

LIFE AND LEARNING XIX

PROCEEDINGS OF THE NINETEENTH
UNIVERSITY FACULTY FOR LIFE
CONFERENCE

at

THE UNIVERSITY OF ST. THOMAS
SCHOOL OF LAW
MINNEAPOLIS, MINNESOTA
2009

edited by
Joseph W. Koterski, S.J.

University Faculty for Life

University Faculty for Life was founded in 1989 to promote research, dialogue, and publication among faculty members who respect the value of human life from its inception to natural death, and to provide academic support for the pro-life position. Respect for life is especially endangered by the current cultural forces seeking to legitimize such practices as abortion, infanticide, euthanasia, and physician-assisted suicide. These topics are controversial, but we believe that they are too important to be resolved by the shouting, the news-bites, and the slogans that often dominate popular presentation of these issues. Because we believe that the evidence is on our side, we would like to assure a hearing for these views in the academic community.

The issues of abortion, infanticide, and euthanasia have many dimensions—political, social, legal, medical, biological, psychological, ethical, and religious. Accordingly, we hope to promote an inter-disciplinary forum in which such issues can be discussed among scholars. We believe that by talking with one another we may better understand the values we share and become better informed in our expression and defense of them.

We are distressed that the media often portray those favoring the value of human life as mindless zealots acting out of sectarian bias. We hope that our presence will change that image. We also believe that academicians united on these issues can encourage others to speak out for human life in their own schools and communities.

Membership in the University Faculty for Life is open to all who now have or who have once had a teaching position in a university or college. We welcome members from every field of study and of every political, philosophical, and religious persuasion. For further information or for additional copies of this or of earlier volumes, please contact us at the following address: Fr. Joseph W. Koterski S.J., Dept. of Philosophy, Fordham University, Bronx NY 10458. Our website can be found at www.uffl.org.

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Bronx NY

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Preface

VOLUME NINETEEN of *Life and Learning* offers a selection of papers drawn largely from UFL's 2009 conference. The editor would like to extend his apology here in the preface for the extensive delay in bringing these fine papers into print.

UFL is deeply grateful to the University of St. Thomas Law School for providing a splendid venue for this meeting, and to our charming and indefatigable local host, Prof. Teresa Collett. Our program chair for this meeting, Prof. Frank Beckwith, arranged a wonderful program. We would also like to express our grateful appreciation to the Our Sunday Visitor Institute for a special grant in support of the 2009 UFL Conference and to all the benefactors of UFL who have made possible its annual meetings as well as the publication of its newsletter and of its annual volume of proceedings. Without their generous contributions this organization would not be able to continue its work. Let me also offer special thanks to Prof. Jacqueline Nolan-Haley (Fordham University Law School) for her invaluable help yet again this year in the reviewing the papers submitted for this volume.

Electronic versions of these papers and many of those delivered at previous UFL conferences are available on our web site at www.uffl.org. For additional copies of this volume or for bound versions of the proceedings of our earlier conferences, please contact me at koterski@fordham.edu.

Joseph W. Koterski, S.J.

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This essay first appeared in *The Weekly Standard*, vol. 14 (June 8, 2009), and we are grateful to its editor, William Kristol, for permission to reprint it here.

Stem Cells and Torture

Gilbert Meilaender

ABSTRACT: Arguments in support of torture as an instrument of policy often trade on the view that it is necessary to deal with great and imminent threats, or necessary even to ensure a society's survival. The structure of such arguments is not unlike the structure of moral arguments that have been used to justify embryo-destructive stem cell research. This essay uses the example of limits on research to think through complications in arguments about torture. In each case we are forced to reflect upon whether how we live or how long we live is of greater moral importance.

LET'S START WITH STEM CELLS. That may seem a strange place to begin thinking about torture, but many bioethical issues are at least as controversial and disputed as is torture. Among the most controversial in recent years has been research that destroys embryos in order to procure stem cells for use in regenerative medicine. Those who oppose embryonic stem cell research, have, in my view, made the right moral choice. The logic of that choice is worth examining, however, before we turn more directly to the issue of torture, for it is a choice that comes with certain costs.

It is still much too soon to say for sure whether the promise for regenerative medicine that some see in embryo-destructive research will be fulfilled or will turn out to be a dead end. Perhaps other approaches—for instance, using induced pluripotent stem cells or altered nuclear transfer—will make better scientific progress without the destruction of embryos, thereby demonstrating that at least sometimes we can have our cake and eat it too. But perhaps not. Maybe these other approaches will fail to cure or ameliorate suffering from serious degenerative diseases,

and embryo-destructive research will, in fact, turn out to be the “gold standard” its defenders often call it.

Even if things were to turn out that way, it would not mean that opponents of embryonic stem cell research had been wrong. It would simply mean that they had accepted the cost to which their moral beliefs committed them. They do not think that good results are the only—or even the most important—factor in determining how we ought to live. However fervently and sincerely they may hope that we find ways to relieve the condition of those who suffer, they do not take the further moral step of concluding that not any and every avenue to that good end may be used. If this means that some suffering that could be relieved is not, then that is the cost, however regrettable, that a commitment to act rightly will sometimes exact.

This distinction, between what we *do* and what we *accomplish*, marks one of the fault lines in moral reasoning, and it re-emerges time and again in bioethical argument. This was seen clearly and stated directly and forcefully when bioethics first burst upon the scene in this country. Thus, in *The Patient as Person*,¹ one of the classic early works in bioethics, Paul Ramsey underscored the fundamental moral point: “There may be valuable scientific knowledge which it is morally impossible to obtain. There may be truths which would be of great and lasting benefit to mankind if they could be discovered, but which cannot be discovered without systematic and sustained violations of legitimate moral imperatives.”

Embryonic stem cell research itself could not at that time have been on Ramsey’s radar, prescient though he was in many ways. However, the ethics of medical research more generally surely was. A subject that received sustained attention in those early years of bioethics, it was the topic of a long and complicated chapter in *Patient as Person*. The thread that holds together the chapter’s complications is the moral stance that

¹ Paul Ramsey, *The Patient as Person: Explorations in Medical Ethics* (New Haven CT: Yale Univ. Press, 1970).

I have noted. The fact that both researchers and subjects are human persons “places an independent moral limit [independent, that is, of all possible good results flowing out of the research] upon the fashion in which the rest of mankind can be made the ultimate beneficiary of these procedures.” That independent limit is the requirement that research subjects be able to give and actually do give a free and informed consent to their participation. If they cannot, the research ought not be done, however beneficial for others it might be—or so Ramsey believed.

Similar themes were sounded at that time by the Jewish philosopher, Hans Jonas, once described by Ramsey as “a person to me of exemplary moral wisdom.” In “Philosophical Reflections on Experimenting with Human Subjects,”² a profound article that continues to repay careful study, Jonas considered the claim that a society “could not afford” to forego research that might improve and save lives—and could not, therefore, be too insistent on moral limits that would impede such research. His reflections on that sort of claim, a claim that might come all too readily to the lips of any of us, are bracing. “Of course” a society can afford to lose members through death. If diseases “continue to exact their toll at the normal rate of incidence..., society can go on flourishing in every way.”

To make medical progress through human experimentation is surely desirable. Yet, Jonas wrote, such improvement is “an optional goal” and “has nothing sacred about it.” What, then, *is* sacred? Each individual person, any one of whom we might be tempted to misuse in the cause of progress for others.

We should not, however, make Jonas’s position simpler than it was. Improving society through research is always desirable but also always optional. Hence, such research is subject to what Ramsey called independent moral limits. They may retard our progress, but society can afford this, and indeed morally must afford it. But what if the issue is not

² Hans Jonas, *Philosophical Essays: From Current Creed to Technological Man* (Chicago IL: Univ. of Chicago Press, 1980), pp. 105-35.

improving but, more starkly, preserving society? Jonas was prepared to acknowledge that there are “examples of what, in sober truth, society cannot afford.” It cannot afford to let an epidemic “rage unchecked.” Some epidemics are acute—as, for example, the Black Death was. Others are public calamities of a more chronic kind—as, for example, “the life-sapping ravages of endemic malaria” may be. Of these possibilities Jonas wrote: “A society as a whole can truly not ‘afford’ such situations, and they may call for extraordinary remedies, including, perhaps, the invasion of private sacrosanctities.” Jonas did not think of this as a matter of numbers alone, since, as he noted, there is also a sense in which society cannot afford a single injustice or violation of rights. Still, there might be cases “critically affecting the whole condition, present and future, of the community” that could constitute something like a state of emergency in which disaster could be averted only through “extraordinary means” of experimentation—means otherwise forbidden.

Think now of our more recent disputes over embryonic stem cell research. However great the promise of such research for relief of suffering and prevention of death, the fact that we continue to suffer and die is not an emergency. If we take to describing that sad fact of life as a crisis or emergency, there will be no end to what we might contemplate doing in the cause of medical progress. Our desire to *accomplish* good results will have swamped any moral limits on what we *do* in pursuit of that goal. And, more generally, this should make us wary of the martial language—a “war on cancer”—still all too common in our thinking about medicine.

The policy for federal funding of embryonic stem cell research adopted by then President Bush attempted both to recognize necessary moral limits and acknowledge complexities. That policy, which permitted funding of research only on stem cell lines derived from embryos destroyed prior to the President’s decision, aimed at acknowledging the good of research, but in a way that would not encourage further destruction of embryos. From the standpoint of opponents of the research, it ran the moral risk of complicity in an evil deed. From the

standpoint of proponents of the research, it incurred considerable moral cost, because of the limits that it put in place. At least in my mind, there was considerable wisdom in the policy. We should acknowledge independent moral limits on how we pursue the goals we desire, and, therefore, we need not hesitate to argue that research in regenerative medicine ought to proceed by means that do not destroy the tiny human beings we all once were: embryos. But there will be costs—moral costs—to such a choice, for medical progress in regenerative medicine may be slower than it could be. What we accomplish, or decline to try to accomplish, does matter morally.

The logic of that choice, as well as its complexities, should not be forgotten as we turn now to reflect upon torture. Even here, though, I begin rather far away from our current disputes. There is a brief but fascinating discussion of torture in Helmut Thielicke's *Theological Ethics*.³ To appreciate its significance we must keep in mind the difficulty—shared by Thielicke—that a certain kind of contemporary Lutheran theology has had with offering any moral guidance and direction.

Why should it be so hard? Because even the very “best” of us never reach a point at which we can with confidence seek God’s judgment upon our behavior. If the best and the worst of us are equally sinners before God, it may seem beside the point to distinguish better from worse actions. (To give him his due, we should note that Thielicke was better than his theory during the years of the Nazi regime.)

If the point of theological ethics is not to distinguish better from worse actions, what is its point? It is to direct us away from our own, always tainted, attempts to distinguish right from wrong and to direct us toward reliance on God’s mercy. Or, in Thielicke’s rather more passionate language, the point of theological ethics is to uncover our Babylonian hearts and shatter any illusions that we might lay claim to

³ Helmut Thielicke, *Theological Ethics*, translated by William H. Lazareth (Philadelphia PA: Fortress Press, 1966).

being righteous. In the dark of night, all cats are gray, and what really counts is our justification before God, a justification that depends not a bit on anything we do, but entirely on God's grace.

Whatever power there may be in such a theological vision—and there is some, as any reader of Thieliicke knows—it will have difficulty saying of any deed that its very doing is incompatible with righteousness before God. How very striking, therefore, that in certain “confrontations with transcendence” Thieliicke himself found examples of “limits which cannot be transgressed,” instances in which there is only one course of action compatible with righteousness before God. This may be an inconsistency in his thinking; if so, it is a felicitous and instructive inconsistency.

The first example of such a limit is the invitation to accomplish some great good through blasphemy. My concern, though, is with his second example of “direct confrontation with transcendence.” This happens when the personhood of another human being, “the bearer of an alien dignity” and “the direct representation of transcendence,” is at stake. “Of man's personhood too we may say, figuratively [as the prophet reports the LORD says of Israel], ‘He who touches it touches the apple of God's eye’.”

How might we thus touch the apple of God's eye? And what might tempt us to do so? Thieliicke has in mind circumstances “in which everything (the fate and success of our movement, perhaps the lives of our companions, wives, children, and even our very nation) depends upon the obtaining of certain information. In such cases the question inevitably arises whether we may obtain this information by means either of torture or of procedures of interrogation involving the use of certain truth drugs.” For the moment, I leave torture undefined. That Thieliicke can group these two means of acquiring information together helps us see what he thinks is at stake, what he means by a “confrontation with transcendence.”

In torture we seek to overcome another person's conscientious resistance to our will. We aim to “break the conscience which is

commanding him to keep silence.” This differs from what Thielicke calls “temptation by desire,” which seeks to work “by way of the man’s own decisions.” Nor can torture be equated with coercion, with an attempt to force a decision out of the person. Torture seeks to inflict pain severe enough to eliminate the ego, to bypass “the sphere of decision altogether.” It seeks, we might say, to turn the person—a subject—into an object, a thing.

Seeing this, we can understand why Thielicke groups torture with the use of a truth serum, which does not inflict pain but attempts to bypass the sphere of decision. His fundamental category is not torture but dehumanization. Temptation and coercion attack—but without bypassing or subverting—the person, and they may sometimes be permitted or, even, required. Torture and truth serum bypass—we might say, “thingify”—the person, taking away “the personal right to decision.” But if the human person is a representation of transcendence, it is the transcendent that has then become our target. A Christian “owes to the world,” Thielicke writes, “the public confession that he is one who is committed, ‘bound,’ and hence not ‘capable of [just] anything.’ If we make ourselves fundamentally unpredictable, i.e., if as Christians we think that torture is at least conceivable—perhaps under the exigencies of an extreme situation—we thereby reduce man to the worth of a convertible means, divest him of the *imago Dei*, and so deny the first commandment. This denial can never be a possible alternative.”

In his *Apologia Pro Vita Sua*, John Henry Cardinal Newman wrote: “The Catholic Church holds it better for the sun and moon to drop from heaven, for the earth to fail, and for all the many millions on it to die of starvation in extremest agony, as far as temporal affliction goes, than that one soul, I will not say, should be lost, but should commit one single venial sin, should tell one willful untruth, or should steal one poor farthing without excuse.”⁴ I am not certain that I want to agree with

⁴ John Henry Cardinal Newman, *Apologia pro Vita Sua* (New York NY: W.W. Norton, 1968).

either Newman or Thielicke, Or, at least, I want to think later about distinctions analogous to those raised by Hans Jonas with respect to medical experimentation. However, it is, to say the very least, instructive to find Thielicke, whose brand of Lutheranism always flirts with antinomianism, insisting that, at least in this instance, what we *do* counts for more than what we *accomplish*, and insisting upon it in a way as relentlessly demanding as Newman's.

It is important that we acknowledge just how demanding it is—important, that is, to acknowledge the cost of giving moral priority to doing rather than accomplishing. “Saints should always be judged guilty until they are proved innocent,” Orwell wrote of Gandhi, and Orwell's own inclination was to think of the saint's demanding standards as, finally, “anti-human.” We may disagree with him, but we should be willing to count the cost of doing so.

Thus, while it may be paradoxical to hear former Vice-President Cheney now calling for full disclosure of the beneficial results of enhanced interrogation methods used in secret during his tenure in office, he is quite right to do so. If we wish to renounce those tactics, we should estimate as best we can the cost of doing so. Even those who reject all utilitarian calculations should not deny the truth in utilitarianism: namely, that consequences do matter.

Or again, it is far too easy an exercise in cost-counting to say with confidence that torture never works. And there are, in fact, persuasive counter-examples. It worked for the French in Algeria (though it is useful to remember that, in the longer run, they lost that struggle), and it has worked on occasion for Israeli authorities. Probably it would always be hard to predict whether torture would work in a given instance, but that is different from the far less persuasive claim that it never extracts useful or reliable information.

It is those holding political office who must pay special attention to consequences. Indeed, that's why they hold office: to focus on what will, within the limits of their power, secure the well-being of the fellow citizens whom they serve. They may—and sometimes should—authorize

us to do what none of us ought to do in our purely private capacities. They may authorize us, that is, to aim to kill those who do injustice or who threaten our life or way of life. It is possible, I know, to argue that what I have called aiming to kill is, in fact, aiming only to defend against or deflect evildoers, and that death of the enemy is not our aim, but that seems unpersuasive as a description of some of the actions that governments rightly authorize. Even more important, it comes close, at least from a religious perspective, to losing the point of government altogether.

Government may punish—and even, in certain circumstances, kill—not because it is itself “lord” of life and death, but because it is the authorized agent of the God who is that Lord. But there are always limits on how government should carry out its retributive and punitive purposes. Even in the extreme case of war we see such limits in the firmly entrenched rule (which is moral, and not just legal) that we may not take aim at non-combatants. We might have good reason to target civilians, thinking thereby to break the enemy’s will to resist, and the United States has sometimes done this—notably in the bombing of German cities and in the use of the atomic bomb against Japan (not to mention General Sherman’s march to the sea). But those actions, however laudable the cause they served and whatever good results they may have accomplished, undermine our sense that war as a human activity should be a test of strength, not of will.

Hence, what a terrorist does is quite different from what a soldier does. The essential feature of the terrorist’s action is that it deliberately (and, generally, at random) targets civilians. Terrorists do so simply to instill fear, and, as Michael Walzer has written, “in its modern manifestations, terror is the totalitarian form of war and politics.”⁵ It recognizes no limits on the violence that can be enacted in a good cause, and it subsumes individuals entirely into their political communities—treating

⁵ Michael Walzer, *Arguing against War* (New Haven CT: Yale Univ. Press, 2004).

us as if we belonged to those communities to the whole extent of our being.

Our obligations to captured terrorists are not, therefore, quite the same as our obligations to captured soldiers, to whom “benevolent quarantine” is owed. (This is a point about our moral, not our legal, obligations. If the Geneva Conventions do not recognize such a distinction, they miss something of moral importance.) The quarantine of terrorists need not be so benevolent. Indeed, once we begin to think about the difference between a captured soldier and a captured terrorist, we really should be puzzled about what we owe the terrorist.

After all, a captured terrorist may not only have carried out an attack in the past. We may have good reason to believe he is planning an attack still to be carried out in the future. If we caught him in the act of doing it, we could kill him in order to protect his innocent victims. Now that we have caught him before that next act—but have not caught all others engaged with him in planning it—can we do nothing to him to protect the innocents at whom the plans he knows and shares are taking aim? Government authorities may surely prey upon his desires and weaknesses in seeking information from him. Likewise, he may be coerced in a variety of ways, using such coercion to “motivate” him to cooperate. But subjecting him to experiences that simply break his will, that turn him into a thing no longer able to decide (in response to either temptation or coercion) is a different matter entirely.

No rule can precisely tell us when we have crossed the line that separates justified temptation or coercion from actions (whatever we call them) that are not justified. Clearly, the issue is not only infliction of pain. Enforced nudity, not in itself necessarily painful, nonetheless “thingifies” a person. Being slapped, even hard, does not (or so it seems to me). Being forced to sit in one’s urine or feces “thingifies” a person. Being forced to listen for long periods of time to loud (and perhaps offensive) music does not, or so it seems to me. None of these should be done to a captured soldier, but perhaps some of them could legitimately be done to this captured terrorist. Part of our problem is that we—as a

people—have had as much difficulty sustaining an honest conversation free of posturing about this question as about the question of stem cell research. It may turn out, in fact, that some political leaders now quite vocal in condemning torture were themselves informed about and approved various forms of enhanced interrogation—which, if true, would be contemptible.

If no rule can quite tell us when we have transgressed a line that should not be crossed, that does not mean there is no such line. Still, when that terrorist who has engaged in one assault and knows of another soon to take place, that terrorist whom we might well have shot had we caught him in the act—when he is captured, might our political leaders find it necessary to cross that line?

To return to the stem cell analogy for a moment, suppose that what was needed was not an entire industry devoted to the use and destruction of embryos in an ongoing program of research, but, instead, just three specific embryos. Produce and destroy them, and we position ourselves for continual progress in the war against degenerative diseases. Draw back, and we forgo all such good results. It is a hypothetical with no purchase on reality, of course, but I have often wondered what my answer to it would be.

In theory, my answer ought to be clear. If human beings were simply members of our species, it might sometimes make sense to sacrifice one or another of them for the sake of the species as a whole. But human beings are not just members of the species or parts of a whole. Each human being is a “someone” who belongs to no earthly community to the whole extent of his being. That is why we are not interchangeable. The “value” of one thousand people may be more than that of one, but the thousand are not more than one in personal dignity.

Thus, the answer should be clear. As Hans Jonas observed, society can afford to regard medical progress as optional if the price of such progress is infringing upon the “sacrosanctity” of human life. But Jonas also believed there were some things which “in sober truth, a society cannot afford.” Writing about medical research, his example was an

epidemic raging unchecked. It is not silly to think of terrorist activity—which intends, after all, to undermine all settled social life by returning us to something rather like Hobbes’s state of nature—as a political parallel.

Epidemics may, Jonas observed, be acute (the Black Death) or chronic (endemic malaria). He was writing about medical experimentation, and he seems to mean that in the face of an acute epidemic, a society—in order to survive—might have to conscript research subjects. To do so violates our sense that people should be used as research subjects only with their consent. It transgresses that moral boundary in a time of emergency because, so it seems, society cannot afford not to do so. It is a boundary I can imagine myself crossing in dire circumstances. The captured terrorist still conspiring (if only through silence) in plans for further, imminent attacks is the political equivalent of an acute epidemic. And those who hold political office may have to step out into a moral no-man’s land in deciding what society can or cannot afford in the face of that threat.

Would I authorize that the captured terrorist be slapped around? Yes. Deprived of sleep for a time and disoriented? Yes. Water-boarded once? Now I begin to suspect that it is corrupting to try to answer that question in advance, as if there were a policy that we could formulate to protect ourselves in a moral no-man’s land. But the answer must, I think, turn on whether doing it once would be more like an attempt at coercion, which is still a test of strength, or whether from the start it would aim to thingify the captured terrorist, trying to bypass altogether his capacity to decide. That brings us, however, to Thielicke’s other, very different, example: not the infliction of pain, but the use of truth serum. Would I authorize it in this circumstance? Perhaps again it is corrupting to try to answer that question in advance, but to the degree one can, I suspect the answer is yes. But, then, why not just three embryos—were that, by hypothesis, all that were needed? In each case wrong, but very little harm, is done.

These questions and reflections have all grown out of Jonas’s sense

of what a society can or cannot afford in the face of an acute epidemic that threatens its very ability to survive. Should we, perhaps, question that line of thinking? Why should it not be true of societies as much as individuals that how they live counts for more than how long? Is there anything sacred about the survival of our community—or any community? Surely not.

Saying that does not, however, solve the problem faced by those in political authority. For, even if the continued survival of our society is not the highest moral good, they have been placed in authority precisely to see to the security and well-being of the society that they serve. It is, at the very least, as Zachary Calo has noted, paradoxical “to propose that the community perish so that its laws might be upheld.”⁶ What choice have political leaders in the face of such an acute threat? If they will not or cannot step into the moral no-man’s land, they must probably resign—unless large numbers of us insist that they remain in office. But, of course, those who replace them may have fewer scruples and—as in Jesus’s story about the house swept free of a demon into which seven yet more evil demons then enter—“the last state of that man becomes worse than the first.”

What if we face not an acute but a chronic epidemic? My own sense is that this is quite a different matter, and Jonas was too quick to lump them together. It is one thing—perhaps never to be done and perhaps always wrong—to step into a moral no-man’s land in the face of an acute emergency. But if the crisis continues indefinitely, it ceases to be an emergency and becomes everyday life. Not three embryos destroyed just once, but an ongoing industry of embryo-destructive research, with which we make our peace on the ground that we do this in the face of the ongoing crisis of human suffering. We should reject the notion of a “war” against disease; it will turn out to justify transgressing most moral boundaries that present themselves.

⁶ Zachary Calo, essay in *Symposium: Torture Justifiable?* (Valparaiso IN: Valparaiso Univ. School of Law, 2009).

And, likewise, we should reject the notion of a “war” on terror. Waterboard that captured terrorist once? Well, I’m not sure we have a rule to cover the question. Waterboard him fifty or a hundred times? Surely not. That is no longer a test of strength, but of will. It is emergency as a permanent condition of life and moral no-man’s land as settled policy. And it grows out of a deep moral dis-ease. We need to learn again that it is not within our power to make ourselves, our society, or those we love secure. How easily we forget that our society and its way of life are fragile and delicate flowers. They are always at risk.

On October 22, 1939, at the Church of St. Mary the Virgin in Oxford, C.S. Lewis preached at evensong. To anxious undergraduates, many of whom would soon face death, and all of whom must have wondered what they were doing studying mathematics or metaphysics at a time when their nation was in mortal peril, Lewis said: “If we had foolish unchristian hopes about human culture, they are now shattered. If we thought we were building up a heaven on earth, if we looked for something that would turn the present world from a place of pilgrimage into a permanent city satisfying the soul of man, we are disillusioned, and not a moment too soon.”⁷ Life, and our shared way of life, are always fragile and insecure. That is not a crisis; it is human history. And during our share of that history it will always be true that how, rather than how long, we live should be our central concern.

⁷ C.S. Lewis, *The Weight of Glory and Other Addresses* (New York NY: Macmillan, 1988).

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Lying for Life? On Delayed Disclosure of Healthcare Limits

Andrew Jaspers

ABSTRACT: This article considers the ethics of delayed disclosure of the limits of healthcare to abortion- or contraceptive-minded clients. It also describes and evaluates the current practices of pro-life crisis pregnancy centers that imitate abortion-providers' advertising techniques so as to attract abortion-minded clients. I argue that such delayed disclosure and advertising are within the limits of truthfulness and that they may be maintained as a legitimate response to a crisis of terminology in the abortion debate. This conclusion validates similar techniques of "benign misleading" as used by NFP-only or abstinence-only healthcare providers.

IS SOMEONE WITH A CERTAIN SET of commitments on the life issues best described as pro-life, anti-choice, or anti-abortion? Alternatively, is someone with the opposite set of commitments most fairly called pro-choice, pro-abortion, or anti-life? Besides the perennial conflict over the proper use of these terms in political matters, there is endless conflict over many other terms and definitions in healthcare. In such a context, the responsibility to speak and live truthfully often conflicts with the policies of various institutions, frequently putting governments and patients at odds with the truth.

When government agencies or private employers set their own terms and enforce them with the threat of financial, legal, or even criminal sanctions, the healthcare provider needs to reflect on how to respond truthfully and in good conscience. Similar challenges may arise from patients who claim the same definitions and institutional force to vindicate their perceived rights to healthcare. In the face of these

challenges, the virtue of prudence may suggest that an indirect response is more warranted than a direct confrontation or vying over terms. Benignly misleading the interlocutor is one such indirect technique.

This essay explores the legitimacy and limits of benign misleading in the clinical context. Cases of benign misleading arise frequently in pregnancy referral services, organizations that attempt to counsel abortion-minded clients without initially disclosing a pro-life motive. Benign misleading is likewise employed by healthcare practitioners who refrain from abortion or contraceptive services but wish nonetheless to treat patients who seek these services.

Having served as a crisis pregnancy counselor for several years, I will consider how abortion language is typically understood by women with crisis pregnancies and how these understandings are applied, and then argue that when warranted, benign misleading is legitimate. Benign misleading is also a legitimate means for clinicians who offer NFP-only or abstinence-only medical services. Although some may criticize benign misleading, these practices should not be abandoned, for doing so would unnecessarily require clinicians and counselors to dismiss morally at-risk patients in need.

AN ACCOUNT OF CONSCIENCE

In his encyclical *Evangelium Vitae* (EV), John Paul II writes that “abortion is a sign of society’s crisis of moral sense where men cannot distinguish between good and evil.”¹ This document points to a misunderstanding of suffering that culminates in the “understandable fruit” of euthanasia (EV §30). The misunderstanding of suffering also leads to the increased practice of induced abortion when the demands of childbearing are exaggerated as justification for abortion. This exaggeration assumes an almost indisputable legitimacy when the case involves a child who is a fruit of rape or is suspected of bearing a deformity in

¹ John Paul II, *Evangelium Vitae* (Boston MA: Pauline Books, 1995), §94.

life. In the latter case the “humane” action for the child is taken to be a case of killing her to save her from the “meaningless” suffering that she would otherwise endure. The clouding of individual consciences on the basic question of the value of human life manifests itself in deeming objectively evil acts acceptable, and even laudable, when done with appropriate intentions and under certain circumstances.

Evangelium Vitae describes the paradoxical inversion of values in modern states that no longer consider many crimes against humanity to be crimes but rights (EV §25). After decades of legal protection, abortion acquires the appearance of a freedom protected by the state and permissible under any circumstances. This “freedom for abortion” already seems to be as sweeping as possible in the United States, but *Evangelium Vitae* noted an aggressive trend in the promotion of abortion. Often referred to as part of “reproductive rights,” access to abortion and contraception is mandated in many states through free healthcare (EV §25). What had been protected as the right to pursue abortion is now being understood as a right to have access to it as an entitlement.²

The abortion industry’s shift in strategy to this more aggressive approach is mirrored by a shift in its promotional language. In a position paper entitled “The Truth about Crisis Pregnancy Centers,” the NARAL Pro-Choice America Foundation warns that crisis pregnancy centers “may endanger women’s health by delaying access to legitimate health-care services.”³ “Reproductive health services” is NARAL’s euphemism for abortion, and they maintain that those who oppose

² For an analysis of this shift, see John J. Conley, S.J., “A New Assault on Conscience,” *Life and Learning XIII: Proceedings of the Thirteenth University Faculty for Life Conference*, ed. Joseph W. Koterski, S.J. (Washington, D.C.: Univ. Faculty for Life, 2003), pp. 21-28.

³ <http://www.prochoiceamerica.org/assets/files/Abortion-Access-to-Abortion-CPC-truth.pdf> (last visited September 1, 2009).

providing or receiving such services are intimidators and extremists.⁴ By this redefining of the debate's terms, the abortion industry intends to marginalize any opposition to abortion.

This strategy of redefinition by abortion providers is supported by contraceptive access campaigns in public schools that are aimed at establishing a wide future client base and at framing the terms of the debate to its advantage. Although implementation of this campaign has not yet been accomplished throughout all of the United States, I would argue that it has been accomplished in some quarters, especially in urban areas among minority women. Many such women now take it for granted that abortion is their only option in cases of failed contraception and expect that the government will readily provide it. Abortion advocates thus consider opposition to "reproductive rights" as tantamount to denying them a necessity of life and a legal entitlement. Anyone who suggests that the decision to abort a child is wrong is viewed as a strange and inhumane threat. Opposition to abortion for such women may still come from their family or religion, but in urban centers among immigrant women these ties are often negligible.

This summary of the efforts to establish a "right to access to abortion" in the consciousness of women with crisis pregnancies has been intended to describe both the state of such "rights" as understood by the abortion providers and many of their clients, and the language that they use to protect and spread this culture. It is, in short, a view that is fundamentally misguided in seeing the legitimacy of abortion as a part of the "reproductive rights" to which the state guarantees free access. Clearly, those who would affirm human life must contest these redefinitions, so as to restore a sense of the pro-life meaning of the terms, lest the terms of the debate be definitively prejudiced against life.

⁴ Steven W. Mosher has written on international efforts to redefine "reproductive health" and other terms, e.g. "'Reproductive Health Care,' the 'Demographic Imperative,' and the Real Health Needs of Women in the Developing World (Part Two)," *The Linacre Quarterly* 76/2 (2009): 181-211.

THE RESPONSE OF CRISIS PREGNANCY CENTERS

Through their experiences with women who have been thoroughly deceived by the abortion industry on these fundamental questions of freedom, truth, and the good, crisis pregnancies centers and hotlines have developed a controversial strategy for reaching these women through “benignly misleading” them to consider the option of birth. It should be noted, however, that not all crisis pregnancies centers temporarily conceal their clinical and pastoral goals. Organizations like Birthright and many others clearly disclose their ethos in their advertising. However, many crisis pregnancy organizations have relied on advertising that conceals their purposes so as to better attract patients who might be abortion- or contraception-minded. In this essay I am concerned to show that these strategies of concealment are morally legitimate.

I would like to provide a sketch of the typical discourse used with women I counseled during a three year period in the Bronx. The women with whom I worked were from a culturally and racially pluralistic context. Almost every woman noted that she had used contraception in the past, but that it had failed or was not being used at the time of her current conception. Abortion would seem to her to be the logical back-up to failed contraception. Although some women sought their abortions with emotional heaviness, many acted as though they were undergoing a minor inconvenience, or were even light-hearted when they were pursuing their first abortions. They nearly always were completely ignorant of the abortion procedures and the basics of fetal development. For women who were post-abortive, there was typically an acknowledgment that their previous abortion was regrettable, but they nevertheless manifested a fatalistic drive to continue having abortions. Almost none of the women initially believed that they had any choice but abortion. Despite their abortion-mindedness, they inadvertently contacted people who intended to help them choose life—something that presumably stemmed from the advertising techniques of abortion-alternative agencies.

In advertising “free abortion alternatives,” crisis pregnancy centers and hotlines throughout the United States are routinely contacted by clients seeking abortions. Unfamiliar with the meaning of “alternatives” in its use above, the women often assume that the phrase means that free abortions are offered. Although this strategy is deemed “deceptive advertising” by the abortion providers, I will argue that there is nothing morally unacceptable in this type of advertising. But I would also like to consider a more controversial technique used by those answering telephone calls for crisis pregnancy centers or pro-life pregnancy hotlines.

Pregnancy help-center calls often proceed as follows. The client says, “I would like to schedule an abortion.” The telephone counselor typically replies: “We offer free abortion alternatives, which include a free pregnancy test, a consultation, and then we see what we can do.” The final clause typically reassures the girl who is seeking an abortion and then presumes that she will be provided with one even though the counselor has not actually said so. The offer in the last clause is formally true in that the center will explore her pregnancy options, including the support that is available for her to carry the child to term. The counselor no doubt expects that the client might interpret the statement incorrectly to mean that the center will help her pursue an abortion. This technique is somewhat more controversial than the “free abortion alternatives” advertisement in that an informed interpretation of the advertisement would dissuade one who seeks an abortion from calling. But the expression used on the telephone leaves room for an incorrect or a correct interpretation.

The promise to “see what we can do” is made to the client in light of her authentic needs and desires as a woman with a crisis pregnancy, where those desires and needs cannot possibly include abortion. The pregnant mother’s unborn child has a right to life, and the mother has a duty to carry that child to birth. Notwithstanding, the counselor recognizes the probability that the expectant mother does not understand her rights and duties, and that if she remains in this ignorance, she will

likely pursue the abortion and suffer various psychological, spiritual, and possibly physical harms. The counselor also recognizes that she will be more able to inform the client of her rights, duties, and options in an in-person conference than in a telephone call. Thus, the counselor does not disabuse her on the telephone of the mistaken assumption that she will be provided with an abortion when she comes to the counseling center. She is in fact often only disabused of this notion after twenty minutes of consultation on abortion procedures, risks, and alternatives. Given the various dispositional factors and educational disadvantages typical of these women, turning them from their abortion-mindedness to a state of desiring to bring their children to birth tends to require a minimum of a one-hour in-person consultation and subsequent weekly follow-up phone calls as needed.

Despite the exigencies of crisis pregnancy care, the good consequences of benign misleading do not necessarily justify its use. If good consequences are obtained by means of an intrinsically evil act, they must not be pursued.⁵ The Catholic Christian tradition has also generally accepted St. Augustine's condemnation of lying as an intrinsic evil, and as such lying is morally unacceptable under any circumstances.⁶ That one may not lie even to protect an innocent person from being killed seems to most people to be morally obtuse. The problem of the lie's intrinsic evil is beyond the scope of this essay, but it may be said that St. Augustine's ban presupposes the need for grace to refrain from lying, and that the God of truth gave language for leading others to truth. If one should sooner die than commit a mortal sin, which earns eternal death,

⁵ The initiatives of Mark Crutcher, and more recently, Lila Rose, President of an organization called Live Action, likely violate the limits of truthfulness. In her efforts to expose the deceptive practices of Planned Parenthood workers by covering up statutory rape cases, Rose declares that she is fifteen years old when she is actually in her twenties.

⁶ Paul J. Griffiths recently defended St. Augustine's ban on lying in *Lying: An Augustinian Theology of Duplicity* (Grand Rapids MI: Brazos Press, 2004).

then this conclusion seems more reasonable.⁷ At the same time, neither St. Augustine nor St. Thomas Aquinas regards all lies as having equal gravity, and the latter believes that lies to protect the innocent are at most venial sins.⁸ But the Catholic tradition tends to discourage all lying. Two definitions of lying in the most recent editions of the *Catechism of the Catholic Church* help assess the context and limits of lying.

Promising to “see what we can do,” a technique that allows for a misinterpretation of one’s statement, is a permissible use of speech in light of the rights, duties, and ends of the woman and the counselor’s truthful care for her, as understood by the *Catechism*. Since truth for the human person must be compatible with the person’s ultimate good, truthfulness must necessarily be tied to the rights and duties that lead them to this good. Thus, the first edition of the new *Catechism* defines lying as leading another into error who “has a right to know the truth” (CCC §2483). This definition’s reference to the recipient’s right to know the truth takes into account the global dimensions of truth-telling. First, the woman has no moral right to have an abortion, nor to know where she can have one. Since the child’s right to life should prevail over any alleged right to control over her body that would involve abortion, she even has a duty *not* to pursue his death. Thus there is no denial of truthful information that the hearer has a right to know, and no one is led into error about information to which she has a right.

In a particular conversation, it may become apparent that the person with whom one is speaking has subscribed to erroneous notions of rights, duties, and entitlements. Upon recognizing the other’s confusion, it is

⁷ Alasdair MacIntyre appeals to agents’ duties to justify lying to protect an innocent in “Truthfulness, Lies, and Moral Philosophers: What Can We Learn from Kant and Mill” in *The Tanner Lectures on Human Values 16*, ed. Grethe B. Peterson (Salt Lake City UT: Univ. of Utah Press, 1995), pp. 307-61. In this paper, I argue that such duties inform the meaning of terms but cannot justify lies.

⁸ Lawrence Dewan, O.P., “St. Thomas, Lying and Venial Sin,” *The Thomist* 61/2 (1997): 279-99.

often of value to inform or correct the other. However, prudence may dictate that the other's good may be better served by refraining from correction at that time. What is most critical in these contexts is *not* to adopt the false terms of the other. This justification comes from what was stated above about the need to resist hostile discourse laden with false terms and concepts.⁹ Accepting the terms of the erroneous party in this way for the sake of a further good was considered and rejected by St. Augustine in his consideration of the problem of lying to trap heretics.¹⁰ The true sense of terms establishes the limits of the agents' rights to know, and the terms that may be used in truthful discourse. Thus, the client's right to know the truth has its reference to the true meanings of the discourse, which is broader than the particular conversation. Provided that one's statements are consistent with this broader context of discourse, one cannot be found to be lying.

The second definition of lying in the *editio typica* of the *Catechism* permits a more local evaluation of an act of lying. This second definition can be seen to supersede the previous definition, which arguably provides too lax of a definition of lying, though it does appreciate the hearer's right to the truth. The second definition distinguishes lying from inculpably giving incorrect information in that lying is "speaking a falsehood with the intention of deceiving" (CCC §2482). But the expression "We will see what we can do" is not a falsehood. It is a vague assurance. The problem arises around the alleged "intention to deceive" in speaking these words. I will argue that one need not intend to deceive

⁹ Alexander Pruss argues for the acceptability of a form of deception that is based on accepting the false terms of the interlocutor in "Lying and Speaking Your Interlocutor's Language," *The Thomist* 63/3 (1999): 439-53. This seems to conflict with the good of personal integrity that Grisez correctly defends. It also misappropriates words, implicitly denying the gift of speech, as Paul J. Griffiths argues in *Lying: An Augustinian Theology of Duplicity*, p. 85.

¹⁰ See William E. Mann, "To Catch a Heretic: Augustine on Lying," *Faith and Philosophy* 20/4 (2003): 479-95.

with this utterance, and that it is permissible to use.

NEAR LYING AND INTENTIONAL DIFFERENCE

Crisis pregnancy centers, primary care physicians, and selected other specialists routinely receive requests for “birth control.” The likely sense of this term for the client is one that includes contraception. However, an NFP-only physician will likely take “birth control” and “family planning” to exclude contraceptives. Is the care provider required to announce this aspect of his or her practice? What if the care provider wishes to offer the client NFP or abstinence education? I would like to suggest that the care provider can schedule the client seeking “birth control” with no intention of providing her with contraception.

A look at the intentions of the speaker and the interlocutor reveal why this is not intentional deception. Given that the speaker and interlocutor have different definitions of “birth control,” the care provider must either adopt the client’s definition, or inform the client of the definitional disparity, or simply act in accord with his own definition. As was argued above, it is imperative that one not adopt the faulty definition of the interlocutor. I would also like to argue that the care provider need not inform the client of the definitional disparity. Classical Catholic ethical theory recognizes the duty of a person to seek the truth, but not necessarily to inform the ignorant at all times and in all ways. Thus, the duty to determine what a term means rests with the client. The care provider may wish to avoid a possibly irate client who came expecting something different. However, the care provider may elect to risk this response for the sake of reaching out to a client who has lost her way. Thus, the care provider may simply act in accord with his definition of, for instance, birth control, even while he suspects that the client has a different understanding of the term. The care provider need not intend that the client have the definition that she does, even though he foresees that she will act in accord with it. Happily, her false definition should in this instance ultimately lead her towards truth and goodness.

Does this solution to ethical healthcare in the context of a crisis of

definitions open the door to creative re-definitions for the sake of pro-life goals? If a patient calls to ask that her pregnancy be terminated, can one instruct one's scheduler to reply by saying something like: "Okay, how would Tuesday at 8AM work for you?" while understanding "pregnancy termination" to be another way of saying "bringing a pregnancy to term"? The answer seems to be no. This is ruled out because "termination of pregnancy" clearly has a current sense of abortion in the conversation. One cannot equivocate on "termination of pregnancy," for instance, by mentally applying the qualifier "through the natural birth process," which depends on a future sense of "termination of pregnancy." The definitions of terms must legitimately correspond to what a speaker knows about the relevant context.

CONCLUSION

In this essay we have examined the customary practice of benign misleading in the context of crisis pregnancy or clinical settings. We have seen that the true sense of an expression must take into account the duties and ends of the human person. In light of these ends and duties, it is licit and sometimes necessary to lead the misguided person to the truth through the use of ambiguous language or of terms of which she has an inadequate definition. One has a responsibility not to concede controversial terms to the opponent and to challenge these terms. The client should not be abandoned to a dangerous course of action with only a rejection or word of disapproval. At the same time, if one is unable to attract and convince the client of ethical healthcare goals within the limits of truthfulness, subsequent moral evils that are pursued by the client are not the responsibility of the one who offered no active support for them.

It has been clear in my experience that nearly all women who are experiencing crisis pregnancies can be told what they need to hear to be brought in for a consultation without any telling of falsehoods. While most cases are handled by assurances like, "We will see what we can do," even more specific requests can be handled by using the opponent's

words but maintaining a true definition of them. Thus, when a woman calls specifically wanting to know whether one carries the morning-after pill or not, one might reply “We carry the full range of reproductive health options” or “We are able to take care of all of your pregnancy needs.” Since these sentences are perfectly true, it is then left to the clinician or counselor to help the client discover her best option in an interview that progressively leads her into greater truth in language and life.

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How the Abortion Option Can Make Women More Vulnerable to Exploitation and Abandonment

Richard Stith

ABSTRACT: This essay argues that besides the benefits and burdens usually discussed in relation to elective abortion there are various effects that are less often considered, including decreases in the freedom of women and additional burdens on those who choose to give birth, such as loneliness, guilt, and abandonment. As the feminist writer Catherine MacKinnon notes, abortion does not liberate women; it only frees male sexual aggression.

DEDEFENDERS OF ELECTIVE ABORTION usually point to two benefits for pregnant women: freedom as a value in itself and relief from significantly burdensome births. Anti-abortionists have countered by claiming that there are also costs to abortion: the termination of unborn lives and damage to women's physical and mental health. This essay does not enter into the debate over how to balance such benefits and costs. Rather, it seeks to show that there are other costs that neither side normally notices. The abortion option can actually make women less free and birth more burdensome. Whatever one's ultimate policy choice regarding abortion may be, these harms should be taken into account.

The key datum upon which we shall deliberate is that sex no longer causes birth. Given the availability of elective abortion, sexual intercourse can only cause choice. It is choice that causes birth.

President Obama has recently reiterated that we "need fathers to

recognize that responsibility doesn't end at conception."¹ His and our problem is that in a very real sense male responsibility does in fact end at conception. Men can now choose only sex, not fatherhood. Mothers alone determine whether children shall be allowed to exist.

This transfer of causal responsibility from sex act to choice act does more than increase pressure on women to give in to male desires for irresponsible sex, though it does do that. It also adds loneliness and guilt to the choice of birth, and abandonment after birth, since women are now solely to blame for any burdens (to themselves or to others) that are incurred with the arrival of a child. Some of these effects could be alleviated by greater empowerment for women, but others probably cannot be mitigated in any way, as we shall see.

Note that the words "elective abortion" and "abortion option" refer, in this essay, to actual access to abortion on request, not to its legality. Although legality may often be identical to availability, it is not always so. For example, abortion could be fully legal in a nominal sense but still not a real option for many because of moral, financial, or geographic constraints. Or abortion might be legally restricted to health reasons, but in fact be easily accessible for any reason. One more note: this essay focuses especially on young, unmarried women because this group is among those most likely to make use of an open abortion option.

IF SEX LEADS ONLY TO CHOICE,

WOMEN BECOME MORE VULNERABLE TO EXPLOITATION

Elective abortion was legalized in 1973 in the United States, in the famous *Roe v. Wade* case, as a defense of "privacy." One of the most critical voices responding to *Roe* came from the Left, that of radical feminist Catherine MacKinnon. In her essay "Privacy vs. Equality."²

¹ "President Delivers Exhortation to Fathers," *The New York Times*, June 20, 2009, p. A10.

² Accessible in Catherine MacKinnon, *Feminism Unmodified: Discourses in Life and Law* (Cambridge MA: Harvard Univ. Press, 1987), pp. 93-102.

MacKinnon explains that “abortion’s proponents and opponents share a tacit assumption that women do significantly control sex. Feminist investigations suggest otherwise. Sexual intercourse...cannot simply be presumed co-equally determined” (pp. 94-95). She adds that “men control sexuality... *Roe* does not contradict this” (p. 97).

MacKinnon continues her argument: “So long as women do not control access to our sexuality, abortion facilitates women’s heterosexual availability. In other words, under conditions of gender inequality, sexual liberation...does not liberate women; it frees male sexual aggression. The availability of abortion removes the one remaining legitimized reason that women have had for refusing sex besides the headache.... The Playboy Foundation has supported abortion rights from day one...” (p. 99).

Referring specifically to the *Roe* court opinion, MacKinnon comes to the conclusion that “[*Roe*’s] right to privacy looks like an injury got up as a gift.... Virtually every ounce of control that women won out of this legislation has gone directly into the hands of men...” (pp. 99-101).

Let us try to unpack the above claim that “male sexual aggression” has been released, in that “the availability of abortion removes the one remaining legitimized reason that women have had for refusing sex besides the headache.” In the days before elective abortion, intercourse might lead to birth. So a woman might well legitimately refuse a man’s sexual advances where neither of them were using birth control. Indeed, since no method of birth control is foolproof, even if a contraceptive (such as a condom) were being used, she might still refuse him by saying that she just didn’t want to take any chances. Abortion provides a failsafe: “Even if something goes wrong, there’s a way out.” So, he can now argue, “What’s your problem?” he can now argue. In other words, males may no longer take “no” for an answer. Knowing that their partners have a way out of pregnancy, men may be less willing to make that risk acceptable to her by using birth control, or for that matter by the ancient method of promising love and marriage should pregnancy occur. This seems to be part, at least, of MacKinnon’s argument.

I recall a law student who would admit when pressed: “I’m in favor of keeping abortion legal because I don’t like using condoms.” If abortion were unavailable, his fear of fatherhood would lead him to use a condom, in order to avoid begetting a child. But since abortion could now come between sex and birth, he saw no benefit to himself in missing any portion of sexual pleasure, even though he thus imposed a risk of unwanted surgery on his partner. He may have assumed that a rational partner would choose abortion either freely or under pressure from him, in order to end an unwanted pregnancy. With less deliberate callousness, under the influence of passion almost any male may just think quite simply: “At least there’s a way out if the unlikely happens and pregnancy occurs.”

I have also met a clever female undergraduate who was living with her boyfriend and thought that she had solved this problem. When I asked whether she was for or against abortion, she answered: “I’m pro-choice, but you can bet I’ll tell him I’m pro-life!” She reasoned that, in light of her warning, he would be careful not to fool around in ways that could lead to pregnancy.

This white lie, however, may still not provide protection for every young woman in her situation. A lover who thought abortion an option for his female partner might indeed take some risks with her. But if she says she is pro-life, so that he thinks abortion is not an option for her, he might just decide to keep her from getting pregnant by leaving her for another woman, someone more open to abortion, a woman who does not insist on him using a condom. Even though the undergrad of whom I spoke did not want unprotected sex, the availability of abortion reduces her competitive sexual attractiveness if she rejects abortion as an option *ex ante*. Even though she is a tough and clever bargainer, the presence in the sexual marketplace of women willing to have an abortion reduces her bargaining power. As a result, in order not to lose her guy, she may be pressured into doing precisely what she does not want to do: have unprotected sex, then an unwanted pregnancy, then the “voluntary” abortion that she had all along been trying to avoid.

Even though her abortion in this case is not literally “forced” or done under great pressure from him, it is in an important sense imposed upon her. And far from alleviating her overall situation, it returns her to the same sexual pressures, perhaps made worse by a new assurance to her boyfriend that she is willing to take care of any new problem pregnancy.

Claims like those made above are fundamentally not empirical. They are founded on the inner logic of choice, and thus count at the least as tendencies to be watched for, even though they might not be noticeable if they were commonly drowned out by countervailing behavioral forces. In fact, economists have shown that such scenarios became common once abortion was legalized in the United States. Easy access to abortion has increased the expectation and frequency of sexual intercourse (including unprotected intercourse) among young people, thereby making it more difficult for a young woman to deny herself to a man without losing him and thus increasing pregnancies and sexually transmitted infections.³

Furthermore, if she attempts to choose birth instead of abortion, she may well find him pushing the other way. Her boyfriend’s fear of fatherhood would once have been focused on intercourse itself and could have led him either to be careful to avoid conception or else (overcoming that fear) to commit himself beforehand to equal responsibility for the child in case of pregnancy. His fear now will turn to getting her to choose abortion. One investigator found that 64% of American women who abort feel pressed to do so by others.⁴ Another discovered that

³ Jonathan Klick and Thomas Stratmann, “The Effect of Abortion Legalization on Sexual Behavior: Evidence from Sexually Transmitted Diseases,” *Journal of Legal Studies* 32 (2003): 407.

⁴ Vincent M. Rue et al., “Induced Abortion and Traumatic Stress: A Preliminary Comparison of American and Russian Women,” *Medical Science Monitor* 10/10 (2004): SR 5-16.

American women almost always abort in order to satisfy the desires of people who do not want to care for their children.⁵

Catherine MacKinnon preceded her insistence that the abortion option leads to greater male sexual aggression with a caveat, however. She said this occurs “under conditions of gender inequality.” She seems to imply that more equality for women could reduce the male exploitation that the availability of abortion causes women. This makes sense. To the degree that individual women are economically, educationally, and in other ways empowered, they will be much more likely to stand up to male pressures to have unwanted sex (and to have unwanted abortions in order to give the guy still more unwanted sex). Concrete measures of assistance would also help this empowerment and would give women more negotiating strength. If campus housing for pregnant women and parents with children is available and treated as normal, for example, a male student will find it harder to pressure his girlfriend into abortion, or indeed to push her into sex under the assumption that she will choose abortion if pregnancy occurs.

Counteracting the negative forces of sexual competition is more difficult. Even if women were universally to agree to refuse sex without condoms, for example, enforcement of this agreement in such an intimate sphere would be nearly impossible. Certainly, the usual recourse of industries that want to stop competition on some matter, i.e., government regulation, would not easily work here. So women would always be tempted to increase their individual sexual competitiveness by consenting to sex without a condom, while relying on abortion as a backup, thus causing female solidarity and power to collapse. Only women strong enough to forgo boyfriends altogether, perhaps like Catherine MacKinnon herself, might be likely in the end to resist.

Notice, too, that just as involuntary sex and involuntary abortion may be less frequent in societies where women are relatively empow-

⁵ Frederica Mathewes-Green, *Real Choices: Listening to Women, Looking for Alternatives* (Chesterton IN: Concilia Press Ministries, 1997).

ered, despite the legal availability of abortion, they will tend to be more frequent where women remain relatively powerless, precisely as a result of abortion's availability. To the degree that a culture is built on *machismo*, the legalization of abortion will make women relatively worse off by giving men another weapon to use to manipulate women as sex objects. To the degree that an economy employs only men, leaving women dependent on economic handouts, women will be much less likely to be able to resist male pressures to make use of of abortion if it becomes available. Wherever men make women's decisions for them, the option of abortion will be a man's choice, regardless of how the law may label it.

This fact is fundamental for human rights activists in developing nations to consider. In those countries, only a thin, elite layer of truly independent and powerful women may be relatively unharmed by the availability of abortion, because only for them is the abortion option more nearly their own. Proclaiming a right to abortion in developing countries may mean just adopting the viewpoint of these well-to-do professionals. (No surprise here, for these elites are often the only voices for women that are heard in the transnational political arenas where abortion is debated.)

IF CHOICE IS WHAT CAUSES BIRTH,

WOMEN BECOME MORE VULNERABLE TO ABANDONMENT

It has been argued that empowering women would help them to resist male pressures to risk pregnancies and have abortions. But, paradoxically, the option of abortion may make sympathy, solidarity, and consequent empowerment in fact less likely.

When birth was the result of passion and bad luck, parents and friends could easily sympathize with a young woman who was going to need help with her baby. If money or a larger place to live were going to be necessary for her to stay in school, a sense of solidarity would beckon. All the more so in the case of the boyfriend, for he was as responsible as

she for the child. He might offer to get a second job or otherwise to shoulder a part of the heavy burdens that she could anticipate.

But now that continuing a pregnancy to birth is the result neither of passion nor of luck but rather of her deliberate choice, some of those who would have helped may have second thoughts. After all, she can avoid all her problems by just opting for abortion. So, if she decides to take those difficulties on, she must think she can handle them. (Even if others offer to help, she may refuse. It is one thing to accept help when one is desperate and something quite different when one has an alternative. She may feel selfish in letting her boyfriend take a second job when she can entirely avoid being in need by opting for abortion.)

Birth itself may be followed by blame rather than support. Since she was the only one with the right to decide whether to let the child be born, the responsibility of caring for the child can easily seem to the boyfriend likewise to be hers alone. Especially if he favored an abortion, and offered to pay for it, he will think that her choice not to abort is the sole cause of the child coming into this world. The baby is her fault.

It may also seem unfair to him that she is given a way to escape from motherhood (by not being legally required to give birth) while he is denied any way to escape from fatherhood (by still being legally required to pay child support). If consenting to sex does not entail consenting to act as a mother, why should it entail consenting to act as a father? Paternity support may seem to him quite unjust, and he may resist compliance with his legal duties.

Prior to the legalization of abortion in the United States, it was commonly understood that a man should offer a woman marriage in case of pregnancy after intercourse, and many did so. But with the legalization of abortion, men started to feel that they were not responsible for the birth of such children, and consequently not under any obligation to marry a woman who refused to have an abortion. In gaining the option of abortion, many women have lost the option of marriage. The number of families that are headed by a single mother has thus grown consider-

ably with abortion, resulting in what some economists call the “feminization of poverty.”⁶

The mother is even worse off if, during pregnancy, tests show that the child will have a disability. It is common for doctors to press for abortion, in order to be sure that she does not later blame and sue them for the costs of raising her special child. Some have suggested that healthcare plans should provide no post-birth coverage for a handicapped child whose mother knowingly refused a paid abortion. If she does not abort, after all, she will be causally responsible for the costs and the alleged burdens that this kind of child brings for the father and for society. Even her friends and neighbors may make her feel guilty or ashamed of not choosing to abort her child.⁷

An employer may well likewise react negatively to maternal needs where abortion has been available. If he (or the State) pays for abortions, he may feel less obligated to shape his labor practices to the needs of pregnant women or women with child-care responsibilities. If maternity causes problems with work routines or job schedules, the employer may well consider these to be “private” or “personal” problems that female employees brought upon themselves by deliberately refusing to abort their children. The availability of abortion makes women’s claims for better working conditions lose a measure of felt legitimacy.

On a theoretical level, it is easy to understand why the option of abortion, though at first sight seeming to many a simple liberation, in fact opens a Pandora’s box. Throughout human history, children have been the inevitable consequence of natural sexual relations between men and women. Therefore, both sexes knew they were equally responsible for their children, and society had no choice but to respond by somehow

⁶ George A. Akerlof, Janet L. Yellen, and Michael L. Katz, “An Analysis of Out-of-Wedlock Childbearing in the United States,” *Quarterly Journal of Economics* 111 (1996): 277.

⁷ Erika Bachiochi, ed., *The Cost of “Choice”: Women Evaluate the Impact of Abortion* (San Francisco CA: Encounter 2004), pp. 46-47.

facilitating their upbringing. Even the advent of contraception did not fundamentally change this dynamic, for all forms of birth control are fallible. Despite contraception, births still happen and children must be taken care of.

Elective abortion changes everything. Abortion absolutely prevents the birth of a child. Thus a woman's free choice *for or against* abortion breaks the causal link between conception and birth. It matters little what or who caused conception. It matters little that the male involved may have insisted on having unprotected intercourse when she did not want it. It is she and she alone who finally decides whether the child comes into the world. She is the responsible one. For the first time in history, the boyfriend and the doctor and the health insurance actuary can point a finger at her as the person who in the end allowed an "inconvenient" human being to come into the world.

The deepest tragedy may be that there is no way out. We face not a male chauvinism that can be overcome, not a pressure that can be reduced or countered, but an inconvenient truth that must be faced. By granting to the pregnant woman an unrestrained choice over who will be born, we make her alone ultimately to blame for how she exercises her power. Nothing can alter the solidarity-shattering impact of the abortion option.

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Right to Life: A Right Beyond Ideology The Case of Tabaré Vazquez

Mario Ramos-Reyes

ABSTRACT: Both socialism and liberalism are ideologies that were proposed as substitutes for Christendom. But, as the saying goes, in Mexico even Communists are *Guadalupanos* –that is, faithful to the Our Lady of Guadalupe. This attitude of faith as a way of looking at reality without an ideological lens, or even looking at nature without naturalistic assumptions, has long been a part of the Latin American historical landscape and culture. The case of Tabaré Vazquez (President of Uruguay from 2005 to 2010), a self-confessed agnostic and a socialist of the leftist political movement *Frente Amplio* (Broad Front), who vetoed a law that would have legalized abortion in Uruguay, is a striking example of such a Communist-Guadalupano. This paper is an account of his story and the reasons why a socialist president defended the right to life with arguments that would make any secularist cringe.

ACCORDING TO TABARÉ VAZQUEZ, it is more important to deal with the real causes of abortion by protecting women, particularly poor women, from exploitation and from the indifference of their partners than to allow its legalization.¹ With this basic conviction, the former president of Uruguay, Tabaré Vazquez (2005-2010), concluded the remarks in which he stated his reasons for vetoing a bill that sought to decriminalize abortion in his country on November 14,

¹ See Vazquez Tabaré, Presidential Decree, November 14, 2008. Accessible at: www.180.com.uy/spip/IMG/pdf/decreto_veto_aborto-2.pdf.

2008.² Vazquez, a physician by profession and a socialist by conviction, opposed his own political movement's attempt to introduce legislation that would have allowed abortion to be legal in Uruguay. This situation presented the paradox of a socialist and a progressive who was nonetheless against a law that is supposed to be one of the landmarks of social progress.

Some, of course, may interpret his action cynically, as a kind of opportunism designed to please the conservative forces of Uruguayan society. This interpretation might carry some credibility in other parts of South America, but it does not hold in Uruguay. A critical reading of the history of the country shows an unmistakably anti-clerical and secularist trajectory, perhaps the most pronounced of all countries in Latin America. In my view, Vazquez's decision suggests a careful evaluation of reality, including the medical and biological aspects of public policy, in preparation for a decision that was based not on ideological prejudices but on facts about human life. Could we claim, then, that the right to life ought to be beyond ideological commitments? If the answer is affirmative, would not the desire for cooperation and dialogue with progressives to reach a rational consensus on issues of human sexuality be validated as an alternate path to the current "culture war"?

Reflection on this question, however, could lead us away from the central aim of this presentation—an examination of the reasons for the veto by the Uruguayan president, with special focus on the historical and cultural differences at work in the ideologies of Latin America. In addition to seeking an explanation of Vazquez's decision, my purpose here is to look at the process by which religious faith is acculturated, especially in relation to the Catholic Church. A careful reading of these antecedents may provide some clues that can illuminate Vazquez's veto and thereby help us to understand a series of historical events in the history of Latin America. First, I will survey various stages in the democratic tradition of Uruguay, and then the process for the assimilation of ideology in Latin America. Finally I will attempt to explain the

² This paper was delivered in May 2009 at the UFL Conference in Minneapolis while Dr. Tabaré Vazquez was still the president of Uruguay. He left the presidency in March of 2010.

reasons for the veto of the abortion bill. Could this veto have been a product of a view of reality beyond any political ideology? Could it be read as an encouraging sign that looking at reality as such, without the taint of ideological prejudices and without appeal to religious tradition, might be a reliable method for justifying and legitimizing the right to life?

I. URUGUAY: FROM DEMOCRACY TO DICTATORSHIP AND BACK

At one time called the “Switzerland of America,” Uruguay enjoyed a stable democracy and economic growth through the first half of the twentieth century. Uruguay is a small country located in southwestern South America, sharing borders with Brazil and Argentina and as well as historic ties to Paraguay, with a population of approximately four million people. Its historical capital, Montevideo, with its eyes open to the Rio de la Plata, was a military fortress, the center of political and cultural life during colonial times. The stability of Uruguay’s democracy has been due in part to what was called the Batllista Reform, a reference to the populist leader José Batlle y Ordóñez, president of the republic during the first and second decades of the twentieth century.

The success of Batlle’s reforms came about by two key factors. The first was the affirmation and implementation of a welfare state, an interventionist state that created a significant bureaucracy and a political clientele. Second, *batllismo* made possible the participation of the middle class and the working class in the administration of the government. The result was a participatory system that gave permanent representation to underprivileged classes through certain constitutional changes such as the so-called collegial system (*colegiado*). The dual executive power used in this system has served to create a political culture of non-exclusion, especially when compared with other nations in the hemisphere.

International finances as well as internal economic reasons began to change Uruguay’s political panorama in the 1950s. The governmental system went into crisis in the mid-1960s and a new constitution was adopted in 1966 that restored a presidential system. Elections under this new constitution were held and won by General Gestido from the

traditional Colorado Party. A short time later he was abruptly replaced by the vice president, Jorge Pacheco Areco. This move initiated a series of delicate political events, prompted by the appearance of urban guerrillas. Pacheco had to face a revolutionary movement led by the legendary group called the Tupamaros, whose aim was to defeat the capitalist system. At that point the days were numbered for Uruguayan democracy. The trigger for that tragedy was the kidnapping and murder by the Tupamaros of Dan Mitrione, an American citizen, an officer of U.S. Office of Public Service, who had allegedly coached the Uruguayan police in forms of torture with electric devices.

The consequences were anything but expected. Pacheco Areco established a state of siege in 1968 that suspended civil liberties, thus escalating the crisis. The confrontation with the guerrillas reached its period of highest activity during the next presidency, that of Juan María Bordaberry, from 1972 to 1976. The national liberation movement of the Tupamaros was ultimately defeated in a struggle that combined urban and rural warfare. It must be noted, however, that the armed forces exercised power *de facto* from 1973 until 1985 through merely “nominal” presidents—first Bordaberry, and later Alberto Demicheli, Aparicio Méndez, and finally Gregorio Alvarez. From being an example of stability and political maturity, Uruguay became a mere façade of democracy for about twenty years. But as early as 1980 civil forces began rejecting the constitutional reforms imposed by the military. By mid-decade popular pressure forced the military to call for general elections in 1984, which resulted in the election of Julio María Sanguinetti, a member of the Colorado Party, as the new president.

The goal of the Sanguinetti administration was to achieve political peace and reconciliation by ending the long years of guerrilla violence and state repression. Hence, an amnesty law was passed with the purpose of turning that sad page of Uruguayan history. In 1990 Luis Alberto Lacalle of the Blanco Party began a term as president lasting to 1995 that focused on the regional aspect of economic integration, on the incorporation of Uruguay to the Mercosur, the common market of the Southern Cone, and on policies of privatization and the reduction of state intervention on the economy. These policies, it must be noted, changed the traditional Uruguayan welfare state and prompted a political reaction

after the re-election of Sanguinetti for a term that lasted until 2000. He was succeeded by Jorge Batlle (a namesake of the Uruguayan reformer) of the Colorado party but allied with the Partido Blanco. It was the defeat of the then growing *Frente Amplio* (Broad Front), a comprehensive collation of leftist political movements, that launched the candidacy of the Socialist physician Tabaré Vázquez.

II. IDEOLOGY AND THE CRITIQUE OF RELIGION

In 2004 Tabaré Vázquez was elected president. For the first time a leftist coalition had managed to win not only the presidency but a majority in both chambers of congress. Vazquez obtained more than 51% of the votes. Thereby he became the first president in the history of the country who did not belong to either of the traditional parties, Blanco or Colorado. Vazquez had practiced medicine for several years as an oncologist and had been mayor of the city of Montevideo from 1990 to 1995. The policies of Vazquez proved different not only from the policies of previous Uruguayan administrations but from those of other socialist governments across Latin America, such as that of Chavez in Venezuela.

As president, Vazquez proved to be a prudent and yet pragmatic politician, opposed to the orthodox socialist economic policies of his party while remaining faithful to the pursuit of human rights and ready to re-open investigation into abuses that had occurred during the years of military rule. Politically socialist but economically pro-free market and free trade, Vazquez nevertheless shocked the country and crossed the ideological boundaries of his movement by vetoing an abortion bill proposed by his own party.

How can this action be explained? Was it mere pragmatism, or perhaps some sort of political expediency? I am not persuaded that either of these were the major reason. But before considering the rationale for his veto, it is imperative to take a look at the issue of ideology and its historical acculturation in Latin America, especially in relation to the political and ecclesial dimensions of Catholic culture there. Needless to say, both liberalism and socialism as generic ideologies were born out of the Enlightenment, and both aimed to replace the old Christendom. That

is also the reason why, over the last two centuries, several attempts have been made to reconcile these ideologies, in all their variations, with the Catholic tradition. Most often these attempts have had negative consequences for the Christian faith. Either the faith has become irrelevant to the people and to culture at large, or in some cases it has been removed from culture and from politics altogether. It appears that ideologies in general, as Destut Tracy thought, were not only alternatives to religion but would, with time, become religious worldviews themselves.³

This latter claim would certainly be valid in some historical periods and regions of Latin America. To repeat an old Mexican saying, in Mexico, even communists are Guadalupanos—that is, faithful to the Virgin of Guadalupe. The faith of these communist-Guadalupanos is too deeply seated in the soul of Latin America for a secularist ideology to remove the faith completely. This, if you will, is a curious sociological dimension, but one that needed to be taken into account during the preparation of certain Church documents that made reference to ideology, such as the document of Puebla in 1979. Ideologies, as Puebla teaches, by defending the interests of a group and by making absolute the vision proposed, “have become secular religions.”⁴ But at the same time, it must be noted, in the process of secularization conducted by ideologies in Latin America, there has been a politicization of the faith, yet never as an anti-religious phenomenon. Ideologies were, so to speak, “baptized” in Latin America. This attitude of ideological acculturation has been the rule rather than the exception in Latin America. Indeed, far from Marx’s desire that the critique of religion is a condition for the possibility of any other critique, Latin America did not go through the process of the Enlightenment secularization in the same way and with the same magnitude that was typical of the wars of religion in modern Europe.⁵

³ Secundino Núñez, *Ideología de los Partidos Políticos en Paraguay* [*Ideology of the Political Parties of Paraguay*] (Asunción, Paraguay: Institute of Social Studies, 1987), p. 29.

⁴ See Document of Puebla, §535 in Núñez, p. 33.

⁵ See Pedro Morandé, “Modernidad y Cultura Latinoamericana: Desafíos

Are we facing an example of that communist-Guadalupano in President Tabaré? Uruguay has been, since colonial times, one of the most secular nations in South America. Within this context, the struggle against laicism and masonry by Mariano Soler, the Archbishop of Montevideo, is worth mentioning. Bishop Soler led a singular battle against Protestantism and Freemasonry in the second half of the nineteenth century, and this battle may provide a significant background for what is happening today.

In the late nineteenth century, Soler published a well-known book on *Masonry and Catholicism* that affirmed his loyalty to Rome while declaring himself open to what he called the upcoming liberal culture that he envisioned would occur with the emergence of Christian-democratic ideas. It must be noted, though, that liberalism, naturalism, and rationalism were, for the young Bishop Soler as for Pope Leo XIII, the true faces of the anti-Catholic secularism. A few years before, of course, Leo XIII had published the encyclical *Humanum genus* in 1884, denouncing Liberalism and Freemasonry, movements that had had a profound influence in Catholic circles on the continent. Bishop Soler did not stop in his negative attitude toward Liberalism. He demanded a new Christendom as a way of protecting the papacy in this time of serious crisis. The loss of the Papal States was a major concern of that time. Bishop Soler argued that to be a Freemason and a liberal Protestant were equivalent in some respects. But at the same time he predicted that a new world was coming, a world that might well include the renaissance of a new Christendom. Bishop Soler died in 1908, but his pastoral guidance is a living example of how to deal with the secularism that penetrated deeply within the Uruguayan elite and oligarchy.⁶

para la Iglesia” [“Modernity and Latin American Culture: Challenges to the Church”] in *Una Experiencia que se hace escuela. Curso de Doctrina Social de la Iglesia* [An Experience that Became a School: A Course on Catholic Social Teaching] (Buenos Aires, Argentina: Ediciones Cultura y Fé, 1989), pp. 49-61.

⁶ See the excellent account of Bishop Soler legacy by Enrique Dussel in *Protestantes y Liberales y Francmasones. Sociedades de Ideas y Modernidad en América Latina, siglo XIX* [Protestants, Liberals and Freemasons. Society

This analysis tries to move beyond seeing Vazquez's views as merely a syncretistic attitude. Vazquez's rationale for his actions compels us to see his stance as arising from a view without ideological or naturalist preconceptions. We find here an assessment that is ideologically value-free, but also lacking in religious references. Vazquez's view is not neutral, though. He seems to appeal exclusively to his experience as a physician and to the law. Medicine and empirical facts as well as a sort of methodological positivism seem to guide his judgment. It is important to note here that positivism in Latin America took a different form than it had in Europe where it took on a more anti-religious strain due to the biases of its founder, Auguste Comte. Uruguayan socialism was linked to a methodological positivism by the fact that its founder, the poet Emilio Frugoni (1880-1969), was adamant in claiming the need for an empirical analysis of reality without resorting to class-bound arguments.⁷ This stance and approach, which in itself amounts to an epistemological realism, demanded a close and faithful reading of reality. But let us turn now to Vazquez's justification of his historic veto of November 18, 2008.

III. THE REASONS FOR THE VETO

Vazquez went to Congress to justify his decision with a speech in two parts. The first part is based on three fundamental aspects regarding sexual and reproductive health. He claims that there is a consensus about the failure of abortion as a social policy. Vazquez not only emphasizes the consensus that abortion is a social evil to be avoided but also warns that in developed countries where abortion has been liberalized such as the United States and Spain, the numbers of abortions have increased. To the ears of an American audience, this statistical evidence coming from a socialist would make any member of the National Right to Life envious

of Ideas and Modernity in Latin America in the Nineteenth Century] (Mexico: Fondo Cultura Economica, 1990), pp. 24-38.

⁷ See Harold Davis, *Latin American Thought, an Historical Introduction* (Baton Rouge LA: Louisiana Univ. Press, 1992), pp. 99-103.

and any member of NARAL cringe.

Secondly, he refers to the existence of a true human life from conception and the need to protect women by law. He even suggests that the law cannot ignore the reality of the existence of life “at the beginning stage of pregnancy, as it is revealed by an honest [evaluation of] scientific data. Biology has evolved considerably. Discoveries, such as in vitro fertilization and DNA, have sequenced the human genome, making it clear that from the moment of conception there is a new life, a new being.”⁸

It must be noted that Vazquez speaks of science and genetic testing. He takes the DNA test as “the queen proof”—a definitive way of establishing the defense of life. Far from his view is any speculation of a Cartesian dualist type that separates humanity from personhood, or human nature from human-rights. Each human being is a “new creature” from conception. Thirdly, he indicates that the degree of civilization of a people is measured by the degree of respect to those in need, and especially to the protection of the weakest, because “the criterion is no longer the subject’s value based on the emotions that rise in another person, or the utility an individual provides, but the value that results from their mere existence.” This claim, obviously, does not really sound like an argument that is being made by an agnostic socialist, but rather a talking point by Mother Teresa or any faithful moral theologian of the Church.

