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# ABORTION AND LATTER-DAY SAINT EXPERIENCES WITH CHILDREN AND LAW

VAL D. RICKS\*

This paper's discussion dispenses with the traditional academic refusal to commit in matters of faith. In fact, my religious faith, explained here by reference to scripture<sup>1</sup> and spiritual experience, to a large degree produces the political commitment I feel with respect to abortion. To write from reason alone and hide my faith would be disingenuous. Moreover, as should be plain to anyone familiar with the legal disputes over abortion, reason alone persuades neither side.<sup>2</sup> Nor has it persuaded me. So, though others have reasoned to conclusions similar to mine, my ultimate understanding does not rest solely on such reasoning.

A caveat is in order. I do not speak for the church of which I am a member, the Church of Jesus Christ of Latter-day Saints. (This Church is commonly called "Latter-day Saints" or "LDS" or the Mormon Church; I will call it simply, the "Church"). I have no authority to speak for God, a church, or any other group or person. I speak only for myself. I am sure that not all Church members (an extraordinarily diverse and international group) would agree with this

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1. The scriptural texts I cite in this article are the four canons recognized by the church to which I belong. These are (1) THE BIBLE, (2) THE BOOK OF MORMON: ANOTHER TESTAMENT OF JESUS CHRIST (1981), (3) THE DOCTRINE AND COVENANTS OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS (1979), and (4) THE PEARL OF GREAT PRICE: A SELECTION FROM THE REVELATIONS, TRANSLATIONS, AND NARRATIONS OF JOSEPH SMITH, FIRST PROPHET, SEER, AND REVELATOR TO THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS (1981). THE BIBLE, THE BOOK OF MORMON, and THE PEARL OF GREAT PRICE are divided into books. THE DOCTRINE AND COVENANTS is divided into sections. References to THE BIBLE are to the King James Version, unless otherwise marked. For convenience, cites to THE BOOK OF MORMON or THE PEARL OF GREAT PRICE will be preceded by the abbreviations "BM" or "PGP," respectively. A section of THE DOCTRINE AND COVENANTS will be identified by the abbreviation "D&C." These scriptural texts are also available online at <http://scriptures.lds.org/>.

2. Many writers have recognized that reason does not seem to persuade with respect to abortion policy. See, e.g., KATHY RUDY, BEYOND PRO-LIFE AND PRO-CHOICE: MORAL DIVERSITY IN THE ABORTION DEBATE, at XVII (1996) (arguing that how one views abortion "is intrinsically related to those things that help construct or contribute to the community's ideology of abortion"); MARK A. GRABER, RETHINKING ABORTION: EQUAL CHOICE, THE CONSTITUTION, AND REPRODUCTIVE POLITICS 16-38 (1996).

paper's discussion, though I know that many would. The discussion in Part II of this paper in particular appears to be clearly supported in scripture, but because the Church does not discuss political matters generally, except where moral issues are involved,<sup>3</sup> few authoritative statements exist regarding the Church's position on the subject discussed in Part II. I have done my best to try to follow revelation in this paper. If I err in any instance, the error is mine alone, and I welcome correction.<sup>4</sup>

### INTRODUCTION

I believe with fellow Church members that family is both an earthly and a heavenly structure—that is, family relationships may continue in the next life.<sup>5</sup> As one might expect, Church members share strong views on the importance of caring for children. Church leaders, in a recent statement, proclaimed:

The family is ordained of God. Marriage between man and woman is essential to His eternal plan. Children are entitled to birth within the bonds of matrimony, and

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3. See *Civil Rights*, in *ENCYCLOPEDIA OF MORMONISM* 287 (Daniel H. Ludlow, ed. 1992) (GospelLink 2000 CD-Rom, ver. 2.03, 2001) (noting that “[i]n the political arena, where competing claims to civil rights are frequently debated, the Church participates indirectly by encouraging members to vote and to foster a society congenial to Christian teaching and righteous living. Occasionally, when public issues implicate important matters of doctrine and morals, the Church publishes recommended positions on disputed issues and encourages members and others to follow their counsel.”).

4. I hesitate to some degree to speak of these matters at all. I believe that God has called a spokesperson, living today, to speak on His behalf to His children. Given the presence of such a spokesperson, if God wanted something to be said generally on the topic of the legality of abortion, He could well say it, and He has not. I am hesitant to speak where His spokesman would not. On the other hand, I feel because of my citizenship and my employment that I have to make a decision with respect to this issue, and I suspect others do as well. Given the issue's importance and the existence of circumstantially relevant revelation, coming to conclusions on the issue without consulting the revelations seems to me particularly irreverent, even disrespectful. If at some future time the Lord reveals to His spokesperson guidance for the Church on this issue, this paper will be moot.

5. See D&C 132; The First Presidency and Council of the Twelve Apostles of The Church of Jesus Christ of Latter-day Saints, *The Family: A Proclamation to the World* (Proclamation read by Gordon B. Hinckley at a General Relief Society Meeting) (September 23, 1995) [hereinafter *A Proclamation to the World*] (“The divine plan of happiness enables family relationships to be perpetuated beyond the grave.”).

to be reared by a father and a mother who honor marital vows with complete fidelity. Happiness in family life is most likely to be achieved when founded upon the teachings of the Lord Jesus Christ. Successful marriages and families are established and maintained on principles of faith, prayer, repentance, forgiveness, respect, love, compassion, work, and wholesome recreational activities.<sup>6</sup>

Another unique belief of Church members is that God ordered the organization of the Church by revelation to the Prophet Joseph Smith (1805-44),<sup>7</sup> the Church's founding prophet, and continues to guide it today through revelation to modern prophets.<sup>8</sup> God loves people today as in biblical times. God inspired Moses, for instance, in such simple matters as building a wall around a rooftop balcony so that people would not fall off.<sup>9</sup> And He will, if anyone will listen, inspire prophets today to speak, against the dangers of alcohol and tobacco, for instance, as did Joseph Smith in 1833,<sup>10</sup> or against Rave parties, as Church President Gordon B. Hinckley did in October 2000.<sup>11</sup> Indeed,

6. *A Proclamation to the World*, *supra* note 5. Support in scripture for the positions taken in this excerpt from the proclamation can be found in BM 1 Ne. 1:1; BM 2 Ne. 25:26 ("And we talk of Christ ... that our children may know to what source they may look for a remission of their sins."); BM Jacob 2; BM Enos 1:1; BM Mosiah 1:2-8; BM Mosiah 4:14-15; BM Mosiah 27:14, 19-23; BM Alma 36:17; BM 3 Ne. 17:3, 21-24; BM 3 Ne. 22:13; D&C 42:22-27 ("Thou shalt love thy wife with all thy heart, and shalt cleave unto her and none else."); D&C 68:25-29; D&C 83:4; D&C 93:39-50; PGP Moses 6:58-62; *Deut.* 6:7 & 11:9; *Psalms* 78:5; *Proverbs* 22:6; *Eph.* 6:4; *Col.* 3:21; 1 *Tim.* 5:8; 3 *John* 1:4.

7. The Church is founded on the premise that God directed Joseph's efforts by revelation given by Jesus Christ directly and also through the visitation of angels. See BM Introduction; PGP Joseph Smith—History; D&C 1 *passim* & especially 2, 13, 20, 21, 76, 110.

8. See D&C 102:9-10, 23; D&C 107:8-10, 18-19, 22, 91-92 ([T]he duty of the President . . . is to preside over the whole church, and to be like unto Moses . . . yea, to be a seer, a revelator, a translator, and a prophet . . ."); D&C Declarations 1&2; PGP The Articles of Faith 7 ("We believe in . . . prophecy, revelation, visions....") & 9 ("We believe . . . that [God] will yet reveal many great and important things pertaining to the Kingdom of God.").

9. *Deut.* 22:8.

10. D&C 89:5-8 ("[I]nasmuch as any man drinketh wine or strong drink among you, behold it is not good.... And again, tobacco is not for the body....") (Revelation given February 27, 1833).

11. Gordon B. Hinckley, *Great Shall Be the Peace of Thy Children*, ENSIGN, November 2000 at 50; Gordon B. Hinckley, *Your Greatest Challenge, Mother*, ENSIGN, November 2000 at 97, 98 (reporting speeches of President Hinckley given in conjunction with the October 2000 conference of the Church) [hereinafter *Your Greatest Challenge*].

modern prophets have spoken on a host of contemporary issues.<sup>12</sup> The Church's canon of scripture is open-ended.

Given the Church's views on the family and an open-ended canon of scripture, one might expect that canon to discuss the legality of abortion. The canon does not, in fact, discuss the issue. Scripture does proclaim: "Thou shalt not ... kill, nor do anything like unto it."<sup>13</sup> And modern prophets clearly place abortion in the category of "like unto" killing.<sup>14</sup> But whereas latter-day scripture commands that those who kill "shall be delivered up and dealt with according to the laws of the land,"<sup>15</sup> implying that killing should be illegal, the Church takes no official stand on the legality of abortion.<sup>16</sup> The Church only

12. For instance, President Hinckley spoke in October 2000 also against tattooing, body piercing, and using illegal drugs; he also spoke of the importance of education and the sacredness of marriage. See *Your Greatest Challenge*, *supra* note 11.

13. D&C 59:6.

14. Church Statement Issued on Abortion (January 11, 1991) (quoting D&C 59:6), reprinted in *News of the Church*, ENSIGN, March 1991, at 78 [hereinafter 1991 Church Statement Issued on Abortion] (noting that "[t]he practice of elective abortion is fundamentally contrary to the Lord's injunction, 'Thou shalt not steal; neither commit adultery, nor kill, nor do anything like unto it.'"); see also LDS Church General Handbook of Instructions 11-14 (1989) (quoted in *Gospelink* 2000, ver. 2.03, 2001) (referring to abortion as "one of the most sinful practices of this day"); GORDON B. HINCKLEY, TEACHINGS OF GORDON B. HINCKLEY 1 (1997) ("Abortion ... is an evil and repulsive escape..."); SPENCER W. KIMBALL, THE TEACHINGS OF SPENCER W. KIMBALL 188-90 (Edward L. Kimball ed., 1982) ("This Church of Jesus Christ opposes abortion..."); Russell M. Nelson, *Reverence for Life*, in SPEAKING OUT ON MORAL ISSUES 110, 110 (1998) (formerly titled MORALITY 1992) (calling abortion "a war on the unborn"); James E. Faust, *The Sanctity of Life*, in SPEAKING OUT ON MORAL ISSUES, *supra*, at 147 (noting that "there is a veneration for life which includes those in being..."); BOYD K. PACKER, LET NOT YOUR HEART BE TROUBLED 228 (1991) [hereinafter PACKER, LET NOT YOUR HEART]; Dallin H. Oaks, *The Great Plan of Happiness*, ENSIGN, November 1993, at 72, 74 ("abortion is ... a serious sin"); Boyd K. Packer, *Our Moral Environment*, ENSIGN, May 1992, at 66, 66-67.

15. D&C 42:79.

16. The 1991 Church Statement Issued on Abortion, *supra* note 14, says:

The Church of Jesus Christ of Latter-day Saints as an institution has not favored or opposed specific legislative proposals or public demonstrations concerning abortion. Inasmuch as this issue is likely to arise in all states in the United States of America and in many other nations of the world in which the Church is established, it is impractical for the Church to take a position on specific legislative proposals on this important subject.

Individual local church leaders sometimes indicate that abortion should be illegal, however. And an earlier statement by the Church's governing body to stake presidents (local ecclesiastical leaders) in Washington state reflected the view that abortion should be illegal: "We have given careful consideration to the question of proposed laws on abortion and sterilization. We are opposed to any modification, expansion, or liberalization of laws on

encourages its “members as citizens to let their voices be heard in appropriate and legal ways that will evidence their belief in the sacredness of life.”<sup>17</sup> Nevertheless, Church members’ attitudes against the legality of abortion are often stronger than this statement might suggest. Why most Church members feel that abortion should be heavily regulated, if not prohibited, except in rare circumstances,<sup>18</sup> is the topic of this paper.

Church members do not believe as a general matter that government should control acts of conscience: “[T]he civil magistrate should ... never control conscience.”<sup>19</sup> Nor do they believe in imposing their religion on others.<sup>20</sup> Imposing God’s laws on an unwilling individual would be uncharitable, contrary to the love God desires us to have for that individual. Such imposition would take away from that individual her God-given opportunity to choose freely between good and evil.<sup>21</sup> A Church hymn testifies:

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these vital subjects.” Letter to stake presidents in the state of Washington, October 27, 1970, *quoted in* Marion G. Romney, *Scriptures and Family Stability*, in *WOMAN* 140, 145 (1979).

17. 1991 Statement Issued on Abortion, *supra* note 14.

18. *Cf. Social Characteristics*, in *ENCYCLOPEDIA OF MORMONISM*, *supra* note 3, at 1375-76. Statistics from surveys reported in the *ENCYCLOPEDIA OF MORMONISM*, in which Jews, Catholics, Protestants, LDS, and others were surveyed as to their attitudes toward abortion, indicate that less than one-fourth of Latter-day Saints favor abortion as a right if reasons for the abortion are lack of money, being unmarried, or not desiring the child. The next closest major religious group is Catholics, slightly more than one-third of them favoring such a right. Most LDS, as with other groups, favor exceptions in cases in which the mother’s health is endangered by the pregnancy or in cases of rape. A smaller percentage of LDS favor abortion in cases of fetal deformity than any other group reported.

19. D&C 134:4. *See also* D&C 134:2.

20. The Church’s canonized Articles of Faith 11 states: “We claim the privilege of worshipping Almighty God according to the dictates of our own conscience, and allow all men the same privilege, let them worship how, where, or what they may.” PGP The Articles of Faith 11.

