

Karen Wiederaenders

Fairway, KS

January 21, 2020

House Federal & State Affairs Committee and Senate Judiciary Committee

Opposition testimony to SRC 1613 and HRC 5019

My name is Karen Wiederaenders and I live in Fairway, KS. I am retired but in my professional life I was a medical librarian, and I served as the Director of Library Services over the entire St. Luke's Health System, an 11-hospital system in the Kansas City area. I hold two Master's degrees, one in Bioethics and one in Library Science. In my role as the Director of Library Services I provided reference services for everyone in the system. Since St. Luke's is a tertiary care hospital, many of the questions I received concerned a high level of care for unusual cases, often including difficult pregnancy complications. Additionally, I am a permanent member of the hospital bioethics committee and have assisted on hundreds of ethical consults.

I would like to present research that I believe is relevant to the issue of abortion. I am submitting a paper I wrote while completing my Masters in Bioethics. This paper is called Personhood: A Legal and Bioethical Synthesis. In this paper, I **examined the characteristics which make us sentient human beings and tried to find the stages at which the human fetus reaches certain capacities, such as the ability to feel pain.** I think you will find my paper helpful in reaching agreement about **the moral status of the fetus.**

There are some who make the false claim an abortion is never medically needed to protect the life and health of a mother, such as the founder of Live Action, Lila Roseⁱ, and the signers of The Dublin Declaration on Maternal Health Careⁱⁱ. I strongly disagree. I know there are cases where the life of the woman is endangered by pregnancy. Having served on the ethics committee for three decades, I have seen many situations where the pregnancy endangers the health of the woman. Her situation cannot be considered in an abstract way. Often there are other children who will be left motherless if she dies. I think it is imperative that we consider what the death of a mother would have on her family.

I have never met a woman who was eager to have an abortion although I have known many who were relieved to have the option. An abortion can be a life-saving procedure for a woman. It is vitally important that her ability to receive this medical procedure not be hindered or prohibited by the overreach of state government into her personal medical treatment decisions. If Roe v. Wade is repealed at the federal level, I fear the language of this amendment will leave the door open for impediments and obstacles that will put women's lives at risk.

Personhood:
A Legal And Bioethical Synthesis

Karen Wiederaenders
Selected Topics in Law and Society
Spring 2011

We cannot understand bioethics unless we have an agreement on the concept of personhood because only persons can have rights and interests. We can readily understand that all living people are persons but there is little agreement about what constitutes a human person at the beginning of life. With the advent of assisted reproduction, society has begun to peer into the earliest hours of conception and even tease apart the tiny cells that comprise the blastocyst. This has led to serious arguments about the status of the pre-embryo and the sacredness of life at every stage of development. Some view every fertilized egg as a person; others say that personhood does not begin until a live birth has occurred. There are arguments to support both views. What is missing from the debate is an actual definition of "personhood." I define "person" as a being who is capable of thought and suffering, is self-aware and conscious, is a member of the human race, and has moral status. I do not think the fetus meets the threshold of personhood until at least the third trimester of pregnancy and I will present the facts to support that argument.

Right to life advocates often speak of the "moment of conception" at which human life begins. There is no "moment of conception." There is a moment when the sperm penetrates the egg and the egg forms a hard shell that prevents any other sperm from entering. Then, over the next 24 hours, the two strands of DNA form into the famous double helix. The egg or "pre-embryo" travels down the fallopian tube and, about 25% of the time, becomes implanted in the uterus and pregnancy begins. At first there are two cells, then four, then eight. If the fertilization took place in a petri dish, this is the point at which the pre-embryos are either put in the freezer for future use or implanted, perhaps three or four at a time, in the prospective mother's uterus. All the cells are undifferentiated at this time and each one can become an entire human being. These are stem cells and, after the third doubling, they begin to follow the commands of the DNA and become organs, placenta, and umbilical cord. At this point the opponents of abortion or stem cell research would argue that the 8-celled embryo has a moral status as a person because it has the capacity to develop into a live human being. Is this true under the law?

