

*Discussion Questions*

- Leland Saunders voiced the objection (March 3<sup>rd</sup> lecture) that (recall Rachels) the “killing” versus “letting die” (K/LD) distinction is glossed over<sup>1</sup>, since after three weeks of pregnancy, a fetus cannot simply be ‘passively’ expelled from the uterus (equivalent in the ‘famous violinist thought experiment’ – FVTE- to the abductee ‘unplugging’ herself) but must be removed by active means via menstrual or vacuum aspiration (Vaughn, 163). According to Leland Saunders, a morally equivalent version of the FVTE to the latter would involve the abductee first killing the violinist, and then removing herself. Do you agree or disagree? If you agree, do you think Thompson’s arguments would still run in the same fashion? (That the K/LD is a difference that makes no moral difference)? (Recall that for the sake of argument Thompson grants the fetus at any stage of pregnancy the moral status of personhood: “I propose ...that we grant that the fetus is a person from the moment of conception.” – Vaughn, 174)
- After running through the famous violinist and Fonda thought experiments, she argues the right to life (RL) consists in the right not be killed unjustly (Vaughn 178). As the Fonda thought experiment and her subsequent passage on Minimally Decent Samaritans (181-182) illustrate, she makes a strict distinction between what is *obligatory* versus what is *supererogatory* (i.e., praiseworthy, decent, etc., but not obligatory).<sup>2</sup> Do you agree that her argument of a woman’s right (as a claim) will always override anything considered supererogatory? Do you think (see note below) that even being a ‘Minimally Decent Samaritan’ is voluntary but not required?
- In her postscript on Infanticide, Warren appears to invoke a utilitarian position. But Thompson seems ‘Kantian’ when it comes to her discussion on rights. Who do you think has a stronger position?
- How viable are Warren’s five criteria for moral personhood (consciousness, reasoning, self-motivated activity, capacity for communication, self-concepts & agency)? Do you see any as necessary, or just sufficient?

---

*Discussion*

The above questions were dealt with in an indirect manner in all three sections. In a broad sense, the consensus appeared to be one in which Judith Jarvis Thompson is exemplary of a form of ethical individualism in which the mother’s *rights* (as claims) are analogous to ‘perfect duties’ (to recall Kant). This would include basic or essential rights like her right to her health

---

<sup>1</sup> Though she mentions it in the case when the mother’s life is in danger in the case of the “Extreme View”- : “[A]bortion would be directly killing the child...doing nothing would be not killing the mother but letting her die.” (Vaughn 175)

<sup>2</sup> Recall Kant’s ‘perfect’ versus ‘imperfect’ duties. Moreover, “[I]t is worth ...drawing attention to the fact that by law...no state in this country is any man compelled to be...even a Minimally Decent Samaritan.” (181)

and safety as well as seemingly frivolous rights like her right not to be inconvenienced. While any *responsibility* she would have toward the child she is carrying is analogous to and ‘imperfect duty’; *supererogatory* (i.e., commendable, praiseworthy, perhaps in most cases considered appropriate) but not *obligatory*. To put it another way: her *individual* right to herself—her health, privacy, etc., can always override any *relational* duty she may have toward the fetus.

Consider in this regard how *individualistic* the claim she is making: An individual’s right to life reduces to the right not to be killed unjustly. Abortion, in most circumstances, does not qualify as killing the fetus (a fully moral *person* since the moment of its conception, she grants for the sake of argument) unjustly.<sup>3</sup> As illustrated for instance in her FVTE, this is because the fetus is essentially dependent on the mother’s body—hence it’s in the mother’s prerogative to terminate this dependency for whatever reason. The fetus is a ‘tenant’, to recall the people seeds thought experiment (PSTE).<sup>4</sup> This is *not* to imply of course that the general moral permissibility of abortion argument she makes extends to the stronger notion of what is ethically praiseworthy or for that matter even appropriate. For instance, “[i]t would be indecent [for] the woman to request an abortion, and indecent in a doctor to perform it, if she is in her seventh month, and wants the abortion just to avoid the nuisance of postponing a trip abroad.” (183) Indecent, maybe, but still within her *rights*. Conversely, “I agree that the desire for the child’s death is not one which anybody may gratify, *should it turn out to be possible to detach the child alive.*” (183)

Echoing the above disclaimer, recall her discussion on the presumed contingent notion regarding the individual’s responsibility toward others, under circumstances analogous to the mother-fetus dependency relation, as illustrated by the ‘minimally decent Samaritan’ cases she depicts:

[I]t is worth drawing attention to the fact that in no state in this country is any man compelled by law to be even a Minimally Decent Samaritan to any person; there is no law under which charges could be brought against the thirty-eight who stood by while Kitty Genovese died. By contrast, in most states in this country women are compelled to be not only Minimally Decent Samaritans, but Good Samaritans to unborn persons inside them. This doesn’t by itself settle anything one way or the other...[b]ut it does show that there is a gross injustice in the existing state of the law. (181)

