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ABORTION: LEGAL AND MORAL ASPECTS

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ABSTRACT

The key issues are examined, and a synopsis of the legal and moral ramifications of abortion is given in this paper. The major moral question is whether there is a biologically relevant stage in the development of the embryo from its conception as a single-celled zygote to birth itself that can allow for the subsequent general prohibition of abortion. Major proponents of the socially relevant point include awareness, the ability to act, being able to feel pain, and survival. The primary legal problem at the root of the abortion debate is whether either foetus has a basic constitutional right to life. The central issue in the abortion debate is the potentiality of the fetus as a living being and whether it should be afforded the same treatment. The determination of personhood relies on a combination of scientific and ethical arguments. As the paper concludes, a practical approach is considered, which suggests that justifications for abortion must be evaluated on a case-by-case basis. For example, it would be unfair and insensitive to force a rape victim to carry a pregnancy to term. Therefore, under this practical explanation, certain abortions may be morally permissible while others may not be.

INTRODUCTION

The issue of abortion has been a topic of philosophical debate for centuries. Philosophers have taken various positions on the morality and legality of abortion, and their views have been shaped by different ethical frameworks, such as utilitarianism, deontology, and virtue ethics. The subject can be more thoroughly defined by posing some essential queries, including: Is it ethical to have an abortion? Does the fetus possess any ethical or constitutional entitlements? Is an unborn child a living being who merits protection on that basis? What are the benchmarks used to define a person? While not meant to be all-encompassing, the following catalog of concerns outlines the research.

MORAL AND LEGAL CONSIDERATIONS

Moral and ethical considerations: The issue of abortion raises questions about when life

begins and whether a fetus has the same moral and ethical value as a born human being. Those who think that fetus has life from conceiving argue that abortion is immoral and equivalent to killing. While others, who believe that the fetus does not have moral status until it can survive outside the womb may argue that the right of woman to have control over her pregnancy should take precedence over the potential life of the fetus.

Legal considerations: The legality of abortion is a contentious issue in many countries. Some countries prohibit abortion altogether, while others allow it in certain circumstances, such as when there is risk to mother's life or when the pregnancy is caused by any illegal activities such as rape, etc. The legality of abortion also raises questions about the role of the

government in regulating personal reproductive choices.⁶²²

THE CONSERVATIVE AND LIBERAL VIEWS

There are two significant theories: the conservative view, which the Church holds, and the liberal view, which Peter Singer holds. From a conservative perspective, life begins at conception, and abortion is considered morally wrong and an act of murder. The fetus is considered to have right as they hold that fetus has a human form, and ending it is considered a violation of that right. Extreme conservative views advocate for a complete ban on abortions, including those in cases when there is risk to mother's life or when the pregnancy is caused by any illegal activities such as rape, etc. They believe that every life is sacred and that it is the responsibility of the state to protect the unborn.

From a liberal perspective, a woman has the right to have control over her body and make choices about her health. They argue that abortion is a personal decision that should be made by the individual, and the government should not have any say in the matter. Extreme liberal views support unrestricted access to abortion, without any regulations or restrictions, and without the need for parental consent for minors. They argue that women's reproductive rights are fundamental, and any attempts to restrict access to abortion are a violation of their human rights. Peter Singer and other philosophers have adopted a more subtle perspective, asserting that the ethical standing of the fetus hinges on its stage of growth and that early-stage fetuses may not possess the same moral status as those in later stages of development or individuals who have already been born.⁶²³

The abortion debate involves philosophical arguments that can be classified into two-rights-based considerations and Consequentialist considerations. Opposing

views on whether abortion should be legal or illegal depend on certain claims. People who hold a conservative view and believe that abortion should be illegal argue that that abortion is immoral and equivalent to killing as human immediately after conceiving, and that the law should prohibit such acts that violate the right to life. Whereas, others who believe that abortion should be legal in most or all cases tend to hold a liberal view and argue that women have the right to control their bodies, that abortion is a just execution of this right, and that the law should not make such rights a criminal act.

