

# Chapter 9

## The Morality of Abortion

### 9.1 Homework

#### Readings :

- Required: RTD 11 (Thomson), RTD 10 (Marquis), SLB9
- Recommended:
  - Jane English, 'Abortion and the Concept of a Person'
  - Bonnie Steinbock, 'Why Most Abortion are Not Wrong'
  - Mary Anne Warren 'On the Moral and Legal Status of Abortion'
- Further Readings for yourself: Carol Gilligan *In a different voice*

#### Study questions – Give a short answer to the following questions:

1. What are the two conflicting values in the abortion debate?
2. What is the Person Argument against Abortion?
3. What is the problem with the first premise of the Person Argument against Abortion?
4. Why is it wrong to kill a fetus according to Marquis? What is the difference between Marquis' argument and the traditional Person Argument?
5. Explain the analogy that Thomson does with the violin player. Which premise of the Person Argument is it supposed to help us address? How? Can you think of ways in which the analogy is not convincing? Can you think of ways in which the analogy could be changed such that to make it more convincing?

## 9.2 Introduction

**A difficult question** – The issue of abortion is probably the most difficult and most controversial ethical issue, especially in the United States. So, let me make clear a few things right away:

**What this chapter is not about** – This chapter is *not* about

- Telling you what to think, or telling you what the right answer is
- Changing your views on the topics or forcing my own answer on you
- *The authors of the readings clearly take sides. The point for us is to listen to the arguments on both sides.*

**What this chapter is about** – This chapter is about: Our assumption will be that there are reasonable people on both sides. In investigating what these people have to say, you should be able to:

- understand why people who don't think like you do think the way they do – i.e. understand that reasons that are behind the other side's beliefs;
- deepen your understanding of your own position, in investigating what reasons are behind it.

**An important distinction** – It is important to distinguish between:

1. whether doing a particular action should be considered as *morally wrong*
2. whether doing a particular action should *made illegal*

There are many things that we consider being morally wrong, but that we still don't want to be illegal.

Example: you won't get into prison or even get a fine if you cheat on your girlfriend (resp. your boyfriend) with her (resp. his) best friend. It is clearly morally wrong, but not illegal.

In this class, we will only address the first issue: whether abortion is morally wrong or not. We will not discuss the problem of legality.

**Two opposite values** – In the traditional debate, there are two values in conflict:

1. The fetus' "right to life"
2. The mother's "right over her own body"

That people have some kind of right or control over their own body seems true. That said, this alone does not settle the question. This is simply because *it is not true that we can do whatever we want with our own bodies, in particular if it affects other people adversely.* The main questions are instead:

- Does the fetus have a "right to life" or not?
- If yes, then does the fetus "right to life" outweigh the mother's right over her own body or not?

**The Person Argument** – The traditional argument against abortion:

P1. The fetus is an innocent person

P2. It is morally wrong to kill an innocent person

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CC: It is morally wrong to kill a fetus

The argument is *valid*. It remains to see whether or not it is *sound*, that is to say, we have to assess whether or not the two premises are true. So, our questions will be :

P1: Is it true that the fetus is a person? – In order to answer this question, we need to define what a ‘person’ is

P2: Is it always morally wrong to kill an innocent person? – Here the right of the mother will come into play

Let’s us start with the first premise.

### 9.3 Premise 1: The question of Personhood

**The notion of Personhood is crucial for the argument** – In the Person Argument against abortion, it is *because* the fetus is considered a person that it is considered morally wrong to kill it.

Thought experiment: what or who do you think it would be ok to kill?

- an ant in your yard? a spider in your house? the giant spider in the forbidden woods behind Harry Potter’s high school?

- robots? – *I, Robot*: is it ok to discard old robots? is it ok to kill Sony?

- can you think of circumstances in which killing a human being would be ok?

Clearly, the notion of a person is not easy to define. To be part of the human species does not seem to be neither necessary. It may not be sufficient either.

**How to Premise 1?** – If we want to be able to assess the first premise of the Person Argument, we need to figure out *what it is that makes a person a person*.

