

Abortion and Liberty

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Abortion is the most fundamental issue involving natural rights and individual liberty. Many people wish the issue would simply disappear, but without clear and correct answers to the questions involved, the controversy will continue, and it will be impossible to defend liberty.

It's no coincidence that today's argument over abortion comes at a time when freedom in general is threatened in the United States, as well as in other Western countries. Nor was it accidental that genocide, abortion, and euthanasia were all practiced under Hitler, and that all three characterize totalitarian states. Abortion has become common in the U.S. only in the past 10 to 15 years, and particularly since the Supreme Court decisions of January 1973.

In the 1960s, state laws were changing, and open violations of those laws were common for the purpose of precipitating court challenges. The past 20 years have been revolutionary in the rapid change in the attitude of the American people about abortion. During the same period, outright hostility toward a free society has also grown, as have the size and power of the federal government.... They are all the result of a lack of understanding and concern for natural rights bestowed on us by our Creator. Our economic and social problems have a common cause: the blatant disregard of human rights.

When large numbers of abortions were first performed in New York, the complaints came not from the political philosophers who demanded consistency and equal protection under the law for prostitutes and homosexuals, but from the garbage collectors. Those who serviced the hospitals refused to pick up the fetuses discarded following abortions. To whom shall we turn for our leadership? In this case, the philosophers of the street.

Throughout medical school, internship, and residency, all of my training was directed toward preserving life and restoring health. The medical literature prior to 1973 focused on techniques for delivering healthy babies. But quickly after the Supreme Court ruling, the journals became a source of information for those performing abortions. The rapidity of the change was as remarkable as it was discouraging. (A recent issue of the *American College of Obstetricians and Gynecologists Technical Bulletin* was a technical description of how to remove and destroy a fetus of 13 to 26 weeks. The more mature fetuses in this group are well past the size of survivability outside the uterus. Recognizing the dangers inherent in late abortion, the article concluded that the solution was prompt and early abortions....

Today, applicants to our medical schools jeopardize their chances of acceptance if they express their objections to abortion. I know of a Congressman's son, who after

being quizzed, was turned down by two university ob-gyn residency programs because he refused to agree to do abortions....

During the 1960s, when abortion became acceptable, the proponents used arguments that Nathanson [who performed or supervised 60,000 abortions before becoming opposed to the procedure] now admits were deliberately false and misleading. For instance, they claimed 5,000-10,000 women died per year from illegal abortions. Dr. Nathanson claimed that this lie was necessary for the "morality" of the cause—legalizing abortion. The truth is that in 1967 there were 160 deaths reported from illegal abortion and in 1972, just prior to the Supreme Court ruling, there were 39. Now there are 1,500,000 abortion deaths each year, hardly a fair trade-off; and maternal deaths from the procedure were still 33 in 1977.

Those who defend liberty remarkably well in other areas frequently fail miserably on the abortion issue by saying that even though they recognize the fetus to be human and alive, it's nevertheless an "intruder," an "aggressor," and the mother—because of *her* rights—can throw this aggressor and intruder out of her uterus. This argument *must* accept throwing out and killing an "intruder" whether *one ounce*, or *seven pounds and one ounce*, hardly a consistent position for those who say *every* individual by his very nature has a natural right to life and liberty. The fetus, of course, neither aggressed nor intruded. The mother and the father placed him there.

Even the United Nations, hardly an example of Protestant fundamentalism, classical Catholicism, or individual liberty and the free market, stated in its 1959 Declaration of the Rights of the Child that "the child, by reason of its physical and mental immaturity, needs special safeguards and care, including appropriate legal protection before as well as after birth."

In 1967, the first International Conference on Abortion met in Washington, D.C. Twenty scientists with various backgrounds concluded "the majority of our group could find no point in time between the union of the sperm and egg, or at least the blastocyst stage and the birth of the infant, at which point we could say that this was not a human life. The change occurring between implantation, a six week embryo, a six month fetus, a one week child or a mature adult are *merely* stages of development and maturation."

The Declaration of Geneva of the World Medical Association states: "I will maintain the utmost respect for life from the time of conception until death." Politically, medically, and legally the consensus seems to be that human life does exist from the time of conception. But the question remains:

"Does the fact that it rests in the mother's womb and not in the mother's crib exempt it from the prohibition against acts of violence?"

