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# HUMANE PROVISIONS FOR ABORTED HUMAN REMAINS

PATRICK MONAGHAN\*

In *City of Akron v. Akron Center for Reproductive Health, Inc.*,<sup>1</sup> the Supreme Court struck down as "void for vagueness"<sup>2</sup> an Akron ordinance

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<sup>1</sup> 462 U.S. 416 (1983). In *Akron*, the Supreme Court affirmed the determination of the Court of Appeals for the Sixth Circuit that § 1870.16 of the Akron ordinance was void for vagueness. *Id.* at 450. In *Roe v. Wade*, 410 U.S. 113, 154 (1973), the Supreme Court initiated many questions concerning the legal rights, if any, of the fetus, and the manner in which the fetus, viable or nonviable, should be treated by the physician. See Doudera, *Fetal Rights? It Depends*, 18 TRIAL 38 (1982); Glantz, *Is the Fetus a Person? A Lawyer's View*, in ABORTION AND THE STATUS OF THE FETUS 107 (1983). Whether a physician performing an abortion must exercise the same care to preserve the life of a viable but aborted fetus as he would a viable, but unaborting one, was discussed in *Wynn v. Scott*, 449 F. Supp. 1302, 1320-21 (N.D. Ill. 1978), *aff'd sub nom.*, *Wynn v. Carey*, 599 F.2d 193 (7th Cir. 1979); see also *Leigh v. Olson*, 497 F. Supp. 1340, 1351-52 (D.N.D. 1980)(requirement of disposal in a "humane fashion" is unconstitutional as applied). In *Wynn*, the court upheld the section of an Illinois statute which provided that:

No person who performs or induces an abortion after the fetus is viable shall fail to exercise that degree of professional skill, care and diligence to preserve the life and health of the fetus which such person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted.

449 F. Supp. at 1320. The court found unpersuasive the plaintiffs' assertion that the section "requires the physician to sacrifice the woman for the unborn fetus, when the needs of the two conflict," and interpreted the section as not requiring "that the physician increase the risk to the woman in order to save the fetus." *Id.* at 1321.

The *Wynn* court also refused to find the section "void for vagueness." The standard of care, the court said, depends on the state of medical technology at the time and varies from one community to another. Therefore, there is no alternative but to "leave discretion in the hands of the attending physician." *Id.*

<sup>2</sup> 462 U.S. at 450; see *Constitutional Law-Abortion-Statutory Interpretation-Void for Vagueness* -Colautti v. Franklin, 439 U.S. 379 (1979), 18 Duq. L. Rev. 161, 170-72 (1979). The due process clause of the fourteenth amendment requires that a person charged with a

that required "any physician who . . . perform[ed] or induce[d] an abortion upon a pregnant woman . . . [to] insure that the remains of the unborn child . . . [were] disposed of in a humane and sanitary manner."<sup>3</sup> Arguably, ordinances directed at abortionists<sup>4</sup> may require greater specificity in describing disposal of the fetus. Those who perform abortions may view the embryo as a medical specimen, rather than as a human fetus.

Prior to the Supreme Court, the Court of Appeals for the Sixth Circuit struck down the "humane disposal" provision on the ground of "vagueness," indicating that an essential basis of the ruling was the court's objection "to mandat[ing] some sort of 'decent burial' of an embryo at the earliest stages of formation."<sup>5</sup> Such language impliedly aligns the Sixth Circuit, as well as the Supreme Court, with the decision in *Margaret S. v. Edwards*,<sup>6</sup> which implicitly held that humane disposal provisions were unconstitutional because such provisions *recognized* a value in the fetus.

