

MAY 2015

FOETAL RIGHTS

**ANWAR
ODURO-KWARTENG**

DEBATING MATTERS
**TOPIC
GUIDES**

MOTION:

**“FOETUSES SHOULD
HAVE RIGHTS”**

PRODUCED BY

Institute of Ideas

bpas
British Pregnancy Advisory Service

ABOUT DEBATING MATTERS

Debating Matters because ideas matter. This is the premise of the Institute of Ideas Debating Matters Competition for sixth form students which emphasises substance, not just style, and the importance of taking ideas seriously. Debating Matters presents schools with an innovative and engaging approach to debating, where the real-world debates and a challenging format, including panel judges who engage with the students, appeal to students from a wide range of backgrounds, including schools with a long tradition of debating and those with none.

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KEY TERMS

[Moral Personhood](#)

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[Autonomy](#)

INTRODUCTION

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One of the most contentious topics in debates about reproductive rights is that of personhood - whether or not society should endow unborn fetuses with rights of some kind. For many, the suggestion that an unborn foetus might be given rights is a problematic one, and would have untold consequences for women's autonomy over their bodies during pregnancy. It would, it's argued, fundamentally alter how we conceive of the concept of personhood more broadly, and challenge our understanding of rights and responsibilities. In addition, some suggest that conferring rights to fetuses would in the end undermine the moral and physical autonomy of pregnant women, and have catastrophic, retrograde effects on their reproductive choices. As writer Rebecca Traister notes, such a discussion leads to a situation where: "The imaginary futures – the 'personhoods' of the unborn have taken moral precedence of the adult women in whose bodies they grow" [Ref: [New Republic](#)]. Despite these arguments, supporters of foetal rights claim that the discussion is about recognising the inherent humanity of an unborn child, as opposed to undermining maternal rights. The recent case in Colorado of an eight-month-old foetus, which was cut out of its mother in a vicious attack and subsequently died, has brought the issue into sharp relief [Ref: [Guardian](#)]. Advocates of foetal rights argue that the inability to prosecute the offender for murder in this particular case stems from the fact that, legally, the foetus had no rights and so could not be the victim of a crime [Ref: [Federalist](#)]. So does talk of foetal rights suggest that the unborn child is the moral equivalent of the mother – and if so, is this correct? Is granting personhood to a foetus a way of acknowledging its potentiality, and protecting its interests, or does it mark the beginning of the end for female autonomy? Should fetuses have rights?

THE FOETAL RIGHTS DEBATE IN CONTEXT

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Rights and the notion of ‘personhood’

Philosophically, the concept of personhood is a complex and contested area, with different schools of thought advocating often competing descriptions of what constitutes a person [Ref: [University of Missouri](#)]. Personhood is important because it is often the way in which society legally, ethically and culturally confers rights – and therefore intrinsic to any discussion of foetal rights, determining whether or not a foetus can be classed as a person in any respect. The legal status of foetuses in the UK, denotes that they are not classed as persons and, as such, when any clash of rights between foetus and mother arises, the rights of the mother can be assumed to trump those of the unborn child [Ref: [Queen Mary University](#)]. In America though, there are 38 states which currently have ‘foetal homicide’ laws, which mean that, to some extent, foetuses are treated as persons against whom a crime can be committed [Ref: [NCSL](#)]. However, a main bone of contention surrounding personhood is the concept of potentiality. Are foetuses inherently persons with rights, or are they merely potential persons who only acquire actual rights at birth? For some, an unborn foetus is a human, endowed with the same humanity as anybody else – from this perspective, personhood is a unique essence that all humans share, whatever their stage of development. As philosopher Peter Kreeft points out: “The personhood of a person is already there, like the tuliphood of a tulip bulb. One must actually be a human being after all, to grow a human brain” [Ref: [CERC](#)]. On the other hand, critics, such as author Valerie Tarico, assert that this approach is problematic because “personhood is a concept with tremendous weight” [Ref: [Huffington Post](#)], tied in with rights and responsibilities, things which are meaningless when

applied to unborn babies, because they do not have the capacity to exercise either. Moreover, it could be argued that ordinarily we do not treat potential properties in the same way that we do actual ones. For instance, “a 10-year-old is a potential voter, and has the potential right to vote, but he or she does not get the actual right to vote until he or she reaches (their) eighteenth birthday, and becomes eligible to vote” [Ref: [BBC](#)].

One body, two sets of rights?

