The Case for After-Birth Abortion in the *Journal of Medical Ethics*: A Critique
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In February 2012 the prestigious *Journal of Medical Ethics* published an article by philosophers Alberto Giubilini and Francesca Minerva, “After-Birth Abortion: Why Should the Baby Live?” According to the authors, “fetuses and newborns… are potential persons because they can develop, thanks to their own biological mechanisms, those properties which will make them ‘persons’ in the sense of ‘subjects of a moral right to life’: that is, the point at which they will be able to make aims and appreciate their own life.”

The authors “take ‘person’ to mean an individual who is capable of attributing to her own existence some (at least) basic value such that being deprived of this existence represents a loss to her.” So, a fetus or a newborn is not a person because it is not mature enough to appreciate its own interests. This is why, argue the authors, it is morally permissible to kill fetuses and newborns. They are only potential persons, not actual persons.

Many abortions are procured because the fetus is diagnosed with a deformity or fatal illness, e.g., Down’s Syndrome, Turner’s Syndrome, Tay Sachs, etc. However, there are some cases where the child is misdiagnosed as healthy, and the parents only find out that the child is deformed or fatally ill after the child is born. Because the newborn is no more a person than the pre-born, the authors argue for the moral permissibility of a form of infanticide that they call “after-birth abortion.”

In this paper I critique the fundamental belief that undergirds the case made by Giubilini and Minerva, that the fetus and newborn are merely potential persons rather than actual persons. My critique will focus on the use of the word “potential” and how its conceptual clarity can only be anchored in a metaphysics of the human person. By itself, the word “potential” tells us nothing about the nature of the being to which it is ascribed unless we already know something about that being and its nature.

I conclude that the fetus and the newborn are not potential persons. They are what they are: beings with a personal nature, and for that reason, they have essential properties that include capacities for personal expression, rational thought, and moral agency. The maturation of these capacities are perfections of its nature, and thus, contrary to what Gubilini and Minerva claim, the human fetus and newborn can be wronged even before either one can can know he has been wronged.

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René Girard and the History of Rights Language
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In the modern world, there are several different schools of thought regarding the philosophical basis of rights language. When pro-life and pro-choice advocates, for example, use rights language the similarity of terms masks a deeper divergence in understanding the meaning of the terms. Are rights built into the fabric of the universe by God? Do they arise out of a social contract? Do they simply express the
wishes of those with political power? The fact that there are critics of rights language from both the right and the left on the political spectrum adds to the general confusion.

This paper will argue that René Girard’s thought inserts a provocative perspective into this discussion by suggesting that rights language is a key aspect of the modern “concern for victims” that has profoundly shaped our culture today. This concern for victims has biblical roots, though it is not necessarily a theological construct. An agnostic, for example, could agree that rights language has arisen in the modern world to build a hedge around the vulnerable and protect them from the violence of the powerful, and could acknowledge the biblical roots of that idea, without believing that the Bible has a divine source.

Girard’s perspective allows for a normative critique of rights language if it is used to defend some victims while creating other victims. This angle would allow pro-life advocates to argue that feminism’s narrative of patriarchal victimage is being used to justify victimizing unborn children. This suggests that today’s defenders of abortion “rights” are more closely analogous to Stalinism than they are to Nazism, because the Marxist worldview relies on a central narrative of (economic) victimage, like feminism relies on a narrative of (gender) victimage. Both worldviews are what Girard calls “semi-converted” by the gospel revelation of the victim, while Nazism was in complete revolt against the possibility of conversion by the gospel. In sum, rights language is a very puzzling aspect of modern culture, and asking questions about its source and meaning provides an avenue that leads to many fruitful insights.

Moral Distress and Conscientious Objection
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Reflecting on the alienation characteristic of contemporary health care, the philosopher Andrew Jameton (1984) introduced the concept of moral distress to describe a nurse’s response to situations in which she knows the right ethical course while facing practically insuperable constraints that either prevent right action or require wrongful action. In this paper, I consider the nature of moral distress (extending it to all clinicians) as originally articulated by Jameton with a view to (modest) revisions of his account. I also consider the relation between moral distress and other responses to moral conflict. Specifically, I articulate the relationship between moral distress and conscientious objection. In an attempt to explain its (at least apparent) increased frequency, I conclude with a reflection upon how moral distress indexes certain features of contemporary culture.

Jameton conceived of moral distress as a state accompanied with epistemic certitude. I propose that to experience moral distress one need not have certitude concerning the correct moral path. Rather, just as one can have more and less profound distress depending on the gravity of breaking the relevant ethical norm, so also one can have degrees of confidence in one’s judgment of the correct thing to do. Thus, we ought to conceive of moral distress as on a continuum concerning our knowledge of the right deed. Moreover, just as the knowledge grounding moral distress comes along a spectrum having certitude at one end, so also the correct response to moral distress varies. As I claim in this paper, at one end of the continuum of responses we find conscientious objection.

