

Sean & Rob vs. R  
Regarding Fetal Rights



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Ms. Harnarine  
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"Can a woman forget her infant, so  
as not to have pity on the son of  
her womb? and if she forget, yet will  
not I forget thee."

- Isaias 49:15

It takes just eighteen days for a heartbeat to begin thumping inside the young infant's body after conception. After a short forty days energy output is twenty percent that of an adult. Three days later brain waves are detected. Thirteen days later all body organs are now present. In just fourteen weeks, it will all take shape and form into an embryo. Unrecognizable shapes will begin to turn into eyes, bones, teeth buds, nose, ears, fingers, toes and even urine. Genitals will be formed and the gender of the eventual baby is realized. For the most part it takes only nine months for two parents to be blessed with a magnificent creation from God. However not all pregnancies end with a story worthy of telling. There have been over twenty million legal abortions in North America as of just 1987, more than a decade after abortion was legalized in 1969 in Canada. Scientific evidence proves that life begins at conception, not birth, but Canada's Criminal Code refuses to acknowledge this. Even pro-abortion geneticist Ashley Montagu believes this, "The basic fact is simple: life begins, not at birth, but at conception," (Broughton 3). There is constant court case battles going on about this very controversial issue. While judges continue to establish precedents pro-life organizers continue to stress for abortion to become illegal in Canada. The unborn child should have the same right to life that everyone else is given under Section 7 of the Charter of Rights and Freedoms, which states "7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

The abortion debate in Canada is included in the Criminal Code of Canada under section 287. The Criminal Code became a law in 1969, thirteen years before the Charter of Rights and Freedoms became law in 1982. “The code exempted doctors from criminal liability if a hospital abortion committee was prepared to sign a statement to the effect that the ‘continuation of the pregnancy of the female person would or would likely endanger (the pregnant women’s) life or health,’” (Duhaime 1). Section 7 of the Charter of Rights and Freedoms says that “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” This section of the charter brought both arguments from pro-life people and pro-choice people. The pro-choice side argue that you can not “force a women” (Duhaime 1) to carry a child that she does not want to carry. The argument is that unwillingly carrying a fetus in the uterus “is a profound interference with a women’s body and this is a violation of her security of the person,” (Duhaime 1). On the contrary, the pro-life side argues that section 7 of the charter should protect the fetus’ rights. “Joseph Borowski asked the high court to rule that abortions violated the fetus’ right to life and equality under section 7 of the Charter,” (Duhaime 1). With both arguments still nagging at the courts so far all verdicts have suggested that “the fetus is not a person capable of claiming rights under the Charter,” (Duhaime 1). As of now the Criminal Code reads that “all females who permit any means to be used for her own miscarriage is guilty of an indictable offense and liable to imprisonment. Also whoever performs the miscarriage is also guilty.” However, none of that applies to qualified medical practitioners who perform an abortion with the consent of the female. In other words, as long as the proper procedures for an abortion are met, no penalty can

be accessed. The year immediately following the legalizing of the Criminal Code, there were 11 152 legal abortions in Canada. Three out of every 100 live births were aborted. It did not take long after abortion was decriminalized for innocent babies to meet an inappropriate and innocent death.

In 1969, a law was passed in Canada that prohibited any persons from procuring a miscarriage of a woman. Section 287 of the Criminal Code said that “Every one who, with intent to procure a miscarriage of a female person, uses drugs, instruments or manipulation of any kind, for the purpose of carrying out their intention, is guilty of an indictable offence and liable to imprisonment for life.” In 1988, Dr. Henry Morgentaler, who owns abortion clinics across Canada, challenged the lawfulness of Section 287, (Duhaime, 1996). The Chief Justice, Brian Dickson wrote that “Forcing a woman by threat of criminal sanction to carry a foetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman's body and this a violation of her security of the person.” Therefore, Section 287 was deemed a violation of Section 7 of the Charter of Human Rights and Freedoms which states, “7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” Furthermore, another case was brought up, this time against Morgentaler. He and two other doctors, Dr. Leslie Franck Smoling and Dr. Robert Scott broke Section 251(4) of the Criminal Code when they allowed women to receive abortions without “obtain[ing] a certificate from a therapeutic abortion committee of an approved hospital [from them], ” (Mapleleafweb, 2002). The Supreme Court Chief Justice, Brian Dickson allowed an appeal because Section 251 violated section 7 of the Charter and was not

justifiable under Section 1 of the Charter. Dickson noted that Section 7, “security of person” was especially violated in Section 251 of the Code, (Mapleleafweb, 2002).

