

## O. Carter Snead on Public Bioethics and the Body

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ABSTRACT: If we aim at human well-being, we need a fairly complete picture of what kind of being we are considering. Professor Snead diagnoses the problem inherent in the current dominant conception of ‘what it means to be human,’ provides detailed evidence that American law and public policy have bought into and built upon this inadequate foundation, and embarks on a more correct path. He recommends that we “remember the body” and thus that we take seriously human dependency, obligation, and the human need for community. This kind of remembering makes all the difference as a foundation for bioethics.

CARTER SNEAD’S *WHAT IT MEANS TO BE HUMAN, The Case for the Body in Public Bioethics*, published in 2020 by Harvard University Press, is a helpful reflection on what it means to be a human being and how the answer to that question bears upon bioethics. The anthropological question should be front and center in any ethical inquiry, and so any legitimate bioethics similarly hinges on foundational presuppositions concerning what it means to be human and the teleology built into that question.

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human,' provides detailed evidence that American law and public policy have bought into and built upon this inadequate foundation, and embarks on a more correct path. It is a roughly hewn path, but one that has the potential to set straight a "public bioethics" that has taken a wrong turn and which has led the medical profession and the country into confusion and harm.

At issue is the moral and metaphysical framework which governs American law and public policy relating to bioethical issues.<sup>1</sup> The view of the human person that has slipped into Western consciousness and especially into American law, according to Snead, is the one that Robert Bellah termed "expressive individualism" and that Charles Taylor labelled "atomism".<sup>2</sup> Michael Sandel calls this individual "the unencumbered self."<sup>3</sup> To show how this anthropology has influenced public bioethics, Snead centers on three "vital conflicts": abortion, artificial reproduction, and end-of-life care. These, he says, "have been persistent features of the landscape, and have largely defined American public bioethics."<sup>4</sup> Although he admits other bioethical issues under the umbrella term "vital conflict," his "inductive anthropological analysis" centers on those three issues: abortion, artificial reproduction, and end-of-life decision-making, including euthanasia.<sup>5</sup> The

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<sup>1</sup> Professor Snead relies heavily upon the work of Robert Bellah, Charles Taylor, Michael Sandel, and Alasdair MacIntyre to describe the anthropology at the root of current bioethical misconceptions. See Robert Bellah et al., *Habits of the Heart: Individualism and Commitment in American Life* (Berkeley: University of California Press, 1985). Charles Taylor, *Philosophical Papers*, vol. 2: *Philosophy and the Human Sciences* (Cambridge: Cambridge University Press, 1985). Michael Sandel, *Public Philosophy: Essays on Morality in Politics* (Cambridge, MA: Harvard University Press, 2005). Alasdair MacIntyre, *Dependent Rational Animals: Why Human Beings Need the Virtues* (Chicago: Open Court Publishing, 1999).

<sup>2</sup> Snead, 75-76.

<sup>3</sup> Snead, 76-77.

<sup>4</sup> Snead, 41.

<sup>5</sup> Snead, 41. The term "vital conflict" is used a number of times when Snead explains the history of American bioethics and its beginnings in the 1960s and 1970s. "Put another way, American public bioethics unavoidably trades in vital conflicts among 'comprehensive' theories of the good. State neutrality is frequently not a coherent option." (40); "... three particular vital conflicts, namely, the legal and policy disputes regarding abortion, assisted reproduction, and end-of-life decision-making, have been persistent features of the landscape, and have largely defined American public bioethics. These vital conflicts are the foci of the inductive

analysis is inductive in that it points toward the many instances in which American law and public policy assumes, adds credence to, and promotes the moral anthropological perspective of “expressive individualism.”

The “expressive individual” or “unencumbered self” is an atomized, rational will who creates meaning, values, and reality. The self who has “forgotten the body,” as Alasdair MacIntyre would say, is not limited or in any way defined by the body or the body’s limitations, needs, or relationships.<sup>6</sup> This is a life emptied of unchosen obligations, either to family or community. The “expressive individual” also lacks claims on that same family or community. This person is free and independent, an individual among other individuals, unencumbered by relationships not chosen. According to Professor Snead, this atomized individual defines the person assumed by current American law and public policy.<sup>7</sup>

And there is no denying that, besides the creators of our “public bioethics,” many bioethics academicians and medical practitioners have bought into that same model of “expressive individualism.”<sup>8</sup> The totally autonomous patient, indeed the autonomous citizen, has flexed her muscles for years, in scholarship and in clinical medicine, to the point at which the medical profession has to fight back and assert its own autonomy. When it comes to moral, political, and legal discourse around the practice of medicine, extreme individual autonomy is preeminent among all other principles and values.