Several voiced objections to Thompson’s arguments here. For instance, **Jad Sleiman (§ 0106)** mentioned that Thompson’s use of the Kitty Genovese case is misleading in at least one important aspect: According to the data of much social psychology, there exists the phenomenon of ‘passing the buck’ in collective behavior in the sense that most will assume someone else will be a Samaritan, so to speak, resulting of course in no one rising to the occasion of providing assistance. So the point here is an illustration of the cliché that “hard cases make bad law.” The Kitty Genovese example Thompson invokes is essentially an atypical example, hardly something one could base an argument on. Admittedly, Thompson cites the Genovese case to illustrate an issue concerning legal policy and her complaint about its inconsistency or hypocrisy; that on the one hand none of the witnesses in the Kitty Genovese case were held accountable by the law, i.e.

---

<sup>3</sup> “[T]here [may be]...*some* cases in which the unborn person has the right to the use of its mother’s body, therefore *some* cases abortion is unjust killing...But I [also] think that we should sidestep this issue...at any rate the argument [against abortion] certainly does not establish that all abortion is unjust killing.” (Vaughn, 179)

<sup>4</sup> Assuming of course in this thought experiment that the mother took all necessary precautions: that she assumed in good faith that the contraceptives weren’t defective and/or she was not intentionally misusing them.

“no state in this country is any man compelled by law to be even a Minimally Decent Samaritan to any person,” but on the other hand “in most states in this country women are compelled to be not only Minimally Decent Samaritans, but Good Samaritans to unborn persons inside them.” As she goes on to say “[t]his doesn’t by itself settle anything one way or the other.” But based on her overall framework of assumptions (as mentioned above) which seems to boil down to an asymmetry regarding the absolute (or *necessary*) character of individual rights vis-à-vis the *contingent* nature of the responsibilities the mother has towards the fetus, it’s fair to say she devotes space to the Kitty Genovese case for a good reason. One may assume that that reason is to re-emphasize the points discussed by analogy: While it would be “very nice” (i.e., supererogatory) for the mother (a victim of an accidental pregnancy) to go ahead and carry the child to term, she *should* be under no obligation to do so.

**Jad Sleiman’s** basic objection however goes beyond the issue of this sad incident being merely a ‘hard case.’ The fundamental concern Jad articulated was that Thompson smuggles in an issue of *descriptive ethics* as *normative*. To put the matter bluntly, Thompson seems to be trying to pass off an “is” as an “ought.” However, as **Charles Mayer (§ 0103)** mentioned, using descriptive claims to support a normative argument is obviously not problematic (*especially*, one might add, to recall the material discussed in the first week or two of class, if one is a moral realist.<sup>5</sup> Nevertheless, the issue isn’t so much relying on factual content to formulate an ethical argument, *it is rather the attempt to pass off a non-moral premise as a moral one*. For instance, this objection was extended by **Daniel Loveland (§ 0103)** to include the issue of viability Thompson mentions in passing: “I agree that the desire for the child’s death is not one which anybody may gratify, *should it turn out to be possible to detach the child alive*.” (183) Daniel was objecting to the notion that Thompson was drawing the distinction between justified versus non-justified killing on the basis of the contingent fact of viability. Obviously, as technology improves, the viability point will change, coming closer to the actual point in time of conception. But to press this point further, though (for the sake of argument) Thompson grants legal and moral personhood to the fetus at the moment of conception, the *real* issue is whether or not the person can function autonomously in the strictly biological sense (at the very least), that is, is the person (fetus) has achieved viability. But this is just another example of smuggling an ‘is’ for an ‘ought’! To put the matter in more succinct terms: Thompson appears to be make a claim of moral generality and necessity (justified versus unjustified killing) essentially dependent on some contingent factual claim. Sure, a fetus is a ‘person’ according to Thompson. But such a ‘person’ it seems is really *not* morally equivalent to a ‘person’ who has the capacity for autonomy as well as (at the very least) being able to live outside the mother’s body. **Daniel** as well as **Zina Makar (§ 0107)** also objected (above disclaimers notwithstanding) to what appears as an apparent equivocation on the part of Thompson with moral and legal categories. Obviously issues concerning morality and legality are often at odds. The ethicist should therefore strive to avoid conflating such categories.

The above concern regarding conflation of descriptive with normative claims seems more apparent in Warren. **Douglas Weithoner (§ 0107)** fundamentally objected to Warren’s apparent categorical ‘mixing and matching’ insofar as her seeking to base some concept of moral personhood with biological/psychological functional categories (her five criteria). Certainly there doesn’t seem to be a problem with seeing conceptual overlap with categories of legal/moral personhood with biological personhood: the problem rests rather in reducing the former to the latter.

---

<sup>5</sup> Recall that moral realists maintain that the basis of moral claims be established or even in some cases can reduce to factual claims. In other words, there’s always some underlying ‘fact of the matter’ underwriting the legitimacy of ethical claims: an “ought” can always be substantiated by an “is”.