

The Self-Evident Truth of the Inalienable Right to Life and the Slavery Analogy to Abortion

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ABSTRACT: The Right-to-Life movement links moral and legal principles. “Rights” define boundaries of inclusion and also boundaries of exclusion. This paper argues that we need to foster an inclusive society. The abolition of slavery in America in the nineteenth century may point the way to how the abolition of abortion may be achieved in the twenty-first century. It took patient perseverance until a crisis compelled the nation finally to resolve the slavery issue. Social acceptance and legal approval of killing weaken the moral foundation of our society and of our legal system. American women generally give three major reasons for having abortions. Considering these reasons may point to how to eliminate elective abortion.

1. Introduction: The “Right” to Life

The roots of the pro-life movement in America lie in moral values. As a popular online encyclopedia simply puts it, “[t]he right to life is a moral principle based on the belief that a human being has the right to live and, in particular, should not be killed by another human being.”¹ Yet the term that is generally used to identify the pro-life movement links it with a legal, not a moral, cause. It is about a “right” to life. That term suggests that the main concern of the pro-life movement is with laws and the legal system, not with morality. We seek to change the laws, to enact legal protections for the “right” to life of, *inter alia*, unborn children.

One of the important functions of “rights” is to express and embody basic notions about essential liberties, duties, responsibilities, and protections that a community values. Most rights exist within relationships. Thus, calls for recognition and protection of many “rights” are calls to recognize and establish

¹ “Right to life” in Wikipedia at https://en.wikipedia.org/wiki/Right_to_life (accessed 27 August 2016).

those key relational boundaries, values, and qualities.² Indeed, “[l]egal values condition perceptions, establish role expectations, provide standards of legitimacy, and account for the institutional patterns of American politics.”³

The symbolic significance of rights has been evident in American history from the time of the Founding when, for example, the independence of the United States of America was justified by Thomas Jefferson in such natural rights language as “self-evident” truths and “unalienable rights.” Governments are “to secure these rights...”⁴ Designation of a right as “self-evident” and “inalienable” means that it is a natural right, imbedded in basic human nature.⁵

Rights and laws are intimately intertwined. “The myth of rights rests on a faith in the political efficacy and ethical sufficiency of law as a principle of government.”⁶ “Rights talk,” as Mary Anne Glendon explained, is the *lingua franca* of the American legal and political order. But overuse and misuse of the

² “Rights define the guidelines for social interaction between *rational* people.” Importance of Philosophy, “Abortion” at http://www.importanceofphilosophy.com/Politics_Abortion.html (accessed 19 July 2016). See also Lynn D. Wardle, “The Boundaries of Belonging: Allegiance, Purpose and the Definition of Marriage,” *Brigham Young University Journal of Public Law* 25 (2011): 287-88: “The yearning to belong is said to be inherent in human nature. As [Professor] Bruce Hafen put it: ‘People simply feel a desire to be connected with others, especially in close relationships. They are feeling the longing to belong.’”

³ Stuart A. Scheingold, *The Politics of Rights* (New Haven CT: Yale Univ. Press, 1974), p. xi.

⁴ Declaration of Independence (1776): “We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.”

⁵ See James R. Stoner, Jr., “The Declaration of Independence” in *Natural Law, Natural Rights, American Constitutionalism, American Founding and Constitutionalism* (Witherspoon Institute, 2016) at <http://www.nlnrac.org/american/declaration-of-independence> (accessed 11 May 2016): “No public document gives more prominence to the idea of natural law, nor relies more crucially upon natural law as a premise, than the Declaration of Independence.”

⁶ Scheingold, p. 17.

rhetoric of rights diminishes the value of all rights and impoverishes the political discourse.⁷ Glendon argues that we need another “public language [besides “rights talk”] that would be better suited in complexity and moral seriousness to the bewildering array of difficulties that presently face us.”⁸ An example of that has been the recent emergence of the notion and slogan that there is a “right to abortion.”⁹

A “right” is an operational legal and political concept.¹⁰ One of the defining functions of a legal rights is to express basic notions about essential liberties, duties, and related responsibilities that a community is committed to protecting, facilitating, and effectuating. It is a label that connotes special legal status and protection; it is tied to special legal consequences.

Thus “rights” define boundaries. They define boundaries of inclusion. Those who enjoy “rights” are “one of us,” members of our community who possesses those rights. “Rights” also define boundaries of exclusion, for they also define as excluded those who are outsiders and from whom rights are withheld.

The contemporary American debate over abortion-on-demand is a debate over fundamental rights and about the boundaries of community. Debate over whether unborn humans *in utero* have a “right to life” is not the first time in American history that the scope of protection of basic human rights has been disputed. The slavery controversy from 1787 to 1865 over the legal status of Africans captured in Africa and brought in chains to American for perpetual involuntary servitude (as well as the legal status of their children) raised many of the same issues as the contemporary debate about abortion-on-demand.

⁷ Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* at <http://www.thesocialcontract.com/pdf/two-one/Glendon.pdf> (accessed 11 May 2016): “This book argues that the prominence of a certain kind of rights talk in our political discussions is both a symptom of, and a contributing factor to, this disorder of the body politic.”

⁸ *Ibid.*

⁹ See “Parenthood and Procreation,” *Stanford Encyclopedia of Philosophy* at <http://plato.stanford.edu/entries/parenthood/> (accessed 29 July 2016); “Abortion,” *Internet Encyclopedia of Philosophy* at <http://www.iep.utm.edu/abortion/#H4> (accessed 29 July 2016); “Abortion” in Wikipedia at <https://en.wikipedia.org/wiki/Abortion> (seen 29 July 2016): “Those who favor the legality of abortion often hold that a woman has a right to make decisions about her own body.”

¹⁰ *Ibid.* at p. 2: “the influence of legal values on political outcomes.”

“Analogies between slavery and abortion are frequent in American politics.”¹¹ This paper will show that many of the same themes and arguments that are now raised about elective abortion also were raised about slavery. The abolition of slavery in America in the nineteenth century may point to how the abolition of abortion may be achieved in the twenty-first century. It took patient preservation of the issue until a crisis compelled the nation to finally resolve the problem.

2. The Moral Basis for the Historic Prohibition of Elective Abortion

The prohibition of killing is an ethical cornerstone of our system of rights and laws. Twenty-first-century American law is not *sui generis* or self-created. It is derived from and largely founded on legal principles that it inherited and borrowed from some earlier legal, moral, and philosophical systems. The prohibition of killing in contemporary American law reflects such prior proscriptions as found in the Law of Moses (“Thou shalt not kill”¹²) and the thought of such philosophers as Hobbes (society is formed to escape “continual fear, and dangers of violent death”¹³) and Locke (under the law of nature “no one ought to harm another in his life” but “ought to do as much as he can to preserve the rest of mankind” and “what tends to the preservation of the life...of another”¹⁴).

Elective abortion violates the moral prohibition of killing.¹⁵ Elective abortion may not be thought of as murder, but it is the *killing* of someone who is innocent. Abortion is performed upon a living human being and the procedure causes (and is intended to cause) the death of an individual of the species *homo sapiens*, an existing, growing, developing human embryo or fetus.

