the HUMAN LIFE REVIEW

SUMMER 2009

Featured in this issue:

Also in this issue:

Kathryn J. Lopez • Mother Teresa • Jérôme Lejeune • Donald DeMarco
Fr. Thomas Berg • Mary Catherine Wilcox • Wesley Smith • Nat Hentoff

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. . . as the Age of Obama unfolds at warp speed, pro-lifers are buffeted along with conservatives in general—conservatives in this case being all those who wish to conserve some semblance of the, yes, *messy* democratic institutions we're being told are in critical need of an Obama-fix. As of this writing the health-care "debate" continues apace, with Democrats still looking to sneak universal abortion coverage into congressional legislation and Republicans (along with a few honorable Democrats for Life) still looking to stop them. "I am finally scared of a White House administration," declares Nat Hentoff—the Human Life Foundation's 2005 Great Defender of Life who's always been an equally great defender of liberty—in a syndicated column we reprint here (page 124). Hentoff, unlike some of his liberal brethren, *wasn't* scared of declaring himself anti-abortion, which he did in a column back in the 1980s. In "My Controversial Choice to Become Pro-life" (page 23), an article he has written especially for the *Review*, Hentoff recalls how his "conversion" changed his professional life.

This year, we salute *three* Great Defenders of Life—our senior editors, Ellen Wilson Fielding, Mary Meehan, and William Murchison. Each in his or her own way has sacrificed in order to take part in the national abortion debate, and in doing so helped to make this journal a success—Fielding, who came to the *Review* out of college and subsequently found time to write for us while home-schooling four children, and then after resuming full-time work; Meehan, by undertaking the ever-challenging occupation of free-lance researcher and writer; and Murchison, who like Hentoff, bravely blows his pro-life horn while most of his media confreres cover their ears. The essays they have contributed to this issue (pages 7, 13 & 28) are icing-on-the-cake evidence of why they so richly deserve to be honored.

While we honor three longtime contributors, we also welcome three new ones: Edmund C. Hurlbutt ("Why Notre Dame Should Not Have Honored Barack Obama," page 41), Todd Bindig ("Abortion and Sexual Assault," page 64) and Mary Catherine Wilcox ("Why the Equal Protection Clause Cannot 'Fix' Abortion Law," page 121). Nearly thirty-five years after our late founding editor J.P. McFadden went to press with the first issue of the *Human Life Review*, the great legal fiasco that is *Roe* v. *Wade* (and *Doe* v. *Bolton*) continues to unsettle the American public and pervert its politics. We are fortunate that younger voices, like Wilcox's, continue to join the struggle to restore the inalienable right to life to the nation's jurisprudence—and, as Ronald Reagan famously pleaded, to its conscience. And we are also fortunate to feature some older ones, like Hurlbutt's and Bindig's, in these pages for the first time. More evidence that McFadden was right back in 1985 when he insisted (in *HLR*'s Tenth Anniversary issue) that the *Review* would never lack for "good copy."

Anne Conlon
Managing Editor

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INTRODUCTION

That human life is Life, *formed and touched by the hand of God, is something we're just plain not going to admit. Many had rather, with hands over hearts, lament the plight of chickens and apes and spiders and geese, provided Man can be blamed or, better yet, held accountable for that plight.*—William Murchison

William Murchison, in our lead article "Let's Hear it for Humanity," says precisely what *needs* to be said—we have lost our common sense—as only he can say it: "We witness with agonized eyes assault and battery committed on the common sense of the human race." That to which he refers (like the emperor's "new clothes") is so obvious it's *verboten*: We live in a culture that passionately campaigns for animal rights, while it denies unborn *humans* the right to life, and weighs protections for *born* humans on a utilitarian scale.

Murchison cites a recent, ridiculous example: President Obama was caught on T.V. swatting a fly; PETA then publicly chastised him and sent him a "Katcha Bug Humane Bug Catcher." Most people probably laughed at that incident, but public wailing and gnashing of teeth over man's "inhumanity" to animals, and to the planet, is pervasive. (And extreme: As you'll read in Wesley Smith's column in *Appendix A*, there is a growing movement to grant animals the legal standing to sue humans!) But, Murchison asks, in this "Age of *Roe* v. *Wade*," where is the dismay at the extermination of our own human unborn?

> Why is it that the Left in modern America plights itself more enthusiastically to the situations and prospects of animals than to those of fellow humans? Why the tears for Fido but rarely, oh, so rarely, for the unseen lump of flesh and brains and aspirations and, who knows, genius that makes, for now, its home in the womb, according to a grand design familiar from mankind's earliest moments?

Murchison does say that human life is "*Life*, touched by God": The faithful are taught that man was created in God's own image. Where there is *no* belief in God, though, is it possible to remain convinced that humans are a unique species, with inalienable rights? This is one of the questions explored in a powerful essay, "The Post-Christian Public Square," by senior editor Ellen Wilson Fielding. She asks: As Western civilization becomes more and more secularized, what have we become, and where are we headed? She reminds us that the belief in God, and specifically in Jesus Christ, is the basis for the concept of individual rights to which our society still (partially) adheres. Those who believe that humans have progressed "beyond" religion, writes Fielding, are not going back to the pagan culture of Greece and Rome, but *forward* to a neo-paganism that may be worse. It's the "neo-pagan world that grays the world with death—both literal deaths, in cases such as abortion and euthanasia, and cultural death, such as below-replacement fertility rates." The progress we claim may be lost in a post-Christian world: It is not clear "how

reliably the Christian insight into the value of each human person in God's eyes, and the scaffolding of human rights and protections erected on that insight, can hold once the religion that perceived this value is jettisoned."

Fielding would agree that our next author is an eminent exception: Veteran journalist Nat Hentoff, our Great Defender of Life honoree in 2005, is a self-professed atheist who believes as strongly as fervent religious believers do in the inviolability of human life. In the 1980's Hentoff, a nationally known columnist reporting on abuses of free-speech and civil rights, announced in his *Village Voice* column that he was pro-life. "That was—and is—the most controversial position I've taken," he writes in his article here (p. 23), and he reveals how his position on life has affected his career. (*Appendix B* is a recent Hentoff column on "Obamacare," titled "I am finally scared of a White House administration.")

Hentoff recalls how his fellow anti-war activist Mary Meehan "shook up both the staff and the readers of *The Progressive* when she wrote that 'some of us who went through the antiwar struggles of the 1960s and 1970s are now active in the right-to-life movement. . . . It is out of character for the left to neglect the weak and the helpless.'" Meehan has been an untiring advocate of the rights of the unborn and the disabled, and this fall she will be honored, along with fellow senior editors William Murchison and Ellen Wilson Fielding, with our Great Defender of Life Award. Longtime readers of the *Review* know that this trio's work has been a mainstay of our journal; we applaud their persevering witness as well as their journalistic and literary excellence.

Meehan's latest article for us, which begins on p. 28, is the first part of a masterful report on eugenics and prenatal testing. It opens with this chilling quote: "'If eugenics is a dirty word,' said University of Wisconsin geneticist James Crow in 1972, 'we can find something else that means the same thing.'" Crow was on the board of the American Eugenics Society, which changed its name in 1973 to the Society for the Study of Social Biology. But the organization's mission remained: the prevention of births of those "deemed to be inferior, especially those with inherited disabilities." In this excellent—and deeply disturbing—report, Meehan shows how the ideology of eugenics has taken hold in prenatal medicine. (And in the Supreme Court: In *Appendix C, National Review*'s Kathryn Jean Lopez reveals some shocking comments made by Justice Ruth Bader Ginsburg in a recent *New York Times Magazine* interview. Margaret Sanger would be proud.) One result is the now-routine testing of the unborn: "Prenatal testing is a huge funnel that's wide at the top—enticing and pressuring women and couples to agree to testing—and narrowly pointed toward eugenic abortion at the bottom." Eugenics, Meehan writes, has been condemned for its racial and class biases, but its "bigotry against people with disabilities is its deepest bias of all, and possibly its oldest. People killed handicapped babies in ancient Greece and Rome, and some great philosophers supported this practice."

Ellen Fielding reminds us that the condemnation of abortion and infanticide was one of the first distinctive differences Christian society brought to a pagan

world. What to make, then, of a "Christian" society that legally practices both? How about the premier Roman Catholic academic institution in the U.S. honoring a president who *endorses* both? The University of Notre Dame's decision to honor President Obama at its Commencement last May, Edmund Hurlbutt writes (p. 41), may have become a national story because of the "angry public reaction from pro-life Catholics" and "scores of individual bishops," but it was played by the media as a public relations win for Obama and Notre Dame. Hurlbutt, a newcomer to our pages, argues persuasively that Notre Dame should *not* have invited Obama. "Abortion kills dialogue," he writes; it has *literally* killed millions of voices (where is *their* right to be heard?). Furthermore, Catholic teaching profoundly disagrees with Obama's claim that we cannot know with certainty "what God asks of us." There are *moral truths* that Christians and non-Christians alike can know, through reason and natural law. Hurlbutt turns to the late Pope John Paul II's encyclical *Evangelium Vitae*, which states unequivocally that abortion and euthanasia are "crimes which no human law can claim to legitimize."

Thirty years ago, Mother Teresa, in her Noble Peace Prize lecture (which we have reprinted as *Appendix D*) said that "the greatest destroyer of peace is abortion." Our next article is written by a man who was privileged to find his advocacy for life leading him to collaborate with, as he calls them, "The Saints": Mother Teresa, Dr. Jérôme Lejeune, and Cardinal John O'Connor. Attorney Patrick Mullaney tells the story of his involvement in the 1990 Alex Loce case. Loce was a young man who attempted to prevent his girlfriend from aborting their child. When legal attempts failed, Loce chained himself to the door of the clinic; he was arrested, the child aborted. In his defense, Loce argued that his child was entitled to life under the Due Process Clause, and his attorneys, Mullaney among them, approached the Saints for help. (We reprint in *Appendix E* some excerpts from Lejeune's beautiful testimony at the *Loce* trial.) You'll read how this case *almost* got national attention, thanks to the Saints; Mullaney reveals the (surprising) roadblocks that led to a sadly missed opportunity.

It is frightening to think how, in the years since we've lost the Saints, the culture of death has made great strides. In "The Stem-Cell Follies," (p. 61) journalist Alicia Colon expresses her frustration at the lack of truth-telling about embryonic stem-cell research, especially from celebrity endorsers (like Parkinson's-sufferer Michael J. Fox) and liberal politicians. It is simply fact that experiments with embryonic stem-cells have not only failed to lead to promising cures, but have proven dangerous, whereas non-controversial, adult stem-cell research has already yielded positive results. (In a surprising and subsequently downplayed instance, pop-star cardiologist and author Dr. Mehmet Oz said on the *Oprah* show—with Michael Fox sitting next to him—that "the stem-cell debate is dead . . . the problem with embryonic stem cells is that embryonic stem cells come from embryos, like all of us were made from embryos. And those cells can become any cell in the body. But it's very hard to control them, and so they can become cancer.")

Widely accepted "truths" may nonetheless prove to be untrue if one simply examines the evidence. One such case is the desirability of abortion in the case of rape argues our next author, Todd Bindig, who we welcome to the *Review*. Even some of those against abortion "intuit" that it ought to be allowed in cases of pregnancies resulting from sexual assault (which, keep in mind, are statistically rare) in the belief that terminating the unwanted pregnancy will assuage the victim's suffering. This view is so prevalent that "any argument against it is interpreted as heartless and irrationally extremist."

But what are the facts? Certainly, the emotions swirling around the horrific crime of rape are intense, and Bindig in no way minimizes the trauma of the assault. Still, logically, if the killing of an innocent unborn human is wrong, the manner in which he or she was conceived does not change the morality of the act. In addition to the philosophical argument, there is a practical one: "In actuality, there is strong evidence that abortion will not only not alleviate the sufferings of sexual-assault victims, but only make them worse." The largest study ever done of women who became pregnant as a result of rape found that 89 percent of those who had aborted their child regretted that decision. Bindig includes poignant testimonies from women who came to see that abortion was not the answer, but rather experienced as a further assault.

Women with unwanted pregnancies need to know that there are alternatives to abortion, including adoption, but adoption itself has been given bad press by the pro-abortion forces. Contributor Stephen Vincent writes next about an ingenious plan, implemented now in 24 states, to help couples who wish to adopt children and to promote the pro-life message: the Choose Life license-plate program. Initiated in Florida over 10 years ago, Choose Life raises funds for counseling and support services for birth mothers and adoptive parents. Not surprisingly, Choose Life plates have faced strong opposition from pro-abortion groups in each state where they are introduced: Vincent reports on how these obstacles have been overcome and what effect the license-plate program is having.

Our final article is a rich biographical study by contributor Edward Short on "William Wilberforce and the Fight for Life." Learning more about the life of the "Great Liberator," a man of resilience and steadfast faith, is rewarding in itself, but even more so as an inspiration for all of us trying to prevail in the beleaguered pro-life movement in 2009. Short writes:

> Foot soldiers, no less than commanders, need to be reassured that others have prevailed over comparably formidable odds. By revisting Wilberforce's life and the strategies he pursued, against opposition that must often have seemed insuperable, we can put some of the challenges and setbacks faced by the pro-life movement in some historical perspective.

Throughout his absorbing, colorful essay, Short demonstrates parallels between Wilberforce and his fellow abolitionists' struggles and our own—writing, for example, that the foes of slavery had to "establish and maintain widespread, popular

support for some 60 years against constant attacks before they could pass abolition in Parliament." He continues: "Here pro-lifers can take heart. All the major polls attest that the majority of Americans side with life." President Obama and those who want to "roll back protections for the unborn" are against the will of the majority, which does not "bode well for the sustainability of the assault on the innocent." Short also writes "Were Wilberforce living in our own time, he would have seen something of his own Christian commitment to the fight for life in Father Richard John Neuhaus . . . ." Indeed, one of Short's descriptions of Wilberforce made me think of our late friend: "There was something life-affirming, something infectiously good and giving about the man, and others gravitated to him." As we honor our three Great Defenders of Life this fall, we will also have a tribute to someone who certainly deserved the honor, Father Neuhaus, who said at a Jewish-Christian pro-life conference in 2001:

> We are signed on for the duration and the duration is the entirety of the human drama, for the conflict between what John Paul II calls the culture of life and the culture of death is a permanent conflict. It is a conflict built into a wretchedly fallen and terribly ambiguous human condition.

* * * * *

In addition to the appendices already mentioned, we wrap up this full issue with several excellent reprinted commentaries. *Appendix F*, "Scrambled Ethics," is a report on the egg-donation decision of New York's Empire State Stem Cell Board, written by its one dissenting member, Father Thomas Berg. Philosopher Donald DeMarco's essay on *Life, Liberty and the Pursuit of Happiness* appears in *Appendix G*; and *Appendix H* is a legal note written by a promising young student at Ave Maria Law School, Mary Catherine Wilcox. May her tribe increase! As always, our burdens are lightened by the ingenious humor of Nick Downes' cartoons. Until next time . . . .

Maria McFadden
Editor

Let's Hear It for Humanity

William Murchison

"After we came out of church," the ever-observant James Boswell related, "we stood talking for some time together of Bishop Berkeley's ingenious sophistry to prove the non-existence of matter, and that everything in the universe is merely ideal. I observed, that though we are satisfied his doctrine is not true, it is impossible to refute it. I shall never forget the alacrity with which Johnson answered, striking his foot with mighty force against a large stone, till he rebounded from it,—'I refute it *thus*.'"

The great Samuel Johnson was ever one for common sense—the plain application of simple and honest observation to what he frequently called "cant." By "cant"—a word that lingers in dictionaries, but which you rarely encounter these days—Dr. Johnson meant vapidity, platitudinous posturing, and the like. Cant was dishonest, hence to be avoided like the plague. It drew people into false understandings, hence into false and potentially injurious actions.

How we need such a mind, such an eye, as Johnson's to keep us honest in the 21st century—a towering task, to be sure. The truth is, we need refurbished minds in and throughout the whole of society, ever alert to the appearance of falsity in important matters. Or has every society felt and talked the same way since Hec was a pup? Answer is yes. I suspect the answer is an *emphatic* yes. We love to lie and believe lies. There seems good reason all the same to revive the question in this, our own honesty-starved era.

Auden called the 1930s "a low, dishonest decade." As modern folk readily sense, most decades since then have competed earnestly in the dishonesty sweepstakes. After a while, one starts to figure out one of the sad consequences of Original Sin: widespread refusal to see things as they are, in favor of the proposal that they're, well, something else entirely.

Where's this going? I'm asked. *Come on, what about the right to life*? I'm headed there. I want merely, if allowed, to put a frame around a continuing human defect—the love of cant, the rejection of good old Johnsonian common sense—before I exhibit that particular frailty for inspection.

If we can't yet, as a nation, as a people, see our way clear to extend unborn life the legal protection it generally enjoyed until January 22, 1973, it must be, in part, because of disinclination to kick a few strategically located

William Murchison writes from Dallas for Creators Syndicate. A senior editor of the *Review* (and one of the Human Life Foundation's 2009 Great Defenders of Life), his new book, *Mortal Follies*: *Episcopalians and the Crisis of Mainline Christianity*, has just been published by Encounter Books.

stones. That human life is *Life,* formed and touched by the hand of God, is something we're just plain not going to admit. Many had rather, with hands over hearts, lament the plight of chickens and apes and spiders and geese, provided Man can be blamed or, better yet, held accountable for that plight.

The priority of human life, born or unborn, in the calculations of any just society, has not for a long time bulked large in our cultural calculations. We're too busy, supposedly, to worry about life that can't speak for itself, much less advance its cause at the polls. The same is true of most species of life we are presently invited by advanced spirits to step forward and defend—animal life, insect life, "the earth" itself, viewed as a lively set of instincts and nerve endings. How about, in terms made unusually real for us by the health-care debate, lives growing close to the expiration date—the elderly or near-elderly, sufferers from chronic disease, and the like? How shall we compare grandma's (to borrow the president's now-famous trope) expectations to those of a factory-raised chicken? Which thrills us more with the sense of participation?

Of cant concerning the evaluation of discrete human lives it should be mandatory to speak with some regularity, if only to remind ourselves how far we have moved as a society from the ideal of protection toward the ideal of "tough-minded" discrimination. What is said in so-called elite circles about unborn human life brooks little comparison with what is so often said in circles so wide—you must read them online to appreciate their reach—about non-human life. One sect of animal lovers campaigns for stopping the use of horse-drawn vehicles. Doris Li, an "animal-rights attorney," hates fishing inasmuch as fish feel pain.

Even insects have their advocates. One of these protests the "senseless slaughter of billions of helpless insects across the world." We are invited to consider that "bugs are living, feeling creatures, too. Imagine the horror of these small beings as they are choking their last breath, clutching their young to their breasts as uncaring humans thoughtlessly spray toxic chemicals." Yes, actually, I've tried—while swatting mosquitoes on a hot summer's night, thankful not to be lying awake in some Asian or African nation wondering how far or near those nice little, humming malaria-carriers might be at present.

The advocates of insect rights—yes, rights—want to abolish flea circuses and flypaper. People for the Ethical Treatment of Animals (PETA) touts the "Katcha Bug Humane Bug Catcher." First you catch the bug; then you liberate it—defeating the purpose of catching the bug in the first place? Never mind. If it comes back, you recapture, or nab another just like the first one: individuality (in the human manner) being a lost cause amid the bugs and varmints.

PETA sent its dandy catching machine to President Obama for prospective use next time one of nature's creatures assaults his comfort, in the manner sensationally reported by the media earlier this year. PETA's agenda is immense, embracing among other things stopping seal slaughter in Canada and standing up for sheep that "are often castrated and have their tails cut off—all without any painkillers—when they are only a few weeks old." A certain Natia M. Sanchez, on PETA's website, declares, "I am shocked and angered that Brookstone"—the nationwide purveyor of electronics, outdoor furniture, and assorted gadgets—"would enter into a shameful business of selling frogs and snails. This is disgusting. . . ."

Meanwhile, Anjelica Huston, far-out daughter of the late, great John Huston, and a favorite of PETA enthusiasts, weeps over the abuse of great apes "torn away from their mothers and forced to depend upon human trainers." Indeed, the so-called Great Apes Project, launched in 1993, aims at conferring human rights on apes, gorillas, and orangutans. That achieved, I imagine the next logical step might be to award prizes for classics knocked out by the proverbially infinite number of monkeys hammering away on the likewise infinite number of typewriters. Or laptops, whatever.

There's so much of this stuff out there—magazines; books; the Internet, especially—it would take years to read through it; and by the time you finished mountains more of it would have arisen. My present point is simple enough, I hope: that discourse of this sort has become common, everyday, and even respectable in the Age of *Roe* v. *Wade*. Not all of it is rot. Let's be clear about that. For instance, Matthew Scully, onetime speechwriter for President George W. Bush and Sen. Robert Dole, produced in 2002 a formidable volume, *Dominion: The Power of Man, the Suffering of Animals, and the Call to Mercy*, which the *New York Times* called "a horrible, wonderful, important book."

Scully pleaded for a loftier—infinitely loftier!—understanding of Man's obligations toward his comparatively powerless neighbors on Planet Earth. Entwined with his reasoning is a historic human habit—that of regard, sometimes outright friendship, for animals, particularly specific ones: the dog at the fireside; the faithful horse; the fallen baby bird; the squirrel on the branch of the pecan tree, preparing his granary for the coming winter; the screech owl that turns up in springtime to nest and breed and oversee the, um, products of conception. It is bred in humans, no doubt, to care about suchlike. It is also bred in humans, or once was anyway, to draw distinctions: over here, humans; over there, even as you scratch their ears or rub their stomachs, non-humans. Animals—they're wonderful. God made 'em, God love 'em.

But, my friends, they're not human, and that's the consideration that needs opening up. Scully himself acknowledges the point, saying, "A dog is not the moral equal of a human being." Why is it that the Left in modern America plights itself more enthusiastically to the situations and prospects of animals than to those of fellow humans? Why the tears for Fido but rarely, oh, so rarely, for the unseen lump of flesh and brains and aspirations and, who knows, genius that makes, for now, its home in the womb, according to a grand design familiar from mankind's earliest moments?

Johnson, thou shouldst be living at this hour. On second thought, how many today would listen to a man who argues by kicking a stone?

The philosophical turn away from humans, and toward rough beasts of one variety or another, is a modern trait, like texting, pro football, and fighting over health-care reform. Its exponents—Peter Singer et al.—are not necessarily more out there in left field than millions of other Americans. They're perhaps just more honest or more verbal. They don't mind saying that the preservation of discrete human lives is a worthy social objective—so long as the lives in question don't clutter up the landscape, depriving young women of the space they crave or demanding that someone fix all their aches and pains. In the universe of Peter Singer, lives lived at the margin, or requiring special attention, aren't of much interest.

Singer's unblinking embrace of abortion is well-known. That he continues as a professor of bioethics at Princeton University, once a hallowed Presbyterian institution, is evidence of the Princeton community's indifference to rigorous philosophical argument. In a recent *New York Times Magazine* article (July 19, 2009), he was up to his old tricks—picking and choosing, refusing to say, "Careful, a life is a life is a life." A human life, that is to say. Singer doesn't embrace human life on principle. He distinguishes; he sorts out. When it comes to potentially costly health care, the young outrank the old. Here no animals get in the picture, only humans residing at opposite ends of the life continuum. A teenager has the chance to live 70 years. Not so the 85-year-old. "The death of a teenager is a greater tragedy than the death of an 85-year-old, and this should be reflected in our priorities. We can accommodate that difference by calculating the number of life-years saved, rather than simply the number of lives saved. If a teenager can be expected to live another 70 years, saving her life counts as a gain of 70 years, whereas if a person of 85 can be expected to live another 5 years, then saving the 85-year-old will count as a gain of only 5 life-years." Hmmm, yes, well—an accurate mathematical calculation there for certain. That cinches the matter? A life isn't a life isn't a life until we measure, calculate, compare, and evaluate in full Singer or PETA mode? I believe that might be what we are

supposed to take away from our encounter with 21st-century cant.

The Sarah Palin-generated argument in the summer of 2009 over whether Democratic reform of health care would countenance "death panels" is further evidence of uncertainty surrounding society's ability to take a clear, unambiguous stand for human life. That would be on the ground that various types of human—the unborn, the old—already command less deference than competing (shall we say) species of life. The urge to say spontaneously, when challenged, "Hey, here's a human life," isn't wonderfully evident in the early 21st century.

The young, they're wonderful. God made 'em, God love 'em. But He made the formerly young as well. They might be seen, too, as deserving a little civilized respect, some recognition of *humanness.* A matter of, well, common sense would seem to be involved here, a matter of what our eyes should reveal when we trouble to open them: man as creature formed in the image of God, deserving, therefore, in some broad measure, the benefit of the doubt.

The non-commonsensical world has tangled philosophical roots that are likely not worth the trouble of separating and taxonomizing here. No animal, however winning in personality or hygiene, used to outrank man, whose God-given humanity distinguished him from beasts we were pleased to call lesser. The common sense on which the general understanding of life was based was the same common sense that affirmed the heat of fire, the wetness of water. What was, was.

The deep romanticism of modern society is a point perhaps not often enough expatiated upon. The romantic view of life doesn't depend on stormy crags, gloomy ruins, and shipwrecks. It depends in large measure on human confidence in the ability of humans to reshape to their taste and ability previous arrangements of all sorts—especially, in these times, the fundamental understanding of what it means to be human. It doesn't mean what it once did, that's for sure. The right of an already-born, and reluctant, mother to cancel the life within her is well-established now in American constitutional law and supposedly learned circles.

You can't barge into an abortion clinic, waving your arms and working to convince the inhabitants that a human life is in jeopardy. The inhabitants have decided otherwise. Being human makes no difference. Common attributes—fingers, ears, minds, souls—don't compute. And so we come well prepared for the public forums in which the rights of animals are asserted (never proved) as of greater interest than the rights of, shall we say, particular humans. We have here reduction to absurdity. We witness with agonized eyes assault and battery committed on the common sense of the human race.

Has it become not just the indicated course but the civilizational duty of human life's friends to reassert with confidence the common sense we recognize by instinct? That's to say, isn't it time to call a spade a spade, to declare a human preference for humans over gorillas and spiders, for all the chest-thumping and bellowing that claim might occasion on the left? That latter prospect merely reinforces the point: Things have gone way too far. They have to be put right in moral discourse. A gorilla is the inferior of a human; for that matter, so is a chicken or a pig, and certainly a fly or a mosquito. No need to argue it: It's the way things are. Likewise, in human ranks, we can't go around assigning prior rights to the young any more than to the old and wise. It's all one big deal: the human race. Nutty as fruitcakes we may be in plenty of particulars, but worth preserving and honoring. You can't come along, writing off particular members of the race, ignoring other members in the exultation of reaching down to pigpen level for new victims to empower and weep over. It doesn't work. It contradicts common sense, and common sense won't stay contradicted, much to the regret of many who exercise the initiative.

What reason can there be not to call out the transcenders of common sense—with arguments, with the light of what-is, instead of what-you-like-to-think-is? "Let's hear it for humanity" sounds inconceivably general as a slogan for the overdue recovery of moral understanding. But it shouldn't.

"I suppose it's one of those hazards of owning beachfront property."

The Post-Christian Public Square

Ellen Wilson Fielding

Whether we are for it or against it, the accelerating secularization of what used to be called Western civilization (and what we may here perhaps less polemically refer to as Europe and its offshoots) is observable fact. The less prosperous and generally politically unstable countries constituting much of Latin America, Africa, and Asia seem split between those coveting the level of physical ease and prosperity that most Westerners have access to and those hating, despising, and fearing the West as a deadly moral and spiritual pollutant.

And even if we have not quite sold our souls to the devil in exchange for our historically unprecedented standard of living, many in Europe and its progeny have paid a high spiritual price. A recent British poll disclosed that only one third of British teens profess belief in any God, with an astounding 50 percent claiming never to have prayed (though 84 percent had at one time or another found themselves in a church). Closer to our borders, the Canadian newsweekly *Maclean's* pithily titled its April 7, 2009 story on religion among Canadian young: "Youth Survey: Teens lose faith in droves."

Things aren't quite as bad in the anomalously more religious U.S. The Pew Research Center reported recently that nearly 60 percent of Americans pray daily, and the total percentage of self-described atheist, agnostic, and secular unaffiliated only slightly topped 10 percent. A more worrisome figure for those charting the future was the 25 percent of young American adults aged 18 to 29 who described themselves as religiously unaffiliated as of late 2007. Adolescence and young adulthood, when people are determining what part of their cultural heritage, including religious and moral beliefs, they shall make their own, have always been the most common time for a period of doubt and unsettled religious convictions. Young people commonly sort themselves out spiritually as they mature and especially as they come to form their own families. But many of those towards the end of the surveyed age category are likely to have already settled into communities and formed families—and some may have decided that marriage and children do not appeal. In addition, Americans throughout the life cycle are showing more of an inclination to roam from church to church, and of course less compunction in picking and choosing which parts of their creeds to assent to.

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In fact, merely checking a box on a survey instrument or responding "yes" to a phone-poll query does not assure the continuity of Christian religious belief. New Age-y and Eastern Religion Lite versions of theism abound, ushering modernity into a brave new world where God has successfully been cloned in our image. According to these more user-friendly religions, God is disposed to be well pleased with us, pretty much whatever we do; he/she smiles benignly as society sets off on ever more self-involved and self-destructive schemes.

So even in the U.S., we have wandered rather far from the faiths of our fathers. Just how far is partially masked by how much of the language and the trappings and the seasonal imagery of traditional Christianity persists. And therefore it is perhaps difficult to fully realize the moral effect of letting go of the Christian ethical imperative. And there is another red herring as well. We find it hard to imagine a non-Christian or post-Christian Western democratic society because we are so aware of how imperfectly Christian all past samples have been. At various times and to varying degrees, the Western nations have indulged both individually and collectively in slavery, genocide, racism, child abuse, religious persecution, brutal wars external and internal, as well as theft, corruption, denial of rights—well, we know the history. From the 1960s on, historians have lingered over the failures and hypocrisies of Western civilization almost lasciviously. This may be evidence of our own era's wholesome disposition toward humility, but more likely and depressingly, our recent eagerness to despise our forefathers betrays a hankering after moral superiority over more pious past generations.

On the eve of the third millennium, Pope John Paul II performed a penitential apologia on behalf of his Church for all the sins and scandals of earlier generations of Catholics. He thereby identified himself and his Catholic contemporaries with their ancestral sinners in a cleansing confessional rite that recognized their own present and future susceptibility to sin. When American historians, on the other hand, devoted their histories to uncovering the sins and scandals of earlier eras, they seemed incapable of perceiving and celebrating the distinctively Christian moral insights that coexisted with the distressingly frequent lapses from virtue. And it is these distinctively Christian moral insights (Christian in the sense that they were advanced and defended by examples and arguments from Christian sources, and they were eventually accepted, at least as social ideals, by self-identified Christian societies) that are at risk if Christianity wanes to minority status in what used to be Christian Europe and its outposts. And for the present, for purposes of measuring continued Christian impact, the definition of "Christians" must be limited to those confessing belief in the traditional creeds and

mores, thus eliminating worshippers of Gaia and female deities, believers in reincarnation, and perhaps much of the population of California.

Something like this discussion about the degree to which belief in God in general and in Christ in particular is necessary to the health of American and European society has occurred off and on in the last two and a half centuries. Our Founding Fathers brooded over it and the French Deists experimented with eliminating Christianity as a retrograde element in the new democratic social order. The doubt-soaked Victorian era of the mid to late 1800s is distinguished not only by autobiographies of apostasy and conversion but by anxious questioning about whether the more disbelieving West had now begun living off its (finite) moral capital. Would habits of right conduct based on religious principles soon degenerate, or would an emerging earth-bound morality suffice to reinforce the social glue of self-control, self-sacrifice, and delayed gratification?

The urgency of the question, certainly for Americans, appeared to wane with the rising religiosity of the middle decades of the 1900s. There followed the spearheading of the civil-rights struggle by Christian clergy and laypeople, and the distraction from the religious anemia of mainstream America caused by the active engagement of Evangelical Christians in politics and culture.

But the naked public square that the late Fr. Richard Neuhaus diagnosed and deplored in the 1980s has not transmogrified over the course of the last 20 years into a robustly Christian one. On one hand, many Americans respect individual Christian figures, Congress continues to employ a chaplain, and the protocol surrounding serious presidential candidates still requires them to disclose their faith as inevitably as it requires them to reveal the state of their health or finances. On the other (more substantive) hand, distinctively Christian moral insights that fueled many of the breakthroughs in human rights over the course of 2,000 years continue to dissolve from the social compact.

One of the earliest remarked-upon Christian practices that broke with the surrounding paganism of the Roman Empire was abstention from abortion and infanticide (which among Romans most commonly took the form of abandonment or exposure). A very ancient collection of Christian teaching, the *Didache*, admonishes: "Thou shalt not slay thy child by abortion, nor kill that which is begotten." Early apologists for Christianity like Tertullian echo this teaching ("He is a man, who is to be a man; the fruit is always present in the seed"). Non-Judeo-Christian observers of both ancient Christianity and its Jewish moral seedbed were well aware of this special attitude toward children, despite the efforts of Nancy Pelosi and

other pro-abortionists during the last election cycle to befog this clearly protective teaching on the unborn and newly born. Their smokescreen of queries about ancient knowledge of human biology and embryology, theories of "ensoulment," and the implications of distinguishing morally between the sin of abortion and the sin of infanticide could not obscure the blatant fact that the early Christian Church denounced both abortion and infanticide as gravely wrong.

In this, Christians sharply diverged from most peoples around them; when pagan societies such as Rome attempted to limit abortion, as they did from time to time, they were motivated either by concerns for the mother's survival (given the riskiness of some of the procedures to induce abortion) or by anxiety about falling birthrates. The Christian societies in Europe, North Africa, and the Near East that succeeded the conversion of much of Europe and the Mediterranean world were all officially opposed to both infanticide and abortion.

Did both abortion and infanticide still take place, more or less covertly, especially in dire situations of rape, poverty, or famine? Yes, of course. Neither practice has ever completely been eradicated or is likely to be, any more than lying, theft, and the murder of non-infants. But they were legally classified as crimes and morally condemned as serious sins, and they were horrifying to the Christian imagination. They became the stuff of scary stories, transmogrified into folk tales like that of Hansel and Gretel, and they often were raised among the actual accusations against witches in the great witch-hunting hysterias that periodically seized regions of Europe.

In contrast, pre-Christian and non-Christian societies looked at the issue more pragmatically, perhaps even somewhat scientifically. If a baby was born malformed, or if the paterfamilias had his doubts about the parentage, or if the child turned out to be yet another girl instead of the awaited male heir, or if there were just too many mouths to feed, why should the head of the household be forced to accept another dependent? Why shouldn't he have the right of refusal? ("Every child a wanted child"—it's an attitude that would later appeal to Margaret Sanger's shriveled heart.)

Some argued (at least up until 40 or 50 years ago, when most enlightened freethinkers and religious liberals began rethinking the abortion prohibition) that expanding human rights to protect the young and the unborn was another step in a natural human progression. It was a broadening of human rights (and liberties) that merely accompanied Christendom, largely coincidentally, and in this respect resembled seemingly non-religious extensions of human liberty like trial by jury or universal suffrage. That was a dubious

leap of faith on their part even 40 to 50 years ago; a better argument up until that time might have been that humanity had now grown past the need for grounding the protection of infants and the unborn on religious prohibitions.

But apparently humanity had not really grown that much. Sometime between the 1950s and early 1960s, when an increasing number of liberals began focusing on the plight of desperate mothers-to-be resorting to back-alley abortions, and 1973, when the Supreme Court unearthed a right to abortion from the U.S. Constitution, moral evolution veered off in another direction. The almost 2,000-year-old certainty that abortion was wrong had by the late 20th century wavered enough that Americans did not revolt from *Roe* v. *Wade* in majoritarian numbers. A majority in 1973 almost certainly disagreed with at least *Roe*'s vertiginous reach, validating abortion from conception to crowning (in partial-birth abortion procedures). But this right rediscovered after two millennia did not seem, well, wicked enough to prompt the kind of concerted effort that led to, say, Prohibition earlier in the 20th century.

And although the pro-life movement is far from tiny, pro-lifers as impassioned opponents of the post-*Roe* status quo have since 1973 constituted only a minority of the population. At the point when a critical minority of pro-abortionists seized judicial momentum and imposed legalized abortion, a majority of American voters, uneasy, uncomfortable, more pro-life than the Court, let it be. And by doing so they let us catch a glimpse of what a non-Christian, post-Christian, beyond-Christian 20th-century democracy would look like, in this particular at least. It would not (even nominally, partially, or grudgingly) protect the unborn from those who would deny it existence. It would not even protect the almost-born, or lend a hand to the aborted-alive. It would, in these respects, look rather like Rome or Babylon or Corinth.

In more primitive parts of the world there still exist tribal areas where children born albino are exposed to die; there have always been temptations to hustle off to death the handicapped or the merely excessively different. And there are economic and even "scientific" reasons for acting this way, just as there are economic and scientific reasons for sterilizing the mentally deficient or encouraging the nonproductive elderly to die. In the Netherlands, such encouragement has long since progressed to enforcing euthanasia on many unknowing and probably unwilling victims. In the U.S., among unborn children tested for Down syndrome, 90 percent of those showing up positive are aborted.

For the handicapped of all kinds who make it through the birth canal alive, there are many more aids to living a more engaged and productive

life than past eras could even have imagined. Only, for those who are not productive, who linger and linger and don't seem very happy, or can't convey their state of mind—a Terri Schiavo, for instance, or someone in persistent coma—there are inducements toward a quicker, cleaner end. These accommodations extend furthest in the two states that have thus far legalized assisted suicide, Oregon and, as of the 2008 election, Washington. In Oregon, for example, a case broke into the media a year or two ago of a cancer patient facing tough odds who was denied coverage by her insurer for the treatment her doctor prescribed. However, she was told that if she chose assisted suicide, the insurer would cover the cost.

Thus far, assisted suicide has struck voters in other states putting it to referendum as too bitter a legal pill to swallow, but the upcoming demographic deluge of elderly, as Baby Boomers leave the ranks of wage-earners, will test the national commitment to care for the aged, infirm, and severely handicapped.

Again, all societies, even ostensibly Christian ones, can at times abuse, ignore, shunt aside, or even hasten towards life's exit the weak and infirm. Christian societies, however, have not been in the habit of legally killing off their elderly, their handicapped, or their mentally ill—and this has historically been true in societies equipped to do much less than we can to make the handicapped or infirm more comfortable or more productive. Today, when many severe mental illnesses can be successfully treated or managed with medication and proven counseling methods, it is astounding that clinically depressed citizens of Oregon or Washington can climb on the assisted-suicide conveyor belt without the intervention of doctors aware that at least some of these people, once treated, would change their minds.

In the medieval town of Gheel, near Antwerp, local care for the mentally ill developed by the 12th and 13th centuries in response to great numbers of afflicted pilgrims to the shrine of St. Dymphna, a young girl said to have been murdered by her insane father. For centuries the people of Gheel cared for those coming to pray at the shrine, often taking them into their own homes and incorporating them into the daily activities of their town, sharing everyday life with these oddly acting and appearing foreigners. In time, facilities—including an infirmary—augmented the mainstreamed care of the townspeople. In the late 1800s Vincent van Gogh's father considered placing the mentally ill artist under the care of the mental infirmary there, which was still famous for its wise care and philosophy of incorporating its patients into the daily life of the town to the degree possible. Throughout those centuries of care, it apparently didn't occur to the locals that a more expeditious method of handling the influx would be to assist the mentally ill into

the afterlife and thus put them out of their misery.

What would a post-Christian society's treatment of the handicapped, elderly, and mentally ill look like? Well, there is still room for matters to degenerate further. Forty-eight states still lag behind the Dutch example. But we can perceive in the pragmatism of those who argue that the very ill and handicapped are too expensive for society to support, and in the bloodlust of the euthanizers, motivations similar to the manly pagan rejection of impractical tenderheartedness. Nowadays, however, that rejection is either consciously or unconsciously camouflaged with the pseudo-tenderheartedness that speaks the vocabulary of quality of life and death with dignity. Across TV screens and broadcast from radio stations in Washington State before the 2008 election, voters were exposed to the blurred-focus fuzzy sentimentalism of 21st-century post-Christian paganism. Bookending human history in the Christian era are two deaths—the supposedly "dignified" pills-plus-plastic-bag final exit of those terrified of a painful, debilitating, and lonely end, and the barbarically undignified crucifixion on Calvary.

The post-Christian public square of American and (even more dramatically) European political and social life is not, however, merely a relapse (or, depending upon your perspective, recovery) of 2,000 years. Post-Christian is not the same as pagan or pre-Christian, whatever the wafty pantheism of the devotees of Gaia or practitioners of Wicca. It is not even the same as post-paganism, which was the religious state of many in the Mediterranean world of Christ's time. (Surveys of teens in the more prosperous sectors of the first-century Roman Empire would likely have turned up high percentages of atheists and agnostics—and high numbers of religious sensation seekers, like members of the bloody cult of Mithras.)

