

Abortion: Libertarianism, Feminism, Communitarianism, Theocracy, and Social Conservatism

Abortion Stories

It was February 1936 when they got the news. Married only five months, she was pregnant. They wanted children eventually, but it was the middle of the Great Depression, and they couldn't afford a place of their own. They stayed some months with his parents and some with her mother, recently widowed. Trained as a commercial artist, Alberta painted ties; trained as an engineer, Irv worked for his older brother selling auto parts. Each earned \$15 to \$25 per week.

Lucky for them, Alberta had an aunt whose third husband was a doctor practicing in Toronto. Alberta took the train alone to visit her aunt; Irv stayed home working; husbands weren't welcome companions or observers. When she came back, Alberta was no longer pregnant and the couple continued their search for the American dream. My older brother was born two-and-a-half years later.

My parents agreed on most political matters because my father had strong opinions and my mother didn't. She was passionate only about abortion. She'd say, "A woman's abortion is nobody else's damn business." (Ladies didn't say "damn" very loud.)

Here's a more recent abortion story by Eliza:

I'm not sorry about the abortion, but I am sorry for the conception. I was 19 years old, a sophomore in college, and searching for love and acceptance in men. Looking back, I think

mostly I wanted to feel attractive and sexy. An old friend came into town, Dan.... We had unprotected intercourse, but he pulled out. It was the mentality of "it'll never happen to me."

Weeks after he had left town, I had to leave one of my classes to violently throw up outside. That was when I first had fears.... A few days later ... one of my closest friends ... drove me to Safeway and bought the tests for me and then we holed up in a bathroom stall of our church-both tests were positive.

So important to my experience is my family and how blessed I am to have them. I went to my sister and we sat on her front porch and cried together. And then we went home to our parents' house and told them.... All I could do was bury my face in my mother's chest and tell her how sorry I was.

In the coming days, I felt numb. Dan was still calling and writing letters, but I was short with him each time he called until he finally stopped contacting me at all. It was my burden, my decision.... I have never spoken to him again and I never want to.

I knew I was supposed to make a decision, but I felt numb and scared and separated from all my peers. Looking back, I realize now how rare and amazing it is that I have a family who I always knew would support my decision, whatever it might be.... My mother researched clinics and she and my sister went with me to the appointment. I remember that the clinic seemed scary and that my doctor had kind, sad eyes.... Afterward, the three of us drove home in the sunshine and my mother bought matching necklaces for us, so that we would always remember what we had gone through as a family.

I left the church I was attending because they pronounced abortion as a sin. The spiritual aspects of my abortion were only between myself and God and it angered me that the church thought they were entitled an opinion also. I returned to the open and affirming church I was raised in and found a hero in the pastor. I told him my story and later that year he officiated over my marriage. The man I married became my boyfriend at the end of the same year I had my abortion. We had only been dating a month when I told him, and when he held me while I cried, I knew he might be someone I could marry.

I made my choice and I do not regret it and I know I never will. I am a better, more empathetic person because of it... I have a college degree and a career, a happy and fulfilling marriage, and the promise that the conception of our first child will be a joyous occasion. I made my choice and because I know the importance of that freedom, I will ... fight for others to have that same choice.

Eliza's view could be justified on feminist grounds. Feminists believe no one should be disadvantaged for being a woman. Because the burdens of pregnancy directly affect only women, if women can't unburden themselves through abortion, they're disadvantaged relative to men. Abortion rights promote equality between the sexes.

Another view, compatible with feminism on this issue, is libertarian. Adults should be able to choose their path of life with minimal interference from others, especially the state. The state interferes with individual rights when it outlaws abortion. Because no one else is directly involved, state interference with abortion denies women the right to self-determination owed all people as a basic human right.

Both of these rationales, feminist and libertarian, champion individual rights.

The Rights of the Unborn

Many pro-life opponents of abortion rights accept the libertarian premise that individuals should be self-determining so long as they're not harming others. But abortion harms others. Eliza's unborn was a person, they think, killed by abortion.

Philosopher John Noonan argues that humanization begins at conception.

The positive argument for conception as the decisive moment of humanization is that at conception the new being receives the genetic code. It is this genetic information which determines his characteristics, which is the biological carrier of the possibility of human wisdom, which makes him a self-evolving being. A being with a human genetic code is a man.

Noonan considers and rejects a later starting point for what he calls "humanization" and others call "personhood." Viability is when the unborn can survive independently of the pregnant woman. Before that time, owing to its dependence on her, some people claim the unborn has no independent existence and therefore is not yet a person.

Noonan counters that "the perfection of artificial incubation may make the fetus viable at any time: it may be removed and artificially sustained." Although that technology doesn't yet exist, its scientific possibility makes viability an unstable standard. Also, it seems strange to say that the unborn goes from nonperson to person depending on its physical location. What is more, Noonan notes, "dependence is not ended by viability. The fetus is still absolutely dependent on someone's care." If independence from needed care is the criterion for personhood, newborns are not persons and infanticide should be permitted along with abortion. A major theme of those attributing personhood to the unborn is that withholding protection from the unborn logically requires withholding it from newborns as well.

