

Week 7 Notes

Philo 101 Online | Hunter College

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1 Abortion

So far in this course, we have mostly focused on big, abstract topics in ethics and political philosophy. This week, we zoom in on a topic that can put some of our theoretical knowledge to work and test it out on a case study with urgent social importance. Although most Americans think that abortion should be legal, there is a large minority who passionately disagree, and this disagreement lines up to some extent with other partisan political divisions in the United States.¹ This has made abortion one of the major moral and political issues of our times. Since the Supreme Court ruled, in *Roe v. Wade* (1971), that the constitutional right to privacy includes women's right to have an abortion, abortion has become an increasingly divisive issue in America. In recent years, restricting access to abortion has been one of the top political priorities of many Americans.

It is worth noting, however, that things have not always been this way. Abortion has been practiced throughout human history. There is evidence that abortion was common in ancient Greece, China, and Egypt, for example. Abortion was legal in the United States until the late 19th Century, when states took turns outlawing it. There is much evidence that abortion remained quite common in the U.S. during the roughly 100 years when it was illegal, though it was driven underground.² Likewise, although many religious communities are currently vocally against abortion, historically they have tended to be much more ambivalent. The near association between some forms of Christianity and opposition to abortion is a relatively recent,

¹You can see some statistics about Americans' opinions about abortion here: <https://www.pewforum.org/fact-sheet/public-opinion-on-abortion/>

²To read about the history of Abortion law in the United States, see *When Abortion Was A Crime*, by Leslie J. Reagan (1998, University of California Press).

and mostly American phenomenon, for example.³ At least part of the present heat-
edness of the abortion debate revolves around the fact that it is a way for politicians
to get their bases angry and excited and ready to vote.

Still, there are age-old questions at work in the debate, and it would be foolish
to deny that these questions are of great moral importance. In particular, we will be
interested in two big questions that are central to ethics:

- What kinds of beings have rights, and why?
- Can one person's right to privacy and self-determination outweigh another
person's right to live?

2 Do Fetuses have Rights?

Our first two readings for this week, by Noonan and Warren, deal with what is of-
ten taken to be the most central philosophical question involved in the ethics of
abortion. We take it for granted that adult humans have rights, including the right
to life—i.e. the right not to be killed by others, for any reason. We also take it for
granted that sperm cells and egg cells do not possess this right. (After all, we tend
to dispose of them without a thought, and without thinking of ourselves as doing
something even remotely bad in doing so.) But every adult human was once created
from a sperm cell and an egg cell. So, at one point in the developmental process does
the right to life set in? This is a very difficult question to answer, because the devel-
opmental process is mostly a very gradual one, but gaining the right to life does not
seem like it can be a similarly gradual process.

So, at what point in human development do rights begin? Notice that the fol-
lowing is pretty clearly *not* a good answer: “a creature has rights as soon as it is
alive”. This is a bad answer for two reasons. First, it's not all that clear when life
begins, and so it just replaces one hard question with another. Second, lots of living
things don't have rights—like, for example, blades of grass—and so being alive can't
be what gives a thing rights. The same goes for the idea that the right to live begins
at the moment when an unborn fetus has a heartbeat: insects and other very simple
animals have beating hearts, but aren't usually thought of as having a right to life.

³To read about the complex history of Christianity and abortion, see this article by
Christina Forrester: http://www.huffingtonpost.com/entry/the-truth-about-christianity-and-abortion_us_58f52ed7e4b048372700dab5

Okay, so what are some possible better answers to the question of when the right to life begins? These two tend to jump out at us:

- Humans have rights starting at conception—the moment at which the sperm cell and the egg cell combine.
- Humans have rights starting at birth—the moment at which the fetus becomes a baby, and exists independently from the mother.

Why do these answers jump out at us? Well, at least part of the answer is that they are discrete events—moments at which something significant in the status of an organism changes. Conception is when it becomes a single organism, and birth is when it becomes an independent organism.

But why should conception or birth be a threshold that we care about? What changes at those moments that could transform a non-rights-holder into a rights-holder? Consider conception. The being that comes into existence at this moment is a zygote—a single cell that may or may not qualify as an organism unto itself. Other single-celled organisms, such as bacteria, do not have rights. Why, then, should this one be special? Next, consider birth. As many have pointed out, birth is an arbitrary moment to choose as the one at which a human gains rights. After all: nothing intrinsic to the organism changes at the moment of birth. All that changes at the moment of birth is where it is located and how it is fed. We now have the technology to make birth happen months ahead of schedule, and to keep the child alive. Does this mean that we have the power to give organisms rights on whatever schedule we choose? This seems like magical thinking. Surely it is something about the development of the fetus itself that is what matters, not where it is housed.

How, then, can we make a principled decision about when a human develops rights? Let us consider how the ethical theories we have looked at so far might answer this question.

