

# *Abortion, Choice, and Libertarian Principles*

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"Pro-choice" was once a fine libertarian term. Today, it is a code word for abortion until birth. The libertarian meaning of the right to privacy also has been spoiled. The charge against abortion is that it is homicide, the killing of one person by another, and no homicide is a matter of privacy.

## **A libertarian framework**

There may be no better issue than abortion for understanding libertarian talk. Abortion is not a victimless-crime debate. In victimless crimes, such as prostitution and using drugs, if there is harm, it is self-inflicted by consenting adults. Human zygotes, embryos, and fetuses are not consenting adults, and abortion clinics are not pleasure palaces.

Under libertarian principles, everyone, including children, has unalienable rights. This one-tiered view of humanity is the ethical premise of the Declaration of Independence, which says "that all men are created equal."

Libertarian principles don't say when the individual is created. They don't say whether it was at birth, viability, conception, or last week. They don't define such terms as men, human beings, persons, or children; they simply presume that we mean everyone. They don't tell us whether "everyone" included you and me before birth. However, an all-inclusive, single-tier view of humanity recognizes, as libertarian principles do, the inseparability of our life and our rights. In contrast, under two tiers of humanity, society and/or the law arbitrarily decides who's in and who's out. For example, in the past, women's right to own and control their own property was severely limited by law.

Is conception Day One in our life? Two-tier advocates generally don't deny that it is. But, they argue, we were only a human organism then; we don't become a human person until later. Exactly when that moment is and what is the magic that transforms an organism to a person, they aren't sure.

Two tiers of humanity is unlibertarian, because it separates life from rights. It's bad enough when our rights are infringed. When personhood is obliterated, rights are not

in the picture at all.

Personhood is the foundation of our rights, and it is pivotal in the abortion debate. If no person is killed by abortion, there is no libertarian objection to abortion. Libertarians for Life holds that we are human beings and persons from conception, and we explain and defend our position in some depth in our literature. At this time, however, I will only outline our argument:

1) in biological terms, conception is Day One in our life; we are all former zygotes, embryos, and fetuses; none of us was ever a sperm or an ovum;

2) a line drawn for when personhood and rights begin, other than at conception, is merely arbitrary;

3) we were persons even when we were zygotes because we had then our capacity, our potential, for reason and choice; it is a potential that we never *fully* develop, but it's a potential we lose only on death;

4) human zygotes are persons with potential, not "potential persons"; they are *actual* persons with rights;

5) any argument that attempts to exclude immature human beings from personhood or from rights also logically entails the legitimacy of excluding more mature human beings, people who are very old, senile, mentally retarded, etc., because such arguments measure personhood only in terms of activities a particular individual can perform right now.

## **The non-aggression principle**

If prenatal human beings are persons, then abortion is homicide, and the argument that a woman has the right to control her own body doesn't cover this fact. The libertarian-sounding rights talk we hear from abortion choicers is generally an attempt to avoid this discussion. Nonetheless, when abortion foes respond to rights-talk, we have to do so on the level of rights. My purpose here is to argue from a rights perspective.

Interestingly, many people on both sides of the debate see abortion as an insoluble clash between the child's unalienable right not to be killed and the mother's unalienable right to liberty. Abortion choicers defend abortion as an escape from slavery. (This was once my view.) Pro-lifers say: Respect life. And both sides argue over which *value* is higher, life or liberty.

Obviously, both are priceless values, and who would want to lose either? However, we should not confuse values and rights. Some things can have a greater or a lesser value than other things, but here, we are discussing our unalienable rights to things we value. Nobody's *right* to life or liberty is

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higher or lower than anyone else's *right* to the same.

A "right" is a claim by one person against another person to be given what is owed. So, what do we owe one another? What we owe each other, basically, is non-aggression.

To "aggress" is to initiate physical force against innocent people or their property, to commit fraud, or to fail to pay our debts. Even endangerment, the threat of aggression, can also be aggression. However, force *per se* is not necessarily aggression, as when used in defense. Defense is a just response to aggression, if the force is proportion to the aggression.

Your right to be free from aggression implies my obligation not to aggress against you. You also owe me non-aggression. Obligations and rights are opposite sides of the same coin. Non-aggression is a constant obligation life-long, like it or not.

