

September 30, 2021

Note to Supreme Court Justices,

This note concerns the constitutional question of whether State Legislation banning abortion after 15 weeks of pregnancy is unconstitutional.

The article that I have enclosed with this note establishes conclusively at the English Common Law (and therefore under the due process clauses of the 5th and 14th Amendments, the person in those clauses) that protecting a 15-week-old fetus as a person is constitutional.

At the English Common Law, a fetus was a person-child once it formed into a recognizable human shape. Modern medicine confirms fetal formation at 8 weeks or less with ultrasound.

Fetal formation established fetal personhood at the English Common Law. “Quick with child” or “with quick child” were terms for fetal formation. The term “quickening,” the perception by the woman of fetal movement, was not the Common Law criterion for fetal formation. What was crucial was not the number of days from conception, or perception of movement by the mother, but whether the product of human conception had achieved fetal formation. If what was aborted could be shown to possess or have possessed a human body, then that proved it was a human being.

If the fetus was formed and it was killed, it was felony murder under English Common Law. If the fetus was not formed and was killed, it was a high misdemeanor. If the mother died from aborting herself, it was treated as felony suicide. If a person killed the woman while aborting her, it was felony murder whether or not the fetus was formed. And at the Common Law a pregnant woman who was condemned was spared execution if she was found to be “quick with child,” or “with quick child,” that is, pregnant with a formed fetus. The woman was examined by a jury of matrons to determine if she were quick with child, pregnant with a live child, so that the child would not be destroyed for the mother’s crime.

In Smith v. Alabama 124 U.S. 465, 478 (1888): The Court observed, “the interpretation of the Constitution . . . is necessarily influenced by the fact that its provisions are framed in the language of the English common law and are to be read in light of its history”.

The material in my article enclosed with this note explains and establishes fetal personhood with citable citations and refers to primary case documents unknown to the court in 1973.

Philip A. Rafferty

(Address omitted here online)
Cell phone 805-558-8457
philiparafferty@gmail.com