Abortion: The Unexplored Middle Ground

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INTRODUCTION

In 1998, R. A. McCormick wrote about abortion as an unexplored middle ground.[1] His words have withstood the passage of time and textbook editions and remain the model for this chapter. Petrozella's discussion provides an update on the issue of abortion and notes that it continues to divide the country. During the Republican National Convention in August 1988, McCormick listened to an interview with fundamentalist minister Jerry Falwell and Faye Wattleton, then president of Planned Parenthood, on the subject of abortion. Falwell insisted that unborn babies were the last disenfranchised minority—voiceless, voteless, and unprotected in the most basic of civil liberties. Wattleton's statements all returned to the concept of privacy and the woman's right to decide whether she would or would not bear a child. It was a tired old stalemate; neither party budged an inch. The moderators identified their only common ground as the ability to disagree.[2]

Unfortunately, the Falwell–Wattleton exchange is still an example of the current discussion on abortion. Each side makes one point that is central and absolute. The discussion accomplishes nothing except perhaps to raise everyone's blood pressure. All remarks are based on this single absolute starting point. Thus, Falwell saw nonviolent demonstrations at abortion clinics as signs of hope for a transformation of consciousness and a growing rejection of abortion. Wattleton saw them as unconstitutional and violent disturbances of a woman's exercise of her prerogative to make her own choice. In 2012, the BBC presented a series of arguments against abortion that opposed an automatic right for women to have this procedure. They are framed from a slightly different perspective than Falwell's, but share an absolute nature.[3]

Are we doomed forever to this kind of dialogue of the deaf? Perhaps, especially if the central principles identified by both sides are indeed central. However, one should note an important difference in these "central issues." Falwell and those who currently share his view speak primarily of the morality of abortion and only secondarily about public policy or the civil rights of the unborn. Wattleton and her successors say little about morality (although they imply much), but put all the emphasis on what is current constitutional public policy. On his level, Falwell was right. On her level, Wattleton was right (in the sense that *Roe v. Wade* does give women a constitutional right to abortion). The discussants are like two planes passing in the night at different altitudes.

In such heated standoffs, the idea of what public policy ought to be, especially which morality to choose, still remains to be fully discussed. The linkage of these two issues in a consistent, rationally defensible, humanly sensitive way usually becomes victim to gavel pounding and vote getting. Unless the

public consciousness can make a more satisfactory linkage than it has thus far, any public policy on abortion will lack supportive consensus and continue to be seriously disruptive to social life. The terms *pro-choice* and *pro-life* will continue to mislead, label, and divide our citizenry.

Is it possible to enlarge the public conversation so that a minimally acceptable consensus might have the chance to develop? McCormick thought so and called his proposed area of conversation "the unexplored middle ground."[4] Despite McCormick's hopeful stance, the middle ground continues to be unattainable. Funding for women's health and family planning continue to be controversial and a focus of national and international debate. All agree that women's health is a United States and United Nations priority. The Earth Charter, the UN Millennium, and *Healthy People 2020*[5] (which states U.S. priorities for a healthy population) all address women's health issues and the disparity of health care and gender discrimination.

Currently, the abortion debate and women's reproductive rights have been in the political spotlight. Fueled by the funding debate, access to legal abortions has been hampered. Dorothy Samuels, in her article "Where Abortion Rights Are Disappearing," states: "Opponents of abortion rights know they cannot achieve their ultimate goal of an outright ban. . . [s]o they are concentrating on enacting laws and regulations narrowing the legal right and making abortion more difficult to obtain."[6]

Some level of middle ground was reached when President Obama issued an executive order "ensuring enforcement and implementation of abortion restrictions in the Patient Protection and Affordable Care Act."[7] The order states that "[f]ollowing the recent passage of the Patient Protection and Affordable Care Act ('the Act'), it is necessary to establish an adequate enforcement mechanism to ensure that Federal funds are not used for abortion services (except in the cases of rape or incest, or when the life of the woman would be endangered), consistent with a longstanding Federal statutory restriction that is commonly known as the Hyde amendment."[8] The order further states that these policies extend to the health insurance exchanges that are part of the act and reinforces that healthcare facilities and providers of care cannot be discriminated against because of "an unwillingness to provide, pay for provide coverage or refer for abortions."[9]

The issue of women's rights still is paramount in the discussion of abortion. According to Gloria Steinem, cited by Hill in an *Oakland Tribune* article of March 6, 2012, "Reproductive freedom is a fundamental human right—to decide what happens to our own bodies is as basic as freedom of speech and freedom of assembly."[10]

ELEMENTS OF A MIDDLE GROUND

1. There is a presumption against the moral permissibility of taking human life. This means that any individual or society sanctioning this or that act of intentional killing bears the burden of proof. Life, as the condition of all other experiences and achievements, is a basic good, indeed the most basic of all goods. If it we take a life without public accountability, we have returned to moral savagery. For this reason, all civilized societies have rules about homicide, although we might disagree with their particulars.