The corrective recommended by Professor Snead is a kind of remembering, not in the Platonic sense of recalling what one knew previously before embodiment, but rather in the sense of restoring the body to its rightful place in a foundational anthropology. An anthropology that takes seriously

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anthropological analysis that comprise the heart of this book. It is thus worth briefly sketching out in a general way the arc of American public bioethics to illustrate the durability of these vital conflicts across time....” (41)

<sup>6</sup> Snead, 88.

<sup>7</sup> Snead, 87.

<sup>8</sup> Besides Judith Jarvis Thomson, Michael Tooley, and Mary Ann Warren, whose arguments Snead entertains in depth in the chapter on abortion, James Rachels and Dan Brock, whose articles on euthanasia have been read widely, come to mind. The discipline of bioethics is dominated by scholars who recognize autonomy as the preeminent value that trumps all others.

the human experience of embodiment, according to Snead, would translate into better law and policy. The body's absence in contemporary public bioethics is a foundational mistake, one that has taken us on a path that blocks human happiness. The right ordering of citizens, as we make choices about ourselves and others at both the beginning and end of our lives, is foreclosed. For in the post-Enlightenment West, the body has been forgotten, and this is a problem.<sup>9</sup>

Remembering the body is remembering limitation, dependency, fragility, relationship, family, community, and unchosen obligation.<sup>10</sup> Remembering the body places public bioethics on a different track. Such a track would encourage and strengthen "networks of giving and receiving"<sup>11</sup> and thereby substitute for laws which presume an unencumbered, meaning-creating, rational individual, a public policy that encourages virtues and practices that build relationship, community, and family bonds. Snead thinks that this more realistic and experiential embodied anthropology would result in a "public bioethics" that encourages the following goods, practices, and virtues: just generosity, hospitality, misericordia, gratitude, humility, solidarity, a strong sense of human dignity, truthfulness, and ultimately, friendship.<sup>12</sup>

To be embodied is to be limited and dependent. A true anthropology recognizes this dependency; an adequate "public bioethics" must do so, too. The dismembering anthropology at the root of our contemporary legal and political framework has the effect of dismembering our families and communities and dehumanizing those who are incapable of rational decision-making. It leaves the pregnant woman alone precisely because she has been given the choice to do whatever she wants about her pregnancy. It leaves IVF's leftover embryos cryopreserved, discarded, or used for scientific research. It leaves surrogates renting out their bodies, as if their emotional

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<sup>9</sup> Snead, 86. "Because the self is defined by its capacity to choose, it is associated fundamentally with its will and not its body. The individual—the person—is thus understood to be identical with the exercise of this particular type of cognition. Therefore, expressive individualism is inevitably dualistic—privileging the mind while subordinating the body in defining the person."

<sup>10</sup> Snead, 88.

<sup>11</sup> Snead quotes MacIntyre here. *Dependent Rational Animals*, 146.

<sup>12</sup> Snead, 99-102.

connection to the fetus growing within them didn't exist. It leaves those suffering at the end of life with the choice, potentially coerced, to end it all rather than accept the compassionate care of health professionals, community members and family members all the way to natural death.<sup>13</sup>

Professor Snead argues his point convincingly, by painstakingly noting the multiple examples in American constitutional law and public policy where the “expressive individual” shows itself in the background, as the presumed answer to the question of what it means to be a human being. The perspective found in Judith Jarvis Thomson's, Mary Ann Warren's, and Michael Tooley's iterations of the liberated and independent woman are likewise detectable in *Roe* and *Doe*, according to Snead.<sup>14</sup> In fact, *Casey*'s shift in justification from privacy to liberty (personal autonomy) is perhaps the best instantiation in American law of the “expressive individual,” the “unencumbered self.”