The non-aggression principle is the foundation, the *sine qua non*, of a good society. This principle is pre-political and pre-legal. It does not arise out of contract, agreement, or the law; rather, such devices presuppose this principle. The unalienable rights to "Life, Liberty and the pursuit of Happiness" announced in the Declaration of Independence are applications of the non-aggression principle. The non-aggression principle would exist even if there were no state, no Ninth or Tenth Amendments, nor any Constitution whatsoever. Our right to be free from aggression is pre-legal.

*And so is our personhood from which this right flows.*

Unalienable rights can be respected or violated, but they can neither be bestowed, as a sort of gift, nor withdrawn, as with a loan. Unalienable rights are logically necessary to the concepts of liberty and property. If they were myths, then earning money versus stealing it and consensual sex versus rape would be morally indifferent behaviors. Anyone who says aggression is unjust, or calls abortion a fundamental right agrees that there are unalienable rights. Both sides of abortion generally agree on the primacy of such rights.

### **Just limits to state power**

But agreeing to the primacy of unalienable rights in principle, we have to ask how we may deal with them in practice. What is the relationship of government to unalienable rights? Is there a just limit to governmental power, and if so, what is it?

We have no obligation to permit aggression, and it is not aggression to outlaw aggression. But behind every government law is the sword, the threat of lethal force. So we must ask, when, if ever, may the government raise the sword? The libertarian would respond, "Do you or I personally have a right to raise the sword in order to achieve a value?" If we don't, then we have no just power to do so and no just power to delegate to a government to do so.

This is affirmed by the Declaration of Independence. It says, "Governments are instituted among Men, deriving their just powers from the consent of the governed." To illustrate consent of the governed, our right to spend our money includes our right to give others a power of attorney to spend it. We cannot give others a just power to spend our neighbor's money, because we have no just power to do so

ourselves. A just police power is limited by the non-aggression principle, because a just state is only an agent of individuals bound by the non-aggression principle. No state has a *just* power to aggress, and no law or Constitution can negate this principle.

Majority rule can neither withhold personhood nor nullify unalienable rights. The strong have the brute power to legalize injustice, but might cannot turn a wrong into a right. When aggression is legal, it masquerades as justice, but it remains aggression.

Accepting that government should be limited makes it easy for some people to say, "I'm personally opposed to abortion, but let's keep it legal, because the state should be neutral." On the surface, that sounds libertarian, but can the state be neutral as regards rights? Not in its own jurisdiction.

The state doesn't have the option of sheathing its sword and letting people fight it out in the streets, because "free-fire zones" are unthinkable in civilized societies. When one side claims a *right* to act and the other claims a right to stop the act, the state can't enforce both claims; it can only enforce one or the other. The state is certainly not neutral when it enables killing by legalizing it, subsidizing it, and giving it police protection. Neither is it neutral when it forces taxpayers to pay the bill. A government that sides with aggressors at the expense of their victims is itself committing aggression.

One more point about the sword. There is no such thing as a right or a just power to expose the innocent to attack. To disarm the innocent is to limit their ability to defend against aggression. When government restricts the just personal use of the sword, this can leave the innocent helpless against attack and in danger of harm. Because there is no thing as a right, or a just power, to endanger the innocent and let them be harmed, the government has the duty to protect them from harm. Government forces us to pay taxes, claiming the necessity of defending the innocent. Taking money under false pretenses is fraud.

Let's now return to why abortion is aggression.<para>

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## **On why life and personhood coexist from conception**

### **The benefit of the doubt**

Abortion was legalized by a 1973 Supreme Court decision on two cases, *Roe v. Wade* and *Doe v. Bolton*. In *Roe*, the Court raised "the difficult question of when life begins"—and confessed that it was "not in a position to speculate as to the answer." The Court didn't know—yet in effect it arbitrarily decided that life begins at birth!

What should the Court do when it is undecided on a pivotal question affecting two parties and feels it can't avoid making a decision? Tossing a coin won't do in such cases. The only reasonable course is to weigh the possible injuries that we would impose by a wrongful decision against either party and then choose to avoid the worst possibility. When a human being's life is on the block, a proper legal system gives the benefit of the doubt to life. This is why even advocates of capital punishment call for stringent proof. If

those accused of felonies get the benefit of the doubt, why not the beings in the womb?

