

The Case Against Compromise

WSJ [wsj.com/articles/SB114911526138067963](http://www.wsj.com/articles/SB114911526138067963)

June 1, 2006

By

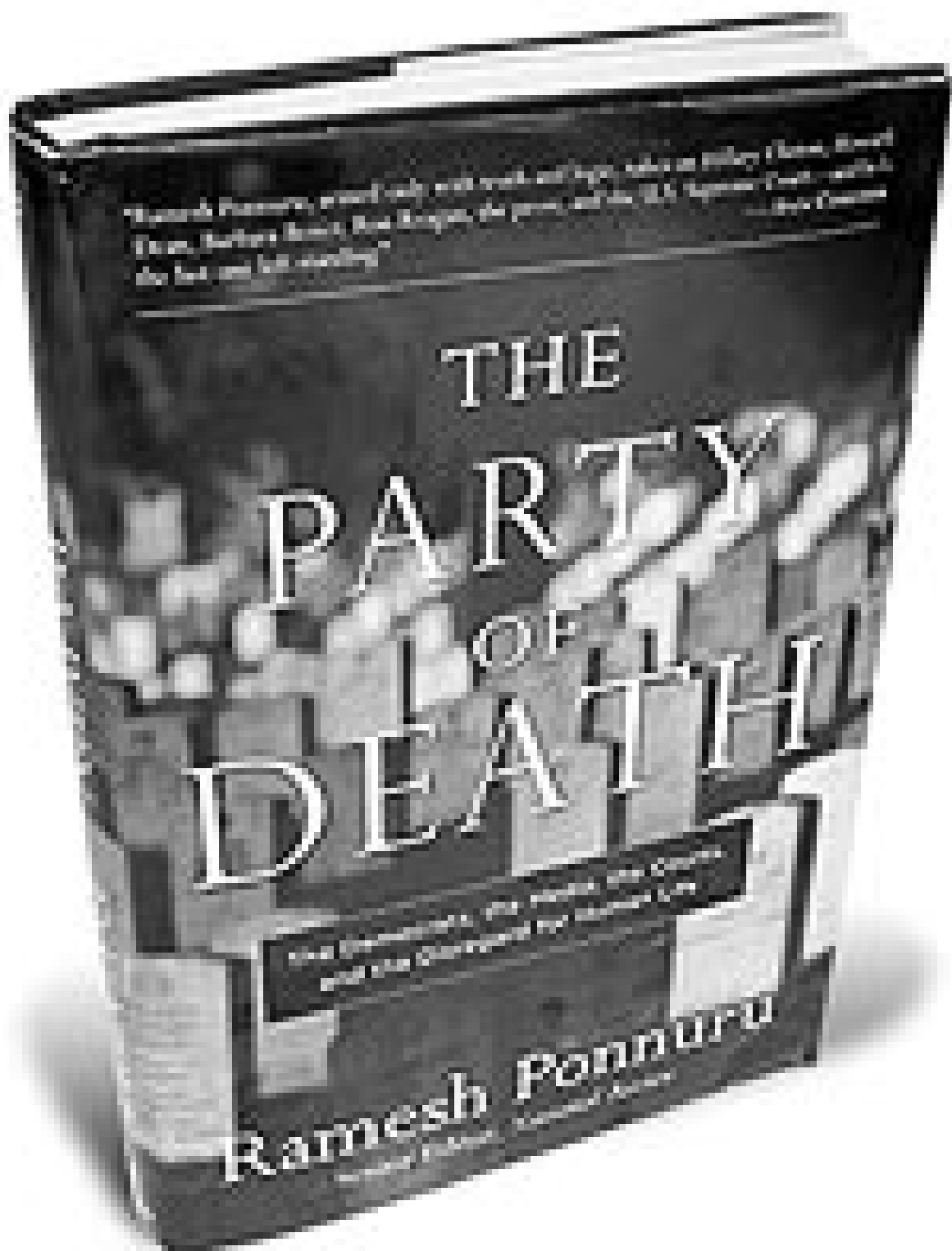
Peter Berkowitz

June 1, 2006 12:01 am ET

It is fairly certain that a book titled "**The Party of Death**" is not calculated to bridge differences, find common ground or in any other way still the controversy that has roiled American politics for more than 30 years.

To the contrary, Ramesh Ponnuru, a gifted polemicist and a sharp thinker, aims to deepen the divide between pro-lifers and pro-choicers, because he believes that the differences are clear-cut. Compromise, he contends, is little more than capitulation to the culture of death enshrined in American abortion law.

