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Hannah Dashefsky

Hannah Dashefsky '11

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The Split

In *The Culture of Disbelief*, law professor and writer Stephen Carter argues that in the contemporary United States there is an apparent split in terms of how American citizens treat the institution of organized, mainstream religion. On the one hand, there exists "a magnificent respect for freedom of conscience, including the freedom of religious belief."[1] This notion is supported by the first two parts of the First Amendment to the United States Constitution, known respectively as the Establishment Clause and the Free Exercise clause, which state: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[2] They dictate an American standard of religious acceptance and guarantee every American the right to practice the religion and hold the beliefs to which he or she subscribes. Practically, the two clauses mandate that the federal government does not favor one religion to others, nor that it favors the institution of religion to non-religion. However, though we live in a country where freedom of conscience and religious belief are founding principles, we must acknowledge that this freedom is limited. While it is almost unimaginable that someone would object to another's use of a religious belief or principle as the reasoning behind a decision that would only affect the individual, the same cannot be said if the decision were to have an effect on the public. In other words, religious reasoning tends to be far less accepted, and viewed more critically, if the decision it justifies relates to a matter of public importance such as politics. This conclusion relates to Carter's argument about the split treatment of religion: on the one hand we embrace the Establishment Clause and the Free Exercise Clause; we value our freedom of conscience. However, on the other hand we exhibit a raw fear of religion when it crosses certain boundaries and when individuals use it as justification for policies under which we all must live. According to Carter, we fear "religious domination in politics" and grow wary of those who take religion too seriously.[3] Because of this fear, the public square treats questions of religion differently than it treats questions of secular subjects.[4] In the following pages I will to defend Carter's argument and use abortion, a hot-button issue in the contentious debate that surrounds religion and politics as a lens through which to examine it. In order to focus my discussion I will analyze two landmark cases, *Roe vs. Wade* and *Planned Parenthood vs. Casey*, and explain how they support Carter's argument that the American public square treats religious arguments differently that it treats secular arguments. In doing so, I will explain why both cases caused outrage among certain religious groups of people and offer my opinion in terms of how to address the controversial topic.

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[1] Stephen Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion*, (New York: Basic Books, 1993), 8.
[2] Cornell University Law School Legal Information Institute. "Bill of Rights." Cornell University, <http://topics.law.cornell.edu/constitution/billofrights> (accessed Apr. 19, 2010.
[3] Carter, 8.
[4] Ibid.

Clarification of Terms

Most important to the scope of this paper is an understanding of the term "secular." In many cases, this word is considered to be antonymous with religious, i.e. to be secular is to be non-religious. However, more recent scholarship has attempted to define secularism with greater historical accuracy. Relevant to the scope of this paper is political secularism, a concept that "justifies the separation of religion from politics either by excluding from politics all ultimate ideals or by an appeal to the principle of political neutrality."[5] All religions are excluded equally, and believers are required to give up "what is of exclusive importance," (i.e. their ultimate beliefs) for the common, collective good.[6] Secularism of this type is colloquially referred to as the separation of church and state, which by definition is not an absence or removal of religion, but rather a division.

The second term that requires a definition is "public square," a concept that both Charles Taylor and Stephen Carter write about. Carter defines it as, "The arena in which our public moral and political battles are fought."[7] Taylor, who replaces the word square with sphere, provides a more informative definition: "A common space in which the member of society are deemed to meet through a variety of media…to discuss matters of common interest; and thus to be able to form a common mind."[8] Common to both definitions is the idea that the public square represents a theoretical and practical space for the public to discuss matters of collective importance and interest. The public square is not the appropriate space for matters of personal interest. The question of religion's relationship with the public square is one of considerable interest among scholars especially because religion can have both a public and private role in one's life. Clergyman and author Richard John Neuhaus addresses this question in *The Naked Public Square*, his critique of religion and democracy in America. He argues that the public square must "exclude religion and religiously grounded values from the conduct of public businesses" based on his conclusion that America is strictly a secular society.[9] However this conclusion is questionable. In fact, according to the 2007 Pew Forum on Religion and Public Life, only 4% of the over 35,000 Americans polled identified as either "agnostic" or "atheist." Over 80% of participants identified belonging to a specific religious tradition.[10] The apparent thriving of religion in America makes it difficult to ban it from the public sphere. Discussion becomes particularly problematic when topics such as abortion, which is tied to religion and politics, are debated.