True, our marital and extra-marital escapades may seem to share much in common with late-Empire sexual activities, particularly among those at the more exalted levels of society: The ease of divorce, the effort to avoid conception, and the levels of self-indulgence line up with those available in our more democratic era even to the traditionally moral middle class of American and European society. Gay-rights activists may also wistfully believe that ancient pagan societies were more accepting, even welcoming, toward them, and this may be true, but only up to a point. Many pagan societies extended a circumscribed toleration of homosexual relationships in certain situations or within certain ages. However, the heterosexual relationship was not only always and everywhere the overwhelming norm, but sacrosanct legally and protected culturally as the nursery of the next generation. The bizarre transsexual and cross-dressing antics found in the courts of some disturbed Roman emperors, for example, were just that—bizarre antics that

neither followed nor influenced any accepted mainstream practices, even of post-pagan, pre-Christian Rome. Like crazed Ugandan monarch Idi Amin's homosexual impositions on his pages, they had nothing to do with empowering oppressed minorities or expanding the reach of traditional institutions.

In fact, the pagan world has little to offer either philosophically or practically to those seeking historical validation for the legal, social, and religious mainstreaming of homosexual activity. These have prospered in the post-Christian public square (and in the more theologically denatured Christian institutional churches), but independently of either pagan inspiration or Christian imprimatur. To the extent that gay rights are circuitously related to any strand of the Judeo-Christian tradition, it may be said to branch off heretically (and simplistically) from natural-law theory. The homosexual-rights version of natural law, in its embarrassingly unadorned form, amounts to this: Those preferring homosexual activity naturally occur as a (small) minority of every human population, and of many animal ones as well. Therefore, homosexual activity cannot be against the natural law, if the natural law is what happens in nature. From the brilliant reasoning of great minds like Augustine and Aquinas, how great a falling off is this long diminuendo to "How can it be wrong if it feels so right?" As Robert Frost would say, "What to make of a diminished thing."

Not all of the values of the post-Christian public square are misconceived, of course. The post-Christian public square honors a smorgasbord of values and causes, some of which were passionately fought crusades of earlier generations that advanced human dignity and true freedom, like the abolition of slavery, freedom of conscience, and legal protection for children. On the other hand, other post-Christian cherished values reveal our civilization heading off the rails. One of the most spectacularly silly of these off-course diversions is the animal-rights movement that, in its pure form, closes its eyes to the qualitative, ontological differences between human beings and other (once known as "lower") forms of life. Of course, in reality animal-rights advocates tend to showcase the cause of cuter, more endearing, and usually more complex life forms than amoebas or slugs. Hence the campaigns on behalf of baby seals, dolphins, whales, circus and farm animals, gorillas and other primates, and family pets. However, on the level of philosophy, most animal-rights theorists posit no abrupt chasm separating animals entitled to human rights from others not. To the extent that they get down to discussing gradations, they draw boundary lines at consciousness, pain sensation, and/or memory/learning. Other post-Christian cherished values also betray an inaptitude for drawing distinctions, such as a unisex view of human roles.

The West's very gradual and checkered pursuit of greater liberty, recognition, and guarantees of rights for all human beings has often gained ground through the efforts of people passionately committed to the implications of the Christian truth that each human being is God-created and God-redeemed, and therefore immeasurably valuable. However, others whose closest approach to religious revelation is belief in the ontological equality of human beings and a corollary commitment to justice and fair play have found in them motivation to defend the individual and expand his sphere of liberty. The insights of Christianity have set in motion a civilization whose achievements can be defended and expounded in many ways, and debated without prejudice by people of many religions. However, the brooders in the age of Victorian doubt had a point. It is not at all clear how reliably the Christian insight into the value of each human person in God's eyes, and the scaffolding of human rights and protections erected on that insight, can hold once the religion that perceived this value is jettisoned.

A line from a 19th-century poem bumped against my memory during the writing of this essay. It came from the pen of the ostentatiously doubting Victorian poet Algernon Charles Swinburne, who famously lamented the historical defeat of paganism by Christianity: "Thou hast conquered, O pale Galilean; the world has grown grey from thy breath; / We have drunken of things Lethean, and fed on the fullness of death."

But Swinburne got it wrong, and so too do those today who believe that most social evils, such as war, hatred, intolerance, and discrimination, to name a few, should be blamed on traditional religious belief. It is the neopagan world that grays the world with death—both literal deaths, in cases such as abortion and euthanasia, and cultural death, such as below-replacement fertility rates. From the perspective of the early 21st century, it is difficult to take seriously the idea that long-secularized Europe's malaise can be blamed on a Christianity most of its people long ago unshackled themselves from. But that did not stop the framers of the European Constitution several years ago from ignoring calls to acknowledge Europe's Christian roots. Long-term amnesia is not a healthy condition for either individuals or societies.

How nearly "post-Christian" is the U.S.? How likely is its trajectory to follow that of the European mother countries whose peoples crossed the Atlantic some time during the last 400 years? As far as personal beliefs go, even among the rising generation, most Americans may hedge their bets or tolerate a lot of views and behaviors that their great-grandparents would swiftly have identified as incompatible with traditional Christianity, but they are still not (yet) post-Christian. And forthrightly traditional Christian believers, meaning people that the first generation of Christians would have

recognized as sharing many or most of their theological and moral beliefs, are plentiful. Even younger Americans, who show a greater tolerance on issues like homosexual marriage and lifestyle, respond to surveys as more pro-life in their sympathies than their elders, and yearn to form stable families. Spiritually malnourished through the junk food marketed by a hedonic culture, they retain the human desire for the real, the true, the lasting things. They yearn for relationships that don't fall apart, love that endures, truths that they can live by and if need be die for. Some seek such stability in the faith of their fathers, some in more exotic faiths, some wander unappeased or attempt to distract themselves from these ultimate questions. What the mid-term result will be for our country in a generation or two is not at all clear.

But well short of final apostasy from the faith that gave birth to Western Civilization, the public culture—including our legal code and political hegemony—could easily launch out, as it has already begun to do, on the same post-Christian seas that Europe is attempting to navigate successfully. A dip in religious fervency, a drop in religious certainty, doubts about which aspects of Christian mores are "private" and which "public," a temptation to avoid moral brick walls by skimming through life living the best of both worlds—all and any of these can, vacuum-like, suck vitality from the public sphere long before the private sphere appears anything like irreversibly secularized. And the longer the public sphere remains naked, the harder it will be for most people to envisage a public square unselfconsciously indebted to the West's moral and religious foundations.

Is this our future? Two types of false prophets are denounced by true prophets in the Old Testament: the ones who preach victory when the Lord has permitted defeat, but also the ones who preach compromise or defeat when the Lord intends victory. Almost a century ago G. K. Chesterton noted the repeated disappointment of those hoping to witness the death of Christianity. If it testifies truly of a God who both created and redeemed the world, it won't die, although it may temporarily cede much ground here and there. But whether the West will solve its identity crisis and recover strength and vitality is still an open question—and that's the good news.

Because human life in a post-Christian world may not look exactly like life in a post-pagan world. It may not look exactly like life in a post-Christian public square either. Quite possibly, in a number of ways, it may look worse.

My Controversial Choice to Become Pro-life

Nat Hentoff

It took me a long time, when I was much younger, to understand a conversation like the one a nine-year-old boy was having recently at the dinner table with his mother, a physician who performs abortions. I heard the story from her husband when he found out I'm a pro-lifer. "What *is* abortion?" the nine-year-old asked. His mother, the physician, tried to explain the procedure simply. "But that's killing the baby!" the boy exclaimed. She went on to tell him of the different time periods in the fetus's evolution when there were limits on abortion."What difference," her son asked, "is how many months you can do it? That's *still* killing the baby!"

I didn't see that an actual baby, a human being, was being killed by abortion for years because just about everyone I knew—my wife, members of the family, the reporters I worked with at the *Village Voice* and other places—were pro-choice. But then—covering cases of failed late-term abortions with a live baby bursting into the room to be hidden away until it died—I began to start examining abortion seriously.

I came across medical textbooks for doctors who cared for pregnant women, and one of them—*The Unborn Patient: Prenatal Diagnosis and Treatment* by Drs. Harrison, Golbus, and Filly—turned me all the way around: "The concept that the fetus is a patient, an individual (with a DNA distinct from everyone else's), whose maladies are a proper subject for medical treatment . . . is alarmingly modern. . . . Only now are we beginning to consider the fetus seriously—medically, legally, and ethically."

I also began to be moved by a nationally known pro-life black preacher who said: "There are those who argue that the [woman's] right to privacy is of a higher order than the right of life. That was the premise of slavery. You could not protest the existence of slaves on the plantation because that was private [property] and therefore outside of your right to be concerned." (His name was Jesse Jackson, but that was before he decided to run for president, and changed his position.)

So, in the 1980s, in my weekly column in the *Village Voice*, I openly and clearly declared myself to be pro-life. That was—and still is—the most controversial position I've taken. I was already well known around the country

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as a syndicated columnist (appearing then in the *Washington Post***)** reporting on assaults on free speech and civil liberties as well as focusing on education, police abuse, and human-rights violations around the world.

Much of that writing was controversial, but nothing as incendiary as being a pro-lifer. Some of the women editors at the *Voice* stopped speaking to me; and while I had been a frequent lecturer on free speech at colleges and universities, those engagements stopped. The students electing speakers were predominantly liberals and pro-choicers. They didn't want this pro-life infidel on their campuses.

I was still winning some journalism awards, the most prestigious of which was one from the National Press Foundation in Washington "for lifetime distinguished contributions to journalism." I'd been told by the head of the foundation that the selection committee's decision had been unanimous. But as I came into the building to accept the award, a committee member told me there had been a serious and sometimes angry debate about my being chosen.

"Some on the committee didn't think that my reporting was that good?" I asked. She hesitated. "No, it wasn't that." "Oh." I got the message. "They didn't think a *pro-lifer* should be honored." "Yes," she nodded, "that was it."

A very pro-choice law professor I knew did invite me to debate him at his college, Harvard. When I started, the audience was largely hostile, but soon I sensed that I was making some headway, and my debating partner became irritated. "If you're so pro-life," he shouted, "why don't you go out and kill abortionists?"I looked at him, and said gently, "Because I'm pro-life." That response seemed to register on some of the students.

During other public debates in various settings, I challenge pro-abortionists to look at photographs in multi-dimensional ultrasound sonograms of infants waiting to be born: their eyes, the moving, outstretched fingers and hands. I have read of women who, on being shown a sonogram of their child, decided not to have an abortion. And I greatly welcomed the news that on May 29, 2009, Nebraska's *unicameral* legislature unanimously voted for a bill that its supporters called "The Mother's Right to See Her Unborn Child Ultrasound Bill." It is now the law in that state that before an abortion, the mother has to begin to get to know—through a sonogram—the child she is thinking of killing.

And, even more likely to prevent abortions is this breaking development reported on June 30, 2009, on *lifesitenews.com*: "A London art student—Jorge Lopez, a Brazilian student at the Royal College of Art in London—has developed a revolutionary new step in prenatal imagery that allows parents to hold a life-size model of their unborn baby." Using four-dimensional ultrasound images and MRI scans, plaster models can be built "that can delineate

the unique form of each child." Says inventor Lopez: "It's amazing to see the faces of the mothers. They can see the full scale of their baby, really understand the size of it."

And really understand that it *is* a unique human being!

On this basic issue, there was an interesting conversation on the June 18 episode of Jon Stewart's popular TV program, *The Daily Show*. Stewart is pro-choice, and his guest, former Arkansas governor and presidential candidate Mike Huckabee, is pro-life. Said Huckabee: "To me the issue is so much more than about abortion. It's about the fundamental issue of whether or not every human life has intrinsic worth and value." Stewart asked him whether he thought that pro-choicers "don't believe that every human life has value." Answered Huckabee: "I don't truly believe that even people who would consider themselves 'pro-choice' actually like abortion [but] they haven't thought through the implications . . . of their conclusions." Huckabee then made the crucial point that 93 percent of abortions in America are elective—they are not based on the health of the mother. Therefore, he went on, this trains future generations to believe that "it's OK to take a human life because that life represents an interference to our lives—either economically or socially."

Stewart became defensive, saying he had affection for his own children before they were born. "I think," he said, "it's very difficult when you look at an ultrasound of your child and you see a heartbeat—you are filled with that wonder and love and all those things." But Stewart was still not against abortion, explaining: "I just don't feel personally that it's a decision I can make for another person." And that brings us back to what the nine-year-old boy told his mother, who performs abortions: "That's *still* killing the baby"—whoever decided to abort that human being. To say it's a decision you can't make for someone else allows a life to be taken.

Years ago, as a reporter, I came to know Dr. Bernard Nathanson, who, at the time, was a wholesale abortionist, having performed more than 75,000 abortions. Then one day, he looked at the lives he was taking, and stopped. Why did he change his mind? In an interview with the *Washington Times* (reported on *lifesitenews.com* on June 12), Dr. Nathanson said: "Once we had ultrasound [sonograms] in place, we could study the fetus and see it was a member of our community. If you don't do that, you're just a creature of political ideology. In 1970," Nathanson continued, "there were approximately 1,100 articles on the functioning of the [human] fetus. By 1990, there were 22,000. The data piled up swiftly and *opened a window into the womb*." (Emphasis added.) And there was a baby—certainly a member of our community!

Eventually, Dr. Nathanson converted to Catholicism, and the late Cardinal John O'Connor of New York presided at the event. I had come to know the Cardinal—first as a reporter, writing what eventually became a book about him, and then as a friend. From our first meeting, I had told him I was an atheist and a pro-lifer. He never tried to convert me; and the day after former abortionist Dr. Bernard Nathanson became a Catholic, the Cardinal called me: "I hope we don't lose you because you're the only Jewish atheist civil-libertarian pro-lifer we have." I assured him he would not lose me, as I realized that for this high-level member of the Catholic hierarchy, my becoming a pro-lifer was decidedly not controversial.

However, I continued to be banished elsewhere. When the dean of the graduate school of Antioch College said he would like to establish there a Nat Hentoff Graduate School of Journalism, I was stunned. No institution has ever been named after me. I accepted, but the day before I was to leave to meet the faculty, the dean—clearly embarrassed—called me to tell me that because many in the faculty were strongly opposed to having a dean opposed to abortion, they would resist the appointment. So, even now, no institution has ever been named after me, and that's just as well. I much prefer to speak for—and be responsible for—only myself.

In debates with pro-abortionists, I frequently quote a writer I greatly admire, Mary Meehan, who often appears in this publication of the Human Life Foundation. Mary was active in the anti-Vietnam-war and civil-rights movements, and wrote an article for *The Progressive* magazine, many of whose readers have similar backgrounds. For years, I was a columnist for *The Progressive* and, as far as I know, I was the only pro-lifer on the staff—and probably among the readers. Mary Meehan shook up both the staff and the readers when she wrote:

> Some of us who went through the antiwar struggles of the 1960s and 1970s are now active in the right-to-life movement. We do not enjoy opposing our old friends on the abortion issue, but we feel that we have no choice. . . . It is out of character for the left to neglect the weak and helpless. The traditional mark of the left has been its protection of the underdog, the weak, and the poor. The unborn child is the most helpless form of humanity, even in more need of protection than the poor tenant farmer or the mental patient. The basic instinct of the left is to aid those who cannot aid themselves. And that instinct is absolutely sound. It's what keeps the human proposition going.

Whether you're on the left or on the right—or an independent, as I am—it's also vital to keep in mind what Barbara Newman has written in *The American Feminist*, the national magazine of Feminists for Life: "If it is wrong to kill with guns, bombs, or poison, with the electric chair or the noose, it is most tragically wrong to kill with the physician's tools."

Way back, a German physician and humanist, Dr. Christoph Hufeland, wrote: "If the physician presumes to take into consideration in his work whether a life has value or not, the consequences are boundless, and the physician becomes the most dangerous man in the state." Once human life is devalued unto death, many of us born people who are sick and in need of costly care—especially as we grow older—can be left to die because our "quality of life" isn't worth keeping us alive.

Having been out of step all these years, I have learned the most fundamental human right is the right to life—for the born, the unborn, the elderly who refuse to give up on life. My daughter, Jessica, recently sent me a button to wear to proclaim the essence of what she and I believe to be Constitutional Americanism: "No, you can't have my rights—I'm still using them."

"*You were 'bad cop' last time*!"

The Triumph of Eugenics in Prenatal Testing

Mary Meehan

Part 1: How it Happened

"If eugenics is a dirty word," said University of Wisconsin geneticist James Crow in 1972, "we can find something else that means the same thing." And he pointedly asked, "How far should we defend the right of a parent to produce a child that is painfully diseased, condemned to an early death, or mentally retarded?" Professor Crow served on the board of the American Eugenics Society for several years in the 1970s—both before and after the group changed its name to the Society for the Study of Social Biology. The Society's name change "does not coincide with any change of its interests or policies," the group assured its followers in 1973.

In pushing eugenics, Crow didn't represent some fringe group in genetics. He was past president of two major U.S. genetics groups. The eugenics board on which he served was chaired for years by genetics giant Theodosius Dobzhansky and also included other leading geneticists.[1] Frederick Osborn (1889-1981), the mastermind of the American Eugenics Society after World War II, already was using a substitute for the dirty word of eugenics. In 1965, he told a correspondent: "The term medical genetics has taken the place of the old term negative eugenics."[2] The older term means efforts to prevent births among people deemed to be inferior, especially those with inherited disabilities.

Osborn, six feet and eight inches in height, was an impressive son of the American establishment. Born into a wealthy New York family, he graduated from Princeton and made his own fortune in business. Later he had experience as an army general and diplomat. But eugenics—the effort to breed a better human race—was his main work and his passion. Highly intelligent and shrewd, Osborn was extremely well-connected. His friends included President and Mrs. Franklin D. Roosevelt and various Rockefellers, whose fortune he tapped for eugenics projects.

Osborn and his eugenics colleagues were deeply involved in efforts to prevent the births of people with disabilities. They encouraged the influence of eugenics—a political ideology—on the science of genetics. And they supported development of prenatal testing and eugenic abortion in the 1950s and 1960s. Prenatal testing is a huge funnel that's wide at the top—enticing

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and pressuring women and couples to agree to testing—and narrowly pointed toward eugenic abortion at the bottom.

This article will show how organized eugenics led to the lethal combination of testing and abortion. But it's important to keep in mind that eugenics also has influence far beyond its formal membership. The eugenics ideology is widespread in science and medicine, and has been for nearly a hundred years.[3]

A later article will describe government involvement and show how the testing-abortion combination has made pregnancy a wretched experience for many women and couples. It will explore ways in which resistance to eugenics might become more effective. It also will highlight programs that offer moral support and practical aid to families with special-needs children.

The Deepest Bias in Eugenics

So many people have condemned eugenics for its racial and class biases that some may assume these are its only problems. Yet bigotry against people with disabilities is its deepest bias of all, and possibly its oldest. People killed handicapped babies in ancient Greece and Rome, and some great philosophers supported the practice. In *The Republic*, Plato endorsed infanticide under the euphemism of "put away": "The offspring of the inferior, or of the better when they chance to be deformed, will be put away in some mysterious, unknown place, as they should be." In his *Politics*, Aristotle bluntly declared: "Let there be a law that no deformed child shall live."[4] Ancient Greeks and Romans drowned handicapped newborns or abandoned them to the elements and wild animals. Besides killing children with visible handicaps, they probably killed many who were well-formed but sickly.[5]

English scientist Francis Galton invented the modern form of eugenics and in 1883 coined the actual word "eugenics" from Greek words that mean "well-born." He said eugenics "must be introduced into the national conscience, like a new religion." Alluding to his cousin Charles Darwin's theory of evolution, Galton claimed: "What Nature does blindly, slowly, and ruthlessly, man may do providently, quickly, and kindly."[6]

Galton's disciples in America, though, eventually proved that they could be as cruel as ancient Greeks and Romans. Today, prenatal testing targets for killing many children the ancients would have missed. Instead of drowning handicapped children after birth or abandoning them in a wilderness, abortionists dismember them in the womb or kill them with a lethal injection to the heart. They do this at a time when surgeons, therapists, and teachers have made great progress in helping handicapped children who are *not* killed before birth.

In the early 1900s, before development of prenatal testing, eugenicists in

many states promoted compulsory sterilization of people with mental retardation or mental illness. They did this on the theory that if such people had children, the children likely would inherit their mental problems. Sterilization also swept up people who were not retarded—but were desperately poor, had little education, and didn't speak standard English. Carrie Buck, the young Virginia woman whose sterilization was approved by the Supreme Court in the 1927 *Buck* v. *Bell* case, apparently was in this category. Carrie had one daughter before her sterilization, but the daughter died in early childhood (after making the honor roll in school). Though Carrie worked hard at useful jobs—picking apples, for example, and caring for elderly people—she never made much money. Nor, apparently, did her husband. With no children to look after them in their old age, the couple lived in dire poverty. Carrie Buck Detamore's grammar wasn't perfect, but her logic was fine when she summed up the sterilization craze of her youth: "They done me wrong. They done us all wrong."[7]

Eugenicists, though, could celebrate the fact that she hadn't been a burden to taxpayers. Founders of the American Eugenics Society had said eugenic measures meant that "our burden of taxes can be reduced by decreasing the number of degenerates, delinquents, and defectives supported in public institutions."[8] That appeal to economic self-interest was to be a major theme of eugenics. It is still very much with us.

By the 1950s and 1960s, leading eugenicists encouraged research on prenatal testing and pressed for legal change to allow abortion of children with serious handicaps. Why didn't they continue to rely on coerced sterilization instead? A 1942 Supreme Court decision, *Skinner* v. *Oklahoma*, while not overruling *Buck* v. *Bell*, had weakened legal defenses of sterilization laws. Civil-rights activists began protesting forced sterilization. (Although many sterilization targets were poor whites such as Carrie Buck, others were poor blacks.) In addition, there was much evidence to challenge the assumption that mental retardation is usually hereditary. The sterilization net probably had caught many people who wouldn't have had "defective" children.[9]

The Ones It Missed

Yet it had missed many people who *did* have children with handicaps. Such parents included the era's leading eugenicist, Frederick Osborn himself. A letter in Osborn's papers indicates that his wife and nearly all of her siblings had mental illness and that one sibling was institutionalized for 50 years or more. One of the Osborns' six children apparently had severe mental illness.[10] Yet Frederick Osborn believed that he and his wife, both descended from early American families, had excellent genes apart from that

one problem. In a 1962 letter to a granddaughter, Osborn said that "you are the carrier of about as fine a set of genes as can be found. You may not realize how good they are. Certainly in the top one or two percent of the population as a whole. It would be a shame to mix them with poor stock."[11]

Osborn's interest in eugenics predated his marriage and fatherhood. The subject was popular in the upper class to which he belonged; and an uncle, Henry Fairfield Osborn, was a leader of the eugenics movement. But the younger Osborn's experience with mental illness in his wife and child may explain the intensity of his interest in inherited disease. By the 1950s, he knew that prenatal testing was becoming a reality. I have found in his papers no discussion of this with reference to his own family. But he probably reasoned that prenatal testing—combined with eugenic abortion—meant that his grandchildren might eliminate any children with mental illness and thus pass on only their good genes.

Osborn's correspondence suggests that he was an affectionate husband and father; yet it's chilling to read some of his formal writing. In 1939 he wrote: "Fortunately, the death rates of persons suffering from mental disease are far higher than those for persons of similar age in the general population." And, 40 years later: "An advance had been made in public acceptance of the idea of controlling the birth of defectives."[12] Whether or not he made the connection consciously, the "defectives" he wrote about included his own wife and child. He once declared, "People not capable of sound thinking should be reduced in number as rapidly as possible." Sheldon Reed, a eugenics colleague, remarked that this "sounds a little stark. It gives me an impression that the guillotine is just around the corner."[13]

As early as 1941, Osborn had said the public "should insist that doctors and public health authorities get to work at reducing the number of defectives." This was a recurring theme, and he used economic arguments to back it up. By 1972, when Down syndrome children increasingly were targeted by prenatal testing and abortion, Osborn complained: "Now with modern medical care they can be carried through to an age of thirty to forty years at an expense estimated at over $200,000 for each case of mongolism" (as Down syndrome was then called). But he could claim advance toward a longtime goal. "Reducing the frequency of inherited defects and deficiencies," he wrote, "has become an important function of medicine and public health. It is not done under the name of eugenics, but it is no less effective for that reason."[14]

A socialist wing of eugenics has resisted the ideology's racial and class bias. In the last century, that wing included prominent scientists such as H. J. Muller.[15] The eugenic socialists, though, generally shared the deeper prejudice based

on disability. This is one reason why today's political Left accepts the combination of prenatal testing and eugenic abortion. The disability-rights movement did not really get off the ground in the U.S. until the 1970s. Had it started 50 years earlier, it could have done fierce battle with eugenics, and it might have kept the political Left true to the principle of equal rights. Eugenics might not have become the powerful monster it is today.

Margaret Sanger—a Planned Parenthood founder and onetime Socialist Party member—was so enthusiastic about eugenics that she belonged to both the American Eugenics Society and its English counterpart. Her prejudice against people with disabilities was deep and unrelenting. In 1922 she complained that "the vicious circle of mental and physical defect, delinquency and beggary is encouraged, by the unseeing and unthinking sentimentality of our age, to populate asylum, hospital and prison." She spoke of people "who never should have been born at all." Malformed children, she said, were "biological and racial mistakes."[16]

Sanger did not improve with age. In 1952 she said people with hereditary disease should not be allowed to marry unless they agreed to be sterilized. Further: "No more children when parents, though showing no affliction themselves, have given birth to offspring with mental and nervous disease—morons, cleft palate, Mongolian idiots." By "Mongolian idiots," she meant people with Down syndrome. British Dr. John Langdon Down, who described the condition in the 1800s, mistakenly thought the almond-shaped eyes of such people indicated a link with Mongolians. Idiocy was a term for severe mental retardation, although in fact most people with Down syndrome are *not* severely retarded.[17] (Other demeaning terms for disability have included "harelip" for cleft lip; "lobster claw syndrome" for cleft hand or foot; and "anencephalic monster" for a newborn who is missing part of the brain. Those terms have done much to isolate and dehumanize their targets.)

At least Sanger did not call for aborting children with disabilities. But the technology to find handicaps before birth was not available then, and Sanger publicly opposed abortion in any case. In the same talk in which she spoke of "Mongolian idiots," she dealt with population control and declared: "Abortions break down the health of the mother without preventing renewed pregnancy at an early date. Abortions are the very worst way to prevent increase in the population. Let us make an end to all this suffering, waste, enfeeblement and despair."[18]

But Planned Parenthood would abandon this approach in the 1960s under the leadership of another eugenicist, Dr. Alan Guttmacher. Meanwhile, Sanger and others had encouraged terrible attitudes toward people with disabilities.

And I wonder: Did *any* of them, as they developed their own disabilities in old age, regret things they had said when they were hale and hearty?

The Great Manipulator

Frederick Osborn realized that overtly racist and political advocates of eugenics had done it much harm in the early 1900s. He once told his colleagues in the American Eugenics Society: "The public will accept negative eugenics from the doctor in a way it would certainly not accept it from an organized but non-scientific movement." Or, as he later said, "Eugenic goals are most likely to be attained under a name other than eugenics."[19] His establishment connections helped him bring this about.

As a trustee of a major foundation, the Carnegie Corporation of New York, Osborn wrote a 1940 memo on its funding of research in human biology. That included what he called a "small but fairly rounded program in medical genetics."[20] Around the same time, he wrote about a conference, funded by eugenics-society members, of the "Committee on the Registration and Social Control of Subcultural and Defective Groups." The Rockefeller Foundation, a major funder of eugenics, was represented at the conference.[21]

Osborn had not served a day in the U.S. military; but as war approached in late 1941, his friend President Roosevelt appointed him a temporary army general and put him in charge of troop morale. Osborn served throughout the Second World War, and his surveys of soldiers' attitudes gave him helpful background for his eugenics work. He was a great believer in using opinion surveys to shape both strategy and public-relations messages.

After the war, and some diplomatic work for President Harry S. Truman, Osborn plunged back into eugenics. He must have been happy to see the formal launching of the American Society of Human Genetics (ASHG) in 1948. All of the founding officers were eugenicists. The first president, H. J. Muller, was an old-timer in eugenics, going back at least to 1921.[22] He had written a 1939 statement, signed by other leading scientists, that is sometimes labeled the "Geneticists' Manifesto." Essentially a declaration of left-wing eugenics, it called for "ever more efficacious means of birth control," including abortion "as a third line of defense" after sterilization and contraception.[23]

Osborn signed up as a member of ASHG, and in 1958 he served as its vice president. The genetics group was top-heavy with eugenicists in its early years. Ten of its first twelve presidents were linked to eugenics. So were many other early officers and several of its journal editors.

In ASHG's 61 years of existence, over one-third of its presidents have had formal eugenics links. More may have had them, but research on recent decades is difficult. The American Eugenics Society last published a membership

list in 1956; so tracking recent members requires much sleuthing in archives and elsewhere. After the society changed its name in the early 1970s, many people assumed it no longer exists. But it is still with us, and still publishes the journal *Social Biology*.[24]

From 1950 to 1961, the American Eugenics Society paid a great deal of attention to medical genetics. Its publications, first *Eugenical News* and later *Eugenics Quarterly*, published information on genetic disease. The society sponsored several conferences related to the topic, including one to encourage genetic advice in marriage counseling and another to promote genetics teaching for medical students. It also persuaded the Population Council to finance several fellowships for postgraduate work in genetics.[25]

It might be more accurate, though, to say that Frederick Osborn decided to finance the fellowships. He was cofounder, first administrator, and later president of the Population Council, which was funded largely by his friend, John D. Rockefeller 3rd. The Council focused mainly on population control in poor countries and among poor people in the U.S. Like other Osborn enterprises, it was stacked with eugenicists. To obtain Council money for genetics fellowships, Osborn took off his eugenics hat, put on his Council hat, and told his Council colleagues what he wanted.[26]

Osborn also promoted "heredity counseling," in which geneticists advised couples who feared that a family disease might be passed on to their children. Sometimes a first child already showed evidence of the disease, and the parents worried about the outlook for future children they hoped to have. Geneticists reviewed information on family background and advised on odds of transmission. If the genetic disease was especially devastating and the chance of transmitting it seemed high, a couple might opt for sterilization, contraception, or periodic abstinence—and then adopt children. When Osborn and other officers of the American Eugenics Society issued their report for 1953-57, they called heredity counseling "the opening wedge in the public acceptance of eugenic principles." They realized, though, that it was an uncertain process—a matter of educated guesses and calculations.

About 20 years earlier, their *Eugenical News* had reported on eugenic abortion in Nazi Germany and in Denmark.[27] That practice, too, had been based on guesses and calculations. Recently, though, there had been breakthroughs in using amniocentesis for prenatal testing. Amniocentesis dates back at least to the late 1800s, when doctors started to drain amniotic fluid from the womb if a great excess of fluid endangered an unborn child and/or the mother. In the 1950s doctors started using amniocentesis to analyze and manage Rh disease. So the early uses of the technique were truly therapeutic. But in 1955-56, researchers in several countries found that fetal sex could

be determined by checking fetal cells in amniotic fluid. This led to abortion of male babies in cases of sex-linked genetic disease. (In hemophilia, for example, when a woman is a carrier, each of her sons has a 50 percent chance of having the disease. Some parents were prepared to abort every son rather than face hemophilia.) Then researchers found that specific diseases could be diagnosed by studying fetal cells retrieved in amniocentesis. Later there would be newer methods of prenatal diagnosis, such as chorionic villus sampling (CVS) and ultrasound.[28]

Pushing the Deadly Combination

Frederick Osborn and his colleagues watched these developments closely. A 1956 report in their *Eugenics Quarterly* noted that some sex-linked diseases could be detected "at a state of pregnancy where interruption is still possible." Yet "interruption"—a Danish euphemism for abortion—was then illegal in the United States in nearly all cases. But not for long. The Rockefeller Foundation was funding a project, run by the American Law Institute, to write a model penal code for the states. British eugenicist and legal scholar Glanville Williams was a consultant to the project. In a book published while it was underway, Williams doubted there should be any punishment for "a mother who, finding that she has given birth to a viable monster or an idiot child, kills it." He supported abortion for fetal handicap. "To allow the breeding of defectives is a horrible evil," Williams wrote, adding that it was "far worse than any that may be found in abortion."[29]

Another consultant was Dr. Manfred Guttmacher, a psychiatrist. He happened to be the identical twin of Dr. Alan Guttmacher, an obstetrician, and Alan happened to be vice president of the American Eugenics Society. (Later he would be president of the Planned Parenthood Federation of America and would push that group into strong support of abortion.) Alan Guttmacher sat in on at least two meetings related to the model penal code and, in 1956, reported to his eugenics colleagues: "Even the most liberal American statute [on abortion] makes no reference to any eugenic consideration. The study group took cognizance of this omission and is planning to frame a model statute to include eugenic considerations." They did just that. When the American Law Institute debated the issue in 1959, a key leader remarked that doctors throughout the country were doing abortions when there was substantial likelihood of defect, "confident that the law cannot mean what it says."[30]

When the Institute approved the model penal code in 1962, it proposed allowing abortion in several cases, including when a doctor finds substantial risk "that the child would be born with grave physical or mental defect."

Eleven years later, in his 1973 majority opinion in *Roe* v. *Wade*, Justice Harry Blackmun said 14 states had adopted "some form" of the Institute's proposal, but didn't say how many had adopted the eugenics provision. Blackmun also cited the Glanville Williams book, though not its eugenics statements. But as attorney Rebecca Messall suggested in this *Review* several years ago, it seems fair to suppose that Blackmun read the book before citing it. She also documented other eugenics influences on *Roe*.[31] That decision opened the floodgates for prenatal testing and eugenic abortion.

The journal and annual meetings of the American Society of Human Genetics had included information on prenatal testing for several years before *Roe*, but frank discussion of eugenic abortion had been rare. Dr. Jérôme Lejeune, the French geneticist who had discovered the chromosomal basis of Down syndrome, raised the issue when he received the society's top award in 1969. In a lecture that leading American geneticists still remembered decades later, Lejeune proposed a special eugenics group—the National Institute of Death—to get rid of embryos and newborns who didn't meet certain standards. There was a catch, though: "To prevent any possible error, concern, or prejudice, the advisors shall be chosen from among knowledgeable persons not belonging to any philosophy, society, or race." Turning from that ironic approach, Lejeune warned his American colleagues: "For millennia, medicine has striven to fight for life and health and against disease and death. Any reversal of the order of these terms of reference would entirely change medicine itself." He added: "It happens that nature does condemn. Our duty has always been not to inflict the sentence but to try to commute the pain. In any foreseeable genetical trial I do not know enough to judge, but I feel enough to advocate."[32]

Yet just a year later, American geneticist Arno Motulsky, receiving the same award that Lejeune had, said that prenatal diagnosis "is giving an exciting new dimension to genetic counseling." He looked forward to development of prenatal testing for sickle-cell anemia, believing that this, "followed by selective abortion, would seem easier in the long run" than avoiding mating of carriers or "complicated therapies of the disease." After the American Eugenics Society changed its name, Dr. Motulsky's name appeared on its (unpublished) 1974 membership list, and he served on the group's board of directors in 1988-93.[33]

Marching into Eugenics

The March of Dimes played a huge role in developing and promoting prenatal testing and counseling. Headed for years by Basil O'Connor, friend and former law partner of President Franklin Roosevelt, the foundation had

focused on preventing the polio that had paralyzed Roosevelt and many others. The success of polio vaccine in the early 1950s had left the wealthy foundation casting about for another cause. In 1958 it announced a major focus on birth defects. Soon Dr. Virginia Apgar became its Chief of Congenital Malformations. She was a member of the American Society of Human Genetics, and at some point she joined the American Eugenics Society.[34]

Under Apgar and her successors, the March of Dimes vastly expanded the number of genetics counseling centers in the U.S. It put large sums into research to develop prenatal testing. It pressed for insurance reimbursement for that testing and campaigned for its government promotion. It funded development of the National Society of Genetic Counselors. Audrey Heimler, the first president of this society, appeared on the 1974 membership list of the Society for the Study of Social Biology—that is, the old American Eugenics Society doing business under its new name.[35]

The March of Dimes did, and does, support some positive approaches to improving the health of babies both before and after birth. Yet it also has conducted a relentless drive for prenatal testing. The foundation's long-published professional journal, *Birth Defects*, carried many articles that supported eugenic abortion. Writing there in 1971 about prenatal diagnosis for couples who already had one child with disability, three professors bluntly said: "The aim of such a program is the identification of subsequent affected children and their selective abortion."[36] One writer spoke about "abortion as a means of disease control." Others even suggested aborting *carriers* of genetic disease.[37]

As awareness grew about the guilt and grief that eugenic abortion caused to parents, *Birth Defects* started running articles about grief counseling, support groups for couples, and even funeral services for aborted children. One article noted that prostaglandin abortion "allows for the parents to view and hold their fetus" and also allows "confirmation of structural anomalies by autopsy." The writers added: "This confirmation may alleviate parental guilt and allow for a more expedient resolution of the grief reaction." But they coldly suggested that "controlled, psychologic studies" to compare prostaglandin abortion with dilation and extraction (that is, abortion by dismemberment) "are needed before the long-term psychologic effects can be evaluated."[38]

Other writers offered a protocol for counseling parents through abortion. Among their suggestions: "Validate their decision: What would have been the burden on them? What would have been the effect on their normal children? What would the affected child's life have been like? Encourage or support the feeling that they had no choice but to terminate." But what should they tell their other children about the abortion? The writers suggested honesty and reassuring the others that "this can't happen to *them*." They also

advised: "Do not implicate the hospital as a place where children go and never return."[39]

In the same 1990 issue in which this advice appeared, other *Birth Defects* contributors used Orwellian words as they described "selective termination" (killing one unborn twin who is handicapped while sparing one who is not) and "fetal reduction" (killing one or more children when fertility treatments produce twins, triplets, or higher multiples). Doctors do these abortions by injecting potassium chloride to the fetal heart. At Jefferson Medical College in Philadelphia, the writers reported, "as many as four fetuses were terminated at one session." In the case of second-trimester abortion for handicap, nothing was left to chance: "All pregnancies were rescanned 30 minutes following the initial injection . . . and if cardiac activity was identified, a repeat procedure was performed the same day." The writers acknowledged, "Many couples question the level of 'consciousness' that the remaining fetuses have and wonder if the remaining fetuses somehow know that one of their potential sibs was terminated. These couples wonder if children who remain will, as they grow, be a constant reminder of the fetuses that were terminated."[40] Perhaps March of Dimes leaders finally realized that *Birth Defects* was a house of horrors. The last issue was published in 1996.

When under attack from right-to-lifers, the March of Dimes claimed that it provided testing and counseling only, that it did not do abortions or advocate for them. Asked about this claim in 1992, Dr. Lejeune said it would be the same as saying, "I'm selling guns to terrorists. I know they are terrorists, but I am just selling guns. Nothing more than that."[41] Lejeune, who died two years later, was one of the greatest defenders of the bedrock medical rule, "First, do no harm." And one of very few in genetics.

NOTES

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Abortion Kills Dialogue:

Why Notre Dame Should Not Have Honored Barack Obama

Edmund C. Hurlbutt

When the University of Notre Dame invited President Barack Obama to address its 2009 commencement and receive an honorary Doctor of Laws degree, the angry public reaction from pro-life Catholics—including scores of protests from individual Catholic bishops—was substantial enough to turn the event into a national news story. As it turned out, however, the media played the story as one of the calm reasonableness of Obama and university president Fr. John Jenkins versus the angry religious passion of the protestors, and handed the clear public-relations victory to Obama and Notre Dame.

True enough, in the days leading up to graduation pro-life protestors took up station at the university entrance brandishing the kinds of graphic signs and photos that have always been a bone of contention among pro-lifers themselves. Some demonstrators got themselves arrested for taking their protest onto the campus itself. And a small plane was even hired to circle overhead carrying still more photos of dismembered fetuses. It was enough to make some of the otherwise rather passive pro-life faculty sniff that the protestors were giving the pro-life position a bad image.

Obama and Jenkins, meanwhile, played their roles in the media script to the hilt. At the graduation, Jenkins praised Obama for being "not someone who stops talking with those who differ with him." And Obama himself called for "open minds and open hearts" in the national debate over abortion. Indeed, opined the president:

> Remember too that the ultimate irony of faith is that it necessarily admits doubt. It is the belief in things not seen. It is beyond our capacity as human beings to know with certainty what God has planned for us or what he asks of us, and those of us who believe must trust that his wisdom is greater than our own. This doubt should not push us away from our faith. But it should humble us. It should temper our passions and cause us to be wary of self-righteousness. It should compel us to remain open, and curious, and eager to continue the moral and spiritual debate that began for so many within the walls of Notre Dame.

