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978-0-521-87084-9 - Defending Life: A Moral and Legal Case against Abortion Choice

Francis J. Beckwith

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DEFENDING LIFE

Defending Life is arguably the most comprehensive defense of the pro-life position on abortion – morally, legally, and politically — that has ever been published in an academic monograph. It offers a detailed and critical analysis of *Roe v. Wade* and *Casey v. Planned Parenthood* as well as arguments by those who defend a Rawlsian case for abortion choice, such as J. J. Thomson. The author defends the substance view of persons as the view with the most explanatory power. The substance view entails that the unborn is a subject of moral rights from conception. While defending this view, the author responds to the arguments of thinkers such as Boonin, Dworkin, Stretton, Ford, and Brody. He also critiques Thomson's famous violinist argument and its revisions by Boonin and McDonagh. *Defending Life* includes chapters critiquing arguments found in popular politics and the controversy over cloning and stem cell research.

Francis J. Beckwith is associate professor of philosophy and jurisprudence, Baylor University. He teaches in the departments of philosophy and political science as well as the J. M. Dawson Institute of Church-State Studies, where he served as associate director from 2003 until 2007. A 2002–2003 Madison Research Fellow in the politics department at Princeton University, he is a graduate of Fordham University (Ph.D., philosophy) and the Washington University School of Law, St. Louis (M.J.S.), where he won the CALI Award for academic work in the Reproductive Control Seminar. His more than a dozen books include *Is Statecraft Soulcraft? Christianity and Politics* (2008); *To Everyone an Answer: A Case for the Christian Worldview* (2004); *Law, Darwinism, and Public Education: The Establishment and the Challenge of Intelligent Design* (2003); *Do the Right Thing: Readings in Applied Ethics and Social Philosophy*, Second Edition (2002); and *The New Mormon Challenge: Responding to the Latest Defenses of a Fast-Growing Movement* (2002), which was a finalist for the Gold Medallion Award in theology and doctrine. With interests in jurisprudence, politics, philosophy of religion, and public policy, Professor Beckwith has published in a wide variety of academic journals including the *Harvard Journal of Law and Public Policy*, *Journal of Social Philosophy*, *International Philosophical Quarterly*, *Hastings Constitutional Law Quarterly*, *Journal of Medicine and Philosophy*, *American Journal of Jurisprudence*, *Journal of Medical Ethics*, *Public Affairs Quarterly*, *Notre Dame Journal of Law, Ethics and Public Policy*, *Social Theory and Practice*, *Southern Baptist Journal of Theology*, *Christian Bioethics*, *Nevada Law Journal*, *Journal of Law and Religion*, and *Philosophia Christi*. His Web site is <http://www.francisbeckwith.com>.

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FRANCIS J. BECKWITH

Baylor University



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ACKNOWLEDGMENTS

I would like to thank the James Madison Program in American Ideals and Institutions (Department of Politics, Princeton University) and its director Robert P. George (McCormick Professor of Jurisprudence, Princeton) for providing me with a research fellowship in an idyllic environment with brilliant colleagues and a proficient staff so that I was able to work on this book free of my ordinary responsibilities as a faculty member. Although the bulk of my work was completed at Princeton (2002–2003), it was at Baylor University, in the 2003–2006 school years, that I finished the book's final chapters and prepared the manuscript and its edited legacies for the publisher. For this reason, I would like to single out for special thanks several of my graduate assistants who were assigned to me by the chair of the Department of Church-State Studies, the academic unit at Baylor University in which I held my faculty appointment during the writing and production of this book. My three 2003–2004 graduate assistants – T. Hunter Baker, Jennifer Clary, and Matthew Tapie – were especially helpful with proofreading an earlier version of the manuscript as well as offering their suggestions and insights. Hunter compiled the book's selected bibliography. After Cambridge University Press accepted the manuscript for publication, another one of my graduate assistants, John Lee (2004–2006), performed the task of reading a later incarnation of the manuscript. Two other graduate assistants, Gerard Figurelli (2005–2007) and Jeremiah Russell (2005–2006), proofread earlier versions of portions of the book that had appeared in a variety of academic journals. In Spring 2007 Gerard took on the tasks of producing an index for the book as well as reviewing the copyedited version of the manuscript. He excelled in both tasks, exceeding even my high expectations of him.

