

Defending the First Premise: Why Prenatal Life Is Not the Exception

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A Senior Thesis submitted in partial fulfillment
of the requirements for graduation
in the Honors Program
Liberty University
Spring 2023

Acceptance of Senior Honors Thesis

This Senior Honors Thesis is accepted in partial fulfillment of the requirements for graduation from the Honors Program of Liberty University.

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Abstract

This thesis frames the abortion debate by dividing the pro-life position into two premises: that the government must protect human beings' right to life, and that an unborn human organism is a human being. It briefly describes the proposition that the unborn are moral persons. It then proceeds to examine philosophical, legal, and practical objections to the first premise, concluding that if the unborn are established as human beings, the government must uphold their right to life. While this thesis is intended to argue in favor of restricting elective abortion, it does not put forth an opinion on what should be considered an elective abortion or how restrictions should be enforced.

Abortion's moral status is not subjective; the government can and should legislate it. An unborn human being has the right to live in dependence on its mother, and abortion is not justified by the right to bodily autonomy or self-defense. The *Roe v. Wade* opinion provided weak support for a constitutional right to abortion. The Court has recognized its insufficient reasoning, and the case is no longer controlling law. Prohibiting abortion does not confer an affirmative duty to aid beyond the bounds of what is appropriate in law. While abortion is treated as a cultural panacea, its societal benefits are vastly overstated. Any positive impact of abortion cannot overcome the government's duty to protect human rights. Like slavery, abortion is an unsalvageable institution that must end.

Defending the First Premise: Why Prenatal Life is Not the Exception

The United States of America was founded 250 years ago with the signing of the Declaration of Independence, the philosophical charter of the newly independent nation. Its declaration of natural rights begins:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. (1776)

America's founders successfully instituted these principles up to a point. The new nation experimented with representative government, attempting to create a functional system that truly reflected the natural rights and intrinsic equality of humanity. However self-evident these truths, though, they were slow to be put into practice. Politics, stubbornness, mistruths, and convenience kept true legal equality off the table for most of the years since. Vast improvements have occurred over time, but the American government still fails in its duty to secure human rights for all. Abortion, the intentional killing of an unborn human being, remains legal in most states, denying equality of the first and most fundamental right: the right to life.

The pro-life philosophy is reducible to a simple syllogism:

- I. If the unborn organism is a human being, the government is responsible for defending its right to life.
- II. The unborn organism is a human being.
- III. Therefore, the government is responsible for defending the unborn human's right to life.

Advocates who do not distinguish between the two principles often find themselves speaking in circles. Historically, attacks have been focused on the second, but there is an increasing tendency

to rhetorically grant the humanity of the unborn yet defend abortion anyway. These new arguments often make sense, but only by intentionally disregarding fundamental truth.

As used here, the word abortion refers only to elective abortions. The medical complexities of what constitutes an elective abortion are a topic for a different essay. This thesis also does not give specific recommendations on how to enforce the unborn human's right to life. For example, Texas made abortion a civil matter to be enforced by lawsuits, attempting to skirt the requirements of *Roe v. Wade*, while other jurisdictions legislate it as a crime (Feuer, 2021). Some propose amending state constitutions to declare fetal personhood, which would likely criminalize embryonic stem cell research, in-vitro fertilization, and forms of birth control that also function as abortifacients (Carlisle, 2022). There is also ongoing debate over who should be liable for committing abortions: only the person performing the abortion or the abortifacient's manufacturer, all professionals involved, or everyone including the mother. Most pro-life advocates would not generally support penalizing mothers, but this raises questions about the government's ability to enforce restrictions. Regardless, these are legislative questions best decided by elected officials.

The Personhood of the Unborn Human

The first premise matters little without establishing the unborn as a human life, a person under the meaning of the Fourteenth Amendment. The bare fact of being human imparts incalculable value. The law recognizes humanity's value; in many cases, this principle forms the basis for legislation. For example, the death penalty is only available for treason and crimes that take human life. Even a deceased human is afforded respect under the law. While dead bodies can't be considered persons, the law still has an instinctive regard for them by virtue of their

biological humanity. Many federal and state laws ensure the respectful treatment of human remains.

Similarly, a human with no brain function must be sustained unless the proper legal authority allows them to pass on. Removing life support from a person who will never recover is not analogous to an abortion, however, because it is a form of passive euthanasia. Many in medical ethics hold the view that, while killing a patient is wrong, it is not necessary to keep one alive at all costs, especially one whose life has effectively ended (McLachlan, 2008). Omissions are not morally equivalent to actions, in other words (McLachlan, 2008). Abortion, by contrast, is the active killing of the doctor's patient for another person's benefit. If no one had acted, the braindead person would still be dead, but the unborn patient would be alive and growing.

Levy v. Louisiana (1968) defines persons as humans that live and have their being. A full discussion on the humanity of the unborn would require a deeper dive into biology, but a layman can observe some simple facts. While scientists disagree on which definition of life is most fitting, a growing organism with continuous cell function would be considered alive under any of them (Sagan & Sagan, 1970). Some would prefer to restrict the beginning of life to implantation or viability, but there is no clear scientific and philosophical justification for doing so (Kaczor, 2015). A zygote is a growing being with a genetic code distinct from its mother, which qualifies it as a separate organism, according to 91% of biologists (Jacobs, 2021).