21. With respect to salvation and the free will/predestination/determinism debate, Church members come down squarely on the side of free will. “[T]he Lord God gave unto man that he should act for himself.” BM 2 Ne. 2:16, 16-29; *see* D&C 29: 35, 39; PGP Moses 3:17 (the Lord told Adam, “of the tree of the knowledge of good and evil, thou shalt not eat of it, nevertheless, thou mayest choose for thyself, for it is given unto thee; but, remember that I forbid it, for in the day thou eatest thereof thou shalt surely die.”); PGP Moses 4:3 (“Satan rebelled against me, and sought to destroy the agency of man, which I, the Lord God, had given him....”); *see also* PGP Moses 7:32 (“and I gave unto them their knowledge, in the day I created them; and in the Garden of Eden, gave I unto man his agency”). Moreover, God would not say, “choose you this day whom ye will serve,” unless He meant to allow His children the choice. *Josh.* 24:15.

It is true that all of God’s children sin. *See Rom.* 3:23; *see also John* 8:34 (NIV) (“everyone who sins is a slave to sin”); *Rom.* 6:16; *2 Pet.* 2:19; BM Alma 12:11. But

*Know this, that ev'ry soul is free  
 To choose his life and what he'll be;  
 For this eternal truth is giv'n:  
 That God will force no man to heav'n.  
 He'll call, persuade, direct aright,  
 And bless with wisdom, love, and light,  
 In nameless ways be good and kind,  
 But never force the human mind.<sup>22</sup>*

If God would not force moral right on anyone, certainly His disciples should not. Some other rationale must exist for regulating abortion.

This paper proposes another rationale. The rationale has two primary premises. The first, addressed in Part I, rests on the dual nature of the living person as body and spirit. It is that the spirits of men and women lived before birth and are eternal, and that a parent-child relationship exists between the child's antemortal spirit and its future parents from the time of conception or, in some cases, even before that time. As I will discuss below, sacred experiences of Church members who are parents give life to this doctrine. In some of these experiences, parents see their future children in vision. In other experiences, God gives special help in the teaching and training of children in a manner that speaks of the children's eternal nature. I have five children and have had such experiences in common with fellow Church members. These experiences make the unborn child, whether or not it has entered a physical body, difficult to ignore.

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application of the atoning sacrifice of Jesus Christ frees the sinner from the bondage of sin, whether from Adam's sin, BM 2 Ne. 2:26; or the person's own sin, Gal. 5:1. Thus, because of Christ's atonement, the Lord's children:

Have become free forever, knowing good and evil; to act for themselves and not to be acted upon, save it be by the punishment of the law at the great and last day, according to the commandments which God hath given.... And they are free to choose liberty and eternal life, through the great Mediator of all men, or to choose captivity and death, according to the captivity and power of the devil; for he seeketh that all men might be miserable like unto himself.

BM 2 Ne. 2:26-27; *see also* BM 2 Ne. 10:23-24; BM Hel. 14:30-31. Thus, men are free, and Jesus died to "draw all men unto him," not to force belief. BM 2 Ne. 26:24; *see also* John 12:32; 3 BM Ne. 27:14-15.

22. Anon., *Know This, That Every Soul is Free*, in *HYMNS OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS*, No. 240 (1985).

The second premise, described in Part II, is that the purpose of government, in God's eyes, is to maximize salvation. What other purpose could God have for it? But because law is an exercise of force and God forces no one to salvation, government's purpose is limited to securing, maintaining, and promoting the freedoms that are preconditions to salvation. These include (at least) the freedom to live, serve God, and teach His truths to others. These are "salvific" freedoms. Because God loves all people, government's purpose in God's eyes is to secure, maintain, and promote such salvific freedom for as many of the human family as possible. As expressed in latter-day scripture with respect to human government, "it is not right that any man should be in bondage one to another."<sup>23</sup>

These two premises combined yield the conclusion, discussed in Part III, that government should protect the salvific freedoms of those not yet born. Government that protects salvific freedom should also allow a mother and father to reject God. A theory of salvific freedom would be empty without protecting the possibility of evil action. But the child's salvific freedom is a weightier premise. On balance, the conclusion that abortion should not be permitted is, in all but a few instances, a relatively easy one. The governmental interest in protecting the child's freedom to live to know good and evil and to learn the joy of serving God and of Christ's redemption far outweighs the governmental interest in protecting the parents' freedom to reject God and their child. Because our spirits are eternal, this rationale applies whether or not the spirit of the unborn child has entered the body. The unborn child's spirit has a protectable interest in salvific freedom from the moment of conception. If the spirit has entered the body, then an abortion is tantamount to killing. But even if the child's spirit has not yet entered, that spirit has been invited to enter the body by the parents who have begun its creation, and the spirit would enter if no abortion occurs. Either way, an abortion places the unborn spirit in bondage and takes from it opportunities to experience life on earth—its sorrows and its joy.

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23. D&C 101:79.



## I. OUR PREMORTAL EXISTENCE

We lived before we came to earth. By this statement I do not mean that we are reincarnated from past lives on this earth but that a part of us is eternal and always existed, originally in the presence of a loving God:

All human beings—male and female—are created in the image of God. Each is a beloved spirit son or daughter of heavenly parents, and, as such, each has a divine nature and destiny.... In the premortal realm, spirit sons and daughters knew and worshipped God ... and accepted His plan by which His children could obtain a physical body and gain earthly experience to progress ... and ultimately realize his or her divine destiny as an heir of eternal life.<sup>24</sup>

The doctrine of premortal, individual, conscious spirits is found in the Bible. The Lord revealed to Jeremiah, “Before I formed thee in the belly I knew thee; and before thou camest forth out of the womb I sanctified thee, *and* I ordained thee a prophet unto the nations.”<sup>25</sup> God is “God of the spirits of all flesh,”<sup>26</sup> says the book of Numbers. And the Preacher, Ecclesiastes, taught that at death “the dust [shall] return to the earth as it was; and the spirit shall return unto God who gave it.”<sup>27</sup> God told Job of a creation at which “the morning stars sang together, and all the sons of God shouted for joy.”<sup>28</sup> Accordingly, the book of Hebrews talks of God as the “Father of spirits.”<sup>29</sup> Paul talked of Christians as “chosen ... in [Christ] before the [creation] of the world ...”<sup>30</sup> to whom God promised “the hope of eternal life ... before

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24. *A Proclamation to the World*, *supra* note 5, para. 2-3.

25. *Jer.* 1:5.

26. *Num.* 27:16.

27. *Eccl.* 12:7.

28. *Job* 38:4, 7.

29. *Hebrews* 12:9; *see also Acts* 17:28-29 (referring to humankind as “the offspring of God”).

30. *Eph.* 1:4-5 (KJV, but the word “creation” is used in the NIV and here replaces the KJV’s “foundation”); *see also Rom.* 8:29-30; 11:2; *2 Thessalonians* 2:13; *2 Tim.* 1:9 (“Who hath ... called us with an holy calling ... according to His own purpose and grace, which was given us in Christ Jesus before the world began.”); *1 Pet.* 1:2.

the world began.”<sup>31</sup> Deuteronomy teaches that when God “divided to the nations their inheritance, ... he set the bounds of the people according to the number of the children of Israel,”<sup>32</sup> as if they lived and were known already. Christ also lived antemortally.<sup>33</sup>

The Biblical record is supported by early Christian writings.<sup>34</sup> The Shepherd of Hermas noted of the Church that “she was created first of all. On this account is she old. And for her sake was the world made.”<sup>35</sup> Second Clement recorded, “So, then, brethren, if we do the will of our Father God, we shall be members of the first church, the spiritual, that which was created before sun and moon....”<sup>36</sup> And the Clementine Recognitions have Peter teaching that God physically “made man, on whose account He had prepared all things, whose internal species is older, and for whose sake all things that are were made....”<sup>37</sup> Both the Gospel of Thomas and the Nag Hammadi Gospel of Philip quote Jesus as saying, somewhat cryptically: “Fortunate is one who came into being before coming into being.”<sup>38</sup>

31. *Titus* 1:2.

32. *Deut.* 32:8; *see also Acts* 17:26-27; *Rom.* 11:2.

33. Evidence for Christ’s antemortal existence is perhaps stronger, in the New Testament, than for any other. John wrote that in the beginning Christ was with God. *John* 1:2, 14. Christ was foreordained at that time. *1 Pet.* 1:19-20. Christ lived before Abraham. *John* 8:58; *Eph.* 1:4-5; *2 Tim.* 1:9. Christ created the earth. *John* 1:3,10; *Col.* 1:15-17; *Hebrews* 1:2. Then he descended from heaven to earth. *John* 3:13; 6:62; 16:28; 17:5. Christians who, following the Nicene Creed, see Christ and His Father as one God-substance would, I assume, claim that Christ’s antemortal existence implies nothing about an antemortal existence for any of us. However, Church members do not accept the Nicene Creed with respect to con-substantiality. *See, e.g., Mark* 1:9-11; D&C 130:22.

34. *See, e.g., BARRY ROBERT BICKMORE, RESTORING THE ANCIENT CHURCH: JOSEPH SMITH AND EARLY CHRISTIANITY* 140-48 (1999) (discussing Shepherd of Hermas, Clement, and the Clementine Recognitions).

35. *Shepherd of Hermas*, Visions 2:4, in Ante-Nicene Fathers [hereinafter ANF] 2:12 available at <http://www.ccel.org/fathers2/ANF-02/anf02-06.htm#P258-35110>.

36. *Clement* 2:14, in ANF, *supra* note 35, at 10 available at <http://www.ccel.org/fathers2/ANF-10/anf10-28.htm#P5819-852153>.

37. *Clementine Recognitions*, 1:28, in ANF, *supra* note 35, at 8:85 available at <http://www.ccel.org/fathers2/ANF-08/anf08-31.htm#P1331-320306>.

38. *The Gospel of Thomas* 19, in *THE GOSPEL OF THOMAS: THE HIDDEN SAYINGS OF JESUS* 31 (Marvin Meyer trans., 1992) (The quote is Meyer’s translation of Thomas.). Meyer explains in his notes to verse 19 that Jesus may well be referring to “anyone who existed before being born.” *Id.* at 77. *See also The Gospel of Thomas* 49 (“Fortunate are those who are alone and chosen, for you will find the kingdom. For you have come from it, and you will return there again.” *Id.* at 43); *The Gospel of Philip* 64 in *THE NAG HAMMADI LIBRARY IN ENGLISH* 138 (James M. Robinson, ed. 1977) (“Blessed is he who is before he came into being. For he who is, has been and shall be.”).

Biblical and early Christian writings about our antemortal life are made less ambiguous in latter-day scripture. Book of Mormon prophet Samuel,<sup>39</sup> who lived in the Americas, taught that “the resurrection of Christ redeemeth mankind, yea, even all mankind, and bringeth them *back* into the presence of the Lord.”<sup>40</sup> And Joseph Smith taught, “Man was also in the beginning with God.”<sup>41</sup> Spirits “have no beginning; they existed before, they shall have no end, they shall exist after, for they are ... eternal.”<sup>42</sup> Modern scriptures echo Biblical passages confirming that the earth was created for the sake of spirits who lived before birth.<sup>43</sup>

Modern scripture also clarifies that the joining of a spirit with a body is a prerequisite for our greater happiness and joy.<sup>44</sup> As Joseph Smith taught in 1841: “Spirits are eternal. At the first organization in heaven we were all present and saw the Savior chosen and appointed, and the plan of salvation made and we sanctioned it. We came to this earth that we might have a body and present it pure before God.... The great principle of happiness consists in having a body....”<sup>45</sup>—again, not *merely* in having a body, but in presenting it pure before God. Joseph taught that spirit and body eternally joined in the

39. Samuel preached five years before Jesus was born. See, e.g., BM Hel. 14.

40. BM Hel. 14:17 (italics added).

41. D&C 93:29.

42. PGP Abr. 3:18. See also PGP Abr. 3:18-28; D&C 93:29-31. These verses in section 93 say, “Intelligence, or the light of truth, was not created or made, neither indeed can be. All truth is independent in that sphere in which God has placed it, to act for itself, as all intelligence also; otherwise there is no existence. Behold, here is the agency of man....” That Joseph Smith equated the passages in Abraham and section 93 is indicated in both Willard Richards’s and William Clayton’s notes on Joseph Smith’s sermon of April 7, 1844. THE WORDS OF JOSEPH SMITH 341-42, 360 (Andrew F. Ehat & Lyndon W. Cook eds., 1991). Wilford Woodruff’s notes on the same occasion record Joseph Smith as saying: “The learned says God made [the soul of man] in the beginning, but it is not so.... God [is] a self existing being, man exists upon the same principle....” *Id.* at 345-46 (original spelling retained).

43. See PGP Abr. 3:24-26 (recounting a council in God’s presence at which an antemortal Jesus said, “We will go down ... and we will make an earth whereon these may dwell; And we will prove them herewith, to see if they will do all things whatsoever the Lord their God shall command them; And they who keep their first estate shall be added upon; ... and they who keep their second estate shall have glory added upon their heads for ever and ever.”).

44. D&C 93:33-34.

45. THE WORDS OF JOSEPH SMITH, *supra* note 42, at 60 (a January 5, 1841 sermon given by Joseph Smith, reported by William Clayton). The council in heaven is also discussed in 2 Tim. 2:9; Jude 1:6; D&C 29:36-38; PGP Abr. 3:22-28.

resurrection and having a fullness of light and truth receive a fullness of joy.<sup>46</sup> This is the doctrine, and I believe it.

This doctrine lives for Church members. Indeed, it affects a great deal of our lives. Author and Church member Richard Eyre described some implications of this doctrine of premortal existence:

If you lived before your birth, you are an eternal soul, and all the frailties and problems of this earth are temporary and likely a part of some greater plan. If you lived before, so did your friends, your children, and your spouse, and you can thus find for them a deeper respect and love. If you lived before, there is far more to you than physical genetics and a few years of trial-and-error experience; there are important and valuable parts of yourself yet to be discovered, talents, abilities, passions, and interests that started to develop very long ago; and your worth is eternal and profound, not temporary and not determined by what you did last week or last year.<sup>47</sup>

As Eyre mentions, the doctrine affects how we see our children. They are eternal souls.