McCormick considered the presumption stated above to be the substance of the Christian tradition.[11] The strength of this presumption varies with times and cultures. Cardinal Joseph Bernardin noted that the presumption is stronger in our time.[12] By that he meant that in the past, the public saw capital punishment as a legitimate act of public protection. Furthermore, in war, killing was justified on three grounds: national self-defense, the recovery of property, and the redressing of injury. Now, however, many people reject capital punishment and view only national self-defense as justifying violent resistance. Although such applications remain controversial, they are not the point here. The key principle is the presumption against taking human life.

The debate about personhood continues. The definition of personhood is that it occurs "at the time of conception." In November 2011, Mississippi attempted to enshrine this idea into law through a referendum. However, the measure failed by a narrow margin. If laws defining personhood pass in state legislatures, then even certain types of birth control will be illegal.[13] As noted by an editorial in *USA Today*, the proposed Mississippi law would have made abortions "illegal period":

> [T]he measure would effectively ban abortion under virtually any circumstances, including rape and incest, and quite possibly to save the mother's life. Interpreted strictly, it would outlaw any birth control method that interfered with a fertilized egg, such as the morning-after pill and IUDs. It would stop embryonic stem-cell research and could severely restrict in vitro fertilization for infertile couples, because unused fertilized eggs are often discarded.[14]

2. Abortion is a killing act. Many discussions of abortion gloss over the intervention as "the procedure" or "emptying the uterus" or "terminating the pregnancy."[15] In saying that abortion is a killing act, McCormick did not mean to imply that it could not be justified at times. He meant only that the one certain and unavoidable outcome of the intervention is the death of the fetus. That is true of any abortion, whether it is descriptively and intentionally direct or indirect. If the death of the fetus is not the ineluctable result, we should speak of premature delivery. To fudge on this issue is to shade our imagination from the shape of our conduct and amounts to an anesthetizing self-deception. All of us should be able to agree on this description, whether we consider this or that abortion justified or not.

To support this idea, the Partial-Birth Abortion Ban Act was passed into law in 2003.[16] Over half the states in the union had already passed bans before the act was finally passed and signed into law. Physicians perform this now-banned procedure on fetuses 20 weeks or older. According to Senator Rick Santorum, there was no need for a health exception with this bill, because the research showed no indication for this. Senator Santorum introduced the bill in the Senate.

Eric Eckholm examined the new restrictions on abortions being enacted by several states. He noted, "Dozens of new restrictions passed by states this year have chipped away at the right to abortion by requiring women to view ultrasounds, imposing waiting periods, or cutting funds for clinics."[17] He further stated that "six states, in little more than a year, ban abortions at the

20th week after conception, based on the theory that the fetus can feel pain at that point."[18] The article pointed out that the viability of the fetus is usually 24 weeks, and that the Supreme Court has decreed "that abortion cannot be banned until the fetus becomes viable."[19]

3. Abortion to save the life of the mother is morally acceptable. Certainly, the issue of abortion to save the life of the mother remains controversial and does not achieve universal agreement. Often a distorted interpretation of a "fundamental individual right to life" exists that comes close to editorial hucksterism. Those who formulate their convictions in terms of a "fundamental right to life" by no stretch of the imagination deny a similar right to the mother. Nor does such a general statement about fetal rights even address situations of conflict. In thinking about common ground, it would be useful to recall the statement of J. Stimpfle, bishop of Augsburg: "He who performs abortion, except to save the life of the mother, sins gravely and burdens his conscience with the killing of human life."[20] The Belgian bishops made a similar statement.[21] Agreement on this point may seem a marginal gain at best. However, in the abortion discussion, any agreement is a gain, especially when it puts caricatures to rest.

