

# the HUMAN LIFE REVIEW



WINTER 2005

*Featured in this issue:*

James A. Weber on . . . . *Good* Population Growth  
Stanley Kurtz on . . . Demographics & Culture War  
Terrence J. Hobin on . . . . . Liberties and Rights  
Nancy Harvey on . . . . . Dying Like a Dog

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**2ND ANNUAL GREAT DEFENDER OF LIFE DINNER**

Wesley J. Smith • Robert P. George • Hadley Arkes

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*Also in this issue:*            **Terri Schiavo, RIP**

Mark Steyn • Fr. Robert Johansen • Nat Hentoff • James Q. Wilson  
Robert P. George • William Murchison • Lucette Lagnado • Rabbi  
Marc Gellman • Michael Barone • Wesley J. Smith • Eric Pfeiffer  
David Klinghoffer • Ramesh Ponnuru • Paul Vitello

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ABOUT THIS ISSUE . . .

. . . as you will see in the announcement on page 66, we're already looking forward to hosting our Third Annual Great Defender of Life Award Dinner at which we'll honor the intrepid journalist, Nat Hentoff. But in this issue, we take a look back at our second dinner, providing readers with a transcript and photographs we hope will convey something of the evening's special charm. In a provocative address (page 50), last year's honoree Hadley Arkes needled the Bush Administration for not having done much to implement the Born Alive Infants' Protection Act. He later repeated the criticism in an essay in *First Things*. How heartening it was to see recently that the Administration has at last sprung into action, issuing guidelines and warning hospitals that failure to conform with the statute might jeopardize federal (e.g. medicare) funding. As long-time readers know, Hadley Arkes has labored hard in the pro-life vineyard; let us hope his efforts continue to bear fruit.

We move on from saluting an old friend to welcoming two new contributors. James A. Weber, whose article "Let's Hear It for Population Growth!" begins on page 5, is currently researching a book on the Judeo-Christian foundations of America. Terrence J. Hobin tells us "a decades-long admiration" for our late editor J.P. McFadden and the *Review* led him to send us "Abortion as Liberty and Right" (page 67)—we are delighted to publish it here.

There are many to thank this time around, beginning with Stanley Kurtz for permission to reprint his important essay from *Policy Review*, "Demographics and the Culture War" (page 17). We're also indebted to *First Things*, where the late Nancy Harvey's "Dying Like a Dog" (page 79) appeared in 1995. Mrs. Harvey's article is as timely today as it was back then, if not more so: A victim of Crohn's disease, she wrote from personal experience of what it was like to suffer from severe malnutrition and dehydration. "Dying Like a Dog" is also a perfect introduction to our appendix section, largely given over this issue to considerations of the inhumane suffering and death of Terri Schiavo. Our thanks go to Rabbi Marc Gellman, James Q. Wilson, Nat Hentoff and William Murchison for allowing us to include their work in the *Review*. Thanks also to Mark Steyn, whose lead appendix weaves demographic and euthanasia trends, and to all the other commentators who were moved to defend Terri Schiavo's right to an impaired life.

We sacrificed much of the appendix section in our last issue to bring you Rebecca Messall's important and eye-opening "The Long Road of Eugenics: From Rockefeller to *Roe v. Wade*." We have received raves from many readers who all say something along the lines of "I had no idea . . ." Alas, we've also discovered an editing error: On page 39, Elihu Root was described as a member of the American Eugenics Society. While there is much evidence to suggest his eugenic allegiances, the author was unable to document his membership in that group. We regret the error and encourage you to go to our website ([humanlifereview.com](http://humanlifereview.com)) for a corrected copy should you need one.

ANNE CONLON  
MANAGING EDITOR



# the HUMAN LIFE REVIEW

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## INTRODUCTION

**D**O YOU REMEMBER THE “POPULATION BOMB”? The catastrophic population explosion foretold in the book of the same name by Paul Ehrlich, who, in 1968, predicted that hundreds of millions would die of starvation by 1975? Population-control propaganda was rampant in the 1960s and 70s, affecting popular consciousness and policy. In 1972, the Commission on Population Growth and the American Future (established by Congress in 1970) recommended a national goal of “zero-population growth”; the population-control *zeitgeist* was also a powerful influence on the 1973 *Roe v. Wade* decision legalizing abortion. In the midst of all this, a young college graduate named James Weber wrote a book *promoting* population growth. Published in 1977, *Grow or Die!* insisted that healthy societies are those that cultivate their most important resource—people. The population “bomb,” Weber contended, was really “a population bust: the ideology of population control is concerned not so much with population as with *control*.” Weber wrote that the population-control movement was attempting to “destroy the right to life, the sacredness of the family . . . and every other moral principle of a civilized, humane, and progressive society.”

In “Let’s Hear it for Population Growth!”—this issue’s lead article—Mr. Weber recalls the reaction to his book back then, and writes about its relevance now. It won’t be surprising to readers of this journal that an instigator of the “overpopulation” propaganda campaign was the eugenicist Margaret Sanger, “who initiated, organized and funded” the first World Population Conference in Geneva in the 1920s. Sanger knew her “better breeding” campaign would be a hard sell; on the other hand, promulgating fears about threats from overpopulation would be much easier—and effective. Weber writes that the overpopulation myth, despite massive evidence to the contrary, still facilitates the abortion license. People who might object in principle to abortion still have the “yes, but” response: “yes, but aren’t there too many people?”

As a matter of fact, the answer is *no*. Yes, we do have a world crisis brewing, but it’s due to the “success” of the population control movement—it is global *under*-population which worries experts now. In our next article, “Demographics and the Culture War,” Stanley Kurtz discusses four new books which grapple with the “cultural and economic consequences of declining birthrates.” Each book begins with an essential fact *not* in doubt—that “global fertility rates have fallen by half since 1972.” Declining birth rates mean aging societies, which may, in the worst-case scenarios, be headed for “economic meltdown.” As you’ll read, the books’ authors do not agree on what changes are needed (a return to traditional social

values? economic incentives?) but they all emphatically agree that “what the world needs now,” desperately, are babies.

The *Human Life Review* was also born in the turbulent 70s. Founded by my late father James P. McFadden, the *Review* was created to stand against the shocking *Roe* decision which stripped the unborn of protection. We celebrated the thirtieth anniversary of our *Review* last October, at the Foundation’s second annual Great Defender of Life Award dinner, honoring Professor Hadley Arkes. In this issue’s special section, we publish a transcript of the evening: an Invocation from Father Richard John Neuhaus, a powerful speech by Wesley J. Smith, a wonderful introduction of Professor Arkes by Robert P. George, and Hadley Arkes’ address, which was riveting, substantial—and somewhat controversial, as the election was only a few weeks away. We hope you enjoy it all, as well as the festive photos we have included. And be sure to take note of our announcement, on page 66, of this year’s dinner date and award winner.

<sup>66</sup>Long and wearying experience has taught pro-lifers a painful lesson in what the corruption of language can do to the quality of the debate,” writes our next author, Mr. Terrence J. Hobin. Indeed, we know that the lethal social programs of abortion and euthanasia were instigated with Orwellian language campaigns: in “doublespeak,” an unborn child is merely a “clump of tissue,” or a “product of conception”; a disabled person has no “quality of life,” and suffocating with a plastic bag over one’s head is “death with dignity.” Here, Hobin writes of another kind of language corruption, more subtle, but also dangerous: imprecision of meaning. His example: the words “right” and “liberty.” Both are used, almost interchangeably, in discussions about abortion, and nobody wants to be “against” either; but in reality, as he explains, a “right” and a “liberty” are in constant conflict, because a right is generally obtained at the cost of someone else’s liberty. Hobin’s essay continues with a fascinating discussion of the proper functions of government, which leads into his main inquiry: whether the legalization of abortion created a “liberty” that makes any sense.

One need look no further for the use of “destructive” language than the so-called right-to-die case that riveted the nation this winter: the killing of Terri Schiavo. Her condition was described by many as “PVS,” a term that, wrote Wesley J. Smith in his book *The Culture of Death*, is itself a “medical diagnosis involving a violence of logic and language (human being = vegetable).” (As you’ll read in *Appendix B*, Mrs. Schiavo never even *received* a proper medical diagnosis: shockingly, she never had an MRI or a PET scan). The indisputable facts are that Terri Schiavo was a cognitively disabled woman, who was *not* terminally ill, and *not* on life support. She was starved and dehydrated to death, by order of the court, following the desire of her husband, despite the enormous efforts of her family and their supporters to keep her alive. In our next article, which first appeared in 1995 in *First Things*, this kind of death was foreseen and described, accurately, as “dy-

## INTRODUCTION

of Crohn's disease. (Her article "Hilter's Children" published posthumously, was in our Fall 2001 issue). She wrote from painful experience, having had "many episodes of severe dehydration and malnutrition (one almost fatal)." Harvey writes that withholding food and fluids so "nature can take its course," is nonsensical: in a non-terminal person, this is an agonizing process. "Our bodies are constructed to fight death. It is natural for them to struggle against death until there is nothing left to fight with, and anyone watching the struggle is going to be upset." Unless of course you are ghoulish George Felos, Michael Schavio's lawyer (and rabid right-to-die-activist) who described Terri Schiavo on one of the last days of her death throes as looking more beautiful and peaceful than he had ever seen.

\* \* \* \* \*

We close this issue with fourteen appendices. With the exception of *Appendix A*, which focuses mainly on the demographic crisis discussed in our first two articles, every piece was written about, or in response to, the Terri Schiavo case. The medical, legal, moral and philosophical issues are discussed accurately, without euphemisms—filling in what was "left out" of the majority of news reports. In "Odd Felos" (*Appendix L*) for example, you'll see that, while some media portrayed the Schindler family and their supporters as (religious) fanatics, the spooky, new-age death fanaticism of George Felos, obvious from his own bizarre writings, somehow didn't make the news. Nor did the media find it "newsworthy" that a sizeable portion of the money Michael received from his lawsuit, meant for Terri's rehabilitation, went into Felos' pocket. The media also failed to report, as Nat Hentoff points out, that "nearly every major disability rights organization in the country" filed a legal brief on behalf of Terri Schiavo's right to live.

Deaths like Terri Schiavo's, sadly, are commonplace; death by dehydration—called the "withdrawal of medical treatment"—is now legal in every state. These killings don't make the news because, in many cases, no one objects. The Schindlers did—they fought for years for their daughter and sister, as did so many good people who supported and prayed for them. They remain generous: they have vowed, even in their grief, to fight on for others like Terri who cannot speak for themselves.

We are inspired by their witness, as we at the *Review* enter our thirty-first year, dedicated to "realspeak" about the war on human life.

MARIA MCFADDEN  
EDITOR

## Let's Hear It for Population Growth!

*James A. Weber*

Many goodhearted people agree with pro-lifers on the principle that abortion is wrong—but are still on the fence when it comes to abortion politics. I call them the “Yes, but . . .” people. If you ask them if they think abortion is wrong and should be illegal worldwide, they will respond: “Yes, but . . .” And if you ask them, “Yes, but what?” many of them will respond, “Yes, but aren't there too many people?”

Where did this idea come from—the idea that the world is overpopulated, and that further population growth would be a bad thing? It certainly didn't come from world history. Throughout 99 percent of human history, population growth was so slow that it was the equivalent of zero—and human development or progress was just as slow. Since the 17th century, world population has grown tremendously, from 500 million to more than 6 billion—and this rapid population growth has been accompanied by a period of human development that has enabled the vast majority of the world's people to enjoy an ever-improving standard of living.

And the negative view of population growth sure didn't arise naturally from the history of the United States. Population growth in the U.S. has resulted in economic progress that is without parallel in world history. Two centuries ago, the U.S. had 4 million people and was a “developing nation.” Today, it has nearly 300 million people and is the major military and economic power in the world. Indeed, since the founding of our country, we Americans have been proud of our growth in population: Not too many years ago, cities, towns, and villages eagerly updated roadside signs to proclaim their growing populations, and the U.S. Department of Commerce had a big clock that ticked off every new person added to the country's population.

So what happened to create a negative view of population growth in America, a land and a people for whom growth is as natural and healthy as breathing? What happened was an elitist propaganda onslaught to convince the American people, contrary to all available evidence and experience, that population growth is bad. This propaganda campaign was launched in the 1920s by Margaret Sanger, who initiated, organized, and funded the first World Population Conference in Geneva. The campaign went on hold during the Great Depression when depopulation became a concern but picked

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James A. Weber is the author of *Grow or Die!* (Arlington House, 1977) and *Power Grab: The Conservator Cult and the Coming Energy Catastrophe* (Arlington House, 1979). He is now doing research for a book on the Judeo-Christian foundations of America.

up steam again when the United Nations established a Population Commission in 1946. In the early 1950s, John D. Rockefeller III organized the Population Council to “study the problems presented by the increasing population of the world.” There followed a mushrooming of individuals and organizations concerned with the so-called “population problem,” culminating eventually in the first overt reference to population growth by a U.S. governmental body. This was the 1959 Draper Commission report, which recommended that the U.S. help nations “in the formulation of their plans designed to deal with the problem of rapid population growth” and “increase its assistance to local programs relating to maternal and child welfare in recognition of the immediate problem created by rapid population growth.” The reference here to “maternal and child welfare,” a euphemism, of course, for birth control, was the beginning of the twisting and distorting of words that has become the hallmark of the population-control and pro-abortion movement.

President Eisenhower was asked, at a press conference, about this recommendation for government-sponsored birth control. Here is what he said: “I cannot imagine anything more emphatically a subject that is not a proper political or governmental activity or function or responsibility . . . This government will not, as long as I am here, have a positive political doctrine in its program that has to do with the problem of birth control. That’s not our business.” But in 1962, after he had left office, Eisenhower wrote in the *Saturday Evening Post*: “When I was president, I opposed the use of Federal funds to provide birth control information to countries we were aiding . . . As I now look back, it may be that I carried that conviction too far. I still believe that as a national policy we should not make birth control programs a condition to our foreign aid, but we should tell receiving nations how population growth threatens them and what can be done about it.”

In 1961, President Kennedy stated that “population control is a matter which goes very much to the life of a country. It is a personal decision and a national decision which those nations must make . . . We help countries which carry out different policies in this regard and it is a judgment in my opinion which they should make.” In a 1963 address to the World Food Congress, he said that “population increases have become a serious concern . . . the population growth rate is too often the highest, where hunger is already the most prevalent.” President Johnson, in his 1965 State of the Union message, promised that he would “seek new ways to use our knowledge to help deal with the explosion in world population and the growing scarcity in world resources.”

The population-control propaganda campaign then reached fever pitch



with the publication of books such as *Famine 1975!* by William and Paul Paddock. Published in 1967, the book claimed that famine causing the deaths of tens of millions of people was inevitable by 1975, owing to a population explosion. In 1968 came *The Population Bomb* by Paul Ehrlich, who upped the ante by opening his book as follows: “The battle to feed all humanity is over. In the 1970s the world will undergo famines—hundreds of millions of people are going to starve to death in spite of any crash programs embarked upon now.”

The media, of course, were only too happy to join the overpopulation chorus. The old *Life* magazine, for example, reported that “with the population of the world now about 3 billion and doubling every 37 years, we will reach the ultimate terrestrial limit of 60 million billion humans in somewhat less than 1,000 years. At that stage, people will be jammed together so tightly that the earth itself will glow orange-red from the heat.” *Newsweek* magazine managed easily to top even that scare scenario, reporting that “the current rate of growth, continued in 600 years, would leave every inhabitant of the world with only 1 square yard to live on. By the year 3500, the weight of human bodies on the earth’s surface would equal the weight of the world itself. By the year 6000, the solid mass of humanity would be expanding outward into space at the speed of light.”

Nor was the U.S. excluded from this population-explosion nightmare. A book bluntly titled *Too Many Americans*, by Lincoln and Alice Day, informed us that “a rate that has averaged 1.7 percent since the end of World War II has been adding more than 2,700,000 to our population *each year*, a number about equal to the population of the whole San Francisco-Oakland urban area, and nearly half a million larger than the entire Boston metropolitan area. Less than 100 years at this rate and our number would be one billion—a third of the present population of the entire world.”

Following in the wake of this population-growth panic, President Nixon in 1969 transmitted to Congress the first presidential Message on Population, which stated in part: “One of the most serious challenges to human destiny in the last third of this century will be the growth of the population . . . If we now begin our work in an appropriate manner, and if we continue to devote a considerable amount of attention and energy to this problem, then mankind will be able to surmount this challenge as it has surmounted so many during the long march of civilization.” Note that Nixon in this statement viewed population growth as both a “challenge” and a “problem.”

In 1970, prompted by this presidential message, Congress established the Commission on Population Growth and the American Future to “conduct

and sponsor such studies and research and make such recommendations as may be necessary to provide information and education to all levels of government in the United States . . . regarding a broad range of problems associated with population growth and their implications for America's future." Note that population growth now no longer presents a "challenge" but instead a "broad range of problems."

Congress required the commission to inquire into the "various means appropriate to the ethical values and principles of this society by which our nation can achieve a population level properly suited for its environmental, natural resources and other needs." This mandate for the commission seemed to foreordain a specific conclusion, namely, that it is *necessary* for the nation to achieve a "population level properly suited for its environmental, natural resources and other needs." In other words, rather than inquiring what can be done to develop resources and improve the environment to meet the needs of a growing population, the commission is specifically instructed to determine how best to control population growth to meet environmental and resource needs.

Prior to publication of its final report, the commission issued an interim report. This interim document maintained the façade of an objective inquiry into population growth, but in its pages we suddenly find near-zero population growth proclaimed as a "national objective." Discussing so-called unwanted births, the report states that there is "some evidence (from the 1965 National Fertility Study) that the elimination of unwanted births would result in fertility levels ultimately commensurate with *near-zero growth*. If this conclusion is valid for 1970 (the 1970 National Fertility Study now underway will provide the basis for such a judgment), the policy implications can hardly be overestimated because the *national objective* could be attained by enabling individuals to achieve their own preferences" (emphases added).

In 1972, the commission issued its final report, which asserted that in "the brief history of this nation, we have always assumed that progress and the 'good life' are connected with population growth. In fact, population growth has frequently been regarded as a measure of our progress. If that were ever the case, it is not now . . . Accordingly, this Commission has concluded that our country can no longer afford the uncritical acceptance of the population growth ethic that 'more is better.' And beyond that, after two years of concentrated effort, we have concluded that no substantial benefits would result from continued growth of the nation's population." Based on this conclusion, the commission made a number of recommendations, among them that the nation should plan for and welcome a stabilized population; that state

laws restricting abortion should be liberalized along the lines of New York law; and that Federal, state, and local governments should make funds available to support abortion services.

President Nixon apparently accepted the commission's recommendation of population stabilization but rejected recommendations related to abortion, stating that he did not "consider abortion an acceptable form of population control." But a year later, in 1973, the U.S. Supreme Court took the matter into its own hands, ruling in *Roe v. Wade* that abortion was legal in all states. In the opinion, Justice Blackmun bluntly cited "population growth" as a factor in the Court's decision.

In the political parlance of Chicago, the "fix" was obviously in when the Commission on Population Growth and the American Future did its report: There was no way that this report was going to recommend anything but zero population growth. And the reference to population growth in the *Roe v. Wade* opinion was the Supreme Court's way of giving a wink and a nod to the political powers-that-be that it got the ZPG message. It is well to remember Finley Peter Dunne's imaginary, turn-of-the-century Chicago tavern where Mr. Dooley, the saloonkeeper, famously remarked: "Th' supreme coort follows the iliction returns." Yes, Mr. Dooley, but we would add that the "coort" also apparently reads government reports.

So there you have it. Up until 1960, the U.S. government was on public record, in the words of President Eisenhower, in opposition to any form of population control anywhere in the world, much less the U.S. Just 13 years later, the government was actively promoting population control in this country as well as abroad and abortion had been legalized, in part as a tool for achieving this objective. In addition, the media were inundating the populace on practically a daily basis with the perils of population growth and horror stories of what might happen if the "population bomb" were not defused. End of story, right? Well, not quite.

In 1970, I was an author in search of a subject. I had graduated with an M.A. in Urban Studies from Loyola University, Chicago, and was looking for something to write about in this area; I had also started my own one-man industrial-public-relations firm so I had more control of my time. I was driving one moonlit evening on Interstate 80/90 from Chicago to South Bend, Indiana, on a business assignment; I can remember almost the exact date because it was during the First National Congress on Optimum Population and Environment (COPE), held in Chicago during the week of June 7 to 11. I had the radio tuned to a talk show on which several people from COPE were being interviewed. Two things stood out. One was a diatribe by one of

the COPE interviewees to the effect that the U.S. was overpopulated, that population was growing too fast, and that we should have zero population growth. My knowledge of population growth was practically nil at that time but, even so, this comment struck me as wrong; it had always been my common-sense, instinctive understanding that population growth had fueled progress in America. The other was the offhand comment of a woman who dismissed abortion as just the removal of a “piece of tissue” or, as she put it in her refined way, “tis-you.” Somehow, I had managed to stumble through more than 18 years of schooling without taking a course in biology but, even so, this didn’t strike me as accurate or realistic.

So I decided to write a book about U.S. population and abortion. Published by Arlington House in 1977, *Grow or Die!* made the case that U.S. population growth, by definition, increases the most important resource of all—people, who, as Julian Simon told us, are the ultimate resource. As a result, U.S. population growth produces economic progress, spurs resource development, creates environmental improvement, advances social welfare, and promotes political freedom. The book maintained that the country was facing not a “population bomb” but a “population bust” and the only explosion was in population propaganda. In addition, the book declared that the “ideology of population control is concerned not so much with population as with *control* . . . The population-control movement clothes itself in moralisms to justify its substitution of ‘quality of life’ for the sanctity of life. But it simultaneously attempts to destroy the right to life, the sacredness of the family, the inviolability of the person, the right to parenthood, the primacy of heterosexual relations, and every other moral principle of a civilized, humane, and progressive society.”

*Grow or Die!* sold well to libraries around the country, owing to a favorable review in *Library Journal*: “Given the current wisdom that population growth inevitably leads to disaster, it takes courage to argue the very opposite: that in America the best solution to economic, environmental, and resource-depletion problems is a growing population. And more shocking than this hypothesis is the convincing case that Weber makes to support it . . . This book is bound to put the zero-growthers on the defensive. Recommended.”

Pro-lifers approved of *Grow or Die!* as shown by the following excerpt from a review in *National Right to Life News*: “The thesis that we are on the verge of unlimited population increase, while our resources remain finite and even shrink, has led many to believe that some very drastic measures will be necessary in the near future to check human increase . . . Weber has provided us with a powerful antidote to such a mentality. He has assembled

and blended a wealth of arguments, figures, and facts. It is must reading on the subject.” Writing in *National Review*, M. Stanton Evans stated that in “a saner age, James A. Weber’s refreshing book on population, *Grow or Die*, might seem superfluous. In our epoch, it is essential reading for survival . . . Most important of all, Weber attacks the authoritarian mentality that undergirds so much of the populationist crusade. The drive for abortion, sterilization, and euthanasia, he makes plain, is a drive for god-like powers over life and death, and over the question of who shall be allowed to ‘breed’ and who shall not. His summary of these issues is as good as any I have seen.”

*Grow or Die!* was, however, not lacking for critics, as evidenced by this excerpt from a *Kirkus* review: “The bottom line of this misleading tract is a jeremiad against abortion and a pitch for immediate passage of a Right to Life Amendment.” And the *New York Times* commented: “Exasperating . . . James Weber wants to include every reason why population growth is good for the world . . . at times you wait for Weber to explain how a burgeoning population will make your teeth whiter . . . Weber’s most effective accomplishment is the compilation of statistics and opinion to counteract the ‘population bomb’ fears that are so prevalent. But the book overreaches and diffuses its message, so that *Grow or Die!* fails to achieve the important goal of getting us to think about the consequences of a diminishing population.”

*Grow or Die!* is long out of print, but used copies are available on the Internet so those who would like to read the book and make up their own minds can do so by ordering it on websites such as *amazon.com*, *bn.com*, or *alibris.com*. I believe readers will find that I would have to change relatively few words in the book to bring it up to date. The same cannot be said, however, for some promoters of population control. In 1978, for example, only six years after the Commission on Population Growth and the American Future published its report recommending zero population growth, Dr. Charles F. Westoff, executive director of the commission, effectively repudiated it. Westoff stated in a *Planned Parenthood Federation of America* journal article that the government might have to start *paying people* to maintain the population level, adding that this “seems ironic and even ludicrous in view of our concerns about [population growth] only a few years ago.”

This reversal is a distant echo of a similar admission nearly two centuries ago by the Rev. Thomas Malthus, the pied piper of overpopulation. Malthus had attended a lecture in London, in which Benjamin Franklin boasted that the American population was doubling every 25 years. Believing this growth rate of 3 percent a year was unsustainable, Malthus published in 1798 his

famous book titled *The Principles of Population*. In that book, English demographer Colin Clark tells us, Malthus maintained that

the whole history of the world indicated that populations grew rapidly until they reached “the limit of subsistence,” after which their numbers were forcibly held down by “vice and misery,” unless they adopted what to him seemed the rational solution, namely deferment of marriage. Of any other form of restriction of conception he strongly disapproved; modern methods of contraception were of course unknown in his time, but in the 1817 edition of his book, he had some curious prevision of them, and foresaw striking consequences: “If it were possible for each married couple to limit by wish the number of their children, there is certainly reason to fear that the indolence of the human race would be very greatly increased; and that neither the population of individual countries, nor of the whole earth, would ever reach the proper and natural extent.”

The reality of this Malthusian revision is today obscured by a fact that is never explained in discussions of U.S. population growth—namely, that we are living in the midst of what historians call a discontinuity. Much is made of the country’s rapid population growth over the past several centuries. The implication is that this growth has been due to exploding birth rates, but the opposite is the case: Birth rates have *declined* over this period. But population growth still occurred, because childhood death rates fell first and faster.

Back in the 17th century; Americans had to have an average of eight children for two of them to survive through adulthood and replace their parents; the other six children died from childhood diseases or other natural causes before reaching adulthood. People had this high number of children because they understood and accepted the fact that it was the minimum necessary to prevent population decline. Taking into account that only two of eight births per family resulted in adults who lived through their reproductive years, the birth rate was essentially the same as the death rate and population was either stable or growing relatively slowly at this time.

But with improvements in medical care and living conditions, the number of childhood deaths began to decrease, resulting in an increasing number of children living through adulthood. As this process continued and parents began to realize over time that more and more of their children were surviving through adulthood, they began having fewer children and the birth rate began to fall. But, because of the time lag between the declining childhood death rate and the falling birth rate, population continued to grow.

The historical discontinuity is that this long-term U.S. population growth process has now come to an end. The death rate of children born in this country has essentially been reduced to zero—so, for the first time in the nation’s history, no further reductions can be expected from this source. As

a result, the U.S. can no longer achieve population growth by, in effect, “backing” into it through drops in childhood death rates. Consequently, a decline in birth rates now directly reduces the rate of the country’s population growth. And decline is exactly what U.S. birth rates have continued to do for the past half century, as parents have found that they can replace themselves by having only two children. Birth rates per 1,000 population have decreased from 25 in 1955 to a record low of 13.9 in 2003. Even though the population was about 50 percent larger, there were fewer births in 2003 (4,021,000) than there had been in 1955 (4,097,000). The country’s total fertility rate—the estimated number of births per woman—decreased from 3.71 in 1955 to a low of 1.79 in 1975. The rate increased to 2.08 in 1990 but then dropped to 1.97 by 1997; in 2002 it was 2.01. For nearly 30 years, the U.S. total fertility rate has been below the rate of 2.1 births per woman which is necessary for a population to replace itself.

It is, of course, impossible to predict with absolute certainty what direction the U.S. total fertility rate will take in the future. For this reason, the United Nations Population Division in its *World Population Prospects: The 2002 Revision* provides high, medium, and low variants of total fertility rates and other data related to population growth. Based on the 2000-2005 period, the low variant best conforms to actual U.S. population experience. Under this variant, the U.S. total fertility rate declines to 1.35 in 2050. U.S. population grows ever more slowly from today’s 293 million to 348 million in 2030, inches up to 356 million in 2045, and then begins to decline in 2050.

If this population-growth slowdown happens, it will have catastrophic consequences. Among its results will be ever more serious worker shortages, which eventually will bring economic growth to a halt. One possible solution to the worker shortages would be to expand immigration. In February 2000, prior to the onset of the recent economic downturn, Federal Reserve Board Chairman Alan Greenspan embraced this solution, stating that “there is an effective limit to new hiring, unless immigration is uncapped.” But immigration was already playing an increasing role in labor-force growth at the time, and the potential political, social, and national-security problems that might be caused by major expansion could be impossible to resolve even in the timeframe of half a century.

There is one and only one permanent, long-term solution to the population problem. This is to increase total fertility rates so U.S. population continues to grow rather than decline. A growing population is good for the country because more people can do more things better. This has been the experience of the American people for more than two centuries and there is

every reason to believe that it will continue to be the American experience as population grows in the future. Population growth creates a need to change, to improve, to find better ways of doing things. No other force on earth provides greater motivation to discard old, outmoded customs and adopt new, innovative methods than the demographic pressure of increasing numbers of people for whom room must be made at the table. Population growth is the engine of economic progress, providing the growing numbers of people necessary to develop new knowledge and technology, create expanding markets, solve environmental problems, produce greater savings, and increase labor-force flexibility. Most important, population growth both stimulates and reflects faith in the future, an intangible yet absolutely necessary precondition of economic advancement.

That the country may be ready to hear this message is evidenced by an editorial that appeared in, of all places, the *Washington Post*. Titled "The Baby Bust," the July 6, 2003 editorial stated: "The U.S. birth rate has been dropping and is now just below replacement level. That it remains among the highest in the developed world is not much consolation: Most of the rich nations of Europe, as well as Japan, are facing a demographic crisis because of low birthrates . . . Countries with shrinking populations may stagnate economically, intellectually, and militarily. If future generations are to carry on the American vibrancy and dynamism, the country must be prepared to embrace more babies, and more adults from around the world."

The moral is clear: Growth is not something that can be accepted or rejected without consequences. It is rather an inexorable law of life that applies to human populations as well as individual human beings. Growing is to be desired and accepted, not feared and rejected. Growing hurts. But not growing hurts even more. Wherever there are people, of course, there are problems. But this is a description of the human condition, not a prescription for population control. In a free society, people solve more problems than they make. And, in turn, it is precisely in solving these problems that a humane, just, and good culture is created, a culture of life in which all people exist as individual persons sharing in a more abundant life.

**L**et us tell the tale of two populations, one representing the culture of life and the other the cult of death. In the culture of life, population growth is gratefully accepted and whatever changes are necessary to accommodate additional people are made. And, in doing whatever it takes to accommodate more people, the culture of life becomes the recipient of unforeseen benefits. It is provided with an incentive to develop new ways of doing things that are more productive than the old. It inculcates within itself the habit of



creatively responding to new challenges as opportunities for improvement instead of problems to be avoided. Most significant of all, the culture of life develops a greater humaneness because it becomes ever more grounded in the basic principle of service to others rather than self.

By contrast, the cult of death rejects population growth and resists changes necessary to accommodate additional people. The cult of death places a low value on human life because it is unwilling to effect the changes necessary to accommodate more people. But, in refusing to accept more people, it suffers unforeseen consequences. It loses the incentive to develop new and more productive ways of doing things. It inculcates the habit of reacting negatively to human needs. It responds destructively to new challenges by eliminating people instead of solving problems. Most significant of all, the cult of death becomes less humane because it increasingly is based on service to self, not others.

Inevitably, both the culture of life which accepts population growth and the cult of death which rejects it will be confronted with crises. When a crisis strikes, which population will be better able to surmount it? Because of its past efforts to improve as a result of population growth, the culture of life will respond positively to the crisis, developing constructive solutions that will enable it to transcend the obstacles in its path. But the cult of death will have no ingrained habit of positive response on which to rely. Consequently, it will react negatively to the crisis and eventually self-destruct.

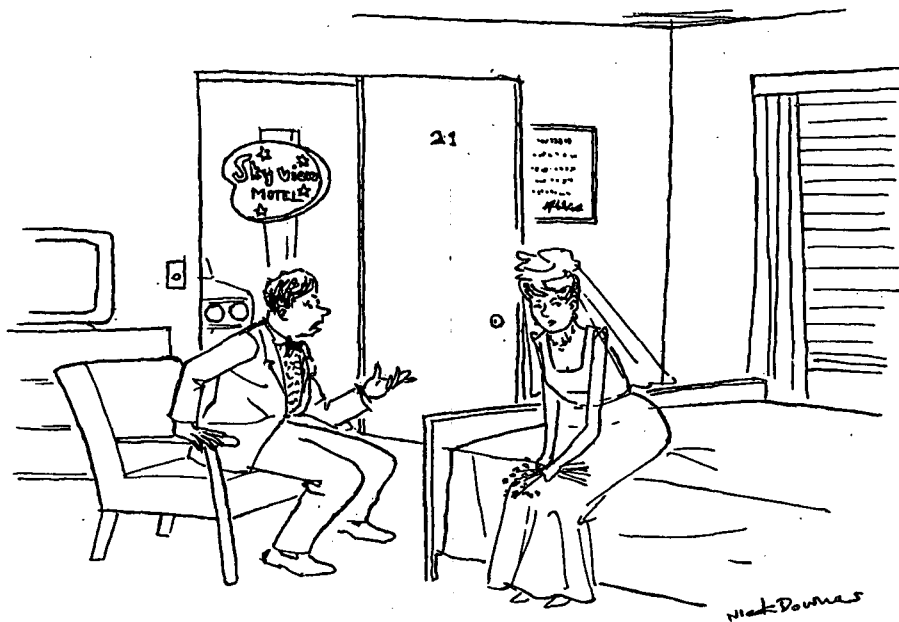
The same story of population growth and decline is told in the Bible. In Genesis 1:28, we learn that population growth is good. God commands his newly created male and female to “be fruitful and multiply and fill the earth.” Psalm 127:3-5 states, “Behold, children are a gift of the Lord; the fruit of the womb is a reward. Like arrows in the hand of a warrior, so are the children of one’s youth. How blessed is the man whose quiver is full of them.” We also learn that population decline is bad. Proverbs 14:28 reads: “In a multitude of people is a king’s glory, but in the dearth of people is a prince’s ruin.” In Leviticus 26:22, God warns the Israelite nation: “I will let loose the wild beasts against you, to rob you of your children and wipe out your livestock, till your population dwindles away.” In Deuteronomy 28:62, Moses cautions the Israelites that “of you who were numerous as the stars in the sky, only a few will be left, because you would not hearken to the voice of the Lord, your God.”