More precisely, what we need is

- EITHER *sufficient* condition(s) for being a person. Then we’ll be able to check whether fetuses satisfy the(se) condition(s) or not. If the fetus fulfill the(se) condition(s), then the fetus is a person, and then the first premise is true.

- OR a necessary condition to be a person that the fetus *does not* fulfill. In this case, the fetus is not a person, Premise 1 is false, and the Person Argument fails.

**IMPORTANT NOTE:** It is crucial that you understand what necessary and sufficient conditions are in order to understand this chapter. Go back to the second chapter if you need.

**In Search for Necessary and Sufficient Conditions for Personhood** – What would that be?

**The alien thought experiment:** Arriving on another planet, on which you encounter new forms of life, on what criteria would you decide whether you treat these forms of life as you would treat a person – that is, presumably, not kill them as lightly as you kill a mosquito when on Earth?

- Would it be sufficient for you that these aliens have a physical resemblance with humans? Would it be necessary? – neither necessary nor sufficient ! you could meet aliens of a dramatically different appearance but whom you would treat as a person, while some ‘human like’ being could well be to be treated as pests !

- Would you require that these aliens are going to live for a long time? - not necessarily

- Would you require that these aliens have souls? – But how exactly would you check on this?

**An example: Mary Anne Warren’s conditions for personhood** – She proposes the following list:

1. The capacity of consciousness and the ability to feel pain
2. The ability to reason.
3. The ability to act in ways that go beyond instinct – to have motives and goals.
4. The capacity for complex communication.
5. Having a sense of self.

—>According the Warren, the fetus does not fulfill all these conditions, and hence, is not a person

**Discussion on the conditions for Personhood** – Let us see what conditions could define personhood, and the difficulties these conditions raise:

1. Human parents or human appearance – but see the alien thought experiment above!

What makes a person a person is not that he or she is human.

—> *Whether or not something is of human appearance seems to be irrelevant to the question of whether this thing counts as a person or not.*

2. Intelligence, complex communication skills, ability to reason, agency (ability to have motives and goals beyond instincts).

All these conditions seems far too strong: if these conditions are necessary conditions for personhood, then retarded and insane people do not count as persons. But that’s unacceptable.

—> *Definitions of personhood requiring high intellectual or moral abilities seem to be too narrow: it excludes too many beings.*

3. Being alive (a), being able to become a human (b), or containing human DNA (c). All these conditions seems to be too weak. Indeed, if these are sufficient to count as a person, then:

- all animals and plants are persons (they are alive)
- sperm and eggs are persons
- all human cells are persons (including these skin cells that you loose everyday)

But that cannot be true.

→ *Definitions of personhood requiring too minimal human characteristics seem to be too wide: it includes too many things.*

**The question of Personhood: a dead end?** – It is very difficult to find an acceptable set of conditions that are together sufficient for personhood.

1. if the definition is too broad, then we have absurd conclusions, like menstruation and “killing” carrots amount to kill a person
2. if the definition is too narrow, then we have absurd conclusions, like it is okay to kill mentally handicapped people

**Sentience as a minimal requirement** – One possible option is to look not for a definite definition of Personhood, but rather for a necessary condition for being considered as a person.

One minimal such condition which is hard to deny is that the being we consider is not only alive, but also *can feel pain* – that is, is *sentient*. This is not claiming that anything which feels pain should be treated as a person, but rather that we don’t have to treat as persons anything that does \*not\* feel pain.

Such a necessary condition allows us to

- on the one hand, exclude sperm, eggs, skin cells from the realm of personhood.
- on the other hand, \*not\* exclude mentally handicapped and insane people

If appealing to sentience does not solve the question of the definition of personhood, it still seems a reasonable minimal requirement for treating something the way we treat persons – in particular not killing them lightly.