Abortion as a Lens

As mentioned above, abortion is one of the hot-button issues in the debate that surrounds religion and politics in contemporary American society. According to Neuhaus, abortion law is "the single most fevered and volatile question that inescapably

[5] Rajeev Bhargava, "Giving Secularism Its Due," *Economic and Political Weekly* 29 (1994): 1786-1787.
[6] Ibid, 1787.
[7] Carter, 51.
[8] Charles Taylor, *Modern Social Imaginaries* (Durham: Duke University Press, 2004), 85-88.
[9] John Richard Neuhaus, *The Naked Public Square: Religion and Democracy in America* (Grand Rapids: Wiliam B. Eerdmans Publishing Company, 1984), vii.
[10] The Pew Forum on Religion & Public Life, "Report 1: Religious Affiliation," U.S. Religious Landscape Survey, http://religions.pewforum.org/reports (accessed Jan. 9, 2011).

joins religion and politics."[11] This provides a perfect lens through which to analyze the larger question of why the public square treats questions of religion differently than questions of secular subjects. Necessary to such an inquiry is an understanding of how the abortion question is connected to religion. At the most basic level of definition an abortion is the "the expulsion of the fetus before it is viable or able to survive outside the womb."[12] As science has granted researchers the information and technology necessary to develop tools to sustain life after progressively shorter gestation periods, the time after which the infant can survive has changed. Today a "good" prognosis in terms of survival and normal neurological developments exists for about 80% of infants born as early as 23 weeks and weighing as little as 400 grams.[13] Neonatologists can predict with almost no error when the infant can survive independently from the mother. In addition, science can tell us the number of weeks at which the fetus has developed pain receptors and at what age the fetus will have a detectable heartbeat. However, according to many religious Americans the scientific explanation is false because it contradicts what is implied in the Bible: life begins at conception.

Of its many roles, religion is expected by many to provide answers to "big" questions: questions about life, death and purpose that we humans cannot answer for ourselves. Life and death go hand-in-hand with abortion and pro-life activists use religion and religious doctrine to support their views. For example, Focus on the Family, a global Christian ministry that adamantly rejects the practice of abortion states that, "The Bible is far from silent on the topic of the sanctity of human life, especially preborn life in the womb."[14] Writers on the Focus website post quotes from the Bible to prove their view that life begins at conception and abortion is murder.

Aside from its contemporary link to religion, abortion has a long historical relationship with religion as well. In *Roe vs. Wade*, the text of the case indicates that people have been looking to religion for answers to the abortion question for at least as long as they have been questioning to more modern, secular authorities such as science. Much of the majority opinion, delivered by Justice Blackmun, is recapitulation of the historical attitudes and law regarding abortion practices. According to the text, Christian figures such as St. Augustine contributed to canon law that dictated abortion law: "The theological debate was reflected in the writings of St. Augustine, who made a distinction between embryo inanimatus, not yet endowed with a soul, and embryo animatus…Later, Augustine on abortion was incorporated by Gratian into the Decretum…recognized as the definitive body of canon law."[15] This is significant because it indicates the long relationship between abortion and religion.

Besides its historical relationship with religion, abortion is also connected to religion because of its undeniably emotional character. Whether or not someone chooses to obtain one, even discussing an abortion can be emotionally taxing. However, the realm of science, and the non-religious framework in which it exists, often lacks an emotional

[11] Neuhaus, 27.
[12] Dan Drucker, *Abortion Decisions of the Supreme Court, 1973 through 1989: A Comprehensive Review with Historical Commentary* (Jefferson: McFarland & Co., 1990),
[13] Dr. Barry Dashefsky, personal communication, August 26, 2010.
[14] Carrie Gordon Earll, "What the Bible Says About the Beginning of Life," Focus on the Family, http://www.focusonthefamily.com/lifechallenges/love_and_sex/abortion/what_the_bible_says_about_the_beginning_of_life.aspx
[15] Roe et al vs. Wade, 410 U.S. 113 (1973).

