THE HUMAN LIFE REVIEW

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BANNING DISMEMBERMENT ABORTIONS

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PERSONHOOD LITE

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PERSONHOOD CONTRA MUNDUM

◆ WHEN DOES HUMAN LIFE BEGIN? ◆

Umberto Eco & Carlo Maria Martini

◆ ALSO IN THIS ISSUE ◆

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. . . Helen Alvaré, a law professor and pro-life leader whose work has appeared here over the years, says the *Human Life Review* "is the place where the movement for life does its thinking." This has been true since early on when constitutional human-life amendments and congressional human-life bills were hashed out in these pages; it's certainly true in this issue, where the debate between "incrementalists" and the emerging "personhood" movement is aired by Paul Benjamin Linton ("Personhood Lite," page 28) and new contributor Gualberto Garcia Jones ("Personhood Contra Mundum," page 35). Another new contributor, Chris Rostenberg ("The First Battle," page 45), has provocative ideas of his own for waging the fight to save unborn children. Still another, Scott Lloyd, makes the case for building on the success of the partial-birth-abortion ban campaign ("Banning Dismemberment Abortions: Constitutionality & Politics," page 11).

Our editor, Maria McFadden Maffucci, reports on how the Vitae Foundation is helping pregnancy centers use effective communications strategies for convincing women not to abort ("Life-Saving Right Brain Research," page 70). Anthony Crescio, a student at Marquette University, also focuses on the woman in his first article for us ("Abortion: a Threat to the Actualization of the Mother," page 57). Katha Pollitt's new book *Pro: Reclaiming Abortion Rights*, is woman-centered, though with an entirely different mission: the aging feminist is touting abortion as "a social good." Susannah Black's review of *Pro* (Booknotes, page 78) first appeared on our website (www.humanlifereview.com); we are pleased to publish it here and to welcome her, and all our other new contributors, to the *Review.* This includes our friend Sally Muggeridge, whose uncle, Malcolm, was a one-time editor-at-large of this journal ("A 20th-Century Pilgrim," page 65).

"When Does Human Life Begin?" The Italian novelist and philosopher Umberto Eco posed that question to the late Cardinal Carlo Maria Martini in an exchange of "letters" between the two men that appeared over a decade ago in Italy's *Il Corriere della Sera* newspaper. The letters were subsequently published in book form as *Belief and Nonbelief: A Confrontation.* We'd like to thank Skyhorse Publishing for permission to reprint the two letters we include here (page 36). Thanks also to *First Things* for allowing us to share William Doino Jr.'s "March On for Life" (page 83); *National Review* for Kathryn Jean Lopez's interview with Jeanne Monahan, "Every Life Is a Gift" (page 85); and the *Wall Street Journal* for Paul McHugh's "Dr. Death Makes a Comeback" (page 88).

We'd like to thank, too, the *National Catholic Register* for recognizing our 40th anniversary in a recent profile of the *Review*. The story can be accessed online (http://www.ncregister.com/site/article/40-years-of-a-pro-life-journal/). Speaking of online, we encourage those of you who are interested to continue to check out our website, featuring blogs from a diverse group of commentators and links to important stories concerning life issues.

Anne Conlon
Managing Editor

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INTRODUCTION

We open this first issue of our 41st year with a war report: dispatches from "The War on Truth" by senior editor William Murchison. This is a real war in which we are currently engaged, in contrast to the phony "war on women"—a trumped-up charge used as a weapon against Republicans in the 2012 elections. As Murchison reports, attempts to resurrect this fake war in 2014 failed badly; it became clear that the "war on women trope" was really about abortion rights, and American women had a lot more on their minds than the pro-abortion lobby's single-issue focus.

We welcome to our pages next attorney Scott Lloyd, who contributes a legal note on an "unexplored possibility" in the pro-life legislative battlefront: a ban on "dismemberment abortions." Lloyd explains that while in the last several years "state legislatures have succeeded in restricting abortion" to a degree not seen since *Roe*, a ban on this horrible abortion method—already described in gruesome detail in the Supreme Court's partial-birth-abortion ban decisions—might provide the Court with a "new interest that overrides a woman's right to abortion before viability." There is much speculation, he reports, on what Justice Anthony Kennedy has written "as a member of the *Casey* majority who later voted to uphold the Partial Birth Abortion Ban"; Lloyd concludes that "careful scrutiny of the jurisprudence" shows that a dismemberment ban would be a "prudent path for abortion proponents to pursue."

"Prudence" vs. "purist" might be the buzz words for debates over legislation (often played out in the *Review*'s pages) between those who favor incremental restrictions and those who insist on personhood with no exceptions. The debate continues in our next two articles, which discuss an additional split within the personhood movement itself. Attorney Paul Linton, in "Personhood Lite," writes as a critic of the personhood strategy, and reports that last fall, after "an unbroken string of defeats" for personhood measures at the state level between 2008 and 2014, Dan Becker, president of Georgia Right to Life, announced the forming of a new group (Personhood Alliance) which would scrap the states' plan and focus on "pursuing personhood through citizen initiatives undertaken at the local (county and municipal) level." Linton finds it "remarkable" that supporters of personhood would now "focus on replicating" their failures and says the new strategy "does not deserve the support of the pro-life community." His charge is answered by the new policy director of Personhood Alliance, Gualberto Garcia Jones (in "Personhood Contra Mundum" p. 35), who defends both the principles of the

personhood movement and the local initiatives planned by Personhood Alliance.

It would not be surprising if both Linton and Garcia Jones—and you, dear reader—have energetic reactions to Chris Rostenberg's article, titled "The First Battle" (p. 45), in which he proposes an interim position in the war, declaring himself a "pro-compromiser." He will stay silent on early abortion, and fight pro-choicers on abortions performed on viable children. Whether one agrees on the position, Rostenberg makes some excellent suggestions, especially when it comes to the public debate, where pro-lifers are forced to talk about the (minority) hard cases, and abortion supporters are not forced to defend the majority of abortions. "Abortion supporters should not be allowed to pick and choose which abortions they wish to talk about."

From the practical to the philosophical: We shift next to a lofty and lyrical duo of letters between Umberto Eco, an Italian philosopher and author known here for his best-selling novel, *The Name of the Rose,* and the late Cardinal Carlo Maria Martini, S.J. We have reprinted their beautiful dialogue on human life: Eco's "When Does Human Life Begin?" (p. 49) and Martini's "Human Life Is Part of God's Life" (p. 53). Continuing with a Christian reflection on what abortion does to the mother is Anthony Crescio, a senior at Marquette University. He insists that the "line drawn in the sand" between the mother and child that often arises in the debate ought to be erased. When a mother has an abortion, she commits a sin of social injustice: in "violating another individual the woman has violated herself." She has also missed out on the opportunity to truly love another in the most self-sacrificial and intimate way a mother can; she has sinned and is suffering, but, Crescio urges, the pro-life community must be there to offer her healing.

This year marks the 25th anniversary of the death of the great British journalist and media personality Malcolm Muggeridge—also the *Review*'s treasured friend and contributor. His niece and the president of the Malcolm Muggeridge society, Sally Muggeridge, contributes a marvelous profile of Malcolm, "A 20th-Century Pilgrim," on page 65. She mentions Malcolm's great friendship with the late William F. Buckley Jr., and his appearances on Buckley's "Firing Line": Excerpts from one such program are reprinted in Appendix D.

Our final article is contributed by your editor, a look at a development in the fight against abortion that began with Carl Landwehr and his Missouri-based Vitae Foundation, which pioneered the use of consumer research (specifically, Dr. Charles Kenny's "Right Brain Research") to help pregnancy centers reach abortion-minded women. As I report, the use of such research was initially met with strong criticism, but it has proven to be powerfully effective in marketing a culture of life and saving lives.

And in our Booknotes, page 78, newcomer to our pages Susannah Black reviews a book by feminist poet and critic Katha Pollitt, *Pro: Reclaiming Abortion Rights*. Pollitt wants to "reframe the way we think about abortion" as (get this) "a positive social good," not the "necessary evil" Naomi Wolf "famously declared it to be in

1995." Black's essay reflects her deep understanding of the "other side"—she was once pro-choice—as well as her conviction, which echoes Crescio, that "we break through into real life not when we reject the moral calls that are placed upon us, but when we willingly take them up . . . ."

* * * * *

We've only room for a few appendices, so we start with two about the 42nd Annual March for Life. In Appendix A, *First Things* contributor William Doino, Jr. admires the marchers for their persevering witness and finds more "reasons to hope in the pro-life movement than to despair because of abortion." In Appendix B, National Review Online's Kathryn J. Lopez interviews the "loving, youthful, and energetic" Jeanne Monahan, president of the March for Life Educational and Defense Fund.

Appendix C is a powerful warning from Dr. Paul McHugh about the resurgence of the push for legalization of assisted suicide in state laws—"Dr. Death Makes a Comeback." Besides the moral problems with the proposed legislation, McHugh says, for physicians, assisting in patient suicide "hollows out the heart of the medical profession." Finally, as mentioned, we close the journal with "Modern Attitudes toward Life and Death," a transcript from a "Firing Line" episode in which William Buckley and Malcolm Muggeridge discuss euthanasia, and the "hard cases" that become the rationalization for ushering in a "humane holocaust."

Our journal's cover has had a makeover; we hope you approve, just as we hope you will be enlightened and encouraged by all that is inside, and cheered—as we are!—by Nick Downes' clever cartoons.

Maria McFadden Maffucci
Editor

The War on Truth

William Murchison

Fiddle-dee-dee! War, war, war. This war talk's spoiling all the fun at every party this spring. I get so bored I could scream.
Scarlett O'Hara, April 1861

To be sure, the war that so diverted the attention of the wily, green-eyed Miss O'Hara's suitors was a real live, sure 'nuff war, with barely thinkable stakes for all concerned. How could it not be talked about?

Alas, the pastime of war talk has degenerated in the interval since the garrison of Fort Sumter hauled down its colors. Everything's a war now—a titanic struggle for truth, justice, and the American way. Or so common usage of this theoretically uncommon term would suggest, what with wars on poverty, wars on disease, wars on ignorance and tobacco and high-calorie soft drinks: not to mention the barely concluded "war on women," a conflict which appears to have ended badly for those who began it.

Well, not "began" it, precisely. That particular iniquity, during the war's course, was attributed to the conservative Republicans who supposedly were bent on forcing American women into a kind of slavery distinct from that which broke apart the whole nation a century ago. The "war" theme became hugely popular for a time among Democrats working to keep women from joining men increasingly fed up with the Obama Administration and its congressional enablers.

The Republicans' mission, as recounted by the likes of embattled Colorado Senator Mark Udall, was to compromise women's rights in various ways, blocking their access to birth control, restricting their constitutional right to abortion, annulling hard-won social and economic advantages. In North Carolina, Republican Senate candidate Thom Tillis came under enemy fire for the supposedly demeaning way he addressed his Democratic opponent, Senator Kay Hagan. Why, he called her "Kay"! Did you ever? A Kentucky Republican campaign aide demeaned Senator Mitch McConnell's Democratic foe Alison Lundergan Grimes as "an empty dress." To mention an article of women's clothing in the context of a political disagreement was obviously to invite alarm over a woman's Getting Out of Her Place in Life. So fluently,

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and monotonously, did Udall heat up the rhetorical war—half his campaign ads were centered on it—that he acquired the notorious nickname "Mark Uterus." (If you want to know one difference between the pre-feminist era and whatever era we're in now, consider that in ye olden tyme, public reference to intimate aspects of the human anatomy was a no-no.)

So went the war talk: on and on and on; war for breakfast, lunch, and dinner; war for the sake of war. It sure spoiled one party: the celebratory bash the Democrats planned to throw after waxing Republicans across the land, consigning Mitch McConnell and his ilk to the dustbin of history for their male instincts and policies.

From a Democratic standpoint, the celebration of male-female conflict made a kind of low, unedifying sense. These days you throw the kitchen sink at your enemies, right? Good government isn't the proximate objective; victory is. Q. E. D.

Democratic strategists gleefully recalled the verbal stumbles of two Republican senatorial candidates, Todd Akin in Missouri and Richard Mourdock in Indiana, as to the delicate subject of rape and resultant pregnancy. Akin spoke carelessly of "legitimate rape," and Mourdock, with utter sincerity, saw such pregnancies as aligned with the will of God. The Democrats pounced instantly, and both Republicans lost.

There was to be none of this sort of thing in 2014, Republican strategists decided. By "strategists" we understand in a broad sense those who funded Republican campaigns and those who supplied them with experts and advice. For the first campaign season since Barack Obama's 2008 victory over John McCain, Republicans put forward no clueless clunkers, male or female either one. Those who wanted to run were vetted; those who seemed the likeliest and savviest were encouraged; the party was not idly sitting around this time, waiting to see who emerged from the local dust-ups.

The Democratic line was that Republicans were so many broad-chested Tarzans, swinging through the jungle, disdainful of women's rights and entitlements in the society of the 21st century. This was supposed to go down poorly with the Janes whom Democrats saw as natural allies. "The Republican war on women is back," according to the Democratic Senatorial Campaign Committee, "and it's even more appalling than ever." This was the generalized verbiage on which candidates like Udall were supposed to rely as they waited for the inevitable—an artless Republican slip that could be whipped into a crisis, an explosion of faux outrage touched off by Democratic publicists.

It didn't work. Manufactured outrage over nothing—e.g., the use of Senator Hagan's Christian name—soon enough drew righteous ridicule. The conservative columnist Kathleen Parker saw how the Democrats were relying

on the power of suggestion. To be at war with women was to be at war (so the suggestion went) with entitlement to abortion. "The war on women," said Parker, "is based on just one thing—abortion rights . . . this is the entire content of the war as defined by savvy Democratic operatives." Elect these more-than-questionable Republicans and they would fall upon *Roe* v. *Wade* with billy clubs and bungstarters. Kimberly Strassel, in her *Wall Street Journal* column, made much the same point: "the left's monomaniacal focus on abortion" had backfired. Women's "issues," to Senator Uterus, were all that mattered.

In fact, suggested Parker, a whole lot more was going on with women than the drudgery of defending abortion rights in every particular. There was the laggard economy for instance. There were the perplexities of health care. Two political scientists writing in the *Washington Post* suggested that "[a]ttitudes about the size and scope of government—not abortion—are what drive the gender gap," with women likely to see insurance coverage for birth control as an issue separate from abortion.

And it didn't work! That would be the crucial point. Democratic cynicism and condescension failed to peel off the female votes that would have left Democrats in charge of the Senate as well as the White House for two more years: two years during which they could have spun for the voters (with media assistance) a fine story about, well, how not much is getting done*, but, boy, are we Democrats whipping up on all the women-haters in the general population!*

What shall we properly call the Democratic strategy?—the degradation of democratic politics? There's obviously a lot of political degradation going on today, but the war on women trope teaches us, or should, how far out of balance things have latterly become. From which configuration at least two points might be deduced.

The first is the self-defeating nature of attempts to solve many of our more pressing social problems through the instrumentality of politics.

True (as I have recently asserted in these pages, and is a fact well recognized in any case) it was the U.S. Supreme Court that originally got the politics wrong. *Roe* v. *Wade* was an intensely political decision: a showdown between different viewpoints on the human life question, requiring in the case of the *Roe* plaintiffs a political solution concerning which neither religion nor philosophy could enjoy any status at the bar. It was the *Roe* majority's aim to put the religious and philosophical-minded out of business insofar as their preoccupations got in the way of what an important political constituency wanted done.

Political majorities in the various states had erected barriers to abortion: That

much was true. They had done so, however, in the spirit of democratic give-and-take: elected representatives of the people shaping laws they believed, and had a right to believe, respected public sentiment. The rules of democracy seemed to call for referring the question anew to the people's representatives so that they might take note of viewpoints and interests that had emerged since enactment of the anti-abortion laws. Maybe the people's representatives would see fit to enact changes in these various laws. Maybe not. The matter was political only in the sense that any democratically enacted law is political: a matter for rational discussion, rational action.

Roe took the matter to a new level. The politics practiced by the seven-man majority in the case were of an order unknown in these controversies. The will of the people, and of their representatives, had ceased to matter. The will of the Court was what mattered.

We all understand this, I think. I bring up the matter for purposes of illustrating the impracticality of submitting great moral questions to political judgment, saving only such judgments as *un-coerced* majorities bring to a particular matter. What did the Court, and the politicians who backed the Court's ruling, suppose conscientious friends of unborn life were going to say in response to *Roe*? Something like, *Well, that's Truth for you—always changing?*

We were gearing up, back in 1973, for the war so many declared last year was here in full force—the war on women (a title all the more inevitable on account of its alliterative properties). The past four decades have been cluttered with charges that politicians styling themselves pro-life lack any real regard for women, want to control women's "bodies," think a woman's proper jobs are washing diapers and folding laundry, etc., etc. Not the least disservice to the cause of rational thought about abortion has been the political pitting of supposedly selfish, hard-hearted males against supposedly discriminated-against, put-upon females.

Were the Supreme Court at this late date to reverse *Roe* and let each state shape its own approach to the abortion question our capacity to clear the public arena of recriminations of the "war on women" type would be small indeed. Too much bad blood, too much distrust exists between the main contending parties—pro-life and pro-choice. Such is the legacy of warfare.

That brings us to my second deduction from the collapse of the "war on women." It has to do with what we clearly nowadays regard as an old-hat virtue: honesty. Honesty, we all acknowledge, is one of those human traits honored at least as much in the breach as in the observance. It would be fanciful to summon up, mentally, some bygone age when, my dear, *everybody* honored Truth, and a man's word was his bond, and a woman's word hers,

and we all went to Sunday School and said thank-you, ma'am, and yes-Father-I-did-it-with-my-little-hatchet. What a nice vision—a trifle marred by visions of the Garden of Eden and the consequences that fell upon our primeval ancestors on account of the evidently human trait to put self-interest first.

The political trade, centered on the quest for power, abounds with temptations to cut moral corners and round moral complexities to the lowest decimal point. Political animals are not in the best times candidates for beatification: the less so as gains in power and influence put before them the prospect of further gains.

All this being so, what is the point? The point is that a more rigid insistence on honesty in our public as well as private affairs might have some salutary effects on a debate that long ago became a bummer—the abortion debate.

"War, war, war"—typical! Inevitable as well. The debate is in no strict sense about abortion; it is about two significantly lesser, if interrelated, considerations: 1) power and 2) votes. Votes yield power. The voters in question here are those women who see their hopes and futures as vested in the continuation of the guilty pleasure called the Right to Choose. It's not necessary actually to employ the right in order to enjoy it. The pleasure comes from knowing it's there if wanted—a living symbol of the new estate in life which various women see as grounded in the overthrow of old restrictions on "choice," old taboos on the particular modes that make civilized life civilized. Nobody tells *me* what to do with *my* body!—that sort of thing. The Democrats' "war on women" strategy was concocted to make the most of a false conceit: to wit, that women's rights were at risk in a Republican empire. There was no honesty in such assertions, only guile and deception.

A practical problem with guile and deception is that they become habits over time: feeding the already powerful disposition of the vote-hungry to use them at the drop of a hat. We can easily see where this thing goes—straight downhill. A politics based on deception and outright lies is a politics deadly to peace and social harmony, in part because of the resentments it stirs up, in part because of the cynicism and distrust it breeds. The remedy is pushback and, hard as it may seem, conversion.

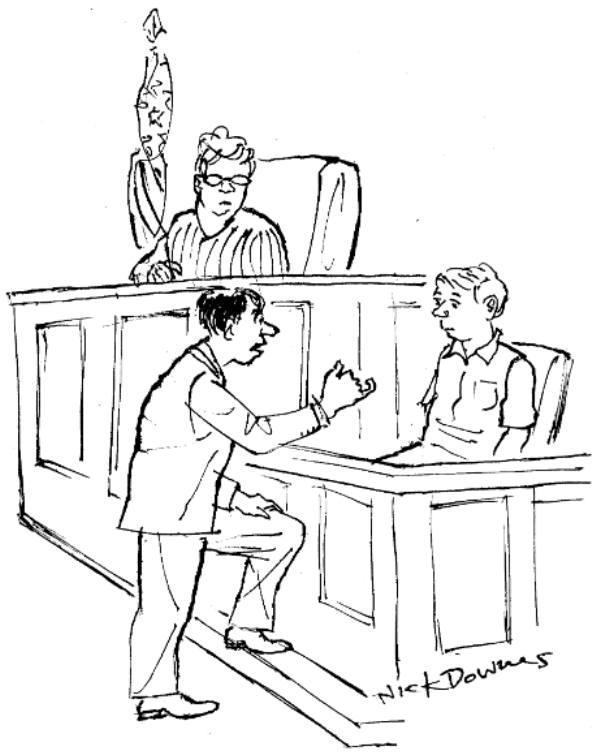
In 2014 the GOP and their voters, including the many who recognized Senator Uterus et al. as attempting the bamboozlement of a whole society for not quite the most attractive purposes, saw what was going on all around them. The check inflicted on the war on women crusaders could discourage replays of the strategy. Or maybe not. A mission even larger than political repulse is the infusing of politics, to whatever degree is remotely possible these days, with respect for the telling of truth. To which end, the calling out of liars and such-like becomes necessary. More essential still, should we

find ourselves equipped for the exercise, would be the self-policing of consciences become soft and flabby due to the temptations of power and the perceived ease of grabbing it.

The truth that proverbially makes us free deserves from a nominally free society the kind of veneration and protection only a society concerned with its soul can provide.

When did honesty pass from commendation as "the best policy"? Hard to say: nearly as hard as the question, how do we restore that state of things?

Our morally corrupted institutions—churches, schools, universities, the multiplying means and channels of communication—may or may not be able to. One thing is sure: They can't unless they try, which they won't until up from the people themselves surges a great clamor for—yes—the Truth. At long last.



"Pinky-swear?"

Banning Dismemberment Abortions:
Constitutionality & Politics

Scott Lloyd

During the past several years state legislatures have succeeded in restricting abortion in this country to a degree not seen since the Supreme Court's 1973 *Roe* v. *Wade* decision.[1,2] These restrictions reflect several approaches, including regulating clinics, limiting specific procedures, instituting consent requirements and waiting periods, granting legal status to the unborn, and restricting abortion after a certain point in the pregnancy. Specific efforts in this last category include bans on the procedure after viability—around 24 weeks—and after unborn children are capable of feeling pain, determined to be at 20 weeks.

Both of the latter approaches focus on some milestone in fetal development, which departs in at least two ways from the last major federal abortion legislation—the ban on Intact Dilation and Extraction, or partial-birth abortion: 1) these new bans focus on the human characteristics of the fetus rather than the gruesome nature of an abortion method, and 2) they prohibit *all* abortion procedures going forward, rather than only a specific one.

There are good reasons for the departure, of course, and noting a difference is not a criticism. At the same time, restrictions that ban abortions before viability represent direct challenges to current abortion jurisprudence—reasonable ones, yes, but challenges nonetheless. If they are to be successful, it will be necessary for the Court to find a new interest that overrides a woman's right to abortion before viability.

There appears to be another unexplored possibility, however. A close reading of the various opinions in *Gonzales* v. *Carhart*[3] and *Stenberg* v. *Carhart*,[4] the two Supreme Court cases dealing with a partial-birth-abortion ban, suggests an avenue toward restricting abortion that would permit passage of significant regulations while not challenging established jurisprudence. Such an avenue would present the Court with the opportunity to author an opinion allowing for greater restrictions without contradicting what it set down in its 1992 *Planned Parenthood* v. *Casey* ruling upholding *Roe*.

This note proposes as an additional approach what seems to be, judging from the relevant jurisprudence, another logical step after the Partial Birth

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Abortion Ban: a ban on Dilation and Evacuation (D&E) abortions.

Some have seen this development coming.[5] For example, there was an attempt to ban D&E abortions in the 2014 legislative session in South Dakota. But the bill's language was so broad it could have been interpreted as encompassing a ban on suction and curettage abortions—the most common procedures in the first trimester. This was enough to ensure the bill's defeat in committee. In the wake of this attempt, media reports speculated that a ban on the D&E procedure could follow the current pain-capable campaign to restrict abortion after 20 weeks (such legislation has already been enacted by 10 states). Kansas State Senator Garret Love (R) has said that he will introduce a D&E ban in the 2015 legislative session. The National Right to Life Committee has also announced that dismemberment bans will be part of its legislative strategy this year.[6]

Of the many techniques employed to abort a baby, dismemberment is among the most brutal and gruesome. The facts are enough to cause most Americans—including members of the pro-abortion-rights majority on the Supreme Court, and even abortionists who perform the procedure—to experience significant disgust, distress, and mental anguish. These are procedures acceptable only to the most hardened abortion advocates, and it seems a ban on them may find a welcome reception at the Supreme Court. Therefore, a ban on D&E abortions seems the best incremental step to follow any success on legislation banning abortion on unborn children capable of feeling pain.

To better understand why, we will take a look at what dismemberment abortion is and what the Supreme Court has said on the matter, especially what Justice Anthony Kennedy has written as a member of the *Casey* majority who later voted to uphold the Partial Birth Abortion Ban. We will then discuss the shape a political effort to pass the bill could take, and consider some of the anticipated challenges to such a law that are likely to arise in Court; finally we will suggest responses that could be made to these challenges, employing the testimony of practitioners of dismemberment abortions.

