***The Ethics of Abortion: Women's Rights, Human Life,
and the Question of Justice***

by Christopher Kaczor

New York: Routledge, 2011. x+246 pp.

Christopher Kaczor's thorough study of "the ethics of abortion" is logically organized as follows: 1) introduction (1–12); 2) "Does Personhood Begin after Birth?" (14–37); 3) "Does Personhood Begin at Birth?" (38–55); 4) "Does Personhood Begin During Pregnancy?" (56–90); 5) "Does Personhood Begin at Conception?" (91–120); 6) "Does the Human Embryo Have Rights?" (121–144); 7) "Is It Wrong to Abort a Person?" (145–176); 8) "Is Abortion Permissible in Hard Cases?" (177–214); 9) "Could Artificial Wombs End the Abortion Debate?" (215–230). He answers "no" to numbers 2, 3, and 4, and "yes" to number 5. His own answer to numbers 6, 7, and 9 is "yes," but his strategy is to consider and reject arguments answering "no" to these questions; his own answer to number 8 is "no," but again his strategy is to consider and rebut arguments for a "yes" answer.

Kaczor asks whether "personhood," not "human life," begins at different points. He does so because today many claim that not all living members of the human species are persons with rights; only "persons" have rights, and killing human beings who are not persons does not violate any "right" to life.

First let us examine the rich contents of Kaczor's book. I will then close with an evaluative critique.

1. The Introduction

Kaczor believes that sound philosophical reasoning informed by a careful examination of the evidence can show that the

vast majority of abortions are morally unjust (12). But he is convinced that meaningful and respectful dialogue between defenders and critics of abortion is possible if two key truths are honored. The first is the difference between the subjective culpability of the agent and the objective morality of the act as determined by relevant moral principles and norms. We must not, indeed cannot, *judge* those who choose to have or defend abortions. "Whatever one's view of abortion itself, refraining from making judgments about the character of those touched by abortion (in whatever way) is helpful in treating the topic properly, and more importantly, I believe (but won't defend here), that it is an essential part of being a decent human being" (5). The second is to avoid loaded language such as *anti-life*, *anti-choice*, etc. and use instead terms such as *defenders of abortion*, *critics of abortion* (6).

2. Does Personhood Begin After Birth?

Defenders of the claim that personhood begins after birth include Michael Tooley and others who accept the definition (or varieties and nuances thereof) of person given by Peter Singer: namely, "a being is a person if and only if the being has 1) an awareness of his or her own existence, 2) over time and in different places with 3) the capacity to have wants, and 4) plans for the future" (17–18). Kaczor provides an exhaustive critique of this definition and the four "person-making" criteria it stipulates, along with a critique of the efforts of many

The Linacre Quarterly 79(1) (February 2012): 104–122.

© 2012 by the Catholic Medical Association. All rights reserved.

0024-3639/2012/7901-0011 \$.30/page.

(Julian Savulescu, Galen Strawson, David Boonin, a “later” Tooley and his colleague Laura Purdy, and others) to “nuance” this definition and offer more sophisticated versions of it in order to answer objections, among them the criticism that, if strictly interpreted, Singer’s definition would include among non-persons those who are sleeping or anesthetized, and if more loosely interpreted would include those in deep coma or severely mentally disabled (24–32).

A common claim is that the unborn and newly born are not actual persons but only “potential persons.” Responding to this claim, Kaczor distinguishes between a “passive potency” and an “active potency.” The former requires the intervention of an agent extrinsic to the being to effect the change from potential to actual (e.g., a sapling has a passive potency to become the leg of a chair) whereas the sapling has the active potency to become a mature tree (24). In defending this distinction Kaczor shows the absurdity of scenarios invented by writers like Nicole Hassoun and Uriah Kriegel to show how an oyster could develop its own rational powers if it were transported to Mars and if living on Mars made oysters capable of this (24–25).

Kaczor counters Jeff McMahan’s argument that neonates and young children are not “persons” by a *reductio ad absurdum*. McMahan argued that since rational functioning determines moral worth, then there are degrees of personhood, and some persons are of greater value not only than non-rational humans but also than some rational ones. He further argued that there is no logical reason why rational entities with rational capacities might not be manufactured. In fact, McMahan himself had to admit that his idea that those persons whose rational capacities are greater than others have more rights than other persons is “dangerously invidious” (23).

Kaczor also shows that the acceptance of the Dutch “Gronigen Protocol” by Hilde Lindemann and Marian Verkerk is rooted in the a priori and falsifiable presupposition that the most humane way to treat severely handicapped newborns is to kill them to save them from a life of “hopeless and unbearable suffering.” This view pre-

supposes that there is such a thing as a life not worth living and that one can judge that another human being is better off dead than alive. But empirical studies show that individuals who have suffered a lifetime because of a genetically-caused serious handicap or accident do not want to be so killed (33–34).

3. Does Personhood Begin at Birth?

Kaczor’s procedure in showing that the answer to this question is “no” is to summarize and criticize the specific views of different authors (e.g., Mary Ann Warren, David Boonin, H. Tristram Englehardt, Ronald Green, Lawrence Tribe), playing them off against each other and showing their inconsistencies and in particular the inconsistencies in the changing views of Warren; he likewise briefly examines the nature of partial-birth abortion, and the Supreme Court’s ruling affirming a constitutional right to this procedure and by that ruling reaffirming the conventional pro-choice view that abortion ought to be legally permissible throughout the nine months of pregnancy until the human being has been entirely removed from the woman’s body (38–55).

