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Abortion



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Introduction

Abortion remains a highly controversial issue in many countries and subject to intense public debate. The aim of this entry is to summarize the most prominent assumptions and arguments concerning the moral and legal dimensions of abortion on which this debate rests. Where the *moral* justifiability of abortion is concerned, this entry focuses on arguments relating to the moral status of the fetus or embryo, the notion of personhood, the biological development of the embryo or fetus, and the moral relevance of specific points in the developmental process. In terms of the *legal* aspects, we consider concepts and principles invoked at law, principally the rights of pregnant women and the medical concept of viability. For each moral and legal position in the abortion debate, we provide an overview of the

principal assumptions and arguments and acknowledge the main criticisms.

This entry exclusively discusses the moral and legal aspects of *induced* abortion (i.e., a deliberate act leading to the expulsion or removal from the womb of a developing embryo or fetus). Any unqualified use of “abortion” should, therefore, be read as referring to induced abortion. Some issues are outside this chapter’s scope, including the question of whether emergency contraceptive methods, which might act either before or after embryo implantation, should count as abortions (see, e.g., Sulmasy 2006; Purdy 2009; Sheldon 2015), and how we should conceptualize “fetal reduction” where one or more fetuses are destroyed in utero in a multiplex pregnancy, which, nevertheless, continues with the remaining fetus(es) (see, e.g., Hall 1996; McClimans 2010; Rao 2015). In addition, this entry is unable to do justice to closely related normative issues, particularly the ways in which various human rights are employed to justify or condemn a woman’s legal right to an abortion (e.g., Jackson 2001; Cook et al. 2003; WHO 2022); women’s access to, and the quality of, abortion services (e.g., Romanis 2023); the issue of fetal abnormality and its moral and legal implications (e.g., Scott 2005; Holm 2008; McGuinness 2013); and reproductive choice in other areas (e.g., Caplan and Wilson 2000; Jackson 2001; Savulescu 2001; Cameron and Williamson 2003; Steinbock 2004).

We begin by articulating the moral justifiability of abortion based on different assumptions and

arguments concerning the moral status of the fetus, the related notion of personhood, and the moral significance of certain stages in embryonic and fetal development. In the second section, we consider the legal implications of the concept of fetal viability and provide an overview of legal justifications for abortion based on arguments related to rights possessed by pregnant women.

Moral Status, Personhood, and the Moral Significance of Embryonic and Fetal Development

The debate about the moral status of the fetus is aimed at establishing whether fetuses are entities that should morally matter for their own sake, that is, whether actions that have the potential to impact them or their interests deserve moral consideration. Determining the moral status of fetuses is a steppingstone to establishing whether fetuses should be ascribed moral rights and, if they should, then which rights. These arguments are prominent in public debates about the permissibility of abortion as well as in the field of applied ethics, but less prominent in legal debates in those jurisdictions that do not recognize fetuses as legal persons.

In the applied ethics literature, debate concerning the moral status of the fetus is often entwined with the question of whether the fetus is a “person.” The conditions of personhood are controversial. However, most agree that personhood is a psychological concept, not a biological one. In other words, personhood is conceptualized in terms of having certain special (i.e., sophisticated or developed) psychological properties (e.g., Baker 2000). However, it has also been characterized in terms of “capacities” for acquiring those properties (e.g., Chisholm 1976) or belonging to a kind whose members typically have such properties when fully developed and in a healthy state (e.g., Wiggins 1980). Note that “personhood” should not be confused with the concept of “personal identity,” for which there are different psychological and non-psychological theories (see, e.g., Shoemaker 2021).

For applied ethicists, the important point is that “person” is used to refer to an entity with *full* moral status, i.e., a “moral person,” which normally entails that the entity has substantive moral rights and legal protections, including a right not to be killed. Where moral status arguments are concerned, the starting point is that a fetus is a separate entity from the pregnant woman and, therefore, may morally matter for its own sake.

