

Lecture Slides

Ethics in the 21st Century

Summer 2019

The following is a sampling of the lecture slides that served as companions to the student handouts.

Contents

1. **CONTRACT LAW**
2. **ABORTION**
3. **CONSERVATION ETHICS**
4. **NON-IDENTITY PROBLEM**

PHIL 178

Contract Law

Agenda

- ❖ 1. What is a contract?
- ❖ 2. Birth of a contract (offer and acceptance)
- ❖ 3. Death of a contract (breaches, excuses, etc.)

1 What is a Contract?

- ❖ A **contract** is a legally enforceable promise.

1 What is a Contract?

- ❖ But not all promises are legally enforceable. The law only enforces “mutually conditional promises”.
- ❖ a) I promise to give you my hat conditional on your giving me \$20, and you promise to give me \$20 conditional on my giving you my hat.
- ❖ b) I promise to give you my hat.

2 Birth: Offers

- ❖ I make you an **offer** =df. I *manifest* a willingness to enter into a *bargain* in such a way that it would be *reasonable* for you to believe that if you accept the bargain, then we will be under contract.

2 Birth: Offers

- ❖ “manifest a willingness”
- ❖ “bargain”
 - ❖ Homeless Coat v. The Raffle
 - ❖ *Elvin Associates v. Franklin* (1990)
- ❖ “reasonable to believe”
 - ❖ [Leonard v. Pepsi](#) (2000), *Kolodziej v. Mason* (2010)
 - ❖ *Lucy v. Zehmer* (1954), *Carbolic Smoke Ball Case* (1892), “first come, first served”

2 Birth: Offers

- ❖ Can you legally offer the impossible? Sometimes, yes.
 - ❖ The “double offer” conundrum.

2 Birth: Acceptance

- ❖ You **accept** my offer =df. You manifest an assent to the terms I made in my offer in a manner that either (i) makes it reasonable for me to believe you are assenting to my offer, or (ii) was required by my offer.

2 Birth: Acceptance

- ❖ How well must you understand the terms to accept?
 - ❖ *Specht v. Netscape* (2002), “Peerless” (1864)
 - ❖ *ProCD v. Zeidenberg* (1996)

2 Birth: Acceptance

- ❖ What sorts of terms can one accept?
 - ❖ a) unfair terms?
 - ❖ *Waters v. Min Ltd* (1992), *Embola v. Tuppela* (1923), *Batsakis v. Demotsis* (1949)
 - ❖ “freedom of contract” v. “unconscionability”
 - ❖ b) blackmail cases
 - ❖ *Lettermann case* (2009)
 - ❖ c) surrogacy cases
 - ❖ “*Baby M*” (1988)

3 Death: Excuse

- ❖ Mistake
 - ❖ *The Fake Stradivarius* (1934), *Simpkin v. Blank* (2012), “buyer beware”
- ❖ “Acts of God”
 - ❖ *Kel-Kim* (1987)
- ❖ Frustration of Purpose
- ❖ Impossibility
- ❖ Incapacity/Youth

3 Death: Breach

- ❖ I **breach** our contract =df. (i) I fail to do something I have contracted to do, or (ii) I demonstrate that I will not do what I have contracted to do, or (iii) I do something that makes it impossible for me to do what I have contracted to do.

3 Death: Breach & Remedy

- ❖ Not all breaches kill contracts.
- ❖ Most common remedy: “expectancy damages”
 - ❖ *“Hairy Hand” Case (1926)*
 - ❖ *“Pledge This!” Case (2009)*

Abortion:

Legality
and
Morality

Agenda

- ❖ 1. The **legality** of abortion (in United States)
 - ❖ 1.1. Before *Roe v. Wade*
 - ❖ 1.2. *Roe v. Wade*
 - ❖ 1.3. Constitutional Interpretation and the Correctness of *Roe v. Wade*
 - ❖ 1.4. After *Roe v. Wade*
- ❖ 2. The **morality** of abortion
 - ❖ 2.1. The language of *rights*
 - ❖ 2.2. The basic right-to-life argument
 - ❖ 2.3. Thomson's defense of abortion

1.1. Abortion in the Law: before Roe v. Wade

- ❖ 1700s:
 - ❖ Abortion permitted prior to “quickening”; state felony for abortion provider after quickening.
 - ❖ Partly grounded in considerations of “ensoulment”.
 - ❖ Pre-quickenings restrictions usually about safety concerns.

1.1. Abortion in the Law: before Roe v. Wade

- ❖ 1800s:
 - ❖ Medical discovery: quickening an insignificant part of gestation process.
 - ❖ Abortion (in most circumstances) becomes a felony up to point of conception in every U.S. state.
 - ❖ But also significant increase in quantity (and social diversity) of abortions.