component because much of the subject matter does not directly affect those dealing with it. Furthermore, science is driven by fact, empirical observation, and tangible evidence. Though these elements are necessary in promoting progress, they are not enough to sustain or satisfy human beings. We need something more; and many people believe that this "more" is religion. In a recent *New York Times* op-ed, law professor Stanley Fish argues that religion provides the missing piece that modern secular society lacks.[16] For many people, religion represents a crucial feature of decision-making and understanding within a secular society. Religion fulfills the role of a comfort by providing meaning, purpose, and reason behind what may otherwise be lacking in those areas.

Background: *Roe vs. Wade*

The very same First Amendment clauses that are meant to protect our freedom to exercise religion in this country have led the U.S. Supreme Court to seek to avoid religious judgments in the arena of life and death issues such as abortion. In the landmark 1973 U.S. Supreme Court case *Roe vs. Wade*, Norma McCorvey, a pregnant single woman using the pseudonym Jane Roe, challenged the constitutionality of the Texas criminal abortion laws, which "proscribed procuring or attempting an abortion except on medical advice for the purpose of saving the mother's life."[17] The majority decision, delivered by Justice Harry Blackmun on January 22, 1973, concluded that the laws were unconstitutional, citing the Due Process clause of the Fourteenth Amendment: "A state criminal abortion statute of the current Texas type…without regard to pregnancy state and without recognition of other interests involved, is violative of the Due Process Clause of the Fourteenth Amendment."[18] The Court emphasized the right of privacy and extended its definition to "include the most intimate of all family planning decisions: the choice not to become a parent by ending a pregnancy."[19] The verdict was significant because it invalidated all state law that restricted a woman's access to abortion. However, the Court's decision did not grant access free of all restrictions. In conjunction with its ruling the Court established a trimester system based on "established medical fact," that divided the three stages of fetal development.[20] According to this system, during the first trimester the decision to abort was left up to the woman and her attending physician, during the second trimester the State can regulate abortion "in ways that are reasonably related to maternal health," and during the third trimester the State can regulate "and even proscribe" abortion except in cases that threaten maternal life and health.[21]

Avoiding the Question: *Roe vs. Wade*

Of importance to this paper is the reasoning that the majority used to justify its opinion. Justice Blackmun and the Court examined how three issues– personhood, citizenship and privacy – relate to abortion and the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment provides a definition of citizenship,

[16] Stanley Fish, "Does Reason Know What It Is Missing?," *New York Times*, April 12, 2010, Opinion Section.
[17] Roe et al vs. Wade.
[18] Ibid.
[19] Melody Rose, *Unavailable? Abortion Politics in the United States* (Washington D.C.: CQ Press, 2007), 65.
[20] Roe et al vs. Wade.
[21] Ibid.

which Blackmun states includes only *born* persons. Based on this conclusion the legal protections afforded by the Constitution depend on the question of citizenship and not personhood because personhood is a precondition of citizenship. In his discussion of privacy Blackmun asserts that privacy, which is guaranteed to citizens, "includes the abortion decision" and uses this to justify the Court's final ruling.[22] As this brief overview shows Blackmun attempts to reach and justify his conclusion without alluding to religious or moral reasoning.

The Court's majority opinion features several noteworthy quotes that support Stephen Carter's argument that the American public square treats religious arguments differently than it treats secular arguments. In his opening address Justice Blackmun states:

One's philosophy, one's experiences, one's exposure to the raw edges of human existence, one's religious training, one's attitude toward life and family and their values and the moral standards one establishes and seeks to observe, are all likely to influence and to color one's thinking about abortion.[23]

Directly after making this statement he says that the Court resolved the issues presented based on "constitutional measurement, free of emotion and of predilection."[24] These statements serve two functions: (1) they openly acknowledge the fact that religion influences how people view abortion; (2) they assure the public that the Court's conclusion is free of all personal beliefs/values, including religion. In the course of the majority opinion Justice Blackmun made two additional references to the question of human life: "the definition of human life is for the legislature and not the courts."[25] In addition he states,