A human is an individual member of the species *homo sapiens*. This is not determined by the presence of a psyche or a visibly human physique, but by the individual's DNA. It could be said that the psyche, what some may call the soul, confers the value humans place on each other rather than DNA. This may well be true, but the government cannot legislate on the basis of the intangible and unobservable. Therefore, legal humanity should rely on an objective marker – a

human genetic code. “Handbook on Abortion,” a famous pamphlet before *Roe v. Wade*, discusses this question, “In a sense nothing else really matters. If what is growing inside the mother is not human life, is just a piece of meat, a glob of protoplasm, then it deserves no respect or consideration at all, and the only valid concern is the mother’s physical and mental health, her social well-being, and at times even her convenience” (qtd. in Greenhouse & Siegel, 2010, p. 101). It is not, however, an undifferentiated piece of tissue. In some sense, it is the “clump of cells” that abortion activists so often refer to. In the same sense, every living thing, from the simplest alga to a human in the prime of his life, is a clump of cells. Cells indicate life, and the genes therein indicate human life.

One thing that emphatically does not grant an individual their humanity is that person’s legal status. The Fourteenth Amendment declares that American citizenship begins at birth, a clause cited in *Roe v. Wade* (1973) as evidence that the Constitution does not grant fetal personhood. Though birth is a convenient point for citizenship to begin, the unborn are biologically and morally alive before then. A social security number is not a requirement to qualify for the right to life. Only the privileges and immunities clause applies exclusively to United States citizens; due process and equal protection are extended to noncitizens (*Yick Wo v. Hopkins*, 1886). Regardless of their legal privileges, non-citizens are unquestionably morally equal to citizens. They have protections under the Bill of Rights, and they are afforded the natural rights of life, liberty, and property.

Without justification, the unborn are not considered legal persons at the federal level (*Murrow v. Clifford*, 1974). They are undeniably human; their DNA declares it. They are alive; their cells grow and replicate. They are not cancerous growths with mutations of their mothers’ genetic codes but new, unique individuals. Some, such as *Psychology Today*, would draw a

distinction between “human” and “person” (Henriques, 2015). The unborn are said to lack the shadowy concept of “being” as used in *Levy*. The truth is that a living human is inseparable from his or her personhood. Attempting this distinction is an age-old mistake, and history shows it to be dangerous precedent. Author and philosopher Aldous Huxley said, “The propagandist’s purpose is to make one set of people forget that the other set of people are human” (qtd. In Johnson & Detrow, 2016). After all, modern abortion is hardly the first instance of a society defining humanity however it suits them. The government should not have the authority to declare a group of humans to exist without being, however courts define the word.

Once humanity is established, the unborn organism possesses human rights and is entitled to have those rights vindicated by the government. The law should protect their life from public and private harm, as it does for postnatal humans. However, various justifications have arisen for allowing the current double standard: philosophical frameworks, legal precedent, and practical considerations. These arguments are insufficient to justify the unborn human’s lack of legal protection.

Philosophical Arguments Against Abortion Restrictions

A person’s position on an issue is greatly affected by their philosophical framework, especially when dealing with the metaphysical. If the unborn’s humanity is granted, whether genuinely or for the sake of argument, there can still be disagreement on how abortion should be legislated. The following arguments focus not on prenatal humanity, but on the government’s responsibility to protect the unborn from harm. They are organized by their philosophical bases but can easily overlap in practice.

The Argument from Feminism

Abortion is often treated as a women's rights issue, vital for resolving gender inequality. Reproductive autonomy, one of its many euphemisms, gives women control over their personal lives and protects them from the hardships of pregnancy. Pro-choice feminists claim that laws criminalizing abortion have the "effect and purpose" of keeping women subservient and denying them the role of decisionmaker in their own lives, but this sidesteps the government's interest in protecting innocent life (Center for Reproductive Rights, 2004, p. 3). Men and women do in fact share an unequal burden in bearing and raising offspring. Biologically, a man could have a hundred children with impunity. The mothers would be saddled with months of physical changes, limited mobility, healthcare costs, hormonal imbalance, social scrutiny, discomfort, and pain from the pregnancy alone. The pro-choice feminist's solution is to end unwanted pregnancies. If the unborn is a human life, however, abortion victimizes an innocent person, and an unjust solution is no solution at all.

While the gender disparity is intrinsic, there are proposals to mitigate it. Child support helps encourage men to be present and assist with the burden of reproduction. Utah has passed legislation that requires child support to cover half of prenatal medical bills and health insurance premiums (Eppolitto, 2021). This policy is a step toward recognizing the legal implications of prenatal personhood. Not only does it protect women from bearing the full burden of reproduction, but it also promotes personal responsibility in men, which could reduce unintended pregnancies overall. While some physical effects of pregnancy are unavoidable, others may be managed by technology, medicine, and social support. Abortion is not the answer.

