

## Chapter 6.09 Abortion

Abortion is a hot issue in the “culture wars” in America. This chapter aims to calm people down by showing to both sides the rationality and humanity in the other side. I take a typical liberal stance. We should keep doing what we do now; the state should allow abortion. We should think of the issue in terms of persons and rights. We should vigorously encourage both birth control and self-control of sex. This is about what most Americans want. The strength of the chapter is its explanations of the logic of Roe v. Wade, the logic of the anti-abortion stance, and how people might have viewed abortion in pre-modern times.

### **Roe v. Wade.**

To the extent that I understand, the famous Supreme Court decision Roe v. Wade lays out these ideas:

-Abortion is not a question of “when does life begin?” or “when is the fetus a fully human person?” It does not matter if life begins at conception or at any other time. It does not matter when a fetus becomes a fully human person. The court did not define when two sets of chromosomes become alive and then become a person.

-Abortion is a question of rights, especially of greater rights. Who has what rights when? What is the basis for the rights? When do rights conflict? Whose rights prevail when?

-A woman has rights based on privacy and on control of her body. I think the right to control her body is based on her (implied) Constitutional right to privacy.

-A fetus also has rights. I am not sure on what the fetus’ rights are based: being alive, being a human person, length of life, or what.

-The woman’s rights are already fully developed when the problem pregnancy begins.

-It is not clear when the fetus’s rights begin. This has to be defined.

-At conception, the fetus is considered either not to have rights yet or to have rights less than the rights of the woman. The woman’s rights prevail.

-As long as the rights of the woman prevail over the rights of the fetus, the woman may abort the fetus. If she aborts during the time when her rights prevail, it is not murder. Whether it is killing is not relevant.

-After the rights of the fetus prevail over the rights of the woman, then she may not abort the fetus. After that time, killing the fetus is a kind of murder.

-It is not necessary that the rights of the fetus begin at conception or at some particular time after conception such as at age six months or when the fetus is viable outside the mother. It is only

necessary that the rights of the fetus begin by the time set by the court for when the fetus' rights overcome the rights of the woman.

-It is not clear what is implied by: the fact that the fetus has (develops) rights; the rights have to begin sometime during the course of the pregnancy; the rights begin at any particular time such as at conception, six months, or viability; the rights of the fetus eventually overcome the rights of the mother; or the rights of the fetus overcome the rights of the mother at any particular time such as at conception, six months, or viability.

-The problem is to decide when greater right shifts from the woman to the fetus, and why. It is useful to have a criterion for the shift in rights.

-The court decided that the criterion for the pivot point in rights is self-viability for the fetus. A self-viable fetus is like an autonomous human person (something Americans value highly). As long as the fetus likely is not viable outside the woman's body, her rights prevail and she may abort the fetus. When the fetus likely is viable outside the woman's body, then the fetus' rights prevail over the woman's rights.

-The court provided an index to decide when the fetus might be viable outside the woman. The court used modern medical success as the basis for its index, and converted that to a time period. If modern medicine says that fetuses of six months old or greater usually survive outside the woman, then that is when the rights of the fetus prevail over the rights of the woman. Before that age, the woman may abort the fetus. After that age, the woman may not abort the fetus.

-That the fetus has (develops) some rights at some time during pregnancy does not have to mean: the fetus has rights from conception, the fetus is a full human person from conception, life begins at conception, the fetus gets rights at any particular time, the rights of the fetus overcome the rights of the woman from conception or at any particular time, or the rights of the fetus are based on its being alive or being a person. It only means that the fetus gets rights at some time during pregnancy.

-That the rights of the fetus eventually overcome the rights of the woman at some time during pregnancy does not have to mean: the fetus has those strong rights from conception, is a full human person from conception, life begins at conception, the strong rights of the fetus are based on its being alive or being a person, or the strong rights of the fetus come at the same time the fetus gets any rights at all. It only means that at some time during pregnancy the rights of the fetus prevail over the rights of the woman.

-In the future, the court might use a criterion other than viability, or might use an index other than the age of the fetus. The court might decide that the rights of the fetus prevail when the fetus shows signs of central nervous system development. The court might decide that occurs at the age of five months (I don't know when it occurs) or might decide that occurs when a fetus can be trained to distinguish between specific sounds.

-In the future, on one hand, the court might think the rights of the fetus begin at conception, and the rights of the fetus prevail over the rights of the mother from then. On the other hand, the court might decide the fetus does not have rights at all until it is born naturally at full term regardless of whether it is alive or a

person. The court might decide the fetus has rights from conception but the rights of the fetus do not prevail over the rights of the mother until the fetus is born naturally at full term.

-In the future, the court might look at rights in a different way, or might not consider the matter in terms of rights at all but on a different basis such as natural types.

-Not to think primarily in terms of persons and rights likely goes against the grain of American legal history and American political culture.

-In the opinion of a layperson (me), the thinking of the court on these issues is quite good.

### **Logical Points.**

For clarity, here is a restatement. There are six distinct considerations:

(1) When the fetus is alive.

(2) When the fetus is a person (to be a person, normally you have to be alive).

(3) When the fetus begins to have rights (to have rights, normally you have to be a living person).

(4) When the rights of the fetus prevail over the rights of the woman.

(5) Some criterion of when the rights of the fetus prevail, such as viability outside the woman.

(6) An index of the criterion. Usually measurable indexes are easiest to use, such as a fetus is viable at six months of age.

