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## A Modest Proposal

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## A MODEST PROPOSAL<sup>1</sup>

*They have no lawyers among them, for they consider them as a sort of people whose profession it is to disguise matters.*<sup>2</sup>

It is a melancholy object to those who live in or visit this great Union, when they see the streets, railroad stations and highway underpasses crowded with alcoholics, drug peddlers, and addicts.<sup>3</sup> These men, women, and children commonly importune passersby for a handout or with an illicit offer. I think it is agreed by all parties that the prodigious number of these people, considering the present deplorable state of our nation, creates an additional burden on our society.<sup>4</sup> Parental influence often contributes heavily to these addictions, leaving many struggling for a solution.<sup>5</sup> Thus, this problem is best

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<sup>1</sup> Jonathan Swift wrote *A Modest Proposal* (hereinafter *Swift*) in 1729, three years after his successful *Gulliver's Travels*. Swift's *A Modest Proposal* was a short satire, proposing a savage, unthinkable remedy to the problem of poverty in 18th century Ireland. The proposal before you addresses a problem relevant to 20th century America, offering an equally savage and unthinkable remedy, which, when considered realistically, exposes the weaknesses of the pro-choice argument. Direct quotes from Swift's *A Modest Proposal* are credited in these footnotes, with quotation marks omitted. In Swift's piece, his true feelings emerge at the end of his piece; here, the author's feelings appear in the footnotes.

<sup>2</sup> SIR THOMAS MORE, UTOPIA, BOOK II, *Of Law and Magistrates* 49 (Ligeia Gallagher ed., Scott, Foresman & Co. 1964) (1516).

<sup>3</sup> See *Swift*, *supra* note 1, at 487.

<sup>4</sup> See *id.* at 487. Current estimates indicate that more than 100 drug-exposed babies are born each day. See Steven Brill, *Should We Give Up?* AM. LAW., Mar. 1990, at 3. "The cost to the state for these drug addicted babies ranges from \$6,000 to \$250,000 per infant depending on the severity of the addiction." Louise E. Abbis, Comment, *The Innocent Addicts*, 31 SANTA CLARA L. REV. 1087, 1087 (1991) (citation omitted). The number of babies damaged by alcohol-abusing mothers has been estimated between 8,000 and 50,000 per year. See Stanton Peele, *Misdirected Crusade*, in BORN HOOKED: POISONED IN THE WOMB 51, 55 (Gary E. McCuen ed., 2d ed. 1994). One report estimated that the cost of services and lost productivity from one Fetal Alcohol Syndrome baby is approximately \$1.4 million. See Tom Daschle & Ben Nighthorse Campbell, *Disaster on the Reservation*, in BORN HOOKED: POISONED IN THE WOMB, at 58, 60 (Gary E. McCuen ed., 2d ed. 1994).

<sup>5</sup> Pregnant drug users often come from families where one or both parents had abused drugs or alcohol, indicating a cyclical effect. See Deborah Appel, *Drug Use*

addressed at its root, before these people are raised to reach this terrible condition.<sup>6</sup>

I calculate that the monetary value placed on the lives of humans is minimal. Physicians value each person, for his or her chemicals, at \$1.98.<sup>7</sup> When grave injury befalls them, judges routinely instruct most juries to limit any wrongful death awards to taxable earnings capability.<sup>8</sup> In our capitalist economy, supply and demand govern value; here supply is great, demand low. The result is a low value attached to human life.

I shall now therefore humbly propose my own thoughts, which I hope will not be liable to the least objection.<sup>9</sup>

I have been assured by reasonable surveys and statistics that a child born to a chemically dependent family has an 83%

*During Pregnancy: State Strategies to Reduce the Prevalence of Prenatal Drug Exposure*, 5 U. FLA. J.L. & PUB. POL'Y 103, 109 (1992). In fact, it has been shown "that 83% of drug-addicted [pregnant] women [are] from chemically dependent families." *Id.* In research studies, "18% of the infants born at Boston City Hospital had evidence of cocaine in their systems," and "more than 20% of pregnant women at D.C. General Hospital . . . admitted to cocaine use," and that hospital believed the true number of users doubled that figure. See Martha Lynch, R.N., Ed.D., & Valerie Ann McKeon, R.N.C., Ph.D., *Cocaine Use During Pregnancy*, 19 J. OF OBSTETRIC, GYNECOLOGIC, AND NEONATAL NURSING 285, 285 (1990).