While Sophocles’ Antigone instances moral distress as a permanent characteristic of the human condition insofar as competing norms such as ethics, law and religion always can conflict, moral distress appears characteristic of contemporary medicine. I suggest that this is due to a variety of factors including moral pluralism and the primacy of legal norms over even non-disputed ethical norms in modern healthcare.
I will explore the issue of whether the federal government has the constitutional authority to require parental notice prior to the performance of an abortion on a minor, and whether the limited emergency exception in the current legislative proposal is constitutional.” A brief introduction to my arguments can be found in my Public Discourse piece posted on March 29.

Abortion inducing drugs, such as “ella”, are covered by the HHS mandate; this is a striking attack on the freedom of conscience of millions of prolife Americans. As is well-known, the mandate also covers sterilization and contraception, and this is an attack against the religious freedom of Catholics, and will cause the closing of many Catholic entities which serve the common good, such as Catholic hospitals.

Related to this is the well-known fact that the most powerful forces at the UN, most especially the current US delegation, promote abortion, sterilization and contraception – the so-called “reproductive rights” – as the solution to solving the problems enumerated in the Millennium Development Goals (MDGs).

Those fighting the HHS mandate rightly focus the legal battle on the question of religious freedom so as to secure the First Amendment and to prevent the flood of future attacks on religious freedom that will occur if this mandate stands. Nonetheless, the elephant in the room must be faced squarely: Why did the administration pick this issue in order to attack religious freedom? And, is it accurate to assert absolutely that “this fight is exclusively about religious freedom and not about contraception, sterilization and abortion.”? In other words, while it may be accurate to say that the administration is trying to focus the fight on contraception in order to make the opponents of the mandate seem out of touch with contemporary people and thereby to deflect attention from the danger posed to the first amendment, there is nonetheless a bizarre irony in that tactic: For the administration this really is about abortion, sterilization and contraception. They see those things as the best thing since sliced bread in the service of the betterment of humanity and the world. It happens to be the case that many religions oppose one or more of those things, and so the attack on the first amendment makes sense from their point of view. I would suggest that their primary motivation is “reproductive rights” but that they see as a powerful means to achieve that goal a simultaneous attack on religious freedom. This is why absolute statements such as “this has nothing to do with contraception, it is exclusively about religious freedom”, while perhaps helpful in the legal arena, are inaccurate when considering the culture.

In this paper, I will explain this dynamic further, I will suggest some ways to adjust the approach to fighting the mandate accordingly, and I will present some points made by Pope Paul VI in *Humanae vitae*, which could serve as a guiding light in this fight.
Scientific Evidence Regarding When Human Life Begins
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There is currently no consensus on when human life begins, and consequently, the biological, moral, and legal status of early human embryos is unclear. Here, the biological facts concerning early human development are examined to establish an objective view of when human life begins, based on universally accepted scientific criteria. The evidence clearly indicates that a new human cell, distinct from either sperm or egg, is formed at the point of sperm-egg fusion. A detailed examination of the molecular and cellular events occurring during the first day after sperm-egg fusion indicates that this new cell has all the properties of a human organism (i.e., a human being). The events occurring during preimplantation development provide further support for the conclusion that the early embryo is an organism, not merely a human cell or a group of human cells.

This view of the embryo is objective, based on the universally accepted scientific method of distinguishing different cell types from each other, and it is consistent with the factual evidence. It is entirely independent of any specific ethical, moral, political, or religious view of human life or of human embryos. Indeed, this definition does not directly address the central ethical questions surrounding the embryo: What value ought society to place on human life at the earliest stages of development? Does the human embryo possess the same right to life as do human beings at later developmental stages? A neutral examination of the factual evidence merely establishes the onset of a new human life at a scientifically well defined “moment of conception,” a conclusion that unequivocally indicates that human embryos from the zygote stage forward are indeed living individuals of the human species—human beings.

Eroding Conscience
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The recent controversy over the Health and Human Services mandate that practically all employers must provide birth control services (including contraceptives, sterilization, and early abortifacients) has eclipsed an earlier controversy on the conscience of health care workers. This concerns the right of health care personnel to refuse to participate in procedures they consider morally objectionable and to be protected from employer sanctions in the case of refusal. The paper will examine the differences between the Bush Administrations’ HHS rule (2008) and the Obama Administration’s revised rule (2011) on the subject. While the Bush rule provides comprehensive protection for the conscience of the health care worker, the Obama rule narrowly restricts this protection to the area of abortion. The controversy over protection of the rights of conscience in the area of health care reflects a broader controversy over the nature of conscience itself and the deference which the state should rightly accord its exercise.

Roe v. Wade and Cultural Due Process
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The Court's conclusion in Roe v. Wade depends to a considerable extent on its reading of the Anglo-American common law. Substantive due process cases are generally argued on the basis of our common law tradition. Furthermore, the Framers of the Fourteenth Amendment plainly intended the
federal courts to apply the common law in deciding cases under that Amendment, and in accordance with
the original intent of the Amendment.

