

## RESTORING THE LOST VIRTUE OF PRUDENTIAL JUSTICE TO THE LIFE DEBATE

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POLITICS FOR THE GREATEST GOOD: THE CASE FOR PRUDENCE IN THE PUBLIC SQUARE. By Clarke D. Forsythe. Downer's Grove, IL: InterVarsity Press. 2009. Pp. 319. \$23.00.

Can a book about *prudence* survive in contemporary publication culture? This one will most definitely survive—and may indeed thrive if readers can handle constructive criticism that leads to greater good.

Lamenting the loss of public virtue and the sad reality that political action and involvement has grown frustrating for the evangelical Christian community, Clarke Forsythe gently, empathetically, and thoughtfully reminds the prolife public that we are no more virtuous than our progressive proabortion counterparts when it comes to judicial activism, clarifying the need for a wiser solution. The mantra of “overturn *Roe v. Wade*”<sup>1</sup> reveals at once underlying disdain and a desire for judicial activism. Though Forsythe himself echoes the same incantation,<sup>2</sup> he takes a giant step in offering the remedy in his new book *Politics for the Greatest Good: The Case for Prudence in the Public Square*.

According to Forsythe, the cure is prudence, a most cherished virtue almost completely absent in the politics of the twenty-first century.<sup>3</sup> The politics of prudence are reasoned, strategic, challenging, and measured. They are the essence of practical reasonableness with moral purpose. In a culture gone adrift of virtue, Clarke Forsythe offers a refreshing

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<sup>1</sup> 410 U.S. 113, 164 (1973) (ruling that abortion is a fundamental constitutional right). A brief internet search reveals no less than 1,180 results for “overturn *Roe v. Wade*,” demonstrating the dominating volume of this mantra, even by Ms. Roe herself, Norma McCorvey. See Cody Sain, Op-Ed., *Overturning Roe v. Wade: As Litigation to Overturn Case Continues, Those Hurt by Abortion Must Speak Out*, BATTALION ONLINE, Mar. 9, 2004, <http://media.www.thebatt.com/media/storage/paper657/news/2004/03/09/Opinion/Overturning.Roe.V.Wade-629439.shtml>.

<sup>2</sup> CLARKE D. FORSYTHE, *POLITICS FOR THE GREATEST GOOD: THE CASE FOR PRUDENCE IN THE PUBLIC SQUARE* 182–83 (2009).

<sup>3</sup> See *id.* at 16–21. At the outset, Forsythe’s book will present the reader with a primer on the classical tradition and virtue. In addition, a refresher in every chapter offers the reader a brief review of the cardinal virtues of justice, courage, and temperance, with prudence foremost and the focus of Forsythe’s view of the horizon. This type of jurisprudence is critical for the Christian lawyer to maintain, making *Politics for the Greatest Good* a necessary addition to every attorney’s must-read list.

challenge to the prolife community in America: take a deep breath; assess, discern, calculate, foresee evil; exercise sagacity; make right decisions, execute, and implement them well.

The reader's first, almost unconscious question will be a nagging reminder of our personal and collective loss of virtue: What is *prudence*? Who uses that word today? This is precisely Forsythe's point—we have lost the virtue we most need. Prudence implies caution in deliberation and practical wisdom to accomplish valuable purposes in the most suitable means, for the utmost common good. Prudence has been absent and must be reclaimed—in both word and deed.

These harsh realities regarding a lack of prudence take on new light in the wake of the murder of well-known late-term abortion provider George Tiller.<sup>4</sup> His killer is in no way representative of the prolife community, as the heinous murder was denounced over and over by prolife organizers.<sup>5</sup> But the killer's lack of understanding of true justice<sup>6</sup> is a reminder of the frustrations lurking in the shadows of prolife America. Prolife citizens vote, prolife citizens work for abortion regulation, prolife citizens sidewalk counsel, and prolife citizens pray. But are we effective? Are we wise? Are we strategic?

*Politics for the Greatest Good* suggests how the prolife community can reconsider a strategy for the greatest good with a solid foundation cemented in the lost art of prudence. According to Forsythe, recovering prudence as a pivotal virtue of the movement is absolutely necessary.<sup>7</sup> Unlike brash, harsh, hateful, and potentially dangerous politics of current events, Forsythe proffers something completely new—the use of

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<sup>4</sup> Nicholas Riccardi, *Doctor At Focus of Abortion Debate Shot Dead in Church*, L.A. TIMES, June 1, 2009, at A1 (“One of the few American physicians who performed late-term abortions, he was targeted by violent extremists as well as principled opponents.”).

<sup>5</sup> See, e.g., Posting of Kathryn Jean Lopez to The Corner, re: The Wrong Release, <http://corner.nationalreview.com/post/?q=NjIzYmQ0ZGY3NTUyNGRjOTI1ZTliOWUyZDc1ZTVlNjI=> (May 31, 2009, 15:40 EST) (“The National Right to Life Committee does the right thing.”); Michelle Malkin, Notes on the Murder of George Tiller, <http://michellemalkin.com/2009/06/01/notes-on-the-murder-of-george-tiller/> (June 1, 2009, 00:48 PST) (“Every mainstream prolife organization has unequivocally condemned the killing. I repeat: Every mainstream prolife organization has unequivocally condemned the killing. Princeton University professor Robert P. George is right about this: ‘Whoever murdered George Tiller has done a gravely wicked thing. The evil of this action is in no way diminished by the blood George Tiller had on his own hands. No private individual had the right to execute judgment against him. We are a nation of laws. Lawless violence breeds only more lawless violence.’” (quoting Posting of Robert P. George to The Corner, Gravely Wicked, <http://corner.nationalreview.com/post/?q=NDM5NGYyYWMxZDY3NWFmYjhjZmJiNTI2YmRjZmRlYWE=> (May 31, 2009, 15:42 PST))).

<sup>6</sup> See Associated Press, *Suspect in Doctor's Death Warns of More Violence*, WASH. POST, June 8, 2009, at A12, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/06/07/AR2009060702565.html> (indicating that the accused suspect felt the actions were justified by late term abortions).

