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OP-ED COLUMNIST

Not All Abortions Are Equal

By [ROSS DOUTHAT](#)

The case of Dr. George Tiller, murdered just over a week ago in the lobby of his church, helps explain why so many people believe that abortion should be available at any stage of pregnancy.

Tiller did abortions in third trimester, when almost no one else would do them – which meant, inevitably, that he handled the hardest of hard cases. He performed abortions on women facing life-threatening complications, on women whose children would be born dead or dying, on women who had been raped, on “women” who were really girls of 10. His Wichita, Kan., office, barricaded against protesters, was reportedly lined with thank-you notes.

Over the last week, there’s been [an outpouring of testimonials](#), across the Internet, from women (and some men) who lived through these hard cases. They help explain why Tiller thought he was doing the Lord’s work, even though that work involved destroying something that we wouldn’t hesitate to call a baby if we saw it struggling for life in a hospital bed. They help explain why so many Americans defend his right to do it.

But such narratives are not the only story about George Tiller’s clinic. He was a target of protests – and, tragically, of terrorist violence – because he performed late-term abortions, period. But his critics were convinced that he performed them not only in truly desperate situations, but in many other cases as well. Over the years, they cobbled together a considerable amount of evidence – drawn from [the state’s abortion statistics](#), from Tiller’s own comments, and from [a 2006 investigation](#) – suggesting that Tiller abused the state’s mental-health exemption to justify late-term abortions in almost any situation.

This evidence is persuasive, but not dispositive. We may never know how many of George Tiller’s abortions were performed on healthy mothers and healthy fetuses. But whatever the verdict on Tiller’s practice, most abortions in the United States bear no resemblance whatsoever to the hardest third-trimester cases.

Yes, many pregnancies are terminated in dire medical circumstances. But these represent a tiny fraction of the million-plus abortions that take place in this country every year. (Almost half of that number are [repeat abortions](#); around a quarter are third or fourth procedures.) The same is true of the more than 100,000 abortions that are performed after the first trimester: Very few involve medical complications of any kind. Even the now-outlawed “partial-birth” procedure, which abortion-rights supporters initially argued was only employed in the direst of dire situations, [turned out](#) to be used primarily for purely elective abortions.

The argument for unregulated abortion rests on the idea that where there are exceptions, there cannot be a rule. Because rape and incest can lead to pregnancy, because abortion can save women’s lives, because babies can be born into suffering and certain death, there should be no restrictions on abortion whatsoever.

As a matter of moral philosophy, this makes a certain sense. Either a fetus has a claim to life or it doesn't. The circumstances of its conception and the state of its health shouldn't enter into the equation.

But the law is a not a philosophy seminar. It's the place where morality meets custom, and compromise, and common sense. And it can take account of tragic situations without universalizing their lessons.

Indeed, the argument that some abortions take place in particularly awful, particularly understandable circumstances is not a case against regulating abortion. It's the beginning of precisely the kind of reasonable distinction-making that would produce a saner, stricter legal regime.

If anything, by enshrining a near-absolute right to abortion in the Constitution, the pro-choice side has ensured that the hard cases are more controversial than they otherwise would be. One reason there's so much fierce argument about the latest of late-term abortions — Should there be a health exemption? A fetal deformity exemption? How broad should those exemptions be? — is that Americans aren't permitted to debate anything else. Under current law, if you want to restrict abortion, post-viability procedures are the only kind you're allowed to even regulate.

If abortion were returned to the democratic process, this landscape would change dramatically. Arguments about whether and how to restrict abortions in the second trimester — as many advanced democracies already do — would replace protests over the scope of third-trimester medical exemptions.

The result would be laws with more respect for human life, a culture less inflamed by a small number of tragic cases — and a political debate, God willing, unmarred by crimes like George Tiller's murder.

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