The second part of the rationale advanced by Vazquez refers to the two dimensions of the bill that, unfortunately, have echos here in America. The first dimension concerns conscientious objection and the second refers to the nature of the abortion procedure as such. As to the conscientious objection, Vazquez rejected any regulation that would infringe upon conscience (as the law proposed to him did) because the negation of a conscience clause would “create a source of unfair discrimination toward those physicians who understand that their conscience prevents them from performing abortions, and prevent the freedom of those who change their minds and decide not to continue

⁸ Tabaré Vazquez, Presidential Decree.

performing abortions.”⁹ Moreover, he thought that the law did not respect freedom of thought in area that is deep and intimate. As for the second dimension, the nature of the act of abortion procedure itself, Vazquez vehemently rejects its characterization as a “medical act,” and thereby he reminds the legislators not to ignore international declarations such as the Helsinki and Tokyo Treaties that were incorporated into the Mercosur legislation and adopted by Uruguay since 1996. They reflect the principles of Hippocratic medicine that characterize the physician as someone who needs to act in favor of life and physical integrity. Abortion is not a medical act. An abortion policy will also mean, Vazquez argued, infringing upon their freedom because “there are many hospitals and medical institutions whose by-laws” prohibit them performing abortions.¹⁰

Finally, Vazquez goes to the root causes of abortion and proposes a realistic approach for a reproductive policy. First, he asked legislators to take a second look at the historical roots of a culture of solidarity that make a republic possible. We need, he suggests, to promote solidarity for women as well as their babies and to provide for another option besides abortion, and thus saving both the mother and her child. The project should be, the president finishes, to attack the root causes of abortion in the country and in the emerging socio-economic reality. Indeed, quite a large number of women, particularly from the poorest sectors, are the sole breadwinners of households. For that reason, we must surround helpless women with the essential protection of solidarity instead of facilitating access to abortion.

How are we to read and reconcile these arguments as belonging to a president who is a member of a party in the tradition of socialism, which calls for precisely an absolute autonomy of individuals in reproductive issues? There is no question that in a time of increasing expansion of reproductive rights (especially through the work of NGOs), Vazquez’s assessment is a happy exception to the reigning culture. But might this not just be a case of an ideological syncretism, between

⁹ Ibid.

¹⁰ Ibid.

liberalism, socialism, and a vestigial Catholicism, in the already mentioned tradition of communist-Latino-American-guadalupanos? I am not persuaded that this last assertion is the case because Vazquez noticeably avoids the use of any term, reference, or allusion to faith or institutional religion. There is no mention of any ideological principle. He relies solely on the law and facts, and on a classical view of medicine as the art of healing. This suggests, without a doubt, that the pro-abortion movement is at its core ideological, an ideology of deception and deceit in relation to the data of reality itself, a projection of people's ideas and tastes onto reality.

Perhaps Vazquez's view of ideology is closer to a creative and dynamic, faithful and loving relation to the facts of reality, eager for beauty and in awe before the gift of life, a vision that has been brewing slowly in his years of medical practice and political experience. In any case, an unmistakably realist view of humanity, beyond any ideological presuppositions and reductive lenses, pushed Vazquez to cast his veto, an action whose reasons are better explained by resorting to his intellectual honesty than a decision driven by ideology or much less so, to the vested interests of the moment. It is a fresh return to reality, with a proper astonishment arising from fascination with what is given to us, something that must be shared both with those who have and those who do not yet have consciousness of humanity. Perhaps, after reading this decision, many of us will open our hearts and pray in a way not unlike the way in which Erasmus prayed to Socrates: "San Tabaré, ora pro nobis."

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Is Breastfeeding the Moral Equivalent of Emergency Contraception in Inducing Early Pregnancy Loss?

Richard J. Fehring

ABSTRACT: This paper provides a counter-argument to the notion that breastfeeding acts as an abortifacient and is thus the moral equivalent of abortion-causing drugs, e.g., Plan B or what is referred to as emergency contraception. Those who make this comparison do so in order to ridicule health professionals who refuse to prescribe or refer abortifacient-type contraceptive drugs and to ridicule laws that protect this right of conscience for healthcare professionals. In this paper I will provide evidence that breastfeeding does not induce early pregnancy loss and that it is not the moral equivalent to the administration of abortifacient-type drugs.

William Saletan, a political columnist for the online website *Slate* (see www.slate.com), recently wrote a letter to Michael O. Leavitt, the former Secretary of the U.S. Department of Health and Human Services, concerning the administration's proposal to eliminate financial aid to healthcare institutions that violate the right of healthcare providers who, for reasons of conscience, refuse to participate in abortion and the prescribing of potentially abortifacient contraceptive methods.¹ Throughout his letter Mr. Saletan ostensibly supported the administration's proposal. He urged that the government should not only protect healthcare providers who refuse to participate in abortion but also provide protection for employees who are involved in other potentially

¹ W. Saletan, "Breast-Feeding Kills: The Pro-life Case against Birth Control, Nursing and Exercise," *Slate*, posted 5 August 2008; accessible at: <http://www.slate.com/toolbar.aspx?action=print&id=2196784>.

abortifacient activities, e.g., those employees who promote and teach breastfeeding, those who are involved with the manufacture or selling of coffee in any capacity, and those who are involved with promoting exercise. He provided studies and evidence that all three of these activities are potentially abortifacient. Presumably his proposed extension of the right of healthcare professionals to refuse, for reasons of conscience, to participate in abortion by recommending breastfeeding, coffee, and exercise was full of sarcasm and is a type of *reductio ad absurdum*.

Other—more serious—authors and scientists have proposed that breastfeeding and the use of natural methods of family planning are the physical and moral equivalents of the use of abortifacient contraceptive measures. They do so on the argument that these natural behaviors cause early pregnancy loss by a similar mechanism that equally applies to emergency contraception and the hormonal birth control pill.² Many pro-life healthcare professionals refuse to prescribe or refer for emergency contraception and hormonal birth-control because of the possibly abortifacient effect. Authors who try to make natural family planning and breastfeeding as the moral equivalents obfuscate the issue. I will attempt to show in the paper that (1) there is little evidence that breastfeeding causes early pregnancy loss, (2) there is evidence that breastfeeding does not cause early pregnancy loss, and (3) that breastfeeding is not the moral equivalent of hormonal contraceptive methods that can act as abortifacients.

STUDIES SUPPORTING EARLY PREGNANCY LOSS

The study that Saletan cited for evidence that breastfeeding can act as an abortifacient was conducted by a group of researchers (including NFP professional nurse teachers) at the Pontifical Catholic University of Chile

² J. Trussell, “Mechanism of Action of Emergency Contraceptive Pills,” *Contraception* 74 (2006): 87-89.

(i.e., Pontificia Universidad Catolica de Chile) and published in 1992.³ The study involved a comparison of 49 fully breastfeeding post-partum women and 25 non-nursing women who had regular menstrual cycles. The researchers measured plasma estradiol (E) and progesterone (P) levels twice a week up to the second postpartum menses. They found that the first post-partum menstrual cycles of the breastfeeding women had longer follicular phases but shorter luteal phases, and lower E and P levels than the non-nursing women. The luteal phase for the breastfeeding women was on average 9.2 days (SD = 0.5) in length and for the non-nursing women 13.3 days (SD = 0.4). Since about one-fourth of the non-nursing women became pregnant during the study's time-period, but only 7% of the breast-feeding women, the authors speculated that the reason for such a difference was due to interference with implantation of the embryo associated with luteal phase defects.

Another study conducted by researchers from The Johns Hopkins University concluded the same thing.⁴ They monitored 60 breastfeeding women from Baltimore and 41 from Manila (Philippines) by having them provide urine samples for E, P, LH, and human chorionic gonadotropin (HCG) on a daily basis. They found that 41% of the first ovulation cycles had luteal phase defects. They also found a 6% pregnancy rate in the first cycle after the first menses. These researchers did not report the actual luteal phase lengths. In another study, an Australian research group analyzed the P levels of 89 breastfeeding women by daily salivary samples.⁵ They defined a deficient luteal phase when P levels were less

³ S. Diaz, P. Miranda, H. Cardenas, et al. "Relative Contributions of Anovulation and Luteal Phase Defect to the Reduced Pregnancy Rate of Breastfeeding Women," *Fertility and Sterility* 58 (1992): 498-503.

⁴ P.R. Lewis, J.B. Brown, M.B. Renfree, R.V. Short, "The Resumption of Ovulation and Menstruation in a Well-Nourished Population of Women Breastfeeding for an Extended Period of Time," *Fertility and Sterility* 55 (1991): 529-36.

⁵ R.H. Gray, O.M. Campbell, R. Apelo et al., "Risk of Ovulation during Lactation," *The Lancet* 335 (1990): 25-29.

than 40 pg/mL and a short luteal phase as a period of 11 days or less from ovulation to menstruation. They found only 32% of the women had adequate luteal phases after their first menstruation. Another earlier study by an Australian group found with 55 post-partum breastfeeding women that, after the first menses, 40% had anovulatory ovarian activity, 25% experienced ovulation but with short luteal phases, and 16% had normal ovulations with deficient luteal phases, i.e., luteal phase lengths less than 11 days.⁶

It is clear from the evidence provided by the above studies that there are many (25%-40%) deficient (hormonally) and short (by days) luteal phases in the first post-partum menstrual cycle. There also is evidence that the pregnancy rate of women during the first post-partum menstrual cycle is much lower than expected in normal cycling women, i.e., 6-7% compared to 25%. The most logical explanation is that luteal phase defects cause a failure in implantation of the embryo. However, all of this evidence is indirect. None of these studies compared the pregnancy rate or the luteal phase parameters with post-partum non-breastfeeding women. However, an earlier study from Ireland monitored the daily salivary estrogen and P levels of 30 post-partum breastfeeding and non-breastfeeding women.⁷ As expected, they found that the return of first menstruation among the 20 breastfeeding women was much longer than the non-lactating women, i.e., a mean of 127 days compared to 57 days. The researchers also found that 44% of the breast-feeding women and 40% of the non-lactating women had abnormal luteal phases. There was no evidence for differences in the amount of luteal phase defects in the first menstrual cycle post-partum among the breastfeeding and non-

⁶ J.B. Brown, P. Harrison, M.A. Smith, "A Study of Returning Fertility after Childbirth and during Lactation by Measurement of Urinary Oestrogen and Pregnanediol Excretion and Cervical Mucus Production," *Journal of Biosocial Science* 9 (1985) Suppl.: 5-23.

⁷ I.I. Bolaji, D.F. Tallon, F.P. Meehan et al., "The Return of Postpartum Fertility by Enzyme-Immunoassay for Salivary Progesterone," *Gynecology Endocrinology* 6 (1992): 37-48.

breastfeeding women. In both groups 50%-56% of the first cycles were anovulatory. Therefore, the luteal phase deficiency might not be due to breastfeeding but rather to the hormonal readjustment that occurs during the post-partum time frame. Furthermore, the decreased pregnancy rates for post-partum breastfeeding women might largely be due to anovulatory menstrual cycles, i.e., menstrual cycles with no chance of fertilization.

EVIDENCE NOT SUPPORTING EARLY PREGNANCY LOSS

Evidence from other recent studies also raises some questions about whether breastfeeding might cause a disruption in implantation due to luteal phase defects. A study, reviewed earlier in this publication, showed that among normal menstrual cycles, implantation (as determined by HCG levels) can occur as early as the fourth day post-partum.⁸ The researchers gave a normal range of 5-14 days for the time of implantation after the day of ovulation. The 11-day post-partum mean reported for breastfeeding cycles (i.e., as reported in the above studies) fits well into this range. Bukulmez and Arici questioned the wisdom of diagnosing a luteal phase defect and preferred to view it as an ovulatory defect.⁹ The authors point out that luteal phase defects are poorly defined and often diagnosed in women with proven fertility.

At Marquette University we have developed a protocol for women who are breastfeeding and not ovulating and who wish to track their fertility in order to avoid pregnancy. The protocol uses an electronic hormonal fertility monitor that measures a threshold level of estrogen and luteinizing hormones (LH) in the urine. The monitor provides the user with a low, high, and peak fertility reading. The peak fertility indicates an LH surge and probable ovulation. The beauty of the protocol is that we have data on the first few menstrual cycles during the

⁸ L.A. Cole, D.G. Ladner, F.W. Byrn, "The Normal Variabilities of the Menstrual Cycle," *Fertility and Sterility*, 2008.

⁹ O. Bukulmez and A. Arici, "Luteal Phase Defect: Myth or Reality?" in *Obstetrics and Gynecology Clinics of North America* 31 (2004): 727-44.

transition from not ovulating to ovulating and having menstrual cycles (see Table One).

Table One: Menstrual Cycle Parameters and Luteal phase length of the first 3 menstrual cycles post resumption of ovulation (N = 10) with regular cycling controls (N=10).

	Total Cycle Length	Follicular Length	Luteal Length	Range
Cycle Zero	NA	NA	8.5 (SD=3.3)	4-14
Control	NA	NA	11.3 (SD=2.9)	4-14
1st cycle	33.2 (SD=6.3)	23.0 (SD=5.5)	10.7 (SD=2.4)	9-13
2nd cycle	31.6 (SD=5.2)	18.7 (SD=4.9)	13.0 (SD=1.4)	10-13
3rd cycle	28.4 (SD=4.1)	15.0 (SD=1.4)	13.3 (SD= 1.5)	7-15
Total	30.5 (SD=4.9)	14.9 (SD=5.2)	11.8 (SD=3.4)	3-20

What is interesting is the post-ovulatory phase length. According to our data, although the luteal phase is somewhat shorter in the first menstrual cycle, the overall length is within the parameters of normal. In fact, the only luteal phase that might be problematic (i.e., a length of 3 days) was from the fifth menstrual cycle after the first ovulation. The overall mean of the 22 menstrual cycle from 10 breastfeeding women was 11.86 (SD = 3.4; Range 4-20). These parameters are well within the norm of menstrual cycles (see Table 1). This provides further evidence that breastfeeding is not a direct cause of early pregnancy loss.

MORAL DIFFERENCES

Even if breastfeeding caused luteal phase deficiencies and impaired the implantation of human embryos, it would not be the moral equivalent of the use of hormonal contraception to prevent pregnancy. Breastfeeding is done primarily for the intent of providing adequate nutrition for the

neonate. Breastfeeding is natural and healthful for both the baby and the mother and is recommended, for at least one year, by the American Pediatric Association. Breastfeeding is better than artificial nutrition. Although a secondary effect of breastfeeding is the suppression of ovulation and a help in spacing children, the suppression of fertility is a natural process. The baby is the child of the mother, and the natural order is to feed and protect the child. Therefore, breastfeeding is a natural process that is good for the woman and baby even if it might have an unintended effect of disrupting implantation of an embryo. Breastfeeding is a good and natural act for the purpose of a good end that also (at times) might result in an unintended death of embryos.

Hormonal contraception, on the other hand, is used for the purpose of suppressing a natural process (i.e., fertility) for the intended effect of avoiding pregnancy and having intercourse without any consequences. Hormonal contraception deceives the naturally fertile rhythms of the woman. Even though breastfeeding could be viewed as an external hormonally suppressing process, the child's need for nutrition is not. Breastfeeding is the natural way for the child to receive nutrition. The ingestion of steroidal hormones frustrates the natural fertility of the woman. Furthermore, the suppressing effect of breastfeeding diminishes as the baby grows and starts to utilize solid foods and liquids. The use of and the need for hormonal contraception continues throughout the entire reproductive life of the woman. Hormonal contraception involves the use of an unnatural means (and some believe a bad means) for the purpose of the desired end (i.e., suppressing fertility so as to plan a family and, for some, merely to avoid a pregnancy) that also has bad consequences for the woman (and her partner and society) and might cause the demise of embryos on a monthly basis.

A secondary reason for using hormonal contraception might be to enhance one's health or to treat a disease process. The hormones, however, might just as well cause health problems, such as increased risk for blood clots, stroke, heart attack, and breast cancer. Furthermore, the use of hormonal contraception prevents the integration of fertility within

the marital act of intercourse. The intention of hormonal contraception is to frustrate this integration. Hormonal contraception is not a holistic but a non-integrative and externally controlled act. Whereas breastfeeding diminishes fertility, especially in the first six months of use, the infertility that is established is not permanent and is more like the infertility that one experiences after menopause, i.e., it is a natural infertility. But probably the biggest difference between hormonal contraception and breastfeeding is that contraception takes fertility and procreation out of the picture altogether. It makes the contracepting individual susceptible to being an object of sex rather than a person deserving of love and acceptance of who they are—not who they are minus their fertility.

The use of hormonal contraception can lead to the view that fertility and the potential child are an enemy that needs to be avoided rather than cherished. This was the view of contraception that was put forth by Pope John Paul II in the encyclical *Evangelium Vitae*. The pope also felt that if fertility and the resulting unintended pregnancy are viewed as the enemy (something to be avoided by means of contraception or sterilization) and if an unintended pregnancy should happen, the pregnant woman would be more inclined to use abortion to terminate the pregnancy that she thought she had responsibly prevented.

To suggest that breastfeeding is morally equivalent to hormonal contraception in causing early pregnancy loss is absurd. Saying that breastfeeding is a cause of early pregnancy loss and that healthcare professionals should inform women of this process is tantamount to saying that we should warn women against living the good life. We should do this no more than a healthcare professional should warn a woman about driving a car simply because she might get into an accident and kill a pedestrian. As Miller points out in his essay on contraception, contraception is contrary to reason itself, and so it is immoral.¹⁰

¹⁰ K. Miller, “The Incompatibility of Contraception with Respect for Life,” *Life and Learning VII: Proceedings of the Seventh University Faculty*

Breastfeeding is not contrary to reason; rather, it is a good thing for a woman to nourish her child through breastfeeding.

The argument by Saletan is similar to those who say that the embryo wastage that occurs naturally during the transmission of human life is no different than what happens during *in vitro* fertilization (IVF) procedures. This was pointed out in the recent document from the Vatican entitled *Dignitatis Personae*, in which the Congregation for the Doctrine of Faith argues that the conclusion would be to avoid the transmission of life altogether.¹¹ This conclusion actually has been proposed by a bioethicist who argued that natural family planning method causes early pregnancy loss; since early pregnancy loss occurs naturally, he concluded that all transmission of human life should be done by IVF procedures and not by natural intercourse.¹² Saletan's opinion article is trying to argue that it is absurd for healthcare professionals to refuse to prescribe both the use of contraception and breastfeeding. However, his parallel absurdities do not logically work.

In summary, the evidence that breastfeeding is a cause of early pregnancy loss is weak. There is no evidence that there is any difference in the luteal phase in the first menstrual cycle post-partum when one compares non-lactating women with breastfeeding women. Furthermore, the reason for the low fertility rate in the first menstrual cycle might be due to anovulation rather than a diminished luteal phase. Even if breastfeeding were a cause of early pregnancy loss, breastfeeding is not the moral equivalent of hormonal contraception, which has among its potential effects the prevention of implantation of early embryonic human life. Breastfeeding with the intent of nourishing the child is a natural and healthy process for both the mother and child. The aim of

for *Life Conference*, ed. J. Koterski, S.J. (Washington, D.C.: University Faculty for Life, 1997): 80-124.

¹¹ Congregation for the Doctrine of the Faith, *Dignitas Personae: Instruction on Certain Bioethical Questions*, issued on 8 September 2008.

¹² L. Bovens, "The Rhythm Method and Embryonic Death," *Journal of Medical Ethics* 32 (2006): 355-56.

hormonal contraception, on the other hand, is the subverting of a natural process for the intent of preventing pregnancy. The idea that health professionals should inform women about the potential abortifacient effect of breastfeeding is absurd.

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Professional Conscientious Objection in Medicine with Attention to Referral

T.A. Cavanaugh

ABSTRACT: This paper takes up President Obama's call issued at Notre Dame for a sensible conscience clause. While this account focuses on abortion, it also reaches beyond abortion to other contested matters. It does so by grounding conscientious objection in medicine viewed as a profession. The paper articulates an account of medicine as a profession and asks how conscientious objection comports with medical professionalism. It presents the general features of a professional conscience clause. In particular, it develops the grounds for and the limits to conscientious objection to referral. Any coherent account of objection must include the ability to object to referring a patient. Instances in which the objecting practitioner has allowed the patient to develop a reliance, however, limit conscientious objection. The paper concludes with an articulation of the duties of the conscientious objector such as the promulgation of one's objection, preservation of confidentiality in instances of objection, and full disclosure.

AT THE UNIVERSITY OF Notre Dame's 2009 commencement, President Obama proposed to "honor the conscience of those who disagree with abortion and draft a sensible conscience clause, and make sure that all of our health care policies are grounded not only in sound science but also in clear ethics as well as respect for the equality of women."¹ This paper takes up the President's suggestion by addressing conscientious objection in medicine. In what follows, this paper presents the principal features of a sensible conscience clause while elaborating upon the need to extend conscientious objection to

¹ President Barack Obama, "Commencement Address at the University of Notre Dame (May 17, 2009)" in *Origins* 39 (2009) at p. 36.

include referral, a particularly controverted claim.

What is a sensible conscience clause? First, one needs to distinguish professional conscientious objection in medicine from conscientious objection in employment more generally. The former concerns those who have publicly, or *pro fateri*, said what they stand for, i.e., professionals.² They have articulated and publicly stated an account of medical care that delimits what they take to be within and without the practice to which they commit themselves. Most importantly, this account includes their conceptions of themselves as medical practitioners and what constitutes a patient, a disease, health, and medical therapy. Physicians, nurses, and pharmacists are medical professionals; ultrasound, radiology, and surgical technicians are not. A sensible medical conscience clause bears on the former. Conscientious objection in employment more generally would address the latter, just as it would address the issue of, for example, Islamic taxi drivers' religiously-based objections to transporting passengers carrying alcohol.³ Thus, what follows concerns

² See Hugh Walters, "The Meaning of Words in the New Health Service," *Journal of the Royal Society of Medicine* 88 (1995) at p. 336: "The word profession comes from the Latin *pro fateri* which means 'to bear witness on behalf of...'" (ellipsis in original).

³ In Minneapolis, approximately two-thirds of cab drivers are Islamic Somalis. According to certain Muslim clerics influential in Minneapolis, the Koran's prohibition against drinking alcohol extends to transporting alcohol. While other clerics dispute this interpretation, some Muslim cab drivers at the Minneapolis airport refused to transport passengers openly carrying alcohol from the duty-free airport stores. Stephanie Simon, "Where Faith and Work Collide," *L.A. Times* (27 March 2007), at A10. In April of 2007, the Minnesota Airports Commissioners decided that a taxi driver must transport passengers with alcohol; see *Dolal v. Metropolitan Airports Commission*, No. 07-1657 slip op. at 4 (Minn. Ct. App. Sept. 9, 2008). Now, if a driver were to refuse a fare on any grounds, his work license is to be suspended for thirty days; a subsequent refusal is to result in a two-year suspension, Minneapolis, Minn., Metropolitan Airports Commission, Ordinance 106 § 3.1 (2007). The policy was appealed to the Minnesota Court of Appeals, which in September of 2008 ratified a lower court's ruling that it was legitimate because the taxi drivers did

professional conscientious objection in medicine.

This account understands a profession to have an independent character autonomous from what law permits and society accepts. While there is pluralism within professions concerning particulars and therefore disputes within the professions concerning their self-conceptions, a profession and professionals as such always stand for something more than the efficient use of skill. Put most generally, this something more amounts to their view of the good that they seek and the bad that they avoid, viz., their ethic. With this distinction in mind, and noting that conscientious objection bears on otherwise legal patient requests, the following outlines a conscience clause for medical professionals. After delineating conscientious objection, this article will present the obligations attending it.

I. GENERAL FEATURES OF A SENSIBLE CONSCIENCE CLAUSE

First, the professional objects based upon her professed account of medicine. Her account is public, promulgated, graspable by others, and scientifically-grounded. The objector must be capable of giving reasons accessible to others, in contrast to asserting an entirely personal stance. These reasons must refer to empirically grounded concepts of health, disease, the subject of both (the patient), the goals of medicine, its capabilities, and its boundaries. So, for example, an obstetrician who objects to circumcising a healthy newborn male may do so based upon his account of bodily integrity and the proper functioning of organs. For similar reasons, a nurse may object to being involved in a sterilization

not suffer irreparable harm; see *Dolal*, No. 07-1657, at 7–8. Although not the topic of this paper, this seems like an unenlightened, unimaginative resolution of the dispute. Given that there were typically more taxis than customers at the airport and that problems arose fewer than a dozen times a month, a variety of resolutions presented themselves, including having non-objecting drivers jump the taxi-line when an objection arose (*ibid.* at 3–4). This, in conjunction with a policy that once a driver takes a fare he must bring the fare to her destination, would have resolved the conflict (*ibid.*).

after a caesarian section. A pharmacist in Oregon or Washington might object to a terminally ill cancer patient's legal request to fill a lethal prescription for physician-assisted suicide in terms of life not itself being a disease. An anesthesiologist might object to her participation in capital punishment by reference to her account of the very concept of a patient and of sickness. In doing so, each of these professionals offers a reason-based explanation available to others for objecting to the relevant request. Professionals offer such explanations not in terms of exclusively personal beliefs but rather in terms of accessible, albeit controverted, answers to the central questions of medical practice. Those questions include: what is medicine? what is a patient? what is a disease? what is health? and what goals can and ought medicine to serve?⁴

Because a sensible conscience clause must be grounded in a professed account of medicine, it does not cover, for example, objections to relieving a patient's pain based on one's religious belief about pain's redemptive value or one's experiential belief that pain builds character. It does not extend to an obstetrician who considers anesthesia during labor objectionable based upon his religious conviction that *Genesis* 3:16⁵ requires that labor be redemptively painful. Nor does it encompass the profane belief in pain as character-building. Sensible objection requires that one's grounds be both reason-based and medical. A religious belief in the redemptive value of pain is neither reason-based nor medical. Alternatively, a belief in pain as character-building may be reason-based, but not medical. Thus, such non-medical, non-reason-

⁴ Sixty years ago, practitioners widely shared a profession of medicine roughly corresponding to the Hippocratic ethic. Today, one finds numerous oaths, and, by implication, professions. For a study of the variety among oaths in all accredited U.S. allopathic and osteopathic medical schools as of 2000, see Audiey C. Kao & Kayhan P. Parsi, "Content Analyses of Oaths Administered at U.S. Medical Schools in 2000," *Academic Medicine* 79 (2004): 882-86.

⁵ *Genesis* 3:16 (Revised Standard, Catholic Edition): "[I]n pain you shall bring forth children."

based convictions do not ground professional conscientious objection.

The exclusion of profane, non-medically based convictions does not significantly depart from current statutes concerning conscientious objection in medicine. However, ruling out exclusively religious convictions importantly differs from current federal conscientious objection statutes, which explicitly mention religious beliefs as a basis for conscientious objection.⁶ Accordingly, it requires comment. A sensible conscience clause for medical professionals does not extend to every instance of conscientious objection that society may be willing to grant to individuals. As noted, an employee may have a claim to conscientious objection in employment just as a citizen may have one to military-service or other forms of governmentally mandated action.⁷ These claims may be grounded in religion. These rights of objection extend to the employee as an employee in the context of employment, or to the citizen as a citizen in the context of citizenship. So also, the professional has rights to conscientious objection in the context of a profession that may materially differ from those of the employee and those of the citizen. Most significantly, the professional's actual profession (her view of health, sickness, patients, and the purposes of medicine) grounds professional conscientious objection.

As members of a profession, physicians, lawyers, and the clergy possess autonomy (literally, of a self-lawed character). For example, the legal and clerical professions enjoy a virtually absolute degree of confidentiality not found elsewhere in social relations.⁸ Professional

⁶. See Health Programs Extension (The Church Amendment) Act of 1973, 42 U.S.C. § 300a-7 (2006), referring to “religious beliefs or moral convictions.”

⁷ See, e.g., *W. Va. State Bd. of Educ.*, 319 U.S. 624, 628–630 (1943); *Newdow v. Rio Linda Union School Dist.*, 597 F.3d 1007, 1014 (9th Cir. 2010), both cases discussing requirement that U.S. school children salute or pledge allegiance to the American flag.

⁸ In this respect, the defeasible confidentiality in medicine differs from its counterparts in law and religion, thus indicating differences within the professions.

conscientious objection in medicine is an instance of the autonomy of the professions from what is simply legal.⁹ Professional conscientious objection differs from religiously grounded objection by being reason-based, and therefore, in principle, accessible to all. To highlight exclusively religiously-based conscientious objection to the neglect of professional conscientious objection renders conscientious objection a strange and alien phenomenon to the non-religious. More importantly, to do so erroneously suggests that the professional has no positions concerning the ethics of her own practice. The venerable Hippocratic Oath indicates otherwise.¹⁰ Regardless of one's judgment concerning the Oath, it points to a 2,400-year-old autonomous profession, as does professional conscientious objection more generally. Accordingly, we must distinguish professional from religious conscientious objection.

Because the professed account of medicine must be empirically grounded, new information and technological changes influence it. It is scientifically grounded, not ideologically based. Accordingly, unlike ideology, discoveries can change it. For example, to consider one currently debated issue of conscience, some find emergency contraception (sometimes known as EC, the "morning after pill," or by its trade name Levonorgestrel¹¹) morally problematic.¹² They do so because they

⁹ From the legality of an intervention, one may not conclude that a professional must acquiesce to a patient's request for the intervention. The criteria, in terms of which one determines legality, have little to no bearing on the practitioner's profession concerning health, sickness, and the ends of medicine.

¹⁰ "I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect." Hippocrates, "The Hippocratic Oath (c. 400 B.C.)" in *Ancient Medicine: Selected Papers of Ludwig Edelstein*, ed. Owsei & C. Lilian Temkin (Baltimore MD: The Johns Hopkins Univ. Press, 1987), p. 6.

¹¹ "Frequently Asked Questions, Plan B One-Step," <http://www.plan-bonestep.com/plan-b-faq.aspx> (last visited Jan. 10, 2011).

¹² See Peter J. Cataldo, "The USCCB and Rape Protocols," *Ethics & Medics* 2 (2004): 29, reprinted in *Linacre Quarterly* 72 (2005): 255-58.

believe it to have at least two mechanisms of operation by which it prevents pregnancy: first, a contraceptive agency by which it prevents ovulation and, thereby, fertilization of an ovum, and second, an abortifacient mechanism by which it prevents the fertilized ovum from implanting in the uterus. All acknowledge the contraceptive mechanism. Dispute and some ambiguity attend the second, putatively abortifacient mechanism.¹³ If it were to be established that the currently favored emergency contraception, Levonorgestrel, had no abortifacient mechanism, or if an alternative pill were developed that acted solely as a contraceptive, then one who finds abortion professionally objectionable—while not objecting to contraception—could with a clear conscience prescribe, fill, or administer it. Whatever the case concerning this example, professional conscientious objection must be evidence-based.

This brings us to the second feature of the clause, which addresses a particularly difficult issue in determining the outlines of sensible conscientious objection: may objection refer to specifics about the patient or must it refer solely to a requested intervention?¹⁴ While there

¹³ J.B. Stanford, “Emergency Contraception: Overestimated Effectiveness and Questionable Expectations,” *Clinical Pharmacology & Therapeutics* 83 (2008): 19.

¹⁴ This question resembles one encountered in discussions of conscientious objection to military service, namely, to be granted conscientious objector status, must an individual object to all wars—be a thoroughgoing pacifist—or may he accept the justice of some wars while objecting to the justice of others—be a subscriber to just war theory, also called selective conscientious objection? Clearly, it is easier for society to administer the pacifist/non-pacifist distinction (object to all wars/not object to all wars) than to extend conscientious objector status to adherents of the just war theory (some wars are just while others are not). Indeed, the U.S. Department of Defense policy, and, apparently, U.S. law do not accept selective conscientious objection. “An individual who desires to choose the war in which he or she will participate is not a Conscientious Objector under the law. The individual’s objection must be to all wars rather than a specific war.” Department of Defense, Instruction Number 1300.06, Conscientious Objectors § 3.5.1 (2007), available at http://www.fas.org/irp/doddir/dod/i1300_06.pdf.

may be legitimate instances in which a professional objects to performing some intervention based upon characteristics of the patient—for example, a physician might prescribe contraceptives while objecting to doing so for minors—such cases ought to be regarded as exceptions to a general rule that focuses on objection to specific interventions. Generally, the professional ought to object to a requested intervention, not to the requestor. So, for example, if a fertility doctor does not object to in vitro fertilization in terms of his account of medical practice, he ought to provide it to all otherwise medically-qualified patients.¹⁵ Generally, objection ought not employ any non-medical reference to the patient who makes the request.¹⁶ Rather, it solely considers the act requested.

¹⁵ See, e.g., *North Coast Women's Care Medical Group, Inc., v. San Diego County*. Superior Court, 189 P.3d 959, (Cal. 2008). A lesbian woman had sought and received fertility treatment (ibid. at 963). While her doctors had no objections to prescribing medication to facilitate fertility nor to referring her to a non-objecting physician, the doctors did object to performing intrauterine insemination [hereinafter IUI] (ibid). There was a factual dispute between the parties that was never settled at court: The plaintiff asserted that the physicians objected to performing IUI in light of her sexual orientation; the doctors claimed to object to inseminating a single woman (ibid. at 969–70). In effect, the court ruled that the basis upon which the physicians did not provide the service was not relevant (ibid. at 970). Their objection had the effect of discrimination based on sexual orientation, regardless of their motive for objection (ibid). The court held that while one need not provide the relevant service, if one does offer it, it must be provided to all: “[D]efendant physicians can simply refuse to perform the IUI medical procedure at issue here for any patient of North Coast, the physicians’ employer. Or, ...defendant physicians can avoid such a conflict by ensuring that every patient requiring IUI receives ‘full and equal’ access to that medical procedure though [sic] a North Coast physician lacking defendants’ religious objections” (ibid. at 968–69), quoting Unruh Civil Rights Act, California Civil Code §§ 51(a), (b), 52(a) (2009).

¹⁶ The medical versus non-medical distinction is not an entirely bright one (and the above-mentioned “medically-qualified patient” does not remain free of ambiguity). Many would think it perfectly legitimate, perhaps even obligatory, for a fertility specialist to object to providing interventions for a woman well past child-bearing age or to a woman based upon the number of

Medicine bandages the wounds of the wounded, regardless of creed, character, race, gender, sexual orientation, innocence, or guilt. Similarly, conscientious objection generally excludes scrutiny of the patient to whose request the doctor objects.¹⁷

Third, conscientious objection extends from individuals to institutions. For institutions organically arise out of the association of individuals who often share a professed account of medicine. As Thoreau notes, “It is truly enough said, that a corporation has no conscience; but a corporation of conscientious men is a corporation *with* a conscience.”¹⁸ To prohibit the extension of conscientious objection to corporations or institutions is to thereby prohibit citizens from associating conscientiously. So, just as a pharmacist may object to filling a prescription for physician-assisted suicide, so also may a pharmacy. Indeed, in the case of small pharmacies, the pharmacy is often the pharmacist.

Fourth, and this point closely follows upon that just made, the extension of conscientious objection to individuals in principle amounts

children she already has. In such cases, medical and non-medical considerations overlap. To take a more controversial case, consider a fertility specialist who limits his practice to married heterosexual couples in light of his medical view that they alone suffer infertility. Such a professional might reasonably maintain that he treats reproductive systems, which systems are neither male nor female, but rather the union of a male and a female. If he were conscientiously to object to treating a single woman (or man), he would not thereby be importing non-medical reference to the patient. For fertility, and thereby, infertility, are medical characteristics of heterosexual couples. Again, while such cases might be justifiable and while society may be willing to accommodate them, they ought to be considered exceptions to the general rule in which one objects to performing a specific intervention, not to performing it for this patient.

¹⁷ See, e.g., *ibid.* at 968–69; see also Wesley J. Smith, “Pulling the Plug on the Conscience Clause,” *First Things* (Dec. 2009), at pp. 41, 43.

¹⁸ Henry D. Thoreau, *Civil Disobedience* (1849), reprinted in *On Civil Disobedience: American Essays, Old and New*, ed. Robert A. Goldwin (Chicago IL: Rand McNally, 1968), pp. 12–13.

to an extension of conscientious objection to the entire profession. For one professional after another may legitimately exercise conscientious objection to include the entire membership of the profession. Simply because the law endorses the use of a medical technology does not, nor ought it to ensure that medical professionals themselves agree with that use of their abilities. For, as professionals, they follow medicine's law, as it were.

This will understandably be a much-controverted claim, especially given concerns about access to interventions in rural areas where one typically finds fewer practitioners. Moreover, as some note, given that the medical professions enjoy monopoly-like control over the controverted procedures and technologies, ought one grant conscientious objection to the profession itself, that is, allow conscientious objection in principle to extend to all members?¹⁹

In light of this monopoly-like control, some who would grant conscientious objection to individuals would deny it both to institutions and to the profession in its entirety. However, as noted above, because professionals constitute a profession and individuals by association compose institutions, conscientious objection cannot be limited to individuals. To do so disregards the individual's associative nature, as Professor Lynn Wardle notes: "To exclude institutional health providers from conscience clause protection is merely an indirect way of denying the conscience and morality of the individuals whose will and purposes the entities were created to effect."²⁰ Nonetheless, those who attend to the exclusive command that the medical professions enjoy over the relevant matters have a point. Medical professions and institutions cannot, on the one hand, exert sole control over technologies and, on the

¹⁹ For a discussion on the issue of monopoly and its bearing on conscientious objection, see Elizabeth Fenton & Loren Lomasky, "Dispensing with Liberty: Conscientious Refusal and the 'Morning-After Pill'," *Journal of Medicine & Philosophy* 30 (2005): 579-92.

²⁰ Lynn D. Wardle, "Protecting the Rights of Conscience of Health Care Providers," *Journal of Legal Medicine* 14 (1993): 186.

other, enjoy conscientious objection concerning those interventions that have been legalized. Thus, just as legislatures and voters may legalize the use of medical technologies in manners rejected by the medical profession,²¹ they may also legalize others to employ those interventions. Indeed, the medical professions ought not to impede, and, as much as is consistent with their professional ethic, ought to endorse non-medical personnel being permitted to employ the relevant legalized technologies and interventions.

Consider a case requiring physician- and nurse-complicity in capital punishment in the State of North Carolina.²² The Supreme Court of North Carolina recently ruled that the North Carolina Medical Board, which licenses physicians in the state, cannot restrict physician-participation in capital punishment to the physician being physically present at an execution.²³ Rather, in opposition to the stance of the Medical Board (on the face of things, principled and balanced), the legislature can, as it does in N.C.G.S. §§ 15-190, require that a physician “monitor the essential body functions of the condemned inmate and [...] notify the Warden immediately upon his or her determination that the inmate shows signs of undue pain or suffering.”²⁴ It could come about that all physicians object to this participation in capital punishment (as it could develop that all nurses and pharmacists also object). Indeed, in arriving at its stance, the Medical Board noted that “physician participation in capital punishment is a departure from the ethics of the medical profession.”²⁵ Additionally, the Medical Board cited the American Medical Association’s Code of Medical Ethics opinion on capital punishment, which distinguishes the personal opinion of the medical practitioner concerning the morality of the death penalty from the ethic of “a member of a

²¹ . See, e.g., *N.C. Department of Corrections v. N.C. Medical Board*, 675 S.E.2d 641, 643–45 (N.C. 2009).

²² *Ibid.*

²³ *Ibid.* at p. 651.

²⁴ *Ibid.* (alteration in original).

²⁵ *Ibid.* at p. 644.

profession dedicated to preserving life when there is hope of doing so.”²⁶ To protect conscientious objection and to ensure accessibility to the legalized intervention, legislatures that mandate the use of medical technologies in capital punishment must extend authority over such techniques to non-medical persons. Thus, the State of North Carolina, for example, ought to revisit the exclusive control of medical professionals over the relevant technologies. The same holds for other uses of putative medicine legislatures legalize.²⁷

Fifth, conscientious objection is a two-way street. That is, conscientious objection protects both those who regard certain patient requests as objectionable and those who consider providing the requested medical intervention to be legitimate or even required. One finds this admirable feature in the Church Amendment of 1973, which prevents discrimination against both those who perform abortions and sterilizations and those who refuse to do so.²⁸ A conscience clause recognizes that there are competing professed accounts of medicine and controverted interventions. As a two-way street, the conscience clause acknowledges the legitimacy of conscience at the level of institutions, while preventing institutions and individuals from discriminating against those whose consciences differ. So, for example, a Catholic hospital that objects to

²⁶ Ibid. at p. 645, quoting American Medical Association, *Code of Medical Ethics: Current Opinions with Annotation* §2.06: 20 (2008–2009 ed. 2008).

²⁷ Ibid. at p. 647: “[E]xecutions are not medical procedures....” The logic of the prevailing position is that, if executions are not medical procedures, then when the law requires medical doctors actively to participate in them, the medical board has no jurisdiction. For according to this line of thinking the physicians do not act in a professional capacity. What ought one make of such a tortuous and, thereby, tortured line of reasoning? One possible implication would be that the Department of Corrections and a majority of justices of the N.C. Supreme Court recognize the autonomy of the medical profession in their very attempt to suborn it. For our purposes, if a legislature wants to use medical expertise for a purpose medical professionals do not share, the legislature does well to make alternative provisions in light of that fact.

²⁸ See 42 U.S.C. § 300a-7(c) (2006).

the performance of abortions or sterilizations on its premises may not deny privileges to an obstetrician who does so elsewhere. Conscientious objection considers one's own conduct, not that of another. While a Catholic hospital might prefer to have unanimity on this controverted matter among those who practice within it, the hospital must extend to others the very protection afforded to it and to those practitioners sharing its account of medicine.

Sixth, conscientious objection encompasses more than simply not performing the controverted intervention while, in certain instances, requiring some cooperation with the patient in his attempt to achieve what he seeks. Working out the boundaries of conscientious objection may be the most difficult task in reaching some political consensus concerning what a sensible conscience clause looks like. Most importantly, conscientious objection encompasses referrals. Because some would permit professionals to object to performing the controverted interventions while requiring referral, this merits greater consideration.²⁹

In order to discuss the extension of conscientious objection to referral, a number of distinctions are in order. First, we must distinguish two cases: namely, that of a patient with whom the professional has no pre-existing relationship and that of the patient with whom there is a relationship prior to the controverted request.³⁰ Second, we must distinguish the act of referral from what we may call full disclosure. By full disclosure, I refer to the need to inform fully the patient of legally and medically available interventions. In my consideration of the obligations attending conscientious objection, I will attend to the

²⁹ See, e.g., Adrienne Asch, "Two Cheers for Conscience Exceptions," *Hastings Center Report* (Nov.–Dec. 2006), at pp. 11, 12.

³⁰ As I employ the phrase, a pre-existing relationship requires an encounter between professional and patient. The more such encounters, the more significant the relationship and the greater the claims the patient has upon the physician. Simply having an appointment or calling in a prescription to one rather than another pharmacy does not establish a pre-existing relationship.

obligation of the objecting professional to discuss alternative options with the patient. Referral and full disclosure differ. The objector need not refer, but he must disclose. Putting this distinction aside for the moment, let us consider the issue of referral with respect to the two aforementioned cases.

Before considering these two cases, a prior question arises: Why regard referral as at all objectionable? Given that professionals refer for those interventions that they do not perform, it is, at least on the face of things, natural to suppose that an objecting professional would refer. For, just as the internist refers ingrown toenails to a podiatrist, so also would the objecting practitioner refer for physician-assisted suicide. Moreover, the internist would refer in both cases for the same reason, namely, because he does not perform the requested procedure. This understandable, yet ultimately mistaken, view proposes that referral ought to occur if one does not perform the relevant act, regardless of the basis for not doing that act. This view fails to note, however, that by referring one endorses the relevant act. The internist referring to the podiatrist thereby approves of and, indeed, recommends the podiatrist's act to the patient. In the case of objection, since the professional does not consider the relevant request to be consonant with his own professed account of health, sickness, and the ends, capabilities, and limits of medicine, he could not consistently refer the patient to another. To do so would be to contradict one's very objection to the request in the first place. A professional ethic cannot coherently regard some act as out of bounds while referring to another professional for the performance of that act. While a patient might be gratified by an objecting professional's referral, he would rightly be puzzled by such a view of an ethical principle. For those who apprehend the concept of a restrictive ethical principle understand it as prohibiting both one's own act and one's promotion of another's so acting.³¹ Thus, from the very nature of allegiance to an

³¹ For a comparable view, see Michael D. Bayles, "A Problem of Clean Hands: Refusal to Provide Professional Services," *Social Theory & Practice*

ethical principle, conscientious objection extends to referral.³²

In light of this, let us return to the two above-mentioned cases. For the extension of conscientious objection to referral in the two cases differs. If no pre-existing relationship exists, the professional need not refer for the reasons noted above. However, if the professional has a pre-existing relationship, he does have an obligation to ensure that his patients are aware of his stance. If he has failed in this respect and an existing patient reasonably assumes him to be willing, the professional has an obligation to refer if the patient so insists.³³ For, absent notification to the contrary, the patient has the reasonable belief that the professional will perform or refer for the requested act. Moreover, the patient has justifiably developed reliance upon the professional. Were the professional not to refer, he would thereby violate the patient's honest dependence to which he contributed by not adequately communicating his objection. Accordingly, as will be noted subsequently,

5 (1979): 165-81. Bayles notes, "The argument against referring...appears consequentialist.... The consequentialism involved is inescapable in morality, for it is the 'consequentialism' of claiming that it is better that wrongful conduct not occur, that one ought not to assist in it.... The arguments are drawn from the inescapable consequentialism of having moral principles." *Ibid.* at p. 168.

³² Notably, this is one of the ways in which an ethical principle can differ from a religious obligation. Consider a few religious observations. For example, on certain days, practicing Catholics do not eat meat. Yet this religious duty does not prevent them from selling, providing, preparing, recommending, and in general promoting the eating of meat by others who do not share their religion. Similarly, on the Sabbath, observant Jews refrain from certain activities. This religious commitment does not prevent them, however, from accepting the performance of such acts on their behalf by a volunteer who does not share their beliefs. So, for example, while an observant Jew may not carry bottled water on a hike on the Sabbath, others may offer to do so for him.

³³ Here, a patient may correctly assume that a medical professional will provide a desired legal medical intervention. Thus, an objecting professional has an obligation to inform his patient of his conscientious objector status, lest a patient develop reasonable reliance upon him.

professionals must scrupulously inform relevant parties of their positions lest they create obligations based upon others' reasonable reliance upon them.³⁴ With the above exception in mind, an objector need not refer.

While in the noted cases, conscientious objection encompasses referral, it does not extend to non-professional, logistical tasks such as the forwarding of medical records, or the return of a prescription from a pharmacy.³⁵ In an instance of conscientious objection, but for the loss of time and the opportunity costs, the patient emerges no worse off from the interaction with the objecting professional.³⁶

Yet, some who have recourse to conscientious objection might object: Is not to acquiesce in the forwarding of medical records, the release of prescriptions, and fully to disclose legal and medically-accepted options provided by other practitioners tantamount to a referral or to moral complicity in the satisfaction of the requested intervention? By so limiting conscientious objection has one given with one hand and taken away with the other?

No. Performing an intervention, referring a patient to another to do

³⁴ Some might point this out as inconsistent with the previous argument that objection encompasses referral. In the envisioned case, the professional has gotten herself into a moral dilemma where she will either violate her conscience by referring or violate her obligation to the patient who has reasonably come to rely upon her. In either case, whatever she does will be ethically problematic. By promulgating her stance to relevant parties, she can avoid this dilemma. Others might object that referral when a preexisting relationship exists does not adequately satisfy the obligations created by reliance. In such cases, if competent, ought not the professional perform the relevant intervention? The answer to this question depends upon particulars of the case such as how much of a burden referral poses to the patient, the elective character of the intervention, and how grave a violation of her profession does the physician regard the requested intervention in comparison to the wrong of reneging on her patient's reliance.

³⁵ Absent reliance, however, and for reasons comparable to those already noted concerning referral, a pharmacist need not call another pharmacy and communicate the contents of a prescription.

³⁶ Of course, the patient incurs no charges for the refusal.

the same, filling a prescription, or communicating the contents of the same to another so that it may be filled intimately involves one in the relevant matter. One thereby acts with the purpose of ensuring the performance of the act. The achievement of the disputed goal shapes and informs one's own act. Accordingly, one thereby becomes an accomplice to the act to which one objects.

For example, a referral must be to another who is capable and willing to fulfill the contested request. That desideratum structures one's act of referral and, thereby, violates a well-formed conscience. Transferring medical records or returning a prescription does not, however, so deeply implicate one in the objectionable act. One need not thereby intend or deliberate about how to achieve the wrong to which one objects. The objectionable act itself does not shape and determine those acts that incidentally advance its achievement. While such acts make it easier for the patient to satisfy his request, they have only a modest determination to that goal. Moreover, they are not necessary to ensure its success. For example, if prior to the objection, the patient incurred an insurance copayment, one would reimburse the same. It is immaterial to conscientious objection that the patient can use that same co-payment to procure the relevant request elsewhere. Absent the return of the co-payment, or return of a prescription, or transfer of medical records, the patient could still secure the controverted intervention.³⁷

In any case, conscientious objection does not extend to preventing the patient from achieving what he seeks. Rather, it ensures that the professional need not violate her profession of medicine in her practice.

³⁷ In cases of professional objection, and even more widely, the patient enjoys moral, and, in some jurisdictions, legal, claims to copayments, prescriptions, and medical records. For example, "Oklahoma explicitly states that a patient has a 'property right' in his or her prescription...." Jill Morrison & Gretchen Borchelt, "Don't Take 'No' for an Answer: A Guide to Pharmacy Refusal Laws, Policies and Practices" (Washington, D.C.: National Women's Law Center, 2007) 8, <http://www.nwlc.org/sites/default/files/pdfs/donttakeno2007.pdf>. See *Oklahoma State Ann.* tit. 59, § 354 (West 2010).

To transfer a medical record, to return a prescription, or to disclose legal options that other professionals offer is not, thereby, to violate a well-formed conscience. Thus, a professional may not invoke professional conscientious objection for such matters.

Seventh, conscientious objection extends to practitioners and to those becoming practitioners. In terms of her chosen profession, a student may object to learning medical interventions that she regards as incompatible with it. As yet to be professed and as one still learning the relevant profession, the student must ensure that she has a proper understanding of her chosen vocation and that her account has sufficient bases in reason and in medicine. She does well to recognize the plurality of views concerning what amounts to medical practice. Moreover, the aspiring medical professional ought to confirm the soundness of her view of medicine and its implications by seeking out experienced practitioners and reflecting upon her views in the light of their practice.

Finally, a sensible conscience clause does not take an *ad hoc* approach to objection by singling out specific currently and widely-recognized controverted interventions such as abortion and physician-assisted suicide.³⁸ Rather, it attempts to establish an acknowledged forum for the exercise of conscience in a milieu increasingly characterized by disagreement. In this respect, such a clause would differ from the

³⁸ For polling data concerning abortion, see “Americans Split on Covering Abortion in Insurance Plans that Use Federal Subsidies,” Angus Reid Public Opinion (Jan. 14, 2010), http://www.visioncritical.com/wp-content/uploads/2010/02/2010.01.14_abortion_usa.pdf; Lydia Saad, “The New Normal on Abortion: Americans More ‘Pro-Life’,” *Gallup* (May 14, 2010), <http://www.gallup.com/poll/128036/new-normal-abortion-americans-pro-life.aspx>. For polling data concerning physician-assisted suicide, see generally “Americans Split over Euthanasia and Assisted Suicide,” Angus Reid Public Opinion (Feb. 10, 2010), http://www.visioncritical.com/wp-content/uploads/2010/02/2010.02.10_euthanasia_usa.pdf; Joseph Carroll, “Public Divided over Moral Acceptability of Doctor-Assisted Suicide,” *Gallup* (May 31, 2007), <http://www.gallup.com/poll/27727/public-divided-over-moral-acceptability-doctorassisted-suicide.aspx>.

currently existing federal clauses.³⁹ For these current federal laws almost exclusively refer to abortion.⁴⁰

A number of reasons recommend not so limiting protections of conscience to specific interventions. First, by itself not singling out any one controverted matter, the clause treats all parties equally. All recognize that they may have recourse to the exception made for conscience, if not now, perhaps at some future date. It does not require that one have an overly active imagination, that one had done an extensive reading of *Antigone*, or that one become a scholar of Anne Hutchinson's trial to conjure up conditions in which a majority regards as legitimate some intervention one considers abhorrent.⁴¹ Consider, for example, the aforementioned case from North Carolina of legislatively mandated physician- and nurse-participation in administering capital punishment,⁴² the prospect of military physicians being asked to

³⁹ For the relevant federal protections of conscience, see 42 U.S.C. §300a-7 (2006); Coats/Snowe Amendment of 1996, 42 U.S.C. §238n (2006); Consolidated Appropriations Act, H.R. 2764, 110 Cong. §508(d) (2008).

⁴⁰ But see 42 U.S.C. § 300a-7(c)(2) (2006), addressing nondiscrimination in federally-funded research towards those who perform or refuse to perform "any lawful health service or research activity," including sterilization.

⁴¹ See Sophocles, *Antigone*, trans. R.C. Jebb (1900), ed. P.E. Easterling (Bristol UK: Bristol Classical Press 2004); Winnifred King Rugg, *Unafraid: A Life of Anne Hutchinson* (Boston MA: Houghton Mifflin, 1930), pp. 160-70. Or, the converse: One regards as obligatory something the majority considers heinous. For the purposes of this paper, medical conscientious objection concerns objections to acts one regards as violating one's profession of medicine (not prohibitions concerning medical acts one regards as obligatory—a positive obligation to act). The latter might include the authorities—due to fear of losing a practitioner in low supply during a plague—forbidding a physician from treating a patient suffering from a highly contagious potentially lethal disease. Such cases are not the concern of this paper, nor do they typify actual cases of medical conscientious objection. They do, however, belong to the topic; a complete treatment would address them. I am inclined to think that the lineaments of conscientious objection concerning positive obligations differ from those regarding refraining from acting.

⁴² See *N.C. Department of Corrections v. N.C. Medical Board*, 657 S.E.2d

participate in torture, or the mundane request that a pediatrician circumcise a healthy infant male so that he “fits in” or “looks like Dad.” In light of such cases, many can realize that they have need of and, thereby, can welcome a conscientious objection clause.

Second, by not singling out any debated issue, the conscientious objection clause itself avoids unnecessary controversy. The heat surrounding discussions of conscience derives entirely from that associated with abortion. The important debate concerning abortion ought to be entirely distinct from that concerning conscience. To confuse the two equates to thinking that the legitimacy of a Quaker’s recourse to conscientious objection depends upon the legitimacy of the specific war in which he would otherwise serve. On the contrary, the reason for extending to him a right of objection has nothing at all to do with the justice or injustice of any particular war. Rather, it has to do entirely with the relation between the individual and a legitimate state. Enlightened individuals who regard war as legitimate realize that the state might demand other acts of them to which they object. Thus, they realize that they might have recourse to conscientious objection just as the Quaker does. So also, distinguishing conscientious objection in medicine from any one controverted issue allows those who regard the profession as something more than a technique for the provision of legally permitted acts to see the need for conscientious objection. For the need arises simply from the autonomy of the profession from the political and social fora in which it operates.

Third, by not limiting the clause to any one intervention, one makes room for responses to unforeseen developments⁴³ and less widely yet still controverted matters.⁴⁴

Fourth, and finally, all of the above aspects of a general conscience clause strengthen the inherent fairness of such a clause and, thereby, the

641, 645–47 (N.C. 2009).

⁴³ For example, new technologies.

⁴⁴ For example, routine infant male circumcision or the provision of what one regards as futile interventions.

political case to be made for it. For people can see that while they may enjoy liberty in their invocation of conscience, they may also incur costs when others with whom they differ invoke conscience in refusing an intervention they request. So, for example, those who oppose abortion may realize that a non-specific conscience clause that does not require them to perform or refer for abortion will also enable physicians who regard futile care to object to its provision. Moreover, once legislated, it will be less likely to suffer the constant tug of war fought over intervention-specific clauses. It will come to be seen, as it ought to be, as part of the nature of medicine as an autonomous profession with its own ethics.

II. THE DUTIES OF THE CONSCIENTIOUS OBJECTOR

The above represent the outlines of a sensible clause that respects claims to conscientious objection. Associated with rights are obligations. What duties accompany conscientious objection? To sum up what follows: The obligations to the patient remain unchanged, but for the denial of the contested request.

Specifically, what do these obligations entail? First, following from the very meaning of professing—and to develop a point previously mooted—full disclosure imposes the obligation to promulgate to the relevant parties one's conscientious objection. This includes one's prospective and current patients, colleagues, employers, and relevant institutions, for example, hospitals and insurance companies. With respect to patients, this bears on informed consent and patient autonomy. Considering the recent referendum legalizing physician-assisted suicide in the State of Washington,⁴⁵ absent an internist's noting his objection to

⁴⁵ See Washington Death with Dignity Act, *Washington Revenue Code Ann.* §§ 70.245.010–70.245.904 (West 2009); Jacob Goldstein, "Washington Passes Initiative 1000, Legalizing Physician-Assisted Suicide," *Wall Street Journal Health Blog* (Nov. 5, 2008 8:46 AM), <http://blogs.wsj.com/health/2008/11/05/washington-passes-initiative-1000-legalizing-physician-assisted-suicide>.

the procedure, a current or prospective patient might mistakenly assume that her doctor would agree to her request for physician-assisted suicide at some future date. Were he to inform her of his objection to doing so, she would have the opportunity to make alternative arrangements, perhaps developing a physician-patient relationship with a doctor whose views are more consonant with hers. Moreover, by promulgating one's conscientious objector status, one avoids the previously noted problem of a moral dilemma resulting from a patient's reasonable reliance, which would require referral.

Second, conscientious objector status obliges the relevant professional to explain her reasons for her objection to those patients who request further information. That is, conscientious objection itself involves its own version of full disclosure based upon a patient's informed consent. This does not mean that the patient must consent to the practitioner's objection. Rather, it means that the patient is due the offer of an explanation. This does not, however, amount to the professional's having a right to pontificate concerning the relevant matter. Rather, the interested patient ought to receive some answer to the question as to why the professional objects. Certainly, not all patients will be interested to know why. Those who are not interested ought not to be treated as captive audiences; those who do want to know ought to receive a considerate and considered answer.

In discussion of one's conscientious objection, full disclosure requires that one note the controverted nature of the matter concerning which one objects. One must bring to the patient's attention that not all medical professionals agree with one's own view. As noted, if no previous relationship exists, this does not require referral. It does, however, require that one puts one's own account of medicine into the larger context that includes other, disagreeing professionals, in virtue of which disagreement one resorts to conscientious objection. The patient ought to emerge having a sense both of one's grounds for objecting and of the pluralism found in medicine regarding the controverted matter. This constitutes the analogue of informed consent for non-controverted

medical care. A professional would have failed in this respect were a patient to emerge from the interaction thinking that the medical profession as a whole rejected the requested intervention.⁴⁶

Third, conscientious objector status bears exclusively on the patient's contested request; it does not relate to the other care the physician, nurse, or pharmacist provides for the patient. If a relationship exists with the patient, then the obligation of non-abandonment mandates that prior to alternative arrangements being in place for the controverted intervention, the physician, nurse, or pharmacist must provide care to which she does not object. So, for example, the internist who objects to her terminally ill patient's considered request for physician-assisted suicide does not thereby abdicate her responsibility to care for that patient otherwise until the patient finds an alternative physician.

Fourth, conscientious objector status requires the continued maintenance of confidentiality, particularly with respect to the fact that the professional objects to something the patient requests. For example, a woman who requests emergency contraception at the counter of an objecting pharmacist does not thereby forfeit any of her claims regarding discretion and confidentiality concerning that very communication with the pharmacist. Indeed, because such situations are fraught with potential for embarrassment and the untoward interest of others, the professional must strenuously and scrupulously protect the patient's privacy specifically concerning the patient's request and the practitioner's conscientious objection.

Finally, as earlier noted, while conscientious objection does not require referral to a third party who will abide by the patient's request, it does require transfer of relevant documents, returning a prescription, and, more generally, acts that, while they may result in the act to which

⁴⁶ If a patient does not wish to discuss the professional's conscientious objection, the professional still must attempt to ensure that the patient leaves the clinical encounter realizing the legality of the requested intervention and that other professionals might not object to it.

one objects, do not require one to aim at that act.

Professional conscientious objection finds its basis in medical practitioners' ancient practice of publicly expressing their accounts of health, sickness, caring, and curing for which they stand. A sensible conscience clause recognizes both the privileges and responsibilities attending such a profession.⁴⁷

⁴⁷ I gratefully acknowledge the very helpful comments of the participants at the BYU Law School's February 2010 Symposium on the Future of Rights of Conscience in Health Care. I thank BYU Law School and University Faculty for Life for sponsoring the Symposium. I particularly thank Professors Richard Myers and Lynn Wardle (the latter's hospitality while at BYU set an insuperable standard for all future conferences). I express gratitude to Professor Guy Micco, M.D., of U.C. Berkeley's School of Public Health for reading and commenting upon earlier versions of this article. I also thank participants in UFL's 2009 Life and Learning Conference who helpfully responded to an earlier version of this paper. I remain entirely responsible for its deficiencies.

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Unintended Consequences of
the Separation of Sex from Procreation

Hanna Klaus, M.D.

ABSTRACT: The technical and, later, the ideological separation of sex from procreation began with contraception, progressed to reducing women and men into sexual objects, and is now attempting to erase gender distinctions and to commodify procreation. In the process genetic continuity is disvalued, leading at times to parentless children. A partial list of consequences is appended.

MARGARET SANGER'S FOLLOWERS are in full spate trying to achieve her goal of helping women to attain "unlimited sexual gratification without the burden of unwanted children...." They use various means, including the caricature of proliifers as persons who only see women as "fetal containers."¹ Ms. Dawn Johnsen and her fellows similarly denigrate "abstinence-only" sexuality education by claiming that it misrepresents the effectiveness and side-effects of contraceptives, and so on. It is sad when youths are led to define healthy sexual activity as non-reproductive and non-relational. Worse, even professional medical groups such as ACOG—the American College of Obstetricians and Gynecologists—have issued an ethics statement that claims that any Fellow who chooses not to perform abortions should either practice with a colleague who will perform them or should practice near a referral site. In other words, to remain in good standing in the profession, one should become complicit in formal cooperation

¹ Dawn Johnsen, a former legal director of NARAL and nominee for Assistant Attorney General in the Office of Legal Counsel.

with an intrinsically evil act.² In order to safeguard physicians' rights of conscience, the outgoing Secretary of the U.S. Department of Health and Human Services, Michael Leavitt issued a directive in December 2008, reminding all that there are federal laws that prohibit dispensing funds to any entity that discriminates against healthcare workers who refuse to partake in acts to which they are opposed in conscience. At this writing, the current Administration is poised to rescind Leavitt's directive and to void the laws that undergird it.

If women are not to be reduced to being fetal containers, the goal of the above group seems to be the obverse: to deny any significance to the procreative aspect of marital—or any—heterosexual relations and to become, in Eve Ensler's words, mere vaginas. No one in the "pro-choice" movement would own such a designation openly, even if it is common locker-room talk, yet is this not what is being proposed? Ever since Betty Friedan decided to leave home and family and to "find herself," the strident feminists have seen no value or virtue in those attributes particular to being a woman, and they value only those qualities previously associated with male achievement. They have denigrated motherhood by, for instance, the derisive captions on cartoons of pregnant males with the statement that if men were to become pregnant they would only have one child. Along with this there are constant reminders that equate sexual responsibility with use of contraception and, it is hoped, the prevention of transmission of sexual diseases. The fact that a sexual relationship is interpersonal seldom surfaces.

But underneath all this talk about women's liberation is an actual, if unwitting, campaign for unlimited male sexual freedom that seems not to be understood by those women who advocate for consequence-free sexual activity. Advocates of "hooking up" become advocates of exploitation, whether unilateral or bilateral. Women secrete oxytocin, the bonding hormone, during orgasm, while men secrete little of it, if any.

² ACOG November 2007.

In order to prevent the bonding that is normally a part of a woman's orgasm, she has to deaden her normal emotions. Some women do this for a time and some for a lifetime, but even when they succeed professionally, many lack fulfillment, as is shown in their constant search for "something new and different." More often the hook-up experience leads to anxiety, depression, and a multitude of other physical and emotional dysfunctions well described by Miriam Grossman, M.D. in *Unprotected*, which she wrote as Dr. Anonymous, and in "Sense and Sexuality" in her own name.³

Rather than dwell on the physical and emotional damage to women that results from casual sexual relations (for this damage has been documented more than sufficiently), I want to look at the societal effects of casual sexual relationships on men.

Many of these effects were already described in Karol Wojtyśa's *Love and Responsibility*. They range from exploitation to loss of paternal relationships in the case of a pregnancy that the woman aborts, to the loss of access to a child born out of wedlock, to limited access, or to court imposed or freely agreed to child support. Depending on the depth of the relationship with the partner, there may be varying degrees of relationship, ranging from cohabitation to straightforward exploitation. But none of these scenarios allow for the fullness of mutual giftedness that only a permanent, committed relationship like marriage can offer. In that instance, the whole is greater than the sum of its parts. Only in a relation like marriage are the partners open to becoming parents and not withholding their fertility from one another when engaging in the marriage act. They achieve responsible parenthood via one of the several reliable natural methods of family planning available.

Protagonists of "same sex unions" are usually not interested in becoming parents, for it is precluded by the very nature of their

³ Dr. Anonymous [Miriam Grossman, M.D.], *Unprotected* (New York NY: Sentinel, 2006); Miriam Grossman, M.D., "Sense and Sexuality" (Clare Booth Luce Policy Institute, 2008).

relationship. Yet the desire for pregnancy and offspring is still present in many lesbians who seek insemination in order to obtain it, while homosexual men will seek adoption or resort to assisted reproductive technologies that may involve an ovum donor and a gestational carrier, or simply a woman willing to bear a man's child conceived either by the natural process or by insemination. In consequence genetic identity and uniqueness are disvalued, and, if carried to its logical conclusion, to a loss of one's self understanding as a human person. For those who take the Genesis account of creation seriously, having to discount the fact that God created humans as men and women leads to another level of loss of personal identity, for one's relationship to one's Creator is called into question. Some people refer to this as existential malaise, or worse. This does not help college students on their road to adulthood.

There are other effects beyond those already mentioned. When sex is trivialized, there is a loss not only of privacy but of personal boundaries, leading to a loss of personal identity. This is especially prominent when teens engage in an act intended to be one of mutual self-giving but have not yet reached sufficient emotional maturity to go beyond self-seeking. As a result, many psychologically arrest at this stage and remain impulsive. If the interaction was coerced or frankly abusive, the developmental effect may be regression to an earlier "safe" stage of sexuality—same-sex attraction. Erik Erickson, whose schema of human development is still seminal, described early adolescence as the stage of same-sex friendship.⁴ Most children pass through this stage on their way to middle adolescence, when heterosexual interests normally emerge. When children or adolescents are sexually abused, they are violated in their very core. Depending on their age, and the gender of the abuser, obviously the victims respond in a variety of ways. Some boys, having experienced coercive homosexual intercourse are then co-opted into the gay community and encouraged to "come out," which for many is

⁴ Erik Erickson, *The Life Cycle Completed* (New York NY: Norton, 1998).

equivalent to burning their bridges with their families. Among them suicide attempts are much higher than in the general community. While G. Remafedi, the researcher who reported that 25% of adolescent psychiatric admissions for attempted suicide were male homosexuals who attributed their attempt to despair over community rejection, another interpretation is possible.⁵ Perhaps the suicide attempt was a cry for help by youngsters who were caught in a situation from which they saw no other means of escape. Lesbians commonly turn to another woman after experiencing heterosexual abuse, a protective form of regression. In any event, International Right to Life reported these sadly disturbing Canadian statistics from *Pro-Homosexual Movement*:

- Life expectancy of homosexual men in Canada is 55 years (20 years less than heterosexual males).
- GLB (Gay, Lesbian, and Bisexual) people commit suicide at rates from 2 to 14 times more often than heterosexuals.
- GLB people smoke 1.3 to 3 times more.
- GLB people have rates of alcoholism 1.5 to 19 times higher.
- GLB people have rates of depression 2 to 3 times higher.
- Gay and bisexual men comprise 76% of AIDS cases.
- Gay and bisexual men are 54% of the new HIV infections each year. If one uses Statistics Canada's figure of 1.7 of all GLB people becoming infected, this is 26 times higher than average.
- GLB people have a higher risk for anal cancer.

This cannot be considered a wholesome healthy life-style, even though several states have legalized "gay marriage"—a clear rejection of fertility. The adjunct is that pointing out these biological realities is considered offensive by some, and actionable in some other countries. All humans

⁵ G. Remafedi, "Sexual Orientation and Youth Suicide," JAMA 282 (6 October 1999): 1291-92. Accessible at: <http://www.thenationalinstitute.org/gremafedi.html>.

possess equal dignity, for all are created by the same God. In speaking of same-sex attractions it is important to distinguish between homosexual attraction and homosexual acts. The acts are clearly incompatible with procreation, but those performing such acts are often in need of help. Since even the American Psychological Association has now acknowledged that there is no “gay gene,”⁶ it must be acknowledged that homosexual attractions can be changed to heterosexual attraction if the individual desires it and can find appropriate therapeutic help, such as reparative therapy.

Unfortunately many health care professionals who care for teenagers have accepted the propaganda that homosexuality is innate and have made no effort to help their patients grow beyond their current orientation. To leave them in this state, which as the Canadian data show, is far from healthy, is, in my view, to neglect a professional obligation.

Years ago the late Paul Ramsey, an ethicist at Princeton, already spoke about “sex without babies and babies without sex” and delineated the dilemmas that would eventuate.⁷ All his predictions, as well as those of Pope Paul VI in *Humanae vitae*, have come true and are on the verge of practical implementation by our current Administration. In consequence they threaten to limit the pool of healthcare providers to those who have no objection to killing the preborn child, performing mutilat-

⁶ For decades, the APA has not considered homosexuality a psychological disorder, while other professionals in the field consider it to be a “gender-identity” problem. But the new statement, which appears in a brochure called “Answers to Your Questions for a Better Understanding of Sexual Orientation & Homosexuality,” states the following: “There is no consensus among scientists about the exact reasons that an individual develops a heterosexual, bisexual, gay or lesbian orientation. Although much research has examined the possible genetic, hormonal, developmental, social, and cultural influences on sexual orientation, no findings have emerged that permit scientists to conclude that sexual orientation is determined by any particular factor or factors. Many think that nature and nurture both play complex roles....”

⁷ Paul Ramsey, “On In-Vitro Fertilization,” *Human Life Review* (1979): 17-30.

ing operations to remove normal fertility from the body as if it were a disease, engaging in “sex change” operations and in the entire range of technologic interferences designed to induce pregnancy irrespective of the genetic origin of the gametes. In other words, in IVF a woman may have one or more embryos implanted in her uterus that have been derived either from her or a donor’s ova, fertilized by her husband’s or any other donor’s sperm. Conversely the embryo may be implanted in a woman—not the “egg donor” or the prospective mother—who becomes a gestational carrier. There are already instances when the child so conceived may not be claimed by the genetic parents and be abandoned to the foster care system.

When those physicians who refuse to perform any of the above procedures have to leave the field, the loss will be not only the practitioners’ but the patients who may not be able find a physician who shares their values. Many a woman does not care to trust her and her baby’s life to an obstetrician who is willing to kill a preborn child. If things go wrong, and it may appear that a child may be damaged in the course of delivery, what is to prevent a physician without scruples to make sure that such a baby does not live and then become the focus of a law suit? Preposterous? I wish it were. We are already seeing the killing by neglect of any baby destined for abortion who has the temerity to be born alive. The *Born Alive Infant Protection Act* is not always followed. In their desire to prevent teenage pregnancy or STDs many healthcare providers insist on confidential interviews with adolescents during which contraceptives are prescribed without parental knowledge or consent. The providers believe that they are providing genuine benefits to their patients, but in fact are deepening the normal adolescent separation from their parents. The difficulty, of course, is that teens need their parents and that the secrecy abetted only makes it harder for teens to come full circle developmentally and reach adulthood. Fostering lack of trust for whatever reason leads to isolation and worse. And our healing profession is in the vanguard!

So, our societal denial of the intrinsic goodness and dignity of both

sexes and of the complementarity required for men and women to become parents has many consequences, none of which enhance our humanity. Recently Pope Benedict XVI, when condemning the merely mechanical approach to HIV/AIDS prevention, identified the real need as one of humanizing sexuality.⁸ To do that, we need to have good role models, ideally a two parent family, as well as a thorough understanding of our sexuality and fertility.