While both sides tend to focus on rights-based arguments, some arguments are based on consequentialist or utilitarian considerations. For instance, people who argue abortion is illegal may say that abortion has medical and psychological risks and may cause post-abortion syndrome or breast cancer, while pro-choice groups may argue that criminalizing abortion may lead to dangerous illegal abortions, unwanted children can have a bad impact on society, and that reproductive rights are crucial and if neglected then woman's participation in the society is affected and the workforce. However, these consequentialist reasoning are widely debated and not frequently discussed in philosophical literature.

The extreme conservative view argues that human identity is present at the earliest stage of development (the unicellular zygote), thereby providing the benefit of proving the identity of the human at the earliest stage of development. However, it is unlikely to claim that the embryo is a human being because it is far less developed than the offspring. The extreme liberal view, on the other hand, has an advantage because it is supported by the common philosophical concept of "personhood." Nonetheless, this viewpoint also has significant flaws, such as the lack of clarity on what morally significant distinction exists between a newborn and a fetus just five minutes before birth. Many moderate

⁶²² "Naturalistic Epistemology," by Chase B. Wrenn, *The Internet Encyclopedia of Philosophy*, ISSN 2161-0002, <https://iep.utm.edu/>, 2023.

⁶²³ Singer, 1993

viewpoints are plausible, particularly when significant differences exist between the different developmental phases. The halt to the biological process due to the return to old and unjust habits is also ethically significant, as emphasized in Gillespie's essay "Abortion and Human Rights" (1984, 94-102).⁶²⁴ While there is no morally significant dividing line in the biological process of development, there are variations that allow for a comparison to be made without having to address the issue of a dividing line.

PERSONHOOD

How can we say that a person has a human life form? Since rights are in question, this is considered a significant concern. As it was said previously it sounds absurd to say that fetus is a living being or has personhood because it does not have any logic or consciousness. As a result, not every human being is considered a person in the legal sense. So, not every human being is said to have moral rights since they are not considered to be a person in the legal sense. The fetus is a human living form by its genes, but it is not proof that this is enough to give it legal and moral rights.

The question being posed is whether the protection of a human person is solely based on their membership of the Homo sapiens species. To make this argument, one would need to show normative empirical characteristics. It is premature to conclude that a life form, including a human, should be protected from harm based solely on their genetic makeup unless there is an argument that human beings have a fundamental interest in safeguarding their offspring. Consideration of moral standing of human being is one approach to address the issue of abortion. This perspective suggests that if human beings have a fundamental opinion in protecting their offspring, they may create a moral code that prohibits actions such as abortion, which can then be enforced through legal means. However, critics argue that linking

the right to life with the classification of being a living being is just a myth, as merely belonging to the Homo sapiens species is not a sufficient basis for giving the right unless there are correct factual reasons to support it.

To address this issue, Jane English outlines five areas of personhood that define human beings, including biological, psychological, rational, social, and legal aspects. However, the concept of personhood becomes unclear when it comes to fetuses, as there are no correct set of essential and required characteristics that can be attributed to them to define personhood.⁶²⁵ Mary Anne Warren believes that certain aspects, such as consciousness, the ability to feel pain, and self-awareness, are essential for a living being to be considered a person.⁶²⁶

Determining whether a fetus qualifies as a person is a challenging task. Although a fetus is undeniably a human offspring, its status as a legal, social, or rational person is not clear. While the fetus may possess some psychological characteristics such as sensation and feeling, these attributes are not there in either zygote or embryo. Although some may argue that the genetic code alone is enough to define personhood upon the fetus, it seems unlikely. However, the question of fetal personhood does not necessarily resolve the issue of abortion's moral justification.

Distinguishing between the ethical and legal characteristics of the abortion debate is challenging, as there are overlaps between the two. While personhood is not a legal issue, it is a matter to be resolved within a particular ethical framework. When the criteria for personhood are decided, this effects the legal aspect since the attribution of constitutional rights, especially the right to life in this conflict, is related to the definition of personhood.