It might seem as if the second step about personhood is not necessary but I think in the long run it is necessary.

The question is of greater rights, not of rights alone, personhood, or life. Life and personhood matter only as they might confer right on the fetus, and might confer on the fetus rights greater than the rights of the woman. Even if the court grants that the fetus is alive from conception, that view does not mean the fetus is a person, has rights, or that any rights of the fetus overcome the rights of the woman at any particular time. Even if the court grants that the fetus is a person, from conception, that view does not mean the fetus has rights or that any rights of the fetus overcome the rights of the woman at any particular time. Even if the court grants that the fetus is alive, is a person, and has some rights, from conception, that view does not mean the rights of the fetus overcome the rights of the woman at any particular time.

It is not clear that any state legislature, or even Congress, has the power to declare the fetus is alive, is a person, has rights, and that the rights of the fetus overcome the rights of the woman, at a particular time. For the Supreme Court to declare that any legislature, including Congress, may decide these issues, the court also has to declare that the right of legislatures overcomes the right to privacy as implied in the Constitution, not only the right to privacy and control of her body of a woman-with-a-fetus but the right of

all persons to various kinds of privacy. If a group wishes definitely to ban abortion, it might need a Constitutional amendment that declares the fetus is alive at conception, a person then, has rights then, and the rights of the fetus overcome the rights of the mother then. The amendment must be clear about what it does to general rights to privacy, as, for example, rights to privacy that are important in freedom of religion. If the Supreme Court declares that legislatures do have the power to decide these issues, then each legislature will have to work it out individually. Congress will have to decide what it wants to control and what it wants to allow to state legislatures.

To my mind, despite the Constitution, the Supreme Court and Congress have not been clear on what is a person or not a person, what kinds of persons there are, what rights any kind of person has simply by being that kind of person, why a person has those rights, when a person has those rights, and why the particular rights of one person overcome the rights of another person. In the near future, these questions are important because business corporations technically are a kind of person with some rights; but we do not want them to have the full rights of flesh-and-blood human beings. We do not want them to have free speech, marry, have children, give bequests at death, or give to campaigns. In the more distant future, we will have to work out these issues fully because of biotechnology and artificial intelligence. I do not bring up the parallel question of what responsibilities are entailed by what rights.

### **“Right to Life”.**

The anti-abortion movement sometimes calls itself “Right to Life”. In so doing, it recognizes that the issue depends legally on rights; but it wants to define rights so as to bolster a total ban on abortion. It defines the fetus as a full human person from conception; says the fetus’s status as a full human person gives the fetus full rights; one of the rights is a “right to life” (like self-defense); and the right to life of the fetus always outweighs the rights of the woman from the time of conception. In effect, the “Right to Life” movement defines fetal rights so as to negate any woman’s rights, and so negate any possibility of abortion. This is another way to re-assert, in terms of rights, ideas that are not about rights at all but about God-given natural types; see below. The “right to life” movement is not really about rights but about using the idea of rights to gain legally what it wants for other reasons. This tactic is common in politics and law, and so should not be held strongly against the “right to life” movement. The “right to choose” movement is not too much different. You should consider all arguments by all sides, and then decide according to what you consider the important principles.

### **Natural God-Given Types.**

To the extent that I understand the position of the Roman Catholic (RC) Church, I use its position to stand for a reasoned coherent alternative view of the topic. Whether the RC Church really can represent the anti-abortion (pro-life) view in general, I cannot say. I take the points below from my reading of RC Church doctrine (principally Thomism), RC Church catechism, and pamphlets on abortion. I do not comment on whether this point of view is true or not. It is widely shared. I apologize if I am not accurate.

-There are natural types. Natural types reflect God’s will. We must respect natural types as an expression of God’s will. We have some obligation to defend natural types. We cannot go against natural types without good reasons. We cannot always argue about natural types in terms of competing

rights. (The fact of natural types does not necessarily argue against evolution by natural selection. The RC Church now apparently accepts Darwinian evolution.)

-These are very important natural types: life, innocence, babies and children, parent-child relations, and the mother-child relation. These types can overlap. When they do, they are even more important. For example, babies are innocent life.

-These natural types are sacred. Especially life is sacred. It has a high value. In some cases, it has a higher value than freedom or privacy. In some cases, any of these natural types might have a value higher than freedom or privacy. I am not sure if "higher value" can translate directly into "greater right". For example, I am not sure if life has a greater priority of rights than the right to privacy in the Confessional.

-People have an obligation to protect life, innocence, innocent life, babies, mothers, fathers, and the parent-child bond. It is not clear if this obligation extends to all instances of these natural kinds such as to animals and to nature as a whole. It is not clear what priority this obligation has, as for example more priority than a right to privacy in the Confessional.

-Parents have a strong natural obligation to defend their children. For a parent not to defend a child is a breach of several natural types and of God's will. For a parent to commit abortion is a breach of several natural types and of God's will.

-Even people that are not themselves the parents of a child have an obligation to defend babies and to defend the parent-child bond.

-Again, it is not clear if the obligation to defend babies and the parent-child bond as natural types extends to all kinds of innocent life such as to animals and to nature as a whole. It is not clear what priority this obligation has, as for example more priority than a right to privacy such as in the Confessional.

-The RC Church does not want the state, any private group, or science, to decide these issues. It does not want the state to decide what natural types are, when life begins, when life becomes human, when killing is murder, what natural types prevail over others, when natural types prevail or rights prevail, whose rights prevail in a case of life versus life, or how rights work in cases of natural types. These are moral issues, which the RC Church should decide.