In the *Roe v. Wade* case, Justice Blackmun wrote:

"The appellee and certain amici argue that the fetus is a 'person' within the language and meaning of the Fourteenth Amendment. In support of this, they outline at length and in detail the well-known facts of fetal development. If this suggestion of personhood is established, the appellant's case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the Amendment.... On the other hand, the appellee conceded on re-argument... that no case could be cited that holds that a fetus is a person within the meaning of the Fourteenth Amendment."¹

He also goes on to say that the constitution never defines the term *person* but none of the uses in the law would lead one to believe that the term was meant for prenatal life. *Roe v. Wade* ended in a compromise. "For the state prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician."² After the end of the first trimester the state could regulate abortion but only in ways that were related to maternal health. If the court had defined the term person then the debate about abortion might have ended there, but the court declined to say whether or not the fetus was a person. The *Roe v. Wade* decision goes on to say:

We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer."³

¹ *Roe v. Wade*, Supreme Court of the United States, 1973.

² *Roe v. Wade*, 1973

³ *Roe v. Wade*, 1973

Consciousness:

Since there is no legal definition of personhood, it is instructive to look at what bioethicists have said about it. One characteristic that is often mentioned is consciousness or awareness of self. Paul Penner and Richard Hull write:

"Personhood is traditionally taken to mean the possession of a range of psychological capacities such as the capacity for thought and self-consciousness. Another descriptive term, used in continental philosophy, is that of personhood as 'Being-in-the-world.' This refers to the state when the organism achieves awareness of its place in the physical world. In virtue of such awareness, the individual may be said to have interests, and we ascribe to beings with interest various rights as means of protecting those interests."⁴

It is certain that an eight-cell pre-embryo does not have any form of consciousness. The fact that it can be frozen at this stage, without any damage to its future use, suggests that it is not actually alive. The question, then, is at what stage does an embryo or fetus begin to have consciousness? None of us can remember prenatal life or even our earliest years, but we know we were conscious at birth because we interacted with our environment in meaningful ways. The earliest possible point for a fetus to begin to be conscious would have to occur when brain development arrives at the point that it begins to function. With the electroencephalograms currently available to us, we can determine that electrical activity starts in the brainstem at about 10 weeks. This does not mean that the fetus has consciousness at that point, but that it has begun to develop the capacity for thought. To actually produce thoughts or consciousness, the fetus has to have cortical activity in the brain and that does not begin until around 22 weeks gestation. Burgess and Tawia describe this stage of development thus:

"Between 22 and 25 weeks of gestation the most distinctive feature of EEG activity is its discontinuous nature. At this stage of development the EEG is made up of bursts of activity of up to 20 seconds interspersed with periods of no activity for up to 8 minutes. At 24 weeks, periods of activity occupy an average of only 2% of the EEG recording time and the EEG consists of a variety of slow waves."⁵

This indicates that continuous, permanent consciousness is not yet possible. However, by 29-35 weeks development, the fetus is experiencing persistent cortical function. This does not mean it is thinking as we understand it but that it is developing the capacity for thought and for self-consciousness.

Is the fetus aware of itself or its environment at this stage? Again, none of us remembers awareness but there is evidence that the fetus is beginning to respond to stimuli. The response of fetuses to sound has been studied.

"Hearing can be shown to function as early as 23 weeks gestation. Fetuses respond with a slowing of the heart rate during maternal speech,

⁴ Penner P.S., Hull, R. T. "The Beginnings of Individual Human Personhood" *Journal of Medicine and Philosophy* 33[2008]:174-82.

⁵ Burgess J.A., Tawais S.A., "When did you first begin to feel it?: Locating the beginning of consciousness. *Bioethics* 10 [1998]:1-26.

a demonstration of habituation, which in turn implies learning dependent on memory and repetitive input. Evidence suggests that fetuses can differentiate between different speech sounds and show preference for the maternal native language."⁶

It has also been shown that fetuses exposed to sounds before birth, such as the theme song for Mom's favorite show, will remember the sounds after birth and will respond to them as they did in utero. Recent studies have also shown that babies cry in ways that mimic their native languages so we know that some learning, via sound, is going on before birth.

So we know that there is some form of consciousness before birth, but that it most likely does not start until fairly late in the pregnancy. This is significant for abortion rights if you accept the idea that a fetus is not a *person* in the sense of the Fourteenth Amendment until more than halfway through the pregnancy so first trimester abortions would not violate the Fourteenth Amendment or the reasoning of the *Roe v Wade* decision.