Population growth was also a crucial issue in the founding of the United States: One of the reasons the founding fathers opposed King George III was that he, in the words of the Declaration of Independence, “endeavored to prevent the population of these states.” Moreover, We the People, it must

always be remembered, founded the country on the principle of limited government, not limited people.

Later on, a desire for population growth drove the criminalization of abortion in America: In his recent book, *The Empty Cradle: How Falling Birthrates Threaten World Prosperity and What To Do About It*, Phillip Longman reports that “one of the leaders of the 19th-century anti-abortion movement, Edwin M. Hale, [wrote] in his 1867 book, *The Great Crime of the Nineteenth Century*, [that] abortion had to be made illegal because ‘it lessens the population of a state.’” It was only with the dissemination of overwhelming “population bomb” propaganda that abortion became legal in this country. But now, an increasing understanding of the critical need for population growth can help the pro-life movement to once again stop abortion—and reclaim the soul as well as insure the survival of America.

So what about those “Yes, but . . .” pro-life folks who worry that there may be too many people? They need to hear the plain truth that we need more, not fewer, people. To be pro-life—in the broadest (culture-of-life) as well as the narrowest (anti-abortion) sense, is to be pro-population growth.



*“When, Janice? When did our marriage start to go downhill?”*

# Demographics and the Culture War

Stanley Kurtz

We moderns have gotten used to the slow, seemingly inexorable dissolution of traditional social forms, the family prominent among them. Yet the ever-decreasing size of the family may soon expose a fundamental contradiction in modernity itself. Fertility rates have been falling throughout the industrialized world for more than 30 years, with implications that are only just now coming into view. Growing population has driven the economy, sustained the welfare state, and shaped modern culture. A declining population could conceivably put the dynamic of modernization into doubt.

The question of the cultural and economic consequences of declining birthrates has been squarely placed on the table by four new books: *The Empty Cradle: How Falling Birthrates Threaten World Prosperity and What to Do About It*, by Phillip Longman; *Fewer: How the New Demography of Depopulation Will Shape Our Future*, by Ben Wattenberg; *The Coming Generational Storm: What You Need to Know About America's Economic Future*, by Laurence J. Kotlikoff and Scott Burns; and *Running On Empty: How the Democratic and Republican Parties Are Bankrupting Our Future and What Americans Can Do About It*, by Peter G. Peterson. Longman and Wattenberg concentrate on the across-the-board implications of demographic change. Kotlikoff and Burns, along with Peterson, limn the economic crisis that could come in the absence of swift and sweeping entitlement reform.

Taken together, these four books suggest that we are moving toward a period of substantial social change whose tantalizing ideological implications run the gamut from heightened cultural radicalism to the emergence of a new, more conservative cultural era.

## New demographics

Drawing on these books, let us first get a sense of the new demography. The essential facts of demographic decline discussed in all four are not in doubt. Global fertility rates have fallen by half since 1972. For a modern nation to replace its population, experts explain, the average woman needs to have 2.1 children over the course of her lifetime. Not a single industrialized nation today has a fertility rate of 2.1, and most are well below replacement level.

In Ben Franklin's day, by contrast, America averaged eight births per

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woman. American birth rates today are the highest in the industrialized world—yet even those are nonetheless just below the replacement level of 2.1. Moreover, that figure is relatively high only because of America's substantial immigrant population. Fertility rates among native born American women are now far below what they were even in the 1930s, when the Great Depression forced a sharp reduction in family size.

Population decline is by no means restricted to the industrial world. Remarkably, the sharp rise in American fertility rates at the height of the baby boom—3.8 children per woman—was substantially above Third World fertility rates today. From East Asia to the Middle East to Mexico, countries once fabled for their high fertility rates are now falling swiftly toward or below replacement levels. In 1970, a typical woman in the developing world bore six children. Today, that figure is about 2.7. In scale and rapidity, that sort of fertility decline is historically unprecedented. By 2002, fertility rates in 20 developing countries had fallen below replacement levels. 2002 also witnessed a dramatic reversal by demographic experts at the United Nations, who for the first time said that world population was ultimately headed down, not up. These decreases in human fertility cover nearly every region of the world, crossing all cultures, religions, and forms of government.

Declining birth rates mean that societies everywhere will soon be aging to an unprecedented degree. Increasing life expectancy is also contributing to the aging of the world's population. In 1900, American life expectancy at birth was 47 years. Today it is 76. By 2050, one out of five Americans will be over age 65, making the U.S. population as a whole markedly older than Florida's population today. Striking as that demographic graying may be, it pales before projections for countries like Italy and Japan. The United Nations estimates that by 2050, 42 percent of all people in Italy and Japan will be aged 60 or older.

Can societies that old sustain themselves? That is the question inviting speculation. With fertility falling swiftly in the developing nations, immigration will not be able to ameliorate certain implications of a rapidly aging West. Even in the short or medium term, the aging imbalance cannot be rectified except through a level of immigration far above what Western countries would find politically acceptable. Alarmed by the problems of immigration and assimilation, even famously tolerant Holland has begun to turn away immigrants en masse—and this before the recent murder of filmmaker Theo Van Gogh, which has subsequently forced the questions of immigration and demography to the center of the Dutch political stage.

In short, the West is beginning to experience significant demographic changes, with substantial cultural consequences. Historically, the aged have

made up only a small portion of society, and the rearing of children has been the chief concern. Now children will become a small minority, and society's central problem will be caring for the elderly. Yet even this assumes that societies consisting of elderly citizens at levels of 20, 30, even 40 or more percent can sustain themselves at all. That is not obvious.

Population decline is also set to ramify geometrically. As population falls, the pool of potential mothers in each succeeding generation shrinks. So even if, well into the process, there comes a generation of women with a higher fertility rate than their mothers', the momentum of population decline could still be locked in. Population decline may also be cemented into place by economics. To support the ever-growing numbers of elderly, governments may raise taxes on younger workers. That would make children even less affordable than they are today, decreasing the size of future generations still further.

If worldwide fertility rates reach levels now common in the developing world (and that is where they seem headed), within a few centuries, the world's population could shrink below the level of America's today. Of course, it's unlikely that mankind will simply cease to exist for failure to reproduce. But the critical point is that we cannot reverse that course unless something happens to substantially increase fertility rates. And whatever might raise fertility rates above replacement level will almost certainly require fundamental cultural change.

**W**hy does modern social life translate into the lower birth rates that spark all those wider implications? Urbanization is one major factor. In a traditional agricultural society, children are put to work early. They also inherit family land, using its fruits to care for aging parents. In a modern urban economy, on the other hand, children represent a tremendous expense, and one increasingly unlikely to be returned to parents in the form of wealth or care. With the growth of a consumer economy, potential parents are increasingly presented with a zero-sum choice between children and more consumer goods and services for themselves.

Along with urbanization, the other important factor depressing world fertility is the movement of women into the workforce—and the technological changes that have made that movement possible. By the time many professional women have completed their educations, their prime childbearing years have passed. Thus, a woman's educational level is the best predictor of how many children she will have. As Wattenberg shows, worldwide, the correlation between falling female illiteracy and falling female fertility is nearly exact. And as work increasingly becomes an option for women, having a

child means not only heavy new expenses, but also the loss of income that a mother might otherwise have gained through work.

Technological change also stands behind the movement of women into the workforce. In a modern, knowledge-based economy, women suffer no physical disadvantage. The ability of women to work in turn depends upon the capacity of modern contraception, along with abortion, to control fertility efficiently. The sheer breadth and rapidity of world fertility decline implies that contraceptive technology has been a necessary condition of the change. Before fertility could be reliably controlled through medical technology, marriage and accompanying strictures against out-of-wedlock births were the key check on a society's birth rate. Economic decline meant delayed marriage, and thus lower fertility. But contraceptive technology now makes it possible to efficiently control fertility within marriage. This turns motherhood into a choice. And what demographic decline truly shows is that when childbearing has become a matter of sheer choice, it has become less frequent.

The movement of population from tightly knit rural communities into cities, along with contraception, abortion, and the related entry of women into the workforce, explain many of the core cultural changes of the postmodern world. Secularism, individualism, and feminism are tied to a social system that discourages fertility. If a low-fertility world is unsustainable, then these cultural trends may be unsustainable as well. Alternatively, if these cultural trends cannot be modified or counterbalanced, human population appears on course to shrink ever more swiftly.

#### **New economics?**

Yet there are signs that the current balance of social forces is not sustainable and may well give way sooner rather than later. That, at any rate, is the view of Longman, Peterson, Kotlikoff and Burns. (Wattenberg is somewhat more sanguine about our ability to weather the coming challenge, although he does not directly address the more dystopic scenarios Peterson, Kotlikoff, and Burns float.) Broadly speaking, both the free market and the welfare state assume continual population growth. "Pay as you go" entitlements require ever-larger new generations to finance the retirement of previous generations. Longman argues that economic growth itself depends upon ever-increasing numbers of consumers and workers.

Population growth, he argues, drove the Industrial Revolution, and there has never been economic growth under conditions of population decline. Thus, for example, he ascribes Japan's current economic troubles to its declining fertility. And though Longman doesn't point to Germany, it is

interesting to note that this particular low-fertility country is also struggling economically to the point of revisiting the famously shorter European work week—a phenomenon obviously related to the struggle to reduce the pensions promised to an aging population and premised on more younger workers than actually came to exist.

Both Longman and Wattenberg raise the question of whether markets need population growth in order to thrive. As Wattenberg puts the point, it hardly makes sense to invest in a business whose pool of potential customers is shrinking. That much might be true, even if entitlement programs like Social Security and Medicare were fully funded. But Social Security and Medicare are not fully funded. On the contrary, America's massive unfunded entitlement programs have the potential to spark a serious social and economic crisis in the not too distant future. And the welfare state in the rest of the developed world is on even shakier economic ground.

The Congressional Budget Office estimates that the combined cost of Medicare and Medicaid alone will consume a larger share of the nation's income in 2050 than the entire federal budget does today. By 2050, the combined cost of Social Security, Medicare, Medicaid, and interest on the national debt will rise to 47 percent of gross domestic product—more than double the level of expected federal revenues at the time. Without reform, all federal spending would eventually go to seniors. Obviously, the system will correct before we reach that point. But how?

Already, senior citizens vote at very high rates—reacting sharply to any potential cuts in benefits. As the baby boomers retire, the political weight of senior citizens will be vastly greater than it already is. Proposed pension reforms brought down French and Italian governments in the 1990s. Even China has been forced by large-scale protests and riots to back off from attempts to reduce retirement benefits.

In the absence of serious reform, we may be in for an economic “hard landing.” Peterson, Kotlikoff, and Burns warn of a spiraling financial crisis that could even lead to worldwide depression. Former Federal Reserve Board chairman Paul Volcker sees a 75 percent chance of an economic crisis of some sort within the next five years.

What might such a “meltdown” look like? Peterson, Kotlikoff, and Burns spin out essentially the same scenario. The danger is that investors might at some point decide that the United States will never rein in its deficit. Once investors see America's deficits as out of control, they will assume their dollar-based securities will be eroded by inflation, higher interest rates, and a serious decline in the stock market. Should a loss of confidence cause leading investors to pull their money out of U.S. securities, it could set off a

run on the dollar. That would create the very inflation, interest rate increases, and market decline that investors feared in the first place. Such has already happened in Argentina, which Kotlikoff and Burns use as a paradigm in which loss of investor confidence brought down the economy in a kind of self-fulfilling prophesy. The danger is that the United States and the rest of the industrialized world may already have entered the sort of debt trap common among Third World nations. A rapidly aging Japan is even more vulnerable than America, say Kotlikoff and Burns. They add that, should investors looking at teetering modern welfare states and the long-term demographic crisis bring down any of the advanced economies, the contagion could spread to others.

Are we really headed for a worldwide economic meltdown that will leave tens of millions of aging seniors languishing in substandard nursing homes while the rest of us suffer from long years of overtaxation, rising crime, and political instability? Kotlikoff and Burns say the prospect is all too real, and Peterson implies as much.

**T**he new information-based economy will likely be somewhat higher than in the past. Higher rates of economic growth will bring in enough revenue to offset the rising costs of entitlements. Medical advances are keeping older workers healthy and productive. Raise the retirement age by a couple of years, say many, and the expanded workforce would boost government revenues enough to offset shrinkage in the number of younger workers.

Peterson, Kotlikoff, and Burns say these fixes won't work. Despite increased life expectancy, older workers have generally been retiring earlier. It would be politically difficult to force them in the other direction. And according to Kotlikoff and Burns, delayed retirement produces negligible gains for the economy. When people work longer, they save less because they have fewer years of retirement to finance. The effects cancel out. Overall investment in the economy is reduced, as is the real wage base available for government taxation.

Kotlikoff and Burns also argue that the apparent productivity gains of the late nineties were illusory. Peterson argues that, even if productivity gains prove real, the benefit for the deficit will be canceled out by increases in discretionary spending.

The truth is, no one knows what future productivity will be. There's a chance rates will turn higher on into the future, yet it seems imprudent to rely on luck with the stakes so high. And as Peterson, Kotlikoff, and Burns point out, so long as Social Security is indexed to wages, revenue gains from higher productivity will be canceled out by increased benefits. Even an ideal



growth scenario cannot solve the entitlement crisis unless Social Security is indexed to prices rather than wages. It would seem that politically difficult reform and significant de facto benefit cuts are inevitable even on the most optimistic of reckonings. And the optimistic scenarios themselves seem strained.

What about the pessimistic scenarios? It would be foolish to predict with certainty an economic “hard landing,” much less world-wide depression. Still, the case that these are at least real possibilities seems strong. Even without a “meltdown,” long-term prospects for the economy and the welfare state in rapidly aging societies seem uncertain at best. How exactly will nations like Japan or Italy be able to function when more than 40 percent of their citizens are over 60? Hard landing or not, and the political power of the elderly notwithstanding, there seems a very real chance that America’s entitlement programs will someday be substantially scaled back. But what sort of struggle between the old and the young will emerge in the meantime, and how will a massive and relatively impoverished older generation cope with the change?

The *Coming Generational Storm* and *Running On Empty* are important books. Whether or not the reader is ultimately persuaded by these premonitions of economic peril, it’s time the United States had a serious debate over entitlement reform. Nonetheless, there is also something problematic in the way that Peterson, Kotlikoff, and Burns place the lion’s share of blame for our problems on our political leadership. True, both parties deserve to be chastised for running from the entitlement crisis. Yet even if Peterson, Burns, and Kotlikoff are right about that, they put too much blame on politicians for what broader cultural and demographic forces have wrought. Peterson nods to demography as the background condition for the deficit dilemma yet barely explores the link. Kotlikoff and Burns have much more to say about the demographic details yet treat our changed fertility patterns as irreversible and therefore irrelevant to policy.

That is a questionable assumption. The growing expense of child-rearing, for example, plays a key role in holding birth rates down. Peterson, Kotlikoff, and Burns are quick to criticize the push for lower taxes, yet rising taxes arguably helped to deepen the population decline at the root of our economic dilemma. In 1955, at the height of the baby boom, a typical one-earner family paid 17.3 percent of its income in taxes. Today, a median family with one paycheck pays 37.6 percent of its income in taxes—39 percent if it’s a two-earner couple. So the new demography has put us into an economic trap. High taxes depress birth rates, but low taxes expand demographically driven deficits still further.

Precisely because we are at an unprecedented demographic watershed, politicians have no model for taking these factors into account. Political leaders in an earlier era could take it for granted that ever-growing populations would keep the welfare state solvent and the economy humming. It's not surprising that neither the public nor politicians have been able to adjust to the immense, unintended, and only gradually emerging social consequences of postmodern family life. With their eyes firmly fixed on the underlying demographic changes, Wattenberg and Longman are less disposed to brow-beat politicians than are Peterson, Kotlikoff, and Burns.

**A new conservatism?**

In the matter of the new demography and its social consequences, the work of Ben Wattenberg holds a place of special honor. In 1987, 17 years before the publication of *Fewer*, Wattenberg wrote *The Birth Dearth*. That book was the first prominent public warning of a crisis of population decline. Yet many rejected its message. In an era when a "population explosion" was taken for granted, the message of *The Birth Dearth* flew squarely in the face of received wisdom. Subsequent events, however, have proved Wattenberg right.

Despite that vindication, Wattenberg's own views have changed somewhat. Whereas *The Birth Dearth* advocated aggressive pro-natalist policies, today Wattenberg seems to have all but given up hope that fertility rates can be substantially increased. On the one hand, he thinks it unlikely that worldwide population can maintain a course of shrinkage without end. On the other hand, he sees no viable scenario by which this presumably unsustainable trend might be reversed.

In *The Empty Cradle*, Philip Longman takes a different view. Longman believes that runaway population decline may be halted, yet he understands that this can be accomplished only by way of fundamental cultural change. The emerging demographic crisis will call a wide range of postmodern ideologies into question. Longman writes as a secular liberal looking for ways to stabilize the population short of the traditionalist, religious renewal he fears the new demography will bring in its wake.

Given the roots of population decline in the core characteristics of postmodern life, Longman understands that the endless downward spiral cannot be reversed without a major social transformation. As he puts it, "If human population does not wither away in the future, it will be because of a mutation in human culture." Longman draws parallels to the Victorian era and other periods when fears of population decline, cultural decadence, and fraying social safety nets intensified family solidarity and stigmatized

abortion and birth control. Longman also notes that movements of the 1960s, such as feminism, environmentalism, and the sexual revolution, were buttressed by fears of a population explosion. Once it becomes evident that our real problem is the failure to reproduce, these movements and attitudes could weaken.

Longman's greatest fear is a revival of fundamentalism, which he defines broadly as any movement that relies on ancient myth and legend, whether religious or not, "to oppose modern, liberal, and commercial values." Religious traditionalists tend to have large families (relatively speaking). Secular modernists do not. Longman's fear is that, over time, Western secular liberals will shrink as a portion of world population while, at home and abroad, traditionalists will flourish. To counter this, and to solve the larger demographic-economic crisis, Longman offers some very thoughtful proposals for encouraging Americans to have more children. Substantial tax relief for parents is the foundation of his plan.

Longman has thought this problem through very deeply. Yet, in some respects, his concerns seem odd and exaggerated. He lumps American evangelicals together with Nazis, racists, and Islamicists in the same supposed opposition to all things modern. This is more interesting as a specimen of liberal prejudice than as a balanced assessment of the relationship between Christianity and modernity. Moreover, the mere fact that religious conservatives have more children than secular liberals is no guarantee that those children will remain untouched by secular culture.

Still, Longman rightly sees that population decline cannot be reversed in the absence of major cultural change, and the prospects of a significant religious revival must not be dismissed. In a future shadowed by vastly disproportionate numbers of poor elderly citizens, and younger workers struggling with impossible tax burdens, the fundamental tenets of postmodern life might be called into question. Some will surely argue from a religious perspective that mankind, having discarded God's injunctions to be fruitful and multiply, is suffering the consequences.

Yet we needn't resort to disaster scenarios to see that our current demographic dilemma portends fundamental cultural change. Let us say that in the wake of the coming economic and demographic stresses, a serious secular, pronatalist program of the type proposed by Longman were to take hold and succeed. The result might not be "fundamentalism," yet it would almost certainly involve greater cultural conservatism. Married parents tend to be more conservative, politically and culturally. Predictions of future dominance for the Democratic Party are based on the increasing demographic prominence of single women. Delayed marriage lowers fertility rates and

moves the culture leftward. Reverse that trend by stimulating married parenthood, and the country grows more conservative—whether in a religious mode or not.

But can the cultural engines of postmodernity really be thrown into reverse? After all, people don't decide to have children because they think it will help society. They act on their personal desires and interests. Will women stop wanting to be professionals? Is it conceivable that birth control might become significantly less available than it is today? It certainly seems unlikely that any free Western society would substantially restrict contraception, no matter how badly its population was dwindling.

Yet it is important to keep in mind that decisions about whether and when to have children may someday take place in a markedly different social environment. As mentioned, children are valued in traditional societies because of the care they provide in old age. In the developed world, by contrast, old age is substantially provisioned by personal savings and the welfare state. But what will happen if the economy and the welfare state shrink significantly? Quite possibly, people will once again begin to look to family for security in old age—and childbearing might commensurately appear more personally necessary.

If a massive cohort of elderly citizens find themselves in a chronic state of crisis, the lesson for the young will be clear. Wattenberg notes that pro-natalist policies have failed wherever they've been tried. Yet in conditions of serious economic stress and demographic imbalance, sweeping pro-natalist plans like those offered by Longman may in fact become workable. That would usher in a series of deeper cultural changes, most of them pointing society in a more conservative direction.

Then again, we may finesse the challenge of a rapidly aging society by some combination of increased productivity, entitlement reform, and delayed retirement. In that case, fertility will continue to fall, and world population will shrink at compounding speed. The end result could be crisis or change further down the road, or simply substantial and ongoing reductions in world population, with geostrategic consequences difficult to predict. One way or the other, it would seem that our social order is in motion.

#### **New eugenics?**

The emerging population implosion, then, may be taken in part as a challenge to Francis Fukuyama's "end of history" thesis. As Fukuyama himself came to recognize in his 2002 book, *Our Posthuman Future*, the greatest challenge to the "end of history" idea is the prospect that biotechnology might work a fundamental change in human nature and society. In the form

of modern contraception, it may already have done so. And contraception could be only the beginning.

Like others who warn of the dangers of biotechnology, Fukuyama is most concerned about the prospect that genetic engineering could undermine the principles of liberty and equality. If children are genetically engineered for greater health, strength, or intellectual capacity, erstwhile liberal society could be plunged into a brave new world of genetically-based class hierarchy.

That is a grave concern, yet there may still be others. The disruptive effects of biotechnology will play out in a depopulating world—perhaps a world shadowed by economic and cultural crisis. So the immediate challenge of biotechnology to human history is the prospect that the family might be replaced by a bioengineered breeding system. Artificial wombs, not the production of supermen, may soon be the foremost social challenge posed by advancing science. Certainly, there is a danger that genetic engineering may someday lead to class distinctions. But the pressure on the bioengineers of the future will be to generate population. If and when the prospect of building “better” human beings becomes real, it will play out in the context of a world under radical population pressure. That population crunch will likely shape the new genetics at every turn.

With talk of artificial wombs and the end of the family, we are a long way from the idea of a conservative religious revival. The truth is, the possibility of a population crisis simultaneously raises the prospect of conservative revival and eugenic nightmare. In his landmark book on Western family decline, *Disturbing the Nest*, sociologist David Popenoe traces out contrasting ideal-typical scenarios by which the Western family might be either strengthened or further eroded. Looking at these scenarios, it's evident that a population crisis could trigger either one.

What could reverse the decline of the Western nuclear family? Anything that might counter the affluence, secularism, and individualism that led to family decline in the first place, says Popenoe. Economic decline could force people to depend on families instead of the state. A religious revival could restore traditional mores. And a revised calculation of rational interest in light of social chaos could call the benefits of extreme individualism into question. We've already seen that a demographic-economic crisis could invoke all three of these mechanisms.

But what about the reverse scenario, in which the nuclear family would entirely disappear? According to Popenoe, the end of the nuclear family would come through a further development of our growing tendency to separate pair-bonding from sex and procreation. Especially in Europe, marriage

is morphing into parental cohabitation. And in societies where parents commonly cohabit, the practice of “living alone together” is emerging. There unmarried parents remain “together” yet live in separate households, only one of them with a child. And of course, intentional single motherhood by older unmarried women—Murphy Brown-style—is another dramatic repudiation of the nuclear family. The next logical step in all this would be for single mothers to turn their children over to some other individual or group for rearing. That would spell the definitive end of the nuclear family.

A prolonged economic crisis accompanied by widespread concern over depopulation would undoubtedly place feminism under pressure. Yet it’s unlikely that postmodern attitudes toward women, work and family could be swept aside—or even significantly modified—without a major cultural struggle. A eugenic regime would be the logical way to safeguard feminist goals in a depopulating world, and there is ample precedent for an alliance between eugenics and feminism.

After all, birth control pioneers like Margaret Sanger in the United States and Marie Stopes in England blended feminism and eugenics at the outset of the twentieth century. As birth control came into wide use, fertility sharply declined—particularly among the upper classes, which had access to the technology. Alarmed by the relative decline of the elites, Teddy Roosevelt urged upper-class women to have more children. Even progressives began to question their commitment to women’s rights. Margaret Sanger’s response was to promote a eugenic regime of forced sterilization and birth control among the unfit. Instead of urging “the intelligent” to have more children, Sanger advocated the suppression of births among “the insane and the blemished.”

The women’s movement of the 1960s forged still more links between feminism and eugenics. Shulamith Firestone’s 1970 classic, *The Dialectic of Sex*, argued that women would truly be free only when released from the burden of reproduction. Today, as scientists work to engineer embryos in the laboratory, while others devise technology to save premature babies at ever earlier stages of development, the possibility that a viable artificial womb will someday be created has emerged. While feminists are divided on the issue, many look forward to the prospect.

Thus, if faced with an ultimate choice between feminist hopes of workplace equality with men and society’s simultaneous need for more children, it is not hard to imagine that some on the cultural left would opt for technological outsourcing—surrogacy in various forms—as a way out. To some extent, this phenomenon has already begun: Consider the small but growing numbers of older, usually career women who choose and pay younger women

to carry babies for them. As with Sanger and Firestone, eugenics may be seen by some as the “logical” alternative to pressure to restore the traditional family.

Christine Rosen, who has usefully thought through the prospects and implications of “ectogenesis,” suggests that objections to the human exploitation inherent in surrogacy could actually propel a shift toward artificial wombs. Of course, that would only complete the commodification of childbirth itself—weakening if not eliminating the parent-child bond. And if artificial wombs one day become “safer” than human gestation, insurers might begin to insist on our not giving birth the old-fashioned way.

Such dark possibilities demand serious intellectual attention. Neither principled objections to tampering with human nature nor instinctive horror at the thought of it suffice to meet the challenge of the new eugenics. Philosophy and instinct must be welded to a compelling social vision. The course and consequences of world population decline offer just such a vision. In the end, philosophical principles and reflexive horror are guardians of the social order, yet without a lively vision of the social order they are protecting, these guardians cannot properly do their work.

#### New choices

Even in the celebrated image of the conservative who stands athwart history yelling “Stop!” there is a subtle admission of modernization’s inevitability. Tocqueville saw history’s trend toward ever greater individualism as an irresistible force. The most we could do, he thought, was to balance individualism with modern forms of religious, family, and civic association. Today, even Tocqueville’s cherished counterweights to radical individualism are disappearing—particularly in the sphere of the family.

It is indeed tempting to believe that the fundamental social changes initiated in the 1960s have by now become irreversible. Widespread contraception, abortion, women in the workforce, marital decline, growing secularism and individualism—all seem here to stay. Looked at from a longer view, however, the results are not really in. We haven’t yet seen the passing of even the great demographic wave of the “baby boom.” The latter half of the twentieth century may someday be seen not as ushering in the end of history, but as a transition out of modernity and into a new, prolonged, and culturally novel era of population shrinkage.

The most interesting and unanticipated prospect of all would be a conservatism. Of our authors, only Longman has explored the potential ideological consequences of the new demography. In effect, Longman wrote his book to forestall a religiously-based conservatism precipitated by demographic

and economic decline. Yet even Longman may underestimate the potential for conservative resurgence.

It wouldn't take a full-scale economic meltdown, or even a relative disparity in births between fundamentalists and secularists, to change modernity's course. Chronic low-level economic stress in a rapidly aging world may be enough. There is good reason to worry about the fate of elderly boomers with fragile families, limited savings, and relatively few children to care for them. A younger generation of workers will soon feel the burden of paying for the care of this massive older generation. The nursing shortage, already acute, will undoubtedly worsen, possibly foreshadowing shortages in many other categories of workers. Real estate values could be threatened by population decline. And all these demographically tinged issues, and more, will likely become the media's daily fare.

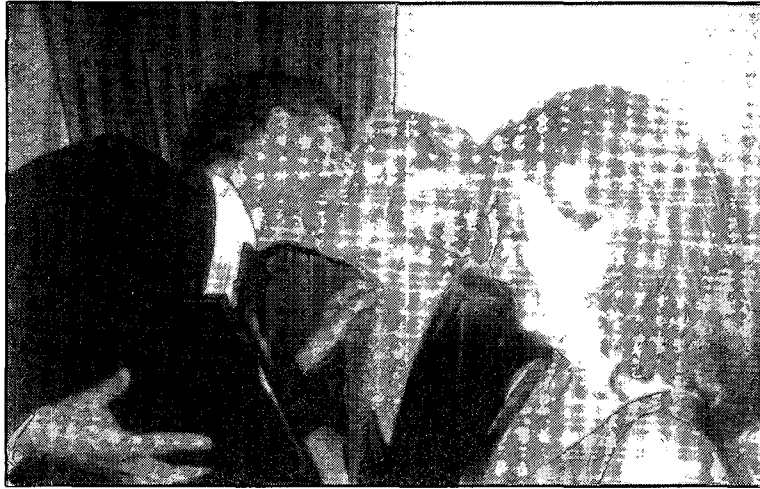
In such an atmosphere, a new set of social values could emerge along with a fundamentally new calculation of personal interest. Modernity itself may come in for criticism even as a new appreciation for the benefits of marriage and parenting might emerge. A successful pronatalist policy (if achieved by means of the conventional family rather than through surrogacy or artificial wombs) would only reinforce the conservative trend. In that case we will surely find that it is cultural radicals standing athwart history's new trend yelling "Stop!"

Humankind faces three fundamental choices in the years ahead: at least a partial restoration of traditional social values, a radical new eugenics, or endless and compounding population decline. For a long time, this choice may not be an either/or. Divisions will likely emerge both within and between societies on how to proceed. Some regions may grow more traditional, others may experiment with radical new social forms, while still others may continue to shrink. And a great deal will depend upon an economic future that no one can predict with certainty. In any case, the social innovations of the modern world are still being tested, and the outcome is unresolved.



The Human Life Foundation  
Great Defender of Life Dinner

❖ October 15, 2004 ❖



Honoring Professor Hadley Arkes  
and featuring the text of his address,  
“Why Articulating the Argument Matters.”

## Great Defender of Life Award Dinner

### *Faith McFadden:*

Welcome! Welcome, old friends and new ones, from our huge staff of five and from our dedicated volunteers—welcome especially to the students here with us tonight. Last year at this podium I welcomed “those from near and as far as California and Spokane”—tonight we have some from Toronto and London.

When we gathered here one year ago, on the exact fifth anniversary of my husband Jim McFadden’s death, with Congressman Henry Hyde as our Great Defender of Life honoree, Mr. Hyde

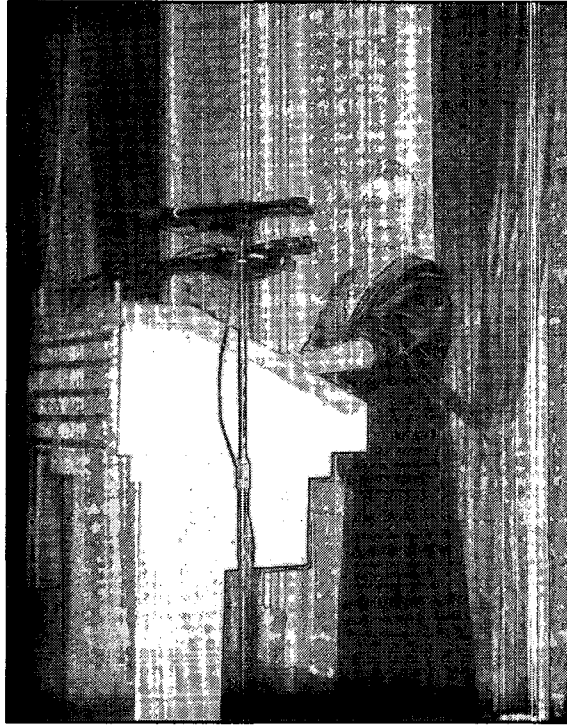
and other speakers spoke eloquently about Jim and how he came to found the Human Life Foundation. It was in many ways a Memorial, as well as a joyous celebration—our first Fund Raiser!