4. Judgment about the morality of abortion is not simply a matter of a woman's determination and choice. Pro-choice advocates often present their position as though the woman's choice were the sole criterion in the judgment of abortion. McCormick believed that very few people, if any, really mean this, at least in its full implications.[22] It is simplistic and unsustainable. Taken literally, it means that any abortion, at any time, for any reason, even the most frivolous, is morally justified if the woman freely chooses it. That is incompatible even with the admittedly minimal restrictions of *Roe v. Wade*. No official church body and no reputable philosopher or theologian would endorse the sprawling and very unlimited acceptance of abortion implied in that criterion. It straightforwardly forfeits all moral presumptions protective of the unborn. In this formulation, the fetus becomes a mere blob of matter.

Conversation about the fourth point will not bring overall agreement on the abortion issue. However, it might lead to a more nuanced formulation on the part of those identified with the pro-choice position. It might also lead to a greater sensitivity on the part of some pro-life advocates to the substantial feminist concerns struggling for expression and attention in the pro-choice perspective.

Controversy concerning the pro-choice perspective is complicated by the availability of the ability to self-induce abortion and the laws against such actions. In the United States, Jennie McCormack was arrested in Idaho for using RU-486, which was purchased over the Internet for $200.00 to self-induce her own abortion.[23] Idaho has a law that prevents a woman from performing a self-induced abortion. Later, the case was dropped for lack of evidence. However, the community ostracized Jennie. Jennie made her decision because there is no Medicaid funding for abortions and she could not financially pay for the abortion. In an article, Nancy Hass stated that the case exemplified what pro-choice groups "have been warning of for years: as clinics become inaccessible, poor women are more likely to take abortion into their own hands. In the era before Roe v. Wade, that meant backroom abortions; now it

conjures images of a lonely woman in a small town at her keyboard performing an internet search of the term 'abortion pill.'"[24] Hass cites Women on the Web, noting that "Hundreds of online merchants will send RU-486 without a prescription."[25] This organization provides the abortifacient to women in countries where abortion is illegal.

5. Abortion for mere convenience is morally wrong. This statement only makes explicit the previous point. Once again, agreement on this point might seem to represent precious little gain. Agreement might even be fugitive because of the problem in defining the phrase "mere convenience." For example, technological advances in the use of ultrasound to determine the sex of a child have begun to change the population dynamics in certain countries that prefer male children to females. Several areas in India have had a "sharp decline for unborn babies who are found by ultrasound clinics to have a female gender."[26] Clinics who perform ultrasounds for gender identification have been banned in India. However, the law can be bypassed by using mobile ultrasounds. According to UNICEF, "Inequality is always tragic and sometimes fatal. Prenatal sex selection and infanticide, prevalent in parts of South and East Asia, show the low value placed on the lives of girls and women and have led to unbalanced populations where men outnumber women."[27]

In an article entitled "UN Using Sex-Selection Abortion Problem to Push for Abortions," Florencia Cadagan stated, "A recent United Nations inter-agency statement on imbalanced sex ratios calls for unrestricted access to abortion as a human right. The statement recognizes that sex-selective abortion is a form of gender discrimination against girls and women, but nonetheless proclaims that ensuring access to services for safe abortion is crucial."[28] It is difficult to prove that a woman is having an abortion for sex selection, so it is argued that this possibility should not negate the availability of safe abortions. Cadagan further notes that the issue of sex-selective abortion

> affects many countries worldwide, especially Asian countries. The UN statement states that restricting access to certain reproductive technologies in order to prevent an imbalanced male-to-female ratio in a given society should not result in the curtailing of human rights of women. However, sex-selective abortions have become so intense that by 2020 an estimated 15–20 percent of men in northwest India will lack female counterparts.[29]

In addition to sex-selective abortions, one must consider the moral implications of abortions for disabilities. As technological advances have provided the means to detect disabilities, should these fetuses be targeted for abortion? Nancy Flanders poses the question, "What if the debate was instead about the unborn child with cystic fibrosis or Down syndrome [rather than sex selection]?"[30] Is advising parents to abort the child with a disability "really about compassion or is it about convenience?"[31] She states, "The fact is that aborting a baby based on a disability is the same as aborting a child based on sex or race. It's discrimination and it sends the message that people with disabilities are less than human and don't deserve a chance at life."[32] She believes that this form of discrimination will continue until society becomes educated about disabilities.

