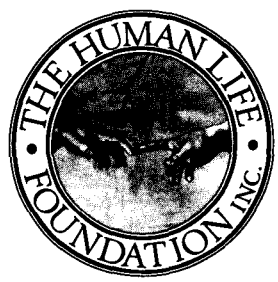
# the HUMAN LIFE REVIEW




SPRING 2004

*Featured in this issue:*



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**The March for Death**

Pia de Solenni • Mark Steyn • Diana West • Jeff Jacoby
Erin Montgomery • David Limbaugh • Michelle Malkin
and Kathryn Jean Lopez

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*Also in this issue:*

Peggy Noonan • Agnes R. Howard • Wesley J. Smith
Raymond J. De Souza, L.C. • Paul Greenberg

*Published by:*

The Human Life Foundation, Inc.

New York, New York

Vol. XXX No. 2 $7.00 a copy

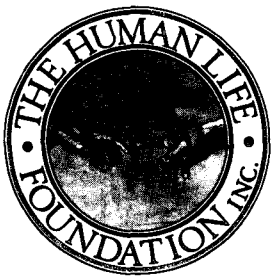
. . . Ronald Reagan wasn't dead two days before the stem-cell vultures began circling the editorial pages and TV talk shows, insisting the world's most famous Alzheimer's victim would surely have embraced embryo-killing research and its promise of cures for just about all that ails us. This is nonsense, as William P. Clark, who was Reagan's national security advisor, pointed out in a New York *Times* op-ed column on June 11. But it is nonsense on wings and even recent admissions by scientists that Alzheimer's victims are unlikely to benefit from stem-cell therapy haven't checked the latest "celebrity" offensive in the funding wars. Thank heavens for Eric Cohen and William Kristol, who've been making the case against embryonic stem-cell research and cloning in *The Weekly Standard* for years. Their recent essay, "The Politics of Bioethics" (page 7) is essential reading for understanding what the brave new world of so-called life-saving research is all about. Thanks to the *Standard* for allowing us to reprint it, and a related article, "Building a Better Baby" by Agnes R. Howard (page 91). For subscription information, visit their website, *theweeklystandard.com* or call 1-800-283-2014.

Another website worth a visit is *touchstone.mag.com*, online home of *Touchstone* magazine, where Anne Barbeau Gardiner's "The Ecumenical Moloch" (page 58) originally appeared; thanks to our friends there for permission to share it with *Review* readers. If you're not online but want to know more, call 1-800-375-7373.

We're delighted to welcome two new contributors to this issue. Richard Weikart ("Does Darwinism Devalue Human Life?"—page 29) is associate professor of modern European history at California State University (Stanislaus) and author of the recently published *From Darwin to Hitler: Evolutionary Ethics, Eugenics, and Racism in Germany* (Palgrave Macmillan). Gregory J. Roden ("*Roe* Revisted: A Grim Fairy Tale," page 49) is an attorney and member of Minnesota Lawyers for Life. Clarke D. Forsythe ("George W. *Truman*," page 16) isn't a new contributor, but it's been a while since he's sent us an original article, so welcome *back*. Forsythe, an attorney and former president of the Chicago-based Americans United for Life, has a new job heading up AUL's Project in Law & Bioethics. Meanwhile, long-time contributor Donald DeMarco ("The Supreme Court and the Assault on Marriage," page 39) has a new book, *Architects of the Culture of Death* (with Benjamin D. Wiker), just out from Ignatius Press.

When a package from Nick Downes arrives all work stops as we gather to survey his latest batch of hilarious cartoons. So imagine what a good time we had when Mr. Downes dropped by the office the other day for a chat. We've commissioned an original cartoon for our 30th Anniversary which we'll celebrate on October 15 at our second Great Defender of Life Award Dinner (see page 83 for details). We hope many of you will be able to join us. If not, be sure to look for Nick's anniversary cartoon in our next issue.

ANNE CONLON
MANAGING EDITOR






Published by THE HUMAN LIFE FOUNDATION, INC. Editorial Office, 215 Lexington Avenue, 4th Floor, New York, N.Y. 10016. Phone: (212) 685-5210. The editors will consider all manuscripts submitted, but assume no responsibility for unsolicited material. Editorial and subscription inquiries, and requests for reprint permission should be sent directly to our editorial office. Subscription price: $25 per year; Canada and foreign $30 (U.S. currency). ISSN 0097-9783.



# the HUMAN LIFE REVIEW

## Spring 2004

Vol. XXX, No. 2

# INTRODUCTION

THE NATIONAL OUTPOURING of mourning and remembrance after the June 5th death of President Ronald Reagan was startling—former foes of the late President united with his friends in praising his world-changing legacy. Also remarkable was the overwhelming affection expressed for Nancy Reagan; in the national news, the Reagans' extraordinary love affair was a top story, and in spite of politics and past criticisms, scores of Americans were transfixed and deeply moved by her grief. As her husband had been suffering from Alzheimer's for years, some would say that she'd already lost him; yet the final scene at the burial, when Nancy could not bear to leave her husband's coffin, said it all: a heartbreaking final goodbye to the love of her life.

Unfortunately, the spotlight on Nancy and the fact that Reagan suffered from Alzheimer's have been used to highlight Nancy's support for embryonic stem-cell research, and even to claim such support as part of Reagan's legacy. (Ironically, it has recently been reported that of all the diseases this research *might* help, it is unlikely that Alzheimer's would be one of them.) President Reagan was himself committed to protecting unborn life, and many of those who were close to him insist he would never support such research. We agree, and have our own historic moment to remember: In the Spring of 1983, President Reagan wrote an article for the *Human Life Review*, "Abortion and the Conscience of the Nation," in which he spoke of his conviction that life must be protected. "Abortion concerns not just the unborn child, it concerns every one of us" he wrote. "We cannot diminish the value of one category of human life—the unborn—without diminishing the value of all human life."

We are facing a crucial moment in history as we engage in moral and political debates over the creation, use and destruction of human embryos for research and cloning—so argue Eric Cohen and William Kristol in this issue's lead article, "The Politics of Bioethics." The authors begin by noting the intensified attacks, from the Kerry campaign and in Congress, on President Bush's 2001 decision limiting embryonic stem-cell research; they aim to sketch "what a realistic *offense* might look like in the months and years ahead."

As a moral issue, they write, "embryo research is at once more defensible and more corrupting than abortion." Defensible because "the goal is a humanitarian one" and "because the early-stage embryos in question are so existentially puzzling. . . . The moral transgression of embryo destruction, though real, is not so obvious, while the sick child or Parkinson's patient is obviously suffering." More *corrupting*, because it involves not a decision made in crisis, but a "premeditated project"; one which, though involving the deliberate destruction of innocent life, could "quickly become 'standard practice' for the entire society, with leading researchers winning Nobel prizes and parents who

reject it for their children seen as legally negligent. Once cures exist, we might quickly forget that there is a moral problem here at all."

The Cohen/Kristol essay is an excellent analysis of the current state of reproductive technologies and the direction they are likely to take. The sobering fact remains that, in the private sector, there are little or no controls—embryos are created by the thousands, left frozen or destroyed, and children are routinely aborted after genetic screening shows an imperfection. The authors ask how to "govern this free for all" and suggest that the "recent unanimous recommendations from the President's Council on Bioethics" would be a beneficial place to start; they also discuss the major pro-life criticisms leveled at these recommendations. (It ought to be noted here that the reaction of the pro-life movement to the suggestions of the Council, as well as President Bush's 2001 announcement, is not monolithic—for more on the latter, see "The Case Against Embryonic Stem-Cell Research," Summer 2001).

Perhaps those in the pro-life movement who fault President Bush for not being "pro-life enough" have expectations based on an unrealistic understanding of the president's power? This is a possibility suggested by Clarke Forsythe in his essay, "George W. *Truman*." As the title indicates, Forsythe makes an historical comparison between Presidents Harry Truman and George W. Bush, and it is a fascinating and useful analogy. Of Truman, Forsythe argues that few Americans would credit him with the success of the civil rights movement, and yet he had a "profound impact." Acting "on his own, without the support of Congress," he writes, "Truman used executive orders, presidential appointments and speeches to effect civil rights reform. What he accomplished in seven years provides a useful yardstick for measuring George W. Bush's action on human life issues in his first term." Forsythe focuses on President Bush's record on life issues in the light of the political realities he faced upon taking office, and the world-changing events he faced nine months after, and examines the two areas in which pro-life Americans "may be most critical of Bush's efforts . . . his support for federally-funded research on existing stem cell lines and his lack of progress in getting his judicial nominees confirmed." He also reminds us that restoring a culture of life to America will require much more than having a pro-life president in office.

The roots of the culture of *death* are explored by a newcomer to our pages, Richard Weikart, who contributes an essay based on research for his recently-released book, *From Darwin to Hitler: Evolutionary Ethics, Eugenics and Racism in Germany*. The relationship of Darwinism to eugenics (and the Nazis) is not new to *Review* readers (see especially "The Evolution of Genocide," by Rebecca Messall, Winter 2000), and yet one suspects the culture at large would be shocked to learn that the same ideas (mainly the elimination of the "less fit") which fueled the evil of Hitler's extermination programs are at play in the major biotechnology issues of the day: euthanasia, abortion, embryonic research and cloning. Weikart himself, a professor of modern European his-

tory, admits that until a few years ago he had not thought about whether Darwinism undermines the Judeo-Christian understanding of the sanctity of human life; yet his subsequent research has revealed that Darwinism devalues human life and has led to "ideologies that promote destruction of human lives deemed inferior," including the atrocities in Nazi Germany—a crucial point to make, since Darwinism is not only alive but "ascendant" in academia.

In our next article, Professor Donald DeMarco argues that the Supreme Court's *un*-Consitutional logic is a key weapon in the assault on marriage. Whereas the Constitution was written with the understanding that "we the people" meant a society of citizens who discover their meaning in "ordered cooperation" with their fellow citizens, the "new" logic of the Court names individualism and privacy as the basis of our dealings with one another. In the *Roe* v. *Wade* decision, the Court decreed that "liberty" trumps the unborn's right to life; the *Planned Parenthood* v. *Casey* ruling "rendered invalid the claim that a husband be notified about the impending abortion" of his child, thus breaking the bond of marriage in favor of, again, the right to privacy and individual fulfilment. *Lawrence et al.* v. *Texas*, which recently found a right to *sodomy* in the Constitution, continues the Court's march toward the abolition of marriage as we know it. The Judeo-Christian concept of marriage as a sacred bond between a man and a woman—*one* man and *one* woman—is becoming more and more foreign to a Court which bases its decisions on personal autonomy. As DeMarco notes, it is already the case that a bigamist in Utah is appealing his incarceration on the grounds that the *Lawrence* decision makes bigamy constitutional as well.

Lawyer Gregory Roden believes that Justice Harry Blackmun, in his *Roe* v. *Wade* opinion, not only used faulty logic—but deliberately *lied* about the precedents he cited to justify his opinion. In "*Roe* Revisited: A Grim Fairy Tale," Roden argues that studying Blackmun's "own citations, which fail to support the tangled web he weaves, is to recognize *Roe* v. *Wade* for what it is: impure, adulterated fiction." Roden gives the reader evidence that Blackmun lied about the status of the unborn in common law, arguing that he basically rewrote history and "overturned a century of statutory law and centuries of American and English common-law cases"—so as to justify *Roe*, which would make killing the unborn the law of the land.

From rewriting American legal history to "re-interpreting" world religions: there is so much creative scholarship for abortion advocates to pursue! Our final article is reprinted from one of our favorite magazines, *Touchstone: A Magazine of Mere Christianity*. Anne Barbeau Gardiner takes on the book *Sacred Rights: The Case for Contraception and Abortion in World Religions*, edited by Daniel Maguire, the ex-Jesuit and member of Catholics for a Free Choice. Maguire, Gardiner tells us, admits that this well-funded (by the Packard and Ford foundations) and widely published book is meant to "counter" the "anomalous and influential presence of the Vatican" at the UN. The essays he

has gathered argue that all major world religions support "moral pluralism" on abortion. However, Gardiner shows, the book fails on its *own* arguments—one hardly need do more than expose its straining prose. It is such a failure that the last section is devoted to "damage control": because the essays on world religions "didn't quite prove what they were meant to," a sociologist is produced at the end to propose that since "most world religions originated at a time when the global population was small, how can 'laws and edicts articulated at that time' guide our behavior now?"

The bad behavior of abortion advocates is the subject of our special section, which reports on the April 25th "March for Women's Lives." We have put together a collection of columns about the event, many of them first-hand accounts. This is important, because the *real* picture of the March somehow didn't make it into the mainstream press. The crudity, obscenity, and anger, which spawned signs like "Abort Bush in the first term" and "Keep Bush out of my pants" just wouldn't have been good publicity for their cause. We are pleased to include this more rounded picture in our historical record, so we can remember the day the Washington Mall was turned into a "mall of shame."

As you recall, in our last (Winter) issue we hosted a symposium, *Ventilating Life and Death*, a discussion of remarks Mr. William F. Buckley Jr. made at our Great Defender of Life Dinner last October. Mr. Buckley recently sent us the following Letter to the Editor:

June 3, 2004

Dear Miss McFadden:

I wish to acknowledge, in this note, the essays by George McKenna, Nat Hentoff, Rita Marker, Father Francis Canavan, Mary Jane Owen, David Oderberg, Stephen Vincent, David van Gend, and Wesley J. Smith.

Their analysis, and expressions, are one more tribute to your journal. They are learned, passionate—and chastening.

I was certainly incorrect in the biographical assumptions I made in the case of Terry Schiavo and her awful husband. Perhaps I should pause to say that no action contemplated under my scheme, let alone encouraged, would have applied given the qualifications mentioned by several of your contributors.

Certainly, as Fr. Canavan instructs us, the distinction in the future will rest on what is ordinary care, and what is—but let us not use the word "extraordinary" as a suitable antonym—thoughtless care. Permit me, since the name of Ronald Reagan was used, to leave it that it should not be thought abusive, or ungrateful, to pray for death, as in the case of Mr. Reagan. And of course we are stalled on the question of what it is that we can pray for, but not effect ourselves. I acknowledge the problem and thank you and your company for their arguments, and for the way they have been presented.

Yours faithfully,
William F. Buckley Jr.

We thank Mr. Buckley for his gracious response.

* * * * *

We begin our *Appendices* with a column by Paul Greenberg on the Unborn Victims of Violence Act. He writes that opponents of the bill understand well its consequences: "Every time abortion is challenged, even tangentially, consequences stir. Just as, in antebellum America, the constant agitation of the slavery question exposed the immorality of slavery itself." *Appendix B* is Peggy Noonan's chilling account of a "big moment" she experienced while attending the Broadway revival of the play "Raisin in the Sun," an experience that shows how far we have come as a culture in accepting abortion.

A modern woman who'd risk her own life to save her unborn child seems like an anomaly in today's world, but that is the story of Dr. Gianna Beretta Molla, who died in 1962 and was canonized this past May by Pope John Paul II. In *Appendix C*, Father Raymond de Souza tells the story of St. Gianna: While critics have attacked her as "the latest Vatican salvo in the abortion wars," Gianna was a happy, successful doctor, wife and mother, whose life "demonstrates that sacrificial love can be lived with radiant joy." *Appendix D* is an article by Agnes Howard from *The Weekly Standard* about a new technique for genetic screening, the FASTER test (First and Second-Trimester Evaluation of Risk). Howard writes that not only will this new testing increase abortions, but the whole nature of being pregnant risks being degraded.

Our last appendix is Wesley J. Smith's poignant column about the final years of Reagan's life; he contrasts the idea of compassion exemplified in the care Reagan received during his illness with the message of "compassion" the euthanasia movement attempts to send. He also quotes President Reagan's words from "Abortion and the Conscience of the Nation," about the sanctity of life: "there is no cause more important for preserving freedom than affirming the transcendent right to life of all human beings, the right without which no other rights have any meaning." (We will be reprinting that article in our next issue; you can also read it on our website, *humanlifereview.com*.)

We dedicate this issue to the memory of Mr. Reagan, whose sense of humor was also fondly remembered—we are sure he would have appreciated the ingenious Nick Downes cartoons we have included throughout.

MARIA MCFADDEN
EDITOR

# The Politics of Bioethics

*Eric Cohen & William Kristol*

"Nothing illustrates this administration's anti-science attitude better than George Bush's cynical decision to limit research on embryonic stem cells," declared John Kerry in a December 2003 campaign speech. He was referring to the president's August 9, 2001, decision to permit federal funding for existing embryonic stem cell lines, where the embryos in question had already been destroyed, but to deny funding for research involving further embryo destruction.

Ever since President Bush announced his stem cell policy, research advocates have attacked it as "not enough." They want more funding for more lines, without restrictions. They want the freedom to produce embryonic stem cell lines indefinitely, using as many embryos as necessary to advance research on a long list of terrible diseases. The idea of limits—in this case, no taxpayer funding for new embryo destruction—strikes them as incomprehensible and indefensible. In this spirit, Kerry attacks the Bush administration's "recessive gene of pessimism about progress and people," and declares that when "faced with a basic decision on America's health, George Bush chose to go to the right wing instead of the right way." Kerry aims to portray the Democrats as the party of health and progress, the Republicans as the party of suffering, death, and religious zeal.

The question is: How will President Bush respond? No doubt he will defend his policy on federal funding. And no doubt he will argue that the eligible stem cell lines are "enough" to get the medical benefits we seek, and that the issue is fundamentally about "respecting human life," not using it as a means to even the noblest ends. But it is not clear that simply playing defense on this and other bioethics issues will succeed. Indeed, over 200 congressmen sent a letter to the president last week demanding that the current restrictions on federal funding of embryonic stem cell research be lifted. Furthermore, it is increasingly clear that limits on federal funding alone do not guarantee our successfully navigating the "vast ethical mine fields" that President Bush warned of in his stem cell speech. This means reexamining what we have learned in the bioethics fight since it began in earnest in 2001, and sketching what a realistic *offense* might look like in the months and years ahead.

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**Eric Cohen** is editor of the *New Atlantis*, a resident scholar at the Ethics and Public Policy Center, and a consultant to the President's Council on Bioethics. The views expressed here are his own. **William Kristol** is editor of *The Weekly Standard*. This essay first appeared in the May 10, 2004 issue of the *Standard*. 

Since the president announced his stem cell policy in August 2001, the science of the brave new world has continued apace—not just the destruction of human embryos on a growing scale, but the manipulation of human reproduction in radical new ways. In its latest report, *Reproduction and Responsibility*, the President's Council on Bioethics finds that the practice of assisted reproduction technology (ART) is largely unregulated. New baby-making technologies are introduced willy-nilly into clinical practice, with little research regarding their effects on the children produced with their aid. Because so many embryos are implanted all at once, nearly half the children born using ART are twins or triplets with disproportionately and often dangerously low birth weights. Some ART clinics already advertise cosmetic baby-making services—such as preimplantation genetic screening to choose the sex of one's child—and these services only promise to increase as our genetic knowledge expands. And it is the ART clinics and their patients that produce thousands of "excess" embryos each year—embryos that are frozen indefinitely or destroyed for research.

Meanwhile, in February 2004, South Korean scientists announced the creation of the first cloned human embryos to the blastocyst stage—the stage when they could be implanted in a woman's uterus to initiate a pregnancy or destroyed in the laboratory to harvest stem cells. The report in *Science* magazine sounds hauntingly like the "decanting room" in Aldous Huxley's *Brave New World*—systematic, precise, unrepentant about its use of women as egg factories and human embryos as raw materials. The South Koreans harvested 242 eggs from 16 women, tested 14 different cloning "protocols," developed 30 human embryos to the 100-cell stage, and destroyed them all to get a single stem cell line.

Just a few months earlier, researchers working with animals showed that it is possible to produce both eggs and sperm from embryonic stem cells, including eggs from male embryos and sperm from female embryos. This means that it might be possible, someday soon, to produce a human child with two male parents or two female parents—and even a human child whose mother, father, or both is a dead embryo. Still other researchers fused together male and female embryos to produce a genderless human hybrid. Chinese researchers have already produced chimeric clones using rabbit eggs and human DNA. And what now seems prosaic—the destruction of IVF embryos for their stem cells—is a growing practice, with a number of states (New Jersey, California) contemplating new public funding initiatives, and a number of universities (Harvard, Stanford) actively creating new embryo research institutes.

While this research has proceeded, the political debate on bioethics has

stalled. President Bush's August 2001 decision established an important moral principle, but also left an ambiguous legacy. The moral principle is that society as a whole, using taxpayer money, will not endorse the destruction of human embryos for any purpose; and it will not create public incentives for embryo destruction in the future. Zealous critics have denounced the policy as the 21st-century equivalent of silencing Galileo—attacking the president directly for imposing his personal religious views on science, and often ignoring the fact that Congress, not the president, made the law that prohibits federal funding of embryo research. More sober critics have argued that because more stem cell lines have been produced since the president's decision, these new lines should also be eligible for funding. The "life and death decision," they argue, has once again already been made. But moving the date of eligibility would undermine the moral logic of the Bush policy. It would send the message that the date will keep moving, and that embryo destruction today will be publicly funded tomorrow.

But the Bush decision, while principled, is also a partial decision: It offers no practical proposal for limiting embryo research in the private sector, though it probably discourages some scientists from engaging in research that cannot get NIH funding. It does not confront the question of what to do about excess embryo creation in in vitro fertilization (IVF) clinics during fertility treatment, or what to do about the roughly 400,000 embryos now frozen "in storage." (Only 3 percent of these frozen embryos, by the way, have been made available by their parents for research purposes.) Finally, the Bush decision gives the nation a stake in the success of embryonic stem cell research as a whole, and probably benefits (indirectly) those who destroy embryos with private funds by advancing the field.

In the end, neither side in the embryo debate is happy with the current policy: Embryo research opponents lament the ongoing destruction of embryos in the private sector; embryo research advocates resent the limits on funding. But both sides also fear that things could get worse than they are now—that is, funding limits could loosen (the conservative worry) or legal restrictions could tighten (the liberal worry). The difference, however, is that research supporters are on the offensive—lobbying Congress and the president to make the funding policy more liberal, and aggressively seeking funding in individual states. Embryo research opponents, by contrast, are on the defensive: trying to preserve the Bush policy, with little hope or expectation of banning embryo research in the private sector.

In the one area where conservatives have tried to set broader limits on biotechnology—human cloning—the political fight remains stalled. Since

2001, the cloning debate has been a battle between two competing bills: the Brownback bill and the Hatch-Feinstein bill. The Brownback bill would ban all human cloning, including the creation and destruction of cloned embryos for research. The Hatch-Feinstein bill would endorse the creation and use of cloned embryos for research, then mandate the destruction of all cloned embryos to prevent the production of cloned children. The Brownback bill is the best way to stop the creation of cloned children, by stopping this act at the very first step. And it would set an important precedent that we should not "create human life solely for research and destruction." The Hatch-Feinstein bill, by contrast, makes the American public an accomplice in this troubling practice, and it creates for the first time a class of human life—cloned embryos—that must by law be destroyed.

The case for the Brownback bill is as clear today as it has been for the last three years. But while the Brownback bill has passed in the House of Representatives twice, passage in the Senate is blocked. In the meantime, there remain no ethical limits on biotechnology of any kind: no limits on radical new ways of making babies (cloning and beyond) and no limits on the creation and destruction of human embryos or later-stage fetuses for research, so long as it is done with private money. We are left fighting for limits that may never come, and playing defense for a policy that only deals with one small piece of the brave new world problem. Perhaps it is time to be both more realistic and more ambitious—more realistic about what is possible now, and more ambitious in seeking limits that go beyond the issue of cloning and beyond restrictions on federal funding for embryonic stem cell research.

For those who worry about where reproductive biotechnology is taking us, there are three fundamental concerns: the destruction of innocent life, the degradation of the family, and the threat of eugenics. Each one requires some elaboration.

The first concern is that in the desire to save human life and promote scientific progress, we will become callous towards life, using the weakest among us as tools to keep the stronger alive. This concern overlaps—both politically and morally—with the abortion issue. Both involve questions about the violability or inviolability of nascent human life, and what we are willing to endure or forgo to respect it. But embryo research is at once more defensible and more corrupting than abortion. It is more defensible because the goal is a humanitarian one (to ease suffering and cure disease rather than end a pregnancy), and because the early-stage embryos in question are so existentially puzzling. They are microscopic, developing, genetically

complete human beginnings—not just any beginnings, but the beginnings of a particular human life. But they are created outside their natural environment in the human womb, and often left frozen for years in the IVF clinics where they are made. These embryos may be "one of us," but they don't seem like one of us. The moral transgression of embryo destruction, though real, is not so obvious, while the sick child or Parkinson's patient is obviously suffering.

For the very same reason, embryo research is potentially more corrupting than abortion. It is a fruit we seek, not a transgression we tolerate. It is a premeditated project, not a decision made in crisis. Only the most extreme pro-choice advocates see abortion as a "good" and abortionists as heroes. But embryo-based medicine, if it were possible, would quickly become "standard practice" for the entire society, with leading researchers winning Nobel Prizes and parents who reject it for their children seen as legally negligent. Once cures exist, we might quickly forget that there is a moral problem here at all. Late-stage abortion requires a greater willingness of mother and doctor to look away from the facts of what they are doing, because of the obvious humanity of the developed fetus. But embryo research, so closely tied to the modern medical project that we all esteem, could become a celebrated American way of life in a way that abortion has not.

The second concern about biotechnology involves the degradation of the family, and the possibility that new ways of making babies will undermine the relationship between parents and children. So far, we see this problem most clearly in our fears about human cloning. To clone a child is to wreak havoc on the ties that bind the generations; it is to make our twin brothers into sons and twin sisters into daughters. It is to impose our perverse self-love on innocent children. But cloning is only one part of a larger project to transform human procreation and the human family. This larger project aims to use our biological cleverness to make us into post-biological beings—to create a world where male and female no longer matter, and where welcoming the newborn child as a mystery gives way to genetic screening, selection, and quality control.

Ironically, what made this project possible in the first place was acting technologically on the desire of infertile couples to have a child of their own, flesh of their flesh. To fulfill this biological desire, we invented a way to initiate human life in the laboratory—a way to bring human origins into full human view, and thus make them available for manipulation and control. The first IVF child was born in 1978. Since then, many infertile couples have had children of their own, with IVF to thank for this blessing. But as a result, we also opened the door to new ways of making babies that

undermine the very biological ties that IVF aimed to serve. Only by bringing the embryo outside the human body is it now possible to give birth to another couple's child; to have a child where the identity of the father is "anonymous"; or to contemplate women giving birth to genetic copies of themselves or two men having a child that is the fruit of their mixed genes. While of course not all families reflect the biological ties between the generations, there is a difference between adopting a child in need and creating an orphan by design.