<sup>7</sup> FORSYTHE, *supra* note 2, at 19.

prudence in politics. The radical left and the radical right may have defined the terms of the debate in the most critical issues of our times, but Forsythe claims that they have not been effective.<sup>8</sup> This book gently throws down the gauntlet to the prolife community, asking it to employ wisdom, speak with discretion, and work toward progress for the sake of the common good—both present and future.

Forsythe makes this challenge all the more salient by whetting the prolife hunger with the habit of prudence: “To the extent we desire to fulfill our greatest potential, we will consistently pursue prudence.”<sup>9</sup> The necessity of practical wisdom and pragmatic reasonableness brings the reader to the intersection of the principled approach and the pragmatic approach and pulls the best of each world into one strategy—prudence. The objective of *Politics for the Greatest Good* is to encourage the use of prudential reasoning “to reflect the greatest measure of justice possible in a world of constraints.”<sup>10</sup>

The art of prudence dictates that right action has four key elements: deliberation, judgment, decision, execution. “Prudence is concerned with right action and requires deliberation, judgment, decision and execution.”<sup>11</sup> Prudence within politics is indeed a refreshingly novel idea.

Clarke Forsythe, senior counsel for Americans United for Life (“AUL”), the litigation arm of the prolife movement,<sup>12</sup> embodies the picture of prudence and writes from an ethos that is respectful, calm, wise, and most importantly, prudent. He not only walks what he talks, but he is what he writes. Forsythe understands the politically frustrated circumstance of the average prolife citizen and has written this book indeed desiring to reach “the greatest good possible.”<sup>13</sup> In his words, he announces that he has written this book “to address the nagging concern that citizens and public officials sometimes have: *whether it’s moral or effective to achieve a partial good in politics and public policy when the ideal is not possible.*”<sup>14</sup> Out of his ethos and articulate work Forsythe begins to teach how to choose with prudence in the context of public policy.

Even apolitical, disillusioned attorneys can find refreshment from Forsythe’s explanations of why the law will always fall short of expectations, hopes, and dreams. By necessity, law exists in a fallen world. The very good it seeks to create is because of the lack of perfection

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<sup>8</sup> See *id.* at 255.

<sup>9</sup> *Id.* at 23.

<sup>10</sup> *Id.* at 21.

<sup>11</sup> *Id.* at 16–17.

<sup>12</sup> Americans United for Life, Clark D. Forsythe, [http://www.aul.org/Clarke\\_D\\_Forsythe](http://www.aul.org/Clarke_D_Forsythe); Americans United for Life, About AUL, [http://www.aul.org/About\\_AUL](http://www.aul.org/About_AUL).

<sup>13</sup> *Id.* at 13.

<sup>14</sup> *Id.* at 11.

within which it must necessarily exist—within a fallen world of imperfect human nature. Nearly every law student sets out on the path of the legal profession with idealism, only to be unsatisfied as a lawyer by what the law can provide for damaged clients. An understanding of the need and methods for implementing prudence from the outset, however, sets a lawyer up for a measure of success and fulfillment based on realistic objectives and practical wisdom. *Politics for the Greatest Good* provides a rigorous salve to prolife jurisprudence to temper expectations, soothe striving, and calm imperfect results with peace and a sense of moral attainment for what good is possible. Through a brief review of the abortion movement and its prolife response, Forsythe reveals a history of dilemma—and a lack of prudence in the public square. This book is a welcome to the principled crowd and the pragmatist set to find the middle ground to reach the greatest good.

Forsythe calls what may be commonly known as the principled approach<sup>15</sup> the “perfectionist” view.<sup>16</sup> He says that a perfectionist view, though attempting to reach the highest good, falls short of making the most good possible.<sup>17</sup> Seeking only the highest good is a paradox in that in striving for the perfect, it misses what could be very good—this is the “paradox [of] moral perfectionism.”<sup>18</sup> Rather than the all-or-nothing approach of the principled camp (which Forsythe argues is “neither prudent nor effective”), prudence supports the “wisdom of an *all-or-something* approach.”<sup>19</sup> Forsythe then offers a principled argument to the principled approach through the work of scholar Graham Walker, who argues that the principled approach requires the pursuit of the greatest good, even if the perfect is unattainable.<sup>20</sup>

The other end of the spectrum is occupied by what may be commonly referred to as the pragmatic approach.<sup>21</sup> Forsythe, however,

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<sup>15</sup> See generally, Lori A. Ringhand, *In Defense of Ideology: A Principled Approach to the Supreme Court Confirmation Process*, 18 WM. & MARY BILL RTS. J. (forthcoming 2009), available at <http://ssrn.com/abstract=1361102> (detailing why principles of ideology ought to direct in the confirmation process).

<sup>16</sup> FORSYTHE, *supra* note 2, at 19–20.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 20.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 28 (quoting Graham Walker, *Virtue and the Constitution: Augustinian Theology and the Frame of American Common Sense*, in VITAL REMNANTS: AMERICA'S FOUNDING AND THE WESTERN TRADITION 99, 135–37 (Gary L. Gregg II ed., 1999)).

<sup>21</sup> The debate between the two camps might be a microcosm of the conflict between the positive law (law made by judicial decree), and the natural law (law discernible by reason). Some have referred to this divergence as the letter of the law versus the spirit of the law. See Anne M. Cohler, *Introduction* to MONTESQUIEU, *THE SPIRIT OF THE LAWS*, at xi, xxi (Anne M. Cohler et al. eds. & trans., Cambridge Univ. Press 1989) (1748); MONTESQUIEU, *supra*, at 5–9. A principled position from which to advance or argue is the antithesis of an opportunistic tendency to use any argument at hand that is effective and

suggests that pragmatism falls short in that it is willing to compromise, possibly even morally, to obtain the desired end. He argues that “prudence is not pragmatism [because] prudence requires [a] moral purpose. Prudence aims to achieve the greatest good possible in the concrete circumstances.”<sup>22</sup>

This struggle is similar to the dilemma faced by lawyers and judges who are trying to achieve what is the best result for a child caught in a legal conflict. No one in the child’s life can really accomplish what is perfect for him or her when that child’s parents separate and divorce and ask a judge to discern how they should best care for, provide for, and protect their child. Because a judge cannot accomplish that perfect world of a happy home life with two married parents, the system looks for what is next best—or what has come to be the legal standard for every child, the best interests of the child (“BIC”).<sup>23</sup> You might say that the BIC standard is prudent justice for a child. It is not perfect (moral perfectionism) and it is not merely pragmatic, because the care of a child requires a moral purpose.

