

Early and Later Abortions: Ethics and Law

*Early Abortions Are Not Wrong, Late Abortions Could Be Wrong,
but probably All Abortions Should Be Legal*

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Abstract

Most abortions occur early in pregnancy. I argue that these abortions, and so most abortions, are not morally wrong and that the best arguments given to think that these abortions are wrong are weak. I also argue that these abortions, and probably all abortions, should be legal.

I begin by observing that people sometimes respond to the issue by describing the circumstances of abortion, not offering reasons for their views about those circumstances; I then dismiss “question-begging” arguments about abortion that merely assume the conclusions they are given to support; most importantly, I evaluate many arguments: both common, often-heard arguments and arguments developed by philosophers.

My defense of abortion is based on facts about early fetuses’ not yet possessing consciousness or any mental life, awareness or feeling, as well as concerns about rights to one’s own body.

Introduction	2
1. Defining Abortion	2
2. Arguments, Not Circumstances	3
3. Question-Begging Arguments	4
4. Arguments Against Abortion	6
5. Why Early Abortions – & So Most Abortions – Are Not Wrong	11
5.1. Consciousness and Ethics	11
5.2. The Right to Life	15
5.3. Later-term Abortions	16
6. Conclusion	16
For Further Reading	17
Discussion Questions	17

Introduction¹

“Liberals,” or people on or towards the “the Left”, tend to be pro-choice about abortion. They tend to believe that, legally, women should be *at liberty* to have abortions, if they want, and so abortions should be legal. Here I support this view.

My emphasis won’t be on the law, but on the ethics of abortion.² I argue that at least early abortions - affecting first trimester or earlier fetuses - are not wrong. Since most abortions are early abortions, I address the ethics of most abortions. Since morally permissible behavior should not be criminalized, at least most abortions should be legal. I do argue, however, that probably all abortions should be legal, even if any later abortions are wrong.³

1. Defining Abortion

I propose this initial definition of abortion:

An abortion is the intentional killing of an embryo or fetus to end a pregnancy.

Abortions are *intentional*. If a pregnancy ends because of an accident, the women did not “have an abortion.” Miscarriages are called “spontaneous abortions,” but these are not deliberate actions that can be morally evaluated.

Some object to the word ‘killing,’ thinking that ‘termination’ is better. But if we think through what this “termination” is, we see that it involves taking something biologically alive and making it not alive, or killing it.

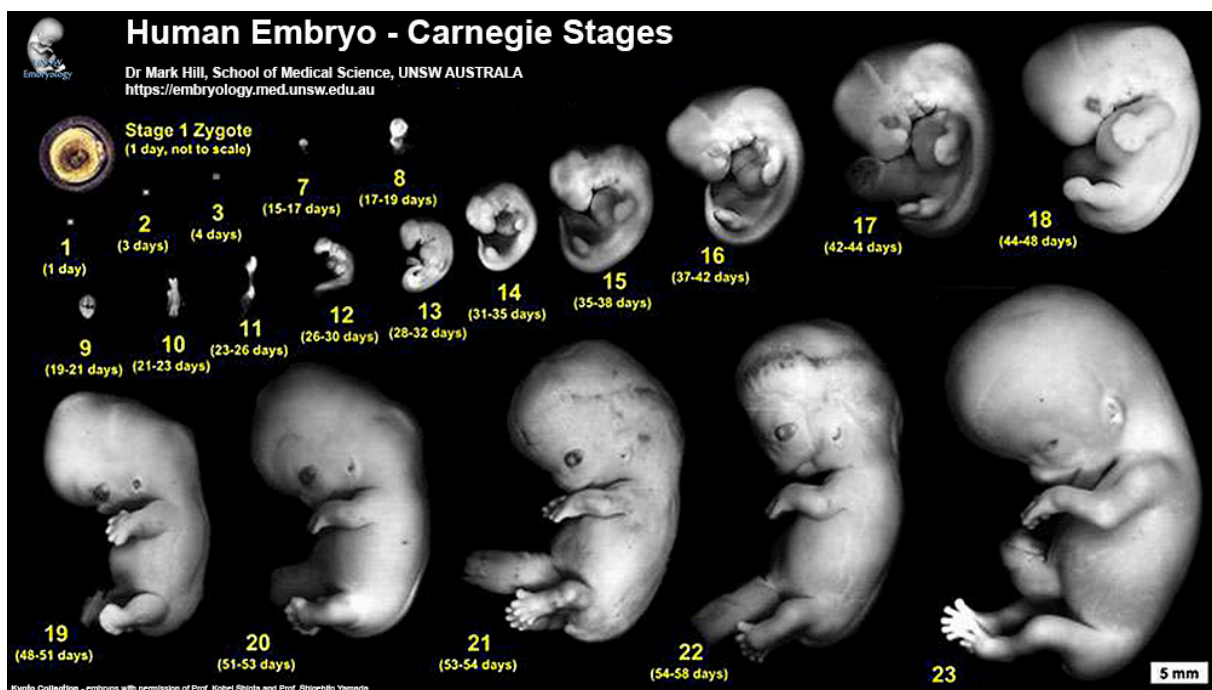
¹ This is an introductory essay intended for readers with little or no background in ethics or philosophy. It engages a wider variety of arguments than discussions written for professional philosophers and advanced philosophy students. It does not engage every important consideration about abortion, as no short essay can.

