense that the child has a right not to be sexually, physically, and/or emotionally abused. However, we must recognize children as the bearer of positive rights, as well. Society must realize that, even though there is a great deal of value in individual rights to liberty and privacy (Held would agree with this), these rights will be of little value to infants and children who need certain things in order to be able to develop into free and independent, autonomous agents with

the capacity to exert their negative rights as human beings. If we focus more specifically on the notion of our responsibilities toward raising our young to become autonomous, loving, independent, goal-oriented, self-sufficient individuals, a cycle may begin in which these young will provide similar "positive enablements" for the next generations.

SECTION IV. PRAGMATIC PERSPECTIVES on PREGNANT SUBSTANCE ABUSERS

Pragmatism: An Introduction

Four brothers are gathered around the television set in the living room of their home. As they sit and watch T.V., they are bothered by the buzzing of a mosquito. They all swat at the annoying bug as it hovers around their ears, their shoulders, and their backs. Finally, the oldest of the group grasps the insect and squashes it in his grip. A minute later, another buzz is heard. Now, the middle brother is able to swat a mosquito just as it lands on his thigh. A minute later, he squashes yet another mosquito into his other thigh. The scenario continues - buzz, squash, buzz, squash. The eyes of the youngest member of the group fixate on the screen door which has remained open since they entered the house about an hour before. He rises from the couch, walks over to the door, and shuts it. A minute later, when all the remaining mosquitoes have been successfully killed, the buzzing comes to a complete stop.

The above scenario is not unlike the attempts of traditional philosophers and lawmakers/enforcers to approach contemporary moral dilemmas. Pragmatism offers an alternative to these "quick-fix" problem-solving techniques. I will elaborate on this idea throughout this section. Similar to feminist ethics, there are many different conceptions of pragmatic ethics. Its flexible and

pluralistic nature allows for such variation. Therefore, I will not attempt to offer a single definition of pragmatism or pragmatic ethics. Rather, as I did for feminist ethics, I will draw on those aspects of pragmatic ethics which are most relevant to my thesis.

John J. McDermott, a contemporary pragmatist, inspired by the classical pragmatists, Charles Sanders Peirce and William James, discusses their [Peirce's and James'] conceptualizations of pragmatism's salient features and arguments.

> The fundamental point . . . has to do with effects and consequences as the bottom line of the worthiness of judgments, propositions, truth-claims or decisions. The classical philosophical tradition in ethics, with the exception of utilitarianism, has been tied to either an a priori source for ethical decisions, or a redoubt of permanence, such as a fixed human nature or a natural law governing all events and evaluations. Pragmatism, to the contrary, stresses the open-ended and novelty-ridden character of our experience, which in turn renders all judgments tentative. Obviously, the future is stretched into infinity such that one cannot wait indefinitely to make a decision. The obligation is to be wary of the immediate future and to weight one's decisions always in the light of possible novelty, both near and far. Once the decision has been made, a persistent monitoring of the ability to sustain that decision is necessary, especially as its ramifications unfold in the context of future experience (McDermott, p. 115).

Similar to Peirce and James, contemporary pragmatist, Anthony Weston, describes pragmatism as flexible and reality-based, allowing us "to embrace the richness and diversity of our actual values and then to make full use of that richness and diversity to open up a new sense of

possibility and flexibility in practical action" (Weston, p. ix). In *Toward Better Problems*,(1992) Weston argues for an approach to practical ethics, based on pragmatism. Based on the foundations of a pragmatic tradition, Weston depicts a system of "practical ethics." In contrast to the rigid rules invoked in traditional ethical endeavors, Weston claims that "practical ethics" offers a "less rule-bound" alternative. In other words, unlike traditional ethics, pragmatic ethics does not attempt to offer rigid, formal, solutions to any given problem. It does not set forth one ultimate goal or ideal (e.g. to maximize utility), towards which all moral problem-solving should strive to approximate. Rather, pragmatic ethics insists only on a "sustained engagement" of the problem and continuous improvement or melioration of our current situation. McDermott claims that:

> . . . pragmatic morality calls upon us to live a life of meliorism, that is, a life in which we effect no ultimate solutions, yet strive to make things better. . . Lamentably, it is rare that any human problem can be totally resolved, and if it is, the wages of the resolution are more damaging than the original problem. More likely, by far, is it that we can ameliorate a situation (1986, p. 126).

Weston and McDermott both describe pragmatic ethics as "a 'preventive' sort of ethics that engages ethical problems over time rather than regarding them as 'puzzles' to be solved"(Weston, p. ix). With pragmatism, the emphasis is not on discovering an answer to "the" problem. Rather, the

emphasis is on a "continuous and critical engagement of the issue"(Weston, p. 85). For example, the pragmatist will search for the reasons why and how these problems arise in the first place. Weston discusses one of the notions of Dewey's philosophy, "social reconstruction," which entails a "rethinking of the problem." This requires us to address the situations which allow these moral dilemmas to arise. Dewey suggests that perceived problems may be "reconstructed" or transposed into something more manageable by looking at their evolution and determining ways to eliminate their origins (Weston, p. 5). Weston borrows Dewey's notion of "problematic situations," to offer a better conceptualization of moral problems.

> [moral problems] are not discrete and self-contained but instead arise out of larger patterns of life and practice, so even to speak of the problem is misleading (Weston, p. 13).

The job of the pragmatist is to ask questions regarding these problematic situations.

Thus, pragmatic ethics forces us to analyze the context of the problem, rather than attempting to separate out the problem from its context and, then, reduce it even further. However, the context in which a problematic situation arises refers not only to past and present circumstances, it also pertains to the future circumstances. Thus, for the pragmatist, the consequences of a particular decision and subsequent action are just as important as the decision

itself. However, pragmatists are not consequentialists. Pragmatists embrace the idea of consequences, but, unlike the utilitarians, they [pragmatists] do not believe that there is one ultimate conception of the "good".[7]

Pragmatists discount the notion of an all-knowing, impartial spectator and moral decision-maker. They turn their back to the objective, removed, bystander that is involved as the over-arching moral arbiter in traditional ethics. Instead, they insist that moral decisions can be made only within the context in which they arise, and by an interactive agent. Thus, pragmatic ethics is a more interactive process which views the personal experiences of those involved as valuable pieces of information with which to better approach discussions in ethics.

> The sacred is not an endowment from afar, as though external forces have decided the quality of our experience by indirection. No, the sacred is the way in which we find ourselves in the world, our values, our needs and above all, our things which accompany us on this journey whose only message is the quality of our life, day by day (McDermott, p. 123).

Whereas the traditional philosopher attempts to use a "view-from-nowhere" in his decision-making process, the pragmatic philosopher is more likely to use many different points of view in her analyses. Pragmatists believe that "the problem" may be perceived differently by the different characters involved in each situation. Pragmatists acknowledge and explore the values at stake and attempt to

articulate the connections between different values (Weston, p. 57). Weston speaks of finding a "center of gravity" where the values at stake "hang together." According to Weston, the goal is to "establish lines of communication between different values" (Weston, p. 57). This differs from traditional ethics' assumption that certain values, typically "masculine" values, are inherently more important than others.

Since pragmatic ethics draws on the experiences and perspectives of the different individuals involved in a particular situation, pragmatic ethics is, in a sense, pluralistic. McDermott claims that a pragmatic interpretation of "pluralism" is slightly different from its original and/or political meaning.

> We do not refer to pluralism as a way-station until agreement and unity of creed, doctrine, custom, and ideology can be achieved. Such an approach is but a furtive way to ultimate closure in blatant disregard for the complex and irreducible human perspective on values, beliefs and ways of living one's life. In the pragmatic tradition, pluralism comes to mean something entirely different. Put bluntly, pluralism is here to stay, for it is a constituting strand in the fabric of the human condition (1986, p. 124).

Pluralism allows pragmatic ethics some flexibility in its ability to deal with individual circumstances. Such flexibility is remarkably absent from the rigid traditional approaches to ethics.

John Dewey insisted that individuals are constituted, in part, within the context of their communities. Though he

did not disregard the biological origins of much of our behaviors, he purported that much of our behaviors are the result of an interplay between our biological make-up and our social environment. Thus, an individual may be born with certain potentials, and depending on the conditions in which he/she is raised, those potentials may or may not be fully realized. For instance, two babies may be born with similar potentials (e.g. to become confident, autonomous agents). Imagine that one of the babies is raised in a middle class family, with two loving, supportive, and educated parents that attend to the child's needs for love, affection and support throughout her developmental years. On the other hand, imagine that the other baby is raised in a lower-income family in which the two parents are uneducated, have an abusive relationship, and abuse the child, physically, mentally, and sexually. It is conceivable, if not probable, that the person that develops in the former situation, in comparison to the person that develops in the latter home, will be relatively more confident and better able to form healthy relationships with others. On the basis of Dewey's notion of the crucial social determinants of human behavior, pragmatic ethics strives to describe or construct social environments so that future generations may approximate their potentials (Putnam, p. 1004).

Pragmatic ethics demands concrete analyses of actual situations. Rather than abstract theorizing performed in a room, far removed from actual real-world events, pragmatic ethics puts a practical twist to philosophical discussions. Pragmatic ethics emphasizes action, as well as theory. Pragmatism takes philosophy out of the classroom and brings it down to earth. It takes philosophers away from their little games of pondering our existential being and the meaning of words (e.g. time). Pragmatists begin by looking at our actual situations with a critical eye. They draw comparisons between different forms of living to find the areas where changes are warranted. Thus, experience gained from one sphere of life (e.g. private) can be used to inform other spheres of life (e.g. public). McDermott quotes James in his description of the pragmatist:

> He turns away from abstraction and insufficiency, from verbal solution, from bad a priori reasons, from fixed principles, closed systems, and pretended absolutes and origins. He turns towards concreteness and adequacy, towards facts, towards action, and towards power (1986, p. 117).

