

Philosophy 104, Ethics, Queens College, Spring 2006
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Lecture Notes, April 3

I. Abortion and the Court

The abortion debate is often focused on the question of when life begins. In *Roe v Wade*, the Supreme Court declines to take a position on that question. They say that constitutional protection is clear only post-natally. Instead, they focus on two others.

Q1) When is the fetus viable?

If the fetus is viable, the State has a greater interest in protecting it. Viability grows earlier as medicine progresses, though it is still extremely rare for a fetus younger than 24 weeks to survive.

Q2) Is the procedure dangerous enough to prohibit?

This is a paternalistic consideration, like prohibition of dangerous drugs, or seat belt laws.

Technically:

First trimester: no restrictions may be made.

Second trimester: states may restrict abortion to protect maternal health.

Third trimester: states may limit abortions, either for reasons of maternal health or protection of potential life.

II. Some post-Roe decisions

The Court has considered abortion several times subsequent to *Roe*.

Some key decisions:

In *Webster v. Reproductive Health Services* (1989), the Court ruled in favor of a Mississippi state law restricting state aid for abortions, declaring that there is no constitutional right to an abortion.

In *Planned Parenthood v. Casey* (1992), the Court upheld *Roe*, but adjusted the details of that ruling, especially the strict trimester division, since they observed that viability may come much earlier than the beginning of the third trimester. The Pennsylvania legislature had passed four restrictions on access to abortions:

1. The “informed consent” rule required doctors to provide women with information about the health risks and possible complications of having an abortion before one could be performed.
2. The “spousal notification” rule required women to give prior notice to their husbands.
3. The “parental consent” rule required minors to receive consent from a parent or guardian prior to an abortion.
4. The fourth provision imposed a 24-hour waiting period before obtaining an abortion.

The Court rejected spousal notification, but upheld the rest of the restrictions.

In *Stenberg, Attorney General of Nebraska, et al. v. Carhart* (2000), the Court ruled that a Nebraska law prohibiting D&X, or partial birth, procedures was unconstitutional, since the state should not try to dictate to doctors which procedures are the safest.

III. Thomson, and the classic anti-abortion argument

What makes the abortion issue so interesting is that there are competing rights.
There is a general right to decide what happens in and to one's body.
There is also a right to life for all persons.

Thomson's goal is to refute one particular argument against abortion.
She calls it, 'the classic anti-abortion argument'.
There may be other arguments against abortion, even if this argument does not succeed.

The classic anti-abortion argument:

- 1) Every person has a right to life.
 - 2) The fetus is a person.
 - 3) So the fetus has a right to life.
 - 4) The right to life, for the fetus, is stronger than the right to choose what happens in and to one's body, for the mother.
- So, abortion is impermissible.

Thomson rejects the conclusion of this argument.

If you reject the conclusion of a (valid deductive) argument, you must also reject at least one premise.

Typically, those who favor abortion rights reject the second premise.

Thomson concedes that the fetus is a person, though she does not really believe it.

She rejects the fourth premise.

She argues that the right to life is not strong enough to support the argument.

Her rejection of the fourth premise proceeds on the basis of an example.

IV. The violinist

Consider the violinist story, p 185.

Substitute 'the violinist' for 'the fetus' and 'disconnect' for 'abortion', in the classic argument.

So:

- 1) Every person has a right to life.
 - 2) The violinist is a person.
 - 3) So the violinist has a right to life.
 - 4) The right to life, for the violinist, is stronger than the right to choose what happens in and to one's body.
- So, disconnecting the violinist is impermissible.

This argument has the same form as the classic anti-abortion argument.

V. Abortion Prohibition

It is possible to hold that abortion is impermissible, but only if you accept that disconnection from the violinist is also impermissible.

Thomson calls this the 'extreme view'.

The extreme view maintains that the right to life is stronger than the right to choose what happens in and to your body.

The extreme view may conflict with our intuitions about what to do in cases in which the mother will die if she carries to term.

