

The ethical and legal status of the foetus

[Sociology](#), [Human Rights](#)



THE ETHICAL AND LEGAL STATUS OF THE FOETUS The difficult question of when life actually begins has often led to several complicated and controversial decisions worldwide. Does life commence at twenty four weeks' gestation, when a foetus can continue to exist outside the womb or twenty two weeks, because of recent advances in bio-medical healthcare? Can this timeline be brought down to eight weeks, when an embryo is deemed a foetus or should life simply begin from conception, as Muslims, Christians, and Buddhists believe? Abortion and foeticide (any act that causes the death of the foetus, including foetal homicide) are the two most commonly debated aspects of foetal law and ethics (Chervenak & McCullough, 2009). Abortion law differs significantly around the world. In Canada abortion is available with no legal constraints. In Ireland, abortion is illegal except when the mother's life is in immediate danger while in Chile, abortion is illegal with no exceptions for the mother's life (Zampas & Gher, 2008). Abortion in Australia is governed by state law rather than national law and there are large inconsistencies in these laws between states and territories (Philips, Eltherington, de Costa, & Woods, 2012). Many of these laws originated during the formation of the Australian states at the end of the 19th century although most have undergone various levels of reform since then (Peterson, 2010). Thus far, abortion has only been officially decriminalized in Victoria and the ACT. Legal statutes of all other states have declared abortion legal only if the risk to the mother's life is greater than it would be if the pregnancy is not terminated. The upper limit of gestation to justify abortion however varies from state to state - up to twenty three weeks in the Northern Territory, up to twenty two weeks in Queensland and possibly up to

twenty eight weeks in South Australia (Peterson, 2011). South Australia, Western Australia and the Northern Territory have also recently passed laws legalizing abortion if the foetus is likely to be born with life threatening complications or serious handicaps. In this case, abortion has to be performed in an approved medical facility and recommended by two physicians (de Costa, 2012). The ethics of abortion have been a source of much discontent and debate for several decades. As Malcolm Potts (2010, p. 158) said, " Abortion is not a war with a victory or surrender. It is not a widespread, instant catastrophe like a tsunami. It is simply a slow moving muddy river sweeping along human anguish, suffering and hypocrisy made up of tens of millions of isolated, private events. " Most ethical questions surrounding abortion usually involve the question of abortion in cases of rape, incest or contraception failure. Potts (2010) wrote that the 15 - 20 minute abortion procedure on a teen pregnancy resulting from rape had the potential to radically change the course of the next half century of the girl's life. The question of whether the foetus is a person with rights and whether the foetus can feel pain has also often been related to the topic of abortion. A recent report by the Royal College of Obstetricians and Gynaecologists states definitively that the foetus cannot feel pain before twenty four weeks although this has been disputed by several medical critics (Cohen & Sayeed, 2011). Pro choice activists also argue that it would be unethical to force a woman to give birth to an unwanted child. Women who choose to abort when they cannot care properly for the child are after all making the most ethical decision available to them. The legal status of the foetus in Australia with regard to foeticide is also currently shrouded with controversy. Presently an

unborn human being has no rights under Australian criminal law and is not considered to be a person. Only when the baby is fully removed from the mother's womb and has independently taken a breath, does it attain the "status of a legal persona" (Walsh, 2010). Foetal conceptions in criminal law again vary from state to state. In Queensland a person can be charged for killing an unborn child by deliberate assault or by the transmission of a serious disease. Western Australia has also planned similar laws but is yet to pass them through Parliament. In all other states criminal charges cannot be brought forward for the deaths of unborn children resulting from incidents such as domestic violence and vehicular accidents where the driver is at fault because the foetus does not have legal rights until it is born (Walsh, 2010). Many of Australia's foetal laws are antiquated and inconsistent. While foetal homicide laws are under intense debate, opinion polls show that the most Australians support women having the choice of abortion. Political pressure and the fear of these topics influencing elections make it difficult to unify these laws (de Crespigny, 2004) but it is high time that the federal government introduces a single, national law for the legal aspects of the foetus.

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