

Public Authority and Private Behavior:
Lessons from Prohibition for the Abortion Controversy
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Both as Christian disciples and citizens of a democratic society we have an obligation to make moral decisions as wisely as we can. Unfortunately, our public educational endeavors seldom offer training in how to think ethically. Although religious institutions supposedly do better, they often admonish us simply to obey rules rather than guide us in how to address complex problems with moral maturity.

The controversy about abortion that is currently dividing our nation into hostile factions illustrates how unaccustomed and how unable to engage in thoughtful dialogue about moral issues we have become as a society. It reveals our failure to cultivate the ability to deal with vexing issues for which there are no perfect solutions. The two slogans we hear so often in the controversy about abortion – The Right to Life and the Right to Choose – refer to highly polarized differences that merely shout at each other.

Those who claim to support the right to life generally offer a rule-based agenda that treats the matter rigidly, going so far as to hold that all abortions are wrong no matter what the circumstances or the outcomes may be. Sometimes those who embrace this outlook even propose ways to impose their agenda – such as paying bounties to individuals who spy on violators of what they consider correct behavior. Such practices are a threat to the conditions necessary to keep government from being oppressive. In contrast, those that embrace the right to choose sometimes do so from a view of liberty that is highly individualistic and seemingly oblivious to the responsibilities that go with living morally. Merely asserting a right to choose might be adequate when applied to deciding which flavor of ice cream one prefers. It is inadequate when applied to major challenges involving weighty moral obligations. Neither of these widely used slogans does justice to the complex considerations that must be addressed in devising action or making policies about a matter as grave as abortion.

The fundamental value at stake in dealing with abortion is the sanctity of human life and the role that the reproductive process has in creating and maintaining it. Honoring that value requires serious deliberation as to when human life begins and what is required to sustain it. Many groups, including religious ones, have different views as to when human life begins and what constitutes its defining features. One view, common to those who oppose each and every

abortion, is that human life begins at fertilization. This view is used to make a judgment that all abortions are wrong and that preventing them overrides almost every other moral concern. In contrast, an alternative view holds that being human is a relational condition rather than merely a biological one, so that abortions made at any time prior to normal births do not destroy human life. Between these contrasting views is the judgment that a viable human life begins somewhere in the course of pregnancy, when the fetus becomes sentient but not yet cognitive. This becomes the basis for the position that a timeline should be determined as to what stage in pregnancy the destruction of a fetus constitutes a moral wrong.

Any and all of these views as to when human life begins involve moral convictions rather than determinations of fact. They are more philosophical or theological beliefs than empirically based findings. This leads to vigorous contention over the differences and their impact on public policy. The right to hold any of these views is protected by the constitutional prohibition against using the power of the state to enforce conformity to any one religious or quasi-religious set of beliefs. Religious communities also have a right to insist their members remain loyal to their teaching, but they do not have a right to expect the state to do that for them. This is the reason the Constitution prohibits the establishment of religion as well as protects its free exercise.

The Supreme Court has been progressively packed by advocates of the view that human life begins at fertilization and that it is within the power of the state to pass laws based on religious premises. That view, strongly held to in conservative Roman Catholic and evangelical Protestant circles, is not shared by all members of even their own ecclesiastical communities, let alone by a wide public consensus. The fact the justices hold lifetime appointments means they can do this without being responsive to the significant differences in views held as honest convictions among the general public.

The decision of the Supreme Court to overturn *Roe v. Wade* opens the way for legislative attempts to use the power of the state to enforce moral stands that are based on sectarian convictions. We can learn the consequences of doing that by noting the extent to which the now outdated experiment with prohibition had similar features. These two efforts to enact religiously based moral imperatives into public law are similar, and dangerous for the same reason.

Opposition to the use of alcoholic beverages originated in religious circles, primarily Protestant in their identity, and more specifically in denominations struggling against barbarism on the frontier related to strong drink. That opposition

became a cause championed by those religious groups to amend the Constitution to prohibit the personal use of most alcoholic beverages. Although the strategy adopted by advocates of prohibition for accomplishing their aims differs from current efforts to ban abortion by legislative action, each seeks to employ the authority of the state to control private behavior according to religious, or religious-like, standards.

In due time the error in enacting prohibition was recognized, and it was repudiated by the repeal of the constitutional amendment creating it. Today most people look upon that so called “noble experiment” wondering how a free and thoughtful society could ever have been duped into undertaking it. It was supported with a zeal that rendered its advocates totally opaque to the fact that doing this amounts to an establishment of religion, albeit in moral rather than institutional ways.

