

SYMPOSIUM: A CELEBRATION OF THE TWENTIETH ANNIVERSARY OF MULIERIS DIGNITATEM, PART II: ARTICLE: A RESPONSE TO AMNESTY INTERNATIONAL'S ABORTION POLICY IN LIGHT OF MULIERIS DIGNITATEM

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Text

[*311]

Introduction

It is an honor and a challenge to participate in a conference devoted to the interdisciplinary study of Pope John Paul II's apostolic letter *Mulieris Dignitatem*. This Article focuses on chapter four, "Eve-Mary," and in particular, the effects of original sin on the relationship between man and woman. When considering the "disturbance of this original relationship,"¹ two questions are raised: What is the original relationship? How is it disturbed? In response, Pope John Paul II argues that the original relationship between man and woman was one of "communion," "unity of the two," existing "side by side" and "one for the other," founded on a fundamental equality that stems from their dignity as human persons made in the image and likeness of God.² The original relationship was later disrupted and marked by **[*312]** a break in this unity, with more tragic results for woman, because mutual sincere gift of self is replaced with man's domination of woman.³ The disturbance reaches an insidious level when a man forces a

¹ Pope John Paul II, *Mulieris Dignitatem* [Apostolic Letter on the Dignity and Vocation of Women] P 10 (1988) [hereinafter *Mulieris Dignitatem*] (emphasis omitted).

² Id. PP 7, 10. John Paul II describes it as a relationship of "communion" and "unity of the two" persons, man and woman, id. P 10 (internal quotation marks omitted), who are made in the image of God and endowed by nature with an intellect and a free will capable of knowing and loving God. Id. P 7. There is a "fundamental equality which the man and the woman possess in the "unity of the two," resulting from their dignity as persons called to mutual relationship, the character of an authentic "communio personarum." Id. P 10. John Paul II refers to this equality as "both a gift and a right" deriving from God the Creator. Id. Man and woman are "to mirror in the world the communion of love" that is the Triune God. Id. P 7. They are called to exist "'side by side' or 'together,'" as well as "mutually 'one for the other.'" Id. John Paul II notes, "The whole of human history unfolds within the context of this call... . On the basis of the principle of mutually being 'for' the other, in interpersonal 'communion,' there develops in humanity itself, in accordance with God's will, the integration of what is 'masculine' and what is 'feminine.'" Id.

mother into an unwanted abortion, or injures or kills her, along with her unborn child, when the woman resists. Professor Ernest Caparros, in his article devoted to the perspective of the "disordered man," studies these violent situations.⁴ Such destructiveness impinges on the discipline of international law through the promotion of women's sexual and reproductive health rights, including abortion. In this regard, the abortion policy of Amnesty International ("AI"),⁵ as developed in conjunction with its global campaign to eliminate violence against women, offers a point of departure and a case study.

[*313] At first glance, AI's "Campaign to Stop Violence Against Women" appears to be thoroughly laudable: a respected organization includes its voice among the chorus of those calling for the elimination of violence against women. But, couched in the language of "sexual and reproductive health rights," AI's newfound "remedy" for rape and incest is abortion - itself a form of brutality. Only by denying the personhood of the fetus and ignoring the well-documented post-abortion suffering of women can AI deflect accusations that its policy promotes further violence and human suffering.

As an alternative to AI's logic of violence, this Article offers the logic of love. Pregnancy is viewed as a relationship between two persons (the mother and her developing unborn child)⁶ - an intimate bond that is ultimately destroyed by procured abortion. Abortion attacks the mother's internal system, which has been activated to sustain human life, and deliberately kills the developing human being. The bond between mother and child is thus broken, and both subjects of the relationship are harmed.

To flesh out this thesis, the Article is divided into two parts. Part I, "The Logic of Violence," offers a critique of Amnesty International's abortion policy. This section argues that AI's abortion policy is riddled with internal inconsistencies and obfuscations about the true breadth of the policy. It reviews the new abortion policy in the context of human rights language, commencing with underlying assumptions and then turning to various scenarios: health-risk abortions, sex-selective abortions, disability-selective abortions, and partial-birth abortions. This Article argues that AI's "rights approach" - a radically individualistic perspective that denies the relational dimension of pregnancy - joins sexual violence with the destructiveness of abortion, which in turn begets more suffering. On one hand, the mother, who has already been the victim of grievous bodily and psychological harm, must endure the

³ John Paul II speaks of the break in the "unity of the two" and the constant threat to such unity. Id. P 10 (internal quotation marks omitted). He points to the threat as being "more serious for the woman, since domination takes the place of 'being a sincere gift' and therefore living 'for' the other." Id. In Genesis, the disorder is expressed in the words "he shall rule over you." Genesis 3:16 (Revised Standard, Catholic Edition); *Mulieris Dignitatem*, supra note 1, P 10. The violation of the fundamental equality, and thereby the right to equality, while involving an element to the disadvantage of the woman, at the same time also diminishes the true dignity of the man. Id. The woman, who is a subject, becomes "the 'object' of 'domination' and male 'possession.'" Id. "Burdened by hereditary sinfulness, [the man and woman] bear within themselves the constant 'inclination to sin,' the tendency to go against the moral order which corresponds to the rational nature and dignity of man and woman as persons." Id.

⁴ Ernest Caparros, *A Disordered View of Manhood and Its Effects on the Idea of Womanhood*, [8 Ave Maria L. Rev. 293 \(2010\)](#).

⁵ Amnesty International is a worldwide movement that campaigns for internationally recognized human rights, such as those articulated in the Universal Declaration of Human Rights. Amnesty International, About Amnesty International, <http://www.amnesty.org/en/who-we-are/about-amnesty-international> (last visited May 14, 2010) [hereinafter About Amnesty International]. Its mission is to conduct research and to eliminate serious human rights abuses. Id. It has more than 2.2 million members, supporters, and subscribers throughout more than 150 countries. Amnesty International, The History of Amnesty International, <http://www.amnesty.org/en/who-we-are/history> (last visited May 14, 2010). AI began campaigning for an end to human rights violations in 1961, when Peter Benenson began a worldwide "Appeal for Amnesty 1961" with the publication of an article entitled *The Forgotten Prisoners*. Id. In 1977, AI received the Nobel Peace Prize for "having contributed to securing the ground for freedom, for justice, and thereby also for peace in the world." Id. (internal quotations marks omitted). In addition to combating violence against women, AI seeks to defend the poor, abolish the death penalty, oppose torture, combat terror, protect the rights of refugees and migrants, and regulate the arms trade. About Amnesty International, supra.

⁶ Cf. 1 Jude Ibegbu, *Rights of the Unborn Child in International Law* 7-8 (2000) (defining pregnancy as the initial span of life from the coming into existence of a human being at the moment of conception or fertilization to birth).

intrusions of abortion on her person and its deleterious effects, while on the other hand, her unborn child is destroyed, the eventual realization of which greatly adds to her afflictions.

By pondering "The Logic of Love" in Part II, a person of good will can come to understand that the sine qua non to breaking the cycle of violence - AI's avowed aim - is healing love and forgiveness. When [*314] the relationship between the mother and the unborn child might be described as tense or fragile, as in the case of rape, states ought to ensure that good practices motivate an appropriate response. For example, the woman with child must be offered love, care, support, education, counseling, and assistance to meet her material and spiritual needs during and after her pregnancy. After all, are these not the preferred means to promote the cure of other strained relationships in the family - for example, between a mother and her rebellious teen? In this way, an alternative position born from the logic of love emerges. Pregnancy, acknowledged as a relationship, where the mother nurtures the unborn child to birth and well beyond, is ultimately understood as an act of love - an act of self-giving. The profundity of this perspective is illumined with the eyes of faith in the apostolic letter *Mulieris Dignitatem*.

I. The Logic of Violence

A. Introduction

This section presents a critique of AI's abortion policy. It begins with an overview of AI's new abortion policy and then studies abortion as a "remedy" in cases of sexual violence. This issue raises two additional questions: Is abortion the only option? Is abortion ever safe? The discussion then turns to AI's policy in regard to health-risk abortions, sex-selective abortions, disability-selective abortions, and partial-birth abortions. The section ends by addressing whether AI, contrary to its own claims, promotes abortion as a human right.