MORAL CHARACTERISTICS OF THE ABORTION DEBATE

⁶²⁴ Gillespie, 1984

⁶²⁵ English, 1984

⁶²⁶ Warren, 1984

I. THE DEPRIVATION ARGUMENT BY DON MARQUIS

Don Marquis was an American philosopher who made significant contributions to the fields of ethics and metaphysics. Born in 1935, Marquis taught at the University of Kansas for over three decades before his death in 2012. Marquis' work has influenced debates on the morality of abortion and euthanasia, and his contributions to the philosophy of death and dying continue to be studied and debated today.

Don Marquis is a philosopher who argues that abortion is morally wrong because it deprives the future of the fetus which is valued. His argument is presented in his paper "Why Abortion Is Immoral," which was published in 1989 (Marquis, 1989). Marquis's approach to the issue of abortion is different from many other arguments, as he focuses on the value of a future that is taken away from the fetus when it is aborted.

In his paper, Marquis begins by rejecting some of the common arguments that are used to justify the morality of abortion. He argues that the question of whether a fetus is a living being or whether a woman has a right to have control over her body is not relevant to the morality of abortion. Instead, he focuses on the issue of whether the fetus has a valuable future, and whether taking away that future is morally wrong.⁶²⁷

Marquis believes that what makes killing wrong is that it deprives the victim of a future of value. This applies to fetuses as well, as they have the potential to develop into human beings with experiences, activities, and relationships that make life worth living. Marquis argues that fetuses have a future of value because they have the potential to experience love, joy, accomplishment, and have opportunities for education, travel, and career. Therefore, taking away this potential future through abortion is morally wrong because it deprives the fetus of something that is valuable.

The fact that Marquis' argument avoids some of the issues with other anti-abortion arguments is one of its advantages. Such arguments, for instance, are based on the contentious notion that fetuses are human beings with the capacity for life, or on the premise that a woman's right to regulate her body takes precedence over the right of the fetus to life. Marquis bases his case on a more basic notion: the importance of having chances and accomplishments in the future.

CRITICISM

One potential objection is that it is difficult to find when a fetus's future becomes valuable. Marquis does not provide a clear criterion for when a fetus's future gains value, which could leave his argument open to criticism. Additionally, his argument assumes that all fetuses have a valuable future, which may not be true in all cases. For example, some fetuses may have serious genetic defects or medical conditions that make their future of little value.

He bases his argument, in summary, on the idea that killing a fetus is immoral because it deprives the person of a meaningful future, and fetuses have a valuable prospective future. He contends that since fetuses have the capacity for experiences, pursuits, and connections that make life worthwhile, they have a valuable future. Although his case has certain flaws, it offers a strong foundation for morally condemning abortion without relying on contentious or debatable assertions about personhood or duties.

II. THE BODILY RIGHTS ARGUMENT BY JUDITH JARVIS THOMSON

Judith Jarvis Thomson was a prominent American philosopher known for her contributions to ethics, political philosophy, and feminist philosophy. Thomson is famous for her dominant essay "A Defense of Abortion". In this she offers a nuanced argument that challenges both pro-life and pro-choice positions on abortion.⁶²⁸ Her work explores questions about

⁶²⁷ Marquis, 1984, pg 190-198

⁶²⁸ Thomson, 1984

personal autonomy, bodily integrity, and the morality of killing, and has had a significant impact on contemporary philosophical discussions surrounding these issues.

The popular philosophical argument in the abortion debate known as the bodily rights argument was developed by Judith Jarvis Thomson. This argument focuses on a woman's reproductive rights on their own body, even if that means having an abortion, and also sees that an embryo is a person with a right to life. However, Thomson argues that a woman's say in her body is a fundamental legal right that includes the right to end a pregnancy, and that this right supersedes the fetus's right to life.

