

Dr. James S. Spiegel, Christian Ethics, Session 10, Abortion, Part 1

© 2024 Jim Spiegel and Ted Hildebrandt

This is Dr. James S. Spiegel in his teaching on Christian Ethics. This is session 10, Abortion, Part 1.

Okay, so we have completed our survey of major moral theories. Now, let's turn our attention to a number of practical moral issues.

Along the way, we'll note arguments pro and con regarding each of these issues and apply in various ways the moral principles and concepts that we've already discussed to these various issues. So, we're going to start with what is probably the most controversial of them all, and that's the abortion debate. Let me begin by just providing a little bit of biological background regarding gestation because there are certain terms that are used in this discussion, and it's important we understand what they mean.

So, after fertilization of the ovum by sperm, the zygote is formed. And as it migrates to the uterus, it becomes a blastocyst. There's an image of a blastocyst.

Roughly from weeks 3 to 8, it's known as an embryo. At about the 3 1/2 week mark, the heart begins beating, which is detectable at about the 6th week. In the 7th week, brain activity begins, and at this point, it's called a fetus.

At roughly the 16th week, there's quickening. That's when the mother can feel the baby moving in her womb. And then, around the 24th week, we've reached viability.

That's when the baby can survive outside the womb. So again, there's the image of a blastocyst. Here's what the embryo looks like around weeks 3 to 4. There's a 7 1/2 week-old embryo.

10 weeks. 3 months and 1 week. 4 months.

6 months. 8 months and 3 weeks. And ta-da, there's my son, Andrew, when he was, I don't know, 6 or 8 months.

So next, let's note some of the categories of abortion. The most fundamental distinction here regarding abortion is the termination of a pregnancy. Generally, abortion is when there's a terminated pregnancy.

The most fundamental distinction is between spontaneous abortions and externally induced abortions. A spontaneous abortion is also known as a miscarriage, and that

is not the source of any moral debate or controversy. What is controversial and debated, of course, is when abortions are externally induced.

This is done through various methods, including vacuum, aspiration, dilation and curettage, saline injection, hysterotomy, prostaglandin, and the morning-after pill. As far as the central philosophical issues, there are two main questions. One regards the ontological status of the fetus.

What kind of entity is this when we're talking about a fetus, an embryo, or a blastocyst? At whatever point during gestation we might be talking about, we can ask, what kind of entity is this? Is it just an appendage, something along the lines of an appendix or a tonsil or an adenoid? Is it potentially human? Is it human but merely biologically so? A biological human but not a person? Or is the fetus, is even a blastocyst or a zygote, a fully human person? So, those are different possibilities under the general question of the ontological status of the fetus. Then we ask, what is the moral status of the fetus? What rights, if any, does a fetus have? And what duties or obligations do we have towards fetuses? Our answer to that question or to those questions about the moral status of the fetus will be determined by our prior answers to the ontological questions. This is why it's important that we first address the ontological question regarding the status of the fetus.

A little bit about the legal background: of course, the landmark decision from 1973 and the Supreme Court decision, *Roe versus Wade*, has been the guiding legal precedent for nearly 50 years now. The court addressed the issue by breaking up gestation into thirds, the various trimesters.

And then made certain rulings that apply to each of these trimesters. With regard to the first trimester of gestation, the court ruled that states may not regulate abortion. With regard to the second trimester, they said that states may regulate, but only for the sake of the mother's health.

Regarding the third trimester, they ruled that states may prohibit any abortion except those that are necessary for the mother's health. Now, since *Roe versus Wade*, there have been a number of other decisions. Actually, in the same year, 1973, there was another case called *Doe versus Bolton*, which actually expanded *Roe* by noting that the health of the mother may include psychological and emotional concerns.

Four years later, in *Planned Parenthood versus Danforth*, they ruled that no parental or spousal consent is necessary. This ruling also left the decision to the pregnant mother and her physician. In 1989, in *Webster versus Reproductive Health Services*, a Missouri law defining life as beginning at conception was upheld.

This ruling also prohibited public funding of abortion. Three years later, in *Planned Parenthood versus Casey*, a Pennsylvania law that called for a 24-hour waiting period to inform the woman of the various risks involved in abortion was upheld. It also upheld the parental consent requirement but rejected the spousal notification requirement.

