

Ethics & Medicine

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OLD MACDONALD HAD AN EMBRYO PHARM, E, I, E, I, OH?

C. BEN MITCHELL, PHD

Imagine hearing the following financial news: "Today, the market in sow bellies is down, soybeans are stable, and the market in human embryos is up." Recent developments in embryonic research have moved us one step closer to that scenario.

The Jones Institute for Reproductive Medicine in Virginia announced in July that they intentionally created human embryos from donor eggs and sperm with the sole purpose of conducting destructive research on nascent humans. The twelve egg donors were paid \$1500 to \$2000 each – about what the average egg donor receives. The sperm donors were paid about \$50 each. So, that means that the money earned from the destruction of human offspring can pay a month's house mortgage for a woman and dinner for two for a man.

In a second case, Massachusetts-based company Advanced Cell Technology (ACT) admitted it was attempting to clone human embryos for the purposes of harvesting stem cells from those embryos. ACT is a privately funded, for-profit biotechnology industry leader.

Associated Press biotechnology writer Paul Elias broke the story on Friday, July 13th, that the Jones Institute, ACT, and Geron Inc. (a Menlo Park, California, biotechnology company) are racing to develop large numbers of embryonic stem cells to supply a market they hoped would open up as soon as President Bush made up his mind about federal funding for embryonic stem cell research.

Elias claims, "Geron buys leftover frozen embryos from fertility clinics and cracks them open to obtain the stem cells."

A market in human beings is not a future possibility; it is a present reality. What these companies are doing can only be described as human embryo farming: producing human embryos for a biotechnological research harvest. Only, instead of "farming," we really ought to call it "pharming," since what they hope to do is to be the first to stake a claim on a pharmaceutical treatment that will earn huge profits.

Of course the morning "pharm report" will not be announcing that the market in embryos is gaining strength – that would be too traumatic for most Americans. Instead, ACT's ethics committee suggests that a human embryo cloned for research purposes should be called an "activated egg" or "ovasome."

What they call their "crop" or "product" is a very important marketing decision. The fertility drug Pergonal, for instance, would not likely be as popular if it were called what it is, "Derivative of Urine." Market share will not rise as high if

their product's name is off-putting or offensive. "Ovasome" sounds like a breakfast drink to be mixed with milk. "I'll just have 'Ovasome'," you can imagine Dad saying as he comes down the stairs in the morning.

Make no mistake about it – this is not silly, it is dangerous. Humans and their body parts are being bought and sold, created and destroyed and planted and harvested, for profit or potential profit. Human beings and their parts have become commodities, like sow bellies, corn, and soybeans.

In their recent book, *Body Bazaar: The Market for Human Tissues in the Biotechnology Age*, Lori Andrews and Dorothy Nelkin argue that the value of human body tissue in the biotechnology age – and the potential for profitable patents derived from it – encourages doctors and researchers to think about people differently . . ." Body parts are extracted like a mineral, harvested like a crop, or mined like a resource."

Do we really want to view human embryos as either farms or pharms, especially when the harvesting requires the destruction of the embryo? It is one thing to use umbilical cords retrieved after the birth of a baby for research; it is another thing to remove the baby's life-giving tissues for potential profitable pharmaceuticals. Yet the "pharmers" at Jones Institute, ACT, and Geron are encouraging us to commodify tiny humans. These nascent human beings are being imperiled by our own biotechnological avarice. "Biotechnological uses," say Andrews and Nelkin, "risk running roughshod over social values and personal beliefs." Indeed.

Americans should repudiate the commodification of human embryos. They are not crops to be harvested. They are not "pharms" to be cultivated. After all, hard as it is to believe, you and I were once tiny human embryos. We too had a right not to be bought and sold at the "pharmers market?" **E&M**

TO THE EDITOR

Dr. Goodnough's commentary (*Ethics & Medicine* 17:1) is an important addition to the current debate about the oral birth control pill's (the Pill) postfertilization effects – which would be tantamount to an abortifacient effect to those who believe that valuable human life begins at fertilization (conception). However, we are concerned about several inaccuracies about medical facts in this paper and believe your readers will find this information useful.

Dr. Goodnough states that the rate of pregnancy on the Pill “. . . in the general population is 3% per year.”¹ Unfortunately, the data to which he refers did not account for elective abortions. In other words, women who get pregnant on the Pill and then abort are not counted in these data. One national analysis, based upon 1992 data from the United States, that did account for the underreporting of elective abortions reported that the unintended pregnancy rates during the first year of Pill use were at least 4% for “good compliers,” 8% for “poor compliers,” and up to 29% for some users. We find that most Pill-users and prescribers are unaware of these facts. Dr. Goodnough discusses what we have called the “turned-on-endometrium theory.” The proponents of this hypothesis feel, like Dr. Goodnough, that “One would therefore expect the endometrium in an ovulatory cycle on the OCP (oral contraceptive pill) to be more receptive than the endometrium in an anovulatory cycle on the OCP.”² We have discussed elsewhere data that may refute this hypothesis.³ Dr. Goodnough does admit that this is only a theory and as such “is somewhat speculative.”⁴ We feel it is more accurate to report that the “turned-on-endometrium” theory is completely speculative. There is, to our knowledge, no published, peer-reviewed data that supports this theory.

Dr. Goodnough inaccurately discusses both our views and the data about the increased risk of ectopic pregnancies in women who get pregnant on the Pill.¹ We feel it is unfortunate that he only used an outdated secondary source of our data (he used the 2nd instead of the current 4th edition). We feel your readers may have been better served if Goodnough had used the primary reference – a peer-reviewed, systematic review that we published in the *Archives of Family Medicine*, an American Medical Association journal.³ Unfortunately, this oversight led to several inaccurate statements. We will cite only one example: Goodnough says that we “. . . lump the progesterone-only minipill (POP) in with the combined estrogen and progesterone OCP.”¹ This is not true. In our paper, we clearly stated that of the available studies, we specifically excluded any that even might have included women taking POPs mixed into the COC group. We said, “Therefore, of the five available publications, only two allow review of the association of COCs with ectopic pregnancy. These two studies from seven maternity hospitals in Paris, France, and three in Sweden involved 484 women with ectopic pregnancies and 289 pregnant controls and suggest that at least some protection against intrauterine pregnancy is provided via postfertilization preimplantation

effects.”³ Our evidence-based and systematic review of this topic concluded, “Therefore, COC use seems to be associated with an increased risk of ectopic implantation or unrecognized loss of (embryos). We considered this level II.² (good to very good) evidence.”

For the reader seeking objective information, the peer-reviewed, systematic review of a subject may be of more value than a commentary, which may be more affected by the bias of the authors. This bias can be amplified in single-author commentaries – such as Dr. Goodnough’s. Likewise, we have some concerns about Dr. Goodnough’s ethical conclusions: Dr. Goodnough indicates his belief that prescribing a medication with a potential postfertilization effect, such as the Pill, is acceptable under the principle that “. . . if we prescribe (OCPs) to enough patients, more patients will be helped than hurt.”¹ Indeed, in the practice of medicine, some risks are necessary. But Pill-takers unnecessarily put pre-born children at risk. In fact, the very survival of these children is at stake. Regardless of the actual risk percentage, which is uncertain, a sexually active woman runs a new risk of aborting a child, in an unrecognized fashion, every time she takes the Pill.

Furthermore, as we discuss below, she has a non-abortifacient option for birth control, such as modern, scientific, natural family planning (NFP), that can be as or more effective than the Pill. Dr. Goodnough discusses a patient’s consent to use the Pill and states, “The fact that she consents and the embryo does not in no way lessens my responsibility.”¹ This does not lessen his responsibility, but increases it. If Goodnough believes that the embryo is fully valuable human life, how can he allow someone else’s consent to put that pre-born child at risk to control his choice to prescribe the Pill? Even if the Pill does not usually cause an abortifacient effect, whenever it does it is just as real an abortion as if that were its primary effect.

Dr. Goodnough reviews our discussion about the Principle of Double Effect. Unfortunately, his incomplete review of the topic did not address what we consider to be the most important point of this principle: The argument about a possible abortifacient effect of the Pill “. . . certainly could be considered to fall under the category of disputable matters discussed in Romans 14:1-21. Objective, knowledgeable Christian observers would in all likelihood line up on both sides of the argument based upon a variety of subjective and objective criteria. However, the fourth principle of double effect has a corollary that must be considered. That corollary relates to alternatives. In other words, the principle is now being interpreted by some authors to make the contention that there must be no other way to produce the good effect.”⁵

Goodnough does not discuss this information with his readers. Your readers should certainly be aware that several forms of natural family planning (NFP) have been found to have effectiveness rates comparable to oral contraceptives. One method that was developed at Creighton University in the United States has been medically studied over the last 20 years and has been reported in a large

meta-analysis to be 96.8% effective at preventing pregnancy, taking into account user and teacher errors. As mentioned above, the Pill is at best 94% effective in actual use. The most recent study of this scientific approach to NFP concluded that pregnancy probabilities using this form of NFP compared favorably with those of other methods of family planning and that women did not need to have regular cycles to use NFP successfully.

Another effective form of NFP, the Billings Ovulation Method, is taught around the world in all sociocultural situations, and used successfully even by people who cannot read or write. NFP is noted by its users and advocates to promote love, romance, communication, prayer, spirituality and learning about natural, God-created reproductive mechanisms. Other advantages of NFP are that it fosters communication and understanding between the man and the woman, develops co-operation between them and a sharing of the responsibility in this important matter of their children."

In all these ways it improves a couple's relationship and helping them to grow in love and fidelity to each other. There is no evidence that the Pill provides these same benefits. Since there is a viable, safe and effective, non-abortifacient alternative to the Pill, this fact would appear to dissolve most arguments that the Pill, until scientifically proven to be non-abortifacient, should be or can morally be used by Christians for birth control. In fact, assuming that NFP is only as effective as the Pill (and not more effective), it would appear that most arguments to use the Pill, in view of the fact that it may have an abortifacient effect, would be reduced to arguments of convenience (for the Pill-user or prescriber) at the potential expense of pre-born human life.

Lastly, Goodnough indicates that the intent one has in prescribing or using Pill is an important consideration. He contends, "If the desired effect is prevention of conception by preventing ovulation, it is not accomplished by a bad effect and there are no alternatives that are safer." Indeed, most Pill prescribers don't intend to cause an unrecognized abortion. Nevertheless, while the intentions of those taking or prescribing the Pill may be harmless, the results can be just as fatal. In this sense, taking the Pill is analogous to playing Russian roulette, but with more chambers and therefore less risk per episode. In Russian roulette, participants usually do not intend to shoot themselves. Their intention is irrelevant, however, because if they play the game long enough they cannot beat the odds – eventually someone dies. However, with Pill roulette, it is another person who may die. The fact that a woman will not know when a child has been aborted in no way changes whether or not it happens. The more Pills she takes, the greater her chance of having a silent abortion. The more a physician prescribes the Pill, the more likely he is to cause an unrecognized abortion.

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EXIT RAMP¹

WILLIAM P. CHESHIRE, MD

*If lost in County Rockingham,
A North Carolina mystery
Distorts one northbound exit ramp
Which enters highway two-twenty.*

*Don't lessen pressure on your brake
Or leave your car unoccupied,
For gravity reversed may make
Your unattended auto slide –*

*Uphill – defying Newton's law!
Bewildered witnesses to this
Will ask, by what strange twist or flaw
Do opposite directions switch?*

*From slip to creep, from roll to rush,
The car let loose will plummet thus
On slopes too steep for eyes to trust.
Without true bearings, fall we must.*

*Which way is up? Which way is best?
Confusion frames experience.
Whilst heavens rotate East to West,
Surrounding landscape orients.*

*Our sense of vertical depends
On how the mountains shape this scene;
An optical illusion bends
Perspectives once erect to lean.*

*When looming mountains lift our view
To north horizon upward nudged,
Inclining frames of reference skew;
A level path we cannot judge.*

*So how much more should we,
therefore,
Rely on valid moral points
Of reference when we first explore
Requests oddly for death by choice?*

*The road that medicine could take
Toward doctor-assisted suicide
Would be a terrible mistake
Against which now we must decide.*

*The Dutch have demonstrated well
The slippery slope along which we
Proceed once doctors cannot tell
A lethal dose from therapy.*

*Hippocrates would question how
The Dutch with systematic ease
Give euthanasia and allow
Not only treatment of disease,*

*But also ending lives of pain
And suffering that will not relent.
'Tis death they offer as "humane,"
At times without informed consent.*

*What sordid economic aim
Removes the sick from public mind?
Kevorkian and Humphrey claim,
That aiding suicide is kind.*

*If suicide is good, they say,
For present suffering's relief,
Then why not offer it today
To those anticipating grief?*

*And if a noble benefit
Is gained by choking respiration
Then why withhold from those unfit
To voice their fatal last petition?*

*Such killing fast degenerates,
Despite concern for patients' best,
Into a plot that terminates
Without explicit prerequisite.*

*And exercise of "right to die,"
Repeated often, far and wide,
Would drive the expectation high
That duty lies in suicide.*

*The notion of a right to die
In reason finds approval nil,
For such a harsh judicial lie
Would obligate doctors to kill.*

*Authority once granted makes
The next step that much easier still.
Removal of restrictions takes
Us further down a murderous hill.*

*As ethical constraints give way,
Down go the lowly euthanists.
Headlong they plunge, their morals stray
Into a bleak, black, deep abyss –*

*Yet they insist – that up the slope
Of progress marches suicide
Unleashed. Through fallacy's false hope
And pride they claim compassion's side.*

*Here, too, the opposite is true;
"Compassion" means "to suffer with,"
And not abandon patients to
Asphyxiation, harm, or death.*

*The long disorienting climb
To suicide's elusive crest
Has ended at no peak sublime,
But in the depths of wickedness.*

*No shadows tip topography
On slopes of medical demise,
But rather flawed theology
Leads to unsavory compromise.*

*The one firm reference point of truth,
Is where God's precious blood
was poured:
Grand vertical straight azimuth,
The cross of Jesus Christ the Lord.*

*His cross establishes the sign
That orients the soul to see,
His outstretched arms the level line
Of horizontal certainty.*

*In weakness Jesus came into
This hurting world like us to live.
Intense heart-rending pain He knew,
The God who suffers does forgive.*

*His Words, the Bible, testify
That in due time death will arrive.
Believe in Him, although you die,
And He will raise you up alive!*

*He is the truth, the life, the way,
His counsel light that guides our feet.
To follow Him from day to day,
Keeps our path smooth, our peace
complete.*

*Trust in the Lord, in Him abide,
And He will keep you in His grip;
Steep slopes may seem to make you slide,
But He will never let you slip.*

*His Sermon on the Mount reveals
A slippery slope one should beware,
For anger multiplies in zeal:
The root of murder thus laid bare.*

*One cannot capture dignity
By sheer autonomy's command,
But mercy and humility
Through Christians lending hand,*

*Will love the sick and suffering
As God so loved the world – that He
Did give His only Son to bring
Salvation overflowingly.*

¹This poem is a correction to the one published in E&M 17:2

GUEST COMMENTARY: POLYGAMY AND AUTONOMY

DAVID B. FLETCHER, PHD

Christians believe that the marital union is to involve a man and a woman in lifetime fidelity. Following this longstanding conviction, Western society has always disallowed polygamy, the practice of a man having more than one wife, or polyandry, a woman having more than one husband. Most Americans and Europeans have difficulty even taking seriously the idea that there is a right to engage in polygamy. But how solid and well grounded is our society's commitment to the normative ideal of heterosexual, monogamous marriage? Recent developments in the law and in social philosophy suggest that monogamy might be in for a serious challenge.

In a recent and much-publicized case, Tom Green, a Utah man, who lives with his five wives and 29 children, was convicted of bigamy and failure to pay child support, for which he may receive a 25 year sentence. In this case, which CNN calls "the first high profile bigamy case in half a century," Mr. Green went public in defending his lifestyle decision and denouncing those who oppose him.¹

Mormonism practiced and promoted polygamy from its founding in the 1840s until 1890, when it formally renounced the practice. Utah banned polygamy as a condition of being received into the Union, and polygamists were prosecuted in Utah through the 1950s. Various Mormon sects in Utah still endorse the practice, and it is estimated that 30,000 cases of polygamy exist in the state.²

Why can't Mr. Green live as he wishes? Should individual autonomy extend to being able to define marriage as one chooses? Although polygamy is defended on the basis of sectarian views, the American Civil Liberties Union of Utah opposes that state's bigamy law. Stephen Clark, the chapter's legal director, says that

Living arrangements are really the most intimate kinds of decisions people make. Talking to Utah's polygamists is like talking to gays and lesbians who really want the right to live their lives, and not live in fear because of whom they love. So certainly that kind of privacy expectation is something the ACLU is committed to protecting.

The bigamy statute, like sodomy statutes and like other anachronistic moralistic legislation, goes to the core of what the Supreme Court identifies as important fundamental privacy rights.³

Not only in the ACLU, but also in the highest ranks of philosophy, this ideal of individual liberty with frighteningly few restraints has been advocated. Several of the most prominent figures in contemporary ethics made the historic move of offering amicus curiae testimony before the United States Supreme Court as they

faced euthanasia decisions in 1997. The authors of the brief are some of the most prominent social philosophers of the latter part of the twentieth century: Ronald Dworkin of the University of Oxford, Thomas Nagel of New York University, Thomas Scanlon, Robert Nozick and John Rawls, all of Harvard University, and Judith Jarvis Thomson of the Massachusetts Institute of Technology. The document, *Assisted Suicide: The Philosophers' Brief*, was submitted to the Supreme Court and was also published in the *New York Review of Books*.⁵ In the words of one critic, "The sheer existence of a brief signed with these names proclaims that the opinion of America's most elevated intellectuals is exactly where one thought it would be: solidly in favor of declaring a constitutionally protected right to doctor-assisted suicide."⁵

The *Brief's* authors explain autonomy as the right of "every competent person . . . to make momentous personal decisions which involve fundamental religious or philosophical convictions about life's value for himself." Expanding on this, they argue that

certain decisions are momentous in their impact on the character of a person's life – decisions about religious faith, political and moral allegiance, marriage, procreation and death, for example. Such deeply personal decisions pose controversial questions about how and why human life has value. In a free society, individuals must be allowed to make those decisions for themselves, out of their own faith, conscience and convictions.