For critics of a move to foetal rights, paramount to the discussion is the inevitable clash between mother and the unborn child which is essentially “pitting her interests against the foetus’s” [Ref: [New York Times](#)]. Reader in law Nicky Priaulx observes that: “A recognition of stronger foetal interests would have far reaching consequences for women’s rights and bodily integrity, and risks constructing all women as potential threats to foetal life” [Ref: [The Conversation](#)]. This suggests that if foetuses are protected in some way by ever-widening legal precedents, then at some point the rights of women will be superseded by those of the foetus. In America, this has already begun to happen, an example of which is the case of expectant mother Alicia Beltran, who was arrested and subsequently detained at a drug treatment facility for 78 days for allegedly endangering the life of her foetus [Ref: [New York Times](#)]. This, some argue, highlights the thin line between protective foetal rights and “female autonomy being stripped away, slowly and surely, until an unborn foetus has more rights than its mother” [Ref: [Metro](#)]. But is this right? After all, it could be argued that foetal-harm laws are only there to ensure that the unborn child has the best chance possible of reaching full term and being born healthy and this can only be a good

THE FOETAL RIGHTS DEBATE IN CONTEXT CONTINUED...

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thing. Writer Trevin Wax concedes that the debate about foetal rights is a difficult one, but suggests that while society seeks both to protect the unborn and to ensure the rights of women during pregnancy, we will be “put in the increasingly uncomfortable position of both affirming and denying the humanity of the unborn” [Ref: [District Chronicles](#)]. This delicate balance of rights is where the difficulty lies. To what extent is a woman beholden to the rights of her unborn child? And are there any circumstances where the rights of the foetus should override hers?

A right to life?

From a Christian perspective, “moral status is determined by the humanity of the unborn. If it is human, then it bares the image of God: its life is sacred” [Ref: [Theologian](#)]. But opponents of this outlook assert that a foetus having an inherent right to life creates huge problems for female reproductive autonomy because it takes away women’s right to choose not to have a child – to have an abortion. Commentators Diana Hsieh and Ari Armstrong argue that a foetus “is not an individual, it is not a rational being, and does not exist in a social context. As such it is not a person with a right to life” [Ref: [Objective Standard](#)]. In contrast, the pregnant woman “is an actual person with the right to life, including the right to control her own body” [Ref: [Objective Standard](#)]. Continuing this line of argument, writer Joyce Arthur, who doesn’t ultimately believe foetuses should have rights, states: “Even if a foetus were a human being with a right to life, this right does not automatically overrule a woman’s right to choose, which can be argued to have a higher moral value” [Ref: [Pro-Choice network](#)]. However, journalist

David Quinn questions whether a foetal right to life overruling the mother’s rights is always a bad thing. He notes that in light of a number of recent cases where pregnant women have been kept alive artificially so that the foetus can live, we should acknowledge the “basic humanity of the unborn” [Ref: [Irish Independent](#)], even if it obstructs the mother’s right to die. So how should we view foetal rights? Do they completely undermine the bodily autonomy of women, ultimately leading to the negation of their reproductive choices? Or do they embody an attempt to recognise the humanity of the unborn. As Father Alexander Lucie-Smith argues, “there is no such thing as a foetus, rather, there is a human person in an unborn state, and as a human and a person, someone with rights” [Ref: [Catholic Herald](#)].

ESSENTIAL READING

[When is the foetus 'alive'?](#)

BBC News

[Potential human, potential rights](#)

BBC News

[The Status of the Human Embryo](#)

Queen Mary University

FOR

[Yes, people believe abortion is murder](#)

Rachel Lu *Federalist* 12 August 2014

[How can it be a crime to poison a foetus with alcohol?](#)

Father Alexander Lucie-Smith *Catholic Herald* 5 February 2014

[Abortion and our attitude to the foetus](#)

Lee Gatiss *The Theologian* 2005

[Human personhood begins at conception](#)

Peter Kreeft *Catholic Education* 1997

AGAINST

[Women matter more than foetuses](#)

Rebecca Traister *New Republic* 11 November 2014

[Giving a foetus personhood will have severe consequences for women](#)

Nicky Priaulx *The Conversation* 7 November 2014

[Does a foetus have more rights than its mother?](#)

Diane Taylor *Guardian* 23 April 2004

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[Personhood: is a foetus a human being?](#)

Joyce Arthur *Pro-choice action network* August 2001

IN DEPTH

[For pregnant women, two sets of rights in one body](#)

Ruth Graham *Boston Globe* 16 February 2014

[Moral and philosophical arguments against foetal rights](#)

Daniel Fincke *Patheos* 13 June 2014

BACKGROUNDERS

[Baby vs. Abortion: The muddled morality over the unborn](#)

Trevin Wax *District Chronicles* 13 April 2015

[How not to protect pregnant women](#)

Deborah Tuerkheimer *New York Times* 13 April 2015

[Colorado: stabbing and cutting a baby out of a mother's womb isn't murder](#)

Mollie Hemmingway *Federalist* 27 March 2015

[The right to life of the unborn must count for something](#)

