

the HUMAN LIFE REVIEW



FALL 2011

Featured in this issue:

William Murchison on Doomsday . . . Again?
Maria Caulfield on An Irresponsible Parenthood Bill
Faith A. McFadden on Ghosts on the Great Lawn (1986)
Patrick J. Flood on . . . Why Human Rights Institutions Matter
Donald DeMarco on A Womb with Three Views
Wesley J. Smith on That Unrepentant Bigotry
William B. Maguire on Mentally Impaired Plaintiffs
Richard Goldkamp on . . . Bumping Heads on Race & Abortion
David Kenagy on . . . A Memo, Medical Records, Movement

9TH ANNUAL GREAT DEFENDER OF LIFE DINNER

MARIA MCFADDEN • JACK FOWLER • REV. W. ROSS BLACKBURN
CHARMAINE YOEST • PAUL GREENBERG

Also in this issue:

Kathryn Jean Lopez • Fred Barnes • Arland K. Nichols • Steven
Mosher • William McGurn • Sarah Ryan • Joan Frawley Desmond

Published by:

The Human Life Foundation, Inc.

New York, New York

ABOUT THIS ISSUE. . .

. . . writing on the occasion of the *Review*'s fifth anniversary, our late founding editor, J.P. McFadden, admitted "there were times when we wondered ourselves whether there was anything left to say." However, he went on, "we failed to count on our own . . . well, success: we started something that stimulated new ideas (and some fine young writers), and before long we had more material than we could publish, and on more issues—albeit usually related to abortion—than we had imagined." This edition of the *Review*, in which we feature essays by four new contributors, provides abundant proof that we who are here today find ourselves in the same happy situation that McFadden did nearly 32 years ago. Maria Caulfield ("The Irresponsibility of 'Responsible Parenthood,'" page 12) is Filipino by birth and makes a point of staying on top of what is going on in the country where many members of her family still reside; Patrick J. Flood ("Why Regional Human Rights Institutions Matter to Unborn Children," page 28) is a retired U.S. Foreign Service Officer whose experience includes working with international organizations on human rights; William Maguire ("The 'Trials' and Tribulations of Mentally Impaired Plaintiffs," page 65) is a member of the California State Bar, and has been involved in civil rights litigation; and David Kenagy ("A Memo, Medical Records, and Movement," page 86) has had a long career both practicing and teaching law. Welcome all.

We are also blessed to have a roster of first-rate regular contributors, represented here by William Murchison ("Doomsday . . . Again?," page 5); Donald DeMarco ("A Womb with Three Views," page 51); Wesley J. Smith ("That Unrepentant Bigotry," page 55) and Richard Goldkamp ("Bumping Heads over Race and Abortion," page 81). As you can see from all the titles I've quoted so far, this issue also affirms there is much still to be said about abortion, et al.

Six years after J.P. made the above remarks, his wife, and our late senior editor, Faith Abbott McFadden, published the first of many essays she would write for the *Review*, "Ghosts on the Great Lawn," which we reprint here in her honor (page 21). Kathryn Jean Lopez, in a moving tribute (*Appendix A*), echoed Christina McFadden Angelopoulos—our production and website manager—in calling Faith the "beloved Matriarch" of the Human Life Foundation. She certainly was that and her absence at our Great Defender of Life Award dinner last Oct. 27, as you will see in reading the transcript included in this issue, was keenly felt. Still, while bitter-sweet, the event honoring the gallantly pro-life journalist, Paul Greenberg, and graciously hosted by another daughter, our editor Maria Maffucci, was a great success—and sure sign of the enduring legacy of Jim and Faith McFadden.

ANNE CONLON
MANAGING EDITOR



the HUMAN LIFE REVIEW

Fall 2011

Vol. XXXVII, No. 4

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Published by THE HUMAN LIFE FOUNDATION, INC. Editorial Office, 353 Lexington Avenue, Suite 802, New York, N.Y. 10016. Phone: (212) 685-5210. The editors will consider all manuscripts submitted, but assume no responsibility for unsolicited material. Editorial and subscription inquiries, and requests for reprint permission should be sent directly to our editorial office. Subscription price: \$30 per year; Canada and other foreign countries: \$40 (U.S. currency). ISSN 0097-9783.

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INTRODUCTION

The fall of 2011 brought news of “Baby 7 Billion”: The United Nations designated October 31st as the day the earth’s seven billionth inhabitant would be born. Though there were celebrations in many countries, they came with dire predictions from population control “experts,” who warned about coming catastrophic scarcities of resources. But, as senior editor William Murchison explains in his lead article (“Doomsday . . . Again?”) “population doomsday-ism, in truth, is the province mostly of specialists with access to the media,” who are really asking whether “breeding can any longer be considered a good idea.” Nor have the dire predictions of the ’60s and ’70s come to pass, but that doesn’t seem to matter to the “experts,” because, writes Murchison, it’s really about trying to *control* human behavior; there is the “notion that some parliament of great minds can draw up cunning prescriptions for the regulation of human affairs,” *especially* when it concerns the breeding habits of the poor.

Such attempts at control are the subject of our next article, by new contributor Maria Caulfield, who reports that in her native country, the Philippines—a nation “that has long held that her people are her greatest and most valuable resource,” (remember Cory Aquino and “people power”?)—members of both houses of Congress are now considering bills aimed at “Responsible Parenthood” and “Reproductive Health,” i.e., population control. With “preferential access” to family planning for the poor, Caulfield says that the “push for contraception among the ‘poor and the marginalized’ arguably constitutes an attempt at eugenics.” Not surprisingly, the impetus for the new legislation has come not from “a people deeply rooted in the Catholic faith and known for strong familial bonds,” but from international groups such as the United Nations Population Fund (UNFPA).

Our next article (“From the Archives”) was written in 1986 by my late mother, Faith Abbott McFadden, a longtime senior editor of the *Review*. In “Ghosts on the Great Lawn,” she pondered the *other* side of the population control story: The lives already *missing*, victims of abortion. Having read in her hometown paper, the New York *Daily News* about Central Park’s Great Lawn filling up with a whopping 800,000 people for a free concert by the Philharmonic, Faith couldn’t help imagining that number of aborted babies, which was still only about *half* the yearly rate for abortions in the U.S. at that time. Referring to the *Review*’s 1983 landmark article, “Abortion and the Conscience of the Nation” by President Ronald Reagan, she wonders *when* a national conscience will emerge. “A conscience is *formed* by the working-together of the heart and the mind,” she wrote:

If there is one point of agreement on both sides of the abortion issue it is that this is “a battle for hearts and minds.” It has to be fought in the courts, but nothing will ultimately change until hearts and minds do. Whichever gets most involved first doesn’t seem to matter all that much, since eventually both must come together.

This journal has been battling to change hearts and minds for over thirty-seven years. In this issue, while Faith's "ghosts" tug at the heart, our next article serves to enlighten the mind. Newcomer Patrick Flood has written an eminently useful guide to battles over the rights of the unborn taking place in international regional organizations. These organizations are important to watch, writes Flood, because "state compliance with regional decisions tends to be high"; it would become an "exquisitely painful irony" if these institutions created to safeguard human rights became "the source of widespread violations of the rights of unborn children."

Contributor Donald DeMarco can be counted on to help us flex our philosophical muscles; in this issue, he invites us to engage in a delightful bit of fancy when he imagines three great thinkers—Plato, St. Thomas Aquinas, and Jean Paul Sartre—as unborn children in the womb, arguing among themselves about what is "out there"! His "A Womb with Three Views" is followed by a fresh and somewhat startling essay from a new contributor, David Kenagy: "A Memo, Medical Records, and Movement." Kenagy's story is a moving example of how the mind's engagement, even tentative at first, can lead to the full conversion of the heart.

Discrimination is a connecting theme in our next three articles. In an age, as Wesley Smith writes in "That Unrepentant Bigotry," that has "made great strides in accepting most classes of human beings," an age in which "the worst forms of racist speech are now far beyond the pale," there is still a group of humans "subjected continuously to profoundly demeaning and hateful characterizations"—those with "profound cognitive disabilities and catastrophically debilitating diseases." Smith illustrates how such discrimination comes in the form of "stealth bigotry"—in the mainstream press and in discussions of policy, those with otherwise clean politically-correct credentials think nothing of describing humans as "vegetables" for example, and actually blaming them for out of control health-care spending. "The idea, often subliminal, is that we have to put *les misérables* out of *our* misery." Following Smith, we welcome William Maguire to our pages with his eye-opening account of how even laws meant to help those with handicaps (specifically, the Americans with Disabilities Act) can in practice still discriminate against people the law is intended to help. Maguire argues that, in a cruel irony, some of the mentally impaired, a classification which includes intellectual disability and autism, are "denied standing as disabled simply because they have been able to overcome some aspects of their impairments." The final article in this trio is by Richard Goldkamp, who revisits a CNSNews.com interview from early 2011, in which now-presidential candidate Rick Santorum "set off a small firestorm among some media critics" when he said it was remarkable that President Obama, as a black man, should say it was above his "pay grade" to decide who is a human being. Santorum was accused of injecting the "race card" where it didn't belong; civil rights proponent Al Sharpton, Goldkamp writes, implied that Santorum was a closet racist. And yet more and more black Americans are joining forces with the pro-life movement (Goldkamp cites organizations like the National Black Pro-life Union and the website

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blackgenocide.org), recognizing that abortion *itself* is racist, disproportionately targeting black and Latino unborn babies. They believe the fight to protect life should be embraced by civil rights proponents.

This was also a powerful message at our 2011 Great Defender of Life dinner, honoring Paul Greenberg of the Arkansas *Democrat Gazette*. In his spellbinding speech, which you may read on page 98, Greenberg tells the story of his own conversion from one who welcomed *Roe v. Wade* to one who sees the pro-life movement as the “watershed issue” of our times. Civil rights was such an issue, he said, and today it is abortion and euthanasia. “There is something about the miracle that is life, and the moral imperative to respect that dignity, that in the end will not be denied. . . . a still small voice keeps asking: Whose side are you on,? That of life or death?” You will also find in our special dinner section remarks by our other speakers, as well as photos of the event. The absence of our senior editor and my beloved mother Faith was deeply felt, but she was well remembered in the evening’s remarks—and was memorialized beautifully in an article written for the *National Catholic Register* by Kathryn J. Lopez, which we have reprinted as *Appendix A*.

We complete the issue, and our 37th year, with a remarkable host of appendices: The *Weekly Standard*’s editor Fred Barnes on the impressive recent gains in the pro-life movement; Arland K. Nichols of Human Life International reveals how the Health and Human Services mandate on contraception was based on unabashedly biased “information”; the Population Research Institute’s Steven Mosher and *Wall Street Journal*’s columnist William McGurn give marvelous “corrections” for those who buy into the Malthusian fears over baby seven billion; young pro-life activist Sarah Ryan writes that the movement to end abortion is “not a sprint, it’s a marathon” (thank God the young are taking up the mantle!); and our final appendix is Joan Frawley Desmond’s report on late Apple founder Steve Jobs, whose personal story, “contrary to the gloomy predictions of abortion-rights supporters,” shows that “‘unwanted’ children consistently defy set expectations about their ability to succeed and find happiness, and the love of adoptive parents can make all the difference.” Finally, we would not be able to greet the New Year with energy were it not for the solace of well-placed humor—which our cartoonist Nick Downes unfailingly supplies.

MARIA MCFADDEN MAFFUCCI
EDITOR

Doomsday . . . Again?

William Murchison

Enough, already?!

One gets that impression for sure, from high-minded eco-sustainability types, as the news sinks in that the 7-billionth dweller on Planet Earth has either just been born or soon will be. Enough people! More than enough! Way, way more: to the imperilment of our stomachs, lungs, and philosophical digestion systems.

To know that the United Nations calculates world population at a big, round 7 billion is to participate in Malthusian angst. It hardly matters on what day the record-shattering 7-billionth birth was recorded—six months before Oct. 31, 2011, or six months after; somewhere in there anyhow. People who wring their hands over the advent of more people see still greater misery headed our way, with the 9-billionth human birth, an event likely (the way things are going, says the U.N.) by 2050. And on from there.

Once more, life gets a bad rap: life as a threat to life itself; mankind's ability to breathe and eat compromised by the seemingly insatiable urge to make more copies of our greedy and vexatious selves. The irony is deep. It has pedigree, at least, beginning with Parson Malthus, in the early 19th century, picking up again in the 1960s and '70s, when despair over economic and populational growth, and the desire to corral that growth, rooted itself in the culture. Paul Ehrlich, a professor of biology at Stanford University, published *The Population Bomb* in 1968, forecasting mass starvation on account of earth's inability to accommodate all the people being born: of whom there were then fewer than 3.7 billion. Everything else was starting to fall apart back then—politics, culture, religion, authority in general. It is hard not to anoint Ehrlich a major prophet, even if his prophecies fell, to say the least, short of the mark. (The '60s and '70s constituted the age of the secular prophet. Remember Charles Reich's *The Greening of America*? If not, don't bother plopping down two bits at some long-gone theology professor's estate sale.)

Here we go again. Maybe—depending on the attention span of a populace more concerned about jobs today than *lebensraum* tomorrow. Populational doomsday-ism, in truth, is the province mostly of specialists with access to the media. Ehrlich is still around and, on cue, when the U.N.'s forecast of a 7-billionth birth became known, disgorged forecasts of “horrendous problems” ahead, “including almost 1 billion people hungry and contributing greatly to the chances of

William Murchison writes from Dallas for Creators Syndicate and is a senior editor of the *Human Life Review*. His latest book is *Mortal Follies: Episcopalians and the Crisis of Mainline Christianity* (Encounter Books).

catastrophic climate disruption.” Ehrlich thinks that “patriotic citizens” should “stop at two children” per couple; he maintains further that “pro-natalists”—folk with different convictions than his own—should suffer the penalties of law.

Control freaks in all sorts of academic and public policy venues viewed the U.N.’s tidings with alarm, warning of adverse effects on the environment. Where are we going to put all these humans? And how large and deep a footprint are they going to leave on living conditions? That includes, naturally, the production of carbon dioxide. The New York *Times* cited the Center for Biological Diversity’s ingenious effort to link populational and environmental concerns by means of condom packaging. “The idea,” reports the *Times*, “is to start a debate about how over-population crowds out species and hastens climate change. . . .” Thus the four-column color photo of a certain Monica Drake distributing condom packages with the evocative inscriptions, “Wear a condom now . . . save the spotted owl” and “Wrap with care . . . save the polar bear.” Ah, those “biological diversity” types! When it comes to romance, you can’t beat ‘em.

The Chronicle of Higher Education alluded to academic big thinkers with, more or less, the same objective in mind—synchronizing and coordinating efforts to avoid over-taxing Mother Earth. The National Academy of Sciences, for example, proposes that a U.S. birth rate of 1.5 kids per woman, rather than 2.0 as at present, could result in a one-third drop in greenhouse gas emissions by century’s end. I had to see what Prof. Jeffrey D. Sachs had to say about all this. Prof. Sachs, director of Columbia University’s Earth Institute and human factory for articles and op-ed essays, has something to say about almost everything. The 7-billionth birth inspired him to write in the *Irish Times* that, lacking a “global framework for the world economy and for managing the Anthropocene, we will improvise our way to disaster.” You were wondering, perhaps, what the Anthropocene might be? According to Sachs, it’s “the epoch”—this one—“defined by our effect on the planet.” A larger question might be: Hadn’t we better notice the subtext here—the need for oversight and supervision of these matters by, I take it, experts and people who don’t merely rut around in bed every night, becoming, as a more delicate epoch used to say, in the family way.

Sachs sees our society “in the hands of corporate propagandists from Big Oil and other interests that will tell us not to worry”—apparently because more births means more future customers. We’ll fix ‘em! Sachs says “universal secondary education” (including condom classes?) will lower fertility rates. A “financial transaction tax” would help make this happen, as would a levy on carbon dioxide emissions.

It is quite arresting to see how all the pieces in this puzzle fit together, when deployed by experienced hands: climate control, population control, restrictions on particular kinds of economic endeavor, and goals, goals, goals. All of it

overseen, naturally, by People in the Know—fortunate enough to have been born before birth and demography became issues for discussion and resolution. The parents of the baby boomers—Sachs, born in 1954, belongs to that vast cadre—were, alas, inattentive regarding the implications of their commitments.

It's up to the children, therefore, to take these matters in hand. And I mean "take them in hand"! Control of one sort or another seems to be all the population mandarins have to offer by way of addressing a problem not universally recognized as such (for reasons we will get to shortly). The mandarins know no one can dictate family size to 7 billion people, notwithstanding that the Chinese, more rigid than we in many things, have manifestly tried. They propose instead economic incentives and disincentives, such as taxes. The intended end is the same: the shaping of human decisions to fit the conceptions (as it were) of people insufficiently tuned in to the higher wisdom on display at Columbia University and elsewhere. All these kids! Do we have to?

All sorts of analysis—the American Enterprise Institute demographer Nicholas Eberstadt is especially deft at this—undercuts the notion of control as a device for matching the world to the aspirations of the control freaks. You want to control economic growth, hence pollution, by controlling population? Have you ever got another think coming, says Eberstadt. Virtually the whole ex-Soviet bloc, despite dramatic falls in birth rate, has been experiencing robust economic growth. China, too, with its famous (or infamous) one-child policy, is on the boom, spewing—my gloss, not Eberstadt's—ever-increasing amounts of coal-generated pollution into the atmosphere. Population control may not be quite the environmental panacea Jeff Sachs supposes it to be. Moreover, says Eberstadt, there have been "unprecedented declines in birth rates in some low-income countries." As for scarcity in resources, due to population growth, "real prices for food are lower than 100 years ago." If food production were waning, the law of supply and demand would be forcing prices skyward as buyers competed for tighter supplies. What's wrong with this picture?

What's wrong, among other things, is the notion that some parliament of great minds can draw up cunning prescriptions for the regulation of human affairs. There is another irony with which to wrestle. It is that birth rates seem not to drive the problem. Death rates do. Which is to say, people aren't dying nearly fast enough to suit the strategy of the control freaks.

Time was when the "long" in longevity could be considered a cruel joke. There wasn't much of it. A Roman citizen might be vouchsafed 25 years of life, an Englishman of the progressive 19th century just 15 more than that. Disease and suffering stalked the globe.

Wander sometime around an old cemetery—one from the 19th century will

do—and take in the heart-tugging number of tombstones advertising the presence beneath of young, very young, children, cut off suddenly due to influenza, typhoid, or practically anything else. This is how it was in the Good Ole Days, otherwise known as the pre-antiseptic, pre-everything-else age. Medicine was generous in purpose but ill-suited to the task of curing infections extinguishable today by the contents of an over-the-counter purchase costing maybe five bucks. In winter, people would put on long underwear, light fires, and hope for the best. The best not infrequently turned into the worst: death.

First wives—even very young and apparently healthy ones—would very often perish in childbirth. So might the child, if actually born alive, perish soon after. Second wives created second families and supplied marital comforts, but not necessarily for long, in that husbands wore themselves out with toil and susceptibility to the infections that appeared to come with life itself. Life was real, life was earnest, and the grave—as Longfellow would have it—was not the goal. Still, the undertaker stayed busy.

Not even warfare and oppression have killed off an adequate number of us—meaning adequate to the purpose of suppressing population growth. A recent *New York Times* chart noted efforts to diminish the surplus population, the bloodiest of which we call World War II. The war's 9.4 million casualties per year—2.6 percent of the world population for the six-year period—certainly put a dent in human expansion. Then came the peace, and people, would you believe it, started multiplying like rabbits, without regard for the consequences.

We became more and more numerous, and we started living longer and longer, to the present vexation of long-range policy planners. Social Security, created in the medically sophisticated 20th century, assumed a retirement age of 65, followed by a few years of decline, degeneration, and finally, death, the cessation of taxpayer-funded benefits. To reach that point in the 21st century can take a couple of decades. Thanks to medical research and the sophistication of a health-care system flayed without charity during the debate over health-care reform, we all live much longer than our parents did. Is that a blessing or a shame? It is true that certain inconveniences attend longer life, such as the much-advertised prospect that many will outlive their resources. Likewise physical cares and concerns intensify as one reaches the 80s: still more so the 90s. At that, I strongly suspect the majority of us, independent of concerns about deterioration, whether of the environmental or the financial sort, see no need to serve public policy ends by kicking off before our grandchildren wed and breed. Mercy-killing and suicide have their adherents, but not so many as to make any difference when it comes to the grand objective of population control.

The essence of the population question, in fact, is not how much population there is—though that matters. Rather, it is whether breeding can any longer be

considered a good idea. The question, irrespective of Earth Institute policies, is not easy to confront in an age widely inured to abortion and not particularly disposed to see life as inherently a very good thing, in and of itself.

Roe v. Wade, viewed from the perspective of going-on-40 years, seems less an eccentric production than it once did: neutral at best on the question of life's inherent worth and goodness. *Roe* fit the times to which it was delivered from on high, with a magisterial flourish of the sort favored by the aforementioned control freaks. Giving birth became, in the hands of the Supreme Court, an option—fine if you wanted to do it, equally fine if you didn't. In a sense, by assigning new human life no special importance, the court green-lighted the speeches, op-eds, and foundation grants whose aim is the reining in of motherhood; e.g., Jeffrey Sachs's notion of "universal secondary education" as a cure for the breeding instinct. Why, we'll simply explain to them, via a Gates Foundation grant, what causes babies—and what babies cause. Education: the sovereign remedy of the over-educated. Throw in new tax levies, and it's off to the races.

Roe notwithstanding, the reality is that no one, whatever *Sturm und Drang* the latest population bomb story provokes, is going to do much to address a problem comparatively few see as a problem. That is, it won't likely generate much more than talk. The talking class—in the media, the think tanks, the foundations, etc.—is not to be deflected from its favorite pastime. Jeffrey Sachs will continue to instruct mankind on the dire fate it is letting itself in for by failing to Take Steps or, more aptly, Control Its Passions. The operative word for population alarmists, as I have suggested, is "control." The people, you see, need instruction. Where instruction fails to deter, they need sanctions, disincentives. Life, on this showing, is a commodity with an optimum production level toward which we will strive, assuming we know what's good for us.

Painful to recognize, from the alarmists' standpoint, is that life itself, in all perplexity, is seen by the unfashionable majority as a generally good thing, for all the despair that particular lives occasionally occasion. Something deep inside instructs that majority: some instinct, some sense of mission and fulfillment. The cover of *Us* magazine, on the recent day I stood at the prescription counter at CVS, heralded the glad tidings that "Khloe Starts In Vitro. 'I'll Do Anything for a Baby.' . . . she and Lamar decide they can't wait." Khloe? Lamar? Ah, one of the numberless Kardashians, I discovered. Not sure about Lamar. Point was, the quest for a baby still resonates widely (leave aside, ahem, the circumstances of that quest). A girl can get celebrated for it, rather than condemned for selfishness and insensitivity to Modern Needs. The on-goingness of life, irrespective of directives from the U.S. Supreme Court or the Earth Institute, has hold of minds and hearts, and seemingly will not let go.

A coincidence came to mind as I reflected on the *Us* cover. It was mid-December. The magazine's ranks and rows of celebrity parents were following in the anthropomorphic footsteps of God, who had had, by reliable report, a baby of His own. Not in quite the manner familiar to modern moms, of course. A baby it was, all the same—tiny legs, thrashing arms, healthy (one supposes) lungs, to be exercised in the lonely nighttime. A couple of weeks following my perusal of obstetric news from the entertainment world, the real world was scheduled for official remembrance of the earlier tidings, when God took up the parenting enterprise: “And she brought forth her firstborn son, and wrapped the babe in swaddling clothes; and laid him in a manger, because there was no room for them in the inn.” Some angels were reputedly on hand to underscore the significance of the occasion.

Demography is much to the point in reflections on birth trends and the ways they affect the economy, not to mention the broader culture. In a larger sense, for all that, demography gives place to consideration of what it means just to live: to draw breath, and to pass on, to create (with collaboration) new life. The author of the eccentric screed the reader holds in his hands is, among other things, a co-grandparent of, so far, two small children: one boy, one girl, cute and smart beyond imagining, I take my oath on it. Grandparents are famous for foolishness. Once upon a time they carried grandkid photos around in their billfolds; now they store the photos on iPhones. It comes to the same thing: amazement, wide-eyed astonishment, mingled with pride, to see (and show off) evidence that life goes on, according to the ancient pattern. Ancient patterns cause the modern world great consternation, as if no one in his right mind could fail to understand the insufficiency of any idea old enough to have liver spots and uncertain joints.

The goodness of life—the goodness of birth—is among those ideas many moderns seem determined to test, with the burden of proof on the defense. Tell us, Mrs. X, why the world needs one more baby, and why this particular one? Your honor, please instruct the witness to cease smiling! Have her answer my question. Mrs. X, I put it to you this way— isn't 7 billion enough? What do we do when we have 8? Have you considered the taxes needed to educate an extra billion? The food problems? The water shortages?

The prosecution, with charts and graphs and reports, has the material to lay before the court of opinion. What it lacks is—let me put it this way, evidence that Broderick P. Murchison, age 4, and Margaret P. Murchison, age 1, ought to be considered populational surplus, lacking importance in the grand scheme of things. Who knows such things? Who can ever know them? The purposes of life, as Western civilization believed and affirmed until fairly recent times, existed in the mind of God the Father. Note the fullness of the identity imputed to Him: Father.

Life, in discrete form or en masse, can be of questionable worth? It can be

harmful to life itself? That essentially secular view of things overlaps the presumptions of an essentially secular age. It may be that any population debate likely to commence will end up testing those presumptions in ways startling to think tank coterie. With birth rates falling in the developed and developing countries (supposedly Catholic Italy's is 1.2!) the problem, to the extent one sees it that way, may fizzle. As Jonathan Last has noted, in the *Weekly Standard*, "...[N]early every population model in recent years has suggested that, between 2050 and 2075, world population will top out at 9 billion to 12 billion. And after that it will begin shrinking."

Could be. Or it could be that human belief in the essential goodness of human life will reassert itself at some unpredictable moment, reminding the 7 or 8 or 9 billion of us around at the time to be thankful as recipients of divine outreach. Wilder, crazier things have happened before, if I am not greatly mistaken.



"By God, we'll pull out of this mess or I'm not Otto von Bismarck!"

The Irresponsibility of “Responsible Parenthood”

Maria Caulfield

“Cornelia, is it true that you have no jewels at all? Is it true, as I have heard it whispered that you are now poor?”