So those are some major Supreme Court cases dating back to *Roe versus Wade* related to abortion. So, we need to distinguish between the moral and the legal issues here. This is one of the things that makes the abortion debate so complex and difficult is that we have these two dimensions to the issue.

And the legal question is, should a woman have a legal right to choose abortion in this country? And the moral question is whether or not it's legal, when, if ever, is it morally appropriate for a woman to have an abortion? So, one can be pro-life or pro-choice, either morally or legally. A lot of people are pro-life in the moral sense and believe that a woman should not have the right to choose an abortion, so they'd be pro-life in the legal sense as well. Many people are pro-choice morally as well as legally.

And then some are pro-life morally but pro-choice legally. So, that gets a bit complicated just in terms of the views that one may hold. We'll be focusing on the moral question.

And depending on your political orientation, that may or may not have implications for the legal question. So, let's begin by talking about some of the major pro-choice, moral pro-choice arguments that have been made. Probably the two most well-known arguments in favor of the pro-choice view have been presented by Judith Jarvis Thompson and Mary Ann Warren.

So, let's begin with Judith Jarvis Thompson's arguments, which are unique and very innovative. Unlike Mary Ann Warren, whom we'll talk about next, Thompson assumes for the sake of argument that the fetus is a fully human person. Let's grant that the fetus is a person and not just biologically human.

Does it still follow that we have to grant the fetus the same moral rights as any, say, human adult? And she argues no. She also tried to pump our intuitions about this issue through some interesting thought experiments. And one of these regards the violinist.

Thompson uses a pretty famous thought experiment. So, suppose you find yourself one day, you wake up in a hospital, and you are hooked to someone through an intravenous line who's lying in a bed next to you. And you discover, you're informed, that you were knocked out, kidnapped, and used to support this person who's next

to you who has a rare blood disease that only your particular blood type could be helpful to assist.

And so, they're using you as a kind of life support machine as you're hooked up to this person who is a world-renowned violinist. The Society for Music Lovers was the ones that arranged for this because they didn't want to lose this great violinist who, without your particular support physically in terms of your blood, would otherwise die in just a few weeks or months. So, they've decided to do this because you probably wouldn't have given your consent.

But now that you're hooked up to this person, they say you just need to stay in this condition for nine months, and then you're free to go. Then, that particular famous violinist can spend the rest of his or her life enriching the lives of other people with his or her musical skill. Now, what would your response be in this situation? Would you say, okay, that makes sense?

I'll just sit here and wait out the weeks and months. Probably not. Your response would probably be, wait a minute, nobody asked me.

I did not choose this. So, you can't make me suffer through this discomfort and inconvenience for nine months even though, okay, the violinist is a valuable member of society and just as much a person as me. I'm going to unhook myself.

Sorry, but you can't make me do this. Now, Thompson's point here is that it's analogous to an abortion where, again, even if we grant that this is a person, you still have the right to unhook yourself in that case. We can grant that the fetus is a fully personal human being with rights and so on.

That does not trump your right to preserve your own freedom in this case. So, she argues that that analogy should show us or reveal to us that not all fetuses have a right to life that would mandate that a woman continue her pregnancy even if it was unintended. Now, we'll respond to this a little bit later in more detail, but I think it's important to note at this point that, as many have observed, it seems that this analogy applies only to pregnancies that result from rape.

That seems like the most exact analogy here. If someone is forced to support this person through no action of their own, that would be analogous to rape, but there are other issues regarding this thought experiment that we'll talk about later. But Thompson has another thought experiment regarding people's seeds.

So, she asks us to imagine a situation very different than our own where there are these tiny invisible seeds that float in the air. And they are such that if they land in carpeting or upholstery, a human person will begin to sprout, a person plant. In this imaginary world, in order to prevent people plants from growing on your furniture or

your floor, there are these fine meshes that people put on their windows that are only semi-permeable.

And the seeds can rarely get through. There's like a 99% chance that seeds will be prevented, but there's maybe 1% chance that a seed will get through. And if it does, by chance, implant in your carpet or your upholstery, a person plant may grow.

Now, suppose a particular woman is living in an apartment, and she's been very vigilant about maintaining the meshes on her windows, but she doesn't always keep her windows closed. She enjoys a bit of fresh air from time to time, so she opens her windows; the meshes are there, but a seed gets through, and it implants in the carpet. She notices after a couple of weeks, oh, there's a person plant growing.