We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.[26]

These two quotes explicitly state the Court's intention to purposely avoid the question of the origins of human life. Based on the second statement it seems as though the Court's reasoning is as follows: Because experts, such as physicians and philosophers, cannot answer the question of life the justices should not be expected to be able to either. In short, the answer "stands outside the scope of judicial competence."[27] However, there is a more important reason why the Court tried to avoid the question: to avoid violation of the First Amendment. A decision based on religious convictions could be interpreted as either preferring one religion to another, or preferring the institution of religion to non-religion. By justifying its verdict with reference to a secular standard of measurement – the right to privacy – the Court believed that it was making a neutral decision. However, the mere fact that the Court mentions the subject of life and personhood opens up the possibility for an argument that avoiding the religious aspect of the abortion question is impossible.

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[22] Ibid.
[23] Ibid.
[24] Ibid.
[25] Ibid.
[26] Ibid.
[27] Stephen H. Galebach, "A Human Life Statute," in *Abortion: Moral and Legal Perspective*, eds. Jay L. Garfield and Patricia Hennessey (Amherst: University of Massachusetts Press, 1984), 125.

The Impossibility of Avoiding the Question: *Roe vs. Wade*

Though the majority opinion states that the Court will not entertain the question of when life begins, it is not entirely successful in this endeavor. The Court succeeds in so far that it does not provide a concrete answer to this question, but fails in another respect. By choosing to purposely bypass the question of life the Court makes a moral judgment and violates the First Amendment. The reasoning for this is as follows: As mentioned previously, not only are the Free Exercise and Free Establishment clauses supposed to ensure that the federal government does not prefer one religion to others, but they are also supposed to ensure that it does not prefer religion as an institution to non-religion. By stating that it will not entertain the religious aspect of the abortion question, and that it will only examine the issue in terms of a secular framework, the Court favors non-religion to religion. In pointedly deferring to a non-religious standard of valuation, it does not respect the views held by both sides of the abortion debate and essentially says to a large group of Americans that their fundamental beliefs and values are meaningless to the U.S. Supreme Court and under the Constitution.

Although the Court claims that it will not entertain the question of human life, it does. By stating that the word person, as used in the Fourteenth Amendment, does not "include the unborn," the Court makes a claim about what it means to be a person under the law.[28] This distinction is an integral part of the Court's reasoning process, without which it would not have been able to arrive at its final conclusion. Stephen Carter sums up this argument with the following statement: "The Court...can reach the result that it does only by declining to define the fetus as human."[29] In other words, by not including the unborn in the category of persons protected under the Fourteenth Amendment, the Court rules that the unborn do not constitute life entitled to Constitutional protection. Philosophy professor Roger Wertheimer supports this conclusion in "Understanding Blackmun's Argument:"

…So the Court must have held that a fetus is not a person. Indeed, strictly speaking the Court appears committed to holding that personhood is not acquired before live birth, because the Court ruled that even after viability, an abortion necessary to preserve the life or health of the mother may not be prohibited.[30]

In this statement Wertheimer observes that because the Court ruled that even after viability an abortion necessary to preserve the life of the mother is allowed then personhood must not be defined until live birth. Otherwise the Court would be granting unfair advantage to one group of people (the mothers) over another (the fetuses).

A statement that supports the conclusion that the Court was unsuccessful in its attempt to avoid the question of human life appears towards the end of the opinion. Justice Blackmun states: "In short, the unborn have never been recognized in the law as persons in the whole sense."[31] The quote summarizes the Court's findings in terms of the legal status of the fetus, namely that when examined through the lens of the Constitution

[28] Roe et al vs. Wade.
[29] Carter, 254.
[30] Roger Wertheimer, "Understanding Blackmun's Argument: The Reasoning of Roe v. Wade," in *Abortion: Moral and Legal Perspectives*, eds. Jay L. Garfield and Particia Hennessey (Amherst: University of Massachusetts Press, 1984), 107.
[31] Roe et al vs. Wade.

it is not recognized as a person, and therefore is not afforded the rights guaranteed to persons. The implications of this conclusion are important. In determining that the fetus is not protected by the Constitution the Court takes away the mechanism for protecting its rights. In effect the law draws a divide between fetuses and born-persons, judging the former as unqualified for protection under the law. Undeniably this represents a moral judgment made in respect to the status of the fetus.