I. What Is a Dismemberment Abortion?

For a description of a dismemberment (or D&E) abortion, it would be difficult to improve on what the Supreme Court has provided us:

> A doctor must first dilate the cervix at least to the extent needed to insert surgical instruments into the uterus and to maneuver them to evacuate the fetus. The steps taken to cause dilation differ by physician and gestational age of the fetus. […]
>
> After sufficient dilation, a doctor inserts grasping forceps through the woman's cervix and into the uterus to grab a living fetus. The doctor grips a fetal part with the forceps

> and pulls it back through the cervix and vagina, continuing to pull even after meeting resistance from the cervix. The friction causes the fetus to tear apart. For example, a leg might be ripped off the fetus as it is pulled through the cervix and out of the woman. The fetus, in many cases, dies just as a human adult or child would: It bleeds to death as it is torn apart limb by limb. The fetus can be alive at the beginning of the dismemberment process and can survive for a time while its limbs are being torn off. The process of dismembering the fetus continues until it has been completely removed. A doctor may make 10 to 15 passes with the forceps to evacuate the fetus in its entirety, though sometimes removal is completed with fewer passes. Once the fetus has been evacuated, the placenta and any remaining fetal material are suctioned or scraped out of the uterus. The doctor examines the different parts to ensure the entire fetal body has been removed.[7]

Roughly 12% of all abortions nationwide are performed after the first trimester (up to 12 weeks after the last menstrual period), and of these, 95% are performed using the dismemberment method.[8] Although suction and curettage may be used until the 16th week of pregnancy, in practice it appears that abortionists will opt for other procedures, especially dismemberment, after the first trimester.[9] Options other than dismemberment exist for aborting a fetus in the second trimester, but they are not often utilized in the United States.[10]

In a certain sense, the dismemberment method differs significantly from what has become known as partial-birth abortion, the now banned procedure in which a doctor partially delivered the fetus before piercing its skull with scissors and vacuuming out its brain.[11] It is a difference large enough to form the basis for much of Justice Kennedy's reasoning in his two partial-birth-abortion opinions.

In another sense, however, dismemberment abortions are similar to partial-birth abortions, particularly in their brutality and inhumanity. This acknowledgment forms much of the reasoning in Justice Breyer's majority opinion in *Stenberg*—and Justice O'Connor's concurrence—where a Nebraska partial-birth-abortion ban was ruled unconstitutional, and in Justice Ginsburg's dissent in *Gonzales,* the decision which upheld the Congressional Partial Birth Abortion Ban Act of 2003. It may also hold a key to establishing a place where the Court can find a ban on dismemberment abortions constitutional.

II. Three Opinions Concerning D&E Abortions Are Unknown

At this point in the development of abortion jurisprudence, we do not know the opinions of Justices Kennedy, Sonia Sotomayor, and (to a much lesser extent) Elena Kagan[12] on the question of late-term abortion. While many suppose each to favor abortion in general, support for late-term abortion is actually an entirely different question. A Knights of Columbus/Marist poll,

for example, found that 84% of Americans—including 58% of those who describe themselves as "pro-choice"—support restrictions on abortion after the first trimester.[13] The possibility exists that these justices would not have much of an appetite for defending late-term abortion, and this sentiment might be particularly acute in the wake of a long political campaign that, in the process of attempting to ban dismemberment, informed the American public about the brutal nature of these kinds of abortions.

The existing abortion jurisprudence remains open to this possibility.

a. Justice Kennedy's Opinions Are Open to a Dismemberment Ban

As the only *Casey* author subsequently to uphold the constitutionality of a partial-birth-abortion ban,[14] Justice Kennedy's opinions regarding late-term abortion are required reading for anyone seeking either to restrict or protect the right to abortion. For these purposes, it is important for us to examine them in some detail.

At first look, his opinions do not reveal any burning desire to join from the bench the growing political movement to limit abortion. In the context of all of the opinions in the partial-birth cases, however, Justice Kennedy's overall stance is open to a different interpretation. In this light, his opinions are notable not for their late-term-abortion partisanship, but instead for passing on several easy opportunities to declare dismemberment bans unconstitutional.[15] All we know from these opinions is that he does not choose to opine on dismemberment abortions, though he does seem to be quite uncomfortable with the procedure. While it may be the case that he would strike down a ban on D&E abortions, he writes as one who would be equally open to upholding the constitutionality of such legislation.

b. What Justice Kennedy Wrote and Its Significance

In his majority opinion in *Gonzales* v. *Carhart*—and four years earlier in a passionate dissent in *Stenberg* v. *Carhart*—Justice Kennedy begins by describing each abortion method in detail, stating that he wants readers to confront the reality of the procedures.[16]

From there, Justice Kennedy reminds us where he stands by summing up his view of the balance that *Casey* struck, at least in reference to banning certain abortion procedures:

> Before viability, a State "may not prohibit any woman from making the ultimate decision to terminate her pregnancy." It also may not impose upon this right an undue burden, which exists if a regulation's "purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." On the other hand, "[r]egulations which do no more than create a structural mechanism

> by which the State, or the parent or guardian of a minor, may express profound respect for the life of the unborn are permitted, if they are not a substantial obstacle to the woman's exercise of the right to choose."[17]

and,

> Where it has a rational basis to act, and it does not impose an undue burden, the State may use its regulatory power to bar certain procedures and substitute others, all in furtherance of its legitimate interests in regulating the medical profession in order to promote respect for life, including life of the unborn.[18]

and,

> Nebraska must obey the legal regime which has declared the right of the woman to have an abortion before viability.[19]

In other words, before viability women must be allowed to make the ultimate decision to have an abortion and the state may not impose on it an undue burden; after viability, the state may regulate to protect life and the medical profession, including barring certain procedures and substituting others. None of these propositions explicitly precludes the possibility of a dismemberment ban; and while the other *Casey* supporters on the Court all state their belief that such a ban would be unconstitutional, Justice Kennedy does not. We will say more about this later.

Justice Kennedy then observes that partial-birth-abortion bans are acceptable under the *Casey* regime, but does so amid claims by other justices that partial-birth abortions and D&E abortions are indistinguishable as both a moral and a legal matter.

To distinguish his position from the Court's other abortion supporters, then, it is necessary in both opinions for Justice Kennedy to go to some length to differentiate between the two procedures. He writes:

> The Court's refusal to recognize Nebraska's right to declare a moral difference between the procedure is a dispiriting disclosure of the illogic and illegitimacy of the Court's approach to the entire case. Nebraska was entitled to find the existence of a consequential moral difference between the [partial birth and standard D&E] procedures.[20]

and

> It was reasonable for Congress to think that partial-birth abortion, more than standard D&E, "undermines the public's perception of the appropriate role of a physician during the delivery process, and perverts a process during which life is brought into the world."[21]

He goes into much more detail, but these two examples provide a sketch of his position. These and similar statements would be unremarkable given what we have just observed, except when one remembers where Justice

Kennedy stands with regard to the status of the Court's abortion jurisprudence—as an author of the Court's balance whereby some abortion restrictions are acceptable and others are not. These statements become remarkable because they do all but declare that the opposite is true: that voters could find there to be *no* moral or rational difference between the two procedures.

This is particularly so in light of what the *Stenberg* majority said—that the two methods are indistinguishable. Consider Justice Stevens, whom Justice Ginsburg joined, writing in his concurrence (among other opinions making the same point less directly): "For the notion that either of these two equally gruesome procedures (partial-birth and standard D&E) performed at this late stage of gestation is more akin to infanticide than the other, or that the State furthers any legitimate interest by banning one but not the other, is simply irrational."[22]

In case the reader missed that point, Justice Kennedy goes on to state it explicitly: "Those who oppose abortion would agree, indeed would insist, that both procedures are subject to the most severe moral condemnation, condemnation reserved for the most repulsive human conduct."[23] It is clearly not lost on Justice Kennedy that abortion opponents might come along and do what we are contemplating here. If he is willing to put this in writing, one would think he would close the loop, so to speak, and opine on dismemberment in order to discourage abortion opponents before they got started.

With this in mind, two other statements become significant. First is Justice Kennedy's explicit acknowledgement that other second-trimester options for abortion exist:

> D&E and intact D&E are not the only second-trimester abortion methods. Doctors also may abort a fetus through medical induction. The doctor medicates the woman to induce labor, and contractions occur to deliver the fetus. Induction, which unlike D&E should occur in a hospital, can last as little as 6 hours but can take longer than 48. It accounts for about five percent of second-trimester abortions before 20 weeks of gestation and 15 percent of those after 20 weeks. Doctors turn to two other methods of second-trimester abortion, hysterotomy and hysterectomy, only in emergency situations because they carry increased risk of complications. In a hysterotomy, as in a cesarean section, the doctor removes the fetus by making an incision through the abdomen and uterine wall to gain access to the uterine cavity. A hysterectomy requires the removal of the entire uterus. These two procedures represent about .07% of second-trimester abortions.[24]

The existence of such alternatives would be key to finding that a dismemberment ban would not violate the balance struck in *Casey*, should the issue come up. So long as there are other methods available, such a ban would not foreclose the possibility of an abortion before viability. Under a

ban, first-trimester options, including chemical abortions and suction and curettage, would remain available, along with induction and other methods in the second trimester after suction and curettage becomes contraindicated. The "ultimate decision" to opt for abortion would not be closed to women. If abortion became less available in the second trimester after a ban, it would be a result of the abortion industry's decision not to adapt to a new regulatory environment.

When the "ultimate decision" to acquire an abortion remains open, as it would with a dismemberment ban, the analysis turns to whether a restriction is an undue burden. This is perhaps where Justice Kennedy's writing is most interesting. When his analysis reaches this point—the same point where others on the Court voice their belief that a dismemberment ban would be an undue burden—he speaks not to a woman's interest in obtaining an abortion, but rather to what interests will serve as a justification for limiting abortion:[25]

> The government may use its voice and its regulatory authority to show its profound respect for the life within the woman. A central premise of the [*Casey*] opinion was that the Court's precedents after *Roe* had "undervalue[d] the State's interest in potential life." The plurality opinion indicated "[t]he fact that a law which serves a valid purpose, one not designed to strike at the right itself, has the incidental effect of making it more difficult or more expensive to procure an abortion cannot be enough to invalidate it." This was not an idle assertion.
>
> The third premise, that the State, from the inception of the pregnancy, maintains its own regulatory interest in protecting the life of the fetus that may become a child, cannot be set at naught by interpreting *Casey*'s requirement of a health exception so it becomes tantamount to allowing a doctor to choose the abortion method he or she might prefer. Where it has a rational basis to act, and it does not impose an undue burden, the State may use its regulatory power to bar certain procedures and substitute others, all in furtherance of its legitimate interests in regulating the medical profession in order to promote respect for life, including life of the unborn.[26]

The interests Justice Kennedy names here are ones that are also present with dismemberment abortions, a notion that his colleagues on the Court voiced repeatedly, as we have seen.

The most challenging passage in his writing to the theory that Justice Kennedy would be open to a Dilation and Evacuation ban is the following:

> The instant cases, then, are different from *Planned Parenthood of Central Mo.* v. *Danforth*, in which the Court invalidated a ban on saline amniocentesis, the then-dominant second-trimester abortion method. The Court found the ban in *Danforth* to be "an unreasonable or arbitrary regulation designed to inhibit, and having the effect of inhibiting, the vast majority of abortions after the first 12 weeks." Here the Act allows, among other means, a commonly used and generally accepted method [Dilation and Evacuation], so it does not construct a substantial obstacle to the abortion right.[27]

While he clearly uses the D&E method to provide reassurance that a partial-birth-abortion ban would not impose a substantial obstacle to the abortion right, this same logic would apply to any other abortion procedure available in the second trimester, so long as there is one available.

The case of saline abortion itself is an illustrative example of how this logic applies to dismemberment. Saline abortion was once the dominant procedure in the second trimester, but it fell out of favor. The same fate could befall the dismemberment procedure, especially, of course, if it became illegal. So this same passage could be applied to dismemberment, substituting another procedure—"Here the Act allows, among other means, a commonly used and generally accepted method [induction, etc.], so it does not construct a substantial obstacle to the abortion right." It may be that a dismemberment ban would lead to a reduction in second-trimester abortions, and that would be the hope for its proponents. One figures this would probably be the case, if only since a campaign for such a law would have the effect of educating Americans on the brutal nature of the procedure.

III. The Political Effort

Regarding a political effort to enact a ban on dismemberment abortions, there are a few things worth keeping in mind.

First, over 80 percent of Americans would support such a ban. As already noted, a Knights of Columbus/Marist poll (conducted in December of 2013) found that 84% (the number is the same for both men and women) support restricting abortion to the first trimester of pregnancy, with exceptions only in cases of rape, incest, or to save the life of the mother; this includes 58% of Americans who consider themselves pro-choice.[28] There are few if any policy initiatives that enjoy such wide support in America today.

Second, the effort should have two goals: passage of the law, of course, but also educating the public on the "brutal" and "inhumane" nature of such procedures and of abortion in general. For this reason, advocates should refer to the procedure using the less euphemistic terms of "dismemberment" or "human dismemberment" abortion, rather than "dilation and evacuation" or "D&E."

Third, advocates for the law should, as much as possible, use the Supreme Court's own language to describe the procedure. In the case of dismemberment abortion, we have the unprecedented phenomenon of members of the *Casey* majority, including the most insistent abortion partisans, both describing the procedures in detail and editorializing on the gruesome nature of them. This is a rhetorical advantage that abortion opponents have not utilized, and it is one that could actually save lives regardless of whether the effort results in a

valid law—simple knowledge of the procedure itself could discourage women from choosing such abortions.

Speeches commenting on the bill, in other words, could quote from Justice Kennedy himself on what exactly takes place during the procedure, adding weight to proponents' rhetoric. They could also quote another author of the *Casey* decision, Justice Ginsburg, who joined an opinion describing dismemberment abortions as "gruesome" and "inhumane," claiming there was no reason to think dismemberment was any less brutal or gruesome—or more respectful of human life—than partial-birth abortion. She also stated it was irrational to contend that dismemberment abortions are any less akin to infanticide than the illegal partial-birth-abortion method.

The line of argument could continue from there, remaining disciplined in referring to "human dismemberment abortions," the most difficult parts of the argument already having been made by supporters of abortion on the Court. Politicians inclined to oppose such a ban, it seems, would have a difficult case to make.

IV. The Effort in the Courts

Also critical to the success of such a ban will be compelling arguments in Court. While we have discussed the Court's current jurisprudence, we have not said explicitly how an advocate would navigate it.

In lower courts, defenders of a law banning dismemberment procedures will inevitably encounter the charge that such a ban would violate current jurisprudence by placing an undue burden on a woman seeking an abortion. Plaintiffs or courts will have extensive language in *Stenberg* and *Gonzales* from which to quote. For example, Justice O'Connor in her *Stenberg* concurrence (quoted in FN 23, *ante*), assumed that the ban on partial-birth abortions also banned dismemberment abortions:

> By proscribing the most commonly used method for previability second trimester abortions, the statute creates a "substantial obstacle to a woman seeking an abortion," and therefore imposes an undue burden on a woman's right to terminate her pregnancy prior to viability.

They could also quote Justice Kennedy, claiming (wrongly, in our interpretation) that in describing the assumptions of the advocates in *Gonzales*, he was asserting them as his own:

> Because D&E is the most common second-trimester abortion method, respondents suggest the Act imposes an undue burden. In this litigation the Attorney General does not dispute that the Act would impose an undue burden if it covered standard D&E.[29]

Or they could quote what we have deemed the "most difficult" passage

from Justice Kennedy's opinion, which referred to a ban on saline amniocentesis which the Court previously had found unconstitutional.

The challenge will be to argue that a ban on dismemberment abortions does not disturb the balance *Casey* reached and that *Gonzales* clarified—that it serves the legitimate interests recognized in both cases while not creating an undue burden on women's right to obtain a second-trimester abortion.

a. Legitimate State Interests that the Ban Serves

i. Protecting the health of the woman

Barring extraordinary circumstances, the abortion industry and its advocates may be hesitant to engage in a narrative that speaks of the relative danger of one abortion over another, as to admit relative danger is to admit danger. It seems reasonable to speculate, then, that the relative safety of alternative methods to dismemberment is not likely to be a major factor in litigation, but there are a few things to keep in mind.

When comparing dismemberment to other second-trimester methods, the evidence is inconclusive as to its relative safety compared to the alternatives, which tend to be forms of chemical abortion.

On the other hand, dismemberment abortion is more dangerous to women than first-trimester procedures. To the extent that a dismemberment ban would result in more women opting for first-trimester abortions, this may be the safer option. Advocates could note this, although one would hope that in actuality it would result in women opting to continue the pregnancy, not end it.

Finally, as a good rhetorical point with limited significance in Court, the dissent in *Gonzales* points out that a dismemberment abortion is likely more dangerous than the banned partial-birth method.[30] The political discussion, and even the discussion in Court, could highlight this fact to remind the public and the judiciary that the partial-birth procedure is safer for women than dismemberment, yet, counter-intuitively, it is partial-birth abortions that are banned.

ii. Protecting the life of the fetus

Justice Kennedy, writing for the Court in *Gonzales*, stated that "the government may use its voice and its regulatory authority to show its profound respect for the life within the woman."[31] The Court here recognized an interest in showing profound respect for the life of the fetus, which is obviously in play here. A ban on dismemberment abortion would not just protect the life of the fetus; it would protect it in many cases from a slow, often excruciating

death. While the above quote is from the context of regulations that aim at persuading a woman to choose life over abortion, taken at face value it indicates a broader interpretation that would cover a ban on dismemberment abortions.

iii. Protecting the integrity and ethics of the medical profession and society as a whole

Perhaps the most relevant interests at play in a dismemberment ban are those protecting society and the integrity and ethics of the medical profession.[32] "States," wrote Justice Kennedy in *Stenberg*, "have an interest in forbidding medical procedures which, in the State's reasonable determination, might cause the medical profession or society as a whole to become insensitive, even disdainful, to life, including life in the human fetus."[33]

In the midst of our society are those who, in the name of the healing arts, lawfully advertise and carry out the dismemberment of their fellow human beings for compensation. Many others have, for a number of reasons, sought such services; some with foreknowledge of the procedures, others only to learn what was involved after undergoing them. The violence, gruesomeness, and inhumanity of dismemberment—an experience they carry with them into their daily lives—must necessarily have a negative effect on our society, however difficult this may be to pinpoint.

Nowhere is the coarsening effect of this procedure more acutely felt than among those in the medical profession. The methodical dismemberment of a human fetus turns out in many ways to be its own punishment, as it is a traumatic event for the people who have taken it upon themselves to perform such a deed, who go on to experience nightmares[34] and regret. Over the years many abortion practitioners have written to describe what it entails:

• Dr. Warren Hern, a Boulder, Colorado, abortionist who has performed a number of D&E procedures and written a textbook on abortion methods, has stated "there is no possibility of denial of an act of destruction by the operator [of a D&E abortion]. It is before one's eyes. The sensation of dismemberment flows through the forceps like an electric current."[35]

• Dr. George Flesh, a former abortionist, wrote: "Tearing a developed fetus apart, limb by limb, is an act of depravity that society should not permit. We cannot afford such a devaluation of human life, nor the desensitization of medical personnel it requires. This is not based on what the fetus might feel but on what we should feel in watching an exquisite, partly formed human being being dismembered."[36]

• Dr. Vincent Argent, a London abortionist who later advocated for limits on late-term abortions, wrote: "It is hard to describe how it feels to pull out parts of a baby, to see arms, and bits of leg, and finally the head."[37]

• Dr. Lisa Harris, an abortionist and Assistant Professor in the Departments of Obstetrics and Gynecology and Women's Studies at the University of Michigan, wrote this in 2008:

> When I was a little over 18 weeks pregnant with my now pre-school child, I did a second trimester abortion for a patient who was also a little over 18 weeks pregnant. . . . I realized that I was more interested than usual in seeing the fetal parts when I was done, since they would so closely resemble those of my own fetus. I went about doing the procedure as usual . . . I used electrical suction to remove the amniotic fluid, picked up my forceps and began to remove the fetus in parts, as I always did. I felt lucky that this one was already in the breech position—it would make grasping small parts (legs and arms) a little easier. With my first pass of the forceps, I grasped an extremity and began to pull it down. I could see a small foot hanging from the teeth of my forceps. With a quick tug, I separated the leg. Precisely at that moment, I felt a kick—a fluttery "thump, thump" in my own uterus. It was one of the first times I felt fetal movement. There was a leg and foot in my forceps, and a "thump, thump" in my abdomen. Instantly, tears were streaming from my eyes—without me—meaning my conscious brain—even being aware of what was going on. I felt as if my response had come entirely from my body, bypassing my usual cognitive processing completely. A message seemed to travel from my hand and my uterus to my tear ducts. It was an overwhelming feeling—a brutally visceral response—heartfelt and unmediated by my training or my feminist pro-choice politics. It was one of the more raw moments in my life. Doing second trimester abortions did not get easier after my pregnancy; in fact, dealing with little infant parts of my born baby only made dealing with dismembered fetal parts sadder . . .
>
> There is violence in abortion, especially in second trimester procedures. Certain moments make this particularly apparent . . . The last patient I saw one day [at the hospital abortion clinic] was 23 weeks pregnant. I performed an uncomplicated D&E procedure . . . I went through the task of reassembling the fetal parts in the metal tray…to ensure that nothing is left behind in the uterus…feelings of awe are not uncommon when looking at miniature fingers and fingernails, heart, intestines, kidneys, adrenal glands…Then I rushed upstairs to take overnight call on labor and delivery. The first patient that came in was prematurely delivering at 23-24 weeks…The neonatal intensive care unit team resuscitated the premature newborn and brought it to the NICU. Later, along with the distraught parents, I watched the neonate on the ventilator. I thought to myself how bizarre it was that I could have legally dismembered this fetus-now-newborn if it were inside its mother's uterus—but that the same kind of violence against it now would be illegal, and unspeakable.[38]

These quotes, which are only a few among many available, provide a line of argument which asserts that dismemberment abortions not only do harm to the professionalism of the doctors who perform them, but also injure their humanity and our society in a way that the abortionists themselves acknowledge and in some cases would seek to prevent. This has direct bearing on the constitutional analysis, as "[a] state may take measures to ensure the medical profession and its members are viewed as healers, sustained by a

compassionate and rigorous ethic and cognizant of the dignity and value of human life, even life which cannot survive without the assistance of others."[39]

b. Undue Burden Analysis

The important question that will be determined in litigation is whether a majority on the Supreme Court believes a ban on dismemberment abortions (D&E as opposed to Intact D&E, i.e., partial-birth abortions) constitutes an undue burden on the right to abortion. It should not be so construed. In many parts of the developed world, induction of labor coupled with steps to kill the baby are the dominant second-trimester forms of abortion, and abortionists in the United States may opt to provide these alternatives.

Even supposing a ban on dismemberment abortions did make second-trimester abortions more difficult to obtain, however, it does not necessarily follow that this would make a ban an undue burden, as women would still be free to obtain abortions by any means up to about 14 weeks and by other means until birth or until the point where it has been outlawed by a state—20 weeks in some, 24 weeks in others. Additionally, as Justice Kennedy pointed out regarding partial-birth abortions, it would be possible to perform a dismemberment abortion (or a partial-birth procedure) after a lethal injection has been administered to the fetus.[40]

The combination of interests involved in banning abortions, particularly that of protecting the medical profession, may be found to justify the possibility of a slightly reduced availability in the second trimester. This would be the argument advocates would have to pursue in the hope of convincing a majority at the Supreme Court.

c. The Rational Basis for Distinguishing between Dilation and Evacuation Abortions and Suction and Curettage

Justice Stevens's musings about whether it is rational to distinguish between a partial-birth abortion and a D&E abortion[41] are likely to be material enough for lower courts to transform at least part of undue burden analysis into a question of whether a rational basis exists for a legislature to distinguish between a ban on dismemberment and a ban on suction and curettage abortions, which also involve dismemberment by different means.

A rational basis inquiry in this instance would actually be whether there was a rational basis for passing the law at all, not whether there was a rational basis to write one law and not another, hypothetical, one. Justice Breyer's musings were an argument he was making on the way to declaring that a partial-birth ban was an undue burden because it also banned dismemberment abortions.

If, however, advocates are asked to opine as to the rational basis inquiry, a host of reasons for such a ban can be brought to bear: to prevent a gruesome procedure; to prevent the baby from potentially experiencing the excruciating pain of such an abortion; to protect medical professionals from the mental anguish they may experience from having participated in such a procedure; to protect the medical profession from the perception that its practitioners engage in something other than the healing arts; to express respect for unborn human life; and to protect society from the coarsening effect such a procedure has on the culture in general.

If it becomes necessary to provide a rational reason for distinguishing between two late-term-abortion procedures (and there is a substantial likelihood that it will come to this), there is an expansive body of literature, much of it quoted above, suggesting that there is a special gruesomeness and inhumanity to dismemberment abortions that have a particularly damaging effect on the psychological/spiritual well-being and moral standing of the people who participate in them. While pro-life advocates believe all abortions to be gruesome and inhumane, those in the abortion industry admit this repeatedly, with enthusiasm, and on the record as it regards dismemberment abortions. In suction abortions, it is the machines involved that dismember the baby, with the flick of a switch. The baby is smaller, there is less blood, the procedure is quicker. With a dismemberment abortion, this same damage must be accomplished manually and more slowly, on a larger baby that bleeds more. Several different accounts mention the phenomenon of feeling the sensation of tearing, of holding the limbs in the forceps, and of struggling to grasp the head, then crushing it, and often beholding a well-formed face in the process. For whatever reason, there seems to be something that touches the practitioner more about this procedure than others, and it can be articulated with a "special" brutality. In the words of Dr. Warren Hern, in an article worth recounting at some length here:

> There was clear agreement [among clinic staff] that D&E is qualitatively a different procedure, medically and emotionally, than early abortion. Many of the respondents [staff at an abortion clinic] reported serious emotional reactions that produced physiological symptoms, sleep disturbances, effects on interpersonal relationships, and moral anguish.
>
> [. . .] Both authors have noted intense reactions in themselves and in other staff members to D&E. [. . . Most staff] thought that D&E was more difficult, tedious, risky, and painful than other procedures for everyone involved, and some feared major complications [. . .]
>
> The respondents noted several differences between first-trimester abortions and second-trimester abortions done by D&E. For second-trimester abortions, there was

an increased fear of complications, the visual impact of the fetus, and the violence of D&E [. . .] several thought it was more difficult to rationalize or intellectualize.[42]

Finally, a ban on dismemberment abortion would be a ban on a method that is politically unpopular, and one that fits within the current articulation of abortion jurisprudence—which would seem to be more open to banning dismemberment than other procedures. It is rational for legislators to craft laws that have a higher likelihood of success in Court rather than a broader law more likely to be declared unconstitutional.

