

Though much of the discussion in all three sections focused on abortion and *Roe vs. Wade*, some (especially in §0106) had some useful insights and comments concerning my three questions (Feb. 22) below. (Their summarized comments start on page 2, following the three questions.)

John Hardwig (1997) “*Is there a Duty to Die?*”

1. For all the rhetorical force and eloquence of his writing, Hardwig throws in a few disclaimers concerning points he feels he should not or does not want to address.¹ Do you think he *should* at least give *some* cursory mention to these issues (see footnote 6 below)? In other words, in more general terms, do you (or do you not) think his paper is more of a polemical piece than a developed argument?
2. Hardwig lays the blame squarely on the “individualistic fantasy” (237) which subverts or ignores our communal and inter-social nature, with its “interlocking finances...common projects and also commitments...shared histories, ties of loyalty.” (ibid) Moreover such “individualistic fantasy” gives bioethics an unrealistic approach to the grim realities of death, since “[w]e fear death too much...[w]e d not even ask about meaning in death, so busy are we with trying to postpone it.” (243) Yet are these obvious truisms of our culture’s obsession with prolonging youth and individualism even relevant regarding the conflicted approach of bioethics towards this complex subject? For instance, is it out of ‘selfishness’ that a husband who dearly loves his wife might exhaust every of his available means to stave off the inevitable death of his spouse who might be equally unwilling to die, *because* she dearly loves him? (One considers wedding vows: “In sickness and in health...to love and to cherish, until death do us part.”) Could one bring up this ‘wedding vow objection’ to argue that the conflicted bioethical approach is not so much based on some simple myth like individuality, but is a reflection on a whole host of motivations, including *communal* ones like not wanting to let one’s loved ones go? If you agree do you think that Hardwig’s oversimplification undermines his case for a duty to die, or is this oversimplification a relatively minor point (and hence the ‘wedding vow objection’ a red herring?)
3. Though Hardwig mentions is passing the possibility that “[c]hronic illness...can also pull a family together,” (238) it’s more of a straw-man device since the majority of evidential calims focus on the enormous toll (emotional, financial, social) a prolonged dying process can have on the patient’s caregivers. Though Hardwig quick to point out that “I am not advocating a crass, quasi-economic conception of burdens and benefits...” (238) the fact remains the bulk of his evidential claims involve loss of resources (homes, jobs, savings). As much as one can sympathize with these obvious claims here concerning the enormous loss, isn’t one however nagged with the feeling that, for example in the case of the 55 year old daughter losing her savings and job to care for her dying 87 year old mother (239), that something is lost in Hardwig’s tallying up the results in this way?

¹ “This notion of a duty to die raises all sorts of interesting theoretical and metaethical questions. I intend to try to avoid most of them...” (235) “Who has a duty to die? And when?...I cannot supply answers here...[such] answers will have to be very particular and contextual...”(240)

Perhaps, for instance, the *intangible* and *unquantifiable* value of the daughter spending those last several months with her mother outweighed the losses the daughter knew she would face? Do you think Hardwig's points, as prima facie commonsensical as they may appear at a first reading, nevertheless fail to do justice to the complex tapestry of the human heart and character, with its deepest motivations and values which may end up being irresolvably conflicted in the face of such a wrenching experience as taking care of a dying loved one?

Jad Sleiman (§0106) pointed out that my objection in question 2. above might present Hardwig's points uncharitably. For fundamentally Hardwig emphasizes *values* as *extrinsic* or, or *relational*: they are constituted or derived from the very fabric of our relations—whether with our inner family circle or with the outer social sphere of our social and professional relations. This is true even for the economic and quantifiable values we place our resources (such as tangible assets like our incomes, homes, etc., as well as intangible ones like our careers) as **Wayne Weissblatt (§0106)** emphasized, by citing Hardwig's contention (which I called into question in 3. above) that he is not advocating a duty to die from a standpoint of simple utilitarianism. Rather, as **Jad** and **Wayne** clarified, appreciating this essentially meta-ethical point of Hardwig's, that values are extrinsic and constituted by human relations, can diminish the criticism I levied against him—that he oversimplifies his case by claiming that the fantasy of individualism is the fundamental flaw. For appreciating the framework of values that seems to be Hardwig's starting-point would temper the objection that those terminally ill wishing not to die soon (which may include the wishes of their loved ones) would be dismissed as simply 'cowardly' or 'selfish.' Moreover, it's consistent to make a claim for an objective *duty* from a contextual and relational view of *values*, so long as one keeps the distinctions straight (**Daniel Loveland (§0103)**) as well as the distinction of duties versus rights (**Wayne Weissblatt (§0106)**). Aside from the pitfalls of strong rhetoric disguising possibly overly-simplified or (all too often) fallacious arguments, it is also true that the clear and accessible prose of Hardwig makes it easier for the reader to empathize with his main points (**Lauren Brady (§0106)**). ("The goal of philosophy is not to study or contemplate the world, but to change it." –Karl Marx)