<sup>6</sup> Most thinking on fetal neglect and social response "fail[s] to address the most important reason for America's high infant mortality: the behavior and motivation of mothers themselves." Harmeet K.D. Singh, *More Spending Won't Fix the Problem*, in BORN HOOKED: POISONED IN THE WOMB, *supra* note 4, at 98, 99. Unfortunately, even when prenatal care is provided free of charge to low-income mothers often do not take advantage of the programs. See *id.* at 99-101.

<sup>7</sup> See Emanuel Thorne & Gilah Langner, *What Price Donor Organs?*, HOUSTON CHRON., Sept. 28, 1986, at 4; Bob Morris, *How Much is That Body in the Window?*, ORLANDO SENTINEL, Jan. 30, 1994, at 22; Sam Lowe, *Wizard of Odd*, PHOENIX GAZETTE, Nov. 28, 1989, at B1. This value excludes the rising values of organs, provided these can be saved. We must recognize, however, that the intrinsic value of human life is something too great to quantify—monetarily—as a collection of parts.

<sup>8</sup> The legal value of an individual thus equals her current earnings capacity.

In fixing that value you must take into consideration the circumstance and condition of [the infant's family]; the services the [infant] would have performed for [her family] in the care and management of the family home, finances, and health; and the intellectual, moral and physical guidance and assistance [she] would have given the [family] had she lived. In fixing the money value of decedent to the [family] you must consider what it would cost to pay for a substitute for [her] services.

N.Y. PATTERN JURY INSTRUCTION § 2:320.5 (West 1998). When evaluating the loss of a child, the loss is measured by the services the child would provide during minority, less the cost of the child's maintenance and education during that period. See *id.*

<sup>9</sup> *Swift*, *supra* note 1, at 489.

chance of also being an addict.<sup>10</sup> Sterilizing addicts is decidedly against their constitutional rights,<sup>11</sup> and infringing in the slightest on any implied constitutional right<sup>12</sup> should be avoided with surgical precision. Of course, sterilizing these unfortunate addicts may have moral implications.<sup>13</sup>

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<sup>10</sup> See *Swift*, *supra* note 1, at 489; *Missing Links: Coordinating Federal Drug Policy for Women, Infants, and Children: Hearings Before the Senate Comm. on Governmental Affairs*, 101st Cong. 7 (1989); *Antidrug Abuse Appropriations Authorization: Hearings Before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce*, 101st Cong. 8 (1989).

<sup>11</sup> In a case best forgotten, the Supreme Court, finding that "heredity plays an important part in the transmission of insanity, imbecility," and other problems, announced: "Three generations of imbeciles are enough." *Buck v. Bell*, 274 U.S. 200, 206-07 (1927). *Buck* upheld a statutory mandate and ordered the sterilization of a "feeble minded" woman. *Id.* at 205, 208. Later, in *Skinner v. Oklahoma*, 316 U.S. 535 (1942), the Court found a constitutional right to procreate. The statute the Supreme Court upheld in *Buck* was subsequently repealed.

<sup>12</sup> Some rights are found by courts. For instance, there is no "right" specifically written into the Constitution permitting abortion. Rather, the Supreme Court cases of the 1960s and 70s used a "penumbra" theory to find this right between the lines of the First, Third, Fourth, and Fifth Amendments, which generally prohibit government intrusion into an individual's private matters. See, e.g., *Roe v. Wade*, 410 U.S. 113 (1973); *Eisenstadt v. Baird*, 405 U.S. 438 (1972); *Griswold v. Connecticut*, 381 U.S. 479 (1965). Many have disagreed. "[W]hen the Constitution sought to protect private rights it specified them; that it explicitly protects some elements of privacy, but not others, suggests that it did not mean to protect those not mentioned." Louis Henkin, *Privacy and Autonomy*, 74 COLUM. L. REV. 1410, 1422 (1974). "I find nothing in the language or history of the Constitution to support [*Roe*]. The Court simply fashions and announces a new constitutional right for pregnant mothers and, with scarcely any reason or authority for its action, invests that right with sufficient substance to override most existing state abortion statutes." *Doe v. Bolton*, 410 U.S. 179, 221-22 (1973) (White, J., dissenting). "I do not think you can use [an Amendment] unless you know something of what it means. For example, if you had an amendment that says 'Congress shall make no'—and then there is an ink blot and you cannot read the rest of it and that is the only copy you have, I do not think the court can make up what might be under the ink blot." *Nomination of Robert H. Bork To Be Associate Justice of the Supreme Court of the United States: Hearings Before the Senate Committee on the Judiciary*, 100th Cong. 249 (1987) (testimony of Robert Bork).

