

# **The Ethical Dilemma of Abortion**

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## **Abstract**

This paper discusses the extremely complex and important topic and dilemma of abortion. Specifically, that the pro-life versus pro-choice dilemma is an imperative one that continues to cause ethical tensions in the United States. For this reason, this issue and dilemma warrants close scrutiny. It affects many major areas including ethics, religion, politics, law, and medicine. Ethical theories and principles of the pro-life position and the pro-choice position will be contrasted. This paper will further discuss the arguments in the context of *Roe v. Wade* and its impact on laws in the United States. The general ethics of the pro-life argument and the pro-choice argument are founded on the issues of human rights and freedom. Three main principles that the pro-life argument argues (the Human Rights Principle, the Mens Rea Principle, and the Harm Principle) will also be discussed. This account will not include this author's own prescriptive response (in the form of recommendations, best practices, or similar types of judgments) and therefore, this paper does not go beyond a purely comparative method. Lastly, the Nuremberg Code, which was created at the Nuremberg Doctors' Trial, will be discussed. Specifically, the Nuremberg Code will be correlated in relation to laws in the United States, as well as contemporary bioethical debates, which are misleading when comparing the use of fetal tissue for transplants from abortions to experiments done during the Holocaust and crimes of Nazi biomedical science.

## **Keywords**

abortion, ethics, pro-life, pro-choice, the Nuremberg Code

## Introduction

The important pro-life versus pro-choice dilemma is one of the longest debated issues that continues to cause ethical tensions in the United States today. For this reason, this issue and dilemma needs to be further scrutinized. This complex dilemma continues to challenge biomedical ethicists, as it connects to all areas of normative assessment, politics, law, medicine, religion, and ethics. Both sides of the abortion dilemma have strong beliefs and persuasions (some views amounting to absolutism). This paper, however, does not go beyond a purely comparative method. Thus, this analysis does not include a prescriptive response of the author in the form of recommendations, best practices, or similar types of judgments. The justification of abortion is an ethical, moral, and legal issue. Ethical theories and principles (including ethical absolutism, conservatism, ethical limits, and liberalism) of the pro-life and pro-choice positions will be contrasted. Similarly, the arguments in the context of the legal case, *Roe v. Wade*, will be discussed.

Proponents of the pro-life and pro-choice arguments emphasize the issues of freedom and human rights. The pro-choice position protects the rights of the pregnant woman, whereas the pro-life position protects the rights of the fetus (Annas, 2011, p. 129). The pro-life argument rests on three principles, namely the Human Rights Principle, the Mens Rea Principle, and the Harm Principle (Matwijkiw, 2020). The pro-life argument is based on the premise that the human life begins at conception (Matwijkiw, 2020). Pro-life advocates are critical of allowing the woman the autonomy to decide between terminating or continuing her pregnancy (Matwijkiw, 2020). Subsequently, the abortion dilemma even challenge the distinction between the Self and the Other (Matwijkiw, 2020).

## Descriptive Analysis

Abortion is generally defined in terms of the viability of a fetus. Lewis and Tamparo (2007), for example, defined *abortion* as “the termination of pregnancy before the fetus is viable” and describe *viability* as the “capacity for living and generally refers to a fetus that has reached a

certain gestational age and weight and is capable of living outside the uterus” (p. 194). The theory that life begins at the time of viability uses the premise that life has begun if the fetus can live on its own (Lewis & Tamparo, 2007, p. 196). There is no consensus on the definition of this gestational age, or age of viability. In the past, it was 24 gestational weeks; however, as medical technology keeps advancing, the age in which fetuses are able to survive becomes younger and younger (Lewis & Tamparo, 2007, p. 194).