I wish to share some experiences Church members have had that reinforce this belief in the life of our children before birth. The Church members who have had these experiences consider them sacred and share them only when they feel the Lord would approve. Part of the reason for this guardedness is that the experiences are revelatory. Whatever the rest of the world may say about these experiences, the premise of the Church is that God speaks to humankind,<sup>48</sup> not only to His prophet on earth,<sup>49</sup> but also to individuals who need the Lord's guidance.<sup>50</sup> To a people who hold that earth's

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46. D&C 93:33-34.

47. RICHARD M. EYRE, *LIFE BEFORE LIFE: ORIGINS OF THE SOUL ... KNOWING WHERE YOU CAME FROM AND WHO YOU REALLY ARE* 53-54 (2000).

48. PGP The Articles of Faith 9 ("We believe all that God has revealed, all that He does now reveal, and we believe that He will yet reveal many great and important things pertaining to the Kingdom of God.").

49. D&C 107:91-92.

50. *John* 8:31; *John* 16:13-14 ("[W]hen ... the Spirit of truth[] is come, he will guide you into all truth...."); *James* 1:5-6; BM 1 Ne. 10:17-19; BM Mor. 10:3-5; D&C 8 & 9.

family is eternal and that this life is but a temporary schooling for their eternal souls, much more exists in the spiritual realm than in the merely physical. It would be surprising indeed if some communication did not take place between the spiritual and physical spheres.

I have had such revelatory experiences. They are glorious. To those who have never understood an experience as inspiration from heaven, such experiences seem to be an epistemological puzzle. How can one receive communication from God? How can one know that God is the source of such an experience? I wish I could describe to you what such experiences are like: love and confidence washing through me, knowledge springing forth as if spoken to my mind. But I can no more fully convey such an experience than I can describe what salt tastes like to one who has not tried it. The best description of revelatory experiences is the one given in scripture, of a child asking his parent for answers:<sup>51</sup> “Ask, and it shall be given you; seek, and ye shall find; knock, and it shall be opened unto you.”<sup>52</sup> “If any of you lack wisdom, let him ask of God, that giveth to all ... liberally, and upbraideth not; and it shall be given him. But let him ask in faith, nothing wavering.”<sup>53</sup> As a parent, I dispense certain information to my children individually, on a need-to-know basis, and only when the child can use the information appropriately. Information about heaven is given in much the same way.<sup>54</sup> Only by exercising faith that an intelligent, loving parent is controlling the flow of information can the epistemological principles of revelatory experience be understood and relied upon. This unique epistemology makes knowledge from heaven somewhat non-democratic and scientifically unverifiable, because not all have exercised or are willing to exercise the faith necessary to

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51. See *Matthew* 6:8 (“[Y]our Father knoweth what things ye have need of, before ye ask him”); *Matthew* 7:7; *James* 1:5-6.

52. *Matthew* 7:7.

53. *James* 1:5-6.

54. See, e.g., *Matthew* 17:9 & *Luke* 9:36 & *Mark* 9:9 (Jesus’ telling His disciples to keep a certain revelation to themselves until a certain time); *John* 8:31-32 (Jesus’ promising the disciples that “if they continue in [His] word,” they should “know the truth”); *John* 7:17 (“If any man will *do his will*, he shall know of the doctrine, whether it be of God, or *whether I speak of myself*.” (first italics added)); *John* 12:20-30 (relating how a voice came from heaven to speak to people who were with Jesus, but some did not hear a voice but only thunder); *Acts* 9:1-8 (reporting that Saul (Paul) saw a vision of Jesus but that “the men which journeyed with him stood speechless, hearing a voice, but seeing no man”).

revelation. But those who exercise faith *will* receive guidance.<sup>55</sup> And those who have experienced revelation understand it and unite with others who have experienced it to witness that it is real.<sup>56</sup>

I wish to relate four experiences. My sense is that these kinds of experiences are somewhat common among faithful Church

55. *E.g.*, BM 1 Ne. 10:17-22 (explaining that “the power of the Holy Ghost . . . is the gift of God unto all those who diligently seek him,” and that those who “diligently seeketh shall find; and the mysteries of God shall be unfolded unto them, by the power of the Holy Ghost, as well in these times as in times of old, and as well in times of old as in times to come”).

56. Rodney K. Smith, also a Church member, has recently described such a revelatory experience:

One evening, I was returning from a fish dinner at my church. The hour was fairly late, and I wanted to go home for the day. As I walked to my house, I felt a very strong impression—a still, small, yet powerful voice—directing me to “take the fish to your neighbor.” I knew that this impression was not internally motivated but had come from God. I was tired and tried to put it out of my mind. I could not banish the thought, so I reluctantly knocked on the door of my closest neighbor. There was no response. I was relieved and started to return to my home, when the voice came into my mind, again, emphatically directing me to “take the fish to your neighbor.” As I approached the next house on my street, I felt that I was directed to continue down the street in search of the “right” neighbor. I confess that I was confused and frustrated, but I felt strongly that I must listen to the impression that I had been given.

Finally, as I approached the next house, I felt a sense of assurance that this was the “right” neighbor. I did not know that neighbor particularly well, but I mustered the courage to knock on his door. In response to my knock, my neighbor cracked open the door just a few inches and inquired, “What do you want, and who sent you?”

I was taken aback by my neighbor’s questions. I opted for the course of least resistance and answered the first question by simply saying that I wanted to share the fish with him. He, in turn, responded by repeating his second question: “And who sent you?” At this point, my only honest response was to say that I believed that God had sent me.

As soon as I said those words, my neighbor opened the door and fell back into his chair. He put his head in his hands and, after a few moments, looked up. His face was ashen, as he related that he was about to go into his bedroom and “blow his brains out.” He added that, given the fact that I had been sent by God to his house, he couldn’t take his life after all. I stayed and talked with my neighbor that night until a spirit of peace came into his home. As I returned home, I was in awe at what had transpired. To this day, I am convinced that God spoke to me. From that experience, I learned anew how very important it is to listen to those promptings and to be mindful of what I am taught and directed to do through application of this powerful religious epistemology.

Rodney K. Smith, *The Role of Religion in Progressive Constitutionalism*, 4 WIDENER L. SYMP. J. 51, 78-79 (1999) (relating also a similar revelatory experience of Dr. Martin Luther King, Jr.).

members, particularly mothers. The first story is of a woman who had two children, a 4-year-old girl, first, and a younger son who was born with brain damage, cerebral palsy, and mental retardation. This woman had been hesitant to have another child, wondering if, under the circumstances of caring for a disabled child, she could handle one more. She relates that in April 1988, she and her aunt attended the Washington, D.C. LDS temple. After she had been there several hours, she and her aunt were sitting in the Celestial Room, where she had the following experience:

During my morning prayer that day I had asked Heavenly Father to tell me His will for me. I don't remember doing that before specifically or [that I] even thought about why I said it. I didn't go down to the temple to receive any great guidance or inspiration for myself. Just to feel the Spirit with me. When my Aunt and I were sitting in the temple I was just thinking about trivial things, then something triggered my mind to think about my posterity. Then I pictured my three children. A young girl with blonde hair, ... our daughter, a young man in a wheel chair [sic], ... our son, and then a tall blonde boy standing behind [him] holding onto his wheelchair. I ... felt that that boy was part our family and he was waiting to join us. ... I had an overwhelming feeling that all would be well and not to worry. ... I had the feeling that I had been very selfish and to stop being selfish, that what was most important is my family and it's not yet complete. I felt very anxious for that other little spirit to come join our family because Heavenly Father had told me he is supposed to be part of our family. When I returned home from the temple, I told my husband ... all about it. He got tears in his eyes and said he had been thinking about it a lot lately and was happy that I had gotten that message.

A year later I got pregnant and found I was due the beginning of December. I just knew he would be born on Christmas day and of course knew it would be

a boy. ... When our baby boy was born on Christmas day the doctor asked me just how did I know it was a boy. [The doctor] was [not a Christian] (the only one on call on Christmas Day). I didn't feel comfortable telling him that Heavenly Father had told me he was a boy.

Our [second] son ... [is] now 11 years old, is blonde, and looks a lot like me. He has been a joy to us and a blessing. Our older son ..., who was born [with multiple disabilities], died three years ago. I think Heavenly Father knew the future of our family and wanted to bless us with another special boy. I'm grateful that he loves me so much to let me have little glimpses of his plan for me and my family.<sup>57</sup>

And a second story from another LDS woman:

A month after our son ... died at 14 months of age, I was going for a walk one day, and as I did frequently, I was talking to Heavenly Father. I told him that I was ready to move on with my life and accept the fact that my baby was gone. I told him that I was ready to go on and be content with our ... other children. I was done having children and that was all right with me. Then I saw a vision of my son, ... and he was kneeling down, in a white ... suit, talking to a little girl about five or six years of age who was dressed in a white dress. He told her that it was her turn to go down to earth and that she would bring her family much "joy and happiness." I knew immediately that it was [my son who had passed away] and that he was talking to our daughter. The Lord was telling me that we weren't done yet. We still had another daughter. The feelings of joy were indescribable. The meaning of the vision was instantaneously apparent to me. The only problem

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57. E-mail from LDS church member [name redacted by author, Ricks] to Professor Val Ricks, Associate Professor of Law, South Texas College of Law (February 12, 2001, 19:10:13 CST) (on file with author).



was how to tell my husband who was still hurting so much at the loss of his son. A day or so later, when I felt the time was right, I told my husband what had happened and he was very accepting of what I saw and felt.

I became pregnant a few months later and that child was our daughter.... Throughout the entire pregnancy I knew that she was a girl. No one can tell me that embryos and fetuses are just a mass of cells! These spirits are very much alive before and during the growth of their bodies before birth!<sup>58</sup>

An experience of Richard Eyre and his wife Linda, as told by Richard himself, is similar:

We were living in England during a particularly busy and challenging time of our lives. Both my wife, Linda, and I were involved in projects that required extensive travel and that were taxing emotionally as well as physically. We were desperately trying to juggle the demands of our work with the needs of our children and family. The last thing that would have occurred to us at that juncture was having another child.

Yet it did occur to us. It kept occurring to both of us that we should try to become pregnant again and add a child to our family. At first I tried to ignore it; Linda did too. It was just incongruous with reality. It didn't fit with where we were in our lives. I couldn't imagine where the feeling was coming from. Certainly not from within me—there was nothing logical or practical about it, no one had suggested it, we didn't even know anyone else who was pregnant or who would put the thought into our minds. But the thought that we should have another baby—*now*—wouldn't go away, and the thought felt like it was coming from

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58. E-mail from another LDS church member [name redacted by author, Ricks] to Professor Val Ricks, Associate Professor of Law, South Texas College of Law (February 4, 2001, 16:01:21 CST) (on file with author).

outside of us.... It troubled Linda even more than it did me. The thought of a new baby on top of everything else she was dealing with right then simply overwhelmed her.

We had asked God for each of our other children, prayed and asked that we could conceive when it seemed that the timing and the situation were right. This time we found ourselves doing just the opposite, essentially explaining to God that the timing and situation were wrong and asking Him to remove this feeling, or at least to allow us to conclude that it was nonsense. When that didn't happen, we felt we had to become more open and more sincere in our prayers, trying to summon our faith and to ask God to let us know His will. We decided to set aside some time one Sunday afternoon to focus on the issue and to pray together for an answer.

The answer that came was unexpected and remarkable. It completely removed our anxiety and replaced it with calm. There was light and clarity within that calm, and we understood that the promptings we had been feeling came from God. Within the answer to that singular prayer, God told us, through an unmistakable feeling deep within our souls, that there was an existing spirit in a spiritual place awaiting entry into mortality and into our family, and that the entry should happen now. Furthermore, He told us *about* that spirit—that he was a spirit of remarkable peace and calm, that he would be an easy baby, that the nature of his comfortable and serene spirit would actually ease our burdens rather than increase them and would draw our family (and our priorities) closer as we came together to care for and love this new child.

I'll never forget the feeling as we concluded that prayer—nor will Linda. We had knelt down feeling troubled, concerned, confused about a prompting that we couldn't understand or accept. We got up feeling

completely at peace, reassured as to what to do, and certain in our souls that there was a spiritual place and that in that spiritual place was a particular, unique person who was preparing to join us, a person whose nature we already knew.

There is a brief postscript to this story about still another level of assurance we received that Sunday afternoon. We had asked our eldest child, Saren, who was seven, to play with her younger brother and sister upstairs so Linda and I could be alone for our prayer. She wanted to know what we were praying about, so we simplified, "About whether to have another baby." After our prayer and within the peaceful aura of our answer, we called up the stairs for Saren to come down so we could thank her—she'd kept everything relatively quiet for nearly two hours. She came down with a twinkle in her eye and three pieces of paper in her hand and a grinning little brother and sister behind her. "We prayed too," she said, "and we marked our votes on these papers." She handed me three homemade ballots, each with two crayon-drawn squares, one labeled "Yes" and one "No." Each of them had an "X" in the yes box.

The longer-range postscript is that our son Talmadge joined our family ten months later and was (and is) all that God had promised us he would be.<sup>59</sup>

Not all such experiences are so full of hope. Wendy Evans Ruppel, a Latter-day Saint, professional counselor, mother of six, and grandmother of seven related the following experience. It is told third-hand, but it is so typical of stories that Church members share and hear that, even if some details have been lost, the essential facts of it ring true:

The teacher of an Old Testament class I once took told the story of a very dear friend of his who was faithful and true. The friend had a son who had taken his parents down the road and back, and they were weary. Finally the son had killed someone and was at

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59. EYRE, *supra* note 47, at 3-6.

the state prison. His parents were distraught. The father prayed and fasted, read the scriptures and studied and pondered, trying to understand what he had done wrong and what he could do now to rectify the situation.