"Jane Roe" now questions her judgment. "In 1973, Norma McCorvey made history as the 'Roe' in the landmark *Roe v. Wade* case, but now says she was misled." Deborah Mathis & Carl Weiser, "*Jane Roe*" Pleases Ashcroft With Her Abhorrence of Abortion, GANNETT NEWS SERVICE, Jan. 21, 1998. "It was my pseudonym, Jane Roe, which had been used to create the right to abortion out of legal thin air . . . [I did not know] what I was signing would allow women to come up to me 15, 20 years later and say, 'Thank you for allowing me to have my five or six abortions.'" *Id.*

<sup>13</sup> Human formation begins immediately after conception. "Somewhere around the second week of pregnancy, the embryo begins to differentiate into discrete organ systems" during organogenesis. William Banner, Jr., M.D., Ph.D., *Medications and the Effects on the Fetus*, in 1 OBSTETRIC AND NEONATAL MALPRACTICE § 5.4

I do therefore offer it to public consideration that we offer these people a three-trimester extension to seek an abortion.<sup>14</sup> An expanded right to terminate offspring within nine months of birth, if exercised, will improve our economy, lessen social problems, and strengthen the war on drugs by eliminating, to a great extent, the need for publicly funded social programs. Although the gestational trimester system is no longer of legal value,<sup>15</sup> perhaps it could retain some value for this purpose; a

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(Michael D. Volk, ed., 1996). At 18 days postconception, the heart and brain begin to form. *See id.* "The heart begins to beat and propel blood through the embryo on approximately the 22nd day of the pregnancy." WILLIAM LARSEN, HUMAN EMBRYOLOGY 153 (1993); *see* GRAY'S ANATOMY 723-24 (37th ed. 1989). The baby's head, eyes and mouth have clearly appeared by 26 days postconception. *See* GRAY'S ANATOMY, *supra*, at 164, 168. "The extremities appear to undergo differentiation and formation from the 24th to 36th days of life." Banner, *supra*, § 5.4; *see also* GRAY'S ANATOMY, *supra*, at 174, 215. At this point, the mother likely does not know she is pregnant.

A registered diagnostic medical sonographer, Kay Ballard-Taraschi, recently wrote: "I can show a viable fetal heartbeat in a 3- to 4-mm embryo when a female is only two weeks late in her cycle." *Your Opinions: Letters to the Editor*, FLA. TODAY, Feb. 11, 1998, at 12A.

I am not a religious fanatic, but certainly have a problem when someone tells an uninformed patient that 'there is nothing there but a mass of tissue' when I know exactly the opposite. . . . I also see the horror on their faces when I show them a moving fetus with arms and legs and they had no idea such existed. . . . That's what this is all about, educating these girls and getting the word out about adoption.

*Id.*

Some would prefer not to educate these women. A 1996 Florida law required patients be informed that instruments are available "that enable a pregnant woman to view the image or hear the heartbeat of her unborn child." *Doctor: Abortion Law Forces Bad Medicine*, WIS. ST. J., Oct. 9, 1996, at 1D, available in LEXIS, News Library, News File (All). A doctor "testified in federal court that the law forces her to give patients false information [sic] and information that needlessly upsets them." *Id.*

A picture is worth a thousand words. For sonogram views and sounds of an antepartum human, visit: *Obstetric Ultrasound—A Comprehensive Guide* (visited Oct. 3, 1999) <<http://www.ob-ultrasound.net>>. From this site you can link to other sites to see his face, <<http://www.ob-ultrasound.net/images/3dface.jpg>>. Other images are available as well, such as <<http://www.ob-ultrasound.net/images/3dhand.jpg>> (detail picture of a baby's hand), <<http://www.ob-ultrasound.net/images/3dfoot.jpg>> (detail picture of baby's foot), and <<http://home.netvigator.com/~joewoo/yawn.mov>> (a nine-second video of the baby yawning).

<sup>14</sup> *See Swift, supra* note 1, at 489.