First, consider utilitarianism. Depending on the version of utilitarianism in question, what we need to find it is when fetuses develop the capacity to experience pleasure and pain, or when they develop preferences. This is something that has been heavily investigated. For example, a 2010 report by Britain's Royal College of Obstetricians and Gynecologists concluded as follows:⁴

⁴You can see the full report here:

<https://www.rcog.org.uk/globalassets/documents/guidelines/rcogfetalawarenesswpro610.pdf>

In reviewing the neuroanatomical and physiological evidence in the fetus, it was apparent that connections from the periphery to the cortex are not intact before 24 weeks of gestation and, as most neuroscientists believe that the cortex is necessary for pain perception, it can be concluded that the fetus cannot experience pain in any sense prior to this gestation. After 24 weeks there is continuing development and elaboration of intracortical networks such that noxious stimuli in newborn preterm infants produce cortical responses. Such connections to the cortex are necessary for pain experience but not sufficient, as experience of external stimuli requires consciousness. Furthermore, there is increasing evidence that the fetus never experiences a state of true wakefulness *in utero* and is kept, by the presence of its chemical environment, in a continuous sleep-like unconsciousness or sedation. This state can suppress higher cortical activation in the presence of intrusive external stimuli. This observation highlights the important differences between fetal and neonatal life and the difficulties of extrapolating from observations made in newborn preterm infants to the fetus.

In other words: fetuses definitely don't experience adult-like pain until 24 weeks, and they seem to be in a state resembling general anesthesia at least most of the time after that until birth. For this reason, many utilitarians conclude that fetuses—and, in particular, early-term fetuses—don't need to be taken into account when deciding what to do. They don't have any rights.

Next, consider Kantian ethics. According to Kant, the only creatures with rights are rational beings—creatures who can formulate and follow their own maxims, and who therefore deserve to be treated as ends in themselves. Are fetuses rational beings? Not yet, it seems. But then again, neither are newborn babies, or some severely mentally disabled people. Rationality is quite a high bar!

In our readings for this week, John T. Noonan and Mary Anne Warren develop and defend positions that resemble the two most dominant positions about fetal rights in America today. Noonan argues that rights begin at conception. But unlike the considerations given earlier, Noonan thinks that his argument is grounded in principles that are anything but arbitrary. Mary Anne Warren, on the other hand, tries to develop a list of criteria for the status of “moral personhood”—i.e., the status that grants one rights—that we could apply to any organism we were to come across, including an alien. Her conclusion is that fetuses gain rights some time late in pregnancy. One of your jobs this week is to understand their arguments well enough

that you could imagine how a debate between them might play out.

3 What about Women's Rights?

In *Roe v. Wade*, the Supreme court did not try to decide the question of when moral personhood begins. They effectively concluded that this issue is not what is most relevant. Instead, they concluded that it is the right to privacy that gives women the right to terminate their pregnancies. This conclusion is echoed by many today, who argue that the most important thing to keep in mind when discussing abortion is that a woman has the right to decide what happens in her own body. The implication is that even if fetuses do have the right to life, that right is outweighed by a pregnant woman's right to decide how her body is used.

This idea has a bit of a Kantian ring to it: a pregnant woman should not be treated (not even by herself) as a mere means to some end, but must be treated as an end in herself. Feminist philosophers have often pointed out that discussions about pregnancy often seem to revolve around the assumption that women are mere vessels for the creation of life—living and breathing “baby factories”. Thinking of women in this way is a way of objectifying them, and of treating them as means rather than as ends.

Still, many have been tempted to think that although the right to privacy, or the right to self-determination is important, surely nine months' worth of it does not outweigh another being's right to *exist*? In other words: in the ranking of rights, life is more important than privacy. This can seem quite intuitive. However, there aren't many other cases when these rights come into conflict. And, in particular, it's hard to think of a situation in which a man's right to privacy comes into conflict with another being's right to live. So, we should be probably be worried that the temptation to rank fetus life over pregnant women's privacy is the result of sexist prejudice.

This is a possibility that Judith Jarvis Thomson explores in our third reading for this week. Because it's hard to think of other real-world conflicts between one person's life and another person's privacy, Thomson invents some imaginary scenarios that she thinks are analogous to different cases abortion in the morally relevant respects. Her scenarios are far fetched. They are reminiscent of science fiction. But this is also what makes them so powerful. If our moral principles are as reliable as we often take them to be, they shouldn't break down when applied to an unusual situation. Thomson is one of the great masters of the art of stress-testing moral principles

by applying them to strange situations. In this case, her conclusion is that most of us would feel no obligation to put another being's life over our own privacy, and that this is just fine. But if so, then we should give more thought to how we rank those rights in our thinking about abortion as well.