As he sat in the temple one day, he had a strong impression that his home had been picked specifically for this soul, a young man who had been present in the premortal existence, to be taught the principles of the gospel, to understand right from wrong. When the time came that he chose to commit murder, he needed to be fully accountable for his choice. Now, if anything doesn't seem fair, that doesn't. Look what these parents went through....

[W]e can't make a choice on either side of [life or death] to ... avoid hard experiences. Our Father's plan was not the plan whereby none of his spirit children would be lost, and he weeps for his children when they suffer and make poor choices.... We cannot choose eternal life unless we've had the painful as well as the joyful experiences upon which to base our choices.<sup>60</sup>

Common elements run through each of these experiences. In all of them, knowledge is given of a child's life before birth. The child's coming to earth is a planned, purposeful event. Indeed, in the first three stories, the parent-child relationship seemed to form before birth. Some of the child's character before birth is revealed: The little girl in the second story was a bringer of joy and happiness. Richard and Linda Eyre's son had a spirit of "remarkable peace and calm, ... comfortable and serene."<sup>61</sup> The young man in the fourth story would test his parents' patience and understanding to their limits. The fourth story's parents do not learn of their son's pre-birth past until he is in

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60. Wendy L. Watson, Elouise Trotter & Wendy Evans Ruppel, *Lessons from the Prodigal Son*, in *CLOTHED WITH CHARITY: TALKS FROM THE 1996 WOMEN'S CONFERENCE* 170 (Dawn Hall Anderson, Susette Fletcher Green & Dloral Hall Dalton, eds. 1997).

61. EYRE, *supra* note 47, at 5.

jail, but, looking back, the vision of the child's special needs gives meaning to the parents' struggle to try to teach him.

The purpose of this paper is not to catalogue Church members' pre-birth experiences. Nor is it to prove the existence of a premortal life. As a general rule, revelatory experiences convince no one but only confirm the faith of those who already believe. Such experiences are not given to prove anything. As St. Mark taught, "signs shall follow them that believe,"<sup>62</sup> not precede them. I believe God loves us too much to prove His existence. He would rather have us love him freely than be forced through proof to believe. But for those whose faith in God and an antemortal life has already been tested and remained true, and who have received a witness from God confirming that faith,<sup>63</sup> the spirits of those children yet to be born are real, conscious individuals who hope and dream of the future just as do we who are already born.

Knowing that a living, conscious part of each individual existed eternally before birth has consequences for understanding this life. There is no instant when an individual human springs into existence. Life on earth might add a body to a spirit, but the person existed before the person's body did.<sup>64</sup> Abortion, as an issue, asks whether someone other than the woman has a stake, an interest, in the body growing within her. Asked against the background of a knowledge of premortal existence, the answer seems apparent. The child already lives in spirit. The body is the child's body. Who else's would it be? What other purpose in God's plan could it serve? Either the child's spirit has entered the body or it will enter the body if

62. *Mark* 16:17.

63. *BM Ether* 12:6 ("I would show unto the world that faith is things which are hoped for and not seen; wherefore, dispute not because ye see not, for ye receive no witness until after the trial of your faith.").

64. I do not think that self-consciousness is or should be the deciding factor in determining whether government should protect a being. See, e.g., Stephen Schwarz, *Personhood Begins at Conception*, in *THE ABORTION CONTROVERSY: 25 YEARS AFTER ROE V. WADE* 257, 258 (Louis P. Pojman & Francis J. Beckwith eds., 2d ed. 1998) (arguing that one should not make the fundamental mistake of confusing functioning as a person with being a person and that therefore the being in the womb is a person, not a potential person) [hereinafter *THE ABORTION CONTROVERSY*]. *Contra* RONALD DWORKIN, *LIFE'S DOMINION: AN ARGUMENT ABOUT ABORTION, EUTHANASIA, AND INDIVIDUAL FREEDOM* 9-24 (First Vintage Books 1994) (1993); Michael Tooley, *In Defense of Abortion and Infanticide*, in *THE ABORTION CONTROVERSY*, *supra*, at 209. Dworkin, Tooley, and other naturalists see no human until self-consciousness occurs.

nothing is done to prevent the growth of the body.<sup>65</sup> This means that a child's growing body is the body of an actual, not just a potential, person. As of conception the child's spirit—with its hopes and desires—is already the child of parents in this world. A parental connection, choate or inchoate, is formed.

If we love this child who would be born, we must care about its life on earth. The child should no more be ignored, rejected, or abandoned than a child already born. Abortion is the rejection of the child, the killing of its body. Abortion takes from the child's spirit the body being made for him or her, depriving that spirit (at least for a time and perhaps permanently<sup>66</sup>) of life on this earth.<sup>67</sup> Abortion's effect of depriving the child of life on earth makes abortion akin to killing, whether the spirit has entered the body or not. The effect of

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65. See, e.g., *Psalms* 139:13-16; *Luke* 1:40-44; *Jer.* 1:5.

66. Whether spirits of aborted children are given another, later chance to come to earth or move on to the next life or another life is presently unclear under Church doctrine. Some authorities suggest aborted children may have no opportunity to live on this earth, though they may inherit another, later. See, e.g., Faust, *supra* note 14, at 150 ("Since the life within [the mother] is not her own, how can she justify its termination and deflect that life from an earth which it may never inherit?"). Cf. BM Mor. 8; D&C 137:5-10 (noting that children who are born alive but die as children are saved in heaven). This factual ambiguity makes the Church member theorists' task far more difficult. Rather than dealing with a known harm—for example, delay in coming to earth to life followed by birth to some other parents on the earth—which could be weighed with greater certainty against the pregnant woman's interests, the theorist must deal with the possibility that the child may not come to earth at all. If the child does not come to earth, what happens to her? The most logical answer, I believe, under the Church's theology is that she waits for a later world. Many I have heard speak about the issue (and I, myself) feel that a just God will make a way for each child eventually, on this world or another. How harmful is this delay and/or change of destination? No one is sure. This speculative proposition is at least two deductive leaps past any revelation of which I am aware. At that point, absent some further revelation, no certainty can be had. See also discussion *infra* note 68.

67. A reviewer of this article suggested that if depriving unborn spirits of a life on earth is the harm from abortion, then the harm from birth control is the same and should under this theory be morally wrong and also the subject of some government action. I agree that a legal prohibition on having children would be morally wrong, pernicious, and that some governmental end of encouraging parents to have and care for children is suggested by the more general goal of protecting the salvific freedom of premortal spirits. See Parts II & III, *infra* (describing this goal of government). But abortion and birth control are not identical issues. When a child is conceived, the moral obligation of the parents then runs to an individual, identifiable child, the parents' child. See, e.g., sources cited *supra* note 65. Before that time, an unidentified child is waiting to be born, but whether to one set of parents or to another, and when, is uncertain absent a revelation such as in those cases cited in the text. Just how to preserve and promote this salvific freedom in the absence of an identifiable victim, other than by general promotion of family values, involves issues different from those relating to abortion and deserves a more thorough analysis than I can give in this paper.

killing and abortion is the same: to deprive a spirit of a body and of the God-given opportunity to experience life on earth.<sup>68</sup>

## PART II: A VIEW OF GOVERNMENT

Latter-day scriptures also give a Christian justification for human government. Because law is an exercise of force and God forces no one to salvation,<sup>69</sup> government acts do not play a direct role

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68. See, e.g., Faust, *supra* note 14, at 150 (“Since the life within [the mother] is not her own, how can she justify its termination and deflect that life from an earth which it may never inherit?”); BOYD K. PACKER, “THAT ALL MAY BE EDIFIED” 176 (1982) (Abortion tampers with the “sacred life processes through which spirits may enter mortality.”); Romney, *supra* note 16, at 144-45; Oaks, *supra* note 12, at 73 (“The ultimate act of destruction is to take a life. That is why abortion is such a serious sin. Our attitude toward abortion is not based on revealed knowledge of when mortal life begins for legal purposes. It is fixed by our knowledge that according to an eternal plan all of the spirit children of God must come to this earth for a glorious purpose, and that individual identity began long before conception and will continue for all the eternities to come.”).

It is possible to invent theological premises that undercut these conclusions. One could surmise (1) that children are not assigned to parents until birth, in which case destroying the child’s body is not an offense against any individual spirit, but perhaps only an offense against God. Or one could argue (2) that a loving God would never allow all opportunities for life on earth to be taken from any member of the already spiritually existent human family.

However, I have found no support for these propositions in scripture, and counter-arguments undercut them. Against the first argument, scriptural evidence exists for a connection between a child’s spirit and the body in the womb. See, e.g., sources cited *supra* note 65. The second argument is only a form of the claim that a good God will not allow evil. God will allow evil, however, to protect human freedom to choose good and evil. See, e.g., *Matthew* 18:7 (“it must needs be that offences come”); *BM 2 Ne. 2:27* (“men are free”). Moreover, one can just as easily surmise theological propositions that undercut the force of both (1) and (2). For instance, spirits of aborted children who in the end have no opportunity to come to earth and receive a body may be sent to another earth. See *PGP Moses 1:33* (“worlds without number have I created”); Faust, *supra*. But see Oaks, *supra* (“according to an eternal plan all of the spirit children of God must come to *this* earth”) (emphasis added).

I will readily admit that I am proceeding here on the basis of faith and that the nature of the connection between growing fetus and spirit child is somewhat uncertain under the Church’s theology. If we love the spirits waiting to come to earth, however, we must give them the benefit of that uncertainty, resolve theological doubts in their favor, and protect them. To run the substantial risk of offense against them is itself an offense against them.

69. See *supra* text accompanying notes 19-22.

in salvation. No government act is salvific. Moreover, force employed against another impinges on that individual's God-given freedom to choose or reject God,<sup>70</sup> and seems inconsistent with the love Jesus has commanded His disciples to have towards others. God seeks to win souls to faith by love.<sup>71</sup> Salvation is of the heart,<sup>72</sup> and God cannot win our hearts by force. Indeed, scriptures teach that God seeks our hearts by love—that “immortality,” “eternal life,” and “joy” of the human family are the guiding purposes in all the acts of God

70. *See supra* text accompanying notes 19-22. The Book of Mormon prophet Lehi taught that God had made

[M]en ... free according to the flesh; and all things are given them which are expedient unto man. And they are free to choose liberty and eternal life, through the great Mediator of all men, or to choose captivity and death, according to the captivity and power of the devil....

BM 2 Ne. 2:27. If God made men free so that they could choose eternal life or death, all coercion that impinges on this freedom must be justified.

71. Only a complete lack of coercion in matters of faith is consistent with the Lord's love for His children and with the love He desires that they have for Him. The first commandment of God's law to Moses, and later reiterated by Jesus, was to “love the Lord thy God with all thine heart, and with all thy soul, and with all thy might.” *Deut.* 6:5, 10:12, 11:1, 11:13, 11:22, 19:9, 30:16; *Josh.* 22:5; *Matthew* 22:36-38; *Mark* 12:29-30; *Luke* 10:25-28; D&C 59:5. The Lord's children would hardly love Him if, as a master, He forced them to be religious slaves. Love can only be perfect when it is perfectly freely given. The Lord's desire to refrain from coercing His children is so great that He refuses even to prove His existence. Proof that the Lord has made His children free to love Him exists in the mere fact that, notwithstanding He has commanded them to love Him, He allows them at the same time to misunderstand and even hate Him. Freedom to love God is only real if freedom not to love God exists. God's freedom is no Hobson's choice.

72. *Deut.* 4:29 (NIV) (“But if ... you seek the Lord your God, you will find him if you look for him with all your heart and with all your soul.”). *See also Deut.* 10:12 (“And now, Israel, what doth the Lord thy God require of thee, but to fear the Lord thy God, to walk in all his ways, and to love him, and to serve the Lord thy God with all thy heart and with all thy soul...?”), 11:1, 13:3, 26:16, 30:2 & 10; *Psalms* 24:3-4 (“Who shall ascend into the hill of the Lord? or who shall stand in his holy place? He that hath clean hands, and a pure heart....”); *Jer.* 31:33 (“I will put my law in their inward parts, and write it in their hearts; and will be their God....”); BM 3 Ne. 9:19-20 (“And ye shall offer up unto me no more the shedding of blood; ... for I will accept none of your sacrifices and your burnt offerings. And ye shall offer a broken heart and a contrite spirit.”); D&C 64:22 (“I, the Lord, require the hearts of the children of men.”).



visible to us.<sup>73</sup> Accordingly, God has commanded His followers never to use force but to follow Jesus' example in winning souls by love.<sup>74</sup>

At the same time, Church members believe with other Christians that human "governments were instituted of God."<sup>75</sup> Thus, God justifies the employment of force by some people against others in certain circumstances. Because use of force is not salvific, God must have some other purpose in it. Yet God's only purpose is the salvation of the human family.<sup>76</sup> Thus government must, to be established by God, serve the human family's salvation, but, at the same time, force no one toward salvation.

The solution to this apparent dilemma is set forth in scripture. It is that government's purpose is limited. The limited task government can accomplish in the service of the human family's salvation is to secure and promote, insofar as possible, the freedom which is a precondition of the salvation of each individual. I call this freedom "salvific freedom." Government's purpose is to secure not salvation, but salvific freedom. Paul in 1 Timothy, 2d chapter, expressed this principle, perhaps most eloquently:

1. I urge, then, first of all, that requests, prayers, intercession and thanksgiving be made for everyone—
2. for kings and all those in authority, that we may live peaceful and quiet lives in all godliness and holiness. 3.
- This is good, and pleases God our Savior, 4. Who wants all men to be saved and to come to a knowledge of the truth.<sup>77</sup>

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73. PGP Moses 1:33, 39 ("39. For behold, this is my work and my glory—to bring to pass the immortality and eternal life of man."); D&C 93:33 ("The elements are eternal, and spirit and element, inseparably connected, receive a fulness of joy."); BM 2 Ne. 26:24 ("He doeth not anything save it be for the benefit of the world; for he loveth the world, even that he layeth down his own life that he may draw all men unto him.").