⁸ Pope Benedict XVI, Apostolic Exhortation *Africae Munus*, 19 November 2011.

Margaret Sanger's goal "unlimited sexual gratification
without the burden of unwanted children"

Sex without babies

Emphasis on results, irrespective of means:
contraception, sterilization, abortion.
Pressure on health care professionals to
provide services without exception,
leading to attempted abolition of
professional's conscience, which in turn
removes patients' protections from
unethical acts.
Massive marketing of services and devices
while denying untoward effects on
Physical, Emotional Social and spiri-
tual aspects of the person.
Decoupling of sex from procreation has led
some to less than full mutual self-
giving.
Reduction of sex to pleasure seeking.
Unilateral or mutual exploitation.
Disvaluing of complementarity leading to
loss of distinction between homosexual
and heterosexual intercourse.
Widespread acceptance of homosexuality as
an equally mature expression of sexual-
ity as heterosexuality, vs. Erickson,
with arrest of psychosexual maturation.
Professional collusion with teens to provide
contraception and/abortion without pa-
rental knowledge or consent delays
psycho- sexual maturation.

Babies without sex (after Paul Ramsey)

ART Assisted Reproductive Technology
when used to replace rather than
enhance the conjugal act.
Loss of parental autonomy.
Substitution of donor gametes –sperm, ova–
without recipient's permission, i.e.,
routine use of donor ova for women
over 35 years of age who seek ART.
Loss of, and devaluation, of genetic continu-
ity in procreation by parents.
Children psychologically deprived of rooted-
ness leading some to endless searches
to establish their identity .
Adopted parents need to establish child's
sense of being wanted and belonging
while acknowledging the lack of genetic
continuity.
Babies unclaimed by genetic progenitors
and "Gestational carriers" who bond
with their babies and refuse to relin-
quish them to the biological parent or
parents. Horror stories abound.
Multiple gestations often limited by "em-
bryo or fetal reduction" Like culling
puppies or kittens.
Fate of "spare embryos" abandoned, donated
for adoption, used for parts –
"research," frozen indefinitely

Reduction of the sexual act to self seeking only

When employed in coercive or frankly abusive relationships may turn the erstwhile victim into a physical and /or sexual abuser

Loss of personal boundaries, self respect, depression, substance abuse, etc.

Severe damage to ovum donors - often women in developing countries who are not informed of the risks they are incurring which include ovarian hyperstimulation syndrome, sterility and death.

Loss of fiduciary doctor-patient relationship with advent of utilitarian ethic.

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The Orientation of Freedom toward Bodily Integrity: Defending the Oocyte from Extracorporeal Manipulation

Kimberly Henkel

ABSTRACT: Modern science views the oocyte as manipulable matter at the service of human purposes. This reductive concept of nature reveals an improper notion of freedom. When freedom is conceived fundamentally as choice, nature is stripped of any inherent value and subordinated to the dictates of man. Thomas Aquinas reveals a fuller account of freedom that is responsive to the goodness already present in nature, thereby restoring a sense of interiority to nature. There is an intrinsic value to the oocyte in its natural end that is entirely distinct from any purposes we may intend. Drawing on John Paul II's nuptial meaning of the body and the understanding of natural inclinations in Aquinas, I hope to develop the value of the oocyte within the context of the goodness of sexual union. Since the natural end of the oocyte is to form new life, attempts to divert it from this path not only frustrate the *telos* of the oocyte but ultimately violate the woman, the marital act, marriage, and love, thus serving as an affront to God and the "procedures" that he has set up for the continuation of humanity.

IN *DIGNITAS PERSONAE*, THE CONGREGATION for the Doctrine of the Faith advises caution over the technologies of Altered Nuclear

Transfer (ANT) and Oocyte Assisted Reprogramming (OAR)¹ because of “questions of both a scientific and an ethical nature regarding above all the ontological status of the ‘product’ obtained in this way.” The document continues: “Until these doubts have been clarified, the statement of the encyclical *Evangelium vitae* needs to be kept in mind: ‘what is at stake is so important that, from the standpoint of moral obligation, the mere probability that a human person is involved would suffice to justify an absolutely clear prohibition of any intervention aimed at killing a human embryo.’”²

Although the recent discovery of induced pluripotent stem cells³ has most likely rendered ANT and OAR superfluous, this intense debate has opened up a new area of inquiry that warrants further exploration. Abstracting from the more critical issue of whether or not these technologies may unintentionally create “defective” embryos, we must consider on a more basic level whether it is acceptable to manipulate oocytes in this process. The premise of ANT and OAR rests on the necessity of derailing the normal reprogramming ability of the oocyte to create life towards a different end, that of creating stem cells. Is this a morally neutral act or does this constitute a violation of the very nature and *telos* of the oocyte? How is man’s freedom to be understood in relation to nature, especially *human bodily nature*? Does his freedom shape and determine nature or does nature *enable freedom* by directing man toward the ethical good?

¹ ANT and OAR attempt to obtain embryonic stem cells without creating an embryo through the fusion of an enucleated oocyte and an altered somatic cell nucleus. For more information on this debate, see <http://www.communio-icr.com/ant.htm>.

² The Congregation for the Doctrine of the Faith, *Dignitas Personae*, http://www.usccb.org/comm/Dignitaspersonae/Dignitas_Personae.pdf, §18.

³ Induced Pluripotent Stem Cells (IPS) can be obtained directly from a somatic cell without the need for an oocyte. The “oocyte” is a female germ cell (reproductive cell) produced in the ovary and in the process of developing into an ovum, or egg.

In order to make an informed moral decision about how to proceed with any technological intervention, it is imperative that we understand the nature of the entity that we intend to alter. Nature, a term derived from *nascor* (*to be born*), implies a certain sense of givenness and structure. Aristotle spoke of the nature of the cosmos, plants, animals, and humans in terms of their internal principle of movement towards a final goal. This movement reveals an interiority and integrity within natural things apart from man's intervention that, rather than diminishing human freedom, actually enables freedom to flourish. But asserting this requires a proper understanding of both freedom *and* nature. Freedom is a part of nature in its already given structure towards the good. Without slipping into a biological determinism whereby nature is set over and above freedom, we should understand nature as helping to provide the shape and foundation for freedom to be fully actualized.

These underlying presuppositions will guide my argument that the oocyte has an internality directed at procreation that *ought not* (and perhaps *cannot*) be frustrated by attempts to divert its teleology. In order to build this argument, I will rely on the work of Karol Wojty^{3a} (Pope John Paul II) in his metaphysics of ethical action in *Person and Community*, his development of the pre-ethical role of nature in *Love and Responsibility*, his notion of the nuptial meaning of the body in his *Theology of the Body*, and his account of freedom and nature in *Veritatis splendor*. Since Wojty^{3a} develops his analysis within an Aristotelian-Thomistic tradition, I will also consider St. Thomas Aquinas's account of human flourishing that describes the inclinations as emanating from the potentiality of man's nature and culminating in his fulfillment.

In attempting to express the depth and interiority of nature, Karol Wojty^{3a} appeals to the conception of the good articulated by Aristotle and Aquinas:

The good is an end: that at which a thing aims. In order to explain why the thing aims at the good as an end, we must turn our attention to the being that does the aiming and consider its nature. We find that the good is always that which in some way corresponds to this nature, that which is needed to perfect

this nature in some respect.⁴

Each natural entity tends towards the end or *telos* that is perfective of its being. As Aquinas notes, “to be is to desire perfection.”⁵ This interior movement towards the good reveals the *form* and *finality* of an entity, which tells us what this thing *is*. An acorn develops into the mature oak tree that is perfective of its being. The acorn possesses both the form and the finality of the oak tree. In clarifying the nature of an end, Msgr. Robert Sokolowski emphasizes the distinction between *natural ends* and *human purposes*. He explains that an *end* “belongs to a thing in itself” as distinct from a *purpose* that implies human intention. Regardless of what a human hopes to achieve with a thing, there exists in it a natural end, which is its perfection “in and for itself.”⁶ This natural end should serve as a guide to help man understand how he may intervene as a steward of nature. Granted that man may make use of nature to serve his needs, still he must subordinate his own purposes to the proper ends already present in nature. As Kenneth Schmitz suggests,

the task given to man by God is a conditional superintendence and use of nature in accordance with the original intention of God. Moreover, in the making of the heavens and the earth, God has already declared the prehuman creation to be good without anticipatory reference to man; ... all living things possess an inherent dignity and value of their own and...their value cannot be overridden by arbitrary human design.⁷

There is a natural end to an entity that is not in itself “moral” (for human

⁴ Karol Wojtyla, *Person and Community: Selected Essays*, translated by Theresa Sandok (New York NY: Peter Lang, 1994), p. 47.

⁵ Thomas Aquinas, *Summa theologiae* I, q.5, a.1.

⁶ Robert Sokolowski, “What is Natural Law? Human Purposes and Natural Ends,” *The Thomist* 68 (2004): 510 (referring to Frances Slade’s distinction).

⁷ Kenneth L. Schmitz, *At the Center of the Human Drama* (Washington D.C.: The Catholic Univ. of America Press, 1993), p. 96.

agency has not yet entered into the picture) but that does indeed have a *pre-ethical* value that must inform our human intentions. This value is determined by *what* a thing *is*. Its nature and end are revealed to man through his reason as a participation in divine reason. This value enlightens us as to how we may treat a thing—the *is* here does imply an *ought* in the sense that our human purposes must be in line with the natural ends of that sort of thing. Human purposes, which involve human agency, do have a moral value.

As Pope John Paul II affirms in *Veritatis splendor*, human freedom is not able to “create” values and is not prior to truth since values already exist (VS §35). In explaining a proper relationship between reason and nature, he affirms a related point: “*the autonomy of reason cannot mean that reason itself creates values and moral norms*” (VS §40). Echoing an earlier sentiment in *Gaudium et spes*, he notes: “created things have their own laws and values which are to be gradually discovered, utilized and ordered by man.” Again, human purposes must be in line with the natural ends. There is danger in thinking that “man can use them without reference to their Creator” (VS §38).

This requires a further clarification of the relationship between nature and freedom. Servais Pinckaers, O.P., highlights two conflicting senses of freedom that may help illuminate this struggle to ascertain meaning in nature: a *freedom for excellence* versus a *freedom of indifference*. He explains the first sense of freedom as the traditional concept of freedom as understood by many Church Fathers and by Aquinas. In the fourteenth century, however, William of Ockham asserted a new sense of freedom constituted primarily as “indifference”—a choice prior to or independent of any reasoning about the merits of the object chosen. He suggested that freedom was first to be understood as the power of the will freely to choose between contraries. Man’s will was not to be understood as first attracted to the good but as something wholly indifferent to the choices that lay before him. Free choice was thus regarded as anterior to both reason and will. Ockham took this as suggesting that man could freely choose such a foundational inclination

as “to know or not to know.”⁸ The only thing limiting this boundless freedom was the law, which was now conceived as an external, irrational imposition. *Freedom of indifference* overturned the primary notion of a eudaimonistic virtues-based morality, thereby yielding to a morality constituted by obligation and juridical duty.

The fallout from this Ockhamistic account of freedom has led to an opposition between freedom and nature whereby freedom must increasingly conquer nature. Pope John Paul II explains how this misunderstanding of freedom has an impact on our concept of nature by “overlooking the created dimension of nature and in misunderstanding its integrity” when he states: “For some, ‘nature’ becomes reduced to raw material for human activity and for its power: thus nature needs to be profoundly transformed, and indeed overcome by freedom, inasmuch as it represents a limitation and denial of freedom” (VS §46). This view characterizes the technological approach in modernity whereby nature is stripped of any intrinsic value apart from human purposes.

In contrast, Aquinas considers freedom as a response to the good rooted in our human nature. This freedom is first responsive since man is not the origin of himself. Being “wholly ordered to finality,” freedom proceeds from reason and will “with their natural inclination to the highest truth and goodness.”⁹ Freedom is located inside the inclinations of man to seek happiness and the good realized in God. Because the good is prior to the will, man is naturally drawn to this good through his inclinations. The good affects him and moves him to choose it. This order in freedom enables man to choose in accordance with his nature by moving him towards his own perfection. Since the *telos* of man is human flourishing, realized in his ultimate *telos* of union with God, the inclinations lead man to this ultimate end. Aquinas states:

⁸ Servais Pinckaers, *The Sources of Christian Ethics* (Washington D.C.: The Catholic Univ. of America Press, 1995), p. 331.

⁹ *Ibid.*, p. 399.

Since, however, good has the nature of an end, and evil the nature of a contrary, hence it is that all those things to which man has a natural inclination, are naturally apprehended by reason as being good, and consequently as objects of pursuit, and their contraries as evil, and objects of avoidance.¹⁰

Drawing from Greek thought, Aquinas outlines three categories of natural inclinations: inclinations to the good and to self-preservation (for all living organisms), to sexual union and the rearing of offspring (for animals), and to the knowledge of truth and living in society (for human beings).¹¹ In man, these inclinations are guided by the inclination to the true and the good and can only be properly understood in that light. All of the inclinations serve as grounds for formulating the various precepts of the natural law that has been imprinted upon man by God.¹² Through them, all of creation participates to some degree in God's eternal wisdom.

Insofar as the inclinations lead us to an understanding of the natural law, the internal law written on the human heart referenced in Romans 2:15, they contain ethical significance. From a Thomistic perspective, it is thus possible to find the basis for ethics (what we ought to do) in reflection on the inclinations (what we are given by nature). In order to develop an adequate account of ethics, we must understand the inclinations in relation to each other. For the purposes of making the case for the moral significance of the oocyte, I will focus primarily on the inclination towards sexual union, while still showing how the other inclinations are necessary to order this urge properly. In this way, we can come to an understanding of man's nature and the goodness and integrity of the body.

Because the human person is a unity of body and soul, sexual union can never be considered only as a physical act. While this act necessarily involves a biological union, it belongs to human nature that it also is a

¹⁰ Aquinas, *Summa theologiae* I-II, q. 94, a. 2.

¹¹ Ibid.

¹² Pinckaers, pp. 404-05.

spiritual act. Because the individual is a union of body and soul (*corpore et anima unus*), sexuality in human beings is taken up into a higher order than in other animals. The husband as an embodied spirit experiences an openness to his wife in the fullness of her body-spirit as “the two become one flesh.” Rather than relegating sexuality to a lower biological sphere, when coordinated with the spiritual inclinations towards the good, truth, and friendship, it becomes one of the most profoundly spiritual acts in which man can participate.

Pinckaers suggests that all of the natural inclinations can be fulfilled only in marriage. He explains how the inclination to self-preservation is realized through the mutual support of the spouses, the inclination to truth is satisfied through the knowledge of the other discovered in love, and the inclination to life in society is fulfilled by the intimate friendship between spouses and the rearing of children. Within the context of true love in marriage, the inclination to the good is fulfilled whereby spouses give themselves totally to the other in a lifelong commitment.¹³ In this way we can see how the inclinations can harmonize with each other, thereby leading man to his true fulfillment.

Sexuality propels man out in search of another as his complement. John Paul II refers to this *nuptial attribute* of the body as constituted in the sexual difference. The human body, which is marked with the sign of masculinity or femininity, “includes right from the beginning the nuptial attribute, that is, the capacity of expressing love, that love in which the person becomes a gift and by means of this gift fulfills the meaning of his being and existence.”¹⁴ Sexual difference is not merely a property, but rather constitutes the very essence and identity of a person and enables the possibility for a communion of persons. This sexual difference discloses the nature of the person as being *for* another. The male body reveals that a man is meant to give himself to a woman.

¹³ Ibid., p. 442.

¹⁴ John Paul II, *The Theology of the Body* (Boston MA: Pauline Books and Media, 1997), p. 63.

The female body shows that she is apt to receive this gift. In her receiving, she is not merely passive, but actively receives the love, which in turn allows her to give herself back to the man. Since the “body reveals the person,” a man is *primarily* constituted as giver and a woman as receiver.¹⁵ In this way, a man finds himself apt for fatherhood as an image of the Father who first gives, and a woman apt for motherhood in the reception of the child into her womb.

This openness to the other takes on a sacred dimension in its openness to the Divine. Through sexual union, husband and wife are able to co-create with God. “The sexual urge owes its objective importance to its connection with the divine work of creation...and this importance vanishes almost completely if our way of thinking is inspired only by the biological order of nature.”¹⁶ This sacred dimension is frequently dismissed in a contraceptive culture that degrades the sexual act as primarily about physical pleasure. If we understand procreation to be good, then the fulfillment of the sexual act is union and procreation, or as Janet Smith puts it, “babies and bonding.”¹⁷ As Wojtyś states the point, a child is “above all the work and gift of God, the Giver of all existence.” He continues, “justice towards the Creator demands particular respect for the procedure which he has established for the initiation of a new human life.”¹⁸ This “particular respect” necessarily includes a directive for couples to remain open to life.

Contraception is contrary to all of the natural inclinations. In rendering the conjugal act sterile, spouses cut themselves off from the goodness and truth of marriage, their own vocation to love through their aptness for motherhood and fatherhood, and the creative intervention of

¹⁵ This needs to be further qualified. There is a giving and receiving in both man and woman, but the primary mode of expression of this giving and receiving corresponds to the sexual difference.

¹⁶ *Love and Responsibility*, p. 57.

¹⁷ Janet Smith, *Humanae Vitae: A Generation Later* <<http://www.goodmorals.org/smith6.htm>> Last accessed October 6, 2009.

¹⁸ *Love and Responsibility*, p. 295 n20.

God. They frustrate the inclination to life in society and self-preservation, which extends into the preservation and continuation of humanity. At root, the inclination for sexual union becomes distorted as its two ends of mutual support and openness to life find themselves in conflict. When the goal of mutual support becomes detached from openness to life, love begins to spiral in upon itself. When spouses aim at maintaining the intimate connection achieved through sexual union at the expense of closing themselves off to the possibility of pregnancy, they inadvertently cut themselves off from the possibility for the continuation of this intimacy and love. Because contraception is built upon a radically dualistic anthropology whereby the body is seen as separate from the person, it treats a profoundly spiritual and bodily act as merely physical. In the end, persons become objects to be manipulated, rather than as subjects to be loved.

There are some, such as Charles Curran, who have argued that recent teachings by the Catholic Church on sexuality “reduce the human moral act just to its physical aspects.”¹⁹ This accusation of *biologism* or *physicalism* has been invoked in an attempt to counter the Church’s teaching against contraception. They argue that because man can control bodily functions such as fertility through his reason, contraception should be licit. They explain that it is acceptable for a couple to interfere with the sexual act “for the sake of the unitive purpose of marriage or for other values in marriage itself.” This can be for the “good of the marriage or the good of persons.”²⁰

In response to these critics who argue against the normativity of such “natural biological functions,” Wojty³a says:

¹⁹ Charles Curran, “Is Contraception Morally Permissible? ‘*Humanae Vitae*’ Revisited” (debate in Dallas, Texas on 23 October 1994). Audio recording at <<http://thedivinelamp.stblogs.com/2008/07/27/is-contraception-morally-permissible-humanae-vitae-at-40/>> Last accessed October 6, 2009.

²⁰ Ibid.

the accusation of “biologism” can only be made if we assume in advance that the sexual urge in man has only a biological sense, that it is a purely natural fact. This assumption, however, made in a purely dogmatic way, begins by depriving the sexual urge of its existential-axiological dimension, reducing it to its biological significance.... It is really this reductionism which deserves to be called “biologism,” since it allows the biological aspect (which of course is important) to obscure the phenomenon as a whole (*pars pro toto*) and absolutize it.²¹

The Church’s ban on contraception does not imply that a couple should strive to have as many children as possible. John Paul II is very clear in explaining the value in ordering the sexual urge and understanding the woman’s biological rhythms, so that in cases where it may be necessary for a couple to delay pregnancy, they may have recourse to periodic continence. “‘Nature’ in human beings is subordinated to ethics, and the correct biological rhythm in women, and the possibility of natural regulation of conception which this gives, are inseparably connected with the love which shows itself on the one hand in willing acceptance of parenthood, and on the other hand in the virtue of continence, the ability to deny and to sacrifice the ‘I’.”²² The sexual urge must be taken up into the spiritual realm in order to allow the fullness of love to flourish. This love becomes concrete through the virtue of chastity in marriage, continued openness to life, and respect for the woman in her totality.

In this way, we can account for the integrity of bodily nature and the sexual act without yielding to biological determinism. A couple can learn of the natural fertility cycles and order their sexuality rightly. Here we must take into account human freedom. Rather than asserting an Ockhamistic account of freedom that subordinates nature to freedom, we ought to invoke a Thomistic account that acknowledges freedom’s necessary ordering to the good evident in nature. As Wojty³a states this

²¹ *Love and Responsibility*, p. 295 n20.

²² *Love and Responsibility*, p. 281.

point, “the dynamisms of the body are not an independent and self-contained phenomenon, but are naturally oriented to serving the good of the integral human person.”²³ A new freedom arises through this integration of inclinations when a man realizes that he is not compelled to act merely on his physical urges, but discovers through these desires a calling to a greater love. It would not be licit for a couple to regulate their sexual lives for the purpose of remaining always closed to the possibility for new life. In ordering their inclination to sexual union within the inclination for the good and the true (culminating in God), they can discover the beauty of God’s plan for their sexuality and the great gift of the child.

It is obvious how vital it is to understand the inclinations in reference and ordered to one another. The spiritual inclinations to truth and goodness must take up the other inclinations of preservation of life and sexual union to order them to the proper end of man—his flourishing, which is union with God. From the sexual urge, we can see how God draws man to himself by revealing to him the giftedness of his nature as *from and for another*. In the body-soul unity of man we can see how this sexual union can be elevated into a higher order through a lifelong commitment in marriage. The twofold task of marriage to build communion between the spouses and to remain open to life further opens man to the Divine. In the “procedure” that God has developed for the continuation of the species, there is special respect for the conjugal union to be open to the creative action of God. Recognizing this act as both physical and profoundly spiritual, and the place where man has the inestimable privilege to co-create with God, we can realize the value of the body.

In the goodness of the conjugal union, we can see the value of all that contributes to the possibility of new life. The sexual organs and gametes (sperm and egg) participate in a special way in the goal of procreation. The sperm and egg unite in a manner analogous to the union

²³ *Love and Responsibility*, p. 303 n48.

of the spouses. The sperm seeks the egg and strives to unite with it. The egg receives the sperm into itself. As soon as a single sperm enters the egg, a wall immediately forms around the exterior of the egg so that no other sperm may enter.²⁴ Upon union, a new life is formed.

This process reveals the unique *telos* of the gametes. While all other somatic (bodily) cells are diploid (containing 46 chromosomes), only the gametes are haploid (containing 23 chromosomes). The chromosomal structure of the gametes already point to the need *for another*. Oocyte and sperm can only be properly understood in reference to each other. While somatic cells have the capacity continuously to renew themselves, gametes lack the ability to self-renew. Gametes have a very specialized trajectory—each sperm and egg grow individually and either lie dormant, fertilize, or die. The egg that is not fertilized dies within twelve to twenty-four hours after its release from the ovary. While sperm may survive for three to five days in a woman's fertile mucus, they too will soon die if they fail to penetrate an egg. Hence, we can recognize fertilization as the “goal” or *telos* of the gametes. It is only when an egg is fertilized that it becomes a mature gamete. Somatic cells do not hold the same teleology as sex cells. While a liver cell is for the liver, and heart cells for the heart, the reproductive cell, or gamete, always strives for union with another whereby it is radically transformed into something far beyond its individual nature. In fertilization, the gametes do not die but rather fuse, resulting in a process of *vital decomposition*. While some of their biological properties are broken down, they are mysteriously transformed and transferred to the zygote.²⁵

In this analysis of the nature and *telos* of the oocyte, it is critical to avoid falling into the reductionism characteristic of modern science. The temporary abstraction of the oocyte presented here is only at the service of achieving a greater synthesis within the teleological whole of its

²⁴ Even on a biological level, we can see arguments for the beauty and goodness of monogamy.

²⁵ I am grateful to Dr. Joseph Mauceri for this insightful analysis.

relation to the sperm, and more broadly to the continuation of human life between woman and man through marriage. The biological joining together of the gametes points to the original communion of persons in the spousal union.

Gametes cannot be understood only in their individual physical structures, but must be considered in their participation in the coming-to-be of new life. Analogous to the “two becoming one flesh” is the mysterious recombination of the genetic material of sperm and egg whereby a new individual with a unique genetic make-up is created. In this biological process is hidden a great mystery whereby God breathes life into a new being through his own creative intervention. This confers a special status upon the gametes in their distinctive contribution to new human life created directly by God, thereby imbuing them with a higher significance than certain other bodily “parts” which might be considered expendable, such as fingernails or hair. This should help guard us against treating both oocytes and sperm as merely inert matter to be manipulated at will.

This leads us back to the question of the relationship between freedom and nature, but now in terms of *bodily* nature. John Paul II warns of the distortion caused by an Ockhamistic account of freedom: “A freedom which claims to be absolute ends up treating the human body as a raw datum, devoid of any meaning and moral values until freedom has shaped it in accordance with its design” (VS §48). Technologies such as ANT and OAR treat the oocyte as simply matter that can be utilized to serve ends other than procreation, reducing the ethical question to concerns over obtaining oocytes.

As noted previously, there is great danger in dismissing the interiority of nature. Oocytes have an integrity that our freedom and reason must engage. We can recognize the value of the oocyte in its connection with the higher realm of procreation. The good of the oocyte aims at forming new life. It is therefore a frustration of the *telos* of the oocyte to divert it from its normal teleology. Although it may be acceptable to experiment on an oocyte for therapeutic purposes, it is

illicit to manipulate the oocyte towards an end apart from its directed path. There is an intrinsic value to the oocyte in its natural end that is entirely distinct from any purposes that we may intend. Human purposes for the oocyte including cloning, ANT and OAR violate not only the oocyte, but also the woman, the marital act, marriage, and love, serving as an affront to God and the “procedures” that he has set up for the continuation of humanity. As Wojty^{3a} asserts, “*Nature cannot be conquered by violating its laws*. Mastery over nature can only result from thorough knowledge of the purposes and regularities which govern it.”²⁶

An improper notion of freedom leads to an impoverished concept of nature. A freedom conceived fundamentally as choice strips nature of any inherent value by subordinating it to the whims of man. St. Thomas reveals a fuller account of freedom as responding to the goodness already present in nature. This restores interiority to nature and corresponds to the inclinations present in man. A notion of responsibility arises out of this proper realization of freedom in light of this *given* integrity of nature. As emerging biotechnologies push man to redefine nature, including his own, knowledge of this inner teleological principle is necessary to prevent him from destroying both the world and himself.²⁷

²⁶ *Love and Responsibility*, p. 229.

²⁷ This paper was written under the direction of Prof. Kenneth L. Schmitz, and the author is deeply grateful for his guidance.

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Pro-Life Communitarianism and a Metaphysics of Relation

James G. Hanink

ABSTRACT: Ideas have consequences, and Philip Devine and Celia Wolf-Devine have recently presented a cogent pro-life communitarianism that promises to have welcome consequences. In this essay I first highlight their perspective. Then I introduce key elements of the metaphysics that best grounds such a communitarianism. It is a metaphysics of relation and system, one that is itself grounded in the dynamism of potency and act. In addition, I suggest how metaphysical considerations might help the Devines meet a pair of objections that they face. Lastly, I point to how solidarity alerts us to a temptation to substitute a counterfeit for genuine community.

IDEAS HAVE CONSEQUENCES, and mistaken ideas have bad consequences. For some three decades, students have read the flawed arguments of Judith Jarvis Thomson, Michael Tooley, and Alison Jaggar in defense of abortion. Now comes a new text with an antidote that just might redirect students. In *Abortion: Three Perspectives*,¹ Tooley and Jaggar are still at work. But Philip Devine and Celia Wolf-Devine win equal billing. They present a cogent pro-life communitarianism.

Nonetheless, and understandably given their audience, their communitarian case is incomplete. In this essay, I first highlight their perspective. Then I introduce key elements of the metaphysics that best grounds communitarianism: a metaphysics of relation and system, itself grounded in the dynamism of potency and act. In addition, I show how

¹ Michael Tooley, Celia Wolf-Devine, Philip E. Devine, Alison M. Jaggar, *Abortion: Three Perspectives* (New York NY: Oxford Univ. Press, 2009).

metaphysical considerations might help the Devines meet a pair of objections that Tooley and Jaggar bring forward. Lastly, I point to how pro-life solidarity alerts us to one temptation to counterfeit community.

ON COMMUNITARIANISM

The Devines contrast communitarianism with the regnant liberal contract view and its individualist ethos. This “political liberalism,” they note, now shapes even our personal ethics and private associations.² Consider the following examples. The first is Judith Thomson’s claim that parents do not have responsibility for their newborns unless they take them home from the hospital. This, the Devines observe, presents “every parent/child relation as an adoptive one.”³ A second example is that this same brand of contractarianism sees no duty to be a Good Samaritan. For a third example, a contractarian regime of this same sort insists that religious schools must bracket their institutional convictions if they are to qualify for public funding. In a like vein, and for a last example, public education monopolists would have home-schooling parents pass strict state scrutiny, as the situation of parents who educate their own children, from California to Germany, gives ample evidence.

Such examples reflect a programmatic line of thought. Nothing expresses it more pointedly than does John Rawls’s admonitions to the family and its friends. Rawls, the premier social contract theorist, argues that in articulating the principles of justice we must *bracket* our roles as spouse, parent, and child. To admit a distinct familial role imperils liberal conceptions of justice. Indeed, parents must prepare children, even in their early education, to comply with “the public culture” that fosters political liberalism and to which, in turn, it appeals for its own legitimacy.⁴

² For the most influential articulation of this philosophy, see John Rawls, *Political Liberalism*, 2nd ed. (New York NY: Columbia Univ. Press, 2005).

³ *Abortion: Three Perspectives*, p. 74.

⁴ See John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly

Communitarianism, in contrast, understands and appreciates that, even now, ordinary life is broadly *shared* rather than merely a venue for the weighing out of individual interests. Any social theory that ignores this reality goes wrong. If language itself emerges from a form of life, we will find that the richness of ordinary language reflects our common life. On the other hand, technical jargon, for the most part utilitarian, notoriously tends to distance us from one another.

Because human life is fragile, the way in which we respond to the loss of life is strongly indicative of who we take ourselves to be. For the communitarian, knowing full well that no man or woman—or child—is an island, any human loss becomes everyone’s loss. How we look to the nurturing of human life is equally indicative of who we take ourselves to be. For the communitarian, the family is at the heart of the human enterprise. The family, the natural habitat of new life, is always and everywhere the *principium*, or wellspring, of the human community.

In light of their communitarianism, and despite the denials of political liberalism, the Devines see abortion as a tragic loss. For the most part, too, our ordinary intuitions reflect this diminishment. The loss, however camouflaged, begins with the human being whom abortion destroys and then reaches to his or her parents and broader family. The loss also diminishes the whole community in which that family lives.

Ordinary intuitions, to be sure, are starting points; yet contending interests skillfully manipulate them. Nor do the Devines suppose that common intuitions are always clear. Thus, for the sake of academic discussion, the Devines recognize that there are “hard cases” in which one *might* make a case for abortion. They note that the intuitions of some seem ready to accept abortion in a case of rape. In such a case, however,

(Cambridge MA: The Belknap Press of Harvard Univ. Press, 2001), pp. 162-67. Earlier Rawls had noted that “in a broader inquiry the institution of the family might be questioned, and other arrangements might indeed prove to be preferable”; see his *A Theory of Justice* (Cambridge MA: The Belknap Press of Harvard Univ. Press, 1971), p. 462.

there is already a grave wounding of a primary human relation. Moreover, the hardest of cases, those in which intuition seems to afford little traction, come about because the early individuation of the zygote can be puzzling, and hence a question arises about its initial standing in the human community.⁵

A METAPHYSICAL GROUNDING

Communitarianism, as the Devines understand it, offers a promising moral vision. It does so, in the first place, because of its philosophical anthropology. This anthropology respects the constitutive *social* dimension of the human person. Because we are rational, we seek to live in society. Yet anthropology cannot be free-standing. An example suggests one reason why this is so. The Devines duly note a link between a strong intuition against late abortions and a gradualist view of personhood. They point out, though, that “[t]here is no place for this intuition in the standard moral ontology of the West,” and if perhaps “personhood turns out to be too open-textured,” we would need to focus on species membership in order to find moral direction.⁶

Nonetheless, ontology does much more than to function as a corrective. Absent metaphysics, moral debate fails to address what wisdom requires: an openness to the whole range of *what* is.⁷ Pope John Paul II, in calling for “*genuinely metaphysical* range,” indicates why anthropology cannot replace metaphysics. It is only a metaphysics, he says, that “makes it possible to ground the concept of personal dignity” and it is the person who offers “a privileged locus for... metaphysical

⁵ Philip E. Devine and Celia Wolf-Devine, in *Abortion: Three Perspectives*, pp. 87-88.

⁶ *Ibid.*, pp. 89-90.

⁷ On this theme, see Josef Pieper, *Leisure: the Basis of Culture*, translated by Alexander Dru, introduction by T. S. Eliot (New York NY: The New American Library, 1963), esp. pp. 83-96.

enquiry.”⁸ For their part, the Devines do venture into metaphysics enough to insist that personhood is a question for philosophy rather than natural science.⁹

Central to developing a metaphysical basis for communitarianism is the category of relation. Norris Clarke, S.J., is especially helpful here in that he extends relation to what he calls *system*. On his view, a system is an irreducible mode of unity. For the perennial philosophy, unity is itself a transcendental. For anything to be, it must have a unity within itself. After all, whatever is, is what it is and not another thing—and were it otherwise, human speech would fail to refer to what is real. Members of a system, for their part, share in a singular overarching relationship; it is a relationship that we cannot reduce to a plurality of isolated relations and their various *relata*. A family, for example, presents each of its members as first and foremost sharing in the same unifying relation. This structure differs sharply from one that presents the members of a family as severally and distinctly related, each to every other member, one that thereby constitutes a set of different relations. Systems commonly function to order reality, and we ourselves are “related to...other beings and systems of them.”¹⁰ In this light, Clarke sees both substantiality and relationality as “primordial dimensions of reality.”¹¹ It would not be difficult for him to find support in St. Thomas for his claim. In his early *Commentary on the Sentences of Peter Lombard*, Aquinas notes: “[A] twofold perfection is found in all things: one, by which a thing subsists in itself; another, by which it is ordered to others things.”¹² Note that this being-ordered-to-others, this relationality,

⁸ John Paul II, *Fides et Ratio* §83.

⁹ Philip E. Devine and Celia Wolf-Devine, in *Abortion: Three Perspectives*, p. 199.

¹⁰ W. Norris Clarke, S.J., *The One and the Many: A Contemporary Thomistic Metaphysics* (Notre Dame IN: Univ. of Notre Dame Press, 2001), p. 136.

¹¹ Ibid.

¹² *In III Sent.* D. 27, q. 1, a. 4.

perfects rather than limits us.

Here we might well add that not all relations are equal. For example, in one sense a mere thing, a “what,” is in relation to others of every kind—but only passively. In contrast, only a living being (a “who”) has the capacity for forging relations with others. Only a “who” can be open to an ever-widening world. We can think of this as a *cosmos* that includes but outstrips the limiting environments that restrict that which remains, inanimately, only a “what.”¹³

Moral considerations offer, of course, a further and pressing reason for paying critical attention to the structure of distinct systems. Clarke distinguishes between the systems that tend to develop the human being and those that tend rather to submerge the human being. For us, a special case comes readily to mind. Giving birth, especially in the context of a nurturing family, is a foundational case of ethical relationality. Its destructive opposite, abortion, exemplifies the rupture of the relational. Abortion in its now routine and commercial context does so egregiously.

In developing a communitarian metaphysics, relation and system are of central relevance. Together with relation and system, and of even more fundamental import, the metaphysical dynamism of act and potency is critical for developing a metaphysics of communitarianism. In the case of each living being, its being in relation involves both a coming into being and an actualizing of potential—together, to be sure, with other living beings. Conception and giving birth, for us, is the matrix of this coming to be and actualizing of the relational. Abortion exemplifies its radical dissolution.

The Devines, indeed, recognize that this metaphysical dimension needs attention. While alerting their readers that “[t]he term ‘potentiality’ is slippery,” they explain its relevance. “There is present within the developing organism a kind of inner drive toward full human maturity; we are presented with an active internally-directed process, rather than a merely passive potentiality—for example, the potentiality a piece of

¹³ For this theme, see Pieper, *Leisure: the Basis of Culture*, esp. p. 84.

marble has to become a statute, or of wood to burn.”¹⁴ In light of this metaphysical stance, they put forward their moral corollary: “An animal that has the (active or internally directed) potential to exhibit distinctively human ways of thinking and behaving is a person—that is to say a rights bearer.”¹⁵ Metaphysics, then, is the ground of ethics. Since there is to be no escape, why not unfurl *both* banners?

A PAIR OF OBJECTIONS & REPLIES

Let me turn now to a pair of objections to the Devines, one from Michael Tooley and the other from Alison Jaggar. Michael Tooley takes issue with their reliance on ethical intuitionism. There is some basis for his complaint. The Devines explicitly state that “fundamental questions of value are matters of intuition rather than reasoning.”¹⁶ Given the often surprising range of disparate intuitions, Tooley proposes a method of reflective equilibrium. On his view, we must put in balance a wide range of relevant intuitions; in doing so, we must also test them in light of relevant and often new scientific data.¹⁷ Ironically, Alison Jaggar claims that Tooley displays a rationalism that undermines his professed method; in its place she recommends her own style of, yes, Rawlsian reflective equilibrium.¹⁸

A metaphysically robust comunitarianism might well help answer Tooley’s objection and, beyond this, advance the debate over methodology. We must, of course, take our intuitions seriously, especially those that point to a danger. The Devines call attention to the “atavistic” and cite Leon Kass on the “wisdom of repugnance.”¹⁹ We must also work for

¹⁴ Philip E. Devine and Celia Wolf-Devine, in *Abortion: Three Perspectives*, p. 79 and p. 205.

¹⁵ *Ibid.*, p. 86.

¹⁶ *Ibid.*, p. 108.

¹⁷ Michael Tooley, in *Abortion: Three Perspectives*, p. 191.

¹⁸ Alison M. Jaggar, in *Abortion: Three Perspectives*, pp. 218-20.

¹⁹ Philip E. Devine and Celia Wolf-Devine, in *Abortion: Three Perspectives*, pp. 68 and 84.

the coherence of our intuitions.²⁰ Like the *eudoxa* that Aristotle sought to reconcile, one's own intuitions are often at odds.²¹ Yet logically prior to our intuitions, which we often but not always share, there is the inescapable first principle, that is, the *source* of practical reason: good is to be done and pursued, and bad is to be avoided.²² This we know by an immediate intuition, but not as a sort of moral sensibility. Without this starting point, sorting out our intuitions or, perhaps, sensibilities, leaves us with an ungrounded inventory. To be sure, there is a reciprocity at work. While moral reasoning draws on first principles, it characteristically discovers them by an analysis, or resolution, of the moral data of experience.²³

We can, moreover, look beyond the latticework of our intuitions. Do not these intuitions themselves have an intentional structure? One does not, after all, have mere moral sensations. Is it not reasonable, then, to take these intuitions to point to an objective ordering of value? This ordering, moreover, is itself relational in that it reflects an interplay of distinctive virtues keyed to a range of specific goods. So understood, this ordering is the objective pole of the moral agent's experience of value.²⁴ It follows that when we act in a way that undermines the relational

²⁰ On the merits of epistemic particularism, see Roderick M. Chisholm's Aquinas Lecture *The Problem of the Criterion* (Milwaukee WI: Marquette Univ. Press, 1973). On the ascent from particulars to universals, see John F. X. Knasas, *Being and Some Twentieth-Century Thomists* (New York NY: Fordham Univ. Fordham Press, 2003), esp. Ch. 3.

²¹ See Aristotle's *Politics*, translated with introduction and notes by C.D.C. Reeve (Indianapolis IN: Hackett, 1998), pp. xviii-xxv for Reeve's helpful account of Aristotle's method of dialectic.

²² Aquinas, *Summa Theologiae*, I-II, q. 94, a.2 c.

²³ For a recent discussion of this pattern, see David J. Klassen, "Application of the Natural Law in the Thought of St. Thomas Aquinas," in *Etudes maritainiennes – Maritain Studies* 24 (2008): 25-28.

²⁴ On the objective character of value, see John F. Crosby, *The Selfhood of the Human Person* (Washington, D. C.: The Catholic Univ. of America Press, 1996), esp. Ch. 7, "Moral Good and Bad," pp. 218-43.

dimension of community, we undermine the good. That this good is convertible with being in the key of “being human” underscores how much is at stake.

With keen insight, the Devines point out how, for some, moral intuitions seem to parallel intuitions about the natural world. They cite Simone De Beauvoir, with specific reference to abortion, and John Stuart Mill, a founder of political liberalism, as expressing Manichean sentiments. The former sees the pregnant woman as “ensnared by nature,” and the latter indicts nature herself as an enemy who “poisons [men] by the quick or slow venom of her exhalations.”²⁵ Strikingly different, of course, is the moral significance of nature for those who see it as the work of the Creator. In this spirit Pope Benedict XVI recently called attention to the moral range of ecology:

[The Church] has a responsibility for the created order.... I ought to safeguard not only the earth, water and air as gifts of creation.... It ought also to protect man against the destruction of himself. What is necessary is a kind of ecology of man.... When the Church speaks of the nature of the human being as man and woman and asks that this order of creation be respected, it is not the result of an outdated metaphysic.²⁶

Rather, the metaphysics at work seeks to reflect, if only in part, the mystery of Creation.

Alison Jaggar, whose objection I next address, takes issue with the Devines for what she sees as an uncritical appeal to community. It is unclear, she complains, whether they appeal to “the value of community in general or to the values of particular communities,” especially since “different communities have different values” and, beyond that, it is

²⁵ Philip E. Devine and Celia Wolf-Devine, in *Abortion: Three Perspectives*, p. 108.

²⁶ The Address of the Holy Father, Pope Benedict XVI, to the Roman Curia on the occasion of their Christmas Greetings, 22 December 2008.

unclear what weight we should give to the bonds of community.²⁷ (Let me insert here that she herself disallows medical personnel conscientious refusal to participate in abortions. She argues on the grounds of human rights and gender equality, as if in doing so she had reached beyond contested values.²⁸) Still, Jaggar does seem to have a basis for complaint. The Devines are perhaps not always as explicit as they might be in drawing the distinction between the roles of community in general and that of particular communities nor as explicit as they might be about how the value of community takes its place in the whole range of values.

Once again a metaphysically robust communitarianism promises to advance the debate. An appeal to community, like an appeal to nature, is of ethical significance only in light of a normative understanding of community. I propose, then, the following definition: *a community is an alliance of persons who share a unified pattern of activities and a reflective pursuit of a common good*. To reach such an understanding, we must begin with the life of particular communities, searching out those communities in which human beings flourish. We can then look beyond the web of such communities to identify a common good that transcends any particular community. This common good is internally relational; its *relata* are the individuals who participate in a human system. As such, each is a substantial center of personhood. Thus Robert Spaemann notes:

[A] person is someone situated *in* this or that condition; the condition is always a predicate of the person, the person always presupposed by the condition. The person is not the result of modification; it simply ‘presents itself,’ like substance in Aristotle. The person is substance because the person is the mode in which a human being exists.²⁹

²⁷ Alison M. Jaggar, in *Abortion: Three Perspectives*, p. 223.

²⁸ *Ibid.*, pp. 166-68.

²⁹ For an incisive account of the relational human context of the person, see Robert Spaemann, *Persons*, translated by Oliver O’Donovan (New York NY: Oxford Univ. Press, 2007), p. 245. Ch. 18, “Are All Human Beings Persons?” is of special relevance.

Insofar as we attack the most vulnerable members of a community, among whom we must include “the least little ones,” the conceived but not yet born, we forfeit the actual being of community and its distinct good.

A communitarian metaphysics, as this account develops, will surely include the motivating relation of solidarity. It is a relation among persons in virtue of which they have the capacity to recognize a shared good and act on a moral impetus to realize it.³⁰ Pope John Paul II spoke eloquently of solidarity, understanding it as “*a firm and persevering determination to commit oneself to the common good; that is to say, to the good of all and of each individual.*”³¹ Solidarity finds its realization in flesh and blood human beings, helping to actualize what is best about us. The failure of solidarity corrupts our institutions and, in doing so, our lives. A culture of death begins by denying solidarity with those whose lives are most in jeopardy. In his recent book *Changing Unjust Laws Justly: Pro-Life Solidarity with “the Last and the Least,”*³² Colin Harte challenges even pro-life leaders to keep faith with the disabled unborn by rejecting legislation that excludes them from the protection of the law.³³

Nonetheless, the received opinion is that keeping faith is compatible with keeping silent. Half a century ago, the Thomist Yves Simon considered this question. Addressing a conference in 1957, he reviewed

³⁰ Here I borrow from William Sweet’s “Solidarity and Human Rights” in *Philosophical Theory and the Universal Declaration of Human Rights*, edited and with an introduction by William Sweet (Ottawa ON: Univ. of Ottawa Press, 2003), especially pp. 214-15.

³¹ John Paul II, *Sollicitudo rei socialis* (1987) §39.

³² Colin Harte, *Changing Unjust Laws Justly: Pro-Life Solidarity with “the Last and the Least”* (Washington, D.C.: The Catholic Univ. of America Press, 2005).

³³ The Devines cite Harte’s theme of solidarity at the close of their communitarian reflection; see *Abortion: Three Perspectives*, p. 109.

a recent case of infanticide that met with a French jury's indifference. Simon then asked:

"What if the baby is unborn? ... Perhaps we would, here, in a group be unanimous. But if we opened the door and invited a few people at random to join our conference, I am sure that we would be at variance in regard to such a rather clear subject as the murdering of children."³⁴

Indeed. And suppose that we were to issue a like invitation? The results would be entirely predictable—even if we were to issue the invitation to our colleagues.

Of course, predictions can be mistaken. I wish that this last one were so. But Simon actually offers his prediction in the context of carefully contrasting natural certainties and matters of opinion. To be sure, we might predict that some will deny that there are any such certainties. But wait. It is certain, is it not, that there are such certainties? John Henry Newman puts probability in perspective. He writes: "In human matters we are guided by probabilities, but...they are probabilities founded on certainties."³⁵ Or, we might say, *doubting itself*, if it is not empty, presupposes belief.³⁶

It is also certain that epistemology and ethics alike witness a contest between virtue and vice. Thus Yves Simon goes on to observe that "we are often tempted to treat things that are above opinion as if they were matters of opinion."³⁷ The epistemic distinction remains sound. And what of the moral temptation? Is it not only too familiar? If I may, I will quote Simon once more:

³⁴ Yves R. Simon, "Personality and Opinion," *Logos* 12/2 (2009): 82.

³⁵ John Henry Newman, *An Essay in Aid of a Grammar of Assent* (Notre Dame IN: Univ. of Notre Dame Press, 1979), p. 194.

³⁶ See Ludwig Wittgenstein, *On Certainty*, edited by G. E. M. Anscombe and G. H. Wright (New York NY: Harper & Row, 1972), esp. #115-23, p. 18e.

³⁷ Simon, p. 81.

[W]e have to live with people who are in disagreement with us even when disagreement is not permissible.... It has to be done: we cannot change the great accidents of human history that cause us to be short of agreement on a number of matters...that are far above opinion.... At the same time we have to get along and be friendly with people who will consider murder legitimate in some cases when we are so convinced that [it] is always by essence an irretrievably very great crime.³⁸

History, to be sure, has its adamant accidents and aberrations. Yet Simon's counsel of friendliness is at odds, I think, with what solidarity, in 2009, requires. The ontological dignity of the human person always precludes contempt for the other. Nonetheless, friendliness is for friends; and friends hold the first things in common. Solidarity is among these first things. We should add, too, that honor is for those who are honorable—especially honorable in regard to those most at risk.

To be sure, we are to live with our neighbors in civility, so far as is possible. But we must also look to the integrity of civic friendship. Elsewhere Simon himself issued an apposite alarm: “[I]n human affairs, counterfeit is so related to genuine form that it appears, with disquieting frequency, precisely where the genuine form is most earnestly sought.”³⁹ In the academy no one has spoken more bluntly about honor and the lives of the innocent than Elizabeth Anscombe. In 1946, her university (Oxford) bestowed an honorary degree on Harry S. Truman. Anscombe declined to join in the ceremony on the grounds of Truman's use of atomic bombs against Hiroshima and Nagasaki. “It is possible,” she wrote, “to withdraw from this shameful business...; if it should be embarrassing to someone who would normally go to plead other business, he could take to his bed.”⁴⁰ As for herself, she feared to go “in

³⁸ Ibid., p. 83.

³⁹ Yves R. Simon, *A General Theory of Authority*. Introduction by A. Robert Caponigri. (Notre Dame IN: Univ. of Notre Dame Press, 1962), p. 27.

⁴⁰ See “Mr. Truman's Degree,” in G. E. M. Anscombe, *Ethics, Religion, and Politics* (Minneapolis MN: Univ. of Minnesota Press, 1981), p. 71.

case God's patience suddenly ends."⁴¹ Is it not thus that wisdom has its beginning?

⁴¹ Ibid.

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Fichte's Idealism and Natural Rights: A Key to Understanding Seemingly Inconsistent Arguments for Abortion and Euthanasia

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ABSTRACT: Abortion and euthanasia opponents are often puzzled by the seemingly inconsistent position held by defenders of these practices. Prematurely-born infants, for example, are regarded as having a right to life while more physically developed fetuses are not. By contrast, in respect to euthanasia, greater physical functionality generally diminishes the degree to which death is considered acceptable. Such inconsistencies are surprisingly cogent when considered in light of the rights theory advanced by the eighteenth-century idealist philosopher G. W. Fichte. Fichte's views often coincide with contemporary liberal convictions, including the beliefs (1) that the fetus is a part of a woman's body, (2) that morality cannot be legislated, (3) that religious institutions should refrain from political discourse that challenges "rational" secular values, and (4) that one has a right to do whatever he or she wishes, as long as it does not directly interfere with another's body. This essay examines how Fichte's idealism develops conceptions of nature, personhood, and rights that justify abortion and euthanasia. But despite the rigor of Fichte's system, it can only avoid the charge of making certain *ad hoc* metaphysical commitments that are in tension with other contemporary liberal convictions by supplementing its idealistic account of personhood and rights with certain biological criteria that actually undermine the case for abortion and euthanasia.

THOSE WHO OPPOSE ABORTION AND EUTHANASIA often find themselves bewildered at the seemingly obvious inconsistencies exhibited by defenders of these practices. To take one example, it is common for advocates of abortion rights to maintain that while a

prematurely-born fetus has an unmitigated right to life, a woman has a right to abort a much more developed pre-born fetus. In the case of euthanasia, defenders of this practice will generally not allow for individuals who are physically healthy but significantly emotionally or intellectually impaired to be euthanized, but they accept this option for mentally functional individuals who are severely physically impaired. The oddities of these positions are particularly apparent when the cases for abortion and euthanasia are considered together. For example, in the abortion case, the greater physical functionality of the pre-born offspring does not correlate to an increased right to life, while in the euthanasia case, the physical functionality of the mentally impaired person is viewed as sufficient grounds for refusing euthanasia. (Of course, there are those who would allow for euthanasia even in these cases, but they will not be considered here.)

Naturally, pro-lifers are aware of the various responses given to explain such apparent peculiarities. For abortion, it will typically be argued that the greater physical development of the fetus does not correlate to a right to life in the way that it might in the case of the mentally impaired person, since the later-term fetus is still physically attached to the mother. For some (including Fichte, as will be addressed later), this permits one to maintain that a fetus at any stage is “a part of the woman’s body,” or to assert that even if this is not the case, the fundamental physical connection to the mother somehow subverts the right to life that would normally be associated with certain levels of physical development. (Even though biological criteria virtually destroy the former claim, given the unique DNA of pre-natal offspring, this work will demonstrate how Fichte’s idealism avoids this problem by subjugating biological facts to the primacy of self-consciousness, which on his scheme requires inter-subjective recognition, which he takes to be impossible for pre-natal offspring.)

To the pro-lifer, these standard pro-choice assertions require much greater explanation. For instance, precisely what is it about physical connectedness (especially where life is developed enough to be sustained

apart from this connection) that trumps the fetus's right to continued existence? Likewise, if the fetus is biologically advanced enough to survive outside the womb, in what sense can he or she be taken to be simply "part of the woman's body" in any compelling sense?

Similar puzzles arise in the case of euthanasia. Is it not arbitrary to allow for euthanasia in the case of someone who is physically impaired, but not for one who is mentally impaired? If mental impairment does not permit euthanasia for a physically healthy individual, what is the reason for this? If it is prohibited on the grounds that such persons are not sufficiently rational to make this judgment for themselves, why would this lack of rational aptitude not in itself diminish the personhood of these subjects, thereby mitigating their rights to life? Conversely, if they are taken to possess rationality sufficient for full-fledged personhood, then why should they not be able to choose euthanasia for reasons related to physical or emotional impairments if they so desire, just as a physically impaired, fully mentally functional individual would be so allowed? Why should physical functionality establish greater grounds than mental or psychological factors in preserving life against a subject's wishes?

With questions like these in mind, this essay aims to demonstrate that abortion and euthanasia positions like those described above are not necessarily as incoherent as they first appear. To the contrary, this work explores the possibility that rather than being derived from various functionalist or materialistic accounts of personhood (as abortion and euthanasia defenses are often presumed to be), such positions may actually be influenced by developments in philosophical idealism, leading up in particular to explicitly intersubjective accounts of personhood.

While Hegel is often regarded as providing the most comprehensive idealist account of the historical foundations of cultural and political life (including the development of various conceptions of "rights"),¹ this

¹ See Hegel's *Philosophy of Right*. The reader may take particular interest

essay examines the somewhat lesser-known work of J.G. Fichte, whose philosophy serves as a bridge of sorts between Kant and Hegel.² In particular, it considers how his idealistic rendering of the concept of “nature” in his important but often-overlooked work *The Foundation of Natural Right*³ (developed in conjunction with his larger work in the *Science of Knowledge*, or *Wissenschafteslehre*) advances concepts of “personhood” and “natural rights” that provide a relatively coherent philosophical foundation for the seemingly incoherent positions on abortion and euthanasia noted above, at least in respect to the question of rights.

Fichte provides a useful historical focus here for a number of reasons. First, an examination of his views on their own merits reveals much in common with many common current-day assumptions about the nature of rights, as well as the relationship of legislation to morality. These include, as will be discussed below, the frequent (but at times seemingly vacuous) assertion that societies cannot (or at least “should not”) legislate morality, as well as the view that one has a right to do

in some of Hegel’s mention of the influence of Fichte, whom he credits with being the first to understand the importance of the positive aspect of will in relation to the concept of “right,” even as he asserts that a further step was needed for this development to be complete. See Hegel’s Introduction, §6.

² Fichte himself frequently cites Kant, generally favorably, while Hegel in the paragraph mentioned in the previous note addresses the relation of the relation of the conceptions of will as the foundation of right in Fichte and Kant, and the relation of both of these to the development of his own view. Equally interesting is W.L. Reese’s observation that the scheme of “thesis/antithesis/synthesis” often attributed to Hegel is actually implicit in the methodology of Kant and found in explicit form for the first time in Fichte’s writings. See Reese’s entries on “Hegel” and “Fichte” in *Dictionary of Philosophy and Religion: Eastern and Western Thought* (Atlantic Highlands NJ: Humanities Press, 1980) p. 212, para. 4 and p. 173, para. 3, respectively.

³ Citations for this work will be given internally. Generally, they will provide the section and page numbers, in that order. All citations are taken from Frederick Neuhouser’s edition, translated by Michael Baur (New York NY: Cambridge Univ. Press, 2000).

whatever he or she wants, as long as it does not physically harm another against his or her will. Fichte fits contemporary liberal attitudes well on this point by explicitly declaring that people have a right to enter into any consensual adult sexual relationship whatsoever, no matter how “degrading” (*FNR* §21), including all extramarital relations (*FNR* §24, 290), as well as a right to divorce (*FNR* §25-31, 291-97).

Along these same lines, he insists that religious institutions should not “aim to construct theoretical proofs or system of ethics or to speculate at all about [matters of the same],”⁴ a view with which those who assume that efforts to legislate against abortion and euthanasia are “illicitly” based on personal religious convictions will undoubtedly agree.⁵ In fact, Fichte agrees with the common contemporary view that a fetus, no matter how developed, is part of a woman’s body (*FNR* §40, 306), while in respect to euthanasia he declares that the state can make no law prohibiting one from taking his or her own life (*FNR* §21, 286).

Secondly, Fichte is relevant in assessing arguments for abortion and

⁴ See his *System of Ethics*, translated and edited by Daniel Breazeale and Günter Zöller (New York NY: Cambridge Univ. Press, 2005), §30, 330. Citations from this work will also be internally cited, following the same format as citations from *FNR*.

⁵ Fichte’s view on the relationship between church and state is actually more complex than the previous citation suggests, though still basically in line with contemporary liberal convictions. He goes further than contemporary liberals in proclaiming a “moral duty” to belong to a church (e.g., *SE* §17, 224) and in further declaring that church leaders are properly called upon to be the moral teachers of society (e.g., *SE* §30, 329). The claim that church leaders should be the moral teachers of society seems at odds with his claim that it is not the place of religious institutions to develop moral teachings. These positions are reconciled once one realizes that Fichte, with astounding similarity to attitudes in among many mainstream religious practitioners in contemporary liberal society, ascertains that the proper role of the church is to reinforce and promote ethical ideals discovered by (secular) reason alone, by uniting people under concrete “symbols” and “creeds,” with these necessarily changing over time to reflect the alleged progress in society’s moral understanding (*SE* §17, 224).

euthanasia rights insofar as he conceptually bridges the thought of Kant and Hegel (as noted previously), whose influence in ethics and political theory is well-established. Indeed, one suspects the influence of Hegelian-like idealistic “progressivism” in the popular conviction that law should be interpreted “in light of” contemporary values, from which “new rights,” or at least hitherto overlooked rights (e.g., abortion rights),⁶ are “revealed.”⁷ While Fichte’s scheme is not progressive in the same manner as Hegel’s,⁸ his conviction that “nature” and the rights corresponding to it are revealed as products of consciousness itself provides groundwork for this Hegelian development.

A key to understanding Fichte rests in comprehending his reasons for asserting the conceptual distinction between “rights” and “morality” (e.g., *FNR* Introduction, sec. II, para. 5, pp. 10-11, §4, 47, and §7, 81). His position, in effect, indicates that while all actions that violate rights

⁶ For an example of someone who speaks specifically of abortion rights in terms of such development (through Hegel, Marx, and others), see Michael Crozier and Peter Murphy, *The Left in Search of a Center* (Urbana IL: Univ. of Illinois Press, 1996), p. 165.

⁷ To be sure, this position is susceptible to charges of arbitrariness. For example, while allegedly “new values” dealing with greater permissiveness in various aspects of human behavior are today often celebrated as “truly progressive,” the emergence of various fascist and nationalistic attitudes and the like are typically not regarded as such, even if in fact Hegel’s system has historically been invoked by some in defense of such developments. Fichte’s scheme, on the other hand, provides a more changeless foundation for recognizing the former, and not the latter (at least where they give rise to certain oppressive activities) as constituting authentic rights.

⁸ Hegel goes a step further than Fichte in conceptualizing states as “organisms” and even “persons” in their own right. See, for example, Reese’s entry on Hegel, p. 213, para.17. See also Hegel’s own critique of Rousseau’s and Fichte’s social contractarian emphasis on the “general will” of the state arising from the primacy of individual wills rather than a “universal will” of the state as a higher order of consciousness transcending (or perhaps even replacing?) individual wills (e.g., *Philosophy of Right*, Third Part, sec. iii: The State, §258).

are immoral, neither the logical inverse (i.e., all immoral actions violate rights) or complement (i.e., all actions that do not violate rights are moral) follows (e.g., §4, 50). The basis of this distinction will be elucidated in section two. In any case, this distinction legitimizes legislation against actions that physically impede the freedom of another to be advanced as protections of basic rights without this constituting a “legislation of morality” as this might be applied to immoral actions that do not involve direct physical obstructions of freedom.

Section two will explain in greater detail the ontological and conceptual basis for distinguishing rights from morality in Fichte. Fichte takes morality to refer to an agent’s decision to treat others according to the principle of rational consistency (where one treats others only as he or she would desire to be treated), where such action is purely self-enforced (i.e., self-determined) apart from any coercive external physical force. By contrast, rights refer to limitations that one chooses to accept respecting his or her actions in relation to the freedom of others, on the condition that they accept these same limitations for themselves, where this agreement is susceptible to enforcement through external physical coercion (such as through a governing authority).

In short, for Fichte morality is purely rationally self-determined, independent of any external enforcement (even that which is assented to). Rights, on the other hand, are rooted in rational agreement, but are accompanied by susceptibility to external enforcement. “Rights” in a certain sense have a priority over morality in that they establish the social conditions needed for moral living to be effectively pursued, even though morality exemplifies a higher development of consciousness (insofar as it is motivated purely by one’s own freedom, apart from any external coercive force). In fact, Fichte’s idealism has been interpreted by some to be pantheistic⁹ (this led to accusations of atheism in his own

⁹ For those who speak of him more as a pantheist, see especially the entry on Fichte by Garrett Green in the *Encyclopedia of Religion*, 2nd ed., edited by Lindsay Jones (Detroit MI: Macmillan Reference USA, 2005), p. 3049, as well

time),¹⁰ while he understood consistent living according to moral-consciousness as constituting the fullest realization of self-consciousness.¹¹ (Other statements by Fichte, considered in this work's final section, are even suggestive of deism, though it is doubtful they represent his sincere position.)

With the distinction of rights from morality in mind, fairness requires pointing out that while Fichte's scheme explicitly denies a right to life to pre-natal offspring (and even to post-natal infants), as well as possibly allowing for certain cases of euthanasia, his *System of Ethics*¹² (which immediately follows *FNR*) indicates that mothers typically feel a maternal protective instinct toward pre-natal offspring that provides a natural foundation for the development of further moral sensibilities (§27, 317). Likewise, he explicitly declares suicide to be gravely immoral, though there might be instances when it manifests a degree of courage (*SE* §20, 252ff, esp. 256).

Despite Fichte's own rigorous distinction between "morality" and "rights," one suspects that in popular belief and practice, what is legally declared as a fundamental right comes to be regarded as morally acceptable. It is far from likely that the obtuse goal of achieving quasi-panteistic moral self-awareness will motivate the average citizen to sacrifice certain immediate conveniences that they have come to regard as fundamental rights. While people can easily comprehend that certain

as Radoslav Tsanoff's entry on Fichte in *The Encyclopedia of Philosophy*, ed. Paul Edwards (New York NY: Macmillan Free Press, 1967), pp. 193-94.

¹⁰ There are many commentaries regarding the so-called "Atheism Controversy" in Fichte. Helpful general discussions can be found in *Fichte: Early Philosophical Writings* by Daniel Breazeale (Ithaca NY: Cornell Univ. Press, 1988), pp. 40-44, and *The Fundamental Principle of Fichte's Philosophy* by Ellen Bliss Talbot (New York NY: The Macmillan Company, 1906), pp. 57-58.

¹¹ See, for example, Reese's entry on Fichte, p. 173, para. 7-8.

¹² Citations from this work will also be given internally following the same format as those provided for *FNR*.

actions may be politically tolerated for pragmatic reasons without appearing to receive moral sanction from the state, it is much more difficult to regard acts as immoral that are construed as *fundamental* rights *requiring* (rather than merely *permitting*) legal protection.

In addition, if what is a fundamental right tends to become equated with what is morally approvable, then a right to express moral disapproval of what has been deemed a right may come to be denied, assuming that it is considered immoral to morally disapprove of what is deemed morally approvable. In effect, the term “tolerate” shifts from implying legally permitted but morally disapproved to suggesting that something is morally approved. Thus, what is morally disapprovable (such as expressing disapproval for approvable actions) is “intolerable,” and hence need not itself be “tolerated” (as the sense of “legally permitted though morally unapproved” has now been lost). One sees an example of this in Fichte’s own assertion, noted earlier, that one has an absolute right to all consensual sexual relations, even though he morally disapproves of any such relation outside of traditional marriage. In contemporary society, his expressed moral disapproval of such protected actions would be deemed by many as “intolerant.” From this, one can imagine many questioning whether one has a fundamental right to express such disapproval, or could in fact be “rightfully” subject to prosecution, especially due to its perceived association with violence.

The view that verbal expression can be legally prosecuted, it should be noted, fundamentally undermines the basic tenets of Fichte’s idealism-based liberalism, thereby destroying the intelligibility of rights. As section two in this essay explains, for him rights arise from the fact that consciousness is determined purely by its own freedom, and cannot be causally determined by factors outside of it, whether physical or rational (though one’s conscious bodily activity may be *physically*—but not rationally, as through speech—impeded). In this case, the claim that speech can be legally restricted as a means of protecting others’ rights is self-contradictory. This is true in that such a view presupposes one’s thoughts and actions can be causally determined by non-physical forces

(e.g., speech), whereby Fichte takes “rights” to be rooted in a freedom that cannot be causally determined.¹³ This position also contradicts itself (from Fichte’s perspective) in that it justifies using the *explicit* coercive force of law to protect rights against possible violence *implicitly* associated with such speech (i.e., where one ascertain that such speech *could* influence violence, keeping in mind that even then it could never *determine* anyone to violence).

Given the potential distortions that can arise from a tacit acceptance, and later reversal, of Fichtean-like distinctions between rights and morality, pro-lifers must remain vigilant not only in retaining a public voice against such practices, but against this voice itself being diminished through the force of law through its association with violence.

This concern is not intended to preclude the possibility that there could be genuinely rightful prohibitions on alleged “hate speech” (the equation of moral disapproval with such speech is highly dubious to begin with) and the like. Rather, it intends simply to point out that such prohibitions run counter to the very notions of liberalism relied upon elsewhere in defending abortion and euthanasia rights.

Before moving into section one, which describes Fichte’s conception of personhood, it should be stressed that this essay, in considering how Fichte’s idealistic conception of “natural rights” provides cogency to otherwise seemingly incoherent arguments for abortion and euthanasia, does not aim to defend these practices. To the contrary, it is my hope that in examining how certain developments in philosophical idealism may provide a generally overlooked, relatively coherent conceptual foundation for such views, pro-lifers can respond more effectively to arguments for abortion and euthanasia rights by better understanding the

¹³ Fichte’s position allows for laws against forms of speech (e.g., slander, libel, perjury) that unjustly harm one’s “honor” (*FNR* §20, 247) and thus may limit his or her ability to obtain within society other goods to which he or she has a right. However, such laws cannot be compared to legal prohibitions on expressed disapproval of particular actions in that the latter are general and do not speak against any particular individual, unlike the case with slander.

some of the underlying (if often overlooked) principles relied upon in advancing these positions. Where these positions are blithely dismissed as simply incoherent, little progress can be made in encouraging proponents of these practices to reflect more critically on the historical and conceptual bases of particular conceptions of “liberty,” “rights,” and even “personhood.” If in fact their conceptions are derived even in part from largely coherent (not to say correct) accounts of nature and personhood (however unaware they may be of these historical origins), the immediate rejection of their views as “irrational” is itself likely to seem reactionary and irrational.

Undoubtedly, it would be simplistic to suggest say that current defenses of abortion and euthanasia are simply, or even primarily, the product of philosophical idealism. Nevertheless, raising these points for consideration may help pro-lifers understand at least a piece of how our culture got to where it stands today in respect to these issues. In addition, despite the impressive degree of originality and cogency in Fichte’s philosophy, his position is susceptible to certain critiques that indicate that his system may ultimately rely on certain concepts that, if properly acknowledged, promote a reconsideration of “rights” and “personhood” more amenable to those who argue against abortion and euthanasia rights.

With these many issues in mind, section one of this essay provides a general overview of Fichte’s idealistic account of how self-awareness and awareness of the external world arise within consciousness in respect to one’s own body, the body of inanimate external objects, and the bodies of others. After this, section two examines how this account of consciousness provides a foundation for personhood and natural rights and elucidates the difference between rights and morality. Section three then explores the implication of these conceptions for defending a right to even late-term abortion, as well as (more questionably) to euthanasia in at least certain cases. Lastly, section four exposes possible inconsistencies and/or arbitrary elements in Fichte’s thought. In offering this critique, it is my hope that those who unreflectively rely upon Fichtean-

like conceptions in defending abortion and euthanasia rights will be made aware that these same foundations can only be consistently sustained by accepting certain other principles that likely challenge other classically liberal sensibilities at least as much as those they often presume to be “illiberally” advanced by abortion and euthanasia opponents.

1. SELF-CONSCIOUSNESS AS A GROUND FOR PERSONHOOD AND RIGHTS

In order to understand Fichte’s conception of rights, it is helpful to realize that his scheme largely marks a development from Kant, who distinguished between things-in-themselves (*noumena*) and things-as-they-are-perceived (*phenomena*).¹⁴ Going beyond the distinction between primary and secondary qualities proposed by rationalist like Descartes¹⁵ and empiricists like Locke,¹⁶ Kant maintains that all knowledge unavoidably entails knowledge of how our mind conceptualizes what is, and cannot, by definition, understand (conceptualize) the nature of anything that may exist apart from the mind. Strictly speaking, one should not even speak of “mind” if one takes this to refer to something known to exist over time as a substance in its own right (though Kant concedes that the simultaneous and sequential awareness of diverse perceptions renders the postulation of a “unifying principle” practically necessary). In any case, on the Kantian scheme, “nature” itself is to be understood as the ultimate unity of all possible perceptions, under the conditions of consciousness that (once again) cannot be assumed to refer to actual traits of “noumenal” objects existing independently of consciousness, but only to the presentation of particular concepts and to relations between these concepts as they arise in consciousness itself.

¹⁴ Immanuel Kant, *Critique of Pure Reason*, Book II, ch. 3.

¹⁵ See, for example, Descartes’s Sixth Meditation in *Meditations on First Philosophy*.

¹⁶ See, for example, Locke’s *Essay Concerning Human Understanding*, Book II, ch. viii.

One notices here a move that will prove critical to Fichte's conception of rights. For Kant, "nature" itself is no longer to be understood as something that could theoretically exist independently of consciousness, which reason seeks to know (as in the case of most classic thinkers), or even as something that exists apart from and incomprehensible to consciousness. Instead, "nature" is defined only through the categories of thought and the pre-perceptual "intuitions" of time and space.¹⁷ In furthering this approach, Fichte's "natural" rights do not presuppose a consciousness-independent nature from which "rights" are derived, so that rights correlate to a nature possessing certain rational capacities. Rather, "nature" itself, and thus the rights correlating to it, are constructs of consciousness. In other words, consciousness precedes, or is the foundation of, "nature," rather than the other way around.

Fichte goes further than Kant in this way: while Kant takes the principles of reason to order the relations between perceptions,¹⁸ as other mental intuitions and categories¹⁹ "shape" our perceptions, Fichte's scheme suggests that perception itself provides the foundation for reason. For example, even the logical principles of identity and non-contradiction arise in perceptual experience for Fichte. In that in his analysis, the very "identity" of a thing (A), as well as the awareness of that which does not share its identity (not-A) can only be derived from consciousness encountering limits (while also expanding its freedom) in what it comes to posit as (1) a body associated directly with this consciousness itself, (2) external objects that are not directly moved through the act of willing, but only through perceived contact with the

¹⁷ Kant, *Critique of Pure Reason*, Transcendental Aesthetic, First Part, §1 (on space) and §2 (on time).

¹⁸ E.g., Kant, *Critique of Pure Reason*, Second Part, Transcendental Logic, §1-2 ("of Logic in General, and "of Transcendental Logic").

¹⁹ These include the predisposition to order empirical experiences according to relations of cause and effect, substance and accident, and so on. Kant provides a table of categories in The First Division of the Transcendental Logic, under the "Analytic of Concepts," in sec. 3 (§10).

subject's body, and (3) external objects that are taken to be the bodies of another consciousness. This third group is posited through the observation of bodies that exhibit an indeterminacy of action virtually infinite in its variations (*FNR*, §5-6, 57ff) that consciousness associates with its own body and that distinguishes it from presumably inanimate external objects that behave in relatively "fixed" and determined ways under particular circumstances. Moreover, these other bodies are distinguished from inanimate objects in that they are able to exert an influence on, and respond to, the "higher" operation of reason (especially as exemplified in speech).²⁰ (The details of this three-fold schemata are addressed later in this section.)

On Fichte's view, the "I" knows itself through its act of willing. However, willing is always directed at some *thing*, and this "thing," in being known, is a content of consciousness. Given this, consciousness knows itself only through knowing itself both through the thing it wills, as well as in respect to itself as the act of willing (*FNR* §1-2, 18ff). In this way, consciousness constitutes a willing and a thing willed. Fichte emphasizes that the "I" is not something separate from the willing, to which the act of willing is attributed. Rather, the willing *is* the I, or at least marks the consciousness will come to know itself as an I (*FNR* Introduction, 4). This I, however, has a particular identity in that in any given moment, it knows itself both in relation to that conscious content that "it goes out into," as well as that which knows itself to have existed before (and thus as surpassing even now) the boundaries of this new content (*SE* §6, 90).

