



FROM BIRTH TO DEATH AND BENCH TO CLINIC

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for Journalists, Policymakers, and Campaigns

CHAPTER 1

Abortion

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abortion

by Bonnie Steinbock

Framing the Issue

Despite the legalization of abortion in 1973, the topic continues to be controversial and divisive in American politics. While the right to have an abortion has remained settled since then, the issue was again before the Supreme Court in 2007. The Court upheld a 2003 law banning a form of abortion called intact dilation and extraction, or “partial-birth abortion.” At one end of the debate over this practice are those who regard abortion as murder—a despicable and heinous crime. At the other end are those who regard any attempt to restrict abortion as a violation of women’s rights to privacy and bodily self-determination. Most Americans are somewhere in the middle.

Abortion has been the subject of much ethical thought from both pro-life and pro-choice perspectives. The central philosophical question concerns the moral status of the embryo and fetus. If the fetus is a person, with the same right to life as any human being who has been born, it would seem that very few, if any, abortions could be justified, because it is not morally permissible to kill children because they are unwanted or illegitimate or disabled. However, the morality of abortion is not necessarily settled so straightforwardly. Even if one accepts the argument that the fetus is a person, it does not automatically follow that it has a right to the use of the pregnant woman’s body. Without that right, as Judith Thomson has argued, abortion could be justified.

Ethical Considerations

Public opinion on abortion falls into three camps—conservative, liberal, and moderate (or gradualist)—each of which draws on both science and ethical thinking.

Conservative. Conservatives regard the fetus as a human being, with the same rights as any human being who has been born, from implantation (when a pregnancy begins) onward. Some conservative groups—such as the Catholic Church—consider the fetus to be a human being with full moral rights even earlier, from conception onward.

Conception is regarded as the significant point because that is when the embryo develops its own unique genetic code, distinct from that of its mother or father, and thus from the egg or sperm. (This belief leads the Catholic Church to oppose some forms of contraception, such as the IUD and the “morning-after” pill, since they cause the death of the embryo by preventing implantation,

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HIGHLIGHTS

- Abortion was legalized in 1973, but the topic remains controversial.
- The central ethical question in the abortion debate is over the moral status of the embryo and fetus.
- Opinions range from the belief that the fetus is a human being with full moral status and rights from conception to the belief that a fetus has no rights, even if it is human in a biological sense. Most Americans’ beliefs fall somewhere in the middle.
- Moral philosophers from various perspectives provide nuanced examinations of the abortion question that go beyond the standard political breakdowns.
- In 1973 in *Roe v. Wade*, the United States Supreme Court based its finding of a woman’s constitutional right to have an abortion up until viability on two factors: the legal status of the fetus and the woman’s right to privacy.
- In 2007, the Supreme Court upheld a law signed by President Bush in 2003 that opposes a form of abortion called intact dilation and extraction, or “partial-birth abortion.” The law includes no health exception.

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FETAL DEVELOPMENT: A TIMELINE

The physiological development of the embryo and fetus during gestation does not alone determine the morality of abortion, but it is relevant to the argument over the moral status of the fetus. Gestation in humans has duration of about 266 days.

0–22 hours

The first stage is **conception** or **fertilization**, a process that lasts about 22 hours and ends with **syngamy**, the merging of the parental chromosomes. Syngamy results in a single-celled **zygote**, which begins rapidly dividing. As many as 50% of conceptions end in early miscarriage.

6–13 days

The process of **implantation** begins on approximately the sixth day following fertilization and takes about a week. Once the embryo is implanted in the uterus, the pregnancy can be detected and is considered clinical. As implantation completes, the embryo develops a **primitive streak**, which is the precursor of the spinal cord and the nervous system. At the same time, the cells differentiate and become different kinds of tissue. This is known as **gastrulation**. Once implantation is completed, twinning—the division of the embryo into two or more genetically identical embryos—cannot occur.

12–16 weeks

Between 12 and 16 weeks, the fetus begins to look recognizably human. (Before then, it would be difficult to distinguish a human fetus from any other mammalian fetus.) Fetal movements, known as **quickening**, are felt by the mother early in the second trimester. By the end of the second trimester, the fetus may suck its thumb.

24–28 weeks

The fetus becomes **viable**, or capable of surviving outside the womb, in the third trimester, between 24 and 28 weeks. With a neonatal intensive care unit, a fetus of 28 weeks gestation age has about an 85% chance of survival. A 24-week-old fetus has only a 10% chance of survival. Even if a premature fetus survives, it is at risk for serious medical problems and lasting disability.