No Full Moral Status Arguments

There are many arguments aiming to show that fetuses do not have full moral status, where full moral status is understood as the status possessed by an adult human being. These arguments differ in detail but have the same overall structure. It is first defined what gives an adult human being full moral status or what makes a human being a person, and then it is shown that fetuses do not possess that characteristic (see, e.g., Warren 1973; English 1975). Such arguments were developed in the 1970s and 1980s based on ethical theories such as preference consequentialism (Glover 1977; Singer 1975), the interest theory of rights (Tooley 1983), libertarianism (Engelhardt 1986), or ostensibly without theory from the question “what makes it wrong to kill an adult human being like you or me?” (Harris 1985). Central to all these accounts is the claim that the basis for the ascription of full moral status must be something intrinsic to the fetus and that this something is a set of cognitive capacities. Depending on the theory to which one subscribes, these can include the capacity for self-awareness (McMahan 2002), consciousness of oneself as a continuing subject (Tooley 1983), being self-motivated and future-oriented (Singer 1993), the capacity to value (Buss 2012), or a complex of sophisticated intellectual and emotional capacities, including emotional and rational awareness of duties and responsibilities (Feinberg 1980). Clearly, the fetus has none of these. Thus, according to this approach, fetuses do not have full moral status. Because a fetus is not a moral person, it is not intrinsically wrong to destroy it. In short, abortion is a morally innocuous act. Therefore, choosing an abortion requires no additional moral reason to justify it.

These kinds of arguments have been criticized for various reasons. The standard objection concerns their underinclusiveness. If we assume that personhood demands sophisticated psychological properties and cognitive capacities, then, as a matter of principle, newborns, infants, and adults with severe cognitive disabilities would fail to qualify as moral persons (Tooley 1983; Clinkenbeard 1989; Kuhse and Singer 1985). On that basis, infanticide on parental demand and killing of severely cognitively impaired individuals could be morally justifiable – though, as Tooley (1983) and Warren (1989) acknowledge, we can still argue that these acts are morally repugnant for reasons that do not depend on these individuals possessing the same moral status as “normal” adult human beings. In addition, it has been claimed that any argument defending infanticide constitutes a *reductio ad absurdum* of the argument itself (Langerak 1979; Greasley 2017, 147–80; Rodger et al. 2018).

One might also wish to challenge “no full moral status” arguments on the basis that, after the 20th week of gestation (Lagercrantz and Changeux 2009), a fetus can develop the capacity for experiencing feelings such as pleasure and pain. The argument here is conditional; if a fetus can experience pain, then painful abortion is no longer morally innocuous. However, proponents of the personhood approach would argue that their conclusions still hold so long as abortion is conducted in a way so as not to cause pain to the fetus. Relatedly, some have appealed to theories in philosophy of mind when considering the personhood of the fetus, arguing, for example, that a necessary condition of full moral status is some form of electrical brain activity, which begins around 10 weeks’ gestation (e.g., Kluge 1976; Himma 2005). Such an approach entails a more conservative conclusion about fetal personhood and the moral permissibility of abortion, specifically, that once the sort of electrical brain activity necessary for moral personhood begins, then there is a risk of abortion resulting in murder (*ibid.*). Ultimately, in relation to early abortions, “no full moral status” arguments, which include those arguments for the moral significance of fetal sentience or fetal brain activity, lead to the practical

conclusion that women should have access to abortion on demand.

Full Moral Status Arguments

On the other side of the coin, there are many kinds of argument that aim to show that the fetus has full or near full moral status either throughout a pregnancy or for a considerable period of gestation. Here, we provide an exposition of three of these: (i) religious arguments, (ii) “a future-like-ours” arguments, and (iii) arguments from potential.

Religious Arguments

It is not possible to give a comprehensive account of current religious arguments in the abortion debate. It is, however, important to understand the basics of these arguments since they are prominent in the public debate in many countries. Nevertheless, we should also bear in mind that many religions do not have any established position on the moral status of the fetus, nor do they ascribe *absolute* protection to human life at any stage (Dunstan 1984, 38).

