

## Pro-Conscience: a Third Way for the Abortion Debate

President Obama delivered a memorable commencement address to Notre Dame's class of 2009. In that speech, Obama offered his thoughts on the abortion debate. Obama deserves credit for his call for mutual respect between the two sides and his emphasis on common ground, and the protesters who objected to his visit deserve credit for challenging him to confront the issue.

Yet, while he called for a more moderate tone in the debate, the substance of Obama's position on abortion is the same as NARAL's, and though he called for common ground, he also declared that on some points the positions of the two camps are irreconcilable. This is where the president is mistaken. It is true that the positions of the National Abortion Rights Action League and National Right to Life are fundamentally irreconcilable, but it is a mistake to suppose that these are the only two possible positions and that the president and the nation must choose between them.

The labels "pro-life" and "pro-choice" oversimplify the range of opinions that Americans hold on the subject of abortion. In May of 2009, a Gallup poll found that 51% of respondents called themselves "pro-life"; 42% called themselves "pro-choice" (this was the first time that a majority classified themselves as "pro-life"). But only 23% would ban abortion completely, and only 22% favored permitting abortion under any circumstances. 53% believed that abortion should be legal only under certain circumstances, which has been the majority view by a wide margin since 1975 [1]. Yet both of the major political parties have allowed those who hold the more extreme views to frame the debate.

The president's call for reducing unwanted pregnancies, easier adoptions, and financial support for pregnant women in need is tacit recognition that while there are irreconcilable differences between the "pro-life" and "pro-choice" lobbying organizations, the pro-life movement *per se* is not fundamentally opposed to the broader progressive agenda. It is possible to be both progressive and opposed to abortion.

Those who support progressive goals need not classify themselves as "pro-choice". Must those who oppose abortion classify themselves as "pro-life"? Could there be another position that is philosophically coherent and politically viable? I'm going to attempt to formulate an alternative that I will call *pro-conscience*. I hope that this position will be acceptable to two kinds of people: firstly, those who oppose abortion but either have reservations about using the power of the state to prevent abortions or are unwilling to support the other policies, such as capital punishment and elective wars, that so-called pro-life politicians have often supported in recent decades, and secondly, those who may consider abortion acceptable, but believe that health care, education, the environment, and many other issues on the progressive agenda are more important than the cause of unrestricted access to abortion.

In keeping with the pragmatic spirit of the current administration, I shall begin by stating pro-conscience policies and then explain the underlying principles. Here's my idea of what a pro-conscience politician might look like: She would oppose late-term abortions, public funding for abortions, and financial support for overseas groups that promote abortions. She would support

parental notification. She would support strong “conscience clauses” for healthcare workers. She would proclaim her personal moral opposition to abortion, and would support organizations that work to reduce abortions using persuasion and social support. But she would not actively oppose legal access to elective abortion during the first nine weeks after fertilization. She would support the nomination of justices who would overturn *Roe v. Wade*, or even a constitutional amendment to that effect, but would not support an amendment that would define when life begins.

Stating the policies that a pro-conscience politician would favor is easy, but explaining the principles that justify this position will require careful exposition.

President Obama has recognized that people can disagree in good faith about the issue of abortion, and this is the basis on which the pro-conscience position rests. The First Amendment guarantees the free exercise of conscience in many matters that may offend the majority of the population; *a fortiori*, concerning moral questions about which there is no consensus among the electorate, and about which there is disagreement in good faith, the state must allow citizens to follow their consciences.

The essence of the pro-conscience position, then, is this: our Constitution does not recognize a right to abort *per se*, but it does recognize freedom of conscience, and since there is good-faith disagreement regarding the status of the unborn at the earliest stages of pregnancy, the state cannot override individual consciences on the question of the morality of abortion during that period.