Looking back, the significance of IVF cannot be overstated: It is the source of the embryos that are now available for research; it is the technological solution for couples seeking a biological child; and it is the crucial first step in transforming human procreation in radical new ways. Looking ahead, however, it is also clear that we stand at yet another major threshold. IVF, in most cases, still mimics nature—producing a child that is the fruit of a coupled male and female. The new ways of making babies, by contrast, radically depart from nature's sexual pairing, and they violate the family structure that has long imitated and civilized our given nature in the rearing of children.

The final concern about biotechnology is that our growing technical control over reproduction will open the door to a new eugenics—where parents pick and choose the genetic characteristics of their offspring, and society pressures families not to have genetically unfit children. The longtime fear of genetic engineering—superbabies made to order—is far-fetched. The real danger is something more subtle. It is using genetic information to choose babies with a greater *probability* of their being superior in ways we desire—that is, a greater probability of being tall, or athletic, or musical, or smart. It is not so much the tyrannical parent as the tentative-obsessive parent that is the problem—the parent who is unwilling to accept the child as given, but obsessed with trying to get the best child possible.

The problem with assisted reproduction today is that infertile couples sometimes put their future child in danger. The problem tomorrow will be that fertile parents, so hungry to have the child they want, will forgo natural reproduction for the clinic—where embryos can be created, screened, and tested in advance. Today, we abort children with genetic diseases. Tomorrow, we will select children with genetic advantages—with all the expectations and deformations that this new imposition of parental will introduces into child-rearing.

At present, all of these practices remain unregulated and unrestricted in America: The use of genetic screening techniques to try to pick children

with "superior" genotypes is ungoverned and unmonitored. Embryo destruction remains fully legal in the private sector, and a recent law passed in New Jersey protects the right of researchers to harvest later-stage fetuses as research tools. Revolutionary new ways of making babies are unhindered, including the now imminent possibility of using the South Korean "cookbook" (as one researcher called it) to try to clone a human child.

In thinking about how to govern this free for all, we have the benefit of the recent unanimous recommendations from the President's Council on Bioethics. The council calls for a ban on implanting human embryos into an animal uterus; a ban on producing embryos with human sperm and animal eggs or animal sperm and human eggs; a ban on initiating a pregnancy for research purposes; a ban on buying, selling, or patenting human embryos; a ban on destroying or harming embryos for research once they reach the 10-14 day stage of development; and a ban on radical new ways of producing a child, including "blastomere fusion" (which would create a child with four genetic parents, not two), conceiving a child whose father or mother is a dead embryo or aborted fetus, and human cloning.

It should be obvious that enacting such recommendations would be a great improvement over the laissez-faire status quo. But the recommendations involving embryo destruction and human cloning have been criticized by some pro-lifers on a number of grounds: for not going far enough, for accepting practices that are unacceptable, and for undermining the ethical clarity required for opposing the misdeeds of the biotechnology project. These criticisms are serious but not decisive. They force the question with which we began: What is a realistic conservative offense on bioethics issues? How does the president balance the steady support of the pro-life community—often the only reliable critics of the new practices—with the need to reach beyond the pro-life community to pass bioethics legislation? Is there wisdom in the partial limits proposed by the council? We believe there is, and that it becomes clear by taking up the two major pro-life criticisms directly.

The first criticism is that the council's recommendations separate reproductive cloning and research cloning, and propose a ban on reproductive cloning only. In doing so, the critics say, the council tacitly endorses the creation of cloned embryos for research; it offers another version of the Hatch-Feinstein bill that pro-lifers have been fighting against for three years. But this is incorrect.

The council's recommendations offer a way of banning reproductive cloning that differs from the two bills that have so far gone nowhere in Congress. When it comes to the dignity of the family, the council is more ambitious than the Brownback bill—banning not only cloning, but a number of radical

ways of making babies. But it does this by recommending a ban on the *creation* of cloned embryos (or other wrongfully produced embryos) *with the intent* of implanting them to begin a pregnancy. Such a law would not (like Hatch-Feinstein) mandate the destruction of any embryos. It would not (like Hatch-Feinstein) endorse the use of embryos for research, but rather preserve the status quo of public silence. The illegal act (unlike Hatch-Feinstein) would be embryo creation, if not all embryo creation. And it would allow the fight for the Brownback bill to continue in parallel, while banning a range of reproductive practices that everyone abhors.

The pro-life rejoinder is that silence means an implicit endorsement of cloned embryo research. And yet, as Leon Kass has pointed out, the Brownback bill, which aims to ban research on cloned embryos, is silent on the creation and destruction of IVF embryos for research. Of course, pro-lifers also reject this practice. They don't endorse it simply by not trying to ban it, and they don't imply that cloned embryos have a more sacred status than IVF embryos. Rather, they take aim at the evils they can limit in the real world, while remaining legislatively silent about the evils they cannot now stop. This is exactly what the council's recommendations do as well—protecting the dignity of human procreation, while remaining silent on the destruction of early embryos.

The second pro-life rejoinder is that by offering an alternative to the Brownback bill, the council recommendations will undermine ongoing efforts to pass the Brownback bill (or legislation like it in the states). They point to the fight in Nebraska, where a pro-embryo-research legislator introduced the council's recommendations verbatim in an effort to stop passage of the Brownback-style bill. But the fact that a pro-embryo research senator is willing to propose recommendations endorsed by pro-life council members like Robert George and Mary Ann Glendon suggests not a weakening of the pro-life side, but a possible movement of the pro-research side in a more conservative direction. Indeed, the Brownback strategy, by itself, may make pro-lifers *less* ambitious than they could be in conservative states, where they might ban all creation of human embryos for research, not just the creation of cloned embryos.

Another pro-life criticism of the council's recommendations is that banning the destruction of embryos for research once they reach the 10- to 14-day stage of development would implicitly endorse research on the earliest human embryos; it would suggest that the moral standing of developing human life changes at the 10- to 14-day line. But this argument seems to us to miss the wisdom of seeking partial—and principled—limits. To ban all

embryo destruction after 10 to 14 days is the embryo research equivalent of a partial-birth abortion ban. The only difference is that instead of the 8- to 9-month fetus being given protected status under the law, it is the 10- to 14-day-old embryo. Imagine if a pro-abortion activist like Kate Michelman endorsed the proposition that all abortions after 10 to 14 days should be outlawed. Pro-lifers would be ecstatic. To enact a 10- to 14-day limit on embryo research would put in place the strongest legal protections of developing human life in the post-*Roe* v. *Wade* era. It would force the other side to accept that at least some embryos are morally and legally inviolable. And if those embryos are to be protected, why not others? It would shift the terms of the debate in a pro-life direction, and limit coming evils (like fetus farming) without betraying pro-life principles.

Certainly a total ban on cloning—indeed a total ban on embryo research—would be ideal from a pro-life perspective. But such bans do not seem forthcoming at the federal level. The status quo prevails—which is ultimately a victory for biotechnology without limits. What conservatives need, instead, is a realistic offense, and the council's recommendations are a good example of this approach, though one could imagine other initiatives along these lines as well. The council offers limits that are much better than nothing—by preventing the destruction of some innocent human life, stopping new ways of degrading human procreation and family ties, and shutting down some gateways to a new eugenics.

We stand at a crucial moment in the debate about reproductive biotechnology—a moment like the late 1960s and early 1970s on abortion, or the early 1970s on in vitro fertilization. Despite the many ethical and legal precedents cutting in the opposite direction—towards a culture of autonomy without limits—there is a widespread consensus today against the most radical new ways of making babies and against harvesting fetuses for research. Reproductive freedom does not yet mean the right to have a child by any means possible. And even the most ardent supporters of embryo research still say they would never harm an embryo after 14 days of development. This broad consensus leaves open a door for enacting limits on the most dehumanizing uses of biotechnology, but it is a door that will not remain open forever.

The council's report lays the groundwork for setting such limits. It establishes the principle that not all science is good for the country, and that scientists, too, must answer to the deliberative judgment of the American people. If we act today to prevent some of the worst abuses of biotechnology, we will at least have begun to face the task before us, governing scientific progress in a democratic and moral way.

# George W. *Truman*

*Clarke D. Forsythe*

> *"I know not any thing more pleasant, or more instructive, than to compare experience with expectation, or to register from time to time the difference between ideas and reality. It is by this kind of observation that we grow daily less liable to be disappointed."*
>
> *—Samuel Johnson*

Since 1973, when the Supreme Court issued its edict in *Roe v. Wade* nationalizing abortion on demand, Americans committed to restoring a culture of life have increasingly focused their attention on presidential elections. With the victories of Ronald Reagan, George H.W. Bush, and George W. Bush, expectations for presidential action on abortion (and other life issues) have successively risen, to the point where today they are perhaps too high. Excessive expectations can make us forget there are constitutional limits on any president's power. More importantly, we may fail to see the need for a broadly based strategy at the state and local levels, where vital centers of cultural influence largely determine what political leaders can achieve. Excessive expectations can, ironically, also obscure the damage done by a pro-abortion president. And they can sideline citizens who despair for greater progress in the political arena.

A more balanced realism is needed, one that takes into account constraints on political action in a fallen world (more particularly, in a federal constitutional system with a separation of powers and checks and balances) and soberly examines what is possible in a world of constraints. The renowned Lincoln scholar, Harry Jaffa—author of *Crisis of the House Divided*—posed four criteria for judging statesmen: "[I]s the goal a worthy one . . . does the statesman judge wisely as to what is and what is not within his power . . . are the means selected apt to produce the intended results . . . does he say or do anything to hinder future statesmen from more perfectly attaining his goal when altered conditions bring more of that goal within the range of possibility?"[1]

Jaffa relied on a prudential tradition that can be traced from Aristotle, Augustine, and Aquinas to Luther and Calvin. Jaffa's four prudential factors—worthy goals, wise judgment as to what is possible, choosing effective means,

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and avoiding future preclusion of improvements—are pertinent in examining President George W. Bush's three and a half years in office. What has he accomplished on pro-life issues? Has he pressed hard enough to get good federal judges through the Senate? Does it matter whether he is re-elected in November? Answers to these questions require putting the matter in a broader perspective, and an excellent foil is a president who effectively advanced another great moral crusade of the 20th century—Harry Truman and civil rights.

## I. Truman's Civil Rights Record

How and why the civil rights movement was successful in changing America between the 1940s and the 1960s sheds important historical light on the power and limitations of presidential action in fostering positive change. In looking back over the past 60 years, certain events stand out in the fight for civil rights. These include the Birmingham bus boycott, the lunch counter sit-ins in the South, President Kennedy's TV address supporting James Meredith's entrance to the University of Mississippi, and the 1963 March on Washington with Dr. Martin Luther King, Jr.'s powerful "I have a dream" speech—none of which occurred on Truman's watch.

Few Americans today would be able to recall all that transpired during Harry Truman's seven years in office. Still fewer would attribute any of the success of the civil rights movement to him. Yet, Truman had a profound impact. And it was one he made by acting on his own, without the support of Congress. Throughout his presidency, Truman used executive orders, presidential appointments, and speeches to effect civil rights reform. What he accomplished in seven years provides a useful yardstick for measuring George W. Bush's action on human life issues in his first term.

Harry Truman was an accidental president, thrust into office at the death of Franklin Roosevelt on April 12, 1945; he had been vice-president for just 82 days. Few Americans knew anything about him, and many of those who did felt that he wasn't up to the job. He inherited the huge domestic and international problems that FDR had faced—especially the need to defeat Japan and the decision to use the atomic bomb—and daunting challenges that were on the horizon—the reconstruction of Europe and the Marshall Plan, the Truman Doctrine and the Soviet occupation of Eastern Europe, the Cold War, the issue of Palestine, and, in his last two years, the Korean war.

Another hurdle for the new president, on the issue of civil rights in particular, was the Congress. He was almost immediately stymied by Southern Democrats who "effectively used the filibuster to control the domestic

legislative agenda of the House and Senate during the 1940s."[2] Despite these obstacles, Truman made civil rights a top priority of his administration.[3]

In December, 1946, Truman issued Executive Order 9808, creating the first President's Committee on Civil Rights. He was moved to take this step by a series of shocking assaults on returning black war veterans. Ten months later, the president publicly welcomed the Committee's 178-page report, titled "To Secure These Rights," as "a declaration of our renewed faith in the American goal—the integrity of the individual human being, sustained by the moral consensus of the whole Nation, protected by a government based on equal freedom under just laws."[4]

Truman issued a series of forceful statements in support of civil rights, beginning on June 29, 1947 when he became the first president to address the NAACP. In his speech, Truman declared: "We cannot await the growth of a will to action [on civil rights] in the slowest state or the most backward community. Our national government must show the way."[5] With that speech, Truman became the first president to "unequivocally . . . commit himself and the federal government to civil rights and human freedom of black Americans."[6]

In January, 1948, in his third State of the Union address, Truman promoted a ten-point civil rights program. "The basic source of our strength is spiritual," he reminded Americans, "for we are a people with a faith. We believe in the dignity of man. We believe that he was created in the image of the Father of us all." A month later, on February 2, he delivered a Special Message to Congress on Civil Rights, based on the Committee's report. In it, he reiterated his 10-point program, which included anti-lynching laws, the abolition of the poll tax, the establishment of a Commission on Civil Rights, and the desegregation of the armed forces.

A Gallup Poll taken a few weeks after Truman's message to Congress showed that 82% of the public opposed his civil rights program.[7] But the president persevered. Two of the most significant acts by Truman concerning civil rights occurred in July, 1948, when he issued Executive Orders calling for the integration of the federal civil service (#9980) and the United States armed forces (#9981). The first of these overturned segregationist policies instituted by another Democratic president, Woodrow Wilson. It was the president's steady commitment to civil rights that provoked the "Dixiecrat" revolt in the Democratic Party, resulting in South Carolina Governor Strom Thurmond's candidacy for President in 1948, and seriously threatening Truman's re-election.

Truman supported a strong civil rights plank in the 1948 Democratic Party

platform and delivered an important civil rights address before 65,000 African-Americans in Harlem on October 29, 1948—a year to the day after the Civil Rights Committee's report and just four days before the 1948 presidential election. "Our determination to attain the goal of equal rights and equal opportunity must be resolute and unwavering," he insisted. "For my part, I intend to keep moving toward this goal with every ounce of strength and determination that I have."[8] Historian Michael Gardner described Truman's Harlem speech as "profoundly spiritual."[9] The *Chicago Sun-Times* called it a "prayerful campaign event."

In June, 1952, Truman became the first president to give a commencement address at Howard University, the country's preeminent black institution of higher learning. "Our country was founded on the proposition that all men are created equal," he told graduates. "This means that they should be equal before the law. They should enjoy equal political rights. And they should have equal opportunities for education, employment and decent living conditions. This is our belief and we know it is right. We know it is morally right."

Truman delivered a second civil rights address in Harlem in October, 1952, in which he gave a wide-ranging review of his Administration's record on civil rights. In his eighth and final State of the Union Address on January 7, 1953, Truman again reviewed the progress that had been made during his presidency, concluding that "there has been a great awakening of the American conscience on the issues of civil rights."

Perhaps the most far-reaching action by Truman concerning civil rights reform was directing his Justice Department to support a series of important cases before the Supreme Court. These culminated in the landmark *Brown* v. *Board of Education* decision in 1954, which overturned the half-century old "separate-but-equal" doctrine.

Historian Michael Gardner summarized Truman's impact: "After repeatedly trying throughout most of his seven-year presidency to have his civil rights proposals enacted by the Congress, President Harry Truman resigned himself in 1952 to the reality that his only legacy in the civil rights area would be those actions that required no congressional concurrence."[10]

Truman's civil rights initiatives—executive orders, regulations, appointments and speeches—eliminating racist policies and instigating significant changes, laid a foundation for future advances. It is hard to see personal political advantage as a motive for his commitment; indeed, political *dis*advantage was clearly the result. But civil rights leaders came to regard Harry Truman as the first president since Abraham Lincoln to make important strides in the ongoing march for reform.

## II. George Bush's Record

Just as Truman became president in a political, social and legal context that shaped and limited what he could accomplish on black civil rights, George W. Bush took office in a context which limits what he can achieve in the struggle to establish the civil rights of the unborn. He became president under the cloud of the 2000 election recount and the Supreme Court's resolution in *Bush* v. *Gore*. (Sidewalks in Chicago still have black stamps proclaiming "Hail to the Thief.") Only with his decisive action in response to the attacks of September 11th, and the subsequent success of the 2002 mid-term elections, did Bush cease being an "accidental president" in the minds of many Americans. As Al Gore's campaign chairman Tony Coelho acknowledged after the November, 2002 elections, "They [Bush and Rove] rolled the dice, they won, and now Bush has a huge mandate. It's not about 9/11 anymore. He is the legitimate President."[11]

Bush also inherited a closely divided Congress. Four months into his first year push on domestic issues, Vermont Senator Jim Jeffords dropped his Republican affiliation and became an "Independent," giving the Senate and its committee chairmanships to pro-abortion Democrats. (The June 4, 2001 *Newsweek* ran a flattering article titled, "Mr. Jeffords Blows Up Washington.") Bush did more than most previous presidents had done to try to change the composition of the Senate at mid-term. The president's party typically loses seats in these elections. But Bush committed considerable time and resources to Republican Senate candidates running in close states. It was a risky strategy, but it paid off. The November, 2002 election was the first one since 1934 (FDR's first term) in which a president picked up seats in *both* the House and Senate (two seats in the Senate, five in the House). Historic though they may have been, the gains weren't enough to end the Senate battles over Bush's more conservative judicial nominations.

In George Bush's three years and a half years as President, sixteen pro-life actions and policy positions stand out, only three of which he accomplished through Congress. These were the Born Alive Infants Protection Act in August, 2002, the Partial-Birth Abortion Ban Act in November, 2003, and the Unborn Victims of Violence Act in April, 2004. (A number of other important federal bills remain stalled in Congress. The Abortion Non-Discrimination Act (ANDA), for example, passed the House 229-189 on September 25, 2002 but remains tied up in the Senate.)

On assuming office, Bush reinstated the Mexico City Policy prohibiting the use of U.S. tax dollars by foreign non-governmental organizations that promote abortion. Other initiatives include resuming the practice of certifying

that the United Nations Population Fund (UNFPA) supports a coercive abortion program in China, making UNFPA ineligible for U.S. foreign aid funds. His administration also made unborn children eligible for the State Children's Health Insurance Program (S-CHIP).[12] This allows states to treat the unborn child as an independent individual eligible for federally funded prenatal care.

President Bush's first significant public action on a life issue came in a nationwide speech on August 9, 2001, when he declared that he would not permit federal funding for embryonic stem-cell research that relies on *future destruction* of human embryos. At the same time, Bush announced that he was creating the President's Council on Bioethics, to be chaired by Dr. Leon Kass. (One forgets that right up until September 10, 2001, the New York *Times* and other papers were regularly running front-page stories on the embryonic stem-cell debate.)

The president also endorsed a federal ban on all human cloning, declaring it to be one of his two pro-life goals (along with getting the Partial Birth Abortion Ban bill passed) in his State of the Union address in January, 2003. Bush directed the U.S. delegation at the United Nations to take a strong stand in support of an international ban that would cover so called therapeutic, or research cloning, as well as reproductive cloning. On December 9, 2003, the U.N. postponed the decision for a year. As reported in the *New York Times*, Richard Grenell, the spokesman for the U.S. Ambassador to the U.N., said the United States "was happy to go along with the one-year consensus but would not alter its stance, 'We will continue to work for a total ban.'" This is the way the British Ambassador to the U.N.—a supporter of cloning for experimental purposes—framed the U.S. position: "It is clear there is no consensus in respect to therapeutic cloning research, but by ignoring this fact and pressing for action to ban all cloning, supporters of the Costa Rican resolution [i.e., the U.S.] have effectively destroyed the possibility of action on the important area on which we are all agreed—a ban on reproductive cloning. To accept the British position banning only "reproductive" cloning would mean not only accepting that human embryos be cloned for the purpose of experimentation, but that their subsequent destruction be required by law as well—mandatory abortion as it were.

In a related action spurred by the widening stem-cell debate, a presidential advisory committee adopted the policy that human beings at the embryonic stage will be considered as "Human Subjects" for purposes of applying rules regulating human experimentation.[13]

Regarding another life and death matter, in 2001 Attorney General John Ashcroft interpreted the Controlled Substances Act as forbidding the use of federally controlled drugs for assisted suicides. His directive was promptly

challenged by the Governor of Oregon, the only state where assisted suicide is legal. The case, *Oregon* v. *Ashcroft*, was recently decided by the United States Court of Appeals for the Ninth Circuit which, in a 2-1 ruling, concluded that Ashcroft had exceeded his legal authority.

Finally, in October, 2003, Bush publicly supported his brother Jeb when the Florida governor ordered that Terry Schiavo's feeding tube be reinserted. That decade-old case remains in litigation, as Ms. Schiavo's parents and siblings continue to fight her husband's attempt to end her life.

President Bush has also taken action on several broader social policies that might not be considered sanctity of life issues, traditionally speaking, but should be seen as helping to build a culture of life. These include an increase in the child-tax credit from $500 to $1000, a reduction in the "marriage penalty," faith-based initiatives created by executive order (when Congress would not pass his entire bill), the new marriage assistance program in the Department of Health & Human Services, and Bush's declared goal in his 2004 State of the Union address to double federal funding for abstinence programs.

### III. Judging Presidents

It is impossible at this time—three and a half years into his first term and the future uncertain—to assess George W. Bush's advancement of the sanctity of life cause. But it is critical to emphasize that no judgment of Bush on pro-life matters can be adequate without also judging him on his broader effectiveness as President. Judging him solely on "pro-life" matters measures his good intentions, but this is not enough, because politics is a matter of action requiring practical judgment. Political leaders in a fallen world are not prophets. Nor can they just stand "athwart history and yell, 'Stop!'" As Aristotle emphasized, the end of politics is "not knowing but doing."

The second reason that broader effectiveness is essential to any judgment on pro-life matters is this: No pro-life presidential candidate can make a difference without being elected and no pro-life president can make as much of a difference in four years as he can in eight. Indeed, no pro-life candidate can be elected in the first place—or reelected—without the judgment by the public that he has a broader agenda and will be effective in accomplishing other things. A president with a "pro-life" reputation needs to succeed in other areas for the success of his pro-life agenda.

Four years may seem like a long time to most people. Presidents sense that time is fleeting; this is especially so for Bush. As the historian Richard Brookhiser put it, "The best a President can hope to do is identify a handful of problems and, by bearing down on them, accomplish a handful of things."[14]

Presidents are judged by the goals they set and how they achieve them in four years, and many have noted that Bush's goals were transformed by the events of September 11. Since then, his principal mission has been the security of the American people. As that day reminds us, presidents do not control their own agenda. Bioethics Council chairman Leon Kass has noted that "2001 was . . . the year in which our world was drastically changed, and with it our nation's mood and attention."[15]

As we have already observed, the achievements of even the most influential Presidents are inevitably shaped by the cultural and political context in which they are inaugurated. In the hindsight of more than 60 years, the threat from Hitler in the 1930s seems clear, but FDR swam against a very strong current in giving help to Great Britain through "Lend-Lease" in 1940-1941. This was reflected in FDR's poignant remark, "It's a terrible thing to look over your shoulder when you're trying to lead and to find no one there."

The two areas in which pro-life Americans may be most critical of Bush's efforts are his support for federally funded research on existing stem-cell lines and his lack of progress in getting his judicial nominees confirmed.

Bush's most important speech on the life issues to date was his August, 2001 address to the nation on stem-cell research. It was significant in its extensive review of the scientific and ethical issues involved, and because it centered on developing human lives at the embryonic stage—the basic issue in *in vitro fertilization* (IVF) which is the gateway to cloning and genetic manipulation. Pro-lifers were not united in their reaction to the decision Bush had made to allow partial funding for embryonic stem-cell research. Some, like the Catholic theologian and commentator Michael Novak, were critical; others applauded it as a "principled compromise." Novak's analysis at the time was correct: The benefit that might be derived from embryonic research does not justify using human beings as a means to that end.

In retrospect, however, the narrow line Bush drew appears to have inhibited the growth of embryonic stem-cell research. A Senate hearing in September, 2002 featured scientists who complained that embryonic research in the United States was "moving exceedingly slowly" due to President Bush's restrictions on federal funding.[16] And on November 10, 2003, an ethics committee sponsored by Johns Hopkins University concluded that it would be unethical and risky to treat people with embryonic stem cells allowed by Bush's policy because they were initially grown on mouse cells which could expose humans to an animal virus.[17] These complaints are obviously self-serving and designed to drum up opposition to the President's policy, but, as evidence of the inhibiting effect of the President's policy, they are significant.

Future technologies that could be used to re-engineer human beings may

impact the future of the human race more widely and permanently than legalized abortion has. This is why the most important action by Bush in his first term may have been the creation of the President's Council on Bioethics. Under the inspired direction of Leon Kass, the 18-member Council has issued a number of important reports that have the potential for shaping public debate and federal and state policy for years to come. In July, 2002, the Council released "Human Cloning and Human Dignity." A second report, "Beyond Therapy: Biotechnology and the Pursuit of Happiness," was published in October, 2003. "Reproduction and Responsibility: The Regulation of the New Biotechnologies," which appeared in April, 2004, is a revision of a June 2003 Discussion Document on how biotechnologies are affecting the beginning stages of human life. It observes that, compared with other countries, reproductive technology in the United States is "relatively unmonitored and unregulated"—data collection on the health of *in vitro* children and their mothers, for example, is not required. A fourth document, titled *Being Human*, is a marvelous collection of readings and a valuable teaching aide.

Like Truman's Civil Rights Committee, the Council's actions and proposals may be ignored by Congress now, but they remind the nation of moral truths about human beings and human nature that may move future generations to action. President Bush should not consign the wisdom of the Council's members to its internal deliberations. Instead, he should rely on that wisdom to publicly inform Americans about the radically different choices they have before them and the directions in which those choices will lead the nation.

