

Phil 116, April 2, 2010
Cohen on public reason and abortion

How might one defend a right to abortion? One might argue that...

1. Abortion is morally permissible, because the fetus is *not* a person.¹
2. Even if the fetus *is* a person, abortion is morally permissible, because it is permissible to refuse to provide life-sustaining aid to a person when (i) this is very costly for you and (ii) you are not responsible for the need for such aid.²
3. Even if abortion is *not* morally permissible, it is impermissible to legally prohibit it, because this would involve the exercise of coercive power on the basis of a justification that some of the people over whom coercive power is exercised could reasonably reject.

Cohen pursues strategy 3.³

The fact of reasonable pluralism: the fact that there are distinct, incompatible philosophies of life to which reasonable people are drawn under favorable conditions for the exercise of practical reason

- Why is there this pluralism? Because the “exercise of practical reason often proceeds within distinct traditions of thought with complex internal structures; personal circumstance and sensibility predispose people to different traditions; and empirical constraints... are typically too weak to swamp such differences, in part because the evaluative concepts themselves are imprecise and their explications are contested.”
- No attractive social or political mechanisms could prevent this.
- Does not mean that no moral outlook is true or can be known. Only that “in matters of comprehensive morality, the truth, if there be such, transcends the exercise of practical reason appropriate to expect of others.”

Deliberative conception of democracy: Citizens treat each other as equals by offering one another justifications for the exercise of collective power based on *public reason*: considerations that *all can accept as reasons*, “given the fact of reasonable pluralism and on the assumption that others are themselves concerned to provide suitable justifications.”

¹ See Jeff McMahan, *The Ethics of Killing: Problems at the Margin of Life* 1.1, 1.2, 1.3, 1.5.1, 1.5.2, 1.5.5, 4.1, 4.2, 4.7.

<http://www.oxfordscholarship.com/oso/public/content/philosophy/9780195079982/toc.html>

My handouts on this can be found at:

[http://sophos.berkeley.edu/kolodny/S08Phil108L15\(McMahanAbortion1\).pdf](http://sophos.berkeley.edu/kolodny/S08Phil108L15(McMahanAbortion1).pdf)

[http://sophos.berkeley.edu/kolodny/S08Phil108L16\(McMahanAbortion2\).pdf](http://sophos.berkeley.edu/kolodny/S08Phil108L16(McMahanAbortion2).pdf)

² See Judith Thomson, “A Defense of Abortion”

<http://links.jstor.org/sici?sici=0048-3915%28197123%291%3A1<47%3AADOA>2.0.CO%3B2-G>

My handouts on this can be found at:

[http://sophos.berkeley.edu/kolodny/S08Phil108L14\(ThomsonAbortion\).pdf](http://sophos.berkeley.edu/kolodny/S08Phil108L14(ThomsonAbortion).pdf)

³ See also Judith Thomson, “Abortion”

<http://www.bostonreview.net/BR20.3/thomson.html>

Democracy, so understood, is not in tension with, but instead *supports*, religious and moral liberties.

Religious liberties:

- If we seek to justify the restriction of religious freedom, we have to do so on the basis of reasons that believers could reasonably accept.
- But religious commitments are reasonably taken, by believers, to be *obligations*.
- So we need to find reasons that they might reasonably see as overriding these obligations.
- There rarely are such reasons.
- “The result is religious liberty, understood to include freedom of conscience, which condemns disabilities imposed on grounds of religious belief, and free exercise of religion, which condemns, in particular, limits on public worship.”

Abortion:

- Restrictions on abortion burden women in uncontroversial ways, that is ways that no one could reasonably reject:
 1. Burden on equality, when women (but not men) are required to carry unwanted pregnancies to term.
 2. Burden on liberty, by preventing women to make choices about the course of their lives. (This problem would not be alleviated by placing a comparable burden on men.)
 3. Burden on judgment, analogous (I think) to religious liberty. In its *Casey* decision, the U.S. Supreme Court says that “at the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”
- These rights *could be* overridden by an argument that abortion is the taking of innocent human life.
- But any such argument would depend on “a particular outlook about the nature and value of life” that could be reasonably rejected.

“The restrictive regime imposes undeniably substantial burdens on women’s liberty, equality, and independence of judgment; in a society of equals, those burdens need to be justified, and the terms of that justification must carry some weight with those whose liberty and equality are impaired. Otherwise, we fail to respect them as equals. The restrictive regime cannot stand, then, because no such acceptable justification is available.”

Assisted suicide:

Here the case is different, because the regulation could be defended by appeal...

- “not to a conception of when life ends or what makes a whole life (or parts of it) worth living,” which some might reasonably reject...
- “but to concerns about when we have a conclusive showing of a person’s willing decision to end her own life, and worries about pressures to make that decision as a way to reduce burdens on family and friends,” which are considerations of a kind whose force all might reasonably accept.