

The Relevance (and Irrelevance) of Questions of Personhood (and Mindedness) to the Abortion Debate

David Kyle Johnson,
King's College, PA

***Abstract:** Disagreements about abortion are often assumed to reduce to disagreements about fetal personhood (and mindedness). If one believes a fetus is a person (or has a mind), then they are “pro-life.” If one believes a fetus is not a person (or is not minded), they are “pro-choice.” The issue, however, is much more complicated. Not only is it not dichotomous—most everyone believes that abortion is permissible in some circumstances (e.g. to save the mother’s life) and not others (e.g. at nine months of a planned pregnancy)—but scholars on both sides of the issue (e.g. Don Marquis and Judith Thomson) have convincingly argued that fetal personhood (and mindedness) are irrelevant to the debate. To determine the extent to which they are right, this article will define “personhood,” its relationship to mindedness, and explore what science has revealed about the mind before exploring the relevance of both to questions of abortion’s morality and legality. In general, this article does not endorse a particular answer to these questions, but the article should enhance the reader’s ability to develop their own answers in a much more informed way.*

***Keywords:** Abortion, Personhood, Mindedness, Sapience, Sentience, Self-awareness, Pro-life, Pro-choice, Fifth Amendment, Roe v. Wade, Don Marquis, Judith Jarvis Thomson, Morality of Recreational Sex, Fetal Consciousness, Fetal Pain*

Introduction

IT IS COMMONLY ASSUMED that the abortion issue is binary; one is either for it or against it. Further, whether one is for it or against it is often assumed to be determined by where one stands on the issue of fetal personhood (i.e. the question of whether a fetus is a person). If you think a fetus is a person, then you think abortion is immoral and should be illegal; and if you think a fetus is not a person, then you think abortion is moral and should be legal. Things, it turns out however, are not so simple.

For example, the abortion issue is not binary such that *abortion is either wrong or it is not*. Why? Because just about everyone thinks that abortion is moral in at least some cases and immoral in other cases. Presumably, just about everyone would agree that if both the baby and the mother will die otherwise,

terminating a pregnancy is moral; it is obviously better to save one life than none. Likewise, presumably just about everyone would think it is immoral for a woman who initially wanted to be pregnant to have an abortion a week before her due date so she could go on a spontaneous vacation instead. So, rather than being binary, the abortion question is linear. The debate becomes a question of where on the continuum should one “draw the line” that indicates when abortion should and should not be permissible.

Something else that complicates matters is the fact that questions of abortion’s morality and legality are separate because, in principle, questions about morality and legality fall into different categories. Generally, questions about what should be legal are answered by appealing to empirical facts about what effects laws will have on society. John Stewart Mill, for example, argued that the primary issue to consider when determining law was utility: what will produce the greatest amount of happiness for the greatest amount of people?¹ Few moral philosophers, however, are purely utilitarian; they think that morality also involves issues of duty, virtue, and care. As a result, there is not a one-to-one correspondence between what is moral and immoral and what should be legal and illegal. For the protection of society, we have laws against jaywalking and speeding, but few would think that jaywalking and going five miles over the speed limit are immoral. Likewise, it was illegal to harbor Jews from the Nazis in Germany during WWII, but that did not make it immoral. Conversely, most would likely agree that it is immoral to lie to your boyfriend or girlfriend so you could cheat on them with their best friend, but few are going to think such a thing should be regulated by the government.

