

George Will is Confused and Misinformed about Abortion

By Nick Gier

George Will is one of our foremost conservative columnists. Except for some overly artful phrasing, he usually writes well-reasoned and evidence-based articles. His most recent piece on abortion—“The Democrats are the Real Abortion Extremists”—is a surprising exception (*The Washington Post*, October 18, 2017).

Pro-Choice Democrats are not Extremists but “Conservatives”

Will claims that Democrats are extremists because most of them refuse to compromise on their “pro-abortion absolutism,” which for him means supporting “abortion-on-demand at any point in pregnancy.” Will is the extremist here, because very few of those who are pro-choice hold this position.

“Pro-choice” is the correct term to describe those who follow *Roe v. Wade*, which allows a woman to choose a legal abortion within the first 24 weeks of their pregnancies. The Center for Disease Control reports that 92 percent of these procedures are performed within the first 13 weeks. If some states did not place unfair obstacles in their paths, many women would have earlier, even safer, abortions.

In what follows I show that *Roe v. Wade* is consistent with our moral, legal, and religious traditions. Both Catholic Canon Law (until 1917) and English Common Law allowed abortions in the first trimester. If the conservative view is that which conserves the values of the past, then *Roe v. Wade* is both conservative in doing so, and also liberal in supporting personal liberty.

Trimester Framework is neither Arbitrary nor Unscientific

Will criticizes the 1973 Supreme Court decision for arbitrarily dividing pregnancy into three trimesters. He claims that the judges “postulated, without a scintilla of reasoning, moral and constitutional significance in the banal convenience that nine is divisible by three.”

Will is famous for his erudition, so he should have known that the trimester framework for fetal development is as old as the Greek philosopher Aristotle. He argued that the fetus starts as a nutritive soul, transitions to a sensitive soul, and then finally becomes a rational soul—a human person.

The fact that there is explosive brain development in the fetus from 25-33 weeks gives credence to Aristotle’s theory. (See www.nickgier.com/fetalbrain.pdf.) Fetal movement, depending on whether it is a woman’s first or second pregnancy, occurs from 13 to 25 weeks, the second trimester. Contrary to Will, Aristotle’s trimester framework is neither arbitrary nor unscientific.

Jews, Aquinas, Augustine are “Liberals” on Abortion?

Thomas Aquinas, one of the greatest Catholic theologians, was profoundly influenced by Aristotle and he accepted his theory of the soul with one crucial exception. Aquinas explained: “The rational soul is created by God at the completion of man’s coming into being. This soul is at

one and the same time both a sensitive and nutritive life-principle, the preceding forms having been dissolved.”

For nearly 600 years English Common Law followed the Jewish tradition in holding that the fetus was not a person until birth. As Genesis tells us: God “breathed into his nostrils the breath of life, and man became a living being” (2:7). Seventeenth Century English jurist Sir Edward Coke believed that abortion was murder only after the fetus is “born alive,” when “it is accounted a reasonable creature.”

The equally great Catholic theologian Augustine believed that abortion should be restricted at the “sensitive soul” stage. Augustine argues that abortion is not homicide, “for there cannot yet be said to be a live soul in a body that lacks sensation when it is not formed in the flesh.”

Unformed vs. Formed Fetus and Catholic Canon Law

A passage from Exodus (21:22-25) has been a focus of the Christian position on abortion, but it is unclear whether this passage protects the life of the woman or the fetus. A later rabbinic interpretation decided that it was the former rather than the latter: “If men when striving strike a woman with child, and cause her to miscarry, but not to lose her life,” a fine should be decided by a judge, but “if death befall her, then thou shalt judge the life of the killer for the life of the woman.” The Vulgate, the Latin translation of the Bible, agrees with this focus on the woman’s life.

The Septuagint, the Greek translation of the Hebrew Bible, introduces the distinction between a formed vs. unformed fetus. This translation, which the early church fathers considered to be divinely inspired, states that if someone causes a woman to miscarry and the fetus is “unformed,” he will pay only a penalty, but if the fetus is “formed,” it is murder. This view was incorporated into Catholic Canon Law and it was not changed until 1917, when personhood was moved back to conception.

