

The Alternative

Volume 40 No.1
September 2013

Dear Reader,

A previous issue of this Newsletter (May, 2012) drew a comparison between dilemmas at the end of life and at the beginning of life. The premise was that light can be shed on both areas by comparing the two of them. The human race has reached a point where it has to decide some difficult matters about how a human life does or does not begin and how a human life may end. Avoiding these issues has become impossible. Not surprisingly, human beings are uneasy about questions that seem too complex to answer. Some readers of this Newsletter found a comparison between the beginning and the end of life as simply adding to the confusion rather than clearing up any problems. Although there is a valid case for a comparison, there also has to be a consideration of each area separately. In the most recent issue of this Newsletter (May, 2013), the end of life was considered; this issue is about the beginning of life.

During the last 40 years the most contentious question about the beginning of life has been abortion. Acknowledgment that this issue of the Newsletter is about abortion has been held off until this second paragraph so that many readers would not stop reading after the first two sentences. One can hardly blame them. The first two sentences that anyone uses about abortion will be enough to get him or her classified. The classification is done by the news media and by spokespersons who are not interested in a conversation that might lead somewhere. Questions about abortion deserve a national conversation that would involve debate, acknowledgment of uncertainty, and compromise. No such conversation has occurred in this country. A U.S. conversation also needs an international context; but, as often happens, the United States is not interested in learning from the experience of other countries, such as Germany, France and Italy.

The strangest aspect of this rigid division into two camps is that it does not reflect the views of the vast majority of the public. Opinion polls for decades have shown that people have a range of views about abortion that do not fit on either side of the classification. It could be that people are just confused and not thinking logically. It seems more likely that people are uncertain about something where uncertainty is called for. Their answers reflect the best compromises that they can come up with, given that they are not getting much help from their political, religious and scientific leaders.

Even the question “What is it that people are actually talking about when they are ostensibly talking about abortion?” has no answer, or else, has many answers. Everyone has some rock of certainty that they stand on. The puzzling fact is that abortion functions that way for a small group of people who dominate talk about abortion. The result is that there is political lobbying on abortion but no conversation. Maybe some day all of this will be clear. For now, the question is: When, if ever, will a conversation begin?

ABORTION: CAN WE TALK

Gabriel Moran

This essay is not directly about abortion; it is about the language in which a practice called abortion is discussed. People want answers to questions so they are often impatient with questioning the question. But if one cannot ask a useful question, one cannot get a useful answer. The word useful here means an answer that will advance a conversation.

A first needed comment is about dividing any issue into two sides and assuming that one side is called x and the other side is called y. Wherever there are intense disagreements, the description of the conflict as x versus y is almost certainly a large part of the problem. People who are called x name their opponent y. If y goes along with the description, y has already lost the argument. Occasionally, this tactic is so transparent to people who hear themselves classified as y that they profess a different x and y, but they seldom rethink what is the basis of the argument in the first place.

My first point, which may be my main point, is that there can be no useful discussion of abortion so long as the language of “pro-life” versus “pro-choice” is used. My claim would not bother some people because they are not interested in having a useful discussion. They already know what the truth is and what public policy should be. Many people, however, feel uneasy about aspects of this question and are ambivalent about their own views. This essay is for people who are not absolutely certain of their position.

It is surprising and frustrating that thoughtful people who are looking to have an actual discussion of abortion do not challenge two assumptions: first, that there are two sides to the question, and second, that pro-choice and pro-life are names for the two sides. There may be aspects of abortion that are reducible to two sides, but immediately reducing the whole question to two sides aborts the discussion. As for naming the two sides, the terms pro-life and pro-choice are silly, absurd names that prove the point about the present impossibility of conversation. While each group can make their case for “life” or “choice” the two abstractions hide where they disagree. Is anyone against life? Is anyone against choice? Perhaps somebody somewhere is. But for discussing abortion, the claim that someone is in favor of life or in favor of choice tells us nothing at all.