Although the authors are creative philosophers who have made a number of original contributions to social and ethical theory, they are content to allow individual liberty to be defined by the Justices of the Supreme Court in such recent decisions as *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992). The authors express solidarity with that ruling which held that "matters involving the most intimate and personal choices a person may make in a lifetime...are central to the liberty protected by the Fourteenth Amendment," and that

At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe and of the mystery of human life...Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.

So to be free I must "define my own concept of existence, of meaning, of the universe and of the mystery of human life." This is argued on the basis of a false dichotomy: The alternative is either radical, individual freedom without constraint, or blind and meaningless obedience to state coercion. Based on this view, the state cannot shape us, but can only compel obedience. But why should we think that forming our convictions out of obedience to an authority automatically means that our beliefs cannot be truly meaningful? The idea that we may help to shape the character of those over which we exercise authority, such as children and students, is hardly new, and Christians believe that we can form meaningful life values in obedience to the Lord and his Word.

The unbounded liberty of which the authors speak cannot be promoted without (in principle) allowing freedoms that society has considered out of bounds. Note that according to the authors, the liberty to seek suicide is a legitimate extension of that autonomy that ranges over “decisions about religious faith, political and moral allegiance, marriage, procreation and death.” Yet society has never permitted autonomy to such an extent, nor could it do so; nor, as far as I know, would all the *Brief's* authors truly wish it so. While the choice of religious faith is arguably a matter of individual choice in modern liberal societies, political allegiance is seldom so considered. Every nation has an interest in fostering such allegiance, and even in the most liberal of democracies there is a crime known as treason.

Nor, as Mr. Green has learned, do we allow complete autonomy in the sorts of marriage arrangements we sanction. Marriage has always been closely regulated by law. The argument of the *Brief* would seem to entail that an individual is free to enter and leave the marital state as he or she chooses, or to marry anyone of one's choosing, including perhaps one's brother or sister, or to enter into polygamous relationships. The substantial body of law regulating the institution of marriage, which at present prohibits each of these exercises of personal liberty, is incompatible with the autonomy defended by the *Brief*. According to the *Brief*, people ought to be allowed to determine for themselves the meaning of marriage, just as they can determine the meaning of life, death and faith.

We might have thought that few if any would seriously propose such a completely libertarian approach to marriage, but Mr. Green does so, and so does the Utah chapter of the ACLU. But it is not simply in polygamy that individual autonomy has been undermining traditional concepts of marriage and family.

Perhaps less exotic but even more frightening than polygamy is the recent U.S. Census study that tells us, according to *Newsweek*, that only one in four American households is headed by a traditional two-parent, married couple, and that

The number of families headed by single mothers has increased 25 percent since 1990, to more than 7.5 million households. Contributing to the numbers are a high rate of divorce and out-of-wedlock births. For most of the past decade, about a third of all babies were born to unmarried women, compared with 3.8 percent in 1940.⁶

Those who value the institution of monogamous marriage and believe that it is essential to the health and welfare of our society and our children will need to seriously tackle not only polygamy and the unbridled individual autonomy that supports it, but other trends that undermine the family, as we work to strengthen marriages and deal with the consequences of society's tragic experiment with the family. **E&M**

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- ⁵. J. Bottum , "Debriefing the Philosophers," *First Things* 74 (June/July 1997): 26-30.
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<http://www.msnbc.com/news/575968.asp?cp1=1>, accessed 8/3/2001.

A THEOLOGIANS' BRIEF: ON THE PLACE OF THE HUMAN EMBRYO WITHIN THE CHRISTIAN TRADITION & THE THEOLOGICAL PRINCIPLES FOR EVALUATING ITS MORAL STATUS

REV DAVID JONES MST, ET AL

(Originally Submitted to the House of Lords Select Committee on Stem Cell Research 1st June 2001 by an ad hoc group of Christian theologians from the Anglican, Catholic, Orthodox and Reformed traditions) Prepared by Rev David Jones MA MA MSt, Director of the Linacre Centre for Healthcare Ethics, London.

On behalf of an ad hoc group of Christian theologians from the Anglican, Catholic, Orthodox and Reformed traditions and endorsed by:

Cardinal Cahal B Daly, BA MA DD, Peritus at Vatican II, Archbishop Emeritus of Armagh, Primate Emeritus of All Ireland.

(ORIGINALLY SUBMITTED TO THE HOUSE OF LORDS SELECT COMMITTEE ON STEM CELL RESEARCH 1ST JUNE 2001 BY AN AD HOC GROUP OF CHRISTIAN THEOLOGIANS FROM THE ANGLICAN, CATHOLIC, ORTHODOX AND REFORMED TRADITIONS)

PREPARED BY REV DAVID JONES MA MA MST, DIRECTOR OF THE LINACRE CENTRE FOR HEALTHCARE ETHICS, LONDON.

ON BEHALF OF AN AD HOC GROUP OF CHRISTIAN THEOLOGIANS FROM THE ANGLICAN, CATHOLIC, ORTHODOX AND REFORMED TRADITIONS AND ENDORSED BY:

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Basis of This Submission

1. In a multi-cultural and multi-religious society, it is appropriate to take account not only of secular arguments concerning the place of the human embryo but also of arguments expressed in the religious language of some sections of the community. It is particularly important to understand the Christian tradition in this regard because of the place Christianity has had in shaping the moral understanding of many citizens in this country, and because this tradition has already been invoked in the context of public debate.¹

2. The Human Fertilisation and Embryology (Research Purposes) Regulations 2001 greatly expand the purposes for which research using human embryos can take place, and thus, if implemented, will inevitably lead to a massive increase in the use and destruction of embryos. The Select Committee has expressed its wish not 'to review the underlying basis of the 1990 Act';² however, the ethical and legal issues surrounding 'the Regulations as they now stand' cannot adequately be addressed without considering the moral status of the human embryo. Similarly, the 'regulatory framework established by the 1990 Act' cannot operate effectively if it is flawed in principle.

3. Adding more purposes for which human embryos can be created for destructive use builds upon a mistake that has already been made in the existing legislation. By far the most important ethical issue involved in the Regulations 'as they now stand' relates to the ethical significance of embryonic human individuals whether produced by cloning or by the ordinary process of fertilization. The spectacle of thousands of stock-piled frozen human embryos being destroyed

at the behest of this legislation bore witness that, even in the area of fertility treatment, too little consideration had been given to regulating the initial production of human embryos, as opposed to their subsequent disposal. The Regulations 2001 make the situation even worse in this regard.

The Christian Tradition

4. Some scholars, considering the prospective benefits to be derived from experimenting on human embryos, have alleged that the Christian tradition had already set a precedent for treating the early human embryo with 'graded status and protection'.³ In support of this it has been noted that there were seventh century books of penance ('Penitentials') which graded the level of penance for abortion according to whether the foetus was 'formed' or 'unformed'. The same distinction was invoked in Roman Catholic canon law which, from 1591 to 1869, imposed excommunication only for the abortion of a 'formed' foetus. Furthermore, St Thomas Aquinas, one of the most authoritative theologians of the Middle Ages, explicitly held that the human embryo did not possess a spiritual soul and was not a human being (*homo*) until forty days in the case of males or ninety in the case of females.⁴ Texts from the Fathers of the Church could easily be found to support a similar conclusion.

5. Nevertheless, the contention that for most of Christian history (until 1869) the human embryo has been considered to possess only a relative value – such as might be outweighed by considerations of the general good – relies on a misreading of the tradition. Even in the Middle Ages, when most Western Christians held that the early embryo was not yet fully human, it was held that the human embryo should never be attacked deliberately, however extreme the circumstances. To gain the proper historical perspective it is necessary to supply a wider context by incorporating other elements of that tradition.

6. The earliest Christian writings on the issue declared simply, 'you shall not murder a child by abortion'⁵: the embryo was held to be inviolable at every stage of its existence.⁶ The first Christian writings to consider the question of when human life began asserted that the spiritual soul was present from conception.⁷ As one account puts it: 'The Early Church adopted a critical attitude to the widespread practice of abortion and infanticide. It did so on the basis of a belief in the sanctity of human life; a belief which was in turn an expression of its faith in the goodness of creation and of God's particular care for humankind.'⁸

7. The earliest Church legislation also contains no reference to the distinction of formed and unformed,⁹ and St Basil the Great, who did consider it, saw it as a sophisticated exercise in splitting hairs: 'We do not consider the fine distinction between formed and unformed.'¹⁰

8. In the fourth and fifth centuries some theologians argued that human life began at conception,¹¹ some held that the spiritual soul was 'infused' at forty days or so¹² (following Aristotle)¹³ and some held that the timing of the infusion of the soul was a mystery known to God alone.¹⁴ However, whatever their views about the

precise moment when human life began, all Christians held that abortion was gravely wrong,¹⁵ an offense against God the Creator and either the killing of a child, or something very like the killing of a child. If it was not regarded as homicide in the strict sense, 'it was looked upon as anticipated homicide, or interpretive homicide, or homicide in intent, because it involved the destruction of a future man. It was always closely related to homicide.'¹⁶

9. In the Anglo Saxon and Celtic 'Penitentials' (from the seventh century) and in the canon law of the Latin Church (from the eleventh century) abortion of a formed foetus sometimes carried heavier penalties than did abortion of an unformed foetus. Yet canon law has an eye not just on objective harm done but also on subjective culpability and on enforceability. The decision of Gregory XIV in 1591 to limit the penalty of excommunication to the abortion of a formed foetus was expressly due to problems enforcing earlier legislation.¹⁷ Abortion of an unformed foetus was sometimes regarded as, technically, a different sin – and sometimes (though not universally) as a lesser sin – than abortion of a formed foetus, but it continued to be regarded as a grave sin closely akin to homicide.

10. From the twelfth century until the seventeenth century, convinced by the anatomy of Galen and the philosophy of Aristotle, most Christians in the West came to believe that the spiritual soul was infused forty days or so after conception. Nevertheless, during this whole period, there was no suggestion that the unformed foetus was expendable. The unformed foetus continued to be regarded as sacrosanct. It was never seen as legitimate to harm the embryo directly, only incidentally, and only then in the course of trying to save the mother's life.¹⁸

11. The first theologian to suggest explicitly that the embryo had a graded moral status, that is, a relative value that could be outweighed by other values, was Thomas Sanchez in the late sixteenth century.¹⁹ He and other 'laxists' proposed that a woman could legitimately abort an unformed foetus to avoid public shame of a kind which might endanger her life. This suggestion constituted a radical departure from the thinking of previous moralists such as St Raymond of Penafort or St Antoninus of Florence and provoked the criticism of Sanchez's contemporaries, the scandal of the faithful and, in 1679, the condemnation of Pope Innocent XI.²⁰

12. Between this discredited school of the seventeenth century and the re-emergence of similar views in the late twentieth century, there is no significant or continuous strand of Christian tradition – either in the Catholic or the Reformed churches. The most balanced and representative Catholic moralist of the eighteenth century, St Alphonsus Liguori, allowed no exception to the prohibition on 'direct' (intentional) abortion and allowed 'indirect' (unintentional) abortion only in the context of attempting to save the mother's life. In a statement reminiscent of St Basil he declared that the distinction of formed and unformed made no practical difference.²¹ He is the last great moralist to consider the inviolability of the 'unformed' foetus as such, because, during his time, the prevailing medical opinion moved away from the distinction between formed and unformed. In

his later writing (on baptism) St Alphonsus also became sympathetic to the view that the spiritual soul was infused at conception.²²

13. From the seventeenth century the classical biology of Galen and Aristotle had begun to be displaced by a variety of other theories. One, in particular, gave a more equal role to the female and male elements in generation, and therefore increased the significance of ‘fertilization’, that is, the moment of the union of male and female gametes.²³ This theory was finally confirmed in 1827 with the first observation of a mammalian ovum under the microscope, a scientific development which informed the decision of Pius IX in 1869 to abolish the distinction in legal penalties between early and late abortions. By the mid-nineteenth century the prevailing opinion, among both Reformed and Roman Catholic Christians, was that, most probably, the spiritual soul was infused at conception.²⁴

14. In asserting that ‘life must be protected with the utmost care from conception’²⁵ and rejecting ‘the killing of a life already conceived’²⁶, twentieth century Christians were in continuity with the belief of the Early Church that all human life is sacred from conception. This had remained a constant feature of Christian tradition despite a variety of beliefs about the origin of the soul and a similar variety in what legal penalties were thought appropriate for early or late abortion.²⁷

15. In the tradition, the only precedents for attributing a ‘graded status and protection’ to the embryo can be found in the speculations of some of the Roman Catholic laxists of the seventeenth century and the re-emergence of similar and even more radical views among some Protestant and Roman Catholic writers in the late twentieth century.²⁸ The great weight of the tradition, East and West, Orthodox, Catholic and Reformed, from the apostolic age until the twentieth century, is firmly against any sacrifice or destructive use of the early human embryo save, perhaps, ‘at the dictate of strict and undeniable medical necessity’;²⁹ that is, in the context of seeking to save the mother’s life.

Some Theological Principles

16. For a Christian, the question of the status of the human embryo is directly related to the mystery of creation. In the context of the creation of things ‘seen and unseen’³⁰ the human being appears as the microcosm, reflecting in the unity of a single creature both spiritual and corporeal realities.³¹ The beginning of each human being is therefore a reflection of the coming to be of the world as a whole. It reveals the creative act of God bringing about the reality of this person (of me), in an analogous way to the creation of the entire cosmos. There is a mystery involved in the existence of each person.

17. Often in the Scriptures the forming of the child in the womb is described in ways that echo the formation of Adam from the dust of the earth.³² This is why Psalm 139 describes the child in the womb as being formed ‘in the depths of the earth’.³³ The formation of the human embryo is archetypal of the mysterious works of God.³⁴ A passage that is significant for uncovering the connections between Genesis and embryogenesis is found in the deuterocanonical book of

Maccabees, in a mother's speech to her son:

I do not know how you came into being in my womb. It was not I who gave you life and breath, nor I who set in order the elements within each of you. Therefore the Creator of the world, who shaped the beginning of man and devised the origin of all things, will in his mercy give life and breath back to you again.³⁵

18. The book of Genesis marks out human beings from other creatures. Only human beings – male and female – are described as being made in 'the image and likeness of God'; only they are given dominion over creation; only Adam is portrayed as receiving life from God's breath and as naming the animals.³⁶ However, at the same time, it is clear that human beings are earthly creatures, made on the same day as other land animals, made from the dust of the earth, not descending out of heaven. Because they are earthly, human beings are mortal: 'Dust you are and to dust you will return'.³⁷ There is no sign in these stories of the dualism of body and soul that is found in Pythagoras or in the ancient mystery religions. The soul is not a splinter of God that is trapped in a body. The soul is the natural life of the body, given by the life-giving God.

19. It was because of the Jewish conviction of the unity of the human being that, when hope was kindled within Israel for a life beyond the grave, it was expressed as a hope for the resurrection of the body.³⁸ The disembodied life of the shades in the gloomy underworld of Sheol³⁹ was not an image of hope but an image of death. The resurrection of the body was presented as the triumph of the Lord over death, the vindication of those who had been faithful to the Lord, even unto death,⁴⁰ and for Christians was given new meaning and foundation in the resurrection of Jesus.⁴¹ The story of the empty tomb and the description of the resurrection appearances emphasized the bodily reality of the life of the resurrection. Jesus walked with the disciples and ate with them and invited them to touch his hands and his feet. 'Handle me and see that I am no bodiless phantom.'⁴²

20. The Fathers of the Church attempted to do justice to the scriptural truths of the bodily resurrection and of the mysterious parallel between the origin of each human individual and the origin of the entire cosmos. From different competing beliefs, the doctrine which prevailed was that the spiritual soul – what makes each individual human person unique, and gives each one the ability to know and to love – is neither generated by the parents nor does it pre-exist the body, but it is created directly by God with the coming to be of each human being.⁴³ Throughout the history of the Church, Christians have used the language of 'body and soul' to understand the human being, but in such a way as not to deny the unity of God's creation. In the fourteenth century, in an attempt to defend this human unity, the Ecumenical Council of Vienne defined the doctrine that the soul was 'the form of the body' (*forma corporis*),⁴⁴ by which it meant: what gives life to the body. Christians held, and continue to hold, that the spiritual soul is present from the moment there is a living human body⁴⁵ until the time that body dies.

21. The Scriptures also emphasize how God's provident care for each person is present before he or she is ever aware of it. The Lord called his prophets by name before they were born: 'The Lord called me from the womb, from the body of my mother he named my name.'⁴⁶ 'Before I formed you in the womb I knew you, and before you were born I consecrated you.'⁴⁷ It is possible to understand these passages as referring not only to the prophets, but to each one of God's children. The Lord calls each one from the womb, forms each one, gives each one into the care of his or her mother, and will not abandon his creature in times of trial.⁴⁸

For it was you who created my being,
knit me together in my mother's womb.
I thank you for the wonder of my being,
for the wonders of all your creation.

Already you knew my soul
my body held no secret from you
when I was being fashioned in secret
and moulded in the depths of the earth.⁴⁹

22. Such passages do not establish when human life begins, but they establish God's involvement and care from the very beginning, a concern that is not diminished by our lack of awareness of him.

