Chapter 2: Abortion: Can We Talk?

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 willingness to 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 Denmark, Germany, France, and Italy.¹

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.² 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.

This chapter is not directly about abortion; it is about the language in which practices 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.³ This deadlock can arise in various ways. It is sometimes the result of a genuine but inaccurate effort to describe a controversy in an unbiased way. Especially in moral matters, any terms that are employed will carry an historic bias. When there is a complaint about the unfairness of either the x or the y in the description, the answer is not likely to be found by simply substituting a synonym to replace x or y.

Sometimes the description of x versus y has been chosen by people who call themselves x. They may say that the description is unbiased and possibly they believe what they are saying. However, in an area of sharp disagreement it is almost impossible that one side in the dispute can be trusted with a description of what the dispute is about. When people who call themselves x call other people y, and when y lacks an understanding of what is happening or does not have the power to resist the imposition of terms, y has already lost the dispute. People called y may continue to snipe at x but the resulting situation cannot be called a debate.

The way out of an intense moral dispute can only come from reconstituting the terms for debate. Who can do that? The immediate inclination is to seek an impartial observer. But on profound issues there may not be anyone who is impartial. Instead, a more promising possibility is to find a bi-partisan umpire, someone who can see that neither x nor y is the
answer but that both x and y are affirming something valuable in the disputed area. The answer therefore is both x and y.

Unfortunately, when people say that the answer to a question is not “either/or” but “both/and,” they usually just restate the disagreement. The need is to recognize that while people called x and their opponents called y may each be affirming something worthwhile, their language conceals and distorts the truth. They may or may not be conscious of that fact. In intense debates, people tend to think that the meanings of the words they are using are obvious, but any important words in the language are ambiguous in meaning.

The first step in trying to open a real debate is by responding to the question “Are you x or y?” with the answer: “w.” which means both/neither. Lest that answer seem to be just a captious avoidance of the issue, the task is to show that w is a complex description that accepts neither x nor y as stated but also does not oppose much of what x and y are intended to affirm. That answer will be unsatisfying to many people because it cannot be put into the form of a slogan.

My first point about abortion, 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. This 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 chapter 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 absence 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 laws. 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.

In the first half of the twentieth century, it was believed that the human race had progressed to the point of banning all abortions. Indeed, it would be progress if abortion were to disappear as a practice of the human race. However, the law got too far in front of the hoped for progress. So long as abortion is perceived as necessary by millions of people a law simply declaring abortion to be illegal is not going to stop the practice.

Until the nineteenth century there had been leniency toward a practice that was morally wrong but could not be entirely eliminated. A major change occurred in the 19th century with the emergence of the medical profession. In the United States the physicians, with the support of evangelical Protestants, passed a series of strict laws on abortion. The Roman Catholic Church was not much heard from. The exclusively male profession of physicians asserted that it was the competent authority for the “therapeutic exceptions” to the new laws outlawing abortion. Women then had the choice either of submitting to the physician’s judgment or of inventing 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.”

One thing that became obvious in the twentieth century was that the human race had to exercise some control over the process of the human race’s continuance. That involved some delicate tampering with how women become pregnant and with the process of pregnancy. Medical practice greatly improved during the twentieth century along with new scientific knowledge. Unfortunately, most of the discussion of how human controls should be carried out was veiled in secrecy.

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 even discuss the problem, it could have said the following: Abortion has always been practiced and no doubt will continue to be common 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 woman usually needs medical advice and medical assistance. The answer to the second question is that abortion should be performed as early and as safely as possible. Facilities and competent 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 shifted the focus to the right of the woman to decide about abortion.\(^6\)

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 morally problematic. The human race should be trying to get rid of the practice of abortion as far as possible; until that is accomplished, it should try to reduce any violence in abortion to a minimum. The Supreme Court decision could have been understood as supportive of people who are morally concerned about abortion.

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 in the nineteenth century because of their fear that Roman Catholics would soon “possess New England.” In the twentieth century, Evangelicals and Roman Catholics became strange bedfellows in opposing abortion.

Roman Catholic 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, *Humani Vitae*. 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.

Roman Catholic Church officials, it seems clear, saw abortion as the fallback position on contraception; 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 nonviolent 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 to 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 that was in need of 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 a somewhat crazy logic to support their moral
purity. Now that we recognize that the woman contributes to the process it makes sense to say that new human life begins at fertilization. There should not be debate about that fact; the embryo is not dead and it is not nonhuman.