Nearly everyone agrees that a decision by the United States Supreme Court was a key moment in the history of abortion. In the United States, nine people have immense power to decide if something is legal. These nine people are supposed to rise above passing controversies and say what is consistent with previous law. Several recent decisions make painfully evident that the process is often something else. The famous case of *Roe v. Wade* was not the Court’s worst decision; it was just its usual confused mess when it tries to deal with religion or emotionally charged moral issues. In back of the Court’s decision was a good intention, namely, the admission that abortion is a question. Abortion has presumably existed throughout all of human history. During that history there has been almost no praise of abortion but also not much condemnation. As is true of much about human sexuality, there was mostly ignorance and silence.

A major change occurred in the 19th century with the emergence of the medical profession. The exclusively male profession of physicians asserted that it was the competent authority for the “therapeutic exceptions” to newly passed laws outlawing abortion. Women then had the choice either to submit to the physician’s judgment or invent their own means when they believed abortion was needed. As usual, the rich had access to safe means, the poor suffered from dangerous “home remedies.” In the 20th century it became clear that the human race has to exercise a control over the process of the human race’s continuance. Unfortunately, the discussion of the best way for human controls to be carried out took place mostly in secret.

When the Supreme Court finally dealt with the issue of abortion, it could not say anything that would settle the matter. If the Court had been candid about its inadequacy to solve the problem, it could have said the following: Abortion has always been practiced and no doubt will continue until the human race gets serious about better ways to control birth. Abortion raises moral issues for which this Court is clueless. Legally, there are two main questions: Who decides about having an abortion? What is the best way to carry out abortions? The answer to the first question should be obvious: the woman who is pregnant. Ideally, the man who is responsible should be involved in the process of deciding but that often does not happen. The answer to the second question is that abortion should be performed as early and as safely as possible. Facilities and people for that purpose have to be readily accessible to both the rich and the poor.

In the Court’s decision, William Douglas was the only justice to give primacy to the woman’s right to choose abortion. Justice Harry Blackmun, who did refer to the “woman’s decision whether or not to terminate her pregnancy,” used as his central premise that “the abortion decision in all its aspects is inherently a medical decision, and basic responsibility for it must rest with the physician.” *Roe v. Wade* tried to shore up the authority of the physician but had the effect of undermining it. As the women’s movement exerted its power, subsequent court decisions affirmed the right of the woman to decide about abortion.

Two conclusions from the Court’s confused meandering in *Roe v. Wade* were that abortion was no longer a crime; and abortions should be performed early. There could have been a helpful discussion about how to make abortion infrequent and safe. No such conversation has ever occurred.

People who continued to say that all abortions are immoral had a strong case. Abortion, as the term indicates, is negative; it refers to ending a process that has begun within the body. The body itself frequently aborts the process, but a deliberate intervention is always morally problematic. The human race should be trying to get rid of the practice of abortion; until that is accomplished, it should try to reduce any violence in abortion to a minimum. The current tactic of passing laws to outlaw abortion after the first 20 weeks of pregnancy (when more than 98% of them occur) could be a reasonable compromise except that the leaders of that movement openly admit that they consider it merely a first step to banning all abortions. The chance of that occurring is approximately zero.

Instead of working to reduce the number of abortions and to make abortions safer, the most vocal moral critics spent their energies uselessly denouncing the Supreme Court, as if a reversal of *Roe v. Wade* would morally improve anything. Evangelical Protestants had fought against abortion since the 19th century; their reason was a fear that Roman Catholics would soon “possess New England.” In the 20th century, Evangelicals and Roman Catholics became strange bedfellows in opposing abortion. Church officials suddenly emerged as leaders in denouncing abortion. Those officials had recently lost their fight over what were confusedly called “artificial contraceptives.” To this day, some church officials have not accepted that defeat. Impartial observers and most Roman Catholics understand the battle to have ended in 1968 with the pope’s incoherent encyclical. Most Roman Catholics either opted out of the Church or decided that on this point the bishops simply did not know what they were talking about.