Two terms of this definition obviously need further clarification, namely “good-faith disagreement” and “at the earliest stages”. They can be clarified simultaneously by examining the most extreme opinions on the subject of abortion. On the pro-life side, there are some who would outlaw all abortions, even those that are necessary to save the life of the mother. On the pro-choice side, there are some who would allow abortions at any time before birth, for any reason or no reason at all, without informing or consulting parents or spouses, regardless of the age of the mother, and at public expense. Polls such as the one quoted above have consistently shown that the consensus of the electorate is clearly against both of these extreme positions.

Moreover, among those who espouse these extreme views, how many really understand the implications of their positions, and how many have adopted these positions as a result of considered reflection and a sincere desire to achieve true answers and just solutions to the difficult questions and problems that abortion raises? Some, certainly, but others adopt these positions for other motives. They may be adhering to an ideological or religious party line, they may be rationalizing their lifestyle, or they may be reacting on the basis of emotion without considering all the relevant facts.

Perhaps I will be accused of poisoning the well or using *ad hominem* arguments. If I were trying to settle the question of the metaphysical status of the unborn, the motives of the proponents of the various views on this matter would indeed be irrelevant. But I am not addressing that theoretical question; I am addressing the practical political problem of whether abortions should be allowed when that theoretical question remains unanswered. In the absence of an answer to the theoretical question, I have turned to freedom of conscience as a principle that might solve the practical problem. But allowing people to follow the dictates of their

conscience means allowing them to act in accordance with what they believe, so it is legitimate to ask in this case, *what do they really believe?*

Do those who profess the most extreme pro-life view *really* believe that there is *no* morally relevant difference between killing a one-day-old zygote (a cluster of as-yet undifferentiated cells which has not even reached the womb yet) and killing a newborn baby, and do they really believe that letting an ectopic pregnancy continue until it ruptures is better than terminating it? Do those who professes the extreme pro-choice view *really* believe that killing a 9-week old fetus is analogous to excising a tumor or extracting a tapeworm (not mention the difficulties raised by late term abortions)? In classroom discussions of this issue, I have found that students who hold extreme views either moderate their views after a thoughtful and well-informed debate, or latch onto an ideological position and dig in. I am not a mind reader, but I suspect that among those who claim to hold the most extreme views, those who are both intellectually honest and well-informed about the facts of prenatal development are a minority within a minority.

Among those who honestly do hold the most extreme views, there may be a generational factor. We need to respect the experiences of women who confronted the issue of abortion in a different era, and understand how those experiences have shaped their views both for and against legal abortion, but we must also insist that this is 2012, not 1973. The social context has changed significantly in the past 40 years. A woman cannot lose her job simply for getting pregnant. Single motherhood does not carry the severe social sanctions it once did. Contraception is widely available. The technological context has also changed. There was a widespread network of safe abortion providers that operated even before abortion was legalized in New York in 1970 [2]. With the Internet, such a network would be easy to reestablish in the event that abortion were to be outlawed through some political maneuvering that did not first achieve a supportive consensus among the citizenry. The Internet also has plenty of information about do-it-yourself abortions, and new abortifacients such as RU-486 could easily be smuggled in. Those on both sides of the debate need to take a fresh look at what really is and is not at stake, and what the consequences of any proposed change in abortion policy really would be.

Philosophers have not yet succeeded in coming up with a generally accepted definition of “personhood” that draws a clear line between persons and non-persons. The theoretical question remains unresolved, but it is clear that by the end of the ninth week after fertilization, those who would defend the life of the fetus no longer bear the burden of proof. By this stage of a normal pregnancy, the fetus has fingers, toes, a face, a nervous system, detectable brain activity, and a beating heart. By this point, it deserves the benefit of the doubt.

The “benefit of the doubt” argument gets stronger as the pregnancy proceeds, but by the same token it gets weaker when applied closer to the moment of conception. There is no good reason to think that an embryo can feel pain before sufficient neurological development has taken place. The pro-life bumper-sticker slogan “abortion stops a beating heart” cuts both ways, for abortion during the first few weeks does not in fact stop a beating heart. Yet even a zygote is a living organism with its own unique genetic code. Concerning the status of the unborn prior to the fetal stage, good-faith disagreement displaces consensus, and the burden of proof therefore rests on those who would impose one particular moral vision on others who do not share it.