Snead recalls this often-repeated quote from *Planned Parenthood of Southeastern Pennsylvania v. Casey*:

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<sup>13</sup> There is some resonance here with feminist “ethics of care” accounts of morality and ethical decision-making. Carol Gilligan states the following in her *In a Different Voice, Psychological Theory and Women's Development*, (Cambridge, MA: Harvard University Press, 1982), 173: “As we have listened for centuries to the voices of men and the theories of development that their experience informs, so we have come more recently to notice not only the silence of women but the difficulty in hearing what they say when they speak. Yet in the different voice of women lies the truth of an ethic of care, the tie between relationship and responsibility, and the origins of aggression in the failure of connection.” This ethic does not lead Gilligan to deduce a mother's special obligation to care for her unborn child, however. See also Virginia Held, “The Ethics of Care,” in *The Moral Life, an Introductory Reader in Ethics and Literature*, 5th ed. (New York: Oxford University Press, 2014), 447-491.

<sup>14</sup> Snead considers these seminal articles on abortion in light of their underlying anthropological assumptions: 126-134. Judith Jarvis Thomson, “A Defense of Abortion,” *Philosophy and Public Affairs* 1 (Autumn 1971): 47-66. Michael Tooley, “Abortion and Infanticide,” *Philosophy and Public Affairs* 2 (Autumn 1972): 37-65. Mary Ann Warren, “On the Moral and Legal Status of Abortion,” *The Monist* 57 (January 1973): 43-61. While the articles are not mentioned or quoted in the Court's abortion opinions, Snead says that they reflect Justice Blackmun's implicit reasoning in *Roe* and *Doe*.

These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under the compulsion of the State.<sup>15</sup>

He reveals how abortion law is indicative of a warped anthropology. He notes, as well, the relative silence of American law and policy regarding artificial reproduction and explains how this silence translates into full-blown reproductive liberty, which excludes from consideration the dependency, vulnerability, and humanity of donors, surrogates, embryos, and the children that are produced by IVF.<sup>16</sup> He also discusses the expansion of assisted suicide to nine states and the District of Columbia, the justification of which on the basis of patient autonomy is as clear an indication as can be imagined of the deadly quality of our now familiar and culturally accepted anthropology of expressive individualism.<sup>17</sup> Without given ends and obligations, or claims on family, community, and, yes, the state, the human person loses those “networks of giving and receiving” that sustain and fulfill human life.

Professor Snead is correct to highlight the missing piece within contemporary academic and public bioethics. Yet I wonder whether it is solely the forgetfulness of the body—this kind of dis-membering—that is bringing our country to the point of accepting death by suicide. Are there other forces at work—in bioethics and in culture generally? Is this Enlightenment and post-Enlightenment valuation of the individual and of individual freedom the only misstep? Or are there other cultural forces behind these bioethical problem areas? While recognizing the positive contribution of this book to the study of bioethics and to legal and public policy analysis, I would like to offer four observations about both the inadequate and the improved anthropologies spoken about in *What it Means to Be Human*.

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<sup>15</sup> Snead, 142-3. *Planned Parenthood v. Casey*, 505 U.S. at 851.

<sup>16</sup> Snead, 212-222.

<sup>17</sup> Snead, 252-268.

The first observation regards the metaphysics of the human being. As Professor Snead has explained, it is because a human person is essentially, by nature, bodily, that a human person is in community, in relationship, and not simply an individual. Because of the limitations and vulnerability that bodily existence brings with it, my being is being in relation, and I am sustained and fulfilled by participating in various networks that create claims and obligations. These networks include parenthood, family, Church, neighborhood, friendship, country.<sup>18</sup> And this anthropological perspective seems correct and significant.

However, as St. Thomas Aquinas would have it, matter, signate matter, is also the principle of individuation of a substance, including of a rational substance, a person. Jane's body, her "signate matter," according to Thomistic metaphysics, is the reason she is Jane, this particular human person.<sup>19</sup> It is her corporeality which makes her a concrete individual. In fact, it may be just as easy and just as harmful to neglect or forget about the individuality of Jane as to forget about her experientially significant relatedness. It is dangerous to diminish individual liberty and individual dignity, as physicians and researchers notoriously did prior to the birth of bioethics in the 20<sup>th</sup> century. There is good reason why informed consent, patients' bills of rights, and the value of autonomy generally conceived grew

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<sup>18</sup> Snead discusses becoming a parent and numerous other experiences that call us out of ourselves into these networks.