Surprisingly, abortion often works against the female liberation it supposedly advances. In one study, 61% of women who had gotten an abortion claimed they had felt highly pressured to do so, especially by their family or significant other (Reardon & Longbons, 2023). Those that reported higher pressure to abort were also more likely to report grief, intrusive thoughts, and interference with daily life (Reardon & Longbons, 2023). Human traffickers also prolifically make use of abortion as a means to hide their abuse and avoid losing income. An influential study found that 55% of women who had been victims of sex trafficking had received abortions, and over half of those said it had not been their choice (Lederer & Wetzel, 2014). Additionally, sex-selective abortion is common in parts of the world, most notably South and East Asia, and it would be naïve to assume it is never practiced in the United States (Erken, 2020). While the feminist movement now upholds abortion as necessary for empowerment, the feminists of the Twentieth Century argued that motherhood is a sacred privilege of femininity, and that abortion is a symptom of the deep societal problems their movement intended to resolve (Feminist History, n.d.). Protecting unborn life is not incompatible with feminism. Women, like men, deserve legal protection at every stage of their lives.

The Argument from Postmodernism

Postmodernism is a philosophical framework that treats institutions and objective knowledge with skepticism. Truth either does not exist or cannot be known according to postmodernism; morality is a matter of opinion and facts are relative (Duignan, 2020). From this viewpoint, a pro-life judge or lawmaker has no right to assert their own standards of morality on others by restricting abortion. This perspective is the source of platitudes such as “If you don’t like abortion, don’t get one.” It is also the philosophy behind the argument that the anti-abortion stance is religious in nature, and that lawmakers would be imposing their beliefs on the rest of

the country by enforcing it. This reasoning reduces prenatal life to a matter of faith that the government has no right to rule on (Greenhouse, 2021). It is flawed, however, because the government's responsibility to protect unborn life is not a matter of religious dogma.

Granted, many pro-life Americans are influenced by their religious values, as with any issue. Jews and Christians believe that humans are the *imago Dei*, or the image of God. Many denominations, especially Roman Catholicism, place significant emphasis on protecting human life inside the womb. However, the belief that human life is valuable is not exclusive to a particular faith. The proposition that life begins at conception is reliant on scientific fact more than any specific religious doctrine. To say that enforcing pro-life principles violates religious freedom is to say that any legal issue with religious implications should be left to the individual; if that were the case, the government would have little room to govern.

Restricting abortion violates neither the Establishment Clause nor the Free Exercise Clause of the First Amendment. The Satanic Temple considers abortion a religious ritual and argues that Satanists should be exempt from abortion restrictions under free exercise (The Satanic Temple, n.d.). However, the Supreme Court in *Reynolds v. United States* (1878) unanimously held that religious practices are not immune to regulation. Otherwise, a person could sidestep any law by claiming the action as a religious practice. Furthermore, laws based on a disapproval of abortion do not violate the Establishment Clause simply because they coincide with some religions' beliefs (*Harris v. McRae*, 1980).

If it is not the government's place to determine who has human rights or which rights predominate, why should the government defend rights at all? Law, by its nature, upholds institutions and absolutes. The Constitution relies on a set of philosophical principles such as inalienable rights; if one is discussing American government, throwing out objective

metaphysical statements is not an option. Where human rights are involved, the law cannot remain neutral without negating its purpose. Abortion is not immune to restriction solely because opinions differ on its morality.

The Argument from Liberalism

Liberalism is a political theory that requires the state to vindicate individuals' rights and autonomy (Ball & Girvetz, 2019). Pro-choice advocates with a liberal philosophy may argue that abortion is protected by the right to bodily autonomy, which takes a form such as: "For pregnancy in a liberal society to constitute a just condition, it must be a relation between a woman and a fetus to which the woman has given her full and voluntary consent" (West, 1999, p. 2120). They believe that even if the unborn human is considered a person, their right to life cannot come at the expense of their mother's right to control her body, and this gives the pregnant woman a self-defense right to remove the invader by any means necessary. As a justification for abortion, this reasoning has several flaws.

An unwanted pregnancy shares aspects with a self-defense situation: an intrusion into one's personal property, various potential for bodily harm to the holder of the property, and an act of violence intended to end the intrusion. The problem with this parallel is that self-defense is subject to rules, especially self-defense ending in the death of the intruder. It is not appropriate to use fatal self-defense against an innocent person (Quong, 2009). The threat of bodily harm needed to justify self-defense must be reasonably perceived as immediate, and fatal self-defense is not appropriate unless the victim is in danger of death or grievous injury (Fisher, 2022). Even Castle Doctrine generally requires the intruder to have unlawfully and forcefully entered the defender's property, and some states require that deadly force was used reasonably (Pantekoek,

2020). People do not have unlimited license to unilaterally vindicate their rights, especially against an innocent person.

Furthermore, the claim that an unborn human needs their mother's consent to live and grow in her body is misguided. In the overwhelming majority of cases, pregnancy results from consensual sexual activity (Finer et al., 2005). Consent to a risk involves consenting to its potential consequences; for instance, stock losses deprive a person of property, but this is not a form of theft. While a person may use whatever means available to mitigate those consequences, they cannot do so at the expense of another person's rights. It is true that liberty generally entitles people to give or withhold consent to the use of their bodies. However, absolutizing this right, over even the right to life, is illogical. A nursing mother in a region without formula access could not withdraw consent for her child to nurse. The stronger of two conjoined twins could not demand that her dependent sister stop using her organs and have them surgically separated. Though controversial, vaccine mandates are another example of the government compelling people to use their bodies for others' benefit. Banning abortion is less of an intrusion on personal liberty than vaccine mandates because it does not compel the woman to use her body in a particular way (i.e., becoming pregnant), but restrains her from halting a natural process (i.e., ending her pregnancy).