I must emphasize again that I am not claiming that any of these facts yield conclusive answers to the moral and metaphysical questions concerning the status of the unborn, nor am I claiming that the status of the unborn is the only relevant consideration. But speculative philosophers faced with theoretical questions have the luxury of answering, “I don’t know”; legislators faced with practical questions do not. The law must either ban abortions completely or allow them under some circumstances. The law might remain neutral in principle, but in practice it must enforce one position or another [2]. In a democratic society, the position that the law enforces ought to reflect the moral consensus of the community within the limits prescribed by the Constitution. The consensus of most Americans is against unrestricted abortion once the unborn has reached the fetal stage; at earlier stages, there is no clear consensus to enforce.

Freedom of conscience is especially important to American Catholics and other members of minority religions who have faced discrimination in the past. The pro-conscience position would offer Catholics an additional benefit: with pro-conscience candidates on the ballot, Catholics could escape the recurring dilemma of choosing between a “pro-life” candidate who rejects the Church’s teachings on peace and social justice and a candidate who accepts those teachings but is “pro-choice”.

Freedom of conscience is the fundamental guiding principle of the pro-conscience position. But how should this freedom be protected? This is especially relevant to the question of whether *Roe v. Wade* should be overturned, and whether the beginning of a person’s life should be defined constitutionally. This opens up another dimension of the pro-conscience position, one which requires another guiding principle that must be harmonized with freedom of conscience, namely, faith in the democratic process. Aristotle says

For the many [. . .] when they meet together may very likely be better than the few good, if regarded not individually but collectively [. . .]. For each individual among the many has a share of virtue and prudence, and when they meet together, they become in a manner one man [. . .]. (*Politics*, Book 3, Chapter 11, translated by B. Jowett)

The pro-conscience politician would share Aristotle’s optimism about what rational citizens can discern through collaborative reasoning, discourse and debate. This collaborative reasoning process can take place in the formal legislative process or in the wider civil society. By contrast, the use of the courts to settle contentious moral issues by judicial fiat is antidemocratic, and should be rejected even if one feels that the courts have generally been correct about such issues.

The civil rights movement provides a useful parallel. What was achieved through the courts? *Plessy v. Ferguson* entrenched Jim Crow for half a century. *Brown v. Board of education* overturned *Plessy v. Ferguson*, but provoked backlash and resistance, and *de facto* segregation of schools did not end. By contrast, the Voting Rights Act and the Civil Rights Act made real and lasting change possible. These acts came from the legislature, not the courts, and were passed in response to the demands of a popular movement and the new moral consensus it helped generate. To those on both sides of the debate, I suggest that if your cause is truly just, then you ought to be able to make your case to the people and persuade them.

Freedom entails responsibility. This applies to both bodies and minds. Our bodies are ours to control, but we are responsible for our actions. Likewise, we are free to pursue the good and the right as we see them according to our own lights, but we have a responsibility to inform

ourselves and think through the issues we are confronted with to the best of our ability. Most Americans implicitly recognize this, and they deserve an abortion policy that recognizes this also. That is what the pro-conscience position is – not an incoherent compromise between irreconcilable extremes, but an honest resolution of the abortion question based on the most important right we possess: freedom of conscience.

## Sources

[1] Gallup. “More Americans ‘Pro-Life’ than ‘Pro-Choice’ for the First Time”. <http://www.gallup.com/poll/118399/More-Americans-Pro-Life-Than-Pro-Choice-%27First-Time.aspx> . See also “Finding Common Ground on Abortion” (2002). <http://www.gallup.com/poll/5218/Finding-Common-Ground-Abortion.aspx> .

[2] This network, the Clergyman’s Consultation Service on Abortion, is described in *Articles of Faith*, by Cynthia Gorney (New York: Touchstone, 1998).

[3] Many writers have made this point about the *de facto* impossibility of neutrality, e.g, Michael Sandel in *Democracy’s Discontent*, pages 20-21 (Cambridge: Harvard University Press, 1996).