ABORTION: STATUS OF THE FETUS, AND CONFLICTING CLAIMS


Separate Questions:
1) If the fetus is regarded as a 'person' in the moral sense of that term-- a full member of the moral community with all the rights possessed by other clear 'persons'-- then are there any circumstances in which abortion is morally justifiable (permissible)?
2) Is the fetus a 'person' in this evaluative sense? That is, does a fetus possess the characteristics that constitute the basis of the rights that paradigmatic 'persons' possess? [Note: this is not an empirical question but a moral one.]
3) If one regards the fetus as a 'person,' is there still a case to be made for the claim that abortion should be legal, or that it may be morally permissible or even obligatory under some circumstances?
4) If one does not regard the fetus as a full 'person,' is there still a case to be made for the claim that abortion (at least under some circumstances) is morally unjustifiable (impermissible)? That abortion might justifiably be prohibited?

PERSONHOOD AND THE STATUS OF THE FETUS: Is the fetus a “person” in the moral sense of the term, possessed of the rights and moral standing that other commonsense “persons” possess?

Conflict of Claims: If the fetus is a 'person’ in the relevant sense then the problem of abortion involves a conflict between the claims of the fetus and the claims of the pregnant woman. Given the personhood status of the fetus, are there circumstances for which abortion is justifiable even though it involves infringement of the fetus’s claim to life where this claim is in competition with other claims of the pregnant woman? (Note: It may, in some cases, depend on what claims are at stake. If the woman’s life or health or future are at stake, then her claim may be stronger than it would be if it were merely her convenience at stake.)

Warren: "I will argue that while it is not possible to produce a satisfactory defense of a woman's right to an abortion without showing that the fetus is not a human being in the morally relevant sense of that term, we ought not to conclude that the difficulties involved in determining whether or not the fetus is human make it impossible to produce any satisfactory solution to the moral status of abortion. For it is possible to show that, on the basis of intuitions which we may expect even the opponents of abortion to share, a fetus is not a person (in the relevant sense), and hence not the sort of entity to which it is proper to ascribe full moral rights."


A Fallacious argument against abortion: The "SLIDE OF MEANING" argument.
(1) It is wrong to kill innocent human beings.
(2) Fetuses are innocent human beings.
(3) So it is wrong to kill fetuses by abortion.

Warren claims that this argument equivocates on the term 'human being.’ Human being can mean either (1) a being with human DNA or (2)a member of the moral community. Premise (1) is clearly true when the term is used in the latter sense. Premise (2) is obviously true when it's used in the former sense.
Defining the Moral Community: What characteristics define membership in the class of things which deserve our moral respect? Things we should not use as food? Warren suggests the following:
1) Sentience- Capacity to have conscious experience, including capacity to experience pain and pleasure.
2) Emotionality- capacity to feel sad, happy, angry, loving, etc.
3) Reasoning-- capacity to solve new and relatively complex problems.
4) Capacity to communicate-- by whatever means. (Should this one be here?)
5) Self-awareness-- having a self-concept as an individual or group member.
6) Moral agency-- capacity to regulate one's actions through moral principles.

A being with none of these, claims Warren, is not a member of the moral community. "Furthermore, I think that on reflection, even the antiabortionists ought to agree not only that 1-6 are central to the concept of personhood, but also that it is part of this concept that all and only people have full moral rights."

The Question of Moral Standing: What criterion should we use to identify those who are 'persons' in the sense that implies full membership in the moral community, with all rights associated with such membership?

Species Criterion: All and only members of the biological species homo sapiens, 'whoever is conceived by human beings,' are moral persons, and thus are entitled to full and equal protection by the moral rule against homicide."

Modified Species Criterion: All and only members of species generally characterized by C, whether the species is homo sapiens or another, and whether or not the particular individual in question happens to possess C, are moral persons, and entitled to full and equal protection by the moral rule against homicide."

Strict Potentiality Criterion: "All and only those creatures who actually possess C (that is, either have C now, or would come to have C in the natural course of human events) are moral persons now, fully protected by the rule against homicide."