1.1. Abortion in the Law: before Roe v. Wade

- ❖ 1900-1960:
 - ❖ Medical professionals take over abortion provider roles, leading to significant increases in safety for women undergoing an abortion.
 - ❖ Feminist movement turns pro-abortion.
 - ❖ Further increase in rate of abortions (800,000/yr in 1930).
- ❖ 1960-1972:
 - ❖ 1962: Sherri Finkbine
 - ❖ Chicago “Jane”
 - ❖ 1965: *Griswold v. Connecticut*
 - ❖ 1967-1972: twenty states loosen abortion restrictions
 - ❖ Political mobilization: e.g., National Right to Life Committee and National Abortion Rights Action League

1.2. Roe v. Wade

- ❖ 1965: *Griswold v. Connecticut*.
 - ❖ Connecticut law making it illegal to use contraceptives.
 - ❖ Estelle Griswold, Executive Director of Planned Parenthood League of Connecticut, opens PP branch in New Haven. Fined \$100. Appeals to Supreme Court.
 - ❖ Supreme Court (7-2) rules the CT law unconstitutional. It violates a fundamental “right to privacy” that is *implicit* in the Constitution.
 - ❖ Dissenting opinion: the CT law an “uncommonly silly law,” but constitutional, since a general right to bodily privacy nowhere to be found in the Constitution.

1.2. Roe v. Wade

- ❖ June 1969: 21 yr old Norma McCorvey pregnant with third child. Seeks abortion, but abortion illegal in Texas.
- ❖ 1970: Norma files suit in Texas court under alias 'Jane Roe'. Appealed to US Supreme Court
- ❖ June 22, 1973: Supreme Court (7-2) rules that the Texas law is unconstitutional.
- ❖ Majority opinion:
 - ❖ 1. The 9th and 14th amendments protects a general right to privacy.
 - ❖ 2. The right to privacy includes the right to have an abortion.
 - ❖ 3. Therefore, the Constitution protects a woman's right to have an abortion.
 - ❖ But not an absolute right. Constitutional right through 1st trimester. Constitutional right in 2nd trimester unless woman's health at risk. No constitutional right in 3rd trimester.
- ❖ Dissenting opinion:
 - ❖ (i) There's no general right to privacy in the Constitution. And, in any case, it's unclear why the Court is seeing implicit fundamental rights of adults in the Constitution, but not fundamental rights of fetuses.
 - ❖ (ii) "The drafters did not intend to have the Fourteenth Amendment withdraw from the States the power to legislate with respect to this matter."

1.3. Constitutional Interpretation

- ❖ How does the law change? By lawmakers performing certain speech acts: writing a statute, making a declaration, etc.
- ❖ But *how* do the speech acts of lawmakers change the law?

1.3. Constitutional Interpretation

- ❖ For example...
- ❖ **Second Amendment:** “A well regulated militia, being necessary for the security of a free State, the right of the people to keep and bear Arms shall not be infringed.”
- ❖ We can see what words are contained in the second amendment. But what is made legal and illegal by the writing of those words? What is their *legal effect*?
- ❖ Is it the *literal meaning* of those words that determines their legal effect? Is it the *intentions* the authors had in mind when they wrote those words? Is it something else?

1.3. Constitutional Interpretation

- ❖ **Literalism:** the legal effect of a constitutional statement is determined by the *literal meaning* of that statement at the time the statement was made.
- ❖ Example: in 1785 Congress, mistakenly thinking whales are fish, says: “Killing fish in Chesapeake Bay is prohibited. Killing aquatic creatures that are not fish is not prohibited.”
- ❖ Does this law make it legal or illegal to kill whales, according to Literalism?

1.3. Constitutional Interpretation

- ❖ **Intentionalism:** the legal effect of a constitutional statement is the legal effect *intended* by the lawmaker.
- ❖ In 1785 Congress says: “Killing fish in Chesapeake Bay is prohibited. Killing aquatic creatures that are not fish is not prohibited.”
- ❖ Does this law make it legal or illegal to kill whales, according to Intentionalism?

1.3. Constitutional Interpretation

- ❖ **Moralism:** the legal effect of a constitutional statement is determined by the moral principles that paint that principle in the best possible light.
- ❖ Compare: a novel, a painting.
- ❖ **Eight amendment:** “Excessive bail shall not be required, nor excessive fines imposed, nor *cruel and unusual* punishments inflicted.”
- ❖ Does this law make it legal or illegal to hang someone for stealing a car, according to Literalism? According to Intentionalism? According to Moralism?

1.3. Constitutional Interpretation

- ❖ **Fourteenth Amendment:** “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any *person* of *life, liberty, or property*, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”
- ❖ Do the legal effects of the fourteenth amendment include the right to an abortion (as claimed by the majority in *Roe*)?
 - ❖ What might the Literalist say? The Intentionalist? The Moralist?