Of the five questions below, most in all three sections focused on issues concerning the legal and moral status of personhood, which pertains primarily to question (3) below. Though many in **§0103** raised concerns having much to do with *policy* of implementing what some of the core points (whether explicitly stated or implied) of the *Roe vs. Wade* decision. The answers are summarized in page 3, below the list of questions.

Abortion and Roe vs. Wade

1. Vaughn (173) mentions that rule utilitarian and act utilitarian positions supposedly weigh consequences (short term versus long term) of abortion, irrespective of the question of the

- status of personhood (for the fetus), while Kantian focus on this issue.² How in general terms do you think a virtue ethicist would decide on the question the morality of abortion?
2. Do you see parallels in the ‘compromise’ or (seemingly) moderate position³ the Court’s Decision on Roe versus Wade takes vis-à-vis the AMA Policy on Euthanasia?
 3. Leland Saunders (Feb. 25th and 27th lectures) mentioned ‘burden of proof’ arguments conservative positions can levy against liberals, regarding the lack of any one characteristic during pregnancy as determining legal and moral personhood. On the other hand, liberals and moderates can counter that the vagueness doesn’t vitiate the distinction as occurring sometime during pregnancy: “We may not be able to pinpoint a precise moment when day becomes night...but that does not mean that day *is* night.” (Vaughn 168) Do you think this response meets the burden of proof objection? Why or why not?
 4. The Court’s position argues that though the right to privacy isn’t explicitly mentioned in the Constitution, nevertheless previous decisions have explicated the penumbra of such a right in terms of the Bill of Rights, the First, Fourth, Fifth, and Ninth Amendments. Nevertheless “[t]he pregnant woman cannot be isolated in her privacy...[t]he situation is inherently different from marital intimacy.” (B., p2) Compare this position with Thompson ‘famous violinist’ thought experiment (Vaughn p. 172). Does the latter adequately reflect RvW position, or is Thompson stating a more liberal position?
 5. RvW argued that the relatively open practice of abortion in the 19th century substantiated the prevalent view that at most times, personhood was assumed to occur after birth. Moreover, “Abortion and the Scripture” (Vaughn 166) indicates that reading Jeremiah as well as Exodus 21 in context suggest personhood wasn’t decided before birth (the penalty for an iduced miscarriage was a fine). RvW makes a similar point concerning the Catholic dogma of ‘mediate animation’ versus ‘ensoulment.’ Do you think these qualifications adequately respond to Scalia’s attack, as mentioned Saunder’s lecture (Feb. 27th)?

Regarding the Supreme Court’s decision to demarcate potential personhood at the onset of viability (which at the time of the document is 1973 medical technology, occurred sometime in the outset of the third trimester of pregnancy⁴), reflect a position based on recent rulings (for its time, i.e. 1973):

[T]he traditional rule of tort law had denied recovery for prenatal injuries...*That rule has changed in almost every jurisdiction.* In most States recovery is said to be permitted *only if the fetus is viable.* (emphases added, p. 3, *Roe vs. Wade*)

² If the fetus is deemed not to be a person, then the Kantian would focus on the freedom and dignity stemming from the notion of the mother’s personhood.

³ Moderate insofar as the unqualified right to an abortion is denied, and depends on the stage of pregnancy: up to the end of the first trimester means no State regulation, up to the end of the second trimester means the State can regulate on behalf of the mother’s health, and at viability the State can weigh the interest of potential life.