Well-Established Insights in Pragmatism Related to Thesis

In the scenario presented at the onset of this section, pragmatism would force us to ask the question: Why are so many mosquitoes attacking this family in the first place? The youngest of the family members finds the source of the problem and puts a stop to it. By not allowing the mosquitoes into the house, the four boys will, no longer,

have to swat and kill each mosquito that they encounter, because their house will be relatively free of mosquitoes. Thus, the youngest member eliminated the origin of the problem. We are now finding ourselves in a situation quite similar to that of the mosquitoes in the house. In the example, the solution to the problem lay in the origin of the problem. Comparable to the scenario, maternal-fetal conflict dilemmas evolve out of problematic situations.

McDermott argues that pragmatic ethics will not provide us with the final solution to all our major ethical dilemmas. That is not its purpose. However, pragmatic ethics offers a more realistic, grounded alternative to those traditional approaches to ethics, in that it is more respectful of the complex and specific nature of problematic situations, and it is more attentive to the context in which problematic situations arise. That is, the pragmatist realizes that problematic situations arise in the context of an individual's life story, and that individual has a history as well as a future. Thus, decisions made in the present must take into account that individual's past, while considering their effects on that individual's future, for present decisions and their subsequent actions will impact the individual's future experiences.

Pragmatic ethics' pluralistic nature allows it to consider the multiple perspectives involved in each moral dilemma, even the perspectives of women. Thus, it opens up

the opportunity for women's perspectives and experiences to be analyzed, even though, pragmatic ethics, alone, has not accomplished this task (admittedly, this is not its specific goal, either).

Traditional ethics will look at the present problem and attempt to solve it. It will reduce the problem, if it feels it is necessary, so that it neatly fits into a rigid formula. Then, it will perform either calculations, or apply a basic rule (or both), and, as a result, crank out a solution. Whether or not that solution is workable, is not its consideration. The one performing the calculations is far removed, objective, and unemotional. Thus, it may have no direct personal interest in the consequences. On the other hand, pragmatic ethics will look at the present problem as the result of a whole series of problems. It will not attempt to fit the problem into some preconceived mold or formula. It will not attempt merely to provide a quick and simple resolution to a problem that may have taken years to develop. Pragmatic ethics will attempt to ameliorate the situation as it appears before us at the present time. Rather than dealing with each case as it presents itself (e.g. the next mosquito), it will ask relevant questions (e.g. where are all the mosquitoes coming from in the first place?). For example, how can we

eliminate these problems so that they do not arise in the first place? Also, how can we improve our present situation?

Limitations of Pragmatic Ethics With Respect to the Problems Generated by Pregnant Substance Abusers

Pragmatism does not disregard or devalue the experiences of women as unworthy of moral analysis. However, pragmatic ethics, traditionally, has not made women's experiences central to its analyses. Pragmatism allows the decision-maker in her particular situation, to draw on any and all relevant experiences. A woman, in her moral analyses, will, certainly draw on her personal experiences. But, historically, women have not been recognized as pragmatic philosophers, and, thus, the perspective of women and women's experiences have remained minimal in pragmatic works.

Charlene Haddock Seigfried, a pragmatist/feminist claims that pragmatism and feminism are mutually supportive, and mutually enriching. She claims:

> [pragmatism] possibly more than any other philosophical movement defends the legitimacy and irreducibility of multiple perspectives. But it does so . . . by not committing itself to any one of them (1996, p. 10).

In addition, Seigfried indicates:

> None of the founding pragmatists made women's experiences central to their own discourse, although their examples are often taken from spheres traditionally assigned to women, such as the family, early childhood education, and (for James, at least)

> mysticism. They did explicitly, frequently, and consistently encourage their students to develop their own experiential basis for reflection and discouraged them from simply taking over philosophical positions they themselves held . . . Women studying with pragmatists were empowered to trust their own experiences and to challenge the system (1996, p. 13).

In other words, pragmatism emphasizes multiple points of view, rather than one point of view (e.g. the "view from nowhere," invoked in traditional ethics). Seigfried points out that, by not forcing itself to emphasize particular points of view, it has emphasized the personal points of view of those who traditionally have been recognized as pragmatists. The original group of American pragmatic philosophers identified by Seigfried includes intellectuals such as William James, John Dewey, and George Mead. This original group of pragmatic philosophers lacks women and other minorities. In addition, Seigfried identifies a gap in pragmatic ethics, concerning the issues of sexism and racism (1996, p. 6).

What These Insights Imply With Respect to the Problems Generated by Pregnant Women who Abuse Substances

An analysis of the problems created by pregnant substance abusers will certainly show that there are vast differences across the population of female substance abusers. The fact that each individual case is unique, should not be surprising, if we realize that no two people are exactly alike, and, thus, no two cases can be exactly

the same. This uniqueness cannot be appreciated by traditional approaches to ethics. The rigid, reductionistic nature of traditional ethics restricts its approach to these situations. This one-sided analysis narrows its scope of the entire problem, resulting in moral decisions based on a distorted reality, and consequences that may not prove beneficial in the future scheme of the individual's life. The traditional philosopher, in a sense, creates his own reality, by molding the problem into one that is more manageable, yet one that may not resemble the original problem. These traditional philosophers, when faced with moral dilemmas (e.g. medical ethics), "offer philosophical theories that are neither grounded, nor tested in the heat of actual, everyday experience" (McDermott, p. 130).

Let's look at how pragmatism and pragmatic ethics could help us approach the primary question of how we should deal with the problem of pregnant women who engage in activities (e.g. drug use) that impose unnecessary risks on the health status of their future children and future members of our society. It is conceivable that the pragmatist would, in addressing this problem, emphasize the complexity of this issue. Rather than drawing comparisons with some hypothetical situations or some unattainable ideal, the pragmatist would use personal experience as a comparison and a guide in her analysis of this situation. This would require an exploration into the many points of view

involved, rather than a completely "objective" single perspective, or "view from nowhere." The pragmatist would address many of the factors that feed into the evolution of the problem and the many consequences that may follow any solutions, public policies, or laws we create to address the problem. Certainly, this will be a complex, empirical, as well as conceptual process, one which cannot be performed from within the sheltered office of the traditional philosopher.

Pragmatist philosophy will suggest that we are defining the problem simplistically. To speak of "the problem" is misleading. It focuses the reader on one particular article of consideration, that is, "the problem." This narrows one's perception of the entire scope of the issue. Pragmatism insists that we probe into the problem, as it is so defined, and ask important subsidiary questions concerning its nature and evolution. For example, why do women engage in self-destructive activities? And, why, exactly, are women abusing substances, in the first place? On the other hand, we can ask: Why do drug addicts get pregnant? Is it a conscious/willing, a conscious/unwilling (e.g. sexual assault, rape), unconscious, or uneducated (about contraception) decision. Moreover, why do they choose to keep the pregnancy? Is the woman not willing to abort? Does she lack access or knowledge or her options? How has the structure of our society enabled women to abuse

substances for long periods of time without being noticed? What motivates the pregnant addict to seek treatment? If society truly wishes to help its future offspring begin life without any avoidable health problems, a pragmatic alternative would be to help pregnant women to make more informed, less constrained choices. (In section I, I referred to some of these constraints, including lack of medical insurance, single parenting, treatment centers designed for men, and stigmatization of drug behavior). To do so, the pragmatic-feminist will encourage us to look seriously into the violation, devaluation and subordination of women throughout the course of their lives. It is important, however, that we do not portray women solely as victims when striving toward social transformations.

Pragmatic ethics allows us to take into consideration the personal values at stake in a given situation. A pragmatist may wish to explore the individual values at risk and attempt to articulate the connections between different and possibly competing values (Weston, p. 57). Between different individuals, personal values may clash. Also, within each individual woman there is tension between competing values. For example, one may ask: Does the woman act according to her own set of values? to those of her parents? her boyfriend? husband? friends? society? or, most likely, a mixture? At this point in her life, does the woman value her pregnancy or feel that it will disrupt her

future plans? Is she in a stable or abusive relationship? How does she view herself in the larger world? Does she feel competent and confident? Inadequate and non-deserving? depressed? valuable? lovable? It is plausible that a woman with low self-confidence and sense of self-worth, may become pregnant and discontinue drug us, seeing this child as a new beginning , valuing its needs over her own. This child, she may feel, will provide her with the love she needs and desires to receive.

SECTION V. A PRAGMATIC-FEMINIST APPROACH to PREGNANT SUBSTANCE ABUSERS

Pragmatic-Feminist Ethics: An Introduction

In this section, I begin by comparing and contrasting feminist and pragmatist ethics. Then, I attempt to illustrate a pragmatist-feminist approach to ethics. For my purposes, I demonstrate how this pragmatist-feminist approach, along with medical, socio-psychologic understandings would enable us to ask the most appropriate questions concerning the problems generated by pregnant substance abusers. In doing so, we may come closer to approximating a resolution or, rather, a better state of affairs, relative to our present condition.

Shared Features of Pragmatist and Feminist Ethics

A comparison of feminist and pragmatist ethics reveals a tremendous amount of overlap in their tone and approach to ethics. This includes: (1) appreciation of experience; (2) less of a quest for certainty and absolute answers; (3) an interactive approach; (4) appreciation of complexity of problems; and (5) exploration of the reasons for their both being marginalized in the larger culture.

Both pragmatist and feminist ethics emphasize the importance of experience for their analyses. They acknowledge the personal as well as social and cultural components of our experiences. They agree that the context

in which a problem arises is worthy of considerable attention. The context provides useful information concerning the historical evolution of the problem, the individuals involved, and the potential consequences of a particular decision. An example of how pragmatism and feminism are mutually enriching is provided by Seigfried.

> Pragmatist philosophy. . . explains why the neglect of context is the besetting fallacy of philosophical thought. Feminism. . . shows how gender, race, class, and sexual preference are crucial parts of context that philosophy has traditionally neglected (1996, p. 39).