Pro-life law professor Robert George also finds viability an inappropriate criterion for a right to life. He writes:

Independence should not be confused with distinctness. From the beginning, the newly conceived human being, not its mother, directs its integral organic functioning. It takes in nourishment and converts it to energy. Given a hospitable environment, it will, as Dianne Nutwell Irving says, "develop continuously without

any biological interruptions, or gaps, throughout the embryonic, fetal, neo-natal, childhood and adulthood stages-until the death of the organism.”

On this logic, the unborn has a right to life from the moment of fertilization (when the genetic code is fixed).

Law professor Richard Stith rejects the alternative of birth as the beginning of a right to life. Rights depend on a being’s nature. All that changes at birth is location. Stith writes, “The birth-wall thesis ... claims that what something is depends upon where it is.” This is obviously false. If the newborn has a right to life, so must the unborn. If the unborn lacks a right to life, so must the newborn, and infanticide should be legal.

On the other hand, abortion-rights advocates claim, many changes in the unborn take place between fertilization and birth, and these may account for the newborn having rights that the unborn lacks. For example, at about eight weeks the unborn can respond to stimuli, which may indicate the beginning of experience. We usually treat sentient beings with more respect than the non-sentient. It’s no crime to bash a rock or carrot against a stone wall, but it is to bash a puppy, because the puppy can experience life. Perhaps the unborn, like the rock or carrot, has no rights before it’s capable of experience, so abortion should be allowed during the first eight weeks of pregnancy.

Perhaps it should be allowed even later in pregnancy because mere sentience doesn’t confer a right to life, as many animals learn on their first trip to a slaughterhouse. The distinctively human capacities for reason and language are what confer a right to life. Charles Gardner points out in the Nation that a “mature brain cell pattern” associated with these traits “is not seen until the sixth or seventh month.” Accordingly, if the mind is the basis for our right to

life, late-term fetuses have such a right along with newborns and all other human beings, but abortion violates no right of the unborn in the first two thirds (the first two trimesters) of pregnancy.

Right-to-life advocates reject this reasoning, because they reject associating rights with capacities. They claim that the right to life inheres in a certain kind of being. The being that becomes a baby, child, and adult is the being created at fertilization. If newborns have a right to life, so must fertilized eggs.

Abortion-rights advocates, by contrast, claim that traits are always the bases for rights. Americans get the right to vote when they turn eighteen and the right to drink hard liquor at twenty-one. Most places, they must complete driver’s education and be sixteen years old to get a driver’s license. A license to practice medicine or law takes more training and time. Assuming that newborns have a right to life, the unborn has the same right when it differs from newborns only in ways that clearly don’t matter, such as location. Pro-lifers are correct that birth makes no difference. But having the distinctively human traits possessed by newborns is required, and these don’t develop until at least the seventh month of gestation.

Right-to-life advocates counter that we do sometimes attribute rights on the basis of potential. Children have a right to education to develop their potential. Children with special intellectual gifts or disabilities usually have the right to appropriate special educational attention. The unborn has the potential and tendency from the moment of fertilization to develop all distinctively human traits that confer a right to life, so it should be nurtured, just as we nurture school children, to make that potential a reality.

In sum, the two sides agree that individual rights are the proper basis for resolving questions about abortion’s permissibility. But

one side concentrates on the woman's right and the other on the right of the unborn. Against the right of the unborn, pro-choice (pro-abortion-rights) thinkers claim that at least through the first two trimesters, the unborn lacks traits necessary for human rights. Pro-life thinkers counter that it's the same being throughout pregnancy, birth, and later life, and that a right to life inheres in the kind of being it is-human-not in the traits it possesses at any given time.

It seems neither side has an irresistible argument. Reasonable people can differ about the unborn's right to life, at least before the third trimester of pregnancy.

Social Status of the Unborn

Another approach to abortion rights concerns social perceptions and norms. The pro-choice side notes that current modes of thinking and acting differentiate between the unborn early and late in pregnancy. Novelist Mary Gordon writes:

We habitually consider, for example, a seven-week-old fetus to be different from a seven-month-old one. We can tell this by the way we respond to the involuntary loss of the one against the other. We have different language for the experience of the involuntary expulsion of the fetus from the womb.... If it occurs early in the pregnancy, we call it a miscarriage; if late, we call it a stillbirth....

Our ritual and religious practices underscore the fact that we make distinctions among fetuses. If a woman took the bloody matter-indistinguishable from a heavy period-of an early miscarriage and insisted upon putting it in a tiny coffin and marking its grave, we would have serious concerns about her mental health. By the same token, we would feel squeamish about flushing a seven-month-old fetus down the toilet.