Fetuses delivered before 20-22 weeks have increasingly been able to survive, whereas in developing countries where technology has not advanced, the time of viability could be even greater than 35 weeks (Lewis & Tamparo, 2007, p. 194). Therefore, the time of viability is not agreed upon; although it is defined by some as 20-35 gestational weeks (Lewis & Tamparo, 2007, p. 194). When does life actually begin? It is undecided if life begins at the time of conception, time when brain function begins (8-12 weeks), time of quickening (the first perceptible movement of the fetus in the uterus, usually around 16-18 weeks), time of viability (20-35 weeks), or at the time of birth (Lewis & Tamparo, 2007, p. 194).

Just as advances in medicine have been made, legal implications of abortion have also undergone significant changes as well. In the United States, abortion regulations were first addressed by statutory criminal law by the early 1800s and fundamentally prohibited (except for cases to save the mother) across the country by the late 1860s (Lewis & Tamparo, 2007, p. 198). For about a century, these laws treating abortion as an illegal practice were relatively stable and unchanged. States did not begin liberalizing their abortion laws until the 1960s and 1970s, and the landmark 1973 U.S. Supreme Court *Roe v. Wade* case monumentally changed abortion laws (Lewis & Tamparo, 2007, p. 198). The case involved a single, pregnant woman (Roe) who took action against the District Attorney of Dallas County (Wade). Roe claimed the Texas antiabortion statute was unconstitutional, pleading the 14<sup>th</sup> Amendment and her right to privacy (Lewis & Tamparo, 2007, p. 198).

The U.S. Supreme Court *Roe v. Wade* brought the issue of abortion fully into public view, and ultimately concluded with historic changes in the law (Lewis & Tamparo, 2007, p. 202). *Roe v. Wade* gave women the choice to continue or terminate a pregnancy based on their constitutional right of privacy (Annas, 2009, p. 97). This decision fundamentally invalidated (either partially or completely) all previous state statutes on abortion but also resulted in a myriad of unanswered questions (Lewis & Tamparo, 2007, p. 198). For instance, when is a fetus considered viable? Is a fetus the “property” of the woman? Does the woman have singular rights to the fetus? Do partners, spouses, or even parents also have rights? Since the U.S. Supreme Court *Roe v. Wade* decision, abortion has been a central biopolitics and bioethics issue in the United States (Annas, 2011, p. 129). Lewis and Tamparo (2007) discussed how the case brought abortion into the eye of the public, yet left ambiguity in the ruling:

The issue came into full public view in 1973 with the *Roe v. Wade* Supreme Court decision. Statutes then changed, and abortion became legal. These statutes are inconsistent, however. The Supreme Court’s intentionally vague ruling has left the states to interpret and regulate abortions. Much variation remains. There is little agreement on the viability of the fetus or what regulations, if any, are established for physicians and facilities. Therefore, abortion rights in one state may not be the same in another. (pp. 202-203)

The intersection of public interest, medical advances, and human rights is uniquely complex and summed up well by Nelson (1992):

Social response to women’s reproductive abilities typically has made their bodies part of the public domain in a way that men’s are not. Modern medicine, right in step with this tradition, has made women’s wombs even more thoroughly public—its technology renders them open to view, and its science tells us with growing precision how the actions of pregnant women affect the health of fetuses. (p. 13)

Statistically, since the U.S. Supreme Court *Roe v. Wade*, the number of women in the United States obtaining legal abortions has actually declined: “In 2002, the abortion rate decreased to its lowest rate since 1976, according to the U.S. Centers for Disease Control” (Lewis & Tamparo, 2007, p. 203).

## **Normative Assessment**

Abortion is an extremely politicized topic, and since *Roe v. Wade*, “bio-ethics issues have consistently taken center stage in elections” (Annas, 2005). Whether or not abortion is moral or justifiable is a very controversial dilemma and issue. The two opposing arguments will be discussed by a purely comparative method. The first position is called the *pro-life* argument and is against allowing abortion, whereas the second argument, called the *pro-choice* argument, supports allowing abortion as a choice. Lewis and Tamparo (2007) illuminate the complexity of abortion laws:

It involves rights of women and rights of the unborn, which adds to its complexity. It is probably impossible that a resolution will ever satisfy everyone. Health professionals will find it difficult to hold a neutral stand. The law grants rights that are to be protected; yet health professionals also must embrace their personal ethics. (p. 204)

The general ethics of pro-life and pro-choice arguments emphasizes human rights and freedom. The pro-choice position protects the rights of the pregnant woman, whereas the pro-life position protects the rights of the life of the fetus (Annas, 2011, p. 129).