A related complaint is that banning abortion gives the unborn extra rights over another person (Donegan, 2019). However, minors do have a distinct set of rights, and the law makes special provisions for their interests. Locke's Second Treatise on Government states that children have a right to their parents' support (1660). Their liberty interests are lesser in practice than those of adults, but their health and safety take precedence. Family law matters are always resolved in the *best interests of the child*. The phrase is taken from the UN's Declaration of the

Rights of the Child, which states, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth” (Declaration of the Rights of the Child, 1959). As long as a parent has custody of a child, they have legal obligations toward that child (Otterstrom, 2019). If both mother and child were equally protected under the law, both of their lives would be zealously defended from unjust harm.

The Argument from Humanism

Many humanists would grant that the unborn is a biological human but claim that its death may not be wrong compared to the consequences of an unwanted pregnancy. The mother can process her suffering, while the unborn is not aware of their own existence; in some circumstances, it is potentially acceptable to end their life before they begin to think and feel. Therefore, humanists "do not presume to lay down strict moral rules," and prefer to allow the mother the autonomy of her decision (Norman, 2016, p. 5).

These arguments are unconvincing when approached from the natural rights perspective inherent in the American legal system. The primary problem with the humanist perspective is that it sets human lives on a scale of relative value. It acknowledges that the unborn human has some value but sets it below the value of the mother's dreams, financial health, or comfort. This line of logic erroneously assumes that the unwanted child will always negatively affect the mother; in two studies, around three-quarters of women denied an abortion would later be happy that they were unable to end their pregnancies (Ankerberg & Weldon, 1990).

The mother's happiness is valuable, but it is not more valuable than an innocent life. Humans have equal worth because they are human, not because of self-awareness, viability, or

any other standard put forth to minimize prenatal humanity. An embryo is not self-aware, but neither can a fifteen-month toddler be called fully self-aware. The toddler's life is equally as valuable as an adult's, despite its developing cognition. A first-trimester fetus is not viable, but the same could be said of people who need medical intervention to be able to survive. If their value is not degraded by their dependence, neither is an unborn human's. When a person is allowed the decision over whether to end another human's life, it renders morality a measure of power, not justice.

Furthermore, if they do judge human value by cognitive development, humanists should be arguing for stricter abortion restrictions. The House of Lords attempted to estimate a prenatal human's cognitive abilities throughout its term *in utero*, finding that the very loosest definition of sentience (fetal motion, response to stimuli, brain stem activity) could occur before the end of the embryonic stage, with stricter milestones being hit throughout the pregnancy (Commission of Inquiry Into Foetal Sentience). The strictest markers for sentience (self-awareness) do not occur in humans until eighteen months after birth (Rochat, 2003). If abortion is to see any restriction, the only objective biological markers are conception, implantation, and birth. Conception is the only one of these that changes the organism qualitatively. For the purposes of legislation, conception is the least arbitrary point at which to restrict abortion.

Abortion and the Law

The legal system exists not only to distribute justice for violations of law, but also to uphold state and federal constitutions and allow people to vindicate their rights. The unborn, however, have no voice in the courtroom. Until 2022, judge-made law prohibited states from recognizing their right to life. Now, with little federal case law on the subject still standing, legal

battles for and against abortion continue at the state level. Both sides have rights-based arguments. However, if the humanity of the unborn is established, the right to life must predominate.

Roe v. Wade

The 1973 Supreme Court case *Roe v. Wade* was decided seven to two by nine very competent justices. However, it was clearly bad law. Its written opinion was far insufficient to justify the grand scale of its holdings. The right to privacy was already an unenumerated right extrapolated from other constitutional provisions by *Griswold v. Connecticut* (1965). The Court in *Roe* stretched this right to determine that abortion, by virtue of its relation to private matters such as marriage, health, and reproduction, is protected by the Constitution. Whether or not *Griswold* had sufficient constitutional support to justify its conclusions, the right to privacy cannot protect conduct that may not be victimless. The Court in *Roe v. Wade* made no effort to interrogate that question. *Roe* and *Doe* went through no intermediate appellate review and were lacking in facts and evidence. They created a broader so-called right to abortion than is currently practiced in any European country (Forsythe, 2022).

Roe v. Wade usurped legislative authority by making abortion a matter of forced constitutional interpretation. Not only did it unilaterally create a right to a type of medical procedure, but it also incorporated that right to all states, which until then had largely rejected abortion (Forsythe, 2013). It even went so far as to impose a rigid framework of specific rules: abortion was to be completely legal throughout the first trimester, then subject to restriction only on the basis of maternal health until viability. After viability, the state was permitted to enforce its interest in the fetus's "potentiality of life" unless a doctor determined that the pregnancy would interfere with maternal health (*Roe v. Wade*, 1973). Health, as determined in the

companion case *Doe v. Bolton* (1973), refers not only to physical health but “all factors -- physical, emotional, psychological, familial, and the woman's age” (p. 192). Even the easiest and best-timed pregnancy is likely to have a significant impact in any of these areas, so finding a doctor to approve a late-stage abortion would be easier in theory than *Roe v. Wade* appears to intend. Data from before *Casey* have not been made public, but according to the Centers for Disease Control and Prevention, almost 1% of reported abortions in 2020 took place past the 20th week of gestation, totaling about 5500 (2021).

