

## **THE ROAD TO ROE AND THE ROOTS OF THE PRO-LIFE AND PRO-CHOICE MOVEMENTS**

BY Keith Cassidy, Ph.D.

When abortion emerged as an issue in the 1960s, those who arose to combat the movement that sought first to “reform” and then to repeal the existing abortion laws were struck by two facts. First, that there was controversy over abortion at all—that the protection of fetal life was not settled and unquestionable. Secondly, that this novel and shocking movement seemed to have strong allies in the mass media and in the professions. They were stunned that it was the opponents of abortion, rather than its proponents, who bore the burden of proof and the stigma of eccentricity and extremism.

For decades no public controversy of any consequence had questioned the widely held belief that abortion was a terrible crime which took an innocent life and which was sharply different from birth control. Suddenly there was a demand for expanded “therapeutic” abortions, a demand which quickly became transformed into a call for unrestricted access to abortion.

Before examining the pro-life movement we should ask, why a pro-choice movement? When and why did it arise, and how did it come to have such powerful friends?

The roots of the pro-choice movement lie much further back in the American past than the 1960s. While that turbulent decade saw forces which triggered the abortion controversy and which aided its speedy triumph, the crucial—and in many respects deeply contradictory—changes in attitude which were the necessary precondition for change occurred far earlier. Where can we find an adequate account of this transformation?

What do pro-choice historians say? In essence the story they tell is this. Throughout history abortion was a long-standing, widely practiced and widely accepted means by which women attempted to control their reproductive lives, which encountered a significant campaign to restrict it only in the 19th century. This campaign had some elements of moral concern for the rights of the fetus but was primarily part of a move by doctors to enhance their professional status.

In addition, they argue it was also part of a move to increase the birth rate of white middle class women, in part because of racist fears of immigrant birth rates but even more because of a fear of women who were not subject to male power. It was an expression of hostility to women and can only be understood in the context of gender relations. (At the same time, they also said that the laws were intended to protect women from the dangers of abortion.)

In this interpretation the repressive regime created in the nineteenth century became for a number of reasons unsustainable by the mid twentieth century. The 1960s movement to end abortion statutes was thus an expression of a desire to return to what they argued was “normal” practice.

To their minds, opponents of this abortion “reform” could best be understood as analogues of the anti-feminist and reactionary forces who, they maintained, had created the laws in the first place.

In other words, this interpretation of abortion-law history focuses on an allegedly disrupted tradition. Reform is seen as a return to an interrupted past in which abortion had been widely accepted. Since it is seen as a restoration, not a revolution, little attention is paid to its deeper roots.

What this approach does not do is to recognize, let alone to explain, the very real revolution in abortion policy undertaken in the 1960s and the way in which it represented not a return to an older tradition but a radical discontinuity, not just with the immediate past, but with several millennia of tradition.

The discontinuity is this: even if one accepts without reservation the claim (dubious at best) that prior to the 19th century laws there was an unrestricted "right" to abortion prior to "quickening," it is also the case that abortion after quickening was forbidden. This arose from a concern to protect human life.

Indeed the less stringent attitude to abortion prior to quickening was the result of the belief that human life was not provably present prior to fetal movement. It is inappropriate to use the word "abortion" in its modern sense to describe those pre-quickening pregnancy terminations precisely because while we know that they were (in objective fact) abortions, they were not perceived as such by those performing or undergoing them. The claim that the pre-quickening terminations in earlier centuries can thus be used as justification for abortion today is insupportable.

More importantly, the modern pro-choice movement does not limit itself to a call for a return to a right to terminate an early-term fetus. It calls for a right to abort all fetuses at any point in the pregnancy for any reason the mother finds sufficient. This is clearly a radical discontinuity with the past.

The story told by pro-choice historians does not recognize or explain this discontinuity. Their failure to deal with it, however, makes it impossible for them to understand how truly radical the pro-choice movement was. It simultaneously makes it impossible for them to understand the nature and role of the pro-life movement.

Abortion advocates cannot recognize that the pro-life movement is much closer to the long-standing tradition of Western society than they are. Thus, they must instead force the movement into what is clearly an utterly inadequate explanatory framework: an anti-feminist backlash by those opposed to gender equality.

By contrast, I would suggest the following. The 19th century laws against abortion were passed with so little difficulty or debate precisely because they did, to a substantial degree, reflect the moral understanding of the community, namely, that ante-natal life deserved protection. At the base of the 19th century crusade to outlaw all abortions lay two assumptions which were widely shared.

First. It was assumed that human life had an absolute value. Second, it was assumed that it was only necessary to demonstrate that human life was a continuous process, from conception onward, in order to validate the claim of the early fetus to full humanity. While these views were held with particular intensity by physicians, they were clearly consistent with the dominant philosophical presuppositions of the society, for otherwise they would not have achieved such relatively easy victories throughout the country.