In his explanation, Forsythe intimates that America has become a utilitarian society—more concerned with what is useful rather than what is right—and that reality is played out in the life debate in the struggle between the principled and the pragmatic approach.<sup>24</sup> “The theme of this book is the recovery of a rich understanding of prudence, as

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tends to be very common in politics, for example, arguing one way one day, and another later, defended by casuistry, or by saying the cases are different. For practical purposes, in the legal context facts of cases do always differ, allowing case law to be at odds with a principled approach, seemingly defeating the original intent of the law, being the essence of judicial interpretation. Codified law poses a different problem of interpretation and adaptation of definite principles without losing the point; here applying the letter of the law may on occasion seem to undermine the principled approach. Conversely, when one obeys the spirit of the law but not the letter, he is doing what the authors of the law intended, though not adhering to the literal wording. Intentionally following the letter of the law but not the spirit may be accomplished through exploiting technicalities, loopholes, and ambiguous language, thereby comprising principle. Classical natural law theorists may refer to this as positivism or the jurisprudence of materialism, while the opposite, principled position may not yield desired results. See generally HEINRICH A. ROMMEN, *THE NATURAL LAW* 109–38 (Thomas R. Hanley trans., Liberty Fund 1998) (1936) (describing the background of positivism, its prominence in totalitarian regimes, and the reaffirmation of natural law).

<sup>22</sup> FORSYTHE, *supra* note 2, at 20.

<sup>23</sup> See generally Lynne Marie Kohm, *Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence*, 10 J.L. & FAM. STUD. 337, 337–40, 370–76 (2008) (explaining the flaws of the BIC standard, yet noting that it alone remains the standard because nothing better has been found to date, other than an intact marriage).

<sup>24</sup> FORSYTHE, *supra* note 2, at 24.

it has been understood by philosophers and statesmen, for its application by policymakers and citizens to contemporary public policy.”<sup>25</sup>

A couple of keys are provided by Forsythe for prolife evangelicals: temper expectations with prudential wisdom and balance objectives with an understanding that politics in a fallen world can really only be a “provisional palliative.”<sup>26</sup> Changing the law is a good objective, but it will always fall short of perfection. Changing the hearts and minds of men and, particularly, women may prove to be much more effective in the long run—both politically and eternally—and Forsythe holds to this premise, encouraging the community to never forget that prudence is thoughtful but also requires action and, most importantly, excellent implementation of any good objective.

With prudence comes hope. Forsythe applies the prudential ointment to frustrated Christians. “You must never confuse faith that you will prevail in the end—which you can never afford to lose—with the discipline to confront the most brutal facts of your current reality, whatever they might be.”<sup>27</sup> “A prudential analysis should yield realistic hopes instead of merely naïve optimism.”<sup>28</sup> Do not give up; take a breath; choose prudentially; be encouraged.

Forsythe uses the most classic ideas and authors, from Aristotle’s concepts of the human soul,<sup>29</sup> to Augustine’s *City of God*,<sup>30</sup> (and “his realism and understanding of God also limits what the [S]tate can and should achieve in that fallen world”<sup>31</sup>) to Aquinas’s *Summa Theologica*,<sup>32</sup> all of which are must-reads for Christians called to the law or public policy as servants and stewards of the common good. Also using contemporary favorites like J. Budziszewski’s *Written on the Heart*, Forsythe draws in the reader.<sup>33</sup> He then uses historical illustrations that

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<sup>25</sup> *Id.* at 18. Forsythe defines political prudence and notes that it “balances zeal with knowledge.” *Id.* at 17.

<sup>26</sup> *Id.* at 28 (quoting Walker, *supra* note 20, at 137).

<sup>27</sup> *Id.* at 37 (quoting JIM COLLINS, *GOOD TO GREAT* 85 (2001)).

<sup>28</sup> *Id.*

<sup>29</sup> *See id.* at 24–26.

<sup>30</sup> *Id.* at 27–28 (noting Augustine’s political realism and holding it up for us to visualize in our times (citing Etienne Gilson, *Foreword* to ST. AUGUSTINE, *THE CITY OF GOD* 13, 19 (Vernon J. Bourke ed., Gerald G. Walsh et al. trans., 1958))).

<sup>31</sup> *See id.* at 28 (citing RUFUS BLACK, *CHRISTIAN MORAL REALISM* 8 (2000)). Forsythe’s work is rich in classical source material.

<sup>32</sup> *Id.* at 29 (citing ST. THOMAS AQUINAS, *SUMMA THEOLOGICA* (W.D. Hughes ed. & trans., 1969)).

<sup>33</sup> *Id.* at 27 (citing J. BUDZISZEWSKI, *WRITTEN ON THE HEART: THE CASE FOR NATURAL LAW* 22–23 (1997)). I was also reminded of *Kingdoms in Conflict*, a 1987 work by Charles Colson (with Ellen Santilli Vaughn). If you have enjoyed and grown from any of these works, you’ll appreciate Forsythe’s work here. He uses these and many other great works to show that a realistic view of human nature is essential, offering the absolute

detail prudent leadership, prudent politics, prudent activism, and even prudent lawyering, as “prudence in politics aims not at the perfect good but at the greatest good possible in the real world.”<sup>34</sup> If this sounds like Forsythe is advocating incrementalism, it seems clear that indeed he is. Forsythe reminds that “[t]he chief end of political prudence is the common good,”<sup>35</sup> not the perfect, common good. For voters, wisdom is also offered:

We cannot hope for the candidate who perfectly represents us. The choice often boils down to the candidate, among those available, who will most closely represent us or a choice between those pursuing injustice and those with whom we might differ regarding truly prudential questions.