Social acceptance and legal approval of killing weaken the moral

¹¹ See generally Justin Dyer, “Understanding the Slavery-Abortion Analogy,” *Public Discourse* (13 December 2013) at <http://www.thepublicdiscourse.com/2013/12/11683/> (accessed 27 July 2016).

¹² Exodus 20:13.

¹³ Thomas Hobbes, *Leviathan*, Ch. 13.

¹⁴ John Locke, *Second Treatise of Government*, Ch. 2, Sec. 6.

¹⁵ “Elective abortion” is distinguished from “therapeutic abortion,” in which an abortion is performed as a matter of medical necessity to save the mother from serious, immediate threat to her life, serious, immediate threat to her health, or when the fetus is dead or suffers from a condition that will result in the child being born dead or imminently dying without hope of cure.

foundation of our society and of our legal system. The protection of all innocent lives is critical to preserving equal justice for all under law in our legal system. Abortion directly violates that core principle of justice and of our legal system.

Abortion violates the fundamental right to life of all persons. In his influential *Commentaries on the Common Law*, in the section on *Rights of Persons*, William Blackstone wrote:

Life is the immediate gift of God, a right inherent by nature in every individual; and it begins in contemplation of law as soon as an infant is able to stir in the mother's womb. For if a woman is quick with child, and by potion or otherwise, *killeth* it in her womb; or if anyone beat her, whereby the child *dieth* in her body, and she is delivered of a *dead* child; this, though *not murder*, was by the ancient law *homicide or manslaughter*. But the modern law doth not look upon this offense in quite so atrocious a light but merely as a *heinous misdemeanor*.¹⁶

Similarly, the Declaration of Independence unequivocally announces that

all Men are created *equal*, that they are endowed by the Creator with certain *unalienable Rights*, that among these are *Life, Liberty, and the Pursuit of Happiness*, that *to secure these Rights* Governments are instituted among men....¹⁷

Thus, protection of human life was and is one of the core purposes for and principles of the establishment of the American system of government. While taking life in time of war and in similar extraordinary circumstances was allowed to protect the lives of innocent others who are unjustly endangered, all of the exceptions that permit killing have vindicated public wrongs, not private interests, private lifestyle preferences, or personal financial advantages.

3. *Roe* Has Caused an Erosion of the Ethic of Respect for Life

In comparison to January 1973, when *Roe* was decided, today there is less compassion, humanity, and sensitivity overall. There is more abortion now¹⁸

¹⁶ William Blackstone, *Commentaries on the Laws of England* (1756), p. 125, at http://avalon.law.yale.edu/18th_century/blackstone_bk1ch1.asp (accessed 27 July 2016) (emphasis added).

¹⁷ Declaration of Independence, ¶2 (1776) (emphasis added).

¹⁸ See National Right to Life Committee, *Abortion Statistics, United States Data & Trends* at <http://www.nrlc.org/uploads/factsheets/FS01AbortionintheUS.pdf> (accessed 16 May 2016).

(the Guttmacher Institute reports that “30% of U.S. women will have an abortion by age 45”¹⁹), more child abuse (“there has been a general increase in the number of abuse and neglect substantiations”²⁰), more violent crime (crime rates rose for twenty years after *Roe*²¹), more killing of the aged, infirm, disabled, handicapped (such events as the founding of the Society for Right to Die in 1974, the 1976 *Karen Quinlan* case, the foundation of the Hemlock Society in 1980, and Dr. Jack Kevorkian’s first assisted suicide in 1990²²).

¹⁹ Guttmacher Institute, “United States, Abortion” at <https://www.guttmacher.org/united-states/abortion> (accessed 10 May 2016): “The Guttmacher Institute is a primary source for research and policy analysis on abortion in the United States. In many cases, Guttmacher’s data are more comprehensive than state and federal government sources.” The Guttmacher Institute is probably the most reliable source of information about abortions in the United States, despite being strongly supportive of abortion and abortion rights. (CDC data was about 12-19% lower than AGI because of CDC’s passive collection of official data until 1998 when CDC quit reporting estimates for the states of California, New Hampshire, and (sporadically) various other states. See “In Brief, Facts on Induced Abortion in the United States” at http://www.guttmacher.org/pubs/fb_induced_abortion.html (July 2008) and Rachel K. Jones, et al., “Repeat Abortion in the United States” at 15 <http://www.guttmacher.org/pubs/2006/11/21/or29.pdf> (accessed January 20, 2014): “It is very difficult to study abortion using social science survey data....”). Also: “One major difficulty in studying abortion is that many women do not accurately report their abortion experiences.” The latest data excludes or under-reports abortion data from several states including California. Guttmacher reported that in 1973 there were 745,000 abortions, in 1980 there were 1,554,000 abortions, in 1990 there were 1,609,000 abortions, in 2000 there were 1,313,000 abortions, and in 2010 there were 1,103,000 abortions in the USA. However, the Guttmacher Institute estimates that its abortion data is 3-6% low because of unreported abortions.

²⁰ American Humane Association, “Child Abuse and Neglect Statistics” at <http://www.americanhumane.org/children/stop-child-abuse/fact-sheets/child-abuse-and-neglect-statistics.html?referrer=http://www.dogpile.com/search/web?fcoid=417&fcop=topnav&fpid=2&q=There%20has%20been%20a%20general%20increase%20in%20the%20number%20of%20abuse%20and%20neglect%20substantiations%20Humane&q1=> (accessed 10 May 2016).

²¹ Consider the rise in the homicide rate: 1970=7.9, 1973=9.4, 1980=10.2, 1990=9.4.

²² ProCon.org, “Historical Timeline, History of Euthanasia and Physician-Assisted Suicide” at <http://euthanasia.procon.org/view.timeline.php?timelineID=000022> (accessed 10 May 2016). See also Sarah Childress, “The Evolution of America’s Right-to-Die Movement,” *Frontline*, 13 November 2012, at <http://www.pbs.org/wgbh/frontline/article/the-evolution-of-americas-right-to-die-movement/> (accessed 10 May 2016).

