

ABORTION POLITICS & POLICY

THE BEGINNING OF ACTUAL HUMAN LIFE

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MEDICAL AND RELIGIOUS PERSPECTIVES MAY DIFFER

CURRENTLY three human life bills are before the United States Congress: H.R. 3225 and S. 158 define actual human life as beginning at conception, and H.R. 900 is the human life amendment to the Constitution. The ultimate intent of these bills is to alter the Supreme Court's 1973 *Roe v. Wade* decision which opened the door for abortion on demand. This decision maintains that a pregnant woman has a Constitutional right to privacy through the second trimester of pregnancy. It is not until then that the fetus becomes "viable" and the state may have a "compelling interest in protecting the fetus."¹

The idea for bills H.R. 3225 and S. 158 originated in an article entitled "A Human Life Statute," written by a lawyer named Stephen Galebach.² Senator Jesse Helms introduced the actual legislation to the Senate in January of 1981. The House bill is a companion, saying essentially the same things: (1) "The Congress finds that present day scientific evidence indicates a significant likelihood that actual human life exists from conception," and (2) Congress finds that under the authority of Section 5 of the Fourteenth Amendment, the term "person" includes all human beings, thus protecting even the fetus according to due process of law.

The second point, which defines "person" as all human beings, is viewed by many legal scholars as unconstitutional. Even Utah's Senator Orrin Hatch has expressed reservations about the constitutionality of

the bills.³ But even greater controversy surrounds the first point, with physicians and other practicing scientists as well as philosophers and theologians entering the fray. This definition purports to state a true scientific fact, and Congress has exercised its fact-finding role by referring the bills to committee for evaluation. The first round of testimony concerning the truthfulness of the definition of the beginning of human life came through a Senate subcommittee on Separation of Powers on April 23 and 24. Senator Hatch refused to co-sponsor the testimony because he felt that it was unbalanced towards support of the definition;⁴ six out of seven physicians who testified supported the definition.

The physicians arguing for the definition unanimously propose what I call the "genetic package conclusion." The genetic DNA "blueprint" for life that is human originates when the human ovum is fertilized by human sperm. Thus conception refers to fertilization of the ovum rather than to the implantation of the fertilized ovum in the uterus. This means that these physicians are convinced that the very essence of human life is the DNA structure.

Each physician supporting the definition has a unique way of arguing for the genetic package conclusion. Watson Bowes maintains that his task is to "define the word 'person' in biological terms." At fertilization the genetic blueprint is formed, and henceforth "there is an inexorable series of events that unfolds with cells dividing, moving, pausing, differentiating, and

aggregating with a baffling precision and purpose." No other definition reflects these biological facts. Therefore, the definition is the only one that is biological.⁵

Micheline Mathews-Roth insists the proposition that "actual human life begins at conception" is universally accepted as fact, based on "continuous repetition, duplication, and confirmation of experimental results."⁶ Without citing specific research, she illustrates this by appealing to a myriad of embryology and biology texts which contain declarations similar to this one by Leslie Arey (*Developing Anatomy*, 1974, p. 55): The Zygote "definitely marks the beginning of a new individual."

Jerome Lejeune suggests that generations within a species are connected by a "material link" which is the DNA molecular thread created at fertilization. Genetics and *in vitro* fertilization and technology such as ultrasound demonstrate the existence and efficacy of the material link. Thus the metaphysical fact is that humans exist at conception. He offers an interesting illustration with *in vitro* fertilization of a cow's ovum which is implanted in a rabbit's fallopian tube to be air freighted around the world with the intent of being removed and implanted in a recipient cow's uterus. The assumption is that the genetic endowment stays the same.⁷

Hymie Gordon proposes that certain criteria indicate life. His argument is that scientific research establishes the criteria of containing many complex molecules, synthesizing new intricate structures from simple raw materials, and replication of itself. DNA is the entity within these criteria that makes the life a human individual. Hence human life begins at conception.⁸

McCarthy DeMere's support of the definition rests on purported empirical evidence. His argument is that genetically, hormonally, and in other organic respects, each is unique from conception. At conception, DNA programs the life cycle and replacement of trillions of cells. Therefore, human life begins at conception.⁹