6. There should be an abolishment of conditions that lead to abortion insofar as is possible. The abolished conditions could include poverty, lack of education, and lack of recreational alternatives to sexual promiscuity among teenagers. Nearly everyone agrees with these prescriptions, but there is little effort to address them. In other words, we have tended to approach abortion too exclusively as a problem of individual choice rather than a social problem. Left at that, it tends to divide people. Were it also approached as a social problem, it could easily bring together those in opposition and move the issue beyond the level of individual choice.[33]

7. Abortion is a tragic experience to avoid if possible. Regardless of one's moral assessment of abortion, most people could agree that it is not a desirable experience. It can be dangerous, psychologically traumatic, generative of guilt feelings, and divisive for families. Of course, it is invariably lethal to fetuses. No amount of verbal redescription or soothing and consoling counseling can disguise the fact that people would prefer to achieve their purposes without going through the abortion procedure. It is and always will be tragic.

8. There should be alternatives to abortion. This is a corollary to the preceding point. Its urgency is in direct proportion to the depth of our perception of abortion as a tragic experience. It would seem likely that the need for alternatives should appeal above all to those who base their approach on a woman's freedom of choice. If reproductive choice is truly to be free, then alternatives to abortion should be available. Alternatives include all the supports—social, psychological, medical, financial, and religious—that would allow a woman to carry her pregnancy to full term should she choose to do so. Expanding the options is expanding freedom.

Bishop Skylstad's letter to the secretary general of the International Secretariat of Amnesty International, dated September 12, 2006, supports this statement. Bishop Skylstad, president of the U.S. Conference of Catholic Bishops (USCCB), stated:

> [A] far more compassionate response [than abortion] is to provide support and services for pregnant women and to advance their educational and economic standing in society. The Catholic Church provides these services to many women around the world and commits itself to continuing to do so. The Catholic Church will also continue to advocate greater attention to these needs in all relevant international assemblies.[34]

This letter was in response to a proposal by Amnesty International to support what the bishop called an "assertive policy of advocating abortion on demand as a 'human right.'"[35] The bishop urged Amnesty International to maintain its neutral stance on abortion and to "not dilute or divert its mission by adopting a position that many see as fundamentally incompatible with a full commitment to human rights and that will deeply divide those working to defend human rights."[36]

9. Abortion is not a purely private affair. *Roe v. Wade* appealed to the so-called right of privacy to justify its invalidation of restrictive state abortion laws. In public debate, assertions about a woman's "control over her own body" often surface. Such appeals either create or reinforce the idea that abortion

is a purely private affair. It is not; at least not in the sense that it has no impact on people other than the woman involved. It affects husbands, families, nurses, physicians, politicians, and society in general. We ought to be able to agree on these documented facts. McCormick argued that the term *privacy* is a misleading term used to underline the primacy of the woman's interest in abortion decisions.[37] Communal admission of this point, which is scarcely controversial, would clear the air a bit and purify the public conversation.

10. *Roe v. Wade* offends many people. So did previous prohibitive laws. On these matters, those who acknowledge facts must agree. However, to place these facts together invites people out of their defensive trenches. In other words, it compels them to examine perspectives foreign to their own.

11. Unenforceable laws are bad laws. Unenforceability may stem from any number of factors. For instance, a public willingness to enforce the law may be lacking. Alternatively, the prohibited activity may be such that proof of violation will always be insufficient. On the other hand, enforcement attempts might infringe other dearly treasured values. Whatever the source of the unenforceability, most people agree that unenforceable laws undermine the integrity of the legal system and the fabric of social life.

Our own American experience with Prohibition should provide sufficient historical education on this point. Its unenforceability stemmed from all the factors mentioned above and more, and it spawned social evils of all kinds. In this respect, Democratic Senator Patrick J. Leahy of Vermont once remarked that the use of amendments should not be to create a consensus but to enshrine one that exists. He added:

> The amendments that have embodied a consensus have endured and are a living part of the Constitution. But where we amended the Constitution without a national meeting of minds, we were forced to retract the amendment, and only after devastating effects on the society.[38]

12. An "absolutely prohibitive" law on abortion is not enforceable. By "absolutely prohibitive," McCormick meant two things.[39] First, such a law would prohibit all abortions, even in cases of rape and incest and in cases where the life of the mother is at stake. Second, "abortion" would mean the destruction of the human being from the moment of conception.