² To say that an action is *immoral* (or *not moral*) is to say that it is *unethical* (or *not ethical*); to say that an action is *moral* is to say that it’s *ethical*. To say that an action is *morally permissible* is to say that it’s *ethically permissible*; *ethically wrong* means *morally wrong* and so on. Ethics and morality are the same thing: why there are two words to describe the same thing is unclear.

³ A not uncommon claim is that since men can’t have abortions, they are not in a position to give arguments on the topic. In quick reply, this is false: someone’s sex (or gender) doesn’t influence their ability to give good arguments on issues that, in many ways, mostly affect people who are importantly different from them. Women can have insights and good arguments about issues that uniquely affect men, and vice-versa. Some women cannot have abortions because they don’t have a uterus or cannot get pregnant: does that mean that they just *cannot* offer reasonable views on the topic? No. And since women disagree on abortion, some women *must* give bad arguments on the topic: e.g., if one woman argues that *all abortions are wrong* and another argues that *all are not wrong*, they cannot both be correct. Women are not infallible on these topics, and neither are men. The goal for everyone is to carefully and critically evaluate any claims and arguments, whatever and whoever their source.

Some people are uncomfortable with this: they react that “Killing is wrong!” and so wonder if abortion should be understood as involving killing. This reasoning overlooks, however, that killing isn’t always wrong: indeed, it is often completely permissible. It’s not wrong at all to kill mold, bacteria, vegetables or tumors. These aren’t even *prima facie* wrong to kill, meaning, *no good reason at all is needed to justify this killing*. This isn’t in any way to compare human fetuses to any of these things: it just makes the point that, since killing often isn’t wrong at all, defining abortion in terms of killing is not problematic.

Some understand abortion as the killing of an unborn *baby* or *child*. While people are free to use the words ‘baby’ and ‘child’ however they’d like, people *can* misuse words. And this seems to be a misuse of words. *Early* fetuses have none of the relevant, perhaps essential, characteristics of babies. We could ask, ‘What are babies like?’ and use people’s responses to make a list of core baby characteristics: cute, cuddly, soft, having a certain smell, can cry, can be happy, sad or angry, needy, and so on. Early fetuses aren’t like that. A visual helps show that it is a stretch to call an embryo or early fetus a ‘baby’ or ‘child’⁴:



In sum, defining abortion as the intentional killing of an embryo or fetus to end a pregnancy is accurate, informative, and morally neutral – all that we want a definition to be.

2. Arguments, Not Circumstances

People sometimes begin discussing abortion by asking questions about abortion in particular circumstances: “*What if* it’s needed to save the mother’s life?” “*What if* the pregnancy is from rape?” “*What if* there are severe fetal abnormalities?” and so on. Or they begin by stating

⁴ Image used with kind permission of Brad Smith of the Multi-Dimensional Human Embryo project at the University of Michigan: <http://embryo.soad.umich.edu/index.html>

circumstances where they think abortion is wrong or not: “It’s wrong if used for ‘birth control’,” “It’s not wrong if the woman is too young to be an effective mother,” and so on.

These starting points are fine, *if* – but *only if* – these statements are supported, or questions answered, with reasons. Our concern is *arguments*, the reasons given for and against specific conclusions about abortion, such as that:

Abortion is:

- (nearly) always morally wrong.
- (nearly) always morally permissible, or not wrong.
- wrong, except in these circumstances: ____.
- permissible, except in these circumstances: ____.
- sometimes morally obligatory, or wrong to not have, such as in these circumstances: ____.

People sometimes offer moral claims about abortion “in general,” without being precise about which abortions they have in mind. But the details matter: depending on the stage of fetal development and the woman’s circumstances, different moral conclusions may be appropriate.

Some people also want to focus on important, but comparatively rare, abortions: for example, of pregnancies from rape (perhaps 1% of abortions) or incest.⁵ Our initial focus will be on more common circumstances where for a variety of *other* reasons, a woman is pregnant but does not want to have a child (or another child, now). After this we will discuss other important, but less common, circumstances.

We can immediately set aside circumstances though where the woman would die if her pregnancy continues, and so the fetus will die also, or we *must* choose between the mother and fetus. Even people who generally oppose abortion typically argue that we should save one life instead of losing two lives and prioritize the mother, not the fetus. Their view then is not that abortion is always wrong, but that it is wrong in *most circumstances*, or *prima facie* wrong.

Whether this specific conclusion, and any other, can be supported with good arguments is our concern.