4. Does Personhood Begin During Pregnancy?

Kaczor examines the following stages during pregnancy when different authors think the living human being becomes a “person” with a serious right to life: *conscious desires/interests* (Bonnie Steinbock); *viability* (*Roe v. Wade*); *quickening/fetal movement* (Kaczor names no one who holds this but simply proposes and then disposes of arguments claiming this); *sentience* (Ronald Green, David Overberg, et al.); *human appearance* (Roger Wertheimer; Jane English); *brain development* (Baruch Brody who, however, completely repudiates abortion after the brain appears, although Kaczor fails to note this); *implantation* (Bernard Nathanson prior to his conversion; Stephan Coleman). Kaczor rebuts these proposals by appealing to relevant scientific studies and to the infighting among defenders of abortion over these criteria for determining the beginning of personhood. In criticizing the claim that the human organ-

ism becomes a person when the brain is developed, Kaczor appeals to D. Alan Shewmon's refutation of the rationale used to claim that the brain is the central organizing element in the human person (79–81).

Of special interest in this chapter is Kaczor's presentation of and refutation of the *developmental view* or the *multi-criterial* approach of Mary Anne Warren in her later writings, which is endorsed by Green and others. According to this approach, each of the criteria noted earlier fails as a sufficient criterion for determining personhood if taken individually. However, if they are taken together they lead to the conclusion that the right to life (a right of "persons") gradually gains strength as pregnancy progresses, and the more similar the human being in utero is to "full-fledged" persons like those of us who are born, the greater the protection it deserves. Nonetheless before birth this being is *not*, Warren claims, a full-fledged person with a serious right to life (83–85).

Her claim ignores the vast difference in the right to life and other rights. There are age restrictions on voting, driving, and being elected to public office because these rights imply abilities to discharge specific responsibilities. But the right to life does not imply any corresponding responsibilities and so can be enjoyed regardless of age or mental capacities. And Warren's view has other problems as well.

Since Kaczor had shown in the earlier chapter that personhood does not begin *after birth*, he ends this chapter by saying that inconsistencies and inner contradictions of the most important arguments that personhood arises *during pregnancy* point to the logical conclusion that personhood begins at conception, the issue of the following chapter (90).

5. Does Personhood Begin at Conception?

Kaczor begins his yes answer to the question by saying that he will address not one but two questions. The first is "a moral question that inquires as to who is a member of the moral community; the second is a biological question that seeks to know when human life begins" (91). The first question

is extremely important, not only for the abortion issue and other ethical issues but also because its answer presupposes or reinforces at least implicitly a general theory of personhood. Kaczor draws on Robert Spitzer's *Healing the Culture: A Common-sense Philosophy of Happiness, Freedom, and Life Issues* and John Kavanaugh's *Who Count as Persons? Human Identity and the Ethics of Killing* to contrast the *endowment account* of personhood and the *performance account* of personhood (93). After criticizing efforts (e.g., by Jeff McMahan, S. Matthew Liao) to defend the *performance account* of personhood and efforts to discredit the *endowment account* (e.g., by Martha Nussbaum), Kaczor argues that every human being is a rational animal (Aristotle's definition centuries ago; man is the *zoon logikon*, *animal rationale*). Moreover every human being is not *potentially* a rational being, but a currently existing actual rational being. Kaczor illustrates this by using examples from pathology—for instance, some men are sterile and cannot therefore reproduce when united in the bodily act of genital intercourse with a woman. But this is a pathological condition, and these men's generative organs remain generative even if they cannot be exercised. Thus human beings from conception on are the *kind of beings* who are actual existing rational beings even if these rational powers, rooted in their being, must be developed in order to be exercised, but they could not be developed if they were not there to begin with, etc. (98–102).

The second question, when does a human being begin to exist, is a biological or scientific question and Kaczor, making his own the scientific studies cited by Patrick Lee,¹ shows that this evidence leaves no doubt about the beginning of human beings; they come to be at conception, when the sperm from the man fuses with the oocyte of the woman and a new organism, distinct from mother and father, begins to be, with the active potency to develop into an embryo, fetus, newborn ... senile old person. Kaczor then offers another argument, which he calls the "constitutive property" argument, to support this conclusion (105–120). (Kaczor notes that

David Boonin had articulated this argument. He does not, however, point out that Boonin's articulation of the argument is in essence a misreading of the argument proposed by Paul Ramsey years ago; Boonin discusses this argument in his widely acclaimed *A Defense of Abortion*²). The "constitutive property" is that all human beings from conception on are *rational animals*, i.e., bodily beings with the active potency to develop and exercise the rational acts of forming concepts, judgments, and arguments, and of making free choices.

6. Does the Human Embryo Have Rights?

In answering "yes" to this question, Kaczor does *not* give arguments to show that embryos have rights. His strategy is to consider and answer "several major objections to the view that the human embryo is a person, a being due fundamental respect" (121). He had examined those objections and rejected them in chapters 2, 3, and 4. This chapter is thus somewhat repetitious. It focuses on twelve arguments proposed by defenders of abortion to deny personal rights to human embryos: *the acorn analogy*; *the size of the embryo*; *twinning*; *embryo fusion*; *the high embryo mortality rate*; *hylomorphism (the "delayed hominization theory")*; *the anti-abortion, anti-contraception argument*; *the argument that cells are not persons*; *the embryo rescue case*; *the bag of marbles analogy*; *cost-benefit analysis*; *the uncertainty argument*.

I will not consider these objections and Kaczor's replies to them in any detail, but I will illustrate his strategy in his replies to the arguments based on monozygotic twinning and on fusion, as well as the high embryo mortality rate, or "wastage," argument.

Twinning: Some (Mary Warnock, Jeff McMahan) argue that the phenomenon of monozygotic twinning proves that an *individual* human being *cannot* exist in the early stages of pregnancy. Kaczor's basic reply is that even if one being can be divided into two, this does not mean that it was never an individual being, something demonstrated by cloning, an artificial kind of twinning. He stresses the difference be-

tween *individuation* and *indivisibility*: the fact that one being can be divided into two does not mean that it was never an individual being. It is also possible that the original human zygote died and in doing so gave rise to two or more individual human beings (127–129).