⁴ Recall Lelan’s point mentioned Feb. 27th, that the viability point keeps getting pushed to earlier stages of pregnancy, due to the improvement of medical technology.

According to **Jacquelyn Gresock (§0107)** who recently took a course examining the legacy of *Roe vs. Wade*, the rulings of States, concerning when issues of recovery/manslaughter charges apply (in the case of fetal harm-whether intentional by a third party or otherwise) hinge on the line that has been drawn during in the pregnancy process distinguishing legal and moral personhood versus non-personhood. By and large, **Jacquelyn** mentioned, the distinction is ‘all over the map,’ depending on the state: no apparent trend seems evident of demarcating personhood along the lines of viability in this case.

This presents a basic difficulty of enabling a Supreme Court Ruling to track what the trend of the State court decision, since nowadays the trend appears so broad and diverse (**Zina Makar (§0107)**). In addition, as **Brandon Farley (§0107)** argued (see footnote 4. above) that if medical technology keeps pushing the line of viability to earlier stages of pregnancy, then it seems anachronistic and inconsistent to keep the personhood category (in which, as *Roe vs. Wade* argued the State can have a compelling reason to regulate the procedure in the interests of the fetus) at the onset of the third trimester of pregnancy. **Zina** argued in addition that except in cases of rape or when the life of the mother is at risk, the personhood status should be pushed to the beginning of the second trimester, when brain activity and quickening and limb formation are all ‘on-line’. Hence though agreeing with *Roe vs Wade* in practice, her claim differs on principle, since the moral reason (for Zina) would rest on the protecting the interest of the potential person.

Brandon also pointed out, in response to *Roe vs Wade*’s appeal to traditional or historical reasons for demarcating personhood until after birth (p. 3 *Roe versus Wade*), that (as in the case of viability being pushed earlier), that such beliefs can also be considered anachronistic, in the light of medical technology rendering positive medical intervention far safer and effective. These technological improvements (like in the case of the question of the morality of euthanasia) are what make the question of the status personhood a legitimate of worthy issue to explore. **Joseph Hall (§0103)** echoed this point by citing history, in which until only in recent centuries was the personhood of *children* taken seriously (since so many children perished in the first several years of infectious disease). Let alone that beliefs we presently recognize as morally wrong were held for centuries in many cultures,⁵ certainly an appeal to tradition seems a weak basis to make a moral argument, especially when the tradition conception appears so anachronistic by the lights of present-day medical technology.

However, others also argued in the different direction: that though (a’ la *Roe vs Wade*’s reasoning) the State should play a regulatory role after the first stage of pregnancy, when the procedure becomes more dangerous, the sole reason for

⁵ Hence claiming the opposite, i.e. advocating the legitimacy of a belief just because most cultures upheld in most times in history, would be to commit the fallacy of the many—recall the list of some argument fallacies posted Feb. 1: <http://www.glue.umd.edu/%7Ewkallfel/Phil140Spring2007-8/Feb1.pdf>
Is Justice Blackmun leaving himself open to such a fallacy, in the passage on page 3 of the brief?

regulation in the second *and* the third stages should be in the interest of the health of the mother. (**Stephanie Ragheb (§0107)**). According to **Stephanie** this is certainly due to the seemingly intractable issue of specification of personhood during any stage in pregnancy, as mentioned also in Feb. 25th and 27th lecture. In comparison, one is confronted with the philosophically unproblematic (but still urgent) issue of the well-being of the mother. **Stephanie's** point echo those of the act or rule utilitarian who would weigh short-term or long-term consequences, and bracket off the personhood issue. **Stephanie's** points however could also be couched in Kantian terms if the personhood status of the fetus is bracketed, "she [the Kantian] may believe that abortion is...justified to protect the rights and dignity of the mother." (Vaughn 173)