23. 'In reality it is only in the mystery of the Word made flesh that the mystery of the human being truly becomes clear.'⁵⁰ To illuminate the mystery of the origin of human persons it seems reasonable to turn to the mystery of the Incarnation. In order to do justice to the infancy narratives, especially that of the Gospel of Luke, one must believe that, from the moment of the Annunciation to Mary of Jesus's birth, Mary conceived by the Holy Spirit and carried the Saviour in her womb. This is emphasized by the story of the Visitation – where one pregnant mother greets another, and the unborn John bears witness to the unborn Jesus.

24. The Incarnation was revealed to the world at the Nativity when Jesus was born, but the Incarnation began at the Annunciation, when the Word took flesh and came to dwell within the womb of the Virgin. This understanding of the text of Scripture is confirmed by the witness of the Fathers of the Church,⁵¹ by the development of the feast of the Annunciation and, not least, by the solemn declaration of the Fourth Ecumenical Council, the Council of Chalcedon (451 CE):

We profess the holy Virgin to be Mother of God, for God the Word became flesh and was made man and from the moment of conception united himself to the temple he had taken from her.⁵²

25. In the Eastern Church, St Maximus the Confessor turned to the Annunciation⁵³ to illuminate the intractable problem of when human life begins. Jesus is said to have been like to us in all things but sin⁵⁴ and Christians believe that Jesus was a human being from the moment of conception: therefore, it seems, every human being must come into existence at the moment of conception.

26. In the West, Christians were more strongly influenced by the biology of Galen and the philosophy of Aristotle and held that the spiritual soul was only infused at the moment when the body was perfectly formed, forty days after conception. The great medieval Christian thinkers all held that the conception of Jesus was an exception, and that he was unlike us in the womb.⁵⁵ This was an unhappy conclusion, forced upon theologians by an erroneous biology. Is it really sustainable to argue that Jesus was unlike us in his humanity? A more adequate vision was supplied by the seventeenth century Anglican theologian Lancelot Andrewes, in a sermon on the Nativity:

For our conception being the root as it were, the very ground sill of our nature; that he might go to the root and repair our nature from the very foundation, thither he went.⁵⁶

27. The words of this sermon bring our attention, not only to the work of the Redeemer from the beginning of his life, but also to our need for redemption from beginning of our lives. It was this need that David recognized in himself according to the psalm, 'Behold, I was brought forth in iniquity, and in sin did my mother conceive me,'⁵⁷ where these words refer not to his mother's sinfulness, but to the complete extent of his own sinfulness. This psalm and the Eden story were given a deeper sense by Christians in light of the redemption accomplished by Jesus. As Jesus had achieved a total transformation, so all human beings were in need of a total transformation: total in the sense of including their very origins. In his letter to the Romans, St Paul drew out the parallel between Adam and Christ and so asserted the involvement of all human beings in Adam's sin.⁵⁸

28. This association of sin and conception is also shown within the Roman Catholic tradition in the development of the doctrine of Mary's complete redemption from sin. The doctrine of the Immaculate Conception appears to imply that Mary was receptive to grace from the moment of her conception in her mother's womb. This Roman Catholic argument is simply an expression of a more widely accepted argument from the Christian doctrine of original sin. Both arguments express the general truth that each and every human being needs the help of God from the very first – which is constantly and, it seems, inevitably expressed as 'from the first moment of his or her conception'.

29. The Christian churches teach not that the early embryo is certainly a person, but that the embryo should always be treated as if it were a person.⁵⁹ This is not only a case of giving the embryo the benefit of the doubt – refraining from what might be the killing of an innocent person. It is also that the ambiguity in the appearance of the embryo has never been thought of as taking the embryo out of the realm of the human, the God-made and the holy. When Pope John Paul II asks, 'how can a human individual not be a human person?'⁶⁰ he is not denying the mysteriousness of the implied answer. Christians recognize the embryo to be sacred precisely because it is inseparable from the mystery of the creation of the human person by God.⁶¹ What is clear, at the very least, is that the embryo is 'a living thing – under the care of God'.⁶²

30. The following, then, are five principal considerations which should inform any Christian evaluation of the moral status of the human embryo:

- I. Though penalties have varied, the Christian tradition has always extended the principle of the sacredness of human life to the very beginning of each human being, and never allowed the deliberate destruction of the fruit of conception.
- II. The origin of each human being is not only a work of nature but is a special work of God in which God is involved from the very beginning.
- III. The Christian doctrine of the soul is not dualistic but requires one to believe that, where there is a living human individual, there is a spiritual soul.
- IV. Each human being is called and consecrated by God in the womb from the first moment of his or her existence, before he or she becomes aware of it. Traditionally, Christians have expressed the human need for redemption as extending from the moment of conception.
- V. Jesus, who reveals to Christians what it is to be human, was a human individual from the moment of his conception, celebrated on the feast of the Annunciation, nine months before the feast of Christmas.

31. Jesus reveals the humanity especially of the needy and those who have been overlooked. Concern over the fate of embryos destined for research is inspired, not only by the narratives of the Annunciation, the Visitation and the Nativity, but also by the parable of the good Samaritan and the parable of the sheep and the goats: 'Just as you did it to one of the least of these little ones you did it to me.'⁶³ The aim of an ethically serious amendment to the 1990 Act should be to regulate the procedures in fertility treatment and non-destructive medical research on human embryos such that these human individuals are adequately protected. **E&M**

References

¹ Hansard Vol.62 1, No.16, col.35.37.

² In its 'Call for Evidence'.

³ Cf. G. R. Dunstan 'The Human Embryo in the Western Moral Tradition' in G.R. Dunstan and M.J. Sellers *The Status of the Human Embryo*, London: King Edward's Hospital Fund, 1988, p. 55.

⁴ *Commentary on the Sentences*, book IV, d. 31 exp. text.

⁵ *Didache 2.2; Epistle of Barnabas 19.5.*

⁶ See also *Apocalypse of Peter 2.26*; *St Clement of Alexandria Teacher II.10.96*; *Athenagoras Legatio 35*; *Municius Felix Octavius 30.2*; *Tertullian Apology 9.4-8*; *Hippolytus Refutation of All Heresies 9.7.*

⁷ *St Clement Prophetic Eclogues 41, 48-49*, cf. M.J. Gorman, *Abortion and the Early Church: Christian, Jewish & Pagan Attitudes in the Greco-Roman World* (Dovers Grove, Ill.: InterVarsity Press, 1982) p. 52; *Tertullian On the Soul 27*. 'Now we allow that life begins with conception, because we contend that the soul also begins from conception; life taking its commencement at the same moment and place that the soul does.'

⁸ 'Some Current Ethical Issues Concerning the Treatment of the Pre-Implantation Human Embryo', a briefing paper prepared by the General Synod Board for Social Responsibility; cf. G. Bonner, 'Abortion and Early Christian Thought' in J.H. Channer ed. *Abortion and the Sanctity of Human Life*, (Exeter: The Paternoster Press, 1985); M.J. Gorman 'Abortion and the Early Church' at <http://www.incommunion.org/gorman.htm>; L. Crutchfield 'The Early Church Fathers and Abortion' at <http://www.all.org/issues/ab99x.htm>.

- ⁹ Elvira (305 CE) canons 53, 65; Ancyra (314 CE) 21; Lerida (524 CE) 2; Braga (527 CE) 77; Trullo (692 CE) 91; Mainz (847 CE) 21; cf. S. Troianos 'The Embryo in Byzantine Canon Law' <http://business.hol.gr/~bio/allfile/HTML/PUBS/VOL3/ha-trx.htm>
- ¹⁰ Basil *Epistle* 118.2.
- ¹¹ St Gregory of Nyssa, *On the Making of Man* 29; cf. St Maximus the Confessor II, *Ambigua* 42.
- ¹² Lactantius *De Opificio Dei* 12; Ambrosiaster *QQ Veteris et Novi Testamenti* 23.
- ¹³ *On the History of Animals* VII.3, 4:583.
- ¹⁴ St Jerome *On Ecclesiastes* 2.5; *Apologia adversus Rufinum* 2.8; St Augustine *Enchiridion* 85, *On Exodus* 2.80; though each of these sometimes state that the foetus is not a man (homo) until he is fully formed.
- ¹⁵ St Augustine *On Marriage and Concupiscence* 1.15; St Ambrose *Hexameron* 5.18; St Jerome *Epistle* 22, 13; St John Chrysostom, *Homily 24 on the Epistle to the Romans*; Caesarius of Arles, *Sermons* 9, 91.
- ¹⁶ J. Connery, *J. Abortion: The Development of the Roman Catholic Perspective*, (Chicago: Loyola University Press, 1977), p. 306, cf. G. Grisez, *Abortion: the Myths the Realities and the Arguments*, (New York: Corpus Books, 1970); J.T. Noonan 'An Almost Absolute Value in History' in J.T. Noonan ed. *The Morality of Abortion: Legal and Historical Perspectives* (Cambridge, Mass.: Harvard University Press, 1970).
- ¹⁷ Bull of 1591, Sedes Apostolica cf. Connery p. 148; Grisez pp. 167–168; Noonan p. 33.
- ¹⁸ Connery pp.114–134; Grisez pp. 166–168; Noonan pp. 26–27.
- ¹⁹ Connery pp. 134–141; Grisez pp. 168–169; Noonan pp. 27–31.
- ²⁰ Denzinger-Schoenmetzer, *Enchiridion Symbolorum* (Rome: Herder, 1965), 2134–2135 cf. Connery p. 189; Grisez p. 174; Noonan p. 34.
- ²¹ *Theologia Moralis III*, 4.1, n. 394.
- ²² *Theologia Moralis VI*, 1.1, dubia 4, n. 124 cf. Connery p. 210; Grisez p. 176; Noonan p. 31.
- ²³ The theory developed by Fienus (1567–1631), Zacchia (1584–1659) and Cangiamila (1701–1763) cf. Connery ch. 10–11; Grisez pp. 170–172; Noonan pp. 34–40.
- ²⁴ This has also become the prevailing opinion among followers of St Thomas Aquinas, cf. B. Ashley 'A Critique of the Theory of Delayed Hominization' in McCarthy D., Moraczewski, A., *Evaluation of Fetal Experimentation: An Interdisciplinary Study* (St Louis: Pope John Center, 1976); B. Ashley and A. Moraczewski 'Cloning, Aquinas, and the Embryonic Person' *The National Catholic Bioethics Quarterly* 1 (2000), 189–201; S. Heaney, 'Aquinas and the Presence of the Human Rational Soul in the Early Embryo' *The Thomist* 56, (1992) 1; M. Johnston 'Delayed Hominization' *Theological Studies* 56 (1995); R. Joyce 'The Human Zygote Is a Person' *The New Scholasticism* 51 (1975).
- ²⁵ Second Vatican Council *Gaudium et Spes* 51.
- ²⁶ Lambeth Conference 1958 report 'The Family in Contemporary Society' in *What the Bishops Have Said about Marriage* (London: SPCK, 1968), p. 17.
- ²⁷ 'The Church has always held in regard to the morality of abortion that it is a serious sin to destroy a fetus at any stage of development. However, as a juridical norm in the determination of penalties against abortion, the Church at various times did accept the distinction between a formed and a non-formed, an animated and a nonanimated fetus.' R. J. Huser *The Crime of Abortion in Canon Law* (Washington D.C.: Catholic Univ. Press, 1942) preliminary note.
- ²⁸ An ill-tempered but perceptive critique of some recent attempts to reread the Christian tradition on abortion as 'relatively tolerant' to abortion of an unformed foetus is D. DeMarco 'The Roman Catholic Church and Abortion: An Historical Perspective' in *Homiletic & Pastoral Review* (July 1984); 59–66 and (August–September); 68–76; cf. <http://www.petersnet.net/research/retrieve.cfm?RecNum=3362>
- ²⁹ Lambeth Conference 1958 report 'The Family in Contemporary Society' in *What the Bishops Have Said about Marriage* (London: SPCK, 1968) p. 17.
- ³⁰ Creed of Nicaea, N. Tanner, *Decrees of the Ecumenical Councils* (London: Sheed & Ward, 1990) I. p. 5.
- ³¹ Gregory of Nyssa, *On the Making of Man*; John Damascene, *Exposition of the Orthodox Faith* II.12; *Creed of Lateran IV*, Tanner p. 230.

- ³² Job 10.8–12, Ecclesiastes 11.5, Ezekiel 37.7–10, (cf. Wisdom 7.1, 15.10–11).
- ³³ Psalm 139.15.
- ³⁴ Psalm 139.15, Ecclesiastes 11.5.
- ³⁵ II Maccabees 7.22–23.
- ³⁶ Genesis 1.26–28; 2.7; 2.19–20.
- ³⁷ Genesis 3.19.
- ³⁸ Daniel 12.2–3; cf. Ezekiel 37.1–14; John 11.24.
- ³⁹ Job 10.21–22; Psalms 6.5, 88.10, 115.17; Ecclesiastes 9.3–6 cf. Homer, *Odyssey* XI. 485–491.
- ⁴⁰ Isaiah 26.19; Hosea 13.14; (cf. II Maccabees 7.9–14).
- ⁴¹ John 11.1–44.
- ⁴² Ignatius of Antioch, *Smyrneans* 3 cf. Luke 24:13–51; John 20.19–29.
- ⁴³ John Damascene, Peter Lombard, St Thomas Aquinas, *Summa Theologiae* Ia Q. 118 art.2–3; Pius XII, *Humani Generis*.
- ⁴⁴ Council of Vienne, *On the Catholic Faith*, Tanner p. 361.
- ⁴⁵ The debate about the timing of the ‘infusion of the soul’ was a debate about when the living human body came into existence.
- ⁴⁶ Isaiah 49.1.
- ⁴⁷ Jeremiah 1.5.
- ⁴⁸ Psalm 22.10–11; Psalm 71.6; Job 10.8–12.
- ⁴⁹ Psalm 139.
- ⁵⁰ Second Vatican Council, *Gaudium et Spes* 22.
- ⁵¹ J. Seward, *The Redeemer in the Womb* (San Francisco: Ignatius, 1993) ch. 3.
- ⁵² *Epistle of St Cyril to John of Antioch*, Tanner p. 70.
- ⁵³ II Ambigua 42.
- ⁵⁴ Hebrews 4.15.
- ⁵⁵ Cf. Thomas Aquinas, *Summa Theologiae* IIIa Q.6 art 4.
- ⁵⁶ Sermon IX on the Nativity in J. Seward, p. 100.
- ⁵⁷ Psalm 51.5.
- ⁵⁸ Romans 5.12–21.
- ⁵⁹ For example, ‘The human being is to be respected and treated as a person from the moment of conception’ Pope John Paul II *Evangelium Vitae* 60, emphasis added.
- ⁶⁰ *Ibid.*
- ⁶¹ Cf. O. O’Donovan, *Begotten or made?* (Oxford: Clarendon Press, 1984) ch. 4.
- ⁶² Athenagoras, *Legatio* 35.
- ⁶³ Matthew 25.40.

TAKING ABORTION SERIOUSLY: A PHILOSOPHICAL CRITIQUE OF THE NEW ANTI-ABORTION RHETORICAL SHIFT

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Since its genesis in the mid-1960s, the movement against abortion rights (or the “pro-life” movement) has made its case in the public square as well as the courts by emphasizing the humanity of the fetus.¹ Its leaders, both popular and academic,² have maintained that if the fetus³ is a member of the human community, then all the moral obligations and rights that apply to other members of the human community apply to the fetus as well. In order to establish the first half of this conditional premise, pro-lifers have made a case for the fetus’s humanity, arguing that the insights of science combined with philosophical reflection lead inexorably to the conclusion that the fetus is a human person.⁴ Pro-lifers then argue that our legal framework ought to reflect that conclusion by protecting the fetus from unjust harm, which would include, among other things, a prohibition of almost all abortions.⁵

Recently, however, some pro-life leaders have questioned this strategy.⁶ They maintain that the humanity of the fetus and the immorality of abortion are not really in dispute among a vast majority of the American populace, whether one’s self-description is pro-life, pro-choice, or somewhere in-between.⁷ Given that, they suggest that the pro-life movement change its rhetorical strategy: instead of merely calling for society to fulfill its moral obligation to protect prenatal persons, the pro-life movement should stress the alleged harm abortion does to women, and for that reason, offer to meet the material and spiritual needs of the pregnant woman who sees abortion as an evil, though necessary, alternative. This shift, proponents believe, will result not only in making abortion rare, but also in making American culture more pro-life.⁸

I will argue that this new rhetorical strategy (NRS) is flawed in at least three ways: (1) its supporters hastily interpret the public’s “moral” condemnation of abortion as consistent with objective morality⁹ and a pro-life view of the fetus; (2) it may nurture and sustain the moral presuppositions that pro-lifers typically have argued allow for abortion; and (3) it rests on an interpretation of social science data that can be challenged.

None of my comments, however, should be interpreted as a discouragement or criticism of works of mercy performed by those intending to ease the burden of women with unplanned pregnancies. These works should be commended and encouraged. My concern in this essay is with those activists who suggest that such works replace, rather than merely supplement, moral argument and ethical justification.

Because this critique of NRS is philosophical, it will focus on the veracity of premises, the validity of inferences as well as the coherence of conceptual claims of proponents of NRS. In addition, this critique should be seen as largely intra-mural. That is, since its focus is on a rhetorical strategy whose proponents believe will best change the minds and hearts of their fellow citizens to think more pro-life, my comments and criticisms presuppose the correctness of this goal for the sake of argument. Although the moral and legal question of abortion is an appropriate topic for scholarly debate, it is not the purpose of this paper to take a moral or legal position on abortion qua abortion.

