

from
**Upholding the Law
and Other Observations**
by
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Bring 'Em Out Alive



The legal theories which keep the noxious abortion controversy alive in the face of steady majority opposition to the practice are really those of trespass and involuntary servitude, the Supreme Court's nonsense about a penumbra of privacy notwithstanding. There IS a penumbra of privacy in any system of government based on a limited delegation of authority to the state-- but it is irrelevant to the abortion question.

Citing that penumbra was an artifice by which the court tarted up with legalese the casting of the issue as a Hobson's choice between violating a defensible claim to autonomy by the woman on the one hand and the proactive death of the fetus on the other (with the ridiculous argument that early-stage humans are not 'human' being deployed like a thumb on one side of the scale). The strained privacy and fetal-inhumanity claims never commanded much meaningful respect from abortion's opponents; but instinctive American support for the much more defensible position regarding the woman's sovereignty furnished abortion advocates with a means to obscure the contrived and

false characterization of the dilemma and steer consideration of the issue in a direction that favored their cause.

Revisiting that element reveals that a normal, well-established, and principled remedy for the conundrum was and is available-- the live, minimum-force-necessary eviction of the unwanted occupant/dependent. This remedy should be embraced as the morally superior, philosophically sound and politically feasible solution to the distasteful, but at least arguably legitimate, competition between the interests of certain people and their children. We can call it the "Bring 'Em Out Alive" compromise.

The essential principles are simple: a woman can claim freedom from involuntarily providing a home and sustenance to the child, and can rightfully force it from her body; but when she does, it must be done without immediate harm to the child. This requirement of restraint is no different than that faced by an impatient and capable landowner, who must yet see even an innocent *uninvited* trespasser to the limits of her land alive, rather than save herself the walk by just gunning down the offender where he stands. The power to evict is unquestionable-- but so is the obligation to employ the minimum force necessary; and particularly where, as in the vast majority of abortions, the 'trespasser' is where he is due to the voluntary behavior of the now unwilling hostess.

Despite the obligation to see the baby safely out of herself and into the world, what would then become of it would not be the woman's business. Some might promptly die, some might more slowly do so; some, perhaps most or all, would become the immediate objects of rescue and preservation efforts by the rest of society. One thing is certain-- none of

them would be in straits more dire than under the current regime.

As for the mothers, they would be modestly more inconvenienced than is the case for an abortion when the survival of the fetus is disregarded, but no more than would amount to a reasonable accommodation. Here, as in any other conventional trespass, there is a conflict of rights, but the balance of interests is simple and uncontroversial.

A greater inconvenience to those mothers than the lengthier, or more costly, or less available procedure would be filling out the forms waiving parental rights to the baby of which they are trying to be rid. I think that such a waiver would be a mandatory element of this compromise. It would be hard to argue with the proposition that such women are not fit parents, at least for these particular children.

This element, combined with what I think is the predictable behavior of the rest of society, would have its own beneficial effect on the entire issue. It is one thing to get your toenail clipped in the privacy of a supportive clinic which will go to any lengths to keep you from perceiving your condition as "being with child". It is quite another to sign the papers and then be operated on, understanding that an emergency medical team waits alongside you to scoop up your discarded baby and begin immediate heroic efforts to save or maintain its life so that it can go on to grow into a cherished little child in someone else's home, leaving your only relationship that of would-be killer and victim. I believe there would be few repeat customers.

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To "Bring 'Em Out Alive" would, I think, reveal the unnatural character of the abortive impulse so starkly as to stigmatize the practice severely, even while leaving it legal.

Though abortions would still be available to those who want them, such women would be marginalized into the ranks of drug-addicts, kleptomaniacs, and others characterized by a lack of self-discipline, personal integrity and sense of responsibility.

There will, therefore, be a great deal of resistance to this proposal among the extremists. They will cast about for arguments, and will chiefly flog the “not human/part of the mother (just a toenail)” proposition. Until now, the subtext of the previous debate has always tended to be, “Even if it is human, it’s rights are trumped by the mother’s (and besides, it’s not human)”. With the rights component removed, all that is left is the “not human/just a toenail” contention. (The health-of-the-mother argument has always rested on a comparison of the relative risks of abortion versus a full-term delivery. A live-baby abortion need be no more invasive or dangerous to the mother than a dead-baby abortion).

The most rudimentary analysis exposes this contention as nonsense: Once the genesis of the (genetically human) fetus is accomplished-- through the agency of two other (genetically independent) individuals-- its self-directed progress of development takes place whether the (genetically different) mother is present and providing the nurturing environment, or that environment is being provided by some guy in a lab coat with an incubator. What emerges from either protective environment is undeniably human. Thus the proposition that the fetus is not an individual human is absurd. Nonetheless, it will be fiercely advanced.

However, the large majority of even those who have previously ceded the debate to their fervent pro-abortion neighbors without much challenge will find it desirable to err on the side of caution and support this change. Indeed, already the recently revealed commonality of “botched” abortions resulting in babies unintentionally delivered alive and left in

clinic closets or trash hampers to die has energized many previous fence-sitters to support stringent legislation regarding the care and treatment of those babies. An amazing transformation of the public perspective takes place when that "clipped toenail" becomes a live baby.

It will also be argued that some babies will suffer more under this solution-- dying slowly from exposure rather than quickly under the scalpel or vacuum device. But this false-- or at least, misdirected-- concern would rest on a failure to appreciate that the world is dynamic rather than static.

As mentioned earlier, much societal effort will turn toward rescue; more significantly, there would be many, many fewer abortions in the first place. Thus, in the worst case (the failure of society to mount the rescue campaign, or that effort's lack of comprehensive success), the same calculus by which we send our young men into battle would obtain, whereby a small number suffer hardship so that a greater number may be spared.

In the end, to "Bring 'Em Out Alive" is a simple and principled solution to an otherwise intractable political problem, and it doesn't require a moral or legal perspective on the humanity of a fetus, or the propriety of abortion. A modest acknowledgement that uncertainty is reasonable will suffice, and, as we entertain no doubts regarding our own claim to the high status of human, self-respect alone demands no less of us.