-Information Interlude: Early Christians avoided infanticide. Early Christians condemned abortion but it is not clear what they did to people that got abortions. Around the time of Jesus, infanticide was more common than abortion; abortion was not very common and so not really much of an issue; see below. I think Early Christians tolerated abortion sometimes but very likely they did not allow it often. It is very unlikely Early Christians used ideas about when life begins, natural types, or whose rights prevail when, to decide about infanticide and abortion. People then did not worry about when life begins, children did not have rights unless they had been declared an early heir of a propertied man, and natural types got broken all the time. Many non-Christians thought Christians violated natural types, as for example when Christians ate human flesh and drank human blood in the Eucharist. Early Christians did not need analysis based on legal-theological-philosophical ideas to condemn infanticide and to frown on abortion.

In any case, the RC Church believes its position is the most consistent with the total tradition of Christianity. I am not sure if it is the most consistent but it is well in line with the historical tradition.

-Return to RC Church position: Fetal life begins at conception. A pregnant woman is a mother from conception. A pregnant woman, together with her child, form a natural type from the time of conception. The obligations to defend life, innocence, children, and the parent-child bond begin at conception. The natural type of a mother-and-her-child-from-conception can be used as the basis for moral argument; it can trump other natural types and trump other arguments based on other grounds such as rights.

-Abortion is not primarily a question of rights. It is a question of preserving natural types, in particular life, innocence, babies, and the parent-child bond. If the question must be seen in terms of rights, in any conflict of rights between the mother and the fetus, the rights of the fetus prevail.

-Although killing might be right in some circumstances, murder is always wrong, and the killing of the fetus is necessarily murder.

-Abortion is wrong even with incest, rape, or genetic defect. There might be some allowance for these cases now, the details of which I do not know.

-It is not enough to let the state enact one set of laws while members of the RC Church live up to a stricter set of Church laws. It is not enough that the state allows abortion while members of the RC Church do not practice abortion. Because innocent life and the parent-child bond are at stake, the RC Church and its members must act to help, and must act through the state to help.

-The RC Church, and members of the RC Church, should push the state, and push its particular officials, to enact laws in accord with the RC Church's moral position on important issues. The RC Church and its members should make the state the instrument of RC Church morality on important issues. Abortion is an issue for which the RC Church and its members should make the state the instrument of RC Church morality. The RC Church and its members should urge laws to protect life, innocence, children born or unborn, and the parent-child bond; laws against abortion are a way to protect all these natural types.

### **Comments.**

Other churches have similar well-thought-out positions which include using the state as a tool of their morality. Other anti-abortion activists do not always have a well-thought-out position. Pro-abortion (pro-choice) advocates also use the state as the tool of their morality.

The natural types described above are related to, but are not exactly the same as, the natural types that were mentioned in Part Five of this book, on evolution. How they are similar and different is too much to go into. I think the natural types listed above carry more "cultural" baggage than the natural types from Part Five. I think the natural types here are more "made up" by particular cultures and subgroups within cultures than the natural types of Part Five. You can see why social scientists might be wary of natural types.

The RC Church argument is framed in terms of “when does life begin” and “life begins at conception” but the dispute goes beyond that. It is about natural types regardless of when they begin. The idea that life begins at conception is a way to invoke relevant natural types.

Natural types in general, and the specific natural types of life, innocence, child, mother, and the parent-child bond, are important in Christian theology beyond this particular controversy. For example, the scandal over child abuse in churches is so sharp largely because it is about the violation of the same natural types as in the abortion controversy and it is about the violation of natural types by constructed types such as priests. The natural type of innocence is important in Western culture and especially in American pop culture. Groups other than anti-abortion groups use natural types, including secular humanists. The environmental movement ultimately depends on the idea of natural types. Natural types do not provide foolproof grounds for conservative arguments; natural types can work both for and against Conservative arguments. I do not know of a good simple book on the relation of natural types and legal rights.

Just as we want to think nature and morality coincide even though they do not, we want to think natural types are all completely compatible and there could be no conflicts between natural types that could not be resolved gracefully. Mothers and children always get along. Anything else would be like finding a contradiction in God’s will. In fact, of course natural types do not always get along. People that use natural types in arguments want to think they know all the natural types and so they know God’s will. Nobody could bring in a natural type that they did not know about. There has to be complete agreement on natural types or else it is again like a contradiction in God’s will. In fact, people do not agree on natural types and there might not be one perfect complete set of natural types. Almost everybody can agree that a human person is a natural type but what about a bishop or a priest? What about maiden aunts or homosexuals? When natural types do not agree, or when people are not sure about the natural types, people have to make decisions on another basis. That is when we invoke courts and rights. I do not know the implications for God’s will.

Not the RC Church or any other organization operates fully in accord with natural types and only natural types. Some Christian doctrines violate natural types and are important just because they violate natural types, such as the Resurrection, the Eucharist, and even Baptism. Current evolutionary theory about religion predicts this situation. What this situation says about God’s will, I do not know either.

Not only are mothers and children natural types, but so also is the mother-with-children-already-who-cannot-afford-more-children a natural type. So also is the woman-without-a-child-but-is-pregnant-and-cannot-take-care-of-this-child-without-endangering-her-future-family a natural type.