Pointedly relying on neither tradition nor religion, Mr. Ponnuru argues that abortion is the murder of innocent human beings. From conception, he says, the embryo is entitled to the full complement of human rights. He believes that *Roe v. Wade*, the 1973 Supreme Court decision that found a right to abortion in the Constitution, paved the way for norms and laws - concerning partial-birth abortion, euthanasia, assisted suicide, eugenics and embryonic stem-cell research -- that devalue human life. To arrest the betrayal of America's obligations to human life in all its forms, Mr. Ponnuru proposes an incrementalist political strategy that would narrow and eventually reverse *Roe* and return the question of abortion to the states.



Patrick Conlon

About abortion and related matters, the public is ambivalent. The author is not.

It is easy to take umbrage at Mr. Ponnuru's blunt and sometimes inflammatory rhetoric, but it is hard to read his survey of the controversies in bioethics today without shuddering at the outer limits of what is now permissible under law. And it is hard not to worry about the coarsening of our moral sensibilities and fear for a more permissive future. According to a recent American Enterprise Institute public-opinion study, a substantial number of Americans, fluctuating between a plurality and a majority, agree with Mr. Ponnuru that abortion is murder. They believe in the sanctity of life and believe that life begins at conception.

But that is only part of the story. Opinions on abortion, according to the AEI study, have been "remarkably stable" over the past 30 years, and they reveal a "deeply ambivalent" America. A solid majority believe that abortion should be a matter of personal choice. They wish to uphold *Roe* while favoring restrictions such as parental consent for minors (usually including a judicial bypass), spousal notification (also including a judicial bypass) and 24-hour waiting periods.

Opinion surveys -- AEI's study relies on a variety of polls -- suggest that Americans are anti-abortion but pro-choice. Mr. Ponnuru blames this seemingly confused outlook on commentators who misrepresent the law laid down in *Roe*. (He briefly takes me to task, among others.) Although it is common to say that *Roe* permits states to prohibit abortion in the final trimester, in fact the court's decision provides an exception when the pregnancy poses a risk to the mother's health. This health exception, Mr. Ponnuru argues, swallows the rule: Doctors and women routinely twist it to cover the anxiety and depression that can accompany the prospect of an unwanted child. The result, Mr. Ponnuru declares, is an abortion-on-demand legal regime.

Though not shy about citing statistics, Mr. Ponnuru provides no data to bolster this claim. But the Alan Guttmacher Institute, whose reliability Mr. Ponnuru elsewhere concedes, found that in 2002 less than 1% of abortions were performed in the third trimester. This finding suggests, at a minimum, that a better understanding of the "health exception" -- and the abuses to which it is undoubtedly prone -- is not likely to alter the deep ambivalence that has marked American public opinion.

Mr. Ponnuru is committed to the view that this deep ambivalence, however persistent, is immoral and unreasonable. At the core of "The Party of Death" is the argument that an embryo has the same claim on us as a newborn child because, from the moment of conception, it contains the genetic structure of a unique human being. It doesn't matter to Mr. Ponnuru that this argument flies in the face of a complex intuition that seems to underlie the American ambivalence: Invisible to the naked eye, lacking body or brain, feeling neither pleasure nor pain, radically dependent for life support, the early embryo, though surely part of the human family, is distant and different enough from a flesh-and-blood newborn that when the early embryo's life comes into conflict with other precious human goods or claims, the embryo's life may need to give way. Deciding just which goods and claims are compelling is, of course, agonizingly difficult but does not, in itself, place one beyond the pale.

To resolve these debates categorically -- as Mr. Ponnuru does -- is to commit an error that has been exposed by thinkers as diverse as Michael Oakeshott, Russell Kirk and Friedrich Hayek. The error consists of attempting to judge the complexities of morals and politics through the reductive lens of natural science, under the bright light of pure reason, from the cold heights of abstract theory. What gets lost is the ability to make relevant distinctions, to discern the wisdom embodied in custom and common sense, to acknowledge the ambiguities, mysteries and tragic choices of lived experience.

Mr. Ponnuru insists that the embryo's unique genetic structure creates a bright line separating a "party of life" from a "party of death," that the right to abortion is indistinguishable from a license to infanticide. (On this last point, as Mr. Ponnuru notes, the famously extreme Princeton ethicist Peter Singer agrees, while defending both.) But bright lines do not always exist -- in law, ethics or politics. That doesn't mean that lines cannot be drawn; they can indeed, carefully, responsibly and defensibly. But they may be neither brightly obvious nor rigidly predictable. They may even shift over time, affected by the kind of debate to which Mr. Ponnuru has made such a forceful contribution.

Mr. Berkowitz, a senior fellow at the Hoover Institution, teaches at the George Mason University School of Law.