Such a prohibitive law is unenforceable. First, it has no consensus of support, as poll after poll over the years has established. Even religious groups with strong convictions against abortion have noted its unenforceability. For example, the Conference of German Bishops (Catholic) and the Council of the Evangelical Church (Protestant) issued a remarkable joint statement on abortion some years ago.[40] After rejecting simple legalization of first-trimester abortions (*fristenregelung*), they stated that the task of the lawmaker is to identify those conflict situations in which interruption of pregnancy is not punishable (*strafloslassen*).

The second reason an "absolutely prohibitive" law would not work concerns specification of legal protection from the moment of conception. If this were enshrined in the penal code and attempts made to enforce it, we would be embroiled in conspiracy law (the intent to abort). Why? This is because in

the preimplantation period, there is no evidence of pregnancy. Lacking such evidence, one could not prosecute another for having performed an abortion, but only for having intended to do so. That is just not feasible.[41]

13. There should be some public policy restrictions on abortion. This point may seem to lack bite: after all, those most polarized could agree on this "middle ground," and even *Roe v. Wade* admitted "some" control. This tiny island of agreement is not important in itself. By focusing on it, discussants must face these two questions: "What kind of control?" and "Why?" Discussing these questions could take us right back to square one, but it could also lead to a more nuanced and sophisticated notion of public policy in a pluralistic society.

A phenomenon occurring today that supports the issue of public policy restrictions is the use of abortion for sex selection. According to Florencia Cadagan, the United Nations recognizes the problem of sex-selective abortions and that it is "a form of gender discrimination against girls and women, but nonetheless proclaims that ensuring access to services for safe abortion is crucial."[42] The UN report cited in this article noted that "[f]ollowing an ultrasound examination, a woman can go to a different clinic to have an abortion while providing a reason that is acceptable within the legal framework."[43]

14. Witness is the most effective leaven and the most persuasive educator concerning abortion. McCormick did not mean to discredit the place of rational discourse.[44] We abandon such discourse at our own risk, and often the result is war. Only genuine education is eye opening. The most effective way of opening eyes is often the practical way of witness; we come to understand and appreciate heroism much more by seeing heroic activity than by hearing or reading a lecture on it. We are more selfless when surrounded by people who are concerned for others. We are more fearlessly honest when friends we deeply admire exhibit such honesty.

Those with deep convictions about freedom of choice for women or about the sanctity of fetal life would be considerably more persuasive if they emphasized what they supported rather than what they opposed and did so in action. Pro-life advocates (whether individuals, organizations, or institutions, such as dioceses) should put resources into preventing problem pregnancies, and when those pregnancies occur, they should support them in every way. Paradoxically, the same is true of those who assert the primacy of free choice. For if the choice is to be truly free, genuine alternatives must exist. In summary, "putting one's money where one's mouth is" is an effective alternative to other means, such as bombing and picketing.

15. Abortion is frequently a subtly coerced decision. As ethicist Daniel Callahan pointed out, "a change in abortion laws, from restrictive to permissive, appears—from all data and in every country—to bring forward a whole class of women who would otherwise not have wanted an abortion or felt the need for one."[45] The most plausible interpretation of this phenomenon, according to Callahan, is that the "free" abortion choice is a myth. He stated:

> A poor or disturbed pregnant woman whose only choice is an abortion under permissive laws is hardly making a "free" choice, which implies the possibility of choosing among equally viable alternatives, one of which is to have the child. She is being offered an out and a help. Nor

> can a woman be called free where the local mores dictate abortion as the conventional wisdom in cases of unmarried pregnancies, thwarted plans, and psychological fears.[46]

Interestingly, agreement that many abortion decisions are coerced might result in cooperation between pro-choice and pro-life advocates. The concern of "pro-choicers" for true freedom would lead them to attempt to reduce or abolish coercive forces by offering genuine alternatives. The pro-life faction should rejoice at this provision of alternate options because it would reduce the felt need for abortion and thus the number of abortions.

16. The availability of contraception does not reduce the number of abortions. In 2012, President Obama modified the birth control rule in the Patient Protection and Affordable Care Act and granted an extension to religious-affiliated employers. Under the act, religious employers would be required to include birth control free of charge as part of their health plans. Richard Wolf reported, "Obama announced that the rule would be tweaked so that in cases where non-profit religious organizations have objections, insurance companies would be required to reach out to the employees and offer coverage directly."[47] Wolf quoted President Obama's statement: "Under the rule, women would still have access to free preventive care that includes contraceptive service no matter where they work. That core principle remains."[48] President Obama also commented that "if a woman's employer is a charity or a hospital that has a religious objections to providing contraceptive services as part of their health plan, the insurance company—not the hospital, not the charity—will be required to reach out and offer the woman contraceptive care free of charge without co-pays, without hassle."[49]

