

Philosophy of CLFL President David Crisafi on the History of America's Legal Protection of Life/Abortion

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What is Cleveland Lawyers for Life? We are a forum for those in the legal profession who believe in the sanctity and dignity of human life from conception until natural death. Our mission is to educate the public about the dignity of human life, support Right-to-Life groups and to advocate for Life in three areas of law: 1) Abortion; 2) Adoption; and, 3) Euthanasia/ Withdrawal of Life Support.

Legal and Political History of the Life and *Roe v. Wade*

1. American Political History

The controversy surrounding *Roe* may ultimately be the result of a lack of knowledge of our Country's founding and Her Constitution.

Our founding fathers created an unprecedented system of government which, to this day, has no companion. Four core beliefs of our founders distinguished this Nation from others. First was that man was endowed by his Creator with certain rights, namely life, liberty and the pursuit of happiness. Second was the belief that these God-given rights were inalienable. Third was that, as such, a government must be instituted BY men to protect these rights and, fourth was the conviction that any authority claimed by that government *came from* the governed (*See* The Declaration of Independence). Such a form of government, where power flowed upward *from the governed people* was the first in history and has never been repeated. All others were established by kings, generals, emperors or some other bodies politic in which rights, if any, flowed down to the people. Our founders knew from experience that these governments were the road to tyranny. Our founding Fathers saw that God must be the guarantor of these rights if our government was to succeed and that consent by the governed was the foundation of our liberty.

What form of government, then, did those Founders establish? Was it a government administered by judges, elitists or bureaucrats? No. It was a representative republic governed by individual liberty and responsibility. It was the fullest expression of self-government. Our Constitution provides that people govern themselves through the election of individuals representing the governed in both the executive and legislative branches. The judiciary was to interpret the law and the Constitution and act as a check to the other branches that might exceed their authority. This check was to be carried out with real people in real litigation. That judiciary was to be circumscribed and limited by the principals of judicial restraint and precedent. The 20th century saw the demise of this principal and a rise of the judiciary acting as the body politic. Judges have acted as legislators; not interpreting the law, but *creating* it; not resolving issues by applying law on a case-by-case basis, but advancing personal agenda and policy in their opinions.

Our nation has suffered further degradation of individual rights at the hand of bureaucratic agencies. Legislators created agencies and delegated much of their power to the unelected officials that ran them. Our right to self-govern has been eroded by the judiciary's usurpation of its function and the legislators' surrender of power to this monolith called bureaucracy. Both are obstacles to affirming the right to life from conception to natural death.

2. Threats to Life, Liberty and the Pursuit of Happiness by Left and Right Extremist Challenge the Sanctity of Human Life

Enemies to this way of life are, to paraphrase economist Milton Friedman, the elitist or central planning types, on the one end, and the pure libertarians on the other end. Elitists, I believe, are those who believe in "central planning." Examples include totalitarian regimes like the rise of the USSR and Hitler. Libertarians, on the other hand, foster attitudes of "laissez faire" and would allow unremitting licentiousness of individuals. Both of these philosophies are at odds with the sanctity of life. The elitist, who considers everyone to be property or a ward of the state, justifies abortion as a means of eliminating life in the womb which may not prove useful to the state or the environment. Such abortion would be not only be justified but sanctioned by the state. The pure libertarian likewise would say that abortion is appropriate wherever life in the womb interferes with somebody else's happiness.¹

Conflicts in a system of government embracing enumerable rights are inevitable. Fully cognizant of these conflicts, our founding fathers listed LIFE first among those rights. It was the first and foremost among them. Comparable to slavery, in which man had a right to own property called slaves, abortion is grounded in that same belief that an unborn child is not a life, but rather personal property. The absolute right to life is lost in *Roe V. Wade*. While *Roe* recognized, implicitly, a right to life in its trimester scheme, it was only in the third trimester that the state could protect that life and the court was required to apply only ordinary scrutiny. From that decision, however, evolved the new standard; the woman's absolute right to her pursuit of happiness. Any law posing an "undue burden" to or inconveniencing the woman's pursuit of happiness was struck down. This was the effective end to the Right to Life.

3. Returning to Our First Enumerated Right: Life

My hope is to come up with an educational road map to lead the general public back to life. The fetus must regain his standing as a life. We must affirm the principal that Life begins at Conception and is protected *from then on*. Abortion protections have been

¹ This is offered in even casual conversation. I have heard elitists say that abortion is ameliorating to society, "one less burden" so to speak. Preventing sure ruin to the girl whose "whole life is ahead of her..." Do we know her future? Really? This is the big lie. But to focus on the legal side...

driven by the abortion industry: the “pursuit of property and pursuit of happiness” group. It has rewritten, redefined and cast aside the original definition of life.

Sadly, the general public does not seem to understand that if *Roe v. Wade* is reversed each state would be free to define life and legislate abortion. While it would be a major step to affirming life, the legal effect would still be limited to state-regulation of abortion. The state’s agencies would be free to fund, advocate, and educate about abortion in a manner consistent with IT’S definition of life.

Some pro-life supporters argue that life would be (and should be) protected under the 14th amendment. These very amendments to the Constitution are problematic as subsequently interpreted, however, and are often the vehicle of judicial activism that lead to *Roe v. Wade*. Reliance on the 14th amendment would only perpetuate the confusion surrounding the role of the judiciary. Until the judiciary is addressed legislatively and/ or constitutionally, the only unambiguous option, under our Constitution, would be a constitutional amendment defining Life as beginning at the moment of conception.

4. Goals

We must try to persuade and encourage legislators to retake their rightful roles from the courts and agencies. Perhaps we need to address or publish positions on what the legislative branch can do.

With persistence, and prayer, we will soon again be the nation that protected its rights, (God-given rights, with life first among them) by empowering officials elected *by the people*.

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