It must be stressed that these are in fact philosophical presuppositions: the absolute character of the human right to life (which for almost all in society was anchored in the belief that it was conferred by a transcendent God, not by society; that it is a right "endowed by their Creator," as the Declaration of Independence has it) and the belief that the category of "human" was biological, not separate from "human person" and not a social construction. These presuppositions reflected deeply rooted and rarely articulated philosophical beliefs.

The widespread persistence of these beliefs was manifested in the fact that when a right-to-life movement arose in the 1960s, most of its efforts were directed at making precisely these points to the public. The focus on showing the continuity of fetal development was a continuation of the 19th century physicians' attack on the quickening distinction.

There was this crucial difference. In the 19th century the right-to-life argument could count on the concurrence of the public, or at least the absence of vocal opposition, because the habits of thought and philosophical assumptions of anti-abortion physicians were almost universally held in society.

By the mid-20th century they were not. That pro-lifers were taken aback by this development is a striking reflection of the degree to which American society had split asunder on its understanding of basic words and concepts.

There are various explanations why abortion advocates came to prevail— structural changes in women's lives and employment, the sense that control of fertility was a right, population anxieties, the civil-rights and anti-war movements, the youth culture of the 1960's, able leaders and particular events (such as the case of Sherri Finkbine, who, when pregnant, had taken Thalidomide, which often produced severe birth defects). But all are inadequate to explain the rapid and complete success of the call for an unlimited right to abortion.

Over the course of decades, from the 19th century to the 1960s, the intellectual framework which permitted and indeed required the beliefs that the human right-to-life was a transcendently anchored absolute and that the category of "human" was independent of social definitions of "person" began to fade, first for the intellectual elite and then for a widening circle of the public.

Clearly, in America as elsewhere in the Western world, the idea of a transcendent moral order became unbelievable for many. The new philosophical climate was less hospitable to the assertion that even in its early stages a fetus was fully human, whatever its appearance, and was entitled to the same absolute protection as any other human. Indeed such a belief came to seem to many as incomprehensible. Eventually what had been a widely held assumption was dismissed by many opinion setters as an irrational assertion best lumped under the dismissive heading of "religion."

While this trend undermined the fetus's claim to legal protection, another trend was underway which paradoxically elevated some other rights claims into absolutes. As Professor Mary Ann Glendon has noted, claims to rights under the Constitution have increasingly been made in absolute terms, including (and most notably) in regard to abortion.

One of the most striking and paradoxical features of the events which led up to the abolition of all abortion laws in *Roe v. Wade* is the erosion of an absolute right to life and the consequent belief that no claims could be made on behalf of the fetus which were not limited by the social circumstance, in conjunction with the absolutizing of previously limited rights under the Constitution.

The pro-choice historical accounts of the triumph of their cause do not address it, however. Implicit is the assumption that no one had ever really believed in fetal rights and that those who speak of fetal rights must be hiding other motives, since they could not really believe in them.

Why is it not clearly acknowledged that both the idea of the "human" and beliefs about the origins and nature of human rights have substantially changed for some in the last century? Perhaps it is because the American polity is based on a rhetoric of innate and absolute human rights, which assumes the continued vitality of the older philosophical beliefs. If it is held that all humans are from birth fully equal regardless of age, race, or ability but that before birth—even one second before birth—they are not entitled to the protection of the law, both human rights and the very definition of "human" must be understood as social constructions, subject to constant revision. This tension between the liberal creed and the defense of abortion has drawn the attention of liberals such as Nat Hentoff.

As noted above, pro-lifers insisted on making arguments based on the older view of inherent, inalienable rights, and of a comprehensive definition of "human," based on a traditional set of philosophical understandings. These views could not be directly attacked unless one was willing to call into question the basis of American liberalism as it was understood by a majority of the public. Radicals might be

willing to do so, but others were not, not even to themselves.

The right-to-life movement embraced a campaign to preserve a traditional understanding of rights, an understanding still shared by many Americans. It could not, however, be attacked, or even understood, as such, so it had to be interpreted and attacked on other grounds: as itself hostile to the rights tradition—thus the claims that it was a repressive movement opposed to gender equality. This is not to suggest a deliberate campaign of misrepresentation, but rather that the abortion debate raised issues of the deepest character, going to the heart of American politics and society and that its full implications were rarely recognized by its participants.

A history of the pro-life movement will find that it arose in part from a defense of traditional understandings of the nature of human rights and of the idea of the “human.” Far from being a “radical,” “deviant,” or “pathological phenomenon,” as suggested by its opponents and some of its interpreters, it is well within the mainstream of American history and American society.

While its opponents certainly commanded considerable power and prestige, they did not command the support of the majority of Americans. Instead the public was deeply divided, with a majority clearly neither fully pro-life nor pro-choice. The abortion controversy is thus the clearest example of the profound philosophical differences which lie at the root of the “culture wars” of contemporary American society

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