The Supreme Court, in an opinion written by Justice Blackmun, disingenuously stated in *Roe v. Wade*<sup>7</sup> that "[w]e need not resolve the difficult question of when life begins."<sup>8</sup> Ten years later, this was repeated in *Akron*. It is the contention of this Article that *Roe v. Wade* and its "progeny," *Akron*, are examples of the technique of lying, repeating the lie and continuing to lie. Martin Buber observed, "The lie is the specific evil which man has introduced into nature. . . . The lie is our very own invention, different in kind from every deceit that the animals can produce."<sup>9</sup>

crime be afforded, through a statute, such notice of criminal conduct that a person of ordinary intelligence would know his contemplated conduct is forbidden by statute. See *Constitutional Law, supra*, at 170-72. Therefore, the statute must provide the accused with fair warning of his criminal conduct, prevent arbitrary and discriminatory enforcement of the statute, and protect the accused when his constitutional freedoms are in jeopardy.

<sup>3</sup> AKRON, OHIO CODIFIED ORDINANCES ch. 1870 (1978).

<sup>4</sup> In *Colautti v. Franklin*, 439 U.S. 379, 403, 408-09 (1979) (White, J., dissenting), Justice White, joined in his dissent by Chief Justice Burger and Justice Rehnquist, referred to those who perform abortions as abortionists.

<sup>5</sup> *Akron Center For Reproductive Health, Inc. v. City of Akron*, 651 F.2d 1198, 1211 (6th Cir. 1981), *modified*, 462 U.S. 416 (1983).

<sup>6</sup> 488 F. Supp. 181 (E.D. La. 1980). In *Margaret S.*, the plaintiff challenged a Louisiana statute concerning abortion on several counts, one of which was a requirement that a physician who performed an abortion must dispose of the fetal remains in accordance with the "Human Remains section of the Cemetery Title." *Id.* at 221 (quoting LA. REV. STAT. ANN § 40:1299.35.14 (West Supp. 1979)). The district court objected to the regulation, contending that it required fetal remains to be treated with the same dignity as the remains of a human. 488 F. Supp. at 222.

<sup>7</sup> 410 U.S. 113 (1973).

<sup>8</sup> *Id.* at 159.

<sup>9</sup> Rosenblum, *Coercion in Liberation's Guise*, in *ABORTION AND SOCIAL JUSTICE* 143, 146 (T. Hilgers & D. Horan eds. 1972) (quoting M. Buber).

When the Senate Committee on the Judiciary on the *Human Life Bill* made its report<sup>10</sup> Congressman Henry Hyde, among others, observed: . . . that of all the twenty-two expert witnesses

who testified before the Senate Subcommittee on the Separation of Powers . . . on the medical and biological questions, none ever claimed that unborn children are not alive nor that they belonged to any other species than human, or even that they were part of the mother rather than a distinct individual human being . . . Wasn't the significance of the birth of Louise Brown that her conception was in a test tube?<sup>11</sup>

Indeed, there is a danger for the very order of society when "the factual concepts on which legal decisions are based are mandatorily defined in ways which can support only the results reached, [because] the possibility of reasoned public criticism is eliminated."<sup>12</sup>

The popular press and the secular community at large recognize the deceit inherent in the abortion decisions. *Newsweek* magazine displayed a picture of an eight week old human embryo on its cover with the caption, "How Life Begins," and stated in its feature article that, despite the "difficult question of when life begins,"<sup>13</sup> *human life begins at fertilization.*<sup>14</sup>

If newborns could remember and speak, they would emerge from the womb carrying tales as wonderous as Homer's. They would describe the fury of conception and the sinuous choreography of nerve cells, billions of them dancing pas de deux to make connections that infuse mere matter with consciousness. They would recount how the amorphous glob of an arm bud grows into the fine structure of fingers agile enough to play a polonaise.

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<sup>10</sup> *The Human Life Bill: Hearings on S.158 Before the Subcomm. on the Separation of Powers of the Senate Comm. on the Judiciary, 97th Cong., 1st Sess. 7, 13, 24 (1981).*

Physicians, biologists, and other scientists agree that conception marks the beginning of the life of a human being — of a being that is alive and is a member of the human species. There is overwhelming agreement on this point in countless medical, biological and scientific writings. Extensive quotation from such writings would be unnecessarily redundant except for the strenuous efforts by some parties to deny or obscure this basic fact . . . If the United States government is to give reasonable consideration to the abortion issue it must start from the fact that unborn children are human beings . . . No governmental body that approaches the abortion question with honesty can accept [the] semantic gymnastics that obscure the real issue . . . Any suggestion that some human beings can be "nonpersons" under the law simply echoes the holding of *Dred Scott v. Sandford* . . . a decision the fourteenth amendment was intended to reverse.