B. The New Abortion Policy

AI had long been opposed to forced abortion, forced sterilization, and forced contraception in all cases, but had not taken a position on access to abortion per se.⁷ Its policy changed in 2003 when abortion emerged as a point of contention during policy discussions surrounding the launch of AI's global "Stop Violence Against Women" campaign.⁸ As a part of this effort, AI's International Council, a small group within the organization, "adopted a policy on sexual and [*315] reproductive rights."⁹ It subsequently consulted the organization at large "to clarify its position on selected aspects of abortion."¹⁰ Three years later, in July 2006, AI adopted a "broad-based policy" couched in terms of "the rights of women and men to make informed decisions about sex and reproduction free from coercion, discrimination and violence."¹¹

Then, in 2007, AI described the new policy on abortion in four bullet points. It called upon states to (1) furnish "full information on sexual and reproductive health," including abortion services; (2) repeal laws that criminalize abortion; (3) provide abortion in cases of pregnancy resulting from "rape, sexual assault, or incest, or when a pregnancy poses a risk to a woman's life or a grave risk to her health"; and (4) ensure medical services for each woman who "suffers complications from an [illegal or legal] abortion."¹²

In response to many questions and complaints surrounding its policy change, AI added several qualifying statements. One, it conceded that some state regulation of abortion access is justifiable, including "reasonable

⁷ Amnesty International, *Sexual and Reproductive Rights: Some Frequently Asked Questions 2* (Apr. 2007), http://www.amnestyusa.org/women/pdf/SRR_FAQ.pdf.

⁸ *Id.* at 1.

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 1.

gestational limits." ¹³ Two, it did not take a position on "whether abortion should be legal" or "whether [abortion] is right or wrong." ¹⁴ Three, it did not "counsel individuals as to whether they should continue or terminate a pregnancy," nor did it "campaign generally for abortion." ¹⁵

One might summarize AI's policy in the following manner. While AI claims to be opposed to acts of violence against women and still expresses concern about forced abortion, forced contraception, and forced sterilization, it is simultaneously (1) soliciting a comprehensive range of ambiguous "rights" related to sex and reproduction, including access to abortion; (2) claiming that it remains neutral on the question of abortion. ¹⁶ From this perspective, AI has attempted to explain and justify this policy, but with little success.

[*316]

C. Abortion for Victims of Sexual Violence

AI argues that its abortion policy is necessary because female victims of rape and incest are doubly stigmatized: first, as victims of sexual violence; second, for being inconveniently pregnant. ¹⁷ AI reports that women in some parts of the world are "desperately seeking to terminate their unwanted pregnancies in order to end the cruel treatment that such pregnancy entails," including trauma, stigma, abandonment, and death threats. ¹⁸ Such vicious treatment of pregnant women is certainly vile, but AI implies that the only remedy for such women is abortion, and preferably legal or "safe" abortion. ¹⁹

AI's policy is based on two false assumptions: (1) abortion is the only option in cases of pregnancy resulting from acts of sexual violence; and (2) legal abortions are safe - that is, they do not cause further damage to the woman or to others.

1. Is Abortion the Only Option?

Abortion is not a woman's only option. There are many religious organizations operating around the world that support women in bringing their children to term under difficult and often traumatic circumstances. ²⁰ In addition, many crisis pregnancy centers and nonprofit organizations have been established to assist pregnant women and

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id. at 2. The opening line of this document is also telling: "Below are frequently asked questions and answers on sexual and reproductive rights, including abortion." Id. at 1 (emphasis added).

¹⁷ See id. (explaining that the policy was developed to address "human rights realities" such as "rape and incest, which may lead to unwanted pregnancies and the stigmatization of victims of sexual abuse"); id. at 2 (highlighting the plight of women raped in war by enemy forces and the stigma attached to the rape and pregnancy, especially in the Democratic Republic of Congo and Sudan).

¹⁸ Id.

¹⁹ Id.

²⁰ See, e.g., Sisters of Life, About Us, <http://sistersoflife.org/about-the-sisters-of-life> (last visited May 14, 2010). The Sisters of Life is a contemplative and active Catholic religious community founded for the protection and promotion of the sacredness of every human life. They welcome pregnant girls and women to live with them as guests at their convents for the duration of the pregnancy, as well as offering practical assistance, such as items for expectant mothers, new or used maternity clothes, gift cards, in addition to help with travel, housing, school, and job opportunities. See id.; Sisters of Life, Donations/Items, <http://sistersoflife.org/donations/items> (last visited Apr. 10, 2010). They also host religious retreats to provide hope and healing for women suffering from what AI might refer to as "complications" of abortion. See Sisters of Life, Villa Maria Guadalupe, <http://sistersoflife.org/villa-maria-guadalupe-retreats> (last visited May 14, 2010).

encourage the continuation of a pregnancy. ²¹ Such initiatives could [*317] be characterized as "good" or "best" practices, reflecting the idea that successful initiatives in one country should be recognized by the international community in an effort to encourage their adoption in other countries. If such resources do not exist in a given country, then certainly AI could promote their development. But as their policy stands, AI has simply become a collaborator or perpetuator of the view that pregnancy itself is the problem. AI, instead of resisting those who would marginalize pregnant women, joins them and facilitates elimination of the so-called "stigma" through abortion.

2. Is a Legal Abortion a Safe Abortion?

a. The Effects of Abortion on Women

Legal abortion is not safe. AI's own abortion policy acknowledges this fact. As previously noted, AI calls on states to provide medical services to women for "complications" suffered from legal or safe abortions, as well as those linked to illegal or unsafe abortions. ²²

That "complications" may arise - and often do - is a fundamental point rooted in experience and right reason. A woman's cervix, "which nature has designed to remain closed to protect the developing ... fetus, must be forcibly opened. Then, her womb, which is designed to nurture life, must be penetrated, suctioned, and scraped." ²³ Consequently, every legally and illegally induced abortion is an act of violence on the woman. It is the premature breach of a woman's internal system that has been activated and transformed to carry out the function of sustaining and nourishing a developing human being. Consequently and unsurprisingly, any violation of the integrity of a woman's internal system can lead to serious "complications" of a physical, psychological, and emotional nature, [*318] including hemorrhaging, infection, sterility, depression, hyperarousal, flashbacks, numbed emotions, and suicide. ²⁴ Some refer to these effects as "Post Abortion Syndrome," "Post Abortion Stress," or "Trauma Disorder." ²⁵

²¹ See, e.g., Frederica Mathewes-Green, *Real Choices* 210 (1997) (providing contact information for several pregnancy care organizations); A Woman's Right to Know, <http://www.awomansrighttoknowok.org> (last visited May 14, 2010); Priests for Life Canada, Pro-Life Canada Index, <http://users.webhart.net/vandee/prolife.shtml> (last visited May 14, 2010) (providing links to pro-life groups and resources in Canada). This last website provides a link to "Crisis Pregnancy Centres in Canada," which can be directly accessed at <http://www.pregnancycentres.org> (last visited May 14, 2010). Usually staffed by volunteers, these centers offer a broad range of services such as pregnancy tests, counseling, fetal development and postnatal medical care, legal aid, assistance in obtaining housing, maternity clothes, baby clothes, baby equipment, financial support, information about adoption services, and even advice regarding education and employment. A Woman's Right to Know, Resource Directory, <http://www.awomansrighttoknowok.org/resources.php> (last visited May 14, 2010).

²² Amnesty International, *supra* note 7, at 1.

²³ Theresa Burke with David C. Reardon, *Forbidden Grief: The Unspoken Pain of Abortion* 114 (2002) [hereinafter Burke & Reardon].