<sup>15</sup> *See Planned Parenthood of S.E. Pa. v. Casey*, 505 U.S. 833, 873 (1992) (overturning *Roe's* trimester framework); *Webster v. Reproductive Health Servs.*, 492 U.S. 490, 518 (1989) (criticizing *Roe's* trimester system as "unsound in principle and unworkable in practice") (quoting *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 546 (1985); *Akron v. Akron Center*

“postpartum abortion,” if you will.<sup>16</sup> Care must be taken to refer to this procedure only as a reproductive “choice,” lest people be misled that it is, in reality, something else.<sup>17</sup>

Reality can be subordinated to support the creation of a legal fiction which would allow postpartum abortions.<sup>18</sup> It is known and accepted in the medical community that there are substantial similarities between an antepartum and a postpartum human.<sup>19</sup> The seven to nine month postconception

for Reproductive Health, 462 U.S. 416, 454 (1983) (O'Connor, J., dissenting) (arguing that the artificial trimester system created by *Roe* “cannot be supported as a legitimate or useful framework”).

<sup>16</sup> For purposes of this proposition, “antepartum” will refer to “before birth,” while postpartum will refer to “post birth.”

<sup>17</sup> “Most Americans personally consider abortion to be immoral—in fact, ‘murder.’” George Skelton, *The Times Poll: Most Americans Think Abortion Is Immoral*, L.A. TIMES, Mar. 19, 1989, at 1. The national survey asked whether the respondents favored abortion “if an unmarried woman who is pregnant does not want to marry the man” (40% for, 51% against); if she is “married [and] does not want any more children” (36% - 54%); and “when it is used “as a form of birth control” (13% for, 80% against).” *Id.* When asked, “[d]o you favor or oppose abortion, no matter what the reason?” 54% were opposed to abortion, and 34% favored it. *Id.* “Between 1987 and 1991 [among U.S. teenagers,] the birthrate rose by 23%, and the abortion rate declined by 10%.” 24 BIOLOGY DIG. 75 (Nov. 1997). According to the Centers for Disease Control, in 1995 the U.S. abortion rate dropped to its lowest level in two decades. See *Abortions Fell in All But 12 States in '95*, WASH. POST, July 3, 1998, at A11. This trend has continued. “Public opinion is moving away from allowing unrestricted access to abortion, the first such shift since the Supreme Court legalized abortion nationwide . . .” Mimi Hall, *Polls: Shift in Support for Abortion*, USA TODAY, Jan. 21, 1998, at 1A. “An analysis of eight USA TODAY/CNN/Gallup Polls taken since 1994 shows a significant drop—8 percentage points—in the number of people who say they support legal abortion under any circumstances.” *Id.*

<sup>18</sup> Consider the following irony. In April 1972, Supreme Court Justice Douglas, in another context, demanded that “things” have a voice in courts:

A ship has a legal personality, a fiction found useful for maritime purposes. The corporate sole—a creature of ecclesiastical law—is an acceptable adversary and large fortunes ride on its cases. The ordinary corporation is a “person” for purposes of the adjudicatory processes . . . . So it should be as respects valleys, alpine meadows, rivers, lakes, estuaries . . . swampland, or even air . . . .”

*Sierra Club v. Morton*, 405 U.S. 727, 742–43, 749 (1972) (Douglas, J., dissenting) (citations omitted). Ten months later, Douglas concurred with the *Roe* majority, explicitly rejecting the unborn child’s rights as an entity or person. See *Doe v. Bolton*, 410 U.S. 179, 209 (1973) (Douglas, J., concurring).

<sup>19</sup> The antepartum human develops rapidly. By the third month after conception, the baby’s “hands and feet are well developed, and in the ninth week he starts to grow fingernails and toenails.” CHRISTOPHER VAUGHAN, *HOW LIFE BEGINS: THE SCIENCE OF LIFE IN THE WOMB* 73 (1996). At this time, girls can be differentiated from boys. See *id.* at 74. “At week 11 the baby will open his mouth, and if a finger brushes his mouth he might suck it. By week 12 he begins

baby has developed DNA, a working heart, brain, organs and fingerprints, similar to a baby twelve months past conception.<sup>20</sup> Furthermore, neither the wanted postpartum nor the unwanted antepartum baby can care for itself, much less survive, without imposing a servitude on someone else. Currently, no legal rights vest in any child until after he successfully negotiates the birth canal, a biological event.<sup>21</sup> Even with a successful birth, however, the child cannot be a party to a contract, vote, own real property, smoke cigarettes, drink alcohol, drive a motor vehicle, get married, pay taxes, or serve this country in war.<sup>22</sup> As a result, at this early stage the child has no meaningful contribution to the country, and, considering its parents, likely never will. The solution is to move this arbitrary vesting point of the child's life as the High Court sees fit.