We might consider in more detail the status of abortion incidence and practice today in the USA. During Thanksgiving week 2015, the Center for Disease Control (CDC) released its national abortion report for 2012.²³ The CDC reported that there were approximately 699,000 abortions in 2012, the latest year for which the CDC has produced figures. That represents a decline of about half since the high of more than 1.5 million in the late 1980s. That number is also a decline from the 730,322 babies who died from abortions in 2011. In other words, some 31,000 babies were saved from abortion (compared to the number who died the year before). Yet there is still much work to do, for according to those figures about 58,250 babies still die in an abortion every month and 13,442 babies die in an abortion every week. 1,915 babies die in an abortion every single day.²⁴

Yet there is reason to think that even the CDC figures are incomplete. The CDC report did *not* include any information from California, Maryland, or New Hampshire. Better estimates (such as those produced by the Alan Guttmacher Institute) show as many as a million babies are killed by abortion every year in the United States. That equates to over 83,000 killings every month, 19,230 killings every week, and over 2,700 abortions every single day.²⁵

Abortion data collected by the Guttmacher Institute is always more complete than the data gathered by the Center for Disease Control and Prevention because the CDC simply passively takes data provided by some

²³ Center for Disease Control and Prevention, Morbidity and Mortality Weekly Report, Surveillance Summaries (Vol. 64, No. 10), 27 Nov. 2015, *Abortion Surveillance – United States, 2012*, pp. 5-11 at <https://stacks.cdc.gov/view/cdc/36091> (accessed 27 July 2016), hereafter “CDC, *Abortion 2012*”); Randall K. O’Bannon, “CDC Report Shows Abortions Drop 4.2% in 2012,” NRLC, *News Today*, 1 Dec. 2015, at <http://www.nationalrighttolifenews.org/news/2015/12/cdc-report-shows-abortions-drop-4-2-in-2012/#.V5-vW2grLcs>, LifeNews.com (1 Dec. 2012).

²⁴ Steven Ertelt, *Abortions Decline to Historic Low: CDC Report Shows 31,000 Babies Saved From Abortions*, LifeNews.com, 25 Nov. 2015, at <http://www.lifenews.com/2015/11/25/abortions-decline-to-historic-low-cdc-report-shows-31000-babies-saved-from-abortions/> (seen 25 May 2016); California Right to Life Education Fund, *CDC Abortion Statistics*, Jan. 2016, at <http://www.calright2life.org/201601Newsletter.pdf> (seen 29 July 2016).

²⁵ See generally Steven Ertelt, *58,586,256 Abortions in America Since Roe v. Wade in 1973*, LifeNews.com, 14 Jan. 2016, at <http://www.lifenews.com/2016/01/14/58586256-abortions-in-america-since-roe-v-wade-in-1973/> (seen 29 July 2016).

states.²⁶ By contrast, the Guttmacher Institute has good ties to abortion providers and tries to find and report all abortions.²⁷ The following chart contrasts Guttmacher abortion data with CDC data.²⁸ The CDC undercount of abortions is significantly double-digit.²⁹ For example, for 2012, the CDC only reported 66% of the number of abortions reported by the Guttmacher Institute.

Chart 1: Guttmacher and CDC Data on Abortions

<u>YEAR</u>	<u>GUTTMACHER</u>	<u>CDC</u>
1973	744,610	615,831
1974	898,570	763,476
1975	1,034,170	854,853
1976	1,179,300	988,267
1977	1,316,700	1,079,430
1978	1,409,600	1,157,776
1979	1,497,670	1,251,921
1980	1,553,890	1,297,606

²⁶ “[S]tates and areas voluntarily report data to CDC for inclusion in its annual Abortion Surveillance Report.” Centers for Disease Control and Prevention, Reproductive Health, CDCs Abortion Surveillance System FAQs, http://www.cdc.gov/reproductivehealth/Data_Stats/Abortion.htm (seen 10 May 2016).

²⁷ “The Guttmacher Institute is a primary source for research and policy analysis on abortion in the United States. In many cases, Guttmacher’s data are more comprehensive than state and federal government sources.” United States Abortion, n20 above.

²⁸ NRLC, *Abortion Statistics*, n20 above.

²⁹ See generally National Right to Life Committee, *Abortion Statistics, United States Data and Trends*, at <http://www.nrlc.org/uploads/factsheets/FS01AbortionintheUS.pdf> (seen 25 May 2016): Because of its different data collection method, GI consistently obtains higher counts than the CDC. CDC researchers have admitted it probably undercounts the total because reporting laws vary from state to state and some abortionists may not report or under-report. Increases and decreases for the CDC and GI usually roughly track each other, though, so both sources provide useful information on abortion trends and statistics. The CDC also stopped reporting estimates for some states in 1998, making the discrepancy larger. Abortions from CA and NH have not been counted by the CDC since 1998, and other states have been missing from the totals during that time frame: OK in 1998, AK from 1998 to 2002, WV in 2003 and 2004, LA in 2005, MD from 2007 to 2012. For areas that did report, overall declines were seen from 1998 through 2012.

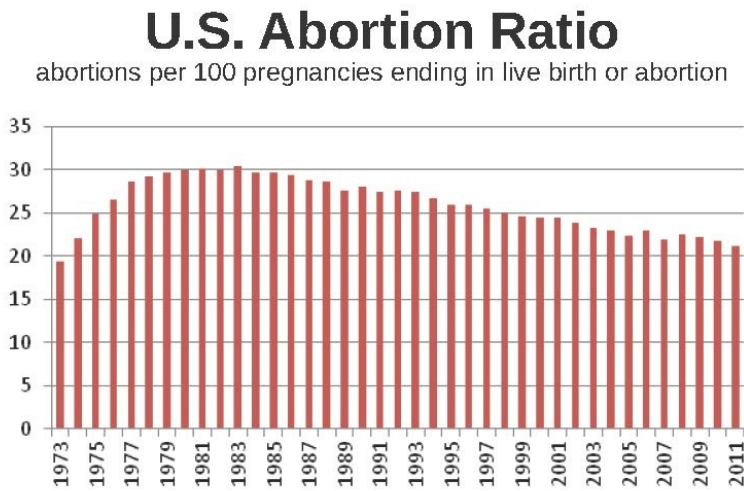
1981	1,577,340	1,300,760
1982	1,573,920	1,303,980
1983	1,575,000	1,268,987
1984	1,577,180	1,333,521
1985	1,588,550	1,328,570
1986	1,574,000	1,328,112
1987	1,559,110	1,353,671
1988	1,590,750	1,371,285
1989	1,566,900	1,396,658
1990	1,608,600	1,429,247
1991	1,556,510	1,388,937
1992	1,528,930	1,359,146
1993	1,495,000	1,330,414
1994	1,423,000	1,267,415
1995	1,359,400	1,210,883
1996	1,360,160	1,225,937
1997	1,335,000	1,186,039
1998	1,319,000	884,273
1999	1,314,800	861,789
2000	1,312,990	857,475
2001	1,291,000	853,485
2002	1,269,000	854,122
2003	1,250,000	848,163
2004	1,222,100	839,226
2005	1,206,200	820,151
2006	1,242,200	852,385
2007	1,209,640	827,609
2008	1,212,350	825,564
2009	1,151,600	789,217
2010	1,102,670	765,651
2011	1,058,490	730,322
2012	1,058,490	699,202
Total	54,762,880	42,701,356

The best estimate of the total number of abortions performed in the United States since the 1973 *Roe* decision is that provided by the National Right to Life Committee: 58,586,256. That amounts to an average of 1,464,500 abortions per year.

The ratio of abortions (i.e., the percentage of pregnancies – excluding

miscarriage – ending in abortion) rose dramatically from 1973 (about 19%) to 1980-1983 (about 30%) and then gradually fell until it was about 21 abortions per 100 known pregnancies in 2011.³⁰ Chart 2, below, from the National Right to Life Committee, illustrates that history.