3. Question-Begging Arguments

Many arguments about abortion are bad. Sometimes this is because they “beg the question,” or *assume* the argument’s conclusion as a premise. Question-begging arguments against abortion assume that abortion is wrong or that fetuses are wrong to kill; question-begging arguments in favor of abortion assume that abortions are not wrong or that fetuses are not wrong to kill. This is circular reasoning and must always be dismissed.

⁵ “In . . . surveys, 1% indicated that they had been victims of rape, and less than half a percent said they became pregnant as a result of incest.” See [Lori F. Frohworth, et al, “Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives,” *Perspectives on Sexual and Reproductive Health*, 2005, 37\(3\):110–118.](#)

Sometimes it's obvious why an argument is question begging ("Abortion is wrong because abortion is not right"); other times reflection is needed. Here are some question-begging arguments for the permissibility of abortion:

"Abortion is not wrong because:

- (1) abortion is *a personal choice*."
- (2) couples *should be able to* make that choice."
- (3) women have *a (moral) right* to have abortions."
- (4) well, if you don't *like* abortions, then don't have one!"

These all seem to assume that abortion is not wrong.

About (1), we would never say that choices to commit arson or kidnapping are "personal choices." Dying your hair or quitting piano lessons, however, *are* "personal choices." "Personal choices" are *choices that are not wrong* to make. Saying that abortion is a "personal choice" *assumes* that abortion is not wrong, as does claim (2).

Regarding (3), *sometimes* when people assert that they have a "right" to do something, they are merely saying that it's not wrong to do that something. That assumption begs the question. (If they explain *why* women have such a right, the argument might not be question-begging).

Response (4) is a slogan, not an argument, that assumes that abortion is not wrong. Imagine someone said, "Don't like *vandalism*? *Don't vandalize!*" "Don't like stealing? *Don't steal!*" This would be absurd because these actions are wrong. (4) assumes abortion is not wrong.

Here are a few question-begging arguments against abortion:

"Abortion is wrong because:

- (1) abortion is *murder*;"
- (2) there are morally *better* options than abortion, like adoption;
- (3) if a woman gets pregnant, she just *must* have the baby;"
- (4) women who have abortions are *irresponsible*;"
- (5) a *good person* wouldn't have an abortion;"
- (6) women who have abortions feel guilty."

These all *assume* that abortion is wrong:

- (1) "murder" means "wrongful killing," so (1) says that *killing fetuses is wrong* because *it's wrongful killing*;
- (2) this assumes that abortion is a bad or undesirable option: it *may be* but we can't just *assume* that;
- (3) this asserts that women *must not* have abortions, which is to say that it's wrong;
- (4) "irresponsible" people don't do what they are *supposed to do*, so (4) assumes that abortions are wrong;
- (5) this assumes that abortion is wrong and so a good person wouldn't do it;

- (6) some women feel guilty after abortions, but many do not. And just because someone feels guilty for doing something does not always mean they have done wrong: there is “false guilt.” (Someone *not* feeling guilty does not show that they did not do anything wrong either!). It only shows that they *believe* they have done wrong, which doesn’t mean that they really have done wrong. (6) assumes abortions are wrong.⁶

We now turn to non-question-begging arguments. If any are bad, it’s for other reasons.

4. Arguments Against Abortion

A case *for* anything depends on the case *against* its being weak. Showing that there’s no good reason to think that most abortions are wrong is important for showing that most abortions are permissible.

We only have space to discuss some of the most important arguments against abortion. Each claim below is given as a reason to believe that that fetuses have the right to life, or have other characteristics that make them *prima facie* wrong to kill, and so abortion is *prima facie* wrong:

- “Fetuses are human, biologically.”
 - Reply: Yes, but a random blob of *biologically human* cells or tissues is not *prima facie* wrong to kill. A malignant tumor isn’t wrong to kill and if there were somehow an independently beating human heart, it wouldn’t be wrong to stop that heart.

⁶ It’s sometimes claimed that people think that abortion is generally not wrong because of fetuses’ size, level of development, location or environment, and dependency (the “[SLED](#)” test). The suggestion is that pro-choice people think that *anything small, dependent, and undeveloped that is located in someone else’s body* is permissible to kill. The objection is that this principle, and related principles, are false, so this principle fails to support thinking that abortion is permissible.

The problem here is that no thoughtful abortion advocate accepts such a principle: nobody should think personhood is defeated or eliminated by SLED factors. Consider a case inspired by Dr. Seuss’s “Horton Hears a Who”: if there were a baby Who, that baby would be tiny, undeveloped (at least not a developed adult and so, in a sense, undeveloped), and dependent; and we could even imagine that Baby Who somehow in someone else’s body (imagine the baby Who is on a speck eaten by someone, but not digested). This Baby Who would be *prima facie* wrong to kill since that baby is a person or conscious being. The SLED factors are irrelevant to that.