What are the possible wrongful injuries that the Court should have considered? The pregnant woman allegedly faces a partial and temporary loss of liberty; her fetus, however, allegedly faces the total and permanent loss of life and therefore liberty as well. The answer is obvious. The Court should have decided for life.

The Constitution affirms "the equal protection of the laws" for all persons. The Court circumvented this principle by dividing humanity into two tiers: a superior class of persons and an inferior class of non-persons. In doing so, it shifted the law from the level ground of equality to a slippery slope.

### **The "who decides?" fallacy**

Some abortion choicers talk as if they don't care whether abortion is homicide; to them, the only issue is the pregnant woman's right to her body. But what about her right to her body *when she was in her mother's womb*? Was she a person when she was conceived? This question won't go away.

In considering the question, let's look again at the libertarian-sounding rights-talk. A sound bite abortion choicers use is, "Who decides?" One could respond, "Decides what?" "Who decides?" is clever propaganda. It appeals to our love of liberty, and its vagueness encourages the confused to sigh, "Oh, let the pregnant woman decide the status of her fetus." Treating personhood as a matter of individual opinion, however, can lead to strange results.

Imagine two pregnant women debating prenatal personhood. One says that her fetus was a person at conception. The other says hers won't be a person until birth. Both fetuses were conceived the same day. As the women debate, a drunk driver hits them, killing both fetuses. What wrong has been committed?

If it's a mother's choice whether her fetus is a person, then to be consistent, we would have to say that the death of one fetus is a homicide but the death of the other is only, say destruction of property. This is absurd, for the two fetuses who were killed are, objectively, the same kind of being.

Twins are born one at a time. One twin pops from the womb. If she is a person, why not the her twin who is just minutes from birth? Birth marks a difference in location but not a difference in kind. Getting older can make a difference how we function, but it doesn't change what we are by nature.

If, on the other hand, we were our mother's property when we began life, under the libertarian concept of property, she should be able to retain ownership as long as she pleases. She could keep us as slaves and bequeath us to others in her will.

### **No "moral in-betweeners"**

Anyone who denies that conception is Day One for personhood has the burden of pinpointing when Day One is. And they must show why it is *this* day rather than one day earlier, or one day later. Our need for exactness on when personhood begins is inescapable, for we must not step on either a woman's or a child's rights. We need a sharp

dividing line. There is no moral class between "person" and "non-person."

Abortion-choice theory, absent proof, sits on the horns of an impossible dilemma. Drawing a line even one day before personhood begins unjustly limits a woman's choice to destroy her property. To draw a line even one day after personhood begins is to permit unjust homicide.

Personhood is an either-or, an all-or-nothing, proposition because the right to be free from aggression is an either-or, and all-or-nothing. The right not to be killed cannot be put on a degree scale, because one cannot be "a little bit alive," or a "little bit dead." Killed or not killed is an either-or, and all-or-nothing. You are either dead or alive. You exist or you don't.

Thus, a so-called potential, partial, or lesser right to life—a right that can be set aside—is, in effect, no right at all. Persons have the right to life. If a being may be killed at whim, this being is not a potential person: this being is a non-person.

"Person" or "non-person" are constants. A person can have a better, or a poorer *personality* than other persons, but no human being has more, or less, *personhood* than any other. Just as the law has no power to give or withhold unalienable rights, it cannot give or withhold personhood. To be an actual person, human beings need do nothing *but be alive*.

When one human being can dictate whether another human being is a person, we should worry about our own prospects. I wouldn't want my personhood to be conditional under the law, subject to the arbitrary opinions of others. Would you? Yet, two tiers of humanity is precisely what abortion choicers support.

The answer to who decides when personhood begins is: Personhood is inseparable from the right to be free from aggression and both are inseparable from our life. We don't *become* persons; we simply *are* actual persons from Day One.

### **The hard cases**

Once we recognize that abortion affects two human beings directly, then what about the hard cases? What about the mother's needs in case of rape, incest, or when her life is in danger? How one deals with them can be a test of whether one holds a one- or a two-tiered view of humanity.