In Roe, therefore, central questions are whether the common law traditionally protected the law of
the unborn child or recognized its personhood and, if so, at what points in the pregnancy (conception?
quickening? viability?). Based on core texts from the common law, including criminal law, property, and
torts, it seems clear that Roe was wrongly decided.

Conscience and Contraception
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The Department of Health and Human Services issued a rule requiring most health insurance
plans to include services such as contraception, sterilization, and abortifacients. The mandate only would
permit exemptions for “religious employers,” including organizations that primarily employ and serve
persons who share the religious tenets of the organizations. The rule was modified, mandating that
“[c]ontraception coverage will be offered to women by their employers’ insurance companies directly,
with no role for religious employers who oppose contraception.” The rule, as modified, violates the First
Amendment as interpreted in Sherbert v. Verner (1963) and Employment Division v. Smith (1990) as
well as the Religious Freedom Restoration Act.

The First Amendment and the Religious Freedom Restoration Act require an accommodation for
those organizations with moral objections to the mandate. The legal analysis alone, however, is not a
sufficient argument against the mandate because it understands freedom of conscience, in the framework
of modern liberalism, as a subjective right to choose among competing conceptions of the good life,
which must be accommodated by the sovereign authority when such an accommodation is possible.
Freedom of conscience is not a matter of choice to be protected by a mere accommodation from the state.
It is a moral obligation which must be protected through a “zone of religious sovereignty,” competing
with the sovereign authority of the state.

Abortion and Marriage: Examining the Linkages
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It has becoming increasingly clear that failure of parents to marry leads, on average, to poorer
outcomes for the children born to them. Recent data on abortion rates by marital status, however, suggests
that this generalization applies also to their unborn children. Specifically, statistics indicate that abortion
is more likely to be chosen if the mother is in a non-marital relationship or in no relationship at all. In
other words, marriage seems to be protective of unborn children. This suggests an important line of
inquiry: Are there other linkages between the issues of abortion and marriage?

Our social understanding of marriage is currently facing challenges from three major trends—
divorce, cohabitation and a growing effort to legally redefine marriage. This paper would discuss some
possible linkages between abortion and these ongoing challenges to marriage. These linkages include the
correlation between unmarried relationships and abortion but also include two-way effects on cultural
attitudes and legal change.

To take but one example, the growing legal and cultural endorsement of “alternative family
forms” has led to increased utilization and acceptance of assisted reproductive technology, which can
contribute directly to increased abortion (i.e. selective reduction of fetuses) and also can accelerate
attitudes inherent in an abortion culture such as the commodification of children.
As another example, both abortion and same-sex marriage create significant and pressing questions related to accommodation of religious organizations and believers who object to facilitating practices that conflict with their faith.

This paper will describe these and other linkages between abortion and marriage and make some suggestions as to how they might be appropriately addressed to enhance the sanctity of human life and protect the unborn.

Felt Moral Obligation and How We Feel About the Baby in the Womb
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When considering a child in the womb, the dominant western philosophical worldview categorizes or “totalizes” such life in order that its particularity (its voice, its face) may be overcome. This “totalization” limits the “otherness” of the unborn child to prescribed understandings and expectations so that it is nothing more than its label or classification. The philosophies of Emmanuel Levinas and C. Terry Warner provide a starting point for a shift in this worldview. Levinas holds that as humans, we are called to the Other. We experience this call or felt moral obligation when we experience "the face" of the Other. This experience is a sacred event. Terry Warner asserts that as we reject this sacred event, this felt moral obligation, we are in what he calls a state of self-betrayal. In other words, we deceive ourselves into thinking that rejecting felt moral obligation is the only course of action we can reasonably take under the circumstances.

For parents, the “face to face” sacred encounter occurs, practically speaking, earlier and earlier in the gestational period as medical ultrasound technology continues to improve. It is evident that over the past thirty years, the acceptability of abortion in the general U.S. population has waned as the quality of ultrasound technology has increased. With this observation, the sacredness of “experiencing the face” becomes quite apparent.

Trends in the Influence of Religiosity on Abortion and Contraception Use in the United States: Data from the 2002 and 2010 National Survey of Family Growth
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Scientists at the National Center for Health Statistics (NCHS) and the Center for Disease Control and Prevention (CDC) conduct the National Survey of Family Growth (NSFG) approximately every 5-7 years. The NSFG includes factors that help explain trends in contraception use, infertility, sexual activity, abortion, and pregnancy outcomes. The NSFG researchers use a nationally representative, randomly selected sample of women 15-44 years of age in the United States (US). An analysis of the 2002 (Cycle 6) NSFG data set revealed that women who viewed religion as very important, attended church frequently (i.e., at least once a week), and held traditional attitudes on religion were less likely to have had an abortion and less likely to ever used potential abortifacient family planning methods, i.e., oral contraceptives (OCs), injectable hormonal contraceptive (ICs), and hormonal emergency contraceptives (ECs). The 2002 study concluded that religiosity has a suppressing effect on abortion and abortifacient contraceptive use.