They are not just women in dilemmas, they are natural types. Now, we have to figure out which natural types prevail, and why. Invoking natural types does not fully solve the problem of abortion.

In the courts, if the argument about abortion were framed in terms of “when does life begin” or “life begins at conception”, it could not be framed primarily in terms of rights but would have to be framed primarily in terms of natural types. I think a shift away from rights to natural types would be a major shift in American legal culture and political culture. The shift would have implications far outside abortion.

## **Non-Modern Settings.**

People did not have abortion as we know it now until recently, not until the 1900s. Abortion was not the main method of dealing with an unwanted baby. The main method was to kill the baby after it was born or to neglect it until it died. The main reason for dealing with an unwanted baby through most of human history has been the need to take care of yourself, your other present children, and future children. The desire to do what you want, have casual sex, and have fun, has never been the main reason for abortion; it is not the main reason now despite Right Wing misinformation. So both abortion practice and anti-abortion fervor of the modern kinds are new. It helps to look at what people faced before.

Until recently, people did not have the chemical or surgical means to abort a fetus safely. The fetus could be killed while in the uterus by techniques like binding the stomach or sticking needles up the vagina; but only at risk to the mother. People had some drugs that supposedly caused abortion but most of the drugs were useless, about as effective as most natural remedies now. Any drugs that did work were also dangerous. Women lost their lives trying to get rid of an unwanted fetus.

When I first started graduate school, Roe v. Wade was only a few years old, and the courts were still working out where to draw the line. The discussion was in terms of trimesters of a pregnancy, in particular if the line should fall between the second and third trimesters. A professor liked to get people to think by saying, "Why not abortion in the fourth trimester or the fifth trimester?" In other words: why not infanticide? (I thank Steve Fjellman for pointing this out to me.) That might sound crazy, but is not. Until recently, most "abortion" was by infanticide. Because it was too dangerous to the mother to try abortion while the child was still in her, parents waited until a child was born, and then killed it directly by strangulation, smothering, or drowning, or killed it indirectly by exposure. Sometimes parents killed it indirectly by neglecting it until it died of starvation or disease. When one or both parents died, the surviving kin of children as old as ten years killed the children or allowed them to die. Even now, a lot of de facto abortion is by indirect infanticide, especially in poor countries, or in poor areas of rich countries. Abortion has always been around, but it was usually abortion of fetuses that are already born (that is, children, by infanticide) rather than of fetuses still in the womb.

If evolution programmed us to want families, then how could it allow a parent to kill her-his child? Evolution did not program us to seek every child as it comes along, or to seek the most children in the short run. Evolution programmed us to seek maximum reproductive success over the long run. Not every child now is a real increase in long-term reproductive success. Another child now can endanger itself, children that we already have, and children that we will have. A mother with a two-year old and a one-year-old already simply cannot feed another baby. If she tries, likely all three will die. Better to let the new baby die than to kill all three. Even if a woman does not have children already, she can see that having a child now will endanger her ability to have the right number of children, at the right times, in the right circumstances, in the future. If she has to take care of a child now, as a young inexperienced woman, she will not be able to learn how to hunt and gather properly, learn the right skills such as sewing, and make the right connections with other women and other families that she and her children will need in the future. Women need a man not just to get pregnant but need the support of a man to reproduce maximally over the long run. They need his protection for the children that he will claim as his own. Women use sex, and the promise of reproduction, to forge bonds with a man so that the man will



help with their family together, especially protect her children. If a woman already has a child by another man, then potential future men will not be as interested in her and not nearly as likely to help her and their future children together. She is much better off getting rid of this child and so offering men a clean platform on which together they can build their own new family. This assessment might not sound sweet but it is realistic. Women have needed to plan and arrange for a lot longer than since Roe v. Wade. One unwanted child can destroy all their planning and the lives of future children. Sometimes it is better to get rid of a short-term modest gain in favor of long-term greater success.

Now we see why the mother-with-her-viable-children-now-and-in-the-future, and the mother-without-children-now-but-potentially-with-her-viable-children-in-the-future are both natural types on which we can base moral reasoning. They are natural types that can trump other natural types such as mother-with-her-child-(fetus)-now, especially if mother-with-her-child-(fetus)-now risks other current children and future children. In the past, the natural types of the potential-mother-who-did-not-want-this-child have trumped other natural types, such as the father's family, and so should trump some other natural types now. Thus abortion is natural and people could feel moral enough about it. Thinking in terms of natural types is a two-edged sword. It does not work only for anti-abortion activists. It can help pro-choice activists. Thinking in terms of natural types works for anti-abortion activists now only because of how Americans mistakenly see natural types from the safety of our urban affluence.

More facts strengthen the argument. Much as we do not like to admit it, we value people differently according to age. People die naturally at all ages. Generally, younger people die more often (have a higher death rate) than older people until about age forty. Fetuses die more often than babies; babies die more often than toddlers; toddlers die more often than children; and children die more often than adults. Weak people die early. Strong people live longer. Just by living longer you show that you are probably stronger than the average younger person. Until at least the teen years, the longer a person has lived, the more likely the person will live another year. In particular, a child of five is more valuable than a baby of one month and is more likely to live another year. If you can only support one of them, you are better off letting the baby die so as to maintain the child. Some cultures do not think that a child is really a full human until it can talk fairly well, which means until it is about five years old. Until then, its death is not a great loss. Often a young child does not get a full funeral. Even now in America, small children do not get a full adult funeral. Maybe in our affluent age we can afford to say we value all life equally, that we would like to see a baby in the same terms as a proven child; but really we do not.