David Quinn Irish *Independent* 2 January 2015

[The conflicting rights of the two in one person](#)

Libby Purves *The Times* 8 December 2014

[If drinking whilst pregnant becomes illegal, will a foetus have more rights than the mother?](#)

Rachel Buchanan *Metro* 6 November 2014

[There are very good reasons a foetus cannot be a victim of crime](#)

Zoe Williams *Guardian* 4 February 2014

[Rights of foetus versus the mother](#)

Eric Eckholm *New York Times* 23 October 2013

[Why I do not believe in absolute bodily autonomy](#)

Roger E. Olsen *Patheos* 5 August 2013

[The false strength of the bodily autonomy argument](#)

Calvin Freiburger *Life site news* 20 June 2013

[Fetuses don't have rights; pregnant women do; this distinction is crucial](#)

Ari Armstrong *The Objective Standard* 17 February 2013

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[Is miscarriage murder? States that put fetal rights ahead of a mother's say so](#)

Sadhbh Walshe *Guardian* 25 January 2013

[Abortion – does the foetus have a right to life?](#)

Murray Rothbard *Libertarian View* 29 December 2012

[What is a Person?](#)

Valerie Tarico *Huffington Post* 8 November 2012

[Fetal personhood: why stop there?](#)

Jeff Schweitzer *Huffington Post* 28 June 2012

[The assault on abortion rights undermines all our liberties](#)

Diana Hsieh & Ari Armstrong *The Objective Standard* Winter 2011

[Do you believe an embryo/foetus is not a human being?](#)

Sword and Spirit.com 2011

[State fetal laws](#)

National Conference of State Legislatures

ORGANISATIONS

[Nation Advocates for Pregnant Women](#)

IN THE NEWS

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[Opponents of fetal personhood Bill cry personhood](#)

Colorado Statesman 24 April 2015

[New Colorado fetal homicide law passes first Senate Committee](#)

The Denver Channel 22 April 2015

[Vicious stabbing of pregnant woman inspires Colorado fetal homicide law](#)

Huffington Post 15 April 2015

[20-year sentence for foetal homicide condemned](#)

Independent 1 April 2015

[Colorado woman not charged with murder of unborn child](#)

Guardian 27 March 2015

[No compensation for child whose mother drank 57 units of alcohol per day whilst pregnant](#)

International Business Times 4 December 2014

[Foetal alcohol syndrome case dropped in Courts](#)

BBC News 4 December 2014

[Fetal personhood laws defeated in Colorado and North Dakota](#)

Newsweek 5 November 2014

[Zoe's law: giving personhood to fetuses at 20 weeks, passes New South Wales Lower House](#)

Guardian 21 November 2013

ADVICE FOR DEBATING MATTERS



FOR STUDENTS

READ EVERYTHING

In the Topic Guide and in the news - not just your side of the argument either.

STATISTICS ARE GOOD BUT.....

Your opponents will have their own too. They'll support your points but they aren't a substitute for them.

BE BOLD

Get straight to the point but don't rush into things: make sure you aren't falling back on earlier assertions because interpreting a debate too narrowly might show a lack of understanding or confidence.

DON'T BACK DOWN

Try to take your case to its logical conclusion before trying to seem 'balanced' - your ability to challenge fundamental principles will be rewarded - even if you personally disagree with your arguments.

DON'T PANIC

Never assume you've lost because every question is an opportunity to explain what you know. Don't try to answer every question but don't avoid the tough ones either.

FOR TEACHERS

Hoping to start a debating club? Looking for ways to give your debaters more experience? Debating Matters have a wide range of resources to help develop a culture of debate in your school and many more Topic Guides like this one to bring out the best in your students. For these and details of how to enter a team for the Debating Matters Competition visit our website, www.debatingmatters.com

FOR JUDGES

Judges are asked to consider whether students have been brave enough to address the difficult questions asked of them. Clever semantics might demonstrate an acrobatic mind but are also likely to hinder a serious discussion by changing the terms and parameters of the debate itself.

Whilst a team might demonstrate considerable knowledge and familiarity with the topic, evading difficult issues and failing to address the main substance of the debate misses the point of the competition. Judges are therefore encouraged to consider how far students have gone in defending their side of the motion, to what extent students have taken up the more challenging parts of the debate and how far the teams were able to respond to and challenge their opponents.

As one judge remarked *'These are not debates won simply by the rather technical rules of schools competitive debating. The challenge is to dig in to the real issues.'* This assessment seems to grasp the point and is worth bearing in mind when sitting on a judging panel.



**“A COMPLEX
WORLD REQUIRES
THE CAPACITY
TO MARSHALL
CHALLENGING IDEAS
AND ARGUMENTS”**

**LORD BOATENG, FORMER BRITISH HIGH
COMMISSIONER TO SOUTH AFRICA**