Key to abortion-related arguments for some world religions (e.g., Christianity, Judaism, Islam) is the view that human beings are composites of body and soul and that the soul is the locus of moral agency. Thus, claims regarding the moral status of the fetus rest on the point at which “ensoulment” is said to occur (i.e., the point where the soul inhabits the body) (for an overview, see Aksoy 2007). However, it is important to be aware that religious approaches to abortion also rely on non-moral-status-related practices and beliefs articulated in scripture and embedded in traditions (e.g., the immorality of abortion because it facilitates sexual activity without procreation).

There are two theories regarding the period of ensoulment: immediate or delayed (Morgan 2013). One view held within the Roman Catholic community is that ensoulment may occur at conception and, hence, that the embryo may become a moral person at that time with a claim to protection. This entails that embryonic life is morally inviolable in all circumstances (see, e.g., Gómez-Lobo 2007; Napier 2011). An alternative Christian theological view is that ensoulment and,

therefore, full moral status is delayed. Such an approach stems from Thomas Aquinas, who, following Aristotle, posited that ensoulment occurs “late” in pregnancy (Donceel 1970; for updated approaches to Thomistic personhood, see, e.g., Eberl 2000; Meyer 2006). Similarly, in Islam, the orthodox interpretation of the Qur’an and the Hadith tradition is that ensoulment occurs at around 120 days following conception (4 lunar months plus 10 days or three periods and 40 days), which is equivalent to 134 days from a woman’s last menstrual period (Al-Bukhari Imam 1995; Albar 1996). Other interpretations suggest between 49 to 55 days after conception (Aksoy 2007, 90). Although Islamic scholars argue that an embryo has sanctity (i.e., fetal rights) from conception (Khitamy 2013), a sanctity that gradually increases during gestation, the fetus is deemed to be a moral person at ensoulment such that a woman who undertakes an abortion is at risk of committing homicide (ibid.). That said, late abortions for medical reasons are still permitted by many Islamic States. By contrast, although Jewish authorities do mention morally significant periods during gestation, Judaism does not ascribe personhood to a fetus until it has been born (Rosner 1986; Jakobovits 1988).

A Future Like Ours

The philosopher Don Marquis (1989) argues that abortion is wrong because it deprives fetuses of a “future like ours.” The basic premise of the argument is that what makes killing one of us (i.e., a “normal” adult human being) wrong is that it deprives us of our future. What we lose by being killed is the sum of our future life and future experiences. Having a future life and future experiences does not require that I have these experiences now or that I know that I will have them in the future but just that they are present in my future. In this sense, a fetus that is killed is deprived of the same thing as we are if we are killed, i.e., a “future like ours.” However, whether Marquis’ argument is, in fact, a type of potentiality argument has been debated (see, e.g., Strong 2008; Morgan 2013).

Arguments from Potential

As we’ve seen, “no full moral status” arguments are based on a fetus lacking certain cognitive capacities. By contrast, some arguments for the full moral status of fetuses have appealed to an account of personhood grounded in an entity’s capacity to develop these capacities. This is usually referred to as the “potential” account (e.g., Stone 1987), the governing principle of which is: “If it would be wrong to kill an adult human being because he has a certain property, it is wrong to kill an organism (e.g., a fetus) which will come to have that property if it develops normally” (Hare 1975, 209).

Persson (2017) has a unique potentiality argument that combines the moral relevance of an entity developing sophisticated psychological capacities with Marquis’ a “future-like-ours” principle. Persson argues that depriving a fetus of a continuation of existence is extrinsically bad for it since its termination prevents not only “their potential to acquire consciousness being actualized” but also their future experiences of the good of well-being and exercises of autonomy (ibid., 57). Conversely, it is extrinsically good for a fetus that capacities to experience enjoyment and exercise autonomy are both actualized and “exercised in the future in so far as this results in experiences that are intrinsically good for them” (ibid., 51).