Thirty-one years after *Roe v. Wade*, the use of judicial nominations to change the ideological makeup of federal courts is still front and center in national politics and elections. Senate Democrats have blocked at least six Bush judicial nominees to the federal appeals courts: Miguel Estrada, Janice Rogers Brown, Charles Pickering, William Pryor, Priscilla Owens, and Carolyn Kuhl. Some pro-lifers think the president's power to make recess appointments of federal judges is a silver bullet that Bush has failed to take advantage of. This reflects a misunderstanding about the clear limitations on recess appointments. Article II, section 2 of the U.S. Constitution reads: "The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions *which shall expire at the End of their next Session.*" Significant cases on social issues are only occasionally presented to federal judges. The likelihood that a recess nominee will be assigned to and rule on a "pro-life" case by the time his or her commission expires is slim. The nominee also has to want the temporary appointment and must give up any office or job he or she currently holds. It

is likely that the most qualified nominees are not willing to put up with the hassle, or give up their current livelihood, for a temporary seat.

These limitations are demonstrated in the two recess appointments Bush has made: federal district judge Charles Pickering to the U.S. Court of Appeals for the Fifth Circuit on January 16, 2004, and Alabama Attorney General William Pryor to the U.S. Court of Appeals for the 11th Circuit. Judge Pickering, who had to give up his life-time appointment to the federal district court, will end up sitting on the Fifth Circuit for only 12 months. Pryor may be able to serve until late in 2005.

Many pro-lifers also wish the Bush Administration would do more to end Democratic filibusters of judicial nominees. But the filibuster is a Senate rule, not a federal law—only senators, by changing their own rules, can end or limit the filibuster. And because ending the filibuster on judicial nominees might compromise or even end the filibuster entirely, it is unlikely Senate Republicans will do this.

By the end of March, 2004, the nominations process had been further politicized. Despite the fact that the Constitution grants the president virtually unrestricted recess appointment power, and Bush had used it only twice, Senate Democrats threatened to obstruct *all* judicial nominees until the President agreed not to make any further recess appointments. The significant limitations on alternative means of appointing judges serve to clarify the importance of the 2004 presidential and Senate elections as the "main event." The only solution to this problem is political—at the ballot box, in the election of senators who will back Bush's nominees.

Clearly, Bush could do more. He never mentioned the culture of life in his January, 2004 State of the Union address, much less sanctity of life issues specifically, and that address sends a strong message about his vision and priorities for a second term. He has not highlighted or reinforced the proposals of his Council on Bioethics. He has not exerted pressure for a federal cloning ban or for the Abortion Non-Discrimination Act. He has done nothing yet—at least publicly—to reexamine the FDA's reckless approval of RU-486, despite some deaths, including that of Holly Patterson in the San Francisco Bay area in 2003. We must remember, however, that judging what is possible and choosing effective means requires a complex, internal analysis that is rarely available to the public.

As the 2004 campaign heats up, the President eventually will have to address the abortion issue. Can he effectively navigate the abortion divide and speak persuasively to Middle America? Bush's advisors would probably prefer that he say as little as possible on the issue, and they may calculate

that—having taken a "moderate" position on abortion in his first term and for other reasons—abortion will be a non-issue in the re-election campaign. And if they are worried by the President's "numbers" with women voters, they may also presume that the less he says on abortion the better. The Democratic nominee will undoubtedly make abortion as much of an issue as possible, especially highlighting the prospect of Supreme Court vacancies to fill on the next president's watch.

Bush has demonstrated in his first term, however, that he is willing to take risks in the short term for greater goals over the long term. There are two sides of the coin in the abortion debate: the impact of abortion on the child and its impact on women. By recognizing abortion's negative impact on women, Bush can join a debate that is necessary to move public attitudes toward a culture of life over the longer term and address abortion in a compassionate and realistic manner that engages the public.

That many Americans see abortion as a "necessary evil" is clear. For the past 30 years, the polling data consistently shows that beneath the superficial labels of "pro-life" and "pro-choice," "[t]he majority of Americans morally disapprove of the majority of abortions currently performed," as University of Virginia sociologist James Hunter, put it in his landmark book.[18] The *Chicago Tribune* aptly summarized the situation in a September 1996 editorial: "Most Americans are uncomfortable with all-or-nothing policies on abortion. They generally shy away from proposals to ban it in virtually all circumstances, but neither are they inclined to make it available on demand no matter what the circumstances. They regard it, at best, as a necessary evil."

If Middle America—as James Hunter calls the 60% in the middle—sees abortion as an evil, why is it thought to be "necessary"? Although the 1991 Gallup Poll did not probe this question specifically, the data make clear that it is *not* because Middle America sees abortion as "necessary" to secure "equal opportunities for women." Instead, many Americans may see abortion as "necessary" in certain narrow circumstances to avert "the back alley" or to secure "women's health."

The Achilles heel of John Kerry's position—or that of any of the Democratic candidates—on abortion is that it blindly protects philandering men who put women in the precarious position of an unwanted pregnancy and an uncommitted relationship, conveniently ignoring the negative impact, physical or psychological, that most women experience, while offering them the carrot of "choice."

The most significant thing that Bush can do is to address the other side of the coin: the negative impact of abortion on women. Although the impact on

the child has to be reinforced in the public mind, it speaks mainly to the pro-life choir. In the back of Middle America's mind, when it comes to abortion restrictions, there's always the question: "What about the impact on women?" And the public generally believes that legalized abortion has been—on balance—good for women.

Middle America's sense that abortion is a "necessary evil" can best be addressed by speaking to the negative impact on women. Helping the public understand the real damage abortion does to women, and highlighting the alternatives available, may contribute to a renewal of public dialogue that we so sorely need on this issue. The physical and psychological burden that women experience is a compelling reason to give women full information, encourage alternatives, and prevent hasty, pressured decisions to opt for abortion. A modest step could highlight the significant risks from abortion that medical science has identified and the need for improved public health data collection and dissemination for further research.

Ironically, a pro-abortion president can do more damage, on balance, than a pro-life president can promote positive change, due to the pivotal role of the Supreme Court in the abortion issue. The clearest example is still Supreme Court nominations. The president elected in November, 2004 will likely have the opportunity to name successors for at least two justices—Chief Justice William Rehnquist (he will turn 80 in October, 2004) and Justice John Paul Stevens (84 in April, 2004). The two justices nominated by Bill Clinton—Ruth Bader Ginsburg and Stephen Breyer—were the deciding votes in the Court's 5-4 decision in *Stenberg* v. *Carhart* (2000) that struck down laws against partial-birth abortion in 30 states.

The unique power to make Supreme Court appointments notwithstanding, presidents are limited in their capacity to create a culture of life—limited by the Constitution (with its federal system and separation of powers), limited by time, limited by resources. The same diffusion of power in a representative democracy that is necessary for liberty limits a president's assertion of power, for good or evil. And that's how it should be in a government under law. That understanding of presidential limits should remind Americans working for a culture of life that they must rely on themselves more than political leaders to create a culture of life and to build the vital centers of cultural influence on which political leaders necessarily depend.

## NOTES

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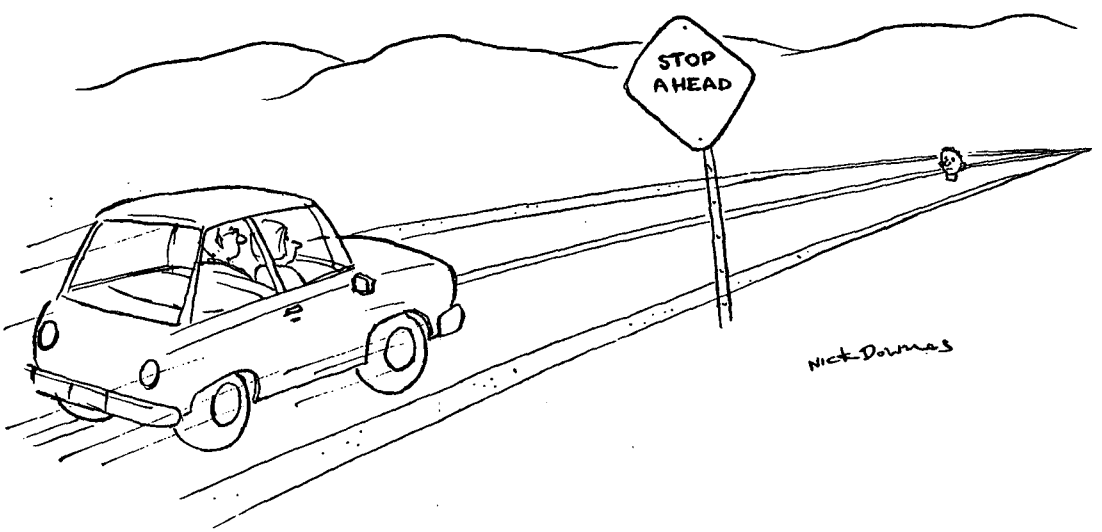

# Does Darwinism Devalue Human Life?

*Richard Weikart*

A number of years ago two intelligent students surprised me in a class discussion by defending the proposition that Hitler was neither good nor evil. Though I kept my composure, I was horrified. One of the worst mass murderers in history wasn't evil? How could they believe this? How could they justify such a view?

They did it by appealing to Darwinism. Their pronouncement on Hitler occurred while we were discussing James Rachels's book, *Created from Animals: The Moral Implications of Darwinism* (Oxford University Press, 1990). Darwinism, these students informed us, undermined *all* morality. This was not the first time I had heard such a view. In fact, at that time I was in the beginning phases of a research project on the history of evolutionary ethics, and I had already reviewed the work of some scientists and social scientists who believed that Darwinism undermined human rights and equality.

Before reading Rachels's book, however, I hadn't thought much about whether or not Darwinism devalued human life itself. Rachels, a philosopher at the University of Alabama best known for his contributions to the euthanasia debate, argues that Darwinism undermines the Judeo-Christian belief in the sanctity of human life. The title of his book comes from an observation Darwin makes in his 1838 notebooks: "Man in his arrogance thinks himself a great work, worthy of the interposition of a deity. More humble and, I believe, true to consider him created from animals." Rachels assumes the truth of Darwinism and uses it as a springboard to justify euthanasia, infanticide (for disabled babies), abortion, and animal rights. Stimulated by his book, I continued my research on evolutionary ethics, but now with two new questions in mind: Does Darwinism undermine the Judeo-Christian understanding of the sanctity of human life? Does it weaken traditional proscriptions against killing the sick and the weak?

As I read more about the development of evolutionary ethics, I discovered that many scientists, social thinkers, and especially physicians in late nineteenth and early twentieth-century Germany, did indeed use Darwinian arguments to devalue human life. In the second edition of his popular book, *The Natural History of Creation*, Ernst Haeckel, the leading Darwinist in Germany, proposed that disabled infants be killed at birth. Darwinists were

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in the forefront of the eugenics movement, which taught that disabled people and non-Europeans were inferior to healthy Europeans. They argued that Darwinism implied human inequality, since biological variation has to occur to drive the process of evolution. Haeckel even suggested that Darwinism was an "aristocratic" process, favoring an aristocracy of talent (not the traditional landed aristocracy, for which Haeckel had no sympathy). Since Darwinism provided a naturalistic explanation for the origin of ethics, many of its adherents dismissed human rights as a chimera.

Darwin expressed incredulity when critics assailed him for undermining morality. In his *Autobiography*, however, Darwin rejected the idea of objective moral standards: One "can have for his rule of life, as far as I can see, only to follow those impulses and instincts which are the strongest or which seem to him the best ones."[1] Friedrich Hellwald, an influential ethnologist promoted a Darwinian view of social evolution in his major work, *The History of Culture* (1875). Hellwald was quite radical in exalting the Darwinian process of the struggle for existence above all moral considerations. "The right of the stronger," he insisted, "is a natural law,"[2] He clarified this idea further:

> In nature only One Right rules, which is no right, the right of the stronger, or violence. But violence is also in fact the highest source of right, in that without it no legislation is thinkable. I will in the course of my portrayal easily prove that even in human history the right of the stronger has fundamentally retained its validity at all times.[3]

Besides stressing human inequality, Haeckel and many of his fellow Darwinists devalued human life by criticizing Judeo-Christian conceptions of humanity as "anthropocentric." Rather than being created in the image of God, they argued, humans were descended from simian ancestors. They blurred the distinctions between humans and animals, alleging that characteristics that had been traditionally considered uniquely human—rationality, morality, religion, etc.—were also present in animals to some degree. In Darwin's own words, the difference between humans and animals is quantitative, not qualitative.

Darwin's explanation that all characteristics previously associated only with the human soul were not qualitatively distinct from animals also undermined the traditional Judeo-Christian conception of body-soul dualism, which endued humans with greater moral and spiritual significance than other organisms.[4] Many Darwinists understood the implications of this, including Haeckel, who founded the Monist League in 1906 specifically to combat dualistic religions and philosophies, especially Christianity (but also Kantianism). One prominent member of the Monist League, August Forel, a world famous psychiatrist at the University of Zurich, described his initial encounter with Darwinism as a kind of conversion experience. He explained

that Darwinism had convinced him that body-soul dualism was no longer tenable and that humans have no free will. Based on his view that heredity accounts for almost all character traits (and most mental illness), Forel became one of the most influential figures in the German eugenics movement, preaching the need to eliminate "inferior" races and handicapped infants, and recruiting Alfred Ploetz, who founded the world's first eugenics organization and journal.

Another element of Darwinism that contributed to the devaluing of human life was its stress on the struggle for existence. Based on the Malthusian population principle, Darwin pointed out that offspring are produced at much higher levels than can survive. Therefore multitudes necessarily perish in the struggle for existence. While Malthus saw this tendency toward overpopulation as the cause of misery and poverty, Darwin explained that it was really beneficial. In the conclusion of *The Origin of Species*, Darwin writes, "Thus, from the war of nature, from famine and death, the most exalted object which we are capable of conceiving, namely, the production of the higher animals, directly follows."[5] For Darwin death—even mass death—was not only inevitable, but necessary. As Adrian Desmond explained in his biography of T. H. Huxley—the foremost Darwinian biologist in late nineteenth-century Britain, who earned the nickname, "Darwin's bulldog"—"only from death on a genocidal scale could the few progress."[6] Hellwald expressed the same idea in *The History of Culture*, claiming that evolutionary progress would occur as the "fitter" humans "stride across the corpses of the vanquished; that is natural law."[7]

Indeed, many leading Darwinists in the late nineteenth and early twentieth centuries believed that in order to foster evolutionary progress, the less valuable elements of humanity, generally defined as the disabled and those of non-European races, had to be eliminated. They feared that Judeo-Christian and humanitarian ethics, together with the advances of modern civilization—especially medicine and hygiene—would produce biological degeneration, since the weak and sick would be allowed to reproduce. Though many focused on methods to restrict reproduction, a surprising number of leading Darwinists—and not only Haeckel and Forel—actually promoted killing the "unfit" as a means to bring biological progress. Racial extermination and infanticide were integral components of their Darwinian program for biological rejuvenation.

In retrospect, the connection between these Darwinian ideas and Hitler's ideology are obvious. Interestingly, however, when I began my research on evolutionary ethics, Hitler was not even on my radar screen. I was wary of

connecting Darwin and Hitler because of Daniel Gasman's failed attempt to draw a direct line from Haeckel to Hitler in *The Scientific Origins of National Socialism*, a book with which most historians rightly find fault. However, the title of my book—*From Darwin to Hitler: Evolutionary Ethics, Eugenics, and Racism in Germany* (Palgrave Macmillan, 2004)—indicates that I made the connection nonetheless, though in a quite different manner from Gasman. Indeed, the more I studied books and articles on evolutionary ethics by German scientists, physicians, and social thinkers, the more I discovered that I could not avoid the parallels between German Darwinist discourse and Hitler's ideology. This should not come as a complete surprise, however, since just about all of Hitler's biographers have noted the strong social Darwinist elements in his ideology, as Ian Kershaw does recently in his magisterial two-volume biography.

Hitler was strongly influenced by the Darwinian ideology of the eugenics movement, and his writings and speeches clearly reflect it. In *Mein Kampf* Hitler asserted that his philosophy "by no means believes in the equality of

> races, but recognizes along with their differences their higher or lower value, and through this knowledge feels obliged, according to the eternal will that rules this universe, to promote the victory of the better, the stronger, and to demand the submission of the worse and weaker. It embraces thereby in principle the aristocratic law of nature and believes in the validity of this law down to the last individual being. It recognizes not only the different value of races, but also the different value of individuals. . . . But by no means can it approve of the right of an ethical idea existing, if this idea is a danger for the racial life of the bearer of a higher ethic.[8]

Thus Hitler justified his racial views by appealing to Darwinian science. Because Hitler's racial views were so obviously flawed, some scholars call Hitler's views pseudo-scientific or a "vulgar" form of Darwinism. However, this is to judge Hitler by later standards of scientific thought. Many leading scientists and physicians embraced eugenics and scientific racism in Hitler's day, and indeed Fritz Lenz, the first professor of eugenics at a German university, crowed in 1933 that he had formulated the essentials of Nazi ideology even before Hitler began his political career.

Hitler's genocidal program was not the only adverse consequence of Darwinism's devaluing of human life, and Germany was not the only country impacted. Much work on the history of the eugenics movement in the United States, Britain, and elsewhere suggests that scientific and medical elites in many parts of the world imbibed the Darwinian devaluing of human life. Though it did not lead to genocide in these countries, it did lead to other injustices, such as the compulsory sterilization of thousands of people classified as "less fit," based on their hereditary condition (sometimes based on

very tenuous evidence, leading to many cases of misdiagnosis). Social Darwinist and eugenics ideology also played an important role in the budding movement to legalize abortion in the early twentieth century.

Further, recent confirmation of my findings about the Darwinian devaluing of human life have come from Ian Dowbiggin's and Nick Kemp's important new studies on the history of the euthanasia movements in the United States and Britain, respectively. Both emphasize the role of Darwinism in paving the way ideologically for euthanasia. According to Dowbiggin, "The most pivotal turning point in the early history of the euthanasia movement was the coming of Darwinism to America."[9] This held true in Britain, as well, for Kemp informs us: "While we should be wary of depicting Darwin as the man responsible for ushering in a secular age we should be similarly cautious of underestimating the importance of evolutionary thought in relation to the questioning of the sanctity of human life."[10] The world view of most early euthanasia advocates was saturated with Darwinian ideology, and they forthrightly used Darwinian ideas to combat the Judeo-Christian concept of the sanctity of human life.

Thus, historical evidence from the late nineteenth and early twentieth centuries overwhelmingly supports the thesis that Darwinism devalued human life. Whatever one thinks philosophically about this issue—and, of course, some Darwinists are embarrassed by the link and try to deny it—historically Darwinism has contributed to a devaluing of human life, thereby providing impetus for euthanasia, infanticide, and abortion.

The question now emerges: Is this all just of historical interest? Haven't we learned a lesson from Nazism not to use social Darwinism to devalue humans? Haven't we abandoned biological racism and rabid anti-Semitism, integral components of Nazi ideology?

Yes, indeed, we have learned much from the Nazi past and I don't think it is fair to compare our present situation with Nazi Germany, as though they are completely the same. We don't live in a murderous dictatorship, and racism is on the defensive, at least in academic circles. For this we can be thankful. Still, in some respects, I wonder if we have learned enough, especially when I see big-name Darwinists, evolutionary psychologists, and bioethicists using Darwinism today to undermine the sanctity of human life. Whether Darwinism does actually devalue human life or not, there are certainly many people who think it does, and they are not intellectual featherweights.

First of all, the position that Rachels stakes out on issues of life and death is strikingly similar to that of the Australian bioethicist, Peter Singer, whose appointment a few years ago to a chair in bioethics at Princeton University

stirred up vigorous controversy. Singer is renowned—or notorious, depending on one's point of view—for promoting the legitimacy of infanticide for handicapped babies and voluntary euthanasia, as well as for defending animal rights. Darwinism plays a key role in Singer's philosophy, underpinning his views on life and death. Singer claims that Darwin "undermined the foundations of the entire Western way of thinking on the place of our species in the universe." It stripped humanity of the special status that Judeo-Christian thought had conferred upon it. Singer complains that even though Darwin "gave what ought to have been its final blow" to the "human-centred view of the universe," the view that humans are special and sacred has not yet vanished. Singer is now laboring to give the sanctity-of-life ethic its deathblow.[11]

Singer and Rachels are not the only prominent philosophers arguing that Darwinism undermines the sanctity of human life. In *Darwin's Dangerous Idea*, the materialist philosopher Daniel Dennett argues that Darwinism functions like a "universal acid," destroying traditional forms of religion and morality. In confronting the issue of biomedical ethics Dennett asks, "At what 'point' does a human life begin or end? The Darwinian perspective lets us see with unmistakable clarity why there is no hope at all of *discovering* a telltale mark, a saltation in life's processes, that 'counts.'" Because of this, Dennett argues, there are "gradations of value in the ending of human lives," implying that some human lives have more value than others. After using his Darwinian acid to dissolve the sanctity-of-life ethic, Dennett wonders, "Which is worse, taking 'heroic' measures to keep alive a severely deformed infant, or taking the equally 'heroic' (if unsung) step of seeing to it that such an infant dies as quickly and painlessly as possible?" *Darwin's Dangerous Idea* is apparently especially toxic to disabled infants.[12]

The evolutionary psychologist Steven Pinker, a professor of psychology at Harvard University, also draws connections between Darwinism and infanticide. After some high-profile cases of infanticide occurred in 1997, Pinker wrote an article purporting to explain its evolutionary origins. Since Pinker believes "that nurturing an offspring that carries our genes is the whole point of our existence," of course he tries to explain infanticide as a behavior that somehow confers reproductive advantage. He argues that a "new mother will first coolly assess the infant and her current situation and only in the next few days begin to see it as a unique and wonderful individual." (This is outrageously speculative; no new mother I have ever met has "coolly assessed" her infant, and it seems to me that those who commit infanticide are not "coolly assessing" the survival prospects for their infant, either—more likely they are desperate.) According to Pinker, the mother's love for her infant will grow in relation to the "increasing biological value of a child (the

chance that it will live to produce grandchildren)." Pinker specifically denies that infants have a "right to life," so, even though he doesn't completely condone infanticide, he thinks we should not be too harsh on mothers killing their children.[13] Pinker's view of infanticide is by no means unusual among evolutionary psychologists. In a leading textbook on evolutionary psychology, *Evolution and Human Behavior: Darwinian Perspectives on Human Nature* (2000), John Cartwright provides basically the same Darwinian explanation for infanticide as Pinker's.

What do Darwinian biologists have to say about all this? Some think Singer and company are on the right track. In 2001 Richard Dawkins, probably the most famous Darwinian biologist in the world today, made an impassioned plea for using genetic engineering to create an *Australopithecine* (whose fossil remains are allegedly an ancestor to the human species). Producing such a "missing link" would, according to Dawkins, provide "positive ethical benefits," since it would demolish the "double standard" of those guilty of "speciesism." Dawkins specifically claims that producing such an organism would demonstrate the poverty of the pro-life position, because it would show that humans are not different from animals. In the midst of this acerbic attack on the sanctity of human life, Dawkins expresses the hope that he will be euthanized if he is ever "past it," whatever that means (some people already think that Dawkins is "past it," but fortunately for Dawkins, I suspect that most of them still uphold the sanctity-of-life ethic that Dawkins rejects).[14]

Edward O. Wilson, the Pulitzer-Prize-winning pioneer of sociobiology and Harvard professor whose entire view of human nature revolves around Darwinism, also exemplifies this devaluing of human life, though he is more subtle about it. In his book *Consilience* (1998) he argues that his empiricist world view "has destroyed the giddying theory that we are special beings placed by a deity in the center of the universe in order to serve as the summit of Creation for the glory of the gods." In one passage in his autobiography he compares humans to ants, informing us that we humans are too numerous on the globe, while ants are in a proper population balance. "If we were to vanish today," Wilson explains, "the land environment would return to the fertile balance that existed before the human population explosion." But if ants were to disappear, thousands of species would perish as a result. The implication seems to be: ants are more valuable than humans, and biodiversity takes precedence over human life.

Many biologists, of course, disagree with Singer and Dawkins. From the late nineteenth century to today they have assured us that Darwinism has no implications for morality. They allege that those trying to apply Darwinism

to morality are committing the "naturalistic fallacy" by deriving "ought" from "is." Darwin's friend and defender, Thomas Henry Huxley, vigorously opposed the attempts of his contemporaries to seek ethical guidance in natural evolutionary processes. More recently, Steven Jay Gould often butted heads with evolutionary psychologists, arguing that morality was a separate realm from biology. In his view Darwinism has nothing to say about how humans should act.

