Anscombe
Bioethics Centre

The Anscombe Bioethics Centre Welcomes the Overturning of Roe v Wade

In 1973 the United States Supreme Court claimed that abortion was a private matter. For this reason, in Roe v Wade, they declared unconstitutional all laws that prohibited abortion before viability, if these laws were intended to protect the unborn child. Later, in Planned Parenthood v. Casey (1992), the Court also declared unconstitutional any law that placed an "undue burden" on women who were seeking abortion before viability. These decisions did not grant women a right to be provided with an abortion, as they did not impose on anyone a duty to provide abortion, but they gave women a legal liberty-right to abortion. On Friday, in Dobbs v. Jackson, the Supreme Court overturned these cases and returned the question of abortion law to the States.

The Anscombe Bioethics Centre welcomes this decision which does not itself protect the unborn child but at least allows States to do so. It brings the American court closer to the European Court of Human Rights which has repeatedly upheld national laws that restrict abortion. There is no human right to intentionally end the life of another human being.

An important part of the argument of the Supreme Court was that the previous decision rested on poor scholarship. It had falsely been argued that at the time America declared independence there was a "common-law liberty" in relation to abortion. This ignored the fact that Bracton, Coke, Hale, and Blackstone all regarded causing a miscarriage as an unlawful act whatever the stage of pregnancy. These common-law authorities also regarded it as a criminal offence at least

from when there was evidence of movement ("quickening"), which they were aware occurred well before the child could be born alive ("viability"). Furthermore, by the time the fourteenth amendment to the Constitution was ratified, in 1868, most states in the United States had statute laws prohibiting abortion at all stages of pregnancy. At that time no-one argued that these laws were unconstitutional. It was not even a minority opinion.

We note that in answering the poor scholarship of Roe v Wade the judges in Dobbs v Jackson drew on the work of Professor John Keown, a former visiting research fellow of the Anscombe Bioethics Centre and a former vice chair of our governing board. This judgement returns the question of abortion to democratic process and political debate. It is to be hoped that these debates will also be guided by serious research and scholarship in bioethics so that laws can be passed that are just and prudent and that offer robust protection both to expectant mothers and to their unborn children.

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