



Thoughts on the
overturn of Roe vs. Wade

Description

The right of a woman to have an abortion must be defended

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The **United States Supreme Court's overturning of Roe V. Wade** has caused great concern for pro-choice advocates of abortion and is having those opposed to abortion jumping for joy.

I support abortion rights for women – I always have. I dislike the idea of a bunch of men who cannot get pregnant deciding on what a woman can and cannot do with her body. Abortion is a contentious issue, and I highly doubt that any woman looks forward to having the procedure.

With all the debates ongoing in the United States, and states such as Texas and Missouri passing laws to restrict access to abortions and making it a criminal offence to literally aid a woman travelling to a state where abortion is available, I present an **essay** I wrote in **2010** for a **Biomedical Ethics course** I took at **Concordia University**. While it does not contain some of the latest information regarding the debate on abortion, the fundamentals have not changed, and my position on access to abortion remains unchanged.

I hope that my essay contributes to the discussion. Here is the essay, along with the endnotes:



This essay deals with the assertion that “An abortion is the deliberate killing of a human being. As such, it is a murder. When you kill an unborn child, you rob it of its whole future life. Therefore, it is never morally permissible and should be illegal.” The above is based on the intertwining theses of: the assertion is factually incorrect and improperly written, and that government – federal and state/provincial; religions such as the **Roman Catholic Church, Southern Baptist Convention** and “**born again**” **evangelical churches** in the United States and Canada; social conservative and religious lobby and interest groups such as the **Focus on the Family** and the **Canada Family Action Coalition (CFAC)** headed by **Charles McVety**, an evangelical Christian leader and president of the Canada Christian College; and political parties such as the **Republican Party** and the **Christian Heritage Party of Canada** should not have the right to intervene on who should be allowed to have an abortion, and when. It also includes arguments raised by pro-life advocates as they pertain to the theses.

That the government has a legitimate interest in protecting potential human life, but that this does not become a “compelling” state interest – overriding the woman’s Fourteenth Amendment right to privacy, and her subsequent right to terminate her pregnancy...

– 1973 *Roe v. Wade* American Supreme Court ruling

Abortion is defined “as the deliberate termination of a pregnancy prior to foetal viability,”ⁱ and removing a fertilized egg from a woman stresses that life legally begins in the first moment outside the womb. Those opposing free choice stress that “since biologically speaking, a human fetus is a human being, abortion is really the deliberative bringing out of the death of a human being.”ⁱⁱ To Catholicism and other religions opposed to abortion, the moment an egg is fertilized it has a soul and, while still inside the womb, is a person in need of legal protection. Pro-choice supporters view the fertilized egg as the stuff of life. There is no religious context to a fetus in the 1973 *Roe v. Wade* American Supreme Court ruling:

“That the government has a legitimate interest in protecting potential human life, but that this does not become a “compelling” state interest – overriding the woman’s Fourteenth Amendment right to privacy, and her subsequent right to terminate her pregnancy – until the point of viability, then assessed at 24 weeks. The Court did not state that viability is or is not when a fetus becomes a person; just that this is the earliest point at which it can be proven that the fetus has the capacity to have a meaningful life as a person.”ⁱⁱⁱ

The **1992 Planned Parenthood v. Casey** Standard ruling “scaled back the viability standard from 24 weeks to 22 weeks” and that the state may protect “its ‘profound interest’ in potential life so long as it does not do so in a way that has the intent or effect of posing an undue burden on the woman’s right to terminate a pregnancy prior to viability.”^{iv}

‘American and Canadian law only recognizes a child as a person after it leaves its mother’s womb. Death certificates are not issued for fetuses lost due to miscarriages...’

The essay topic assertion incorrectly states that “An abortion is the deliberate killing of a human being. As such, it is a murder.” American and Canadian law only recognizes a child as a person after it leaves its mother’s womb. Death certificates are not issued for fetuses lost due to miscarriages and American states that take serious measures to reduce access to abortion clinics do not register the loss of fetuses as deaths. When a pregnant woman dies, only one death certificate is issued. The **1997 Supreme Court of Canada ruling for Winnipeg Child and Family Services (Northwest Area) v. G. (D.F.)**, stated:



“The law of Canada does not recognize the unborn child as a legal person possessing rights. This is a general proposition applicable to all aspects of the law. Once a child is born, alive and viable, the law may recognize that its existence began before birth for certain limited purposes. But the only right recognized is that of the born person. Any right or interest the fetus may have remains inchoate and incomplete until the child’s birth.”^v

