

while Justices John Paul Stevens, David Souter, and Ruth Bader Ginsburg dissented. The Court also upheld U of M's law-school admissions policy 5-4 in a separate case, *Grutter v. Bollinger*. The policy assigns no numerical value to a race-based application but weighs it in the admissions process. In *Grutter*, the Court accepted "diversity" but narrowed its use post-*Bakke*.

The Court's ruling in *Gratz* was a defeat for U of M and its supporters, who privately told Michigan legislators in the 1990's that they would not compromise on the race-based policy. Dr. Carl Cohen's research, Deborah Whyman's tenacity, Jennifer Gratz's courage, the CIR's legal work, and the U.S. Supreme Court's ruling mean that the University of Michigan can no longer discriminate against undergraduate applicants on the basis of race.

*Greg Kaza served three terms (1993-98) in the Michigan House of Representatives.*

## LIFE

### Fateful Choices

by Doug Bandow

There are few issues more emotional than abortion. The dogmatism of the respective combatants strikes fear in the hearts of lesser mortals—which means almost every politician. Three decades after *Roe v. Wade*, the issue of abortion is unlikely ever to be resolved politically.

The major parties have largely followed the passions of their most active members, which means that Republicans usually are pro-life; Democrats, pro-abortion. Only Republicans, however, are regularly chided for their lack of inclusiveness. Recently, the Michigan Democratic Party officially recognized the Choose Life Caucus. Alas, such acceptance is not likely at the national level: Last year, the Democratic National Committee refused to post a link to Democrats for Life of America on the DNC's website. In 1992, the party barred Pennsylvania Gov. William Casey from addressing the Democratic National Convention because he dared suggest that a party that purported to stand for the disadvantaged and helpless should protect the unborn.

In contrast, Dick Gephardt, Bill Clinton, Al Gore, and now Dennis Kucinich have all forsaken their pro-life principles in hopes of garnering votes. Kucinich explained his convenient flip-flop: "People want to make sure that their president has a capacity to grow and a capacity to evolve." And, apparently, to sell out.

So strong are these political currents that, even with the GOP in control of the Senate, nominees for every federal court feel constrained to say that they have no opinion on—indeed, have never even thought about—the most contentious constitutional decision of our time. A friend of mine lost a nomination as district-court judge because he answered the *Roe v. Wade* question incorrectly in the view of the Democratic members of a local legal panel, created to vet nominees for the state's two Democratic senators.

The abortion issue seems to require a balancing of life and liberty. As a result, few pro-lifers really feel comfortable treating abortion as murder, which warrants the severest penalties in the criminal code, while many abortion advocates draw back from supporting partial-birth abortion, where the line between abortion and infanticide simply disappears.

Many Americans, and certainly most politicians, wish the issue would simply go away. Yet human life is at stake. That alone does not preclude support for abortion or the legal right to abortion. It does, however, suggest that the issue is fundamentally different from many of the bills that clutter legislators' calendars and controversies that fill newspaper op-ed pages. Highway pork might be a waste, and corporate welfare might be offensive; the taking of life, however, requires a more serious justification than that which is typically offered.

Anti-abortion activists probably enjoy their strongest political position in years. The President proclaims his support for their agenda, and the GOP runs Congress. Pollster John Zogby figures that the "pro-life advantage" in the 2002 Senate races was seven percent.

Evidence of the pro-life movement's clout came late last year, when pro-life members derailed a bankruptcy-reform measure, backed by a who's who of corporate America and pushed by the House Republican leadership, because the legislation penalized protestors at abortion clinics. This year, pro-lifers won the battle over partial-birth abortion. Even the Senate voted to ban this particularly gruesome procedure, in which the child

is partially delivered, only to be killed brutally.