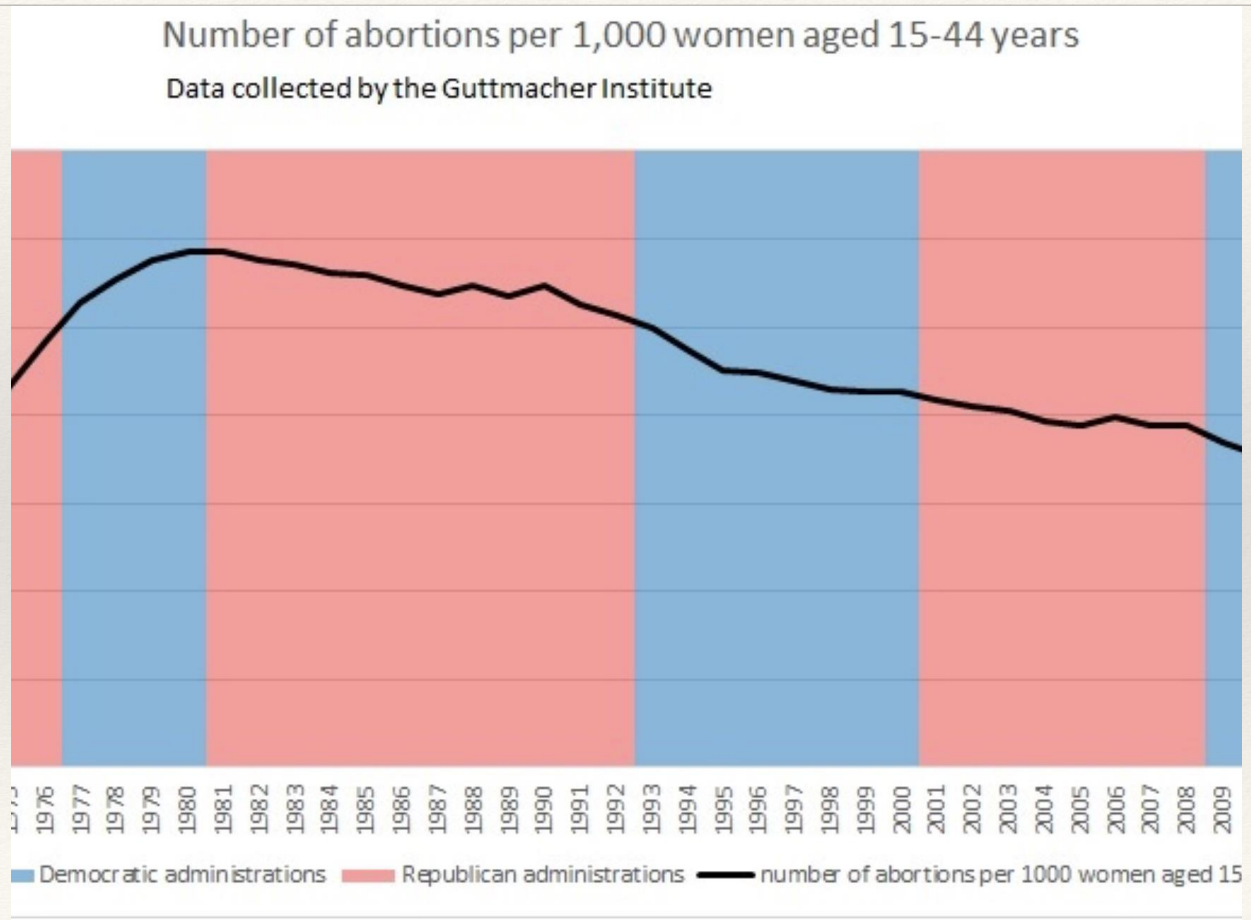
1.4. Abortion in the Law: after Roe v. Wade

- ❖ 1992: *Planned Parenthood v. Casey*
- ❖ 2002: “*Born Alive*” Act
- ❖ 2003-2007: *Partial-birth Abortion Ban Act*
- ❖ Changes in “viability” date.

1.4. Abortion in the Law: after Roe v. Wade

- ❖ Domains of state variability:
 - ❖ Time period in which abortion permissible.
 - ❖ Parental involvement. 37 states require parental consent or notification.
 - ❖ Mandatory events: waiting periods, ultrasounds, heartbeat listens, counseling.
 - ❖ Abortion provider qualifications.

1.4. Abortion in the Law: after Roe v. Wade



1.4. Abortion in the Law: after Roe v. Wade

- ❖ Public Opinion, by gender
- ❖ Public Opinion, historical trends

1.4. Abortion in the Law: after Roe v. Wade

- ❖ 2019:
 - ❖ New York passes Reproductive Health Ac, legalizing abortion in third-trimester.
 - ❖ Alabama, Mississippi, Kentucky, Ohio, Georgia, Louisiana pass “Heartbeat Bills”: abortion illegal after six weeks.