Insofar as the I knows itself only in relation to that which is perceived as beyond it, however, this content of consciousness beyond

²⁰ Fichte also considers animals and "lower" living organisms within this scheme, maintaining that while they lack the freedom associated with truly rational consciousness (and thus cannot be the subjects of rights), there is nevertheless a basis for positing their existence as something distinct from merely inanimate objects (e.g., *FNR*, §6, 74-77).

it becomes part of the I's very awareness of itself. Thus, that which is not-I (that is, that which is willed by the I, and in being so willed, is known by the I to be beyond and thus distinct from it) is now contained in the I's idea of itself. (The term "not-I" is found mainly throughout *System of Ethics*, though it is in accord with *Foundation of Natural Right*'s conception of limits encountered by original consciousness in coming to know itself and the external world.) It follows from this that there must be something that is not the I, for the I to know itself. On the other hand, in knowing this other through which it knows itself, this other cannot be utterly separated from the I's idea of itself. Hence, this other (i.e., this not-I), is realized to be both beyond, and a part of, the I's self-awareness.

The I comes to know itself through what it is not, which in turn becomes part of its idea of itself. However, in knowing itself as a certain "thing," the I must have an idea of itself. Put differently, the I is what it knows, but since it knows that it knows, part of what the I consists of is its awareness of its awareness of itself. Thus, the I's own self-awareness constitutes an idea (call it I*), which, in being an idea or concept, is both something other than, and a part of, the consciousness that knows it (e.g., *FNR* §1, 18-19). However, because I* represents the I, this idea must represent the I as it actually is. At the same time, because the I is that which is both distinct from, and partly identified with, *both* the not-I that is originally beyond the I, *and* its idea of itself that represents it, I* must *itself* contain an idea of the original not-I and the I as that which are different from *it* (i.e., I*).

Put differently, the original not-I (which served as a limit to consciousness) is a "not-I" to *both* the I and I*. Likewise, the original I that is defined through the original not-I and through I* is itself a not-I to I*. Consequently, I's awareness of itself includes not-I, I*, and its being not-I*. This means, though, that I* (which is I's awareness of itself) also contains not-I* as part of *its* identity, and so on. Additionally, because I* must represent I, and because I knows itself as that which has an idea of itself (I*), I* must also have an idea of itself (e.g., I**) that

identifies itself as being other than the original I, the original not-I, and not-I*. But since I** represents I* (which includes the concept of I**), I*** must also have an idea of *itself*, and so on.

A version of this problem remains even if one proposes that there need be no ensuing series of I**...s if I itself is I*'s concept of itself, just as I* is for I. This is true, in that from the standpoint of I*, I would both precede it and be a product of its reflection, and *vice versa* in respect to the standpoint of I. Hence, the awareness of each of itself as both a cause and product of the other would result in each forming a new concept of itself (one as the other's cause, the other as the other's product), so that a purely internalized (as opposed to "outwardly" generated) series of I-concepts would result, in a kind of solipsistic gridlock, through which I could never "break out" to be aware of something that did not have its origin in I.

It is evident from the above descriptions that an inescapable introspective infinite regress of some kind looms on the epistemological horizon for Fichte. At the same time, the philosopher himself anticipates the opposite problem of a methodological circle that threatens to render even the first concept of the I (I*) impossible, rather than generating a regress of I**...s. To the point, in order for the I to form a concept of itself in the first place, it must be something definite. It can only be something definite, though, in relation to something previously outside of its consciousness, as was just explained. But another object cannot relate to it if this consciousness does not yet have a definite form as a "this" as a thing to which something else can relate. Conversely, this other cannot be a definite "object" (as it must be to be an "other") if the first consciousness is not yet a definite "this" by which something outside of it can be experienced as a definite other (*FNR* §3, 32).

Despite these apparent difficulties, Fichte is able to avoid the difficulties of infinite regress, solipsism, and potential self-contradiction in accounting for the possibility of the I through the fact that the I only

forms an idea of itself (I*)²¹ insofar as it originally desires some not-I that differs from both I and I* and from which the possibility of the I, and thus I*, arose (*FNR* §1, 19). Even though this not-I becomes “part” of the I’s self-awareness (as well as of I* that represents I), a solipsistic gridlock is avoided by the fact that the I is constantly confronted by new experiences beyond itself, which it then assimilates into a new idea of itself (*FNR* §1, 19). Hence, the I and its corresponding I* are constantly undergoing change, moving forward into ever-greater awareness as the I encounters and wills to “take into” its consciousness new things beyond it (*FNR* §2, 27-28). While this does entail that the I’s concept of itself is ever expanding, it is ever expanding in a way that allows it to “break free” of its own previous limitations, thereby “entering into” a world previously entirely different than it and all of its ideas.

As for the problem of consciousness needing to already be defined in order to define another that can define it (i.e., consciousness), this is averted by the fact that the initial freedom, in encountering new experiences from without, comes to realize that it is free to either pursue or reject these experiences as something that can be defined as an other. This reflective awareness of the ability to continue to act, or not act, toward these as-of-yet indefinite limits provides the foundation for consciousness to be defined as a subject that has the freedom to act or not act in specific ways.

In addition, its decision to act or not act in particular ways toward these limits establishes points of “fixture” for these limits, whereby they can be defined as particular objects. In effect, the moment when consciousness realizes this freedom to act or not act in respect to encountered limits constitutes a moment of simultaneity in which the definite I and the definite objects external to the I, both of which mutually define one another, occurs. Even so, the fact that this awareness originates in the consciousness awareness of this freedom, consciousness

²¹ The designation of the I’s self-concept as I* is mine, and not used by Fichte, though this still matches his description.

is discovers that it is basically self-defining, since it is through this freedom that the objects through which consciousness is defined are themselves defined (*FNR* §3, 32-33).

For Fichte, these constantly arising new experiences constitute the “external” world of matter. At the same time, his scheme is idealistic in that these new experiences arise within consciousness itself. Fichte does not posit a “realm” fundamentally outside of consciousness, for if one imagines such a realm, it would exist in consciousness as a concept, and thus not be outside of it. Here is where the seeds of Fichte’s purported pantheism become apparent. Consciousness is constantly becoming “more than it currently is” through what becomes newly present to it.

While one is tempted to posit a “cause” outside of consciousness to explain for these otherwise seemingly *ad hoc* new experiences, this is precluded in that “cause” itself is something only understood through one’s sensory experience. Consequently, “causality” itself is a product of consciousness (e.g., *SE* Part II, 65, and §14, 149-54). In this way, attributing these new experiences to an external cause would require thinking of them as arising through a prior act of consciousness. This seems to point to either another infinite regress, or to consciousness being the constant emergence of new contents that, even as they have their origin in consciousness, consciousness freely determines how it will be defined through them (and hence through itself). Consciousness is the freedom of the self-defining defined. (The manner in which this indicates consciousness to ultimately be eternal—perhaps as God—is addressed mostly in section four.)

To continue, the emergence of new sensory experiences within self-consciousness allows Fichte to deduce three distinct limits to the exercise of freedom that characterizes the I. Precisely speaking, these perceptual encounters with the not-I that enables free consciousness to form an idea of itself are the experience of particular kinds of limits to the exercise of conscious freedom.

First, Fichte notes the perception of the subject’s own body, as addressed previously. The body both limits and increases freedom. On

the one hand, the will directs the actions of the body, which in turn enables it to exercise a degree of physical control over other things external to the body. On the other hand, the body's encounter with these things also places certain limits on the subject's freedom. The limit that is the subject's body, then, is concomitant with the subject's awareness of objects outside of it. Fichte's idealism remains intact in that these objects are necessarily known within consciousness.

External objects differ from the body in that they cannot be manipulated by a sheer act of will, unlike voluntary bodily motions. Rather, these objects can only be controlled through direct physical contact, by either the subject's body or another object.

Thus, these objects constitute a distinct type of limit on freedom. In addition, Fichte suggests that it is only by observing interactions between objects, which appear to occur in a strictly determinate manner, that subjects come to form an idea of physical causality. This concept is taken to be fundamentally different from the exercise of freedom the subject's experiences over his or her own body, which is highly variable and able to interact with (including refraining from physical interaction with) external objects.

The above analysis prompts Fichte to absolutely reject deterministic accounts of action (*SE* §14, 149ff). Physicalist determinism is rejected insofar as the idea of causality between inanimate objects differs even in our experience from that we experience in willing (*SE* §14, 151-52 and *FNR* §3, 35). Beyond this, even forms of so-called "rational determinism," where subjects are said to be determined to act (apart from direct physical causality) from "motives" deterministically formed through comparatively "stronger" perceptions, are precluded.

Fichte rejects "rational determinism" on a number of grounds. First, his analysis of the I has already demonstrated that conscious freedom is the foundation by which concepts of the I and external objects constituting not-I's come to be. In this case, freedom is known to precede one's awareness of such objects (as well as of their causal capabilities), so that attributing the activity of the will to such objects is conceptually

backward.

Similarly, the very judgment concerning the comparative “strength” of various perceptions associated with diverse objects presupposes that consciousness must to some extent “transcend” these experiences in order to assess and compare them. (This is in line with Fichte’s view that the I’s concept of itself is identified in part in relation to particular not-I’s, while also remaining “outside” of them). Likewise, reflection reveals that desires sometimes grow stronger the longer they are not acted upon, thereby indicating that consciousness has a power to not act on them (*SE* §14, 153-54). The very capacity to form such judgments, then, implies for Fichte the freedom to determine itself in respect to whether or not a particular desire linked to a certain perception will serve as its motive for action. While all actions are directed toward *something* originally “outside” the I, the I in effect retains an implicit ability to determine *which* desire it will act upon.

Finally, along with the subject’s own body and external inanimate objects, freedom encounters objects outside itself that (1) exhibit a variability of activity resembling free activity more than the highly determinate actions of other external objects and (2) are able to both influence, and be influenced by, the subject’s free activity apart from direct physical contact, particularly in respect to verbal utterances, which themselves demonstrate a high degree of variability as opposed to rigid determinacy (*FNR* §3, 31ff). Given this variability of motion and non-tactile responsiveness, the I posits these objects as bodies correlated to a conscious freedom apart from its own. The realization of conscious subjects apart from oneself forms the basis for Fichte’s account of “personhood,” as will be now be addressed.

2. PERSONHOOD AND NATURAL RIGHTS

Much as consciousness becomes aware of itself through its interaction with objects and subjects outside of itself, for Fichte consciousness can only be *personal* through the realization of the consciousness of others. Nevertheless, just as his account of the I must be qualified in order to

avoid an infinite regress and/or solipsism, his explication of personhood faces similar challenges. These difficulties will be introduced in this section, and critiqued in section four.

A. PERSONHOOD

For Fichte, one is a person (P1) both through recognizing the personhood (made evident through P1's perception of their free activity) of another (P2), and by being recognized by another (be it P2 or someone else) as a person. However, just as P1 is only a person by recognizing another as a person, P2 can only be a person by recognizing someone other than himself or herself as a person (whether this is P1 or someone else). This means that, for Fichte, one cannot be a person without recognizing others as persons, and without being recognized as a person oneself (e.g., *FNR* §6, 68-69). This process exemplifies (as noted in the introduction) the essentially intersubjective nature of Fichtean personhood. As he expresses, "But prior to his [i.e., the other's] influence upon me, *I am not an I at all*" (*FNR* §6, 69, emphasis Fichte's).

Because being a person requires (1) realizing the personhood of another, (2) realizing one's own personhood, and (3) being recognized as a person by others, the above scheme reveals, more deeply, that one can only be a person if he or she realizes that P2 recognizes his or her own (P2's) personhood, which in turn requires P2 knowing that some other recognizes him or her (P2) to be a person. In other words, one must not merely be recognized as a person by another; he or she must realize that he or she is so recognized, and that this other realizes his or her own recognition by another. Fichte comments on this very point, stating, "Thus I must suppose that the person outside me... assumes the very same things about me that I assume about myself and about him; and I must assume that he simultaneously assumes that I am also assuming the very same things about him" (*FNR* §6, 69).

The above requirement, however, presents a difficulty similar to that addressed previously in respect to the self-definition of consciousness. To be recognized as a person, one must already be a person (i.e.,

something cannot be recognized as that which it is not). But it has been demonstrated that one can only be a person by being recognized as one! Consequently, it appears, in circular fashion, that personhood is both a pre-condition for, and result of, being recognized as a person by another (*FNR* §6, 70ff).

Fichte responds to this puzzle by suggesting that the recognition of another and oneself as personal necessarily arises from the fact of recognizing the comparability of the indeterminacy of another's activity to one's own, relative to more determinate objects (*FNR* §6, 74ff). Hence, it is more accurate to say that the mutual awareness of freedom, as opposed to personhood, is a precondition for establishing personhood. Fichte expresses this in terms of recognizing a "potential" personhood that is made "actual" in the actual intersubjective realization of personhood (*FNR* §6, 69).

The philosopher further maintains that this particular realization happens necessarily, and not as a matter of choice (*FNR* §7, 79ff), as "choice" already presupposes a recognition of oneself as an I with power to act upon various desires in response to particular perceptions. In exercising freedom in one's own body and observing it in the activity of another body, the I (and thus one's own personhood) is posited, along with the simultaneous awareness of the other as an I that, in being another I, is an I for-itself, and not just for the "original" I. Strictly speaking, the other is not an I until he or she is "summoned" (e.g., *FNR* §2-4, 31-41) by another, and responds in such a way to establish and convey one's own personality.²² One must therefore be able to speak of a particular consciousness as being recognized as potentially personal before becoming an actual person, as the latter only occurs when one realizes personality in one's self and others (*SE* §6, 69).

A complication arises here as to how exactly one is able to know that the indeterminant bodily activity perceived in another is necessarily

²² For a helpful summary of this process of "summoning," see also Neuhauser's introduction to *FNR* pp. xv-xvi.

the result of a conscious freedom like one's own. Certainly, one can infer that this is *likely*, as such activity is possible in oneself only through conscious freedom. Still, how can one *know* this?

Stated more precisely, this difficulty arises from the fact that the I realizes itself through a reflective act by which it comes to form a concept of itself (I*) through its identification-within-distinction in relation to what it is not (not-I). In this case, the fact that personal awareness arises in associating the indeterminate activity observed in another body/object with a person (P2) distinct from oneself requires realizing that this other (P2) also has an idea of itself, formed in an identification-within-distinction with what this other is not. Put differently, the I cannot enter into this other's consciousness to know what concepts it has, or to even know that it is conscious at all. As Fichte declares, "Each rational being, just as surely as he is one, can rationally presuppose of others... that they have the same concepts of these objects" (*FNR* §6, 69). How this point can be justifiably presupposed, though, requires elaboration.

As mentioned earlier, Fichte contends that consciousness becomes aware of consciousness outside itself by observing the free indeterminate bodily activity of another, along with the ability to influence, and be influenced by, this other through verbal utterances (*FNR* §6, 65-66, and 71). For Fichte, the mere perception of an object possessing a bodily shape similar to one's own (which, as has been shown, represents another limit on and instrument for freedom) produces in one an "expectation of reciprocal communication." He adds: "This is the case not through habituation and learning, but through nature and [natural] reason" (both quotes from *FNR* §6, 75).

Though one encounters the other through the sheer exertion of the will, one has no control over recognizing this similarity to one's own body. He goes as far as to assert that consciousness instinctually recognizes the "human shape" as "sacred" (*FNR* §6, 79). On the surface, this assertion may sound *ad hoc*. It is more tenable, however, when one considers that freedom by its very nature, as pure undetermined willing,

strives to exist, and hence resist attempts to control it. As a result, perceiving such freedom outside oneself immediately brings to mind, by association, an awareness of this striving, which is now attributed to this other.

Insofar as one has an idea of oneself, and this idea involves a concept of indeterminate action manifested as conscious striving, this indeterminacy perceived in the not-I has now become joined to the idea of conscious striving in the I's idea of itself. In this way, this indeterminacy in the other, the concept of which is now taken into part of the I's very concept of itself as I*, becomes attached to (i.e., associated with) the awareness of conscious freedom already contained in the idea of oneself. Given this, Fichte is able to assert that upon observing the other's free bodily activity, and the use of its "higher organ" (e.g., *FNR* §6, 62 and 65-68) through vocalization, one is "compelled" to recognize the other as free and rational (*FNR* §7, 79). Hence, this recognition is "necessary" rather than the result of a "free" choice, even though it naturally arises from one's awareness of his or her own freedom.

The assertion that the human shape is instinctually regarded as "sacred" and is immediately associated with freedom holds significant implications for abortion and euthanasia. Obviously, at a very early pre-natal stage the human shape is readily apparent, just as it clearly is for a person in a physically limited state. As he states, it is by "an instantaneously grasped connection, as given to the senses...compels everyone with a human countenance to recognize and respect the human shape everywhere—regardless of whether that shape is merely intimated and must still be transferred (albeit with necessity) to the body that intimates it, or whether that shape already exists at a certain level of completion" (*FNR* §6, 78-79). Nevertheless, while Fichte makes it clear both here and later in *Foundations of Natural Right* and *System of Ethics* that there is an natural impulse to care for offspring, he also stresses that pre-natal offspring do not have any rights *per se*. (These claims are addressed in more detail later.)

One can infer at this point that this lack of rights naturally follows

from the fact that the offspring do not perceive the free bodily activity of those outside the womb, and thus cannot achieve the intersubjective recognition necessary for full-fledged personhood. One suspects, then, that while Fichte would personally be averse to the idea of abortion, his system nevertheless lacks grounds for granting offspring the rights needed to merit societal protection. This becomes more evident here in the following discussion where the details of his distinction between rights and morality are clarified.

B. RIGHTS

For Fichte, rights differ from morality in this: while one cannot help but recognize the other as a person upon observing his or her free bodily activity (through the process described above), one can freely choose not to agree to limit his or her freedom in respect to the freedom of another. This marks the difference between rights and morality. In recognizing another as a person, one is necessarily aware that rational consistency demands that he or she regard the other as his or her “equal” (*FNR* §6, 74) and thus treat him or her in a way consistent with how he or she desires to be treated. Morality, then, occurs where the individual agrees to act according to this necessary awareness, outside of any external force which is capable of determining, or impeding, the subject’s actions. Where physical force is threatened, even in respect to defending a morally proper action, the condition of self-determination according to the principle of reason alone has been violated, and the possibility for morality is nullified. Accordingly, proper political authority must refrain from asserting its coercive power as a means of bringing about proper moral behavior. To do so would, in effect, constitute an injustice against morality.

By comparison, right involves persons mutually expressing to one another limitations on one another’s behavior, with the implicit permission to have these limitations maintained, if necessary, by physical force (*FNR* §8, 88ff). Though rights are recognized and established by reason, they are secured through the “lower organ” of the physical force.

In this way, morality is a more advanced activity than the establishment of rights, as it pertains only to self-determined freedom, irrespective to any possible relation to external force.

Once again, as a rational being, one by necessity (through the mutual process of personalization addressed above) cannot but help realize a moral duty toward the other, as well as this other's qualification to be a rights-bearing subject. Nonetheless, the recognition of this duty and this qualification does not in itself constitute an agreement to actually limit one's freedom according to this recognition. The recognition that one should place oneself under the determination of reason (which Fichte notes fundamentally differs from physical determinism) is unavoidable. The agreement, however, to subject oneself to physical force in assuring such compliance is a different matter altogether (*FNR* §7, 81). As he exclaims, "[i]n relation to a particular person, I am absolved from adhering to the law [i.e., of reason and right] requiring me to treat him as a free being, and the question of how I treat him depends entirely upon my choice, or I have a right to coercion against him" so that "this person cannot, *through the right alone* [emphasis Fichte's] prevent my coercion of him (although he may do so...by appealing to the moral law," though (once again) "my coercion is not against *this* law [i.e., the law of right]" (all quotes are from *FNR* §7, 83; the emphasis is Fichte's).

Fichte avers that the decision to grant such recognition is "arbitrary" (*FNR* §7, 81). This holds in that while the rational subject comprehends that rational consistency dictates that if he or she wishes his or her own freedom to be respected he or she must respect such freedom in others, there is nothing that necessitates a choice to live by this principle of consistency (*FNR* §7, 80).

Ironically, though in one sense Fichte takes morality to be the highest aim of consciousness insofar as it is totally self-determined and free from all application of physical force, there is a sense in which right epitomizes freedom on his view. This is true in that morality is determined according to the laws of reason, though Fichte insists that this is fundamentally different than physical causality; it is a determination

rooted in the nature of reason itself. Nevertheless, one's agreement to have the exercise of his or her freedom limited in relation to another is *necessitated* neither by reason nor physical force, though this ability is made *possible* by reason. Likewise, the decision not to live according to the rule of right allows one to be the target of physical coercion against his or her will. As he states, "[t]he rational being is not absolutely bound by the character of rationality to will the freedom of all rational beings outside him [i.e., to acknowledge the exercise of their freedom as a right]" (*FNR* §7, 81).

The above assessment has implications for practices such as abortion and euthanasia in that even if Fichte takes such practices to always be morally unacceptable (as will be touched upon later), a legal prohibition of these could be construed as logically violating the principle of "natural rights." This follows from that fact that moral behavior must be self-determined (and therefore cannot be legislated), thereby suggesting a wrongful violation of "natural freedom" where compliance with morality (where it does not involve directly limiting the freedom of others) is coerced by law. Hence, his claim that maternal instinct provides supports the development of morality does not provide a basis for legally mandating women to give birth (or, for physically debilitated individuals to choose to remain alive).

To repeat, one is not necessitated to place oneself under threat of coercive force in respecting the freedom of another. Once one does assent to this, though, he or she places himself or herself under certain requirements of reason. The most notable of these Fichte terms "original rights" (*FNR* §8-11, 85-108). In particular, these include the right to not have one's freedom and personality rendered impossible (*FNR* §8, 87). This logically demands (of particular relevance to pro-choice arguments) the "absolute inviolability of the body" so that "there should be absolutely that produces an immediate effect upon the body" (*FNR* §11, 108). In respect to the pro-choice position, this of course presumes that terminating a pregnancy does not involve an infringement upon anyone's bodily rights (e.g., the fetus). Section three examines why in fact Fichte

maintains that no such infringement can logically apply for pre-natal offspring.

Besides these rights, original rights in general can be summarized by the principle that no one's right may be limited by another unless this other has assented to an equal limitation. This agreement must be taken to "command universally and categorically" without exception to all who accept its conditions (*FNR* §8, 86). Given that the limitation of right must involve assent, one who limits the freedom of another in a particular way implicitly agrees to have his or her right limited in a similar way (*FNR* §8, 86-87). Lastly, a right to continued existence also entails that one has right to provide himself or herself with the basic goods needed to secure such survival, including adequate food, shelter, and property in general (e.g., *FNR* §18, 184ff), as well as meaningful employment sufficient to obtain these necessities (*FNR* §18, 186, and §19, 202-04).²³ These rights are "natural" in the sense that they all flow from the natural exercise of conscious freedom, remembering that for Fichte, there is no "nature" outside of consciousness.

It is important to note in this explication that right pertains only to the agreement to refrain from actions that theoretically impinge upon the freedom of others. This means that in principle there cannot be a right to form a mutually binding agreement to limit one's activity in respect to those things that do not potentially involve a physical imposition on another's freedom. Certainly, people may elect to limit their own behavior in ways that do not involve direct imposition on others, but they cannot form a binding agreement (backed up by law) with others to do the same. Consequently, Fichte surmises that society must necessarily permit free speech (except where it could cause undue harm), intellectual

²³ Interestingly, Fichte proclaims that beyond simple materially sufficient employment, society should strive to establish conditions in which one can seek a profession that best "fits" his or her individual personality, as opposed to merely assuming a profession based on one's parents' profession, one's familial or other social circumstances, and so on. See *SE* §21, 260.

inquiry, religion, and the like (*SE* §29-31, 327-36).²⁴ Perhaps more intriguingly, he ascertains that no law can rightfully be made against any consenting sexual relation, including adultery (*FNR* §24, 290), or divorce (*FNR* §25, 291).²⁵ While certain instances of these activities may be morally objectionable, one nonetheless has a natural right to them.

Now that a basic outline of the basis and nature of Fichte's conception of personhood and natural right has been provided, a brief assessment of the application of these principles to the practice of abortion and at least certain cases of euthanasia can be provided. Once again, it should be stressed that while Fichte may well morally object to these practices, his philosophy conceptually precludes a basis for legislating against them. In this case, the ability to choose these activities, even if immoral, is a "natural" right, and cannot be legally restricted without violating the proper (for him) purview of rights. Following this, a few critical comments will be given in regard to theoretical shortcomings in Fichte's position.

3. APPLICATION TO ABORTION AND EUTHANASIA

A. ABORTION

In respect to abortion, Fichte directly states that the fetus cannot be regarded as a person and must be perceived as part of the woman's body (*FNR* §40, 306). This must be the case, as the fetus, being within the womb, is incapable of the mutual recognition of freedom required for

²⁴ Precisely speaking, Fichte's system requires distinguishing the acts that come from belief or thought and the beliefs and thoughts themselves. For him, there can be no right to "conscience," "belief," and so on in that "rights," by definition, only apply to physical activities observed in the "sensible" world (*FNR* §4, 51).

²⁵ According to the logic of his system, however, laws may be made which preserve the partners' capacity to secure the basic goods needed for reasonable existence, where such security is jeopardized by the dissolution of a relationship upon which they were dependent for meeting these needs. See *FNR* §26ff.

personhood. This holds true no matter how developed the fetus is, since prior to birth “it” has not been spatially removed from the mother in a way that enables the fetus to regard the mother (or the mother to regard the fetus) as a personal “other” through a mutual experience of external limitation. By contrast, a much younger prematurely born infant would have entered into this “field” of sensory perception, and thus encountered the conditions through which personhood and the development of rights are made possible.

Fichte assertion, noted previously, that there is “natural drive” for the mother to protect her offspring without this implying a “matter of right” is poignantly elucidated when he proclaims:

One can just as little say that the child has a right to demand this physical preservation from his mother, as that the branch has the right to grow on the tree; conversely, one can just as little say that the mother has a duty to preserve her child, which she can be coerced to fulfill, as that a tree has a duty to support the branch which it can be coerced to fulfill. (*FNR* §41, 308)

Following this, he adds that even infanticide, while a “monstrous” and “atrocious” act, is not a “crime against the child’s external rights,” as “[t]he child has no external rights in relation to the mother” (*FNR* §48, 312).

In fact, even Fichte’s suggestion that the mother has a moral obligation to preserve her offspring is mitigated by the claim that while there is natural instinct to care for her offspring, there is “just as little a moral duty, i.e., a *special* duty, to preserve precisely *this child*” (*FNR* §41, 308, emphasis Fichte’s) until this general instinct has felt this general drive in respect to this particular child. A similar remark is made in *System of Ethics* when he declares that initially the woman’s care for her offspring only arises as an animal instinct, and thus “falls below” the concept of morality and duty (*SE* §27, 316). He concedes, nevertheless, that one incapable of such feeling can never advance to the more specifically rational experiences of “compassion” and “pity” that provide the groundwork for the moral experience of recognizing the dignity of

others through which one respects their rationality and freedom (*SE* §27, 316-17).

Amazingly, Fichte's logic leads to the even more troublesome conclusion that the father's sense of duty to a particular child can be expected to develop even later. According to him, "[b]etween father and child there is absolutely no natural connection that is guided by freedom and consciously established" (*SE* §27, 316). Even after birth, Fichte's scheme dictates that the father has no more direct interest in the care of his own child than he would for any child he observed; any special interest he holds is strictly on behalf of the mother, with whom he has freely entered into a relationship (*FNR* §42, 308). Consequently, where a child is born out of wedlock, neither the mother nor infant has a right to receive care from the father (*FNR* §42, 309), though the state can still hold the father responsible in that other's in society may suffer the consequences if these children do not receive adequate economic support (*FNR* §47, 312).

Section two's earlier statement that the mere "human shape," no matter how vague, elicits "respect" and is inclined to be regarded as "sacred" might lead one to hope that contemporary technology, which allows observers to visually perceive the shape and free bodily activity of pre-natal offspring, might be viewed as providing a basis for recognizing pre-natal offspring to have rights. Unfortunately, this is still not possible for Fichte, in that the fetus would not be able to reciprocate in this recognition, as personhood and rights requires. In fact, as mentioned a moment ago, Fichte proposes that even small children are not yet persons with rights, as they fail to demonstrate a variability of activity greater than what one observes in animals (*FNR* §43, 309).

Ironically, at most Fichte's system might allow for the state to forbid abortions (so that it would not not an absolute right) in the case where the repopulation (and thus survival) of the state depends upon this (*FNR* §46-50, 311-14). Fichte only mentions infanticide here, though (*FNR* §48, 313), and it is unlikely that this logic can carry over to abortion, as already-born infants are spatially separate from their mothers. Thus, even

if they have not exhibited the intersubjective awareness needed for full-fledged personhood, they are at least something external to the mother's body, and thus the state can put certain restrictions on the mother's treatment of them, if it is in the interest of securing others' freedom, just as it could in respect to citizens' interaction with other external objects. In any case, though infanticide can never be mandated by the state, nor can it be explicitly permitted through its laws, it can be implicitly permitted by remaining silence on the subject (*FNR* §48, 313). Certainly, at least these standards apply to abortion, along with the possible further condition (unlike the allowance, though not obligation, for outlawing infanticide) that the mother could never be legally required to bring the offspring to full term. In this event, the right to an abortion would not only be allowable, but necessary; this actually seems to better fit Fichte's reasoning.

B. EUTHANASIA

The use of Fichte's principles to justify the legality of euthanasia in certain cases is more questionable in that he directly insists in a number of places in *System of Ethics* that one morally cannot take one's own life, nor provoke others to do so (§20, 250ff). On the other hand, though the topic of suicide is given much more attention in *System of Ethics*, in *Foundations of Natural Right* he remarks in passing that same logic which mandates legally allowing all consensual sexual relations also entails that "the state cannot pass a law against suicide" (§21, 286).

In fact, even in respect to morality and not rights, Fichte concedes that one who commits suicide "with cool and thoughtful self-awareness" rather than out of rash and impulsive desire to escape suffering exhibits "proof of strength of soul" that "necessarily merits respect" as a demonstration of freedom (*FNR* §20, 256). In the end, though, he concludes that even a suicide like this is morally unacceptable in that an even greater degree of freedom is exhibited in the ability to form a law (principle) for living by which one freely continues to abide, regardless of external circumstance.

While it is clear that Fichte finds any form of self-killing to be immoral, it must be remembered that this does not mean that one does not have a right to do it. The reasons for this right are relatively plain upon further analysis.

To begin, “rights” pertain to activities that others have permitted one to do that place limits on their freedom, on the condition that this subject also agrees to limit his or her actions in identical ways for the sake of their freedom. This, in turn, implies agreeing to allow political authority to use coercive force to assure compliance with these limits. It follows from this that one cannot have a “right” to prohibit an individual from doing something that does not observably affect the freedom of others. Hence, it is difficult to see how the state could have a right to forbid people from taking their own lives, or requesting another to take them, as long as the others were not *required* by the coercive force of law to take them.

One could perhaps rebut this conclusion by pointing out that insofar as “right” pertains to an exercise of freedom, one does not necessarily have a “right” to act in a way that would essentially end his or her freedom, as this implies a contradiction (i.e., “I have an absolute right to violate my own rights”). There is some evidence that Fichte’s reasoning might allow for this answer. For example, he states in *System of Ethics* that “indentured servitude” is “absolutely contrary to right” (§32, 340). Taken literally, this would mean that one did not have a right to voluntarily give up his or her freedom to another. Accordingly, it could be argued that one did not have a right to surrender his or her freedom by ending his or her life.

Looked at more closely, however, this comment regarding indentured servitude is not reasonably applicable to a ban on suicide. First, Fichte may be speaking only of servitude that is involuntary, which is most always the case; the example of voluntary slavery is quite hypothetical. Secondly, even if Fichte’s prohibition on servitude did include that which was voluntary, its principle is not sufficiently parallel to euthanasia. One cannot freely limit one’s activity toward another in a slave-like

fashion, since rights are predicated on a reciprocal limitation by the other. Obviously, though, it is unintelligible for some people to make themselves the slave of another, and for these others to make themselves slave to the first. If both agree to be slaves for the other, then there is no master, but if there is no master, there is no slave!

In short, mutual voluntary enslavement would be logically self-cancelling. By comparison, one can coherently will to allow another to have his or her own life taken, on the condition that the other allows him or her this same free choice. Likewise, in respect to slavery, it is self-contradictory to say that one can freely surrender his or her freedom, as this would be maintained by an ongoing free decision to continue surrendering it. A one-time decision to be killed does not involve this same kind of contradiction, however, since once one is dead, the loss of his or her life (freedom) is not sustained by his or her freedom; rather, his or her freedom simply no longer exists.

The above demonstrates that it is unlikely one can make a plausible Fichtean case against a right to euthanasia. This would especially be true, however, in cases like that mentioned in this essay's introduction, where one's physical mobility was limited to such an extent that the range of motion typically associated with freedom was no longer evident. As section one detailed, personhood is dependent upon recognizing another to have a degree of freedom similar to one's own. In the case of a severely physically debilitated person, this would no longer be apparent.

To be sure, we could recognize such an individual's personhood by virtue of his or her previous demonstration of sufficient variability, as well as through his or her ability to speak and the like. Still, as these capacities were lost, the basis within Fichte for recognizing this individual as a person would diminish. In fact, as mentioned previously, Fichte technically declares "rights" to thought that do not correspond to actions to be unintelligible, as "right" refers by definition to the physical manifestation of will. Given this, more than merely the allowance for voluntary euthanasia, a possible case for *involuntary* euthanasia in cases of extreme debilitation arises.

Finally, the above case might even be made more convincing by the fact that the continued care of such persons actually infringes on the freedom of others, and thus (perhaps improperly) limits their rights. It is *possible* that such a conclusion might be avoided if one suggested that the original agreement to live in a state implied tacit assent to take care of severely debilitated persons on the condition that each citizen would be cared for himself or herself under these conditions. Such an argument may not be compelling, though, in that it presupposes that one is agreeing to care for *persons* in certain situation, on the condition that he or she would receive the same care *as a person* in similar circumstances. However, while agreements can be made with *persons*, the very point in question in this scenario is whether one would in certain circumstances be a “person” with whom such an agreement could be made.

Now that it has been shown how Fichtean principles can be used to provide an surprisingly cogent case for abortion and euthanasia rights in contexts that would otherwise seem incoherent, a brief consideration of potential conceptual difficulties with Fichte’s system is in order.

4. FINAL REFLECTIONS: A PRELIMINARY CRITIQUE OF FICHTEAN RIGHTS

Though Fichte’s systematic account of self-awareness, personhood, and natural rights is deduced with striking originality and rigor, it is not without weaknesses that detract from the strength of his conclusions. Space does not permit an extensive investigation of these points. Even so, it is worthwhile to investigate these issues enough to realize that what many presume to be “common sense” views regarding certain alleged rights are largely dependent upon potentially problematic concepts that, if elucidated, reveal that many of the conceptual underpinnings of the current liberal paradigm may be inadequate for continuing to support certain contemporary liberal conclusions. It is hoped that once these difficulties are apparent, proponents of these views will be honest enough to re-evaluate their position, while those resisting these views will gain insight as to which alternate direction to pursue in formulating sufficiently liberal arguments against abortion and euthanasia.

As noted in section two, for Fichte, freedom is understood in the context of rights when persons are able to agree to certain limits on their freedom, on the further condition that violations of this agreement are to be subjected to coercive external force. Such a scheme, however, requires articulating terms of this agreement. Similarly, interpersonal recognition itself is facilitated through a “summoning,” which may involve bodily gestures that demonstrate freedom, but also suggests the capacity to influence another through rational speech. The difficulty here is that communication, which is needed both to authenticate personhood and establish the conditions for rights, is itself a highly developed social product.

Indeed, Fichte himself acknowledges that this process in practice is not carried out merely by a two-way intersubjective recognition, but involves an entire community of rational beings (*FNR* §6, 68, and §7, 79ff, especially 82). This, however, points to a potential chicken-and-egg type problem. Simply put, language cannot be developed apart from persons, but presumably there cannot be persons until there is language (however rudimentary) by which to communicate personhood. Fichte himself seems to be thinking of something like this when he notes that for a rational being to determine itself (i.e., to recognize oneself as a free rational being) “in consequence of the summons” of another, “it must first understand the summons, and so it is dependent on some prior cognition of the summons,” in which case “the purposiveness of the summons is conditional on the understanding and freedom of the being to whom it is being addressed” (all from *FNR* §3, 35; see also earlier citations in section two regarding the role of speech in establishing personhood).

Along similar lines, section two considered a potential methodological circle in Fichte’s account of personhood. One must be regarded as a person to be a person, but one cannot be regarded as a person unless one already is a person. Personhood, then, seems to be both a precondition for, and product of, being recognized as a person. Fichte resolved this by appealing to the recognition of potential personhood, exhibited by

recognizing that another possessed a body similar to one's own, which he or she therefore associates with freedom through his or her experience of his or her own body.

This solution, however, begs the question as to how can one recognize "potential" personhood without already conceptualizing actual personhood, which requires already being a person. The answer, as Fichte realizes, is that the person recognizing the potential personhood of the other must have already attained personhood by the recognition of some third party, who at some point had recognized this first subject's potential personhood. This process of personalizing intersubjective recognition therefore requires in practice more than merely two subjects; it presupposes a community of "several" rational beings, some having realized personhood prior to others (*FNR* §7, 82). On Fichte's scheme, then, two subjects must either recognize one another (and hence themselves) as persons at almost exactly the same moment, or at least one of them must have been recognized as a "potential person" (though not yet having rights) by some prior person, until he or she at some "magical moment," so to speak, becomes aware of his or her own and others' personhood.

The simultaneity presumed in this first possibility verges on miraculous, and seems rather *ad hoc*. Furthermore, even if such a mutual personalization did occur at exactly the same moment, the question would remain as to whether this could have occurred apart from the sufficient development of language needed for each to verify the personhood of one another, and establish agreements concerning rights. Accordingly, only the second possibility remains: namely, that each is "preserved" in a condition of pre-personal freedom until through this freedom self-awareness (and other-awareness), and hence personhood, is realized.

The second option, however, raises the chicken-and-egg problem alluded to above: it requires that the "chain" of prior persons who can recognize the potential personhood of others must extend back infinitely. One must therefore posit a beginning of this system at which some first

beings were recognized as persons, without “coming into personhood” through their recognition by another as potentially personal. Such a concession, however, completely violates Fichte’s account of personhood, and looks even more miraculous and *ad hoc* than the appeal to simultaneity in the first option.

This difficulty leads Fichte at least verbally to acknowledge the existence of a “rational being...that is not a human” who “brings up” the “first human beings,” though “only to the point where humans could start bringing one another up” (all quoted remarks are from §3, 38). A few lines later he directly identifies this “being” as a “spirit” akin to one mentioned in the Book of Genesis.

The allusion to God in this context is fascinating for a number of reasons that can only be touched upon very briefly here. Conceptually, he is suggesting that though human beings were first “made” persons by God, God intentionally removes Himself from the process after that, leaving personalization entirely up to humanity. One finds a peculiarly deistic conception here; though God is the original source of personhood and rights, He designed things so that we are not to consider Him at all (except as a necessary first personal cause, kept in the speculative background as far as possible) when determining whether something outside of us is a person with rights.

It is questionable whether Fichte is being sincere in his acknowledgment of a Creator. Historians are well-aware of the so-called “Atheism Controversy”²⁶ that he faced toward the end of his career, and a common scholarly view today is that he was more of a pantheist²⁷ who indicates at times that the order of the world (including the moral order) cannot be conceived where God is conceived as something independent of God *via* creation.²⁸ Indeed, Fichte may be tipping his true metaphysical hand, so to speak, a bit when he exclaims in §3 that the supposition of a

²⁶ See n10 for sources which provide a helpful overview.

²⁷ See n9.

²⁸ Talbot, p. 57.

Creator “is surely a necessary assumption point in one’s reflection” without clarifying whether this a more advanced or less mature stage of understanding.²⁹

This suspicion is supported elsewhere in his writing where he refers to the “indissoluble conflict” and the “self-contradiction” of the conception of a “first cause.”³⁰ Nonetheless, he does hold in the same text that the “existence of God” is “subjectively certain,” even though no objective concept of Him can be formed (even by God Himself!), in that the I’s continual striving to understand its relation to the not-I (i.e., as an indentification-with-distinction, as discussed in section one) promotes a general concept of “all that is not-I,” which necessarily produces belief in God. This concept, though (as just mentioned), cannot be “objective”; it can be “nothing more than belief,” with belief being only subjective.

This enigmatic comment seems to indicate (though Fichte does not say so directly) that the belief itself that there must be a God *is* God.

²⁹ This assessment also illuminates a noteworthy line of conceptual development through Kant, Fichte, and Hegel regarding the relationship between God and morality. To comment on this very briefly, whereas Kant eventually posited the existence of God (along with immortality) as a “necessary postulate” for the sake of completing his moral scheme (see, for example, Book II, ch. 2, in *Critique of Practical Reason*), Fichte apparently comes to equate the moral law itself with God (i.e., God *is* the moral law), while Hegel begins to push this further in locating higher degrees of divine self-awareness within the participation in the state (e.g., *Philosophy of Right*, Third Part, sec. iii, esp. §258). In respect to Fichte’s views, see Talbot, pp. 57-58 n1, who quotes the following from Fichte in vol. 5, p. 186 of *Sämmtliche Werke* (Berlin, 1845-86), 8 vols; see Talbot’s Preface, p. iii for bibliographic reference: “The living and working moral order is itself God; we need no other God and conceive no other.” Also of interest here is *SE* §19, 245, where he cryptically proposes that “Everyone becomes God, to the extent that one is permitted to do so—that is, so long as one preserves the freedom of all individuals.”

³⁰ See Fichte’s review of *Aenesidemus*, as found in *Fichte: Early Philosophical Writings*, translated and edited by Daniel Breazeale (Ithaca NY: Cornell Univ. Press, 1988), pp. 76-77.

Insofar as belief is only subjective to the consciousness that has it, though, this conclusion appears to amount to pantheism, as mentioned here in the previous paragraph.³¹ As Talbot states, it is a matter of debate as to whether Fichte intends to deny God a transcendent consciousness of any sort outside of human consciousness (a view closer to atheism or pantheism), or whether he simply refrains from referring to God as “conscious” in that we as finite beings necessarily think of consciousness in finite terms of a limited I, whereas God’s “consciousness” would be (inconceivably to us) infinite.³²

Whatever Fichte’s own understanding of the nature of God and His relation to morality and rights, it is evident that his liberal conception of rights relies heavily on certain metaphysical perspectives. Ironically, if a deistic interpretation is retained, one must hold to very specific views about the supposed intention of the Creator (i.e., to be left out of the picture). It also requires an *ad hoc* conviction that “personhood” originally came from God, but remains unaffected by God after this. In fact, such an assertion begs the further question as to how *God* could be personal without being recognized as a Person by some other Person. Given this, Fichte’s analysis of personhood would require holding (once again, in *ad hoc* fashion) that God’s personhood, unlike all others, did not require intersubjective recognition, or that God’s being “itself” was interpersonal, as in the doctrine of the Trinity.³³

It is extremely difficult to discern if Fichte could allow for such a view, as he denies the possibility of an “objective concept of God,” whereas the intersubjective awareness in which personhood is realized for him, as has addressed earlier, in that the I experiences a concept of itself (I*) as an object of consciousness, as well as an objective concept of the other, in this process. By contrast, if God was an interpersonal

³¹ Ibid., p. 76.

³² Talbot, pp. 57-58.

³³ In researching the sources and texts used in this present work, no statements suggestive of this doctrine were found.

community of Persons, it seems that on Fichte's scheme, each Person would have an objective concept of Himself and each other Person, thereby contradicting his conviction that God could exist only subjectively. In fact, this demand for subjectivity seems to preclude the possibility of there being an infinite, or eternal, self-consciousness, so that "God" exists only where there are finite persons to believe in God (i.e., allow for a unity of not-I's which they can never conceptualize, as the "flow" of not-I's is continual and never completed). Fichte hints at this (once again, rather cryptically) in asserting that no consciousness could never know itself to be eternal, as knowledge presumably refers to objects of thought of which consciousness becomes aware *at some point* (i.e., in time).³⁴

By comparison, a much more consistent account would hold that if God established personhood for human beings originally, then this basis for personhood and rights is preserved within the entire process of human development as it was designed by God. In this case, a good argument can be made that the most objective criterion for determining personhood would be in the created biological order, with "personhood" being ascribed to anyone possessing human biological traits. Put differently, one is a person when God regards one as a person (however God's personhood may be understood), with it being presumed (to avoid arbitrariness) that the first point of this recognition traces all the way back to one's biological origin.

On this line of thinking, God would not intend for us to leave Him out of the picture and "produce" personhood through a purely human intersubjective recognition, but rather to regard ourselves as having been designed to *participate with* God in the formation of personhood. Accordingly, one's "right" to existence would originate in God's design. This also would entail that abortion and euthanasia were violations of the rights of persons.

It is obvious that an alternative basis for rights such as one just

³⁴ Ibid.

considered carries far too many theological overtones for the comfort of those who desire to leave God “out of the picture” in their conception of liberal rights. At the same time, it appears that the Fichtean position that appeals to most of their other sensibilities of such individuals (such as the prohibition on legislating morality, having a right to do whatever does not physically affect another against his or her will, and so on) itself relies on arguably even more specific (and arguably less consistent) metaphysical requirements. This is evidenced in its ultimately *ad hoc* acceptance of an infinite regress of finite consciousness, or in its need to allow for exceptions to its conception of personhood in accounting for the origins of this process.

In closing, one may suspect that this whole quagmire of complexities is the result of a highly-nuanced idealism that most would take to be *prima facie* implausible, so that a more “naturalistic” (i.e., materialistic) account of personhood that *presupposes* objectivity (as opposed to regarding it as a subjective construct) should be adopted instead. This approach, however, is itself inadequate as a support for liberal rights, particular in respect to abortion and euthanasia, as will now be explained.

First, if one attributes personal rights in something “physically objective,” the most objective “point” for locating these would be in the biological origin and features of a subject, suggesting a right to life wherever biological human life is detected. In fact, the commonly accepted pro-choice view that a late-term fetus has no right to life, whereas a functionally much less developed born offspring does, is only cogent on an idealistic scheme such as Fichte’s, and not on a strictly physicalistic one.

Secondly, Fichte could rightfully claim that for all its empirical posturing, such a naturalism is actually decidedly unempirical in that one can never provide direct evidence for origins outside of consciousness, as “evidence” in itself is realized only in thought. To be sure, one could make an *inference* to such a pre-conscious set of conditions, but such an inference could never, in principle, be directly empirically verified. By

contrast, Fichte proposes a method that, theoretically, is “verifiable” to anyone capable of carefully reflecting back on what they experience within his or her own consciousness.

Lastly, Fichte could point out that rights are only possible where one accepts as a brute fact (accessible he thinks to the evidence of reflection) a conscious freedom that is purely self-determined, and in this sense “transcends” the limits of the external world of inanimate physical reality. If physical reality is presumed as a starting point, freedom, and thus genuine personhood and rights, appears to be impossible. In this case, assigning “personhood” and “rights” at any point (or even to posit them as an “objective” fact at all) is far and away more arbitrary than anything proposed by Fichte himself, or the alternative theistic conception provided here that coherently traces these back to biological origin.

CONCLUSION

A close examination of Fichte’s idealistic philosophy provides magnificent insight as to particular developments in the concept of “personhood,” “nature,” and rights that remarkably coincide with many basic contemporary liberal convictions, generally held as “common sense with little awareness of their significant philosophical influences. This is perhaps nowhere clearer than in positions often taken in respect to abortion, particularly in granting a right to life to prematurely-born offspring who are functionally much less developed than late-term prenatal offspring who are not recognized as persons with rights. Despite its impressive degree of detail and considerable rigor, however, Fichte’s scheme appears to ultimately rely upon highly metaphysical (and arguably arbitrary) conceptions that run counter to any number of other liberal sensibilities. In addition, alternatives with debatably less arbitrary foundations ultimately replace the purely intersubjective account of personal rights with a theocentric one that is also incompatible with these liberal convictions. At the same time, attempts to skirt these implications by assuming a purely naturalistic (physicalistic) approach to these issues conceptually fare even more poorly in grounding

personhood and rights in anything objective, including the attempt to defend a fundamental right to abortion.

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The Difference Between Form and Shape: Why Human Appearance Is Morally Irrelevant

Craig Payne

ABSTRACT: The groups of people broadly characterized as “pro-life” and “pro-choice” seem to operate under remarkably different conceptual frameworks regarding the development of the unborn child. This disagreement over hominization and the status of the conceptus is profoundly rooted or “embedded” (in the words of Teresa Iglesias) in “different *conceptualizations* of the reality of the embryo.” Richard Stith describes these different conceptual frameworks as primarily two in number, “development” and “construction.” This article argues that the “construction” view of embryonic growth makes the common error of confusing something’s “shape” with its “substance” or “form” (using Thomistic terminology), while the “development” view does not make this mistake. One may therefore conclude from both philosophical and scientific stances—from the Thomistic metaphysics of “form” and from advances in embryology—that Stith’s development” model clearly seems superior to the “construction” model.

ROBERT PASNAU EXPRESSES explicitly the implicit thought of many when he writes, “It is surely absurd to think that a few unformed cells count as a human being.”¹ The reader will note the language used here. The “ontological” position on the question about the immediate hominization of the zygote, that the zygote is a human being

¹ Robert Pasnau, *Thomas Aquinas on Human Nature: A Philosophical Study of Summa Theologiae Ia 75-89* (Cambridge UK: Cambridge Univ. Press, 2002), p. 120.

from conception, is not even to be considered a viable option in bioethical discussions. It is regarded not only as an “absurd” view, but as “surely absurd”—as if any rational audience must find its absurdity to be self-evident. Notice also the loaded adjective “unformed.” Another writer points out for a more popular audience that the three-day-old blastocyst is composed of only about 150 cells, while the brain of a fly contains over 100,000 cells: “The human embryos that are destroyed in stem-cell research do not have brains, or even neurons.”² Again, the implication is that anyone thinking of the zygote as possessing an “intellectual nature” or “form” of any sort is not to be taken seriously.

Likewise, Daniel Dombrowski and Robert Deltete think of the position of immediate hominization of “a microscopic speck of matter” as “ridiculous.”³ As quoted by Anne Gardiner, they think of the abortion of embryos (up to the thirty-second week of their existence⁴) as not relevantly different from mowing one’s lawn or pruning bushes:

The authors inform us that performing an abortion on a “nonsentient” child (which, as we have just seen, can be up to the eighth month) is like mowing the lawn. Here are their very words: “It is unclear to us, however, why killing a nonsentient being is rash or precipitous. We do it all the time with equanimity when we mow the grass.” Elsewhere they say that an abortion is “like pruning one’s rose bush.” These are chilling analogies. But do they actually work as analogies? No. For when one prunes a rosebush, it is to make it bloom more abundantly; when one mows the grass, it is to make it grow thicker and stronger. But when one aborts a child, does that child’s capacity to grow improve?⁵

² Sam Harris, *Letter to a Christian Nation* (New York NY: Knopf, 2007), p. 29.

³ Daniel A. Dombrowski and Robert Deltete, *A Brief, Liberal, Catholic Defense of Abortion* (Champaign IL: Univ. of Illinois, 2000), pp. 33 and 129.

⁴ “The fetus becomes morally considerable between twenty-four and thirty-two weeks when sentience, and then the cerebral cortex, starts to function” (ibid., p. 56).

⁵ Anne Barbeau Gardiner, “For Catholic Dissenters, Abortion Is Like Mowing Grass” —review of *A Brief, Liberal, Catholic Defense of Abortion* in *New Oxford Review* 71/9 (October 2004), <http://www.newoxfordreview.org>, n.p, accessed 12 July 2006.

The quotations are taken from pages 36 and 44 of the work by Dombrowski and Deltete. To consider their position more fully, the quotation from page 44 might be completed: “It is unclear to us, however, why killing a nonsentient being is rash or precipitous. We do it all the time with equanimity when we mow the grass *or cut out cancerous tumors*” (emphasis added). The fact that Dombrowski and Deltete can thus equate a developing, unitary being with the parasitic growth of diseased cells exemplifies a profound lack of understanding of the Thomistic notion of the human hypostasis, the unitary being made up of its “form and matter.”

Even though the analogies of the pruned rosebush and the mown grass, as Gardiner points out in this passage, do not really work as analogies since the obvious intent of pruning and mowing (as opposed to abortion) is to allow the recipients of the operations to flourish and grow, it is still striking that such analogies suggest themselves as appropriate to the intelligent, educated, cultured authors of the pro-choice work here under discussion. Why is it that these analogies seem wholly appropriate to one set of persons and completely bizarre and far-fetched to another? It would seem that these different groups operate under remarkably different conceptual frameworks regarding the development of the unborn child.

STITH’S “CONSTRUCTION AND DEVELOPMENT”

Disagreements over hominization and the status of the conceptus are profoundly rooted (or “embedded,” in the words of Teresa Iglesias) “in different *conceptualizations* of the reality of the embryo, i.e., of the ‘same facts’ about the embryo (or, for that matter, of the human being as such) that are taken to be ‘different’ by the so-called ‘conservatives’ and ‘liberals,’ and are manifested in what they say and do with them.”⁶

⁶ Teresa Iglesias, Review of *Conceiving the Embryo: Ethics, Law and Practice in Human Embryology*, and *Creating the Child: Ethics, Law and Practice of Assisted Procreation*, ed. Donald Evans, in *Studies in Christian Ethics* 11 (1998): 83-90, here at p. 84, emphasis in original.

Richard Stith, professor of law at Valparaiso University School of Law, describes these different conceptual frameworks as primarily two in number, “development” and “construction.” In response to his own question, “Why do many pro-choice people find our arguments against early abortion not just unconvincing but absurd?” he responds: “I submit that pro-life arguments seem absurd to any listener who has in the back of the mind a sense that the embryo or fetus is being *constructed* in the womb.” He goes on to explain his terminology:

Here’s an analogy: At what point in the automobile assembly-line process can a “car” be said to exist? I suppose most of us would point to some measure of minimum functionality (viability), like having wheels and/or a motor, but some might insist on the need for windshield wipers or say it’s not fully a car until it rolls out onto the street (is born). We would all understand, however, that there’s no clearly “right” answer as to when a car is there. And we would also agree that someone who claimed the car to be present from the insertion of the first screw at the very beginning of the assembly line would be taking an utterly absurd position. To someone who conceives of gestation as intrauterine construction, pro-life people sound just this ridiculous. For a thing being constructed is truly not there until it is nearly complete. (Moving from ordinary language to metaphysics, we would say that a constructed thing does not have its essential form until it is complete or nearly complete. And it can’t be that thing without having the form of that thing.)⁷

In Stith’s account, this distinction between “development” and “construction” is not merely “an accident of language” and can be seen in several commonplace daily examples.

For instance, perhaps a friend has taken a once-in-a-lifetime photograph that cannot be duplicated, even under similar circumstances. (In a paper given in 2007, Stith offers the example of a photograph of a jaguar that has now darted back into the cover of the jungle foliage.⁸) If

⁷ Richard Stith, “Arguing with Pro-Choicers.” Firstthings.com (30 October 2006), n.p., accessed 5 January 2007, emphasis in original.

⁸ Richard Stith. “Construction, Development, and Revelopment,” *Life and Learning XVII: Proceedings of the Seventeenth University Faculty for Life Conference*, ed. Joseph W. Koterski, S.J. (Washington, D.C.: University Faculty for Life, 2008), pp. 243-55; here see pp. 249-52. Stith uses the term

the camera were of the type that uses non-digital Polaroid film, this film would begin to “develop.” If at that point one were to rip off the protective film cover from the snapshot, the photograph would be ruined and irreplaceable. The friend who had taken the photograph would be likely to protest vehemently and would not be solaced by the comment, “But the photograph was still in the brown-smudge stage. Why should you care about a blotch of brown smudges?” Stith points out: “Just so for pro-lifers, who find dignity in every human individual. To say that killing such a prized being doesn’t count if he or she is still developing in the womb strikes them as outrageously absurd.”⁹ In this view, even if the entity under discussion only had a few cells or were only a zygote, it would still be a *developing human*, and so it ought to be treated just like other developing humans—newborn babies, for example—ought to be treated. “Development, unlike making,” as Stith writes in a different article, “implies continuity in being.”¹⁰

On the other hand, if the protective film cover had been ripped off from a blank piece of unexposed film, the photographer would be much less upset. In that instance the photographer would not have lost anything of great value, since the unexposed film had nothing developing on it. It would have had “passive potential” in that it *could have* developed into the image of something only if it had been exposed to that something. But, since it in fact had not been so exposed, it would retain only passive potential and not “developing potential.” As Stith writes, “Only developing potential already contains its own form (essence, identity), is already the *what* that it is in the process of manifesting.”¹¹ The photograph, for example, is already a photograph from the time of its exposure, even if its image is neither apparent nor even visible. There seems no real

“revelopment” to describe the process by which the zygote’s ongoing development as a human being is “re-veiled” or “reveloped” in one’s understanding by the constructionist’s presuppositions.

⁹ Stith, “Arguing with Pro-Choicers,” n.p.

¹⁰ Richard Stith. “The Priority of Respect: How Our Common Humanity Can Ground Our Individual Dignity.” *International Philosophical Quarterly* 44/2 (2004): 165-84, here at p. 180.

¹¹ Stith, “Arguing with Pro-Choicers,” n.p.

difference between ending the development of the exposed Polaroid photograph, on the one hand, and on the other, destroying the same photograph once it has been completely developed and thus has manifestly become “a photograph.” The same entity is being destroyed in both cases, simply at different levels of development.

From the “constructionist” point of view, even if this view is held only latently or unconsciously in the mind, the concept of the embryo or zygote as “under construction” in the womb would lead one to reject Stith’s “developing film” analogy. In this opposing view, the embryo progressively “becomes” human as it has more and more functions or capacities added to it. A Benthamite utilitarian, for instance, might hold the “construction” view and argue that aborting the embryo is not wrong until the embryo develops enough of a nervous system to feel pain. (Of course, even at that point a Benthamite utilitarian would not assert that the embryo’s pain makes it “wrong” to abort the embryo, for the embryo’s pain would be only one factor in the utilitarian calculus and other factors might well lead one to support the abortion.)

Likewise one might argue that the essence of “humanness” is the ability to reason and so support abortion (and probably euthanasia) on the grounds that the embryo has not yet developed a brain, a cerebral cortex, reasoning abilities, etc. In the case of euthanasia, one could argue in some cases that the patient in losing these abilities has also lost humanness. In both of these arguments, the ethical dilemma is seemingly resolved by thinking of the embryo as being under “construction” and hence not yet human until it gains enough functions or capacities or “parts” in the construction process. In the case of euthanasia, the adult human is seen as losing humanness by losing functions or “parts,” by being “deconstructed.”

In popular parlance, this “construction” image is expressed in such sentences as these: “It [the zygote] is only a few cells” – “It is so tiny, merely the head of a pin” – “It does not have a brain, nor even a cerebral cortex” – “It does not have any viable human organs” – “It looks nothing like a human” – and so on. In just this manner Udo Schüklenk, co-editor of the journal *Bioethics*, connects the issue of the small size of the

embryo with its personhood:

Embryos ten-fourteen days after conception really are nothing more than accumulations of a few hundred cells. They do not possess a central nervous system, a brain, or any capacity to suffer. So, while one might wish to discuss the question of whether or not such embryos are human beings, one cannot reasonably disagree about whether they have any of the characteristics that define persons. They do not. There is an important distinction between membership of our species, on the one hand, and personhood on the other.... [One should not] buy into the argument that we should treat a few hundred cells as if they were people, because these cells were so evidently not people to begin with. Why should one treat something as if it were something else that patently it is not?¹²

Note that the personhood of the embryo is directly linked in this view with its “parts” or the “characteristics that define persons.” Of course, one could point out in response that if embryos really were “nothing more than accumulations of a few hundred cells,” as Schüklenk puts it, then any accumulation of a few hundred cells should work just as well for the purposes of medical research. Since this is obviously not the case, one should at least admit that there is something quite different about the particular collection of cells that makes up a living embryo.

Some philosophers have taken this position further to its logical conclusion, even though this conclusion is (so far) unacceptable to most people. This conclusion simply applies the logic of “construction” to the actually born infant and points out that the tendency of most people is to “read a kind of personal identity backwards” into fetuses, and even more so into human infants.¹³ According to writers such as Jeffrey Reiman, “[k]illing infants is not, morally speaking, murder”¹⁴ since the “construc

¹² Udo Schüklenk, “How Not to Win an Ethical Argument: Embryo Stem Cell Research Revisited,” Editorial in *Bioethics* 22/2 (February 2008): ii-iii, here at p. ii.

¹³ Jeffrey Reiman, *Abortion and the Ways We Value Human Life* (Lanham MD: Rowman & Littlefield, 1999), p. 92.

¹⁴ *Ibid.*, p. 108. This position is famously held by better-known philosophers such as Michael Tooley, Jonathan Glover, and Peter Singer; see

tion” necessary for the attainment of moral personhood has not yet taken place. Although such a conclusion seems socially unacceptable, particularly when stated in such a blunt fashion, it does seem to follow logically from the acceptance of the construction image of the human being’s growth as the “lens” of our view of human development. In 1983 Peter Kreeft wrote as a sort of *reductio ad absurdum*: “If dependence makes for nonpersons, small children are nonpersons and killing them is not murder.”¹⁵ This “absurd” conclusion has readily been incorporated into various philosophical arguments. “Particular scientifico-philosophical viewpoints,” as Iglesias writes, “although necessarily related to the empirical facts... rest on moral commitments and moral convictions, as ‘the eyesight of the soul,’ in terms of which we see everything.”¹⁶ If one sees humans as the end result of a “construction” process, then every stage of human development up to the end result of maturity also may be seen as an incomplete example of humanity.

Kreeft would disagree with the rhetorical intent behind these construction-oriented arguments, but he summarizes well their primary idea:

Whenever a person begins, it just can’t be as early as fertilization. Just look at that zygote: a single cell with no brain, no nervous system, no consciousness, no heart, no face, ...no differentiation of cells or functions or systems, no organs.... Don’t you feel the utter absurdity of calling *that* a human being?¹⁷

Likewise, the ethicist Maureen Junker-Kenny points out the significance of the “size” issue in the minds of many (though she herself also disagrees with this ascription of significance): “How can one suggest reflection on the moral status of something that is smaller than a speck of dust? For some, the question of moral status would already be answered

especially Singer’s “Killing Babies Isn’t Always Wrong,” (London) *Spectator* (16 September 1995): 20-22.

¹⁵ Peter Kreeft, *The Unaborted Socrates: A Dramatic Debate on the Issues Surrounding Abortion* (Downers Grove IL: InterVarsity Press, 1983), p. 61.

¹⁶ Iglesias, “Review of *Conceiving the Embryo*,” p. 87.

¹⁷ Kreeft, *The Unaborted Socrates*, pp. 62-63, emphasis in original.

by this observation, and dismissed as impossible.”¹⁸

But an obvious question should immediately spring to one’s mind: Why is this so? Certainly there may exist some pre-philosophic wisdom in the reluctance to grant personhood to “a microscopic speck of matter.” But if one does not want to limit one’s moral considerations to appeals to pre-philosophic sense, and especially if one is making a philosophical argument in the strict sense, one is left with the question: What does the size of a developing human have to do with that developing human’s moral status? In Thomistic terms, what do the “accidents” of the being’s size and appearance have to do with the proper identification of the type of “substance” that the being in question possesses? In the case at hand, it is a substance that is human in kind. What does the human “shape” or “size” have to do with the proper identification of the human “form”? This is the philosophical issue in question, even when the technical terms of Thomism are not in use, as in the following quotation:

As debates over stem-cell research and cloning roil on, proponents ask: How can you care about these clumps of cells, no bigger than the period at the end of this sentence? But why is size an issue when there is so much inherent developmental capacity? Surely size in a world of quarks, quantum events, Planck’s Constant, and neutrinos is relative. Scientists who describe the Big Bang claim that at its beginning the whole universe was many times smaller than a single human cell.¹⁹

In fact, when considering the possible contributions of pre-philosophic wisdom, one might also mention the widely accepted point that a violation of any human victim is all the worse to the extent that the victim is the more helpless to offer resistance. Abuse of a baby, for example, is commonly seen as worse than abuse of a twelve-year-old, abuse of a twelve-year-old as worse than abuse of a thirty-year-old, and so on, until advanced age once more renders the victim relatively helpless. If the size

¹⁸ M. Junker-Kenny, “The Moral Status of the Embryo” in *Concilium: The Ethics of Genetic Engineering* (April 1998): 43-53, here at p. 43.

¹⁹ Sidney Callahan. “Zygotes and Blastocysts.” *Human Life Review* 28/3 (2002): 81-82, here at p. 81.

of the conceptus is actually morally significant, it is so only in the sense that humanity should sympathize even more with the very helplessness of the victim of abortion.

“Some commentators say that human embryos don’t ‘look like’ human beings,” as Robert P. George writes. However, “the answer is that they look exactly like the human beings they are, that is, human beings in the embryonic stage of their existence.”²⁰ The size or shape of the conceptus would seem to have no moral significance at all in the determination of when the conceptus should be accepted as a human person, that is, as an individual, developing substance of rational nature.²¹ The issue of size is discussed here solely because it continues to be brought up in bioethical disputations as if the mere mention of the microscopic size of the zygote or blastocyst in fact conveyed some morally significant defense of the practice of abortion.

FORM AND SHAPE

The “construction” conceptual framework seems markedly inferior to its rival. The “development” conceptual framework is better for various reasons, and especially for its use of embryologically-based premises. It may be helpful here to consider why the “construction” model may still seem to be “a sensible surmise, especially for those unfamiliar with

²⁰ Robert George, *The Clash of Orthodoxies: Law, Religion, and Morality in Crisis* (Wilmington DE: ISI Books, 2001), p. 320. George and Tollefsen expand this thought in a later work by saying: “To claims about the size and appearance of the embryo, we must say that it simply begs the question about the humanity (and the rights) of the embryo to say that it does not resemble (in size and shape) human beings in later stages of development. For the five-day-old embryo looks exactly like what human beings look like at five days old.” Robert P. George and Christopher Tollefsen, *Embryo: A Defense of Human Life* (New York NY: Doubleday, 2008), p. 159.

²¹ The definition of a person as an “individual substance of rational nature” is borrowed from Boethius through Aquinas, *Summa Theologica* III.2.2. The translation of the *Summa Theologica* used is that of the Fathers of the English Dominican Province, 1920 (New York NY: Benziger Brothers, 1947).

modern science.”²² In testimony before a U.S. Senate subcommittee Dr. Micheline Matthews-Roth of the Harvard University Medical School commented: “It is incorrect to say that biological data cannot be decisive.... It is scientifically correct to say that an individual human life begins at conception.” After hearing this testimony, the Senate in its official report reached this conclusion: “Physicians, biologists, and other scientists agree that conception marks the beginning of the life of a human being—a being that is alive and is a member of the human species.”²³ Dr. Keith Moore, former head and currently Professor Emeritus of the Department of Anatomy at the University of Toronto Faculty of Medicine, likewise asserts in his widely used text: “A zygote is the beginning of a new human being.... Human development is a continuous process that begins when an ovum from a female is fertilized by a sperm from a male.”²⁴ Both human life and development, in other words, begin in the fertilized ovum far before any significant level of “construction” is achieved or any tests of functionality can be applied. Moore’s judgment is further supported by numerous authorities in the field of embryology; examples of such support could be multiplied.²⁵

Contrary to the “construction” model, therefore, hominization does

²² Stith, “Construction, Development, and Revelopment,” p. 246.

²³ These statements are taken from the official report of the Subcommittee on Separation of Powers, U.S. Senate Judiciary Committee S-158, 97th Congress, First Session, 1981.

²⁴ Keith L. Moore, Ph.D., and T.V.N. Persaud, M.D., *The Developing Human: Clinically Oriented Embryology*, 6th ed. (Philadelphia PA: W.B. Saunders, 1998), pp. 2-3.

²⁵ For example: “[The] moment of zygote formation may be taken as the beginning or zero point time of embryonic development” – William J. Larsen, *Essentials of Human Embryology* (New York NY: Churchill Livingstone, 1998), p. 17; “Fertilization is an important landmark because, under ordinary circumstances, a new, genetically distinct human organism is thereby formed” – Ronan R. O’Rahilly and Fabiola Muller, *Human Embryology and Teratology* (New York NY: Wiley-Liss, 1996), p. 5; “The culmination of the process of fertilization...marks the initiation of the life of a new individual” – Bradley M. Patten, *Human Embryology*, 3rd ed. (New York NY: McGraw-Hill, 1968), p. 43); and so on.

not occur when the zygote or embryo has enough “parts” nor when the embryo is “viable” enough to survive outside of the mother’s womb. The fact of an embryo’s requiring continued care (much as in the case of the candidate for euthanasia in a hospital bed) has nothing to do with whether or not the embryo (or the patient) is a human being. To conclude with Stith:

From the point of view of natural science (and natural theology) delayed animation (quickenings) is no longer needed to explain human development, and Ockham’s razor should cut it out of our debates. “Viability” is similarly irrelevant to human identity if we bear in mind that the child is developing rather than being constructed.... In other words, those who hold both to the truth of human development and to the truth of universal human dignity will seek to respect life from conception.²⁶

Stith therefore is in essential agreement with the “ontological position” of scholars like John Noonan mentioned earlier: “The criterion of humanity, thus, was simple and all-embracing; if you are conceived by human parents, you are human.”²⁷ As Stith writes in “The Priority of Respect,” if a developing tree bears apples, “we know in hindsight that it was always an apple tree...unless someone can show that its later form was a product of making (grafting) rather than development.”²⁸ Similarly Jason Eberl points out the differences between a “natural substance” such as a zygote and an “artifact” such as a hammer and then concludes: “For a natural substance...its *ordered natural development*, the principle of which is active and internal to it, is sufficient for it to *be* that toward which it is developing.”²⁹ In support of his statement Eberl quotes Aristotle’s *De Generatione Animalium*: “When we are dealing with definite and ordered products of nature, we must not say each *is* of a

²⁶ Stith, “Arguing with Pro-Choicers,” n.p.

²⁷ John T. Noonan, ed, *The Morality of Abortion* (Cambridge MA: Harvard Univ. Press, 1970), p. 51.

²⁸ Stith, “The Priority of Respect,” p. 180.

²⁹ Jason Eberl, *Thomistic Principles and Bioethics* (New York NY: Routledge, 2006), p. 30, emphasis in original.

certain quality because it *becomes* so, but rather that they *become* so and so because they *are* so and so.”³⁰

The distinction between the conceptual models of “development” and “construction” might also be stated as the Thomistic distinction between “form” and “shape” mentioned briefly in the previous section. Eventually the specific “shape” that something takes—a growing human being, for example—will achieve “its own terminal boundaries”³¹ as it develops. However, the specific shape at any particular point in the course of the thing’s growth does not determine the essence of the thing; rather, it is the thing’s essence or form that sets the parameters for the possibilities of the shapes that the thing can take in the course of its existence. A mannequin may have a human shape, but it is not thereby a human being, since it has no innate principle (no “substantial form” of a human type) directing its development toward the terminal boundaries of that shape (in the sense of the mature contour of a being of that type). When still an embryo or a zygote, a human being may not yet possess its mature contour or terminal human shape (likewise for someone who has suffered the loss of multiple limbs), yet that individual still possesses a human form directing the on-going development of his or her size and shape. As Ric Machuga writes:

Modern philosophy’s disdain for the distinction between form and shape ultimately demonstrates the truth of Aristotle’s remark that a little mistake at the beginning of a philosophy can have disastrous consequences in the end. . . . All things are composed of both form and shape. “Form” is that which makes something *what* it is. “Shape,” as we are using the term, refers to the totality of a thing’s physically quantifiable properties, i.e., its physical shape and size, height, weight, chemical composition, etc., in its most complete [physical] description.³²

³⁰ Aristotle, *De Generatione Animalium* 778b2-6, as found in *The Complete Works of Aristotle*, ed. J. Barnes, 2 vols. (Princeton NJ: Princeton Univ. Press, 1984), emphasis in original.

³¹ Aquinas, *Summa Theologica* I-II, q.54, a.1.

³² Ric Machuga, *In Defense of the Soul: What It Means to Be Human* (Grand Rapids MI: Brazos Press, 2002), pp. 25 and 27), emphasis in original.

Therefore, given this distinction, it would be wrong to attempt to determine “humanness” based on when the embryo begins to take on a recognizably human “shape,” or when it is sufficiently “constructed.” The embryo is human because it has a human form, whatever shape it may currently possess, and eventually it will have a full-fledged or mature human shape precisely due to that human form that is at its core. In simplest terms: The embryo is human in “form” from the beginning of its existence, as its eventual human “shape” and its eventual human functional abilities will reveal to the gaze of anyone, regardless of whether they have the philosophical training to think about the matter in terms of substantial form and accidental form.