Thus did the president relegate the religious passion of the protestors to

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the confines of self-righteousness, and call for them to open their minds and hearts to, well, doubt. "I do not suggest that the debate surrounding abortion can or should go away," Obama concluded, just that it be, well, reasonable. "Each side will continue to make its case to the public with passion and conviction. But surely we can do so without reducing those with differing views to caricature."

Abortion Kills Dialogue

Obama and Jenkins thus held up Obama's presence—and the honor given him—as far from a betrayal of what it means to be a Catholic university. Rather, the event was to be seen as every bit the essence of what a university—including a Catholic university—is about: reason, dialogue, and "moral and spiritual debate" free of "certainty about what God has planned for us or what he asks of us."

So were they right? Was reason all on their side?

Not at all, for ironically it is precisely in the name of "dialogue" and "reasoned debate" that Notre Dame should never have invited President Obama to speak. For a university is, in fact, a kind of sacred space for dialogue, a place where reason rules and where the pursuit of truth gets played out by an ongoing conversation—literally across the generations—about the matter at issue. Simply as a university, Notre Dame thus has an institutional stake, a kind of constitutional duty, to protect dialogue.

Abortion, however, kills dialogue. It silences the voices of the next generation: or, at any rate, the one-quarter to one-third of almost two full generations that have been aborted since the 1973 *Roe* v. *Wade* decision legalizing abortion—some 50 million people. Countenancing abortion has also invariably involved caricaturing the pre-born precisely in order to obscure their humanity. They are "just blobs of tissue," mere "potential persons," even "parasites"—to cite just a few of the dehumanizing terms.

Imagine the impact if every fourth seat among the assembled Notre Dame graduates had been left empty as a sign of the lost one-quarter of the current generation of college graduates. Where are President Obama's "open heart and open mind" to *their* right to dialogue? They are non-existent, of course. Actions speak louder than words and Obama's political career has been absolute in its support of legalized abortion: even to the point of his opposing a proposed law in Illinois to require a second physician be present at late-term abortions to tend to any child who survived the abortion and was thus born alive.

Talk is cheap, in other words; and it is hardly expecting too much from a university president and board of trustees to act on that truth. Abortion kills

dialogue: just as it destroys every single human right along with the human being who alone is the bearer of rights.

Truth Is Possible

Notre Dame's critics also denounced the university's betrayal of its Catholic identity, however, and here, too, Jenkins played the public-relations game. He noted at one point before the graduation that Catholics cannot rely merely on Catholic arguments in engaging the abortion debate—which only showed how out of touch Jenkins is with the genuinely "Catholic" argument on abortion.

The best single place to find that argument is *Evangelium Vitae* ("The Gospel of Life," henceforth EV), Pope John Paul the Great's 1995 encyclical on the modern holocaust of abortion. (An encyclical is the most solemn form of the Pope's regular, that is, "ordinary," teaching office.) There John Paul affirms:

> Even in the midst of difficulties and uncertainties, every person sincerely open to truth and goodness can, by the light of reason and the hidden action of grace, come to recognize in the natural law written on the human heart (cf. Rom. 2:14-15) the sacred value of human life from its very beginning until its end, and can affirm the right of every human being to have this primary good respected to the highest degree. (EV 2)

"Upon recognition of this right," he immediately continues, "every human community and the political community itself are founded" (ibid.).

Thus the first "Catholic" teaching about abortion is precisely that it is *not* an exclusively Catholic matter:

> The issue of life and its defense and promotion is not a concern of Christians alone. Although faith provides special light and strength, this question arises in every human conscience which seeks the truth and which cares about the future of humanity. Life certainly has a sacred and religious value, but in no way is that value a concern only of believers. The value at stake is one which every human being can grasp by the light of reason; thus it necessarily includes everyone. (EV 101)

Catholic teaching thus profoundly disagrees with Obama's contention that that we cannot know with certainty "what God asks of us." In some cases, everyone can know: and not as a matter of faith, but as a matter of reason. Thus the primary Catholic task in such matters often comes down to reinforcing the "truth and goodness" of the secular world as it already exists rather than promoting some specifically Catholic doctrine or perspective.

Hence, too, a Catholic university's first duty today regarding the Church's teaching on abortion becomes simply to defend the universal availability of some moral *truths*. In the post-modern intellectual world of contemporary academia this is a daunting task, to be sure. The post-modern mindset

regards claims to knowing objective truth—moral truth in particular—as essentially illegitimate: suspect of being rooted in undue religious certainties, at best, or of being mere intellectual excuses for oppressing one group or another (homosexuals desiring to marry, for example) at worst. Thus, the American Catholic university today finds itself in the odd position of being called to "speak" to Harvard, as it were, telling its venerable elder brother in the work of education that Harvard's very motto—*Veritas,* Latin for "Truth"—is not a casualty of the post-modern era, but remains the driving force for every authentic university.

But what has all this to do with a graduation speaker? Just this: In selecting such speakers, Catholic universities have a particular duty to hold would-be honorees accountable for the universal availability of some moral truths. It has a duty to defend the *natural* dignity of the human mind by holding invitees accountable for those moral truths which "every person sincerely open to truth and goodness" cannot *not* know. When inviting public officials, moreover, it assumes a particular duty to defend the human mind's natural ability to know that legalized abortion is an affront to the very foundation of the "political community."

Does this fact mean that Notre Dame is required to make a personal judgment about Barack Obama that, at least when it comes to abortion, the man is not sincerely open to truth and goodness? Of course it does; the ongoing holocaust—50 million and *counting*—demands attention. The whole point at issue, moreover, is not whether the university needs to make moral judgments about any potential graduation speaker. Of course it does; the issue is by what standard his or her fitness should be judged.

By *not* inviting President Obama—as it had invited President George W. Bush—to address its graduates, Notre Dame would effectively have said: Barack Obama can, from reason alone and not even from faith, know that abortion takes a human life and is heinously wrong. From reason alone, he can know the moral truth that every just political community must legally prohibit it. That he refuses to know these truths—or refuses to act on them if he does know them—shows him to be unfit to address a university: a place where "Veritas" is the motto of every moment.

A Murderous Lawlessness

Then there is the matter of the honorary Doctor of Laws degree that Notre Dame awarded Obama. What is the Catholic understanding of this honor?

Looking to *Evangelium Vitae* once again, we find clear Catholic teaching that legalized abortion is not law at all, but a kind of lawlessness. Thus the honor to Obama constituted an absurdity, in the Catholic view:

> "To safeguard the inviolable rights of the human person, and to facilitate the performance of his duties, is the principal duty of every public authority." Thus any government which refused to recognize human rights or acted in violation of them, would not only fail in its duty; its decrees would be wholly lacking in binding force. (EV 71)

This assertion by John Paul II is filled with moral and intellectual dynamite. First, the entire paragraph is itself a quotation from Blessed John XXIII's encyclical *Pacem in Terris*, his great message of "Peace on Earth": thus linking the search for peace to rectifying the injustice of legalized abortion. Second, the internal quotation is from Pius XII's Radio Message of Pentecost 1941, in which the wartime Pope denounced the moral illegitimacy of the Nazi regime. And third, "on this topic," John Paul says in a footnote (EV, n. 94), "the Encyclical [*Pacem in Terris*] cites: Pius XI, Encyclical Letter *Mit brennender Sorge* [With Burning Sorrow] [and] Pius XII, Christmas Radio Message (24 December 1941)." *Mit brennender Sorge*—the only papal encyclical ever written and officially delivered in German—was Pope Pius XI's bitter 1937 denunciation of the Nazi dictatorship. And Pius XII's Christmas message was hailed by the *New York Times* of the day for its similar attack on the immorality of the Nazi enterprise in World War II.

This is the background against which John Paul the Great assesses laws legalizing abortion. They are murderous lawlessness, not law at all:

> "Authority is a postulate of the moral order and derives from God. Consequently, laws and decrees enacted in contravention of the moral order, and hence of the divine will, can have no binding force in conscience . . . ; indeed, the passing of such laws undermines the very nature of authority and results in shameful abuse."[95] This is the clear teaching of Saint Thomas Aquinas, who writes that "human law is law inasmuch as it is in conformity with right reason and thus derives from the eternal law. But when a law is contrary to reason, it is called an unjust law; but in this case it ceases to be a law and becomes instead an act of violence."[96] And again: "Every law made by man can be called a law insofar as it derives from the natural law. But if it is somehow opposed to the natural law, then it is not really a law but rather a corruption of the law." (EV 72)

"An act of violence," a "shameful abuse," a "corruption of the law" that "undermines the very nature of authority": This is how the Catholic Church views legalized abortion.

> Abortion and euthanasia are thus crimes which no human law can claim to legitimize. There is no obligation in conscience to obey such laws; instead, there is a *grave and clear obligation to oppose them by conscientious objection*. . . . In the case of an intrinsically unjust law, such as a law permitting abortion or euthanasia, it is therefore never licit to obey it, or to 'take part in a propaganda campaign in favor of such a law or vote for it." (EV 73; emphasis in original)

Here too, moreover, it is Catholic teaching that every human being—not just Christians or Catholics—can know by *natural reason* that an unjust law is no law at all. Thus, the only proper "Catholic" response to the proposal to honor the nation's most powerful, prominent proponent of legalized abortion with an honorary "Doctor of Laws" degree can only be horror at the contempt that such an honor shows *to the law itself*. For the sake of the legal system, the just exercise of authority by the government, the very legitimacy of the government itself, "there is a grave and clear obligation to oppose [such laws] by conscientious objection."

Killing the Common Good

Finally, we come to the issue of whether or not Obama's sheer prominence as the president of the United States does not—in spite of all that we have already seen—justify his appearance at Notre Dame. Surely, precisely as a university, Notre Dame has a duty to listen to what the nation's president is saying. Does this not justify the invitation?

In the Catholic view, it does not. That is because in its full panoply, the Catholic teaching is that—because he is evidently misguided on so profoundly obvious and grave a moral matter as legalized abortion—Barack Obama's every position on every matter affecting the common good is to be viewed with suspicion. That is because "it is impossible to further the common good without acknowledging and defending the right to life, upon which all the other inalienable rights of individuals are founded and from which they develop," as John Paul insists (EV 101).

John Paul is adamant on this point, in fact, and repeatedly warns that *legalized* abortion threatens the *entire* common good.

- "When the Church declares that unconditional respect for the right to life of every innocent person—from conception to natural death—is one of the pillars on which every civil society stands, she 'wants simply to promote a human State. A State which recognizes the defense of the fundamental rights of the human person, especially of the weakest, as its primary duty'" (EV 101).
- "Consequently, laws which legitimize the direct killing of innocent human beings through abortion or euthanasia . . . deny the equality of everyone before the law [and] are therefore radically opposed not only to the good of the individual but also to the common good. . . . Disregard for the right to life, precisely because it leads to the killing of the person whom society exists to serve, is what most directly conflicts with the possibility of achieving the common good" (EV 72).

• "There can be no true democracy without a recognition of every person's dignity and without respect for his or her rights" (EV 101).

• "This is what is happening also at the level of politics and government: The original and inalienable right to life is questioned or denied on the basis of a parliamentary vote or the will of one part of the people—even if it is the majority. This is the sinister result of a relativism which reigns unopposed: The 'right' ceases to be such, because it is no longer firmly founded on the inviolable dignity of the person, but is made subject to the will of the stronger part. In this way democracy, contradicting its own principles, effectively moves towards a form of totalitarianism" (EV 20).

• "[Where abortion is legal] the State is no longer the 'common home' where all can live together on the basis of principles of fundamental equality, but is transformed into a tyrant State, which arrogates to itself the right to dispose of the life of the weakest and most defenseless members" (EV 20).

• "The appearance of the strictest respect for legality is maintained, at least when the laws permitting abortion and euthanasia are the result of a ballot in accordance with what are generally seen as the rules of democracy. Really, what we have here is only the tragic caricature of legality; the democratic ideal, which is only truly such when it acknowledges and safeguards the dignity of every human person, is betrayed in its very foundations" (EV 20).

• "'How is it still possible to speak of the dignity of every human person when the killing of the weakest and most innocent is permitted? In the name of what justice is the most unjust of discriminations practiced: Some individuals are held to be deserving of defense and others are denied that dignity?'[16] When this happens, the process leading to the breakdown of a genuinely human co-existence and the disintegration of the State itself has already begun" (EV 20).

• "It is true that history has known cases where crimes have been committed in the name of 'truth.' But equally grave crimes and radical denials of freedom have also been committed and are still being committed in the name of 'ethical relativism.' When a parliamentary or social majority decrees that it is legal, at least under certain conditions, to kill unborn human life, is it not really making a 'tyrannical' decision with regard to the weakest and most defenseless of human beings? Everyone's conscience rightly rejects those crimes against humanity of which our [20th] century has had such sad experience. But would these crimes cease to be crimes if, instead of being committed by unscrupulous tyrants, they were legitimated by popular consensus?" (EV 70).

• "Democracy cannot be idolized to the point of making it a substitute for morality or a panacea for immorality. Fundamentally, democracy is a 'system' and as such is a means and not an end. Its 'moral' value is not automatic, but depends on conformity to the moral law to which it, like every other form of human behavior, must be subject: In other words, its morality depends on the morality of the ends which it pursues and of the means which it employs. . . .The value of democracy stands or falls with the values which it embodies and promotes" (EV 70).

• "Not even democracy is capable of ensuring a stable peace, especially since peace which is not built upon the values of the dignity of every individual and of solidarity between all people frequently proves to be illusory. Even in participatory systems of government, the regulation of interests often occurs to the advantage of the most powerful, since they are the ones most capable of maneuvering not only the levers of power but also of shaping the formation of consensus. In such a situation, democracy easily becomes an empty word" (EV 70).

• "Nor can there be true peace unless life is defended and promoted. As Paul VI pointed out: 'Every crime against life is an attack on peace, especially if it strikes at the moral conduct of people. . . . But where human rights are truly professed and publicly recognized and defended, peace becomes the joyful and operative climate of life in society" (EV 101).

"Tyrant state," "totalitarianism," "a tragic caricature of legality," "the democratic ideal . . . betrayed in its very foundations," "a process leading to the . . . disintegration of the state itself," "an attack on peace." It is impossible to read such repeated, harrowing denunciations of the effects of *legalized* abortion without concluding that John Paul could only regard public officials who support it as the *de facto* enemies of peace, justice, democracy, and the common good.

In other words, the abortion "issue" is not just about the death of hundreds of millions of pre-born children around the world. It is also about the life and death of society itself, of actual functioning democracies, and peace within and between societies.

• "As I wrote in my Letter to Families, 'we are facing an immense threat to life: not only to the life of individuals but also to that of civilization itself'" (EV 59).

• "Only the concerted efforts of all those who believe in the value of life can prevent a setback of unforeseeable consequences for civilization" (EV 91).

President Obama's failure to be "sincerely open to truth and goodness" on

the issue of abortion is thus not merely a personal, private failing; nor is it just a failure on a "single issue." It marks a fundamental betrayal precisely of the *office* of president itself, and a failure on a "foundational" issue for society as a whole—precisely because support of *legalized* abortion betrays authentic democracy, peace, indeed civilization itself.

So clouded is Barack Obama's conscience—as evidenced by his failure to oppose legalized abortion—that, on John Paul II's principles, even what Obama says on other subjects must be taken in only with great suspicion. In his Apostolic Exhortation "Christ's Faithful Laity," for example, John Paul insisted that any "cry for human rights, for example, the right to health, to home, to work, to culture . . . is false and illusory if the right to life, the most basic and fundamental right and the condition of all other personal rights, is not defended with maximum determination" (*Christifideles Laici*, 38).

"False and illusory"—a lie and a fraud—is how John Paul II viewed *any* political program which included legalized abortion as an integral part. Is it possible to say any more clearly that it is precisely as president of the United States that Barack Obama should not have been honored by Notre Dame with the speaker's platform and Doctor of Laws degree?

Conclusion

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness." This foundational "proposition"—as Abraham Lincoln called it—of the American experiment in democracy is finally what is at issue in Notre Dame's invitation to its 2009 graduation speaker.

The souls of the tens of millions of aborted babies go to God, we pray. It is for us the living that we must truly mourn and pray. For we store up a terrible judgment by God against our nation the longer the holocaust continues. And while individual souls are judged in eternity, nations are judged—and rewarded or punished—in history.

Dancing with the Saints

Patrick Mullaney

We live in a society that has exempted the value of life from the democratic process by making life an individual constitutional right.[1] However, despite this and the fact that there is now little serious disagreement that life exists before birth, unborn life has somehow been un-exempted from the Constitution's protection.

One need look no further than *Roe* v. *Wade* for an explanation. There, in support of its primary holding that abortion is a Due Process liberty, the Supreme Court also held that the unborn child is not a "person" within the meaning of the Fourteenth Amendment, thus declaring the entire class outside the Due Process Clause. Moreover, this "non-person" aspect of *Roe* is agreed to by many pro-life commentators and jurists. The standard pro-life argument is that abortion should not be a constitutional right, that it is a political issue to be resolved legislatively by the states. However, many pro-life leaders, for reasons we'll explain later, take no exception to *Roe*'s holding that the unborn child is not entitled to have its life protected under either Fifth or Fourteenth Amendments.[2]

About 20 years ago, I decided to get involved in the abortion battle. I knew very little about the finer constitutional points. In fact, my interest was pretty simple: I thought it was wrong to kill and didn't think it was such a good idea for the Constitution to find virtue in it. I also thought it wasn't much of an idea to decide who lives and who dies by voting on it. I'm as big a fan of democracy as anybody else, but there seemed to me to be something decidedly un-American about subjecting the value of life to a vote. Beyond all that, however, what really bothered me was the acceptance of the idea that an entire class of humanity could be exempted from the protection of an enumerated right to life.

My involvement soon became what I'd have to describe as a remarkable journey. I'd like to share part of my journey here, what happened and why. In particular, I'd like to share my experiences with three extraordinary people I met along the way, Mother Teresa of Calcutta, Dr. Jérôme Lejeune, and John Cardinal O'Connor. (For simplicity, I'll occasionally refer to them as "the Saints").[3] I'd like to explain how they were part of that journey, and, more importantly, why they lent their support to a cause that some very learned people

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on both sides of the abortion debate could or would not support.

My story revolves around a then-27-year-old man named Alex Loce. In late 1990, Alex was living in Queens, N.Y. He was engaged to a young lady living near Morristown, N.J. She'd become pregnant and, despite his offers to marry her and care for their child, she'd decided to obtain an abortion at a Morristown clinic. She told Alex about her intentions, including her scheduling of a procedure at the clinic on September 8, 1990.

Alex came to Morristown on a Friday, the day before the abortion. With the help of attorneys—Richard Traynor, Michael Carroll, and me—he applied late in the evening to the New Jersey Superior Court in Morristown for a temporary restraining order halting the procedure. His application was denied. He then appealed on an emergent basis to the Appellate Division in Springfield via conference call. After this failed, the appeal was continued to the New Jersey Supreme Court, on the same Friday night: A sole judge, Justice Robert Clifford, heard the appeal sometime after midnight in his Chester living room. After hearing from all the parties who had gathered over the course of the evening—Alex, his fiancée's attorney, the ACLU, NOW, and a few others—Justice Clifford affirmed the lower courts: Alex's baby would be aborted the next day.

But Alex was a determined young man. The next morning, he, joined by a number of sympathizers, chained himself to the door of the clinic. He managed to close the clinic down for about seven hours until the Morristown police obtained a set of graphite metal cutters from the New York Police Department. Eventually he was removed and his baby aborted. He was charged with trespassing and prosecuted in Morristown's municipal court.

The case received an enormous amount of local publicity. This was a father trying to remain a father, a father trying to care for his child. This was a father who had been to the highest court in the state to save that child's life, a father who for all his efforts was being criminally prosecuted. If ever there was a case to bring forward the missing piece of abortion jurisprudence—the unborn child's life right—this could be it.

Alex would defend himself by invoking that missing piece. The argument was simple: His child was alive prior to the abortion and therefore entitled to have its life protected by the Due Process Clause, just as anyone else's would be. Further, in removing Alex from the clinic under the authority of the trespass statute, Morristown had allowed the abortion to take place and thereby violated the child's right to life. As the state cannot prosecute somebody while simultaneously violating somebody else's constitutional rights, Alex was entitled to raise his unborn child's life right in his own defense.

Of course, in order to establish such a right, we had to prove that there is

such a thing as unborn life. So Dick Traynor and I wrote to Cardinal O'Connor in New York, explaining the nature of the effort and asking him to assist. Specifically, we requested his assistance in obtaining the testimony of Dr. Jérôme Lejeune, a world-renowned geneticist and pediatrician based at the Sorbonne. He is often referred to as the "Father of Human Genetics" for his discovery, among other things, of the genetic basis for Down Syndrome, the first human abnormality known to be attributable to a genetic defect. But Dr. Lejeune was more than the sum of his professional credentials: His traits of character were much more impressive even than his prodigious intellect. He did not claim the status of anything more than an observer and describer of what he saw as God's work. From his extraordinary position to observe, he saw in the physical world a material fidelity to the commands of life's author and he could explain even the most complex of life's scientific realities with a childlike simplicity.

It's safe to say that requesting the presence and assistance of such a man at a municipal-court proceeding in New Jersey was something of a stretch. However, immediately upon receipt of our request, Cardinal O'Connor faxed Dr. Lejeune a letter informing him of what the Cardinal saw as the importance of the case and virtually imploring him to lend his service on Alex's behalf.

Dr. Lejeune came to Morristown to testify at Alex's trial on April 13, 1991. Those in attendance were spellbound as he described the wonders of life as it passes from generation to generation, how there is no gap in the human continuum, how one generation is undeniably connected to the last at the moment of conception. He received an ovation when his testimony was completed. (Not an everyday event in criminal prosecutions.) Most important, the trial judge, Michael Noonan, basing his opinion largely on Dr. Lejeune's scientific testimony, held that—as a matter of scientific fact—life begins at conception. I'm told that that was a first in an abortion-related case. Although Judge Noonan was forced to find Alex guilty based on *Roe*'s precedent, he went on to describe the abortion of Alex's child as a "legal execution"—something else no one had ever heard from an American court.

These findings gave the case something of a national status, something to be built upon. At about this time the Cardinal let me know that John Paul II was following the events closely, even considering including the Loce Case (as it became known) in a note of an encyclical he was writing.[4] That was all it took for me to ask Cardinal O'Connor if he'd approach the Pope and see if he, the Pope, wouldn't publicly get behind the effort. Certainly that would be a boost. After some time the Cardinal got back to me and said that after much thought and prayer he didn't think it was a good idea to involve the Holy See in the internal affairs of sovereign governments. Knowing, however, that we

needed support going forward (and I'm paraphrasing only a little), he went on to say, "How about Mother Teresa?"

It thus came to pass that Mother Teresa became involved in the Loce Case. Her first contribution was to the New Jersey Supreme Court, as the appeal was taken there in early 1993. She addressed a letter—typed, I'm told, by her, on an old typewriter in her room in Calcutta—to the justices, imploring them to review the case and grant to the unborn child its life right. The letter, simple and to the point, reads:

54-A A.J.C. Bose Road
Calcutta 700016, INDIA

Justices of New Jersey
The Supreme Court of New Jersey
Trenton, New Jersey 08625

Re: State of New Jersey v. Alex Loce

Dear Justices of New Jersey,

To make it easier for us to love and protect one another, Jesus made us this promise . . . "Whatever you do to the least of my brethren, you did to me." "When you receive a little child in my name . . . you receive me." Today, the least and most unprotected of our brethren, is the little unborn child. We have all been created by the same loving hand of God, It is your responsibility to protect the rights of all God's children that come before you, regardless if they can speak for themselves or not. As you are making your decision to hear this case, I beg you to protect the rights of God's poorest of the poor, please do not turn your back and reject the rights of the little unborn child. I beg of you to do what Jesus would do in this situation.
My gratitude to you is my prayer for you, for the work that you are doing and the people whom you serve.

Mother M. Teresa, M.C.
Calcutta

Mother Teresa's letter was delivered to me through care of the Cardinal in February 1993. At the suggestion of a friend, I gave the Supreme Court copies and kept the original. It hangs on the wall of my office to this day.

Unfortunately, none of the seven justices on the New Jersey Supreme Court, including those known to be opposed to *Roe*, voted to grant certification. So we moved on to the Supreme Court of the United States. By now, *Loce* had become a rallying point. Dedicated and competent people undertook to organize groups from around the world to submit amicus briefs to the Supreme Court requesting the Court to take the case and properly resolve the question of the unborn life right. By the time they were done, 170 Friends of the Court from 60 nations had filed briefs.

Dr. Lejeune, who was then dying of cancer in Paris, composed a handwritten note to Cardinal O'Connor, referring to Mother Teresa as the "true Mother of the disinherited," and imploring her to continue to aid in the Loce effort. Through the Cardinal I was soon advised that she'd agreed to submit a formal amicus brief on Alex's behalf. I'm told she'd never directly petitioned a government in her life—for reasons similar to the Holy See's—but considered the unborn life right to be so fundamental that an exception was called for.

Being associated with Mother Teresa was a unique experience. Everybody loved her: the ACLU, NOW, Catholics for a Free Choice—everybody. Even if they disagreed violently with everything she said, few dared to disagree strongly in public, let alone criticize her. She attracted universal good will.

Mother Teresa came to Washington in February 1994 to deliver a speech at the National Prayer Breakfast. The speech has become very well known: She spoke passionately to President and Mrs. Clinton and Vice President and Mrs. Gore of the obligation to protect the unborn. A Washington public-relations firm—donating its services—had arranged for Mother Teresa, following the prayer breakfast, to deliver personally her amicus brief to the Clerk of the Supreme Court. They had also arranged for her to be escorted by Peter Jennings and Cokie Roberts as she climbed the outside stairs, entered the building, and proceeded to the Clerk's office. Her support of the Loce Case was to be featured on the evening news. The same firm had also arranged for her to appear for the same purpose later that night on *Nightline*. I was invited along, I guess for technical support. I'd been told that Mother Teresa had refused to grant media interviews for a ten-year period prior to her coming to us. She was going to make yet another exception, for the unborn child.

As you might imagine, this was all pretty heady stuff for me. Advocating a simple point and being involved for a very short time, I found myself and my colleagues about to visit the seat of power, escorted by Saints. Those in power, the justices of the Supreme Court, were about to be requested by the most beloved person in the world to consider an issue they had never seriously addressed, the crux of the abortion debate, the obligation of law to life. I couldn't help but think that no one wants to be on the other side of a moral issue from Mother Teresa, not even Supreme Court justices. It all seemed too good to be true. Such a thing could not possibly happen.

And it didn't.

A few days before the prayer breakfast, I received a phone call from Cardinal Hickey's office in Washington informing me that the Cardinal had "requested" that Mother Teresa not deliver her brief to the Court personally.

His concern was that she might embarrass the president, who had personally invited her to come to the United States to address the political leaders.

I was also told that Mother Teresa would honor his request. Gone was the national exposure, gone was the momentum that the networks may have provided. Gone was a lot of effort from a lot of very good people.

Picking up the ball, Cardinal O'Connor told me that it was important to see the effort through to its end and that someday I'd understand. He offered to fly Mother Teresa to New York to have the brief signed there. She did and the brief was eventually filed by her attorneys, Robert George and William Porth. Still, a great opportunity had been lost.

Shortly thereafter, the Supreme Court denied Alex's petition for certiorari. Not one justice—not even those who had long opposed *Roe*—voted to take the case. It simply ended there. None of the 16 justices sitting on the Supreme Court of New Jersey and the Supreme Court of the United States saw fit even to hear the case.

I've had many years to consider the events of the Loce Case. At first I kept on asking, simply, how could all this have happened? Why had these remarkable people—the moral leaders of the world—gotten behind an obscure prosecution defended by an obscure attorney in an obscure municipal court? My thoughts over time began to center on the differences between the Saints and the justices who'd refused to hear the Loce Case. What was it? Why had the Saints so fervently advocated the case, and the justices so fervently discarded it? I wasn't expecting much from the justices who favored abortion rights. But I did expect something from those who didn't. So I began to ask myself: What is the difference between the Saints and those justices who represent the mainstream of pro-life thought, who not only oppose abortion's constitutional status but also see it as a moral wrong? How can the obvious solution—to declare an enumerated constitutional protection against a fundamental moral breach—simply be discarded?

I think the central fact is that the Saints *knew* of the proper moral order, and insisted that the political order *conform* to it. It sounds strange today, in an age where all moral points of view are tolerated, even valued, to say that someone *knows* the moral order. To the Saints, though, it's not only known, it's the starting point of a continuum between it and the political order.

About 700 years ago, St. Thomas Aquinas taught that every man is at the outset a blank tablet (*tabula rasa*), knowing nothing. As we go through life, each of us begins to acquire knowledge through the senses, first with awareness of particular tangible things, like this table and that chair. From the particular we proceed actively to abstract general concepts. We come to know

what tables and chairs are generally by *intellectualizing*—a capacity of human reason—upon our sensory perceptions of particular tables and chairs.[5]

The moral order, however, is intangible. So St. Thomas went on to consider whether we can know things beyond the physical. He answers that, yes, we can; that, being human, the intellect must start with sensing physical things, but, being *intellect*, it may proceed farther, to the metaphysical. He goes on to make the distinction between the direct sensory knowledge we can gain of physical things through observation and our knowledge of the metaphysical. The latter is not direct; rather, it is relational—or analogical—to the physical. All material things, he teaches, *manifest* God and their relationship to God, yielding to us an analogical and imperfect knowledge of God's nature—a knowledge of permeating, universal goodness.[6]

It is upon this knowable reality of goodness that St. Thomas establishes the knowledge of a moral order. He states that all creatures are by their particular natures ordered to God as their *purpose*. Men, rational by nature, are ordered to God through their reason and rational intellect. Thus, the free intellect is always properly used toward God through the pursuit of God's nature—the good (*bonum*). And it is through this proper ordering of the free will that we come to know the first moral principle of practical reason—that good is to be done and evil avoided.[7]

St. Thomas considers the political order within the same context. For him, the State is a natural institution in that it also properly reflects the nature of man. The State's *purpose*—the reason it exists—is to serve as a continuum of the moral order. Thus, a democratic state requires a collective use of reason in pursuit of the good.[8] A constitutional order would similarly require elements of its constitutional structure, such as individual rights, to be applied in the pursuit of the good. In general, to St. Thomas any human law or institution must be an application of truth; within its context an application of that revealed first through the Jews and then through Christ culminating in the Great Commandment to love one another.[9] To St. Thomas, human law's reach is no farther than its end in goodness, and to the extent that the law violates goodness it "will not be a law but a perversion of law."[10]

I think this suggests an understanding of the Saints' advocacy in the Loce Case. They simply believed that an unprotected portion of humanity—the unborn—be included within the protection of an enumerated constitutional right to life as part of the Constitution's obligation to pursue the good. As per St. Thomas, that advocacy was of a proper continuum of the moral order to the political as it currently exists in America. More important, to the Saints there is not—and may not be—a moral void in the political order, a void

where competing concerns render irrelevant or subordinate the moral, at least as to the law's obligation to life.

Let's now turn to the competing thoughts of the justices who decided not to consider the Loce case. We can focus first on the pro-life justices, those who disagree with the legitimacy of the abortion liberty, but would deny the unborn life right. Judge Robert Bork perhaps outlines their position best in his October 2003 *First Things* article, "Constitutional Persons: An Exchange on Abortion." There he wrote, concerning the Due Process Clause as encompassing unborn life: "That reading seems to me *absurd*. The Constitutional question is not what biological science tells us today about when human life begins. *No doubt conception is the moment. The issue, instead, is what the proponents and ratifiers of the Fifth and Fourteenth Amendments understood themselves to be doing.*" (Emphasis added.) As to whether the proponents and ratifiers may have intended such a result, he goes on to say: "I think that the Constitution has nothing to say about *abortion,* one way or another, leaving the issue as the Constitution leaves most moral questions, to *democratic determination.*" (Emphasis added.)

We can see at first blush that Judge Bork's concerns on abortion's constitutional status are different from those of the Saints. His concerns are political. They're based on the solid premise that if constitutional rights are not limited to the original intent of those who drafted the text of the Constitution, any number of rights found nowhere within it, such as abortion, may be undemocratically imposed upon all of us simply because the Supreme Court at some time may like them. That's a great argument against abortion as a constitutional right. But he goes on to conclude that because abortion is not a valid constitutional right, neither is the unborn life right.

This seems to conflict with the facts. Abortion may not be an enumerated right—but life certainly is. It seems that the drafters intended to protect life, without classification or exclusion of any kind, as they put it in the Constitution, not once, but twice. It's always seemed to me that Judge Bork's democratic concerns—and the similar concerns of all the pro-life justices and many commentators—simply do not apply to the argument for the unborn life right.

Let's examine exactly what Judge Bork's methodology does. It subordinates the value of life to a competing political—democratic—concern. It argues that since an original intent to protect unborn life specifically within the abortion context is not found, the conceded facts that unborn life exists and that abortion takes that life become irrelevant. This political aspect of the argument—a concern about runaway federal judges—thus supersedes the primary moral obligation of the law to protect life, subordinating life to a political concern. Simultaneously, the Constitution is made a moral void

on the issue as it denies an entire class of humanity the protection of an enumerated and fundamental human right.

We should also take a minute to note that, in one respect, the pro-life justices have something in common with the pro-abortion justices. They all subordinate life to a competing concern: the pro-abortion justices to personal autonomy, the pro-life justices to the mandates of original intent. They all deny the law's obligation to protect life within that subordination.

Here we can see the difference between the Saints and the justices: To the Saints, there can be no moral void within the Constitution resulting from these competing concerns. To the justices, there can.

Now, to most Americans this difference isn't offensive. We are well conditioned to the reality that our political institutions and our laws function in a moral void. And, as Judge Bork makes clear, we can address moral issues within the democratic process. So, one may ask, what's the big deal about Judge Bork's position? If abortion has a moral component, why not just address it at the ballot box? What's lost in classifying unborn life out of Due Process protection?

It's here that I have to introduce John Paul II into the Loce journey. I'd mentioned above that Cardinal O'Connor told me in 1992 that the Holy Father was following the case closely, even considered using it in an encyclical note. Later, I was told that the Holy Father kept copies of the briefs we'd filed with the Supreme Court on the altar of his private chapel as he said Daily Mass while the case was pending before the Court.

His encyclical *Evangelium Vitae*, released in 1995 and written during the Loce years, took up the issue of the law's obligation to unborn life. It did so in three steps. First, it affirmed the existence of a right to life *prior* to the political process—a right found in the natural law, before the human law, and based on a faithful and reasonable knowledge of the sacred value of human life and the dignity of the person from conception to natural death. Second, much like St. Thomas, John Paul II declared the recognition of the right to life as *the purpose* of the subsequent political community.[11] Finally, he went on to consider the consequences of its being denied by that political community, writing:

> "[If] the original and inalienable right to life is *questioned or denied* on the basis of a parliamentary vote or will of the people—even if it is the majority . . . the right ceases to be such, because it is no longer founded in the inviolable dignity of the person, but is made subject to the will of the stronger part. In this way democracy, contradicting its own principles, effectively moves towards a form of totalitarianism . . . *when this happens the process leading to the breakdown of a genuinely human co-existence and a disintegration of the State itself has already begun*." (Emphasis added.][12]

That's pretty strong stuff: movement towards totalitarianism, disintegration of the state. But let's look at what John Paul II is saying. First and foremost, government *exists* to recognize the life right. Thus, government's *denying* the right corrupts its own purpose. It does so by recasting the right's essential nature. No longer original (prior to the political process) and inalienable, it is now contingent upon other, competing concerns. The state has thus contradicted its core principles, making its foundation something other than the recognition of life, the recognition of the dignity of the human person. John Paul II sees this contradiction as so fundamental a breach that a society undertaking it cannot endure.

It can be argued that John Paul II speaks only of the democratic process, not the constitutional adjudication of rights. But I think his point is broader. His condemnation of denying life was not from any particular governmental perspective. Rather, it was from a core mandate applicable wherever the issue is presented: The right to life must prevail over *all* competing concerns, including Judge Bork's.

When I read *Evangelium Vitae*, I began to understand the Loce journey: The Loce Case was presenting precisely the point that was being considered by the Holy Father. As I began to understand the point and its magnitude, I began to understand why the Cardinal had gone to such extraordinary lengths; why he'd engaged Dr. Lejeune and Mother Teresa; why Dr. Lejeune and Mother Teresa had unquestioningly lent themselves to our effort. They say great minds think alike. I guess holy minds do as well. To those minds, the United States must honor, not deny, life in its law. I began to understand how they'd seen that the United States had in fact honored life at our law's summit; exempting it from the dangers of the democratic process by recognizing and protecting it individually. I began to understand how they saw that that honoring was now being lost, not only by the recognition of abortion as an individual right, but also by the denial of the life right to the unborn by all who considered the issue. I began to understand how the Loce Case was an opportunity for them to advocate the proper status of life within the law.

Maybe most important, it began to dawn on me how people like the Saints see both unity and fragility within the world. They see that fidelity to the moral order spoken of by Saint Thomas, not to politics or policy, is what allows a society to exist as an integrated whole. They see that integration as resting upon the proper use of a society's free will, including the collective will in the form of its laws, in pursuit of the moral order, in pursuit of God's nature, in pursuit of the good. They also see that the moral order is as fragile as it is strong; and they see the consequences—laid out in no

uncertain terms by John Paul II—of its being fundamentally violated on topics of basic human concern.

I certainly can't claim to know if our treatment of life is leading us down the path that John Paul II suggests. I'm well aware that as far as the topic of constitutional protection for the unborn goes, a lot of good people don't seem concerned at all. We've seen that Judge Bork dismissed the argument as "absurd." Paul Linton, in his Summer 2007 *Human Life Review* article, "Sacred Cows, Whole Hogs and Golden Calves," similarly described its practical advocacy as a "counsel of despair dressed up in the guise of a false hope."

It seems pretty clear that the Saints would disagree. No, they saw nothing absurd or desperate in what Alex Loce tried to do. After these many years, I think what they saw was an attempt to bring Truth to the law, as St. Thomas so long ago suggested. In its temporal struggle with abortion, they saw America as engaged in the eternal struggle between Truth and Freedom, how to conform the power of Freedom with the mandate of Truth. I think that what they were trying to tell us, in the end, was what John Paul II put so well in *Fides et Ratio*: "Truth and freedom either go hand-in-hand or together they perish in misery."[13]

NOTES

1. The Due Process Clauses of both the Fifth and Fourteenth Amendments set forth "life" as an individual right.
2. See Bork, "Constitutional Persons: An Exchange on Abortion," *First Things*, January 2003; *see also* Linton, "Sacred Cows, Whole Hogs, and Golden Calves," *Human Life Review*, Summer 2007.
3. Mother Teresa of Calcutta was beatified by John Paul II on October 19, 2003. Dr. Lejeune was proposed for beatification by Cardinal Fiorenzo Angelini at the Pontifical Academy for Life in Rome on February 20, 2004. In April 2007, Paris Archbishop Andre Vingt-Trois launched the process for his beatification. To those who knew Cardinal O'Connor, his own beatification is just a matter of time.
4. The Loce Case was not mentioned, though the encyclical turned out to be *Evangelium Vitae*. As set forth *infra*, John Paul II advocated a recognition and protection of unborn life precisely as was being advocated in the Loce Case.
5. *Summa Theologica, Ia*, 84, 7, 3; *see also* Copleston, A *History of Philosophy*, Vol. II, Medieval Philosophy, at 393-4, Doubleday. (Further references to *Summa Theologica* shall be designated as *S.T.*; further references to *A History of Philosophy* by Father Copleston shall be referenced as *Copleston* with appropriate Volume and Page indications).
6. *Copleston*, Vol. II at 390-4.
7. *S.T.*, 1a, IIae, 94, 2; *Copleston*, Vol. II at 406.
8. *De Regimine Principum*, I; *Copleston*, Vol. II at 413.
9. *Copleston*, Vol. II at 418.
10. *S.T.* Ia, IIae, 95, 2; *Copleston*, Vol. II at 419.
11. *Evangelium Vitae*, N. 2, N. 20.
12. *Evangelium Vitae*, N. 20
13. *Fides et Ratio*, N.90.

The Stem-Cell Follies

Alicia Colon

I can't say Faye Kellerman is one of my favorite authors, but she does write about interesting situations, and what I've found most fascinating about her mystery novels is their descriptions of the daily life of an Orthodox Jewish family. Her two main characters are Detective Peter Decker, who converted to Judaism when he got married, and his wife, Rina Lazarus. The Deckers keep kosher and observe the Sabbath.