Both pragmatist and feminist ethics are less rule-bound alternatives to traditional ethics. Traditional ethics emphasizes formal rules and static solutions to moral problems. In contrast pragmatist and feminist ethics emphasize the more fluid nature of moral dilemmas. They realize that their moral decisions are mutable, and will, most likely, be subject to revision, as the circumstances warrant.

Pragmatism emphasizes the plurality of experience and perspectives involved in moral dilemmas. It "argues for the inclusion of diverse communities of interest, particularly marginalized ones"(Seigfried, 1996, p. 37). This enhances its appeal to feminist ethics. As I mentioned in the previous section, both feminism and pragmatism have been subjected to marginalization.

Thus, they are both suspicious of the structures which have encouraged their suppression.

Both pragmatic and feminist ethics emphasize the interaction between the observer or the knower and the situation. They insist that moral decision-making occurs within the realm of our actual situations, and draws on lived experiences and the personal values of those making the decisions. Both invoke a non-Cartesian discourse that is interactive rather than detached, and value-laden rather value-neutral. Both "reject philosophizing as an intellectual game that takes purely logical analysis as its special task"(Seigfried, p. 37). This game playing, that Seigfried alludes to, is not unlike the theorizing that occurs within the philosophical community. Philosophers have, traditionally, embarked on long, drawn-out journeys into the meaning of particular words (e.g. time). At one time, such irrelevant tasks may have appeared worthy of discussion. However, both feminists and pragmatists believe that our current ethical dilemmas engender a sense of urgency that those traditional topics do not. Pragmatists and feminists insist that discussions of ethics must be taken out of the classroom, and into the actual world in which these situations evolve.

Unlike traditional ethics, which strives to reduce moral dilemmas so that they can neatly fit into calculations or can be subject to rigid rules, pragmatism and feminism

appreciate the complexity of situations. They insist that ethical dilemmas are messy by nature. To attempt to reduce them is unacceptable, because it changes the whole nature of the problem into something that does not contain all the important variables that the original problem contains. By modifying the problem into something more manageable, traditional ethics loses the context, as well as the holistic nature of the actual dilemma. By utilizing simplified hypothetical examples of the actual problem, in order to make a decision, the traditional ethicists forgets that the problem has a human component and consequences for human beings.

Both pragmatism and feminism have been subjected to marginalization. Seigfried describes the struggles of both pragmatism and feminism as they have strived to be recognized in the face of systematic marginalization by traditional American philosophers.

> [Pragmatism] seems to have been criticized and eventually relegated to the margins for holding the very positions that feminists today would find to be its greatest strengths. These include. . .disclosure of the value dimension of factual claims . . . linking of dominant discourses with domination; subordinating logical analysis to social, cultural, and political issues; realigning theory with praxis; and resisting the turn to epistemology and instead emphasizing concrete experience (1996, p. 21).

Seigfried claims that this marginalization of pragmatism occurred, in part, due to its "feminine style" (Seigfried, 1991, p. 10 and 1996, p. 33). By a "feminine style," she is

referring to those characteristics of pragmatism that have been deemed as "feminine," by society. As I mentioned earlier, society has labeled certain characteristics and values as "feminine" or "masculine." Seigfried claims that traditional philosophy is characteristically "masculine," so far as it espouses a rule-bound, detached, value-neutral, rationalistic, reductionistic, unemotional type of philosophy. In contrast, pragmatism espouses a more flexible, concrete, pluralistic, experiential, value-laden, philosophy. According to Seigfried, the notion of a philosophical endeavor with such "feminine" values was unacceptable to traditional philosophers (Seigfried, 1996, p. 33). One may criticize Seigfried for her recognition and support of pragmatism's "feminine" nature. Seigfried does realize that "masculinity and femininity are not reductively biological essential natures but culturally mediated assumptions of gender" (1996, p. 34). Though Seigfried accepts these "feminine" values as a somewhat accurate depiction of values characteristic of women, she acknowledges the social constructs of such gender labels and stereotypes.

> Femininity and masculinity are social and psychological interpretations of gender that both exhibit and mask unequal power relations. Feminism exposes the negative impact of such stereotypical attributions of gender characterizations. However, some aspects of experience that have been associated with women, labeled feminine, and consequently devalued in patriarchal cultures have also been positively revalued by feminists . . . That I find

> James's metaphorical and suggestive style more congenial to my own way of thinking than an analytic and explicit style can be understood as the expression of a feminine style without implying that all women think this way or no men do. James, for instance, rejects . . . philosophic argumentation that seeks to triumph over opponents by convicting them of errors and argues instead for shared understanding as the goal of philosophic discourse. From my point of view, he is rejecting a prevalent form of masculine style for a feminine one (1996, p. 33).

Differences Between Pragmatist and Feminist Ethics

Both pragmatists and feminist ethics emphasize the critical role of personal experience in their analyses. However, they differ in the sense that pragmatist ethics takes the experiences of all those involved as central to its discourse, without committing itself to any one perspective. It does not disregard the experiences of any individual. Therefore, like feminist ethics, its takes women and the concerns of women seriously. However, it is not committed to the task of uncovering covert societal structures that encourage the subordination and oppression of women. Unlike feminist ethics, pragmatic ethics has not traditionally addressed issues that specifically affect women, such as the oppression of women and their systematic subordination through the structures of a male-dominated society.

One may argue that at the end of their analyses utilitarians, Kantians, pragmatists, and pragmatic-feminists will all come to similar conclusions, or conclusions which

would be morally acceptable to the others. It is within the process of their analyses that the major differences become apparent. As Scheffler pointed out, the Kantians focus on the "right," while the consequentialists focus on the "good." Pragmatists do not claim to have a preconceived notion of that which is "right" or that which is "good" in all cases across the spectrum of our actual situations. Pragmatism forces us not only to look at the consequences of our actions, but also to look at the historical evolution of our current situations. A pragmatic-feminist approach forces us to analyze the context of each individual situation, and appreciate the complexity rather than attempt to reduce it into some preconceived formula. Neither a utilitarian nor a Kantian approach requires us to ask the important question of why these problems arise in the first place. Some theorists focus on individual cases and on intractable problems, dealing with each one as it arises without actually trying to decrease the number that arise in the first place. A pragmatic-feminist approach accepts the existence of such unfortunate intractable cases but focuses more on the question of how such intractable problems have evolved. Thus, the focus for the pragmatic-feminist is not only on each particular situation as it arises, but also on finding ways to prevent their existence. The focus is placed on finding an alternative approach through the development of preventive types of programs and policies.

Instead of focusing on the cases in which a physician must persuade a woman who is already in her fourteenth week to discontinue use of cocaine, pragmatic-feminist ethics would rather we prevent these cases from arising in their already malignant form. Also, for the cases which we face today, the goal is not to find an absolute solution in the eyes of the pragmatist. Rather, the focus is on a continuous engagement of the issue, such that our policies and programs are evaluated over time for their degree of effectiveness and moral acceptability. Certainly, one may argue that Kantians and utilitarians would not disagree with this rationale. However, it is not required by their respective disciplines which are guided by strict rules and the search for absolute answers.

A Plausible Pragmatic-Feminist Approach to The Problems Generated By Pregnant Substance Abusers

Intervention at the Level of the Pregnant Woman

If we look at how we can intervene at the level of the woman's choice to discontinue/continue risky behaviors once she realizes that she is pregnant, it becomes apparent that, by this stage, intervention is extremely difficult. There is general agreement in the medical community that if a person wants to stop using alcohol, cigarettes, and/or drugs, any type of program will work. On the other hand, if an individual does not want to stop using, little can be

done to help that individual. There is no evidence to suggest that the criminalization of "fetal abuse" or "fetal neglect," will serve the purpose of improving health care for pregnant women and children. To say that the answer is to lock women up for the duration of their pregnancies (if they abuse substances), or to make them pay for their wrongdoings, merely ignores the complexity of the issue. First, by the time the legal proceedings have come to a final decision, the damage has already been done. As I mentioned previously, the fetus is most vulnerable during the first trimester. Once a woman's activities have been recognized as harmful to her fetus, and the courts have decided to incarcerate her, the toll of her behaviors has already been taken on the fetus. Secondly, the threat of incarceration will, most likely, deter pregnant substance abusers from seeking prenatal care. In the end, women and children would suffer from lack of adequate prenatal care. Moreover, punishment for the use of legal substances, such as alcohol and/or cigarettes during pregnancy overrides a woman's fundamental rights to do to her body as she sees fit. Legal approaches appear to work only with respect to the "no smoking" laws in many restaurants and in planes (except international flights). However, this may be the result of social pressures as opposed to legal ones (I will discuss this later in this section).

A pragmatist-feminist approach to the issue requires us to appreciate the complexity of these situations. It demands of us a thorough appreciation of the context of each individual woman's situation. That is, we must probe into the circumstances which have allowed these problems to arise. In doing so, we can obtain valuable information that may help us in formulating an effective approach to these cases.

Certainly, it is critical, as Dewey realized, for a society to expect its citizens to accept a certain level of responsibility for their actions, but it is also critical that we are able to reflect on the ways in which society fosters certain behaviors in its citizens, since society may be partially responsible for these actions. As Dewey recognized, society plays a crucial role in determining how an individual chooses to behave. For us to fully address the issue, we must recognize the connection between an individual woman and her environment (e.g. society in which she lives). For instance, we must examine the social structures which serve to oppress women. The explanation for many human behaviors (e.g. substance abuse in pregnancy) may have a lot to do with prior injustices, such as differential access to medical information and health care, fewer resources, and a lower quality of care provided. Many women become locked into a cycle of poverty and despair, and thus are more likely to be involved in self-destructive ways

of life which may involve substance abuse. Pregnant women are not isolated beings, islands that are independent of the communities in which they dwell. Very few women actually begin abusing drugs and/or alcohol once they realize they are pregnant. In order to design strategies to address the issue, we must agree upon an overall goal, which these policies, programs, and/or services are attempting to achieve. This goal, I propose, is the goal of producing healthier babies and women. Many policies proposed as alternatives in the past seem to focus on the former or the latter, but not both.