. . . .

Prudence starts with identifying the good, but quickly moves to identifying the greatest good possible in the concrete situation. Cooperation, in turn, is concerned with separating good from evil when working with others—and politics and public policy inevitably involve working with others.<sup>36</sup>

At times Forsythe’s support for “cooperation” gives the sense of splitting hairs over what it means to be involved with doing evil to accomplish something of merit. It seems that he may be advocating the very thing from which he seeks to be separated. In this context, though, he offers concrete examples and strategies to place boundaries around an evil, to limit it as much as possible.<sup>37</sup>

Of great importance is Forsythe’s comprehension of the absolute necessity of prudential rhetoric. Effectively done, rhetoric ought to move a listener to prudential action.<sup>38</sup> Why is it that most Americans understand the needs for limits on abortion,<sup>39</sup> yet prolife rhetoric seems

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necessity of understanding the need for a realistic approach to problems in a fallen, imperfect, and fallible world.

<sup>34</sup> FORSYTHE, *supra* note 2, at 38.

<sup>35</sup> *Id.* at 40 & n.104.

<sup>36</sup> *Id.* at 45.

<sup>37</sup> This strategy was to me reminiscent of new lawyering strategies to preserve families as much as possible in divorce litigation. *See, e.g.*, Pauline H. Tesler, *Collaborative Family Law*, 4 PEPP. DISP. RESOL. L.J. 317, 317–25 (2004) (describing the success of collaborative law as an alternative to divorce litigation).

<sup>38</sup> FORSYTHE, *supra* note 2, at 50–52.

<sup>39</sup> Polling data consistently show that 70–80% of Americans support at least some limitations on abortion. Only 15–20% of Americans believe abortion should be legal *at any time of pregnancy and for any reason*. PollingReport.com, Abortion and Birth Control, <http://www.pollingreport.com/abortion.htm> (last visited Nov. 23, 2009) (providing a collection of polling data from a variety of sources from the past decade). A recent poll by the Pew Research Center for the People & the Press, conducted March 31 through April 21, 2009, found that only 18% thought abortion should be legal in “all cases,” but did not probe the stage of pregnancy. PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS, PUBLIC TAKES

to be demonized all too often? Here in rhetoric, emotion finds its place, and that emotional rhetorical appeal must be positive, affirming, warm, and loving. It is particularly important for prolife activists to understand how to confront the public perception that abortion is a necessary evil. Forsythe's instruction in this is very well done, and he challenges the young conservative with this type of prudence.<sup>40</sup> The book is neither esoteric nor ivory tower. Rather it is realistic, sensible, and morally appropriate while challenging the reader to act—and to act wisely and well and teaching how to do so. Forsythe brings prudence (an otherwise quite prudish word) into the twenty-first century—to the politics of the right, to a culture quite lacking in it, yet hungry for “the perfected ability to make right decisions.”<sup>41</sup> Does the reader still need encouragement to follow the prudential path? Forsythe offers this: “How well one thinks through the process of deliberation, judgment and decision will likely determine how steadfast one is in the decision made.”<sup>42</sup>

History lovers will thoroughly enjoy Forsythe's fascinating rendition of political prudence in the American founding. From John Adams's angst in preserving order to Thomas Jefferson's sometimes misplaced optimism in liberty, Forsythe traces how prudence shaped the actions of each end of the spectrum to come together as new Americans.<sup>43</sup> Forsythe proffers that prudential jurisprudence finds its embodiment in the Declaration of Independence, from its fact based reality to its flowery rhetorical appeal,<sup>44</sup> and all as a direct reflection of the Founders' understanding of Scripture and Classical thought.<sup>45</sup>

Before laying out the trends in abortion case law and the public discourse and state and federal legislation of the past forty years of abortion elitism, Forsythe uses the colorful and vivid illustrations of Wilberforce and Lincoln—the best examples of political prudence in turbulent times in the context of another of the great evils of our time, slavery. Forsythe illustrates political prudence in steadfast judgment with Wilberforce in England in his fifty year trek to end slavery and with Lincoln's difficult decisions, strategies, and eventual path to complete

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CONSERVATIVE TURN ON GUN CONTROL, ABORTION (2009), *available at* <http://pewresearch.org/pubs/1212/abortion-gun-control-opinion-gender-gap>. Indeed, support for legalized abortion in “all or most cases” seems to be trending downward, as an 8% drop in support from August 2008 to August 2009 indicates. *Id.*

<sup>40</sup> FORSYTHE, *supra* note 2, at 52–54.

<sup>41</sup> *Id.* at 26 & n.19 (quoting JOSEF PIEPER, *THE FOUR CARDINAL VIRTUES* 6 (Univ. of Notre Dame Press 1966) (1954)).

<sup>42</sup> *Id.* at 32.

<sup>43</sup> *Id.* at 72, 75–76.

<sup>44</sup> *See id.* at 57–58.

<sup>45</sup> Forsythe uses some important Scriptural examples that serve independently as Bible studies of encouragement for wise action, from Nehemiah to Romans Chapter 13. *See id.* at 59–63.



emancipation of slaves. *Politics for the Greatest Good* presents a solid legal analysis of the life debate and dilemma through the lens of the abolition movement. Without ever likening slavery to abortion, the reader implicitly understands the amazing similarities between the two movements as Forsythe gently and painstakingly unfolds the frustrations felt and dilemmas faced by two of freedom's most loved and effective champions: England's William Wilberforce and America's Abraham Lincoln.