Given this understanding, it is possible to see that Dombrowski and Deltete confuse these two ideas and the terms that express them when they write: “The human soul is to the body (*hylē*) like the *shape or form* (*morphē*) of a statue is to the original statue.”³³ While Aquinas does borrow from Aristotle the analogy that “the soul and body are one, as...wax and its shape are one,” it seems obvious that the form of a living, developing being is not to be identified with its terminal shape, as would be the case with a lifeless statue. The form is, rather, the first act of the living being’s animation and development: “The unity of a thing composed of matter and form, is by virtue of the form itself, which by reason of its very nature is united to matter as its act.”³⁴ Therefore, the discussion of the human form does not also require the discussion of shape, for the shape of the embryonic human has little or nothing to do with its humanness.

One may therefore conclude that from both philosophical and scientific stances—from both the Thomistic metaphysics of “form” and from advances in embryology—that Stith’s “development” model clearly seems superior to the “construction” model. The zygote’s potential is developing from within, from its activated DNA, and therefore its human form, the activating agent giving life to the genetically human cells, is

³³ Dombrowski and Deltete, *A Brief, Liberal, Catholic Defense*, p. 27, emphasis added.

³⁴ Aquinas, *Summa Theologica*, I, q.76, a.7.

also present from the beginning of its animation. The conceptus is not only living, but a living human being. Moreover, in Aquinas's view, if in fact the zygote is a living human being, the zygote would also be a human person. This is so because the definition of "person" as "an individual substance of rational nature" would suffice for Aquinas with regard both to humanness and to personhood. However, that argument must be left for another time.

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Retrieval of Fatherhood through a Retrieval of Faith in God the Father

Matthew Lewis Sutton

ABSTRACT: Many methods exist for analyzing the rise of abortions and its connection with the absence of fathers. The dramatic changes in law, politics, ethics, and society provide material for various accounts of the decline in the culture of fatherhood, but the dramatic changes in Christian theologies of the Trinity also provide additional reasons for the decline. In this article I argue that to retrieve a culture of fatherhood we must retrieve a faith in God the Father. Through the use of select books of the New Testament, particularly Paul's letters, I establish the causal relationship between a retrieval of theologies of the God the Father and the retrieval of a culture of fatherhood. Only by having a right understanding of the fatherhood presented to us by the God the Father above can we have a right understanding of fatherhood here below.

IT ALL STARTED WHEN my wife and I had to attend a baptism class for our newborn daughter. As a Catholic theologian who knows something about the beauty and depth of this sacrament, I was looking forward to the class. It began well with a nice if all-too-cheesy video of a baptism with a happy, young priest teaching a happy couple about the happy sacrament. After the video, the well-meaning couple teaching the class led us seven couples in a nice, relaxed conversation about what we thought was the meaning of baptism—as if there had not been nearly two thousand years of serious theological scholarship on this sacrament. Anyway, the happy talk had to end sometime and so we were all given a handout with a closing prayer, which we were told was given to us by the Church. “Let us pray together,” the happy couple said. We

all sheepishly looked at each other and began to pray, "Our Parent who is our creator, redeemer, and sustainer."¹ I choked, coughed, contorted, looked at my wife, and sulked as we continued to prayer to the divine up-there, to the one who is cuddly and looks like a budding flower.

After the class, one of the teachers asked me, as a theologian, what I thought about the class. An interior battle ensued. The Midwestern nice in me wanted to say, "It was nice. Thank you. Have a good night." But the Catholic theologian in me inspired by years of studying Trinitarian theology won. I said, "I didn't like that parent prayer and I really think we should be praying to God the Father." As I walked away, embarrassed at my outburst, I asked myself, "How could I be so rude?" Then I asked myself the real question. What has happened to Christianity's belief in God the Father? Why at this moment when the six other young fathers and I were newly struck by the beauty, blessing, and burdens of being a father did we have to pray to the Divine Parent who is cuddly, cute, and syrupy?

I know that the teaching couple were just passing on what the parish sacrament director had given to them. I also know this sacrament director was just passing on the theological training that she received in one of the mostly well-run lay ecclesial minster programs. But, let us be serious. This is bad theology. When Jesus the Lord rose from the dead and appeared to the apostles who were bewildered and standing on a mountain in Galilee, he did not command them with the words, "Be alright and maybe go and tell someone about baptism in the name of the parent and the child and the budding flower." No, we are told by the one Lord of heaven and earth, who has taught us to pray to God the Father, "Go therefore and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit" (Mt 28:19). Why were these six new fathers and I, being told by my church that I should not call upon God as Father at this superlatively, Trinitarian time

¹ For an argument regarding these types of liturgical and prayer changes, see Marjorie Procter-Smith, *In Her Own Rite: Constructing Feminist Liturgical Tradition* (Nashville TN: Abingdon Press, 1990).

of baptism? Why are we abandoning a theology and spirituality that can help fathers be present in the lives of their children in an age in which fathers are abandoning their children?

One of the reasons for the rise of abortions in the last quarter of the twentieth-century and at the beginning of this century is due to the absence of fathers who should be caring for these crisis-pregnancy mothers and aborted children. Many methods exist in analyzing the rise of abortions and its connection with the absence of fathers. The dramatic changes in law, politics, ethics, and society provide accounts for the decline in the culture of fatherhood, but I think that the dramatic changes in Christian theologies of the Trinity also provide an additional reason for the decline. The influence of radical feminist theologies of the Trinity has systematically deconstructed good theologies of God the Father. One of the consequences of this deconstruction is that a healthy culture of fatherhood has disappeared.

In this essay I argue that to retrieve a culture of fatherhood we must retrieve a faith in God the Father. The tragic societal decline of fatherhood has been accompanied by the equally tragic theological decline of theologies of God the Father. Through the use of select books of the New Testament, particularly Paul's letters, I establish the causal relationship between a retrieval of theologies of the God the Father and the retrieval of a culture of fatherhood. What is at stake here is that with the return of fatherhood, there will be a decrease in abortions and ultimately an established culture of life.

Let us first briefly discuss the societal decline of fatherhood. In a recent report by the National Center for Health Statistics, which is part of the Centers for Disease Control and Prevention, children born to single mothers have increased sharply in the past couple of years.² In the 1980s, eighteen percent of all births were children born to single mothers. In the early 2000s, children born to single mothers rose

² Stephanie J. Ventura, "Changing Patterns of Nonmarital Childbearing in the United States," National Center for Health Statistics Data Brief, no. 18 (Hyattsville MD: National Center for Health Statistics, 2009).

dramatically but became relatively stable at thirty-four percent. In 2007, forty percent of children were born to single mothers. Forty percent of children in 2007 and predictably in 2008 will not have a father present at the beginning of their life in any significant way, if at all. Among the many demographic and sociological shifts in our culture, this fatherless generation is seriously detrimental.³ In the next decades as these children progress through the educational system and eventually reach adulthood, their sense of “normal” family life will mean a single mother and no father. The ramifications of this shift no doubt include an increase in abortions.

In a related way, the recent book *Fragmenting Fatherhood: A Socio-legal Study* by the British law professors Richard Collier and Sally Sheldon tracks the diminishing status of the role of fatherhood in society and law.⁴ They argue that from the beginning of the twentieth century into the twenty-first, the role of the father has fragmented the father as a socially positive archetype to socially negative arch nemesis and legally from the father as sole-authority to no-authority. In our culture’s demands for immediacy, celebrity, and sexuality divorced from procreativity, the role of the father has declined socially and legally.

I think that we should also add theologically. Just as our culture has abandoned the father, we have also abandoned theologies of God the Father. I would now like to discuss the decline of theologies of the God the Father.

In the last third of the twentieth century, Christian theology experienced a dramatic onslaught of feminist critiques of its belief in the

³ There is, for example, the transformative segregation of different marriage and family models as well as the increase of women desiring motherhood before marriage. See Kay Hymowitz, *Marriage and Caste in America: Separate and Unequal Families in a Post-Marital Age* (Chicago IL: Ivan R. Dee, 2007) and the important study, Kathryn Edin and Maria Kefalas, *Promises I Can Keep: Why Poor Women Put Motherhood Before Marriage* (Berkeley CA: Univ. of California Press, 2005).

⁴ Richard Collier and Sally Sheldon, *Fragmenting Fatherhood: A Socio-legal Study* (Oxford UK: Hart Publishing Limited, 2008).

designation of the First Person of the Trinity as God the *Father*. Such theologians like Rosemary Radford Reuther, Elizabeth Johnson, Elizabeth Schüssler Fioenza, Gavin D'Costa, and more recently Tina Beattie argued in different ways that "father" language used by Christianity is sexist speech applied to god in order to reinforce patriarchal societal roles. In their very different ways, Christian feminist theologians want to disrupt gendered speech about God through radical designations of God as "She Who Is" or emphasis on the Holy Spirit as feminine Sophia-god who has equality with the masculine Father-god. They advocate non- or multi-gendered language of God by arguing that such divine language shifts will create a transformed church and society in which men and women are equal. In the words of D'Costa,

If all signs are polyvalent, then little wonder that the great "crown jewel of theological sophistication," the symbol of the living god, the sign of redemption, the trinity, can also turn into a homosexual rod of slavery and domination regarding gender and its cultural patterning. Without a never-ending vigilance, the church might fall into the greatest error it has stubbornly resisted: worshipping a false god of man's creation. ⁵

For D'Costa, the church must be vigilant against gendered-language about God because it quickly turns into an enslaving, oppressive, false Trinity.

Although the feminist critique of father language of God is quite complex and varied, the effect of these feminist critiques has been consistent. It is common for many educated Christians who work in mainline Protestant and Catholic churches to avoid referring to God as Father and the use of the masculine pronoun when referring to God. In the majority of seminaries and masters of theology or divinity programs throughout the country, the curriculum includes an examination of the feminist critique of the language of God usually presented by mostly sympathetic academic theologians. In my own judgment, the encounter

⁵ Gavin D'Costa, *Sexing the Trinity: Gender, Culture and the Divine* (London UK: SCM Press, 2000), p. 203.

with this curriculum does not create many feminist theologians, priests, religious, or lay ecclesial ministers. It does, however, definitely make them scared of calling God “Father.”

In the story from the beginning of this talk, the parish staff person who trained the couple in giving baptism classes is not a radical feminist theologian. She is a good Christian woman trying to help the church heal and grow good families. However, this person thinks this prayer will not scare anybody away from the church. By giving out a prayer to “Our Parent, who art up there” she is able to avoid all those negative feelings we have about our bad fathers who abused our mothers and abandoned us. It is not the case that these types of educated Christians are all radical feminist theologians; rather, they think that a good minister should avoid father language to help as many people become happy, comfortable, and Christian.

I am sympathetic to the legion of lay ecclesial ministers, sisters, priests, and religious who work long hours for very little compensation in Christian churches and ministries. However, we have a devastating problem when a Christian has to apologize for praying the Lord’s Prayer and crying out to God as Abba, Father.

The question we must deal with now is the causal link between the societal decline of fatherhood and the theological decline of theologies of God the Father. Which is the cause and which is the effect? If we know which is the cause and which is the effect then we can better achieve a retrieval of a culture of fatherhood in order to reduce abortions and truly create a culture of life.

One initial response to this question is that the societal decline precedes the theological. But there is another response that I think is correct. The theological decline leads to a societal decline. In order to establish this causal relationship, let us begin with Paul.

Pope Benedict XVI declared the year beginning from June 29, 2008, the Solemnity of the Saints Peter and Paul, to the same date in 2009 as the Year of Saint Paul.⁶ Benedict thus provided the Church the opportu

⁶ Benedict XVI, *Saint Paul: General Audiences July 2, 2008 – February*

nity to deepen its relationship to Paul, who was born some 2000 years ago. Among the many fascinating aspects I have been learning about Paul this year has been his really surprisingly profound theology of God the Father and the Father's relationship to earthly fatherhood.

The common idea in feminist theologies is that the designation of fatherhood is projected upon God by human fathers. Paul made the reverse claim. In Paul's letter to the Ephesians, he prayed for them by saying, "I bow my knees before the Father, from whom every family in heaven and on earth is named" (Eph. 3:14-15). Who does the giving of the name and who receives the name? For Paul, God the Father gives his name to every family in heaven and on earth. These families receive their existence from God the Father.

Paul, of course, spoke here about the church as a family who receives its existence from God the Father alone, but also closely attached with or at least in connection to his idea is the interpretation that families receive their existence from God the Father. It is this Father as creator, originator, and *archè* of the Trinity who is at the originating point of everything.⁷ For Paul, if the church at Ephesus is going to have a renewal in its commitment to being counter-cultural and completely imitating the crucified Christ, it will only be through a bowing of knees to God the Father. When they bow their knees to the Father, Paul reminded them that the Holy Spirit will strengthen them from within so that Jesus Christ may dwell in their hearts (Eph. 3:16-17).

Belief in God the Father as the First Person of the Trinity and as the one who is ultimately the focus of prayer is central to early Christianity. The Pauline scholar Michael Gorman makes the case in his theological study of Paul: "One of the distinctive features of Jesus', Paul's, and (it appears) most early Christians' relationship with God was their practice

4, 2009, trans. *L'Osservatore Romano* (San Francisco CA: Ignatius Press, 2009).

⁷ Jean Daniélou, *God and the Ways of Knowing*, translated by Walter Roberts (San Francisco CA: Ignatius Press, 1957), p. 132.

of calling God ‘Father,’ often using the Aramaic word *Abba* to do so.”⁸ For Jesus, Paul, and early Christians calling God “Father” was essential to God’s revelation of himself and was necessary for encountering God in prayer.

In his letter to the Romans, Paul described the apparently common early Christian experience of crying out in prayer to God as “*Abba! Father!*” (Rom. 8:15). He explained that this occurs because we have received the spirit of sonship through the Holy Spirit, which happens in baptism. Paul taught that just as Jesus as the Son of God cried out to God as his *Abba*, so too should the Romans cry out to God as their *Abba* (Rom. 8:12-17). Similarly, in Paul’s Letter to the Galatians he reminded the church at Galatia that they have received the Spirit of the Son and so from their hearts they are “crying, ‘*Abba! Father!*’” (Gal. 4:6). In these letters, Paul placed father-child language at the center of the Christian’s encounter with God. The child gives his father honor and obedience and the father provides his child with fulfillment of all their needs now and in the future. Paul argued that when one becomes Christian in baptism, they are taken from a master-slave relationship with God to a truly divine father-son or daughter relationship with God (Gal. 4:7).

Along with these points about Paul’s theology of God the Father, we must remember that the first document written by a Christian, namely, Paul’s first letter to the Thessalonians, began this way, “Paul, Silvanus, and Timothy, to the Church of the Thessalonians in God the Father and the Lord Jesus Christ: Grace to you and peace” (1 Thes. 1:1). The first written Christian word about God is that he is *Father* and that Jesus is *Lord*. For Paul as a good Jew, Lord-language is reserved for YHWH alone. The message of Paul’s greeting is that Jesus Christ is he who is one with YHWH and is therefore Lord and that this YHWH is Father. Father language is present in the Old Testament (cf. 1 Sam. 9:1,

⁸ Gorman, *Apostle of the Crucified Lord: A Theological Introduction to Paul and His Letters* (Grand Rapids MI: Eerdmans Publishing Company 2004), p. 119.

16:6, 2 Sam. 8:16, 2 Chr. 29:1, and Judges 9:1).⁹ However, the father language in the New Testament presents God the Father as *the* central image of the God revealed by Jesus Christ as Son. In his commentary on this first Christian verse, Gorman makes the following point:

the opening [of 1 Thessalonians] identifies the church as being “in” not only Christ (a common Pauline idea) but also God the Father. This pair corresponds to the summary of Paul’s gospel in 1:9-10 and of God’s guidance in 3:11. The role of the Spirit, though not mentioned in either of these places, is still prominent in the letter (1:5-6; 4:8; 5:19). The Thessalonians’ experience of God and the gospel is Trinitarian in character.¹⁰

In this letter, Paul greeted the Thessalonians with a reminder of the gospel he preached to them that had at its center being in Christ and in God the Father. The whole letter as the first surviving document of early Christianity prominently displays a sincere belief in the Trinitarian character of God and the deep need of early Christians to encounter God as the Father who has sent his Son and Holy Spirit in order to bring them into himself.

The Synoptic Gospels, which are of course written after Paul’s letters, are in continuity with this Trinitarian character of the God revealed in Jesus Christ. Interestingly, in his book *Jesus of Nazareth*, Benedict XVI makes the theologically and exegetical argument that central to the synoptic, historical Jesus is the revelation of God as Father.¹¹ The insistence of the synoptic gospel writers is clear that Jesus invoked God as Father. This insistence can be seen, for example in Mark’s preservation of the Aramaic in Jesus’s prayer in the Garden of

⁹ “The common occurrence of these names shows the idea of God, or Yahweh, as father was well known and accepted.” Christopher J. H. Wright, *Knowing God the Father Through the Old Testament* (Downers Grove IL: Intervarsity Press, 2007), p. 24.

¹⁰ Gorman, *Apostle of the Crucified Lord*, p. 152.

¹¹ Benedict XVI, *Jesus of Nazareth: From the Baptism in the Jordan to the Transfiguration*, translated by Adrian Walker (New York NY: Double Day, 2007), pp. 23-24, 319-55.

Gethsemane when he cries out, “Abba, Father, all things are possible to you; remove this chalice from me; yet not what I will, but what you will” (Mk 14:36). The revelation of God as Father is seen also in Jesus’s teaching on prayer during the Sermon on the Mount: “Pray then like this: Our Father who art in heaven...” (Mt 6:9, cf. Lk 11:2). The Synoptic Jesus is in intimate relation with God as his Abba and he teaches a relationship of prayer that invokes God as Abba.

The Gospel of John, which is a later New Testament writing, amplifies Jesus’s relationship to God as Father. In the Book of Glory (John 13:1-20:31), which is the second half of John’s Gospel, has the central feature of Jesus as the Son revealing his interior prayer relationship to God the Father. All of the Father-language in these dialogues led the apostle Philip to burst out, “Lord, show us the Father, and we shall be satisfied” (John 14:8). It is as if Philip’s words gathered up all of humanity’s yearning and he summed them in his prayer to Jesus, “Show us the Father” and then and only then, “we shall be satisfied.” Jesus the Son then answered the prayer of Philip with the important words, “He who has seen me has seen the Father” because, Jesus continued, “I am in the Father and the Father is in me” (John 14:9-10). Jesus taught that the satisfaction Philip seeks, and with him all of humanity, can be found only in the Father and the only way to the Father is in Jesus as the Son.

Rather than something that is tertiary or secondary to the revelation of the God of the New Testament, Paul, the Synoptic gospels, and the Gospel of John speak about the fatherhood of God as essential to his revealing of himself in Jesus Christ and the Holy Spirit. Additionally, we have seen that by relating to God as Father, one receives from him all that he truly needs.¹²

As a final point in this section, I would like to add in the teaching

¹² I do not have time here to present a full theology of God the Father in the New Testament, but if I did it would be reasonable to present such aspects of the fatherhood of God like his mercy, personal presence, covenant relationship, oneness with the Son and Holy Spirit, which is shared with the Church, sacrificial love, providence ancient, present and forever along with our need to honor, cherish, obey, and love him.

and caution provided by the *Catechism of the Catholic Church*. It says that, “By calling God ‘Father,’ the language of faith indicates two main things: that God is the first origin of everything and transcendent authority; and that he is at the same time goodness and loving care for all his children.”¹³ Further along, it also says that we ought

to recall that God transcends the human distinction between the sexes. He is neither man nor woman: he is God. He also transcends human fatherhood and motherhood, although he is their origin and standard (Ps. 27:10, Eph. 3:14, Is. 49:15): no one is father as God is Father.”¹⁴

The Catechism is saying that father-language is the language of faith that speaks of God’s transcendence and his intimate care. It also says that God transcends our concept of father and even mother because the nature of God transcends human sexual differentiation. God, however, has chosen to reveal himself as father in the words and life of Jesus Christ. In other words, as we speak about God as Father, we cannot limit ourselves to our own experience of fatherhood and motherhood. Instead, we must allow God’s way of being father be the “origin and standard” of our concept of fatherhood and motherhood.

Having provided an argument for the need to retrieve a theology of God the Father, I would like to discuss the implications of this retrieval. In the Letter of James, we are encouraged to believe that “every perfect gift is from above, coming down from the Father of lights” (James 1:17). The effect that we truly desire in our society, the concern here of course is the retrieval of fatherhood (certainly, one of the perfect gifts), comes from God the Father. It is only from the Father above that there can be a retrieval of fatherhood below. Every perfect gift does not come from below. The letter of James or the Pauline letters discussed earlier do not instruct us that deconstructing father language of God achieves social harmony. Every perfect gift comes from above, from the Father of

¹³ *Catechism of the Catholic Church: Modifications from the Editio Typica* (New York NY: Doubleday, 1997), § 239.

¹⁴ Ibid.

lights. As strange as it might sound to some, only when we have a right faith and understanding of God's fatherhood can we have a right understanding of human fatherhood.

The Christian feminist critique of the language of God has one point correct. Language about God affects our relationship with each other. However, what they do with this insight, namely, changing the language revealed about God in order affect a change in society, forgets the proper order of revelation. It is God who reveals his fatherhood throughout the Old Testament and in a more definitive way in the New Testament. Fatherhood language has not been projected upon the divine realm. This idea would give into the critique of the atheist humanist philosopher, Ludwig Feuerbach, who argued that God the Father-language is only a projection of human desire. Instead, the Christian should believe and teach that fatherhood language has been revealed by God himself.¹⁵

When we speak about a God beyond the Father revealed by Jesus Christ, we distort the revealed God of salvation history. The effect of this distortion of belief, as good as the intentions of many Christian feminist theologians might be, is not positive change. Rather, the effect is the belittling of earthly fatherhood. Let me be clear here, the critique of patriarchal social sin is a necessary act of Christians; however, the critique must be done in the right way. It is only through a proper understanding of God the Father's sacrificial love that we truly see the potential of what human fatherhood could be. Since the practice of good religion is inextricably tied with the development of good culture, it is my firm belief that faith in God the Father, "who so loved the world that he gave his only-begotten Son" (John 3:16), will be essential for

¹⁵ Along with Hans Urs von Balthasar, the important twentieth-century Catholic theologian, Christians must insist that God has interpreted his own being in Jesus Christ and this interpretation given by God is that he is Father: "How then can man, who is created with an orientation towards God and constantly seeks him, begin to interpret him? Only God, who has the vision of his own wisdom is able to reveal his wisdom." Hans Urs Von Balthasar, "God is His Own Exegete," *Communio: International Catholic Review* 4 (1986): 280-87.

affecting a retrieval of a culture of fatherhood. The right relation between men, women, and children can only happen with a right understanding of God who has revealed himself as Father, Son, and Holy Spirit.

In conclusion, I have been arguing in this paper that the retrieval of fatherhood, which will affect a reduction in abortions, must be preceded by a retrieval of good theologies of God the Father. Only by having a right understanding of the fatherhood presented to us by the God the Father above can we have a right understanding of the fatherhood we all desire here below. Rather than having a daggers-drawn relationship to the Father language of the Christian God, we must sheath our animosity and draw out instead a love for God the Father revealed by Jesus Christ as the Son of God and the Holy Spirit as their mutual love.

Returning to the baptism class I spoke about earlier, I would like us to think about the fathers in that class who had to read that awful prayer to the divine parent. What if the brand new fathers, who are full of new-found love for their child while also experiencing bewilderment at how they are supposed to be a father, would have prayed to God the Father in the words our Lord taught us? If they called out to God as Abba, do we think they would have been better or worse fathers? Should they not be praying to the origin and standard of all life “who so loved the world” who so loved his Son, who so loved us, “that he gave his only-begotten Son, that whoever believes in him should not perish but have eternal life” (John 3:16)? What if instead of belittling the Father language of God we embraced it?

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Abortion in Canadian Literature: Comparisons with American Literature and Canada's Unique Contributions

Jeff Koloze

ABSTRACT: After reviewing the scholarship on abortion in twentieth-century Canadian fiction written in English, the essay discusses various abortion scenes in major Canadian works by comparing and contrasting them with major works from the United States. The essay then discusses post-abortion syndrome and illustrates passages in Canadian fiction on abortion where numerous characters display features of that syndrome.

LOCATING CANADIAN NOVELS concerned with abortion often approximates an archaeological dig since compilations of literary criticism frequently obscure, minimize, or lack references to abortion. Margaret Atwood's *Survival: A Thematic Guide to Canadian Literature*¹ has much to say about babies being an inappropriate solution for a plot's denouement, calling this technique the "Baby Ex Machina,"²

¹ Margaret Atwood, *Survival: A Thematic Guide to Canadian Literature* (Toronto ON: McClelland & Stewart, 1972).

² Atwood, *Survival*, p. 247. The "Baby Ex Machina" denouement is well-established in Canadian fiction. Frederick Philip Grove's 1925 *Settlers of the Marsh* (Toronto ON: Penguin Canada, 2006) ends with two instances of children bringing closure to an otherwise disastrous plot: Bobby, a young man befriended by Niels, the main character, and encouraged to do well, has five children; Ellen, the love of Niels's life, realizes at novel's end that she needs to be a mother (pp. 215, 231-32). The "baby ex machina" is even used by Atwood herself in *The Edible Woman* (New York NY: Anchor Books, 1969), where the pregnant Ainsley rejects the idea of abortion as a solution to her pregnancy and runs off to marry another man. Alice Munro's vivacious narrator in *Something I've Been Meaning to Tell You: Thirteen Stories* (New York NY: New American Library, 1974), originally bold enough to say that

but the closest she comes to noting the abortive tendency in many female characters is to use the phrase “life-denying” in answer to her speculation regarding

why most of the strong and vividly-portrayed female characters in Canadian literature are old women. If you trusted Canadian fiction you would have to believe that most of the women in the country with any real presence at all are over fifty, and a tough, sterile, suppressed and granite-jawed lot they are. They live their lives with intensity, but through gritted teeth, and they are often seen as malevolent, sinister or life-denying, either by themselves or by other characters in their books.³

Joseph Jones and Johanna Jones refer to abortion once in their *Canadian Fiction*,⁴ and that only as a quotation of other criticism by Roberta Rubinstein of Atwood’s *Surfacing*,⁵ where the critic considers that the number nine, which occurs as a motif in the novel, “suggests the human gestation period that [the narrator] never completed, either literally with

she “meant to have lovers and use birth control and never have any children,” immediately corrects herself, saying “actually I wanted to make an enviable marriage, both safe and passionate, and I had pictured the nightgown I would wear when my lover-husband came to visit me for the first time in the maternity ward” (p. 202). Cindi, whose abortion causes the rupture in her marriage with Ivan in Richards’s *Evening Snow Will Bring Such Peace* is pregnant at the novel’s end by her new lover; David Adams Richards, *Evening Snow Will Bring Such Peace* (Toronto ON: McClelland & Stewart, 1990). In a further variation of this deus ex machina, the main character in Fred Bodsworth’s *The Sparrow’s Fall* (New York NY: New American Library, 1967) is a hunter in the great Canadian north who fears that his wife and newborn child would die if he does not find food quickly. Returning to them after a prolonged hunt, his wife shares the joyous news that the child is still alive (p. 176).

³ Atwood, *Survival*, p. 237.

⁴ Joseph Jones and Johanna Jones, *Canadian Fiction* (Boston MA: Twayne, 1981).

⁵ Margaret Atwood, *Surfacing* (New York NY: Anchor Books/Doubleday, 1972).

her own child, or psychologically with her self.”⁶ By the time of the second edition of John Moss’s *A Reader’s Guide to the Canadian Novel*,⁷ abortion could be mentioned openly, as in his discussion of Atwood’s *Surfacing*, where the narrator “is haunted by” many events in her life, including “the child she aborted.”⁸ While Dallas Harrison’s 1995 essay on Sandra Birdsell in *Canadian Writers and their Work* has much to say about the author’s “symbolism,” which is “clear,” and notes that although “this story...comes close to meeting a feminist agenda,” abortion is not explicitly discussed.⁹ Finally, Karen S. McPherson has confirmed that “there is nothing on abortion” in her 2007 monograph, *Archaeologies of an Uncertain Future: Recent Generations of Canadian Women Writing*.¹⁰

Perhaps the absence of critical discussion about abortion in Canadian literature can be attributed to greater attention to other themes that have occupied writers since the foundation of the country; one hopes that the absence of critical commentary on abortion is not due to squeamishness or lack of interest. Perhaps the absence is a symptom of a more serious literary illness: evidence of a national literature that still has not yet “arrived.” Critics have suggested that such an inherent inferiority complex was in control since late in the nineteenth century and has continued until the first third of the twentieth. Research on the

⁶ Jones and Jones, p. 123.

⁷ John Moss, *A Reader’s Guide to the Canadian Novel*, 2nd ed. (Toronto ON: McClelland and Stewart, 1987).

⁸ Moss, p. 3. A 1998 reprint of the novel boldly asks the following question in a section of “Questions for Contemplation or Book Group Discussion”: “What clues in the novel suggest that the narrator is struggling to suppress memories of an abortion?” (Atwood, *Surfacing*, p. 204).

⁹ Dallas Harrison, “Sandra Birdsell” in *Canadian Writers and Their Work*, edited by Robert Lecker, Jack David, and Ellen Quigley (Toronto ON: ECW, 1995).

¹⁰ Karen S. McPherson, *Archaeologies of an Uncertain Future: Recent Generations of Canadian Women Writing* (Montreal & London: McGill-Queen’s Univ. Press, 2007); “Re: Information needed on ‘Archaeologies of an Uncertain Future’,” email to the author (15 April 2009).

production of Canadian literature by Gordon Roper shows that “up to 1880, some 150 authors had published little more than 250 volumes.” But the number of Canadian authors nearly tripled from that time until 1920, and their published works increased by over 500% to 1,400 volumes.¹¹ Despite the increased Canadian literary output in the rest of the twentieth century, Jones and Jones conclude their survey of Canadian literature in a section emphatically titled “Searching for *the* Canadian Novel” with borrowed poetic license that defines Canadian literature:

The poet John Robert Colombo had added (in 1967) his...“Recipe for a Canadian Novel,” specifying one Indian, one Mountie, one Eskimo, one Doukhobor, to which should be added “one smalltown whore,” “two thousand miles of wheat” complete with farmer “impotent and bent” and his fair-haired daughter, “then a Laurentian mountain and a Montréal Jew.” Other ingredients include “a young boy with a dying pet,” “a mortgage unmet,” “exotic and tangy place names” (Toronto, Saskatoon, Hudson Bay). There is further mention of maple syrup, maple leaves, “one Confederation poet complete with verse,” all of which is to be garnished with a sauce of “paragraphs of bad prose that never seem to stop.” When simmered (but not brought to a boil) and baked, this concoction “serves twenty million all told—when cold.”¹²

¹¹ See Jones and Jones, p. 35.

¹² Jones and Jones, pp. 140-01. The 1960s may have been the decade for introspection about Canadian literature. Graeme Gibson alludes to the problems of Canadian literature in his *Five Legs* (Toronto ON: House of Anansi Press, 1969). Contained within a narrative style that borders on extreme abbreviation of dialogue if not psychobabble, characters in the novel discuss the problems of writing in this exchange:

“You’re doing some writing?” Sudden pain and glaring, I ... Nodding, and. It’s crap, all crap, he.... “How’s it going?” ... “Difficult, yes.” Rocking he bends, he smiles with laughter in the room. “Particularly in Canada it seems,” what? ... “It’s difficult alright.... The problems of a real Canadian literature.” ... “Goddamn Puritan mentality doesn’t simply you know, inhibit the development of naturalism or anything no! No, sir.” ... “It fears, that’s the thing, it demeans the very role of art itself!” (Gibson, pp. 236-37).

Despite the absence of critical commentary explicitly identifying the topic, numerous Canadian novels contain characters who have experienced abortion, and, like their American counterparts, the historical progression of these novels shows that abortion was not a topic of late twentieth-century concern. By the publication of Frederick Philip Grove's *Settlers of the Marsh*, characters freely discuss abortion; one woman in the novel discloses at least three self-abortions and a possible fourth in the span of four pages.¹³ By the 1960s, abortion became a frequent topic in Canadian literature, playing a significant role in character development in Margaret Atwood's *The Edible Woman*, Graeme Gibson's *Five Legs*, Atwood's *Surfacing*, Margaret Laurence's *The Diviners*,¹⁴ Audrey Thomas's *Blown Figures*,¹⁵ David Helwig's *The Glass Knight*,¹⁶ and David Adams Richards's *Evening Snow Will Bring Such Peace*). Abortion plays a less significant role in several other works, including Alice Munro's *Lives of Girls and Women*,¹⁷ and Sandra Birdsell's *Ladies of the House*¹⁸ among others.¹⁹

¹³ Grove, pp. 110-13. Grant Allen, could precede Grove's entrance into the abortion discussion. Although he speaks of motherhood as fulfillment for women and apotheosizes the unborn child in his 1985 novel *The Woman Who Did* (Toronto ON: Broadview, 2004) pp. 89, 106-07, his only claim to being Canadian is that he was born in Canada. Nicholas Ruddick, editor of a newly-released version of his novel, asserts that, although he "never hid his Canadian roots," Allen never lived in Canada beyond age fourteen (p. 14). Besides this historical fact, the novel functions as didactic fiction arguing for sexual license and illegitimacy more than as an argument regarding abortion or, as it was often called in the nineteenth century, infanticide.

¹⁴ M. Laurence, *The Diviners* (Chicago IL: Univ. of Chicago Press, 1974).

¹⁵ Audrey Thomas, *Blown Figures* (Vancouver BC: Talonbooks, 1974).

¹⁶ David Helwig, *The Glass Knight* (Ottawa ON: Oberon Press, 1976).

¹⁷ Alice Munro, *Lives of Girls and Women* (New York NY: Vintage Contemporaries/Vintage Books, 1971).

¹⁸ Sandra Birdsell, *Ladies of the House* (Winnipeg: Turnstone, 1984).

¹⁹ While abortion plays a significant role as a basis for the theme in Atwood's *The Handmaid's Tale* (Boston MA: Houghton Mifflin, 1986), no significant abortion episode is worth mentioning here. However, readers will find an extensive commentary about the novel in Anne Barbeau Gardiner, "The

CANADIAN LITERATURE ON ABORTION
 CONTRASTED AGAINST THE AMERICAN EXPERIENCE

Given the essential national comparisons between Canada and the United States (linguistic commonality allowing persons in both countries to read controversial works written in English regarding the rights of women and their changing roles in the family),²⁰ there are many parallels between Canadian fiction on abortion and its American counterpart, especially when one reviews the general philosophical ideas of the abortion movement. Grove's *Settlers of the Marsh* implies that women knew about self-abortion techniques and that they spoke of them only among themselves; the novel explicitly records one woman's techniques ("lift heavy things...take the plow and walk behind it for a day"²¹). Atwood's *The Edible Woman* contains the idea that a mother is not in possession of her body when she is pregnant²²—the bifurcation between "her" body and that of the unborn child being a creation of the mid-twentieth century. Gibson's *Five Legs* lists traditional abortifacients, focusing on ergot.²³ Munro's *Lives of Girls and Women* cites traditional causes that were used as justification for abortion in the 1960s: mothers dying from childbirth and "crazy women [who] had injured themselves in obscene ways with coat hangers."²⁴ This same novel contains perhaps the longest section in Canadian literature, offering traditional images

Interrelated Defense of Abortion and Pornography in Margaret Atwood's *The Handmaid's Tale*," *Life and Learning XIII: The Proceedings of the Thirteenth University Faculty for Life Conference at Georgetown University, 2003*, edited by Joseph W. Koterski, S.J. (Washington, D.C.: Univ. Faculty for Life, 2004), pp. 87-101.

²⁰ Cf. supplementary material provided after Allen's novel *The Woman Who Did*, and Margaret Sanger's formulation in her 1938 autobiography of "seven circumstances under which birth control should be practiced." See *Margaret Sanger, An Autobiography* (New York NY: Norton, 1938), p. 193.

²¹ Grove, p. 110.

²² Atwood, *The Edible Woman*, p. 122.

²³ Gibson, pp. 4, 20, 80.

²⁴ Munro, pp. 88, 132.

that were used to argue for legalizing abortion:

I read about a poor farmer's wife in North Carolina throwing herself under a wagon when she discovered she was going to have her ninth child, about women dying in tenements from complications of pregnancy or childbirth or terrible failed abortions which they performed with hatpins, knitting needles, bubbles of air, I read, or skipped, statistics about the increase in population, laws which had been passed in various countries for and against birth control, women who had gone to jail for advocating it.²⁵

Atwood's *Surfacing* contains the idea that the child of the narrator was her "husband's,"²⁶ an idea that is unique in literature of the time (that the father has, in the context of abortion, any rights over the child he creates). The narrator in Laurence's *The Diviners* is afraid of becoming pregnant; her first husband calls children "accidents,"²⁷ symptomatic of the 1960s when sexual activity was viewed as the paramount reason for marriage and that any child conceived indicated more a failure of birth control or contraception than a salutary transmission of life. Birdsell's *Ladies of the House* conveys the impression that women could be driven to abortion because "nothing worked" whether contraceptive or other to alleviate women's fear of pregnancy,²⁸ a defeatist position used by the early feminist movement to encourage support for abortion. Finally, Ruby, a character in Richards's *Evening Snow Will Bring Such Peace*, views abortion as an act of rebellion, a pose dominant in the abortion movement since early agitation:

²⁵ Munro, pp. 182-83. The idea that abortion is a foreign matter, as evidenced here by the citation of a book read about a "North Carolina" mother, is repeated in Munro's *Something I've Been Meaning to Tell You*, where abortion is viewed as something done in Crete and Spain (p. 168). Closer to Canada, Thomas's narrator in *Blown Figures* mentions an abortion in New York.

²⁶ Atwood, *Surfacing*, p. 30.

²⁷ Laurence, p. 164.

²⁸ Birdsell, p. 75.

It was not inherent in Ruby to forgo anything that was new or irreverent—and this is primarily what attracted her to abortion. What umbrellaed her concern was not so much that it would be right, but that it would be rebellious and gain attention. Like everything else Ruby did.²⁹

Often, Canadian similarities with American counterparts operate at the linguistic level. One recalls the American man's and Jig's word-play surrounding the pronoun "it" in Hemingway's "Hills Like White Elephants,"³⁰ the quintessential template for abortion narratives. The use of this third-person pronoun to refer to the dehumanized unborn child can be found in Atwood's *Surfacing*, although the word "child" is introduced into the exchange as well.³¹ Atwood weaves the affectionate term for the fetus ("child") and the depersonalized "it" in another novel. Confronted by the mother of his unborn child, who wants him at least to stay in the child's life if not marry her, Len in *The Edible Woman* exclaims that he does not "want any son at all! I didn't want it, you did it [become pregnant] yourself, and you should have it removed."³² A

²⁹ Richards, pp. 133-34.

³⁰ Ernest Hemingway, "Hills Like White Elephants" (1927) in *Men Without Women* (New York NY: Charles Scribner's Sons, 2006), pp. 69-77.

³¹ Atwood, *Surfacing*, p. 187.

³² Atwood, *The Edible Woman*, p. 233. Moreover, the idea that the unborn child is alien to the mother's body or less than human (an essential step in the depersonalization that, as William Brennan demonstrates in *Dehumanizing the Vulnerable: When Word Games Take Lives* (Chicago IL: Loyola Univ. Press, 1995), must occur before abortion can be performed with impunity, occurs rarely in Canadian literature. American critics may be more concerned with the "alien" or "otherness" nature of the unborn child than their Canadian counterparts. In fact, American critics often use the first term to depersonalize the unborn child by equating it with the extraterrestrial denotation of the term. See, for example: Peter Swiggart, *The Art of Faulkner's Novels* (Austin TX: Univ. of Texas Press, 1962); John L. Cobbs, "Alien as an Abortion Parable," *Literature/Film Quarterly* 18/3 (1990): 198-201, where he expresses the proportion that the alien within the body of the astronaut in the film *Alien* is "like an embryo within a uterus" (p. 200); and Lucy Ferriss's *The Misconceiver* (New York NY: Simon & Schuster, 1997), which, like Cobb, again conjures

more recent example of linguistic comparison between American and Canadian fiction on abortion is Cindi's assertion in Richards's *Evening Snow Will Bring Such Peace* that she is "fine" after her abortion, which recalls Jig's ambiguous assertion in Hemingway's "Hills Like White Elephants."³³ "I'm fine," Cindi asserts one page after her abortion is performed.³⁴ The assertion of health becomes suspicious when the same phrase is repeated fifteen pages later,³⁵ just as Jig's repetitious use of the phrase challenges the claim made in Hemingway's story.³⁶

DIFFERENCES BETWEEN AMERICAN AND CANADIAN LITERATURE ON ABORTION

Despite these similarities, Canadian fiction on abortion differs significantly from its American counterpart in several respects, one being the step-by-step description of abortion procedures, whether those that occurred before or after legalization, which is relatively absent in Canadian work. Granted, there are examples in American fiction of abortion episodes told "off stage." For example, Annabelle Marie Strang relates the details of her abortion to J. Ward Moorehouse in John Dos Passos's *The 42nd Parallel*, the third part of his *U.S.A.* trilogy,³⁷ in such a way that the narrator simply says that "[h]e heard the details in chilly horror."³⁸ Even Richard Brautigan's *The Abortion: An Historical*

up the image of fetuses being similar to space aliens (p. 82).

³³ Hemingway, p. 192.

³⁴ Richards, p. 141.

³⁵ Richards, p. 156.

³⁶ A briefer use of this signal term in abortion stories can be found in Margaret Atwood's short story "Giving Birth," in the anthology *We Are The Stories We Tell: The Best Short Stories by North American Women Since 1945*, edited by Wendy Martin (New York NY: Pantheon Books, 1990), pp. 134-49, here p. 139.

³⁷ John Dos Passos, *U.S.A.*: I. *The 42nd Parallel*; II. *Nineteen-Nineteen*; III. *The Big Money* (New York NY: Modern Library, 1937).

³⁸ Dos Passos, *The 42nd Parallel*, p. 198.

Romance 1966,³⁹ a work written when the turbulence of abortion agitation was at its height before legalization in the U.S., relates the intimate details of Vida's abortion occurring off stage as well.

While characters in Dos Passos's *U.S.A.* trilogy relate their abortion scenes *ex post facto*, other abortion scenes in American fiction became increasingly more detailed, and subsequent authors placed the readers in the immediacy of the abortions being performed. Although Charlotte's abortion in Faulkner's *The Wild Palms*⁴⁰ occurs off stage, the amount of detail accorded the preliminaries to the event has increased:

She boiled the water herself and fetched out the meager instruments they had supplied him with in Chicago and which he had used but once, then lying on the bed she looked up at him. "It's all right. It's simple. You know that; you did it before."

"Yes," he said. "Simple. You just have to let the air in. All you have to do is let the air—" Then he began to tremble again. "Charlotte. Charlotte."

"That's all. Just a touch. Then the air gets in and tomorrow it will be all over and I will be all right and it will be us again forever and ever."⁴¹

Similarly, the abortions described in Book Five, titled "My Three Abortions," in Brautigan's *The Abortion: An Historical Romance 1966* occur off stage, but they are mentioned with significant attention to detail; for example, the narrator of the novel, the father of Vida's unborn child, sees the abortionist's teenaged attendant take a bucket to another room and hears a series of toilet flushes, after which the attendant returns with the bucket empty. By the time of John Irving's *The Cider House Rules*⁴² the depiction of abortion becomes not merely routine, but a moment of philosophical speculation and apotheosis for Homer Wells, the abortionist:

³⁹ Richard Brautigan, *The Abortion: An Historical Romance 1966* (New York NY: Simon and Schuster, 1971).

⁴⁰ William Faulkner, *The Wild Palms* (New York NY: Random House, 1939).

⁴¹ Faulkner, p. 220.

⁴² John Irving, *The Cider House Rules* (Toronto ON: Bantam, 1985).

He chose the curette of the correct size. After the first one, thought Homer Wells, this might get easier. Because he knew now that he couldn't play God in the worst sense; if he could operate on Rose Rose, how could he refuse to help a stranger? How could he refuse anyone? Only a god makes that kind of decision. I'll just give them what they want, he thought. An orphan or an abortion.

Homer Wells breathed slowly and regularly; the steadiness of his hand surprised him. He did not even blink when he felt the curette make contact; he did not divert his eye from witnessing the miracle.⁴³

In contrast, Canadian instances of abortion are mostly retrospective events with little detail supplied. Grove's self-aborted mother in *Settlers of the Marsh* gives no details about her abortions except for the barest of facts. Naomi in Munro's *Lives of Girls and Women* is barely able to relate her failed attempts to self-abort. The main character in Atwood's *Surfacing* describes not so much the procedures of her abortion as much as she depicts in quick succession the arrangements for the abortion and the immediate aftereffects. Eva's self-abortion in Laurence's *The Diviners* is reduced to one quick "sentence" divided over two paragraphs: "Eva shivers, cries a little but not much. / And aborts herself that night with a partly straightened-out wire clotheshanger."⁴⁴ Isobel, the main character in Thomas's *Blown Figures* provides more of a traditional description of a surgical abortion than any other author considered thus far:

Scrap. Small detached piece of something, fragment, remnant (pl.) odds and ends, useless remains, allied to *scrape*.

Dr. Biswas was going to scrape her out. How tiny he was. She could have reached out from the trolley and held him between her forefinger and thumb. A few scraps left. An embryonic finger maybe, or a toe. A little lost eye. It doesn't—always—all come away at once.⁴⁵

⁴³ Irving, p. 568.

⁴⁴ Laurence, p. 123.

⁴⁵ Thomas, p. 132, italics in original.

In Helwig's *The Glass Knight* Elizabeth glides over significant details of her abortion: "It had come out of her body. The doctor had probed her more deeply than she had thought possible. He had torn something in her, something he didn't know or care that he had touched." Elizabeth then advances in her narrative to the time immediately after the abortion procedure: "She had curled up in the back seat like a child beginning to grow. She would grow back whatever it was she had lost."⁴⁶ Cindi's abortion in Richards's *Evening Snow Will Bring Such Peace* is denoted only by the briefest phrases spanning two paragraphs: "when the procedure started," "from behind the door," "as if she was being hurt," "She kept looking out the window because she couldn't look at Dr. Savard," and "'How do you feel?' he said finally."⁴⁷

Canadian fiction that concerns abortion is in further contrast to its American counterpart in three socio-political areas. I have commented elsewhere on three frequent themes in contemporary American fiction on abortion: devaluation of parenthood and children, a bias against the Roman Catholic Church, and demonization of right-to-lifers.⁴⁸ Canadian fiction does not display these negative tendencies as its American counterpart.

This is not to say, however, that literary evidence does not exist to support some of these three negative features. With the notable exception of children being metonymically reduced to "accidents" (as in failure of contraception) in Laurence's *The Diviners*, Clara in Atwood's *The Edible Woman*, for example, is adept at calling her children dehumanizing and vulgar names, as when she compares a newborn to an "octopus" or calls another child a "bastard."⁴⁹ Although her own life is in shambles, Elizabeth in Helwig's *The Glass Knight*

⁴⁶ Helwig, pp. 134-35.

⁴⁷ Richards, pp. 140-41.

⁴⁸ See especially ch. 9 of my *An Ethical Analysis of the Portrayal of Abortion in American Fiction: Dreiser, Hemingway, Faulkner, Dos Passos, Brautigan, and Irving* (Lewiston NY: Edwin Mellen Press, 2005).

⁴⁹ Atwood, *The Edible Woman*, pp. 28, 34.

acknowledges that her parents had a good marriage and a good life together.⁵⁰

Regarding attitudes toward the Roman Catholic Church, there is neither the vituperation against well-meaning Catholics who espouse a pro-life position nor narratological hostility against the institution of the Church. A character in Atwood's *Surfacing* explains the large number of children she sees in a village in Quebec thus: "They must fuck a lot here.... I guess it's the Church." She then immediately becomes mock-penitent (or does he mean it seriously?): "Aren't I awful."⁵¹ Atwood's casual comment about the Catholic Church extracted from an interview supplied at the back of the *Surfacing* volume may help readers understand the activities of the unnamed narrator, but it does not persuade the reader to adopt a negative view against the Church.⁵² Similarly, in Gibson's *Five Legs* the discussion that Felix has with his parents about his desire to convert to Catholicism shows the reader more the parents' bias than the view that readers should take toward Catholics and their position on abortion. Richards's depiction of the abortionist Armand Savard in *Evening Snow Will Bring Such Peace* is noteworthy for the anti-Catholicism that informs the Quebecois abortionist's character more than the life-affirming positions of the Church, which are not attacked in the novel.

Finally, regarding the third negative feature of contemporary

⁵⁰ Helwig, pp. 133-34.

⁵¹ Atwood, *Surfacing*, p. 9.

⁵² Her full remarks are that "ever since we all left the Roman Catholic Church we've defined ourselves as innocent in some way or another. But what I'm really into in that book [*Surfacing*] is the great Canadian victim complex. If you define yourself as innocent, then nothing is ever your fault" (p. 210).

Another instance of possible anti-Catholicism occurs in Munro's *Lives of Girls and Women*. When Garnet's mother identifies one of his former girlfriends as a Roman Catholic, she asserts that "'Married her you would have been poor,' said his mother significantly. 'You know what the Pope tells them to do!'"'; Garnet counters this attack by responding, "You did okay without the Pope yourself, Momma" (p. 246).

American abortion fiction (demonization of right-to-lifers), I find no evidence in Canadian fiction of attacks against those who advocate the pro-life position to the degree that, for example, Howard Fast and Mary Logue attack those who oppose abortion in their novels, *The Trial of Abigail Goodman*⁵³ and *Still Explosion*⁵⁴ respectively.⁵⁵

THE UNIQUE IN CANADIAN ABORTION LITERATURE

In final contrast, the Canadian might be the first world literature that documents the deleterious effects of abortion on women. American fiction, especially since the 1980s, has tended to be dogmatic about abortion as an issue of rights, as though all feminist thought should view abortion as the highest good and a matter only pertaining to women themselves. Canadian literature, in contrast, reflects much more on abortion's effects on women, their relationships, and their lives. One can categorize discussion of the effects of abortion on women under the rubric of "post-abortion syndrome" (PAS), a concept that has gained currency in the psychological literature and that has practical use for literary study.

A relatively recent item in the psychological literature, David C. Reardon began discussion of PAS with his *Aborted Women: Silent No More*.⁵⁶ Although primarily written for an American audience, his research concludes that women could suffer a range of five consequences after abortion, including "guilt and remorse," "broken relationships and sexual dysfunction," "depression and a sense of loss,"

⁵³ Howard Fast, *The Trial of Abigail Goodman* (New York NY: Crown, 1993).

⁵⁴ Mary Logue, *Still Explosion* (Seattle WA: Seal Press, 1993).

⁵⁵ Both of these novels can be dismissed as didactic if not propagandistic efforts to demonize opponents of abortion, whose actions respond to the fact that abortion is legal in the United States throughout the entire nine months of pregnancy for any reason whatsoever.

⁵⁶ David C. Reardon, *Aborted Women: Silent No More* (Westchester IL: Crossway Books, 1987).

“deterioration of self-image and self-punishment,” and suicide.⁵⁷ Researchers on PAS in Canada include Elizabeth Ring-Cassidy, whose *Women’s Health After Abortion: The Medical and Psychological Evidence* (2nd edition co-authored with Ian Gentles),⁵⁸ can help to elucidate the behavior and thought of aborted women in Canadian novels. Summarizing their research of psychological risk factors and complications following abortion, these researchers report:

Women who have abortions are at risk of emotional difficulties after the procedure, especially those with pre-existing factors such as relationship problems, ambivalence about their abortion, adolescence, previous psychiatric or emotional problems, pressure by others into making a decision to abort, or religious or philosophical values that are at odds with aborting a pregnancy.⁵⁹

Evaluating the effects that abortion has on interpersonal relationships specifically, these same researchers conclude:

Women’s marital or partner or family relationships can be significantly affected by abortion.... When a woman or adolescent girl has been coerced into having an abortion, typical reactions include feelings of betrayal (by partners or family members), anger, depression, sadness, and breakdown of trust and intimacy in relationships.... “Suppressed mourning” has very negative outcomes, often leading to feelings of numbness and/or hostility and anger, and to difficulties in forming future relationships and in bonding with later-born children....⁶⁰

Professional organizations are ambivalent about the existence of PAS, and the reasons for such temerity are obvious; abortion is not only controversial as a political issue, but also an economic force in the

⁵⁷ Reardon, pp. 121ff. Other American researchers into PAS include Priscilla Coleman (Bowling Green State University) and Vincent Rue.

⁵⁸ Elizabeth Ring-Cassidy and Ian Gentles, *Women’s Health After Abortion: The Medical and Psychological Evidence*, 2nd ed. (Toronto ON: de Veber Institute for Bioethics and Social Research, 2003).

⁵⁹ Ring-Cassidy and Gentles, p. 149.

⁶⁰ Ring-Cassidy and Gentles, p. 232.

Western world. Proving that abortion is big business or that it is a political question inspiring fear in some circles is not the purpose of this paper. One can, however, learn the attributes of the theory and determine whether women in Canadian literature who engage in abortion manifest those characteristics.

The post-abortion evidence from the novels—especially remorse, anger, and sense of loss—is obvious. One paragraph in Atwood's *Surfacing* directly recounts the narrator's abortion episode:

He said I should do it, he made me do it; he talked about it as though it was legal, simple, like getting a wart removed. He said it wasn't a person, only an animal; I should have seen that was no different, it was hiding in me as if in a burrow and instead of granting it sanctuary I let them catch it. I could have said No but I didn't; that made me one of them too, a killer.⁶¹ After the slaughter, the murder, he couldn't believe I didn't want to see him any more; it bewildered him, he resented me for it, he expected gratitude because he arranged it for me, fixed me so I was as good as new; others, he said, wouldn't have bothered. Since then I'd carried that death around inside me, layering it over, a cyst, a tumor, black pearl; the gratitude I felt now was not for him.⁶²

The anger in the above passage may only become evident when one verbalizes the words, and a dramatic rendering is necessary since, except for the absence of punctuation, which rushes some phrases together, there are no linguistic markers to emphasize one word over another. Moreover, the pain and guilt that the narrator feels is matched only by her resentment against her lover for arranging, persuading, or coercing her into an abortion. Certainly, the literary creation is wonderful to behold; the narrative torques between the narrator's present experience in Quebec and her reminiscences, a loss of linearity in narrative design that challenges the reader's certainty regarding what time period the narrator is in or to whom she is speaking. How unfortunate that the reader sees that the clear statement of the narrator's abortion should

⁶¹ Forty years earlier, Ellen's mother in Grove's *Settlers of the Marsh* calls herself a "murderess" for having self-aborted (p. 113).

⁶² Atwood, *Surfacing*, pp. 145-46.

come three-fourths of the way into the novel, nine years after the event. It has taken that long for the main character to express her anger and to identify the source of the distresses in her life.

Although Morag in Laurence's *The Diviners* does not have an abortion,⁶³ the self-abortion that Eva, her childhood friend, performs is cited often throughout the novel. The abortion occurs after more than one hundred pages into the work, to be recollected about sixty pages afterwards; thirty pages later, the reader learns that the main character of Morag's novel self-aborts much like her childhood friend Eva did. Eva's aborted child is mentioned a final time towards the end of the novel. Thus, Eva's self-abortion is a loss that has profoundly affected others.

The narrative structure of Thomas's *Blown Figures* is not as unique as it first seems. Brautigan's style, for example, often combined long passages with smaller ones, and the abortion episodes in his novel are minimized by the interpolation of seemingly unrelated chapters. Thomas's novel, however, is a more radical departure from traditional narrative style. Nearly 70% of the novel (373 of the 547 pages) consists of brief one-line statements; rarely does the text reach a half page. While the details of Isobel's abortion have been mentioned above, what remains are the literary features that manifest PAS features. The narrator questions Isobel regarding her two abortions, and the use of a narrator questioning the main character is further evidence that the main character herself cannot yet address her own abortions. The questioning occurs within parentheses, adding one more layer of remove from the questions, in a rapid, punctuation-free, stream-of-consciousness style that precludes objective consideration of the abortions:

([...] How does it feel, lying there in the hot, oppressive room, remembering. Where is your baby Isobel, the one you wanted, your little dead tot? The lamp does not light, the door does not open the windows are mirrors the mirrors are

⁶³ She does become pregnant and considers abortion, but Morag is freed from the need to decide on whether to abort or not when she menstruates.

doorways, the flowers are children the children are dying—what happened to your little dead tot whom you last saw curled in the silvery basin? And the other one, Richard’s son—where is he now?)⁶⁴

It seems appropriate in terms of a satisfactory dénouement that, sixty pages from the end of the novel, Isobel can describe her abortion in semi-expository, yet still poetic paragraphs.

Elizabeth’s abortion in Helwig’s *The Glass Knight*, recounted about halfway through the novel, blends present actions with past over several paragraphs. The absence of subjects or predicates for many of the “sentences” in the passage which follows further challenges the reader to an easy understanding of the emotions that the main character feels:

The body curled around its wound. Curled like a secret child, like Elizabeth curled on the floor in sunlight on a white rug. In a suburb of Montréal. A doctor with a strange accent and eyes that looked friendly although he didn’t say one friendly word, as she left said *Try not to come back* and the nurse smiled.

She hadn’t imagined. Couldn’t imagine the pain. All she knew was that she must hold it inside herself, hold her pain like a rich gift, that if she screamed the world could come apart in the pieces of her scream....

She sat up and went to the radio. Turned it off. Went and lay down on the bed, lying on her back, straight and still. He fucked her, dim and insistent. She must get rid of him somehow. Decided to phone and tell him she wouldn’t see him again.⁶⁵

A characteristic of PAS is that the emotional force of the abortion event will recur repeatedly; nearly forty pages later, the reader learns that Elizabeth’s abortion occurred four years earlier.

As a final example, the reader could have interpreted a passage in Birdsell’s *Ladies of the House* merely as the alienation that Truda feels in a complex world, until three words alter the scene: “And Truda saw

⁶⁴ Thomas, p. 153.

⁶⁵ Helwig, pp. 97-98, italics in original.

the *tiny white coffin*.”⁶⁶ At the mention of “tiny white coffin” the reader must re-evaluate the passage before and after this notation. Had Truda aborted? The pages before and after this notation are ambiguous and uninformative. Like the abortion episode in Atwood’s *Surfacing*, it takes the narrator much time to disclose even this alienation effect of a possible abortion. Perhaps Truda is a character who still cannot reach the point of disclosure about her abortion and thus still suffers.

This study began with a facetious list of elements deemed necessary for Canadian novels circa the 1960s. Besides the fact that more works are now established in the Canadian canon, fictional representation of abortion has altered the list considerably. While the references to the impact of historical influences on the nation, tawdry items aligned with popular sentiment about Canada, and an appreciation of the land itself will always inform Canadian literature, some new items can be added to the list, many of which are connected with aborted women.

An updated list of characteristics of Canadian fiction would include, first, a rejection of the American tendencies to engage in *ad hominem* attacks against those who hold opposing views on abortion. Second, it would include those women who reflect deeply on the great sorrow caused by their abortions. Finally, the updated list would include those who ponder how their abortions have affected not only themselves, but their lovers and relationships with others. These three items may qualify Canadian literature on abortion to fit the category of tragedy as the dominant literary mode; it is this tragic sense that may constitute Canada’s greatest contribution to the world’s literature on abortion.⁶⁷

⁶⁶ Birdsell, p. 131, emphasis added.

⁶⁷ Additional sources consulted in the preparation of this paper:

Aitken, Johan Lyall, *Masques of Morality: Females in Fiction* (Toronto ON: Women’s Press, 1987).

Dawson, T. Brettell, ed. *Women, Law and Social Change: Core Readings and Current Issues*, Canadian Legal Studies Series (North York ON: Captus Press, 1990).

De Mille, James. *A Strange Manuscript Found in a Copper Cylinder*, 1888, ed. Malcolm Parks, Centre for Editing Early Canadian Texts Series 3

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- (Oshawa ON: Carleton Univ. Press, 1986).
- de Valk, Alphonse, *Morality and Law in Canadian Politics: The Abortion Controversy* (Montreal QU: Palm, 1974).
- Greenglass, Esther R., *After Abortion*, Canadian Social Problems Series (Don Mills ON: Longman Canada, 1976).
- Hebert, Anne, *Kamouraska* (Toronto: Stoddart, 1973).
- Jelen, Ted. G. and Marthe A. Chandler, ed. *Abortion Politics in the United States and Canada: Studies in Public Opinion* (Westport CT: Praeger, 1994).
- Markoosie, *Harpoon of the Hunter* (Montreal ON: McGill-Queen's Univ. Press, 1970).
- McLaren, Angus, and Arlene Tigar McLaren. *The Bedroom and the State: The Changing Practices and Politics of Contraception and Abortion in Canada, 1880-1980* (Toronto ON: McClelland and Stewart, 1986).
- Tatalovich, Raymond. *The Politics of Abortion in the United States and Canada: A Comparative Study*, Comparative Politics Series (Armonk NY: M. E. Sharpe, 1997).

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Pak Wansŏ's "The Dreaming Incubator": An Application of Western Literary Theories to a Major Work of Korean Fiction

Jeff Koloze

ABSTRACT: The essay discusses themes in twentieth-century Korean fiction, including contemporary topics such as abortion and infanticide. The essay then focuses on Pak Wansŏ's short story "The Dreaming Incubator" (1994), which discusses abortion from the mother's perspective. The essay uses formalist, feminist, and Marxist literary theories to explicate the story. Finally, the essay demonstrates that the narrator of the story manifests post-abortion syndrome.

DISCUSSING KOREAN LITERATURE before an American audience forces one to address several obstacles, especially if the audience is comprised either of American college or university students or the general public who know virtually nothing of the author under consideration here. A lack of cultural knowledge, certain scholarly perspectives or biases, and even problems of orthography can impede appreciation of an author like Pak Wansŏ. Thus, literature professors and others who wish to share the didactic and literary values of her work must remove these obstacles first.¹

Perhaps the easiest challenge to address concerns orthography,

¹ The didactic function of modern Korean literature has been noted by Bruce Fulton and Youngmin Kwon, who write that Korean writers hold "the belief that fiction writing is essentially a serious undertaking, and one with ethical overtones. Writers will not be condemned for didacticism," *Modern Korean Fiction: An Anthology*, edited by Bruce Fulton and Youngmin Kwon (New York NY: Columbia Univ. Press, 2005), pp. xi-xii.

where the Romanization of the Korean alphabet following the McCune-Reischauer or Revised Romanization systems fails due to translator or publisher variation.² Publications in the last two decades use several variants for “Pak Wansō,” including the hyphenated variant “Pak Wans” (used by Kim in a 1990 discussion and by West and Suh in a 2001 monograph³), “Park Wan-so” (used by Suh in a 1998 anthology⁴), and “Park Wansuh” (the spelling used in the translation of the short story discussed here as reproduced in Choi’s 2002 anthology). This paper follows the most recent orthographic rendering of “Pak Wansō” as used by Fulton and Kwon in their 2005 work.

A much more challenging obstacle, however, is the ignorance that American audiences have of international history, the vocabulary of movements that have shaped world events, and the canon and lexicon of literature. Scholars writing for the academic world and for the general reading public have commented on American ignorance of world cultural values for decades now.⁵ Perhaps Harold Bloom’s comment about student attitudes toward literature, albeit sarcastic, identifies three reasons why they cannot appreciate it:

Precisely why students of literature have become amateur political scientists, uninformed sociologists, incompetent anthropologists, mediocre philosophers, and overdetermined cultural historians, while a puzzling matter, is not beyond

² See, for example, In-sob Zong’s commentary on the translation of Korean works, *A Guide to Korean Literature* (Elizabeth NJ: Hollym International, 1982), especially pp. 276ff.

³ *Remembering the “Forgotten War”: The Korean War Through Literature and Art* (Armonk NY: M. E. Sharpe, 2001).

⁴ *The Rainy Spell and Other Korean Stories*, revised and expanded edition, translated by Suh Ji-moon (New York NY: M. E. Sharpe/UNESCO, 1998); a translation of *Changma oe Han’guk tanp’yon sonjip*.

⁵ Consider, for example, the seminal work of E. D. Hirsch in his *Cultural Literacy: What Every American Needs to Know* (Boston MA: Houghton Mifflin, 1987) and Stephen Prothero’s *Religious Literacy: What Every American Needs to Know--and Doesn’t* (New York NY: Harper SanFrancisco, 2007).

all conjecture. They resent literature, or are ashamed of it, or are just not all that fond of reading it.⁶

Finally, sometimes academics themselves have contributed to this cultural ignorance. Many scholars have reiterated the same themes that inform post-war Korean literature: the national trauma experienced since the Korean War, the disillusionment of the 1950s that culminated in student uprisings and militia control of the government in the early 1960s, and the tension on the social fabric created by the immediate and successful industrialization of South Korea in the last third of the twentieth century.⁷

While similar identification of themes testifies to the consistency, if not integrity, of the scholarship, an educated reader might think that only certain topics inform Korean literature. The trauma of the Korean War is still being negotiated by Koreans themselves, a psychological factor in the national consciousness that Americans, for example, simply cannot understand.⁸ But newer, more controversial topics in contemporary Korean literature exist. Often, these newer themes are suggested by scholarly commentators but they have not yet been explored in detail and not categorized. This paper attempts to address some of these more contemporary themes and to apply some of the major literary theories to

⁶ Harold Bloom, *The Western Canon: the Books and School of the Ages* (New York NY: Harcourt Brace, 1994), p. 521.

⁷ See, especially, Chong-un Kim, *Postwar Korean Short Stories: An Anthology*, 2nd ed. (Seoul, Korea: Seoul National Univ. Press, 1983, pp. ix-x).

⁸ Except for the trauma created by the partition of Palestine in 1948 to create Israel, no other recent historical event can approximate the trauma created by the division of the Korean peninsula into two nations. The dissolutions of the Soviet Union and Yugoslavia in the past three decades have occurred peacefully or with minimal military action. Examples of separatism cannot help one to convey the Korean trauma since most separatist movements are proceeding legislatively; the efforts of the Parti Quebecois in Canada and separatist movements in the United States are prime examples.

Pak Wansŏ's short story "The Dreaming Incubator"⁹ for the express purpose of helping Western audiences to appreciate her fine work.

THEMES IN KOREAN LITERATURE

Commentators have categorized various themes of Korean literature since the war. The division of the peninsula into two nations, the permanent separation of families caused by that division, and the fratricide caused by family members caught behind the lines of the respective countries who then fight against each other are standard themes in Korean literature. Other scholars have identified more contemporary topics that have recently been coming into prominence: the clash of traditionalism and modernization, the influence of Western political and religious ideas on Korean society, and the effects of a strong capitalist drive on the Korean family—topics that the author under discussion here has addressed. Fulton and Kwon summarize Pak's biography by saying that "she has written profusely, focusing in turn on wartime trauma..., the ideological and territorial division of the Korean peninsula..., and changing women's roles and self-perceptions."¹⁰ West and Suh affirm that Pak's work addresses not only the standard themes, but also the newer topics in Korean literature, noting that Pak herself

says that she wanted to prevent the Korean War and its aftermath from becoming a mere historical record of territories lost and gained, and the death of a family member from becoming just a number in the wartime casualty toll.¹¹ She wanted to record the personal meanings and consequences created by the war.... Pak believes that the breakup, or weakening, of kinship ties, aggravated by the influx of the idea of individualism from the West, has made the Korean people self-centered.¹²

⁹ Wansuh Park, "The Dreaming Incubator," *Unspoken Voices: Selected Short Stories by Korean Women Writers*, edited by Jin-Young Choi, translated by Jin-Young Choi (Dumont NJ: Homa & Sekey Books, 2002), pp. 101-42.

¹⁰ Fulton and Kwon, p. 291.

¹¹ Pak's beloved uncle and brother were killed during the war.

¹² West and Suh, pp. 94, 101.

Other specific topics are only now beginning to emerge in Korean literature, both of which emanate from the subjugation of women: abortion and infanticide.¹³ Admittedly, mention of these topics is often couched in ambiguous or secretive terms, and infanticide is mentioned much more frequently than abortion. Several examples of the secretive nature of possible abortion or infanticide can be mentioned here. A character in Kang Sok-kyong's "Days and Dreams" mentions how, if she had "known better," she "wouldn't have done it." Here "it" meaning give birth to her second child; the possibility could either mean abortion or infanticide.¹⁴ A character in Kim Yongha's short story "Lizard" speaks of a lost "baby" who had been killed either while in the womb (abortion) or once born (infanticide), and any verification of the child's death is frustrated because the event is recounted as a dream.¹⁵

Infanticide is clearly mentioned in several other stories. A young

¹³ Both of these newer topics demonstrate the tension created by the importance that Koreans place on children and the contradiction of that value as evidenced in abortion. The value of children is especially noted by Kim Taekil in *Values of Korean People Mirrored in Fiction*, translated by Kim Heung-sook, 2 vols. (Seoul, Korea: Dae Kwang Munwhasa, 1990), who writes: "Childless people are often lamented," primarily because they have no one to continue the practice of ancestor worship (vol. 1, pp. 79-80). Writing in 1990, the author comments further on a corollary of infanticide practices: "Sexual discrimination not only affects women but the whole population of Korea. It is widely known that the general tendency of neglecting girls and favoring boys is making the imbalance of population a very serious problem in Korea" (vol. 2, p. 122). Despite the apparent love for children in Korean culture, casual references to abortion abound in Korean fiction; see, for example, Chong-un Kim's discussion of So Kiwon's "The Unchartered Map" in *Postwar Korean Short Stories: An Anthology*, 2nd ed. (Seoul, Korea: Seoul National Univ. Press, 1983), pp. xvi-xvii.

¹⁴ *Words of Farewell: Stories by Korean Women Writers*, trans. Bruce and Ju-Chan Fulton (Seattle WA: Seal Press, 1989), pp. 1-27, here at p. 5.

¹⁵ *Modern Korean Fiction: An Anthology*, edited by Bruce Fulton and Youngmin Kwon (New York NY: Columbia Univ. Press, 2005), pp. 371-82, here at p. 379.

woman in Park Kyongni's short story "Youngju and the Cat," reflecting on poverty, exclaims: "I understand why people kill their children first before they commit suicide."¹⁶ Another possible case of infanticide is alluded to but not depicted in O Chong-hui's short story "Evening Game."¹⁷ A young woman in Han Kang's "Nostalgic Journey" recounts a childhood event, where her father, who had already thrown her sister into the sea, attempted to kill her also; the narrator has taken years to acquire the courage to reveal the event.¹⁸

One clear instance of abortion can be found in Pak Kyong-ri's short story "Pyoryudo," and critics have pointed out the disastrous effects of abortion on the main character in terms that match those used by scholars who document cases of post-abortion syndrome:

Kwang-hi meets Min-u while working as a waitress at a tearoom and conceives his child. She solves the problem by having an abortion, but suffers mentally. She feels that all the people around her despise her and she thus abhors others. She thinks she is the lowest woman in the world. She leaves the tearoom in agony and becomes a prostitute in the red-light district in Seoul. At the end of the self-depreciation, she is mentally deranged and kills herself.¹⁹

Both abortion and infanticide are well discussed in Pak's work. "The Dreaming Incubator," in fact, is summarized by Choi as "a savage criticism...of Korea's prejudice against girls that used to force women to abort female fetuses."²⁰

¹⁶ Park Kyongni's short story "Youngju and the Cat" p. 54.

¹⁷ Chong-hui O, "Evening Game," *Words of Farewell: Stories by Korean Women Writers*, translated by Bruce and Ju-Chan Fulton (Seattle WA: Seal Press, 1989), pp. 181-201, here at p. 193.

¹⁸ *Unspoken Voices: Selected Short Stories by Korean Women Writers*, edited by Jin-Young Choi, translated by Jin-Young Choi (Dumont NJ: Homa & Sekey Books, 2002), pp. 219-51, here at pp. 247-48.

¹⁹ Kim, *Values*, vol. 2, 144.

²⁰ Choi, p. 9. Educated readers, of course, know that the practice of female infanticide is common in India and, especially, China, where a draconian forced abortion policy is part of the nation's population control efforts.