Polling data have consistently shown that a vast majority of people see abortion as wrong, even morally wrong, and they often describe it that way, using words and phrases like “tragic,” “a difficult dilemma,” “something I would never do,” and “a horrible choice.” David Reardon, an NRS proponent, points out:

[N]early 80 percent of the public will now admit that abortion involves the destruction of a human life, even though many in this group still believe abortion should be legal. In fact, studies show that at least 70 percent of aborting women believe what they are doing is morally wrong, or at least deviant behavior.¹⁰

Nevertheless, both in practice and public discourse many relegate abortion to a question of personal preference, something they do not do when it comes to behaviors they consider serious moral wrongs, such as spousal and child abuse, torture, and human slavery.¹¹ For example, imagine the public’s reaction to a politician who said the following: “I am ‘personally opposed’ to owning a slave and torturing my spouse but if someone thought it consistent with his ‘deeply held religious beliefs’ to engage in such behaviors it would be wrong for me to try to force my beliefs on that person.” A politician having said that would be considered a moral monster. Yet, such language is perfectly acceptable when discussing abortion: “I am ‘personally opposed’ to abortion but if someone thought it consistent with her ‘deeply held religious beliefs’ to have an abortion it would be wrong for me to try to force my beliefs on that person.” It is clear that even though a vast majority of Americans see abortion as morally wrong and believe that it is the taking of a human life, it is not clear that many in that majority actually consider it a serious moral wrong.

The New Anti-Abortion Strategy: Presentation and Critique

It seems, then, that until the American populace judges abortion as a serious moral wrong, rather than as a mere moral wrong, their opinion on the legal status of abortion will not likely shift in a pro-life direction.¹² Yet, supporters of NRS maintain that their strategy can make abortion rare and thus shift public opinion without directly addressing the question of whether abortion is a serious moral wrong.

A. NRS and the Humanity of the Fetus

Frederica Mathewes-Green, a proponent of NRS, argues: “Pro-lifers will not be able to break through this deadlock by stressing the humanity of the unborn...[T]hat is a question nobody is asking. But there is a question they are asking. It is, ‘How could we live without it?’ The problem is not moral but practical: in this wrecked, off-center world, where women are expected simultaneously to be sexually available and to maintain careers, unplanned pregnancies seem both inevitable and catastrophic.”¹³

But if Mathewes-Green is correct about people’s view of the fetus (and there is good reason to believe she is not correct), then far from demonstrating her point, she has shown us that those who support abortion rights and yet concede the full humanity of the fetus and the moral wrongness of abortion are either sociopaths (i.e., they willingly and without conscience permit and sometimes engage in what they know to be a serious moral wrong), morally untutored (i.e., the pro-life movement has not carefully explained the logic of conceding the full humanity of the fetus), or do not really appreciate the logical problem of asserting that one has a moral right (i.e., abortion is morally permissible) to do a moral wrong (i.e., abortion is morally impermissible).¹⁴ But this is as far away from a practical problem as one could imagine. A practical problem is something like this: how can we make ends meet on only one paycheck. A practical problem is not: if only society’s expectations were modified, I would not have to kill my unborn offspring. This is a deeply moral problem that reveals something about a person’s character. After all, even if NRS results in reducing the number of abortions (and there is no reason to suppose that it would), it may have the unfortunate consequence of sustaining and perhaps increasing the number of people who think that unless their needs are pacified they are perfectly justified in performing homicide on those members of the human community, who pro-lifers believe, are the most vulnerable of our population. It is difficult to imagine that any reflective pro-lifer would think society would be morally better off in such a state of affairs.

Relying on a study commissioned by the Caring Foundation, a pro-life group that produces television spots that try to address the concerns of pregnant women, NRS defender Paul Swope writes:

When a woman faces an unplanned pregnancy, her main question is not “Is this a baby?” – with the assumed consequence that if she knows it to be so she will choose life. Women know, though often at the subconscious level, that the fetus is human, and that it will be killed by abortion. But that is the price a woman in that situation is willing to pay in her desperate struggle for what she believes to be her very survival. Emphasis on babies, whether dismembered fetuses or happy newborns, will tend to deepen the woman’s sense of denial, isolation, and despair, the very emotions that will lead her to choose abortion.¹⁵

Her central, perhaps subconscious, question is rather, “How can I preserve my own life?” The pro-life movement must address her side of the equation, and do so in a compassionate manner that affirms her own inner convictions. Without stigmatizing or condemning, pro-lifers must help a woman to reevaluate what she perceives the three “evils” before her.¹⁶

Of course, all that Swope says about women considering abortion can also be said of Susan Smith, the South Carolina woman who, in an attempt to please a boyfriend who did not want children, plunged her car into a lake with both her two young boys buckled in. Perhaps she is now reflecting in prison: “That is the price in that situation I was willing to pay in my desperate struggle for what I believed to be my very survival.” Thus, if one were to apply Swope’s analysis of abortion to infanticide, one would have to conclude that if there were less condemning and stigmatizing of parents who kill their infants, there would be fewer Susan Smiths. However, if Swope is mistaken about what women contemplating abortion think of the moral status of their fetuses, then there is no analogy.

The study cited by Swope “suggests that women do not see any ‘good’ resulting from unplanned pregnancy. Instead they must weigh what they perceive as three ‘evils,’ namely, motherhood, adoption, and abortion.”¹⁷ But Swope’s inference is hastily drawn, for he does not entertain the possibility that the reason why these women choose only to kill their fetuses (if they choose to abort) rather than their already born children, if they have any, suggests that he and Mathewes-Green are mistaken about “the question nobody is asking” After all, if the pregnant woman thought of herself as a mother while contemplating pregnancy termination, rather than seeing motherhood like she sees adoption or abortion (which Swope himself admits is the case), a state of affairs that may or may not occur in the future, perhaps abortions would be as rare as Susan Smith-type occurrences. But they are not. Thus, it seems reasonable to infer that NRS supporters are mistaken. That is to say, pregnant women seeking abortions generally do not see their fetuses on the same moral plane as they see either themselves or their already born children.

B. Social Science or Moral Philosophy?

One can question whether the research done by NRS proponents are examples of good social science, and whether the inferences they draw from these data are warranted.

In her Real Choices Project, Mathewes-Green set out to discover the practical reasons why women had abortions, then based on those findings, she believes, pro-lifers can then try to meet the needs of women in crisis pregnancies so that the number of abortions can be reduced. The project collected its data from post-abortion listening groups as well as a survey distributed to 1,860 pro-life pregnancy centers. Pro-choice groups were invited but declined to participate. Only 10 percent of the surveys were completed and returned.¹⁸

It is doubtful whether such a study will result in accurate information about most women who have abortions. First, the surveys were distributed to pro-life pregnancy centers, institutions whose clients may not be representative of all women who receive abortions. Second, the women who attended the listening groups were most likely more hurt and more highly motivated to share their experiences than those women who had abortions but chose not to attend such groups because they may not have suffered as significantly (or at all) in comparison to the participants.

Swope confidently infers from the Caring Foundation study that “the pro-life movement’s own self-chosen slogans and educational presentations have tended to exacerbate the problem, as they focus almost exclusively on the unborn child, not the mother. This tends to build resentment, not sympathy, particularly among women of child-bearing age.”¹⁹ Swope attempts to justify this ambitious conclusion by appealing to both the data that resulted from this study as well as one of the study’s objectives. Of the latter, Swope writes:

One objective of the research was to answer a question that has baffled pro-life activists for some time. How can women, and the public in general, be comfortable with being against abortion personally but in favor of keeping it legal? Because pro-lifers find it morally obvious that one cannot simultaneously hold that “abortion is killing” and “abortion should be legal,” they have tended to assume that people need only be shown more clearly that the fetus is a baby. They assume that if the humanity of the unborn is understood, the consequent moral imperative, “killing a baby is wrong,” will naturally follow, and women will choose life for their unborn children. This orientation has framed much of the argument by pro-lifers for over two decades, with frustratingly little impact.²⁰

Several problems with this objective come to mind. (1) The pro-life argument is not that abortion is wrong because it kills a baby, but rather, abortion is morally wrong because it kills a human person who is not yet a baby but still a fully human person. For the pro-lifer, the term “baby” is like the terms “adult” and “adolescent.” It merely labels a particular stage in human development. If Swope is right about the pro-life argument, then the argument itself, ironically, may be the reason it has apparently not worked: since it is obvious to most people that a fetus is not a baby (a label we ordinarily assign to newborns not preborns), a woman seeking an abortion, thanks to this “pro-life” argument, can have the abortion without believing she is killing a bonafide member of the human community. She likely knows that abortion is killing something, but thanks to a confused premise of this “pro-life” argument, she knows what is being killed is not yet a baby, because she knows on independent grounds that a fetus is not a baby (just as she knows an infant is not an adult). For the term “baby” is typically associated with a postnatal human being who is named, cuddled, brought home and sometimes christened, none of which is experienced by the typical fetus. Thus, in most people’s way of looking at things, a fetus is not a baby. (2) It is unclear how Swope knows that the traditional pro-life argument has had little

impact. It may be that because of the cultural, legal, and moral condition with which the pro-life movement has had to work, it has done remarkably well, and its impact has been extraordinary. Perhaps the presence and activism of the pro-life movement has kept certain segments of the public (e.g., evangelicals, conservative Roman Catholics) largely pro-life, and for that reason, the movement has a fighting chance to change the minds of people over the next 40 to 50 years. Swope does not have counterfactual knowledge of how the world would have been if the pro-life movement had not emphasized fetal humanity from its genesis. Swope cannot, therefore, possibly know what he claims he knows.

Swope cites data that apparently show a shift in abortion attitudes in specific geographical locations throughout the United States after the Caring Foundation's television ads were broadcast (These television ads attempt to address the "three evils" cited by Swope by trying to persuade viewers that not having an abortion is in the pregnant woman's self-interest.²¹). Although an analysis of the accuracy of the data is important, I want to focus on Swope's claim that he can infer from the data that the population surveyed are becoming more pro-life.

Swope speaks throughout his essay about those interviewed having a "pro-life sentiment," holding a "pro-life position," and moving in a "pro-life direction." Yet, he never defines precisely what these phrases mean and how one could know that someone's beliefs are consistent with them. Consider, for example, the following statements:

- a. Abortion is immoral
- b. Abortion should be illegal
- c. The fetus is as much a human person as an ordinary adult or infant.
- d. The fetus is human.
- e. Abortion is generally not good for women.

Suppose someone provided the above answers to a Caring Foundation pollster inquiring about that person's moral and legal view of abortion. One interpretation of these answers is that they are confirmation of a "pro-life sentiment." Yet, they are all consistent with some version of a non-pro-life viewpoint. As evidence of this, consider a'-e' in which each statement in a-e is coupled with a non-pro-life sentiment (in bold lettering) that is consistent with the apparent pro-life statement with which it is paired:

- a' Abortion is immoral, **but it ought to remain legal.**
- b' Abortion should be illegal, **but not because the fetus is a human person, but because it will likely be psychologically harmful to the woman**
- c' The fetus is as much a human person as an ordinary adult or infant, **but that is my personal religious belief and it would be wrong for me to force that belief on others.**
- d' The fetus is human, **but not fully human like an ordinary adult or child who has a right to life. Thus, abortion ought to remain legal.**

- e' Abortion is generally not good for women, **but not because the fetus is a full human person, but because the abortion disrupts something what is natural and good for the expectant mother. Even so, abortion should remain legal.**

Thus, what Swope interprets as a “pro-life sentiment” may not be pro-life at all, for those giving the answers may be judging abortion as bad or wrong under the assumption that moral judgments are merely personal, relative, and subjective, a view that seems to be in ascendancy these days.²² For example, a typical pro-lifer or traditional moralist (which could easily be a supporter of abortion rights)²³ assumes that when a person says “X is morally wrong” he means that “X ought not be done by anyone including myself.” Yet, for the relativist, “X is wrong” may mean “X does not please me” or “X is not something I would do” or “I would prefer that others not do X, but who am I to judge?” In sum, it is nearly impossible for one to interpret a person’s answers as consistent with a “pro-life sentiment” unless one has knowledge of the person’s background beliefs (e.g., Is she a moral relativist?), worldview commitments (e.g., Are all humans persons or do some have more personhood than others?), and/or level of ethical sophistication (i.e., Does she really know what it means to say something is morally wrong? That is, does she understand the logic of morals and apply it consistently?).

There are several general problems with Swope’s defense of NRS. First, perhaps Swope’s approach seems to bring out apparent pro-life sentiments in the populations he studies because the pro-life movement’s historical emphasis on fetal humanity has made Swope’s message much easier to receive. Thus, the impact of the Caring Foundation’s ads may be largely the result of a culture having heard in other venues what Swope thinks has had virtually no impact.

Second, even if Swope’s approach “works” in terms of reducing the number of abortions, it does not follow that the culture is becoming more accepting of the pro-life perspective. That is, Swope’s emphasis on appealing to the pregnant woman’s self-interest to persuade her not to have an abortion may result in nurturing and sustaining a philosophical mindset that is consistent with abortion’s moral permissibility even if abortion may actually become rarer in practice. According to Swope:

Using language and imagery that will attract rather than alienate, the pro-life movement must show that abortion is actually not in a woman’s own self-interest, and that the choice of life offers hope and a positive expanded sense of self.²⁴

Although an appeal to self-interest may persuade some women not to have abortions, it is not clear how the choice not to abort under that pretense is equivalent to moral conversion and intellectual assent to the pro-life perspective. After all, if a 19th-century American slave owner chose to free his kidnapped Africans because he was persuaded to believe that it was not in his self-interest to continue owning them, such an act, though good insofar as sparing the slaves a tremen-

dous indignity, would not be equivalent to the slave owner being converted to the belief that no person by nature is property and thus ought not to be owned by another. It would be, in other words, wrong to conclude on the basis of the slave owner's act of liberation that he had become a converted abolitionist. Since the pro-life position, as we have seen, is based on the belief that fetuses are full members of the human community and ought not to be killed by anyone without justification, being persuaded not to have an abortion would not be equivalent to moral conversion and intellectual assent to the pro-life perspective.

Moreover, there are clearly some cases where abortion may be in the pregnant woman's self-interest.²⁵ Given his emphasis on self-interest, Swope has no principled argument against that sort of abortion. Nurturing an apparently unprincipled self-interested populace does not seem consistent with what pro-life activists would conceive as a pro-life culture, even if it results in fewer abortions. After all, Swope and his allies admit that what is doing much of the moral work in the minds of women contemplating abortion is self-interest. Given that admission, it is not clear why they see that as a character trait to massage rather than as an impulse that needs to be disciplined by the exercise of moral judgment. Since the pro-life position affirms that one ought not to have an abortion in virtually every circumstance even if you judge it to be in your self-interest, it seems counter-intuitive for the defenders of NRS to want to provide a cultural environment hospitable to the moral primacy of self-interest.

Third, Swope (along with Mathewes-Green and Reardon)²⁶ admits that women who have abortions oftentimes rationalize what they are doing. Given that, how can Swope and his allies trust these women to give an adequate self-assessment of their own reasons for having an abortion, when these proponents of NRS admit that these reasons are the result of the rationalized deliberations of self-interested moral agents?²⁷

It seems, then, that the findings of social science, without the resources of moral philosophy, are not an adequate ground on which to base the pro-life cause. At the end of day, it is probably the case, as I noted earlier in this paper, that the proponents of NRS are mistaken about the public's opinion of the fetus. It is likely that many people believe that the fetus is human (in some primitive though incomplete sense), but not fully human; they see abortion as a moral wrong, but not as a serious moral wrong. Ironically, the data cited by Swope, Reardon, and Mathewes-Green²⁸ seem to indicate this as well: a majority of Americans believe abortion is killing as well as morally wrong, yet they believe it should be legal. But this does not tell us whether Americans believe abortion is a serious moral wrong (i.e., unjustified homicide). After all, there are many moral wrongs (e.g., adultery, lying to friends) that many people believe should not be prohibited by law. It is likely that they think the same about abortion.

Conclusion

NRS supporters seem to be saying that the only way to persuade the general public that abortion is a serious moral wrong is for the pro-life movement to show that many women suffer (either psychologically, physically, or both) as the result of the process of choosing as well as having an abortion, and that pro-lifers deeply care about and have compassion for these women.²⁹ Such a strategy may very well result in fewer abortions, but it is not clear that it will result in the cultural change of mind, the intellectual assent and moral conversion, that pro-lifers desire. After all, from a strictly moral point of view, abortion is not a serious moral wrong just because the woman suffers and/or because it is not in her self-interest to have an abortion. For many abortions do not result in gratuitous suffering or harm to the women who have them, and clearly no pro-lifer would want to say that those abortions are morally benign.³⁰ In addition, doing good may require that one suffer more than if one did either evil or no good at all. That is, suffering may or may not accompany the committing of a serious moral wrong, and sometimes suffering accompanies that which is morally obligatory or permissible or has no moral aspect whatsoever. It seems, therefore, that the proponents of NRS confuse “feeling good” with “doing good.” ■&■

References

¹ See the essays by pro-life, pro-choice and moderate thinkers in parts V and VI of Louis P. Pojman and Francis J. Beckwith, eds., *The Abortion Controversy 25 Years After Roe v. Wade: A Reader*, 2nd ed. (Belmont, CA: Wadsworth, 1998)

² See, for example, Randy Alcorn, *Pro-life Answers to Pro-choice Questions* (Eugene, OR: Multnomah, 1992); Hadley Arkes, *First Things: An Inquiry Into the First Principles of Morals and Justice* (Princeton, NJ: Princeton University Press, 1986), chs. 16, 17; Francis J. Beckwith, *Politically Correct Death: Answering the Arguments for Abortion Rights* (Grand Rapids, MI: Baker, 1993); Patrick Lee, *Abortion and Unborn Human Life* (Washington, DC: Catholic University of America Press, 1996); Stephen Schwarz, *The Moral Question of Abortion* (Chicago: Loyola University Press, 1990); and Dr. and Mrs. J.C. Willke, *Abortion: Questions and Answers*, rev. ed. (Cincinnati: Hayes Publishing, 1988).

