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Upholding Life Guideline #6 for Government and Citizenship

by
James W. Skillen©

On April 18, the U.S. Supreme Court handed down a judgment on partial-birth abortions that once again heightened the argument between those who support restrictions on abortion for the sake of the unborn and those who oppose the ruling because they say it endangers women's lives and freedom.

The case was *Gonzales v. Carhart*, which represented a legal challenge to the federal law of 2003 that outlawed partial-birth abortion. That procedure, which is a rarely used, destroys the late-term fetus after it has been partially delivered from the womb. The Supreme Court's precedent-setting *Roe v. Wade* decision in 1973 recognized the state's interest in regulating abortion, particularly in the third trimester of pregnancy, even while it established the so-called right of a woman to have an abortion. But up until now, no significant restriction on abortion procedures has been upheld by the court.

Consequently, many who support the law that Congress passed in 2003 see the *Gonzales v. Carhart* decision as a first small step toward reversing *Roe v. Wade*. And many who have opposed any restrictions on abortion fear that the pro-life advocates may be right. That is why Justice Ruth Bader Ginsburg wrote in her dissenting opinion in the case that the court's decision "cannot be understood as anything other than an effort to chip away at a right declared again and again by this court—and with increasing comprehension of its centrality to women's lives" (*Financial Times*, 4/19/07).

Interestingly, Ted Olsen, writing in *Christianity Today* (June, 2007), points out that Justice Ginsburg is no fan of *Roe v. Wade's* argument that women have a "right of privacy." The right of privacy is not a sufficient foundation to protect a woman's right to an abortion, in Ginsburg's view. Instead, according to Olsen, what Ginsburg wants the court to uphold (quoting Ginsburg) is "a woman's autonomy to determine her life's course, and thus to enjoy equal citizenship stature." From Ginsburg's point of view, nothing in regard to

pregnancy should interfere with a woman's autonomy. Olsen wants to remind pro-life advocates, therefore, that their aim should not be trying to overturn *Roe v. Wade* but instead, reversing "the widespread view of children as a burdensome infringement on autonomy—a burden that can be acceptably lifted by killing the child, even as he or she emerges from the birth canal."

The Supreme Court's decision in *Gonzales v. Carhart* and Olsen's comments on Ginsburg's dissenting opinion provide an excellent point of departure for the introduction of the sixth *Guideline for Government and Citizenship*, published by the Center for Public Justice. That *Guideline* is titled, simply, "Human Life" (available at: www.cpjustice.org/guidelines/human_life.html).

Government's Responsibility

1. In the first of six affirmations the *Guideline* says, "Government's responsibility for the political community begins with the protection of (a) the lives of its citizens and (b) the life-generating, life-sustaining institutions of marriage and family." Of course, such an affirmation takes the well-being of women fully into account. Dangers to their lives, whether from pregnancy or from back-alley abortions, has to be high on the list of government obligations to protect life. But it is a mistake, from this *Guideline's* point of view, to pit the unborn (or partially born) child against the pregnant mother's right of autonomy. Life-generation by humans lies at the foundation of human life, just as human community lies at the foundation of life. Absolute autonomy of a man or a woman is a myth, a false and unobtainable ideal. The fundamental question is, how can human beings live together in ways that uphold life and the life-generating process for all.

2. We all know that many pregnancies occur in circumstances that are less than optimum for the future well-being of an unborn child. But that should not lead us away from the recognition that the best way for human life to be generated, protected, and developed is through sound marriages and families. That is the second affirmation of this *Guideline*: "The generation of new human life belongs, by the Creator's design, to married couples, who bear primary responsibility for the care and upbringing of their children." In other words, government's responsibility to protect life entails protecting and promoting marriage and family life, because that is where the unborn and the newly born are best protected and loved.

From this point of view, therefore, the ideal of autonomy for either a man or a woman is a mistaken starting point. When it comes to sexual intercourse that can lead to pregnancy, a man and a woman have already participated in an act that represents their lack of autonomy and their dependence on and obligation to one another. Of course, one must immediately recognize that rape or incest represents a violation of a woman's dignity and in no way represents her willing entrance into an obligation toward that man or for a child that might, as a result, have been conceived within her. Government's must act to protect women from such violations and to punish men who commit such acts. Yet

protecting women from violation and not allowing men to escape either a penalty or the obligation to the women they have violated should be seen as part of the government's responsibility to protect life and the life-generating process in marriages and families.