APPLICATION OF LITERARY THEORIES TO "THE DREAMING INCUBATOR"

"The Dreaming Incubator" is a first-person narration of a relatively simple event in the life of an unnamed woman. The narrator goes to her nephew's school play to videotape the child's performance. There she meets the father of another child in the production. When she is having trouble working the camera, the man offers to record the performances of both children. They go to a tearoom after the performance, ostensibly so that she can thank him for his kindness. During their ensuing discussion, the narrator is amazed that, while he was disappointed on the birth of his second daughter, the man rejects the accepted view regarding preferring sons over daughters. The narrator finds this extremely difficult to believe. On their second meeting, when she broaches the topic again, the narrator self-discloses at least two abortions and hatred of the in-laws who coerced her into aborting. The story ends with the narrator criticizing her family's support of patriarchal practices, questioning her husband's role in the abortions, and driving aimlessly away from her home.²¹

Other commentators have not been as direct in categorizing Pak's works. Ji-moon Suh writes: "With surgical precision, she exposes the vacuity of prosperous middle-class existence, the enormous cost of maintaining mistaken values, and the unintentional cruelty of people toward themselves and one another. In her stories, the delight of the critic in exposure coexists with the humanitarian's pity and horror at the discovery" (p. 204). It is curious that Peter H. Lee does not include any work by Pak in his *Modern Korean Literature: An Anthology* (Honolulu HI: Univ. of Hawai'i Press, 1990), while other lesser lights are included.

²¹ While the sense of a closure at the end of a work of fiction is a formalist concern, it is intriguing that the narrator should choose to drive away from her home, thus illustrating in the denouement a significant element of Korean social philosophy: "Because of Korea's rigid social structure, the person who does not fit in is at a greater disadvantage than he or she would be in the more individualistic societies in the West. For in Korea, one's identity is determined almost exclusively by relationships with others, whether family, clan, classmates, or colleagues. In extreme cases, misfits are virtually nonpersons—people without a society, internal exiles. It is the status of such

If the plot of the story is simple, what is not simple is the narratological flow of the reminiscences that are interspersed and the interpretative skills demanded of readers as they proceed through the story. Thanks to decades of college attention to literary theories, although they may not be masters of the vocabulary, Western readers are familiar with key concepts from the major literary theories and know when specifics of any given theory can be applied to works with which they are completely unfamiliar. Western readers have been trained to apply feminist, formalist, and Marxist theories to American and British works for the past four decades since their secondary education, formalism having been the dominant mode of literary study much longer. It would be interesting to determine the applicability of these literary theories to an example of Korean literature as well. To make an analysis of the story as concise as possible, the following will expand on this basic plot summary vis-à-vis several literary theories.²²

individuals that lends tension to a great deal of contemporary Korean fiction.” Pihl, Fulton, and Fulton, *Land of Exile: Contemporary Korean Fiction* (Armonk NY: M. E. Sharpe, 1993), p. xiv.

²² A word of caution must be injected here. Some commentators object to the application of literary theories to international works on the ground that doing so obscures the primary functions of literature (to teach and to entertain). M. M. Badawi thus challenges the tendencies of most literary theories to divert attention away from the entertainment and didactic purposes of literature while succinctly challenging the more prominent literary theories in the following passage: “At a more fundamental level, I cannot dismiss as irrelevant the question of value.... Nor am I capable of reducing to the status of a mere game of words, however intricate the rules, a work that grapples with the baffling mystery of human existence, exploring the dark recesses of the mind, trying to make sense of the intensity of human passions and suffering, or even endeavouring to lessen the misery of the wretched of the earth by advocating political or social action. Literature is much more than entertainment: this was once regarded as a truism, but sadly it has to be repeated now, even at the risk of sounding too solemn. Modern fashionable French-inspired academic literary criticism, particularly in the United States of America—what Frank Kermode recently described as “high-tech, jargoned and reader alienating”—has, in my opinion, with its neo-scholasticism done a considerable disservice to literature

FORMALISM

According to Western formalism, a story should immediately frame the exposition, the essential elements of the plot or the matter to be discussed, so that the reader can understand the events to follow. Early criticism of post-war Korean literature identified a clear break from the concise formalist exposition of plot development. While the concern of Korean writers during the Japanese occupation “was story, conceived in chronological terms,” Lee writes:

What the new generation discovered was the inner world of the protagonist, his psychological and philosophical dimension, in fine, his stream of consciousness. Skeptical of inherited techniques and established reputations, the new writers subjected the leading names and achievements in modern Korean fiction to a fresh valuation. They freed Korean fiction from its well-knit formalism and made it a medium adequate to contain the quality of complex, contemporary experiences.²³

Reading the first paragraphs of Pak’s story makes it seem as though it will concern resentment between sisters, one who cares little for domestic chores and her big sister, the narrator, who seems to be a contented wife and mother of three children. This statement of the problem to be discussed in this story, however, changes dramatically halfway through when the narrator mentions “the secret [she] hid away deep inside.”²⁴ Four pages later it is evident that an abortion that the narrator had ten years earlier will control the discourse of the balance of the story as much as it has controlled her life. The abortion episodes and the narrator’s reflection on them develop the story further, moving the

by robbing it of its seriousness, even though as a rule it suffers itself from unbearable solemnity. “Perennial Themes in Modern Arabic Literature,” *British Journal of Middle Eastern Studies* 20/1 (1993): 3-19; here at pp. 5-6.

²³ Peter H. Lee, *Korean Literature: Topics and Themes*. Association for Asian Studies: Monographs and Papers 16 (Tucson AZ: Univ. of Arizona Press, 1965), here at p. 116.

²⁴ Pak, p. 124.

plot away from an analysis of sisterly relations to the deep psychological hurt of a forty-year-old woman suffering from abortion. The first abortion is responsible for the narrator's hatred of her mother- and sister-in-law, both of whom compelled her to abort because the child she was carrying was a daughter and not a more valuable son. A second abortion, disclosed only seven pages from the story's end, changes the character of the narrator even more dynamically; she had never told her mother-in-law about an abortion performed three months after her first child was born, indicating the disastrous effects on the family created by events shrouded in secrecy.

What is especially interesting about the arrangement of details of the abortion episodes is that the narrative, which had proceeded chronologically according to formalist theory before the abortion was mentioned, careens wildly throughout the balance of the story after the abortion is disclosed. Once the man leaves the coffee shop (the location of their second meeting), the narrator recalls significant details about the abortion ten years earlier. In the next paragraph she returns to the present. On her way home, the narrator is forced to drive through a newly-developed area where "On both sides, raw red earth was exposed on the sloping cut.... The two sloping cuts looked like two widely spread legs of a woman in a hospital stirrup."²⁵ This recollection does not keep her in the past, however; she drives against oncoming traffic and, in a battery of interrogatives, questions whether her husband is as much an accomplice in the abortion as the man with whom she had two dates suggested that all men who brought their wives to the abortion clinic were. This reflection returns the narrator to the time surrounding the conception of her third child, a daughter, from there to the present, from there to the time of her son's birth, then back to the abortion episode, back to the time after her first child's birth, and ultimately to the present. The byzantine chronological ordering effectively suggests a stream of

²⁵ Pak, p. 130.

consciousness technique to mirror the narrator's confusion.²⁶

FEMINIST THEORY

While it is common knowledge that feminist literary theory is concerned with patriarchal oppression of women, especially by men, what is striking is that neither of the two male characters with whom the narrator interacts manifest patriarchal tendencies. The man with whom she has two dates certainly does not. He advocates a greater equality between men and women when arguing that the Korean preference for a male child is morally wrong. Similarly, he views abortion as a clear violation of the right to life of an unborn female child. The man bases his position on the fact that Korean reproductive agencies guaranteed that parents would have sons by aborting any unborn child who was female.

To a lesser degree, since her relationship with him is not portrayed but related from her perspective, the narrator's husband manifests patriarchal oppression only insofar as he agrees to his wife's abortions. Whether he provides full consent, however, is debatable, as is evident by the lengthy consideration that the narrator herself makes regarding whether her husband can be considered an accomplice in the abortions or not. Conveniently, the husband is not an active character in the story; he is either out of town on business or has a phone conversation relayed to the reader through the narrator's perspective.

²⁶ In the biographical introduction of Pak in their anthology, Pihl, Fulton, and Fulton ratify this interpretation of authorial intention: "Her language, enriched by the skillful use of irony and metaphor, implies much about the characters and their world with a minimum of authorial intervention. Like many Korean writers of fiction, Pak spends more time on people and their attitudes than on physical description. While using objective description to establish a physical setting, she conveys most of her information through the language of her characters and, in her first-person narratives, the attitude of her narrator. We are told less about how things *appear* to the narrator and more about how they make her *feel*." *Land of Exile: Contemporary Korean Fiction*, edited by Marshall Pihl, Bruce and Ju-Chan Fulton (Armonk NY: M. E. Sharpe, 1993), p. 150, italics in original.

In contrast, the most patriarchal characters are the narrator's mother- and sister-in-law, both of whom are the primary agents of persuasion, if not compulsion, for the narrator to abort, and who seem to collaborate with the abortionist while the narrator is silent during the procedure. The narrator's attempt to bond with her unborn daughter (humanizing her by calling her "Princess Little Thumb") is thwarted by two narratological effects: first, the humanization occurs as she "slowly went under anesthesia"; second, her in-laws immediately occupy the dream in which they force the substitution of Princess Little Thumb by "a big fat baby."²⁷ The mother-in-law is especially egregious in her patriarchal perception of society; she states outright that, unlike "a girl's ugly lower part," which should not be shown to any husband, "a boy's little pecker is something to be shown proudly."²⁸

A final insult to the narrator from a feminist perspective is her dehumanization. She moves from "Big Sister" at the beginning of the story, to "a crazy bitch" (as she was called by angry motorists whom she cut off on the road) to a non-human machine: "I was indoctrinated from my diaper days to serve as an incubator."²⁹

MARXIST CRITICISM

While Pak and her contemporaries have addressed the impact of political Marxism on Korea, the principles of Marxist literary criticism can help readers understand several important elements of the story. An initial application of Marxist criticism would investigate the ideologies and power structures of the characters. The narrator's contest with her sister over domestic duties is relatively innocuous when contrasted against that which exists between the narrator and members of her family who compel her to abort the third daughter. The man whom she meets at the school play functions as a catalyst for change, and it is entirely proper that the man was once a college revolutionary—a character type with an

²⁷ Pak, p. 139.

²⁸ Pak, p. 141.

²⁹ Pak, pp. 101, 130, 141.

even greater symbolism in Korean literature than it does in the West, especially since student demonstrations helped to topple dictatorships.

An essential element of Marxist criticism concerns economic forces on characters' actions. Moreover, the narrator's statements that her first abortion occurred in times of poverty ("when my husband had just quit his job with no alternative plans. We were at the end of the rope"³⁰) lose their rationalizing force quickly. The husband is set to inherit significant real estate from his mother; he has traveled to Japan and China on, as the narrator herself affirms, business. More importantly, the narrator's sister and brother-in-law discuss at length how she is "a real estate jaebol [business family or monopoly], definitely several cuts above those small businessmen who have to plug a big deficit hole with small profit all year long."³¹ Granted, the abortions occurred ten years earlier, but economic factors should not have been a consideration in the abortions, except that the materialistic tendencies of the family (the mother-in-law especially) contributed to the compulsion towards abortion.

OTHER LITERARY THEORIES

One can apply historical criticism to this short story only insofar as it is a testament to the lives of women affected by abortion at the time of its writing. Whether there is a political motive behind the writing cannot be ascertained. There is no compelling passage in the short story demonstrating that Pak is agitating either for or against abortion laws.³² What

³⁰ Pak, p. 136.

³¹ Pak, p. 115.

³² A political statement on abortion in South Korea is possible, of course. Even though abortion is legal in the United States throughout the nine months of pregnancy for any reason whatsoever, it is significant that the number of abortions in South Korea is comparable to that of the United States: "In Korean law, an induced abortion, defined as the removing of a fetus before the 28th week of gestation, is allowed in cases of genetically inherited diseases, transmitted diseases, incest, rape, and those cases that may greatly harm maternal health. However, it has been used as a form of contraception in Korea, and the number of induced abortions runs between 1.5 to 2 million cases

is significant from the historical perspective is that Pak would write about such a personal topic when many other Korean authors still focus on the disastrous effects of the Korean War on the nation.

Psychological criticism could also enhance one's reading of the story, but an adaptation of the general principles of the theory as transmitted to students of literature would need to be made. Arguing a Freudian or a Jungian interpretation of the story would yield a tortured reading, leading not into mere speculation but fantasy.³³ Besides, the

annually. There are 600,000 newborns in Korea each year, and the number of abortions is nearly three times the number of deliveries. The total number of abortions in Korea is the second highest in the world. One out of two married women has experienced an abortion. Eighty percent of abortions are done for gender-selection purposes, using an ultrasound scan to ascertain the gender, and then selectively aborting female fetuses. Those who seek abortions for reasons defined by the law account for only 20% of all abortions. Unmarried women have 18.5% of the induced abortions; 26.5% of these women were between ages 16 and 20. The overwhelming majority of women who had an abortion, 77.9% of married women and 71.3% of unmarried women, reported satisfaction with the results of the abortion. This reflects, perhaps, the fact that abortion has become commonplace in Korea." Hyung-ki Choi, et al., "Abortion," *The Continuum Complete International Encyclopedia of Sexuality, Updated, with More Countries: South Korea* (New York NY: Continuum, 2004), p. 953.

Despite this possibility of a political statement, one can argue that Pak is more concerned with the effect of abortion on the culture and tries to demonstrate that through different perspectives. "Three Days in That Autumn," a short story published in an earlier anthology, *My Very Last Possession and Other Stories*, trans. Chun Kyung-Ja et al. (Armonk NY: M. E. Sharpe, 1999), pp. 156-97, where she recounts the last three working days of an abortionist before she retires. The story weaves between historical reminiscences of the abortionist and her own thwarted desire to assist in the birth of a child—all in a narrative style which would severely challenge the most astute reader eager to find anything preachy in the writing.

³³ A traditional psychological critical evaluation could be created. On giving birth to a son, the narrator states, "I gave them an heir and I could be as grand as I wanted to be. In fact, I became a man. My son was my newly acquired male organ" (p. 133). As one can imagine, an interpretation along the

commentary about post-abortion syndrome above suffices to disclose the psychological bereavement of the narrator.

As much as there are difficulties which must be resolved before they can appreciate her work, Western readers will find that Pak Wansō herself challenges them to view the world much differently than they currently may. In “The Dreaming Incubator” those who should stand for women’s rights and the freedom of choice much vaunted by some women’s rights activists vis-à-vis abortion act like those in China who implement population control measures by forcing mothers to abort. The narratological style of the second half of the story breaks Western narrative conventions in two significant ways, thereby allowing the narrator the space not only to explore the causes behind her two abortions, but also to investigate who is to blame; these are questions that are not aired well in Western democracies, where abortion legalization is merely agitated for by certain groups. Moreover, Western democracies are laboring under a stifling political correctness; one thinks of the efforts of some professional organizations that discount the existence of post-abortion syndrome even when research has documented its existence since the publication of David C. Reardon’s seminal research on the topic in 1987.³⁴

Another significant challenge that Western readers must overcome is the familial breakdown that occurs when abortion infects the institution. Western readers are raised in societies that lack the cohesiveness of the Korean family structure, a structure that contemporary Korean writers are now warning is in danger because of Western influences. Thus, having become accustomed to the fragmentation of the nuclear family, Western readers may not understand why Pak’s narrator suspects virtually all of her family members after her abortions.

Finally, the most significant challenge that Western readers may

Freudian lines of penis envy or a possible application of the Oedipus complex of these few sentences could be entirely coherent, yet ridiculous.

³⁴ David C. Reardon, *Aborted Women: Silent No More* (Westchester IL: Crossway Books, 1987).

have involves the subject of the short story. “The Dreaming Incubator” is not about political commentary or criticism of the economic system in Korea. It is not about a family struggling to cope with the disasters wreaked upon it by the Korean War. It is about abortion, a premier example of world literature on the subject that compares to other major works that address this issue. If Ernest Hemingway’s “Hills Like White Elephants”³⁵ presents the American view on abortion in fiction, if the Sudanese Leila Aboulela’s “Make Your Own Way Home”³⁶ presents the Arab world’s view on the issue, then Pak’s depiction of abortion in “The Dreaming Incubator” adds the much-needed Asian perspective.

³⁵ Ernest Hemingway, “Hills Like White Elephants” in *Men Without Women* (New York NY: Charles Scribner's Sons, 1927), pp. 69-77.

³⁶ Leila Aboulela, *Coloured Lights* (Edinburgh UK: Polygon, 2001), pp. 83-97.

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The Coercive Reality
behind Pro-Choice Rhetoric:
Identifying What “Popular Sovereignty,”
“Reproductive Freedom,”
and “Death with Dignity”
Demand from Those Who Disagree

Ryan C. MacPherson

ABSTRACT: Advocates for political rights to abortion and physician-assisted suicide often support their positions with pro-choice rhetoric: a woman should be free to choose whether or not to carry a child to term; terminally ill patients should be free to choose whether to wait until the disease completes its course or to end their lives sooner. In each case, however, a coercive reality lies behind the pro-choice rhetoric. That is to say, advocates for the apparent right to choose seek legislation that ultimately coerces dissenters to become complicit against their will. The current political debates on these issues therefore bear close analogy to America’s antebellum debates over slavery: rhetoric that initially seemed to be an argument for states’ rights or popular sovereignty soon revealed itself to be an emergent national policy that required all non-slaveholders, including abolitionists, to take action in support of the slavery regime. Similarly, political activists who deploy pro-choice rhetoric in favor of abortion or physician-assisted suicide resort to coercion in order to obtain and exercise the power to make such choices. Arguably, it cannot be otherwise, for coercion is necessary to maintain widespread social acceptance of choices that so fundamentally violate natural law.

A STATUE AT THE NATIONAL ARCHIVES BUILDING in Washington, D.C., bears the inscription “What Is Past Is Prologue.” This paper aims to persuade you *that neither abortion nor physician-assisted suicide can comfortably exist in American society unless the individual liberties of a significant portion of our population suffer*

severe restrictions. But first, I begin with a story from the past, a story concerning popular sovereignty in the years before the Civil War. All this bears relevance to my thesis concerning abortion and physician-assisted suicide, for “what is past is prologue.”

The year was 1850, the place the American West, the issue slavery. And the contest was for the future of a nation. Two years prior, the United States had concluded a war with Mexico, resulting in the acquisition of territory that today comprises six southwestern states. Residents of the California territory applied for statehood in 1849, submitting for Congressional review a proposed constitution containing this provision: “Neither slavery, nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State.”¹ Congress accepted California as a free state in 1850, but during that same year also voted to permit slavery in the New Mexico and Utah Territories if the settlers there desired it. Meanwhile, Congress hotly debated whether to protect or abolish slavery within Washington, D.C. As auctioneers sold African slaves to the highest bidders just outside the U.S. Capitol Building, Congress at last resolved to permit the practice of slavery to continue while at the same time forbidding any further slave trade between the District of Columbia and other slave regions. But the most controversial piece of legislation in what became known as the Compromise of 1850 was the Fugitive Slave Act.²

The federal constitution, as ratified in 1788, included a fugitive slave provision according to which states that forbade slavery within their own borders were nonetheless required to lend reasonable assistance to slaveholders from other states whose runaway slave had fled to a free state. The Fugitive Slave Act of 1850 elevated this

¹ Constitution of the State of California (1849), Art. I, Sec. 18, www.sos.ca.gov/archives/level3_const1849txt.html.

² For the history of the Fugitive Slave Act’s impact in the antebellum sectional crisis, see David M. Potter, *The Impending Crisis, 1848-1861*, edited and compiled by Don E. Fehrenbacher (New York NY: Harper and Row, 1976), pp. 121-40; James M. McPherson, *Battle Cry of Freedom: The Civil War Era* (New York NY: Ballantine, 1988), pp. 78-89.

reasonable assistance to a new level, and did so at a time when Americans were more divided than ever over the moral, social, and political ramifications of slavery. This new fugitive slave law coerced northern opponents of slavery to participate in the perpetuation of slavery by avoiding acts that would free slaves and by committing acts that would ensure the re-enslavement of escaped slaves. Moreover, in cases wrongfully decided, the law required northern abolitionists to participate in the enslavement of legitimately free blacks who had been mistaken as escaped slaves. Admitting a surprisingly blatant bias, the law offered financial incentives to federal commissioners, who were paid twice as much if they decided disputes in favor of slaveholders rather than in favor of persons suspected of being runaway slaves.³ The law specifically required both federal agents and ordinary U.S. citizens to comply with its provisions on behalf of slaveholders. Any person found to assist a runaway slave, in any manner, whether “directly or indirectly,” could be fined up to \$1,000, imprisoned up to six months, and required to reimburse the slaveholder for the loss of his human property.⁴

These provisions infuriated northern abolitionists, who had been calling for the outlawing of slavery for two decades, as well moderate northerners who had been willing to tolerate the slave practices of their southern neighbors so long as slavery did not expand into the rest of the Union. Amid such sharp political divisions, one politician believed he could hold the nation together: Senator Stephen Douglas from Illinois. It was Douglas who had orchestrated the Compromise of 1850, letting one side have a free California and an abolition of slave trade in Washington, D.C., while letting the other side have the prospect of slavery’s expansion into Utah and New Mexico and the continuation of slavery within the nation’s capital. The Fugitive Slave Act, however, left the political balance leaning eerily in favor of the slaveholders. Even so, Senator Douglas tried to maintain common ground throughout the 1850s.

³ Fugitive Slave Act (1850), sec. 8, www.usconstitution.net/fslave.html.

⁴ Fugitive Slave Act, sec. 7.

He did so primarily by advocating the freedom of choice, but his efforts ended in utter disaster. Promoting a slogan of “popular sovereignty,” Senator Douglas proposed in 1854 that the Kansas and Nebraska Territories should be organized under the principle of local, representative democracy: let the settlers themselves freely choose whether to allow or forbid slavery in those western lands; Congress should not restrict their freedom of choice.⁵ Few proposals could sound so quintessentially American, and yet no proposal would prove so dangerous to the American Republic as the Kansas-Nebraska Act of 1854.

What Congress accepted in the name of allowing local populations the freedom of choice soon manifested itself as a coercive effort by one faction to dominate its political opponents. A legislature formed of pro-slavery advocates in Lecompton, Kansas, prepared a constitution to apply for statehood. In addition to guaranteeing slaveholders the right to own slaves, they also took steps to prevent slavery’s opponents from gaining a foothold in their slaveholding society. The Lecompton Legislature made it a felony to publicly question, whether in speech or in print, the right of a slaveholder over a slave. Slavery’s opponents also were forbidden from serving as jurors in cases on this topic.⁶ It was clear

⁵ “It [is] the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States.” Kansas-Nebraska Act (1854), Sec. 14, avalon.law.yale.edu/19th_century/kanneb.asp.

⁶ “Section 12. If any free person, by speaking or by writing, assert or maintain that persons have not the right to hold slaves in this territory, or shall introduce into this territory, print, publish, write, circulate, or cause to be introduced into this territory, written, printed, published or circulated in this territory, any book, paper, magazine, pamphlet or circular, containing any denial of the right of persons to hold slaves in this territory, such person shall be deemed guilty of felony, and punished by imprisonment at hard labor for a term of not less than two years.

“Section 13. No person who is conscientiously opposed to holding slaves, or who does not admit the right to hold slaves in this territory, shall sit as a

that slavery would remain intact wherever slaveholders wanted it.

But could that principle apply also to free areas? Could a slaveholder claim a right to his slave even in a northern state or in a particular territory where slavery was forbidden by law? A man named Dred Scott thought not. Scott, a slave from Missouri, had been brought by his master into the free state of Illinois and a free territory then called Wisconsin—actually, present day Minnesota, at Fort Snelling. While working for his master, or rented out to others, in these slave-banning areas of America, Scott had been trusted to travel without supervision. He also had been granted a civil marriage to the woman he loved. In brief, he had enjoyed core characteristics of freedom. And so he petitioned, first to the courts of Missouri and eventually to the federal courts, to be declared a free man, liberated forever from slavery.⁷

The history of British and American jurisprudence was on his side. Lord Mansfield rendered a verdict in England in 1772 that the moment a slave sets foot on a territory where slavery is outlawed, he becomes forever a free man. His reasoning was that slavery is so contrary to human nature that it cannot possibly exist unless a society enacts laws to create and preserve it.⁸ Similarly, courts of several southern states, including Missouri, had ruled in favor of slaves' petitions for liberation during the 1820s and 1830s.

Turning its back on these case precedents, the U.S. Supreme Court ruled in *Dred Scott v. Sandford* that Scott remained the property of his master, who had a right to travel with him throughout the United States, in both slave zones and free zones, even as a man may travel with his horse or other property. Nullifying federal law, the nation's high court

juror on the trial of any prosecution for any violation of any of the sections of this act." An Act to Punish Offenders against Slave-Property (1855), as quoted in Sarah T. L. Robinson, *Kansas: Its Interior and Exterior Life* (n.p.: n.p., 1856), chap. 7, www.kancoll.org/books/robinson/r_chap07.htm.

⁷ Paul Finkelman, ed., *Dred Scott v. Sandford: A Brief History with Documents* (Boston ma: Bedford/St. Martin's, 1997).

⁸ The case of *Somerset v. Stewart* (1772) is discussed in Finkelman, *Dred Scott*, pp. 20-21.

declared that slavery must be protected in all territories.⁹

But this judicial victory for southern slaveholders would also lead to their demise, for in affirming the right of a slaveholder over his slave even in a place where the law prohibited slavery, the court had denied Senator Douglas's doctrine of "popular sovereignty." In place of the people's choice to have or not to have slavery, the court had issued a federal mandate forcing slavery to be recognized even in places where Congress had sought to restrict it. The coercive politics of slavery, manifesting itself now through both the Fugitive Slave Act and the *Dred Scott* decision, betrayed the southerners' pretension to be defenders of liberty or of states' rights. Their "peculiar institution," their "southern way of life," depended, for its very existence, not upon states left free to decide for themselves, but upon a federal government that would enforce slave laws even in those northern states where the local population loathed slavery.

It was precisely this realization, this demise of Senator Douglas's "popular sovereignty" compromise, that Abraham Lincoln brought before the American people in his campaign for the presidency. His election would prompt eleven southern states to secede from the Union.¹⁰ South Carolina explicitly based its secession on the failure of the federal government to enforce the Fugitive Slave Act in states that did not wish to support slavery.¹¹ The Confederate Constitution accordingly included a stronger and clearer fugitive slave policy,

⁹ *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

¹⁰ The "Deep South" states of South Carolina, Georgia, Alabama, Mississippi, Florida, Louisiana, and Texas seceded in direct response to Lincoln's electoral victory, December 1860 through February 1861. The "Upper South" states of Virginia, North Carolina, Tennessee, and Arkansas joined them after shots were exchanged at Fort Sumter in April 1861.

¹¹ "Declaration of the Immediate Causes which Induce the Immediate Secession of South Carolina from the Federal Union," 20 December 1860, avalon.law.yale.edu/19th_century/csa_scarsec.asp.

echoing the *Dred Scott* decision.¹² It also required that all states entitle citizens from each state to “the right of transit and sojourn in any State of this Confederacy, with their slaves and other property; and the right of property in said slaves shall not be thereby impaired.”¹³ The Confederacy’s Constitution forbade its Congress from enacting any “law denying or impairing the right of property in negro slaves.”¹⁴ This new constitution also required that state laws be subordinate to federal law and to the federal, slavery-protecting constitution.¹⁵ Rather than reserving slavery as a state’s right, as Douglas’s doctrine of popular sovereignty would have had it, the Confederate States of America charted a course in which a new federal power—that of the Confederacy—would ensure slavery’s continued existence.¹⁶

In its short-lived history, from 1861 to 1865, the Confederacy demonstrated itself as a coercive national force intent upon preserving

¹² “No slave or other person held to service or labor in any State or Territory of the Confederate States, under the laws thereof, escaping or lawfully carried into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such slave belongs, or to whom such service or labor may be due.” Constitution of the Confederate States of America (1861), Art. IV, Sec. 2, Clause 3, avalon.law.yale.edu/19th_century/csa_csa.asp.

¹³ Constitution of the Confederate States of America, Art. IV, Sec. 2, Clause 1.

¹⁴ Constitution of the Confederate States of America, Art. I, Sec. 9.

¹⁵ “This Constitution, and the laws of the Confederate States made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the Confederate States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.” Constitution of the Confederate States of America, Art. VI.

¹⁶ Only after secession, and even more so after the Civil War, did the myth of the Lost Cause emerge, with its emphasis on states’ rights. Prior to the Civil War, southerners demanded federal enforcement of the Fugitive Slave Law and *Dred Scott* decision. See Alan T. Nolan, “The Anatomy of the Myth,” ch. 1 in *The Myth of the Lost Cause and Civil War History*, ed. Gary W. Gallagher and Alan T. Nolan (Bloomington IN: Indiana Univ. Press, 2000), pp. 11-34.

the right of slaveholders to keep human slaves as property. As one American history textbook notes, “[t]he Confederacy reached levels of government involvement unmatched until the totalitarian states of the twentieth century.”¹⁷ In part, this was a war-time necessity, as industries were nationalized for military production and taxes were collected upon imports, exports, and incomes.¹⁸ But state coercion also went deeper: suppressing freedom of speech and freedom of the press by labeling arguments against slavery as treason.¹⁹

What may have begun as a question of personal liberty to transport one’s property in slaves from one state to the next, or as a state’s right to regulate its own peculiar institution, became a national policy that had no toleration for dissent. The protection of a slaveholder’s choice to own another human being required the coercion of an entire society by force of federal law. Or, as Lincoln had observed as early as his “House

¹⁷ Larry Schweikert and Michael Allen, *A Patriot’s History of the United States: From Columbus’s Great Discovery to the War on Terror* (New York NY: Sentinel, 2004), pp. 325–26.

¹⁸ Richard Bense, “Southern Leviathan: The Development of Central State Authority in the Confederate States of America,” *Studies in American Political Development* 2 (1987): 68-136.

¹⁹ “It [the CSA] has passed laws making it treason to say or do anything in favor of the government of the United States, or against the so-called Confederate States. It has prostrated and overthrown the freedom of speech and of the press; it has involved the whole South in a war whose success is now proven to be utterly hopeless, and which, ere another year roll round, must lead to the ruin of the common people. Its bigoted, murderous, and intolerant spirit has subjected the people of Tennessee to many grievances. Our people have been arrested and imprisoned; our houses have been rudely entered and shamefully pillaged; our families have been subjected to insults; our women and children have been tied up and scourged, or shot by a ruffian soldiery; our towns have been pillaged; our citizens have been robbed of their horses, mules, grain, and meat, and many of them assassinated and murdered.” Tennessee Governor William G. Brownlow, Message to the Joint Committee on Reconstruction of the First Session, Thirty-Ninth Congress, 6 April 1865 (Washington, D.C.: Government Printing Office, 1866), 13-14, adena.com/adena/usa/cw/cw156.htm.

Divided” speech of 1858, “If any one man desires to enslave another, no third man has the right to object.” Thus, Lincoln was convinced that “this Government cannot endure permanently half slave and half free.... It will become all one thing or all the other.”²⁰ In the Confederate States of America, it had become coercively all slave.

With brilliant foresight, Lincoln had seen it all coming. A moderate on the issue of slavery, and certainly not an eager proponent of social equality between the races, Lincoln would try to maintain peace as long as he could. But already in his presidential campaign speech at Cooper’s Union in New York City in February 1860, Lincoln identified the root of the civil war that soon would erupt:

What will satisfy them? Simply this: We must not only let them alone, but we must somehow, convince them that we do let them alone.... What will convince them? This, and this only: cease to call slavery *wrong*, and join them in calling it *right*. And this must be done thoroughly—done in *acts* as well as in *words*. Silence will not be tolerated—we must place ourselves avowedly with them. Senator Douglas’[s] new sedition law must be enacted and enforced, suppressing all declarations that slavery is wrong, whether made in politics, in presses, in pulpits, or in private. We must arrest and return their fugitive slaves with greedy pleasure. We must pull down our Free State constitutions. The whole atmosphere must be disinfected from all taint of opposition to slavery, before they will cease to believe that all their troubles proceed from us.... Holding, as they do, that slavery is morally right, and socially elevating, they cannot cease to demand a full national recognition of it, as a legal right, and a social blessing.²¹

²⁰ Abraham Lincoln, “A House Divided,” 16 June 1858, www.americanrhetoric.com/speeches/abrahamlincolnhousedivided.htm.

²¹ Abraham Lincoln, “Cooper Union Address,” 27 February 1860, showcase.netins.net/web/creative/lincoln/speeches/cooper.htm. I thank Welsley J. Smith for brining this passage to my attention. Smith employed it (as I do, below) in comparison to today’s debates over physician-assisted suicide. Wesley J. Smith, “Post Mortem on the 2008 Elections,” presentation at the 2008 National Convention of Christian Life Resources, Pewaukee WI, 15 November 2008.

INTRODUCTION

I write this essay in the spirit of Abraham Lincoln, who identified the coercive reality behind the pro-choice rhetoric of his day. Back then, debates over slavery gripped the nation's conscience. Today, other issues polarize our politics. Arguably, abortion and physician-assisted suicide rank at the top of the list. Just as Lord Mansfield had claimed that slavery could not exist in any society unless laws were passed to promote it, so also I am of the opinion that neither abortion nor physician-assisted suicide can receive widespread or long-lasting social acceptance, unless the force of law makes it so. More specifically, *I endeavor to persuade you that neither abortion nor physician-assisted suicide can comfortably exist in American society unless the individual liberties of a significant portion of our population suffer severe restrictions.*

My thesis may seem entirely wrongly founded to some, and I readily admit its counterintuitive character. Americans of the late twentieth and early twenty-first centuries have become accustomed to viewing abortion as a question of private choice, not public coercion. The same sort of pro-choice rhetoric that has championed a woman's right to abort her child also has been applied to permit terminally ill patients a right to physician-assisted suicide. Neither case offers any obvious evidence for my thesis concerning social coercion.

But I wish to scrutinize the sincerity behind the often recited claim that abortion and physician-assisted suicide should be tolerated because our national commitment to individual liberty supposedly necessitates it. In questioning the sincerity behind the "pro-choice" arguments offered in defense of these practices, I do not question the sincerity of the persons employing such "pro-choice" rhetoric. I merely assert that those who are sincere also are mistaken. To state my thesis again: *I endeavor to persuade you that neither abortion and nor physician-assisted suicide can comfortably exist in American society unless the individual liberties of a significant portion of our population suffer severe restrictions.* My title thus summarizes my message: "The Coercive Reality behind Pro-Choice Rhetoric."

REPRODUCTIVE FREEDOM:
THE COERCIVE REALITY BEHIND ABORTION RIGHTS

Commentators frequently cite *Roe v. Wade* (1973) as the landmark Supreme Court case that legalized abortion. More accurately, it *nationalized* abortion,²² an activity that already was legal, in varying degrees, throughout nearly half of the states. On the eve of the *Roe* decision, twenty-two states plus the District of Columbia permitted abortion at least in some cases, such as to save the mother's life. Fourteen of these states also allowed abortion for broader considerations, including rape, incest, or the psychological well-being of the mother, following a model law prepared by the American Legal Institute.²³ In 1970, New York's legislature voted to permit abortion on-demand up to the 24th week of pregnancy. The prevailing argument behind the New York law relied upon recently coined phrases, including "a woman's right to choose," "pro-choice," and "reproductive freedom."

Dr. Bernard Nathanson introduced these expressions while working

²² *Roe*'s mandate for abortion on demand destroyed the compromises of the past, rendered compromises impossible for the future, and required the entire issue to be resolved uniformly, at the national level." *Planned Parenthood v. Casey*, 505 US. 833, 995 (1992) (Scalia, J., dissenting).

²³ By the 1950s, Alabama and Washington, D.C., permitted abortion "to preserve the mother's health" and Massachusetts, New Jersey, and Pennsylvania allowed for "lawfully" performed or "lawfully" justified abortions, leaving the definition for the courts to determine. During the 1960s and early 1970s, other states began to allow for abortion, too. "Fourteen States...adopted some form of the ALI statute," by allowing for abortion in cases of rape, incest, and/or maternal health concerns: Arkansas, California, Colorado, Delaware, Florida, Georgia, Kansas, Maryland, Mississippi, New Mexico, North Carolina, Oregon, South Carolina, and Virginia. "By the end of 1970, four other States had repealed criminal penalties for abortions performed in early pregnancy by a licensed physician, subject to stated procedural and health requirements": Alaska, Hawaii, New York, and Washington. *Roe v. Wade*, 410 U.S. 113, 140 and 140n37 (1973).

with the National Association for Repeal of Abortion Laws (NARAL).²⁴ Despite his lip service to “choice” and “freedom,” Nathanson himself was trapped in a dismal culture of death. Raised by a controlling father, he entered medical school to fulfill parental expectations and, after impregnating his girlfriend, accepted a \$500 gift from his father to pay for her abortion. “The night before the abortion we slept together huddled in each other’s arms; we both wept, for the baby we were about to lose, and for the love we both knew would be irreparably damaged by what we were about to do.”²⁵ They soon parted ways, and Nathanson married another woman, whom, he later admitted, he also did not love. After divorcing his first two wives and impregnating a new girlfriend, Dr. Nathanson performed the surgery to abort his very own child. As abortion was legalized in New York, hospitals became overwhelmed by the demand for first-trimester abortions. Dr. Nathanson therefore pioneered an outpatient procedure that would allow clinics to take over. During his career, he supervised over 75,000 abortions, most of them as director of “the biggest abortion clinic in the western world,” New York’s Center for Reproductive and Sexual Health.²⁶ Meanwhile, his public speaking engagements in the medical and legal communities earned him the nickname “the abortion king.”

The power of Dr. Nathanson’s pro-choice rhetoric manifested itself most strongly when he began serving as the Chief of Obstetrical Services at St. Luke’s Hospital, also in New York. There he experienced the “moral whipsaw” of aborting a 23-week-old fetus at the request of

²⁴ Jennifer Taylor, “The Choice of Liberty,” *H[uman] L[ife] I[nternational] Reports*, rpt. *The Catholic Exchange*, 27 May 2002, catholicexchange.com/2002/05/27/95308/; Nathanson also is credited with introducing the slogan that “verbal engineering always precedes social engineering.” See American Life League, *Pro-Life Activist’s Encyclopedia* (1998), chap. 15, prolife.ath.cx:8000/.

²⁵ Bernard Nathanson, *The Hand of God: A Journey from Death to Life by the Abortion Doctor Who Changed His Mind* (New York NY: Regency, 1996), p. 56.

²⁶ Nathanson, *Hand of God*, p. 92.

one woman while trying, during the very same shift, to rescue another 23-week-old fetus for a woman who went into premature labor and wanted her baby saved. In the era of legalized abortion, personal choice had the power to determine the difference between life and death.²⁷

The rhetoric of choice leaves an easy-to-follow trail in the history of higher court decisions concerning abortion. Attorney Sarah Weddington argued before the Supreme Court in *Roe v. Wade* that a woman

should be allowed to make the choice as to whether to continue or to terminate her pregnancy.... [T]he freedom involved is that of a woman to determine whether or not to continue a pregnancy.... We do not ask the Court to rule that abortion is good or desirable in any particular situation. We *are* here to advocate that the decision as to whether or not a particular woman will continue to carry or will terminate a pregnancy is a decision that should be made by that individual. That in fact she has a constitutional right to make that decision for herself.²⁸

The court essentially accepted Weddington's argument, ruling in 1973 that "[t]he right of privacy...is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."²⁹

Nineteen years later, in *Planned Parenthood v. Casey* (1992), the Court reaffirmed this "recognition of the right of the woman to choose to have an abortion...and to obtain it without undue interference from the State."³⁰ In this instance, a woman's right to choose meant that the State of Pennsylvania could not limit her choice by requiring that she first notify her husband of her intent to procure an abortion. The court reasoned that a woman's right to choose an abortion takes priority over any right that her husband or the father of the child may have, particu-

²⁷ Nathanson, *Hand of God*, p. 128.

²⁸ Sarah Weddington, quoted in *May It Please the Court: Transcripts of 23 Live Recordings of Landmark Cases as Argued before the Supreme Court*, edited by Peter Irons and Stephanie Guitton (New York NY: New Press, 1993), pp. 345, 346, 353.

²⁹ *Roe v. Wade*, 410 U.S. 113, 153 (1973).

³⁰ *Planned Parenthood v. Casey*, 505 U.S. 833, 846 (1992).

larly in cases when a woman might suffer physical or psychological harm from a husband who would be upset by either her pregnancy or her choice to terminate a pregnancy. Justice Sandra Day O'Connor, writing for the majority, explained it thus:

These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life.³¹

In other words, women have a constitutional right to define for themselves the moral status of a fetus and to choose whether or not to continue to bear a child. Shortly after the Supreme Court issued this decision, a Texas abortion clinic hired a woman named Norma McCorvey. She was the "Jane Roe" of *Roe v. Wade*. The clinic's name, not surprisingly, was "A Choice for Women."³²

But the most revealing example of how effectively the rhetoric of choice could expand a woman's right to abortion came in 1999 when the Supreme Court struck down Nebraska's law that prohibited "an abortion procedure in which the person performing the abortion partially delivers vaginally a living unborn child before killing the unborn child and completing the delivery."³³ The court declared this partial-birth abortion ban unconstitutional on the conviction that "it 'imposes an undue burden on a woman's ability' to choose a D&E [dilation and extraction] abortion, thereby unduly burdening the right to choose abortion itself."³⁴

In 2003, Congress enacted a partial-birth abortion ban, successfully seeking language different enough from that of the Nebraska law in

³¹ *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992).

³² Norma McCorvey, with Gary Thomas, *Won by Love* (Nashville TN: Thomas Nelson Publishers, 1998).

³³ Neb. Rev. Stat. Ann. § 28-326(9) (Supp. 1999), as quoted in *Stenberg v. Carhart*, 530 U.S. 914, 922 (1999).

³⁴ *Stenberg v. Carhart*, 530 U.S. 914, 930 (1999).

order to pass muster with the Supreme Court. During Congressional debates, Senator Hilary Clinton opposed the pending federal ban on partial-birth abortion because it did not allow for an exception that would permit a woman to choose a late-term abortion for a child discovered to be developmentally abnormal.³⁵ That is to say, Senator Clinton attempted to strengthen the rhetoric of choice by citing an example in which she expected her legislative colleagues to agree that a woman ought to have a choice: if the child is malformed anyway, why not choose abortion? And if a woman is to have the choice to abort, then why not give her the choice to do so even late in the game—say, in the eighth month of pregnancy, when so-called “partial-birth abortion” is the preferred means?

Four years after Congress debated this controversial issue, a Florida court awarded parents \$21 million in a “wrongful birth” suit. That is, they sued their doctor for not detecting a genetic abnormality in their child prior to his birth, arguing that if only they had known, they would have aborted the child.³⁶ Thus, what began as one woman’s right to

³⁵ George Neumayr, “The New Eugenics,” *American Spectator*, 13 July 2005, www.spectator.org. “We are talking about those few rare cases when a doctor had to look across a desk at a woman and say, I hate to tell you this, but the baby you wanted, the baby you care so much about, that you are carrying, has a terrible abnormality.... I will end by referring again to the young woman, Mrs. Eisen, who was in my office yesterday, about 25 years younger than I am. Hard to imagine. She said: I had no idea that the decision I made with my husband and my doctor to deal with this genetic abnormality was something I could have never had under the laws of where I lived before, and that if this passes, it will become illegal in the future.” Sen. Hilary Clinton, as quoted in Congressional Record, March 12, 2003 (Senate), S3588. Following this statement, Sen. Santorum debated Sen. Clinton, noting that her argument would justify late-term abortions of children with cleft palates and spina bifida (based on statistics he cited of existing eugenic abortions for those conditions). Congressional Record, March 2003 (Senate), frwebgate4.access.gpo.gov/cgi-bin/TEXT12_gate.cgi?WAISdocID=647065307461+2+1+0&WAISaction.

³⁶ Elizabeth O’Brien, “Couple Receives over \$21 Million Dollars for ‘Wrongful Birth’ of Handicapped Son,” *LifeSiteNews.com*, 24 July 2007, www.lifesitenews.com/ldn/2007/jul/07072403.html.

choose has become her doctor's obligation to advise her choice so thoroughly as to remove all reasonable chance that she would give birth to a child she would not want.

And doctors do feel obligated—even doctors who know that the women they serve would never consider abortion. Our own family doctor knows that neither I nor my wife would consider an abortion. But clinic policy is clinic policy, and so our doctor handed us a free book that states in bald pro-choice rhetoric:

Being tested [for congenital abnormalities] is a personal choice. Some couples choose not to be tested for birth defects. Others find that testing and counseling can help them make decisions and consider options.... Testing for birth defects during pregnancy can help a women decide whether to continue her pregnancy. If she finds out her baby has a severe problem, she has the option to end the pregnancy....

There is no "right" choice in these cases. The decision is based on the values unique to each person. The choice that's right for one woman may not be right for another....

Some choose to end a pregnancy. Others may choose to continue it even if the baby will have a problem.³⁷

Apologizing to us, our doctor nonetheless asked the required question: Would we want any of the first-trimester screening for Down's Syndrome or other complications that the medical community regarded as indications for abortion?

When doctors worry about being sued for not recommending abortion, and parents worry about being burdened by special-needs children, "the temptation to eugenic abortion becomes unstoppable." Even pro-life mothers may succumb to persuasive techniques—nigh unto coercive—such as being shown a video of how challenging it can be to care for disabled children. "The right to abort a disabled child," notes one commentator, "is approaching the status of a duty to abort a disabled

³⁷ American College of Obstetricians and Gynecologists, *Your Pregnancy and Birth*, 4th ed. (Washington, DC: ACOG, 2005), pp. 223-24, 234-35.

child.”³⁸

Still, the rhetoric supporting abortion rights emphasizes choice above duty. The proposed federal Freedom of Choice Act clearly fits this pattern, both in its title and in its content. Section 4(a) reads: “It is the policy of the United States that every woman has the fundamental right to choose to bear a child, to terminate a pregnancy prior to fetal viability, or to terminate a pregnancy after fetal viability when necessary to protect the life or health of the woman.” Just as Senator Stephen Douglas as an antebellum Democrat from Illinois running for the U.S. presidency, promoted the pro-choice agenda of “popular sovereignty” with respect to slavery, so also another Democratic Senator from Illinois running for president—Barack Obama—championed the pro-choice rhetoric of the Freedom of Choice Act. During his campaign, Obama promised Planned Parenthood that he would sign this bill into law if elected president.³⁹

But beneath the pro-choice rhetoric is a coercive reality. Section 4(b)(2) forbids any government from “discriminating against the exercise of the[se] rights...in the regulation or provision of benefits, facilities, services, or information.”⁴⁰ This policy revision explicitly seeks to override any contrary “Federal, State, and local statute, ordinance, regulation, administrative order, decision, policy, practice, or other action enacted, adopted, or implemented before, on, or after the date of enactment of this Act.”⁴¹ For example, if the proposed Freedom of Choice Act becomes law, then the numerous state laws requiring parental notification or parental consent before minors may have an abortion would be repealed, as would 24-hour waiting periods and informed consent laws applicable to adults. The Freedom of Choice Act

³⁸ Neumayr, “The New Eugenics.”

³⁹ Penny Star, “Faith-Based Hospitals Could Close If Obama Signs Freedom of Choice Act,” Catholic News Services, 1 December 2008, www.cnsnews.com/public/content/article.aspx?RsrcID.

⁴⁰ Freedom of Choice Act (FOCA), H.R. 1964 (introduced 19 April 2007), sec. 4(b)(2), thomas.loc.gov/cgi-bin/query/z?c110:H.R.1964.

⁴¹ FOCA, sec. 6.

also would reinstate partial-birth abortion nationwide. Military and religious hospitals that presently limit abortion would be required to provide access on demand. The Hyde Amendment, restricting the use of federal money for funding abortions, would be repealed. American taxpayers opposed to abortion would thereby become complicit in it.⁴²

A similar spirit of coercion animates President Obama's proposal to lift the "conscience clause" that presently implements existing federal laws to protect pro-life healthcare workers who wish to abstain from participation in, or referral for, abortion procedures. Without the conscience clause and the statutes it implements, pro-life healthcare workers would face the dilemma of becoming complicit in something they find immoral, quitting their job, or trying to keep their job while protesting the law in civil disobedience.⁴³ Senator Tom

⁴² For leading arguments in opposition to FOCA, see www.fightfoca.com and www.focafacts.com. For arguments in favor of FOCA, see NARAL Pro-Choice America's endorsement at www.prochoiceamerica.org/choice-action-center/us-gov/foca.html.

⁴³ The so-called "conscience clause" refers to a rule adopted in 2008 by the Department of Health and Human Services with encouragement from the Bush administration: "Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law," 45 CFR 88.4, final rule as adopted 3 December 2008, www.nfprha.org/images/HHS_Regs.pdf. Following President Obama's request, "HHS has issued a notice of proposed rulemaking to rescind the provider refusal rule—a recent regulation that expands the interpretation of existing 'conscience clause' statutes that protect the rights of health care professionals to refuse to provide abortion services. The comment period ended on April 9 [i.e., 2009]. After a thoughtful and serious review of all the comments, HHS will determine whether to rescind the regulations, modify the proposed rule, or propose an entirely new rule." U.S. Department of Health and Human Services, *Progress Report* (29 April 2009), 6, www.hhs.gov/progress-report/report.pdf (accessed 7 May 2009). Unless the three sets of laws implemented by the conscience clause are repealed (e.g., by the adoption of the Freedom of Choice Act), the protections they identify would remain technically effective, even if the conscience clause is rescinded. "No matter which option is selected [rescind, modify, or replace the current rule], providers will continue

Coburn, an Oklahoma ob/gyn physician, has vowed civil disobedience if Obama rescinds the conscience clause: “I think a lot of us would go to jail,” he told reporters.⁴⁴ The issue undoubtedly would find its way into the courts. And what then? It is difficult to predict, but pro-life healthcare workers have reason to worry. Consider, for sake of analogy, the 2006 New York court ruling that a group of Catholic charities were required to provide their workers with health insurance coverage for birth control despite the Catholic Church’s official position against birth

to be protected—as they have been for years—by the existing conscience clause statutes that will remain in place.” HHS, *Progress Report*, 6. However, the current rule was adopted because of concerns that pro-life healthcare workers were not being fully informed of their rights under those statutes, namely, the Church Amendments (enacted various years during the 1970s), the Public Health Services Act of 1996, and the Weldon Amendment (2008). 45 CFR 88.1; cf. pp. 10-11 of the PDF document containing 45 CFR 88, cited earlier in this note. For example, an ethics opinion issued by the American College of Obstetricians and Gynecologists limits freedom of conscience by stating that “health care professionals have the duty to refer patients in a timely manner to other providers if they do not feel that they can in conscience provide the standard reproductive services that their patients request,” that health care facilities serving patients likely to request controversial services (such as emergency rooms) should be staffed preferentially by persons willing to support the “prompt disposition of emergency contraception,” and that institutions with religious objections to such practices should not position themselves as primary responders to victims of sexual assault. Committee on Ethics, “The Limits of Conscientious Refusal in Reproductive Medicine,” *ACOG Committee Opinion* 385 (Nov. 2007), 5, www.acog.org/from_home/publications/ethics/co385.pdf. Such recommendations apparently conflict with federal law, insofar as the service providers are subject to the aforementioned statutes (e.g., if they receive federal funding, such as through Medicare or Medicaid). The current conscience clause serves to make that conflict more evident.

⁴⁴ Josiah Ryan, “U.S. Senator Says He Would Practice Civil Disobedience If Obama Repeals Abortion ‘Conscience Clause,’” 2 March 2009, *Catholic News Service*, www.cnsnews.com.

control.⁴⁵ The lesson is this: religious freedom must yield to reproductive choice.

Clearly, then, some kinds of choices receive preference over others in the coercive reality that lies behind the pro-choice rhetoric promoted by abortion advocates. We might easily reconfigure the words of Lincoln in 1860:

What will satisfy them? Simply this: We must not only let them alone, but we must somehow, convince them that we do let them alone.... What will convince them? This, and this only: cease to call abortion *wrong*, and join them in calling it *right*. And this must be done thoroughly—done in *acts* as well as in *words*. Silence will not be tolerated—we must place ourselves avowedly with them. The Freedom of Choice Act must be enacted and enforced, suppressing all restrictions against abortion as a moral wrong, whether made in clinics or hospitals, by physicians or nurses. We must pay taxes and fund their abortions with willing pleasure. We must pull down our pro-life constitutions and rescind the conscience clause. The whole atmosphere must be disinfected from all taint of opposition to abortion, before they will cease to believe that all their troubles proceed from us.... Holding, as they do, that abortion is morally right, and socially elevating, they cannot cease to demand a full national recognition of it, as a legal right, and a social blessing.

I will next apply this same analysis to physician-assisted suicide: a coercive reality lies behind the pro-choice rhetoric.

DEATH WITH DIGNITY:

THE COERCIVE REALITY BEHIND PHYSICIAN-ASSISTED SUICIDE

Proponents of physician-assisted suicide emphasize a respect for patient choice as a key rationale. In brief, they argue that when a patient suffers from a terminal illness, particularly if it involves significant physical discomfort, then that individual should have the right to choose to end his or her life before the terminal illness finishes its course. They further conclude that the most humane way to exercise this right would be to

⁴⁵ *Catholic Charities of the Diocese of Albany et al. v. Gregory V. Serio*, 127 NY Int. (2006).

secure the assistance of a physician who could prescribe a patient-administered lethal drug. In addition to patient choice, the rhetoric supporting this practice also emphasizes the concept of “death with dignity.” Dignity, however, is in this context defined in terms of personal autonomy, that is, a person’s ability to direct one’s own affairs in a manner of one’s own choosing. Thus, even the emphasis on “dignity” functions to reinforce the rhetoric of “choice.”

An emphasis on personal choice in the dying process has underpinned the “right to die” movement from the start. Derek Humphrey, for example, whose book *Final Exit* brought popular attention to the euthanasia movement in America, summarizes the case for physician-assisted suicide thus: “While it is true that we have no control over our births, at least we ought to have control over our deaths. How can we claim to be free people if someone else’s morals and standards govern the way we die? ... Knowledge gives choice.... Sometime in the [twenty-first] century, laws will be altered to permit voluntary euthanasia and physician-assisted suicide.”⁴⁶

The identification of physician-assisted suicide as a “choice” that people ought to have a legal right to make pervades the broader movement that Humphrey has inspired. In 2003, his organization, the Hemlock Society, changed its name to the Society for End-of-Life Choices. Two years later, End-of-Life Choices merged with a similar organization, Compassion in Dying, to form Compassion and Choices.⁴⁷ Its website features the following quotations from clients, each deploying a rhetoric of “choice” as foundational to the euthanasia movement:

- “Having the choice gives me comfort—just knowing there’s an option,

⁴⁶ Derek Humphrey, “The Case for Physician-assisted Suicide,” www.finalexit.org/lit-essays.html (accessed 10 February 2009).

⁴⁷ “Aid-in-Dying Timeline,” www.compassionandchoices.org/learn/timeline; Herbert Handlin and Kathleen Foley, “Physician-Assisted Suicide in Oregon: A Medical Perspective,” *Issues in Law and Medicine* (22 Sept. 2008).

knowing there's a choice. This has taken the fear out of dying for me."⁴⁸

■ "I felt alone until I called Compassion & Choices. They let me know I had choices and support. What a comfort that was."⁴⁹

Compassion and Choices recently persuaded a Montana court to classify physician-assisted suicide as a constitutional right. Not surprisingly, the plaintiff, a 75-year-old cancer patient, summarized his attitude in terms of "choice": "It comforts me to know that my doctor can prescribe medications that I can take to bring about a peaceful death, that I can gather my loved ones and die with dignity in my own home. This is my personal choice, based on my values and beliefs."⁵⁰

Barbara Lee, the president of Compassion and Choices, similarly summarizes the organization's mission in pro-choice language: "We dream of a time when all Americans can live and die as a free people, in dignity and according to their own values."⁵¹ Lee's advocacy group further identifies itself as a leader in the national "choice-in-dying movement."⁵² That movement recently secured enough votes in the State of Washington to pass Initiative 1000, the Death with Dignity Act.⁵³

As a ballot initiative, the Washington proposal became law upon approval of the voters, but without the scrutinizing process ordinarily conducted in state legislative committees. Although the act itself contains 31 sections, spanning ten single-spaced pages, voters saw only the following summary on their ballots:

⁴⁸ Char Andrews (identified as a "client with breast cancer"), quoted at www.compassionandchoices.org (accessed 10 February 2009).

⁴⁹ Tom McDonald, (identified as an "end-of-life client"), quoted at www.compassionandchoices.org (accessed 10 February 2009).

⁵⁰ "Montana Court Decides Terminally Ill Patients Have Right to Death with Dignity under Montana Constitution," *Medical News Today*, 8 December 2008, www.medicalnewstoday.com (accessed 17 February 2009).

⁵¹ Barbara Lee (identified as "President, Compassion & Choices"), quoted at www.compassionandchoices.org (accessed 10 February 2009).

⁵² www.compassionandchoices.org/learn.

⁵³ "Victory in Washington: Destination Dignity," *Compassion & Choice*, (Winter 2008) 5, www.compassionandchoice.org.

This measure would permit terminally ill, competent, adult Washington residents medically predicted to die within six months to request and self-administer lethal medication prescribed by a physician. The measure requires two oral and one written request, two physicians to diagnose the patient and determine the patient is competent, a waiting period, and physician verification of an informed patient decision. Physicians, patients and others acting in good faith compliance would have criminal and civil immunity.⁵⁴

Several key phrases in that ballot summary frame the issue in pro-choice rhetoric: “competent, adult Washington residents...to request and self-administer...informed patient decisions.” Opponents of the ballot measure sought a court order requiring that ballots identify the proposal’s intended effect as the legalization of “physician-assisted suicide,” but Thurston County Superior Judge Chris Wickham ruled that such language was too “loaded.” In an attempt to be impartial, the judge also ruled out the supporters’ preferred phrase, “death with dignity.”⁵⁵ (Oddly enough, the voters would check “Yes” or “No” next to a paragraph forbidden from using the phrase “death with dignity” even though the impact of “yes” votes would enact a law entitled “The Washington Death with Dignity Act.”⁵⁶)

Whatever its official description, favorable editorialists clothed it in the language of choice: “This law would allow the dying patient to make his/her own choice about how to exit. Some will argue that can only be God’s choice. Proponents see it as God helping those who help themselves.”⁵⁷ Televised commercials supporting the proposal featured

⁵⁴ “Washington Initiative 1000 (2008),” *ballotpedia.org/wiki/index.php/Washington_Initiative_1000_(2008)*.

⁵⁵ Brad Shannon, “Ruling Aims to Keep Ballot Title Neutral for End-of-Life Measure,” *The Olympian*, 1 March 2008, *www.theolympian.com*; Richard Roesler, “No ‘Suicide’ Label on Initiative,” *Seattle Times*, 2 March 2008, *seattletimes.nwsource.com*.

⁵⁶ The Washington Death with Dignity Act, *wei.secstate.wa.gov/osos/en/Documents/I1000-Text%20for%20web.pdf*.

⁵⁷ “Death with Dignity Initiative Promotes Humane Choice,” editorial, *Newcastle News*, 7 October 2008, *www.newcastle-news.com*.

slogans such as “It’s My Decision.”⁵⁸ One commercial featured former Oregon governor Barbara Roberts, suggesting that other states could follow the example of Oregon’s Death with Dignity Act. She portrayed the law as benefitting patients primarily by expanding their choices: “It has given them dignity. It has given them choices. It has given them a sense of self-control.”⁵⁹ Another commercial concluded that “it is compassionate to allow terminally ill patients the choice of ending their suffering.”⁶⁰

One may infer that the eventual passage of the Washington State act resulted more from the effectiveness of the pro-choice rhetoric employed in the political campaign than from a thorough understanding among voters as to what the full text of the ballot initiative meant. The Washington initiative closely mirrored the provisions of the Oregon Death with Dignity Act, adopted by voters in 1994 as the nation’s first physician-assisted suicide initiative. That precedent-setting act employed phrases that, however clear to lawyers, would leave most laypeople befuddled: “except as otherwise required by law... notwithstanding the provisions of subsections (1) to (4) of this section,” etc. Debate within legislative committees may have encouraged greater scrutiny of the Washington proposal; TV sound bites and editorial one-liners, by contrast, reduced the matter to a question of allowing someone the “choice” to “die with dignity.” Legal scholars who defended the Oregon law after its enactment similarly framed the argument in terms of “the patient’s autonomous choice about how to treat his/her suffering” and ultimately concluded that, “for terminally ill patients, respect for autonomous choices about how best to deal with their own experience

⁵⁸ “It’s My Decision: Yes on I-1000” (2008), www.youtube.com.

⁵⁹ Barbara Roberts (Oregon Governor, 1991-1995), in “Oregon Governor Speaks Out on DWD Act,” video, 3 August 2008, www.youtube.com/watch?v=z718hwqs3s.

⁶⁰ “Martin Sheen Lies about I-1000,” 1 October 2008, www.youtube.com/watch?v=T-DwFmZP0Lw

of suffering validates physician-assisted suicide.”⁶¹ But how many people who favor legalized physician-assisted suicide—particularly those who voted “Yes” without reading the full text of the proposed legislation—how many of them recognize that the details of both the Oregon and Washington acts invoke significant state coercion against dissenters?

Indeed, both the Oregon Death with Dignity Act (1994) and Washington’s Initiative 1000 (2008) include several coercive provisions that limit the liberty of persons and organizations who do not wish to support physician-assisted suicide. The laws go so far as to require broad classes of citizens to actively promote a practice concerning to which they may feel either neutral or opposed. Specifically, these laws coerce dissenters to become complicit in the following six ways:

1. *Doctors are required to be dishonest.* The Washington law insists that “the patient’s death certificate...shall list the underlying terminal disease as the cause of death,” despite the fact that death results from ingesting a lethal drug prescribed specifically for that purpose.⁶² Presumably this provision seeks to protect the privacy of persons wanting to terminate their own lives through a physician-prescribed method without letting their family know that they have done so.

2. *Citizens are denied liberty of contract with respect to any agreement that would impinge any person’s access to physician-assisted suicide.* The Oregon and Washington laws both state that any contract, will, or other agreement, whether written or oral, that is in anyway contingent upon whether or not a person requests lethal medication from a physician, is invalid.⁶³

⁶¹ Emily P. Hughes, “The Oregon Death with Dignity Act: Relief of Suffering at the End of Medicine’s Ability to Heal,” *Georgetown Law Review* 95/207 (2006): 207-35, quoting 207, 235.

⁶² Washington Death with Dignity Act, Sec. 4(1)(k)(2).

⁶³ “(1) No provision in a contract, will or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for medication to end his or her life in a humane and dignified manner, shall be valid. (2) No obligation owing under any currently existing

3. *Insurance companies are forbidden from applying a suicide exclusion of benefits to acts committed under the new laws.* Under Oregon law, life insurance companies may exclude coverage for persons who commit suicide in the traditional sense of the term.⁶⁴ However, Oregon law coerces insurance companies to grant full coverage for persons who self-administer a lethal drug for the purpose of ending their life in compliance with the Death with Dignity Act.⁶⁵ The Washington law similarly constrains liberty of contract for insurance companies.⁶⁶

4. *State government officials are forbidden from using the term “assisted suicide” to describe what must instead be called “self-administering life-ending medication.”* The Washington law specifies that “state reports shall not refer to practice under this chapter as ‘suicide’ or ‘assisted suicide.’ ... State reports shall refer to practice under this chapter as obtaining and self-administering life-ending

contract shall be conditioned or affected by the making or rescinding of a request, by a person, for medication to end his or her life in a humane and dignified manner.” Oregon Revised Statutes, 127.870 §3.12. The Washington law similarly states that “any provision in a contract, will, or other agreement...[that would] effect whether a person may make or rescind a request for medication to end his or her life...is not valid.” Washington Death with Dignity Act, Sec. 16(1).

⁶⁴ Shenker and Bonparte, LLP, attorneys at law, “Life Insurance Claims/Suicide Defense,” www.ashenkeresq.com/lawyer-attorney-1369288.html (accessed 12 February 2008).

⁶⁵ “The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request, by a person, for medication to end his or her life in a humane and dignified manner. Neither shall a qualified patient’s act of ingesting medication to end his or her life in a humane and dignified manner have an effect upon a life, health, or accident insurance or annuity policy.” Oregon Death with Dignity Act, 127.875 §3.13. 127.875 §3.13.

⁶⁶ “A qualified patient’s act of ingesting medication to end his or her life...shall not have an effect upon a life, health, or accident insurance annuity policy.” Washington Death with Dignity Act, Sec. 17.

medication.”⁶⁷

5. *The state is prohibited from prosecuting cases of such self-administration of life-ending medication as any form of wrongful death.* In Oregon, “Actions taken in accordance with [the Death with Dignity Act] shall not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide, under the law.”⁶⁸ The law reads nearly identically in Washington.⁶⁹ Thus, family members of the deceased would have no case against a physician who prescribed a lethal drug to their loved one, so long as the physician did so as set forth in the Death with Dignity Act. In other words, so long as the physician obtained informed consent from the patient at least 15 days in advance, fabricated the death certificate to protect the patient’s privacy, and so forth. Legal immunity also is provided to home visitation workers, from organizations such as Compassion and Choices, who coach patients through the process of taking the lethal drug prescribed for their “dignified death.”⁷⁰

6. *Professional medical associations are forbidden from disciplining physicians who prescribe fatal doses of medication for a patient to end his or her life.* The Oregon law states: “No professional organization or association, or health care provider, may subject a person to censure,

⁶⁷ Washington Death with Dignity Act, Sec. 18(1). The Oregon law does not explicitly forbid referencing such acts as “assisted suicide” but does preference alternative terminology identical to that used in Washington. It is telling, however, that the Public Health Division of the Oregon Department of Human Services uses the abbreviation “pas” (presumably for “physician-assisted suicide”) in the website directory for official information on the Death with Dignity Act. www.oregon.gov/DHS/ph/pas/ (accessed 17 February 2009).

⁶⁸ Oregon Death with Dignity Act, 127.880 §3.14.

⁶⁹ “Actions taken in accordance with [the Death with Dignity Act] do not, for any purpose, constitute suicide, assisted suicide, mercy killing, or homicide, under the law.” Washington Death with Dignity Act, Sec. 18(1).

⁷⁰ For a case-study analysis of a Compassion in Dying (now called Compassion and Choices) home visitation team, in comparison to the approach taken by a non-suicide-recommending organization, see Herbert Hendlin and Kathleen Foley, “Physician-Assisted Suicide in Oregon: A Medical Perspective,” *Michigan Law Review* 106 (2008): 1613-39, at 1629-33.

discipline, suspension, loss of license, loss of privileges, loss of membership or other penalty for participating or refusing to participate in good faith compliance with [the Oregon Death with Dignity Act].”⁷¹ Once again, the Washington law sets forth a similar restriction, barring medical associations from disciplining doctors who would intentionally assist their patients in achieving death.⁷²

In summary, when it comes to “death with dignity,” the state’s legal protection of one person’s “choice” translates into the state’s coercion of dissenters to become complicit in the very act they loathe. Physicians must write dishonest death certificates. Freely contracting adults are no longer free to make a contract that limits in anyway a person’s access to such assisted-suicide. Insurance companies may not exclude coverage in cases of self-administered lethal medication, although they still may do so for suicides not assisted by a physician. The state forbids its record-keepers from labeling the self-administration of intentionally lethal prescription drugs as “suicide” and prevents its justice department from prosecuting such cases as forms of wrongful death. Ultimately, state power goes so far as to limit dissenters’ freedom of association, which arguably is still protected by the federal First Amendment; but until the courts rule otherwise, both the Oregon and Washington laws forbid medical associations from limiting their membership to physicians who vow never to prescribe lethal drugs to their patients.⁷³ Quite

⁷¹ Oregon Death with Dignity Act, 127.885 §4.01(1).

⁷² “A professional organization or association, or health care provider, may not subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating or refusing to participate in good faith compliance with [the Washington Death with Dignity Act].” Washington Death with Dignity Act, Sec. 19(1)(b).

⁷³ In *Lee v. Oregon* (1997), a federal appellate court dismissed the plaintiff’s complaint that the Oregon Death with Dignity Act restricted healthcare providers’ “freedom of association” by forbidding them from limiting physician memberships to those who do not participate in assisted suicides. The court cited lack of jurisdiction as its grounds for dismissal, since the situation remains hypothetical until a healthcare provider encounters an actual instance of prosecution under the act. *Lee v. Oregon*, 107 F.3d 1382 (9th

ironically, these laws have so exalted the patient's choice to die, that physicians no longer have the liberty to form medical organizations committed exclusively to the promotion of life.

Could it have happened otherwise? Probably not. The pro-choice rhetoric, though expressed in terms of *individual liberty*, necessarily requires *state coercion* for its realization. Why? Because humans are social beings. We lack the level of personal autonomy assumed by the "death with dignity" movement. Even supporters acknowledge this when they refer to their cause as "aid in dying." Aid from whom? From another person, of course. Therefore, the state must ensure that other people make such aid available. Said another way, "physician-assisted suicide" requires not only a suicidal patient, but also a physician, an insurance company, and a public records office, not to mention a mortician. A coercive state does not arise in a democratic society by accident; rather, once a society becomes committed to guaranteeing for one individual a "right to die," all other parties impacted by this seemingly private "choice" must play their appropriate public roles; if any of them refuse, the state, empowered by the collective will of the voters, will coerce them. Oregon, Washington, and Montana mark the beginning of a movement that already has a strong footing in Arizona, California, Wisconsin, and other states.

Indeed, nothing short of nationwide coercion will satisfy the "Death with Dignity" advocates. What will satisfy them? Simply this: We must not only let them alone, but we must somehow, convince them that we do let them alone. What will convince them? This, and this only: cease to call physician-assisted suicide *wrong*, and join them in calling it *right*. And this must be done thoroughly—done in *acts* as well as in *words*. Silence will not be tolerated—we must place ourselves avowedly with them. The Death with Dignity Act must be defended and enforced, suppressing all restrictions against physician-assisted suicide, whether by physicians or state record officers, by insurance agents or family members. We must defend and promote death with dignity in the name

of personal pleasure. We must pull down our pro-life constitutions. The whole atmosphere must be disinfected from all taint of opposition to physician-assisted suicide, before they will cease to believe that all their troubles proceed from us. Holding, as they do, that physician-assisted suicide is morally right, and socially elevating, they cannot cease to demand a full national recognition of it, as a legal right, and a social blessing. Abraham Lincoln spoke similarly concerning slavery and its supporters in 1860.

CONCLUSION

My intention was to persuade you *that neither abortion nor physician-assisted suicide can comfortably exist in American society unless the individual liberties of a significant portion of our population suffer severe restrictions*. Despite the pro-choice rhetoric, a coercive reality limits the choices of those who would object to these practices. As I have demonstrated, the tendency is toward requiring everyone to participate, at some level, in the promotion or preservation of abortion and physician-assisted suicide. There is an obvious reason why this must be so.

When political activists deploy pro-choice rhetoric in defense of choices that violate the natural moral order, then they must, if they want to obtain and exercise the power to make such choices, soon resort to coercion. Why? Because few people will be willing to choose freely that which so fundamentally violates the natural moral order; even those who do, will not be willing to do so for very long. Natural law has its way of “talking back.” Just as gravity has its way of making that which goes up come down,⁷⁴ so also “the moral law within,” to borrow Immanuel Kant’s expression, or the “conscience,” to borrow St. Paul’s term, holds

⁷⁴ For the parallel between the physical law of gravitation and the natural moral law, see William Blackstone, *Commentaries on the Laws of England*, 1st American ed. (1771), Introduction, Section 2, www.yale.edu/lawweb/avalon/blackstone/blacksto.htm.

in check those who make immoral choices.⁷⁵

And so it is today. Recall what Lord Mansfield had said of slavery: it would fade out of existence unless laws artificially preserved it. Even Stephen Douglas had to admit, in his famous debates with Abraham Lincoln, that if popular sovereignty truly were followed—that is, freedom of choice without coercion from the Supreme Court’s *Dred Scott* decision—slavery could never survive in the north.⁷⁶ Even in the south, slavery would not have been as pervasive without state policies that actively promoted and preserved it.⁷⁷ Likewise, without state coercion to perpetuate abortion and physician-assisted suicide, these practices would never amount to more than marginalized aberrations of an otherwise stable social order.

Nevertheless, advocates for such practices, when they express their case in pro-choice rhetoric, claim that it is the opponents of abortion and the opponents of physician-assisted suicide who resort to coercion. By outlawing abortion, are not pro-lifers coercing all pregnant women to bear children, rather than allowing them the liberty to choose for themselves? By outlawing physician-assisted suicide, aren’t pro-lifers coercing terminally ill patients to suffer an undignified death?

These are, of course, loaded questions. No doubt one could make a case that pro-lifers “coerce” women to bear children and terminally ill patients to refrain from suicide. But as I have demonstrated in this paper, the alternative positions also are coercive—despite the pro-choice rhetoric they deploy. Thus we must face the real question: it is not a

⁷⁵ Immanuel Kant, Conclusion to *The Critique of Pure Practical Reason*, in *The Philosophy of Immanuel Kant*, edited and introduced by Carl J. Friedrich (New York NH: Modern Library, 1993), p. 288; Romans 2:14-15.

⁷⁶ Harold Holzer, ed., *The Lincoln-Douglas Debates: The First Complete, Unexpurgated Text* (New York NY: Harper Perennial, 1994), pp. 88-89.