I happen to know many observant Jews myself, and they all respect the sanctity of life. Many of them have joined me in Washington for the annual March for Life in January, when we mourn the anniversary of *Roe* v. *Wade*. So I was rather surprised when I recently picked up *Capital Crimes*, a 2006 book Kellerman co-wrote with her husband, the celebrated novelist Jonathan Kellerman. The book is divided into two novellas, one of which, "My Sister's Keeper," disappointingly repeats the lies about stem-cell research that liberals perpetuate to keep amoral researchers in business. The story's main character is a progressive state representative, Davida Grayson, who's obsessed with passing legislation to fund the stem-cell research that she claims would have saved the life of her late sister Glynnis. Kellerman writes: "Stem cells would have saved Glynnis. How different would things have been for the Grayson family if the scientific community had been funded righteously?"

I kept waiting for her character to expound on the difference between adult- and embryonic-stem-cell research and to clarify that private funding of both of them is legal. Adult-stem-cell research has always received government funds; government funding of embryonic-stem-cell research was forbidden until President Barack Obama lifted the ban. The omission of these central facts amounts to a lie—and lies have been all too important a part of the stem-cell debate.

Never were the lies more blatant than in the 2004 election, when Michael J. Fox went to bat for two Democratic Senate candidates—Claire McCaskill in Missouri and Benjamin Cardin in Maryland—with television ads that showed him shaking and rocking from the debilitating effects of Parkinson's disease. The ads accused the Republican candidates of depriving victims of the disease of much-needed government funds. In the McCaskill ad, Fox told voters, "What you do in Missouri matters to millions of Americans.

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Americans like me." In the Cardin ad, he said that "George Bush and Michael Steele would put limits on the most promising stem-cell research," and that Steele's opponent would support such research.

It is very important for these advocates to propagate the myth that pro-lifers are against the funding of stem-cell research. Nor was Michael J. Fox the only celebrity involved in this deception: Christopher Reeve, suffering from quadriplegic injuries, urged support for stem-cell research that could help him walk again.

But here is the truth about stem cells: While *no cures* have resulted from embryonic-stem-cell research, adult- and placental-stem-cell research has already yielded many medical benefits. In fact, there is no need for embryonic-stem-cell research at all: Scientists have found ways to convert skin cells into whatever cells they need. This is not something that the mainstream media want the public to know.

In 2001, experiments involving the transplants of fetal cells into the brains of Parkinson's patients were catastrophic. Dr. Paul E. Greene, in *The New England Journal of Medicine*, described the side effects: The patients "chew constantly, their fingers go up and down, their wrists flex and distend." He added that patients "writhe and twist, jerk their heads, fling their arms about." One patient suffered side effects so severe that he could no longer eat and had to have a feeding tube put in. Another suffered the side effects intermittently and unpredictably; his speech became unintelligible when the side effects started. Greene found the effects so terrible that he took a firm position: no more fetal transplants.

But the pro-embryonic-stem-cell propaganda is so successful that when President Obama lifted the ban and pledged billions for unproven embryonic research, cheers went up from millions of families awaiting the medical miracles that—in reality—will come only from research on adult stem cells.

For the life of me, I can't understand why the Republicans and pro-life organizations couldn't come up with effective counterprogramming to the celebrity mis-informercials. All they would have to say is that there has been no ban on stem-cell research; that private funding has always been allowed, even for embryonic-stem-cell research; and that there have been zero successes from the latter type of research in any case.

But it's hard to break through the wall of lies and denial. The entertainment culture will do so only rarely, and most often by accident—offering a pro-life message without realizing that it is doing so. The 2005 film *The Island*, starring Ewan McGregor and Scarlett Johansson, is a thriller about a man and a woman living in a germ-free utopian facility under the impression that

they are being sheltered against a virus that has eradicated human life outside their domed environment. In reality, they are both cloned material awaiting transport to a special island where they are to be killed and harvested for their body parts. These will then be transplanted into the bodies of the wealthy individuals from whom the two main characters have been cloned. Once they learn the truth, they wage a daring escape and try to warn the outside world about what is happening. The film is fiction, but the motives it depicts are true to life: those of an amoral scientific community that does not respect the sanctity of our human essence.

Last year, the CBS series *Eleventh Hour* had an episode that—intentionally and honestly—tackled these issues. The main character, Dr. Hood, challenges Miranda, a scientist who is trying to clone human beings. Miranda chides Hood for not joining forces with her in the attempt to create life. Hood responds, "Only to destroy it?" And he explains:

> The problem is, cloned babies are people no matter what their origin and some organs can't be removed without killing a person. If you remove the organ, in order to put it into someone else, the donor's going to die and that, last time I checked, was murder. . . . When I was, am, holding that child, that cloned child, I had a feeling for a second what it must be like to be Geppetto, God-like, and it made me dizzy. I mean, if this is really where we're headed, if, if we're really going to be playing God, then I don't want a part of it.

Miranda rebukes him: "You're a coward, Dr. Hood. You play at being a good man. But you will never be great." Hood responds: "I can live with that."

Is it any wonder that CBS cancelled this show? It doesn't fit with the message Hollywood wants to send out. But even though the falsehoods get repeated more often and more loudly, we can take comfort in the fact that the truth is on our side. And, sooner, or later, that *must* make a difference.

Abortion and Sexual Assault

Todd S. Bindig

On the controversial issue of the moral permissibility of abortion, we find three basic points of view: 1) Abortion is morally unproblematic and access to it should not be limited in any way. 2) Abortion is generally morally wrong but ought to be allowed in some "special cases." 3) Abortion is always morally wrong and never ought to be permitted. Though it gets prolific support from the "mainstream" news and entertainment media as well as the current administration of the federal government, the first view is actually the least widely held (to my knowledge, to date none of the major American pollsters have ever shown more than 10 percent support for it). The vast majority of Americans hold the view that abortion is, generally speaking, at the very least morally problematic if not outright morally wrong. Of the two remaining views, the majority falls into the category of those who hold the position that abortion is generally morally wrong but ought to be allowed in some "special cases."

Of the "special cases," one that is asserted most commonly, and most passionately, is that of a pregnancy that results from a sexual assault. The intuition that, though abortion is generally morally wrong, it is conditionally allowable in the case of a pregnancy resulting from a rape seems to result from some version of the following reasoning: 1) Rape is one of the most traumatic events an individual can experience. 2) We ought to do anything possible to assuage the suffering of rape victims. 3) If the victim has become pregnant as a result of the rape, this will generally add to the victim's trauma. Therefore 4) we ought to allow the victim to terminate this unwanted pregnancy if she believes that this will help her get over the trauma of the rape more quickly. This view is so widely accepted that any argument against it is interpreted as heartless and irrationally extremist. In the 2008 presidential election, Republican vice-presidential candidate Sarah Palin was repeatedly criticized for wanting to "force women to carry their rapist's baby," and this in no small way contributed to the negative arguments made against her.

The aim of this paper is to address directly the question of the permissibility of abortion in the event of a pregnancy resulting from a sexual assault. I shall not be discussing the general moral permissibility of abortion, but rather shall be speaking directly to the majority position that abortion is generally

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morally wrong but conditionally allowable in the event of a pregnancy resulting from a sexual assault. I shall be arguing, first, that if abortion is morally wrong on the grounds that it harms the pre-born child, the way in which this child came into existence and the fact that the mother did not consent to and does not want the pregnancy does not make this harm allowable. I shall then argue that, even if it were the case that the sexual assault would make the abortion conditionally permissible, the impact of abortion on the sexual-assault victim is, contrary to general intuitions, actually extremely negative; and therefore, if it is our goal to help relieve her suffering, we ought not allow her to undergo this procedure. I shall conclude that the argument that abortion is generally morally wrong but ought to be allowed in the case of a pregnancy resulting from sexual assault, though appealing for emotional reasons, is rationally groundless, and the likelihood of our achieving the desired effect of assuaging the rape victim's suffering through an abortion is directly contradicted by all available evidence. Thus, the abortion is not only immoral, but also impractical. Therefore, we ought neither to hold nor to defend the position that abortion is generally morally wrong but ought to be allowed in the case of a pregnancy resulting from a sexual assault.

The Moral Argument

If abortion is generally morally wrong, this wrongness is usually expressed in terms of harm done to the pre-born child in the womb. The basic argument is usually given as follows: 1) Intentionally killing an innocent person is always morally wrong. 2) Abortion is the intentional killing of an innocent person. Therefore, 3) abortion is always morally wrong. (I have argued elsewhere[1] that killing is experienced as a harm by the one who is killed.) If abortion is generally morally wrong but ought to be allowed in the case of pregnancy resulting from sexual assault, one needs to make the argument that due to the special nature of this specific case, the wrong done by abortion to the pre-born child in the womb is justifiable.

Let us suppose that someone broke into my house, beat me up, and stole my iPod. This would cause me great distress, as music is one of my only refuges from the stress of my work—and, of course, no one enjoys being beaten up, so, clearly, I would be distraught. The thief has done me a great harm and as a result, it is my desire that someone be flogged for this transgression. Let us suppose that the law agrees that a flogging is in order to assuage my suffering and loss. Would it be morally acceptable for this flogging to be administered to one of my children? None of my children is the thief. My children had no part in the crime. The only way they are even remotely in the equation might be that they add to the stress I feel from my work, stress

that was alleviated by playing my iPod, which is now gone. Most would agree that it would not be even remotely acceptable for me to take out my anger with my attacker on my children—or anyone else other than my attacker, for that matter.

A possible response to this example is that, in the case I offered, I am seeking to punish someone and punishment can only be justly given to the guilty, while in the case of the pregnancy resulting from sexual assault, the victim is not seeking to punish the rapist vicariously via the abortion of "his" child; rather, the victim is seeking to "repair the damage" of enduring a pregnancy to which she did not consent and which she does not want.

First of all, in reality, many victims of sexual assault *do* see abortion as a way to strike out vicariously at the rapist. This is a common line of reasoning given in many first-person accounts found in *Victims and Victors*[2]; *Aborted Women, Silent No More*[3]; *Forbidden Grief*[4]; and *Women Exploited*[5] — four excellent books that discuss the impact of abortion on the women who have had abortions, drawing almost exclusively on first-person accounts of women who have had abortions.

Second, whether the intent is to punish or simply to "remove" the pre-born child, the harm done to this child, via the abortion, is the same. Whether the intent was to strike out vicariously at the rapist or to seek to "repair the damage" of enduring a pregnancy to which the victim did not consent and which she does not want, the pre-born child is still killed; the harm experienced by the one who is harmed is the same. The questions that need to be answered are: 1) Is it ever morally acceptable to inflict great harm on an innocent person in order to lash out at a different, guilty party? And 2) When, if ever, is it morally acceptable to inflict harm on an innocent person in an attempt to alleviate one's own suffering?

Michael Davis claims: "Our moral responsibilities may not always be what we choose."[6] With specific reference to Thomson's "famous violinist" example[7] he writes: "You were wronged, of course, but not by the violinist. If you unplug him now, you will escape the wrong done you, but you will do that only by shifting the consequences of that wrong onto the violinist."[8] Leaving aside the fact that an abortion certainly does not "escape the wrong done" by rape—a point to which I shall return shortly—Davis proposes that we can come to what he believes to be an easily accepted general principle: "That one has been wronged does not make permissible imposing on one who did not do the wrong (and was not otherwise to blame for it) burdens it would otherwise be impermissible to impose on him."[9]

Let us apply this principle to the case of pregnancy due to sexual assault. It is true that rape is one of the most horrific crimes imaginable. The fact that

it *ever* occurs is awful and the fact that it occurs with the frequency it does is a moral indictment on our society. We absolutely should not minimize our sympathy for victims of this terrible crime, nor ought we to minimize the righteous indignation we feel towards—or to restrain the vengeance we take against—those who perpetrate this objectively evil act. However, our sympathy for the women who, on top of being raped, become pregnant from this attack ought not to justify the brutal killing of a human being who is entirely innocent of the crime.

Patrick Lee writes: "Granted that it is extremely difficult for a woman or girl pregnant after a rape to carry the baby to term, still, that difficulty is not in the same category as the harm that would be done to the child by causing his or her death."[10] Certainly, the pre-born child *is* the child of the rapist, but the children of criminals are not justly jailed—let alone executed—for the crimes of their fathers. If the son of a murderer were put to death for the crime of his father—one of which he was entirely innocent—I can think of no one who would not think this to be gravely immoral. Lee continues: "The child came to be through a violent act, but that is now irrelevant for how the child himself or herself should be treated. . . . The child deserves no less consideration on the grounds that he or she came to be through a horrible violent act of his or her father."[11]

Add to this that not only is the pre-born child the child of the rapist but also that of the victim of this awful crime. It is *her* child, and all of the responsibilities a mother has for her child hold, whether the child was intended or not; whether the child was wanted or not. Lee writes: "fathers delinquent on their child support cannot rightly claim they have no duties to their children on the grounds that they wished not to have them (the children)."[12]

When one faces a situation where another person will certainly die if one does not make some sacrifice to prevent his/her death, and one decides that one is required to do anything less than to make a sacrifice just short of laying down one's own life to sustain this other individual's life, one has decided that the thing that one would not sacrifice to save that individual's life is something that is more important than the life of another human being. To say this about nearly anything other than one's own life is to gravely skew one's priorities.

Philosopher Peter Unger provides many thought experiments that illustrate that, at some level, we share this intuition. One of Unger's examples[13] goes something like this: Let's suppose that it is my life's ambition to buy a fancy car. Let's further suppose that it takes me the majority of my life to work to afford this car and I had to sacrifice nearly everything else in the process. I buy my fancy car and drive it home. On the way home, while

crossing train tracks, I see a runaway trolley racing towards me, but on the other side of my car, a little way down the track, is my child, whose foot has become stuck in the tracks. I quickly observe that the only way to save the life of my child is to keep my car on the tracks, in the path of the oncoming trolley. If I do this, my car will stop the trolley, thus saving my child's life. I will survive the crash, but my precious car will be destroyed, and—because I could not afford the expensive insurance—there is no possibility of replacing it. Additionally, the impact will also injure me such that for nine months I will occasionally experience nausea and vomiting, moderate to severe back pain, significant weight gain, and other unpleasant symptoms. After nine months, I will have an extremely painful medical procedure, lasting hours, to treat my injuries, from which it will take me about six weeks to recover, and which will permanently scar and alter my body's appearance, though I will not be permanently disabled in any significant way. Unger argues that even though the action would be as severe as sacrificing *my entire life's work and ambition*, I am morally required to keep my car on the tracks. Patrick Lee also asserts the injustice of picking our own comfort or convenience over a child's life: "The harm avoided (discomfort) is not comparable, is not in the same category, with the harm caused (death)."[14]

Notice an additional significant factor: The child is my own. This added element seems to *increase, not decrease* my obligation to save the child. As Lee writes: "Even reluctant parents have responsibilities to their children. When we read or see on the news that people have left their newborn child in a garbage dumpster we react with horror or disgust."[15]

Consider also the typical response to an example given by ethicist Rosalind Hursthouse. She discusses how bone-marrow transplants can often save, or greatly prolong, the lives of people with leukemia. In the United States, we catalogue information on people's bone-marrow compatibility—a simple blood test can tell if people are compatible and, when volunteers register, the results are stored for future reference. Most commonly, when an individual needs a bone-marrow transplant, physicians first screen his or her family to find a possible donor. If no donor can be found in the family, physicians turn to the database. Hursthouse discusses an incident in which a young leukemia patient needed a bone-marrow transplant or he would die. None of the family members was a match, but a computer search found that there was one individual who was a match and could save/prolong the young man's life. When this individual was contacted and told of the situation, the individual refused to be a donor and save the leukemia patient's life. No, explanation for this refusal was given.[16]

Hursthouse's reaction to this story is the same as I would expect from most people: While it is understandable to be scared about such an operation and not want to do it, it seems profoundly selfish to refuse. She writes:

> You cannot refuse to do something just because it is frightening and unpleasant and a bit painful when it is a matter of someone else's life . . . a significant amount of time and trouble, worry and risk, may be morally required of one, to save someone's life even when only chance has brought about a circumstance in which one's choice lies between giving that time and trouble or letting someone die.[17]

One of the reasons people don't accept the idea that it is generally immoral to value anything other than one's own life over the life of another person is that this view entails the potential of requiring extreme sacrifice on one's own part. To change one's view would mean accepting that avoiding things like the suffering of pain or disfigurement, the losing of money, or work, or your dreams, etc., by letting someone else die is very bad, and that is extremely difficult because it requires massive and sweeping change in one's own life. However, it is imperative that we recognize that when another person's life will end if we pick some other thing over saving/sustaining that life, we are generally wrong to pick the other thing.

The question of whether or not abortion, though generally morally wrong, is conditionally allowable in the case of pregnancy due to sexual assault must be resoundingly answered in the negative. Clearly, it is not morally acceptable to inflict harm on an innocent individual in order to lash out vicariously at a different, guilty party. Additionally, it is not morally acceptable to choose to kill (or allow to die, or fail to sustain the life of) another innocent human being when that which one would sacrifice to sustain that innocent human being's life is profoundly less significant than the innocent life lost. This is even more clearly the case when the innocent life lost is that of one's own child.

If abortion is morally wrong because it is the killing of a human being, then the manner in which this pre-born child came into being is morally irrelevant. The truth remains that to have an abortion would be to kill—or at least to cease sustaining the life of—an entirely innocent individual who is additionally one's own child. While we must be sympathetic to the sufferings of the rape victim, it is not morally allowable or in any way justifiable to attempt to alleviate these sufferings by having one's pre-born child killed. Pregnancy due to sexual assault in no way morally justifies abortion.

The Practical Argument

The intuition that abortion, though generally morally wrong, ought to be allowed in the case of pregnancy resulting from sexual assault seems to be

rooted in the intuition that the pregnancy adds to the trauma of the rape and that the abortion will somehow assuage the suffering that the sexual-assault victim is experiencing from the rape, speeding her recovery. Though I have just shown that it is, in fact, not the case, let us assume, for the sake of argument, that abortion in this situation is morally justifiable. It seems only reasonable to examine whether or not an abortion in this situation would have the desired effect: namely, that it would somehow relieve the suffering that the sexual-assault victim is experiencing from the rape and speed her recovery. If the contrary is true—that an abortion in this case not only fails to assuage the sufferings of the victim, but in fact tends to make them worse—irrespective of the moral justifiability of the abortion, it makes no practical sense to allow abortion to be available in this situation.

In actuality, there is strong evidence that abortion will not only not alleviate the sufferings of sexual-assault victims, but only make them worse. Patrick Lee writes:

> It is important to see that abortion is unlikely to help the emotional condition of a woman or girl trying to recover from the horrible violence of rape. From all accounts, both pro- and anti abortion, abortion is itself a highly traumatic experience. . . . Women with the smallest chance of having severe emotional problems through feeling guilt about an abortion are those who had abortions for trivial reasons. The more serious the motive, that is, the more pressure there was to choose abortion, the more likely they will have serious emotional problems later. This means that girls or women who have abortions in pregnancies due to rape—though the number is quite small—are the most likely to have emotional problems later.[18]

We philosophers tend to do a lot of speculation, grounded on our intuitions regarding what is most likely to be the case. However, outside of the walls of our ivory tower, there is a real world. In that real world there are real events, and the facts of those events ought to have an impact on our analysis. Yet the factual evidence regarding the impact abortion has on the victims of sexual assault has been largely absent from this debate. Studies of this topic have been done, and all of the available evidence speaks with one voice. In Theresa Burke's summary:

> [In] the largest study ever done of women who had pregnancies resulting from rape . . . 89% of those who aborted a pregnancy resulting from sexual assault explicitly stated that they regretted having their abortions. They often described their abortions as more traumatic and difficult to deal with than the sexual assault. . . . Conversely, among the sexual assault victims who carried to term, in retrospect they all believed they made the right decision in giving birth. None regretted not having an abortion.[19]

Here follow some typical examples of the testimony given by the women in that study. The women's identities were kept confidential.

"Nina":

> The rape was bad but I could have gotten over it. The abortion is something I will never get over. No one realizes how much that event damaged my life. I hate my rapist, but I hate the abortionist too. I can't believe I paid to be raped again. This will affect the rest of my life.[20]

"Patricia":

> I killed part of myself when I had the abortion. It only compounded my pain; it didn't solve anything. . . . I would definitely discourage a woman from having an abortion following rape. . . . Only through seeing the pregnancy through to completion will she really allow herself the chance to heal completely. . . . The effects of abortion are much more far-reaching than the effects of the rape in my life.[21]

"Marie":

> Far from helping me deal with the rape, the abortion just covered the issue. Abortion is not helpful; it only obscures the areas that need healing by placing a huge wall of guilt between the real issues and the woman's conscience.[22]

"Helene":

> The negative feelings resulting from the rape were not eliminated by the abortion. Nothing was solved; instead, the grief was now doubled. . . . Abortion does not help or solve a problem—it only compounds and creates another trauma for the already grieving victim by taking away the one thing that can bring joy.[23]

The pages of the four books I mentioned near the beginning of this paper (*Victims and Victors*; *Aborted Women, Silent No More*; *Forbidden Grief*; and *Women Exploited*) are filled with similar testimonies.

It is no wonder, then, that the suicide rates of sexual-assault victims who have become pregnant and had a subsequent abortion are so high. In one study, these women were found "three times more likely to commit suicide within a year of their abortions than women in the general population, and more than six times more likely than the women who carried their pregnancies to term."[24] Sandra Mahkorn, a rape counselor with decades of experience, argues that "encouraging abortion as a 'solution' to a rape pregnancy is in fact counterproductive, because abortion only serves to reinforce negative attitudes."[25] Mahkorn had the following things to say about pregnancy resulting from sexual assault:

> The belief that pregnancy following rape will emotionally and psychologically devastate the victim reflects the common misconception that women are helpless creatures who must be protected from the harsh realities of the world. . . . Pregnancy need not impede the victim's resolution of the trauma. . . . While on the surface this "suggestion" may appear acceptable and even "humane" to many, the victim is dealt another disservice. Such condescending attitudes on the part of physicians, friends

> and family can only reaffirm the sense of helplessness and vulnerability that was so violently conveyed in the act of sexual assault itself.[26]

An annotated bibliography, *Detrimental Effects of Abortion*,[27] provides 259 pages of sources, all of which give extensive detail of the vast number of severe, physiologically and psychologically detrimental effects of abortion.

One might well ask: If the profoundly negative effects of abortion in the case of pregnancy resulting from sexual assault are so well documented, where do otherwise rational people get the intuition that this would be beneficial? Reardon et al. have an excellent explanation for this phenomenon:

> Public support for abortion in cases of rape is rooted in one thing, the abhorrent fear of being raped. The opinion that "I would never want to have a rapist's baby" arises directly from the underlying fear, "I would never want to be raped." . . . Indeed, none of the women whose testimonies we gathered wanted to be raped. Given the choice, none of them would have chosen this way to become pregnant. Before their own experience with rape pregnancies, most would have accepted the idea that abortion might be good in the case of rape pregnancies. It is only when they were actually faced with such a pregnancy that they could see through this universal fear. . . . The majority of pregnant rape victims actually choose to carry to term. Prior to their own rape pregnancies, many of these women had opinions that were typical of the general population. Most would have accepted abortion in the cases of rape.[28]

Thus, the explanation for the erroneous intuition that abortion is somehow "the right thing to do" in the case of pregnancy resulting from sexual assault is as follows: The element of the intuition that is "doing all the work" is the fear of being raped, or the fear of having someone one care for being raped. However, once this awful event has occurred, it becomes clear that the moral value of the pregnancy itself and the event that caused that pregnancy are not as connected as we might think, at least in the event that the cause is negative. Many people have the intuition that if the cause of the pregnancy is negative, as it clearly would be in the case of rape, then the pregnancy itself can only be negative. All available evidence seems to suggest that this is not necessarily the case and that, in fact, the pregnancy might be a significant factor in the healing process; countless testimonies of women who carried their pregnancy to term after they were raped support this argument. On the other hand, all available evidence clearly illustrates that the *vast* majority of women who have an abortion after becoming pregnant from a sexual assault profoundly regret this decision and have a vast array of negative physiological and psychological effects.

Let us suppose that there is a 12-year-old boy who firmly believes that the only way he can make it through the psychological trauma of being a teenager is to become a star linebacker for the football team. However, he is very small and there is no indication in his background that he will grow to be big

enough to be a star linebacker. Let's further suppose that this boy goes to his parents and personal physician and says: "The only way that I can survive the trauma of being a teenager is to be a star linebacker and the only way I can be big enough to do that is for you to give me steroids." What would be our impression of any parent or physician who complied with this request? All available evidence points to the severely detrimental effects of taking steroids. It seems that any parent or physician with any sense would refuse the treatment and recommend some other, more beneficial course of action.

The same conclusions seem to apply to abortion in the cases of pregnancy resulting from sexual assault. All available evidence indicates that there are severely detrimental physiological and psychological effects to this course of action, and nearly every woman who takes this action deeply regrets it. If the conditions that lead us to conclude that any parent or physician with any sense would refuse the treatment and recommend some more beneficial course of action in the steroid case and the sexual assault abortion case are the same, as it seems clear that they are, our responses ought to also be the same.

It appears, then, that the majority position—which claims that abortion is generally morally wrong, but allowable in the special situation of a pregnancy caused by a sexual assault—is irrational. Clearly, if abortion is generally wrong then the situation that caused the pregnancy is morally irrelevant to the question at hand. Additionally, all available evidence indicates that not only is abortion not morally allowable in this circumstance, but it also has severely detrimental effects on the women whom we have sought to help, and is thus impractical. It seems safe to conclude that the fact that a pregnancy has resulted from a sexual assault is no justification for allowing abortion.

NOTES

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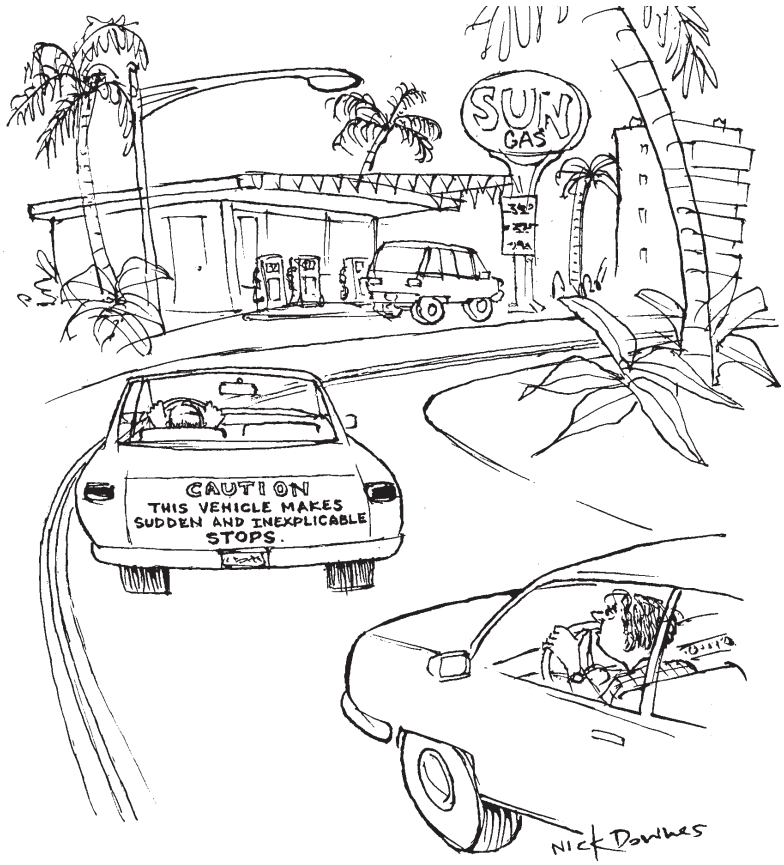

Choosing Life

Stephen Vincent

For Kelly and Darin, a married couple in Florida, the cute cartoon figures on the Choose Life license plate presaged an even cuter baby: the real baby girl they adopted with help from the Choose Life program.

"I would see those Choose Life plates around but I never really knew what they were all about," says Kelly, who with her husband did not want their last name used for this article. "Now I'm going to encourage people to get the plates. I see how much we benefited, how much they can help the birth mother, and the child who is adopted."

Kelly and Darin are among the many couples who have followed the license-plate message to choose adoption. They worked through Bethany Christian Services in Winter Park to locate a young pregnant woman who was seeking to place her child for adoption. The young mother was a client of Women's Pregnancy Center in Ocala, a pro-life pregnancy resource center (PRC) that receives funds from the Choose Life license-plate program to provide counseling and support services for women planning to place their newborn for adoption.

"It is so wonderful to be able to be a blessing with these funds," says Tracy Okus, the adoption counselor for Women's Pregnancy Center. "It makes something that is so difficult just a little bit easier sometimes, especially when we are helping a single mom who is struggling."

With funds from the state-approved plates, Okus provides basic necessities for pregnant women who are making adoption plans. These include rent or mortgage, medical expenses, food, clothing, and transportation. According to the legislation under which the Choose Life program operates, 70 percent of the funds must go directly to clients who plan to place their child for adoption, and 30 percent is reserved for adoption-related educational materials and advertising campaigns. The centers receiving funds may not perform or refer for abortion.

Sunshine State Start

Initiated in Florida just over ten years ago, the Choose Life plates have spread to 23 other U.S. states, raising money for adoptive services and spreading a pro-life message. The effort in each state takes a different path, depending on the social and legislative atmosphere. Successful campaigns in

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one state are used as roadmaps for others, but the way in which the plates are introduced into the legislature and presented to the public depends largely on local conditions.

Opposition in each state varies in intensity, though pro-abortion groups and legislators have always made their voices heard wherever the plates are proposed. The common argument is that the state should not be subsidizing and promoting the message of one side of a political debate over abortion. The commonsense response is that the state has an interest in fostering the improved care and upbringing of children through their placement with qualified adoptive parents.

If Connecticut can promote "Save the Sound" (for the Long Island Sound), states should certainly be free to prefer adoption over abortion.

Still, the fact that the plates do not mention abortion, and promote adoption, which most recognize as a public good, has helped the program pass through state capitols.

Indeed, proponents say the issue is not so much political as social—providing counseling and resources so that pregnant women in difficult circumstances have the freedom to make a true choice, to consider the adoption option.

According to Choose Life, Inc., a nonprofit formed in Florida to advise groups in other states, the automotive plates started as the idea of Randy Harris, who was Marion County commissioner at the time. After noticing the proliferation of specialty plates for different causes in Florida, he envisioned a pro-life, pro-adoption message for his state.

He and two other volunteers, Jim Steel and Russ Amerling, set about fulfilling the state's requirements for introducing a new specialty plate. They raised $30,000 quite easily from a strong pro-life community and gathered more than 14,000 signatures. But the state senate turned back the application in 1997. Undeterred, the trio resubmitted their application in the next legislative session, and this time both the House and Senate voted to approve. The bill was sent to the desk of the governor, who promptly vetoed it.

Unlike most vetoes at the state level, this one made national news, and pro-lifers across the country began calling for a Choose Life plate in their own states. A new pro-life movement was born almost overnight by the reflexive veto of a Democratic governor in the usually conservative state of Florida.

The Choose Life trio went back to the legislature a third time, which proved to be the charm. The measure squeaked through the senate by a single vote; when the bill reached the governor's desk, the man holding the pen this time was newly elected Jeb Bush. He was happy to add his signature to make it

law on June 10, 1999. The nation's first Choose Life plate was a legislative winner, but a lawsuit by the National Organization for Women held up the actual sale of the plates for more than a year. Finally, on August 11, 2000, the first Choose Life plates were released to the public and motorists were truly free to display the message of their choice.

In the past decade, the Choose Life plates have appeared on more than 40,000 Florida vehicles, and have been renewed by motorists numerous times. With the extra $20 registrants pay for the specialty plate, more than $5 million has been raised for pro-life pregnancy centers that help women choose adoption over abortion. According to Choose Life, Inc., about 400 adoptions are aided each year in Florida with the license-plate funds.

'Johnny Appleseed' Services

Choose Life, Inc., keeps a scorecard on its website (www.choose-life.org) with images of each state's approved license plate. Most states show the distinctive mop-head boy and girl figures along with the words "Choose Life." But Tennessee has a picture of an actual laughing baby; Louisiana has a drawing of a stork carrying a baby in a blanket; North Dakota shows an image of a child's heart within a larger heart; and Missouri has cut-out figures of a big sister holding hands with her toddler brother, who carries a teddy bear.

Virginia went through a heated debate on the plates this spring and became the 24th state to vote approval. After the legislature passed the measure in March, Gov. Tim Kaine, a Democrat, was under intense pressure from pro-abortion groups to use his veto power. NARAL even called the license plates "propaganda." Kaine, who was on record as wanting to reduce abortions, eventually signed the bill, and the plates became available to motorists on July 1.

A map on the Choose Life website gives the status of bills by state, with some surprises. The reliably pro-life Texas and Kansas have yet to pass a Choose Life bill, whereas heavily liberal Connecticut already has plates available.

Russ Amerling, a 66-year-old retired IRS agent, wears many hats for Choose Life, Inc., which is a fully volunteer organization. ("No one gets a salary," he confirms.) As secretary, treasurer, and media liaison, Amerling tends to much of the day-to-day business. "We are like the Johnny Appleseed of the Choose Life plates, going around, planting seeds," Amerling laughed. "We help [activists in other states] through the maze of legislatures, to develop language for a bill, to get the message to policymakers, to encourage them to keep going."

He said the effort in Florida is a great motivator to other states. What if his

team had quit after the first legislative defeat? Amerling tells those starting up in other states that they must believe in the message, believe in the program, and keep going for the sake of the children and their mothers.

A list of personal stories posted on the website shows the difference the license plates are making. Pat in Memphis tells this story:

> [A lady] was parked in a shopping mall parking lot. When she returned to her car, she found a young girl standing behind her car, crying. The girl said she wanted to meet the owner of the car. The lady thought the girl had been in an accident.
> No—the girl wanted to thank her for having that license plate, because God had used it to convince the girl not to have an abortion. The girl had been in her boyfriend's car on the way to an abortion clinic, when she prayed about the decision to abort (with which she had been struggling). Her boyfriend wanted her to have the abortion and he was paying for it. She had been afraid to tell her parents about the pregnancy.

To condense the rest of the story, the girl told her boyfriend to pull into the mall's parking lot so she could visit the bathroom. On her way inside, she saw the Choose Life license plate and suddenly her heart was touched. From the mall, she called for her parents to pick her up. When she returned to the parking lot, she couldn't find her boyfriend's car. So she stood behind the car with the Choose Life plate, to thank the driver when she returned.

Other testimonies come from pregnancy-center directors who tell of the teens and college students they have helped to find adoptive parents for their newborns, with funds from the Choose Life program. One young woman tells of getting pregnant while in college, and the hopelessness she felt until she found a pregnancy center that supported her choice to keep the child and paid for all her expenses related to the pregnancy. She even got to see the baby sometime later, with the adoptive parents. "He is chubby, healthy and so happy. My family and my counselor celebrated this reunion with me," she writes.

Personal Conviction

Amerling got involved in pro-life issues in a personal way some years ago. Through much of his life, he didn't give the issue of abortion much thought.

"I knew it was legal, but abortion never really entered my universe," he admits.

The issue became personal when a single woman in the Sunday-school class he was teaching became pregnant. "It was a wake-up call for me," Amerling recalls. "What do I do? What advice should I give? The answer was obvious, as soon as someone I knew was in this situation."

The young woman delivered her child. Sixteen years later, Amerling still

keeps in touch with her. "She's married now, with two more children," he reports. "She says about her first child, 'He is the joy of my life.'

"I know many pro-life counselors who deal with women who regret their abortions," Amerling continues. "I have yet to meet a woman who regretted having the baby."

Amerling and his wife, Jill, have devoted their retirement years to the Choose Life cause. "We hope to live long enough to see the plates on the road in all 50 states," he said. With 24 states approved, they're almost halfway down the long and winding road to a "Choose Life" America.

William Wilberforce and the Fight for Life

Edward Short

In the spring of 1797, after devoting ten years of his life to the fight to abolish the slave trade, William Wilberforce (1759-1833) saw his hopes for abolition once again dashed when the House of Commons voted to refer the issue to the colonial legislatures, which had no interest in even considering the case for abolition. "In these circumstances," William Hague writes in his brilliant biography of the Great Liberator, "the responsibility resting on Wilberforce's shoulders to sustain the parliamentary battle, develop new lines of attack against wily opponents, and keep the hopes of abolitionists alive at a time when so many had lost heart or abandoned the fight, was immense. Looked at from the standpoint of the twenty-first century, Wilberforce's ultimate victory was inevitable. But looked at from the standpoint in April 1797, after such a string of deeply discouraging defeats, the workings of inevitability would have seemed very hard to discern."[1]

In the past, Wilberforce had steadfastly done battle with the economic interests behind the trade, which were considerable, concentrated in England's three wealthiest ports, Liverpool, Bristol, and London. But now a new obstacle arose. In the wake of the French Revolution, there was widespread fear that slave rebellions might break out in British-owned colonies in the West Indies, and the consensus in Parliament and the country was that if abolition were granted, these colonies would become ungovernable. So, once again, abolition had been scuttled. Yet despite setbacks, despite the obloquy of contemporaries, Wilberforce and his abolitionists stood their ground. Among his many detractors was no less a figure than Lord Nelson, who spoke for many when he said, "I was bred in the good old school and taught to appreciate the value of our West Indian possessions . . . and neither in the field nor the senate shall their just rights be infringed, while I have an arm to fight in their defense or a tongue to launch my voice against the damnable doctrine of Wilberforce and his hypocritical allies."[2] As it happened, Wilberforce's allies were a good part of what made him so redoubtable. They numbered the prime minister, William Pitt, who may not have shared his friend's religious convictions but knew that slavery was untenable; both morally and economically.[3] John Newton, a former slave trader turned preacher, most of whose youth had been given over to blaspheming and

Edward Short is completing a book on Cardinal Newman and his contemporaries which will be published by Continuum.

buccaneering; Granville Sharp, a philanthropist and self-taught scholar, who brought to the abolition campaign the same prodigious determination that he brought to teaching himself Greek and Hebrew; and Thomas Clarkson, the Cambridge-educated pamphleteer who spent years amassing evidence to document the deep criminality of slavery. In 1787, after putting himself to school to Sharp and Clarkson, Wilberforce was convinced that abolition was a cause that "speaks for itself. . . . As soon as I had arrived thus far in my investigation of the slave trade, I confess to you, so enormous, so dreadful, so irremediable did its wickedness appear that my own mind was completely made up for the abolition. . . . Let the consequences be what they would, I, from this time determined that I would never rest until I had effected its Abolition."[4] But another reason Wilberforce prevailed against his opponents was that there was a core of indomitable resilience in the man, which actually became stronger in adversity. The source of this was his strong faith in God, which also left him in no doubt of the eventual triumph of truth. This is why the legacy of William Wilberforce and his campaign to abolish slavery offers such useful encouragement to those committed to protecting life against the scourge of abortion. In long-term campaigns, foot soldiers, no less than commanders, need to be reassured that others have prevailed over comparably formidable odds. By revisiting Wilberforce's life and the strategies he pursued, against opposition that must often have seemed insuperable, we can put some of the challenges and setbacks faced by the pro-life movement in some historical perspective.

William Wilberforce was born in the High Street, Hull, on August 24, 1759, the "year of victories" in which the British gained Canada and India for what would become their slave-riddled empire. Wilberforce's paternal grandfather had made the family fortune in the Baltic trade. He was also prominent in local affairs, being mayor of Hull twice and owning landed estates in Yorkshire. His father, Robert Wilberforce, fully expected his son to carry on the family trade. In his wonderfully readable account of Wilberforce's life, Hague describes the mercantile hubbub in which Wilberforce grew up. In front of the family's elegant and roomy red-brick house, built in the late 17th century, carts and wagons were loaded and unloaded with the goods brought back from ships; but "Such a scene outside the front door of the house was only a hint of what would be happening at the bottom of the garden at the rear; ships were moored to each other as they waited, sometimes for weeks, for customs officers to give permission to unload; when they did so the staiths would groan beneath the weight of imported goods—timber, iron, ore, yarn, hemp, flax and animal hides from Scandinavia, manufactured goods and dyes from Germany and Holland, and,

as the century wore on and a growing population took to importing its food, large quantities of wheat, rye, barley, beans, peas, beef, pork and butter, all to be washed down with thousands of gallons of Rheinish Hoch."[5]

Apropos Wilberforce's early life, Hague writes that "those looking for clues to his later choices in life will not find them in his infant years." And yet, there are clues. The family business impressed on Wilberforce the evil of preventing human beings from exercising their God-given talents. In this, he would have entirely seen Adam Smith's point that slavery was wrong, among other reasons, because "A person who can acquire no property, can have no other interest but to eat as much, and to labour as little as possible. Whatever work he does beyond what is sufficient to purchase his own maintenance can be squeezed out of him by violence only and not by any interest of his own."[6] And Wilberforce's own personal fragility as a child, which would leave him with poor health throughout his life, convinced him of the preciousness of God's gift of life. Later, he was grateful, as he said, "that I was not born in less civilized times, when it would have been thought impossible to rear so delicate a child." So, from an early age, Wilberforce was aware of both the potential and the vulnerability of human life—which he would apply again and again to his campaign to end slavery.