Fusion: It may be possible that two human zygotes can fuse into one. The argument (Harris, Green) is that two human beings cannot fuse into one; therefore two human zygotes cannot so fuse but rather become "humanized" with the appearance of the primitive streak fourteen days after conception. All this case shows is that two human beings were in existence prior to fusion (and no instances of the fusing of human embryos have been recorded so far as I know, although Kaczor does not note this), and now the two human beings cease to exist and a new human being takes their place (129–130).

Embryo wastage or high embryo mortality: The argument (Green, McMahan) is that if embryos were truly human beings and especially if they were persons, parents would grieve over miscarriages as they do over the death of a toddler or aunt or beloved friend, whereas they do not. But most women do grieve over miscarriages. Far more important, however, is that grieving a death is itself irrelevant to whether an entity is a human being or person. There seems to be a relatively high rate of "embryo" wastage. But, Kaczor argues, experts think that this is the result of gross abnormalities and serious deficiencies in the reproductive process because of incomplete fertilization. In a majority of cases, it is likely that no human being or person was "wasted" or lost but rather some non-human organism. In addition, all human beings die, some during pregnancy, others at birth, others at different stages of their lives, but their deaths in no way show that they were not human beings or persons when they died (131–133).

7. Is It Wrong to Abort a Person?

Kaczor begins this chapter by declaring: "If every human fetus is a person, is abortion always wrong? It would seem so. Since having others respect one's right to life is a *necessary condition* for the possi-

bility of enjoying all other rights (including the right to privacy and bodily integrity), it has a necessary priority over all other rights [with a reference to Spitzer's *Healing the Culture*] (145). But Kaczor does not show precisely why *intentionally* aborting a person, including unborn persons, is *always* morally wrong. Rather he criticizes some major arguments proposed by defenders of abortion justifying the killing of the unborn. The arguments are the following: the violinist analogy (of Judith Thomson), the burglar analogy (Thomson's), the "no worse off" analogy (Francis Kamm), the "special duties to children but not to fetuses" argument (Thomson), the comparative burdens objection (Thomson, Martha Nussbaum), the "does killing make the fetus worse off" argument (Kamm). Kaczor analyzes and criticizes these arguments from page 150 through page 176, giving special attention to Thomson's different "arguments/analogies" (150–167); in analyzing Thomson's thought he shows the significant moral distinction between *foreseeing* an evil effect and *intending* that effect, a distinction Thomson rejects.

I will not consider Kaczor's critique of all these arguments but rather show his procedure by briefly summing up his critique of Thomson's violinist analogy and his treatment of the key difference between *foreseeing* and *intending*. Most readers are familiar with the violinist analogy that Thomson used in her famous article "The Rights and Wrongs of Abortion," published in the inaugural issue of Princeton University's *Philosophy and Public Affairs* in 1971, two years before *Roe v. Wade*. Just as a person does not have a moral obligation to allow the violinist plugged into her body while she is sleeping so that his blood can be purified by her kidneys to use her body for this purpose for nine months, so a woman who gets pregnant, perhaps after taking precautions (e.g., contraceptives) not to, has no obligation to allow the unborn child to continue to use her body for nurture for nine months; rather she has a right to have the child removed from her body even if its death is foreseen as an effect of its removal.

Thomson tries to buttress this analogy by referring to the Gospel story of the Good

Samaritan. She thinks that if the woman were a "good" or "very good" Samaritan she would permit the violinist to remain plugged into her and the fetus to remain in her body for nurture until birth. But she says we are not obliged to be "good" or "very good" Samaritans, only "decent" Samaritans, and that a decent Samaritan would not be obliged to sustain the life of either violinist or fetus at such a severe cost to his own life.

Kaczor's criticism focuses on the Good Samaritan story. He says that the strength (or initial plausibility) of the analogy rests on the intuition that one may unplug oneself from the violinist, but he argues that Thomson's reference to the Good Samaritan considerably weakens her analogy. He stresses that the point of the story is *moral* and not *legal*. Thomson appeals to it as offering us moral wisdom (not religious faith). "Using the Good Samaritan story to justify not helping someone in need is," Kaczor writes, "rather like using the race between the tortoise and the hare to justify a lack of perseverance" (150–151). He goes on to argue that the violinist analogy can be attacked on other grounds, for instance, on the right of the violinist and fetus to bodily integrity. Unplugging yourself from the violinist suggests that you are not violating his bodily integrity. But what if you could unplug yourself from him only by chopping him up or tearing him limb from limb or suctioning him away by a machine that grinds him to pieces? If one does this, is not one violating his right to bodily integrity, the same right the one to whom he is attached possesses? And to separate herself from the fetus, does not the woman have to have it ripped apart by a curette, or sucked out by a machine that grinds it into pieces, and in so doing she violates its right to bodily integrity? (151–152).

Kaczor emphasizes that Thomson's analogies proceed on the assumption that there is no moral difference between *foreseeing* and *intending* the evil effects of our actions, e.g., the death of a human person, say the violinist, the fetus, or an innocent non-combatant in war. But Kaczor goes on to show the centrality of this distinction for *morality*. We are in some way responsible

for the unintended evil effects of our actions, for they would not take place if we did not choose to do the deeds that cause those effects (e.g., the deaths of innocent non-combatants caused by dropping bombs on a military target—what is now called “collateral damage”). However, we have a much greater moral responsibility for the actions we freely choose—i.e., intend—to do, as examples clarify, and here I offer some of my own. For instance, if I drive a car to go to the store, my chosen deed here and now is to drive the car to the store; in driving it I foresee that I will use up gasoline, wear out my tires, and pollute the atmosphere. But I do not *intend* these evil effects; indeed I would prefer that they not occur. Similarly, a dentist may foresee that he will cause me pain in doing some procedure on my teeth, but he is not intending that I experience the pain; if he does I will go to a different dentist. Many abortion defenders (e.g., Boonin, Thomson) reject this key distinction, and Kaczor takes up their objections in detail and answers them (157–162).