A frequently heard feminist critique of social structures is that women's contributions to society, particularly mothering and childbirth, have been devalued. Some feminists argue that society perceives pregnancy as a "biological" or "natural" process, rather than as a distinctly human undertaking. The devaluation of pregnancy, becomes more apparent when one looks closely at the existing social structures which tend to place pregnant women at a disadvantage (e.g. rigid work hours, no compensation for days off). These factors may engender a feeling of resentment within the pregnant woman towards her fetus. Consequently, these negative feelings may harm the relationship between the pregnant woman and her unborn child. Thus, a society which is truly interested in the flourishing of children, must take an interest in the

physical, mental, and emotional well-being of its pregnant women.

In our analysis of the context of these problematic situations, we must look more closely at what is occurring within the individual's home during her developmental years. The educated, wealthy woman who was raised by two loving, caring, and supportive parents, is likely to place more value on her child's life than the depressed woman who has a low self-concept and feels that neither she, nor her baby, has anything of value to contribute to society. Most sociologists and psychologists will agree that an individual's childhood is the most crucial time period during which he/she must develop a sense of independence, love for one's self, and sense of self-worth. If not, development may be impeded, and self-confidence may be diminished, or never achieved at all. We may be asking a woman to suddenly develop a sense of love for herself, or even more drastically, we may be pleading with her to develop a sense of love for another human being when she has never experienced it herself and, thus, has no example to follow. It is plausible that one must have felt love and felt valued at some time in her life in order to feel love for and value another. Moreover, an individual who does not see much of a future for herself is not likely to see a bright future in store for her child and, thus, may not value its health and future well-being as much as a woman

who has high hopes and aspirations for her child.

Held discusses the importance of a society being interested, nourishing, and taking the time and effort to support the flourishing of children. I believe that this support must begin during the child's fetal life and remain until the child is no longer a dependent. To do so, we must insure that pregnant women are provided with certain basic necessities (e.g. adequate prenatal care). This will require society to recognize its responsibilities to both women and children. To offer free prenatal care is a good start, but it does not suffice. For example, it will not solve the problem that we see, especially in the black population, of women entering the prenatal care setting too late. Also, it will not solve the problems created during a woman's early reproductive years, prior to her pregnancy. A pragmatist-feminist approach will probe into the existing barriers to health care, and more specifically, prenatal care, in order to discover the underlying reasons why many women enter the prenatal care setting later than others, or even worse, not at all. Also, prenatal care providers must be made aware of the psychological and emotional state of the pregnant woman. A woman's mental health during her pregnancy can have a tremendous impact on her feelings for her unborn child, and eventually, her newborn.

Alternative Programs Aimed at the Level of The Pregnant Woman

Universal Prenatal Care

As I mentioned earlier, many women do not have equal access to prenatal care and are uninsured, especially minorities. Universal prenatal care is a costly, yet beneficial, alternative. Due to the high price society may have to pay to sustain/maintain care of the newborn that suffers from fetal alcohol syndrome, low birth weight, cocaine addiction, etc., it may be in our best interests to improve the quality and availability of prenatal care. The expenses would have long-range effects of greater benefit than legislation that would criminalize certain maternal behaviors. However, its promotion would require the cooperation of health care providers and the government. Medical payment for detoxification centers and improving the medical services available to women, so that women who need the help can have access to such services, would also dissolve another barrier to better health care alternatives.

Public Awareness Programs

Public awareness programs could be useful as preventive tools, increasing education on such topics as drug abuse, pregnancy, birth control, and prenatal care. These programs could be utilized to inform individuals about the harmful effects of alcohol, cigarettes, and other drugs on

themselves and fetuses. Measures to decrease the number of teen pregnancies through education about birth control and provision of condoms and other contraceptive methods can help to decrease the number of these situations that arise.

Drug Treatment Centers

There is a considerable amount of research gathered through the investigation of various drug treatment centers that has shown that many women are deterred from the current treatment centers because of their orientation towards men (e.g. authoritarian environment, male health professionals, no on-site day care, rigid treatment hours). In addition, those treatment centers that are designed for women, are hesitant to allow pregnant women into their treatment program due to concerns of liability. Moreover, those treatment centers that do allow women to enter have long waiting lists, and these women and their fetuses do not have the time to wait. If we recognize that the health care of pregnant women and women of child-bearing age is, in part, the responsibility of society, we must take great steps towards providing for their unique concerns. The emphasis on negative rights of our present culture may not find this policy (requiring funding for drug treatment centers) necessarily appropriate, because it requires the members of the public to pay for the health care of other individuals.

In addition, health care professionals must realize that the concerns of women are not constant across the whole population of women. Studies suggest that the concerns of women differ with respect to race, ethnicity, and socioeconomic status. Thus, treatment within specialized centers for pregnant women must be individualized. The AMA recommends that substance abusers be provided with rehabilitative treatment appropriate to their specific physiological and psychological needs. This was one of the underlying assumptions in the development of the "free standing clinics" of the 1970's by the feminists (Eagan, p. 25). The philosophy of these clinics was that women should have control over their own health care. These clinics provided a comfortable atmosphere for women of all races, sexual orientation, religions, etc. They also made hours suitable for the working mother's schedule and provided child care. The services were given mainly by women health care professionals and lay people which added to the non-authoritarian and non-threatening atmosphere they sought to provide at these clinics (Eagan, p. 25). Clinics, such as these (based on this type of philosophy and atmosphere) would, on the face of it, appear to be useful today in "meeting women on their own terms" (Weisensee, p. 24). The Women's Movement recognized the importance of women taking control of their own health care. This includes a healthier, self-caring, self-respecting, and

self-rewarding approach to one's life. Such a philosophy ought to be incorporated in any program that seeks to promote a healthier lifestyle and lifestyle changes in women. Unfortunately, studies indicate that drug treatment centers designed specifically for women have not demonstrated a statistically significant improvement over those with a mixed population. The reason for such a minimal improvement may be found in the past structure (e.g. traditional model) of treatment centers, in general.

Personal Model as Paradigm for Intervention

The traditional model for substance abuse treatment centers and physician-centered health care has been the educational model, the results of which have been extremely disappointing. An educational model, oftentimes involves a one-on-one interaction between a physician and a patient. Thus, it may also be described as a personal model. These measures involved providing individuals with the facts about the harmful effects of long-term substance abuse. The assumptions underlying such an approach were that individuals make decisions that are consistent with their personal values and goals, and that individuals engage in behaviors that govern their self-interests. It was assumed that, provided with the facts, individuals would choose not to engage in these activities, because they would perceive them as not being in their best interests. Not only does

this approach assume that all women make decisions in accordance with their values, but also it assumes that all women value their fetuses' lives as well as their own. This approach is consistent with traditional moral theory's focus on rationality, which emphasizes a connection between knowledge and action. It is assumed that if only the pregnant woman saw the relative weight of each choice, she would be motivated by rational thought to choose the course of action that holds the greater value. The most plausible reason for why such models have proven to be of little benefit is that their underlying assumptions are not entirely true.

A Social Model as Paradigm for Social Intervention

The approaches which have had the greatest impact are ones that invoke a social model as opposed to the educational or personal one described above. The assumption underlying these models is that social pressures act as a stronger stimulus for behavioral modification than those appealed to by a personal or educational model. These approaches engage an individual's network of friends and family in the course of her treatment. The pressure exerted by an individual's friends, family, and acquaintances appears to be a strong motivator in maintaining an individual's behavioral changes. For example, an alcoholic who decides that she would like to stop drinking would be

encouraged to discuss her decision with others in her social network. Thus, she may be discouraged from drinking either by overt pressures from her friends and family. Or, she may be discouraged from drinking, because she knows that her friends and family will be disappointed in her failure of will.

It is conceivable that an alternative program based on the Weight Watchers program could be beneficial and effective in some cases. The patient and physician could devise a plan, consistent with the values of the patient, in which both the physician and the patient have specific and active roles. For instance, the patient might consent to having a drug test performed on a routine basis. Drug testing under these circumstances is acceptable if, and only if, the patient authorizes her consent. It would help if the physician could assure her that the results would be confidential, but the physician, under no circumstances, must deceive the patient in order to obtain her consent (under circumstances of deception, the patient's decision would no longer be fully autonomous). The patient might agree to attend group meetings (e.g. Alcoholics Anonymous) or enter into a drug treatment center, depending on her type of addiction, personal values, and other commitments.

Offering Better Alternatives to the Addict

Other alternative programs which seem to be effective are ones which find job placements and career opportunities for people addicted to alcohol and/or other drugs. The goal of these programs is to provide better alternatives to the drug addict so that she can envision other, better alternatives to her present lifestyle.