In October 1776, Wilberforce entered St. John's College, Cambridge, where, as he wrote, "I was introduced on the very first night of my arrival to as licentious a set of men as can well be conceived. They drank hard, and their conversation was even worse than their lives. . . . Often indeed I was horror-struck at their conduct."[7] What Wilberforce encountered at Cambridge was unexceptional: Oxbridge in the 18th century was notorious for hard drinking and dissipation. Still, even without these distractions, Wilberforce might still have had a hard time applying himself to his books. His considerable personal fortune, as well as his native generosity—he always had a great Yorkshire pie on offer in his rooms—gave him a prominence in his college that was fatal to diligence. An undergraduate who lived nearby recalled, "By his talents, his wit, his kindness, his social powers, his universal accessibility, and his love of society, he speedily became the centre of attraction to all the clever and the idle of his own college and of other colleges."[8] Despite his social success, he graduated full of regret that he had not lived under a more "strict and wholesome regimen." Nevertheless, in at least one respect, these years foreshadowed his later abolitionist career. However physically unimposing—he was only five foot four and never without his beribboned eyeglass, which was necessary for his poor eyesight—Wilberforce demonstrated at Cambridge the same ability to gather talented companions around him that he would demonstrate in London when he led the campaign

against slavery.[9] There was something life-affirming, something infectiously good and giving about the man, and others gravitated to him.

Disinclined to join the family business, Wilberforce chose instead to go into politics and at the age of 21, in September 1780, he became MP for Hull. In the House of Commons, he befriended William Pitt, who often stayed with Wilberforce in his house in what was then still rural Wimbledon, which he inherited from his uncle. Pitt and Wilberforce personified the attraction of opposites. Pitt was shy and haughty, Wilberforce outgoing and ingenuous. There were other complementary differences. As Hague points out, "Pitt had plentiful connections, widespread recognition and a famous name, but no money; Wilberforce had exactly the opposite."

After Wilberforce helped Pitt become prime minister in 1783, when Pitt was only 24, their political alliance was forged; with few exceptions, it remained intact for the rest of their careers. Nevertheless, Pitt's support for abolition, while helpful, was no more instrumental in securing its political and legal success than Reagan's and Bush's support for the pro-life movement was instrumental in its success. The abolitionists had to establish and maintain widespread, popular support for some 60 years against constant attacks before they could pass abolition in Parliament. Winning the debate over slavery in the country as a whole was always more important than securing powerful parliamentary connections, useful though those were.

Here pro-lifers can take heart. All the major polls attest that the majority of Americans side with life: 51% of Americans self-identify as pro-life; (Gallup Poll, June 2009); 61% of Americans say abortion is an important issue and 52% think it is too easy to obtain an abortion in America (Rasmussen Survey, June 2009); and 62% of Americans want more limitations placed on abortions, while only 36% believe abortion should be generally available (CBS Poll, June 2009).[10] President Obama and the pro-abortion lobby are working aggressively to roll back protections for the unborn against the will of the majority, which does not bode well for the sustainability of their assault on the innocent.[11]

In 1784 and 1785, in the course of making two continental tours, Wilberforce underwent a deep conversion experience. As he described it, he was so conscious of his "great sinfulness in having so long neglected the unspeakable mercies of my God and Saviour . . . that for months I was in a state of the deepest depression. . . . Nothing which I have ever read in the accounts of others exceeded what I felt." Aware that he had the power to do both great good and great evil, he confided to his Diary in 1785, "I must awake to my dangerous state, and never be at rest till I have made my peace

with God." An old school friend suggested that Wilberforce read Philip Doddridge's *The Rise and Progress of Religion in the Soul* (1745), which laid out many of the signal elements of evangelical Christianity. "You will wish to commence a hero in Christ," Doddridge exhorted his reader, "opposing with a vigorous resolution the strongest efforts of the powers of darkness, the inward corruption of your own heart, and all the outward difficulties you may meet with in the way of your duty, while in the cause and in the strength of Christ you go on conquering and to conquer."[12]

Once imbued with his newfound evangelical faith, Wilberforce was unsure whether he should remain in public life. It was Pitt, the least religious of men, who disabused his friend of the notion that public life and faith were somehow incompatible. "You confess that the character of religion is not a gloomy one," Pitt wrote, "and that it is not that of an enthusiast. But why then this preparation of solitude, which can hardly avoid tincturing the mind either with melancholy or superstition? . . . Surely the principles as well as the practice of Christianity are simple, and lead not to meditation only but to action."[13]

The next man to whom Wilberforce went for advice made an even more decisive impression on him. John Newton was a former slave trader from Liverpool turned preacher whose conversion to evangelical Christianity only gradually opened his eyes to the evils of slavery, but once his eyes were opened he became a fierce anti-slavery campaigner, principally from prominent pulpits in the City of London. Newton's autobiography went through ten British and nine American editions before the end of the 18th century, and he was at work on a book of hymns with William Cowper, right before the poet descended into his final madness. He was also the author of such well-known hymns as "How sweet the name of Jesus sounds," "Approach, my soul, the mercy seat," and "Amazing Grace." The advice that Newton gave Wilberforce on whether or not he should remain in public life stayed with him for the rest of his life: "You meet with many things which weary and disgust you," he told the young convert, "which you would avoid in more private life. But then they are inseparably connected with your path of duty. And though you cannot do all the good you wish for, some good is done, and some evil is probably prevented, by your influence and that of a few gentlemen in the House of Commons, like-minded with yourself. . . . You are not only a Representative for Yorkshire. You have the far greater honour of being a Representative for the Lord, in a place where many know him not, and an opportunity of showing them what are the genuine fruits of that religion which you are known to profess."[14]

Once in receipt of this counsel, from a man who suffered piercing remorse for his own past folly, Wilberforce finally saw his way clear. "My walk is a

public one," he wrote; "my business is in the world; and I must mix with the assemblies of men, or quit the post which Providence has assigned me."[15]

Were Wilberforce living in our own time, he would have seen something of his own Christian commitment to the fight for life in Father Richard John Neuhaus, who once reminded a gathering at a pro-life conference: "We are signed on for the duration and the duration is the entirety of the human drama, for the conflict between what John Paul II calls the culture of life and the culture of death is a permanent conflict. It is a conflict built into a wretchedly fallen and terribly ambiguous human condition."[16] There was nothing Pelagian about that prediction.

In 1797, while at Bath, Wilberforce met and married Barbara Ann Spooner, the daughter of a Birmingham banker and his wife, Barbara Gough-Calthorpe, the sister of the first Lord Calthorpe. Scarcely two weeks after Barbara sought Wilberforce out for spiritual advice, he proposed. Their strong, devoted marriage produced seven children, two of whom, Robert Isaac and Henry William, were converted to Roman Catholicism by John Henry Newman. Wilberforce delighted in children and was an attentive and playful father, never allowing his political activities to stint his family life.

Wilberforce's long-gestating concern for the plight of slaves took definite shape in 1787, when, under what came to be known as the "Wilberforce oak" in Holwood, Kent, Pitt convinced his good friend to make the anti-slavery cause his own. On May 12, 1789, Wilberforce made his formal entry into the parliamentary campaign against slavery by giving a three-and-one-half-hour speech detailing the Middle Passage and the effects of the trade on Africa. Edmund Burke, after hearing the speech, praised it as "most masterly, impressive and eloquent. Principles so admirable, laid down with so much order and force, were equal to anything he had ever heard of in modern oratory; and perhaps were not excelled by anything to be met with in Demosthenes."[17] A brief excerpt will bear Burke out.

> Policy . . . Sir, is not my principle, and I am not ashamed to say it. There is a principle above everything that is political; and when I reflect on the command which says: "Thou shalt do no murder," believing the authority to be divine, how can I dare to set up any reasonings of my own against it? And, Sir, when we think of eternity and of the future consequences of all human conduct, what is there in this life that should make any man contradict the dictates of conscience, the principles of justice, the laws of religion, and of God? Sir, the nature and all the circumstances of this trade are now laid open to us; we can no longer plead ignorance, we cannot evade it, it is now an object placed before us, we cannot turn aside so as to avoid seeing it; for it is brought now so directly before our eyes that this House must decide, and must justify to all the world, and to their own consciences, the rectitude of the grounds and principles of their decision.[18]

In his biography of Wilberforce, Hague confirms something J. P. McFadden, the founder of the *Human Life Review*, knew instinctively: that, in any campaign to win hearts and minds, "eloquence matters."[19] It is true that Wilberforce's great speech did not carry the day when it was first delivered. After Wilberforce urged that abolition would improve the lot of the slaves already in the West Indies and refuted the economic case for continuing the trade, none of the twelve points he introduced in favor of abolition were debated: The interests in support of the trade were so rich and powerful that the question of abolishing it was thought unworthy of debate. On this dispiriting note was joined the fight for life that would consume Wilberforce for the next fifty years. But it was fitting that he should have started the campaign with such a burst of inspired oratory, because when Britain did finally abolish the slave trade (1807) and then slavery itself (1833), it was largely as the result of the steady stream of speeches, pamphlets, books, and letters that Wilberforce and his abolitionist companions addressed to the consciences of their contemporaries.

One difference between slavery and abortion is that the latter, as a "legal" practice, is relatively new. Until the late 20th century, no society had ever imagined that there could be a legal right for women to abort their babies. Slavery's roots, on the other hand, run deep. From the beginning of recorded time slavery was the inveterate corollary of conquest. After noting the prevalence of this barbarity among Babylonians, Egyptians, Greeks, and Romans, the historian J. M. Roberts had to admit that "the ancient world rested civilization on a great exploitation of man by man; if it was not felt to be very cruel, this is only to say that no other possible way of running things was conceivable."[20] The curious guiltlessness that attached to slave-owning survived well into the 19th century. In his classic study, *Southern Honor*, Bertram Wyatt-Brown writes of how "Yankees, most especially the antislavery reformers, expected Southern contrition for wrongs of the slaveholding past, but that would have violated Southern honor." He quotes Cornelia Spencer, a matron from South Carolina and survivor of the Civil War. "I believe," she wrote at the end of the war, "that the South sinned. Sinned in her pride, her prosperity, her confidence. Sinned in the way she allowed a few fanatical demagogues to precipitate her into the war. . . . But strongly as I feel all this, so strongly do I feel that, though we have fallen we shall rise again. God chastens whom He loves. . . . I would rather be the South in her humiliation than the North in her triumph."[21] Such impenitence was an important corollary of slave-owning, and it would make the abolition of slavery doubly difficult. This is why the evidence-gathering of Sharp and Clarkson was so crucial: It revealed the full horrors of the trade to people who had no direct

experience with it. Agents in our own popular culture work to promote a similar guiltlessness about abortion, by involving the issue in what are now treated as the irresistible "rights of women," but it is dubious whether the attempt will ever entirely succeed. Natural law cannot be indefinitely flouted.

Slavery entered a new and accelerated phase with the emergence of the colonies of the New World, first in the Caribbean and then on the American mainland, which were heavily reliant on slave labor. Initially, the Portuguese ruled the trade; then the Dutch; but, beginning in the 18th century, the French and English took it over, setting up their own trading posts along Africa's "slave coast." "Altogether," Roberts calculates, "their efforts sent between nine and ten millions of black slaves to the western hemisphere, 80 per cent of them after 1700. The eighteenth century saw the greatest prosperity of the trade; some six million slaves were shipped then. European ports like Bristol and Nantes built a new age of commercial wealth on slaving. . . . What has disappeared and can now never be measured is the human misery involved, not merely in physical hardship (a black might live only a few years on a West Indian plantation even if he survived the horrible condition of the voyage) but in the psychological and emotional tragedies of this huge migration."[22]

This calls to mind the 45-million-plus biographies that should have enriched American history, but that abortion made impossible. And what is even more remarkable about this shambles is how many continue to accept it. For an age that battens on self-recrimination—loathing itself for committing every imaginable injustice—it is odd how it never fails to absolve itself of the crime of abortion, against which all other crimes of the modern world pale. When the history of this episode in deliberate moral blindness finds its historian, what a tale will be told of narcissism and heartlessness, bad faith and worse reasoning, guilt and brazen denial of guilt.

Slavery, too, inspired its fair share of callousness. After approving Sir John Hawkins's slave-trading expeditions, Elizabeth I hoped that no slaves would be taken against their will, for "that would be detestable and call down Heaven upon the undertakers."[23] Here was the deliberate blindness that animated so much collusion in the trade. Even when slave traders had firsthand proof of the misery they were causing, they tended to minimize it. One British captain described how "the men were put in irons and two shackled together, to prevent their mutiny or swimming ashore. The Negroes are so willful and loth to leave their own country that they have often leap'd out of canoes, boat and ship into the sea, and kept under water until they were drowned to avoid being taken up and saved . . . they having a more dreadful apprehension of Barbados than we have of hell though, in reality, they live

much better there than in their own country; but home is home."[24] Once on board, slaves who refused to eat were force-fed or threatened with burning coals; mutinous slaves were flogged "till the poor creatures have not power to groan under their misery;" and female slaves were routinely raped. As John Newton testified, slave ships were "part bedlam and part brothel."[25] And yet he himself was living proof that men could feel remorse for conniving at such barbarity and join the good fight to stop it. "Amazing Grace, how sweet the sound / That saved a wretch like me / I once was lost but now am found / Was blind, but now, I see."

Many in the 21st century look down their noses at an 18th-century social order that could tolerate the inhumanity of slavery. As proof of that inhumanity they cite the Zong Massacre (1781), when Luke Collingwood, captain of the slave ship *Zong*, set sail with over 400 slaves from São Tomé in the Gulf of Guinea en route to Jamaica. After being blown off course, the ship was left without enough water for its enslaved cargo, so Collingwood and his officers decided to throw 133 sick and dying slaves overboard to enable the ship's Liverpool owners to avoid paying £30 a head insurance for each dead slave.[26] Wikipedia, the popular encyclopedia, describes the episode thus:

> The term "Zong Massacre" was not universally used at the time. It was usually called "The Zong Affair," the term "massacre" being used mainly by those considered to be 'dangerous radicals.' . . . At the time, the killing of slaves—individually or *en masse*—was not considered to be murder. In British law, the act was completely legal and could be admitted to the highest court in the land, without danger of prosecution.

What Captain Collingwood and his officers did in the mid-Atlantic 228 years ago will never cease to horrify the humane conscience. But it is striking that the legal murder of abortion inspires no similar outrage. After all, we legally dispose of unborn children at an infinitely higher rate and with the same brisk callousness. Perhaps one day, when the information age has disenthralled itself from the culture of death, we will see an entry in Wikipedia for "The Abortion Massacre," one that will read: "At the time, the killing of unborn children—individually or *en masse*—was not considered to be murder. In British and American law, and indeed most law around the world, the act was completely legal and could be admitted to the highest court in the land without danger of prosecution. . . ."

Yet this analogy is not entirely exact, because English law in the 18th century did *not* sanction the murder of slaves; or, indeed the practice of slavery. Wikipedia, like most ventures involved in political correctness, falsifies the historical record. In his magisterial history, *A Polite and Commercial People: England 1727-1783*, Paul Langford, Professor of Modern History at Lincoln College, Oxford, shows that the 18th-century English might look the other way at the

crime of slavery but they would not degrade their law into sanctioning what they knew was unsanctionable. Of course, Langford admits that abolitionists had their work cut out for them at a time when slavery was such an integral part of England's growing empire, but he also shows that abolitionists did make progress, however incremental.

> The most notable victory of the early years was the verdict of 1772 in the case of James Somerset, a negro on whose behalf a group of London reformers sought legal redress. [Somerset was an escaped slave who was recaptured and was being held aboard a ship in London preliminary to being sold in Jamaica.] Mansfield was a cautious judge in such matters and was reluctant to offer a definitive verdict in a test case of this kind. None the less he eventually ruled that slavery was "so odious that nothing can be suffered to support it but positive law. Whatever inconveniences, therefore, may follow from this decision, I cannot say this case is allowed or approved by the law of England; and therefore the black must be discharged." Though he hedged his judgement about with qualifications, it was widely taken to signify that slavery was illegal in England itself.[27]

Lord Mansfield's reasons for coming down on the side of Somerset were not dissimilar to those that impelled Byron White to come down on the side of the fetus in *Roe* v. *Wade*, when he wrote in his splendid dissent: "I find nothing in the language or history of the Constitution to support the Court's judgment. The Court simply fashions and announces a new constitutional right for pregnant mothers [410 U.S. 222] and, with scarcely any reason or authority for its action, invests that right with sufficient substance to override most existing state abortion statutes. The upshot is that the people and the legislatures of the 50 States are constitutionally disentitled to weigh the relative importance of the continued existence and development of the fetus, on the one hand, against a spectrum of possible impacts on the mother, on the other hand. As an exercise of raw judicial power, the Court perhaps has authority to do what it does today; but, in my view, its judgment is an improvident and extravagant exercise of the power of judicial review that the Constitution extends to this Court."[28]

In going up against the slave trade, Wilberforce was going up against an entrenched economic interest. This was clear enough when General Tarleton, MP for Liverpool, a former officer in the American War of Independence, notorious for his bloodlust and womanizing, stood up in the House of Commons and announced, "There are in Liverpool alone above 10,000 persons completely engaged in the slave trade, besides countless numbers affected and benefited by it. I have received instructions from my constituents to oppose Mr. Wilberforce's intentions with all my power."[29]

As John Ehrman, Pitt's biographer, remarked, slavery was "an integral part of the old Colonial System. . . . West Indian sugar needed support; British

shipping must retain its strength; and the greatest British ports—London, Liverpool, and Bristol—had substantial capital tied up in slaves. . . . Taking a long average, the number of Africans transported was perhaps 80,000 a year, of whom probably half were packed into British ships."[30] In *Slavery and the British Empire*, Kenneth Morgan breaks this economic interest down into real numbers. "Slaves together with staple products grown on plantations (especially tobacco, rice, and sugar) potentially generated lucrative returns in the early modern British Atlantic trading world. In 1770 tobacco (worth £906,638) was the most valuable export commodity from British North America and rice (worth £340,693) was the fourth most valuable commodity. In 1772-4 British sugar imports were worth £2,360,000, making sugar easily the most valuable commodity imported from anywhere."[31]

The economic interests against which pro-lifers battle are equally formidable. "The mammoth tax-exempt nonprofit with 122 affiliates nationwide reported revenues . . . of a record $903 million during its 2005-06 fiscal year," Charlotte Allen reported of Planned Parenthood in *The Weekly Standard*, "and it continues to bask in an amazingly exalted reputation, at least among Democratic politicos, celebrities, a largely sympathetic and even sycophantic press and the gigantic family foundations set up by such tycoons past and present as David Rockefeller, David Packard, Bill Gates, and the ubiquitous George Soros, all of whom have donated hundreds of millions of dollars to Planned Parenthood causes."[32] In April 2008, the annual report of Planned Parenthood revealed that the abortion provider had a total income of $1.02 billion—with reported profits of nearly $115 million. Taxpayers contribute $336 million to these revenues in the form of government grants and contracts at both the state and federal levels—a third of Planned Parenthood's budget. The 289,650 abortions performed by Planned Parenthood in America in 2006 give some indication of the use to which this funding is being put.

Yet Wilberforce and the abolitionists, like pro-lifers today, were also up against another more insidious foe: the invocation of rights. In the case of the slave trade, this was tantamount to a willful refusal on the part of slave-owners to acknowledge the humanity of the enslaved, a refusal justified by the claim that the slave-owner had a *right* to such a refusal. "Slavery in its proper sense," Montesquieu wrote in 1748, "is the establishment of a right which makes one man so much the owner of another man that he is the absolute master of his life and of his goods." This was a useful defining of terms. Rights were bandied about in the defense of slavery with the same licentious abandon that they are bandied about today in the defense of abortion.

But for Montesquieu the right to slave-ownership was indefensible. "It is not good by its nature; it is useful neither to the master nor to the slave: not to the slave, because he can do nothing from virtue; not to the master, because he contracts all sorts of bad habits from [owning slaves], because he imperceptibly grows accustomed to failing in all the moral virtues, because he grows proud, curt, harsh, angry, voluptuous, and cruel." In 1762, Rousseau went further: "The words *slave* and *right* contradict each other, and are mutually exclusive." In 1769, the Scottish philosopher Adam Ferguson corroborated Rousseau: "No one is born a slave because no one, from being a person, can . . . become a thing or subject of property."[33]

Edmund Burke agreed with these thinkers in insisting that rights had to be judged on their practical import. Replying to a young Parisian after the outbreak of the French Revolution, who had asked whether the French were capable of turning their newfound liberty to responsible account, Burke wrote: "You have theories enough concerning the rights of men. It may not be amiss to add a small degree of attention to their nature and disposition. It is with man in the concrete, it is with common human life and human Actions you are to be concerned."[34] What Burke objected to in the French Revolution was that, in the name of rights, it ran roughshod over "common human life." We can see the same impatience with real life in abortionists and slave drivers. The proponents of abortion are as little concerned with the life of unborn children as the proponents of slavery are with the life of slaves: In both cases an abstract right trumps "man in the concrete."

Seen in this light, the woman who claims a "right" to end the life of the unborn child exercises the same "ownership" over that unborn child that the slave-owner exercises over the slave. According to this arrogant logic, if the child is an inalienable part of the woman's body and if the woman owns her body, it follows that the woman can do with the child as she likes—even if that means murdering the child. But this right is no more defensible than the right to own slaves. If the words *slave* and *right* contradict each other, so too do the words *aborted* and *right*: because they are also mutually exclusive. The proponents of abortion, in their solicitude for what they style the "reproductive rights" of women, like to fancy themselves the heirs of the Enlightenment, but Montesquieu and Rousseau, for all their theoretical vagaries, would have rejected a line of reasoning that claims a right to infanticide. In fact, Rousseau, worried that Europe might become depopulated, denounced abortion and argued that increasing population was the hallmark of good government.[35]

Wilberforce encountered opposition from yet another quarter: from those who claimed that in seeking to free African slaves, he was neglecting the

plight of British laborers. In 1823, William Cobbett took Wilberforce to task for urging that West Indian slaves be put on a footing equal to that of free British laborers. "Your appeal is to the inhabitants of this country," Cobbett wrote in his best polemical vein. "You make your appeal to Piccadilly, London, amongst those who are wallowing in luxuries, proceeding from the labour of the people. You should have gone to the gravel-pits and made your appeal to the wretched creatures with bits of sacks round their shoulders, and haybands round their legs: you should have gone to the roadside, and made your appeal to the emaciated, half-dead things who are there cracking stones to make roads as level as a die for the tax-eaters to ride on. What an insult it is, and what an unfeeling, what a cold-blooded hypocrite he must be that can send it forth; what an insult to call upon people under the name of free British labourers; to appeal to them in behalf of Black slaves, when these British labourers, these poor, mocked, degraded wretches would be happy to lick the dishes and bowls out of which the Black slaves have breakfasted, dined or supped."[36] After reading this, one can appreciate G. M. Young's observation in *Portrait of an Age*: "At the sight of Wilberforce, Cobbett put his head down and charged."[37]

Pro-lifers are often attacked for concentrating their efforts on the plight of the unborn at the expense of the born, agitating against abortion, so this reasoning goes, when they ought to be remedying the poverty that leaves so many children without health care, not to mention sufficient food, clothing, and shelter. In such invidious criticism Wilberforce would have recognized a familiar ploy. A good example of this was recently reported in the *Wall Street Journal* apropos the debate regarding health care and abortion:

> Federal law currently prohibits tax funding of abortion except in the rare cases of rape, incest or threat to the woman's life. Many private insurance plans offered by employers also exclude abortion coverage. That could change, though. Most congressional proposals would set up a federal oversight panel, which could require some plans to cover abortion. Given that possibility, Judie Brown, president of the American Life League, a Catholic anti-abortion group, says she finds it "diabolical" that some Catholics are pressing for congressional action. But other Catholic groups say the abortion issue distracts from pressing needs. The lack of good care, they argue, is in itself immoral, and so Catholics must make an overwhelming push to get Congress to act on behalf of the tens of millions of uninsured. "That's the real pro-life message," says Victoria Kovari, who runs Catholics in Alliance for the Common Good, a left-leaning advocacy group.[38]

The Zong Massacre points up another parallel between Wilberforce's campaign against slavery and the pro-life campaign against abortion. The horrors of the Middle Passage, thanks to the evidence gathered by Sharp and Clarkson, were increasingly put before the British public, as were the

torments that awaited slaves once they were delivered to market. In Rio de Janeiro, for example, they were herded together in shops, offered for sale stark naked, and bought like cattle. Yet in British politics it was thought axiomatic that abolishing this odious practice was unthinkable. And indeed there were many who argued before Parliament that the slave trade actually benefited slaves. As Hague points out, slave traders "sought to persuade the Privy Council that the slave trade maintained high standards of care and that the slaves themselves were often happy with their lot. . . . Such assertions may seem ridiculous, but there were certainly people sitting in London disposed to believe them and in a world with no photographic or recording devices it was difficult to prove to universal satisfaction that they were false."[39] Here we have a striking precursor to the Orwellian logic of Planned Parenthood, which never ceases to present its brutal assaults against the unborn as the ministrations of benevolence, though, with our sonograms and other recording devices, we have no excuse for continuing to credit the monstrous falsehoods of this unscrupulous organization.

The hurdles that faced Wilberforce when he launched his anti-slavery campaign in Parliament are not at all dissimilar from the hurdles faced by pro-lifers, who are told again and again that what has become the now deeply entrenched institution of abortion is similarly irresistible. Pro-lifers must continue to follow Wilberforce in taking the case for life to the country at large. A public opinion thoroughly acquainted with the evils of abortion will force the political establishment to repudiate those pressure groups that try to suggest that abortion is a species of health care or has the support of the majority of Americans.

Of course, in the case of abolition, it took British public opinion centuries to come round to the recognition that slavery was unacceptable. In the late 18th and early 19th centuries, there was always the temptation for a people consumed with many other concerns—revolution, war, bad harvests, economic depression, the dislocations of industrialization—to postpone abolition. Then, again, there was a reluctance to consider abolition because of the practical difficulties it would introduce. If abolition were granted, what would become of the slaves? Would they be able to be integrated into the society of free men? Or would they simply be appropriated by Britain's enemies? Yet, despite these difficulties, the education of public opinion undertaken first by Sharp, Clarkson, and Wilberforce and then by members of the Clapham Sect, including Thomas Babington Macaulay's father Zachary and Sir James Stephen, the grandfather of Virginia Woolf, bore fruit. Once public opinion was shown the facts of the matter, conscience undertook an importunate campaign of its own—a campaign which did not stop with the passing of the

Slave Trade Abolition Act in 1807 or the Abolition of Slavery Bill in 1833, which outlawed slavery throughout the British Empire.

In 1840, in response to stirrings of his own conscience, J. M. W. Turner painted *The Slave Ship*, which he based on the Zong Massacre and described as "Slavers throwing overboard the dead and dying—typhoon coming on." The artist in Thackeray marveled at the terrible vividness with which Turner recreated this vision of horror. "The sun glares down upon a horrible sea of emerald and purple, into which chocolate-coloured slaves are plunged, and chains that will not sink; and round these are floundering such a race of fishes as never was seen since the saeculum of Pyrrhae . . ."[40] Ruskin thought the painting contained "the noblest sea that Turner has ever painted," and confessed that "if I were reduced to rest Turner's immortality upon any single work, I should choose this."[41] Ruskin's father, after reading his son's rapt description of the picture in *Modern Painters*, bought it for him. Yet once the old man died, Ruskin got rid of it: The subject was too painful for him. That it hangs now in the Museum of Fine Arts in Boston is a macabre irony. Once a city fiercely opposed to slavery—William Lloyd Garrison personified its passion for abolition for decades in the 19th century—Boston is now a byword for rabid abortionism.

Turner's painting captures the despair of a man who looked out onto the world and saw only a sea of predators and "chains that will not sink." Even Ruskin had to admit that Turner "was without hope."[42] Similar despair always threatens the pro-life movement. This is why Wilberforce is such a salutary figure. He is a constant reminder of the power of hope, which is inseparable from the power of truth. "Accustom yourself to look first to the dreadful consequences of failure," he urged his fellow abolitionists, "and then fix your eye on the glorious prize which is before you; and when your strength begins to fail, and your spirits are well nigh exhausted, let the animating view rekindle your resolution, and call forth in renewed vigour the fainting energies of your soul."[43] This was the hope that animated Wilberforce in his fight against slavery, one rooted in courage. Of course, he urged his fellow abolitionists to show their opposition magnanimity and forbearance. "Let true Christians . . . strive in all things to recommend their profession," he wrote. "Let them be active, useful, and generous towards others; manifestly moderate and self-denying in themselves. . . . Let them countenance men of real piety wherever they are found; and encourage in others every attempt to repress the progress of vice, and to revive and diffuse the influence of Religion and Virtue. . . . Let them pray continually for their country in this season of national difficulty."[44]

But he also recognized that there was a time for taking off the gloves, and

this is the Wilberforce who speaks most compellingly to us today. In a letter to a friend he complained of opponents in high places. "It was truly humiliating to see, in the House of Lords, four of the Royal Family come down to vote against the poor, helpless, friendless Slaves. I sometimes think the Almighty can scarcely suffer us to be rid of such a load of wickedness, to which we cling so fondly. . . . It is often the way of Heaven to let the error bring its own punishment along with it. Well, my friend, it will one day be consoling that you and I exerted ourselves to clear the ship of this stinking cargo."[45]

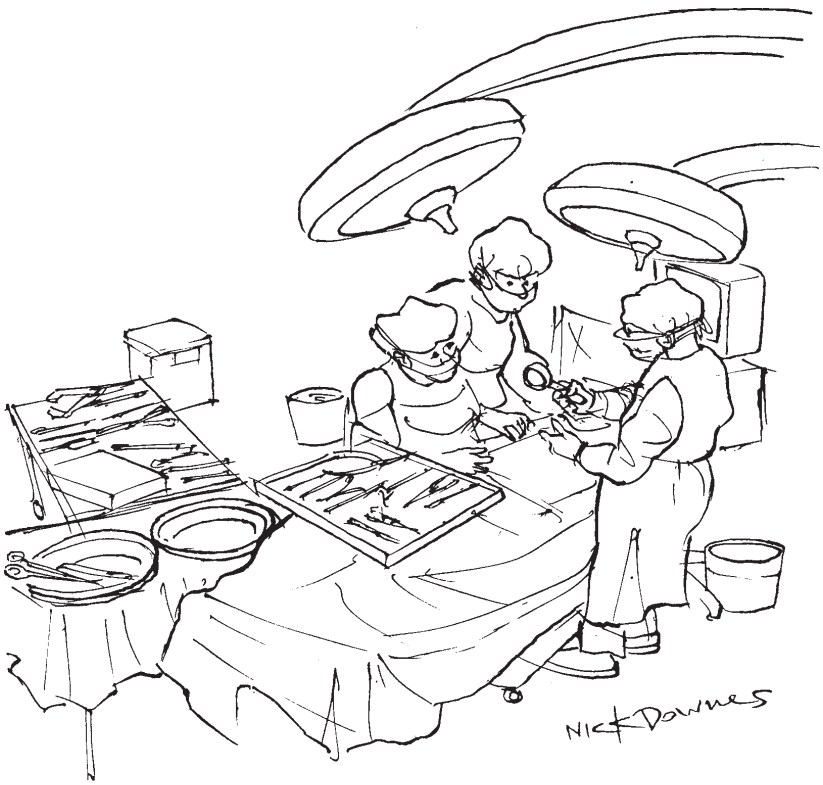
We too must clear our ship of stinking cargo, especially that perfidious cargo which would usurp our liberties by making abortion an obligatory component of state-run health care. This is the most pressing battle in our own fight for life and William Wilberforce can help us win it.

NOTES

1. William Hague, *William Wilberforce: The Life of the Great Anti-Slave Trade Campaigner* (New York, 2007), 268. For my own understanding of Wilberforce's heroic role in the fight for life, I am heavily indebted to Hague's first-rate biography.
2. Nelson quoted in Roy Adkins and Lesley Adkins, *The War for All the Oceans: From Nelson at the Nile to Napoleon at Waterloo* (London, 2007), 181-2.
3. See William Hague. *William Pitt the Younger: A Biography*. (New York, 2005), 247 "If we listen to the voice of reason and duty, and pursue this night the line of conduct which they prescribe, some of us may live to see a reverse of that picture, from which we now turn our eyes with shame and regret. We may live to behold the natives of Africa, engaged in the calm occupations of industry, in the pursuits of a just and legitimate commerce. We may behold the beams of science and philosophy breaking in upon their land, which, at some happy period in still later times, may blaze with full lustre." Pitt speaking in the House of Commons, 1792.
4. Wilberforce quoted in Hague, 141.
5. Ibid., 3.
6. Adam Smith, *The Wealth of Nations* (Penguin, 1999), Book III, Ch. II, 488-9.
7. Wilberforce quoted in Hague, 21.
8. Ibid., 23.
9. See Sydney Smith to Lord Holland, 21 August 1827, in *The Letters of Sydney Smith*, ed. Nowell C. Smith (Oxford, 1953), 1, 469. "Little Wilberforce is here, and we are great friends. He looks like a little Spirit running about without a body, or in a kind of undress with only half a body."
10. I am indebted to Phil Lawler for these statistics, which were provided to me by the executive director of Good Counsel, Chris Bell, a pro-lifer in whom Wilberforce would have seen a kindred spirit.
11. According to Lawler (4 August 2009): "The Senate health care bill contains a hidden provision that matches the provisions of the Freedom of Choice Act; it would preempt any state law hindering a woman's access to "essential health services"— again, a phrase that includes abortion services. Federal health care legislation would overturn the following state laws: 42 states have physician-only laws that limit the practice of abortion; 32 states follow the funding limitations of the federal Hyde Amendment (no taxpayer funding of abortions); 27 states have abortion clinic regulations to protect the health of women; 30 states have informed-consent laws (women receive information about fetal development, fetal pain or the causal link between abortion and breast cancer; or are offered an ultrasound exam); 24 states require a 24-hour waiting period before an abortion; 36 states require some kind of parental involvement: either parental notice (11 states) or parental consent (25 states); and at least 5 states have funded abortion alternatives (pregnancy centers, prenatal assistance, adoption promotion)."

12. Doddridge quoted in Hague, 74.
13. Pitt to Wilberforce, quoted in Hague, 86.
14. Newton quoted in Hague, 263.
15. Wilberforce quoted in Hague, 165.
16. See "Building a Culture of Life" by Richard J. Neuhaus in *Human Life Review* (W/Sp. 2002).
17. Burke quoted in Hague, 184.
18. From Wilberforce's speech in the House of Commons, 12 May 1789. See *The Folio Book of Historic Speeches*. ed. Ian Pindar (London, 2007), 90.
19. See Hague, 177-78. Speaking of the 18th-century House of Commons, Hague writes: "The readiness of Members of Parliament to switch their votes according to the arguments presented, particularly on an issue such as this [abolition] where party loyalties did not apply, placed a premium on oratorical ability and persuasiveness which the subsequent rise of disciplined parties would ultimately render almost worthless. The prospect that a speech could make all the difference to the result generally brought out the best in those speaking, just as the disconnection between the quality of the speech and the result obtained would by the twentieth century produce speeches of stultifying morbidity. In the House of Commons of 1789, eloquence mattered." Hague is right and wrong here. He is right about the influential role that good oratory could play in the 18th century House of Commons (though not always—Burke rarely swayed votes); but he is wrong when he asserts that "disciplined parties" now render such eloquence "almost worthless." As J. P. McFadden realized, good arguments can always sway votes in and out of legislative assemblies. Hague himself has proven an effective orator as Shadow Foreign Secretary. For a good laugh but also for a good sense of his adroit debating skills, see Hague's speech on Blair's former spin doctor, Peter Mandelson: http://www.youtube.com/watch?v=geWERiWP7aA .
20. J. M. Roberts. *History of the World* (Oxford, 1993), 49.
21. Bertram Wyatt-Brown. *Southern Honor: Ethics and Behavior in the Old South* (Oxford, 1982), 28-29.
22. Roberts, 530.
23. Hague, 116.
24. Ibid., 124.
25. Ibid.
26. Ibid., 137.
27. Paul Langford, *A Polite and Commercial People: England 1727-1783* (Oxford, 1989), 517.
28. From *Roe* v. *Wade*, Dissenting Opinion of Justice Byron White (22 January 1973).
29. See *History in Hansard 1803-1900: An Anthology of wit, wisdom, nonsense and curious observations to be found in the Debates of Parliament*, collected by Stephen King-Hall and Ann Dewar (London, 1950), 9. For a lively portrait of Banastre Tarleton, the Oxford-educated son of a Liverpool merchant, see Christopher Hibbert, *Redcoats and Rebels: The War for America 1770-1781* (Folio Society, 2006), 272: "He was a captain of twenty-three when chosen by Clinton to command the British Legion, a mixed force of cavalry and light infantry. He was almost 'femininely beautiful,' extremely vain, argumentative and none too scrupulous, well deserving many of the unfavourable comments upon his character and activities to be found in the newspapers printed in America in those areas controlled by Congress. He boasted, as Horace Walpole said, 'of having butchered more men and lain with more women than anyone else in the army,' though Sheridan thought 'raped' would have been a more exact description than 'lain.'"
30. John Ehrman. *The Younger Pitt: The Years of Acclaim* (London, 1969), 387.
31. Kenneth Morgan, *Slavery and the British Empire: From Africa to America* (Oxford, 2007), 34.
32. Charlotte Allen, "Planned Parenthood's Unseemly Empire: The billion-dollar 'non-profit'" in *The Weekly Standard* (10/22/2007). See also Donald T. Critchlow, *Intended Consequences: Birth Control, Abortion, and the Federal Government in Modern America* (Oxford, 1999).
33. See Hague, 129. Hague's discussion of the Enlightenment's critique of slavery is well done.
34. Edmund Burke to Monsieur Dupont, October 1789, in *Letters of Edmund Burke: A Selection*, ed. Harold J. Laski (Oxford, 1922), 274.
35. See Terence E. Cook. "Rousseau: Education and Politics," in *The Journal of Politics*, Vol. 37, No. 1 (Feb., 1975), pp. 108-128 or http://www.jstor.org/stable/2128893.
36. *Cobbett's England: A Selection from the Writings of William Cobbett*, ed. John Derry (London, 1968), 98.

37. G. M. Young, *Victorian England: Portrait of an Age*, 2nd ed. (Oxford, 1953), 44.
38. See "Health-Care Overhaul Creates Dilemma for Some Catholics," by Stephanie Simon, *Wall Street Journal* (8/05/2009).
39. Hague, 172.
40. Thackeray quoted in A. J. Finberg, *The Life of J. M. W. Turner* (Oxford, 1961), 378. In the phrase "saeculum of Pyrrhae," Thackeray alludes to the Deluge. "Pyrrha, daughter of Epimetheus and Pandora, was the wife of Deucalion, the Noah of Greek mythology. Many people believed that the earth would one day be overwhelmed in a second flood, and the dreadful prodigy of Jove hurling his bolts at his own temple was to the superstitious a warning that the time was at hand." See Clement Lawrence Smith, *The Odes and Epodes of Horace* (Boston, 1903), 7.
41. See John Ruskin. *Modern Painters*, edited and abridged by David Barrie (New York, 1987), 158-160. Ruskin thought so highly of *The Slave Ship* because, as he said, "Its daring conception, ideal in the highest sense of the word, is based on the purest truth, and wrought out with the concentrated knowledge of life." For him, "the whole picture" was "dedicated to the most sublime of subjects . . . the power, majesty, and deathfulness of the open, deep, illimitable sea." See *Modern Painters*, 160.
42. Ruskin quoted in Kenneth Clark, "The Artist Grows Old," in *Moments of Vision* (London, 1981), 164.
43. Wilberforce quoted in Hague, 276.
44. Ibid., 275.
45. Ibid., 318-19.



"This is an ice cream scoop—I asked for the melon-baller."

APPENDIX A

[*Wesley J. Smith is a senior fellow in human rights and bioethics at the Discovery Institute. His new book,* A Rat Is a Pig Is a Dog Is a Boy: The Human Cost of Animal Rights, *will be published in January. This article is reprinted with permission of The Weekly Standard, where it appeared July 20, 2009. For more information, visit www.weeklystandard.com.*]

So Three Cows Walk into Court . . .

Wesley J. Smith

Imagine you are a cattle rancher looking for liability insurance. You meet with your broker, who, as expected, asks a series of questions to gauge your suitability for coverage:

Have you ever been sued by your cattle?

If the answer is yes, what was the outcome of that suit?

Have you received any correspondence or other communication from your herd's legal representatives threatening suit or seeking to redress any legal grievance?

If you think that's a ridiculous scenario, that animals suing their owners could never happen, think again. For years, the animal rights movement has quietly agitated to enact laws, convince the government to promulgate regulations, or obtain a court ruling granting animals the "legal standing" to drag their owners (and others) into court.