OFFICIAL LDS COMMENT ON WHEN "ACTUAL HUMAN LIFE" BEGINS IS NEUTRAL UNLESS A REVELATION OCCURS ON THE MATTER

Jasper Williams ask the questions What is Life?, What is human life?, and When does human life begin? He defines life as "that characteristic of a cell or a group of cells which permits it to assimilate gases, fluids, or other matter, to convert it to a useful component of its environment or of itself, and to derive therefrom energy which it uses to grow or to move, or to reproduce, or to repair, or to replace worn out parts of itself." He goes on to say that these characteristics of life together with the *added* characteristics of growth, reproduction, higher mental activity, and movement make that life human. "Human life's singular characteristic is mental behavior associated with development of genetically influenced bodily characteristics which when fully developed have the appearance and behavior of a human being who is capable of reproducing its kind." Finally he says "at that moment (conception) is a potential human being possessed of human life with a human genetic blueprint" to become any individual.¹⁰



It is important here to interject two points of commentary on Williams's reasoning. First, he states that higher mental activity is an important criterion in determining that life is human. Readable electrical brain activity does not exist until about eight weeks. Hence how can he call a zygote human given that criterion as well as others such as reproduction and movement? Secondly, he says that at conception a *potential* human being exists. But the fact is that S. 158 reads "*actual* human life exists from conception." Williams may wish to distinguish between "human being" and "human life," but it is unclear how he can do this given that he uses the phrases interchangeably throughout his testimony. Besides this, there is a great deal of difference between the concepts "potentially" and "actuality." All things considered, Williams's testimony does more to undercut the definition in S. 158 than it does to support it.

Leon Rosenberg disagrees with the definition for the following three reasons: (1) he knows of "no scientific evidence which bears on the question of when actual human life exists," (2) "the notion embodied in the phrase 'actual human life' is not a scientific one, but rather a religious, metaphysical one," and (3) "the clinical implications of the bill are fundamentally counter to the best interests of the people of the United States." Rosenberg's arguments for the first and second reasons are based on his own understanding of the limits of the scientific method and an appeal to authoritative figures in medical research. He agrees that the DNA structure is formed at fertilization but disagrees that this structure indicates *actual* human life. Rather, he sees DNA as providing the *potential* for human life with a big difference between actual and potential. The concept of "humanness" cannot be tested experimentally by science. To support his view on the limitations of science and that the beginning of human life is a religious question, he enlists quotes by researchers Joshua Lederberg, Lewis Thomas, and Frederick Robbins. Let me add here that Andre Hellegers, of the Georgetown University School of Medicine, maintained in 1970 that "it is not a function of science to prove, or disprove,

where in this process *human life* begins, in the sense that those discussing the abortion issue so frequently use the word 'life'" (*Theological Studies*, V. 31, p. 9). This argument boils down to a view that the determination of when life begins in S. 158 is inappropriate for science and hence legislation because it is a religious or metaphysical question.

Rosenberg also outlines three undesirable effects resulting from the proposed definition: (1) it would outlaw the use of IUDs "because they prevent uterine implantation and, thereby, act against the fertilized ovum which has, by legal decree, been made a person" (let me add that it has also been argued that all IUDs would have to be removed or the woman face charges of manslaughter or worse; (2) it would prevent the surgical removal of a hydatid mole "because the mole begins as a fertilized human ovum"; and (3) it would stop amniocentesis used for diagnosis of genetic disorders because given the small but finite risk of miscarriage, "no physician would be willing to carry it out and risk, in turn, being charged with manslaughter or murder."¹¹

Other arguments against adopting the definition are that genetic research, in-utero research, and in-vitro fertilization and subsequent implantation would be severely curtailed given the possibility of manslaughter charges or worse. In addition, we would be granting human life to an entity such as a zygote that we would classify as clinically dead under the Harvard criteria of death.

A CLAIM THAT THE CHURCH CANNOT JUSTIFY MORAL POSITIONS (OR ANY DOCTRINAL POSITION) WITH THE CONCEPT OF POTENTIALITY IS SIMPLY MISGUIDED.