But my intention is very far from being confined to provide only for the children of drug addicts; it is of a much greater extent, and shall take in the whole number of infants, without discrimination, up to a certain age who are a burden to their parents or society.<sup>23</sup>

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swallowing amniotic fluid." *Id.* The total height of the baby is over five inches, who moves about vigorously, although the mother will not feel the baby yet. *See id.* at 74-75.

<sup>20</sup> "Except for its diminutive size, the baby is nearly fully formed by the end of the fifth month. . . . [and] now he is 12 inches long and weighs over a pound." RONALD E. GOTS & BARBARA A. GOTS, *CARING FOR YOUR UNBORN CHILD* 37 (1977). After 28 weeks, the baby's eyes can open, has hair on his or her head, and has a voice. *See* STEDMAN'S MED. DICTIONARY 638 (26th ed. 1995). "Eyebrows and eyelashes make their first appearances." GOTS & GOTS, *supra*, at 38. At this point the baby may have the ability to live outside the womb, separate from the mother. *See* STEDMAN'S MED. DICTIONARY, *supra*, at 638. "There are a few final touches in organ maturation . . . which occur during the final three months. However, this is mostly a period of growth rather than fine adjustment." GOTS & GOTS, *supra*, at 39.

<sup>21</sup> Merely negotiating the birth canal is not enough; the passage must be completed successfully. *See infra* note 26 (regarding partial birth abortion).

<sup>22</sup> *See, e.g.*, N.Y. GEN. OBLIG. LAW. § 3-101 (2) (McKinney 1992) (rendering contracts made after a party has attained the age of eighteen years not invalid on the ground of infancy); N.Y. PUB. HEALTH LAW § 1399-cc (McKinney 1992) ("Any person operating a place of business wherein tobacco products are sold or offered for sale is prohibited from selling such products . . . to individuals under eighteen years of age . . ."); N.Y. ALCO. BEV. CON. LAW § 65 (McKinney 1985) ("No person shall sell . . . alcoholic beverages to [a]ny person, actually or apparently, under the age of twenty-one years."); N.Y. VEH. & TRAF. LAW § 501 (McKinney 1992) (requiring attainment of eighteenth year before regular driver's license issued); N.Y. DOM. REL. LAW. § 15 (McKinney 1992) (requiring applicant for marriage license to be at least sixteen years old).

<sup>23</sup> *See Swift, supra* note 1, at 488.

Birth defects will be no more. Reliance on prenatal medical testing to determine birth defects is no longer a risk. Such testing is undoubtedly more accurate after nine months.<sup>24</sup> The heavy burden placed on parents and taxpayers in caring for those with defects will be lifted.

Each individual will be guaranteed even greater rights than our forefathers wrote into the Constitution. Women have more choices than ever before, clearly advancing their rights. The father's side of the equation, long ignored, now has a voice.<sup>25</sup> Other interested family members may also assist in making the choice, perhaps by informed majority vote, after careful inspection.

There are other considerable advantages to this system. First, little change is required to the clinical abortion procedures.<sup>26</sup> Unwanted by its family and society, the infant could be brought to the neighborhood clinic for disposal, where the same methods of termination may be employed.<sup>27</sup> As

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<sup>24</sup> Prenatal screening is designed to detect genetic diseases or defects while the child is still in the mother's womb. See ELENA O. NIGHTINGALE, M.D. & MELISSA GOODMAN, *BEFORE BIRTH: PRENATAL TESTING FOR GENETIC DISEASE* 27 (1990). Common tests include: measuring the amount of alpha-fetoprotein in the mother's blood, amniocentesis, chorionic villus sampling, removing a sample of fetal blood. See *id.* at 27–28. More recently, Doppler Imaging has been used to assess and monitor the baby's status, providing color images from Doppler signals. See *UCSD 3D Ultrasound Imaging Group Picture Gallery* (visited Oct. 3, 1999) <<http://tanya.ucsd.edu/gallery.html>>. Still, human error is possible. See *This Laboratory Shakes its Credibility*, HARTFORD COURANT, Nov. 15, 1994, at A8; *When Birth Defect is Possible, Experts Are Too Quick to Suggest an Abortion*, SYRACUSE HERALD-J., Aug. 18, 1998, at A10.

<sup>25</sup> Although he has the right to marry outside his own race, to procreate, to be a parent, and a duty to care for his children, the father has no rights as to the unborn baby. See *Roe*, 410 U.S. at 165, n.67 (refusing to discuss "the father's rights, if any exist in the constitutional context, in the abortion decision"); *Stanley v. Illinois*, 405 U.S. 645 (1972) (discussing parenthood generally); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (discussing privacy generally); *Skinner v. Oklahoma*, 316 U.S. 535 (1942) (discussing procreation generally).