Animals are not (yet) legal persons or rights-bearing beings, hence, they lack standing to go to court to seek legal redress. That procedural impediment prevents animal rights activists from attacking animal industries "from within," as, for example, by representing lab rats in class action lawsuits against research labs. This lack of legal standing forces attorneys in the burgeoning field of animal law—who are dedicated to impeding, and eventually destroying, all animal industries—to find other legal pretexts by which to bring their targets directly into court.

In 2006, the Humane Society of the United States—which has no affiliation with local humane societies—brought a lawsuit against Hudson Valley Foie Gras contending the company permitted bird feces to pollute the Hudson River. The Humane Society of the United States isn't an environmental group, so why were they suing about pollution? The answer is that the animal rights group considers its legal adversary to be a "notorious factory farm." But because it had no standing to bring a private case against Hudson Valley as guardians for the farm's ducks, but still wanting to impede the farm's operation, the Humane Society availed itself of the private right to sue directly as permitted under the Clean Water Act.

But imagine if the farm's ducks could sue the farm. The Humane Society or any other animal rights group—who, after all, would be the true litigants—could sue the company into oblivion. Indeed, if animals were granted legal standing, the harm that animal rights activists could do to labs, restaurant chains, mink farms, dog breeders, animal parks, race tracks, etc., would be worse than the destruction wrought by tort lawsuits against the tobacco industry. No wonder animal rights activists salivate at the prospect of animals being allowed to sue.

Animal standing has friends in some surprisingly high places—including potentially at the highest levels of the Obama administration. Senator Saxby Chambliss of Georgia, ranking Republican member of the Senate Agriculture Committee, recently announced he was holding up the confirmation of law professor Cass Sunstein—a close friend of the president rumored to be on the fast track for the Supreme Court—as the White House's "regulations czar." The reason: Sunstein explicitly advocates animals' being granted legal standing.

In a 2004 book which he edited, *Animal Rights: Current Debates and New Directions,* Sunstein wrote:

> It seems possible . . . that before long, Congress will grant standing to animals to protect their own rights and interests. . . . Congress might grant standing to animals in their own right, partly to increase the number of private monitors of illegality, and partly to bypass complex inquiries into whether prospective human plaintiffs have injuries in fact [required to attain standing]. Indeed, I believe that in some circumstances, Congress should do exactly that, to provide a supplement to limited public enforcement efforts.

It is worth noting that Sunstein's commitment to animal standing has been sustained over time. He made a similar argument in an article published in the *UCLA Law Review* in 2000. His support for animal rights also extends to an explicit proposal in a 2007 speech to outlaw hunting other than for food, stating, "That should be against the law. It's time now."

The idea of giving animals standing seems to be growing on the political left, perhaps because it would be so harmful to business interests. Laurence H. Tribe, the eminent Harvard Law School professor, has spoken supportively of the concept. On February 8, 2000, less than a year before his Supreme Court appearance on behalf of Vice President Al Gore in the aftermath of the Florida vote controversy, Tribe delivered a speech praising animal rights lawyer Stephen Wise and arguing on behalf of granting animals the right to sue:

> Recognizing that animals themselves by statute as holders of rights would mean that they could sue in their own name and in their own right. . . . Such animals would have what is termed legal standing. Guardians would ultimately have to be appointed to speak for these voiceless rights-holders, just as guardians are appointed today for infants, or for the profoundly retarded. . . . But giving animals this sort of "virtual voice" would go a long way toward strengthening the protection they will receive under existing laws and hopefully improved laws, and our constitutional history is replete with instances of such legislatively conferred standing.

But animal rights lawyers aren't waiting until the law is changed before enlisting animals as litigants. While these efforts have so far been turned back by the courts, they have received respectful hearings on appeal. In 2004, an environmental lawyer sued in the name of the "Cetacean Community"—allegedly consisting of all the world's whales, porpoises, and dolphins—seeking an injunction preventing the federal government from conducting underwater sonar tests. When a trial court found that the "Community" had no standing, the case was appealed to the Ninth

Circuit Court of Appeals, where anything can happen. The court refused to grant the whales and dolphins standing, but in language that must have warmed every animal liberationist's heart, it stated that theoretically, animals *could* attain the right to sue:

> It is obvious that an animal cannot function as a plaintiff in the same manner as a juridically competent human being. But we see no reason why Article III [of the U.S. Constitution] prevents Congress from authorizing suit in the name of an animal any more than it prevents suits brought in the name of artificial persons such as corporations, partnerships or trusts, and even ships, or of juridically incompetent persons such as infants, juveniles and mental incompetents.

Of all the ubiquitous advocacy thrusts by animal rights advocates, obtaining legal standing for animals would be the most damaging—which makes Sunstein's appointment to the overseer of federal regulations so worrisome and Senator Chambliss's hold on the nomination so laudable. Chambliss plans to meet with the nominee personally "to provide him the opportunity to fully explain his views." Chambliss said:

> Professor Sunstein's recommendation that animals should be permitted to bring suit against their owners with human beings as their representatives, is astounding in its display of a total lack of common sense. American farmers and ranchers would face a tremendous threat from frivolous lawsuits. Even if claims against them were found to be baseless in court, they would still bear the financial costs of reckless litigation. That's a cost that would put most family farming and ranching operations out of business.

But animal standing would do more than just plunge the entire animal industry sector into chaos. In one fell swoop, it would both undermine the status of animals as property and elevate them with the force of law toward legal personhood. On an existential level, the perceived exceptional importance of human life would suffer a staggering body blow by erasing one of the clear legal boundaries that distinguishes people from animals. This is precisely the future for which animal rights/liberationists devoutly yearn.

APPENDIX B

[*Nat Hentoff, a longtime syndicated columnist, has authored many books, including* The War on the Bill of Rights and the Gathering Resistance (*Seven Stories Press, 2004*). *The following column appeared August 19, 2009 on Jewish World Review* (*www.JewishWorldReview.com*) *and is reprinted with Mr. Hentoff's permission*.]

I am finally scared of a White House administration

Nat Hentoff

I was not intimidated during J. Edgar Hoove's FBI hunt for reporters like me who criticized him. I railed against the Bush-Cheney war on the Bill of Rights without blinking. But now I am finally scared of a White House administration. President Obama's desired health-care reform intends that a federal board (similar to the British model)—as in the Center for Health Outcomes Research and Evaluation in a current Democratic bill—decides whether your quality of life, regardless of your political party, merits government-controlled funds to keep you alive. Watch for that life-decider in the final bill. It's already in the stimulus bill signed into law.

The members of that ultimate federal board will themselves not have examined or seen the patient in question. For another example of the growing, tumultuous resistance to "Dr. Obama," particularly among seniors, there is a July 29 *Washington Times* editorial citing a line from a report written by a key adviser to Obama on cost-efficient health care, prominent bioethicist Dr. Ezekiel Emanuel (brother of White House Chief of Staff Rahm Emanuel).

Emanuel writes about rationing health care for older Americans that "allocation (of medical care) by age is not invidious discrimination" (the *Lancet*, January 2009). He calls this form of rationing—which is fundamental to Obamacare goals—"the complete lives system." You see, at 65 or older, you've had more life years than a 25-year-old. As such, the latter can be more deserving of cost-efficient health care than older folks.

No matter what Congress does when it returns from its recess, rationing is a basic part of Obama's eventual master health-care plan. Here is what Obama said in an April 28 *New York Times* interview (quoted in a *Washington Times* July 9 editorial) in which he describes a government end-of-life services guide for the citizenry as we get to a certain age, or are in a certain grave condition. Our government will undertake, he says, a "very difficult democratic conversation" about how "the chronically ill and those toward the end of their lives are accounting for potentially 80 percent of the total health care" costs.

This end-of-life consultation has been stripped from the Senate Finance Committee bill because of democracy-in-action town-hall outcries but remains in three House bills.

A specific end-of-life proposal is in draft Section 1233 of H.R. 3200, a House Democratic health-care bill that is echoed in two others that also call for versions of "advance care planning consultation" every five years—or sooner if the patient is diagnosed with a progressive or terminal illness.

As the *Washington Post*'s Charles Lane penetratingly explains ("Undue influence,"Aug. 8): The government would pay doctors to discuss with Medicare patients explanations of "living wills and durable powers of attorney . . . and (provide) a list of national and state-specific resources to assist consumers and their families" on making advance-care planning (read end-of-life) decisions.

Significantly, Lane adds that, "The doctor 'shall' (that's an order) explain that Medicare pays for hospice care (hint, hint)."

But the Obama administration claims these fateful consultations are "purely voluntary." In response, Lane—who learned a lot about reading between the lines while the *Washington Post*'s Supreme Court reporter—advises us:

"To me, 'purely voluntary' means 'not unless the patient requests one.'"

But Obama's doctors will initiate these chats. "Patients," notes Lane, "may refuse without penalty, but many will bow to white-coated authority."

And who will these doctors be? What criteria will such Obama advisers as Dr. Ezekiel Emanuel set for conductors of end-of-life services?

I was alerted to Lane's crucial cautionary advice—for those of us who may be influenced to attend the Obamacare twilight consultations—by Wesley J. Smith, a continually invaluable reporter and analyst of, as he calls his most recent book, *The Culture of Death: The Assault on Medical Ethics in America* (Encounter Books).

As more Americans become increasingly troubled by this and other fearful elements of Dr. Obama's cost-efficient health care regimen, Smith adds this vital advice, no matter what legislation Obama finally signs into law:

"Remember that legislation itself is only half the problem with Obamacare. Whatever bill passes, hundreds of bureaucrats in the federal agencies will have years to promulgate scores of regulations to govern the details of the law.

"This is where the real mischief could be done because most regulatory actions are effectuated beneath the public radar. It is thus essential, as just one example, that any end-of-life counseling provision in the final bill be specified to be purely voluntary . . . and that the counseling be required by law to be neutral as to outcome. Otherwise, even if the legislation doesn't push in a specific direction—for instance, THE GOVERNMENT REFUSING TREATMENT—the regulations could." (Emphasis added.)

Who'll let us know what's really being decided about our lives—and what is set into law? To begin with, Charles Lane, Wesley Smith and others whom I'll cite and add to as this chilling climax of the Obama presidency comes closer.

Condemning the furor at town-hall meetings around the country as "un-American," Harry Reid and Nancy Pelosi are blind to truly participatory democracy—as many individual Americans believe they are fighting, quite literally, for their lives.

I wonder whether Obama would be so willing to promote such health-care initiatives if, say, it were 60 years from now, when his children will—as some of the current bills seem to imply—have lived their fill of life years, and the health-care resources will then be going to the younger Americans?

APPENDIX C

[*Kathryn Jean Lopez is editor-at-large of National Review Online and a syndicated columnist. The following was published July 27, 2009, and is reprinted with permission. Kathryn Jean Lopez © Newspaper Enterprise Association, Inc.*]

Human Life Is More than a Distraction

Kathryn Jean Lopez

Don't underestimate the power of President Barack Obama. This White House administration marks an age of transformation—Obama said so himself. And let's face it, D.C. is certainly changing.

"The day I'm inaugurated, the country looks at itself differently. And don't underestimate that power. Don't underestimate that transformation," then-senator Barack Obama told the National Urban League two years ago. He was talking about the historic fact that he would be the first black president of the United States, a fact greeted by bipartisan applause.

But the transformation did not stop there. And transformation isn't a good in itself.

During the presidential campaign, Obama—who once, on the floor of the Illinois statehouse, defended infanticide—played moderate and told evangelical megachurch pastor Rick Warren that abortion was above his pay grade.

But Obama is now pushing a health-care plan that in its various congressional iterations could "result in the greatest expansion of abortion since *Roe* v. *Wade*," according to the National Right to Life Committee.

This plan, and the president's record—which errs on the side of death when it comes to international abortion funding and embryo-destroying stem-cell research—aren't the only signs of a deadly change in Washington. A shameful acceptance of abortion as a fact of life is creeping into mainstream establishment culture.

Talking about abortions and Medicaid funding in a *New York Times Magazine* interview earlier this month, Supreme Court justice Ruth Bader Ginsburg candidly shared: "Frankly, I had thought that at the time *Roe* was decided, there was concern about population growth and particularly growth in populations that we don't want to have too many of."

Her comments should have been jarring to the interviewer. There are populations we don't want to have too many of? Abortion was meant to address this desire? Not only did this warrant a follow-up question that didn't happen, it should have been a front-page story.

Ginsburg's comments are consistent with comments made by Secretary of State Hillary Clinton earlier this year. Upon acceptance of an award from Planned Parenthood, Clinton declared: "The 20th-century reproductive-rights movement, really embodied in the life and leadership of Margaret Sanger, was one of the most transformational in the entire history of the human race."

In a 1921 article, Sanger explained: "The most urgent problem today is how to limit and discourage the over-fertility of the mentally and physically defective."

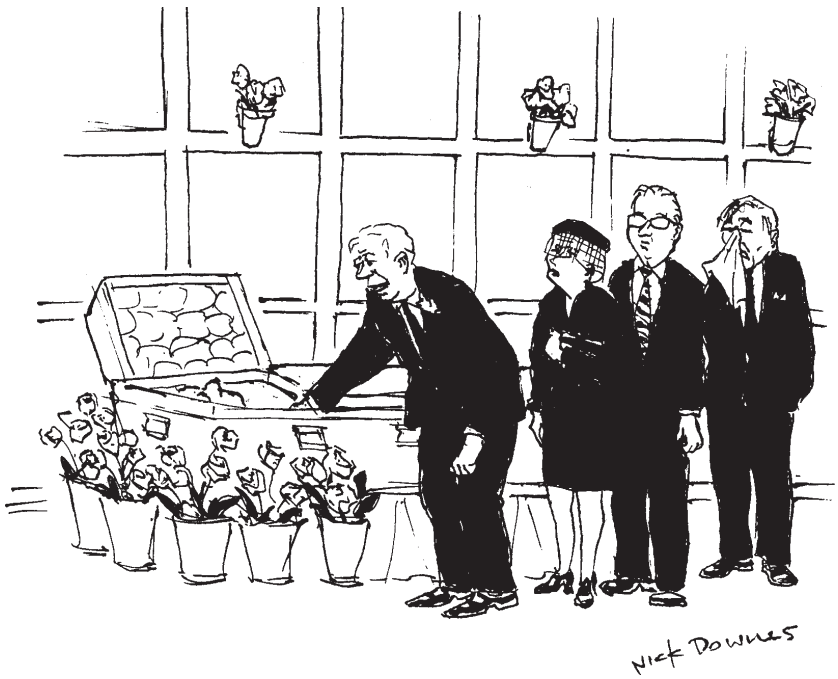
When Rep. Jeff Fortenberry, a Republican from Nebraska, subsequently pressed Clinton on her expressed "awe" of Sanger, Clinton compared the unapologetic eugenicist to Thomas Jefferson.

The roots of the modern-day "pro-choice" movement are real and can be seen without too much effort, but are not often discussed. It may be the hubris that comes with being the majority party in Washington that accounts for such prominent officials' letting their eugenic slips show.

And it's not just a women's issue. But it is often the Gray Lady's—the *New York Times*'s. One week after the Supreme revelation, the same Sunday insert published a piece by Princeton University professor Peter Singer, an unapologetic defender of infanticide, in defense of rationing health care. The ties that bind on the left, right out in the open.

With all this going on, it's disturbing but not surprising that the president would dismiss questions about abortion and his health-care plan. In an interview with Katie Couric that aired the night before his dud of a prime-time health-care press conference, Obama called such questions a "distraction": The fate of human lives and dignity are but details to be hashed out and cast aside by politicians in a rush to socialize medicine.

His mistake was to be so dismissive just as it's becoming increasingly impossible to ignore the pro-choice movement's eugenic past. If you're pro-choice in America today you need to confront the roots of your ideology. Because it's not just the stuff of history.



"Hi. I'm Ed Stark and I'm running for congress."

APPENDIX D

[*Mother Teresa of Calcutta was generally acknowledged, worldwide, to have been a remarkable woman—yet many were surprised* (*some, of course, were not*) *when she received the 1979 Nobel Peace Prize for her work among the dying and the poor. The following is the text of the address she delivered on accepting the award in Oslo, December 11, 1979.*]

Nobel Lecture

Mother Teresa

As we have gathered here together to thank God for the Nobel Peace Prize I think it will be beautiful that we pray the prayer of St. Francis of Assisi which always surprises me very much—we pray this prayer every day after Holy Communion, because it is very fitting for each one of us, and I always wonder that 4-500 years ago as St. Francis of Assisi composed this prayer that they had the same difficulties that we have today, as we compose this prayer that fits very nicely for us also. I think some of you already have got it—so we will pray together.

Let us thank God for the opportunity that we all have together today, for this gift of peace that reminds us that we have been created to live that peace, and Jesus became man to bring that good news to the poor. He being God became man in all things like us except sin, and he proclaimed very clearly that he had come to give the good news. The news was peace to all of good will and this is something that we all want—the peace of heart—and God loved the world so much that he gave his son—it was a giving—it is as much as if to say it hurt God to give, because he loved the world so much that he gave his son, and he gave him to Virgin Mary, and what did she do with him?

As soon as he came in her life—immediately she went in haste to give that good news, and as she came into the house of her cousin, the child—the unborn child—the child in the womb of Elizabeth, leapt with joy. He was that little unborn child, was the first messenger of peace. He recognised the Prince of Peace, he recognised that Christ has come to bring the good news for you and for me. And as if that was not enough—it was not enough to become a man—he died on the cross to show that greater love, and he died for you and for me and for that leper and for that man dying of hunger and that naked person lying in the street not only of Calcutta, but of Africa, and New York, and London, and Oslo—and insisted that we love one another as he loves each one of us. And we read that in the Gospel very clearly—love as I have loved you—as I love you—as the Father has loved me, I love you—and the harder the Father loved him, he gave him to us, and how much we love one another, we, too, must give each other until it hurts. It is not enough for us to say: I love God, but I do not love my neighbour. St. John says you are a liar if you say you love God and you don't love your neighbour. How can you love God whom you do not see, if you do not love your neighbour whom you see, whom you touch, with whom you live. And so this is very important for us to realise that love, to be true, has to hurt. It hurt Jesus to love us, it hurt him. And to make sure we remember his great love he made himself the bread of life to satisfy our hunger for his love.

Our hunger for God, because we have been created for that love. We have been created in his image. We have been created to love and be loved, and then he has become man to make it possible for us to love as he loved us. He makes himself the hungry one—the naked one—the homeless one—the sick one—the one in prison—the lonely one—the unwanted one—and he says: You did it to me. Hungry for our love, and this is the hunger of our poor people. This is the hunger that you and I must find, it may be in our own home.

I never forget an opportunity I had in visiting a home where they had all these old parents of sons and daughters who had just put them in an institution and forgotten maybe. And I went there, and I saw in that home they had everything, beautiful things, but everybody was looking towards the door. And I did not see a single one with their smile on their face. And I turned to the Sister and I asked: How is that? How is it that the people they have everything here, why are they all looking towards the door, why are they not smiling? I am so used to see the smile on our people, even the dying one smile, and she said: This is nearly every day, they are expecting, they are hoping that a son or daughter will come to visit them. They are hurt because they are forgotten, and see—this is where love comes. That poverty comes right there in our own home, even neglect to love. Maybe in our own family we have somebody who is feeling lonely, who is feeling sick, who is feeling worried, and these are difficult days for everybody. Are we there, are we there to receive them, is the mother there to receive the child?

I was surprised in the West to see so many young boys and girls given into drugs, and I tried to find out why—why is it like that, and the answer was: Because there is no one in the family to receive them. Father and mother are so busy they have no time. Young parents are in some institution and the child takes back to the street and gets involved in something. We are talking of peace. These are things that break peace, but I feel the greatest destroyer of peace today is abortion, because it is a direct war, a direct killing—direct murder by the mother herself. And we read in the Scripture, for God says very clearly: Even if a mother could forget her child—I will not forget you—I have carved you in the palm of my hand. We are carved in the palm of His hand, so close to Him that unborn child has been carved in the hand of God. And that is what strikes me most, the beginning of that sentence, that even if a mother could forget something impossible—but even if she could forget—I will not forget you. And today the greatest means—the greatest destroyer of peace is abortion. And we who are standing here—our parents wanted us. We would not be here if our parents would do that to us. Our children, we want them, we love them, but what of the millions. Many people are very, very concerned with the children in India, with the children in Africa where quite a number die, maybe of malnutrition, of hunger and so on, but millions are dying deliberately by the will of the mother. And this is what is the greatest destroyer of peace today. Because if a mother can kill her own child—what is left for me to kill you and you kill me—there is nothing between. And this I appeal in India, I appeal everywhere: Let us bring the child back, and this year being the child's year: What

have we done for the child? At the beginning of the year I told, I spoke everywhere and I said: Let us make this year that we make every single child born, and unborn, wanted. And today is the end of the year, have we really made the children wanted? I will give you something terrifying. We are fighting abortion by adoption, we have saved thousands of lives, we have sent words to all the clinics, to the hospitals, police stations—please don't destroy the child, we will take the child. So every hour of the day and night it is always somebody, we have quite a number of unwedded mothers—tell them come, we will take care of you, we will take the child from you, and we will get a home for the child. And we have a tremendous demand from families who have no children, that is the blessing of God for us. And also, we are doing another thing which is very beautiful—we are teaching our beggars, our leprosy patients, our slum dwellers, our people of the street, natural family planning.

And in Calcutta alone in six years—it is all in Calcutta—we have had 61,273 babies less from the families who would have had, but because they practise this natural way of abstaining, of self-control, out of love for each other. We teach them the temperature meter which is very beautiful, very simple, and our poor people understand. And you know what they have told me? Our family is healthy, our family is united, and we can have a baby whenever we want. So clear—those people in the street, those beggars—and I think that if our people can do like that how much more you and all the others who can know the ways and means without destroying the life that God has created in us.

The poor people are very great people. They can teach us so many beautiful things. The other day one of them came to thank and said: You people who have vowed chastity you are the best people to teach us family planning. Because it is nothing more than self-control out of love for each other. And I think they said a beautiful sentence. And these are people who maybe have nothing to eat, maybe they have not a home where to live, but they are great people. The poor are very wonderful people. One evening we went out and we picked up four people from the street. And one of them was in a most terrible condition—and I told the Sisters: You take care of the other three, I take of this one that looked worse. So I did for her all that my love can do. I put her in bed, and there was such a beautiful smile on her face. She took hold of my hand, as she said one word only: Thank you—and she died.

I could not help but examine my conscience before her, and I asked what would I say if I was in her place. And my answer was very simple. I would have tried to draw a little attention to myself, I would have said I am hungry, that I am dying, I am cold, I am in pain, or something, but she gave me much more—she gave me her grateful love. And she died with a smile on her face. As that man whom we picked up from the drain, half eaten with worms, and we brought him to the home. I have lived like an animal in the street, but I am going to die like an angel, loved and cared for. And it was so wonderful to see the greatness of that man who could speak like that, who could die like that without blaming anybody, without cursing anybody, without comparing anything. Like an angel—this is the greatness of our people.

And that is why we believe what Jesus had said: I was hungry—I was naked—I was homeless—I was unwanted, unloved, uncared for—and you did it to me.

I believe that we are not real social workers. We may be doing social work in the eyes of the people, but we are really contemplatives in the heart of the world. For we are touching the Body of Christ 24 hours. We have 24 hours in this presence, and so you and I. You too try to bring that presence of God in your family, for the family that prays together stays together. And I think that we in our family don't need bombs and guns, to destroy to bring peace—just get together, love one another, bring that peace, that joy, that strength of presence of each other in the home. And we will be able to overcome all the evil that is in the world.

There is so much suffering, so much hatred, so much misery, and we with our prayer, with our sacrifice are beginning at home. Love begins at home, and it is not how much we do, but how much love we put in the action that we do. It is to God Almighty—how much we do it does not matter, because He is infinite, but how much love we put in that action. How much we do to Him in the person that we are serving.

Some time ago in Calcutta we had great difficulty in getting sugar, and I don't know how the word got around to the children, and a little boy of four years old, Hindu boy, went home and told his parents: I will not eat sugar for three days, I will give my sugar to Mother Teresa for her children. After three days his father and mother brought him to our home. I had never met them before, and this little one could scarcely pronounce my name, but he knew exactly what he had come to do. He knew that he wanted to share his love.

And this is why I have received such a lot of love from you all. From the time that I have come here I have simply been surrounded with love, and with real, real understanding love. It could feel as if everyone in India, everyone in Africa is somebody very special to you. And I felt quite at home I was telling Sister today. I feel in the Convent with the Sisters as if I am in Calcutta with my own Sisters. So completely at home here, right here.

And so here I am talking with you—I want you to find the poor here, right in your own home first. And begin love there. Be that good news to your own people. And find out about your next-door neighbour—do you know who they are? I had the most extraordinary experience with a Hindu family who had eight children. A gentleman came to our house and said: Mother Teresa, there is a family with eight children, they had not eaten for so long—do something. So I took some rice and I went there immediately. And I saw the children—their eyes shinning with hunger—I don't know if you have ever seen hunger. But I have seen it very often. And she took the rice, she divided the rice, and she went out. When she came back I asked her—where did you go, what did you do? And she gave me a very simple answer: They are hungry also. What struck me most was that she knew—and who are they, a Muslim family—and she knew. I didn't bring more rice that evening because I wanted them to enjoy the joy of sharing. But there were those children, radiating joy, sharing the joy with their mother because she had the love to give.

And you see this is where love begins—at home. And I want you—and I am very grateful for what I have received. It has been a tremendous experience and I go back to India—I will be back by next week, the 15th I hope—and I will be able to bring your love.

And I know well that you have not given from your abundance, but you have given until it has hurt you. Today the little children they have—I was so surprised—there is so much joy for the children that are hungry. That the children like themselves will need love and care and tenderness, like they get so much from their parents. So let us thank God that we have had this opportunity to come to know each other, and this knowledge of each other has brought us very close. And we will be able to help not only the children of India and Africa, but will be able to help the children of the whole world, because as you know our Sisters are all over the world. And with this prize that I have received as a prize of peace, I am going to try to make the home for many people that have no home. Because I believe that love begins at home, and if we can create a home for the poor—I think that more and more love will spread. And we will be able through this understanding love to bring peace, be the good news to the poor. The poor in our own family first, in our country and in the world.

To be able to do this, our Sisters, our lives have to be woven with prayer. They have to be woven with Christ to be able to understand, to be able to share. Because today there is so much suffering—and I feel that the passion of Christ is being relived all over again—are we there to share that passion, to share that suffering of people. Around the world, not only in the poor countries, but I found the poverty of the West so much more difficult to remove. When I pick up a person from the street, hungry, I give him a plate of rice, a piece of bread, I have satisfied. I have removed that hunger. But a person that is shut out, that feels unwanted, unloved, terrified, the person that has been thrown out from society—that poverty is so hurtable and so much, and I find that very difficult. Our Sisters are working amongst that kind of people in the West. So you must pray for us that we may be able to be that good news, but we cannot do that without you, you have to do that here in your country. You must come to know the poor, maybe our people here have material things, everything, but I think that if we all look into our own homes, how difficult we find it sometimes to smile at each, other, and that the smile is the beginning of love.

And so let us always meet each other with a smile, for the smile is the beginning of love, and once we begin to love each other naturally we want to do something. So you pray for our Sisters and for me and for our Brothers, and for our Co-Workers that are around the world. That we may remain faithful to the gift of God, to love Him and serve Him in the poor together with you. What we have done we should not have been able to do if you did not share with your prayers, with your gifts, this continual giving. But I don't want you to give me from your abundance, I want that you give me until it hurts.

The other day I received 15 dollars from a man who has been on his back for twenty years, and the only part that he can move is his right hand. And the only

companion that he enjoys is smoking. And he said to me: I do not smoke for one week, and I send you this money. It must have been a terrible sacrifice for him, but see how beautiful, how he shared, and with that money I bought bread and I gave to those who are hungry with a joy on both sides, he was giving and the poor were receiving. This is something that you and I—it is a gift of God to us to be able to share our love with others. And let it be as it was for Jesus. Let us love one another as he loved us. Let us love Him with undivided love. And the joy of loving Him and each other—let us give now—that Christmas is coming so close. Let us keep that joy of loving Jesus in our hearts. And share that joy with all that we come in touch with. And that radiating joy is real, for we have no reason not to be happy because we have no Christ with us. Christ in our hearts, Christ in the poor that we meet, Christ in the smile that we give and the smile that we receive. Let us make that one point: That no child will be unwanted, and also that we meet each other always with a smile, especially when it is difficult to smile.

I never forget some time ago about fourteen professors came from the United States from different universities. And they came to Calcutta to our house. Then we were talking about that they had been to the home for the dying. We have a home for the dying in Calcutta, where we have picked up more than 36,000 people only from the streets of Calcutta, and out of that big number more than 18,000 have died a beautiful death. They have just gone home to God; and they came to our house and we talked of love, of compassion, and then one of them asked me: Say, Mother, please tell us something that we will remember, and I said to them: Smile at each other, make time for each other in your family. Smile at each other. And then another one asked me: Are you married, and I said: Yes, and I find it sometimes very difficult to smile at Jesus because he can be very demanding sometimes. This is really something true, and there is where love comes—when it is demanding, and yet we can give it to Him with joy. Just as I have said today, I have said that if I don't go to Heaven for anything else I will be going to Heaven for all the publicity because it has purified me and sacrificed me and made me really ready to go to Heaven. I think that this is something, that we must live life beautifully, we have Jesus with us and He loves us. If we could only remember that God loves me, and I have an opportunity to love others as he loves me, not in big things, but in small things with great love, then Norway becomes a nest of love. And how beautiful it will be that from here a centre for peace has been given. That from here the joy of life of the unborn child comes out. If you become a burning light in the world of peace, then really the Nobel Peace Prize is a gift of the Norwegian people. God bless you!

APPENDIX E

[*The following are excerpts from the April 13, 1991 testimony of Dr. Jérôme Lejeune at the trial of* Alexander Loce (New Jersey v. Alexander Loce et. als.*)*]

"The Story of Tom Thumb"

Q. Dr. Lejeune, could you please describe the process of human reproduction?

A: It is a very long story, your Honor. Because life has been with us for millennia. But even if life continues from generation to generation, each of us has a very unique beginning, which is the moment that all the information necessary and sufficient to be that particular human being, which we will call later Peter or Margaret, depending on its own genetic make-up, when this whole necessary and sufficient information is gathered.

And we now know from experience both in animals and now in human beings, that this moment is exactly the moment at which the head of the sperm penetrates inside the ovum; then the information carried by the father encounters in the same recipient cell the information carried or transmitted by the mother; so that suddenly a new constitution is spelled out.

It is very curious that biology and the science of the law are speaking the same language.

The voting process even exists in biology, which is the choice of the sperm.

Because there are maybe hundreds of thousands or ten thousand sperm swimming around one egg, and one is selected. And that is a voting process. And at the moment the human constitution is entirely spelled out, a new human being begins its career. That's not rhetoric. That's not fancy, or hope of a moralist. It is just an experimental phenomenon.

Q: Dr. Lejeune, where is this information specifically contained?

A: This information is specifically contained in two different parts. One is DNA. DNA is a long thread molecule. And to give you an impression, your Honor, this flat ribbon is roughly comparable to the tape that you put in a tape recorder. But it is very minute.

Inside the head of a sperm there's a long thread of one meter, one yard, say. And this is so tightly coiled in 23 little pieces that we call chromosomes, that the whole thing is inside the head of the sperm and the volume of it is upon the point of a needle.

In the first place, in so small a volume, all the data which will spell out the way to build all the protein which will make the machine tool inside the cells is entirely spelled out.

The same is true in the ovum, in which 23 little pieces of chromosomes one meter long all together stay there until they receive the help of the 23 from the father. Now that's part of the information and it is a text book.

Most of the people will stop there and tell you that genetic information is carried by DNA. That's perfectly true. But there's another type of information, the amount of which is even much more important and much bigger, which is inside the cell.

Inside the ovum there are prepared billions of highly specialized molecules who will recognize and be recognized by the signals given by the genetic make-up.

And to make the thing understandable, remember that when you use a tape recorder if you buy a mini cassette in which the music of an artist such as Mozart is recorded, then if you put it in your tape recorder, you will get a symphony. But curiously on the tape there are no notes of music, and inside your tape recorder there are no musicians.

Nevertheless, by a special code written on the tape, some information is given to your tape recorder so that it will read it, and it will make the air move by the loudspeaker so that what is coming to you is not the orchestra, not the musicians, not evidence of music, but the genius of Mozart.

That's the way life, the symphony of life, is played. That is inside the egg, which receives the tape band from father and which has its own tape bands, and which make 23 plus 23, 46 volumes of the table of the law of life.

Now when you speak about genetic information, you have to remember you have the long ribbon of DNA which is the mini cassette of the symphony of life, but you have the cell itself which is the tape recorder; and which has an enormous amount of information.

Because the tape recorder, to read a tiny ribbon like this, must be a fantastic machine, extremely complex.

* * *

Q: Doctor Lejeune, as the being develops, does it retain its individuality and its membership in the human species?

A: Totally. We, each of us, has never been a chimpanzee. And we are not going to become one.

No baby goes through different species. It belongs to its own species from the very beginning. And that's true of every species. It's not a special feature of humanity.

But what is written in the human fertilized egg that is in a human zygote, in the human being of one cell, what is written is this humanity.

Q: Dr. Lejeune, at eight weeks how would you describe that being?

A: I would describe that being indeed as a human being. But to tell the Court what it looks like, I would say it's Tom Thumb.

Q: Tom Thumb?

A: Tom Thumb. Because the human being at eight weeks is the size of my thumb. That is, from the head to the rump, he measures one inch. And if you were looking at one of them, having never seen anything about human embryology, if I had an eight-week-old human being in my fist you would not see I had anything inside.

But if I opened my hand you would see a tiny being with fingers, with toes, with a face and with palm prints you could read with a microscope.

You would see the sex. And this story of Tom Thumb, of the tiny human being

smaller than the thumb which has always enchanted the young babies and the great mothers, is not a fancy.

It is a truth. Each of us has been a Tom Thumb in the womb of the mother, in this curious shelter, in which only some red light, dim light comes in, in which there is very curious noise, one loud, and strong, and deep hammering which is the heart of the mother and which bangs around a decemberate of a counter bass. And the other is very rapid, like the maracas. And it will come from the heart of this tiny human being. And those two rhythms which we can now detect with hydrophones are typical of the most primitive music any human ear has ever heard, which is the symphony of two hearts; the mother one like the counter bass, 60 times per minute, and the baby one like maracas like 150 per minute: 140 if it is a boy, 160 if it is a girl. . . . This symphony by two hearts is what defines the true story of Tom Thumb.

Q: Dr. Lejeune, what is the effect of an abortion on an eight week human being?

A: It kills a member of our species.

APPENDIX F•

[*Fr. Thomas Berg, a priest in the Archdiocese of New York, is executive director of the Westchester Institute for Ethics and the Human Person and a member of the ethics committee of New York's Empire State Stem Cell Board. The following column appeared June 2, 2009* on *National Review Online* (*www.nationalreview.com*) *and is reprinted with permission.*]

Scrambled Ethics

Fr. Thomas Berg

On May 12, my colleagues on the ethics committee of New York's Empire State Stem Cell Board voted overwhelmingly to recommend that state funds be awarded to researchers who have paid women for their "time and burden" in the retrieval of their eggs for research purposes.

If adopted by New York's full stem-cell board, the measure will mimic the long-established practice in the assisted-reproduction industry of paying up to $10,000 per retrieval. New York would become the first state in the union to allow such reimbursements to eggs-for-research donors.

As if paying women indirectly for their eggs were not shocking enough, New York is anxious to take this issue farther by using state monies to "reimburse" women directly for their egg donations. Several thousand taxpayer dollars would be handed over to any woman who undergoes the dangerous process of egg donation.

Such aggressive monetary reimbursements have been disallowed in most states, including California and Massachusetts, both of which are enthusiastic about stem-cell research. Even the University of Pennsylvania ethicist Arthur Caplan, a pro-cloning advocate, thinks paying women for eggs is a bad idea: "The market in eggs tries to incentivize women to do something they otherwise would not do. Egg sales and egg rebates are not the ethical way to go."

Paying donors is wrong because egg donation entails very serious health risks for women, which can include moderate to serious ovarian hyper-stimulation syndrome (OHSS). This medical condition causes anything from bloating and nausea to loss of fertility, organ failure, and death. And as Time magazine recently highlighted, the long-term risks to egg donors are unknown for the simple reason that "they have never actually been studied." Wonder of wonders.

In one of the few studies actually on record, Dr. Jennifer Schneider and Wendy Kramer surveyed 155 egg donors about some of the long-term outcomes from their donation experience. They found that almost one-third of donors suffered health complications associated with OHSS, and 5 percent suffered subsequent infertility.

It goes without saying that because the long-term risks of egg donation are essentially unknown, the donors' "informed consent" at the time of donation is a joke.

Nonetheless, when looking at the prospect of $5,000 to $10,000, most low-income women are not going to care. That's why paying women for eggs will necessarily lead to the undue inducement and consequent exploitation of women. A voluntary donor, by contrast, is much more likely to calmly weigh the pros and cons of

donation, and only go through with it if she feels strongly that she is doing good.

It's not surprising that egg-donation agencies across the country are reporting a sharp increase in applicants seeking to donate eggs, as high as 55 percent in some places compared with the same period last year. Is that due to a sharp increase in altruism? I don't think so. "Whenever the employment rate is down, we get more calls." That's what Robin von Halle, president of Alternative Reproductive Resources, a Chicago-based fertility clinic, told the *Wall Street Journal* last December. "We're even getting men offering up their wives; it's pretty scary," she said.

And by the way: What would those donated eggs be used for? Everything from creating human embryos specifically for research purposes to attempts at human cloning. New York could pave the way for all these practices by making egg donations fundable with state tax dollars. Maybe your state will follow suit.

"This is all subsidized housing—most everyone's rent is paid by their parents."

APPENDIX G

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Life, Liberty, and The Pursuit of Power

Donald DeMarco

> *"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness."*

So reads the second paragraph of the Declaration of Independence, which the original thirteen States of America passed unanimously on July 4, 1776. It is worth noting that the independence that Congress had in mind when it passed its Declaration was not from religion, reason, or rectitude, but from Great Britain. More specifically, it was from an "absolute Despotism."

Life, Liberty, and the pursuit of Happiness! Noting the dubious decision to enshrine the right to pursue happiness alongside of two unimpeachable values, many have tried to find consolation in the equally dubious maxim that "two out of three isn't bad." Not bad for a batting average. But it can be fatal for anything organic. One can bleed to death from a single wound. A solitary tapeworm can destroy its host. In feline arithmetic, 1 cat + 2 mice = 1 cat.

The problem with pursuing happiness is, simply put, that happiness is not an object of pursuit. Bob Hope once quipped that he found more meaning in "the happiness of pursuit." As its etymology informs us, happiness is something that "happens" when we are pursuing something else. It is, as someone said, "a by-product of an effort to make someone else happy" (Gretta Palmer in *Permanent Marriage*). Nathaniel Hawthorne understood this and expressed the point by a charming analogy: "Happiness is like a butterfly which, when pursued, is always beyond your grasp, but, if you will sit down quietly, may alight upon you." Happiness has the paradoxical quality of eluding us to the extent we pursue it. It is more correct to say that happiness pursues us (and captures us when our actions are receptive to it).

Aristotle's ethics is built on the uncontestable fact that all men desire happiness. In fact, his ethics is called *eudaimonian* precisely for that reason (*eudaimonia* = happiness). But the "Master of those who know,"as Dante called him, understood only too well that it is through a life of reason in accordance with virtue that one attains this elusive ideal. Happiness is not merely a choice. If it were, the whole world would be exhilaratingly happy.

Whereas people cannot pursue happiness directly, as if it were an apple dangling from the lower branch of a tree, there is no end of things that they can and have pursued in the vain hope that they would secure this highly prized treasure. In this regard, they pursue such vanities as pleasure, wealth, status, fame, and power. Their acute frustration lies in the fact that such pursuits carry them further and further

away from happiness. As we read in Macbeth, "and my more-having would be a sauce to make me hungry more." (Act. IV, scene iii)

The great and present danger for Americans results from their having misinterpreted the "pursuit of Happiness" as the pursuit of a certain kind of Power that gives them, presumably, radical autonomy. As a result, in pursuing this power, the lives and liberties of others get in the way. The Court stated in *Planned Parenthood* v. *Casey* that "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of life." If one possesses such spacious liberty, it must necessarily encroach upon the lives and liberty of others. As Abraham Lincoln famously quoted a Western farmer who had an intriguing theory about land ownership, "I am not greedy about land; I only want what joins mine."

Why is it that the pursuit of power is not synonymous with the pursuit of happiness? Thomas Aquinas offers two basic reasons. "It is impossible for happiness to consist of power," he writes, because "power is a principle" (not an end) and because "power has relation to good and evil." (whereas happiness is an unqualified good)

Power, being a principle, is prior to something that is put into act. It precedes its exercise. In this sense, power is like money; it is something that is a means to an end, an instrument by which something other than itself is obtained. Both power and money are media of exchange: the former used to bring about an action, the latter to obtain goods or services.

