



Debates on the beginning of life and legal regulations to personhood: a feminist approach

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Thinking Time Series: University of Victoria –
Graduate Student Law & Society Research Group

March 20th, 2024

Territorial Acknowledgement

I speak to you from unceded Indigenous lands. The Kanien'kehá:ka Nation is recognized as the custodians of the lands I am currently living on.

Tiohtià:ke/Montréal is historically known as a gathering place for many First Nations and today it is home to a diverse population of Indigenous and other peoples.

I respect the continued connections with the past, present and future in our ongoing relationships with Indigenous and other peoples within the Montreal community.



Debates on the beginning of life and legal regulations to personhood: a feminist approach

- Personhood rights and abortion rights
- When does law start protecting life?
- Religion
- Secularism
- Feminism and Women's Rights
- Making abortion legal and safe for women
- Contemporary debates
- Legal Protection to the right to life in Brazil
- Legal Protection to Life in Canada



Personhood rights and Abortion rights

- Legal, political, social, philosophical, (bio) medical, theological debates
- When does life begin?
- How does law protect life?



When does law start protecting life?

- Right to life:
 - Fundamental right
 - Established in most constitutions
 - Gives meaning to all other rights
- Abortion:
 - Contested right
 - Recognized as a human right (UN, OAS...)
 - Different strains of feminism



When does law start protecting life?

- When life starts?
 - Answer might vary according to personal beliefs
- Legal protection:
 - Depends on political decisions about the beginning of life
- Religion:
 - Fundamental right + Secularism



Religion

- Catholic Church:
 - Different perspectives on abortion
- 1970s onwards:
 - Harsher reproof of abortion procedures/ contraception
- Widespread idea that:
 - “Nothing justifies killing an innocent”



Secularism

- Secularity: shifts the regulation on gender and sexuality
- 1960s/70s: Sexual Revolution
 - Contraception becomes “widely” available
- Right to have a religion vs. right to not be bound to any religious belief



Feminism and Women's Rights

- 1970s onwards:
 - Abortion is de-criminalized in most European and North American jurisdictions
 - LAC: dictatorships delay debates on abortion rights
- Márcia Tiburi: life of embryos vs. life of women: sexist and patriarchal discourses
- Motherhood as the centre and the reason for women to exist: Women's bodies as vessels ("more body") vs. fetus ("more life")



Feminism and Women's Rights

- United Nations:
 - Conference Programme of Action, Cairo, 1994: sexual and reproductive rights are human rights
- Conference on Women's Rights, Beijing, 1995: women's rights are human rights
- CEDAW, General Rec. 19, 24, 35: Recommends de-criminalizing abortion and ensuring safe access



Making abortion legal and safe for women

- Portugal legalizes abortion (2007)
- Spain legalizes abortion (2010)
- Uruguay legalizes abortion (2012)
- Argentina legalizes abortion (2020)
- France constitutionalizes right to abortion (2024):
 - But what about access? Intersectionality and inequality in access



Contemporary debates

- Roe v. Wade (1973):
“personhood begins at birth”
- Overturn of Roe vs. Wade, by Dobbs v. Jackson (2022):
“right to abortion is not deeply rooted in the Nation’s history and tradition” - Whose history?
- States now can regulate access to abortion: increase of restrictive laws + *in vitro* procedures



Contemporary debates

- Regulations on fertility procedures:
 - Caso Artavia Murillo y otros vs. Costa Rica (Inter-American Court of Human Rights, 2012):

“In contrast, the impact on the protection of prenatal life is very slight, because the risk of embryonic loss is present both in IVF and in natural pregnancy. The Court underlines that the embryo, prior to implantation, is not covered by the terms of Article 4 of the Convention, and recalls the principle of the gradual and incremental protection of prenatal life.”



Legal protection to the right to life - Brazil

- Constitution (1988) protects right to life + Inter-American Convention on Human Rights (Pacto de San José da Costa Rica, art. 4)
- Civil Code: personhood rights begin at birth (art.2):
birth with life and potential life (nuance)



Legal protection to the right to life - Brazil

- Criminal Code (1940):
 - abortion is allowed to save the mother's life, in case of sexual violence, in case of anencephaly (litigation)
 - Abortion without the woman's permission: detention 1 to 3 years
 - Infanticide: detention, 2 to 6 years
 - Homicide: imprisonment, 6 to 20 years



