

## LICENSE TO KILL

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When the muffled whimpers were first heard coming from the outhouse, the woman who heard them thought they were the cries of a trapped animal. Summoned to investigate. Town Marshall Robert Parr, using a telescopic mirror and flashlight, espied the feet of an infant. Emergency Medical Technician Teresa Treadway was carefully lowered into the pit—which, thankfully, was nearly empty—and retrieved a six pound, seven ounce baby. “We could see the baby down there,” Treadway later explained. “He was covered with blankets but his little foot was out. He was moving his little foot. He wasn’t crying, but there was a little bit of whimpering.”

The incident, which took place last August in Clay County, Indiana, was just one of several in which mothers abandoned newborns in toilet facilities. In July, a 16-year-old visiting Atlantic City, New Jersey, from the Dominican Republic abandoned her newborn child in a toilet in a bus station lavatory. A July 15, 1997, Associated Press dispatch noted that the Atlantic City incident was by no means unique: “Three teen-age mothers have been charged since November [1996] in the deaths of their newborns in cases with New Jersey ties.... A teen-age couple from New Jersey was charged with killing their newborn son in a Newark, Delaware, motel in November. A 17-year-old girl from Pennsylvania is accused of concealing the death of her baby, which was born May 26 at a condominium in Vetnor and stuffed in a gym bag. And an 18-year-old girl from Forked River is accused of killing her baby, born in a bathroom while she attended her high school prom last month.” Melissa Drexler, the mother who gave birth at the prom, was arraigned on murder charges after an autopsy on the infant (who had been abandoned in the garbage) found that he had been killed by “asphyxiation due to manual strangulation and obstruction.”

Yet another infanticide occurred in Queens, New York, last November. Fifteen-year-old Nancy Martinez gave birth to a baby girl while sitting on a toilet; she later explained to investigators that “she let the baby fall into the water, where [she] cried for several seconds while her arms and legs flailed.” Martinez was arraigned on murder charges, prompting syndicated columnist George Will to comment, “If, as soon as the baby’s skull appeared, Martinez had opened a hole in the skull and extracted the brains, the most she could be charged with is practicing medicine (specifically, partial-birth abortion) without a license.”

Casting about in search of an explanation for these appalling incidents, Dr. Dave David, a Boston gynecologist regarded as an expert in teen pregnancies, suggested that the fault lies with the publicity such episodes receive: “A woman who’s agonizing about what to do may hear about other people disposing of their babies and decide that’s what she will do.” This

observation is sound, as far as it goes, but it ignores the fact that teenagers in such troubled circumstances have grown up in a culture in which the Supreme Court has ruled that babies are disposable during the entire nine months of pregnancy; and the President deploys his veto pen to defend a form of infanticide (partial-birth abortion) that is morally and scientifically indistinguishable from the incidents described above. When a troubled teenage mother discards a newborn infant in a toilet, her repellent action is perfectly compatible with the abortion ethic.

### **“Order of Priorities”**

The *Roe v. Wade* decision of 1973 invalidated the abortion laws of all 50 states and enshrined the abortion ethic as the supposed “law of the land.” Writing for the Supreme Court’s majority, Justice Harry Blackmun decreed that since “the word ‘person,’ as used in the Fourteenth Amendment, does not include the unborn,” it was not necessary to “resolve the difficult question of where life begins.” The Court’s majority dismissed the living individual within the womb as “potential” life, worthy of the “interest” of the state but meriting no protection from it. Blackmun further decreed that the state may enact measures to protect a developing child who had reached viability, and thus enjoyed a “capability of meaningful life outside the mother’s womb.” However, Blackmun insisted, even at such a late stage, the state’s “important and legitimate interest in potential life” must yield to considerations of maternal health, including mental and psychological distress. In other words, under *Roe* a developing child may be killed at any point in the pregnancy, since the child is not recognized as a “person” by the Supreme Court.

Blackmun’s opinion forms a tissue of pointless pedantry, littered with irrelevant citations and intellectual cul-de-sacs intended to distract its reader from a point raised in Justice Byron White’s dissent: “I find nothing in the language or history of the Constitution to support the Court’s judgment. 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.” As a result, continued White, the Court interposed “a constitutional barrier to state efforts to protect human life and [invested] mothers and doctors with the constitutionally protected right to exterminate it.”