³ I am using the term “fetus” in the popular sense as synonymous with “unborn.” I am not using it in the technical sense of referring to the last stage in prenatal development after zygote and embryo. In other words, I am using the word fetus to refer to the unborn entity at all stages of its development prior to birth.

⁴ Examples of this approach are Beckwith, *Politically Correct Death*; Lee, *Abortion*; Dianne Nutwell Irving, *Philosophical and Scientific Analysis of the Early Human Embryo* (PhD dissertation, Philosophy Department, Georgetown University, 1991); J.P. Moreland and Scott B. Rae, *Body and Soul* (Downers Grove, IL: InterVarsity Press, 2000); and Schwarz, *The Moral Question of Abortion*.

⁵ There are some who challenge the claim that the nature of the fetus is what is doing, or ought to be doing, the moral work in the disagreement over abortion. (For defenses of this perspective, see Judith Jarvis Thomson, “A Defense of Abortion,” *Philosophy and Public Affairs* 1 [1971]; Frances M. Kamm, *Creation and Abortion: A Study in Moral and Legal Philosophy* [New York: Oxford, 1992]; Eileen McDonagh, *Breaking the Abortion Deadlock: From Choice to Consent* [New York: Oxford, 1996]; Laurence Tribe, *Abortion: The Clash of Absolutes* (New York: Norton, 1990), ch. 6; and David Boonin-Vail, “A Defense of ‘A Defense of Abortion’: On the Responsibility Objection to Thomson’s Argument,” *Ethics* 107.2 [January 1997]. For replies to this perspective, see Francis J. Beckwith, “Personal Bodily Rights, Abortion, and Unplugging the Violinist,” *International Philosophical Quarterly* 32 [1992]; Lee, *Abortion*, chapter 4; Keith Pavlischek, “Abortion Logic and Paternal Responsibilities: One More Look at Judith Thomson’s Argument and a Critique of David Boonin-Vail’s Defense of It,” in *The Abortion Controversy*; and John T. Wilcox, “Nature as Demonic in Thomson’s Defense of Abortion,” *The New Scholasticism* 63 [Autumn 1989]). Although this is an important and influential perspective, it falls outside the scope of this essay. For the focus of this discussion is the pro-life movement and its call for ultimately making most abortions illegal. In order for the pro-life movement to accomplish this, it must directly respond to the conditional challenge put forth by Justice Harry Blackmun in *Roe v. Wade*: “The appellee and certain amici argue that the fetus is a ‘person’ within the language and

meaning of the Fourteenth Amendment. In support of this, they outline at length and in detail the well-known facts of fetal development. If this suggestion of personhood is established, the appellant's case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the Amendment. The appellant conceded as much on reargument. On the other hand, the appellee conceded on reargument that no case could be cited that holds that a fetus is a person within the meaning of the Fourteenth Amendment." (*Roe v. Wade* 410 U.S. 113, 157-58 [1973]). Consequently, the political and legal reality is that fetal personhood is doing all the moral work, even though some moral philosophers and legal and political theorists argue that it does not and/or should not.

⁶ See Paul Swope, "Abortion: A Failure to Communicate," *First Things* 82 (April 1998); Frederic Mathewes-Green, *Real Choices: Offering Practical, Life-Affirming Alternatives to Abortion* (Sisters, OR: Multnomah, 1994); and David C. Reardon, *Making Abortion Rare: A Healing Strategy for a Divided Nation* (Springfield, IL: Acorn Books, 1996).

⁷ I use the labels "pro-life" and "pro-choice" out of courtesy to those who prefer this self-description of their stance on abortion. Although in some contexts they are rhetorically powerful labels, they are not really very informative about either perspective. After all, the pro-choice advocate does not deny that human persons have a right to life. He just believes that this right to life is not extended to fetuses since they are not human persons and/or they are not entitled to the use of the pregnant woman's bodily resources. The pro-life advocate does not deny that people have the liberty to make choices that they believe are in their best interests. She just believes that this liberty does not entail the right to choose abortion since such a choice conflicts with the life, liberty, and interests of another human person (the fetus), which is defenseless, weak, and vulnerable, and has a natural claim upon its parents' care, both pre- and post-natally.

⁸ See Reardon, *Making Abortion Rare*, especially chs. 1-3. Reardon, for example, writes: "The solution to this bad publicity [for the pro-life movement] is to always—ALWAYS—place our arguments for the unborn in the middle of a pro-woman sandwich. Our compassion for the women must be voiced both first and last in all our arguments, and in a manner which shows that our concern for woman is a primary and integral part of our opposition to abortion." (*Ibid.*, 26).

⁹ "Objective morality," the opposite of moral relativism, is the view that there exist unchanging moral truths that apply to all persons, in all times, and in all places. For a critique of moral relativism and a defense of moral objectivism, see Francis J. Beckwith and Gregory P. Koukl, *Relativism: Feet Firmly Planted in Mid-Air* (Grand Rapids, MI: Baker, 1998). For a classic defense of moral relativism, see Ruth Benedict, "A Defense of Moral Relativism," in *Do the Right Thing: A Philosophical Dialogue on the Moral and Social Issues of Our Time*, ed. Francis J. Beckwith (Belmont, CA: Wadsworth, 1996).

¹⁰ Reardon, *Making Abortion Rare*, ix. Although it is not entirely clear from the text, the statistics cited by Reardon seem to come from two sources he sites elsewhere in his book: (1) A 1990 Gallup poll of over 2,000 adults conducted by social scientists James Davison Hunter and Carl Bowman (See James Davison Hunter, *Before the Shoot Starts: Searching for Democracy in America's Cultural War* [New York: The Free Press, 1994], 93), in which they found that "77% of the public believe abortion is the taking of a human life, with 49% equating it with murder. Only 16% claim to believe that abortion is only a 'surgical procedure for removing human tissue.' Even one-third of those who describe themselves as strongly pro-choice concede that abortion is the taking of a human life" (Reardon, *Making Abortion Rare*, 188). (2) A March 19, 1989 Los Angeles Times "poll that found that 65% of those who favor legalized abortion and 74% of those who have had an abortion, believe abortion is morally wrong" (*Ibid.*).

¹¹ A 2000 poll conducted by the *Los Angeles Times* seems to reflect this, even though the numbers seem to be drifting in an anti-abortion direction:

Despite the increasing level of discomfort with the high court's ruling—43% of current survey respondents express support for Roe, compared with 56% in 1991—the poll shows continued opposition to a constitutional ban on abortion.

Individual opinions about abortion are rife with ambivalence, the poll suggests. Many respondents express positions that on their surface appear to contradict each other but, upon exploration, reveal two strong but competing sets of feelings....

More than half of those surveyed say abortion should either be illegal in all circumstances or legal only in cases of rape, incest or when a woman's life is in danger. At the same time, more than two-thirds say that, regardless of their own feelings on the subject, the highly personal decision to obtain an abortion should be left to a woman and her doctor.

Even more striking, while 57% of respondents say they consider abortion to be murder, more than half of that group agree that a woman should have the right to choose an abortion.

(Alissa J. Rubin, "Americans Narrowing Support for Abortion Times Poll: Results reveal a conflicted stance—they think it's murder yet lean toward leaving the choice to women. Still, support increases for limiting the procedure's availability," *Los Angeles Times* [June 18, 2000]. As found at www.latimes.com)

¹² It should be noted that a telephone survey—conducted in mid-1998 by Princeton Survey Research Associates for the pro-choice Center for Gender Equality—shows an apparent pro-life shift in the opinions of American women. According to one author, this poll "found that 53 percent of American women favor prohibiting abortion either altogether or with exceptions for rape, incest, or to save the life of the mother. A lot of people were shocked by this finding. They shouldn't have been. It's consistent with polls pro-life groups have been doing for years; a Christian Coalition poll taken the same week had an identical result." (Ramesh Ponnuru, "Not Dead Yet: The Pro-Life Movement is Winning," *National Review* [17 May 1999], as found at www.nationalreview.com/feature/feature.html). The number of 53 percent is an 8 percent shift away from a pro-choice sentiment in a poll done two years prior. According to Diane Colasanto of Princeton Survey Research Associates, "The changes on abortion are pretty dramatic." The president of the Center for Gender Equity, Faye Wattleton, in a teleconference with reporters, said, "We find some of the findings very disturbing." (From the Jan. 28, 1999 edition of *The Pro-Life Infonet*, an online daily compilation of pro-life news and educational information maintained and edited by Steven Ertelt [ertelt@pro-life.org]. It is sponsored by Women and Children First [www.pro-life.org/wcf].)

¹³ Mathewes-Green, *Real Choices*, 32.

¹⁴ For a philosophical analysis of the question of whether one can have a moral right to do a moral wrong, see Robert P. George, *Making Men Moral: Civil Liberties and Public Morality* (New York: Oxford University Press, 1993), chs. 3 and 4; Arkes, *First Things*, chs. 1-4.

¹⁵ Swope is Northwest Project Director of the Caring Foundation.

¹⁶ Swope, "Abortion: A Failure to Communicate," 33

¹⁷ Swope, "Abortion: A Failure to Communicate," 32

¹⁸ See Mathewes-Green, *Real Choices*, 11-26.

¹⁹ Swope, "Abortion: A Failure to Communicate," 33

²⁰ *Ibid.*, 31-32.

²¹ Here are some examples of these ads (from Swope, "Abortion: A Failure to Communicate," 33-34):

[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 think 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."

[A woman rises from her bed, the clock showing 3:00 am. 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...."

[A young woman sits by a fireplace, facing the camera.] "You know, I used to be pro-choice, and then something happened to me—I had a baby of my own. When I was pregnant I finally realized that all this little kid was trying to do was make it, just make it, just like all of us. So I haven't figured it all out yet, but why, when I wanted the baby, it was my baby, and why I didn't, it was something else? Think about it."

²² Professor Marianne Jennings, director of Arizona State's Lincoln Center for Applied Ethics, writes that "today's college students, trained as moral relativists, are perplexed at best by universal rules. Among Americans in the 18-34 age group, 79% believe that there are no absolute standards in ethics, according to a survey conducted in 1997 by Lutheran Brotherhood, an insurance company. A recent poll of M.B.A. students conducted by a pair of business professors found that 73% would hire a competitor's employee to obtain trade secrets. The same survey found that only 60% of convicted criminals would do so." (Marianne M. Jennings, "Business Students Who Hate Business," *The Wall Street Journal* [3 May 1999]: A22). For a philosophical critique of moral relativism, see Beckwith and Koukl, *Relativism: Feet Firmly Planted in Mid-Air*.

²³ Take, for example, Louis P. Pojman, a defender of abortion rights as well as a strong critic of moral relativism. See Louis P. Pojman, "The Case for Moral Objectivism," in *Do the Right Thing*; and Louis P. Pojman, "Abortion: A Defense of the Personhood Argument," in *The Abortion Controversy*.

²⁴ Swope, "Abortion: A Failure to Communicate," 35

²⁵ See the personal stories of women who believe that legal abortion is a benefit to them and others: Ellen Messer and Kathryn E. May, *Back Rooms: Voices from the Illegal Abortion Era* (Amherst, NY: Prometheus, 1994; reprint of 1988 edition by St. Martin's Press); and Suzanne T. Poppema, MD and Mike Henderson, *Why I Am an Abortion Doctor* (Amherst, NY: Prometheus, 1996) This poses a problem for the NRS supporters: why don't pro-choice stories count against the pro-life position? After all, if persuading people of the wrongness of abortion is contingent upon the personal liability to the aborting woman, on what non-judgmental grounds could the NRS supporters say that an abortion is wrong if the woman and her physician claims that it benefits her?

²⁶ See Mathewes-Green, *Real Choices*, especially 11-60. Reardon calls this rationalization "self-deception." See his essay, "Women Who Abort: Their Reflections on the Unborn," in *The Silent Subject: Reflections on the Unborn in American Culture*, ed. Brad Stetson (Westport, CT: Praeger, 1996), 143-146 As we have seen, Swope admits to this rationalization when he writes that aborting women see before them three evils—motherhood, adoption, and abortion—and oftentimes see the latter as the best way to preserve the self, their highest good. Of course, if Swope is correct that these women "know" that abortion is killing a human person, the aborting woman's reasoning does not result in moral justification for the abortion, but is merely an attempt to rationalize a serious moral wrong. But given that, it is not clear how Swope knows that these women are giving him correct information about their decision making, for they may be again engaging in rationalization while being interviewed by Caring Foundation researchers.

²⁷ In fact, Mathewes-Green dismisses the testimonies of women who have had abortions when those testimonies do not fit her theory. She writes: "Becky says that if she had known the facts of fetal development, of how the baby grows in the womb, that would have stopped her. If she had only known that it was really her baby in there, she would have done anything to give it life. The other women agree vociferously. Knowledge of their unborn children would have weighted to one side of the scale more than anything the other side could present. The pain of years of grief now resolved, these women have bonded with their long-dead children, and the maternal urge to protect one's offspring is strong. They cannot imagine anything standing in the way of bringing those children to life. I am impressed with the light in their eyes, the healing won after such piercing pain, and the wholeness these women now seem to show. But, at the same time, I question whether their viewpoint is prevalent among women at the beginning of the journey, those just now considering abortion. I am skeptical of the belief that the facts of fetal development alone will be convincing in most cases. I wonder whether, given the original desperate situations, it would have even been sufficient for those women who face them now." (Mathewes-Green, *Real Choices*, 42-43). It seems that Mathewes-Green is missing the key moral premise presupposed in her discussion with these women: killing persons without justification is wrong. What Becky is saying is that if she had been fully informed of her unborn child's personhood, she would not have had the abortion. That is, she, like the other women, understands the logic of morals. But if not for the moral premise and what follows for its practical application, the facts of fetal development would have made no difference, just as the facts of human anatomy would have not influenced the decision-making and subsequent, now infamous, actions of O.J. Simpson, Susan Smith, and Ted Bundy.

²⁸ See Swope, "Abortion: A Failure to Communicate," 31-32; Reardon, *Making Abortion Rare*, ch. 2; and Mathewes-Green, *Real Choices*, ch. 1.

²⁹ I am not implying by this that pro-lifers currently lack compassion and/or do not engage in acts of mercy in support of women in crisis pregnancies. I am simply restating the position of NRS supporters.

³⁰ Reardon asserts that "because every abortion hurts a woman, as well as her child, we can defend every unborn child by defending the best interests of the mother, knowing that her best interests are never served by abortion." (Reardon, *Making Abortion Rare*, 13). Putting aside the ambiguity of the term "best interests" (which Reardon interchangeably uses with "self-interest"), it is difficult to know how such a claim could ever be proved empirically or even whether it is prima facie morally correct from a pro-life perspective (e.g., abortion to save the life of the mother, as in the case of an ectopic pregnancy, seems morally unobjectionable to most pro-lifers). Yet, in another context, when chiding the abortion industry, Reardon condemns self-interest: "Abortion counseling is biased by financial self-interest, paternalism, psychological need, and social concerns which extend beyond the personal needs of the individual patient." (Ibid., 79). Evidently, if a woman owns an abortion clinic, her self-interest should be condemned and thwarted so that the good may be pursued (i.e., making sure that abortions do not occur at that clinic), but if that very same woman is contemplating having an abortion at that very same clinic, her self-interest should be nurtured by pro-life counselors so that the good may be pursued (i.e., making sure she does not undergo an abortion at that clinic).

PRENATAL DNR ORDERS AND THE BABY DOE REGULATIONS: CASE REVIEW AND ANALYSIS

ROBERT E. CRANSTON, MD

In a 300-bed hospital in Chicago, the mother of Baby T¹ requested an Ethics Committee consultation, to assist her and her family in making plans. At the time of the consultation, Mrs. T was a 21-year-old pregnant woman (gestational age 23 weeks). This was her fifth pregnancy. She had had three spontaneous miscarriages and one live birth. Her son, age 25 months, had dysmorphic features, and mild developmental delay. Mrs. T was married, and her husband was the (presumed) father of Baby T.

Two perinatologists, specialists in high-risk pregnancy, had independently performed ultrasounds on Baby T, three weeks apart. The studies suggested clubbed hands and feet, an abnormally small and malformed stomach, and poor fetal movement. At the time of the consult, genetic tests performed on fluid obtained from amniocentesis were pending. Mr. T and Mrs. T apparently did not agree as to the planned care for.

Baby T. They discussed and rejected abortion as an option. Mrs. T's wishes seemed to vary depending on which of the family members was present. Mrs. T reported that she and Mr. T argued frequently, and she described him as being immature and impulsive. While there was obvious marital discord, they were legally married, and the two parents were in agreement that they would not abort their child. Mrs. T's mother, Mrs. W, was encouraging abortion, as she felt that her daughter would not be able to adequately care for two handicapped children.

In a preliminary meeting with Mrs. T, she told the hospital ethicist and social worker that she desired aggressive care for her newborn upon delivery, but that her husband did not want their child to be placed on life support. They both agreed that Mrs. W was to have no say about the care of their child. Two days later at the time of the full consultation, Mrs. T, Mrs. W, the social worker, the neonatologist, the obstetrician, the PhD/ethicist, and an MD member of the ethics committee met to discuss concerns. Mr. T was not present. Mrs. T said he was at work.

The story slowly unfolded, as Mrs. T seemed to have trouble talking in front of others. In this setting, her story changed dramatically from that of two days earlier. She and her mother both talked in disparaging tones of Mr. T's lack of intelligence and gross irresponsibility. Mrs. T denigrated Mr. T's opinions and his ability to make decisions. Mrs. W gave the impression that she and her daughter would make all decisions regarding Baby T's care. Mrs. W stated that "the fami-

ly” had decided that while they wanted the baby to be born vaginally after a normal labor, they did not wish for any assistance to be given the baby at birth. In fact, they did not wish for food or hydration to be given Baby T, since it was their opinion that if Baby T were allowed to live, he or she would have a poor quality of life. They specifically wished to complete advance directives to make certain that no care would be provided for Baby T at birth.

