

Philosophy 104, Ethics, Queens College, Spring 2005
Russell Marcus, Instructor
email: philosophy@thatmarcusfamily.org
website: <http://philosophy.thatmarcusfamily.org>
Office phone: (718) 997-5287

Lecture Notes, April 4

I. Review Midterm

II. 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 that's not necessarily relevant.

We're taking a stand where none is obviously right.

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

III. *Roe v Wade*

The question at hand: Is the 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:

- 1) To discourage illicit sex.
- 2) To protect the mother.
- 3) To protect pre-natal life.

Notice that the second is clearly an instance of paternalism.

A law is paternalistic if it attempts to protect the individual from himself.

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

To 2), 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 3), 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 2) and 3) 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.

The questions become:

1) 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.

2) Is the procedure dangerous enough to prohibit?

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

Technically:

1st trimester: no restrictions may be made.

2nd trimester: states may restrict abortion to protect maternal health.

Post-viability: states may limit abortions, either for reasons of maternal health or protection of potential life.

IV. 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.

V. 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.

The same argument now gives you the wrong answer.

VI. The difference between the fetus and the violinist

Let's proceed on the assumption that you are morally permitted to disconnect from the violinist.

Either:

- 1) The classic argument is defective; or
- 2) The difference between the violinist case and the abortion case is relevant.

If 2), the difference can not be that the fetus is voluntarily assumed.

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

This would be a dangerous distinction to make.

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

You might want to say that the difference is that you were kidnapped in the violinist story, but the mother can become pregnant voluntarily.

This would mean that if a pregnancy was involuntary, then one would be allowed to have an abortion.

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

If there is no other support for 2), both the original argument and the version with the violinist 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.