I did not intend this. I did my due diligence to keep that seed from implanting in my apartment, so I'm going to uproot it. Thompson believes that that is a perfectly rational approach, and in spite of the fact that that is an actual person who was growing up in the woman's apartment, she may still uproot it.

She did her due diligence to prevent that from happening, but it did happen, so she still has the right to pull up that person plant. And so that would be, of course, analogous to the use of certain kinds of birth control, the pill, say, for example, which is highly effective in preventing implantation of fertilized ova on the uterine wall. If a woman finds herself pregnant in those circumstances, she should have the right to abort just as much as that woman in the apartment has the right to pull up that person's plant.

So, she argues that we do not have a duty to be good Samaritans or splendid Samaritans, which that would describe someone who stays hooked up to the violinist. It would describe someone who lets the person plant grow in her apartment, though she tried to prevent it. We do have a duty to be, as she puts it, minimally decent Samaritans, but a minimally decent Samaritan is not duty-bound to allow the person plant to live or the violinist to stay hooked up.

So she talks about this case in the 1960s where a woman named Kitty Genovese was being bludgeoned by someone outside her apartment complex, repeatedly stabbed by a man, and she was crying for help for maybe 10, 15 minutes. There were no less than several dozen, if not 50 or 60, people who heard her screaming, and nobody called the police. Eventually, she died of her injuries.

This is a famous case because it's such a tragic instance of people not wanting to get involved, resulting in the death of someone who could easily have been saved if someone had just called the authorities. They could have arrived on the scene and at least saved her after she had been stabbed, if not preventing some of the stabbings as well. So, a minimally decent Samaritan would make the phone call there.

You're not having to put yourself out to the point of exposing yourself to danger if you just make a phone call. So that's minimally decent. And laws, good Samaritan laws, which require people to help someone to avoid significant harm, which don't put a person out very much, like saving a toddler from drowning in a foot of water, recognize this.

You do have a duty to be minimally decent. It's not going to put you out or cause any risk to you just by helping the kid out of the water. So, it's appropriate to have such laws.

But the problem with abortion laws prescribing or restricting abortions in cases of, say, failed contraceptives, according to Thompson, is that that's basically imposing an excessive burden on someone when they've done due diligence to avoid becoming pregnant. So, what are we to say to Thompson's arguments here? One thing we could say is that allowing one's fetus to live is minimally decent. Even if significant steps were taken to prevent pregnancy through birth control, if this is a genuine human person that is growing inside the woman, then isn't it minimally decent not to take the life of that person? Is it really heroic? So, one could question whether it's actually your duty or your obligation to continue with the pregnancy.

It's not a supererogatory act, as Thompson represents it. It's not above and beyond the call of duty. It is your duty.

With regard to the people seeds analogy, some have pushed back like this and noted that what Thompson does here is wrongly compare sex, which is a highly intimate act, to casually breathing fresh air. It also suggests wrongly that procreation is a similarly passive kind of thing, which it is not, except in rare cases where someone is impregnated. In the case of rape, it's a consensual act on the part of both people involved.

So, there's a kind of misleading dimension to her thought experiment there. So that's Thompson in her arguments, and we'll revisit that shortly, specifically her violinist argument, and we will look at an objection to that.

Secondly, there's Marianne Warren's argument, which is also well-known and takes a different approach than Thompson's.

Warren challenges the idea that fetuses are persons and concludes that fetuses have no right to life. And this is the more common way that pro-choice proponents argue these days. Her basic argument is that all and only persons have moral rights.

Fetuses are not persons. Therefore, fetuses have no moral rights. It's a basic argument, syllogism here, that is valid.

If it is true that all and only persons have moral rights and that fetuses are not persons, it does follow that fetuses have no moral rights. Now, the controversial premise there is the second one, the idea that fetuses are not persons. How does Warren defend that? She defines a person generally as a member of the moral community and argues that fetuses don't qualify as members of the moral community.

She also uses her own thought experiment to pump our intuitions about this. Suppose you have these space travelers, and they land on another planet and encounter these moving entities that are strangely shaped. And they make odd sounds, beeps, and whistles.

And they seem to be moving around in a way that is intentional. But the space travelers find these entities so strange looking that they're not sure if they are persons. So, the question is, and Warren poses to us, what kinds of questions should they or would they ask to determine whether these strange entities are persons or members of the moral community? What kinds of things would you look for to ascertain whether a strange being you encountered on another planet was a person? She proposes that these are the sorts of things that they would look for and that you and I would look for.