These words are spoken to a Roman widow by her friend in *Cornelia's Jewels*. In the story, Cornelia invites to dinner a wealthy friend who was expected to bring her famous collection of precious stones. After the meal, the guest opens her treasure chest and shows off her riches.

Then the guest makes her inquiry. Cornelia, plainly dressed and devoid of adornment, brings her two boys to her side and replies to her guest, “No, I am not poor. Here are my jewels and they are worth more than all of yours.”

Like Cornelia, the Philippines has long held that her people are her greatest and most valuable resource. But unlike Cornelia, members of both houses of the Philippine Congress are now aiming to rob the country of her jewels by seeking to pass separate bills that promote the use of artificial contraceptive methods, some of which are proven to be abortifacient. Similar in content, the bills are commonly referred to together as the Reproductive Health (RH) Bill or, more recently, as the Responsible Parenthood Bill. Supporters of the bill express increasing confidence in its passage and call on Philippine lawmakers to vote on it. But as of this writing, Senate President Juan Ponce Enrile, who opposes the bill, has said that the Philippine Senate will sideline debates on the RH bill until January 2012.

Cloaked in euphemistic language that talks about reducing infant mortality, preventing sexually-transmitted diseases, and promoting breast-feeding, the Responsible Parenthood Bill seeks to drastically change the culture in this predominantly Catholic nation.

As someone who was born into a large family in the Philippines, I find the bill disturbing. In earlier years it seems to me that the drive to endorse a culture of contraception was more discreet, and discussions of family planning were conducted with greater subtlety; today, the attempt is bolder and the attack is more wide-reaching.

Problematic Language

The bill is particularly troubling because of its push to have the poor and marginalized practice artificial contraception in a country where close to a third of the population lives below the poverty line.

House Bill No. 4244 is lengthily named “An Act Providing for a Comprehensive

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Policy on Responsible Parenthood, Reproductive Health, and Population and Development and for Other Purposes.” Section 12 of the House Bill states:

A multidimensional approach shall be adopted in the implementation of policies and programs to fight poverty. Towards this end, the DOH (Department of Health) shall endeavor to integrate a responsible parenthood and family planning component into all antipoverty and other sustainable human development programs of government with corresponding fund support.¹

The bill also defines “Reproductive Health Care Program” as the “systematic and integrated provision of reproductive health care to all citizens, *especially the poor, marginalized, and those in vulnerable and crisis situations.*” [Emphasis added.]² Moreover, Section 13 states that “the LGUs (local government units) shall ensure that *poor families receive preferential access to services, commodities and programs for family planning*” (emphasis added).³ This push for contraception among the “poor and marginalized” arguably constitutes an attempt at eugenics.

The House bill also uses the term “reproductive health rights,” a particularly problematic term because it is also used in international circles and has been intentionally misconstrued to include the right to abortion. If the House bill is passed, it will take its place alongside current Philippine legislation that expressly makes abortion a criminal offense. Therefore, any conflict arising from this bill and the current legislation against abortion will necessitate judicial intervention in the Philippine courts.

And yet the term “reproductive health rights” was never meant to cover abortion. Former Representative to the United Nations Commission on the Status of Women Ellen Sauerbrey stated at a meeting of the UN Commission on the Status of Women that:

nongovernmental organizations are attempting to assert that Beijing (the 1995 Fourth World UN Conference on Women held in Beijing) in some way creates or contributes to the creation of an internationally recognized fundamental right to abortion.⁴

She added, “There is no fundamental right to abortion. And yet it keeps coming up largely driven by NGOs trying to hijack the term and trying to make it into a definition.”⁵

Still another problem is the inclusion of the following guiding principle in the House bill: “While this act recognizes that abortion is illegal and punishable by law, the government shall ensure that all women needing care for post-abortion complications shall be treated and counseled in a humane, non-judgmental and compassionate manner.” The Senate bill has an almost identical statement.

This statement sends any or all of the following messages: 1) that the law against abortion is inhumane and unjust; 2) that the implementation of the law against abortion is ineffective; and 3) that abortions are a reality that should be accepted.

Nowhere in the bill is there any mention of the penalties or punishment against the providers of abortion.

The Teachings of the Church

The Catholic Church has made clear her teaching on abortion. In 1995 Pope John Paul II wrote in *Evangelium Vitae*:

Given such unanimity in the doctrinal and disciplinary tradition of the Church, Paul VI was able to declare that this tradition is unchanged and unchangeable. Therefore, by the authority which Christ conferred upon Peter and his Successors, in communion with the Bishops . . . I declare that direct abortion, that is, abortion willed as an end or as a means, always constitutes a grave moral disorder, since it is the deliberate killing of an innocent human being. This doctrine is based upon the natural law and upon the written Word of God, is transmitted by the Church's Tradition and taught by the ordinary and universal Magisterium.⁶

Unfortunately, however, abortion has become somewhat of a moral conundrum in the Philippines, where many understand that the Church prohibits artificial contraception but grossly misunderstand Natural Family Planning (NFP), and where the addition of a child to a family that is already desperate is regarded as a heavy burden and a path to financial disaster.

I remember working in 1985 in the Philippines as one of two assistants to the editor for a publishing company. The other assistant, who was at least 10 years older than I, confessed to me that she had had an abortion, which was illegal then in the Philippines as it is now. Her husband was unemployed, she was already the mother of two, and theirs was a bleak hand-to-mouth existence. I remember being dumbfounded, not knowing how to respond, and certainly unwilling to pass judgment on her.

On the other hand, I am also aware of families who are so willing to bring forth children in spite of dire financial straits that the children are deprived of the basic necessities of nutrition, clothing, housing, and education. One such family I know has a mother who works as caretaker of a small beach property, even as she cares for 11 children. Her husband and the father of her children was unemployed for many years, and recently died.

Despite perceptions to the contrary, the Catholic Church does not teach couples to have as many children as possible; in decisions about family size, the married couple can thoughtfully take into account both their own welfare and that of their existing and foreseen children. Therefore, the couple should consider both their spiritual and material condition (economic hardship, for instance), as well as their physical and psychological state.

My father's generation believed that their futures were assured if they welcomed children as blessings. Part of that conviction lay in the common thinking

that their children would provide support for the parents in their retirement years. But many families lack the means to provide for their progeny, who first need the tools to secure a viable future before they can meet the responsibility of caring for the elderly. Decent housing, proper health care, and a good education are among the needs that parents struggle to meet for their children in the Philippines; unless these are met, the family enters a cycle of poverty that is difficult to break.

I am one of the fortunate ones. My father and mother embraced a family of eight children, of whom I am fifth. Both of my parents had good educations, and although my father sometimes worked three jobs to make ends meet, we lived a decent middle-class life and my father succeeded in putting all his children through Catholic schooling. During one period when my father was unemployed, my mother took in other children as nursery and kindergarten students in the school she established, and their tuition sustained our family. All eight of us completed college and seven went on to pursue graduate degrees. Because of this focus on education, all of us have been able to help provide for our parents' retirement.

The Catholic Church in Philippine Politics

In many ways, the Church plays a pivotal role in Philippine politics. The clearest case of this was the historical event that put the Philippines back on the map and showed the world that her greatest resource is indeed her people.

In 1986 two high-ranking military officials, one of whom was Senate President Juan Ponce Enrile (at that time Secretary of Defense), risked their lives by resisting the administration of dictator Ferdinand Marcos. Broadcasting from Radio Veritas, the late Jaime Cardinal Sin of Manila exhorted millions of Filipino civilians to stage a bloodless revolution by marching out to protect these two military officials. Tanks sent by the Marcos administration rolled along a major highway, only to be blocked by unarmed civilians and religious nuns offering flowers to the soldiers. In the Philippines and throughout much of the world, the event that led to the downfall of Marcos and the accession of President Corazon "Cory" Aquino, became known as "People Power." Many see this incident as a precursor to another bloodless revolution that brought down the Berlin Wall three years later.

With the possible passage of either the House or Senate version of the reproductive health bill looming, the Catholic Church is once again involving itself in Philippine politics. The Catholic Bishops' Conference of the Philippines (CBCP) issued a statement that reads in part: "Advocates contend that the RH bill promotes reproductive health. The RH bill certainly does not. It does not protect the health of the sacred human life that is being formed or born. The very name 'contraceptive' already reveals the anti-life nature of the means that the RH bill promotes. These artificial means are fatal to human life, either preventing it from fruition or actually destroying it."⁷

The statement also says: “We hold that on the choices related to the RH bill, conscience must not only be informed but most of all rightly guided through the teachings of one’s faith.”

And yet, for more than a decade, there have been legislative efforts to pass a bill that mandates the use of artificial contraception. The Church has become alarmed at this juncture partly because President Benigno Aquino III, son of the late President Cory Aquino, has vocally supported the bills and committed to sign the legislation if it gets to his desk.

“The chances for the RH bill being passed this year are higher than the previous 14 or so congresses. Those who are for it have exerted so much effort this year in terms of lobby and social campaign—and consequently for funds—than in the previous years,” said Msgr. Pedro Quitorio, spokesman for the CBCP. “On the other hand, I have never seen the Catholic Church and pro-life groups campaign so hard than in this congress.”

In addition to the Responsible Parenthood Bill, the issue of divorce is now on the table. The Philippines is one of only two remaining sovereign states that ban divorce. The Vatican is the other.

The Philippines seems to be sliding dangerously down a slippery slope. Archbishop Oscar Cruz expressed concern that divorce and same-sex marriage will follow the reproductive health bill, and he thinks that President Aquino will support both. “The RH (Bill), divorce and same-sex bills are all connected. Whether he (President Aquino) endorses it or not, it is in his program. It’s his people in Congress. I hope I’m wrong.”⁸

Population Growth vs. Economic Growth

Unlike the Church, which allows couples to determine their family size and spacing of children for just and moral reasons, the House bill audaciously advises couples to limit their children to two as “the ideal family size.” Previous House bills had been more hard-line in this regard. Although the language for this two-child policy has been softened compared to prior bills, the policy still collides with the Philippine Constitution’s provision: “The State shall defend the right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood.”⁹

Clearly, the basis for this policy is population reduction. On his website, Rep. Edcel Lagman, author of the House bill, states: “. . . an RH law enhances the ability of the Philippines to meet the Millennium Development Goals (MDGs), whose common denominator is reproductive health and family planning.”¹⁰ He also claims that “UN Human Development Reports show that countries with higher population growth invariably score lower in human development. . . . Over the years, the Philippines has consistently been the worst performer among Southeast Asian countries.”¹¹

In another Web posting, Lagman states: “The bill will promote sustainable human development. The UN stated in 2002 that ‘family planning and reproductive health are essential to reducing poverty’ and ‘countries that invest in reproductive health and family planning and in women’s development register slower population growth and faster economic growth.’”¹²

But attributing poverty in the Philippines to a population explosion has been debunked by intellectual figures such as Dr. Bernardo Villegas, a CPA and prominent Filipino intellectual. At age 21, Villegas was one of the youngest people to be appointed a teaching fellow at Harvard’s College of Arts and Sciences. Now working as Senior Vice President at the University of Asia and the Pacific, he is often consulted by top government officials on policy issues. A member of the Constitutional Commission that drafted the Philippine Constitution during President Cory Aquino’s administration, Villegas has written in the *Philippine Daily Inquirer*:

The neo-Malthusians blame rapid population growth for our poverty situation. I find this explanation laughable especially during these times when the only countries in Asia that are posting positive GDP growth rates are the countries with huge populations . . .

Large and young populations have two advantages: They provide low labor costs and attractive consumer markets. The ones who are afraid that the Philippines will have Standing Room Only (SRO) if our population keeps growing should be told that our rich East Asian neighbors have population densities much higher than the Philippines: Singapore (7,223 per sq. km), Hong Kong (6,501), Taiwan (625), and South Korea (483). When Philippine population peaks in 2025, the population density will not even exceed 400 persons per sq. km. In addition, the Philippines is much richer in natural resources than these four tigers.¹³

According to Villegas, the Philippines is poor because for 30 years after World War II, Philippine leaders “adopted economic policies that fostered an inward-looking, import-substitution industrialization based on protectionist, anti-market, and ultra-nationalist ideologies” similar to what “most Latin American countries implemented with the same dire consequences.”¹⁴

Former Manila Mayor Lito Atienza echoes this analysis. In a mix of English and Filipino, he said, “Our number one resource is the human resource. Overpopulation is not a problem. It does not cause poverty. There is no data linking population growth to poverty. We need sound economic policies.”¹⁵

Totalitarian Policy

One of the more questionable sections of the House bill is a requirement that couples receive information materials from the government about methods of contraception prior to obtaining a marriage license. (With few exceptions, a marriage license is required in the Philippines for either a civil or church wedding.) Section 18 of the House bill states: “No marriage license shall be issued by the Local Civil Registrar unless the applicants present a Certificate of Compliance issued for free

by the local Family Planning Office certifying that they had duly received adequate instructions and information on responsible parenthood, family planning, breastfeeding and infant nutrition.”¹⁶ Thus, if the House bill is passed, in a mostly Catholic country a Filipino who decides to marry in the Catholic Church would be able to obtain a marriage license only if he agrees to receive instruction that goes against the teachings of the very same religion he wishes to follow.

This stipulation violates the Universal Declaration of Human Rights (UDHR), for which the Philippines was one of 48 signatories. Article 18 of the UDHR states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, *to manifest his religion or belief in teaching, practice, worship and observance.* [Emphasis added.]¹⁷

Article III, Section 5 of the 1987 Philippine Constitution also states that “No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed.”¹⁸

Sexual Education

Another disturbing aspect of the Responsible Parenthood Bill is the requirement to provide sexual education to youth as early as fifth grade. Commenting on this provision, Atienza said, “Can you imagine, from Grade 5 to high school, we will be teaching them all about sex? Supposedly for good intentions we will teach them proper appreciation for the reproductive system of the human body. You don’t need to teach the kids about the reproductive system. We need to teach them math, science, good values and technology. Let’s leave it to the parents to teach them about [sex].”¹⁹

Because the House bill defines adolescence as “the period of physical and physiological development . . . between 11 to 13 years and terminating at 18 to 20 years of age,” many of the provisions that include the word “adolescents” would cover minors as young as 11 years old. Taken alongside various other sections, the bill becomes worrisome in its content related to minors. As an example, Section 3(b) states the following as a guiding principle: “Respect for, protection and fulfillment of reproductive health and rights seek to promote the rights and welfare of couples, adult individuals, women and adolescents.”²⁰ Also, Section 4 defines “adolescent sexuality” as “the reproductive system, *gender identity*, values and beliefs, emotions, relationships and *sexual behavior* at adolescence.” [Emphasis added.]²¹

Taking Section 4 together with Section 3(b), one can reasonably argue that the bill establishes a right to reproductive health for children from 11 to 20 years old.

This means that minors as young as 11 years old will share in the rights bestowed by the bill on adults, including those that relate to contraception.

The International Link

It is difficult to believe that a people deeply rooted in the Catholic faith and known for strong familial bonds would repeatedly press their lawmakers to pass a law mandating contraceptive use. And sure enough, there is evidence that much of the impetus behind the bill comes not from the lawmakers or the Filipino public but from international groups such as the UN Population Fund (UNFPA). The UN's Millennial Development Goals have been publicly cited by RH bill supporters as a reason for passage.

The pressure has been “intense and sustained,” said Piero Tozzi, Senior Legal Counsel, Global, for the Alliance Defense Fund, a U.S.-based group that monitors religious liberty. Tozzi pointed to a 2009 forum sponsored by UNFPA in which the European Union Ambassador to the Philippines chided the Philippine Congress for not passing the RH bill while appearing to link increased foreign aid with more widespread and effective distribution of contraceptives.

Jo Imbong, Executive Secretary of the Legal Office of the CBCP, said that the bill has ties to the UNFPA and other international agencies:

Publicly available documents establish the link with and pressure between international funding agencies and the pro-RH agenda lobby in the Philippines. Since the 70's, there have been many so-called “country programmes” promoted and funded by such agencies, notably the UNFPA and IPPF (International Planned Parenthood Federation), among others. In the case of UNFPA, it leads international initiatives for the RH agenda. UN agencies and donors had made it clear that they prefer to let UNFPA be the main (and at times only) voice advocating the issues associated with the RH agenda in the Philippines. Thus, in the 2005-2010 Evaluation of the 6th UNFPA Country Programme to the Philippines, UNFPA expressed the belief that the new government of President (Benigno) Aquino will better address the persistent challenges to the country allegedly posed by population, gender and reproductive health issues, and so UNFPA favored a more resolute push for the passage of the Reproductive Health Bill in the present 15th Congress.²²

Speaking about the bill's effect on the Filipino people, Imbong says:

In its attempt to legislate immoral liberties and counterfeit “rights” (such as sexual rights for adolescents in defiance of parental rights and the imperatives of morality), the RH bill battles Filipino cultural and moral values that feeds the Filipino soul. With the harm to be wrought by its proposed “universal access” to all methods of contraception, the bill fosters hostility to new human life, the health of women are in peril, the bond between spouses and between parent and child are broken, marriage is trivialized, the sanctity of human sexuality is violated, and in the end, the social fabric unravels.²³

Imbong added that “the bill is rooted on deception. It is neither reproductive, nor promotive of health. It is a foreign agenda making its way into our rich culture.

It is an insult to the Filipino people.”

The country will likely continue to debate the problems of poverty, population, and development on the congressional floor and in the public square. But perhaps Philippine lawmakers should search for the answer to the country’s problems not in forcing the implementation of a destructive bill, but in effecting a change toward responsible government.

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From the Archives:

Ghosts on the Great Lawn (1986)

Faith Abbott McFadden

You know Erma Bombeck, and how funny she can be. Millions read her syndicated newspaper column regularly. But sometimes she's not funny.

One of her own favorite columns is reprinted from time to time, when she's on vacation. Thus, last summer, her fans saw again her sober column titled "The Phantom Senior Classes." It's about teenagers who die in drunk-driving accidents. Erma imagines a Central High ("somewhere in the midwest") which "until this moment" had a senior class of about 200, but this year, she writes, there will be *no* senior class at Central—nor any such classes for the next 45 years, because during that time some 9,000 young drunk-driving victims won't live to get their diplomas.

In a futuristic flashback, she adds that Central High closed its doors in 2029, because of "decreasing enrollment"—indeed, 44 more Centrals would also close down, because in those 40-some years over 400,000 young people would also be victims of such tragic accidents.

It struck me, because I too had been thinking about phantom children, not at Central High but on the Great Lawn in New York's Central Park, during the big Fourth of July Liberty Weekend celebration, when President Reagan joined the millions who came to see the refurbished Statue of Liberty's torch relighted.

The following Monday, the tabloid New York *Daily News*' front-page banner headline roared "IT WAS SOME PARTY"—the historic six-million throng, the story reported, had "one big bash . . . ate 750,000 hot dogs, and drank two million drinks." There were millions in the subways; the longest lines *ever* waited above; the statistics ran on and on. And then this: the "Most Well-Mannered Crowd: the 800,000 at the Central Park Concert."

There have been many concerts in Central Park, including Rock affairs that got out of hand, with drug disasters, muggings, even riots, involving as many as a half-million "youths" of all ages. But this one was to be different. A half-million people were expected, but the police didn't expect big troubles from a crowd coming to hear the New York Philharmonic. (Who goes out of control when Zubin Mehta conducts, Yo Yo Ma plays his cello, Itzhak Perlman fiddles, and the soloists are

Faith Abbott McFadden, long time senior editor of the *Human Life Review*, and widow of its late founding editor, J.P. McFadden, died on August 30, 2011. This essay, her first for the *Review*, originally appeared in the Fall, 1986 issue. Mrs. McFadden, the mother of five children, was also the author of *Acts of Faith: A Memoir* (Ignatius Press, 1995).

Marilyn Horne, Placido Domingo, and Sherrill Milnes?) The 1,700 cops mobilized were there mainly to handle pedestrian traffic in and out of the park. A police Captain said: “Zubin Mehta groupies are not generally trouble-makers.”

And it *was* a great night, with the enthusiastic crowd exceeding predictions and reaching the 800,000 the *News* reported. (Have *you* ever seen that many people in one place?)

On the blistering hot afternoon before the concert I had walked across the Great Lawn on the way to higher ground from which I hoped to view the First Ever Annual Great Blimp Race. The Lawn had begun filling up since early morning; from atop the Belvedere Castle (yes, we did see the five blimps, between buildings) I saw whole families with picnic and “survival” apparatus. But I had no idea of what a *capacity* crowd on the Great Lawn would look like, until that night, when I watched the concert live on TV and saw the aerial view from the blimps. And when I read Monday’s *News*, I thought: So that’s what 800,000 looks like.

Numbers have always left me cold: I have No Head for Figures—zeroes and commas play tricks on me: hundreds turn into thousands and vice-versa. From earliest memory (when I told friends about my great-grandmother who died at age 301—actually she was run over by a milk cart at 103) through my first job, when my boss began to look for a *new* job because, he said, he needed to make a “five-figure salary” (which someone later explained meant \$10,000-up) up to the present, my inability to translate figures into what they represent has been a practical disability and a social embarrassment.

So I have had to make a sort of game about numbers. A kind of Sesame Street for adults, where you see the numbers and then envision abstract images. And since adult heads must deal with many more than ten oranges or witches or whatever, there must be an expanded concept: a spatial concept, if hundreds and thousands up to millions are to make any sense.

Time magazine recently had a clever Sesame Street-type visual aid, for people who can’t conceptualize a sea depth of 12,500 feet, at which the remains of the *Titanic* lie: Ten Empire State buildings were stacked up atop each other. So if you can visualize how tall the Empire State is, you get the idea of how deep is the ocean over the *Titanic*.

My first numerical-visual aid was 2,000, which was the size of the student body in my high school. When I would hear that some demonstration or celebration had drawn a crowd of something-thousand, I’d remember my high school auditorium as a standard of comparison.

After the *Roe v. Wade* decision in 1973, I began attending the annual March for Life in Washington, and my numbers game expanded: One year there were 35,000 marchers (we stood on a street corner and watched them march by); another year 50,000; one year 70,000. From Capitol Hill one got a conceptual idea of what

70,000 *looked* like. Anything to do with the *million* category was still an abstraction. Until my Great Lawn experience.

A few days after I'd read in the *News* about the 800,000 people at the concert (more than ten times the size of that Washington mob), I received a copy of an ad which had appeared in the *New York Times* on May 26th (we had not seen it earlier because it was in the *Times*' "National Edition," which goes outside New York). The ad, sponsored by Doctors for Life, offered Congratulations to the 8th Grade Graduates of 1986 and Condolences to "Your classmates who didn't make it"—the 745,000 souls who would have been 8th grade graduates in 1986 had they not been aborted.

The ad said: "Many of you (3,137,000) were born in 1973—the year abortion was legalized. Over 745,000 of your Class of '86 were aborted in the same year—the Massacre of 1973." Now that the figure 800,000 was indelible in my mind, I could "see" 745,000. And 750,000 hot dogs dispensed that Liberty Weekend? Just about one for each absent member of that class.

And of course these 8th graders would become, in the fall, the first high school freshman class in American history to have been decimated by abortion. I imagined the Great Lawn filled with silent 8th grade graduates, Class of 1986, standing upright, the ghosts of the Class That Wasn't There.

"Where there is no vision, the people perish." Would a vision—a viewing—of the perished help make sense of their sheer numbers, I wondered? Of course there can't be pictures of my ghosts on the Great Lawn, those victims of "the massacre of 1973." I remembered the pictures of the mere 900 victims of the Jonestown Massacre. Who can forget all those full-color magazine photos of the victims of fanaticism and cyanide-laced Kool-Aid, lying there on the ground in Guyana. Horrible, we shuddered. Still, though, *that* happened somewhere else, not "close to home." Not on Central Park's Great Lawn. But we *had* seen 800,000 people on the Great Lawn, which is almost exactly *half* the number of babies unborn-in-America every year, so I could visualize them covering *two* Great Lawns with a capacity crowd of ghosts. Probably all of Central Park could be populated by ghosts, at the current rate of snuffing-out.

But 1.6 million *is* hard to visualize. Break that figure down, though, into the *daily* rate of snuffing-out, and you get about four thousand ghosts created every day. Twice the size of my high school auditorium. Two full assemblies a day, wiped out: vaporized.

The other day, I caught myself saying (as who doesn't?) "Gee, thanks a million." And suddenly I wondered how long it would take to say "thanks" a million times. It would take a lot longer to count to 1.6 million: It *is* more awesomely horrible to *know* that that many babies are killed each year.

The ad said that only 600,000 had been killed in all our wars. That amazed me,

so I looked it up. The total I found was 652,000 deaths in battle, plus another 500,000—plus “other” war deaths. I looked up that famous disaster, the 1918 Flu epidemic. It killed “only” a half million Americans. I’m told that an estimated 18 million unborn babies have died since *Roe v. Wade*, which must make abortion the worst epidemic in history.

Dwelling on this tends to make my Numbers Game work *too* well. Before you know it, you’re thinking: How many each hour, each minute—how many, from here to the subway? *That* sort of thing.

Especially when there are visual aides, from here to the subway. Each summer day in Manhattan one sees large groups of name-tagged little kids erupting from the subway, being maneuvered along 86th Street toward Central Park: happy, fun-time-anticipating kids, two by two. Their day-camp counselors stop them every so often to take yet another head-count and remind the kids to stick with their partners. My mind wanders and I see one single line of kids. Their buddies aren’t there. One out of how many, I wonder, got vaporized in the few years since these day-campers were born? Nobody can do a head-count of those little ghosts.

Not to overdo it, but there’s another big story in town this summer that makes the abortion issue “hit home”—babies falling out of windows.

One can’t imagine New Yorkers saying: “So what?” when they read that yet another child has fallen to its death from an unbarred window. No: We are compassionate. We agonize over needless deaths. The *News* (August 11) headlined: “9th child falls to death,” and the *New York Times*, the same day, told us it was “the 77th time that a child has fallen through a window in the City. Nine of the falls have resulted in deaths, including four within the last three weeks.”

We think: how *needless*. Why don’t these parents/babysitters learn from the papers about window-bars? We *feel* for the bereaved parents even as we accuse them of negligence (and as we check our *own* window-bars).

Even when we know and can quote the statistics about abortion; even when we see the annual statistics broken down into daily and hourly fatalities, we tend—automatically—to make a distinction between *statistics* and *individual* victims of preventable fatalities, whose names and ages are reported in the papers, with their baby pictures.