Polls back up Gordon's observations. An ABC News/Washington Post poll conducted in January 2003 found that whereas 57 percent of Americans favored legalized abortion in "All or Most Cases," and 42 percent thought abortion should be legal "To End Unwanted Pregnancy," only 23 percent thought a late-term procedure called "partial-birth abortion" should be legal and even fewer, 11 percent, approved of abortions after six or more months of pregnancy.' It seems most Americans find abortion early in pregnancy less troubling than abortion later, as if the unborn's right to life increases with age.

John Noonan rejects reliance on popular opinion.

Feeling is notoriously an unsure guide to the humanity of others. Many groups of humans have had difficulty in feeling that persons of another tongue, color, religion, sex, are as human as they.... Any attempt to limit humanity to exclude some groups runs the risk of furnishing authority and precedent for excluding other groups.... To decide who is human on the basis of the sentiments of a given society has led to consequences which rational men would characterize as monstrous.

There are two themes here. One associates protecting the unborn from abortion with protecting Jews from Nazis and blacks from slaveholders. Society is wrong in all these cases when it fails to recognize humanity in others. The second theme is a slippery slope argument. If we don't protect the unborn now, the elderly, the ill, the outcast, and others will eventually be considered expendable as well.

Gordon addresses fears of a slippery slope.

Many anti-choice people fear [a] slippery slope toward a brave new world where handicapped children are left on mountains to starve and the old are put out in the snow. But if we look at the history of abortion excepting ... the People's Republic of

China (which practices forced abortion), there seems to be a real link between repressive anti-abortion stances and repressive governments. Abortion was banned in Fascist Italy and Nazi Germany.... It is paid for by the governments of Denmark, England, and the Netherlands, which have national health and welfare systems that foster the health and well-being of mothers, children, the old and the handicapped.

Technological developments since Noonan wrote in 1970 may also allay fears of a slippery slope. The unborn have increasing social visibility. Debra Rosenberg writes in *Newsweek*, “new high-tech fetal ultrasound images allow prospective parents to see tiny fingers and toes, arms, legs and a beating heart as early as 12 weeks.... These images ... pack such an emotional punch that even the most hard-line abortion-rights supporters may find themselves questioning their beliefs.”” To the extent that abortion rights depend on social perceptions and norms, fetuses twelve weeks or older may receive increased protection, owing to their increased visibility.

Abortion Rights as Religious Freedom

The increasing visibility of and empathy toward the unborn worries the pro-choice camp. They argue that social perceptions should not impair the fundamental right of women to control their own bodies. A major reason we have our Bill of Rights is to protect individuals from popular perceptions and electoral majorities that would deny fundamental rights and curtail basic freedoms.

The First Amendment protects religious freedom. It begins: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” This statement contains what are called the Establishment Clause and the Free Exercise Clause. Although not the original understanding, the

Establishment Clause now means that no government agency-local, state, and federal-may show preference for one religion over another or for religious over secular views. So, for example, a publicly funded Christmas display at the courthouse may unconstitutionally establish religion. Adding a Chanukah menorah, Kwanza welcome, and model Stonehenge may convert the display into a constitutional celebration of the season.

Some people believe that restrictions on abortion violate the Establishment Clause. They accuse abortion opponents of being theocrats attempting to confine everyone’s behavior to what their religion finds acceptable. The Catechism of the Catholic Church, for example, states: “Human life must be respected and protected absolutely from the moment of conception.” The Church wants to impose this religious view on everyone: “The inalienable right to life of every innocent human individual is a constitutive element of a civil society and its legislation.” Another staunch opponent of abortion rights is the Christian Coalition. Imposing their religious morality on everyone seems to violate the Establishment Clause.

This reasoning is flawed. Faith-based advocacy for a social cause doesn’t turn government action for that cause into an establishment of religion. Catholics, for example, advocate feeding the hungry, healing the sick, and housing the homeless. They run soup kitchens, hospitals, and shelters to meet people’s needs. The government can do these things as well, without establishing religion, because there are secular justifications. Secular utilitarians, for example, may believe that such programs promote the greatest good for the greatest number. Although taxes needed to provide low-cost housing may reduce taxpayers’ well being, that reduction is less than the increase in well being among poor people provided decent places to live, utilitarians might think. Whether they’re right or wrong, their reasoning is entirely secular.

Similarly, government action to curtail abortions doesn't become religious and violate the Establishment Clause simply because religious groups concur.

On the other hand, there must be a secular justification for government action. We saw that both pro-life and pro-choice advocates appeal to secular political philosophies that emphasize individual rights—one side concentrating on the rights of women, the other on rights of the unborn. But the unborn have rights only if they are persons—hence the centrality of the debate on the personhood of the unborn.

Good reasons based on solid science and respectable analogies are given on both sides of this debate. Pro-life supporters emphasize the integrity of the individual from fertilization through adulthood. Pro-choice supporters point out differences concerning distinctively human traits between an embryo and a newborn. The pro-life people claim, correctly, that the embryo will (most likely) develop such traits if given the chance. The other side counters that rights generally correspond to actual traits, not potentials. Pro-lifers note that the right to education is an exception to this rule.