“The Court apparently values the convenience of the pregnant mother more than the continued existence and development of the life she carries,” White observed. “Whether or not I might agree with that marshaling of values, I can in no event join the Court’s judgment because I find no constitutional warrant for imposing such an order of priorities on the people and legislatures of the states.” Here White identified the core of the abortion ethic: It teaches an “order of priorities” in which the state exalts convenience over the right to life of an unborn human being, including babies who are slaughtered in the birth canal a few inches and seconds shy of birth. That ethic did not develop through spontaneous consensus; it was imposed upon the American public by a lawless Supreme Court.

In *Measure for Measure*, Shakespeare writes: “Thieves for their robbery have authority when judges steal themselves.” Official lawlessness inevitably inspires private lawlessness. Taking their cue from the Supreme Court’s official dehumanization of pre-born children, the

troubled mothers who secretly bore children only to discard them in toilets or strangle them at birth were acting on the license to kill granted by the Court in *Roe*, as adapted to their understanding that birth need not interfere with the “order of priorities” reflected in that decision.

In his *Roe* decision, Justice Blackmun arrogated to the Court the Olympian prerogative of striking down all existing state abortion laws—but modestly declined to offer guidance regarding the question of when legal personhood must be recognized. To be even more specific, the Court did not rule on whether a partially delivered infant threatened by partial-birth abortion is a “person” and thus entitled to the protection of the law. The *Roe* decision did take notice of a Texas statute which made it a felony to kill a child intentionally during the process of delivery.

As the House Judiciary Committee has observed, there “is no substantive difference between a child in the process of being born and that same child when he or she is born. The only distinguishing characteristic is locale. Clearly, the child is as much a ‘person’ when in the process of being born as that child is when the process is complete.”

The continuity between legal partial-birth abortion and post-birth infanticide is illustrated by the infamous case of Amy Grossberg and Brian Peterson, a college-age couple from Delaware who delivered their baby in a motel room and allegedly killed him and abandoned his body in a dumpster. A backgrounder provided by the National Right to Life Committee points out that “at a single abortion clinic in Englewood, New Jersey—only a few miles away from the homes of the young couple in question, doctors acknowledged that they perform over 1,500 partial-birth abortions a year.” Nor are most of them performed for “medical” reasons: A clinic official informed the *Bergen County* (New Jersey) *Record*, “Most are Medicaid patients, black and white, and most are for elective, not medical, reasons; people who didn’t realize, or didn’t care, how far along they were. Most were teenagers.”

### **A Step Further**

The only substantial difference between the variety of infanticide called “partial-birth abortion” and the variety practiced by Grossberg and Peterson is that states are presently permitted to recognize birth as the beginning of legally defined personhood, and punish as murderers those who kill newborns. However, laws against infanticide may be the next casualty of the logic of *Roe v. Wade*.

In a November 2nd *New York Times Magazine* essay inspired by the recent high-profile infanticide cases, Steven Pinker, a professor of psychology at the Massachusetts Institute of Technology, argued that women who kill their newborns are acting out instincts that are hard-wired “into the biological design of our parental emotions” as a result of “natural selection.” Non-human mammals often abandon weak or sickly newborns and “favor the healthiest in the litter or try again later on,” Pinker blithely observed. “In most cultures, neonaticide [the killing of newborns] is a form of this triage.... In most societies documented by anthropologists ... a woman lets a newborn die when its prospects for survival to adulthood are poor.”

Pinker contended, “Full personhood is often not automatically granted at birth,” and, “To a biologist, birth is as arbitrary a milestone as any other” in conferring personhood upon the individual. In fact, “Several moral philosophers have concluded that neonates are not persons, and thus neonaticide should not be classified as murder.... So how do you provide grounds for outlawing neonaticide? The facts don’t make it easy.”

Pinker’s essay generated a torrent of indignation, some of it contributed by liberals who support abortion on demand. “Of all the arguments advanced against the legalization of abortion, the one that always struck me as the most questionable is the most consequential: that the widespread acceptance of abortion would lead to a profound moral shift in our culture, a great devaluing of human life,” wrote liberal commentator Michael Kelly in the November 6th *Washington Post*. Taking note of Pinker’s essay, in which “the voice of the intellectual establishment came out for killing babies,” Kelly ruefully admitted, “This time, it seems, the pessimists were right.”