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present and assess in this book in either my conversations with them or while I was immersing myself in their published works. Among these wise souls are a select few whose insights stand out as particularly illuminating: Robert P. George, Hadley Arkes, Michael Bauman, J. P. Moreland, Scott B. Rae, Gregory P. Koukl, John Conley, Teresa Collett, Peter Kreeft, Patrick Lee, Diane Nutwell Irving, W. Norris Clarke, Keith Pavlischek, Seana Sugrue, Jim Stoner, Frederica Matthews-Green, John Finnis, Alexander Pruss, Joe Koterski, Doris Gordon, Edwin C. Hui (Xu Zhi-Wei), David Reardon, Robert Passantino, Gretchen Passantino, Steve Schwarz, Frank Pavone, Marvin Olasky, Steven D. Thomas, Don Marquis, Tom King, Jorge Garcia, Nigel Cameron, A. A. Howsepian, Norm Geisler, Richard Stith, Scott Klusendorf, J. Budziszewski, Leon Kass, Harold O. J. Brown, Mark Foreman, Ronald Tacelli, and Francis Canavan.

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generous in spirit. He lived the virtues he taught. He will be missed, but not forgotten.

As always, my lovely wife, Frankie Beckwith, to whom this book is dedicated, continues to support my work and has been especially patient in the writing of this tome. No heart is bigger, and no face has a prettier smile. She's my "precious angel," to borrow a phrase from Bob Dylan. My parents (Harold J. "Pat" and Elizabeth Beckwith), as well as my siblings (James, Patrick, and Elizabeth) and their spouses (Kimberly, Paige, and Patrick) and children (Dean, Dylan, Devin, Riley, Darby, Sophie, John Paul, Camilla Grace, and Michael Aniello), are a constant source of comfort and encouragement. It is through our understanding of the unity of spouses and the generation of their children that we gain a greater appreciation, and a deeper wisdom, of who and what we are as human beings in community and the obligation we have to both honor our predecessors and preserve for our progeny a moral framework that makes the achieving of the good life for them more likely and easier to sustain.

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- "Defending Abortion Philosophically: A Review of David Boonin's *A Defense of Abortion*." *Journal of Medicine & Philosophy* 31 (April 2006): 177–203.
- "Thomson's 'Equal Reasonableness' Argument for Abortion Rights: A Critique." *American Journal of Jurisprudence* 49 (2004): 118–134.
- "The Explanatory Power of the Substance View of Persons." *Christian Bioethics* 10.1 (April 2004): 33–54.
- "When You Come to a Fork in the Road, Take It? Abortion, Personhood, and the Jurisprudence of Neutrality." *Journal of Church & State* 44.3 (Summer 2003): 485–487.
- "*Roe v. Wade*: Its Logic and Its Legacy." *The Southern Baptist Journal of Theology* 7.2 (Summer 2003): 4–29. A revised and updated version of this article was published under the title "The Supreme Court, *Roe v. Wade*, and Abortion Law." *Liberty University Law Review* 1.1 (2006): 37–72.
- (with Steven D. Thomas). "Consent, Abortion, and the Pre-Natal Rapist: A Brief Critique of McDonagh's Suggested Revision of *Roe v. Wade*." *Journal of Libertarian Studies* 17.2 (Spring 2003): 1–16.
- "Cloning and Reproductive Liberty." *Nevada Law Journal* 3.1 (Fall 2002): 61–87.
- "Why I Am Not a Relativist." In *Why I Am a Christian: Leading Thinkers Explain Why They Believe*, revised edition. Edited by N. L. Geisler and P. Hoffman. Grand Rapids, MI: Baker Books, 2006, 17–31.

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“Abortion, Bioethics, and Personhood: A Philosophical Reflection.” *The Southern Baptist Journal of Theology* 6 (Spring 2000): 14–28.

“Ignorance of Fetal Status as a Justification of Abortion: A Critical Analysis.” In *The Silent Subject: Reflections on the Unborn in American Culture*. Edited by Brad Stetson. Westport, CT: Praeger Books, 1996, 33–42.

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“Utilitarian Arguments, Abortion Rights, and Justice Blackmun’s Dissent in *Webster*: Some Philosophical Observations.” *Simon Greenleaf Review of Law and Religion: A Scholarly Forum Interrelating Law, Theology and Human Rights* 8 (1988–89): 5–24.

I would like to thank the editors and publishers of these publications for not only allowing my work to first appear in print in these venues but also for permitting me to republish revised versions of those works here as parts of this book.

Special thanks to Stephen D. Schwarz for granting permission to republish in Chapter 4 a reworked, amended, and updated version of a chart that originally appeared in his book, *The Moral Question of Abortion* (Chicago: Loyola University Press), 1990, 22–25.