There is evidence that the *Roe* and *Doe* decisions were motivated in part by fears of rapid population growth (Forsythe, 2013). Justice Blackmun mentioned population growth as a complicating factor in *Roe*, and one of the *amici curiae* in support of Jane Roe explicitly cited population control as a reason for legalizing abortion (Greenhouse & Siegel, 2010). Even the pro-choice Justice Ginsburg voiced her concerns about potential alternative purposes: “Frankly I had thought that at the time *Roe* was decided, there was concern about population growth and particularly growth in populations that we don't want to have too many of” (Bazelon, 2009, para. 78). If this motive was present, it may partially explain the cases’ weaknesses.

The Court’s decision to implement viability as the line after which the states have an interest in protecting fetal life was arbitrary. It was not mentioned during oral arguments or put forth by any party or *amicus* (Forsythe, 2022). Furthermore, the point of viability in 1973 was a much later date in the pregnancy than it is now (Colby, 2021). Somehow, the legal protections afforded to the unborn under *Roe* were subject to change with advances in medical technology. Actual viability also depends on region and access to medical technology. If a pregnant woman at 24 weeks travels from New York to West Africa, is her child suddenly deprived of moral value? Viability varies with every case and cannot be determined until the child is born. In fact,

Justice Blackmun admitted that his reliance on trimesters was “arbitrary, but perhaps any other selected point, such as quickening or viability, is equally arbitrary” (qtd. in Forsythe, 2013, p. 50). This should have alerted the justices that they were assuming far too much authority and imposing philosophically unsound policy, but it failed to shake their confidence. *Planned Parenthood v. Casey* (1992) invented the more reasonable undue burden test but still did not do enough to address states’ legitimate interest in protecting prenatal life. States could now promote life and impose stricter limits on abortion, but they could not directly prevent most abortions from being performed (*Casey*, 1992).

Dobbs and the Unknown Future

The legal history of abortion in America has been extremely controversial. Countless organizations exist solely to advocate for either side of this specific issue. However, most of its existing case law was suddenly overturned last summer by the court case *Dobbs v. Jackson Women’s Health Organization* (2022). The *Dobbs* decision did not rely on the premise that abortion kills a human being, though it acknowledged the possibility. It relied instead on federalism and a more literal constitutional interpretation than previous case law. *Dobbs* calls *Roe* “egregiously wrong” and its reasoning “exceptionally weak” (*Dobbs*, 2022, p. 2243). *Roe*’s application of the right to privacy “conflated the right to shield information from disclosure and the right to make and implement important personal decisions without governmental interference” (p. 2237). The ability to have an abortion was held to be neither “deeply rooted in this Nation’s history and tradition” nor “implicit in the concept of ordered liberty,” failing the *Washington v. Glucksberg* (1997) test to be considered a fundamental right (p. 2242). *Dobbs* replaced the undue burden test with rational basis review, allowing states to regulate abortion

when the regulation relates to legitimate purposes, including the belief that the unborn human has moral value. Unsurprisingly, this case has been as divisive as the case it overturned.

The overturning of *Roe v. Wade* crumbled the existing structure of abortion case law. The Court explicitly intended the question to return to the legislature and the states, as it has now done (*Dobbs*). Many states now prohibit abortion either partially or in all non-extreme cases. It remains that Congress may preempt these laws by placing *Roe*'s holdings into statute. Despite compelling constitutional support, the Supreme Court would be unlikely to invalidate such a law. A federal constitutional amendment either for or against abortion access is also unlikely, considering America's sharp divide on the issue. As the Court intended, local popular opinion will now dominate the abortion debate.

McFall v. Shimp

Pro-choice advocates often use the analogy of a person being forced by law to donate an organ to another person in critical need (Carroll & Crutchfield, 2022). Some cite the case *McFall v. Shimp* (1978), which held that an individual has no right to a bone marrow donation from a relative, even if his life is in the balance and no other donor match is available (Piper, 2021). However, this case is poor evidence for the right to abortion. First, it was a local case with little mandatory authority on other jurisdictions. Second, it was disputed between an uncle and nephew, who have no legal duty to one another. Abortion does not reflect these facts because parents are responsible for medically providing for minor children in their custody (Otterstrom, 2019). Third, the uncle was not responsible for the nephew's illness, so he made the situation no better or worse by refusing to be involved. By contrast, an unborn child's conception and resulting dependency were caused by their parents' actions. Fourth, the case is improper as an analogy because abortion is an active killing rather than a refusal to donate. Even chemical

abortion, which cuts off blood supply, is equivalent to fatally neglecting a dependent rather than failing to donate blood. Fifth, *McFall* specifically refers to the surgical removal of a body part from one person to give to another as the improper imposition on bodily autonomy. Most pregnancies do not reflect this situation. Sixth, the court called the uncle's refusal "morally indefensible" even though it declined to compel his donation. *McFall* was correctly decided, but its holding does not provide a compelling argument for the right to an abortion.