After Section 287 was deemed unconstitutional parliament tried to create a replacement law but were unable to find the right wording. Canada has been without an abortion law since then, (Robinson, 2000). In 1973 the United States Supreme Court partook the famous Roe vs. Wade case. Roe was a pregnant single woman who “challeng[ed] the constitutionality of Texas criminal abortion laws, which prohibited any abortion except to save the woman’s life, ”( Laws Restricting Abortion, 2000). The courts ruled that the abortion laws violated the “Due Process Clause of the Fourteenth Amendment, which protects against state action the right to privacy, including a woman's qualified right to terminate her pregnancy, ”(Roe vs. Wade). According to Roe vs. Wade:

- a woman and her doctor may freely decide to terminate a pregnancy during the first trimester,
- state governments can restrict abortion access after the first trimester with laws intended to protect the woman’s health,
- abortions after fetal viability must be available if the woman’s health or life are at risk; state governments can prohibit other abortions, (Laws Restricting Abortion, 2000).

The whole focus of abortion being legalized in the above cases was due to the rights of the woman, but there was something missing. What was missing in all of this was the unborn child who had her fundamental freedoms of “life, liberty and security” taken away from her.

Throughout the world there have been cases that beg us to ask “if an unborn child was allowed the right to life in that case, then why not in the case of abortion?” One of the most controversial cases regarding this issue in North America was that of Laci Peterson. Laci Peterson was a 27 year old substitute teacher in California, she was pregnant with her son Conner at the time of her disappearance on December 24<sup>th</sup>, 2002. Scott Peterson, her husband was suspected of murder when “remains of his wife and the son they planned to name Conner were found on the shore of San Francisco Bay in Richmond near where Peterson told police he went fishing on Christmas Eve, the day he reported his wife missing, ”(ABCNews, 2003). If found guilty Scott Peterson would face charges for two accounts of murder, which could mean the death penalty. What was controversial about this was that the charge included the murder of the unborn child, whom they have named Connor,” (BBC News, 2003). Recently a spokesman for President Bush stated that "The president does believe that when an unborn child is killed or injured...the law should recognise what most people immediately recognise, and that is that such a crime has two victims, "(BBC News, 2003). When asked whether or not a double murder charge can be filed when one of the victims is an unborn child, Attorney Anthony Cohen replied:

Apparently so. Any Supreme Court watcher or abortion activist (on both sides of that debate) knows that late-term fetuses have certain legal rights that do not attach to early-term fetuses. But I wouldn't be surprised if the defense team early on tried to challenge the prosecution's "double-murder" charge, arguing that since the Peterson's baby never was born it could not therefore have been murdered. If that argument sticks - which I doubt - it would turn the case into a "single" murder

case and perhaps jeopardize the prosecution's plans to seek the death penalty for Scott if he is convicted, (Cohen, 2003).

Another case which stirred the debate on abortion was that of Jaclyn Kurr. The 20 year old Jaclyn was 17 months pregnant with quadruplets when her boyfriend attacked her. In order to protect her unborn children Kurr picked up a kitchen knife and stabbed her boyfriend to death, (Schmidt, 2002). Ms. Kurr is now serving an up to 20 year prison sentence, but according to her attorney, Gail Rodwan, Jaclyn “had the right to defend herself and her fetus, under a statute in Michigan called the defense of others law. It says, in part, that a ‘person has the right to use force or even take a life to defend someone else under certain circumstances if a person acts in lawful defense of another,’ ”(Goldblatt, 2002). As well, in Michigan there exists the fetus protection law, which states “a fetus is entitled to separate protection and that a person that assaults a pregnant woman may be criminally liable for any harm to that woman or her unborn child, ”(Goldblatt, 2002). Rodwan also stated to the court of appeal that “When the person committing the assault knows that the woman he is assaulting is pregnant, there are two separate crimes, and the woman should be able to assert self-defence for herself and defence of others for her unborn child, ”(Schmidt, 2002). Jaclyn Kurr was found guilty due to the fact that the fetus protection act only protects those unborn children over 22 weeks of age from conception. Though, according to Douglas Johnson, the legislative director of the National Right to Life Committee in the United States “Such cases impress upon people that the fetus is ‘a member of the human family,’ which helps build the political case against abortion. ‘Most people recognize instinctively when there’s a criminal assault that injures a woman and kills an unborn child that that crime has two victims.’” In 1996 a

pregnant mother named Martina Redhead had a glue sniffing addiction. She had had this addiction for several years, including when she was pregnant with her three other children who two of them had mental and physical handicaps because of it. When an appellant from the Winnipeg Child and Family Services came to check up on her when she was pregnant with her fourth child they found Redhead intoxicated. In response to the mother's actions the appellant "sought an order that she be placed in custody of the Director of Child and Family Services and be confined at the Health Sciences Centre until the delivery of the child,"(Benson, 2000). The order was granted by a judge of the Manitoba Queen's Bench, and Redhead stayed at a hospital until she was discharged. She gave up sniffing glue and gave birth to a healthy child in December of 1996, (Benson, 2000). The question brought up by this case is whether or not a court can have the right to order a pregnant woman into confinement to protect her unborn child. According to the Supreme Court the Court "did not, as the law stands, have the jurisdiction to grant the relief sought in order to protect the child,"(Benson, 2000). This is because the unborn child is not yet considered a person and under law there is no one to protect until the child is actually born. Yet, the fact that detaining the woman cause her to stop sniffing glue and give birth to a healthy child leads many to suspect that the Manitoba judge made the correct decision.