*Id.*

<sup>11</sup> Hyde, *The Human Life Bill- Some Issues and Answers*, in *THE HUMAN LIFE REVIEW*, at 7, 10 (Spring 1982).

<sup>12</sup> *Senate Comm. on the Judiciary, Human Life Federalism Amendment*, S. REP. NO. 465, 97th Cong., 2d Sess. 47 (1982) (concerning S.J. Res. 110) [hereinafter cited as *FEDERALISM*].

<sup>13</sup> Begley & Carey, *How Life Begins*, *NEWSWEEK*, Jan. 11, 1982, at 38.

<sup>14</sup> Adler & Carey, *But Is It a Person?*, *NEWSWEEK*, Jan. 11, 1982, at 44.

They would tell of cells swarming out the nascent spinal cord to colonize far reaches of the embryo, helping to form face, head and glands. The explosion of such complexity and order—a heart that beats, legs that run and a brain powerful enough to contemplate its own origin—seems like a miracle. It is as if a single dab of white paint turned into a multicolored splendor of the Sistine ceiling.<sup>15</sup>

The government itself has revealed the falsity in suggesting that there is no need to resolve the difficult question of when life begins. The embryo is spoken of as a child on posters in liquor stores warning that alcohol may be hazardous and in appeals from the March of Dimes to “take care of your baby *before he is born.*” Yet this amorphous blob of paint that becomes the “multicolored splendor of the Sistine ceiling” is not a person before the law.

The question of “humane disposal” is controversial because it forces a confrontation with the act itself. What is it that we are doing and what is this embryo/blob/tissue or whatever? We cannot in one breath recognize “it” as a blob of paint turning into the “multicolored splendor of the Sistine ceiling” and in another, toss “it” into a waste disposal. “It” is a human being—a fact we do not care to admit, particularly when we go to kill it. The pro-abortion advocates are very frank about this contradiction. While admitting that scientific fact conclusively indicates that life begins at conception, they contend that this fact has been observed merely to placate the abhorrence of society for killing.<sup>16</sup>

In *Margaret S. v. Edwards*, the attempt to separate “the idea of abortion from the idea of killing” is carried through under the “socially impeccable auspices” of the federal judiciary.<sup>17</sup> Concerning the requirement of burial or cremation of aborted fetuses, the court stated that “[s]uch a question equates the abortion process with the taking of a human life, because fetal remains are required to undergo the same elaborate formalities of burial or cremation which are traditionally reserved for deceased persons.”<sup>18</sup> The court not only maintained that abortion is

<sup>15</sup> Begley & Carey, *supra* note 13, at 38.

<sup>16</sup> *A New Ethic for Medicine and Society*, 113 CAL. MED. 67, 68 (1970).

Since the old ethic has not yet been fully displaced it has been necessary to separate the idea of abortion from the idea of killing, which continues to be socially abhorrent. The result has been a curious avoidance of scientific fact, which everyone really knows, that human life begins at conception and is continuous whether intra- or extra-uterine until death.

The very considerable semantic gymnastics which are required to rationalize abortion as anything but taking a human life would be ludicrous if they were not often put forth under *socially impeccable auspices*.

*Id.* (emphasis added).

<sup>17</sup> See *Margaret S.*, 488 F. Supp. at 188-90.

<sup>18</sup> *Id.* at 222 (emphasis added).

not killing, but additionally implied that a funeral—the grieving process for the living, the recognition of the value of the person and the intrinsic worth of the human made in the image of God — is nothing but an “elaborate formalit[y].”