Practical Considerations

In the context of government, utilitarianism is a political philosophy that considers a policy to be moral only if it creates a net benefit for society. Under this system, no government action is inherently immoral as long as it could cause more total pleasure than pain (Bentham, 1789). Few philosophers take this idea to its extreme, because under the right thought experiment, it could theoretically justify totalitarian atrocities. Humans instinctively understand that, regardless of outcome, some actions are simply wrong. Shades of utilitarianism exist in government because of the desire to prioritize the needs of the majority – partly for practical purposes, and partly to secure reelection. Despite this tendency, "ends justify the means" reasoning is no way to run a government. The state's role is to protect the People's rights, not to make life perfect for its citizens. A utopia created by killing the innocent, even if possible, would not be worth preserving. Even if the ends could justify the means, legalized abortion has not improved society to a significant enough extent to excuse its ethical cost. However, consequence-based arguments for abortion merit observation.

Social Policy

Poverty

Abortion is an issue that disproportionately affects the poor. About half of women who get abortions are impoverished. This is speculated to be because higher-class families have better means to prevent accidental pregnancy and handle the cost of raising a child. Because of this disparity, abortion is said to reduce the number of children growing up in poorer communities (Sanger-Katz et al., 2021). However, any argument for abortion as an antidote for poverty would be better off arguing for more community support for struggling families or parentless children, not for ending lives. *Roe v. Wade* did not appear to have any positive effect on poverty (Forsythe, 2013). Poverty is associated with a breakdown in the traditional family structure, a problem that has grown since abortion became legal throughout America. A state's out-of-wedlock births increase at a rate of 0.6% per 1000 abortions because the resulting shift in culture increases risky sexual activity and decreases "shotgun weddings". Because single parenthood is associated with increased poverty and unemployment, abortion has the potential to harm communities as much as it helps (Lott & Whitley, 2007).

Poverty makes the prospect of raising a child daunting, and many parents worry that abortion is a better choice than delivering a child they fear they cannot provide for. However, there is reason to believe that society would begin to adjust to a country without abortion. According to the Charities Aid Foundation's World Giving Index, America is the most generous nation in the world across the decade of study (World Giving Index, 2019). Already, pregnancy resource centers exist to manage some of the burden on pregnant mothers with lesser means. Evidence shows that these have better service than abortion facilities, and their service improves when they are publicly funded (Vinekar et al, 2023). Government programs also exist to protect

people in difficult social or financial situations. Furthermore, without the option of abortion, unwanted conceptions will decrease. Women with restricted abortion access use more contraceptives by a ratio of 1.14 (Jacobs & Stanfors, 2015). These factors may not totally negate the economic effects of restricting abortion, but it is impractical to imagine devastating effects on a large scale. Finally, while babies are by nature consumers of resources, the children will soon grow up and be able to be productive. Considering the state of America's birthrate, banning abortion could have positive economic consequences in the long term.

Crime

The Donohue-Levitt Hypothesis, also known as the Freakonomics argument, asserts that America's decrease in crime over the past decades is due to abortion (Donohue & Levitt, 2001). The methods in this study were flawed for multiple reasons, the biggest of which was that the researchers did not account for the age of the criminals. If abortion prevented future criminals from being born, one would expect crime to decrease according to the age group those criminals would be in at the time of study. When these numbers were adjusted, the rebuttal study found that the Donohue-Levitt hypothesis is poorly supported, and that violent crimes seem to increase with the legalization of abortion, though property crimes slightly decrease (Lott & Whitley, 2007).

The Foster Care System

When people cite the number of children in foster care as evidence for abortion's necessity, they are misunderstanding the role of the foster care system (Contreras, 2022). It is generally used as a temporary home for children whose guardians are unable to care for them, potentially due to serving jail time or substance abuse rehab. The goal is to reunite the child with

the parent if possible, so most children in foster care are not waiting to be adopted. There is no direct connection between abortion and improving the foster care system (Heppner, 2019).

Newborn babies are usually adopted from birth, and there is a long waitlist to adopt.

Health

Medical ethics rely on the premise that a doctor must do no harm. Though many medical procedures cause pain or injury, all are undertaken for the good of the patient. Abortion is a startling anomaly. In other circumstances, the unborn human would be considered another patient, especially in light of the growing field of prenatal surgery. However, a contingent of medical professionals use their skills primarily to end the lives of their would-be patients.

The original Hippocratic Oath contained an absolute prohibition on abortion, though this is no longer the case with most medical oaths (Horan et al., 1987). The four modern principles of clinical medical ethics are beneficence, nonmaleficence, autonomy, and justice. Beneficence is the duty to work in the patient's best interest, including protecting them from non-medical dangers. Nonmaleficence means causing no harm where it isn't necessary. Autonomy means respecting the patient's intrinsic worth, being honest, and allowing them to make their own medical decisions. Justice is the requirement to treat patients fairly according to their needs (Varkey, 2021). Abortion violates all four of these principles by ending the life of a patient for another patient's benefit.