In 2011, the 2006-2010 (Cycle 7) of the NSFG was released for public research use. Therefore, the purpose of the proposed paper is to examine new data from the 2006-2010 NSFG and to determine the influence of religiosity on ever use of abortion, emergency contraceptive (ECs), oral hormonal contraceptive pill (OCs), and the injected hormone Depo-provera (ICs) among US women between the
ages of 15-44. A second purpose of the paper is to compare those results with results reported in the 2007 study. The 2006-2010 NSFG is a population based selection of 12,676 women. The data set contains variables on ever use of abortion, the above methods of hormonal contraception, and variables on importance of religion, church attendance, and attitudes on human sexuality. In the 2002 NSFG there were 7,676 reproductive age women in the data set.

Preliminary results indicate that those reproductive age women who report religion to be very important in their lives are 37% less likely to ever have had an abortion (42% in 2002), 50% less likely to ever used EC (36% in 2002), 14% less likely to ever have used (the pill) OCs (4% in 2002), and 2% less likely to ever have used Depo (ICs) (13% in 2002) compared to reproductive age women who view religion to be less important in their lives. With the variable Church attendance, those women who attend Church services once a week or more are 48% less likely to ever have had an abortion (64% in 2002), 57% less likely to ever have used EC (44% in 2002), 24% less likely to ever have used Depo (ICs) (29% in 2002), and 35% less likely to ever have used the pill (OCs) (10% in 2002) compared to reproductive age women in the US who attend church services less frequently. The tentative conclusion is that religion has less of an effect on the ever use of abortion among reproductive age women when comparing current (i.e., 2006-2010) results with those found in 2002 and mixed results with other forms of potential abortifacients.

The paper will discuss possible reasons for the decline in the influence of religion on abortion and investigate other common religious values (such as having sexual intercourse only within marriage and same sex activity) as confounding factors.


Abuse of Discretion: The Inside Story of the Supreme Court’s Creation of the Right to Abortion

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Mr. Forsythe has just completed writing a book about the behind-the-scenes story of the Supreme Court decisions in Roe v. Wade and Doe v. Bolton that were decided the same day (January 22) in 1973. The book is based on several years of research, including a review of the papers of seven of the nine Justices who voted in Roe and Doe. His presentation will be taken from the research he has done on the subject.

Casey and a Woman’s Right to Know: Ultrasounds, Informed Consent, and the First Amendment

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Twenty years after Planned Parenthood of Southeastern Pennsylvania v. Casey was decided, courts across the country are being called on to apply the Court’s undue burden test to novel abortion regulations. The most recent wave of regulation involves the use of ultrasound technology. Twenty-two States currently require physicians to perform, offer to perform, or follow specific protocols when performing an ultrasound prior to any abortion procedure. National attention, however, has focused on the growing number of States that require physicians to display and describe the ultrasound images to a
woman seeking an abortion. Three States—Texas, North Carolina, and Oklahoma—have already passed such legislation, and several other States currently are considering similar bills.

The ultrasound statutes in Texas, North Carolina, and Oklahoma were immediately challenged in the state and federal courts. Instead of focusing on the woman’s Fourteenth Amendment due process rights, the central issue in the federal cases has been whether physicians have a First Amendment right to be free from compelled disclosures relating to the ultrasounds. The federal courts have struggled with how to resolve these First Amendment claims within the abortion context. While the Fifth Circuit Court of Appeals upheld the Texas speech-and-display statute, state and federal courts enjoined similar statutes in Oklahoma and North Carolina.

This article explores the split between and among the courts that have addressed the First Amendment challenges to these mandatory speech-and-display regulations. In particular, the article evaluates how Casey’s undue burden test affects the First Amendment speech rights of physicians in the abortion context. Drawing on Casey’s references to Wooley v. Maynard and Whalen v. Roe, the article concludes that the government has broad authority to mandate disclosures designed to inform a woman’s decision about an abortion. Under Casey, mandatory speech-and-display requirements that do not impose a substantial obstacle to a woman’s exercise of her right to abortion are constitutional if they are reasonable, which Casey defines as being truthful, nonmisleading, and relevant. As a result, the article contends that courts should uphold the Texas, North Carolina, and Oklahoma ultrasound statutes—as well as the similar statutes being considered by state legislatures across the country—against First Amendment challenges of physicians.