The committee members reviewed the medical facts of the case with Mrs. T and Mrs. W, including various possible scenarios that might occur at the time of delivery. They discussed the inherent uncertainties of medical predictions based on incomplete data. They discussed the implications of the Baby Doe Regulations. They discussed advance directives, and the fact that legally Mr. and Mrs. T would be the decision-makers in this situation, and the fact that Mrs. W had no legal say in Baby T’s care decisions. All questions were discussed at length, and follow-up consults were arranged for Mrs. T (and hopefully Mr. T) to meet with a geneticist (MD/PhD) and the social worker.

What Are The Baby Doe Regulations?

The original “Baby Doe” case was in Bloomington, Indiana, in 1982.² A child was born with Down Syndrome and esophageal atresia. A simple, relatively safe surgery could easily have rectified this child’s esophagus problem, and the child would likely have lived for many years. The parents and physician, however, together decided that in light of future “suffering” this child would endure, it would be better to forego surgery and allow the child to die. This decision was challenged, but upheld, in court. Without food or water, Baby Doe died six days later.³

Health and Human Services immediately issued notification that federally-funded facilities could not “withhold from a handicapped infant nutritional sustenance or medical or surgical treatment required to correct a life-threatening condition if 1) the withholding is based on the fact that the infant is handicapped and 2) the handicap does not render treatment or nutritional sustenance contraindicated.”⁴

Over the next three years several revisions to the regulations were made, primarily due to legal challenges from various organizations.⁵ While ethicists and pediatricians do not always adhere to these regulations,⁶ these final rules⁷ have not been legally challenged, and remain in effect in U. S. hospitals.⁸

Individual states may add their own layers of statute and interpretation. Texas law follows the original Baby Doe Regulations fairly closely. Front-page headlines of the November 29, 2000 USA Today ask “Who decides whether a baby lives or dies?”⁹ In 1990, Karla Miller, of San Felipe, Texas, delivered a baby girl, Sidney, who was more than three months premature. Initially, Karla and her husband Mark were offered the options of aggressive care for Sidney, with potential for long-range disabilities, or supportive care. After “an afternoon of thought, prayers and tears, (they) chose the second option.”¹⁰ The Woman’s Hospital of

Texas, in *Houston* overruled, however, and Sidney received immediate endotracheal intubation and prolonged Intensive Care Unit hospitalization. She survives today, blind, speechless, incontinent, and partly paralyzed. The family sued and won a \$43 million dollar settlement. This is currently under appeal. “Two similar cases have been [taken to trial] in Mississippi and Ohio. Lawyers say dozens more could follow.”¹¹ The essential argument that the Millers make is that, against their wishes, their child was assaulted and grievous damage has occurred. The hospital maintains that the *Baby Doe* rules compelled them to act to save the child.

Doctors, pointing to other similar cases where the outcome was much better, and fearful of lawsuits for not intervening, (brought by the family when family members later change their minds), are petrified. Who is to decide these life and death dilemmas?

What Are Prenatal DNR Orders?

There is a long-established history of advance directives in this country. The standard documents are living wills (LW) and durable power of attorney for healthcare (DPAHC). These documents are generally written by adults for their own care, or for the care of their non-decisional adult family members.¹² Obviously, in the case of a newborn, the infant has no cognitive ability to direct these proceedings, so the parent(s) or appropriate proxy(ies) directs the process. However, as any pediatrician will sadly tell you,¹³ many parents do not have the best interests of their children at heart, and pediatricians are schooled to position themselves as the patient advocate, at times in opposition to the parents’ wishes. Thus, we see the rationale for the official title of the *Baby Doe* regulations “Child Abuse and Neglect Prevention and Treatment.”¹⁴

Given this, at the time of delivery – which is often quite unpredictable – many persons, in a complicated team effort, are working together in the care of the child. The need for communication is paramount if these professionals are to not work at cross-purposes. In *Baby T*’s case, for instance, besides the family caregivers, the professionals might include obstetricians, perinatologists, neonatologists, multiple levels of nurses, social workers, chaplains and others. (If any complications should arise, hospital administrators and attorneys would be added to the list.) Given the complexity of this communication, the prenatal directive can be extremely helpful in clarifying intents and goals.

By planning in advance, reasoned, careful thought can go into each of the specific elements of the possible decisions. While every conceivable outcome and minute twist in the story cannot be foreseen, planning ahead can frequently help avoid pain and confusion in the midst of a crisis. Certain options can be ruled in or out early, and the tone of care can be established. Choices that might bring deep regret may be avoided. Just as “one does not make good decisions about pre-marital sex at 1 a.m. in the back seat of a car on *Lover’s Lane*,”¹⁵ some choices are best made in advance.

With this in mind, some hospitals have established policies for withholding or withdrawing life-sustaining treatment from infants.¹⁶ Carle Foundation Hospital, a not-for-profit facility in Urbana, Illinois, is such a hospital. Carle's policy, currently in draft form, emphasizes the importance of parental rights in making decisions for their newborns, while abiding by state and federal laws.

This policy iterates key elements of the Baby Doe Regulations. It then puts these within the context of the caregivers' rights of conscience, mandatory reporting of medical neglect, mandatory provision of medical care for infants, specific qualifying medical diagnoses, provisions for temporary suspension of DNR plans and specifications for appropriate documentation.¹⁷

Who Is Authorized To Make Decisions For Newborn Infants?

Typically, this is a seemingly straightforward issue. Through millennia parents have been the obvious decision-makers for their infant children. This was the case with Baby T. However, Baby T's story raises one of the most important questions in this regard. What if one or both of the parents is not capable of making such a decision?

This raises a distinction that is often missed or muddled by caregivers discussing this type of dilemma. Decisional capacity is not the same as competence. Competence is a technical, legal issue that requires confirmation by professionals, often psychiatrists, neurologists, or neuropsychologists, entailing careful documentation of "the patient's ability 1) to take in information, 2) to assess that information in relation to his or her own beliefs and values, and 3) to communicate the resulting decisions to another person."¹⁸ Decisional capacity, on the other hand, is the standard that usually applies and is rarely challenged: Is there a general consensus among the primary caregivers, including the family, that the patient is able to make the decision in question? There is a major distinction between these two, and establishing true competence is often expensive, and rarely necessary. In addition, one could be incompetent to make decisions in one sphere (Should I buy or sell AT&T stock today?), and clearly have decisional capacity about whether one wishes to forego specific medical treatments.

Given the above, if one or both of the parents are felt by the medical team or challenged by the extended family, to not be able to make appropriate medical decisions, several things may occur. 1) Sometimes just having a family conference with the physicians helps everyone to agree on a single plan of action, and no particular confrontation or clarification of decisional capacity is needed. 2) At other times, the team may request a bioethics consult to help clarify for all involved if this is true or not.¹⁹ Often, particularly with the input of social workers and neutral physicians on the bioethics team, the proposed decision-maker may be deemed decisional for the question. Or, the question of decisional capacity may be moot if all parties amicably agree to a proposed plan – as may be seen with the doctor/family conference above.

3) The third course of action, which may be necessary if strong concern about litigation is present, or if the implications of given decisions are profound would be to pursue declaration of formal competence or incompetence as outlined above.²⁰

How Is Communication Best Achieved?

In the vast majority of medical decisions, communication is relatively straightforward. Doctors are selected for training and then carefully schooled to care for their patients and to treat them in a fashion that they would like themselves to be treated. Paul Ramsey, PhD,²¹ Edmund D. Pellegrino, MD,²² and many others over many years have discussed appropriate care by physicians. Clifton K. Meador, MD,²³ has captured some of the centuries-old wit and wisdom of appropriate physician insight and behavior in *A Little Book of Doctors' Rules*. Nigel M. de S. Cameron discusses the ancient Hippocratic Oath in the context of doctor-patient communication.²⁴ While he bewails the current changes in medicine, he begins with and calls doctors back to, this unique come-along-side, compassionate, caring communication which has always characterized the best doctors.

John F. Kilner, Director of The Center for Bioethics and Human Dignity and frequent lecturer, employs the term "Care-giver" in all his discussions of communication.²⁵ One might wonder if this new terminology is based on a godly inclusiveness, noting the important contributions that many disciplines make to patient care, or a more strident rights-based, demand to be noticed that seems to typify some in nursing circles.²⁶ Diann B. Uustal, RN, PhD, in her plenary lecture at the 7th Annual Internal Conference of On Bioethics, July 2000, in Bannockburn, Illinois, seemed to take a position that nurses are the only providers dedicated to caring, and that physicians are only concerned with curing the patient.²⁷ I assume that Dr. Kilner is graciously emphasizing the mutual importance of all providers. Certainly, in the arena of communication with patients about end-of-life concerns, input from multiple caregivers is imperative. Wennberg emphasizes the patient's responsibility in communication.²⁸

This underscores the role that a properly functioning, multi-disciplinary bioethics committee or consult team can play in complex communications. Some patients have difficulty, as did Mrs. T, communicating with males, physicians, or purported "authorities". Social workers, chaplains, nurses and others may facilitate discussion for such patients. This has frequently been the case at Carle, and in the Baby T scenario a female social worker played the key role of facilitator.²⁹ Along with physicians and nurses, in clinical ethics, social workers and chaplains are much more visible and necessary than scholars, lawyers or politicians.

Succinctly, then, I posit that: 1) communication should begin with doctors and their patients. 2) It should include family. 3) Nursing involvement is imperative. 4) At times the multi-disciplinary ethics team is essential. 5) Rarely, the courts may need to intervene.

Should Christians Seek Maximal Care For Their Children?

Since time immemorial, a parent's love, and particularly a mother's love have been held as the consummate example of pure, complete, accepting love. While not all people have experienced this love, the phrase "Mother-love" conjures up a picture of warmth and security. This emphasis on complete acceptance is illustrated by the snide aside sometimes heard, "He has a face only his mother could love." While obviously an insult, this underscores the assumed. Mothers are known for their unconditional love.

Scripture frequently employs the model of parental love as the epitome of selfless compassion. The parable of "The Prodigal Son"³⁰ tells of the father's constant longing for the return of the lost son, and his depth of forgiveness shown on the son's return. The Psalms³¹ compares God's love and pity for his children to that of the earthly father. We understand God better when we study the best in our own parental relationships. Christ likens himself to a mother hen³² longing for the safety of her brood. Christ also directs his disciples to pray to God, addressing him as "Our Father."³³

Nonetheless, we live in a fallen world,³⁴ and parents are sometimes guilty of heinous crimes against their children. Thus we see the need of the disciplines of medicine, law, social service, and nursing, and even the federal government³⁵ to serve as enforcers of parameters established to protect these who are most vulnerable.

Having stated the above, what is the responsibility of Christian parents to their children? Should we be seeking maximal care for our children? What is maximal care? What are Christian goals for treatment? We live in a world with limited resources. Is it ethical to expend large amounts of energy and money on patients who face an uncertain future, such as Sidney Miller?

In sorting through these ethical dilemmas we must first address which tool(s) we will use to decide. John Kilner,³⁶ proposes an ethical model, which is: 1) God-centered, 2) reality-bounded, and 3) love-impelled.³⁷

As parents, we need to examine our motives. Are we acting out of a sense of desperation, duty, guilt or frustration, or are we working from a God-centered basis? If we always remember that He is sovereign, and that He is omniscient, loving, and omnipotent, how will this affect our actions? We should never feel that the fate of our children rests solely in our hands. God is working all things together for our good.³⁸ He loves our children more than we do.

The reality-bounded aspect of ethics may help us avoid two opposite errors. We should not feel that we can dictate to God what He must do for us. He is God, and we are not. The "Name it and Claim it" mentality should have no place in our ethical decision-making. On the other hand, Reality-Bounded thinking should have guided the original Baby Doe parents. A relatively simple surgery could have saved their child. They had no way of predicting exactly how their handicapped child would experience the world. Sound statistical surveys have

shown that parents, families and caregivers often do not appropriately estimate quality of life in the same manner as the affected patients.³⁹ In looking at reality, however, the issue of futility, alluded to in the Baby Doe regulations, is a difficult one. Christopher Hook, MD offers a useful analysis of this in *Dignity and Dying: a Christian Appraisal*.⁴⁰ Futility will likely always remain a thorny issue.

Love-impelled ethics should help us put the interests of the child ahead of our own. This is the third tier of ethical decision-making⁴¹ and is guided primarily by the two previous parameters. This love must be subject to God and to reality. An important aspect of being love-impelled is the question of burdensomeness. Gilbert Meilaender discusses this, along with the “Ordinary vs. Extraordinary” question in *Bioethics: a Primer for Christians*.⁴² It has become fashionable in bioethical debates to act as if the Ordinary vs. Extraordinary debate is totally passe. I think that this is in error, and suggest Dr. Meilaender’s chapter for reviewing this timely topic.

Using these three standards, we as Christians will still struggle with decisions. When we struggle, we should rely on timeless Christian tools for choosing. John Wesley spoke of the four pillars of Reason, Experience, Scripture and Tradition.⁴³ I like to remember this with the mnemonic “REST in the Lord.” Tom Beam, MD puts this succinctly. He says that in difficult decisions “We should read scripture, meditate, pray, seek wise counsel, and decide.”⁴⁴ A wise Christian, referring to this process once said: “When the time comes to act, act. It may be years before God confirms the wisdom of your decision.”⁴⁵

Epilogue: What Became Of Baby T?

Mrs. T did not abort Baby T. In a telephone interview, the neonatologist relayed the following story.⁴⁶ At 36 weeks gestational age, 4 weeks premature, Mrs. T went into spontaneous labor and delivered a vigorous baby boy. Apgar scores were 9 at one minute and 9 at five minutes.⁴⁷ Intubation was not necessary. In light of his prematurity, gavage feedings were employed, but he tolerated them well. The baby had orthopedic anomalies and a dysmorphic face, but sonography of the heart and abdomen were normal. An MRI scan of the brain was normal. The parents and Mrs. W have each been present and attentive. The social worker stated that she felt that the parents were making reasonable gestures of affection.⁴⁸

The neonatologist noted that Mrs. W, the grandmother who had urged abortion, was present constantly, and assertively asked many appropriate questions aimed at fostering good care for Baby T. Unlike the social worker, he expressed concern about infant bonding and the ongoing communication between Mrs. T, Mr. T, and Mrs. W.⁴⁹ **E&M**

References

- ¹ This is a true story. Some details have been altered or deleted to protect confidentiality. This case came to a Bioethics Consult team that I serve on, and I was a member of this consultation. Names of doctors quoted below are altered.
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- ³ R. Munson, *Intervention and Reflection: Basic Issues in Medical Ethics*, 5th ed. (New York: Wadsworth Publishing Company, 1996), pp.11-114.
- ⁴ *Ibid.*, p. 111.
- ⁵ *Ibid.*, pp. 112-113.
- ⁶ Personal communication with Steve Johnson, M. A. Johnson, Carle Foundation Hospital ethicist, performed an informal e-mail survey of other hospital ethics teams. A number told him they did not adhere to Baby Doe Regulations.
- ⁷ Final Rule: 45 CFR 1340. U. S. Department of Health and Human Services (1985). Published in 50 *Federal Register* 72, 14887-92.
- ⁸ R. J. Joynt and R. C. Griggs, *Baker's Clinical Neurology* on CD-ROM, 2000 ed. (Minneapolis, Lippincott Williams & Wilkins 2000) Section titled The Baby Doe Regulations. (No page numbers on CD-ROM.)
- ⁹ R. Willing, "Who decides whether a baby lives or dies?" *USA Today*, 29 November 2000, Section A, p. 1A.
- ¹⁰ *Ibid.*
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- ¹² C. Junkerman and D. Schiedermayer, *Practical Ethics for Students: Interns and Residents*, 2nd ed. (Frederick, MD: University Press, 1998), pp. 57-62.
- ¹³ Personal Communication, Betty Davis, MD, pediatric neurologist.
- ¹⁴ See note 7 above.
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- ¹⁷ *Ibid.*
- ¹⁸ G. P. Stewart, W. R. Cutrer, T. J. Demy, D. P. O'Mathuna, P. C. Cunningham, J. F. Kilner, L. K. Bevington, *Basic Questions on End of Life Decisions*, (Grand Rapids, MI: Kregel Publications 1998), pg. 34.
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- ²⁰ See note 18 above.
- ²¹ P. Ramsey, *The Patient as Person*, (New Haven: Yale University Press 1970.)
- ²² E. P. Pellegrino and D. C. Thomasma with D. G. Miller, *The Christian Virtues in Medical Practice*, (Washington D. C.: Georgetown University Press 1996.)
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- ²⁴ N. M. de S. Cameron, *The New Medicine*, (London: Hodder and Stoughton 1991), pp. 1-67.
- ²⁵ J. F. Kilner, lecture at Breathtaking Decisions, Colorado Springs, November 2000.
- ²⁶ C. Dupree, lecture at Professions in Medicine course, Trinity Graduate School, July 2000.
- ²⁷ D. B. Uustal, plenary lecture #6 at 7th Annual International Conference on Bioethics, "Will the Care Be Squeezed Out of Healthcare?" July, 2000.
- ²⁸ R. N. Wennberg, *Terminal Choices: Euthanasia, Suicide, and the Right to Die*, (Grand Rapids: William B. Eerdmans Publishing, 1989) p. ix.
- ²⁹ See note 1 above.