After denying we knew when life begins, we denied that the fetus is a person; then we denied “it” is a human being; and then, not only in the face of God did we deny its humanity but in the face of the findings of the Ethics Advisory Board; we even deny “it” the “profound respect” to which “it” is “entitled.”<sup>19</sup>

The holding of *Margaret S.* exemplifies this denial by stating that “[s]ince the fetus is not a person, neither is it a human being.”<sup>20</sup> Not content with the foolishness inherent in saying a human fetus is not a human being, the court reiterates its view by criticizing the humane disposal statute for “impermissibly” raising “the status of a fetus to that of a human being by using language equating fetal remains with human remains . . . .”<sup>21</sup>

In *Akron*, the Supreme Court and the Court of Appeals for the Sixth Circuit, although more subtly, have also arrived at this level of foolishness. The Akron ordinance was declared unconstitutional because it was vague in that it left open the interpretation that the ordinance mandated a “decent burial” for aborted fetuses.<sup>22</sup>

Observe how the court uses “fetus” as a noun *unmodified*, in contrast to “being” as a noun modified by “human.” The question to be asked is what kind of being is the aborted fetus? Admittedly, if it is a species of animal fetus, then certainly such a fetus cannot be raised to the level of a human being or lowered thereto. Obviously, however, because these are humans who are obtaining abortions, their fetuses are human and no statute does, nor can, raise them to the level of human beings because a *human* fetus is, by definition, a *human* being. “Human” and “fetal” are not mutually exclusive words. In *Margaret S.*, the court uses “remains” as a noun modified by “fetal” in contrast with “remains” modified by “human,” as if there were some natural opposition between the two. What kind of “fetal” is opposed to “human”? Certainly not a “human fetus” or a “fetal human.” If the subject matter for disposal is a human fetus, then the remains are both fetal *and* human. The remains cannot be fetal *or* human — they are either human or non-human, fetal or non-fetal. The words “human” and “fetal” are not mutually exclusive .

The verbiage of *Margaret S.* is comparable to Judge Haynsworth’s

<sup>19</sup> Report of the Ethics Advisory Board on HEW Support of Research Involving Human In Vitro Fertilization and Embryo Transfer, 44 Fed. Reg. 35033, 35056 (1979).

<sup>20</sup> *Margaret S.*, 488 F. Supp. at 222.

<sup>21</sup> *Id.*

<sup>22</sup> See *Akron*, 462 U.S. at 451 (citing *Akron*, 651 F.2d at 1211).

statement in *Floyd v. Anders*<sup>23</sup> that “. . . the Supreme Court declared the fetus in the womb neither alive nor a person within the meaning of the Fourteenth Amendment.”<sup>24</sup> If it were true that the unborn were not alive, the alleged need for abortions under any theory would be obviated.

One might certainly state that each of us has a constitutional right to lie to himself. The law does not require one convicted personally to admit that he acted wrongly. Likewise, the fact that a woman contemplating committing an abortion internally knows that it is the taking of human life does not mean that she should by law be required to acknowledge externally the action.

Presumably, a woman presently possesses the right to kill the unborn child, but not the right to demand that society financially underwrite her decision or to applaud by pretending “the human embryo” is not “entitled to profound respect” as even the United States Government’s own *Report of the Ethics Advisory Board* concluded it was.<sup>25</sup> Though an individual may have a right to lie to himself, he has no right to demand that the rest of us deny that he is acting, or that the rest of us act as if nothing were occurring. Moreover, a provision for humanely disposing of aborted fetal remains need not bring up the question of the Supreme Court’s decision in *Roe v. Wade*, since the fetus has been afforded rights in other areas of the law without reference to *Roe*.<sup>26</sup>

Indeed, the opposition that the abortionists make to humane disposal raises a question of our own comfort with the whole materialistic philosophy.<sup>27</sup> If the embryo is really a blob, a speck of flesh, a hank of hair, and nothing more, why care about how it is disposed of? The true target of those opposed to the “humane disposal” concept, however, is not what is

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<sup>23</sup> 440 F. Supp. 535 (D.S.C. 1979).

<sup>24</sup> *Id.* at 539.