Consequently, one could answer the “When is abortion moral?” question without having answered the “When should abortion be legal?” question. Indeed, a person could believe that abortion is immoral in most cases, but still think that it should be legally available for those same cases. For example, if one thought that making abortion illegal would not reduce the number of abortions but would increase the number of deaths due to botched abortions (potentially because more women would die seeking back alley coat

¹ To be more specific, Mill argued that governmental action should be governed by what he called “the Harm Principle.” The only time someone’s liberty could rightly be curtailed by the government was to prevent them from harming others. Nonetheless, Mill specifically rejected appealing to natural rights to support his argument. He saw protecting liberty as the most effective way to produce the most amount of happiness for the most amount of people. See J. S. Mill, *On Liberty* (Boston, MA: James R Osgood and Company, 1871), chap. 1, <https://doi.org/10.1037/12289-000>.

be a logical place to draw the line.⁵⁸ Moreover, notice that all three of these points could be used not only to argue that abortion should be legal before viability, but that it should be illegal afterwards, as well. To be clear, this article is not saying that arguments do not exist for drawing the line somewhere else, both later and earlier; but given the concerns of personhood and mindedness that are at issue here, drawing the line at viability is at least logically and legally defensible.

Conclusion

It was not this article's goal to draw the metaphorical line regarding when abortion is moral and should be legal. It was merely the goal to lay out the basics regarding the concept of personhood and what has been discovered about the mind. That way, readers can assess each issue's relevance to a logical evaluation of abortion's morality and legality. Readers can now draw their own conclusions with these more nuanced philosophical and medical considerations. Interestingly, abortion is not the only issue in which questions of personhood and mindedness are highly relevant. They are also relevant in discussions about other religious issues as well, such as end-of-life decisions and the afterlife, which ought to be explored in greater detail in a future article.

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⁵⁸ I make the distinction "biological being" here because, legally, non-conscious entities, like corporations, are considered "artificial people" and are granted some of the same rights that conscious biological people have.

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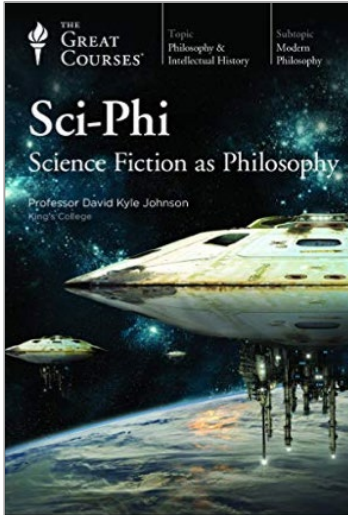
ABOUT THE AUTHOR

[David Kyle Johnson](#) is professor of philosophy at King’s College (Wilkes-Barre, Pennsylvania) who also produces lecture series for The Teaching Company’s *The Great Courses*. His specializations include metaphysics, logic, philosophy of science, and philosophy of religion, and his “Great Courses” include *Sci-Phi: Science Fiction as Philosophy*, *The Big Questions of Philosophy*, and *Exploring Metaphysics*. Kyle has published in journals such as *Sophia*, *Religious Studies*, *Think*, *Philo*, and *Science, Religion and Culture*. He has also written numerous book chapters, including eleven entries in *Bad Arguments: 100 of The Most Important Logical Fallacies in Western Philosophy* (Wiley-Blackwell, 2018). He is also the editor-in-chief of *The Palgrave Handbook of Popular Culture as Philosophy* (Palgrave, forthcoming), and the editor of *Black Mirror and Philosophy: Dark Reflections* (Wiley-Blackwell, 2019). He maintains two blogs for *Psychology Today* (*Plato on Pop* and *A Logical Take*), and most of his academic work is available for free download on [academia.edu](https://www.academia.edu).

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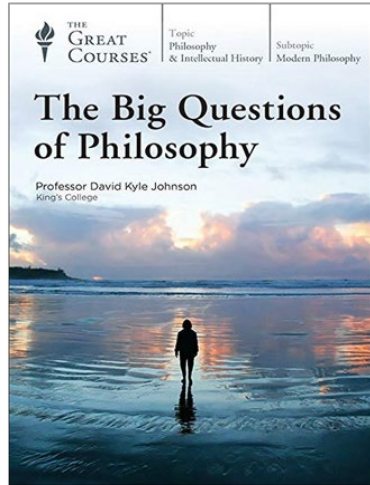
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