*This year, on the 30th anniversary of the Human Life Review, I think Jim would be saying “Hey, it’s not about me—it’s about The Issues.”*

And tonight we have a distinguished honoree well-known for his convictions about The Issues: Professor Hadley Arkes, a good friend of Jim’s—you’ll hear from him soon; it’s a treat to have him here—he has a very busy schedule.

Jim’s vision was that the *Human Life Review* would become a permanent record of the battle to save the unborn; he hoped the Foundation and the *Review* would continue after his demise—and thanks to you all, it *has*. We know how happy he’d be to see all of you here tonight—friends, nieces, nephews—and how pleased he must be to know how well our daughter Maria McFadden Maffucci, mother of three, President of the Human Life Foundation and Editor of the *Human Life Review*, has continued his legacy.

And so now I’ll turn the mike over to—Maria.



*Faith Abbott McFadden*

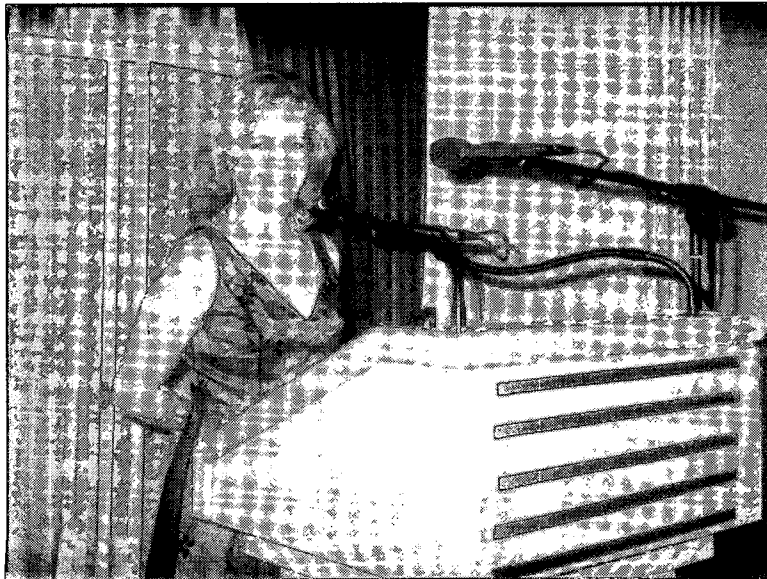
*Maria McFadden Maffucci:*

Thank you, Mom. Of course my mother Faith, in addition to being our Senior Editor, is also the Faith Abbott of *Acts of Faith*, a book she wrote about her life before J.P.

A warm welcome to you all—and a very special welcome to our Foundation members. We wouldn't be here at all, much less celebrating the *Human Life Review's* 30th anniversary, if it were not for you, and the sacrifices you have made so that the Foundation could continue.

As you know, but for the benefit of our guests this evening, my late father created the Foundation to have *two* specific programs, one educational, which is the *Review*, and the other charitable: our matching grant program for crisis pregnancy centers. While we aim to change minds and hearts about abortion and other life issues through the *Review's* words, at the same time, we know there are legions of good people working every day to provide practical help to women in need, and, thanks again to you, our supporters, we are able to help *them*. (An interesting digression: it was twenty years ago this day, October 15th, 1984, that the late Cardinal John O'Connor gave his word that any pregnant woman in need could come to him for free assistance. This was, to put it kindly, under-reported in the secular press, which likes to perpetuate the myth that pro-lifers don't actually *do* anything for individual babies and their mothers.)

My heartfelt thanks to all those who made this evening possible: our distinguished guests, our dinner committee members, and most especially our



*Maria McFadden Maffucci*

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staff. Joining my mother and me in this enterprise are Anne Conlon, managing editor of the *Review*—many of you know she has also taken on the daunting task of editing *catholic eye*, our sister publication; Rose Flynn DeMaio, who is our unflappable business and financial manager; and our newest staff member, my sister Christina McFadden. Christina had finished the final day of her job at the Philharmonic the evening of our first dinner, and came right over here to the Union League Club to get to work—she has been working hard ever since. And Mrs. Patricia O'Brien, our volunteer, who has become an invaluable and greatly loved member of our team . . .

We are thrilled to have Professor Hadley Arkes here tonight, as the recipient of our award. You will be hearing more about him in a little while, but I would like to say that my late father would be very pleased at our choice. J.P. greatly admired Hadley, for his eloquent and prolific writing, for his delightful sense of humor—and most of all, for his unflinching defense of the right to life of the unborn.

All of you have a gift bag this evening with a copy of our new issue. Several of the authors featured are here tonight: George McKenna, Patrick Mullaney, Mary Meehan, and John Muggeridge. Our special anniversary section remembers our most famous article to date—in 1983, President Ronald Reagan wrote his famous essay, “Abortion and the Conscience of the Nation,” for the *Review*. As you will see, we also have special journal pages, with tributes to the *Review* and to Hadley Arkes . . . Our honoree from last year, Congressman Henry Hyde, sent us the following:

The cause of the defenseless preborn deserves intellectual firepower. One of the most potent voices in this struggle has been Professor Hadley Arkes of Amherst College. Hadley brings buoyancy and humor along with his scholarship and thus is a gifted teacher and wonderful friend. The *Human Life Review* is to be congratulated upon its 30th anniversary and especially in selecting such a splendid defender of the preborn to honor.

William P. Clark, whose remembrance of Reagan is also featured in this issue, could not be here tonight, but he sent us a copy of a letter he sent to Hadley, in which he said: “You certainly deserve this prestigious award, having been our fearless and witty leader in the Life movement . . .”

All of you are also receiving a copy of Hadley's recent book, *Natural Rights and the Right to Choose*, and that has been made possible by the generosity of Mr. and Mrs. Michael Novak, and Mr. and Mrs. Robert O'Brien.

And now, I am so honored to ask Father Richard John Neuhaus, a good friend of ours and of Hadley Arkes, to give the Invocation. Enjoy the evening!



*Fr. Richard Neuhaus*

*Fr. Richard John Neuhaus:*

Thank you Maria. Maria was Managing Editor at *First Things* before she moved up to greater things. It is a great honor to have a small part in an evening celebrating my dear friend, Hadley Marx (sic)—I'm sorry, Groucho Arkes—No—you'll see the connection as the evening goes on as to why people get confused as to his name. Hadley is a happy warrior in a cause that tempts many people to despondency, kept going by the extraordinary conviction that he has—much evidence to the contrary—that human beings have a capacity for reasonable apprehension of the truth.

And he keeps at this so persistently that he matches the persistence of the invaluable publication that is the *Human Life Review*.

And so they are well matched. And I'm sure that Jim McFadden, as Maria said, would be greatly pleased—is greatly pleased.

Now if we bow our heads for prayer: Lord of life, accept our gratitude, we beseech you, for your servant Jim McFadden, for his wife Faith, for Maria, for all who so faithfully continue the legacy established thirty years ago in the cause of life. Accept, we ask you, our gratitude for your servant Hadley. We thank you for giving him the conviction that the law of Truth is built in to your very creation and that we have the capacity to discern and to obey moral truth. Enable us to live our lives in response to that truth; our lives lived as a gift in response to the gift of life. And now bless us we pray, bless this evening, all we are, all we do, all we say, and this food to our good and to your glory. This we ask in your most holy name, Father of Abraham, Isaac, Jacob, and Jesus. Amen.

[WESLEY J. SMITH, INTRODUCED BY FAITH McFADDEN]

*Mrs. McFadden:*

We want you now to hear from another distinguished guest. It is a privilege to have him with us for he, too, is a very busy person with many speaking engagements. Along with writing books and articles, Wesley J. Smith is a Senior Fellow with the Discovery Institute and an attorney for the International Task Force on Euthanasia and Assisted Suicide, and, as many of you know, a frequent contributor to the *Human Life Review*.

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We discovered Wesley Smith—it's an interesting story—back in 1993 when we happened upon a "My Turn" column in *Newsweek* written by "Wesley Smith, an author and consumer advocate who lives in San Francisco." Wesley Smith had written that "My Turn" column about his friend Frances who had made suicide a sort of creed. Wesley wrote: "She had been talking about killing herself for years," and this woman had made arrangements for a letter to be sent to her many friends on the very day of her self-induced demise. Her letter began, "Today is my seventy sixth birthday. Unassisted and by my own free will I have chosen to take my final passage."

We sought and received permission from *Newsweek* to reprint that column and we ran it in our Fall '93 *Review*, after which we sent this Mr. Smith a check and thanks for his contribution. Apparently Mr. Smith was surprised and wondered who we were. So that's how it all began. And now let's welcome our friend Wesley J. Smith.



*Wesley J. Smith*

*Wesley J. Smith:*

When one is a free-lance writer, and one receives an unsolicited check, it gets one's attention. I remember that very well. I bring you greetings from California, once known as the Golden State, now the Terminator State. My governor can beat up your governor. [LAUGHTER] Let me ask you: can life get any stranger?

I am really honored to be here tonight. I'm so honored to be part of the *Human Life Review* family and to be published by the *Human Life Review*. It has been quite a journey for me to come from someone who really had no comprehension, really, of these issues, and then, the suicide of Frances, my friend, changed my life.

What you weren't told in the introduction was that Frances was influenced by Hemlock Society literature. She had a whole file filled with advocacy proselytizing for suicide. And I was so upset about what I saw in that file that I wrote the *Newsweek* piece. And then the hate mail that came to me was so stunning: "Suicide is noble"; "euthanasia is the future," etc. "You want people to suffer. May you live a long and suffering life." Well thank you very much.

I wondered what had happened to my culture and where was I when it happened. Because I had thought when I wrote the *Newsweek* piece that it was utterly uncontroversial. And I have since found, in fact, that rather than those kinds of attitudes being controversial, believing in the sanctity/equality of human life is what has become controversial.

And I think the *Human Life Review*, perhaps more than any other journal, and early on, understood that the life issues, as they are known, encompass far more than abortion. In fact, what we face as a culture—and it is an essential question and a simple one—and we confront it at the beginning of life and at the end of life—and that question is this: Does life have ultimate intrinsic value simply and merely because it is human?

Simple question. Should have a simple answer. That answer should be an unequivocal yes. If it's yes, then we believe in the sanctity/equality of human life ethic. We believe that each and every one of us has equal inherent moral worth simply and merely because we are human.

Or to put it more simply: there's no such thing as "them," there's only us. That is the essential foundation of Western Civilization and Liberty. Because without that understanding, when we say that some have less value than others, that is the predicate for oppression, exploitation, and killing.



But others today are saying, no, no, no: to say that life has an intrinsic value simply and merely because it's human is irrational. It is religious. It is an act of discrimination against animals, known as speciesism. Our "friend" Peter Singer, now, unfortunately, at Princeton University, is the perhaps chief proponent of that idea.

And you know we've been down this road before: this idea that we can create distinctions, invidious discrimination and invidious distinctions among and between people.

For example, race: We at one time in the 19th century said that blacks, African Americans, had less value than whites. And that justified one of the great evils in human history: the American slaveocracy.

And as I was sitting here talking to folk and sitting at my table contemplating what I would say, it occurred to me that if the *Human Life Review* had been around in the mid 19th century, it would have been an abolitionist journal. Because the *Human Life Review* believes that each and every human being has equal inherent moral worth. And it also occurred to me that if the great abolitionist William Lloyd Garrison were alive today, he'd be writing for the *Human Life Review*.

And then we had in the early 20th century the eugenics movement, that sought to distinguish between the fit and the unfit. And that led directly in the United States and in Canada to mass involuntary sterilization. And in Germany it led to mass murder of people with disabilities.

And now today we have the utilitarian bioethics movement that says, no; moral worth is not established by being human, but by determining whether a being or an organism is a "person" or a "non-person," based on whether one has sufficient cognitive capacity; whether one is self-aware over time, or whether one can be held morally accountable for actions. And under this view there is such a thing as a human non-person. And so in this discriminatory philosophy that has developed out of the high academy, we now are told that there are humans who are not persons.

So who are they? They are all unborn because no unborn human life is self-aware over time. It is also newborns; newborns are not self-aware over time so Peter Singer infamously says that parents should have up to a year to decide whether to keep or kill the newborn child. And if the interests of the family are not served by having that baby, the parents should be able to kill that child. Some have called it—I believe it was Joseph Fletcher—called it a post-birth abortion.

We also find that people like Ronald Reagan, when he had Alzheimer's disease, are denigrated as human non-persons. Terry Schiavo in Florida is denigrated as a human non-person because she had a severe injury and is



now cognitively incapacitated.

And what does this lead to? It means that we can kill the unborn. We can create them solely for purposes of research which Harvard University has now declared it will do to the applause of the *New York Times*. And we are told we can genetically engineer our progeny, not so that we accept them with unconditional love—but so that they can meet our pre-conditions and desires.

One of the reasons that Ted Williams has been frozen reportedly is so that some day his DNA can be sold [for use in cloning]. So that if I want a son who would become a power left-handed hitter, maybe Boston can actually win a World Series. Then I can choose to have Ted Williams' DNA in my child.

But that's the end of unconditional love. Because what if Ted Williams' clone wanted to be a ballet dancer or an engineer? Would the parents demand their money back?

We are told that because Terri Schiavo is not a person we can take away her food and water and dehydrate her to death. That we even can kill people like Terri Schiavo for their organs. Indeed, in the medical journal *Critical Care Medicine* last year, there was an article by two Harvard physicians urging that we be allowed to harvest organs from people who were “neurologically devastated and/or immanently dying,” which, if carried out, would turn cognitively disabled human beings into mere natural resources, mere crops to be harvested.

We have a new theory in bioethics that's known as “futile care theory” in which doctors and bioethicists are supposed to be allowed to say no to *wanted* life-sustaining treatment based on *their* perception of the quality of the patient's life. And these futile care policies are being promulgated in hospitals around the country.

You know, one of the most remarkable things about the *Human Life Review* is how quickly this journal perceived the threat that I've just been describing; and understood that being pro-life meant far more than being anti-abortion. Indeed, publishers, editors, and contributors to the *Human Life Review* were aware of this growing moral crisis from the beginning.

As I prepared to come here, I looked through some old *Human Life Reviews*, and I came across this: a 1983 article by Mr. McFadden who, unfortunately, I never had the opportunity to meet. And he warned about Peter Singer. And he warned about what he called “the new future.” And this is what he wrote:

The New Future is even more awful than it seems. Even if the majority of Americans *knew* about what is involved, they would find it impossible to transfer Singer's inhuman

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notions to their family doctor. The grand strategic factor in the current War Between the Ethics [meaning the quality of life ethic and the sanctity of life ethic] is that the apostles of the New Future *know* precisely what they are doing—never mind what they may say—while the mass of Americans don't yet realize there *is* a war, and those who do can scarcely believe that the enemy could seriously intend the predictable results.

And my friends, what Mr. McFadden wrote in 1983 remains true today. Most people out there among the general public have no idea about what is being planned for them. And when you tell them, they believe that you are an alarmist. But when they do, just remind them that just because you're paranoid, it does not mean they're not really after you. He went on:

To be sure, the "old ethic" will not die: it is indeed based on the Judaeo/Christian ethic, and it has been with us for thousands of years because, God knows, it is a *human* ethic. But of course it can be temporarily defeated, as it has been often enough in history, whenever a militant, determined enemy has caught its defenders unprepared.

And that is a problem we face in this country. People are not prepared for the onslaught that faces us. "Communism of course shows the lengths to which new futurites can go," Mr. McFadden continued.

Indeed, how completely they can succeed in setting up truly diabolical "utopias" ruled by inhuman New Men. But then Poland reminds us that in the end, real men will remain, to rebuild human society. The urgent need now is to prevent things going as far as they *can* go while there is still time to do so.

And that remains our urgent and deeply necessary obligation to our fellow men and women.

You know I really read a lot about the history of abolition and Abraham Lincoln, because it is incredibly relevant to today. And if any of you want to see echoes of what you are going through in the pro-life movement, read *Arguing About Slavery*, especially what John Quincy Adams did in Congress after he was President of the United States, to the point that the slaveocracy tried to prevent him from even speaking about slavery in the House of Representatives. Tried to get him kicked out of Congress. Read *All On Fire*, the biography of William Lloyd Garrison. Read everything you can get your hands on that's good about Abraham Lincoln.

Abraham Lincoln, just a few miles from here, gave his famous Cooper Union speech on February 27th, 1860. And at that time he warned that the abolitionist movement and the anti-slavery forces had pushed the slaveocracy into a corner, to the point where they were utterly intolerant of any opinion

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that differed from theirs. And we see this today, don't we?

How many of you have been called Taliban because you believe in the sanctity of human life? How many of you have been called religious fanatics and rigid and judgmental, and put down as if you are the problem rather than the cause of a possible solution? And Lincoln wrote, or I'm sorry, Lincoln said, at Cooper Union about slavery that the only thing that the South would accept was the following:

This and only this, cease to call slavery wrong and join them in calling it right. And this must be done thoroughly; done in *acts* as well as in words. Silence will not be tolerated. We must place ourselves avowedly *with* them. The whole atmosphere must be disinfected from the taint of opposition to slavery before they will cease to believe that all of their troubles proceed from us.

We see these same factors at work today; the elite and the special people of our society will never respect those of us who struggle to maintain a sanctity/equality of life ethic. We must first come to see that human cloning is right today, if it is for medical treatment. Tomorrow, if it is to help gay or infertile couples have a biologically-related child. Assisted suicide is right because it is a choice. But we find, ironically, that choice has its limits with the imposition of futile care theory. As I said, that would give bioethicists and doctors the right to refuse wanted life-sustaining treatment based on their perceptions of the quality of the patient's life.

Indeed throughout the depth and scope of the issues covered in the *Human Life Review* we see a struggle between those who believe that life has ultimate value simply and merely because it is human, and those who do not.

Lincoln ended his speech with words that made him President, and they are relevant today:

Let us have faith that *right* makes might. And in that faith let us to the end dare to do our duty as we understand it.

Now we know that the media opposes us, but so what? That should be just like the force of gravity to a rocket scientist; it is just a problem to overcome [APPLAUSE].

We know that the opposition is rolling in dough, and checks flow. But so what? Right makes might.

This much we also know: the publishers and editors of the *Human Life Review*, like Jim McFadden before them, will do their duty as Lincoln envisioned it as long as their lives have breath.

I am honored to have been part of this pressing project, and I thank you for everything you do and for having me here tonight. Thank you all very much.

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[PROFESSOR ROBERT P. GEORGE INTRODUCED BY MARIA MAFFUCCI]

***Maria McFadden Maffucci:***

Professor Robert George is McCormick Professor of Jurisprudence and Director of the James Madison Program in American Ideals and Institutions at Princeton University. And he is a member of the President's Council on Bioethics. He is himself a brilliant light in the pro-life movement, and a very good friend of our honoree. So here, to introduce Hadley Arkes: Robert George.

***Robert George:***



Thank you, Maria, and thank all of you. It's a great honor to be here this evening to join you in celebrating thirty years of the *Human Life Review*. I want to take a moment to say it's a special treat to be here. I notice that we have some Sisters at this table over at the end, and I learned from Maria that these are Sisters of the new order called the Franciscan Daughters of Mary; an order devoted to the pro-life cause. Isn't it wonderful to have them here with us this evening?

Well we're here within weeks of an election and those like the Sisters and myself who are Catholics among us have been instructed in the past few days by very a distinguished theologian from Massachusetts about our faith. Turns out we were badly mis-educated Catholics. We had been told that our faith was to be given expression in the public sphere in the advancement of the common good, and the elevation of human dignity, and the protection of innocent life. But it turns out that the great theologian from Boston College says we're wrong about all that; our faith is a *private* matter, not to be imposed on others.

Yes, this is the refrain of Senator Kerry; that his Catholic faith, although on the one hand he says, of course, that faith guides him in everything that he does from fighting poverty to environmental protection. But then he turns around on the other hand when it comes to protecting innocent life in the womb, or embryos in petri dishes; no we can't protect those lives because that would be imposing our religion; and our religion, you see, is such a *private* matter, we must not impose it on others.

Hadley once remarked to me that at least it's a better situation than we have with the other Senator from Massachusetts who considers his religion to be so private he won't impose it even on himself [LAUGHTER, APPLAUSE].

Ladies and gentlemen, thirty-one years ago the Supreme Court of the United States in an act of breathtaking institutional arrogance denied the people of the United States their rightful authority to protect the lives of innocent, unborn children. Harry Blackmun and the six Justices who joined him in handing down the atrocity known as *Roe* versus *Wade* thought that they had settled the abortion issue.

Blithely they assumed that the American people would accept their edict and that the practice of abortion would be integrated into the fabric of American life. Yet today, as Father Richard Neuhaus has pointed out to us, no issue is less settled in the United States than the issue of abortion. Indeed, a majority of Americans oppose the abortion license fashioned by the Justices in *Roe*, and its companion case of *Doe* versus *Bolton*.

The overwhelming majority of Americans oppose the overwhelming majority of abortions performed legally under the regime of *Doe* and *Roe*. You wouldn't *know* that from reading the *New York Times*, would you? But read the polls and read them carefully. Read the polls that don't ask questions like: Are you for *Roe* versus *Wade* or not, without explaining what *Roe* versus *Wade* is. Look at the polls that ask the question: Do you believe that abortion should be permitted for convenience? Do you believe that abortion should be permitted because the family can't afford another child?

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When the questions are asked and people have an opportunity to answer them, it's clear that abortion is an unsettled issue, and as a matter of fact, the American people on the whole oppose most abortions. Indeed a majority of *women* in whose name the abortion right was crafted by the Court oppose most abortions. And in what must be the most dismaying news of all, for the supporters of abortion, a majority of young people, including the newest cohort of voters, the 18 to 24, are majority pro-life. Can you believe that? Neither can the *New York Times* [APPLAUSE].

The abortion license has not been accepted by the American people; on the contrary, support for abortion has eroded as the years have passed. Even as the death toll continues to mount, with over one million more killings each year, the American conscience has not been deadened. We have not gone the way of France or Sweden or even Britain; nations whose populations have, to their shame, accepted the taking of innocent life as a solution to personal and social problems.

Unlike these nations, the United States has a powerful, vibrant and determined pro-life movement; a grass roots movement, a people dedicated to fighting the evil of abortion everywhere that it can be fought, from the halls of Congress to the sidewalks in front of the abortion mills.

The issue of abortion remains unsettled despite the Supreme Court's edict, because pro-life citizens, people like you, have not permitted the American people to avert their gaze from the horror of abortion, or pretend not to see its profound inconsistency with the principles upon which our nation was founded.

In every domain of pro-life work there have been heroes. Mother Teresa of Calcutta worked and prayed ceaselessly for the protection of innocent life. On her visits to the United States she never tired of reminding us that abortion is profoundly contrary to America's great promise of justice for all. She was a great pro-life hero.

Ronald Reagan, the first truly pro-life President in the post *Roe* versus *Wade* era, and of course a contributor to the *Human Life Review*, was another hero of our movement. Francis Schaeffer, the writer and thinker who led millions of evangelical Christians into the pro-life camp, was another. John Cardinal O'Connor was another [APPLAUSE]. The late Jim McFadden was another great pro-life hero [APPLAUSE].

Now all of these great men and women have gone on to their eternal reward. But there remain among us many pro-life heroes. There are heroes like Sam Brownback in the United States Senate and Henry Hyde in the House of Representatives. There are heroes who are priests and bishops like Father Richard John Neuhaus and Archbishop John Myers of Newark. Evan-

gical leaders like Chuck Colson and James Dobson, Rabbis like Marc Gellman and Yehuda Levin. All that call their communities of faith to solidarity with the tiny victims of abortion.

There are the unsung heroes working every day in pro-life pregnancy centers and as sidewalk counselors from Bangor to Seattle, working in adverse circumstances. And a great many of these heroes are women. Some are busy rearing their own children, yet they make time and take the trouble to reach out in love to help other women who are in need, and other women's children who are at risk. They—these women, these counselors—they are perhaps the greatest of the pro-life heroes.

In my own field of academia, alas, there are not many pro-life heroes. The academic community, which is supposed to prize truth above all else, is mostly blind to the truth about abortion, namely that it is the unjust taking of innocent human life. The parking lots of our colleges and universities are filled with cars bearing bumper stickers saying, "I'm pro choice and I vote." "Keep your Rosaries off my ovaries." Or worst of all, "Kerry/Edwards" [LAUGHTER].

Nevertheless the academic world has managed, despite itself, to produce one of the pro-life movement's greatest heroes and I am deeply honored to have been invited this evening to speak for all of you in paying tribute to him.

By the time I entered the academic world the truth about abortion was out of the bag. Even professors had to acknowledge that none of what they and the other partisans of abortion had claimed on its behalf in 1973 had been borne out. Abortion had not reduced poverty or solved the problem of illegitimacy. It was becoming increasingly evident that the availability of abortion had not improved women's lives.

Indeed, far from being a boon to women in crisis pregnancies, the abortion license had rendered them more isolated and vulnerable; vulnerable particularly to those, be they boyfriends or employers, who saw abortion as a solution to *their* problems; the women's interest in the matter be damned.

After an abortion women were—and still are very often—abandoned and even when they are not, many suffer its horrific psychological and emotional fallout. And some suffer it for the rest of their lives.

And on top of all of this, there was a seemingly unceasing torrent of bad news for the pro-abortion side, coming in from the sciences of embryology, fetology, and developmental biology.

Every advance in the scientific understanding of embryo genesis and intrauterine human development, every single one confirmed what pro-life advocates have been saying all along: From conception there exists a dis-

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tinct and unique human being, a new member of the human family differing from the rest of us in no morally significant respect, but only as a matter of the stage of his or her natural development.

And as if to rub it in, technology produced the sonogram, a device that reveals for all to see the beautiful and very decidedly human life of the child in the womb. Now pro-abortion people find themselves in the unenviable position of pleading with their fellow citizens to ignore the evidence in plain sight. Yes, by the time I began my career as a university teacher in the mid-1980's, the pro-abortion side was on the defensive. And even some professors had developed something of a bad conscience about abortion. So for me and for the other pro-life scholars of my generation, things were easier than they had been for our senior colleagues.

I can't say that we were welcomed with open arms. Not everyone in the universities was delighted to have us around, and much hostility and discrimination remained and remains. Still, things were easier. For those like Hadley, who entered the academic life in the 1950's and sixties and who were there through the seventies and early eighties, things were tough; particularly in the aftermath of *Roe*, dissent from the pro-abortion orthodoxy was barely tolerated on campus. Indeed, in many places it was brutally repressed.

As the ideologies of sexual liberation and radical feminism gained ascendancy, pressure to conform was massive. Most professors, even those who harbored doubts about abortion, did conform. Of the few who did not, most remained silent, avoiding the topic not only in their writings, and in their courses, but even in casual conversations with friends and colleagues. Only a very few, a very few indeed, were dedicated enough to the cause of truth and justice to embrace the pro-life position and bold enough to speak out in defense of the child in the womb.

Hadley Arkes was one of the few. And ladies and gentlemen no one, no one in American academic life was, or is, more dedicated or outspoken or articulate in the cause of human life [APPLAUSE].

There is nothing in Hadley's biography that would have caused even the most perceptive and astute observer to predict that he would become a hero of the pro-life cause. He grew up in Chicago as a member of a loving family, but not one in which religious devotion was intense. He was graduated from college at the University of Illinois and earned a Ph.D. at the University of Chicago. He began teaching at Amherst—Amherst College—in the 1960's, rising from the rank of assistant professor eventually to become a tenured full professor, and a holder of two of the college's most prestigious endowed chairs.



His books were published by Princeton University Press and his articles appeared in the leading scholarly journals. In short, his curriculum vitae, a very distinguished curriculum vitae by any accounting, looked very much like the curriculum vitae of other top professors at elite American colleges and universities.

Yet he—not quite alone but nearly so—steadfastly refused to conform to the prevailing orthodoxy of such places on abortion or anything else. When support for the abortion license on campuses such as Amherst and Princeton rigidified into unquestioned dogma, he remained faithful to the cause of the unborn child. He stood in solidarity with the victims of abortion. He would not give in. And he would not shut up. He could not be intimidated; he would not be tricked; he could not be bought. He claimed the freedom of his own mind.

Ladies and gentlemen, I can tell you that one exercises that freedom even today at a price. Hadley knew—anyone would—that his refusal to conform, his insistence on speaking the truth about the evil of abortion, would subject him to discrimination and abuse. Things would be different for him.

Some of this discrimination, some of this hostility would be overt; much of it would be just below the radar screen. The standards would be different for Hadley. The bar would be raised and irrespective of the quality of his writing and teaching, there would be honors and offices denied. He knew that going in. Academic institutions congratulate themselves for their alleged devotion to academic freedom. They make a special claim of dedication to the right to dissent. Yet no church punishes its heretics or enforces its doctrines with the resolute determination of the professoriate. They are very unsentimental about the matter.

Even for those who manage to break through the screen to win a teaching appointment and even to win tenure, there are positions and opportunities for which the unspoken rule is: No pro-lifers need apply. Hadley knew all of this, but it did not deter him from speaking the truth, plainly, boldly and loudly.

In his writing and teaching, Hadley more than surpassed the standards set for him. He became the mentor to generations of Amherst College students, and his books and articles spread his fame throughout the academic world.

But his devotion to truth and to life propelled him into the domain of public affairs, even as he continued to work as a teacher and scholar. He became one of the most prized speakers on the pro-life lecture circuit; and his reputation as a speaker and writer on pro-life issues brought him to the attention of pro-life *political* leaders who came seeking his counsel. Whether it is testifying in support of pro-life legislation in Congress or contributing

to the debate preparation kit for a pro-life Presidential candidate, Hadley has always made himself available to help those who are willing to defend the child in the womb.

Academics are not known for their practical political skills, and for the most part that is a very good thing. The less politically skillful most academics are, the better. But Hadley has contributed not only philosophical arguments but important political strategies to the pro-life cause.

Above all in importance is the idea now embodied in the Born Alive Infants Protection Act, which was passed by the Congress and signed into law by President George W. Bush. More than a decade ago, Hadley shared this idea with me. Every year a small number of children survive the efforts of abortionists to kill them. They emerge from their mothers' bodies alive and quite literally kicking. Yet what is their legal status?

Having emerged from the womb, is there a legal obligation of the abortionist and his staff to care for them, to preserve their lives as they would the lives of any other infant? If the child is viable, is there an obligation to save its life by providing the ordinary care to which other newborns are entitled?

No one seemed to know quite for sure. Some judges would read *Roe* versus *Wade* as implying that the right to abortion was the right to an effective abortion; the right, that is, not to the termination of a pregnancy, which, after all, happens every time a child is born, but to a dead fetus.

But surely this, the idea that the right to abortion was the right to a dead fetus, would come as startling, disturbing news to most Americans, even those who considered themselves to be pro-choice.

It was a brilliant idea: Framed as a modest first step on which all good citizens of good will could agree, Hadley's proposal of a federal law to protect the child who survives an abortion would put the pro-abortion leadership in an impossible dilemma. Although the law would have application in only a small number of cases, and save only a few babies, it would unravel the logic of the pro-abortion position.

It would plant in the law a principle that would stand in the starkest possible contrast to the logic of abortion; namely the principle that the standing of the child as a human being with a right to life did not depend on whether anyone happened to want her. Even if she was unwanted, indeed marked for termination by abortion, the child's own moral status was undiminished.

But if that is so, then what is the basis for the legal permission of abortion in the first place? What, indeed. And this we knew the pro-abortion side would immediately perceive. But what could they do—defend infanticide? But unless they were willing to do just that, they would have to tolerate the restoration of a principle of law that would function as a time bomb to blow up the abortion license.

People can tolerate moral inconsistency in the law for a while, perhaps a long while. But they cannot tolerate it indefinitely, not at least on issues of the greatest moral moment. The principle residing in the Born Alive Infants Protection Act would be a standing rebuke to the very idea of a right to abortion.

Well, the pro-abortion leadership *did* see this immediately. Yet not all pro-lifers were quick to grasp the value of Hadley's proposal. Some saw it as applying to too few cases; too few to make it worth the effort to enact it into law. Others feared that it might imply the acceptance of abortion or of the distinction between the child a moment before birth and the same child a moment after birth. Some thought that an effort to enact it might interfere with our efforts on other fronts, especially our efforts to ban partial-birth abortions. So many years passed.

Indeed, it was only after the Supreme Court struck down Nebraska's partial-birth abortion statute in *Stenberg* versus *Carhart* that Congress finally held hearings on Hadley's bill and voted it through.

Now we must put the Born-Alive Act to work in creative ways. For example: The administration—if it continues into a second term—or even before that—could threaten to withhold all federal support to hospitals that violate the law by failing to rescue children who survive abortions. Questions could be raised about the tax-exempt status of institutions that fail to protect the child who survives an abortion. After all, liberal jurists themselves have paved the way for such strategies of enforcement in cases involving institutions that fail to comply with anti-discrimination laws.

And the genius of the Born-Alive Act is that it is precisely such a law; a law against discrimination, discriminating against the child because the child had been marked for abortion.

Bob Jones University down in South Carolina lost its tax-exempt status as a result of its prohibition on inter-racial dating. Why should not Christ Hospital in Chicago sacrifice *its* tax-exempt status for allowing the killing by intentional neglect of children who escape the abortionist's knife? Why should they be tax exempt?