8. Is Abortion Permissible in Hard Cases?

Kaczor answers “no” to this question. He divides the chapter into two lengthy sections separated by a shorter one. The first major section discusses “Hard Cases for Critics of Abortion” (178–191), and these include the following: difficult circumstances, fetal deformity, abortion for the child’s good, cases of rape and incest, abortion to save the mother’s life. The second major section takes up “Hard Cases for Defenders of Abortion” (193–214), and these include the following: murder of pregnant women; sex selection abortion; abortion for frivolous reasons; safe and legal, but why rare? why parental opposition? prenatal bonding with “our baby”; morally permissible vs. morally objectionable; intermediate moral worth of the human fetus. The third and shorter section concerns “Cases of Conscience” (191–193). It will be useful to consider all of these.

Hard Cases for Critics of Abortion

Difficult circumstances. The most common reason for abortion is that the circum-

stances of the pregnancy are not felt to be right either for the mother or for the child to be born. Typical circumstances of formidable difficulties are broken homes, drug abuse, crushing poverty, abusive relationships, fear of public humiliation, inability to complete education or do one’s work. It would be arrogant and wrong to judge women seeking abortion because of these circumstances; what they need is support, not condemnation. But these circumstances can and do exist after a child is born and can even be worse. But even defenders of abortion would not use these circumstances to justify the intentional killing of a six-year-old child. Commonly accepted morality holds that such killing of innocent persons or helping others to do so is not ethically permissible even in the worst circumstances. Doing the right thing may be difficult and even heroic, but one is obliged not to do or facilitate such intentional killing (178–179).

Fetal deformity. Kaczor uses the same kind of reasoning to answer this difficulty. He notes the exceptional difficult case when prenatal testing shows that the unborn child has a disease or malady known to be fatal shortly after birth. Even if abortion is not chosen, the unborn child is doomed to death. Abortion will spare the mother the burden of continuing the pregnancy, the burden of giving birth, and the agony of waiting for the child to die after birth. Abortion seems justified by the principle that in such circumstances we should salvage the best out of a difficult situation. But Kaczor notes that abortion itself imposes serious burdens on the woman; more important ethically is that the expected lifespan of a person does not affect the permissibility of killing him. Thus if the human being in utero is a person, then intentionally killing him or her is impermissible even if he or she will shortly die (180–181).

Abortion for the child’s good. This difficulty, similar to the previous one, appeals to the emotions and shows that the motives of those who abort unborn children for this reason are used to justify the intentional killing of innocent unborn persons. But good motives are not sufficient to justify

freely chosen human acts. They cannot justify the intentional killing of innocent human persons whose *lives* are integral to their *being* (181–183).

Cases of rape and incest. In such cases (Kaczor treats incest as often the same as rape, since it usually occurs against the free consent of the woman) abortion is justified as the necessary means to protect the good of the mother. Kaczor first points out that if conception can be prevented, this is morally acceptable because the means chosen is not contraceptive (to impede the beginning of new life through a freely chosen genital act) but is rather to protect the woman from suffering further bodily violence from the rapist. (Kaczor does not himself spell this out in his text, but his footnote reference is to John Finnis's treatment of the matter in his *Moral Absolutes* of 1991, and Finnis clearly sets forth the reasons why this is true.) Kaczor emphasizes that most women who conceive a child after rape do not abort the child but bring it to birth and either place the child for adoption or raise him or her themselves.

But if the woman wants the abortion so that she will not be reminded of the suffering she endured by being raped, nonetheless the truth remains that the unborn child is an innocent human person with the same inviolable right to life as the pregnant woman. Like all other human persons, the mother has the corresponding duty to refuse to intentionally kill that person, which is what she does if she consents to abortion. Some (e.g., Thomson) object that this would require heroic virtue on the part of the woman. Kaczor acknowledges this, but he then affirms a most important truth, writing: "[S]ome circumstances, including those created by the evil choices of others, can sometimes remove the category of the merely permissible, leaving us with a choice between the morally wrong and the morally heroic. If a dictator orders you to torture your mother to death or face a firing squad, you will be faced with a choice between the morally wrong and the morally heroic" (184–185). And this, one will correctly infer, is the same situation for the woman made pregnant by being raped.

Abortion to save a mother's life. Kaczor addresses these cases by using what he calls "DER," double effect reasoning, and he then briefly summarizes the requirements of this reasoning as summed up in the principle of double effect by Thomas Cavanaugh.³ According to this summary of the principle of double effect and of double effect reasoning, performing an act with two morally significant effects is justified if "(1) the evil effect is not intended as a means or as an end; and (2) there is a proportionately serious reason allowing for the evil effect" (186).

Kaczor says that if we apply double effect reasoning to abortion, its first condition shows us the moral difference between "direct" and "indirect" abortion, and it is crucially important to distinguish abortions where fetal death is intentionally brought about (frequently called "direct" abortion) and procedures in which the death of the human being in utero is not intentionally brought about but is the side effect of what a person brings about intentionally (frequently called "indirect" abortion). Direct abortion is not justifiable because it is the intentional killing of an unborn human person. The second condition of double effect reasoning is fulfilled if the mother's life is at risk, because saving her life is a proportionately serious reason for allowing or tolerating the death of the unborn child. Kaczor then examines three cases in which the mother's life is at risk: ectopic pregnancy, cancer of the uterus, and the case when the baby has trouble exiting the birth canal.

He judges that abortion in the first two cases is "indirect" and the death of the unborn child a foreseen but not intended effect, and that therefore abortion in such cases is morally justifiable. He notes some debate among reputable writers who reject all intentional killing of innocent persons over different methods of coping with ectopic pregnancies, especially by use of the drug methotrexate. But he says that the majority of contemporary writers now accept salpingostomy: splitting of the fallopian tube in which the fetus has implanted, removing the unborn child, and sewing the tube up in order to increase the woman's chances of conceiving in the future. This

method had been repudiated many years ago by J. Lincoln Bouscaren, a Jesuit canon lawyer who first developed an argument justifying salpingectomy as a morally permissible way to save the life of a mother if endangered by an ectopic pregnancy—a salpingectomy is the excision of the fallopian tube where the fetus had implanted rather than in the womb.