English Common Law and “Quickening in the Womb”

English Common Law used the term “quickening in the womb” to establish the cut-off point for abortion. “To quicken” means “to receive life,” and this conforms nicely with Augustine’s “formed” and “live” soul and the “viability” criterion of Roe v. Wade. Under the influence of Sir William Blackstone (1732-80), quickening was incorporated in early U.S. law, and, significantly, this would have been the position of our founding thinkers. If one uses the conservative hermeneutic of “originalism,” the beliefs of both Biblical and Constitutional writers should apply, not the politically convenient opinions of today.

A recent book on William Blackstone claims that, primarily because his legal textbooks were read in every law school in the American colonies, he “had the greatest influence on the thinking of our founding fathers.” The conservative American Blackstone Institute praises him to the hilt, because the founders “referred to Blackstone more than to any other English or American authority.”

Genetic Identity is Not Personal Identity

Many anti-abortionists claim that genetics make this traditional view obsolete and unscientific. The problem, however, is that genetic identity is not personal identity. There is always a possibility of twinning up to 16 weeks, and identical twins, while being genetically unique, are obviously two different persons. With the technology of cloning, there would be as many potential persons as there are body cells. Furthermore, Aquinas (see above) and all orthodox Christians believe that a person's essence is created by God, not by biology.

Conscious Perception of Pain only at 28 Weeks

Anti-abortionists are now proposing laws that protect the fetus at 20 weeks, when they believe that it can feel pain. Thirteen states now require doctors to read a script on fetal pain to all women considering abortion. Bioethicist Arthur Caplan criticizes such laws because they “reduce the process of informed consent to the reading of a fixed script created and mandated by [conservative] politicians not doctors.” Women in these states, during the most vulnerable time of their lives, are now subjected to a screed designed by anti-abortionists and not based on the best medical evidence.

A 2005 article in the *Journal of the American Medical Association* surveyed all the research and concluded “that a fetus' neurological pathways that allow for the conscious perception of pain do not function until after 28 weeks gestation.” In 2010 the Royal College of Obstetricians and Gynecologists agreed with those results and in 2012 the American Congress of Obstetricians and Gynecologists joined the scientific consensus.

What about a Consistent Pro-Life Position?

On November 1, 2017, House Republicans held a hearing on a bill that would ban abortions at the point that a fetal heart beat can be detected. (This is a futile effort, because a similar North Dakota law has already been declared unconstitutional.) Animal fetuses also have beating hearts, they quicken in the womb, they feel pain, and they have unique genetic identities. As a pro-life vegetarian I have no difficulty protecting the lives of all beings that can feel pain, but I wonder how many carnivores out there will agree with me?

Some Christians will object that what makes humans different from animals is that they are created in the “image of God” (Gen. 1:26). Nowhere in the Bible is this phrase explained; it is not mentioned again in the Hebrew Bible; and, in the New Testament, it refers to Christ and only once to a husband's rule over his wife.

Early Church Fathers fell back on Aristotle and defined the “image of God” as possessing a rational soul. This definition of personhood has now been embedded in our moral and legal traditions for two millennia. However, archeological evidence has now explained the “image of God” as a political one: Adam and Eve, and Christ as the New Adam, are God's representative on earth. Without the divine image, ordinary humans have to be content with same souls as the animals. According to Ecclesiastes, they are created with the same divine breath (3:19) and they have souls (Hebrew *nephesh*; Greek *psychē* [Rev. 8:9]).

The main problem with Aristotle's concept of personhood is that we now know that animals can show intelligent, emotional, and moral behavior without large cortexes. Crows have distinctive tool kits and they recognize individual human faces. Dogs have a moral sense of being cheated on food portions. Alex, an African grey parrot, was the subject of a 30-year scientific experiment, and he reached high levels of cognitive performance. Not only was Alex able to answer questions, he, unlike any ape tested, also asked questions.

Specieism: The Last Frontier of Discrimination

We can no longer make a moral distinction between our lives and those of our fellow creatures. We should therefore reject the fallacy of "speciesism," which privileges humans as the only beings with a serious moral right to life. I challenge all of us to embrace a consistent pro-life position that respects the dignity and value of all living beings. If women at abortion clinics have to listen to a lecture about fetal pain, then a similar script should be read out at every slaughter house in the U.S.

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