<sup>19</sup> Thomas Aquinas. S.T.I. q. 75. a. 4, corpus. *Basic Writings of Saint Thomas Aquinas*, Volume I, Edited by Anton Pegis (New York: Random House, 1944):

"I answer that, the assertion, the soul is a man, can be taken in two senses. First, that man is a soul, though this particular man (Socrates, for instance) is not a soul, but composed of soul and body. I say this, because some held that the form alone belongs to the species; while matter is part of the individual, and not of the species. This cannot be true, for to the nature of the species belongs what the definition signifies, and in natural things the definition does not signify the form only, but the form and the matter. Hence, in natural things the matter is part of the species; not, indeed, signate matter, which is the principle of individuation, but common matter. For just as it belongs to the nature of this particular man to be composed of this soul, of this flesh, and of these bones, so it belongs to the nature of man to be composed of soul, flesh, and bones; for whatever belongs in common to the substance of all the individuals contained under a given species, must belong also to the substance of the species."

in prominence and became the most valued of bioethical principles. As Professor Snead explains and documents, bioethics is a reactive discipline.<sup>20</sup> Its beginning was a response to egregious violations of individual liberty and human rights that occurred in the US and in Europe in the 20<sup>th</sup> century. Indeed, if you wish to find the inspiration for the egregious and dehumanizing Nazi experiments, you need look no further than the scientific and medical communities of 19<sup>th</sup> and early 20<sup>th</sup> century America.

Thanks to Kantian ethics, the dignity of the individual became established, one might say entrenched, in bioethics practice and policy, for good and ill. In the case of abortion rights, the practice of artificial reproduction and the spread of assisted suicide, for ill. However, when it comes to the right of the patient to know and consent to her own care and to participating as a subject in research, the Kantian, Enlightenment autonomous will was a life saver at a time when those networks of giving and receiving failed miserably. The body's significance for a valid and just bioethics is great. However, I wouldn't want to forget or underestimate the significance of the autonomous chooser either. And neither, I am certain, would Professor Snead.<sup>21</sup> I am this individual person, and my individuality is metaphysically and ethically significant. In fact, it may be that an Enlightenment-style argument for the individual right to life of the unborn human being is the most powerful argument out there. It may be that a

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<sup>20</sup> Snead, 36. In the first chapter Snead documents multiple scandals and the efforts of public actors to respond. Snead reflects: "The initial reaction nearly always includes an attempt at fact-finding... The discourse and debate in these hearings feature a recurring thrust-and-parry over scientific freedom, biomedical progress, and efforts to relieve suffering on the one hand, and, on the other, the competing and constraining goods of respect for the dignity and autonomy of persons, as well as the practice of humility and the corollary injunction against 'playing God.'"

<sup>21</sup> Snead, 64: "While these goods and principles [autonomy and self-determination] are important, and well suited to resolving conflicts among free and independent individuals operating at the height of their cognitive powers, they are not adequate for the lived reality of dependence, vulnerability, and diminished freedom that characterizes the human context of public bioethics."

Kantian argument against killing fetal human life—human life not yet capable of reasoning or choice—is foundational.<sup>22</sup>

Second, it is necessary to consider the term “public bioethics.” Professor Snead says that it makes sense for much of American law to follow a “live and let live” kind of neutrality, which makes way for individuals to set their own path consistent with their own diverse normative commitments. However, in matters of “public bioethics” where there are vital conflicts, he says, such neutrality is problematic; the state must take sides when it comes to protecting early human life and those who are close to death.<sup>23</sup> And this is a reasonable defense of both limited government and of government protections via law and policy.

However, in narrowing his focus on “public bioethics” to those vital conflicts of abortion, assisted reproduction, end-of-life care, and physician-assisted suicide, Professor Snead does not do justice to the breadth and significance of “public bioethics” and provides a distorted picture of the nature of bioethics law and public policy. To separate out these issues from other matters of “public health” and to focus on them solely would seem to cause another kind of dismembering. This dismembering, insofar as it ignores other “vital conflicts,” shrinks one’s understanding of the human experience of vulnerability, limitation, and relationship. It excludes the lived experiences of many of our most vulnerable fellow citizens.