This pro-life measure is welcome, though, in a sane constitutional order, the federal government would have no power to legislate at all in this area. The constitutional order is not sane, however, and Congress will not keep its hands off abortion, so the ban at least shifts the balance a little bit. Even so, the prohibition will not protect many lives, let alone transform what Pope John Paul II has called the "culture of death." Mark Crutcher, president of Texas pro-life group Life Dynamics, complains that "banning partial-birth abortion will not save one baby's life" and that late-term abortions will continue through other means. Amie Kerhner, who works for the Kansas City clinic of George Tiller (which probably has performed more partial-birth abortions than any other "provider") agrees: "As soon as they add an exception for the life and health of the mother, you're just not going to see anybody being prosecuted under this." Indeed, since the number of partial-birth abortions is so small—around 2,200 per year—any impact will inevitably be minor.

Pro-lifers have also successfully fought Washington's promotion of abortion internationally: The U.N. Population Fund has promoted the procedure worldwide and, even worse, has underwritten, at least indirectly, coercive Chinese population policies, including forced abortions. Private groups, such as the International Planned Parenthood Federation, have also advanced abortion while on the federal dole. Refusing to fund such organizations has made a necessary moral statement and perhaps saved some lives—especially female ones, since, in countries such as China and India, abortion is often used for sex selection, which almost always favors boys. By one estimate, South Asia now lacks 74 million women who, based on demographic norms, should be alive today.

States have been an even more fertile arena for activism. For instance, many states require parental consent and instruction on fetal development, measures that are eminently reasonable and likely preserve some lives. *World* found that abortion among teens fell most quickly in states with strong parental-consent laws. Such restrictions remain effective only at the margin, however. In most cases, a woman who wants an abortion can easily procure one.

Ending abortion in America by po-

litical means looks increasingly unlikely. Few new marginal (and thus constitutional) restraints are available. At the same time, the courts continue to protect the vast majority of abortions.

A more basic social transformation is necessary. The partial-birth abortion debate, in particular, has served as a powerful educational tool at a time when new technologies are increasingly forcing us to confront what it means to be human.

Partial-birth abortion demonstrates that the slippery slope beckons. Peter Singer has long plied academia as a frank advocate of infanticide. Others tread his path: Dan Brock, a bioethicist from the University of Rhode Island, has suggested abortion for babies determined by genetic testing to be disabled. Brock defends his view by saying that the decision should be left to parents, not to government officials.

Outside of a culture of life, it is virtually impossible to enforce a legal framework that respects human life and dignity. So long as *Roe v. Wade* stands, most abortions will remain legal. If 30 years of activism—and at least three Republican presidents formally dedicated to overturning the decision and a Supreme Court largely shaped by GOP presidents—cannot eliminate a decision that barely qualifies as constitutional law, *Roe* is not likely to be eliminated.

Moreover, even if *Roe* disappeared, abortion would remain legal until the states restricted the procedure. That is unlikely to happen in California, New York, and a score of other jurisdictions, absent a political earthquake—which will not occur without an equally powerful philosophical and moral earthquake.

Yet pro-lifers are making progress. Perhaps the most important measurement is the abortion rate, which has fallen from 29.3 per 1,000 women in 1981 to 21.3 today. And there are now as many people who claim to be against abortion as there are those who support it. Of the third of Americans who say that their view has shifted, two thirds have become more pro-life. Seven in ten say they favor “restoring legal protection for unborn children.” Six in ten say it is “too easy” to get an abortion and want tougher restrictions, some of which are not allowed by *Roe v. Wade*; indeed, that decision receives popular support chiefly because most people have no idea what it actually requires.

Building popular support has not been easy, but pro-lifers have benefitted from the extremism of the pro-abortion lobby.

The attempt to keep a parent from even learning about his daughter’s desire for an abortion threatens family relationships and responsibilities. And the partial-birth abortion issue has helped by illustrating the logical end of the pro-abortion movement: a dead baby.

The impact of medical advances is also important: Premature babies as early as 26 weeks are now being saved. A recent *Newsweek* headline read: “Preterm births are on the rise, but new medical studies show that the tiniest babies often do just fine.” We fight so hard to save premies, while blithely killing babies of the same age destined for normal births.