No argument by either side would convince neutral observers, because remaining differences don't depend on facts but on unarguable judgments about the importance of certain facts and the strength of competing analogies. Our intellectual resources make the personhood of the unborn (in nearly the first two-thirds of gestation) impossible to decide upon.

The pro-life comparison of protecting the unborn from abortion with protecting blacks from slavery breaks down, because we can prove to neutral observers that people of different races share

common human biological traits. Blacks and whites can have children together, which makes them the same species. Blacks and whites can speak the same languages and do other species-specific tasks, such as write and do math. Genetics adds additional proof. There's no stalemate here.

The stalemate regarding the unborn resembles religious disagreements. Some people believe that God exists; others don't. Some believe that Jesus is the son of God sent to Earth to redeem sinners; others don't. Some believe that there's life after death; others don't. Some believe that there's a heaven and hell; others don't. As with the rights of the unborn, reasons are given on both sides, some of them based on science, but neither side can convince neutral observers. That's why we say these are matters of faith.

People are free in the United States to live by their faiths and to attempt to convert others, so long as they respect the right of everyone else to do the same. This is guaranteed by the Free Exercise Clause of the First Amendment. But the Establishment Clause prohibits people using the law to impose their faith on others. If belief in the personhood of the unborn is a matter of faith-like belief in the existence of God, as the intractability of disagreement suggests—the Establishment Clause would forbid using the law to impose this religious-like belief on others. Legislatures violate the Establishment Clause when they forbid abortion on the rationale of protecting the unborn (in the first two-thirds of pregnancy). This kind of reasoning may account for the persistent belief among pro-choicers that pro-lifers are theocrats unconstitutionally imposing their religion on an unwilling public.

Abortion opponents reply that when abortion is legal, the shoe's on the other foot. If both beliefs are religious-like, legalized abortion is

the imposition on society in general of the religious-like belief that the unborn is not a person with a right to life.

But this reasoning is flawed. The Establishment Clause requires the law to avoid taking sides on matters of faith. Decisions are left up to individuals. Abortion is legal in this situation because everything is legal unless the state has a secular reason to make it illegal. Abortion is legal by default.

A better objection to the pro-choice Establishment Clause argument concerns the relevance of “religious-like beliefs” to First Amendment analysis. Like many religious beliefs, beliefs about the unborn’s personhood can’t be proved. But the subject matter, rights of the unborn, is different from religious subjects-God, Jesus, life after death, and so on. Pro-lifers could claim this difference is crucial to application of the Establishment Clause, which uses the word “religion,” not the term “religious-like belief.”

On the other hand, perhaps the essential point of the Establishment Clause is to avoid the civil discord that often accompanies government attempts to impose some people’s beliefs on others, when the beliefs in question are not central to our way of life or our ability to interact harmoniously and productively. People can interact well while disagreeing about God, Jesus, heaven, and the afterlife, but discord ensues when some try to impose their views on others. If the point of the Establishment Clause is to avoid such discord, civil strife surrounding the abortion debate suggests that religious-like beliefs about the unborn should be treated as religious beliefs for Establishment Clause purposes.

In any case, when individual rights are the sole focus of debate, the pro-choice side has an advantage. Women seeking abortions are

definitely individuals with rights, whereas the rights of the unborn are uncertain.

Communitarian Opposition to Abortion, But Not to Abortion Rights

Law professor Mary Ann Glendon contrasts the individual-rights approach to abortion common in the United States to the more communitarian approach in Western Europe. Communitarians emphasize that individuals are products of social interaction. Religion, for example, is important to many people. For the most part, individual religious commitment presupposes that preceding generations had religious insights, shared those insights, and started organizations featuring those insights. Most religious people were raised in regular contact with a religious group and are sustained in their commitment by continued fellowship with co-religionists. In short, the individual makes a religious commitment, but the soil in which commitment sprouts and grows is social.

The same is true of those whose life stories center on baseball, physics, architecture, philosophy, or politics. Society makes individuals more than individuals make society, because although in our society individuals have many paths to choose from, those paths are socially created and maintained. In the vast majority of cases, social paths set limits to individual aspiration and commitment.

Communitarians are interested in the social paths that society creates and maintains. For example, Glendon notes, in 1975 the West German Constitutional Court considered the issue of abortion and decided the unborn has a right to life after fourteen days. But the court “chose to emphasize the character of this right as a value of the community rather than as something that belongs to the fetus.

The court was more concerned with the obligation of the state to promote the public value than it was with any rights the value might give to individuals.” This explains why “the West German court ... held that the legislature need not impose penal sanctions for abortion when continuation of the pregnancy would constitute an insupportable hardship for the woman concerned.” Rather than vindicate one individual right at the expense of another, the court showed “a commitment to an order of values.”” An order of values is the mainstay of the socialization process that forms individuals, so the state must take care, on communitarian premises, to maintain it and improve it where possible.