Self:

A second attribute of personhood which is closely related to consciousness is *self*. Consciousness is not a free-floating quality. It has to be grounded in a being capable of awareness. That awareness constitutes the *self*. K.E. Himma has this explanation:

"In getting a sense for what, for the purposes of my argument, the concept of self *qua* subject describes, it is helpful to reflect on conscious experience. When I am having a conscious experience of some kind, say a visual perception of a tree, I can distinguish, analytically at least, two different elements of that experience. The first is, of course, the visual image of a tree as it appears, so to speak, in or to my mind's eye. This image consists of a number of felt qualities that constitute the perceptual content of the experience. These qualities include shapes and colors that are arranged in particular patterns, such as, for example, those that we associate with the branches of a tree.

The second is an awareness of something I experience as an inner Observer, an inner 'I' as Todd E. Feinberg puts it, to whom the image appears.

In my conscious experience of the tree, I am there as the observer or *subject* of that perceptual content."⁷

Self is a concept that is built from experience, mainly in discovering the ways that *I* am different from *you*. I know my face when I see it in a mirror. I have memories and experiences that make me what I am. An unborn fetus has no experience and in fact has no perception of itself as separate from its environment because it never has been separate from its environment. An embryo or fetus forming within the uterus is completely enmeshed in its environment. What's more, the placenta and the other products of conception are actually growing with the fetus. So the fetus, if it perceives anything, cannot perceive of itself as a separate being. One can wonder if twins or triplets recognize the presence of their siblings in the womb but it seems very unlikely that they would since the other fetus would just be part of the environment. A friend of mine, the mother of triplets, once told me that her babies liked to sleep crowded together in the same crib. I don't think any of the babies thought the others were separate beings they just knew that they felt right when they were together.

⁶ Penner and Hull

⁷ Kimma H.E., "A dualist analysis of abortion: personhood and the concept of self *qua* experiential subject." *J Med Ethics* 31 [2005]:48-55.

They had been habituated to the tightness of the womb which indicates some degree of awareness. As they grew they discovered their individuality and started competing with each other for their parent's attention. Now they are young adults and completely distinct from each other but it was a long process.

I would argue that the development of the awareness of self begins at birth when the first separation from the mother occurs. Up until that point, the fetus is a product of the mother's body and not actually a separate human being. I am not arguing that it is like any other organ in the mother's body or that it is not alive, but that it does not yet have a self. Here again we are back to talking about consciousness as a prerequisite to self.

"Fins and colleagues (2008) write that consciousness encompasses subjectivity, sentience, self-awareness and an ability to appreciate the relationship between the self and the environment' and recognize that it has been philosophically identified both with access to information and with phenomenality."⁸

I don't think anyone would argue that the fetus has subjectivity, sentience, self-awareness or the ability to appreciate the relationship between the self and the environment. It's not even certain that the newborn understands that it is now separate from its mother. The infant begins a relationship with the world around it at birth and continues to develop that relationship as long as it has consciousness. This is how a self is acquired and the fetus can not have it prenatally.

Ability to feel pain:

Recently the Kansas legislature joined several other states in passing a law restricting abortion after 22 weeks of gestation based on the idea that the 22 week fetus can feel pain. According to the Kansas City Star:

"One bill going to Brownback would ban all abortions at 22 weeks of pregnancy due to fetal pain unless a physician declares the abortion is necessary to save the woman's life or prevent irreversible damage to a major bodily function. The specifies that bodily function does not include mental or emotional functions, as the current law is interpreted."⁹

The ability to feel pain would imply two things about the fetus. First, that it has sufficient consciousness to be aware of pain. Second, that it has an *interest* in not be subjected to pain. Only persons can have interests so, if it meets the standard of personhood, it would also have an interest and a right to not be aborted. This is the intent of the anti-abortion framers of this law, of course, but are they right?

As discussed previously, it is not possible for a 22 week fetus to have consciousness. The legislation in Kansas is similar to a law being considered by Congress, the Unborn Child Pain Awareness Act. This proposed law contends that "the fetus has physical structures necessary to experience pain as evidenced by drawing away from surgical instruments."¹⁰ If this is true, then the fetus must also recognize the surgical

⁸ Wilkinson D., Kahane, G., Savulescu, J., "Neglected personhood" and Neglected Questions: Remarks on the Moral Significance of Consciousness," American Journal of Bioethics - Neuroscience 8[Sept 2008]:31-33

⁹ Two anti-abortion measures head to Kansas governor. Kansas City Star March 29, 2011 <http://www.kansascity.com/2011/03/29/276413/kansas-lawmakers-pass-anti-abortions.html>. Accessed March 29, 2011.

