

Testimony of
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Before the Select Investigative Panel of the Committee on Energy and
Commerce, “Bioethics and Fetal Tissue”
March 2, 2016

Chairman Blackburn, and distinguished members of the Committee on Energy and Commerce, my name is Patrick Lee. I am the John N. and Jamie D. McAleer Professor of Bioethics, and the Director of the Center for Bioethics, at the Franciscan University of Steubenville. Thank you for this opportunity to speak to you about bioethics and fetal tissue.

I will argue that it is unjust for the government to fund or encourage elective abortions. To do so is not only to deny a class of human beings—unborn human beings—equal protection of the law, it significantly assists in those killings. Second, it is a further injustice for the government to allow or encourage the use of fetal tissues procured from elective abortions. And third, allowing the use of fetal tissue obtained from abortions on the ground of the mother’s consent is a further injustice and depersonalization of unborn human beings. Women who choose to have direct abortions by that act forfeit the moral standing needed for being a proxy decision-maker in regard to the disposition of their baby’s remains.

There are both moral and legal questions concerning abortion. I will address legal issues—not what actually is the law, but what the law should be, or what laws concerning the specific issues addressed here would be, as far as I can see, in accord with justice.

A central question for all of these issues is: What type of being is killed in abortion? I will argue that in fact what is killed in abortion is a human being, a person, deserving of our respect and of protection of the law. Every human being deserves equal protection of the law, and so if human embryos and fetuses are in fact human beings—some of the evidence for which I will indicate in a moment—then it is gravely unjust to provide protection of the law to born human beings, but deny it to unborn human beings. *A fortiori*, the political community should not encourage and assist the killing of unborn human beings by funding abortion providers.

So, what does the evidence indicate regarding what is killed in abortion? No one denies that *something* is killed in abortion. What type of being is it?

This question, in turn, subdivides into two. First, is the human embryo or fetus a human being? That is, is the human embryo or fetus a member of the human species, a human individual? Second, if what is killed is a human being, is it also a person, since some admit that the human embryo or fetus is a human being, but deny that he or she is a person, a being with basic rights. (Here I am using the term “person” in its everyday sense rather than raising the question of what the Constitution meant by it.)

The standard scientific texts on this issue—in embryology, developmental biology, and genetics—explicitly affirm that a human being at the earliest stage of development comes to be at fertilization. Here are three of many, *many* examples:

“Human life begins at fertilization, the process during which a male gamete or sperm unites with a female gamete or oocyte (ovum) to form a single cell called a zygote. This highly specialized, totipotent cell marked the beginning of each of us as a unique individual.” “A zygote is the beginning of a new

human being (i.e., an embryo)." Keith L. Moore, *The Developing Human: Clinically Oriented Embryology*, 7th edition. Philadelphia, PA: Saunders, 2003. pp. 16, 2.

"Fertilization is the process by which male and female haploid gametes (sperm and egg) unite to produce a genetically distinct individual." Signorelli et al., Kinases, phosphatases and proteases during sperm capacitation, *CELL TISSUE RES.* 349(3):765 (Mar. 20, 2012)

"Although life is a continuous process, fertilization (which, incidentally, is not a 'moment') is a critical landmark because, under ordinary circumstances, a new, genetically distinct human organism is formed when the chromosomes of the male and female pronuclei blend in the oocyte"

(emphasis added; Ronan O'Rahilly and Fabiola Mueller, *Human Embryology and Teratology*, 3rd edition. New York: John Wiley & Sons, 2000, p. 8). (Many other examples could be cited, some of which may be found here:

<http://clinicquotes.com/list-of-quotes-from-medical-textbooksscientists-proving-life-begins-at-conception/>)

As long as they are clear that the question is about the coming to be of a distinct human organism—and not about the philosophical question of personhood—the authorities are in agreement. And they agree because the underlying science is clear. At fertilization a sperm unites with an ovum, each of them ceases to be, and a new entity is generated, the embryo, initially a single totipotent cell, called the zygote. (Hence it makes no sense to say that a sperm or an ovum becomes a mature human, or that a sperm or an ovum has the potential to become a mature human: Ingredients do not become what

they enter into, whereas an immature human being — an embryo, fetus, or infant — does become an adult human being simply by maturing.) It is obvious that the human embryo is a *distinct* entity, not a part of the mother or a part of the father. For unlike body cells, tissues, or organs, the embryo does not function as part of its mother. Moreover, the cells of the embryo or fetus have a genetic structure distinct from that of the mother or the father.