Gould, however, did not really divorce science and morality as much as he claimed. While vociferously arguing that Darwinian science on the one hand and religion and morality on the other are "non-overlapping magisteria," separated as far as the east is from the west, he persisted in drawing conclusions from his Darwinian science that are suspiciously laden with religious and moral implications. In *Wonderful Life: The Burgess Shale and the Nature of History* (1989), the whole point is to use the Burgess Shale—a fossil-laden outcropping of rock in Canada teeming with many extinct, ancient forms of life—as an example of the contingency of history, to demonstrate that there is no real purpose to human existence. "Wind back the tape of life to the early days of the Burgess Shale; let it play again from an identical starting point, and the chance becomes vanishingly small that anything like human intelligence would grace the replay." His view of the contingency of human creation in the evolutionary process clearly affects the way he views the nature and status of humanity, for he informs us that "biology shifted our status from a simulacrum of God to a naked, upright ape." The closing words of this book are remarkable for someone who claims to keep science and religion in non-overlapping compartments:

> And so, if you wish to ask the question of the ages—why do humans exist?—a major part of the answer, touching those aspects of the issue that science can treat at all, must be: because *Pikaia* [a Burgess shale chordate] survived the Burgess decimation. This response does not cite a single law of nature; it embodies no statement about predictable evolutionary pathways, no calculation of probabilities based on general rules of anatomy or ecology. The survival of *Pikaia* was a contingency of 'just history.' I do not think that any 'higher' answer can be given, and I cannot imagine that any resolution could be more fascinating. We are the offspring of history, and must establish our own paths in this most diverse and interesting of conceivable universes—one indifferent to our suffering, and therefore offering us maximal freedom to thrive, or to fail, in our own chosen way.[15]

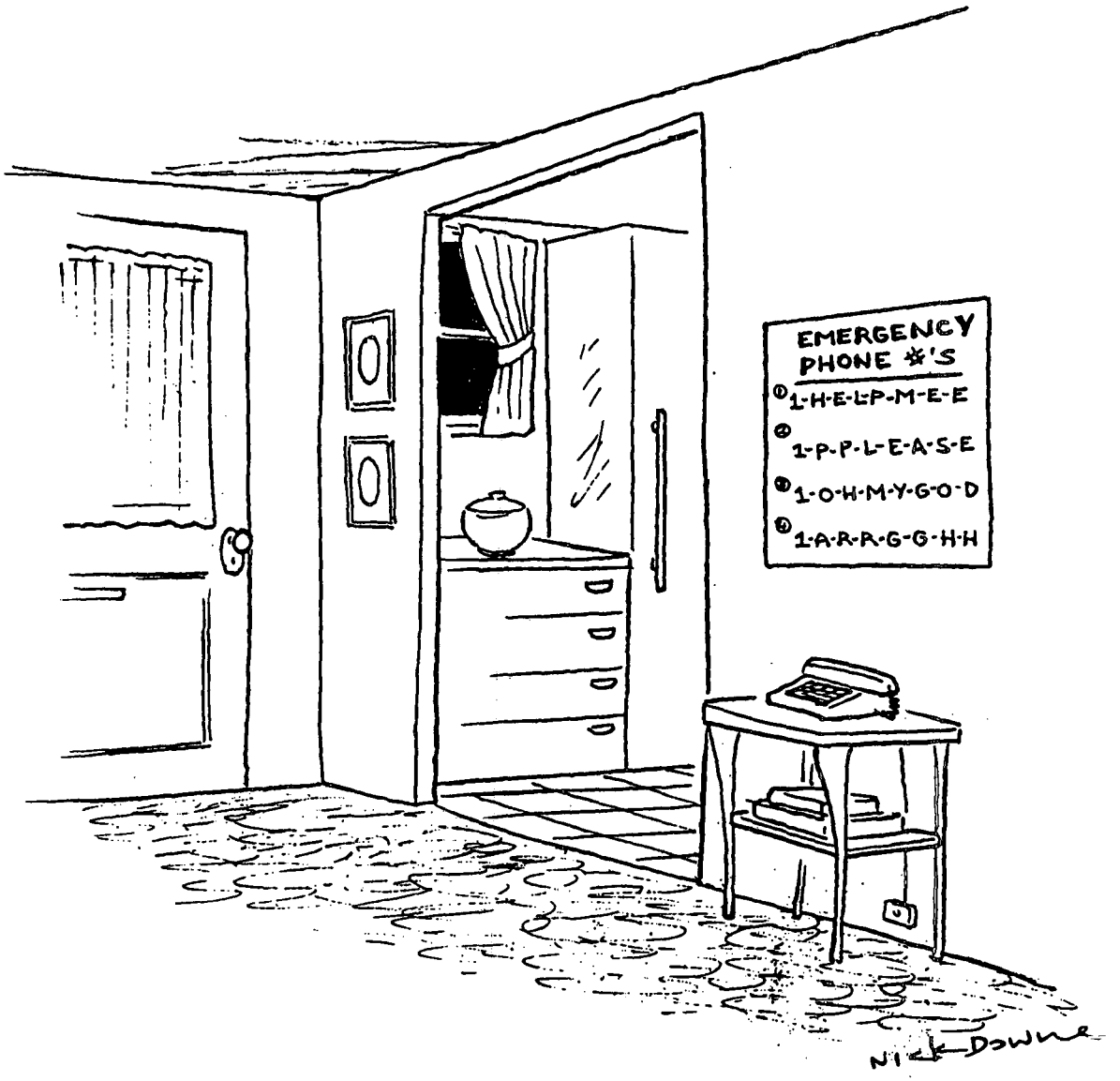
Does Gould really think this conclusion has no religious or moral implications? Does he really believe that his claim that biology demotes humans from the image of God to a naked ape is a purely scientific statement that has no bearing on moral issues, such as abortion and euthanasia?

In light of all this, does Darwinism really devalue human life? I think I

have shown conclusively that historically Darwinism has indeed devalued human life, leading to ideologies that promote the destruction of human lives deemed inferior to others. Those on the forefront in promoting abortion, infanticide, euthanasia, and racial extermination often overtly based their views on Darwinism. Also, as I have shown in this essay, those favoring a Darwinian dismantling of the sanctity-of-life ethic have a good deal of intellectual firepower, and the idea is becoming rather widespread in academic circles today. There are, of course, various religious and philosophical moves that one can make to evade these conclusions, and some Darwinists have in the past and will continue in the future vigorously to oppose such developments (for this we can be thankful), construing them as faulty extrapolations by overzealous Darwinian materialists. However, it seems to me that there is an inherent logic in the move by Darwinists to undermine the sanctity-of-life ethic, which makes it so alluring that I doubt it will ever disappear as long as Darwinism is ascendant. In any case, it is certainly safe to say that in modern society Darwinism has contributed mightily to the erosion of the sanctity-of-life ethic. Darwinism really is a matter of life and death.

## NOTES

1. Charles Darwin, *Autobiography* (NY: Norton, 1969), 94.
2. Friedrich Hellwald, *Culturgeschichte in ihrer natürlichen Entwicklung bis zur Gegenwart* (Augsburg, 1875), quote at 27, see also 278, 569.
3. Ibid, 44-45.
4. On the connection between dualism and bioethics, see J. P. Moreland and Scott Rae, *Body and Soul: Human Nature and the Crisis in Ethics* (Downers Grove, IL, 2000).
5. Darwin, *The Origin of Species*, (London: Penguin, 1968), 459.
6. Adrian Desmond, *Huxley: From Devil's Disciple to Evolution's High Priest* (Reading, MA, 1997), 271.
7. Hellwald, *Culturgeschichte in ihrer natürlichen Entwicklung*, 58, 27; "Der Kampf ums Dasein im Menschen- und Völkerleben," *Das Ausland* 45 (1872): 105.
8. Adolf Hitler, *Mein Kampf*, 2 vols. in 1 (Munich, 1943), 420-1. Emphasis is mine.
9. Ian Dowbiggin, *A Merciful End: The Euthanasia Movement in Modern America* (Oxford, 2003), 8.
10. N. D. A. Kemp, *'Merciful Release': The History of the British Euthanasia Movement* (Manchester, 2002), 19. For more information on Dowbiggin's and Kemp's works, see my review essay, "Killing Them Kindly: Lessons from the Euthanasia Movement," in *Books and Culture: A Christian Review* (Jan./Feb. 2004), 30-31.
11. Peter Singer, *Writings on an Ethical Life* (New York, 2000), 77-78, 220-21.
12. Daniel Dennett, *Darwin's Dangerous Idea: Evolution and the Meanings of Life* (NY, 1995), ch. 18.
13. Steven Pinker, "Why They Kill Their Newborns," *The New York Times Sunday Magazine* (November 2, 1997).
14. Richard Dawkins, "The Word Made Flesh," *The Guardian* (December 27, 2001).
15. Stephen Jay Gould, *Wonderful Life: The Burgess Shale and the Nature of History* (NY, 1989), quotes at 14, 323; for his views on the compartmentalization of science and religion, see "Nonoverlapping Magisteria," *Natural History* 106 (March 1997): 16-22.
16. For further material proving this point, see my book, *From Darwin to Hitler: Evolutionary Ethics, Eugenics, and Racism in Germany* (NY, 2004).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NICK DOWNE

# The Supreme Court and the Assault on Marriage

*Donald DeMarco*

> *We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*

These words, which most educated Americans will instantly recognize as the Preamble to their Constitution, represent the fortuitous coincidence of great ideas and beautiful prose.

America is a society of "People." She is not a loose aggregate of individuals. She is a "Union," not a collectivity of fragments. She wants "domestic Tranquility," not discord between intransigent individualists. She is dedicated to "Posterity," not to satiating herself in the present.

The Preamble makes it clear enough, as it enumerates its list of great philosophical ideas, that it recognizes man as a social being, one who fulfills himself, attains his happiness and discovers his meaning not in isolation from others, but through ordered cooperation with his fellow citizens. The founding fathers of the Constitution did not contemplate that it would ever be necessary to amend the spirit of the Constitution that its Preamble embodies.

So it would seem. But the sword can be mightier than the shield.

When the 1857 Taney Court ruled, by a 7-2 vote, that according to the Constitution, a black man is "property," Justice Benjamin Robbins Curtis, in his dissent, made the following comment: "[W]hen a strict interpretation of the Constitution, according to the fixed rules which govern the interpretation of laws, is abandoned, and the theoretical opinions of individuals are allowed to control its meaning, we have no longer a Constitution; we are under the government of individual men, who for the time being have power to declare what the Constitution is, according to their own views of what it ought to mean." *Dred Scott* v. *Sandford*, 19 How. 393, 621 (1857) (Curtis, J., dissenting).

In his lengthy and well-reasoned dissent, Justice Curtis did not lose sight of either the letter or the spirit of the Constitution: "That Constitution was ordained by the people of the United States . . . These colored persons were

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not only included in the body of 'the people of the United States,' by whom the Constitution was ordained and established, but in at least five States they had the power to act, and doubtless did act, by their suffrages, upon the questioning of its adoption. It would be strange if we were to find in that instrument anything which deprived of their citizenship any part of the people of the United States who were among those by whom it was established."

Justice Curtis was showing admirable restraint in his employment of the word "strange." In his actions, he showed less restraint. He protested the infamous *Dred Scott* decision by resigning from the Supreme Court. He returned to Boston and to a private law practice. His thought, his integrity, and his legacy should not be forgotten.

He knew what was expected of him as a defender of Justice. He knew that politics is no better than the philosophical ideas on which it is founded.

The Constitution rightly insists that politics be founded on Justice. Lincoln knew this and expressed the matter in prose that is not only eloquent, but compelling. Concerning the issue brought to the attention of the Taney Court, Lincoln said: "Slavery is founded on the selfishness of man's nature—opposition to it on his love of justice. These principles are in eternal antagonism; and when brought into collision so fiercely as slavery extension brings them, shocks and throes and convulsions must ceaselessly flow." The alternative to reason is violence. The alternative to living by the Great Ideas is barbarism.

"Political reasons have not the requisite certainty," wrote Justice Curtis, "to afford rules of judicial interpretation." What are these "political reasons" that are detached from the notion of justice that undergirds the Constitution? "They are different in men. They are different in the same men at different times," as Justice Curtis reminds us. They are legion: convenience, popularity, fashion, preference, private interest, partisan power, ideology, and so on. Justice Clarence Thomas would write in *Foster* v. *Florida* (2002), that "this Court . . . should not impose foreign moods, fads, or fashions on Americans," a comment that Justice Scalia would reiterate in *Lawrence et al.* v. *Texas*. "Politics without principle," said Gandhi, is one of the "Seven Deadly Sins of the Modern World."

Two days prior to the reading of the *Dred Scott* decision, America's 15th president, knowing in advance what the Taney ruling was going to be, provided, in his inaugural address, as clear an example of politics without philosophical principle that is possible to imagine. Turning his attention to slavery, President Buchanan said: "A difference of opinion has arisen in regard to the point of time when the people of a Territory shall decide this question for themselves." Then, in a studied attempt to appear democratic, open-minded,

and accepting, made the following thoroughly disingenuous announcement: "This is, happily a matter of but little practical importance. Besides, it is a judicial question, which legitimately belongs to the Supreme Court of the United States, before whom it is now pending, and will, it is understood, be speedily and finally settled. To their decision, in common with all good citizens, I shall cheerfully submit, whatever this may be."

In 1973, by a similar 7-2 vote, *Roe* v. *Wade* found something no one else had found for nearly 200 years "implied in the penumbra of the Constitution," namely, a woman's right to abortion established on her right to "privacy."

It was, in the view of dissenting Justice Byron White, "an act of raw judicial power," the kind of highly politicized judgment that Justice Curtis had inveighed against. There is no such provision in the Constitution or in constitutional principle. Constitutional lawyer John T. Noonan, Jr. states in his book that bears the intentionally sardonic title, *A Private Choice*, that *Roe* v. *Wade* reduced the woman to "a solo entity unrelated to husband or boy friend, father or mother . . . She was conceived atomistically, cut off from family structure." The legal and cultural processes advancing the "institutionalization of individualism" were well on their way.

Justice Harry Blackmun, who wrote the majority decision in *Roe* v. *Wade*, wrote the dissenting position thirteen years later in another deeply significant case, *Bowers* v. *Hardwick* (1986). In this case, the issue before the Court centered on the constitutionality of laws against sodomy. By a 5-4 vote, those laws were upheld. Blackmun, in his dissent, and citing *Olmstead* v. *United States* (1928) argued that "the most comprehensive of rights and the right most valued by civilized men [is] the right to be let alone." He reiterated his own principle articulated in *Roe* v. *Wade* about the "right to privacy" and cited, approvingly, another pro-abortion decision which stated, "[T]he concept of privacy embodies the moral fact that a person belongs to himself and not others nor to society as a whole" (*Thornburgh* v. *American College of Obstetricians and Gynecologists* (1977).

Blackmun's willingness to reduce all human beings—or at least, American citizens—to the curious state of non-social individual atoms contradicts not only the spirit of the Constitution as embodied in the Preamble, but also contradicts what we know about the intrinsically and ineradicably social nature of the human person. "It is not good for man to be alone" has far more than a theological ring. It is the common agreement of psychiatrists, psychologists, sociologists, historians, and anthropologists, that the human being is a person who is simultaneously unique and communal. If there is a

"moral fact," it is that a human being is *not* an island of liberty, an atom of autonomy, but a person who expresses his integrity and realizes his authenticity in the context of a society. It is surely not in the spirit of the Constitution to disenfranchise people from the status of being "People" while reducing them to the status of mere individuals. The Constitution does not contain within itself a provision for self-implosion.

The majority in *Bowers* v. *Hardwick* upheld anti-sodomy laws—including those that proscribed homosexual sodomy—in part, because it was in the interest of preserving the good of the family to do so. Responding to this contention, Blackmun offered a most astonishing line of thinking, arguing that, "We protect those rights not because they contribute, in some direct or material way, to the general public welfare, but because they form so central a part of an individual's life." "We protect the family," he wrote, "because it contributes so powerfully to the happiness of individuals, not because of a preference for stereotypical households."

Putting aside his impertinent and cynical description of the family as a "stereotypical household," what is more significant, in this analysis, is Blackmun's facile reduction of the joys of family life to the segregated joys of its component individuals. He speaks of "the ability independently to define one's identity," as if a man becomes a husband without a wife, or a wife becomes a mother without a partner who fathers the child, and a married couple attains parenthood apart from having children. The family, properly understood, is an organic unity. It represents *shared life*, what the ancient Greeks meant by the word "*zoe*," as opposed to "*bios*," their word for unshared life as it exists within each individual living thing.

Neither Blackmun, nor his like-minded kin, seem to be able to grasp the notion of a *bond*, as it appears (for example) in the "bond of matrimony" in which two people willingly and often happily begin to live as a two-in-one flesh couple, or husband and wife, or as two who are joined together in wedlock in such a way that they share their life together, no longer as purely distinct individuals, but as a union of two persons. A married couple is not a "juxtaposition of solitudes," but a "communion of persons."

For Blackmun, if marriage were construed as a bond between husband and wife that transcended individualism, it was not to be understood as a reality that must be honored, but as a political cause that must be avoided. Accordingly, and citing the landmark *Griswold* v. *Connecticut* case of 1965, he stated, "And so we protect the decision whether to marry precisely because marriage 'is an association that promotes a way of life, not causes; the harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects.'" His panegyric to "liberty" as "the ability independently to

define one's identity" leaves one to believe that a man becomes a husband and a father independently of his intimate cooperative involvement with his wife who becomes the mother of his children.

The absolutization of liberty conceived as independence from everything, was not achieved, however, until 1992 when, in the *Planned Parenthood* v. *Casey* decision, the Majority informed the "people of the United States," that "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and the mystery of human life." Given such spacious and unchecked liberty, legal analysts were left to ponder whether it rendered the rule of law either obsolete or unenforceable.

Can the "rule of law" survive in a nebulous atmosphere that is simultaneously antinomian, acosmic, and asocial? Did the framers of the Constitution envision the typical American exercising his freedom within a solitary dream world or by his contribution to the common good?

Justice Antonin Scalia would later refer to this allusion to unbridled liberty as the "passage [that] ate the rule of law." Such wooly thinking, writes Robert Bork in *Slouching Towards Gomorrah* (1996), was "intended, through grandiose rhetoric, to appeal to a free-floating spirit of radical autonomy." And at the close of *The Tempting of America* (1990), he offered sober advice to judges who have fragmented the human being into a private and asocial atomic unit: "Those who made and endorsed our Constitution knew man's nature, and it is to their ideas, rather than to the temptations of utopia, that we must ask our judges to adhere."

The *Casey* ruling rendered "invalid" the claim that a husband be notified about the impending abortion of his children in the womb. Such a claim, said the Court, "constitutes an undue burden" on the pregnant woman. "It cannot be claimed," the Court went on to declare, "that the father's interest in the fetus' welfare is equal to the mother's protected liberty." Here the woman's liberty to kill trumps her husband's fatherly responsibility to protect the life of his own child. In so stating, the Court unravels marriage by creating such a broad disparity between husband and wife that marriage in the form of a unity of two equal persons is no longer viable. The Court emphasized this point in its declaration that a marriage in which the father should be notified about the impending abortion of his child is "repugnant to this Court's present understanding of marriage and the nature of the rights secured by the Constitution." If this decision is not tantamount to the Court's opinion that marriage is essentially unconstitutional, it is exceedingly and dangerously close. And this narrow gap was made even smaller by the 1992 *Lawrence et al.* v. *Texas* (July, 2003) decision that overturned the *Bowers* v. *Hardwick* ruling.

Writing for the Majority in the *Lawrence* case, Justice Anthony Kennedy cited the infamous "mystery passage" (which Scalia lampooned as the "sweet-mystery-of-life passage") as a way of explaining "the respect the Constitution demands for the autonomy of the person in making these choices [homosexual sodomy]." "Persons in a homosexual relationship may seek autonomy for their purposes, just as heterosexual persons do."

The *Lawrence* decision, by finding a right to sodomy in the Constitution (but apparently not for marriage as it is properly understood), relied on a principle of liberty so broad that it would apply equally and logically to the right to homosexual marriage as well as to polygamy and incest. Nonetheless, the Court pretends that such application will not obtain and that we need not fear the judicial imposition of homosexual marriage. To this groundless claim, Justice Scalia warns in his dissent, "Do not believe it." After dismantling as morally significant the difference between hetero- and homosexual congress, what reason is left for the Court to deny the benefit of marriage to homosexual partners who, in their Constitutionally protected liberty, choose to marry? For Scalia, who in reference to this point is merely applying logic, there is none, but only "if one entertains the belief that principle and logic have nothing to do with the decisions of this Court. Many hope that, as the Court comfortingly assures us, this is so."

Of course, there is no comfort in knowing that the Supreme Court is trying to bury heads in the sand. The logic is simply this: Since the People of the United States are merely radical, antinomian individuals, a real marriage between a man and a woman is unconstitutional, whereas a newly defined kind of right for same-sex couples to "marry" *is* constitutional.

If we are to apply logic to this peculiar notion that the Supreme Court has been developing with regard to the human being as an essentially atomic entity, we begin to see that the Constitution is actually more congenial to same-sex unions than it is to those that are heterosexual.

Same-sex unions are, by nature (we are excluding technological forms of reproduction), sterile. As such, no offspring can be conceived to create a disparity between the pregnant woman's "right to choose" and the father's absence of such a right. The heterosexual union, which is fecund by nature, contains the troubling potential of putting the partners at odds with each other as well as with the Constitution. Once the woman becomes pregnant, in this peculiar perspective of the Supreme Court, she becomes alienated from her husband while her husband becomes alienated from the Constitution. In the interest of preserving a strict equality of rights between married partners, then, the same-sex relationship becomes preferable. Same-sex partners by virtue of being the same sex remain that way and do not

become differentiated as mothers and fathers (or even, strictly speaking, as wives and husbands). But it is in becoming specifically mothers and fathers that the heterosexual partners put themselves at odds both with each other as well as with the United States Constitution.

In reflecting on the *Bowers* decision that upheld anti-sodomy practices, Robert Bork made the following comment: "It has never been thought, until the rampant individualism of the modern era, that all individuals are entitled, as a matter of constitutional right, to engage in any form of sexual behavior." Indeed! The Majority observed that if the voluntary sexual conduct between consenting adults is unlimited, then it would be difficult (or at least illogical) to prosecute individuals on charges of bigamy, adultery, incest, and other sexual crimes that take place in the home.

If the Court is guilty of illogic, as in the *Lawrence* case, it is not an oversight that everyone else will share. Tom Green, for example, is currently serving a prison sentence on four counts of bigamy. In documents filed with the Utah Supreme Court, Mr. Green's lawyer is arguing that an application of the *Lawrence* ruling shows that bigamy, along with sodomy, is a constitutionally protected right. The Utah Civil Liberties Union agrees and has provided the state's highest court with an *amicus curiae* brief.

Since the *Lawrence* decision, Jon Carroll has called for legalized polygamy in the *San Francisco Chronicle*, Judith Levine has made a plea for group marriage in the *Village Voice*, and Michael Kinsley—a mainstream journalist—has called for the legal abolition of marriage.

The New York *Times* published a "Week in Review" article juxtaposing photos of Tom Green's family with sociobiological arguments about the naturalness of polygamy and promiscuity. Same-sex marriage proponent Adam Goodheart adduces the purpose of the Supreme Court as "that of cleaning out the dust of the past and remaking the world afresh" (New York *Times*, July 3, 2003, op-ed page).

Stanley Kurtz, in "Beyond Gay Marriage" (*The Weekly Standard,* August, 2003), documents the effort at a "polyamory" offensive (group marriage—see Deborah Anapol's book, *Polyamory*: *The New Love Without Limits*) that a determined coterie of legal scholars, academicians, and activists are making, who are using same-sex marriage as their Trojan Horse. Writing for *Social Justice Review* (Jan.-Feb., 2004), Robert Valente sees such an effort—congruent with and buttressed by recent Supreme Court decisions—as making "marriage, in all but name, thus effectively annihilated." Kurtz, himself, expresses the fear that "What lies beyond gay marriage is no marriage at all."

The creators of America's Constitution understood, as did Aristotle more than two millennia ago, that man is a social being (*zoon politikon*). He is not at liberty to live for himself exclusively. He is a person who is both unique and communal. He takes his place among other unique people who work together for the common good. So inclined by nature is the human being to social alliances that one of these alliances, called "marriage," represents a union of such profound I-Thou intimacy that the time-honored expression, "two-in-one flesh" aptly captures its nature. Moreover, the science of immunology has affirmed on a physiological level the objective reality of this two-in-one flesh unity. Commenting on the *Lawrence* decision, Professor William E. May, of the Pope John Paul II Institute for Studies on Marriage and Family, states that "the majority opinion completely ignores the intimate bonds between sex, marriage and generation of new life. It is blind to the indispensable contribution married men and woman make to the common good of society."

The contributions of immunology in shedding additional light on the nature of two-in-one flesh warrants further elaboration. Our immune system, certainly one of the great marvels of nature, equips us with 100 billion (100,000,000,000) immunological receptors. Each of these tiny receptors has the uncanny natural capacity to distinguish the self from the non-self. Consequently, they are able to immunize or protect our bodies against the invasion of foreign substances that could be harmful to us.

Marvelous as nature is, it is never extremist. From a purely immunological point of view (from the standpoint of an all-out defensive strategy), a woman's body would reject the oncoming sperm, recognizing it as a foreign substance. But this is precisely the point at which nature, we might say, becomes wise. If our immune system regards sperm as a potential enemy, then fertilization would never take place, and the human race would have come to an early demise with the passing of Adam and Eve.

But something extraordinary occurs, which makes fertilization and the continuation of the human race possible. Traveling alongside the sperm in the male's seminal fluid is a mild immunosuppressant. Immunologists refer to it as consisting of "immunoregulatory macromolecules." This immunosuppressant is a chemical signal to the woman's body that allows it to recognize the sperm not as a non-self, but as part of its self. It makes possible, despite the immune system's usual preoccupation with building an airtight defence system, a "two-in-one-flesh" intimacy.

Now that sodomy is talked about as a human right to be exercised by male same-sex couples without discrimination, we may ask how it compares, im-

munologically speaking. Male sperm, being blissfully unresponsive to political ideologies or cultural trends, go right ahead and behave strictly according to their nature. They penetrate the nucleus of whatever body cell (somatic cell) they might encounter. This fusing, however, does not result in fertilization, the first stage in the life of a new human being, but, as scientists have shown, can and does result in the development of cancerous malignancies.[1] Furthermore, the immunosuppressant aspect explained above does not have the same protective effect; instead, an "immunopermissive environment" is created, as if the immune system becomes confused and welcomes its enemies.

Depositing sperm in the "wrong place" (like pouring motor oil into the gas line), by nature's standards, is courting disaster. Nature, we might add, demands respect. It does not make accommodations to politically based ideologies or individual preferences. From nature's standpoint, there is no equality between heterosexual and male homosexual intercourse.

The same-sex issue is hotly contested. This is par for the course when it comes to moral issues. All too often, as it is commonly said, there is far more heat than light. In order to bring some measure of objectivity to the discussion, a close observation of nature, such as science can provide, is extremely helpful. Science, like nature, is immune to political or fashionable trends. But in looking closely and carefully at what the science of immunology can tell us, we have even more reason for upholding and honouring the wisdom of marriage as a union of a man and a woman. And what is more, we have added reason to feel awe when we re-read the first chapter of Genesis, which refers to marriage as a union of "two in one flesh."

A variety of Supreme Court decisions, beginning with *Roe* v. *Wade* in 1973, have indicated a significant drifting away from both the spirit of the Constitution, especially as it is embodied in its Preamble, as well as from the social nature of the human being, as understood throughout history. The current mood (and it is truly more a *mood* than a philosophical grasp of man and society) of radical individualism fails to support the bond of matrimony, a personal union that is generally regarded as forming the basic unit of society. As marriage is usurped by radical individualism, the family becomes weakened, and society suffers proportionately.

In his 1857 inaugural address, President Buchanan remarked that thanks to the Taney Court, the issue of slavery would be "speedily and finally settled." Has a president and a Supreme Court ever been more egregiously wrong about an issue of such transcendent importance? Perhaps not. But can we be so sure? Four decades of intense antagonism that began in 1973, in the name of "liberty," have obviously not "speedily and finally settled" the issue of

abortion. In fact, it has created a slew of new contentious issues, involving the very meaning of the person, marriage, the family, and society. Now the very credibility of the American government is at issue. The Dred Scott decision hastened the arrival of the Civil War. A prolonged Culture War has been raging in America since 1973 (or perhaps since 1965 with *Griswold* v. *Connecticut*). If a woman truly does have a constitutional right to abortion, then it becomes increasingly clear, with one Supreme Court decision after another, that marriage and the family are unconstitutional, and society is nothing but a collectivity of individuals with certain groups of individuals having special rights that others do not have.