¹⁰ Lee, Susan J, et al. "Fetal Pain: A Systematic Review of the Evidence" JAMA 294 [2005]:947-54.

instruments as dangerous even though it has never encountered them before. This implies that the fetus can see or, at least, sense the presence of the surgical instruments. There is no explanation given as to how the fetus would be able to do this and we know from experience that small children do not know what is dangerous and will routinely put themselves at risk if left unsupervised for any period of time. Does the fetus somehow forget danger after it is born?

But the fact remains that a fetus will draw away from surgical instruments when it encounters them in utero. Is it because of pain? The American Medical Association thinks not. It differentiates between pain and nociception and considers drawing away from surgical instruments to be nociception.

"Nociception may be characterized by reflex movement in response to a noxious stimulus, without cortical involvement or conscious pain perception. Nociception involves peripheral sensory receptors whose afferent fibers synapse in the spinal cord on interneurons, which synapse on motor neurons that also reside in the spinal cord. These motor neurons trigger muscle contraction, causing limb flexion away from a stimulus."¹¹

Nociception is a reflex movement that implies the presence of active nerve cells. It is the same reflex that often happens with people who are unconscious or even brain damaged. Touching a person's hand will often cause them to grasp, which appears to be a purposeful response when it really isn't. Many times in ethics consults I have heard people say "But she squeezed my hand!" when we are trying to convince them that their loved one is permanently unconscious and without hope of recovery. It is quite true that the patient did respond to a stimulus, but it is not true that it was a purposeful response no matter how much it may look like one.

Pain can also be characterized as a reflex movement but it is much more than that. The AMA says:

"Pain is a subjective sensory and emotional experience that requires the presence of consciousness to permit recognition of a stimulus as unpleasant. Although pain is commonly associated with physical noxious stimuli, such as when one suffers a wound, pain is fundamentally a psychological construct that may exist even in the absence of physical stimuli, as seen in phantom limb pain. The psychological nature of pain also distinguishes it from nociception which involves physical activation of nociceptive pathways without the subjective emotional experience of pain. For example, nociception without pain exists below the level of a spinal cord lesion, where reflex withdrawal from a noxious stimulus occurs without conscious perception of pain."¹²

In contrast to nociception, pain requires development of the cortical regions of the fetal brain and actual consciousness. What's more, the cortical regions of the brain must be in communication with the spinal cord for pain to be perceived and this does not happen in fetuses before 26 weeks of gestation.¹³ Even then the connection is very weak and under-developed so that it is not likely that a noxious stimulus would produce true pain until much later in the pregnancy. And there is one more step before the fetus can feel pain. According to Lee:

¹¹ *ibid*

¹² Lee

¹³ Lee

"The histological presence of thalamocortical fibers is insufficient to establish capacity for pain. The anatomical structures much also be functional."¹⁴ At what point do the brain and the spinal cord begin to "talk" to each other? Electroencephalography, while not perfect since no EEG "pain pattern" has ever been identified, is one way to see the brain working.

"Normal EEG patterns have been characterized for neonates as young as 24 weeks postconceptual age (PCA) (i.e. the gestational age plus number of weeks postpartum). Electroencephalographic activity is normally asynchronous between the hemispheres and mostly discontinuous at less than 27 weeks PCA, becoming mostly continuous around 34 weeks PCA. Intrahemispheric synchrony increases around 29 to 30 weeks PCA, then declines, the increases again, reaching almost complete synchrony by term."¹⁵

There is no definite answer as to when the fetus has the cerebral capacity to feel pain but it appears certain that it cannot before 29 - 30 weeks post conception. This still leaves open the question of the psychological construct of pain. Can a fetus that is completely without experience in the world have the capacity to feel pain as a psychological construct? We have no way of knowing for sure but it seems unlikely. The psychological construct of pain would imply that the fetus has a memory of pain. We know that none of us has any memory of our own birth or even our first few years so it appears that for a preborn fetus to be able to recognize pain, it would have a functioning memory when a newborn does not. This is illogical. Besides, how would a fetus remember pain when it has never felt it before?