The one-cell embryo (zygote) develops by dividing into two cells, then four, then eight and so on (though some divisions are asynchronous and so there is usually a three-cell stage for example). While these divisions occur, all of the cells continue to be enclosed within a thin membrane called the zona pellucida, which is inherited from the ovum.

Are these merely a bundle of disparate cells? The evidence shows, on the contrary, that together they make up a single organism. These cells inter-communicate and function together as parts of a whole in a regular and predictable manner. As a result, they perform an ordered, differentiated growth and constitute a stable body. For example, as the embryo travels down the uterine tube into the uterus during the first four or five days, the different cells begin differential gene expression (modifications of different parts of the DNA within the cells' nuclei in order to generate different types of new cells that can function in different ways), with the result that different parts of the embryo are suited to different functions.

On day three or four, at the transition from the eight-cell stage to the 16-cell stage, the embryo differentiates into trophoblastic cells (precursors of the placenta) on the one hand, and inner cell mass cells (precursors of the permanent part of the embryo and

fetus), on the other hand. This is the first overt functional differentiation that occurs, but the cells have been preparing for this differentiation since day one.

So from the zygote stage onward the cells are functioning as parts of a whole, and are internally coordinated toward the next step in a developmental trajectory that eventually involves the development of a body plan and distinct organs. This is a new and distinct multi-cellular organism. It is developing itself in a predictable direction.

Obviously it is also *human* since its cells have the genetic structure characteristic of humans.

Is this a *whole* human organism? This question is important because human tissue and human cells alone are not whole human organisms — for example, an isolated skin cell or a heart before it's implanted into a recipient. Each of these is human but neither is a whole organism.

The evidence indicating that the human embryo is a whole human being is that it has within itself all of the internal resources and the active disposition to develop itself to the mature stage of a human being. The direction of its growth is internally coordinated — what it receives from outside itself is only a suitable environment and nutrition. The organizational information for its growth comes from within.

Moreover, at no stage after fertilization does there occur a fundamental change in its direction of growth. None of the changes that occur to this being after the sperm-egg fusion— as long as this being stays alive — qualify as producing a fundamental change in its interiorly directed growth, so as to involve the coming to be of a new organism. Rather, everything that happens after fertilization either assists or retards its interiorly directed self-development.

Thus, given its genetic constitution and epigenetic structure, all this organism needs to develop to the mature stage is what human beings at any stage need, namely, a suitable environment, nutrition, and the absence of injury or disease. So it is a whole human organism—a new human individual—at the earliest stage of his or her development.

Sometimes it is objected that if we say human embryos are human beings, on the grounds that they have the potential to become mature humans, the same will have to be said of sperm and ova. This objection is untenable. The human embryo is radically unlike the sperm and ova, the sex cells. The sex cells are not *whole* or *complete* organisms. They are not only genetically but also functionally identifiable as parts of the male or female potential parents. They clearly are destined either to combine with an ovum or sperm or die. Even when they succeed in causing fertilization, they do not survive; rather, their genetic material enters into the composition of a distinct, new organism.

Nor are human embryos comparable to somatic cells (such as skin cells or muscle cells), though some have tried to argue that they are. Like sex cells, a somatic cell is functionally only a part of a larger organism. The human embryo, by contrast, possesses from the beginning internally orchestrates its growth toward its own survival and development rather than that of a larger system.

So, a human embryo (or fetus) is not something distinct from a human being; he or she is not an individual of any non-human or intermediate species. Rather, an embryo (and fetus) is a human being at an early stage of development—the embryonic (or fetal) stage. In abortion what is killed is a human being, a whole living member of the species

homo sapiens, the same *kind* of entity as you or I, only at an earlier stage of his or her development.