- ³⁰ Luke 15:11-31.
- ³¹ Psalm 103:13.
- ³² Matthew 23:37, and Luke 13:34.
- ³³ Matthew 6:9.
- ³⁴ Genesis chapter 3.
- ³⁵ See note 7 above.
- ³⁶ See note 25 above.
- ³⁷ J. F. Kilner, *Life on the Line*, (Grand Rapids: William B. Eerdmans Publishing, 1992), pp. 13-29.
- ³⁸ Romans 8:28
- ³⁹ T. Beam, lecture at Breathtaking Decisions, Colorado Springs, November 2000.
- ⁴⁰ C. C. Hook, *Dignity and Dying: a Christian Appraisal*, ed. J. F. Kilner, A. B. Miller, E. D. Pellegrino, (Grand Rapids: William B. Eerdmans Publishing 1996), pp. 84-95.
- ⁴¹ See note 25 above.
- ⁴² G. Meilaender, *Bioethics: A Primer for Christians*, (Grand Rapids: William B. Eerdmans Publishing 1996), pp. 68-78.
- ⁴³ M. B. Wynkoop, *Foundations of Wesleyan-Arminian Theology*, (Kansas City, KS: Beacon Hill Press of Kansas City 1967), pg. 13.
- ⁴⁴ See note 39 above.
- ⁴⁵ My wife's grandmother had this quote, paraphrased by me here, on a plaque in her home, attributed to Henry Drummond. I have been unable to locate the citation.
- ⁴⁶ Personal communication with Dr. Tim Ganton, neonatologist.
- ⁴⁷ Apgar scores are based on a scale of 1-10, ten being perfect. 8 or 9 are very good.
- ⁴⁸ Personal communication with Heather Eddy, M.S.W.
- ⁴⁹ See note 46 above.

A THIRTY-YEAR PERSPECTIVE ON PERSONHOOD: HOW HAS THE DEBATE CHANGED?

DENNIS M. SULLIVAN, MD

Introduction

The concept of personhood remains the central and enduring focus of any intelligent discussion of bioethical norms. Whether the perspective is secular or religious, couched in theological discourse or philosophical verbiage, any theory that wishes to show how man should behave must begin with what man is. Indeed, personhood “pops up” in the most unexpected places. Physicist John Polkinghorne claims that a grand, unified “Theory of Everything” must include and reconcile quantum mechanics, general relativity theory, and amazingly, the personhood of human beings:

Let us come straight to the point. A central question is the significance to be assigned to personhood in forming a credible and adequate account of reality. By a person I mean at least this: a self-conscious being, able to use the future tense in anticipation, hope and dread; able to perceive meaning and to assign value; able to respond to beauty and to the call of moral duty; able to love other persons, even to the point of self-sacrifice (Polkinghorne, 2000, p. 11).

Thus, personhood is the “ground zero” of bioethical reflection. I have chosen the past thirty years as the basis of the following discussion, since during this period many changes have occurred in how personhood is viewed by society. To be more precise, the debate has been driven so much by the Supreme Court’s landmark *Roe v. Wade* decision in 1973, that we could readily talk about personhood “pre-Roe” and “post-Roe.”

This change in understanding has also been brought about by changes in the discipline itself. Bioethics began as an impulse of theological discourse, in an attempt to curb and control potential societal abuses of modern technology. In the mid-1960s, most bioethicists were religious thinkers and theologians. Currently, however, many members of hospital ethics committees are physicians and lawyers, and secular philosophers teach university bioethics courses.

This subtle shift has profound implications. The foundations were originally deontological in nature, the “should” of bioethics, whereas now the basis of most decisions is utilitarian, with an emphasis on outcomes. According to (Meilaender, 1995), the entire discipline has lost its “soul.” Nowhere is this shift more evident than in the ongoing controversy over personhood.

This paper will review the concept of personhood and its relevance to bioethics. I begin with a historical overview of the traditional understanding of

personhood in secular and religious thought. I will then examine some modern challenges to personhood, and the recent shift towards utilitarian thinking. Finally, I will argue that personhood must remain the central focus of bioethical discourse, especially in view of technological advances that may make conservative utilitarian arguments moot.

Personhood In Historical Context

Theological beliefs attach great value to human life. Certainly the Judeo-Christian outlook has dominated Western culture, and has influenced secular trends as well. Brannigan and Boss give this concise summary:

Roman Catholics, Muslims, and Orthodox Jews believe that human life is sacred because it is a special creation of God. Only humans are ensouled; therefore all and only human life has moral value. There is no distinction between biological humanhood and personhood. We, as humans, have moral value simply because we have a human genotype, no matter what our age or stage of development (Brannigan & Boss, 2001, p. 189).

Theologically, in the words of Wennberg, “personhood can be equated with the *imago dei* . . .” He adds, “the terms human person and image of God are virtually synonymous” (Wennberg, 1985, p. 36).

The normative Christian view has been that personhood begins at conception. For example, Tertullian held that God created the soul at the moment of conception, arguing against the infusion of a soul at a later time (Gorman, 1982). Jerome and Augustine spoke harshly of any “acts destroying the fetus after conception” (Noonan, 1970, p. 15). This was in striking contrast to the alternative views of pagan society: “Christians discarded all pagan definitions of the fetus as merely part of the mother’s body. To Christians, the fetus was an independent living being” (Gorman, 1982, p. 77).

The Judeo-Christian tradition of the value of life had great influence over Western culture for centuries, only coming into serious conflict with other societal values at the time of the Enlightenment. Clearly, the most egregious example of a rejection of the conservative view occurred with the eugenics movement of the early twentieth century, culminating in the horrible excesses of the Holocaust. However, another crisis that led to the need to define humanity more precisely was the rise of modern medical techniques for abortion. A conflict of values between the traditional view of persons and the permissive liberalism of abortion led directly to the legal battleground of Roe. Richard Neuhaus has demonstrated the centrality of the abortion issue:

Even if some of the great questions that occupy bioethics might theoretically be isolated from the question of abortion, they seldom can be in cultural and political fact. Whether by inherent logic or by historical accident, the abortion debate has become the magnet to which all the other life-and-death debates are attached. We can try to pull them back from that debate, but they are inexorably drawn back to it . . . In ways even more relentless and entangled than at present, arguments about what we insist are “other” questions

will be emerging from and returning to the question of abortion (Neuhaus, 1992, p. 222).

In the early years of the modern bioethics movement (1965-1980), the lines were sharply drawn on both sides of the abortion question, with the debate centered on the personhood of the fetus versus the rights of pregnant women. Respected writers such as John T. Noonan, Harold O.J. Brown, Francis Schaeffer, and C. Everett Koop went beyond the traditional theological understanding, and added biological and philosophical reasons that the unborn child is a human person from conception. Yet there is no doubt that the conservative view had begun to erode in this era. Many have blamed the decline of the Judeo-Christian worldview and the rise of secular humanism as key factors in the modern denial of personhood (Schaeffer & Koop, 1979, pp. 20-21).

However, even the U.S. Supreme Court acknowledged the centrality of personhood. In the 1973 decision, Judge Blackmun stated: "If this suggestion of personhood is established, the appellant's case, of course, collapses, for the fetus' right to life is then guaranteed specifically by the [Fourteenth] Amendment." However, the Court declined to rule on that basis: "We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer" (Roe, 1973). The Court went on to make autonomy, defined as a woman's right to privacy, the central issue. This was held as a higher (or at least more clearly visible) principle, over the human life of the fetus.

One reason that Roe denied personhood to the fetus was its lack of independent viability; i.e., if the fetus was still dependent on the mother for life, it was not yet a person worthy of protection. Nonetheless, in the years since Roe v. Wade (and as reaffirmed in the 1992 Casey decision), even this view of personhood has not been determinative. From a legal perspective, there has always been an exception clause that operates after the point of viability, for "pregnancies endangering a woman's life or health" (Casey, 1992). Because of broad definitions of such exceptions, abortion has essentially been legal up to any moment before physical birth.

Indeed, many pro-choice scholars have regarded personhood as irrelevant. Some have gone so far as to assert that the Roe decision needlessly alienated the religious and politically conservative community, in denying personhood to the fetus. Lawrence Tribe, a liberal constitutional scholar, has written: "The Court could instead have said: Even if the fetus is a person, our Constitution forbids compelling a woman to carry it for nine months and become a mother" (Tribe, 1990, p. 135).

Judith Thompson presented a compelling argument along these lines in 1971. Though her "unconscious violinist" illustration preceded Roe v. Wade, there is no evidence that it influenced the Court, since the Court refused to con-

cede personhood to the fetus. Thompson's argument, briefly stated, goes like this: Imagine that you awake one morning to find that you have been kidnapped and had your circulatory system attached to a famous violinist. The Society of Music Lovers, in an attempt to save the violinist from a fatal kidney ailment, is using your healthy body to cleanse his bloodstream. After nine months, he will have recovered, and can be safely disconnected from you. To say that you are legally and morally obligated to accede to this situation is clearly outrageous (Thompson, 1971). Thompson extends this analogy to pregnancy, and thus argues persuasively that even personhood does not trump a woman's right to autonomy.

Francis Beckwith presents a cogent refutation of the violinist argument by showing that the two circumstances (violinist and pregnancy) are in no way morally equivalent. For example, he points out that pregnancy is not always a voluntary moral obligation, as in the case where couples conceive in spite of contraceptive efforts. Such a couple is still morally responsible to protect such unplanned children. Beckwith then contrasts the unnatural and artificial situation of the violinist with the natural state of the unborn:

It is evident that Thompson's violinist illustration undermines that deep natural bond between mother and child by making it seem no different from two strangers artificially hooked-up to each other so that one can 'steal' the service of the other's kidneys. Rarely has something so human, so natural, so beautiful, and so wonderfully demanding of our human creativity and love been reduced to such a brutal caricature (Beckwith, 1995, p. 193).

Beckwith goes on to state that abortion is not merely the withholding of treatment, as with the violinist, but is an active form of killing. Indeed, Thompson's case seems particularly weak at this point, since few have disputed that abortion is the active destruction of life. Legal scholar J. Budziszewski has said it well: "Whether a particular act of killing counts as murder is, of course, an ethical question, but whether it kills is a biological question. To kill is to take life, and the unborn child is alive" (Budziszewski, 1997, p. 230).

Is the living entity that is killed in abortion a person? Peter Kreeft perhaps best illustrates the centrality of this question in his allegorical dialog, *The Unaborted Socrates*. In a conversation between the philosopher and an abortionist named Dr. Herrod, the question of personhood is the key:

Socrates: Now, rationally, what does killing mean?

Herrod: I suppose it means forcibly putting a live organism to death.

Socrates: And is abortion's object a live organism?

Herrod: Of course.

Socrates: And is the [termination] of the process its death?

Herrod: Yes.

Socrates: Is the death forcible?

Herrod: Yes.

Socrates: Then abortion is killing.

Herrod: Yes, but not murder.

Socrates: That is yet to be decided . . . We agreed that murder is the killing of an innocent human being . . .

Herrod: . . . “[But] a fetus is not a human being, and therefore abortion is not murder. Quod erat demonstrandum. Finis. Consummatum est. Case closed” (Kreeft, 1983, pp. 18, 19, and 36).

By showing the abortionist’s discomfiture, Kreeft has deftly reiterated what the U.S. Supreme Court affirmed in 1973: personhood is the key to the moral and constitutional protection of human life.

Reflections From the Current Debate

Because the respect for life has declined in the modern world, a certain degree of pessimism is perhaps understandable among those who hold to a pro-life position. In the shifting ground of abortion rights, pro-life writers have perhaps felt that the personhood battle has been lost, or at least has been ignored. From a legal perspective, even some pro-life legal experts claim that personhood may be a “dead issue” (P. Cunningham, personal communication, July 17, 2000). This may well be true, for the Supreme Court precedents of *Roe v. Wade* and *Casey* are now so well established that even a predominantly conservative Court may not be able to overturn them.

Another reason for pessimism may derive from a lack of impact of the personhood argument on popular sentiment. Carol Gilligan conducted a study among pregnant women facing the possibility of terminating their pregnancies. Many acknowledged the humanity and personhood of their unborn child, even to the point of calling abortion “murder.” Yet the economic and social circumstances of their lives mostly influenced their choices, often resulting in a decision to abort (Gilligan, 1982).

Pessimism about the effectiveness of the personhood argument is highlighted by the current emphasis on utilitarian arguments to stem the tide of abortion. The psychological, emotional, and physical harm of abortion provides a compelling argument against taking the life of unborn children. This allows one to avoid the question of personhood. For example, there are significant psychological consequences of abortion, often underreported or ignored by abortion rights groups. Ashton reported that 44% of patients undergoing induced abortion complained of nervous disorders, 36% had sleep disturbances, and 31% regretted their decision to abort (Ashton, 1980). Others have reported post-traumatic stress disorder, sexual dysfunction, and suicidal ideation (Elliot Institute, 2000). In addition, a growing list of physical complications is linked to abortion, including an increased risk of breast and other cancers, uterine perforation, and an increased risk of problems with subsequent pregnancies (AUL, 2001; Elliot Institute, 2000; Somerville, 2001).

It seems evident, however, that the medical and physical risks of abortion will diminish as techniques improve. This is certainly the claim of the National Abortion Rights Action League (NARAL), which has extensively defended the safety of elective abortions. NARAL claims that abortion must be legal, in order

to prevent a return to the days of illegal, “back alley” procedures (NARAL, 2000). In fact, there is no good evidence that illegal abortions were common in the years immediately prior to Roe, and no evidence that the legalization of abortion has had any impact on these statistics (Willke, 1998).

It is probable that the psychological impact of abortion will be less the earlier it is performed (Lazarus, 1985). It is also clear that a growing number of women prefer medical, as opposed to surgical methods (Winikoff, 1995). These trends can only increase as newer pharmaceutical abortifacients become available. According to Roberge, “Advances in technology will reduce the fetal body count while vastly increasing the embryonic fatalities. As a consequence, this may increase societal acceptance of abortion” (Roberge, 1997).

The array of technological choices for medical abortion is growing at an alarming rate. Methotrexate is an increasingly appealing medical alternative among abortion providers, and has been well accepted by patients (Harvey, Beckman, & Satre, 2000). Gynecologists, including a growing number who do not currently perform surgical abortions, are willing to use mifepristone, also known as RU 486 (Koenig, Tapias, Hoff, & Stewart, 2000). This trend will only increase now that the French abortifacient has received FDA approval.

A subtle distinction has arisen in terms of “abortion alternatives.” Increasingly, the secular medical community has relied on implantation of the embryo as a determinant of pregnancy. There has even arisen the term “pre-embryo” for the pre-implantation product of conception. Robertson has succinctly summarized this concept: “A legal and ethical consensus is emerging that pre-embryos are not legal persons or moral subjects” (Robertson, 1992). This is clearly a shift from the traditional definition of personhood.

Armed with this arbitrary distinction, a woman is not “pregnant” until the “pre-embryo” has implanted in the uterine wall. This has fueled the popularity of so-called emergency contraception, also called the “morning-after pill,” as touted in this statement from Planned Parenthood: “Emergency contraception, also called postcoital contraception, can prevent pregnancy after unprotected intercourse” (Planned Parenthood, 2000). This method uses higher-than-normal doses of estrogen and progestin hormones (the same hormones used in birth-control pills), and prevents implantation of the embryo if fertilization has already occurred. In other words, the effect may be that of an early medical abortion. We have discussed elsewhere the use of “pre-embryo” as a euphemism to justify early abortion, on the grounds that a woman is not actually pregnant (Sullivan, Francis, & Sellers, 1999).

Yet this idea has dramatically influenced the popular understanding of emergency contraception. Columnist Ellen Goodman expressed it this way: “[Emergency contraceptives] like Preven or Plan B that prevent fertilization or implantation are not abortifacients. They don’t even work if you’re already pregnant. The sooner you take them, the better the odds you won’t get pregnant” (Goodman, 2001). This understanding presumes that pregnancy is defined by

implantation, not conception.

There is a widespread movement, both in Britain and the U.S., to make such “emergency contraception” available without prescription (Wade, 2001). Whereas abortion used to be something that doctors did to women, now it is becoming something that women do for themselves. What effect does this trend have for the conscience of society, as women become more and more involved in the active taking of human life?

Also looming on the technological horizon are abortifacient vaccines. Studies are underway to stimulate the immune system to react against human chorionic gonadotropin (HCG), a hormone produced by the developing embryo, which is necessary for proper maturation of the uterine endometrium. Another immune target is the trophoctoderm, the outer layer of the human embryo. If successful, both techniques would prevent implantation of a developing embryo every time it is conceived. The woman would hardly know that she is pregnant, yet if she is sexually active, she could have as many as twelve abortions every year (Roberge, 1995).

As techniques for early abortion become easier and medically safer, some of the current pro-life arguments focusing on untoward maternal effects of abortion may have an unintended consequence: they may, in a subtle way, morally facilitate the procedure:

As more data arises on the complications due to surgically induced abortions, marketing strategies for abortifacient products will capitalize on this data as a motivational factor toward more embryo-stage directed abortifacients. Simply put, pharmaceutical corporations will use available data on abortion complications (e.g. abortion and infertility link; abortion and breast cancer link, etc.) to convince the consumer to use birth control that in reality is abortifacient in nature. As the population of consumers accepting this technology increases, total surgical abortions will rapidly decrease, while the total number of abortions will rise exponentially (Roberge, 1997).

As abortion becomes easier and safer, through chemical means such as methotrexate, mifepristone, “emergency contraception,” or even through HCG or trophoctoderm antigen vaccines, the guilt and other costs may diminish, and along with it, the utilitarian ethical argument. After all, a woman who is not even aware she is pregnant may find it an easy decision, emotionally and psychologically, to abort an unwanted child. If the ethical position depends on the consequences of the act alone, there may be no reason for women not to choose such “easy” technologies.

In the present environment, it is clear that strictly utilitarian arguments will be severely diminished in their ability to prevent the destruction of embryonic human life. Therefore, the personhood argument must remain a foundational part of the pro-life ethic.

Influence of Personhood on the Debate

In spite of the pessimism discussed earlier, some modern trends give hope that personhood may still have a powerful influence. The controversy over “partial-birth” abortion (more technically known as intact dilation and extraction) is revealing in this respect. This procedure elicits such a reaction that 23 states have attempted to outlaw it, and there have been two attempts in the U.S. Congress (1995 and 1997). In contrast to early abortion, people react instinctively to “partial-birth” abortion, for it is difficult to deny the humanity of a 20-week old fetus.