For instance, harms associated with health care so costly that one is forced to either forgo treatment or suffer financial hardship and strain are not attended to here.<sup>24</sup>

Yet the plight of the parents of a child with Down syndrome who needs heart surgery after birth, is an important vital conflict. The family is crushed

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<sup>22</sup> Harry J. Gensler, “A Kantian Argument Against Abortion,” *Philosophical Studies* 49 (1986), 83-98. Gensler’s interesting argument from consistency applies the Golden Rule to the abortion issue and positions the individual self as an essential element in his argumentation against abortion. One must either concede abortion’s immorality or give up on consistency and thus human reason. Admittedly, Kantian and Enlightenment thought is often used to support individual freedom at the expense of individual dignity.

<sup>23</sup> Snead, 39.

<sup>24</sup> It is true that Snead warns that he will not attend to every vital conflict in the book.

because, though the father has health insurance, it is sorely inadequate. Since the US rate of abortion due to a positive test for Down syndrome is estimated to be nearly 67 percent,<sup>25</sup> one would think this clearly vital conflict is a matter for serious consideration in any account of public bioethics. Our health system does not recognize the vulnerability of this family and others facing massive medical bills who lack adequate health coverage. They are treated as autonomous individuals and not supported in a way that could allow them to thrive.

Fellow citizens suffering from gun violence in urban neighborhoods show up regularly and increasingly in our nations' emergency rooms. This is another vital matter deserving a robust public response. The leading cause of death of children and adolescents aged 1–18 is now firearms-related (which includes suicide, homicide, unintentional, and undetermined causes). Gun violence had been the second leading cause of death of children and adolescents until 2020, when it overtook automobile accidents.<sup>26</sup> In this instance there is a dismembering, as well. The lackluster response to this data suggests that many Americans assume that those living this reality can escape it if they put their mind to it. There seems to be a presumption of individual autonomy and a lack of recognition that people need support, that families are hurting and vulnerable, that individuals cannot escape this reality without true communal commitment.

The third observation is this: one must not neglect the role of technology in shaping our public bioethics. It is not the body *per se* that is missing from

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<sup>25</sup> Jaime L. Natoli, Deborah L. Ackerman, Suzanne McDermott and Janice G. Edwards, "Prenatal diagnosis of Down syndrome: a systematic review of termination rates (1995–2011)" *Prenatal Diagnosis* 32 (2012): 142–153. DOI: 10.1002/pd.2910 Accessed August 4, 2022, <https://obgyn.onlinelibrary.wiley.com/doi/pdf/10.1002/pd.2910>. For an international look at the growing instance of abortion after prenatal testing for Down syndrome, see: Sarah Zhang, "The Last Children of Down Syndrome," *The Atlantic Magazine*, December 2020. According to Zhang, approximately 95 percent of women who receive a positive prenatal test for Down syndrome choose to abort.

<sup>26</sup> Matt McGough, Krutika Amin, Nurmita Panchal, and Cynthia Cox, "Child and Teen Firearm Mortality in the U.S. and Peer Countries," Kaiser Family Foundation. Accessed August 4, 2022, <https://www.kff.org/global-health-policy/issue-brief/child-and-teen-firearm-mortality-in-the-u-s-and-peer-countries/>.

consideration in the current governing anthropology. After all, we must not forget that the dominant argument for the legitimacy of abortion, IVF, and assisted suicide is essentially: “My body, my choice.” The body is all over bioethics scholarship and legal reasoning. In the abortion debate, it is the mother’s womb that is occupied by the fetus/violinist/people seeds/intruder. Trimesters and abortion procedures figure significantly in abortion case law. In IVF, body parts are bought, sold, and rented. With assisted suicide, the debilitated body of the cancer patient is the focus. I’m not sure that the body is being forgotten, as much as it is seen as an object to be controlled.