The lesson here is that if a being is *prima facie* wrong to kill, then its size, location, dependency, and development do not matter. (This simplification ignores relevant concerns raised by Thomson, discussed below). But if a being is *not* wrong to kill, those factors are irrelevant. Advocates of the SLED test might merely *assume* then that abortion is wrong, which is begging the question.

- “We were once fetuses; there is *continuous development* from fetuses to us. Since we have rights now, we’ve had them at every stage of our existence.”
 - Reply: Our having some characteristic or right *now* does not mean we had it *then*. Most of us can walk, talk, think, feel, and make decisions but fetuses cannot, even though we developed from them. Continuous development does not, in itself, support thinking that fetuses are *prima facie* wrong to kill.
- “Fetuses are *human beings* or organisms.”

This claim is that fetuses are not merely biologically human, but that they are whole *beings* or *organisms*. This is true, but why would this make them wrong to kill?

Some respond that this is obvious, since *it’s just plain wrong to kill human beings*. This is not obvious, however, since embryos and beginning fetuses are human beings that are quite different from most human beings like us: they lack consciousness, cannot feel, think, perceive or experience any of the types of things that typical born human beings can. Arguably these are important differences, since psychological or mental characteristics are what *make* us wrong to harm and kill, and early fetuses lack them.

In thinking about human beings, who likely comes to mind are human beings who we interact with on a daily basis. We don’t think about *human beings* who are born without most of their brains (anencephalic newborns, who die soon after birth) or *human beings* who have permanently lost all consciousness due to serious brain injury.

These human beings should be treated respectfully, but they can also be treated in ways that would be wrong to treat “normal” human beings: letting their bodies die and, perhaps, (actively) killing them. This is sometimes not wrong because their being alive is no value *to them* anymore: they permanently lack or have lost consciousness, awareness, and feeling.

Early fetuses are human beings, but have not developed what makes life valuable: consciousness, awareness, feeling, and other features of a mental life that allow for relationships, activities, learning and everything else that makes life worthwhile. They lack this; they are merely biologically alive; and so it is arguably *prima facie* permissible to kill them.

- “Fetuses are persons.”

Everyone can agree that persons have the right to life, or are *prima facie* wrong to kill, but who or what is a person? What *makes* something, or someone, a person?

Some claim that fetuses are *persons*, from conception or soon after, and so they are *prima facie* wrong to kill. Others deny that fetuses are persons, especially early fetuses. These disputes sometime lead to shouting and violence, with different sides merely insisting on their definition. There are more rational ways

to help determine the *essence* of personhood, however, by thinking about what *makes* us persons. Consider this:

We are persons now. Either we will always be persons or we will cease being persons. If we will *cease* to be persons, what can end our personhood? If we will *always* be persons, how could that be?

Both options give insights into personhood. Many people think that their personhood ends at death or if they were to go into a permanent coma: their body is (biologically) alive but the *person* is gone.⁷ And if we continue to exist after the death of our bodies, what continues to exist? The *person* (perhaps even without a body!). Both responses suggest that personhood is defined by a rough and vague set of psychological or mental, rational and emotional characteristics: consciousness, knowledge, memories, and ways of communicating, all psychologically unified by a unique personality.

A second activity supports this understanding:

Make a list of things that are definitely not persons. Make a list of individuals who definitely are persons. Make a list of imaginary or fictional being which, if existed, would be persons: these beings that fit or display the concept of person, even if they don't exist. What explains the lists?

Rocks, carrots, cups and dead gnats are clearly not persons. *We* are persons. Science fiction gives us ideas of non-human persons. Even though non-human characters from, say, Star Wars, don't exist, they fit the concept of person: we can befriend them, work with with them, and so on, and we could only do that with persons. A common idea of God is that of an immaterial person who has exceptional power, knowledge, and goodness. Are conscious and feeling animals, like chimpanzees, dolphins, cats, dogs, chickens, pigs, and cows more relevantly like us, as persons, or are they more like rocks and cabbages, non-persons?

⁷ Some claim that permanently comatose individuals remain persons, despite the complete loss of any mental life: they are "persons with potential." (Set aside how anyone would know that a coma is permanent). Yet they tend to think that these bodies can sometimes permissibly be let die. Since it is *prima facie* wrong to let *persons* die, but not wrong to let these bodies die, this suggests that these *bodies* are not persons. Personhood is a guide to how someone should be treated, so if someone can permissibly be let die, that suggests a lack of personhood. If someone replies that they *remain* persons, but just have lost their consciousness, memories, abilities to communicate and personality, we should genuinely wonder what their personhood consists in, on this view, since the concept now fails to provide guidance for action in particular cases.

Sentient animals seem to be closer to persons than not. So, this classificatory activity further supports a psychological understanding of personhood.⁸

Concerning abortion, early fetuses would *not* be persons on this account: they are not yet conscious or aware since their brains and nervous systems are either non-existent or insufficiently developed. Consciousness emerges in fetuses much later in pregnancy, likely after the first trimester. This is after when most abortions occur (see below). Most abortions, then, do not involve killing a *person*, since the fetus has not developed the characteristics for personhood.