V. Conclusion

The violent and gruesome nature of dismemberment abortions, their unpopularity, and the extensive public record from both jurists and abortion doctors expressing discomfort and horror at the procedure all make an effort to ban it a worthy course of action for the pro-life movement to undertake. Careful scrutiny of the jurisprudence under which these abortions occur reveals a plausible path to a majority at the Supreme Court approving such a ban. Accordingly, dismemberment bans are a prudent path for abortion opponents to pursue in the wake of any successes in pain-capable legislation now making its way through the states and the U.S. Congress.

NOTES

1. Guttmacher Institute, "More State Abortion Restrictions Were Enacted in 2011–2013 Than in the Entire Previous Decade," Guttmacher Institute Media Center (January 2, 2014) at http://www.guttmacher.org/media/inthenews/2014/01/02 index.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed:+Guttmacher+(New+from+the+Guttmacher+Institute).
2. *Roe* v. *Wade*, 410 U.S. 113 (1973).
3. 550 U.S. 914 (2007).
4. 530 U.S. 914 (2000).
5. Robin Marty, "The Next Battle in the Abortion Wars," *Politico Magazine*, February 17, 2014, at http://www.politico.com/magazine/story/2014/02/south-dakota-abortion-wars-103596.html
6. Steven Ertelt, "Groundbreaking Pro-Life Bill Would Ban Dismemberment Abortions Tearing Babies Limb from Limb," LifeNews.com, January 14, 2015, at http://www.lifenews.com/2015/01/14/groundbreaking-pro-life-bill-would-ban-dismemberment-abortions-tearing-babies-limb-from-limb/.
7. *Gonzales*, 550 U.S. at 916-18 (citations omitted); *Stenberg*, 530 U.S. at 958-59 (Kennedy, A., dissenting).
8. *Stenberg*, 530 U.S. at 924.
9. *See*, Warren Hern, *Abortion Practice*, 28-35, 108-156 (1990).
10. These for the most part consist of hormonal induction of labor, injection of various substances into the amniotic fluid, or administration of chemicals or hormones in the area between the uterus and the amniotic sac. *See* Bygdeman, Marc and Gemzell-Danielsson, Kristinia, "An Historical Overview of Second Trimester Abortion Methods," *Reproductive Health Matters*, 16: 196-204 (2008).
11. For a description of the partial-birth method, see *Gonzales*, 550 U.S. at 919-21.
12. Justice Elena Kagan, as White House Counsel for President Bill Clinton, helped revise a memo from the American College of Obstetricians and Gynecologists in the midst of the debate on Partial Birth Abortion. She changed it from a paper that concluded that the procedure was never

medically necessary to one that concluded it was sometimes the best option. *See, e.g.*, "Kagan Defends Revising Medical Group's Statement on Partial-Birth Abortion," FoxNews.com (June 30, 2010) at http://www.foxnews.com/politics/2010/06/30/kagan-defends-revising-medical-groups-statement-partial-birth-abortion/.

13. Knights of Columbus/Marist, Poll: Abortion in America (2014) at http://www.kofc.org/un/en/resources/communications/marist-poll-abortion-restrictions2014.pdf.
14. Justice O'Connor said she *would* vote for one if Nebraska's statute was worded differently: "Thus, a ban on partial-birth abortion that only proscribed the D&X method of abortion and that included an exception to preserve the life and health of the mother would be constitutional in my view." *Stenberg*, 530 U.S. at 951 (O'Connor, S., concurring).
15. Justice Kennedy even chides the Majority in *Stenberg* for going farther than it needed to in order to reach its result: "The majority and, even more so, the concurring opinion by Justice O'Connor, ignore the settled rule against deciding unnecessary constitutional questions. The state of Nebraska conceded, under its understanding of *Casey*, that if this law must be interpreted to bar D&E as well as D&X it is unconstitutional." *Id.* at 978 (Kennedy, A., dissenting).
16. "Words invoked by the majority, such as 'transcervical procedures,' '[o]smotic dilators,' 'instrumental disarticulation,' and 'paracervical block,' may be accurate and are to some extent necessary; but for citizens who seek to know why laws on this subject have been enacted across the Nation, the words are insufficient. Repeated references to sources understandable only to a trained physician may obscure matters for persons not trained in medical terminology. Thus it seems necessary at the outset to set forth what may happen during an abortion." *Id* at 957-58 (Kennedy, A., dissenting).
17. *Gonzales*, 550 U.S. at 928-29.
18. *Id.* at 941.
19. *Stenberg*, 530 U.S. at 963 (Kennedy, A., dissenting).
20. *Id.*
21. *Gonzales*, 550 U.S. at 930 (citations omitted).
22. *Stenberg*, 530 U.S. at 946-47 (Stevens, J., concurring).
23. *Id.* at 963 (Kennedy, A., dissenting).
24. *Id.* at 922 (citations omitted).
25. This in addition to other moments where he comes right up to the line where he would be expected to pass judgment on D&E abortions, but does not cross it: "Because D&E is the most common second-trimester abortion method, respondents suggest the Act imposes an undue burden. In this litigation the Attorney General does not dispute that the Act would impose an undue burden if it covered standard D&E." *Gonzales*, 550 U.S. at 929. Here he names the AG's position without commentary, when Justice O'Connor was not so restrained in *Stenberg*, commenting under the assumption that the partial birth abortion ban under consideration also banned D&E abortions: "By proscribing the most commonly used method for previability second trimester abortions, the statute creates a 'substantial obstacle to a woman seeking an abortion,' and therefore imposes an undue burden on a woman's right to terminate her pregnancy prior to viability." *Stenberg*, 530 U.S. at 949-50 (O'Connor, S., concurring)(citations omitted).
26. *Gonzales*, 550 U.S. 940-41.
27. *Id.* at 48.
28. Knights of Columbus/Marist, Poll: Abortion in America (2014) at http://www.kofc.org/un/en/resources/communications/marist-poll-abortion-restrictions2014.pdf.
29. *Gonzales*, 550 U.S. at 929.
30. "Intact D&E, plaintiffs' experts explained, provides safety benefits over D&E by dismemberment for several reasons: First, intact D&E minimizes the number of times a physician must insert instruments through the cervix and into the uterus, and thereby reduces the risk of trauma to, and perforation of, the cervix and uterus the most serious complication associated with nonintact D&E. Second, removing the fetus intact, instead of dismembering it in utero, decreases the likelihood that fetal tissue will be retained in the uterus, a condition that can cause infection, hemorrhage, and infertility. Third, intact D&E diminishes the chances of exposing the patient's tissues to sharp bony fragments sometimes resulting from dismemberment of the fetus. Fourth, intact D&E takes less operating time than D&E by dismemberment, and thus may reduce bleeding, the risk of infection, and complications relating to anesthesia. *Gonzales*, 550 U.S. at 178 (2007)(Ginsburg, dissenting).
31. *Id.* at 157.

32. "There can be no doubt the government 'has an interest in protecting the integrity and ethics of the medical profession.'" *Id.* (citations omitted).
33. *Stenberg*, 530 U.S. at 961 (Kennedy, A., dissenting).
34. *See, e.g.*, Rebecca Paley, "End of the Road: In the twilight of his career, one of the oldest living late-term abortion doctors tells all," *Mother Jones*, September / October, 2003, at http://www.motherjones.com/politics/2003/09/end-road/. ("Rashbaum and his colleagues practically taught themselves how to perform abortions and were limited by the crude instruments of those days—Dixie cups attached to the suction machine by rubber bands. And although Rashbaum felt he was performing a necessary service, it weighed heavily on his conscience. He was troubled by a recurring dream of a fetus trying to hold onto the walls of a uterus by its tiny fingernails. Raised that abortion was wrong, he reasons, 'What kind of dreams do you think you are going to have?'")
35. Warren M. Hern, M.D., and Billie Corrigan, R.N., "What About Us? Staff Reactions to the D&E Procedure," paper presented at the Annual Meeting of the Association of Planned Parenthood Physicians, San Diego, California (October 26, 1978).
36. George Flesh, M.D., "Why I No Longer Do Abortions: Tearing a second-trimester fetus apart simply at a mother's request is depravity that should not be permitted") *Los Angeles Times* (Perspective on Human Life), September 12, 1991, at http://articles.latimes.com/1991-09-12/local/me-2729_1_human-life/2.
37. Vincent Argent, M.D., "Why this abortion doctor wants to see time limits reduced to 16 weeks," *The Telegraph*, May 28, 2008, at http://www.telegraph.co.uk/news/uknews/1976846/Why-this-abortion-doctor-wants-to-see-time-limits-reduced-to-16-weeks.html.
38. Lisa H. Harris, "Second Trimester Abortion Provision: Breaking the Silence and Changing the Discourse," 16 *Reproductive Health Matters*, 74-81 (2008).
39. *Stenberg*, 530 U.S. at 962 (Kennedy, A., dissenting).
40. "If the intact D&E procedure is truly necessary in some circumstances, it appears likely an injection that kills the fetus is an alternative under the Act that allows the doctor to perform the procedure." *Gonzales*, 550 U.S. at 164 (2007).
41. "[T]he notion that either of these two equally gruesome procedures [Dilation and Extraction / Intact Dilation and Extraction] performed at this late stage of gestation is more akin to infanticide than the other, or that the State furthers any legitimate interest by banning one but not the other, is simply irrational." *Stenberg*, 530 U.S. at 946-47 (Stevens dissenting).
42. Warren Hern, M.D., M.P.H., and Billie Corrigan, R.N., M.S., "What About Us? Staff Reactions to D&E," 15 *Advances in Planned Parenthood*, 1-8 (1980).

Personhood Lite

Paul Benjamin Linton

Proposals to amend state constitutions to confer legal status upon the unborn child—so called personhood amendments—or to require the state legislature to do so have been overwhelmingly rejected by the electorate in four statewide public votes: Colorado (2008, 2010), Mississippi (2011), and North Dakota (2014). Another ten citizen-initiated, state constitutional personhood proposals never appeared on the ballot because the sponsors failed to garner sufficient petition signatures: California (2010, 2012), Colorado (2012), Michigan (2009), Missouri (2010), Montana (2008, 2010), Nevada (2010), Ohio (2012), and Oregon (2012). In yet two other states—Arkansas (2012) and Oklahoma (2012)—such proposals were not allowed to be placed on the ballot because if approved by the voters they would have violated the federal Constitution as interpreted by the Supreme Court in *Roe* v. *Wade* (1973). In a number of other states, efforts to persuade state legislatures to place personhood amendments on the ballot have also failed.

In addition to these state constitutional measures, efforts to amend state statutes to prohibit abortion were defeated by large margins in Colorado (2014) and in South Dakota (2008, 2010). Similar measures were struck from the ballot in Alaska (2013) and Oklahoma (1992)—on state and/or federal constitutional grounds—and also failed of passage in several state legislatures.

Discouraged by this unbroken string of defeats, leading advocates of these initiatives have abandoned efforts to amend state constitutions or state statutes, adopting a new strategy of pursuing personhood through citizen initiatives undertaken at the local (county and municipal) level. In a *Christian Newswire* story that appeared on October 29, 2014, less than one week *before* the most recent electoral defeats in Colorado and North Dakota, Dan Becker, president of Georgia Right to Life, announced the founding of a new organization called Personhood Alliance. According to Becker—who is also the new group's interim President—Personhood Alliance will launch a campaign to enable local voters "to approve no exceptions Personhood protection for all innocent human beings through their municipal ballots." The campaign would

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seek to incorporate "personhood language" in local ordinances and codes "to ensure that every innocent human life, from earliest biological beginning through natural death, is legally protected." Becker noted that "In addition to protecting children in the womb, this would add protection for the elderly, infirm and severely disabled."

The *Christian Newswire* story reported that many individuals formerly associated with promoting personhood at the state level had jumped ship and were now on board with promoting personhood at the local level. These include, among others, Gualberto Garcia Jones, former board member of Personhood USA (which, under the direction of Keith Mason, is still advocating statewide citizen initiatives), who is now Personhood Alliance's policy director; Molly Smith, president of Cleveland Right to Life; Christopher Kurka, executive director of Alaska Right to Life and a founding member of Personhood Alliance; Bill Fortenberry (Alabama), a board member of Personhood Alliance; Les Riley (Personhood Mississippi) and Dr. Beverly McMillan, President of Pro-Life Mississippi; and Darlene Pawlik, New Hampshire Right to Life PAC director.

In a lengthy article posted on *Life Site News* three days *after* last November's election, Gualberto Garcia Jones called on the personhood movement to engage in some "sober analysis." He acknowledged that his pre-election predictions as to how well the Colorado and North Dakota measures would do had been "off," and conceded that "the statewide personhood ballot measure is dead for now." There were three reasons, he said, for the movement's defeat: the overwhelming financial resources opponents of personhood (particularly Planned Parenthood) devoted to defeating statewide measures; hostile media reporting; and lack of support from politicians who were supposedly pro-life.

Conspicuous by its absence from Garcia Jones's explanation was any awareness on his part that voters rejected attempts to use civil and criminal law to ban abortion throughout pregnancy, either because they recognized (as with the Colorado measure) that they had no present constitutional authority to do so, or simply because they failed to understand what was being proposed to them (as with the ambiguous and vague North Dakota amendment). Garcia Jones did grudgingly acknowledge that a clearly worded amendment—which the author of this article helped to draft—neutralizing the state constitution as an independent source of abortion rights and designed to overturn a pro-abortion decision of the state supreme court did pass in Tennessee (Amendment 1), thereby allowing the state to regulate abortion within federal constitutional limits. He dismissed this victory, however, as setting the bar "painfully low."

Having concluded that "the current strategy of statewide ballot measures may have reached its limit," Garcia Jones proposed an alternative strategy of launching citizen initiatives at the local level (counties and municipalities), especially in less populated areas with more conservative constituencies. What initiatives might be pursued? Garcia Jones observed that local laws "deal with many powers that touch upon the personhood of the preborn, from local health and building codes to local law enforcement such as child abuse prevention."

Offhand, it is hard to see a connection—any connection—between health and building codes and the "personhood of the preborn." His suggestion that local law enforcement of state "child abuse" statutes could be used to promote personhood is equally mystifying. In the absence of special *state* (not *local*) legislation, only two state supreme courts (Alabama and South Carolina) have held that child endangerment or abuse statutes may be applied to pregnant women who ingest illegal controlled substances detected in the bloodstream of their children following live birth. The overwhelming majority of state courts have held otherwise, which would bar local law enforcement officials (police and prosecutors) from charging and prosecuting pregnant women for endangering the life or health of their unborn children by using illegal drugs. Whether state child endangerment and abuse statutes can be applied to pregnant women presents a question of state, not local law. And even in Alabama and South Carolina, the prosecutions are limited to pregnant women who ingest illegal controlled substances and the decision to file charges against such women is left to the discretion of local prosecutors. No local citizen initiatives could affect the exercise of such discretion. No doubt Gualberto Garcia Jones, Dan Becker, and the Personhood Alliance have other initiatives in mind that have not yet been formulated and publicized, but the examples Garcia Jones has provided to date are not encouraging.

Theoretical and Practical Problems with the Local Citizen Initiative Strategy

Without knowing the specifics of the local citizen initiatives Personhood Alliance intends to promote, this article can offer only a general critique of the strategy. The author has previously published articles in the *Human Life Review* and *First Things* criticizing attempts to overturn the Supreme Court's "personhood" holding in *Roe* v. *Wade* through state constitutional amendments or litigation.[1] Those criticisms apply with full force to the strategy that Personhood Alliance has adopted (to the extent that strategy is intended to create a conflict with the Supreme Court's abortion jurisprudence), but will not be repeated here. Instead, the focus will be on the distinct problems created by attempting to promote "personhood" at the local level.

The first thing that needs to be noted with respect to Personhood Alliance's new strategy is that a citizen initiative is not available in many counties and municipalities in the United States. In those localities, legislation (called ordinances, as distinct from statutes enacted by state legislatures) may be adopted only by a vote of the county board, city council, or village board. Even in those states that allow citizen initiatives at the local governmental level, that authority is often limited to specific issues that are far removed from what the Personhood Alliance may have in mind. So, the strategy of pursuing personhood through citizen initiatives at the local level is not even an option in many communities.

Second, it is not at all obvious how citizen initiatives could be used to regulate abortion in those counties and municipalities that do allow such initiatives. One area of regulation that is indisputably of local concern is zoning, but previous efforts to use zoning regulations to "freeze out" abortion clinics have been uniformly rejected by the courts.[2] Of course, physicians who perform abortions in their offices, and outpatient clinics where abortions are performed, must comply with local zoning regulations, but those regulations must be evenly applied to all such offices and clinics and cannot single out abortion providers for regulation. Moreover, at least in some jurisdictions, it is doubtful a citizen initiative could be used to adopt changes in a zoning ordinance.

An attempt to regulate abortion at the local level (other than through zoning restrictions) would run into several other potential obstacles. One such obstacle is that under state law (state medical practice acts) the regulation of the practice of medicine is an exclusive prerogative of the state. This is an area of law in which local regulation has been preempted by the state (as is also the case with the professional discipline of physicians).[3] Occasionally, in limited circumstances, a state may share its regulatory authority over the practice of medicine with local government. For example, in Illinois, under the Ambulatory Surgical Treatment Center Act, municipalities have the authority to regulate outpatient surgical facilities, but that authority may be exercised only by the governing body of the municipality, not through citizen initiatives, and applies only to those facilities which are required to be licensed by state (not local) law.

Another obstacle is that, to the extent that a local ordinance attempts to impose criminal sanctions as part of a regulatory scheme, those sanctions may be preempted by state criminal laws regulating abortion. Thus, a municipality could not impose criminal penalties for failing to comply with a local ordinance requiring informed consent, parental consent or notice, a waiting period, or other abortion regulation that was also the subject of

statewide regulation (carrying criminal penalties). And even in those states that allow citizen initiatives at the local level, it is questionable whether such initiatives could be used to adopt criminal laws. Finally, the penalties that may be imposed by units of local government are limited to misdemeanors, while a state may impose felony penalties for violation of its abortion regulations. Thus, even assuming a citizen initiative could be used to impose criminal penalties for violation of a local abortion regulation, why would anyone in the pro-life movement support such an initiative when more serious criminal penalties are on the state statute books (or could be enacted at the state level)?[4]

Third, assuming that abortion regulations may be adopted at the local level through citizen initiatives, such regulations obviously have no legal effect beyond the geographical boundary of the county or municipality that has adopted them. But most abortion providers are located in larger cities whose residents tend to be more liberal in their voting patterns than those who live in smaller cities or rural areas, as the decisive defeat of a citizen-initiated proposal to ban abortions after twenty weeks in Albuquerque, New Mexico (November 19, 2013), demonstrated. Gualberto Garcia Jones forthrightly acknowledges this demographic fact in his *Life Site News* article, noting that "it is readily evident that majorities in almost every metropolitan area of the country are opposed to our worldview." If he is correct, then trying to regulate abortion providers who are located (as most are) in larger cities through citizen initiatives is doomed politically.

Fourth, to the extent that the Personhood Alliance strategy contemplates prohibiting (not merely regulating) abortion at the local level (assuming that such prohibitions could be adopted through a citizen initiative),[5] it would be subject to the same objections as efforts to prohibit abortion at the state level, i.e., that it violates the Constitution as interpreted by the Supreme Court in *Roe*, as modified by *Planned Parenthood* v. *Casey*. So, that would also be a "non-starter."

Fifth, any attempt to include unborn children within the scope of a local anti-discrimination ordinance (an approach indirectly suggested by Christopher Kurka in the *Christian Newswire* story discussed at the beginning of this article) would run into a similar problem. If the inclusion of unborn children in an anti-discrimination ordinance was intended to prohibit abortions, it would be struck down by the courts as violative of the Constitution. Moreover, anti-discrimination ordinances normally focus on specific categories of discrimination—in employment, in the sale or rental of real estate, in the extension of credit and in public accommodations—none of which would have any application to unborn children.

Alternatives to Regulation

Now, it is certainly possible that Personhood Alliance would want to promote the rights of unborn children without (or in addition to) regulating (or prohibiting) the practice of abortion, but that is a strategy that should be (and has been successfully) pursued at the state, not the local level. In a variety of areas outside the context of abortion, states have enacted statutes recognizing unborn children as rights-bearing entities or, to use a term dear to the advocates of constitutional personhood, *persons*. Such statutes include laws making the killing of an unborn child a crime—fetal homicide statutes—and prohibiting the execution of pregnant women in states that allow the death penalty (criminal law); extending the protection of civil wrongful death statutes to unborn children throughout pregnancy and barring wrongful life and wrongful birth causes of action (tort law); restricting the withdrawal or withholding of life-sustaining medical treatment from a patient who is pregnant and is unable to make decisions for herself because of her condition (health care law); allowing guardians or guardians *ad litem* to be appointed to represent the interests of unborn children (guardianship law); and including unborn children as "lives in being" for purposes of inheritance (property law).[6] All of these laws help to create and maintain what Garcia Jones has referred to as the "social and legal tension" between how the unborn child is treated in the context of abortion and in all other contexts, but not one of them could have been adopted at the local level; they are appropriately matters of statewide concern.

Conclusion

Given the broad range of measures that could be (and have been) successfully pursued at the state level to extend rights to or recognize the humanity of the unborn child in a myriad of ways outside the context of abortion, it is remarkable that the supporters of personhood would forego such legislative opportunities (of which they seem to be unaware) and instead, focus on replicating locally their failed strategy at the state level. In his *Life Site News* article, Gualberto Garcia Jones warned that "unless the Personhood movement wishes to become another non-profit machine that simply thrives off of the discontent of an ever shrinking population, a lot has to change." A lot *doe*s have to change, but switching strategies from one that is dead to one that is stillborn is not the change that is required. The local citizen initiative strategy adopted by Personhood Alliance does not deserve the support of the pro-life community.

NOTES

1. "How Not to Overturn *Roe* v. *Wade,*" *First Things* 15 (November 2002); "Sacred Cows, Whole Hogs & Golden Calves," H*uman Life Review* 43 (Summer 2007); "This Dog Won't Hunt: A Reply to Gregory J. Roden," *Human Life Review* 34 (Fall 2008); "A Fool's Errand: State 'Personhood' Proposals," *Human Life Review* 35 (Fall 2009).
2. *See*, *e.g.*, *Framingham Clinic*, *Inc.* v. *Board of Selectmen of Southborough*, *Massachusetts*, 367 N.E.2d 606 (Mass. 1977) (striking down ordinance that added abortion clinics to the list of prohibited uses in all zoning districts); *West Side Women's Services*, *Inc.* v. *City of Cleveland*, 573 F. Supp. 504 (N.D. Ohio 1983) (same with respect to ordinance that excluded abortion clinics from district zoned for local retail businesses which included medical offices); *Deerfield Medical Center* v. *City of Deerfield Beach*, 661 F.2d 328 (5th Cir. 1981) (reversing denial of preliminary injunction against zoning ordinance that singled out abortion clinics); *Planned Parenthood of Minnesota* v. *Citizens for Community Action*, 558 F.2d 861, 868 (8th Cir. 1977) ("there is no judicial authority allowing a municipality, by imposing special restrictive zoning requirements on first trimester abortion clinics, to do indirectly that which it cannot do directly by medical regulation") (affirming preliminary injunction against enforcement of zoning ordinance targeting abortion clinics); *Fox Valley Reproductive Health Care Center*, *Inc.* v. *Arft*, 446 F. Supp. 1072 (E.D. Wis. 1978) (issuing preliminary injunction against similar ordinance), *appeal dismissed as moot*, 622 F.2d 590 (7th Cir. 1980).
3. The fact that since *Roe* was decided forty-two years ago the Supreme Court has considered only *one* abortion case involving an attempt to regulate abortion through a local ordinance, *see City of Akron* v. *Akron Center for Reproductive Health*, *Inc*., 462 U.S. 416 (1983), rather than a state or federal statute, suggests that such regulation is not normally an appropriate subject of local legislation (otherwise, more litigation involving local regulation would have been expected to reach the Court). To the author's knowledge, whether the City of Akron had the authority under Ohio law to adopt the ordinance struck down in the *Akron Center* case was not litigated in state or federal court.
4. Another problem lurks beneath the surface of enacting local ordinances that would criminalize the same conduct as state statutes. Under well-established double jeopardy principles, a person may not be prosecuted for a state criminal offense if he has already been prosecuted (and either acquitted or convicted) of a municipal criminal offense based upon the same set of facts. Thus, a physician who engages in conduct that would violate both state and local criminal laws could avoid prosecution on the more serious state charges by pleading guilty to the less serious local charges, hardly a result that would advance the state's interest in enforcing its own abortion regulations.
5. That this may remain an objective of the new strategy is evident from the following passage in Garcia Jones's *Life Site News* article: "Those who have been in the Personhood movement know that the goal was always to be standard bearers. To use the initiative process as a way to call people back to their conscience. To use a potential legal challenge to bring tension to a jurisprudence that otherwise survives only through total capitulation to the abortion-on-demand paradigm—by this I mean the constitutional standard set out in [*Planned Parenthood* v.] *Casey* [505 U.S. 833 (1992)] that dictates whatever 'pro-life' legislation is passed cannot create an 'undue burden' to a woman seeking to commit an abortion. Personhood looked at the undue burden test and responded emphatically that not only do we want to create an undue burden, *but we demand the total abolition of abortion.*" Emphasis added. Apart from his confusion as to what *Casey* "dictates" (certainly not "abortion-on-demand"), Garcia Jones implies that the new strategy of relying upon local citizen initiatives may be used to challenge the Supreme Court's abortion jurisprudence. That implication is made explicit when he states that social and legal tension was our goal, *and that will continue to be our goal until we achieve the abolition of abortion* . . . ." Emphasis added.
6. A comprehensive list of such statutes, none of which has ever been struck down by a state or federal court, is set forth in the author's article, "The Legal Status of the Unborn Child under State Law," VI U. *St. Thomas Journal of Law & Public Policy* 141 (Fall 2011).