What if the media informed us that, this year, 1.6 million babies would fall to their deaths from unguarded windows? At the rate of about 4,000 daily, almost three every minute? We wouldn’t feel just “compassion” but horror. We’d raise hysterical cries about committing national suicide, about what it all meant for the *future*.

The reality is that 1.6 million babies were victims of preventable deaths last year. Is there any difference, ultimately? There is no future for the nine small children with names who have died so far this year from window falls: There is the

same no-future for the un-named, unbirth-dated babies who are also victims of needless death. But *these* victims of preventable deaths never make it to the stage where *we* have “feelings” about them. The 4,000 per day aborted babies are statistics of a *different* sort; we don’t read about how they died; we don’t know their names; we can be rhetorical about Unborn Millions, but not about three babies falling out of windows every minute, even though the end result is the same. There are no degrees of death.

Maybe it’s because abortion statistics have all those zeroes. We think of the aborted in terms of zeroes if we think about them at all. It’s easier to deal with “mass murder” than to think about individual victims. To think of the victims as one-at-a-time individuals offends one’s sensibilities. But that is how they died, one at a time, just as the window-victims died. Just as the window-victims had been *born*, one at a time; just as you and I were born, and will die. So the fatalities of legal abortion would have been born one at a time, had they not been “terminated.” Each of the 1.6 million victims unborn in America every year has an identity.

It’s as if the unborn don’t count. They do, however, count up. The next window victim will be the 10th. Somewhere, there has been (or soon will be) abortion victim 18,000,001.

“Where there is no vision, the people perish.” One wonders if even the most ardent pro-abortionists, given a vision of several empty Great Lawns and *knowing* what the empty spaces represented, would say: So what? More likely they’d say Yes, but . . . most likely, they’d not say anything, because they are too busy with numbers: *theirs*. (Stand up and be counted, all in favor of women’s reproductive rights.) Their numbers represent the *born* who are now free of burdensome unwanted babies.

And what was Ellie Smeal’s National Organization for Women doing in our nation’s capital on July 7th, the day the *Daily News* raved about New York’s Freedom Party? Picketing the U.S. Catholic bishops, that’s what. About 25 women (*that’s* a crowd I have no trouble visualizing) bearing signs about Civil Rights, and also carrying umbrellas, marched outside the bishops’ headquarters, chanting: “Let it rain. Let it pour. We know what we’re marching for.”

Ellie Smeal’s supporters had done better last March in Washington: An estimated 80,000 demonstrated for Abortion Rights. On July 7th, they were protesting the bishops’ endorsement of an amendment for the so-called Civil Rights Restoration Act now pending in Congress. They want the government to force institutions to support abortion: That’s what “civil rights” is all about, of course. Indeed, “We know what we’re marching for.” *What*, not *who*. So that was how NOW joined in celebrating Liberty Weekend.

NOW cares about *now*. What about the future? Is their Emperor eternally

resplendent in new clothes? Don't they know that decimated populations will affect everyone? Even if they (being very cerebral people) don't weep over the unborn, don't they worry about, say, economics? Don't they know that they, and the children they *have* allowed to live, face tremendous financial burdens? That there won't be enough people for jobs, children for schools, soldiers to defend the nation—and who will take care of the NOW Generation in *its* old age?

One might say that they have their backs to the future. Yet it is often these same people, oblivious to the ramifications of a dwindling population, who crusade for “conservation.” Who ask: Have you thought about the future? Save our trees! Be good to ozone layers. Save the whales. We must not allow this-or-that animal to become extinct. Conserve, preserve! Save our National Parks. (Save our Great Lawns, so that someday they *can* be empty?)

Erma Bombeck touched on that, too: “The people of this country champion the lives of helpless seals, unborn babies, abandoned dogs and cats, abused children, alcoholics, the elderly and the disease-ridden. When will we weep for the phantom classes at Central High?”

I wish Erma had listed unborn babies next to phantom classes rather than between helpless seals and abandoned animals—I trust Erma would correct this, if she thought about it. After all, what unborn children and her phantom teenagers have in common is that they *all* are “would-have-beens and should-have-beens.”

There is no doubt that the concert on the Great Lawn had a strong emotional impact on everyone there, as well as on television viewers (some of whom, like us, could rush to our windows to see the fireworks, live, at the grande finale). It was a shared experience, a sort of group emotion. But such “emotional experiences” can lead to a heightened perception of reality.

When I read the Doctors for Life ad, and had that spatial-visual concept of how many ghosts there must now be from sea to shining sea, I felt “personally” involved. I *felt* the reality of how many aren't, and won't ever be, there to share in our So Proudly Hailing; to join in the final Ode to Joy, which had everyone standing up. Then everyone sang God Bless America (even Kate Smith would have been impressed). In the land of the free and the home of the brave, these twilight ghosts were unfree to ask God to bless America. For them, Freedom's Birthday had come too late.

More from Erma Bombeck's column: “The halls echoed with school songs that were never sung, valedictorians who never spoke and cheers that were never heard.”

The *News* had also mentioned, in connection with the well-behaved 800,000, that 1,200 plastic bags had been given to the concert-goers, to clean up after themselves; and that they'd left behind only 250 cubic yards of trash. I do not have a concept of cubic yards, but I figured 250 of them must be a mere drop in

the sanitation truck bucket. And then I remembered stories I'd read about the disposal of fetuses, in just such trash bags, and I had no wish to conceptualize. I did not want to play my Numbers Game.

A few years ago President Reagan published an essay, *Abortion and the Conscience of the Nation*. Conscience has to do with knowing and feeling, it seems to me: A conscience is *formed* by the working-together of the heart and the mind. If there is one point of agreement on both sides of the abortion issue, it is that this is "a battle for hearts and minds." It has to be fought in the courts, but nothing will ultimately change until hearts and minds do. Whichever gets most involved *first* doesn't seem to matter all that much, since eventually both must come together. If we are *whole*—and I don't know anyone who would like to be considered fragmented.

There are dedicated anti-abortion people who *feel* so deeply about the unborn that they use sheer emotional bombardment as a weapon. You know, all those graphic pictures, etc. But people will not see what they don't want to see. Shock tactics simply turn them off.

Then there are those whose approach is basically cerebral: They know that seeing is not necessarily believing; nevertheless they are convinced that seeing *statistics* will lead to comprehension. (If people only knew the *facts* about unborn babies, they would rise up and say: "This killing has got to stop!") Which is a bit like saying: If teenagers only *knew* the Facts of Life, they'd stop getting pregnant—education is the answer. But we know that a whole generation of Sex Ed has produced the highest pregnancy/abortion rate in history.

Abortion and the Conscience of the Nation? It may be that until there is a coming-together of seeing and believing and knowing, in individual consciences, there can't be any formation of a national conscience; and 1.5 or 1.6 million—all those innocent zeroes—will continue to be slaughtered, one at a time, every few seconds, every single year. But their little ghosts will continue to not go away.

The nonsensical nursery rhyme becomes less nonsensical:

The other day
Upon the stair
I saw a man
Who wasn't there.
He wasn't there again today:
I wish that man
Would go away.

Why Regional Human Rights Institutions Matter to Unborn Children

Patrick J. Flood

Throughout the world, battles are underway over legal protection for the unborn child. The contest is taking place in national legislatures, courts, government ministries, civil society, the media, and international organizations. Among the last-named, probably the most important are the regional human rights commissions and courts. This article examines their legal authority, composition, and access rules, and their impact on the laws and practices of national states regarding the right to life of unborn children. It also suggests possible courses of action by pro-life advocates.

The Context

We need to keep international organizations in perspective, recognizing that national states still make most of the rules about whose lives must be protected and whose may be ended. As territorial sovereigns, states retain primary lawmaking authority within their borders and they still have a monopoly of enforcement power; regional international organizations and their staffs do not have their own standing police and military forces. At the same time, all states have freely accepted, through treaties, their accountability before the organized community of states for how well they protect human rights. Accountability can occur at the universal level within the United Nations system, and at the regional level through the institutions described in this article.¹

This article will show the considerable authority that states have granted to regional human rights commissions and courts, though the extent of this authority varies from region to region. The members of these commissions and courts are elected by states, but these entities have been endowed with independence,² and in Europe and the Americas they have made decisions with major consequences for national laws and practices in a wide range of human rights matters. In both Europe and the Americas, in response to commission or court decisions, states have paid compensation to victims and amended their legislation to preclude or discourage future violations. The rationale for granting such independence to these bodies is to encourage them to impartially interpret the law rather than support the

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political interests and goals of their states. The same rationale applies to the African and Arab institutions.

State compliance with regional decisions tends to be high; this docility can be explained in part by states' current reliance on the rule of law as the best cure for arbitrariness, warlordism, and other evils.³ The trend toward complying with court and commission rulings is part of the effort to build a more stable, law-governed, and peaceful world, but many observers worry that it could also wrest control of public affairs from citizens, a fear that also troubles critics of the European Union (EU), World Bank, International Monetary Fund, and World Trade Organization. It would be an exquisitely painful irony if regional human rights institutions themselves became the source of widespread violations of the right to life of unborn children. It has not yet happened, but pro-life governments and NGOs need to be vigilant and engaged on a continuing basis.

Regional Organizations: Overview

It is important to understand at the outset that the regional institutions are neither branches nor agents of the United Nations; they operate independently on the basis of their own legal authority, which is derived from founding documents ratified by the states in their respective regions.⁴ There are four regional courts, two in Europe and one each in the Americas and Africa. In addition there are six commissions, two in Africa and one each in the Americas, the Arab League, the Association of Southeast Asian Nations (ASEAN), and the Organization of Islamic Cooperation (OIC).⁵ They display substantial diversity in their founding documents, composition, structure, legal authority, access rules, compliance procedures, and relationships to regional supervisory bodies.⁶ The main focus here will be on Europe, the Americas and Africa, whose institutions have developed over a longer period.

Since basic human rights are by definition essentially the same for all human beings, one might wonder why states do not conduct all human rights work within the UN. But geographic proximity still counts for something in human relations, provoking conflict but also a natural sense of community. States in geographic proximity thus develop free trade areas and regional security arrangements and demonstrate regional solidarity in global organizations and often even in international crises, temporarily putting aside differences. In addition, at the UN regional level, groups have always functioned, formally or informally, for election of officers, coordination of common positions on substantive as well as procedural issues, and lobbying of other regional groups.

Europe

Two regional courts, each created by a separate multilateral treaty, play significant roles: The European Court of Human Rights (ECHR), established under the

European Convention on Human Rights (1950), and the European Court of Justice (ECJ), established under the series of treaties creating the European Union. The most important decisions taken by the ECHR affecting the rights of the unborn child are summarized below. While the ECJ has hitherto concentrated on matters directly concerning European integration, its expanded powers under the Lisbon Treaty (2009) and the inclusion of the Charter of Fundamental Rights as an annex to the Treaty have raised questions about its competence to address human rights issues, along with concerns about how its work might overlap or conflict with that of the ECHR.

The Organization for Security and Cooperation in Europe (OSCE) has a human rights office and conducts a range of investigative and promotional activities on particular topics selected by the OSCE's intergovernmental policymaking bodies, but it has not addressed the rights of unborn children.

ECHR

Article 2 of the European Convention on Human Rights provides that "No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law," though it does not specifically address the application or non-application of this right to unborn children.

The ECHR consists of 47 judges, one from each member state of the Council of Europe, elected by the Parliamentary Assembly of the Council of Europe for a single nine-year term. (Each state nominates three candidates, from which the Assembly chooses one after reviewing their qualifications and interviewing them.) The Court normally hears cases in a chamber of three or seven judges, but in the most important cases, or on appeal from one of the smaller chambers, a Grand Chamber of 17 judges is convened. Any European citizen who believes a state has violated his or her rights under the Convention, or any recognized nongovernmental organization on the applicant's behalf, may file a petition with the Court. The state accused in the complaint may appoint an *ad hoc* judge to the panel hearing the case, unless the state's regular judge is already a member of that panel.

Until 1998 most cases were decided by the quasi-judicial European Commission on Human Rights, which gave individuals as well as states a right of petition; the Court only heard cases filed by states or referred by the Commission. In 1998 the Commission was abolished and the Court assumed its previous responsibilities.

In the first case concerning the unborn child, the Commission ruled in 1977 that a West German statute banning abortion after 12 weeks' gestation did not violate a right to privacy under Article 8 of the Convention.⁷ In two subsequent cases, the Commission ruled against a husband in the UK (1980) and a domestic partner in

Norway (1992) who had argued that Article 2 of the Convention safeguarded their unborn children from abortion. In both of these cases the Commission implied that the unborn child has some rights but chose not to draw a bright line defining how far they extend; instead, the Commission deferred to the national legislation, though it stated that a law needed to strike a “fair balance” between the interests and rights of mother and child.⁸

After it assumed responsibility for the Commission’s work, the European Court of Human Rights applied the national primacy and “fair balance” concepts in *Boso v. Italy* (2002) and *Vo v. France* (2004).⁹ In an interesting case not directly concerning abortion, *Odievre v. France* (2003), the Grand Chamber decision included the following comment on the unborn child: “There is also a general interest at stake as the French legislature has consistently sought to protect the mother’s and child’s health during pregnancy and birth and to avoid abortions, in particular illegal abortions The right to respect for life, a higher-ranking value guaranteed by the Convention, is thus one of the aims pursued by the French system.”¹⁰

The most important case is that of *A, B, and C v. Ireland* (decided December 16, 2010),¹¹ in which the petitioners asked the Court to find Ireland’s pro-life Constitutional article and related legislation to be in violation of several rights guaranteed in the Convention. By a vote of 11-6 the Grand Chamber solidly reaffirmed the doctrine of national primacy, stating emphatically that “Ireland, like all other member states of the Council of Europe, has the sovereign right to determine its law on abortion in accordance with its own constitution and laws.” The Court also decided that, because Ireland permitted freedom of travel and freedom of information about abortion providers abroad, its Constitution met the “fair balance” test.

Responding to a complaint by “C” that Irish law did not establish an adequate procedure to enable her to exercise her rights under existing Irish law, the Court declared unanimously that Ireland, like other Council member states, must apply its laws to achieve their purposes and on a nondiscriminatory basis. Because Ireland had not provided an adequate procedure for “C” to do this, the state must pay damages. This finding was consistent with the principle enunciated by the ECHR in *Tysiac v. Poland* (2007),¹² namely that Polish law (which like Irish law restricts abortion but unlike Irish law provides certain exceptions) should have instituted a procedure giving the complainant timely access to an impartial appeal against the negative hospital decision in her case, and that the existing Polish appeal procedure was insufficient for this purpose.

The Court followed the same reasoning in the case of *R.R. v. Poland* (May 2011), in which it found that the state had not provided timely access to services (prenatal genetic testing) that are legal and that could have determined whether the unborn child’s presumed disability qualified the mother for an

abortion under Polish law. The Court awarded monetary damages to the applicant.¹³ According to Gregor Puppinck of the European Center for Law and Justice, the ruling also had a pro-life aspect: the Court affirmed that the obligation to provide access to legal medical services falls upon the state, not upon individual health professionals. Puppinck argues that this amounts to a strong affirmation of the rights of practitioners to refuse to participate in matters that violate their conscience.¹⁴

The Court's decision in the Ireland case means that the ECHR should no longer be asked to overturn national laws on the core issues of whether and to what extent abortion can be permitted. Those issues are to be resolved through the national democratic process. Implementation issues, such as complaints alleging denial of procedural rights under national law, are likely to continue reaching the Court.

The Committee of Ministers, the highest political body in the Council of Europe, monitors implementation of Court decisions through quarterly meetings of senior deputies, who review reports from the Court on compliance and related communications from states.

ECJ

The European Court of Justice comprises 27 judges elected by common accord of EU governments; in practice, each member state nominates a single judge. Terms are for six years, renewable.

The Court has authority to interpret the Treaty of Lisbon (entered into force December 2009), which incorporates as an annex the Charter of Fundamental Rights of the European Union.¹⁵ While the Charter is silent on abortion, a right to abortion, the rights of unborn children, or any equivalent terms, the Court's power to interpret the Treaty is limited only by the guiding principles in its text, such as subsidiarity and specific conferral of competences, which would appear to be obstacles to the Court's striking down national laws on abortion. National parliaments can complain that the Court has not given adequate weight to subsidiarity or conferral in a particular ruling, but at the end the Court decides whether to agree with the complaint.

The drafters of the Lisbon Treaty did not resolve the obvious problem that the ECHR and the ECJ might come to different conclusions about a specific human rights issue.¹⁶ Instead, they urged the two courts to consult with each other to try to avoid a clash, and they provided that the EU, now that it has legal personality, could become a party to the European Convention, perhaps thinking that this would preclude conflict by ensuring that the ECJ followed precedents set by the ECHR.

ECJ findings and decisions are not subject to appeal and have direct effect; that

is, they apply to citizens as well as states and do not require national implementing legislation or national judicial action.¹⁷ In 1964 the ECJ asserted the supremacy of European law over national law and of its decisions over those of national courts.¹⁸ However, ECJ supremacy is not unchallenged. On June 30, 2009 the German Constitutional Court held that the initial implementing legislation of the Lisbon Treaty was incompatible with the German Basic Law (Constitution), because it did not accord the German parliament sufficient rights to participate in European lawmaking and treaty amendment procedures.¹⁹ As Frank Schorkopf wrote in the *American Journal of International Law*, the Court “would view the EU as an association of sovereign states to which the principle of conferral of competences applies . . . [but] rejected the concept of a European federal state,” insisting that “the primary source of legitimization of the . . . [EU] . . . must be national polities.”²⁰ The Court went further, defining certain rights concerning what it called “the political formation of economic, cultural and social circumstances of life,”²¹ with which European integration must not significantly interfere, including basic liberties, family and education policies, and freedom of religion and ideology.²² This decision required the German Government and Parliament, which had been driving energetically toward ever-closer union, to take steps to ensure that certain basic rights would be safe from Union encroachment. Although the Court did not mention abortion, its list of areas reserved for national authority could easily accommodate Germany’s law on the subject, which, despite elements of permissiveness, in principle recognizes the humanity of unborn children and provides limited substantive and procedural protections for them. The German Constitutional Court has upheld these protections.

In June 2011 the Czech Parliament decided not to adopt draft legislation that would have provided abortions to citizens of other EU nations. Parliament was responding to protests by Czech pro-life and pro-family groups, and in light of a legal opinion submitted by the Alliance Defense Fund pointing out that the EU institutions acknowledged that they have no authority over national legislation on abortion.²³ The Alliance memorandum included the following statement by the President-in-Office of the Council of the European Union in response to a question by a member of the European Parliament concerning abortion:

The Council has never discussed this, because it does not fall within its competence. The European Union treaties have not bestowed on the Community or the Union the competence whereby the Union could regulate on abortions. The Member States thus have the competence to regulate on this and ensure compliance in their territory with the laws that they pass. The EU cannot interfere in unsatisfactory states of affairs due to differences in the legislation of Member States when it comes to areas that are not within its competence.²⁴

A few months later, responding to another question that raised the same issue of

legal competence to legislate on abortion, the Council reiterated the view that the matter legally falls under the competence of the individual states.²⁵

Although the Treaty of Lisbon and the Treaty on the Functioning of the European Union entered into force after the foregoing statements, nothing in these documents authorizes the EU lawmaking bodies (Commission, Parliament, and Council) to legislate on abortion, and so far they have declined to do so. EU states are also members of the Council of Europe and parties to the European Convention, and it seems improbable that they would seek to attack a landmark ECHR ruling such as the *Ireland* decision through EU legislation. Additionally, the principles of subsidiarity and “conferral of competences” mentioned above would come into play. Still, there is reason to pay attention.

In October 2011 the ECJ ruled that “a process which involves removal of a stem cell from a human embryo at the blastocyst stage, entailing the destruction of that embryo, cannot be patented.” The Court said its ruling upheld an existing European directive on biotechnology patents “intended to exclude any possibility of patentability where respect for human dignity could thereby be affected.” The Court defined a human embryo as “a human ovum, as soon as fertilized if that fertilization is such as to commence the process of development of a human being, or a non-fertilized human ovum into which the cell nucleus from a mature human cell has been transplanted, or a non-fertilized human ovum whose division and further development have been stimulated by parthenogenesis.” Because the ruling prohibits patenting, it will likely be a strong disincentive to investment in embryo-destructive research.²⁶

Advisory Bodies

The EU Fundamental Rights Agency, while it has no legislative or regulatory authority, seeks to influence public and official attitudes through research, public information, and networking activities. It is supervised by a multinational management board selected by EU member states and EU institutions, and is assisted by an appointed Scientific Committee.²⁷

Within the Council of Europe, the Commissioner for Human Rights carries out functions that go beyond those of the EU agency. The Council’s website describes the mandate of the Commissioner in these terms:

The Commissioner’s work . . . focuses on encouraging reform measures. . . . Being a non-judicial institution, the Commissioner’s Office cannot act upon individual complaints, but the Commissioner can draw conclusions and take wider initiatives on the basis of reliable information regarding human rights violations suffered by individuals.²⁸

Despite being “non-judicial,” the Commissioner can take part in the proceedings of the ECHR by invitation or on the Commissioner’s own initiative, and in person as well as by written testimony.²⁹ The Commissioner can also make “assessment”

visits to a member state and make recommendations to the government “to help redress shortcomings,” including recommendations to change laws and official practices. The present Commissioner has already made at least one visit to each of the 47 COE states. The position thus has a mandate for activism, and could be influential in persuading national states to adapt their legislation and regulations.

Although the two European human rights agencies have no executive, legislative, or judicial authority over member states or their citizens, their substantial staffs and budgets add to their potential influence.

The COE Parliamentary Assembly, an advisory body comprising of national parliamentarians, on October 3, 2011 adopted a resolution “condemn[ing] the practice of prenatal sex selection,” and calling on states to “introduce legislation with a view to prohibiting sex selection in the context of assisted reproduction technologies and legal abortion, except when it is justified to avoid a serious hereditary disease.” While the exception is regrettable, the resolution as a whole is a welcome step forward. Besides urging legislation, it also encourages national ethics bodies to “elaborate guidelines for medical staff, discouraging prenatal sex selection by whatever method,” with the same exception. The measure was supported across party and national lines, and passed 81-3, with 3 abstentions.³⁰

The Americas

Two Inter-American institutions, both part of the OAS system, oversee observance of human rights in the region: the Inter-American Commission on Human Rights (IACHR), and the Inter-American Court of Human Rights (hereinafter the Inter-American Court). Their roles are specified in two distinct documents:

- The *American Declaration of the Rights and Duties of Man*, adopted by the OAS General Assembly in 1948, does not mention a specific right to legal protection for unborn children, nor does it recognize a right to abortion. Article I states simply that “Every human being has the right to life, liberty, and the security of his person.”

- The *American Convention on Human Rights* (1969), which entered into force in 1978, contains the following relevant provisions:

Article 1. Obligation to Respect Rights

2. For the purposes of this Convention, “person” means every human being.

Article 3. Right to Juridical Personality

Every person has the right to recognition as a person before the law.

Article 4. Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.

IACHR

The IACHR is charged with overseeing implementation of both documents, but for non-parties to the Convention it applies only the Declaration. The Commission has seven members elected by the OAS General Assembly for a four-year term, renewable once. They serve independently, and a Commissioner may not take part in a case involving his or her own country. The Commission monitors, sometimes visits, and makes recommendations for improvement. It also adjudicates petitions from states, individuals, and NGOs that allege that the rights of specific individuals have been abridged under the Declaration or under the Convention (in the case of states parties to the latter). Of the 35 OAS member states, 25 had acceded to the Convention as of November 2011.

Inter-American Court

The only bodies that can refer cases to the Inter-American Court, which was established under the Convention, are the Commission or a state party to the Convention. Individuals and NGOs thus have access to the Court only through the Commission. Article 41 of the Convention allows non-victims to file petitions with the Commission against a state party, but a victim must be identified in the petition. (By contrast, in the ECHR an actual victim must file the petition.) The Commission can call expert witnesses to assist it in cases before it.³¹ The Court consists of seven judges elected by the OAS General Assembly for six-year terms, renewable once. A judge need not recuse himself from a case involving his home country. The Court's judgments are binding on states. It can also render advisory opinions at the request of the Commission, another OAS agency, or any OAS member state. Thus far (November 2011) the Court has not decided any cases involving the rights of the unborn, nor issued an advisory opinion on the subject.

Cases

The Commission has decided two cases involving the unborn child. In 1981 it rejected a complaint brought by two Americans against the U.S. Government; the petitioners had asserted that the legalization of abortion by the U.S. Supreme Court in 1973, and a subsequent application of that decision in a Massachusetts case, violated the Declaration. The petitioners argued that the Convention should be read as spelling out more precisely the provisions of the Declaration, and that therefore Article 1 of the Declaration should be understood as applying from the moment of conception. The Commission ruled by majority vote that, since the

U.S. was not a party to the Convention at the time the petition was filed, and since the Convention itself had not even entered into force at the time the alleged violations occurred, it could not apply the Convention in the case.³²

In its decision the Commission noted, however, that in preparing its draft of the future Convention in 1968 the Commission had itself included the phrase “in general, from the moment of conception” and that the San Jose Diplomatic Conference had approved this formulation by majority vote in the process of adopting the Convention the following year. The Commission had rejected the unqualified phrase “from the moment of conception” because it wanted to accommodate the domestic legislation of states that permitted abortion “*inter alia*, to save the mother’s life, and in case of rape.”³³ Therefore it is clear that the Commission and the San Jose Conference both saw a need to include protection for the unborn child, although they did not define precisely the length of time in pregnancy during which protection was to be afforded; the reason for including the qualifying phrase “in general” seems to have been intended as a formula that would allow some flexibility for narrow exceptions on substantive grounds such as the two just mentioned. The legislative history also indicates that the words “*inter alia*” were not to be understood broadly.³⁴

The second case is that of Paulina del Carmen Ramirez Jacinto. In this case the Government of Mexico and the Commission reached a friendly settlement providing for monetary and other compensation to the petitioner, who had been raped as a minor but denied her right under Mexican law (as a rape victim) to obtain an abortion. The denial occurred because Mexico had not enacted regulations that would have enabled the petitioner to exercise this right. Under the terms of the settlement, Mexico was required to, and did, change its federal regulations to remedy this omission, and the State of Baja California changed its law on the matter.³⁵

Compliance

A cursory survey of IACHR decisions over the past several years shows a high rate of compliance. This is probably due to the Commission’s preference for and skill in obtaining “friendly settlements,” in which the respondent state takes substantial measures to accept IACHR recommendations for compensation to victims. Willingness to comply is reinforced by a landmark Court ruling stating that parties to the Convention are obliged to adopt IACHR recommendations in individual cases.³⁶ In cases of non-compliance that are not resolved through direct contact with the state concerned, the Commission can publish the facts, inform the OAS General Assembly, and/or refer the case to the Court. Court judgments are binding, and the Court can order reparations and “measures to guarantee non-repetition” of the violation. In case of non-compliance or excessively delayed

compliance, the Court can enlist the assistance of the OAS General Assembly.