- “Fetuses are potential persons.”

If early fetuses are not persons, they are potential persons: they could, and would, become persons (and so they’re not persons now). Abortion is wrong because of this, however, only if premises like these are true:

- Potential X’s have the rights of actual X’s, *or*
- Potential X’s should be treated like actual X’s.

But potential doctors, spouses, adults, judges, criminals and so on never have the (moral or legal) rights of actual individuals of that kind, or should be treated like that. Arguments from potential are doubtful.⁹

⁸ In an important article on abortion ([Warren, Mary Anne. "On the moral and legal status of abortion." *The Monist* 57, no. 1 \(1973\): 43-61](#)), Warren writes that “the traits which are most central to the concept of personhood . . . are, *very roughly*, the following:

1. Consciousness . . . , and in particular the capacity to feel pain;
2. Reasoning . . . ;
3. Self-motivated activity . . . ;
4. The capacity to communicate . . . ;
5. The presence of self-concepts, and self-awareness . . . ”

Warren’s definition is a plausible development of John Locke’s (*Essay Concerning Human Understanding*, 1689) definition of a person as “a thinking intelligent being, that has reason and reflection, and can consider itself as itself, the same thinking thing, in different times and places.” Warren’s and Locke’s theories explain why cabbages and rocks are *not* persons and why we *are* persons and why those other (possible) beings fit the concept of person. Both definitions arguably require *too sophisticated* levels of mental awareness, but their emphasis on psychological capacities determining personhood is what’s important. This is better than understanding persons as *human beings*, since that definition doesn’t allow for even the possibility of non-human persons or human beings losing their personhood.

⁹ Some may observe, in reply, that children should be go to school so they can actualize their *potential*. That’s true, but these children are persons, and have a psychological connection to their potential future self. And suppose we *knew*, for certain, that a child would die at, say, 18

- “Fetuses have valuable futures; they lose those valuable futures when aborted.”¹⁰

Don Marquis argues that in thinking about abortion, we should begin by understanding *why* it is typically wrong to kill “normal” human beings, and then attempt to apply our findings to abortion.

He argues that the best explanation why it is typically wrong to kill *us* is that killing deprives us of our future good experiences, our valuable futures: if we are killed, we lose out on all the positive experiences, relationships, and accomplishments that we would have experienced. Inflicting this loss is profoundly wrong, unless done for an serious, justifying reason. Marquis thinks this explanation applies to fetuses: they have futures that they would experience, and abortion prevents them from experiencing those futures, so abortion is *prima facie* wrong.

While insightful, there is room for doubt. First, Marquis’s explanation for the wrongfulness of killing is developed from examples where there is a *psychological connection* from the murder victim to her future: she is aware of her future and has hopes and plans for it. Fetuses don’t have this *at all*. That’s a potentially relevant difference and so Marquis’s explanation might not extend to fetuses.

Second, Marquis’s argument might imply that contraception, even abstinence (!), is *prima facie* wrong. This objection begins with an abstract observation that there are single objects with multiple parts that do not touch: there is space between the parts. A dinette set is an example, but many physical items will do, since there are parts and there is some *space* between the parts, if we look closely enough. From here, we observe that there are eggs and *sperms-that-could-and-would-fertilize-those-eggs* all around us; some combinations of these are indeed *single things*, given the metaphysics above; some of these have valuable futures; and so contraception and abstinence are *prima facie* wrong, since they too prevent these (abstract) entities from experiencing their valuable futures. But since refraining from bringing these (abstract) individuals into actual existence is not wrong, something has gone wrong with Marquis’s argument.

years old: in a sense, they lack the potential future that we hope all children have. But shouldn’t this child still go to school? Finally, suppose someone is a *potential* brain surgeon, but can realize that potential *only if* you tutor her. Are you, or is anyone, *morally obligated* to provide that tutoring, so she can realize her potential? Few would agree that this potential imposes obligations on anyone else: this insight can be applied to abortion. Judith Thomson’s arguments are related (see below).

¹⁰ [Marquis, Don. “Why Abortion Is Immoral.” *The Journal of Philosophy* 86, no. 4 \(1989\): 183-202.](#)

In sum, these are some of the most important arguments given against abortion.¹¹ More research and reflection is needed, but we *may* be able to reasonably reach some tentative conclusions about the case in favor of thinking that abortion is typically wrong.

5. Why Early Abortions – & So Most Abortions – Are Not Wrong

5.1. Consciousness and Ethics

If the arguments against abortion do not succeed, should we think that abortion is *prima facie* permissible? Almost. To fully reach that conclusion, we need some positive arguments in its favor.

Abortion debates often proceed with little factual information about fetuses or abortions. This is problematic: for any real-world ethical issue, we need to know the facts. Here is some relevant information:

- Fetal consciousness and pain:

¹¹ Here are some more arguments: “The Bible (or God) says abortion is wrong.”