Like communitarians, social conservatives recognize the limits of individualism and individual rights. They, too, advocate maintaining an order of values. The two philosophies differ, however, in their estimates of human flexibility. Social conservatives appeal to tradition because they fear that innovations unleash human tendencies toward misbehavior. Communitarians, by contrast, are more accepting of change, because they are less fearful of human immorality.

The Spanish high court’s abortion ruling, like the West German, reflected communitarian commitment to evolving public values. The Spanish court advanced

the notion that what the pregnant woman can be required to sacrifice for the common value is related to what the social welfare state is ready and able to do to help with the burdens of childbirth and parenthood. For example, the Spanish court, reluctantly upholding the exception for a defective fetus, takes note of the hardship involved in raising a disabled child and the very limited degree of public assistance presently available in Spain.

Compassion for the pregnant woman and her family tempers concern for fetal life in the evolving order of public values.

American values may resemble Western Europe’s communitarian thinking more than pro-choice or pro-life views that concentrate on the individual rights of women or the unborn. For example, when abortion was illegal, the crime was never treated as murder, as it logically should have been if the unborn has a right to life equal to that of other people. More recently, the ABC NEWS/Washington Post poll conducted in 2003 found that 81 percent of Americans think abortion should be available in cases of rape or incest. But the same poll finds that only 42 percent favor legal abortion to terminate an unwanted pregnancy. On an individual rights basis, 39 percent of respondents-81 percent minus 42 percent seem confused. They think the unborn has a right to life, so it shouldn’t be killed at a woman’s whim, but if pregnancy results from rape or incest, the unborn somehow loses its right to life.

I think these poll results show support for something like the communitarian order of values found in Western European law. The life of the unborn is an important value, but not the only important value. Glendon writes, “All of the West European laws, while permitting abortion on a wide variety of grounds, communicate that fetal life is an important interest of the society and that abortion is not a substitute for birth control.” Allowing abortion for trivial reasons, on this communitarian analysis, can erode the social solidarity needed for human flourishing, but so could ignoring the plight of women whose unborn results from rape or incest.

This communitarian analysis suggests that a good society helps pregnant women and working mothers in order to reduce the burdens of pregnancy and motherhood. Countries that do this have lower abortion rates. Glendon points out that the United States has a

poor record of obtaining child support payments from absent parents. “Countries like Denmark, Norway, and Sweden,” by contrast,

have long had mandatory paternity actions that do in fact result in determining paternity for nearly all children born to unmarried mothers. Several countries now use standard formulas and tables for calculating realistic amounts of child support and have extremely efficient collection mechanisms, including direct deduction of child support from the noncustodial parent’s wages.

Most European countries also have laws requiring employers to give pregnant women a maternity leave of six months, followed by “the right to an additional year of unpaid leave, with full job protection and fringe benefits.” Typically in the United States, a woman is lucky to get several weeks off. In addition, Western European countries provide “day care for children ages three to five within the public educational system.” Most American must pay for day care, and affordable, quality day care is hard to find.

The fact that Western Europe has a lower abortion rate than the United States suggests that people who want to minimize the incidence of abortion here should imitate Europe’s communitarian model of social solidarity. Europeans have universal health care and generous unemployment benefits that reduce the burden of having a child. Freelance writer Nina Kohl claims that in the United States, “rising unemployment and soaring healthcare costs are directly connected to the abortion rate.... Of women who abort, two-thirds say they can’t afford a child. Half say they don’t have a responsible mate and co-earner.”

Comprehensive sex education can also help, Kohl maintains: “Belgium, a country where abortion is legal, has achieved the lowest abortion rate in the world, with sex education that recommends abstinence but stresses responsibility and teaches teens

how to use contraception.” In sum, the way to reduce the abortion rate, according to Kohl, is to protect women “from poverty, inadequate healthcare coverage, jobs without flexible schedules, lack of affordable daycare, limited access to contraception and sex education, and fathers who don’t take financial and emotional responsibility for their children.”

This communitarian approach may find support among feminists because it ties the abortion issue to a host of feminist concerns, such as childcare, flexible working hours, payments from missing fathers, and other programs needed for women to fulfill maternal duties without looming poverty and competitive disadvantage in the workplace.

Theocratic and Social Conservative Opposition to Abortion Rights

Theocrats and social conservatives, like communitarians, emphasize social good rather than individual rights and relate the abortion issue to a vision of society transformed. However, while communitarians envision new government programs and mandates that protect women and children, theocrats and social conservatives envision a society rededicated to the nuclear family and the simple pleasures of home life.