I have never read a case where a sane parent enjoyed killing his-her own child, although I have read cases where a stepparent did or a crazy parent might have. Parents abort their babies or kill their children because they have to for the sake of their other children now or their other children to be. Parents abort their babies or kill their children because they have to. Usually they hate it but they get over it.

When pre-modern women had to kill a baby, other members of the group usually did not interfere. Even when the baby was related to other members of the group, the mother had final say because she had to look after the child and she had to consider her other children, real now or to come. The mother had to decide. Other people did not interfere because they knew they, or their own daughters, someday might be in the same fix and they did not want other people to interfere then. The modern situation is odd and unnatural, in which people unrelated to a woman, not in the immediate group of the woman, and who do

not benefit or lose from her decision, stand hard on an abstract moral principle so as to tell the woman what to do with her own child and reproduction.

In societies that came later, among some agricultural societies, parents could sell their children, even when parents knew the life into which they were sold would be bad and even when the child might die as a result. Sometimes older children had the right to sell younger children. Parents in the Bible sold their children. Joseph's brothers sold him into slavery. The idea is the same as abortion even when one child is already alive: one child can be sacrificed for the welfare of the parent or the welfare of other children, even against the will of the child. Then, sacrificing one child for the welfare of several others is natural and moral.

### **Modern Setting.**

Modern women inherited the capacity to plan their reproduction just as did their ancestors, which capacity includes being able to regretfully get rid of an unwanted child if they have to. Modern women also have new burdens of modern life: waiting a long time in school before starting a family, having little education in sex and relationships before starting a family, having to work for a living outside the home and having to work with strangers, and meeting many strange men that are hard to evaluate for their potential as husbands and fathers. Fortunately, modern women have the advantages of birth control and of the opportunity to abort a child as a fetus rather than wait until it is born to expose it.

Few modern women use abortion as a primary form of contraception, few women like getting an abortion, and few are traumatized by it either. Women feel relieved but they do not feel happy. A few women feel guilty for a time but most feel relief. Women tend to feel guilty for a long time only if they have more than one abortion as the result of bad planning. Women know there is something wrong with aborting a fetus, and feel bad about it; but they also know there is something more wrong with having a baby when not ready, living in poverty and regret, disabling their lives, the life of the baby, and the lives of any future children too. Abortion is something they have to do, do it, get it over with, and move on, hopefully to better families.

Anti-abortion advocates differ from our ancestors because modern life allows them the luxury to differ. Modern wealth allows them to get morally huffy about other people, when our ancestors had to keep a necessary silence. Modern life allows them to use state institutions to impose their morality and their self-interest on other people, when our ancestors had to act directly or, more often, not act at all.

### **Modern Liberal Solution.**

In this situation, the best thing to do, the best compromise of nature and morality, the resolution most in line with evolved human nature, the resolution that includes natural types and morality, seems to be what modern women have worked (back) to: Abortion is a private affair. Do not be a slut. Have sex when appropriate and mostly only then. Sometimes have sex for fun but always remember there might be consequences. Use sex as one way to learn about relations and as one way to attract men and hold men. Use birth control from the time you first start having sex. Do not have unprotected sex. Do not commit infanticide either directly or by neglect. Know that having a child now could hurt present children or future children, and could end your ability to plan your life and your future family life. If you get

pregnant, think about having the baby and giving it up for adoption, as in the movie “Juno”. Accept that some fetuses die anyway but not all fetuses die anyway. If having a baby and giving it up for adoption seem wrong while abortion seems tolerable, then get the abortion. Do not use abortion as a regular method of birth control. Do not get abortions often. Stay out of the lives of other people who have to make similar hard decisions.

### **Anti-Abortion.**

Why do anti-abortion activists insist their morality and their natural types must trump other ideas even when they make allowance in cases such as murder and robbery? I do not take on the whole of the “culture wars” here. I repeat a bit from above. I do not mean to mock. Take the arguments seriously. You share much of the logic but might apply it differently.

#### *Reason 1: Morality, and Using the State to Support Morality.*

1A: The Principle of LIFE. Anti-abortion people call themselves “pro-life” for good reasons. The preservation of life is good in itself. Anything that hurts life usually is intrinsically bad. Anything that supports life usually is intrinsically good. Pro-lifers support fetuses for the same reason environmentalists save whales, baby seals, owls, fish, and bugs; for the same reason advocates of the poor support the poor; why many people want true national health care; and why some people are vegetarians. I think pro-life activists often love pets. If you support any kind of life, then you have to have some sympathy for supporting fetuses. Why should we support one kind of life but not another, or support one kind of life but kill another?

Of course, if anti-abortion activists support fetuses then they also should support all kinds of life in all kinds of other causes. Usually they do not. I have never taken a survey, but I guess that anti-abortion activists are not environmentalists and they doubt global climate change. Then we need to know why human life is better than other kinds of life. We need to know why human comfort is more important than devastating all of nature. We need to know why fetuses are more important than the poor, sick, older children, or children not yet even conceived. We need to know why, if you will expend energy for the support of one kind of human life, you do not spend energy for the support of all life, human and non-human. At the same time, if environmentalists support whales and seals, then they have to be able to tell us why they are not against abortion, and why non-human life might have more priority than human life. If the answer in any case is “because I have only so much time and energy, and I choose to use it this way” then activists have to understand that their cause might not be absolute, and might not be absolutely holy and compelling for all people.