Maternal Health

The risk of death resulting from abortion is said to be fourteen times lower than that of childbirth (National Institute of Family and Life Advocates). This figure entirely disregards fetal mortality, but is it otherwise accurate? The issue with estimating the effects of abortion is that

abortion facilities do not have uniform reporting requirements. Those that do report only have access to information about the immediate effects occurring under their roofs. Because of the American system's emphasis on patient privacy, data on maternal mortality are collected from an imperfect set of facts. Finland, by contrast, has a centralized medicine system that keeps better records. One study found that the death rate for women in the year following an abortion is 3.5 times that of women who gave birth to a living baby ("Immediate Complications," 2009). A study in California using Medicaid records found a woman's comparative likelihood of death to be two times higher in the two years after an abortion and 1.5 times higher within eight years (National Institute of Family and Life Advocates). These studies do not prove causation – for example, it could be that a woman who is already ill is more likely to abort her unborn child. However, the strength of the trend calls the maternal health rationale into question.

Abortion has been found to increase the mother's risk of future preterm births (Forsythe, 2013). Legalized abortion has also increased high-risk sexual encounters, which escalated the spread of sexually-transmitted diseases (Forsythe, 2013). Even chemical abortions can be dangerous; they are four times as likely to produce complications as surgical abortion in the first trimester ("Citizen Petition," 2019). Anecdotal stories from the abortion industry potentially indicate that "a lot" of women accept the pain of aborting at home as self-inflicted punishment for the guilt of having an abortion (Budziszewski, 2011, p. 161). Because of the privacy of such situations, whether this has led to women delaying seeking medical help is unclear.

Illegal Abortions

One common argument is that abortion must remain legal so it can be practiced in a safe and controlled manner. "Back alley" abortions, named for the secret entrances to the clinics rather than being committed in a literal alley, are not a negligible problem. Their damage is hard

to determine, but circulated estimates of 5,000-10,000 deaths a year before *Roe* are based on a complete fabrication (Forsythe, 2013). The true number was undoubtedly far lower, and will be lower still as modern medicine improves. Furthermore, the argument that an action must be legal because it is more dangerous in its illegal form cannot apply when the act is intrinsically wrong. Modern human trafficking may be less humane than the legal slavery of the seventeenth century, but the government should still not condone either practice. According to the pro-abortion Guttmacher Institute, lack of access to abortion corresponds with a 1.14 times higher rate of contraception use (Jacobs & Stanfors, 2015). Criminalizing abortion will reduce the total number of abortions, even though those that still occur will naturally be illegal.

Mental Health

The effects of abortion on mental health are even more difficult than physical health to properly study. Many of the risk factors for abortion are also risk factors for mental illness, so establishing causation can be elusive. Many studies are too short-term to find meaningful results (Sullins, 2016). A thirteen-year study, which controlled for socioeconomic and other factors, found that abortion was associated with a 45% increase in mental illness, suicidal ideation, and substance abuse, a significantly stronger correlation than with involuntary pregnancy loss. Live birth was weakly associated with better mental health (Sullins, 2016).

Mental health is a special concern when a pregnancy results from the tragedy of rape. It is surprisingly uncommon for sexual assault to result in pregnancy, but by no means trivially rare (Makhorn & Dolan, 1981). Pregnant victims have been put into a physically and emotionally painful situation they did nothing to invite, so the pro-life position that their children should be carried to term is politically difficult. The response in states such as Mississippi and West Virginia is to legalize abortion in these circumstances (“Tracking the States,” 2023). The

difficulty of the situation blinds pro-life lawmakers to their own philosophy that all human life is equally valuable. Abortion's answer to abuse is to create more victims by destroying the life that resulted. Victims may have been led to believe that undoing a consequence of their abuse will relieve some of the trauma, but in doing so, they are turning around and inflicting harm on an innocent person. Social systems dealing with victimized women should focus on relieving the burden of the trauma without pitting mother and child against one another. America does not punish the child for the sins of the father, and even difficult circumstances should not change that.

While the impulse to escape the consequences of the crime committed against her is understandable, a woman impregnated through sexual assault will not necessarily resort to abortion, and if she does, it will not undo her trauma. Abortion is not necessary to preserve the mother's mental health in cases of rape. In two older studies, victims of rape who had become pregnant reported similar psychological consequences to those who did not. Most of them kept their pregnancies, and throughout the period of study, they were found to be quite capable of psychological recovery (Makhorn & Dolan, 1981). More recent data show that this may still be the case: 73% of rape victims in the newer survey did not abort their pregnancies; of those, 64% raised their children. None of the women surveyed said that they regretted carrying their children to term. Of those that chose abortion, 88% expressed regret, 43% recalled feeling pressure to abort, and only 7% felt that abortion is a good solution for victims (Terzo, 2019). While these are only a handful of studies, they show that society does not have to choose between supporting victims and protecting life.