As abortion is not “murder,” there is a logical disconnect in the follow-up statement of “When you kill an unborn child, you rob it of its whole future life” – it never was a person. Hence the statement, “Therefore it is never morally permissible and it should be illegal,” is a view held predominantly by social conservatives, religious fundamentalists of various faiths (mainly Christian), and conservative elected officials that want to impose their beliefs on others via the law. In March 2008, the Canadian House of Commons voted 147 to 132 in favour of allowing **Bill C-484** – An Act to amend the Criminal Code (injuring or causing the death of an unborn child while committing an offence) to proceed to Committee Stage, but the bill was stalled and reintroduced later as **Bill C-291** and died. Alberta **Conservative MP Jake Epp**, who sponsored the bill, stated in March 2008 that:

“Since 72% of Canadians support this legislation, I will continue to work hard to persuade my Parliamentary Colleagues that I have no sinister motives, and that they should support the Bill at further stages. Canadian women who choose to give birth when they are pregnant should not have to stand alone to protect the child within that they are eagerly awaiting.”^{vi}

Epp’s comments reflect the language of many pro-life advocates and the bill was recognized by many pro-choice groups as a back-door attempt to begin the process of ultimately repealing abortion rights in Canada. The **Public Service Alliance of Canada**, whose membership consists of many faiths and political and social viewpoints, was concerned by the bill and its implications. A PSAC press release expressed the pro-choice view in the philosophical and legal debate:

“Although defenders of this bill claim they want to better protect pregnant women against violence, what is really at stake here is the legal recognition of the fetus’ right to life and the possible re-criminalization of abortion.”^{vii}

PSAC said the bill ,if adopted, would “undoubtedly result in massive intrusions in the lives of pregnant women as has been the case in those states in the U.S. that have adopted similar legislation” and that on the 20th anniversary of the **Morgentaler decision** that struck down the Criminal Code provisions that made abortion a crime in Canada. This historic Supreme Court decision recognized that women’s constitutional rights to security of the person, autonomy and freedom include the right to end an unwanted pregnancy without state interference. We must now take action to protect this right. This is why it is important that we take a stand now to defend women’s reproductive rights. This is a question that goes to the heart of women’s equality, dignity and human rights.^{viii}

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CFAC, like other pro-life groups, are “true believers” as defined by **Eric Hoffer** in ***The True Believer: Thoughts on the Nature of Mass Movements***, and are adamant in their position – “We believe in the inherent dignity of human life, from conception to natural death,”^{ix} and want the government to make abortion illegal. There is no middle ground for these groups. As noted by Hoffer: “Though there are obvious differences between the fanatical Christian ...and the fanatical Nazi, it is true that fanaticism which animates them may be viewed and treated as one.”^x

While fanatics on the pro-life side wish to impose their religious, moral and ethical values on multi-cultural and multi-religious societies in North America on the premise that they hold correct views, groups like **PSAC** and the **Abortion Rights Coalition of Canada**



only desire that women can access counselling in private to review their options without any pressure whatsoever (religious and social) and, if abortion is chosen, that the procedure be done privately and that the clinic be entered/exited without having to face demonstrators.

The liberal position on abortion is a “woman’s right to have an abortion is she so chooses... that abortion is a private matter to the woman because it does not substantially affect the welfare of any other person,”^{xi} while the conservative position is that “abortion is not a private matter because it involves the killing of the fetus,” and is based on the premises of “it is generally agreed that the taking of human life in most circumstances is wrong” and the “fetus is a human life and so abortion is always homicide.”^{xii} The pro-choice position recognizes the law, while the pro-life camp ignores the law through the insistence on using words such as “murder,” “homicide,” and that a fetus is a “human life.”

Pro-choice supporters accept pro-life advocates demonstrating to change the law, challenging legal decisions that allowed abortion to become legal such as the **1988 R. v. Morgentaler Supreme Court ruling** and the 1973 Roe v. Wade ruling, and lobbying politicians to change the law and create obstacles to abortion, but until the law is changed, that access to and when an abortion is sought should not be restricted by government and religious/social lobby groups. The Morgentaler ruling, which struck down **Section 251 of the Criminal Code** and “required women who wanted an abortion to appeal to a three-doctor hospital abortion committee,”^{xiii} took time to achieve, while Roe v. Wade – a polarizing ruling, changed the situation where 42 states like Texas “restricted abortion to the few cases where a woman’s life or health was in peril would have to recalibrate the laws to allow women the right to choose when and if to have children.”^{xiv}

‘Though there are obvious differences between the fanatical Christian ...and the fanatical Nazi, it is true that fanaticism which animates them may be viewed and treated as one.’