<sup>26</sup> In the third trimester "partial-birth abortion" procedure, the baby is partly delivered, feet first, from the womb and through the birth canal until all but the head is exposed. As the baby's arms and legs move, a pair of surgical scissors are thrust into the base of the skull, a suction catheter is inserted through the opening, and the child's brain is suctioned out, which collapses the skull. The rest of the body is then more easily removed. See Tamar Lewin, *Wisconsin Abortion Clinics Shut Down*, *Citing New Law*, N.Y. TIMES, May 15, 1998, at 5; Ray Kerrison, *Put Baby Killers on the Spot*, N.Y. POST, Oct. 1, 1998, at 9; *Against Infanticide*, NAT'L REV., Apr. 22, 1996, at 19.

<sup>27</sup> Menstrual extraction, illegal in most states, involves an application of suction within the uterus, "as the suction is applied, the uterine contents are aspirated."

customary, third parties, not previously privy to the mother-child relationship would intervene and terminate the statistically-doomed infant, for a fee. Likewise, the child may be finally disposed using the current methods, with her antepartum siblings and the other medical refuse. The mother can be spared the burden, time and embarrassment of personally going to her abortionist, as the father or a friend could choose to bring in the child.

Skilled abortion providers receive an economic windfall. Their base of potential clients will double. Further, because the postpartum fetal pain is now audible and visible to those present, perhaps more can be charged for anesthesia and handling.

The long-term benefits are equally attractive. To name but a few, our streets will be cleaned up and our neighborhoods safer. No doubt housing will be easier to come by, and less costly. More people can work, instead of taking care of children.<sup>28</sup> Substantial costs will be avoided.<sup>29</sup>

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Phillis Turk, *Abortion*, in GYNECOLOGY, WELL-WOMAN CARE 451, 455 (Ronnie Lichtman & Susan Papera, eds. 1990). Dilation and evacuation is a frequent method of abortion, where "the cervix is mechanically dilated and the uterine contents are crushed" and then removed with a large-bore vacuum and scoop. *Id.* at 457. This procedure is more difficult for medical personnel, as they must dismember the baby and remove it in pieces. See BARBARA KATZ ROTHMAN, *THE TENTATIVE PREGNANCY: PRENATAL DIAGNOSIS AND THE FUTURE OF MOTHERHOOD* 195 (1986). Amniocentesis is also widely used, where an 18-gauge needle is inserted into the uterine cavity, replacing amniotic fluid with saline or urea. See Turk, *supra*, at 457. Saline is a liquid salt; urea is found in urine or synthesized from ammonia and carbon dioxide; either will poison the baby. See AMERICAN HERITAGE DICTIONARY 1086, 1329 (2d ed. 1985).

<sup>28</sup> "With an estimated ten to fifteen percent of all married couples involuntarily childless, and an estimated five hundred thousand to one million women unable to conceive or carry a child without assisted fertilization methods, there exists a real need for childless couples to have some form of assistance . . ." Charlene Kalebic, *The Constitutional Question of Cloning Humans: Duplication or Procreation?: An Examination of the Constitutional Right to Procreate*, 8 S. CAL. INTERDISC. L.J. 229, 281 (1998) (footnote omitted). "Adoption is, of course, one option that does not require high technology. However, it is often unavailable because of the lack of adoptable infants . . . resulting in a three to seven year waiting list. Ironically, one of the major [reasons is] . . . abortion. . . . Putting the [1.5 million] babies [aborted per year] up for adoption instead of destroying them would eliminate the waiting list in approximately one year and four months." *Id.*

<sup>29</sup> See *supra* note 5. The total cost to this country for substance abuse has been estimated at "over \$177 billion annually—or about \$750 to every man, woman and child in America." Richard L. Jones, *The Impact of Drug Abuse on the Welfare System*, in BORN HOOKED: POISONED IN THE WOMB 19, 22 (1994).

I can think of no one objection that will possibly be raised against this proposal.<sup>30</sup> We are all perfectly comfortable with our “choice” not to keep an “unwanted mass of fetal tissue.” Studies show that valid social concerns create this comfort.<sup>31</sup> By implementing this proposal, we can legislate away unwanted people, thus reducing drug abuse, crime, homelessness, and overpopulation. Legislative power and even social custom have been used before to advance particular causes, both in our country and abroad, with marvelous success.<sup>32</sup>

Legally, there should be no problem. It is self-evident that all babies are created equal, whether created three, seven, or thirteen months ago.<sup>33</sup> Although some critics of this proposal

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<sup>30</sup> See *Swift*, *supra* note 1, at 493.