Arguments against this policy cite religious freedom as the underlying issue. House Speaker John Boehner is quoted by Richard Wolf as saying, "If the president does not reverse the attack on religious freedom, then the Congress, acting on behalf of the American people and the Constitution . . . must. This attack by the federal government on religious freedom in our country must not stand and will not stand."[50] Jeanne Monahan, director for Center for Human Dignity at the Family Research Council, stated: "Some people have moral or ethical objections to contraceptives. They should not be forced to violate their conscience by paying premiums to health plans that cover these items and services."[51]

The morning-after pill is included as part of the services for reproductive health. Secretary Kathleen Sebelius of the Department of Health and Human Services restricted the use of the morning-after pill without a prescription to women 17 years of age or older. However, government scientists recommended that this pill be available to all ages without the need for a prescription. There are issues concerning the lack of physician care and the increase in appropriate sexual behavior that could occur with the availability of the morning-after pill. International issues also exist. For example, the United Nations issued a manual in 1999 that the Vatican condemned because it recommended "the distribution of emergency contraception—the morning after pill—in refugee camps. The UN has never insisted that refugees be forced to swallow this pill, only that it be made available to women facing the risk of rape."[52] An additional comment regarding the Vatican's position on birth control was that "[t]he Holy See approves only the natural method of birth control for use in refugee camps."[53]

Whether for prevention of abortions or for birth control, contraceptives are not without risk to women. The Food and Drug Administration (FDA) has recommended stronger labels on the contraceptive patch and some best-selling classes of birth control pills that contain drospirenone, warning about the possibility of blood clots. An FDA study "estimated that 10 in 10,000 women taking drospirenone containing drugs would get a blood clot per year, compared with about 6 in 10,000 women taking older contraceptives."[54]

The Institute of Medicine (IOM) Advisory Panel submitted a report to Secretary of Health and Human Service Sebelius regarding coverage for contraception. In this report, the panel stated that "nearly half of all pregnancies in the United States were unintended, and that about 40% of unintended pregnancies ended in abortion. Thus, it said greater use of contraception would reduce the rates of unintended pregnancy, teenage pregnancy and abortion."[55] The report further stated that "contraception is highly cost-effective."[56] The IOM panel recommended that contraception be provided at no cost because women without insurance could not afford birth control. The panel recommended coverage of sterilization procedures, education, and counseling as well as emergency contraceptives such as Plan B and Ella.

Healthy People 2020 includes a goal for family planning: "Improve pregnancy planning and spacing, and prevent unintended pregnancy."[57] These services include "contraceptive and broader reproductive health services, including patient education and counseling."[58] The overview of the goal discusses the benefits of family planning for the prevention of unwanted pregnancies and teen pregnancies. This section further discusses the cost savings to Medicaid and the public costs of unwanted pregnancies. *Healthy People 2020* recommends preconception care that includes a reproductive life plan. "A reproductive life plan is a set of goals and action steps based on personal values and resources about whether and when to become pregnant and have (or not have) children."[59] This definition is derived from R. Gold's work *An Enduring Role: The Continuing Need for a Robust Family Planning Clinic System*.[60]

The section on family planning in *Healthy People 2020* contains 15 objectives. A selected list that is pertinent to this discussion includes the following:[61]

- Family Planning objective 3 deals with the availability of emergency contraception at family planning clinics and calls for an "[i]ncrease [in] the proportion of publicly funded family planning clinics that offer the full range of FDA-approved methods of contraception on site."[62]
- Family Planning objective 4 calls for an "[i]ncrease [in] the proportion of health insurance plans that cover contraceptive supplies and services."[63]
- Family Planning objective 6 deals with contraceptive use at the most recent sexual intercourse. It calls for an "[i]ncrease [in] the proportion of females or their partners at risk for unintended pregnancy who used contraception at most recent sexual intercourse."[64]
- Family Planning objective 9 deals with an increase in abstinence. One of the targeted objectives is to increase the percentage of adolescents under the age of 17 who have never had intercourse. The use of condoms to prevent pregnancy and protection against sexually transmitted diseases (STDs) is also included in this objective.[65]

- Family Planning objective 14 targets Medicaid eligibility for pregnancy-related care. It calls for an "[i]ncrease [in] the number of states that set the income eligibility level for Medicaid-covered family planning services to at least the same level used to determine eligibility for Medicaid-covered, pregnancy related care."[66] Currently 21 states have met these criteria; the target for *Healthy People 2020* is 32 states.
- Family Planning objective 15 deals with publicly supported contraceptive services and supplies. Its objective is to "[i]ncrease the proportion of females in need of publicly supported contraceptive services and supplies who receive those services and supplies."[67] The use of condoms to prevent pregnancy and protection against STDs is also included in this section. There is an emphasis on education in this and in several of the objectives.