Catholic Church officials, it seems clear, saw abortion as the fallback position on contraceptives; that was a terrible way to approach the question. They might have made a connection by saying: “We are against abortion as a violent way to control birth; we now realize that we were mistaken about other non-violent ways of controlling birth; these should be encouraged as the most direct way to reduce abortions.” That is not the way the ideological battle developed. Instead of saying we are against violence to living beings, especially human beings, they announced that they were in favor of life. The question then became “when does (human) life begin?” which is not the question needing debate.

For many centuries there was an assumption that women had nothing to contribute to the process of generating a baby except to provide a place for the man’s seed. This has been called the “flower pot theory” of pregnancy. Some sects considered a man’s “spilling his seed” to be equivalent to murder; they had the support of a somewhat crazy logic. Now that we recognize that the woman contributes to the process it makes sense to say that new human life begins at fertilization. (Fertilization is a biological term; it refers to something visible. “Conception” is a philosophical term). There should not be debate about that fact; the embryo is not dead and it is not nonhuman. The human race now knows important scientific facts about genetics and that a DNA profile is established at the start of the process. But it is not a scientific question to ask when a human being exists; it is a philosophical question, and one that has no precise or agreed upon answer.

Agreement should be possible that an individual human being does exist when the organism is capable of living outside the womb. The principle holds even though there is no exact answer to when that is the case. Most people think that a human being exists before then. In any case, the entire process of pregnancy should be respected and the fetus should be protected. But it is unintelligible to most people to say that an individual – a person, a human being, a baby, a being, a someone, a who – exists at fertilization.

A society could legally assign personhood to an embryo at fertilization but lawyers do not control the meaning of person. Legal personhood can be assigned to a corporation but no one mistakes General Motors for a person. Biologists cannot say when “a human being” or “a person” exists even though they can clearly say that human life begins at fertilization. “Human life” can be and is used in many generalized ways. No one thinks

that because human life exists on earth that there is a person whose name is “human life.” At some point in the development of human life during pregnancy there exists a combination of characteristics and behavior that we persons identify with a person. Exactly when that is will never be agreed upon, but the great majority of people cannot make any sense of saying that 46 chromosomes, a fertilized ovum, is a person. Do those who say that persons exist at fertilization believe that the billions of abortions that happen, even without external intervention, result in one-celled human beings that go to heaven and enjoy a vision of God?

I walk by several building sites every day. For long stretches of time not much seems to be happening; then suddenly I recognize that there is a building. The building did not come into existence between Tuesday and Thursday of the week when I noticed it. Someone else probably recognized the existence of the building at a different time. It may seem trivial to distinguish between “building” and “a building” but whereas the first can be readily agreed upon, the second has no precise answer even though at some point there clearly exists “a building.” That “human life” begins at fertilization should be easily agreed upon; when “a human life” exists is inherently ambiguous and, one might add, it is an ambiguity that is disconcerting to everyone.

In the 2012 political campaign, politicians who said they were against all abortions found themselves cornered when rape and incest were brought up. Most of them said they made exceptions for rape and incest, but that position made no logical sense. Their painful choice was to renounce either logic or their belief. A few politicians went all the way with their logic which brought down ridicule on them. Todd Akin famously said that in cases of “legitimate” rape, the body would shut down the possibility of pregnancy. The reason for his use of the word legitimate is obvious: if conception does occur, that proves there was no rape. He was simply being consistent. An alternative approach to consistency was to say, for example in the case of the 9 year-old Brazilian girl who had been raped by her stepfather since she was age 6 and was now pregnant with twins, that it must be God’s plan for her, and that the child and her mother should trust in God. Most of the public found both of these consistent defenses of human life to be appalling.

The ridicule that was heaped on a few politicians for their nutty, if consistent, views is not particularly helpful. An orthodoxy in most of the news media that constantly refers to a “woman’s right to choose” and “abortion rights” obstructs any meaningful discussion of how society should encourage ways to regulate and, eventually eliminate abortion as far as possible. The phrase “abortion rights” is relatively recent but it is now omnipresent. The plural of rights here is mysterious because presumably what is meant is “a right to abortion.” But that phrase might generate reflection. Does anyone think that abortion is a good that a person has a right to? Wouldn’t it make more sense to talk about abortion as tragic if sometimes acceptable rather than being a good that a person has a right to?

