

# Introduction to Philosophy

Philosophy 110W

Spring 2011

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Abortion and Personhood



# Business

- ☛ Papers due now
- ☛ Final Exam Wednesday at 7pm
  - Review Session on Monday at 1pm?
- ☛ Course Evaluations
- ☛ Today:
  - Quick Review of Mill and Kant
  - Abortion and Personhood
- ☛ For End of Class
  - Supplemental Course Evaluations

	Utilitarianism	Kantian Ethics
	Action-Guiding, moral theory	Action-Guiding, moral theory
Why should one be moral?	Pain/ Pleasure Favor/ Disapproval	Duty, not inclination
What, generally, determines if an action is good or bad?	Consequences in the world	One's own Good Will
What tool do we use to evaluate actions?	Greatest Happiness Principle	Categorical Imperative Test
What is the minimum we have to do to be moral persons?	Create the greatest happiness for the greatest number	Never break the moral law, the CI
How can we exceed the moral minimum?	There is no supererogation. One must consider one's own interests impartially.	Sometimes aiding others in meeting their ends.
Why do persons have value?	They can be happy.	They are the bearers of rational life.
Scope	Broad	Narrow
Precision of the theory	Imprecise	Precise

# Abortion and Paternalism

- ☛ Anti-abortion laws, as an historical matter, were paternalistic laws.
  - Protection of women
- ☛ We generally oppose paternalism.
- ☛ But:
  - drug laws
  - suicide prohibitions
  - motorcycle helmet and seat belt laws

# Middle Ground?

- There are about a million and a half abortions each year in the United States.
- What is the optimal number of annual abortions?

# Roe v Wade, 1973

- ☛ The Supreme Court: states may not ban abortions.
  - ↳ States may impose certain limits on abortions.
- ☛ The Court considered three classic anti-abortion arguments
  - ↳ A1: To discourage illicit sex
    - not appropriate for the Court to regulate
  - ↳ A2: To protect the mother
    - carrying to term can be dangerous, too
  - ↳ A3: To protect pre-natal life
    - Fourteenth amendment: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

# The Court and the Beginning of Life

We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer (Justice Blackmun, *Roe v Wade* 410 U.S. 113, 1973).

# Viability

- ☛ The State's interest in both A2 and A3 grow as pregnancy progresses.
- ☛ Eventually there is a “compelling point” at which states may prohibit abortions.
- ☛ States enacting laws may focus on two questions.
  - Q1. When is the fetus viable?
  - Q2. Is a given procedure dangerous enough to prohibit?
- ☛ Viability grows earlier as medicine progresses, though it is still extremely rare for a fetus younger than 24 weeks to survive.
- ☛ Q2 is a consequentialist, or utilitarian, consideration.
- ☛ Q1 naturally supports Kantian considerations about personhood.
  - Answers to Q1 would also be useful to the utilitarian.

# Recent Rulings

## ☛ Webster v Reproductive Health Services (1989)

- Mississippi may restrict state aid for abortions.
- No constitutional right to an abortion

## ☛ Planned Parenthood v Casey (1992)

- 1. An 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. A spousal notification rule required women to give prior notice to their husbands.
  - Rejected
- 3. A parental consent rule required minors to receive consent from a parent or guardian prior to an abortion.
- 4. A fourth provision imposed a 24-hour waiting period before obtaining an abortion.

## ☛ Stenberg, Attorney General of Nebraska, et al. v. Carhart (2000)

- States can not proscribe dilation and excision procedures.
- The state should not try to dictate to doctors which procedures are the safest.

## ☛ Gonzales v. Carhart (2007)

- The Court upheld the Partial-Birth Abortion Ban Act, enacted by the United States Congress in 2003, and signed into law by President Bush.

# Abortion Questions

- ☛ Some non-philosophical questions surrounding abortion include:
  1. What is the law?
  2. When is a fetus viable?
  3. How does the fetus develop?
- ☛ Some philosophical questions surrounding abortion include:
  1. Who has rights?
  2. What kinds of obligations do we have toward others?
  3. What is a person?

# The Classic Anti-Abortion Argument

- ☛ Depends on rights
  - AA1. Every person has a right to life.
  - AA2. The fetus is a person.
  - AA3. So the fetus has a right to life.
  - AA4. 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.
  - AAC. So, abortion is impermissible.
- ☛ Put aside interesting questions about AA4.
- ☛ AA is not applicable to cases in which a pregnant woman will die if she carries to term.

# Fetal Personhood

AA1. Every person has a right to life.

AA2. The fetus is a person.

AA3. So the fetus has a right to life.

AA4. 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.

AAC. So, abortion is impermissible.

- ☛ Locke's criterion won't help: consciousness is unobservable.
- ☛ Reid's criterion fails to give us criteria in principle.
- ☛ Hume and Parfit are obviously no help.
- ☛ Noonan argues in favor of AA2.
- ☛ Warren argues against AA2.