Kaczor also judges morally right radiation therapy or a hysterectomy, that is, removal of the uterus, to save the life of a pregnant woman suffering from cancer of the uterus and for whom life-saving treatment of the cancer cannot be postponed until the baby is born. In such a case, use of radiation therapy that would have as a side effect the death of the unborn baby, or a hysterectomy that would also result in its death, is justifiable insofar as the death of the unborn child is not intended but only the life-preserving therapy done to the mother (186–189).

The third case, when the unborn child cannot exit the birth canal because it is stuck in it and the pressure it exerts can cause the mother to die, is also called the craniotomy case because the unborn child can exit the birth canal if a craniotomy is performed on it, and this requires that the baby's skull be crushed. If the craniotomy is not done then both mother and baby will die; if it is done, the mother's life can be saved. Kaczor identifies four possible outcomes, the first three resulting if the doctor does nothing and the fourth resulting from his intervention: 1) both mother and child will die; 2) the baby will die, and then removing its corpse by crushing its head is not immoral; 3) the mother will die and then the child can be removed safely; and 4) the mother will be saved if a craniotomy is performed on the baby.

Kaczor notes that Germain Grisez, John Finnis, and Joseph A. Boyle have argued that in both the hysterectomy and craniotomy cases the *death* of the unborn child is neither the means nor the end intended and that there is no moral obstacle to engaging in these performances to save the life of the mother.⁴ Kaczor thinks that one could argue that “even if the crushing of the baby's skull is not killing as a means

to save the mother's life it may involve another evil means, namely the mutilation or violation of the physical integrity of the child,” and one could thus distinguish the craniotomy case from the hysterectomy case. But he then goes on to consider arguments for and against the claim that crushing the baby's skull is an unjustifiable mutilation because it results in the baby's death and the questions these arguments raise. He judges these questions to be of great importance and difficulty and leaves them as open questions (190–191).

Cases of Conscience

This brief section concerns the debate between critics of abortion and defenders of abortion about the place of conscience. Kaczor criticizes the 2007 paper “The Limits of Conscientious Refusal in Reproductive Medicine” issued by the Committee on Ethics of the American College of Obstetricians and Gynecologists (ACOG). This document shows that ACOG considers conscience not as one's best judgment concluding a process of moral deliberation from basic moral principles to practical conclusions about what one is obliged to do or not to do here and now. Rather, it regards conscience as someone's own private opinion about what he personally ought to do without any appeal to basic principles to justify that opinion. Conscience is more of a belief that must not be imposed on others. The ACOG document also requires doctors and other health-care personnel to refer patients to others if they feel that they cannot personally provide the standard reproductive services—these include artificially making children in the laboratory, providing contraceptives, and abortion. The ACOG document not only unfairly limits a doctor's liberty in action but also infringes on his right of free speech. For these and other reasons this position regarding the role of conscience must be repudiated (191–193).

Hard Cases for Defenders of Abortion

Murder of pregnant women. Most people find the raping of women morally abhorrent and particularly odious if the woman is pregnant and even more so if it

causes her to have a miscarriage. So true is this that even proponents of capital punishment balk at executing a pregnant woman. At times the male who has caused a woman to become pregnant assaults her in order to cause a miscarriage if she refuses to abort the child. A notorious example occurred when Scott Peterson killed his wife Luci, eight months pregnant with their son Connor. Missing from Christmas Eve, 2002, their bodies, separately, washed to shore on April 14, 2003, and Connor's umbilical cord was still attached. Despite protests by abortion rights advocates, the husband was legally charged by the California Court with two counts of murder, with "special circumstances" calling for tougher penalties. Laws similar to the one in California charging the murderer with two homicides are in effect in many states (193–194).

Sex-selection abortion. If abortion is done because a child of unwanted sex is known to be in the womb, another serious problem for defenders of abortion is posed. Sex-selection abortion almost always means the elimination of females and in some countries/cultures extends to their infanticide should they survive until birth. In the U.S., for instance, eighty-five percent of women and ninety-five percent of men want a male child for the first baby and the first baby may well be the last wanted. If abortion is not the killing of a person, it poses no problem different from the killing of a guppy (as Warren holds), but this kind of abortion troubles female defenders of abortion. But how could they criticize such abortions without implying that abortion itself is problematic? In fact, the American College of Gynecologists and Obstetricians (ACOG) opposes sex-selection abortion. Kaczor gives other good reasons for opposing sex-selection abortion (e.g., it leads to further violence against women) and concludes, "It is not a simple matter to condemn SSA [sex-selection abortion] while upholding abortion for other reasons" (194–200).

Abortion for frivolous reasons. Abortions are frequently done for very frivolous reasons—parents want a child conceived during a certain astrological sign, a Leo, say, rather than an Aries; or they want a

child of a certain hair color. Kaczor cites Naomi Wolf, who identified some frivolous reasons used by classmates in her high school during the 1970s (for instance, a girl would try to get pregnant just to find out if she could; and if she did, she would abort the pregnancy). This is enough to illustrate the problem (200).

Safe and legal, but rare? Abortion defenders frequently claim that they want to make abortion "safe, legal, and rare." But if there is nothing wrong with abortion and if it is a woman's right, what difference does it make how often a woman has one? Some sexually active women simply do not want to use contraceptives (and some begin their sexually active lives during their teens), and such women may want to have abortions rather frequently before they reach menopause. Some may say that abortion is bad for their health, physical and psychological, and that they therefore ought to practice birth control to avoid abortions. Certainly abortion is much more invasive and expensive than using contraceptives. But does this championing of contraception over abortion for *health* reasons not show that the emotional trauma frequently caused by abortion is perhaps due to the recognition that birth control prevents a new human life from coming into existence whereas abortion destroys one that has already come to be (200–202)?