William Wilberforce, a man of little stature and (initially) less faith, yet possessing effective oratory skills, constantly and consciously "avoided permanent compromise that would prevent future progress."<sup>46</sup> Wilberforce understood that what was immediately impossible might be achievable over time. Strategies detailed by Forsythe of Wilberforce's work are very instructive to public legislation today, providing a script for how to favor partial prohibitions when immediate abolition is not possible. Of particular insight for public policy was Forsythe's illustration of how admiralty related to abolition. An accomplice in the effort to end the slave trade, James Stephen, admiralty lawyer and brother-in-law to Wilberforce, proved in open court that abolition would actually help Britain's war effort against other European powers—almost single-handedly ending the British slave trade to foreigners.<sup>47</sup> "[C]ompromise on principle was unthinkable, but compromise on tactics was never a problem."<sup>48</sup> This sort of state diplomacy is instructive to abortion public policy.<sup>49</sup>

Having laid the foundation for prudence with Wilberforce, Forsythe then develops the western public policy landscape fully with illustrations from Abraham Lincoln. In this one man, America found practical wisdom and moral virtue inextricably intertwined.<sup>50</sup> Forsythe uses and cites strategy and details set forth in Doris Kerns Goodwin's *Team of Rivals*, noting Lincoln's mastery of his emotions and phenomenal understanding

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<sup>46</sup> *Id.* at 43.

<sup>47</sup> *Id.* at 101–02 (citing ROGER ANSTEY, *THE ATLANTIC SLAVE TRADE AND BRITISH ABOLITION 1760–1810*, at 341–42, 357, 400–01 (1975)).

<sup>48</sup> *Id.* at 109 (quoting J. Douglas Holladay, *Foreword* to JOHN POLLOCK, WILLIAM WILBERFORCE: A MAN WHO CHANGED HIS TIMES 11 (1996)). Forsythe adds that "[o]ne weakness of movement activists is a tendency to confuse every compromise of tactics with a compromise of principle. By equating a compromise of tactics (tactical flexibility) as a compromise of principle, activists can undermine their own strategy and strip themselves of energy." *Id.*

<sup>49</sup> Applying Stephen's strategy to abortion policy could prove to be equally pragmatic. For example, not enough has been made of the crystal clear connection between economic gain to abortion providers and progressive abortion policy, a correlation deserving of much strategic consideration.

<sup>50</sup> *See id.* at 26, 111–16.

of magnanimity and prudence.<sup>51</sup> Lincoln is the classic example of how many factors and forces beyond a leader's complete control can be shaped by prudent decisions and implementation.<sup>52</sup> Forsythe shows how Lincoln used three steps to judgment: "[1] to know what is good or right, [2] to know how much of that good is attainable, and [3] to act to secure that much good but not to abandon the attainable good by grasping for more."<sup>53</sup> Lincoln represents the greatest lesson in conscious striving for self-restraint to accomplish greater common good. His personal character influenced public policy and introduced the notion of political morality, revealing the complex intertwining of public policy with personal character.

Like Wilberforce, Lincoln established fences around slavery that led to the "rebellion" (rather than the "secession"—illustrative of Lincoln's perception in shaping public morality with political rhetoric).<sup>54</sup> For a perfect example, one need only look to Lincoln's summation of his party's policy:

The Republican Party . . . look[s] upon [slavery] as being a moral, social and political wrong; and while they contemplate it as such, they nevertheless have due regard for its actual existence among us, and the difficulties of getting rid of it in any satisfactory way . . . Yet having a due regard for these, they desire a policy in regard to it that looks to its not creating any more danger. They insist that it should as far as may be, *be treated* as a wrong, and one of the methods of treating it as a wrong is to *make provision that it shall grow no larger*.<sup>55</sup>

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<sup>51</sup> *Id.* at 121–22 (citing DORIS KEARNS GOODWIN, *TEAM OF RIVALS: THE POLITICAL GENIUS OF ABRAHAM LINCOLN*, at xvi–xvii (2005)).

<sup>52</sup> *See, e.g.*, GOODWIN, *supra* note 51, at 107. The classic strategic political feat was that Lincoln positioned himself to be everyone's second choice, knowing he was no one's first choice! *Id.* at 211–12 ("Lincoln's gradually evolving political strategy began with an awareness that while each of his three rivals had first claim on a substantial number of delegates, if he could position himself as the second choice of those who supported each of the others, he might pick up votes if one or another of the top candidates faltered. As a dark horse, he knew it was important not to reveal his intentions too early, so as to minimize the possibility of opponents mobilizing against him.")

<sup>53</sup> FORSYTHE, *supra* note 2, at 112 (quoting HARRY V. JAFFA, *CRISIS OF THE HOUSE DIVIDED: AN INTERPRETATION OF THE ISSUES IN THE LINCOLN-DOUGLAS DEBATES* 371 (Univ. of Chicago Press 1982) (1959)). "Understanding Lincoln's prudence requires a balanced inquiry into his judgment of proper ends and appropriate means in the context of the particular opportunities and obstacles he faced." *Id.*

<sup>54</sup> *Id.* at 123. Additionally, for those history buffs still irked by Lincoln's suspension of *habeas corpus* eight times during the Civil War, Forsythe sets out the prudence of these acts in a well-reasoned and necessary-for-the-common-good context. *Id.* at 130–34.

<sup>55</sup> *Id.* at 119 (quoting Abraham Lincoln, Seventh Lincoln-Douglas Debate, Alton, Illinois (Oct. 15, 1858), in *ABRAHAM LINCOLN: SPEECHES AND WRITINGS 1832–1858*, at 774, 807–08 (Literary Classics of the United States, Inc. comp., 1989)).

Forsythe makes brilliant arguments for the comparisons between the life dilemma and the abolition dilemma, offering details of how the tri-branch government forces at work to favor slavery prior to Lincoln are very similar to the tri-branch forces at work to favor abortion today—against the majority will of the people.<sup>56</sup>

This discussion aids in the understanding of the outright battle over the life plank in the Republican platform. The life plank is so controversial because it embodies the virtue of a republic—as the essence of republicanism is the dissemination of virtue among the people. Republicanism, therefore, balances the danger of democracy and majority rule. “Virtue is the spirit of a republic; for where all power is derived from the people, all depends on their good disposition.”<sup>57</sup> That is indeed a scary thought. The notion that liberty is preserved in republican virtue may be at the heart of the current politically correct demagoguery of the Republican Party and even the Republican Party’s unpopularity, as well as the struggle within the party over the life plank. American pop-cultural elitist hatred of religion may be the result of the demise of virtue—a race to squander liberty on the existential without constraint.