Modified, or Gradualist Potentiality Criterion: "Potential possession of C confers not a right, but only a claim, to life, but that claim keeps growing stronger, requiring ever stronger reasons to override it, until the point where C is actually possessed, by which time it has become a full right to life.

Actual Possession Criterion: "At any given time (t), all and only those creatures who actually possess C are moral persons at t, whatever species or category they may happen to belong to."

Feinberg’s View: Feinberg argues that one must actually possess the characteristics in question at the time when they are to be respected.

Questions and Reservations: What about people who are sleeping, sedated, or unconscious? What about future generations whose well-being may depend on our present choices?

Is there another alternative? Gradualist-Actual-Possession Criterion, with progressive accrual of rights corresponding with the acquisition of underlying capacities…?

Modified Actual Possession Criterion: Possession of a right corresponds to the possession of an underlying capacity or capability that justifies and explains that right. Thus as a developing fetus acquires capacities, it gradually acquires the rights that correspond to them. Once a threshold set of capacities has been acquired, one becomes a ‘person’ in the morally relevant sense.
CONFLICT OF CLAIMS: If the fetus is a 'person' in the relevant sense then the problem of abortion involves a conflict between the claims of the fetus and the claims of the pregnant woman. Given the personhood status of the fetus, are there circumstances for which abortion is justifiable even though it involves infringement of the fetus’s claim to life where this claim is in competition with other claims of the pregnant woman? (Note: It may, in some cases, depend on what claims are at stake. If the woman’s life or health or future are at stake, then her claim may be stronger than it would be if it were merely her convenience at stake.)

Thompson's Violinist Example: An argument from analogy that aims to show that we would not, in relevantly similar circumstances, have an enforceable obligation to make deep sacrifices on behalf of another person, even if that person's life depended on it. This case, claims Thompson, has all the relevant characteristics of the abortion case: the principles people apply there also apply here. The violinist is innocent, her life is at stake, she is potentially a person or not, and the 'victim's' choice determines whether she will live or die.

Thompson's solution: Maybe one ought to stay in bed for 9 months, but no one would argue that you would be a murderer if you didn't do so. One might say, with regret: “I can't take time out of my life to do this now: I'm working on a degree, I have plans, projects, other people need me, I have other obligations as well. The violinist, though a full person, doesn't have a right to my body. It might be uncharitable of me not to take time out of my life to help her, but it is not a moral duty to stay. Analogously, she argues, the fetus doesn't have a right against the woman which could oblige her to carry it to term.

Mary Ann Warren's Response:
1) Thompson's argument doesn't provide support for an unconditional right.
2) There is a further question of responsibility: if the woman is responsible for her condition, then if Thompson's argument is all we've got, the right to abortion is weakened. (Consider modified violinist case with responsibility.)

Voluntariness and Responsibility: A Range of Cases
- Fully Involuntary -
1) pregnancy caused by rape (totally involuntary)
2) pregnancy caused by contraceptive failure, where fault is manufacturer.
3) pregnancy caused by contraceptive failure within known 1% risk.
4) pregnancy caused by negligence. (carelessness in use of contraceptives, etc.)
5) pregnancy caused by recklessness (know the risk, but are swept up by passion)
6) pregnancy caused by indifference (they don't care whether she gets pregnant)
7) Deliberate planned pregnancy.
- Fully Voluntary -

Voluntariness and Responsibility. If the decision to become pregnant was fully voluntary, this would strengthen the case against a woman's right to choose an abortion. If involuntary, then the similarity with Thompson's "violinist" example is increased.

Conflict of Claims: Possible Grounds for a Woman's Right.
1) Property rights over one's body: sometimes considered the most basic right.
2) Self-Defense and Proportionality: Self defense is usually considered sufficient to justify the use of deadly force, so this would solve the problem which flattened the previous suggestion.
3) Bodily Autonomy: The right to make one's own decisions about what happens with one's own body.
4) Defense of another 5) Other possibilities?
Problem of Proportionality: In law and morals, one may respond to the prospect of harm by inflicting proportional damage on one’s attacker (whether morally innocent or no). Is abortion a proportional response to the disadvantages risked in an unwanted pregnancy? In analogously similar situations (where similarly weighty values are at stake), is it permissible to use lethal force in self-defense?