An issue that remains controversial is at what point the fetus becomes sentient, or capable of experiencing pain or other sensations. Clearly, sentience is impossible before the beginning of brain function, detected by the appearance of brain waves between eight and 10 weeks. However, brain waves alone are not enough to determine sentience. In addition to a functioning brain, the neural pathways have to be developed enough to transmit pain messages to the brain. Researchers believe that this occurs sometime during the second trimester. Some researchers think that sentience may occur as early as 17 weeks gestation; others think it doesn't occur until between 20 and 24 weeks. But certainly by the third trimester, the fetus is very likely sentient and probably can hear. In virtually all respects except location, fetuses at the end of the third trimester are just like born babies.

even before clinical pregnancy has occurred.) The fetus changes dramatically during gestation but, on the conservative view, no stage is ever reached at which we can say, now we have a human being, whereas a day or a week or a month earlier we did not. Any attempt to place the onset of humanity at a particular moment—whether it be when brain waves appear, or the human form becomes distinct, or at quickening, sentience, or viability—is bound to be arbitrary because all of these stages will occur if the fetus is allowed to grow and develop.

A more recent antiabortion argument by Don Marquis in 1989 differs from the traditional conservative view in that it is not based on the fetus's being human, nor even based on species membership. Rather, Marquis argues that abortion is wrong for the same reason that killing anyone is wrong—namely, that killing deprives its victim of a valuable future, what he calls “a future like ours.” This raises two questions about what it is to have a

future like ours. First, what precisely is involved in this notion? Does it essentially belong to rational, future-oriented, plan-making beings? If so, then killing most nonhuman animals would not be wrong, but neither would killing those who are severely developmentally disabled. Second, at what point does the life of a being with a future like ours start? If the important notion is the loss of one's future, at what point is there an identifiable victim? Here the biology of gestation becomes important.

After conception but prior to implantation, the embryo can still split into two (or more) distinct individuals. This makes it impossible to connect the loss of a future to any particular “victim” prior to implantation. This may seem irrelevant since prior to implantation, there is no clinical pregnancy, and, therefore, no possibility of abortion. However, its relevance becomes apparent when one realizes that some forms of contraception (like the IUD and the “morning-after” pill) cause the

death of the embryo by preventing implantation. On the “future like ours” account, emergency contraception is permissible, which contrasts with the view of the Catholic Church.

Liberal. Most liberals acknowledge that the fetus is human in a biological sense, but deny that this endows the fetus with full moral status or a right to life. In 1971, Judith Thomson gave a completely different pro-choice argument, claiming that even if the personhood of the fetus were granted, this would not settle the morality of abortion because the fetus's right to life does not necessarily give it a right to use the pregnant woman's body. No one, Thomson says, has the right to use your body unless you give him permission—not even if he needs it for life itself. At least in the case of rape, the pregnant woman has not given the fetus the right to use her body. (Thus, Thomson's argument, somewhat ironically for an article entitled “A Defense of Abortion,” provides those who are generally anti-choice with a rationale for making an exception in the case of rape, as do many pro-lifers—though not the Catholic Church.) Thomson maintains that whether a woman ought to allow a fetus to remain in her body is a separate question from whether the fetus is a person with a right to life, and depends instead on the amount of sacrifice or burden it imposes on her.

More recently, in 2003, Margaret Little argued that while abortion is not murder, neither is it necessarily moral. A pregnant woman and her fetus are not strangers; she is biologically its mother. However, she may have conflicts of duties. For example, a woman's relationship to her children who have been born goes beyond mere biological connection and imposes stronger obligations. For this reason, their interests may trump those of the fetus. At the same time, even if the fetus is not a person, it is a “burgeoning human life,” and as such is worthy of respect. Many women believe that bringing a child into the world when they are not able to nurture it would be disrespectful of human life. The main reason women choose abortion, according to Little, is that they think it would be wrong to have a child when they are not capable of being good mothers.

Moderate. The moderate, or gradualist, agrees with the liberal that a one-celled zygote is not a human person, but agrees with the conservative that the late-gestation fetus is virtually identical to a born infant. Thus, the moderate thinks that early abortions are morally better than late ones and that

the reasons for having one should be stronger as the pregnancy progresses. A reason that might justify an early abortion, such as not wanting to become a mother, would not justify an abortion in the seventh month to the moderate.

