GLC Weekly

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Harvard Law Journal Documents Unborn Babies are Constitutional Persons, Part 2

Thomas W. Jacobson, Global Life Campaign

The Common Law and legal history of both Great Britain and the United States reveal that from the 1300s to the mid-1900s, babies in the womb were recognized and protected as "persons,"

as "human beings," and the duty of governments and law was to protect human life from the moment it could be detected. Also, during the 1800s, every nation (with a known policy) prohibited abortion. Also during the 1800s, both Great Britain and the USA faced the truth that Africans and others with black or brown skin color were "persons" equally created in the image and likeness of God; both nations ended slavery. The same arguments that were used to justify slavery have been used to justify abortion in recent generations.

Joshua Craddock wrote a *Harvard Journal of Law & Public Policy* article documenting the parallel history of protecting babies in the womb and approving the Fourteenth Amendment to the U.S. Constitution guaranteeing equal rights, not only to former slaves, but the right to life of preborn children. His article was titled: **"Protecting Prenatal Persons: Does the Fourteenth Amendment Prohibit Abortion"** (http://journals.law.harvard.edu/jlpp/wp-content/uploads/sites/90/2018/02/Craddock_FINAL.pdf). Here is Part 2 of excerpts from the article:

"B. Common Law Precedent and State Practice

"By the time of the Fourteenth Amendment's adoption, 'nearly every state had criminal legislation proscribing [prohibiting, removing from the protection of law] abortion,' and most of these statutes were classified among 'offenses against the person.' The original public meaning of the term 'person' thus incontestably included prenatal life. . . . In twenty-three states and six territories, laws referred to the preborn individual as a 'child.' . . .

"The adoption of strict anti-abortion measures in the mid-nineteenth century was the natural development of a long common-law history proscribing abortion. Beginning in the mid-thirteenth century, the common law codified abortion as homicide as soon as the child came to life (animation) and appeared recognizably human (formation), which occurred approximately

40 days after fertilization. Lord Coke later cited the 'formed and animated standard', rearticulating it as 'quick with childe.' . . .

"Thus, common law consistently prohibited abortion of human beings *in utero* according to the best medical knowledge of the day, and viewed abortion as the wrongful killing of a human being.

"In the eighteenth century, [Lord] Coke's description 'quick with child' (the point at which the child is first *able* to move, then considered the beginning of existence) was equated with 'quickening' (the point at which the mother first *feels* fetal movement). This distinction was intended to protect prenatal life as soon as it could be discerned, not to exclude human life from protection prior to that point. . . . The *Roe* Court . . . failed to see that the rule was merely a tool of criminal law, not a statement about the value of life prior to perceptible movement in the womb.

"The 'quickening' distinction survived in common law until emergent medical science discovered 'that human life began at fertilization,' allowing medical examiners to prove prenatal life and cause of death due to abortion with greater certainty. After this discovery in the early nineteenth century, British courts instructed jurors that 'quick with child,' which had earlier meant 'formed and animated,' now meant 'from the moment of conception.' . . .

"Thomas Percival's . . . *Medical Ethics* declared, '[T]o extinguish the first spark of life is a crime of the same nature, both against our maker and society, as to destroy an infant, child, or a man.' The American Medical Association's 1859 report on abortion considered the human being *in utero* a person, and it called for protection of the 'independent and actual existence of the child before birth, as a living being.' They decried the 'unnecessary and unjustifiable destruction of human life' both before and after quickening, and they urged state legislatures to reform their abortion statutes. The Medical Society of New York in 1867 'condemned abortion at every stage of gestation as "murder."' . . .

"Meanwhile state legislatures also took action to prohibit abortion from the point of fertilization. At the end of 1849, 'no fewer than 18 of the 30 states had enacted anti-abortion statutes; by the end of 1864, 27 of 36; by the end of 1868, 30 out of 37,' in addition to six territories. Of those thirty states, 'twenty-seven punished abortion before and after quickening . . . . These statutes indicate that the preborn were included within the public meaning of the term 'person' at the time of the Fourteenth Amendment was adopted."

"When the Amendment was adopted in 1868 . . . At least twenty-eight jurisdictions labeled abortion as an 'offense[] against the person' or an equivalent criminal classification. Nine of the ratifying states explicitly valued the lives of the preborn and their pregnant mothers equally by providing the same range of punishment for killing either during the commission of an abortion. The 'only plausible explanation' for this phenomenon is that 'the legislatures considered the mother and child to be equal in their personhood.' Furthermore, ten states . . . considered abortion to be either manslaughter, assault with intent to murder, or murder. . . .

"(T)hese statutes were enacted in recognition of unborn human beings' full and equal membership in the human family. . . .

"(A)fter ratifying the Fourteenth Amendment in January 1867, the Ohio legislature took up a bill to amend their 1834 anti-abortion statute. . . . Their Senate . . . concluded their report: 'Let it be proclaimed to the world, and let it be impressed upon the conscience of every woman in the land "that the wilful killing of a human being, at any stage of its existence, is murder."' . . . Other state legislatures (enacted similar laws). . . .

"At the time of the Fourteenth Amendment's adoption, nearly every state understood 'person' to include prenatal life. The inclusive meaning of 'person' in the 1860s state law should thus shape an originalist understanding of the Amendment."

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Jacobson comment: The last part of the Fourteenth Amendment declares: "nor shall any State *deprive any person of life*, liberty, or property, *without due process of law*; *nor deny to any person* within its jurisdiction *the equal protection of the laws*." Craddock is correct in asserting that this Amendment guaranteed legal protection of the right to life not only of former slaves, but of children in the womb regardless of their color of skin or circumstances of conception.

PRAY that the LORD would restore a true understanding and deep valuing of each child, beginning in the womb, as a person, a human being, created in the image and likeness of God, of inestimable value, and worthy of protection by parents, family, the Church, medical professionals, government, and good laws.

For the LORD, the sacred gift of life, and remembrance of the babies,

Thomas W. Jacobson
Founder & Executive Director
Global Life Campaign
TJacobson@GLC.life ; GLC.life ; www.GLCPublications.com

*The purpose of the Global Life Campaign is to **call and equip trustworthy disciples inspired by the Holy Spirit,** to be a catalyst movement to establish principles and practices in nations that align with the Word of God and respect human life.*