- Replies: The Bible doesn’t *clearly* discuss abortion, but *just because* the Bible (or any religious text) says an action is wrong doesn’t *necessarily* mean it’s wrong: e.g., verses concerning slavery, violence and, to some, loving enemies and immigrants suggest this. And, *if* God exists (and perhaps He doesn’t; this is controversial!), either God would have *reasons* to oppose abortions or not, so what would those reasons be? That’s our concern. Finally, religions should not determine the law.
- “Abortions are dangerous.”
 - Replies: No, they are not, especially if done early in pregnancy: they are no more dangerous than many medical procedures. And pregnancy and childbirth *are* dangerous, to some degree. And dangerous actions aren’t always wrong and/or should be illegal.
- “Would you be OK if your mother had had an abortion?”
 - Reply: “Would you be OK if your mother had been a nun? Or your father had a vasectomy before you were born?” *Many* actions would have prevented each person’s existence, but aren’t wrong.

Most medical and scientific research finds that, at the earliest, fetuses likely become conscious and develop an ability to feel pain around the end of the second or beginning of the third trimester of pregnancy (24 weeks).¹²

- When abortions occur:

The CDC reports that, “in 2014, the majority (67.0%) of abortions were performed at ≤ 8 weeks’ gestation, and nearly all (91.5%) were performed at ≤ 13 weeks’ gestation. Few abortions were performed between 14 and 20 weeks’ gestation (7.2%) or at ≥ 21 weeks’ gestation (1.3%).”¹³

The Guttmacher Institute reports that two-thirds of abortions occur at eight weeks of pregnancy or earlier; 89% occur in the first 12 weeks¹⁴:

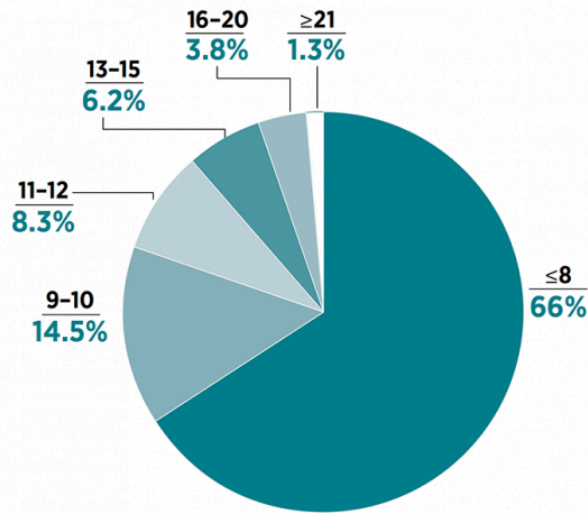
¹² Research on fetal pain is easier to find than research on fetal consciousness. While it’s possible to be conscious without an ability to feel pain, this might be a state where nothing can be good or bad or that individual: what this would be like for a fetus is hard to imagine, it’s safe to say. For some relevant research that suggest fetal consciousness, or the capacity for pain, develops far later in pregnancy, past when most abortions occur, see e.g., [Lagercrantz, Hugo. “The emergence of consciousness: science and ethics.” In *Seminars in Fetal and Neonatal Medicine*, vol. 19, no. 5, pp. 300-305. WB Saunders, 2014](#): “consciousness cannot emerge before 24 gestational weeks [6 months] when the thalamocortical connections from the sense organs are established. Thus the limit of legal abortion at 22-24 weeks in many countries makes sense”; [Lee, Susan J., Henry J. Peter Ralston, Eleanor A. Drey, John Colin Partridge, and Mark A. Rosen. “Fetal pain: a systematic multidisciplinary review of the evidence.” *Jama* 294, no. 8 \(2005\): 947-954](#): “the capacity for functional pain perception in preterm neonates probably does not exist before 29 or 30 weeks. . . the capacity for fetal pain is limited but indicates that fetal perception of pain is unlikely before the third trimester”; [Benatar, David, and Michael Benatar. “A pain in the fetus: Toward ending confusion about fetal pain.” *Bioethics* 15, no. 1 \(2001\): 57-76](#): “the available data showing how, on balance, it tends more to support than undermine the claim that fetuses of around 28 to 30 weeks’ gestation are capable of feeling pain”; among other sources.

¹³ [Jatlaoui, Tara C. "Abortion surveillance—United States, 2014." *MMWR. Surveillance Summaries* 66 \(2017\).](#)

¹⁴ [Guttmacher Institute.. "Induced abortion in the United States." *Fact sheet* \(2014\).](#)

WHEN WOMEN HAVE ABORTIONS*

Two-thirds of abortions occur at eight weeks of pregnancy or earlier; 89% occur in the first 12 weeks, 2013



*In weeks from the last menstrual period.

www.guttmacher.org

Figures in other countries should be investigated. But, at least in the United States, most abortions are done early in pregnancy, far before consciousness develops in the fetus.