74. D&C 121:36-46 ("41. No power or influence can ... be maintained by virtue of the priesthood, only by persuasion, by long-suffering, by gentleness and meekness, and by love unfeigned; 42. By kindness, and pure knowledge...."); Col. 3:12-17.

75. D&C 134:1 ("We believe that governments were instituted of God for the benefit of man."); Rom. 13:1 ("The authorities that exist have been established by God." (NIV)).

76. See *supra* note 73 & accompanying text.

77. 1 Tim. 2:1-4 (NIV).

Verse two gives one reason to pray for kings: that Christians may live in peace and worship God. Verse four gives another reason to pray for those in authority: that all men might be saved and come to a knowledge of the truth. The gospel must be spread to all nations, and all should have the freedom to accept it and be sanctified in it—this is the Christian’s prayer for governments.<sup>78</sup>

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78. Uniquely LDS scripture is much clearer on this point. One particular biblical passage, Romans 13:2, is troublesomely ambiguous: “1. ... The [governing] authorities that exist have been established by God. 2. He who rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves.” *Rom.* 13:1-2 (NIV); *Rom.* 13:2 (KJV) (“they that resist shall receive to themselves damnation”). Because God says He will bring judgment against all who oppose the ruler, a ruler might consider himself to be approved of God in every act He performs as ruler, even those acts that would be evil if performed not as ruler. The larger context of the passage clarifies that the ruler is “the minister of God *to thee for good.*” *Rom.* 13:4. Paul also assures the church of that time that if they “do what is right” the ruler “will commend” them. *Rom.* 13:3 (NIV). Surely Paul means to say that the ruler is God’s minister to the extent the ruler works righteousness. See also *Eccl.* 8:5-6; *1 Pet.* 2:13-14. In fact, if government, the authority Paul speaks of, is taken to have, and act only within, the purpose asserted in this paper, the passage in Romans becomes clear and uplifting.

Another way to interpret Paul’s counsel in *Rom.* 13:1-8 is to remember that Paul was talking to people who were largely politically powerless. To disciples not involved in politics, Jesus counseled that they should submit (*Rom.* 13:1 NIV) or be in subjection (*Rom.* 13:1 KJV) to government authorities. Jesus and Peter paid taxes together “lest we should offend” the “kings of the earth.” *Matthew* 17:24-27. The counsel in *Matthew* 22:15-22 & *Luke* 20:20-26 to render Caesar’s to Caesar is similar. The counsel is intended to encourage the saints to walk peacefully and respectfully among all men; it is an instruction on how to love the king, even if the king does not love the saints in return. *John* 13:34 (“A new commandment I give unto you, That ye love one another; as I have loved you, that ye also love one another. By this shall all men know that ye are my disciples, if ye have love, one to another.”) (capitalization retained from original); *Matthew* 5:38-48 & especially 46 (“For if ye love them which love you, what reward have ye? do not even the publicans the same?”) (capitalization retained from original). Peter taught similarly:

Submit yourselves for the Lord’s sake to every authority instituted among men: whether to the king, as the supreme authority, or to governors, who are sent by him to punish those who do wrong and to commend those who do right. For it is God’s will that by doing good you should silence the ignorant talk of foolish men. Live as free men, but do not use your freedom as a cover-up for evil; live as servants of God. Show proper respect to everyone: Love the brotherhood of believers, fear God, honor the king.

*1 Pet.* 2:13-17 (NIV). See also *Exod.* 22:28; *Prov.* 24:21; *Eccl.* 8:2-6; *Acts* 23:5; *Titus* 3:1; D&C 58:21-22; D&C 98:4-8; D&C 101:76-80; PGP The Articles of Faith 12 (“We believe in being subject to kings, presidents, rulers, and magistrates, in obeying, honoring, and sustaining the law.”).

Still a further difficulty with the passage in *Romans* 13 lies in verse four’s statement that the ruler “does not bear the sword for nothing. He is God’s servant, an agent of wrath to bring punishment on the wrongdoer.” *Rom.* 13:4 (NIV). Some have used these passages as an

This principle of freedom is also expressed, less eloquently but more clearly, in the following passage from latter-day scripture recording a revelation from God:<sup>79</sup>

4. And now, verily I say unto you concerning the laws of the land, it is my will that my people should observe to do all things whatsoever I command them.
  
5. And that law of the land [of the United States] which is constitutional, supporting *that principle of freedom* in maintaining rights and privileges, *belongs to all mankind*, and is justifiable before me.
  
6. Therefore, I, the Lord, justify you, and your brethren of my church, in befriending that law which is the constitutional law of the land; ...
  
8. I, the Lord God, make you free, therefore you are free indeed; and *the law also maketh you free*.<sup>80</sup>

In verse four, God says concerning the law of the land that He desires His people to do all things that He commands them to do—this is the “principle of freedom” referenced in verse five. Thus, the scripture

excuse for the death penalty, or for having the government punish all sin, but these conclusions hardly follow from this passage alone. The sword or some weapon is practically necessary to bring any force against the unwilling. Paul is saying merely that there is a reason that the government can use force, not that the government *should* punish by death or should punish sin as such.

In Joseph Smith’s “translation” of the Bible, which is partly commentary and non-canonical in the Church but highly regarded, this entire passage in Romans is limited to Church authorities, the “sword” in verse four is changed to “rod”, and the word “taxes” in verses six and seven is changed to “consecrations.”

79. This revelation was given August 6, 1833, to Joseph Smith, at Kirtland, Ohio. “At the time, members of the Church in Missouri had begun to suffer persecution at the hands of non-members in that area.” D&C 98 *preface*.

80. D&C 98:4-8 (emphasis added). This view of government’s function is also set forth, though not as clearly and succinctly as in scripture, in writings of various modern prophets, including EZRA TAFT BENSON, *THE CONSTITUTION: A HEAVENLY BANNER* 2-10, 15-17 (1986) and PACKER, *LET NOT YOUR HEART*, *supra* note 14, at 63-68.

reads that the part of constitutional law supporting freedom to do what God has commanded is justifiable before him. The reference in verse six to the constitutional law of the land must be taken to include the reference in verse five to “that principle of freedom.”<sup>81</sup> And verse eight, read consistently with the prior verses, identifies a relationship between God’s laws and human laws: The purpose of both kinds of laws is to free us up so that we can serve God. God’s laws do this by freeing us from the bondage of sin, and human laws do this by freeing us from bondage to other humans.

God’s purpose for human laws is also described in another passage:<sup>82</sup>

77. ... [T]he laws and constitution of the people [of America] ... [which] I [the Lord] have suffered to be established, ... should be maintained for the rights and protection of all flesh, according to just and holy principles;

78. *That every man may act in doctrine and principle pertaining to futurity, according to the moral agency which I have given unto him, that every man may be accountable for his own sins in the day of judgment.*

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81. I have heard others read these sentences not as a block, but individually. Verse seven of the passage reads, “And as pertaining to the law of man, whatsoever is more or less than *this*, cometh of evil.” D&C 98:7 (emphasis added). If the antecedent of *this* in verse seven is not carefully traced, the reference in verse seven might appear only to apply to the reference to “law which is ... constitutional” in verse six. Because verse six lacks the limiting clause, “supporting that principle of freedom,” stated in verse five, some think that any law that is constitutional is justified by the Lord. This reading ignores verse five and unduly exalts the Constitution. “Constitutional law” in verse six is still restricted by the limiting clause in verse five. Reasoning regarding constitutional law also runs this way in D&C 101. *See infra* text accompanying the two notes immediately following this one. This is also the way the Book of Mormon justifies law. *See infra* notes 84-90 and accompanying text. Thus, the limitation of justified law to that “supporting that principle of freedom” continues in the passage, and verse seven’s statement that “whatsoever is more or less than this, cometh of evil” applies to law justified by this principle and not to all constitutional laws as such.

82. This revelation was given on December 16, 1833, when Church members gathered in Missouri were suffering persecution. Mobs had driven Church members from their homes at great loss of property, and many had been threatened with death. At the time, Church members were trying to regroup in another location. D&C 101 *preface*.

79. Therefore, *it is not right that any man should be in bondage one to another.*

80. And for this purpose have I established the Constitution of this land by the hands of wise men whom I raised up unto this very purpose, and redeemed the land by the shedding of blood.<sup>83</sup>

This passage, and in particular the emphasized portions, gives a clear purpose for human laws: to maintain the freedom necessary to allow the Lord's children to exercise their moral agency and to be accountable only to God in certain things—in other words, to secure and maintain salvific freedom so that the Lord's final judgment will be fair.

In the Book of Mormon, the purpose of government is expressed as part of a requirement of “equality” and a goal of maintaining religious liberty.<sup>84</sup> The Book of Mormon tells a story in

83. D&C 101:77-80 (emphasis added).

84. Keeping the peace is also named as a goal, but when a reason is mentioned for the goal of peace the reason is always religious freedom. See BM Words of Mormon 1:17 & Mosiah 1:1 (Benjamin and the prophets' labors “did once more establish peace in the land”); BM Mosiah 2:4 (“that they might give thanks to the Lord ... who ... had appointed ... a just man to be their king, who had established peace in the land ... and who had taught them to keep the commandments of God, that they might rejoice and be filled with love towards God and all men”); BM Mosiah 27:2-4, 6 (King Mosiah's proclaiming an end to private persecution by unbelievers and a strict command given to the churches forbidding persecutions so that no pride would “disturb their peace”); BM Mosiah 29: 10, 14, 40 (introducing argument for reign of the judges with the suggestion that it would bring peace, Mosiah's teaching commandments of God in order to bring peace, and praising Mosiah for bringing peace); BM Alma 1:33; BM Alma 4:5 (many thousands baptized and continual peace in the land); BM Alma 13:18 (account of Melchizedek's establishing peace in his land through preaching); BM Alma 46:12, 31, 37 (Moroni's naming peace, after God, religion, and freedom, as a goal of Nephite government); BM Alma 48:10 (Moroni's “preparing to support their liberty, their lands, their wives, and their children, and their peace, and that they might live unto the Lord their God, and that they might maintain that which was called by their enemies the cause of Christians”); BM Alma 50: 39 (Nephihah's oath as chief judge and governor to “judge righteously, and to keep the peace and the freedom of the people, and to grant unto them their sacred privilege to worship the Lord their God, ... to support and maintain the cause of God all his days, and to bring the wicked to justice according to their crime”); BM Hel. 11:21-23 (“the ... year began in peace; and the church did spread ...; and they did have exceedingly great peace in the land”); BM 3 Ne. 1:23 (after many were baptized, “thus the people began again to have peace in the land”); BM 3 Ne. 6:16 (“And thus Satan did lead away the hearts of the people ...; therefore they had enjoyed peace but a few years.”); BM 3 Ne. 7:14-26 (“in some degree they had peace in the land; nevertheless, their hearts were turned from the Lord their God, and they did stone the prophets and did cast them out from

which a priest, Alma, brought cases of religious persecution, private citizens against private citizens, before the king, whose name was Mosiah. Mosiah, in response,

Sent a proclamation throughout all the land round about that there should not any unbeliever persecute any of those who belonged to the church of God[, a]nd there was a strict command throughout all the churches that there should be no persecutions among them, that there should be an equality among all men....<sup>85</sup>

Now “equality” in and of itself is an empty idea.<sup>86</sup> The content in laws guaranteeing equality comes not from the equality requirement itself but from the distinctions offered to justify the law’s treating some differently than others.<sup>87</sup> Mormon, the compiler of *The Book of Mormon*,<sup>88</sup> later hinted at what would have counted as an acceptable justification for distinctions between people:

[I]t was strictly contrary to the commands of God that there should be a law which should bring men on to unequal grounds. *For thus saith the scripture: Choose*

among them”); BM 3 Ne. 9:9 (explaining that “they that did destroy the peace of my people and the government of the land” were destroyed so “that the blood of the prophets and the saints should not come up unto me any more against them”); BM 4 Ne. (continual peace resulting from righteousness persists for many years). Peace is sometimes mentioned as a goal without giving a reason. BM Mosiah 10:1, 5 (words of Zeniff); BM Mosiah 19:27, 29 (Limhi); BM Alma 44:14-15, 19-20 (Moroni’s requiring Lamanite prisoners to make a covenant of peace); BM Alma 50:36 (people of Morianton covenanting to keep the peace); BM Alma 51:22 (reporting that Moroni was “subjecting [the people] to peace and civilization”); BM Alma 62:11; BM 3 Ne. 6:3-6.

85. BM Mosiah 27:1-4. The proclamation came from Mosiah as king, and the command came from Alma, surely with Mosiah’s approval. Mosiah was both high priest and king, Alma being high priest over the church under Mosiah. BM Mosiah 25:19, 26.

86. See Christopher J. Peters, *Outcomes, Reasons, and Equality*, 80 B.U. L. REV. 1095 (2000); Christopher J. Peters, *Equality Revisited*, 110 HARV. L. REV. 1210 (1997) [hereinafter Peters, *Revisited*]; Peter Westen, *The Empty Idea of Equality*, 95 HARV. L. REV. 537 (1982).

87. See, e.g., Peters, *Revisited*, *supra* at note 86, at 1210 *passim* (analyzing the concept of equality and its “supposed application in a variety of circumstances”).

88. Mormon was born c. 311 C.E. somewhere on the American continent. From about 326 until 385 he served his tribe as both general and record keeper. BM Words of Mormon; BM Mormon 1-6. As record-keeper, he had custody of the tribe’s written history and from this he, with his son Moroni, partly compiled and partly authored the record known as *The Book of Mormon: Another Testament of Jesus Christ*. See BM Title Page and Introduction.