<sup>25</sup> See 44 Fed. Reg. 35033, 35056; FEDERALISM, *supra* note 12, at 42 (and polls cited therein).

<sup>26</sup> See, e.g., Doudera, *supra* note 1, at 39-44; Glantz, *supra* note 1, at 109-16. In the areas of property law (inheritance), criminal law (for the viable fetus), and tort law, certain rights have been guaranteed to the fetus. See Glantz, *supra* note 1, at 109-16. In *Wynn v. Scott*, 449 F. Supp. 1302 (N.D. Ill. 1978), *aff'd sub. nom.* *Wynn v. Carey*, 599 F.2d 193 (7th Cir. 1979), the district court protected the rights of the aborted fetus by upholding a provision of the Illinois Abortion Act prohibiting any “exploitation of or experimentation with the aborted tissue.” *Id.* at 1322. Finally, “the state interest in the dignity of treatment of human life, even if it has never been considered by the Court as a justification for an absolute abortion prohibition, ought to justify a state regulation governing the disposition of human remains, including fetal remains.” L. WARDLE, THE ABORTION PRIVACY DOCTRINE: A COMPENDIUM AND CRITIQUE OF FEDERAL COURT ABORTION CASES 302 (1980); accord M. SHAW & A. DOUDERA, DEFINING HUMAN LIFE: MEDICAL, LEGAL AND ETHICAL IMPLICATIONS 263 (1983) (questions whether aborted fetus is granted same legal protection against “infliction of indignity” as is corpse).

<sup>27</sup> See Jancin, *Emotional Turmoil of Physicians: Staffed Biggest D & E Problem*, OB. GYN. NEWS 1, 16 (Dec. 15, 1981).

done with the human "material," but that the human soul is being attacked. The established orthodoxy demands that we act as though there were no God and that we have no soul.

While scientists ponder the Shroud of Turin or the heavens for proof,<sup>28</sup> however, the shocking evidence of our spiritual nature bursts forth in the twentieth century through the testimony of Auschwitz, the Gulag, Cambodia, and Nagasaki. Once we recognize the evil illustrated by the events of this century, we know *God is* and *we are*—and the stakes of the conflict. As Elie Wiesel heard intuitively on entering a concentration camp as a prisoner: "The soul is important and the enemy knows it; that's why he tries to corrupt it before destroying us. Do not let him."<sup>29</sup>

By their public positions against humane disposal, abortionists show how they internalize the knowledge of killing. In accepting the responsibility of killing, the abortion advocate is driven by a dynamic much like the slaveholders of old. Slavery was once apologetically defended as a necessary evil. Its actual evil nature compelled it to advocate itself as a "positive good."

Similarly, as with slavery, we have watched abortion move from being a drastic measure, a last resort, a necessary evil, an unfortunate occurrence, to a "fundamental right" upon which a vast industry is built. The term "abortion choice" becomes layered with a nonsensical attitude as though it is something that everyone should have along with the chicken in every pot and the car in every garage.

It has become increasingly evident that an emerging consensus is now recognizing this abominable act for what it truly is: the systematic killing of defenseless human beings. Recently, in Corpus Christi, Texas, two legally aborted fetuses discovered in a garbage dump were released by authorities for burial. Just as a nation honors her dead abroad and seeks them out though they be in a Southeast Asian jungle, or victims of terrorism in San Francisco or South America, so do the bodies and souls of the aborted unborn require a fitting and proper burial.

If we are a deeply "religious people," as stated by Justice Douglas,<sup>30</sup> and "a society that so strongly affirms the sanctity of life," according to Justice Brennan,<sup>31</sup> surely individuals should at least be able to have a memorial service without first necessitating the removal or consideration of a preliminary injunction, and a legislative provision for the remains of the aborted should be enacted.

The Japanese experience, including the emphasis on grieving for the aborted fetus, suggests the growing recognition of the horror of the act of

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<sup>28</sup> See R. JASTROW, *GOD AND THE ASTRONOMERS* (1978).