The woman's life in danger is a life-boat type of case. In life-boat cases, two or more individuals are at risk, and none of them is at fault. Because none of them has a *right* to attack the innocent, none of them has a right to attack the others. The mother's right to self-preservation does not turn her child into a mere "thing" that she may destroy at will.

Life-threatening pregnancy is a medical emergency in which doctors can only do the possible. Their goal should be to save both patients, the mother and the child. The goal of a premature delivery is to help both. The goal of abortion, however, is a dead fetus; in fact, a live birth is a failed abortion.

Incest presents no special problem for rights if the female is a consenting adult. If she was raped, then adult or not, her role is involuntary and such unwanted pregnancy presents a peculiar problem for rights. Not just for the

woman and her child but for observers. To explain this requires a discussion too long to include here, but for information, please see "Abortion in the Case of Pregnancy Due to Rape," an article by John Walker (available for \$1.00 from Libertarians for Life). Walker shows that having been victimized does not justify harming any innocent person.

In any event, the hard cases do not obscure the fundamental issues. If abortion *per se* were not aggression, then exceptional cases like rape, incest, or the mother's life in danger would be non-issues.

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## What about the woman's liberty?

Let's turn now to what abortion choicers claim is fundamental: the woman's right to control her own body. Many abortion choicers oppose a right to a dead fetus, particularly after fetal "viability." This is interesting, because what about the woman's right to control her body when her fetus is considered viable?

Strictly speaking, "viable" means "capable of living or developing in normal or favorable situations." To condition the right not to be killed on being able to survive in a hostile environment is like saying, "If you are in danger, and I'm the only one who can save you, I have the right to attack and kill you; but if you can fend for yourself, I have no right to kill you."

We must not confuse technical medical problems with philosophical problems. When artificial wombs are available, viability will start at conception. Besides, a viability test is arbitrary, for it hinges largely on the competence of medical personnel, which can vary. The fact that *others* lack the ability to maintain your life does not justify or excuse the deliberate taking of your life.

When a child is conceived, the child is helpless. This can put the *needs* of parent and child in serious conflict. But it doesn't put their *rights* to be free from aggression in conflict.

Some try to deal with their conflicting needs by pointing to the common understanding of the non-aggression principle: Although we may not aggress against one another, we have no obligation under rights to *help* one another.

They are overlooking at least two important distinctions. One distinction is between killing and letting die. The other is, who is causally responsible?

### Killing versus letting die

Abortion choicers use such euphemisms for abortion as "pro-choice," "pregnancy termination," and "reproductive rights," because most of them recoil at a "right" to a dead fetus. Particularly among libertarians, some insist they favor only an "eviction" abortion, that is, where the child is evicted intact and alive; if she doesn't survive, that's too bad.

Letting die doesn't shut off the possibility of survival, however theoretical and remote this possibility might be. For example, in hysterotomy abortions (which are similar to Caesarian deliveries), children have come out alive.

In the real world, however, the evictionist's position gives only lip service to the moral distinction between

intentional killing and letting die, and those who give such service are playing let's pretend with somebody else's life. Most abortions are meat-grinders, not simple "letting die" procedures. Abortions don't merely place children in grave danger of death. In fact, the point of abortion is intentional destruction of the fetus.

Nonetheless, the evictionist position must be addressed. In theory, we could have a law that limits abortion to simple removal. On the surface, such a law can seem to reflect the non-aggression principle. But let's look deeper.

Many abortion choicers insist that, even in an ordinary pregnancy, having to carry an unwanted child to term is slavery. The woman has no obligation to be a good Samaritan, they argue; her right to liberty is paramount.

One error in that argument is that liberty is not paramount. Life and liberty are equal rights; both are merely examples of the basic right: the right to be free from aggression.

Another problem with the charge of slavery is that it ignores the distinction between attack and negligence. When the cord is cut at birth, the parents can passively abandon their child by walking away. Eviction, however, is not passive; it is an active intervention against the child.

But we still have to address the heart of the eviction argument.