FETAL DEVELOPMENT:

Trimester: about three months. Vague term.

1) Intercourse—sperm wends its way toward the ovum...
2) Day 1: Fertilization- sperm and ovum unite.  (After sperm enters ovum it swims around for a while before the genes in the sperm and those in the ovum unite.  At this stage it could still be “removed.”  Shortly after fertilization, the sperm breaks down and sperm and ovum unite to form the unique genetic complement of the new embryo.)
3) Day 6 Implantation- embryo embeds itself in uterine wall. Until this point it has floated free. Often embryos are simply expelled before implantation. At this stage, the embryo is a round mass of cells with an empty space in the middle.
4) Day 14 Cells begin to differentiate into “inner” and “outer” cells of embryo
5) Day 14-21 formation of primitive streak. Twinning no longer possible.
6) Day 22 First menstrual period missed. “Middle” layer of cells forming and differentiating into fetus. Major organs forming at this stage, and ‘heartbeat’ beginning.
7) Day 28 head and ‘tail’ and limb buds formed.
8) Day 35 hands and feet, eyes begin to form. Embryo is now 4-5 mm long (less than 1/4)
9) Day 42 brainwaves detectable. Brain differentiated into three recognizable divisions. Eyelids begin to develop.
10) Day 49 Some independent reflexive movement. Ovaries and testes begin to form.
11) Day 56 all major organs in place, bones begin to replace cartilage. No longer an ‘embryo,’ now a ‘fetus.’
12) Day 70 Circulation, reflexes in place.
13) Day 82 May be capable of experiencing pain
14) Day 119 Dreaming may be possible. May weigh nearly .5 lb.
15) Day 124 “Quickening” - first perception of independent fetal movement.
16) Day 140 Latest stage when abortions are a legally protected woman’s right
17) Day 154 Survival outside womb sometimes possible.(?)
18) Day 210 Vision, Taste, Touch, Hearing, but not smell. (???) Proprioception?
DON MARQUIS: AN ARGUMENT THAT ABORTION IS WRONG

"The argument of this essay will establish that abortion is wrong for the same reason as killing a reader of this essay is wrong. I shall just assume... that killing you is seriously wrong.

**Standard Anti-Abortion Argument:**
1) Fetuses are human and alive.
2) Humans have the right to life.
3) Therefore fetuses have a right to life.
4) Of course, women have a right to control their bodies, but the right to life overrides this right.
5) Therefore abortion is wrong.

**On Thompson's argument:** Marquis argues that Thompson's argument fails to establish a right to abortion-- at best, it establishes such a right in a limited set of cases that should, Marquis thinks, be the subject of serious consideration by abortion opponents.

**Two Syllogisms:**
1a) All humans have a right to life.
2a) Fetuses are humans.
3a) Therefore fetuses have a right to life.
1b) Only persons have a right to life. [Reference to properties that uniquely identify 'personhood.']->
2b) Fetuses are not persons.
3b) Fetuses do not have a right to life.

**Marquis: Which syllogism shall we reject?**
(1a) is subject to philosophical criticism in many papers. Not everything that is biologically human has a right to life (cancer cells).
(1b) is also subject to criticism: it seems to exclude too much. (Infants, the severely retarded, some of the mentally ill...) (Hard to justify the tight connection between the psychological and the moral, says Marquis.)

**Marquis' "Future Like Ours" [FLO] account of the Wrongness of Killing: "The wrongness of killing us is understood in terms of what killing does to us. Killing us imposes on us the misfortune of premature death. That misfortune underlies the wrongness. Premature death is a misfortune because when one is dead, one has been deprived of life." Marquis goes on to argue that one is deprived of the goods one would have experienced but for one's premature death.