### **Quality or Sanctity?**

But Pinker’s essay was neither the first, nor the most candid, defense of infanticide. Indeed, the intellectual groundwork for the legalization of infanticide was being laid before the ink was dry on the *Roe* decision, and the Supreme Court has passively endorsed infanticide in practice.

In his *Roe* opinion, delivered on January 22, 1973, Harry Blackmun used the expression “potential life” to create an artificial distinction between the developing child and a legally recognized “person.” The same curious use of the adjective “potential” found its way into an essay published on that same day in the *London Thnes* by Barbara Smoker, vice chairman of the British Humanist Association. Smoker contended that “the situation of a newborn baby is very different from that of the same baby, even a few weeks later.... At birth the baby is only a potential human being and at that point it is surely the humane and sensible thing that the life of any baby with obvious severe defects, whether of body or brain, should be quietly snuffed out by the doctor or midwife.” The key to Smoker’s suggestion is the redefinition of a living newborn as a “potential human being”—a move which would be entirely compatible with the *Roe* decision, which does not, in Blackmun’s words, clearly “resolve the difficult question of where life begins.”

A few weeks after the *Roe* decision was published, James Watson—the man who cracked the genetic code—presented a very similar brief on behalf of institutionalizing infanticide in the case of children born with birth defects. “If a child were not declared alive until three days after birth,” wrote Watson in the May 1973 issue of *AMA Prism*, “then all parents could be allowed the choice ... the doctor could allow the child to die if the parents so choose and save a lot of misery and suffering.”

Another apologia for infanticide was composed by Dr. Joseph Fletcher, creator of the concept of “situational ethics.” In a January 1982 interview, Fletcher insisted, “It is absolutely imperative that society put an emphasis on the quality of life, rather than the sanctity of life.”

According to Fletcher, “There is no doubt that the general trend in ethical thought is to terminate the lives of defective newborns.... [I]f such a child had a demonstrably low IQ or had severe physical disabilities, then its life should be mercifully ended.”

A few weeks after Fletcher shared his musings about the “merciful” killing of newborns, the arguments for infanticide were translated from the realm of theoretical abstraction into murderous reality. In the notorious 1982 “Baby Doe” case in Bloomington, Indiana, a six-day-old infant who was born with a defect of the esophagus was allowed to starve to death, rather than receive intravenous nutrition and relatively minor surgery to correct the defect. This was done because the child was born with Down’s syndrome, a genetic defect which results in mental retardation, and the baby’s parents did not want the burden of raising a retarded child. Despite the fact that several doctors had volunteered to perform the surgery, and numerous couples had offered to adopt and raise the child, the parents’ decision to starve their child was upheld by the Indiana Supreme Court.

Following the Bloomington case, the Reagan Administration issued new guidelines requiring hospitals that receive federal funds to ensure that handicapped newborns were not denied treatment on the basis of their handicap. Borrowing a tactic from the left, the Reagan Administration packaged the regulations as a “civil rights” issue—thereby seeking to justify federal intervention in state and local affairs. Significantly, a five-judge Supreme Court majority (including Blackmun) struck down the so-called “Baby Doe Regulations” on June 9, 1986, insisting that the federal government has no authority “to give unsolicited advice either to parents, to hospitals, or to state officials who are faced with difficult treatment decisions concerning handicapped children.”

In the *Roe v. Wade* decision, the Court eagerly enhanced the power of the federal government to create an abortion “right.” However, it displayed no similar appetite when offered an opportunity to extend federal jurisdiction in order to protect the lives of endangered newborns. In this the Court was faithful to the “order of priorities” associated with the abortion ethic.

### **Scientific Support**

Acceptance of the abortion ethic requires not only the rejection of millennia of Western moral teachings, but a dogmatic disdain for recent scientific findings that confirm the humanity of the unborn. In recent years, medical facilities in Europe and Asia have begun to make use of newly developed three-dimensional ultrasound technology (3DUS), which offers much more accurate and detailed views of the developing child. The computer-generated images produced by 3DUS systems are of tremendous benefit in early diagnosis and treatment of fetal health problems.

However, as reporter Liz Townsend points out, “For pro-lifers, all forms of ultrasound are both a blessing and a burden. More accurate views of unborn children make them more ‘real’ to the average person.... But ultrasound can also doom an unborn child to extinction when a ‘malformation’—such as cleft palate or clubfoot—is seen on the picture.”