²⁴ See generally Burke & Reardon, *supra* note 23; Elizabeth Ring-Cassidy & Ian Gentles, *Women's Health After Abortion: The Medical and Psychological Evidence* (2d ed. 2003). *Women's Health After Abortion* compiles scientific and technical data that refutes the commonly held assumption that induced abortion is safe and "almost risk free." *Id.* at 1. On the contrary, there are "clear hazards to women's physical and psychological health," which raises the question whether a woman's right to informed consent is being fully respected by the medical community. *Id.* It connects these effects with Post-Traumatic Stress Disorder ("PTSD"). PTSD generally involves two major elements: first, a traumatic event either witnessed or experienced pertaining to actual or threatened death; second, physical injury with an accompanying response of intense fear, helplessness, or horror. Burke & Reardon, *supra* note 23, at 109-10. It also involves three types of symptoms: hyperarousal (inappropriate fight-or-flight defense mechanisms, such as anxiety attacks, angry outbursts, and difficulties sleeping); intrusion (reliving the traumatic experience); and constriction (numbed emotions or altered behavior patterns to avoid whatever is associated with the trauma). *Id.* at 109-10. The typical experience of PTSD following abortion is summed up as

an initial state of numbness while psychologically trying to integrate the traumatic experience. Later symptoms, which may not appear for months or even years, include irritability, depression, an unreasoned sense of guilt for having survived while others

Moreover, the use of abortion as a "remedy" for victims of sexual violence raises particular health problems for this group of women, since many have experienced abortion and described it as surgical rape.²⁶ Certainly, such an experience would put women who have a [*319] history of sexual abuse or rape in special danger.²⁷ The abortion would constitute another trauma with corresponding psychiatric problems even if one could persuasively argue that the victim freely consented to the abortion.²⁸ The harm would be even greater for those victims of sexual violence who - like many women - proceed with an abortion due to feelings of helplessness "to resist or change the circumstances that are "forcing' them to choose abortion," even when they consider abortion to be a type of murder.²⁹

b. The Effects of Abortion on Others

So far we have considered whether legal abortion is safe for the woman. Let us now turn to the issue of whether legal abortion is safe for others. As previously noted, AI does not take a position on whether abortion is right or wrong or whether abortion should be legal.³⁰ Instead, AI views abortion in terms of victimization of women and state oppression, and so it situates its abortion policy in the context of female suffering. AI states, "The policy is based on the principle that every woman has the right to be free from any form of coercion, discrimination or violence as she makes and puts into effect informed decisions concerning reproduction, including decisions in relation to the continuation or termination of pregnancy."³¹

did not, memory impairment or trouble concentrating, and difficulties relating emotionally to other people. Nightmares, flashbacks to the traumatic scene, and overreaction to noises or situations that remind one of the trauma are also common.

Id. at 111; see also John J. Dillon, *A Path to Hope* (1990) (providing assistance to parents of aborted children and offering guidelines and advice to those who work as counselors and ministers); Pam Koerbel, *Abortion's Second Victim* (AMG Publishers, rev. ed. 1991) (1986) (discussing the effects of abortion, which the author, who underwent an abortion, argues have been overlooked or denied by society); *Post-Abortion Syndrome: Its Wide Ramifications* (Peter Doherty ed., 1995); *Victims and Victors* (David C. Reardon et al. eds., 2000) (assaulting the commonly held belief that most pregnant rape victims seek abortion and that the abortion, when obtained, is a satisfactory solution); Abortion Recovery International Homepage, <http://abortionrecovery.sectorlink.org> (last visited May 14, 2010); Hope After Abortion, Resources, <http://www.hopeafterabortion.com/hope.cfm?sel=resources> (last visited May 14, 2010); Nat'l Right to Life, Abortion: Some Medical Facts, <http://www.nrlc.org/abortion/ASMF/asmf.html> (follow "Is Abortion Safe?" hyperlink) (last visited May 14, 2010); Rachel's Vineyard, About Us, <http://www.rachelsvineyard.org/aboutus/ourstory.htm> (last visited May 14, 2010) (offering post-abortion healing ministry at various sites in the United States, Canada, Portugal, Australia, and New Zealand).

²⁵ Ring-Cassidy & Gentles, *supra* note 24, at 217

²⁶ Burke & Reardon, *supra* note 23, at 113-14. One of the author's patients described her experience as follows:

I was fully awake, no pills given, or shots. I lay there with tears rolling down my face. The room was cool. My tears felt like fire on my face, cutting it, slice by slice, tear by tear. My hands were wet with sweat; my right hand squeezed the counselor's thin, cold hand as though squeezing the life out of her. My left hand lay fisted, clenched tightly on my vibrating stomach as the abortion occurred. It felt as though someone was raping me with a 15-Amp canister vacuum hose with no mercy as I lay there helpless, crying calmly, as if agreeing to be raped.

Id. at 114. Dr. Burke provides several further examples. Id. at 114-15.

²⁷ Id.

²⁸ Id.

²⁹ Id. at 116-17. Dr. Burke supports this assertion with her personal work with women who have had abortions as well as statistics regarding many more abortions. Id. at 116-17, 314 nn.13-15. She also relates how her clients describe abortion as fearful or horrifying, while others recount having an overwhelming feeling of "helplessness." Id. at 112-13.

³⁰ Amnesty International, *supra* note 7, at 1.

³¹ Id.

In response, the abortion question is never exhausted by referencing only women; one must also consider the effects on the unborn child, father, and others (for example, grandparents).³² In [*320] specific regard to the unborn child, let us consider two additional points. First, in a typical AI torture case, the victim is the one against whom violence or state oppression is brought to bear. In an abortion case, while the mother may well be a victim of violence, she nevertheless perpetrates violence against a developing human being. The moral and legal questions this raises must be answered. Second, as in the case of torture, AI characteristically promotes the rights of only one innocent, helpless individual or group. But in abortion, obviously, the rights of another person are also at stake and are endangered by the mother, the abortionist, and all those who favor public policies denying or ignoring the rights of the unborn child. AI's readiness to support the rights of the mother against the rights of the one within her, while sadly not unusual, flies in the face of the organization's history of being the voice of the voiceless.

D. Abortion in Cases of Health Risk

AI also calls for abortion in cases where a woman's health or life is at risk due to pregnancy. AI presents the abortion policy as limited: "AI currently does not take a position on laws regulating the termination of pregnancy other than in cases when pregnancy results from rape, sexual assault, or incest or where it poses a risk to the woman's life or a grave risk to her health."³³ In other words, AI argues that it only supports legalization of abortion in restricted and narrow circumstances.

In response, all that has been previously stated about the harmfulness of abortion is relevant here, since one would be promoting abortion as a "remedy" to eliminate health risks that would arise in the case of pregnancy. Further, in the current legal climate, "grave risk of health" is interpreted broadly, therefore this caveat is meaningless, since in practice it is interpreted as abortion on demand. For example, according to statistics gathered by the United Nations, women may legally procure abortions on the basis of a mental health concern in 125 countries.³⁴ Defining "mental health" is [*321] notoriously difficult, and not surprisingly, its definition varies around the world. During the 1990s, for instance, India allowed abortions on the basis that the mental anguish of an unwanted pregnancy could constitute a "grave injury to the mental health of the pregnant woman."³⁵ A similar understanding has been adopted by the judiciary in the United States.³⁶

E. Sex-Selective Abortions

³² Research is available on abortion and its negative effects on men and how abortion affects a woman's interpersonal relationships. See generally C.T. Coyle, *Men and Abortion: A Path to Healing* (1999); Dillon, *supra* note 24; Redeeming a Father's Heart: Men Share Powerful Stories of Abortion Loss and Recovery (Kevin Burke et al. eds., 2007); Ring-Cassidy & Gentles, *supra* note 24.

³³ Amnesty International, *supra* note 7, at 2.

³⁴ Population Division, U.N. Dep't of Econ. & Soc. Affairs, *World Abortion Policies 2007*, U.N. Doc. ST/ESA/SER.A/264, U.N. Sales No. E.07.XIII.6 (2007), available at http://www.un.org/esa/population/publications/2007_Abortion_Policies_Chart/2007_WallChart.pdf.

³⁵ Anika Rahman, Laura Katzive & Stanley K. Henshaw, *A Global Review of Laws on Induced Abortion, 1985-1997*, 24 *Int'l Family Planning Perspectives* 56, 57 (1998) (internal quotation marks omitted); see also Reed Boland & Laura Katzive, *Developments in Laws on Induced Abortion, 1998-2007*, 34 *Int'l Family Planning Perspectives* 110, 112 (2008).

³⁶ See, e.g., *Women's Med. Prof'l Corp. v. Voinovich*, 130 F.3d 187, 209 (6th Cir. 1997) ("[A] woman has the right to obtain a post-viability abortion if carrying a fetus to term would cause severe non-temporary mental and emotional harm."); see also *Doe v. Bolton*, 410 U.S. 179, 192 (1973). In *Doe v. Bolton*, the Supreme Court of the United States, by a seven-to-two majority, created a unique and unlimited definition of medical necessity in relation to abortion: "[A doctor's] medical judgment may be exercised in the light of all factors - physical, emotional, psychological, familial, and the woman's age - relevant to the well-being of the patient. All these factors may relate to health." *Id.*

More curious is AI's position on sex-selective abortions. AI opposes sex-selective abortion on the grounds that it is "a manifestation of gender discrimination."³⁷ But if the fetus or unborn child has no rights, since it is not a subject in law, how can one talk about discrimination? This can be explained in two ways, neither of which is satisfactory. One, AI has embraced a relativistic and utilitarian position: An unborn child does have rights, but only to the extent that these rights placate the imagined demands of AI's female constituency. Yet the shallowness and ambiguity is surely exposed in the fact that if a fetus has no inherent right to life, the unborn female child is likely to meet the same fate as her brothers. Two, AI opposes sex-selective abortion not because it violates the rights of the human person, but because it is a symptom of gender discrimination. AI hopes to cure the so-called disease by attacking the symptom. This approach is illogical. That an instrument of death could be used as a propaganda tool to promote (female) life reflects a sick irony. Abortion cannot be a policy point or a tool to be used to achieve change. If these are AI's grounds, then such thinking seems to reflect the views of the very governments AI has historically targeted as violating human rights.