To explain her reasoning, Thomson uses an analogy involving a famous violinist who needs a blood transfusion to survive. The violinist's fans kidnap a random person off the street and connect the person to the violinist's circulatory system for nine months, with the person unable to disconnect themselves from the violinist. Thomson argues that an individual has the right to disconnect themselves, even though it means killing the violinist. Similarly, a woman has the will to abort, even if it means killing the fetus, because the fetus does not possess any rights to carry the baby against her will.

Thomson's reasoning is unique as it acknowledges the personhood of the fetus while still defending a woman's right to have a say in her body, which is an important distinction from arguments that deny the personhood of the fetus.

CRITICISM

One potential objection is that it does not consider the responsibility of the woman for creating the fetus. Critics of the bodily rights argument argue that women who engage in consensual sex are responsible for any resulting pregnancies and should not be allowed to stop them. Thomson responds to this objection by arguing that even if a woman is responsible for creating a fetus, she still has the right to control

her body and decide whether to continue the pregnancy.

Judith Thomson's bodily rights argument is a strong defense of a woman's right to control her own body, even in the case of pregnancy. According to Thomson, a mother's right to have control over her pregnancy is constitutional right that includes the right to end a pregnancy. She argues that the fetus may have right to life but this right cannot dominate the right the mother's and cannot go against her will.

While there may be weaknesses in Thomson's argument, it offers a persuasive justification for defending abortion rights based on the principle of bodily autonomy. Her analogy of the violinist helps illustrate her point that a woman should not be forced to carry a fetus to term against her will. This argument is particularly important in the ongoing debate over abortion rights, which has been a contentious issue for decades.

By emphasizing the importance of a mother's right to abort or not, Thomson's reasoning has played a significant role in shaping the discourse around abortion rights. While it may not be the only argument in favor of abortion rights, it offers a powerful defense of the principle of bodily autonomy and the right to make decisions about one's own body.

III. RESPECT FOR HUMAN LIFE ARGUMENT BY ROSALIND HURSTHOUSE

Rosalind Hursthouse is a prominent philosopher known for her contributions to virtue ethics, environmental ethics, and the ethics of abortion. She is famous for her book "On Virtue Ethics,". In this she offers a comprehensive defense for the virtue ethical approach to moral philosophy.⁶²⁹ Hursthouse's work emphasizes the importance of character and moral motivation in ethical decision-making, and she has been a leading voice in the development of virtue ethics as a distinct ethical theory. In addition to her work on virtue ethics, Hursthouse has also contributed to debates on environmental ethics and the ethics

⁶²⁹ Hursthouse, 1991

of abortion, offering nuanced arguments that challenge conventional positions on these issues.

Rosalind Hursthouse is a philosopher who has argued for the importance of respecting human life in the context of abortion. She believes there is a moral duty to protect human life, which applies to fetuses and born individuals. Hursthouse argues that the right to life is not just a legal or political construct, but rather a fundamental aspect of human dignity.

In the case of abortion, Hursthouse contends that an embryo is also a human form with the potential for a valuable living. She argues that this potentiality gives the fetus a moral standing that deserves respect and protection. Hursthouse acknowledges that the fetus is not yet a fully formed person, but she supports that this is not relevant to its moral worth. She argues that an unborn child is a homo sapiens and so has a moral status that should be taken seriously.

Hursthouse's argument for respecting human life in the context of abortion is not solely based on religious or cultural beliefs. Rather, she supports that there are good reasons to value human life, including the potential for the fetus to have a valuable future. She also argues that it is inconsistent to value the lives of some human beings while disregarding the lives of others.

However, Hursthouse does acknowledge that there are situations in which abortion may be morally permissible. For example, if the life of the mother is at risk or if the pregnancy resulted from rape or incest, she believes that there may be grounds for justifying an abortion. Nonetheless, she maintains that these cases do not negate the importance of respecting human life in general.