<sup>31</sup> “I wanted to look nice in a bathing suit this summer.” *In re the Unborn Child H*, No. 84C01-8804-JP-185, slip op. at 2. (Vigo County Cir. Ct., Ind., April 8, 1988). In fact, studies show that couples who had undergone abortions for social reasons express less guilt than those who aborted for “fetal defects.” Turk, *supra* note 27, at 452.

<sup>32</sup> Over the course of human history, we have lost the unique cultural contribution of millions of individuals through the execution of improvident, ignorant, and inhumane state policies. “[I]n ancient Greece, babies born with birth defects were sometimes left on the hills to die, a practice adopted to evade the ethical proscription against direct killing.” Wesley J. Smith, *Unnecessary Tragedy: Assisted Suicide Comes to Oregon*, 21 HUM. LIFE REV. 25, 25, Mar. 22, 1995, at 25. In Nazi Germany, similar proposals “focused on the right of society to rid itself of those who were burdensome.” Thane Josef Messinger, *A Gentle and Easy Death: From Ancient Greece to Beyond Cruzan Toward a Reasoned Legal Response to the Societal Dilemma of Euthanasia*, 71 DENV. U. L. REV. 175, 193 (1993). This was permissible because “[w]e’re not thinking of individuals but of the race. The race is bigger than the individual.” *Id.* at 193 n.177 (quoting the comments of the Nazi Health Office) (citations omitted); see ROBERT JAY LIFTON, *THE NAZI DOCTORS, MEDICAL KILLING AND THE PSYCHOLOGY OF GENOCIDE* 22 (1986) (“The *völkisch* state must see to it that only the healthy beget children. . . . Here the state must act as the guardian of a millennial future. . . . It must put the most modern medical means in the service of this knowledge.”) (quoting Adolf Hitler). “Only in Nazi Germany was sterilization a forerunner of mass murder.” *Id.*; see also Paul A. Lombardo, *Three Generations, No Imbeciles: New Light On Buck v. Bell*, 60 N.Y.U. L. REV. 30 (1985) (describing the history and the people involved with the state-ordered sterilization in *Buck*). When the early American colonies grew and began to experience labor shortages, “Black inferiority” became the rationale for enslavement, which was legalized in six of the thirteen colonies between 1619 and 1664. See Nathan V. Gemmiti, Note, *Porsche or Pinto? The Impact of the “Motor Voter Registration Act” on Black Political Participation*, 18 B.C. THIRD WORLD L.J. 71, 75 (1998). More recently, Holland seems to have accepted the idea of infant euthanasia, provided the parents consent. See Mike Corder, *Newborn Euthanasia: Newest Frontier in Dutch Debate*, ASSOCIATED PRESS, Dec. 5, 1995.

<sup>33</sup> “We hold these truths to be self-evident, that all men are *created* equal . . . with certain unalienable Rights, that among these are Life, Liberty, and the pursuit

may disagree, arguing that by the third trimester postpartum this fetus is almost a child, thankfully these people have no legal standing. Applying the same legal arguments as we do to the currently-legal first through third trimester antepartum abortions comforts us into thinking this is acceptable. Ultimately, the mother must be free to choose whether to keep the baby or terminate it, because the baby is her burden.<sup>34</sup> And after all, this is a choice, not a child.<sup>35</sup>

Religious objection carries no weight. The *morality* of postpartum abortion is exclusively a religious issue and, as such, is excluded from legal debate. Someone else's religion-induced attachment to these "products of conception" is not for public concern, and is obviously trumped by an individual's unlimited rights.

I calculate this remedy to be appropriate for this country only now, because we are so socially and medically sophisticated.<sup>36</sup> Because of our advanced status, as a country we

of Happiness." THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (emphasis added). "Create" means to "cause to exist; bring into being." AMERICAN HERITAGE DICTIONARY (2d ed. 1985). While people develop at different rates and to different levels, the point at which we are created does not vary.

<sup>34</sup> You cannot "undo" a pregnancy. The problem is once you accept as reasonable the killing of these beings as a solution to a particular situation and label this a constitutional right—and it appears many of us have—you justify your position with a discussion of Constitutional interpretation, case law, and any other intangible you can find. I use "intangible" because no such right is written into the Constitution.