[*322]

F. Disability-Selective Abortions

Incongruously, AI does not oppose disability-selective abortions; it purports to take a neutral position.³⁸ The reasoning here is that such abortions raise "complicated issues of fact" that are still being debated by "advocates for the rights of persons with disabilities."³⁹

In response, it is disingenuous to argue that disability-selective abortions are the only abortions that raise complex questions. One might also query why the views of advocates for disability rights are even relevant to the policy if the unborn baby is not a person who has rights. If AI intends to imply that it might be acceptable to abort disabled unborn children in order to spare born disabled children future pain, then it would be difficult to rule out infanticide as a further permissible option. In the end, the disability-selective position further undermines AI's credibility as a defender of the voiceless, especially when one considers that AI is essentially introducing a hierarchy of humanity. And AI is content to simply eliminate those who stand on the bottom rung.

G. Partial-Birth Abortions

AI favors "reasonable gestational limits,"⁴⁰ yet it disfavors criminalization in reasonable circumstances by opposing bans on partial-birth abortion and criminal sanctions against physician abortion providers in such circumstances. AI states:

While Amnesty International does not take a position on specific laws regulating the termination of pregnancy, AI does oppose imprisonment and other criminal sanctions for women and their providers. AI therefore opposes the provision of the federal law upheld by the Court in *Carhart*⁴¹ that imposes fines and up to two years in prison for doctors who perform particular types of abortions.⁴²

³⁷ Amnesty International, *supra* note 7, at 6.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 1 ("AI recognizes that some state regulation of access to abortion is justifiable. For example, states may properly ensure that medical practitioners are licensed, may provide other protection against malpractice, and may set reasonable gestational limits.").

⁴¹ [Gonzales v. Carhart, 550 U.S. 124, 132-33 \(2007\)](#).

⁴² Amnesty International, *supra* note 7, at 6 (footnote added).

[*323] Clearly, any policy that rejects imposing criminal penalties on individuals who commit what many would describe as infanticide overrides any pretense to gestational limits and moves to a tacit approval of this grievous act. Consequently, the questions raised are: How can AI claim that it supports criminal penalties for violations of "reasonable" abortion regulations - gestational limits - while at the same time proclaiming that a ban on partial-birth abortion is not reasonable? What is a reasonable gestational limit? For AI, in fact, there is no limit.

H. Is Abortion a Human Right for AI?

Lastly, one must consider AI's use of ambiguous and controversial human rights terminology: "sexual and reproductive rights, including abortion."⁴³ It is worth remembering in this context that which was previously mentioned: AI purports to take a neutral position on disability-selective abortion because it raises "complicated issues of fact" still debated on the international level. Yet, in the face of rigorous argument on the topic of "sexual and reproductive health rights,"⁴⁴ AI takes a position. Just to highlight the fluid status of the **[*324]** ongoing polemics on the international level in this regard, in December 2008, a Petition for the Unborn Child and the Family was presented at the U.N. headquarters in New York, signed by about 437,000 people from 168 countries. The petition urged U.N. member states "to return to the original understanding of the Universal Declaration on Human Rights ... as a document which protects unborn life and the traditional family."⁴⁵

Moving to the question of whether AI promotes the right to abortion, something it denies, inconsistencies in AI's policy are obvious. This Article has already discussed how the abortion health exception can be interpreted broadly and how AI's abortion policy - permitting partial-birth abortion and disability-selective abortion - is broader than one is first led to believe. It has noted that AI contends there is a list of cases where abortion is the only option. It has emphasized that AI argues that abortion ought to be "safe," meaning legal. It has highlighted that AI calls for the "repeal" of abortion laws.⁴⁶ It has shown that AI employs contentious human rights language ("sexual and

⁴³ Id. at 1 ("Below are frequently asked questions and answers on sexual and reproductive rights, including abortion.").

⁴⁴ See, e.g., Third World Population Conference, Bucharest, Rom., Aug. 19-30, 1974, World Population Plan of Action, PP 14(e), 24(b), U.N. Doc. E/CONF.60/19 (1974) (acknowledging that "respect for human life is basic to all human societies," but also recommending the reduction of "illegal abortions," thereby implying that abortion can be legal). Ten years later, the Report of the International Conference on Population maintained that, although couples have a right to family planning, governments should "take appropriate steps to help women avoid abortion, which in no case should be promoted as a method of family planning, and whenever possible, provide for the humane treatment and counseling of women who have had recourse to abortion." See International Conference on Population, Mexico City, Mex., Aug. 6-14, 1984, Recommendations for the Further Implementation of the World Population Plan of Action, Recommendation 18(e), U.N. Doc. E/CONF.76/19 (Sept. 14, 1984). Similar statements were made in the Programme of Action adopted at the United Nations' International Conference on Population and Development in Cairo in September 1994. There is a right to family planning, and abortion is not to be promoted as a method of family planning, but new ambiguities arise when, at the same time, the document contends that couples have a right to "reproductive health" and "reproductive rights." International Conference on Population and Development, Cairo, Egypt, Sept. 5-13, 1994, Report of the International Conference on Population and Development, PP 7.2-7.26, U.N. Doc. A/Conf.171/13 (Oct. 18, 1994). As in Cairo, the Fourth World Conference on Women's Declaration and Platform for Action uses the terminology of "reproductive health" and "reproductive rights," but rejects abortion as a method of family planning. Fourth World Conference on Women, Beijing, P.R.C., Sept. 4-15, 1995, Report of the Fourth World Conference on Women, PP 94-95, 106(k), U.N. Doc. A/CONF.177/20/Rev.1 (Jan. 1, 1996).

⁴⁵ See Susan Yoshihara, Pro-Life Coalition at UN Delivers 437,000 Signatures in Support of Unborn and Family, Friday Fax (C-FAM, New York, N.Y.), Dec. 11, 2008, http://www.c-fam.org/publications/id.939/pub_detail.asp; see also Ibegbu, supra note 6, at 162, 613 (arguing that the protection accorded the unborn child is "very fragile insofar as [relevant] provisions [of international conventions] are subject to different interpretations," and proposing that the international community accord legal protection to the unborn child's right to life from the moment of conception); Patrick J. Flood, Is International Law on the Side of the Unborn Child?, 7 Nat'l Cath. Bioethics Q. 73 (2007) (considering the 2005 Protocol on Women's Rights in Africa and proposing that the international community explicitly promote the protection of the unborn child's right to life through a U.N. declaration and through the appointment of a special rapporteur on the protection of the unborn).

⁴⁶ Amnesty International, supra note 7, at 1.

reproductive rights, including abortion") and develops a policy in this regard.⁴⁷ Pursuant to this policy, AI calls on governments "to account for their laws and policies on abortion and make appropriate policy recommendations toward the realization of women's human rights."⁴⁸ Yet, despite the aforementioned statements, AI denies that abortion is being promoted as a human right.⁴⁹

[*325]

I. Summary

AI views the abortion question in terms of victimization. Its abortion policy is situated within the context of female suffering, and "sexual and reproductive rights" are cited to promote abortion in cases where the woman does not want to continue the pregnancy. Viewed in this way, there are not just two underlying assumptions as originally thought, but rather three: abortion is the only option, legal abortion is a safe abortion, and abortion is a human right. Contrary evidence renders these assumptions false: organizations exist all over the world that assist women in difficult circumstances to carry their baby to term; well-documented proof demonstrates how the act of abortion, both legal and illegal, is violence on the woman and her developing unborn child; and considerable debate, unsurprisingly, continues as to whether abortion is a human right.

This appears, therefore, to be AI's policy: One, any effective abortion regulation is never reasonable. This is so because AI would support penalties for violations of reasonable gestational limits but does not even oppose partial-birth abortion precisely because that would promote - so it suggests - unreasonable regulation and criminal penalties. Indeed, it is difficult to understand AI's policy in any way other than obfuscation of an actual expansive position on abortion that includes a tacit approval of infanticide. Two, a mother can obtain a late-term abortion on the basis of an illusory mental health concern, or as a selection against a disabled child, but not an early-term abortion if the reason is sex selection. It is difficult to understand whose human rights are at stake in this policy: pregnant women and unborn girls? Why are some grounds for abortions acceptable and others not? And if the only "human rights" at stake are those of the mother, the content of which can vary so substantially according to the alleged mental state of one person, then is AI really speaking about "human rights"? If so, where else in AI's tradition can we find such a policy?