The theocratic and social conservative vision has endured over decades. Sociologist Kristin Luker’s study in the early 1980s found opposition to abortion related by theocrats and social conservatives to belief that the nuclear family is grounded in natural differences between men and women. One of her interviewees said:

What is natural for human life and what will make people happy? The feminist movement has wanted to ... turn women into men or to kind of de-sex them.... [What] I find so disturbing [about] the whole abortion mentality is the idea that family duties-rearing children, managing a home, living and caring for a husband-are somehow degrading to women. And that's an idea which is very current in our society-that women are not going to find fulfillment until they get out there and start competing for a livelihood with men.

Another pro-life activist said: "I believe there's a natural mother's instinct.... I believe men and women are very different, and beautifully different, and that they're complementary in their nature to one another."

The traditional nuclear family, because it reflects natural differences between men and women and gives children the support they need to assume adult responsibilities is the basic building block of healthy societies. Anything that jeopardizes the nuclear family should be resisted. Married women working outside the home jeopardizes the nuclear family, according to some pro-life activists interviewed by Luker.

When you start ... competing in the marketplace for what you can do and how you can get one-up or whatever, then I think we get into problems. It's harder to come down off that plane [of activity] and come home to a life where everything is quite mundane, and the children are way beneath you.

Another activist adds: "I think [pro-choice] people help destroy the family because they want to make it so free for the woman to go to work, like with the childcare centers and all the rest of it." From this perspective, the subsidized daycare that communitarians promote is bad because it encourages women to work outside the home and neglect their primary duties as wife and mother. This weakens the nuclear family.

Women's outside employment also reflects a materialistic mind-set that devalues children. One pro-life activist put it this way:

There has been a very strong attitude that the child represents an obstacle to achievement [and] an obstacle to a lifestyle that will include the yacht and weekend skiing.... A great many couples are opting not to have any children at all because of the portrayal of the child as an obstacle, especially to a woman's career and a two-salary family.

Materialism, the loss of traditional roles in the nuclear family, the marginalization of children in families, and the availability of abortion to end unwanted pregnancies all tend to oppress rather than liberate women, according to pro-life activists. They create pressure for women to have sex outside marriage, an activist explains:

I think having abortion as an alternative-as a way out, I guess-makes it easier for men to exploit women than ever before. I think they are less inclined probably to take responsibility for their actions or to anticipate the consequences of their actions as long as abortion is available. And I think it makes it harder for women who do not choose to engage in premarital sex to say no.

One self-identified Catholic among the pro-life activists interviewed by Luker believed that sex should take place only between married couples, thereby strengthening the nuclear family, because procreation is the natural goal of sex. He said: "You're not just given arms and legs for no purpose.... There must be some cause [for sex] and you begin to think, well, it must be for procreation ultimately in addition to fostering a loving relationship with your spouse." Luker comments:

Values that define sexuality as a wholesome physical activity, as healthy as volleyball but somewhat more fun, call into question everything that pro-life people believe in. Sex is sacred because in their world view it has the capacity to be something

transcendent-to bring into existence another human life. To routinely eradicate that capacity through ... contraception or abortion is to turn the world upside down.

Journalist Russell Shorto, writing in the *New York Times Magazine* in 2006, found the same view among twenty-first-century pro-life activists. He quotes Dr. Joseph B. Stanford:

Sexual union in marriage ought to be a complete giving of each spouse to the other, and when fertility (or potential fertility) is deliberately excluded from that giving I am convinced that something valuable is lost. A husband will sometimes begin to see his wife as an object of sexual pleasure who should always be available for sexual gratification.”

Judie Brown, president of the American Life League, told Shorto: “The mind-set that invites a couple to use contraception is an anti-child mindset. So when a baby is conceived accidentally, the couple already have this negative attitude toward the child. Therefore seeking an abortion is a natural outcome. We oppose ... contraception.”

Dr. R. Albert Mohler, president of the Southern Baptist Theological Seminary, applies this insight to the contraception pill.

I cannot imagine any development in human history, after the Fall, that has had a greater impact on human beings than the pill. It became almost an assured form of contraception.... Prior to it, every time a couple had sex, there was a good chance of pregnancy. Once that is removed, the entire horizon of the sexual act changes. I think there could be no question that the pill gave incredible license to everything from adultery and affairs to premarital sex and within marriage to a separation of the sex act and procreation.

The pill, like abortion, promotes pleasure-oriented, materialistic values in place of family-oriented commitment to spouse and children. It helps wives control fertility so they can work outside the

home in pursuit of material gain, and it helps men and women gratify hedonistic impulses through sex that’s degraded through dissociation from procreation. Kristin Luker summarizes:

If one values material things too highly, one will be tempted to try to make detailed plans for acquiring them. If one tries to plan too thoroughly, one will be tempted to use highly effective contraception, which removes the potential of childbearing from a marriage. Once the potential for children is eliminated, the sexual act is distorted ... and husbands and wives lose an important bond between them. Finally, when marriage partners who have accepted the logic of these previous steps find that contraception has failed, they are ready and willing to resort to abortion in order to achieve their goals.