Fertilization is a biological term that refers to something visible. Conception is a philosophical term about a human being. It is of little help to say that a person exists from the moment of conception; that statement is little more than tautology. Persons are conceived but does the conception happen at fertilization? 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 comes into existence; it is a philosophical question, and one that has no precise or agreed upon answer.

It should be possible to get agreement that an individual human being does exist when the organism is capable of living outside the womb. Despite changes brought about by medical advances the principle of viability holds. 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 given protection from the time of fertilization. The movement to outlaw abortion after twenty weeks could be a reasonable compromise. Ninety-eight percent of abortions are performed before twenty weeks. Beyond that date abortions should only occur for grave exceptions.

Unfortunately, the provision of twenty weeks in most proposals is being used as a distraction from other provisions in these laws which are intended to make abortion less accessible. One does not have to deduce the intent behind these laws; it is openly admitted by advocates of the laws. The twenty-week provision is meant to be a step toward outlawing all abortions. The chances of that happening are approximately zero. Meanwhile, any helpful provisions to lessen the need for abortion and to make safe abortions available to the poor as well as the rich are lost in the ideological battle.

Abortion at any stage of pregnancy is a moral concern. Violent intrusions into the life cycle should be avoided. The moral failure varies in degree according to all the circumstances. The destruction of the human embryo for trivial reasons is surely a wrong. But to accuse people of murder for accepting abortion at the earliest stage of pregnancy is not a way to begin a conversation. Paul Griffiths, who is a thoughtful Roman Catholic writer, wrote an essay in 2004 advocating church acceptance of same-sex marriage. In that essay he contrasts accepting such gay unions with an opposition to abortion: “The current state of U.S. law about abortion makes impossible the legal restriction of the slaughter of more than a million innocent human beings every year.”7 That is a stunning charge based on a counter-intuitive belief which is rejected by tens of millions of responsible citizens. To the vast majority of people the charge makes no sense at all. 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 belief that is in radical conflict with all of our ordinary ideas of what constitutes a person or a human being seems to be based on a theological premise. The interesting
development in recent decades is that the passionate opponents of abortion have called
upon modern science and technology to support their case. For example, Peter Steinfels is
one of the most intelligent and best informed writers in the Roman Catholic Church. He
begins a lengthy and thoughtful discussion of how the church might alter its position on
abortion with this statement: “Fertilization, a remarkable process involving the union of
twenty-three chromosomes from each parent, creates a new, unique, individual member
of the human species, a physically dependent but genetically distinct and self-directing
organism. This is a scientific fact, not one dependent on faith or religious teaching.” If
that description were a “scientific fact” there would be little room for controversy.

The Roman Catholic Church’s position is truly tragic. It has a legitimate moral concern in
criticizing the widespread practice of abortion. But church officials seem to have lost the
power to make distinctions, something that had been a hallmark of Catholic tradition.
Perhaps many people called conservative do not know the tradition very well. On
abortion, there is a distinction that goes back to the fourth century that would open the
door to compromise on public policy.

From the earliest centuries of the church, there was acknowledgment by Christian writers
of a difference between the beginning of life and what was called animatus. The English
word animate is obviously derived from that term but the Latin meaning refers to the
anima or soul. The distinction had nothing to do with science or empirical evidence
(which might be misleadingly suggested by the English term “quickening”). It was based
on a common sense understanding that a speck of matter is not a baby. There was no
agreement on how long after the beginning of life an individual – an ensouled person –
came into existence. A suggestion of 40 days was no doubt a symbolic number. Then as
now no one knows; there may be variations that cannot be captured by stating days or
weeks.

The important point is that Jerome, Augustine, the twelfth-century Code of Canon Law,
Pope Innocent III, and numerous other church writers acknowledged their uncertainty of
when an individual person comes into existence. Thomas Aquinas, who is usually
invoked in any church controversy, was very clear in holding that “ensoulment” took
place some time after the beginning of pregnancy. Interestingly, even the Second Vatican
Council acknowledged that saying human life begins at conception does not decide the
question of when “animation” occurs. Historian John Noonan called his important study
of abortion “An Almost Absolute Value.” All that is needed for the Roman Catholic
Church to begin a conversation is a recognition that “almost absolute” is not absolute.