⁷⁷ “Ultimately slavery could exist only through the power of the state”: laws prohibited slaveholders from freeing their slaves or educating them; laws prohibited slaves from testifying in court; laws required all citizens to assist in apprehending fugitive slaves; laws restricted the migration even of free blacks in the south. Schweikert and Allen, *Patriot’s History*, pp. 260-61.

matter of choice vs. coercion, but a matter of public norms, of social values. One side envisions a society in which the public funds abortion and all healthcare workers must be willing to participate, a society in which patients have access to physician-assisted suicide and physicians must record dishonest death certificates to protect the patient's privacy. The other side envisions a society in which abortion is prohibited except for the rare emergency cases, a society in which terminally ill patients may be cared for by others but not killed by themselves. Other participants in the debate envision yet another sort of society, but the point is that each society will rely, to some degree, upon state coercion for stabilization, just as property rights depend upon the punitive force of government to fine or imprison those who shoplift or burglarize.

And so we return to the real question at hand: Which ultimate values ought we desire that the coercive force of government would promote and protect? This, and not the "pro-choice" pretension of personal liberty, is at the center of the real debate. As our society wrestles with this question, numerous proposals will be entertained—a new law here, a new court decision there. But just because the current problem we face may be coercive state policies favoring abortion or physician-assisted suicide does not mean the only solution, or even the best solution, involves coercive legislation from the other side. Other remedies exist.

First, there is the possibility of favoring the particular social values that can subsist with a minimal of state regulation. Although some state regulation may be helpful or even necessary—for example, to permit an emergency procedure that saves the life of a mother even when it risks the life of her unborn child—such laws will be far less invasive, far less coercive, than those that guarantee to women in all circumstances the right to an abortion by demanding of others some level of complicity in her act of killing. We need not delve into all the details now; it suffices to say that one can imagine laws disfavoring abortion and physician-assisted suicide that would be far less coercive than those favoring these practices. What Jennifer Roback Norse has noted in her critique of no-fault divorce applies also to abortion and physician-assisted suicide:

“The supposedly libertarian subtext of this idea is that people should be as free as possible to make their personal choices. But the very non-libertarian consequences of this new idea is that it obliterates the informal methods of enforcement.”⁷⁸ In other words, by severing the family into autonomous individuals, “pro-choice” policies render each of them as wards of a coercive state.

But I also want to go beyond the political dimensions of the problem and conclude with some brief remarks about the ethical dimensions. By the late 1970s Dr. Bernard Nathanson, the “abortion king,” had come to regret his participation in the horrors of abortion. Ultrasound images persuaded him that life within the womb *is* life: a fetus visibly struggles to avoid the abortionist’s scalpel and vacuum-suction tube. The “abortion king” thus became a pro-life leader and used his documentary ultrasound film *Silent Scream* to change the minds of others. Eventually he even came to recognize the forgiveness won for him by Christ. How deeply it pains him that the pro-choice rhetoric he invented cannot be so easily retracted.⁷⁹

And what about Norma McCorvey—the “Jane Roe” from *Roe v. Wade*? She, too, repented in sorrow and then rejoiced to know forgiveness in Christ. “Though painful emotions still return, bringing with them doubts concerning God’s love, McCorvey finds comfort especially in these passages: ‘If anyone is in Christ, he is a new creation; old things have passed away; behold, all things have become new’ (2 Corinthians 5:17); ‘If we confess our sins, He is faithful and just to forgive us our sins and to cleanse us from all unrighteousness.’ (1 John 1:9)”⁸⁰

⁷⁸ Jennifer Roback Morse, “Why Unilateral Divorce Has No Place in a Free Society,” ch. 4 in *The Meaning of Marriage: Family, State, Market, and Morals*, edited by Robert P. George and Jean Bethke Elshtain (Dallas TX: Spence, 2006), pp. 74-99, at 77.

⁷⁹ Nathanson, *Hand of God*, p. 141 (*Silent Scream*), pp. 191-96 (conversion to Christianity).

⁸⁰ Ryan C. MacPherson, “How a Christian Child’s Love Won Jane Roe’s Heart,” review of *Won by Love*, by Norma McCorvey, The Hausvater Project, 22 Jan. 2009, www.hausvater.org.

How did this change come about in the hearts of Dr. Nathanson and Miss McCorvey? It was through gentle, kind, and loving words and actions from Christian friends. “Christ’s love, communicated in actions and not just in words, transformed America’s most infamous abortion advocate[s] into...Christian defender[s] of purity and life.”⁸¹ If we want to change the world, we now know how.

If we reject the “pro-choice” agenda for the façade of coercion that it is, we should embrace the pro-life calling for the compassionate lifestyle that it is. This means not merely steering a woman away from abortion, but providing her with food when she hungers, clothing when she is cold, comfort when she is heartbroken, and encouragement from God who promises daily bread for all and eternal life in Christ. If we don’t wish to be compelled by the state to support a woman’s choice to kill her child, then we need to ask God to move us with love to assist a woman who needs help raising her child.

And likewise for the terminally ill who contemplate physician-assisted suicide. Ultimately it is not, as Abraham Lincoln so starkly framed it, simply a contest between them and us, but rather a calling for us to serve them—to show them how the coercive reality behind their pro-choice rhetoric entraps not only us, but also themselves, and to help them break free from the sorrow, the pain, the confusion, and the guilt that would drive them toward such choices in the first place. Is this not what it must mean in early twenty-first-century America for Christians to live as the salt and the light of the world?⁸²

⁸¹ MacPherson, “How a Christian Child’s Love Won Jane Roe’s Heart.”

⁸² An earlier version of this presentation, which included also a critique of the coercive reality behind the pro-choice rhetoric deployed in favor of same-sex “marriage,” was delivered at Bethany Lutheran College, Mankato, MN, 16 April 2009. I thank my colleagues and students at Bethany for their feedback and encouragement, and the administration for fostering an atmosphere in which these delicate topics can be discussed in a manner that compassionately seeks objective moral truth.

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Catholic Feminist Ethics and the Culture of Death: The Case of Sister Margaret Farley

Anne Barbeau Gardiner

ABSTRACT: In her recent book *Just Love*, Sister Margaret Farley makes so-called “women’s experience” the basis for a radical new “sexual ethics.” She promotes an upper-class feminist ideology while censuring the Catholic Church for promulgating an ethics that is not universal but only a masculine construct. Ever since 1973, Farley has been a leading and consistent apologist for the Culture of Death, but in the year 2000, in her presidential address to the Catholic Theological Society of America, she openly confronted and blamed the Magisterium for standing on a narrow ground in its repeated condemnations of abortion. And yet her writings and those of other Catholic feminists in her wake reveal that it is these dissidents themselves who stand on a narrow ground in their defense of abortion. Their embrace of “women’s experience” as an ideology has led directly to Farley’s *Just Love*, a work that condones not just abortion but also masturbation, pornography, adultery, and active homosexuality.

IN *A JUST AND TRUE LOVE*, a recent collection of essays honoring Sister Margaret Farley, Maura Ryan asserts that in the last forty years Catholic feminists have challenged the traditional sexual ethics of the Catholic Church by insisting on “the significance of woman’s experience as a source for interpreting moral value.” Their strategy has been to give “priority” to women’s experience, with the “underlying assumption” that this experience is “revelatory of the divine.”¹ Sister

¹ “Introduction” in *A Just and True Love: Feminism at the Frontiers of Theological Ethics: Essays in Honor of Margaret A. Farley*, ed. Maura A. Ryan and Bryan F. Linnane, S.J. (Notre Dame IN: Univ. of Notre Dame Press, 2009), pp. 2-6.

Margaret Farley has led the way in claiming that “women’s lived experience—that is, knowledge gained from living as women—provides a perspective upon human reality which is itself a source of moral truth.” By this rule, Farley has turned woman’s experience into a “crucial resource for feminist ethics”² and a “radical challenge to Catholic ethics.”³ The Church claims that men and women share a common human nature that provides the ground for objective moral standards. Farley, however, denies that there is such a shared nature. She contends that the “official” moral teaching of the Church is based only on men’s experience, and so is not universal, and that the special experiences of women ought now to be the “starting point” for new ethical reflections.⁴

Jesuit Brian Linnane agrees with Farley and calls it a “scandal” that the Church will not “dialogue” with Catholic feminists on matters like abortion, for besides being “particularly attentive to the role of experience,” these feminists are correct, he thinks, when they call the Church’s teachings “experience-laden” rather than universal. For Linnane and Farley, Catholic morality is a masculine construct limited to the cultural plane. This is why Linnane can praise Farley for creating an alternative sexual ethic without the Church’s emphasis on “abstinence.”⁵

Lisa Sowle Cahill hails Farley as “a leader in the development of feminist theology” because she was the first to apply the feminist motto “the personal is political” to the Catholic Church and thereby subject the

² Anne E. Patrick, S.N.J.M., “Framework for Love: Toward a Renewed Understanding of Christian Vocation” in *A Just and True Love*, p. 325.

³ Susan L. Secker, “Human Experience and Women’s Experience: Resources for Catholic Ethics” in *Dialogue about Catholic Sexual Teaching: Readings in Moral Theology No. 8*, ed. Charles I. Curran and Richard A. McCormick, S.J. (Mahwah NJ: Paulist Press, 1993), p. 590. This article first appeared in *The Annual*, Society of Christian Ethics, 1991.

⁴ Secker, “Human Experience,” pp. 588-89.

⁵ “The Sexual Abuse Scandal in the Catholic Church: Implications for Sexual Ethics,” *A Just and True Love*, pp. 282, 278.

Vatican to a “critique from the perspective of gender equality.”⁶ She blazed the trail for many other Catholic feminists, such as Jean Molesky-Poz, a former Franciscan nun who urges women to trust their “experiences” rather than the Church and to “begin with the local narrative...as a challenge to hegemonic power relations parading as universals.”⁷ It is not surprising that Margaret Farley follows the transcendental Thomists Karl Rahner and Bernard Lonergan, for these two criticized Catholic tradition for making “individual conscience unduly subordinate to ecclesiastical authorities and norms.” Farley declares that the Church cannot impose rules on women by “juridical power” and insists that the Church can only invite “consent.” Of course, she herself rarely gives her consent, for as Charles Curran notes approvingly, she has for years opposed “papal teachings on contraception, sterilization, divorce, homosexuality, and direct abortion.”⁸ She has even criticized such papal encyclicals as John Paul II’s *Familiaris consortio* for not giving “due weight” to women’s experience.⁹ Farley has erected so-called “women’s experience” into a Trojan Horse full of armed amazons that can penetrate, she hopes, the very gates of Rome.

According to Mary Henold’s recent history of the movement, Catholic feminism embraced the Culture of Death in the early seventies. In 1973 Catholic feminists were “oddly silent on the abortion issue” when debate over *Roe v. Wade* raged across the nation. Henold claims to have discovered from interviews with them and their correspondence

⁶ “Feminist Theology and Sexual Ethics” in *A Just and True Love*, pp. 20-21.

⁷ Jan Molesky-Poz, “The Form That Didn’t Fit: Charting New Maps, Illuminating New Spaces” in *Reconciling Catholicism and Feminism? Personal Reflections on Tradition and Change*, ed. Sally Barr Ebest and Ron Ebest (Notre Dame IN: Univ. of Notre Dame Press, 2003), pp. 21, 23.

⁸ Charles E. Curran, “John Paul II’s Understanding of the Church as Teacher of the Truth about Humankind” in *A Just and True Love*, p. 430.

⁹ Secker, “Human Experience,” p. 584.

that even then a “majority” favored abortion-rights.¹⁰ In 1974 Farley published a subtle defense of abortion entitled “Liberation, Abortion and Responsibility,” in which she placed the Culture of Life and the Culture of Death on the same plane as “different experiences of moral obligation” and presented the raging controversy as between the rights of “mothers or fetuses,” never once using the word *child* or *baby*. She declared that both sides had an “unconditional claim” on “conscience,” while she found “ambiguity” only regarding the nature of the “fetus.” Then she ended with a wild utopian flourish by advising Catholic pro-lifers to start changing the “centuries-laden structures of oppression” that allegedly made abortion necessary.¹¹

Soon after, in 1982, the Sisters of Mercy sent a letter to all Mercy hospitals recommending that tubal ligations be done. Since this directive violated the Church’s teaching on sterilization, Pope John Paul II opposed it, gave the Mercy sisters an ultimatum, and caused them to withdraw that letter. Margaret Farley justified their “capitulation” to this papal demand on the ground that “material cooperation in evil for the sake of a ‘proportionate good’” is morally permissible. Here she claimed that obeying the pope was complicity in *evil* and excused her sisters’ obedience only because it prevented “greater harm, namely, the loss of the institutions that expressed the Mercy ministry.”¹² This contempt for papal authority followed from Farley’s basic contention that “women’s experience, if taken seriously, would alter the very moral norms that are being brought to bear in particular judgments. Women’s experience brings into view a dimension of personhood which the theological

¹⁰ Mary J. Henold, *Catholic and Feminist: The Surprising History of the American Catholic Feminist Movement* (Chapel Hill NC: Univ. of North Carolina Press, 2008), pp. 88, 132, 220-25.

¹¹ Farley’s article appeared originally in *Reflection* 71 (May 1974): 9-13, and was reprinted in *On Moral Medicine: Theological Perspectives in Medical Ethics*, ed. Stephen Lammers and Allen Verhey (Grand Rapids MI: Eerdmans, 1987), pp. 434, 435, 437.

¹² “Framework for Love: Toward a Renewed Understanding of Christian Vocation” in *A Just and True Love*, pp. 316-17, 328.

tradition has ignored, distorted, or falsely characterized in its construal of the normatively human.”¹³ Thus she made so-called women’s experience the ultimate measure of good and evil in the Church. I say *so-called* because, although she pretends to speak for all women, Farley speaks for a radical minority of women, and even though she uses the word *experience*, she means something ideological.

Another major confrontation occurred soon afterwards when the Vatican responded to a *New York Times* advertisement published on 7 October 1984, which had been paid for by Catholics for a Free Choice (CFFC). The ad consisted of a statement (composed in 1983 by Daniel and Marjorie Maguire and Frances Kissling), entitled “A Diversity of Opinions Regarding Abortion Exists among Committed Catholics.” It was signed by ninety-seven Catholics, including two priests, two brothers, and twenty-six nuns from fourteen communities. Among the signers was Margaret Farley.¹⁴

She waited until her presidential address to the Catholic Theological Society of America in 2000 to attack the Vatican’s “overwhelming preoccupation” with abortion and its attempt “to control internal debate.”¹⁵ In her speech “The Church in the Public Forum: Scandal or Prophetic Witness?” she called the Church’s defense of the Culture of Life “scandalous” and asked for an end to the Vatican’s “opposition to

¹³ Secker, “Human Experience,” p. 587, paraphrasing Farley’s “Moral Imperatives for the Ordination of Women” in *Women and Catholic Priesthood: An Expanded Vision*, ed. Anne Marie Gardiner (Mahwah NJ: Paulist Press, 1976), p. 42.

¹⁴ There were 75 more priests, religious, and theologians who signed the ad but who asked for their names to be withheld because they feared to lose their Church-related jobs. See Barbara Ferraro and Patricia Hussey, with Jan O’Reilly, *No Turning Back: Two Nuns’ Battle with the Vatican over Women’s Right to Choose* (New York NY: Poseidon Press, 1990), p. 220.

¹⁵ Presidential Address, *Proceedings of the Catholic Theological Society of America* 55 (June 2000): 87-101. See her note on it in Margaret A. Farley, *Compassionate Respect: A Feminist Approach to Medical Ethics and Other Questions*, Madeleva Lecture in Spirituality (Mahwah NJ: Paulist Press, 2002), p. 98.

abortion” until “the credibility gap regarding women and the church” has been closed. She also demanded “a reasonable degree of tolerance for theological diversity.” Despite Farley’s contumacy toward her religious superiors, Sister Anne Patrick calls her “thoroughly Catholic” and echoes her view that the Vatican must listen to “the wide range of church members’ experiences before teaching on controversial issues.”¹⁶ This “wide range” of experiences apparently includes having abortions and practicing lesbianism, but not repenting from these grave sins. It is tragic to contemplate the effect of such an ideology on educated Catholic women. Once caught in its spider web, many seem unable to break out of it. Take, for example, Janet Kalven of Grailville, who was born in 1913, received into the Church in 1937, and converted to feminism in 1969. Kalven writes, “On the sexuality issues—contraception, divorce and remarriage, ordination of women, mandatory priestly celibacy, homosexuality, abortion—both my studies and my experience led me to part company with the current teachings of the Church.”¹⁷ As a result Kalven, now in her nineties, sees Christianity as one “myth” among others and clings desperately to the ideology of an aging feminist minority.

Since the eighties, Farley and her fellow Catholic feminists have defended the Culture of Death by claiming that the Church’s teaching is too *narrow* for them. In this they are entirely mistaken, since the Church’s teaching on sexual morality has the breadth of metaphysics and natural law, as well as the heights and depths of revelation itself, whereas their new sexual morality stands on the narrow base of a postmodern feminist ideology. Yet Farley boldly criticizes the Church for the “narrow scope” of her “discourse” on abortion and asks that the debate be widened to encompass the “social and relational context,” “the ambiguity of fetal status,” and “the complex and intimate nature of women’s experience of pregnancy.” She hopes that by endlessly

¹⁶ Ibid., pp. 324-25.

¹⁷ “Feminism and Catholicism” in *Reconciling*, p. 40.

complicating the issue of abortion, a new moral teaching will emerge.¹⁸ Following lockstep behind Farley, Kathleen Kennedy Townsend uses terms like *broad* for the permissive morality of feminists and *narrow* for the Church's teaching.¹⁹ But when we look at the stories told by Catholic feminists about how they came to promote abortion-rights, we find that their base is truly *narrow*, not *broad*. They usually trace their pro-abortion advocacy back to a single "experience" that triggered an impulsive choice.

A good example of this can be found in the story of two nuns who have never repudiated their decision to sign the CFFC *New York Times* ad in 1984. In 1990 they published *No Turning Back*, in which each defended her pro-abortion stand by citing a personal experience as her moment of illumination. For Sister Patricia Hussey it happened in 1969 when a friend told her she had aborted a child and was not sorry about it. Sister Pat reflected that Millie could not have been "wrong" in her choice because she was "a good and tender-hearted woman," so at that instant Catholic teaching "began to fall apart" before her eyes, and she decided without further reflection that abortion was not "a case of right and wrong." Similarly, Sister Barbara Ferraro in 1971 encountered Anna, a mother who had aborted her child and been told in confession not to receive the Eucharist till she repented but who now wanted to receive with her son at his First Communion. Barbara reflected that Anna was "a good woman," so even if the Church was "rigid" on abortion there was "no easy answer." On the spur of the moment, she told Anna to go ahead and receive Communion while assuring herself that "I could not believe that the God I was coming to know would say anything different." What god was Barbara "coming to know"? It was surely not the Most Holy Trinity, because she and Pat had been sitting in feminist circles discussing works like Mary Daly's "After the Death

¹⁸ Secker, "Human Experience," p. 583 n16

¹⁹ *Failing America's Faithful: How Today's Churches Are Mixing God with Politics and Losing Their Way* (New York NY: Warner Books. 2007), pp. 20, 130, 185.

of God the Father.”²⁰ The god they were “coming to know” was Margaret Farley’s idol of “woman’s experience” as the ultimate source of truth.

Soon the personal became the political. In 1982 and 1983 Pat and Barbara testified in the West Virginia legislature against a parental notification bill,²¹ and then in 1984 they sided with Democrat Geraldine Ferraro when she ran for Vice President, pleased that she supported “freedom of choice” as a “matter of conscience.” It was to help her campaign that they signed the CFFC ad in *The New York Times*. At the time Ferraro was claiming that her “experience” in the district attorney’s office had led her “to disagree with the official church,” yet she continued to call herself a Catholic and she invited the other Catholics in Congress to a CFFC breakfast, where she informed them that the “Catholic position on abortion” was not “monolithic.”²² Like Ferraro, Pat and Barbara were now militant in claiming to be Catholics supporting the Culture of Death: they spoke out for abortion-rights at a NOW rally in Washington, D.C. on 9 March 1986, and, after freely resigning from their religious order in 1988, they helped found two pro-abortion organizations: West Virginia Catholics for Choice and West Virginia Clergy and Laity for Reproductive Rights.²³ This is where Farley’s idol of woman’s experience led them, straight to the worship of Moloch, the idol to whom the ancient Canaanites sacrificed their screaming children.

Here are two more examples of feminists who made a single narrow experience their reason for opposing the Church on abortion. Sister Laurie Brink, O.P., who teaches biblical studies at Catholic Theological Union, tells of a girl named Olive who came to her some years ago in Jamaica to request money for an abortion. The two of them went to the principal, who told Olive to come back with her mother. The girl never returned, and ever since then Brink has felt that she let Olive down. And

²⁰ *No Turning Back*, pp. 67-71, 99-100, 98.

²¹ *Ibid.*, p. 206.

²² *Ibid.*, pp. 217-18.

²³ *Ibid.*, pp. 261, 325.

so she has committed herself “to a path because of that experience, for the sake of Olive and every single Olive I meet.” Brink’s disaffection from the Church is profound (she says she would be Jewish in a heartbeat if she didn’t believe the Jesus “story”), but she stays in place in the hope that Catholic teaching will “change.”²⁴ This is an oft-repeated pattern—Catholic feminists retaining a position inside the Church from which they have mentally excommunicated the Magisterium. As Mary Henold observes, when Catholic feminists say they are committed to “the church,” they mean “the people, not the structures and hierarchy,” because their “understanding” of Catholicism is not “contingent on institutional affiliation.”²⁵ Yet feminist nuns like Brink are glad to take as their due the security, prestige, and influence that come from having a teaching role in the Church.

A further example of building on a narrow experience comes from Kathleen Kennedy Townsend, who tells of writing a paper in college in 1974 to justify her friend’s abortion: “I undertook the project so I would have time to think of her, our friendship, and what our public policy should be.” Before she wrote that paper, she had already decided that her friend was a “good person” whose “experience” was a matter of “conscience” and that the Catholic Church was “adamant, unforgiving, un-nuanced” in its perennial teaching on abortion.²⁶ The paper was the rationalization of an emotional leap. In 1986 Townsend ran for Congress on a platform of abortion-rights. When her Catholic identity was questioned by pro-lifers, she retorted that she was indeed a Catholic: “Yes, I disagreed with the Church on abortion rights,” but “the idea that each soul was precious, that every person was indispensable in the sight of God, stood at the heart of everything I tried to do.” We should note that she applied her maxim *each soul is precious* so narrowly that it

²⁴ Kerry Kennedy, *Being Catholic Now: Prominent Americans Talk about Change in the Church and the Quest for Meaning* (New York NY: Crown Publishers, 2008), pp. 133-34.

²⁵ *Catholic and Feminist*, p. 7.

²⁶ *Failing America’s Faithful*, p. 59.

excluded all babies in the womb. Townsend ends by advising the Vatican to concede that abortion is a “deeply complicated and difficult issue” on which “good Catholics” can disagree. Otherwise, she warns, Catholic women will ignore the Church’s teaching on abortion as they have on contraception. After all, she adds with palpable contempt, rules made by “celibate” men who have not known “the joy of sex” and merely want to protect their “power” are irrelevant to Catholic women liberated by “sexual revolutions.”²⁷

Many feminists join Townsend in scoffing at *celibate* men in the Vatican who lack personal experience of sex. They might as well scoff at the Virgin Mary and our Lord Jesus Christ. For example, Jane Zeni warns that the “limitations” of a Church authority wielded “exclusively by celibate males” must be taken into account when the issue is abortion or some sexual matter on which they lack “subjective experience.”²⁸ She is echoed by Father Linnane, who observes that “the traditional Catholic sexual ethic may be deficient insofar as it has been formulated largely by celibate, male religious professionals.”²⁹ Likewise, Susan Secker remarks that feminists want the Church to adjust its concept of the “normatively human” because it was “formed by Western, celibate, highly educated and affluent men on the basis of men’s experience.”³⁰ Thus, the ideologically-driven experience of an upstart minority is supposed to trump the wisdom of the ages. Catholic feminists are grandiose enough to imagine that their so-called experience is a battering ram that will knock down the gates of Rome.

Another theme that recurs in Catholic feminist writing is the claim that abortion is a very “complex” issue. Kerry Kennedy complains that the Church’s teaching is too *simple*: “the public generally only hears the simple answers to complex questions,”³¹ while Patricia Hussey and

²⁷ Ibid., pp. 145-46, 62.

²⁸ “Journey from/to Catholicism” in *Reconciling*, pp. 196-97.

²⁹ “The Sexual Abuse Scandal” in *A Just and True Love*, p. 282.

³⁰ Secker, “Human Experience,” p. 581.

³¹ Kerry Kennedy, “Preface,” *Being Catholic Now*, p. xxxi.

Barbara Ferraro declare that after attending a Women-Church conference in 1983, they realized that the “ambiguities” surrounding abortion are “infinite.”³² Margaret Farley faults the Church for its failure to take into account the full “complexity of experience,”³³ and Charles Curran blames the Vatican for failing to sift in “great detail” the “complex human reality before coming to an answer to a complex moral question.” Curran agrees with Farley that the “hierarchical magisterium” should not claim “certitude” in sexual ethics but rather should learn to embrace “self-doubt” as the basis for “discernment.”³⁴ In short, feminists can parade as infallible in their pronouncements, but to suit them the Pope must wrap himself in complexity, ambiguity, and doubt.

Farley has long taught that women’s experience has an “authoritative function in interpreting biblical and theological sources.”³⁵ Little wonder that in chapter five of her recent book, *Just Love: A Framework for Christian Sexual Ethics*, where she discusses the four sources of a new framework for sexual ethics—Scripture, Tradition, secular disciplines, and contemporary experience—she makes experience the most authoritative source of all. First, she dismisses Scripture as “spare and often confusing” on sexual ethics, and then she finds Tradition so “confusing” that its “practices and beliefs” will now have to “be challenged” and “replaced.” She regards her third source—disciplines like biology, sociology, and history—as not usable without “discernment,” yet giving access to “reality,” an access that she never credits

³² *No Turning Back*, p. 214. “Women-Church groups” is defined on p. 213 as “feminist base communities, small circles of women who share their stories and their faith, help each other to live in solidarity, and try to create rituals.”

³³ Secker, “Human Experience,” p. 583. She is paraphrasing Farley’s “An Ethic for Same-Sex Relations” in *A Challenge to Love: Gay and Lesbian Catholics in the Church*, ed. Robert Nugent (New York NY: Crossroad, 1986), p. 99; and Farley, *Personal Commitments*, p. 82.

³⁴ “John Paul II’s Understanding of the Church” in *A Just and True Love*, p. 450.

³⁵ Secker, “Human Experience,” p. 588. Secker is paraphrasing Farley’s “An Ethic for Same-Sex Relations,” pp. 97-98.

Scripture or Tradition with giving.³⁶ In discussing her final source “contemporary experience,” Farley laments that some sexual activity has been experienced as “evil” or “deviant” only because it has been *constructed* that way by religion and society. Today, however, the views behind such constructions can be “overturned” and experience in the sexual sphere can “assert an authority that modifies prior norms that would order it.” She gives so great an authority to feminist experience in this section that it alone can serve as the “measure against which the other sources are tested.”³⁷ In her view, therefore, so-called women’s experience outweighs Scripture, Tradition and secular disciplines combined. She might as well call it a new revelation. In her seminal essay on Margaret Farley, Susan Secker correctly sums up her view in this way: ethical appeals that violate a woman’s experience cannot be “legitimately claimed to have authority, even if such appeals are grounded in Scripture or theological tradition.”³⁸

In chapter six of *Just Love*, Farley speaks of “mutuality” as a norm for her new sexual ethics, but she notes that mutuality differs “in kind and degree” in the various cases of a one-night stand, a short fling, or a love with commitment. Her new ethical approach does not allow her to state that such sexual activity outside of marriage is sinful. She even refuses to say that “hooking up,” defined here as “sex without any relationship,” is gravely immoral. All her warnings are in the opposite direction—against a return to what she scorns as “sexual taboo morality.” She worries that if teenagers are rebuked for hooking up, they might end up with a sense of “shame and guilt.” She says we already know the “dangers” and “ineffectiveness of moralism,” of “pinch-faced virtue,”

³⁶ Margaret A. Farley, *Just Love: A Framework for Christian Sexual Ethics* (New York NY: Continuum, 2007), pp. 182-89.

³⁷ *Just Love*, pp. 190-96.

³⁸ Secker, “Human Experience,” pp. 587-88. She is drawing this from Farley’s “Feminist Consciousness and Scripture” in *Feminist Interpretation of the Bible*, ed. Letty M. Russell (Philadelphia PA: Westminster Press, 1985), pp. 42-43.

and of “narrowly construed moral systems,”³⁹ but she does not explain what “dangers” follow from living according to Catholic morality. Thus Farley repeatedly depicts the moral teachings of the Church as spiteful and narrow rather than as lofty and universal. In another work, where she defends the use of condoms in Africa because of the AIDS crisis, she once again condemns “taboo morality” and the “reiteration of long-standing sexual rules” because this perpetuates “fear and shame,” prevents “change” in “traditional beliefs,” and fails to respond to “present experiences.”⁴⁰ She never considers that *present experiences* might be tokens of a licentious age.

In *Just Love* Farley even defends masturbation—a practice that the *General Catechism* of the Catholic Church calls “gravely disordered” (#2352)—as the “great good” of “self-pleasuring,” and then defends pornography—something that the *Catechism* calls a “grave offense” (#2354)—as not necessarily “harmful” when it does not distort “gender relations” or eroticize “sexual violence.”⁴¹ She has an entire chapter in her book justifying homosexual activity on the basis of same-sex “experience.” Here we see the spreading tentacles of the Culture of Death: hardly any form of impurity fails to be legitimized in Farley’s new framework of sexual ethics for Christians.

Catholic feminists such as Farley continue to await the Church’s capitulation. As Mary Henold points out, many of them are ensconced in departments of theology and in parishes in the roles of “pastoral associates, pastoral administrators, theologians, liturgists, directors of religious education, and seminary instructors.” In these positions they claim to have the “right” to “define what it means to be Catholic.”⁴² An example of a feminist defining *Catholic* for herself could be seen in Milwaukee in 1991, when Theresa Delgadillo, a self-declared Latino lesbian feminist, became part of a “human barricade” in support of

³⁹ *Just Love*, pp. 233-35, 243.

⁴⁰ *Compassionate Respect*, p. 12.

⁴¹ *Just Love*, pp. 235-40.

⁴² *Catholic and Feminist*, pp. 242-43.

abortion-rights against Operation Rescue. Delgadillo became angry when she saw “a Latino man wielding a banner of Our Lady of Guadalupe.” Why? Because, she complained, “his version of Guadalupe was not mine.”⁴³ In other words, she had the right to claim that Our Lady of Guadalupe, in her untainted purity, was on the side of active lesbianism and abortion-rights. Well, why not, if a Catholic feminist like Sister Margaret Farley, from her endowed chair at Yale, has taught for decades and with apparent impunity, that her ideology of “women’s experience” outweighs Scripture, Tradition, academic disciplines, and plain common sense.

⁴³ Theresa Delgadillo, “Race, Sex, and Spirit: Chicana Negotiations of Catholicism” in *Reconciling*, p. 247.

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End of Life, or Ending Life?

Robert C. Cetrulo, J.D.

ABSTRACT: In 1973 the U.S. Supreme Court's decision in *Roe v. Wade* ushered in the wholesale destruction of unborn children. Pro-lifers quickly realized that the basis for this decision would spawn further degeneration of the principle that all innocent human life is sacred. In recent years the relativism of this jurisprudence has extended to assisted suicide, euthanasia, and organ-harvesting from those who have not yet died. This paper recounts the experience of a lawyer who has handled cases in this area over many years. It argues that the only chance for adequate protection of patients requires that a person have *both* a well-articulated healthcare proxy and a pro-life living will.

FUTURE HISTORIANS MAY WELL CAPTION the last half of the twentieth century in the United States as “The Flight from Responsibility.” In the 1960s “no fault insurance” was developed— the concept being that a person’s own insurance company would pay for one’s injuries in an automobile accident, regardless of who was to blame. The slogan suggested a kind of entitlement, regardless of responsibility.

At about the same time there developed the concept of “no-fault divorce” in which marriage was treated simply as a contract from which a person might walk away, even as the result of a unilateral choice, without regard to responsibility. Then came the idea of “no-fault sex,” i.e., the sense that one could engage in sex without taking responsibility for a child conceived through sexual intercourse, for there was always the option of abortion. Now we have the notion of “no-fault medicine,” represented by euthanasia and assisted suicide, with all of the enabling statutes that immunize physicians from criminal and civil responsibility.

LEGAL AND MORAL METAMORPHOSIS

As in all human social situations, acceptance is a process rather than a single event. The concept of “death with dignity” is not a construct of 1960s America. Its modern genesis was a book written in the 1920s in Germany by a psychiatrist and a law professor that recommended that a “good” death be furnished to pure blood Germans with painful terminal diseases.¹

This eugenic movement was pioneered in America by Margaret Sanger, founder of Planned Parenthood of America as well as of its predecessor, the American Birth Control League. Select quotations illustrate her views: “Birth control—more children from the fit, less from the unfit.” “Birth control—to create a race of thoroughbreds.” “No man or woman should have the right to become a parent without a permit for parenthood.”²

Eugenics became sufficiently well-accepted in the 1920s in the United States that it was even recognized by the U.S. Supreme Court.³ In that case the Court upheld a mandatory sterilization statute as applied to the mentally retarded on the mistaken (but then widely accepted) theory that mental infirmity was inherited (“three generations of imbeciles are enough,” to quote the indelicate language the Court used).

It ought to be frightening that the U.S. Supreme Court used that decision as supportive authority for its 1973 decision legalizing abortion. One would have thought that such a line of reasoning had been abandoned after the Nazi experience. The Court’s decision ushered in the modern medical holocaust of surgical abortion that kills more than a

¹ Karl Binding and Alfred Hoche, *The Release of Destruction of Life Devoid of Value* (Santa Ana CA: R.L. Sassone, 1975), originally published in German by Felix Meiner Verlag, Leipzig, 1920.

² Elasah Drogin, *Margaret Sanger, Father of Modern Society* (New Hope KY: CUL Publications, 1989).

³ *Buck v. Bell*, 274 U.S. 200 (1927).

million unborn children a year in this country.⁴

This anti-life movement suffered a temporary setback in the United States by reason of the Nazi embrace of the euthanasia concept. By the end of World War II the Nazis were doing away with amputees from World War I and even with children who were chronic bed wetters and those who had badly modeled ears in their insane search for “perfection.”⁵

DEFINITIONAL DEHUMANIZATION: THE SEEDS OF EUTHANASIA

In 1973 the U.S. Supreme Court authorized the killing of a whole class of innocent human beings, the unborn, on the grounds that they were “not persons in the whole sense of the word” (*Roe v. Wade*, supra). Thus began anew the slippery slope. If one may destroy a human being because he is too young, then there is no reason why one may not destroy him because he is too old, unproductive, expensive, and so on. Doing so has depended on a new version of the old euphemistic game or re-naming things of which one ought to be ashamed, such as in the phrase “death with dignity” and the argument about the “right to die,” an argument fueled by the concept of cost-containment in medicine. The movement progressed despite the inverted demographic structure that has resulted from abortion and contraception. There are proportionately fewer and fewer people entering the work force to sustain more and more people leaving for retirement, thus undermining the social security system. For the first time in history, people over the age of sixty will outnumber children fourteen years or younger in many industrial countries.⁶

⁴ *Roe v. Wade*, 93 S.Ct. 705 (1973).

⁵ Fredric Wertham, M.D., *A Sign for Cain: An Exploration of Human Violence* (New York NY: Macmillan, 1966). See also Fr. Paul Marx, O.S.B., *Death Without Dignity* (Collegeville MN: Liturgical Press, 1978).

⁶ Population Research Institute Seminar, featuring insurance industry expert W. Patrick Cunningham, Harvard research specialist Nicholas

LIVING WILLS

In my more than thirty years of involvement in the Pro-Life movement, I had been unequivocally opposed to Living Wills, for I saw them as the opening wedge in the euthanasia movement. They seemed to me to be unnecessary, capable of mischief, and furnished to us by the same people who gave us abortion on demand. They have quite properly been called “designer deaths.”

The development of my present stance on this question (that is, support for what Professor Charles Rice calls “Please Don’t Kill Me Wills”) has been dictated by the unfortunate successes of the pro-death forces in our legislatures and courts. In my own state of Kentucky we had successfully resisted the passage of Living Will statutes until 1998. When the first bill passed, pro-life organizations warned that the death peddlers would return shortly, seeking to legalize the withdrawal of food and water in addition to “extraordinary means” of life support. It only took them one session to do so. In 1990 they passed such an amendment, and I regret to report to you that it was passed with the support of the Kentucky Conference of Catholic Bishops. It contained an incredibly expansive net to catch the unwary, i.e., those who thought that they were safe by not having a Living Will. It mandated that with respect to any patient who is “comatose” (not dying, just “comatose”) and who had *not* executed a Living Will, someone else could be appointed to make decisions, including the withdrawal of food and water.

Another reason that a pro-life Living Will is necessary is the Federal Patient Self-Determination Act, enacted by Congress in 1991. It requires hospitals and nursing homes to explain to every person newly admitted their *rights* under state Living Will laws. The practical effect of this is to shove under the noses of these infirm and frequently aged people the “designer death” formula of the state statutes that they should not be furnished extraordinary care, that they should not be furnished food and

Eberstadt, and World Magazine journalist Mindy Belz.

water, etc., etc. This vulnerable population is given the impression that they *must* execute such a document and many then do so, frequently when it would truly be contrary to their wishes. In default of education and the availability of a better document, they are seduced.

The only way to avoid this death-inducing scheme is to have alternative pro-life documents available. A massive educational effort is imperative to get such documents into the hands of the public, with the understanding that they need to have them in order to protect themselves.

COMPASSIONATE KILLING

Killing, of course, is never compassionate. Its advocates do not understand the true etymology of the word “compassion” (suffering *with*). It is certainly not “merciful” to cause someone to die from starvation and dehydration. An accurate medical description of the horrors of such a death includes the following:

Various effects from lack of hydration and nutrition lead ultimately to death—mouth would dry out and become caked or coated with thick material.... Lips would become parched and cracked.... Tongue would swell and might crack.... Eyes would recede back into their orbits and cheeks would become hollow.... Lining of the nose might crack and cause the nose to bleed.... Skin would hang loose on his body and become dry and scaly.... Urine would become highly concentrated, leading to burning of the bladder.... Lining of his stomach would dry out and he would experience dry heaves and vomiting.... Body temperature would dry out into thick secretions that would result in plugging his lungs.... At some point within 5 days to 3 weeks his major organs, including lungs, heart, and brain would give out, and he would die...extremely painful and uncomfortable...cruel and violent.⁷

This incredible brutality has led to the argument, embraced even in the prestigious *New England Journal of Medicine*, contending that the

⁷ *Paul Brophy v. New England Sinai Hospital*, Mass. S. Ct. 1986.

distinction between active and passive euthanasia is philosophically unjustified. If we are killing these people painfully by “omission,” then we should frankly kill them painlessly by “commission.”⁸

MODERN STATUTORY APPROACH

Most states have Living Will legislation as well as legislation pertaining to healthcare surrogates (sometimes called “proxy” legislation). Both approaches are fatally flawed. The first involves the patient making healthcare decisions in writing in advance of the onset of disease and before even a diagnosis has been made. Such a decision cannot be well-considered or appropriate to the situation.

The second (the proxy approach) gives *carte blanche* to some other person to make that decision for the patient if the patient becomes comatose or incompetent. Here, of course, there is no application at all of the patient’s own wishes, consistent with his own moral philosophy, and no control on the part of the patient—“control” being, ironically, the usual selling feature emphasized by the pro-death movement.

Combining the best features of these approaches while still complying with state statutes can produce legal instruments that articulate a philosophy that will be difficult for the death-dealers to compromise. Such a pro-life directive designates a person whom one individually chooses (someone on the same moral wavelength as the patient) to have authority in the event that one loses decisional capacity, while prescribing the guidelines by which the proxy, one’s physician, and any other person who comes to be involved are to be bound. “Human bodily life” is described in such documents as “inherently good and not merely instrumental to other goods.” Specifically prohibited is anything being done or omitted such that an act or omission “would be the direct and primary cause of my death.” It directs that the patient “be provided medical care and treatment appropriate to my condition that

⁸ See NEJM 292/2 (9 January 1975): 78-80.

offer a reasonable hope of benefit without excessive pain and that do not pose a severe threat to my life.”

Such an approach short-circuits the pro-euthanasia concept (often developed under the term “futile care”) and provides that “while certain treatments may be futile in combating or curing a disease, treatment or care that sustains life is not futile.” It insists that “pain relief and basic nursing care, specifically including food and fluids, are to be provided as well as ordinary nursing and medicare care appropriate to my condition.” Admittedly, there is no panacea in this complicated field. Many years ago I recall learning that the marvelous Christian convert, Malcolm Muggeridge, indicated that his prayer was that in his final days he would “be delivered into the hands of a Christian physician.” Unfortunately, in this post-Christian era in the United States, and with the degeneration of legal, medical, and moral standards, the defense stratagem needs to be a little more thorough.

POWERS OF ATTORNEY

Most everyone is familiar with the concept that you can execute a document that gives authority to another person to make decisions for you. For people of advanced years, the use of a Durable Power of Attorney is recommended. This gives that authority to a person who shares your moral values. One can add therein the healthcare decision guidelines described above. The authority granted to the attorney-in-fact by the Durable Power of Attorney continues even after the principal becomes disabled, because this document contains an additional paragraph that states: “This power of Attorney shall not become ineffective upon my disability.” This point guarantees continuity of decision-making authority in the person in whom you have trust—but limited by the guidelines you have specified. The Durable Power of Attorney avoids the intervention of a court-appointed guardian who may or may not follow your wishes.

For those who are young and in good health and who do not need to have another presently take care of their affairs, a Springing Power of

Attorney is recommended. Such a document gives the same authority and the same healthcare decision guidelines, but postpones the effectiveness of that grant of authority until such time as disability arises, which can be confirmed by the affidavit of the treating physician.

The genesis of these principles can be found in various ecclesial documents, including the following: *Catechism of the Catholic Church* §2276-79, Pope John Paul II's Address to the Pontifical Academy of Sciences (21 October 1985), "Guidelines on Life-Sustaining Treatment" by the National Conference of Catholic Bishops' Committee on Pro-Life Activities (January 1985), and *Declaration on Euthanasia* by the Sacred Congregation for the Doctrine of the Faith (5 May 1980).

PRO-LIFE LAWYERS

Pro-life lawyers are essential. The term is not an oxymoron, for they do exist and they have such great patron saints as Thomas More, Robert Bellarmine, Robert Ives, and Francis de Sales. It is *crucial* to select a pro-life lawyer and make sure that this attorney is on the same moral wavelength. Such an attorney can then apply these principles to the statutes of the state in which you live and can produce protective and principled pro-life documents.

HOSPICE VS. ASSISTED SUICIDE

An early pioneer in the hospice movement (founded originally in the middle of the nineteenth century by the Irish Sisters of Charity) was the English physician Richard Lamerton, M.D., who writes: "Deep in our common mind and heart, as old as our civilization itself, is the knowledge that hospitality is a duty owed to the weary traveler and to the sick." Dr. Lamerton also warns against euthanasia and assisted suicide:

Once a patient feels welcome, and not a burden to others, once his pain is controlled and other symptoms have been at least reduced to manageable proportions, then the cry for euthanasia disappears.... It is our duty so to care for these patients that they never ask for euthanasia. A patient who is longing

to die is not being treated properly.⁹

A modern expert on the subject, Dr. Ira Byock, president of the American Academy of Palliative Medicine, points out that the control of pain “can *always* be done.”¹⁰ And, of course, individual and intentional termination of innocent human life is always prohibited: “One may not do evil, even to accomplish good.”¹¹ The same principles were reiterated recently by Pope Benedict XVI.¹² In our increasingly amoral society, the devil is in the details, and one must determine the specific moral principles operative in any given hospice. Many of them have become “death camps,” as Bobby Schindler stated while he helplessly watched the court-ordered execution by dehydration of his sister Terri Schiavo, who was prohibited by armed guards from even having her lips moistened.

THE GERMAN EXPERIENCE

We need here to consider the observations of Dr. Leo Alexander, a psychiatric consultant to the Nazi war crimes trials of physicians at Nuremberg:

Whatever proportions these [German war] crimes finally assumed, it becomes evident to all who investigated them that they had started from small beginnings. These beginnings at first were merely a subtle shift in emphasis in the basic attitude of the physicians. It started with the acceptance of the

⁹ Remarks by Dr Ira Byock, President of the American Academy of Hospice and Palliative Medicine, at the Kentucky Association of Hospices Symposium, Louisville KY (June 9-11, 1999). See also his article in *The Wall Street Journal* (27 June 1997).

¹⁰ Ira Byock, M.D., *Dying Well* (New York NY: Riverhead Books, 1997), p. 245.

¹¹ Romans 3:8; see *Catechism of the Catholic Church*, §2280-83.

¹² *Catholic World Report* (January 2009): 29ff.; Pope Benedict XVI, Address to Conference on Organ Donation (11/7/08) in *Catholic World Report* (January 2009): 32.

attitude, basic in the euthanasia movement, that there is such a thing as a life not worthy to be lived. This attitude in its early stages concerned itself merely with the severely and chronically sick. Gradually the sphere of these unproductive, the ideologically unwanted, the racially unwanted, and finally all non-Germans. But it is important to realize that the infinitely small wedged-in level from which this entire trend of mind received its impetus was the attitude toward the non-rehabilitatable sick.

Those who argue that assisted suicide can be effectively limited and controlled must confront the naive statement of U.S. Chief Justice Warren Burger, expressed in *Roe v. Wade* in 1973: "Clearly the court today does not authorize abortion on demand." If Burger were alive today, how would he react to the surgical slaughter of four thousand babies a day in the United States—more than forty-eight million since 1973—most performed for reasons having nothing to do with even the most strained and farfetched medical argumentation?

THE DUTCH EXPERIENCE

From a practical standpoint, the consequence of blurring the line between "healing" and "killing" by the healthcare profession has resulted in a disastrous slide down the slippery slope. In the 1970s, the Dutch courts began to tolerate physician-assisted suicide for terminally ill but competent patients. By the early 1980s, the medical profession had established guidelines for physicians to perform assisted suicide and euthanasia.

In 1984 the Netherlands Supreme Court accepted physician-assisted suicide and euthanasia not only for terminally ill patients but also for chronically ill and elderly patients whose deaths were not otherwise imminent. In 1986 the Dutch Medical Association established "guidelines for euthanasia." And in 1990 the official Remmelink Report confirmed that "non-voluntary euthanasia was being widely performed in the Netherlands: 2,300 cases of euthanasia at the patient's request, 400 cases of physician-assisted suicide, and more than 1,000 cases in which physicians terminated patients' lives *without their consent*. Fourteen

percent of the patients who were killed without consent were fully competent and eleven percent were partially competent. These were patients who could have made their own decisions about whether to live or die but were never given the opportunity to decide for themselves.”¹³ This has euphemistically been referred to as “termination of patients without explicit request.”

In her landmark book *Deadly Compassion*,¹⁴ Rita Marker points out how Anne Humphry was hounded to her suicide by her pro-death husband Derrick Humphry, the founder of the Hemlock Society, and how he had earlier killed his first wife and well as his parents. As Marker points out, these statistics from Holland demonstrate that in a nation of only some fifteen million people, whose total death count each year is about 130,000, Dutch physicians have deliberately ended the lives of some 11,800 people each year by administering or providing lethal doses or lethal injections. This accounts for more than nine percent of the total annual deaths in the nation.

This modern downward spiral has predictably and unavoidably proceeded “from assisted suicide to active euthanasia, from terminally ill to chronically ill, from voluntary to non-voluntary, and from physical illness to mental suffering.”¹⁵ In twenty-three years we have gone from tolerance of the practice of physician-assisted suicide for physically suffering, terminally ill, competent patients to the judicial and medical approval of the non-consensual termination of patient lives. The camel is never content with only his nose in the tent! Ironically, it was Dutch physicians who were most resistant to Hitler’s euthanasia initiatives.

¹³ *Issues in Law & Medicine* 14/3 (1998): 302.

¹⁴ Rita Marker, *Deadly Compassion: The Death of Anne Humphry and the Truth about Euthanasia* (New York NY: William Morrow, 1993).

¹⁵ *Issues in Law and Medicine* 14/4 (Winter 1998).

DEATH WITHOUT DIGNITY: STARVATION AND DEHYDRATION
(MODERN EUTHANASIA, AMERICAN STYLE)

Capital punishment for the innocent, by the cruel and barbaric method of starvation and dehydration, was judicially established as a method to get rid of the inconveniently ill, in the now famous Florida case involving Terri Schiavo. Mrs. Schiavo was admitted to a Florida hospital by her husband Michael after a mysterious collapse. She was comatose and never able to describe what had occurred to her, although a bone scan taken within months after her admission revealed multiple fractures in her ribs and hip joints, upper thighs, and both knees and ankles, even though she had not been involved in an automobile accident or anything of that kind. Her husband was named as her legal guardian and was successful in a \$2.25 million medical malpractice suit on her behalf. He used the funds not for her care but for litigation as he sought to have her killed. Mr. Schiavo took up living with another woman and fathered a child by her, and ultimately succeeded in having the courts authorize the withdrawal of food and water from her, resulting in her slow and painful death. These facts are documented in *Terri's Story* by Diana Lynne.¹⁶

As pointed out by Fr. Frank Pavone, National Director of Priests for Life, who spent much of the last two weeks of Terri's life at her bedside as she was being starved and dehydrated to death (the official cause of death reported on her autopsy report):

She is not dying. She has no terminal illness. She is not on a life support system. She is not alone, but rather has loving parents and siblings ready to care for her the rest of her life. She has not requested death.... Terri's death was not at all peaceful and beautiful. It was quite horrifying. She is dehydrating to death, and looked it. Her face had an expression of dread and sorrow. In my 16 years as a priest, I never saw anything like it before.¹⁷

¹⁶ Diana Lynne, *Terri's Story: The Court-Ordered Death of an American Woman* (Nashville TN: WND Books, 2005).

¹⁷ Online at <http://www.priestsforlife.org/euthanasia/terri.htm>, accessed 24 February 2005.

Dr. James Dobson, Chairman of Focus on the Family, also argued against the killing of Terri Schiavo, by pointing out the recent return to memory and speech of another lady who was comatose for twenty years after being struck by a drunken driver: “Mental disabilities do not damage a person’s worth—the preciousness of life is not defined by one’s abilities.”¹⁸

PAPAL TEACHING

The ethical principles concerning the furnishing of food and water to all patients, including the comatose, were re-stated by His Holiness Pope John Paul II in “Life Sustaining Treatments and Vegetative State: Scientific Advances and Ethical Dilemmas” (20 March 2004). After rejecting the non-diagnostic phrase “vegetative state” as “demeaning the value and personal dignity of a person,”¹⁹ the pope pointed out that “the administration of food and water, even when provided by artificial means, always represents a *natural means* of preserving life, not a *medical act*...and as such is morally obligatory” [his emphasis]. Both Pope John Paul II and Terri Schiavo went home to the Lord in Holy Week of 2005, he dying by natural means, she a painful victim of modern mendacity.

What is needed is for the courts to acknowledge this fundamental moral truth, that food and water constitute human care, not medical treatment, and thus that it is always morally obligatory to provide them to every human being, regardless of their condition. If the courts fail to do this, then the legislative and executive branches need to address the abuse of power in the courts. In the meantime, everyone should execute pro-life documents about the end-of-life (both living will and medical

¹⁸ Christian Communication Network, February 11, 2005.

¹⁹ “A man, even if seriously ill or disabled in the exercise of his highest functions, is and always will be a man, and he will never become a ‘vegetable’ or an ‘animal’.”

power of attorney) that express this principle, so as to protect themselves from the horrible death of starvation and dehydration.

LIVING WILL OR SURROGATE PROXY?

Most states have legislation authorizing these approaches. Taken singly, each of these approaches is fatally flawed. The first (the living will) involves the patient making specific healthcare decisions in writing, in advance of the onset of the disease and before even a diagnosis has been made. Such a decision, therefore, cannot be well-considered or appropriate to all situations. The second (surrogate proxy) gives *carte blanche* to some other person to make that decision for the patient if the patient becomes comatose or incompetent.

Had Terri Schiavo followed the “proxy only” approach, she most likely would have designated her husband Michael in that role. Hindsight clearly demonstrates that we cannot be “certain” that any given individual will comply with our “unspecified” wishes or with moral law. Michael would presumably have killed her by dehydration under such a proxy, as he did in fact under his power of guardianship. Had she had *an appropriate pro-life living will*, she would not have been subjected to the painful death that she actually experienced.

There exists another flaw to the “proxy only” strategy. Even if a person executes a proper pro-life healthcare surrogate document that spells out the mandatory provision of food and water, and so on, years later he may be taken to a hospital under a dramatic healthcare situation, at which time he and his family members will be asked by the hospital clerk whether the patient has a living will. When advised in the negative, a “designer death formula” form will likely be presented, providing that food and water shall not be artificially furnished. In the urgencies of the situation, it will often be the case that the document will be signed without careful reading or full explanation. I advise readers that these documents are being widely circulated and in fact are in use even at the “Catholic” Saint Elizabeth Hospital near my own home in northern Kentucky, even though we have complained to the hospital and to the

bishop.

When the patient becomes comatose and when a dispute arises at the hospital level, with a healthcare surrogate document that is several years old that specifies that food and water be provided and a one-day-old living will that specifies that food and water not be given, the matter could well be taken to court, where the resulting decision is not likely to be a good one. The most recent document will be held to be applicable.

As a lawyer with personal experience of in-depth research on this subject over many years and with experience in handling these cases at a counseling level, at a level of medical confrontation, and at the level of litigation before the Kentucky Supreme court, I suggest that the only chance for adequate protection of a patient requires that a person have *both* the healthcare proxy and a pro-life living will, each of which must name a person in whom the patient has the best opportunity for trust to see to the execution of these documents. But these documents must also spell out the specific provisions of care and must make clear that such provisions are binding upon physicians, hospitals, and the surrogate himself. Food and water must be mandatorily provided, without exception, unless death is immediately imminent, as noted in the recent statement by Pope John Paul II in 2004.

While there is no panacea in this field, the combination of the best of each of these approaches results in a protection plan of legal instruments that articulate a philosophy that will be difficult for the death-dealers to circumvent: “Human bodily life is inherently good and not merely instrumental to other goods.... Nothing shall be done or omitted that would become the direct and primary cause of my death.... The patient is to be provided medical care and treatment appropriate to his condition, which offer a reasonable hope of benefit without excessive pain and do not pose a severe threat to his life,” and so on.²⁰

²⁰ Appropriate language can be found in *Catechism of the Catholic Church* and in the documents that I have drafted and explain in more depth in my book, *That Reminds Me of a Story.... Reflections of a Pro-Life Warrior*,

While it is true that the concept of the Living Will was initiated by the same people who gave us abortion on demand, my personal metamorphosis to the belief that we need to prepare what Prof. Charles Rice calls “Please Don’t Kill Me Wills” has been dictated by the unfortunate successes of the pro-death forces in our legislatures and courts. It is absolutely indispensable that we provide this essential protection to our aged and our ill, a vulnerable population in this age of fractured families and moral de-sensitization.

BRAIN DEATH AND ORGAN DONATION

The complexity of this topic makes impossible a thorough discussion of this problem here. One needs, however, to be aware of the tension that exists between Judeo-Christian principles of maintaining life, on the one hand, and the demand for organs, on the other. Prior to 1968, a patient was pronounced dead by a physician who observed the absence of circulation, breathing, and reflexes. But in 1968 a committee at Harvard Medical School recommended using irreversible cessation of all brain activity as the sole criterion for determining brain-death. This change allowed doctors to take organs from people whose heart and lungs were kept going artificially, a process essential to the protection of the conditions of the organs so that they would be useful for transplantation.²¹

Most people would be shocked at some of the “protocols” (procedures) established at some hospitals for the harvesting of organs. One requires the injection of morphine! Why a painkiller, if the patient is already dead? Three-quarters of the hospitals surveyed permitted doctors to take organs from patients who are not even brain-dead! Some of these shocking facts were highlighted on a “60 Minutes” CBS documentary on

available at Northern Kentucky Right to Life Educational Foundation, Inc., P.O. Box 1202, Covington KY 41012, www.nkyrtl.org (\$12.95).

²¹ *Understanding Brain Death* by Paul Byrne, M.D. Chairman of the Department of Pediatrics, St Vincent Medical Center, Bridgeport CT.

13 April 1997, "Not Quite Dead." In one case, the records show that the heartbeat of the patient shot up during the time when the organs were being cut out. In another it acknowledged that death did not occur until vital organs were removed from a gunshot victim.

These truths have now been widely documented in professional and secular publications. As Dr. Stuart Younger wrote in a letter to the editor of the *New England Journal of Medicine* on 14 November 1994, "The signs of life in brain-dead patients...are very real and cannot be discounted in human terms, even if we have done so in public policy."

Given all this, it is crucial to re-examine the practice of signing one's driver's license, for in many states that signature authorizes the donation of organs. Many organs do not survive a person's death, and thus harvesting them in effect causes the death of the person. One may not morally give them away without being responsible for causing the death.

One way of building up "an authentic culture of life," suggested Pope John Paul II in his encyclical *Evangelium vitae*, is restricting the donation of organs to situations in which it can be "performed in an authentically acceptable manner" (§86). In the name of fraternal charity, the Church does encourage certain kinds of organ translation. But under moral law the Church sees the need to observe certain restrictions on this practice. There is need to distinguish between organ transplants *inter vivos* and *post mortem*. An example of the first category would be a donation of bone marrow or of one of two healthy kidneys. Organ transplants such as these do not threaten the life or health of the donor. On the other hand, organs that are necessary for sustaining life can be donated only after the true death of the donor. These would include such vital organs as the heart, lung, and liver.

As set out in the *Catechism of the Catholic Church* §2296, there are three requirements that must be met: (1) there must be informed consent given by the donor or someone who can legitimately make such a decision, (2) "the physical and psychological dangers and risks incurred by the donor are proportionate to the good sought for the recipient," and

(3) “it is morally inadmissible directly to bring about the disabling mutilation or death of a human being, even in order to delay the death of the other persons.” In other words, if the removal of the vital organs from the donor causes or hastens his death, then the organ transplant is morally impermissible, regardless of any good intended. The immanence or inevitability of the donor’s death is not moral authority to cause or hasten it. The end does not justify the means (see Romans 3:8).

As reported in *Catholic World Report* in 2000, Pope John Paul II stated: “Vital organs which occur singly in the body can be removed only after death—that is, from the body of someone who is certainly dead.”²² The problem arises that if doctors wait to make sure that a person is “certainly dead,” the vital organ may also die and would no longer be beneficial. Can it be determined with certainty that death has occurred prior to the deterioration of the vital organs to a state where they can no longer be used for transplantation?

Writing in *Catholic World Report* in March 2001, Bishop Fabian Wendelin Bruskewitz and Bishop Robert T. Vasa, joined by members of the medical community, stated (pp. 50ff.):

We maintain that the present human transplantation procedures promote the intrinsic good of the recipient while *not* preserving, but rather extinguishing, the life of the donor. However, the medical community know that unpaired vital organs taken from a “certainly dead” donor are unsuitable for transplantation.... When healthy vital organs are taken in accordance with the legal common practice of medicine, the donor is killed.

In order to facilitate organ donations, there have been numerous attempts to redefine death in an arbitrary fashion that is divorced from true biological facts. Bishop Bruskewitz and his co-authors warn: “Every transplant center agrees that death is whatever and whenever a doctor says it is.” In November 2008 Pope Benedict XVI praised the meritorious nature of the act of organ donation but condemned the abuses

²² Address to the International Congress on Transplants (29 August 2000).

prevalent in the organ transplant industry:

It is helpful to remember, however, that the individual vital organs cannot be extracted except *ex cadavere*.... In these years science has accomplished further progress in certifying the death of the patient. It is good, therefore, that the results attained receive the consent of the entire scientific community in order to further research for solutions that give certainty to all. In an area such as this, in fact, there cannot be the slightest suspicion of arbitration, and where certainty has not been attained the principle of precaution must prevail.... However, in these cases the principal criterion of respect for the life of the donor must always prevail so that the extraction of organs be performed only in the case of his true death.²³

Alan Shewmon, M.D., professor of neurology and pediatrics at UCLA, after praising the pope's references to "the entire scientific community" and "certainty," stated:

It can hardly be claimed that there is a "consensus of the entire scientific community" and "certainty" regarding the diagnosis of brain death when some countries define it in terms of the whole brain while others in terms of only the brain stem.... There is a persistent current of publications in the medical and philosophical literatures questioning whether any sort of purely neurological "death" is true death.... Until a true professional consensus is reached on such important aspects, "the principle of caution should prevail."²⁴

Christians must not be misled by "legal" definitions of death. Just because a law, or an "accepted" medical "ethic" may assert some moment when death occurs, the definition cannot change the reality of when death does in fact occur. In determining what is right and what is wrong, an individual must look to reality and not to an arbitrary definition, e.g., when the pro-abortion American College of Obstetrics and Gynecology arbitrarily changed the definition of the beginning of

²³ *Catholic World Report* (January 2009): 32-33.

²⁴ *Catholic World Report* (January 2009): 33; "Recovery from Brain Death: A Neurologists's Apologia," *Linacre Quarterly* (1997).

life. It has been known for decades to be at “conception,” that is, the fertilization of the egg by the sperm, but this association began to claim the moment to be that of the “implantation” of the conceptus in the womb, so as to legalize chemical abortion through the pill.

Paul A. Byrne, M.D., former president of the Catholic Medical Association, writing in *Celebrate Life*,²⁵ warns that patients have been declared “brain dead” and yet are alive today. He relates the story of twenty-one-year-old Zack Dunlap, who was declared “brain dead” four hours after an accident. As they were preparing to remove his organs, a nurse scraped his foot and beneath one of his fingernails, whereupon he moved. He later stated that he heard the doctors pronounce him dead twice.²⁶

MORAL ENTROPY

Entropy, a fundamental principle of physics, tells us that all physical things deteriorate. In the moral realm also, I would submit that things either improve or deteriorate—they never just stay the same. And that reminds me of a story—of the family that lived in an isolated cabin on top of a mountain. The grandfather was dying. The father called in the twelve-year-old son and instructed him to put his grandfather on an old rickety cart that was out in the barn and take him to the edge of the cliff and push him over. When the son returned with the empty cart, the father inquired why the son hadn’t just pushed the old cart over the hill with his grandfather, and the son responded, “But Dad, won’t I be needing that for you?”

Why do we assume that this present generation can abort our

²⁵ July-August 2008.

²⁶ For an excellent discussion of this topic, I refer the reader to “Life, Life Support, and Death,” authored by nine eminent pro-life physicians and a pro-life lawyer, led by Paul A. Byrne, M.D., past president of the Catholic Medical Association of the United States and available through the American Life League, Inc., P.O. Box 1350, Stafford VA 22555.

children's siblings and euthanize their grandparents, without simultaneously affirming to our children the appropriateness of such conduct? We can be assured that unless we effectively restore the fundamental principle of the dignity and inviolability of each individual human life, from conception to natural death, we are guaranteed further erosion in other aspects of life.

In 1993 the Kentucky Supreme Court approved the killing of a comatose patient by starvation and dehydration in the case of *DeGrella v. Elston*.²⁷ The rationale used by the court was that this longtime comatose patient had been heard, by witnesses, to express prior to her comatose state a desire not to be kept alive should that occur to her. The Majority Opinion declared that it was not approving a death decision made by another for a patient based upon the patient's "quality of life" and issued this disclaimer: "Nothing in this Opinion should be construed as sanctioning or supporting euthanasia, or mercy killing."

The slippery slope of evolutionary aggression continues, however, with a more recent decision of the Kentucky Supreme Court in a case for which I served as an *amicus curiae*, involving the proposed action of the Attorney General to order the removal of tube feeding from a comatose but non-dying retarded patient. To get rid of him, it was necessary to "push the envelope" and create a new anti-life doctrine, the dangerous test of "substituted judgment" (which had been specifically rejected in *DeGrella*, by which one person or entity (here, the State) presumes to have the wisdom to decide for another that this other person will not recover and that death is better than life. The court approved the killing action, even though this preceded the Schiavo decision.²⁸ The slippery slope get ever more slippery and steeper!

In Appendix III to my book I have provided pro-life documents that I have drafted: Pro-Life Living Will Directive, Durable Power of Attorney, and Springing Power of Attorney. These can be taken to a

²⁷ *DeGrella v. Elston*, Ky. 858 S.W.2d 698 (1993).

²⁸ *Woods v. Commonwealth*, 142 S.W.3d 24 (2004).

local pro-life attorney to be adapted for the particular state statutes, so as to make sure that they qualify. *Never assume* that an attorney is pro-life, even if such an assumption seems normal because of his religion or some other affiliation. The attorney needs to be interrogated along the lines of the principles contained in these documents. The life one saves may well be one's own!

WHAT ARE WE TO DO?

As with so many things in life, the solution is simple but not easy. We are to trust in God. Rest assured that He will send us other and stronger calls to return to Him. We are to keep the faith, communicate the truth, and pray, but recognize that until enough people recognize that “it ain’t the economy, stupid, it’s the morals,” things will continue to worsen.

As individuals, we must remember always to keep our eye on the goal. I heard a gifted clergyman recently preach a message that each of us probably needs to hear repeated frequently. He said that every day is a Day of Judgment. We judge whether to follow Christ or to sin against Him, whether to choose life or to choose death, and we approach a day closer to that final gate through which we will pass into eternity, either Heaven or Hell. Hence we should heed the advice of St. Paul:

Do you not know that those who run in a race, all indeed run, but one receives the prize? So run as to obtain it. And everyone in a contest abstains from all things, and they indeed to receive a perishable crown, but we an imperishable one. I, therefore, so run as not without a purpose. I so fight as not beating the air, but I chastise my body and bring it into submission, lest perhaps after preaching to others I myself should be rejected.²⁹

Remember, too, the words of Winston Churchill: “Never, never, never, never, never give up!” Further, to paraphrase the admonition of St. Paul:

²⁹ 1 Cor. 9:24-27.

Always, always, always keep your eye on the goal – horizontal and immanent, yes, but more importantly, vertical and transcendent!

LETTING GO

In 2001 *Homiletic & Pastoral Review* published an article of mine on euthanasia,³⁰ tracing the modern history of this tragic movement for the past hundred years as it has wound its way into our modern American society. I captioned the article “Euthanasia: Hell’s Last Sacrament” after the title that George A. Kendall gave to a marvelous article that he published years earlier in *The Wanderer* (12/11/86).

Kendall’s article contains some of the finest philosophical and theological indictments of the pro-death movement that I have ever read, including this passage:

For the Christian, the meaning of life, its value is love. From this perspective, life is one long process of letting go of self. Not, of course, the genuine self which God created in love, but of the sovereignty of the ego. It is one long process of giving the self to others and ultimately of surrendering the self to God in love. The process of dying is simply the last stage of this process. The affirmation of God’s sovereignty by surrendering oneself, one’s life to His life. It is the final letting go of every egotistical and self-centered attachment in allowing one’s self to fall at last into the void.... The Christian facing death fears Satan’s last efforts to draw him into evil. He receives the last sacraments. The unbeliever, in contrast, faces his Enemy’s last attack and chooses suicide as a defense. Euthanasia, assisted suicide, self-deliverance, aid in dying must therefore be understood in spiritual terms as a kind of Satanic last sacrament of evil, a kind of final right of passage by which the man who has chosen the outer darkness over God’s light of love passes through the last threat and finds his rightful place in that eternal darkness.

Consider the striking parallels between the ages of man and the seasons of the year. Our youth is springtime, bursting forth with the energy of new life, filled with the excitement of learning, and accepting, and

³⁰ *Homiletic & Pastoral Review* (March 2001): 14-21.

beginning our vocation. Then comes summer, mankind's maturing years, busily devoted with enthusiasm and idealism to important goals—busily and avidly pursuing and attempting to implement these goals. Next comes perhaps the most beautiful season of all, autumn, with the breathtaking display of God's beauty in nature in the foliage. Here we are in the position of attempting to benefit others and ourselves by the experiences and opportunities that have been given to us—teaching both by word and example and passing on to the generations behind us the accumulated wisdom of the ages of which we have been the beneficiaries. These can and should be very productive years.

Finally, winter has its own quiet beauty and significant importance. In nature things are going dormant and indeed dying. Here again God teaches, as the energy and busyness of summer have faded through autumn, that now it is the time of preparation for the end, with its solemn dignity. This can be an opportunity for the most important work of all. In nature it is the snow that feeds the rose beneath the soil. In human development we are preparing for the second most important day of our lives—the day of our death, when we must give an accounting to our Maker. In these last stages the way in which we prepare ourselves can be eloquent testimony to others.

To cut short this crucial time by euthanasia, assisted suicide, or the like is to deprive the soul of this most important opportunity for tremendous spiritual progress, and to deprive the person of that essential opportunity to make his final peace and say his final goodbyes to others, to attempt to do better with others than he has heretofore done with them, and to permit them the same opportunity with respect to him.

For the dying patient who needs to make peace with himself, with his loved ones, and with his God, the five last words suggested by Hospice are recommended: "I forgive you—forgive me—thank you—I love you—goodbye." To these must be added, "Pray for me, as I do for you."

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The “Heated Debates” Survey: How Connecting Issues Have an Impact on Opposition to Violence

Rachel M. MacNair

ABSTRACT: Do people rate the consistent life ethic as making them more likely to oppose death-causing practices? Do they similarly rate the idea that killing is traumatic? An online survey offered these as two of five arguments connecting abortion, capital punishment, and war when asking respondents to rate the impact of each argument on each issue. Consistency and trauma were rated as moving toward opposition on practices that the respondents favored, but primarily with respondents who opposed one practice but favored the other. Those who favored both were less impressed. An argument favoring abortion to deter crime by eliminating future criminals also moved people who favored abortion availability toward opposing abortion. Consistency and trauma are two arguments that can strengthen the case against each form of socially-approved killing, but most strongly in those who already oppose one form and can therefore be encouraged to apply those arguments to other forms.

THERE ARE TWO RESEARCH QUESTIONS for this quantitative study. The first is: how do people who are not already persuaded rate the persuasiveness of the concept of the consistent life ethic, as compared to other arguments connecting issues of violence? The second is: how do people rate the impact of the concept that the act of killing is traumatic on their position on issues involving killing? The research literature on the consistent life ethic or on connecting different issues involving killing deals entirely with those who already are or are not persuaded and investigates their differing characteristics. The literature on the idea that killing human beings can be an etiological stressor causing symptoms of Post-Traumatic Stress Disorder and other post-trauma reactions is almost entirely an attempt to establish whether this

is the case, and if so, what the implications might be. In both cases, there has been strong speculation, based on informal observations, that these two ideas have persuasive ability to move people toward greater opposition to killing of human beings under what are now socially-approved circumstances. This study is an attempt to offer some empirical evidence as to whether or not this is the case.

Several studies have focused on how positions on the two issues of abortion and the death penalty combine. They divide people into the four possible groups: those favoring both, those opposing both, and those favoring one of them but opposing the other. Claggett & Schafer¹ analyzed a public opinion survey in order to divide different demographic groups into those four categorizations and to ascertain percentages of each. Kimberly Cook² wrote a book in which she reported on extensive interviews with people in each of the four categories in order to get insight on their reasoning. However, these results are not representative of their respective groups as a whole. Her findings on the group favoring abortion availability and opposing the death penalty are used as one of the arguments (#4) to connect issues that will serve as one of the three contrasts to the two of interest for the current study. Johnson & Tamney³ were more narrowly focused by studying the capital punishment positions of abortion opponents. They divided the “inconsistent” (those who oppose abortion but favored the death penalty) and the “consistent” (those who oppose both). They found the inconsistent to be more traditional and more concerned with sexual morality.

¹ W.J.M. Claggett and B.E. Shafer, “Life and Death as Public Policy: Capital Punishment and Abortion in American Public Opinion,” *International Journal of Public Opinion Research* 3 (1991): 32-52.

² Kimberly J. Cook, *Divided Passions: Public Opinions on Abortion and the Death Penalty* (Boston MA: Northeastern Univ. Press, 1998); see also her “A Passion to Punish: Abortion Opponents Who Favor the Death Penalty,” *Justice Quarterly* 15 (1998): 329-56.

³ S.D. Johnson & J.B. Tamney, “Factors Related to Inconsistent Life-Views,” *Review of Religious Research* 30 (1988): 40-46.

Adding war and euthanasia as issues that are connected, Lester, Hadley, and Lucas⁴ tested students on personality differences. They found small differences on war and euthanasia, but none on capital punishment or abortion. An unpublished paper⁵ looked at the specific personality variable of Machiavellianism as first defined by Christie & Geiss⁶ and considered the scores of the different abortion/death penalty groupings. Those who oppose both abortion and the death penalty had the lowest Machiavellianism scores; those who favored both had the highest scores; and each of the two groups who favored one and opposed the other had similar scores that were in between the other two.