Potentiality arguments for the attribution of full moral status have been subject of intense debate. For instance, it is argued that mere potential sophisticated psychological or cognitive capacities are insignificant for the attribution of moral status (e.g., Warren 1977). Alternatively, although the potentiality of an embryo or fetus may be the same as the potentiality of an infant, the moral significance of this potentiality does not justify giving an embryo or fetus the same moral status as an infant, although it can be sufficient for *some* moral status (Holm 1996). In addition, when it comes to the attribution of rights associated with moral status, it has been argued that deriving actual rights from the potential for having such rights is logically flawed because the potential for having rights necessarily entails the attribution of potential, not actual, rights (Feinberg 1980).

Gradualist Arguments

A purportedly popular view among people who do not have strong views regarding the moral status of the fetus is that moral considerability strengthens throughout gestation as the fetus develops toward full maturation and birth (Burgess 2010; Greasley 2017). In other words, fetuses have little or no moral status very early in pregnancy, but their moral status gradually increases up to the point of birth, when the new human being becomes a fully instantiated moral person (see, e.g., Engelhardt 1974, Sumner 1997; Little 2008; Burgess 2010). This entails that late fetuses should be owed greater protections than early ones and, relatedly, that as a fetus matures, its interests and moral rights strengthen while the moral rights of pregnant women diminish (Greasley 2017). In practical terms, third trimester fetuses are considered much more morally important than first trimester ones (Burgess 2010). It is for this kind of reason that the “gradualist” approach might be viewed as morally underpinning moderately liberal abortion regimes that allow abortion on demand during early pregnancy but require pregnant women to satisfy grounds or provide specific reasons for abortions after a certain gestational threshold.

Gradualist approaches are open to attack from both “no full moral status” and “full moral status” arguments. Therefore, they are difficult to defend on principled grounds. In addition, gradualist accounts of moral status remain open to the logical objection that actual moral rights cannot be derived from an entity’s potential for having such rights (Feinberg 1980). In short, even if we acknowledge that a more developed fetus is closer to *becoming* a moral person compared to an early fetus, being closer to qualifying for moral rights is not equivalent to qualifying for said rights. Consequently, it is not immediately obvious what it is that makes a fetus that is closer to becoming a moral person deserving of more moral status than a less developed fetus (for a response to this problem and a defense of gradualism, see Warren 1997).

Abortion Laws, Rights of Pregnant Women, and the Legal Import of Fetal Viability

The content of abortion legislation varies immensely across jurisdictions. Readers should consult the World Health Organization’s (WHO) Global Abortion Policies Database. Some jurisdictions either completely or almost completely prohibit abortion during all stages of pregnancy (e.g., Algeria, Brazil, Iran, Iraq, Libya, Malta, Morocco, Saudi Arabia, Sudan, Syria), whereas others do not allow for abortion on demand but do provide *more than one* legal ground for accessing an abortion (e.g., Chad, India, Israel, Italy, Malaysia, Namibia, Niger, Zimbabwe, and most jurisdictions in Mexico).

Globally, the most common approach to liberal abortion law involves maintaining a clear legal distinction between “early” and “late” abortions (Center for Reproductive Rights, “The World’s Abortion Laws”). For “early abortions,” the only consideration is the woman’s request for an abortion. For abortions beyond a certain gestational threshold, a specific reason or ground for the abortion is required, and permission must be given by a competent person or body. Common reasons include substantial risk of fatal or serious fetal abnormality, risk to the life or health of the pregnant woman if the pregnancy continues, social factors, or pregnancy resulting from rape, incest, or other sexual crime.

The right to safe and legal abortion is a fundamental human right protected under international and regional human rights treaties and national constitutions. In general, arguments for this specific right involve appeals to one or more general rights possessed by pregnant women under international human rights treaties, including the rights to life, liberty, privacy, equality, and non-discrimination and freedom from cruel, inhuman, and degrading treatment (see, e.g., Jackson 2001; Cook et al. 2003; WHO 2022).