Disability

One particularly concerning idea in America is that major prenatal diagnoses justify abortion, or even that it would be immoral to allow a child to be born severely disabled (Clarkeburn, 2000). To illustrate, two-thirds of prenatal Down syndrome diagnoses in America end in abortion. This number is conservative compared to European countries such as Iceland, which aborts 100% of its Down syndrome population (Wakeman, 2017). If abortion is viewed as an extreme form of birth control, extinguishing life before it begins, then this could be considered mere prevention of disabilities and genetic conditions. However, abortion does not prevent disability. The disabled person already exists at the time of the prenatal screening; abortion ends the disability by extinguishing their life. Additionally, no prenatal medical test is completely accurate, so these decisions are sometimes made using inaccurate information.

Even a utilitarian approach to morality would struggle to prove that severely disabled people's suffering makes death preferable for them. Disabled people are capable of living fulfilling lives; many are even happier than the average person (Sohn, 2021). Parents may feel they have no choice besides abortion because it is difficult to care for a disabled family member. A disability in the family may bring personal and financial stress in many circumstances, but the disabled child has intrinsic worth greater than any lifestyle change they cause. Most families find their lives enriched by their disabled members, despite any additional difficulty; for example, 79% of parents of children with Down syndrome feel that their outlook on life is more positive because of their child (Skotko et al., 2011). These families deserve empathy and support, not abortion.

A subcategory of the fetal abnormality argument is the existence of terminal prenatal diagnoses. In some cases, such as ectopic pregnancy, there is genuinely no option but to remove

an embryo that is non-viable and potentially already deceased. That would not be considered an elective abortion. However, abortion of a terminally-diagnosed embryo or fetus is not as black and white as it is made out to be. Hospice care exists for unborn and pre-term infants. Organ donation is also possible for infants who will die shortly after birth, allowing the child's humanity to be recognized and potentially preventing the same tragedy from occurring in another family ("Neonatal Donation," 2022).

Conclusion: A Wrong is a Wrong

Sooner or later, time breaks all impasses. The issues that were up for debate a century ago are now by and large decided. Fifty years ago, the United States Supreme Court unilaterally adopted abortion nationwide, based on bad philosophy, deficient medical understanding, and inadequate constitutional interpretation (*Roe*). Now, states are free to decide for themselves what should be done. The Supreme Court is satisfied to leave the issue to federalism, but that is far from a solution.

A wrong is a wrong. When the institution of slavery plagued the United States, there were those on both sides of the debate who were satisfied to leave it as a state-led issue. The strategy didn't work; fear of a national ban led to the Civil War, which ironically forced the national government's hand to end legal slavery. If abortion ends human life, it must be banned at every level by any constitutional means available.

Classifying the unborn as nonpersons unconstitutionally deprives them of equal protection of the law. When fundamental human rights are at issue, the United States Constitution is implicated, and thus the issue falls to the federal government under the Fourteenth Amendment's enforcement clause. States can live and let live on tax policy or

controlled substances; abortion is unacceptable injustice. Congress should prohibit elective abortion nationwide, and the Supreme Court should defeat any state law promoting it. While the United States Constitution does not generally restrict individual actions, an amendment along the lines of the Thirteenth Amendment would not be out of order.

Think of the common arguments once used to support legal slavery. Some called it a necessary evil. These people were worried about the economic impact of abolition, or they feared that free black Americans would weaken or endanger society. These fears, in hindsight, seem like pale excuses to rob human beings of their rights. America adapted to emancipation without any overwhelming disaster. In the same way, pragmatic fears about the end of legal abortion are insufficient to justify withholding human rights.

Some southerners during the period leading to the Civil War, such as John C. Calhoun, went so far as to argue for slavery as a positive good. They said it was for the slaves' own benefit that their freedom was taken away, because they were not suited to live freely (Calhoun, 1837). Slaves were notably absent from this discussion. In the same way, some say that abortion is necessary to protect unwanted children from future hardship (Clarkeburn, 2000). In both cases, humans do not have the authority to make that determination. All people have inherently equal value; therefore, the same rights must be recognized in everyone.

Slavery was once protected by a legitimate right, the right to private property. However, a manifestation of a right cannot be legitimate if it violates a more foundational right of another – a human being is not property, regardless of what the law says. In the same way, a person's legal authority over her own body cannot overcome her child's right to life. The unborn human is not her body or her property. Humanity is the only variable that really matters. Abraham Lincoln's 1854 Peoria speech used the same dichotomy regarding enslaved black Americans, "If he is not a

man, why in that case, he who is a man may, as a matter of self-government, do just as he pleases with him” (qtd. in National Park Service, 2016, para. 61). If the full humanity of the black man is recognized, however, “why then my ancient faith teaches me that ‘all men are created equal;’ and that there can be no moral right in connection with one man's making a slave of another” (qtd. in National Park Service, 2016, para. 61).

Thomas Jefferson said of the evil of slavery, “Indeed I tremble for my country when I reflect that God is just, that his justice cannot sleep forever” (1787, Query XVIII). Jefferson must have envisioned something like the Civil War as America’s reward for exploiting fellow man. Abortion, though quieter, is a national evil of similar magnitude. If Jefferson were right about justice for national wrongs, one can only imagine what would await this country. Regardless, this problem can be cured, not immediately, but gradually and with consistent pressure. Abortion is not a modern problem, and restrictions will not end it, but they would solve much of the injustice and allow the unborn their rights. America’s mission to create a truly just society in accordance with its founding principles can only be accomplished by ending legal abortion.

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