Artificial Wombs and Abortion Rights
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In the foreseeable future, it may be possible safely to separate fetuses from their mothers early in pregnancy, and transfer them to artificial wombs for gestation until full term. What will these developments (hereinafter “fetus-sparing abortions” and “AW,” respectively) mean for constitutional abortion rights? On the assumption that the Supreme Court will continue to adhere to the principles adopted in Roe v Wade and Planned Parenthood v Casey, this Article argues that (1) the Court will probably rule that first-trimester fetuses are not viable for constitutional purposes even if they can be rescued via AW; (2) the Court will probably rule that the right to elective abortion protects a woman’s interest in killing her fetus—not merely her interest in terminating her pregnancy; (3) the Court will accordingly strike down, as unduly burdening the right to elective abortion, state laws that require women to bear the high costs of fetus-sparing abortions and AW; but (4) the Court will probably uphold state fetal-rescue programs that prohibit fetus-killing abortions while providing state funding for fetus-sparing abortions and AW.

If these predictions prove accurate, much will depend on just how expensive AW is, and just how much pro-life legislatures (and their constituents) are willing to pay to rescue fetuses. Even if rescuing every aborted fetus in a given state is politically and financially impracticable, fetal-rescue programs that target second-trimester fetuses may prove feasible as well as constitutional. Limited programs of that kind are also the most likely vehicles for bringing these constitutional questions before the Supreme Court.
The Abolition of Chattel Abortion
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My UFL presentation will begin by defining terms such as chattel, abortion-on-demand, and abolition. I will then discuss suggestions for appropriate and legal ways to uphold the sanctity of life. I will conclude with a call to action, comparing the abolition of abortion in the 21st century to the abolition of slavery in the 19th century. Abortion-on-demand is a lucrative business that exploits women and children for financial gain. It pollutes the earth with aborted children who are burned in incinerators, flushed down sewers, and illegally dumped in landfills or garbage bins. It furnishes specimens for eugenic medical experiments, harvesting vulnerable infants to make cures and cosmetics for privileged adults. In 1995, news sources reported that certain clinics in China were providing aborted babies as food for human consumption. Recently a British man was arrested in Thailand for transporting six aborted babies that he planned to sell on the “black magic” market. South Korean customs agents recently seized thousands of aborted baby flesh pills being marketed as energy boosters, virility enhancers, and health supplements. The Pepsi corporation has finally discontinued an aborted fetus stem-cell line that they had been using to test new soft-drink flavors. In Beed, India, the bodies of sex-selected aborted girl babies are being fed to dogs. Who will join Mother Teresa, church leaders, and others who have peacefully spoken out against this defiling violence?

Substantial Identity, Future States, and Human Worth
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Don Marquis has recently criticized an argument for the right to life that he dubs the BLG in honor Francis Beckwith, Patrick Lee, and Robert George. It runs as follows.

1. All individuals who possess the basic natural capacity for rational agency have the right to life.
2. All human beings are individuals who possess the basic natural capacity for rational agency.
3. Therefore, all human beings have the right to life.

The argument fails, claims Marquis, because some living human beings lack the basic natural capacity for rational agency. Not surprisingly, he cites the cases of someone in an irreversible vegetative state, of the anencephalic infant, and of a (merely) “brain dead” individual. So (2) is false.

Nonetheless some still defend (2). Why? They do so because they hold that each human being retains his or her identity throughout the course of life, irrespective of any cognitive deficiencies. The basis of this identity is the individual substance that makes each of us who we are. We can term this view “the substance identity thesis” or SI, and initially the BLG offers a way to support it. Marquis, however, thinks that the cases that seem to undermine (2) are far more telling than the arguments that support the substance identity thesis.

While Marquis’s view has some plausibility, I will argue that there are strong reasons to retain the SI and that the cases that he thinks undermine both (2) and thus the SI do not in fact do so. In part my argument depends on the role of substance in understanding change and action. It makes little sense to speak of change, as opposed to replacement, unless there is an enduring subject of change. It makes less sense to speak of action (whether past, present, or future) without an enduring agent that acts. Given these commonsense and (yes, Aristotelian) points, we can intelligibly speak of a human being undergoing trauma and suffering its effects, e.g., a trauma leading to a vegetative state or anencephaly or “brain death,” only if the individual who undergoes the trauma is the same individual who sustains the consequent damages.
Marquis prefers to ground a right to life on the worth of an individual’s future experience—and the possible loss of that right on the loss or impairment of that future. But we cannot speak of the quality of just some (anonymous) future. The future, rather, is of a “someone” who is the self-same person from the beginning until the end of life in virtue of being an individual substance.

**Latino Literature on the Life Issues: Commentary on Tato Laviera’s “Jesús Papote,” Judith Ortiz Cofer’s “Silent Dancing,” and Bella**

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Lorain County Community College

This paper considers literature written by Hispanic or Latino authors who address any of the three life issues (abortion, infanticide, and euthanasia). After surveying the canon of literature available in English by these authors, the paper reviews the literary criticism of their works and then examines several passages, explicating them so that non-Latino audiences can appreciate the themes evoked in the literature.