Building Community

3. "When pregnancy and childbirth occur outside of marriage or at a time of marital or family crisis," the *Guideline* continues, "difficulties arise that typically call for the assumption of extraordinary responsibilities by extended family members, supportive friends and neighbors, churches, social service organizations, and/or public authorities. All such assistance should aim to support and nurture life, marriage, and the family, rather than to encourage abortion."

The point here is not to push aside any consideration of dangers to women that may come from pregnancy or from a violative act that caused pregnancy, but rather to consider first the proper and healthy patterns in which life should be affirmed and nurtured. We can only decide how best to respond to that which violates and destroys life if we know what the good is that should be encouraged and upheld. Pregnancy is not the only circumstance in which a woman (or a man) may find that individual "autonomy" is restricted. Loss of a job, ill health, lack of friends, an accident that lays one up or causes a long-term handicap—any number of negative circumstances can put a person in a bind. But the partial remedy for most such degradations is the help provided by family members, friends, service providers, and government. The first step in helping someone with an unwanted or problematic pregnancy, then, should not, in most cases, be the offer of an abortion but the extended hand of those who are building and strengthening community and making it possible for life to continue even for those in great distress.

4. In the same way that our laws affirm the dignity of human life and then make room for those rare circumstances in which police officers or the military may be justified in using force against those who threaten life, so we should consider abortion to be a last-resort option rather than a first-resort option. This is the burden of the *Guideline's* fourth affirmation: "Abortion entails the taking of human life and is a violation of the life-generating process. Therefore, abortion should *not* be allowed under public law as an ordinary or standard means of family planning, or for the social and psychological convenience of those responsible for pregnancy."

5. The fifth affirmation follows directly from the fourth: "As a life-ending act, abortion should never be legalized as a freedom right of those responsible for a pregnancy. Government bears responsibility for decisions that involve the taking of life. Consequently, abortion should require public-legal authorization, and then only under circumstances of unusual danger to the pregnant woman."

Once again, we need to emphasize that the burden of pregnancy should never fall disproportionately on the pregnant woman, particularly if the pregnancy occurs outside of marriage. There may, indeed, be circumstances that justify an abortion. But the presumption must be in favor of life, of protecting life and the life-generating communities of marriage and family. As soon as people generally, and government in particular, give up on the protection of life in favor of allowing citizens to have a free choice about when to abort life, the movement toward the degradation of life picks up steam. The quest for autonomy can never produce autonomy; it only leads to a condition in which every person is encouraged to function more and more on one's own, where each person is left to his or her own devices, and where no one bears responsibility for anyone else, because, after all, each person is "free" to decide whatever he or she pleases. Instead, the presumption should always be in favor of life, protecting life and the life-generating process. It is the taking of life, including the life of the unborn, that should always have to be justified in terms of very high standards of life protection, not the other way around. It is not abortion that should be free and easy while any restriction on abortion would have to be justified in terms of a "high standard" of autonomy.

6. The final affirmation of this *Guideline* continues the theme of community building in favor of life: "With respect to the reasons why pregnancy sometimes arrives as an unwanted burden to a woman, government should do everything in the sphere of its responsibility to:

- support adequate health care for pregnant women and for infants
- encourage pregnancy counseling
- promote adoption
- strengthen foster care."

It is true, of course, that there is much more to the protection of life than protecting the unborn and supporting the life-generating capability and responsibility of men and women. Every person's life should be protected, and that requires protection of the means by which people live together and sustain life. Food production, access to clean water and air, the availability of jobs, and much more are all necessary if life is to continue. But all of these means of sustaining and enhancing life depend on human communities and the interdependence of people and institutions. No one is autonomous.

Government can and must play its part in protecting life, and that should include more than simply penalizing those who take life. Government must be on the side of affirming and upholding life, which means upholding all the life-generating and life-sustaining institutions through which human creatures depend on and nurture one another in life.