We generally let people kill in self defense.

In this case, there are competing rights to life, not a balance of a right to life with a right to choose what happens to your body.

To maintain the extreme view, you could rely on the doctrine of acts and omissions: it is better to let die than to kill.

Consider the trolley example.

This option is not open to a consequentialist.

The extreme view is implausible.

VI. The 'weak extreme view'

We can modify the extreme view, to account for competing rights to life.

On the new view, abortion is permissible only given equal, competing rights to life.

That is, if the mother's life is at stake, an abortion is allowable.

Call this the 'weak extreme view'.

Even on the weak extreme view, you have to stay connected to the violinist, unless doing so would kill you.

This too is implausible.

We have a right to disconnect ourselves from the violinist.

But since the argument applied to the violinist has the same form as the classic anti-abortion argument, we have reason to believe that the argument itself is faulty.

If it is faulty in this case, it can not be a good argument in any case.

A good argument is one whose form can be relied on in any case.

VII. The difference between the fetus and the violinist

Really, there are two possible resolutions to the conflict.

Either:

R1) The classic argument is defective; or

R2) The difference between the violinist case and the abortion case is morally significant.

Exploring R2, one might say that the difference is that the violinist was kidnapped, but the mother can become pregnant voluntarily.

This would mean that if a pregnancy was involuntary, the result of a rape, say, then one would be allowed to have an abortion.

But the difference can not be that the fetus is voluntarily assumed.

This would entail that the difference in whether the right to life outweighs the right to choose depends on how the fetus was created.

Different people would have different rights, depending on their origins.

If you have a right to life, it should not matter whether you were created by voluntary pregnancy or by rape.

This would be a dangerous distinction to make.

It would create different classes of people depending on their parents.

This is really indefensible, inconsistent with what we think about human rights.

If there is no other support for R2, both the original argument and the violinist version must be defective.

Thomson argues that the problem is in premise four.

Specifically, she argues that the right to life is not stronger than, can not outweigh, the right to determine what happens in and to one's body.

VIII. The right to life

Thomson argues that the problem in the classic argument is that the right to life does not outweigh the right to choose.

So, what is a right to life?

It is not a right to bare minimum we need to survive.

Consider Thomson's Henry Fonda example.

Also, consider the debates over welfare in our country.

We might provide a basic right to food and shelter.

But we don't even do that, let alone ensure survival.

The right to life is not even a right not to be killed: consider the violinist again.

He has a right to life, but disconnecting him is killing him.

Whatever a right to life is, it does not give you the right to use some one else's body.

IX. When does the fetus have the right to the mother's body?

What would give you the right to use another person's body?

Surely, their consent would.

Consider the sick violinist.

Imagine he comes to you, asking to connect to you kidneys for nine months.

Imagine also that you decide to grant his request.

Now, it seems, he has the right to use your body.

You have entered into an agreement, and violating it would harm him.

Similarly, if you invite the fetus in, you take responsibility for the pregnancy.

If you are not responsible for the pregnancy, then you may justly take steps to remove the fetus from your body.

If a woman consents to getting pregnant, according to Thomson's argument, she has no right to abort.

The question of the permissibility of abortion thus becomes, "What constitutes consent in cases of pregnancy?"

X. Consent

Thomson argues that if you use contraception (responsibly), then you are not responsible for the pregnancy.

An opponent might argue that any consensual sex, with the knowledge that birth control sometimes fails, constitutes consent.

Thomson considers examples of intruders.

If I leave a window open and an intruder comes in, I am partially responsible.

I could have acted in a way that would have prevented his intrusion, p 189.

Still, I have not consented to his presence.

Similarly, consider the person-plants which take root in your carpet.

You buy mesh screens, but one is defective.

You have not consented.

The moral of these examples is that responsible use of birth control is a clear signal that one has not given consent to a pregnancy.

One can always prevent pregnancies by getting a pre-emptive hysterectomy.