Moral Status:

The real argument keeping the abortion debate going is the question of the moral status of the embryo, fetus, or unborn child. First, a few definitions of moral status. Jason Eberl states:

"For instance, according to classical natural law theory (as influenced by Aristotelian virtue ethics) a being's moral status is related to the set of intrinsic capacities it possesses and the inherent value in allowing such capacities to develop into full actualization."¹⁶

McCullough and Chervenak say that "The phrase 'moral status' means that human beings have obligations to an entity, to protect and promote its interests." I would suggest that basically moral status means personhood in that it implies that the being in question has interests and rights that the rest of us have to recognize and protect. I have already shown that the embryo has no awareness of self or anything else, no perception of pain, has not developed a self. Does it have moral status? At what point in the pregnancy can the fetus be said to have moral status?

There are some, notably the Catholic Church, who say that the embryo has moral status at conception because it is indisputably a member of the human family. The argument that the conceptus has moral status is based on the idea that each of us continued from the embryo stage to our present stage so it is illogical that the

¹⁴ Lee

¹⁵ Lee

¹⁶ Eberl, J.T., "The Moral Status of "Unborn Children" Without Rights" American Journal of Bioethics 8[2008]:44-46.

embryo that became what we are today could have been anything other than us. It is basically arguing that the child we were is no different in moral status than the embryo we were before we were born. In thinking about this premise we need to return to the embryo stage and consider its characteristics.

As mentioned previously, the first cell division after fertilization is just two stem cells; the second is more stem cells. It is not until the fourth division which occurs about two weeks after conception that the cells begin to differentiate. Up until this point every cell in the embryo has the potential to become a complete human being. Sometimes the embryo splits apart and two identical human beings are formed, identical twins. There are even cases of identical triplets and quadruplets so it cannot be said that the embryo at this stage is a unique human being. No live person can split in two and form two distinct people. It could be said that each stem cell has the potential to become a human being but it cannot be said that a human being exists at this point.

You could make the argument that since the embryo has the potential to develop into eight people, it deserves our protection that much more. Since this paper is not about potential but about personhood let me just say that potential is only that - something that might happen. There are no cases of identical octuplets being born although it is theoretically possible. We cannot assign rights according to what is theoretically possible. For instance, I have the potential to go to medical school and become a doctor. That potential does not allow me to call myself a doctor now. In the same way, an embryo has the potential to develop into a human being but that potential does not grant it humanness or personhood now. If we as a society would want to grant rights based on potential we would never be able to do it, especially with something like an embryo that is basically all potential. We would first have to come to terms with the fact that 75% of pregnancies never come to term and there is no way to stop this.¹⁷ Next we would have to grant rights based on not what people have done but on what they assert that they might do. It would be impossible.

An eight cell embryo is not yet a unique individual but at the next cell division the stem cells undergo a change and begin to become the differentiated cells that will create the fetus, the placenta and umbilical cord. DeGrazia explains:

"On day 14 or 15 some middle cells differentiate and it is now determined which cells will become part of the placenta and which will become part of the fetus. Within a day, in the portion that will become part of the fetus, a column of cells differentiates into the 'primitive streak,' the precursor to the spinal cord. Spontaneous twinning is now impossible. The human organism is now uniquely individuated and it clearly functions as a single integrated unit. From a biological understanding of our essence, a uniquely individuated human organism is a being of our kind."¹⁸

So about two weeks post conception, when the stem cells loss their unique ability to become any cell in the body, the embryo settles into the uterine wall and begins the arduous journey towards birth. At this point it can be said that the embryo is a unique individual if not yet a person. Since it is now a unique individual it has some moral status but how much is open to debate. The right-to-life position and that of the Catholic Church is that intentionally destroying an embryo, whether in utero or in a petri dish, is murder. Robert George of Princeton University says:

¹⁷ DeGrazia, D., "Moral Status, Human Identity, and Early Embryos: A Critique of the President's Approach" *Journal of Law, Medicine & Ethics* 34[2006]:49-57.