What if the mother could take off right after conception as easily as the father can? An equalizer here is in vitro fertilization. Abandoning a child so conceived without first finding a substitute guardian puts the child, of course, in harm's way. May the parents leave their child unattended in hazardous situations? If their child dies, is that simply regrettable, like famine victims dying because no one gave them assistance? For the parents as regards obligations, is there no difference between their own children and the children of strangers?

Interestingly, even most abortion choicers consider gross neglect and outright abandonment to be criminal behavior. When children have medical emergencies in the middle of the night, most parents don't go back to sleep saying, "So what if my kid might die? I have the right to control my own body, don't I?"

It is true that the *means* a woman must use to mother her child before birth are quite different from the means she uses after birth. But what difference does it make, *in principle*, whether her kid is in the crib or in her womb? When she nurses her infant or carries him in her arms, she is using the *same* body she used to carry that same child to term.

As even most abortion choicers recognize, the parent is not a good Samaritan; parents owe their immature children protection from harm. Well, why are they *obligated* to provide such support? Did you and I have the right, before we were born, to be in our mother's womb?

To nail down why we did, we have to take a further look.

### Who's mugging whom?

A child's creation and presence in the womb are caused by biological forces independent of and beyond the control

of the child; they are brought into play by the acts of the parents. The cause-and-effect relationship between heterosexual intercourse and pregnancy is well known. The child did not cause the situation. The parents are the causative agents of both the pregnancy and the child's dependence.

Who among us could have chosen not to begin life, or not to inhabit our mother's body when conceived? Inhabiting the mother's body is a direct byproduct of the *parents'* volitional act, not the child's. What the prenatal child does, she does *by necessity*. And this necessity is also a direct byproduct of the parents' volitional act.

As everyone knows, nobody survives without certain necessities of life, and very immature children can't obtain them without outside help. Childhood dependency is a fact of nature, like the liquidity of water.

Abortion choicers know that the stork doesn't drop children on our heads. Yet, many insist, parents are not responsible for "accidental" pregnancies.

This raises two meanings of "responsible for:" 1) being the source or cause of a consequence, and 2) being accountable to others for the consequence, owing them.

One cause of the child's existence, the union of a sperm and ovum, is natural. But it is dependent upon an antecedent cause, the human action that enables the two cells to come together. Nature can't do its part unless the parents pull the trigger, so to speak. What parents cause to be is not just a child but a child with needs; it's a package-deal. A child would not be in need of sustenance and of help if she didn't exist. And the stork did not do it.

The fact of parental agency refutes any assertion that the child is an aggressor of any sort, a trespasser, a parasite, or whatever. Since a prenatal child is where she is because of her parents' actions, she can be said to be acting as her parents' agent - which places her alleged "guilt" squarely on her parents' heads. We might even say that the mother aggressed against herself, except that aggression doesn't apply to actions against oneself. Let's note the two central aspects to conception that are relevant to rights: 1) It is voluntary on the parents' part, and not on the child's; *the situation* is imposed on the child. 2) The parents' power over the child is total; it is they who have set up and control the entire situation. If their child dies due to *their* negligence, they have not merely let her die; they have killed her.

To conceive and the abort one's child - even by mere eviction - is to turn conception into a deadly trap for the child: it is to set her up in a vulnerable position that is virtually certain to lead to her death. Conception followed by eviction from the womb could be compared to capturing someone, placing her on one's airplane, and then shoving her out in mid-flight without a parachute. The child in the womb is a captive, in the sense that she is in the situation involuntarily. The captive is not a trespasser on the captor's property, by definition.

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## The non-endangerment principle

When abortion choicers liken the parent to the good Samaritan, they talk as if feeding one's own children is an

act of charity. It is a kindness to give charity, because nobody has an obligation under unalienable rights to do so. Giving to charity is a matter of choice, by definition. But the good Samaritan is not a causative agent of another's need for support; good Samaritans are chance bystanders. In procreation, parents are not chance bystanders but active participants. Conception and pregnancy are foreseeable consequences of even careful sex.

When children are conceived in petri dishes, even then the parents are active participants in procreation. Here, of course, both parents can walk off without attacking their child. But to abandon one's child in the petri dish is like putting her on board one's airplane and then jumping out, leaving her on the plane to crash, and doing all this without the child's consent. Sure, maybe a stranger with a suitable womb will happen by who is willing and able to adopt her. But what if this doesn't happen?