What does prudence mean, though, for the life debate today? Forsythe seems to say that prudence requires the overturning of *Roe*. His focus on *Roe*, however, may be his only flaw. While detailing attempts to overturn *Roe* and stating emphatically that the case must be overturned, he essentially sets forth why *Roe* will never be removed.<sup>58</sup> My sincerest criticism of *Politics for the Greatest Good* is the error of thinking that *Roe* is the abortion case that must be overturned. Rather, because it established new parameters of constitutional understanding completely different from *Roe*, *Planned Parenthood of Southeastern Pennsylvania v. Casey*<sup>59</sup> is clearly the landmark case on abortion today. It reaffirmed *Roe* but set new parameters—or as Forsythe would say, it “erect[ed] legal fences against a social evil when they could not prohibit it.”<sup>60</sup> *Casey* is much more important than *Roe* now because it changed the constitutional protections from a medical trimester framework to a subjective undue burden standard.<sup>61</sup> Should *Roe* be abolished, *Casey*

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<sup>56</sup> Cf. *id.* at 120 (demonstrating Lincoln’s adversity with the three branches of government).

<sup>57</sup> *Id.* at 71 (quoting MICHAEL NOVAK, ON TWO WINGS: HUMBLE FAITH AND COMMON SENSE AT THE AMERICAN FOUNDING 38 (2002)).

<sup>58</sup> See *id.* at 182–88.

<sup>59</sup> 505 U.S. 833 (1992).

<sup>60</sup> FORSYTHE, *supra* note 2, at 147; see *Casey*, 505 U.S. at 845–46; *Id.* at 878–79 (O’Connor, Kennedy, and Souter, JJ., plurality opinion).

<sup>61</sup> *Casey*, 505 U.S. at 872–79 (O’Connor, Kennedy, and Souter, JJ., plurality opinion).

would still remain—along with its undue burden standard controls. Forsythe sees *Casey* as “another force,” yet it is actually the peak of the abortion mountain—the height of unfettered choice and the beginning of the descent toward state regulation fencing in abortion.<sup>62</sup>

Forsythe unfolds how protections for the unborn have been developed and grown dramatically since *Roe*. Because the *Roe* opinion was against previous state regulation,<sup>63</sup> states have worked diligently to replace their lost abilities in other ways—particularly by creating state regulation still possible in the wake of *Roe*<sup>64</sup>—leading Forsythe to pronounce that “[w]ith *Roe*, the Supreme Court incurred a self-inflicted wound.”<sup>65</sup> Prior to *Roe*, states’ laws had a long and strong tradition of protecting the unborn child as a human being under the law, while now the High Court has taken the blame for creating a constitutional right not previously recognized by a majority of states.<sup>66</sup> This is precisely why *Casey* is now the law on abortion and why it has worsened the decision of *Roe* due to the new standard based toward personal existentialism of the “undue burden” standard rather than trimester biological facts of prenatal development. This is why *Casey* controls rather than *Roe*.<sup>67</sup> While characterizing *Casey* as reaffirming *Roe*,<sup>68</sup> Forsythe recognizes that *Casey* abruptly shifted the rationale for the abortion right from history to sociology and notes that “[t]his ‘reliance interests’ rationale remains the one unifying rationale among the justices for continuing their national power over abortion.”<sup>69</sup> Forsythe then suggests that the Court returned the standard of legislative review to strict scrutiny in the 2000 *Stenberg v. Carhart* decision;<sup>70</sup> yet, it seems clear that *Gonzales v. Carhart* is the more important case of the two at this point because of its use of *Casey* jurisprudence, simultaneously upholding the undue burden standard and narrowly upholding the Congressional ban on partial birth

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<sup>62</sup> See Lynne Marie Kohm & Colleen M. Holmes, *The Rise and Fall of Women’s Rights: Have Sexuality and Reproductive Freedom Forfeited Victory?* 6 WM. & MARY J. WOMEN & L. 381, 400–402 (2000).

<sup>63</sup> See *Roe v. Wade*, 410 U.S. 113, 171–72 (1973) (Rehnquist, J., dissenting).

<sup>64</sup> See FORSYTHE, *supra* note 2, at 184. “Since *Roe*, approximately thirty-six states have passed legislation to treat the killing of the unborn child (outside the context of abortion) as a homicide, and twenty-four of these thirty-six states treat the killing as a homicide *from conception*.” *Id.* at 183.

<sup>65</sup> *Id.* at 183.

<sup>66</sup> *Id.*

<sup>67</sup> Other legal scholars have agreed with this position. See, e.g., Craig A. Stern, *The Common Law and the Religious Foundations of the Rule of Law Before Casey*, 38 U.S.F. L. REV. 499, 500, 518–22 (2004) (implicitly finding *Casey* to be the law of the land on abortion rights).

<sup>68</sup> FORSYTHE, *supra* note 2, at 202.

<sup>69</sup> *Id.* at 193.

<sup>70</sup> *Id.* at 200; see *Stenberg v. Carhart*, 530 U.S. 914 (2000).

abortion.<sup>71</sup> Forsythe believes that some passages suggest that the “new five-justice majority could uphold virtually any regulations that make medical sense.”<sup>72</sup> Indeed, Forsythe makes the case for *Casey* by detailing what “imperfect legislation” has achieved over the past thirty years and mostly in the wake of the *Casey* decision.<sup>73</sup> *Casey* effectively put fences around *Roe* that have limited abortion.