1B: Defending the Helpless and Innocent. Fetuses are not just alive, they are helpless and innocent. When child molesters go to prison, the other inmates treat them like crap, and for good reasons. An obvious comparison is to slavery. Slaves needed somebody to help them. If any modern American is against racism or against slavery, then he-she must explain why she-he is not also against abortion. If you would have fought slavery, or did fight racism, then you should also fight abortion. See below.

1C: Parenthood and Natural Relations. The relation between parents and children, especially between a mother and her children, is a natural type. For a mother to kill her children, does not just deny a

natural relation, it turns around and subverts what should be one of the most basic and purest natural relations. If this natural relation can be perverted, any natural relation can be perverted, nothing is secure, and no relations are secure. There is no moral universe and no stability. This natural type must be defended to defend all natural types.

1D: The Family as the Basic Unit of Society and Human Life. The family is not really the basic unit of human social life but the family is important and many people think that it is the basic unit. It is important enough to play a role in the abortion controversy. An abortion seems like a strike at the heart of the family. As a strike at the heart of the family, it is a strike at the heart of society. If people will undermine the family then they will undermine society. To preserve society, we have to preserve the family. We cannot preserve the family and society if we allow mothers to kill their own unborn children.

1E: Slippery Slope. If we allow exceptions for any one kind of life or natural relation, then we are likely to fall down the slippery slope where we selectively defend particular kinds of life for our own reasons. We will selectively kill life for our own reasons. If we do not defend all fetuses, all the time, everywhere, then we will kill old people because they are inconvenient or because we want their wealth. We will practice infanticide, kill children, sell children, use children as slaves, use children as prostitutes, and kill our annoying spouses. We can only defend any life if we defend all life all the time.

1F: Using the State. With a problem as large as abortion, the only enforcer is the state. Abortion is a large genuine moral question and a true question of common decency. The state is the proper agent for any true large question of morality and common decency. We cannot leave it up to individual conscience or the free market. The state must act as advocate of the innocent and the helpless, just as with Civil Rights and with laws that protect against racism, sexism, and gay bashing.

### *Reason 2: Using Morality as a Tool*

The anti-abortion ideal is easier to crusade for if you are a middle class person, with a secure job, with benefits, than if you are a poor person with a crappy job, and you live in an extended family, expanded family, or other non-stereotypical family. In my experience, most people who strongly oppose abortion are middle class or nearly middle class whether Black, White, or any ethnicity. They fear the uncertain working class beneath them and the poor. They fear the unemployed and poorly employed. By enforcing anti-abortion, they de-stabilize the poor and make sure the poor cannot compete against them for jobs. A strong anti-abortion ideology that uses the state for enforcement also uses morality as a tool in class competition.

All competition is comparative. Anti-abortion laws differentially hurt the poor and anti-abortion stigma differentially hurts the poor. Poor people especially need to manage their reproduction. Poor people are especially vulnerable to disruptions in reproductive strategy. An unwanted child is an inconvenience to a middle class family such as in the movie "Juno" or for the Palins but it can devastate a modest working class family. It can take away all chances for all children to go to college. Even when abortion is illegal, a middle class family usually finds a way to get one. Poor families cannot. Laws are not enforced as strictly against middle class people as against poor people and punishment is harsher on the poor for the same crime. Judges are likely to be sympathetic toward a middle class woman but

likely to condemn a poor woman who has an abortion. Neighbors are likely to sympathize with a middle class woman or her daughter but likely to condemn a poor girl as promiscuous.

My assessment only says that poor people should not be differentially denied abortion. My assessment does not imply that poor people have a right to badly manage their reproduction, a right to support from the state for early pregnancy, or a right to abuse state support programs. Rights come with duties. If poor people want respect, they have to earn it by having babies only when they can fully support them for a long time.

### *Reason 3: Feeling Self-Righteous and Worthwhile*

Crusading for innocent, helpless LIFE makes people feel justified and saved. It makes people feel better about themselves, feel righteous, gives them a reason to live, ties them to something bigger than themselves, makes them feel as if they will leave a legacy, allows them to focus their energy on one topic, allows them to avoid thinking about the bigger picture, and lets them find other people like themselves to reinforce the whole package. It makes them vulnerable to bad leaders. People who crusade in this way care more about themselves than they do about people in general or even about their specific cause. They don't care who they hurt as long as they feel good. They do not see other people as people. It is easy to get behind the crusade against abortion if you don't want to think too much. Crusading for other principles such as CHOICE, FREEDOM, or NATURE can have the same effect. Left-wing environmentalists crusade for LIFE just as do anti-abortionists but do so in a different arena. Rarely have I met anti-abortion activists that learn very much about real biology, real ecology, and real nature, about the moral issues, about how people have dealt with unwanted pregnancy in other times and places, or about the role of the state. They learn only enough to see the issue their way, and to see they can use it to justify themselves. If you want to fight against abortion, think it out first. If you decide to fight, then do it, but be ready to explain. Life, innocence, children, parents, women, mothers, families, the poor, and people of all socio-economic classes and all races all deserve better than what the culture wars and the anti-abortion movement have given them so far.

### **Role of the State.**

I think the state is on the right track in the wake of Roe v. Wade, and should continue much as it has since then.