One liberty must be balanced against another. Liberty is possible, but not all conceivable liberties are compossible. The liberty to care should take precedence over the liberty to kill. So too, the liberty of the family should supercede the liberty of errant individuals.

John T. Noonan, Jr. has pointed out that "The Liberty of abortion became larger than any liberty located within the family structure." Liberty preserves its value not when it is isolated from responsibility, but only when it is wed to it. It is not good for either man or liberty to be alone. In divorcing great ideas from their complementary and vivifying counterparts, the Supreme Court has created a dynamic rift that ever increasingly separates wife from husband, parents from children, family from society, and individuals from the common good. It is a self-destructive process and desperately cries out for remedy.

The Supreme Court has been usurping the democratic process. "We should get out of this area, where we have no right to be," writes Justice Scalia in his dissent from the *Casey* ruling, "and where we do neither ourselves nor the country any good by remaining."

## NOTES

1. In an article entitled, "Sexual Behaviour and Increased Anal Cancer," published in *Immunology and Cell Biology*, authors Richard J. Ablin and Rachel Stein-Werblowsky report that "anal intercourse is one of the primary factors in the development of cancer." According to the prestigious *New England Journal of Medicine*, "Our study lends strong support to the hypothesis that homosexual behaviour in men increases the risk of anal cancer." In addition, the *International Journal of Cancer* finds that "Being single and having practised anal intercourse appears to be associated with anal cancer and case reports have suggested a recent increase in the number of cases of anal cancer." The medical references are legion.

# *Roe* Revisited: A Grim Fairy Tale

*Gregory J. Roden*

The difficult thing in writing about Harry Blackmun's opinion in *Roe* v. *Wade* is that it is so fraught with error and mischief one scarcely knows where to begin. It isn't enough that even the proponents of abortion have disagreed with his reasoning; the real problem is that Blackmun didn't even agree with himself.

**Blackmun v. Blackmun**

Consider this: At one point Blackmun declared, "It is *undisputed* that at common law, abortion performed before 'quickening'—the first recognizable movement of the fetus in utero, appearing usually from the 16th to the 18th week of pregnancy—was not an indictable offense." It certainly was disputed, as Blackmun himself attested in footnote 27 of his opinion. That footnote was to support a nearly identical, if less absolute, statement by Blackmun that "*most* American courts ruled, in holding or dictum, that abortion of an unquickened fetus was not criminal under their received common law." The last part of footnote 27 reads, "*Contra, Mills v Commonwealth*, 13 Pa 631, 633 (1850); *State v Slagle*, 83 NC 630, 632 (1880)." "Contra" is a citation term used where "authority states the contrary of the proposition." Blackmun's assertion that it was "*undisputed* . . . abortion performed before 'quickening' . . . was not an indictable offense" is proven wrong without even examining the court opinions cited in footnote 27![1] The quickening rule is of great relevance because Blackmun used it to allege that a woman "at the time of the adoption of our Constitution . . . enjoyed a . . . right to terminate [her] pregnancy. . . . , the opportunity to make this choice." But, as the "contra" citations show, the several states possessed the constitutional ability to proscribe abortion under their common law from the moment of conception, if they chose to do so—they were not required to follow the quickening rule. In and of itself, this is enough to refute Blackmun's entire opinion in *Roe*.

To study Blackmun's own citations, which fail to support the tangled web he weaves, is to recognize *Roe* v. *Wade* for what it is: impure, adulterated fiction. Blackmun learned much of his tale while sitting at the feet of the NARAL Brothers Grimm, Cyril C. Means, Jr. and Lawrence Lader. Means, legal counsel for the National Association for the Repeal of Abortion Laws, had written two law review articles in the years leading up to *Roe*; Blackmun

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referred to Means's first article three times and his second article four times. The only writer cited more times by Blackmun was Lader, the founder of NARAL. Lader's book, with the less than clever title *Abortion*, was cited eight times by Blackmun.

As we have already seen, there was varied treatment of the crime of abortion by the states. In a few states, it was an indictable offense before quickening; for most other states, it was not indictable until after. Additionally, for some states the indictable offense was not "murder" (although it was still criminal) unless the "born alive rule" was satisfied, a very strict evidentiary rule. In his *Roe* opinion, Blackmun cited some pages from Mean's first article that contained a cogent explanation of the "born alive rule": "By Coke's time, the common law regarded abortion as murder only if the foetus is (1) quickened, (2) born alive, (3) lives for a brief interval, and (4) then dies. If, however, a quickened foetus is killed in the womb and then stillborn, the offense was 'a great misprision.'" Means attributed the "born-alive rule" to the renowned English common law lawyer, Sir Edmund Coke. How then could Blackmun state with a clear conscience (strike that, with *a* conscience), "In a frequently cited passage, Coke took the position that abortion of a woman 'quick with childe' is 'a great misprision, and no murder'"? Blackmun did not complete Coke's sentence, which thereafter reads, "but if the childe be born alive, and dieth of the Potion, battery, or other cause, this is murder: for in law it is accounted a reasonable creature, in rerum natura, when it is born alive."[2] Instead, Blackmun referred to Means's second article in which Means paraded his contrived theory that Coke "intentionally misstated the law" regarding abortion. The twisted logic Blackmun used to apply this "New Coke" theory of Means defies analysis. Blackmun concluded it was "doubtful that abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus"! The net result was this: Blackmun overturned a century of statutory law and centuries of American and English common-law cases because the counsel for NARAL questioned the integrity of a seventeenth century English jurist known as "the greatest common law lawyer of all time."

One could discuss Blackmun's erroneous treatment of the common-law crime of abortion in great detail (and many, including this writer, have), but the real issue is whether the act of obtaining an abortion prior to quickening, in those jurisdictions where it was not an indictable offense, can be said to be a "right." That is to say, was it a lawful activity? To answer this question we have Mr. Means to thank again, with his discussion of the "murder of the mother by abortion" rule. In his first article, Means admitted that in every state jurisdiction, for both a quickened and an unquickened fetus, "If she [the mother]

died in consequence of the procedure, he [the abortionist] was guilty of murder." The rule existed because abortion was always viewed as an unlawful act; unlawful regardless of whether or not the rules of criminal procedure in the jurisdiction allowed for a criminal indictment at the stage of gestation in question. Since it was an unlawful act, the woman could not lawfully consent to the abortion and her consent was no defense for the abortionist. In *State* v. *Harris* (1913), the Supreme Court of Kansas summed it up this way:

> To attempt to produce an abortion or miscarriage, except when necessary to save the life of the mother under advice of medical men, is an unlawful act and has always been regarded as fatal to the child and dangerous to the mother. . . . Conceding it to be the common-law rule that one is not indictable for the commission of an abortion unless the child has quickened, yet all the authorities agree that, if, from the means used, the death of the woman results, it is either murder or manslaughter. . . . The right to life and to personal safety is not only sacred in the estimation of the common law, but inalienable. It is no defense to the defendant that the abortion was procured with the consent of the deceased. The common law stands as a general guardian holding its aegis to protect the life of all.[3]

Any honest review of our legal history will show that abortion was never a right, it was always a wrong. The Court was in grave error to strike down all abortion laws based on Blackmun's erroneous reasoning.

So then, the Court should just overturn *Roe*, wash its hands of the issue, and turn the matter over to the states, as even some pro-life legal theorists have argued? After all, as Blackmun recounted in *Roe*, "On the other hand, the appellee conceded on reargument that no case could be cited that holds that a fetus is a person within the meaning of the Fourteenth Amendment." So, there must not have been any cases holding the fetus to be a person when Blackmun wrote this . . . right? Wrong! And, Blackmun knew better.

### The Great Hypocrisy

Suppose Blackmun had gotten out his Black's Law Dictionary 4th Edition and looked up the word "person"; he would have found this entry, "A child *en ventre sa mere* is not a person. *Dietrich* v. *Northampton*."

*Dietrich* was a prenatal tort case that denied "wrongful death" compensation because the unborn child, which survived a few minutes after a premature birth, was not viable at the time of the injury and hence was not a separate legal person. *Dietrich* was decided by none other than Oliver Wendell Holmes, Jr. when he was sitting on the Massachusetts Supreme Court. The most profound criticism of *Dietrich* is this: "Justice Holmes, who, never having had the personal experience of fatherhood, may have had the two ideas [viability and quickening] confused in his mind. . . . At common law, of course, there were only three criteria: conception, quickening, and birth alive. Viability

was never mentioned by common-law judges or treatise writers." It would seem that the viability standard, upon which *Roe* and *Casey* v. *Planned Parenthood* rely so heavily, was an accidental invention of Justice Holmes, at least according to one critic. The critic? Cyril Means, in his first article.

Means was not alone in his criticism—at the time *Roe* was written the *Dietrich* case was repudiated in 48 states. The revered William Prosser called this repudiation "the most spectacular abrupt reversal of a well settled rule in the whole history of the law of torts." Blackmun could hardly have been ignorant of this, as he made reference to Prosser and the pages of his *The Law of Torts* containing this provocative statement. The cited pages contain another well known quotation from Prosser, "All writers who have discussed the problem have joined in condemning the old rule [*Dietrich*], in maintaining that the unborn child in the path of an automobile is as much a *person* in the street as the mother, and in urging that recovery should be allowed upon proper proof." So we see, that when Blackmun was writing the *Roe* opinion, 48 states had already found the unborn child to have a separate legal existence from its mother, to have the legal status of a "person," under their tort law. This was, of course, in addition to the legal protection afforded the unborn under criminal and property law in the several states.

Blackmun made his reference to Prosser (and several related articles) when he briefly dealt with the topics of prenatal tort law and wrongful death actions for stillborn infants. Study this declaration:

> In a recent development, generally opposed by the commentators, some States permit the parents of a stillborn child to maintain an action for wrongful death because of prenatal injuries. Such an action, however, would appear to be one to *vindicate the parents' interest* and is thus consistent with the view that the fetus, at most, represents only the potentiality of life.

This is a boldfaced lie—it wasn't Coke who was guilty of "intentionally misstating the law," it was Blackmun! The contention that wrongful death lawsuits concerning stillborn children were successful only if they vindicated the "parents' interest" was directly refuted by the very articles Blackmun cites, and most forcefully so by the *American Law Review* (*ALR*) article titled "Annotation, Action for Death of Unborn Child." This article enumerates the 14 states in which such lawsuits have been successful on behalf of the *child's* interest, versus the 10 states in which they were not. The word "person" jumps off the page 40 times in the course of the article, as the key inquiry in most of the cases was whether or not the stillborn child was a "person" within the meaning of the state's wrongful death statute. In addition to the cases presented in the *ALR* article, two years before *Roe* was decided a federal court added the District of Columbia to the jurisdictions allowing

wrongful death recoveries for stillborn children, in *Simmons* v. *Howard University* (1971). *Simmons* also gave testimony to the clear trend in the law allowing such recoveries: "The increasing weight of authority supports the proposition that a viable unborn child, which would have been born alive but for the negligence of defendant, is a 'person' within the meaning of the wrongful death statute."

If that weren't enough, the last section of the *ALR* article specifically deals with the issue of parents seeking to vindicate *their own* interest—whether they may *personally* recover for the loss of a child (rather than recovering on behalf of the *child's estate*). The courts responded with a resounding "*No*," with one federal court and 15 state courts denying a vindication of the *parents'* interest; whereas, no court anywhere allowed such a "vindication." If Blackmun is not guilty of "lying through his teeth" about prenatal tort and wrongful death law, then he is guilty of the most egregious act of incompetence in the history of the Supreme Court.[4]

### Unborn Persons

Speaking of egregious acts of incompetence, now is a good time to discuss the *Dred Scott* decision, since many people assume that the court in that case likewise denied the "personhood" of African Americans. Justice Taney did many unjust things in writing that opinion, but denying "personhood" to slaves was not one of them. Painful events can result in amnesia, which seems to be the situation with slavery. The Constitution of the United States had already recognized the lamentable property rights of slave owners in Article IV, Section 2, which provided for the return of escaped slaves. Now, pay close attention to how it reads: "No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due." Yes, that's right, the Escaped Slave clause used the word "person" in referring to slaves. What *Dred Scott* did was to deny that African Americans, freed or slaves, could be "citizens" under the Constitution.

The key thing here is that both the majority and dissenting opinions in *Dred Scott* agreed that the original power of making a "person" a "citizen" was held by the states. The more narrow term "citizens," denotes members of the "political body, who . . . form the sovereignty, and who hold the power and conduct the government through their representatives," in the words of Justice Taney. Likewise, the majority and dissenting justices agreed that, in our system of limited and specifically enumerated federal powers, the national government "has no power over the person or property of a citizen but what the

citizens of the United States have granted." Taney argued that the grant of power by the states to the federal government to naturalize aliens was a nationalization of the power to bestow citizenship, that the framers of the constitution did not intend for free African Americans to be construed as citizens, and so state grants of citizenship to freed slaves were ineffective at the federal level and need not be recognized by the federal courts. Whereas, the dissenting justices held that the retained power of the states included the power to grant such citizenship to freed slaves and the federal courts were thereby bound to recognize them as citizens.[5]

So then, *Dred Scott* was an argument over the extent and scope of the grant of limited power by the states to the federal government to make "citizens" out of "persons." It would make absolute nonsense out of the *Dred Scott* opinion to infer any grant of power to the federal government to deny any individual was a "person"; "person" being a much more broader term and encompassing the subset "citizen." Besides, there is no clause in the Constitution even coming close to giving the federal government the power to strip away from any class of human beings their "personhood." After all, this isn't Nazi Germany (the Reichsgericht, the highest court in Germany, refused to recognize Jews as legal persons in 1936; on the other hand, this isn't today's Germany—the Constitutional Court of Germany ruled the unborn child has an inalienable right to life in 1993).

If "personhood" can then be said to be conferred by any governmental authority, that authority must therefore rest with the states. Indeed, in fulfilling their duty to all persons, every slave state treated the homicide of a slave as murder.[6] An example of this was the Supreme Court of Mississippi, in *Mississippi* v. *Jones*, which declared in 1821:

> Is not the slave a reasonable creature, is he not a human being, and the meaning of this phrase *reasonable creature* is a human being, for the killing of a lunatic, an idiot, or even an unborn child, is murder, as much as killing a philosopher, and has not the slave as much reason as a lunatic, an idiot, or an unborn child?

"An unborn child?" What bitter irony!—the Fourteenth Amendment, enacted to protect one politically disadvantaged group, the newly emancipated slaves, became the instrument of death for another disadvantaged group, the unborn. In the face of these historical facts, for the Supreme Court to deny unborn persons the equal protection of the law is to declare them "outlaws." "Outlawry" was a common law punishment—the placing of a person outside the protection of the law; a punishment used for such common-law crimes as . . . well . . . committing abortion. The outlawry of unborn persons is a violation of the Fifth and Fourteenth Amendments' Due Process clauses. We are not talking about some speculative violation of *substantive* due process, rather

a violation of *procedural* due process plain and simple. The Supreme Court has declared on a number of occasions, most notably in *Casey* v. *Planned Parenthood*, that our constitutional phrase "due process of law" is equivalent to the words "law of the land" ("*per legem terrae*") contained in the Magna Carta, which reads: "no freeman shall be taken, or imprisoned, or disseised, or *outlawed*, or exiled, or any wise destroyed; nor shall we go upon him, nor send upon him, but by the lawful judgment of his peers or by the law of the land." As the Court stated in *Casey*, "Those guarantees [of due process] derived from Magna Carta's '*per legem terrae*' should also be safeguards against arbitrary judicial decisions." Yet, in *Roe* v. *Wade* the unborn were outlawed without due process of law. Consequently, instead of the Fourteenth Amendment's contributing to the demise of unborn persons, or being no more than a coldhearted neutral observer of their destruction, it should operate as it was intended—extending federal protection under the Due Process and Equal Protection clauses to all persons, born and unborn.

Once upon a time, constitutional scholars were able to discern some system of internal logic working in the Supreme Court's opinions. Several months ago, I attended a seminar on the cases the Court handed down in its 2003 term. The constitutional scholars presenting at the seminar were at times quite beside themselves, and frankly admitted that a number of the cases simply could not be understood within any rational framework of constitutional law, particularly the University of Michigan *Bollinger* cases and the *Lawrence* v. *Texas* case. Such scholars utilize categorical terms to assist them in divining Supreme Court opinions, such phrases as, "strict scrutiny," "*Lemon* test," "three prong test," "bifurcated questions," etc. In order to deal with these problematic cases, I propose the use of a new categorical term, "Fiction," for which *Roe* v. *Wade* is the prototype—why hide the fact from the American public that they are being deceived? In particular, one can only hope that exposing *Roe* for the lie that it is will ultimately result in all persons, born and unborn, *living*, happily ever after.

## NOTES

1. *See* Roden, *Roe* v. *Wade and the Common Law: Denying the Blessings of Liberty to our Posterity*, 35 UWLA LAW REVIEW 212, 248-50 (2003) (hereinafter cited as Roden I). ("The first 'contra' case is *Mills* v. *Commonwealth*. Mills was indicted and convicted for an attempt to procure an abortion upon one Mary Elizabeth Lutz; it was not alleged that she was quick with child. The attorney for Mills 'contended that it was not an indictable offence in Pennsylvania, (there being no statute on the subject,) to attempt to procure an abortion, where the mother is not quick with child, and that quickness must be averred in the indictment—reference was made to . . . 4 Bla. Com. 393.' The Supreme Court of Pennsylvania affirmed the judgment holding:

> It is a flagrant crime at common law to attempt to procure the miscarriage or abortion of the woman. Because it interferes with and violates the mysteries of nature in that

> process by which the human race is propagated and continued. It is a crime against nature which obstructs the fountain of life, and therefore it is punished. The next error assigned is, that it ought to have been charged in the count that the woman had become *quick*. But, although it has been so held in Massachusetts and some other States, it is not, I apprehend, the law of Pennsylvania, and never ought to have been the law anywhere. It is not murder of a living child which constitutes the offense, but the destruction of gestation by wicked means and against nature. The moment the womb is instinct with embryo life, and gestation has begun, the crime may be perpetrated. The allegation in this indictment was therefore sufficient, to wit, 'that she was then and there pregnant and big with child.' **By the well settled and established doctrine of the common law, the civil rights of an infant *in ventre sa mere* are fully protected at all periods of conception**; 3 *Coke's Institutes*.

Here the court is influenced by the civil law, which allows for protection of an infant *in ventre sa mere* at all periods after conception. The result of which is that in Pennsylvania the procuring of an abortion, even prior to quickening, was criminal according to its adaptation of the common law. This is hardly a case that works for Blackmun. . . .

The second 'contra' case, and the last case of footnote 27, is *State* v. *Slagle*. Slagle was convicted of murder by poison of a woman who was quick with child. In reviewing the counts against the defendant, the court stated:

> In some states it has been held that in the absence of any statute the offence can only be perpetrated upon a woman so far advanced in gestation as to be quick with child, and this requirement is met in the present bill. But we are not disposed thus to restrict the criminal act, but to hold that it may be committed at any stage of pregnancy. It was determined by the supreme court of Pennsylvania in *Mills* v. *Commonwealth*, and we quote the clear and forcible language in which the principle is announced in the opinion of Coulter, J.: 'It is a flagrant crime at common law to attempt to procure the miscarriage or abortion of the woman.
> [. . . .] The moment the womb is instinct with embryo life, and gestation has begun, the crime may be perpetrated.' This enunciation of the law, so careful and distinct in expression, dispenses with the necessity for further discussion.

The court then reviewed the expert testimony and the indictment for their sufficiency before affirming the conviction. This case is also noteworthy for transferring the intent of the defendant to kill the child in the womb to the death of the mother. . . .

The footnote 27 cases firmly establish the abortion of a quickened or born-alive fetus as a common law crime, though most do not do so for an unquickened fetus. These cases do not support Blackmun's contention that it appeared doubtful 'that abortion was ever firmly established as a common-law crime'; rather, they impeach it. Additionally, a number of the cases that held the abortion of an unquickened fetus not to be punishable, did so reluctantly, characterizing the act as immoral, and encouraged legislation to right said wrong. Whereas, none of the cases offer one scintilla of evidence that at common law a woman had a right to an abortion of an unquickened fetus. Lastly, in most of the cases, whether or not the actions in question were criminal hinged upon whether or not the fetus had quickened and cannot be dismissed as dicta.") (citations omitted, emphasis added by the author).

2. G. Grisez, *Abortion: The Myths, the Realities, and the Arguments*, 186-87 (1970), quoting E. Coke, *The Third Part of the Institutes of the Laws of England* 50-51 (London: 1654).
3. *State* v. *Harris*, 136 P. 264, 266-67 (1913) (citations omitted). *See* Clark & Marshall, *A Treatise on the Law of Crimes* 394 (5th ed. 1952) ("If a woman is not quick with child, one who uses an instrument or administers a drug, without her consent, for the purpose of procuring a miscarriage, is guilty of an assault and battery. And if she dies in consequence, he is guilty either of murder or manslaughter, whether she consented or not, on the ground that he has done an act, without lawful purpose, dangerous to life, or at least an unlawful act.") *See also Commonwealth v. Parker*, 50 Mass. 263, 265-66, (1845) (a case cited by Blackmun in *Roe* in footnote 27) ("The use of violence upon a woman, with an intent to procure her miscarriage, without her consent is an assault highly aggravated by such wicked purpose, and would be indictable at common law. So where, upon a similar attempt by drugs or instruments, the death of the mother ensues, the party making such an attempt, with or without the consent of the mother, is guilty of the murder of the mother, on the

ground that it is an act done without lawful purpose, dangerous to life, and that the consent of the woman cannot take away the imputation of malice, any more than in the case of duel, where, in like manner, there is consent of the parties."); *Smith* v. *State*, 33 Me. 48, 54-55 (1851) (a case cited by Blackmun in *Roe* in footnote 28) ("If medicine is given to a female to produce an abortion, which kills her, the party administering it will be guilty of her murder. 2 Chitty's Cr. Law, 729; 1 Hale's P.C. 429. This is upon the ground, that the party making such an attempt with or without the consent of the female, is guilty of murder, the act being done without lawful purpose and dangerous to life, and malice will be imputed. *Commonwealth v. Parker*, 9 Metc. 263; 1 Russell on Cr. 454."); 1 HALE, PLEAS OF THE CROWN *429-30 (1778) ("But if a woman be with child, and anyone gives her a potion to destroy the child within her, and she takes it, and it works so strongly that it kills her, this is murder, for it was not given to cure a disease, but unlawfully to destroy her child within her, and therefore he that gives a potion to this end must take hazard, and if it kill the mother, it is murder, and so ruled before me at the Assizes at Bury in the year 1670.' See, also, Margaret Tinckler's Case, 1 East's P.C 354"); W. HAWKINS, A TREATISE OF THE PLEAS OF THE CROWN *ch. 31, Sec. 16, at 78 ("And it was anciently holden, That the causing of an Abortion by giving a Potion to, or striking, A Woman big with Child, was Murder: But at this Day, it is said to be a great Misprision only and not murder, unless the Child be born alive, and died thereof, in which Case it seems clearly to be Murder, notwithstanding some Opinions to the contrary, And in this Respect also, the Common Law seems to be agreeable to the Mosaical which as to the purpose is thus expressed, If men strive and hurt a Woman with Child, so that her Fruit depart from her, and yet no Mischief follow, he shall be surely punished, according as the Woman's husband will Lay upon him, and he shall pay as the Judges determine; *And if any Mischief follow, then thou shalt give Life for Life.*") (emphasis added) (Quoting from Exodus 21:22-23); Roden I, 273-76.

4. *See also* Roden, *Prenatal Tort Law and the Personhood of the Unborn Child: A Separate Legal Existence*, ST. THOMAS LAW REVIEW (forthcoming in 2004, Issue 16:2) (hereinafter cited as Roden II).
5. *See also* Roden II.
6. T. COBB, AN INQUIRY INTO THE LAW OF NEGRO SLAVERY IN THE UNITED STATES OF AMERICA Sec. 84, 87 (1858) (*reprinted in http://www.law.ucla.edu/students/academicinfo/coursepages/s2001/337/cobbexcerpt1.htm* ; see *http://www.lib.auburn.edu/archive/aghy/slaves.htm#offenses* ); *see also Scott* v. *Sandford*, 60 U.S. 393, 550 (1857) (McLean, J., dissenting) ("A slave is not a mere chattel. He bears the impress of his Maker, and is amenable to the laws of God and man; he is destined to an endless existence."); 60 U.S. at 624-25 (Curtis, J., dissenting) ("The master is subject to the supreme power of the State, whose will controls his action towards his slave, and this control must be defined and regulated by the municipal law. In one State, as at one period of the Roman law, it may put the life of the slave into the hand of the master; others, as those of the United States, which tolerate slavery, may treat the slave as a person when the master takes his life; while in others, the law may recognize a right of the slave to be protected from cruel treatment.").

## The Ecumenical Moloch:

# The Latest Assault on the Unborn in the Name of the World's Religions

*Anne Barbeau Gardiner*

In his introduction to *Sacred Rights: The Case for Contraception and Abortion in World Religions,* the editor, Daniel Maguire, makes the startling claim that no one can take away a woman's right to abortion without engaging in religious persecution: "To criminalize a right that is grounded in the world's major religions is criminal itself. It is also a form of religious persecution." Do the essays prove that a right to abortion is both *sacred* and *grounded* in the traditions of the world's major religions? (I am focusing on abortion, which Maguire calls the necessary "backup option" to contraception.)

They do not, though much effort and money went into the making of this book. It developed with the financial support of the Packard and Ford foundations and was published simultaneously in 24 cities by a world-class publisher, Oxford University Press. Fourteen authors from different religious backgrounds came together to provide the essays.

Maguire frankly admits that the book is meant to "counter" the "anomalous and influential presence of the Vatican" at the United Nations, especially at the Cairo conference of 1994. (He is a professor of ethics at Marquette University, a Jesuit institution, and a member of the board of Catholics for a Free Choice.) He claims that it will show that almost all religions support "moral pluralism" on abortion, even Catholicism. But why are the world's religions suddenly being dragooned into the service of abortion? Maguire explains that ours is far from being a "postreligious age," because "major scientists" agree that the problems of the planet cannot be solved unless human beings acquire a "vision of the sacred." Ah, well, if "major scientists" agree that religion is useful, let's bring on religion.