One can disagree that *Roe* is the key, yet nonetheless heed Forsythe’s challenges. He offers that the key to the politics of prudence is to clearly focus on women’s health. The Court has effectively endangered women’s health by never requiring informed consent regarding well-documented medical risks of abortion.<sup>74</sup> These risks include premature delivery of future children, higher risk of placenta previa in future pregnancies, suicide, substance and alcohol abuse, and increase in breast cancer due to “the loss of the protective effect of a first full-term pregnancy.”<sup>75</sup> He explains how to think about state abortion prohibitions, regulations, the priorities to be placed on each, which is more effective, and which will be more palatable for enforcement by the Court and adds insight on how to build “a good factual record for judicial and public education.”<sup>76</sup> Forsythe further charges that because the Court has never required clinic safety, it has essentially empowered the abortion industry to unilaterally decide abortion standards, profiting from this and the ability to collect attorney’s fees each time they win in litigation.<sup>77</sup>

These observations and suggestions are Forsythe’s most important contribution to the abortion debate. Prudence offers a strategy to “hollow out” *Roe*, as he puts it.<sup>78</sup> He details exactly what is needed to do so and even suggests what the next test case on abortion must do, noting the importance of the five best medically documented long-term risks from abortion.<sup>79</sup> “The Court has repeatedly issued pronouncements that the people in the states have compelling interests in regulating abortion and

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<sup>71</sup> *Gonzales v. Carhart*, 127 S. Ct. 1610, 1626–27 (2007). The Supreme Court’s decision upheld Congress’s ban by holding that it did not impose an undue burden on the due process right of women to obtain an abortion, “under precedents we here assume to be controlling.” *Id.* at 1627, 1635. *Gonzales* distinguished (but did not reverse) *Stenberg*. *Id.* at 1629–31.

<sup>72</sup> FORSYTHE, *supra* note 2, at 201.

<sup>73</sup> *Id.* at 175–79.

<sup>74</sup> *Id.* at 184.

<sup>75</sup> *Id.* at 203.

<sup>76</sup> *Id.* at 209–11. Forsythe’s prudent strategy should be a check on the prolife mantra to “overturn *Roe*.”

<sup>77</sup> *See id.* at 184.

<sup>78</sup> *See id.* at 198–203.

<sup>79</sup> *Id.* at 208.

then issued rules that continually stymie any regulations.”<sup>80</sup> Does this imply sabotage, judicial schizophrenia, or simply the inherent problem embodied in the “undue burden” standard? The result is that Forsythe finds himself making the *Casey* argument. “As a practical matter, due to legislative changes in the states since 1973, if the Court overturned *Roe* today, abortion would be legal in at least forty-three states tomorrow.”<sup>81</sup> This is exactly why overturning *Roe* is not the answer. Rather, prudentially and incrementally working to make abortion next to impossible through regulations allowed under *Casey* is politics for the greatest good.

Stronger commentary on *Roe* and *Casey* would focus on the peculiarity of such a High Court to so strongly adhere to what it believes to be fact: that abortion is the central way for women “to control their reproductive lives.”<sup>82</sup> Unfettered personal autonomy as set forth in *Casey*’s “mystery passage”<sup>83</sup> has paved the way for regulating biotechnology to harm human life and human good with unfettered existentialism. Forsythe details how American law has deeply respected the life of the embryo prior to *Roe*, making an excellent case for *Roe* being the beginning of the end of legal respect for life. The net result is that the effect of *Roe* has been so obviously dangerous that in its July 1974 session the United States Congress even deemed it necessary to enact a “moratorium on any federal funding for embryo research.”<sup>84</sup> Congress saw then what *Roe* could bring and legislated against it then accordingly. To be fair, Forsythe sets out critiques of prudential legislation which achieve a “lesser evil”<sup>85</sup> rather than the complete abolition of abortion,<sup>86</sup> and he details some formidable starting points to actively protect human goods immediately.<sup>87</sup> Nonetheless, chapter six is completely devoted to the successful overturning of *Roe*.

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<sup>80</sup> *Id.* at 185. This is a tangential call to the members of the Court to consider future decisions in this light. Forsythe cites twenty-eight contradictory decisions over thirty-plus years. *Id.* at 186.

<sup>81</sup> *Id.*

<sup>82</sup> *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 856 (1992).

<sup>83</sup> “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.” *Id.* at 851.

<sup>84</sup> FORSYTHE, *supra* note 2, at 229 (citing National Research Act, Pub. L. No. 93-348, 88 Stat. 342 (1974)).

<sup>85</sup> *See id.* at 73, 172 (quoting THE FEDERALIST NO. 41, at 200 (James Madison) (Oxford Univ. Press, 2008)).

<sup>86</sup> *See id.* at 231–33.

<sup>87</sup> *Id.* at 233–38 (setting forth legislative protection strategies that can be sought without delay).

Yet whether there is disagreement with Forsythe over *Roe* or *Casey* or a concern for compromise with erecting regulatory fences around abortion that intrinsically uphold it as a right to be regulated or the principled crowd disdaining the pragmatic set, the fact remains that all sides of the conflict want the same exact outcome—ideally no abortion. One says all or nothing; the other says get a little at a time to achieve the whole. A fable of Aesop comes to mind regarding a tortoise and a hare.<sup>88</sup>

*Politics for the Greatest Good* comes full circle in the life debate by relating all the prudence needed in the abortion context to the bioethics dilemmas faced by the nation today—and the myriad issues related therein, including cloning, embryo research, chimer hybrid reproduction, genetic selection, and eugenics. Each is well set forth in chapter seven and well-worth the read.

For the safety of women and children, Forsythe also recognizes the dependence of human life on the family. To securely protect human life and reproduction from the beginning, the two-parent family and two-parent childbearing are irreplaceable. The need to preserve a child's right to a complete identity is one of Forsythe's primary observations that brings into full focus how devastating abortion has been on American society.<sup>89</sup> Sociologists refer to this as the inexorable link between marriage and parenting.<sup>90</sup> Forsythe links abortion and the lack of protection for human life with eugenics, the lack of conscientious professional protection, disabilities discrimination, genetic discrimination, cloning discrimination, genetic enhancement, germ line modification, and the patenting of human chimeras and hybrids, along with the lack of parental responsibility noted in the current surplus of extracorporeal embryos, strongly suggesting that abortion rights have led to a myriad of parent (unborn) child conflicts ab initio.<sup>91</sup>

Indeed, the right to procreative freedom has furrowed the ground for more possibilities than imaginable. In this way, Forsythe brings his defense of life back to Aristotle's philosophical anthropology—"that an individual substance with a rational soul . . . retain[s] the core of human nature."<sup>92</sup> The most frightening prescience of his book might be this observation: "The moral-autonomy model in biotechnology means, in practice, freeing powerful human beings to subject powerless human

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<sup>88</sup> Aesop, *The Hare and the Tortoise*, as reprinted in MY STORYTIME TREASURY 106, 106–07 (Olive Beaupré Miller ed., Houghton Mifflin 1991) (1920) (adapted from original).