In conclusion, Rosalind Hursthouse's argument for respecting human life in the context of abortion is grounded in a belief in the inherent worth of human beings. While she acknowledges that there may be

circumstances in which abortion is morally permissible, she says that the potential for a valuable life means that fetuses deserve to be protected and valued.

LEGAL CHARACTERISTICS OF THE CONFLICT OF ABORTION

The abortion debate is heavily focused on whether or not a fetus should be considered a legal person entitled to the right to life.

I. QUASI-RIGHTS OF A FETUS

The concept of quasi-rights suggests that as non-persons, fetuses do not have any legal rights. Instead, they have an existential quasi-right to life which protects them from harm, but this does not necessarily grant them full legal rights. Quasi-rights are often granted to animals with higher consciousness to protect them from being killed without a good reason. However, if legal rights are solely based on personhood, then embryos may not possess any constitutional rights.⁶³⁰

Furthermore, the quasi-rights of the fetus cannot override the full legal rights of the pregnant woman, which include self-determination, privacy, physical integrity, and life. In other words, while the fetus may have some form of quasi-right to life, this does not create a legal conflict to the rights of a woman who is conceived.

II. POTENTIALITY ARGUMENT BY JOEL FEINBERG

Another perspective in the abortion debate is the potential argument, as presented by Joel Feinberg. Feinberg argues that it is illogical to get absolute rights from potential abilities to have them.⁶³¹ This means that there may be situations where having an abortion is wrong or illegal, even when the fetus has no rights or is not yet considered a moral person. Feinberg uses the example of person X, who had the potential to become the President of the USA in the years before their rule. However, this potential does not grant them the authority to

⁶³⁰ Korsgaard, 1996, pg 156

⁶³¹ Feinberg, 1984, pg 145-150

command the army as the potential President of the USA. In other words, actual rights cannot be derived from the potential ability to have legal rights in the future.

Benn, whom Feinberg cites, argues that there may be other reasons to prohibit infanticide and late abortions that do not rely on the concept of rights. Therefore, although the embryo may have a quasi-right to live, which may not necessarily mean that it has legal rights that can override those of the pregnant woman.

The legal characteristics of the conflict of abortion are complicated and involve the question of whether a embryo is a legal person which have life. While the concept of quasi-rights and the argument of potentiality provide different perspectives on the issue, they both suggest that fetuses do not have full legal rights. However, the existence of the quasi-right to life for the fetus means that measures should be taken to protect it from harm while still respecting the full legal rights of the pregnant woman.

CONTEMPORARY SCENARIO

In general, the legality of abortion is determined by national laws and regulations, which are influenced by social, cultural, religious, and political factors.

Some countries, such as the United States, have a long history of legal battles over abortion. In 1973, the landmark Supreme Court case *Roe v. Wade* showed a woman's constitutional right to obtain an abortion during the first two trimesters of pregnancy. However, this decision remains controversial and has been challenged by various anti-abortion groups and politicians.

In other countries, such as Ireland and Argentina, abortion was illegal until recent legal changes. In Ireland, a referendum was held in 2018 to repeal the constitutional amendment that banned abortion in all circumstances, except when there possesses a risk to woman's. The amendment was repealed, and legislation

was passed allowing for abortion in certain circumstances. In Argentina, after a long and heated debate, abortion was legalized in 2020.

In some countries, such as Brazil, abortion is legal only if the woman is conceived because of rape or if there is any risk. In others, such as Canada, abortion is legal up to the point of viability (when the fetus can survive outside the womb) or up to the moment of birth in cases where the mother's life is in danger.

CONCLUSION

The legal aspects of the abortion conflict involve complex problem related to women's biological and social rights, fetal rights, medical ethics, and social justice. The debate over abortion is often divisive and emotionally charged, with proponents and opponents holding deeply held beliefs and values that are not easily reconciled. Overall, the issue of abortion remains a highly contested topic in philosophy, with no clear consensus among philosophers.

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