Secondly, power is ambiguously related to good. It is univocally related to good and evil. Power that brings about evil is equally power as power that brings about good. Therefore, the achievement of power cannot be the achievement of happiness since happiness is both an end and an unequivocal good (*S.T.* I-II, Q2, art. 4).

The contemporary experience of how the pursuit of power has led to an assault on both life as well as liberty, is consistent with and supported by such legal decisions as *Roe* v. *Wade* (1973) and *Planned Parenthood* v. *Casey* (1992). By redefining the human being in terms of "autonomy" the Court has effectively severed the person from his fundamental moral obligation to protect the life and liberty of others.

But an obligation (or duty) is not exactly the same as a right. America broke away from England because her rights, not her duties, were being transgressed. Because of historical circumstance, the Declaration of Independence did not enshrine the duties to protect life, safeguard liberty, and love one another. Moreover, it probably did not occur to the framers that it would be necessary to regard love as a "right."

The right to love was wounded by *Planned Parenthood* v. *Danforth* in 1976 and salt was rubbed into that wound in the subsequent *Casey* decision. The simplest definition of love is that it is practical concern. Surely parents should know this. But if a father cannot save his child-in-the-womb from premature death, his paternal love remains frustrated at the level of mere intention.

The Court ruled in *Planned Parenthood* v. *Danforth* that the state cannot "delegate to a spouse a veto power which the state itself is absolutely and totally prohibited from exercising during the first trimester of pregnancy." It also argued that the state has "no constitutional authority to *give* the spouse unilaterally the ability to prohibit the wife from terminating her pregnancy when the State itself lacks that right."

Implicit in the Court's ruling is the peculiar notion that the biological father is not so much a father as he is a "delegate" of the state, although the state is unable to delegate fatherhood to him. Thus, the father is prevented form loving his unborn child effectively. Also implicit in the decision is the notion that marriage is unconstitutional because the traditional notion that unites husband and wife as one, would prohibit an alienation of the mother from the father so that only the former could decide the fate of their child. Marriage and the family constitute an organic entity. The Court, in order to rationalize abortion, must alienate the pregnant mother from the web of her marital and maternal bonds. In dissent, Justice Byron White stated: "It is truly surprising that the majority finds in the United States Constitution, as it must, in order to justify the result it reaches, a rule that the State must assign a greater value to a mother's decision to cut off a potential human life by abortion than to a father's decision to let it mature into a live child." We must not allow Justice White's awkward references to "a potential human life" and its maturation "into a live child" to obscure that more important point he is making, namely, that the mother's right to kill takes precedence over the father's right to love. Neither Justice White, nor any reasonable person believes that such a grotesque inversion of human values is contained or implied in the United States Constitution.

The *Casey* decision went even further in severing the father from both his own fatherhood as well as from any attempt he might make to safeguard the life of his unborn child. According to *Casey*, the claim that a husband be notified about the impending abortion of his children in the womb is "invalid." Such a claim, the Court stated, "constitutes an undue burden" on the pregnant woman. "It cannot be claimed,' the Court emphasized, "that the father's interest in the fetus' welfare is equal to the mother's protected liberty."

Ordinarily, a wife wants her husband to support her and their unborn child during her pregnancy. Her constitutionally protected liberty to abort, however, renders her husband's positive concerns about his marriage and his child irrelevant. Thus, the Constitution forbids a father from loving his unborn child in a way that is beneficial to that child. No matter what the mother may think, premature death cannot be construed as a benefit for the child. The father who wants to save his unborn child is thereby ordered by law to stand idly by and accept this alienation both from his offspring as well as from his wife. Marriage and the family are no longer perceived to be integral; they are shattered into a loose collectivity of alienated and conflicting pieces. The wife's power to abort annuls the husband's claim to protect.

That the father even be notified about his wife's impending abortion of his child

is, in the words of the Court, "repugnant to this Court's present understanding of marriage and the nature of the rights secured by the Constitution."

In the motion picture, *Moonstruck*, Olympia Dukakis' character says to a self-pitying, philandering bachelor, "What you don't know about women is a lot!" What the Court does not know about marriage and the family is, indeed, a lot, but with very little excuse. There is no right located in the Constitution to dismantle marriage and the family. But this is precisely what is done when an unborn child is legally killed and the father is legally removed from the moral and protective role he has a natural right to have as an integral and constitutive member of both his marriage and his family. Moreover, the Court does not appear to know what it means to be a human being. A human being is not a solo entity, a lonely rights bearer, who seeks the meaning of his life as an autonomous individual.

The French national motto, in contrast with Life, Liberty, and the pursuit of Happiness, is *liberté*, *égalité*, and *fraternité*. In *Life is a Blessing*, a biography of the distinguished geneticist, Jérôme Lejeune, by his daughter, Clara, the author recounts a story her father was fond of telling. A certain rural priest, who had made a favorable impression on the young Jerôme Lejeune, had the following words inscribed over the door of his rectory: *vérité*, *humilité*, and *paternité*. Whenever someone asked the priest why he had chosen these words, he would reply, "Well, it's all very simple, because truth (*vérité)* will set you free (*liberté)*, humility will make you equal (*egalité)*, and paternity will teach you that you are all brothers (*fraternité)*, since you all have the same Father."

The good priest was getting to the roots of his national motto, roots that he found to be more Christian. Truth, humility, and paternity, however, would all be censored in today's climate of uncompromising political correctness.

When Thomas Aquinas presented his treatise on the natural law, he drew special attention to its three primary precepts (*S.T.* I-II, Q. 94, art. 2). The first precept is something we have in common with animals and plants, namely, a natural inclination to preserve ourselves in being. This fundamental natural inclination is the basis for our right to *life*. The second precept, which we have in common with all animals, is the inclination and capacity to have offspring and provide for their care and education. This is the basis for our right to *love*. The third precept of the natural law is proper to man, "a natural inclination to know the truth about God, and to live in society." This is the basis for the natural right to *liberty.*

Consequently, for Aquinas, the three most fundamental rights are not Life, Liberty, and the pursuit of Happiness, but Life, Liberty, and Love. It is precisely this Love that would put him at odds with recent Supreme Court decisions. The "pursuit of Happiness," which is ambiguously related to happiness and equally relatable to the destruction of marriage and the family, is not as firm or well-grounded a natural right as the right to love one's own children in a practical and beneficial way. The "pursuit of Happiness" can easily, as is only too evident, degenerate into the pursuit of Power.

The triad of Life, Liberty, and the pursuit of Happiness contains within itself its

own seeds of destruction. They are not necessarily in balance with each other because they spring from different grounds and are subject to wildly different and even sometimes capricious interpretations. Life may be personal in the social sense that Aristotle had in mind when he referred to man as a "social animal" (*zoon politikon*). Or it can be regarded in terms of the fictitious "autonomous self." Liberty may be the freedom to choose rightly, or an individualized license that is radically incompatible with the legitimate liberties of others.

In an International Congress on Natural Law, organized by the Pontifical Lateran University of Rome (Feb. 22, 2007), Benedict XVI made the following comment about the natural law and how true liberty (freedom) must be anchored in the nature of the human being: "Yet taking into account the fact that human freedom is always a freedom shared with others, it is clear that the harmony of freedom can be found only in what is common to all: the truth of the human being, the fundamental message of being itself, exactly the *lex naturalis* (the natural law)."

Aquinas is wise in recognizing that the natural law is grounded in the human being. Therefore, it has one root in which its three fundamental principles are mutually compatible. He is also wise in recognizing that on this earth, human beings have much in common with both animals and plants, in addition to having their own uniqueness. His understanding of the natural law is not concocted out of thin air. By contrast, Robert H. Bork, in *Slouching Towards Gomorrah: Modern Liberalism and American Decline*, has accused the Supreme Court of creating, precisely "out of thin air" the "general and undefined right to privacy" that undergirds the presumed right to abortion and its consequent assault on marriage and the family (p. 103).

Life, liberty, and love provide a system of checks and balances. Love protects life and ensures that liberty be a shared liberty for the good of all associations, from marriage and the family to society in general. The infamous "sweet-mystery-of-life" statement in the *Casey* decision interpreted liberty so broadly that Justice Antonin Scalia characterized it as the "passage (that) ate the rule of law." It was a liberty that had grown too big to be any longer compatible with life, love, or reasonable restrictions. Liberty that does not honor the liberty of others cannot be a natural right. Just as the respiratory, digestive, and circulatory systems operate harmoniously in the human body, so, too, must life, liberty, and the pursuit of happiness operate harmoniously in the social order. This will happen only if people pursue their happiness through self-forgetful love.

APPENDIX H

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Why The Equal Protection Clause Cannot "Fix" Abortion Law

Mary Catherine Wilcox

Thirty-five years after *Roe* v. *Wade*[1] was decided, it continues to face tremendous opposition from the general public.[2] The Supreme Court has acknowledged the "intensively divisive controversy" *Roe* engendered,[3] yet the Court has deprived the people of the ability to reach a consensus on the abortion issue through democratic means.[4] Legal scholars continue to criticize the decision for lacking support in the language and history of the Constitution.[5] Even some supporters of abortion rights do not believe *Roe* provided a sufficient constitutional basis for the right to abortion.[6] Facing the prospect of *Roe*'s demise, abortion advocates are desperate to base the right to abortion in a constitutional provision other than the Due Process Clause.[7] They have offered the Equal Protection Clause[8] as an alternative, which they claim would provide a solid constitutional foundation for the right to abortion.[9] Justice Ruth Bader Ginsburg's dissent in *Gonzales* v. *Carhart*,[10] which argued that women need access to abortion to be equal citizens,[11] has brought this argument to the forefront of the legal debate over abortion. Given Justice Ginsburg's dissent in *Gonzales* and recent legal works arguing for an equal protection analysis of abortion statutes,[12] the trend toward making equal protection arguments to strike down abortion regulations is evident. This Note proves that such attempts cannot and will not be successful in the courts.

Part I discusses the inherent weaknesses in *Roe*'s substantive due process analysis. Legal scholars, dissenting Justices, and the Supreme Court have effectively criticized earlier cases, such as *Lochner* v. *New York*,[13] that invoked substantive due process to strike down state statutes. As a consequence, abortion advocates have argued to base the right to abortion in the Equal Protection Clause. Part II depicts the evolution of abortion advocates' arguments to strike down post-*Roe* statutes regulating abortion, from invoking the liberty interest of the Due Process Clause to making equal protection arguments to support legalized abortion. The courts have never used the Equal Protection Clause to strike down statutes regulating abortion, but Justice Ginsburg's dissent in *Gonzales* v. *Carhart* shows that abortion advocates have not abandoned this argument. Part III demonstrates that the Equal Protection Clause does not provide for a right to abortion. Arguments that the Clause protects the right to abortion lack precedential support. Part IV proves that, contrary to the claims of abortion advocates, women do not need legal abortion to have the equal protection of the law.

I. Substantive Due Process: A Weak Foundation for Abortion Law

On January 22, 1973, the U.S. Supreme Court handed down *Roe* v. *Wade*, overriding century-old statutes that criminalized abortion in a majority of states.[14] The

decision immediately spawned public opposition and extensive legal criticism from scholars on both sides of the abortion issue.[15] There are three main arguments that demonstrate that *Roe*'s substantive due process analysis is unconstitutional. First, the Court's selection of substantive due process as the source of the right of privacy violates the principles of stare decisis and separation of powers.[16] Prior to *Roe*, the Court had rejected using substantive due process to strike down laws that did not comport with the Justices' particular economic or social philosophies.[17] The Court declared:

> [A] state legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the Constitution . . . and . . . Courts should be careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular Court may happen to entertain.[18]

What is more, legal scholars have decried the Court for *Lochner*ing in *Roe*.[19] Indeed, there are striking similarities between the two decisions.[20] Perhaps some have refused to compare *Roe* to *Lochner* on the basis that "the 'right to abortion,' or noneconomic rights generally, accord more closely with 'this generation's idealization of America' than the 'rights' asserted in . . . *Lochner*."[21] In response to this argument, Professor John Hart Ely pointed out that this attitude is actually the embodiment of the *Lochner* philosophy, which grants protection to rights the Constitution does not guarantee.[22] The Court's substantive due process reasoning also mirrors the Court's faulty reasoning in *Dred Scott* v. *Sandford*.[23] Thus, *Roe* departed from precedent and the Constitution in using substantive due process to find a constitutional right of privacy.

Second, *Roe* failed to demonstrate how a right to abortion could be established from the right of privacy.[24] None of the cases cited by the Supreme Court to support the right of privacy even address abortion in the slightest sense.[25] The Court merely stated that "[t]his right of privacy . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."[26] Furthermore, the Court failed to prove how the right to abortion could be established from its substantive due process analysis.[27] Instead of providing legal reasoning for its holding, the Court made a policy argument, listing all the problems women face during pregnancy.[28] In regard to the Court's policy arguments for legal abortion, Professor Ely commented, "All of this is true and ought to be taken very seriously. But it has nothing to do with privacy in the Bill of Rights sense or any other the Constitution suggests."[29] Thus, *Roe* failed to sufficiently connect the right of privacy to the right to abortion through case law and legal analysis.

Third, the Court used an improper method of analysis to find that the right to abortion was fundamental, and thus, protected by substantive due process.[30] Substantive due process analysis requires the finding of a fundamental right, which is weighed against the state's interest in regulation. The Court employed *Palko* v. *Connecticut*'s[31] test for fundamental rights in its analysis, which requires that "only [those] personal rights that can be deemed 'fundamental' or 'implicit in the concept

of ordered liberty' . . . [can be] included in this guarantee of personal privacy."[32] The use of the *Palko* test as opposed to more recent tests used to identify fundamental rights enabled the Court to examine the history of abortion dating back to ancient Greece and Rome, rather than limiting the scope of historical analysis to American history and traditions.[33] In this way, the Court was able to give the impression that the states' century-old abortion statutes were "freak developments in the history of ordered liberty,"[34] rather than evidence of "deeply-rooted American traditions which represented a break from Old World traditions."[35] The fact that academic scholars have since thoroughly refuted the Court's historical account of abortion[36] supports the position that, even under the *Palko* test, the Court improperly concluded that a fundamental right to abortion existed in the Due Process Clause.[37]

To this day, no one, not even the Supreme Court, has been able to justify *Roe*'s creation of a right to abortion out of the right of privacy, which the Court found to exist in substantive due process.[38] The Court has merely reaffirmed the right to abortion through the doctrine of stare decisis, and not simply on the basis of substantive due process.[39] Recognizing the failings of *Roe* and its weak precedential and constitutional foundation, abortion advocates have resorted to equal protection arguments to strike down statutes regulating abortion.[40]

II. The Trend Toward Equal Protection Arguments for a Constitutional Right to Abortion

Roe never mentioned equal protection, although it described the burdens pregnancy imposes on women.[41] Rather, the Court focused on a woman's private decision between herself and her physician.[42] This rationale is much to the dismay of abortion advocates who seek to anchor the right to abortion in the Equal Protection Clause.[43] Although most abortion cases have focused on the constitutionality of abortion statutes through the lens of the Due Process Clause, equal protection arguments began to emerge in cases challenging abortion-funding restrictions and abortion clinic regulations. Eventually, the Court began to implicate women's equality in abortion cases, and abortion advocates' equal protection arguments evolved into claims of gender-based discrimination. To date, the Court has neither applied the Equal Protection Clause to strike down an abortion statute nor acknowledged that the Clause could protect the right to abortion.

A. Restrictions on Public Abortion Funding and Abortion Clinic Regulations

The Court has refused to apply intermediate scrutiny in cases of restrictions on public funding of abortion and abortion clinic regulations, repeatedly holding that such restrictions and regulations do not violate the Equal Protection Clause. In the early years following *Roe*, abortion advocates began to invoke the Equal Protection Clause to challenge restrictions on government funding of abortion. In general, they argued that states must treat abortion and childbirth equally, and may not indicate a policy preference by funding only medical expenses related to childbirth.[44]

The Supreme Court has repeatedly rejected this argument, holding that women who are indigent do not constitute a suspect class and that abortion is not a fundamental right for equal protection purposes.[45] Because indigent women do not constitute a suspect class, the Court applies the rational basis test to test the constitutionality of abortion funding restrictions.[46]

In *Harris* v. *McRae*,[47] the Court refused to apply the Equal Protection Clause to strike down the Hyde Amendment, which prohibited Medicaid funding of abortion "except where the life of the mother would be endangered if the fetus were carried to term, or except for such medical procedures necessary for the victims of rape or incest when such rape or incest has been reported promptly to a law enforcement agency or public health service."[48] The Court, noting that it has repeatedly held that poverty alone does not constitute a suspect classification, subjected the Hyde Amendment to the rational basis test. [49] The Court found that this amendment was rationally related to a legitimate state objective, and thus, held it to be constitutional.[50]

After the Court established that indigent women were not a suspect class for purposes of equal protection analysis, abortion advocates next argued that the state had an affirmative duty to provide funding for abortion under the Equal Protection Clause. The Court also rejected this argument. In *Webster* v. *Reproductive Health Services*,[51] the plaintiffs challenged provisions of a Missouri abortion statute that forbade "any public employee within the scope of his employment to perform or assist an abortion, not necessary to save the life of the mother," and made it "unlawful for any public facility to be used for the purpose of performing or assisting an abortion not necessary to save the life of the mother."[52] The Court found no merit to the equal protection argument because the state may use public facilities and employees to encourage childbirth over abortion.[53]

Similarly, in *Rust* v. *Sullivan*,[54] the plaintiffs challenged regulations promulgated to clarify Title X of the Public Health Service Act, which appropriated federal funds for family planning, but prevented those funds from being used for abortion-related purposes.[55] They argued that the regulations effectively precluded indigent "Title X clients" from obtaining an abortion because they could not receive funding for the procedure.[56] In upholding the regulations, the Court held that a pregnant woman is in no worse position than she would be had Congress not provided family planning funding at all.[57] Furthermore, the Court added, the government has no affirmative duty to fund an activity merely because it is constitutionally protected, and may choose to favor childbirth over abortion by means of unequal funding.[58]

In more recent years, abortion advocates have sought to strike down abortion clinic regulations on equal protection grounds. Two federal cases have explicitly rejected claims that health and safety regulations relating to abortion clinics violate the Equal Protection Clause. In *Greenville Women's Clinic* v. *Bryant*,[59] abortion advocates unsuccessfully invoked the Equal Protection Clause in a challenge to a South Carolina health regulation relating to abortion clinics.[60] The court applied a rational basis test to determine that the regulation did not violate the Equal Protection Clause.[61]

Similarly, in *Tucson Woman's Clinic* v. *Eden*,[62] abortion advocates argued that an Arizona abortion clinic regulation violated the equal protection rights of physicians and their patients by distinguishing between abortion providers and those doctors who provide other comparably risky medical services.[63] The court disagreed, reasoning that the regulation passed rational basis review because it was facially related to health and safety issues and there was no evidence that it had a "stigmatizing or animus based purpose."[64] Further, abortion advocates argued that the regulation violated the equal protection rights of physicians by distinguishing between those who provide fewer than five first-trimester abortions and those who provide five or more first-trimester abortions or any second- or third-trimester abortions.[65] The court, however, found that the regulation survived rational basis review because it legitimately excluded smaller private practices from the regulation, which would have imposed unduly burdensome requirements on such practices.[66]

The abortion advocates' third argument was that the regulation violated the equal protection rights of women by distinguishing between abortion—a medical service sought only by women—and comparably risky procedures sought by men.[67] The court responded by holding that the regulation satisfied the undue burden standard set forth in *Planned Parenthood of Southeastern Pennsylvania* v. *Casey*[68] because the State asserted maternal health as its interest in promulgating the regulation and there was no material issue of fact regarding an invidious purpose behind the regulation.[69] In upholding Arizona's regulatory scheme for regulating abortion clinics, the court expressly denied the validity of all three of the plaintiffs' equal protection claims.[70] Equal protection claims to strike down abortion restrictions in the context of clinic regulations have completely failed in court.

These cases demonstrate that the Supreme Court has conclusively established—and lower courts understand—that policies disfavoring abortion are not ipso facto sex discrimination,[71] and do not discriminate against a suspect class.[72] Thus, a rational basis test is applied to these restrictions rather than the intermediate scrutiny standard used for gender-based classifications.[73]

B. Sex Equality and Abortion

In abortion cases, the Court has merely mentioned concerns about discrimination against women, but has never invalidated a law on equal protection grounds. Abortion advocates assert that *Thornburgh* v. *American College of Obstetricians & Gynecologists*[74] was the first case to suggest that abortion restrictions implicate equal protection concerns.[75] At the conclusion of the *Thornburgh* opinion, the Court noted that "[a] woman's right to make [the abortion] choice freely is fundamental. Any other result . . . would protect inadequately a central part of the sphere of liberty that our law guarantees equally to all."[76] At issue in *Thornburgh* was a Pennsylvania statute that required doctors, before performing an abortion, to obtain the informed consent of their patients and to provide their patients with information about help that is available to them should they choose to carry their child

to term.[77] The statute also required physicians to report basic information about the abortion transaction, use an abortion technique in post-viability abortions that would give the unborn child the best opportunity to be born alive, and have a second physician present during an abortion when viability is possible.[78] The Court based its decision to invalidate these statutes on their infringement of constitutional privacy interests.[79] The Equal Protection Clause was never mentioned in the Court's decision to reaffirm the right to abortion.[80]

Equal protection arguments to protect the right to abortion were before the Court in *Webster* v. *Reproductive Health Services*,[81] yet the Court declined to reevaluate the constitutionality of *Roe* in its decision.[82] Justice Blackmun, in his opinion concurring in part and dissenting in part, hinted at an equality argument for maintaining *Roe*: "I fear for the liberty and equality of the millions of women who have lived and come of age in the 16 years since *Roe* was decided."[83] The Missouri statute at issue in *Webster* contained, among other provisions, findings that life begins at conception and that the lives of unborn children are protectable; required that Missouri law be construed to provide unborn children with the same rights as other persons, subject to the Constitution and Supreme Court precedent; and required abortion doctors to determine the viability of the unborn child if the mother is believed to be twenty or more weeks pregnant.[84] The Court upheld all of these requirements.[85] A plurality of the Court expressly rebuked Justice Blackmun's arguments:

> Justice Blackmun's suggestion that legislative bodies, in a Nation where more than half of our population is women, will treat our decision today as an invitation to enact abortion regulation reminiscent of the Dark Ages not only misreads our views but does scant justice to those who serve in such bodies and the people who elect them.[86]

In *Planned Parenthood of Southeastern Pennsylvania* v. *Casey*, abortion advocates asked the Court to use the Equal Protection Clause to strike down a Pennsylvania statute that required mandatory spousal notification.[87] Though the Court struck down the spousal notification provision, it employed the undue burden test and did not invoke the Equal Protection Clause in its decision.[88] The push to reaffirm *Roe* on equal protection grounds reveals that abortion advocates recognized the weak constitutional foundations of *Roe* and sought shelter for the right to abortion in the Equal Protection Clause.[89] The Court, however, implicitly rejected their argument by not using the Equal Protection Clause as a basis for reaffirming the right to abortion. Instead, the Court based its decision on "individual liberty . . . combined with the force of *stare decisis*."[90] In its stare decisis analysis, the Court referenced women's equality, stating that "[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."[91] However, this assertion was part of the Court's analysis of the reliance issue;[92] it has no bearing on the Court's equal protection analysis.

Abortion advocates in *Stenberg* v. *Carhart*[93] argued that abortion restrictions

constitute gender discrimination because they only affect women and women alone bear the burden of pregnancy and childbirth.[94] Although the Court acknowledged that there are people who hold these views, the Court also acknowledged that "[m]illions of Americans believe that life begins at conception and consequently that an abortion is akin to causing the death of an innocent child."[95] Equal protection concerns were not taken into consideration in the Court's decision to strike down the Nebraska ban on partial-birth abortion.[96] Instead, the Court measured the statute against the undue burden standard set in place by *Casey*.[97]

In *Gonzales* v. *Carhart*, the Court held that a federal statute regulating a particular partial-birth abortion procedure did not impose an undue burden on a woman's decision whether or not to have an abortion.[98] The Court's analysis centered on the Due Process Clause and made no mention of the Equal Protection Clause. Justice Ginsburg, however, brought up a sex equality argument in her dissenting opinion.[99] She discussed *Casey*'s references to female equality, concluding that the right to abortion concerns the equality of women rather than privacy rights: "Legal challenges to undue restrictions on abortion procedures do not seek to vindicate some generalized notion of privacy; rather, they center on a woman's autonomy to determine her life's course, and thus to enjoy equal citizenship stature."[100] *Gonzales* is an example of how the Due Process Clause cannot be used to strike down all statutes regulating abortion. Justice Ginsburg's response demonstrates the abortion advocates' recognition of this reality and their continued efforts to make equal protection arguments to protect the right to abortion created by *Roe*.

III. The Equal Protection Clause and Abortion

Abortion advocates have argued that the right to abortion is weakened by the Court's exclusion of a "constitutionally based sex-equality perspective" in *Roe*.[101] They contend that restrictions on abortion constitute discrimination against women in violation of the Equal Protection Clause.[102] While abortion advocates claim that the Equal Protection Clause can protect the right to abortion, this argument fails for the same reasons scholars have criticized *Roe*'s substantive due process analysis.[103] Like the privacy cases *Roe* cited as encompassing a right to abortion under the Due Process Clause,[104] the cases striking down invidious gender-based classifications under the Equal Protection Clause do not provide a precedent for a right to abortion because they have nothing to do with abortion.[105] In addition, there is established legal precedent that a classification on the basis of pregnancy is not a classification on the basis of gender, and thus the Equal Protection Clause cannot be used to strike down abortion statutes on the basis that they discriminate against women as a class.[106]

A. Women's Equality in Constitutional Law

The Equal Protection Clause of the Fourteenth Amendment provides that a state may not "deny to any person within its jurisdiction the equal protection of the

laws."[107] Under the Equal Protection Clause, "men and women [who are] similarly situated must be treated equally under the law. . . . On the other hand, the Equal Protection Clause does not require equal treatment for men and women under all circumstances."[108] To prove a claim of gender discrimination, a plaintiff is ordinarily required to show that he or she suffered "purposeful or intentional discrimination" on the basis of gender.[109] Generally, gender-based discrimination that is unsupported by reasonable justifications violates the Equal Protection Clause.[110] Legislative classifications on the basis of gender are subject to a heightened level of scrutiny.[111] To survive judicial scrutiny, gender-based classifications must serve important governmental objectives and be substantially related to the achievement of those objectives.[112] However, the Constitution does not prevent the state from making a gender-based classification where men and women are not similarly situated if the classification is not invidious.[113]

In the 1970s, the Court began to strike down statutes containing overt gender-based classifications.[114] These cases established precedent for the Court's treatment of gender-based classifications, but none of them involved an abortion restriction. In 1971, *Reed* v. *Reed*[115] made history by striking down a law that preferred men over similarly situated women for estate administration purposes.[116] Two years later, the Court invalidated a federal statute requiring women, but not men, to prove the dependency of their spouses in order to receive increased quarters allowances and medical benefits.[117] During the latter half of the 1970s, the Court decided several cases that collectively held that social security benefits,[118] welfare assistance,[119] and workers' compensation benefits provided to male employees must also be provided to female employees.[120] The Court also held that a statute setting a higher age of minority for males than females for child support purposes was invidiously discriminatory.[121]

None of the cases in which the Court struck down a gender-based classification even remotely involved a restriction on abortion. They solely involved gender-based classifications, to which the Court applied an intermediate level of scrutiny and found that the classifications invidiously discriminated against women who were similarly situated to men, or vice versa.

The Court has upheld gender-based classifications that were not invidious, but rather reflected the fact that the sexes are not similarly situated in certain circumstances.[122] Abortion restrictions fit into this category for three reasons. First, they are predicated on differences in reproductive capacities between men and women. Second, because "[a]bortion is a unique act,"[123] abortion restrictions do not affect women as a class. They merely affect a subset of women who are not classified on the basis of their gender, but on the basis of the presence of life within their wombs.[124] Lastly, abortion restrictions do not "mask a discriminatory animus for disparate treatment unrelated to any genuine objective."[125] The Court has held that abortion restrictions have the goal of preventing abortion—and not of unjustly discriminating—and therefore abortion restrictions are not invidiously discriminatory.[126] In short, there is simply no precedent in sex equality cases to support the abortion

advocates' claim that abortion restrictions could be struck down as invidious gender-based classifications.

B. Classifications on the Basis of Pregnancy

Despite a lack of precedent for their arguments, abortion advocates claim that because only women can become pregnant, restrictions on abortion are really a form of discrimination against women.[127] As a consequence, they argue abortion restrictions should be struck down on equal protection grounds.[128] The Court has never characterized laws governing pregnancy as sex-based state action for purposes of equal protection review. In fact, the Court has firmly established over the past three decades that classifications on the basis of pregnancy are not gender-based classifications, and thus, they are only subject to a rational basis standard of review.[129]

In *Geduldig* v. *Aiello*,[130] the Court considered the constitutionality of a California disability insurance program that excluded payments for disability accompanying normal pregnancy.[131] In upholding the constitutionality of the disability restriction, the Court rejected the argument that the case involved discrimination on the basis of gender in violation of the Equal Protection Clause.[132] The Court explained:

> While it is true that only women can become pregnant, it does not follow that every legislative classification concerning pregnancy is a sex-based classification . . . . Normal pregnancy is an objectively identifiable physical condition with unique characteristics. Absent a showing that distinctions involving pregnancy are mere pretexts designed to effect an invidious discrimination against the members of one sex or the other, lawmakers are constitutionally free to include or exclude pregnancy from the coverage of legislation such as this on any reasonable basis, just as with respect to any other physical condition.[133]

Geduldig held that state-based benefits programs are permitted to exclude pregnancy benefits without violating the Equal Protection Clause, even though "only women can become pregnant."[134] Similarly, abortion regulations do not constitute sex discrimination, even though "abortions are procured only by women."[135]

More recently, in *Bray* v. *Alexandria Women's Health Clinic*,[136] the Court held that attempts by anti-abortion activists to restrict access to abortion clinics did not constitute discrimination against women as a class.[137] Relying on, inter alia, *Geduldig*, the Court expressly refuted the argument that "since voluntary abortion is an activity engaged in only by women, to disfavor it is *ipso facto* to discriminate invidiously against women as a class."[138]

In these cases, the Court reasoned that even though only women may become pregnant or undergo an abortion, real reproductive differences between the sexes may justify laws and regulations that directly impact pregnant women.[139] Abortion restrictions are not gender- based classifications because they do not regulate women as a class, but only women who are pregnant.[140] Women who are not pregnant are not affected by abortion restrictions. It is true that only women can become pregnant, but the target of abortion restrictions is pregnancy, "an objectively identifi-

able physical condition with unique characteristics."[141] Thus, legislative classifications based on pregnancy are analyzed under rational basis review.[142]

Cass Sunstein, a constitutional law scholar and abortion advocate, has acknowledged the impossibility of overcoming this reasoning: "A denial of equality means a refusal to treat the similarly situated similarly. With respect to the capacity to become pregnant, women and men are not similarly situated. An equality argument is therefore unavailable."[143] Sunstein has suggested that one way around this argument is for the Court to stop taking into consideration the physical differences between men and women.[144] He and other abortion advocates have argued that pregnancy is a social disability[145] and that abortion restrictions are based on traditional, and constitutionally impermissible, views about women's role in society.[146]

Such an argument, however, is essentially an illogical policy argument lacking any basis in the language and meaning of the Constitution.[147] First of all, it is impossible to reasonably argue that the right to abortion impacts women alone.[148] Regardless of whether the Court will treat an unborn child as a person for purposes of the Equal Protection Clause,[149] the unborn child is still a living human being[150] whose life is worthy of protection.[151] The state has a compelling interest in protecting such human life, which would trump any liberty or equality interest of the unborn child's mother.[152]

Second, the Court has repeatedly emphasized that the state has a legitimate interest in protecting fetal life and promoting maternal health[153] and in ensuring that abortion restrictions do not aim to invidiously discriminate against women.[154] *Roe* itself asserts that statutes banning abortion were enacted in the nineteenth century largely because the medical profession recognized that life begins at conception.[155] Indeed, even the feminists who were fighting for women's equality when the majority of criminal abortion statutes were enacted opposed abortion.[156] Furthermore, *Roe* unequivocally states that two of the factors that motivated states to enact criminal abortion statutes in the nineteenth century were to protect women from a hazardous procedure and to protect prenatal life—precisely the two state interests the Court has, since *Roe,* time and again recognized as legitimate.[157]

IV. A Feminist Case *Against* Abortion

Without constitutional or precedential support for using the Equal Protection Clause as a safe haven for the right to abortion, the argument to analyze abortion restrictions under heightened scrutiny of the Equal Protection Clause is essentially an unreasonable policy argument.[158] The main thrust of the "equality" argument for abortion is that abortion is necessary for women to "enjoy equal citizenship stature."[159] Yet in the thirty-five years since *Roe* legalized abortion, it has become abundantly clear that legal abortion denigrates—not elevates—women's status in society by physically and psychologically harming women who have abortions and by providing an excuse for society not to deal with the real reasons women feel they cannot keep their child.[160] The abortion advocates' focus on pregnancy as a burden only women bear—rather than a miracle only women can experience—

perverts the spirit of feminism and denies the reality of unborn life in the womb. It also excludes males from the equation, who must be held accountable for the child they helped to create. Furthermore, their argument is impossible to justify for the simple reason that many women do not consider abortion their right, and in fact, believe it is degrading to women.[161] More and more women who have had abortions are speaking out about the physical, emotional, and psychological trauma they have experienced as a result of their abortion procedures.[162]

Although modern abortion advocates contend that abortion is necessary for women's equality, the original feminists viewed abortion as anti-woman. In her publication, *The Revolution*, Susan B. Anthony denounced abortion as detrimental to women:

> Guilty? Yes, no matter what the motive, love of ease, or a desire to save from suffering the unborn innocent, the woman is awfully guilty who commits the deed. It will burden her conscience in life, it will burden her soul in death; but oh! thrice guilty is he who . . . drove her to the desperation which impelled her to the crime.[163]

Elizabeth Cady Stanton considered abortion a form of "infanticide."[164] She adamantly opposed abortion, writing, "When we consider that women are treated as property, it is degrading to women that we should treat our children as property to be disposed of as we see fit."[165] Most significantly, an editorial from the newspaper that she edited identified women's equality as a means of *ending* abortion: "There must be a remedy even for such a crying evil as [abortion]. But where shall it be found, at least where [shall it] begin, if not in the complete enfranchisement and elevation of women?"[166] Victoria Woodhull, the first female presidential candidate, was a strong advocate for the right to life of the unborn.[167] She, too, believed abortion hurt women's equality: "Every woman knows that if she were free she would never bear an unwished-for child, nor think of murdering one before its birth."[168] Finally, Alice Paul, the author of the original Equal Rights Amendment ("ERA"), opposed the later development linking the ERA and abortion.[169]

As these women recognized, abortion is inherently anti-feminist because it violates the central tenets of feminism: nonviolence, nondiscrimination, and justice for all.[170] Early feminists fought against male oppression, yet pro-abortion feminists today are oppressing the unborn in the worst way. Abortion advocates' justifications for a woman's decision to place her interests above the life of her unborn child, such as her own superiority of size, intellect, need, or value as a person, are the same justifications men gave for denying women equal rights.[171] There was a time when women were treated as men's property, and their value was determined by whether men wanted them.[172] Thus, it is repulsive to feminist ideals to say that an unborn child is the property of his or her mother and to allow a child's life to depend on whether or not the mother wants her child.[173]

Abortion advocates fail to take into account that abortion denies unborn females the equal protection of the law.[174] In an increasing trend of sex-selective abortion, female unborn children are aborted purely on the basis of their gender.[175] This

reveals the inconsistency of pro-abortion feminism: condemning sex-selective abortion as an acknowledgement that there is a living female baby inside the mother's womb, while accepting that sex-selective abortion tolerates a preference for male children over female children.[176]

Abortion is also a threat to women's equality because it facilitates pregnancy discrimination.[177] Pro-life feminist Daphne Clair de Jong equated abortion with the continued subjugation of women when she wrote, "To say that in order to be equal with men it must be possible for a pregnant woman to become un-pregnant at will is to say that being a woman precludes her from being a fully functioning person."[178] No other oppressed group has ever needed surgery to become un-oppressed.[179] The very idea suggests that women's bodies are inferior to men's, and must be fixed in order to enjoy the equal protection of the law. This is not a feminist argument. A truly feminist position recognizes the natural, physical differences between men and women, and seeks equality for women based on these differences, rather than by pretending they do not exist.

To garner support for legalizing abortion, abortion advocates falsely claimed that millions of women died from illegal back-alley abortions.[180] More than three decades after *Roe* legalized abortion, thousands of women are injured by abortion every year and some of them die.[181] This is not surprising considering the substandard conditions in America's abortion clinics.[182] It is particularly outrageous that in some states, veterinary clinics are more regulated than abortion clinics.[183] Though many state legislators have worked to pass laws regulating abortion clinics to protect women's health, abortion advocates have stood in their way.[184] Such "restrictive" standards include: "maintaining a smoke-free and vermin-free environment, properly sterilizing instruments and having resuscitation equipment and drugs necessary to support cardiopulmonary function readily available in treatment and recovery rooms."[185] It is quite contradictory, considering that abortion advocates claim to be concerned with keeping abortion *safe* and legal, that they would oppose the minimum standards that the abortion industry itself developed.[186] Thus, it appears that abortion advocates are more concerned with women having access to abortion than ensuring that abortion is safe for women.

Even if abortion clinics met minimum health and safety standards, however, women would still be harmed by abortion because it is an inherently dangerous and invasive procedure. Long-term risks associated with abortion include breast cancer,[187] placenta previa, pre-term birth, suicide, and a higher mortality rate in the year following an abortion as compared with the mortality rate either of women in the year after childbirth or of the general non-pregnant population.[188] Other physical risks of abortion procedures are uterine perforation, cervical lacerations, complications of labor, handicapped newborns in later pregnancies, ectopic pregnancy, pelvic inflammatory disease, endometritis, and a lower general health.[189] Serious complications that can immediately result from an abortion include infection, excessive bleeding, embolism, ripping or perforation of the uterus, anesthesia complications, convulsions, hemorrhage, cervical injury, and endotoxic shock.[190]

Although women may initially feel a sense of relief following an abortion, these feelings are quickly replaced with feelings of guilt, nervous disorders, sleep disturbance, and regrets about the decision.[191] Many women experience immense grief after an abortion, which leads to other serious mental health problems.[192] Psychological risks of abortion include post-traumatic stress disorder, sexual dysfunction, suicidal ideation and suicide attempts, increased smoking, alcohol abuse, drug abuse, eating disorders, child neglect or abuse, divorce and chronic relationship problems, and repeat abortions.[193] Abortion advocates have consistently challenged informed consent laws that are meant to inform women of these risks.[194] The abortion advocates' argument against such laws is that their true purpose is to dissuade women from having an abortion.[195] By refusing to acknowledge that women have a right to know about the physical and psychological risks associated with abortion, abortion advocates reveal that they are truly pro-abortion, not pro-woman.

Legal abortion has allowed society to neglect the real reasons women seek abortions. Most women, if they felt they had options, would choose to give life to their children, rather than abort them.[196] Accepting abortion as a short-term solution delays real reform for women, such as decent pay during maternity leave, improved job security, and quality childcare.[197] It also enables men to escape responsibility for their actions, leading some men to deny responsibility for helping women who decide not to abort.[198] Notably, prominent abortion activists Kate Michelman and Frances Kissling recently recognized that abortion advocates have failed to address tough questions such as "why women get pregnant when they don't want to have babies."[199] True equality for women will not require a choice between the life of a child and finishing an education or continuing a career.[200] In the words of early feminist Sarah Norton, "Perhaps there will come a time when . . . an unmarried mother will not be despised because of her motherhood . . . and when the right of the unborn to be born will not be denied or interfered with."[201]

Conclusion

There is no question that *Roe* v. *Wade* stands on questionable constitutional and precedential grounds. Even abortion advocates have criticized *Roe* for failing to provide an adequate basis for the right to abortion. The lack of foundation for the right to abortion and continued public opposition to *Roe* will inevitably cause the decision to be overturned or, at the very least, ignored by the Court. The pressing issue is what happens to the right to abortion when the abortion issue is finally returned to the people. Having anticipated this dilemma, abortion advocates have argued for the Equal Protection Clause to save the right to abortion.