Just as the principle of the Born-Alive Act is a standing rebuke to the very idea of a right to abortion, Hadley himself is a living rebuke to an intellectual class that has chained itself to the ideology of abortionism. They are shamed by the contrast between the brilliant clarity of his thought and the murkiness of their own. While they are reduced to risible and self-defeating claims such as the claim that all truth is socially constructed, he has exposed their fallacies precisely by shining upon them the brilliant

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light of truth. He is a hero. He is my hero, my role model, in a great many ways my mentor. And it honors me more than you can possibly know to say that he is a founding member of the Board of Consulting Scholars of the James Madison Program at Princeton, where he has also been a visiting Professor. And he is a Fellow of the Ethics and Public Policy Center on whose Board of Directors I have the privilege to serve with Father Neuhaus, and whose President, Ed Whelan, is with us this evening.

I ask you to join me in the great pleasure of paying tribute to a wonderful, pro-life hero, Professor Hadley Arkes.



*Faith and Maria present Professor Hadley Arkes with the Great Defender of Life Award*

***Hadley Arkes:***

Well, after Robby [Robert George] and Father Neuhaus, I think I'll say goodnight, ladies and gentlemen. I'll stop there.

You know, when this praise gets going I find myself looking around to spot just who might have walked in the room who fits that description. And I say at times that I just came in to read the meter and they've asked me to stay around and say a few words.

My dear, dear friend Robby George has become so accomplished in the praise he tailors so precisely that I'm just reluctant to interfere with an artist at the height of his art. But everything he says about me is just amplified in his rendition. And yet, the praise is more aptly directed to him: It's just hard to find anybody who has stood more firmly in a more disarming way in the center of the academic universe at Princeton—he has acquired Woodrow

Wilson's Chair, and yet stands against the political currents of the University. By the standing measures, he may be counted as the most popular professor with the highest-ranking scores. [Turning to Robert George] Is it 4.9 out of five? And persistently he confounds all those people trying to do us in because he's so resistant, enduringly charming, brilliant, penetrating. It's a remarkable story. There's nothing like Robby in the academic world right now [APPLAUSE].

And I have our beloved Richard Neuhaus, Father Neuhaus and—what's that journal of his called? *First Things*? [*First Things* is the title of a book by Prof. Arkes which was published before Fr. Neuhaus launched his journal—ed.] . . . But I have to say that I was just so touched to walk in here tonight and see such dear friends collected: Kevin and Jo[séphine] Lynch have returned after a couple of years abroad. Linda Bridges used to tutor Kevin when he was the young Articles Editor at *National Review*. Linda and I knew Kevin when he was a youngster—when that soft spot in his head had just hardened. Kevin and Jo met at *National Review*. I just think the whole country is better for having Kevin and Jo back. And here is Linda, Dorothy McCartney, with Rich Collier and Janet . . . John Cannon and Jeanne. You know, in the Hebrew Legends there are thirty six people who hold up pillars, and prop up the world. About twenty four of them are here tonight.

But I also saw another figure, reminding me of something else: A few years ago I was put up at St. Agnes to do a talk, and Dorothy McCartney and I had dinner. Returning that night, I found that I was locked out of the Rectory at St. Agnes at a quarter to twelve. I went to a phone booth on Third Avenue to dial the church, and I found only a phone tree until it said, "if you want last rites . . ." I selected that item and got . . . Father Shelley on the phone. [Searching the room] Where's Father Shelley?—I saw him here. I think he believes it's rather indecorous of me to be standing here, still alive, after all of that. Father, they say you're really a pushover in Confession; is that true?

In the brochure for the dinner Maria and the staff made references to my humor. I just wonder: What could they have meant? [Turning to Robert George] Robby, was it some schtick of mine that they're recalling? Is it the bit from *La Traviata*? I don't think Richard Neuhaus ever heard that, and we can do it again; but it began with an item saved for me by Mike Uhlmann, and before I do it, a word on Michael Uhlmann.

About a year ago I was running a conference of my own at the time of the first awards dinner in memory of Jim [McFadden], with the award being given to Henry Hyde. And we had there the man to whom I dedicated my most recent book, Michael Martin Uhlmann. No one could have been better at invoking the memory of Jim than Mike Uhlmann, and I can't help thinking

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that if Mike hadn't made that appearance here last year and performed so handsomely, he would have been invited back to receive the Award this year.

For after Henry Hyde, it's hard to find someone who's done more to advance the concern for the pro-life issue in Washington than Mike Uhlmann. Mike wrote the first proposal for the Human Life Amendment, pushing this cause from every lever in the White House and, later, from his law firm. Someone mentioned President Reagan's address/article for us in 1983. Michael Uhlmann had some hand in that writing. He was, indeed, very much like Jim. And, of course, we must say, Faith and Maria have made it their mission to continue the work that Jim had launched, and which they helped him sustain. They've done it so handsomely; they've been really preeminent figures of this movement. It's a bit curious then, and a little awkward, I must say, to be receiving an award at their hands when they clearly have the premier claim to receive awards at the hands of this family [APPLAUSE].



*Professor Hadley Arkes*

When they mentioned my humor I was trying to figure out what could they have been referring to. As I say, I thought of the bit from *La Traviata*: Michael Uhlmann clipped that item for me from the *New York Times* several years ago. It was a clipping from the section called the "Metropolitan Diary," sketches of life in the city. The letter he clipped for me read in this way. It said: "Dear Diary, It was during Act III of *La Traviata* by Verdi at the New York City Opera. After witnessing Alfredo's confession of love, Violetta's rejection of the carefree life of Paris, their retreat to the countryside, Georgio's appeal to release Alfredo for the benefit of his sister's prospects of marriage, Violetta's compliance and pretended deceit, Alfredo's jealous rage, her reversal, and illness, Georgio's sympathy, the lovers' tragic reunion and Violetta's death . . . —after all of this I heard the woman behind me say to her companion: 'The same thing happened to my girlfriend Gloria.'" [LAUGHTER]

I'd like to draw on the same blending of the grand and prosaic in offering

these reflections to you tonight. But I think part of what Maria had in mind, in her comments on humor, is that point I used to make about philosophers being in the same business as comedians. They both make their livings by playing on the shades of logic, and tricks of language, contained in the jokes. And so we often use humor for the sake of making a substantive point and leading people gently into the argument. For years, in that vein, I drew on that entertainment offered by Professor Richard Lederer: The history of the world as culled through the papers of his undergraduates. It contained items such as these: Socrates was a Greek teacher who died from an overdose of wedlock. [LAUGHTER] David was a Hebrew King who did battle with the Philatelists. Louis Pasteur discovered a cure for Rabbis. And of course long before that, . . . Sir Francis Drake circum . . . cised the world . . . with a one hundred foot clipper! [EVEN LOUDER LAUGHTER]

The ensemble also contained these items: that Bach was the most famous composer of his age, and so was Handel. Handel was half German, half English and half Italian.

Now I used to say that the interval between the lines and the laughs here usually could be measured in milliseconds. You realize that you need to absorb a whole system of logic before you can understand so quickly what is funny about saying Bach is the most famous—and that so too is Handel. And of course adding up the three halves (half German, half English, half Italian).

Now at times the logical point runs rather deeper, and it begins to reveal flaws in what people take to be the anchoring principles of their lives. One thinks here of Bertrand Russell's joke about Mrs. Christine Franklyn-Ladd, who was a solipsist—that is, she professed not to know that there was anyone in the world apart from herself—but she was so disappointed she couldn't find others to come to meetings. [LAUGHTER]

I used to say that if our ears were tuned in the same way we would induce the same urbane giggling if we heard people say: "If there really are moral truths that hold in all places, they would be recognized in all places. And the very fact that there is such disagreement about them—that there is such a variety of opinions on these moral questions—indicates that there are no such moral truths."

Now the philosophers would point out that this proposition self destructs in about twelve seconds. For it reduces to this proposition: that the very presence of disagreement indicates the absence of truth. I would record my own disagreement with *that* proposition—and by its own terms, that would be quite enough to prove its falsity. And yet what is remarkable is how many people are willing to stake whole careers on the basis of a self-refuting proposition that dissolves in twelve seconds. With Harry Blackmun, in *Roe v.*

*Wade*, it ran in this way: When so many learned people in philosophy and religion have disagreed on the question of when human life begins, obviously there is no truth that judges are in a position to render.

In this way, of course, we use humor to lead people into the argument and its logic. In my new book I try to do it in another way by recalling, as a launching point, that incident after the Battle of Gettysburg when General Meade had not grasped the full depth of the victory won by the Union armies under his command. But Lincoln did grasp the dimensions of what had taken place, and he tried to prod Meade to get his force together again and strike at Lee's army before Lee made it back across the Potomac. Yet, Meade held back, and in holding back, lost the moment.

He telegraphed to Lincoln and said that they could take consolation in the success of the army in "driving the invader from our soil." Lincoln turned to his secretaries, Hay and Nicolay, and said, How do I convey it to these people? "The whole country is our soil." When your own side begins to absorb the premises of the other side—that is when you are in trouble. Now part of what I was arguing in the book was that, in a similar way, we have found members of the political class absorbing premises utterly at odds with the very premises of this regime. Lincoln recalled Senator Pettit of Indiana, who had famously said that the "self-evident" truth of the Declaration of Independence was a "self-evident lie."

Now here was Senator Pettit, an officer of high rank, in a regime based on the consent of the governed. That regime sprung from that "proposition," as Lincoln called it, "all men are created equal." From that proposition came the inference that the only rightful government over human beings is that which draws its powers from the consent of the governed. And yet here was Senator Pettit, who professed a deep contempt for the very premise on which his own authority rested.

Now if that can be true for senators, why could it not be true for judges? Why is it so inconceivable that judges, too, in their judgments, have put into place premises that are at war with a regime of law? As I have suggested, they have put in place the premises of an "anti-jural jurisprudence." Part of the argument then in my book was that members of the political class had talked themselves into a "right to choose" [abortion], and as they've talked themselves into that "right to choose," they've talked themselves out of the very premises of natural rights that underlie the American regime. They've made of themselves the infirmest allies for the rest of us, because they can no longer give an account, or offer a moral defense, of those rights. They are not in a position then to vindicate any of our rights. And so, even if there *were* such a thing as a "right to abortion," they can no longer vindicate that right, for they cannot explain its rightness—or for that matter, explain and defend any of our other rights.



I was quite touched by the decision, supported by some generous donors, including our dear friend Michael Novak, to purchase for people at this dinner that new book with Cambridge, *Natural Rights and the Right to Choose*, now in its paperback edition. That handsome book, which you have in your bags, is being used all over Chicago by my family as coasters to put under drinks. [LAUGHTER] In my hopes for that book, and my pitch for it, I would take a line from Sam Goldwyn, when he said, “I don’t care if I make a nickel on this movie as long as every man, woman, and child in the country sees it.”

Now as it turns out, the new edition supplies the end of the story that was told in the hardbound edition: the story of our experience with that “most modest first step of all” on abortion, the proposal simply to preserve the life of the child who *survives* the abortion. We had Judge Clement Haynsworth confronting a case in Tennessee of a child who had survived an abortion for twenty days, undergone a surgery, and died; and the question was put: Had there been an obligation to preserve his life? The answer rendered by Judge Haynsworth was, no: That was not a child protected by the law; it was a fetus marked for “termination.” The right to an abortion was the right to an effective abortion, or a dead child.

We proposed that President Bush, the first one, begin with that point. The speech we had imagined for him, in offering this approach, was something that could have been used quite as well the other night by the current President Bush, during the debate, when he was asked a question on abortion and provided with an opening. He might have said: This matter of abortion has been handled so long by the courts that we need a conversation before we can begin to legislate again. People on the other side insist that abortion is not infanticide, and so they imply that they are willing to begin protecting a child at some point. Why don’t we start there? Why don’t we begin the conversation at the place where even pro-choicers agree that we can protect the child; and we’ll move step by step from there? Why can’t we begin simply by protecting the life of the child who *survives* the abortion?

Again, the story of our experience in bringing that bill back into play, and enacting it, is told in *Natural Rights & the Right to Choose*. The hardbound book went to press at a time when the action on the bill had been stalled, as a result of 9/11. In the aftermath of that tragedy, everything not directly related to national security was pushed to the periphery. But then suddenly there was a clearing, with legislation starting again to move. The bill was brought to the floor of the House and passed without dissent in March 2002. And then, to our astonishment, the Democrats allowed the bill to be brought to the floor of the Senate in July, where it passed quickly, in the same way.

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The president signed the bill in August 2002, in a ceremony in Pittsburgh, and my friends at the White House were kind enough to invite me to the signing.

As I say, the story of that bill—its rationale and strategy, the strains of dealing even with our friends in Congress—that story is told within my book, and it's not my purpose tonight to replay the book. I'd draw on a couple of passages for the sake of making my way to the argument I would put before you tonight, as we look ahead—as we consider the kinds of possibilities that now come into sight as a result of passing the Born-Alive Infants' Protection Act.

In the book, I cut into the problem in the spring of 1998, when we were suddenly finding a concert of the federal judges to strike down the bills on partial-birth abortion in the States. The federal judges pulling off this feat were willing to use all manner of arguments, including arguments that were at odds with one another, and yet reaching the same conclusion. But the subtext, as they say these days, was that *they just wouldn't have it*: The people in charge of the federal courts were telling us they would not brook even the slightest restraints on abortion. Plainly, they had come to regard the right to abortion as something like a first freedom, the real anchor of personal privacy and freedom under the Constitution. And so my friend Nik Nikas, defending the law in Arizona, argued to Judge Richard Bilby that the legislators were simply trying to erect a “firm barrier against infanticide.” Judge Bilby thought that was an interesting argument, but he eventually explained, in language suitably muffled, that we couldn't really do that any longer: We couldn't erect a barrier indecorously firm against infanticide if it would inhibit an abortion. The trend reached its decisive point in June, 2000, as Robby [George] suggested, when the Supreme Court struck down the bill on partial-birth abortion in Nebraska and, by implication, the same bills in thirty other States.

Around the same time Judge Richard Posner in Chicago, in the Seventh Circuit, was dealing with the comparable law in Wisconsin, and he took the occasion to twit us: He remarked that the law had never claimed the authority to protect the child herself—and so why should the State have a compelling interest in moving the killing of the child from the birth canal back to the uterus? And in a way he was right. For the drafters of that measure had never filled in that elementary point that we had sought to fill in with our “most modest first step”: namely, that the child really was an entity, a being, who came within the protection of the law.

And so, when the Supreme Court struck down, in a sweep, all of those laws dealing with partial-birth abortion, some of us thought we would take our guide from Andrew Jackson. In that line attributed to him at the Battle of New Orleans, Gen. Jackson had supposedly said, “Boys, I want you to

elevate them guns a little lower.” We wanted to raise our sights by drawing back to something more modest. We suggested that our friends on the Hill return to the most modest bill of all and fill in that elementary point: that even the child marked for an abortion has a claim to the protection of the law. Establish that premise, and we’ll come back later to the bill on partial-birth abortion, but come back on a firmer ground. The bill was indeed about planting premises, as Robby suggested; but the enduring irony of the story is that our adversaries always understood this measure better than our friends did. Our friends couldn’t understand what the import of this was—why something so simple could yield anything of much use to us. But our enemies were moved to a desperate opposition at once, because they saw the principle that lay at the heart of the thing.

I was given the privilege of leading the testimony in the Judiciary Committee of the House, where I was joined by Robby George. And to the astonishment of Doug Johnson of National Right to Life, on that day when the hearings opened, the National Abortion Rights Action League actually came out *in opposition* to this move to protect the child who is born alive, following an abortion. Doug was astonished and delighted, for he never quite believed they would actually do that.

Congressman Jerry Nadler, from Manhattan’s Upper West Side, saw the import of this quite clearly, and he offered counsel to a circle of feminists gathered around him after the hearings in a nervous cluster: He advised them, in effect, to play rope-a-dope: Just go along with it. The bill was modest; it would make little change. And so, don’t play into the hands of the pro-lifers by giving them the argument they’re seeking, the argument that would only draw attention to the bill. With most of the Democrats folding, the bill went through the “markup” in committee, with a vote of 22-1.

Now if the other side had us in this position, they would have been squeezing us hard. And so we needed to raise the level of tension a bit for the sake of drawing the argument that we needed to hold in order to bring out, to a larger public, the significance of this measure. With the fine work of the staff, then, we brought out the statement marking off the premises and the reasoning behind the bill. We could earnestly say then, “If we have this wrong, just amend the statement and correct any of these sentences. But we don’t see how you could vote for this bill coherently unless you understand that even the child marked for an abortion has a claim to the protection of the law, a claim that cannot pivot on the question of whether anyone *wants* her. Now do we have that right? Or are you protecting the child merely because it *pleases you* to protect the child? Would you cease to protect the child when it ceases to please you to protect it? Well *tell* us that. Amend it. Tell us why you’re voting for this bill.

“But if you’re not changing it, then the further implication seems to be that that child has a claim to the protection of the law that cannot be *contingent* on her location or whether she serves the interests of anyone else.

“She must have, then, an intrinsic dignity, which becomes in turn the source of rights of an intrinsic dignity.”

Well, with the presentation of those findings, we did set off tensions. But not among the Democrats—among the Republicans. Thirty-five so-called “moderate” Republicans demanded a meeting with the Republican leadership in the House. They threatened to adjourn the House and close down the government at the height of the presidential campaign if we went to the Floor with those “inflammatory” findings. Charles Canady, who introduced and managed the bill, was taken aback, and said, What do you mean inflammatory findings? Do you think there’s a constituency for infanticide back in your district?

**W**e had expected that the leadership would help settle these people, calm them down, soften something here and there, but keep the bill, with its findings, intact. We were quite surprised, and a bit jolted, when our friend Henry Hyde came to the judgment that the leadership had better placate these rather intemperate, panicky “moderates.” Henry decided that the findings had to be jettisoned. And his reasoning ran in this way: In order to preserve a pro-life Congress, we needed a pro-life Republican majority. That means we had to go to the aid of certain pro-choice Congressmen who were hanging by a thread, men like Steve Kuykendall in Los Angeles. As it turned out, the move didn’t save Steve Kuykendall. He went down anyway.

But that decision rather sealed the fate of those findings, at least for that season and this first effort on the bill. We never did manage to draw then the argument we were seeking. Now all of this was taking place during the presidential election and to our real astonishment, candidate Bush never showed the slightest interest in making use of this device, the most modest first step on abortion. He would say nothing about this bill and, indeed, he would never say anything about it. He would never even endorse it. Even as President he wouldn’t endorse it. A decision was made to have an endorsement issued by the Executive Office of the President. That was rather different from having a statement issued by the press secretary at the White House, in the presence of the press, where a statement could elicit questions in turn. But when the bill was endorsed in this way, no questions would be directed to the White House. Once again, Mr. Bush would avoid the occasion to speak some disarming words, in offering the simplest, most disarming first step on abortion.

The situation draws us back to Robby George's line about the first George Bush—that his problem for the pro-life movement is that he was “all action and no talk.” And we needed the talk. We needed the talk that framed the argument. But we find ourselves now, with the passage of the Born-Alive Infants' Protection Act, and with the bill on partial-birth abortion now enjoined in the courts—we find ourselves in this most curious situation: that this modest bill of ours, the most modest bill of all, supplies now the most powerful lever we have, in a way that even we hadn't expected. And even our own friends in Congress haven't come to the recognition of how powerful an instrument it is.

For over a year now, the White House has been apprised of these things, and of the simplest steps that could be taken, with a considerable effect—steps that would not even involve an Executive Order. Yet, when we consider even the slightest, useful things that could be done, the White House has looked for a way of doing something notably less than those slightest things.

And when I say slight, I do mean slight: I mean, for example, taking the first step of simply informing hospitals and clinics that there is such a law on the books as the Born-Alive Infants' Protection Act. At the same time, the government could make the straightforward inquiry: Are these hospitals or clinics withholding medical care from babies that survive abortions? Are they performing a version of the so-called “live birth abortions” performed at Christ Hospital in Oak Lawn, Illinois where babies were delivered alive and put aside to die? We could quite simply, and decently, raise these questions. One friend in Washington, a seasoned lawyer, remarked that the mere posing of that question is a move likely to tighten sphincter muscles throughout the landscape. For hovering over that inquiry, coming from the Administration, is the prospect of losing federal funds.

About a year and a half ago, we thought we had an assurance from the Secretary of Health and Human Services, Tommy Thompson, that the letter would be forthcoming to inform the hospitals and clinics, and to lodge this query. Not too long ago, a friend in the pro-life movement wrote to Tommy Thompson to ask, whatever happened to that letter? Recently she received a reply from the Secretary, reporting that it hadn't seemed useful, after all, to send out such a letter. Precisely why it did not seem useful is something that still hasn't been explained.

The Born Alive Infants' Protection Act contained no penalties. It provided neither criminal punishments nor civil penalties in the form of fines. And that sets the stage for another move. The President could point out that we had never established the penalty for delivering a live child and letting the child die. He could simply invite the committees on the judiciary in the Senate and the House to hold hearings and reflect on the question: What

*would* the penalty be for killing a baby born alive? Would the offense be at least as serious as a moving violation in traffic? Would it justify a criminal penalty or a hefty fine? But the President could suggest that, once again, we take a step in moderation. Instead of having criminal penalties or knockout fines, why don't we merely withdraw federal funds from hospitals and clinics that may be engaging in this awful procedure? And then the President may ask, Would the formulas of the Civil Rights Restoration Act apply?

For example, if a student at a college has a federal loan, the college is itself regarded as a recipient of federal funds. In that event, all federal regulations would come to bear on *all* parts and programs of that college. In a spirit of genuine inquiry—without the need yet for an Executive Order—the President may pose to the committees this innocent, but intriguing, question: What is a “recipient of federal funds”? Do the formulas of the Civil Rights Acts apply, and particularly the Civil Rights Restoration Act of 1988: If a clinic has a patient covered by Medicare, or another patient with a Social Security check, or a loan from the department of Veterans' Affairs, does the whole facility become a recipient of federal funds? But of course every hospital in the country depends on federal funds, and the funds could be withdrawn now from the whole hospital or clinic, not merely from the section from which the offense comes.

**T**he mere posing of these questions is bound to set off tremors among the Democrats. Would the Democrats find this application of the Civil Rights Act objectionable? Would they like to dismantle this whole scheme of legislating by indirection, the scheme by which the federal authority has been extended over the past forty years to coincide with the reach of the liberal agenda? After all these years, we still can't say exactly how the federal government reaches a private clinic counseling birth control. We simply give federal grants, and if a clinic doesn't accept the money, the federal rules do not apply. There are no binding rules, therefore no legislation in the strictest sense. We could make use of the same device in legislating now, by indirection, to restrict abortion. Would the Democrats now find this arrangement disturbing and wrongful? Would they like to start dismantling this whole scheme, so critical to the liberal project in politics? If so, we will help you. For the White House, this is a win/win proposition.

And yet nothing. No move in this direction, when all it would require is the raising of questions. But we have had ample reason already to see what remarkable effects can be generated with such simple moves, or the lodging of questions. Ronald Reagan once made the point, in passing, in a State of the Union Address, that fetuses can feel pain. That remark of the Gipper's set

off long evenings of discussion on late night television, and it even led to hearings by the Senate Committee on the Judiciary. In that vein, we need only consider the convulsions that took place, more recently, when the announcement was made that if—just if—the act on partial-birth abortions was finally cleared by the courts, the enforcement of the act would be placed in the hands of the Civil Rights Division of the Department of Justice. Even to suggest that the protection of the child could be likened to the defense of civil rights was enough to set off displays of spleen and pointless rage, which were hardly edifying, and which only managed to show just how effortless it is to spark panic among the Democrats and send them spiraling off into useless fits.

The Democrats could not possibly stand by with indifference if the President merely raised the question about the withholding of federal funds—and then applied that familiar device to this problem of partial-birth abortions.

After all, what the courts have enjoined so far is the bill that bars the grotesque surgery known as partial-birth abortion. The path is clearly open now for the President, or any member of Congress, to say: We're appalled that the federal courts have enjoined us from barring this procedure performed on a child at the point of birth, collapsing the head of the child, sucking out its brains. This is a procedure opposed by about eighty percent of the American public. But while the courts have enjoined the bill forbidding the procedure, the American taxpayers should not be forced to become accomplices in this business. They should not be compelled, through the tax system, to fund something they regard as abhorrent. And so, we would have Congress simply remove all federal funds from hospitals and clinics in which this procedure is performed.

As I say, the Democrats could not possibly ignore this move because they know that if we take this move of legislating by indirection we will move step by step on abortion. They can't possibly hold back from resisting it, but if they do resist it, they would take the first steps in dismantling the structure of power they had put in place over forty years.

Nothing could be relied on more to create a crippling tension among our adversaries. Or this move could have the effect of finally administering that short, sharp, shock that pushes people over the edge—that finally persuades hospitals that they'll have none of this, that they'll get out of the business altogether. In the case of doctors, it may be the shove that jars them into sobriety and induces a few of them finally to turn to one of their patients and say, "Really now, we might as well settle on the truth of the matter: that real human beings are killed in these surgeries."

But even beyond this move on partial-birth abortions, an even deeper surprise may come when our Born-Alive Infants' Protection Act is connected

to a case that now has iconic standing among the liberals: the famous case of the Bob Jones University (1983). The university lost its tax exemption because it barred its students from dating and marriage across racial lines. The allegation was that the policies of the university were in opposition to the public policy of the United States. The university could not be sued under the Civil Rights Act because no one had been denied admission on the basis of race. The case was brought by *private parties* complaining to the IRS. And yet in all strictness there was no public policy, *nothing* in the statutes or Executive Orders of the United States that barred people, in their private choices of partners, from discriminating on the basis of race. But now, in sharp contrast, there is indeed a statute of the United States that explicitly forbids the withholding of medical care from a child who survives the abortion.

Once again, the situation requires only the simplest of moves. There is no need for Executive Orders or litigation. In the case of Bob Jones University, there were simply complaints made to the IRS. Complaints may be made now as well by private persons, or taxpayers, that the clinics performing the live-birth abortions are not in accord with public policy; indeed that they are in violation of federal law. They should have their tax exemptions removed, or they should face the serious threat of that removal. And of course all of these clinics depend critically on tax exemptions.

These are the simplest moves, requiring the slightest of exertions, and I'm afraid that we find the measure of the current White House when we recognize that even these slightest of all things are reckoned beyond the will of this President to do. He does not seem inclined to say, on this matter of abortion, one word that he is not strictly compelled to speak.

Which brings us to this melancholy statement of our current situation. The two President Bushes had the wit to build on the coalition that President Reagan had drawn to himself, including many Catholics and Evangelicals. That movement has now converted the Republican party into the pro-life party in our politics.

**T**hanks to President Bush, continuing to build on that party, we have an Administration now thoroughly peopled with pro-lifers at every level of the government, and in virtually every outpost. This may be the most pro-life Administration we have seen since *Roe v. Wade*. And what is at stake in the election is nothing less than the preservation of this Administration, with the judicial nominees it may yet serve up, and its willingness to sign on to the pro-life legislation passed by a Republican Congress.

But the deep and unsettling irony in our situation is that we have, at the very top of this Administration, at the head of the pro-life party in our politics, a



leadership that will not articulate the pro-life argument in public, mainly because it doesn't articulate arguments. Mr. Bush is an admirable man, on many counts, and I believe he is our true friend. But his inclination has been to sound themes or sentiments, not to frame arguments and make a case. And my own sense is that, in holding back from making arguments, he has held back from cultivating the discipline of getting clear on his own reasons.

We may preserve a pro-life administration and avoid the deep evil, I think, of a Kerry administration; an evil that is as certain as anything in politics in this life is likely to be. But we may make that gain while preserving a political leadership that teaches, as part of its legacy, this corrosive or destructive lesson: that it is somehow impracticable or impolitic to make the pro-life argument in public. That is a debilitating and destructive lesson, for it begins to suggest that the public cannot understand such an argument, or that the argument cannot be made—that there are not in fact reasons accessible to the public, reasons that ordinary folk could understand and find compelling.

As an old friend—and I think I can count myself, in this setting, an old friend—I hope you will give me the indulgence of permitting me, in ending, to sound the sentiments I sounded at the end of my book. I had recounted our experience with the Born-Alive Act, and the surprises we had encountered at the hands of our own, nominal allies. It was a sobering experience, revealing something unsettling about the state of the political class, even on our side—and I was moved to say this:

A political class that has lost the sense that reason—and arguments—matter is a political class that may serve in positions as officers of state, and yet its members will have lost their vocation. At times, the need to clarify the principles entails the need to stage the confrontation or the debate, and that may indeed involve the need to pick a fight. A political class that is persistently reluctant to show that spirited nature will produce, not merely a politics that is banal, but one that is denatured. In removing the conflict, or removing the argument, one may gently remove as well the moral substance. Aristotle remarked, in one of his most memorable observations, that if the art were in the material, then ships would be springing, fully crafted, from trees. [*Physics*, 199b 28] But ships were not part of the world of “causation,” produced through the workings of the laws of nature. Ships were part of a world governed by design, by the awareness of ends, and the shaping of reasons. We may be bringing forth now a political class more and more detached from the sense that there is any particular importance in compelling the other side to come out with their reasons, and claim them as their

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own. To a political class molding itself in that way, we may not only ask, where is the reason that gives meaning to political life, but where, in all of that, is the *art*? Where do we find the distinctive hand that shows your work? Where do we find the design that marked your understanding, the touch that reflected the experience you had cultivated? And where, finally, do we find the impression, lingering through time, that you were here?

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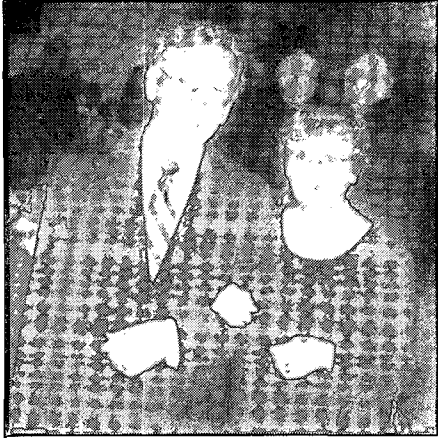
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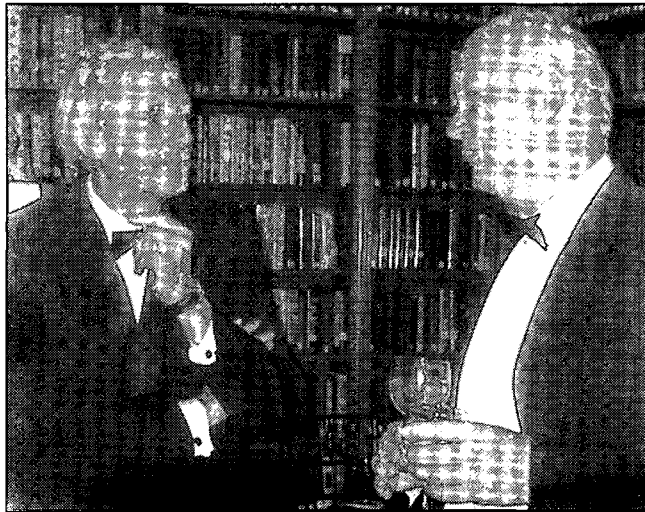
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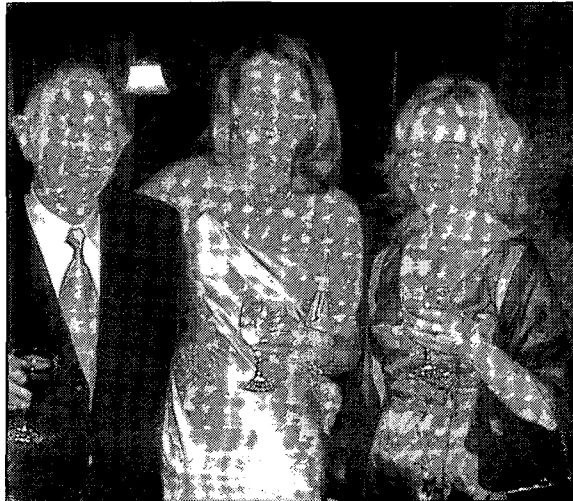


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Nat Hentoff is a renowned expert on First Amendment rights, the Bill of Rights, the Supreme Court—and the fight to defend human life. Throughout his career, he has used his enormous journalistic talent to defend the right to life of the unborn, the newly-born, the frail elderly and the disabled. Our founder, J. P. McFadden, who was the inspiration for this award, greatly admired Mr. Hentoff for his eloquence in the cause of life, and for his integrity. Since 1984, he has appeared regularly in our pages, with hard-hitting articles decrying abortion, the unjust treatment of pro-life protestors, euthanasia/assisted suicide, and the killing of the disabled. In recent years, Hentoff worked tirelessly to bring the plight of Terri Schiavo to the public eye. Mr. Hentoff is the author of many books on free speech, education, and jazz; he has also written novels, children's books, and biographies, including *John Cardinal O'Connor: At the Storm Center of a Changing Church*. His latest book is *The War on the Bill of Rights and the Gathering Resistance*.

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# Abortion as Liberty and Right

*Terrence J. Hobin*

Long and wearying experience has taught pro-lifers a painful lesson in what the purposeful corruption of language can do to the quality of debate. Denying words the meanings they developed in their natural evolution, insisting that the connotations attached to them are different from those their users intend, employing obscure or grandiose phrases for simple ideas, turning definitions on their heads, and declaring whole realms of vocabulary out of bounds (for the sake, naturally, of tolerance) not only makes dialogue difficult, it inhibits the ability even to think about protected subjects, for lack of the words to do it. George Orwell dramatized the process of thought constriction through language control far more effectively than I could ever hope to do, and some of the more outrageous particulars from the abortion arena have been well documented in this journal and elsewhere.