2.1. The language of Rights

Hohfeldian Type	Correlative
A has claim against B	B has duty towards A
A at liberty	B has no claim against A

- ❖ A has a claim that B not take her car = B has a duty to A (B “owes it” to A) not to take her car.
- ❖ A is at liberty to drive her car = no one has a claim that A *not* drive her car
- ❖ Ordinary talk of ‘rights’ is ambiguous between claims and liberties.

2.2. The Right-to-Life Argument

❖ Some definitions:

- ❖ **Extreme anti-abortionism.** Abortion is morally impermissible, even in cases where the woman's life is at stake, there are serious fetal defects, or where the pregnancy is the product of non-consensual sex.
- ❖ **Moderate anti-abortionism.** Abortion is morally impermissible in cases where the woman's life is not at stake, there are no serious fetal defects, and where the pregnancy is the product of consensual sex.
- ❖ **Extreme pro-abortionism.** Abortion is morally permissible up until the time of birth.
- ❖ **Moderate pro-abortionism.** Abortion is morally permissible up until the time of viability.
- ❖ **"Ordinary" pregnancy.** Pregnancies that are the result of non-incestual, consensual sex, where the woman's life is not threatened by the pregnancy and where the fetal does not suffer from any significant defects.

2.2. The Right-to-Life Argument

- ❖ 1. Every human/person has a claim right to life.
- ❖ 2. A fetus is a human/person.
- ❖ 3. Therefore, a fetus has a claim right to life. [1 & 2]
- ❖ 4. It is impermissible to violate someone's claim rights unless there are *more* weighty rights at stake.
- ❖ 5. There are no more weighty rights at stake in cases of abortions in ordinary pregnancies (for example, a woman's permission right to decide what happens in and to her body is outweighed by a fetus's claim right to life).
- ❖ 6. It is a violation of a human/person's right to life to kill it.
- ❖ 7. Therefore, it is impermissible to kill a fetus in cases of ordinary pregnancy. [3,4,5 & 6]

2.2. The Right-to-Life Argument

- ❖ The “old school” abortion debate centered around the first two premises:
 - ❖ 1. Every human/person has a claim right to life.
 - ❖ 2. A fetus is a human/person.
- ❖ Pro-abortion objection:
 - ❖ If we read the argument in terms of ‘persons’, then (1) is plausible but (2) is implausible.
 - ❖ If we read the argument in terms of ‘human’, then (2) is plausible but (1) is unsupported.

2.3. Thomson's Defense of Abortion

- ❖ Thomson proposes a very different sort of objection.
- ❖ Even if (1) and (2) are true, she says, the argument still fails.

2.3. Thomson's Defense of Abortion

- ❖ Thomson: premise (6) is false. *"It is a violation of a human/person's right to life to kill it."*
- ❖ The case of the Violinist.

2.3. Thomson's Defense of Abortion

- ❖ **Failed Rescue.** Max finds himself stranded at sea one day with a nutritional epipen that will allow him to survive for nine months, at the end of which (he knows) he will be saved. That same day, Max happens upon an unconscious stranger on another raft who, Max somehow learns, will die imminently unless Max brings the stranger aboard and feeds the stranger with Max's epipen every day for the nine months. Appreciating the gravity of the situation, Max brings the unconscious stranger aboard and learns that, if he successfully cares for the stranger in the meantime, the stranger will regain consciousness about twenty weeks into this rescue mission. But Max has a hard time rationing the scarce food and space on his tiny raft, and after suffering bouts of related nausea, cramping, and vomiting, Max pushes the unconscious stranger overboard ten weeks into the rescue.

2.3. Thomson's Defense of Abortion

- ❖ Thomson:
 - ❖ 1. It is intuitively permissible to unplug the Violinist.
 - ❖ 2. The violinist, like all humans, has a right to life.
 - ❖ 3. Thus, the right to life does not include a right to be provided with whatever is necessary to live a minimally decent life.
Likewise, the right to life does not include the right to the use of another's body. In sum: a right to life does not entail that others have a duty of rescue, no matter what the cost.
- ❖ A right to life only gives one the right not to be killed *unjustly*.
 - ❖ The case of the Falling Man.

2.3. Thomson's Defense of Abortion

- ❖ **Objection #1: it's not okay to unplug the Violinist**
 - ❖ Counter: but then we need to seriously revise our ordinary moral beliefs about the extent of our duties of rescue.

2.3. Thomson's Defense of Abortion

- ❖ **Objection #2: the Violinist case is not a good analogy because it involves no consent.**
 - ❖ In cases of ordinary pregnancy, you consent to the sex that carries with it a risk of pregnancy.
 - ❖ “No doubt she did not invite [the fetus] in. But doesn't her partial responsibility for its being there itself give it a right to the use of her body?”
 - ❖ Counter: The Burglar. The Seed People.