# Noonan and Conception

- ☛ The fetus is a human being from the moment of conception.
  - ↳ a non-arbitrary moment
  - ↳ “Moral judgments often rest on distinctions, but if the distinctions are not to appear arbitrary fiat, they should relate to some real difference in probabilities. There is a kind of continuity in all life, but the earlier stages of the elements of human life possess tiny probabilities of development” (Noonan 355b).
- ☛ All other moments are arbitrary.
  - ↳ In any ejaculation, any sperm has only a 1/200,000,000 chance of developing into a zygote.
  - ↳ A woman starts with 100,000 to 1,000,000 oocytes, only a few hundred of which become eggs.
  - ↳ After conception, there is an eighty percent likelihood of survival.

# Genetic Code

- ☛ “The positive argument for conception as the decisive moment of humanization is that at conception the new being receives the genetic code. It is this genetic information which determines his characteristics, which is the biological carrier of the possibility of human wisdom, which makes him a self-evolving human being. A being with a human genetic code is a man” (Noonan 356b).
- ☛ Kripke and the Queen of England
  - Kripke did not argue that genetics were sufficient for establishing personal identity.
  - He did not argue that having a human genetic code is sufficient to establish that one is a human being, or even a person.
  - Noonan does hold those positions.

# Noonan Against Other Criteria

- ☛ Viability depends on the concept of dependence.  
“The most important objection to this approach is that dependence is not ended by viability. The fetus is still absolutely dependent on someone’s care in order to continue existence; indeed a child of one or three or even five years of age is absolutely dependent on another’s care for existence; uncared for, the older fetus or the younger child will die as surely as the early fetus detached from the mother” (Noonan 354a).
- ☛ Fetuses start gaining experience before birth, and no particular experience seems necessary to be human.
- ☛ We can not trust the feelings of adults or social viability to ground a non-arbitrary distinction between human beings and non-humans because our perceptions themselves vary widely and need not reflect any important difference.

# Warren's Criteria

John

# Vagueness



- \*An average person has 100,000 -150,000 hairs on his/her head.
- \*Is the line at 10,000 hairs? 5000 hairs? 1000 hairs?
- \*You don't turn a bald person into a non-bald person by adding one, tiny hair to her head.
- \*There are bald people.
- \*There are non-bald people.
- \*Any point of distinction will be arbitrary.
- \*But, that doesn't mean that there is no distinction.

# Is 'Human Being' Vague?

- Noonan provides a point of distinction between human beings and non-human beings.
- He defends that point of distinction by claiming that it is non-arbitrary.
- But, 'human being' may be a vague predicate.
- If 'human' is vague, then we can not expect a non-arbitrary distinction between humans and non-humans.
- Noonan's argument, depending on a preference for a non-arbitrary distinction, is thus unmotivated.

# Biology and Moral Personhood

- ☛ Noonan's stated goal is a definition of 'human being', rather than personhood.
- ☛ 'Human being' is a biological category.
- ☛ As we have seen, personhood is only implausibly a matter of biology.
- ☛ Warren seeks a broader characterization of personhood.
- ☛ Space travelers: friend or food?
  - Are replicants worthy of respect or dignity?

# Moral Theory and Personhood

- ☛ We might want to know if their ends are the kinds of ends that rational persons should consider in formulating maxims for the purposes of the categorical imperative test.
- ☛ We might want to know if their happiness is important to maximize in our utility calculations.
- ☛ We need criteria for personhood that go beyond merely biological factors.
- ☛ Genetic humanity is not sufficient to establish moral personhood.
- ☛ Some humans are not persons.
  - brain dead humans, and strictly dead ones
  - Human cancer cells have the genetic code of human beings.
- ☛ Some persons are not, or may not be, humans.
  - aliens and sentient machines

# Warren 's Five Concepts of Personhood

WP1. Consciousness (of objects and events external and/or internal to the being), and in particular the ability to feel pain;

WP2. Reasoning, (the *developed* capacity to solve new and relatively complex problems);

WP3. Self-motivated activity (activity which is relatively independent of either genetic or direct external control);

WP4. The capacity to communicate, by whatever means, messages of an indefinite variety of types, that is, not just with an indefinite number of possible contents, but on indefinitely many possible topics;

WP5. The presence of self-concepts, and self-awareness, either individual or racial or both (Warren 359b)

# Applying the Concepts to Abortion

- ☛ We need not possess all of WP1 - WP5 to be a person.
  - The paradigms are us adult humans.
  - A person will have to be like us in some ways, but need not be like us in all ways.
- ☛ “All we need to claim, to demonstrate that a fetus is not a person, is that any being which satisfies *none* of [WP1 - WP5] is certainly not a person. I consider this claim to be so obvious that I think anyone who denied it, and claimed that a being which satisfied none of [WP1 - WP5] was a person all the same, would thereby demonstrate that he had no notion at all of what a person is -perhaps because he had confused the concept of a person with that of genetic humanity” (Warren 360a).
- ☛ “In the *relevant* respects, a fetus, even a fully developed one, is considerably less personlike than is the average mature mammal, indeed the average fish” (Warren 361a).

# Course Evaluations