### Jews & Christians

The book begins with the three monotheistic religions. Speaking for the Jewish faith, Laurie Zoloth says that conservative rabbis have encouraged Jews to produce large families because Jews number only 0.2 percent of the

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world's population and are threatened with extinction due to intermarriage and a decline in fertility. She cites a former Chief Rabbi of Britain lamenting that abortion has already deprived Israel of "over a million native-born citizens," to which she responds that making up these "genocidal losses" by opposing abortion is neither "nuanced" nor "consistent" with Jewish tradition.

Zoloth concedes that all religious traditions take a "strong pronatalist position" and regard abortion as a "failure," but she argues nevertheless that traditions must be "held in tension with the widespread praxis of abortion even in faith communities where the act is forbidden." Note well that for her the contemporary practice of abortion establishes a new norm that must be "held in tension" with the cumulative and consistent traditions of the past. By this rule, a single generation can trump all the religious traditions handed down for 3,000 years. It would have surprised Moses to learn that as soon as a sin becomes widespread, it is thereby elevated to a norm to be "held in tension" with its opposite commandment delivered on Mount Sinai.

Zoloth realizes that Jewish tradition permitted abortion only in very limited circumstances, as the twelfth-century rabbi Maimonides allowed an abortion when the life of the mother was in danger. But she can only go back to 1770 to find a rabbi who permits abortion "in the case of a woman who has gotten pregnant out of wedlock" and only to the 1950s to find rabbis who allow abortions for mental anguish. Far from making abortion a *sacred* right *grounded* in ancient Judaism, then, this essay exposes it as a modern and even now only partial development.

In the second essay Christine Gudorf argues that there is no need to accept the Catholic ban on abortion, for since the ban on contraception was "rejected by the majority of Catholics around the world, and in many places by priests and bishops as well," the same could happen to that ban on abortion. After all, in Catholicism, "the sense of the faithful carries some authority of its own, and must be consulted by ecclesial authorities." The bishops are not the only source of authority. Whenever the bishops disagree with theologians, the laity can use "traditional Catholic moral probabilism," that is, declare the teaching to be doubtful and uncertain and follow what they believe the best answer.

But there is a problem. Gudorf has to admit that Catholic theologians have not yet "developed" an opposition to the church's ban on abortion. The reason is that the present pope has made abortion the test of orthodoxy, and those who question the teaching end up being forced "to recant on threat of expulsion." But never mind, she adds, in a generation or two the church will surely allow Catholic women to have abortions "under some circumstances."

Does she prove that abortion is a *sacred* right *grounded* in ancient Catholic tradition? Not a whit.

Next, Gloria Albrecht explains that the "Protestant Principle" prevents us from turning "our own ideas and creations into idols." So fundamentalists are not real Protestants, since they have embraced the "idolatry of familism—the belief that 'saving' the heterosexual, two-parent family solves most, if not all, of our social problems." They even use sonograms in their "highly successful strategy" of personalizing the fetus from the earliest stages of his life. But the fact that they try to control change by opposing a "safe, surgical abortion as a form of birth control" means they have abandoned the Protestant "project" launched in the sixteenth century.

Albrecht is willing to concede that Luther and Calvin defended "the full humanity of the fetus from its earliest stage," yet she insists that only the defenders of abortion continue in the "trajectory" of the Reformers by their continual openness to change. She admits that not till the 1970s did "major mainline Protestant denominations" endorse "not abortion per se, but the need for women to be able to exercise the freedom of their own consciences in their difficult decisions necessitated by unwanted pregnancies," and that even then they still held "that the sacredness of life includes fetal life," while not according that fetal life an "absolute value." Her tenuous argument is far from proving there is a *sacred* right to abortion *grounded* in the Protestant principle.

**Muslims, Hindus & Others**

After her, Sa'diyya Shaikh argues that Muslim tradition is "flexible" on abortion, despite the fact that "many contemporary Muslim societies" are "rigid" due to fear of a "conspiracy by Western powers to limit the growth and power of the Muslim world." It seems the legal records of classical Islam show a wide range of positions on abortion before the 120th day of the unborn's life—when, it was believed, an angel breathed a spirit into him—from "unqualified" permission to abort the fetus to "categorical prohibition." The justification offered by the laxer schools supposedly included pregnancy out of wedlock and unwillingness "to accept the responsibility of parenthood." After the 120th day, abortion was "a criminal offense and prohibited by all Islamic legal schools" except where the mother's life was at stake or the fetus was expected to be deformed.

The problem with this account is that we are not told how authoritative or how widely accepted was each one of these legal schools. (In fact, in *Abortion: A Reader,* an authority on medicine in the Islamic tradition says that "several medieval jurists" permitted abortion in the first four months, but

"the majority opposed it because the fetus was 'going to be ensouled' and the coming into being of new life was not, therefore, a remote possibility but a ripe potentiality which could not be destroyed." So then, the four legal schools Sa'diyya Shaikh mentions were *not* equally accepted. The argument is based on sleight of hand.)

And even if they were of equal authority, this author nowhere proves that there was a *sacred right* to abortion grounded in the classical legal sources of Islam. The word "permission" tells it all: Even for the more permissive schools, abortion was only *a permitted evil,* not a good sanctified by religion. So in the light of this essay, abortion is not a *sacred right* in Islam, the denial of which amounts to *religious persecution.*

In the book's fifth essay, Sandhya Jain remarks that religion in India has such "plasticity" that it can vary according to the social realities of the day. Yet this author acknowledges that ancient Hindu tradition condemned abortion as a "heinous crime," "the basest of sins," and one of those "atrocious acts" subject to severe retribution. Hinduism's "implacable aversion to abortion" was related to the belief that a soul entered in at conception, bringing its past *karma* with it, so that the embryo was never part of a woman's body.

But while most teachers condemned abortion, even in the case of illegitimacy, the thing was still practiced, as shown in medical texts offering ways to commit them. Since 1971 India has provided women with abortion on demand. Sandhya Jain argues that *dharma,* the need to live according to the demands of the time, requires it. But the chief proof offered that this is not in contradiction with the substance of India's ancient traditions is that there is a lack of opposition from the "Hindu religious fraternity," who remain "quite vocal" on "cow slaughter." Here again, no real evidence is provided that abortion is a sacred right grounded in the religion's authorities and history.

In the sixth essay, Parichart Suwanbubbha contends that Thai Buddhism can "justify the deliberate choices of abortion." The writer admits that in this tradition it is a precept to "abstain from killing" and that "the value of the conceptum is the same as that of a born person" because a soul is believed to enter at fertilization, yet claims that it can allow abortion because its morality is all about "intention." Only an abortion done with a bad intention—for greed, anger, selfishness, or sex-selection—would result in severe retribution, such as grief, fear, disease, or a shortened life.

An abortion done with a good intention would be forgivable—the author compares it to a "venial sin" in Catholicism—provided it was balanced with good deeds. Only mothers know what "their real intentions" are and what their retribution will be. But the later the abortion and the "more effort" expended in killing the unborn, the "more serious" the retribution. Forgive-

ness may be sought from the dead child by prayers and by giving alms to hospitals and monks. In this essay, it appears that abortion in Thai Buddhism, however well-intentioned, has always been a "sin" and so not *sacred* nor *grounded.*

Neither is proof given in the next two essays that abortion was ever *sacred* among the Yorubas of West Africa or the American Indians. First, Funmi Togonu-Bickersteth explains how the Yorubas have always seen abortion as "dangerous, immoral, and shameful." Abortions are nevertheless "prevalent" among them, but since Nigerian law forbids them, they are performed by "fake doctors or herbal doctors" who use traditional abortifacients. Mary C. Churchill argues that though "there is no word that equals abortion" in the native languages of American Indians, abortion "reflects traditional Native religious values" because "gender segregation" was practiced among them from time immemorial and women have always made "their own decisions" about their bodies. No proof is offered that native traditions saw the unborn child as part of the mother. In neither case is the argument made that abortion was sacred and grounded in the peoples' religions.

**China's Case**

The ninth and tenth essays examine Chinese religious traditions. First, Ping-Chen Hsiung speaks of the Late Imperial Period and how ancient Chinese men, while they were pronatalist, believed that it was better to have less frequent sexual intercourse for the sake of increased spiritual energy and longevity, as well as for greater pleasure and more successful reproduction. Men saved up, nurtured, and intensified their "male essence" through "carefully observed abstinence." There was even a genre of poetry from the ninth to the thirteenth centuries that celebrated the "noble discipline" of men sleeping alone, especially after age forty.

This exemplary moderation limited family size. However, the author adds that Confucianism and Taoism hold "no inherent opposition to the notion of contraception or abortion." He points to the infanticide of females in former times as parallel to the modern practice of "sex-selective abortions." But note his phrase *no inherent opposition:* When he lets abortion in, it is only by the back door of this negative. This is a far cry from abortion being a *sacred right* in Chinese traditions.

Then Geling Shang observes that there has been little resistance in China to the one-child policy imposed by the Communist government, even though the policy seems "coercive and even violent" to Westerners. The essay explains that there was no "explicit code" against abortion in ancient times, because it was thought to occur only in the case of "disastrous or disgraceful"

pregnancies. Performed secretly by midwives, not by official physicians, abortion was believed to incur "harmful, unhealthy, unnatural, and even shameful consequences."

For at least three reasons, the "coercive campaign" to use abortion as "a supplemental means of birth control in the late 1960s" met with little resistance, the author argues. Traditional Chinese religion saw it as a relatively minor offense. In the *Table of Merits and Errors* from the Yuan Dynasty (1279–1368), for example, abortion was listed as a 300-point error, as compared to the 1,000-point error of murdering an adult. In this same *Table,* infanticide was a 1,000-point error, "tantamount to murder," yet poor families still resorted to female infanticide. Chinese tradition expects the individual to sacrifice himself for the family, "so why not a fetus?" And finally, the traditional family in China regards children as "private property."

The essay concludes that there might be a "humanistic" but not a "religious" objection to the coercion used by local officers in implementing China's one-child policy. It is "traditional belief," not Communist ideology, that makes abortion possible on this vast scale. (What about the fear of government reprisals?) In the end, however, Geling Shang has at best shown that abortion was an error in Chinese tradition: only a 300-point error, but an error, after all, not a *sacred right.*

### Damage Control

The concluding essays of *Sacred Rights* seem designed for damage control—perhaps because the essays on world religions didn't quite prove what they were meant to. So at the end of the book a sociologist named Anrudh Jain comes forward to say that most world religions originated at a time when the global population was small, so really, how can "laws and edicts articulated at that time" guide our behavior now? We have to be directed by "recent interpretations of old teachings." This turns the project of *Sacred Rights* on its head. This is saying that even if abortion is *not grounded* on ancient religious traditions, so what? Those traditions are outdated, and we moderns must reinterpret them to suit the needs and knowledge of the present.

Then Jose Barzelatto and Elizabeth Dawson inform us that it doesn't matter any more whether the world's population expands or shrinks, because the concern now has "evolved" from "numbers" to the sexual rights of individuals. The debate has shifted "from numbers to values," and therefore religions now have "an even more important role to play" than before. To show this, they trace the history of the several conferences on religion and abortion in the last decade that led to the making of this book.

Before the meeting of the UN International Conference on Population

and Development (ICPD) in Cairo in 1994, the defenders of abortion convened a meeting in Belgium that included thirty scholars of the world's major religious traditions. These scholars prepared a report for the NGO delegates to the forthcoming conference in Cairo, stating that "most religious traditions do not forbid abortion altogether" and that "no single faith may claim final moral authority in international discourse." Further, an international meeting of physicians in Manila in 1996 recommended that abortion be demystified by an emphasis on the diversity of values. Besides all this, it was decided at still another meeting in Bogota, in 1998, to "ensure" that abortion was discussed in public "from a pluralistic perspective."

In a final chapter, Arvind Sharma explains why *Sacred Rights* is so important and gives us at the same time a very subtle transvaluation of religion. *Sacred Rights* is a book that "rescues the study of religion" from both "traditionalists and modernists"—especially from modernists. They are the ones who see religious traditions as "uniformly opposed" to abortion, because they stereotype religion and make it a "metaphor" for "backwardness," as if progress were only "progress *from* religion."

But it is religion, not science, that "is more likely to be available as a means of knowledge" to ordinary people and to enable them "to sustain a coherent vision of the world over time." In responding to the pressures of modern times, religions can be "innovative," "inventive," and even "creative," while keeping the "quality," though not the "content," of their traditions. Just as people trust the scientific method when the content of science changes, so they will believe in the "*method* of a religion" despite a "variability" of the answers it has provided through time.

Sharma follows this discussion of religion in general with a paragraph on each of the religions represented in this book, to show how each provides a way for supporters of abortion to claim its authority. In Judaism, every text is open to a "fresh interpretation"; in Catholicism, "papal teaching and historical fact" can be divided; in Protestantism, there is individualism and a "demarcation between secular and sacred"; and in Islam, no interpretation of the Qu'ran is ever final, since it is only a human activity. Thus in these four religions, "revelation" can "go on revealing, as it were, continually."

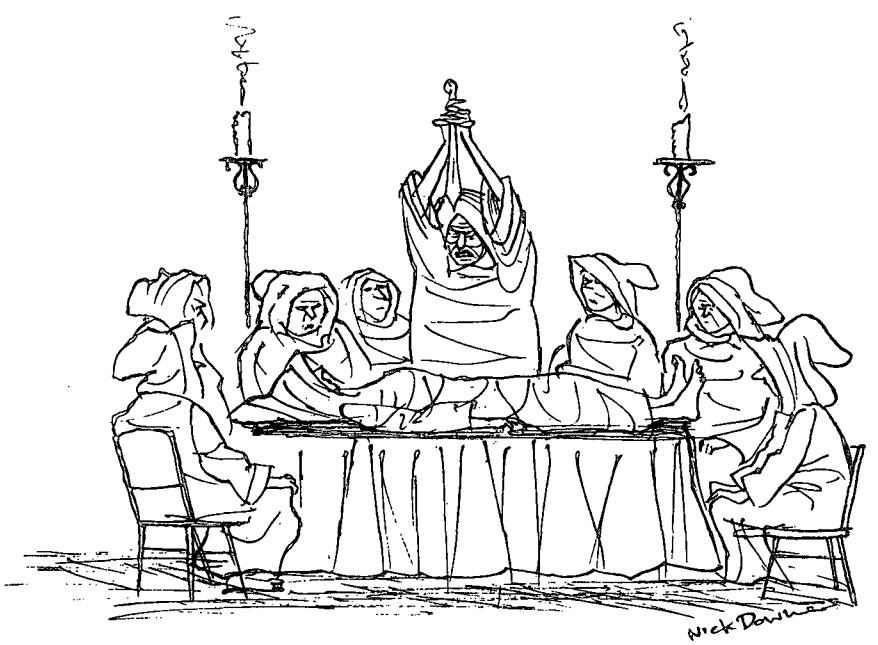
Then in Buddhism, "intentionality" can be extended "indefinitely"; in Hinduism, though the "main body" of its sacred literature "frowns upon abortion," a minor Vedic text permits it in difficult cases; in Confucianism, the sacred is located "in the secular"; in Taoism, the two sides of sexuality are distinguished, "recreation and procreation"; and finally, in primal religions, "population and consumption" are kept "in exquisite balance." For the Culture of Death, each of these religions has a selling point.

**Modern Molochs**

In antiquity, the Canaanites persuaded themselves that by sacrificing some of their children to Moloch they made their future more secure. They deluded themselves, for these abominable sacrifices were what ensured their expulsion from the land of milk and honey.

*Sacred Rights* is filled with the same delusion. The authors believe that only the holocaust of unborn children can secure our planet for the future. Like those ancient Canaanites, they speak of religion when they are endorsing violence as a "back-up option" to unrestrained sexuality. As Milton points out with delicious irony in *Paradise Lost,* the "lustful Orgies" of Chemos would take place right next to the very grove where children were sacrificed to Moloch, "lust hard by hate" (I.406–416). This is a perennial truth: Lust always requires violence.

In Greek mythology, the earth-born Giants uprooted Mount Ossa and piled it on Mount Pelion in a bold, impious attempt to scale the heavens and overthrow the gods. This was sheer carnality trying to raise itself to the level of divinity. In this book, likewise, fourteen authors have piled one religious tradition on top of another in an attempt to raise abortion to the heavens as a *sacred right* warranted by humanity's ancient traditions about the divine. Surely this is as bold and impious an attempt as that of the Giants. And as doomed to fail.



*"Before we begin, I ask that you turn off all cell phones."*

# Sounds of Silence

*Pia de Solenni*

To get people to attend this past Sunday's "pro-choice" march, the organizers had to rename the march . . . twice. First, it was the Choice March. Then it became the Freedom of Choice March. In a final effort, they came up with the winning "March for Women's Lives." While it isn't accurate or honest, it was certainly effective. Still, they needed more people. Not enough people would march for abortion alone; so supporters issued a widespread invitation that encompassed anyone with an anti-Bush gripe or who simply doesn't like pro-lifers.

Say what you may about pro-life organizations, they never offer their opponents as moving targets to satisfy the fetishes of so-called supporters.

After more than 30 years of legalized abortion, pro-choicers can now only gather the public support they need to keep the abortion question alive by confusing the issue. Their message is as mixed up as it was 30 years ago—perhaps even more so. They can offer no convincing argument because women themselves, while willing to identify themselves as pro-choice, believe that most abortions should not be legal. Many of these women believe there's more to women's health than the abortion issue. But while they may be more interested in HIV/AIDS, healthcare, jobs, or even the election, they allowed themselves to be duped into marching for abortion on Sunday.

Other marchers came apparently because the World Bank protests were over and they had nowhere left to go. Or they were angry. Or (and?) they don't like President Bush. At the March, Erica Quest, a pro-lifer from Virginia, noticed, "There was no unified message. [It was] everything from 'We hate Bush' to lesbian rights. Everything crass and violent. Nothing feminine. Nothing dignified. You're just taken back by the anger. I was almost embarrassed to be a woman."

Bevlin Lyons, also a pro-lifer from Virginia, attended the march with her husband, Joe, and their infant son, Sebastian. Holding her son and a pro-life sign she witnessed what she calls "the sadness of it all. They're angry about something. There was no sign of joy at anything."

But wait—pro-choice marchers should be excited about their "choices," and the fact that any pregnant woman can get an abortion at any time for any reason in the United States.

While gay activists have become more and more public about their beliefs, scarcely any women come out with pride—no pun intended—when it comes to talking about their abortions. If the Alan Guttmacher Institute is right in its estimate that about 40 percent of American women have had an abortion, that's a lot of women who have kept quiet. Some of them may have been at the march on

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**Pia de Solenni** is the director of life and women's issues at the Family Research Council. This article appeared April 29, 2004 on National Review Online and is reprinted with permission.

Sunday. They'll talk about "choice" in general, then, but not about any particular "choice" they may have made.

The abortion agenda has only been able to offer women freedom *from* — from a difficult situation, from an annoyance, from the responsibility of a child. Yet, this type of freedom doesn't appear to be a major issue for most women.

Last year, the pro-choice Center for Advancement of Women issued what they titled a "groundbreaking survey of over 3,300 American women." The survey participants identified 12 priority issues. "Keeping abortion legal" ranked *eleventh* barely beating out "increasing the number of girls who participate in organized sports."

A Zogby poll released last week shows that 49 percent of Americans consider themselves pro-life, compared to 45 percent who consider themselves pro-choice. Overall, upwards of 60 percent of those polled support restrictions on abortion. Perhaps more important, only 13 percent support legal abortion at any time, for any reason—hardly a majority opinion. But this is an extremely vocal minority.

Now that 40 million unborn children have died and abortion has become one of the most common surgical procedures in the United States, a growing voice is emerging. This is the voice of the woman who's had an abortion, who regrets it, and who feels she was never empowered with adequate information to make a real choice. Some of these women and their supporters countered the march with a silent, peaceful protest.

And the silence worked in at least a few cases. Janet Morana, co-founder of the Silent No More Awareness Campaign stood at Constitution and Seventh Streets with a group of about a hundred post-abortion women and their supporters. In the midst of their silence, a woman from D.C. named Shirley came up to two of them. She was holding a Planned Parenthood "Stand Up For Choice" sign and she said, "I can't hold this sign and march with them anymore." She explained that she had lost a child to crib death and then she broke down sobbing. She saw the reality of the "choice" for which she had been marching.

Susan Pine, executive director of F.A.C.E. Life, came to the march from Florida. Armed with the experience of her own abortions and subsequent years of pro-life activism, she came to stand in silent witness to the effects of her "choices." Before the march, she spoke with a group of college pro-choicers there. They told her that although they didn't believe in abortion for themselves, as a form of birth control, or after the first trimester, they attended the march to "represent poor stupid women with six babies." Apparently, having six children is a sign of stupidity. So much for personal choice.

Rory Conway, a pro-lifer from Washington, D.C., saw women standing with "I regret my abortion" signs confronted by angry marchers. He commented, "The crowded scene was not so unlike the angry mobs of Jerusalem on Good Friday, and I recall that Christ, in the midst of his detractors, kept his silence. In the midst of a war of words, perhaps only silence can provide the seedbed of peace."

Susan Pine also saw the quiet effects of silent protest. "Some women," she said,

"would see our signs, start to cry, drop everything, and leave."

Undoubtedly, most of those who came to march for the so-called right to abortion left with the same convictions that they brought. But they were unable to present a cohesive and peaceful voice. Their anger was frustrated by the few pro-lifers who attended in silence.

The experiences of women who have had abortions, if we are willing to listen, will determine the future of the culture of life in the United States.


*"No, you're too young for 'slut Barbie.'"*

# Safe, Legal, and Rare . . . Oh My!

*Mark Steyn*

A decade ago, Elizabeth Taylor was going from one celebrity AIDS rally to another urging us to make sure we "use a condom every time you have sex, every time." *Every* time, Liz? Apparently so, until one day mankind is extinct and giant condoms roam the earth, bouncing across the ruins of our civilization like playful prophylactics in animated Scandinavian health-ministry announcements.

The spirit of Liz lurked just below the surface at Washington's Million Abortionist March, or whatever it was called. For people who talked endlessly about "reproductive rights," they seemed re markably indifferent, if not downright hostile, to exercising them.

I concede that I'm anti-abortion. If I were pro-abortion, I'd probably sound like Teresa Heinz Kerry, who told *Newsweek* that the act involves "stopping the process of life" but that "I ask myself, 'If I had a 13-year-old daughter who got drunk one night and got pregnant, what would I do?'" If I had to go a bit further, I might even sign on to her husband's line ("safe, legal, rare," blah, blah, nuanced boilerplate, zzzzzzz).

But, if I can just about conceive (if you'll forgive the expression) the leap from my position to Teresa's and from Teresa's to Senator Flippy's, I can't imagine how you'd get from Senator Flippy's to the bulk of the sentiments on display at the big march itself. Whoopi Goldberg brandishing a coat hanger. Surly women stomping about with "Keep Your Bush Off My Bush" placards. The decay of a fluffy soft-focus euphemism into just another crude insult: "If Only Barbara Bush Had Choice." The freaky, barely grasped meaning of all those speakers' regrets that their own mothers never enjoyed the freedoms they have—as Maxine Waters put it, "I have to march because my mother could not have an abortion." The casual dismissal of half the human race: "The Opinions of Those with Nothing At Stake Are Worth Little"; "If Men Got Pregnant, They'd Make Abortion a Sacrament."

Actually, it's the sisterhood who've made abortion the sacrament for a brave new religion of the self. Had Teresa Heinz Kerry stood up and read out her *Newsweek* quotes, she'd have been booed: No one on the Mall wanted to hear about the agonized parents of distraught adolescents helping them to the soi-disant "difficult personal decision." Abortion isn't difficult or agonizing, but something to be celebrated, the central freedom of a modern woman's identity.

Before the century is out, the Left will come to regret the conflation of feminism and abortion.

When a young lady demands that our Bush be kept off her bush, she's referring

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Mark Steyn, a widely published journalist, writes the "happy warrior" column for *National Review* magazine. The following appeared in the June 28, 2004 issue of *National Review* and is reprinted with permission 

to political interference in a "woman's right to choose." In fact, it's the abortion absolutists who insist on political intervention. Abortion has to be legislated uniformly, coast to coast—and beyond: Half the complaints about Bush's "war on women" revolve around his disinclination to spend taxpayers' dollars promoting abortion overseas. Which raises the question: Leaving aside the moral questions, what is the state's interest in abortion?

The answer to that is obvious: The most urgent problem facing the Western world right now is the big lack of babies. On the Continent, abortion is part of the settled political consensus and its persistence as an issue over here is seen as further evidence—along with guns, capital punishment, and functioning militaries—of American backwardness. The result is collapsed birthrates in Mediterranean countries of around 1.1, 1.2 children per couple—that's to say, about half of what's called "replacement rate." Why be surprised that Spanish voters don't have the stomach for war? To fight for king and country is to fight for the future, for your nation, for its children. But Spain has no children, and thus no future. What's to fight for?

Even if you subscribe to the premise of *Roe* vs. *Wade*—that abortion is a privacy issue—society as a whole has no interest in elevating a "woman's right to choose" to state policy. The government's interest lies in increasing birthrates, to avoid the death spiral of post-Catholic Italy. If any Democrat understands that, she or he is in no hurry to speak up.

Which leads to the next question: Who will be the first victims of the West's collapsed birthrates? In Europe, the only country still exercising its "reproductive rights" at replacement rate is Muslim Albania. The rest of the continent is dependent on immigration mainly from North Africa and the Middle East. In other words, by exercising a "woman's right to choose" to the present, unprecedented degree, Western women are delivering their societies into the hands of fellows far more patriarchal than a 1950s sitcom dad. If any of those women at that Washington march still have babies, they might like to ponder demographic realities: A little girl born today will be unlikely, at the age of 40, to be free to prance around demonstrations in Eurabian Paris or Rome chanting "Hands off my bush!"

By then, Gloria Steinem will be 110, and no doubt still looking incredibly hot, but even she will be sadder and wiser. The hyper-rationalism of radical indi vidualism isn't, in the end, rational at all. You'll recall that during the Iraq war, we heard a lot of talk about ancient Mesopotamia—the land of the Sumerians, Akkadians, and Hittites—being "the cradle of civilization." That's the point. Without a cradle, it's hard to sustain a civilization.