<sup>89</sup> See FORSYTHE, *supra* note 2, at 234–36.

<sup>90</sup> See generally LINDA J. WAITE & MAGGIE GALLAGHER, THE CASE FOR MARRIAGE 124 (2000) (analyzing the general finding of researchers that child rearing is best accomplished in a home with married parents).

<sup>91</sup> FORSYTHE, *supra* note 2, at 235–37.

<sup>92</sup> *Id.* at 247.

beings to their will.”<sup>93</sup> Not without answers, Forsythe’s suggestions and solutions to the life dilemma also offer new proposals for how to think about bioethics as well. Forsythe links the decline in human dignity and respect for human life not only with family breakdown but also with self-seeking utilitarianism.

Primary to a politic of prudence is achieving incremental gains for life whenever possible with moral purpose. The ultimate question begged is whether these positives are accomplished with a mere change of law or a change of human hearts and minds. This answer may fall to the actions of the American body of believers in our choices.<sup>94</sup> This insight brings the reader back to the desperate need for prudence.

So, how do political leaders achieve the greatest good possible in the particular circumstances?

It requires an effective integration of the complicated elements of policy-making—a belief in the pursuit of human flourishing, a real concern for public opinion and for educating our fellow Americans, and a willingness to use prudent rhetoric.<sup>95</sup>

Prudence requires facts, knowledge, analysis, evaluation, and empathetic rhetoric; Forsythe has mastered the key: prudence makes zeal effective.<sup>96</sup> If “wisdom and virtue among the people [is] essential to the perpetuation of liberty and republican government,”<sup>97</sup> Forsythe offers prudent advice for success: “Practically applying prudential reasoning requires an intimate knowledge and understanding of . . . actual circumstances at the particular time . . . identifying effective solutions to those obstacles. *It requires that we tie good and effective means to good ends . . . [with] three primary qualities: seeking good counsel, exercising good judgment and implementing that judgment effectively.*”<sup>98</sup>

In working to transform current realities, the prolife movement needs “clear-sighted objectivity”<sup>99</sup> and the “capacity for foresight.”<sup>100</sup> *Politics for the Greatest Good* provides a worthy education—and worthy life application. Using the universally applicable principle of prudence (a heretofore outmoded and unpopular virtue), Forsythe shows exactly why that virtue is so desperately needed in the prolife community today. He

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<sup>93</sup> *Id.* at 248.

<sup>94</sup> Most important to recall is the believer’s freedom in Christ surrendered to the cross. The Apostle Paul’s reminder and exhortation to believers is particularly instructive: “Everything is permissible—but not everything is beneficial. ‘Everything is permissible’—but not everything is constructive. Nobody should seek his own good, but the good of others.” 1 *Corinthians* 10:23–24.

<sup>95</sup> FORSYTHE, *supra* note 2, at 249.

<sup>96</sup> *Id.* at 24.

<sup>97</sup> *Id.* at 74.

<sup>98</sup> *Id.* at 30.

<sup>99</sup> *Id.* at 31.

<sup>100</sup> *Id.* at 32.



challenges the movement to a thoughtful strategy for public education, for shaping the popular will, for dealing with opponents, and for placing the U.S. Supreme Court in a position to amend and forever alter its proabortion jurisprudence by ruling on state regulations that will protect both women and children. Forsythe reminds that the abortion debate has not been framed in a full reality—that abortion harms children *and women*—but that prolife constituents need a much greater focus on women’s health and medical protection.<sup>101</sup>

Most of the prolife community will agree with Forsythe—no one law will solve the human life debate. Yet he makes clear that the mistake is to assume the moral argument alone is enough.<sup>102</sup> Rather, what is needed is a strategy that is at once moral and economic, emphasizes safety, and offers foresight that links the many facets of the life dilemma together. Forsythe reminds that the absolutely necessary elements are discernment, deliberation, decision, and implementation<sup>103</sup>—all this is prudent.

As an important contribution to the scholarship and the doctrine in this area, Forsythe also offers interesting reflective insight to the believer—that his faith may cause him or her to over-spiritualize the problem. “People of faith, it seems, are particularly susceptible to imprudence when it comes to their involvement in political and social causes . . . . They sometimes replace prudent action with religious clichés based on a phrase or a verse in Scripture”—which sometimes a believer may think can replace insufficient study and knowledge.<sup>104</sup> Add to this life-based worldview wisdom and prudence.

Prudence lost compromises the common good. In *Politics for the Greatest Good*, a prolife lawyer has provided a well-constructed summary of the commonalities between the fight for abolition and the struggle over abortion—which ultimately might once again reflect a change for the entire world, as a calling from God.

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<sup>101</sup> With all respect and absolutely no ill will toward those wonderful, noble and preserving sidewalk counselors, I have always struggled with the “here’s a diaper, have your baby” mentality, leading me to greatly appreciate Forsythe’s insight. Of course, mine is an exaggerated view but communicates the need for depth in the prolife solution.

<sup>102</sup> FORSYTHE, *supra* note 2, at 257.

<sup>103</sup> *Id.* at 259.

<sup>104</sup> *Id.* at 260. Indeed, Forsythe takes the opportunity that his foresight suggests by helping believers to see that we may be our own worst enemies in the life debate. “Making a practical difference is sometimes prevented by a religious self-pity or self-condemnation that often sees the biggest problem in the colleagues who ‘compromise.’” *Id.* This statement serves as a poignant reminder to the principled crowd to not blame the pragmatic set and for the latter not to hold the former responsible for lost opportunity. Indeed, both are to blame for a lack of factual medical knowledge worked into the legal record that could indeed protect women, and thereby save more lives, both adult and unborn.