2.3. Thomson's Defense of Abortion

- ❖ **Objection #3: the Violinist case is a bad analogy because the Violinist is not your offspring.**
- ❖ Counter: "We do not have any such "special responsibility" for a person unless we have assumed it, explicitly or implicitly. If a set of parents do not try to prevent pregnancy, do not obtain an abortion, and then at the time of birth of the child do not put it out for adoption, but rather take it home with them, then they have assumed responsibility for it, they have given it rights, and they cannot now withdraw support from it at the cost of its life because they now find it difficult to go on providing for it. But if they have taken all reasonable precautions against having a child, they do not simply by virtue of their biological relationship to the child who comes into existence have a special responsibility for it."
- ❖ Counter-counter: The case of Grandma. And other non-assumed special responsibility.

2.3. Thomson's Defense of Abortion

- ❖ Worth noting: the following two questions are distinct.
- ❖ (1) Is it morally permissible to have (or perform) an abortion?
- ❖ (2) Should the law allow abortions to be had/performed?
- ❖ The second question introduces a potential new factor: rights against coercion.
- ❖ A possible position: it is wrong for an individual to perform an abortion, but it is also wrong for the government to use coercive force to prevent doctors from performing abortions.

Conservation Ethics

Agenda

- ❖ 1. Preliminaries
- ❖ 2. The intrinsic worth of natural entities
- ❖ 3. The well-being of natural entities
- ❖ 4. Ethical decisions: case studies

1.1.

Instrumental v. Intrinsic Worth

- ❖ Moral worth: that quality which explains why one's interests must be taken into consideration and one must be treated in certain ways.
- ❖ Instrumental v Intrinsic worth.

1.2. Survey

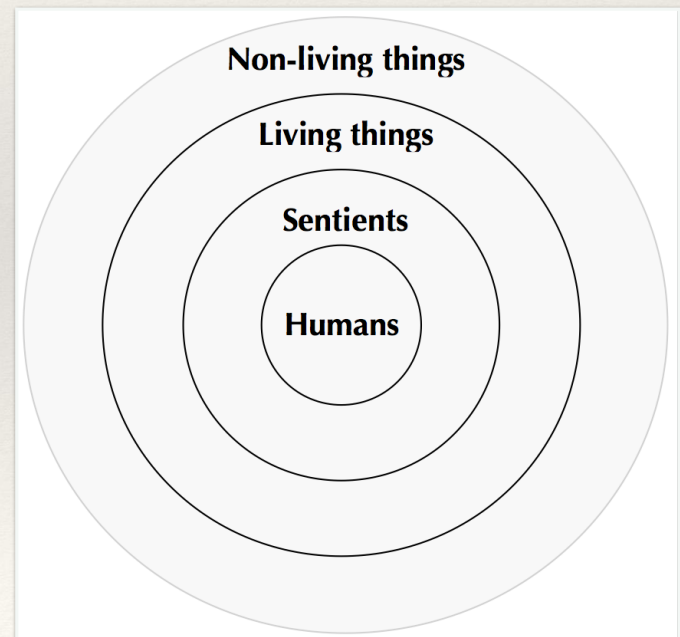
- ❖ Do human beings have intrinsic moral worth?
- ❖ Do non-human animals that are capable of the conscious experience of pleasure and pain have intrinsic moral worth?
- ❖ Do trees have intrinsic moral worth?
- ❖ Do rocks or mountains have intrinsic moral worth?
- ❖ Do species (and not just their individual members) have intrinsic moral worth?
- ❖ Do “natural communities” or ecosystems have intrinsic moral worth?

2

The Worth of Natural Entities

2.1. What sorts of natural entities have worth?

- ❖ *Humanism*. Only human beings have intrinsic moral worth.
- ❖ *Sentientism*. Only conscious creatures have intrinsic moral worth.
- ❖ *Bio-ethicism*. Only living things have intrinsic moral worth.
- ❖ *Eco-ethicism*. Living things have intrinsic moral worth, but so too do some non-living things (e.g., species, ecosystems).
- ❖ *Gaia-ethicism*. The only entity with intrinsic moral worth is the Earth itself (biosphere, atmosphere, hydrosphere, pedosphere).



2.2 How much worth do natural entities have?

- ❖ *The Equal View.* All natural entities with moral worth are of equal worth.
- ❖ *The Variable View.* Not all natural entities with moral worth have the same amounts of it.

2.3.

What explains moral worth?

- ❖ Candidates:
 - ❖ Consciousness (capacity to feel pleasure/pain)
 - ❖ Rationality
 - ❖ Emotionality
 - ❖ Life
 - ❖ Functional complexity
 - ❖ Being valued
 - ❖ Some combination of the above...

2.3.

What explains moral worth?