II. The Logic of Love

A. Introduction

This Part is divided into three sections: pregnancy as a relationship, pregnancy as a strained relationship, and pregnancy as a relationship with God. The term "pregnancy as a relationship" **[*326]** recognizes two developing human beings, the mother and her unborn child, which necessarily means that both should be accorded the same protections in human rights law.⁵⁰ This topic will consider the mother-child bond in international law, American law, academic writings, and finally, the thought of Pope John Paul II in *Mulieris Dignitatem*.

⁴⁷ Id. at 1-2.

⁴⁸ Id. at 2.

⁴⁹ Id. at 2 ("Some media reports and individuals have claimed that AI promotes a 'human right to abortion.' This grossly misrepresents AI's policy on sexual and reproductive rights."). AI justifies this statement on the basis that its "sexual and reproductive rights policy emphasizes access to contraceptive services and to sexual health information" to reduce the risk of unwanted pregnancies. Id.

⁵⁰ Margaret Monahan Hogan, *Maternal-Fetal Relations*, Lecture 10 of the International Catholic University's Medical Ethics Course, <http://home.comcast.net/~icuweb/c04110.htm> (last visited May 14, 2010); see also Jane Adolphe, *The Pope's Peace and Security Council Resolution 1325*, *5 Ave Maria L. Rev.* 429 (2007). The latter article notes that, as a mother, the woman conceives, bears, nurtures, raises, and accompanies human beings in life. From the moment of conception, the mother gives shape not only to the child's body, but also to his or her whole personality, albeit in an indirect way. During the various stages of development, she has a unique opportunity to nurture in the child a sense of security and trust - necessary elements

The term "pregnancy as a strained relationship" also recognizes both the mother and her unborn child, but accepts that there may be circumstances that strain this relationship. To flesh out these ideas, the scholarship of academics and the thought of Pope John Paul II are discussed with a view to proposing an alternative solution to the so-called "remedy" of abortion proposed by AI. Under the topic "pregnancy as a relationship with God," motherhood is viewed with the eyes of faith within the economy of salvation. Against the backdrop of the wonder of salvation history - essentially a love story between God and man - each and every pregnancy is not only a relationship of love between mother and child, but also a sign of God's love manifested in his New Covenant with humanity.⁵¹ For a person of faith, this gives further reason to question AI's policy.

B. Pregnancy as a Relationship

The fact that pregnancy is a relationship is evident in law. For example, on both the international and the regional level, there are prohibitions against carrying out the death penalty on pregnant women.⁵² By necessary implication, the reason for this prohibition is **[*327]** "precisely because she is carrying in her womb an innocent human being";⁵³ there is not just one life at stake, but two. Moreover, the 1948 Universal Declaration of Human Rights recognizes that "motherhood and childhood are entitled to special care and assistance,"⁵⁴ and the 1966 International Covenant on Economic, Social and Cultural Rights acknowledges that "special protection should be accorded to mothers during a reasonable period before and after childbirth."⁵⁵ The 1959 Declaration of the Rights of the Child affirms in its preamble that the "child ... needs special safeguards and care, including appropriate legal protection, before as well as after birth"; Principle 4 acknowledges that "special care and protection shall be provided both to [the child] and his mother, including adequate pre-natal and post-natal care."⁵⁶ The 1989 Convention on the Rights of the Child repeats verbatim, in its preamble, the "before as well as after birth" preambular paragraph of the 1959 Declaration, and it also acknowledges the child's right to "the highest attainable standard of health" inclusive of "pre-natal and post-natal health care for mothers."⁵⁷ These provisions are a powerful counterweight to the argument that the "right to life," affirmed in many international and regional instruments, does not apply to a developing unborn child and his or her mother.

In the law of the United States, for example, though abortion is permissible through *Roe v. Wade* and its progeny,⁵⁸ legislation exists **[*328]** that recognizes the relationship between the mother and unborn child in a way that

for the proper development of personal identity - which in turn is key to establishing fruitful relationships with others. Yet the woman is also shaped by the child: her body changes, she can feel the life growing within her, and she adapts her life to the needs of the unborn child. *Id.* at 438-39.

⁵¹ *Mulieris Dignitatem*, supra note 1, P 19 .

⁵² See, e.g., Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 76, P 3, June 8, 1977, 1125 U.N.T.S. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol II) art. 6, P 4, June 8, 1977, 1125 U.N.T.S. 609; Organization of American States, American Convention on Human Rights art. 4, P 5, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123; International Covenant on Civil and Political Rights art. 6, P 5, Mar. 23, 1976, 999 U.N.T.S. 171.

⁵³ 1 Ibegbu, supra note 6, at 119.

⁵⁴ Universal Declaration of Human Rights, G.A. Res. 217A, art. 25, P 2, at 76, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

⁵⁵ International Covenant on Economic, Social and Cultural Rights art. 3, P 2, Dec. 16, 1966, 993 U.N.T.S. 3.

⁵⁶ Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), pmbl., Principle 4, U.N. GAOR, 14th Sess., U.N. Doc. A/RES/1386 (Nov. 20, 1959).

⁵⁷ Convention on the Rights of the Child pmbl., art. 24(1), (2)(d), Nov. 20, 1989, 1577 U.N.T.S. 3.

⁵⁸ [*Roe v. Wade*, 410 U.S. 113 \(1973\)](#) (holding that the constitutional right of personal privacy includes the right to have an abortion); see, e.g., [*Doe v. Bolton*, 410 U.S. 179 \(1973\)](#) (voiding several of Georgia's procedural limitations on abortion); [*Webster v. Reprod. Health Servs.*, 492 U.S. 490 \(1989\)](#) (refusing to revisit the holding in *Roe v. Wade* but upholding limited

indirectly brings into question the justness of abortion. For example, one federal law classifies a fertilized egg as an unborn child for purposes of health insurance and coverage eligibility.⁵⁹ In addition, at least thirty-six states currently have fetal homicide laws making it a crime to intentionally kill or harm a fetus - Kansas law even defines the term "person" to include children at "any stage of gestation from fertilization to birth"⁶⁰ - and at least twenty-one states have legislation applying to the earliest stages of pregnancy.⁶¹

Turning to the question of scholarship, various authors have argued against abortion on the basis of the intimate mother-child bond that exists in pregnancy. Dr. Margaret Monahan Hogan, reflecting upon the data available in the sciences of embryology and fetology, argues that human life begins at syngamy (the last point in the fertilization process).⁶² From that point forward, the woman is carrying within her body a dependent and living human being.⁶³ As a consequence, she argues pregnancy is "a temporary physical and [*329] moral union of two whole human beings."⁶⁴ In other words, there is a "union of being" and a "union of purpose" between the two: The former refers to the limited physical relationship between two whole human beings, one immature and one mature, while the latter emphasizes that "neither of the human beings who constitute the relationship is determined to accomplish the totality of its existence within this relationship."⁶⁵ In other words, both the woman's life and the life of the fetus are characterized by a set of ends extending beyond pregnancy, but the accomplishment of the latter's ends requires the immediate cooperation of the woman.⁶⁶ When the woman recognizes relationship with the unborn child, either

abortion regulations); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992) (interpreting Roe to permit reasonable regulations on previability abortions); *Stenberg v. Carhart*, 530 U.S. 914 (2000) (invalidating Nebraska's ban on partial-birth abortions on the grounds that the State failed to demonstrate that banning partial-birth abortions without a health exception would not create significant health risks for pregnant women); *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320 (2006) (holding that an abortion statute should not be invalidating if a narrower declaratory and injunctive relief is sufficient); *Gonzales v. Carhart*, 550 U.S. 124 (upholding the Partial-Birth Abortion Ban Act of 2003 and expressly recognizing the state's legitimate interest in regulating the medical profession in order to promote respect for human life).