There is another form of language corruption, however, not as purposefully imposed and not as widely recognized but almost as serious in its effects, and it is the one I wish to discuss. It is an imprecision of meaning we unconsciously agree to in virtually all oral discussions and in most of what we read and write. Like doublespeak, it is especially devastating to out-of-favor factions who attempt to bring to light points of view that are not frequently heard and that require precision of language in order that an audience accustomed only to ideas in fashion can hope to assimilate them. When a speaker uses the word "equality," for example (or "democracy," or "justice," or "progress," or "tolerance") most of his audience will treat it as an unwarranted annoyance if one of his listeners asks that he be more specific and substitute a less value-laden or more narrowly defined word. But equality (as applied to people) has several distinct meanings and a number of nebulous ones. A discussion of human equality goes immediately awry when the various sides in a dispute use the same word for entirely different things.

## *Rights and Liberties*

Two words that enter into almost any discussion of politics, and the politics of abortion in particular, are "rights" and "liberties." The meanings of these words are so often confused that they are sometimes treated as if they were the same thing. The phrase "civil rights," for example, may be

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Terrence Hobin writes from Mountain View, California.

carelessly used when “civil liberties” is intended. In spite of its name, the American Civil Liberties Union is usually more concerned with promoting rights at the expense of liberty than the other way around; and phrases enshrined in the Constitution, like the “right . . . to assemble,” the “right . . . to petition,” and the “right . . . to keep and bear arms,” encourage the confusion. But “rights” and “liberties” do have different specific meanings that are important to any discussion of the powers and limits of government, and for the sake of clarity there is reason to insist on narrower meanings in that context.

The distinction I wish to make is between *civil* rights and *civil* liberties, by which I mean rights and liberties provided or guaranteed to us under law by government. In the context of political discussion to which this article will be limited, rights will mean civil rights, liberties will mean civil liberties.

By liberty I mean the absence of legal restriction: the ability to do what one wishes without interference from laws or government. It is from this meaning that the word “libertarian” derives. Liberty (in this restricted sense) implies nothing about opportunity. I may be free to go to Harvard in the sense that no legal restriction prevents me. This does not mean I have the slightest glimmer of hope of actually doing so. A legal entitlement to a loan or scholarship might furnish me that opportunity; however, such a government-provided benefit would then be a (civil) right.

Conflict with another individual can result in inhibitions on my freedom, but my civil or legal liberty is not infringed by someone acting on his own initiative. The reason that individual acts of coercion should be treated differently from official ones is that governments maintain a monopoly on the *legal* use of coercion. When my neighbor does something to deprive me of life, health, comfort, liberty (here under its broader meaning), or property, he is almost certainly acting illegally. His deed is a crime or an action for which he can be sued, and the remedy available to me is civil litigation or the enforcement of existing laws—not new laws or a redesign of government.

When government deprives me of life, health, comfort, liberty, or property, it is (usually) acting legally. If I feel I am being treated unjustly, my only recourse is through reform of the political situation. Which rights should government provide? Which liberties should it guarantee? These are the things about which we argue, vote, stage protests, and, when we become dissatisfied enough, rise in revolt. This is the subject matter of politics.

Actions allowed us without legal penalty we call (civil) liberties. Protections and privileges granted to us by government are (civil) rights. Liberties impose restrictions on government: things it is not allowed to do. Rights

impose obligations on government: things it is supposed to do. The concepts, if not exactly opposite, are at least in constant conflict, since rights are generally obtained at the cost of liberty.

Let's say my neighbor parks his car in front of my driveway and boxes me in. If liberty were unrestricted, I might respond by ramming his car with mine, and he might then force his way into my house and beat me up. Since most of us do not care to live that way, we yield some of our freedoms in exchange for protections of government. Blocking driveways, ramming cars, and beating people up are made illegal and subject to punishment through actions of legislatures, police forces, and law courts. I cannot engage in these activities without risking a legal penalty.

In granting government the ability to pass and enforce laws, we gain rights at the cost of freedom. Benefits such as schools, roads, and protections against foreign invasion or violence from neighbors are provided to us at the cost of taxes we must pay and restrictions we must endure. The costs are usually not in proportion to the benefits we receive. Each of us may wind up as a net payer or a net receiver. And the restrictions we endure may be as severe as compulsory military service.

A right may be a protection—e.g., against acts of violence or theft or discrimination—or it may be a privilege: an entitlement to money (welfare payments) or goods (food stamps, medical care, hydroelectric power) or an opportunity to do something I would not otherwise be able to do. Tax-supported schools are an example. An opportunity is given to my children to attend school and a favor is granted to me as a parent not to pay any more taxes (perhaps less in fact) than do my childless friends. These rights are bought at the cost of economic deprivations imposed in various ways on various people without (much) connection to the benefit each of them receives. They are also bought at the cost of liberty, in this case of those who benefit. In establishing an educational system, the state makes attendance compulsory. I am forced to send my children to school whether I wish them to go or not and to a state school unless I can afford to do otherwise. I have obtained a right to schooling for my children, but I have lost my freedom to raise them as I wish.

The same activity may entail both a liberty and a right. If no legal penalties can be imposed on me for what I choose to say, I have freedom (liberty) of speech. This, of course, does not mean that other individuals may not respond to what I say in any non-violent or non-coercive way, such as by vilifying me, boycotting my business, or firing me if I happen to work for them. If the government provides a facility such as a free-speech corner in a

public park, and perhaps stations a policeman there to ensure that I am not abused for what I say, it has provided me a right of (free) speech as well. If there is a law that says I cannot be fired for expressing my opinions, that is also a right of speech, but of quite a different kind.

Liberty is complete only when there is no effective government: No rights exist then nor does the concept of legality have meaning. Government puts limits on liberty by law, regulation, and judicial precedent. The majority of laws impose restrictions of one sort or another. The more laws there are and the greater their scope, the less freedom exists and the more rights people have. The purpose of politics is to reach agreement on the balance. The problem, of course, is that everyone has a different idea of what the balance should be; but most of us at least agree that the maximization of either is undesirable. The maximization of rights is called tyranny and has been approximated at various times and places when a large array of protections and privileges is created for government officials and the factions they favor at the cost of the almost total subjugation of the rest of the population. The maximization of liberty is called anarchy and has been approximated in sparse and far-flung communities where no agents of government intrude.

A last detail on definitions: The phrases “freedom of . . .” or “freedom to . . .” generally connote liberty; the phrase “freedom from . . .” usually means a right. Of Roosevelt’s four freedoms, those of speech and religion are civil liberties, limitations imposed on government; but to the extent that freedom from want and freedom from fear can be said to be legally guaranteed by the government of the United States or any other, it is through actions of that government, not by restrictions placed against it. Freedom from want, if it exists, is a right, not a liberty.

As most of us have come to appreciate, “rights” and “liberties” both have highly positive connotations. Nobody wants to declare himself against either one, ever. The point I wish to make is that by attaching specific meanings to these words we are able see more clearly that a balance has to be struck between the two: The more one advocates liberty, the less he can defend rights. That is perhaps *the* crucial point in any discussion about the proper functions of government.

What *are* the proper functions of government? There are as many answers to that question as there are people who hold political opinions. The makers of the American Revolution were committed to an approach that can appropriately be labeled “self-determination”: a republican form of government in which the better features of democracy would be brought forth, by allowing individuals as much liberty as possible while assigning whatever government



functions were necessary to the lower levels, those most easily and directly influenced by individual voters. A person would be allowed to live his life by the standards he chose as long as he did not actively harm his neighbor. Never fully put into practice, this philosophy stressed local government, limited authority, and individual autonomy at the expense of rights. Since that time, philosophies of government popular throughout the world have moved steadily away from liberty in the direction of rights. Political theorists of our day start from the premise that governments should and will prescribe values for the nations they control, through protections, privileges, and opportunities (i.e., rights) they create to encourage some types of behavior and inhibit others.

Whether the current fashions in politics suit your taste or mine, they are the ones we are likely to be faced with for the rest of our lives. Starting from this fact, I would like to see if you and I can agree on a minimum set of rights a government might provide and a maximum it might allow, and inquire if these limiting cases tell us anything about what the legal status of abortion should be. Let me first take a moment to discuss the status of abortion in the United States now, as a result of the way its legalization came about.

#### Creative Jurisprudence

The moral transformation of the United States in the 20th century was marked with unusual clarity by a specific historical event: the *Roe v. Wade* decision of 1973. I do not propose to waste time or words reviewing this patently preposterous document or examining its extravagantly voguish social biases and its conception of judicial review. The impact it had on democracy and the Constitution, not to mention human lives, is evident to anyone who has the moral strength to consider the issue in depth. What I do want to comment on is the nature of the specific civil liberty that that decision brought into being, as compared, for example, with other liberties that are or were contained in the Bill of Rights.

Contrary to the general trend of the times (in which civil rights were routinely being created at the cost of liberties), in *Roe v. Wade* the Supreme Court found an abortion *liberty* in the Constitution, and not only found it there, but declared it to be absolute. Let me explain what I mean by that.

The First Amendment, you will remember, prohibited Congress from abridging various freedoms: of speech, press, assembly and petition. In apparent recognition of the fact that laws governing these areas might be useful or even necessary for reasons outside the range of federal competence, the comprehensive restrictions placed on Congress were not extended to

state legislatures. The latter could abridge speech, press, assembly, and petition as their constitutions allowed and as their constituents endorsed through the votes they cast. As regards religion, not only were states not included within the range of the First Amendment's restrictions, Congress was prohibited from making any law *respecting* the establishment of a religion: It could neither establish one nor interfere with the establishment of one. In short, the First Amendment guaranteed certain freedoms to the people and to the states against over-assertions of federal power.

This condition of federal inferiority would not be allowed to prevail indefinitely. Over time, by such Amendment-defying feats of imagination as "unprotected speech" and "the doctrine of incorporation," the Supreme Court managed to capture for itself and the federal government control over what would and would not be allowed in the areas of religion, speech, press, assembly, and petition.

The Second Amendment was more forcefully put than the First, if not quite forcefully enough to prevent its being interpreted: "The right of the people to keep and bear arms shall not be infringed." Neither Congress nor state legislatures would be allowed to infringe this freedom. It is the most clear-cut example in the Bill of Rights of what I call an "absolute" (unqualified) liberty. Due process of law, by way of comparison, is an obligation on government, hence a right. Prohibitions against quartering troops and unreasonable searches and seizures do place limits on government agents, but of a sort imposed by law on all other citizens. In other words, they are extensions of ordinary property and privacy rights rather than barriers to the legislation of restrictions in some area of human behavior.

**W**ell, then: What kind of a liberty did *Roe v. Wade* and *Doe v. Bolton* create? An absolute one, of course, along the lines of the Second Amendment, without the annoying limitations to which the freedoms of religion, speech, press, assembly, and petition were supposed to be subject. According to the majority decisions in *Roe* and *Doe*, neither the federal nor any state government can enforce legislation that prevents an abortion from being performed up to the moment of birth as long as an abortionist can be found to say that it is in the interests of the physical or mental health of the mother. The liberty of a mother and her abortionist to dispose of a child before birth makes it impossible for any significant rights (a right to life, in particular) to be granted to the child.

In this regard, how does *Roe v. Wade* stack up against *Dred Scott v. Sandford*—a case that is often cited as its rough moral equivalent? In *Dred Scott*, a slave brought suit, claiming he should be free as a result of having

lived with his master in Illinois and then in the northern part of the Louisiana territory before being returned to the slave state of Missouri. After years of litigation in lower courts, the Supreme Court decided in 1857 that Scott was to remain a slave, primarily because he was not a citizen and did not have a citizen's right to sue. The details of the arguments are intricate, labored, and not half worth the effort it takes to wade through them. Chief Justice Taney, who wrote the majority opinion, maintained that descendants of people who were brought to this country as slaves were not intended to be citizens even after they had been emancipated. *Roe v. Wade* is among the philosophical progeny of *Dred Scott* at least in the sense that the liberty of one person to maintain control over another prevents significant rights being given to the latter.

The Taney court also showed itself ahead of its time in the type of decision it produced: long (over 100,000 words for the combined opinions), turgid, barely readable, and ranging over all sorts of social, political, and historical topics vaguely tied to the issue. One of the things Taney chose to put into his decision that might have had important political implications was that in the Missouri Compromise of 1820 Congress had exceeded its constitutional authority by prohibiting slavery in the northern parts of the Louisiana territory; Congress had no such power, he said. The point was largely academic by the time *Dred Scott* was written, however, since the allegedly unconstitutional legislation had already been undone by the Kansas-Nebraska Act.

Of all Supreme Court decisions ever rendered, *Dred Scott* is probably the one most universally denounced. Yet it went nowhere near as far on the issue of slavery as *Roe v. Wade* did on the issue of abortion; and, intellectually empty as its arguments may be, they are not quite as empty as those of *Roe v. Wade*. The Constitution does make explicit concessions to slavery from which one can at least speculate on what the legal implications of the practice should be; but there is nothing in the document about either abortion or the so-called right of privacy on which the abortion liberty was said to depend. More important, *Dred Scott* never intimated that the freedom to own slaves was guaranteed absolutely by the Constitution in the way that *Roe v. Wade* decided that the freedom to abort one's children is. It made no claim that legislatures could not control, limit, or ban slavery within the borders of the states they represented. Illinois had done so and so had all the other northern states, and no question was raised about their ability to do what they had done.

To put it another way: If *Roe v. Wade* had gone only as far on the issue of abortion as *Dred Scott* had on the issue of slavery, the former's effect might

merely have been to deny to the federal government the ability to prohibit abortion in territories; state legislatures could have continued to outlaw abortions as they had seen fit. Abortion would have been allowed in states that chose to make it legal, and in those states unborn children would have been denied all rights—but the existing statutes of the 50 states would not have been affected.

As pro-lifers, which of us would not be overjoyed, relatively speaking, to find ourselves in the situation in which *Dred Scott* left the abolitionists—a situation in which the ordinary mechanisms of democracy, established for just such purposes, could still be relied upon?

### **Abortion Liberty**

As I stated earlier, liberty is complete until government intrudes upon it. All of us want to be free but none of us wishes to be at the mercy of his neighbors, so we are willing to tolerate at least some level of government. The minimum function on which we can agree—the first and most important right we seek from government—is protection against violence and theft. We are willing to pay something in money and freedom in order that others will be prevented from actively harming us. It is hard to imagine a political party that abjures this right. I assume you do not, and neither do the people who favor legal abortions.

The liberty to abort in the United States is absolute. But under a minimum form of government of the sort I just described, in which liberty is to be maximized and rights are to be kept to a minimum, should this be the case? In other words, if the rights provided us by government were limited to *just* a protection against being actively deprived of life, health, comfort, liberty, and property by others, would abortion be legal?

Except to flat-earthers and their intellectual counterparts in other fields of endeavor, the answer is obvious. We know now, as well as we can be said to know anything of a scientific nature, that when a human sperm and egg cell merge successfully, a *new, distinct, living, human* being comes into existence—and that to destroy those joined cells is to destroy that human life. If indeed we believe government should provide protection against the taking of life, then it should prohibit abortion. It's that simple. It *really* is. And all the rest is sophistry.

### **Abortion Rights**

*Roe v. Wade* created an abortion liberty: the freedom to perform abortions, or have them performed, without legal penalty. Since that time, many abortion rights have also come into existence or are being sought. By

abortion rights I mean protections, privileges, and opportunities granted to abortion providers and advocates, and individuals seeking abortions, through government action. Payment for abortions through Medicaid is an obvious example. (The use of federal funds is currently restricted by the Hyde Amendment to cases of rape and incest and to protect the life of the mother, but approximately 21 states cover Medicaid abortions for more wide-ranging reasons.) Another is taxpayer support of abortions through organizations that promote or provide them, such as Planned Parenthood, or that encourage them with varying degrees of indirection, such as the United States Agency for International Development (USAID) and the United Nations Population Fund (UNFPA).

Some other abortion rights include the requirements that health-insurance companies include abortion in their coverage; that employers include abortion in the health insurance they provide their employees; that hospitals perform abortions; that medical schools include abortion training; and that public schools encourage their students (who attend under compulsion) to regard abortion as morally neutral or desirable.

In China, abortions are not only provided and promoted by government, they are in many cases made mandatory. Abortion rights there have been bought at an enormous cost in liberty—the freedom to have children. If we can agree that protection against active coercion is a minimum set of rights a government should ensure, can we also agree to some upper limits for those rights? Regardless of how we differ about the totality of functions we think appropriate to government, are there certain protections and privileges that government should *not* provide? Or, from another way of looking at the same question, which liberties should government definitely guarantee?

Many of us may agree in principle that freedoms of religion, speech, press, assembly, and petition should be guaranteed, but when we get down to specifics our opinions on these matters may differ more than we think; and we know that many people want the freedom to keep and bear arms to be infringed, perhaps denied. What of other freedoms not named in the Constitution: of travel, of place of residence, of emigration, of thought or opinion, of occupation, of schooling, of membership or political party, of disposing of one's goods as one wishes, of behavior on one's own property or in solitude, to have as many children as one wishes and to raise them by whatever standards one chooses—or a hundred others you could probably suggest? Which of these, if any, should be explicitly protected against encroachment?

This task is obviously a lot more complicated than coming up with a minimum set of rights, and thinking about it reveals how difficult reaching

agreement would be. It also illustrates the fact that, because of those difficulties, many important freedoms are not guaranteed explicitly in the Constitution. Among them is one that, I think, most of us will agree should be protected to the degree that that is possible: freedom of conscience. Like any other freedom, freedom of conscience imposes a barrier to the creation of certain rights. Rights should not be created that force people (or encourage them under threat of penalty) to act against their consciences, nor should they have to pay for governments to do things that violate their consciences—except for those protections and benefits, democratically judged necessary to the common good, that *only* government can provide.

Can a government function effectively if it has to respect the freedom of conscience of its citizens? Under the qualifications I stated I think it can, but this much I know: It can come a whole lot closer to respecting that freedom than it is accustomed to doing now.

The right to a trial as part of due process of law has been interpreted to allow the government to force individuals (under threat of penalty) to testify in court and to serve on juries. Coercions on these people were relaxed to take account of *some* individual differences of conscience. Those who believed it was morally wrong to take an oath, for example, were allowed not to do so. They were still made to testify, however, on the basis (I suppose) that justice cannot reasonably be attained without forced testimony.

A more extreme example is war. Armed forces are enlisted and paid for by a nation to provide protection for its residents against real or imagined harm from foreign powers. This sometimes leads to situations in which people are forced under threat of imprisonment (even death, in some cases of desertion) to serve in the armed forces. Individual differences of belief are taken into account but often capriciously, depending on the degree of war fervor at the time. Some individuals will be allowed to opt out of combat, however, or perhaps out of war duty altogether by objecting to participation as a matter of conscience. Taxpayers are still forced to pay for a war whether they find it morally repugnant or not on the presumption (I suppose) that they get the “benefit” of it in any case. The effects of military actions cannot reasonably be doled out on an individual basis.

Both these cases are explicitly governmental in nature. Almost all of us consider a judicial and a military system necessary to public safety, while the benefits they produce are broadly distributed and difficult to assign individually. Even more distinctive is the degree to which both these systems rely on coercion: acts and threats of physical and economic punishment of a sort only governments are allowed to employ.

What does all this mean to the subject under discussion? Do abortion

rights force individuals to violate their consciences? Obviously yes. To those who regard abortion as the willful destruction of an innocent human life, financing abortion is paying for murder. Out of respect for the freedom of conscience of these people, abortion rights should be created *only* if they have been democratically judged necessary to the common good *and* if they cannot be provided without the active involvement of government.

I have already discussed the degree to which the nation's democratic judgment concerning abortion was explicitly swept aside in 1973 (and continues to be). Building on this anti-democratic foundation, however, ordinary legislative processes have produced various abortion rights. What are we to think of them? Despite the apparent complexity of the issue, this point is not at all difficult to decide. Abortion is flat-out *not* governmental in nature in the way a judicial system is, or the protections offered by the armed forces are. It is, rather, like health care or housing or education or entertainment or a hundred other things each of us can decide individually whether or not to acquire. Like health care and housing and education and entertainment, it can be obtained through ordinary, voluntary methods of purchase; and if an individual cannot afford an abortion, she can be given access to it if there are enough people around who think she should be. In a realm of legal abortion, there is no reason that those who view it as a social good cannot bring about the results they desire without forcing participation from those who disagree with them. Any or all of its advocates can donate as much time or money as they wish to sympathetic clinics, hospitals, groups, and individuals.

During the period when slavery was legal, those who considered the practice despicable understandably objected to paying taxes to support it—for example, for the enforcement of fugitive-slave laws. In our time those who regard abortion as murder even more understandably object to sacrificing their money and their civil liberties to promote the practice through Medicaid, Planned Parenthood, USAID, UNFPA, and all the other types of abortion rights various legislatures take it into their heads to create.

Review: An Exercise in Logic

If we make the effort to distinguish carefully between civil rights and civil liberties, most of us, including most advocates of legal abortion, will agree to certain rights that are to be included in the minimum that any just government will provide and certain liberties that are to be included in the minimum that any just government will guarantee.

Based on the minimum set of rights (which includes legal protection for innocent human lives), abortion will be prohibited.

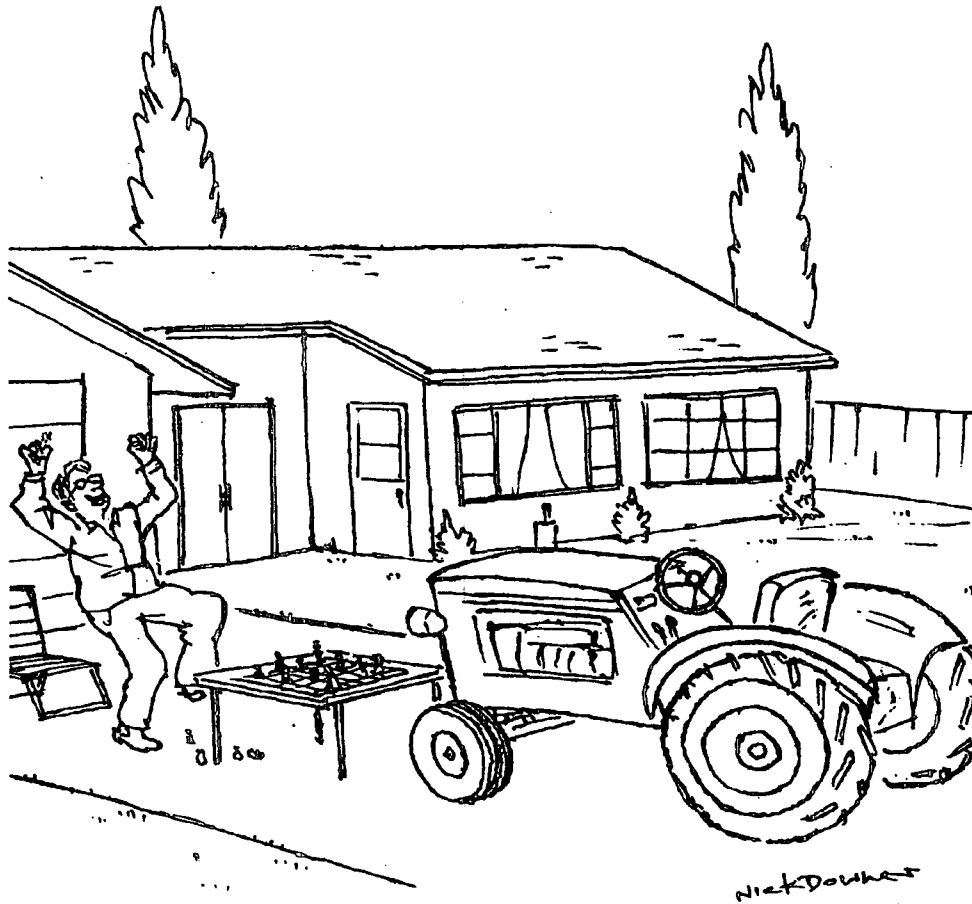
TERRENCE J. HOBIN

Based on the minimum set of liberties (which includes freedom of conscience to the degree compatible with essential government functions), abortion rights will not be created.

Abortion is legal.

Abortion rights exist.

I leave it as an exercise for the reader to determine the logical implications of these statements.



*"Once again, man beats machine!"*



## Dying Like a Dog

Nancy Harvey

Hunger and thirst, starvation and dehydration—ugly words to most of us, bringing images of tormenting weakness, agonizing muscle spasms, the ultimate cannibalism as the body devours itself to stay alive. But not everyone views such words with disgust. Last May, St. Louis University, a private Catholic school, held a conference on medical ethics that included a workshop entitled, “Dying of Dehydration—Does it Hurt?” Last April, some contributors to the symposium in *First Things* on medical ethics, “The Sanctity of Life Seduced,” recommended starvation and dehydration for certain terminal patients and those in a “persistent vegetative state” (PVS). Living wills list artificially administered food and water as things that may be taken away, and newspaper and magazine articles continue to suggest that modern technologies for continuing food and water cause the terminally ill to suffer long and agonizing “bad deaths,” or (if they are in PVS), “bad lives” without human capacities.

The people who recommend starvation and dehydration are not monsters or throwbacks to the Third Reich. They seem to be genuinely concerned with the pain and ugliness of “bad death,” and some of them are worried that the horrors of technological death increase grassroots support for the euthanasia movement. Those who favor removing food and water have impressive credentials. They include lawyers, doctors, and medical ethicists. However, I wonder how many of them have experienced dehydration and starvation almost to the point of death; how many of them have spent time in the sick bed?

I am a patient—not terminal or in PVS, but very expensive to keep alive, and more and more aware, as I grow older, of what it means to regard food and water as options instead of necessities. I have had scurvy, liver damage, compression fractures, staph infections, seizures, kidney failure, and many episodes of severe dehydration and malnutrition (one almost fatal). Having had surgery for Crohn’s disease, I am kept alive by very expensive hydration and nutrition that goes directly into the bloodstream. Poor health has been a part of my life for twenty-three years.

During this time, I have not noticed that my doctors are afflicted with the hubris that regards death as an accident that can be prevented. Perhaps because

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Nancy Harvey, who died in 2001, taught French at Cuba High School in Cuba, Missouri. This essay appeared in the April 1995 issue of *First Things*. Reprinted with permission. ©1995 First Things.

NANCY HARVEY

they work with chronic disease, my doctors tend to have a very fatalistic attitude. They know they cannot overcome death. All they can do is buy time—and few of them want to buy time for a dying patient in great pain.

Yet ordinary people seem to have gotten the impression that this is exactly what doctors most want to do. Ordinary people seem haunted by the nightmare of the technological “bad death.” An old woman full of cancer has her heart stop. Instantly the medics rush in with the paddles to start her up again. A respirator is hooked up. Her gut shut down a couple of days ago, so she already has a central line. Her kidneys quit yesterday, and she is now on dialysis. The medics shock her heart back into action, make sure the beat is regular, check all systems, and leave, after hooking her up to a heart monitor. But late that night the nurses are called away from their stations to tend to others. There is no one watching the monitor. The woman’s heart stops—this time forever.

Such a death would certainly be an example of technological hubris, but no one should believe that this is routine care for elderly patients with terminal conditions. The extreme, high-tech procedures imagined by ordinary people are rarely the subject of debate; it is simple feeding tubes and common antibiotics that are labeled “unnatural” by “ethicists”—in the thought that the life which they sustain is also unnatural and should not be continued. Feeding tubes are artificial and unnatural, of course, although they are low-tech and simple to use. They are necessary only for a person who cannot swallow. In most cases, spoon-feeding can be, and used to be, done instead, though it is more expensive. Spoon-feeding must be done by hand and spoon-fed diets have to taste good. It is unfair to blame feeding tubes for keeping people alive when many patients (including even some in PVS) could be nourished by other methods. This does not change the fact that feeding tubes are unnatural. But the nature of man is to live in an unnatural environment. There are many people in our society who are kept alive by unnatural technology. There are many people with mild chronic diseases or physical handicaps who are not robust enough to live without electricity, running water, air-conditioning, cars, microwaves, and telephones. Placed in the natural environment of a third world country, they would soon die—unless, of course, someone was willing to care for them. But is such care “natural”? Is it natural for a person or family or society to assume the burdensome care of an adult who will never get better? Is it more natural to help a crippled adult limp to the toilet than to diaper and wash an incontinent adult? Is spoon-feeding a paralyzed man who can only open his mouth and swallow more natural than tube-feeding a paralyzed man who can turn his head and smile?

Perhaps we should ask a different question. Perhaps we should ask, "Is it natural or unnatural for man to use technology to increase his physical comfort?"

Having spent a fair amount of time dehydrated and malnourished, I can confidently say that hydration is far more pleasant than the opposite. Anyone who doubts this can forgo fluids for a few days or nourishment for a few weeks and experience the reality. And after my experiences with staph infections, I would want antibiotics even if I were dying of cancer.

Of course, there is an art to the practice of medicine, part of which involves looking at the patient as well as the chart, and knowing what will help and what will hurt the whole person. There may be times when antibiotics cannot be given, perhaps because the side effects are worse than the staph or because the kidneys or liver cannot take the strain. There may be times when a cancerous mass or fluid retention causes tube feeding to be painful. And there comes a time when the gut and kidneys shut down. The body cannot use food and water after that point, and death is very close. But I cannot understand taking away food and fluid before the body itself decides to quit.

Although food, water, and antibiotics add greatly to a patient's comfort, there are still people who fear a technological "bad death." They have, I think, two reasons for their fear. Hospital deaths with IVs and feeding tubes are the only deaths they see, and, with or without medical technology, dying tends to be a long and painful struggle. This is not the fault of the feeding tube. It is nature's fault. Our bodies are constructed to fight death. Everything from our bone marrow to the wax in our ears continually defends the body against invasion, attacking invaders who have breached the barriers and repairing injury. Death may be natural in that it is part of nature, but our bodies do not find it so. It is natural for them to struggle against death until there is nothing left to fight with, and anyone watching the struggle is going to be upset. It is hard to watch even when the patient is kept as comfortable as possible—even harder if the patient is in pain.

I believe this is the strongest reason for the fear of a technological bad death. Many of us who have lost friends or relatives have seen them suffer great pain. Unfortunately, we have sometimes seen doctors or nurses treating dying patients as though they were merely surgical cases, allowed only so much sedation every four hours. It may well seem more compassionate to starve and dehydrate a patient rather than to allow him to live on in such pain. And food and water are, of course, futile for a dying patient. But so is bedding, so is clothing, so is shelter. None of these will cure disease or

prevent death except for the death that results when they are taken away. We can take away the bedding and the clothing and leave the helpless patient naked, so he dies of hypothermia or pneumonia. We can take away the artificial shelter of the hospital and leave the patient in a natural setting, so he dies of exposure. Or we can take away his food and water so he starves and dies of thirst. We can then soothe our consciences by saying that we have not killed anyone or intended anyone's death, but merely allowed nature to take its course.

But we are in control of nature. We decide what we will take away, and when, and from whom. Nature becomes our tool and does our dirty work for us, allowing us to feel blameless as we pull the stomach tube and disconnect the IV.

Most ordinary people, however, know there is a difference between omission and abandonment. They do not accept the idea, so popular with those who would remove food and fluid, that taking away a helpless person's food and water is morally superior to giving him a lethal injection. My distant cousin, a man with cancer, died from the removal of his food and water. His sister was not allowed to be in on the decision, but she watched him die in torment. While he was still able to feel pain, he was racked by agonizing muscle spasms. When he was finally dead, he was so contorted that the undertaker was unable to make him presentable. His sister, a registered nurse, considered it the most horrible death she had ever seen.

Of course, those who would remove food and fluid do not wish to torture the helpless: therefore, I can only assume that they have no idea of the quiet torment of starvation and dehydration. Doctors may say that it doesn't hurt, but knowledge of suffering cannot be gained second-hand. I do not understand how a headache feels by reading about constricted blood vessels. I know how those blood vessels feel because I have a headache. My experiences with starvation and dehydration have not encouraged me to think of them as a comfortable alternative to the "bad death" of feeding tubes, nor as a superior rival to the swift, painless, merciful death promised by those who support euthanasia.

But those who would remove food and fluid do not stop with the terminal patient. They are also concerned with those leading a technological "bad life"—those in PVS. They feel that many people are afraid of ending up in such a state, and this fear encourages grassroots support of euthanasia.

I agree about the fear, but I believe it has a different cause. I have had high school students express concern about ending up in PVS, perhaps because they have been taught that it can result from drinking and driving. But the older people I know are simply afraid of helplessness. In the celebrated case

of Christine Busalacchi, the St. Louis papers and TV stations were full of debate on whether her cerebral cortex was functioning. The case was an example of medical arrogance—CAT scans and neurological tests were used to measure a human relationship, and the testimony of caregivers from different institutions was ignored. But most of the people I talked to about the case did not care about her cerebral cortex. They did not care whether or not Christine was capable of experiencing pleasure or pain or responding to the love of others. They saw a helpless person dependent on others for her care, without control over her basic functions, and they did not like the picture.

Some of those concerned with this problem would not remove food and fluid from those who are not terminal and who have a functioning cerebral cortex. But the ordinary people I am referring to do not want to live with a damaged but functioning cerebral cortex that results in limited or deranged behavior. They dread living with severe Alzheimer's Disease—unable to recognize family and friends, unable to care for themselves, obsessed with the idea that someone is stealing their clothes. Many feel the same about strokes and fear mental impairment, loss of bodily control and simple dignity.