Personhood Contra Mundum

Gualberto Garcia Jones

The Personhood movement is unique within the larger pro-life movement because, although it has a clear legal component,[1] it never subverts its strategy to positive law. Positive law refers to laws crafted by human beings on their own authority. In contrast, natural law or "the laws of Nature and of Nature's God," as the Declaration of Independence terms it, is common to all human beings because it is derived from nature (and ultimately, from nature's Creator). It is therefore above man-made laws, and the standard by which those laws should be judged.

The tension between positive and natural law as sources of legal authority has led many pro-life legal practitioners[2] to profoundly misunderstand the Personhood movement as merely a band of idealists. However, the essential tenets of the Personhood movement are actually universally held: All human beings, without exception, have intrinsic worth and derive their value from the Creator rather than from government; government is legitimate only insofar as it serves to protect these inalienable rights; and individual citizens have the right and duty to actively resist the government if it suppresses these rights.[3]

Pro-life criticism of the Personhood movement, regardless of the wording, is fundamentally consequentialist. Consequentialism holds that the consequences of one's conduct are the ultimate basis for judging the rightness or wrongness of that conduct. The Personhood movement maintains that the promotion of laws that explicitly consent to the murder of some human beings for the sake of an uncertain reduction in evil[4] is a profound and unacceptable violation of our principles; however, its detractors hold that Personhood's adherence to principle results in inevitable legal failures, harming the larger pro-life movement.

Princeton University law professor Robert George, in another context, captures the reasoning behind the Personhood movement's rejection of compromise when he writes that "the conviction that a little evil may rightly be done . . . for the sake of preventing a greater evil, puts human beings on a path to losing their grip on good and evil altogether. We would not have gotten those 'liberal' abortion laws in the first place were it not for the

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widespread adoption of an essentially consequentialist view of right and wrong."[5]

Being attacked by the mainstream pro-life movement for adhering to its foundational principles can be discouraging for any pro-life activist. However, now, more than ever, a return to our foundational principles is the only long-term solution to the constitutional, political, and cultural crisis brought on by liberal secularism.

Understanding the Personhood Movement

It bears repeating that Personhood measures are governed by adherence to a principle, not to a particular legislative or legal strategy. The recent use of the citizen-initiated state constitutional amendment was a particularly fruitful strategy for grassroots activism. It allowed activists to go directly to the people and discuss the fundamental ideas that motivate the pro-life movement. It fomented the growth and activation of grassroots networks through the arduous task of collecting signatures. Legally, it raised the important question of federalism and the proper role of the states under the Tenth Amendment power to exercise police powers.

But the citizen-initiated state constitutional amendment process has not been the only fertile field for the Personhood movement's activists. At the urging of local activists, state political party bosses have had to acknowledge that large majorities of the GOP base in South Carolina and Georgia are calling for the protection of all innocent human beings in their respective states.[6] Large religious organizations such as the Mississippi,[7] Texas,[8] Georgia,[9] and Oklahoma[10] Baptist Conventions have all passed resolutions calling for the legal protection of all human beings at every stage of development as a result of the Personhood movement.

The Personhood standard has also been used to successfully support the election of public officials who pledge to adhere to the highest possible pro-life standards. For example, Georgia Right to Life, which has Personhood endorsement criteria,[11] just elected 90.2 percent of its candidates in the 2014 primary[12]; 98.7 percent of those candidates won their respective races in the general election in November.[13] Nationally, the Personhood pledges of presidential candidates such as Rick Santorum, Mike Huckabee, and Newt Gingrich helped them win primaries in crucial states such as Iowa, Colorado, Georgia, and South Carolina in the 2008 and 2012 primaries. Personhood can also be credited with ensuring that prolifers held strong against pressure to insert rape exceptions into several measures, among them the Tennessee Constitutional Amendment passed last year.

These instances demonstrate that the Personhood movement is not limited

to citizen initiatives, legislation, resolutions, or even the law. It is instead defined by adherence to the principles of a limited government that recognizes and protects the inalienable rights of all[14] human beings as persons and a commitment to grassroots activism.

How We Became Slaves in Sodom and Gomorrah

> *. . . the candid citizen must confess that if the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made in ordinary litigation between parties in personal actions the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal.*
>
> —Abraham Lincoln, *First Inaugural Address*

Today's prolifers are generally agreed that we Americans have ceased to be our own rulers, having instead resigned our government into the hands of unelected judges and bureaucrats. On the moral issues that hold together our culture and sustain the rule of law, such as the issuance of laws for the benefit of the health, safety, and morals of the people, the Supreme Court has claimed for itself an unchecked and practically unappealable power. If the Supreme Court says there is a right to homosexual sodomy, or pornography, or abortion, or anything else, then nothing short of a constitutional amendment can stop it. And where there is no limit to the power of the government, the government inevitably becomes a tyrant. It follows that in modern America, the foundational principles of limited government have been overrun by a despotic state. Federalism, the limitation of government action through the enumeration of rights, and the checks and balances of co-equal branches have been replaced by Federal Supremacy, Judicial Supremacy, the Imperial Presidency, and the pork-barrel Congress.

In the Executive Branch, President Obama is fond of saying that if Congress doesn't act, then he will. And act he has: usurping the legislative functions of Congress with his despotic use of administrative rule-making on the issues of health, marriage, immigration, and drug enforcement; engaging in foreign wars with no congressional approval; and naming judges during non-existent recesses. In the Judicial Branch, according to the Supreme Court, it is a constitutional right to tear a baby limb from limb, but unconstitutional to teach children to pray at a public school. It is a constitutionally protected right to engage in, record, and sell explicit acts of fornication, but unconstitutional to display the Ten Commandments in public spaces. It is constitutional to define a fine as a tax in order to force private citizens to buy certain products, but unconstitutional for citizens to define the institution of marriage as between one man and one woman.

While there is no single cause for the decline of America into legal despotism and moral relativism, and to some extent all three branches of the federal government have failed, nevertheless the primary structural failure in our government that precipitated the others has been the Judiciary.

Alexander Hamilton assured the newly independent American people in the Federalist Papers No. 78 that "the judiciary is beyond comparison the weakest of the three departments of power." Thomas Jefferson, however, alive to the danger of Judicial Supremacy, wrote in 1820, "You seem . . . to consider the judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy."[15]

After the *Kelo* v. *City of New London* decision in 2005, Nancy Pelosi famously stated that when the Supreme Court rules on the constitutionality of a matter it is "almost as if God has spoken."[16] Although Pelosi is one of the fiercest opponents of the right to life, I believe that her logic is essentially the same as that driving the pro-life opposition to the Personhood movement. Consider:

1. When attempting to advocate for a Congressional Personhood Act under Section 5 of the 14th Amendment, Personhood proponents are countered by pro-life critics who say that the Supreme Court has ruled definitively and exclusively on the meaning of the term person and Congress cannot contradict it;
2. When attempting to pass state constitutional amendments or state statutes recognizing the Personhood of the preborn, Personhood proponents are told that a state constitutional amendment can't supersede or contradict the United States Constitution, because Judicial Supremacy trumps the Tenth Amendment police powers of the states to regulate on matters of health and morals;
3. When attempting to pass local measures, Personhood proponents are confronted with arguments that local governments cannot regulate these matters, because the state legislature shapes the criminal code, and in turn the state legislature cannot contradict *Roe* v. *Wade,* because of (you guessed it) Judicial Supremacy.

Of course these critics are partly correct, but they also miss the point. The fact is that we currently don't live in a democratic constitutional republic. Resistance at every level of society—but especially at every level of government—is the only hope for restoring America to a limited government and to a culture of life.

Revival: Personhood and the Resurrection of America

Alexis de Tocqueville, the great French aristocrat who provided an international context for American exceptionalism, credited much of the vitality of 19th century America to the numerous and influential activities and functions of civil associations and churches. Unfortunately, in the past 50 years, as America has slouched along on its march toward Gomorrah, the organizations that once sustained traditional American morals were in retreat. However, in his insightful masterpiece on America's decline in the face of secular liberalism, Judge Robert Bork noted with uncharacteristic optimism the emergence of a vital grassroots religious conservative movement.

> Perhaps the most promising development in our time is the rise of an energetic, optimistic, and politically sophisticated religious conservatism. It may prove more powerful than merely political or economic conservatism because religious conservatism's objectives are cultural and moral as well. Thus, though these conservatives can help elect candidates to national and statewide offices, as they have repeatedly demonstrated, their more important influence may lie elsewhere. Because it is a grass roots movement, the new religious conservatism can alter the culture both by electing local officials and school boards (which have greater effects on culture than do national politicians), and by setting a moral tone in opposition to today's liberal relativism.[17]

The first step, noted Robert Bork, is to understand what has happened to us as a nation; the next is resistance in every area of the culture.

Recalibrating the Personhood Movement:
From Statewide Initiatives to Local Measures

I received considerable criticism following my recent article on LifeSiteNews.com[18] calling for a recalibration[19] of the Personhood strategy. There I called for a sober post-mortem analysis of the two Personhood amendments that had just failed at the ballot box in Colorado and North Dakota. Some of the criticism came from those who support the prior and ongoing[20] Personhood efforts and feel betrayed or threatened by the prospect of modifying the movement's focus.[21] Others, who have never supported Personhood as a viable strategy, saw in the article the raising of the white flag of surrender.[22] Both misread the article's thesis.

A central reason for calling for an evolution of strategy was the need to increase the social and legal tension:

> Social and legal tension was our goal, and that will continue to be our goal until we achieve the abolition of abortion, but we have to be honest with ourselves and realize that the current strategy of statewide ballot measures may have reached its limit.

Due to space constraints, I had to omit some important supporting points.

The article didn't mention that, contrary to what the campaign leadership in Colorado had publicly maintained, actual volunteer participation was at an all-time low, church participation was dwindling, and the debate that the Personhood movement so desired as a mechanism for cultural change was simply not occurring.

In a behind-the-scenes story on the campaign in Colorado, MSNBC described the campaign headquarters in the following way: "The Personhood USA headquarters in Denver does not look like the seat of a revolution. It doesn't even look like an organized campaign office. On a recent Saturday, less than a month before Colorado voters will be asked to vote on Amendment 67, the unremarkable office suite was nearly empty."

For once, MSNBC was actually telling the truth: The campaign headquarters was nearly empty because the movement had ceased to attract and motivate people to sacrifice for the campaign. Another fact not mentioned in the article was that the Colorado campaign had only raised $29,000, compared to over $3 million from Planned Parenthood for the opposition.[23] These fundraising discrepancies pointed to an unavoidable conclusion: The base had become exhausted physically, financially, and emotionally.[24]

If statewide ballot initiatives give Planned Parenthood an operational advantage due to their greater financial and media resources, then the logical response is to take the fight to a smaller and more local venue.

The Municipal Ballot Initiative, Local Ordinances, and Local Resolutions

In the LifeSiteNews article, I suggested exploring ways for citizens to engage, in a very local way, in the type of activism that will have a culturally transformative effect while minimizing exposure to the well-funded abortion interests.

During 2013, no pro-life initiative gathered more attention and generated more debate than the Albuquerque 20-week abortion ban. Although the law itself was morally flawed, the idea of engaging in a citizen-led local pro-life battle was a novel one for the pro-life movement and was very successful at grassroots activation.[25]

Critics of the municipal approach state that it is hard to see any connection between local law and abortion. But the wording of the Albuquerque 20-week ban explicitly and credibly put this objection to rest by referencing both the New Mexico Statutes and the Charter of the City of Albuquerque as recognizing the power of the city to "secure health and safety within its geographical borders."[26]

Critics also objected that Personhood measures cannot be enacted at a local level because civil rights are a matter of state concern. Here, it is useful

to examine another local ballot measure that failed to pass but was successful in educating and activating the grassroots: Anchorage's Proposition 5. In 2012 the homosexual movement attempted to add "protections" for people regardless of "sexual orientation or transgender identity" to the city's civil rights laws.[27] Proposition 5 proves that significant civil rights change can be proposed at the local level.

Anchorage is also a good municipality to illustrate how Personhood can be advocated at the local level. Taking the exact same path as the homosexual movement did in Proposition 5, Personhood activists could propose an amendment to Chapter 8.10 (Offenses against Persons) of the Anchorage Code of Ordinances, specifically to the section dealing with child abuse. In Section 8.10.030 it is declared "unlawful for any person to commit child abuse . . ." and a child abuser is defined as a person who "intentionally, knowingly, recklessly, or negligently causes or permits a child or vulnerable adult to be tortured; cruelly confined; cruelly punished or physically injured."[28] The above-referenced municipal section points to the Alaska State Code for the applicable definitions, but the word child is not defined in either the municipal or state code.[29] It would be perfectly feasible to use the initiative process in Anchorage to define the word "child," as the Supreme Court of Alabama recently recognized, to include all children born and preborn for purposes of the child abuse ordinance.

In the 2014 Alabama Supreme Court decision *Hicks* v. *Alabama,*[30] the court ruled that although the chemical endangerment section of the Alabama Code of 1975 did not define "child," it was nonetheless proper and constitutional to include the preborn in that class. In his concurring opinion, Chief Justice Roy Moore eloquently wrote:

> I concur with the main opinion and with Justice Parker's specially concurring opinion, which rightly notes that "[b]ecause an unborn child has an inalienable right to life from its earliest stages of development, it is entitled . . . to a life free from the harmful effects of chemicals at all stages of development." I write separately to emphasize that the inalienable right to life is a gift of God that civil government must secure for all persons—born and unborn.

Notice that Chief Justice Moore calls the protection of the inalienable right to life the duty of all "civil government," which would include not just the Supreme Court of the United States, or Congress, or the state legislature, but municipal governments. However, Chief Justice Moore goes even further, emphatically calling upon us to nullify *Roe* v. *Wade* and its progeny:

> I would go further and state that the judicially created "right" to abortion identified in Roe has no basis in the text or even the spirit of the Constitution and is therefore an illegitimate opinion of mere men and not law. See id., 410 U.S. at 174 (Rehnquist, J.,

> dissenting) (describing Roe as finding "within the Scope of the Fourteenth Amendment a right that was apparently completely unknown to the drafters of the Amendment"); Doe v. Bolton, 410 U.S. 179, 221 (1973) (White, J., dissenting) (finding "nothing in the language or history of the Constitution to support the Court's judgments . . . . fashion[ing] and announc[ing] a new constitutional right"). Roe and its progeny therefore have no applicability in any case, in any context, and, like the German laws nullified at Nuremberg, should be jettisoned from federal and state jurisprudence.[31]

Two other common objections to the local Personhood measures merit a brief response. One is that the municipal ballot initiative is not available in all municipalities. However, this is not a hurdle, since Personhood is not wedded to one particular political mechanism. Where the municipal ballot initiative is not available, activists can effectively lobby or even seek election and take over city councils or assemblies. The second objection is that the small conservative municipalities will rarely have an abortion facility to regulate. However, the fact that there is no abortion clinic in a particular community does not mean that the community can't find other ways to protect the rights of the preborn.

These are just a few of the possibilities that we are contemplating. Much has yet to be discovered and developed at the local level. No national organization or leader can match the impact of a local citizenry determined to reclaim its role in its own government.

Undoubtedly, those who object to the central political idea of the Personhood movement—that we must actively resist judicial tyranny—will attempt to demonstrate how the courts will shut down our initiatives and local efforts. Quite frankly, the Personhood movement is not so much concerned with the changes that we can achieve through the legal system as it is with changing the legal system itself. That system is so broken that attempting to get it working in its current condition is an exercise in futility. Instead, the Personhood movement will look to the true repository of American sovereignty: the people and the Creator from whom our inalienable rights emanate. We will not limit ourselves to one strategy, just as we will not accept judicial, legislative, or executive tyranny.

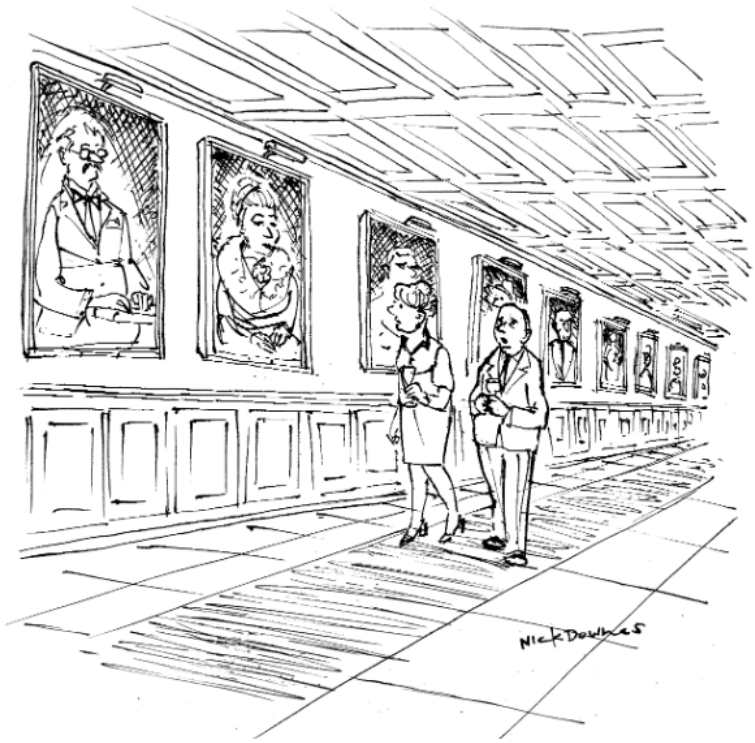
Few have expressed it more eloquently than Abraham Lincoln did at Gettysburg in words that resonate so strongly in our own fallen and blood-stained America:

> It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth.[32]

NOTES

1. That all human beings are bearers of fundamental and inalienable legal rights simply by virtue of being human and should therefore be recognized as persons. Contrary to Justice Blackmun's opinion in *Roe* v. *Wade*, there is ample precedent for human beings having been afforded legal protection as persons throughout American history. My favorite example of this is the case of *Williams* v. *Marion Rapid Transit Co*., a 1949 Ohio State Supreme Court decision where the court wrote that, "If the common law protects the rights of the unborn child and if every intendment in the law is favorable to him, **the inference is inevitable that such unborn child is a person** and possesses the rights that inhere in a person even though he is incapable himself to assert them."
2. There are also many notable legal scholars who support the Personhood movement. Notre Dame Emeritus professor Charles Rice has been a vocal advocate of state Personhood amendments. See http://www.personhood.org/index.php/personhood-advocates/personhood-advocates/personhood-advocates#Legal
3. It should be added that the individual states, the different branches of government, all those who swear to uphold and defend the Constitution, and the people themselves have the right and duty to resist tyranny by any branch of government or individual official.
4. Former Attorney General of Kansas Phill Kline once mentioned to me an astonishing fact, namely that none of the thousands of well-intentioned but morally flawed pro-life regulations has ever resulted in the successful prosecution of the world's largest abortion provider, Planned Parenthood.
5. Robert P. George, *Conscience and its Enemies: Confronting the Dogmas of Liberal Secularism* (Wilmington: Intercollegiate Studies Institute, 2013), 235.
6. Georgia Voter say "Yes" to Personhood Amendment: http://www.christiannewswire.com/news/391914486.html; 79% of SC GOP backs Personhood: https://www.lifesitenews.com/news/79-of-sc-gop-backs-personhood-pro-life-republican-tops-pro-abortion-gop-foe
7. https://www.baptiststandard.com/news/baptist/13167-mississippi-baptists-back-personhood-amendment
8. http://sbtexas.com/am-site/media/2011-resolutions.pdf
9. http://www.christianexaminer.com/article/right.to.life.says.1400000.georgia.baptists.crucial.to.personhood.efforts/47619.htm
10. http://baptistnews.com/culture/social-issues/item/7972-okla-baptists-affirm-'personhood'-of-unborn
11. Personhood endorsement criteria require the politician to commit to put into practice his or her pro-life beliefs in a consistent manner. For more details on this, see GRTL's endorsement criteria here: http://grtlpac.org/?q=endorsement-guidelines
12. http://www.grtl.org/?q=primary-election-victories
13. 78 out of 79 of GRTL-endorsed candidates won their general election: http://www.grtlpac.org/?q=grtl-pac-2014-endorsements
14. Groups such as Rebecca Kiessling's "Save The 1" and Pam Stenzel and Monica Kelsey's "Living Exceptions" enthusiastically endorse the Personhood movement because it refuses to abandon the fight for children conceived in rape.
15. Thomas Jefferson, Letter to William Charles Jarvis (28 September 1820).
16. http://www.washingtontimes.com/news/2005/jul/1/20050701-010419-9346r/
17. Robert H. Bork, *Slouching Towards Gomorrah: Modern Liberalism and American Decline* (New York: Reganbooks, 1996), 342.
18. Gualberto Garcia Jones, "It's time for the Personhood movement to do some sober analysis." LifeSiteNews.com, November 7, 2014. https://www.lifesitenews.com/opinion/its-time-for-the-personhood-movement-to-do-some-sober-analysis
19. http://www.salon.com/topic/personhood/
20. Personhood Florida is currently engaged in the collection of signatures for a statewide Personhood amendment. See www.personhoodfl.com
21. The leadership of Personhood USA, a group I was previously associated with, went so far as to publicly accuse me of "trying to undermine our initiatives by scaring citizen-activists and candidates away from supporting Personhood."
22. http://www.jillstanek.com/2014/12/personhood-split-part-2/

23. https://www.lifesitenews.com/opinion/post-election-analysis-planned-parenthood-is-biggest-loser-in-personhood-ba
24. It is true that Amendment 67 in Colorado gathered more votes than any other prior Personhood amendment; however, the text and context of the amendment were of a kind which by itself elicited more support from low-information voters, and this, and not any real growth in the movement, were the reason for the increase in the total and percent of the vote.
25. The organizers of the initiative gathered 27,000 signatures to put the initiative on the ballot, more than double the 12,000 required signatures.
26. Section 12 of the City of Albuquerque Late Term Abortion Ban Initiative read "The Citizens of Albuquerque are empowered by Chapter Three of New Mexico Statutes Annotated and Article Three of the Charter of the City of Albuquerque to affirmatively act to secure health and safety within its geographical borders." See http://ballotpedia.org/City_of_Albuquerque_Late_Term_Abortion_Ban_Initiative,_Ordinance_Text
27. http://www.nytimes.com/2012/04/05/us/proposition-5-gay-rights-anchorage-alaska.html?_r=0
28. https://www.municode.com/library/ak/anchorage/codes/code_of_ordinances?nodeId=TIT8PECO_CH8.10OFAGPE
29. http://www.touchngo.com/lglcntr/akstats/statutes/title47/chapter24/section900.htm
30. https://www.liberty.edu/media/9980/attachments/041814-Ex_parte_Hicks_1110620.pdf
31. *Hicks* v. *Alabama*, pg. 42, n. 9, Chief Justice Moore concurring opinion. https://www.liberty.edu/media/9980/attachments/041814-Ex_parte_Hicks_1110620.pdf
32. Abraham Lincoln, Gettysburg Address, November 19, 1863.



"I come from a long line of people who have died."

The First Battle

Chris Rostenberg

The pro-life agenda involves a two-step message: Killing unborn children is wrong, and the unborn is a child from conception. Trouble is, prolifers are stumbling by taking the second step first and largely ignoring the first step. Why try to convince Americans that zygotes and embryos are persons equal to you and me when those Americans have yet to realize that second- and third-trimester unborn—who are recognizably children—must not be aborted? Why try teaching the second lesson (that the unborn is a child from conception) when your audience does not grasp the first (that killing unborn children is wrong)? It is a mistake to accept the way pro-choicers frame the issue: "When does life begin?" The proper response to this question is not "Conception," but rather, "At what point in the pregnancy should the killing stop?" Likewise, when asked about rape and incest, the reply ought to be: "Do you support abortion in all the cases that are not rape or incest—that is, 98 percent of abortions?"

Prenatal homicide is legal through all nine months of pregnancy—that is horrible, but it is also useful. Useful, because so many Americans oppose this law once they are made aware of it. Rather than recruiting all the people who would oppose *Roe* v. *Wade* and *Doe* v. *Bolton* (the Supreme Court rulings that deceptively made all abortion legal until birth), too many pro-lifers say, "If you won't oppose abortion all the way from fertilization, we will never be allies." We must recognize the great opportunity offered by the Supreme Court's fanaticism rather than squander it for ideological purity. So few people have even heard that the law permits abortions throughout nine months of pregnancy, but everyone has heard about prolifers' focus on conception. Civil War historian Shelby Foote said, "America's genius is its willingness to compromise"; it is now time for a compromise on abortion.

So I am not a prolifer, I am a *pro-compromiser.* I oppose late abortion, am silent on early abortion, and support no abortion (except when the woman's life is endangered, which virtually never happens). I am not saying yes to first-trimester abortion; I simply have nothing to say about it. Nor do I take a position on rape or incest abortions. If you don't oppose something, you don't have to talk about it, and those two areas of the debate get far too much attention.

Planned Parenthood doesn't seem to track post-viability abortions, but we

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Chris Rostenberg, who writes from New York, believes new media will help create a tipping point in public opinion toward defending unborn babies.

can approximate. In America, we kill over 300 children a day in the fourth month or later, and since children can survive outside the womb in the fifth-and-a-half month, I estimate that we kill viable children at least a hundred times a week. That is more than enough reason to fight pro-choicers; we need not discuss zygotes.

Pro-compromise individuals have differing opinions on embryonic stem cell research, in vitro fertilization, abortifacient contraception, cloning, population control, and euthanasia—the real crimes happen in the womb. I want more attention on forced abortion, clinic safety, and infanticide. Shrink your message, expand your audience. The whole pro-life agenda is huge and ungainly, hard to understand, and easily misrepresented by its foes—pro-compromise is much simpler. Let the anti-abortion movement have two branches: pro-life and pro-compromise!

Since my pro-compromise position does not support any abortion, some would ask why I call it a compromise. That's because to be silent on something is to allow the majority to have its way, and since most Americans support early abortion, I am ceding the issue. Is the pro-compromise position morally consistent? If not, so what? Americans are not morally consistent on abortion, and for too long the implication has been that they should accept the "consistent" nine-month position. Americans are not obligated to have only morally consistent laws: Many lawyers will tell you that no law is morally consistent, because laws are the result of many opposing forces seeking a consensus.