¹⁸ DeGrazia

"The principle to which I subscribe is one that says that all human beings are equal, and ought not to be harmed or considered to be less than human on the basis of age or size or stage of development or condition of dependency."¹⁹

This argument is known among philosophers as "equal moral status" and it maintains that since there is no bright line separating the embryo from the fetus or the fetus from the child there is also no moment in which life becomes worthy of respect. It is always fully worthy of respect. On the other side of this debate is the idea that life is always worthy of respect but that respect does not mean the same respect that we give to a person. We can have levels of respect that do not involve human personhood. For instance, we can have respect for animals or nature. We show a different form of respect for a dying person than we show for a corpse although both are worthy of respect. This view also encompasses the fact that we react differently to the embryo than we do to a live person. No one would run into a burning building to save an embryo but many people would try to save a child. Embryos can be frozen or divided while persons cannot. Embryos also do not suffer. So there are many differences between embryos and persons that may allow us to offer a different level of respect.

Pro-choice advocates point to the fact that at this stage of development the embryo is completely dependent on the woman carrying it. It is a small part of her body at this point and should be under her control. Others, like Robert George, consider dependency to be irrelevant to the argument. We are all dependent at some point in life, whether as children or as older adults. This should not diminish our moral status. Perhaps dependency does not diminish the moral status of the embryo but it is a consideration. The second consideration in dependency is that of rights. Does the embryo have a right to its mother's womb? Does any of us have a right to demand that someone take care of us? At this point I would have to ask whether or not the pregnancy was entered into willfully. Did the woman agree to become pregnant? If she did, then she has also agreed to nurture the embryo. If the pregnancy was forced on her, as in cases of rape, then she is under no obligation to take on the responsibility of motherhood. We could get into a long list of "what ifs" here such as what if it was date rape or what if it was contraceptive failure. My opinion is that none of us has the right to intrude into someone's personal life and judge their motives. I really don't want to know how someone became pregnant and I don't consider that I have the right to ask.

In the Roe v Wade decision the mother's rights prevailed at this point. I would agree that the embryo has some moral status as a potential member of the human race although much less than the pregnant woman. The embryo does not yet meet the threshold of personhood and the mother certainly does so her autonomy should prevail at this point. If she does not want to continue the pregnancy, now is the time to end it. In fact, the great majority of abortions take place in the first six weeks of pregnancy and so do not concern the ending of the life of a person.

Cell divisions continue and, by the end of the first trimester, the embryo no longer exists. The pregnancy has progressed to the point where a fetus is present so let us now consider the moral status of the fetus.

¹⁹ "Debating the moral status of the embryo" 2011 March-April Harvard Magazine <http://www.harvardmagazine.com> accessed April 12, 2011

As discussed previously, at the beginning of the second trimester the fetus has not yet developed a capacity to think or feel pain, it has no awareness of self or its environment, and it can neither see nor hear. At about 23 weeks it is developed enough to survive outside the womb if it is given very high-tech intensive care. This does not mean that every 23 week baby will live but that enough of them do that it is usually worthwhile to give them extraordinary care. Even so many of these premature babies come out of intensive care blind and handicapped and facing a life of pain and hardship so saving them is not always the ethical route. However, once a baby is born it is considered a person who has rights.

The second trimester of pregnancy is not when elective abortions happen. No woman would continue a pregnancy for over 20 weeks and then decide she wants an abortion unless she is seriously mentally ill. Abortions at this point are difficult, painful, expensive, and hard to get. They involve going through labor and delivering a half-formed baby. The only reason anyone would want a second trimester abortion is if something is terribly wrong with the pregnancy or the fetus. Recently a Catholic hospital got into trouble with the church hierarchy for performing an abortion to save a woman's life. I have not encountered anyone who thought the church acted ethically because the fetus, although it has some moral status, never has the right to kill its mother. Pregnancy is a symbiotic relationship that should be beneficial to both parties. The woman provides her body for the gestation of the infant because she wants to become a mother. While it is true that all pregnancy is mildly dangerous, no woman is obligated to continue a pregnancy that will kill her or cause her severe harm. What about the right of the fetus to be born? I would argue that all rights are limited including the right to life. For example, I have a right to life but it is limited by the resources available to protect my right and by the rights of others. If I need a heart transplant, I can get on the transplant list and hope that a suitable heart becomes available. If my sister's heart would work for me, she has no obligation to give it to me since it would cause her death. Similarly, a second trimester fetus has a limited right to life since it has most of the prerequisites for surviving outside the womb. But it has no right to kill its mother and, in fact, has a strong interest in keeping her alive. So the rights and interests of the fetus are subordinate to the rights and autonomy of the mother.