❖ Questions:

- ❖ If consciousness/capacity to feel pleasure/pain is the sole ground of moral worth, what sorts of natural entities have intrinsic moral worth? Do they have it in equal amounts?
- ❖ If life (“goal-directedness” or “being an organism”) is the sole ground of moral worth, what sorts of natural entities have intrinsic moral worth? Do they have it in equal amounts?
- ❖ If functional complexity is the sole ground of moral worth, what sorts of natural entities have intrinsic moral worth?
- ❖ If being valued is the sole ground of moral worth, what sorts of natural entities have intrinsic moral worth?

3

the well-being of natural
entities

3.1. the idea of Well-Being

- ❖ The fact that something has moral worth doesn't yet tell us what duties we have towards that thing. Must also know what is *good* and *bad* for that thing — i.e., we must know what makes its life go better or worse

3.2.

the well-being of
sentients



3.2. the well-being of sentients

- ❖ In week one, we talked about what makes a human life go better or worse.
- ❖ Two influential theories:
 - ❖ *Hedonism (the Pleasure view)*. One life is better than another just in case it has a greater balance of pleasure over pain.
 - ❖ *The Desire-Satisfaction View*. One life is better than another just in case it involves the fulfillment of more desires.
- ❖ But both of these theories are inapplicable to non-sentients...

3.2.

the well-being of living, non-sentient
things



3.2.

the well-being of living, non-sentient things

- ❖ Intuitively, what sorts of things would be *bad for* an oak tree?
 - ❖ Disease
 - ❖ Loss of nutrients
 - ❖ Storm damage
 - ❖ Bark stripping
 - ❖ Death
 - ❖ Lack of acorns/failure to reseed
 - ❖ (Lack of beauty?)

3.2. the well-being of living, non-sentient things

- ❖ Two theories:
 - ❖ (1) *The Survival Theory*. Something is good for a non-sentient, living thing just in case it helps the organism to survive.
 - ❖ Worries for the survival theory?

3.2. the well-being of living, non-sentient things

- ❖ (2) *The Teleological Theory*. Something is good for a non-sentient, living thing just in case it helps the organism to function properly. (Where members of different species have different proper functions.)
- ❖ What is it for an organism to function properly?
 - ❖ Cannot appeal to the desires/plans/intentions of the organism.
 - ❖ Historically, an organism's proper function was thought of as a product of *divine design*: a wolf is functioning well just in case it is functioning as God designed wolves to function.
 - ❖ Most contemporary philosophers appeal to *biological fitness*. A wolf is functioning well just in case it is functioning in a way that typically promotes wolf survival and reproduction.

3.3.

the well-being of non-living things



3.3.

the well-being of non-living things

- ❖ Types of ecological entities:
 - ❖ *Species*. Populations of organisms that closely resemble each other genetically and are capable of interbreeding so as to produce fertile offspring. (e.g., eastern gray squirrel)
 - ❖ *Populations*. Groups of individuals from the same species who inhabit a particular area. (e.g., the gray squirrels in a particular forest)
 - ❖ *Communities*. Collections of populations in the same area. (e.g., the flora and fauna of a particular forest)
 - ❖ *Ecosystem*. An interacting natural community together with its non-living environments. (e.g., a particular forest)

3.3.

the well-being of non-living things

- ❖ What, intuitively, are the sorts of things that make for a better ecosystem?
 - ❖ “Biodiversity”:
 - ❖ Qualitative variety at each level
 - ❖ Quantitative variety at each level
 - ❖ Process diversity
 - ❖ “Integrity”:
 - ❖ Historical longevity
 - ❖ Historical continuity
 - ❖ Stability
 - ❖ Beauty

3.3.

the well-being of non-living things

- ❖ A challenging question: *why* are all of these features *good for* an ecosystem?
 - ❖ Cannot appeal to pleasure/pain.
 - ❖ Cannot appeal to desire satisfaction.
 - ❖ Cannot appeal to survival value.
 - ❖ Cannot appeal to reproductive value.
 - ❖ Perhaps: functional complexity or being valued

4.

Ethical

decisions

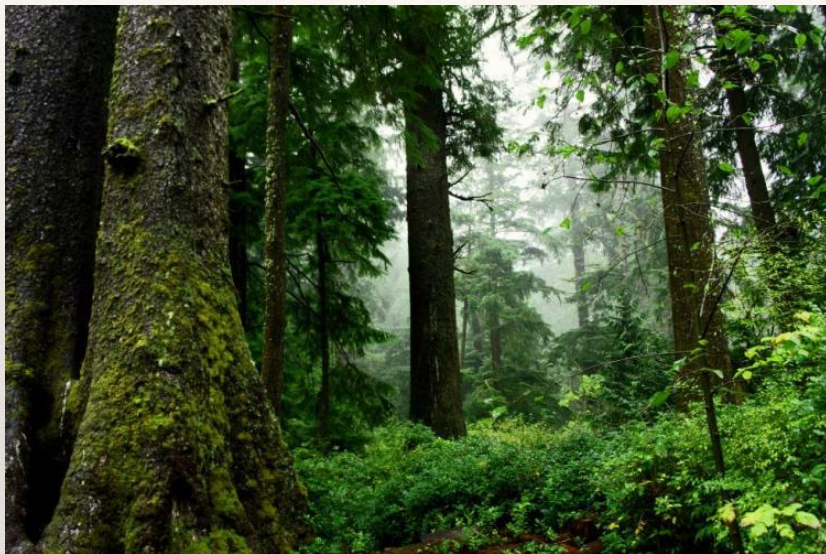
4.