⁵⁹ State Children's Health Insurance Program, Eligibility for Prenatal Care and Other Health Services for Unborn Children, 67 *Fed. Reg.* 61,956 (Oct. 2, 2002). For a critique of this legislation, see Letter from Priscilla J. Smith & Nicole Noorigian, Ctr. for Reprod. Rights, to Thomas A. Scully, Adm'r, Ctrs. For Medicare & Medicaid Servs., U.S. Dep't of Health & Human Servs. (May 15, 2002), <http://reproductiverights.org/en/document/comments-submitted-to-us-department-of-health-and-human-services>. For a commentary praising it, see Soc'y for the Protection of Unborn Children, Health Insurance for the Unborn (June 2003), <http://www.spuc.org.uk/documents/papers/healthinsurancefortheunborn.pdf>.

⁶⁰ *Kan. Stat. Ann. § 21-3452* (2007) ("'Unborn child' means a living individual organism of the species homo sapiens, in utero, at any stage of gestation from fertilization to birth.").

⁶¹ Nat'l Conference of State Legislatures, Fetal Homicide, <http://www.ncsl.org/IssuesResearch/Health/FetalHomicideLaws/tabid/14386/Default.aspx> (last visited May 14, 2010); see also Christine Vestal & Elizabeth Wilkerson, States Expand Fetal Homicide Laws, *Stateline.org*, Aug. 22, 2006, <http://www.stateline.org/live/details/story?contentId=135873>.

Several states have multiple feticide laws for manslaughter, first-and second-degree murder and recently states have passed laws protecting the fetus in vehicular murder while under the influence of drugs or alcohol.

In all, 37 states have one or more fetal homicide laws, with 24 states defining a fetus as a person and a separate homicide victim. In Maine and 12 other states, the laws apply stiffer punishments for murdering a pregnant woman, but do not make the death of the fetus a separate crime.

Id.

⁶² Hogan, *supra* note 50.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Id.

implicitly or explicitly, she accepts the immediate disadvantages that occur for the sake of the more dependent human being.⁶⁷

Another scholar, Maura Ryan, criticizes the feminist concept of "unrestricted procreative liberty" by an appeal to viewing persons "as embodied and relational."⁶⁸ Sidney Callahan argues that during pregnancy a woman's body "no longer exists as a single unit but is engendering another organism's life."⁶⁹ Donald De Marco contends, "Motherhood is not a conjunction or a connection or a concoction. It is the relationship par excellence that unites two separate humans in a manner that is simultaneously biological and spiritual, inter-personal and life-giving."⁷⁰ He continues, "The willful denial that the bond between the pregnant woman and her unborn child is maternal is a choice and a strike against motherhood and the reduction of the person to a truncated individual."⁷¹ De Marco relates the abortion rights movement to a materialism that is deaf to the natural melodies of pregnancy and motherhood: "The melody that unites a pregnant woman with her child is spiritual and defines her motherhood. A **[*330]** strictly materialistic philosophy denies the spiritual order it cannot understand. Fear flees from the spiritual order it cannot comprehend."⁷²

Moving now to *Mulieris Dignitatem*, Pope John Paul II makes a distinction between physical motherhood and spiritual motherhood. Physical motherhood is "a special communion with the mystery of life, as it develops in the woman's womb."⁷³ In every pregnancy, the woman has "unique contact" with the human being developing in her womb.⁷⁴ The man, although in relationship with the mother and the unborn child, "always remains 'outside' the process of pregnancy and the baby's birth."⁷⁵ The mother must bring the baby to his or her father. The Pope emphasizes that while parenthood belongs to both the man and the woman, the most demanding part is the sum of conception, pregnancy, and giving birth, whereby the energies of the woman's body and soul are involved and absorbed.⁷⁶ For example, motherhood necessitates changes in her body (eating habits, sleeping habits) as well as her soul (emotional, psychological, and spiritual).⁷⁷ She is fully giving herself to the child. This activation and transformation of the woman is needed to sustain and nourish the developing life in her womb and the evolving relationship between the woman and the child. In this way, Pope John Paul II contends a mother is sensitive to the other in a particularly feminine way that "profoundly marks the woman's personality."⁷⁸ Spiritual motherhood, on the other hand, refers to the dignity and vocation of the female human being, which consists in loving God and

⁶⁷ *Id.*

⁶⁸ Maura A. Ryan, *The Argument for Unlimited Procreative Liberty: A Feminist Critique*, in *Bioethics: Basic Writings on the Key Ethical Questions that Surround the Major, Modern Biological Possibilities and Problems* 81, 94-95 (Thomas A. Shannon ed., 4th ed. 1993) (1976).

⁶⁹ Sidney Callahan, *Abortion and the Sexual Agenda: A Case for Pro-life Feminism*, in *Abortion and Catholicism: The American Debate* 128, 131 (Patricia Beattie Jung & Thomas A. Shannon eds., 1988).

⁷⁰ Donald De Marco, *The Integral Person in a Fractured World* 109 (2001).

⁷¹ [Id. at 110.](#)

⁷² [Id. at 113.](#)

⁷³ *Mulieris Dignitatem*, *supra* note 1, P 18.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ See *id.*

⁷⁸ *Id.*

neighbor in all circumstances and states in life. ⁷⁹ The woman, like all human persons, is called to "exist 'for' others" - to move toward self-realization, which can only be achieved "through a sincere gift of self." ⁸⁰

[*331]

C. Pregnancy as a Strained Relationship

Let us remember that AI developed the new abortion policy with victims of sexual violence primarily in mind. Dr. Hogan takes up this exact issue. She discusses the union of the mother and the developing unborn human being in cases where the mother has not consented to the relationship, such as in cases of rape. When the relationship between the two subjects is so strained, Dr. Hogan proposes that two issues be considered in assessing the situation:

[First,] as a physical union ... what obligations might be claimed to arise where the life of one human being is so radically dependent on the other for such a limited period of time[?] ... [Second,] as a moral union ... what limitations may be placed on the activities of the more powerful when they find themselves in relationships that are not of their own choosing[?] ⁸¹

Similar sorts of questions are being asked in the field of law. In the United States, some refer to the aforementioned tension as "maternal-fetal conflict." ⁸² These academics are confronting the issue of prenatal abuse and the possibility of legal confinement of pregnant alcoholic or drug-addicted women, who put their unborn babies at risk. ⁸³ Within this discussion, some scholars are canvassing the **[*332]** possibility of legal representation for the "fetus"; they are also reflecting upon the incongruence of laws, assessing the logic behind those laws that legalize abortion existing side by side with other laws that protect the unborn child. ⁸⁴ One might well query: How is it permissible to kill the unborn child but impermissible to abuse him or her?

⁷⁹ Id. P 21.

⁸⁰ Id. P 7 (internal quotation marks omitted) (quoting Second Vatican Council, *Gaudium et Spes* [Pastoral Constitution on the Church in the Modern World] P 24 (1965), reprinted in *The Sixteen Documents of Vatican II* 513, 536 (Nat'l Catholic Welfare Conference trans., 1967)).

⁸¹ Hogan, *supra* note 50.

⁸² See, e.g., Rosamund Scott, *Rights, Duties and the Body: Law and Ethics of the Maternal-Fetal Conflict* (2002).

⁸³ See Cynthia L. Glaze, *Combating Prenatal Substance Abuse: The State's Current Approach and the Novel Approach of Court-Ordered Protective Custody of the Fetus*, [80 Marq. L. Rev. 793, 812-13 \(1997\)](#).

Although court-ordered protective custody may appear extreme and unnecessary to some, the state has previously been granted the power to confine an individual for the benefit of a third person... .

Similar to the protective custody at issue, courts have also previously ordered confinement of a pregnant woman and her fetus when the woman refused to comply with lifesaving medical treatment for the fetus. This form of custody requires the woman to undergo major surgery, in addition to being admitted to a hospital... .

Therefore, since people have previously been held against their will for the protection of a third party, it seems only logical to allow the state to protect an unborn viable fetus from the dangerous controlled substances his or her mother may be ingesting.

Id. (footnotes omitted); see also Carol Gosain, Note, *Protective Custody for Fetuses: A Solution to the Problem of Maternal Drug Use? Casenote on Wisconsin Ex. Rel Angela v. Kruzicki*, [5 Geo. Mason L. Rev. 799, 828-29 \(1997\)](#) ("Two-thirds of the states and the District of Columbia have statutes expressly providing for discretionary commitment of drug and alcohol-dependent individuals, and many other states broadly interpret their commitment statutes to allow the confinement of alcoholics and drug addicts... . Thus, states may commit drug-dependent persons for the purpose of treatment without violating their constitutional rights.").