The publicity surrounding PVS cases has certainly been used by the media as a stimulus for the euthanasia movement, but there is also a great deal of quiet publicity—in newspapers, in women's magazines, and on local TV stations—that shows an ugly picture of the lives of those who simply need care. These stories deal with the problems of living with Alzheimer's Disease or stroke damage, the abuse of the elderly by their children, nursing home horror stories, the cost of long-term care, and the problems of those who must work, care for their children, and also care for elderly relatives. The message is often veiled but clear—there is a strong possibility that the last years of life will be spent in a miserable state, devoid of human dignity, plagued by demented behavior and physical suffering, costly and burdensome to others. How much kinder it seems to give such people the blessing of a swift, painless, dignified death.

This is the great attraction of euthanasia: to spare ourselves the experience of the body's struggle with death. I believe that the only way to resist the seduction of euthanasia is to care—to nurse the terminal person with love, to manage pain better, to recognize and respond to the dying person as Ruth or Helen or Fred instead of as a problem to be solved. Dying people do not lose their personalities or their humanity. They still like lemon sherbet, fingernail polish, baseball news. They still need humor, consideration, loving caresses, and companionship.

Dying people can and should be nurtured—but what of the helpless person

who is not dying? I believe the same things hold true. The quality of the helpless person's life depends to a great extent on the care received—on the competence, cheerfulness, and affection of those who do the caregiving. My grandfather, who lived for twelve years in a nursing home, was so paralyzed from the effects of Parkinson's Disease that he could hardly open his mouth, yet the nurses loved him and his family came and came often, bringing all the grandkids for him to enjoy—once even celebrating Christmas in his room so he could watch them open presents.

And as for people in PVS, we will never know what their damaged brains are capable of relearning unless we are willing to nurture them. It is highly unscientific, at the very least, to think that we know everything we need to know about the brain and that any behavior from a PVS patient that contradicts the current theory of "vegetablism" is irrelevant. Neurological tests and CAT scans do not constitute a theory. The behavior of the patient linked with the tests and scan are what we use to construct the theory. And since there is conflicting evidence about behavior, and since diagnosis is not infallible, it is inhumane to deprive people of food and water simply because current theory holds that they cannot feel it.

If our current theory is wrong, we will have caused a "bad death." Starvation and dehydration do cause suffering. They add to the cruelty and ugliness of death and reinforce the idea that the helpless person is no longer a member of the human family. I am sure that some will say that the sufferings of thirst and starvation can be alleviated, but it is asking a great deal of nurses and doctors to expect them to take away food and water and then treat the problems caused by taking away food and water. And if some compassionate doctors or nurses make an effort to discover effective sedation to remove the torments of thirst, if they try to keep the patient's electrolytes balanced and carefully adjust the amount of food and fluid (still using the feeding tube) in order to lessen the suffering as much as possible, then nature is no longer allowed to take its course. This death also becomes technological—and for the same reason: to make the patient as comfortable as possible while he dies.

If we are serious about fighting the euthanasia movement, I believe we must fight the idea that our status as members of the human family depends on our health, that under certain circumstances we will no longer be nurtured, our basic needs will purposely be ignored, and we will be abandoned to suffer and die. If we establish the idea that people no longer have lifetime membership in the human family, the practice of abandonment could become widespread—strongly encouraged perhaps by insurance carriers to cut costs. Then we may find ourselves no longer able to choose to die a

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death befitting the dignity of a man living to the end of his natural life, surrounded by concern for his comfort, and given the basic care his body still needs. Instead, our death will resemble the death of an unwanted dog who is abandoned by his owners and left to die of starvation and dehydration. Every responsible pet owner knows that it is a cruel fate for an animal, no matter how old or sick. And those who see a worn-out horse or an old dog left without food and water can call the police.

But if we decide that it is acceptable to treat humans worse than we treat animals, it should not surprise us if many people at the grassroots level decide that as long as they have to die like a dog, they would rather not suffer the fate of an abandoned stray. We should not be surprised if they work long and hard for the legal right to be quickly and painlessly “put to sleep” by the family “vet.” Once this is accomplished, the evil inherent in such a practice will become all too apparent. As any member of the humane society can testify, disease and infirmity are not the only, or even the most common, reasons why Fido is put to sleep.

## APPENDIX A

[*The following column, which appeared March 22, 2005 in the (London) Daily Telegraph, is reprinted with Mr. Steyn's permission. Copyright Mark Steyn.*]

### **The Strange Death of the Liberal West**

*Mark Steyn*

I am, as Tony Blair might say, deeply passionately personally deeply personally opposed to abortion. But, unlike him, I think it ought to be an election issue.

Not because of my personal beliefs: I happen to believe a lot of what we call “late-term abortion” is in reality early-term infanticide, but, if you don’t accept that that’s a human life that’s being destroyed, my deeply personal passionate beliefs aren’t likely to sway you one way or another. That’s where so-called progressive politicians such as Blair and John Kerry have it all backwards: the point about abortion is not that it’s a “matter of conscience” for individuals to “wrestle with,” but that it’s a crucial part of the central political challenge of our time.

Almost every issue facing the EU—from immigration rates to crippling state pension liabilities—has at its heart the same glaringly plain root cause: a huge lack of babies. I could understand a disinclination by sunny politicians to peddle doom and gloom were it not for the fact that, in all other areas of public policy, our rulers embrace doomsday scenarios at the drop of a hat. Most 20-year projections—on global warming, fuel resources, etc.—are almost laughably speculative. They fail to take into account the most important factor of all—human inventiveness: “We can’t feed the world!” they shriek. But we develop more efficient farming methods with nary a thought. “The oil will run out by the year 2000!” But we develop new extraction methods and find we’ve got enough oil for as long as we’ll need it.

But human inventiveness depends on humans—and that’s the one thing we really are running out of. When it comes to forecasting the future, the birth rate is the nearest thing to hard numbers. If only a million babies are born in 2005, it’s hard to have two million adults enter the workforce in 2025 (or 2033, or 2041, or whenever they get around to finishing their Anger Management, Systemic Racism and Gay Studies degrees). If that’s not a political issue, what is? To cite only the most obviously affected corner of the realm, what’s the long-term future of the Scottish National Party if there are no Scottish nationals?

When I’ve mentioned the birth dearth on previous occasions, pro-abortion correspondents have insisted it’s due to other factors—the generally declining fertility rates that affect all materially prosperous societies, or the high taxes that make large families prohibitively expensive in materially prosperous societies. But this is a bit like arguing over which came first, the chicken or the egg—or, in this case, which came first, the lack of eggs or the scraggy old chicken-necked women desperate for one designer baby at the age of 48. How much of Europe’s fertility woes derive from abortion is debatable. But what should be obvious is that the way the abortion issue is framed—as a Blairite issue of personal choice—is itself symptomatic of the broader crisis of the dying West.



Since 1945, a multiplicity of government interventions—state pensions, subsidised higher education, higher taxes to pay for everything—has so ruptured traditional patterns of inter-generational solidarity that in Europe a child is now an optional lifestyle accessory. By 2050, Estonia's population will have fallen by 52 per cent, Bulgaria's by 36 per cent, Italy's by 22 per cent. The hyper-rationalism of post-Christian Europe turns out to be wholly irrational: what's the point of creating a secular utopia if it's only for one generation?

Shortly after 9/11, I wrote in these pages about one of the most curious aspects of the new war—the assurance given to Islamist “martyrs” that 72 virgins were standing by to pleasure them for eternity. The notion that the after-life is a well-appointed brothel is a perplexing one to the Judaeo-Christian world, and I suggested that Americans would be sceptical if heaven were framed purely in terms of boundless earthly pleasures.

But, on reflection, if the Islamists are banal in portraying the next world purely in terms of sensual self-gratification, we're just as reductive in measuring this one the same way. America this Holy Week is following the frenzied efforts to halt the court-enforced starvation of a brain-damaged woman for no reason other than that her continued existence is an inconvenience to her husband. In Britain, two doctors escape prosecution for aborting an otherwise healthy baby with a treatable cleft palate because the authorities are satisfied they acted “in good faith.” You can read similar stories in almost any corner of the developed world, except perhaps the Netherlands, where discretionary euthanasia is so advanced it's news if the kid makes it out of the maternity ward. As the New York Times reported the other day:

Babies born into what is certain to be a brief life of grievous suffering should have their lives ended by physicians under strict guidelines, according to two doctors in the Netherlands. The doctors, Eduard Verhagen and Pieter J. J. Sauer of the University Medical Center in Groningen, in an essay in today's New England Journal of Medicine, said they had developed guidelines, known as the Groningen protocol.

Ah, the protocols of the elders of science. Odd the way scientists have such little regard for scientific progress. It's highly likely that many birth defects—not just the bilateral cleft lips—will be treatable and correctible in the next decade or two. But once you start weighing the relative values of individual lives, there's no end to it. Much of that derives from the way abortion has redefined life—as a “choice,” an option.

In practice, a culture that thinks Terri Schiavo's life in Florida or the cleft-lipped baby's in Herefordshire has no value winds up ascribing no value to life in general. Hence, the shrivelled fertility rates in Europe and in blue-state America: John Kerry won the 16 states with the lowest birth rates; George W. Bush took 25 of the 26 states with the highest.

The 19th-century Shaker communities were forbidden from breeding and could increase their number only by conversion. The Euro-Canadian-Democratic Party welfare secularists seem to have chosen the same predicament voluntarily, and are likely to meet the same fate. The martyrdom culture of radical Islam is a literal dead end. But so is the slyer death culture of post-Christian radical narcissism. This is the political issue that will determine all the others: it's the demography, stupid.

## APPENDIX B

[Fr. Robert Johansen is a Catholic priest in Kalamazoo, Michigan. The following is reprinted with the permission of National Review Online (nationalreview.com, March 16)].

### Starving for a Fair Diagnosis

*Reverend Robert Johansen*

Terri Schiavo lies in a Florida hospice, subject to a judge's order that will cause her to die of starvation and dehydration commencing this Friday, March 18, at 1:00 P.M. Her parents, Bob and Mary Schindler, have fought for over a decade to prevent her death. They have repeatedly gone to court in their efforts to stop Terri's husband, Michael, from removing the tube that provides her with food and water.

The court battle has gone largely against the Schindlers. Last week, Pinellas County Circuit Court judge George Greer issued a steady stream of rulings denying almost every motion the Schindlers raised. He denied some of them summarily, without hearing arguments or evidence. Among the motions Judge Greer denied was a request for new testing and examination of Terri by independent and qualified specialists. David Gibbs, attorney for the Schindlers, submitted 33 affidavits from doctors and other medical professionals contending that Terri's condition should be reevaluated. About 15 of these affidavits are from board-certified neurologists. Some of these doctors also say that Terri could benefit from therapy. Judge Greer was unmoved.

Many people believe that Terri Schiavo has had "the best of care," and that everything has been tried by way of rehabilitation. This belief is false. In fact, Terri has had no attempts at therapy or rehabilitation since 1992, and very little had been done up to that point. Terri has not even had the physical therapy most doctors would regard as normative for someone in her condition. The result is that Terri suffers from severe muscle contractures, which have caused her body to become contorted. Physical therapy could remedy this, but husband Michael has refused to provide it.

Terri has also suffered from what many professionals would regard as neglect. She had to have several teeth extracted last year because of severe decay. This decay was caused by a lack of basic dental hygiene, such as tooth-brushing. She also developed decubitus (skin) ulcers on her buttocks and thighs. These ulcers can be prevented by a simple regimen of regular turning: a basic nursing task that any certified nurse's aide can perform. The presence of these easily preventable ulcers is a classic sign of neglect. Bob and Mary Schindler have repeatedly complained of Terri's neglect, and have sought to remove Michael as guardian on that basis. Judge Greer was unmoved by those complaints as well.

And, quite apart from the question of Terri's therapy and care, it is entirely likely that Terri has never been properly *diagnosed*. Terri is usually described as being in a Persistent Vegetative State (PVS), and indeed Judge Greer ruled as a finding of fact that she is PVS; but this diagnosis and finding were arrived at in a way that has many neurologists expressing surprise and dismay.

I have spent the past ten days recruiting and interviewing neurologists who are willing to come forward and offer affidavits or declarations concerning new testing and examinations for Terri. In addition to the 15 neurologists' affidavits Gibbs had in time to present in court, I have commitments from over 30 others who are willing to testify that Terri should have new and additional testing, and new examinations by unbiased neurologists. Almost 50 neurologists all say the same thing: Terri should be reevaluated, Terri should be reexamined, and there are grave doubts as to the accuracy of Terri's diagnosis of PVS. *All* of these neurologists are board-certified; a number of them are fellows of the prestigious American Academy of Neurology; several are professors of neurology at major medical schools.

So how can Judge Greer ignore the opinions of so many qualified neurologists, some of whom are leaders in the field? The answer is that Michael Schiavo, his attorney George Felos, and Judge Greer already have the diagnosis they want.

Terri's diagnosis was arrived at without the benefit of testing that most neurologists would consider standard for diagnosing PVS. One such test is MRI (Magnetic Resonance Imaging). MRI is widely used today, even for ailments as simple as knee injuries—but Terri has never had one. Michael has repeatedly refused to consent to one. The neurologists I have spoken to have reacted with shock upon learning this fact. One such neurologist is Dr. Peter Morin. He is a researcher specializing in degenerative brain diseases, and has both an M.D. and a Ph.D. in biochemistry from Boston University.

In the course of my conversation with Dr. Morin, he made reference to the standard use of MRI and PET (Positron Emission Tomography) scans to diagnose the extent of brain injuries. He seemed to assume that these had been done for Terri. I stopped him and told him that these tests have never been done for her; that Michael had refused them.

There was a moment of dead silence.

"That's criminal," he said, and then asked, in a tone of utter incredulity: "How can he continue as guardian? People are deliberating over this woman's life and death and there's been no MRI or PET?" He drew a reasonable conclusion: "These people [Michael Schiavo, George Felos, and Judge Greer] don't want the information."

Dr. Morin explained that he would feel obligated to obtain the information in these tests before making a diagnosis with life and death consequences. I told him that CT (Computer-Aided Tomography) scans had been done, and were partly the basis for the finding of PVS. The doctor retorted, "Spare no expense, eh?" I asked him to explain the comment; he said that a CT scan is a much less expensive test than an MRI, but it "only gives you a tenth of the information an MRI does." He added, "A CT scan is useful only in pretty severe cases, such as trauma, and also during the few days after an anoxic (lack of oxygen) brain injury. It's useful in an emergency-room setting. But if the question is ischemic injury [brain damage caused by lack of blood/oxygen to part of the brain] you want an MRI and PET. For subsequent evaluation of brain injury, the CT is pretty useless unless there has been a massive stroke."

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Other neurologists have concurred with Dr. Morin's opinion. Dr. Thomas Zabiega, who trained at the University of Chicago, said, "Any neurologist who is objective would say 'Yes'" to the question, "Should Terri be given an MRI?"

But in spite of the lack of advanced testing, such as an MRI, attorney George Felos has claimed that Terri's cerebral cortex has "liquefied," and doctors for Michael Schiavo have claimed, on the basis of the CT scans, that parts of Terri's cerebral cortex "have been replaced by fluid." The problem with such contentions is that the available evidence can't support them. Dr. Zabiega explained that "a CT scan can't resolve the kind of detail needed" to make such a pronouncement: "A CT scan is like a blurry photograph." Dr. William Bell, a professor of neurology at Wake Forest University Medical School, agrees: "A CT scan doesn't give much detail. In order to see it on a CT, you have to have massive damage." Is it possible that Terri has that sort of "massive" brain damage? According to Dr. Bell, that isn't likely. Sometimes, he said, even patients who *are* PVS have a "normal or near normal" MRI.

So why hasn't an MRI been done for Terri? That question has never been satisfactorily answered. George Felos has argued that an MRI can't be done because of thalamic implants that were placed in Terri's skull during the last attempt at therapy, dating back to 1992. But Felos's contention ignores the fact that these implants could be removed. Indeed, the doctor who put them in *instructed* Michael to have them removed. Michael has never done so.

The most obvious possible explanation for what would otherwise be inexplicable behavior is that Michael Schiavo, George Felos, and Judge Greer don't want to admit any information that would upset the diagnosis they already have. Dr. Morin, when told that Michael had refused an MRI, and that Judge Greer had confirmed the decision, said: "He refused a non-invasive test? People trying to do the right thing want the best and most complete information available. We don't have that in Terri's case." Dr. Bell agreed with this assessment, saying, "It seems as though they're fearful of any additional information."

Doctors for Michael Schiavo have said that an MRI and PET are not necessary for Terri because PVS is primarily a "clinical" diagnosis, that is, one arrived at on the basis of examination of the patient, rather than by relying on tests. And the neurologists I have spoken to agree on the clinical nature of the diagnosis, while insisting that advanced tests nonetheless are a necessary part of it. But the star medical witness for Michael Schiavo, Dr. Ronald Cranford of the University of Minnesota, has repeatedly dismissed calls for MRI testing, and his opinion has prevailed.

Dr. Cranford was the principal medical witness brought in by Schiavo and Felos to support their position that Terri was PVS. Judge Greer was obviously impressed by Cranford's résumé: Cranford travels throughout the country testifying in cases involving PVS and brain impairment. He is widely recognized by courts as an expert in these issues, and in some circles is considered "the" expert on PVS. His clinical judgment has carried the day in many cases, so it is relevant to examine the

manner in which he arrived at his judgment in Terri's case. But before that, one needs to know a little about Cranford's background and perspective: Dr. Ronald Cranford is one of the most outspoken advocates of the "right to die" movement and of physician-assisted suicide in the U.S. today.

In published articles, including a 1997 op-ed in the Minneapolis–St. Paul *Star Tribune*, he has advocated the starvation of Alzheimer's patients. He has described PVS patients as indistinguishable from other forms of animal life. He has said that PVS patients and others with brain impairment lack personhood and should have no constitutional rights. Perusing the case literature and articles surrounding the "right to die" and PVS, one will see Dr. Cranford's name surface again and again. In almost every case, he is the one claiming PVS, and advocating the cessation of nutrition and hydration.

In the cases of Paul Brophy, Nancy Jobes, Nancy Cruzan, and Christine Busalacchi, Cranford was the doctor behind the efforts to end their lives. Each of these people was brain-damaged but not dying; nonetheless, he advocated death for all, by dehydration and starvation. Nancy Cruzan did not even require a feeding tube: She could be spoon-fed. But Cranford advocated denying even that, saying that even spoon-feeding constituted "medical treatment" that could be licitly withdrawn.

In cases where other doctors don't see it, Dr. Cranford seems to have a knack for finding PVS. Cranford also diagnosed Robert Wendland as PVS. He did so in spite of the fact that Wendland could pick up specifically colored pegs or blocks and hand them to a therapy assistant on request. He did so in spite of the fact that Wendland could *operate and maneuver an ordinary wheelchair with his left hand and foot, and an electric wheelchair with a joystick*, of the kind that many disabled persons (most famously Dr. Stephen Hawking) use. Dr. Cranford dismissed these abilities as meaningless. Fortunately for Wendland, the California supreme court was not persuaded by Cranford's assessment.

Expert witnesses in court are supposed to be unbiased: disinterested in the outcome of the case. Part of the procedure in qualifying expert witnesses is establishing that they are objective and unbiased. But given Dr. Cranford's history of advocacy in the "right to die" and euthanasia movements, and given his track record of almost always coming down on the side of PVS and removal of nutrition and hydration, one might question his objectivity. Indeed, the Schindlers' attorneys attempted to do so in the 2002 evidentiary hearing at which Cranford testified, but went unheard. Organizations such as the International Task Force on Euthanasia and Assisted Suicide submitted *amicus curiae* (friend of the court) briefs in the appellate proceedings in Terri's case, demonstrating Cranford's bias in detail. But these arguments also seemed to fall on deaf ears.

Some neurologists who also consult in legal cases were not surprised at the handling of Dr. Cranford's expert testimony. In theory, they said, the expert witness is supposed to be objective, but, as Dr. Bell explained, "the way it really works is that an attorney carefully selects an expert that will give him the outcome he desires." He related that he has been asked by attorneys to serve as an expert. "I

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have looked over medical records,” he said, “and told attorneys what I thought.” But on occasion, he said, his opinion was “obviously not what they wanted to hear” and “they moved on to another expert.” Bell acknowledged that Cranford is “a highly accomplished and experienced speaker,” but said that in him the court “likely found a highly prejudiced expert.”

Neurologists who are familiar with diagnosing and treating PVS and other brain injuries have told me that PVS is a notoriously difficult diagnosis to make. It requires a great deal of time spent with the patient over several days or weeks. The reason for this, as Dr. Bell explained, is that brain-injured patients have severely disrupted sleep/wake cycles. Dr. Mack Jones, a neurologist in Ft. Walton Beach, Fla., added that patients with severe brain injury will have greatly varying levels of alertness: “Two independent examiners may get an entirely different impression depending on when and how long he/she has spent performing the examination. For example, one examiner may unknowingly attempt to evaluate the patient during a stage of sleep. Another examiner, by chance, may find a more responsive patient simply because [the patient is] now more aroused.” Dr. Morin concurred, saying that in his experience “the attention of brain-injured patients is very erratic,” and that because of this he has “seen inadequate assessments even by experienced neurologists.” Because of these difficulties, the American Academy of Neurology has made it clear that it can take months for a physician to establish with confidence the diagnosis of PVS. A 1996 *British Medical Journal* study, conducted at England’s Royal Hospital for Neurodisability, concluded that there was a 43-percent error rate in the diagnosis of PVS. Inadequate time spent by specialists evaluating patients was listed as a contributing factor for the high incidence of errors.

So, did Dr. Cranford, or any of the doctors testifying for Michael Schiavo, spend *months* evaluating Terri? No. To be fair, none of the doctors appearing for the Schindlers spent months with Terri either. But it is hardly coincidental that the doctors who spent the most time with Terri came to the conclusion that she is not PVS. The doctors brought in by the Schindlers spent approximately 14 hours examining Terri over more than two weeks; their conclusion was that Terri is not PVS, and that she may benefit from therapy.

In marked contrast, Dr. Cranford examined Terri on one occasion, for approximately 45 minutes. Another doctor for Michael Schiavo, Dr. Peter Bambikidis of the Cleveland Clinic Foundation in Ohio, examined Terri for about half an hour. When Dr. Bell learned of the cursory nature of these exams, he said: “You can’t do this. To make a diagnosis of PVS based on one examination is fallacious.” In Cranford’s examination, described by one witness as “brutal,” he discounted evidence under his own eyes of Terri’s responsiveness. At one point, Dr. Cranford struck Terri very hard on the forehead between her eyes. Terri recoiled and moaned, seemingly in pain. In his court testimony, Cranford dismissed the reaction and moan as a “reflex.”

“I asked Dr. Bell if he thought a moan uttered after a painful blow could be a

reflex. "It's highly unlikely," he replied. He qualified his answer by noting that he had not actually seen the video of the exam, but he believes that the description of Terri's reaction is not consistent with a reflex. "A moan is not a reflex," Bell said. "A wince or grimace is not a reflex."

By the very definition of Persistent Vegetative State, the patient must exhibit no "evidence of awareness of self or environment" or "ability to interact with others." As one neurologist put it, if a patient shows "any response to the outside world, the patient isn't in a PVS." All it takes, according to Dr. Jones, is "only one examiner to discover the presence of higher brain function and the naysayers' opinions are, by the very definition of PVS, null and void."

Given the difficulty of diagnosing PVS, the high rate of error, the obvious bias of the doctor whose judgment forms the basis of the judge's ruling that Terri is PVS, and the growing outcry from the neurological community, how is it that Judge Greer's ruling has been sustained? The answer is that in our legal system, once a judge has ruled on a matter of *fact*, it is very difficult to revisit such a ruling. The lawyers' rule of thumb is that trial courts hear and rule on questions of fact, and appellate courts rule on questions of law; it's unusual for an appellate court to overturn a lower court's ruling because of an issue of fact.

That's why, at every turn in this case, the Schindlers have had to try to undo the faulty rulings of fact previously issued by Judge Greer. They've had to go back before Judge Greer himself and try to convince *him* that he was wrong, and should undo his own rulings. Judge Greer has proven unwilling to do so. The higher courts, unwilling to overturn a trial judge's rulings of fact, have no interest in granting new hearings. Michael Schiavo and George Felos have no interest in revisiting Terri's diagnosis, as that ruling provides the whole legal basis of their ability to end her life. Dr. Cranford has no interest in seeing his own diagnosis called into question. Dr. Bell lamented that at this point, "medical realities are no longer governing this case." He added that it seemed to him that medical issues concerning the care of the patient had been subsumed by legal issues. In our courts, he added, "once a decision is made they don't want additional information."

The whole history of Terri's case over the past few years can be summed up as the efforts of the Schindlers, and those who value Terri's life, to try to introduce additional information before the courts and other authorities. Some of this information consists of facts and arguments that were ignored or dismissed without adequate consideration; some has been the result of advances in the diagnosis and treatment of brain injuries over the last five years. On the side of Michael Schiavo, George Felos, and Judge Greer, their efforts have consisted almost entirely in trying to prevent any new information from being presented or considered.

The legal system's willful blindness to facts cannot succeed forever. The truth has a way of coming out. But will it do so in time to save Terri Schiavo? Dr. Morin said to me, towards the end of our conversation, that "the law can find a way to do the right thing if it wants to." The problem so far is that those who have the power to do the right thing seem to have no desire or inclination to do so.

## APPENDIX C

*[Nat Hentoff is a columnist for the Village Voice and author of many books, including The War on the Bill of Rights and the Gathering Resistance (Seven Stories Press). The following column, which appeared March 29, 2005, is reprinted with Mr. Hentoff's permission.]*

### **Terri Schiavo: Judicial Murder**

*Nat Hentoff*

For all the world to see, a 41-year-old woman, who has committed no crime, will die of dehydration and starvation in the longest public execution in American history.

She is not brain-dead or comatose, and breathes naturally on her own. Although brain-damaged, she is not in a persistent vegetative state, according to an increasing number of radiologists and neurologists.

Among many other violations of her due process rights, Terri Schiavo has never been allowed by the primary judge in her case—Florida Circuit Judge George Greer, whose conclusions have been robotically upheld by all the courts above him—to have her own lawyer represent her.

Greer has declared Terri Schiavo to be in a persistent vegetative state, but he has never gone to see her. His eyesight is very poor, but surely he could have visited her along with another member of his staff. Unlike people in a persistent vegetative state, Terri Schiavo is indeed responsive beyond mere reflexes.

While lawyers and judges have engaged in a minuet of death, the American Civil Liberties Union, which would be passionately criticizing state court decisions and demanding due process if Terri were a convict on death row, has shamefully served as co-counsel for her husband, Michael Schiavo, in his insistent desire to have her die.

Months ago, in discussing this case with ACLU executive director Anthony Romero, and later reading ACLU statements, I saw no sign that this bastion of the Bill of Rights has ever examined the facts concerning the egregious conflicts of interest of her husband and guardian Michael Schiavo, who has been living with another woman for years, with whom he has two children, and has violated a long list of his legal responsibilities as her guardian, some of them directly preventing her chances for improvement. Judge Greer has ignored all of them.

In February, Florida's Department of Children and Families presented Judge Greer with a 34-page document listing charges of neglect, abuse, and exploitation of Terri by her husband, with a request for 60 days to fully investigate the charges. Judge Greer, soon to remove Terri's feeding tube for the third time, rejected the 60-day extension. (The media have ignored these charges, and much of what follows in this article.)

Michael Schiavo, who says he loves and continues to be devoted to Terri, has provided no therapy or rehabilitation for his wife (the legal one) since 1993. He did have her tested for a time, but stopped all testing in 1993. He insists she once told him she didn't want to survive by artificial means, but he didn't mention her



alleged wishes for years after her brain damage, while saying he would care for her for the rest of his life.

Terri Schiavo has never had an MRI or a PET scan, nor a thorough neurological examination. Republican Senate leader Bill Frist, a specialist in heart-lung transplant surgery, has, as *The New York Times* reported on March 23, “certified [in his practice] that patients were brain dead so that their organs could be transplanted.” He is not just “playing doctor” on this case.

During a speech on the Senate floor on March 17, Frist, speaking of Judge Greer’s denial of a request for new testing and examinations of Terri, said reasonably, “I would think you would want a complete neurological exam” before determining she must die.

Frist added: “The attorneys for Terri’s parents have submitted 33 affidavits from doctors and other medical professionals, all of whom say that Terri should be re-evaluated.”

In death penalty cases, defense counsel for retarded and otherwise mentally disabled clients submit extensive medical tests. Ignoring the absence of complete neurological exams, supporters of the deadly decisions by Judge Greer and the trail of appellate jurists keep reminding us how extensive the litigation in this case has been—19 judges in six courts is the mantra. And more have been added. So too in many death penalty cases, but increasingly, close to execution, inmates have been saved by DNA.

As David Gibbs, the lawyer for Terri’s parents, has pointed out, there has been a manifest need for a new federal, Fourteenth Amendment review of the case because Terri’s death sentence has been based on seven years of “fatally flawed” state court findings—all based on the invincible neglect of elementary due process by Judge George Greer.

I will be returning to the legacy of Terri Schiavo in the weeks ahead because there will certainly be long-term reverberations from this case and its fracturing of the rule of law in the Florida courts and then the federal courts—as well as the disgracefully ignorant coverage of the case by the great majority of the media, including such pillars of the trade as *The New York Times*, *The Washington Post*, *The Miami Herald*, and the *Los Angeles Times* as they copied each other’s misinformation, like Terri Schiavo being “in a persistent vegetative state.”

Do you know that nearly every major disability rights organization in the country has filed a legal brief in support of Terri’s right to live?

But before I go back to other Liberty Beats—the CIA’s torture renditions and the whitewashing of the landmark ACLU and Human Rights First’s lawsuit against Donald Rumsfeld for his accountability in the widespread abuse of detainees, including evidence of torture—I must correct the media and various “qualified experts” on how a person dies of dehydration if he or she is sentient, as Terri Schiavo demonstrably is.

On March 15’s *Nightline*, in an appallingly one-sided, distorted account of the Schiavo case, Terri’s husband, Michael—who’d like to marry the woman he’s now

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living with—said that once Terri’s feeding tube is removed at his insistent command, Terri “will drift off into a nice little sleep and eventually pass on and be with God.”

As an atheist, I cannot speak to what he describes as his abandoned wife’s ultimate destination, but I can tell how Wesley Smith (consultant to the Center for Bioethics and Culture)—whom I often consult on these bitterly controversial cases because of his carefully researched books and articles—describes death by dehydration.

In his book *Forced Exit* (Times Books), Wesley quotes neurologist William Burke: “A conscious person would feel it [dehydration] just as you and I would. . . . Their skin cracks, their tongue cracks, their lips crack. They may have nosebleeds because of the drying of the mucous membranes, and heaving and vomiting might ensue because of the drying out of the stomach lining.

“They feel the pangs of hunger and thirst. Imagine going one day without a glass of water! . . . It is an extremely agonizing death.”

On March 23, outside the hospice where Terri Schiavo was growing steadily weaker, her mother, Mary, said to the courts and to anyone who would listen and maybe somehow save her daughter:

“Please stop this cruelty!”

While this cruelty was going on in the hospice, Michael Schiavo’s serpentine lawyer, George Felos, said to one and all: “Terri is stable, peaceful, and calm. . . . She looked beautiful.”

During the March 21 hearing before Federal Judge James D. Whittemore, who was soon to be another accomplice in the dehydration of Terri, the relentless Mr. Felos, anticipating the end of the deathwatch, said to the judge:

“Yes, life is sacred, but so is liberty, your honor, especially in this country.”

It would be useless, but nonetheless, I would like to inform George Felos that, as Supreme Court Justice William O. Douglas said: “The history of liberty is the history of due process”—fundamental fairness.

Contrary to what you’ve read and seen in most of the media, due process has been lethally absent in Terri Schiavo’s long merciless journey through the American court system.

“As to legal concerns,” writes William Anderson—a senior psychiatrist at Massachusetts General Hospital and a lecturer at Harvard University—“a guardian may refuse any medical treatment, but drinking water is not such a procedure. It is not within the power of a guardian to withhold, and not in the power of a rational court to prohibit.”

Ralph Nader agrees. In a statement on March 24, he and Wesley Smith (author of, among other books, *Culture of Death: The Assault of Medical Ethics in America*) said: “*The court is imposing process over justice.* After the first trial [before Judge Greer], much evidence has been produced that should allow for a new trial—which was the point of the hasty federal legislation.

*“If this were a death penalty case, this evidence would demand reconsideration.*

*Yet, an innocent, disabled woman is receiving less justice. . . . This case is rife with doubt. Justice demands that Terri be permitted to live.”* (Emphasis added.)

But the polls around the country cried out that a considerable majority of Americans wanted her to die without Congress butting in.

A March 20 ABC poll showed that 60 percent of the 501 adults consulted opposed the ultimately unsuccessful federal legislation, and only 35 percent approved. Moreover, 70 percent felt strongly that it was wrong for Congress to get into such personal, private matters—and interfere with what some advocates of euthanasia call “death with dignity.” (So much for the Fourteenth Amendment’s guarantee of due process and equal protection of the laws.)

But, as Cathy Cleaver Ruse of the Secretariat for Pro-Life Activities of the United States Conference of Catholic Bishops pointed out:

“The poll [questions] say she’s ‘on life support,’ which is not true [since all she needs is water], and that she has ‘no consciousness,’ which her family and dozens of doctors dispute in sworn affidavits.”