The subject of abortion is not reducible to two sides. Unfortunately, there are two ideologies that control talk about abortion while most of the public is given little help on making some progress in eliminating the need for abortion and improving the ways of continuing the human race.

ABORTION AND THE PUBLIC (2013)

David Leonhardt, *New York Times*

Nationwide polls consistently show that people are no more “pro choice” than “pro life,” when asked to choose a label. More detailed questions yield similar results. And women are no more in favor of “abortion rights” than men. “Abortion is not heading in either party’s direction,” says Andrew Kohut of the Pew Research Center.

About 60 percent of Americans favor access to abortion in the first trimester (12 weeks) of pregnancy, but close to 70 percent think that it should be illegal in the second trimester, according to Gallup. Likewise, a recent National Journal poll found 48 percent of respondents favoring, and only 44 percent opposing a House bill that bans abortion after 20 weeks of pregnancy except in cases of rape and incest. About 8 in 10 Americans believe abortion is taking a life, said Ed Goeas, president of the Tarrance Group, a Republican polling firm. “What you have is a discussion about when it is acceptable.”

Perhaps the best weapon of abortion rights advocates is their opponents’ extremism. The Texas bill, for instance, would close most of the state’s abortion providers and ban the procedure after 20 weeks, without exception for rape or incest. A clear majority of Americans support such exceptions, as well as those for the health of the mother, polls show.

But supporters of abortion access have their own challenges. The issues of which it is easiest to predict the future of public opinion generally involve individual rights. Over time, rights – suffrage for women and blacks, job opportunities for Irish, Jews, Latinos and other ethnic minorities, marriage for interracial and same-sex couples – tend to expand in the United States. In the debate over abortion, unlike the debates over immigration and marriage, both sides can easily claim the mantle of individual rights. Supporters can maintain that women deserve the right to make decisions about their bodies at any point in a pregnancy – and that many abortion opponents change their position when facing a real-life decision.

Opponents can counter with increasingly clear images from sonograms, often showing decidedly human forms on the cusp of viability. Opponents can also point to the specter of eugenics: one study has found that prenatal screening caused births of children with Down syndrome to be 49 percent lower than they otherwise would have been, even as medical advances have sharply extended the lives of people with the disorder. When fetuses with Down syndrome are aborted, it is typically after the first trimester.

Those dueling claims probably mean that the debate over abortion is here to stay. As Mr. Kohut notes, polls show that young people – despite their general liberalism – are divided much as their parents and grandparents have been. If the issue presents either Republicans or Democrats with a political opportunity, it is one they will both struggle to exploit, given the passionate feelings of their bases.

PUBLIC OPINION (1984)

By Kristin Luker

Motherhood is a topic about which people have very complicated feelings, and abortion has become the battleground for different definitions of motherhood. Neither the “pro-life” nor the “pro-choice” movement has ever been representative of how Americans feel about abortion. More to the point, all our data suggest that neither of these groups will ever be able to be representative.

The political groups that joined forces in California in the early 1960s in order to press for changes in the state’s century-old abortion laws were much more liberal in their support of abortion than most Americans. At that time large numbers of Americans rejected abortion even when the woman’s health was “seriously endangered,” when the pregnancy was the result of rape or incest. What is remarkable about public opinion on abortion prior to the Supreme Court decision is how quickly it changed within a decade of the first calls for abortion reform. In 1965 only 73 % of those polled in an NORC study approved of abortion when there was a threat to the woman’s health; by 1972 that figured had grown to 87%. In 1965 only 59% supported abortion in cases of rape; by 1972 approval rates had risen to 79%.