⁸⁴ Adam C. Kolasinski, *Untenable Unborn Child Dichotomy*, *The Tech* (Mass Inst. of Tech., Cambridge, Mass.), Apr. 2, 2004, at 5, available at <http://tech.mit.edu/V124/PDF/N16.pdf>; see also Sam S. Balisy, Note, *Maternal Substance Abuse: The Need to*

Pope John Paul II acknowledges the crimes against women and children, such as rape, describing them as "outrageous and barbaric behavior which is deeply abhorrent to the human conscience."⁸⁵ He understands that such atrocities may be driven by the disorder within individual men and that it can also be part of a systematic effort to effect ethnic cleansing in times of conflict.⁸⁶ Whatever the reason, Pope John Paul II argues that the solution is not to promote abortion of the unborn child. He contends that every violation of life "contains the seeds of the extreme violence of war,"⁸⁷ and given woman's unique role in the transmission of human life, she ought to be a peacemaker by promoting and protecting life.⁸⁸ With this point, he alludes to perhaps the greatest distortion of being woman: the drama of abortion, whereby woman the life-giver becomes woman the life-taker. With such an action, she participates in planting the seeds of [*333] war rather than the seeds of peace.⁸⁹ In cases of rape and incest, the answer for the mother and her unborn child is authentic and viable alternatives that promote assistance during and after pregnancy, including those related to finding another family to raise the child. Pope John Paul II calls on all men and women of good will to assist in this regard, and in addition, to return to God's original plan for man and woman, namely to be in relationship and profound communion.⁹⁰ This requires man and woman to work together to eliminate all violence against mothers and their unborn children.⁹¹

D. Pregnancy as Relationship with God

Finally, let us consider God's way of loving man in the economy of salvation and the profound meaning attributed to pregnancy and motherhood as a natural and supernatural reality. In viewing AI's abortion policy with the eyes of faith, a person of faith has additional reasons to question AI's policy, insofar as it runs counter to God's covenant of love with humanity.

What is this covenant of love? "God is love, and he who abides in love abides in God, and God abides in him."⁹² The self-revelation of God takes place in two periods of salvation history.⁹³ God had previously spoken through

Provide Legal Protection for the Fetus,[60 S. Cal. L. Rev. 1209 \(1987\)](#); Moses Cook, Note, From Conception Until Birth: Exploring the Maternal Duty to Protect Fetal Health, [80 Wash. U. L.Q. 1307 \(2002\)](#); Glaze, supra note 83; Susan Goldberg, Of Gametes and Guardians: The Impropriety of Appointing Guardians Ad Litem for Fetuses and Embryos, [66 Wash. L. Rev. 503 \(1991\)](#); Lisa H. Harris, Rethinking Maternal-Fetal Conflict: Gender and Equality in Perinatal Ethics, 96 *Obstetrics & Gynecology* 786 (2000); Erin N. Linder, Note, Punishing Prenatal Alcohol Abuse: The Problems Inherent in Utilizing Civil Commitment to Address Addiction, [2005 U. Ill. L. Rev. 873](#); Amy Lotierzo, Comment, The Unborn Child, a Forgotten Interest: Reexamining Roe in Light of Increased Recognition of Fetal Rights, [79 Temp. L. Rev. 279 \(2006\)](#); Lynn M. Paltrow, Pregnant Drug Users, Fetal Persons, and the Threat to Roe v. Wade, [62 Alb. L. Rev. 999 \(1999\)](#).

⁸⁵ Pope John Paul II, Message for the Celebration of the World Day of Peace P 10 (Jan. 1, 1995), in *Serving the Human Family: The Holy See at the Major United Nations Conferences* 821, 826 (Mons. Carl J. Marucci ed., 1997).

⁸⁶ See Pope John Paul II, Letter to Archbishop Franc Perko of Belgrade (Apr. 19, 1999), in *I Am Particularly Close to Suffering People of Kosovo*, *L'Osservatore Romano* (English Ed.), Apr. 28, 1999, at 2.

⁸⁷ Pope John Paul II, supra note 85, P 10.

⁸⁸ See id.

⁸⁹ See id.

⁹⁰ See id. PP 3-4.

⁹¹ See id.

⁹² 1 John 4:16 (Revised Standard, Catholic Edition).

⁹³ See Hebrews 1:1-3 (Revised Standard, Catholic Edition).

In many and various ways God spoke of old to our fathers by the prophets; but in these last days he has spoken to us by a Son, whom he appointed the heir of all things, through whom also he created the world. He reflects the glory of God and bears the very stamp of his nature, upholding the universe by his word of power. When he had made purification for sins, he sat down at the right hand of the Majesty on high

the prophets of the Old Testament, who introduced the pronouncements with "Thus says the Lord." ⁹⁴ In the New Testament, God communicates in the Person of the Son, who "bears the very stamp of [God's] nature," one in substance with the Father. ⁹⁵ This Son begins his pronouncements with "I say to you." ⁹⁶ **[*334]** In the first period, God commands love; in the second, God is himself the gift of love to mankind. "The Revealer becomes the revelation, revelation and revealer coincide." ⁹⁷

In the midst of this salvific event, one finds woman. ⁹⁸ This reality is beautifully disclosed in the Annunciation dialogue between the angel Gabriel and the Virgin Mary, where the Triune God is manifest. ⁹⁹ Mary's gift of "interior readiness" to accept Jesus takes place within the context of her betrothal to Joseph. ¹⁰⁰ Pope Benedict XVI fleshes out the significance of betrothal in his encyclical letter *Deus Caritas Est*. Therein, he explains how eros (intoxicating love promising infinity or eternity) is rooted in the very nature of the human person, prompting him or her to marriage and the purifying love of agape (sober love in discovering the other and being ready and willing to sacrifice). ¹⁰¹ In marriage, love is now ready and willing to express care and concern for the other in a total, forgiving, fruitful, exclusive, and permanent manner. ¹⁰² In this way, "God's way of loving becomes the measure of human love." ¹⁰³

Jesus Christ comes to dwell within Mary. ¹⁰⁴ "Within and beneath her heart," then, is a mystery of a "particular heart-to-Heart, **[*335]** body-to-Body communion between mother and Child." ¹⁰⁵ This pregnancy takes on a

Id.; see also Fr. P. Raniero Cantalamessa, O.F.M. Cap., *Jesus of Nazareth: "One of the Prophets?"*, Homily in the Papal Household (Dec. 7, 2007), <http://www.cantalamessa.org/en/predicheView.php?id=216>.

⁹⁴ See, e.g., Exodus 4:22; Joshua 24:2; 1 Samuel 15:2; 1 Kings 12:24.

⁹⁵ Hebrews 1:3 (Revised Standard, Catholic Edition)

⁹⁶ See, e.g., Matthew 5:18, 22, 28, 32, 34, 39, 44; Mark 9:1, 41; Luke 18:17, 29; John 3:3, 5, 11.

⁹⁷ Cantalamessa, *supra* note 93; see also Pope Benedict XVI, *Deus Caritas Est* [Encyclical Letter on Christian Love] P 1 (2005) [hereinafter *Deus Caritas Est*] ("Since God has first loved us (cf. 1 Jn 4:10), love is now no longer a mere "command"; it is the response to the gift of love with which God draws near to us.").

⁹⁸ *Mulieris Dignitatem*, *supra* note 1, P 3 (emphasis omitted).

⁹⁹ Id.; Luke 1:31-37 (Revised Standard, Catholic Edition). In the Annunciation dialogue, all three Persons of the Trinity are present: "The Holy Spirit will come upon you, and the power of the Most High will overshadow you; therefore the child to be born will be called holy, the Son of God." Id. 1:35 (internal quotation marks omitted) (emphasis added).

¹⁰⁰ *Mulieris Dignitatem*, *supra* note 1, PP 18, 20.

¹⁰¹ *Deus Caritas Est*, *supra* note 97, PP 5-7, 10-11. Through fidelity to the One God, man comes to experience himself loved by God and discovers joy. Id. P 9. God's love for his people is always a forgiving love, while at the same time eros is always purified by agape. Id. PP 5-7, 10. Since God created man as male and female, as a body and soul unity, in his image and likeness, endowed with intellect and will to know and love him and neighbor, the biblical narrative in Genesis presents the idea that "by nature [man] seeks in another the part that can make him whole, the idea that only in communion with the opposite sex can he become "complete." Id. P 11. The male and female seek each other, and "only together do the two represent complete humanity and become "one flesh." Id.

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Josemaria Escriva, *Christ Is Passing By* 41 (Scepter Publishers 1974) (1973).