General Activities

The IACHR has held public hearings on the general subject of abortion. In 2007, during its 130th Regular Session, the Commission held a wide-ranging discussion of the subject at the request of the pro-abortion Center for Reproductive Rights, the Center for Justice and International Law (CEJIL), and Human Rights Watch, but the report of the meeting does not indicate participation by any pro-life organization.³⁷ Similarly, a hearing on the Reproductive Rights of Women held during the IACHR's 141st session featured reports by organizations in 12 countries in the region, but apparently included no pro-life organizations.³⁸ It is not clear from the published record why only pro-abortion organizations took part in these events. According to Article 64 of the Commission's Rules of Procedure, interested groups may take part in hearings on general matters and country situations if they submit a request 50 days in advance and if the Commission agrees. It is also possible for NGOs to submit information relevant to country studies prepared by the Commission, including studies prepared in connection with an onsite visit.

Africa

Three institutions currently have continent-wide responsibility for human rights: the African Commission on Human and People's Rights (hereinafter African Commission), the African Committee on the Rights and Welfare of the Child (African Committee), and the African Court of Human and Peoples' Rights (ACHPR). The last-named is in the process of merging with the African Court of Justice, under a decision by the African Union Assembly (AU Assembly) on July 1, 2008. The Protocol for the merged court, which is to be known as the African Court of Justice and Human Rights (ACJHR), had not been ratified as of November 2011.

The African Commission on Human and Peoples' Rights

The African Commission consists of eleven members elected by the AU Assembly (Heads of State and Government) for six-year perpetually renewable terms. The Commission studies and makes recommendations to governments on human rights conditions, organizes conferences, seminars, and similar meetings, encourages national and local human rights institutions in the region, asks governments for reports on compliance with Commission recommendations, and suggests to governments principles on which to base domestic legislation. The Commission also has a role in interpreting its founding document, the African Charter on Human and Peoples' Rights, a role it currently shares with the ACHPR and will continue to share with that court's successor once the court merger takes place.

This includes the Maputo Protocol discussed below. The African Commission is also one of the bodies specifically authorized to bring cases before the present and future Court. NGOs have wide-ranging access to the Commission (though not to the Courts—see below); they can obtain official observer status, with the right to submit agenda items, address the Commission, place interns, support rapporteurs and missions, organize workshops, and even draft normative resolutions and protocols.³⁹ As of November 2011, the Commission itself has not adopted recommendations concerning the rights of the unborn, nor referred any cases on the matter to the ACHPR.

The African Committee on the Rights and Welfare of the Child

The Committee consists of eleven members, elected for five years by the AU Assembly from states parties to the African Charter on the Rights and Welfare of the Child (Children's Charter). Unlike the other African institutions discussed here, the members' terms are not renewable. Other than the UN Committee on the Rights of the Child, this is the only treaty-based committee charged with protecting children's rights. Its mandate is thus of particular pro-life interest. As spelled out in the Children's Charter, the Committee's job is to conduct studies, make recommendations to governments, formulate "and [lay] down principles and rules," cooperate with other organizations, "monitor implementation and ensure protection of the rights enshrined in this Charter," "interpret the Charter at the request of" a member state or AU organ or certain other recognized bodies, and other tasks as may be assigned by the AU or (interestingly) the UN.⁴⁰ The Committee can receive and consider "communications" (petitions) from individuals or from NGOs recognized by the AU or UN alleging violations of the Charter, but states cannot file complaints.⁴¹ The Committee may "resort to any appropriate method of investigating" the matter, and is to report its findings biennially to the AU Assembly and then to publish the report. States that are parties to the Charter are required to make this report widely available.⁴²

States Parties are also required to submit periodic reports on their implementation of the Charter (Article 43); the Committee reviews these in a multi-stage procedure involving repeated contacts with the state concerned to request additional information, culminating in publication of the Committee's concluding observations. NGOs can take part in the preparation of their state's report, if the state agrees, and may also participate informally in the stages of the Committee's review of state reports leading up to their submission to the AU Assembly. They can also submit alternative (shadow) reports to the Committee, as long as their views differ from those already contained in the state's own report. If a state declines to submit a report at all, after repeated requests the Committee can choose to review the NGO report as a substitute.⁴³

The Children's Charter incorporates, by inclusive reference, language from the UN Convention on the Rights of the Child supporting the rights of the child before as well as after birth; the Committee's work thus merits attention by pro-life NGOs. Its secretariat is based within the main African Union secretariat in Addis Ababa, Ethiopia.

African Court of Human and Peoples' Rights (ACHPR)

The ACHPR consists of eleven judges, elected by the AU Assembly for six-year terms, renewable once, from lists proposed by states party to the Court Protocol.⁴⁴

The Court can consider actions brought under any international human rights instrument to which the State(s) concerned are parties, not only African instruments. Moreover, the Court can apply as sources of law any relevant human rights instrument, universal or regional, ratified by the State(s) concerned. This represents a much broader spectrum than that available to the European and Inter-American Courts. The Court may also deal with "matters of interpretation arising from the application or implementation" of the Court Protocol, a function that, as stated above, it shares with the African Commission.

Article 5 designates who can bring a case to the ACHPR:

- a) the African Human Rights Commission;
- b) the State Party which has lodged a complaint to the Commission;
- c) the State Party against which the complaint has been lodged at the Commission;
- d) the State Party whose citizen is a victim of a human rights violation; and
- e) African intergovernmental organizations.

Additionally, when a State Party has an interest in a case, it may submit a request to the Court to be permitted to join in the proceedings.

As for NGOs and individuals, Article 5(3) of the Court Protocol provides that the ACHPR may entitle relevant NGOs with observer status with the African Commission and also individuals to institute cases directly before it, but only in accordance with Article 34(6) of the same document. The latter Article narrows this entitlement by specifying that states *may* make declarations accepting the competence of the Court to receive cases under Article 5(3), but that the Court may *not* receive any petition involving a State Party which has *not* made such a declaration. As of November 2011, 26 states had ratified the Court Protocol, but only Tanzania, Malawi, Ghana, Burkina Faso, and Mali had made the declaration accepting individual and NGO access.

As of November 2011, the ACHPR had not considered any cases involving the rights of the unborn.

The (Future) African Court of Justice and Human Rights (ACJHR)

The new Court, whose founding Protocol was adopted by the African Union (AU) on July 1, 2008, is charged with being the principal judicial organ of the Union. As of November 2011, the Protocol was not in force; only Mali, Libya, and Burkina Faso had ratified it. According to the Protocol, the ACJHR will consist of two sections, each with eight judges elected by a two-thirds majority of the AU member states for six-year terms, renewable once. A judge may not take part in a case involving the state of his or her nationality. The sections will meet separately – one to decide human rights cases and the other to deal with all the rest—but either section may refer a matter to the full court for decision. The Court has broad authority to interpret and apply, among the States Parties to an agreement, not only the African human rights treaties but, as with the current ACHPR, also “any . . . relevant human rights instrument ratified by the States concerned.”⁴⁵ The new Court will also be able to order reparations (Article 28 (h)) and compensation (Article 45).

Compliance

Judgments of the new Court will be binding on the States Parties, and if a state fails to execute a judgment, the Court may refer the matter to the AU Assembly, which may impose sanctions on that state (Article 46). The Court may invite a state, AU organ, or individual to testify or submit written observations in a case (Article 49). It may also issue advisory opinions, but only on the request of an AU organ (Article 53); States Parties and certain intergovernmental organizations may either ask or be asked to testify orally or in writing on the subject of the advisory opinion request. (Article 54)

Access

Articles 29 and 30 of the Protocol establishing the new Court designate who will have standing to bring a human rights case to the Court:

- a) State Parties to the Protocol;
- b) The African Commission on Human and Peoples’ Rights;
- c) The African Committee of Experts on the Rights and Welfare of the Child;
- d) African Intergovernmental Organizations accredited to the Union or its organs; and
- e) African National Human Rights Institutions.

As with the ACHPR, both individuals and African Union-accredited NGOs will be allowed to bring a case directly to the new Court, but only when it concerns a state that has made a declaration accepting the competence of the Court to receive cases from these sources. This provision prevents the Court from being

swamped by massive and often duplicative applications, as happened in the European system before it adopted vigorous measures to address the rapid accumulation of a backlog of over 100,000 petitions.

Basic Documents

1. The *African Charter on Human and Peoples' Rights* (1981), entered into force 1986, says nothing directly about abortion or the rights of the unborn but uses inclusive language in key provisions:

- Article 4. Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.
- Article 18. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

The reference in Article 18 would include the 1959 UN Declaration on the Rights of the Child, which recognizes the child's need for "appropriate legal protection, before as well as after birth."⁴⁶

2. The *African Charter on the Rights and Welfare of the Child* (1990), entered into force 1999,⁴⁷ refers in its Preamble to the "principles of the rights and welfare of the child" contained in the UN Convention on the Rights of the Child,⁴⁸ and affirms in Article 1 that "Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State."

- Article 2 adopts the definition of "child" in the UN Convention: "every human being below the age of 18 years."

The following provisions should therefore be read in the light of the Preamble and Articles 1 and 2:

Article 5

1. Every child has an inherent right to life. This right shall be protected by law.
2. States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection, and development of the child.

Article 30

1. States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:

- (e) ensure that a death sentence shall not be imposed on such mothers.

The Protocol on the Rights of Women in Africa (2003), entered into force in 2005 and known as the “Maputo Protocol,” is the sole exception among African treaties to the pattern of expressing an explicit or implied preference for life. This exception turns up in only a single sentence, one intended to provide a basis for killing unborn children, in complete contradiction to all other relevant provisions of African treaty law: Article 14, Para. 2(c) provides that

States Parties shall take all appropriate measures to protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus.

This provision is vulnerable on several grounds when analyzed in the context of the Protocol itself and the broader context of other international conventions to which African states are parties. For instance, abortion or equivalent terms are not included among the rights “to health of women, including sexual and reproductive health” in Paragraph 1 of the same Article, nor are they mentioned anywhere else in the treaty. “Reproductive rights” are undefined.

The phrase “where the continued pregnancy endangers the mental and physical health of the mother” presents a further difficulty. The general obligation of a state to protect the health of everyone in its jurisdiction is not founded on an undefined “reproductive right,” as 14(2) (c) would have it understood. Moreover, many countries and several of the United States have found that laws permitting abortion for “mental health” quickly deteriorate in practice into abortion-on-demand, with the vast majority of abortions being performed under this heading.

Paragraph 14 (2) (c) seeks to impose on ratifying states an obligation that conflicts with other provisions of international law to which the same African states are party, such as the UN Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child. These state clearly and directly that *every* child has an inherent right to life and that the state is obliged to protect this right. As already noted, both documents define a child as “every human being below the age of eighteen years,” and recognize that the child needs appropriate legal protection before as well as after birth.

In one respect, the Protocol conforms with the African Charter on the Rights and Welfare of the Child and with the International Covenant on Civil and Political Rights, since it prohibits the execution of pregnant women. The Protocol thus demonstrates the drafters’ understanding that the unborn child has a right to life that is independent of the mother’s rights.⁴⁹

Further, the Protocol calls upon states to “establish and strengthen existing pre-natal and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding.” If the unmentioned baby were not already physically present before birth, the woman would not have use for

specifically “pre-natal” services.⁵⁰

There are many legal and logical reasons, therefore, why the abortion paragraph should not be applied, and why at some point it should be deleted.

A state can protect its domestic law on the unborn by entering a reservation upon ratifying the Women’s Protocol. While a reservation is the strongest step, even states that do not file a reservation can still protect their unborn children to some extent by declining to make the declaration authorizing NGOs and individuals to bring cases directly to the African Court.

By contrast, the U.S.-based pro-abortion Center for Reproductive Rights has urged that abortion “advocates . . . pressure governments to ratify the Maputo Protocol...and to make declarations accepting the jurisdiction of the African Court over cases brought by individuals and NGOs.”⁵¹

Unlike the Children’s Charter, the Maputo Protocol does not create a separate implementation mechanism. Instead, it is to be implemented by the African Commission. This is another reason why pro-life states and NGOs should participate more actively in the Commission’s work, since it is one of the bodies specifically authorized to bring cases before the current and future African Court. Thus a pro-life majority on the Commission would keep the Commission from being turned into an instrument for pro-abortion advocacy, including referrals to the Court of radical challenges to pro-life national laws.

League of Arab States

The Arab Charter on Human Rights was adopted by the League of Arab States in May 2004, and entered into force on March 15, 2008. Three of its provisions are relevant here:

- Article 5: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”
- Article 7: “The death penalty shall not be inflicted on a pregnant woman prior to her delivery or on a nursing mother within two years from the date of her delivery; in all cases the best interests of the infant shall be the primary consideration.”
- Article 43 coordinates the Arab Charter with other legal instruments:

Nothing in this Charter may be construed or interpreted as impairing the rights and freedoms protected by the domestic laws of the States parties or those set forth in the international and regional human rights instruments which the states parties have adopted or ratified, including rights of women, the rights of the child and the rights of persons belonging to minorities.⁵²

The Charter provides for an Arab Human Rights Committee of seven independent experts elected by States Parties for a four-year term, renewable once. The Committee is to review reports by States Parties on their implementation of the

rights in the Charter, to request additional information if necessary, to share their conclusions with the state concerned, and to make recommendations. The Committee does not have authority to hear and adjudicate individual cases or to impose reparations or other sanctions on states it finds non-compliant with the Charter. Its conclusions, recommendations, and annual report to the Council of the League will be public documents, creating an incentive for states to make an effort to comply.

The Committee has focused its early efforts on internal organization and familiarity with other relevant organizations and agencies.

ASEAN

The ASEAN Intergovernmental Commission on Human Rights, established in mid-2009, does not operate from a regional charter or convention on human rights, but its “Terms of Reference,” adopted at the July 2009 ASEAN Ministerial Meeting, provide a flavor of the political context within which it is to operate. The Commission is to

1.4. Promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural, and religious backgrounds, and taking into account the balance between rights and responsibilities.

1.5. Enhance regional cooperation with a view to complementing national and international efforts . . . and

1.6. Uphold international human rights standards as prescribed by the Universal Declaration . . . the Vienna Declaration and Programme . . . and . . . instruments to which ASEAN Member States are parties.⁵³

The Commission may advise member states, encourage them to ratify international human rights instruments, and assist them in fulfilling current treaty obligations. There is no complaint procedure.⁵⁴ This limited mandate, and the fact that Commission members are government appointees and representatives, strongly suggests that the Commission intends to proceed cautiously in its early years. In 2010, the Commission began discussion of an ASEAN Human Rights Declaration and concentrated on developing its internal organization and getting to know ASEAN institutions and UN agencies. Unlike the Arab Human Rights Committee, the ASEAN Commission has no mandate to request or examine state reports or to ask for information on compliance with Commission recommendations.

What Pro-Life Advocates Can Do

It is clear from the foregoing discussions that NGOs can play important roles in the Inter-American and African Commissions on Human Rights, and in the African Committee on the Rights and Welfare of the Child. They are authorized to

contribute to country reports, conduct and submit substantive research and studies, prepare petitions, and more. These institutions offer broad scope for NGO activity and input, including positive opportunities that do not appear to be fully utilized by pro-life NGOs at the moment.

Among regional courts, NGOs have full access to the ECHR, which recently confirmed (in the *Ireland* case) the principle that each European state is free to legislate on abortion; this decision should return the main focus of activity on that subject to national democratic legislative processes.

While there is less scope for NGO activity in proceedings before the Inter-American Court, the ACHPR, and the ECJ, it would be a mistake for pro-lifers to ignore them. If the composition of these courts changes, the content and direction of their decisions could change as well. As noted, in Africa five parties to the Maputo Protocol have also authorized individual and NGO access to the ACHPR: Burkina Faso, Mali, Ghana, Malawi, and Tanzania. Pro-abortion individuals or NGOs in one of these countries could, therefore, bring a case directly to the ACHPR alleging that the state is in violation of the abortion clause of the Maputo Protocol (Article 14 (2) (c)).

The Center for Reproductive rights has opened an office in Nairobi, and the NGO Equality Now has issued a how-to manual to use the Maputo Protocol to challenge national protective laws. These actions clearly indicate that pro-lifers in Africa and elsewhere need to prepare for more active engagement on the ground in Africa. Perhaps one or more international pro-life NGOs should open permanent offices in key countries.

It matters a great deal who is chosen to sit on regional courts and commissions, most of which reach decisions by majority vote. This means that a far-reaching ruling affecting an entire continent could be decided by a single vote in a panel as small as thirteen (the ECJ Grand Chamber), eleven (Africa), or even seven (the Americas). As noted earlier, the independence of commissioners and judges from government instructions is premised on the belief that it will incline those elected to an objective, impartial application of treaty provisions to specific cases, and some judges and commissioners undoubtedly strive for this ideal. Yet reading the actual language of their rulings and dissents reminds us that judges and commissioners are not computers dealing with mathematical or astronomical calculations but human beings dealing with human values. As humans they inevitably bring these values to their deliberations, including their sense of what justice *should* mean in the cases before them.

For both the European Court of Justice (ECJ) and the European Court of Human Rights (ECHR), the number of judges equals the number of member states. Within the ECJ, states nominate a single candidate, who is ordinarily elected by consensus along with all the other national nominees. For the ECHR, the Council

of Europe Parliamentary Assembly (PACE) chooses each judge from three national nominees following a formal screening procedure that includes in-person interviews by a PACE committee. For both courts, then, NGO input into the process appears to be limited mainly to the nomination stage.

In the Americas and Africa, the number of judges and commissioners is much lower than the number of states, and informal lobbying can take place at both the nomination (i.e., national) and election (i.e., multilateral) stages. For the Inter-American Commission on Human Rights, each OAS member state may nominate up to three candidates. The OAS General Assembly then conducts the election. For the Inter-American Court, States Parties to the Inter-American Convention may nominate up to three candidates, and the election is by States Parties during an OAS General Assembly session.

For the African Commission, which has the important responsibility of overseeing implementation of the Maputo Protocol as well as the main Charter of Human and People's Rights, the eleven members are elected by the African Union Assembly from lists of candidates proposed by member states; each state can nominate two candidates. Invitations to submit nominations are sent to member states four months before an election. For the African Committee on the Rights and Welfare of the Child, the AU Secretariat invites nominations from member states six months in advance. Both of these elections present opportunities for NGOs to suggest qualified candidates to their respective governments and express support for their nomination. Interim vacancies, to be filled by the state of nationality of the departing member, offer additional opportunities.

For the current African Court (ACHPR), States Parties to the Court Protocol can nominate up to three candidates, and (by contrast with the Inter-American system), the entire AU Assembly, not just States Parties to the Court Protocol, elects the Court. For the proposed new consolidated Court (ACJHR), States Parties to the Protocol can nominate up to two candidates, and may indicate whether they are candidates for the human rights section or the general international law section of the Court. The AU Executive Council and the Assembly will conduct the actual election.

Candidates for all of the regional courts must be judges or lawyers, but this is not a requirement for candidates for the Inter-American and African Commissions or for the African Committee on Children's Rights.

National Human Rights Institutions. NHRIs also influence national laws and policies and nominations to international courts and commissions; therefore, pro-life leaders should be encouraged to take part in their work. For courts and commissions, an NHRI is likely to support candidates who share the philosophy of its leaders. Most NHRIs perform some advisory role for their government and they play an increasingly important role in international forums. For instance, they are

among the organizations specifically authorized to bring cases to the African Court of Human and Peoples' Rights.⁵⁵

Staff. Pro-life advocates should not overlook the professional staff members of the commissions, courts, and NHRIs, as staff often have significant substantive input and influence in the decision-making processes of their organizations. This also holds for the two official European rights agencies. Simply submitting relevant and accurate information to the staffs would be one positive way to contribute to their work.

The foregoing is only a brief sketch of some ways in which pro-life advocates can participate more actively in the increasingly important work of the regional human rights commissions and courts.

NOTES

1. In one sense the International Criminal Court (ICC) could be regarded as a human rights court because of its authority to prosecute and try individuals for genocide, war crimes, and crimes against humanity, which obviously include some of the most serious human rights violations. However, there is no global human rights court responsible for addressing violations of all universal human rights treaties.
2. The exception is the newly-established ASEAN commission, which is made up solely of government representatives.
3. A separate development, similarly aiming at safeguarding human rights from government abuse, is the increasing acceptance of an international community-based responsibility to protect populations from mass killing by their own governments or when the state is unable to protect its people. World Summit Outcome Document (2005), A/RES/60/1.
4. I have written elsewhere on the UN role concerning the right to life, for instance "Is International Law on the Side of the Unborn Child?" *National Catholic Bioethics Quarterly*, Vol. 7, No. 1, Spring 2007, which includes limited discussion of regional bodies; also, Review of *Power and Principle: Human Rights Programming in International Organizations*, Joel E. Oestreich (Georgetown, 2007), *National Catholic Bioethics Quarterly*, Vol. 8, No. 2, Summer 2008.
5. Africa also has several sub-regional courts, but space limitations do not permit analyzing them here. In late June 2011, the OIC changed its name from the Organization of the Islamic Conference. Its Commission, created at the same meeting, is not yet in full operation and is not discussed here.) www.OIC/CFM-38/LEG-RES-38-FINAL.pdf
6. For a comprehensive account of the philosophical origins, drafting and negotiating history of the principal regional treaties, and a close analysis of their terms from a pro-life standpoint, see Rita Joseph, *Human Rights and the Unborn Child* (Leiden & Boston: 2009), chapters 10 (Europe), 11 (the Americas), and 12 (Africa). Her book, which also analyzes the main United Nations documents, is the only full-length study I am aware of that covers the origins and development of both the universal and regional treaties from a pro-life perspective.
7. *Bruggemann and Scheuten v. Federal Republic of Germany*, App. No. 6959/75, 10 European Commission on Human rights *Decisions and Reports*, 100 (1977)
8. *Paton v. United Kingdom*, App. No. 8416/78, 3 Eur. H.R. Reports 408 (1980) and *R.H. v. Norway*, App. No. 17004/90, Eur. Comm. on Human Rights (1992).
9. *Boso v. Italy*, ECHR No. 50490/99, decided Sept. 5, 2002; *Vo v. France*, ECHR No. 53924/00, decided 2004.
10. *Odievre v. France*, ECHR 42326/98, Reports 2003-III, paras. 44ff.
11. *A, B, and C v. Ireland*, judgment No. 12686 (app. No. 25579/05), decided December 16, 2010
12. *Tysiac v. Poland*, ECHR judgment 6999, March 20, 2007. (app. No. 5410/03)
13. *R.R. v. Poland*, ECHR judgment No. 13114, May 26, 2011 (app. No. 27617/04).
14. Reported at www.lifenews.com/2011/03/02. Also see Parliamentary Assembly of the Council of

- Europe Resolution 1763 (October 7, 2010), narrowly adopted after sharp debate, affirming the rights of healthcare practitioners and institutions to decline to participate in abortions and other practices that violate their conscience.
15. Poland, Ireland, the Czech Republic, and the UK opted out of the Charter of Fundamental Rights.
16. Elizabeth F. Defeis, "Human Rights and the EU: Who Decides? Possible Conflicts between the European Court of Justice and the European Court of Human Rights," *19 Dickinson International Law Journal*, p 301-330.
17. *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration*. Case 26-62, 5 February 1963.
18. *Flaminio Costa v ENEL* [1964] ECR 585 (6/64)
19. Frank Schorkopf, in "International Decisions," *American Journal of International Law*, vol. 104, 259-65.
20. *Id.*, 261
21. Para. 249 of the Court's decision, quoted at *Id.*, 262.
22. Paras. 256-60 of the Court's decision, cited at *Id.*, 263. The German Parliament thereafter enacted a revised implementation law, details of which are not relevant here.
23. Alliance Defense Fund memo cited at LifeNews.com/2011/06/06
24. www.europarl.europa.eu, Debates, Response to question No. 11 (H0983/06), Wednesday, December 13, 2006. The Council of the European Union is a ministerial-level EU legislative and policymaking body, often confused with the Council of Europe or with the "European Council" (of heads of state and government, which has no legislative functions).
25. www.europarl.europa.eu. Written reply of March 19, 2007 to written question E/4955/2006.
26. *Oliver Bruestle v. Greenpeace*, Case 34/10, judgment of October 18, 2011; quotations from Reuters.com/article/2011/10/18-us-embryo-court-idUSTRE79H19229111018, accessed 11/10/2011
27. For an outline of the Agency's mission and functions and a summary of recent activities, see Olivier de Schutter, "The EU Fundamental Human Rights Agency: Genesis and Potential," in Kevin Boyle, *New Institutions for Human Rights Protection* (Oxford: OUP, 2009), 93-126. Also, <http://fra.europa.eu/fraWebsite/about>
28. www.coe.int/t/commissioner/Activities/mandate
29. www.coe.int/t/commissioner/Activities/3Pintervention
30. PACE Resolution 1829 (2011)
31. Dinah Shelton, *Regional Protection of Human Rights*, vol. 1 (Oxford: Oxford University Press, 2005), 599-605.
32. IACHR Resolution No. 23/81, Case 2141. The decision was adopted 5-2, with the two dissenting Commissioners filing detailed legal, scientific, and medical arguments that the Declaration could and should be interpreted as protecting the unborn. A third Commissioner wrote that, while he agreed with the majority that the Convention was not applicable to the U.S. because it was not a party thereto, he "completely shares the judgment" of the dissenters that "human life begins at the very moment of conception and ought to warrant complete protection from that moment, both in domestic law as well as international law." www.cidh.org/annualrep/80.81eng/USA2141.htm
33. *Id.*, paragraph 25
34. In its 1981 review of the Declaration, the Commission said that in 1948 eleven countries plus Puerto Rico allowed abortion to save the mother's life, and six in cases of rape. Only four states permitted abortion for reasons other than these: Peru (to save the mother's health), Cuba (to prevent transmission of a contagious disease), Nicaragua and Uruguay ("to protect the honor of an honest woman"), and Uruguay (economic reasons, if done in the first three months). *Id.*, paragraphs 18 (b), subparas. (e) and (f)
35. www.cidh.org/annualrep/2007/eng.mexico/161.02.eng.htm (Report 21/07, Petition 161-02)
36. Dinah Shelton, *Remedies in International Human Rights Law*, 2nd edition, (Oxford: Oxford University Press, 2005), 380-88.
37. Press Release 54/01, available at cidh.org
38. Annex to Press Release on 141st Session, available at cidh.org
39. Dinah Shelton, *Regional Protection of Human Rights*, vol. 1, 545.
40. Article 42, www.africa-union.org/Official_documents/Treaties.
41. *Id.*, Article 44.
42. *Id.*, Article 45. "Any appropriate method" is understood by the Committee as including in-country

- visits with the consent of the respondent state.
43. www.en.wikipedia.org/wiki/African_Charter_on_the_Rights_and_Welfare_of_the_Child, last visited September 21, 2011. This entry contains an excellent summary of the role of NGOs (called CSOs in the entry) in the preparation of reports and other functions of the Committee.
 44. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, OAU/LEG/AFCHPR/PROT (III), adopted June –1998, entered into force 2004.
 45. Protocol on the African Court of Justice and People's Rights, Article 28.
 46. General Assembly resolution 1386 (XIV), November 20, 1959, third preambular paragraph.
 47. OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* Nov. 29, 1999. As of January 2011, 45 of the 53 African Union member states had acceded to the Charter.
 48. "REAFFIRMING ADHERENCE to the principles of the rights and welfare of the child contained in the declarations, conventions and other instruments of the Organization of African Unity and in the United Nations and in particular the United Nations Convention on the Rights of the Child; and the OAU Heads of State and Governments Declaration on the Rights and Welfare of the African Child,"
 49. Article 4, paragraph 2 (j) of the African Charter on the Rights and Welfare of the Child. Article 6 (5) of the Covenant.
 50. Many international agreements impose obligations on states to promote health care and nutrition for all women, pregnant or not.
 51. Center for Reproductive Rights, *Briefing Paper—The Protocol on the Rights of Women in Africa*, June 2005, p. 18. www.reproductiverights.org
 52. www.umn1.edu/humanrs/instree/loas2005.html
 53. www.asil.org/ilib090724.cfm#r2
 54. Id. Also see www.asean.org/26456
 55. A recent and growing body of scholarship has focused on the domestic aspects of international human rights implementation. (For instance, Sonia Cardenas, *Conflict and Compliance: State Responses to International Human Rights Pressure* (Philadelphia: U. of Pennsylvania Press, 2007) and Julie Mertus, *Human Rights Matters: Local Politics and National Human Rights Institutions* (Stanford: Stanford U. Press, 2009).