Why personal opposition? Many abortion advocates say that they are personally opposed to abortion but do not want to impose their views on others and want to keep abortion legal and safe. But presumably one is personally opposed because abortion is the unjust taking of a human life. A rebuttal of this argument is suggested by some defenders of abortion (e.g., McMahen). According to this rebuttal the critic of abortion is inconsistent if he says he is "personally opposed" to killing abortionists. If abortion really is a gravely unjust killing of the innocent, then violence to stop that killing seems morally required. To condemn this violence shows the inconsistency of opposition to abortion. Kaczor answers this objection by noting, for instance, that many people think that the war against Iraq initiated by President Bush in

2003 was unjust and led to the unjust killing of many innocent persons. They did not, however, seek to assassinate him, and they have not been accused of inconsistency. So why make this charge against critics of abortion if they do not choose to kill abortionists? Kaczor offers other arguments of a similar kind to answer this problem (202–206).

Prenatal bonding with “our baby.”

Many parents immediately begin to love the unborn human being in the woman’s womb as a person. But if this entity is not a person or has no moral worth, as abortion defenders claim, it is difficult to explain why these parents can be so terribly mistaken; in fact, many parents like this grieve deeply over a miscarriage, and if the unborn is not a person, their behavior seems silly or stupid, but it does not seem right to accuse them of this.

Elizabeth Harman offers a sophisticated argument to reply to this objection; her argument is based on what she terms the “Actual Future Principle.” According to this principle, if an early fetus has an actual future in which he or she will be conscious, then this human fetus has moral worth; but if an early fetus does not have an actual future of which he or she will be conscious, then the fetus has no moral worth. Parents who immediately love the unborn human being are acting reasonably since it is likely that this fetus will have an actual future of which it will be conscious, but obviously fetuses to be aborted will not have such an actual future. Kaczor rebuts this argument with four cogent considerations, and there is no need to set them forth here (206–209).

Morally permissible vs. morally objectionable. On this view abortion is legally permissible but morally objectionable. This distinction might help defenders of abortion respond to many of the hard cases and could even be extended to all abortions. Kaczor doubts that this distinction is a real one. There is a real distinction between the morally permissible and the morally heroic, between the obligatory and the supererogatory. Earlier (150–158, pages to which Kaczor now refers), he had shown that at times circumstances so shape a situation that one

must choose between a heroic act and seriously violating an innocent person’s inviolable right to life, and he suggests that this is the situation here (209–210).

Intermediate moral worth of the human fetus. Kaczor begins this section by writing: “[T]he defender of abortion can respond to all these [previous] cases with one rejoinder. The murder of pregnant women, a condemnation of sex-selection abortion, the moral impermissibility of abortion for insignificant reasons, personal opposition, the desire to see the practice of abortion become rare, and parental love for their prenatal children do not presuppose the personhood of the fetus, but rather that the human fetus has some value” (210). But if the human fetus has some value, so does a puppy, but we do not respect puppies as we do persons, so there is no reason to respect human fetuses as persons.

There are many objections to this claim and Kaczor neatly summarizes them, but in essence this claim was shown to be arbitrary in the chapters of his book showing that personhood does not begin after birth or at some time during gestation (211–214).

9. Could Artificial Wombs End the Abortion Debate?

Kaczor gives a “yes” answer to this question, but examines the issue first from the perspective of ardent defenders of abortion and then from that of ardent critics of abortion, answering objections to a yes answer.

From the Perspective of Ardent Defenders of Abortion

Kaczor asks what is meant by a “right to abortion.” It could mean a right to terminate the human embryo/fetus or a right to extricate it from the woman’s body. They seem to be linked at present because methods used to extricate the fetus from the womb invariably kill it. But if an artificial womb becomes available, the distinction would be meaningful. Kaczor’s reading of the literature convinced him that many ardent defenders of abortion in fact advocate only a right to evacuate the embryo/fetus and not to kill it, and he refers to many

well-known defenders of abortion to show this (the American College of Obstetricians and Gynecologists, Warren, Thomson, Boonin). Even some ardent defenders of abortion who also defend infanticide (Singer) think that if someone wants to adopt a healthy fetus brought to term in such an artificial womb it is difficult to see why it should die. Kaczor concludes that if ardent supporters of abortion like those named are willing to let live a fetus brought to term in this way, then artificial wombs could surely end the abortion debate for them (214–219).

From the Perspective of Ardent Critics of Abortion

Kaczor identifies some major objections to the use of artificial wombs by ardent critics of abortion: the artificiality objection, the IVF objection, the deprivation of maternal shelter objection, the birth within marriage objection, the integrative parenthood objection, the surrogate motherhood objection, the wrongful experimentation objection, the objection from the right of the child to develop within the womb of the mother.

The artificiality objection. Kaczor answers this by noting that neonatal intensive care units are highly artificial and are not ethically impermissible, and an artificial womb seems simply to be a further development along the same lines. Moreover, in the case of a pregnant woman about to have a hysterectomy because of cancer to protect her life, she would prefer to have her baby moved to such a womb than die as the foreseen but not intended effect of her cancer treatment.

The IVF objection. This objection fails to distinguish between complete ectogenesis, required by IVF, and partial ectogenesis when an unborn child is already in his mother's womb and is transferred to an artificial womb rather than being killed by direct abortion or as the unintended effect of a legitimate therapy (radiation therapy or hysterectomy for uterine cancer) on the mother.