People with this anti-abortion view don’t oppose abortion primarily because anyone’s rights are violated. They oppose contraception even if it violates no rights. They promote an ideal of human sexuality and social interaction that’s incompatible with widespread use of contraception and abortion. If their views are based on religious texts, they’re theocrats. Others are social conservatives who think contraception and abortion endanger the nuclear family and valuable social traditions regarding male and female roles. They think the nuclear family and traditional roles have served humanity well, because they reflect natural differences between men and women.

Central to this outlook is belief that people tend to act immorally, contrary to their own long-term interests. Most seek immediate pleasure and material rewards, using contraception and abortion to gain pleasure from sex while avoiding responsibility for children. The resulting lifestyle is spiritually impoverished. The goal of public policy should be moral renewal. Communitarian proposals to reduce abortion through programs that educate the young about contraceptives and help women with children work outside the

home are misguided, according to these theocrats and social conservatives. Equally, whether or not abstinence-only programs of sex education are the most effective, or effective at all, is beside the point. The point is that more comprehensive sex education that teaches youngsters how to use birth control furthers society's moral decline.

Legal Restrictions on Abortion

The Supreme Court decided in *Roe v. Wade* (1973) that women have a privacy right to get abortions from willing providers with no government restrictions during the first trimester of pregnancy. During the second trimester, states can impose restrictions aimed at safeguarding the woman's health. Only during the third trimester may states impose restrictions aimed at preserving the life of the unborn, but these restrictions mustn't jeopardize the life or health of the pregnant woman. *Planned Parenthood v. Casey* (1992) modified *Roe* by allowing at all stages of pregnancy state restrictions that don't overly burden a woman's fundamental right to have an abortion. The central decision in *Roe* was upheld. Women have a right to abortions, and no state may restrict abortion at any stage of pregnancy in ways that jeopardize a woman's life or health.

Since 1992, states have experimented with many abortion restrictions. One that the Supreme Court found unconstitutional was Nebraska's ban on what pro-life advocates call partial-birth abortion.

Partial-Birth Abortion

According to the organization Religious Tolerance, based in Ontario, Canada, the procedure, officially called "dilation and extraction,"

is usually performed during the fifth month of gestation or later. The woman's cervix is dilated, and the fetus is partially removed from the womb, feet first. The surgeon inserts a sharp object into the back of the fetus' head, removes it, and inserts a vacuum tube through which the brains are extracted. The head of the fetus contracts at this point and allows the fetus to be more easily removed.

Critics of the procedure claim that because the fetus is no longer fully in the uterus, killing it is technically murder, not abortion. A less-technical concern is that after about twenty-four weeks of gestation, the unborn may reasonably be considered a person with a right to life. It has all the major systems and organs, including distinctively human sections of the brain. It differs from a healthy newborn, whose right to life is undisputed, only in ways that generally don't make a difference in our law and culture. It's smaller, weaker, and more dependent on a particular life-support system (the maternal uterine environment) than a healthy newborn, but size, strength, and temporary dependence on a life-support system aren't usually considered relevant to decisions about personhood.

The Supreme Court viewed matters differently, finding two flaws in Nebraska's prohibition of partial-birth abortion. First, the procedure outlawed is often used earlier in pregnancy, during the second trimester, when-according to the *Roe* decision-states may not limit abortions to preserve the life of the unborn. (I'd prefer saying that Nebraska banned abortions when the personhood of the unborn is just a religious-like belief.)

Second, although the law allowed exceptions to protect the woman's life, it didn't allow exceptions to protect her health, as Roe requires. Feminists might support *Roe's* requirement this way: even if the unborn is a person with a right to life, denying women the right to abortions needed to preserve their health is unfair. Men are never required to jeopardize their health to save the life of a child. Suppose a child needs a liver or kidney transplant to survive, and the father is the only person with enough tissue match for successful donation. He isn't required to donate. Because people have the right to decide what medical risks they'll undertake, the law gives everyone the right to decline medical operations no matter the consequences for others, even their own children. If women were denied the right to abortions late in health-jeopardizing pregnancies, they'd be the only category of patients required to risk their health for others. This goes against the feminist principle that no one should be disadvantaged for being a woman.

On the other hand, consider this case:

My name is Elena and I am 39 years old. I am single and childless. After many many years of working full time and attending college part time I am finally living my dreams and attending medical school.... I am through my first year and so happy to be here. I am peri-menopausal; for the last 3 years my periods have been quite irregular. I can easily go for several months without a period.... I always use condoms, so when I found out I was pregnant I couldn't believe it. I went out and bought 3 more pregnancy tests; every one came up positive. I cried, it just couldn't be so. There was no way I was going to have that child. My partner already had 4 kids and a horrible relationship with his ex-wife. I was not willing to toss my dreams aside so I could raise an unplanned child in that environment. Besides I had worked too hard to get where I was in my life, and I didn't want to just throw that away. I decided that I would terminate the pregnancy.