The freedom to determine one’s own way, destiny, and meaning includes the freedom to pursue a technical and scientific mastery over one’s own body. Medical technology, like technology in general, has taken control of human beings in ways not imagined when the scientific project began. Pope Francis calls this phenomenon the “technocratic paradigm,”<sup>27</sup> a paradigm whose shift seems enormously difficult to engineer. Effective artificial contraception, safe surgical and medical abortion techniques, the scientific breakthroughs that make producing a human embryo in a petri dish a project with a relatively high success rate, the availability of drugs that promise to make death more like choosing to fall asleep—all these scientific and technological ‘advances’ have opened horizons to human choice that were not imagined previously. The progress of medical science and technology was bound to bring with it serious ethical challenges. It is this progress, too, that has brought about a “public bioethics” in crisis.

The unencumbered individual—as well as couples and families—all find powerful technologies at their beck and call in ways no earlier age enjoyed. Certain technologies are in no way neutral and call for responsible control, if not outright rejection. If it is true, as Professor Snead suggests, that the pre-ordained living will of the progressively mentally incompetent patient is an abuse of autonomy and a rejection of family and communal bonds,<sup>28</sup> it is also true that the use of certain technologies that keep organs

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<sup>27</sup> Pope Francis, *Laudato Si’, On Care for Our Common Home*, Vatican, 102-114. Accessed August 4, 2022, [https://www.vatican.va/content/Francesco/en/encyclicals/documents/papafrancesco\\_20150524\\_enciclica-laudato-si.html](https://www.vatican.va/content/Francesco/en/encyclicals/documents/papafrancesco_20150524_enciclica-laudato-si.html).

<sup>28</sup> Snead, 242-251.

functioning far beyond their medical benefit is also abusive and requiring careful consideration. Technological mastery and the refusal by some—who may even be family members—to recognize the natural limitations of human life are accentuating the problems we face.

One final point, alluded to in this book and treated in Erika Bachiochi's recently published *The Rights of Women: Reclaiming a Lost Vision*, is worth emphasizing. Public bioethics and the current dominant understanding of the body reveals a Lockean influence.<sup>29</sup> The body is now instrumental and considered "one's own," that is, "*propre*," property. A kind of capitalist mindset has taken bioethics with it, as everything outside my will devolves into property, including one's own body. With artificial reproductive technologies, the body can be fertilized at will—with body parts that are bought and sold, using wombs that can be rented if needed. With contraception, my body, totally my own to do with what I will, can be made barren at will. In abortion, the fruit of my body can be killed at will, since I have bodily rights and can refuse to house the child who is intruding on my life plans.<sup>30</sup> And in physician-assisted suicide, one can contract with others to trade in one's living body for a corpse.

Essentially, I have not actually forgotten about my body. I have rather come to think of it as totally mine, a thing I own, manipulate, and instrumentalize, rather than as a gift that was given to me—by nature, God, or fortune, as Michael Sandel would say.<sup>31</sup> If body is gift, then one's attitude toward that body is gratitude and a felt obligation to cherish, respect, and view it as sacred. Either I am embodied spirit, or I am a knowing and willing self who can use the body as an instrument to attain my goals and projects. While Professor Snead notes this distorted Lockean vision of the body as property, I believe it is well worth emphasizing this all too 'consumerish'

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<sup>29</sup> Snead, 127 -128.

<sup>30</sup> As Bachiochi's research suggests, these life plans are sometimes formed in response to a market economy that expects women's fertility to be left unaccounted for and unaccommodated in the workplace.

<sup>31</sup> Michael Sandel, "Mastery and Gift," in *Biomedical Ethics*, 7th ed, Edited by David DeGrazia, Thomas Mappes, and Jeffrey Brand-Ballard, (New York: McGraw Hill, 2006), 611.

perspective. The body is not nothing; rather it has come to be understood as my property.

*What it Means to be Human: the Case for the Body in Public Bioethics* sheds much needed light on American law and public policy relating to abortion, artificial reproduction, and end-of-life care. Its treatment of the body's significance with respect to bioethics law and public policy is thorough and grounded in sound critiques of America's current and widely accepted anthropology. Carter Snead has shone a bright light on the body's physical limitations and the resultant dependency of individuals on others, a communitarian approach that bears repeating when considering other issues that relating to "public bioethics."