

# *The Moral Permissibility of Abortion*

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## *Legality vs Morality*

It's important to distinguish between two different questions.

1. *Legal Question:* Should it be legal to have an abortion?
2. *Moral Question:* Is it morally permissible to have an abortion?

These questions are related, but distinct. We are interested in the Moral Question.

## *The American Liberal Position*

Here's a possible view (held by many) that is inspired by the current legal status of abortion in the United States.

- o **The Liberal View.** It is morally permissible to have an abortion early enough on in the pregnancy. It is not morally permissible, however, to have a "late-term" abortion. (Furthermore, infanticide is morally impermissible.) There is a certain point in fetal development at which it is no longer morally permissible to have an abortion.

Is this a tenable position to have about abortion? How can abortion be morally permissible but infanticide morally impermissible?

1. "No. It's not a tenable position. If abortion is morally permissible, then infanticide is too. Furthermore, both abortion and infanticide (in some cases at least) are morally permissible." (Utilitarians)
2. "No. It's not a tenable position. If abortion is morally permissible, then infanticide is too. Furthermore, neither abortion nor infanticide is morally permissible."
3. "Yes. It is a tenable position. Infanticide is morally impermissible because an infant is a person. And it is morally impermissible to kill a person (all else equal). But a fetus is not a person."

JJT in "*A Defense of Abortion*" offers a defense of The Liberal View in the following way. First, she grants — for the sake of argument — that fetuses are *persons* and thus that fetuses have a standing Right to Life. Then, she argues that *even if the fetus has a right to not be killed*, abortion might yet be morally permissible in very many cases.

## *Thomson's Arguments*

Consider the following sketch of an argument against the moral permissibility of abortion.

Surely whether or not something should be legal or not depends, at least in part, on whether or not that something is morally permissible.

The Supreme Court in *Roe V Wade* emphasizes the importance of **viability**. The Court says:

State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period, except when it is necessary to preserve the life or health of the mother.

We will return to the important of viability later on.

Why might a fetus not count as a person? What makes something a person (in the morally relevant sense)? Here are some possibilities: sentience, cognitive capacity, agency, consciousness,...

**P1** Abortion involves violating the fetus' right not to be killed.

**P2** ?????

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**C** Abortion is morally impermissible.

What are some ways to fill in **P2** to arrive at a plausible and valid argument?

### *Against The Extreme View*

Here is one way to fill in **P2**:

**P2'** If  $\phi$ ing violates someone's right not to be killed, then  $\phi$ ing is morally impermissible.

This principle seems far too strong.

1. *First-Personal Case*. It is morally permissible to kill an innocent person, who has a right not to be killed, in self-defense. If it is morally permissible to violate someone's Right to Life in self-defense, then it is morally permissible for a mother to have an abortion when her life is a stake.
2. *Third-Personal Case*. It is morally permissible to kill an innocent person, who has a right not to be killed, in order to enforce property rights. Because the mother has a property right to her own body, then if her life is at stake, it is morally permissible for a third-party (like, e.g., a doctor) to perform an abortion.

See for example JJT's EXPANDING BABY case.

This, however, only secures the conclusion that it is morally permissible for *the mother* to abort the fetus. Is it also morally permissible for a doctor to perform an abortion?

See JJT's THE SCARCE PROVISIONS example.

### *Against The Less Extreme View*

The Extreme View holds that abortion is never morally permissible under any circumstances. The Less Extreme View says that abortion is morally permissible only in cases when the mother's life is at stake; otherwise, it is morally impermissible.

**P2''** If  $\phi$ ing violates someone's right not to be killed, and it is not done in self-defense (or to protect property rights when the property owner's life is at stake), then it is morally impermissible to  $\phi$ .

JJT thinks that The Less Extreme View is still too extreme. To bring this out, she points to the following important distinction between two ways of understanding what it is to have the Right to Life.

- o **Liberty Rights**. If you have a *liberty right*, then others are obligated to not interfere with you.

Note that The Less Extreme View holds that abortion is morally impermissible even in cases of rape.

- **Claim Rights.** If you have a *claim right*, then others are obligated to aid you.

For the sake of argument, JTT grants that a fetus has a Liberty Right to Life. But does the fetus have a Claim Right to Life? That is: are we — and in particular, the fetus' mother — obligated to aid the fetus in staying alive?

If the mother has not bestowed the fetus with a *claim right* to her aid, then it is morally permissible for the mother to refuse to continue aiding the fetus in its survival.

On this view, if the mother hasn't granted the fetus a claim right to her aid, it is morally permissible to stop aiding the fetus in its survival.

### *Against The Moderate View*

The Moderate View holds that abortion is only morally permissible when the mother's life is at stake or when the pregnancy was non-consensual. Otherwise, abortion is morally impermissible.

**P1'** If X has a claim right to your aid and  $\phi$ ing involves violating that right, then  $\phi$ ing is impermissible.

**P2'''** By engaging in sex *voluntarily*, the mother thereby bestows the early fetus a claim right to her aid.

JTT disagrees with this second part; you need to do more to give the fetus a claim right. (You need to "invite it in").

### *The More Moderate View*

The More Moderate View holds that abortion is morally permissible when the mother's life is at stake, or the pregnancy was the result of rape, or the pregnancy result of contraception-failure. Otherwise, abortion is morally impermissible.

### *The Limits of the Permissibility of Abortion*

1. **Intentional Pregnancy.** According to JTT, it is morally impermissible to intentionally try to get pregnant, succeed, and then have an abortion. By intentionally trying to get pregnant, the mother has given the fetus a claim right to life.
2. **The Good Samaritan Problem.** Not violating rights is not the only thing of moral importance. Sometimes we are morally obligated to give aid regardless of claim rights, if providing the aid isn't too costly.
3. **Viability.** Abortion is only morally permissible up to the point at which the fetus is viable.

On this picture, we are granted liberty rights automatically. You just get them. In order to have a claim right, however, that right must be bestowed to you via a promise or a contract or something similar. See for example JTT's THE VIOLINIST example.

However, it is not morally permissible for the mother to *positively kill* the fetus, if the fetus could survive unaided by its mother. This is why **viability** is a crucial ethical turning point.

See THE PEOPLE SPORES example.

JTT disagrees with this view, too. Being "irresponsible" doesn't amount to "inviting it in". One needs to do more in order to bestow the fetus with a claim right to one's aid.