"Pro-choice" means nine months. Pro-choicers cannot claim every position that is not pro-life; pro-life is at one pole, pro-choice is at the other. Arguments used by pro-choicers demand nine-month abortion (the fetus is not a person until birth, etc.). And the law that pro-choicers defend is a nine-month law. If you support early abortion and don't qualify your endorsement, you are a nine-monther. I know pro-choicers who think late abortion should be illegal, but also believe *Roe* and *Doe* should stand so that early abortion won't be made illegal in any state, so they support the killing of these older babies anyway. Such people say, "These babies deserve to live—now kill them."

Many people who call themselves pro-choice are really "pro-hybrid," meaning they are part pro-legal abortion and part anti-legal abortion. As long as they use the standard nine-month pro-choice arguments, however, they are insisting on child-killings they don't really support. A prolifer says to the pro-hybrid, "Oppose abortion all the way and become a prolifer," while a pro-compromiser simply says, "Oppose late pre-birth infanticide *as you already do*, be silent on early abortion, and become a pro-compromiser." Again, shrink your message and expand your audience. Pro-compromise

might be seen by prolifers as a retreat, but I see it as a strategic attack on the ground where our opponents are weakest.

If, in the name of women, you lie to women about abortion, you might be neurotic. Pro-choicers know that most liberties are desirable, so they assume that the abortion liberty is desirable for women. Since abortion kills babies and baby-killing is wrong, pro-choicers tend to completely misrepresent the practice. One way to lie is to pretend prenatal homicide is reproductive rights. Child-killing has nothing to do with reproduction. Another way to be dishonest is to say, "I support abortion, but I oppose looking at photographs of abortion or talking about it with my opponents." You might support *Roe* and *Doe* while telling yourself you respect democracy and love the Constitution. You might claim you oppose bigotry while pretending the right to privacy trumps the right to live, or that unborn babies' right to privacy is not violated when they are dismembered.

One common obfuscation is to exploit the myopic focus, calling attention to easy-to-defend abortions (like those resulting from rape), while refusing to answer for hard-to-defend killings (like those destroying viable children). So, a person might ask, "What if the mother was raped by her *uncle*, and she is 13 years old, and on welfare, with two other children, and she will die if she gives birth, and the child has two heads, etc. . . .?" That is the myopic focus. People framing the issue this way are often emotionally stunted. A person unable to opine on post-viability abortion is unable to responsibly participate in politics. *Abortion supporters should not be allowed to pick and choose which abortions they wish to talk about*—they need to show that all pre-birth infanticide is right; anti-abortion activists only need to show that some killings are wrong. Yet exploiting the myopic focus is the leading mindset among the academy and the information gatekeepers, and is one reason most Americans lack even a rudimentary understanding of prenatal homicide.

Prolifers are totally outmaneuvered by the myopic focus; their strategy is always to accept the frame and answer every last question *head-on*. That is why we find ourselves in the position we are in 42 years after *Roe* and *Doe*. This is unforgivably naïve, bringing a knife to a gunfight. The savvy pro-compromiser refuses to be pinned down by the myopic focus, turns the tables on the pro-choicer, and frames the issue as it calls to be framed: "Can you justify *all* abortion?" The question about early abortion is best left to a future America. I am not saying prolifers don't have a place in the debate; someone who considers embryos to be people might often feel the need to accept the myopic focus. But there must be an out.

To illustrate how the pro-life movement has sometimes been misguided, consider this: In the same week that Bill Clinton was sworn in as president, I was in Washington, DC, at a right-to-life convention and I spoke to a very prestigious prolifer. I asked him why he and his organization did not draw more attention to the nine-month nature of our abortion law. He replied, "People tend not to believe us about that, so we talk about informed consent and waiting periods." My jaw dropped. We certainly won't win fighting *that* way! Prolifers often seem more interested in "being right" than in succeeding. They should not consider "compromise" to be a dirty word.

For individuals and for societies, the debate begins with killings of older children, not with embryos or euthanasia. Late in the pregnancy, there is no real question of whether the unborn is a human person, while at the beginning of pregnancy there are such understandable questions. If you support late prenatal homicide, then you support early abortion too, but the opposite is not necessarily true, so it makes sense to discuss late abortion first. With euthanasia, the subject wants to die, but the unborn child in the sixth month does not. Late abortion is simpler than many other facets of the life issue, and more outrageous. There is an urgent need that many people feel to stop late abortion. If or when it becomes possible to pass anti-abortion laws, most states will probably go through a pro-compromise phase. The only way prolifers, pro-compromisers, and pro-hybrids can get the law they want is to expose and overturn or circumvent the Supreme Court rulings. That is our first battle.

When Does Human Life Begin?

Umberto Eco

Dear Carlo Maria Martini,

According to the schedule we have agreed to, it is time for us to continue our conversation. The goal of this letter exchange is to identify common ground between lay people [secularists] and Catholics (and I remind readers that you are participating as a believer and a man of culture, not in the robe of a prince of the Church). I have been wondering, however, if we should be limiting our discussion to include only what beliefs we have in common. Is it worthwhile for us to ask each other what we think about capital punishment or genocide, for example, only to discover that we agree profoundly on these topics and the values associated with them? For this to be a true dialogue, we should be exploring the subjects on which there is no consensus. Yet that's still not enough. A lay person does not believe in the Holy Spirit and a Catholic obviously does, for example, but that does not occasion a lack of understanding, just a mutual respect for our personal beliefs. The critical moment occurs when from disagreement is born a deeper conflict and incomprehension that can be translated into political and social agendas.

One such conflict is right-to-life versus existing abortion legislation.

Confronting a problem of this scope calls for putting one's cards on the table, and avoiding ambiguity. He who asks the question should clarify his own perspective as well as what he expects from the respondent. Hence, my first clarification: I have never been in the situation of having a woman tell me she is pregnant by me, and put the question to me as to whether to abort or to consent to her wish to abort. Had it ever happened, I would have done everything possible to persuade her to grant life to that being, whatever the price. The birth of a baby is a marvelous thing, a natural miracle that we must accept. That said, I don't feel I have the right to impose my own ethical position (my emotional disposition, my intellectual persuasion) on anyone. I believe there are terrible moments about which neither you nor I know very much (which is why I'll refrain from drawing hypothetical comparisons),

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Umberto Eco, the Italian philosopher, literary critic, and novelist, is best known for his 1980 historical mystery novel *Il nome della rosa* (*The Name of the Rose*). In the mid-90's, the Italian newspaper *Corriere della Sera* invited him and the late Cardinal Carlo Maria Martini, S.J., then Archbishop of Milan, to carry on a dialogue in its pages. The following two "letters" are excerpted, with permission, from the Helios Press edition of *Belief or Nonbelief: A Confrontation* (2012), translated from the Italian by Minna Proctor, and with an introduction by Professor Harvey Cox of Harvard.

when a woman has the right to make an autonomous decision about her body, her feelings, her future.

Nonetheless, there are those people who appeal to the right to life. If we cannot permit someone to kill another person, nor even to kill himself (I won't embroil myself in a debate about self-defense), we likewise cannot allow someone to halt the course of a life begun.

So we come to my second clarification: it would be inappropriate of me to ask you to express your opinion or restate the teachings of the Church. Instead, I am inviting you to offer your own reflections in relation to current doctrine on the subject. When the banner of Life is waved, it can't but move the spirit—especially of nonbelievers, however "pietistic" their atheism, because for those who do not believe in anything supernatural the idea of Life, the feeling of Life, provides the only value, the only source of a possible ethical system. Despite that, there is no more elusive, nuanced, or, as today's logicians are wont to say, "fuzzy" concept. As the ancient Greeks knew, life is not recognized exclusively from the appearance of intellectual spirit, but also from the manifestation of sensory, even vegetative spirit. Nowadays, for example, there are "radical ecologists" who believe that Mother Earth with her mountains and volcanoes has a life unto herself, and who speculate the human race might have to disappear in order to ensure the survival of the planet it threatens. There are vegetarians, who sacrifice vegetable life to preserve animal life, and oriental ascetics who cover their mouths, so as not to swallow and kill invisible microorganisms.

At a recent conference, the African anthropologist Harris Memel-Fote noted that the typical attitude of the Western world is *cosmophagic* (a beautiful term: we have always tended to devour the universe). Now we should be open (and some societies already are) to some form of *negotiation*: between what mankind can do to nature in order to survive, and what it shouldn't do so that nature will survive. When negotiation occurs it's because there are still no fixed rules; one negotiates to establish them. I believe that, with the exception of certain extremist positions, we are constantly negotiating (more often with our emotions than our intellect) our concept of respect for life.

Most of us would be horrified at the idea of slaughtering a pig, but happily eat ham. I would never squash a caterpillar in the park, but am merciless when it comes to mosquitoes. I discriminate between bees and wasps (both constitute a threat, but I recognize virtues in the former that I don't in the latter). You could argue that while our perception of vegetable and animal life is nuanced, our perception of human life isn't. Yet this is a problem that has troubled theologians and philosophers for centuries. If, by chance, a properly trained or genetically manipulated monkey should show that it could type

reasonable sentences into a computer, engaging in a dialogue, demonstrating affection, memory, the ability to solve mathematical problems, reactivity to logical principles of identity and perception of the Other—would we then consider it to be almost human? Would we grant it civil rights? Because it thinks and loves? Yet we don't necessarily consider everything that loves to be human; in fact, we kill animals even though we know the mother "loves" her own offspring.

When does human love begin? Are there (today, never mind the customs of the Spartans) any nonbelievers who would affirm that a being is human only after his culture has initiated him into humanity, granting him language and articulated thought (which according to St. Thomas were external accidents that allowed us to infer the presence of rationality—one of the defining aspects of human nature), and who would condone the murder of a newborn because, in point of fact, he is only an "infant"? I think not. Everyone considers the newborn still attached to the umbilical cord to be a human being. But how far back do we go from there? If life and humanity already exist in the seed (in our genetic makeup, even), then is the wasting of semen a crime equal to homicide? The indulgent confessor of a tempted teenager wouldn't say that, and neither do the Scriptures. Cain's sin in Genesis is punished with an explicit divine curse, while Onan's brings him death by natural causes for shirking his obligation to give life. On the other hand, and you know this better than I do, the Church repudiated Tertullian's Traducianism whereby the soul (and original sin with it) is transmitted through semen. St. Augustine was still trying to negotiate that idea through a form of *spiritual* Traducianism, but it was Creationism that gradually imposed itself, according to which God introduces the soul directly into the fetus at a given moment in its gestation.

St. Thomas used up precious stores of subtlety to explain how and why this was the case, and from that ensued a long discussion on the purely vegetative and sensory phases the fetus passes through and how only after these phases are completed is the fetus ready to receive intellectual spirit (I have just reread his wonderful meditations on this very question in both the *Summa* and the *Contra Gentiles*). I won't go on evoking the long debates undergone in order to determine at what phase of pregnancy definitive "humanization" occurs (what's more, I don't really know to what extent modern theology is still willing to consider this issue in Aristotelian terms of potentiality and actuality). I do want to say that at the very core of Christian theology lies the question of the threshold (a paper-thin threshold) beyond which what was a hypothesis, a germ—a dark articulation of life still tied to the mother body, a

marvelous desire for the light, not unlike a seed deep in the earth struggling to flower—at a certain point is recognized as a *rational animal*, a *mortal*. Nonbelievers face the same problem; a human being is always born from this initial hypothesis. I am not a biologist (no more than I am a theologian) and don't feel equal to drawing any reasonable conclusions about where the threshold lies, or even if there is a threshold at all. No mathematical theory of catastrophe can tell us if there is a breaking point, a point of spontaneous explosion. We are perhaps condemned to know only that there is process of which the miracle of the newborn baby is the final outcome. Determining when in the process we have the right to intrude, or when we no longer have the right, can be neither pinpointed nor discussed. And so, either the decision ought never to be made, or making it is a risk the mother must meet alone or before God or before the court of her own conscience and of humanity.

As I said, I'm not looking for some kind of pronouncement from you. I am asking for your comments on this impassioned theological debate that has gone on for centuries over a question that underlies our indentification of ourselves as a part of a human society. Now that theology no longer measures itself against Aristotelian physics, but rather against the certainties (and uncertainties) of modern experimental science, what is the current state of the theological debate? You know how such questions involve not only the abortion problem but a whole series of dramatic new issues such as genetic engineering, and how everyone, believer and nonbeliever, is debating bioethics today. Where does a modern theologian then stand in relation to classical creationism?

The definition of what life is, and where it begins, is a question that concerns our life. These are heavy questions, morally, intellectually, and emotionally—believe me—for me too.

Umberto Eco

Human Life Is Part of God's Life

Cardinal Carlo Maria Martini

Dear Umberto Eco,

You are right to open your letter with a reminder that the aim of our epistolary exchange is to identify a common ground of discussion between lay people [secularists] and Catholics, and to approach issues about which there is no consensus, above all those issues that give rise to profound misunderstanding that then translates into political and social conflict. I agree, so long as we have the courage first to unmask the common misunderstandings that lie at the root of greater misunderstanding, making it easier for us then to confront the real differences. We must let ourselves become involved, show passion and sincerity, and be willing to "lay it all on the line" as we explore these central concerns. That is why I appreciate the clarification you offer on the subject of Life: the birth of a baby is "a marvelous thing, a natural miracle that we must accept."

Beginning from this, we recognize that the issue of Life (I'll get to your use of a capital L in a moment) is most certainly a critical point of contention, in particular as regards legislation on the voluntary termination of pregnancy. But here there is already a prime source of confusion. It is one thing to talk of human life and protecting human life from an ethical point of view; it's another to ask in what concrete way legislation can best defend those values in a given civil and political situation. Further confusion comes from what you've called "the banner of Life" that "when waved, can't but move the spirit." I suspect you'd agree with me that banners symbolize the big ideals of a general sort but aren't very useful for resolving complex questions in which there emerge conflicts of values within those big ideals. One needs then to reflect with caution, patience, sensitivity. Borders are always dangerous territory. As a boy, I remember walking in the mountains along the border in the Valle D'Aosta and suddenly wondering where exactly the border between the two nations was. I didn't understand how determining a border was humanly possible. The nations nonetheless did exist, and quite well defined.

A third source of misunderstanding is, as I perceive it, a confusion between the broad use—the "analogic" use (as the Scholastics would say; and I cite them with confidence because you assure me that you've just re-read parts of the *Summa* and the *Contra Gentiles*)—of the term "Life" and the

restricted, proper use of the term "human life." The first sense embraces every living creature above the earth, on the earth, and under the earth, and also "Mother Earth" herself with all her tremors, fecundity, and breath. In Milan our Ambrosian hymn for Thursday nights, referring to the first chapter of Genesis, sings:

On the fourth day all that lives
Thou hast brought, O God, from primordial waters:
The worm and fishes in the sea,
The birds circling in the air.

But this broader concept of "Life" is not at issue here, however much its meaning can engender cultural, even religious, differences. The pressing ethical issue in this discussion regards "human life."

Even this point needs clarification. One sometimes imagines, or writes, that for Catholics human life represents the supreme value. This is, at the very least, imprecise, and doesn't correspond to what the Gospels tell us: "And do not fear those who kill the body but cannot kill the soul" (Matthew 10:28). The life that has supreme value in the Gospels is not the physical nor the psychic one (for these the Gospels use the Greek terms *bios* and *psyche*) but the divine life (*zoe*) communicated to man. These three terms are clearly distinguished in the New Testament, the first two subordinated to the third: "He who loves his life (*psyche*) loses it, and he who hates his own life (*psyche*) in this world will keep it for eternal life (*zoe*)" (John 12:25). So when we say "Life" with a capital letter, we should be referring first and foremost to that supreme and concrete Life and Being that is God himself. This is the Life that Jesus attributed to himself— "I am the way, and the truth, and the Life" (John 14:6)—the Life in which every man and woman is called to participate. The supreme value in this world is man living the divine life.

This explains the Christian conception of the value of physical human life: the life of a person called upon to participate in the life of God himself. For Christians, respecting human life from its first manifestation is not an amorphous sentiment (you spoke of "personal disposition" and "intellectual persuasion"), but rather the fulfilling of a specific responsibility: that of a physical, living person whose dignity is not determined by a benevolent judgment on my part, or by a humanitarian impulse, but by a divine calling. It is somethat that is not only "me" or "mine" or even "inside of me," but before me.

On what does divine benevolence depend when I find myself facing a concrete life that I can label human? You've correctly noted that "everyone considers the newborn still attached to the umbilical cord to be a human

being." But "how far back do we go from there?" Where does the "threshold" lie? You've also correctly recalled Thomas's subtle reflections on the distinct phases of the development of life. I am neither a philosopher nor a biologist and wouldn't want to intrude myself on such questions. But we all know that we have a better understanding today of the dynamics of human development and a clearer sense of genetic determination starting from a point that, at least in theory, can be identified. From conception, in fact, a new being is born. Here "new" means as distinct from the two elements that united to form it. This being begins a process of development that will result in a baby, that "marvelous thing, a natural miracle that we must accept." From its inception, this is the being we are talking about. Identity has continuity.

Beyond these scientific and philosophical matters lies the fact that whatsoever is open to so great a destiny—being called by name by God himself—is worthy of enormous respect from the beginning. I wouldn't want to invoke the generic right-to-life argument here, because it might be taken as impersonal or superficial. We are talking about real responsibility toward that which is produced by a great and personal love, responsibility toward "someone." Being called upon and loved, this someone already has a face, and is the object of affection and attention. Every violation of this need of affection and attention can only result in conflict, profound suffering, and painful rending. We believe that everything should be done to keep this conflict and this rending from occurring. Such wounds heal with great difficulty, if ever. And it is above all the woman who will bear the scars, for the trust has been put in her primarily for that being which is most fragile and most noble in the world.

If this is the human and ethical problem, the civil problem is consequently how to help people and society at large to avert this rending? How does one give support to those who find themselves in an apparent, or real, conflict of conscience, so that they aren't destroyed by it?

You end by saying: "The definition of what life is, and where it begins, is a question that concerns our life." I agree completely—at least on the "what," on which I've already given my answer. The "where" can remain a mystery, but depends on the value placed on "what." Something of highest value warrants highest respect. Starting from her we could consider any specific case, a process which will always be daunting but never undertaken lightly.

One question remains: I have heavily emphasized that in the New Testament, it is not physical life itself that counts, but the life communicated by God. What could be the point of engaging in a dialogue on such a precise point of "revealed" doctrine? The first answer can be found in your expression

of the anguish and trepidation felt by everyone considering the destiny of a human life, at whatever moment of its existence. There is a splendid metaphor that reveals in lay [secular] terms something common to both Catholics and laymen, that of the "face." Levinas spoke of it movingly as an irrefutable instance. I would rather cite the words, almost a testament, of Italo Mancini in one of his last books, *Tornino i volti* [Back to the Faces]: "Living in, loving, and sanctifying our world wasn't granted us by some impersonal theory of being, or by the facts of history, or by natural phenomena, but by the existence of those uncanny centers of otherness—the faces, faces to look at, to honor, to cherish."

Carlo Maria Martini

"Look at me when I'm Skyping you, young man!"

Abortion:
A Threat to the Actualization of the Mother

Anthony Crescio

In discussions of any human life issue, a Christian perspective will always affirm the dignity of the human being. This affirmation is grounded in the belief that our Creator desires for us, not just life, but life in abundance (John 10:10). In asserting this belief, the Christian perspective will conclude that abortion is unacceptable for two reasons: 1) The unborn child is in fact a human being and so is entitled to the right to life; and 2) Because of the damage that is done to her as an individual by having an abortion, the worst decision a woman can make is to procure an abortion. Moreover, a Christian perspective can bridge the gap in the abortion debate by erasing the line in the sand drawn between the mother and the child which often arises in the debate, pitting the unborn child's right to life on the pro-life side of the debate and the mother's right to choose whether or not she will bring a child into this world on the pro-choice side. A truly Christian approach to the conversation is able to effectively erase this line precisely because it stands on the side of both individuals. It should not be thought that such an approach is naturally *de fide* in character; rather, the reasons for taking it are reinforced by science and empirical study. Thus, as will be demonstrated below, the conclusions reached by taking a Christian approach to the discussion are rational, but this rationality is informed by faith. In the end it will be shown that in the spirit of its founder, a Christian approach to this discussion desires that both the mother and child experience not merely existence, but life in abundance.

Many studies have been done on the psychological effects of abortion on the mother. In 2008, the APA Task Force on Mental Health and Abortion (TFMHA) published a comprehensive review and evaluation of literature published in peer-reviewed journals beginning in 1989. The review concluded that "among women who have a single, legal, first-trimester abortion of an unplanned pregnancy for nontherapeutic reasons, the relative risks of mental health problems are no greater than the risks among women who deliver an unplanned pregnancy."[1] In the same review, however, the TFMHA wrote that it is "clear that some women do experience sadness, grief, and feelings of loss following termination of a pregnancy, and some experience significant

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disorders, including depression and anxiety."[2] In an attempt to dissociate the negative mental health experiences of women who have had an abortion from the abortion itself, the TFMHA determined that the cause of the negative mental health experiences was other factors, including those of a social nature: "feelings of stigma, perceived need for secrecy, exposure to antiabortion picketing, and low perceived or anticipated social support for the abortion decision."[3] In this respect, the TFMHA touches on something of the utmost importance: the social nature of the human being.

A similar study was published by *The British Journal of Psychiatry* (BJP) in 2011. Like the review conducted by the TFMHA, this study conducted a quantitative synthesis and analysis of research published from 1995 to 2009. However, whereas the study conducted by the TFMHA declared that mental health problems could not be attributed to having an abortion per se, the study published by the BJP concluded that "the results revealed a moderate to highly increased risk of mental health problems after abortion."[4] This conclusion was based on findings that the results of their analysis "indicated that women who have had an abortion experienced an 81% higher risk of mental health problems of various forms when compared with women who had not had an abortion."[5] Moreover, the study concluded that "nearly 10% of the incidence of mental health problems was shown to be directly attributable to abortion."[6] Therefore, in direct contrast to the study conducted by the TFMHA, this study found that women who have had an abortion are more likely to experience mental illness in their lives following the procedure.

The conclusions drawn by those conducting the studies are in obvious contention with one another. Notice, however, that the studies only disagree on the causes of the adverse mental health experiences of women who have had an abortion, not that women who do have an abortion are likely to experience adverse mental health effects. The disparity lies in the fact that the study by the TFMHA attributes causality to the negative societal influences surrounding women who have had an abortion, while the study published by the BJP more directly attributes the adverse mental health consequences to having had an abortion. The proposition I will make here is that those two causes are one and the same; drawing a distinction between them is merely an exercise in semantics.

Published in 1999, *A Clinician's Guide to Medical and Surgical Abortion* more acutely examines the negative mental health experiences of women who have had an abortion. Based on research from studies conducted prior to 1999, the text lists several reactions commonly found in women who have had an abortion, including: "depression, guilt, shame, regret, and grief."[7] The text also includes a list of symptoms associated with each specific reaction

listed. For example, when speaking of those symptoms that are a sign of depression, the text lists among other things "suicidal ideation" and "feeling worthless."[8] Under the reaction of shame the text lists the symptoms of "relentless thoughts of being a bad person, engaging in self-destructive behaviors, and inordinate fear about anyone finding out about the abortion."[9] When discussing the negative reaction of regret experienced by a woman who has had an abortion, the text speaks of "Dwelling . . . on negative consequences attributed to the abortion."[10] However, what is most revealing for the purposes of this article is one of the symptoms listed as a sign that the woman is dealing with guilt. Under this reaction the text explicitly includes "Interpreting any misfortune, illness, or accident as signs of God's punishment."[11] Reading the list of symptoms compiled in a presentation by Dr. Martha Shuping reveals that women who have had an abortion often are confronted with a troubled conscience, exemplified in "relentless thoughts about being a bad person," "inordinate fear about anyone finding out about the abortion," and "interpreting any misfortunes as signs of God's punishment."[12] This shortened list of symptoms more acutely sheds light on the driving force behind the experience of post-abortion mental side-effects. Put simply, the woman who experiences these symptoms senses that she has somehow violated a law that resides within her.

This law is what Augustine would call "the eternal law" and what Aquinas would term "the natural law." This set of guiding rules has been transcribed on the hearts of every human being by his or her Creator. St. Augustine wrote that this law "is the Divine Reason or Will of God, commanding the observance, forbidding the disturbance of the natural order of things."[13] The guardian and administrator of this Natural Law is none other than what Cardinal John Henry Newman called "the aboriginal Vicar of Christ," the conscience.[14] Put simply, women who experience this variety of painful psychological symptoms following an abortion are so troubled because in their souls they are being addressed by the voice of God. They are being told that what has been done violates what Christ identified as the two greatest commandments, offending God and neighbor, in this case their very own child. Taken one step further, the pain experienced by women who have had an abortion is much more than psychological, for it is of a spiritual nature.