<sup>29</sup> E. WEISEL, *ONE GENERATION AFTER* 79-80 (1970).

<sup>30</sup> See *Zorach v. Claiborn*, 343 U.S. 306, 313 (1952).

<sup>31</sup> See *Furman v. Georgia*, 408 U.S. 238, 286 (1972) (Brennan, J., concurring).

abortion and the actual humanity of the fetus. At the same time, the large number of Japanese abortions has given rise to temples like Hase, in Kamakura, an ancient capital of Japan, where more than 50,000 statues stand, honored as repositories for the souls of the unborn babies. A Buddhist altar in Hase is decorated with children's clothes and toys, and holds dozens of written memorials to the children.<sup>32</sup>

On May 5, 1982, President Reagan gave recognition to 16,433 dead, kept in containers and labeled in jars, that were found in Los Angeles when a storage container broke open.<sup>33</sup> In a letter written to a Dr. Philip B. Dreisbach upon the discovery of the bodies, the President spoke of the "great horror and sadness evoked" and of how:

[T]he reality of abortion and its consequences removes all trace of doubt and hesitation. The terrible irony about this sudden discovery is not that so many human lives were legally aborted, but that they are only a tiny proportion of the 1.5 million unborn children quietly destroyed in our nation each year. This is the truth many would rather not face.<sup>34</sup>

Referring to abortion as evil and a national tragedy, the President, like many others, was "hopeful that evidence like that found in California will move those who have thus far preferred silence or inaction and encourage them to agree that something must be done," and he found it fitting and proper that a "memorial service for these children" be held.<sup>35</sup>

Yet, even in the face of this plea, a judge on June 29, 1982 issued a preliminary injunction restraining a Los Angeles district attorney from releasing "fetal tissue" for burial.<sup>36</sup> The injunction was granted at the request of American Civil Liberties Union attorneys, who claimed that plaintiffs "[would] suffer severe and irreparable injury."<sup>37</sup> Absurd idioms abounded. The ACLU would accept "incineration," not "cremation"; the court would permit for "underground storage," not "burial." Other government-sponsored mass funerals, induced by law in the twentieth century, have included incineration (Auschwitz), as well as "underground storage" (Babi Yar).

Then, as now, there will be public prayer, and in time, public recognition of the reality of what was done. Today, however, the unconstitu-

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<sup>32</sup> See Lehner, *Japanese Ceremonies Show Private Doubts Over Use of Abortion: Rituals Help Atone For Guilt, But Mixed Feelings Lead To Rising Public Debate*, Wall St. J., Jan. 6, 1983, at 1, col. 4.

<sup>33</sup> Letter from President Reagan to Dr. Phillip B. Dreisbach (May 5, 1982)

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Feminist Women's Health Center v. Philibosian*, 157 Cal. App. 3d 1076, 203 Cal. Rptr. 918 (1984), cert. denied, 105 S. Ct. 1752 (1985).

<sup>37</sup> *Feminist's Women's Health, Inc., Duncan, Donovan, Atheist's United v. Van de Camp*, No. 413606 (Cal. App. Dep't Super. Ct., June 29, 1982).

tional effort of courts to prohibit by prior restraint religious speech about those killed by abortion is equally ominous.<sup>38</sup>

In California, the state court in *Feminist Women's Health Center, Duncan Donovan, Atheists United v. John Van de Camp*<sup>39</sup> actually cited *Margaret S. v. Edwards* for the proposition that prayer over aborted human remains is unconstitutional. Yet, the First Amendment rights of free speech and free expression of religion clearly include the right for any individual or group to conduct public prayer. Thus, it is absurd to rule that because a mother has made a decision to abort her child and medical personnel have carried out that decision, no one else may publicly pray or express concern in memorial services or otherwise for the aborted human "material." Such speech in no way entails any government expenditure of funds, nor is it "government advancing religion." Indeed, applying the criteria of *Sherbert v. Verner*,<sup>40</sup> the governmental action attempting to prohibit prayer over aborted human remains is in violation of the First Amendment because it places a substantial burden on the free exercise of religion, and the government has no overriding interest secured by the imposition of such a burden. The question must be asked: what is the religion of the plaintiffs, who, not being content to express their own views by killing the unborn human life, now demand that everyone else acquiesce? Certainly, if there should be room for the practice of their religion, there should be room for others. The abortionists have practiced theirs by a ritualistic killing; now let others practice their faith by public prayer.