Justice Ginsburg, for one, has championed the Equal Protection Clause as a means of constitutionally protecting the right to abortion, and her extreme pro-abortion agenda in the Supreme Court is evident. First, she wants to do away with the intermediate scrutiny standard for gender-based classifications and replace it with a strict scrutiny standard.[202] Furthermore, she wants restrictions on abortion to be considered gender-based classifications, despite the long-standing precedent that differential

treatment of pregnant women is not a gender-based classification. Finally, she wants the Court to review abortion restrictions under a strict scrutiny standard—the least deferential treatment the Court affords to statutes—which would enable the Court to more easily strike down restrictive abortion statutes. This scheme would completely deny states the ability to regulate abortion to protect maternal health and promote prenatal life—rights that *Roe* recognized and *Casey* sought to preserve.[203] In fact, *Roe* implicitly addressed Justice Ginsburg's argument and rejected the notion that concern for a woman's autonomy would make her right to an abortion absolute:

> On the basis of elements such as these, [abortion advocates] argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree. [Their] arguments that [the state] either has no valid interest at all in regulating the abortion decision, or no interest strong enough to support any limitation upon the woman's sole determination, are unpersuasive.[204]

Thus, Justice Ginsburg's plan would give the Court more power than even *Roe* and *Casey* could justify.

Despite the number of law review articles making arguments for using the Equal Protection Clause in this way, Justice Ginsburg's plan cannot and will not work. The Court has considered equal protection claims in abortion funding and clinic regulation cases and rejected such claims in every instance.[205] On this front, the Court has merely acknowledged women's equality concerns, but it has never even mentioned the Equal Protection Clause as a possible constitutional protection for the right to abortion. Thus, there is no precedent in abortion law for using the Equal Protection Clause to analyze abortion restrictions.

As a result, abortion advocates have countered that the Court should bring abortion law into line with the sexual equality cases, which struck down invidious gender-based classifications of women similarly situated with men. But the sex equality cases provide no precedential basis for the Court to find a constitutional right to abortion in the Equal Protection Clause. Furthermore, the Court has already ruled that a classification based on pregnancy does not constitute a gender-based classification under the Equal Protection Clause.[206] Thus, abortion restrictions cannot be analyzed in equal protection terms under anything more scrutinizing than rational basis review.

Without a constitutional or precedential basis for their arguments, the abortion advocates' only option is to make a policy argument for a departure from precedent. But as this Note proves, legal abortion has actually lowered the status of women in society, rather than elevating it as the abortion advocates claim. Legal abortion harms women and forces them to deny what is uniquely female: the ability to bring a new life into the world. Instead of focusing on turning women into men, that is, making women "un-pregnant" through an abortion procedure, the abortion movement should seek to make women truly equal by finding ways to elevate the status of pregnant women in society.

The abortion advocates' arguments for using the Equal Protection Clause as a basis for the right to abortion parallel the same shortcomings they have acknowledged regarding *Roe*: they lack analysis, precedent, and basis in the Constitution. The difference is that analyzing abortion statutes under strict or heightened scrutiny would afford the abortion movement greater power than *Roe* and *Casey* provided, envisioned, or justified. Eventually, *Roe* v. *Wade* will fall, and the abortion movement cannot, in a constitutionally sound and defensible way, "save" the right to abortion through the Equal Protection Clause.

NOTES

1. 410 U.S. 113 (1973).
2. *See Abortion Foes Protest 35th Year of* 'Roe,' USA TODAY, Jan. 23, 2008, at 3A; Press Release, Harris Interactive, Support for *Roe vs. Wade* Declines to Lowest Level Ever (May 4, 2006), *available at* http://www.harrisinteractive.com/harris_poll/index.asp?PID=659 (concluding from a 2006 poll that only forty-nine percent of the population supports *Roe* v. *Wade*). Public opinion of *Roe* may very well be lower than the poll results show, because the poll misrepresented *Roe* by stating that it legalized abortion only in the first three months of pregnancy. In actuality, *Roe*, when read in conjunction with its companion case, *Doe* v. *Bolton*, made abortion legal through all nine months of pregnancy. Dave Andrusko, *Harris Poll Shows Lowest Support for* Roe v. Wade *in Decades*, NAT'L RIGHT TO LIFE NEWS, June 2006, http://www.nrlc.org/news/2006/NRL06/PDF/June06HarrisPollPage12.pdf.
3. Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 866 (1992).
4. ROBERT H. BORK, THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW 115–16 (1990) ("[T]he [*Roe* v. *Wade*] decision was the assumption of illegitimate judicial power and a usurpation of the democratic authority of the American people.").
5. *E.g.*, Andrew A. Adams, *Aborting* Roe*: Jane Roe Questions the Viability of* Roe v. Wade, 9 TEX. REV. L. & POL. 325, 339–40 (2005); Clarke D. Forsythe & Stephen B. Presser, *Restoring Self-Government on Abortion: A Federalism Amendment*, 10 TEX. REV. L. & POL. 301, 306–20 (2006); Clarke D. Forsythe & Stephen B. Presser, *The Tragic Failure of* Roe v. Wade*: Why Abortion Should Be Returned to the States*, 10 TEX. REV. L. & POL. 85, 137–41 (2005); Philip A. Rafferty, Roe v. Wade*: A Scandal upon the Court*, 7 RUTGERS J.L. & RELIGION 42–46 (2005).
6. *See, e.g.*, John Hart Ely, *The Wages of Crying Wolf: A Comment on* Roe v. Wade, 82 YALE L.J. 920, 947 (1973) ("[*Roe*] is bad because it is bad constitutional law, or rather because it is *not* constitutional law and gives almost no sense of an obligation to try to be.").
7. U.S. CONST. amend. XIV, § 1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . ."); *see* Reva Siegel, *Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection*, 44 STAN. L. REV. 261, 262–63 (1992).
8. U.S. CONST. amend. XIV, § 1 ("[N]or [shall any State] deny to any person within its jurisdiction the equal protection of the laws.").
9. *See* Jack M. Balkin, Roe v. Wade*: An Engine of Controversy*, *in* WHAT *ROE* v. *WADE* SHOULD HAVE SAID 3, 18–19 (Jack M. Balkin ed., 2005); Ruth Bader Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to* Roe v. Wade, 63 N.C. L. REV. 375, 386 (1985); Kenneth L. Karst, *Foreword: Equal Citizenship Under the Fourteenth Amendment*, 91 HARV. L. REV. 1, 57–59 (1977); Sylvia A. Law, *Rethinking Sex and the Constitution*, 132 U. PA. L. REV. 955, 1016–17 (1984); Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 YALE L.J. 1281, 1311 (1991); Frances Olsen, Comment, *Unraveling Compromise*, 103 HARV. L. REV. 105, 118 (1989); Donald H. Regan, *Rewriting* Roe v. Wade, 77 MICH. L. REV. 1569, 1569–71 (1979); Siegel, *supra* note 7, at 262 65.
10. 127 S. Ct. 1610 (2007).
11. *Id.* at 1641 (Ginsburg, J., dissenting).
12. *See, e.g.*, Kim Shayo Buchanan, Lawrence v. Geduldig*: Regulating Women's Sexuality*, 56 EMORY

L.J. 1235, 1290–92 (2007); David H. Gans, *The Unitary Fourteenth Amendment*, 56 EMORY L.J. 907, 934, 937 (2007); Kenneth L. Karst, *The Liberties of Equal Citizens: Groups and the Due Process Clause*, 55 UCLA L. REV. 99, 125, 127–28 (2007); Eileen McDonagh, *The Next Step After* Roe*: Using Fundamental Rights, Equal Protection Analysis to Nullify Restrictive State-Level Abortion Legislation*, 56 EMORY L.J. 1173, 1174–75, 1180–81 (2007); Gillian E. Metzger, *Abortion, Equality, and Administrative Regulation*, 56 EMORY L.J. 865, 896–97 (2007); Reva B. Siegel, *Sex Equality Arguments for Reproductive Rights: Their Critical Basis and Evolving Constitutional Expression*, 56 EMORY L.J. 815, 833–34 (2007).

13. 198 U.S. 45, 62, 64 (1905).
14. Roe v. Wade, 410 U.S. 113, 116, 166 (1973). The following states had criminal abortion statutes similar to the Texas statute at issue in *Roe*: Arizona, Connecticut, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, West Virginia, Wisconsin, and Wyoming. *Id.* at 118 n.2.
15. *See* Robert M. Byrn, *An American Tragedy: The Supreme Court on Abortion*, 41 FORDHAM L. REV. 807, 814 (1973); Joseph W. Dellapenna, *Nor Piety Nor Wit: The Supreme Court on Abortion*, 6 COLUM. HUM. RTS. L. REV. 379, 384 (1975); Charles E. Rice, *The* Dred Scott *Case of the Twentieth Century*, 10 HOUS. L. REV. 1059, 1059, 1062–63 (1973); *supra* note 6 and accompanying text.
16. James Bopp, Jr. & Richard E. Coleson, *The Right to Abortion: Anomalous, Absolute, and Ripe for Reversal*, 3 BYU J. PUB. L. 181, 194–202, 221 (1989).
17. Ferguson v. Skrupa, 372 U.S. 726, 729–30 (1963).
18. *Id.* at 729 (internal quotation marks omitted) (quoting Tyson & Brother—United Theatre Ticket Offices, Inc. v. Banton, 273 U.S. 418, 446 (1927) (Holmes, J., dissenting)). The Court further noted that "[t]he doctrine . . . that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely [had] . . . been discarded," and the Court had "returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws." *Id.* at 730.
19. Ely, *supra* note 6, at 937–43; Richard A. Epstein, *Substantive Due Process by Any Other Name: The Abortion Cases*, 1973 SUP. CT. REV. 159, 168 (1973).
20. Bopp & Coleson, *supra* note 16, at 198–99.
    Both *Roe* and *Lochner* appear result-oriented, unjustified by the Constitution, and designed to protect a certain profession, rather than all interested parties. The reasoning process behind both sets of cases is analogous. Both reflect the clear biases of the justices. Both dealt with issues that seemed especially pressing and important at the time (less so in a broader historical perspective), but were not mentioned by the framers.
    Id. at 198 (footnote omitted).
21. Ely, *supra* note 6, at 939 (footnote omitted) (quoting Kenneth L. Karst & Harold W. Horowitz, Reitman v. Mulkey*: A Telophase of Substantive Equal Protection*, 1967 SUP. CT. REV. 39, 57–58 (1967)). Ely himself discredits those who attempt to distinguish *Roe* from *Lochner*. *Id.*
22. *Id.*
23. 60 U.S. (19 How.) 393 (1857); Michael Stokes Paulsen, *The Worst Constitutional Decision of All Time*, 78 NOTRE DAME L. REV. 995, 1011–13 (2003) ("[N]ot only do *Dred Scott* and *Roe* share the same linguistically nonsensical constitutional theory of 'substantive due process,' they apply it in much the same mischievous way, extrapolating from specific provisions a new, general right.").
24. Bopp & Coleson, *supra* note 16, at 221.
25. BORK, *supra* note 4, at 114; *cf.* John Hart Ely, *Foreword: On Discovering Fundamental Values*, 92 HARV. L. REV. 5, 11 n.40 (1978) ("The Court has offered little assistance to one's understanding of what it is that makes [the sex-marriage-childbearing-childrearing cases] a unit. Instead it has generally contented itself with lengthy and undifferentiated string cites . . . . You can say a bunch of words, but a constitutional connection . . . should require something more than this."); Epstein, *supra* note 19, at 170 ("[I]t is difficult to see how the concept of privacy linked the cases cited by the Court, much less . . . explain[ed] the result in the abortion cases.").
26. Roe v. Wade, 410 U.S. 113, 153 (1973).
27. Bopp & Coleson, *supra* note 16, at 221.

28. *Roe*, 410 U.S. at 153.
29. Ely, *supra* note 6, at 932.
30. Bopp & Coleson, *supra* note 16, at 236–40.
31. Palko v. Connecticut, 302 U.S. 319, 325 (1937).
32. *Roe*, 410 U.S. at 152 (quoting *Palko*, 302 U.S. at 325).
33. Bopp & Coleson, *supra* note 16, at 235–40.
34. *Id.* at 240.
35. *Id.* at 237–38.
36. JOSEPH W. DELLAPENNA, DISPELLING THE MYTHS OF ABORTION HISTORY (2006) 13–15, 31, 126, 134, 143–49; John Keown, *Back to the Future of Abortion Law:* Roe*'s Rejection of America's History and Traditions*, 22 ISSUES L. & MED. 3, 3–12 (2006).
37. Bopp & Coleson, *supra* note 16, at 239.
38. Paulsen, *supra* note 23, at 1008; BORK, *supra* note 4, at 115.
39. Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 982 (1992) (Scalia, J., concurring in the judgment in part and dissenting in part) ("The authors of the joint opinion, of course, do not squarely contend that *Roe* v. *Wade* was a *correct* application of 'reasoned judgment'; merely that it must be followed, because of *stare decisis*.").
40. *E.g.*, Ginsburg, *supra* note 9, at 376 ("[T]he [*Roe*] Court ventured too far in the change it ordered and presented an incomplete justification for its action.").
41. Roe v. Wade, 410 U.S. 113, 153 (1973).
42. *Id.* at 165 ("The decision vindicates the right of the physician to administer medical treatment according to his professional judgment . . . ."); *cf.* Ginsburg, *supra* note 9, at 382 ("Academic criticism of *Roe*, charging the Court with reading its own values into the due process clause, might have been less pointed had the Court placed the woman alone, rather than the woman tied to her physician, at the center of its attention.").
43. *See supra* note 9 and accompanying text.
44. Harris v. McRae, 448 U.S. 297, 303 (1980); Maher v. Roe, 432 U.S. 464, 470, 473–74 (1977).
45. Poelker v. Doe, 432 U.S. 519, 521 (1977) (holding that a city's refusal to provide publicly financed hospital services for nontherapeutic abortions, while it simultaneously provided such services for childbirth, did not violate the Equal Protection Clause); *Maher*, 432 U.S. at 480 (holding that the Equal Protection Clause did not require a state participating in the Medicaid program to pay the expenses incident to nontherapeutic abortions for indigent women simply because it paid expenses incident to childbirth); Beal v. Doe, 432 U.S. 438, 447 (1977) (same holding in relation to Title XIX of the Social Security Act).
46. *See* Minn. State Bd. for Cmty. Colls. v. Knight, 465 U.S. 271, 291 (1984) (applying rational basis review where the plaintiffs failed to demonstrate "reason to invoke heightened scrutiny").
47. 448 U.S. 297 (1980).
48. *Id.* at 302 (quoting Pub. L. No. 96-123, § 109, 93 Stat. 923, 926 (1979)).
49. *Id.* at 322–26.
50. *Id.* at 324. In a similar case, *Williams* v. *Zbaraz*, the Court reached the same conclusion. Williams v. Zbaraz, 448 U.S. 358, 369 (1980) (holding that an Illinois statute prohibiting state medical assistance payments for all abortions except those necessary for the preservation of the mother's life did not violate the Equal Protection Clause).
51. 492 U.S. 490 (1989).
52. *Id.* at 507 (internal quotation marks omitted) (quoting Mo. Rev. Stat. §§ 188.210, 188.215 (1986)).
53. *Id.* at 509–10.
54. 500 U.S. 173 (1991).
55. *Id.* at 177–79.
56. *Id.* at 203.
57. *Id.*
58. *Id.* at 201; *cf.* Judith C. Gallagher, *Protecting the Other Right to Choose: The Hyde-Weldon Amendment*, 5 AVE MARIA L. REV. 527, 540 (2007) ("The Court has consistently held that the government is obliged not to interfere in an abortion decision, but it is not required to facilitate abortion or to fund it.").
59. 222 F.3d 157 (4th Cir. 2000).
60. *Id.* at 160, 162, 174.
61. *Id.* at 174.

62. 379 F.3d 531 (9th Cir. 2004).
63. *Id.* at 543.
64. *Id.* at 546.
65. *Id.* at 536, 543.
66. *Id.* at 547.
67. *Id.* at 543.
68. 505 U.S. 833, 846 (1992).
69. *Eden*, 379 F.3d at 549.
70. *Id.* at 546–47, 549.
71. Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 272–73 (1993).
72. Harris v. McRae, 448 U.S. 297, 323 (1980).
73. *Bray*, 506 U.S. at 273.
74. 476 U.S. 747 (1986).
75. Siegel, *supra* note 7, at 349.
76. *Thornburgh*, 476 U.S. at 772.
77. *Id.* at 758–61.
78. *Id.* at 765–70.
79. *Id.* at 762–72.
80. *Id.* at 759.
81. Brief for the National Coalition Against Domestic Violence as Amicus Curiae Supporting Appellees at 5–10, Webster v. Reprod. Health Servs., 492 U.S. 490 (1989) (No. 88-605).
82. *Webster*, 492 U.S. at 521.
83. *Id.* at 538 (Blackmun, J., concurring in part and dissenting in part).
84. *Id.* at 501 (majority opinion).
85. *Id.* at 499, 522.
86. *Id.* at 521 (opinion of Rehnquist, C.J.) (citation omitted).
87. Brief for Petitioners and Cross-Respondents at 15–16, 19 n.27, 33, 39, 40, 46–48, Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992) (Nos. 91-744, 91-902).
88. *Casey*, 505 U.S. at 895.
89. *See* Brief for Petitioners and Cross-Respondents, *supra* note 87, at 16, 19 n.27, 39, 40, 46–48.
90. *Casey*, 505 U.S. at 853.
91. *Id.* at 856. This is not an accurate statement, however, as women were already progressing in society prior to *Roe*. Teresa Stanton Collett, *Teresa Stanton Collett (dissenting), in* WHAT *ROE* v. *WADE* SHOULD HAVE SAID, *supra* note 9, at 187, 189.
92. *Cf.* Bradley Aron Cooper, Essay, *The Definition of "Person": Applying the* Casey *Decision to* Roe v. Wade, 19 REGENT U. L. REV. 235, 245 (2006) (arguing that the Court evaluated women's economic dependence on the availability of abortion as a "type of future reliance" on the "future availability of abortion").
93. 530 U.S. 914 (2000).
94. Brief Amici Curiae of Seventy-Five Organizations Committed to Women's Equality in Support of Respondent at 16, *Stenberg*, 530 U.S. 914 (No. 99-830).
95. *Stenberg*, 530 U.S. at 920.
96. *Id.* at 930.
97. *Id.*
98. Gonzales v. Carhart, 127 S. Ct. 1610, 1632 (2007).
99. *Id.* at 1641 (Ginsburg, J., dissenting).
100. *Id.*
101. Ginsburg, *supra* note 9, at 386.
102. *See* Law, *supra* note 9, at 963–65 (arguing that sex equality should be used to analyze abortion restrictions); MacKinnon, *supra* note 9, at 1311 (arguing that regulations that prohibit or limit a woman's reproductive rights are better analyzed with respect to sex equality principles than privacy principles, because the "private is a distinctive sphere of women's inequality to men"); Laurence H. Tribe, Commentary, *The Abortion Funding Conundrum: Inalienable Rights, Affirmative Duties, and the Dilemma of Dependence*, 99 HARV. L. REV. 330, 335–38 (1985) (arguing that unwanted pregnancies enslave women who cannot afford an abortion, depriving them of the equal protection of the law).
103. *See supra* Part I.
104. *See supra* notes 24–29 and accompanying text.

105. *See infra* Part III.A.
106. *See infra* Part III.B.
107. U.S. CONST. amend. XIV, § 1.
108. 16B C.J.S. *Constitutional Law* § 1139 (2005).
109. Back v. Hastings on Hudson Union Free Sch. Dist., 365 F.3d 107, 118 (2d Cir. 2004).
110. Lyon v. Temple Univ., 543 F. Supp. 1372, 1378 (E.D. Pa. 1982).
111. City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 440 (1985).
112. *Id.* at 441.
113. Michael M. v. Superior Court of Sonoma County, 450 U.S. 464, 469 (1981).
114. Ginsburg, *supra* note 9, at 377–78.
115. 404 U.S. 71 (1971).
116. *Id.* at 76–77.
117. Frontiero v. Richardson, 411 U.S. 677, 688, 690–91 (1973).
118. Califano v. Goldfarb, 430 U.S. 199, 206–07 (1977); Weinberger v. Wiesenfeld, 420 U.S. 636, 645 (1975).
119. Califano v. Westcott, 443 U.S. 76, 78, 89 (1979).
120. Wengler v. Druggists Mut. Ins. Co., 446 U.S. 142, 151–52 (1980).
121. Stanton v. Stanton, 421 U.S. 7, 13, 15, 17 (1975). Furthermore, the Court demonstrated that the Equal Protection Clause protected men as well. In *Craig* v. *Boren*, the Court invalidated a statute that enabled women to buy 3.2% beer at a younger age than men. Craig v. Boren, 429 U.S. 190, 210 & n.24 (1976). Similarly, in *Orr* v. *Orr*, the Court struck down a statute that potentially required men, but not women, to pay alimony to a divorced spouse. Orr v. Orr, 440 U.S. 268, 278, 283 (1979).
    In 1981, the Court found that a Louisiana statute naming the husband "head and master" of property jointly owned with his wife violated the Equal Protection Clause. Kirchberg v. Feenstra, 450 U.S. 455, 456, 459–61 (1981). A year later, the Court granted male students the right to attend a publicly funded, all-female nursing school. Miss. Univ. for Women v. Hogan, 458 U.S. 718, 727, 731 (1982). Most recently, the Court held that Virginia's exclusion of women from the Virginia Military Institute denied them equal protection of the laws. United States v. Virginia, 518 U.S. 515, 539–40 (1996).
122. Rostker v. Goldberg, 453 U.S. 57, 78–79 (1981) (upholding draft registration requirements imposed on males only); Michael M. v. Superior Court of Sonoma County, 450 U.S. 464, 472–73 (1981) (upholding a state statutory rape law punishing males but not females); Schlesinger v. Ballard, 419 U.S. 498, 504–05, 508 (1975) (upholding a promotion policy of the United States Navy which allowed women a longer period of time for promotion prior to mandatory discharge); Kahn v. Shevin, 416 U.S. 351, 352, 355–56 (1974) (upholding a state property tax exemption for widows only).
123. Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 852 (1992).
124. Paulsen, *supra* note 23, at 1009 n.35.
125. *Id.*
126. Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 274 (1993); *see infra* notes 152–53 and accompanying text.
127. *E.g.*, Law, *supra* note 9, at 1007–08.
128. *E.g.*, *id.* at 1016–17.
129. Although Congress has stated that a classification based on pregnancy is a classification based on sex under Title VII of the Civil Rights Act of 1964, Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, 92 Stat. 2076 (codified at 42 U.S.C. § 2000e (2000)), this congressional definition has no bearing on the Supreme Court's abortion jurisprudence. Justice Ginsburg has acknowledged that the congressional definition is "not controlling in constitutional adjudication," but has nevertheless indicated that it could "stimulate" the Court to reverse course on this issue. Ginsburg, *supra* note 9, at 379. The question of employment discrimination on the basis of pregnancy (the subject that Congress addressed in the Pregnancy Discrimination Act) has little, if anything, to do with the question of whether, and to what extent, life in the womb should be protected. Similarly, as Professor Michael Stokes Paulsen has correctly pointed out, equal protection claims in the context of abortion regulation that focus on the disparate treatment of similarly situated men and women are "quite aside from the question of whether . . . there nonetheless exists a sufficiently compelling (or 'important') state interest in protecting embryonic and fetal human life." Paulsen, *supra* note 23, at 1009 n.35.

130. 417 U.S. 484 (1974).
131. *Id.* at 488–89.
132. *Id.* at 494.
133. *Id.* at 496 n.20.
134. *Id.*
135. James Bopp, Jr., *Will There Be a Constitutional Right to Abortion After the Reconsideration of* Roe v. Wade*?*, 15 J. CONTEMP. L. 131, 140 (1989).
136. 506 U.S. 263 (1993).
137. *Id.* at 266–74.
138. *Id.* at 271–74 (footnote omitted).

> [W]e have said that "a value judgment favoring childbirth over abortion" is proper and reasonable enough to be implemented by the allocation of public funds, and Congress itself has, with our approval, discriminated against abortion in its provision of financial support for medical procedures. This is not the stuff out of which a[n] . . . "invidiously discriminatory animus" is created.

Id. at 274 (citations omitted).

139. *Cf.* Michael M. v. Superior Court of Sonoma County, 450 U.S. 464, 478 (1981) (Stewart, J., concurring).

> [W]hile detrimental gender classifications by government often violate the Constitution, they do not always do so, for the reason that there are differences between males and females that the Constitution necessarily recognizes. In this case we deal with the most basic of these differences: females can become pregnant as the result of sexual intercourse; males cannot.
>
> . . . Gender-based classifications may not be based . . . upon archaic assumptions about the proper roles of the sexes. But we have recognized that in certain narrow circumstances men and women are *not* similarly situated . . . and a legislative classification realistically based upon those differences is not unconstitutional.

Id. (citations omitted).

140. *See supra* note 135 and accompanying text.
141. Geduldig v. Aiello, 417 U.S. 484, 496 n.20 (1974).
142. *See id.* at 496 n.20.
143. Cass R. Sunstein, *Neutrality in Constitutional Law (with Special Reference to Pornography, Abortion, and Surrogacy)*, 92 COLUM. L. REV. 1, 42 (1992).
144. *Id.* at 43–44.
145. *Id.*
146. *See, e.g.*, *id.*; Siegel, *supra* note 7, at 267–68.
147. Paulsen, *supra* note 23, at 1009 n.35 (describing equal protection arguments for abortion as "policy arguments dressed in quasi-constitutional clothing").
148. John Hart Ely, a constitutional scholar and abortion advocate, recognized that "more than the mother's own body is involved in a decision to have an abortion; a fetus may not be a 'person in the whole sense,' but it is certainly not nothing." Ely, *supra* note 6, at 931.
149. For a discussion of the personhood of the unborn under the Fourteenth Amendment, see generally Charles I. Lugosi, *Conforming to the Rule of Law: When Person and Human Being Finally Mean the Same Thing in Fourteenth Amendment Jurisprudence*, 22 ISSUES L. & MED. 119 (2007).
150. Science proves that human life begins at conception. RONAN O'RAHILLY & FABIOLA MÜLLER, HUMAN EMBRYOLOGY AND TERATOLOGY 8 (2d ed. 1996) ("Although [human] life is a continuous process, fertilization is a critical landmark because, under ordinary circumstances, a new, genetically distinct human organism is thereby formed."). The Supreme Court itself has begun to acknowledge that the life of an unborn child is at stake in an abortion procedure. *See* Gonzales v. Carhart, 127 S. Ct. 1610, 1633 (2007) ("[T]he State may use its regulatory power . . . in furtherance of its legitimate interests in regulating the medical profession in order to promote respect for life, *including life of the unborn*." (emphasis added)).
151. A plethora of law review articles prove this point. *See, e.g.*, Gerard V. Bradley, Life's Dominion*: A Review Essay*, 69 NOTRE DAME L. REV. 329, 338, 341–44 (1993); Lugosi, *supra* note 149, at 122, 129–30, 133, 201, 273–75; Charles I. Lugosi, *Respecting Human Life in 21st Century America: A Moral Perspective to Extend Civil Rights to the Unborn from Creation to Natural Death*, 48 ST. LOUIS U. L.J. 425, 470–74 (2004); Paulsen, *supra* note 23, at 1014–22; Mark Trapp, *Created Equal: How the Declaration of Independence Recognizes and Guarantees the Right to Life for the Unborn*, 28 PEPP. L. REV. 819, 823–31 (2001); Tracy Leigh Dodds, Note, *Defending America's Children: How the Current System Gets It Wrong*, 29 HARV. J.L. & PUB.

Pol'y 719, 736–39 (2006); Paolo Torzilli, Note, *Reconciling the Sanctity of Human Life, the Declaration of Independence, and the Constitution*, 40 Cath. Law. 197, 216–26 (2000).

152. Professor Michael Stokes Paulsen had this to say:

> [S]urely there is a "compelling" or "subordinating" state interest in protecting human life, at all stages, from being killed by other human beings.
>
> . . . That interest trumps any claim of "liberty" to commit such a killing [of a preborn human being], under any sensible analysis.
>
> . . . One can torture the provisions of the Constitution for pages, desperately attempting to generate an argument that supplies a presumptive liberty or equality interest in avoiding pregnancy, but that interest must yield in almost every circumstance if what is in the mother's womb is an actual human life.
>
> Michael Stokes Paulsen, Michael Stokes Paulsen (dissenting), in What Roe v. Wade Should Have Said, supra note 9, at 196, 208.

153. Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 846 (1992) ("[W]e reaffirm . . . the principle that the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child."); Roe v. Wade, 410 U.S. 113, 154 (1973) ("[A] State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life.").
154. Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 273 n.4 (1993) ("The approach of equating opposition to an activity (abortion) that can be engaged in only by a certain class (women) with opposition to that class leads to absurd conclusions. On that analysis, men and women who regard rape with revulsion harbor an invidious antimale animus.").
155. *Roe*, 410 U.S. at 141–42. In 1857, the American Medical Association adopted resolutions protesting "against such unwarrantable destruction of human life" and called on state legislatures to change their laws to protect the lives of the unborn. *Id.* at 142 (internal quotation marks omitted).
156. *See infra* notes 163–69 and accompanying text.
157. *Roe*, 410 U.S. at 148–50.
158. Paulsen, *supra* note 23, at 1009 n.35. This section highlights feminist arguments *against* abortion. These arguments are policy arguments, not constitutional arguments. I include them in this Note, however, because abortion advocates use policy in attempt to change the Court's constitutional analysis of legislative classifications based on pregnancy. Even if I were to agree that policy should be used to trump the Constitution, which I do not, these policy arguments are still inherently flawed.
159. Gonzales v. Carhart, 127 S. Ct. 1610, 1641 (2007) (Ginsburg, J., dissenting).
160. One study found that the two most common reasons for deciding to have an abortion are financial constraints and lack of partner support. Lawrence B. Finer, Lori F. Frohwirth, Lindsay A. Dauphinee, Susheela Singh & Ann M. Moore, *Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives*, 37 Persp. on Sexual & Reprod. Health 110, 112–13 (2005), *available at* http://www.guttmacher.org/pubs/psrh/full/3711005.pdf.
161. For example, Feminists for Life of America is one of many women's organizations propounding the view that abortion is anti-woman: "[A]bortion is a reflection that our society has failed to meet the needs of women . . . . Women deserve better than abortion." Feminists for Life of America, *Mission Statement*, Am. Feminist, Summer–Fall 2004, at 2, 2, *available at* http://www.feministsforlife.org/taf/2005/PWA2005.pdf.
162. For example, the Silent No More Awareness Campaign, an organization that seeks to expose and heal the physical and emotional pain of abortion, has collected hundreds of signatures of women who regret their abortions. Silent No More Awareness Campaign, We Regret Our Abortions, http://www.silentnomoreawareness.org/signaturead/ad.pdf (last visited Oct. 23, 2008).
163. Susan B. Anthony, *Marriage and Maternity*, Revolution, July 8, 1869, at 4. Susan B. Anthony referred to abortion as "child-murder" and proclaimed, "We want *prevention*, not merely punishment. We must reach the *root* of the evil . . . ." *Id.* She believed abortion was "practiced by those whose inmost souls revolt from the dreadful deed." *Id.*
164. Elizabeth Cady Stanton, *Infanticide and Prostitution*, Revolution, Feb. 5, 1868, at 65.
165. Feminists for Life of America, Feminist History: Voices of Our Feminist Foremothers, http://feministsforlife.org/history/foremoth.htm (last visited Oct. 6, 2008) (quoting Letter from Elizabeth Cady Stanton to Julia Warde Howe (Oct. 16, 1873), recorded in Howe's diary at Harvard University Library).

166. Editorial, *Child Murder*, REVOLUTION, Mar. 12, 1868, at 146.
167. Feminists for Life of America, *The Voice of Our Feminist Foremothers*, AM. FEMINIST, Spring 2005, at 12, 12–13, *available at* http://www.feministsforlife.org/taf/2005/PWA2005.pdf. Woodhull insisted that "[t]he rights of children . . . as individuals begin while yet they remain the foetus." *Id.* (quoting Editorial, *Children–Their Rights, Privileges and True Relations to Society*, WOODHULL & CLAFLIN'S WKLY., Dec. 24, 1870, at 4). Editor's Note: The Woodhull quotation in the footnote text has been reproduced here precisely as it was originally published in 1870.
168. Editorial, EVENING STANDARD (Wheeling, W. Va.), Nov. 17, 1875, *reprinted in* THE HUMAN BODY: THE TEMPLE OF GOD, at 469, 470 (Victoria Claflin Woodhull & Tennessee C. Claflin eds., London 1890).
169. Feminists for Life of America, *supra* note 167, at 13. "A colleague recalls her saying, 'Abortion is the ultimate exploitation of women.'" *Id.*
170. Feminists for Life of America, *You're a Feminist?*, AM. FEMINIST, Spring 2005, at 11, 14, *available at* http://www.feministsforlife.org/taf/2005/PWA2005.pdf.
171. Natalie Nardelli, *Finding a Home in Today's Feminism*, AM. FEMINIST, Spring 2004, at 14, 15–16, *available at* http://www.feministsforlife.org/taf/2004/spring/Spring04.pdf.
172. Justice Ginsburg spoke to a similar point in her dissenting opinion in *Carhart*. Gonzales v. Carhart, 127 S. Ct. 1610, 1649 (2007) (Ginsburg, J., dissenting) (rehearsing language from two Supreme Court opinions to demonstrate that women were once viewed as unfit for many of life's occupations).
173. Nardelli, *supra* note 171, at 18.
174. Unborn female children are being killed at a higher rate than their male counterparts. The following is the story of one little girl, now grown to adulthood:
    My name is Gianna Jessen . . . .
    . . . I am 23 years old. I was aborted and I did not die. My biological mother was 7½ months pregnant when she went to Planned Parenthood in southern California and they advised her to have a late-term saline abortion.
    A saline abortion is a saline salt solution that is injected into the mother's womb. The baby then gulps the solution, it burns the baby inside and out, and then she is to deliver a dead baby within 24 hours.
    Ladies and gentlemen, this happened to me. . . .
    I remained in the solution for approximately 18 hours and was delivered alive on April 6, 1977, at 6:00 a.m. in a southern California abortion clinic. There were young women in the room that had already been given their injections and were waiting to deliver dead babies. When they saw me, they experienced the horror of murder. . . . Due to a lack of oxygen supply during the abortion, I live with cerebral palsy.
    Born-Alive Infants Protection Act of 2000: Hearing on H.R. 4292 Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 106th Cong. 23–24 (2000) (testimony of Gianna Jessen).
175. For a discussion on sex-selective abortion in America, see William Saletan, *Sexual Satisfaction: Abortion and Your Right to Accurate Sex Selection*, SLATE, Feb. 25, 2008, http://www.slate.com/id/2185090/.
176. *See* Paulsen, *supra* note 152, at 206 (pointing out the irony and hypocrisy revealed by sex-selective abortion).
177. *See* Nardelli, *supra* note 171, at 16 ("Those who advocate legal abortion concede that pregnant women are intolerably handicapped; they cannot compete in a male world of wombless efficiency. Rather than changing the world to accommodate the needs of pregnant women and mothers, pro-abortion feminists encourage women to fit themselves neatly into a society designed by and for men." (quoting Rosemary Bottcher)).
178. *Id.* (quoting Daphne Clair de Jong).
179. *Id.* at 18.
180. Dr. Bernard Nathanson, one of the founders of the National Association for the Repeal of the Abortion Laws (NARAL), lied about the number of women dying from illegal abortions to gain support for legalized abortion. He later admitted, "The number of women dying []from illegal abortions was around 200–250 annually. The figure constantly fed to the media was 10,000." Bernard Nathanson, *Confessions of an Ex-Abortionist*, http://www.catholiceducation.org/ articles/abortion/ab0005.html (last visited Oct. 23, 2008).

181. Denise M. Burke, *Abortion Clinic Regulation: Combating the True "Back Alley," in* THE COST OF "CHOICE": WOMEN EVALUATE THE IMPACT OF ABORTION 122, 126 (Erika Bachiochi ed., 2004) [hereinafter THE COST OF "CHOICE"]. One commentator added this insight:
    The number of women dying from legal abortions is probably several times what it was when abortion was illegal. For many compelling reasons, deaths resulting from illegal abortion were accurately reported on death certificates. Independent studies have confirmed this. But ever since 1973, whenever a legal abortion results in a maternal death the underlying cause is often, and perhaps usually, ignored or disguised on death certificates.
    David C. Reardon, *Illegal Abortions: The Myth and the Cure*, POST-ABORTION REV., Oct.–Dec. 1999, at 1, 1.
182. Burke, *supra* note 181, at 123–24.
183. Denise M. Burke, *Abortion Clinic Regulations: Combating "Back Alley" Abortions*, AM. FEMINIST, Winter 2002–2003, at 4, 5, *available at* http://www.feministsforlife.org/taf/2002/ Winter%2002-03/Winter02-03.pdf.
184. *Id.*
185. *Id.*
186. *Id.* at 6.
187. Angela Lanfranchi, *The Abortion-Breast Cancer Link: The Studies and the Science*, *in* THE COST OF "CHOICE," *supra* note 181, at 72, 73.
188. Elizabeth M. Shadigian, *Reviewing the Evidence, Breaking the Silence: Long-Term Physical and Psychological Health Consequences of Induced Abortion*, *in* THE COST OF "CHOICE," *supra* note 181, at 63, 70.
189. David C. Reardon, *A List of Major Physical Sequelae Related to Abortion* (2000), http://www.afterabortion.info/physica.html.
190. *Id.*
191. David C. Reardon, *A List of Major Psychological Sequelae of Abortion* (1997), http://www.afterabortion.info/psychol.html.
192. E. Joanne Angelo, *Psychiatric Sequelae of Abortion: The Many Faces of Post-Abortion Grief*, LINACRE Q., May 1992, at 69, 70–71.
193. Reardon, *supra* note 191.
194. Denise M. Burke, *Undermining Your Right to Know*, AM. FEMINIST, Winter 2002–2003, at 21, 22, *available at* http://www.feministsforlife.org/taf/2002/Winter%2002-03/Winter02-03.pdf.
195. *Id.*
196. *See* Frederica Mathewes-Green, *Seeking Abortion's Middle Ground: Why My Pro-Life Allies Should Revise Their Self-Defeating Rhetoric*, WASH. POST, July 28, 1996, at C1 ("No one wants an abortion as she wants an ice-cream cone or a Porsche. She wants an abortion as an animal, caught in a trap, wants to gnaw off its own leg.").
197. Nardelli, *supra* note 171, at 16.
    Abortion is the destruction of human life and energy that does nothing to eradicate the very real underlying problems of women. The pregnant welfare mother begs for decent housing, a decent job and child-care or respect for her child-nurturing work. Instead, she gets directions to the local abortion clinic and is told to take care of "her problem." How convenient. Much less time and trouble than teaching her about authentic reproductive freedom and reproductive responsibility. Much cheaper than attending to her real problems: her poverty, her lack of skills, her illiteracy, her loneliness, her bitterness about her entrapment, her self-contempt, her vulnerability. After the abortion these problems will all be there . . . .

Id. (quoting Cecelia Voss Koch).

198. An example of this attitude is the so-called men's *Roe* v. *Wade* case, where the National Center for Men claimed that men should be able to opt out of financial responsibility in the event of an unexpected pregnancy. *See* CBSNews.com, 'Roe v. Wade *for Men' Suit Filed*, Mar. 9, 2006, http://www.cbsnews.com/stories/2006/03/09/national/main1385124.shtml.
199. Frances Kissling & Kate Michelman, Editorial, *Abortion's Battle of Messages*, L.A. TIMES, Jan. 22, 2008, at A19.
200. *See* Serrin M. Foster, *A Feminist Case* Against *Abortion*, *in* THE COST OF "CHOICE," *supra* note 181, at 33, 38.
201. Sarah F. Norton, *Tragedy–Social and Domestic*, WOODHULL & CLAFLIN'S WKLY., Nov. 19, 1870, at 10.
202. In *United States* v. *Virginia*, Justice Ginsburg, who authored the opinion, used "exceedingly

persuasive" throughout the opinion to describe the intermediate scrutiny standard, which made it appear to be a stricter standard than what the Court had previously used in sex equality cases. United States v. Virginia, 518 U.S. 515, 532–33 (1996). However, the Court has never held that laws discriminating on the basis of sex are subject to the same strict scrutiny standard as racial classifications. Jeffrey Rosen, *Jeffrey Rosen (dissenting), in* WHAT *ROE* v. *WADE* SHOULD HAVE SAID, *supra* note 9, at 170, 181. Constitutional scholars, such as Judge Bork, have pointed out that the framers of the Fourteenth Amendment never contemplated that "racial and sexual groups needed special protection to the same degree." BORK, *supra* note 4, at 66 n.*; *see also* Brief Amicus Curiae of Life Issues Institute Supporting Respondents/Cross-Petitioners at *3–4, Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992) (Nos. 91-774, 91-902), 1992 WL 12006426.

203. *See supra* note 153 and accompanying text.
204. Roe v. Wade, 410 U.S. 113, 153 (1973).
205. *See supra* Part II.A–B.
206. *See supra* Part III.B.

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