In addition, the Maternal, Infant and Child Health (MICH) section of *Healthy People 2020* includes an objective with a developmental focus on preconception health. "Recent efforts to address persistent disparities in maternal, infant, and child health have employed a 'life course' perspective to health promotion and disease prevention."[68] An emerging issue in MICH occurred when "[a]t the start of the decade, fewer than half of all pregnancies [were] planned. Unintended pregnancy is associated with a host of public health concerns."[69] The report noted that "[t]he risk of maternal and infant mortality and pregnancy-related complications can be reduced by increasing access to quality preconception (before pregnancy) and interconception (between pregnancies) care."[70]

The irony is that *Healthy People 2020* is advocating for access to family planning as part of a vision of "a society in which all people live long, healthy lives" and has identified family planning as one of the priorities, with 15 targeted objectives.[71] However, the trend to remove public and private funding from Planned Parenthood would seem to negate this effort. In addition, the controversy over religious freedom and women's health in the Patient Protection and Affordable Care Act is compromising access to family planning.

Finances are still a major barrier for access to family planning services. The issue remains: Do women have the right to family planning, and if so, who pays for the cost of the services? Questions regarding coverage remain unanswered. To be covered without cost sharing, a prescription must be obtained. Another issue occurs when a women has her tubes tied and there is no cost sharing or deductible. What if there are complications and the procedure requires hospitalization? Will male vasectomies and condoms be covered? The Department of Health and Human Services will need to address these questions and many others.

17. Permissive laws forfeit the notion of "sanctity of life" for the unborn. This is a harsh statement, but that does not make it less true. Here ethicist Daniel Callahan is at his best—and most tortured. He grants a woman the right not to have a child she does not want. However, he is unflinchingly honest about what this means. "Under permissive laws," he notes, "any talk whatsoever of the 'sanctity of life' of the unborn becomes a legal fiction. By giving women the full and total right to determine whether such a sanctity exists, the fetus is, in fact, given no legal or socially established standing whatsoever."[72] Callahan does not like being backed into this corner. However,

he is utterly honest. His legal position does not allow for any pious doublethink. The law "forces a nasty either-or choice, devoid of saving ethical ambiguity."

18. Hospitals that do abortions but have no policy on them should develop one. McCormick introduced this proposition as a contribution to the unexplored middle ground because non-Catholic healthcare facilities have approached the problem almost exclusively in terms of patient autonomy.[73] Some hospitals have grown nervous about this posture because it amounts to simple capitulation to patient preferences. They have begun to see that theirs is not a carefully reasoned moral stance on abortion, but an abdication of the responsibility to develop one. The counsel to develop a policy is relatively nonthreatening because it does not dictate what that policy ought to be. It is promising because it suggests that ethical complexity and ambiguity might become more explicit, which would represent an advance in the dialogue.

19. One should take the "consistent ethic of life" seriously. McCormick[74] borrows the phrase *consistent ethic of life* from Cardinal Joseph Bernardin. Many have observed that those who are most vociferous about fetal rights are among our most hawkish fellow citizens. Something is amiss here. One must consider abortion within the larger context of other life-and-death issues, such as capital punishment and war making.

20. Whenever a discussion becomes heated, it should cease. This is the final proposed piece of middle ground. McCormick knew from long experience that shouting sessions on abortion only alienate and divide the shouters.[75] Nothing is illumined, not because the arguments being offered are not illuminating, but because nobody is either listening or being heard.

The idea of an unexplored middle ground and the invitation to explore it will please few. Yet the abortion problem is so serious that we must grasp at any straw. A nation that prides itself on its tradition of dignity and equality for all and the existence of civil rights to protect that equality cannot tolerate a situation denying human fetuses this equality and these rights. We must at least continue to discuss the problem openly. Quite simply, the soul of the nation is at stake. Abortion's pervasiveness represents a horrendous racism of the adult world. When it is justified in terms of rights, all rights are endangered because their foundations have been eroded by arbitrary and capricious application.