However, some grant that a human embryo or fetus is a human organism. but argue that she is not a person, she is not a bearer of rights. In order to be a person, some object, an entity must have some characteristic in addition to being a human being—it is not enough, on their view, to be identical to a being that is clearly a person at a later time. They might hold, for example, that to be a person a being must have self-awareness or self-conscious desires—in the sense of an the immediately exercisable capacity for those acts. (It is worth noting that every human being, including human embryos or fetuses, has a radical capacity (or root capacity) for self-consciousness, rational acts, and so forth; even though they cannot now perform such acts, they have the capacity to develop themselves to the point where they will perform them—just as, even though I cannot now read Chinese, I have the root capacity to do so since I can acquire the immediately exercisable capacity to do so by study.)

If this position were right—that is, if one needed self-consciousness, or an immediately exercisable capacity for self-consciousness, in order to be a person—then it would be hard to see how a human being in a temporary coma would qualify as a person. A human being may be in a coma for several weeks—during that time she is very much like an embryo or fetus. She cannot right then, that is, while she is in a coma, engage in self-conscious acts, or any type of higher mental acts. But she remains a person. I suggest that the clearest reason why a human being in a coma is still a bearer of rights is that she is the same kind of being as you and me; she is an individual with the internal resources to develop herself to the point where she will have self-consciousness and

shape her life by deliberate choices. She has basic rights because she remains a human being.

Someone might also object that the individual who is in a coma is different from a human embryo or fetus. The individual in a coma *did* have consciousness and self-conscious desires in his life in the past. And this being is a person, because of that past self-consciousness and desires.

But suppose I were in a coma, as a result, say, of a brain tumor that affected only a certain portion of the cerebral cortex, and we knew that after life-saving surgery I would regain consciousness in the future, but not any of the same consciousness, or any of the same memories or skills I had in the past. Suppose I would only gradually regain full consciousness and I would have to learn everything again—how to walk, talk, and so on. Would it be right to kill me then? Of course not—but that would not be because of my past consciousness or self-awareness, since all of that consciousness, all those memories, mental skills, and so forth, are gone forever. In this situation, it would be wrong to kill me because by killing me you would be depriving me of my whole future as a rational being, a being that, although not now conscious or self-aware, has a nature orienting him toward the stage where he will do all the things that distinguish human beings from other living beings that do not possess basic rights. What makes it wrong to kill me in such a situation is not that one would be killing something that has an immediately exercisable capacity for consciousness—it is enough if I am identical to the thing that eventually will have rational consciousness in order to have a right to life.

So, to be a bearer of basic rights, it is enough if an entity is constituted in such a way that she has an active disposition to develop herself to acquiring rational

consciousness. But the hypothetical scenario I have just referred to is in relevant respects similar to the position of human embryos and fetuses. Human embryos and fetuses are human beings—animal organisms with the active disposition to a rational mode of life. Thus, just as it would be wrong to kill me if I were in a coma, while I was still unconscious but slowly developing to the point where I would be conscious, so it is wrong to kill human embryos or fetuses because they are human beings, individuals actively developing themselves to the stage of a rational mode of life.

Further, being a whole human being (whether immature or not) is an either/or matter—a thing either is or is not a whole human being. But all of the acquired qualities that could be proposed as criteria for personhood come in varying and continuous degrees: there is, for example, an infinite number of degrees of self-consciousness or the possession of self-conscious desires. So if human beings were bearers of rights only because of such qualities, and not in virtue of the kind of being they are, then, since such qualities come in varying degrees, no account could be given of why basic rights are not possessed by human beings in varying degrees.

The proposition that all human beings are created equal would be relegated to the status of a superstition. For example, if developed self-consciousness bestowed rights, then, since some people are more self-conscious than others (that is, have developed that capacity to a greater extent than others), some people would be greater in dignity than others, and the rights of the superiors would trump those of the inferiors. This conclusion would follow no matter which of the acquired qualities generally proposed as qualifying some human beings (or human beings at some stages) for full respect were selected. But in truth are persons do possess an equal and inherent fundamental dignity; it is wrong to

relegate some persons to an inferior position on the grounds of an alleged inferior worth. Indeed, our nation is rightly dedicated to the proposition that all human beings are created equal. Human beings are not equal in respect to inessential attributes. But they are equal with respect to their common human nature. Basing rights on inessential attributes logically entails the denial of equal fundamental rights. Thus, equal fundamental rights are best explained by the position that such rights are based on our human nature, and all human beings are equal precisely in their human nature.