*ye this day, whom ye will serve.* Now if a man desired to serve God, it was his privilege; or rather, if he believed in God it was his privilege to serve him; but if he did not believe in him there was no law to punish him.<sup>89</sup>

The point of the laws was to ensure to each an equal opportunity to serve God or not, or in other words, to preserve equality in salvific freedom.<sup>90</sup>

With this general purpose in place, the Christian can elaborate several more specific components of salvific freedom. Elaboration at length is a much larger project than this paper requires, but certainly an individual's salvific freedom includes life, belief, and speech. Life is foundational to salvific freedom.<sup>91</sup> God created the earth for the human family so that "*men would seek him and perhaps reach out for him and find him, though he is not far from each one of us.*"<sup>92</sup> God cannot win our hearts unless they are beating. Life is, in large measure, the ability and opportunity to exercise the will to choose good or evil for a time; it is a space of time in this world to prepare for

89. BM Alma 30:7-8 (emphasis added).

90. Because the point of the laws was to ensure an equal opportunity to serve God, those private offenses or "crimes" that stopped one from serving God were deemed to put the Lord's children on unequal grounds:

But if he murdered he was punished unto death; and if he robbed ... stole ... [or] committed adultery he was also punished; yea, for all this wickedness they were punished. For there was a law that men should be judged according to their crimes. Nevertheless, there was no law against a man's belief; therefore, a man was punished only for the crimes which he had done; therefore all men were on equal grounds.

BM Alma 30:10-11.

91. *Accord* D&C 134:2 ("We believe that no government can exist in peace, except such laws are framed and held inviolate as will secure to each individual ... the protection of life."). Accordingly, the Lord requires His disciples to deliver murderers up so that they may be "dealt with according to the laws of the land." D&C 42:79.

92. *Acts* 17:26-27 (NIV) (emphasis added). See PGP Abr. 3:24-25 ("We will go down . . . and we will make an earth whereon these may dwell; And we will prove them herewith, to see if they will do all things whatsoever . . . God shall command them."). The Lord also said of his children, "I have created him for my glory." *Isaiah*. 43:7; see BM Jacob 2:21. This purpose is synonymous with man's receiving eternal life, for God is glorified when His children love Him eternally and receive eternal life. See *John* 17. See also *Daniel* 7:13-14.

the next,<sup>93</sup> to prepare to present our souls, both spirit and physical body,<sup>94</sup> to be “a living sacrifice, holy, acceptable unto God.”<sup>95</sup> Freedom of belief is necessary because faith—a hope for (or the treating of as certain) things which are not seen but which are true (including future things)—<sup>96</sup> is the first principle of the soul’s growth.<sup>97</sup> And freedom to speak is necessary so that those lacking faith can be told that they have reason to hope.<sup>98</sup> Thus, government, to

93. BM 2 Ne. 2:10-29 (explaining that the “days of the children of men were prolonged ... and their time was lengthened, according to the commandments which the Lord God gave unto the children of men,” *id.* at 2:21).

94. D&C 88:15 (The “spirit and the body are the soul of man.”).

95. *Rom.* 12:1.

96. *Hebrews.* 11:1; BM Alma 32:21; BM Ether 12:6.

97. JOSEPH SMITH, LECTURES ON FAITH 1: 9-10 (N.B. Lundwall Comp., 1834-35) (“[F]aith is ... the principle of action in all intelligent beings ... the moving cause of all action in them”). Freedom to believe or disbelieve is fundamental to Christianity’s existence. Faith in Christ is a condition of salvation. See PGP The Articles of Faith 4. Accordingly, freedom of belief was linked in the Book of Mormon to the Book of Mormon’s equality measure of good government, which, as noted *supra* text accompanying notes 84-90, was grounded in the protection of salvific freedom. See also BM Alma 30:7-9 (discussed *supra* text accompanying note 89); BM Alma 30:11 (“Nevertheless, there was no law against a man’s belief; therefore, a man was punished only for the crimes which he had done; therefore all men were on equal grounds.”). See generally BM Alma 1:17; Alma 1 (“the law could have no power on any man for his belief”); D&C 134:2 (holding that “no government can exist in peace, except such laws are framed and held inviolate as will secure to each individual the free exercise of conscience”).

98. *Rom.* 10:17. See *Rom.* 10:14 (“How then shall they call on him in whom they have not believed? and how shall they believe in him of whom they have not heard? and how shall they hear without a preacher?”) (original capitalization retained). See also *John* 5:24 (“He that heareth my word, and believeth in him that sent me, hath everlasting life”); BM Jarom 1:10-12. Accordingly, the Lord calls His servants to preach the gospel: “Go ye therefore, and teach all nations, ... Teaching them to observe all things whatsoever I have commanded you....” *Matthew* 28:19-20. See *Zech.* 8:16 (“Speak ye every man the truth to his neighbour....”); *Mark* 16:15-16; *Col.* 1:25-29; *2 Tim.* 4:2 (“Preach the word....”); BM Alma 32:23; BM Mor. 7:22-26; D&C 4; D&C 36:4-8; D&C 88:77-80 (“And I give unto you a commandment that you shall teach one another the doctrine of the kingdom.”); PGP Moses 6:57 (“Wherefore teach it unto your children, that all men, everywhere, must repent, or they can in nowise inherit the kingdom of God....”). Jesus’ disciples are to “speak[] the truth in love” “until we all reach unity in the faith and in the knowledge of the Son of God and become mature, attaining to the whole measure of the fullness of Christ.” *Eph.* 4:15, 13 (NIV).

Preaching is so integral to the Gospel that Christ himself is also known as “the Word.” See *John* 1; *1 John* 1:1, 5:7; D&C 93:8-10; PGP Moses 1:32. His message is known as “the word” and “good news.” For a discussion of Christ as “the Word,” see, e.g., *Mark* 4:14, 16:20; *John* 5:24, 8:31, 12:47, 15:3, 17:8; *Col.* 3:16; *2 Tim.* 4:2; *James* 1:22; *1 Pet.* 2:2; *1 John* 1:10; BM 2 Ne. 31:20, 32:3; BM Alma 5:7, 12:10, 32:23, 32; D&C 1:38; D&C 11:21; D&C 18:34. For a discussion of Christ as the “good news,” see, e.g., *Isaiah* 52:7 (“How beautiful upon the mountains are the feet of him that bringeth good tidings, that publisheth peace; that bringeth good tidings of good, that publisheth salvation; that saith unto Zion, Thy



serve salvific freedom, must preserve not only freedom to worship but also freedom to live, to believe and act on that belief, and to speak.

To a nonbeliever, this political theory might sound something like libertarianism or classical liberalism,<sup>99</sup> and the results of it may overlap libertarian conclusions on certain issues. Like libertarianism, salvific freedom implies a kind of “no harm” principle. Humans are free to engage in moral wrong so long as they do not infringe on another’s salvific freedom. But salvific freedom is not libertarianism. For one, libertarianism is open to a humanistic interpretation, but salvific freedom is not. Whereas libertarianism may put the human will at its center, considering it a good in itself, salvific freedom has God’s will at heart and sees human will primarily as an opportunity to choose God or to decline to do so. Libertarianism’s exaltation of human will allows certain descriptions about human nature and the world, such as that humans act as no more than rational individuals, or, even more reductivist, “monkeys with big brains.”<sup>100</sup> Seekers of salvation, on the other hand, see another worldview. They see the world through the eyes of revelation, which means that their legal theory must take account of (among other things) the eternal nature of human beings—including children yet to be born—and the purpose of God’s earth and its resources.

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God reigneth!”), 61:1; *Matthew* 24:13-14; *Mark* 1:14, 13:10, 14:9, 16:15; *Luke* 2:10, 4:18, 9:6; *Acts* 8:25; *Rom.* 1:16; *Gal.* 1:8 & 11; *Eph.* 6:15, 6:19; *Rev.* 14:6; BM 1 Ne. 10:14; BM 3 Ne. 27:13; D&C 1:23; D&C 11:24; PGP Moses 5:58.

99. On libertarianism, see, e.g., <http://www.libertarian.org/>.

100. RICHARD A. POSNER, *THE PROBLEMATICS OF MORAL AND LEGAL THEORY* 30, 35 (1999). See also *Musings of a ‘Monkey With a Brain,’* NAT’L L. J., June 17, 1996, at A26 (discussing Posner’s views on life, liberalism and the limits of lawyers).

## PART III: CONCLUSIONS

That abortion should be regulated, and in most cases prohibited, follows from these premises.<sup>101</sup> Abortion deprives the unborn of salvific freedoms: the freedom to live to learn the bondage and misery of sin, the emancipation of law, and the joy of redemption in Christ.

Of course, government should also protect the child's parents' salvific freedom, and because their freedom to reject God is as much a part of salvific freedom as is freedom to serve Him,<sup>102</sup> one could argue that protection of the unborn child's parents' salvific freedom requires that they be allowed to reject God by aborting their child. But that conclusion would not follow, because the parent's interest must be balanced against the child's. Balancing the rights of the unborn child to come to earth in order to have a time and space to learn to know God, on the one hand, with the freedom of the child's mother and father to do whatever else they wish to do other than have a child, on the other hand, will in all but an extremely rare case weigh clearly and heavily for the child. Indeed, to give the unborn equal rights requires that the parent give the unborn child the same privilege the parent has received: the privilege of birth.

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101. Just what means or methods government should use to prohibit or otherwise regulate abortion is not specified in scripture. How best to follow Christ and use force to prohibit or otherwise regulate is a topic worthy of greater discussion than this paper allows. However, I propose that a great deal more creativity is in order than even many Church members would at first think. The proposals for reform Joseph Smith suggested during his candidacy for the U.S. presidency included, interestingly, the suggestion that legislatures "pardon every convict in their several penitentiaries, blessing them as they go, and saying to them ... 'Go thy way and sin no more.'" 6 JOSEPH SMITH, HISTORY OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS 205 (1950). Smith as candidate advocated instead that convicts for theft and other felonies be put to work on public projects,

[O]r any place where the culprit can be taught more wisdom and more virtue, and become more enlightened. Rigor and seclusion will never do as much to reform the propensities of men as reason and friendship.... Let the penitentiaries be turned into seminaries of learning, where intelligence ... would banish such fragments of barbarism.

*Id.* I am not suggesting that Joseph Smith's proposals for education and forced labor be implemented in the abortion or in any other context. But I am suggesting that the Christian looking to use force to preserve freedom should be prepared to think outside the box with respect to the way force is used.

102. *See supra* Part II.

Only if the balance pits the mother's life or long-term health (including emotional and psychological health from such trauma as rape or incest) against the child's life would the scales hang near the balance. Even then, the mother has had a chance to live already, and the child has not.<sup>103</sup> And even if a mother's life or health were in danger, the uncertainties of medical opinion regarding the risks of childbirth may leave a greater margin of error than the balancing of the child's and mother's interests. Doctors deal only in probabilities when it comes to predicting the medical future. How horrible a mother would feel if, after her life were over, she learned that the doctor had been wrong and that both mother and child would have lived, healthily. A decision to abort in those circumstances requires more than the vagaries of medical opinion. It requires the certainty of a revelation. One could only be sure of the justification to abort if a revelation had been obtained. But those who cannot obtain revelations must do their best to know and balance the interests of mother and child, and the law should let them do so.

One must also be especially sympathetic to the mother in the case of rape or incest. The mother in such a case has not invited the child. Only the child's father has, and only in order to violate both the mother and the child. Certainly no mother should be made to raise such a child forced upon her, but opportunities should be provided to place the child with another family if and when the child is born. Should the mother be made to give birth? Should the 10-year-old incest victim give birth to her brother? The victim-mother is dealing with the trauma of violence as well as an unwanted, uninvited life within her. The victim-mother who does not know the power of Christ to heal such wounds might understandably either break down in misery or apathy or come to hate as much as she has been hated. And there but for the grace of God we might all go. This woman needs a great deal of love and support.

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103. The force of this consideration would change according to what we understand to be the fate of the spirits of aborted children. If the spirit of an aborted child will never receive an opportunity to come to earth, then the sacrifice would be worth the cost that a mother makes to bear a child she may not live to see. Knowing that fact would, moreover, give intense significance to the sacrifice of women who have died in childbirth but were survived by the infant. On the other hand, if delay in coming to this earth is all that is at issue, and God will assure that all the spirits expecting to live here will in fact be born here at some time, then the harm to the child is considerably lessened, and no weighing of the mother's life against her child's lost opportunity need occur.

On the other hand, her child is innocent and has committed no crime. Essentially, the victim-mother has been given an abandoned child, one abandoned in her womb. And this child is willing to come from an antemortal life even to a body conceived in rape or incest, to parents who do not want her. The opportunity to experience life on earth means that much! Abort this child? Again, revelation seems called for, and those who cannot obtain it must struggle to balance the interests involved. The law should let them.

I wish we, as Americans, were ready to commit as much to these children and to victims of rape or incest as they need in order to heal. I would certainly rather pay for an effective program of healing such children and victims than for Houston's new basketball arena, my city's most recent, high-profile public project. Even so, only the power of Christ's grace is strong enough to heal such wounds.

I cannot think of any other reason why anyone should be able to reject a child, an anxious spirit ready to take a body. Certainly a potential handicap or birth defect is no excuse. Kathy Rudy writes as if American liberal culture actually demands that "defective" fetuses be aborted.<sup>104</sup> According to Rudy, the only babies that should survive in what she sees as our culture are those capable of complying with the culture's liberal expectation that all persons be rational and independent.<sup>105</sup> But all spirits are rational and independent. That the child's body suffers from temporal defects that prohibit the ability to reason, to care for itself, or to develop physically is no reason to reject the child. Finally, any other distress of pregnancy pails by comparison with the concerns mentioned above—such pains and aches are on a decreasing continuum of the mother's interest as compared to her child's interest, which remains great. In all of these other cases, the freedom of the child to experience life on earth and learn, by that experience, to choose God or not should be legally protected.