This information is morally relevant because consciousness, or awareness, is the basis for all that is valuable and important for us. Death or a permanent coma is typically bad for us because our consciousness ends: *we* cease to be and nothing can go worse, or better, for us. Consider whether, when someone has permanently lost consciousness, there is any value *to that individual* in keeping his or her body alive: there is not. Pre-conscious, early fetuses are at the other end of this cycle. It's not that they haven't experienced what's of value: there is no *experiencer* of value: there is no one who is there, since a conscious individual does not yet exist.

Given these facts and quick philosophical thinking, here are three arguments in positive defense of abortion. First, a general argument from the absence of consciousness:

1. If something is not conscious and has never been conscious, then it is *prima facie* permissible to kill that thing.
2. Early abortions kill early fetuses that are not conscious and have never been conscious.
3. Therefore, abortions of early fetuses are *prima facie* permissible.

This general argument can be supported by more specific concerns. First, from concerns about *harm*:

1. To harm someone is to make them worse off, compared to how they *were*.

2. Early fetuses aren't made worse off by death: for a never-been-conscious being, non-existence doesn't make it worse off, since it lacks a conscious perspective that can take a turn for the worse.¹⁵
3. So, killing does not make non-conscious beings worse-off, or harm them.
4. Actions that don't harm anyone (or have a high risk of harm) are *prima facie* permissible.
5. So abortion is *prima facie* permissible.

Second, from the lack of personhood:

1. A person is a being who has at least *some* of the following: consciousness, awareness, thoughts, feelings, memories, anticipations and so on: a mental life or mind.
2. If something is not conscious or sentient and has never been conscious or sentient, then it is definitely not a person.
3. Early fetuses are not conscious or sentient and have never been conscious or sentient.
4. So, early fetuses are definitely not persons.
5. It is *prima facie* permissible to kill things that are definitely not persons.
6. So, abortions of early fetuses are not wrong.

These arguments should be explained in greater detail, but the preceding discussion should help anyone understand why they might be considered sound. Let's quickly consider some questions about these consciousness-based arguments:

- "Does this mean that it's OK to kill sleeping people or comatose people?"
 - Reply: No, these individuals were conscious: the sleeper will regain consciousness and we hope the coma patient will too.
- "Does that mean 'more' conscious human beings have more rights or greater value than those with less, if that makes sense?"
 - Reply: No: why would anyone think that? We should think that *all* conscious human beings have basic rights and equal value.

¹⁵ Some might deny this, claiming that plants and (mechanical) machines can be harmed. While plants and machines can, of course, be *damaged*, these damages don't affect their point of view, since they don't have one: there is no way it is *to be* a plant or machine, such that they damage makes it worse *for that* plant or machine. Alternatively, the type of harm *we* would suffer if hit by a speeding truck is quite different in feel and moral significance from the type of "harm" done to a run-over plant or a typewriter, so much so that we might want to just not call those damages 'harms.'

- “Does that mean it’d be OK to kill someone who goes into a coma and awakens with a complete loss of all of her knowledge, memories, and personality?”
 - Reply: No. If they awaken, they are conscious, and so *prima facie* wrong to kill. This would, however, be the start of a new person (in the same body!) if there is no psychological connection to the earlier person.

What this all suggests is that abortions, if done early in pregnancy, are *prima facie* permissible. This is true when abortions are sought for pregnancies resulting from rape or incest. It’s also true when a woman seeks an early abortion for nearly any reason.¹⁶ And since actions that are not wrong should not be criminalized, women should have the legal right to have abortions.¹⁷

5.2. The Right to Life

Some of the earlier arguments above can be seen as attempts to show that early fetuses have a right to life. They don’t appear to succeed. Nevertheless, it’s often assumed that if fetuses have the right to life, or are persons, abortion would be typically wrong. Judith Thomson has argued, however, that this common reasoning involves a false assumption about the right to life. Cases illustrate this:

- “You wake up in a hospital ‘plugged into’ a violinist, who is using your kidneys to filter his blood. You were kidnapped and put into this role. He will die without your assistance.”
 - Does the violinist have a *right* to use your kidneys? No.
- “Your death will be prevented by the touch of your favorite celebrity on your forehead.”
 - Do you have a *right* to that touch? No.
- “Your twin sibling will die unless *you* donate your kidney to her.”
 - Does she have a *right* to your kidney? No.

¹⁶ I will observe that some people who accept this conclusion also think that abortions for, say, sex selection are morally problematic. Whether this attitude is inconsistent or not is beyond this essay.

¹⁷ This is likely consistent with thinking that nobody is morally obligated, or should be legally required, to perform abortions. But there are many people willing and able to perform medically safe abortions, so this is not a current practical concern.

