

Philosophy 104, Ethics, Queens College, Spring 2006
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Lecture Notes, March 29

I. Review Midterm.

II. Discuss paper assignment, due April 10.

III. Abortion introduction

Abortions were not illegal until the late nineteenth century. At that time, before antibiotics, it was a dangerous procedure, mortality rate was high. Even the Church didn't have an official anti-abortion stance; this was left as a practical matter to women and their midwives. But, in large part in response to the high mortality rate, state laws arose prohibiting abortion.

In 1973, after a period of emphasis on civil rights and, in particular, women's rights, the Supreme Court ruled in *Roe v Wade* that states may not ban abortions. They also ruled that states may impose certain limits on abortions.

Some philosophical questions surrounding abortion:

- 1) Who has rights?
- 2) What kinds of obligations do we have toward others?
- 3) What is a person?

Some non-philosophical questions:

- 1) What is the law?
- 2) When is a fetus viable?
- 3) How does the fetus develop?

These may or may not be relevant to a philosophical position.

On absurd examples:

Abortion is a difficult subject, so we look toward easier cases, to refine our intuitions.

We wonder about those cases, and then apply them here.

Some of those cases may look pretty weird, but oddity is not necessarily relevant.

We are exploring issues which have no obviously right solution.

I have a short paper on the website on this topic, see the Handouts section.

IV. *Roe v Wade*

The question at hand: Is a law that prohibits abortion constitutional?

This is not a question of morality, per se, but if the law is based on morality, maybe we can get an insight into the moral question.

Three classic anti-abortion arguments:

- A1: To discourage illicit sex.
- A2: To protect the mother.
- A3: To protect pre-natal life.

Notice that A2 is an instance of paternalism.

A law is paternalistic if it attempts to protect the individual from him or her self.

We generally oppose paternalism.

But, we do have some paternalistic laws, e.g. drug laws, suicide prohibitions, seat belt laws.

So, should the case of abortion be one of these limited exceptions?

The Court responds:

To A1, that it is not appropriate for the Court to regulate sex in this manner.

To A2, that with current medicines and procedures, carrying to term is more dangerous than an abortion, early in the pregnancy.

This is especially true for very young women.

As the fetus grows, an abortion procedure becomes more dangerous.

Perhaps it would make sense to prohibit dangerous late term abortions.

To A3, that the fetus is not protected by the fourteenth amendment, p 181.

The Court ruled that there is no defense for outlawing abortions absolutely.

The State's interest in both A2 and A3 grow as pregnancy progresses.

Eventually there is a "compelling point" at which the states may prohibit abortions.

Note that the Court ignores the question of when life begins, p 181.