The Legal Perspective

In 1973 in *Roe v. Wade*, the United States Supreme Court based its finding of a woman's constitutional right to have an abortion up until viability on two factors: the legal status of the fetus and the woman's right to privacy. Concluding that outside of abortion law, the unborn had never been treated as full legal persons, the Court then looked to see if there were any state interests compelling enough to override a woman's right to make this personal decision for herself. It decided that there were none until the fetus became viable, somewhere between 24 and 28 weeks. At viability, the state's interest in protecting potential life trumps the woman's right to privacy, and at that point states may prohibit abortion altogether if they choose, unless continuing the pregnancy would threaten the woman's life or health.

While the right to abortion has remained settled since *Roe v. Wade*, the right-to-life movement has recently focused on a particular abortion technique known to doctors as “intact dilation and extraction” and to the general public as “partial-birth abortion.” In 2003, President Bush signed into law a bill that banned the technique, describing it as a “gruesome, inhumane” procedure that is “never medically necessary to preserve a woman's health,” in which a fetus is partially delivered alive and a physician performs “an overt act that the person knows will kill the partially delivered living fetus.”

The law, which included no health exception, was found unconstitutional in 2005 but was upheld by the U.S. Supreme Court in the case of *Gonzales v. Carhart* in 2007. In her dissent, Justice Ruth Bader Ginsburg described the ruling as “alarming,” and said that it “tolerates, indeed applauds, federal intervention to ban nationwide a procedure found necessary and proper in certain cases by the American College of Obstetricians and Gynecologists.” For example, intact dilation and extraction is safer for the woman—and more likely to preserve her future fertility—than dilation and extraction is because dismembering the fetus in utero might puncture the uterus.

One of the more curious aspects of the law is

that it makes no mention of the stage of gestation, prohibiting only intact dilation and extraction. It does not prohibit another method, dilation and extraction, which involves dismembering the fetus in the uterus, and can also be used beyond the first trimester. If the issue is how gruesome or inhumane the abortion is, drawing an ethical distinction between intact dilation and extraction and dilation and extraction in utero is puzzling. Moreover, many believe that the question of whether a particular procedure is medically indicated belongs to the woman's doctors, and not to the Congress of the United States. Opponents of the law argue that it could threaten some second-trimester abortions and that it is an attempt to intimidate doctors who perform abortions. 🌳

RESOURCES

Web sites

- www.acog.org – the American College of Obstetricians and Gynecologists. The site's Health Care for Underserved Women department contains a resource guide on abortion that includes statistics, research, and medical practice guidelines.
- www.bbc.co.uk/ethics – the British Broadcasting Corporation's ethics homepage contains a page on the abortion debate that includes articles on legal issues, medical topics, fetal and parent rights, philosophical and ethical concerns, and religious views.

Recent news

- Kari Lydersen, "Antiabortion Ballot Initiative Appears Likely," *Washington Post*, April 2, 2008.
- "Behind the Abortion Decline" (editorial), *New York Times*, January 26, 2008.
- Rob Stein, "As Abortion Rate Drops, Use of RU-486 Is on Rise," *Washington Post*, January 22, 2008.
- Stephanie Simon, "Changing Abortion's Pronoun," *Los Angeles Times*, January 7, 2008.
- Celia W. Dugger, "Abortion Complicates Congressional Debate Over Foreign Aid Bill," *New York Times*, December 9, 2007.

Further reading

- Adrienne Asch, "Will We Need Abortion in Utopia," in *Principles of Health Care Ethics, Second Edition*, ed. R.E. Ashcroft, A. Dawson, H. Draper, and J.R. McMillan (Hoboken, N.J.: Wiley, 2007), 393-400.
- Rebecca Dresser, "Protecting Women from Their Abortion Choices," *Hastings Center Report*, November-December 2007.
- Ronald Dworkin, "The Court and Abortion: Worse Than You Think," *New York Review of Books*, May 31, 2007.
- Margaret Olivia Little, "The Morality of Abortion," in Christopher Wellman and R.G. Frey, eds., *A Companion to Applied Ethics*, Blackwell Publishing, 2003.
- Bonnie Steinbock, "Why Most Abortions Are Not Wrong," in R.B. Edwards and E.E. Bittar, eds., *Advances in Bioethics*, Jai Publishing, 1999.
- Don Marquis, "Why Abortion Is Immoral," *Journal of Philosophy*, April 1984.
- Mary Anne Warren, "On the Moral and Legal Status of Abortion," *The Monist*, January 1973.
- Judith Thomson, "A Defense of Abortion," *Philosophy and Public Affairs*, Winter 1971.



See legislation appendix



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