One way to appreciate why the personhood issue is so problematic during pregnancy is that it is an especially morally acute instance of a general logical and metaphysical problem in philosophy: the problem of *vague predicates*. Vague predicates abound...does this imply that the world has some properties that are 'fuzzy'? Debates surrounding this have raged for centuries. The early Greeks for instance presented the problem of vagueness through various paradoxes, the most commonly-known one being the 'heap' or *Sorites* paradox: Say you start with a single pebble. Certainly a single pebble doesn't qualify as a 'heap'. OK, so add another pebble, and another, and so on...**Question:** does the difference between 'non-heap' and 'heap' rest on the difference of *one* pebble? That would imply that everything up to a certain number *N* of pebbles is designated as 'non-heap' whereas *N* + 1 pebbles is designated as 'heap'. But this seems dubious, to say the least! What *is* this 'magic number' *N* and how can it be known from the *qualitative* notion 'heap'? This is just *one* set of questions one can ask here, there are many more, even more difficult!⁶

If the above seems like a silly puzzle, think again. *The question of when to distinguish person versus non-person during the period of pregnancy is equivalent to the above question.*⁷ The conservative evades the Sorites paradox by stipulating that personhood begins at conception, thus (recall Feb. 27th lecture) placing the burden on the liberal to provide consistent demarcation criteria at some stage(s) past the point of conception. But the liberal has a reply also! (Recall question 3. above). Just because no clear line may be drawn somewhere doesn't imply there is no contrast! This is the standard response to the vagueness question: "Just because there exists no clear boundary between light and dark does not imply they are the same." To suggest otherwise would be like stipulating one pebble is a 'heap', but the term 'heap' is reserved for *many* (i.e. more than one) pebbles. So the conservative position could be accused of exhibiting this kind of incoherence.

⁶ For more information, see <http://plato.stanford.edu/entries/sorites-paradox/>

⁷ As are many questions concerning vague predicates. For instance, consider 'bald', 'smooth,' etc.

Yet, as **Joseph Hall (§0103)** objected, this response by the liberal (“just because no sharp boundary exists between night and day doesn’t mean they are the same”) is unsatisfying also: Because it doesn’t attempt to offer any positive criteria of distinction. On the contrary, the reply seems merely to re-state the problem of vague predicates! So we’re back in the same old conundrum.

Other replies to the above questions (besides 3) were offered. For instance, **Erin Coco (§0107)** pointed out that it seems plausible a virtue ethicist can offer a positive moral account or framework in the issue of abortion, not just passing the buck by focusing on an exemplary character (which obviously begs the question of what makes such characters exemplary, let alone moral exemplars can behave differently in the same situation). For Erin, the ‘stable dispositions’ (virtues) surrounding potential motherhood have to do with responsibility, nurturing, etc. So in the dilemma of abortion, the mother faces a conflict of virtues problem the same way a Kantian may face a conflict of duties problem. However, this doesn’t mean that virtue ethics can provide no guidance in the matter. On the other hand, strictly viewing Aristotle’s position, according to **Zina Markar (§0107)**, does spell a tension between *eudaimonea* as applied to development of excellence as applied to the individual, versus the notion of *oikos* (household) or *polis* (city) in which Aristotle recognizes the essential dimension of communal interest and support. Indeed, some recent virtue ethicists (like Michael Slote, who taught here at UMCP) have sought to reduce such tensions (individual value vis-à-vis communal value) by developing a *virtue as caring* basis: where *caring for others and for oneself vis-à-vis others*, becomes the ‘default’ virtue. It’s reasonable then, to conclude, from **Erin’s** point, that a virtue (of caring) moral framework can offer some articulate position on abortion.

As mentioned, concerns were raised especially in (**§0103**) concerning the feasibility of applying the notions of *Roe vs Wade* doctrine on the level of policy. **Daniel Loveland (§0103)** for instance considered the clause of “psychological harm...[m]ental and physical health may be taxed” (p.1 *Roe vs, Wade*) on behalf of the interests of privacy and integrity of the mother can function as a loophole or slippery slope in the case of undercutting the “state[‘s]...assert[ing] important interests...in protecting potential life,” (ibid) which according to the court decision can take precedence during the third stage of pregnancy. Perhaps the state can, *in principle*, but can it *in practice*? Could the mother invoke the spectre of psychological harm as to trump the state? Trying to ‘fix’ this by asking a state-certified board of psychologists to independently evaluate or assess the issue of potential psychological harm, as suggested by **Sahila Chopra (§0103)**, may seem to further open a Pandora box of problems, as others like **Joseph Hall (§0103)** pointed out, as the burden of costs on the state can increase high as to function as a disincentive for someone to seek an abortion in the first place.