Note the consequences of accepting this view:

1. Animals can feel pain – hence, on this view, we should not kill them lightly (but you are fine with carrots)
2. A fetus can fell pain only around the 20th weeks of gestation (half way through the 40 weeks of pregnancy) – hence, on this view, it is ok to kill embryos, and fetus no older than 20 weeks.

Another strategy around this problem is to avoid discussing personhood. Both Marquis and Thomson attempt to do this.

## 9.4 First way out of the dead end? Marquis on when is it wrong to kill

**Marquis' analysis** – Marquis tries to avoid the question of personhood: he tries to give a reason why it is wrong to kill a fetus, independently of *whether or not* a fetus is person. That certainly sounds like a more promising strategy.

→ *So: the question we ask now is not: what makes a person a person, but rather: what makes killing morally wrong? This is an interesting question, even outside of the sole issues of abortion: it has implications for euthanasia, death penalty, and in general our morality about killing. Clearly, it is not always the case that killing is morally wrong (you kill mosquitoes, soldiers kill other soldiers etc. Marquis gives us the opportunity to wonder about the conditions in which an instance of killing should be considered a morally wrong.*

**Unacceptable conditions** – Let us consider first some conditions that could come to mind, but which do not work under further reflexion:

1. Desire account of wrongful killing: Killing is wrong only when it goes against one's desires.

Objection: If this is true, then killing a suicidal teen is ok – Unacceptable

2. Discontinuation account: Killing is wrong only when it interrupts valuable experiences.

Objection: If this is true, then unconscious people could be killed because they have no experiences – Unacceptable

→ *So: it may be less easy than we thought to find the reason why killing is wrong. Let's see what Marquis proposes*

**Marquis' thesis and its implications :**

Marquis thesis is that *an instance of killing is wrong when it deprives someone of a valuable future like ours.*

**Advantages of Marquis' thesis outside of the abortion issue** – It allows us to explain:

- why killing is wrong generally (killing is depriving someone from a valuable future),

- why people are depressed about chronic illnesses (it deprives them from a valuable future).

**Important Implications of Marquis' thesis :** It is important to consider that if we accept Marquis' condition for making an instance of killing morally wrong, we must also accept the following implications:

1. It wouldn't just be humans that are wrong to kill: animals seem to qualify too.
2. It is ok to kill anyone who \*doesn't\* have a valuable future: so, arguably, voluntary assisted suicide is ok
3. It is wrong to kill children, infants, and fetuses.

→ *Keeping in mind these implications, let us see how Marquis' thesis applies to the issue of abortion*

**Marquis and abortion** – In the abortion case: Marquis rejects the Person Argument and proposes instead:

P1. It is wrong to kill when it deprives of a valuable future like ours.

P2. A fetus has a valuable future like ours

CC: So: it is wrong to kill a fetus, (and abortion is morally wrong)

→ *SO: According to Marquis, abortion is wrong because it deprives fetuses from a potentially valuable future like ours.*

**Possible objections to Marquis :**

**Is sentience an additional necessary condition?** – Perhaps another property is required, e.g. sentience. Sentience is what gives a being interests that deserve to be taken into account. Without sentience, a theory of wrongful death cannot apply.

- Marquis' response: Drug induced loss of sentience provides a counterexample: it cannot be right to kill someone under strong pain relief

- Possible answer: distinction between structural ability to feel pain and actual ability to feel pain – drugs do not change the structure of our bodies.

**Steinbock's criticism of Marquis** – Here is a way in which one can criticize Marquis' argument:

In order for the valuable future account of wrongful death to apply to a fetus, there must be some way of linking the fetus to the person who has valuable experiences like ours. *To do this, one needs a personal identity theory, a theory that indicates which individuals are the same individuals over time.*

**Two theories of personal identity :**

(T1) Physical theory of personal identity: What makes a person the same person over time is the causal history of the physical components of their bodies. Though we create and lose cells, it is the causal connections between the cells and the rest of our organs that composed us at an earlier time and later time that serve to identify two people as the same.

(T2) Psychological theory of personal identity: What makes two people the same person is when there is continuity of psychological experiences between the two persons.