The decision of the Court overturning *Roe v. Wade* invites the misuse of state power to enforce sectarian norms. It thereby furthers an authoritarian element in public life. To avoid such dangers, we must be aware of the difference in function between how laws and morals nurture social behavior. Laws – the tools of governance – are usually measured by consistency in application. Moral values – which are the concern of a greater and more complex society – should be measured by their effectiveness in furthering worthwhile outcomes.

In the case of either alcoholic drink or abortion, the consequences of imposing legal restrictions are seldom salutary. In the matter of alcoholic beverages, the consequences were often badly distilled products, such as “white lightning” or “moonshine,” that could threaten health and even life. In the case of abortion the consequences are back alley clinics that lack the safeguards of good medical procedures. Religiously driven moral zeal therefore often produces horrendous threats, such as witch hunts and inquisitions. To ignore this possibility is to be blind to the dangers of using restrictions on individual behavior as a way of governing public life.

Consider this simple illustration of why situations and not merely laws matter for decision making, A sign on a dangerous place to swim might read: No Bathing Allowed. If an inexperienced person ignored the sign and began to drown after diving in, anyone who went in to save the person in trouble would violate the sign understood as a law but would render heroic action in terms of a value. This means that actions normally considered illegal may in certain instances be considered acceptable. In the case of abortion, if performed to save the

life of the mother, the violation of a law against an abortion would legitimately be considered acceptable.

Not too long ago an interpretation of Christian ethics that went by the term “Situation Ethics” gained considerable attention. It was a critique of those forms of morality that are rigid and categorical in the application of rules without allowing for exceptions. The importance of taking the situation into account in making judgments was welcomed by many faithful people as an important corrective of religious legalisms that insists the divine will is always the same and therefore must be enforced absolutely. Situation ethics may have been misunderstood by some as holding that situations alone determine what should be done without regard for moral criteria. That simplistic version of the idea failed to acknowledge the importance of moral norms. A wise perspective on how to decide what to do in any moral matter should take both norms and circumstances into account. What it means to be moral requires us to discern what moral norms call for in any particular circumstances.

Opponents of abortion generally think of abortion as a matter about which the use of law is necessary. That explains the tendency of many who would outlaw abortion to insist upon ruling it out in every case. Doing so is considered necessary in order to be consistent in controlling behavior. But there are others who are aware that conditions vary, that it is possible (and necessary) to consider abortion as morally wrong yet acknowledge it may be legitimate whenever it serves a good purpose. Many Protestant pronouncements on abortion regard opposition to abortion as a presumption against its use but not an unyielding prohibition. That is sometimes implied in judgments that abortion should not be used as a means of birth control since it is not like most other medical procedures that are benign in their consequences. Those who understand this can treat abortion as a matter for wise maturity rather than authoritarian rigidity. Although many individuals who understand this do not use abstract academic language, they are well aware that abortion should not be categorically ruled out in all circumstances. It can be used appropriately as well as misused. This same presumption also indicates abortion should not be treated merely as a device of convenience readily available to counteract the consequences of flagrant irresponsibility in the misuse of reproductive relationships.

To take seriously a presumption against abortion involves, not only judging it to be morally problematic, but giving attention to how its use can be reduced and its dangerous consequences avoided. Many of those who wrestle with the possibility of having an abortion have been caught in circumstances they either did

not choose or regret having fallen into. They must be offered sympathy and help; not merely told they would be guilty if they go through with the procedure. That is the basis for allowing abortion in the case of incest and rape. There may well be other sources of dismay that can attend the awareness of being pregnant, for instance, the recognition a fetus is severely incapable of normal living or that one is neither financially or functionally able to offer an offspring proper nourishment and guidance or able to find surrogate caregivers who can. In dealing with such complexities individuals may differ, which means that some will get it right while others will get it wrong as measured by a moral straitjacket. But both are the recipients of God's loving care which is mediated to us through faithfulness rather than rectitude.

To reduce abortions by thoughtfully overcoming the circumstances that lead to them is a better use of responsible moral strategy than trying to prohibit it from ever being done. Our public life would be greatly served if the discussion about abortion were more nuanced and sophisticated, if the dialectic between obligation and liberty were understood. Having the liberty to make decisions is an essential condition for being responsible moral agents. It is wrong to impose inflexible moral restrictions on individuals, but also wrong to assume freedom makes it legitimate for them to disregard moral guidance. Deciding how to maintain a proper balance is best done by individuals who face situations firsthand, aided by professionals when possible, and not by those who advocate rigid and arbitrary legal restrictions against behavior that does not affect them personally. Just as the Bible reports that Jesus taught that the Sabbath was made for humankind rather than humankind for the Sabbath, we can hold that the reproductive process was made for our beneficial use and is not restricted to a single dictum as to what human behavior should be mandatory or subject to the anxieties created by legal intervention.