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INTRODUCTION

Who and What Are We and Can We Know It?

The primary purpose of this book is to provide a thorough defense of the pro-life position on abortion and its grounding in a particular view of the human person, a view I will argue is the most rational and coherent one that is at the same time consistent with our deeply held intuitions about human equality. A secondary purpose of this book is to offer an analysis of the abortion question as it touches on law, politics, and public discourse. This book's third purpose is to examine the extent to which our political and legal disagreements on abortion do not adequately capture, and seem almost deliberately framed not to capture, the narrow questions of philosophical anthropology and political theory that are the only ones that really matter if we have any hope of resolving a dispute some believe is intractable. This book is, in a sense, then, not really a book *about* abortion, but rather, a book about human equality, one that makes the argument that the project that began centuries ago – having its metaphysical roots in the biblical notion of the *imago dei* (image of God) that provided the intellectual scaffolding for the Declaration of Independence, the abolitionist movement, Abraham Lincoln's second inaugural address, and Martin Luther King Jr.'s speech on the steps of the Lincoln Memorial – can be, and ought to be, extended to include the true wideness of our human community, that is, to include the unborn.

The climate of America and of the world has changed since the U.S. Supreme Court reaffirmed *Roe v. Wade* (1973) in its 1992 decision, *Casey v. Planned Parenthood* (1992). The enthusiasm for moral relativism that seemed to be in ascendancy in those days has been disciplined by the terrorist atrocities of September 11, 2001, and those that followed in Spain (2003), the United Kingdom (2005), and India (2006). With the attendant questions about war and national security that these events raise, moving to the forefront of our public discourse is an acute

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awareness of the fragility and preciousness of life, the importance of ethical clarity, and the need to require moral justification when the taking of another's life may be required. In addition, the debates over partial-birth abortion, stem-cell research, and human cloning in the mid-to-late 1990s and early 21st century have served to underscore that the question often skirted by jurists, politicians, and professional bioethicists – what is the scope of the human community? – can no longer be ignored. After all, if Christopher Reeve was identical to his embryonic self, then we were no more justified in killing an embryo to acquire its stem cells so that Mr. Reeve might walk again than we would be in stealing Mr. Reeve's eyes so that Stevie Wonder might see again.

The pro-life position I defend in this book can be outlined by the following argument:

1. The unborn entity, from the moment of conception, is a full-fledged member of the human community.
2. It is *prima facie* morally wrong to kill any member of that community.
3. Every successful abortion kills an unborn entity, a full-fledged member of the human community.
4. Therefore, every successful abortion is *prima facie* morally wrong.¹

I intend to show that each one of the premises of this argument is at best true or at least more likely true than not. In Chapter 9 I review this argument-outline and summarize the conclusions I reach in Chapters 4 through 8. These conclusions are the basis on which I support the premises of my argument.

It is important that I define some terms. First, when I say that the unborn entity is a *full-fledged member of the human community* (or *fully human* for short) I mean to say that she is just as much a bearer of rights as any human being whose rights-bearing status is uncontroversial, for example, her mother, you, or me. That is, the unborn entity is entitled to all the rights to which free and equal persons are entitled by virtue of being free and equal persons. So, for example, one cannot deprive the standard unborn entity of her life without the sort of justification we would expect if we were depriving a standard 10-year-old of his rights. To illustrate, if it is wrong to kill a 10-year-old as a result of taking his kidneys and giving them to people the government thinks will benefit society (e.g., scientific geniuses on the verge of curing cancer or AIDS), it is wrong to kill a 20-week-old fetal-clone as a result of taking his kidneys and giving them to his genetic progenitor, a scientific genius, who needs

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them to survive so that he may continue his work on cures for cancer and AIDS.

Second, when I say that killing a member of the human community is *prima facie* morally wrong I mean to say that in ordinary circumstances no one is morally justified in killing another human being. However, this does not mean that it is *always* wrong in *every* circumstance to kill someone who is fully human. There could be circumstances in which killing is justified, such as in cases of self-defense or just war. In the case of abortion, the killing of an unborn entity is justified if her presence in her mother's womb poses a significant threat to her mother's life. For if the unborn entity is not surgically removed (which will undoubtedly result in her death if performed early on in the pregnancy), then *both* mother *and* child will die. The specific intention is not to kill the unborn entity but to save the life of the mother. The child's death is an unfortunate, though anticipated, consequence that cannot be avoided unless one is willing to let both mother and child die. Such a decision is the *result* of applying pro-life principles: it is *prima facie* a higher good that one human being should live rather than two die if one cannot save both.