We would ask, are they conscious? Is there some level of awareness there? Can they reason? Is there a self-motivated activity? Do they have the capacity to communicate? And are there self-concepts? Do they have self-concepts? So she suggests that these are the sorts of characteristics that we need to look for in any case to ascertain whether any entity is a person, a member of the moral community who, therefore, has rights. So, among these five criteria, she maintains that the first and the second of these, and possibly the third, are necessary for personhood. That would be consciousness, reasoning, and maybe self-motivated activity.

But what she's proposing is that at least you have to be conscious and have a capacity for reasoning in order to be a person. And if that's the case, if these are necessary conditions, and she believes they're also probably sufficient conditions as well for personhood, any being that does not have any of these qualities would not be a person. Fetuses, as it turns out, meet none of these criteria.

So, fetuses aren't conscious, they can't reason, there's no self-motivated activity, they don't have the capacity to communicate, and there are no self-concepts. These are things that all come later in human development, in fact, well beyond birth. So, her conclusion is that fetuses have no right to life, and women have a right, therefore, to abort in any case.

Now, this is, again, a very influential argument. It's important to note, by way of criticism, that this reasoning allows for the killing of unwanted babies. If an infant, a newborn baby, can't reason, can't communicate, doesn't have self-concepts, and there's no self-motivated activity there, then it fails these criteria.

Even if there is basic awareness or consciousness, which I think she'd say even that for a newborn infant is questionable. But she bites the bullet on this in her article, which she wrote in the early 70s, presenting this argument. She grants that, okay, infanticide in some circumstances would be acceptable, but she says we don't need to worry about that because, in the overwhelming majority of cases if the parents don't want the baby, somebody else does.

So, it concerns other people now that the baby is outside the womb, and their interest in keeping the baby alive is significant. You have people who want to adopt, and so on. So, she essentially says we don't need to worry about infanticide for those reasons, infanticide being a logical outcome of her view.

Secondly, her space traveler illustration is misleading in a very subtle way. I think she confuses sufficient conditions with necessary conditions for personhood. So, just to clarify the distinction between a necessary condition and a sufficient condition,

X is a necessary condition for Y if Y cannot be present in the absence of X. X is a sufficient condition for Y if Y cannot be present in the absence of X. So, we'd say that oxygen is a necessary condition for combustion. What that means is without the presence of oxygen, you can't have combustion. X is a sufficient condition for Y if X guarantees the presence of Y. So, being born in the United States is a sufficient condition for U.S. citizenship.

It's not a necessary condition. You can be naturalized as a U.S. citizen. You don't have to be born in the U.S. But if you were born in the United States, then that's a sufficient condition for your being a U.S. citizen.

It guarantees that you're a U.S. citizen. So just because to go back to Warren's argument, just because these criteria or these characteristics of consciousness, reasoning, self-concepts, self-motivated activity, and the ability to communicate, just because there are sufficient conditions for personhood, and that would give us grounds for concluding that these entities we found on another planet are persons, it doesn't follow from that that they are necessary conditions for personhood, that you have to have them to be a person. So, her argument is problematic for that reason.

And then, finally, her distinction between human and person is itself questionable. And this is a very common assumption in abortion discussions these days. People will just take it for granted, even strong pro-lifers, that, well, we can make the distinction

between being human and being a person, that that's a reasonable distinction to make.

But we can challenge that. Who says that person is a subcategory of human? Might it not be the other way around? What if a human is a subcategory of a person? After all, there are other kinds of persons. God is a person.

Angelic beings are persons, and they're not human. And who knows what other kinds of persons God might have made in the universe if C.S. Lewis is right. There's intelligent life out there.

They could be divine image bearers as well, and we can imagine that. So maybe a human is actually a subcategory of a person, in which case, if we know that someone is a human being, then we know that it is a person just because it is human. And if that's the case, then any human being in any woman's womb at any point of development would, therefore, be a person.

So those are two major arguments for the pro-choice position, two of the most influential arguments in the history of the abortion debate, from Judith Jarvis Thompson and Marianne Warren, and those are some critical responses that I think are helpful. In the next lecture, we'll talk about pro-life arguments, philosophical and theological.

This is Dr. James S. Spiegel in his teaching on Christian Ethics. This is session 10, Abortion, Part 1.