Chart 2: U.S. Abortion Ratio, 1973-2011



While the total number of surgical abortions has been dropping, there are more early abortions, more chemical abortion, and more repeat abortions.³¹

³⁰ Ibid. Likewise, the rate of abortions per women 15-44 followed the same trajectory.

³¹ National Right to Life, “The State of Abortion in the United States, January 2016,” pp.7-8 at <http://www.nrlc.org/uploads/communications/stateofabortion2016.pdf>

Nearly half (44.2%) of American women who are now having abortions have had at least one prior abortion.³² Eleven percent report two previous abortions and 8.6% report three abortions or more.³³ Over twenty percent of all known pregnancies in American end in abortion.³⁴ Sadly, minorities are much over-represented in the abortions statistics relative to their population: “[T]he abortion rate for Hispanics is nearly twice (15 abortions per thousand women of reproductive age) what it is for whites (7.7 per thousand). The abortion rate for blacks (27.8) is nearly four times that of whites.”³⁵

In 2012, unmarried women accounted for 85.3% of all abortions according to the CDC. Women living with a partner to whom they are not married constitute only about 10% of women in the population but they accounted for 25% of abortions.³⁶ Women with one or two prior abortions accounted for 35.6%, and women with three or more prior abortions accounted for 8.6%.³⁷ According to the CDC, black women were 3.6 times more likely to have an abortion in 2012 than non-Hispanic white women. Some 37% of women obtaining abortions identify themselves as Protestant (51% of the total population), and 28% identify themselves as Catholic (24% of the total population).³⁸

(accessed 27 July 2016).

³² See generally CDC, “Abortion 2012,” at p. 9: “54.3%, 36.2%, and 9.5% of women had zero, one to two, or three or more previous abortions, respectively, in 2012.... Nearly six in ten (59.8%) report having already previously given live birth to at least one child.” Steven Ertelt, *58,586,256 Abortions in America Since Roe v. Wade in 1973*, LifeNews.com, 14 Jan. 2016, at <http://www.lifenews.com/2016/01/14/58586256-abortions-in-america-since-Roe-v-wade-in-1973/> (seen 25 May 2016). See generally CDC, *Abortion 2012*, at 34, Table 16.

³³ See generally CDC, *Abortion 2012*, at p. 33, table 15.

³⁴ Karen Pazol, Andreea A. Creanga, Denise J. Jamieson, *Abortion Surveillance – United States, 2012, Surveillance Summaries, 27 Nov. 2015*, in Center for Disease Control and Prevention, *Morbidity and Mortality Weekly Report*, at <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6410a1.htm> (seen 27 July 2016).

³⁵ Ertelt, n26 above.

³⁶ Abort73.com, *U.S. Abortions Statistics*, at http://www.abort73.com/abortion_facts/us_abortion_statistics/ (seen 28 July 2016).

³⁷ *Ibid.*

³⁸ *Ibid.*

4. Why Do Women – and Girls – Have Abortions?

American women generally give three major reasons for having abortions. First, about three-fourths say that having a baby would interfere with work or school or other responsibilities. Second, about three-quarters say that they cannot afford a child. Third, about half say they do not want to be a single parent or are having problems with their husband or partner. Only about one-in-eight (12%) of women having abortion mentioned a physical health problem among their reasons for having an abortion. According to the National Abortion Federation, only 1% of aborting women reported that they were the survivors of rape.

The Supreme Court has upheld parental notice requirements (with judicial bypass provisions),³⁹ and 39 states currently have parental consent or notification laws for minors seeking an abortion.⁴⁰ Yet, according to the Guttmacher Institute, nearly half of all minors having abortion report that neither of their parents knew about their abortion.⁴¹ Secret abortions on minors is a scandal waiting to erupt in tragedy.

By the Hyde Amendment and similar provisions, the U.S. Congress has barred the use of federal Medicaid funds to pay for elective abortions (except when the woman's life would be endangered or in cases of rape or incest). That reflects strong public opinion. Yet, seventeen States still fund abortions (mostly with state funds).⁴²

Public attitudes about abortion have generally remained constant. As the Gallup Poll graph below clearly shows, public opinion about the legality of abortion has remained significantly stable since *Roe v. Wade* was decided in 1973.⁴³

³⁹ *H.L. v. Matheson*, 450 U.S. 398 (1981).

⁴⁰ The states are: AL, AK, AR, AZ, CO, DE, FL, GA, IA, ID, IL, IN, KS, KY, LA, MA, MD, MI, MN, MO, MS, MT, NC, ND, NE, NH, OH, OK, PA, RI, SC, SD, TN, TX, UT, VA, WI, WV, and WY.

⁴¹ *Ibid.*

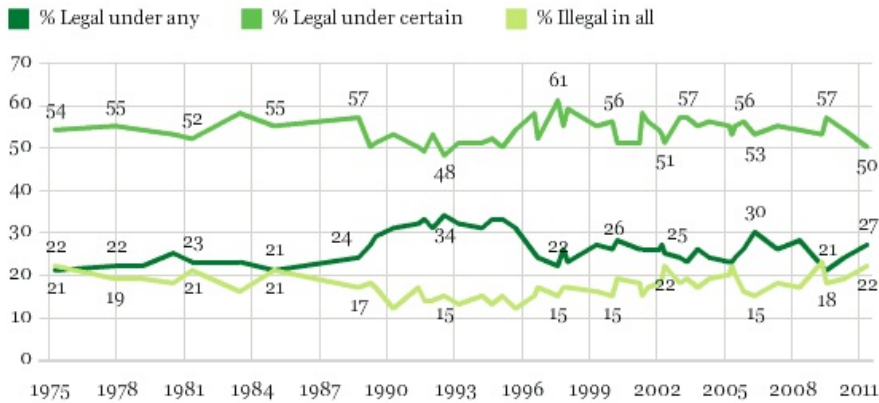
⁴² *Ibid.* The states are: AK, AZ, CA, CT, HI, IL, MA, MD, MN, MT, NJ, NM, NY, OR, VT, WA and WV.

⁴³ Lydia Saad, "Americans Still Split Along 'Pro-Choice,' 'Pro-Life' Lines" *Gallup*, May 23, 2011 at <http://www.gallup.com/poll/147734/Americans-Split-Along-Pro-Choice-Pro-Life-Lines.aspx>

Graph 1

Circumstances Under Which Abortion Should be Legal

Do you think abortions should be legal under any circumstances, legal only under certain circumstances, or illegal in all circumstances?



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Most American men and women agree that abortion is immoral and that it should be illegal in most or all cases, as Chart 3 below confirms.⁴⁴

⁴⁴ Ibid.