The Role of the Physician -- Justifiable Paternalism

A crucial consideration in the process of designing policies and programs, or laws, to address the issue of substance abuse in pregnant women is the role of the physician and the physician-patient interaction. When we speak of the criminalization of "fetal abuse" the worry is that physicians will become the legal enforcers of these laws, because they are the ones at the front line that are most likely to detect the deleterious behavior of the mother (one must wonder if they would be better at detecting substance abuse in pregnant women than they have been in detecting substance abuse in the more general female population). This would completely undermine the physician-patient relationship, shifting the focus away from the health care of the pregnant woman and onto the health care of the fetus. Lawrence Nelson has proposed four recommendations for physicians who work with pregnant women. First, anticipate potential problems and carefully discuss

both the patient's and the physician's values before a conflict occurs. Second, be aware of one's own prejudices/biases, especially when dealing with noncompliant patients. Third, provide graphic disclosure of possible difficulties for child and mother. Fourth, demonstrate and record the mental status of the mother. Overall, these guidelines are helpful, but there are additional recommendations I would propose. Physicians must improve their diagnostic techniques for the detection of substance abuse in women. Women commonly present with a variety of symptoms, and it is the physician's duty to attempt to detect one, if it exists. The physician should also be prepared to counsel her patient who is abusing substances, but recognize her [the physician's] own limits and biases, and refer the patient to other more helpful resources, if necessary. If a physician feels that she cannot fully inform a patient of all the available options, she should refer that patient to another physician. Though the physician may feel that even the act of referral does not absolve her of feeling of guilt due to her conscience, she must be aware of the legal implications of withholding information from a patient. (For some physicians, the legal consequences are a sufficient motivator for acting in ways that undermine their personal integrity. For others, they are not). The AMA also recommends that the physician document medical advice given to the patient, including the

consequences of noncompliance, in order to protect herself against subsequent legal action by a pregnant patient or an injured child (1988, p. 2670).

In order to devise plans, programs, or policies of intervention, we must decide how much paternalistic intervention is justifiable in these situations. Paternalistic intervention involves interference for the sake of the pregnant woman. This can be differentiated from intervention to prevent harm to others. Martin Benjamin offers three conditions for justified paternalism: (1) impaired autonomy; (2) prevention of severe harm; and (3) the "thanks dad" condition or ratification. In other words, Benjamin claims that paternalistic intervention is justifiable if, first, an individual's autonomy is diminished. Second, paternalistic intervention is justifiable if it is invoked in order to prevent severe harm to the individual. Finally, Benjamin offers the "thanks dad" condition. This condition insists that the paternalistic intervention will be ratified at some later time, meaning that the individual that is being interfered with now will thank us later. To illustrate the application of these three conditions, imagine a situation in which a woman sees her daughter running into a busy street. Most likely, the woman will interfere with her child's actions to prevent her from running into the street and getting hit by an oncoming vehicle. According to Benjamin, her actions

would be justified. First, the autonomy of the child is, in a sense, impaired. Children are not fully autonomous agents and cannot deliberate effectively in many situations. Second, by intervening with her child's actions in this situation, she is preventing severe harm to the child that would occur if the child was hit by the car. Third, her child will thank her for intervening with her actions, if not today, then later in her life.

I will argue that, in certain situations, such as the one presented above paternalistic intervention is justifiable and morally defensible. On the other hand, deception and manipulation are, for the most part, morally unacceptable. They are methods by which a person's capacity for choice is disregarded. On the other hand, one who is being coerced still has the freedom to protest and debate, meaning she still has the freedom of choice, if not the freedom of action. Her mind is intact, left unhampered by deceptive controls. Certain forms of coercion may take charge of a woman's body. For example, she may be incarcerated or detained for drug treatment in a hospital or other institution. However, she has the capacity to speak her mind. She may choose to appeal or choose to protest. She may not be able to leave the institution physically, without permission, but she is aware of her situation and in full control of her mental faculties. Deception, which could involve lying, does not allow one this freedom of

mind, because it circumspects one's conscious awareness.

The use of paternalistic intervention may be acceptable in situations in which a woman's decisions fail to be autonomous. The way in which the action is not autonomous has an effect on how a physician should talk with, advise, and/or counsel a woman. The former may justify stronger measures, or a higher level of coercion than the latter. However, determinations of autonomy are value-laden and inconsistently applied. Therefore, an approach to questions of autonomy ought to be based upon certain criteria such as the ones presented by Bruce Miller (1981).

Miller discusses autonomy as "free action," as authenticity, as effective deliberation, and as moral reflection. Some people claim that for an individual to be considered fully autonomous, she must satisfy all four senses of autonomy. It is important to determine what level of autonomy we are going to require of the woman who is making this critical choice. The degree to which she fails to achieve this level of autonomy, gives us a basis for deciding the extent of paternalistic interference that is justified in our actions toward her (e.g. use of state power, criminal sanctions, or at the level of the physician-patient relationship).

In order for one's choice to be autonomous, in the sense of it being a "free action", it must be "voluntary" and intentional. That is, one's decision is not free if it has

been generated as a result of some form of coercion. In many cases, the extent to which one's actions are "voluntary" is debatable. We can agree that a pregnant woman who is making a certain decision in conjunction with the wishes of a person holding a gun to her head is being coerced (by an external force). However, some people will insist that the mood-altering substances (e.g. alcohol, nicotine, cocaine) provide an internally coercive force which may be perceived as equally or more compelling than having a gun to one's head. With respect to the intentional nature of one's actions, it can be argued that, by using substances during her pregnancy, a woman does not actually intend to harm her fetus. Rather, it is argued, she is merely attempting to satisfy an acute physiological and/or psychological need for that particular substance. Some psychologists may disagree, and claim that the woman subconsciously does want to damage the fetus, in certain cases, due to some unresolved feeling of anger. However, what I find more compelling is the medical evidence gathered on the nature of physical dependencies to alcohol, cocaine, nicotine, and other drugs. Research shows that these drugs do produce a state of physical dependence as evidenced by the fact that many alcoholics/addicts display features of physical dependence, such as tolerance to increasing amounts of the drug, and withdrawal symptoms upon discontinuance of the drug. Not all alcoholics/addicts experience physical

symptoms of tolerance and withdrawal. And, others would claim that the psychological dependence (e.g. drug seeking behaviors), are even more compelling than the physical symptoms. All we can conclude from this knowledge (of the presence of physical and psychological component of the alcoholic/addict's behavior) is that we must consider its influence when determining an individual's degree of autonomy and, subsequently, our actions toward her. This information may make the implementation of legal sanctions seem even more inappropriate and unethical, since convicting these women of crimes through the criminalization of "fetal neglect" would not help them to overcome their addictions. If society's goal were only to protect its future children, then legal sanctions may appear to be an appropriate alternative, even though they are ineffective at protecting the fetuses (as I have already discussed). However, society's goal ought to be to improve the well-being of both its women and children. Thus, legal sanctions remain ethically unsound. However, the evidence of physical dependence may make paternalistic approaches to certain women seem more acceptable.

The second sense of autonomy referred to by Miller is that of "authenticity." Once a woman is dependent, physically, and /or psychologically, on a substance, one may ask whether or not the choice she makes under this influence is "authentic?" In other words, is she making a choice that

is consistent with her "authentic" self (before the addiction/dependence)? This is a difficult question to answer, because it is difficult to determine exactly what another person's "authentic self" is, or was like prior to the addiction/dependency, and at what stage the person began making "unauthentic" decisions.

Some people would argue that the substance-dependent individual has a decreased capacity for "effective deliberation," that is, she cannot rationally weigh the value of delivering a healthy baby, against the value of taking a substance that may harm herself and/or her baby, because if she could, she would certainly choose the former. We must be careful when making claims that are based on society's conception of what is right and good, and imposing its system of values unto others. Assessing effective deliberation does not require imposing society's values on the woman. Physician-patient dialogue may reveal that the patient's own values lead to discontinuing use of the drug as the right action. The physician may have to provide some facts about the effect of drugs on fetuses, but the patient's values may then drive the decision. The physician's job is to find out whether the patient's decision is well-informed and well-thought out, and, if not, to provide the means to make the patient more informed. For example, in certain cases, woman may not realize the harmful effects of alcohol, nicotine, and/or other drugs on her

fetus. In these cases, she may just need to be informed, and, then, her own system of values will guide her to actions which will increase her fetus' chances of being born healthy. In other cases, a woman may know the facts concerning the harmful effects of certain substances on her fetus, but need to be facilitated by an outside source in reminding herself of her own set of values. These women would benefit from a healthy physician-patient relationship, one which does not include a physician forcing society's values on the woman. On the other hand, in cases in which there is a long history of substance abuse, and the woman is less likely to agree to treatment, we can not just assume that she is not able to deliberate effectively. I would like to claim that many of the pregnant women who abuse substances are able to deliberate effectively, but may still choose to abuse the substances. As I mentioned earlier in this section, the assumption that individuals always make decisions that are consistent with their values and interests is incorrect. This assumption underlies traditional approaches to substance abuse treatment modalities, which have, in turn, proven to be ineffective.

The last sense is autonomy as moral reflection, in which we ask whether or not the individual is reflecting on her own set of values and moral beliefs when engaging in the decision-making process. This is the most difficult to assess.

In order to illustrate the situations in which paternalistic intervention may be justifiable, I will present three different, yet relevant, situations for our analyses. First, let's imagine a situation in which a woman and her husband have been planning on having a child for over two years. As soon as they begin attempting to conceive a child, the woman makes a decision not to drink any alcohol, smoke cigarettes, or partake in any other activities that could potentially harm their future child. She even begins decreasing her intake of caffeine and Nutrasweet products. She begins all of these restrictions in her diet and activities prior to the actual conception, just to be safe. One week after the start of her pregnancy, the woman's twin sister informs her that she (the sister) has just been diagnosed with inoperable breast cancer which has already metastasized to other sites in her body. As a result of this shocking news, the pregnant woman collapses into a deep state of depression. She begins drinking heavily, in an attempt to escape the pain of her sister's condition, and the realization that her sister will, most likely, die soon. Her husband takes her to their physician, who diagnoses her with clinical depression due to the devastating news. The physician and her husband attempt to persuade her to stop drinking, by reiterating the same values that she and her husband used in their decision to have a child and to do everything in their power to insure

that their child was born healthy. But, she refuses to even think about the fetus within her body, claiming that she should not outlive her sister. Due to her sudden depression, the woman in this case is not deliberating effectively. Her capacity for autonomous decision-making is diminished. Because this would be harmful to herself as well as the fetus, paternalistic interventions are clearly justifiable. The physician may opt to provide the woman with antidepressants and a referral to a psychiatrist in an effort to return the woman to an autonomous state. Depending on the severity of her condition, she may even have to be hospitalized, which would actually be the most extreme form of coercion. However, in this case, her rational faculties are diminished. This extreme form of coercion would be justifiable on the basis that her decision, at the present time, is not "authentic." In this case, on the basis of her past relationships, we have an idea of what her "authentic" self is like. With her rational faculties impaired, it can be said, that she is making "unauthentic" decision and, thus, extreme forms of coercion cannot be misconstrued as manipulation. Since manipulation implies a bypass of one's rational faculties, we cannot bypass that which is not present for us to bypass. Thus, the physician is allowed, if not required, to use stronger measures to insure the welfare of both the woman and her fetus.