For this and many other reasons, it is important that abortion continue to occupy a prime place in public consciousness and conversation. If we settle for the status quo, we may be presiding unwittingly at the obsequies of some of our own most basic, most treasured freedoms. That possibility means that any strategy—even the modest one of keeping a genuine conversation alive by suggesting a middle ground as its subject—has something to recommend it.

THE CONTINUING RELEVANCE OF DISCUSSION REGARDING ABORTION

Abortion issues continue to be in the forefront of public consciousness and conversation. Examples include the arguments regarding late-term abortion heard by the Supreme Court. Linda Greenhouse, in her article "Justices Hear Arguments on Late-Term Abortion" stated that Justice Kennedy's comments reflected arguments that the doctors challenging the law have made. They

say that "partial-birth abortion—known medically as both "intact dilation and evacuation and D and X for dilation and extraction—is often safer because removal of an intact fetus avoids injury to the uterus. The more common method of second-trimester abortion, in which the fetus is dismembered, can leave behind bone fragments."[76]

Another issue that garnered attention was the approval and signing by then President George W. Bush of a law that made the morning-after pill (Plan B) accessible to women older than 18 without a prescription. Garner Harris, in a *New York Times* article published August 25, 2006, noted that "abortion rights advocates argue that the wide availability of Plan B may reduce abortions: abortion opponents assert that Plan B will cause them."[77] Harris quoted Kirsten Moore, president of the Reproductive Technologies Project in Washington, D.C., as saying, "We are pleased that a common sense, common ground agenda for reducing unintended pregnancy and the need for abortion finally won out."[78]

The Pontifical Academy for Life "Statement on the So-Called 'Morning-After Pill'" stated that the morning-after pill used "within and no later than 72 hours after a presumably fertile act of sexual intercourse has a predominantly 'anti-implantation' function, i.e., it prevents a possible fertilized ovum (which is a human embryo), by now in the blastocyst state of its development (fifth to sixth day after fertilization), from being implanted in the uterine wall by a process of altering the wall itself. The final result will thus be the expulsion and loss of this embryo."[79]

Plan B remains controversial. In an article about Shippensburg University's Plan B vending machine, Reming reported that the vending machine in the university's clinic dispensed condoms, pregnancy tests, and the morning-after pill. The university installed the machine after a survey supported the idea (85% approval) and the student government asked that it be installed. The university stated that no one younger than 17 would be allowed access to the machine, in compliance with FDA regulations that any female younger than 17 must have a prescription.[80]

Other issues for consideration in abortion discussions and in finding the common ground include the wide availability of family planning methods and the reimbursement of insurance companies for these services. Other areas of discussion might address questions such as "Should churches that oppose contraceptive use be required to include these services in their employee health plan benefits?" Finally, questions such as "Should politicians whose religious beliefs are in conflict with their public duty as they see it be sanctioned by their religions if their vote conflicts with their religious teachings?" may have to be included in the discussion about common ground. Certainly, the issue of abortion and abortion policy will still be an area for discussion in health care well into the 21st century.

SUMMARY

This chapter helps the reader understand why there is still difficulty in finding a middle ground on the issue of abortion. It began with the presentation of the two current and very divergent positions. Using McCormick's ideas as a starting point, Petrozella then described the need to expand public conversation

to include points of consensus or middle ground on this difficult issue. She presented new information to be considered for establishing this middle ground. Although some elements of her argument might be controversial for the reader, examples and ethical reasoning support each element. The issue of abortion will continue to challenge ethics in the 21st century.

QUESTIONS FOR DISCUSSION

1. According to the author, why is it difficult to discuss the concept of abortion?
2. What is the role of the healthcare professional in relation to abortion?
3. How can the principles of ethics (autonomy, beneficence, nonmaleficence, and justice) assist in finding a middle ground on abortion?
4. What is the impact of new legislation on finding common ground on abortion?
5. How does your personal view on abortion affect your care for patients in this area?

FOOD FOR THOUGHT

Abortion remains a controversial topic even in clinical practice. Patients and clinicians often have different ethical positions on this procedure, and conflicts can occur. Some patients find it difficult to discuss their medical history concerning abortion. From a practical point of view, how can you obtain information from patients on abortion-related areas without seeming to make judgments? Remember that nonverbal communication is a powerful communicator.

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