It is often the case that arguments grounded in a constellation of these general human rights are considered sufficient to justify a state’s obligation to enact abortion legislation with provisions for

abortion on request. This can take two forms. Abortion can be decriminalized with regulation covered by provisions in medical law and processes overseen by the healthcare system (e.g., as initiated by Nordic countries in the 1970s and, more recently, implemented in New Zealand and certain Australian federated states). Alternatively, abortion can remain a criminal offense, but broad exemptions are introduced via specific abortion legislation (e.g., the United Kingdom). In both cases, the scope of abortion on demand is usually limited to a certain week of gestation, which, depending on the jurisdiction, can range from 8 to 24 weeks.

The setting of the gestational limit is not entirely arbitrary but arguably (and often implicitly) grounded on the medical concept of “viability” (Jackson 2001; Romanis 2020). Viability concerns the capacity for fetal survival if born. In general, the point at which a fetus, under normal circumstances, is deemed to be viable represents the point at which life-sustaining interventions may need to be provided. This entails that the point at which fetuses are viable is subject to current medical opinion and thereby contingent on the state of medical technology. Fetal viability is, therefore, subject to change over time. In addition, because viability is defined by the necessity to perform life-sustaining interventions, it is likely to differ across the world depending on a healthcare system’s ability to deliver neonatal treatment.

If fetal interests are deemed worthy of legal protection based on viability, then it seems consistent to suggest that abortions should be permitted to protect fetal interests in those cases where a fetus has a severe condition such that its life outside of the womb would be characterized by significant suffering, which the pregnant woman wishes to prevent (McGuinness 2013). In other words, fetal interests should cover terminations on the grounds of conditions that could, after birth, lead to a best interests’ judgment not to preserve an infant’s life.

Grounds- or reasons-based provisions for late pregnancies have been subject to criticism by legal scholars. For instance, Jackson (2000) argues that the requirement for a pregnant

woman to satisfy grounds or provide reasons to access an abortion, which, in practice, makes abortion access dependent on medical discretion, is incompatible with patient autonomy. Jackson concludes that abortion should be permissible for “any or no reason,” thereby supporting the rejection of all grounds-based provisions in abortion legislation as well as the abolishment of statutory tests in general. Similarly, the WHO argues – primarily on human rights grounds – that grounds-based approaches and gestational limits should be completely abolished (WHO 2022).

Conclusion

In the public debate on abortion, there is a risk of conflating moral and legal arguments (e.g., when arguments employ the term “right,” as in “X has a right to A”). The aim of this entry has been to highlight issues, assumptions, or arguments prominent in the public debate and differentiate them into the respective moral or legal debates in which they tend to feature. This is not an exact science. After all, legal arguments for or against abortion can appeal to moral principles, norms, and theories (e.g., respect for pregnant women’s autonomy, “gradualist” arguments for fetal moral status). Relatedly, the scope and content of arguments concerning the moral permissibility of abortion can be influenced by developments and constraints at law (e.g., a woman’s legal right to an abortion, the legal import of fetal viability, etc.). Nevertheless, few modern human rights conventions or treaties recognize fetuses as legal persons such that they should be afforded legal rights independently from pregnant women. Therefore, in general, when the public debate addresses the permissibility of abortion by appealing to issues concerning fetal/embryonic status, particularly its status relative to the status of a “normal” adult human being, what is at stake is a question of *moral* rights. By contrast, abortion legislation tends to take its bearing from international human rights treaties and national constitutions, where the focus is predominantly on the human rights of legal persons. However, as we’ve seen, the scope and implications of a woman’s legal

right to safe abortion as enshrined in provisions in abortion legislation can vary immensely across the globe.

Cross-References

- ▶ [Aristotle](#)
- ▶ [Human Rights and Justice](#)
- ▶ [Human Rights Conventions](#)
- ▶ [Legal and Moral Rights](#)
- ▶ [Legal Person](#)
- ▶ [Rights \(General\)](#)
- ▶ [Rights, Moral and Legal](#)
- ▶ [Sovereignty and Human Rights](#)

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