Second, imagine a pregnant woman who is fully aware of the potential consequences of alcohol on her developing fetus. She and her husband planned this pregnancy and are enthusiastic about having their first child. This woman receives good prenatal care and meets with her physician at the appropriate times throughout her pregnancy. Prior to her pregnancy, she and her husband would drink socially and during their nights out together. In fact, they sometimes would drink so much they would have to take a cab ride home from the party or restaurant. Her physician persuades her to limit her drinking or abstain altogether. With the knowledge of the potential consequences of alcohol, she decides to limit her alcohol intake, rather than abstain. She decides that she will only drink one glass of wine at their fancy dinners (about once a week), and at social gatherings (about once a month). She explains her decision with her physician and husband. The physician agrees that those amounts will, most likely, not harm the fetus. However, he admits that the medical field is uncertain exactly what quantities can cause harm. Is stronger paternalistic intervention appropriate in her case? Should the restaurant waiters be instructed not to serve liquor to this woman or other pregnant woman (even though, by the time a woman shows obvious signs of pregnancy, the effects of alcohol have, most likely, exerted their damage)? Paternalistic intervention, provided by the physician,

husband, or waiters is not justifiable in this case. The woman is clearly making an autonomous, fully informed choice. Thus, her decision must be respected, and her freedoms not restricted by others.

Third, imagine a situation in which a seventeen year old woman is shocked to learn that she is pregnant. This is not planned, and she does not feel ready to have a child at this stage in her life. Even though the father of the child does not want to have anything to do with her, or their child, she chooses not to have an abortion, due to her Catholic convictions. She receives adequate prenatal care and has been informed to limit her intake of alcohol, smoking, and use of other drugs (e.g. cocaine). She admits that she drinks heavily at parties and smokes "about a pack a week." Her physician tries to persuade her to discontinue these activities. She absolutely refuses to quit smoking and says that she will limit her alcohol intake to some degree. In her case, stronger paternalistic intervention would be justifiable. But, to what degree? Certainly, not to the extent that it was warranted in the first case, and certainly, more than was warranted in the second case. The types of paternalistic intervention would have to respect her autonomy, while taking into consideration her age, and feelings towards her pregnancy. This is not a clear-cut case, which is more similar to actual situations than the first two cases. I cannot provide an absolute answer to the

question as to what forms of paternalistic intervention are justifiable in this situation. Whatever form they take, they must respect her capacity for autonomous decision-making, be flexible to her dynamic situation, and attempt to ameliorate the situation.

Improving the Status of Women

George Annas has claimed that "the best chance we have to protect fetuses is through enhancing the status of all women by fostering reasonable pay for the work they do, providing a reasonable social safety net, and ensuring all pregnant women access to high quality prenatal services" (1987, p. 1214). This approach is very attractive, especially for someone, like myself, who believes that responsibility for some of the behavior in question is not solely that of the woman. This approach is sensitive to the many issues in women's health, including substance abuse, differential treatment of male and female alcoholics, differential treatment of women of color and Caucasian women, and others which were brought up in the course of this analysis.

Other Opportunities for Improvement

More research is needed concerning the physiological basis of the interaction of drugs and the fetal developing cells, so we can draw a cause and effect relationship more

clearly between the woman's intake and the harm incurred by the fetus. Concerning the actual costs to society in covering the health care of substance abusers, pregnant women who abuse substances specifically, and prenatal care for all pregnant women, it would be helpful to perform cost-benefit analyses which may motivate government officials more strongly than the more ethical/moral analyses.

Intervention at the Level of the Child

The most promising approach to this situation appears to incorporate preventive types of measures. These would be most consistent with a pragmatic approach to moral dilemmas. Substance abuse prevention programs are now incorporated into the curriculum of many schools. Similar to the situation with drug treatment modalities in the adult populations, studies demonstrate that a social model is more effective with children than a personal model. This social model looks different than the one used with adults. It includes engaging children into a group effort to prevent others from beginning and/or to encourage others to quit smoking, using alcohol, and or other drugs. Hanging signs in elementary schools with simple messages such as "smoking stinks" are examples of effective deterrents to the development of future self-destructive behaviors. This technique is both educational and social in its approach.

An approach which specifically targets female adolescents and younger girls is most consistent with feminist ethics. Thus, the pragmatic-feminist will want to analyze the historical evolution of this problem, and ask her self why these problems arise in the first place. We must refer back to those factors which seem to motivate women to drink. Stress is one of those factors, which I discussed in section I. Certainly, stress is not a phenomenon that affects only women. In fact, many of the stressors indicated in section I are common to both men and women. For example, both men and women can experience depression and suffer from low self-esteem. However, for my purposes, I will discuss those factors unique to women and, more specifically, to young girls, that contribute to low self-esteem and a feeling of inferiority (relative to men). Feminists have gone to great lengths to analyze and uncover those societal forces which have served in the systematic oppression of women. These factors relative to adult women were discussed in the first part of this section. If one of the primary contributors is low self-esteem, then we will want to find new ways to allow young girls to attain a high level of self-esteem. This may require external reinforcement from society and family.

A combined effort of pragmatic and feminist ethics can help in the analysis of the present situation and, eventually, in the creation of new and creative approaches

to these problems. If we agree that all individuals (with some exceptions) are born with the potential to become confident, autonomous, virtuous, moral agents, we must look at our social structures which serve to diminish this capacity and ask ourselves how we may cultivate morality in such a way which is most beneficial to the flourishing of our children, and, therefore, society as a whole. A pragmatic-feminist approach will search for answers to important questions. For example: (1) In what ways has society/culture contributed to the amount of value a mother places on her fetus, or children (sine she does accept that this fetus will be a child)? (2) Why is it that not every woman places the same amount of value on the life of her child? (3) How does a woman develop a high level of self-confidence? and (4) How does a woman determine her own personal worth?

At an extremely young age, a child begins to develop a sense of herself and her capacity for autonomy. We must not ignore the needs of our young girls at these early stages of life. It is at these critical stages, that intervention is extremely important. Once a child's self-esteem and sense of autonomy are destroyed, it becomes more and more difficult to make repairs. That is the reason why it is imperative that we ensure that our little girls' senses of autonomy and independence and self-esteem are not impaired at such early stages of life. For example, one of the

leading causes of depression and low self-esteem in adult women is early child abuse, and/or sexual abuse. We must protect our children from such abhorrent acts. But, there are also much more, seemingly benign, yet insidious, barriers to a young girl's sense of autonomy and independence. These are the barriers set up by society as a whole. They are the subtle ways in which society keeps women in a subordinate position, and they begin at the early stages of the young girl's life and extend throughout her entire lifetime. The portrayal of women through the media reinforces a perception of young girls and women as objects. The emphasis on physical beauty fosters a societal expectation for all women to be thin and sexy. This engenders a feeling of guilt and failure in the young girls who do not fit into society's conception of the "beautiful woman." Thus, a young girl's image of herself is tainted by the images she sees in the media. She may look in the mirror and realize that she does not have a body similar to the ones displayed at the "Miss America" pageant. These unrealistic expectations diminish the self-esteem of our young women. Do we really want our young girls to have the latest *Sports Illustrated* cover girl as a role model? We should strive to transform this unrealistic image of women into one which will allow our young women to flourish. We must ask ourselves, how we can structure society so that our young women define themselves in terms of their inner

qualities and values, rather than, in terms of how they are perceived by men?

Our young women must be provided with role models who allow them to envision themselves as successful human beings. Empowerment programs, such as "take our daughters to work" day, encourage young girls to strive for success, by providing them with role models in the workplace. These types of programs enable young women to envision themselves in those fields which, traditionally, have closed their doors to women (e.g. medicine).

Children are not born fully autonomous agents. The capacity for autonomy is actually a developmental capacity that slowly emerges. Thus, a young child may not be able to deliberate effectively. The capacity for autonomy must be cultivated. One of the ways in which a child's autonomy may be cultivated is by giving a child choices, as opposed to orders. On the other hand, a child growing up in a home with no structure whatsoever will, most likely, have a diminished capacity for autonomy. An example of how parents may cultivate their child's capacity for autonomy is by allotting their child a specific amount of allowance each week, and allowing the child to spend it as she chooses (even if their child chooses to spend that money on the new SEGA video game, which her parents know will be used for only about a month before the child grows tired of the game). This is just one example of how parents can

cultivate their children's capacity to make autonomous decisions. Certainly, children should not be allowed to do as they choose all the time. As I mentioned, children do not have the capacity to deliberate effectively. Parents must ensure that their children are safe. For example, a parent that sees her child running into the street without looking both ways first should not merely stand by and let the child do as he/she chooses. Also, a child should not have the choice about whether or not he/she is going to attend school. One of the ways parents can cultivate their child's capacity for autonomy is by making decisions for their children that, in the future, will assure that their children attain full autonomy later.