These cases suggest that the (moral or legal) right to life is *not* a right to another person's body, even if that body is necessary to save one's life.¹⁸ So, fetuses do not have the right to their mother's bodies, even if they are persons with the right to life. So it is permissible for a pregnant woman to withhold what the fetus needs to continue living: that means that abortion, at least, does not violate rights and so may be not wrong. This insight augments the arguments above, and suggests an alternative definition of abortion:

An abortion is the ending of a pregnancy by withholding the resources needed for the fetus to develop and be born.

5.3. Later-term Abortions

Fortunately, abortions far later in pregnancy are rare. But when they occur, they kill conscious beings. Should later abortions be illegal?

No. According to information available on these types of abortions, they are nearly always done for very good medical reasons. Moreover, we don't want the (slow) courts interfering in these time-sensitive, complex medical decisions. So probably all abortions should be legal, even if any are morally wrong.¹⁹

6. Conclusion

Whatever one's politics, abortion is a momentous decision that determines, at least, whether a woman will continue a pregnancy and give birth and, usually, whether two people will be parents (or parents again). And there are, of course, the effects on the fetus. These are life-changing decisions that involve profound and intense emotions. These feelings seep into politics, but our task, as philosophical thinkers, is to examine passionate issues with a passion for thinking in calm, cool, careful and critical manners. This passion for fact-finding, conceptual analysis and argument evaluation should positively influence our other passions, as individuals and as a society.²⁰

¹⁸ Some respond that, in most cases of pregnancy, the woman *did something* that contributed to the fetus's existence. But doing something that contributes to someone being somewhere doesn't give them the right to be there: e.g., if you *do something*, e.g., open a door, and someone falls into your house, that doesn't give them a right to be there. Second, to argue that "abortion is wrong because a woman did something that contributed to the fetus's existence and so it's wrong to end that pregnancy" *appears* to be question-begging: see the above discussion of the argument that "abortion is wrong because if a woman gets pregnant, she just *must* have the baby."

¹⁹ For important factual and legal information about later abortions, see the Guttmacher Institute's "Later Abortion" report, published on *Guttmacher Institute*, January 20, 2017, at <https://www.guttmacher.org/evidence-you-can-use/later-abortion>

²⁰ For helpful comments on this paper, I thank Cliff Guthrie, Dan Hooley, David Morgan, Joona Räsänen, Robert Bass, Tom Metcalf and Bob Fischer.

For Further Reading

A short, introductory reading on abortion:

1. Nathan Nobis, "[Ethics and Abortion](https://1000wordphilosophy.com/2016/03/07/the-ethics-of-abortion/)," in *1000-Word Philosophy: An Introductory Anthology*: 1000wordphilosophy.com/2016/03/07/the-ethics-of-abortion/

David Boonin's *A Defense of Abortion* provides a comprehensive and systematic critical overview of many arguments about abortion, as well as argues in defense of abortion:

2. [Boonin, David. *A Defense of Abortion*. Cambridge University Press, 2003](#)

These three widely reprinted articles are *the* seminal philosophical writings on abortion:

3. [Thomson, Judith Jarvis. "A Defense of Abortion." *Philosophy & Public Affairs* 1, no. 1 \(1971\): 47-66.](#)
4. [Warren, Mary Anne. "On the Moral and Legal Status of Abortion." *The Monist* \(1973\): 43-61.](#)
5. [Marquis, Don. "Why Abortion Is Immoral." *The Journal of Philosophy* 86, no. 4 \(1989\): 183-202.](#)

For factual information concerning abortion, see the Guttmacher Institute (<https://www.guttmacher.org>), the CDC's Abortion Surveillance System (https://www.cdc.gov/reproductivehealth/data_stats/abortion.htm) and/or any other country's national public health departments and organizations.

Discussion Questions

1. A number of different definitions of 'abortion' were offered in these readings. Which definition was best? Why? Are there other definitions that are better? Why?
2. You are a person. You are generally wrong to kill. What is the *best* explanation of *why* you are a person or what *makes* you a person? What's the *best* explanation why you are generally wrong to kill? (Why are these explanations *best*?). Do these explanations apply to any fetuses? Why or why not?
3. Judith Thompson argues that, *in general*, people do not have moral rights to other people's bodies, even if they need those bodies, or parts of those bodies, to stay alive: so, e.g., you wouldn't be violating someone's right to life if you didn't give them one of your organs that they need to stay alive. Do you agree or disagree? Why? And, more importantly, does anyone *ever* gain a moral right to someone else's body? Why? How?

4. Suppose technology will one day allow pregnant women to remove unwanted fetuses from their bodies and place them in “artificial wombs.” If such technology existed, do you think that would make abortion wrong (or “more wrong,” so to speak)? Or would abortions be permissible, even if this option existed? Or would abortions be permissible, even if this option existed?
5. Are there other arguments (beyond any discussed in the readings) about abortion that would typically *only* be accepted by people who already accept the argument’s conclusion? That is, are there arguments against abortion that would only be accepted by people who already believe abortion is typically wrong? Are there “pro-choice” arguments that are only accepted by people who are already “pro-choice”? Are these arguments good or bad? How and why?