Legal protection to the right to life - Canada

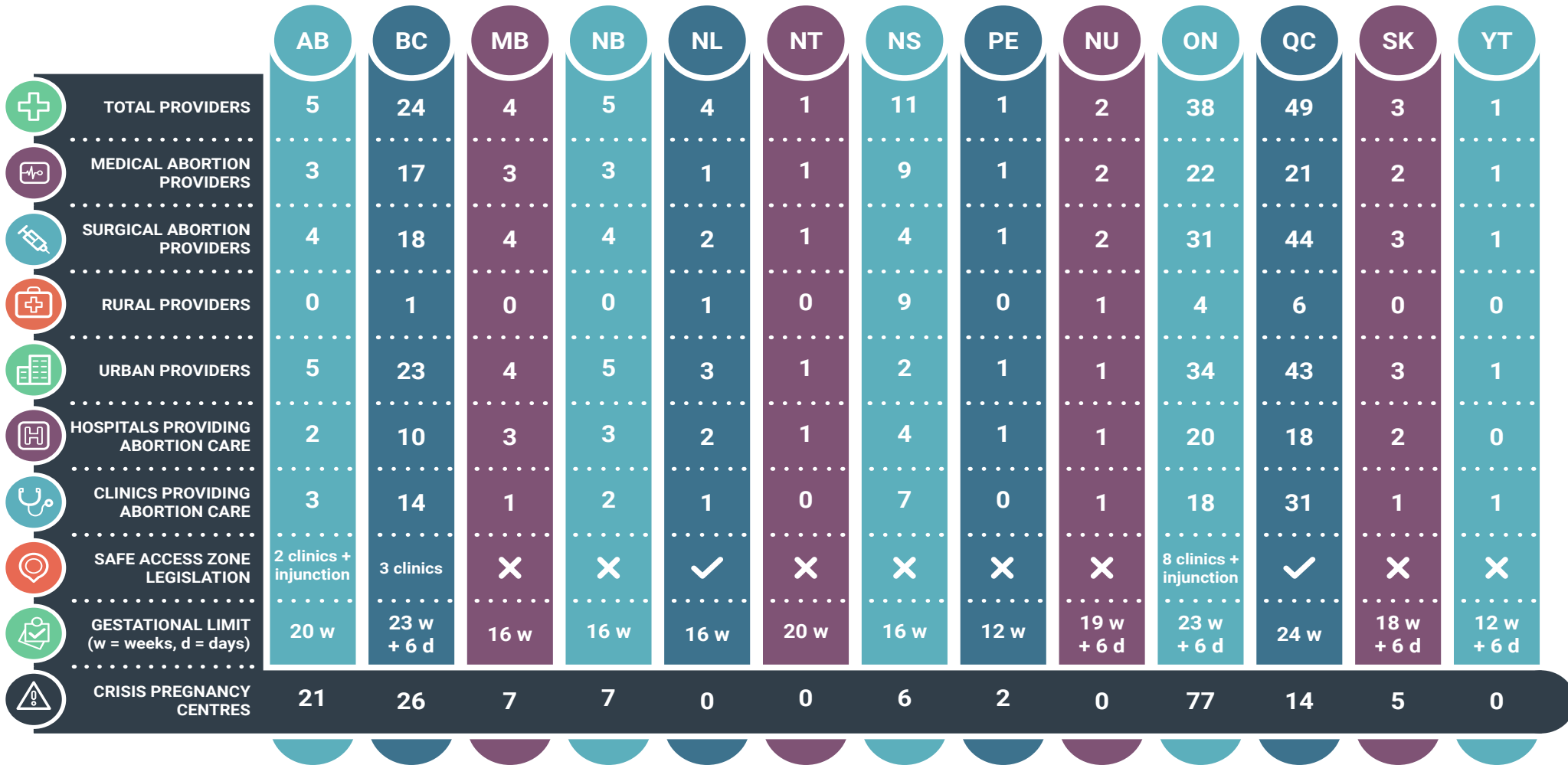
- Section 7 of the Charter: life, liberty, and security of person
- Criminal Code:

When child becomes human being

- 223 (1) A child becomes a human being within the meaning of this Act when it has completely proceeded, in a living state, from the body of its mother, whether or not
 - (a) it has breathed;
 - (b) it has an independent circulation; or
 - (c) the navel string is severed.



ACCESS AT A GLANCE: ABORTION SERVICES IN CANADA



* While the 2014 Abortion Provider Survey uses census metropolitan areas (CMAs) to categorize providers as urban or rural, in this table, each point of service was individually assessed as "urban" or "rural" based on its categorization as a city or town/village/unincorporated settlement.

Legal protection to the right to life - Canada

- Over 250 abortions happen daily in Canada
- About 1 in 3 people who can get pregnant have an abortion in their lifetime. It's a very common and safe medical procedure.
- Over a third of people who get abortions are already mothers/parents

* Action Canada for Sexual Health and Rights/ LEAF – Women's Legal Education & Action Fund



Legal protection to the right to life - Canada

- “Pro-life” movement: Significant extra-legal barrier to access to abortion in Canada
- 2012: Motion 312 (Parliament): Discuss the legal status of the fetus:
Re-branding opposition to abortion as a way of fighting discrimination against women
- Decrease in the numbers of hospitals providing abortions
- Decriminalization does not mean there is unimpeded access to abortion!



References

In Defense of Reason: Religion, Science, and the Prince Edward Island Anti-abortion Movement, 1969 – 1988.
Katrina Ackerman

Choice Interrupted: travel and inequality of access to abortion services since the 1960s
Sethna et al.

“Can the Congenital Zika Virus Syndrome Crisis Contribute to Challenging Contemporary Discourses Against Abortion Legalization in Brazil?” ethic@ - Florianópolis, Santa Catarina, Brasil, v. 17, n. 2, p. 291 – 318. Dez. 2018 (with Daniela Rosendo) (Peer Reviewed) Available at: <<https://periodicos.ufsc.br/index.php/ethic/article/view/1677-2954.2018v17n2p291> >

“Direito à Vida e a personalidade do feto, aborto e religião no contexto brasileiro: Mulheres entre a vida e a morte” [Translation: Fetus Right to Life and Personality, Abortion and Religion in Brazilian Context: Women between Life and Death] (2015) Ethic@ Revista Internacional de Filosofia Moral v. 14, n.2 (with Daniela Rosendo) (Peer reviewed) pp. 300-319.



Thank you!

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