

When does life begin? As state laws define it, science, politics, and religion clash

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As life-preserving medical technology advanced in the second half of the 20th century, doctors and families were faced with a thorny decision, one with weighty legal and moral implications: How should we define

when life ends? Cardiopulmonary bypass machines could keep the blood pumping and ventilators could maintain breathing long after a patient's natural ability to perform those vital functions had ceased.

After decades of deliberations involving physicians, bioethicists, attorneys and theologians, a U.S. presidential commission in 1981 settled on a scientifically derived dividing line between life and death that has endured, more or less, ever since: A person was considered dead when the entire brain—including the brainstem, its most primitive portion—was no longer functioning, even if other vital functions could be maintained indefinitely through artificial life support.

In the decades since, the committee's criteria have served as a foundation for laws in most states adopting brain death as a standard for legal death.

Now, with the overturning of *Roe v. Wade* and dozens of states rushing to impose abortion restrictions, American society is engaged in a chaotic race to define the other pole of human existence: When exactly does human life begin? At conception, the hint of a heartbeat, a first breath, the ability to survive outside the womb with the help of the latest technology?

That we've been able to devise and apply uniform clinical standards for when life ends, but not when it begins, is due largely to the legal and political maelstrom around abortion. And in the two months since the U.S. Supreme Court issued its opinion in *Dobbs v. Jackson Women's Health Organization*, eliminating a long-standing federal right to abortion, state legislators are eagerly bounding into that void, looking to codify into law assorted definitions of life that carry profound repercussions for abortion rights, birth control, and assisted reproduction, as well as civil and criminal law.

"The court said that when life begins is up to whoever is running your

state—whether they are wrong or not, or you agree with them or not," said Mary Ziegler, a law professor at the University of California-Davis who has written several books on the history of abortion.

Unlike the debate over death, which delved into exquisite medical and scientific detail, the legislative scramble to determine when life's building blocks reach a threshold that warrants government protection as human life has generally ignored the input of mainstream medical professionals.

Instead, red states across much of the South and portions of the Midwest are adopting language drafted by elected officials that is informed by conservative Christian doctrine, often with little scientific underpinning.

A handful of Republican-led states, including Arkansas, Kentucky, Missouri, and Oklahoma, have passed laws declaring that life begins at fertilization, a contention that opens the door to a host of pregnancy-related litigation. This includes wrongful death lawsuits brought on behalf of the estate of an embryo by disgruntled ex-partners against physicians and women who end a pregnancy or even miscarry. (One such lawsuit is underway in Arizona. Another reached the Alabama Supreme Court.)

In Kentucky, the law outlawing abortion uses morally explosive terms to define pregnancy as "the human female reproductive condition of having a living unborn human being within her body throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth."

Several other states, including Georgia, have adopted measures equating life with the point at which an embryo's nascent cardiac activity can be detected by an ultrasound, at around six weeks of gestation. Many such laws mischaracterize the flickering electrical impulses detectible at that

stage as a heartbeat, including in Georgia, whose Department of Revenue recently announced that "any unborn child with a detectable human heartbeat" can be claimed as a dependent.

The Supreme Court's 1973 decision in *Roe v. Wade* that established a constitutional right to abortion did not define a moment when life begins. The opinion, written by Justice Harry Blackmun, observed that the Constitution does not provide a definition of "person," though it extends protections to those born or naturalized in the U.S. The court majority made note of the many disparate views among religions and scientists on when life begins, and concluded it was not up to the states to adopt one theory of life.

Instead, *Roe* created a framework intended to balance a pregnant woman's right to make decisions about her body with a public interest in protecting potential human life. That decision and a key ruling that followed generally recognized a woman's right to abortion up to the point medical professionals judge a fetus viable to survive outside the uterus, at about 24 weeks of gestation.

In decisively overturning *Roe* in June, the Supreme Court's conservative majority drew on legal arguments that have shaped another contentious end-of-life issue. The legal standard employed in *Dobbs*—that there is no right to abortion in the federal Constitution and that states can decide on their own—is the same rationale used in 1997 when the Supreme Court said terminally ill people did not have a constitutional right to medically assisted death. That decision, *Washington v. Glucksberg*, is mentioned 15 times in the majority opinion for *Dobbs* and a concurrence by Justice Clarence Thomas.

Often, the same groups that have led the fight to outlaw abortion have also challenged medical aid-in-dying laws. Even after *Dobbs*, so-called right-to-die laws remain far less common than those codifying state

[abortion rights](#). Ten states allow physicians to prescribe lethal doses of medicine for terminally ill patients. Doctors are still prohibited from administering the drugs.

James Bopp, general counsel for the National Right to Life Committee who has been central to the efforts to outlaw abortion, said that both abortion and medically assisted death, which he refers to as physician-assisted suicide, endanger society.

"Every individual human life has inherent value and is sacred," said Bopp. "The government has the duty to protect that life."

Both issues raise profound societal questions: Can the government keep a patient on life support against his wishes, or force a woman to give birth? Can states bar their own residents from going to other states to end a pregnancy, or prohibit out-of-state patients from coming in to seek medically assisted death? And who gets to decide, particularly if the answer imposes a singular religious viewpoint?

Just as there are legal implications that flow from determining a person's death, from organ donation to inheritance, the implied rights held by a legally recognized zygote are potentially vast. Will death certificates be issued for every lost pregnancy? Will miscarriages be investigated? When will Social Security numbers be issued? How will census counts be tallied and congressional districts drawn?

Medical professionals and bioethicists caution that both the beginning and end of life are complicated biological processes that are not defined by a single identifiable moment—and are ill suited to the political arena.

"Unfortunately, biological occurrences are not events, they are processes," said David Magnus, director of the Stanford Center for Biomedical Ethics.

Moreover, asking doctors "What is life?" or "What is death?" may miss the point, said Magnus: "Medicine can answer the question 'When does a biological organism cease to exist?' But they can't answer the question 'When does a person begin or end?' because those are metaphysical issues."

Ben Sarbey, a doctoral candidate in Duke University's department of philosophy who studies medical ethics, echoed that perspective, recounting the Paradox of the Heap, a thought experiment that involves placing grains of sand one on top of the next. The philosophical quandary is this: At what point do those grains of sand become something more—a heap?

"We're going to have a rough time placing a dividing line that this counts as a person and this does not count as a person," he said. "Many things count as life—a sperm counts as life, a person in a persistent vegetative state counts as life—but does that constitute a person that we should be protecting?"

Even as debate over the court's abortion decision percolates, the 1981 federal statute that grew out of the presidential committee's findings, the Uniform Determination of Death Act, is also under review. This year, the Uniform Law Commission, a nonpartisan group of legal experts that drafts laws intended for adoption in multiple states, has taken up the work to revisit the definition of death.

The group will consider sharpening the medical standards for [brain death](#) in light of advances in the understanding of brain function. And they will look to address lingering questions raised in recent years as families and religious groups have waged heated legal battles over terminating artificial life support for patients with no brain wave activity.

Bopp, with the National Right to Life Committee, is among those

serving on advisory panels for the effort, along with an array of doctors, philosophers, and medical ethicists. The concept of "personhood" that infuses the anti-abortion movement's broader push for fetal rights is expected to be an underlying topic, albeit in mirror image: When does a life form cease being a person?

Magnus, who is also serving on an advisory panel, has no doubt the commission will reach a consensus, a sober resolution rooted in science. What's less clear, he said, is whether in today's political environment that updated definition will hold the same sway, an enduring legal standard embraced across [states](#).

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