**Arguments for the "FLO" View:**
1) Considered Judgment Argument: This fits with considered judgments about why death is bad.
2) Worst of Crimes: Explains why we believe that killing is one of the worst of crimes.
3) Appeal to Cases: Explains why it is not wrong to remove the feeding tube from someone who is permanently unconscious. Explains why it is wrong to remove the tube from someone who is temporarily unconscious. Explains why euthanasia is permissible in cases of permanent intractable pain.
4) Analogy with Animals: Cruelty toward animals is clearly wrong-- we have laws against it, and we fairly universally regard people who torture animals as morally reprehensible. It is "speciesist" to ignore suffering just because it happens to someone who is different (in morally irrelevant respects) from ourselves. The differences between fetuses and ourselves are not morally relevant, argues Marquis, since they too can suffer premature death that deprives them of the lives they would have led. It would be akin to a form of prejudice, he argues, were we to fail to respect this loss simply because fetuses are different from us in irrelevant respects.
Replies to Objections:

1) **The Potentiality Argument:** "Potential Xs do not now have the rights of Xs." The fact that you are a potential president of the United States does not render you the current Commander in Chief of the Armed Forces.

**Marquis:** This standard move doesn’t apply, since having a FLO is a current property of the fetus.

2) **Argument from Interests:** Fetuses don’t have interests, since they lack conscious awareness. Fetuses are not even minimally sentient before 22 weeks.

**Marquis:** Something can be in someone's interest without that person taking an interest in it (or being capable of taking an interest in it). In this sense, good treatment is in the interest of an unconscious patient, even though she might not be able to take an interest in it while unconscious.

3) **Problem of Equality:** The FLO view seems to imply that it’s worse to kill the young than the old.

**Marquis:** There are good reasons to have legally equal treatment of murderers, and it is FLO that explains why murder is a terrible crime.

4) **Contraception Objection:** According to FLO, we should have as many kids as possible! The same argument that counts against abortion counts against contraception!

**Marquis:** Not so. (i) There's no one to kill at the time of contraception. [Is this clear? Can Marquis say this without raising the question of 'personhood' once again?] (ii) Before conception, there are too many potential "individuals" to be harmed. After conception, there is a clear individual present. This is the obvious dividing line, argues M.

BARBARA KATZ ROTHMAN: REDEFINING ABORTION

**Question:** Is abortion a decision to end a relationship or is it a decision not to enter a relationship.

**Fact:** Different women, different people, take very different attitudes toward their prospective and retrospective abortions. Some people never look back. Others grieve as if for the loss of a child.

**Constructing the Fetus:** (107) The notion of the ‘fetus’ as an ‘unborn child’ is a new social construction. The fetus acquires a symbolic status as pure and valuable and "innocent of the world."

According to Rothman, we have moved to a 'fetus-centered' account of abortion, and away from a 'woman-centered' one. [Which is more desirable? Is Rothman right in her disparagement of what she describes as the current model?]

**Medicalization of Abortion:** Abortion and birth control need not be 'medicalized' in the way that they have been-- Doctors are not "trained experts" concerning the issues relevant to abortion or BC decisions that women make, and should not have the authority they are usually granted in this context. Further, they have mixed motives concerning abortion; the issue has lost some of its political edge in recent years, argues Rothman. (111) "The counselors are there, but the feminist goal of what the counselors were to do-- helping a woman take charge of her life-- has given way to the institutional goal of taking charge of the patients."

**Reconstructing Abortion:** Returning (?) to a "woman centered understanding of abortion" involves seeing women as creators, and seeing abortion as a matter of deciding not to create, not a matter of "destroying what we contain." "But if we focus on the seed, focus on the fertilized egg, we come to think that the baby is there already, inside her, not the creation of her body but its captive. And then if comes to seem only reasonable, what ethicist Daniel Callahan calls a 'balancing rights perspective,' to weigh the rights of this fetus against the rights of its mother. But by creating (?) this fetus, this unborn child, as a social being, we turn this woman into 'its mother' --defining her in terms of the fetus even as she seeks to avoid making a baby, avoid becoming a mother."(111)