By 1970, organized medicine was pushing harder than ever for readily available abortion services. The American Public Health Association no longer debated its advisability and disregarded entirely the concern many had for the right of the fetus to equal protection under the law. The executive board of the APHA adopted "standards" to be followed for those providing abortions to the public. One provision was that: "An important function" of an abortion clinic is "to simplify and expedite the abortion—there should be no delay."

...I know of several cases where the expediting was so efficient that the "abortion" was done on an empty uterus for a handsome fee. If remorse is a real problem, this speeding up of the process serves to increase this complication....

The Rights of the Fetus

The fetus, for certain legal purposes, is recognized as a person. A baby born with an injury caused by drugs or medical neglect has recourse in a court of law claiming damages. This was true with the thalidomide cases in the 1960s. The Supreme Court in *Roe v. Wade* brushed this aside saying traditional tort law denied recovery for prenatal injury, while conceding that today "that rule has been changed in almost every jurisdiction."

A baby not yet born, if injured or killed in an automobile accident, can claim damages either directly or through the parents from those liable.

One of the most ironic legal twists of this whole abortion question demonstrates the schizophrenic position of today's law. An unborn baby today has more legal "protection" of his "right to die" than of his right to life. If an abortion is attempted and fails, the mother, *for the infant after birth*, can sue the doctor for "malpractice." *OB-GYN News* recently reported how attorneys now can earn over a million dollars per year on suits like this because "cases involving failed abortion have led to astronomic settlements."

The unborn child was a person when the "malpractice" occurred and under the equal protection clause deserves payment as an "injured" party, collectible at birth. If the newborn can collect damages from an "insult" (failure to be killed) incurred during gestation, this in itself confirms legal recognition that a person with legal rights truly did exist. The tragedy is that since the Supreme Court rulings of 1973 this legal recognition only occurs when life instead of death prevails.... The law...says a fetus shall receive equal "protection" under the law while the law itself permits (and the government finances) his death. The fetus that deserves life—as *all* fetuses do—has no protection whatsoever. The law and the state thus become the enemies of life, not the protectors of life, just as they have become thieves when they *confiscate* property instead of *protecting* property by

punishing theft and protecting rights of property ownership.

Legally a fetus is entitled to inheritance, even if the father dies before the birth of the infant. This has been a part of our legal code since 1795. This certainly gives legal recognition to the fetus...as a person entitled to legal protection under the law. If we can protect the *property* of a fetus and guarantee that it be delivered to him even after birth, why can we not guarantee and protect and deliver to him his *life* as well? The courts have even ruled that the illegitimate child of a father who died before the birth of the infant was entitled to the father's Social Security benefits. This is, of course, not a natural right, but it is a recognition that a person does exist and was afforded legal recognition.

Mother versus Child

The key moral and legal argument is the issue of the mother's right to her own body and the right of a fetus to his life....

If the life of the fetus may be destroyed while within the body, there is no consistent argument against this same mother destroying that same life the minute or the week after birth when it is in the mother's home, for both the body and the home are the property of the mother....

This problem is well illustrated with a "failed" abortion in which a live baby is delivered instead of a dead one. In 1977, Dr. William Waddill of California agreed to do an abortion on an 18-year-old girl. He estimated her gestational period at 21 or 22 weeks. The abortion was attempted with a saline injection, and the patient subsequently delivered a 2.5 pound premature infant estimated to be at 31 weeks gestation. The discrepancy was explained by Waddill: "I made an error; I had no idea it was so large." Even so the abortion attempt was legally performed.

Following delivery, Waddill—according to the testimony of a pediatrician—deliberately choked the baby in order to kill him. When this did not immediately work, Waddill allegedly suggested to the pediatrician that the sink be filled and the baby's head held under. Eventually the baby died; the mother sued for \$17 million; and Waddill was tried for murder.

Anyone who supports abortion has no legal, moral, or practical defense against the deliberate killing of the newborn. Without a consistent resolution of this issue, we cannot achieve a pro-liberty, natural rights philosophy.... If we are to limit government's role only to protection of life, liberty, and property, we cannot dilute this [role] and confuse the issue by...rejecting the protection of innocent life merely because of the location, size, or condition of certain human beings.

[Originally published by Ron Paul as a booklet, this essay was reprinted, with permission, in two parts in *AAPS News*, December 1988 and August 1989.]