### Steinbock's dilemma for Marquis :

- Suppose we go with the physical theory of personal identity. Well, we are causally connected to sperm and egg. Every egg and every sperm can be connected to a person with a potentially valuable future. In this case, any instance of birth control, menstruation, or masturbation (for men) would be instances of wrong killing.

- Suppose we go with (T2), i.e. the psychological theory of personal identity. Well, before a certain stage of development, there is no psychological experiences (even pain). Hence, there is no way to connect the fetus to the person who has valuable experiences.

→ *So, either abortion is allowable in non-sentient fetuses, or birth control, etc, are instances of wrongful killing, which is absurd. Which leaves us only with the idea that Marquis' criterion for wrongful killing works only for sentient fetuses (older than 20 week old)*

### Conclusion on Marquis :

Marquis seems to make the right kind of move when he decides to leave aside the question of personhood and to try to figure out another criterion which makes killing wrong. His proposal is interesting because it allows to understand why a human life appears to be valuable to us: it contains a valuable future.

The problem is that Marquis' criterion falls back into trouble when we think about it more seriously. The trouble resides in the question of how we decide whether something "has a future like ours". For something to have a future, it is required that this thing has some kind of identity, which allows us to make a link between the past and the future. Considering them the theories of identity that are available on the market, it seems that we end up with a similar restriction as in the previous section on the person argument: *it seems difficult to justify that it is morally wrong to kill anything which is not sentient.*

→ *When we try to find the conditions for wrongful killing, whether in the discussion of the notion of person or in the discussion of the valuable future, it seems that we reach the same result: it seems that killing a being is not wrong unless this being is at least sentient. Note that we haven't found any sufficient condition which would work as a criterion for wrongful killing, because we haven't found any sufficient condition either to be a person, or to have a valuable future like ours. To try to answer this question proved very difficult. All we have found is a criterion for killing to be ok.*

## 9.5 Premise 2: Is it always wrong to kill an innocent person?

Up to now, we have tried to:



- assess premise 1 of the Person Argument, which required to find sufficient conditions for being a person, which in turn proved difficult to achieve.

- reformulate the Person Argument, in changing the condition for an instance of killing to be wrong – we change the condition: “to be a person” into the condition: “to have a future like ours”.

In both cases, the result is that killing a non-sentient fetus, that is, less than 20 weeks of gestation, appeared not to be a case of wrongful killing.

Now, what we haven’t discussed yet is Premise 2 in the Person Argument. This is what Thomson proposes to do: even if the fetus was indeed a person, would the person argument hold? That is: is it always wrong to kill an innocent person?

**Thomson’s analogy** – The violinist hooked up to your body without your consentment

Are you morally obliged to stay in bed with the violinist? Is it morally wrong to unhook yourself?

- if you have to stay for nine minutes?

- if you have to stay for nine months?

- if you have to stay for nine years?

- if there is a high probability that this is going to make you die?

→ *Thomson’s point here is not to say that it is always morally right to unhook yourself, rather to say that the case is not clear, and hence, that it is not obvious that the second premise of the Person Argument always true. Which means that we may have to distinguish between cases. Now, the strength of Thomson’s argument depends on the strength of the analogy between the violin player example and abortion. What are the morally relevant differences between the violin player example and abortion, and does this make a difference regarding the conclusions she draws?*

**Cases in which the analogy seems to work** – There are two cases for which Thomson’s analogy seems directly relevant:

(1) The case in which pregnancy is due to rape.

(2) The case in which the life of the mother is endangered.

Are there possible objections in these cases? I don’t think there is any in case (1), but there is one in case (2).

**A possible objection in case (2): direct killing vs. letting die :**

A common argument given in the extreme case in which the mother is sure to die in case she goes through pregnancy is the following:

You cannot kill directly but you can let people die – so, according to this argument, you cannot kill the fetus, but it is not morally wrong to let nature follow its path and let the mother die

Thomson’s answer: the coats in winter

→ *The objection does not seem convincing at all. So, for the two cases in which either the pregnancy is due to rape, or the life of the mother is endangered, it seems that Thomson has a convincing argument that it is not necessarily wrong to kill the violinist / fetus.*

**What about the other cases** – Of course, pregnancies are not always as dramatic as in the case of rape or danger for the mother's life. So, how does Thomson's argument fare in the other (the majority of) cases?