By the beginning of the third trimester the fetus is capable of ex-utero life and has most of the capacities that would qualify it for personhood. It has consciousness as evidenced by the fact that its EEG pattern is now organized and it can hear and learn. It can feel pain. It does not yet have a self since it has not yet had any experiences but it has the capacity to experience the world around it once it is born. Likewise, it has very limited ways to interact with the world around it but it can kick and move. Whether or not this is purposeful, we do not know. We can say that the third trimester fetus has the characteristics of a newborn infant and so qualifies for personhood.

I take the view that the development of personhood is a continuum that starts with the embryo and ends at death. I would not say that an eight cell embryo has any of the characteristics of personhood, except the DNA necessary to give it membership in the human species. Since it is not an individuated being, its destruction does not rise to the level of real moral concern. I know there are many who would argue with that stand but the fact is that assisted reproduction clinics all over the world are creating and discarding these pre-embryos all the time. In fact, nature is creating and destroying these all the time too. The most common fate for a fertilized egg is not implanting in the uterine wall. If these were considered persons, then their destruction would be considered something on the order of genocide. After all, the embryos destroyed naturally comprise about 75% of all pregnancies. To decry this as a moral calamity would be to argue with nature.

As the embryo develops it begins to become a unique human being. In the first trimester, it has some recognizable human features but no consciousness and no capacity for thought or experience so it is not a person under the meaning of the Fourteenth amendment. Elective abortion at this point is morally troubling because of the potential for human personhood but the rights of the woman should prevail. It is her body and her future. If she does not consent to be a mother, then she should not be forced into it.

By the second trimester, the fetus is developing the capacity for life on its own. Once it has detectable brain waves it is beginning to become conscious. The presence or absence of brain waves determines whether an adult is dead or alive and the same standard could be applied to prenatal life. When the fetus begins brain wave activity at about 20 weeks then it has met the first threshold for personhood and should be protected. All third trimester fetuses, except for those with severe congenital defects that are incompatible with life, have a rudimentary personhood and are capable of living outside the womb. These should be considered children and given the rights and protections appropriate to their status in society.

It is my opinion that the reasoning of Roe v Wade was correct. The embryo is not a person under the Fourteenth Amendment and the third trimester fetus is.

Bibliography

1. Roe v. Wade, Supreme Court of the United States, 1973.
2. Penner P.S., Hull, R.T. "The Beginnings of Individual Human Personhood" *Journal of Medicine and Philosophy* 33[2008]:174-82.
3. Burgess J.A., Tawais S.A., "When did you first begin to feel it?: Locating the beginning of consciousness." *Bioethics* 10 [1998]:1-26.
4. Kimma H.E., "A dualist analysis of abortion: personhood and the concept of self *qua* experiential subject." *J Med Ethics* 31 [2005]:48-55.
5. Wilkinson D., Kahane, G., Savulescu, J., "'Neglected personhood' and Neglected Questions: Remarks on the Moral Significance of Consciousness," *American Journal of Bioethics - Neuroscience* 8[Sept 2008]:31-33
6. Two anti-abortion measures head to Kansas governor. *Kansas City Star* March 29, 2011 <http://www.kansascity.com/2011/03/29/276413/kansas-lawmakers-pass-anti-abortions.html>. Accessed March 29, 2011.
7. Lee, Susan J, et al. "Fetal Pain: A Systematic Review of the Evidence" *JAMA* 294 [2005]:947-54. ¹
8. Eberl, J.T., "The Moral Status of 'Unborn Children' Without Rights" *American Journal of Bioethics* 8[2008]:44-46. ¹
9. DeGrazia, D., "Moral Status, Human Identity, and Early Embryos: A Critique of the President's Approach" *Journal of Law, Medicine & Ethics* 34[2006]:49-57.
10. Debating the moral status of the embryo" 2011 March-April *Harvard Magazine* <http://www.harvardmagazine.com> accessed April 12, 2011

ⁱ <https://healthfeedback.org/claimreview/lila-rose-claim-that-abortion-is-never-medically-necessary-is-inaccurate-it-is-necessary-in-certain-cases-to-preserve-mothers-life-young-america-foundation/>

ⁱⁱ <https://www.dublindeclaration.com/>