Many readers of this column are pro-choice, pro-abortion rights. But what choice did Terri Schiavo have under our vaunted rule of law—which the president is eagerly trying to export to the rest of the world? She had not left a living will or a durable power of attorney, and so could not speak for herself. But the American system of justice would not slake her thirst as she, on television, was dying in front of us all.

What kind of a nation are we becoming? The CIA outsources torture—in violation of American and international law—in the name of the freedoms we are fighting to protect against terrorism. And we have watched as this woman, whose only crime is that she is disabled, is tortured to death by judges, all the way to the Supreme Court.

And keep in mind from the Ralph Nader-Wesley Smith report: “The courts . . . have [also] ordered that no attempts be made to provide her water or food by mouth. Terri swallows her own saliva. Spoon feeding is not medical treatment. This outrageous order proves that the courts are not merely permitting medical treatment to be withheld, they have ordered her to be made dead.”

In this country, even condemned serial killers are not executed in this way.

## APPENDIX D

*[James Q. Wilson is the chairman of the Council of Academic Advisors at the American Enterprise Institute and author of The Moral Sense (Free Press, 1997). Reprinted from The Wall Street Journal (March 21); ©2005 Dow Jones & Company. All rights reserved.]*

### **Killing Terri**

*James Q. Wilson*

Terri Schiavo is not brain dead as far as anyone can tell. If you are brain dead, you have suffered an irreversible loss of all functions of the brain. If agreed to by at least two physicians, that means you are legally dead, such that your organs can be harvested to help other people.

Instead, Ms. Schiavo is in what many physicians call a “persistent vegetative state” (PVS). That means that she lacks an awareness of her self or other people, cannot engage in purposeful action, does not understand language, is incontinent, and sleeps a lot. To be clinically classified as being in a PVS, these conditions should be irreversible. But from what we know, some doctors dispute one or more of these conditions and believe that it is possible that whatever her symptoms, they are not irreversible.

Her condition is hardly unique. In 1995, when the American Academy of Neurology published its report on people in a persistent vegetative state, it found that there were as many as 25,000 adults and 10,000 children in this country who suffered from PVS. Based on the best studies the Academy could find at the time, some adults in a vegetative state 12 months after a devastating injury or heart failure could recover consciousness and some human functions. The chances that such a recovery will occur are very small, but they are not zero.

If they are not zero, then withdrawing a patient’s feeding tubes and allowing her to die from a lack of water and food means that whoever authorizes such a step may, depending on the circumstances, be murdering the patient. The odds against it being a murder are very high, but they are not 100%.

Many people, myself included, have allowed life-support systems to be withdrawn from parents who have no hope of recovery. My mother was going to die from cancer, and after all efforts had been made to help her, my sister and I allowed the doctors to withdraw the devices that kept her alive. She was dead within hours.

My case, and that of countless other people who have made that decision, differs from that of Terri Schiavo in two important ways. First, the early death of my mother was certain, but no one can say that Ms. Schiavo will die soon or possibly at any time before she might die of old age. Second, all the relevant family members agreed on the decision about my mother, but family members are deeply divided about Terri.

These differences are of decisive importance. When death will occur soon and inevitably, the patient does not starve to death when life support ends. Since there was no chance of our mother living more than a few more days, what my sister and I did could not be called murder. When death will not occur soon, or perhaps for

many years, and when there is a chance, even a very small one, that recovery is possible, people who authorize the withdrawal of life support are playing God.

And in Terri's case, they are playing God when they do not have to. Her parents have begged to become her guardians. Her husband has refused. We do not know for certain why the husband has refused. I doubt that he wishes to receive for himself the money that still exists from her insurance settlement and, apparently, he has offered to donate that money to charity. Perhaps, being a Catholic, he would like her death to make him free to marry the woman with whom he is now living. Or perhaps (and I think this is the most likely case) he does not want his wife to live what strikes him as an intolerable life.

The intolerable life argument has support from many doctors and bioethicists. They claim that a person can be "socially dead" even when their brains can engage in some functions. By "socially dead" they mean that the patient is no longer a person in some sense. At this point their argument gets a bit fuzzy because they must somehow define what is a "person" and a "non-person." That is no easy matter.

By contrast, physicians have unambiguous ways of determining whether a person is brain dead. This means that brain death is a very conservative standard and, if it errs, it errs on the side of preserving life.

Some people believe that all of these issues can be resolved if everyone signs a living will that specifies what is to be done to them under various conditions. The living will is supposed to determine unambiguously when a "Do Not Resuscitate" sign should be placed on a patient's hospital chart. Terri Schiavo had not signed a living will. If she had, we would not be facing these issues.

But scholars have shown that we have greatly exaggerated the benefits of living wills. Studies by University of Michigan Professor Carl Schneider and others have shown that living wills rarely make any difference. People with them are likely to get exactly the same treatment as people without them, possibly because doctors and family members ignore the wills. And ignoring them is often the right thing to do because it is virtually impossible to write a living will that anticipates and makes decisions about all of the many, complicated, and hard to foresee illnesses you may face.

For example, suppose you say that you want the plug pulled if you have advanced Alzheimer's disease. But then it turns out that when you are in this hopeless condition your son or daughter is about to graduate from college. You want to see that event. Or suppose that you anticipate being in Terri Schiavo's condition at a time when all doctors agree that you have no chance of recovering your personhood and so you order the doctors to remove the feeding tubes. But several years later when you enter into a persistent vegetative state, some doctors have come to believe on the basis of new evidence that there is a chance you may recover at least some functions. If you knew that you might well have changed your mind, but after entering into a PVS you can make no decisions. It is not clear we would be doing you a favor by starving you to death. On the contrary, we might well be

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doing what you might regard as murder.

There is a document that is probably better than a living will, and that is a durable power of attorney that authorizes a person that you know and trust to make end-of-life decisions for you.

Terri Schiavo's case could be decently settled by a judge who recognizes that there is some small chance of recovery and that several family members are willing to take responsibility for managing that process in hopes that a recovery of even small human features will occur. The judge in Florida ignored this and ordered her feeding tubes removed. The Florida appellate courts have not stayed his hand, and the U.S. Supreme Court, perhaps for want of jurisdiction, has not intervened.

This is a tragedy. Congress has responded by rushing to pass a law that will allow her case, but only her case, to be heard in federal court. But there is no guarantee that, if it is heard there, a federal judge will do any better than the Florida one. What is lacking in this matter is not the correct set of jurisdictional rules but a decent set of moral imperatives.

That moral imperative should be that medical care cannot be withheld from a person who is not brain dead and who is not at risk for dying from an untreatable disease in the near future. To do otherwise makes us recall Nazi Germany where retarded people and those with serious disabilities were "euthanized" (that is, killed). We hear around the country echoes of this view in the demands that doctors be allowed to participate, as they do in Oregon, in physician-assisted suicide, whereby doctors can end the life of patients who request death and have less than six months to live. This policy endorses the right of a person to end his or her life with medical help. It is justified by the alleged success of this policy in the Netherlands.

But it has not been a success in the Netherlands. In that country there have been well over 1,000 doctor-induced deaths among patients who had not requested death, and in a large fraction of those cases the patients were sufficiently competent to have made the request had they wished.

Keeping people alive is the goal of medicine. We can only modify that policy in the case of patients for whom death is imminent and where all competent family members believe that nothing can be gained by extending life for a few more days. This is clearly not the case with Terri Schiavo. Indeed, her death by starvation may take weeks. Meanwhile, her parents are pleading for her life.

## APPENDIX E

[The following appeared on National Review Online (nationalreview.com) March 21, 2005 and is reprinted with permission.]

### “Always to Care, Never to Kill”

*NRO Staff & Robert P. George*

*National Review Online recently had a chance to talk to Robert P. George, the McCormick professor of jurisprudence at Princeton University and a member of the President’s Council on Bioethics, about the Terri Schiavo case and the broader issue of assisted suicide. Professor George has published widely on law, ethics, and philosophy in books, scholarly journals, and, too rarely, in articles for NRO. He previously served as a presidential appointee to the U.S. Commission on Civil Rights.*

**NATIONAL REVIEW ONLINE:** How should we go about thinking about the circumstances under which it is morally permissible to refuse medical treatment? What principles ought to guide us?

**ROBERT P. GEORGE:** From a moral vantage point, it can be, though it will not always be, permissible to decline treatment—even potentially life-saving treatment—when one’s reason for declining the treatment is something other than the belief that one’s life, or the life of the person for whom one is making a decision, lacks sufficient value to be worth living. What we must avoid, always and everywhere, is yielding to the temptation to regard some human lives, or the lives of human beings in certain conditions, as *lebensunwerten Lebens*, lives unworthy of life. Since the life of every human being has inherent worth and dignity, there is no valid category of *lebensunwerten Lebens*. Any society that supposes that there is such a category has deeply morally compromised itself. As Leon Kass recently reminded us in a powerful address at the Holocaust Museum, it was supposedly enlightened and progressive German academics and medical people who put their nation on the road to shame more than a decade before the Nazis rose to power by promoting a doctrine of eugenics based precisely on the proposition that the lives of some human beings—such as the severely retarded—are unworthy of life.

**NRO:** Just to provide greater clarity to the principle, could you explain how it applies to the cases of the killing of enemy combatants in wartime and of the death penalty?

**GEORGE:** Sure. Killing in war—assuming that it is not a genocidal war—is not done on the ground that enemy soldiers have lives unworthy of life. Where a war is just, the killing of combatants on the field of battle is done in self-defense or in the defense of innocent third parties who are victims, or potential victims, of an unjust aggressor. Even where a war is unjust, the reason for killing is typically something like expanding a nation’s borders, gaining wealth, or avenging a perceived historical wrong. The exception again is a genocidal war, where members of certain groups are targeted for extermination because their enemies regard them as unfit to live. The Nazis killed—murdered—thousands of handicapped people and millions of Jews precisely because they regarded them as unfit to live. German soldiers—

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some of whom were Nazis, some of whom weren't—killed hundreds of thousands of British and American soldiers in battle, not because they regarded them as *lebensunwerten Lebens*, but in the cause of territorial expansion and world domination.

Now let's consider the death penalty. Its supporters typically do not claim that the death-row inmate has a life unworthy of life. That isn't their justification for capital punishment. Their claim, rather, is that the individual convicted of a capital murder should be executed because that is what justice requires as payment for his heinous crime. Their justification for the death penalty is *retributive*. (Of course, they may also believe that the application of the death penalty will prevent the murderer in question from repeating his crimes and perhaps also deter others.) They may fully recognize the inherent dignity and value of every human life, including the life of the murderer himself, yet believe that by wantonly taking the life of another human being the murderer has forfeited his own right to life. Some supporters of the application of the death penalty in the case of Karla Faye Tucker acknowledged that she had repented of her crime and reformed herself. They certainly did not regard her as unfit to live. Indeed, they believed that, if spared, she would probably devote her life to good causes. Yet they believed that retributive justice demanded her execution.

Of course, opponents of the death penalty, such as the pope, say that a due respect for the inherent worth and dignity of every human life, including the life of a murderer, forbids the death penalty except in circumstances in which it is the only way to prevent a particular murderer from killing yet again. But the dispute between its supporters (in most cases) and opponents is about the moral implications of the principle that human worth and dignity are inherent. It is not a dispute about whether the principle is valid and ought to govern our deliberation about when, if ever, killing is morally permissible.

**NRO:** To what extent do these principles depend on sectarian religious belief?

**GEORGE:** Not at all. At the same time, they are in harmony with the teachings of the Jewish and Christian traditions. These traditions proclaim the inherent worth and dignity of every human being as a creature made in the very image of God—*imago dei*. In our own culture, the Catholic Church has played a leading, albeit far from exclusive, role in defending these principles when they have come under attack by proponents of abortion and euthanasia. But the Church herself has not put these ideas forward as matters of special revelation. The Church's own teaching is that they are matters of natural law that all people of good will can understand and for which every mature individual in possession of his faculties can be held responsible. They're knowable by the light or reason and conscience even apart from the teaching of the Bible or the *magisterium* of the Church.

**NRO:** What's the role for public authority in enforcing these norms?

**GEORGE:** First, it is to ensure that no laws are premised on the proposition that some lives are *lebensunwerten Lebens*. And not only must public authorities refrain from acting on any such premise, they should protect people from be-



ing victimized by other individuals, or by institutions, who would treat some lives as unworthy of life.

The police always have the right and, where it is within their power, the duty to prevent suicide—except now in Oregon under certain circumstances. Even where attempted suicide is not punished as a crime, it is decriminalized rather than, strictly speaking, legalized. It is not given the status of a legal right, except again in Oregon. When the police find a guy perched at the edge of a bridge getting ready to jump, their job is to stop him and prevent him from going through with it if they can. They are not merely supposed to try to ascertain whether he has carefully thought things through and made a rational decision to do away with himself, or if he's in a fit mental state to decide. They are supposed to prevent the suicide because the law refuses to honor even a person's own judgment that his is a life unworthy of life.

NRO: Back to the question of declining medical care—

GEORGE: We know of course that there are lots of legitimate reasons for declining medical care. Often it's burdensome in nature; often it interferes with other opportunities that one might have, the opportunity for example to spend the remaining time one has, even if it will be shorter, in the embrace of one's family in the home rather than in an institution; sometimes it's the daunting expense that is involved. These can be morally legitimate reasons for declining medical care even where treatment could extend life a bit. But at the same time, we know that our decision as a society to recognize a right to refuse treatment, though it is the morally and prudentially correct decision in my view, will open certain limited opportunities for abuse. There will be circumstances in which people who want to do away with themselves will be able to accomplish the goal by exercising the right to decline life-saving medical care. And there will, alas, be circumstances in which some people, exercising so-called substituted judgment, make unjustified "choices for death"—to use the language of euthanasia advocate Ronald Dworkin—of people for whom they are supposed to be caring.

It is important to see, however, that the law does not validate such choices. It treats abuses as unfortunate but unavoidable side-effects that must be tolerated and cannot prudently be eliminated without sacrificing important values and objectives. There is nothing odd about this. In many areas of law, possible abuses must be tolerated as side effects of honoring important values. We know, for example, that some criminals and their attorneys will abuse the procedural protections that our society affords to persons accused of crimes to escape just punishment. Yet we rightly consider certain protections to be essential to the system of justice.

Now this, by the way, the Supreme Court actually managed to recognize in the assisted-suicide cases, when the justices unanimously rejected a right to assisted suicide while at the same time accepting the traditional common-law understanding that people have a right to decline even potentially life saving medical treatments. What the Court said is you can't deny people pain-killing narcotics even if a side-effect of the pain-killing narcotics is the shortening of life. That's entirely

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consistent with the moral norms I am explaining and defending, and which the Judaeo-Christian tradition endorses.

**NRO:** As you know, there's some question about what Terri Schiavo's wishes were or would be now. How much should turn on this question?

**GEORGE:** It is the wrong question. It is pointless to ask whether Terri Schiavo had somehow formed a conditional intention to have herself starved to death if eventually she found herself in a brain-damaged condition. What's really going on here—and I don't think we can afford to kid ourselves about this—is that Terri's husband has decided that hers is a life not worth having. In his opinion, her continued existence is nothing but a burden—a burden to herself, to him, to society. He has presumed to decide that his wife is better off dead.

Even if we were to credit Michael Schiavo's account of his conversation with Terri before her injury—which I am not inclined to do—it is a mistake to assume that people can make decisions in advance about whether to have themselves starved to death if they eventually find themselves disabled. That's why living wills have proven to be so often unreliable. One does not know how one will actually feel, or how one will feel about one's life and the prospect of death, or whether one will retain a desire to live despite a mental or physical disability, when one is not actually in that condition and when one is envisaging it from the perspective of more or less robust health.

Consider the case of a beautiful young woman—an actress or fashion model perhaps—who is severely burned in a fire. Prior to actually finding herself in such a condition, she might have supposed—and even said, if the subject had come up in a conversation—that she would rather be dead than live with her face grotesquely disfigured. But no one would be surprised if in the actual event she did not try to kill herself by starvation or some other means, and did not want to die.

In any event, it is clear that the only reason for Michael Schiavo's decision is that he considers Terri's quality of life to be so poor that he wants her to be dead. He claims that she would want that too, which I don't grant, but even if he's right about that, we should treat her like anyone else who wants to commit suicide. We rescue, we care. We affirm the inherent value of the life of every human being. Our governing principle should be *always to care, never to kill*.

**NRO:** What are the proper limits of the federal government's authority here?

**GEORGE:** I don't see that any just authority of the state of Florida is being displaced by the effort of Congress to ensure that Terri's right to life is honored and that civil rights claims on her behalf are given a hearing in the federal courts. By "just authority of the state of Florida," I mean the authority of the people of Florida to make laws through their elected representatives, subject to the provisions of the state constitution and the Constitution of the United States. I am not impressed by appeals to "federalism" to protect the decisions of state court judges who usurp the authority of democratically constituted state legislative bodies by interpreting statutes beyond recognition or by invalidating state laws or the actions of state officials in the absence of any remotely plausible argument rooted in the text, logic,

structure, or historical understanding of the state or federal constitution. The fact is that, under color of law, Michael Schiavo is seeking to deprive Terri of sustenance because of her disability. Under federal civil-rights statutes, this raises a substantial issue. It cannot be waved away by invoking states' rights.

The federalism argument is more plausible in the case of Oregon's assisted-suicide law than it is in Terri Schiavo's case. It wasn't some judge in Oregon who manufactured a right to assisted suicide or claimed to find it hiding in a penumbra. I think the people of Oregon made an unwise, indeed, tragic, decision, but it was a decision made by the democratically constituted people of Oregon. Whether or not there are legitimate grounds for the federal government to override that decision, the federalism argument for not overriding it is far weightier and more serious than it is when trotted out as a reason to keep Congress from acting to prevent Terri Schiavo's being starved to death at the command of her husband.

The other thing that Congress is being accused of is interfering in a family decision. Now look: Terri Schiavo has been abandoned by her husband. Michael Schiavo took a vow to be faithful to Terri "in sickness and in health, forsaking all others, 'til death do us part." But he has not been faithful; he has not forsaken all others. He has set himself up in a marriage in all-but-name with someone else, a woman with whom he already has two children. He has disrespected Terri and, indeed, forsaken her. Now he is seeking to bring about her death by starvation. Notice something wrong with this picture? Terri's parents and siblings, by contrast, have never abandoned her. They are prepared to shoulder all the burdens, including the financial burdens, of caring for her. They want to provide the therapy that many medical people who have observed Terri, whether at the bedside or by videotape, believe can help her. No one expects a full recovery, but it may be possible for her to make genuine progress. That possibility will be foreclosed, however, if she is killed by deliberate starvation before it can begin.

## APPENDIX F

[William Murchison, a syndicated columnist, is Radford Distinguished Professor of Journalism at Baylor University. The following column appeared March 22, 2005, and is reprinted with permission. ©2005 Creators Syndicate.]

### Life and Other Disputed Questions

*William Murchison*

There is—yes—a certain wackiness to the Terri Schiavo proceedings. How often does the president of the United States fly to Washington, D.C. to sign a bill prolonging the life of one woman?

We can't wonder, nevertheless, that it has come to this. Our culture is loudly, messily working out its views on human life, which are not the same views we entertained as recently as 50 years ago.

Our views back then were largely formed by a sense of religious duty or, at any rate, religious precedent. God had given life to mankind. It was no trifling gift. Neither war, nor disease, nor capital punishment essentially modified the view of life as a possession to be cherished and shielded. That was before *Roe v. Wade* and the Supreme Court's announcement of a previously unsuspected right to abort a pregnancy. The court told us life had just become a choice. Well, to some extent it had. We could not gun down anyone we wanted to just because we wanted to, but a woman, if she wanted, could expel life from her body. It seemed there were exceptions to life's preciousness. Within limits, the individual could determine for himself how precious, or the reverse, a particular life had become.

It is interesting, in a lugubrious way, to see how thinking has evolved in this matter. We're surely not surprised that it evolved. Give "choice" to one and someone else will ask: "What about me, too?" That is the question Terri Schiavo's husband appears to have asked. What about *my* right to decide when life isn't worth living, consonant with my own insights and understandings?

No doubt those who haven't walked in the shoes of someone long deprived of meaningful life with a spouse should be careful in distributing condemnations. Michael Schiavo may be a brute, or he may not be. I wonder if it isn't less useful to examine the man's character than to scrutinize his attempt at radical extension of the *Roe* principle. Michael Schiavo wants to judge. He instructs us all, in essence: Leave me alone to judge; it's my affair, not yours.

That's the *Roe* principle at work, and a good old secular, non-theological principle it is. The *Roe* principle says to everyone from your congressman down to your in-laws: Shut up, don't bother me; *I'm* in charge here. Small wonder Michael Schiavo raged at Congress' and the president's intervention in what he took to be his personal affair.

The *Roe* principle is intensely me-centered. If I want, I can admit God to my deliberations; and, if I don't want, you can't make me. The only trouble is the *Roe* principle, 32 years after the *Roe* decision, provides no sure basis for comfort. The way we come to understand a principle is watching it at work—like now, in the

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Schiavo case. A woman who may not—but also may—be capable of recovery is threatened by the courts with death. There is no presumption to which her life is entitled? None at all? It is possible (under Roe) to answer yes. But to answer without some uneasiness? That would seem another matter entirely.

This same uneasiness about how we judge life was on exhibit at the Scott Peterson trial—provided we had nothing better to do than watch the Scott Peterson trial. California had charged the husband with the murder not just of the wife, Laci, but also of the couple's 8-month-old unborn son. Some probably find this circumstance odd: You mean, like, the mom can abort, but the dad (so to speak) can't? Why?

Perhaps, in part, because of that uneasy feeling in so many stomachs—the intuition that life, in all its wonder, is a matter best left, not to private opinion, but to the conscientious oversight of the larger society. That society's present uneasiness over Terri Schiavo must be counted a profoundly healthy development.

## APPENDIX G

[*Lucette Lagnado is a reporter for The Wall Street Journal where the following column appeared March 25, 2005. Reprinted from The Wall Street Journal ©2005, Dow Jones & Company. All rights reserved.*]

### **Still Beautiful, Still Human**

*Lucette Lagnado*

In the innocent smile, the movements, the curled helpless hands of Terri Schiavo, I see my mother. In the desperation of Terri's mother to keep her daughter alive, I see myself and my own desperation to keep my mother alive. In the stance adopted by Terri's husband—that she has no business being alive—I see the world I faced back in the early 1990s, when the pro-death movement was relatively young and the culture of death not nearly as pervasive as it is today.

As debates rage on Ms. Schiavo's fitness to live, questions about the value of a human life emerge front and center. First, the young woman is said to be all but dead. An army of bioethicists then appear on TV to declare that Terri in fact died 15 years ago. It isn't hard to go from there to rationalizing the move to deny her food and water. Why keep Terri alive? Why bother? She hasn't really been alive for years, we are told.

My mother, Edith, was actually in worse shape than Terri, who at least can breathe on her own. Edith could not—she depended on a ventilator that, after she left the hospital, was installed in the apartment we shared. Nor could she move her arms or legs, and her memory and speech were gone. That made her a perfect candidate for the mercy-killing squads I found lurking everywhere within the medical and social-work establishment.

Why keep Edith alive? Why bother?

Those were the questions that confronted me back then, and I recall feeling bewildered by them, by their insidious nature. I tried to respond as soberly as I could. My mother, a clerk at the Brooklyn Public Library, hadn't harmed anyone, I said. She might not be able to move or talk or argue, but she could still feel.

And she was still an intensely lovable and loving human being.

I could hug Edith and see her smile that adorable half-smile that was all she could muster after her series of strokes. And, oh, how she loved it when a kindly nurse's aide fluffed her pillows or took the trouble to give her hair a good washing. The aide would dip a washcloth into the basin of hot soapy water and proceed to scrub and gently massage her head. My mother seemed so happy; it was a small act that brought her immense pleasure and comfort.

I realized that the greatest danger was that Edith would be dehumanized, would cease to be a person to those around her. My challenge became to persuade doctors, nurses and ordinary visitors to see my mother as a human being—not merely as a stroke victim, a quadriplegic or, cruelest of all, a “vegetable.”

I made it a priority each morning to comb her hair and put a silk bow in it. I would hold up a mirror and point out how lovely she looked.

The bow was large, and pink, and it gave my mother an oddly festive look, as if she were on her way to a party. Even in her 60s, Edith was pretty, with the large brown eyes of a doll on a shelf, and the effect of this motionless woman sitting there impeccably coiffed was arresting. That piece of pink silk worked wonders—mostly in changing the discourse. She became known in and out of the hospital as “The Lady With the Bow.” Nurses bestowed on her extra doses of Tender Loving Care. Doctors spent extra minutes by her bedside, moved by her beauty.

That is when I realized that the stroke had not robbed Edith of her charm. Or her fundamental humanity.

I glimpse the same charm and the same humanity in Terri Schiavo—though the advocates of the culture of death have sought to rob her of both.

Their most powerful weapon has been language. Think of the recurrent phrase “persistent vegetative state” that we’ve heard to describe Terri. What it conjures, of course, is a turnip, say, or a piece of broccoli. If Terri is a vegetable, she can’t possibly be human. She can’t feel, or think, or care what we do to her.

She is not even really alive, or so we’ve been told by the legion of camera-loving bioethicists. If we believe them, we need not worry about the effects of withholding food or water. We can persuade ourselves that hers is a merciful death. A vegetable doesn’t feel hunger pangs, does it?

As for that haunting clip that we have all seen dozens of times, where Terri appears to move and respond—well, they are “involuntary” movements. It is all a mirage, this sense we get watching that she is so intensely alive, her head moving about, seemingly trying to communicate. Don’t believe what you see, the medical experts inform us. Believe, instead, the husband who must have her dead, who has made a nice new life for himself with a woman and children.

And then there is the contretemps over Terri’s dependence on “artificial feeding.” Suddenly a simple feeding tube, a venerable technology that has saved countless people in rough patches, has been made to seem evil and suspect. Yet I’d be hard-pressed to find someone who hasn’t at some point needed “artificial” feeding of one kind or another. How about that night in the ER when you required an IV to get liquids and nutrients because you couldn’t eat normally? Should feeding by an IV also be challenged because it isn’t “natural”?

Edith, too, depended on a feeding tube. She lived at home with me at the time. What struck me was the tube’s sublime simplicity. Of all the gadgets we had to keep my mother going, it was the simplest—far easier to handle than the ventilator or, for that matter, the IV. A nurse would pour cans of liquid food into a plastic bag every few hours; the liquid then flowed through the tube and into her stomach.

No high-tech stuff. No massive expenditures of money. A stunningly easy, effective piece of life-saving technology. Yet in the Schiavo affair, those same forces that usually muster support by attacking ventilators and other costly and complex technologies that “prolong” life are now casting a suspicious eye on this benign tool that costs a few dollars to administer. Technically, Terri should have been a very tough case for the pro-death brigades.

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In the wake of the Terri Schiavo ordeal, we are now treated to published accounts of children recalling how they denied their own parents nutrition. “Defining deviancy down” was the phrase coined by Sen. Daniel Patrick Moynihan to describe a society that had lost its moral compass and lowered its capacity for outrage. The phrase seems perfect to describe the middle- and upper-middle-class children who have surfaced to boast of how they ended their parents’ lives—as if it had been somehow an act of valor. It is also a chillingly apt description of a society that, in the name of the law, forces a young woman to die of thirst and to starve even as we watch.

With all due respect to the lawyers, the husband, the courts and the neurologists, I prefer to heed the lessons I learned observing my mother in her pink bow. She, who enjoyed and reveled in the smallest act of kindness—a sweet word, a gentle embrace, the feel of sudsy shampoo on her hair—would have been bewildered by the barbaric show we have been witnessing in the hospice in Florida.



## APPENDIX H

*[Marc Gellman is president of the New York Board of Rabbis. This column appeared March 25 on MSNBC.com. Reprinted with permission, ©2005 Newsweek, Inc. ©2005 MSNBC.com.]*

### Catching the Moon

*Marc Gellman*

We are forced to face extraordinary moral issues mostly because ordinary people make their lives or deaths inescapable. The civil-rights struggle was always visible; but after the Mississippi murders of James Chaney, Michael Schwerner, and Andrew Goodman in the summer of 1964, the struggle was inescapable. Violence against gay people was always visible, but after the death of Matthew Shepherd in October 1998 that violence was inescapable. The moral dilemma of surrogate parenting was made inescapable by the decision of Mary Beth Whitehead in February 1988 not to surrender the child she had been paid to conceive. And now, Terri Schiavo has made inescapable the always-present moral issues of euthanasia—and, in doing so, has wordlessly reminded us that all the big issues are moral and personal and spiritual and ultimately never legal or political.

The three facts all parties to the Schiavo case agree are true are that she is alive, she is innocent and she is mute. Everything else is in dispute. One group is arguing that rational individuals can decide to refuse medical treatment, even healing treatments, if they are unhappy about the quality of their life. Terri's husband is saying that Terri wanted this. The other side is arguing that she did not want this and that her parents are willing to care for her. I believe the issue is what we as a culture will do with living, innocent, mute people in our midst, and no court can rule on that.

In many right-to-die cases, the patient is on life-support systems, so all that needs to be done to allow them to die is to remove these medical obstacles to death. However, in this case Terri Schiavo is not on any life support systems. In this case, in order to live she only requires hydration and nutrition; and it is a big stretch for many people to label food and water extraordinary means. It is one thing to let a person die in peace who is already dying. It is one thing to remove an obstacle to death. It is quite another to cause death.

When you add in her parents' willingness to assume the financial and emotional burden of her care, the insistence of her husband that he be given the right to starve his wife to death just seems insanely ghoulish to many people who are otherwise in favor of a person's right to die. Death, they argue—and I agree—is not always an insult or a betrayal. Death can be a natural and welcome release from pain and suffering. We now face the frightening possibility of modern medicine, motivated more by a defensive fear of lawsuits than the Hippocratic oath of "first do no harm," stopping us from crossing over when it is our time. But this obviously is not Terri Schiavo's time. She is alive, innocent and mute. She is not at death's door. All this sound and fury is about cruelly bringing the door to her.

Many good people are justly fearful of government intrusion in private, personal

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and family decisions, but, like abortion, the question gets messy when you realize that there are two people with rights, not just one, and their interests are not always compatible. In the abortion debate, it is the right of the pregnant woman to reproductive freedom that does not stand alone but must stand against the right of the fetus to live. In this case, it is the right of the husband to make decisions for his severely brain-damaged wife versus the right of his wife to live. To expect the government to stay out of this is absurd. One way or the other, some court must decide whose interests are primary in these searing ethical conflicts. Either way, the government will and must intrude.

The argument that abortion is only about the rights of pregnant women or that euthanasia is only about the rights of Terri Schiavo's husband is both unbalanced and unfair. The rights of a person with severe brain damage or the rights of a fetus cannot be defined away. They are what give these dilemmas moral force and tragic urgency. It is this conflict of rights that is defining our culture now. And it has nothing to do with religious fanatics imposing their will, or narcissistic yuppies creating a culture of selfishness and death. It is about an entire culture struggling to know what is the right thing to do with the mute and innocent lives in our midst.

However the courts dispose of the legal issues in the Schiavo case, or in the various abortion cases, the moral issues will remain with us and between us. After the ruling they will be just as powerful and just as contentious as was slavery when it was the defining moral issue of our culture a century and a half ago. The courts have ruled both ways over the years, and their rulings settle the law for a time, but they never settle the moral issues. Their ruling in the Dred Scott case in the mid-19th century that slavery was legal did not make slavery moral. And for the pro-life community and for the pro-choice community, no ruling will end the moral debate that is defining us. Life is either a privilege or it is a gift we have not given and cannot revoke. No act of Congress or the courts can free us from facing that choice. And that choice, like the choice to forgo slavery, is not made in the great public places. That choice is made in the quiet and humble places where the better angels of our nature speak to the best parts of our loving hearts.

I visit many dying people, and one of them, David, always wanted me to tell him the Yiddish story of the foolish men of Chelm who one night saw the reflection of the moon in a rain barrel and decided that it would be a very valuable item for dark and stormy nights. So one clear moonlit night they sneaked up on the rain barrel, saw that the moon was in the barrel, and threw a cover over it. So pleased were they that they had caught the moon that they called the whole village together on a dark night to open the barrel and light the village. After opening it, they sadly discovered that the barrel was full of rain but no moonlight. After a lengthy consultation they concluded, "We were not quick enough to catch the moon." "Not quick enough to catch the moon," David said to me on my last visit to the hospice. That night he crossed over to a place where the answers to all questions are clear. To answer some questions, you need intelligence, cash, power and patience. But for other questions, you need an open heart and you need to be fast enough to catch the moon.

## APPENDIX I

*[Michael Barone is a senior writer for U.S. News & World Report and principal co-author of The Almanac of American Politics. The following column appeared March 27, 2005 and is reprinted by permission of Michael Barone and Creators Syndicate, Inc].*

### No, It Wasn't a Cynical Ploy

*Michael Barone*

A lot of sophisticated people are clucking at the actions of Congress and George W. Bush that attempted to save the life of Terri Schiavo. This was pandering to the religious right, we are told, a cynical partisan ploy by Republicans, an intervention by an activist, even ayatollah-like, federal government into a state court case and a family dispute. I do not put myself forward as an expert on this case, nor am I certain that Congress and Bush made the right decision, or that the courts, state and federal, made the wrong one. But I do think much of the criticism and condescension is misguided. And I think that the response of elected officials reflects one of the great strengths in our country: a confident belief in moral principles that stands in vivid contrast with what we see in much of Europe and in the supposedly sophisticated precincts of this country.