Chart 3

Summary of 2011 U.S. Abortion Views -- by Gender and Age

	Men	Women	18 to 34 years	35 to 54 years	55 and older
	%	%	%	%	%
"Pro-choice"	49	50	51	53	45
"Pro-life"	46	44	42	43	49
Morally acceptable	40	39	44	42	34
Morally wrong	51	51	53	48	51
Legal in any circumstances	24	29	31	28	22
Legal in most circumstances	12	8	9	12	9
Legal in only a few circumstances	42	36	35	39	42
Illegal in all circumstances	19	24	24	19	22
Legal in any/most	36	37	40	40	31
Legal in a few/none	61	60	59	58	64

May 5-8, 2011

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In recent years, abuses and scandals (such as the Gosnell abortion fiasco in Philadelphia) have had an impact public opinion and have caused states to enact 231 abortion restrictions in just four years (2011-2014).⁴⁵ For example, during the 2014 state legislative session, state legislators introduced 335 new laws that would restrict abortions. Ultimately, 15 states enacted 26 new

⁴⁵ Steven Ertelt, "States Have Passed 231 Pro-Life Laws Stopping Abortions Since 2010," LifeNews.com, 5 January 2015, at <http://www.lifenews.com/2015/01/05/states-have-passed-231-pro-life-laws-stopping-abortions-since-2010/> (accessed 28 July 2016).

abortion restrictions that year.⁴⁶ Between 2010-2014, various states adopted 231 new abortion restrictions since the 2010 midterm elections swept abortion opponents into power in many state capitals across the country.⁴⁷ More than one-quarter of all abortions restrictions enacted since 1973 (288 of 1,074 laws) were enacted in the five years from 2011-15.⁴⁸

It is clear that abortion remains a matter of great controversy and moral dispute in the USA. Little has changed in the past 43 years in terms of American's views about abortion.

5. Slavery and Abortion Are Moral Twins

Thinking about abortion readily leads us to think about the terrible blight of slavery in our national history. Americans are uncomfortable with the similarities between the tragedy of slavery and the tragedy of elective abortion. In terms of principles and morality, slavery and abortion are moral twins. Chart 4 below compares the principles undergirding and supporting slavery with the principles undergirding and supporting elective abortion today, and shows the strong similarities.

Chart 4: The Ethics of Slavery and the Ethics of Elective Abortion

Slavery	Abortion
Rejection of humanity of slaves	Rejection of the humanity of unborn child
Denial of the 'personhood' slaves	Denial of the personhood of unwanted children
Assertion: it was good for slaves	Assertion: it is best for unwanted unborn children
Assertion: no one had a right slave owners what to do	Assertion that no one has a right to tell to right tell women what to do
Claim: slave owners had a right to choose	Claim: women have a right to choose
Claim of Constitutional protection	Claim of Constitutional protection

⁴⁶ Ibid.

⁴⁷ "In Just the Last Four Years, States Have Enacted 231 Abortion Restrictions," Guttmacher Institute, News in Context, January 2015, at <https://www.guttmacher.org/article/2015/01/just-last-four-years-states-have-enacted-231-abortion-restrictions> (accessed 28 July 2016).

⁴⁸ "Last Five Years Account for More Than One-quarter of All Abortions Restrictions Enacted Since Roe," Guttmacher Institute, News in Context, January 2016, at <https://www.guttmacher.org/article/2016/01/last-five-years-account-more-one-quarter-all-abortion-restrictions-enacted-roe> (accessed 28 July 2016).

Prediction that abolition would lead to chaos	Prediction that restricting abortion would lead to chaos
Claim that abolition would impose an unfair burden on owners	Claim that abortion restriction would impose an unfair burden on women
Claim that a slave only became a “person” when set free	Claim that the unborn only become “persons” when born
Prediction that if left alone, slavery would be gradually abolished	Claim that if left alone, abortion would become rare
Fact: a hierarchical view of race	Fact: a hierarchical view of human life
Fact: vigorous suppression of abolitionist speech	Fact: Draconian limits on pro-life speech
Claim that abolitionists are religious fanatics	Claim that pro-lifers are religious fanatics
Lincoln’s question: Is a man not a man because he is black?	Pro-Lifers’ question: Is a child not a child because she is yet in the womb?

In many ways the pro-life movement is comparable to the nineteenth-century abolitionist movement. Sadly, what we lack is the twenty-first century counterpart to Abraham Lincoln, who could endure extreme opposition, stay the course, and do what had to be done to eliminate the great evil of the day.

6. The Gender-Distorted Harms of *Roe v. Wade*

Discussion of abortion is never complete without consideration of the impact of abortion and abortion restrictions upon women. Women are always victims of elective abortion. They are the class-victims of *Roe v. Wade*. Women in distress are exploited by the *Roe* doctrine that allows the destruction of their unborn children. *Roe* especially exploits poor women, unmarried women, and minority women. The *Roe* doctrine of abortion privacy merely constitutionalizes the age-old response of irresponsible, sexually exploitive men: “It’s *your* problem; *you* take care of it.”

7. Twenty Reasons for the Persistence and Strength of the Pro-Life Cause

The January 14, 2013 *Time* Magazine Cover asked: “*Why Is Abortion Still So Controversial 43 Years After the Supreme Court ‘Settled’ the Issue in Roe v. Wade?*”⁴⁹ and so I will briefly suggest twenty reasons why *Roe* exacerbated,

⁴⁹ *Time*, 14 Jan. 2014. A copy of the cover is at Albert Mohler, “Losing Ever Since Roe? TIME Sounds the Siren for Abortion Rights,” 7 Jan. 2013, at <http://www.albert>

rather than settled, the public controversy over elective abortion.

1. *Images of the Existence and Development of Prenatal Human Life.* In the last four decades pictures of the pre-born child have proliferated. They are so common today that every man, woman, and child is familiar with the appearance of the child *in utero*. That knowledge underscores the pro-life claim that the unborn child is a human being fully worthy of protection of our laws.

2. *High Number, Rate, and Ratio of Abortions in the United States.* The number of abortions performed yearly in this country is discomfoting. People are not pleased or proud of the 58 million abortions that have been performed here since *Roe v. Wade* was decided 43 years ago. They are disquieted by that data. It suggests something disappointing and problematic with our nation. Likewise, there is discomfort about the ratio of abortions to total pregnancies and about the number of abortion repeaters.

3. *Gestational Age of Aborted Pre-Natal Children.* While most abortions are performed in the first twelve weeks of pregnancy, a shocking number of abortions are late-term abortions:

In 2012, the majority (65.8%) of abortions were performed by ≤ 8 weeks' gestation, and nearly all (91.4%) were performed by ≤ 13 weeks' gestation. Few abortions (7.2%) were performed between 14–20 weeks' gestation or at ≥ 21 weeks' gestation (1.3%). From 2003 to 2012, the percentage of all abortions performed at ≤ 8 weeks' gestation increased 7%; the percentage performed at >13 weeks remained consistently low ($\leq 9.0\%$).⁵⁰

4. *Horrific Late-term Abortion Procedures.* The images and descriptions of late-term abortion are truly horrific. That causes many people to try to distance themselves from the label of pro-abortion. (Indeed, even abortion activists use another term to describe themselves: pro-choice. That sounds much more moral, more ethical, more decent, less dishonorable, and less immoral than “pro-abortion.” But there remains a problem for pro-lifers, even with the euphemism. Alexander Pope summarized the concern here when he wrote: “Vice is a monster of so frightful mien As to be hated needs but to be seen; Yet seen too oft, familiar with her face, We first endure, then pity, then

mohler.com/2013/01/07/losing-ever-since-roe-time-sounds-the-siren-for-abortion-rights/ (accessed 2 August 2016).