This is for me no light conclusion. Against it one can cite various legal arguments, but none persuade me away from this position. The current legal regime supporting an abortion right was reached entirely through non-democratic processes, by a mere flex of

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104. RUDY, *supra* note 2, at 3-21.

105. *Id.*

judicial muscle.<sup>106</sup> And the privacy argument is wholly circular. To me, the most likely argument in favor of abortion is that abortion equalizes a woman's sexual freedom with a man's.<sup>107</sup> Men's irresponsibility and exploitation of women with respect to sex and the natural consequences of sex—namely, children—is on a level with the worst forms of slavery.<sup>108</sup> And men routinely abandon women who then must raise their (the men's) children alone, with no or little emotional or social support, and very often without any financial support. And women often cannot find financial support elsewhere while they care for children. The law as currently administered seems unable to even things out. But this is a problem that the law should address. Men's actions in this regard impose on the salvific freedom of women and children. I understand abortion as a partial response to this problem. Because she can have an abortion, a woman can be just as free as a man can be from the consequences of sex. Abortion thus

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106. See Dennis J. Horan & Thomas J. Balch, *Roe v. Wade: No Basis in Law, Logic, or History*, in *THE ABORTION CONTROVERSY*, *supra* note 64, at 73 (showing that the legal and historical precedents appealed to by Justice Blackmun in *Roe v. Wade* do not stand up to constitutional scrutiny). See also Justice O'Connor's opinion in *Planned Parenthood v. Casey*, which justified retention of a constitutional abortion right essentially because, if the court backed down now, the Justices would look as if they were politically motivated (as if we did not already know that they were when their decision offered no textual, doctrinal, historical, or clear prudential support). 505 U.S. 833, 864-69 (1992) (O'Connor, Kennedy, & Souter, JJ., plurality) (noting

There is a limit to the amount of error that can plausibly be imputed to prior Courts. If that limit should be exceeded, disturbance of prior rulings would be taken as evidence that justifiable reexamination of principle had given way to drives for particular results in the short term. The legitimacy of the Court would fade with the frequency of its vacillation.

*Id.* at 866.) Justice Blackmun also concluded (in my view, laughably) along the same lines, "What has happened today should serve as a model for future Justices and a warning to all who have tried to turn this Court into yet another political branch." *Id.* at 923 (Blackmun, J., concurring in part, concurring in the judgment in part, and dissenting in part).

107. See Sally Markowitz, *A Feminist Defense of Abortion*, in *THE ABORTION CONTROVERSY*, *supra* note 64, at 389, 394-98 ("Feminists often understand this oppression to involve men's treating women as breeding machines, sexual or aesthetic objects, nurturers who need no nurturance. Women become alienated from their bodies, their sexuality, their work, their intellect, their emotions, their moral agency." *Id.* at 394.). See also, e.g., *Casey*, 505 U.S. at 912 (Stevens, J., concurring) (claiming that "*Roe* is an integral part of a correct understanding of both the concept of liberty and the basic equality of men and women"); *id.* at 928-29 (Blackmun, J., concurring).

108. See, e.g., Catherine MacKinnon, *Roe v. Wade: A Study in Male Ideology*, in *THE ABORTION CONTROVERSY*, *supra* note 64, at 96-98 (commenting on nonconsensual aspects of sexual intercourse).

becomes the way a woman frees herself from bondage to men with regard to sex.

This argument is unpersuasive, however. While I sympathize with women's plight and would rejoice at empowering women sufficiently to cope with men's irresponsibility regarding their children, this response is not a solution to the problem, first and foremost because it makes children the price of women's freedom. Given the analysis set forth above of the balance between a child's and its parents' salvific freedom,<sup>109</sup> I must conclude that abortion as a solution creates a larger problem than it solves. Women should not be allowed to stop the lives of their children in order to avoid having to deal with the burdens placed on them by men.<sup>110</sup> Curing men's irresponsibility by encouraging women to shirk theirs is equivalent to curing a family member's overspending by encouraging everyone to overspend. Innocent creditors, in this case the children, are left with the debts.

Other reasons also render abortion deficient as a solution for inequality. Creating equality through abortion rights actually implies that the goal of abortion is sex without consequences. Equality, again, is itself an empty idea.<sup>111</sup> Abortion creates equality by ridding both mother and father of the consequences of sexual intercourse. That method of creating equality assumes that sex without consequences is itself a good. Abortion rights, then, are about access to sex without consequences.<sup>112</sup> Serving that goal through abortion is fraught with

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109. See *supra* text accompanying notes 101-06.

110. I agree as a general matter with Markowitz's "Sacrifice Principle." According to Markowitz, this "Principle" stands for the idea that "[w]hen one social group in a society is systematically oppressed by another, it is impermissible to require the oppressed group to make sacrifices that will exacerbate or perpetuate this oppression." Markowitz, *supra* note 107, at 394 (emphasis omitted). But bearing a child is more than merely a "sacrifice," as Markowitz puts it. Rather, bearing the child is the fulfillment of a duty to the child. The question, then, is whether an oppressed group is—because of their oppression—justified in harming or oppressing a third, innocent group. The answer must be "no," because two wrongs do not make a right.

111. See *supra* note 86.

112. See, e.g., MacKinnon, *supra* note 108, at 100. Many appear not to want to admit this fact, most especially those who attempt to separate pregnancy from any significant causal relationship to sexual intercourse. E.g., Judith Jarvis Thomson, *A Defense of Abortion*, in *THE ABORTION CONTROVERSY*, *supra* note 64, at 117 (analogizing pregnancy to someone's borrowing one of your kidneys for nine months); EILEEN L. McDONAGH, *BREAKING THE ABORTION DEADLOCK: FROM CHOICE TO CONSENT* (1996) (McDonagh's work largely follows and refines Jarvis's) [hereinafter *BREAKING THE ABORTION DEADLOCK*]. See also Eileen

difficulties even besides its breach of a child's salvific freedom. For instance, Abortion posits as the model for equality the exploitive male who wants sex without commitment, preferably without consequences, as part of his unencumbered autonomy.<sup>113</sup> The exploitive male has always been willing to sacrifice a great deal that is good in order to

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McDonagh, *My Body, My Consent: Securing the Constitutional Right to Abortion Funding*, 62 ALB. L. REV. 1057 (1999) [hereinafter *My Body, My Consent*]. McDonagh posits, astonishingly, that an unwanted pregnancy resulting from voluntary sexual intercourse is equivalent to an assault by a fetus, which the woman bearing the fetus should have a right to use lethal force to repel in self-defense. Robin West, reviewing McDonagh's work, argues that the strength of McDonagh's argument is that it does not depend on the fetus being a non-person, since self-defense rights should be available equally against persons and non-personal, harmful forces. Robin West, *Liberalism and Abortion*, 87 GEO. L.J. 2117, 2117-18 (1999). But McDonagh's work is unsound. Even West points out that McDonagh has no real response to the argument that "a woman who is pregnant against her will, but as a result of voluntary intercourse, has implicitly consented to the pregnancy because she at an earlier time (when engaging in intercourse) voluntarily assumed the risk of conception." *Id.* at 2130. McDonagh attempts her best case through analogies that even West admits are used selectively depending on the point attempted, and not consistently throughout. *Id.* at 2129-31. In fact, none of McDonagh's (or Jarvis's) suggested analogies are equivalent to the kind of pregnancy that really matters to abortion-rights advocates, the case in which consensual sexual intercourse causes both the physical existence and absolute dependence of another human being on her or his mother. Arguments by analogy depend on our forgetting some aspect of that description. McDonagh's argument in fact depends on our forgetting the causal connection between consensual sex and pregnancy. She tries to obscure the causal connection explicitly by arguing that sex's causation of pregnancy does not matter for purposes of abortion debates. BREAKING THE ABORTION DEADLOCK, *supra*, at 40-59 (relying on analogies to tort law's legal and factual cause doctrines to obscure the causal connection between sex and pregnancy). But without sex to deal with, a woman would only become pregnant in order to have a child, and no (or very few) abortions would occur. That McDonagh views abortion as the key to sex without consequences is implicit in her argument.

113. See e.g., Celia Wolf-Devine, *Abortion and the "Feminine Voice,"* in THE ABORTION CONTROVERSY, *supra* note 64, at 414 (arguing that there is a discrepancy between women's practice of aborting children and the nurturing, non-violent, egalitarian, and relational "feminine voice" and that the aborting female fits the "male" model more than the "female" model); Francis J. Beckwith, *Arguments from Bodily Rights: A Critical Analysis*, in THE ABORTION CONTROVERSY, *supra* note 64, at 132. Abortion rights arguments are often set in gender-neutral terms. See MacKinnon, *supra* note 108, at 100. But the model for the neutral gender argument is a non-child bearer, a man. E.g., *My Body, My Consent*, *supra* note 109, at 1057 *passim*; Thomson, *supra* note 112, at 118-19 (only a kidney is needed to save Thomson's violinist). This "bad man" paradigm is also what allows suggestions such as Keith Pavlischek's in *One More Look at Judith Thomson's Argument and a Critique of David Boonin-Vail's Defense of It*, in THE ABORTION CONTROVERSY, *supra* note 64, at 176. Pavlischek posits that, given abortion-rights advocates' assumptions, allowing an abortion right logically requires that a father who did not want and does not consent to a pregnancy, but rather wants the mother to abort, should not be bound to pay child support. *Id.*

attain sexual freedom—meaning freedom from the effects of sex.<sup>114</sup> Using abortion rights to equalize access to sex without consequences only treats the woman like an exploitive male.<sup>115</sup> The model not only presumes that the male is incorrigible but concludes that the woman is, too.

The model also devalues pregnancy by denying the uniqueness of that experience. This model for equality seems particularly unsuited to women, most of whom have a natural ability and many of whom have the propensity to bear and care for a child. In fact, encouraging the woman to deny what her body is naturally inclined to do results in emotional and psychological trauma in many women who have abortions.<sup>116</sup> Women do not have abortions for abortion's

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114. Sexual freedom can also be viewed from the paradigm of responsibility and duty, in which case it would mean not avoidance but the embracing of the results of sexual activity. In the case of heterosexual sexual intercourse, this would entail a commitment to nurture to adulthood any children that resulted.

115. In this tradition of male exploitation, men's autonomy and self-fulfillment is promoted and women and children are considered a resource to be used by men to that end. Caroline Whitbeck, *Taking Women Seriously as People: The Moral Implications for Abortion*, in *THE ABORTION CONTROVERSY*, *supra* note 64, at 430, 440-43. When women are given the same right, their children are considered by them to be a resource to be used in seeking the women's own self-fulfillment.

116. See, e.g., MARTHA BECK, *EXPECTING ADAM: A TRUE STORY OF BIRTH, REBIRTH, AND EVERYDAY MAGIC* (1999). Beck recounts that she had numerous miraculous experiences—she heard voices, received help from unseen beings and friends who mysteriously came to her aid, experienced redemptive love, and so on—all of which forcefully convinced her not to have an abortion, but rather to give birth to her Down-syndrome child, Adam. Beck, who lacks religious faith and is somewhat agnostic about the source of these experiences, seems largely to attribute these experiences to the forces of her own body, implying that she would have denied a part of her essential self had she had an abortion. She knows of no proof that anyone else's body would work as hers did and so is unwilling to generalize the experience and see in it a message about abortion to others. But other women have reported spiritual, emotional, or psychological trauma from abortions. For example, Steinberg reported the following emotional symptoms or changes of behavior in women who had undergone abortions:

The predominant feeling is grief, including sadness, loss and regret. Furthermore, women experience anger at themselves and their partners. Other feelings include fear, anxiety, mistrust, discomfort around infants and small children, decreased self-worth and isolation. Many women also experience depression and some type of obsession with the abortion itself. This obsession includes flashbacks, nightmares and wondering what the fetus would have looked like had it been born. Furthermore, women experience mild to severe guilt.

Besides traumatic feelings, many women experience behavior changes as well. For example, abortion is a cause or catalyst in the breakup of many relationships. Other negative changes include substance



sake.<sup>117</sup> But motherhood is unappreciated in our society, which encourages focus on self and self-fulfillment. Motherhood is also considered worth nothing monetarily but rather parasitic of economic production, which is more prized and rewarded. Behind most abortions are men and women who do not want responsibility for the natural consequences of sex and do not value motherhood enough to support, love, and value a mother for her being both a woman and a mother. It is not surprising that women do not feel they have the support structure around them that would allow them to nurture a child in the way the child should be nurtured. For this reason, regulation of abortion must include steps to increase and improve alternatives, not just through adoption but also in supporting the mother.<sup>118</sup>

Ironically, in the end, abortion does not result in sexual equality. The woman bears the primary burden of abortion. Usually she bears the cost, but she always bears the pain of the procedure. And society casts primary blame for the abortion tragedy at women's feet. In abortion rhetoric, for example, the father is carefully excluded from responsibility with respect to the unborn child so that neither his consent nor even his feelings are relevant.<sup>119</sup> Were the rhetoric and

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or alcohol abuse, sleep or eating disorders, frequent crying and suicidal thoughts. Some women even attempt suicide.

Terry Nicole Steinberg, *Note And Comment: Abortion Counseling: To Benefit Maternal Health*, 15 AM. J. L. & MED. 483, 489-90 (1989) (internal citations omitted).

117. See, e.g., Whitbeck, *supra* note 115, at 434-35 (“[W]omen do not want abortion any more than they want to have mastectomies, even if the risks from each are minimal.” “[W]omen do not want abortions, although under duress they may resort to them.”).