"Have you any idea what our monthly cable bill is? Now get in here and watch T.V.!"

A Womb with Three Views

Donald DeMarco

It did not happen. But it could have happened. It is a matter of historical record that Plato was born in Ancient Greece, Aquinas in the Middle Ages, and Jean-Paul Sartre in the Twentieth Century. Yet it would not have been impossible, in the lottery of life, for all three of these talented thinkers to have been conceived by the same woman and, to stretch the imagination to its outer edge, to have been united in the womb as fraternal triplets.

What thoughts might these three extraordinary individuals have shared in their close quarters if they were as precocious in the womb as they were prolific in the world! As philosophers in the world, each of them dominated the intellectual climate of his day; each was a milestone in the history of Western thought. Together they summarize three radically different views of God and life: Plato represented pagan acceptance; Aquinas, Christian reception; Sartre, atheistic rejection.

If the notion of three embryonic philosophers dialoguing in the womb seems a bit fanciful, it may be worth noting that the small world of the womb has often been regarded as a prototype of the larger world outside. An ancient Jewish proverb states that in the womb man knows his cosmic connection, and after he is born, must rediscover it. Psychotherapist Rollo May claims the womb provides “a state of we-nests” which makes language and communication possible. Media guru Marshall McLuhan remarked that all our senses may very well be “specialized variants” of “womb-wise” touch. Thomas Merton compared the child in the womb with the cloistered religious when he referred to him as “Planted in the night of contemplation/Sealed in the dark waiting to be born.”

Furthermore, our imaginative dialogue is not altogether without historical foundation. Let us recall the Visitation recorded in Luke’s gospel, when Elizabeth’s child “leaped in her womb” at the recognition of another child in the womb—Jesus.

* * * * *

It is late in the prenatal development of our precocious and prolific trio. They have slumbered deeply for several months and now, having awakened from that long period of peace, begin to make observations, raise questions, and draw certain personal conclusions. The one who will be known as Plato proposes a most ingenious theory. He judges the womb to be a deprived environment where

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shadow has been separated from substance. He argues that the womb is but a prison and that outside it is a world infinitely richer and more real. "There is a being who is good and who sustains and nourishes us," he reasons, "but we must find the courage to get out of our cave-like dwelling and enter the light so that we may come to know this being. If we continue to feast on shadows, we will remain entirely oblivious to reality."

Aquinas listens intently as Plato waxes eloquent. But he is more patient. There *is* such a being, he agrees. And the life that awaits us when we are delivered from this exile is indeed more beautiful and more satisfying than anything we can imagine. "We must have hope. These 'shadows,' as you call them," he explains to Plato in a confident tone, "are also real and have their own value and purpose. We must wait and hope, and in due time we will be delivered. We will finally meet the being who sustains and nourishes us, but only when the time is propitious."

The third occupant, having listened attentively to the other two, shakes his head angrily. "Neither of you are being realistic in any sense! You do not have the courage to face the brute fact that this is a squalid and hopeless place. Because you cannot admit to the absurdity of our existence in this dismal and congested chamber, you imagine beautiful places that simply do not exist. You must accept the absurdity of your fate. Only then will you be free. Your wishful fabrications can only prevent you from being truly yourselves."

Plato and Aquinas try very hard to explain the doctrine of cause and effect to their cynical sibling. They reason that since we are not the cause of our being, and since we are not the authors of our own life, spirit, and capacity to think, there must be some higher cause that produces these effects. If you follow the law of reason, they advise, you too will conclude that there must be an order of reality that transcends this gloomy confine and our humble mode of existence.

"All I know is what I see," Sartre replies. "I can do without superstitious nonsense." Then Aquinas, speaking very gently, says that he understands his brother's doubts and that he has many doubts of his own, but whenever he is plagued by uncertainties, he prefers to believe in more reality than in less.

Upon hearing this, Sartre becomes even more enraged and shakes the umbilical cords so vehemently that he momentarily shuts off the air supply. "Don't do that," gasps Plato, after regaining his equilibrium. "You are acting like a being without reason."

Aquinas antagonizes Sartre even further by lecturing him on the virtues of commutative justice and fraternal charity.

"Let me put it as bluntly as I can," Sartre snaps. "There is no exit from this place. And what is more, I do not owe either of you anything. I belong to myself alone. And frankly, after listening to your verbal inanities, I am convinced more

than every that man's greatest trial is other people. In fact, if I may coin a phrase, 'Hell is other people.' And one more thing! These cords you seem to think are so important are really fetters. I shall cut them; only then shall we be free."

"No!" Aquinas bellows. "These cords connect us with the source of our nourishment and love. We are dependent beings. If we sever our connections with the being who sustains us, we shall surely die."

"If we remain attached to another," Sartre retorts, "we cannot be ourselves, we cannot be the masters of our own destiny."

"Our freedom lies in obedience," Aquinas answers, "and in the wisdom to love and serve the one who is our Master." "Knowledge will be our freedom," adds Plato. Yet Sartre remains adamant: "Faith in anyone else is bad faith. I believe in myself. Now please leave me alone."

Plato, in a more reflective mood, calls attention to the low, steady beats that reverberate throughout the womb. "These rhythmic sounds," he muses, are the footsteps of the demiurge who assisted in our creation. He lingers awhile to be assured that we are all right."

Sartre reproaches him one again: "These endless, repetitious sounds I hear overwhelm me with a feeling of nausea. They are as senseless as life itself and serve only to announce our impending doom."

"I beg to differ with you," Aquinas states, almost apologetically. "I believe these ever-present beats are a sign that we are under constant protection. Moreover, I believe that this protection is a natural emanation from a source of continual love."

More time passes. The triangular dispute remains unresolved. Then the hour arrives when spasms occur and jostle the embryonic trinity. The walls of their fleshy incubator contracts and convulses with increasing severity. The trio are now tumbling and careening into each other. "What is happening?" they exclaim in unison. "We are dying!" answers Plato. "This is absurd!" shouts Sartre. "Have faith!" urges Aquinas.

Soon the spasms become more frequent and intensify to the point that they expel the three philosophers from their tiny hermitage and force them down through a narrow corridor.

"You see," says Sartre. "It is just as I have maintained; life is utterly absurd and can lead only to even greater absurdities." "Truly we are dying," Plato moans. "No," says Aquinas calmly: "In death we are born to life; the seed must die so that it may live to a higher life."

The discussion is ended. With one last great spasm, the three are forced out into the world. They are chilled by the cold and confused by their first experience of weight. As they cry, air fills their lungs for the first time. And then they meet the being whom they both sought and denied, the being who sustained and nourished them.

Her name, however, is not “freedom,” or “first cause” or “demiurge,” but *mother*. And she is more tender and more beautiful and more loving than they could possibly have imagined. Now the philosophers live in an extra-uterine environment that none of them can possibly deny. Yet their quarrel persists and follows a familiar pattern. Plato is anxious to find his way out of this world of earthly shadows, while Sartre insists that this new environment is all there is. But Aquinas, still patient and full of faith and hope, continues to believe in even more reality.



“Sir, is this the boy who taunted you while you were outside practicing tai-chi?”

That Unrepentant Bigotry

Wesley J. Smith

“Stop the hate!” we are often told. And to be sure, that is a worthy goal. Indeed, in recent decades great strides have been made throughout society in accepting most classes of human beings as indeed, truly and clearly, “us.”

For example, the worst forms of racist speech are now far beyond the pale, to the extent that the despicable N-word can no longer be uttered publicly without serious social consequences—even to popular entertainers¹—and racist jokes are, thankfully, largely an ugly anachronism of the unlamented Jim Crow past. Meanwhile, most people frown at sexist, homophobic, and other epithetic utterances intended to demean whole categories of people based on personal characteristics or creed. Finally, after decades of effort and consciousness-raising, Martin Luther King’s dream of a culture that judges people on the content of their character is encouragingly close to reality.

But the news is not all good. Many of our brothers and sisters remain the victims of a pervasive but nearly invisible bigotry—and indeed subjected continually to profoundly demeaning and hateful characterizations—mostly without social protest, cultural opprobrium, or even notice by the usual enforcers of cultural comity. Indeed, the “hate speakers” may even be applauded or their denigration either not noticed or ignored, perhaps because the denigrators are often themselves unaware that they have engaged in hurtful rhetoric.

Ironically, this still-discriminated-against group is also our most diverse. It draws its members from all races, ages, nationalities, genders, sexual orientations, and any other human identifier one can conjure. In fact, even if we are not already within this scorned cadre, any one of us could become a member at any time, and all of us know—or have known—loved ones who could be so identified.

So, who are these despised unfortunates? People with profound cognitive disabilities and catastrophically debilitating diseases, against whom it remains respectable to employ profoundly demeaning descriptives in public discourse, public policy advocacy, and private conversation.

Here’s an unfortunate classic example: Noted New York *Times* columnist David Brooks complimented an amyotrophic lateral sclerosis (Lou Gehrig’s disease) patient named Dudley Clendinen for a column in which he explained why he would refuse heroic efforts to extend his life. End-of-life decision making is, of course, an important and legitimate topic of punditry. But look at how Brooks described

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people disabled by ALS—and by extension all quadriplegics:

Clendinen's article is worth reading for the way he defines what life is. Life is not just breathing and existing as a self-enclosed skin bag. It's doing the activities with others you were put on earth to do.²

How can anyone in good conscience and with love for their fellowman refer to anyone as a mere “self-enclosed skin bag”—as if the person were no more meaningful morally than a leather wallet or alligator skin purse? Yet, because bigotry against people with disabilities is mostly invisible, odds are very good that Brooks was ignorant of the profoundly hurtful and denigrating nature of his words.

Denigrating Language Adversely Impacts Policy and Culture

We should also note the utilitarian ugliness implicit in Brooks' words. If we are to remain a moral society, we must reject all assertions that our value comes from *what we can do*. Rather, we matter because of *who we are*, members of the exceptional species *Homo sapiens*, each of us—if Jefferson is to be believed—created equal and possessed of inalienable rights simply and merely because we are human. Indeed, embracing the equal and intrinsic dignity of each individual—without resort to invidious categorizations—is indispensable to establishing and maintaining universal human rights.

Some might think: What's the big deal? Brooks did not have a malign intent. He surely doesn't “hate” people with disabilities or the elderly experiencing the terrible difficulties of morbidity in the way the KKK hates people with dark skin.

No doubt that is true. But bigotry may actually be more damaging when it doesn't emanate from a malicious heart, but instead arises from a deeply held and almost unconscious conviction that the prejudiced person is himself unaware of. Brooks' easy use of the deeply denigrating term “skin bag” fits that description.

Stealth bigotry is dangerous because accepting such derogatory thinking leads to policies and attitudes that can cost lives. Sure enough, the force of logic unleashed by his own words leads Brooks to consider the earlier deaths of the elderly, disabled, and dying as a primary means of solving our medical resource crisis:

A large share of our health care spending is devoted to ill patients in the last phases of life. This sort of spending is growing fast. Americans spent \$91 billion caring for Alzheimer's patients in 2005. By 2015, according to Callahan and Nuland, the cost of Alzheimer's will rise to \$189 billion and by 2050 it is projected to rise to \$1 trillion annually—double what Medicare costs right now.

Obviously, we are never going to cut off Alzheimer's patients and leave them out on a hillside. We are never coercively going to give up on the old and ailing. But it is hard to see us reducing health care inflation seriously unless people and their families are willing to do what Clendinen is doing—confront death and their obligations to the living.³

Hardly “obvious.” If one promotes the noxious notion that somebody disabled by ALS is merely a skin bag, and that the morbidly ill elderly or dying somehow have a moral obligation to choose to die sooner rather than later—“voluntary” will eventually have little to do with it.

This isn’t merely theoretical. Some hospitals are already denying very ill and aged patients *wanted* life-sustaining treatment under the bioethical policy known as Futile Care Theory (aka, “medical futility”), which empowers doctors/bioethical committees to refuse to provide efficacious life-sustaining treatment based on quality of life judgmentalism or cost-benefit analyses.⁴ Not only that, some countries engage in explicit health-care rationing—medical discrimination by a polite name—and rationing has been discussed favorably as a method of containing costs in the United States in such influential publications as the *New England Journal of Medicine*.⁵ Some bioethicists have even promoted an explicit “duty to die.”⁶

As I have observed the ebb and flow of these and other bioethical debates surrounding end-of-life, I have noticed a consistent pattern among those who promote culture of death agendas such as hastening or choosing early death as the answer to suffering or societal difficulties. It goes something like this:

1. Vividly depict the suffering of elderly, dying, and disabled people, etc. The point is for us to be both repulsed by the person being described and fearful of such a fate ever befalling us.

2. Dehumanize people we want to convince to jump (or push) out of the lifeboat. Hence, Brooks’ use of the skin bag pejorative.

3. Blame the sick, disabled, and elderly for out-of-control health care spending, and for family discord and financial difficulties.

4. Pull back from the blatant dehumanizing with a hedge, saying that it is “obvious” you aren’t suggesting they be left on hills to die, just as Brooks did.

5. But then say we have to have a “serious conversation” about policies that will do figuratively just that. Indeed, when you hear the term “serious conversation” in this context, it usually means that marginalized groups are being targeted for some form of oppression or abandonment.

The idea, often subliminal, is that the time has come to put *les misérables* out of *our* misery.

Following the Eugenics Path

We have been here before—and not that long ago—with the Eugenics Movement and its poisonous progeny. Indeed, just as the abolitionists created an advocacy method to expand civil rights that remains effective today, eugenics activists similarly established an approach to strip targeted groups of their equality, one that we are again following.

First, *eugenicists divided humanity between desirable and undesirable castes*, based on supposed medical and scientific criteria. Thus, eugenics advocates divided people between the so-called “fit”—generally people like them—and the “unfit,” people deemed to have less moral value based on supposed lack of intelligence, moral degeneracy, “inferior” race or ethnicity, disability, and the like.

Margaret Sanger, who is often lionized because of her advocacy for birth control, was in historical reality a radical eugenicist and social Darwinist who advocated policies that she hoped would eventually eradicate those she judged undesirable. As the historian Edwin Black (who clearly wants to admire Sanger) writes in his splendid history on eugenics, *War Against the Weak*:

Sanger was an ardent, self-confessed eugenicist, and she would turn her otherwise noble birth control organizations into a tool for eugenics, which advocated mass sterilization of so-called defectives, mass incarceration of the unfit, and draconian immigration restrictions. Like other staunch eugenicists, Sanger vigorously opposed charitable efforts to uplift the downtrodden and deprived, and argued extensively that it was better that the cold and hungry be left without help, so that the eugenically superior could multiply without competition from “the unfit.” She referred repeatedly to the lower classes and the unfit as “human waste” not worthy of assistance, and proudly quoted the extreme eugenics view that human “weeds” should be exterminated.⁷

Next, eugenicists *blamed the ills of society on members of invidious categories they had created*. The 1920 German book, *Permission to Destroy Life Unworthy of Life*⁸ (*Die Freigabe der Vernichtung lebensunwerten Leben*) was a classic case in point. Its authors were two of the most respected academics in their respective fields: Karl Binding was a nationally renowned law professor, and Alfred Hoche was a physician and noted humanitarian. *Permission to Destroy Life Unworthy of Life* (in reality two extended essays, one by each author) was a full-throated assault on the Hippocratic tradition, human exceptionalism, and the sanctity/equality of life ethic.

Binding and Hoche identified three categories of people they denigrated as “unworthy of life”—the terminally ill, the unconscious, and the so-called “incurable idiots,” whose lives Binding and Hoche viewed as “pointless and valueless,” emotional and economic burdens “on society and their families.” Hoche put it this way:

I have discovered that the average yearly (per head) cost for maintaining idiots has till now been thirteen hundred marks . . . If we assume an average life expectancy of fifty years for individual cases, it is easy to estimate what incredible capital is withdrawn from the nation’s wealth for food, clothing, heating—for an unproductive purpose.⁹

Permission to Destroy Life Unworthy of Life created a sensation among Germany’s intelligentsia. Aided by their leadership and in conjunction with the growing acceptance of Social Darwinism, anti-Semitism, racial hygiene, and eugenics, the Binding/Hoche view soon was accepted by much of German society.

For example, a 1925 poll of the parents of disabled children reported that 74 percent of them would agree to the painless killing of their own children.¹⁰

Finally, *the negative public attitudes sown by open and accepted denigration of categories of human beings bootstrapped active oppression, exploitation, and killing*, either by the government or with its approval. Thus, the concept of “life unworthy of life” paved the way for the Nuremberg Laws, under which hundreds of thousands of Germans were involuntarily sterilized; worse still, nearly as many disabled Germans were murdered as a “healing treatment” in Germany’s infamous euthanasia pogrom.

A similar pattern victimized the “unfit” in the USA. By 1910, “eugenics was one of the most frequently referenced topics in the *Reader’s Guide to Periodic Literature*.”¹¹ In its boom years of the 1920s, eugenics became a serious and influential scientifically supported social and political movement. Eugenicist societies formed for the promulgation and discussion of theories, and academic eugenics journals sprouted, with eugenics advocacy supported financially by some of the country’s most notable philanthropic foundations. Courses in eugenics were taught in more than 350 American universities and colleges.¹² Many of the most notable political, cultural, and arts figures of the era caught the eugenics virus, including Theodore Roosevelt, Winston Churchill, George Bernard Shaw, Clarence Darrow, and Helen Keller (!), helping fuel the movement’s popular support.

But eugenics didn’t reach hurricane strength until the Supreme Court of the United States sanctioned forced sterilization as a public good. The infamous *Buck v. Bell* decision victimized Carrie Buck, who had been born out of wedlock to a prostitute mother, and had herself given birth out of wedlock to an infant, perhaps after being raped by a foster relative, after which Carrie was institutionalized.

This was precisely the kind of down-the-generations “degeneracy” that eugenicists claimed threatened the human “germ plasm.” Sterilization, they fervently believed, was an unpleasant but necessary corrective. When the case finally reached the Supreme Court, Chief Justice Oliver Wendell Holmes, writing for an 8-1 court, sealed Carrie’s fate:

We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the state for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. . . . The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. Three generations of imbeciles is enough.¹³

Think about it. An American citizen, wholly innocent of any crime, was sterilized legally, an act of profound oppression sanctioned by her own government. Her daughter died in the second grade of an intestinal ailment. Her teachers considered her very bright.¹⁴ During Carrie’s life, she married twice, sang in the church

choir, and took care of elderly people. She always mourned her inability to have more children. She died in 1983.¹⁵

The Supreme Court's imprimatur opened the eugenics floodgates. There were about 6,000 eugenic sterilizations in the United States between 1907 and 1927. By 1940, the number had climbed to nearly 36,000. By the time eugenic sterilizations ended in this country in the early 1970s, nearly 70,000 of our fellow Americans had been sterilized, all under the color of law.¹⁶

That Unrepentant Bigotry

Nearly everyone today acknowledges that eugenics was both pseudo-science and a shameful example of the oppression that follows logically from creating invidious categories of people deemed to be less worthy of society's protection. Today, no legitimate societal leaders advocate forced sterilization, and to be sure, murder is not viewed as a way to improve the quality of the human race.

But there are other ways to fall off a moral cliff. The underlying bigotry expressed in eugenics advocacy continues to be wielded against some people to this day. In fact, the same categories targeted by Binding and Hoche as unworthy life remain vulnerable to widespread and societally approved disdain, expressed by culturally approved denigrating speech.

Perhaps the best example of this phenomenon is the use of the word "vegetable" to describe people with catastrophic cognitive disabilities. Just like the worst racial epithet, the V-word intentionally diminishes, demeans, and, most damagingly, dehumanizes.

Yet people who would never consider using the N-word think nothing of describing their fellow humans as if they were mere rutabaga. Indeed, the V-word is used in popular entertainment without fear of experiencing the kinds of consequences that would befall any program using the N-word approvingly.

The popular television program, *Family Guy*, provides a particularly egregious example. The program literally mocked the late Terri Schiavo, who was dehydrated to death by court order at the request of her husband because she was diagnosed as persistently unconscious.

The episode opens with a fictional school play, *Terri Schiavo: The Musical*. In it, she is depicted as having been hooked up to every conceivable medical machine—in reality, all she needed to remain alive was food and water delivered through a tube. False history aside, the lyrics sung by the characters are truly beneath contempt in their jeering depreciation of both Terri's memory and, by logical extension, the memory of anyone now living with serious cognitive impairments. When the character "Michael Schiavo" says, "She's a vegetable," the chorus responds, "We hate vegetables!" to which the audience roars with laughter. Later Terri is depicted as having "mashed potato brains," which are poured into a

bowl, and is described as “the most expensive plant you’ll ever see.”¹⁷ Now imagine what would happen if the same level of denigration was directed at AIDS patients. You can’t, because it wouldn’t—and shouldn’t—happen.

Such bigoted attitudes extend far beyond popular entertainment. The “V-word” continues to be used among the most “enlightened” public intellectuals. For example, in an interview published in the *New York Times*, the noted author Jane Brody used it in discussing a book she wrote on planning for death.

Start thinking about it when it’s unlikely to happen any time soon. It’s much easier to do it then. It’s less painful. Get it out of the way. Many people are saying, “I’m going to take action now while I still feel good and I’m still healthy.” You don’t have to be old. If you recall, Terri Schiavo was 26 when she suffered a heart attack that deprived her brain of oxygen and left her a living vegetable for 15 years, at great cost and trauma to her family.¹⁸

As it did during the eugenics catastrophe, the denigration of the cognitively disabled is easing the way toward poisonous policies. Thus, a few years ago the *Daily Mail* reported that the Labour Party’s then-“czar for the elderly” urged that demented patients not be sustained medically, and added insult to potential injury by denigrating them with the V-epithet:

Dame Joan Bakewell says she does not want people to be kept alive because of machinery when their “identity has ceased to exist.” Old people should be allowed to die if they become “vegetables,” Joan Bakewell has said. Labour’s czar for the elderly said she had made a living will that will mean she is “not kept alive if I’m a vegetable.” She added that people should not be helped to go on living by machinery if they had outlived their normal lifespan. The 75-year-old television presenter also called for laws that would allow terminally ill patients to be given fatal doses of drugs. The controversial call for assisted dying and allowing people with dementia to die came a week after Dame Joan’s appointment as the “voice of older people” . . . She added: “I don’t want people to be kept alive simply because there is a lot of enormous machinery that can keep them pumped up and with all the organs going, when in fact their identity has ceased to exist.”¹⁹

She doesn’t want people kept alive. When a public official possessing such a discriminatory mindset toward people with disabilities and the elderly is appointed to high office, when she openly disparages the helpless with a hateful epithet intended to dehumanize and degrade, when she promotes euthanasia and what can only be called a duty to die—and she is considered the voice of the elderly—trouble is definitely coming!

And it gets potentially worse. Since people feel free to use the V-word so casually, we should not be surprised that some advocate policies that treat people as mere plant matter—meaning ripe for the picking.

What is lower than a living broccoli plant? A corpse. Thus, some within the organ transplant community and bioethics advocate that unquestionably living people

diagnosed as seemingly incapable of returning to consciousness—about 40 percent of whom prove the diagnosticians wrong—be redefined as “non persons” or as “dead” so they can be harvested for their organs. For example, an article published in *The Lancet*, representing the views of “the International Forum for Transplant Ethics,” opined:

If the legal definition of death were to be changed to include comprehensive irreversible loss of higher brain function, it would be possible to take the life of the patient (or more accurately, stop the heart, since the patient would be defined as dead) by a ‘lethal’ injection, and then to remove the organs needed for transplantation subject to the usual criteria for consent.²⁰

Another alarming article, published in the *Journal of Medical Ethics*, argued that such patients, denigrated by the bioethicist authors as mere “living cadavers,” should have their own kidneys removed—presumably for transplantation—and replaced with pig organs to test the safety of xenotransplantation. Demonstrating how little the authors thought about such people, they wrote, “experimenting on them is legitimate under the same conditions as experiments on cadavers.”²¹

Outright killing of the cognitively disabled is also openly advocated in respectable public discussion forums. The Huffington Post—which has millions of readers—published a piece provocatively entitled, “How Would the Rainforest Handle Alzheimer’s Disease?” written by a religion writer named April L. Bogle. Reflecting the kind of Social Darwinism expressed by Margaret Sanger, Bogle advocated the propriety of killing people with Alzheimer’s disease and the morbidly infirm.