⁵⁰ CDC Abortion Surveillance – United States, 2012, *supra* note 25.

embrace.”⁵¹

5. *Multiple Abortions (Abortion Repeaters)*. As the data cited above shows, increasingly American women are having a second, third, fourth (or more) abortion. Now almost half of women obtaining abortions have had a previous abortion. Most Americans consider abortion to be a once-only exception. They reason: Perhaps a woman made a mistake. If abortion is an evil, it may be considered a “necessary evil” this once. But the growing number of repeat abortions blasts that comfortable illusion.

6. *Ease of Access to Abortion*. Again, Americans like to think that American women rarely use abortion. If abortion is not convenient, that is okay because it is used rarely, or so they hope. The growth and open presence and accessibility of abortion clinics belies that hope and creates great (if quiet) discomfort.

7. *Contrast between Treatment of Preterm and Aborted Babies*. The efforts to save the prematurely born child who is wanted and the obviously easy disposable of the unwanted pre-born child create a contrast that is disagreeable to those who like to minimize abortion. For example, the May 22, 2014 of *Time Magazine* featured a story about “*Saving Preemies*.”⁵² Yet the casual, callous killing of the unwanted fetus or embryo stands in disturbing contrast.

8. *Numerous, Ongoing Abuses*. Perhaps the most recent, and recently notorious, example of the sleaziness of the commercial abortion business is Dr. Kermit Gosnell and the “house of horrors” that his Philadelphia abortion clinic has been shown to be. Such stories make it difficult for many Americans to feel comfortable with the current state of the law that allows so little regulation of abortion, and that invites such outrageous abuses.

9. *Comparative Abortion Rate*. It is disquieting that the rate of abortions in some other nations is lower than the rate of abortions in the United States. While most regions of the world report higher abortion rates, some regions have reported lower abortion rates than the United States.⁵³ As Americans learn

⁵¹ Alexander Pope, at <http://www.famousquotes.com/show/1007420> (accessed 28 July 2016).

⁵² TIME Magazine, May 22, 2014 (cover).

⁵³ Guttmacher Institute, “Induced Abortion Worldwide, May 2016,” at <https://www.guttmacher.org/fact-sheet/facts-induced-abortion-worldwide> (accessed 29 July 2016).

about abortion practices and numbers abroad, it creates uneasiness and concern that there is something wrong with our moral compass and practices in this country.⁵⁴

10. *Abortion and Family Structure.* In the United States, over 85% of all abortions are performed on unmarried women. Thus, it appears to be a procedure that facilitates promiscuity, sexual irresponsibility, and exploitation. Moreover, a high rate of abortion indicates that abortion is being used as just another method of birth control. That practice seems to undermine and to be contrary to fostering strong, stable families.

11. *Compared to Other Nations, American Abortion Law Is Extreme.* In her celebrated study, *Abortion and Divorce in Western Law* Professor Mary Ann Glendon examined twenty Western nations (including the USA) to compare the ways in which they dealt with difficult issues. One of her findings was that compromise on the abortion issue was common in countries that were deeply divided about the morality and preferred legal regulation of abortion.⁵⁵ Yet American law was the most “extreme” of any of the Western nations she studied. Certainly, that polar position is worrisome to many Americans and explains some of the anxiety about not only our abortion laws, but about our national ethics and morality in general.

12. *Gross Distorting Effects of Roe v. Wade upon U.S Law.* The impact of *Roe v. Wade* upon American law and legal processes has been problematic. *Roe* had a distorting effect upon our legal polity. Those distortions include substantive (doctrinal) legal distortions, as well as distortion in the legal system and political process. For example, every judicial nomination, especially Supreme Court nominations, becomes a battleground over abortion. Every nominee can be sure that he or she will be grilled about their views about *Roe* and the abortion doctrine. Abortion and its legal doctrine has grown exponentially since January 22, 1973 when *Roe* was decided.

13. *Dramatic Expansion of the Roe Doctrine.* The abortion privacy doctrine has grown dramatically since *Roe v. Wade* was decided on January 22, 1973. For example, as Appendix 1 shows, there have been more than fifty major, important Supreme Court decisions dealing with abortion since 1973.

⁵⁴ See generally CBSNEWS, “Abortion around the world: Where are rates highest,” at <http://www.cbsnews.com/pictures/abortion-around-the-world-where-are-rates-highest/8/> (accessed 28 July 2016).

⁵⁵ Mary Ann Glendon, *Abortion and Divorce in Western Law* (1987).

Over forty of these can be classified as having had a major impact upon American constitution law.

14. *Dramatic Practical Effects of Roe v. Wade.* Roe had an immediate impact upon the incidence and practice of abortion in America. As Chart 1 *supra* shows, it produced a dramatic increase in the incidence (number) of abortions. No one – not even the most optimistic advocate for unrestricted abortion – would have guessed in 1972 that the next 43 years would see 58 million abortions performed in the USA, and legal abortions at that.

15. *Public Attitude: Undiminished Opposition.* The abortion debate has not abated in the slightest. Pro-choice (pro-abortion) attitudes are slipping noticeably (if slightly). In 2013, “Rasmussen Reports national telephone survey [found] that 46% of likely U.S. voters now consider themselves pro-choice, the lowest finding in three years of regular surveying. Forty-three percent (43%) say they are pro-life, matching the highest finding to date. Eleven percent (11%) are undecided.”⁵⁶

16. *Extremist Policy of Roe v. Wade.* The Supreme Court revived and applied the discredited doctrine of substantive due process in *Roe v. Wade*. The doctrinal ruling in *Roe* was that the unwritten constitutional right of privacy includes a woman’s decision to have an abortion. The Court decreed that there could be no restrictions in first trimester, only regulation for medical safety in second trimester, and after ‘viability’ (28 weeks) restriction only if an abortion were deemed “necessary” to protect life *or health* of the mother, including her *financial* health, her psychological stress, concern about *family size*, etc.

In *Doe v. Bolton* (*Roe*’s companion case) the Court held that the abortion restrictions suggested by the American Law Institute’s highly respected Model Penal Code were unconstitutional. The effect was immediately to render all abortion laws in all fifty states invalid and unconstitutional. Rarely has the Court rendered a more sweeping decision with more profound immediate impact on American life and law than it did in *Roe v. Wade*.

17. *Five Categorical Wrongs of Roe.* It is not an exaggeration to say that almost no credible legal scholar thinks that *Roe* was a good legal decision. While many like the result, none like the opinion. That is because of at least five great categorical flaws. (1) *Roe v. Wade* has severely distorted American

⁵⁶ Rasmussen Reports, July 9, 2013, at http://www.rasmussenreports.com/public_content/politics/current_events/abortion/46_are_pro_choice_43_pro_life (accessed 29 July 2016).

law by corrupting multiple doctrines. (2) *Roe* has severely distorted American medical practice, for abortion is now regarded as just a “ho-hum” elective procedure. (3) *Roe* has caused a serious erosion of the ethic of respect for the sanctity of inconvenient life. (4) *Roe* has caused a severe erosion of the dignity of personhood. And (5) *Roe* has seriously eroded rights of conscience.