118. The Church sponsors an agency called LDS Family Services as a support arm for women who are unmarried and pregnant, whether Church members or not. Telephone interview with Ken Lowe, Area Director, LDS Family Services (June 5, 2001). Counseling as needed, including group work, and assistance with grief resulting from adoption are provided free of charge, as are adoption agency services and medical care throughout the pregnancy for women who do not have insurance. *Id.* The Church pays for the program's cost. *Id.* The adoption service encourages mothers to choose adoptive couples, and couples and mothers are encouraged to choose whether or how much contact they will have with each other after the adoption. *Id.* In addition, the Church sponsors a welfare program through its lay priesthood Church administration to assist faithful Church members temporarily if need exists. *Id.* In the welfare program, Church members are encouraged to help themselves as much as possible to obtain funds for shelter and food. *Id.* However, if other sources of funds are exhausted, payment of rent and food from ecclesiastical funds is usually available. *Id.* It is thus foreseeable, given the right circumstances, that an unmarried, pregnant Church member might be provided with necessities and medical care throughout a pregnancy and counseling through and after adoption. *Id.*

119. Typically, abortion rhetoric focuses only on the fetus or the pregnant woman. Yet, if “the political struggle over abortion is ultimately grounded in different attitudes toward

remedy honest, the father would not get off so lightly. It is as if the woman said to him, "I'm pregnant, but you don't need to worry about it. I'll pay to have a doctor scrape away at my inner core<sup>120</sup> to remove the baby, and I'll take full responsibility for choosing this horrible alternative. Don't you worry about a thing. You needn't concern yourself with it." And that, as if we could conclude that anything like that ever really happens, is supposed to make her equal with him. Men also profit from the abortion business itself.<sup>121</sup> A true safeguard of women's equality would exclude men from all profit from abortion.

A much better legal approach would attack the equality problem at its roots. Change the laws to protect the salvific freedom of women and children. Make men live up to their obligations. I am sympathetic with women's distrust of a male legal system's ability or propensity to deal adequately with male exploitation.<sup>122</sup> But name nine women Supreme Court Justices. Elect women president and vice president and fifty women governors. Fill Congress and the state legislatures with women. Appoint all-women corporate boards for Fortune 500 and other corporations. Then see whether men will act as irresponsibly as they do! See whether women gain control of their sexual lives!<sup>123</sup> But do not force the children to bear the burden of

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human sexuality," Graber, *supra* note 2, at 28, then what men do and think has as much to do with the issue as what pregnant women think, particularly if, as Catherine MacKinnon and others argue, men rather than women are primarily responsible for the conditions of sexual intercourse which result in pregnancies. *E.g.*, MacKinnon, *supra* note 108, at 98. *See also* Markowitz, *supra* note 107, at 394.

120. The phrase is Whitbeck's. Whitbeck, *supra* note 115, at 435.

121. Many abortion doctors and clinic owners are male, and male-owned businesses traffic in fetal parts. *See, e.g., Fetuses for Sale? Accounts of For-Profit Industry Lead to Investigation*, (March 8, 2000), at ABCNews.com, [http://abcnews.go.com/onair/2020/2020\\_000308\\_fetalparts\\_feature.html](http://abcnews.go.com/onair/2020/2020_000308_fetalparts_feature.html).

122. Professor Cheryl Preston suggested this to me.

123. Often, when abortion-rights advocates confront the suggestion that mothers should not be the ones to decide whether to abort or not, the advocates resort to *ad hominem*. Subtly but hotly they question the motives of the abortion foe. For example, Catherine MacKinnon argues, "Why should women not make life or death decisions?" MacKinnon, *supra* note 108, at 96. *See also* West, *supra* note 112, at 2125 (implying that antagonism to abortion could only be fueled by traditional, cultural, discriminatory assumptions about women generally, assumptions that disregard her status as a free agent). But the *ad hominem* is a *non sequitur*. Women should be free to make life and death decisions, but only according to law and only when justified. MacKinnon herself concludes that leaving abortion in a wholly private sphere, as *Roe* did, does not equalize women's status with men's because men largely control women's sexual and financial lives. MacKinnon, *supra* note 108, at 96-103. As long as men control sex and money, women's ability to obtain an abortion will likewise remain in largely

their fathers' sins. And do not force women to choose between bearing the burden of men's irresponsibility and casting that off, Medea-like, on their children.<sup>124</sup> Some progress has been made along these lines, in enacting marital rape laws, remedying sexual harassment, requiring equal wages, increasing reporting of child abuse, and collecting child support more successfully. But the current legal response is not adequate, and more must be done. Greater immediate progress could be made in ensuring that women vote and in placing women in positions of power, so that the legal system can correct male exploitation effectively. These would be better legal cures for male sexual irresponsibility than giving a woman a license to act as irresponsibly as a man.

In fact, protecting women and children's salvific freedom requires encouraging men to care for their children. This move may require a paradigmatic change in our thinking. Exploitive men—not their children—should be held responsible for the harm men cause.<sup>125</sup>

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male control. *Id.* Ironically, MacKinnon's argument for women's abortion rights, if accepted, would leave the unborn worse off with respect to their mothers than their mothers have ever been with respect to their fathers. MacKinnon's men merely have sex and purses in their hands. Her women have their children's lives in their hands. The private sphere that MacKinnon would place around the mother (the private sphere hidden behind her *ad hominem* attack on the pro-life position) thus has the potential for far greater harm than anything she complains that men can do. It is not women's making life and death decisions I am concerned about, but lawlessness where life and death are concerned. Let women make the life or death decisions. But just as a woman's sex partner may not arbitrarily choose to end the woman's life, so too a woman should not arbitrarily be able to choose to end her child's life.

124. Caroline Whitbeck characterizes abortion as a "grim option," akin to the decision to be hung with either a silk or a hemp rope. Whitbeck, *supra* note 115, at 434. Whitbeck objects to the allusion to Medea, however. *Id.* at 434. She sees Medea as killing her children only from rage. *Id.* However, Medea's actions may have been born of despair or a desire for justice, not the misogyny that Whitbeck claims. In Euripides' play, the god rescues Medea after she slays her children, implying a measure of justice and divine approval of her act. *See* EURIPIDES, *THE PLAYS OF EURIPIDES* (Shelley, Dean Milman, Potter and Wodhull trans., 1947). The double irony is that the god is a male, Medea's father. *Id.* Whitbeck correctly (and ironically) notes that Medea is "a product of the masculine imagination." Whitbeck, *supra*, at 434. For further discussion on abortion and the exploitive male as the paradigm for equality, see *supra* notes 113-15 & accompanying text.

125. Actually encouraging men through legal means to support their children has never been aggressively tried. Suppose child and wife abusers were attacked with the enthusiasm of the war on drugs. Suppose the IRS collected child support payments. Suppose a future president talked at length and often about the obligations of fathers and the way her husband cares for her children. Suppose we had Children's Day (as some other countries do) in addition to Father's and Mother's Day. Formulating this policy would require a great deal more text than I have here, but taking men's obligations toward their children seriously is a worthy and often neglected goal of government.

Then the end served by the law would be not sex without consequences but caring for children, and mothers would be praised and valued, even empowered toward their work in service of that goal. Men's work would also rightly be revalued as primarily a means to serve children, the work in which mothers have traditionally had primary control and experience.

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Others have made many of these arguments for limiting abortion rights, but, as should be obvious by now, I am persuaded partly because of my faith. I must care for unborn children. A few years ago, shortly after I was hired at South Texas College of Law, my colleague Jim Paulsen and I were talking about the function of government, and he said to me, "You have no idea just what a diversity candidate you were" for teaching law. I now see that he was right. The views of government and the worldview expressed here are somewhat unusual in the legal academy. I am confident in what I am, however. I would hardly be a disciple of Christ if I ignored what He has said when I went to work or when I voted. But I do not expect many people to adopt these views. My own faith arises from what I have experienced. I see these experiences and the resulting faith as a great blessing from God. Had I not experienced what I have, I myself would not believe what I write here. So though I have experienced these things, but for God's blessings to me I would walk in other shoes.

Some will not understand the views I express here, and others will criticize these views, saying that a faith-based view of government is un-American<sup>126</sup> or, less plausibly, unconstitutional.<sup>127</sup> Some may

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126. See, e.g., Tooley, *supra* note 64, at 220 ("[I]t is surely true that it is inappropriate, at least in a pluralistic society, to appeal to specific religious beliefs of a nonmoral sort ... in support of legislation that will be binding upon everyone, including those who either accept different religious beliefs, or none at all."). Tooley's naked assertion here is too much to pass by without comment. By whose views will appropriateness be determined? What counts as a pluralistic society? What are "specific religious beliefs of a nonmoral sort"? I assume Tooley would include mine from Part I, but the belief in the premortality of humans is the most moral approach that I know of to thinking about other persons' pasts and potential. Is this a nonmoral sort of rule? What does "nonmoral" mean? I suspect it means something like "not subject to refutation by rational argument." But then I must ask: whose rationality and whose argument? I am afraid Tooley will be unable to set reasonable answers to these questions.

And does it matter merely that such a belief can be appealed to in support of certain legislation? Is the legislation inappropriate if a religious belief of a nonmoral sort can be appealed to in support of it—even if plenty of moral religious beliefs also support it? And why? I frequently submit to laws that I do not agree with. And even though proponents of those laws pretend to make only rational arguments, they hold to their positions irrationally and/or irrationally refuse to hear others. These irrefutable beliefs are the equivalent of what I suspect Tooley means by religious beliefs of a nonmoral sort. Moreover, religionists argue over beliefs all the time, quite rationally, and there is no reason why one who does not believe in a “religion” cannot join the argument. *See also generally* the exchange between Greene and Idleman noted in the next footnote.

127. Compare Abner S. Greene, *The Political Balance of the Religion Clauses*, 102 YALE L. J. 1611, 1613 (1993) [hereinafter Greene, *The Political Balance*] (arguing that the Establishment Clause “should be read to forbid enacting legislation for the express purpose of advancing the values believed to be commanded by religion”) and Abner S. Greene, *Is Religion Special? A Rejoinder to Scott Idleman*, 1994 U. ILL. L. REV. 535, with Scott C. Idleman, *Ideology as Interpretation: A Reply to Professor Greene’s Theory of the Religion Clauses*, 1994 U. ILL. L. REV. 337 (showing various fallacies in Greene’s arguments). *See also* Michael J. Perry, *Why Political Reliance on Religiously Grounded Morality Does Not Violate the Establishment Clause* 42 WM. & MARY L. REV. 663, 670 (2001) (arguing that while “the nonestablishment norm forbids government to privilege one or more churches[, i]t does not forbid legislators (or other policymakers), even when they happen to constitute a legislative majority, to make a political choice disfavoring conduct on the basis of a religiously grounded belief that the conduct is immoral”). With respect to abortion, *see, e.g.*, Greene, *The Political Balance*, *supra*, at 1621 & 1638, and Paul D. Simmons, *Religious Liberty and Abortion Policy: Casey as “Catch-22”*, 42 J. CHURCH & STATE 69, 74-77 (2000) (arguing that any protection of a fetus from the moment of conception amounts to an establishment of religion because (Simmons claims) only metaphysical religious arguments support the view that a fetus is a person from the moment of conception). Beckwith, in reply, persuasively argues that defining *person* is a metaphysical activity whether one does it religiously or not, and gives examples of non-religious metaphysical views that conclude that a fetus is a person. *See* Francis J. Beckwith, *Law, Religion, and the Metaphysics of Abortion: A Reply to Simmons*, 43 J. CHURCH & STATE 19, 26-32 (2001).

128. 1 Cor. 2:14; *see also* BM 1 Ne. 8:25-28 & 11:35 (recording Lehi’s vision of the great and spacious building, whose occupants were “mocking” believers, and which was the “world and the wisdom thereof”).

129. *See, e.g.*, ROBERT H. BORK, *SLOUCHING TOWARDS GOMORRAH: MODERN LIBERALISM AND AMERICAN DECLINE* 177, 173-85 (1996) (arguing that the moral issue affecting one’s decision whether abortion is right or wrong should not be whether the fetus is considered sentient or whether its appearance is human-like, but rather whether prospective life may have been denied the unborn individual); Schwarz, *supra* note 64, at 257; John T. Noonan, Jr., *Abortion is Morally Wrong*, in *THE ABORTION CONTROVERSY*, *supra* note 64, at 203; Lynn Wardle, *The Quandary of Pro-Life Free Speech: A Lesson from the Abolitionists*, 62 ALB. L. REV. 853, 859-881 (1999) (criticizing *Roe* on grounds that it broke with history; resurrected and expanded substantive due process; shifted regulatory power from the states to the federal government; shifted power from the legislative to the judicial branch, thus weakening self-government; and undermined respect for the rule of law and judicial ethics); Wolf-Devine, *supra* note 113, at 414; Richard G. Wilkins, Richard Sherlock, & Steven Clark, *Mediating the Polar Extremes: A Guide to Post-Webster Abortion Policy*, 1991 BYU L. REV. 403 (advocating reform of *Roe* on the ground that *Roe* ran contrary to popular opinion about

mock. Christians are taught to expect mockery. Paul wrote, “[T]he natural man receiveth not the things of the Spirit of God: for they are foolishness unto him: neither can he know *them*, because they are spiritually discerned.”<sup>128</sup> And, frankly, I do not want our politicians openly to adopt these principles. I am sure that they would abuse them before long, and thus belittle the principles themselves. Besides, plenty of other reasons exist to criticize our laws. The literature is replete with commentary on abortion not dependent on but consistent with faith and reaching results similar to those I have proposed.<sup>129</sup>

Why speak, then? Simply forthrightness with my friends requires that I share what has convinced me. On the abortion issue, my faith plays a significant role. I either reveal what has truly convinced me on this issue or I make other collateral and, I think, not as convincing, arguments. But if these collateral arguments have not fully convinced me, why should I think they will convince others? Two other reasons prompt me to speak. First, some readers will understand a reality for which love, peace, faith, hope, and answered prayers are evidence. For them, the explicitly faith-based discussion matters. Second, I wish those who do not understand the faith-based argument to meet those who do, to try to see the world through their eyes. The vision of non-believers may be blurry, but even though only spiritually squinting into this world, one mostly outside it may see enough at least to respect and even value its existence.

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abortion, unduly limited legislatures with regard to what should have been a legislative issue, and ignored the interest of the fetus in life).