## **Pro-Life Position and Arguments**

The pro-life position argues that abortions are ethically unjustifiable and therefore, should not be allowed. The pro-life argument can take a moderate and non-absolutist argument or a classical and radical argument (ethical absolutism), which is what this paper discusses. The pro-life argument is based on the premise that the right of the fetus is

dominant, as “the fetus is innocent, weak, and helpless, and its right to life should be protected at all costs” (Lewis & Tamparo, 2007, p. 202). Therefore, the (absolutist) pro-life argument is committed to the premise that the human life begins at conception, and allowing abortions condones feticide, or the intentional killing of the fetus (Matwijkiw, 2020).

The argument against abortion, or the pro-life position, is founded on three principles: The Human Rights Principle, the Mens Rea Principle, and the Harm Principle (Matwijkiw, 2020). The Mens Rea Principle states that “the intentions of the agent should be given weight” (Matwijkiw, 2020). Thus, this principle is violated by abortion as the agent intentionally killed another, as the pregnancy is terminated deliberately and knowingly (Matwijkiw, 2020). Furthermore, the Harm Principle, which prescribes, as a norm, that “you should not inflict serious harm on other people,” is violated by abortion. This is because pro-life advocates believe it is impossible to deny that abortion does not constitute serious harm, as the life of the fetus is lost (Matwijkiw, 2020). Pro-life advocates argue that, in the case of an abortion, it is an undeniable fact that you are ending the life of another human person (again, using the premise that human life begins at conception), just as it is also irrevocable (Matwijkiw, 2020). The last principle to discuss, the Human Rights Principle (a fundamental principle in ethics), is violated by the act of abortion as well. The Human Rights Principle prescribes that “equal rights should be distributed on the basis of humanity” (Matwijkiw, 2020). Whether or not that life is continued or terminated means that life is at stake. Pro-life advocates hold the belief that the life of the fetus ought to be continued (Matwijkiw, 2020).

## **Pro-Choice Position and Arguments**

The absolutist pro-choice position believes that abortions are ethically justifiable and, as a result, should be performed as long as the procedure is safe. This argument is based on the premise that the rights of the pregnant woman rank higher than any other (i.e., the fetus); the decision of if an abortion is performed is the right of the woman, and

therefore other conditions, such as the circumstances or the viability of the fetus, are not to be considered (Lewis & Tamparo, 2007, p. 201). Liberalism would regard the body of a pregnant woman as her own, so she ought to have a right to control it (Matwijkiw, 2020). The classical pro-choice argument prescribes that the woman should be free to make the choice for herself as an individual, and these choices are considered self-regarding because the fetus is only a potential person – not the Other as claimed by the pro-life argument (Matwijkiw, 2020)

## **Influences of the Nuremberg Code**

The Nuremberg Code was one of the first major documents regarding human rights (Annas, 2005). Annas and Grodin (1995) highlighted the fact that “scientific progress is important, but the human subject comes first” (p. 199). Annas (2005) claimed that at the Nuremberg Doctors’ Trial, where the Nuremberg Code was produced, modern bioethics was born. As Annas (2005) said, “legal issues are raised in the context of a constitutional dispute, as in public debates about abortion...and still other times it is in the form of a debate over the wisdom or effectiveness of statutes and regulations,” an example seen in human experimentation.