In the quotes from the article below, note how Bogle’s thesis fits the advocacy pattern I described earlier. First, she makes a harsh and dehumanizing analogy that undermines human exceptionalism; then she takes it (sort of, but not really) back; and finally she calls for a “serious conversation” about allowing acts that will take us deeper into the moral abyss. From her piece:

In a nursing home, there is no system for life and death except the endless waiting. The rainforest, on the other hand, has it all worked out. Obviously it is a brutal plan, but I argue no more horrendous than the “care” people endure in a nursing home. In the rainforest, everything is about survival—from being eaten, from lack of sun or water, from limited nutritious soil... Is this more brutal or terrifying than an Alzheimer’s home? At least in the rainforest, nature is in balance and everything is there for a purpose. It is a highly complex system of interconnectedness and interdependency that functions perfectly when left on its own.

And here I thought that the mark of human progress and civilization was the distance we had moved beyond the merciless tooth and claw of the natural world.

Bogle then discusses how our unproductive parents and grandparents, spouses, brothers and sisters, friends, cousins, and aunts are a drag on society:

So what can we learn from this [rainforest pattern of life and death]? That unnatural ways of extending life aren't necessarily a good thing. There is no design for handling the prolonged decline and decay, and this is breaking down some vital systems. The cost of care is draining Medicare and Medicaid coffers and threatening their continued survival. Family finances are being wiped out, forcing relatives who are living full and productive lives to sacrifice their possessions and downscale their activities. Once vibrant family caregivers are dying earlier than their sick loved ones, zapped of energy, creativity and vitality.

Why not just say it? "Parasites!"

Then, having devalued the helpless elderly as being no good to anyone, much less themselves, she brings in the old hedge to show she's not really crass:

No way am I suggesting we leave our loved ones to die and let nature run its course like the rainforest would. But I am urging our society to create a responsible plan for cleaning up the mess it has made. Just as the rainforest is an ecosystem that naturally balances its life cycle, so too can our society be intentionally restructured to provide more humane end-of-life options for people stuck in the "new old age."

Like what? *Very elderly people and their surrogates can and do refuse medical treatment any time they want.* No antibiotics, for example, DNR orders in the event of heart failure, no kidney dialysis, etc. Moreover, often advanced Alzheimer's patients and their counterparts don't need life-extending medical treatment. They need personal care: food and water, warmth, proper hygiene, etc.

So, what can she be talking about? Why, killing of course.

We need to start a serious conversation among religion and law, and the health sciences and the human sciences, to figure out how we can let people die in a way that allows human reason and decision-making to play a major role. At the very least, we should allow people to determine—when they are still of sound mind and body—what they would like to do when they reach the point of no return, either mentally or physically. This "Enhanced Advanced Directive" would be legal for health care providers to follow, even if it calls for assisted suicide.²²

There are between 2.4 and 5.1 million Alzheimer's patients in the United States today.²³ Are we really prepared to overdose hundreds of thousands of people when they reach advance stages—or help them kill themselves while still competent?

Activists and their supporters who struggle against racism and other forms of discriminatory thinking have long understood that the words we use express how we think, which in turn leads to action—both private and public. By working to move racist and similar epithets beyond the pale, activists like Martin Luther King understood that better behavior would follow—and so it has.

Yet, there remains in society one group of people who are still mocked, dehumanized, marginalized, castigated, blamed for societal woes, and subjected to threatened actions that present a clear danger to their lives and futures. If we are to have a truly equal and moral society, if our health care system is to have any

chance of caring properly for the least of those among us, to use a Biblical turn of phrase, we need to watch our mouths and cleanse our hearts.

NOTES

1. Associated Press, "Richards Says Anger, Not Racism, Sparked Tirade," November 22, 2006.
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The “Trials” and Tribulations of Mentally Impaired Plaintiffs

William B. Maguire

In this article I will demonstrate that people with mental impairments chronically and disproportionately are impoverished and unemployed, as compared to their non-mentally impaired counterparts. I will propose possible reasons why this is the case. Furthermore, I will argue that all too often plaintiffs with mental impairments bringing claims under Title I of the Americans with Disabilities Act (ADA) are denied standing as “disabled” simply because they have been able to overcome some aspects of their impairments. Next I will examine how Congress and the Equal Employment Opportunity Commission (EEOC) have recently expanded the protections for ADA plaintiffs. Finally, I will argue that two illustrative cases might have turned out differently had they been decided after the enactment of these recent expansions.

We begin by previewing an illustrative case that will be analyzed more fully *infra*¹: Charles Irvin Littleton, Jr. was a 29-year-old man who had been diagnosed with “mental retardation” (now referred to as an “intellectual disability”) as a young child.² He received social security benefits and lived at home with his mother near Leeds, Alabama.³ After graduating from high school with a special education certificate and attending some technical college courses, he worked at various jobs that state agencies and public service organizations had been able to find for him.⁴ Littleton was eventually referred to an employment coordinator with the Alabama Independent Living Center.⁵ The coordinator helped him apply for a job as a cart-push associate with a Wal-Mart Store in Leeds.⁶ Wal-Mart invited Littleton to an interview for the position and things looked promising for Littleton to obtain employment despite his mental impairment.⁷

Wal-Mart’s personnel manager initially said that Littleton’s employment coordinator could accompany Littleton during the interview.⁸ However, when the time for the actual interview arrived, Wal-Mart did not allow the employment coordinator to accompany Littleton.⁹ The interview did not go well and he was not offered the position.¹⁰

Littleton sued under Title I of the Americans with Disabilities Act (ADA), alleging he was not offered the position because of his mental impairment.¹¹

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The federal district court granted summary judgment in favor of Wal-Mart, stating that Littleton did not make a *prima facie* showing that he was “disabled” within the meaning of the statute.¹² Littleton appealed to the Eleventh Circuit, which affirmed the district court’s grant of Wal-Mart’s motion for summary judgment.¹³ Among other reasons, the Eleventh Circuit seemed to draw something of a negative inference against Littleton simply because he had been able to largely overcome many aspects of his disability—namely, the fact that he drove a car, in the court’s mind, meant that he was not “disabled.”¹⁴

This case is just one example of the endemic discrimination suffered by people with mental impairments in the employment arena. As opposed to many physical impairments, which are often more easily identified, less stigmatized, and more easily accommodated, mental impairments are less easy to identify, more stigmatized, and not easily accommodated. Furthermore, many people with mental impairments are able to partly overcome their impairments and thus, courts have often drawn a negative inference from this to find that such mentally impaired plaintiffs do not meet the legal definition of “disabled” under the ADA. This article will attempt to delineate the contours of mental impairment law under the ADA and demonstrate some of the procedural, substantive, legal, and practical hurdles that people with mental impairments must clear, both in daily life and in court, to prevail on a discrimination claim under the ADA. Finally, it will predict how certain pertinent cases would be decided today under the ADA Amendments Act of 2008 (ADAAA).

Background

This article focuses on ADA Title I plaintiffs with mental impairments because the plight of these plaintiffs is less universally understood, more stigmatized, and less easily accommodated than that of plaintiffs with physical impairments.

A. Tribulations: Employment and Poverty Among Persons with Mental Impairments

Statistics and research suggest that plaintiffs with mental impairments are disproportionately and chronically impoverished and unemployed, as compared to their non-mentally-impaired counterparts. A vicious cycle oscillates between unemployment and poverty, impacting people with mental impairments particularly severely.¹⁵ According to the EEOC, “[a]n estimated 2.5 million people in the United States have an intellectual disability.”¹⁶ The EEOC also estimates that only “31% of people with intellectual disabilities are employed, although many more want to work.”¹⁷ People with severe mental impairments such as schizophrenia and bipolar disease are typically unemployed at a rate of eighty to ninety percent.¹⁸

As a result, the mentally impaired are disproportionately poor.¹⁹ In fact, between one third and one half of people with mental impairments live at or near the

federally defined poverty line.²⁰ By comparison, only 14 percent of the general population is at or below this line.²¹ Additionally, 43 percent of people with mental impairments who hold college degrees do not work, compared to only 13 percent of college graduates without mental impairments.²²

These data suggest that employers are in fact discriminating against people with mental impairments, even though they may be qualified for the position and able to perform the essential job functions. Some may argue that these employment statistics can be explained by the mere fact that the mentally impaired are simply unable to perform the essential job functions. Statistics exist that might support this argument at first blush.²³ For example, people diagnosed with depression generally have higher health-related “lost productivity time” (hours per week absent plus hour-equivalents per week of reduced performance) than their peers without depression.²⁴ According to Amir Tal and his co-authors, “[s]tudies have identified verbal memory, sustained attention, and executive functions as specific areas of cognitive functioning sometimes impaired in persons with serious mental illness.”²⁵

Instead of accepting the premise that mentally impaired employees are simply ineffective as compared to their non-impaired counterparts, Tal and his co-authors take a different view. They argue that a “combination of the disability itself and external social factors such as the stigma associated with mental illness and its translation into discriminatory behavior by employers” more accurately explains the reasons for the discouraging statistics regarding the correlation between the mentally impaired vis-à-vis their employment and poverty numbers.²⁶

People with mental impairments, as compared to people with physical impairments, are also discriminated against in insurance coverage. For example, long-term disability insurance policies generally cap benefits for people with mental impairments but not for people with physical impairments.²⁷ This is so despite the passage of the Mental Health Parity Act, which applies only to health insurance providers.²⁸ Thus, despite some progress, the mentally impaired remain on uneven footing with the physically impaired in regard to disability insurance, poverty, and unemployment metrics.

B. “Trials”: Mental Impairments and The ADA

Title I of the Americans with Disabilities Act (ADA) prohibits any covered entity from discriminating “against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge, and other terms, conditions, and privileges of employment.”²⁹ The ADA was passed in 1990 because Congress found that “individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion . . . and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities.”³⁰ In fact, the

ADA states as its purpose, *inter alia*, “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”³¹

In the first two decades of the ADA’s existence, employers have found loopholes in its statutory definitions and the case law interpreting those definitions to avoid liability.³² Also during this period, the U.S. Supreme Court has been reluctant to let ADA plaintiffs clear certain procedural hurdles and actually have a chance to prove their cases on the merits.³³

Defendants have used these loopholes to avoid liability for blatant acts of discrimination. For example, in April of this year, the EEOC filed suit against an employer on behalf of 31 mentally impaired workers alleging, *inter alia*, that the Henry’s Turkey Service subjected the men to over 20 years of abuse, discrimination, and unpaid wages.³⁴ According to the complaint, the defendant denied workers their lawful wages, paying \$65 a month for full-time work, verbally and physically harassed them, restricted their freedom of movement, required them to live in deplorable living conditions, and failed to provide adequate medical care when needed.³⁵

i. Intellectual Disability and the ADA

In *Littleton v. Wal-Mart Stores, Inc.*, introduced *supra*,³⁶ the 11th Circuit affirmed the trial court’s grant of the defendant’s motion for summary judgment in an employment discrimination case where the plaintiff claimed the defendant refused to hire him as a cart-push associate because of his intellectual disability (referred to in the case as “mental retardation,” the condition’s former name).³⁷ The court reasoned that the plaintiff did not make a *prima facie* showing that he was covered by Title I of the ADA.³⁸

In order to make the *prima facie* showing under the ADA, a plaintiff must prove: (1) that he has a disability; (2) that he is a qualified individual; and (3) that he was discriminated against because of his disability.³⁹ As the Eleventh Circuit explained, if plaintiff establishes a *prima facie* case, “a presumption of discrimination arises and the burden shifts to [defendant] to proffer a legitimate, non-discriminatory reason for the employment action. [*internal citation omitted*] If [defendant] meets its burden, then plaintiff must show that the proffered reason is a pretext for discrimination.”⁴⁰

However, Littleton did not even get a chance to engage in the second two steps of this process. The trial court and the Eleventh Circuit both said that he was not even “disabled” within the meaning of the ADA.⁴¹ To meet the definition of “disabled” set out in the ADA, the plaintiff must show that he or she has a physical or mental impairment that *substantially limits a major life activity*, that he or she has a record of such an impairment, *or* that he or she is regarded as having such an impairment.⁴² Littleton alleged that he was disabled under the first

prong (“substantially limited in a major life activity”), or in the alternative, under the third prong (“regarded as”).⁴³

As to the first prong, the court held that he could not show that he was substantially limited in a major life activity.⁴⁴ Littleton, who was intellectually disabled, did receive a high school certificate in special education and even attended a technical college.⁴⁵ He was able to drive a car and read too.⁴⁶ The court drew a negative inference against Littleton primarily based on the fact that he drove a car.⁴⁷ The court afforded significant weight to the defendant’s argument in this regard: “As Wal-Mart contends, moreover, the fact that Littleton drives a car might be determined to be inconsistent with his assertion that his abilities to think and learn are substantially limited.”⁴⁸

The court conceded that Littleton’s condition caused him to suffer “certain limitations.”⁴⁹ However, these admitted limitations were not “substantial limits” on major life activities in the court’s view.⁵⁰ Instead the court went on to say that it is “unclear whether thinking, communicating, and social interaction are ‘major life activities’ under the ADA.”⁵¹ This allowed the three federal appellate judges to hold that Littleton, an intellectually disabled person, did not prove that he was substantially limited in a major life activity.⁵² They found this despite the fact that mental retardation qualifies as a “mental impairment.”⁵³

The U.S. Equal Employment Opportunity Commission (EEOC), the federal agency responsible for promulgating regulations implementing the ADA, offers guidance on the issue, stating that a person with a mental impairment is considered intellectually disabled when:

(1) the person’s intellectual functioning level (IQ) is below 70-75; (2) the person has significant limitations in adaptive skill areas as expressed in conceptual, social, and practical adaptive skills; and (3) the disability originated before the age of 18.[internal citation omitted] “Adaptive skill areas” refers to basic skills needed for everyday life. They include communication, self-care, home living, social skills, leisure, health and safety, self-direction, functional academics (reading, writing, basic math), and work.⁵⁴

ii. Autism Spectrum Disorders and the ADA

Another type of mental impairment that has caused ADA Title I plaintiffs difficulty in proving “disability” is Autism Spectrum Disorder (ASD). In 2009, one out of every 110 children born in the U.S., and one out of every 70 boys, is diagnosed with ASD.⁵⁵ People with ASD represent a unique and rapidly increasing subset of people with mental impairments under the ADA.⁵⁶ ASD is by definition a spectrum, and hence, varying degrees of severity present varying challenges in a work setting.⁵⁷

On the one hand, people with ASD are often extremely “high-functioning” and can integrate into the workplace “seamlessly.”⁵⁸ However, “[c]hanneling employees with high-functioning autism into high-tech enterprises, emphasizing savantism

and mathematical wizardry, does pose ethical and legal dilemmas.”⁵⁹

On the other hand are people on the opposite end of the spectrum. Those with severe ASD symptoms sometimes are unable to even talk, interact effectively, or comprehend emotions.⁶⁰ Incorporating these people into the workplace and keeping them there can be a “daunting” task.⁶¹ Admittedly, the case law surrounding ADA claims brought by employees with ASD is “sparse.”⁶² However, as more and more people diagnosed with ASD reach employment age, this number is sure to rise.

As discussed *supra*, in order to make a *prima facie* showing on a Title I ADA claim, the aggrieved plaintiff must prove that he or she is disabled, has a record of disability, or is regarded as having a disability.⁶³ In order to prove that he is disabled, the plaintiff must also show that he or she is substantially limited in a major life activity.⁶⁴ In the case of ASD, it had been unclear whether “social interaction” was a major life activity.⁶⁵ While “social interaction” is not listed among the “major life activities” in the ADAAA, several cases have found it to be so.⁶⁶

Prior to the ADAAA, discussed *infra*,⁶⁷ “communicating” and “speaking” were not included as “major life activities,” under the EEOC’s regulations. Many people with ASD are substantially limited in both communicating and speaking; but since people along the spectrum have such varying symptoms and varying degrees of symptoms, whether the plaintiff is “disabled” under the ADA will likely depend on a factually intensive, case-by-case analysis.

Like Mr. Littleton, *supra*, who was penalized by the court in his ADA claim by virtue of his high level of functioning as a person with an intellectual disability, Kathleen Comber was similarly penalized by the court in her ADA claim.⁶⁸ The court noted that “[w]hen she was hired, she told her supervisors that she had multiple medical conditions affecting her ability to learn, read, see, interact with others, and breathe.”⁶⁹ Comber was diagnosed with autism while she was employed by the defendant as an aide to mentally ill patients at a rehabilitation facility.⁷⁰ Comber then told her employer of her diagnosis.⁷¹

One day Comber suffered an episode after she refused to drive a van that had a particularly strong odor.⁷² She believed that the odor from a deodorizer would cause her to have an asthma attack.⁷³ Her refusal to be confined in the van with an offensive odor led to a confrontation with her supervisor, with whom she had had a contentious relationship for some time.⁷⁴ Eventually, after her supervisor refused to alter her duties for that day, Comber lost her cool following the confrontation and kicked a chair out of a room into a hallway.⁷⁵ The next day her boss fired her for this outburst.⁷⁶ Comber filed suit, alleging that she was fired in violation of Title I of the ADA.⁷⁷

The court found that Comber could not prove she was “disabled” under the ADA because she was not substantially limited in the major life activities of breathing

and working.⁷⁸ As to working, the court assumed, without deciding (remember this is pre-ADAAA) that working was a major life activity.⁷⁹ However, the court found that Comber failed to establish that she was “substantially limited in her ability to perform any of a broad class of jobs,” which was the EEOC standard at the time.⁸⁰ The court went so far as to characterize Comber’s autism, as it related to her employer, as a mere “personality conflict.”⁸¹

Again, just as the court did in *Littleton*, the court here also alluded to the fact that it was discounting her purported disability because she had been successful in combating it in the past.⁸² Despite finding that Comber “submitted evidence to show that autism directly affected her ability to form and maintain ordinary social relationships,” the court stated that “[n]evertheless, Comber has worked successfully, despite her claimed conditions, for years.”⁸³ This is another example of federal courts drawing negative inferences against a Title I ADA plaintiff simply because she has partially overcome her disability.

C. Passage of the ADAAA and new EEOC regulations

In 2008 Congress passed the ADA Amendments Act of 2008 (ADAAA) in order to clarify and re-affirm Congress’ intent that persons with disabilities be able to bring claims on the merits.⁸⁴ Among the purposes of the ADA Amendments Act of 2008 were “. . . reinstating a broad scope of protection to be available under the ADA . . . and to convey that the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis.”⁸⁵

To this end the ADAAA expanded the list of major life activities to include, but not to be limited to: “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, *thinking*, *communicating*, and *working*.”⁸⁶ New EEOC regulations have specifically included “interacting with others” as a major life activity as well.⁸⁷

The EEOC previously took the view that “substantially limited” in the major life activity of “working” should be interpreted to mean that the person is “significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities.”⁸⁸ However, the EEOC just released new guidance, specifically stating that “‘substantially limits’ is a lower threshold than ‘prevents’ or ‘severely’ or ‘significantly restricts’ . . .”⁸⁹

Another purpose of the ADAAA was to overrule the Supreme Court’s holding in *Sutton v. United Airlines* 527 U.S., 471 (1999), which held that the ameliorative effects of mitigating measures were to be taken into account when deciding if a plaintiff was substantially limited in a major life activity.⁹⁰ For example a person with diabetes was not to be considered disabled if the person took insulin and

monitored his or her blood sugar. However, the ADAAA specifically mentions “learned behavioral or adaptive neurological modifications” as examples of such ameliorative or mitigating measures *not* to be taken into account when a court assesses whether someone meets the definition of disability.⁹¹ It is clear now that the proper standard against which to measure a plaintiff claiming to be disabled is “. . . the average, functioning human with all original parts intact, and no additions or modifications.”⁹² This means that more plaintiffs will be able to proceed to the merits of their cases.

Argument

In this section I will argue that neither of the two previously proffered explanations for chronic and disproportionate unemployment and poverty among the mentally impaired fully explains the disparity. I will then propose a middle ground explanation between the two theories. Then I will argue that the definition of disability was previously too narrow, but that it is broadening under the ADAAA and EEOC guidelines. Finally, I will describe how the two above case illustrations could have turned out differently had they been decided after these recent changes.

A. Why are people with mental impairments chronically and disproportionately poor and unemployed?

The previous section noted some staggering statistics related to poverty and unemployment among people with mental disabilities as compared to the population at large.⁹³ It also posited two explanations for this disparity: one argued that the mentally impaired were simply unable to perform essential job functions,⁹⁴ while the other asserted that the social stigma attached to mental impairments led to discriminatory behavior on the part of the employers.⁹⁵ Most likely, the real answer lies somewhere between these two extremes.

It is not likely that the first extreme is totally accurate. Mental impairments encompass a myriad of symptoms and levels of severity. Therefore, it is almost impossible to say that “most” or a “majority” or “all” mentally impaired people are one thing or another. It is fair to say, however, that no one wants to live in poverty if it can be avoided. It is likely that most people want to work, if they can, to give their life purpose. Therefore, if people with mental impairments could find work with an employer willing to engage in an iterative process, it stands to reason that they probably would.

However, the premise that mentally impaired people are incapable of performing the essential job functions is probably rooted in some modicum of truth. It is not hard to imagine that people with severe or chronic mental impairments could find regular job attendance difficult, to give one common example. As regular attendance is generally considered an essential function of any job, for which a reasonable accommodation is not required under the ADA, people who have to

miss extensive work time because of debilitating mental impairments can, as a result, fail to meet the essential job functions.

The contrary argument is that the employers simply discriminate against the mentally impaired because of the social stigma surrounding them. This argument implies that something nefarious goes on within the mind of the employer. It could be that the employer had a bad experience in the past with an employee with depression. It could also be that the employer truly despises people with ASD or some other impairment. Or it could be that the employer thinks it will be bad for business if he employs an intellectually disabled person.

However, the premise that employers are simply prejudiced against people with mental impairments ignores certain economic and legal realities. First, there are often economic incentives for hiring disabled people, both direct and indirect. Directly, federal grants exist for hiring such people. Indirectly, such hiring often generates goodwill for the business, because the business is seen as a good, inclusive corporate citizen. Second, in today's overly-litigious society, employers are likely to be aware of the potential legal consequences of taking adverse employment action against a class of people like the mentally impaired (or certainly their lawyers are aware of this).

B. Is the mentally impaired plaintiff “disabled” within the meaning of the ADA?

It defies logic and conventional wisdom to state that thinking, communicating, and social interaction are not major life activities. In fact, they are things human beings spend a significant amount of time on everyday. However, in *Littleton, supra*, the Eleventh Circuit decided that the “mentally retarded” (now referred to as “intellectually disabled”) plaintiff was not disabled under the ADA in part because he was fairly independent, learned, and capable.⁹⁶ Of course, a person's skills and impairments, or lack thereof, do not exist in a vacuum. Determining that an otherwise disabled person is not disabled because he or she has been able to overcome certain aspects of his or her disability flies in the face of the spirit of the ADA. Instead, the totality of the circumstances should be examined. A medical diagnosis of mental retardation should be sufficient to meet the “disabled” threshold prong of the ADA. Mental impairments, along with their accompanying social stigma, should suffice to define a plaintiff as “disabled,” either under the first (“substantially limited in a major life activity”), second (“having a record of a disability”), or third (“regarded as”) prong of the threshold test. This will at least allow the aggrieved plaintiff the opportunity to prove his or her discrimination case on the merits. The ADAAA and new EEOC regulations support this position.

Under EEOC regulations mentioned *supra*, a plaintiff is no longer substantially limited in the major life activity of working if, and only if, he is significantly restricted from a broad range of jobs compared to the average person having

comparable training, skills, and abilities.⁹⁷ In contrast, new EEOC regulations just promulgated assert that a plaintiff can now be considered “substantially limited” under a lower threshold showing.⁹⁸

If it were decided today, the plaintiff in *Littleton*, *supra*,⁹⁹ could use this line of reasoning to argue that his intellectual disability substantially limits his working vis-à-vis non-intellectually disabled people who have comparable skills such as driving, reading, and comprehending, and comparable training such as a high school special education certificate and some technical college. It is nonsensical to infer from this regulation that Littleton has to prove himself substantially limited vis-à-vis other intellectually disabled people. As the ADAAA has made clear, average people are the relevant comparators and thus the Eleventh Circuit erred in its evaluation of Littleton’s relative abilities.

Littleton was decided in 2007. Cases like *Littleton* are likely the type that led to creation of the ADA Amendments Act of 2008 (ADAAA). Another helpful line of argument that *Littleton* could have offered under the ADAAA is that “working” is now considered a “major life activity.”¹⁰⁰ Among the purposes of the ADAAA was to clarify and re-affirm Congress’s intent to cover persons with impairments and thus afford them the opportunity to prove their cases on the merits.¹⁰¹ Unfortunately, prior to the ADAAA, far too often plaintiffs lost on threshold, standing grounds, before the merits were even reached.

As discussed *supra*, often people with mental impairments such as Autism Spectrum Disorder (ASD) are pigeonholed into types of jobs that supervisors think they are “suited” for based on gross stereotypes of everyone along the spectrum.¹⁰² It is nothing short of exploitative to put people with ASD, or any mental impairment for that matter, into “boxes” that employers think fit them simply by virtue of their mental impairment(s). People with ASD should be given the opportunity to thrive and grow in any position for which they can perform the essential job functions with or without reasonable accommodation, not just those that non-ASD people deem suitable for them, like accountancy or computer programming, to name two typical examples.