Background: *Planned Parenthood vs. Casey*

Less than twenty years after it delivered what is consistently referred to as the "landmark decision" regarding abortion, the U.S. Supreme Court once again revisited the issue and was given the opportunity, and in fact *asked*, to overturn the decision made in *Roe vs. Wade*.[32] In *Planned Parenthood of Southeastern Pennsylvania vs. Robert P. Casey* the constitutionality of five provisions featured in the Pennsylvania Abortion Control Act of 1982 were simultaneously challenged: (1) the "informed consent rule" which required a woman seeking an abortion to give her informed consent prior to the procedure and specifies that she must be provided with certain material at least 24 hours before the abortion; (2) the "parental consent rule" which required minors to obtain parental consent before receiving an abortion; (3) the "spousal notification rule" which required women to give prior notice to her husband; (4) the "24 rule which requires" that a woman wait one day after giving consent to obtain the abortion; (5) reporting requirement rules imposed on facilities that perform abortions.[33] The narrow 5-4 plurality opinion delivered by Justices O'Connor, Kennedy and Souter on June 22, 1992 concluded that, "the essential holding of Roe vs. Wade should be retained and once again reaffirmed. We conclude that the basic decision in Roe was based on a constitutional analysis which we cannot now repudiate."[34] Of the specific provisions brought into question, the Court approved of the first, second and fourth provisions and struck down the third.

Unlike the *Roe* opinion, which founded a woman's right to choose an abortion on the right to privacy protected by the Fourteenth Amendment, the *Planned Parenthood vs. Casey* opinion grounded this right in the Fourteenth Amendment's notion of "liberty." The plurality opinion stated that, "The Constitutional protection of the woman's decision to terminate her pregnancy derives from the Due Process Clause of the Fourteenth Amendment. It declares that no State shall 'deprive any person of life, liberty or property, without due process of law.' The controlling word in the case before us is 'liberty.'"[35] In order to fully understand the Court's reasoning one must understand what was meant by liberty, a rather nondescript term. The plurality decision stated that liberty includes and is defined by "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life."[36] This reasoning eventually led the Court to conclude: "The woman's right to terminate her pregnancy before viability is the most

[32] Wertheimer, 105.
[33] Planned Parenthood of Southeastern Pennsylvania v. Robert P. Casey, 505 U.S. 833 (1992).
[34] Ibid.
[35] Ibid.
[36] Ibid.

central principle of *Roe v. Wade*. It is a rule of law and a component of liberty we cannot renounce."[37]

Another significant aspect of the *Casey* decision concerns its treatment of the trimester system established in *Roe*. *Casey* rejected the trimester system, basing its decision on recent medical advancements. The plurality opinion argued that the trimester approach was no longer necessary in ensuring that the woman's right to choose an abortion did not become subordinate to the State's interest in promoting fetal life. However, despite recognizing this flawed aspect of *Roe*, the *Casey* Court failed to recognize in terms of another aspect of *Roe* that needed to be addressed. The *Casey* case provided the Supreme Court with a second chance to address the question of human life in terms of how it relates to abortion, but once again, the Court tried to avoid this central question.

Avoiding the Question: *Planned Parenthood vs. Casey*

The opinion text indicates that Justices O'Connor, Kennedy and Souter tried to avoid making a moral judgment and entertaining the question of human life by making a decision that was based on what they called "reasoned judgment." The plurality opinion states:

The inescapable fact is that adjudication of substantive due process claims may call upon the Court in interpreting the Constitution to exercise that same capacity which by tradition courts always have exercised: reasoned judgment. Its boundaries are not susceptible of expression as a simple rule. That does not mean we are free to invalidate state policy choices with which we disagree.[38]