# Planned Parenthood Meets Dante's Inferno in D.C.

*Diana West*

If you, like me, missed out on the March for Women's Lives in Washington last weekend, fret not; The Washington Post was there, and thank goodness. Without its style section coverage, a babe in the woods, particularly from a conservative "red" state of mind, might have gotten the idea that this massive demonstration for abortion rights (sorry, "women's lives") was a shameless outpouring of a raging movement that trivializes life itself.

Au contraire. The Washington Post declared the march was an "impressive and congenial" gathering that "felt both urgent and singularly focused on its cause." Sure, there were descriptions to be gleaned from other media of marchers whose babies sported pro-abortion stickers on their rompers, of uterus-replicas hoisted high over marchers' heads, and the seemingly endless stream of placards and banners that variously called for both George W. Bush's political abortion come November ("Abort Bush in the First Term," "Stop Unwanted Presidencies"), and his physical abortion, retroactively ("If Only Barbara Bush Had a Choice").

While this sounds like something out of Planned Parenthood meets Dante's Inferno, according to the Post account, there was nothing ugly, psychotic or even, to use today's term of choice, mean-spirited, about any such expressions of support for "women's lives." As the newspaper put it, "The vibe of the day-long rally was at once good-humored and yet deadly serious."

This is really good to know. Otherwise, it might have been easy to mistake the unprintable obscenities of the day as having been, well, obscene, and the banalities of the speakers as having been, well, banal. "The march is about the totality of women's lives," said abortion rights activist Kate Michelman, expressing a thought so very deadly serious—clearly, not banal—that it's hard to imagine why the rally wasn't called the March for the Totality of Women's Lives.

"Leggo my Eggo" was a favorite march slogan, according to the Post, but gag not; this was surely a display of Post-style good humor. So, no doubt, was "Keep Bush out of my pants," a slogan reported elsewhere. "There was also a poster of an animated uterus with eyes and boxing gloves on each ovary, looking for a fight," the newspaper noted.

A fight—for what? Anyway you define the terms of the abortion debate, this "animated uterus" was not fighting for life. Also at the march was a "spoken-word poet," who, according to the Post, "riffed on the Con-stitution, the coun-try, counter-revolutions—except in each of those c-words," the newspaper urged, "please insert the naughty c-word. (The one we're not supposed to say in print.)" It contin-

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**Diana West**, a columnist for the Washington *Times*, writes a weekly commentary for the Newspaper Enterprise Association.This commentary appeared May 3, and is reprinted by permission of United Feature Syndicate, Inc.

ued, "Now, you're speaking the language of the modern movement."

Ain't life—sorry, "women's lives"—grand? This psychotic "spoken-word poetry" must be what the Post had in mind when it described the rally as being "aggressive and even occasionally, almost delightfully, profane." Or maybe it was its observation that "every obscene gesture or slogan or T-shirt comes with Magic-Markered flowers or bubbly lettering." All of which is to say, how aggressively occasional! How profanely almost delightful!

From Uterus the Menace (described above), to the T-shirt emblazoned "Cute Guys for Women's Lives"—"and he was cute," gushed the Post—to a banner of marching medical students proclaiming "We are tomorrow's abortion providers," what is most striking about the ghoulish March for Women's Lives is not that it was a heavily attended rally in favor of abortion rights. Rather, it is its massive "blue"-state-style effort to take abortion from the pitiful shadows of human history to a place in the cultural sun where it is meant to exist as a sacred right of enlightened womanhood—something to celebrate. And this the Post style piece does with gusto, with its protest idyll of "happy, combative squeals," Powerpuff Girls, their "best boyfriends and husbands ever (with) perfect three-day stubble," and a Gloria Steinem who "practically glowed."

Maybe it is one thing to wrangle over the moral and spiritual price of abortion; it is very much another to elevate abortion into a cause for righteous glee as the March for Women's Lives did. "Carole King came on just as the wind picked up, and reminded the crowd, a capella, what it feels like when the earth moves under your feet," the Post wrote in closing, waxing dangerously lyrical. "Such an old chestnut, this endless abortion debate, yet it all sounded somehow renewed."

Whether this triggers a blue-state tingle, or a red-state chill, is there anyone who thinks the ultimate image of abortion is renewal?

# We're F*****' Feminists!

*Kathryn Jean Lopez*

WASHINGTON, D.C.—"I wish Barbara Bush had had choice available to her." That was a snippet of an ongoing conversation—and it was characteristic of more than one—overhead Sunday night on an Amtrak train from Washington, D.C., to New York City. The train was filled with March for Women's Lives participants. And that was characteristic of the whole weekend. At a pre-march rally on Saturday night at the D.C. Armory by RFK Stadium, California congresswoman Maxine Waters told George W. Bush to "go to hell." Going to hell with him, said Waters, should be John Ashcroft, Don Rumsfeld, and Condi Rice. In a brief, non-impromptu speech, that's what a member of the United States Congress chose to say. (You'll be amused—or horrified—to know she was introduced as "the future president of the United States.")

Of course, there were plenty of relatively hum-drum placards and t-shirts, etc., around the nation's capital this weekend: "It's Your Choice...Not Theirs," "Stop Bush's War on Women," and the like. But you couldn't avoid the obvious: At the official march kickoff rally Saturday night, the most frequently used word was the f-word—and I don't mean "feminist." There was a crass, angry framework to the whole march weekend, in fact. President Bush hates women, for sure. And, mercy be on any woman in the line of sight of John Ashcroft (that would be, for the record, every American woman). Abortionist George Tiller actually referred to Bush, Cheney, Rumsfeld, and Ashcroft as "the four horsemen of the apocalypse"—which, I guess, makes eternal damnation all the more fitting. The war being waged is against women; as one attendee put it: "Pro-life is to Christianity as al Qaeda is to Islam."

What was desperately lacking at the March for Women's Lives was any sense of perspective.

The most colorful signs were of the "Get Bush Off My Bush" variety. That's one thing on young girls' tank tops, but one of my Amtrak companions in her middle age was longing for one, too. It's a crowd that needs some growing up.

And healing. Quietly gathering around the march were women and men—and college students—organized under a group called Silent No More, which works with families suffering from abortion. Their permit request was denied after an effective effort from the supposedly freedom-loving sisters who organized the "March for Women's Lives." (Said Georgette Forney, president of NOEL, one of the groups that makes up the Silent No More coalition (the other being Priests for Life), "It's ironic that they are marching to protect women's right to choose and at the same time working to deny us our right to talk about the pain abortion caused

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**Kathryn Jean Lopez** is the editor of *National Review Online* where this column appeared on April 26, 2004. Reprinted with permission.

us. We are the faces of the choice they promote.") So, Silent No More adjusted plans, remapped their routes, and had a little prayer chain around the march under another group's permit. No pictures of aborted fetuses from them. No yelling. No hating. They held signs that said "Women Deserve Better," "I Regret Lost Fatherhood," and "I Regret My Abortion." One sign was simply a happy face that said, "I Am Pro-life."

One of the women gathered with Silent No More, Lynn Hurley, told me that she had had an abortion in 1971 when she was in college. She knows the pain of abortion and says, "I hurt for the [women marching] who hurt, who have been through abortions themselves. They're probably in denial." She said, "I'm hoping women might see our signs and be touched by them."

Though the "pro-choice" caricature of a pro-lifer is of a hater—killers of abortionists, oppressors of women—that elitist conventional wisdom (which was very much part of the march on Sunday) ought to be reconsidered. One close look at what went on both on and around the Mall this weekend would be a healthy baby step in that direction.


*"And no more walking through mirrors, young lady."*

# "Abort Bush"

*Erin Montgomery*

"ABORT BUSH IN THE FIRST TERM." A group of women on the National Mall displayed a banner with these words during last Saturday's March for Women's Lives, while a throng of fellow abortion-rights demonstrators marched by, nodding their heads in approval. The banner's message couldn't have been more clear, or a more glaring example of sordid wordplay—unless you consider another sign displayed at the march: "KEEP BUSH OUT OF MY . . ."

Led by the ACLU, the Black Women's Health Imperative, the Feminist Majority, NARAL Pro-Choice America, the National Latina Institute for Reproductive Health, the National Organization for Women, and the Planned Parenthood Federation of America, the march featured a lengthy list of speakers. Senator Hillary Rodham Clinton, former secretary of state Madeleine Albright, Gloria Steinem, Whoopi Goldberg, and Ted Turner were just a few of the many proponents of abortion rights who urged the crowd to take back the country and elect John Kerry in November.

When actress Camryn Manheim took the stage during the afternoon portion of the rally, she joked, "CNN [is reporting that this] is the largest march in the history of the universe. Of course, Fox is saying there's no one here." News reports now say that the event drew about 500,000 people, making it one of the largest abortion-rights demonstrations ever held on the Mall. The March for Women's Lives website says the crowd numbered 1.15 million.

But unconfirmed numbers (the U.S. Park Police no longer provide estimates) don't tell the full story behind the marchers. In terms of age, race, and gender, the marchers were diverse, and some were scared. "I spend half my day in class, half doing activist work," Niva Kramek, a sophomore at the University of Pennsylvania and a member of the student group Penn for Choice, said. "I'm terrified of what's going to happen [if Bush is reelected]."

As I made my way through piles of hot pink Planned Parenthood signs and dodged the Texas Mamas for Choice, I stumbled into Brenda Beckett. A 52-year-old from Seattle, Beckett explained that in 1975 she had had an abortion as a 25-year-old married woman. "I haven't regretted it once," she said. What she does regret is the "eight hours of orientation"—doctor going over alternatives, such as adoption—she sat through beforehand. "I never had any children cause I never wanted any," she said. Her husband at the time supported her decision; they are no longer married.

"Even though Bush says he believes in non-intrusive government, he is being intrusive," protestor Priscilla Balch said. An abortion-rights activist since her teens,

Erin Montgomery is an editorial assistant at *The Weekly Standard*. 

Balch, 60, is "very upset to see that we're going backwards." John McKenna, a senior at Ohio University, has been a part of other pro-choice marches, though this was his first in Washington. He was raised Catholic and attended an all-boys Catholic high school in Cleveland. He has been able to reconcile his religious upbringing with his pro-choice beliefs, stressing that the march is not just for women.

By and large, the marchers were gleeful and unapologetic, sometimes leading to contradictory acts of protest: parents placed pro-abortion stickers on their newborn babies' clothing, and women went topless as a way to get others to take the cause more seriously. Juxtapose them with the counter-protestors who marched in a dignified manner on Pennsylvania Avenue. Silent No More, a group of women who underwent abortions and regret their decision, almost didn't make it to the march when they were denied a permit to stand on the outer sidewalks of Madison and Jefferson streets, directly across the street from the rally on the Mall.

Leading a group of women carrying "I REGRET MY ABORTION" signs, Silent No More co-founder Georgette Forney said, "It's ironic that they are marching to protect women's right to choose and at the same time [are] working to deny us our right to talk about the pain abortion caused us. We are the faces of the choice they promote." After having their permit denied, the women gathered under a permit issued to the Christian Defense Coalition, 16 members of which were arrested when they moved out of their designated area on Pennsylvania Avenue and into the area intended for marchers at Fourth Street and Madison Drive.

Meanwhile, I listened to Forney, 43, tell me about the abortion she had at age 16. She went through a healing process in 1995 and shared her secret with her church in 1998. She also began to correspond with other suffering, post-abortive women over email. Forney says her healing process started with an epiphany. "I came across my old high school yearbook one day. I was holding my yearbook, and it felt like my baby. All of a sudden, I knew she [I just sensed she was a girl] was there. I could feel her spirit, and knew she was awesome."

# A Message for Ashley Judd

*Michelle Malkin*

Beautiful young actress Ashley Judd went to Washington last weekend wearing a crucifix and a trendy little T-shirt that boasted: "THIS IS WHAT A FEMINIST LOOKS LIKE."

The Associated Press snapped a photo of Ashley, honored guest of the "March for Women's Lives," which has been widely disseminated on the Internet. Pro-abortion leaders must be ecstatic. In a sea of angry (Hillary Rodham Clinton), haggard (Cybill Shepherd) and ghoulish (Whoopi Goldberg) women shaking their fists and waving coat hangers, Ashley's pretty smile helped put a softer, gentler and more glamorous spin on the morbid march for "reproductive rights."

Ashley's message to millions of young American women and girls: Opposing the partial-birth abortion ban is fun! Morning-after pills are cool! Sex without consequences rules!

One wonders what Ashley's mom, beloved country singer Naomi Judd, must have thought of her daughter traipsing around with abortion rights' militants. Naomi has spoken eloquently for years about how she firmly rejected abortion as an unwed teen and repeatedly witnessed the miracle of life as a labor and delivery nurse. "I've seen ultrasounds . . . you know that those babies are real," she told TV talk show host Sally Jesse Raphael in 1998.

A few years later, Naomi faced off against Sen. Barbara Mikulski, D-Md., on ABC's "Politically Incorrect" and argued for an eminently reasonable 24-hour waiting period before abortions. Drawing on her nursing experience, Naomi advocated full disclosure of the risks and consequences of abortion—including the use of ultrasound to give women the "whole picture." Sen. Mikulski growled that it was an "insult" to think that women didn't know what they were doing. Naomi responded that famous abortionist Bernard Nathanson, co-founder of the National Abortion Rights Action League, only disavowed his profession after witnessing abortion procedures filmed through ultrasound technology.

"Oh, my God in heaven, this is a living human being in its mother's womb," Naomi quoted Nathanson confessing. "(H)e was devastated at what he had done."

Needless to say, neither Naomi nor Dr. Nathanson was welcomed on the dais with Ashley, Whoopi and Cybill. Neither was Democratic presidential candidate John Kerry's wife, Teresa Heinz Kerry, who committed the shocking sin of letting the truth about abortion slip out in a recent Newsweek interview. The procedure, she said, is about "stopping the process of life . . . I don't view abortion as just a nothing."

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Michelle Malkin, a syndicated columnist and broadcast commentator, is the author of *Invasion: How America Still Welcomes Terrorists, Criminals and Other Foreign Menaces to Our Shores.* The above ran April 28, 2004 and is reprinted by permission of Michelle Malkin and Creators Syndicate, Inc.

One wonders at the candid conversation Mrs. Heinz Kerry might have had with Rebecca Porter, Florida director of Operation Outcry Silent No More, who recently attended a Kerry campaign event in Tampa, Fla. Porter quietly held a sign that read, "My abortion hurt me." Candidate John Kerry stared at Porter's sign while working a handshake line, but did not address her. Instead, a Kerry campaign staffer grabbed the sign and tore it to pieces.

Emulating the Democratic Party strategy (remember, this is the party that banned pro-life Democrat Bob Casey, the late governor of Pennsylvania, from speaking at its 1992 presidential convention), the free-speech fanatics of the Left did their best to stifle pro-life dissent and voices of conscience at last weekend's march. They shouted down counter-protesters and tried to hide pro-life protest signs by covering them with their profanity-laced placards. The abortionistas got unexpected help from the Bush administration's National Park Service, which forbade many pro-lifers from displaying graphic posters on adjacent sidewalks.

Nonetheless, the truth keeps slipping out. In Britain, a ground-breaking documentary by filmmaker Julia Black titled "My Foetus" aired last week. Black is pro-choice, but says she "wanted to kick-start debate by allowing both sides . . . to actually look at what an abortion is." Her film showed a four-week-old fetus being vacuumed from its mother's womb—as well as images of the broken limbs of 10, 11 and 21-week-old aborted children.

Pro-choice journalist Lauren Booth described her response to the documentary this way: "My hand flew to my mouth in shock. I swallowed. I didn't want to say it, but the word 'murder' came to my lips."

This is the true face of abortion, Ashley. Multiply it by 40 million. The mass destruction of unborn life in the name of feminist rights is not "just a nothing." Go ask your mom.

# The Mall Of Shame

*David Limbaugh*

A pro-abortion marcher in Washington on Sunday said, "I just had to be here to fight for the next generation and the generation after that." I'd like to ask her which generation aborted babies belong to.

This woman was just one of many converging on Washington's Mall to rally for "abortion rights" and "global reproductive freedom." Sadly, her statement, just like the broader "pro-choice" movement, is shrouded in deception and euphemism.

I mean no offense here, but the more you examine the pro-aborts' claims and distortions of language, the less sympathetic their cause becomes. Consider certain statements of the rally's supporters and participants.

Actress Lynda Carter said, "There is a religious and moral superiority and arrogance that so many, not all, Republicans have. It is the ultimate intrusion by government to tell a woman when she can have children, if she has them at all."

No pro-life advocates I know are trying to tell women when they can have children. They can have them anytime they want. They just shouldn't be allowed to "terminate" them in the womb.

And if the pro-life position is grounded in religious convictions, on what do pro-abortionists base their casual disregard for life? Aren't they saying the mother's "right to choose" is a moral right? If not, why all the moral outrage?

And if it is arrogant for pro-lifers to stand up for innocent life, how arrogant is it for pro-aborts to ignore the dignity, rights and even existence of the unborn? As for "ultimate intrusion," I wish Ms. Carter would tell us how she justifies intrusions on the baby's body and life.

Kate Michelman, president of NARAL Pro-Choice America, said, "The march is about the totality of women's lives and the right to make decisions about our lives." Other pro-aborts insist that women's health is their great concern.

But their zeal has little to do with choice or women's health. If they truly cared about choice, they wouldn't favor government-funded abortion on demand without restriction, including partial-birth abortion.

They'd want pregnant women to make informed choices. They would make sure they were aware of the latest research suggesting that large percentages of women who've had abortions experience emotional or psychological problems. They'd tell them about their babies' possible sensitivity to physical pain.

They'd tell them of the suspected linkage between abortion and breast cancer, even if the evidence is inconclusive. And they'd quit exaggerating concerns over the mother's health as a justification for partial-birth abortions.

Gloria Feldt, president of Planned Parenthood Federation of America said,

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"Anti-choice extremists are not just against abortion—hey also oppose contraception and comprehensive medically accurate sex education." Oh? I wonder if by that she means the routine suppression of the abstinence message and facts about the failure rate of condoms for both pregnancy and HIV transmission. And they lecture us about safe sex?

Another marcher invoked the specious pro-abort battle cry "Stop the violence." What about violence toward the babies? And what about the violence of some of the marchers themselves?

I received an e-mail from a lady who went to the march as a "ProtestWarrior." She said the marchers desecrated her sign, screamed insults, and made profane gestures and that one man physically hurled her to the ground. She said, "These tolerant, inclusive, choice liberals were the most hateful 800,000 people the 12 members of PW ever encountered."

Another pro-abort said that pro-lifers have no respect for the Constitution. By "Constitution" I don't think she meant the document signed in 1787 that British Prime Minister William Gladstone described as "the most wonderful work ever struck off at a given time by the brain and purpose of man."

More likely, she was referring to the penumbra-and-emanation-laden "living document" that unelected, unaccountable, lifetime-appointed, activist judges often mold to fit their ideologies by inventing such fictions as the constitutional right to privacy.

The "pro-choice" movement is based on the lie that an unborn human being is not a human being. If pro-aborts had nothing to hide, would they use such misleadingly innocuous words as "choice," "reproductive rights" and "family planning" when they mean the act of terminating life?

If "choice" were so popular with the public, would the pro-aborts' presidential candidate of "choice," Senator Kerry, feel compelled to dissemble, saying he is personally against abortion but opposed to the government regulating it? That's like saying he's personally opposed to shoplifting but against the government interfering with the thief's choice. Actually, it's much worse than that.

As scientific and technological advances continue to shed light on the darkness of their position, pro-aborts will become increasingly desperate. The marchers treated us to just a little bitter foretaste of that Sunday.

# The Enemy of Women

*Jeff Jacoby*

There were two must-read stories on Page 1 of the April 26 New York Times. One, headlined "Abortion-rights marchers vow to fight another Bush term," reported on the massive pro-choice rally that had flooded the nation's capital one day earlier. The other, "Militants in Europe openly call for jihad and the rule of Islam," described the rise of Muslim supremacists who make no secret of their goal: the conversion of Europe to Islam, by force if necessary.

The abortion rally was called the March for Women's Lives—a creepy Orwellian inversion if there ever was one. And yet countless marchers really did seem to believe that the foremost threat to women's lives today is George W. Bush and his benighted opinion that killing babies in the womb is wrong. To be sure, killing babies in the womb is legal—and has been for 30-plus years. Roughly 1.3 million abortions are performed in the United States every year, which suggests that what the pro-choicers euphemistically call "reproductive freedom" is alive and well in modern American life.

But 750,000 people don't descend on Washington to hear that things are OK. The mood on the National Mall was acrid with fear and loathing. Protesters bore signs reading "Stop the war on women." And speaker after speaker warned that no female will be safe until the Republicans are driven from the White House.

"Keep your laws off my body!" yelled actress Ashley Judd. "Can you hear me, 1600 Pennsylvania Avenue?" Hillary Clinton issued a plea to "stand up for our Constitution" by electing John Kerry in November. "We will not be gagged!" roared Susan Sarandon. "We reject, Mr. Bush, your hypocrisy, your greed, your disrespect for women's bodies, for women everywhere." Gloria Steinem intoned: "This government is the greatest danger on earth."

But there is a vastly greater danger—especially to women—than the president of the United States: the global jihad being waged by militant Islamists, like those described in the other New York Times story.

"Young Britons whose parents emigrated from Pakistan . . . have turned against their families' new home," the paper reported. "They say they would like to see Prime Minister Tony Blair dead or deposed and an Islamic flag hanging outside No. 10 Downing Street. They swear allegiance to Osama bin Laden and his goal of toppling Western democracies to establish an Islamic superstate under Shariah law, like Afghanistan under the Taliban."

The abortion marchers haven't forgotten what "Afghanistan under the Taliban" was like, have they? Women could not leave their homes unless accompanied by a

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male relative. In public they had to be shrouded from head to toe and could be flogged for allowing a glimpse of ankle or wrist. Barred from working outside the home, many Afghan women sank into poverty. They couldn't wear brightly colored clothes, high heels, or makeup. They were forbidden to play sports. They weren't even permitted to laugh out loud.

Today the Taliban dictatorship is gone and Afghanistan's 12 million women are free of its cruel fanaticism. For that they can thank the US military and its commander-in-chief—the same commander-in-chief so stridently denounced on the Mall last week as an enemy of women.

It is surreal: We are at war with aggressors who would undo every gain women have made in the last 200 years, and the feminist left makes abortion its number one priority. Is the pro-choice movement really so frozen in Sept. 10 thinking? Do the National Organization for Women and Planned Parenthood and Feminist Majority really consider it more important to fight for partial-birth abortion than to fight for the liberal democratic values the Islamofascists aim to destroy? Don't they understand what it means when radical imams—like the one in Geneva quoted by the Times—are openly urging their followers to "impose the will of Islam on the godless society of the West"?

Writing in the Australian newspaper The Age last week, journalist Pamela Bone listed a few recent news items from the Pakistani press: A 17-year-old girl strangled by her older brother because she had married a man of her own choosing. Two women dead in "honor killings" committed by their husbands—one tied to a bed and electrocuted; the other axed to death. A woman beaten so severely by her in-laws for failing to prevent her younger sister from eloping that her legs had to be amputated.

"Thousands of women in Arab countries are legally murdered every year in the name of honor," Bone wrote. "Women are stoned and beaten for reasons that would be unheard of in Western countries. The freedoms of Western women, their open sexuality, are a large part of the hatred Islamist men feel for the West. . . . They would, if they could, have all our daughters in burqas."

Militant Islam is on the march. Not only in Pakistan or the Middle East, but in England and France—and America. The stakes are enormous. This is no time for any of us to be fighting the wrong enemy.

# 30 Years . . . and Counting!

The Human Life Foundation will host its second annual Great Defender of Life Dinner on Friday, October 15, 2004, at the Union League Club, in New York City.

As we celebrate the *Human Life Review*'s 30 years of continuous publication, we will also honor our long-time contributor, Amherst College Professor Hadley Arkes, with the Great Defender of Life Award. Arkes is the architect of the Born-Alive Infants Protection Act, which President George Bush signed into law on August 5, 2002. He is also the author of several books, the most recent of which is *Natural Rights and the Right to Choose* (Cambridge, 2002). Our late editor, J.P. McFadden, was an avid admirer of Professor Arkes' writing and his unflagging commitment to the pro-life cause; J.P. was also a fan of the professor's (famous) sense of humor.

Professor Arkes will be introduced by Robert George, the McCormick Professor of Jurisprudence at Princeton University and a member of President Bush's Bioethics Council. We hope you will consider joining us for this very special event. For more information, please contact us at 212 685-5210.

*Individual Tickets - $200*
*Sponsor Table (listed in program) - $2,000*
*Benefactor Table (listed in program) - $5,000*

# APPENDIX A

[*Paul Greenberg is the Pulitzer-Prizing winning editorial page editor of the* Arkansas Democrat-Gazette. *This column appeared on March 10, 2004.* ]

## One Life or Two?

*Paul Greenberg*

"The possibility of a pregnant woman surviving an attack and losing her unborn child, only to have the law tell her no one was killed is unthinkable."

That was Marion Berry, a congressman from Arkansas, explaining—simply, undeniably—why he voted for the bill that would recognize a woman's unborn child as a victim when she is attacked.

It makes sense. Two lives are lost when a pregnant mother and her child are killed, as in the Laci Peterson case in California. Which is why 29 states, including Arkansas, make killing the child a crime, too. And why the House of Representatives has just passed the Unborn Victims of Violence Act—254 to 163.

Why would anyone vote against such a law? You know the reason: It might interfere with a woman's right/power to obtain an abortion.

Or so those voting against the bill argued. Never mind that the bill itself specifically exempts abortion - or any act of the mother that might harm the child.

Those opposed to the bill understand very well the general message it's sending—that human life is to be protected even in the womb. They know a bill can specifically exempt abortion from criminal penalties but still raise moral qualms about it.

Those trying to derail this bill, or at least gut it, understand what's going on here. And so do those proposing it. Every such proposal is one more flank attack on the central proposition underlying the legalization of abortion: that the unborn have no claim on life that the state need respect.

Protect the unborn victims of assault and murder, and who knows where it might end?

Every time abortion is challenged, even tangentially, consciences stir. Just as, in antebellum America, the constant agitation of the slavery question exposed the immorality of slavery itself.

The Peculiar Institution was threatened even when the abolitionists of the time were seeking only to limit it—in the territories, in interstate commerce, in the nation's capital—rather than outlaw it altogether.