By offending her neighbor, the child, the mother has offended God through sin, and because of this she has caused a divide between herself and God who sustains her in life. Like all who commit an egregious sin, she experiences a death of the soul of sorts. This is exemplified in the symptom mentioned above, that the woman often feels as though she is a bad person, or that she

is worthless. In his work *No Future Without Forgiveness*, when speaking of the atrocity of apartheid, Archbishop Desmond Tutu wrote, "In the process of dehumanizing another . . . inexorably the perpetrator was being dehumanized as well."[15] Likewise, women who have had an abortion also sense this. In violating another individual, the woman has violated herself, thereby losing something of what makes her human. Hence the social component that is manifest in the list of symptoms noted above. In short, the action of abortion is at bottom a sin of social injustice, precisely because she has offended her neighbor, her child; and sin "in fact 'diminishes man."[16]

Secular society has claimed to be a champion of science in many cases; however, when it comes to abortion, in no way can a pro-choice stance claim to have science on its side. The claim that a woman who has conceived a child should have the right to choose what is done to her body is absolutely correct. This is not to imply that an individual has absolute rights over the self, for one can most certainly violate the natural law by mistreating the self. Such a subject would be the topic of a different discussion. Here the distinction is drawn to emphasize the social nature of the abortive act, which science undeniably proves by demonstrating that the life within a pregnant woman is not part of her body. In speaking of the new life formed at the moment of conception, Cardinal Elio Sgreccia explains that though contained in and sustained by the body of the mother, "the new program (i.e., the life of the embryo) is neither inert nor 'executed' by means of maternal physiological organs using the program in the way an architect uses a blueprint as a passive pattern, rather it is a new project that builds itself and is its own principle moving force."[17] Therefore "to say that the embryo is a part of the mother's body is . . . an error or anti-scientific mystification . . . the development of the embryo depends on the mother only in an extrinsic way."[18] In other words, the embryo is sustained in life by the body of the mother in the same way the individual body of any human being is sustained in life by its surrounding environment. The very act of conception imbues the new life with a unique individuality which it has received from its Creator, and is completely separate from that of the mother. From the very moment of conception, then, the new life is a composite human being, i.e., physical and spiritual. To separate the creation of the physical body from that of the embodiment of the soul is a severe misunderstanding. As Cardinal Sgreccia explains, "The composite essence of man (soul and body) passes from the potential and hypothetical state to the real state . . . following an existential act that concretely realizes the potentiality" and "Since the existential act proceeds (can only proceed) from the Creator, the same act vivifies and actualizes the body, and this occurs (can only occur) simultaneously with the secondary causes—that is, at the

moment of procreation."[19] What is the proof that this new life is a complete individual? That "the whole that will appear at the end (if 'end' is understood to mean birth or adult life) is already causatively and genetically present at the beginning and in an individual sense as well."[20] As Tertullian wrote, "he who will be a man already is one."[21]

Understanding then, as science demonstrates, that there are two human individuals involved at the center of the issue (the mother and the child), the act of abortion can be seen as having a social dynamic. Of course the very nature of this particular social relationship compounds the severity of the negative repercussions experienced by the woman following an abortion. For from the very moment the woman conceives and is cognizant of the fact that she has a new life growing within her, she has become a mother. Moreover, the biological aspect of motherhood can never be divorced from the spiritual aspect of motherhood, "because motherhood concerns the whole person, not just the body, nor even just human 'nature.'"[22] In rejecting the new life that has begun to grow within her, the woman turns away from the most intimate and profound way which she can actualize herself as an individual, that is by giving herself to another, in this case her child. As the Second Vatican Council's Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes,* states, "man, who is the only creature on earth which God willed for itself, cannot fully find himself except through a sincere gift of himself."[23] By procuring an abortion, the mother inexorably says "no" to the idea of giving herself to another. In short, by mistakenly believing that the only way she can actualize her potential as a human being is to place herself as her object of ultimate concern, the mother eliminates the possibility of growing and developing as an individual by giving herself to her child. Therefore by saying "no" to the idea of giving herself to her child, the mother unknowingly simultaneously says "no" to the idea of actualizing her potential as a human person. In a tragedy of supreme irony, the mother has been convinced in many cases that her freedom as an individual is at stake, and to give her life to another will inhibit her freedom. However, as St. John Paul II wrote, "Love, as a sincere gift of self, is what gives the life and freedom of the person their truest meaning."[24] By nature the human being seeks to actualize her potential. As St. John Paul II wrote, "Being a person means striving towards self-realization, which can only be achieved through a sincere gift of self."[25] This is due to the fact that human beings are created in the very image and likeness of the Creator, and to say this means "that man is called to exist 'for' others, to become a gift."[26]

Taking this one step further, a mother who chooses to have an abortion not only turns away from the opportunity to grow as an individual on a general

level, but also shuns her own unique dignity as a woman. The female has been entrusted by her Creator in her very body to be a proclamation of the Gospel. It is in the female body that life is received, that life is carefully knit together, and that life first begins. In her body, every time a woman conceives a new life, she experiences a new Genesis, a new dawn of creation. St. John Paul II writes, "Each and every time that motherhood is repeated in human history, it is always related to the covenant which God established with the human race."[27] Far from being a burden to the woman, motherhood is an opportunity, of "Biblical proportions" if you will, for the woman to grow as a human person. This does not imply that the only way for a woman to actualize her potential as a human being is to become a biological mother, which is not the position or point of this discussion. Rather it is an attempt to emphasize the great opportunity a woman is presented with in offering herself as a gift to another in this, the most intimate of ways. This is the case because in giving herself to her child the woman gives herself to the whole of the human race as well. St. John Paul II conceived of this idea with the teaching that "Motherhood involves a special communion with the mystery of life, as it develops in the woman's womb," and "This unique contact with the new human being developing within her gives rise to an attitude towards human beings—not only towards her own child, but every human being—which profoundly marks the woman's personality."[28] This special relationship with all of humanity, entrusted to the woman in becoming a mother, is precisely why (as we saw above) a woman who has an abortion feels the need to conceal what has taken place. The conscience of the woman is telling her that she has not only offended the child through this act, she has alienated herself from all those around her as well; for by rejecting the child, she has rejected life in general and she feels the need to hide this from those around her.

The shortcoming of the pro-life movement is perhaps that it often portrays the negative side of abortion, which it rightly should, for abortion is the blatant taking of another human life. However, by overemphasizing this aspect, the movement fails to demonstrate to a potential mother what an extraordinary opportunity has been laid before her. To be sure, the circumstances in which a woman conceives a child can be tragic, as in the case of rape or incest; and they are often less than ideal, as when a single woman conceives a child or when a married woman who is experiencing difficult times, whether emotionally or financially, conceives a child. These are often seen as legitimate reasons for terminating a pregnancy, but this is only because the woman has failed to be presented with or has failed to grasp the glorious opportunity which lies before her. We have seen above in the

teaching of St. John Paul II and the Second Vatican Council that growing as an individual requires a complete gift of the self through love. This is in alignment with the commandment of Jesus Christ, who confirmed the words of the young man as being the Greatest Commandment, that is to "love the Lord, your God, with all your heart, with all your being, with all your strength, and with all your mind, and your neighbor as yourself" (Luke 10:27). Surely this commandment is at times fulfilled under the most trying and even most painful of circumstances, as portrayed most perfectly by the sacrifice of Christ on the cross. In his work *Love and Responsibility*, St. John Paul II wrote that true love at bottom has three basic characteristics: self-sacrifice, benevolence, and justice. Through motherhood, a woman has the opportunity to fulfill this commandment of love in the most profound and intimate of ways. She sacrifices her very self for the well-being of the infant growing within her; she does this out of a desire for the good of the new individual whose life has been conceived in her; and she does this out of justice to the Creator in whose image and likeness the child growing inside of her has been created.

The research of various disciplines cited above leads to the conclusion that the pro-life movement must do two things. First, it must continue to declare abortion as an intrinsic evil for two reasons: It takes the life of an innocent human being, the child, and it diminishes and severely impairs the development of a second, the mother. Second, in order for it to demonstrate that the pro-life movement is in fact prolife with regards to all involved, it should convey the idea that by having an abortion the woman has so much to lose as an individual and absolutely nothing to gain. It is of the utmost importance that lines never be drawn in the sand between a woman who has had an abortion and the prolife community. Rather, in the spirit of Christ, the prolife movement must say to these women that we are "aware of the many factors which may have influenced your decision, and [we] do not doubt that in many cases it was a painful and even shattering decision. The wound in your heart may not yet have healed."[29] But we are here to help you heal, because we see the dignity you hold as a woman, regardless of your past actions. As Jesus told the woman caught in adultery, we too do not condemn you "but go and do not sin again" (John 8:3-11). And to women in the midst of contemplating an abortion today or who may be in the future the pro-life movement must say, "You are called to bear witness to the meaning of genuine love, of that gift of self and of that acceptance of others . . . which ought also to be at the heart of every . . . interpersonal relationship."[30] For your very task as a mother is a call to proclaim the gospel of life, and an opportunity for you to grow as an individual. The pro-life movement must make all women aware of the fact that "God entrusts the human being to her, always and in every

way, even in the situations of social discrimination in which she may find herself."[31] And lastly, let the movement remind women that "our time in particular awaits the manifestation of that 'genius' which belongs to women," who have been called in a special way to make God's love manifest to the world by their very nature, a genius "which can ensure sensitivity for human beings in every circumstance: because they are human!—and because 'the greatest of these is love.'"[32]

NOTES

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24. John Paul II, Encyclical Letter, *Evangelium Vitae* (Boston: Pauline Books and Media, 1995), 96.
25. John Paul II, *Mulieris*, 7.
26. John Paul II, *Mulieris.*
27. John Paul II, *Mulieris*, 19.
28. John Paul II, *Mulieris,* 18.
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A 20th-Century Pilgrim

Sally Muggeridge

My uncle, Malcolm Muggeridge, has often been described as one of the foremost British writers of the 20th century. Despite the fact that some of his most enduring and admired work deals with the subject of faith, Malcolm did not ever regard himself as a theologian. He was to become, however, a man with an unshakable conviction in a living Jesus—a consciousness of a spirit that animated and guided our existence. Life, he claimed, was a gift of God. Interestingly, American presidents and the like started (and have continued to this day) to quote my uncle on the humanity of the unborn child, going right to the matter. President Ronald Reagan, in an article for the *Human Life Review* on the tenth anniversary of *Roe* v. *Wade* in 1983, quoted this: "Either life is always and in all circumstances sacred, or intrinsically of no account; it is inconceivable that it should be in some cases the one, and in some the other."

Malcolm wrote, lectured, and broadcast about Christianity using words that were understandable and to which very many people found they could relate. An intellectual of immense depth of thought, his philosophy on life and the after-life was shaped by saints, particularly St. Francis, St. Augustine and St. Paul. He was truly fascinated by them and, together with William Blake, they crop up repeatedly in his writings. With this interest, it is not so surprising that he discovered a modern day "saint" of his own, an Albanian nun called Mother Teresa, working for God in the squalor and deprivation of Calcutta. In his career, Malcolm had experienced affliction and poverty in abundance. Perhaps that was why he immediately recognised in Mother Teresa a divine purpose, what he immediately felt to be saintliness. He found that in her presence all the foolish material aspirations and distractions were as nothing, as he witnessed love being freely and unconditionally offered to the dying and destitute. Indeed, so inspired was he by this example of selfless work carried out by the Sisters of Charity that he felt he wanted to participate in the church of which they were members. He came to see the Catholic Church, alone of contemporary institutions, as offering serious and stubborn resistance to a drift into moral chaos. Mother Teresa had the most powerful

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and profound influence on him, leading him through constant encouragement to eventually find Christ.

Mother Teresa was not the only influence on him. He greatly admired the work of Father Paul Bidone, working tirelessly in Sussex, England, looking after severely mentally handicapped children. And he was also staunch friends with the Earl of Longford, a near neighbor and a leading Catholic.

Malcolm frequently described himself as a 20th-century pilgrim and the headstone over his grave in Whatlington churchyard in Sussex bears the epitaph "Valiant for Truth." In *The Pilgrim's Progress*, Bunyan uses both metaphor and allegory to chronicle a journey through life "wherein is discovered, the manner of his setting out, his dangerous journey, and safe arrival at the desired country." Over the past few years, I have been discovering just how much my uncle's life represented a pilgrimage, always with a constant need to hurry on, always seeking answers to fundamental questions of man's existence, and hoping perhaps finally to see the Holy City set on a hill. He sought from an early age to chronicle and so make some sense of his own varied and turbulent life, from boyhood in Croydon to his college days at Cambridge; from teaching stints in India and Cairo to his career as a writer and journalist experiencing Britain, Russia, and India in the 1930s; from life as a soldier-spy in the Second World War to becoming an esteemed radio and television celebrity, rubbing shoulders with presidents, popes, and future saints. He had a face and voice that became instantly recognised around the world. His life reads as a series of adventures punctuated with occasional mishaps, but always with that restless, self-destructive urge. However, events on the way often served as important moments of revelation and he recorded his growing disillusionment with the 20th century's utopian dreams. There was a corresponding awakening of his own faith.

It appeared to some that Malcolm made this journey of faith through life from complete agnostic to ardent believer and evangelist. Closer study shows that from an early age he was always aware that another dimension existed—that there was somehow and somewhere a destiny beyond the devices and desires of the ego. In short, he made the profound realisation that earthly life could not be the end.

There was never a total certainty in his faith. In fact he claimed that the only people who never doubted or waivered in their deeply held beliefs were materialists or atheists. Doubt, Malcolm said, was an integral part of coming to have faith, and conversely, an integral part of belief was to have doubt. My uncle also felt that embracing Christianity was necessarily always going to be a question of faith, not one of rational proof. Whilst he believed firmly in the Incarnation, he often chose to describe the event as a drama—in other

words, an artistic truth rather than an historical truth. It is interesting to note that his faith had been greatly confirmed and consolidated by his experiences working for the BBC on religious programmes in the Middle East, particularly in the Holy Land. Far from being the cynical journalist observing with detachment and at a distance with a job to do and a schedule to keep, he admitted to being incredibly moved by many of the experiences encountered whilst the cameras were filming. For instance, he later recounted his personal feelings speaking to pilgrims at Lourdes, or of visiting the birthplace of Christ in Bethlehem. He found he could not be dispassionate about the faith of those he met and closely observed.

In turn, it must be said, Malcolm Muggeridge appears to have had a profound effect on others—through his writing and broadcasts he has helped turned millions to faith, and more than once from despair and suicide. He both absorbed and reflected the human condition. Able to use the new 20th-century media to great effect, and with a brilliant mind, he was a skilled documentary maker with a great gift for imparting obviously heartfelt truth. I have had the pleasure to meet a remarkably large number of journalists, eminent churchmen, media celebrities, and ordinary men and women, on both sides of the Atlantic and as far afield as Australia, whose lives have at some time been variously touched by Malcolm. I have met with actors, writers, painters, cartoonists and sculptors. Twenty-four years after his death, there remains a huge following worldwide.

On being interviewed in later life Malcolm was frequently asked what he most wanted in the short time that remained to him. He would answer "I should like my light to shine even if only very fitfully, like a match struck in a dark cavernous night and then flickering out." I have found myself somewhat left by default to hold the flame in my uncle's memory, encouraging it to burn ever more brightly, keeping the literary and broadcast legacy alive.

A very active secondary market in his out-of-print books takes place on the internet, and a vast amount of information can be found, including biographies, articles, lectures, sermons, quotations, and even jokes. He was a great writer and frequently regarded himself, like St. Augustine, as a vendor of words. Many have now come to feel like I do that the legacy of his writing and broadcasts have provided not just that momentary flicker he hoped for but a bright and shining light, albeit with perhaps only a small part of the certainty and luminosity of St. Paul, in whose footsteps he once so memorably trod. With so much darkness in the world, it struck me that we all need every bit of extra illumination.

Considered now in retrospect, Malcolm's legacy is one of accurate prophecy

on many of the major issues of our time. Whilst he didn't always get it totally right, today we bear the fruit of many of his dire predictions about sexual permissiveness, immigration, advances in medical science, the spread of Islam, the lowering of standards on the media, etc. He was memorably described "as the prophetic scourge of the follies and fantasies of our time, a political radical and a cultural iconoclast."

In recent years, we have seen the beatification of Mother Teresa and there is a movement towards achieving her eventual canonisation. However, Malcolm Muggeridge had long before been canonised by the media. He became, and indeed remains today, St. Mugg, latter-day people's saint and 20th-century prophet. No doubt intended at first as a term of mild derision, with cartoons depicting him with a halo, to most it has since became a term of genuine affection and respect. Perhaps of all the honours, sainthood on earth is as much as anyone could ask. The shrine for St. Mugg, patron saint of broadcasting, such that it is, lies in the Buswell Library in Wheaton College in Illinois. Letters, journals, sermons, book reviews, videotapes, and radio and television scripts, his solid silver ink stand bearing the caricature of Mr. Punch, his bronze bust, even the great man's Olympia typewriter form the relics. There are quite a few visitors, no doubt attracted to a man converted to asceticism and Roman Catholicism, albeit late in life. Wheaton, as a Christian College, is an appropriate venue and they have been generous in their support. In later life, Malcolm's reputation had perhaps been higher in the United States and Canada than at home in Britain. But it is always in the nature of things that a true prophet may not be recognised by his own people. His exposition of conservative Christian values certainly resonated very readily in America, largely due to a number of charitable and educational foundations there motivated by Catholic agendas.

I am particularly delighted that Malcolm's dear friend William F. Buckley Jr., so sadly missed since his death in 2008, was also a dear friend of mine and my husband David. He and Buckley explored matters of belief and faith in considerable depth on "Firing Line."

My uncle had a poet's love of life. He loved his long country walks. He revelled in the beauty of nature with all its shapes, smells and colours, and the company of his friends and family. But with ever growing faith and conviction, he looked forward impatiently to death, or more precisely "that other life." Very near the end he penned these words: "Like a prisoner awaiting his release, like a schoolboy when the end of term is near, like a migrant bird ready to fly south, like a patient in hospital anxiously scanning the doctor's face to see whether a discharge may be expected, I long to be gone. Extricating myself from the flesh I have too long inhabited, hearing the key turn in the

lock of Time so that the great doors of Eternity swing open, disengaging my tired mind from its interminable conundrums and my tired ego from its wearisome insistencies. Such is the prospect of death."

2015 will mark 25 years since Malcolm's death and this quarter-century without him has been marked by a huge interest in his works, especially since the "Malcolm Rediscovered" event at Wheaton College in 2003. There will be a major series of activities next year on both sides of the "pond."

William F. Buckley Jr. and Malcolm Muggeridge on "Firing Line"

BUCKLEY: Well, I raise the subject of capital punishment only to stand, or to attempt to stand athwart your argument that if you give the state a certain power, it's going to abuse it.
MUGGERIDGE: Well, I don't think there's any parallel between the two at all. I mean, we know that it's liable to abuse it, we know in fact already it's abusing it. That cases, special cases that were considered to be obvious, people in particularly advanced stages of illness were being killed—
BUCKLEY: Killed? Or were not being tended?
MUGGERIDGE: Or not being tended, allowed to die. They're pretty much the same thing.
BUCKLEY: In philosophy it's all the difference in the world.
MUGGERIDGE: Yes, but for the individual concerned, if you say I'll kill you or allow you to die, I'll say, dear Bill, do whatever takes your fancy because for me it comes to the same thing.

—"Modern Attitudes Towards Life and Death," transcript of a 1979 "Firing Line" conversation with William Buckley and Malcom Muggeridge. More can be found in Appendix D on page 91 (the entire text can be accessed at www.humanlifereview.com).

Life-Saving Right Brain Research

Maria McFadden Maffucci

> *I can clearly remember where I was when I first read the* First Things *article by Paul Swope. We were away at a Family Church Retreat and I had brought some things I needed to read for work. I was sitting in our room and was reading—I started crying because after years of reading articles that claimed women used abortion as birth control, Paul had captured what was in my head and heart as the reality of why I had an abortion.*
>
> *My abortion was not about birth control—it was about fear. Fear of ruining my current reputation and future dreams. Fear of people finding out I wasn't a "good" girl. Someone finally understood why I had an abortion and had research to support it!*
>
> *I shared that article with everyone for more than 12 years.*
>
> —*Georgette Forney,* Silent No More[1]

In his article "Abortion: A Failure to Communicate" (published in *First Things*, April 1998), Paul Swope challenged the pro-life community to consider that it had failed to communicate its message effectively to the audience that most needed to hear it: modern American women of childbearing age.

For 25 years, he said, the pro-life movement had "stood up to defend perhaps the most crucial principle in any civilized society, namely, the sanctity and value of every human life"; however, despite the rightness of the cause and the integrity of those working to further it, the message had not been effective with the very audience who needed to embrace it—women at risk for choosing abortion. Why? Because pro-life activists were focusing "almost exclusively on the unborn child, not the mother."

Unplanned pregnancy represents a threat so great to modern women that it is perceived as equivalent to a "death of self." While the woman may rationally understand that this is not her own literal death, her emotional, subconscious reaction to carrying the child to term is that her life will be "over."

Swope's article became the most requested in *First Things*' history; it revolutionized the way many pregnancy centers counseled clients and also how they used the media to reach women at risk. It also generated controversy.

Where did it come from?

The story of this article begins with Carl Landwehr, the founder of the Vitae Foundation. A sociologist, Landwehr joined the pro-life cause soon after *Roe* v. *Wade* (founding the Vitae Foundation in 1978), but, in an approach starkly different from other movement pioneers, Landwehr looked to a

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business model, asking a group of businessmen in his home state of Missouri to consider: "How would you market the product of life if that was your business?" Based on this, the newly formed Vitae Foundation created the first pro-life commercials aired in Missouri, ads that would "bring realistic debate about the abortion issue into the mainstream public by addressing attitudes without politicizing or radicalizing them."

In 1993, Landwehr sought funding for these ads from a top marketing and business leader, Peter Herschend[2]; this meeting changed the course of Vitae forever. Herschend said he would fund the commercials, but not as they had been developed: "You are going about this the wrong way," he told Landwehr, "You've got to use the research Dr. Charles Kenny is doing for Fortune 500 companies."[3]

Through this introduction, Landwehr hired Kenny, a Ph.D. in psychology and an expert in consumer marketing, who had been working with companies such as General Motors, Coca Cola, and GTE. Kenny had founded The Right Brain People in 1972, with the purpose of helping "companies understand the emotional factors that drive consumer decisions" by using his "unique and proprietary method for uncovering consumer emotions," which he called Right Brain research.[4] Drawing from neuroscience, put simply, the left side of the brain can be thought of as "housing" intelligence, logic, thinking, short-term memory, conscious awareness, language and reasoning; the right brain is the seat of motivation, creativity and intuition, feelings and emotion, and long-term memory. In order to access this part of the brain, Right Brain People's market research makes use of in-depth, one-on-one interviews: The key, says Kenny, is getting people to "relax, visualize and re-live experiences," to access those "emotional moments which are locked in as memories." For example,

> In a traditional market research interview, the interviewer might ask the buyer of an SUV, "Why did you buy that SUV?" The answer will always be shaped by rationalizations and posturing, preventing the interviewer from accessing the real reasons for decision making. Instead of giving us information filtered by judgments of what is proper or what they think we might want to hear, our indirect approach gets respondents to forget that they are being interviewed and allows them to tell us about their experiences and what really motivates them.[5]

Kenny's first research project for the pro-life media entailed interviews of 50 women who considered themselves "pro-choice," but uneasily so. Its conclusions were published in a report ("Abortion: The Least of Three Evils: Understanding the Psychological Dynamics of How Women Feel about Abortion") that became the basis for Swope's article. The report's conclusions were, even to the researchers, surprising, going against what many in the

movement believed. Because an unwanted pregnancy is not seen as a good, and a woman "desperately wants a sense of resolution to her crisis," she comes to consider abortion as the least of three evils, the second evil being keeping the child, and the most evil—adoption. Abortion was "perceived as offering the greatest hope for the woman to preserve her own sense of self, her own life." This is also, wrote Swope, why "women feel protective towards the abortive woman and her 'right to choose.' And deeply resentful towards the prolife movement, which they perceived as 'uncaring and judgmental.'"

Where prolifers have been promoting "Adoption, not Abortion," urging adoption at the outset is not helpful, Dr. Kenny explained: If you present adoption initially when a woman is in crisis, it is "confusing and scary."[6] Many women's initial, visceral reaction to adoption is overwhelmingly negative; they see it as a shameful act on their part. Adoption is seen as "a kind of double death," wrote Swope. First, "the death of the self," as the woman would have to accept motherhood; second, the woman would then be a "bad mother, one who gave her own child to strangers." (This does not mean prolifers should not promote adoption! Indeed, Charlie Kenny has also done extensive Right Brain research on adoption, for the Family Research Council and the National Council on Adoption, to help pregnancy centers effectively counsel women to consider adoption. But the research advises that this can only be done effectively *after* a woman decides to have her baby.[7])

Swope's *First Things* article included descriptions of the new ads Vitae created. For example, a "pro-motherhood"ad:

> [*A woman is in front of a nice house, raking leaves. She says good-bye to her daughter, then turns to the viewer.*] *"I was sixteen when I found out that I was pregnant with Carrie. I wasn't married and I was really scared. You know, some people today say that I should have had an abortion, but it never occurred to me that I had that choice, just because it wasn't convenient for me. Hey, I'm no martyr, but I really can't believe I had a choice* ***after*** *I was pregnant. Think about it."*

An "ad that more directly discourages abortion":

> [*A woman rises from her bed, the clock showing 3:00 a.m. She goes to the window, staring into the black, rainy night. She stands silently, as a female voice speaks.*] *"They said you wouldn't be bothered by a voice calling for you in the night . . . . There would be no trail of cereal through the house, no spills or stray toys. The clock ticks. All is calm. And you realize, there is still a voice. If you've faced the pain of an abortion, call 1-800 . . . ."*

Swope also answered the question: "How effective have such ads been?" with some impressive statistics. In Missouri, for example, where the Vitae ads had been appearing for several years, the abortion rate was dropping at

almost six times the national average; significant decreases in abortion were seen in all the states airing the ads. Not only that, but "independent, professional polling" both pre- and post-ads showed that in markets where the ads were showing, the population in general shifted in a pro-life direction: e.g., in Boston, where a 13-week television campaign was conducted in 1997, pro-life sentiment among those who saw the ads almost doubled, from 20 percent pre-poll to 36 percent post-poll.[8]

Although Swope does state in this article that descriptions of fetal development and "even graphic abortion pictures can still be used to great effect with certain audiences," he asked prolifers to be "willing to re-frame the debate." For example, he said the slogan "Abortion Stops a Beating Heart" may be effective with prolifers, but might drive a woman in crisis "into further denial and despair."

