

An Analysis of, and Alternative to, the debate on Amendment 4, Florida Constitution.

Thomas R. Cuba, Ph.D.

2024 1014

As I watch political advertisement after political advertisement on television either supporting Amendment 4 or tearing it down, I am compelled to write down my thoughts. My assessment, as it has been for years, is that both of the pro and con arguments are emotional, flat, and don't, or won't, really address the problem; they only address the emotions and personally preferred outcomes. Last night, I was inspired to examine the issue just as I would in the classroom. So, instead of sleeping, my mind drifted through what might be done to take the simple emotional positions and convert them to ones more salient.

So, here goes.

In addressing any mathematical problem, or in constructing a mathematical model that could be created to predict outcomes of any situation, the first step is to identify the immutable values. These are called 'given's' and cannot be changed during the remaining steps of the solution. They are normally constructed in the absence of emotion and personal preference. In each such analysis, there are also limits within which the analysis is to be applied.

LIMITS:

The exercise here does not address general abortion situations, such as between two consenting adults. It is targeted at the 'rape and incest' argument.

GIVEN:

- 1: The life of the mother will always have a greater value than the life of the fetus.
- 2: Rape is a crime and ought to be punished severely.
- 3: Incest is not rape. It is consensual.
- 4: Incest may take place between an adult and a juvenile.
- 5: Incest may occur between two juveniles.
- 6: In either incest or rape, two people are involved in the act.
- 7: Those engaged in sex-trafficking, who are arranging for rapes to occur, are also engaged in the actual crime of rape.
- 8: In either incest or rape, the act may or may not produce a third biologically distinct entity, the fetus.
- 9: Biologically, the fetus is a separate organism, even if rather parasitic.

10: The primary role of law is to deter any particular type of crime from occurring again.

Now, the reader may or may not accept all of these as immutable truths, especially Number 9, which is often rejected by supporters of abortion because it undermines a part of the emotional argument mentioned earlier, and Number 10, which goes to the philosophy of law enforcement.

For this exercise in logic, however, I ask everyone's forbearance and that you go through it to the end before commenting.

The next segment of this analysis is founded, to a great deal, in the course of the societal structure of human history. *Punishment* of crime has often been about revenge on an individual level, but when the *Crime and Punishment* are connected at the societal level, the primary intent is to deter that type of crime from occurring again; See Given Number 10. The charge of government is prevention.

In our analysis, we have now identified several possible outcomes of incestual or forced intercourse. The most salient is Number 8. It is undeniable that the production of a fetus will put a greater burden on the mother if she carries it to term. So, I will begin my proposed penalty phase with the distinction of the two situations.

In the case of incest between an adult and a juvenile, whether a fetus is produced or not, the principal crime is that of Child Abuse. Keeping in mind the governmental goal of *prevention*, I propose that the first penalty for this type of child abuse ought to be quite severe. I lean towards a sentence of thirty years in prison without the possibility of parole.

When a fetus is produced, the adult in the case, the penalty, in addition to the extended incarceration, ought to require that the adult ought to surrender all of his, or her, worldly goods. The items that are surrendered would be converted to cash and placed into a dedicated fund to be used to support the young mother, assisting with medical bills, diapers, medicines, food, clothing, and housing.

In the case of forcible rape, the penalty ought to include that same forfeiture of possessions, but to increase the deterrent, I also propose that the crime of forcible rape carry the mandatory death penalty.

I should explain the logic behind the mathematics of *Prevention*. In the case of forcible rape, should the crime produce a third person, the fetus. then the most guilty of the three entities involved is the rapist, and the most innocent is the fetus. In establishing the relationships among these three entities, it makes little sense to punish the most innocent with death, instead of the most guilty.

Taken together, the forfeiture of possessions and a penalty of thirty years of incarcerated life or life itself, would carry a much stronger deterrent and alternative to

the emotional construct of the legalization or prohibition of abortion. Such a law would satisfy virtually all of the Given Conditions of the mathematical model.

One last thing. Without sacrificing the life of the mother, the life of the fetus ought to be protected as much as possible.

Please note that I was unable to find the mathematical deterrent to Number 5: *Incest may occur between two juveniles*. The situation appears to be outside the limitations of the governmental limitations of the mathematics and the proposed model.

Also, what the mathematical solution has not addressed is the psychological well-being of the mother. This too is outside of the governmental limitations of the model for *Punishment*. Perhaps the answer is in the use of that fund created from seized assets and, perhaps, the formation of support groups patterned after Alcoholics Anonymous. At least the participants would know that they are not alone and could share solutions to individual problems.