Compounding that irony is the fact that it is not uncommon for heroic medical efforts to be undertaken to save prematurely born babies of a gestational age that is younger than other children who are slaughtered by abortion—witness the case of “Baby Kelly,” who was born at 21 weeks after conception. By way of contrast, Dr. George Tiller of Kansas, who publicly acknowledges performing third-trimester abortions, maintains that babies shouldn’t be regarded as “viable” until they are “capable of surviving outside the womb without artificial life supports.” Tiller’s standard would permit abortions through the 34th week of pregnancy—two weeks short of full term. Tiller, incidentally, sluiced some of the proceeds from his grisly trade into the Clinton re-election campaign during a June 17, 1996, White House “coffee”—a gesture of thanks for Mr. Clinton’s veto of the partial-birth abortion ban, perhaps.

### **A “Failed” Abortion**

Bill Clinton and other pro-abortion extremists insist that banning partial-birth abortion would fatally injure the abortion “right” created by *Roe v. Wade*—and their fears are somewhat justified: That “right” depends upon the preservation of the legal assumption that the unborn child never acquires the right to life at any time prior to birth. In the traditional Western view, as articulated in the Declaration of Independence, the right to life is conferred upon individuals by their Creator. Under the abortion ethic, that “right” is only conferred upon those humans who are “wanted.” One might suspect that a major reason pro-abortion activists so tenaciously defend partial-birth abortion is that it prevents the unwanted complication of a “failed” abortion—meaning a live “unwanted” child. Twenty-year-old Gianna Jessen is one such blessed complication.

In April 1977, Gianna’s mother, a troubled 17-year-old, underwent a saline abortion—a method in which a toxic solution is used to poison the unborn child and burn it alive in the womb. As is the case in such abortions, the unborn Gianna swallowed some of the poisoned amniotic fluid. However, she miraculously survived the torture and was born at 30 weeks’ gestational age. It is not uncommon for personnel at abortion clinics to deal with such complications by allowing the “unwanted” children to die from neglect, but in Gianna’s case a nurse took her to the hospital, where she hovered between life and death for three months before her condition stabilized.

Although she has cerebral palsy as a result of her experience, Gianna is a bright, articulate young woman blessed with a radiant Christian faith and a beautiful singing voice. Understandably, she is also deeply committed to the pro-life cause. In April 1996 she was invited to offer testimony before a hearing of the House Judiciary Subcommittee on the Constitution.

Referring to her birth mother’s decision to end her life in utero, Gianna told the subcommittee: “I am the person she aborted. I lived instead of died.... Some have said I am a ‘botched abortion.’ A result of a job not well done.” Gianna informed the lawmakers that she had met other abortion survivors, including a two-year-old named Sarah who also has cerebral palsy as a result of salt poisoning by an abortionist. “She is blind and has severe seizures,”

Gianna testified. “The abortionist, besides injecting the mother with saline, also injects the baby victims. Sarah was injected in the head.” Despite her afflictions, Gianna told the subcommittee: “I am happy to be alive. I almost died. Every day I thank God for life.”

Gianna is a living reproach to the abortion ethic—and her living witness is too much for pro-abortion activists to bear. Of the 13 congressmen on the subcommittee, only two were on hand to hear Gianna’s testimony. Particularly conspicuous by her absence was Colorado Democrat Patricia Schroeder, a fervent supporter of abortion. Schroeder boycotted the hearing, protesting that it was intended to “undermine the public’s consistent and overwhelming support for *Roe v. Wade*.” Indeed, nothing undermines sophistry more effectively than the truth.

### ***Matter of the Heart***

Schroeder’s decision to avoid Gianna Jessen’s testimony provides an apt illustration of the biblical proverb which teaches us that “the wicked flee where no man pursueth.” It also illustrates that the battle to restore institutionalized respect for human life is ultimately one in which hearts and minds must be changed.

Defeating the abortion ethic in all its permutations will require more than overturning *Roe v. Wade* and strengthening legal protection of the right to life. As we have seen, existing laws against the murder of newborn children have proven to be of little benefit in deterring those bent on committing infanticide—whether by abandoning infants in toilets or killing them through artfully rationalized clinical neglect. The same was true of those who flouted pre-*Roe* laws against abortion; it will probably be true in the future as chemical abortifacients such as RU-486 replace surgical procedures as the abortion method of first resort.

The damage done to the Constitution by *Roe v. Wade* must be repaired, and statutory protection for the right to life must be restored. But the ultimate victory will require that hearts be changed, one at a time.