

Abortion Laws: A Suggestion for Politicians*

*Peter L.P. Simpson***

ABSTRACT: Abortion laws that lay down limitations on abortion often contain clauses making exceptions for the life and health of the mother. This article proposes that this practice is back to front. Abortion laws should instead be worded so as to say that abortion is permitted except for the sake of the life and health of the mother. Ten arguments are given to show that both opponents and supporters of abortion should, on the basis of their own rival premises, agree to this rewording.

IT IS A CURIOUS FACT about current laws (at least in the USA¹) that abortion is viewed as the solution for which pregnancy is the problem. Thus, laws that lay down limitations or prohibitions on abortion also contain clauses making exceptions for the life and health of the mother – as if the mother’s life and health were threatened by pregnancy and preserved by abortion. What is puzzling here is that, on any fair assessment of the issue, these exceptions are

* This paper is a revised version of one published in *Ave Maria Law Review* 18/1 (2020): 15-34, and is published here with permission.

** *Peter L. P. Simpson* is professor of Philosophy and Classics at the City University of New York, Graduate Center and College of Staten Island. His main publications have been in the area of Ancient Philosophy and Moral and Political Philosophy. More recently he has been producing a complete online translation into English of Duns Scotus’s main theological work, the *Ordinatio* (aka *Opus Oxoniense*). His website is: aristotelophile.com.

¹ The classic instances are the Supreme Court decisions in *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). Many other countries adopt similar laws, as the UK in its Abortion Act 1967.

Life and Learning XXX: Proceedings of the Thirtieth Conference of the University Faculty for Life, ed. Joseph W. Koterski, S.J. (Bronx NY: UFL, 2020), pp. 241-44.

Life and Learning: Proceedings of the Thirtieth Conference of the University Faculty for Life, ed. Joseph W. Koterski, S.J. (Bronx NY: UFL, 2020), pp. 241-44

one-sided if not even back to front. Of course, continuing a pregnancy has its risks, but it is hardly as if abortion has none of its own.

On the contrary, not only does it carry risks of severe physical harm. It also carries risks of severe psychological harm (the latter of which typically go under the name of post-abortion syndrome).² There are other harms too, of a moral, family, and civil nature that have been little explored but seem no less real. One could add, of course, the certainty of the harm that is caused to the aborted child but, for present purposes at any rate, there is no need to. For, since abortion certainly carries the risk of such harms to the woman, and since, where there are risks, one should look for a way to avoid them, why is pregnancy not viewed as this way? Why, in other words, is pregnancy not viewed as the solution for which abortion is the problem?

So, here is a suggestion. Instead of wording abortion laws so that they say abortion is permitted for the sake of the life and health of the mother, word them so that they say abortion is permitted *except* for the sake of the life and health of the mother.

Accordingly here is a proposal for a single, and very simple, law to cover all cases of abortion: “abortion is permitted through the whole of pregnancy, up to and including the final month, except for the sake of the life and health of the mother.”

What are the implications of such a law? First, since it puts the whole burden of abortion on judging the harm to the woman, it would force everyone, including supporters of abortion, to take seriously what those harms are. At the moment, there seems to be a tendency to ignore or play down these harms because, not surprisingly, acknowledgment of them is seen as a threat to abortion rights.

But this law contains no such threat. It allows everything that any abortion rights advocate could want. After all, no pro-abortionist wants abortions that cause women harm. They admit that they are not in favor of abortion for its own sake (or if any are, they dare not openly admit it, for who but a hater of pregnant women and unborn children could be in favor of abortion for its own sake?). They are only in favor of it because, or insofar as, it is necessary for the

² St. John Paul II was acutely aware of this problem, no doubt from direct pastoral experience, in his native Poland already by 1960, the date of publication of a study in Polish that has been translated into English as *Love and Responsibility* (San Francisco CA: Ignatius Press, 1993), pp. 284-85. Note that European East Bloc Countries had legal abortion long before West Bloc Countries did.

life and health of the woman. Well, this law gives them that.

Consequently, second, they cannot possibly object to it, and, third, they could mount no serious legal challenge to it (as such challenges were raised, albeit unsuccessfully, against the law passed in the U.S. in 2003 to ban partial birth abortions because of that law's alleged failure to take proper account of the life and health of the woman).³

So, fourth, this law would allow, or rather require, the most careful investigation and fullest public exposure of all the risks to the woman that abortion involves. At the moment it does not seem that this is properly being done. Take, for instance, the claim that there is a connection between abortion and breast cancer. Has the relevant research been carried out, or carried out with the necessary urgency and honesty? Are those who say there is a connection, or who say there is not, given a fair and uninterrupted hearing, or are they free of threats or bribes to make them say one thing rather than another? Further, are the results, if or when made public, matter for calm reflection or do they become a political football to be kicked about in partisan rivalry?

All such questions would be moot on the basis of the abortion law proposed here because, fifth, it would, in effect, call everyone's bluff. Are you in favor of abortion? Well, then, prove that it causes the woman no harm by supporting and making public the best possible research on what are its effects, short and long term. Are you opposed to abortion? Well, then, prove that it causes the woman harm by doing the same. Are you opposed to such research and to making it public? Well, then, stand convicted of indifference, if not actual hatred, towards women, their needs, and their rights.

Sixth, this law promises, eventually, to end abortion and, seventh, for reasons with which no one could, in good conscience, disagree. For if the harms of abortion are anything like what we have reason to believe they are – and what we have reason to believe they will be shown to be once the research can be conducted and publicized without partisan bickering – then no abortion, however early or easily performed, will be without serious harm to the woman.

Consequently, every abortion will, according to this law, be an exception and so not permitted.

But eighth, and to repeat, those who favor abortion will not be able to

³ *Partial-Birth Abortion Ban Act*, Pub.L. 108-105, 117 Stat. 1201, enacted November 5, 2003, 18, U.S.C. §1531. Upheld after challenges in *Gonzales v. Carhart*, 550 U.S. 124 (2007).

complain that this law denies them what they want. For this law allows abortion to any woman throughout pregnancy. It only says that she should not be subjected to it if it is going to cause her harm. And how could she or anyone else say that she should be subjected to what will cause her harm?

Of course, pregnancy can cause harm, even physical death, but what this law does – and this is of the last significance – is put the burden of proof on those who would say that abortion will cause no or less harm. For my wager is that, when all the facts are in – all the facts about the physical, psychological, emotional, moral, family, and civil harms that abortion involves – no abortion will turn out to be less harmful than even the most dangerous pregnancy. So why don't we all, whatever side of the debate we are on, let the question of abortion turn on these facts – and accept the result?

Thus, ninth, this law does not go against the convictions or aims of either side. For while, in its form, it allows full legal access to abortion, it will, in its effect, do the opposite and should, over time, bring abortion to a virtual stop. So it gives both sides what they want.

Tenth, and most importantly, this law will have this effect, not by intensifying the hostility and bitterness between the rival sides or by polarizing further the political debate, but by uniting everyone in the pursuit of a goal they all profess (unless deliberately dishonest) to embrace: the rights, the life, and the health of the woman.

Or such is the hope.