This statement is important because it reiterates the fact that the Court will interpret the Constitution through the lens of logical and objective reason, as opposed to opinion and personal preference. By stating that it will base its conclusion on reason the Court dismisses the prospect of basing its decision on moral judgments, which are bound in emotion and certainly not reason. The plurality justices follow the precedent Blackmun set in *Roe vs. Wade* by outwardly acknowledging that they won't examine abortion with their personal values in mind: "Some of us as individuals find abortion offensive to our most basic principles of morality, but that cannot control our decision. Our obligation is to define the liberty of all, not to mandate our own moral code."[39] Integral to this statement is the plurality's deduction that the concept of liberty is not controlled by one's personal preferences. Instead, liberty can be applied to situations dispassionately in order to reach rational conclusions. Justice Scalia, who concurs in part and dissents in part, relevantly disagrees with the plurality claim to neutrality: "There is of course no way to determine that as a legal matter; it is in fact a value judgment."[40] This statement is reminiscent of that used in the *Roe vs. Wade* because it also leads to the conclusion that the answer to the question of human life is not something that the courts should seek to answer.

[37] Ibid.
[38] Ibid.
[39] Ibid.
[40] Ibid.

The Impossibility of Avoiding the Question: *Planned Parenthood vs. Casey*

As discussed previously, the *Roe* justices failed in two respects: first, because they did not avoid the question of human life as they said that they would, and second, because in entertaining this question they made a value judgment that led to the determination that fetuses are unqualified for protection under the law. This judgment undermines the validity of the case because it constitutes a blatant inconsistency in terms of what the Justices claimed to do and what was actually done. Though argued almost twenty years later, undoubtedly after countless scholars noted *Roe*'s inconsistency, *Casey* also failed in the same respects. However, unlike the *Roe* case, in which none of the involved participants noted this inconsistency, in the *Casey* case Justice Scalia, in his dissenting opinion, highlighted the flaw.

Scalia argues that although the authors of the plurality opinion claim to have exercised reasoned judgment to determine that liberty, as guaranteed by the Fourteenth Amendment, includes the right to "define the mystery of human life," and consequently "the right to destroy human fetuses," in reality they made a decision based on personal views.[41] In his characteristic style Scalia undermines the plurality opinion in the following way: first, he states that the Court fails to provide adequate reasons to "explain how it is that the word 'liberty' includes the right to destroy human fetuses."[42] Second, he argues that instead of providing clarification, the Court just describes the relationship between abortion and liberty in terms of several phrases including, "central to personal dignity and autonomy," and involving "personal autonomy and bodily integrity."[43] Scalia goes on to point out that these same phrases are applicable to other acts that the Court has previously determined are not entitled to protection under the Constitution such as polygamy, adult incest and suicide. Scalia concludes that if the Court can apply the same set of adjectives, which serve to operationally define liberty, to practices that are both lawful and unlawful the Court must not have established a strict and fixed way to apply the concept. As a result the Court has unavoidably engaged in exercising a value judgment and not a reasoned judgment.

The *Casey* Court indirectly made another value judgment by accepting Blackmun's conclusion in *Roe* that the word person, as used by the Fourteenth Amendment, does not "include the unborn."[44] Only by accepting this conclusion as true could the *Casey* plurality feasibly make the argument that it did. In order to explain this point I will examine what could have transpired had the opposite occurred: If the *Casey* Court disagreed with *Roe* and concluded that the Fourteenth Amendment's use of the word person *did* include the unborn, then fetuses and born persons would be equally protected under the law. Given equal protection under the law the *Casey* argument in support of abortion would have no basis. Whether or not liberty encompassed a woman's decision to obtain and abortion would be meaningless because, under the Constitution, the fetus and the woman would receive equal protection. Granting the woman the right to abort the fetus would unfairly advantage the woman. Therefore, though an independent moral judgment was not made by concluding that Constitutional liberty only applies to the woman, the *Casey* Court is necessarily accepting and bolstering *Roe*'s judgment that the

[41] Ibid.
[42] Ibid.
[43] Ibid.
[44] Roe et al vs. Wade.

fetus is not considered a person under the law. Once again the impossibility of avoiding the question of human life and making a value judgment is confirmed.