– Eric Hoffer, *The True Believer: Thoughts on the Nature of Mass Movements*

While Roe v. Wade continued to be challenged politically, legally and through state regulations, in Canada the Morgentaler ruling has been generally accepted, even by the Conservative Party (which has many pro-life supporters) to retain electoral support in the center. The concept of law and how judgments are written is an aspect of philosophy, and laws and court rulings reflect the law itself, the philosophical views of legislators and judges and to what extent they are willing to take in aspects of public opinion. As noted in Roe v. Wade:

“In 1821, Connecticut became the first state to explicitly ban abortion. The primary purpose of the law was to spell out the conditions under which the state could prosecute the abortionist for an abortion.”^{xv}

The goal of the law was to prevent women from accessing medical help to end a pregnancy and force them to bear children. The 1828 New York State law on abortion included:

“one unique clause legalizing abortion when “the same shall be necessary to preserve the life of such a woman, or shall have been advised by two physicians to be necessary for such purpose. This “therapeutic exception” to the anti-abortion law was an elastic one, for doctors might (and in later years did) argue that mental health and future physical health could be considered acceptable reasons for therapeutic exceptions.”^{xvi}

The authors of Roe v. Wade stressed that such clauses were designed to protect the life of the woman – the existing person over the life of the unborn, when they wrote:

“the clamour of the medical community for such ‘doctors’ acts’ suggests that their purpose was to protect women from quacks and herbalists whose ministrations might endanger the women’s lives.”^{xvii}

This is philosophy and common sense being transformed into law and the above-mentioned points address the



pro-life arguments of: “No physician should be asked to murder or kill anyone. Physicians are supposed to save lives, not take them,” “The Hippocratic Oath forbids abortions, so they are simply wrong,” “An abortion is a medical procedure. Therefore it is a decision made by physicians, not by selfish and/or misguided women,” “Abortions are often deadly. Why should we ask women to risk lives?” and “If we sanction killing fetuses, then we lessen the respect for human life everywhere. Who would really feel safe in such a society?” ^{xviii}

‘I am against abortion, but I can understand that in certain cases, there is almost no other choice than to practice it.’

– Cardinal Jean-Claude Turcotte

A slight crack in the Roman Catholic Church’s opposition to abortion occurred in 2009 when Quebec **Cardinal Jean-Claude Turcotte**, commenting on a case in Brazil when a nine-year-old sexually abused girl became pregnant with twins by her father and had an abortion, told a reporter:

“Personally, I am against murder but can understand that sometimes, when someone is attacked, they need to kill in self-defence. I am against abortion, but I can understand that in certain cases, there is almost no other choice than to practice it.” ^{xix}

Turcotte reacting to Brazilian **Archbishop Cardoso of Recife**’s decision to excommunicate those who participated in the girl’s abortion procedure declared it a “clumsy move.” ^{xx} This is the same person who in 2008 renounced his **Order of Canada** after **Dr. Henry Morgentaler** was inducted into it for “his services to women and for leadership in the fields of humanism and civil liberties.” Turcotte told the CBC, “I’m worried about how we treat life, from conception to death. I decided to take a stance that clearly reflects my convictions.” ^{xxi}

Turcotte, a potential candidate to replace the current pope, has since remained silent on abortion. He went from abortion being “murder” for all cases to “murder” being acceptable in rape and incest cases but has not provided any guidelines on situations where abortion can be practiced.

Turcotte’s words put into question pro-life arguments such as: “The right to life is the most fundamental of all rights since without life there are no other rights. All humans have the right to life. Human fetuses are certainly human. Therefore they have the same right to life as everyone else does,” “there is no such thing as an unwanted baby. There is always somebody ready to give any baby tender, loving care, so adoption is always an option,” “women who get pregnant do so voluntarily, therefore they are morally obliged to carry their baby to full term,” and “even if a fetus were not an actual person, it is a potential person. The rights of potential persons always outweigh those of actual persons since they have not even begun to live their lives.” ^{xxii}

‘[Dr. Henry] Morgentaler stressed the need for individual women to decide if and when they want to terminate a pregnancy and rejected the imposition of morals and ethics regarding the status of the fetus...’

Morgentaler opened an abortion clinic in Montreal in 1969 and personally performed thousands of “illegal” abortion procedures based on his philosophy “that access to abortion was a basic human right and that women should not have to risk death in order to end their pregnancies.” ^{xxiii} His Canadian clinics were raided by the police including a Toronto clinic that was firebombed. Morgentaler was “arrested several times and spent months in jail as he fought his case at all court levels in Canada,” ^{xxiv} but he never wavered in his convictions.