**A Hidden Agenda? The Politics of Abortion under a Majority Conservative Canadian Government**

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The paper I propose will continue and develop an analysis I furnished in “‘Shut Up!’ he explained: How the Effort to Keep Abortion off the Political Agenda has Shaped Canadian Politics,” (*Life and Learning* XV, pp. 321-353). The context for this study as for its predecessor is the fact that abortion in Canada (and almost nowhere else in the world) is entirely unrestricted by law, and has remained so since 1989 when Canada’s Supreme Court struck down the existing law on the subject. My previous analysis reviewed the various unsuccessful efforts to place abortion on our political agenda since the last government effort to enact a law in 1990 and the consequences for our politics and political parties – especially the Conservative Party – of the effort to keep abortion off the agenda. I argued that ending the public silence on abortion might serve the strategic interests both of those who want to see the practice of abortion restricted and of those trying to build a centre-right political party capable of forming a majority government in Canada.

In the years since my previous essay the Conservative Party has won a majority in Canada’s House of Commons while the silence on abortion has continued. In fact, the Conservative leader and Canadian Prime Minister, Stephen Harper, has insisted that he has no intention of seeing the topic raised in Parliament while his chief political foes (and his journalist-critics) continue to insist that Harper and his party do want to impose restrictions on abortion though they have hidden this purpose in their now successful effort to create a majority government. Although opinion surveys indicate dissatisfaction with the status quo, Harper and his critics proceed as if any willingness by the Government even to discuss abortion would undermine – perhaps fatally – the recent political success of the Conservatives. On the other hand, social conservatives do remains a significant contributor to the public support that enabled the Conservatives to win a parliamentary majority in the federal election of 2011.

The study I propose will analyse the nature and magnitude of the political and rhetorical problem posed by the “secret agenda” charge and consider how the issue of abortion might be framed so as to overcome the obstacle that charge poses. I shall review recent and unsuccessful efforts through Private Members’ bills to accomplish this by increasing the criminal penalty where an act of violence directed at a pregnant woman results in harm to, or the death of, the foetus; or by punishing actions intended to coerce a woman to have an abortion; or by reviewing and revising the 400 year-old common law definition of what it is to be a human being in Canada’s Criminal Code. I intend also to examine the prospect for reducing public funding for abortion at the provincial level through a review of what our
courts, policy-makers and others have held as to the obligation of the provinces to fund abortion under the Canada Health Act – with special attention to the case of Prince Edward Island, where the provincial government has so far refused to provide for abortions in provincial hospitals. The potential effectiveness of reduced funding and other possible limits upon abortion will also be assessed through an examination of the available statistical evidence as to incidence and trends over the past several years, comparing that evidence so far as possible with its US counterpart.

Finally, my paper will attempt to give some account of what distinguishes the politics and fact of abortion in Canada and the US. In particular, my paper will consider how we might account for the powerful and largely successful effort of Canadian politicians to keep abortion off the public agenda in contrast to the large role it has played recently for example in the competition between those seeking the Republican nomination.

Current Controversies Over Defining Death and Transplanting Vital Organs From the Corpses of Human Persons

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This paper will consider and discuss contemporary debates by Catholic scholars who are loyal to magisterial teaching (including John Paul II’s final word on the subject in August 2002) concerning the validity of so-called brain death or the neurological criterion as a valid way to determine whether a person has really died.

The Twentieth Anniversary of Planned Parenthood v. Casey (1992)

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Regarded (by Michael Paulsen) as the worst constitutional decision of all time, Planned Parenthood v. Casey (1992) was a momentous decision. The Court seemed poised to overrule Roe v. Wade. In the end, Justice Kennedy joined with Justices O'Connor and Souter to author the (in)famous joint opinion, which upheld the essence of Roe v. Wade while abandoning some of Roe's key features. Casey has generated a lot of commentary and been influential in many respects.

On the 20th anniversary of the decision, this paper examines the Casey decision and assesses its impact. After a brief description of the decision, the paper will consider the impact of Casey in 3 principal areas—on the law of abortion, on the law of substantive due process, and on the role of stare decisis in constitutional litigation.

Casey has had an important impact on the law of abortion. Casey abandoned Roe's trimester framework and replaced it with the undue burden approach. This is now the governing law but the long term future of the undue burden approach is uncertain.

Casey has also influenced the Court's approach to substantive due process. Casey's language and in particular the sweet-mystery-of life passage has been celebrated and derided. The Court seemed to abandon the expansive approach to substantive due process that the "mystery" passage reflects in the assisted suicide cases in 1997. Yet, several years later, the mystery passage provided strong support for the Court's expansive decision in Lawrence v. Texas (2003). The mystery passage has had mixed reception in the lower courts and its long term future is uncertain.
Casey has also had influence on the Court's approach to stare decisis. The Court's use of Roe as a super-precedent was controversial at the time and was ignored in Lawrence, which overruled Bowers v. Hardwick. The concept though has continued to be much-discussed in the literature on precedent.