Edith Bogue⁷ covered the complications of American public opinion as shown in the General Social Surveys. She concluded that while few people hold to opposition to all the forms of killing of human beings, few people endorse them all either, and opinion is shifting toward opposition in several of the areas.

Much of the quantitative literature that includes the four issues of abortion, euthanasia, the death penalty, and war considers how they divide. Factor analyses on life-and-death positions uniformly have a two-factor solution: abortion and euthanasia (with assisted suicide, other suicide, and refusal of treatment) go in one factor, and capital punishment with military positions (war, arms build-up, military

⁴ David Lester, Richard A. Hadley, & William A. Lucas, "Personality and a Pro-death Attitude," *Personality and Individual Differences* 11 (1990): 1183-85.

⁵ Rachel M. MacNair, "The Relationship of the Machiavellian Personality, Sense of Coherence, and Ethics," paper presented on 1 March 2008 at the Mid-Year Research Conference on Religion & Spirituality, hosted by Division 36 (Psychology of Religion and Spirituality) of the American Psychological Association.

⁶ R. Christie & F. Geis, *Studies in Machiavellianism* (New York NY: Academic Press, 1970).

⁷ Edith Bogue, "Does the Seamless Garment Fit? American Public Opinion" in *Consistently Opposing Killing: From Abortion to Assisted Suicide, the Death Penalty, and War*, ed. R.M. MacNair & S.J. Zunes (Westport CT: Praeger, 2008), ch. 10, pp. 73-86.

spending) in the other.⁸ This tracks well with current political divisions.

Based on this literature, MacNair⁹ conducted two large studies to address points that arose. The first was a paper-and-pencil format with a variety of populations (n = 464) that primarily offered Likert-style questions on the connections between abortion and the death penalty only, along with asking respondents for a short answer on what connections or differences they perceived. The second study was an on-line survey with snowball technique recruitment (n = 699). Respondents were asked about what were the connections and what were the differences for each possible combination of abortion, death penalty, war, and euthanasia; there are six ways of putting those into pairs, so six sets of answers were solicited.

One of the findings of these two studies that is pertinent to the current investigation is that people who were in opposition on both issues were the most likely to see the issues as connected, and did so by large majorities. Those who favored both were the least likely to see them as connected. Those who favored one and opposed the other were in the middle in terms of the percentage that saw them as connected.

Another of the relevant findings is that for those who did endorse the issues as connected, a substantial majority (about two-thirds overall) when responding to an open-ended question with a short answer gave variations on the theme of killing, causing death, and violence. This suggests that combining the issues does bring to mind for many the aspect of the issue that opponents are most interested in conveying.

The two-factor model of the previous literature was confirmed

⁸ David G. Beswick, "Attitudes to Taking Human Life," *Australian and New Zealand Journal of Sociology* 6 (1970): 120-30; J.S. Cleghorn, "Respect for Life: Research Notes on Cardinal Bernardin's 'Seamless Garment'," *Review of Religious Research* 28 (1986): 129-42; Richard A. Kalish, "Some Variables in Death Attitudes," *The Journal of Social Psychology* 59 (1963): 137-45.

⁹ Rachel M. MacNair, "Perceptions of Connections" in "Consistently Opposing Killing: From Abortion to Assisted Suicide, the Death Penalty, and War," ed. R.M. MacNair & S.J. Zunes (Westport CT: Praeger, 2008), ch. 11, pp. 87-101.

inasmuch as the two pairs (war with death penalty and abortion with euthanasia) were the only two that were endorsed as connected by a majority of the entire set of respondents.

Participants were also asked to rate themselves on a liberal/conservative continuum. Unsurprisingly, when this was applied to the four different groups for favoring and opposing abortion and the death penalty, results showed that those who favor abortion and oppose the death penalty tended toward the liberal end of the spectrum and those who opposed abortion and favored the death penalty tended toward the conservative end. Those that favored both or opposed both, however, were much more distributed over the spectrum, with a mean score coming out in the middle. Notably, those who opposed both were more likely to opt out of the spectrum altogether, as about a quarter of them selected "other."

As for the concept that killing human beings can be traumatic to those who do it, most of the research literature is consolidated in the book *Perpetration-Induced Traumatic Stress: The Psychological Consequences of Killing*.¹⁰ Those who engaged in socially-approved killing that are covered in this book include combat veterans, people who carry out executions, police who shoot in the line of duty, and abortion staff. The current state of quantitative studies strongly suggest that killing is not only a possible etiological stressor, but that it may lead to more severe post-trauma symptoms than other forms of traumatization do. This is an area that still requires considerably more research for its development, but the current study serves as part of its development by addressing the question of public perceptions involving the concept when applied to issues that involve such killing.

METHODOLOGY

A survey was preliminarily pilot-tested for needed revisions, and then

¹⁰ Rachel M. MacNair, *Perpetration-Induced Traumatic Stress: The Psychological Consequences of Killing* (Westport CT: Praeger, 2002).

put on-line on the Survey Methods webpage. Recruitment of respondents was by a snowball email request technique. Several listserves, primarily with people active on one or many of the issues, were sent notifications with a link to the survey site and a request that people send this on to other individuals and listserves that might find it of interest. It was stressed in the message that people of varying views were being sought, and the listserves included those active on different sides of the issues. Recruitment continued from July 2008 to February 2009, a period high in advocacy interest because of being during the election and immediately post-election. This effort resulted in 352 respondents.

After completing demographic questions, respondents were asked their position on three issues. Previous experience had shown that respondents object to being given only two options, and there is also an advantage in being able to measure a middle position between the two extremes. Therefore, for each issue, respondents were given three options, in which the first was a matter of favoring the practice, the third was a clear-cut opposition to the practice, and the second was a middle position between the other two. For categorizing people into groups, however, those with a middle position were included with those that supported the practice as one group so that those that entirely opposed the practice would be in the other.

The positions to select as closest to respondent's position on abortion were pro-choice, middle ground, and pro-life. The positions on the death penalty were in the form of statements: it should be done more often; it should be done only with strict safeguards; I oppose it in all cases. The positions on war were also in the form of statements, all of which focused on the contemporary war at the time, the American war in Iraq. The first was "I supported the war from the start, and still do." The middle ground was taken up by two statements: "I was for it when it started, but no more (or I'm no longer sure)" and "I was against it when it started, but now support the war." The final position was "I opposed the war from the start, and still do."

Experience from past studies shows that abortion and the death

penalty have the advantage that people are quite clear what their positions on these issues are, and can therefore relatively easily categorize themselves. In the case of euthanasia, many have not been clear, or have even indicated confusion as to what it was. In the case of war, a simple expression of a position on war in general will find the vast majority favoring some and opposing others, with the number of those opposing all or favoring all both being too small to be statistically useful. Therefore, when one is getting someone's positions on war, it is more helpful to be more specific, such as asking for a position on a specific war. The timing of this survey provided an opportunity to use a war that was prominent in the news and so would make sense to respondents as something to ask about.

As part of the demographic portion, respondents were asked to rate themselves along a liberal/conservative continuum, in which as an arbitrary assignment lower numbers would be more toward the liberal and higher numbers more toward the conservative. The continuum was: radical, liberal, moderate, conservative, and ultra-conservative. An option of "other" was supplied for those who wished to opt out of the spectrum altogether.

Participants were then offered five different arguments that connected issues (in different variations of favoring and opposing). For each of these arguments, respondents were asked what impact the argument had on each of the three issues of abortion, death penalty, and war. For each, the options in Likert format were: (1) much more likely to favor; (2) somewhat more likely to favor; (3) no effect; (4) somewhat more likely to oppose; and (5) much more likely to oppose. Unsurprisingly, most people answered (3) – no effect – on each of the responses, inasmuch as people are not generally persuaded of anything by one paragraph on one occasion. Enough people did indicate a greater degree of favoring or opposing, however, to allow for meaningful results. For interpretation, any number above (3) indicates a tendency to move toward opposing, and any number below (3) indicates a tendency to move toward favoring.

The wording of the five arguments is given below. In all cases, the

wording was taken from advocates of the views in order to give the fairest presentation. The word in brackets is the label for the argument in the ensuing results and discussion.

Argument #1 – Consistent Life Ethic [Consistency]

The consistent life ethic is made up of peace movement people who oppose abortion and pro-lifers who oppose war and the death penalty. The idea is that being consistent in opposing the killing of human beings across the board is the right thing to do, and also that it makes a more persuasive case than opposition to just one of the issues. The statement of purpose for the group Consistent Life is: “We are committed to the protection of life, which is threatened in today’s world by war, abortion, poverty, racism, capital punishment, and euthanasia. We believe that these issues are linked under a ‘consistent ethic of life.’ We challenge those working on all or some of these issues to maintain a cooperative spirit of peace, reconciliation, and respect in protecting the unprotected.”

Argument #2 – Defending the Innocent [Defense]

The Death Penalty is the ultimate punishment for deliberately taking another *innocent* person’s life. I don’t care if it deters the crime or not. I care that the murderer pays the price. Wars, unfortunately, have to be fought because there are powerful and evil people out there in the world who do evil and horrible things to other *innocent* people. These people must be stopped and War is often the tool to stop them. Evil people often don’t sincerely participate in or care about diplomacy. Abortion, on the other hand, is the deliberate killing of an unborn *innocent* human being. My stand on all three issues is clearly one of protecting the innocent. It isn’t that complicated.

Argument #3 – Crime Prevention [Crime]

I believe abortion is wrong. However, I also believe it has been the most effective crime deterrent in our time, much more effective than the death penalty. Ever since *Roe vs. Wade*, for every one person executed under the death penalty, approximately 45,000 abortions take place in

America, a large percentage to poor single mothers most likely to bear criminals, stopping the criminals before they start. The Right often justifies the death penalty by appealing to its reduction of crime as a deterrent. Applied in the same way, could this argument “loosely” apply to abortion as well? So you’re on the jury, a statistical distribution has been suggested for the application of the death penalty in order to stop crime before it starts—am I talking about the statistical chance of a murderer killing again, or am I talking about the statistical chance of an unwanted (poor, inner-city) baby killing in the future? Does the death penalty work as a deterrent? Well, abortion did...and so does the death penalty when applied to lesser crimes than murder.

Argument #4 – Choice [Choice]

I found when I asked people who were pro-choice and opposed the death penalty and war how the positions were connected, they came up with the following ideas: the government and its flawed legal system should not interfere with life- and death-decisions; a concern for the societally disadvantaged, which includes war victims, those on death row, and women in poverty with crisis pregnancies; an anti-control attitude and disdain for punitiveness; and a concern for personal autonomy.

Argument #5 - Killing as Trauma [Trauma]

You may have heard of Post-Traumatic Stress Disorder (PTSD), a set of very severe mental symptoms people might get from being victimized by violence. More recently, the idea has gained support that not merely being a victim, but engaging in the act of killing someone could be a trauma that could cause PTSD symptoms. There is some evidence that killing in combat adds trauma on top of the combat itself. There is also evidence that people who carry out executions and people who perform abortions show signs of some of these severe post-trauma symptoms.

Because this is the first known study that takes this approach, results are exploratory. There are too many comparisons proposed to allow for

proper significance testing based on specific hypotheses, with patterns of answers being the results of interest. There is a prediction that respondents will rate the Consistency argument and the Trauma argument as leading toward opposition on abortion, death penalty, and war more than the Defense, Crime, and Choice arguments. There is also a prediction that the pattern of distribution with the liberal/conservative continuum will replicate previous literature.

RESULTS

Description of Respondents

The sample size was 352. There were 161 female and 162 male with the remainder not indicating, and thus roughly an even gender split. Ages ranged from 11-99, with a mean of 48.8 and standard deviation of 16.85. Respondents varied well on politics and religion, as shown in Table 1.

Table 1: Demographic Characteristics of Participants (N = 352)

<u>Characteristic</u>	<u>n</u>	<u>%</u>
Politics		
Democrat	96	27.3
Republican	67	19.0
Independent	72	20.5
Third-Party	15	4.3
Religion		
Catholic	141	40.1
Protestant and Other Christian	85	24.1
Jewish, Muslim, Buddhist, Hindu, Other	30	8.6
Undefined Spirituality	33	9.4
Atheist/Agnostic/Don't Think	25	7.1

Note: the percentages do not at up to 100% because not all respondents answered the questions.

Impact of Arguments

The primary research questions are whether people who are not already persuaded rate the Consistency and/or Trauma arguments as moving them toward more opposition. Using the same set of four groups as in previous literature—favoring both, opposing both, and both ways of favoring one while opposing the other—the means of those who favor the death penalty are reported for their impact on views of the death penalty, and the means of those who favor abortion availability are reported for their impact on views of abortion. Scores above (3) mean some motion toward opposing the practice, and scores below three mean some motion toward favoring it.

Table 2: Impact Scores on Death Penalty and Abortion for Groups that Favor Each

	<u>+dp / +ab</u> (n = 41) <u>M</u>	<u>+dp / - ab</u> (n = 68) <u>M</u>	<u>- dp / +ab</u> (n = 92) <u>M</u>
Death Penalty			
Consistency	2.98	3.16	
Defense	2.73	2.75	
Crime	2.81	2.88	
Choice	2.73	2.91	
Trauma	2.89	3.20	
Abortion			
Consistency	3.10		3.21
Defense	3.05		3.03
Crime	3.30		3.09
Choice	2.95		2.88
Trauma	3.06		3.27

Note. + means favoring; - means opposing; dp is death penalty position; ab is abortion position.

The pattern is clear: those who favor both abortion availability and the death penalty are unimpressed with the anti-execution arguments, and the move toward opposition on abortion with the anti-abortion arguments is slight. The pro-life group that favors the death penalty, however, shows a clear pattern of moving toward opposition to the death penalty with the Consistency and Trauma arguments only, while the pro-choice group that opposes the death penalty shows a similar pattern. In short, the “seamless shroud” position is less impressed with either the consistent life ethic or the idea that killing is traumatic to those who do it. Those who have a mixture of favoring and opposing rate both arguments as more likely to move them toward opposition on the issue where they currently favor the practice.

There is an unexpected finding here that is interesting, in that opposition to abortion is at its highest rating of all in the group that favors abortion availability as well as the death penalty using the Crime argument—despite that argument being a pro-abortion argument! The assertion that abortion of many children is a deterrent to later crime seems to be counter-productive with people who already favor abortion availability. Table 3 shows the results for abortion and war.

Table 3: Impact Scores on War and Abortion for Groups that Favor Each

	<u>+war / +ab</u>	<u>+war / - ab</u>	<u>- war / +ab</u>
	(n = 28)	(n = 96)	(n = 105)
	<u>M</u>	<u>M</u>	<u>M</u>
War			
Consistency	2.93	3.30	
Defense	2.78	2.74	
Crime	2.80	3.07	
Choice	2.84	3.09	
Trauma	3.04	3.24	
Abortion			
Consistency	3.18		3.17
Defense	3.07		3.03
Crime	3.24		3.13

Choice	2.92	2.90
Trauma	3.04	3.24

Note. + means favoring; - means opposing; war is war position; ab is abortion position.

The pattern here is very similar; the Crime argument is still counter-productive on abortion. Otherwise, as with the death penalty, the members of the group that favor both are generally unimpressed with anti-war arguments on war while the proliferers who favor the Iraq war at some level do move more clearly toward opposition with both the Consistency and Trauma arguments. The same pattern almost applies on abortion, except here, the group that favors the war at some level is about as likely as the group that opposes it to move toward opposition to abortion with the Consistency argument; they are less impressed with the Trauma argument.

To summarize overall, then, the “consistent life ethic” and “trauma of killing” tend to get ratings moving toward opposition among those who favor one issue and oppose the other, and are not as likely to do so among those that favor both. The Defense and Choice arguments are weak among those who do not already agree with their positions. The Crime argument, as worded here, seems to be counter-productive for abortion availability even among those who already favor such availability.

Liberal-Conservative Spectrum

The question was whether the self-ratings on a liberal/conservative continuum replicate previous findings.¹¹ As before, people were divided into four groups on the basis of their position on abortion and the death penalty, with those who favored both, those who opposed both, and the two ways of favoring one and opposing the other. The five-point spectrum had ratings of (1) as radical, (2) as liberal, (3) as moderate, (4)

¹¹ See MacNair (2008).

as conservative, and (5) as ultra-conservative; those who answered “other” were not counted for purposes of deriving a mean score for each group, since they are not on the continuum.

The group of people who favored the death penalty and opposed abortion did, as would be suggested by previous literature,¹² have the highest mean score, namely, 3.83, toward the more conservative; only 2 out of 70 self-designated as liberal, with 17 as moderate and 41 as either conservative or ultra-conservative. Indeed, in the “ultra-conservative” category, 11 out of 12 who selected this option were in this group. The one remaining ultra-conservative was in the group that opposed both the death penalty and abortion.

The group that was mixed in the opposite direction, by opposing the death penalty and favoring abortion availability, also replicated previous results by accounting themselves more toward the liberal side of the spectrum, having the lowest mean score of the four groups, 2.13. Only two of them listed themselves as conservative, with 40 out of 96 as liberal, 16 as radical, and 22 as moderate. The difference between these two groups on their liberal-conservative continuum scores was highly significant according to a t-test, $p < .001$.

Also as before, the two groups that favored both or opposed both had mean scores in the middle—opponents with 2.66, proponents with 2.86. Their distributions were also more spread out among the categories. The difference between the two was not at all significant, $p = .384$.

Also, as before, the group that opposed both had about a quarter (25.2%) who opted out by selecting the “other” category, while the other three groups ranged from 14.3 to 16.7% who did so. Put another way, almost half (46.8%) of those who selected the “other” category were in the group that opposed both abortion and the death penalty. People who do not fit the popular media’s understanding of the left/right dichotomy are more likely than others to opt out of it entirely.

¹² See Cook (2008) and MacNair (2008).

DISCUSSION

It has been a common complaint that the consistent life ethic weakens the case against its constituent issues by combining them together. Proponents in both the pro-life and the peace movements have accused the consistent life ethic philosophy of being a way of watering down their issues. Proponents of the ethic have responded that, to the contrary, across-the-board consistency strengthens the advocacy of all issues. This exploratory study provides some empirical support for that contention, in that immediate cross-sectional ratings showed a tendency toward more opposition to abortion and war when the concept is presented in a one-paragraph format.

This was not a comparison of arguments on one issue—say, a set of arguments against abortion—to ascertain which among them might be the most effective. That would have been an entirely different study, one that considered what are the most and least effective arguments for making a specific case.

That would also be a very difficult thing to ascertain, inasmuch as people are rarely convinced on any point on the basis of a one-paragraph description. The wording of any one paragraph can also have an inordinate amount of influence separate from the point actually being made. Variations in how friendly or aggressive, how polite or how dogmatic the presentation of the point is can have an influence such that different ratings would have occurred had the same point been made in a different manner. Such variations may have had an influence in this instance.

The severe limitations of a one-paragraph description on just one occasion have all the normal problems of cross-sectional as opposed to longitudinal research. Rating an impact as being “more likely” to favor or oppose also falls far short of actually being convincing, as would be expected for such a skimpy description of the argument. After all, most people did answer “no effect” on each of the questions. Long-term persuasiveness is an entirely different question, reserved for a study that could at the least be done over the course of at least weeks or months.

The Crime argument is a variation of one that created quite a stir in

academia and the popular media, a study arguing that the legalization of abortion was responsible for the contemporary drop in crime rates.¹³ Pro-lifers naturally had many counter-arguments to make to the thesis itself, but the current study suggests the possibility that the argument was actually counter-productive. People who favor abortion availability (especially those who also favored the death penalty) seemed to have a strong reaction, giving one of the highest scores of moving toward opposition to abortion as was present among those whose position was to favor its availability.

As for the nature of Perpetration-Induced Traumatic Stress as an argument against the relevant forms of violence, to most people this will be something of a new idea. Unlike the consistent life ethic, there has been no major public forum in which this argument is frequently made, nor any organization dedicated to educating about this point specifically. Only as it has been subsumed under the consistent life ethic has it gained much by way of public advocacy; most of the work on it has remained confined to scholarly circles. Therefore, it is valuable to have this empirical evidence that many people who favor a practice rate their likelihood of opposing that practice to be greater upon consideration that it may be traumatizing to those who must carry it out.

Yet among the most interesting of the findings is that the impact of moving toward opposition varies not by positions on solitary issues, but on how the positions combine. People who favor both practices tend not to be impressed with the arguments of the consistent life ethic or of killing as trauma, while people who favor one and oppose the other do tend to be more impressed with both those arguments. In the case of the consistency argument, this makes sense in that those who favor both forms of violence are practicing a different form of consistency, one that believes that violence is a legitimate and effective way to solve problems. It is when a person has been convinced against one form of

¹³ John J. Donahue & Steven D. Levitt, "The Impact of Legalized Abortion on Crime," *The Quarterly Journal of Economics* 116/2 (2001): 379-420.

violent practice that the case for consistency against other forms of violence has greater impact. Similarly, those who have considered violence as problematic in some way and are therefore amenable to the argument that those practicing that violence are traumatized by doing so are more likely to apply that insight to other practices for which they had not previously had opposition. This finding may have practical applicability in terms of prioritizing resources for those wishing to have maximum societal impact.

Yet another limitation of this study is that it considered only three major issues. In Edith Bogue's work from the General Social Surveys, she reflected on a wide variety of life-and-death issues. Though displeased with how few people were consistently opposed to death-causing practices as a whole, she also found few that were in favor of all such practices across the board, once a larger number of issues were taken into account. Perhaps either the Consistency argument or the Trauma argument will have more impact if it can find the issue upon which a specific person or group does oppose violence as a problem-solving technique, rather than selecting out a specific two or three issues on which they do not.

Persuasiveness and stable changes in attitudes and behavior will always require far more than one paragraph of argument can allow for. The literature on persuasion is quite rich, since there are several for-profit groups as well as social issue advocacy groups that take a keen interest in it. Nevertheless, this study does provide evidence for the contention that the two arguments of the consistent life ethic and of killing as being traumatic to those who do it are can be effective with some individuals and groups, particularly those who do already have a concern against at least some form of violence.

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Prudence and Telos in Pro-Life Evolution

James R. Kelly

ABSTRACT: It has been almost four decades since *Roe v. Wade* and abortion remains an inconclusively disruptive part of every Supreme Court nomination process and every presidential election. While decades old national surveys show only glacial change in public opinion, though in a prolife direction, the public debate has changed in morally significant ways. Abortion opponents now unanimously accept that stopping abortion requires comprehensive help for woman who are pregnant and tempted to abortion by life circumstances—often of poverty and male irresponsibility. Abortion proponents increasingly acknowledge that abortion most often is more an unhappy decision than the consciousness enlarging experience intrinsic to the practice of authentic human rights. To continue as a vital cultural presence, social movements require both prudence and telos. Since the 1992 Supreme Court *Casey* decision the pro-life movement has prudently pursued an “incremental way” characterized by persuasion, assistance, and truth. But to remain vital, prudence requires an explicit beckoning horizon, a telos. The animating moral core, the essence, the ultimate goal of the movement opposing abortion is to become ever more consistently pro-life in its commitment to nonviolence. The ultimate fates of the peace and pro-life movements are morally intertwined.

ON NOVEMBER 7, 2006 BY A REFERENDUM VOTE of 55 to 45 percent, voters in South Dakota overturned the nation’s most stringent abortion ban. Supporters had hoped to use it to challenge once again the then 33- year-old *Roe vs. Wade* decision, which overthrew all state laws proscribing or limiting abortion, some of them going back to the nineteenth century. The South Dakota referendum prohibited abortion in all stages and had no exceptions for either women’s health, though it did allow abortion if the mother’s life was threatened, nor any rape or incest or fetal deformity exceptions. Polls

showed that, even while expressing moral discomfit with abortion, voters favored all of these exceptions. In fact, the South Dakota right to life movement was itself by no means unanimous about seeking a no-exception abortion law. Indeed, based as it is on the absolute and rock-bottom principle that everyone, from conception on, possesses an intrinsic and inalienable right to life and community support, it has been and will be a continuing moral, religious, and legal challenge for the movement to craft and support laws that voters will pass and citizens will accept.

After the South Dakota defeat of the movement's morally preferred right to life abortion bill, the longest serving presidents of the nation's leading and centrist right to life organization, The National Right to Life Committee, founded immediately after *Roe*, quickly sought to encourage abortion opponents to seek more achievable legal approaches. In his monthly publication from the Life Issues Institute Dr. John C. Willke, who served as NRLC president during the 1970s and 80s and whose *Handbook on Abortion*¹ is the most widely published of any piece of right to life literature, wrote: "It seems obvious that if the solidly pro-life state of South Dakota can't pass and maintain a law that has no rape exception, not many other states could either." Certainly such a law could not pass nationally. It also seems obvious that a major precedent has been set. Willke's National Right To Life Committee presidential successor, Wanda Franz, Ph.D., similarly acknowledged that "the large 'middle' of the public is still not ready to ban abortion altogether" and reminded readers that she has "frequently urged pro-lifers" that "the point is not to make a statement but to make a difference," adding that "the perfect is the enemy of the good."²

In the light of the comments by Franz and Willke, both highly experienced right to life activist leaders, in reflection on the failure to pass a strict abortion ban in South Dakota, it is instructive to consider

¹ After 1985 the title of this book has been *Abortion Questions & Answers* by Dr. and Mrs. J. C. Willke (Cincinnati OH: Hayes, 1985).

² *National Right to Life News* (Dec. 2006), p. 3.

the letter written by Blasé Cupich, the Bishop of Rapid City, South Dakota. This letter was read aloud at all the diocesan masses on September 23-24, six weeks before the referendum. He cautioned that abortion opponents must make known their commitment to women and the social and policy changes needed for their well being so that we “create the conditions for others to hear us.” Cupich called for “mature” bills that were comprehensive and consistent.³

Cupich’s challenge to the South Dakota abortion opponents can serve to outline the argument of what follows. In contemporary pluralistic societies persuading citizens, achieving social policy, and protecting values through law entails a discerning prudence that, in Cupich’s words, “create the conditions for others to hear us.” Such an ongoing dialogue requires a pro-life comprehensiveness animated by a consistency that is evolving toward its grounding in a commitment to non-violence. My linkage of the practice of prudence and the telos of non-violence is indebted to the late Charles Tilly, perhaps the foremost American theorist of social movements. Tilly observed about even scholarly social movement analyses: “Although we tell them forward, their logics run backward,” for “they involve a subtle teleology... [and] impute a kind of coherence.”⁴ Pertinent to Tilly’s insight that “teleology” is central to making coherent sense of social movements is the too often forgotten fact that the core objections to abortion and to war are rooted in the same moral principle. This conjunction appeared at the very beginning of the modern opposition to making abortion a constitutional right. In 1964, almost a decade before *Roe v. Wade*, Tom Cornell, one of the founders of the Catholic Peace Fellowship, said that it was pacifism that brought him to protest both the Vietnam War and abortion. “Catholic pacifists,” he explained, “are opposed to war because it is the planned, mass taking of human life for political purposes...(and) we are opposed to abortion, euthanasia, capital punishment, and economically

³ “Coming Vote Against Abortion,” *Origins* 36/17 (2006): 267-68.

⁴ *Regimes and Repertoires* (Chicago IL: Univ. of Chicago Press, 2006), p. ix.

enforced starvation also, on the same basis.”⁵ Just two years before *Roe* the late Gordon Zahn, one of the founders in America of *Pax Christi*, the international Catholic peace organization founded after World War II, also linked opposing abortion and opposing war: “It is not just a matter of consistency; in a very real sense it is the choice between integrity and hypocrisy. No one who publicly mourns the senseless burning of a napalmed child should be indifferent to the intentional killing of a living fetus in the womb.”⁶ But before examining this linkage, we should examine the more immediate centrality of *prudence*.

The Primacy of Prudence

To be moral requires wisdom. Having the right principles—and especially the right absolute, such as all human life is sacred—and being well-intentioned does not make our public acts and activism moral. *The Catechism of the Catholic Church*⁷ acknowledges the complexity of translating moral principle into law and societal practice, particularly in §1805-06 where the cardinal virtues and prudence are described. The term “cardinal” signifies the pivotal role of the four cardinal virtues (temperance or self-control, courage, justice, and prudence) and especially of prudence, the most cardinal in that it employs conscience and intelligence to achieve the most justice amidst the complexity of social reality.⁸

⁵ Cited in Patricia McNeal, *Harder Than War: Catholic Peacemaking in Twentieth-Century America* (New Brunswick NJ: Rutgers Univ. Press, 1992), p. 169.

⁶ “The Unborn Life and the Protection of Life,” *Commonweal* (May 28, 1971): 337-39. On the early linking of war and abortion opposition, see my “Why the Pro-Life Movement Should Return to Its Roots,” *America* (Feb. 16, 2009): 11-14.

⁷ *Catechism of the Catholic Church* (New York NY: Image Books, Doubleday, 1995).

⁸ Still the classic treatment of the classical cardinal virtues and the centrality of prudence is Josef Pieper, *The Four Cardinal Virtues* (Notre Dame IN: Univ. of Notre Dame Press, 1980 [1954]). Regarding the centrality of prudence, Pieper writes: “He alone can do good who knows what things are

Like the *Catechism*, the *Compendium of the Social Doctrine of the Church* (Pontifical Council For Justice And Peace, 2004) summarizes Catholic traditional teaching on abortion (§155, 233, 553, 570) and explicitly adds the priority of prudence in any attempt to make the Church's constant teaching about the sacredness of human life from conception to death a vital part of contemporary culture and politics. The *Compendium* (§568) informs us that social science is a core aspect of discernment and cautions that "no problem can be solved once and for all," thus requiring an ongoing process of discernment and the search for prudence that includes the social sciences. The *Compendium's* last (§570) entry on abortion explicitly locates it within the context of prudence and the need for discernment in efforts to make the teaching about abortion a central dimension of cultural, social and political life:

When—concerning areas or realities that involve fundamental ethical duties—legislative or political choices contrary to Christian principles and values are proposed or made, the Magisterium teaches that a well-formed Christian conscience does not permit one to vote for a political programme or an individual law which contradicts the fundamental contents of faith and morals. In cases where it is not possible to avoid the implementation of such political programmes or to block or abrogate such laws, the Magisterium teaches that a parliamentary representative, whose personal absolute opposition to these programmes or laws is clear and known to all, may legitimately support proposals aimed at *limiting the damage* caused by such programmes or laws and at diminishing their negative effects on the level of culture and public morality. In this regard, a typical example of such a case would be a law permitting abortion. The representative's vote, in any case, cannot be interpreted as support of an unjust law but only as a contribution to reducing the negative consequences of a legislative provision, the responsibility for which lies entirely with those who have brought it into being.

like and what their situation is...appropriate to the real situation, that is, to the concrete realities which form the 'environment' of a concrete human action; and that we therefore take this concrete reality seriously, with clear-eyed objectivity" (p. 31).

So, it is clear that the Roman Catholic Magisterium includes the teachings that abortion is a grave offense against human dignity, an attack on the first human right, the right to life, *and* that the protection of this value in modern pluralistic and democratic societies, far from being a simple opposition, requires discernments, both personal and communal, involving ongoing acts of prudence that, in turn, cannot be expected to resolve the public policy and legal issue “once and for all.” To survive, movements must continuously evolve. Prudence aims not only at giving witness but at achieving some actual good effects in the real world inhabited by a majority who are not Roman Catholics and whose traditions might not entirely confirm the Catholic teaching that each human being from conception onward should be regarded as a person with rights equal to its mother and the rest of us. So, it may well take some time and constant discernment to achieve a worthy prudence, or, we might say, a civic wisdom, on the issue. The *Compendium* itself offers as the “typical example” a law and policy that cannot be expected to remove an evil but can only “limit the damage” and “diminish their negative effects on the level of culture and public morality” (§570).⁹ In the American abortion controversy the major event creating challenges for the exercise of prudence and pro-life social movement evolution is the June 29, 1992 Supreme Court decision *Planned Parenthood of South*

⁹ In §21 the Congregation draws on the classical distinction between law and morality and explicitly acknowledges that “civil law cannot expect to cover the whole field of morality or to punish all faults” and that it “must often tolerate what is in fact a lesser evil in order to avoid a greater one.” Then the Congregation proceeds (§23) to offer the criteria that an acceptable abortion law be placed within a larger legal and policy framework “so that there will always be a concrete, honorable and possible alternative to abortion.” These alternatives, the Congregation continues, require the active involvement of the state and public agencies: “Help for families and for unmarried mothers, assured grants for children, a statute for illegitimate children and reasonable arrangements for adoption” and, the Congregation adds, this requires, in effect, an abortion-related option for the poor “starting with the most deprived, so that always and everywhere it may be possible to give every child coming into this world a welcome worthy of a person.”

Eastern Pennsylvania vs. Casey. *Casey*, in fact, challenged both sides of the abortion controversy and opened a moral ground for the search for common ground.¹⁰

The 1992 *Casey* decision was a narrow (5-4) ruling that satisfied neither legal abortion promoters nor opponents nor, for that matter, any clear majority of supreme court scholars. In *Casey* the Supreme Court reaffirmed *Roe*'s key holding—a woman had a right to abortion—but the court rejected Justice Blackman's "trimester" framework as "too rigid" and explicitly added that a state may enact abortion restrictions that do not, in retired Justice Sandra Day O'Connor's now famous legal phrase, pose an "undue" burden on a woman's decision to choose an abortion. The Pennsylvania law required that a woman seeking an abortion give her informed consent prior to the abortion, that she be provided with information about abortion and her stage of pregnancy and about state and private resources available to help her if she chooses childbirth, and that an unmarried woman under eighteen have the informed consent of one of her parents or obtain a judicial bypass if she is not willing to involve her parents. (The Court ruled as an undue burden Pennsylvania's requirement that a married woman seeking an abortion obtain a statement indicating that she had notified her husband about her intended abortion.) Most pertinent to prudence, the core *Casey* addition to *Roe* was the prominence that it gave to the state's right to establish procedures and policies "designed to persuade her to choose childbirth

¹⁰ Too briefly, "Common ground" refers to pro-life and principled pro-choice (those who say they do not encourage abortion but judge that the woman alone can judge whether her abortion would be just) collaborate without any compromise of principle by ensuring that an abortion is not coerced by others or by circumstance. See my "Common Ground for Pro-Life and Pro-Choice," *America* (Jan. 16, 1999); "Beyond Compromise: Casey, Common Ground, and the Pro-Life Movement," Chap. 12 in *Abortion Politics in American States*, ed. Mary C. Segers and Timothy A. Byrne (Armonk NY: M.E. Sharpe, 1995), pp. 205-24; and "Truth, Not Truce: 'Common Ground' On Abortion, a Movement within Both Movements," *Virginia Review of Sociology* 2 (1995): 213-41.

over abortion” and to permit “a state to further its legitimate goal of protecting the life of the unborn by enacting legislation aimed at ensuring a decision that is mature and informed, even when in so doing the state expresses a preference for childbirth over abortion.”

Casey, an Exemplar of Prudence

The late Robert P. Casey, a two-term governor of Pennsylvania (1987-1994), was well known for his opposition to abortion. A graduate of Holy Cross College and a prominent and observant Catholic, he recalled in his autobiography¹¹ that he found himself in opposition to abortion “instinctively...(as) I cannot recall the subject of abortion ever being mentioned, much less discussed in depth, in school or at home. My position was simply a part of me from the beginning.” Casey worked with the Pennsylvania Right to Life groups but found that he could not, in prudence, support the abortion regulations they had successfully gotten the Pennsylvania legislature to adopt in 1987. In fact, on December 17, 1987 he vetoed Pennsylvania’s first Abortion Control Act. In his veto message, Casey challenged Pennsylvania Right to Life and told the legislature:

I must note that our concerns cannot end with protecting unborn children, but must extend to protecting, and promoting the health, of *all* our children and their mothers. The right to life must mean the right to a decent life. Our concern for future mothers must include a concern for current mothers. Our respect for the wonders of pregnancy must be equaled by a sensitivity to the traumas of pregnancy. This Administration has called for significantly increased support for child and maternal health programs, for education, for rape counseling and support services.

Casey invited the legislature to search with him for a “strong and sustainable Abortion Control Act, one that forms a humane and constitutional foundation for our efforts to ensure that no child is denied his or her chance to walk in the sun and make the most out of life.”

¹¹ *Fighting For Life* (Dallas TX: Word Publications, 1996), p. 178.

At a March 11, 1993 address to a Conference on Abortion and Public Policy at St. Louis University¹² Casey explicitly reflected on prudence and opposition to abortion:

Prudence we all know to be a virtue. Classical thinkers rated it the supreme political virtue. Roughly defined, it's the ability to distinguish the desirable from the possible. It's a sense of the good, joined with a practical knowledge of the means by which to accomplish the good. A world in which every unborn child survives to take his first breath is desirable. But we know that such a world has never been. And prudence cautions us never to expect such a world. Abortion is but one of many evils that, to one extent or another, is to be found at all times and places.... But the point is that after facing up to such facts, the basic facts of our human condition, prudence does not fall silent. It is not an attitude of noble resignation; it is an active virtue.... It doesn't capitulate. It's tolerant, but not timid.... Prudence asks: "If there is no consensus, how do we form one? What means of reform are available to us?"

Casey's attempt to bring his pro-life convictions to the highly divisive political debate about abortion scanted neither principle nor the empirical realism required for prudence. He explicitly drew on the long philosophical and religious tradition of the pre-eminence of prudence among the cardinal virtues. He explicitly cautioned the pro-life movement not to expect the end of abortion but continuously to seek ways of achieving a greater consensus on the right to life and for legal and comprehensive policy reforms that would better safeguard the principle of the sacredness of all forms of human life. Casey's stress on comprehensive and consistent pro-life approaches, though present from the movement's inception, had publicly dimmed mainly because of the political alliance of prominent right to life social movement organizations (SMO) with Republican Party fiscal conservatives following Ronald Reagan's 1979 presidential campaign promise to seek a Supreme Court reversal of *Roe v. Wade*.¹³

¹² *Human Life Review* 19/2 (1993): 54-64.

¹³ There are many commentators who characterize the Republican pursuit of what came to be known as *Regan-Democrats*, working and middle-class

In fact, early on, even before *Roe*, the Right to Life Movement understood that, in the words of the National Conference of Catholic Bishops' first statement on abortion (*Human Life In Our Day*, April 17, 1969) that a persuasive anti-abortion response had to include efforts to "provide to all women adequate education and material sustenance to choose motherhood responsibly and freely." And while only recently acknowledged outside the movement,¹⁴ grass roots volunteers have long sought to provide material help and counseling to women conflicted by abortion. In 1970 Louise Somerhill founded Birthright to provide counseling, financial assistance, medical help, and even private "birthright" homes for women whose futures were threatened by an unwanted pregnancy. In 1971 Lori Maier founded Alternatives to Abortion International. Many others followed, such including Care Net, Heartbeat International, and the U.S. National Institute of Family and Life Advocates, so that by the end of the 1980s there were more than

people whose economic interests better aligned with Democratic Party ideology, as more tactical than principled. For a summary of the evidence of the solely tactical connection of post-Reagan Republican leadership, see Robert G. Morrison, "Breakfasting With Champions," *Life And Learning*, vol. VIII (Washington, D.C.: University Faculty for Life, 1998), pp. 187-97. While not impugning Reagan's moral disapproval of abortion, a scrutiny of his daily diary and personal notes and writings found only one passing mention of abortion. Regarding its political and legal centrality for him, it is worth noting that Reagan's name appears as the author of *Abortion and the Conscience of a Nation* (Nashville TN: Thomas Nelson Publishers, 1984); see Annelise Anderson, Martin Anderson, and Kiron K. Skinner, *Reagan In His Own Hand: Reagan's Writings 1975-1991* (New York NY: Free Press, 2001). His own appointed biographer, Lou Cannon, reports that "neither in his campaigning nor governance did Reagan give primacy to abortion." See "How Church and State Made Their Match," *The New York Times* (May 20, 2007). Reagan's wife and his two children endorsed legal abortion.

¹⁴ The February 15, 2007 issue of *Time* contained one of the few national media reports on grassroots voluntary pregnancy resource centers (Nancy Gibbs, "The Grassroots Abortion War") and its tone was more of fairness than of favor, as the author spent much space inspecting the volunteers' medical claims about the dangers of abortion.

3,000 such emergency pregnancy centers (now called pregnancy resource centers) in the United States.

But Casey's prudence required more than the grass roots volunteer efforts to provide women with unwanted pregnancies emergency relief and counseling. After all, the data has long showed that poor women, while statistically less likely to approve of abortion, were more likely than affluent women to have abortions. A study done by Planned Parenthood demographers in the mid-1980s found that while fourteen percent of all American women fall below the poverty line, one-third of all abortion patients do.¹⁵ Recent data say that poor women are four times as likely to have abortions as richer ones. And though they comprise about twelve percent of America's women, and are far more likely to personally disapprove of abortion, blacks represent more one-third of aborting women.¹⁶

Post-Casey Social Movement

Whatever the legal status of abortion, the heart of opposition to abortion must always be persuading a pregnant women that abortion is wrong and that there are those willing to help her in bringing her child to birth and, afterwards, that her foregoing of abortion does not result in the death of her aspirations. In terms of the law and abortion it is another truth that while the social movement activists on both sides tend to hold the absolute positions of ending all legal abortions or making any abortion legal, the majority of Americans, and this for the past four decades, hold positions that entail a range of restrictions on abortion but

¹⁵ Ada Torres and Jacqueline Darroch Forrest, "Why Do Women Have Abortions?", *Family Planning Perspectives* (July-August 1988).

¹⁶ Nancy Gibbs, "The Grassroots Abortion War," *Time* (Feb. 15, 2007). Abortion alternative groups acknowledge that they should increase their availability to minorities. For example, Care Net's "Touchdown Cities" project aims at bringing free pregnancy services—pregnancy tests, peer counseling, material resources, childbirth and parenting classes, and community referrals—to inner city areas. Their first effort is a collaboration with *People For People* Ministries in Philadelphia.

not a return to its complete illegality. Though social movement organizations do not use the term “complexity” in their slogans or appeals, to succeed in their policy and legal efforts, abortion opponents must, in prudence, factor into their tactics the long-standing¹⁷ complexity of American opinion about abortion. Thus, since *Casey vs. Planned Parenthood* the movement opposing abortion has largely¹⁸ adopted an incremental approach to law and social policy that ideally seeks to make more vital the truth that abortion kills a developing human being and that, in tandem with *Casey*-apt restrictions, offers assistance that helps women to choose birth rather than abortion. In this way, the movement opposing abortion has made more concrete the otherwise abstract “choice” in the pro-choice slogan. The *National Right to Life*’s preamble to its state information website on incremental abortion laws explicitly refers to the core principle of the *pro-choice* movement:

An informed consent bill protects a *woman’s right to know* [emphasis in original], the medical risks associated with abortion, its alternatives, and nonjudgmental, scientifically accurate medical facts about the development of her unborn child before making this permanent and life-affecting decision. If advocates of legal abortion were truly ‘pro-choice’ instead of ‘pro-abortion,’ they would not object to allowing women with unexpected pregnancies access to *all* [emphasis in original] the facts. Perhaps they fear that full knowledge might lead to fewer abortions.

¹⁷ Recent survey data show slight increases in pro-life support and slight decreases in pro-choice, and especially among young adults, but there is no significant change in the long-standing support for some abortion legality. See Raymond J. Adamek, *30-Plus Years of Abortion Polls: What Have We Learned?* (New York NY: Ad Hoc Committee in Defense of Life, 2002). Adamek concludes: “Our review of major abortion polls and of analyses of these polls by social scientists indicates that a majority of Americans endorse neither the prolife nor the pro-choice position.... Once could argue, however, that the public is closer to prolife positions” (p. 39).

¹⁸ Social movements are always plural. For a critique of the *Casey* incremental approach see, Colin Harte, *Changing Unjust Laws Justly* (Washington, D.C.: The Catholic Univ. of America Press, 2005).

Operationalizing Casey

A leading proponent of the “incremental” approach, Peter A. Samuelson, a former president of Americans United For Life,¹⁹ the first national right to life group and one that now specializes in formulating pro-life legislation and laws for state legislators and activists, in his January 10, 2007 fundraising letter wrote: “We know that the majority of Americans are in favor of the common-sense pro-life laws that AUL promotes. And we know that these laws save lives.”²⁰ The movement’s incremental efforts began almost immediately following the Supreme Court’s *Casey* decision, with Idaho in 1993 and North Dakota in 1994.

Involving Parents

The post-*Casey* state restriction that has the most widespread support are those state laws that require parental involvement in a minor’s decision to have an abortion. As of the summer of 2007 a majority of states— thirty-five—require *some* parental involvement in a

¹⁹ Since 2005 AUL has distributed annually updated copies of *Defending Lives: Proven Strategies for a Pro-Life America* to more than 4,500 state legislators and policy groups in all fifty states.

²⁰ Another former AUL president, Clark Forsythe, has just published (2010) a book entitled *Politics for the Greatest Good* in which he summarizes the teaching about prudence in the works of Aristotle, Augustine, Aquinas, and others with special attention to the right to life strategy of incrementalism. There are some studies that show that such abortion restrictions lower the abortion rates. Virginia Cartoof and Lorraine Klerman, “Parental Consent for Abortion: Impact of the Massachusetts Law,” *American Journal of Public Health* 76 (1986): 397-400; Theodore Joyce, Robert Kaestner, and Silvie Coleman, “Changes in Abortions and Births and the Texas Parental Involvement Law,” *The New England Journal of Medicine* 354 (2006): 1031-38; F. Althaus and Stanley K. Henshaw, “The Effects of Mandatory Delay Laws on Abortion Patients and Providers,” *Family Planning Perspectives* 26/5 (1994): 228-31, 233; Michael J. New, “Analyzing the Effect of State Legislation on the Incidence of Abortion during the 1990s (Heritage Foundation Center For Data Analysis, 2004), Report 04-01. New’s more recent studies confirm his earlier conclusion about the impact of abortion restrictions on lowering abortion rates.

minor's decision to have an abortion. And all thirty-five have an alternative process— appearing before a judge or specified health professionals if a judge is unavailable; moreover, twenty-nine states permit a minor to obtain an abortion without notification of parents in case of a medical emergency, and fourteen in cases of abuse, assault, incest or neglect. Twenty-two states require one parent's consent.

Counseling, Waiting Periods, and Resources Information

Thirty-two states require that women receive counseling before an abortion. The counseling provisions vary by state but most often they require that the women receive information that encourages them to choose the birth of their unborn child rather than abortion. Most of these states require that the women considering abortion receive state-developed information on fetal development. They typically show pictures of fetal development at various stages and the relative risks of both childbirth and abortion. Three states include data on the possible link between abortion and breast cancer and three on the possible psychological after-effects of abortion. Twenty-one states require that women be told about the public and private assistance that is available for prenatal care, childbirth and infant care; seventeen states require that women be given a list of agencies that provide educational referral or counseling services designed to help women carry their pregnancies to term. Most (twenty-four) of the states that require counseling (thirty-two) also require women to wait for some period of time—typically twenty-four hours—after they have received the information and before an abortion can be performed. Seven states require that the counseling be in-person; eighteen states permit a variety of ways, including phone, mail, fax, and website.

Deepening the “Know” in “The Right to Know”

Twenty states have statutes that require that abortion providers inform their clients of the availability of ultra sound pictures of her fetus prior to an abortion. Right to Life activists describe ultrasound legislation as “window to the womb” laws. There are no systematic studies of

their impact on a woman's decision, but analysts opine that gestational age of the fetus would be a major factor.²¹ Other recent state additions to the Casey-like "right to know" incremental laws include information about fetal pain. Five states (Arkansas, Georgia, Illinois, Minnesota, Oklahoma) already include these data in their required pre-abortion information. The consideration that at least by the early third trimester the developing fetus experiences pain during an abortion is becoming more difficult to dispute. The Georgia Women's Right To Know Act requires that the woman seeking an abortion read or hear that:

By 20 weeks' gestation, the unborn child has the physical structures necessary to experience pain. There is evidence that by 20 weeks' gestation unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are 20 weeks' gestational age or older who undergo prenatal surgery.

Under Georgia's statute, the woman also receives

materials designed to inform the female of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when the female can be known to be pregnant to full term, including any relevant information on the possibility of the unborn child's survival and pictures representing the development of unborn children at two-week gestational increments, provided that any such pictures must contain the dimensions of the fetus and must be factually accurate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only factually accurate scientific information about the unborn child at the various gestational ages.

Safe Haven Laws

Beginning with Texas in 1999, forty-eight states have enacted a provision intended to provide a safe and confidential means of abandon-

21 Kevin Sack, "In Ultrasound, Abortion Fight Has a New Front," *The New York Times* (May 28, 2010), p. A1.

ing an infant, ranging from seventy-two hours to one year (North Dakota) in specified locales without threat of prosecution for child abandonment. *Safe havens* include hospital emergency rooms, firehouses, police stations, adoption agencies, and calling 911. Still, dozens of cases of neonaticide occur each year.²² Timothy Jaccard, a safe haven law activist, attributes some of this failure to insufficient public awareness of the law and the lack of funding to publicize it.

On April 1, 2004 Congress passed the *Federal Unborn Victims of Violence Act*. It allows states to prosecute those who kill a pregnant woman for double homicide or assault. Thirty-five states have a law holding someone guilty of homicide who, in the course of an attack on its mother, causes the death of her fetus. Ten states provide partial coverage, such as Arkansas which begins this coverage at twenty weeks and after. From the pro-life standpoint a major dimension of the law is that it permits states to define the unborn child as “a member of species homo sapiens, at any stage of development, who is carried in the womb.” From 1990 to 2004 more than 1,300 pregnant women have been killed, and the woman’s unwillingness to obtain an abortion has often been a major factor in her murder.

A recent development pertinent to the *Unborn Victims of Violence Act* is the amending of state right to know bills to require abortion providers to inform women that it is illegal for someone to coerce them into having an abortion and that the state offers help for women who feel they have no recourse but abortion. Seven states (Alabama, Arkansas, Kansas, Louisiana, Pennsylvania, Utah, and West Virginia) have statutes dealing with forced abortions. For example, a Wisconsin legislative panel in September 2007 approved a bill for an Assembly debate and

²² Safe haven provisions also serve to remind us of the constancy of infanticide-abortion, as the equivalent–foundling wheels, which was a revolving wooden barrel inserted into a convent or hospital wall–were institutionalized by a papal bull issued in the twelfth century by Pope Innocent III, who was shocked by the number of dead babies found in the Tiber. Elisabetta Povoledo, “Updating an Old Way to Leave the Baby on the Doorstep,” *New York Times* (February 28, 2007), p. A4.

vote that would require abortion clinics to inquire whether women seeking abortion feel pressured by their partners or parents and, if so, to refer them to an agency or group that deals with domestic violence or family issues. Current Wisconsin law requires women to consent to the abortion but does not monitor whether pressure led to her decision.²³

The notion of fetal pain, in turn, correlates morally and emotionally to the question of legal gestational limits to abortion. *Roe* legalized abortion up to viability (then thought to be around twenty-four weeks) except when a woman's life or health required even a late abortion; but the accompanying *Doe* decision gave an expansive definition of health that included psychological and even economic considerations that, in effect, made abortion legal throughout gestation. Thirty-six states prohibit abortions after fetal viability (or in the third trimester), except when necessary to protect a woman's health. In eighteen states a second physician must participate in these late abortions.

Gonzales v. Carhart

The April 18, 2007 decision (5-4) that upheld the Partial-Birth Abortion Ban Act of 2003 (reversing the Court's 2000 decision in its *Stenberg v. Carhart* ruling that the ban violated the federal constitution as interpreted in *Roe* and *Casey*) is a right-to-life legal highpoint in that it bans a particular kind of abortion and brings to public attention in the most vivid way possible the fact that abortion kills a human being. By 2000 about thirty states had enacted bans designed to prohibit this kind of late-term abortion, giving empirical credence to Judge Anthony Kennedy's observation "that there was a moral, medical, and ethical consensus that partial-birth abortion is a gruesome and inhumane procedure that...should be prohibited."²⁴

²³ *LifeNews.com* (Sept. 19, 2007).

²⁴ Kennedy noted that Congress had amended the bill in a way that was consistent to the *Casey* criteria that the state's "legitimate, substantial interest" in expressing "profound respect for the life of the unborn" must not place an undue burden on a woman's right to an abortion as found in *Roe*. *Carhart* ruled that Congress had met the *Stenberg* objections that the ban's overreach and

Carhart also builds on the post-*Casey* right-to-life movement's efforts to diminish abortion by advancing a woman's right to know the facts about and the consequences of abortion. Kennedy wrote:

Respect for human life finds an ultimate expression in the bond of love the mother has for her child. The Act recognizes this reality as well. Whether to have an abortion requires a difficult and painful moral decision. While we find no reliable data to measure the phenomena, it seems unexceptionable to conclude some women come to regret their choice to abort the infant life they once created and sustained.... The State has an interest in ensuring so grave a choice is well-informed. It is self-evident that a mother who comes to regret her choice to abort must struggle with grief more anguished and sorrow more profound when she learns, only after the event, what she once did not know: that she allowed a doctor to pierce the skull and vacuum the fast-developing brain of her unborn child, a child assuming the human form. It is a reasonable inference that a necessary effect of the regulation and the knowledge it conveys will be to encourage some women to carry the infant to full term, thus reducing the absolute number of late-term abortions. The medical profession, furthermore, may find different and less shocking methods to abort the fetus in the second trimester, thereby accommodating legislative demand. The State's interest in respect for life is advanced by the dialogue that better informs the political and legal systems, the medical profession, expectant mothers, and society as a whole of the consequences that follow from a decision to elect a late-term abortion.

lack of a health exception created an undue burden for a woman seeking a late term abortion. Kennedy noted that "if intact D&E is truly necessary in some circumstances, a prior injection to kill the fetus allows a doctor to perform the procedure, given that the Act's prohibition only applies to the delivery of 'a living fetus.'" A doctor who decides that a partial-birth abortion is necessary, in Congress's words, "may seek a hearing before the State Medical Board on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself." Congress also specified that a woman upon whom a partial-birth abortion is performed may not be prosecuted.

The post-*Casey* achievements in state legislatures, characterized by a high degree of movement prudence, mark a major shift²⁵ in the abortion controversy. The only certainty about social movements is that they continually evolve; otherwise they lose a grassroots energy and devolve to ever more marginal public status. The movement opposing abortion has met this empirical criterion of evolution, beginning mostly as a counter-movement against a few pro-abortion activists, then developing quickly from anti-abortion to *right-to-life* that almost immediately included programs, both of grass roots volunteers and of social policy, intended to narrow the circumstances when abortion might otherwise seem the only substantive choice for a desperate and despairing mother. Further evolutions include the actualization of the moral intuition present from its beginning that consistency about the sacredness of life required commitments that contested the resort to violence as a reasonable option in all dimensions of human life. Even in his prudence, Casey adumbrated the telos of non-violence at the core of opposing abortion. Besides an increasing comprehensiveness, Casey believed the movement against abortion required an even deeper evolution. Casey considered opposition to abortion as ultimately a part of an active non-violence: "Let me say it directly: Abortion is the ultimate violence. If a child in the womb, the most innocent thing on earth, is not safe—then who is? If as a nation we don't revere that child, that innocence, what will make us revere any life?"²⁶ So, following Tilly's mature realization

²⁵ For some pre-Tilly efforts (efforts that do not explicitly employ the notion of "telos") to characterize the evolution of the movement opposing abortion, see my "Learning and Teaching Consistency: Catholics and the Right-To-Life Movement" in *The Catholic Church and the Politics of Abortion*, ed. Timothy A. Byrnes and Mary C. Segers (San Francisco CA: Westview Press, 1992), pp. 152-68; "Seeking A Sociologically Correct Name for Abortion Opponents" in *Abortion Politics in the United States and Canada*, ed. T.G. Jelen and M.A. Chandler (Westport CT: Praeger, 1994), pp. 15-40; and "Pro-life Politics: From Counter-Movement to Transforming Movement" in *Consistently Opposing Killing*, ed. Rachel M. MacNair and Stephen Zunes (Westport CT: Praeger, 2008), pp. 159-72.

²⁶ *Fighting for Life* (Dallas TX: Word 1996), p. 140.

about social movement analyses, let us teleologically examine the further evolution of the modern movement opposing abortion.

The Beckoning Horizon of Prudence

After the late Joseph Cardinal Bernardin's December 6, 1983 Gannon Lecture at Fordham University the phrase *the consistent ethic of life* achieved some prominence but not immediate acceptance within pro-life social movement organizations. He entitled his address "A Consistent Ethic of Life: An American Catholic Dialogue." Bernardin had been invited to speak on the American Bishops' just published and widely commented on pastoral letter "The Challenge of Peace," which strongly criticized the Reagan Administration's arms build-up and especially the government's unwillingness to reduce the number of nuclear weapons and to renounce any first-use policy. The document said that it was highly unlikely that any use of nuclear weapons could be morally justified. In their document the bishops taught (§286-87) that the same moral principle governed both the classical just war principle of *discrimination* (prohibiting any direct targeting, much less the killing of non-combatants) and the traditional prohibition against induced abortion. "Nothing," they taught, "can justify the direct attack on innocent human life, in or out of warfare. Abortion is precisely such an attack." Bernardin anticipated the huge task it would be to persuade others to make the connection between opposing abortion and opposing war,²⁷ acknowledging that those who opposed a nuclear arms buildup

²⁷ While the consistent ethic of life has been endorsed by the American Catholic Bishops in all of the major election year statements of the USCCB, there has been constant disagreement within the right to life movement, and within American Catholicism, on its validity and on how to translate this ethic into electoral politics. Prominent activists, such as Judy Brown of American Life Lobby, the late Nellie Gray, organizer of the annual January 22 March On Washington, the late James McFadden, publisher of *The Human Life Review*, and many others have complained that a "many issues approach," in McFadden's words, "still cloaks pro-abortion Catholic politicians" such as Edward Kennedy, Geraldine Ferraro, Mario Cuomo, Patrick Leahy, and we can add the

did not often oppose abortion, and vice versa. Such a congruence would require the continuing moral evolution of both movements. But it is important to note that within the pro-life movement the linkage has been present from its inception. The moral insight that objections to abortion and objections to war are rooted in the same moral principles appeared at the very beginning of the modern anti-abortion movement. As mentioned earlier, in 1964, almost a decade before *Roe*, Tom Cornell, one of the founders of the Catholic Peace Fellowship, said that it was pacifism that brought him to protest both the Vietnam war and abortion. Two years before *Roe* Gordon Zahn, one of the founders of *Pax Christi*, the international Catholic peace organization formed after World War II, linked opposing abortion and opposing war. So too did Dorothy Day, a founder of *The Catholic Worker*. Cornell, Zahn, and Day were not solitary figures.

In 1973, the year the Supreme Court in its *Roe vs. Wade* decision (7-2) struck down all state laws prohibiting or restricting abortion, the first college social movement organization formed in the abortion controversy, The National Youth Pro-Life Coalition at the University of Minnesota, morally intertwined its opposition to abortion and to the Vietnam War: “The Coalition is deeply concerned that our contemporary society is not consistent in its respect for human life” and it challenged those who were “antiabortion, pro-war and pro-capital punishment” to moral consistency because “true conservatism should involve a willingness to ‘conserve’ all human life.”²⁸

contemporary 2007 catholic democratic candidates for president such as Denis Kucinich, Bill Richardson, and Joseph Biden. Bernardin acknowledged the political complexities involved in trying to apply a consistent ethic of life to elections. When he gave a speech entitled “Linkage and the Logic of the Abortion Debate” at the annual National Right to Life conference held the next year after his Fordham *Consistent Ethic* address, Cardinal Bernardin recalled that, at its conclusion, only about half applauded (personal interview).

²⁸ Telephone interview with Susan Hilgers, a founder of the National Youth Pro-Life Coalition.

The year following *Roe* the Catholic Peace Fellowship published its *Statement on Abortion* (June 28, 1974), saying: “For many years we have urged upon our spiritual leaders the inter-relatedness of the life issues, war, capital punishment, abortion, euthanasia and economic exploitation.” It was signed by Dorothy Day, Eileen Egan, Hermene Evens, Joseph Evans, M.D., Thomas C. Cornell, James H. Forest, and Gordon Zahn.

Six years after *Roe*, in 1979, Juli Loesch began *Pro-lifers for Survival*, which linked the oppositions to war and abortion. In 1980, the Evangelical Christian journal *Sojourners* explicitly joined opposition to abortion to its long-standing opposition to the arms race and to capital punishment. Though largely ignored by the media and prominent pro-life social movement organizations, by the mid-1980s there was a wide and dense network of groups that explicitly linked their non-violence and rejection of modern warfare to a moral critique of abortion. At the last Prolifers for Survival gathering in March 1987 the “Seamless Garment Network” was formed. Its mission statement reads:

We the undersigned are committed to the protection of life, which is threatened in today’s world by war, abortion, poverty, racism, the arms race, the death penalty and euthanasia. We believe that these issues are linked under a consistent ethic of life. We challenge those working on all or some of these issues to maintain a cooperative spirit of peace, reconciliation and respect in protecting the unprotected.

By 2003 the Network had over 120 member organizations, most of them with religious identities, such as Catholic Worker groups and diocesan Peace and Justice Committees, Pax Christi, Evangelicals for Social Action, Sojourners, and the Buddhist Vihara Society. Because the metaphor “seamless garment” (as in John 19:23-24) required constant explication in a secular society, the network now identifies itself as “Consistent Life—An International Network for Peace, Justice, and Life.” At the end of the year 2009, the Consistent Ethic—Voices for Peace and Life web site listed 215 group affiliates. In efforts to overcome media stereotypes of abortion opponents, Consistent Life has taken out ads in

publications explaining the consistent ethic of life. Signers have included prominent peace activists such as Daniel and the late Phillip Berrigan, Elizabeth McAlister, Jim and Shelly Douglass, Joan Chittister, O.S.B., the late Eileen Egan (the first to apply the seamless garment metaphor to abortion opposition), Jean Goss and Hildegard Goss-Mayr of the International Fellowship of Reconciliation, Bishops Thomas Gumbleton, Walter F. Sullivan, and Raymond J. Hunthausen; Nobel prize recipients Mairead Corrigan Maguire and Adolfo Perez Esquivel, and the high-profile Protestant theologians Harvey Cox and Stanley Hauerwas.

The linking of the fates of the movements opposing the violence of abortion and the violence of war is still far from the empirical center of the pro-life movement and public notice. But that this telos is at the moral core of the movement is implicit in the ways that activists find themselves speaking when they must respond to their critics, especially on the occasions when fringe elements commit violence in the name of the pro-life movement.

Towards Making the Implicit Explicit

After each murder of an abortion performing doctor, pro-life social movement organizations and leaders first accurately note that the killer is a “lone wolf” unattached to any pro-life group and then—and here is the pertinence to telos—they unfailingly characterize their movement as *inherently* non-violent. For example, after the Eric Rudolph series of terrorist bombings in the Atlanta area in the mid-1990s, the chairman of the Bishops’ Committee for Pro-Life Activities said, “Such violence is the opposite of everything we stand for.” The executive director of the Georgia Right to Life said that violence “is never the solution to social problems.” Gary L. Bauer, then president of the Family Research Council, said: “Violence is not the answer to violence.” David O’Steen, long-time executive director of the National Right to Life Committee said: “The goal of NRLC is to break the cycle of violence, which includes abortion, not perpetuate it.”

After Scott Roeder murdered Dr. George R. Tiller in the vestibule of his church on the last Sunday of May in 2009, the remarks of leading pro-life organizations simply recycled these avowals of non-violence from a decade earlier. Father Frank Pavone, the founder and director of Priests for Life, a prominent pro-life Catholic group said: “We at Priests for Life continue to insist on a culture in which violence is never seen as the solution to any problem. Every life has to be protected, without regard to their age or views or actions.” Thomas Glessner, a pro-life attorney who heads NIFLA, a group that provides legal services to hundreds of pregnancy centers, said “violence is never a solution. The pro-life movement stands against violence and killing and this opposition is in our DNA.”²⁹

The repetitive pattern of these remarks show that when pro-life leaders respond to their severest critics in a morally persuasive way they link their opposition to abortion to the nascent non-violence movement, adumbrated in the gospels and embodied by, among others, Gandhi, Martin Luther King, Dorothy Day, and countless others. But these leaders and the mainstream movement opposing abortion have yet to apprehend personally and organizationally the deeper meaning and full moral implications of their immediate response to any use of violence to stop abortion.³⁰ Some religious leaders, however, more explicitly and prophetically call for a more direct linkage of oppositions to the violence of war and of abortion, as well as some of the most significant of contemporary pro-life social movement organizations, such as Feminists for Life.³¹

²⁹ All of the above are cited in “Atlanta Archbishop Decries Bombing of a Clinic,” *The Tablet* (Jan. 25, 1997) and “A Truly Horrendous Bombing” (Jan. 16, 1997).

³⁰ An examination of their responses show their animadversion to violence is not tactical—it gives pro-life a bad name—but principled: violence is inherently contradictory to the core meaning of opposing abortion.

³¹ Important too is the publication of some key commentary on the practice of the consistent ethic of life in *Consistently Opposing Killing: From Abortion to Assisted Suicide, the Death Penalty, and War*, ed. Rachel M. MacNair and

It is important to note that even when the phrase “a consistent ethic of life” is not explicitly employed, positions taken against abortion made in a dialogic or non-polemical context strongly tend toward, first, a comprehensive approach and then, with more reflection, to a vision of non-violence. In his 2007 World Day of Peace Message entitled “Both Gift and Task” Pope Benedict XVI, in his section on the right to life, in the fashion of the Second Vatican Council and of Joseph Cardinal Bernardin, explicitly linked opposition to the various kinds of violence in the context of a vision for a just peace:

As far as the right to life is concerned, we must denounce its widespread violation in our society: alongside the victims of armed conflicts, terrorism and the different forms of violence, there are the silent deaths caused by hunger, abortion, experimentation of human embryos and euthanasia. *How can we fail to see in all this an attack on peace* [emphasis added]?³²

In his address to the bishops of Switzerland on the day after his World Peace Day message, Pope Benedict says that since “there can be no contradiction between defense of life and defense of values such as peace, justice and nonviolence,” he is troubled that these movements are not yet united:

Stephen Zunes (Westport CT: Praeger, 2008).

³² It is also pertinent to point out that, because abortion as a direct attack on innocent human life is intrinsically unjust, some Catholic commentators justify making abortion a single issue that trumps all others in voting. But in his message for World Peace Day 2007, Pope Benedict XVI recalls the teaching of the Second Vatican Council that nuclear weapons and other means of indiscriminate destruction are intrinsically evil and merit “unequivocal condemnation”: “When it [the cold war] came to an end, there was hope that the atomic peril had been definitively overcome and that mankind could finally breathe a lasting sigh of relief. How timely, in this regard, is the warning of the Second Vatican Council that “every act of war directed to the indiscriminate destruction of whole cities or vast areas with their inhabitants is a crime against God and humanity, which merits firm and unequivocal condemnation.”

I have pondered on this—I have been pondering on it for a long time—and I see ever more clearly that in our age morality is, as it were, split in two. Modern society not merely lacks morals but has “discovered” and demands another dimension of morality, which in the Church’s proclamation in recent decades, and ever earlier perhaps, has not been sufficiently presented. This dimension includes the great topics of peace, nonviolence, justice for all, concern for the poor and respect for creation. They have become an ethical whole which, precisely as a political force, has great power and for many constitutes the substitution or succession of religion.... And it also fascinates young people, who work for peace, for nonviolence, for justice, for the poor, for creation.... And they are truly great moral themes that also belong, moreover, to the tradition of the Church.... The other part of morality, often received controversially by politics, concerns life. One aspect of it is the commitment to life from conception to death, that is, its defense against abortion, against euthanasia, against the manipulation and man’s self-authorization in order to dispose of life.... *I believe we must commit ourselves to reconnecting these two parts of morality and to making it clear that they must be inseparably united* [emphasis added].³³

Efforts to recognize what Benedict XVI laments—the separation of pro-life from peace-movements—are present when the setting is dialogic and the emphasis is on integrity and moral plausibility. Here are two more representative examples of the continuing evolution of the pro-life movement and its telos, one from hierarchical Roman Catholicism, one from pro-life feminism.

At the January 21, 2007 mass on the eve of the annual march for life, in his homily Cardinal Justin Rigali, Bishop of Philadelphia and Chair of the USCCB Committee on Pro-Life Activities, preached: “To choose life ... involves rejecting every form of violence: the violence of poverty and hunger, which oppresses so many human beings, the violence of armed conflict, which does not resolve but only increases divisions and tensions; the violence of particularly abhorrent weapons.”³⁴

³³ Zenit, text from the Vatican (Dec. 8, 2006).

³⁴ *Origins* (Feb. 1, 2007).

Serrin M. Foster, the President of *Feminists For Life*, is in constant dialogue as she speaks at colleges and other institutions and has published a list of the most commonly asked questions that challenge her. Her toughest questions concerning choice and women's autonomy always lead her to place opposition to abortion in the context of the aspiration of non-violence. Here are the three most common questions about choice and Serrin's responses.³⁵ Each is anchored on a rejection of violence as a solution:

Don't you respect women enough to allow them to make a choice?

Most women do not have abortions as a matter of "choice," but because they feel they have no resources to support a different choice. A coerced decision is not a free choice—it's a last resort. We support nonviolent choices—single motherhood, fatherhood, grandparenthood, marriage and various adoption options—along with practical resources and support. A society that promotes abortion as a "necessity" or "necessary evil" underestimates women and the violence of abortion and disregards what women really want.

If you don't trust me with a choice, how can you trust me with a child? All choices aren't equal, but all people are. We reject violence against women and children through abortion, and promote peaceful alternatives that benefit both women and equality.... It's not about trust—it's about condemning violence.

Don't women need to control their own lives? No one has complete control over his or her life. Once a woman is pregnant, the question is, 'What is the best possible nonviolent outcome for her?'

From such various and emergent efforts by those who explicitly place themselves in a condition of dialogue where the stress is on integrity and moral plausibility³⁶ we can see, at least in an anticipatory way, that the telos—the fullest coherence—of the right to life movement opposing abortion is to become fully pro-life and join contemporary Christianity

³⁵ Cf. www.feministsforlife.org.

³⁶ We simply run out of space. See, for example, the March 2007 Board of the National Association of Evangelicals' *An Evangelical Declaration Against Torture: Protecting Human Rights in an Age of Terror*. At the very end the authors place their witness in the context of a seamless garment, the metaphor that Cardinal Bernardin used for a consistent ethic of life.

to the first witness of the Christian Church, and with many others, in a commitment to non-violence.

The Telos of Abortion Opposition Is a Commitment to Non-violence

The telos—the vital moral core, the essence, and the ultimate goal—of the movement opposing abortion is to become ever more consistently pro-life in a commitment to non-violence. Principled non-violent antiwar activists comprised one of the core early streams of the modern movement that sought to prevent abortion from becoming a normal dimension of human life. To keep its vitality the movement opposing abortion must keep returning to its deepest and more inclusive moral insight: that a resort to violence in any dimension is a negation of the human good. And to keep its deepest vitality, movements opposing war must learn from the early opponents of abortion that at its deepest moral justification abortion is a personalization of just war theory applied to a unique and vulnerable developing human life. Abortion is the individualization and thus the continuation of just war theory. The fates of the moral flourishing of the non-violence animating both the anti-war and the anti-abortion movements are irrevocably linked.

Admittedly, a consistent ethic of life as the core of the movement opposing abortion will sound like transcendent ideals that belong to Kingdom of God language and the category of the eschatological rather than sociological analysis. But invitations to such a witness answers a call from our deepest moral centers and from the transcendent human aspiration to solidarity. And, following Tilly once again, a truly vital social movement will tell its story backwards. A consistent ethic of life can protect anti-abortion prudence from losing sight of its beckoning vision by grounding it in the most comprehensive and ultimate meaning for opposing abortion: a growing commitment to non-violence.

About Our Contributors

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The essay by Richard Fehring is an extended version of a paper originally published in *The Linacre Quarterly*. This article includes new data from Marquette University not treated in the earlier paper.

Another version of the paper by Andrew Jaspers appeared in *The Linacre Quarterly* 76/4 (2009) under a different title.

The essay by Gilbert Meilaender first appeared in *The Weekly Standard*, vol. 14 (June 8, 2009), and we are grateful to its editor, William Kristol, for permission to reprint it here.

A slightly truncated version of the essay by Richard Stith was published in *First Things* (Aug.-Sept. 2009) under the title “Her Choice, Her Problem: How Abortion Empowers Men.” We are grateful to that journal for the permission to reprint it here in an expanded version. The present article is substantially modified from the Spanish original presented on 25 August 2008 at the Institute for Legal Research of the Universidad Nacional Autónoma de México. That original can be accessed at http://www.miradaglobal.com/index.php?option=com_content&task=view&id=910&Itemid=9§ion=18&lang=es§ion=18§ionid.

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