So far the Canadian Courts have ruled that "the fetus is not a person capable of claiming rights under the Charter." The law does not see an unborn child as an individual because they rely on the mother to live and are connected to them. But what born child under the age of ten does not rely on their mother or a guardian? All children at birth need their mothers when they are born. Just because they now have a home



outside their mother's womb does not mean that they can survive on their own in this world. Also how is a new baby capable of claiming their rights under the Charter? It is not fair to punish an unborn child for not being able to claim its rights, when a born child who also can not claim their rights are guaranteed them. The differences between an unborn child and a newly born at times are massive. But the differences between a seventy year old and that same newly born is also massive. At all points of a persons life they are growing both mentally and physically. So how can you decide which periods of ones growth they are or are not allowed to have their fundamental freedoms guaranteed to them from the Charter? Lets use marijuana as an example. Section 4 of the Criminal Code of Canada states that the possession of marijuana is illegal. Section 7 of the Charter says that every person has the right to life. Section 5 of the Criminal Code says that trafficking marijuana is illegal, Section 6 says that importing marijuana is illegal. Now comes the important information. Section 7 of the Criminal Code says that the cultivation of marijuana is punishable under law. In other words you are not allowed to grow marijuana. It is easy to understand why the growth of marijuana is illegal. It is illegal under the assumption that one day the small seed will grow into an illegal drug. The act the government wants to forbid is the actual smoking of marijuana. Because of this, the government makes all steps of growing the plant, transporting it, and even holding it illegal, all because of the "joints" future. A future incomparably greater then one of a simple marijuana plant. If we declare that all procedures taken when handling marijuana are illegal from the time it is just a few cells large to the time it is being smoked, then why can't we declare that a baby has rights from the time it is just a few cells large to the time it naturally dies.

Abortion is not the only life and death matter being debated in the House of Commons. Another highly controversial issue is euthanasia, the act of doctor assisted suicide. Often times with euthanasia a victim of a deadly and painful disease is at the mercy of their medicine and hardly ever in charge of their own destiny. They live with constant pain and little if not any chance of a recovery. Their family members and close friends must sit and watch their already lost loved ones suffer through their not only worse but last weeks, days, hours, moments of their lives. Section 241 of the Criminal Code punishes those who commit euthanasia, as well as the doctors who assisted in the procedure. In 1993, forty-two year old Sue Rodriguez appealed to the British Columbia Supreme Court declaring that Section 241 infringed on her rights to liberty and security. The British Columbia Supreme Court dismissed the appeal stating that Section 241 does not infringe upon the rights given in Section 7, because Section 7 in this case is not justified under Section 1. This ruling played particular interest to us for our abortion issue. An embryo inside a mothers womb, just like Sue Rodriguez, have no control over their bodies. They both are totally dependent on another source for survival. The baby on one hand has a future to look forward to. Family and friends will greet it with great smiles and open arms. A patient wishing for a doctor assisted suicide has a painful future to look forward to. Family and friends will look on with broken hearts and sad tears. While the baby, for the most part, will break free from being entirely dependent on their mother, the dying patients will never again be dependent. If the government forbids doctor assisted suicides for those in need of a peaceful, painless

death, how can they at the same time not forbid the legal killing of an innocent child with a future?

In conclusion, an unborn child should have the right to life, liberty and security promised to all persons in Section 7 of the Charter of Human Rights and Freedoms. But, truly the right to have a life as a human is not a privilege that should be given to us by our government. Mother Theresa gave a very moving argument when she stated:

Human rights are not a privilege conferred by government. They are every human being's entitlement by virtue of his humanity. The right to life does not depend, and must not be declared to be contingent, on the pleasure of anyone else, not even a parent or a sovereign, (Mother Theresa).

The right to life for an unborn child was taken away, in Canada, when Morgentaler argued that Section 287 of the Criminal Code was against the mother's rights set out in Section 7 of the Charter. This, along with the American equivalent of Roe vs. Wade, has brought up many cases which have challenged whether or not a foetus should have the right to life and security. The Lacy Peterson case took pro-life activists to the edge of their seats when it was declared that the suspected murderer of Connor and Laci would face double homicide. Now, shortly after this case took place the family of Laci Peterson is trying to create an "Unborn Victims of Violence Act." If this act is successful then in the future the unborn child will be protected against any type of violence, including abortion. We also find it interesting how the Canadian government illegalised the cultivation of marijuana, with the knowledge that even a marijuana seed will become a plant. Though, they do not see, nor give the right to life to an unborn child. The unborn

child has so much to look forward to, but so many are denied to know our world and way of life. By “so many,” I mean the 31.8 out of every 100 who died from abortion in 1999 in Ontario and many other children, (LifeSiteNews.com).

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