

A Rational Look at the Abortion Issue

By Roy Minet (Rev. 05/17/19)

It's difficult to think of any issue more divisive than abortion. A human individual's right to life is a primary right that everyone agrees should be guaranteed. People do and should have strong feelings about terminating pregnancies.

Thinking is considerably muddled when we just use the term "right to life." What we really mean is "a *human individual's* right to life." We don't intend to secure this right for every living thing. If we did, then we'd have to be careful not to step on ants and would be unable to kill weeds in our gardens.

Our U.S. Constitution guarantees the right to life for all human individuals under its jurisdiction. So, the crux of the matter is determining when a new human individual comes into existence. That turns out to be not as simple as it might seem. People (including us libertarians) sincerely and strongly hold many differing opinions. Here is a sampling:

1. When an ovum is fertilized by a sperm and/or becomes attached to the uterus
2. Some specific time after fertilization or attachment
3. When there is a heartbeat
4. When there is brain activity
5. When the fetus can survive outside the uterus
6. When pain can be experienced
7. When consciousness and self-awareness occurs
8. When the umbilical cord is severed
9. When a birth certificate is issued (or at some other time after birth)

Some parents of teenagers might argue for age 18 or when their teens are gainfully employed. (JK, JK!)

We libertarians normally insist that one person's view not be forced upon another. Unfortunately, that isn't possible in this case because what is required is actually a *legal definition*, and legal definitions have to apply equally to all.

It must be clear when a new human individual comes into existence and, therefore, acquires the rights and protections of the Constitution. If this occurs while the new guy is inextricably attached to mom, two individuals' rights must be considered. Any conflict of interest would need to be resolved by a court.

Understandably, the Framers of our Constitution did not in 1787 foresee the need for a more exact definition of when a new citizen appears. Arguably, they defaulted to birth and severance of the umbilical.

In 1973 and 1992, the Supreme Court recast the definition more in terms of survivability. Although probably not the final answer, the Roe v Wade and Casey decisions do somewhat improve legal clarity.

The ruling in Roe held that women had a constitutional right to abort a fetus prior to its viability. As Cornell Law School's Legal Information Institute explains, the court decided that during the first trimester of a pregnancy, "the decision to terminate the pregnancy was solely at the discretion of the woman. ... During the second trimester, the state could regulate (but not outlaw) abortions in the interests of the mother's health. After the second trimester, the fetus became viable, and the state could regulate or outlaw abortions in the interest of the potential life except when necessary to preserve the life or health of the mother."

In Casey, Pennsylvania Gov. Robert P. Casey was defending the state law that required a woman to inform her spouse, or a minor to inform her parents, before having an abortion, and also mandated a 24-hour waiting period. The U.S. Supreme Court ruled that the "informed consent" provision was an "undue burden" on a woman's rights; the waiting period was deemed to be reasonable. The Casey ruling affirmed Roe, and said that states could regulate abortions, so long as their regulations did not constitute an undue burden.

But the vehement differences of opinion rage on. How might we bring people together?

Rational people agree that there is an objective reality that can be discovered and understood using the scientific method. Gaps in knowledge are no shame; don't just dream something up, work to obtain that knowledge however long it may take. Through the scientific method and logic they can eventually reach agreement on substantially anything – peacefully.

Some views derive from religious doctrine. When people allow faith to override the rational process, they lose this invaluable mechanism to resolve differences. If a Hindu and a Christian disagree on what a human individual is or when a new one comes into existence, they are pretty much irreconcilably stuck if their positions are based on faith.

Obviously, people must be completely free to believe whatever they want, but not to force their beliefs upon others. Unfortunately, some do try to impose their views either indirectly through the force of law or by direct force. Consequently, religion has long been and remains today a leading cause of violence in the world.

Given so many strongly held, diverse views, one could well argue that *no* law authorizing the government to forcefully intervene could be deemed legitimate. Whatever the law, a majority would oppose it. But there always has to be *some* working legal definition. For now, that's the Roe v Wade and Casey decisions. Whenever a comfortable majority of rational people can reach agreement would be the time to revise that definition if/as appropriate.

The end of a human individual's existence usually is clear-cut, but occasionally it is not. The decision to "pull the plug" in such difficult situations is based upon cessation of "meaningful" brain activity. Although still somewhat nebulous, perhaps this does point us toward the most appropriate definition for the beginning of an individual as well.

To be an individual likely requires consciousness and self-awareness. New tests promise to objectively measure whether or not consciousness exists, but no one would yet suggest such a test should be used as a legal standard.

No reasonable person likes abortion, so it surely makes sense to reduce the size of the problem. Instead of fighting about the definition, expend that effort on matching up would-be parents with reluctant mothers and facilitating in-utero adoptions. All parties come out ahead in an entirely libertarian way through such *voluntary* agreements.

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