This bill, too, deals with an issue only on the periphery of a troubling moral question. But how oppose it? How defend the indefensible proposition that no crime is committed when a pregnant woman's child is killed?

So defenders of abortion offered a compromise: an amendment that would punish an offender who "interrupted" a pregnancy, but without recognizing the unborn child as a separate victim.

Recognition must not be accorded the unborn child in his—or her—own right, not if the unthinkable is to remain the law of the land.

John F. Kerry understands. The senator from Massachusetts—and presidential nominee presumptive—has the most logical of reasons for opposing legislation like the Unborn Victims of Violence Act:

"The law cannot simultaneously provide that a fetus is a human being and protect the right of the mother to terminate her pregnancy."

Precisely. I think he's got it.

If one bill after another is proposed and even passed to protect the unborn or (in the case of partial-birth abortions) the semi-born, the law may come to recognize the unborn child's right to life. As it once did. And abortion will be considered a low crime, as it once was, instead of a choice.

One side in this never-ending debate understands well enough when life begins. It's scarcely a mystery. The answer can be found in any biology textbook. And every ultrasound confirms it.

To quote one believer, "You do not *determine* what is right or wrong; you *discover* it, inscribed in reality."

The other side tells us we can determine for ourselves when life begins, or at least the kind worth legal protection.

In between are all the nice people who'd really rather not think about the whole thing, or who may be against abortion "personally," but wouldn't protest if others aborted their offspring.

After all, do we really need Ezra Pound's "filthy, sturdy, unkillable infants of the very poor"? And it's not as if the issue were clear-cut, you know . . . .

All of which reminds me of a story a young editorial writer once told me. As a sophisticated journalist, he was trying to explain some things to his father, who came from the old school. He was telling the old man that not every issue is a simple matter of right and wrong, that some things aren't black and white but shades of gray . . . .

At which point the old man responded: "Son, there's always a right and a wrong. You just have to figure out which is which."

# APPENDIX B

[*Peggy Noonan is a contributing editor of* The Wall Street Journal *and author of* A Heart, a Cross, and a Flag *(Wall Street Journal Books/Simon & Schuster), a collection of post-Sept. 11 columns. The following appeared on Opinionjournal.com on April 29, 2004. Reprinted, with Ms. Noonan's permission, from The Wall Street Journal.* ]

## "Raisin" and Falling

*Peggy Noonan*

Every now and then you witness a small moment that is actually a big moment. Maybe it alerts you to something surprising that's going on, or maybe it illustrates what you already know but in a new way, one that can't be dodged or avoided.

It happened to me the other day at a play, a press preview of the Broadway revival of Lorraine Hansberry's "Raisin in the Sun." I love this play. I've seen it several times, but I hadn't seen it in years when I settled into my seat.

It has gotten more attention than most shows, mostly because it features the Broadway debut of rap mogul P. Diddy, the former Puff Daddy, who apparently has decided to go by his birth name, Sean Combs. That's how he's listed in the playbill.

The play was wonderful. I urge you to go. It's an important piece of work, and I left moved and excited. I hadn't realized when I first saw it, decades ago, and saw the movie, also decades ago, that "Raisin" was a landmark play. But it is. It captures with wit and heart a great moment in time. It tells of a black family living on the cusp of cultural liberation in 1950s America. We see them face questions of daily life—what is it to be a man, what is familial loyalty?—as they wrestle with great cultural questions. Shall we, as black Americans, assimilate and become like white Americans? Can we turn back to our African roots to find the truth of our people? Does the older generation have a clue what kind of changes are sweeping the young, or are they too busy surviving to feel the winds of change? Are they in the habit of second-class citizenship?

These ideas were new then. It was all untried. Young people would do, and in time history itself would decide if they'd done right.

The family whose story is told is an intact nuclear family. It is clear they are not special because they are intact and functioning—they're average, like everyone else. Everyone works hard—cleaning woman, chauffer—and everyone has dreams. Phylicia Rashad as the mother is transcendent. She is going to make you cry. She's a great actress, and I didn't know it. I thought she was just a persona with a particular kind of dignity, but she is an artist.

Audra McDonald as a young woman married to a ne'er-do-well son is equally brilliant. Sean Combs on the other hand is not a person of artistic talent. The problem is not that he acts like a high school sophomore, though he does—he registers surprise by bulging his eyes and making an O with his mouth. It's that the thing for which he has become famous—strutting and rapping with a jaded slack-jawed

look—is not a facet of his talent but the whole of it. When he sings a snatch of song you realize, *Oh my God, he can't even sing.* I thought rappers could sing but choose not to. Who knew?

But here's a funny thing: there's something moving in it when you realize that he made it as a star in America through sheer will, through a bulldozer's determination. That also is something you get from God, and he got a lot. It took guts for him to do Broadway and bring new people into the theater for the first time, so I suspect he'll get a pass from the critics. This play is going to be a hit because he's in it. (At the curtain call he gallantly kissed Ms. Rashad and then Ms. McDonald—and Ms. McDonald got this look on her face that said, "Don't gallantly bend to kiss my little cheek when I just carried your sorry ass for three hours.")

I was so moved by the show in part because the audience was full of people who were not your basic Broadway theatergoing types. They had come for P. Diddy and found themselves enthralled by a play. They were so responsive that in a scene where a mother slaps her daughter the whole audience went "Oh!" So did I. When the character based on Lorraine Hansberry breaks out in a tribal dance we didn't just laugh with delight, we hooted and hollered. The audience was *alive.* It was so moving and got me kind of choked. I thought, Maybe this is like what it was like when Shakespeare wrote, "You tell him, Romeo—Juliet no, don't!"

But I must tell you of the small moment that was actually a big moment. (There's a possible spoiler coming up, so if you don't know the story and mean to see the play, stop here.) An important moment in the plot is when a character announces she is pregnant, and considering having an abortion. In fact, she tells her mother-in-law, she's already put $5 down with the local abortionist. It is a dramatic moment. And you know as you watch it that when this play came out in 1960 it was received by the audience as a painful moment—a cry of pain from a woman who's tired of hoping that life will turn out well.

But this is the thing: Our audience didn't know that. They didn't understand it was tragic. They heard the young woman say she was about to end the life of her child, and they applauded. Some of them cheered. It was stunning. The reaction seemed to startle the actors on stage, and shake their concentration. I was startled. I turned to my friend. "We have just witnessed a terrible cultural moment," I said. "Don't I know it," he responded.

And I can't tell you how much that moment hurt. To know that the members of our audience didn't know that the taking of a baby's life is tragic—that the taking of your own baby's life is beyond tragic, is almost operatic in its wailing woe.

But our audience didn't know. They reacted as if abortion were a political question. They thought that the fact that the young woman was considering abortion was a sign of liberation. They thought this cry of pain was in fact a moment of self-actualizing growth.

Afterwards, thinking about it, I said to my friend, "When that play opened that plot point was understood—they knew it was tragic. And that was only what, 40 years ago." He said, "They would have known it was tragic even 25 years ago."

And it gave me a shiver because I knew it was true.

Lorraine Hansberry died in the mid-1960s when she was only 35 years old. She didn't know how things would turn out. She didn't know that a poor family that is also a nuclear family would seem exceptional, that a young black intellectual could indeed become a person of substance and respect, a doctor, and that this, 35 years later, would not seem unusual. That the struggle for racial equality would also be a long one, with many twists and turns.

She would be surprised perhaps by how some of the dramatic themes she introduced played out. The whole play is about moral choices—taking chances to make things better. She had a moral mind. She thought the great question of her time was whether the different races in America could learn to treat each other with justice and grace. I can't imagine she'd guess that members of an eager audience in the year 2004 would have become such moral dullards that we wouldn't understand something as basic as an abortion, and what it is. If she were alive now I wonder if she would be surprised, or shocked, that that moment no longer worked as a dramatic plot point because the audience had changed so much in its understanding of the basics.

So much progress followed the 1960s, in so many ways, but applauding abortion isn't progress. It's ugly. And I'm writing this with an odd little hope. That you might go see this great play, and when the moment comes that the young woman announces she might end the life of the child she is carrying, that you would sit quietly and think about what that moment means. And if anyone cheers or hoots or hollers, give them a look. Let them see your silence. Lead with it. Help the people around you realize: *Something big is being spoken of here. And we know what it is. And it is nothing good.*

*"Bad report. Bad, bad report."*

# APPENDIX C

*[Fr. Raymond J. de Souza is a chaplain at Queen's University in Ontario. The following first appeared on National Review Online (May 18) and is reprinted with permission.]*

## Gianna's Message

*Fr. Raymond J. de Souza*

Yesterday, gay couples got married in Massachusetts. Last week, the Australian government announced that it would attempt to boost the dwindling birth rate by offering $3,000 to new mothers, with the finance minister encouraging Australians to go home and "do their patriotic duty." This month New Jersey created a publicly-funded research center where embryos will be used for experiments which require their destruction. Last year, Korean scientists successfully created a human clone to harvest its stem cells.

In the midst of all this, Pope John Paul, who today celebrates his 84th birthday, canonized a remarkable woman last Sunday—Dr. Gianna Beretta Molla. The new saint, who died in 1962, was a physician of cultured tastes—she enjoyed fashion, the symphony, and took in the opera at Milan's *La Scala*—and varied recreations. She painted, played sports, and was a skier and mountaineer. She married the love of her life, Pietro, and with the birth of her children, was a woman as accomplished and as happy as could be imagined. The secret of her joy was her deep Catholic faith.

In 1961, while expecting her fourth child, that faith was put to the test. During the pregnancy, a tumor was discovered growing alongside the uterus. Rejecting advice to have an abortion, Dr. Molla opted instead for a more risky surgery that would protect her unborn daughter. A difficult pregnancy continued, and little Gianna Emmanuela was born on April 21, 1962. A week later, Dr. Molla died, having sacrificed her life for her daughter.

Dr. Molla lived in the heart of the 20th century as a woman who had it all. The future of the 21st century will depend in large part on whether the understanding of marriage and family life she exemplified will be seen as a model to be imitated or a constraint to be overcome.

"May our age discover once again through the example of Gianna Beretta Molla, the pure, chaste and fruitful beauty of conjugal love, lived as a response to the divine call," John Paul said of the new saint yesterday. The reality is that few today, including those in St. Gianna's native Italy, see purity, chastity, fertility, or even love, as having any essential relation to conjugal life.

Margaret Wente, columnist for Canada's *Globe and Mail*, connected the dots in a recent essay celebrating the birth-control pill as an engine of social change: "The Pill decoupled sex and marriage, and it also decoupled marriage and procreation. The purpose of marriage became mutual satisfaction, not children. And once that happened, gay marriage probably became inevitable."

Some critics have attacked St. Gianna as the latest Vatican salvo in the abortion wars. That's not quite right, as saints are chosen for their holiness and not as

polemical points. At the same time though, St. Gianna is the embodiment of John Paul's oft-proposed alternative to the sexual revolution. That proposal insists on the coupling of marriage and procreation, and sex and marriage. It is a demanding proposal. It is demanding because it requires sacrificial love. The life of St. Gianna demonstrates that sacrificial love can be lived with radiant joy.

The alternative is what we are living. Birth rates have plummeted all over the affluent West. If children are a sign of hope in the future, Europe—and to a lesser extent Canada, Australia and the United States—is losing its will to live. St. Gianna, as a female physician with a successful medical practice was something of a rarity in the 1950s. The contemporary Italian woman would find her profession less remarkable than that she actually married and had children. Over in Spain, which competes with Italy for Europe's lowest birth rate, the new socialist government has indicated that it wants to promote gay marriage and further liberalize abortion laws. The Spanish future will have more sex and fewer babies—that is to say a future with less of a future.

The ultimate fruit of the sexual revolution is the decoupling of the future from the present. What is done today must not have an effect on what happens tomorrow; future consequences of current behavior are to be minimized, ignored or, as happens in fertility clinics and research labs every day, destroyed. The sexual revolution was fueled by indulgent philosophy and contraceptive technology, with easy abortion as the necessary foundation. The Catholic Church, in insisting that what has been joined should not be rent asunder, has opposed this promiscuous decoupling—so much so that people who know nothing at all about the Catholic faith know that it is opposed to contraception, divorce and abortion.

The Christian vision of the "coupled" life, founded upon the supernatural coupling of God and man, has taken a beating these past four decades since St. Gianna died. Whether that vision, so joyfully lived by one Italian mother and doctor, proves compelling in this century will determine in large part whether we will recognize our common future.

# APPENDIX D



## Building a Better Baby

*Agnes R. Howard*

We may not yet have mastered a way to insure perfect babies, but researchers are hard at work improving methods to eliminate imperfect ones.

This winter brought news that specialists are pioneering FASTER (First and Second-Trimester Evaluation of Risk), a combination of maternal blood tests and ultrasounds to detect Down syndrome at 10-13 weeks. Screening pregnant women this way could reduce the use of the more invasive amniocentesis, normally performed at 15 to 18 weeks. And it would have a further advantage: A woman who failed a FASTER test could terminate her pregnancy before it showed.

While some obstetricians are exploring alternatives to amnio, however, another group of doctors is calling for broadened access to it. In the January 24 issue of the British medical journal the *Lancet*, Ryan A. Harris, A. Eugene Washington, Robert F. Nease Jr., and Miriam Kuppermann maintain that all pregnant women—not just those over 35—should be able to choose either amniocentesis or chorionic villus sampling (CVS), since all would benefit from knowing whether a fetus were abnormal.

By whatever means it is obtained, of course, this knowledge is provided not just to satisfy idle curiosity. About 90 percent of women who discover their baby has a chromosomal disorder abort it. While the FASTER camp, who call for early screening, and the Harris camp, who stress universal access to genetic diagnosis, advocate different kinds of prenatal testing, they have a common aim. Under the guise of extending opportunity to women by giving all "informed choice," they would, in practice, burden every mother with the expectation that she bring to birth only a healthy baby.

The *Lancet* article is particularly troubling for the way it makes its case. Entitled "Cost utility of prenatal diagnosis and the risk-based threshold," it reports the findings of a survey of 534 women of diverse backgrounds, aged 16-47, who were asked about the "time-tradeoff utility" of having a child born with a chromosomal abnormality. The authors analyzed the respondents' preferences alongside published case studies and trials of prenatal testing, abortion rates, and cost data. Harris et al. argue that the familiar age threshold for prenatal diagnosis should be abandoned. It rests, they say, on a misjudgment about the way women weigh the risks of miscarriage caused by anmiocentesis against the risks of Down syndrome. At present, prenatal diagnosis is mostly used with higher-risk patients, particularly those past 35, the age when the probability of Down syndrome begins to overtake the probability of procedure-related miscarriage. The working assumption has been that women would be unwilling to incur the risk of miscarriage unless the risk of

having an abnormal child were greater.

Harris et al. turn that assumption on its head. They contend that women are much more worried about having a Down syndrome baby than they are about losing a normal baby to miscarriage after the test. The costs of the test, they argue, are amply repaid by either the reassurance that the baby is normal or the ability to avoid the difficulties of having a Down syndrome child: "The more reassurance women desire, the more cost effective is the testing." This boils down to a judgment that women would rather forfeit a healthy baby than brook the possibility of raising an abnormal one.

How did we get here? Many elements have helped bring us to a point where it could seem prudent to screen all fetuses in order to reduce Down syndrome births, and a considerable part of the problem rests with two faulty assumptions about pregnancy.

The first is our contemporary treatment of childbearing as a medical process. Fetal quality controls would fit right in alongside the many other tests a pregnant woman undergoes. Depending on the sensibilities of her obstetrician, bad test results may transform somebody's baby into a biological complication to be remedied by a medical procedure. Rayna Rapp, an anthropologist who studies prenatal testing, writes of a woman who received an unhappy diagnosis and entered her doctor's office in tears, only to be scolded (comforted?) this way: "That isn't a baby. . . . It's a collection of cells that made a mistake."

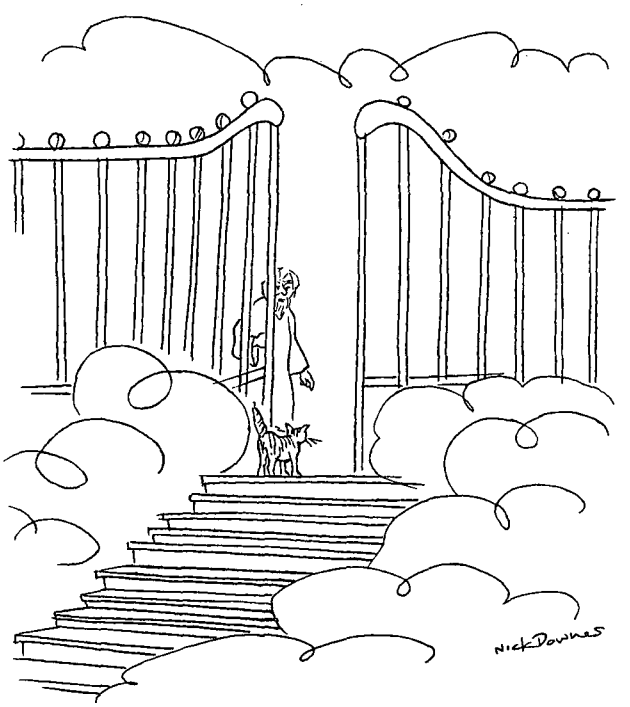
In a culture where choosing the test is roughly equivalent to choosing abortion for an abnormal fetus, a decision to make the test a routine part of prenatal care would lend to ensuing abortions an air of inevitability, even medical necessity. To institutionalize these tests may damage the way women perceive pregnancy. As Barbara Katz Rothman argued in her important 1986 book, *The Tentative Pregnancy*, the use of amniocentesis and CVS may make a woman reluctant to acknowledge she is going to have a baby until a favorable test result has signaled it is safe to keep the child—sometimes well into the second trimester, after she has started to feel the baby kick. Although Rothman supports abortion, including in Down syndrome cases, she regrets the consequences of the tests.

The second cultural problem is the assumption that pregnancy is essentially a matter of choice. A woman starting prenatal care can expect to be asked, "Is this a wanted pregnancy?" Already we act as though what gives moral standing to pregnancy is the choosing of it, preferably in advance, if necessary after the fact, but always the conscious determination to continue rather than end it. This pattern of thought makes it easier to hazard a healthy fetus in order to prevent having a defective one, without admitting to ourselves that this is our calculation. We can act as though, until the test is done with good results, the pregnancy isn't quite real. To universalize genetic diagnosis is to entrench even more deeply than we already have the idea that a baby *becomes* a baby only when we choose to grant that status—if and when it passes genetic muster.

To admit this is not to place a sinister cast on the issue. The effort of Harris et al.

to weigh in economic terms the danger of having a Down syndrome baby is already sinister enough. The authors calculate that having the test and aborting an abnormal child can gain a woman nearly $15,000 per year in improved quality of life (QALY). The two commentators whose remarks accompany the *Lancet* article express some reservations about this. "In any prenatal diagnostic intervention," they note, "there are ethical questions not directly addressed by economic analysis." True enough. After all, one could make the case that all children impose a cost in quality of life, even entirely healthy, normal ones. It is grotesque to measure children's worth primarily in QALY terms.

The work of Barbara Katz Rothman once again provides a cautionary tale. Examining the introduction of fetal screening in the Netherlands in the late 1980s, Rothman found that midwives, who presided over most deliveries there, resisted the tests. Explaining their decision not to recommend screening to their patients, some midwives asked: "Why spoil the pregnancy?" That is, there is a human good that is fostered by allowing pregnancy to be a hopeful time, a worthwhile stage of motherhood. To press pregnant women to learn about genetic disorders is to reinforce the notion that it is permissible to give birth only to normal babies. Granted, wide-scale testing would offer reassurance to many, but at the high cost of further degrading the way we bear ourselves toward the children we bear.




*"Well, which is it—in or out?"*

# APPENDIX E

[*Wesley J. Smith is a senior fellow with the Discovery Institute and an attorney for the International Task Force on Euthanasia and Assisted Suicide. The following appeared June 17 on National Review Online* (www.nationalreview.com) *and is reprinted with permission.*]

## Compassionate or Callous?

*Wesley J. Smith*

Compassion, literally defined, means, "to suffer with another." That is why I have always found the monopolization of that word by proponents of euthanasia and assisted suicide so discordant. Euthanasia isn't about suffering *with* anybody. It's about using someone's suffering—and the pity it evokes—as a justification to kill.

The Netherlands has allowed euthanasia for more than 30 years, supposedly under strict guidelines to protect the vulnerable from abuse. But the list of those "eligible" has steadily lengthened, to the point that it now includes depressed people without organic illnesses. And now, the Dutch government has opened the legal door to killing patients with Alzheimer's disease. In doing so, the nation sent a powerful message to Alzheimer's patients and their families: The lives of those with this dreaded disease are so burdensome and undignified that they are not worth maintaining or protecting.

Contrast this with the message Nancy Reagan and her family sent the world by lovingly caring for Ronald Reagan in his declining years. This is what true compassion looks like. Through their unwavering devotion—giving wholeheartedly to Reagan even when he had little to give back in return, and taking some of his suffering on their own shoulders for ten difficult years—the Reagan family provided a vivid demonstration of the power of unconditional love. Nothing that has been done to recognize the late president—the naming of an airport after him, the public outpouring of respect during the week of mourning, the burying of political hatchets—could have honored Ronald Reagan the man, husband, and father more appropriately.

Ronald Reagan understood clearly how crucial it is to value all people equally, regardless of their capacities or state of health. Writing in *Human Life Review* in 1983, in words that are especially poignant considering what befell him ten years later, he warned: "Regrettably, we live at a time when some persons do not value all human life. They want to pick and choose which individuals have value. Some have said that only those individuals with 'consciousness of self' are human beings."

This dehumanization offended Reagan to his core. He warned that the philosophy established at the Founding of the United States that all are created equal, possessing an inalienable right to life, is subverted when some of us are seen as disposable. And he recognized that sanctioning their killing—even in a desire to alleviate suffering—undermines our essential humanity.

Of course, some would say that the reverse is true, that a life with Alzheimer's

isn't really living. Better to put people out of their misery than allow them to die slowly, while losing their identities. Such an end is seen as especially burdensome for those who have lived robust lives of independence, intellectual rigor, achievement, and accomplishment—people who would be humiliated to see themselves having to depend so totally on others for their care.

But the life Reagan led in his declining years demonstrates how wrongheaded such views are. True, Reagan was no longer able to occupy the public stage. True, he was very ill. True, this caused him and his family tremendous anguish. But it is untrue that falling prey to catastrophic illness meant that he possessed less human dignity and moral worth than he did when telling Mikhail Gorbachev to "tear down this wall." Indeed, what we have learned in the last week about Reagan's gentle life in his final, private years demonstrates that there can be profound meaning even in the most difficult and trying circumstances.

Betsy Streisand's "Memories of a Friend in the Park," a first-person observation piece published in the June 21, 2004 *U.S. News and World Report*, was especially touching in this regard. Streisand recounts how, as Reagan's Alzheimer's forced him out of the public limelight in the late 1990s, he frequented a park in Beverly Hills. Reagan, accompanied by his nurse, liked to sit on a park bench and watch children at play. She recalled: "Reagan didn't speak much to adults. It was our children he was interested in. Time and again these sticky little specimens encrusted with juice and sand would come up next to him as they made their way to the bags of snacks on the bench. And he would beckon them closer...And although he gradually stopped speaking to us—and our children—we never stopped speaking to him or having the kids play close by where he could watch."

As Reagan's cognitive and verbal abilities collapsed, his human desire to love and be loved remained undiminished. Reagan's son Michael spoke emotionally to this when he described his dad's joy at hugging and being hugged. "As the years went by and he could no longer recognize me," Michael said in a tribute to his father, "I began a process of hugging him whenever I would see him." Most poignantly, the son recalled once forgetting to hug his father goodbye. As he was about to get into his car, Michael's wife told him to turn around. There in the doorway was Ronald Reagan, arms outstretched, waiting for his hug. Tears in his eyes, Michael rushed back to his father and the two embraced.

Even at the very end, love triumphed over disease. Reagan loved his Nancy deeply and intensely, and as he was breathing his last breaths, somehow, some way, he dug deep within himself and found some final reserve of devotion. He opened his eyes, recognized her, and giving her one final look, he died. Nancy Reagan and the family called his final great communication a "wonderful gift."

Now juxtapose this story of anguish—as well as love, grace, and devotion—with euthanasia in the Netherlands, which will now be applied to patients with Alzheimer's. The best view of it is found in a book by a nursing-home doctor named Bert Keizer. In *Dancing with Mr. D.* Keizer describes several euthanasia cases in which he provided lethal injections. In every case, he depicts the lives of

frail and dying people under his care as pointless, useless, ugly, grotesque. Those with whom he interacts all seem to share these views, including his colleagues, family members of patients, and the patients themselves—allowing Keizer to kill patients without bad conscience.

One man he describes probably has lung cancer but the diagnosis is never certain. When a colleague asks, "Why rush?" while pointing out that the man isn't suffering terribly, Keizer snaps, "Is it for us to answer this question? All I know is that he wants to die more or less upright and that he doesn't want to crawl to his grave the way a dog crawls howling to the side walk after he's been hit by a car." Keizer either doesn't know or doesn't care that with proper medical treatment, people with lung cancer don't have to die in unmitigated agony. The next day, he lethally injects the patient, telling his colleagues as he walks to the man's room, "If anyone so much as whispers cortisone [a palliative agent] or 'uncertain diagnosis,' I'll hit him."

Another patient Keizer kills is disabled by Parkinson's disease. The patient requests euthanasia, but before the act can be carried out, he hesitates after receiving a letter from his religious brother who warns that God is against suicide. This upsets Keizer, who writes: "I don't know what to do with such a wavering death wish. It's getting on my nerves. Does he want to die or doesn't he? I do hope we won't have to go over the whole business again, right from the very start." Keizer decides to push the process along. He asks the nursing-home chaplain to assure the man that his euthanasia will not upset God. The man reconsiders and again decides he wants to die. Keizer is quick with the lethal injection, happy the man has "good veins." The patient expires before his uncertainty can disturb his doctor's mood again.

Where is the compassion in this? Caring, unlike killing, can be costly in time, money, and emotional anguish. But, as the near universal outpouring of admiration for Nancy Reagan as caregiver demonstrates, it also ennobles and liberates. Indeed, as Ronald Reagan wrote long before he knew the words would apply so personally: "My Administration is dedicated to the preservation of America as a free land, and there is no cause more important for preserving that freedom than affirming the transcendent right to life of all human beings, the right without which no other rights have any meaning."

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