Human rights are a universal theme in human experimentation (Annas & Grodin, 1995, p. 7). Annas and Grodin (1995) explained that the “need to respect the humanity and self-determination of all humans is central to the ethos not only of medicine and human experimentation but of all civilized societies” (p. 7). The two principal areas of the Nuremberg Code together “protect the rights of the individual as an autonomous human being” (Annas & Grodin, 1995, p. 184). Eight of the 10 provisions of the Nuremberg Code are directed at protecting the welfare of the subjects, rather than directed at protecting the rights of the subjects (Annas & Grodin, 1995, p. 184). Federal regulations created in the 1970s to regulate research differ significantly from the Nuremberg Code in numerous ways (Annas & Grodin, 1995, pp. 188-189). For instance, regarding the rights and welfare of a subject, more emphasis is placed on the rights versus the welfare (Annas & Grodin, 1995, p. 189).

Under the 1975 regulations on fetal research, however, the Nuremberg Code provisions were adopted (Annas & Grodin, 1995, p. 189). In essence, stricter demands were established to ensure the welfare of fetuses, more so than when compared to other subjects (Annas & Grodin, 1995, p. 189). Annas and Grodin (1995) proposed two reasons for this. First, these fetal research regulations happened closely after abortion was legalized by *Roe v. Wade* (Annas & Grodin, 1995, p. 189). Second, as fetuses are unable to consent on their own behalf, informed consent could not protect the fetuses in the same way it could for adults (Annas & Grodin, 1995, p. 190). Annas and Grodin (1995) discussed the importance of providing fetuses specific research regulations:

These stringent fetal research regulations were designed to protect fetuses from presumably uncaring pregnant women, especially those who were contemplating abortion, and overzealous researchers. In the absence of the subject's ability to give informed consent and protect his own interest, the fetal research regulations were designed to protect the subject's welfare along the lines of the Nuremberg Code. (p. 190)

Annas and Grodin (1995) also discussed the misleading comparison in contemporary arguments of using fetal tissue for transplants from abortions to the Holocaust and crimes of Nazi biomedical science (p. 270). Annas and Grodin (1995) described the thesis of moral equivalence drawn between the camp inmates of Nazi experiments and the aborted fetuses used for fetal tissue experiments as grievously flawed (pp. 270-272). They explained the following:

Those who object to the use of fetal tissue in experimentation do so on the grounds that it violates the rights of the fetus if the tissue must be obtained from elective abortions. No one who proposes to use fetal tissue from aborted human fetuses for transplantation does so because he believes that the fetus is condemned to die. The fetus, whether rightly or wrongly, is already dead. (Annas & Grodin, 1995, p. 272)



There is a significant moral difference in how the prisoners were used in the camps to how fetal remains from elective abortions are used (Annas & Grodin, 1995, p. 273). Annas and Grodin (1995) concluded that “none of the arguments invoked by the Germans who conducted experiments in the camps has any parallel to the arguments against complicity or legitimization cited by those who would outlaw or forbid the practice of fetal tissue transplant experiments...” (p. 273).

## **Conclusion**

The important pro-life versus pro-choice dilemma is a controversial issue which continues to cause ethical tensions in the United States today. This complex dilemma continues to challenge biomedical ethicists, as it extracts from all areas of normative assessment, politics, law, religion, and ethics. Both sides of the dilemma have strong beliefs and persuasions. The general ethics of pro-life and pro-choice arguments emphasizes human rights and freedoms. The pro-choice position protects the rights of the pregnant woman, whereas the pro-life position protects the rights of the life of the fetus. Therefore, the (absolutist) pro-life argument is committed to the premise that the human life begins at conception. The pro-life argument rests on three principles, namely the Human Rights Principle, the Mens Rea Principle, and the Harm Principle. The pro-choice position believes that abortions are ethically justifiable and therefore, should be performed as long as the procedure is safe. This pro-choice argument is based on the premise that the rights of the pregnant woman rank higher than the fetus. Lastly, the Nuremberg Code was created at the Nuremberg Doctors’ Trial and can be correlated to current laws in the United States, as well as contemporary bioethical debates. Contemporary arguments are misleading when comparing the use of fetal tissue for transplants from abortions to experiments done during the Holocaust and crimes of Nazi biomedical science.

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