This didn't sit well with some in the movement: Some pro-life leaders feared that Swope's proposal represented a dangerous compromise of the anti-abortion message. Scott Klusendorf, in "The Vanishing Pro-Life Apologist" in 1999, warned that this approach was "morally disastrous": "The status of the fetus is our foundation . . . Without that, everything else crumbles." Focusing on the woman would "promote the vice of selfishness instead of the virtue of sacrificial motherhood.[9] Professor Francis Beckwith also objected, in a letter published by *First Things*, saying that "Even if Mr. Swope's approach 'works' in reducing the number of abortions, it does not follow that our culture is becoming pro-life. His emphasis on appealing to the pregnant woman's self-interest (rather than her moral obligation not to kill her own child) in order to persuade her not to have an abortion may result in nurturing the type of mentality that makes abortion more acceptable even though it may become (for a time) rarer in practice."[10]

For critics, Swope's article was another voice arguing for what Dr. Beckwith dubbed a New Rhetorical Strategy (NRS), and that strategy included the growing movement to learn from women's abortion testimonies coming out of David Reardon's 1987 book, *Aborted Women: Silent No More*, and Frederica Mathewes-Green's book, *Real Choices: Listening to Women*. The debate continued; in 2004, for example, Dr. Beckwith published an article in *Touchstone* magazine ("Choice Words"), again protesting Swope's approach: "being persuaded not to have an abortion is not the same as moral conversion and intellectual assent to the prolife perspective." There were three "responses" to Beckwith, two also arguing against the "NRS," Terry Schlossberg, executive director of Presbyterians ProLife and David Mills, editor of *Touchstone*; Frederica Mathewes-Green was the sole voice

supporting the strategy as necessary to get around the "mysterious mental roadblocks that were preventing hearers from receiving our simple logic."[11]

Reflecting on the pushback on Vitae's research and ad campaigns, Dr. Kenny said that "there are many who come to the pro-life movement because of their deep beliefs"—whether religious, moral, or even philosophical—"that abortion is a grave moral wrong and evil." The call to fight it is "felt deeply within their being"; it's not a job, it's a true cause. But "their ways of communicating flow out from where they are coming from." What they do "works in a moral debate," he said, but for a woman in crisis, "their efforts may not only fall on deaf ears, they may actually drive women away." Carl Landwehr recently put it this way: Both "sides" in the abortion debate aim through advertising to "manage women's fear." The pro-abortion side tries to "exacerbate it, we try to remove it. Have you ever tried to replace fear with logic? It doesn't work."

Many pro-life organizations already working with pregnant women were quick to explore and then make use of Vitae's research. For example, Peggy Hartshorn, the president of Heartbeat International, which provides leadership development for over 1800 pregnancy help centers worldwide, incorporated the research into training manuals for her counselors. Hartshorn's "immediate reaction" to Swope's article

> was that, finally, research has confimed what those of us who had been working closely with women in pregnancy help centers for many years knew to be true. It explained, for eample, the otherwise mystifying yet common statement on adoption, "I could never give my baby away"—from a woman seeking an abortion, which would, instead, end her baby's life . . . Because it pertains to human nature, and some of women's deepest fears and desires, it is a classic piece of research for the pregnancy help movement and the pro-life movement in general.

And in 2005, Chris Slattery's EMC Frontline teamed with Vitae to run a five-week television campaign in the Bronx. "Pregnant women as well as those who knew pregnant women responded to the ad, resulting in a 42.5 percent increase in calls. Before the campaign, the centers were receiving about 400 calls per month. During the campaign, those calls increased to 710."[13]

In February of 2013, Swope and Kenny together had an article published in *American Thinker*: "A New Understanding of the Trauma of Abortion,"[14] which was based on the results of a second Right Brain research study, this one interviewing women who had already been pregnant and how they made decisions about unwanted pregnancies. Swope and Kenny presented three main findings for a woman's decision: "Women carry an unwanted pregnancy to term when guilt wins out over shame, when they feel the pregnancy will

not end their own current or future selves, and that the unborn will be better off alive than dead." The article points out that none of the above involves "biology (Is it a baby?), or abstract moral reasoning (Is abortion right or wrong?)."

The report also stated that:

> Most of the women did not have deep trust or confidence in their boyfriends or in the ability of their marriage and family situation to accommodate another child. Rather than relying on their parents whom they felt were controlling rather than supporting, they longed for a female confidante who could have listened to them as they expressed their emotional turmoil and helped them explore their options.

The authors said the implication for pro-life *counseling* was clear: "Pro-lifers may believe they have the moral high ground, but a woman in crisis will not turn to one if she perceives that person to be preachy, rigid or manipulative." They also praised the post-abortion counseling efforts of Silent No More and Rachel's Vineyard, both members of the family of ministries associated with Priests for Life, whose founder, Fr. Frank Pavone, agreed that the Right Brain research is of "tremendous value" and that he incorporates it in his preaching and in the training he does for clergy:

> I always make the point that a homily on abortion needs to begin with two clear assertions, namely, that we are here to provide help to those who feel they have no choice but abortion, and that anyone who has had an abortion can find healing and forgiveness in the church. I also tell pastors that a clear announcement in the bulletin, on the parish website, and/or on the parish property saying things like, "Forgiveness is available after abortion," and "If you are pregnant and in need, we are here to help," have a wonderful impact on the community, not only because they actually reach people who need help, but also because they give to everyone a clear idea of what the church and the pro-life movement are all about, namely, not pointing fingers of condemnation but extending hands of mercy and help.

The *American Thinker* article did not raise hackles as the *First Things* article had. In the intervening years, the face of the movement had changed dramatically, with more diversity, better use of mass media, and much more emphasis on compassion for people suffering from the trauma of abortion. Perhaps also it is more understood that the Vitae approach is effective for marketing of abortion alternatives, and for counselors, which doesn't mean the other areas of the movement—philosophical, legal—need to refrain from calling out the evil of abortion. Father Pavone put it this way:

> Pro-life strategic planning should take this research into account, as it should take all good research into account, but it cannot stop there. This movement is a movement of social reform, which must also learn from the history of other movements of social reform and must derive its principles from Scripture, which has much to say about confrontation with evil. Putting everything in this wider context will sometimes lead leaders and strategists to different practical conclusions than what Vitae may conclude

> and that kind of freedom needs to be respected by all. Put another way, research like this should never be considered a straitjacket, but rather an important ingredient, among many others, in the overall recipe for ending abortion.[15]

Vitae continues to commission studies from Right Brain People and work with Dr. Kenny. Landwehr said he "wouldn't spend one penny on media" that *doesn't* use right-brain research. Vitae's media marketing strategies have expanded, now including two websites, the pregnancy help resource YourOptions.com, and a website for teens: GravityTeen.com, and Vitae is helping pregnancy centers attract women's attention on the internet.

While Carl Landwehr remains full-time as founder and Senior Advisor, in 2014 he stepped down as president of Vitae, passing the baton to Dr. Pat Castle, formerly a professor of analytical chemistry and engineering with the Air Force and the co-founder of another national pro-life organization, National LIFE Runners. Dr. Castle spoke about Vitae's track record in an interview with EWTN at the March for Life 2015: "Together we are winning," he said, quoting Vitae's motto; he spoke with pride about Vitae, "the world's oldest and largest research-based pro-life research messaging organization" which has put out "over 6 billion life-affirming messages that have helped save over 82,000 babies."[16] Also new to the organization is Sharla Cloutier, Vitae's East Region Director, who left a successful career in business because she is convinced Vitae's approach is life-saving for babies *and* their mothers. She clearly articulates what Vitae's ads "look like" and how they may bring a woman—incrementally—to the moral and religious principles of pro-life:

> A woman facing an unexpected pregnancy is typically reached through very specific messaging and can have a seriously negative, even visceral, reaction to messages outside this subset, as well-intentioned as those messages may be. She turns away from references to God; she knows what God thinks and she doesn't need a billboard with a Bible verse to chastise her further. She shies away from images of babies and pregnant mothers, as she is not yet able to fathom herself as a mother, nor admit to herself that she's carrying a child. Understandably, a woman in this situation is not inspired by images of crying or distraught women.
>
> She is best able to connect with images of women who appear to be in a situation similar to her own, looking reflective, capable, empowered (although perhaps not overly so). When first marketing pregnancy help to a woman facing an unexpected pregnancy, the focus must be entirely on the woman and her situation. At this point, it is about the woman, not the child. She will be more open to reaching out and sharing her story if she encounters people genuinely interested in her, versus people more immediately focused on proselytizing or "saving babies." Once she feels safe, cared for, and respected as an individual, she will be better able to talk about her child, and, eventually, God.[17]

Finally: The Vitae Foundation is one of many effective and varied pro-life organizations working to turn the tide after *Roe*, with undeniable results.

Last November, the CDC released its national abortion report, saying that the number of abortions in the U.S. has declined to an "historic low." Where 33 percent of pregnancies used to end in abortion, it's now 18 percent. As pro-life analyst Professor Michael New wrote in *National Review*, "Since the abortion rate is falling while the unintended-pregnancy rate is stable, a higher percentage of women facing unintended pregnancies are choosing to carry their children to term . . . declining abortion numbers provide evidence that pro-life efforts to change the hearts and minds of women facing unplanned pregnancies are bearing fruit and, more important, saving lives."[18]

NOTES

1. Georgette Forney, email message to author. February 10, 2015. Forney is co-founder of Silent No More Testimonies and President of Anglicans for Life.
2. Pete Herschend is co-founder of Hershchend Family Entertainment which owns, operates and manages family-centered theme parks across the county.
3. Here and forward; Carl Landwehr, phone interview with author, February 13, 2015.
4. Dr. Charles T. Kenny is the author of *The Right Brain Way: Drive Your Brand with the Power of Emotion*, Trafford Publishing, 2008.
5. company website, www.rightbrainpeople.com
6. Here, and forward: Charles Kenny, phone interviews with author January 15, February 13, 2015.
7. "The Missing Piece: Adoption Counseling in Pregnancy Resource Centers," Curtis Young, published by Family Research Council http://www.adoptionbirthmothers.com/wp-content/uploads/2010/12/The-Missing-Piece-PDF.pdf. "Birthmother-Goodmother," Dr. Charles Kenny, National Council for Adoption and Family Research Council http://www.adoptionbirthmothers.com/wp-content/uploads/2012/12/Birthmother-Good-Mother-PDF.pdf
8. See Swope's article http://www.firstthings.com/article/1998/04/004-abortion-a-failure-to-communicate for more statistics on results, as well as The Vitae Foundation's website, www.vitaefoundation.org.
9. Scott Klusendorf, president of Life Training Institute, in *Christian Research Journal*, 1999, vol. 22, no 1.
10. Dr. Francis Beckwith, professor of Philosophy and Church-State Studies at Baylor University, author of several books, including *Defending Life: A Moral and Legal Case Against Abortion Choice* (New York: Cambridge University Press, 2007).
11. "A Forum on Pro-Life Strategy," in *Touchstone: A Journal of Mere Christianity*, January/February 2004 http://www.touchstonemag.com/archives
12. Peggy Hartshorn, email message to author, February 17, 2015.
13. Pia de Solenni, "Changing Lives in 30 Seconds," Celebrate Life, Jan-Feb 2008.
14. *American Thinker*, Feb 21 http://www.americanthinker.com
15. Father Frank Pavone, email message to author, February 10, 2015.
16. https://www.youtube.com/watch?v=xN5eWATWx2M&feature=youtu.be&t=58m45s
17. Sharla Cloutier, interview with author and email message, January 28, 29 2015.
18. http://www.nationalreview.com/corner/396946/while-congressional-republicans-dawdle-pro-life-movement-winning-michael-j-new

BOOKNOTES

PRO: RECLAIMING ABORTION RIGHTS

Katha Pollitt
(Picador, 2014), 272 pages

Review essay by Susannah Black

No one, we are told, is pro-abortion. No one thinks these are easy decisions. Abortion is something that will happen no matter what; it is up to us to tame it. In the words of Bill Clinton, abortion must be "safe, legal, and rare." *Safe* and *legal*, we are told, will help guarantee *rare*. What we are all committed to—as few abortions as possible—is best achieved by a regime of legalized abortion.

That has been the official pro-choice consensus—the respectable position on abortion—since the eighties, and it is this position that Katha Pollitt challenges in her new book, *Pro: Reclaiming Abortion Rights*. Pollitt wants to "help reframe the way we think about abortion." Rather than regarding it as a tragic or even difficult choice, she urges readers to "start thinking of abortion as a positive social good and saying this out loud."

Pollitt's primary audience are those who are pro-choice, but embarrassedly so. Holding on to the notion that abortion is sub-optimal, they believe there is reason to grieve, that there is something (if not someone) that is lost. To these people Pollitt would say: You must not grieve; indeed it is your obligation *not* to grieve, but to change the way you look at and feel about the world. Abortion is *not* the necessary evil Naomi Wolf famously declared it to be; it's not an evil at all.

Wolf, in her much-heralded 1995 *New Republic* essay, "Our Bodies, Our Souls," castigated Second Wave feminists like Pollitt for

> react[ing] to the dehumanization of women by dehumanizing the creatures within them. In the death-struggle to wrest what Simone de Beauvoir called transcendence out of biological immanence, some feminists developed a rhetoric that defined the unwanted fetus as at best valueless, at worst an adversary, a "mass of dependent protoplasm."
>
> Yet that has left us with a bitter legacy. For when we defend abortion rights by emptying the act of moral gravity, we find ourselves cultivating a hardness of heart.

Wolf's solution to this hardening was not to make abortion illegal, but to encourage supporters to recognize the moral gravity of the act: "to be strong enough to acknowledge that America's high rate of abortion—which ends

more than a quarter of all pregnancies—can only be rightly understood as a failure." We must have, Wolf insisted, "an abortion-rights movement willing publicly to mourn the evil—necessary evil though it may be—that is abortion. We must have a movement that acts with moral accountability and without euphemism."

The essay was a bombshell, and Wolf's readers reacted in a wide variety of ways: Some women—those who had had abortions and those who had not; those who were still against legal restriction and those who felt themselves beginning to waver—found in her argument fragments of a truth they had thought they needed to repress. However others, including Katha Pollitt, were outraged.

Nearly twenty years later, Pollitt's book is a sign of the enduring cultural fallout from Wolf's quasi-defection. If Wolf would do everything she could (well, everything short of actually opposing abortion) to keep hearts from hardening and the culture from dehumanizing the unborn, Pollitt aims to toughen up those in the mushy middle: to make them actively and proudly as "Pro" as she—and a subset of other Second Wave sisters—has always been.

* * *

If fetuses are persons, then it's wrong to kill them. If they are not persons, then there's nothing wrong with killing them; there's nothing regrettable about an abortion. But in fact they are persons; therefore we should not kill them.

That's the pro-life position in a nutshell. Pollitt's position, you might think, would be this:

If fetuses are persons, then it's wrong to kill them and we shouldn't do it. If they are not persons, then there's nothing wrong with killing them; there's nothing regrettable about an abortion. But in fact they are not persons; therefore we shouldn't worry about killing them.

But that's not her argument. In the sixty pages she devotes to chapters titled "What Is a Person?" and "Are Women People?" Pollitt mostly skirts the philosophical issue of personhood, focusing instead on how *actions* indicate what Americans believe a fetus to be. The idea that fetuses are persons is absurd, she concludes, because people don't act as if fetuses (or at least embryos) really are persons. Her position then is something more akin to this:

If fetuses are persons, then it's wrong to kill them and we shouldn't do it. If many people don't act as if they think it's wrong to kill them, then fetuses can't be persons. Many people act as if they think it's not wrong to kill fetuses, therefore fetuses are not persons, and there is nothing wrong with killing them.

That's not the extent of her discussion of the personhood issue, but it is the burden of it. People who think there might be something wrong about

abortion yet support its legality (at least in some cases) are not acting as if they believe fetuses are persons; therefore they can't really believe they are. So, if they don't really believe in the personhood of the fetus, what is their problem with abortion?

Pollitt would have her mushy-middle readers understand that the real reason for their opposition to abortion—and especially that of hardline prolifers—is pathological disgust at women's sexual pleasure and a fundamental fear of the idea of women having power. I remember believing this. It's the basic worldview of Margaret Atwood's *The Handmaid's Tale*—that women's sexuality and women's power—not the personhood of the fetus—are at the heart of the abortion debate.

Reading *The Handmaid's Tale* as a young woman made me feel the weight of something called the Patriarchy like a heavy stone on my chest. I remember that weight, the panic of it, the outrage it engendered in me. I remember believing that the right to an abortion guaranteed I would never end up like the heroine of Charlotte Perkins Gilman's harrowing short story, "The Yellow Wallpaper," who was driven mad by a rest cure—imposed by her husband and her doctor—meant to cure her of ambition and discontent. I was, and am, ambitious; I believe women as well as men are called to be fruitful, expansive, creative; to spend themselves in a great purpose. The need for legal abortion was sold to me as a guarantee that I would be able to pursue such a life.

I remember being outraged by all these thoughts; but the argument that abortion is necessary to save women from patriarchal oppression is (in most ways, for most prolifers) so far from reality that I find it difficult to recall now what that outrage felt like. The people I know who are most passionately pro-life—myself included—consider little else than the personhood of the fetus: That's why we are passionate. The panicky sense we get when we think of the numbers of unborn children dying every day has nothing—nothing—to do with a desire to repress women's sexuality, or to deny them their rightful exercise of power.

Sometimes I get tired of trying to talk about abortion logically, because the logic seems so self-evident to me. Why the disconnect? Perhaps because on some level pro-choicers sense the need to establish mental distance: *Abortion can't possibly be what they say it is, because then I'd be supporting something horrible, I'd be supporting the killing of babies, and I don't want to kill babies; I am not that person.* I believe this is a deeply hopeful reaction. Because the truth is that most who are pro-choice are not that person; they are not completely hardened (as others of us are not completely hardened to

other wrongs that we don't address as we should). There is something in nearly all of us that wants to stop engaging in doublethink, to recognize and protect the baby.

However, especially for those women who have had abortions—but not only for them—it can be very frightening to contemplate the guilt that might accompany an admission of what is really happening in an abortion. I became pro-life before I became a Christian; I don't fully understand how. One of the things that Christianity offers those who are afraid to confront the reality of abortion is a safe space to call it wrong, a safe space to feel guilty, a safe space to grieve, not only for its tiny victims but for all those who have been complicit—mothers, fathers, friends, doctors; all who have silenced their own hearts—and for all the familial and cultural wreckage it has caused.

Wolf's essay was muddled in many ways, not least because she misunderstands the nature and purpose of calling something a sin, although she sees value in the word. Repentance—the possibility of repentance—is in her vocabulary, but doesn't include the idea of not doing the wrong thing anymore. The world where someone could acknowledge what is really happening in an abortion, receive the forgiveness he or she might need, *and* gain the power to stop committing this wrong, is one that Wolf seems to long for, but doesn't believe is real. Pollitt doesn't even want that kind of world. And she wants others not to want it as well.

In Katha Pollitt's worldview, killing the whatever-it-is in the womb (for whatever the reason) is an existential act of freedom by which one self-actualizes, or escapes from a flat existence. But this has got it backward. We break through into real life not when we reject the moral calls that are placed upon us, but when we willingly take them up, even if we didn't ask for them. Even if they are unplanned. Anything else leads to an increasing, if deceptive, sense that the world—including our own lives—is less rich, less real. The biggest quest we're called to—life itself—is not one we were consulted about: We didn't ask to be born, nor to be called to live in a kind of self-giving relational love that can be costly. But it is precisely this love that reshapes us into people who delight—consistently, completely, thoroughly—in real life, and in each other.

It has taken a conversion of the heart, an ongoing conversion, for me to come to believe on the deepest level that there is no conflict between my ability to live as richly and fully as I can, and the good of other people. There is no antithesis between my flourishing and God's design. This means I don't have to fear that admitting the claims others have on me—all the inconvenient calls to love, to give of myself—will result in my annihilation. Answering these calls—even when we didn't ask for them—is what it means to show

up for our own lives. Refusing them—above all, refusing them at the expense of fellow human creatures—does not and cannot result in my well-being.

Look, that's all very abstract, and I'm a little self-conscious about it. But I'm just so tired of us talking past each other; I'm so tired of living in a world where my friend groups are divided into those who believe that pro-choicers are monsters, and those who believe that prolifers secretly want to enslave women. There has to be common ground; there must be. Katha Pollitt's book is a logical mess, the product of terrifying moral deafness. It is important to understand that what *Pro* calls for is a restoration of the mind-clouding, heart-hardening, "mass of dependent protoplasm" rhetoric Naomi Wolf so thunderously—and successfully—denounced.

But even to Katha Pollitt, this is what I would say: The world we live in is one where it is safe to acknowledge that all fetuses are babies; it is safe to grieve for them; safe to ask for and receive forgiveness. The world we live in is one where we can affirm—wholeheartedly—the value of every human person, ourselves included. The world we live in is one where God Himself became a fetus—trusting Himself to the love of an unmarried teenage girl—then laid down His life so that all of us could have the power happily to choose life for those we are called to care for. And to choose the fullness of life for ourselves.

– Susannah Black is a writer and Native New Yorker. She lives in Queens.

APPENDIX A

[*William Doino, Jr. is a contributor to* Inside the Vatican *magazine, among many other publications, and writes often about religion, history and politics. He contributed an extensive bibliography of works on Pius XII to* The Pius War: Responses to the Critics of Pius XII. *The following article was published on January 12, 2015, on the website of* First Things *(www.firstthings.com) and is reprinted with permission.*]

March On For Life

William Doino, Jr.

Forty years have passed since the Supreme Court handed down its *Roe* v. *Wade* decision, on January 22, 1973, and our country has never been the same since. Abortion is the worst domestic crime ever sanctioned by America, and the statistics become more grim by the year: nearly 60 million unborn children have been legally murdered since *Roe*.

Because of the confused times we live in, the full extent of this evil has not yet been recognized. In the Fall of 2013, for instance, Pope Francis gave an interview which was interpreted—or rather, misinterpreted—as downplaying the ongoing abortion Holocaust, "We cannot insist only on issues related to abortion, gay marriage and the use of contraceptive methods," he said. While the Church's teaching is clear, he went on, "it is not necessary to talk about these issues all the time."

"The dogmatic and moral teachings of the Church are not all equivalent," Francis continued. "The Church's pastoral ministry cannot be obsessed with the transmission of a disjointed multitude of doctrines to be imposed insistently." He said that the Church should instead be highlighting the "essentials of the Gospel"—the love, mercy and salvific power of Jesus Christ—because "it is from this proposition that the moral consequences then flow."

Francis was trying to explain how the moral teachings of the Church are woven within the larger fabric of the Gospel, and how evangelization should be advanced in that context, but that is not how it was received. The pope's comments, particularly his use of the word "obsessed," were employed to mercilessly attack social conservatives and to denigrate the pro-life movement. "Pope Says the Church is 'Obsessed' with Gays, Abortion, Birth Control," blared the *New York Times*. "Pope Seeks Less Focus on Abortion, Gays, Contraception," followed *USA Today*.

Despite all of this, there are more reasons to hope in the pro-life movement than to despair because of abortion. For one thing, this particular papal interview, not to mention the sensational headlines which followed, did not do justice to Francis's own pro-life record, which is outstanding.

Let us remember, too, that, appearing before a crowd of tens of thousands in Rome early in his papacy, Francis said, "I greet the participants of the March for Life which took place this morning in Rome and invite everyone to *stay focused on the important issue of respect for human life*, from the moment of conception." He then joined the 40,000 marchers on the ground, to express his solidarity with them, and pro-lifers throughout the world cheered. Today, this

extraordinary event is rarely mentioned.

Then there is the revealing fact that many leaders of the "pro-choice" movement have themselves openly acknowledged what abortion really is. "We know that it is killing, but the state permits killing under certain circumstances," says the founder of a Milwaukee abortion clinic. Camille Paglia, the outspoken feminist, is even more blunt:

> The pro-life position, whether or not it is based on religious orthodoxy, is more ethically highly involved than my own tenet of unconstrained access to abortion on demand. . . . Hence I have always frankly admitted that abortion is murder, the extermination of the powerless by the powerful. Liberals for the most part have shrunk from facing the ethical consequences of their embrace of abortion, which results in the annihilation of concrete individuals and not just clumps of insensate tissue.

Even more encouraging is the fact that, despite forty years of pro-abortion propaganda, half of all Americans still describe themselves as pro-life. Since their activism began, peaceful pro-lifers have endured jeers, contempt, unjust arrests, and even violence. Though the media has largely ignored their witness (even as it has covered fringe extremists, never part of the authentic pro-life movement), they have marched on nonetheless.

This January 22, hundreds of thousands of pro-lifers will march in Washington, as they do every year, to speak, pray, and bear witness to the fundamental right to life that every American citizen is entitled to. Let us join them—if not by marching, then in spirit—in peace and in hope, undeterred.

Maria McFadden Maffucci, Anne Conlon, and Kathryn J. Lopez, with the Sisters of Life and Pro Bikers for Life, January 22, 2015, Washington, DC

APPENDIX B

[*Kathryn Jean Lopez is editor at large of National Review Online. The following interview appeared on NRO (www.nationalreview.com) on January 21, 2015. © 2015 by National Review. Reprinted by permission.*]

"Every Life Is a Gift"

Kathryn Jean Lopez

Jeanne Monahan is president of the March for Life Education and Defense Fund. Her loving, encouraging, youthful, energetic leadership on the shoulders of giants of the pro-life movement demonstrates hope in the midst of a continuing culture of death. The United States is now in its 42nd year under Roe v. Wade, but Americans are more pro-life than not; a new Knights of Columbus poll shows 84 percent of Americans wanting abortion banned after three months of pregnancy, for starters. The bright lights of crisis-pregnancy centers, maternity homes, and women/child/family-centered health care are beacons in a renewal, even as our politics can remain somewhat miserable, often doubling down on manipulative rhetoric and division.

I will be appearing with Monahan later today when I emcee the March for Life Conference and Expo's Culture of Life Seminar, "Every Life a Gift: How Society and Individuals Can Influence our Culture for Life." First, she talks with National Review Online about the March and the future.

KJL: Why is the March for Life important to do year after year?

Monahan: The March for Life began on January 22, 1974, the first anniversary of the Supreme Court decisions Roe v. Wade and Doe v. Bolton which made abortion legal in all trimesters. At the time organizers of the March did not want that sad day to go unnoticed, even though they believed the poorly constructed court decisions would soon be corrected. Abortion advocates believed that pro-lifers would soon become "sensitized" to abortion and the March would soon "die down" but they were sorely wrong.