In particular, what about unwanted pregnancies when birth control fails?

- Thomson: the dandelion-babies in your house

- Jane English' refinement of the violinist case (refined by myself): you've heard that it may happen that you get hooked up to a violinist when going to the opera. You know that usually, it is likely to happen when you go to the reception after the performance. So, you go only to the performance and not to the reception. You are careful not to get close to the location where the reception takes place. Despite all your precautions, you get caught and hooked up with the violinist. How much responsibility does you have? Is it morally wrong to unhook yourself?

- Another example: robbed in Chicago

→ *The refined analogy gives us the opportunity again to see that Premise 2 is not straightforwardly true in all the case of unwanted pregnancies. Now, this were just analogies, which is rather poor. Can we find a rational basis for the ideas we draw from the analogies? The distinction between moral favors and moral obligation will prove useful here.*

**Moral obligation vs Moral Favors** –Thomson's main thesis is that *we are not morally obligated to help another, but it would be a great moral favor.*

- Henry Fonda's (or Britney Spears' if you like) touch

- The Great Samaritan: if we were morally obligated to be Great Samaritans, then we would be all morally wrong not to devote our lives to fight, say, poverty in Africa.

This helps us understand the distinction between moral favors and moral obligations:

**Definition 21 – Moral Obligation**

*A moral obligation is something one must do on pain of immorality.*

*One usually does not get special praise for doing his or her moral obligations. If, however, one doesn't do his or her moral obligations, he or she can be blamed.*

**Definition 22 – Moral Favor**

*A moral favor is something one can do above and beyond moral obligations.*

*If one does a moral favor, he or she can be praised, If, however, one does not do any moral favor, he or she is usually not blamed for it.*

In the case of unwanted pregnancies or hooked-up-violinists, to help save the life of the fetus/violinist would be a moral favor, but it is not a moral obligation.

→ *Thomson's thesis can then be reformulated as: we are not morally obligated to be Great Samaritans.*

**Conclusion on Thomson** – Thomson's conclusion is that not all cases of abortion are wrong – it depends on how much sacrifice is involved:

- There are clear cases, at each extreme of the scale:
  - a. we are not obligated to keep the violinist-baby if our life is in danger;
  - b. but not helping when it does not involve any great sacrifice is morally wrong – last minute abortion after unprotected sex or because conflict with your vacation plans will count as morally wrong under Thomson's view.
- In the middle, no clear cases, but a *continuum* instead, spreading from the moral indecency to the morally right.

*It would be a fallacy to cut one way or another just because there are extreme case.*

Indeed, this is a fallacy we talked about earlier: the Slippery Slope fallacy. Remember: a slippery slope argument is an argument which says that there is no line to draw just because it is difficult to know where to draw the line between cases: The example we consider in chapter 2 was the one about alcoholism.

### 9.5.1 Conclusion

As said in introduction, the point of the chapter was to make you think about your own view on abortion, in considering the arguments from the other side.

- One important conclusion from our investigation is that there is probably not simple answer to the issue of whether or not abortion is wrong which would apply to all cases.

- There seem to be clear case in which abortion appears as morally ok. Two important concepts were useful for the discussion:

1. the notion of sentience – none of the usual arguments against abortion seem to work unless the fetus is sentient

2. the notion of moral favor, by contrast to the notion of moral obligation – in many cases, not having an abortion amounts to a moral favor, not a moral obligation

- That said, there are clear cases in which abortion appears to be morally wrong:

1. When nothing was done to avoid the pregnancy

2. When no great sacrifice is involved

→ *In the middle, because we have a continuum of cases, there is no straightforward answers, but a case by case assessment is in order.*