I scheduled a surgical abortion with Planned Parenthood in between my crazy school schedule and multiple exams.... But during the ultrasound portion of my scheduled abortion I discovered that I was ... in my 23rd week of pregnancy. I was completely devastated and I felt like an idiot.... There was only one place that could help me at that stage and it was hundreds of miles away in Wichita, KS. My partner went with me.... It took almost 16 hours to drive to the clinic in Wichita.... I could feel the fetus moving inside me, kicking me. That made me cry even more. I was certain I was making the right choice for me, but it was so difficult and I felt so alone in my situation.... The clinic was not what I expected, everyone was extremely warm and supportive. (Well, except of course the bitter protestors cursing at me outside the clinic, while they clutched their small children.)

The pregnancy interfered with Elena's plans and dreams, not with her physical health. What would Elena have thought and done if she'd discovered the pregnancy two or three weeks later, when the unborn was arguably a person with a right to life? What if she still wanted the abortion? An exception for women's health might have been used to spare her the mental anguish of coping with grave disappointment. That's one kind of loophole to bans on late abortions that Nebraska was trying to close by refusing to allow exceptions for maternal health.

Parental Consent and Other Requirements

One way of cutting down on abortions, many pro-life advocates believe, is to require parental approval before minors can have abortions. Any reduction of abortions is good, from the individual-rights perspective of those who think the unborn is a person. Theocrats and social conservatives who champion family values also want to encourage family interaction.

However, in 2006, the Supreme Court didn't allow a New Hampshire parental consent law to go into effect, because the law requires a forty-eight-hour waiting period after parents are notified of their daughter's abortion plans. The waiting period could jeopardize the minor's health in cases of medical emergency.

Also out of concern for the minor's welfare, the Court requires that laws mandating parental notification or consent make provision for exceptions in cases where the minor convinces a judge that she's either mature enough to make her own decision or that abortion without parental involvement would be in her best interest. *New York Times* correspondent John Leland reports that such provisions for judicial bypass make it easy for minors to get abortions without parental notification or consent. He tells the story of seventeen-year-old Alicia, who sought abortion in Arkansas, which requires parental consent.

Alicia, who was 17 or 18 weeks pregnant, said she did not have the abortion earlier because she was afraid to confront her parents....

"But I can't give the baby a life it should have financially," she said. "My boyfriend didn't want me to go through with it, but he realized he couldn't support a baby either...."

Getting judicial bypass was not difficult.... "If you go to the judge and say, 'I'm afraid to tell my parents because they might harm me,' that's all you need to say," said Dr. Tom Tvedten, who has been performing abortions in Arkansas for 20 years.... "It doesn't have to be true, because how would anybody know?"

Parental notification requirements in more than thirty states have little effect on rates of teen pregnancy or abortion, according to the *New York Times*.

The *Times* analysis of the states that enacted laws between 1995 and 2004—most of which had low abortion rates to begin with—found no evidence that the laws had significant impact on the

number of minors who got pregnant, or, once pregnant, the number who had abortions...

Providers interviewed in 10 states with parental involvement laws said that of the minors who came into their clinics, parents were more often the ones pushing for an abortion even against the wishes of their daughters.

"I see far more parents trying to pressure their daughters to have one," said Jane Bovard, owner of the Red River Women's Clinic in Fargo, N.D., a state where a minor needs consent from both parents.

Various states have other requirements designed to discourage abortion. Some states require abortion providers to offer to show women who are at least twelve weeks pregnant a sonogram of the unborn. Some require providers to read scripts that inform patients of such information as the father's legal duty to help support his child. Required waiting periods of twenty-four or forty-eight hours (with exceptions for medical emergencies) are also meant to discourage women from having abortions. These roadblocks are constitutional, so long as they don't place too great a burden on a woman's right to choose abortion.

Conclusion

Most pro-choice advocates appeal to individual rights. Their political philosophy is either libertarian or feminist. If they don't see the unborn as a person, they're not dismayed by abortion and don't see it as tragic. Many communitarians, by contrast, are concerned about public morality and fear that widespread, casual abortions are morally degrading. Some consider the unborn a person. Others are unsure of the unborn's personhood or want to show respect for people who think the unborn is a person. In any case, communitarians propose reducing abortion through sex education

and child-friendly government policies, while retaining abortion's legal availability.

Pro-life advocates may also appeal to individual rights, but they stress the right to life of the unborn. This position is no less libertarian, except that the unborn's rights are less certain than a woman's rights. Alternatively, pro-life advocates may adopt a theocratic or social conservative view that considers abortion to be just one aspect among many of our society's moral decline. Abortion is wrong and should be stopped, not so much to vindicate the unborn's right to life as to start reversing the general trend of Western civilization toward irresponsible hedonism. Evidence of this lamentable trend, according to many theocrats and social conservatives, are increasing individualism, materialism, sexual promiscuity, divorce, contraception, and homosexuality. Keeping the focus on what such people view as moral degradation, homosexuality, same-sex marriage, and polygamy are discussed in the next chapter.

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