Let's talk again about the non-aggression principle. Basically, non-aggression is a negative obligation, like don't commit robbery. If we commit robbery, we incur positive obligations to the victim for the harm done.

We can also incur positive obligations even if we have not initiated force. For example, a contract is not an initiation of force, yet by merely signing the contract, each party to it now owes each other performance. Failure to perform is an aggression.

The child's right of parental support does not arise out of contract or tort, or out of any aggression committed by the parents. It does not arise out of the biological relationship of parent to child. The child's right arises out of the non-aggression principle. To see why, consider the matter of endangering innocent people without their consent.

One example is lighting a barbecue in our back yard. The mere act of starting the fire is not aggression. But if the fire threatens to spread to our neighbor's land, we caused the danger. If their property catches fire, we also caused the harm and initiated force. *Since we may not end up initiating force, we may not endanger others without their consent and then let harm befall them.*

We could call this the non-endangerment principle: If we endanger innocent people without their consent, we owe them protection from the harm. Notice, although prevention of harm may require positive actions on our part, it is still essentially a negative obligation. And we can incur it even though no one has yet suffered any actual force.

Threats of harm, however, can be considered as forms of aggression. The kind and degree of prevention we must provide depends upon the kind and degree of the risk we impose upon others. When we drive a car, at the minimum, we must stay alert and drive carefully. When people drive drunk, we have no obligation to wait until they bash someone before we take them off the road.

### The child's right to be in the mother's womb

Some abortion choicers say that life is a gift to the child by the parents, a gift that doesn't bind the parents. A "gift," however, implies the option to refuse to take it, and beginning life is not an option for the child. Her life is thrust upon her, and so her need for life support and so is her inability to fend for herself. Conception doesn't make a child

worse off (or better off) than before, because children do not pre-exist conception, but she is created vulnerable to harm. For the parents to thrust this package upon the child and then take off is to thrust the child into danger, to threaten her with harm. If harm befalls the child because she was abandoned, it's the parents' fault, not the stork's.

The parent-child relationship is unique as a situation: it is the only one that begins when one side causes the other side to exist. But parental obligation is not unique as an obligation - the obligation to act justly towards others is a universal, rather than a special, obligation.

The source of parental obligation is the obligation to not aggress; parental obligation is simply a concrete example of this basic obligation. By caring for their child, the parents prevent an aggression that would take place if they were to willfully or negligently permit harm to befall her.

Conception is not, in itself, endangerment or a threat of aggression; it's a normal, natural fact of life, and pregnancy automatically protects the child against the possible dangers of an unsupportive environment. Yet by conceiving a child, parents give themselves a life-or-death power over her, and they get this control without her consent.

If parents intentionally or negligently use their power to put their child in harm's way (not feeding her, for

example), they caused the danger without her consent. If the child is harmed (starves to death), they also caused the harm without her consent.

Even simple eviction from the womb initiates force and violates the child's rights. In most abortions, however, the child is first dismembered or poisoned, then evicted.

Killing a child either directly or by deliberate negligence is a wrong, not a right. Abortion - even a simple removal - is lethal child abuse.

I once saw a bumper sticker that said, "I owe, I owe, so off to work I go." It was a fun way of complaining about having to drag one's body to work in order to make the car payments. And it also taught a fundamental truth: the right to control one's own body doesn't justify the failure to pay one's debts.

You owe your own kid protection from harm; you must provide. She has the right, under individual liberty, to your support. Parents have no right to kill their children, and neither do they have a right to evict their children from home. For the prenatal child, the mother's womb is home; this is where she *needs* to be - and this is where she has the right to be.

The so-called "right" of abortion is not libertarian; it is a dogma in search of a rationale.

*LFL's literature and speakers are available to explain and defend why we oppose abortion. Our reasoning is expressly philosophical rather than either religious or pragmatic. A list of our literature is available on our website, or send a self-addressed stamped envelope to: Libertarians for Life, 13424 Hathaway Drive, Wheaton, MD 20906. Phone: 301/460-4141, Fax: 301/871-8552, email: libertarian@erols.com, Web site: <http://www.L4L.org/>*