Today, the March for Life has grown to become the largest human rights demonstration in the world. We will continue to march until the human rights abuse of abortion is brought to an end. We also march to proactively build a culture of life – through legislation and education on the most pressing pro-life needs (such as our theme this year, "Every Life is a Gift").

I think it is also worthy of note that the March impacts those who participate. I always feel somewhat changed after the March; it is a powerful and convicting event.

KJL: It's a bit of a paradox. It's a grave anniversary and yet there is always incredible joy. How do you explain it?

Monahan: There is a palpable sadness and darkness when considering the enormous loss our country has incurred; we grieve over 56 million Americans lost to abortion in these past 42 years. Many in our culture also daily carry the burden of the wounds of abortion. Included in our lineup of speakers is a courageous woman who shares her experience of regret after being involved in an abortion. Yet simultaneously

our message is one of hope, of healing. It is joyful—a wonderful, necessary message similar to a bright light turned on in a dark room. We are united together advocating for those most in need, and this is exactly where we need to be. The young participants, in particular are so positive and enthusiastic. Could there be a more important cause? Together we will bring this human rights abuse to an end; we will build a culture of life!

KJL: Why the theme you chose this year?

Monahan: Because the March for Life unites so many various groups and because the sheer volume of people in attendance is in the hundreds of thousands, we choose the theme with an eye to educating on the most pressing pro-life issues. "Every Life is a Gift" brings to life the reality that developing babies who receive a poor prenatal diagnosis are disproportionately targeted for abortion. In the United States approximately one out of every five babies is terminated. When it comes to disabled babies, a shocking nine out of ten are aborted. We are in essence eradicating people with special needs in our country. We want to do our part to show the inherent dignity of every human person.

KJL: Are there speakers you're especially excited about?

Monahan: I'm excited about all of our speakers, chosen with the theme in mind, "Every Life is a Gift." Miss Julia Johnson is an enthusiastic high school student from North Dakota who will encourage other young people to build a culture of life; Dr. Gracie Christie will discuss the medical perspective; Mrs. Kathleen Wilson will address the giftedness of mothers and children in her shelter. Here is the full lineup: Archbishop Joseph Kurtz, President of US Conference of Catholic Bishops; Dr. Grazie Pozo Christie, M.D.; Mr. Carl Anderson, Supreme Knight of the Knights of Columbus; Rep. Cathy McMorris Rodgers (R., Wash.); Rep. Chris Smith (R., N.J.); Rep. Daniel Lipinski (D., Ill.); Sen. Tim Scott (R., S.C.); Mrs. Kathleen Wilson of Mary's Shelter; Miss Julia Johnson, Senior at Shanley High School; Mrs. Nancy Kreuzer, Silent No More; Mrs. Kristan Hawkins, president of Students for Life; Rev. Sammy Rodriguez, National Hispanic Christian Leadership Conference.

KJL: I'm emceeing a pre-game program of sorts for you on Tuesday. What do you hope to accomplish there?

Monahan: The culture of life seminar is an opportunity for marchers to consider and reflect upon the theme in an in-depth and academic way. The rally only allows for short remarks but this seminar will provide a deeper intellectual consideration of the underlying problem and possible solutions. Speakers include Dr. Paige Cunningham from the Center for Bioethics and Human Dignity as well as Mr. Mark Bradford from the Jerome Lejeune Foundation USA. We also have a handful of powerful testimonies from luminaries whose lives bear witness to the giftedness of the human person.

KJL: There's a real social media component this year. What's that look like? Are there virtual marchers, too?

Monahan: Social media is a critical piece of the March for Life! It enables march-

ers to share their experiences with their entire social network. It also shows the truth about the sheer number of participants and their positive impact at the March. In this way mainstream America can see the reality of the March regardless of if their TV station covers it. Our #WhyWeMarch social media campaign is a digital conversation starter. And anyone can participate, whether you're actually marching in Washington or San Francisco, or watching the livestream from home.

KJL: To any marchers who encounter a counter protester or someone with a hostile word or sign, what's your advice?

Monahan: One of my favorite sayings is "love destroys evil." Be kind, show the truth with all the love you can muster for this person who likely has some wound in their background that impairs their view of the inherent dignity of every human being from conception.

KJL: What do you find are some of the most constructive conversations you have with people who describe themselves as pro-choice?

Monahan: I find that asking questions and listening to personal stories is most helpful and trying not to judge the person (vs. the objective act) often opens the doors to dialogue. I often find that people who self-identify as being "pro-choice" do not believe that a person is created at conception. So a basic understanding of personhood and human dignity is usually a good starting point.

KJL: To anyone reading this who is not Marching and think you're more about taking away women's freedom and insisting children be born who will suffer, what might you offer as food for thought?

Monahan: I would probably begin by sharing about a woman who called in to talk with me during a media interview last week. She was 88 years old and with her voice breaking shared about how she had an abortion decades ago and still suffered tremendous regret. Blessed Teresa of Calcutta once said "abortion is profoundly anti-woman. Three-fourths of its victims are women: all of the moms and half of the babies." I believe that abortion advocates do a profound disservice to everyone when they refer to abortion as being good for women. The truth is that abortion takes a life and hurts the woman.

KJL: Who are some of the heroes you've been meeting along the way?

Monahan: This could be quite a long list! One that comes to mind is Rep. Dan Lipinski who is a Democrat and ardently pro-life. While I'm quite certain that his view is not popular with some of his congressional colleagues he humbly and courageously never waivers on the issue. Another hero is Mrs. Georgette Forney of Silent No More and Anglicans for Life. She would prefer to not share her story of being involved with an abortion decades ago but continues to do so with the hope that other women will not. Another hero is Dr. Bill May, a former professor who recently met his heavenly reward. He advocated for life in the field of moral theology and bioethics, lived it as a professor, husband and father day in and day out.

APPENDIX C

[*Paul McHugh, former psychiatrist in chief at Johns Hopkins Hospital, is the author of* Try to Remember: Psychiatry's Clash Over Meaning, Memory, and Mind *(Dana Press, 2008). The following appeared in the* Wall Street Journal *on January 23, 2015. Reprinted from The Wall Street Journal © 2015, Dow Jones & Company. All rights reserved.*]

Dr. Death Makes a Comeback

Paul McHugh

"I guess Jack's won," a pal of mine said, alluding to Jack Kevorkian , whose views on physician-assisted suicide are lately back in vogue. With backing from liberal financier George Soros—a longtime supporter of "right to die" legislation—proponents are intent on expanding beyond Oregon, Vermont and Washington the roster of states where the practice is legal. Legislation to allow assisted suicide is moving through New Jersey's statehouse, last month a New York legislator vowed to introduce a similar bill, and in California state Sens. Bill Monning and Lois Wolk are working to legalize the practice.

My pal may have a point, but he perhaps has forgotten how often in fights for good ideas, the bad ones—even when crushingly defeated, as when Michigan sent Kevorkian to prison in 1999—sidle back into the ring and you have to thrash them again. Since ancient Greece physicians have been tempted to help desperate patients kill themselves, and many of those Greek doctors must have done so. But even then the best rejected such actions as unworthy and, as the Hippocratic Oath insists, contrary to the physician's purpose of "benefiting the sick." For reasons not too different, doctors traditionally refuse to participate in capital punishment; and, when they are inducted into military service, do not bear arms. Also, as Ian Dowbiggin showed in "A Merciful End: The Euthanasia Movement in Modern America" (2003), physician-assisted suicide was periodically championed in the 20th century yet rejected time after time by American voters when its practical harms were comprehended. As recently as 2012, Massachusetts voters defeated an initiative to legalize assisted suicide.

There are two essential harms from the practice. First: Once doctors agree to assist a person's suicide, ultimately they find it difficult to reject anyone who seeks their services. The killing of patients by doctors spreads to encompass many treatable but mentally troubled individuals, as seen today in the Netherlands, Belgium and Switzerland.

Second: When a "right to die" becomes settled law, soon the right translates into a duty. That was the message sent by Oregon, which legalized assisted suicide in 1994, when the state-sponsored health plan in 2008 denied recommended but costly cancer treatments and offered instead to pay for less-expensive suicide drugs.

These intractable, recurrent drawbacks are but one side of the problematic transaction involved with assisted suicide. The other, more telling side is the way assisting in patients' suicides hollows out the heart of the medical profession.

The fundamental premise of medicine is the vocational commitment of doctors

to care for all people without doubting whether any individual is worth the effort. That means doctors will not hold back their ingenuity and energies in treating anyone, rich or poor, young or old, prominent or socially insignificant—or curable or incurable.

This is the heart and soul of medical practice. The confidence with which patients turn to their physicians depends on it, and it is what spurs doctors to find innovative ways of helping the sick.

So why do the arguments for physician-assisted suicide regularly recur? Primarily because of compelling stories about patients who despair when medical futility, burdensome treatments and an unavoidable, painful fate seem to combine. Such patients have never been rare.

A recent high-profile case was that of Brittany Maynard, a 29-year-old woman diagnosed last year with a malignant brain tumor. She chose to publicize how, given her fears over what doctors were predicting, she would move from California to Oregon where a physician could—and did—prescribe medications for her to kill herself before many of the symptoms she feared had developed.

Since the time of Hippocrates, it has been the fellow-feelings evoked in all of us by patients' descriptions of their plight that have carried the argument for assisted suicide. All the counterarguments based on practical, factual or vocational matters tremble before these sentiments.

We'd be dour folk indeed if we did not respond in some way to the Brittany Maynards. But, surely one can ask, is poisoning her the best response on offer? And, since Hippocrates, most thoughtful doctors have said, "No."

Thinking about the place of sentiments in our actions might be helpful. G.K. Chesterton addressed this issue in a 1901 essay entitled "Sentimental Literature": "If sentimental literature is to be condemned," he wrote, "it must emphatically not be because it is sentimental, it must be because it is not literature." We all can immerse ourselves happily in tales of the loyal, courageous or romantic. The sentiments aren't bad; it's the literature—hackneyed, contrived, simplistic.

Physician-assisted suicide is sentimental medicine. It's not the sentiments that are bad; it's the medicine—bad because when assisted suicide is legalized, the sick don't get more choices for their care; they get fewer.

Assisted suicide is the cheap and easy option for doctors, a simple, irrevocable, one-size-fits-all remedy that slights diagnostic thought, forsakes therapeutic options and crosses a time-honored barrier protecting patients from mischief.

Proper medical end-of-life care—the kind that answers the sentiments by bringing thorough, supportive professional skills to the patient—is challenging and often complex. It depends on doctors recognizing that terminal illness is not a uniform death sentence—as Kevorkian claimed—but differs with each patient. Distressing symptoms such as pain, nausea, confusion or fear come in distinctive forms and from various sources, needing and responding to individual treatments.

For the terminally ill today, treatment of this sort is regularly supplied by palliative hospice care in ways detailed by Atul Gawande in his recent book "Being Mortal."

Doctors and nurses have the tools to relieve much of the pain and suffering from terminal illnesses. With these tools—along with an interdisciplinary concern for the patient's emotional and spiritual state—hospice now can supply what Cicely Saunders, its British founder in the 1960s, promised when she declared, "Last days need not be lost days."

With physician-assisted suicide, many people—some not terminally ill, but instead demoralized, depressed and bewildered—die before their time. Hardly a surprise, that being the whole idea of suicide. All that's needed to stop this killing is for doctors, as they do with capital punishment, to refuse to participate. Hundreds of Oregon physicians already do so, and much honor to them.

Legislators and voters across the country should not let sentiment cloud their view of assisted suicide when proponents raise it for consideration yet again. Rather than legalizing physician-assisted suicide, better to advocate for palliative care by doctors and nurses who are ready to help.

APPENDIX D

[*William F. Buckley Jr. (1925-2008) and Malcolm Muggeridge (1903-1990) were popular editors, authors, TV personalities (and much more) on both sides of the Atlantic. The interview excerpted here was transcribed from Mr. Buckley's "Firing Line" TV program of May 21, 1979, and reprinted in the Summer 1979 edition of the* Human Life Review. *The entire interview can be accessed on the* Review*'s website: www.humanlifereview.com*]

Modern Attitudes toward Life and Death

William F. Buckley & Malcolm Muggeridge

Buckley: . . . Malcolm Muggeridge's opposition to abortion is well known, less so, his conviction that the same attitude of mind that permits abortion cannot know when to curb its milleniarist passion for the perfect society. What must come, what surely will come, Mr. Muggeridge predicts, is euthanasia. In predicting this he predicts that the rationale will be contrived for eliminating those who do not live, in the haunting phrase of Justice Blackmun in the abortion decisions, "a meaningful life." . . . I should like to begin by asking Mr. Muggeridge how he reconciles his belief that only by hating one's life in this world will we keep life for all of eternity, with his fierce devotion to prolonging one's life in this world?

Muggeridge: Well I'm not exactly in favor of prolonging life in this world, but I am very strongly in favor of not arbitrarily deciding to end it. Either by the individual himself, which I think is a simple thing to do, or by society in general making the assumption that it's not worth living. I'm against that. Hating one's life in this world, of course, is to a materialist almost blasphemous. But to a person who finds the greatness of life, the joy of life, the wonder of life, in its relationship to eternity, it makes more sense.

Buckley: Well, does that answer the concrete question whether the state should be permitted to collaborate in a decision reached by an individual to end life rather than to prolong it on terms unsatisfactory to him? I ask you that question in context of your grander position that there is something wrong with clinging to life in this earth since there is so much about it that is to be despised.

Muggeridge: Well, the first part of your question, as far as the matter of the state collaborating with an individual who wishes to end his life, actually such cases of people wishing to end their life are very, very, very much rarer than advocates of euthanasia would care to admit. I was the other day with an old matron who'd worked for thirty years in what's called a terminal ward. And she told me that she could recall only *one* case in which the individual concerned, with clear faculties, a clear awareness of what he was saying, wanted his life to be ended. The usual thing is that the decision to end a life is taken on the basis of medical opinions, which of course, in themselves, often are mistaken. They are far from being always right, and they are the basis of what people looking on to someone else's life might suppose to be justification.

Buckley: Well, I think what you say is true, but let's attempt to reason there from concretely. There is a man, you may or may not have heard about, whose name is

George Zygmaniak, a young man, 21. He broke his neck, was paralyzed from the neck down, begged his brother to shoot him. Brother obliges. Shot him. He's tried for murder and is acquitted by the jury. Now, taking each one of those step by step, no one doubts that the request was made, therefore he would fall in the category—would he not?—of those who in fact intelligently sought the end of their life.

Muggeridge: Only if you assume that his mind at that moment was clear, capable of making a decision like that. Say, for instance, that he had altered his will in that state of mind. It's very possible, supposing the will had been contested, that a court might have accepted the fact that his faculties were not working clearly and adequately, so that—

Buckley: The trouble with that reasoning is it's circular. Isn't it? It's really saying if somebody chooses to do something there is reason to suppose that he is not sane in choosing to do that thing.

Muggeridge: Not at all. It's saying that people under great stress, particularly connected with what might appear to be terminal illnesses, are liable to be in a neurotic state of mind, and to ask for things which, were their minds clear—and sometimes afterwards their minds have become clear. I myself know people who have shouted to die and who've lived, and who say that the one great mercy of their lives was that their shouts went unheeded.

Buckley: Well, the obvious example of that would be people under torture. One knows that people under torture sometimes long for death, and when torture ceases—

Muggeridge: Exactly.

Buckley: But, let us postulate that Mr. Zygmaniak in fact desired death.

Muggeridge: Well, if you postulate that, you've postulated the whole thing. If you say that, you're really postulating the whole thing. You see, I consider that someone's desire to be killed—and I've felt such desires—

Buckley: Are natural.

Muggeridge: Not necessarily, but it is not to be taken at its face value, and that the state must base its attitude toward this situation on that. If only because once you accept Mr. ah, I forget his name—

Buckley: Zygmaniak.

Muggeridge: Zygmaniak's position, you will open the way to an infinite number of abuses if only for that reason.

Buckley: Well, the notion that if you prohibit pornography you will end up by prohibiting James Joyce is the so-called "slippery slope" argument, and you have used that precise metaphor in going from abortion to euthanasia. I think in fact distinctions can be made that distinguish between Zygmaniak say, and a state looking at Zygmaniak and saying, "You are not leading a meaningful life and under the circumstances we're going to order your execution."

Muggeridge: Well, let me give what I think is perhaps the best illustration of what I'm trying to say. The sort of law which would enable Mr. Zygmaniak to be killed was in fact passed by the Weimar Republic. That was the first government in modern times that passed euthanasia legislation, and the arguments from which it was based

were precisely those of the Zygmaniak case. That decree, those regulations, without any modification, provided the basis for this Holocaust that all your viewers of the West have been watching. There was no change. The doctors operated the decree under the Weimar Republic and the medical profession continued to cooperate with the Nazi authorities in putting it into effect subsequently. I'm only using that—

Buckley: Well, this presumes that Hitler was anxious for a juridical anointment of Auschwitz and I see no evidence of that.

Muggeridge: The curious thing is that in the documents concerned—and they have been examined with great care—there is no evidence whatsoever that Hitler made any attempt to modify or extend or do anything about the existing legislation. That it provided the basis for, first of all, getting rid of what were called useless lives, in other words people who were sick, people who were senile, people who were mentally afflicted. Later, getting rid of children that had been born, like mongol children and so on. And finally, getting rid of people who were not considered to be appropriate citizens of a state that aimed at being a *Herrenvolk.* And finally, of course, still with the same procedure, getting rid of people who were racially unacceptable. I'm only using it for one reason, Bill. Because it was just that one case—the useless life, the man who wants to end it, the state steps in and ends it for him—that opened the way to this Holocaust. And I will predict to you, without any reservation, that we are embarking upon a holocaust, a humane holocaust, which will put that other one quite in the shade . . . Fifty million babies were killed off last year. That's not a bad start. And when you get on to this other—already it's happening you know, old people don't want to go to homes because they think they're going to be killed, mongol babies are disappearing from wards . . . When it's all worked out, that will be the result, and the justification for it will be just this case that you've mentioned. And that's why I'm against basing any sort of legislative procedure on such cases.

Buckley: Well, in the first place he was tried. So the reason he was tried is that, in fact, the brother committed murder. But you have an interesting intervention—a jury refused to convict him. So there you have an adversary position between the law, which says a murder is a murder, you can't shoot somebody even if he asks you to. And on the other hand, the jury of one's peers saying that under the particular circumstances, they are not disposed to send the (quotes) killer to jail. Now let's not let these distinctions elude us. In the first place I think it extremely unlikely that had the Weimar Republic failed to pass its euthanasia laws, it would have stayed the hand of Adolph Eichmann. That is to say, we were faced with a government that made its own *macht politik,* and abominated, as I understand it, such sentimentalism as common law rights, which went widely unobserved at every level. But is it a fact that civilization requires you, the individual, to collaborate with doctors who seek to use modern technological ingenuity simply to keep you alive?

Muggeridge: Not at all. Not at all. Nothing requires you to do that. But equally, it is clear to me at any rate, that nothing can possibly justify putting in train a process, an attitude of mind, which can only result in this ultimate determination to be

relieved of the burden of looking after the ostensibly unfit, inadequate, defective citizen. As far as your point about Hitler and the Nazis are concerned, of course, it's perfectly true, they might well have proceeded to kill the sort of people who were killed in the camps, but they would not necessarily have had, which they did have, the full cooperation of the German medical profession, which they did. The doctors made no protest.

Buckley: Ah, gosh. Isn't that, um, a little genocidal? To say that about all doctors?

Muggeridge: It's a little genocidal, but it's a simple fact. And if you read the summing up at the Nuremberg trial—because as you know, what they did in the matter of what we call mercy killing, was one of the war crimes charged against them—they were convicted of it. And if you look at the summing-up of it by a man called Alexander, who was the American representative there, you will see that this is what he states. That because this began in humane terms, mercy killing, just such cases as you mentioned—

Buckley: He traced the authority therefore—

Muggeridge: Yes. And he said that there was never evidence that the medical profession, still less psychiatrists, in whose hands the decision in these matters very often lay, made any protest whatever.

Buckley: Of course . . . that argument is frequently used for tactical advantage. There are people in America who say we must not have capital punishment for people who murder their father and their mother because the next thing you know, the state having once been licensed to kill, it will send to the electric chair people who steal apples. I think that is an antihistorical argument, but I'm wondering why you think it isn't.

Muggeridge: Well, I think first of all we must be absolutely clear, if we're going to make any sense of this discussion, that capital punishment, whether it be good or bad, the situation is completely different. Capital punishment is the state deciding that a particular crime is such that the person who commits it, will—is better killed, and that the person who commits it—

Buckley: What if his crime is Jewishness?

Muggeridge: Yes, but not, because Jewishness has not been in any civilized country a capital offense, nor indeed was it in the Third Reich.

Buckley: You're saying we're progressing against civilization.

Muggeridge: Yes, we are. We're progressing against civilization. But anyway, if and when capital punishment is commended as a method of getting rid of Jews, the attitude that will be required will be different. But as of now what is advocated in the case of capital punishment—I'm not at this minute concerned to say whether it's justified or not—is that a state is entitled to kill a man who commits a certain kind of crime because the deterrence thereby created will prevent a worse evil—

Buckley: Well, that's *an* argument.

Muggeridge: Yes. And what I would think to most people is the decisive argument. But never for one minute is it suggested that in killing the murderer you are doing a great kindness to *him.* You're dealing with something that society demands. Now,

in euthanasia, what makes it such a sick and horrible thing, is that it is purportedly done in the interests of the person who's killed. And of course in the case of abortion it's done against a child not yet come into the world, who can't be said to have done anything good or anything bad.

Buckley: Well I'm anxious to stay on this side of abortion because—your views are well known on that and happen to coincide with my own—

Muggeridge: I only wanted to get rid of capital punishment because otherwise it's going to be a red herring, you see.

Buckley: Well, I raise the subject of capital punishment only to stand, or to attempt to stand athwart your argument that if you give the state a certain power, it's going to abuse it.

Muggeridge: Well, I don't think there's any parallel between the two at all. I mean, we know that it's liable to abuse it, we know in fact already it's abusing it. That cases, special cases that were considered to be obvious, people in particularly advanced stages of illness were being killed—

Buckley: Killed? Or were not being tended?

Muggeridge: Or not being tended, allowed to die. They're pretty much the same thing.

Buckley: In philosophy it's all the difference in the world.

Muggeridge: Yes, but for the individual concerned, if you say I'll kill you or allow you to die, I'll say, dear Bill, do whatever takes your fancy because for me it comes to the same thing.

Buckley: Yes, but if you are scheduled to die, the question of how you die becomes a moral consideration, right? And the fact that you're going to die anyway is something that you come to terms with. Suppose I ask you to analyze the case of Kerri Ann McNulty. Forty-five days old, suffering from cataracts in both eyes, nerve deafness, and from severe mental retardation to the extent establishable. Parents request that an operation to clear an obstruction in her aorta not take place. Judge says no. It must take place, because the quality of life is not a proper consideration. You are unequivocally on the side of the judge?

Muggeridge: Unequivocally on the side of the judge, and so would be all the best pediatricians I know, such as for instance Dr. Everett Koop, who has written a great deal on this, and who says that in handling cases of this kind which don't necessarily—the best treatment by a doctor of that calibre, is not necessarily calculated to increase indefinitely the span of life. But that insofar as he has, and he has had many experiences of the kind, worked upon and sought to maintain the life of people, of children who've been written off medically, it has been on the one hand an enormous spiritual experience for him. It has enormously enhanced the spiritual life of their parents, and more often than not, in a surprising number of cases has proved to invalidate the original medical conclusion. So that—

Buckley: Sudden remissions and that kind of thing.

Muggeridge: All sorts of things have happened—

Buckley: Sure.

Muggeridge: —that you can't be sure. So I think the judge was right. On the other

hand, of course, a doctor who is a Christian, and who, being a Christian, has a due sense of the sacredness of human life, and of how what is the soul in people is what matters infinitely more than their bodies. Such a doctor, in deciding what is the best possible course of treatment for a grownup person or a child, will be actuated by the well-being, the true well-being of that child, spiritual and physical. In those circumstances—

Buckley: What authority does he have?

Muggeridge: He has the authority of being a doctor. He has the authority of being a Christian. He has the authority of having taken an oath as a doctor which he proposes not to scorn and deride, but to keep. Namely, that being a doctor means looking after those who are put in your charge, totally, wholeheartedly, in conjunction with your own faith and your sense of what God wishes is their good.

Buckley: But what then is the authority of the parent?

Muggeridge: The authority of the parent is in having chosen that doctor, and they chose him, and they could have had some other doctor, they could have had one of these killing doctors, Heaven knows there are plenty of them, who'll kill them at the drop of a hat. If you say, we want this child killed, they'll do it. No difficulty finding one of them.

Buckley: Well, here there was a difficulty because the matter was referred to a judge.

Muggeridge: Yes, but only because by some accident it was brought up. I mean things like that are being decided by killer doctors every day of the week. And it was brought up, no doubt, before a judge, possibly even—and here I'm guessing—possibly even to have on the books a really good case that my dear Bill Buckley can quote on his program. Because that also happens. It happened with abortion. Specific cases were promoted in order that a good, a seemingly good argument might be available. So I don't know how it got into court. I think the judge is there to administer the law. And if you have judges who take a sentimental view, and say to a murderer, "Well sir, I'm terribly sorry, but I sympathize with you very deeply and therefore I'm not going to punish you," you'll make an even greater nonsense of our law than is the case now. Just before I left England a journalist came on the television and said that he had, at his wife's request, given her some poison. And she died. Well, he said of course if there's a case about this I shall plead guilty. And the judgment of the media inevitably was that he was a fine fellow. And there was no case. The director of public prosecution decided he was not going to bring a case, which means that to all intents and purposes euthanasia is now legalized. That's the position.

Buckley: Well, euthanasia usually means action by the state, doesn't it?

Muggeridge: Well no, it means an action by a doctor in the confidence that the state won't worry him about it. That's what it means . . .

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