-I see no compelling reasons having to do with maintaining order so that the state needs to make abortion completely illegal. There is no evidence that people commit infanticide more often if abortion is illegal, or that people abuse children in other ways. There is good evidence that strict laws against abortion erode order in that strict laws require women to break the law and that they de-stabilize the poor.

-I see no compelling reason that the state needs to strictly enforce anti-abortion as a moral issue. Allowing abortion does not break down general morality, and does not break down the morality needed for general order. Even if we all agree that abortion is morally suspect, it is not the kind of moral issue that the state has to do something about. It is more like gambling or drinking than robbery or murder. Abortion is a bit like slavery but the two issues differ for reasons summarized below. To legally enforce morality in this issue tempts the state to do so on other issues as well, and so should be avoided.

-The state does have to regulate abortion. The state has to recognize the sides of the mother, present children, future children, present fetus, and present unborn child when the fetus reaches the status of an unborn child. The state has to serve as the arbiter in drawing the line between sides.

-The state needs to force the burden of proof on any group that wishes to change the current balance, especially any group that wishes the rights of the fetus to dominate the rights of the mother from conception, or the rights of the mother to dominate the rights of the fetus at all times.

-Local units of the central state, such as American states, counties, cities, towns, and school districts, owe people a clear explanation of this issue.

-Abortion should be allowable under health insurance programs, including any national health insurance. The state should make sure that private insurance programs do not exclude abortion. Some provision can be made for institutions, such as churches, that condemn abortion, but the provisions should be conservative and based on proven long-term commitment.

-Prevention is the best approach by far. The state should help people with birth control. The state should educate people about various kinds of birth control, including abstinence but not limited to abstinence. Birth control should be a part of state health insurance. Children should have access to birth control if they request, even if their parents do not grant permission. The state should do nothing to prohibit knowledge of birth control and should do nothing to inhibit agencies that help people to get birth control.

-We should keep the issue of abortion framed in terms of rights and persons, and should strive for more clarity about rights and persons. A parallel issue shows why. I think the rights of the woman in *Roe v. Wade* are based on the right to privacy. The right to privacy is widely known and accepted in America. The right of executive privilege is the right of the executive branch (President) to maintain some secrecy from the other branches so as to run smoothly. Executive privilege is well established in law. The Constitution does not explicitly guarantee either the right to privacy or executive privilege. I think the right to privacy is not in the Constitution because the founders of the United States took the right to privacy completely for granted as a powerful right equal to any rights explicitly cited. They did not need to write it in. I think executive privilege is not in the Constitution mostly because the founders did not think the executive branch had a dire need for secrecy and autonomy. Yet Conservative Right Wingers stress executive privilege while diminishing the right to privacy. They recognize the rights of a social unit while overlooking the rights of real flesh-and-blood human persons. That path leads to a police state. The right to privacy is far more important than executive privilege. Rightists do not explain why executive privilege is more important to them than a right to privacy or why the right to executive privilege is more implied in the Constitution than the right to privacy. We need to protect the right to privacy. To do so, we need to think in terms of persons and rights even when they are not explicit in the Constitution. We need to think in terms that block powerful groups from seizing more power. Framing abortion entirely in terms of a black-and-white right to life by a fetus, as a natural type, that trumps the right to privacy, and trumps other claims about rights and persons, undercuts all reasonable discussion about rights and persons, and it erodes arguments about the right to privacy. Eventually not thinking in terms of persons and rights will support not life but tyranny and anti-life.

## **What Anti-Abortion (Pro-Life) Advocates Can Do to Live With This.**

- Understand that abortion is not an attack on morality, the family, or the state. Allowing abortion will not necessarily undermine morality. Historical evidence says that it does not.
- Understand that morality is not the same as the stereotypical suburban nuclear family.
- Understand that the stereotypical family is not the basic unit of human social life or the state, and that the state will not stand or fall because abortion supposedly undermines the family.
- Accept that the state is not the primary and best agent of all your moral convictions. Understand the limited role of the state as the supporter only of order and of generally recognized common decency.
- Understand that using the state as the agent of your moral convictions can harm your moral convictions and religious group in the long run.
- Do not support political candidates that stand or fall on this one issue. In particular, do not support candidates who promise to make the state the agent of your morality alone.
- Live under the modern secular state much as early Christians did in the Roman Empire. Live a stricter life by your morals. Do not have abortions.
- Provide counseling, guidance, and love to women who need it, without judgment. If a woman is determined to have an abortion and you cannot counsel her, send her to a good place elsewhere.
- If permitted by your faith, provide birth control.
- Search your soul to make sure you are not acting primarily to feel good about yourself, to feel justified, righteous, and saved. Make sure you act primarily because you think anti-abortion activism is the best use of your talent, time, and energy.
- Support the poor. Support other pro-life causes such as environmentalism.
- Adopt children. Foster children. Support charities that support children. Pay for a child to go to camp or to go to school. Make sure your local children have enough to eat, and good shelter. I find it hard to take seriously anti-abortion pro-life activists who have not done several of these other activities, especially adopt a child.
- Keep in mind that technological changes will make abortion as we know it obsolete, perhaps in about as many decades from now as we have already had Roe v. Wade. Prepare yourself for the more important future fights.

-Explain clearly to yourself, and be prepared to explain clearly to others, why you oppose abortion but favor the death penalty, favor guns, allow people to use deadly force in defense of property, glamorize violence, hurt the poor, or hurt nature.