Many abortion proponents claim that personhood is a complex question, and that no one can agree on its bases. They claim that, in a pluralistic society, the personhood of the fetus is a value judgment, upon which honest people may differ. The fact that there is such a widespread outcry over “partial-birth” abortion belies this claim.

What of Gilligan’s contention that a woman may choose abortion in spite of a belief that her child is a living person? Clearly, this is no failure of the ontological argument itself, but a failure to fully communicate the significance of personhood. It is also a failure to meet a woman’s felt needs, for in the economic or social crises of their lives, women may not be able to “hear” well.

Modern crisis pregnancy centers (often run by churches) provide counseling for women contemplating abortion, and offer alternatives such as adoption in a nonjudgmental environment. The principle here is that women are inextricably linked to their unborn children. Meeting societal and personal needs is a necessary step if personhood is to help them decide against terminating a pregnancy.

A newer trend in these facilities is the use of an ultrasound examination. This non-invasive test, performed in early pregnancy, can help a woman to visualize the fetus as an actual baby. Dr. William Stalter, Medical Director of a women’s center in Dayton, Ohio, feels that it has a significant impact: “With ultrasound, I can see an immediate change in their demeanor. They see the baby sucking its thumb, moving its arms and legs; all of a sudden it is really a small child, rather than just a blob of tissue” (W. Stalter, personal communication, February 28, 2001). Although it is too early for accurate statistics, it appears that such ultrasound examinations in early pregnancy may actually lower the abortion rate. By identifying the fetus as a person, a woman may choose life.

Is there a common denominator in these trends? What is it about “partial-birth” abortion and ultrasound exams that speaks to the conscience of people, whether or not they are Christians? Could there be “self-evident” truths and “unalienable rights,” that are readily seen by all people? The seventeenth-century English philosopher John Locke claimed that natural rights are not derivative or conferred, but intrinsic. In other words, “natural rights come with being human; they can’t be given up” (Budziszewski, 1997). Personhood, thus defined, would become an ontological principle that adheres to the fetus by definition.

Such an appeal to conscience, natural law, or common humanity may have more influence in a pluralistic society than strictly theological principles.

Though beyond the scope of this discussion, modern technology has raised a whole host of additional bioethical questions that relate to personhood. Such developments include newer reproductive technologies, cloning, and the Human Genome Project. In all of these, a proper ethical position will benefit greatly from a careful study of the personhood standard.

Conclusion

This paper has analyzed the personhood debate over the past thirty years, and has shown how that debate has undergone some subtle changes. The shift in bioethics from deontological to utilitarian principles has influenced the conservative focus on personhood, and perhaps blunted its impact.

Yet abandoning personhood as a central tenet would be a serious error. As shown, advances in abortive technology may make utilitarian arguments against abortion less and less effective. This is not to say that such arguments are inappropriate or irrelevant, for anything that helps reduce abortion in society is of great value. However, a sole reliance on utilitarian approaches may lose impact as technology advances.

Abandoning personhood would leave no adequate basis for the defense of life at its earliest stages. Such would leave a vital element out of the ongoing discussion of human nature, and would diminish us as human beings. **E&M**

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BOOK REVIEWS

Without Moral Limits: Women, Reproduction, and Medical Technology, *revised edition*

Debra Evans

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One irony of the legalised abortion era is that there has been an increase in demand for infertility services. There are now numerous options available to couples (or individuals) who find it difficult to conceive and carry a child to term. But are all, or any, of the available options morally acceptable? Of what procedures should a couple avail themselves and to what lengths should a couple go in order to conceive? These and other questions are addressed in *Moral Limits: Women, Reproduction, and Medical Technology*, a revised edition of Evans' 1989 work.

Evans offers a cautionary note concerning many of the common treatments for infertility. Chapter one briefly reviews the history of egg harvesting and embryo experimentation. In chapter two, she moves to the specific practice of in vitro fertilisation. Chapter three addresses embryo transplants while chapter four discusses the possibilities of artificial wombs. Chapters five and six address the possibilities and limits of infertility diagnosis and treatment. The final chapter examines some of the more dangerous possibilities for the future of infertility treatment along with Evans' own scriptural reflection. The book also includes two appendixes, one of which is the Vatican Statement on Noncoital Reproduction and another offers advice to couples facing infertility.

Two points make Evans' work commendable: her integration of the Christian worldview and ethical analysis, and her warning about the exploitation prevalent in some aspects of infertility treatment. First, Evans writes as an unashamed Evangelical and effectively integrates the Christian worldview into her critique of reproductive technology. In particular she emphasises the Christian perspective on gender and sanctity of human life issues. Evans celebrates a traditional view of femininity and childbearing. Criticising the current sexual infatuation that devalues women, she says, "I am grieved that our society has become increasingly captivated by sexual exploitation and pornography while growing hostile toward women's normal and natural reproductive design" (p. 17). Furthermore, Evans says that the widespread use of contraception has actually devalued women in some ways: "Rather than being freed to live in harmony with the natural rhythms of womanhood, women have been taught to fear what their wombs might produce" (p. 83). Concerning the sanctity of human life, Evans correctly makes a connection between the large numbers of eggs fertilised during some infertility treatments and the resulting selective abortions of some embryos. She says, "IVF significantly increases the likelihood of multiple conception and directly promotes the practice of selective abortion" (p. 116).

Evans is at her best when she points out the exploitation of infertile couples prevalent in some quarters of the infertility industry. She points out that most couples mistakenly believe that once they stop using contraceptives they will become pregnant immediately. In contrast, Evans says the average time it takes for a couple to conceive is eight months. When some couples do not conceive immediately, they sometimes panic and think they are infertile. Some specialists in infertility play on this sense of panic for financial reasons. Evans expresses her concern about the economic exploitation of couples who want to have a baby when she says, "Why are millions of dollars being spent on medical "miracle" treatments such as IVF when up to 50 percent of the infertility occurring in this country might be avoided through healthier lifestyles and earlier childbearing?" (p. 102). She goes on to say, "IVF is a hit-and-miss, exorbitantly expensive technology that clearly favors those who can afford to pay the price" (p. 114).

These strengths noted, this work could be improved in some ways. Though her research is extensive and includes some developments that have taken place since the first edition, her argument could be strengthened by substituting some older references with more current ones.

Overall, footnotes would have been preferable to end notes. Her critique of our culture's negative opinion of pregnancy could be tempered by acknowledging that many women have in fact died while giving birth. Finally, the average reader might find the book easier to understand if definitions of technical terms were moved from chapter five to chapter one.

Evans does not claim to be a professional philosopher or ethicist. She writes as an activist. Physicians and pastors may find it helpful to recommend this work to couples struggling with infertility. Evans' cautionary note challenges us to think through the morality of spending large amounts of money on procedures which might not be successful and which may lead to the destruction of human life.

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Regulation of the Healthcare Professions

Timothy S. Jost, Editor

Chicago, IL: Health Administration Press, 1997

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The significance of this book is that it deals with the power struggle between managed care and the healthcare professions, mainly physicians. The future direction of health care might be determined by this struggle. Timothy Jost was dominant in shaping this book as editor and author of more than one-fourth of the material. Like most of the authors, Jost is an attorney. He also teaches health management at Ohio State University.

The Foreword is by Richard Lamm, who is closely associated with the Hastings Center and is controversial because of being identified with the 'duty to die' position. Here he supports the position that professional interests should no longer be given power over the public interest. Therefore, he prefers regulation to balance this loss of equilibrium in the health system.

The book contains nine chapters, with Jost writing the first two. He offers an insightful sketch of the history of healthcare regulation (especially legal and legislative) in relation to, and in conflict with, the medical profession, and later with other healthcare professions, especially nursing. The historical source of licensure came from the Church and the university. This reference to the Church is one of the very few and reminds us of the dominant framework of the legal and secular focus of the book.

The historical overview culminates in the twentieth century and points to the remarkable achievements that include professional development with its scientific base, academic rigor and research, and productive results such as doubling the life span of Americans. Managed care now threatens to reverse some of the achievements accomplished by the medical community (especially the American Medical Association). Jost also shows how corporations and markets have changed the medical and nursing professions. Their actual scope of practice was limited by cost constraints. Even the definition of competency was modified from clinical practice toward administrative detail and supervision on the basis of commodification. Market excesses such as bribery, self-referral, and other conflicts of interest harmed the crucially important and vulnerable professional-patient relationship. Since Medicare and Medicaid claim about one third of health care, federal and state governments also exercise power and authority over health professions.

Chapters three through nine describe the specific interaction between regulation and professional autonomy. For example, chapter three ably examines three problems regarding professional conduct: sexual misconduct, drug abuse, and impairment of practitioners by drug misuse (the most prevalent problem). In addition, the very important Americans With Disabilities Act is discussed because it increases the power of federal regulation that continues to grow rapidly. Chapter four deals with competency and includes the most detailed discussion of managed care,

though this 'elephant' is present throughout the book. Due process, legal procedures, the role of state and federal law, and especially the importance of the American Constitution make up the substance of chapter five.

Chapter six is especially significant because of its excellent interpretation of the AMA's role in policing ethics. Chapter seven offers clarification between public and private regulation. Both chapters seven and eight deal with antitrust laws and how they impact regulation, especially of physicians. My favourite chapter was nine because it is by Arnold Relman who represents the best from a physician's perspective. Physician's professional autonomy and integrity must be maintained in spite of the power of Health Maintenance Organizations.

This book is a necessary read because of its topic and the solid nature of its clear arguments and massive reference lists in each chapter. It reveals the importance of the law in American bioethics. In fact, the 'dean' of the legal in our field, George Annas, suggests that the law has shaped American bioethics. I was disappointed that his name was not listed in the Index, which is nevertheless helpful in reading this solid and competent professional contribution. In fact, the book provides excellent background for understanding current cases before the Supreme Court. For example, Patricia Garrett, a nurse, has sued her state because she was fired when she took time off work to treat her cancer. Cases like this will shed light on how state law can regulate healthcare professionals, and this book helps explain the Constitutional background.

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Body and Soul: Human Nature and the Crisis in Ethics

J. P. Moreland and Scott B. Rae

Downers Grove, IL: InterVarsity Press, 2000

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What is a human person, and what follows from the metaphysics of personhood when applied to the bioethical issues of our day? In *Body and Soul: Human Nature and the Crisis in Ethics*, J. P. Moreland and Scott Rae offer an excellent treatment of the key theological and philosophical issues relevant to human personhood and its implications for bioethics.

In Part I, Moreland and Rae spell out a metaphysical account of human personhood, drawing from Aristotle, Thomas Aquinas and biblical exegesis for their substance dualist view. Where fitting, they employ insights gained from science and other disciplines in formulating their view (they point out as well that ethical knowledge can be used to adjust one's ontology of human personhood where appropriate).

Moreland and Rae argue that human persons are substances, in a certain philosophical use of the term, and not property-things. Space does not allow for a thorough explanation of these terms and the relevant distinctions. However, several things that we seem to know about persons are better accounted for by a substance view of human personhood than the property-thing view held by naturalists and Christian complementarians. For example, the fact that human beings possess absolute personal identity through change is easily accounted for by the substance view, which holds that a human person is essentially identical to her soul, so that regardless of whatever physical and temporal changes she undergoes, she remains strictly the same person. Naturalists and Christian complementarian views cannot account for this truth, and seem to be compelled by their ontology of human persons to hold that persons are not substantial continuants, but rather are property-things that do not retain absolute personal identity through change. Yet we seem to know in our own first-person cases that we are the same person today that we were five years ago. We may have gained or lost certain parts and/or properties, but we are still the same possessors of those parts and properties.

In chapter six, there is a particularly interesting discussion of the relationship between the soul and the body. On this Thomistic substance dualist view of a human person, there is one substance, namely, the soul, as well as the body, which depends on the soul for its existence and development. The soul contains various mental states and also possesses different capacities, some of which are actualised and some of which are not (e.g. one may have the capacity to speak English and the capacity to speak Russian, but due to education and location only the capacity to speak English has been actualised). The authors argue that it is the soul which guides the development of the body. Taking into account current understandings of the operation of DNA, they take an organocentric view of DNA, living organisms and morphogenesis, and maintain that the living organism as a whole is the fundamental unit of morphogenesis. DNA specifies the patterns for making proteins used in the growth and development of an organism, and genes help stabilise certain aspects of this development, but for Moreland and Rae it is the soul which yields the overall plan and internal organisation of the parts of the organism.

After developing their ontology of human personhood, in Part II Moreland and Rae apply their view to certain ethical issues: the moral and metaphysical status of the unborn, reproductive technologies, genetic technologies, human cloning and euthanasia/physician-assisted suicide. Central to this discussion is the fact that on their view, there can be no such thing as a human non-person. It may be the case that certain human beings fail to actualise certain soul-ish capacities often thought to be essential to human personhood, but all that follows from this is that such capacities are latent within the person, not that there is such an entity as a human non-person. Consciousness is often, either implicitly or explicitly, thought to be one such essential component of personhood, so that the foetus who fails to possess it can be justifiably aborted. However, the authors point out that as a member of the natural kind 'human being', a foetus possesses the ultimate capacity for consciousness, even if that capacity has not yet been actualised. Since no reason can be given for preferring actualised capacities over latent ones, and since foetuses are not potential persons but rather persons with potential, it follows that intentionally ending the life of a foetus, especially due to a failure or lack of birth control, is morally problematic.

I leave it to the reader to explore in detail the implications of this ontology of human personhood to the bioethical issues mentioned above, and commend this book as one well worth the read for the person interested in an engaging and robust Christian account of human personhood and its implications for bioethics.

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The Invention of Autonomy: A History of Modern Moral Philosophy

J. B. Schneewind

Cambridge, U. K., and New York: Cambridge University Press, 1997

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Many who work in bioethics are frustrated by the way the concept of autonomy is used as a trump card to short-circuit debate about matters of ethical substance, particularly by those who would relax traditional moral prohibitions against abortion, physician-assisted suicide, and other practices. Autonomy, according to Beauchamp and Childress in *Principles of Biomedical Ethics*, is the acknowledgement of a "person's right to hold views, to make choices and to take actions based on personal values and beliefs." Yet, they argue that "respect for autonomy has only prima facie standing and can be overridden by competing moral considerations."

Recently, the late Fr. Richard A. McCormick has complained of what he calls "the absolutization of autonomy," arguing that "When the rightness or wrongness of choice is reduced to the single factor that it is this individual's choice, morality has been impoverished" ("Bioethics: A Moral Vacuum?" *America*, 180.15 (May 1 1999): 8-12). This absolutized autonomy is advocated by Dr. Jack Kevorkian, for whom "the highest principle in medical ethics – in any kind of ethics – is personal autonomy, self determination" (cited from *Free Inquiry*, Fall 1991, in McCormick's article).

Unbridled autonomy is defended by several prominent moral philosophers in *Assisted Suicide: The Philosophers' Brief*, submitted to the Supreme Court (*New York Review of Books*, March 27, 1997). The Brief's authors explain autonomy as the right of "every competent person . . . to make momentous personal decisions that involve fundamental religious or philosophical convictions about life's value for himself," including "decisions about religious faith, political and moral allegiance, marriage, procreation and death."

This is autonomy to frame individualistic conceptions of reality, political allegiance and views of marriage and the family! One is hard pressed to imagine a society that could be truly indifferent to the choices one would make in these areas. How did autonomy come to prevail over all other important moral values? How did morality come to be identified with being independent and self-governing, rather than with being faithful and obedient?

In *The Invention of Autonomy: A History of Modern Moral Philosophy*, J. B. Schneewind tells the story of how in the past few centuries morality developed from a matter of obedience to that of autonomy. In particular, he explores the philosophical and historical contexts of the questions addressed by Immanuel Kant in his influential work in ethics, one in which autonomy is given pride of place. Kant "invented the conception of morality as autonomy" (p. 3) and was the first philosopher to attempt to demonstrate that individuals must be autonomous and self-governing, rather than obedient. Prior to Kant, morality in the West was thought of as involving "two essential components," as Schneewind puts it:

One concerns the proper human stance in relation to God. As created beings we are required to show deference and gratitude as well obey our creator's commands, which cover morality as well as religious worship. The other concerns human moral abilities. Most people are unable to think well enough to give themselves adequate moral guidance; most are also too weak willed and too strongly driven by their desires and passions to behave decently without credible threats of punishment for transgression and promises of reward for compliance.

The moral task for leaders and followers had been to "live their lives in humble submission to their ruler, God" (p. 509). Since Kant, however, morality has become widely thought of, at least by philosophers, as a matter of independence, of accepting the moral law as it is legislated by the individual herself, with no need for external sanctions to motivate compliance.

This book is valuable in a great many ways. First, Schneewind offers a fine historical treatment of morality and its relation to faith, reason, the will, and salvation in such prominent figures as St. Thomas Aquinas, Luther and Calvin and shows that the emergence of moral philos-

ophy in Western thought was a constant dialectic between faith and reason. He offers the surprising judgement that “These different Christian interpretations of natural law were far more significant for the development of modern moral philosophy than the ethical writings of Plato or Aristotle” (p. 17). Every serious student of Christian ethics should study these chapters.

Second, Schneewind has done a remarkable job of placing Kant in the context of historical issues. Schneewind explains not only well-known figures like Locke, Spinoza, Leibniz, Descartes and Hobbes, but less well known but important authors like Pufendorf, Cumberland, Wolff and Crusius. This is among the very most complete and insightful histories of ethics available today.

Third, it is immensely valuable to realise that autonomy is a social construction, initiated at a particular time and place, relatively recently in the history of moral thought. This should help us recognise that interpretations of autonomy are open to question, commentary, and amendment as we attempt to think through the issues of morality carefully, rather than repeat slogans that continue to marginalise Christian concerns in the field of ethics.

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