In sum, it is hard to argue with Paulsen's assessment of Casey. In terms of influence, the decision may not have much long term impact. Casey didn't settle the controversy over abortion. It may not, depending on whether the Court continues the path suggested by Gonzales v. Carhart, be very influential on the law of abortion. Casey may not prove to have much influence on the law of substantive due process. The Court seems disinclined to expand the scope of substantive due process. The major exception here is in the area of gay rights but that seems driven more by equality concerns and not the liberty/autonomy focus of Casey. The Casey decision's influence on the Court's approach to stare decisis is also uncertain. Casey, in sum, seems to have been an important decision but one without significant long-term influence.

Abortion and the Rights of the Unborn in Antiquity
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In law codes and authoritative statements, from Mesopotamia to ancient Israel to the Classical World, the right to life of the unborn were very widely, if not universally, protected. This power point lecture will consider views on abortion in the ancient world and the general protection of the rights of the unborn to life.

Imaged, Sealed, Inviolable and Real: Human Dignity in Mounier and Maritain
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In his July, 1838 Harvard Divinity School Address, Ralph Waldo Emerson offers the future divines advice on preaching and teaching. In an expansive statement he reveals his high concept of a living God and human dignity: “It is the office of a true teacher to show us that God is, not was; that He speaketh, not spake. The true Christianity—a faith like Christ's in the infinitude of man—is lost.” It was Emerson’s wish that both be recovered. And for two French scholars, Mounier and Maritain recovery is critical.

French Catholic Personalists, Emmanuel Mounier and Jacques Maritain, both of whom had considerable impact in the US, shared Emerson’s philosophical anthropology. The sources of their thought are very far afield from Emerson’s natural theology yet they arrived at essentially identical conclusions about the elevated importance of man and in so doing articulated a deep and concrete human dignity concept that possesses considerable beauty, mystery and, perhaps, current relevance. And they did so at a critical moment in history, the 1930s and 1940s, when both individualism and statism menaced. They accomplished a broadening and expansion of the concept of human dignity that made it prominent and public. They are among those who connect earlier documents to Catholic Social Teaching and to Mystical Body of Christ theology. They clarified and elevated a concept of human worth that in some ways anticipates uses to which John Paul II puts it in Evangelium Vitae as the foundation of crucial life issues.

Yet human dignity has been recently critiqued. Those questioning it wonder whether the concept has any utility. Psychologist Steven Pinker suggests it be abandoned as too contextual, fungible and even dangerous. Many questions could be raised about these objections but they are not his chief concern nor is
refuting them directly my purpose. Pinker’s overarching objection seems to have been inspired by the
President’s Commission on Bioethics of 2002, a body he suspects of research obstruction via dignity.
If Human Dignity has any meaning it must be applicable to and extractable from situations of
much more moment and significance (beginning and end of life) than those from Pinker’s examples.
Pinker is surely right in saying commission members seem to be in general agreement about the utility
and significance of human dignity. But was there a conservative attempt to bend crucial public policy
issues to a particular theological anthropology, and to obstruct research, as he seems to fear? Or has
dignity some specifiable meaning over time? Has it some continuity and content? Contrary to Pinker I
will argue that is has both.

This essay will examine only the human dignity views of Mounier primarily from his A
Personalist Manifesto (1938) and his treatise Personalism (published in French in 1949 and in English in
1952) and Maritain’s via Integral Humanism (originally appeared in 1936 in French and republished a
decade later), Education at the Crossroads (1943), The Person and the Common Good (1946) and Man
and the State (1951). Then it will connect these views to earlier ones and to recent applications to argue
for its worth, consistency and relevance to Roman Catholic discussions for some time past and even
currently.
The French scholars sought ways to wall off the highly valued individual from both statism and
individualism and their toxic human impact. They both protect man from the state by asserting his divine
worth and his capacious Emersonian infinitude. Both also wish, as did Emerson, an inherently dignified
high calling: for Mounier “vocation” and for Maritain as citizen in service to a common good at once both
secular and transcendent. Moreover all three are eager to avoid any individualism that would separate
this ultra-important “person” from the society of other persons or from community as “a person of
persons.” For all three, recognition of unsurpassable human importance is the first step toward a better
social order. The final factor to be discussed is what I will call: The “Presence of the Real:” persons
ensouled and embodied, imaged, imprinted and sealed by the divine and concrete, unique, inviolable—in
a word, real.

The Moral Status of the Embryo and its Bioethical Implications
Robert Santoro
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I will study Catholic arguments on the moral status of the embryo. My purpose is to examine the
current Catholic approach to the moral status of the embryo and consider its bioethical consequences by
highlighting possible developments in the Catholic tradition.