Concluding Thoughts

The above analyses of both *Roe vs. Wade* and *Planned Parenthood vs. Casey* support Stephen Carter's argument that the public square treats religious arguments differently than it treats secular arguments. In the case of abortion, representatives of the public square, such as the United States Supreme Court, tried to avoid questions pertaining to religion by characterizing them as beyond the scope of the Court's jurisdiction. However, secular topics were approached much differently and used without reservation as evidence to support the Courts' conclusions. Many Americans, especially those who subscribe to pro-life ideology, were, and continue to be, outraged by *Roe vs. Wade*, as they should be. The *Roe* and *Casey* decisions do threaten religious values and unfairly advantage the non-religious. They succeed in doing so because they fail to address the religious aspects that are integral to the abortion question.

Some argue that the outrage felt by pro-lifers is directed more towards the *reasoning* behind the decision than the actual decision itself. Guido Calabresi summarizes this view in the following quote from *Ideals, Beliefs, Attitudes and the Law*: "The Court, when it said that fetuses are not persons for purposes of due process, said to a large and politically active group…It does not matter not matter whether a fetus is alive. A fetus is still not protected by *our* Constitution."[45] In effect this statement told the Christian Right and other deeply religious people that their beliefs were not acceptable tools for public argument. It excluded them from the public square. The continued relevance of the abortion question is evidenced by the strong opinions held and voiced by both sides of the debate. It is safe to say that in the future we would like to avoid another *Roe vs. Wade* situation. Instead both pro-choice and pro-life, and religious and non-religious Americans would prefer a solution that did not result in anger and outrage.

Considering the abortion history of the last several decades this seems unlikely. However, a reexamination of the original principle that this essay sought to explore – the public square's unequal treatment of religious questions – may lead to some informative conclusions in terms of how we might begin to address the abortion debate. One of the reasons why the public square's unequal treatment of religion is quickly becoming a topic of conversation among scholars is because there is a resurgence of religious belief in America. More and more Americans are using their religious beliefs as the basis for their fundamental values. In *The Desecularization of the World: Resurgent Religion and World Politics*, Peter Berger writes: "…the assumption that we live in a secularized world is false. The world today…is as furiously religious as it ever was and in some places more so than ever."[46] As a result, banishing religion to private sphere is no longer considered to be acceptable by these people. Therefore, I think the first step in terms of finding a solution to the abortion debate concerns respecting and listening to all views concerning the topic. Instead of prematurely rejecting certain opinions or lines of reason based on the values in which they are grounded we should allow everyone's opinion equal time in the

[45] Guido Calabresi, *Ideals, Beliefs, Attitudes and the Law* (Syracuse: Syracuse University Press, 1985): 95. [Emphasis original].
[46] Peter Berger, *The Desecularization of the World: Resurgent Religion and World Politics* (Grand Rapids: Wm. B. Eerdmans Publishing Co., 1999): 2.

public square. Calabresi points out the value in such an approach by stating that it communicates to both side, but especially the losing one, the message that "Your views matters, and are worthy."[47] Though this is by no means a solution, perhaps communication will foster the beginning of a more accepting and tolerant relationship between the pro-life and pro-choice camps.

In terms of the Supreme Court's treatment of the subject of abortion, I don't agree with its decision to immediately dismiss the question of human life because of its religious nature. As both the *Roe* and *Casey* cases have shown, these decisions led to major criticism of the Courts' reasoning. Abortion is a topic that straddles both the secular and religious worlds, and trying to confine it to one obviously just does not work. Though it would be unrealistic to expect the Court itself to decide the question of human life – a task that would likely take countless hours and still not be solved– I don't think it would be unrealistic or excessive to allow experts from different fields to explain their perspectives to the Court. For example, a secular physician and a member of the Christian Right could both address the Court and explain their views on the origins of life in terms of science and the Bible, respectively. Based on each of the two testimonials the Justices would decide to either adopt one of the theories of life or reject both, and proceed with their decision-making process. Though one could argue that by adopting a theory of life the Court would be violating the First Amendment, a counterargument could be made claiming that Court is giving the same treatment to both by allowing each equal time and consideration in the Court.

[47] Calabresi, 98.

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