In true obedience, Antigone bowed not to Creon's tyrannical "rule of law" but buried her brother. How long will we all continue to cower to the tyranny of *Roe v. Wade* "rule of law"?<sup>41</sup> For now, the acts of the judicial officials and the concern of the President remain on record and there can be no doubt of the emerging consensus. Justice O'Connor, in her dissent, has rightly prophesized that *Roe v. Wade* ". . . is clearly on a collision

<sup>38</sup> W. BRENNAN, *THE ABORTION HOLOCAUST: TODAY'S FINAL SOLUTION* 145-65 (1983).

<sup>39</sup> *Van de Camp*, No. 413606 (Cal. App. Dep't Super Ct., June 29, 1982).

<sup>40</sup> 374 U.S. 398 (1963). In *Sherbert*, the Supreme Court announced a two-pronged test. First, the court must determine whether a real burden is placed on the free exercise of religion. Second, the court must determine whether the government has a compelling interest to establish the burden and whether the interest is achieved by the least restrictive means. *Id.* at 403.

<sup>41</sup> See J SWIFT, *GULLIVER'S TRAVELS*, reprinted in M. MCNAMARA, *RAGBAG OF LEGAL QUOTATION* 227 (1960). "It is a maxim among lawyers that whatever hath been done before may legally be done again; and therefore, they take special care to record all the decisions formerly made against common justice and the general reason of mankind." *Id. Contra Acts* 4:20 (New Amer. Translation)(Peter and John before the Sanhedrin) "Judge for yourselves whether it is right in God's sight for us to obey you rather than God"; *Acts* 5:30 (New Amer. Translation) (Peter and the Apostles before the Sanhedrin) "Better for us to obey God than men!" *Id.*

course with itself."<sup>43</sup> The abortionists perceive this "collision course" and the emerging consensus and state that "why we see that kind of crowd" for the pro-life cause is in part because:

. . . advancing technology that is being reported in the public media with the capacity to improve and increase fetal viability, with the capacity to do a whole range of medical, technical programming in which we begin to see the fetus as a patient . . . tends to personalize it . . . [T]echnology and medical sciences and perceptions of fetal viability are radically changing in our society . . . if we don't begin to cope with that we are going to find ourselves isolated some place.<sup>44</sup>

Having acted without fear of ultimate isolation, these men of our time now worry about their growing isolation in public life. This further shows that people, as human beings, can and will recognize the intrinsic worth of the *human* as has the President. Ironically, the frenzied and furied drive of abortionists to deny public recognition of what the act of abortion is and its consequences is pressed under a rationalization of "privacy." There is an unintended logic in this position, for as William Faulkner observed in *Intruder in the Dust*:

. . . of all human pursuits murder has the most deadly need of privacy; . . . man will go to almost any lengths to preserve the solitude in which he evacuates or makes love but he will go to any length for that in which he takes life, even to homicide, . . . by no act can he more completely and irrevocably destroy it . . . .<sup>44</sup>

Our slain brothers and sisters are intruders in the dust. Their lifeless remains are eloquent appeals to the reason known only to the heart. In life, they were not recognized as persons; yet, in death, their remains cry out for an acknowledgement of their personhood that has been abused and profaned.

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<sup>43</sup> *City of Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416, 458 (1983) (O'Connor, J., dissenting).

<sup>44</sup> *National Right to Life News*, May 26, 1983, at 12 (quoting A. Moran's speech at the Abortion Federations Annual Meeting in Minneapolis, Minn.)

<sup>44</sup> W. FAULKNER, *INTRUDER IN THE DUST* 57 (1948).