There are at least a dozen other categorical flaws in the *Roe* decision. These include:

- a) *Privacy* is AN inadequate analytical framework for act by one human being on another human being that kills a third living human being.
- b) The *dictionary* approach to “personhood” was grossly inadequate.
- c) Abortion is an act of *violence*; why is it constitutionally preferred?
- d) Many serious *moral dilemmas* were (and still are) ignored.
- e) *Judicial fiat*: judicial policy making is the wrong way to resolve core normative social issues.
- f) The Court went *too far* (it could have struck down Texas abortion law on much more modest, narrower grounds).
- g) Medical model for constitution rights is *inapt*.
- h) *Roe v. Wade* has severely distorted American *constitutional law* and doctrines.
- i) *Roe* has severely distorted Americans’ medical practice, for abortion is now the *most common surgical procedure in America*.
- j) *Roe* has caused a serious *erosion of the ethic* of respect for the sanctity of inconvenient life.
- k) *Roe* has caused a severe *erosion of the dignity* of personhood.
- l) *Roe* has seriously *eroded rights of conscience*.

Whether one agrees or disagrees with the *Roe* decision, there is no doubt that it has been one of the most important, influential and controversial decisions in the history of the Supreme Court.

18. Roe has Caused Erosion of the Ethic of Respect for Life. Since *Roe*, there has been a serious erosion of respect for life in America. And when American values erode, it impacts the values and practices of many other nations. Today in this country there is more killing of aged, infirm, disabled, handicapped, more child abuse, more violent crime, less compassion, humanity, sensitivity. In sum, the “hearts of men wax cold.”

Roe has produced *moral schizophrenia* into American life, law & medicine. Consider the following:

1. Two healthy women enter a hospital or clinic at the same time. Both are

twelve weeks into pregnancy. One enters a room on the second floor to obtain treatment to preserve the life of her unborn child *in utero*. The other enters another room on the first floor in order to destroy the life of her unborn child *in utero*. Is that rational? Coherent? Morally justifiable?

2. Two women are on their way to an abortion clinic to have an abortion. One is mugged by an attacker whose attack causes the unborn child to die. The other safely enters the clinic and has a legal abortion. Can the mugger be prosecuted for homicide or murder or feticide? Can the doctor who performed the abortion be prosecuted?

3. Two women have similar difficult situations: both are poor, struggling, attending school, with hopes for a better life, unmarried, both got pregnant with an unplanned and unwanted pregnancy, and both were abandoned by the man who got them pregnant. Both believe that having to care for a child now will ruin their chances for life and the future. One woman has a nineteen-week old child *in utero* and the other woman has a one-week-old newborn child. Can both/either kill the unwanted, burdensome child? Why? What moral distinction does “birth” make, and why?

4. What other non-emergency deadly medical procedures can minors obtain without parental consent? Are parental interests any less? Why is abortion given such preferential treatment?

5. Mutual consent of both parents is required (unless abandon) to give a child up for adoption; mutual consent is required to procreate a child. So why is father’s consent (even consultation) not required for abortion?

19. Numerous legal scholars have condemned Roe’s shabby reasoning. There is no love lost for *Roe* in the legal academy, which generally supports the policy it effectuated. For example: Yale Law Professor Alexander Bickel chastised the High Court for ruling by judicial fiat and for failing to explain its reasoning: “One is left to ask why. The Court never said. It refused the discipline to which its function is properly subject. It simply asserted the result it reached.”⁵⁷

Harvard Law Professor (later Stanford Dean) John Hart Ely wrote: “At times the inferences the Court has drawn from the values the Constitution marks for special protection have been controversial, even shaky, *but never*

⁵⁷ See Lynn D. Wardle & Mary Anne Q. Wood, “A Lawyer Looks at Abortion,” (1982): 164.

before has its sense of any obligation to draw one been so obviously lacking.” He further observed: “*Roe* lacks even colorable support in the constitutional text, history, or any other appropriate source of constitutional doctrine....” Professor Ely concluded his stinging analysis of *Roe* by observing that it “is bad because it is bad constitutional law, or rather because it is *not* constitutional law and gives almost no sense of an obligation to try to be.”⁵⁸

University of Chicago Law Professor Richard Epstein commented that the Supreme Court’s rationale for its abortion decisions was so poor that “[w]hat seemed to make sense as a matter of principle to a lot of people and a lot of lawyers is all of the sudden suspect.”⁵⁹

Harvard Law Professor (also Solicitor General) Archibald Cox (the most cited law professor of the twentieth century) declared: “My criticism of *Roe v. Wade* is that the Court failed to establish the legitimacy of the decision by not articulating a precept of specific abstractness to lift the ruling above the level of political judgment.”⁶⁰

Professor Michael W. McConnell wrote: ““The reasoning of *Roe v. Wade* is an embarrassment to those who take constitutional law seriously....”⁶¹ He also said: “The Supreme Court brought great discredit on itself by overturning state laws regulating abortion without any persuasive basis in constitutional text or logic. And to make matters worse, it committed these grave legal errors in the service of an extreme vision of abortion rights that the vast majority of Americans rightly considered unjust and immoral.”⁶²

20. *Ongoing public protests and vocal opposition (e.g., annual March for Life on January 22)*. The strong expression of opposition to and criticism of *Roe v. Wade* has not abated in over forty-three years. There is no lessening of the strong rejection and repudiation of that decision and of the doctrine that it imbedded into our constitutional law. Every year, hundreds of thousands of protesters gather in Washington, D.C. on the anniversary of the *Roe* decision. Many (perhaps most) of those who come to march and protest are young

⁵⁸ Ibid. at 163.

⁵⁹ Ibid. at 164.

⁶⁰ Ibid.

⁶¹ Michael W. McConnell, “*Roe v. Wade* at 25: Still Illegitimate,” *The Wall Street Journal*, Jan. 22, 1998, at A 18.

⁶² NARAL, “Michael W. McConnell, Nominee for the United States Court of Appeals for the Tenth Circuit,” at http://www.prochoiceamerica.org/assets/files/courts-noms-mcconnell_quotes.pdf (accessed 28 July 2016).

Americans.⁶³ While others (including President Obama) celebrate decades of abortion-on-demand,⁶⁴ young pro-life Americans brave the cold, the winter travel, the snow and opposing protesters to express their commitment to pro-life values. That commitment and action energizes the pro-life community, and deserves the respect of all Americans.

8. Conclusion: America Will Become Pro-Life In Laws As Well As Attitudes If We Never Give Up!

Advocates of abortion-on-demand claim that the trend of history is on their side. That claim could not be further from the truth. In fact, elective abortion only flourishes under in an artificial environment where strong artificial inducements suppress natural humanity. The strong pro-life values of the American people clearly evidenced not just by public opinion polls but, more powerfully, by their persistent efforts to enact laws to protect the living human child *in utero*, despite four decades of cynical Supreme Court rulings invalidating pro-life laws and promoting and facilitating elective abortion.