Morgentaler stressed the need for individual women to decide if and when they want to terminate a pregnancy and rejected the imposition of morals and ethics regarding the status of the fetus upon those who do not follow the tenets of various religions and lobby groups.



In conclusion, this paper has explained why the assertion for the essay topic is factually inaccurate and logically flawed and why government, official religions, political/religious/social lobby and interest groups, and political parties should not place restrictions (based on morality, ethics and beliefs) on when women should be allowed to have abortions when such individual actions do not personally affect their lives. It has demonstrated how the law and the philosophy behind the practice of law and the legal decision process support the theses. The laws on abortion in North America today reflect **Thomas Jefferson's separation of church and state** and the **secularization of society**, a process that began in England much earlier compared to countries on the continent.

Endnotes



- ⁱ Ornstein, Jack, *Study Notes from Lecture 7 of Biomedical Ethics* (PHIL 235), (Econcordia, 2010, 1)
http://www.econcordia.com/courses/biomedical_ethics/lesson7_sm/
- ⁱⁱ Ibid., 1
- ⁱⁱⁱ Head, Tom, *Does a Fetus Have Rights?*, (About.com Guide, 2010)
http://civilliberty.about.com/od/abortion/p/fetus_rights.htm
- ^{iv} Ibid.
- ^v Supreme Court of Canada, *Winnipeg Child and Family Services (Northwest Area) v. G. (D.F.)*, 1997, 3 S.C.R. 925
<http://csc.lexum.umontreal.ca/en/1997/1997scr3-925/1997scr3-925.html>
- ^{vi} *Unborn Victims of Crime Act passes Second Reading in the House of Commons*, (Canada Family Action, March 5, 2008)
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- ^{vii} *Bill C 484: Call To Action*, (Public Service Alliance of Canada, February 2, 2010)
<http://psac.com/issues/c-484-e.shtml>
- ^{viii} Ibid.
- ^{ix} *About Us*, (Canada Family Action, 2010)
<http://www.familyaction.org/about-us>
- ^x Hoffer, Eric, *The True Believer: Thoughts on the Nature of Mass Movements* (Harper & Row, Publishers, New York, 1966), 8
- ^{xi} Ornstein, *Study Notes from Lecture 7 of Biomedical Ethics* (PHIL 235), 5
http://www.econcordia.com/courses/biomedical_ethics/lesson7_sm/040.aspx
- ^{xii} Ibid., 5
- ^{xiii} *Cardinal Turcotte gives back Order of Canada*, (Canadian Broadcasting Corporation, September 11, 2008)
<http://www.cbc.ca/canada/montreal/story/2008/09/11/mtl-turcotte0911.html>
- ^{xiv} Hull, N.E.H. & Hoffer, Peter Charles, *Roe v. Wade The Abortion Rights Controversy in American History*, (University Press of Kansas, Lawrence, Kansas, 2001), 2.
- ^{xv} Ibid., 20.
- ^{xvi} Ibid., 21.
- ^{xvii} Ibid., 21.
- ^{xviii} Ornstein, Jack, *Dr. O's Lesson 7 Notes: Abortion*, (Econcordia, 2010), 2-3
http://www.econcordia.com/courses/biomedical_ethics/lesson7/DrONotes/Lesson%20%20Notes.pdf
- ^{xix} *I can understand abortion: Montreal cardinal*, (CathNews, April 16, 2009)
<http://www.cathnews.com/article.aspx?aeid=12980>
- ^{xx} Ibid.
- ^{xxi} *Cardinal Turcotte gives back Order of Canada*, (Canadian Broadcasting Corporation)
- ^{xxii} *Dr. O's Lesson 7 Notes: Abortion*, 1-2
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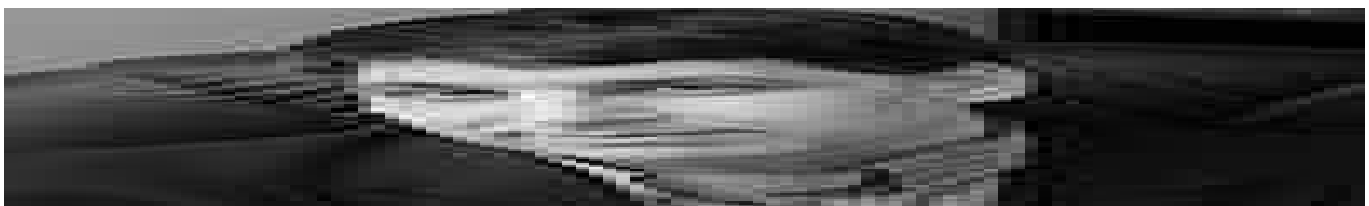
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