Picture the scales of justice, circa 1789. Place unlimited abortion on one side, supported by all the abortion rights you think you can read into the new Constitution of the new nation. On the other side, balance the scale with the lives of unborn Americans, supported with the extent of medical knowledge at that time. Now progress into and through the 20th century, adding more and more knowledge, sophistication and eventually computer imaging to see more clearly the truth about the unborn Americans. While the Constitution was not changed to add abortion rights, and the effect of an abortion did not change, our knowledge has changed, tipping the scales in favor of a right to life. Even those who believe the Constitution should be interpreted differently in different times, cannot make that interpretation blindly balancing 20th century rights against 18th century fetal understanding. I submit that at some clouded, misguided stage, we passed by the truth and the reality of what we do to our children, blinding ourselves to the biological truths, while perfecting the ultimate form of child abuse.

<sup>35</sup> Of course, it is a child, not a choice. See *supra* notes 13, 19-20.

<sup>36</sup> Medical science is rapidly advancing. For instance, after rape, prompt medical treatment can prevent most pregnancies. See Joan Beck, *Happy 25th? Grieving for Lost Love, Lost Hopes, Lost Lives*, CHI. TRIB., Jan. 18, 1998, at 19. A "human embryo may be removed from the uterus of the mother and transferred to a recipient surrogate who is then able to deliver the child at full term." J. SCOTT ET AL., DANFORTH'S OBSTETRICS AND GYNECOLOGY 833-41 (6th ed. 1990). More

are able to disregard the truth about the creation of life and human development.<sup>37</sup> We capably accept a lesser value on human life, tastefully avoiding words too specific or realistic.

I will not accept any recognition or appreciation for the success of this proposal. I have no personal interest in endeavoring to promote this necessary work, having no motive other than reducing the suffering drug addicts, helping prevent homelessness and crime, reducing the number of children with defects, promoting individual rights and social causes, and reducing economic burdens on our society.<sup>38</sup>

Finally, in fairness, I am not so violently bent upon my own opinion as to reject any offer, proposed by wise men, which shall be found equally innocent, cheap, easy and effectual.<sup>39</sup> That proposal, however, must solve hereditary substance abuse, end birth defects, and guarantee more constitutional rights, with the same quickness, economy and finality as proposed here. Such a proposal must have the flexibility to expand, as this one does, beyond a mere three-trimester extension. It shall be legally

recently, Ina Wilmut and his team implanted "the nucleus from cell lines created from the udder of a mature ewe into an enucleated egg (an egg with the nucleus taken out). The egg was then implanted into a Scottish Blackface ewe. Dolly arrived 148 days later, a DNA carbon copy of her Finn Dorset ewe mother." Kalebic, *supra* note 28, at 234.

<sup>37</sup> The abortion to live birth ratio in this country was 321 to 1,000 in 1995. See Lisa M. Koonin et al., *Abortion Surveillance—United States, 1995 (Part 2)*, MORBIDITY AND MORTALITY WKLY. REP., July 3, 1998, at 31B, available in 1998 WL 10376653. "[T]he 25th anniversary of the Supreme Court decision *Roe v. Wade* . . . should be an occasion to lament the deaths of the estimated 35 million unborn babies whose lives have been terminated in the last quarter of a century." Beck, *supra* note 36. "It should be a time to mourn for a society whose culture and morality have failed women so grievously that millions of them feel they must be allowed to have their unborn children killed—and who celebrate abortion laws and court decisions as a hard-won 'right.'" *Id.*

<sup>38</sup> See *Swift*, *supra* note 1, at 31.

<sup>39</sup> *Swift*, *supra* note 1, at 30. On April 28, 1990, a crowd up to 700,000 strong converged on Washington D.C. to attend the "Rally for Life" near the Washington Monument. See Carlos Sanchez, *At Mall, Voices Rise Against Abortion*, WASH. POST, Apr. 29, 1990, at C1. The crowd rose to an applause when Vice-President Dan Quayle exclaimed: "Will the American people continue to accept the notion that unborn children are disposable? Our answer is, 'Not in this country. Not now. Not ever.'" *Id.* "In the long and bitter struggle over abortion in America, nothing exemplifies the utter failure of *Roe v. Wade* as vividly as this moment." Richard G. Wilkins et al., *Mediating the Polar Extremes*, 1991 B.Y.U. L. REV. 403, 405 (1991) (arguing the pro-abortion stance is too extreme, and reflecting on the Rally for Life).

embraceable. And to be truly effective, that solution must further disguise any matters of truth adverse to its implementation, as effectively as done before.

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