Even the younger generation, long assumed to be irrevocably in favor of abortion, is becoming more pro-life. A bare majority of college students support keeping abortion legal, but the percentage is among the lowest in 33 years. According to a Zogby poll, one third of 18- to 29-year-olds would ban all abortions, compared to just 23 percent of those aged 30 to 64 and 20 percent of those over 65. The sharpest decline in abortions has come among teenage girls.

Growing popular unease mixed with fear of controversy has helped drive doctors out of the abortion business. The Guttmacher Institute reports that the number of abortionists fell to 1,800 in the year 2000, from about 2,000 four years before (itself down sharply from the peak of 2,900 in 1982). Notably, there are now fewer physicians performing abortions than there were in 1974, the first year abortion was legal across the United States.

Researcher Lawrence Finer attributes some responsibility to new contraceptive techniques but adds that pro-life activists have thwarted efforts to “establish basic abortion services.” Wayne Goldner, the only board-certified OB-GYN and abortionist in southern New Hampshire, claims that “[i]t’s pure and simple fear” of harassment that stops more doctors from performing abortions.

Fewer doctors are being trained to perform abortions, a result of the activism of such groups as the Christian Medical Association as well as the impact of hospital mergers, which often link religious institutions to secular ones. This, naturally, has sent the pro-abortion lobby forth to demand abortion training. New York City Mayor Michael Bloomberg issued an executive order mandating abortion education for all OB-GYN residents, though students are allowed to opt out for

moral or religious reasons.

Such requirements have been combined with mandates—in New York and elsewhere—to pressure even Catholic hospitals and healthcare plans to offer abortion counseling and referrals, if not abortions themselves. (A 1996 federal law bars states from forcing plans and providers to cover or offer abortions.) Some people apparently believe that abortion should not just be an option.

One of the most important tasks for the pro-life movement is to recapture the term *choice*. To have sex is to choose to engage in the act that creates babies. Except in cases of rape (or those of genuine mental incapacity), a choice was made. Abortion represents an attempt to avoid responsibility for the consequences of choice. Restricting the “right to choose” an abortion ensures that everyone accepts responsibility for the serious consequences of her sexual choices.

To say that government should intervene to protect the lives of babies is not to ignore the potentially enormous problems that accompany unwanted pregnancies. An estimated 30 million women have had abortions over the last 30 years. Although some chose the procedure because it was convenient, many did not act for frivolous reasons. They faced the seemingly daunting challenge of an unwanted pregnancy and saw abortion as the best option.

Opponents of abortion should respond to them with compassion, not condemnation. One example is the pro-life campaign Silent No More, in which women who have had abortions express their regret at having done so. They have used everything from candlelight vigils to television ads to point out that abortion created more problems for them than it “solved.”

Ultimately, politics will not win the issue. Pro-lifers must concentrate on changing public attitudes. Only when the public believes abortion to be morally wrong will politicians (and judges) decide that it is legally wrong.

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## MUSIC

# The Dream of the South

by Mark Royden Winchell

*"Poetry is a northern man's dream of the South."*

—F. Scott Fitzgerald,  
"The Last of the Belles"

In the summer of 1933, Southern Agrarian poet Allen Tate and his friend Marxist literary critic Malcolm Cowley visited various Civil War landmarks in northern Tennessee and southern Kentucky. After being photographed shaking hands in front of the Confederate monument in a cemetery near Fort Donelson, the two drove home singing such plantation melodies as "Old Black Joe," "Swanee River," and "My Old Kentucky Home." At the end of the trip, Cowley noted somewhat sheepishly, "You know those songs we've been singing? They were all written by a Pittsburgh boy."

As recently as the 1950's, when I attended a public elementary school in Columbus, Ohio, the songs of Stephen Collins Foster were part of the official curriculum. I had first heard about the Swanee River years earlier when my father (who never lived in the South) gave me the first baths that I can remember. Literary critic James Olney recalls that, when he was a schoolboy in Marathon, Iowa, 50 years ago, he and his classmates sang

over and over again, until they were deeply etched into memory, such songs as "Camptown Races," "Old Folks at Home," and "Oh! Susanna." . . . There we were children not of the Cotton Belt but of the Corn Belt, required to sing every verse of a song like "Ring, Ring de Banjo."