A society can legally assign personhood but lawyers and politicians do not control the
meaning of person. Legal personhood can be assigned to a corporation but no one
mistakes General Motors for a (natural) person. The Supreme Court was not so crazy as it
was made out to be by critics of the 2010 decision Citizens United v. Federal Elections
Commission. The Court affirmed that a corporation can be recognized as a person. The
Court failed to point out that there are obvious differences between artificial persons and
natural persons. With no restrictions on campaign contributions by corporations,
immense political power shifted away from citizens to concentrated wealth.
Biologists can clearly say that human life begins at fertilization. But biology cannot decide the meaning of person and when a human being exists. We who are persons can usually recognize others of our kind. We do it on the evidence of our senses and what the mind conceives. There are dozens of signs of personhood in what we can see, hear and touch. We can usually recognize when a human language is spoken even if we do not understand what is said. In the absence of a common language we find other ways to communicate. We might be surprised by some of the behavior of foreigners. The Spanish invaders were shocked by the Aztec practice of human sacrifice but that reaction was precisely because the Spanish recognized the Aztecs as persons.

Strong opponents of all abortion often invoke a comparison to slavery. Although slavery was widely accepted in the past, a more enlightened human race now condemns it. The claim is that abortion will similarly be condemned in the future. The comparison to slavery might be helpful to the cause of restricting late abortions. But for asserting that a fertilized ovum should have the rights of a human being the example of slavery presents evidence against the position.

When Columbus encountered the Arawak or when Africans were brought in to work the tobacco and cotton fields, any sane person could see that they were human beings. They were thought to be inferior to the white Europeans who were prejudiced in ways that are obvious today. Slave holders were acutely aware that they were dealing with human beings which is why it was important to humiliate the slaves and it was illegal to teach a slave to read. Aristotle thought that some men were born to be slaves; he did not think that slaves were not human beings. Only on the basis of a powerful ideology could anyone deny what was apparent to the senses and reason, that a slave was a human being. Those who say that in the future a fertilized egg will be recognized as a human being are on the ideological side of rejecting what the senses and reason recognize as a human being.

The phrase “human life” is used in many generalized ways. No one thinks that because human life exists on earth that there is someone 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 are identified with persons. No single characteristic, such as conscious awareness or feeling pain, is persuasive to everyone.11 Exactly when the person exists will never be agreed upon. 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. One should not kill babies even if they are the result of rape. The painful choice for these politicians 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 fertilization and conception do 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, reduce the need for, and, eventually eliminate abortion as far as possible. The phrase “abortion rights” is a relatively recent phrase but it is now omnipresent. The use of the plural “rights” here is a mystery 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 a tragic if sometimes acceptable choice rather than a good that someone has a right to? That attitude seems be the most common among women having an abortion, that is, an emphasis on their responsibility more than their rights.

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 most abortions and improving the ways of continuing the human race. Although the position of most Roman Catholics is similar to the general population, the Roman Catholic Church is identified as the most determined obstructionist to any discussions that might lead to helpful compromises.

Catholic tradition has a good (though by no means spotless) record of concern for vulnerable human beings. In many ways it continues to be a voice for the downtrodden. Jesus of Nazareth was certainly right when he said “the poor you always have with you.” Abortion as routinely practiced today is worthy of the church’s concern. But a “respect for life” surely includes protests against poverty, the state execution of prisoners, and the militarization of the country. Even Pope Francis suggested that an obsession with
abortion may prevent church officials from using the resources of Catholic tradition to stand on the side of oppressed people and to speak out against violations of the human body and the destruction of the physical environment.

4 Luker, *Abortion*, 60: “Nineteenth-century abortion laws were by no means passed in response to Catholic concerns. If anything, they were passed in response to feelings against Catholics, in particular their higher fertility rates.”
6 Burt, *Death*, 75-79.
8 Peter Steinfels, “Beyond the Stalemate: 40 Years after ‘Roe’,” *Commonweal*, July, 14, 2013.
13 Carol Gilligan, *In a Different Voice* (Cambridge: Harvard University Press, 1982); Ronald Dworkin, *Life’s Dominion: An Argument about Abortion, Euthanasia and Individual Freedom* (New York: Vintage Books, 1994), 57: “Feminists do not hold that a fetus is a person with moral rights of its own, but they do insist that it is a creature of moral consequence. They emphasize not the woman’s right suggested by the rhetoric of privacy, but a woman’s responsibility to make a complex decision that she is best place to make.”