I will study the moral status of the early embryo within the Catholic moral tradition. The recent
history of Magisterial teachings will be analyzed in order to understand the development of the
Magisterial arguments. In response to Magisterial teachings, specifically Domum Vitae, a few Catholic
theologians – Norman Ford, Richard McCormick, and Thomas Shannon – have proposed changes to the
Church teaching to make it compatible with contemporary developmental embryological data. In response
to the writings of these theologians, other theologians – Mark Johnson and William Bracken – used
contemporary scientific data to support the theory of immediate hominization. In the style of a traditional
Quaestio Disputata, I will present both arguments in the effort to evaluate them. I will integrate this
debate with Carol Tauer’s contribution on probabilism. Ultimately, I will disagree with Tauer’s analysis
and conclude that the Magisterial tutioristic defense of the embryo is persuasive.
Qualitative investigation of pregnancy desires, intentions, and choices
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Director (Office of Cooperative Reproductive Health)
University of Utah School of Medicine

“Unintended” pregnancy is associated with elective abortion, inadequate prenatal care, poor health behavior during pregnancy, perinatal complications, child abuse and neglect, and developmental problems in childhood. However, there is a lack of clarity in research and policy about the underlying assumptions, measurement, meaning, and risk associations for “intended” versus “unintended” pregnancies. Not all “unintended” pregnancies are at substantial risk for these adverse outcomes. We have conducted a series of qualitative investigations of how women and men perceive and respond to pregnancies as “unintended” or “intended.” We have conducted semi-structured interviews with 33 adult women obtaining prenatal care, 19 adult women seeking abortion, and 15 adult women adopting out their children; 20 adolescent women obtaining prenatal care, 5 adolescent women seeking abortion, and 3 adolescent women adopting out their children; and 27 men whose partners were obtaining prenatal care, 13 whose partners were seeking abortion, and 3 whose partners were adopting out their children. Across these samples, we have found that wanting a pregnancy and planning it are distinctly different constructs that each have several components; that men and women sometimes have different wanting and planning attitudes towards a pregnancy; that decisions to seek abortion can be driven by the woman, the man, or both; and that decisions to seek prenatal care, abortion or adoption are highly related to the social and cultural context.

Teaching Correct Principles: Elective Abortion in the Doctrine, History, and Policy Positions of the Church of Jesus Christ of Latter-day Saints and in the Cultural Practices of the Members of the Church (Mormons)
Lynn D. Wardle
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One of the challenges facing any cultural community is to maintain and transmit from one generation to another commitment to moral principles, policies and personal behaviors that are inconsistent with social values and practices that have become generally-accepted and widely-practiced. How do church leaders create and nurture a faith community that maintains with integrity high moral standards in principle and practice relating to behaviors and values that it considers fundamentally immoral that have become socially popular? Abortion presents a case study of a human behavior and social practice that once was widely proscribed and condemned as immoral but which, in the past five decades, has become socially accepted and widely practiced in American society. This paper will focus on how the religious community of the Church of Jesus Christ of Latter-day Saints (herein “Church”) has responded to the challenge of social acceptance and legitimation of elective abortion as a religious community. It will review the statements and policies expressed by Church leaders, historically in the 19th century, and in the critical last 50 years during which elective abortion has become legal and socially-accepted in the United States. It will consider how effective that has been in nurturing pro-life attitudes, opinions, policy positions, and personal practices of the members of “LDS” or “Mormon” religious community. It will suggest some of the significant institutional factors that have contributed to the nurturing and maintaining support for strong pro-life ethics, policies and personal behaviors of Mormons.
Disregarding the Child’s Identity and Subjectivity: How Transactional Assisted Reproduction Privileges Adult Desire Over the Best Interests of the Child
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The public concern in the United States over an "octomom," or about inadequately screened donor sperm causing birth defects in Intra Cytoplasmic Sperm Injection children has identified some of the untoward results of our using technologies of assisted reproduction (ART) before we have fully understood their potential consequences for the unborn child. While media coverage has been attuned to the potential that a parent be overly optimistic about her ability to parent, or that fertility clinics may be too lightly regulated to provide safety for women and children, one consequence of current ART practices which has received less scrutiny is the potential for negative consequences for the child herself who is produced for parents who fully intend that she will have little or no knowledge of or interaction with one or both of her biological parents.

While it may not be a tort recognized in law, it is a gross abuse of power for an adult to bring a child into being with the intention of deliberately destroying the child's ability to know the material history of her own body. Such an act of hubris does not adequately consider the best interests of the child, nor adequately recognize the subjectivity of the child. This paper explores those issues.

A Post-Modern Proposal
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“A Post-Modern Proposal” is beholden to Jonathan Swift’s “A Modest Proposal” in approach, structure, tone, style, subject matter, irony, and intent. In particular, the essay confronts the issue of the Unborn in the United States and the world at-large. Birthed out of the pure tradition of propaganda, dating back to its inception with the Sacra Congregatio de Propaganda Fide, the essay strives to convince the reader to believe certain ideas and then to persuade them to pursue a prescribed course of action. “A Post-Modern Proposal” is an essay that is long overdue.