In 1928, the state legislature of Kentucky made Foster's "My Old Kentucky Home" the official state song. The Florida legislature did the same for "Old Folks at Home" in 1935. In 1951, a joint resolution of the U.S. Congress declared Foster's songs "a national expression of democracy" and Foster himself "the father

of American folk music." Why, then, is this onetime national icon largely unknown to Americans who came of age in the 1960's and later?

The demise of Stephen Foster's reputation coincides with the ritualistic trashing of the Old South in American popular culture. In "Old Black Joe," "My Old Kentucky Home," and "Old Folks at Home" (to cite only three of Foster's better-known songs), the South is presented as a homeland that is desirable, biracial, and lost. As all intellectuals know, the image of home as desirable runs counter to one of the central dogmas of canonical American literature. Thus, Foster starts out with one strike against him. If the desirable home had been anywhere other than the South, his work probably would have been dismissed by the cultural elite as nothing more than harmless sentimental drivel. To idealize the South, of course, adds political incorrectness to aesthetic gaucherie. Moreover, to suggest that blacks may have felt some measure of attachment to that benighted land challenges the notion that the antebellum South was the moral equivalent of Nazi Germany and that slavery was an American holocaust.

Although slavery surely did not produce contentment, the bonds of regional affection were frequently so strong that they transcended the injustice of human bondage. As the escaped slave and prominent abolitionist Lewis Clarke observed in 1845:

Some people are very much afraid all the slaves will run up North, if they are ever free. But I can assure them that they will run back again if they do. If I could have been assured of my freedom in Kentucky, then, I would have given anything in the world for the prospect of spending my life among my old acquaintances, and where I first saw the sky, and the sun rise and go down.

African repatriation has never worked because African-Americans are more American than they are African. And, to a considerable extent, they are Southern Americans.

Like several of Foster's other songs about the South, the tone of "Old Black Joe" is elegiac.

Gone are the days when my heart  
was young and gay;

Gone are my friends from the cotton fields away;  
Gone from this earth to a better land, I know,  
I hear their gentle voices calling  
"Old Black Joe!"

What makes Joe convincingly human and not just a stereotype—racial or otherwise—is his ambivalent feelings about the prospect of entering Heaven. When the voices of his departed friends beckon him, he tells them: "I'm coming, I'm coming," but, at the same time, he asks himself: "Why do I weep when my heart should feel no pain? / Why do I sigh that my friends come not again, / Grieving for forms departed long ago?" Rather than joyously anticipating Heaven (where there will, presumably, be no racial discrimination, much less slavery), Joe keeps thinking of the more tangible pleasures of his youth: "Where are the hearts so happy and so free? / The children so dear that I held upon my knee? / Gone to the shores where my soul has longed to go." Because he is a man of faith, Joe proceeds confidently to future glory, but there is at least a part of him that would prefer to return to the past. This psychological tension makes "Old Black Joe" a credible portrait of a recognizable person. It is also a strongly antimillenarian statement. If the memory of your real home can seem more affecting than the certainty of an ideal afterlife, how much better it must be than the chimerical hope of an earthly paradise.

Foster's "My Old Kentucky Home" was inspired by the most popular American novel of the 19th century—Harriet Beecher Stowe's *Uncle Tom's Cabin*. Both works lament the loss of a home in Kentucky. Foster's original audience would certainly have thought of *Uncle Tom's Cabin*, and some later stage versions of Stowe's novel featured "My Old Kentucky Home," along with several of Foster's other songs. This fact alone should absolve Foster of the charge of justifying—much less glorifying—slavery. Far from being incompatible with opposition to slavery, a black man's love of his Southern home and his Southern masters was an important feature of the most famous antislavery novel ever written.

The speaker in Foster's song is a slave, who could very well be Uncle Tom. Like Old Black Joe, he begins by remembering the idyllic home he has lost:

The sun shines bright in the old