Winston Churchill, who heroically led Britain through its “darkest hours” in the twentieth century, explained how to overcome tremendous odds and achieve success that seems to apply to the pro-life quest to restore a culture and ethic of respect for human life. Churchill said: “Never give in – never, never, never, never, in nothing great or small, large or petty, never give in except to convictions of honor and good sense. Never yield to force; never yield to the apparently overwhelming might of the enemy.”⁶⁵ He also declared: “As long as we have faith in our own cause and an unconquerable will to win, victory

⁶³ Christopher White & Cheryl Wetzstein, “March for Life reflects abortion awareness among young generation,” *Washington Times*, 22 January 2015: “The 42nd March for Life again lived up to its reputation, *drawing hundreds of thousands* of mostly young marchers who oppose abortion.” Ibid.: “‘We are the pro-life generation and we will not remain idle. It is our job to protect our brothers and sisters in the womb and their right to life,’ said Julia Johnson, a senior at Shanley High School in Fargo, North Dakota.”

⁶⁴ Steven Ertelt, “Obama Celebrates 42 Years of Abortion: Roe Gives Our Daughters Rights and Freedoms,” LifeNews.com, 22 January 2015, at <http://www.life.news.com/2015/01/22/obama-celebrates-42-years-of-abortion-roe-gives-our-daughters-rights-and-freedoms/> (accessed 27 May 2016).

⁶⁵ Winston Churchill Quotes, at http://www.goodreads.com/author/quotes/2834066.Winston_Churchill (seen 10 May 2016).

will not be denied us.”⁶⁶ He noted that: “Success is the ability to go from one failure to another with no loss of enthusiasm.”⁶⁷ Finally, also relevant to the pro-life cause, he remarked: “If you're going through hell, keep going.”⁶⁸

Pro-life Americans have no choice but to keep going, keeps speaking, keep legislating until the Supreme Court recognizes and upholds legal protections for the right of life of all humans. For us today the only solution is, as it was for the nineteenth-century American abolitionists, “to maintain fidelity to the Constitution but deny that the Supreme Court can authoritatively settle” this issue.⁶⁹ We must continue to speak, write and legislate that *Roe v. Wade* was wrong, and that the people of this nation alone can legitimately decide the question of the extent to which unborn humans are legally protected. If we do so, ultimately we will prevail.

APPENDIX: 51 Important Supreme Court Abortion Decisions, 1971–2016

A. Twelve Major Supreme Court Abortion Decisions in the 1970s

1. *United States v. Vuitch*, 402 U.S. 62 (1971)
2. *Roe v. Wade*, 410 U.S. 113 (1973)
3. *Doe v. Bolton*, 410 U.S. 179 (1973)
4. *Bigelow v. Virginia*, 421 U.S. 809 (1975)
5. *Connecticut v. Menillo*, 423 U.S. 9 (1975)
6. *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976)
7. *Bellotti v. Baird* (I), 428 U.S. 132 (1976)
8. *Maher v. Roe*, 432 U.S. 464 (1977)
9. *Beal v. Doe*, 432 U.S. 438 (1977)
10. *Poelker v. Doe*, 432 U.S. 519 (1977)
11. *Colautti v. Franklin*, 439 U.S. 379 (1979)
12. *Bellotti v. Baird* (II), 443 U.S. 622 (1979)

B. Ten Major Supreme Court Abortion Decisions in the 1980s

13. *Harris v. McRae*, 448 U.S. 297 (1980)
14. *Williams v. Zbaraz*, 448 U.S. 358 (1980)
15. *H. L. v. Matheson*, 450 U.S. 398 (1981)
16. *City of Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416 (1983)
17. *Planned Parenthood Association of Kansas, Missouri, Inc. v. Ashcroft*, 462 U.S. 476 (1983)

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ Dyer, *supra* note 12.

18. *Simopoulos v. Virginia*, 462 U.S. 506 (1983)
19. *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747 (1986)
20. *Diamond v. Charles*, 476 U.S. 54 (1986)
21. *Frisby v. Schultz*, 487 U.S. 474 (1988)*
22. *Webster v. Reproductive Health Center, Inc.*, 492 U.S. 490 (1989)*

C. Ten Major Supreme Court Abortion Decisions in the 1990s

23. *Hodgson v. Minnesota*, 497 U.S. 417 (1990)
24. *Ohio v. Akron Center for Reproductive Health, Inc.*, 497 U.S. 502 (1990)
25. *Rust v. Sullivan*, 500 U.S. 173 (1991)
26. *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)*
27. *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993)*
28. *National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249 (1994)*
29. *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753 (1994)*
30. *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357 (1997)*
31. *Lambert v. Wicklund*, 520 U.S. 292 (1997)
32. *Mazurek v. Armstrong*, 520 U.S. 968 (1997)

D. Five Major Supreme Court Abortion Decisions from 2000-2009

33. *Hill v. Colorado*, 530 U.S. 703 (2000)*
34. *Stenberg v. Carhart*, 530 U.S. 914 (2000)
35. *Scheidler v. National Organization for Women, Inc.*, 537 U.S. 393 (2003)*
35. *Ayotte v. Planned Parenthood of Northern New England*, 546 U.S. 320 (2006)
37. *Gonzales v. Carhart*, 550 U.S. 124, (2007)

E. Three Major Supreme Court Abortion Decisions from 2010-2016

38. *Susan B. Anthony List v. Driehaus*, 573 U.S. ___, 135 S.Ct., 2014 WL 2675871 (June 16, 2014)*
39. *McCullen v. Coakley*, ___ U.S. ___, 135 S.Ct. __ (June 26, 2014)
40. *Burwell v. Hobby Lobby*, 573 U.S., ___ 135 S.Ct. __ (June 30, 2014)
41. *Whole Woman's Health v. Hellerstedt*, ___ U.S. ___, ___ S.Ct. __ (June 27, 2016).

F. Other Significant Supreme Court Cases Involving Abortion

1. *Arnold v. Sendak*, 429 U.S. 968 (1976)
2. *Guste v. Jackson*, 429 U.S. 399 (1977)*
3. *Hartigan v. Zbaraz*, 484 U.S. 171 (1987)
4. *Fargo Women's Clinic v. Schafer*, 507 U.S. 1013 (1993)
5. *Lawson v. Murray*, 515 U.S. 1110 (1995)*
6. *Leavitt v. Jane L.*, 518 U.S. 137 (1996)
7. *Janklow v. Planned Parenthood Sioux Falls Clinic*, 517 U.S. 1174 (1996)
8. *Lawson v. Murray*, 525 U.S. 955 (1998)*
9. *Federal Election Commission v. Wisconsin Right to Life*, 551 U.S. 449 (2007)*
10. *Lefemine v. Wideman*, 133 S.Ct. 9 (2012) (Per Curiam) *

* = pro-life free speech or expression case