An example of how Dewey's notion of "social reconstruction" could be put into practice with respect to this issue is to make drug use less appealing, thereby helping to increase perception of self-worth in women and children by empowering them. Pragmatism requires us to ask what changes must occur so that these dilemmas, such as pregnant women abusing drugs do not arise in the first place. This approach is preferable to one that attempts to solve the problem in its mature (malignant) state. Unlike the reductionistic tendencies of traditional philosophers, pragmatists appreciate the complexity of moral dilemmas. Realizing that moral problems are not neat in and of themselves, they do not attempt to transform them into a

neat little package which is easier to manage, but in all actuality, only serves to obscure the true nature of the particular situation. The problems generated by pregnant women abusing substances develop as a result of a series of problematic situations. They are multi-faceted and do not fit neatly into a clean package. Thus, pragmatism provides us with an approach that will allow us to appreciate the complex nature of these moral dilemmas.

Alternative Programs at the Level of the Child

Self-esteem cannot be taught directly, but it can be fostered. Society's job is to provide the opportunities for young women to develop into fully autonomous agents. The educational system provides an opening through which children can be reached. There is much controversy surrounding recent attempts to create a alternative educational environments, specifically for women, through the creation of all girls schools. On the one hand, the traditional educational system does appear to limit the educational opportunities of girls. Schools are criticized for the extent to which they reflect society's male-dominated structure and act to oppress our young women. Proponents of segregated learning claim that children need to be provided with all the possible opportunities with which to best approximate their potentials. On the other

hand, one wonders if the creation of schools specifically for girls will merely act to reinforce existing gender bias which pervades the educational system. A pragmatist-feminist approach may agree that the separation of children in school according to sex will not have beneficial consequences, especially when one takes a look at our long history of past and present discriminatory practices, including segregation according to race and sex, and the consequences of such segregation programs. The most likely decision would be that segregation according to sex is neither effective nor ethically sound. A more reasonable approach would be to make changes in the present curriculum and training of teachers. For example, schools should utilize more books written by female authors and sensitive to women. Also, teacher training programs should include specific sessions which make teachers more aware of the many forms that gender bias can assume. They should be instructed as to how to respond to gender biases within themselves and within their students and students' parents.

Education on the harmful effects of alcohol, nicotine, and other drugs does help to prevent substance abuse, if it is done in the correct way and time, that is, if it involves a group approach and is not begun too late (that point varies amongst individuals). An appropriate time to begin education is at the elementary school level. Advertisements, such as "smoking stinks," place the emphasis

on the social consequences of smoking rather than the personal. It is ironic, how many individuals are more influenced by the notion that their breath will stink and their teeth will yellow than the notion that they may die of lung cancer.

In order to address this issue, I am providing a set of guidelines that are ethically defensible, in order to develop a set of philosophically sound alternatives. These are the characteristics a program (e.g. school curriculum, t.v. advertisement) must have to avoid being ethically unsound (e.g. incarceration). A program must:

1. have value (meaning) to the individual (e.g. be in accordance with the values of the individual)
2. be reinforcing, uplifting, enjoyable
3. preserve choice for the individual
4. specify consequences
5. be persuasive
7. be affordable to all people regardless of race, sex, ethnicity, socioeconomic status, or financial situation
8. be conducive to the development of one's autonomy
9. be informative and educational
10. not utilize manipulative measures to persuade individuals

In accordance with the pragmatic tradition, it is absolutely necessary that we constantly evaluate the consequences of

our chosen programs. Any programs devised must be subject to continuous scrutiny and skepticism. Thus, there is no final closure on our projects. As long as these problems exist, we can always strive to ameliorate the present situation. This problem requires a sense of urgency, yet patience. A sense of urgency keeps our theorizing out of the classroom, and makes action always a priority. Patience allows us to deal with these situations in an ethically sound manner, so that the fundamental rights of women are not overlooked in our urgency to protect the lives of our future generations. Ultimately, we must always strive to better our situation, which involves improving the well-being of both women and children.

NOTES

[1] Feinberg explains in greater detail this notion of fetal "contingent rights" in his article, "Is there a Right to Be Born" (1976). He says:

> . . . American jurisdiction have conferred . . . contingent rights upon fetuses --- conditional . . . upon their eventually being born alive. I refer to rights to be free of bodily injury that will handicap them after they are born. . . Thus, a child born with malformed limbs because a motorist negligently ran over his mother while he was in her womb is entitled to recover damages after he is born from the negligent motorist. . . his prenatal legal rights . . . do not include a right to be born alive, but only the conditional right if born alive, to be free of physical injury (1976).

These "contingent rights" were intended to protect the fetus from harm by outside (third party) sources. The intention was not to provoke an adversarial relationship between the woman and her fetus, by pitting the rights of the pregnant woman against the "contingent rights" of her fetus.

[2] Fleischman and Macklin discuss the notion of the fetus as "patient." As a patient the fetus is viewed as an individual person with interests in its own welfare.

> This patient clearly cannot participate in decision making concerning its own care and focus for the pragmatic-feminist is not on each particular situation as it arises. treatment. Its wishes cannot ever have been expressed, and it is completely

> dependent upon others to determine its destiny (Fleischman and Macklin, p. 121).

The idea of the fetus as a patient apart from the woman in which it is being carried, it is argued, encourages the mental separation of the maternal - fetal integrated unit. As a patient, the fetus is the bearer of rights similar to those of its mom, and possibly seen as overriding those of its mother. Fleischman and Macklin present a criticism by R. Hubbard:

> . . . it is clear that pregnancy has become a disease with two potential patients--the pregnant woman and her fetus--and of these, the fetus is medically and technically by far the more interesting one. . . In this way the fetuses's presumed 'rights' as a patient can be used to control pregnant women (1987, p. 137).

This poses many difficulties for the physician whose duty it is to act in the best interests of her patient(s). Thus, one can see where a sense of a "conflict of duties" may arise. For more detail, refer to Fleischman and Macklin (1987, pp. 136-7).

[3] The AMA's statement reflects an underlying assumption that the options presented to a given patient are in both principle and fact, able to be discussed by the physician. This assumption is incorrect. One can imagine a situation in which one of the options opposes the moral belief system of the physician so much so that he cannot discuss that particular option with the

patient before him because, in doing so, he would undermine his personal integrity. Even the act of referral would play on his conscience, and undermine his personal integrity to the same degree as if he had been the one providing that particular option. Thus, for this physician there may be only five options as opposed to the six provided by another physician to his patient. Martin Benjamin and Joy Curtis provide an analysis of a situation similar to the one descried above. The situation they discuss is that in which a health care professional is disinclined to discuss options with a patient due to her religious convictions which are strongly opposed to abortion. As a professional, the physician must acknowledge pluralistic conceptions of the "good." I expand on this in Section IV and V.

For situations in which the health care professional's religious beliefs conflict with that which is legally required of her, Benjamin and Curtis claim that the health care professional must not impose her religious beliefs onto the patient unless she can,

> ...provide strong, nonreligious arguments . . . personal, religiously grounded opposition is not sufficient to override . . . prima facie obligations to provide legal . . . services and to preserve the clients's right to privacy(Benjamin and Curtis, p. 48).

For situations in which the health care professional has "strong" secular moral convictions opposing one or more

of the options, Benjamin and Curtis state:

> . . . we may hope that attempts to anticipate and respond to objections to her position would have revealed to her that decent, thoughtful people -- people who are neither callous nor 'moral pygmies' -- can hold an opposing view (1986, p. 48).

In section V, I set forth a set of criteria which any action, program, or policy must contain in order for it to be morally sound. Physicians' actions which do not conform with all of the criteria are thus immoral. Therefore, the actions of this physician are condemnable from a pragmatic-feminist standpoint.

[4] For discussion of the notions of "conscience" and "personal integrity," see, for example, Benjamin (1995, p. 469-472).

[5] Fleischman and Macklin discuss in fuller detail how a "respect for persons' rule may be applied to situations of maternal-fetal conflict.

> This principle supports the right of the woman to determine what happens to her body, including the fetus, which is undeniably a part of her body. The principle of "respect for persons" might also be viewed as granting the fetus protection because of its 'diminished autonomy', although this application of the principle is more controversial. It depends on whether a fetus is the type of entity that possesses autonomy, albeit diminished. According to this principle, the physician has a clear moral obligation to respect the autonomy of the mother an a somewhat less

> clear obligation to protect the fetus, with its diminished autonomy .. Stated another way, the physician has an obligation to protect the wanted fetus because of its future potential for full autonomy (1987, p. 124).

[6] Feminists were not the first to discuss and analyze the notion of "care" and an "ethic of care." See W.T. Reich's discussions on the history of the notion of "care" and an "ethic of care" (Reich, 1995 pp. 319-336 and Jecker and Reich, pp. 336-342).

[7] The reader will notice that I discuss the consequences of our actions and policies, yet claim not to be a consequentialist. It may be helpful for the reader to understand the distinction between two senses of the notion of consequences. First, there is the teleological conception of consequences (e.g. utilitarianism), which I have contrasted to deontological theories (e.g. Kantianism) in section II. A teleological perspective holds that we must always strive to produce the best consequences overall. As I discussed in section II, consequentialists place the "good" prior to the "right." Second, there is a sense in which all endeavors in philosophical ethics appeal to consequences, even Kantians. Thus, all rational thinking attempts to identify consequences. Certainly, we must always attempt to determine the consequences of

our actions, programs, and policies. However, from this perspective, the production of good consequences is not always the overriding goal.

LIST OF REFERENCES

LIST OF REFERENCES

Aguilar, R.J. and Nightingale, N.N.: 1994, 'The Impact of Specific Battering Experiences on the self-esteem of Abused Women,' *Journal of Family Violence* 9 (1) (March), pp. 35-46.

Annas, G. J.: 1986, 'Pregnant Women as Fetal Containers,' *Hastings Center Report* 16 (6), pp. 13-14.

Annas, G. J.: 1987, 'Protecting the Liberty of Pregnant Patients,' *The New England Journal of Medicine*, p. 1214.

Annas, G. J.: 1994,'Women, Health Care and the Law,' in E. Friedman (ed.), *An Unfinished Revolution*, United Hospital Fund of New York, New York, pp. 29-46.