Moreover, people with ASD who bring ADA claims may not be able to meet the standing requirements in that they cannot show that they are “disabled” under any of the three prongs. However, the ADAAA’s expanded definition of major life activity should afford such people a better chance of proving that they are substantially limited in major life activities of either “caring for oneself,” “speaking,” “learning,” “reading,” “concentrating,” “thinking,” “communicating,” or “working.” Had the *Comber* case taken place after the enactment of the ADAAA, it is possible that Comber could have proven she was “disabled” as a result of her ASD. Her ability to learn was affected. As learning is now considered a major life activity, she likely could have proven “disability.” She also had problems “interacting

with others,” which as the new EEOC guidelines state, is a major life activity.¹⁰³

Like the plaintiff in *Littleton*,¹⁰⁴ Comber was essentially punished by the court for the fact that she was able to overcome many of the detrimental effects of her condition. The court drew a negative inference against her because for the vast majority of her employment she was able to keep her symptoms in check.¹⁰⁵ However, if this case were decided today, since the ADAAA states that mitigating factors are not to be taken into account when assessing whether a plaintiff is “disabled” and expands the definitions of major life activity, the court might reach a different conclusion.

Conclusion

In the past, plaintiffs with mental impairments bringing claims under the ADA have been prematurely dismissed for a lack of standing. Courts have found all too often that plaintiffs like Charles Littleton and Kathleen Comber, despite suffering from intellectual disability and autism spectrum disorder respectively, were not “disabled” within the meaning of the statute, because they were not substantially limited in major life activities. Courts have drawn negative inferences against plaintiffs like Littleton and Comber because of these plaintiffs’ past success in overcoming their impairments.

Today, the ADAAA and new EEOC regulations can help some of these kinds of plaintiffs clear the threshold standing hurdle. Congress and the EEOC now forbid courts to take into account ameliorative or mitigating measures when assessing whether a plaintiff is “disabled.” That means that even though Mr. Littleton was able to drive a car, he should still be considered “disabled” by virtue of his lesser ability to learn compared to a person without an intellectual disability (formerly known as “mental retardation”).

Still, it is clear that people with mental impairments have practical obstacles to overcome in addition to their legal ones under the ADA. People with mental impairments are chronically and disproportionately poor and unemployed, compared to their non-mentally impaired counterparts. Some ascribe this disparity to the employees’ own inability to perform the essential job functions, while others contend it is social stigma and discrimination by the employer. Of course, no one explanation can totally account for this disparity. In order to break this vicious cycle of poverty and joblessness, employers should engage in an iterative process with mentally impaired applicants/employees. At the same time, mentally impaired applicants and/or employees must make every possible effort to overcome their disabilities and demonstrate that they can perform the essential job functions.

—The author wishes to thank his classmates, family, friends, girlfriend Tracey Nelsen, Professor Larson, The Honorable Dale B. Lindman, Nicole Bonine,

Esq., and his former co-workers at Halunen & Associates, who fight for the rights of disabled employees every day.

NOTES

1. See *infra* notes 38-55 and accompanying text (detailing the case of *Littleton v. Wal-Mart Stores, Inc.*, 231 Fed. Appx. 874 (12th Cir. 2007).
2. See *Littleton v. Wal-Mart Stores, Inc.*, 231 Fed. Appx. 874, 875 (11th Cir. 2007).
3. See *id.*
4. See *id.*
5. See *id.*
6. See *id.*
7. See *Littleton*, 231 Fed. Appx. at 875.
8. See *id.*
9. See *id.*
10. See *id.* The Wal-Mart employee testified that Littleton “displayed poor interpersonal skills and a lack of enthusiasm about the job.” *Id.*
11. See generally *id.*
12. See *Littleton*, 231 Fed. Appx. at 875.
13. See *id.*
14. See *id.* at 876.
15. See generally Amir Tal, et al., “USING SITUATION TESTING TO DOCUMENT EMPLOYMENT DISCRIMINATION AGAINST PERSONS WITH PSYCHIATRIC DISABILITIES,” 35.3 Employee Relations L.J. 82 (2009), available online by entering “employee relations law journal amir tal” into Google search engine (arguing that “in light of the role of job-holding in the well-being, functioning, and recovery of persons with psychiatric disabilities, the prevalence of unemployment in this population is disconcerting.”)
16. See *supra* “EEOC” at note 55 (internal citation omitted). This number only reflects “intellectual disability,” formerly known as “mental retardation,” it does not even reflect those with other mental impairments such as Autism Spectrum Disorder, discussed *infra* at notes 56-84 and accompanying text.
17. See *id.* (internal citation omitted).
18. *Id.* at 83, n 3 (citing R. Drake, et al., “REGIONAL VARIATION IN COMPETITIVE EMPLOYMENT FOR PERSONS WITH SEVERE MENTAL ILLNESS,” 25 Administration and Policy in Mental Health and Mental Health Services, 493–504 (1998); M. McQuilken, et al., “THE WORK PROJECT SURVEY, CONSUMER PERSPECTIVES ON WORK,” 18 J. of Vocational Rehabilitation, 59–68 (2003)).
19. See *supra* Tal note 16 at 84.
20. *Id.*
21. U.S. Census Bureau, “Income, Poverty and Health Insurance in the United States: 2009 – Highlights.” <http://www.census.gov/hhes/www/poverty/data/incpovhlth/2009/highlights.html>. (noting that the poverty rate is up from thirteen percent in 2008, only the second statistically significant increase since 2004).
22. See Tal *supra* note 16 at 85.
23. See generally Tal *supra* note 16 at 85.
24. See Tal *supra* note 16 at 85, n 14 (citing W. Stewart, “COST OF LOST PRODUCTIVE TIME AMONG U.S. WORKERS WITH DEPRESSION,” *J. of the American Medical Association*, 289, 3135–3144 (2003). (reporting that according to one study, depressed employees lost an average of 5.6 hours per week of productivity time, compared to only 1.5 hours lost by non-depressed employees).
25. See Tal *supra* note 16 at 85, n 13 (citing M. Antila, et al., “COGNITIVE FUNCTIONING OF BIPOLAR I PATIENTS AND RELATIVES FROM FAMILIES WITH OR WITHOUT SCHIZOPHRENIA OR SCHIZOAFFECTIVE DISORDER,” *J. of Affective Disorders* (in press, 2009); A. Wingo, P. Harvey, and R. Baldessarini, “NEUROCOGNITIVE IMPAIRMENT IN BIPOLAR DISORDER PATIENTS, FUNCTIONAL IMPLICATIONS,” *Bipolar Disorders*, 11, 113–125 (2009); A. McIntosh, et al., “NEUROPSYCHOLOGICAL IMPAIRMENTS IN PEOPLE WITH SCHIZOPHRENIA OR BIPOLAR DISORDER AND THEIR UNAFFECTED RELATIVES,” *The British J. of Psychiatry*, 186, 378–385 (2005).

26. See Tal *supra* note 16 at 85.
27. Peter Blanck, *et al.*, *Disability Civil Rights Law and Policy*, 203, West (2009).
28. See 29 U.S.C.A. § 1185a (2011) *et seq.*
29. 42 U.S.C. § 12112(a) (2008).
30. *Id.* at § 12101(A)(5).
31. *Id.* at § 12101(B)(1).
32. The ADA Amendments of 2008 (ADAAA) have attempted to close some of these definitional loopholes and re-clarify Congress' intent to offer broad coverage to people with disabilities.
33. See *Carruthers v. BSA Advertising Inc.*, 357 F.3d 1213 (11th Cir. 2004) (quoting *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 197 (2002) (stating that the term "disability" is to be "interpreted strictly to create a demanding standard for qualifying as disabled.")).
34. See No. 3:11-cv-0004 CRW-TJS (D.Iowa, April 6, 2011); see also "Workers with Intellectual Disabilities Abused by Texas-Based Company for Years, EEOC Charges," EEOC Press Release, <http://www.eeoc.gov/eeoc/newsroom/release/4-6-11b.cfm>.
35. See No. 3:11-cv-0004 CRW-TJS.
36. See *supra* notes 3-15 and accompanying text (introducing the case of *Littleton v. Wal-Mart Stores, Inc.*).
37. 231 F. App'x 874, 876 (11th Cir. 2007).
38. *Id.*
39. *Id.* (quoting *Cleveland v. Home Shopping Network, Inc.*, 369 F.3d 1189, 1193 (11th Cir. 2004)).
40. *Id.*
41. *Id.* at 877. The court cited *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 195 (2002), as an example. In *Williams*, the Supreme Court stated that "[m]erely having an impairment does not make one disabled for purposes of the ADA. Claimants also need to demonstrate that the impairment limits a major life activity." *Williams*, 534 U.S. at 195.
42. 42 U.S.C. § 12102(1)(a-c) (emphasis added).
43. See *Littleton*, 231 F. App'x at 876.
44. *Id.* at 876-77.
45. *Id.* at 877.
46. *Id.*
47. *Id.*
48. *Littleton*, 231 F. App'x at 876.
49. *Id.* at 877.
50. *Id.* The court rested its analysis on the fact that the burden rests with plaintiff to prove all elements of the *prima facie* case. *Id.*
51. *Id.*
52. *Id.* at 877-78.
53. See 29 C.F.R. § 1630.2(h)(2).
54. The U.S. Equal Employment Opportunity Commission, "QUESTIONS & ANSWERS ABOUT PERSONS WITH INTELLECTUAL DISABILITIES IN THE WORKPLACE AND THE AMERICANS WITH DISABILITIES ACT," March 17, 2011, http://www.eeoc.gov/facts/intellectual_disabilities.html#N_5_.
55. Autism Society of America, http://support.autism-society.org/site/PageServer?pagename=about_home citing the Centers for Disease Control and Prevention's ADDM autism prevalence report).
56. See Andre T. Cavagnaro, "AUTISTIC SPECTRUM DISORDERS: CHANGES IN THE CALIFORNIA CASELOAD, AN UPDATE JUNE 1987- JUNE 2007," California Health and Human Services Agency, State of California 2003 Survey of Developmental Disabilities (stating that Autism is the fastest growing developmental disability, with a 1,148 percent growth rate in the last 20 years); see also Autism Society of America, Facts and Statistics, <http://www.autism-society.org/about-autism/facts-and-statistics.html> (stating that the number of children diagnosed with ASD increased 10 to 17 percent per year as of 2003).
57. According to the Autism Society of America's website, http://support.autism-society.org/site/PageServer?pagename=about_home:

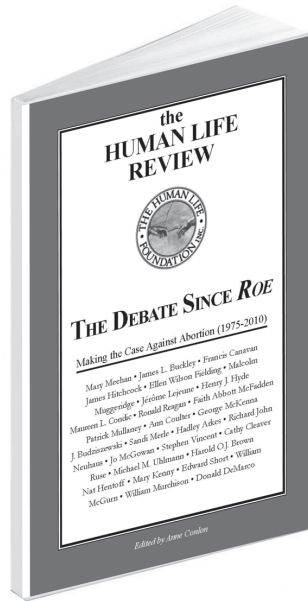
Autism is a complex developmental disability that typically appears during the first three years of life and is the result of a neurological disorder that affects the normal functioning of the brain, impacting development in the areas of social interaction and communication skills. Both children and adults with autism typically show difficulties

in verbal and non-verbal communication, social interactions, and leisure or play activities. Autism is a “spectrum disorder” and it affects each individual differently and at varying degrees.

Id.

58. Daniela Caruso, “AUTISM IN THE U.S.: SOCIAL MOVEMENT AND LEGAL CHANGE,” 36 Am. J. L. & Med. 483, 511 (2010) (relating anecdotes about the prevalence of ASD among “math geeks, persons with relational difficulties and often superior analytic intelligence.”).
59. *Id.* (citing David Wolman, “THE ADVANTAGES OF AUTISM,” *New Scientist*, May 4, 2010, reporting that “Michelle Dawson, an autistic cognition researcher at the University of Montreal, Canada, cautions against pigeonholing people: ‘[a]sking what kind of job is good for an autistic is like asking what kind of job is good for a woman. . . .’”).
60. See Autism Society of America, “DIAGNOSTIC CLASSIFICATIONS,” <http://www.autism-society.org/about-autism/diagnosis/diagnostic-classifications.html>.
61. See *supra* Caruso note 59 at 512.
62. See *supra* Caruso note 59 at 512.
63. See *supra* note 43 and accompanying text (describing the three methods by which a plaintiff can meet the first prong of the ADA’s disability definition).
64. See *id.*
65. See *McAlindin v. County of San Diego*, 192 F.3d 1226, 1232-35 (9th Cir. 1999) (finding that “interacting with others” is a major life activity under the ADA); see also *Francis v. Chem. Banking Corp.*, 2000 WL 687715, at *1 (2d Cir. May 24, 2000) (assuming without deciding that “interacting with others constitute[s] [a] major life activity”); *Doyal v. Okla. Heart, Inc.*, 213 F.3d 492, 496 (10th Cir. 2000) (same); But see *Soileau v. Guilford of Me., Inc.*, 105 F.3d 12, 15 (1st Cir. 1997) (expressing doubt that “the ability to get along with others” is a major life activity under the ADA).
66. See *id.*; See also *supra* note 87 and accompanying text (recalling that social interaction does not appear in the ADAAA’s definition of “major life activity”).
67. See *infra* notes 85-93 and accompanying (outlining the ADAAA’s recent additions to the list of “major life activities”).
68. See *supra* *Littleton*, notes 44-48, 50-52 and accompanying text, describing the case of Mr. Littleton, whose ADA claim was dismissed on summary judgment because he could not prove he was disabled under the ADA, in large part because he had been successful in overcoming obstacles occasioned by his underlying mental impairment).
69. *Comber v. Prologue, Inc.*, 2000 WL 1481300, at *1 (D. Md. Sept. 28, 2000).
70. See *id.* at *1.
71. See *id.*
72. *Id.*
73. *Id.*
74. *Comber*, 2000 WL 1481300, at *1.
75. *Id.*
76. See *id.* at *2.
77. *Id.* at *1.
78. See *id.* at *3-4.
79. *Comber*, 2000 WL 1481300, at *3.
80. See *id.* at *3.
81. See *id.* “In the case of an autism disorder, this distinction between a personality conflict and signs of a disability is perhaps even harder to draw than it is in the case of depression . . . her underlying problem at Prologue is better characterized as a personality conflict.” *Id.*
82. See *id.* at *3. “Comber has worked in the past in several counseling positions with mentally disabled people, and has recently retrained with an eye toward working as a computer programmer.” *Id.*
83. *Comber*, 2000 WL 1481300, at *3.
84. See ADA Amendments Act of 2008 § 2(b)(1), (5). Among the purposes of the ADA Amendments Act of 2008 were “. . . reinstating a broad scope of protection to be available under the ADA . . . and to convey that the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis.” *Id.*
85. *Id.*

86. 42 U.S.C. § 12102(2)(A) (2008) (emphasis added). This Section went on to further expand the scope of major life activities to include the “major bodily functions” of: “. . . functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.” Id. at § 12012 (2)(B).
87. See 76 FR 17007 (March 25, 2011).
88. See 29 CFR § 1630.2(j)(3)(i) (2008).
89. See 76 FR 16981 (March 25, 2011).
90. See ADA Amendments Act of 2008 § 2(b)(3).
91. See 42 U.S.C. § 12102 (4)(E)(i)(IV).
92. Collin R. Bockman, “CYBERNETIC-ENHANCEMENT TECHNOLOGY AND THE FUTURE OF DISABILITY LAW,” 95 Iowa L. Rev. 1317, 1322 (2010) (arguing that the ADAAA, while well intentioned, could become irrelevant as mitigating factors become more significant with the advent of brain implants, brain-computer interfaces, advanced prosthetic limbs, and other ameliorative devices).
93. See *supra* notes 16-27 and accompanying text (citing statistics from various sources which reflect the fact that people with mental impairments are disproportionately poor and unemployed compared to their non-mentally impaired counterparts).
94. See *supra* notes 24-26 and accompanying text (arguing that the reason the mentally impaired are chronically and disproportionately unemployed and poor is because they are incapable of performing the essential job functions).
95. See *supra* note 27 and accompanying text (maintaining that the reason the mentally impaired are chronically and disproportionately unemployed and poor is because social stigma leads to discrimination by employers).
96. See *supra* notes 45-48 and accompanying text (detailing the court’s decision that Littleton was not disabled because he had finished high school, could drive a car, and was generally very competent, for a mentally retarded person).
97. See *supra* notes 89-90 and accompanying text (describing new EEOC regulation which rejects the definition of “substantially limited in a major life activity” in the above described manner and instead substitutes a new, lower threshold standard to include more plaintiffs within the definition).
98. See *supra* notes 89-90 and accompanying text (describing new EEOC regulation which rejects the definition of “substantially limited in a major life activity” in the above described manner and instead substitutes a new, lower threshold standard to include more plaintiffs within the definition).
99. See *supra* notes 38-54 and accompanying text (recounting the case of *Littleton*, who the Eleventh Circuit found to be not disabled, despite his intellectual disability).
100. See *supra* note 87 and accompanying text (stating that under the ADAAA “working” is now considered a major life activity).
101. See *supra* notes 85-86 and accompanying text (declaring that among the purposes of the ADAAA was to re-affirm Congress’ intent to cover a broad class of people under the ADA).
102. See *supra* notes 59-60 and accompanying text (recounting that there are moral and legal ramifications to pigeonholing people with ASD into particular categories of jobs).
103. See *supra* note 88 and accompanying text (announcing new EEOC regulations, just promulgated, which include interacting with others as a major life activity).
104. See *supra* notes 38-53 and accompanying text (recalling the *Littleton* case, in which the court found a mentally retarded person not disabled under the ADA in part because he could drive, work, and graduated high school).
105. See *supra* notes 70-84 and accompanying text (citing the court’s language in which it admitted that Comber had trouble maintaining ordinary social relationships yet, because she had a successful work history, she could not be considered disabled under the ADA).



**“Good writing can win battles;
great writing, whole wars.”**

—J.P. McFadden

This is a book for anyone who has sat around the kitchen table (or the dorm room) defending the sanctity of human life while wishing he or she had greater command of the facts and arguments. Culled from the *Human Life Review*'s unique 35-year-record of anti-abortion advocacy, *The Debate Since Roe* features essays by doctors and lawyers, politicians and political scientists, philosophers and clerics, journalists, and, to quote the *Review*'s late founding editor J.P. McFadden again, those who bring “a layman’s view of the meaning of it all.” A perfect gift for students, pastors, family members and friends. To order a copy (\$14.95 includes shipping), please use the enclosed business reply envelope or call us at (212) 685-5210. Bulk pricing is available for orders of over 10 copies. You may also order copies at our website: www.humanlifereview.com.

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Bumping Heads over Race and Abortion

Richard Goldkamp

*The Lord called me from birth, from my mother's womb, he gave me my name....
Can a mother forget her infant, be without tenderness for the child of her womb?
Even should she forget, I will never forget you.
— Isaiah 49: 1, 14-15*

An interview with CNSNews.com early in 2011 turned into a controversial moment for former Pennsylvania Sen. Rick Santorum shortly before he decided to enter the race for the GOP nomination for the presidency.

A Fox News contributor at the time of the interview, Santorum set off a small firestorm among some media critics over his adamant defense of the sanctity of human life. What ignited it all was Santorum's skeptical view of our president's high-profile role in the abortion debate. Santorum directed attention back to a controversial, off-the-cuff remark made by Barack Obama during the 2008 presidential race. Readers of this journal will likely recall that remark as well: In a campaign forum at the evangelical Saddleback Church in Lake Forest, Calif., the president was asked: "At what point does a baby get human rights, in your view?" Obama dodged Pastor Rick Warren's question by telling him that "... answering that question with specificity, you know, is above my pay grade."

But the real question, maintained Santorum in his interview, is at once simpler and more demanding than the one Barack Obama claimed he wasn't qualified to answer: Why should unborn human life *not* be treated with the same dignity and respect that the rest of us consider is our due? In Santorum's view, the president's pro-choice position meant he was implicitly valuing some lives above others. Santorum hastened to stress the humanity of the unborn child for CNS. "If that human life is not a person," he said, "then I find it almost remarkable for a black man to say 'now we are going to decide who are people and who are not people.'" Drawing a parallel to the era of slavery, Santorum later clarified his position in a statement that asserted "... the unborn of all races are also wrongly treated as property" today in much the same way that black slaves were once treated by their owners in America.

Santorum's comments at the time were overshadowed by news headlines about the events that came to be known as the Arab Spring. A new surge of interest in some form of democracy sparked government resistance in various countries in North Africa and the Middle East, leading to the deaths of several thousand protesters at the hands of autocratic regimes and the rise and fall of rulers. Closer to

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home, a different kind of turmoil drew attention, as Mexican drug-cartel violence threatened to spill across the U.S.-Mexican border into our own country. But the random targeting of innocents elsewhere should serve as a grim reminder to us all: Indirectly, such situations help dramatize why pro-life proponents keep pushing tirelessly for a new Culture of Life in America. Abortion—the world’s grossest form of legal misbehavior—is still widely tolerated in our midst, and Rick Santorum did not shrink from naming it.

Online critics at sites like the *Huffington Post* and *Politico* implied that he was injecting race into a discussion where it didn’t belong. “Playing the race card,” as a *Politico* headline put it, was called out as both a dishonorable and futile way for a conservative “accuser” like Santorum to discredit a White House opponent on the controversial issue of abortion.

End of discussion?

Not quite. In a subsequent appearance on Fox News Channel’s “Sean Hannity Show,” Santorum defended his words on CNS. The Hannity show sparked a tense exchange with civil rights proponent Al Sharpton, who obviously sided with Santorum’s media critics over his quarrel with the president. Fox viewers, however, had added reason to be wary of Sharpton’s words. If he stopped short of directly accusing Santorum of racism in the abortion debate, he openly bought into a popular left-wing stereotype of political conservatives as closet racists. To borrow Dr. Martin Luther King’s formulation, Sharpton’s comments clearly implied that Santorum’s criticism of Obama had more to do with the color of the president’s skin than with the content of his character.

Yet in fact, Sharpton did a better job of condescending to Santorum than of clarifying where the fault lay in his adversary’s arguments. By implying that the pro-life Santorum was “victimizing” Barack Obama by a new sign of racism, Sharpton was cynically using civil rights language not only to shield the president from an honest critique of his dismissive attitude toward the unborn, but to protect a woman’s “right” to kill the unborn by violating that human subgroup’s own civil rights. Sharpton paid little attention to the steady stream of pro-choice white politicians who regularly challenge—and are challenged by—their white pro-life constituents. Those constituents could hardly be labeled “anti-white racists,” could they?

Santorum essentially laid the groundwork for this Fox newscast when he told CNS that our first black president apparently learned little from a major segment of American history. Obama routinely shields himself from the unborn’s humanity by hiding behind the deception of “reproductive freedom rights”; Santorum argued that by doing so Obama was turning his back on the broadly applicable lessons of the nation’s struggle over slavery.

Just as black people were once denied the freedom extended to other persons

under the law of the land by hiding the reality of slavery behind the mask of “property owners’ rights,” so *Roe v. Wade* robbed the child in the womb of legal personhood. *Roe* disguised the unborn as little more than a piece of chattel for a pregnant woman to dispose of as she wished. Even if Obama fails to see the connection between the evils of slavery and abortion, Santorum insisted that the connection is there for people of good will and open minds to see.

Our abortion dilemma obviously extends beyond the question of race. Yet when Hannity asked Rev. Sharpton point-blank whether he regarded himself as pro-life, Sharpton equivocated in an obvious effort to refocus the conversation on the civil rights of minorities. But do such civil rights include a black woman’s right to abort a child she doesn’t want? Rev Sharpton implied that civil rights issues were simply beyond Santorum’s ability to grasp clearly. However, maybe it is Rev. Sharpton who cannot see past race to discern the violation of (white *and* black) unborn babies’ rights. So for Sharpton’s benefit, let’s rephrase Santorum’s case against Obama’s abortion stance. Would any reasonable person today want to honor a self-proclaimed abolitionist from the 1850s who had declared himself “personally opposed” to slavery, yet felt obliged to defend a Southern plantation owner’s “right to choose” how to exercise his property rights —without government interference?

Two politically incorrect mini-truths emerged from this fray on Fox: High-profile black leaders like Sharpton no longer “own” the civil rights issue as it applies to either race or ethnicity, any more than pro-life white Americans “own” the sanctity-of-life issue.

Rev. Sharpton either missed or completely ignored a follow-up CNS interview with two other articulate and honorable pro-lifers about Santorum’s criticism of Obama. Neither Day Gardner nor the Rev. Clenard Childress Jr. saw any hint of racism in what the former Pennsylvania senator had to say. The old “Uncle Tom” stereotype of dissidents from the Democrats’ black-voter plantation simply didn’t apply to Gardner or Childress. Even though both are themselves African-Americans, they found President Obama’s ardently pro-abortion stand not only mystifying but offensive to Black America.

Referring to America’s “enslaved past,” Gardner told CNS she thought Obama’s racial heritage should have made him especially sensitive to the fact that unborn children should not be considered less than human “just because they are small or are not able to help themselves.” Gardner heads the National Black Pro-Life Union in Washington, D.C. A Baptist minister and lifelong resident of Montclair, N.J., Childress strongly reinforced the ex-senator’s perspective on Mr. Obama. In his CNS interview he invited anyone interested to reflect on the conditions under which Barack Obama was born.

“His mother endured, and took on the challenges that were given her and did not choose to kill the child that was in her womb,” Childress noted. “She was abandoned by her father. She did not have any certain dwelling place. She was unquestionably unsure about her financial stability, and yet she chose to have Barack.”

That baby, he emphasized, went on to become the first black president of the United States. But Childress also reinforced the ex-senator’s perspective on Mr. Obama: “Rick Santorum is absolutely right,” he told CNS.

Pastor Childress also launched a unique Web site, blackgenocide.org, about a decade ago. The site went onstream with some alarming truths about our country’s traffic in abortion: Black children make up roughly one-third of all unborn infants killed annually in America. That number is far disproportionate to the size of the black community, which constitutes only 12 percent or so of the population in American.

A common perspective thus emerges from Santorum, Gardner, and Childress: Supporting a pregnant woman’s “right to choose” means that our president has put the White House seal of approval on the annual killing of more than 400,000 defenseless black children in America—along with some 800,000 other unborn innocents as well.

Neither the president nor Rev. Sharpton may choose to admit it, but Santorum’s views on the sanctity of life are increasingly shared by black Americans. In fact, a growing number of pro-life voices from all sectors of American society have shown up in our midst. A Fox News/Opinion Dynamics poll released in early 2011 showed that 50 percent of those questioned now consider themselves pro-life, against 42 percent listing themselves as pro-choice. The results reversed almost exactly the results of a similar Fox survey in September 2008. The Fox poll results reflected a trend picked up by a Gallup opinion poll taken about two years earlier.