It is tempting to argue that the “pro-choice” people simply persuaded a great many fellow Americans to accept their point of view. To some extent, they probably did; certainly the mere fact that they made the abortion issue a subject for public debate allowed many more people to become familiar with it and to form personal opinions about the merits of their case. It seems likely, however, that American public opinion was shaped more significantly by the large-scale social changes going on at the same time – changes in the status of women, changes in traditional sexual morality, and an increasing concern with poverty.

Two critical facts should be kept in mind: These changes in public opinion occurred *before* the Supreme Court decision and the Court’s decision did not “legislate morality.” Public opinion on the issue had already been shaped during the previous decade of debate, and the Court’s decision did very little to change patterns of opinion.

Depending on the poll and the wording used, between 20 and 40 % of the American public are deeply committed to either the “pro-life” or “pro-choice” position; they believe either that the embryo has an obvious “right to life” or that abortion is a woman’s choice. Somewhere between 50 and 80% of the public, although in general approving of abortion, do not subscribe to either of these opposing views. Despite what the activists on either side of the debate would like to think, the overwhelming majority of Americans hold what might be thought of as middle-of-the-road opinions on the topic of abortion. They simultaneously approve of “necessary” abortions and disapprove of “casual” abortions. American public opinion accepts abortions when continuation of the pregnancy would cause hardship, but there is a deep division about just what kinds of hardships are severe enough to merit an abortion.

TEN READINGS ON ABORTION

There are many hundreds of books and essays on abortion so no one can say that these are the 10 best things to read. This is a list of readings that attempt to reflect on an inherently complex and ambiguous subject. The list is heavy on Roman Catholic writers who are trying to find a way for the Catholic Church to defend important values while getting out of the corner that officials have painted themselves into.

- 1) Kristin Luker, *Abortion and the Politics of Motherhood* (1984) is probably still the best book on the subject. She was able to get lengthy, thoughtful reflections from a wide range of women and she avoided a polemical attitude in interpreting their motives. Her statistics generally hold up almost 30 years later, an indication that the public attitude has not changed much over the years.
- 2) Robert Burt, *Death is that Man Taking Names* (2002) is an excellent book on problematic aspects of death. The author has a short but insightful discussion about the Supreme Court decision on abortion and its background (pp. 68-80).
- 3) Mary Ann Glendon, *Abortion and Divorce in Western Law* (1987) is a helpful comparison of twenty countries, most of them European, in their laws governing abortion. Among these countries, the United States stands almost alone in its lack of regulations concerning abortion.
- 4) Emily Matchar, "In Liberal Europe, Abortion Laws Come with Their Own Restrictions," *The Atlantic*, August 5, 2013. A helpful updating of Glendon's study of comparative law. The author argues that in Europe regulation of abortion is based on the idea of the common good and not driven by religion.
- 5) Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (1982) is a well-known study of the moral development of women. The author interviewed women who were considering abortion. The interviews revealed a variety of thoughtful and conflicted responses about abortion.
- 6) Francis Beckwith, *Defending Life: A Moral and Legal Case against Abortion Choice* (2007) is a comprehensive marshaling of evidence against abortion. Unfortunately, any valuable points the author makes will be convincing only to the people who were already convinced of his position.
- 7) Christopher Kaczor, *The Ethics of Abortion: Women's Rights, Human Life and the Question of Justice* (2013) is admirable in the author's attempt to present in a civil manner a condemnation of all abortions. He begins by reflecting on ambiguities of language but he has no doubts about opposing his "pro-life" beliefs to "pro-choice."
- 8) George O'Brien, *The Church and Abortion: A Catholic Dissent* (2002) disagrees with official church teaching but the author is hampered by the fact that he begins by accepting most of the theological language that leads to that teaching.
- 9) Robert George and Christopher Tollefsen, *Embryo: A Defense of Human Life* (2008) is critical of scientific practices that have grown up with the acceptability of abortion. They make some good points about the need for some controls on using the human body as a factory but they offer no basis for compromise.
- 10) Peter Steinfels, "The Church and Abortion," *Commonweal*, June 13, 2013, is a long and thoughtful argument for the need of compromise in the Catholic church's position. But his unwillingness to challenge the basic church assumptions makes any compromise unlikely.