Ethical decisions

- ❖ Case studies:
 - ❖ Human well-being v. well-being of individual organisms (discussed yesterday)
 - ❖ Human v. species
 - ❖ Individual organisms v. species
 - ❖ Individual organisms v. ecosystems

4.1.

Human v. Non-human species



Pacific Northwest conifer forest

Northern Spotted Owl



4.1.

human v. non-human species

- ❖ Northern Spotted Owl lives only in old-growth forest. < 5,000 individuals.
- ❖ Old-growth forest most lucrative for logging.
- ❖ Post-WWII construction boom in Pacific Northwest. Vast portions of old-growth forest cut down.
- ❖ 1980s: Northern Spotted Owl population begins sharply declining.
- ❖ 1990: decision whether to put the N.S. Owl on the Endangered Species list.
 - ❖ If **YES**, then likely the N.S. Owl population stabilizes. But 24-million acres of timber forest off limits, raising home construction prices by 5% throughout entire country.
 - ❖ If **NO**, then likely N.S. Owl goes extinct.

4.2

Individual organisms v. species



Barred Owl

Northern Spotted Owl



4.2

Individual organisms v. species

- ❖ Northern Spotted Owl placed on Endangered Species list in 1990. But population continues to plummet.
- ❖ New threat: bigger, more aggressive, east-coast import owl. The Barred Owl.
- ❖ Two choices:
 - ❖ (1) **Do nothing.** Likely the Northern Spotted Owl species goes extinct.
 - ❖ (2) **Kill 1,000 barred owls/year for ten years.** Save 100 Great Northern Owls.

4.3

Individual organisms v. Ecosystem



Feral Pigs



4.3

Individual organisms v. Ecosystem

- ❖ Feral Pigs: hybrids of early European domesticated pigs (introduced 1539) and the Eurasian Wild Boar (introduced 1912).
- ❖ > 6 million in U.S.
- ❖ 26% lower vertebrate species in areas with feral pigs
- ❖ Feed on reptiles, amphibians, and birds
- ❖ US native plants fit for grazing mammals, but not rooting mammals — responsible for reduced population of 300 plant species, 250 of which are endangered.
- ❖ Water pollution and diminishment of fish population
- ❖ Severe threat to sea turtle population
- ❖ Very few natural predators in US with absence of Grizzly
- ❖ Two options:
 - ❖ **Allow unrestricted hunting with financial compensation:** will reduce population by 50%.
 - ❖ **Do nothing.** Pig population will increase by 50% within ten years.

The non-identity problem

Agenda

- ❖ 1. The Problem
- ❖ 2. Potential Solutions

1

the

problem

❖ **Mary:**

- ❖ Mary is pregnant. She suffers from a condition that, if untreated, will reduce her child's expected lifespan to 40 years (though with no reduction in quality of life up until that time).
- ❖ The condition can be treated with a single costless, painless, side-effect free pill.
- ❖ Mary decides not to take the pill. She later gives birth to Matthew.

❖ **Susy:**

- ❖ Susy returns from a jungle expedition and has contracted a disease. Her body will have defeated the disease in twenty-four hours, but if she conceives within the day her child's expected lifespan will be only 40 years.
- ❖ Mary decides to conceive *today*. She later gives birth to Sammy.

1

the

problem

- ❖ Two potential policies:
- ❖ **Depletion:**
 - ❖ Our society will enjoy a high quality of life for 100 years, a moderate quality of life for the next 100 years, and a low quality of life for 500 years after that.
- ❖ **Conservation:**
 - ❖ Our society will enjoy a moderate quality of life for the next 700 years.
- ❖ We choose Depletion.

1

the

problem

- ❖ Three attractive claims:
- ❖ (1) An act is *wrong* only if that act makes things *worse* for someone. Acts that *maximize* wellbeing for each and every existing or future person cannot be wrong.
- ❖ (2) One does not make someone's life worse by bringing them into existence to live a life worth living.
- ❖ (3) We act wrongly when we choose the Depletion policy. Susy acts wrongly by not waiting for a day to have a child.