The deprivation of the mother's sheltering womb objection. This is more serious

and difficult to answer. However, unborn children whose lives are at risk in utero (e.g., if the mother is poisoned) are sometimes removed by doctors and cared for outside the maternal womb and there is no objection to this; some cases may become complicated but there is no reason *in principle*, to exclude use of an artificial womb to preserve the life of an unborn child whose life is in grave danger if he remains in his mother's womb.

The birth within marriage objection. Some critics of abortion emphasize that *Donum vitae* judges immoral birth outside of marriage as achieved by IVF and warns that IVF techniques can open the way to other forms of biological and genetic manipulation. Critics argue that use of artificial wombs is such manipulation. In fact, the document explicitly mentions the possibility of making such wombs and seems to condemn ectogenesis. But this passage does not condemn partial ectogenesis that in many ways simply extends the value of NICUs (newborn intensive care units) to protecting lives of unborn babies if those lives are in imminent danger of being lost.

The integrative parenthood objection. This objection is based on this passage of *Donum vitae* in particular: "a child has the right to be conceived, *carried in the womb*, brought into the world and brought up within marriage."⁵ This text and some others *seem* to exclude partial ectogenesis as undermining *gestational parenthood*. But this interpretation does not stand scrutiny. Were it to be understood as absolutely unexceptionable, it would follow that all women who become pregnant as a result of rape or incest ought to marry the unborn baby's father. But marriage after any pregnancy out of wedlock is not a good solution. It would be far better for the child if its mother gave it up for adoption after birth, and this requires heroic action on the mother's part and on that of the adopting parents.

The surrogate motherhood objection. This is based on the truth that surrogate motherhood is clearly wrong and strongly condemned by *Donum vitae*. But none of that document's definitions of surrogate motherhood include partial ectogenesis as a form of surrogacy.

The wrongful experimentation objection. Kaczor thinks that this is the most powerful objection against use of an artificial womb by women seeking abortion. One ought never subject unborn human persons to risky experiments that are not undertaken for their good but rather for the sake of their mothers, who want to rid themselves of their unborn children. Kaczor argues that basic bioethical principles justifying experimental procedures intended to save the lives of individuals in imminent danger of death could be applied to use of artificial wombs to protect the lives of unborn human persons who would otherwise be killed by abortion. If such experimentation led to the improvement of these techniques, use of an artificial womb would no longer be experimental but a common procedure subjecting a person to no unacceptable risks.

The objection of the right of the child to develop in his mother's womb. This seems a good one in the light of a passage from Pope John Paul II's *Centessimus annus*: "Among the most important of these [basic human rights] mention must be made of the right to life, an integral part of which is the right of the child to develop in the mother's womb from the moment of conception."⁶ "But," Kaczor writes, "it is not evident from this or from other passages from John Paul II that he even considered the possibility of an artificial womb as a way of overcoming the impasse over abortion, let alone that he had considered and rejected this possibility" (227). He thus concludes that using this passage as a definitive magisterial judgment against use of an artificial womb for partial ectogenesis is not licit.

Kaczor's conclusion, after sorting through objections and offering responses to them, is that use of artificial wombs might well be a way to end the abortion debate (215–231).

10. Evaluative Conclusion

Kaczor's book gives good arguments to show that individual personal life begins at conception. He likewise shows, by a host of arguments, many of them playing defenders of abortion off against each other, that

the distinction between being a living human being and being a "person" is based on erecting arbitrary criteria for personhood, criteria constantly subject to change. He also considers in some depth and with fairness specific arguments by a wide variety of scholars attempting to justify the practice of abortion and the right of women to abort the unborn at any time during their pregnancy. His work, moreover, is based on a comprehensive study of the literature; the bibliography is twelve pages long and references more than 250 items. His bibliography, however, does ignore some older and still important studies, including Germain Grisez's massive 1970 work *Abortion: The Myths, the Realities, and the Arguments*.⁷

A good, strong point of this work, I think, is Kaczor's commentary and conclusion regarding the current dispute among Catholic scholars on the moral licitness of craniotomy as a means of saving the mother's life if the baby is stuck in the birth canal and pressure exerted on her can kill her.

There are some serious weaknesses in Kaczor's study, however. The chapters on the rights of the human embryo and on whether it is wrong to abort a person (chs. 6 and 7) are in my judgment very weak. In chapter 6, Kaczor defends the rights of the human embryo negatively by offering criticisms, many of them good in their own way, of arguments claiming that the human embryo is not a person and hence does not enjoy rights, as we have seen in the earlier presentation of the contents of that chapter. I think he could and should have offered a stronger *positive* defense of the rights enjoyed by human embryos, in particular the right not to be killed intentionally by others, if he had summarized or briefly mentioned with references, the brilliant work of Wesley Hohfeld, professor of legal ethics at Harvard University in the first half of the twentieth century, which is central to John Finnis's analysis of rights in his *Natural Law and Natural Rights*.⁸ Hohfeld sharply distinguished between a "claim right," or right in the strict sense, and a "liberty," or "liberty right." To distinguish these rights from each other, it is necessary to speak of

a three-term relationship between two persons (or groups of persons) and an act of a specific type. If we do, we can speak of a claim-right as follows: *A* (=a person or group of persons, or all persons if we are speaking of basic human and inalienable rights of human persons) has a *right* (a "claim right") that *B* (=another person, group of persons, or all persons) should *x* (=some specifiable act), if and only if *B* has a *duty* to *A* to *x*.

Thus innocent human persons (=A) have a *right* in the sense of a claim right to life if and only if innocent human persons (=A) have a right that all other persons (=B) have a duty to innocent human persons (=A) to forbear intentionally killing them (=x). In other words, the right of innocent human persons to life, if genuine, means that all other persons have an obligation or duty *not to kill them* intentionally. Applying this argument to unborn children, we can say: unborn children have a strict right or claim right to life if and only if unborn children (=A) have a right that their mothers and other persons (=B) have a duty to unborn children *to forbear aborting them, i.e., intentionally killing them* (=x). This right is genuine because all persons, including mothers, have a strict obligation or duty to forbear intentionally killing innocent human persons, and abortion is the intentional killing of an innocent human person.