American College of Obstetricians and Gynecologists: 1987, Committee on Ethics, 'Patient Choice: Maternal-Fetal Conflict,' Committee Opinion No.55, p. 2.

American Medical Association: 1988, 'When Physician and Pregnant Women Disagree (Maternal-Fetal Conflict),' *JAMA* 264, p. 267.

Arras, J.D. and Steinbock, B.: 1995, *Ethical Issues in Medicine*, Mayfield Publishing Company, California.

Balisy, S.S.: 1987, 'Maternal Substance Abuse: The Need to Provide Legal Protections for the Fetus,' *Southern California Law Review* 60 (4), pp. 1209-1238.

Baquet, D.: 1990, 'Hearings on neglect Upheld in Newborn Cocaine Cases,' *New York Times* (May 30), p. B3.

*Benjamin, M.: 1995, 'Conscience' in W.T. Reich (ed.), *Encyclopedia of Bioethics*, Volume I, Simon and Schuster Macmillan, New York, pp. 469-472.

Benjamin, M. and Curtis, J.: 1986, *Ethics in Nursing, Oxford University Press*, Inc., New York and Oxford.

Bentham, J.: 1961, 'Principles of Morals and Legislations,' in Dolphin Books (ed.), *The Utilitarians*, Doubleday & Company, Inc., Garden City, New York.

Blume, S.B., Counts, S.J. and Tornbull, J.M.: 1992, 'Women and Substance Abuse,' *Patient Care* 26 (12) (July), pp. 141-156.

Coutts, M.C.: 'Maternal-fetal conflict: Legal and Ethical Issues,' Scope note 14, National Reference Center for Bioethics Literature, Kennedy Institute of Ethics, Georgetown University, Washington, DC, pp. 4-5.

Eagan, A.B.: 1994, 'The Women's Health Movement,' in E. Friedman (ed.), *An Unfinished Revolution*, United Hospital Fund of New York, New York, pp. 15-28.

Feinberg, J.: 1976, 'Is There a Right to Be Born,' *Understanding Morality*, Dickinson Publishing Company, California.

Fleischman, A.R. and Macklin, R.: 1987, 'Fetal Therapy: Ethical Considerations, Potential Conflicts,' in M. Benjamin and W. Weil (eds.), *Ethical Issues at the Outset of Life*, Blackwell Scientific Publications, Boston, pp. 21-150.

Galston, W.:1983, 'On the alleged right to do wrong: a response to Waldron,' *Ethics* 93 (Jan) pp. 320-324.

Gilligan, C.: 1982, *In A Different Voice: Psychological Theory and Women's Development*, Harvard University Press, Cambridge, Massachusetts, and London, England.

Hare, R.M.: 1991, *Moral Thinking*, Oxford University Press, New York.

Held, V.: 1993, *Feminist Morality: Transforming Culture, Society, and Politics*, The University of Chicago Press, Chicago and London.

*Jaggar, A.M.: 1992, 'Feminist Ethics,' in L.C. Becker (ed.), *Encyclopedia of Ethics*, Garland Publishing, Inc., New York and London, p. 361-370.

Jaggar, A.M.: 1993, 'Feminist Ethics: Some Issues For the Nineties,'in W.H. Shaw (ed.), *Social and Personal Ethics*, Wadsworth Publishing Company, California, pp. 78-89.

Jamieson, M. and Schabot, C.: 1986, 'Women and Chemicals,' in D.K. Kjervik and I.M. Martinson (eds.), *Women in Health and Illness: Life Experiences and Crises*, W.B. Saunders Company, Philadelphia, pp. 96-106.

*Jecker, N. and Reich, W.T.: 1995, 'Contemporary Ethics of Care,' in W.T. Reich (ed.), *Encyclopedia of Bioethics*, Volume I, Simon and Schuster Macmillan, New York, pp. 336-342.

Johnson, D.: 1987, 'A New Threat to Pregnant Women's Autonomy,' *Hasting's Center Report* 17 (4), pp. 33-40.

Kresnack, J.: 1990, 'Baby's Ills Take Up Bill Surpassing $1 Million,' *Detroit Free Press* (October 1).

Kolder, V.E.B., Gallagher, J. and Parsons, M.T.: 1987, 'Court-Ordered Obstetrical Interventions,' *New England Journal of Medicine* 316 (19) (May), pp. 1192-96.

Livizzo-Mourey, R. J. and Grisso, J. A.: 1994, 'Health, Health Care, and Women of Color,' in E. Friedman (ed.), *An Unfinished Revolution*, United Hospital Fund of New York, New York, pp. 47-64.

Logli, P.A.: 1990, 'Drugs in the Womb: The Newest Battlefield in the War on Drugs,' Symposium: Criminal Liability for Fetal Endangerment, *Criminal Justice Ethics* 9 (1), pp. 23-28.

*Lyons, D.: 1992, 'Utilitarianism,' in L.C. Becker (ed.), *Encyclopedia of Ethics*, Garland Publishing, Inc., New York and London, pp. 1261-1268.

Mariner, W.K., Glantz, L.H., and Annas, G.J.: 1990, 'Pegnancy, Drugs, in the Perils of Prosecution,' Symposium: Criminal Liability for Fetal Endangerment, *Criminal Justice Ethics* 9 (1), pp. 30-42.

Marquis, D.: 1978, 'Ethics and the Elderly: Some Problems' in S.F. Spicker, K.M. Woodward, and D.V. Tassel (eds.), *Aging and the Elderly: Humanistic Perspectives in Gerontology*, Humanities Press, Inc., New Jersey, pp. 341-355.

*Marshall, J.: 1992, 'Kantian Ethics,' in L.C. Becker (ed.), *Encyclopedia of Ethics*, Garland Publishing, Inc., New York and London, pp. 674-677.

McDermott, J.J.: 1986, 'Pragmatic Sensibility: the morality of experience,' in J.P. DeMarco and R.M. Fox (eds.), *New Directions in Ethics*, Routledge and Kegan Paul Inc., New York and London, pp. 113-136.

Mill, J.S.: 1961, 'On Liberty and Utilitarianism,' in Dolphin books (ed.), *The Utilitarians*, Doubleday & Company Inc., Garden City, New York.

Miller, B.L.: 1981, 'Autonomy and the Refusal of Lifesaving Treatment," Hastings Center Report 11 (4) pp. 22-30.

Moss, K.L.: 1990, 'Legal Issues: Drug Testing of Postpartum Women and Newborns as the Basis for Civil and Criminal Proceedings,' *Clearinghouse Review* 23 (11), p. 1406-1414).

Nagel,T.: 1986, *The View from Nowhere*, Oxford University Press, NY.

Nelson, L.J.: 1987, 'Compulsory Treatment of pregnant Women,' *Clinical Ethics Report* 1 (5), pp. 1-8.

O'Neill, O.: 1980, 'The Moral Perplexities of Famine Relief,' in T. Regan (ed.), *Matters of Life and Death: New Introductory Essays in Moral Philosophy*, Random House, New York, pp. 260-298.

Paltrow, L.M.:1990,'When Becoming Pregnant is a Crime,' Symposium: Criminal Liability for Fetal Endangerment, *Criminal Justice Ethics* 9 (1), pp. 41-46.

*Putnam, R.A.: 1992, 'Pragmatism,' in L.C. Becker (ed.), *Encyclopedia of Ethics*, Volume II, Garland Publishing, Inc., New York and London, pp. 1002-1005.

*Reich, W.T.: 1995, 'Care: History of the Notion of Care,' in W.T. Reich (ed.), *Encyclopedia of Bioethics*, Volume I, Simon and Schuster Macmillan, New York, pp. 319-329.

*Reich, W.T.: 1995, 'Care: Historical Dimensions of an Ethic of Care in Health Care,' in W.T. Reich (ed.), *Encyclopedia of Bioethics*, Volume I, Simon and Schuster Macmillan, New York, pp. 331-336.

Risemberg, H.M.: 1989, 'Fetal neglect and Abuse,' *New York State Journal of Medicine* 89 (3) (March), pp. 148-151.

Scheffler, S.: 1994, *The Rejection of Consequentialism*, Calendron Press, Oxford.

Seigfried, C.H.: 1996, *Pragmatism and Feminism:Reweaving the Social Fabric*, The University of Chicago Press, Chicago and London.

Seigfried, C.H.: 1991, 'Where are All the Pragmatist Feminists?' *Hypatia* 6 (2), pp. 1-19.

Shaw, M. W.: 1984, 'Conditional Prospective Rights of the Fetus,' *Journal of Legal Medicine* 5 (1), pp. 63-116.

Tague, T.: 1991, 'Protection of Pregnant Addicts and Drug Affected Infants in Muskegon County, A Multi-Disciplinary Approach of Prosecution and Treatment,' *Wall Street Journal*. Document Prepared by Muskegon County Prosector.

Treutler, S.: 1990, 'School Officials Prepare for the Worst,' *Muskegon Chronicle*, (Aug 26).

Weisensee, M.: 1986, 'Women's Health Perceptions in a Male-Dominated Medical World,' in D.K. Kjervik and I.M. Martinson (eds.), *Women in Health and Illness: Life Experiences and Crises*, W.B. Saunders Company, Philadelphia, pp. 19-33.

Weston, A.: 1992, *Toward Better Problems: New Perspectives on Abortion, Animal Rights, the Environment, and Justice*, Temple University Press, Philadelphia.

Wolf, P.:1988, 'The Case of Brenda Vaughan,' *Washington Post*, p. C8.

Zimmerman, D.: 1987, 'Forcing women to be Splendid Samaritans: Moral Doubts about Forced Obstetrical Intervention,' A Position Paper for the British Columbia Civil Liberties Association, B.C. Civil Liberties Association, Vancouver, B.C., pp. 1-9.

* secondary sources