So, 1.) the human embryo, from fertilization onward, is a human being; 2.) the human embryo or fetus and has fundamental rights, simply in virtue of being a human being. So, it is unjust intentionally to kill, or discard, an unborn human being, as occurs in abortion. It is wrong to kill you or me today because of the fundamental kind of beings that we are, and it would have been wrong to kill us when we were adolescents, wrong to kill us when we were children, but it also would have been wrong to kill us when we were fetuses or embryos.

Unborn human beings differ from born human beings in many ways—for example, in size, ways of obtaining oxygen and nutrition, and level of development. But they also are alike in many ways. Most important, each is a human being, only at different stages of development. I submit that it is the fundamental likeness, or sameness, rather than the difference, that is morally significant.

Since what makes you and me intrinsically valuable as subjects of rights is what we are, it follows that you and I are intrinsically valuable from the moment we come to be, and do not cease to have intrinsic value as persons until we cease to be. The

Declaration of Independence has it right: All human beings—not just those whose lives are convenient or non-burdensome to us—possess equal and inherent dignity and rights. No class of human beings can with justice enslave, use, experiment on, or deliberately kill, other innocent human beings for their own purposes.

This was the principle at stake in the 19th century with the issue of slavery and is also at stake with the civil rights movement in the 20th and 21st centuries. It is the same principle that is at stake in the debates concerning unborn human life. Just as all human beings, no matter what the color of their skin, deserve equal protection of the law, in the same way, all human beings, no matter what their age or degree of development, deserve that protection.

In *Roe v Wade* Justice Blackmun famously—or infamously—claimed that the Court would not settle the question of whether the fetus is a human being or not. And yet as a *practical* matter the Court could not refrain from either treating these human fetuses as human beings or treating them as subhuman objects that can be killed or disposed of. The political community will either include a class of entities within the scope of the protection of the law or it will not. If it does, then at least to that extent it treats them as persons; if it does not, it treats them as non-persons. Since it is a practical matter it cannot leave the issue undecided.

Moreover, the further act of governmentally funding and endorsing abortion providers is an additional injustice (and one not clearly authorized by *Roe v Wade* or cases stemming from it). *Roe* attempted to avoid the question of whether what is killed in abortion is a human being. But by subsidizing abortion providers the government cannot

even make a pretense of being neutral on the abortion issue—to subsidize and encourage the killing of human fetuses is to presuppose that what is killed is *not* a human being.

Finally, there is a serious problem concerning the woman's consent regarding the use of tissues and organs from the abortion procedure. How can her consent have ethical or legal significance, given her previous choice to abort?

The donation of organs after death requires authoritative consent from the person who died or, if a minor, from her parent (or legal guardian). In the case of fetal organs or tissues parental consent is required. This seems permissible in the case of spontaneous abortions (miscarriages) or ectopic pregnancies. However, there is clearly a problem in the case of elective abortion. Parental authority over children is based on the close union or connection of parents to their children that creates a special responsibility of parents to their children, a responsibility to care for them and be devoted to their survival and well-being, and to rear them to maturity. Grave abuses of that relationship, or actions indicating that a parent no longer has the child's interest at heart, cause the parent to lose that parental authority. That is, parental authority is contingent on the parent's willingness to have the child's interest in heart. A parent's failure to care for a child in a very grave way, or a parent's grave harm or abuse of a child, results in the loss of parental authority and of the parent's right to make decisions for that child. But the choice to have the child killed—even if done in confusion and mitigated responsibility—is incompatible with a willingness to act in the true interests of the child. Thus, the practice of allowing or encouraging the use of fetal tissue obtained from elective abortions, relying as it does on the mother's consent, treats the bodily parts of the fetus as if they were parts of the woman's body. The practice makes no sense unless the fetus is

assumed to be a sub-personal object, related to the mother as a possibly bothersome part of her, rather than as—which in truth she is—a distinct human individual.

I submit that governmental funding of abortion providers, and the use of fetal tissue from elective abortions, involve flagrant denials of the humanity of the fetus and are grave injustices.