### **Optional: Abortion and Slavery.**

Abortion and slavery are similar issues due to the weakness and (situational) innocence of the victims: fetuses and slaves. We need think how the two issues might differ, why we might want to use the state to abolish slavery but not use the state to abolish abortion. This argument is not about whether slavery is worse than abortion. This argument is not about whether abolishing slavery is more morally compelling than abolishing abortion. This argument is about whether the state should intervene as much with abortion as it did with slavery. The points are about how people see the role of the state in abortion and slavery. Some reasons are not pretty; some are downright ugly. Some reasons apply to related issues such as why we do not allow infanticide even if we allow abortion although I do not elaborate on these extensions. Recall that the American Civil War was not at first about abolishing slavery but about secession, and that abolishing slavery was probably never the biggest reason for the fighting.

-In assessing these issues, it helps to have lived where children are forced into slavery and prostitution, especially surplus children; and it helps to recognize the modern debt industry as a form of de facto slavery. In the light of those cases, it seems obvious that slavery and abortion are not the same, and that the state should fight slavery even if it does not oppose abortion.

-Except for some clandestine sex slavery, slavery is a public visible institution, often on a large scale. Everybody can see when we have it and when we don't have it. It can be eradicated once and for all by state action because it is public and visible. Expenditure on eradicating slavery is limited in scope and in time. In contrast, abortion is a small private act. You can't tell by looking at a woman if she has had an abortion. Evidence clearly shows that the state cannot eradicate abortion. Unlike slavery, if the state makes abortion illegal, the state has to commit continual resources to fight it.

-Slavery does lead to disorder and slavery would have high maintenance costs, especially in a modern technological economy. The state would have to erect and maintain a large judicial and enforcement apparatus to sustain slavery. Abolishing slavery eliminates the cost of creating and sustaining the apparatus.

-Abortion does not lead to disorder and does not have much maintenance cost for the state other than the licensing of medical personnel.

-Slaves were not fetuses. Many were adults. They were already fully and undeniably human and already they fully and undeniably had good chances of survival. Unlike fetuses, there was no obvious reason why slaves could not have fully adult rights.

-To all but racially blind people, slaves were obviously already human persons like us. Fetuses are potentially humans like us but they only somewhat resemble us, even with modern viewing techniques like ultrasound. They are not yet fully human persons.



-It is hard to really put yourself in the place of a fetus so that the principle of “applies equally to everybody” obviously holds. It is much easier to put yourself in the place of a slave, even if the slave is of another race, religion, or gender.

-More urgently than abortion, slavery raises the problems of the “slippery slope” and it calls on us to think about the principle of “applies equally to everybody”. If a Black person can be a slave, then why not a White woman, Asian, Canadian, Mexican, or any other non-White, non-male, non-American person? If a Black man can be a slave, then why not a White man or a White woman? If we do not want to be enslaved, and we do not want our children to be enslaved, then we better not allow anybody else to be enslaved. If we do allow others to be enslaved, then we tacitly give permission that we might be enslaved under different conditions. To destroy a fetus does not mean that we open ourselves up for destruction. To allow abortion is not to give permission that we might be murdered under different conditions.

-Even if we are not Black and so subject to possible immediate slavery, what if we are in a group that might become slaves by extension such as Southern Europeans, Eastern Europeans, Indians, Native Americans, or Asians? More than abortion, slavery leads us to see that it might happen to us, and causes us to think about “applies equally to everybody”. Because we are old enough to think about abortion, automatically we are old enough not to be aborted, and so, with abortion, but unlike with slavery, we are always talking about somebody else. We are never in the group that might be aborted. But we could become slaves if the laws changed or if power changed, and so, with slavery, we could be in the group of slaves, and we have to think about ourselves. We have to think about the full consequences of “applies equally”.

-Because we are never ourselves in the group that might be aborted (adults making the laws are never fetuses), we have to stress our ability for empathy in the case of abortion. Some people can make this leap but many people cannot, and do not feel the need. Because we might be in the group of slaves, and we are adults like them, we do not have to stretch much to feel empathy. Most people can make this leap of empathy. In fact, to maintain slavery, most people have to suppress their natural empathy for the slaves.

-The presence of some slaves leads us to think of any children as possible slaves. Child slaves are often prostitutes. The presence of any slaves leads us to think of selling our own children or of using any children as slaves. Unlike fetuses, parents already have invested quite a bit into children of the age to be sold, and would not want to lose that investment. Parents do not want to allow any slavery because it opens the door to the loss of the investment in their children. Even if people allow abortion, they do not lose nearly as much as if they would lose for a child sold to slavery, and so this argument about lost investment is not as strong against abortion. Even if parents get money for selling their children, they fear that the price did not compensate for the loss of the child. They fear that the institution of selling children poses a threat so large even to unsold children that the threat to everybody overcomes any price for the children actually sold.

-Freed slaves, if properly processed, likely make a good work force of proven ability. As free people, they can be assets to society and to order. Fetuses are not yet an asset, can be a big liability, and might lose any investment (die) before they get old enough to be valuable. As a matter of fact, the

United States did not help its slaves well enough after it freed them, and so missed an opportunity, but that is a tactical error rather than an error in the logic of this point.

-The above reasons are a mixture of practicality and morality. The practical issues can bolster the moral issues so that abolishing slavery can be presented as a compelling moral duty, a moral duty proper to the state.

-You can allow abortion while also opposing slavery. You can allow slavery while also opposing abortion. You can be against both. You can allow both. In any case, you have to give reasons. The reasons have to take some account of the principles given here.