The view argued at these hearings on potential anti-abortion legislation that DNA is the essence of human life is compatible with the materialistic theory of human identity which rejects the existence of spirit or soul. But as a Mormon, I was taught from childhood that life became human when the spirit enters the body; this conjoining of spirit and body was thus a necessary and sufficient condition for "actual human life."

To think that the scientific method can tell us when this connection occurs is a failure to understand the scope and limits of science. Does brain electrical activity at 8 weeks signify this occurrence? Furthermore, if "actual human life" is granted to a microscopic zygote at conception, what about the fact that twinning is possible through a two week period *after* conception? Mormons would be forced to believe that either one spirit would be split into two or more bodies or that multiple spirits first enter the microscopic zygote and then their respective bodies after twinning.

But LDS doctrine does not contain an official position on when the spirit and body come together. Thus current official LDS comment on when "actual human life" begins would have to be *neutral* unless a revelation occurred on the matter.

It is possible to justify restrictive abortion policies based on the potentiality of "humanness," however.

Many LDS religious values are based on potentiality. We are often told that as mortals we are "gods in embryo," which stresses our potentiality as valuable. The eschatology and infinite telos of movement with purpose implies a value for potentiality. Certainly we have value in spite of the fact that we are not yet gods! Some prohibitions on sexual activity are based on the potential for protecting the procreative powers, family relationships, and human happiness. A claim that the Church cannot justify moral positions (or any doctrinal position) with the concept of "potentiality" is simply misguided.

To legislate when human life begins is a serious matter worthy of nothing less than the truth. Biologically, the existence of the genetic package would mark the beginning of human life, but this is only a necessary and not a sufficient condition for "humanness." The sufficient condition should be left to one's theology or philosophy. If we are to accept the limitations of science yet grasp what it can offer, then the statement in S. 158 should be amended to read: The Congress finds that present day scientific evidence indicates a significant likelihood that biological human life exists from conception. The word "actual" indicates the existence of all necessary and sufficient conditions which science simply cannot identify. The substitution of "biological" for "actual" is much closer to the truth. In fact, it is true, for no one disputes the importance of the genetic package. This amended statement would allow religion and philosophy their proper role, which is to expound on "actual human life."

I should add that some argue that nobody should care whether or not the definition is actually true as long as the effect is to undo the Roe v. Wade Supreme Court decision thereby creating an opportunity for the States to formulate their own abortion laws which assumes that abortion on demand during the second trimester should be eliminated. While I am personally sympathetic to curtailing abortion on demand, I have serious reservation about basing public policy on anything other than truth. To do anything less than this is a blatant example of saying that the end justifies the means or that our public policy can lie to catch the Supreme Court in a lie.



Notes

1. Paul Ramsey, *Ethics at the Edges of Life* New Haven: Yale University Press, 1978, pp. 3-142.
2. Stephen H. Galebach, "A Human Life Statute," *Human Life Review* 7:1 (1981): 5-33.
3. Lynn D. Wardle, Associate Professor of Law at BYU, has written an unpublished evaluation of the Constitutionality of the Human Life Bills in which he concludes that they are probably unconstitutional as they currently read.
4. Editorial by Lee Roderick, *The Herald* (Provo, Utah), May 6, 1981, p. 48.
5. Watson A. Bowles, Jr. MS of Testimony given to the Senate Subcommittee on Separation of Powers, April 23, 1981.
6. Micheline M. Mathews-Roth. MS of testimony, April 1981.
7. Jerome Lejeune. MS of testimony, April 23, 1981.
8. Hymie Gordon. MS of testimony, April 23, 1981.
9. McCarthy DeMere. MS of testimony, April 23, 1981.
10. Jasper F. Williams. MS of testimony, April 1981.
11. Leon E. Rosenberg. MS of testimony, April 24, 1981. The executive board of the American College of Obstetricians and Gynecologists unanimously approved a policy statement opposing "human life" legislation now before Congress. Their basic reasoning was that the question cannot strictly be answered scientifically. (*The Herald*, June 19, 1981, p. 17.)

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