Start with the federalism issue. During Reconstruction, Congress passed laws authorizing the federal government to protect the civil rights of individuals left unprotected or harmed by state action. Those laws have been invoked in cases where the rights of black Americans were violated and the violators went unpunished. Invoked, I would say, not often enough. The law Congress passed and Bush signed was an attempt to protect the civil rights of one individual in light of substantial evidence that those rights were not being protected by the state. You may not regard the evidence as persuasive, though I think it's pretty strong: At crucial stages Terri Schiavo had no independent advocate; some medical tests that many neurologists regard as routine in such cases were not administered. Federal interventions to uphold civil rights should probably be rare. But they're not unprecedented in this country.

A cynical partisan ploy by Republicans? Not really. It is possible that Democrats, if in control, might not have summoned a special session. But this was not a purely partisan issue. Democrats did vote for the bill and made its passage possible. Proceedings in the Senate could have been stopped by a single objection to a unanimous-consent request. No senator objected. Minority Leader Harry Reid cooperated fully with Republicans. In the House, enough Democrats returned from recess to provide the necessary quorum, and 46 Democrats voted for the bill, while 53 voted against.

Were all these Democrats and Republicans acting cynically? I don't think so. Take Sen. Tom Harkin, a liberal Democrat who worked for the measure. Harkin's interest arose from his long concern for the disabled—he was a chief sponsor of the Americans with Disabilities Act—and his desire to protect the rights of the incapacitated. Were his views informed by his Roman Catholic faith? I don't know,

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but what if they were? Legislators are under no obligation to have moral principles entirely divorced from religious beliefs. I can't answer for every member who voted for the bill or against it. But the quality of the debate suggests to me that large majorities on both sides were acting out of reasoned moral conviction more than political calculation.

Reasoned moral conviction: That is one of our national strengths. George Weigel, in his new book, *"The Cube and the Cathedral: Europe, America, and Politics Without God,"* argues that without strong religious beliefs, tolerance degenerates into indifference, mere "skepticism and relativism," which fail to provide a reason that people should be tolerant and civil. I would broaden Weigel's argument by saying, "without strong religious or moral beliefs," but his larger point is well taken. Look at Christopher Caldwell's recent accounts in the *Weekly Standard* of how multiculturalist tolerance in the Netherlands and Sweden has made them helpless against separate subsidized communities of Muslims who refuse to practice tolerance themselves and seek to destroy the tolerant society around them. A society that believes only in skepticism ultimately has no means of self-defense. On the Schiavo issue, most members of Congress, on both sides, were not indifferent but acted on moral convictions in a difficult situation. They were trying to do what they believed was right. They deserve respect, not contempt.

## APPENDIX J

[Reprinted with permission of *National Review Online* (nationalreview.com, March 29).]

### “Human Non-Person”

*Wesley J. Smith*

My debate about Terri Schiavo’s case with Florida bioethicist Bill Allen on Court TV Online eventually got down to the nitty-gritty:

**Wesley Smith:** Bill, do you think Terri is a person?

**Bill Allen:** No, I do not. I think having awareness is an essential criterion for personhood. Even minimal awareness would support some criterion of personhood, but I don’t think complete absence of awareness does.

If you want to know how it became acceptable to remove tube-supplied food and water from people with profound cognitive disabilities, this exchange brings you to the nub of the Schiavo case—the “first principle,” if you will. Bluntly stated, most bioethicists do not believe that membership in the human species accords any of us intrinsic moral worth. Rather, what matters is whether “a being” or “an organism,” or even a machine, is a “person,” a status achieved by having sufficient cognitive capacities. Those who don’t measure up are denigrated as “non-persons.”

Allen’s perspective is in fact relatively conservative within the mainstream bioethics movement. He is apparently willing to accept that “minimal awareness would support some criterion of personhood”—although he doesn’t say that awareness is determinative. Most of his colleagues are not so reticent. To them, it isn’t sentience per se that matters but rather demonstrable rationality. Thus Peter Singer of Princeton argues that unless an organism is self-aware over time, the entity in question is a non-person. The British academic John Harris, the Sir David Alliance professor of bioethics at the University of Manchester, England, has defined a person as “a creature capable of valuing its own existence.” Other bioethicists argue that the basic threshold of personhood should include the capacity to experience desire. James Hughes, who is more explicitly radical than many bioethicists (or perhaps, just more candid), has gone so far as to assert that people like Terri are “sentient property.”

So who are the so-called human non-persons? All embryos and fetuses, to be sure. But many bioethicists also categorize newborn infants as human non-persons (although some bioethicists refer to healthy newborns as “potential persons”). So too are those with profound cognitive impairments such as Terri Schiavo and President Ronald Reagan during the latter stages of his Alzheimer’s disease.

Personhood theory would reduce some of us into killable and harvestable people. Harris wrote explicitly that killing human non-persons would be fine because “Non-persons or potential persons cannot be wronged” by being killed “because death does not deprive them of something they can value. If they cannot wish to live, they cannot have that wish frustrated by being killed.”

And killing isn’t the half of it. Some of the same bioethicists who have been telling us how right and moral it is to dehydrate Terri Schiavo have also urged that

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people like Terri—that is, human non-persons—be harvested or otherwise used as mere instrumentalities. Bioethicist big-wig Tom Beauchamp of Georgetown University has suggested that “because many humans lack properties of personhood or are less than full persons, they . . . might be aggressively used as human research subjects or sources of organs.” Such thinking is not fringe in bioethics, a field in which the idea of killing for organs is fast becoming mainstream. In 1997, several doctors writing for the International Forum for Transplant Ethics opined in *The Lancet* that people (like Terri) diagnosed as being in a persistent vegetative state should be redefined as dead for purposes of organ procurement:

If the legal definition of death were to be changed to include comprehensive irreversible loss of higher brain function, it would be possible to take the life of a patient (or more accurately to stop the heart, since the patient would be defined as dead) by a lethal injection, and then to remove the organs needed for transplantation subject to the usual criteria for consent.

Knowing that this kind of thinking predominates in contemporary bioethics, I decided to bring up the matter in my Court TV debate with Bill Allen.

**Wesley Smith:** If Terri is not a person, should her organs be procured with consent?

**Bill Allen:** . . . Yes, I think there should be consent to harvest her organs, just as we allow people to say what they want done with their assets.

Put that in your hat and ponder it for a moment: If organ harvesting from the cognitively devastated were legal today—thank goodness, it isn’t—Michael Schiavo would be the one, no doubt sanctioned by Judge Greer, who could consent to doctors’ “stopping” Terri’s heart and harvesting her organs.

Think that’s a horrid thought? Well, ponder this: More than ten years ago, transplant-medicine ethicists Robert M. Arnold and Stuart J. Youngner painted a disturbing picture of the kind of society that the bioethics movement is leading us toward: literally a culture in which organ procurement is a routine part of end-of-life care and “planned deaths.” The ethicists predicted that in the not-too-distant future:

Machine dependent patients could give consent for organ removal before they are dead. For example, a ventilator-dependent ALS patient could request that life support be removed at 5:00 P.M, but that at 9:00 A.M. the same day he be taken to the operating room, put under general anesthesia, and his kidneys, liver and pancreas removed. . . . The patient’s heart would not be removed and would continue to beat throughout surgery, perfusing the other organs with warm, oxygen-and-nutrient-rich blood until they were removed. The heart would stop, and the patient would be pronounced dead only after the ventilator was removed at 5:00 P.M., according to plan, and long before the patient could die from renal, hepatic, or pancreatic failure.

Know this: There is a direct line from the Terri Schiavo dehydration to the potential for this stunning human strip-mining scenario’s becoming a reality. Indeed, as Arnold and Youngner put it so well, “If a look into such a future hurts our eyes (or turns our stomachs), is our discomfort any different from what we would have experienced 30 years ago by looking into the future that is today?”

## APPENDIX K

[Eric Pfeiffer writes the daily "Beltway Buzz" column for *National Review Online* ([www.nationalreview.com](http://www.nationalreview.com)). The following appeared on NRO on March 30, 2005 and is reprinted with permission.]

### Odd Felos

*Eric Pfeiffer*

"I wonder what it would be like to die right now?"

Many of us have asked ourselves this question and Michael Schiavo attorney George Felos is no exception. Unlike most, however, Felos has a story to go along with it.

In his 2002 book *Litigation as Spiritual Practice*, Felos expresses his belief in the "cosmic law of cause and effect," in which the human mind is not limited by the constraints of reality. More specifically, if one wants a new car, one could make this dream car manifest "out of the ether."

Felos claims to have used his mental powers to cause a plane he was passenger on to nearly crash. By simply asking himself, "I wonder what it would be like to die right now?" the plane's autopilot program mysteriously ceased to function and the plane descended into free fall. Felos then observed, "At that instant a clear, distinctly independent and slightly stern voice said to me, 'Be careful what you think. You are more powerful than you realize.' In quick succession I was startled, humbled and blessed by God's admonishment."

Throughout *Litigation as Spiritual Practice*, Felos combines tactics on successful litigation with his spiritual adventures. The book's 30 chapters feature a diversity of selections such as: "Bargaining for the Contingency Fee" alongside others entitled, "Rescued on Dream Wings" and "My Death and Resurrection."

On its website, Felos' publisher Blue Dolphin describes his book as "the excitement and drama of the courtroom, and the ecstasy and anguish of spiritual evolution in a combative environment. If the seemingly barren and war-strewn field of litigation can be the playground where spirit dances, it can revel anywhere."

Felos believes he used this "conscious evolution" in his first "right-to-die" case concerning Estelle Browning. Felos says when he was alone with Browning they shared a "soul touch" in which their spirits left their respective bodies and spoke to each other. It was in this encounter that Browning "told" Felos she wanted to die:

"As I continued to stay beside Mrs. Browning at her nursing home bed, I felt my mind relax and my weight sink into the ground. I began to feel lightheaded as I became more reposed. Although feeling like I could drift into sleep, I also experienced a sense of heightened awareness."

He writes,

As Mrs. Browning lay motionless before my gaze, I suddenly heard a loud, deep moan and scream and wondered if the nursing home personnel heard it and would respond to the unfortunate resident. In the next moment, as this cry of pain and torment continued, I realized it was Mrs. Browning.

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I felt the midsection of my body open and noticed a strange quality to the light in the room. I sensed her soul in agony. As she screamed I heard her say, in confusion, "Why am I still here . . . Why am I here?" My soul touched hers and in some way I communicated that she was still locked in her body. I promised I would do everything in my power to gain the release her soul cried for. With that, the screaming immediately stopped. I felt like I was back in my head again, the room resumed its normal appearance, and Mrs. Browning, as she had throughout this experience, lay silent.

In addition to his soul-touch with Estelle Browning, Felos also says he had a pre-conception conversation with his future son, who said, "I'm ready to be born . . . will you stop this fooling around!"

For the past 25 years, Felos has practiced yoga and meditation as a means to advance his spirituality and career. And while he lectures on "practicing non-attachment," Felos has made a good living along the way attaching sizeable legal fees to his bank account.

Critics of Felos and Michael Schiavo claim a significant portion of funds awarded for the care of Terri Schiavo have actually been absorbed in legal fees paid to Felos. As Wesley Smith, author of *Forced Exit: The Slippery Slope From Assisted Suicide to Legalized Murder* and frequent NRO contributor, says, "I find it bitterly ironic that the bulk of the money a medical-malpractice jury awarded to Terri for use in making her better instead went into Mr. Felos's pocket to make her dead."

Felos describes his spiritual beliefs as syncretistic religion, mixing elements of Christianity, Buddhism, Hinduism, and Native American ceremonial practices. In *Litigation as Spiritual Practice's* introduction, he declares, "evolution of consciousness is our ultimate salvation."

His apparent lack of concern for Terri Schiavo's plight might be better understood in the context of his belief that "[i]n reality you have never been born and never can die."

This is all not to say that Felos isn't entitled to believe whatever he wants to. He, of course, is. However, this is the same man who has described the Schindler family and their supporters as "fanatics." It's a belief many in the media have reciprocated in their analysis of what drives the Schindler's fight for Terri's survival. But, *really*, who's three sheets to the moonbeam?

Felos did not respond to NRO's request for a transcendent, cosmic-vibe chat.



## APPENDIX L

[*David Klinghoffer* ([www.davidklinghoffer.com](http://www.davidklinghoffer.com)) is the author of *Why the Jews Rejected Jesus: The Turning Point in Western History*. The following column appeared March 29, 2005 and is reprinted with permission from *National Review Online* ([nationalreview.com](http://nationalreview.com))].

### Liberal Jews & Terri Schiavo

*David Klinghoffer*

As the fate of Terri Schiavo was decided and then carried out, the enigma of Jewish liberalism came again to the fore. What accounts for Jews whose idea of dying “with dignity” included this incapacitated Florida woman being dehydrated to a state of living mummification like the ghoulish images of Nazi death-camp survivors?

Jewish Democrats in Congress and the Florida legislature led the rushed struggle to fend off efforts to save the brain-damaged woman. Meanwhile, I had a chance to personally gauge Jewish sentiment when Seattle’s largest Conservative synagogue graciously invited me to speak on an unrelated subject—my new book, *Why the Jews Rejected Jesus*, which acknowledges the cultural contributions of Christianity.

In the Q&A period, the synagogue’s rabbi asked what contributions I had in mind. When I mentioned the campaign by Christians to rescue Terri Schiavo from being killed by her husband—Michael, who claimed she’d want it this way—the crowd reacted with a sharp intake of breath, shocked murmurs as if I’d said a kind word about the Spanish Inquisition.

To add to the sense of values gone topsy-turvy, Mrs. Schiavo’s ordeal was climaxing over the festival of Purim. Parallels with the Purim story, the Biblical book of Esther, leap out at you. In both, a vigorously determined personality (Haman, Michael Schiavo) seeks to take the life of an innocent or innocents (the Jews, Mrs. Schiavo) with the aid of a high government official (King Ahashuerus, Judge Greer) while the people (Persia’s Jews, America’s Christians) weep, fast, and don sackcloth. Simultaneously, a protagonist (Queen Esther, Governor Bush) closely linked to the head of state contemplates intervening.

The mystery of why Jewish liberals feel as they do about Mrs. Schiavo’s case was underlined by a concurrent news story—about the California judge who reportedly spoke to prosecutors in death-penalty cases about excluding Jews from juries because, “No Jew would vote to send a defendant to the gas chamber”—the memory of Nazi gas chambers being too vivid to allow it.

So, Jews would freely permit a woman who did nothing wrong to be diminished to the condition of a death-camp victim, while they could never do so to a person who committed a grievous crime. Call in the psychologists.

By way of explanation, a theory recommends itself, one that I have heard before from radio commentator Dennis Prager among others.

It is that Jewish liberals are misshapen by centuries of being humiliated by Christians. Today, though we live in the most Jewish-friendly country in history, it’s as if we’re still back in medieval France or Germany. Whatever Christians favor—

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the death penalty, saving Terri Schiavo, curbing abortion, whatever—we must reject out of self-respect.

I was not sold on this theory until I received a mass e-mail from the Jewish Federation here in Seattle. A stolidly conventional communal group, the Federation has got the idea in its head of promoting homosexual dalliances. The e-mail celebrated the launch of “Bashert” (the Jewish term for a divinely fated romantic relationship), a Federation program “seek[ing] to create a fully welcoming and inclusive Jewish community for lesbian, gay, bisexual, and transgender (LGBT) Jews.” Bashert’s inaugural event would feature as a speaker the assistant rabbi of the Conservative (which in Jewish parlance means “liberal”) synagogue whose members had been so disturbed by my thanking Christians for trying to preserve Terri Schiavo’s life.

Is it a coincidence that our Federation was seized with enthusiasm for homosexual matchmaking just as the gay-marriage issue was roiling Christians? The latter disapprove of gay marriage, so we promote gays hooking up. Never mind the powerful stance our own traditional religion in fact takes against homosexual intercourse—as it does against dehydrating people to death, aborting them, or granting life to murderers.

No wonder Christian and Jewish conservatives become impatient with Jewish liberals. Yet, the latter deserve not condemnation but compassion.

One of the penitential prayers associated with Purim laments how the Jews of Esther’s time once partied in the palace of their foe, King Ahashuerus, enjoying “the feast of the one who abhorred them.” America’s Christians certainly don’t abhor Jews—affection mixed with puzzlement are the themes of their feelings—but there is certainly a tension between our two faiths. They regard us as critically wrong on a vital point, namely in our attitude toward Jesus, and vice versa.

For this reason, to rejoice without reservation at their feast must leave a Jew a little uneasy, which is one reason I wrote my book, detailing in a positive way the Jewish position about their savior. However, to deny our own religion—by failing to protest the killing of Terri Schiavo, for example—to save the honor of that very same religion seems the height of incoherence.

## APPENDIX M

*[Ramesh Ponnuru is a senior editor of National Review where this essay first appeared in the April 25, 2005 issue. Reprinted with permission. © 2005 by National Review, Inc.]*

### The Schiavo Case: Reasons to Live

*Ramesh Ponnuru*

You could be forgiven for forgetting, during the recent drama about Terri Schiavo, that assisted suicide is illegal in Florida—as it is in every state but Oregon. Commentators on the Schiavo case discussed whether a life like the one she had over the last 15 years is worth living or whether bringing about her death would be the right thing to do. They asked what her preferences were, or would be now. They debated whether Florida law was wise to give her husband Michael Schiavo the right to make the life-or-death decision.

But Florida law doesn't recognize Mrs. Schiavo's right to kill herself, let alone her husband's right to make that choice for her. If she had (miraculously) recovered enough faculties to have been able to beg a physician to give her a lethal injection, and had done so, her wish could not legally have been granted. If she had recovered her faculties and then refused to eat or drink, the response of her caregivers would almost certainly have been to try to talk her into changing her mind.

Florida law allows patients to turn down medical treatments and, when they cannot make medical decisions, designates others to decide for them. Turning down treatment can, of course, cause the patient to die. The decision to turn down treatment may even be made with the precise intention of causing death, as was the case with Michael Schiavo's decision.

Yet Florida does not allow assisted suicide. Why does the state allow patients to die the potentially agonizing death of starvation but not receive a quick, painless lethal injection? That question was frequently asked, for various polemical purposes, during the Schiavo controversy.

One possible answer to the question is that the law is simply inconsistent. Floridians, like most people, have muddled views on medical ethics. For some emotional or esthetic reason, they prefer that death be accomplished by starvation. Perhaps starvation preserves the illusion that the patient is merely being "allowed to die," while a lethal injection would dispel it.

It is possible, however, to take a different view that makes almost complete sense of the law. There are many reasons a patient might wish to decline certain medical treatments (or a husband might wish to decline treatments for his incapacitated wife). Perhaps the treatment would involve pain. Perhaps the patient would rather spend her final days at home among loved ones, even if those days would number more in a hospital. Nobody believes that these are illegitimate choices or that the law should prevent them from being made. Nobody believes that there is any moral imperative to do everything possible to extend a person's lifespan—although such was the heat of the Schiavo debate that pro-lifers were sometimes unfairly accused of holding something like that view.

**Lives “not worth living”**

If the law allows a patient to decline treatment, it will have to allow him to decline treatment even when he is declining it solely for the purpose of hastening or causing his own death. In the case of incapacitated patients, it will have to allow the decision-maker to decline treatment even if the decision-maker’s intent is to bring about the patient’s death. The legislature, in allowing such scenarios to take place legally, is not prospectively blessing these “choices for death” (to use liberal legal theorist Ronald Dworkin’s approving phrase). Otherwise, it would repeal or relax the laws against suicide and assisted suicide. It is, rather, viewing these choices as abuses that must be tolerated in order to achieve the good of letting people make medical decisions for themselves and their family members.

The difficulty here is that the Supreme Court in 1990 defined food and water as a medical treatment, and required that all states allow patients to turn it down (or allow their surrogates to turn it down for them). Florida law follows the Court’s ruling. But in almost every case, the only reason to disconnect an incapacitated patient from a feeding and hydration tube will be to cause that patient’s death. The law, on this point, really is muddled. The Court seems to have taken the nation a half-step toward assisted suicide without quite realizing what it was doing—because, again, if it did realize what it was doing, there would be no reason to allow state bans on assisted suicide.

For those who favor euthanasia, then, the next step is clear. The Schiavo controversy has revealed widespread support for the notion that some lives are so terrible that they should be ended. It would not be surprising if in the next few months and years there were moves for other states to follow Oregon’s lead and legalize assisted suicide.

The path ahead for opponents of euthanasia is less clear. Oddly, the Schiavo controversy drew almost no attention to the principled case against euthanasia. This is not only, or even mostly, the fault of the media. Pro-lifers hardly made the case themselves. In a way, this failure was understandable. For political and legal reasons, it made a kind of tactical sense for those who wanted to keep feeding Terri Schiavo to deny that she was in a “persistent vegetative state”—but in denying that, pro-lifers let the notion that it is acceptable for people who are in that state to be starved to death slide right by. It made tactical sense to question whether Mrs. Schiavo really would have wanted to die this way—but in asking it, pro-lifers failed to challenge the notion that it is acceptable to kill those who wish to be killed.

The concept of the “sanctity of life” was a spectral presence in the debate, never given a rational form. So it was easy for people to fall into the assumption that it was an essentially religious concept. Proponents of feeding Mrs. Schiavo were, by and large, Christians, and Christian conservatives at that. They often claimed, or implied, that they were doing God’s will. Resisting euthanasia thus came to be seen as somehow theocratic, and certainly irrational. Pro-lifers were “emot[ing]

with bug-eyed religiosity,” the *Financial Times* calmly opined. Hendrik Hertzberg called them “Christianists” in *The New Yorker*, comparing them to bin Laden.

Yet this view turns matters upside down. There is a perfectly rational case against euthanasia. The case *for* it, on the other hand, almost inescapably rests on what might be described as a kind of irrational spirituality.

The case against starts with the idea that human beings have inherent worth and dignity, and therefore are equal in fundamental rights, simply by virtue of being human—a premise that, when it is brought to bear on other issues, is usually not rejected as religious in its origin. If that premise is true, then these rights cannot depend on particular qualities that some human beings have and others do not. The right to life has to be among these rights, which means that it cannot depend on race, or age, or health, or sex. It cannot depend even on whether the person who has it wants it: He doesn’t cease to be a human being with the full complement of rights simply because he wants to die. (It is because the right is intrinsic to human beings that it is also inalienable, as our Founders, who were not theocrats, put it.)

If all human beings do not possess basic rights simply because we are human beings, on the other hand, then it must be the case that some human beings have them because of qualities they, in particular, have. So, for example, we could hold that only human beings with the immediately exercisable capacity for abstract mental functioning have the right not to be killed—which would make it possible for us to allow abortion, research that destroys human embryos, and euthanasia of the permanently comatose or persistently vegetative. But since the capacity for abstract mental functioning varies continuously, we will have to both identify a non-arbitrary minimum level it is necessary to have to possess rights and explain why people who have more of that quality should not be regarded as greater in worth and dignity than people who have less of it. It is impossible to do either.

Thus it ends up being impossible to confine the category of lives deemed unworthy of protection to the unborn and the persistently vegetative—impossible not just practically, but in principle. We have seen how this works at the beginning of life: Whether our criterion is the ability to reason, self-awareness, or the capacity to experience pain, newborn infants do not differ from late-term fetuses. Pro-choicers who find Peter Singer’s advocacy of infanticide repulsive cannot come up with a persuasive argument for why he is wrong. He differs from them only in his willingness to embrace the logical consequences of the premises he joins them in affirming.

#### Failures of logic

For the law to allow people to take innocent human lives—even their own—is necessarily for it to regard some lives as not worth living. This is perhaps especially the case when the law restricts the “right” to commit suicide to specific categories of people, such as the severely disabled and ill. As bioethics writer Eric Cohen noted in *The Weekly Standard*, at least one Florida appeals court that considered the Schiavo case made this move without even realizing it. It simply assumed that the only reason anyone—including Mrs. Schiavo herself, or rather

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the Mrs. Schiavo of the past looking at the situation—could want to keep the tube connected was the possibility that “a miracle would somehow recreate” her cerebrum. It assumed, that is, that Mrs. Schiavo would not have wanted to continue living indefinitely in a persistent vegetative state, because no one would. It was all right to end her life, that is, because it was, objectively, not a life worth living.

The common description of Mrs. Schiavo as “brain dead” is also worth noting at this point. Here is Christopher Hitchens, who used the Schiavo controversy as the occasion for another of his denunciations of “religious fanatics”: “The end of the brain, or the replacement of the brain by a liquefied and shrunken void, is . . . if not the absolute end of ‘life,’ the unarguable conclusion of human life. It disqualifies the victim from any further say in human affairs.” Mrs. Schiavo, he writes, was already Michael Schiavo’s “ex-wife” before the tube was pulled. (I assume the echo of the dead-parrot routine is intended.)

Hitchens’s statement, taken literally, is truer than he appears to realize. Most people accept brain-death as the criterion for death. But the prevailing standard has required the death of the whole brain, not just the cerebrum. If the cerebrum is gone, the higher mental functions are gone as well. But when the whole brain is gone, the body ceases to be able to direct and integrate its own functioning. At that point, there literally is no longer a living organism. Fudging the issue—treating the (contested) diagnosis of the liquefaction of Terri Schiavo’s cerebrum as though it meant brain-death—is a way of moving the goalposts. Once that has been done, all kinds of consequences follow. As Wesley Smith has reported, some “bioethicists” have proposed taking usable organs from people in situations like Terri Schiavo’s.

The argument—that allowing euthanasia violates a basic human right, denies the ground of human equality, and would also in principle require acceptance of evils that almost everyone can recognize as such—has only been sketched here. To be airtight, it would have to be elaborated, and defended against criticisms. (These things can be done.) The argument’s conclusions correspond with the Judeo-Christian tradition. But it does not at any point rely on the premise that God is a Trinity, or that He even exists, or that the pope or the church can teach infallibly in moral matters.

### **Voodoo bioethics**

It is remarkable, however, how often the argument *for* euthanasia seems to depend on a kind of superstition: on a dualism that separates a person from his body. This dualism holds a person, understood as a consciousness, to be important and worth protecting, but does not so hold the physical organism that this person merely “inhabits.” The person is the “ghost in the machine” or, to use Anna Quindlen’s more recent metaphor, the tune in the music box. Libertarian commentator Glenn Reynolds took this valorization of the willing, desiring self pretty far: “If Terri Schiavo’s desire is to die, then in fact, you’re making her into a non-person by not following it.” *Not* to kill her was to destroy her personhood because it was to disregard her will.

This dualism facilitates the denial of a right to life in cases where there is no

reasoning, conscious self—as in abortion and the euthanasia of the “vegetative.” As such, it is open to the same egalitarian objections mentioned earlier. But it is also untenable. It contradicts everyday experience: We sense and perceive, which are clearly bodily actions, but also engage in conceptual thoughts, which cannot be reduced to bodily actions; and it is clearly the same subject who does both types of things. The dualist refutes his idea in the act of uttering it.

During Terri Schiavo’s last days, we heard, perhaps, too much about God, and not enough about justice. I say this not because I think that religious arguments about public policy are somehow inadmissible, or for that matter because I doubt that God wanted us not to kill Mrs. Schiavo. But this conviction of mine derives from my prior conviction that God wants us to do justice to one another. (Kant: “Suicide is not abominable because God forbids it; God forbids it because it is abominable.”) To say that God wanted us to save Mrs. Schiavo from starvation, without explaining why justice required us to save her, was conclusory. And it had two negative consequences. The first was that our commentariat, all too eager to engage in hyperbolic arguments about theocracy, now had a perfect excuse to do so rather than to deal more directly with the ethical issues involved in the Schiavo case.

The second was that a conclusory religious argument to save Mrs. Schiavo opened the door to a sloppy religious argument to end her life. The argument here, which quickly became a favorite of the anti-tubists, was that Christian conservatives were behaving faithlessly by striving to keep Mrs. Schiavo from attaining her eternal reward. If they really believed in the next life, went the argument, they would not have gone to such lengths to prolong this one. They were guilty of theological hypocrisy.

This was an extremely careless argument. To begin with, plenty of Christian conservatives do not believe that everyone (or anyone) is guaranteed admission into Heaven. But the more important flaw in the argument is that it wholly ignores the distinction between not prolonging someone’s life and deliberately ending it. Nobody involved in the Schiavo case argued that heroic measures must always be taken to prolong the lives of dying patients (which, incidentally, Mrs. Schiavo was not until the tube was disconnected). Everyone, if asked, would have to concede that it could sometimes be permissible to take someone off life support, even when death was a predictable consequence of that action—if, for example, the patient preferred to die at home rather than in a treatment center. Nobody, with the possible exception of the DEA, opposes the use of pain medication to relieve suffering in every case where its use risks causing the patient’s death. The claim that pro-lifers are “absolutists” on life cannot survive even cursory examination.

What pro-lifers opposed was an action, removing the tube, that not only resulted in death *but the entire point of which was to cause death*. To pretend that this distinction did not exist was to beg the question, short-circuiting the charge of hypocrisy. For if the action in question was an unjustified killing—and not a mere “allowing to die,” as the popular euphemism had it—then surely it is obvious that

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Christians could not favor it on the theory that Heaven would be on the other side of it. Churches would then, to be truly consistent, have to fund death squads to usher even more people into paradise. Liberals who do not understand this point should imagine what their reaction would be if someone had said to Martin Luther King Jr., “Why are you carrying on about justice? If you really believe that the world has been redeemed by the Lord, what’s the point?”

People die every day, and people get killed every day. The Schiavo case was a tragedy not because the government failed to stop it from happening, but because it directed it to happen—with the apparent support of most Americans. The danger is not that the slope is slippery, but that we have already slid too far down it.



## APPENDIX N

*[Paul Vitello wrote the following while still a columnist for Long Island Newsday—he is now on the staff of the Metro Section of the New York Times. Copyright, 2005 Newsday. Distributed by Tribune Media Services. Reprinted with permission.]*

### My Daughter May Dance

*Paul Vitello*

In dreams, my 12-year-old daughter sometimes talks. She once said “yes” in a dream. Another time, she walked. There was a dream once where she walked and talked. That was very exciting.

These are my dreams.

If she has similar ones, she can’t tell me. She is severely disabled and has been so since she was 10 months old, when she suffered brain damage during a surgery. She cannot walk, talk, or feed or dress or otherwise fend for herself.

Like many parents of disabled children, I sometimes dream her “well.” It is a form of fervent wishing, I suppose. But I think of it also as a kind of wake-up call, if dreams can be called that—a way for my deeper self to remind my regular self never to give up hope.

I don’t know if the parents of Terri Schiavo, the severely brain-damaged woman being denied food and water in Florida, have dreams in which Terri snaps out of the damaged state she’s inhabited since her heart attack in 1990. I imagine they do.

They claim to have seen her getting better over time. They say she’d be better off still if doctors hadn’t insisted on describing her as “vegetative,” and if her husband hadn’t denied her therapies over the last seven years.

But I can tell you this. When my daughter was first injured, a team of neurologists looked at her brain scan results and wrote her off as pretty much “vegetative.” Most doctors we subsequently took her to studied her EEG reports more carefully than they ever studied her. But she was and is not an EEG report.

She’s a kid who—sometimes, though not always—gives you her hand when you ask for it; who smiles when you speak to her; who can pat the red object when you present her a red and a green object and ask her to touch the red one.

This is beyond what Terri Schiavo might be able to do, apparently. But so what?

At what point would those who determined that Terri Schiavo’s life was not worth living be confident in ruling that my daughter’s life—limited as it is to those few, inconsistently performed acts of awareness—was also not worth living?

This is the question underlying the growing unease with which many disabled people and their loved ones have viewed the Schiavo story, especially since her feeding tube was removed two weeks ago.

How can anyone know what constitutes another being’s life-worthiness?

A columnist for another newspaper, writing about Schiavo, stated with awesome certitude the other day that, “The inescapable prison of her body and inert cranial cavity is surely the worst kind of hell for her soul . . .” But how does he know what is the worst kind of hell?

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What if Terri Schiavo feels pleasure when she's fed, and comfort when she's touched? What kind of hell is that, exactly?

"We totally object to any cognitive test for 'personhood,'" said Diane Coleman, president of Not Dead Yet, a Chicago-based national organization of disabled people opposed to assisted suicide and what they see as a growing euthanasia movement in the United States. "The use of such testing will inevitably result in the non-voluntary euthanasia of many people with disabilities—based on society's prejudiced judgment of our 'quality of life.'"

Her group joined more than 20 other disability rights groups in formally opposing Michael Schiavo's legal efforts to discontinue his wife's feeding and hydration.

Coleman is not against people choosing health care proxies, or people choosing to die. She is against legal guardians making such life-and-death decisions for the disabled without their full consent—as she believes is the case with Terri Schiavo and her husband, Michael.

It doesn't much matter to people in Not Dead Yet, or to me for that matter, that the Republican Party and the Right to Life movements have taken up positions on this issue that pretty much match their own.

It's not about Republicans, or about Operation Rescue, though both those groups have tried to make it so.

The issue is Terri Schiavo and all the other severely disabled people who may not enjoy the level of "quality" in their lives that some consider the minimum requirement, but who are alive.

And who may dream. One doesn't know. In her dreams, my daughter may dance.

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