

140: Matters of Life and Death – 15 – Abortion (1): conflicting claims

1 Preliminaries

The debate over abortion divides into two parts:

- (1) the **moral standing of the fetus** – whether the fetus has moral significance in its own right, whether it has basic rights, when and in virtue of what such rights or moral significance are acquired;
- (2) **conflicting claims** – *granting* the moral status / rights of the fetus, may the mother's claims over her own body override those of the fetus?

Keep these questions distinct!

Distinguish **direct** versus **indirect** reasons against killing. E.g. an objection that abortion violates a right to life, is a direct reason. E.g. arguments, (i) *against* abortion that many infertile couples want to adopt, and (ii) *for* abortion on grounds of unhappiness caused by unwanted babies, are *indirect* reasons. Focus on *direct* reasons, as more basic.

The debate is often presented in form 'Is a fetus human?', 'Is a fetus a person?' – but usage of these terms is slippery. Define – *human* = *member of species homo sapiens* (then the fetus obviously *is* a human), *person* = *reasoning self-conscious agent* (then the fetus is obviously *not* a person).

One important question is whether the fetus has moral standing (matters morally), and at what point it acquires that standing.

E.g. we can ask whether *all humans* have moral standing. (Then the fetus does.)

Or whether *only persons* have moral standing. (Then the fetus doesn't.)

For now assume that the fetus *does* have moral standing, and has whatever rights / moral significance that any person has.

2 Abortion for Utilitarians

For a Utilitarian *direct* reasons will almost always speak against abortion. For to abort is to cause the loss of, on average, 80 years of worthwhile life.

Direct reasons will only speak *for* abortion in cases where the fetus cannot expect to live a worthwhile life.

Even considering direct *and* indirect reasons, a Utilitarian will normally be opposed to abortion? For 80 years of worthwhile life will normally amount to more than any unhappiness caused to the mother / parents / siblings.

But unwanted babies aren't happy? Reply **(a)** Even an unwanted baby will normally have a life very much better than nothing. Reply **(b)** an unwanted baby can be happy if adopted.

The replaceability argument (Singer in *Practical Ethics*).

Abortion is permissible provided that the baby is replaced with another one later. Since what matters is the *quantity* of happiness, it doesn't really matter *which* individuals live to experience it.

But a dilemma –

Either the argument applies also to normal adults; in which case it just goes to show the unacceptability of Utilitarian thinking!

E.g. the 'cloning machine' which can build an adult human in days. Is it then ok to kill me, provided a replacement is built?

Or the argument *doesn't* apply to adults, in which case it is covertly assumed that the fetus doesn't have moral standing – (i.e. doesn't matter, or doesn't matter so much, morally).

3 Abortion in self-defense?

Judith Jarvis Thomson shows how, from a Contractualist perspective, abortion can be thought of in terms of **conflicting claims**.

Even if a fetus has full moral standing, it doesn't necessarily follow that all abortions are ruled out (morally impermissible).

For there remains the question of the conflicting claims of mother and fetus.

E.g. Consider abortions where the mother's life is threatened by her continued pregnancy – might this be acceptable **killing in self-defense**?

But – (a) But the fetus is *innocent* –quite unlike a case of being attacked by someone with murderous intent.

But – (b) Even if this is set aside, by what right does a third-party (i.e. a doctor) take sides, preferring the life of mother to baby?

An example (Thomson) – The man with the rare blood disease, whose blood needs filtering through another's kidney's for nine months. You volunteer, get connected up, but something goes wrong – your life or his. What can you do? The man is innocent (he is not some murderer attacking you).

But it is too much for him to demand your life? – you did not *have* to do this (you volunteered), the man has no right against you, you acted generously.

And surely, if you request it, the doctors are at least *permitted* (if not obliged) to disconnect you, hence putting your life above that of the sick man? For it is *your* body, and he has no right to it.

“**But** you *promised!* Surely this gives the sick man a *right* to use your body!” True.

But – (a) Promises create only weak rights, fairly easily overridden (especially when circumstances change).

But – (b) In the case of pregnancy, no promise was given – the fetus cannot have rights to use the woman's body arising out of *legitimate expectations*, for it has none.

Another example: you swim out to rescue a drowning swimmer; he is too heavy, and is now causing you to drown (no fault of his). Surely you may push him away, causing his death? And surely if a helicopter can winch only one of you to safety, it should (or at least *could*) be you rather than the swimmer? For you are only drowning as a result of your volunteering to attempt a rescue.

Derivable from the Contractualist principle used for Trolley Problem ? – accidental harms should lie with the victims.

The examples bring out that abortions (or at least *some* cases of abortion), if wrong, are against Charity rather than against Justice. The right to life of the fetus is *not* like the right of an independent being not to be killed (murdered). It is rather the (more problematic) “right” of a *dependent* being to the *means necessary for survival*.

In contrast, the woman's right *is* one of Justice – No one may force her to use her body in one way rather than another. And the doctors may take the side of the mother where her life is threatened?

4 The case of the famous violinist

Another version of the blood-disease example – supposed to be comparable to abortion following **pregnancy due to rape**. This time the man with the rare blood disease is a Famous Violinist. Jane is the only one known to have the right blood type. She is kidnapped by the society of music lovers, and wakes up in bed near the violinist. She will have to remain for nine months (if she disconnects now, he will die).

This is like pregnancy due to rape? In both cases the dependent person has *no right* to use the woman's body. In both cases it would be *more than generous* for Jane to remain, and nine months is too much to demand of her? (Remember, generosity *can* be an obligation – e.g. the child drowning in the pond.)

But we need to take great care with these examples, to ensure the cases are *relevantly* similar.

An irrelevant feature, is that to insist on Jane staying is *to let her kidnappers get away with it*.

There is nothing parallel to this in most cases of pregnancy due to rape, since pregnancy is rarely part of the rapist's intention.

Better e.g. – you are mugged in a hospital corridor, knocked unconscious, laid on a trolley outside the operating theatre where a volunteer was to be left to be connected to the violinist.

Does this make any difference? Nine months of life is still too much to ask?

Another irrelevant feature is that the violinist is threatened by something *other than* disconnection (if he is disconnected, it will be his original illness that kills him, not you).

Not so the fetus – here aborting *is* killing. (Philippa Foot)

But does this really make any difference to our intuitions?

Better e.g. – the violinist is connected up to you *by mistake* following a mis-diagnosis; but once connected, it would cost him his life to disconnect.

Surely it would *still* be generous of you to remain?

⇒ In cases of pregnancy due to rape, and in cases where pregnancy threatens the mother's life, there is no direct moral objection to abortion (for a Contractualist).