

The Costs of Constitutional Principle

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Daniel K. Williams, [Defenders of the Unborn: The Pro-Life Movement Before Roe v. Wade](#) (2016).

The law delivers uneven benefits for the protagonists of Daniel K. Williams' masterful study of the early decades of the pro-life movement. Williams chronicles the transformation in the 1960s of what had been a religious crusade against contraception and abortion into a secular, rights-based cause that also appealed to some left-leaning Catholics and Protestants. Williams argues that antiabortion activists invested more in legal strategies after the Supreme Court's decision in *Roe v. Wade*. Leaders of the movement became preoccupied with a constitutional amendment overturning *Roe*. Entanglement with law ultimately undercut demands for material benefits that some pro-lifers believed women required to have a real reproductive choice.

Williams first takes readers into the poorly understood years of early pro-life activism when "the campaign against abortion was almost inseparable from the Catholic Church's fight against contraception." (P. 4.) By studying the predominantly religious and medical debates that dominated the 1930s and 1940s, *Defenders of the Unborn* recovers a mostly lost prehistory of the abortion battle. At this time, as Williams shows, debate often turned not on the meaning of the Constitution but on the medical need for abortion and the religious beliefs of those opposed to it. Williams also traces the origins of now-ubiquitous comparisons of abortion and the Holocaust to this period.

As Williams' story moves into the 1950s and 1960s, the antiabortion movement often relied on law and lawyers. *Defenders of the Unborn* digs deep into early debates about abortion reform in California when Walter Trinkaus, a lawyer representing the California Conference of Catholic Hospitals, argued that legal disputes should turn on whether the fetus was a person. Although it was far from evident at the time, Trinkaus' argument would soon come to define those who for the first time identified themselves as part of a social movement.

Defenders of the Unborn offers fresh insights about how an avowedly Catholic cause became a non-denominational and at least partly legal movement. The spread of the birth control pill and growing support for contraception turned the Church's position on birth control into a major political liability. The story of Sherri Finkbine, a mother who wanted to end a pregnancy after taking a drug known to cause fetal defects, increased public support for abortion, as did a major German Measles epidemic. Losses in states from California to North Carolina convinced abortion opponents that they would have to "sever the ties between the right to life cause and contraception, Church doctrine, and even the Church itself." (P. 88.)

In response, Father James McHugh, the organizer of what would become the National Right to Life Committee, the largest national antiabortion organization, urged lay Catholics to form independent state and local organizations committed to the rights-based, secular arguments honed by lawyers like Trinkaus. The repeal of abortion laws, together with the spread of graphic images of late abortions, allowed abortion opponents to attract a meaningful number of evangelical Protestants and other non-Catholics. Williams argues that some who tolerated therapeutic abortions felt that "abortion on demand" went too far.

The constitutional framing of the movement's cause inspired homemakers and professional women, who figured so prominently in the movement's ranks. Some of these leaders viewed the right to life as a matter that involved rights for women and unborn children: legalizing abortion would deny pregnant women the right to societal support for childbearing and childrearing. Birthright, the pioneering crisis pregnancy center, captured these women's ambivalence about law. Emphasizing the importance of service provision, Birthright nonetheless primarily argued: "It is the right of

every pregnant woman to be a mother, and it is the right of every child to be born.” (P. 154.)

Williams argues that *Roe* began a new era in antiabortion engagement with the law. At first, pro-life activists believed that “their only hope was a constitutional amendment guaranteeing the right to life from the moment of conception.” (P. 205.) Although some abortion opponents viewed the campaign for the so-called human life amendment as a dangerous distraction, an otherwise fractious movement rallied around the idea of a constitutional solution. As Williams suggests, it would be hard for antiabortion voters to resist voting for a party that endorsed that solution. As the Republican Party stepped up its support for a fetal-protective amendment, abortion foes increasingly marginalized proposals and constitutional arguments that fit poorly in a largely conservative agenda.

Defenders of the Unborn tells the story of how engagement with lawyers and the law inspired and mobilized antiabortion activists at some points while silencing or limiting other advocates. Framing the cause as a fight for the right to life initially allowed Catholic leaders to win the support of those who interpreted the movement’s constitutional rhetoric in surprising and radical ways. In addition to burnishing the movement’s secular image, the very open-endedness of a right to life accommodated many with different political perspectives. While conservatives remained hostile to contraception and non-marital sexuality, left-leaning activists used rights-based arguments in advocating for private and public support for pregnant women, infants, and older children. Student activists pointed to the right to life in questioning both the wisdom and constitutionality of the death penalty and the Vietnam War. Still others saw the right to life as a natural extension of Lyndon Johnson’s War on Poverty or even the fight for welfare rights. Strikingly, many of the activists who effectively deployed constitutional arguments were not lawyers and saw litigation as relatively unimportant.

Williams’ writing is clear and accessible, and he often makes powerful use of the voices of those he studies. Studying the antiabortion movement is no easy feat: many insiders view scholars and journalists with suspicion, and most archival material is found in obscure, far-flung places. Williams goes the extra mile to find crucial documents that will be of use to other scholars. *Defenders of the Unborn* handles a divisive topic with fairness and insight, and Williams unquestionably makes an original contribution to the study of abortion, forcing readers to rethink the origin story of what has become a leading part of the modern conservative coalition. The book is a must for anyone studying the legal history of abortion.

But Williams argues that the antiabortion movement’s embrace of constitutional ideas and arguments ultimately set a trap sprung by the Supreme Court in *Roe*. Lawyers for the movement had narrowed the ideas of a right to life championed by grassroots arguments. Instead of demanding material support for pregnant women and children, these attorneys argued for a compelling interest in protecting life that justified sweeping abortion bans. Because *Roe* commanded so much public attention, grassroots activists concluded that the Court had rejected everything that the movement stood for. On some level, these advocates were right: they opposed abortion, and the justices had legalized it from coast to coast. But in many ways, because the right to life had come to mean so many things, grassroots activists read *Roe* too broadly, seeing it as a repudiation of arguments made for the protection of women, children, or even the poor.

And the antiabortion movement’s preoccupation with restoring the right to life, *Defenders of the Unborn* shows us, limited what the cause could stand for, which policies advocates could promote, and which leaders activists could endorse. As Williams recognizes, the reasons for the antiabortion movement’s rightward turn (and narrowing agenda) were complex. Political-party realignment around the abortion issue had not been inevitable. The rise of neoliberalism, with its praise for small government and free markets, made an alliance with the Republican Party more appealing to abortion opponents who believed that presidential elections would ultimately reshape the Supreme Court. The decline of the New Left, the end of the Vietnam War, and the shoring up of support for the death penalty also deprived some abortion opponents of logical allies on the other side of the political spectrum.

But the alienation and heartbreak facing some of the pro-lifers in Williams’ story came from the movement’s relationship to lawyers and the law. Ironically, in Williams’ telling, it was *Roe v. Wade*, not grassroots abortion

opponents, that defined for many in the movement what the recognition of the right to life would mean. As many in the movement focused single-mindedly on a constitutional amendment reversing *Roe*, the antiabortion movement gradually marginalized many of those who had made the movement successful in the early 1970s. Political scientists, judges, and historians have long wondered how differently the abortion debate might have gone if the Supreme Court had issued a different kind of decision in *Roe*. *Defenders of the Unborn* forces us to ask an equally important question: would it have made a difference if abortion opponents defined themselves by something other than a constitutional right to life?

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