This book is divided into three parts. Part I, which contains three chapters, concerns moral reasoning, abortion law, and politics. Chapter 1 is a brief defense of the possibility and importance of moral reasoning. I offer a case against moral relativism, arguing that there are objective moral principles that apply to all persons, in all times, and in all places. As part of my case against relativism I make the point that the disagreement over abortion is not a dispute over moral principles *per se*, but a clash over the question of who counts as a member of the human community (i.e., whether it includes the unborn) and/or how we ought to apply our moral principles. Chapter 2 deals with the current state of abortion law in the United States. I correct the general public's misunderstanding on the nature of that law by presenting, explaining, and critiquing the reasoning of the Supreme Court's majority opinion in *Roe v. Wade* (1973). I also address how court cases since *Roe* have shaped the constitutional right to abortion. In Chapter 3 I address the objection that the pro-life position on abortion – even if it is the morally correct point of view – cannot be reflected in our laws because it is “religious” and hence would violate the First Amendment's prohibition of religious establishment.

Part II is the core of my case. In Chapter 4, I present the scientific facts of prenatal development as well as the different methods physicians use in performing abortions. In Chapters 5 through 7, I critique many arguments that are used to justify abortion at some stage during

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pregnancy. There are three questions fundamental to the abortion debate that I answer in these chapters. (1) Do the popular arguments for the abortion-choice position really support abortion as a fundamental *right* (Chapter 5)?² (2) Is there any decisive moment in the unborn's development at which it becomes "fully human" or a "person" (Chapter 6)? (3) Even if the unborn entity is fully human, is it possible that abortion is *still* morally justified and thus legally permissible (Chapter 7)?

Part III contains two chapters. In Chapter 8, I address the issue of human cloning, whose moral and legal difficulties are similar to those found in the abortion question. Although contemporary bioethical debate is dominated by this and other issues (e.g., embryonic stem-cell research) that are perceived as more pressing than abortion, the answer to the philosophical question lurking behind abortion – who and what are we? – turns out to be the key that unlocks the ethical quandaries posed by these other issues. After all, if human persons ought not to be either subjects of research or killed without justification, and if the unborn from conception is a full-fledged member of the human community, then killing embryos to use their stem cells or to perfect human cloning is *prima facie* morally wrong. In Chapter 9, my concluding chapter, I sum up my case for the pro-life position by briefly reviewing the conclusions arrived at in Chapters 1 through 8.

I do *not* argue for the pro-life position by appealing to theological reasoning or the authoritative writings of any particular religious tradition. The main thrust of this book is philosophical and jurisprudential. Hence, if my arguments are sound, an atheist, agnostic, or humanist is intellectually obligated to become pro-life. Consequently, those who want to label and dismiss the pro-life position as a *merely* "religious view" (an argument with which I deal in some detail in Chapter 3) will be disappointed by my strategy to ground the pro-life perspective in an array of arguments that can be apprehended by engaging in reasoning unaided by anyone's holy scripture and/or divine revelation. This is not to say, of course, that a citizen may not be fully warranted in holding a pro-life position even if her only basis for doing so is theological. For I am not saying that theological reasons are *de facto* epistemologically inferior to so-called secular reasons.³ In fact, I have, on occasion, defended theological arguments for the pro-life position.⁴ But because the immediate discounting of religious reasons, or religiously motivated reasons,⁵ is not considered bad form among many in our public and academic cultures, I have chosen not to employ theological arguments in this book and thus not to tempt fate.

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To make the text more readable, I have dealt with some technical arguments in the endnotes rather than in the text of each chapter. To cite just two instances. In Chapter 2, I relegate to the endnotes an analysis of David Boonin's assessment of using the Supreme Court's viability standard as an argument for denying personhood to pre-viable fetuses. Also in Chapter 2, I critique in the endnotes Justice Blackmun's argument that the severity of punishments found in pre-Roe anti-abortion statutes demonstrates that these statutes did not recognize the unborn as a constitutional person or a full-fledged member of the human community. So, the reader may want to consult the endnotes on occasion.

At the end of the day, the abortion debate is about who and what we are and whether we can know it. The cultural conflict over the permissibility of abortion is really a dispute over whether we are justified in extending our nation's moral progress toward the elimination of unjust discrimination to include those who are the most vulnerable in the human family, the unborn. It is, in the end, whether we like it or not, a testimony to that inescapable truth penned by Aristotle more than two millennia ago, "Statecraft is soulcraft."