

Law is too blunt an instrument for the complex realities of abortion

People's lives elude sharply drawn lines.

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Photo by Adene Sanchez, Getty images

After decades of debate over abortion, few minds have been changed. Most Americans occupy a muddy middle ground: they are uneasy with abortion being legal in all cases, yet unwilling to see it entirely prohibited. Whether people lean more toward legalization or prohibition is often difficult to determine, since their position varies according to how pollsters phrase their questions.

Judging from official denominational statements, mainline Protestants also generally occupy that muddy middle. Their position might be stated this way: human life is a gift from God which calls for respect and gratitude; nevertheless, the tragic contingencies of life may render the gift such a burden that in some cases it may be refused. That formulation captures people's moral ambivalence on the issue but hardly translates into a clear public policy, much less into the language of law. What cases are we talking about? And who decides? That's where things get complicated.

A cursory foray into the practicalities of restricting abortion reveals even more difficulties. Consider a question frequently asked in polling: Should abortion be allowed in cases of rape? Some 70 percent agree that it should. The question is newly pertinent, since Alabama recently passed a law disallowing that exception—a move that provoked unease even on the antiabortion side.

How exactly would that apparently specific exception be enacted? Would a woman invoking the exception need to offer legal proof of rape? Would she have to press charges before obtaining the procedure? What if a girl or woman was raped by a partner or family member upon whom she was financially dependent, and she feared to press charges against him?

Such questions immediately reveal how disastrously blunt an instrument the law is for dealing with moral choices in this intimate and complex area of life, even when (as in this case) there is broad agreement in principle. Similar questions arise with regard to exceptions related to fetal or maternal distress. There's no calculus for determining what constitutes a grave threat to a woman's well-being, and the intrusion of the law into the decision making carries its own grave costs. The law demands that lines be sharply drawn; people's sexual and reproductive lives are bound to elude those lines.

Across the country, state legislatures have been rewriting abortion law in expectation that *Roe v. Wade* might be overturned. No law can capture the moral complexity of this issue or the nuances of people's moral positions or life situations. Developing human life has a claim on us, one that increases in later stages of development, but it is never an absolute claim. The relative weight of the claim can finally best be assessed by the woman most intimately involved, in consultation with her medical advisers—not by the blunt arm of the state.

A version of this article appears in the print edition under the title "Why abortion eludes the language of law."