Christ was humble of heart. Throughout his life he looked for no special consideration or privilege. He began by spending nine months in his Mother's womb, like the rest of men, following the natural course of events. He knew that mankind needed him greatly. He was longing to come into the world to save all souls, but he took his time. He came in due course, just as every other child is born. From conception to birth, no one - except our Lady, St. Joseph and St. Elizabeth - realized the marvelous truth that God was coming to live among men.

singular supernatural significance. By receiving God, the gift of love, in the Person of the Son, Mary commences a singular relationship with him: "Behold, I am the handmaid of the Lord." ¹⁰⁶ "Mary attains a union with God [both physical and spiritual] that exceeds all the expectations of the human spirit." ¹⁰⁷ She fully embodies what St. Paul would later describe in his Letter to the Galatians: "It is no longer I who live, but Christ who lives in me" ¹⁰⁸ "Here we find ourselves," as Pope John Paul II notes, "at the culminating point, the archetype, of the personal dignity of women. ¹⁰⁹ Mary's motherhood "highlights a form of union with the living God which can only belong to the "woman"; ¹¹⁰ such motherhood bears the fullness of what it means to be feminine. ¹¹¹

As previously noted, however, motherhood is not solely a flesh-and-blood reality; there is something more than the historical passage of every human being "through the threshold of a woman's **[*336]** motherhood." ¹¹² Pope John Paul II explains that Mary's motherhood is life-giving in both physical and spiritual senses. In addition, he notes that God begins a New Covenant with humanity through her maternal fiat. Motherhood has been rendered part of this order; from then on, it is a sign of God's New Covenant with humanity. ¹¹³ "Each and every time that motherhood is repeated in human history, it is always related to the Covenant which God established with the human race through the motherhood of the Mother of God." ¹¹⁴ Pope John Paul II elaborates on this point in linking the "pangs of childbirth" to the suffering and joy of the Paschal Mystery. ¹¹⁵ When the time comes for the woman to give birth, she feels pain, but when the baby has been delivered, she experiences the joy that a child is born into the world. ¹¹⁶ Similarly, when the time came for the passion and death of Jesus, Mary and the apostles experienced distress and pain, but when he rose again on the third day, they experienced joy. ¹¹⁷

Id. (footnote omitted).

¹⁰⁵ George A. Peate, *Unborn Jesus Our Hope* 76 (2006).

¹⁰⁶ Luke 1:38 (Revised Standard, Catholic Edition).

¹⁰⁷ *Mulieris Dignitatem*, supra note 1, P 3 (emphasis omitted).

¹⁰⁸ Galatians 2:20 (Revised Standard, Catholic Edition).

¹⁰⁹ *Mulieris Dignitatem*, supra note 1, P 5. It is noteworthy that woman is disfigured in ideologies that promote the so-called "right to abortion" and persuade her to destroy the life within, harming her own body and her personal identity as a feminine sexual being and mother. The hope for humanity lies elsewhere. Mary's embrace of God's loving covenant points to the mystery and true dignity of every woman. Little wonder her Son, Jesus Christ, promoted woman's true dignity and vocation as exemplified by his mother - the most perfect human creature in salvation history. See id. PP 12-16.

¹¹⁰ Id. P 4 (emphasis omitted).

¹¹¹ Id. P 5; see also Angelo Scola, *The Anthropological and Theological Bases of the Dignity and Mission of Woman in the Magisterium of John Paul II*, in *The Logic of Self-Giving* 56, 69 (1997) (discussing how Mary is the archetype of woman because of her "spousality, maternity and prophetic "genius." (emphasis added)). In brief, from an anthropological perspective, spousality refers to the fact that man does not exist alone. The human being, always existing as masculine and feminine, is in relationship as a unity of male and female persons, different but complementary, which in turn points to every human person's original dependence on each other and God. Id. at 59-61. In this way, difference or otherness is the path to unity. [Id. at 66](#). Maternity, the second aspect, "opens the way for an understanding of the special link between woman and life." [Id. at 69](#). The third component, prophetic genius, "is especially related to the logic of love which, in the end, is the only logic that is credible for humankind." Id.

¹¹² *Mulieris Dignitatem*, supra note 1, P 19.

¹¹³ Id.

¹¹⁴ Id. (emphasis omitted). Understood in this light, motherhood is a "'listening to the word of the living God' and a readiness to 'safeguard' this Word, which is 'the word of eternal life' (cf. Jn 6:68)." Id. (emphasis omitted).

¹¹⁵ Id. (internal quotation marks omitted).

¹¹⁶ Id.

¹¹⁷ Id.

Mary is also the most complete expression of the dignity and vocation of every human being - every mother, father, and child. This consists in union with God. ¹¹⁸ Mary discovers her vocation as a human being called to love God and neighbor - to "exist 'for' others" - to move toward a self-realization that can only be achieved "through a sincere gift of self." ¹¹⁹

[*337] Finally, in imitating Mary, the Catholic Church herself becomes a mother by receiving and nurturing the Word of God. ¹²⁰ Through baptism and preaching, she brings forth new children who are "conceived by the Holy Spirit and born of God" and destined for eternal life. ¹²¹ Finally, as the Virgin Bride, the Church "keeps whole and pure the fidelity she has pledged" to Jesus Christ her Spouse. ¹²²

E. Summary

The logic of love presents pregnancy as a relationship of love between a mother and her unborn child. By analogy, just as a mother and her rebellious teenager may have to endure difficult and perhaps lengthy periods of interaction, so too can a mother and her unborn baby. In the former case, a mother is not generally encouraged to radically separate from her teenager or to use physical and mental violence against him or her. Similarly, in the case of maternal-unborn child conflicts, the state and society ought to encourage a nonviolent response. The answer to both of these scenarios ought to be the same: peaceful resolution of disputes in the spirit of love and forgiveness with the assistance of family, friends, communities (including religious communities), and the state. A deeper understanding of this perspective is then presented within the economy of salvation, where the love of God for humanity is manifested and motherhood plays a significant role.

Conclusion

The "logic of violence" as revealed in AI's abortion policy is unpersuasive. It is, in effect, institutionalizing an act of brutality. An intentionally procured abortion can never be a remedy, but is always an act of violence. It destroys individuals, personal relationships, and the deepest sense of community. The "logic of love," on the other **[*338]** hand, recognizes that the bond between the mother and the unborn child may be strained in certain circumstances. Yet this unfortunate reality must be met with healing love, forgiveness, care, and concern, as well as material and spiritual assistance during and after pregnancy. To this end, the good practices of religious organizations and crisis pregnancy centers ought to be promoted in the international community, and AI should call on states to foster such

¹¹⁸ Id. P 4 (emphasis omitted); see also Rainero Cantalamessa, *Poverta* 144-45 (1996) ("Jesus is born in me because he was once born in Mary at Bethlehem. The actual birth of Christ is the sign and the model of an invisible birth of Christ. In extreme poverty, in silence, in the most profound quite and peace, the omnipotent Word descended from the kingly throne, as the bright light shining in the darkness for the first time... [These] are the conditions for Christ's birth to be repeated.").

¹¹⁹ *Mulieris Dignitatem*, supra note 1, P 7 (internal quotation marks omitted) (emphasis omitted); see also Scola, supra note 111, at 68-69.

She is the one who, eminently among humankind, fulfils the supernatural destiny of being sons in the Son. Mary conceives her whole life in function of the Son: in her, as in no other creature, is fulfilled the design pre-established by the Father, since she was preserved from original sin and her whole history, from the immaculate conception to the assumption, is an affirmation of the will of the Father in the following of the Son.

Id. (footnote omitted).

¹²⁰ *Mulieris Dignitatem*, supra note 1, P 22; see also Scola, supra note 111, at 68 ("As Mother and Virgin, Mary is archetype of the Church In her person is concentrated, on the one hand, the Motherhood of the Church, whose womb is the baptismal font [for birth in Christ], and on the other, the perfect obedience of faith which tradition links, in a special way, with virginity [a form of spousal love].").

¹²¹ *Mulieris Dignitatem*, supra note 1, P 22 (internal quotation marks omitted) (quoting Second Vatican Council, *Lumen Gentium* [Dogmatic Constitution on the Church] P 64 (1964), reprinted in *The Sixteen Documents of Vatican II*, supra note 80, at 107, 175 [hereinafter *Lumen Gentium*]).

¹²² Id. (internal quotation marks omitted) (quoting *Lumen Gentium*, supra note 121, P 64).

solidarity in their own jurisdictions. Viewing the logic of love within the Christian tradition means that every terminated pregnancy is a defeat for humanity and a rejection of God's love. In the final analysis, meeting violence and suffering with the logic of love is the "only logic that is credible for humankind."¹²³

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¹²³ Scola, *supra* note 111, at 69.