1

the

problem

- ❖ But here's the problem:
- ❖ The "*necessity of origins*": if you are the product of sperm x and egg y, then necessarily you are the product of sperm x and egg y.
- ❖ Susy does not make Sammy worse off by not waiting a day. If Susy had waited a day, then Sammy would never have existed!
- ❖ Depletion does not make any particular person worse off. If we had chosen Conservation, then entirely different people would have existed in two-hundred years!

1

the

problem

- ❖ So one of these three claims *must* be false:
- ❖ (1) An act is *wrong* only if that act makes things *worse* for someone. Acts that *maximize* wellbeing for each and every existing or future person cannot be wrong.
- ❖ (2) One does not make someone's life worse by bringing them into existence to live a life worth living.
- ❖ (3) We act wrongly when we choose the Depletion policy. Susy acts wrongly by not waiting for a day to have a child.

1

the

problem

❖ But which one?

2

solutions

potential

2.1

potential solutions:
reject (3)

- ❖ We could deny:
 - ❖ (3) We act wrongly when we choose the Depletion policy.
Susy acts wrongly by not waiting for a day to have a child.
- ❖ **Worry 1:** this is extremely counterintuitive in individual cases.
- ❖ **Worry 2:** a more general consideration: it seems odd that the manner in which future people are conceived should make such a difference to the permissibility of present policies.
Consider the Depletion₂ case.

2.1

potential solutions: reject (3)

- ❖ Two potential policies:
- ❖ **Depletion₂:**
 - ❖ Our society will enjoy a high quality of life for 100 years, a moderate quality of life for the next 100 years, and a low quality of life for 500 years after that.
- ❖ **Conservation₂:**
 - ❖ Our society will enjoy a moderate quality of life for the next 700 years.
- ❖ Just before voting for the policy, we freeze 1-million sperm and eggs. As part of either policy, these sperm and eggs will be used to conceive 1-million children in 300 years.
- ❖ We choose Depletion₂.

2.1

potential solutions:
reject (3)

- ❖ A really significant implication!:
- ❖ If (3) is false, then it turns out that we have much **fewer duties towards future generations** that we may have thought we did. Morality permits us to privilege presently-existing people to a considerable extent.

2.2

potential solutions: reject (2)

- ❖ We could deny:
 - ❖ (1) An act is *wrong* only if that act makes things *worse for* someone. Acts that *maximize* wellbeing for each and every existing or future person cannot be wrong.
- ❖ There are three ways we might deny (1):
 - ❖ *Strategy 1*: you can harm someone without making them worse off.
 - ❖ *Strategy 2*: you can violate someone's rights without making them worse off.
 - ❖ *Strategy 3*: morality is more impersonal than we may have thought.

2.2

potential solutions: reject (3)

- ❖ *Strategy 1*: you can harm someone without making them worse off. An act can be wrong in virtue of *harming* someone, even if it's not wrong in virtue of making that person *worse off*.
- ❖ Shiffrin's gold bar.
- ❖ **Worry**: but these sorts of harms are often morally acceptable. Heart surgery. Why think Susy's case and the Depletion case are like the gold bar case and not like the heart surgery case?

2.2

potential solutions: reject (3)

- ❖ *Strategy 2*: you can violate someone's rights without making them worse off. An act can be wrong in virtue of *violating* someone's *rights*, even if it's not wrong in virtue of making that person *worse off*.
- ❖ Many think there are such things as harmless wrongs:
 - ❖ Being treated unfairly without being made worse off
 - ❖ Being disrespected without being made worse off
- ❖ **Worry**: but why think Sammy is treated unfairly or is disrespected? And why think those living in the year 2400 are treated unfairly or disrespected by the Depletion policy?

2.2

potential solutions: reject (3)

- ❖ *Strategy 3*: morality is more impersonal than we may have thought. An action can be wrong in virtue of bringing about a worse *society*.
- ❖ Morality doesn't just care about comparisons between each individual's possible lives.
- ❖ On this view, Depletion is worse than Conservation because it brings about a worse society.
- ❖ But how to think about these societal comparisons? What makes a society better or worse?

2.2

potential solutions: reject (3)

- ❖ What makes a society better or worse?
- ❖ The **Total View**: One society is better than another if it enjoys more total well-being.
 - ❖ ...but this leads to the “Repugnant Conclusion”.
 - ❖ We care, not just about quantity, but also about quality.
- ❖ The **Average View**: One society is better than another if it enjoys more average well-being.
 - ❖ ...but this leads to the “Mere Addition Paradox”.
 - ❖ We care, not just about quality, but also about quantity.
- ❖ The **worry**, then, for adopting an “impersonal” approach to morality: it’s unclear if there’s a plausible way to do it.

where does this leave us?

- ❖ Commonsense morality cannot survive intact when it comes to our obligations to future persons. We have to give up some intuitive claim or other.
- ❖ Either we need to rethink our conception of *wrong action*.
- ❖ Or we need to rethink the *extent of our duties to future persons*.