What of the alleged "right" of a woman to an abortion? Expressed as a three-term relationship between two persons and a specifiable action, we see that the alleged right is really a "liberty" claimed by women. It can be put generally as follows: *B* (=a person, group of persons, etc.) has a *liberty* relative to *A* (=a person, a group of persons, etc.) to *x* (=some specifiable act), if and only if *A* has no claim right that *B* should not *x*.

Translating a woman's alleged "right" to an abortion into this language we have the following: a woman (=B) has a liberty relative to the unborn baby (=A) intentionally to abort it (=x) if and only if the unborn baby (=A) has no claim right that the woman (=B) should not abort it (=x). But the unborn has the claim right that his or her mother (and others) forbear from aborting

it. Consequently, the liberty (and not right) claimed by women to abort is spurious.

Chapter 7 on the wrongness of abortion goes into a minute analysis of many arguments proposed by defenders of abortion to show how specious they are; Kaczor in particular devotes great attention to two analogies used by Judith Jarvis Thomson in her celebrated 1971 article on the rights and wrongs of abortion. But his critique of her reasoning in my judgment is far inferior to the majestic rebuttal of Thomson's entire article by John Finnis in his "Rights and Wrongs of Abortion: A Reply to Judith Jarvis Thomson," published in 1972 in the same journal in which Thomson's ludicrous essay appeared. Moreover, Kaczor makes no reference whatsoever, either in his text or bibliography, to this masterful article. Kaczor's analyses of some bad arguments to justify abortion are interesting, but they do not develop in any way the great arguments that show why abortion is always wrong.

Other weaknesses are present but not too serious. Moreover, despite the serious weaknesses noted, Kaczor's book is exceptionally valuable and makes a great contribution to the abortion debate.

William E. May, Ph.D.

Professor Emeritus

Pontifical John Paul II Institute
For Studies on Marriage and Family
Washington, D.C.

Notes

¹ Lee refers to Leslie Arey, *Developmental Anatomy*, 7th ed. (Philadelphia: W.B. Saunders, 1974); William Larsen, *Human Embryology* (UK: Churchill, Livingstone, 1993); and Keith Moore, *Before We Are Born* (Philadelphia: W.B. Saunders, 1998).

² Cambridge: Cambridge University Press, 2002.

³ Thomas Cavanaugh, "The Intended/Foreseen Distinction's Ethical Relevance," *Philosophical Papers* 25:3 (1996): 179–188.

⁴ Kaczor refers to their article, "'Direct' and 'Indirect': A Reply to Critics of Our Action Theory," *Thomist* 65 (2001): 1–44.

⁵ Congregation for the Doctrine of the Faith, *Donum vitae* (Instruction on Respect for Human Life in Its Origin and on the Dignity of

Procreation, Replies to Certain Questions of the Day) (1987), n. II.A.1, emphasis added, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html.

⁶ Pope John Paul II, *Centesimus annus* (On the Hundredth Anniversary of *Rerum Novarum*) (1991), n. 47, http://www.vatican.va/holy_

[father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus_en.html).

⁷ Cleveland/New York: Corpus Books, 1972.

⁸ John Finnis, *Natural Law and Natural Rights* (Oxford/New York: Oxford University Press, at the Clarendon Press, 1980), 199–205.

Handbook on Critical Life Issues, rev. 3rd ed.

by John A. Leies, S.M.

Philadelphia: The National Catholic Bioethics Center, 2010. 279 pp.

The rapid developments in biotechnology and bioethics have made it necessary to update, for the fourth time, the National Catholic Bioethics Center's best-selling text, *Handbook on Critical Life Issues*, first published in 1982. The author, Father John A. Leies, S.M., is a highly respected professor of morality and bioethics at Saint Mary's University, San Antonio. He has served as a professor or administrator there for thirty-seven years, and is a consultant to the National Catholic Bioethics Center. Written by a priest who loves to teach, the revised third edition of *Handbook on Critical Life Issues*'s greatest strength is that it is accessible to the beginning student, the inquiring mind, and the faithful medical professional. It is the work of a master teacher—someone who enjoys instruction and knows how to introduce essential topics and grapple with them seriously, without losing the student in the technical arguments and morass that often characterize academia. Although written by a great academician, this book is intended for “any person concerned with understanding and evaluating the moral and religious issues of our day.” He reaches that person with alacrity and charm.

Handbook on Critical Life Issues is comprised of four parts: 1) Personhood, 2) The Beginning of Human Life, 3) The End of Human Life, and 4) Appendices. Each of the fifteen chapters ends with “Review and Discussion Questions” which aid the reader in identifying and assimilating the most pertinent points.

Every good pedagogue begins his teaching with fundamental issues and principles; Father Leies provides these fundamentals in part I of his text. After providing a brief overview of various philosophical anthropologies, he turns to a distinctly Catholic anthropology. To do so, he draws upon Scripture, noting that “the most important thing about the human person is the person's relationship with God” (13). The human person is a bodily creature who is the “*living image*” of the Trinity. Recognizing the tendency within modern medicine to treat patients as nothing more than a body, a disease, or a case study, Father Leies stresses that health care ought to be person-centered. Medicine which is person-centered will ensure the privacy of the patient, heed the psychological condition of the patient, and provide informed consent. Emphasis is placed on the responsibility patients have for their own health, and the rights that correspond with those responsibilities. One such right is the right to life—the subject of his fourth chapter.

Recognizing that “*One may never aim to destroy the bodily life of an innocent person*,” Father John responds to offenses against the inviolable right to life and the inherent personal dignity each human being possesses (33). To conclude the first part of the text, our attention is directed toward chapter 5, “Suffering and Stewardship.” Suffering is decidedly personal. However, he also identifies four elements common to all human suffering caused by illness: 1) ill-