Another sign of the shift in thinking among black Americans occurred when Dr. Alveda King, niece of the Rev. Martin Luther King, embraced the Catholic faith and linked up with the thriving Priests for Life group based in New York. Together, Ms. King and Priests for Life created two Pro-Life Freedom Rides in 2010—one of them in late July from Birmingham, Ala., to Atlanta, Ga., the other in mid-October from Knoxville to Chattanooga, Tenn. Those bus rides led auto caravans behind them to special prayer vigils and public rallies in an effort to widen America’s recognition of abortion’s lethal impact on our country. Ms. King’s message: Protecting life in the womb is not only the most basic of human rights issues but a civil rights issue as well. She especially invited black and Hispanic Americans to take a closer look at Planned Parenthood’s destructive power on their communities.

Breaking news in mid-January of an abortionist run amok may well have prompted

Santorum to encourage a reappraisal of the cultural confusion gripping America now. On January 19, Philadelphia abortionist Dr. Kermit Gosnell, 69, was charged with eight counts of murder. Eight staff members at his Women's Medical Society were arrested and charged with him. Bags and bottles holding aborted fetuses were found scattered throughout his clinic. "There were jars lining shelves with severed feet that he kept for no medical purpose," Philadelphia District Attorney Seth Williams said at a press conference.

The grand jury report said Gosnell catered especially to women too far along in their pregnancies for most doctors to perform an abortion. The prosecutor accused the doctor of inducing labor, forcing live births of viable babies, then killing them "by cutting into the back of the neck with scissors" and severing their spinal cords. ABC News pointed out that Gosnell's clinic was located in a poor neighborhood in West Philadelphia, where he earned millions of dollars over a period of more than 30 years. The grand jury sharply rebuked the state Department of Health for failing to shut down the clinic, despite repeated complaints dating back to at least 1993. Dr. Gosnell's arrest may well have prompted Rick Santorum to question our president's strange reluctance to concede the harm done to women and children alike as a result of abortion in his country.

Maybe it's time for civil righters like Al Sharpton, still mired in outdated definitions of their favorite cause, to recognize just how much times have changed. Why don't they join hands with civil rights proponents who also support the sanctity of every human life?

Many Americans empathized with the struggle of thousands of people in Arab countries for a greater voice in their government, and watched in dismay as those same people became victims of attacks by government forces in North Africa and the Mideast. Nearer to home, we have even more reason for anxiety about the drug-cartel traffic and violence that continues to pose danger to people living in our Southwestern border states. But the ongoing everyday violence of legalized abortion kills far more American innocents in a single month than the total number of innocent civilians and police who have died at the hands of drug cartels in Mexico (where an estimated 40,000 or more people have been killed since 2006).

Thus, Rick Santorum's impassioned and provocative analysis of the sanctity-of-life conflict in late January can be seen as a ray of light shining on one of the darker chapters in the history of American culture. Indirectly, Santorum's message is also a fresh voice of hope for black and Hispanic women and men eager to launch their own families. If they root their decisions firmly in love and marriage, they can not only enhance their own lives, but contribute to America's future as well.

A Memo, Medical Records, and Movement

David R. Kenagy

A Memo

It smelled like cat crap stuck in a waffle-bottomed shoe. It needed washing. And that was my job. When a company's problem stinks enough somebody decides, "Kick it to the lawyers." Cover-your-ass memos keep lawyers employed.

This one's tone was frank and sincere. One page long. Nobody took credit. It came from a "Department" of nursing, obstetrics and gynecology. It stated, "After flooding the uterus with saline to stimulate contractions and expulsion of the fetus we place the remains in an isolet, provide comfort measures and await the cessation of heart sounds and movement."

"Here, shit-for-brains, take this memo and write our damn response." The Senior Partner, the Managing Partner himself, had given me an assignment. Marines who landed on Iwo Jima sometimes talked that way, even 30 years later, on the 44th floor of a downtown high rise, wearing a Brooks Brothers suit and 300-dollar shoes. Whatever the memo said, my boss didn't want to deal with it.

So I read the memo. The guts of it went something like this, "When a baby is delivered with a heartbeat and signs of movement, we prepare a birth certificate. If vital signs later cease, we prepare a death certificate." It then asked, "Is that practice required by law in the case of a therapeutic abortion?"

"Let me understand this," I thought. "Woman comes in for abortion, baby comes out with heartbeat, nurse puts baby in incubator, turns on heat lamp, and watches until heart stops beating. Do we need a birth certificate followed by a death certificate?" How should I know? Could the law require a nurse to drop by mom's post-abortion recovery room to ask, "And what would you like to name your baby?" But then, in the next breath, "And may we ask you to designate your preferred funeral arrangements?"

In law school all this seemed so elegant, so well reasoned. Quite mechanical. Nothing messy. We just "balance the mother's privacy rights" against any rights of the "unborn fetus" and, depending on the trimester of the pregnancy, somehow things get resolved in favor of the mother's right to "terminate the unwanted pregnancy." That was enough to pass the bar exam.

Now to apply my newly-minted credentials. "Under the applicable Administrative Code," I wrote, "a baby born with any of three specified signs, including heartbeat, is

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‘born alive’ and requires a birth certificate.” Once a birth certificate issues, a death must be certified as well. Clean and simple. My memo to the “Department of Obstetrics and Gynecology” was as short as the one I got. I never heard of it again, but the memory lingered, unsettled.

Years later I learned that medical technology apparently resolved the law’s awkward recovery room rituals. “In utero curettage” cleared up any unseemly discussions required by “the lawyers.” Aborted babies stopped being “born alive” because little pieces of tissue don’t have a heartbeat. A tidy solution to a messy legal conundrum.

I really dislike preachy articles about abortion. And that would be most of the ones I’ve read. They settle nothing and inflame everyone. So, for this intrusion into your world, I decline to bitch at you. This is all you’ll get: Somewhere I once read there is now no condemnation for those who are in Christ Jesus.

Why did the law seem so clear in law school, but so clumsy in practice? I remember how we celebrated a woman’s right to privacy and its connection to abortion. For women, a right soon enough well settled in law. For men, a welcome surge in the tide of opinion against prudes who’d say “no.” Zippers down, boys. Risk-free sex and best of all: no child, no child support. For any who doubted the law’s wisdom, fairness, and needed protection, the clincher involved the hypothetical 11-year-old pregnant girl, raped by her Neanderthal uncle. Is she without rights in the matter? Facts like that settled the issue, or so I believed. Still, The Memo’s aroma and my hard-headed response stuck like a burr in my sock.

Medical Records

The expert witness pushed a gigantic stack of medical records back across the conference table. “The doctor here did nothing wrong.” My relief at hearing that opinion was evident by the grin on my inexperienced face. “This little meeting is going well,” I gloated. It would likely mean another winning verdict—the full extent of my concern at the time.

But the case, involving obstetrics and gynecology, had one other twist. I couldn’t help asking a side question during this private, pretrial consultation. I noticed in the records a series of about six or seven repeated entries coded, “TAB.” At the time I didn’t know what it meant. He told me. “TAB is therapeutic abortion.” I asked why he thought there had been so many. “Was there something wrong?” “Oh, no,” he answered. And then, with the casual air of professional confidence he added, “Just gender shopping.”

I sat, staring. “Here, I’ll show you,” he offered. The doctor turned to the laboratory reports section of the medical records and showed me results from a series of amniocenteses. Each corresponded by date to just before every TAB. “You see, this patient would get an amniocentesis and it would tell her the gender of the

fetus. As you can see, they were all girls. At least until she got her boy, which she delivered normally at full term. As for the female fetuses. . . . they were all aborted. It's the law, you know."

Yes, I knew the law. I knew about babies born alive and isolets and warming lamps and birth certificates and death certificates. But "gender shopping" right here in the United States was a new one on me. I'd read how the Chinese, constrained by their repressive regime's "one child rule," would keep a bucket of water beside a poor rural mother's birth bed. If a baby girl emerged, the bucket was employed. If a boy, no need. The family was complete with its male heir.

How bitter my derision against the barbaric practices of the modern Chinese culture. What kind of people would do such a thing? How could they do it? What human community could build a silent consensus condoning the massacre of unknown numbers of baby girls? "Shameful," I thought. And then, of course, I realized my racist, ignorant arrogance. How, indeed, could "those people" do this thing?

In the quiet confines of a conference room "those people" became "my people." The medical records in a random lawsuit taught me that gender shopping was as common in my neighborhood as in the outer reaches of the Chinese empire. How many little girls would be sacrificed for the flimsy cause of male preference? How bizarre that such a practice in the United States had become possible through legal precedent designed to protect the rights of women. How unexpected that the site of gender shopping in the United States is not a bedside bucket but the sterile, protective sanctum of an otherwise life-sustaining medical clinic. How strange that the application of intricate laboratory testing first employed to save or enhance the life of an unborn baby should become the instrument of crude, gender-based decisions to end a baby's life.

I now had two thorns in my sock.

Movement

After learning that ovarian cysts likely prevented us from having children, my wife and I began looking into adoption. Reconciling to adoption was no easy thing for my self-aggrandizing side. I had always imagined children of "my own." You know, the whole "heir" thing. Sad. Still, that process moved me toward a new appreciation for children's lives. And so, when medical miracles allowed us to get pregnant with our first, it was pure delight.

Our little home had a couch in the front room. We would watch TV there in the early days of the pregnancy. Sitting together on that couch, my wife put my hand on her belly. "The baby's jumping," she said with a giggle. As my hand rested there I felt movement. I felt the life-movement of our baby. Our baby, just weeks old, was alive in there.

My world moved as surely as our child did. The fetus inside my wife was alive. So were the gasping babies comforted with heat lamps while professionals pondered the rules of birth and death certificates. And so were the babies whose terminal blunder was being female. The laws that punish murderers of pregnant women with double homicide now made emotional sense to me. The laws that allow the unrestrained “termination” of living babies inside their mothers suddenly did not.

Walking with pointy burrs in your socks hurts. But a memo, some medical records, and a tiny movement helped clarify my mind and clear out my socks.



"All I had in mind was dinner and a movie and things just snow-balled."

The Human Life Foundation's 9th Annual



Great Defender of Life Dinner

**HONORING
Paul Greenberg**

**OCTOBER 27, 2011
THE UNION LEAGUE CLUB
NEW YORK CITY**

Photographs by Stephen Sisler

Jack Fowler:

I went to Holy Cross, and when I graduated, thanks to Maria, I went to work!



For Jim McFadden, at *Life Letter*, the *catholic eye*, and the *Human Life Review*. And in the first few months—the first issue I worked on—Ronald Reagan wrote his tremendous piece on “Abortion and the Conscience of a Nation.”

I want to say we’re here to have a wonderful evening; to honor a man who truly deserves to be honored for how much he’s stood up for life. But I don’t want

you to leave the evening without remembering how important the *Human Life Review* is to this movement. Now, any movement—military—any kind of movement—what’s very important are people who are in the trenches. Blood, sweat, tears—people who do mailings, people who do all sorts of hands-on work. But in the case of this movement, much of the real difficult work is intellectual. And it’s sustaining people’s need to be reinvigorated on why the issues we address—why the things we fight, why the things we support—are vital. And I would have thought, when the *Human Life Review* was founded in 1975, that Jim McFadden probably would have thought “how am I going to sustain this for a *couple* of years?” Now—what are we, is it 37 years later?—and this phenomenal *Review* is still producing such wonderful intellectual ammunition for this movement. I hate to say always “ammunition” as if we’re at war, as if we’re fighting—although, a lot of it is a fight. But a lot of us need to be reminded about the beauty of life, and the way this issue has gone into other areas, of infanticide, of euthanasia, and other things that cry out to heaven for justice and God’s mercy, that He would stop this. But it’s the *Human Life Review* that has been plugging away all these years, providing that very necessary intellectual ammunition for this movement, so remember that when you leave here tonight, and someday in February, or when you get a nice little letter from Maria, remember that please. It’s very important. Listen, I know this organization. There are no sugar daddies! There are no sugar mammas! It’s like *National Review*; we get by on the kindness of strangers, and very normal people making normal contributions. And that’s vital. So no one is sitting there writing big checks to help sustain it.

The *Human Life Review* is vital and it needs help; it needs to be around for

thirty—well, it needs to be around forever. Because it's not only about discussing bad things, it's also about promoting good things, and the beauty of life, which God has given us. But anyway—now am I introducing you, Maria? I met Maria at Regis High school where I went, and where Maria was in the play *Oklahoma*, and I was on the stage crew, and we were a little bit friends there, but then we were both philosophy majors at Holy Cross. She has been just—you know, the issues aside and the institution aside, just a wonderful human being, and a great and dear friend. And the fact that I'm here tonight, and that everything I do in my life from a professional point of view is really because of her kindness to me, many years ago, she's just a wonderful woman . . . Maria Maffucci.

Maria McFadden Maffucci:

Thank you, Jack. I am very proud to call you my friend. I am *so* happy to be here tonight with Paul Greenberg, to finally meet him! Prior to this, I've known him



through his words, in his columns, emails or letters . . . and I've noticed a remarkable thing, which is that Paul's words seem to come when I need them most. Several times when I've been discouraged, I'll read a column of his that's so good and incisive that it's a shot in the arm, a reminder of how invigorating truth-telling can be! Then there was that exciting time we got a call from Nat Hentoff telling us that Paul Greenberg had just written a column about the *Human Life Review*. When I thanked

him for that column, I got an email from him saying, "I don't know how you happy few do it. But, please, never stop, and when things look dark, as they will, and fatigue sets in, as it will, please remember that there are readers like me who not only appreciate you and learn from you and your remarkable stable of contributors, but absolutely depend on you."

Well, the truth is, the *Review* depends on *writers* like *Paul Greenberg*! He does in his columns what we aim to do with our journal: He speaks the truth about human life and death. He challenges those who don't see that the emperor is actually *naked* to open their eyes; his clear logic and gracious words encourage those who are with him, like our faithful friends here tonight, to persevere.

And today, Paul *himself* is here—just when I need him—here to inspire us to keep on going when things indeed look dark, here to cheer us, at this bittersweet celebration, the first without my beloved mother, Faith, who died on August 30th

of this year. This is our ninth annual dinner, and at each one before this my mother was here standing next to me, starting our evening off with a *rhyme* . . . well, actually, that is what we all remember, but I looked it up, and she only started rhyming in 2006, when she wrote a ditty for the late Father Francis Canavan, whose 88th birthday was that day.

A couple of years ago, she opened with this one:

Back in the year two-thousand-three
we began what came to be
the Human Life Foundation's
annual celebration
of those for whom there are no maybe's . . .
about saving babies.
These evenings also benefit the *Human
Life Review*:
Heartfelt thanks to all of you
who've helped keep it afloat. (It's okay to gloat.)

My mother often wrote rhyming verse for people she cared about. As I have been going through her files I have found *many*: tender rhymes for my Dad on anniversaries or to cheer him when he was sick, rhymes for friends' birthdays or retirements, rhymes about her children . . . in our sister publication, *catholic eye*, we just published her rhyming remembrance of the day she entered the Catholic Church—which was actually Halloween, 1954. And as many of you know, Faith shared my Dad's love for a good pun, the more groan-worthy, the better!

Things will never be the same without Faith, but I do *know* she wouldn't want us to be sad. She would want us all to enjoy this evening, especially the "happy few" who make up our staff and who have worked so hard, despite the difficulties of these past months, to plan this event. I would like to thank Anne Conlon, our managing editor, Rose Flynn DeMaio our business manager, our tireless volunteer, Pat O'Brien, our dinner journal volunteer, Jane Devanny, and our production manager, my sister Christina, who in the past two years has juggled working and raising twins. Said twins turned 2 yesterday, and are here tonight, along with my three children, the grandchildren my mother adored. And there are other young people here tonight, from grade schoolers up to graduate school, thanks to our many supporters who sponsored students to come to this event. You, young ones, are the future of the movement, and I hope that what you hear this night will stay with you, and that you will go out and continue to be great defenders of life as well.

I am grateful to Jack for MC-ing tonight, and I would also like to thank Charmaine Yost, president and CEO of Americans United for Life, for coming—even though AUL has their 40th anniversary gala next week. You will hear more about Dr. Yost from Jack Fowler in a little while.

In your gift bags tonight you will find our new issue; just out, as well as a new

collection of Paul Greenberg's columns, *Another Line Crossed*, edited by Anne Conlon. And we have a handsome dinner journal as well, with tributes to Paul and to my mother.

Heartfelt thanks to all of you who make it possible for us to publish the *Human Life Review*, now in its 37th year. We would not have made it this far without you, and we need you. And we need *more* of you! So one way you can really help us is to introduce new readers to the HLR—we are always ready to send you extra copies.

Finally, I would like to share some thoughts with you about what we celebrate here. We celebrate life, which is at once the most ordinary and the most extraordinary thing—all of us here were born, and all of us will die, of that we are sure. To me, birth is a joyful miracle; and death—well, death is a heart-rending mystery. But our human beginnings and endings are sacred. Our society has forgotten this—births are now a “choice,” and death something to be denied, hidden—or considered a failure of modern medicine.

My mother often typed out quotations she liked, and I found one on her desk a few weeks after she died, which is a much better way of looking at death: It is this, from the Indian poet Rabindranath Tagore, who won the Nobel Prize for literature in 1913: “Death is not extinguishing the light but putting out the lamp because the dawn has come.”

My mother was an extraordinary woman, a writer, poet, artist, and legendary letter-writer; she was a colleague and a friend. But what I will miss most about *her* is her most ordinary and yet extraordinary role, that of a mother, *my* mother. And that is also why we are here tonight, and why we do what we do: We stand for the sacredness of motherhood, and the defense of unborn life.

And now I will turn the mike over to the Rev. William Ross Blackburn, who will give our invocation.

Reverend W. Ross Blackburn:

Praise the LORD! Praise the LORD, O my soul! I will praise the LORD as long as I live; I will sing praises to my God while I have my being. Put not your trust in princes, in a son of man, in whom there is no salvation. When his breath departs, he returns to the earth; on that very day his plans perish. Blessed is he whose help is the God of Jacob, whose hope is in the LORD his God, who made heaven and earth, the sea, and all that is in them, who keeps faith for ever; who executes justice for the oppressed, who gives food to the hungry. The LORD sets the prisoners free; the LORD opens the eyes of the blind. The LORD lifts up those who are bowed down; the LORD loves the righteous. The LORD watches over the sojourners; he upholds the widow and the fatherless, but the way of the wicked he brings to ruin. The LORD will reign for ever, your God, O Zion, to all generations. Praise the LORD!

(Psalm 146)

Let us pray.

Heavenly Father,

As the giver of all good gifts, we have much to be thankful for. Thank you for the *Human Life Review*, especially for the life and vision of James and Faith McFadden, and for your blessing on their work that continues through Maria and those who serve alongside her. Thank you for Paul Greenberg, for many years of defending the fatherless. And thank you for the privilege of being able to work alongside them.

Remembering that this is your work, grant us strength, wisdom, courage, and perseverance, to be about the work you have given us to do, defending the fatherless and pleading for the widow. Teach us to love what you love, and to hate what you hate. And we look forward to the day when the earth will be filled with the knowledge of the glory of the LORD, when, from the least to the greatest, all will know you, and there will be no more tears, no more pain. Hasten that day, and grant us to be faithful in ours.

Thank you for this food and this evening, and for those who have prepared it all for us.

In Christ's name,

Amen

Jack Fowler:

I'm going to be introducing Charmaine Yoest. Let me tell you a little something: There was a beautiful, very complimentary profile of Charmaine recently in the *Christian Science Monitor*, and I just want to take this as a little jumping off point—not so much about Charmaine but about the media. And then I'll get back to you, Charmaine. (Laughter) This says—(now when Charmaine gets up here you'll see she's a wonderful, beautiful woman and that's just a fact): "It's harder to peg Yoest in the traditionally one-dimensional caricature of an anti-abortion advocate. She is not shrill, rigid, or somehow provincial in values or experience. She is not a fire-and-brimstone finger wagger, though faith is a centerpiece of her life."

You know, I have toiled in the vineyards of this movement since 1983 when I went to work for the *Human Life Review*, and even before that up in county Woodlawn in the Bronx, involved in local pro-life activities, and I have to tell you, I have rarely met a person that this describes, anywhere in my life (except when I ran Bingo) but certainly not in *this* movement, and that's no surprise to anyone here.

It's easy to beat up on the liberal media—please don't beat up on the conservative media, it's my job and my livelihood. But the pro-lifers I've met—the Sisters of Life, for example, you know, you've never met more beautiful, loving, wonderful, outgoing . . . and these are people who actually dedicate their whole lives to the issues that we care about. And except for one or two people in this

room (and I'll tell you who you are later), you're all nice too!

A night like this is an inspiring evening. To see good-natured, wonderful people who are involved to protect life, and to enhance life and motherhood and all these wonderful things. So when I was reading that in the profile, it really struck me. It is a caricature. And we all know that. But there is no more false caricature in America today than that of the characterization of the pro-lifers.

We who are involved—at many different levels—some people are picketing at clinics and praying, doing any number of things, helping find homes for pregnant unwed mothers—much of our movement, much of the fight involves legal matters [because of] *Roe v. Wade*. We'd still have abortions without *Roe v. Wade*, but they made it a heck of a lot easier in the penumbras that they found. And among the many ways we fight back—a *critical* way is legal. Now, I'm no legal scholar and I'm sure most people in this room are not. But thank God there are some legal scholars out there. People who make it their purpose in life to figure out ways to move the ball forward. To defend life as much as they can, even incrementally. It would be nice if we had a human life amendment pass . . . but life is three yards and a cloud of dust in many things. And things happen incrementally. In about 20 or 24 states right now, things are happening incrementally, positively, in our movement, where legal scholars, who work for Americans United for Life, have devised any number of strategies and laws on any number of the—we'll call them tangential—issues. But you know, those issues—when they pass and when they are approved—they save lives. Parental notification. It's not overturning *Roe v. Wade*. But it saves lives. And you know when we die and go to heaven, it's a good thing to go and say, "Yeah I know I did all those things, but I saved some lives, too," and that's what Americans United for Life does. It provides the basis where in various states, people are doing these simple but very important things.

I've known Charmaine about 8 years or so; she was involved in Family Research Council, and then she played a significant role in Mike Huckabee's presidential campaign a few years ago. But now she is leading this very important organization. And she is a unique, non-caricature-able leader, spokesman, for the pro-life movement. I'm sure she confounds the heck out of not only our enemies at NARAL and other organizations, but even the liberal media. She just doesn't fit nicely into their little lines. She's really a very important person in America today. Because very few issues are as important as the issues we deal in. It's my great pleasure and my great honor to introduce to you Charmaine Yoest, who is the president and the CEO of Americans United for Life. Charmaine.

Charmaine Yoest:

Thank you so much Jack—I'll have to confess to you that I'm very relieved, because Jack is sitting next to my daughter Sarah . . . and he spent a portion of



our dinner tonight pumping her for all of my deep dark secrets. So I didn't know quite how that was going to turn out. But I have to say that's a perfect preface for my remarks in terms of Jack's reflections on what an honor it is to be part of this movement, and the kind of people that we all get to interact with. I love the fact that I get to get up every morning and work on this issue. But sometimes it

is hard and sometimes it's wonderful too—when your job is to be in the trenches on an issue like the one that we all care so deeply about, the thing that keeps you going are the wonderful people that you work with. And that leads me to what a great, great and deep honor it is for me tonight to get to introduce Paul Greenberg, who is one of the most remarkable people in our movement. When Maria invited me to come and have the honor of introducing him, I jumped at the chance. With one singular hidden agenda, which was to have the opportunity to tell Mr. Greenberg what a hero he has been to me over the years. And there have been several times in my life where things that he has written have inspired and uplifted me through some dark times and kept me going when I needed that. My father is probably the founding member of the Paul Greenberg Fan Club. You know how you used to get little clippings in the mail; I now get a steady diet of Paul Greenberg e-mail-forwards from my father who is like “you have to be sure to read this. And I think you should write Mr. Greenberg a note and tell him what a great article this is.” And so I sent him an e-mail yesterday saying, “Hey guess who I get to meet tomorrow night!” So it's an honor to be able to tell you a little bit about why we are so fortunate to get to hear from Paul Greenberg tonight. The basic biography of Paul Greenberg is that he's the editorial-page editor of the *Arkansas Democrat Gazette*, but he is also the winner of the Pulitzer Prize. He won the Pulitzer Prize in 1969, but he was also a finalist in 1978 and 1986. And in 1987, he went on to win the H.L. Mencken Award. And that's just a sampling of the paragraphs-long listing of writing awards that he has earned over his career. But the breadth of his commentary—we are here tonight to honor his pro-life writings—but his commentary is so broad, that if you do a quick survey of just the things he's written in the last month, they include an editorial on foreign policy, on Occupy Wall Street, an analysis of Herman Cain's 9-9-9 proposal, and a reflection on the question of “What Makes a Great Teacher.” He is also the author of several books: one of them is called *No Surprises*—a collection of essays about Bill Clinton—I did not know, Paul, that you were the originator of the term “Slick Willie.” In that book is

a chapter that includes a self-description which I could not resist in sharing—I apologize. He writes: “I like old books, old films, old typefaces, the smell of coffee, the taste of Scotch whiskey, the origin and connotation of words, Mozart, Telemann, ‘Carmen,’ Patsy Cline, all the passions that are safely dead.”

Well, fortunately for us, Paul, you are still safely with us. Paul himself said an editorial is “the day’s news after somebody’s had a chance to think about it.” Well, think he does. There is a wonderful irony that I can’t wait to share with you. His Pulitzer Prize was awarded for a series of op-eds he wrote in 1968 that reflected on civil rights—what he describes as “the need for understanding, and a respect for the rights of others . . .” Isn’t that just a beautiful, beautiful irony for us tonight, because we stand in the great tradition of the abolitionists and the civil rights leaders—this is our great civil rights movement today. And that brings us to the reason that we are honoring him tonight. Paul Greenburg, throughout his career, has been an unflinching defender of life, and I’d like to conclude by reading for you one of the articles that I mentioned to you that I keep with me, that is a great inspiration to me. Ironically, this clipping was sent to me not by my father but by my uncle, so there is a vast family of fans of yours in the Krauss/Yoest household. After one particular political skirmish over abortion, Paul Greenberg wrote: “Even if nothing practical comes of standing up for principle, something will have been accomplished. Future generations will know that this whole culture of death, of which abortion has been so central a part, was not imposed on America without resistance. Call it bearing witness. Voices in the wilderness have been known to prove prophetic. Someday, some way they will be heard. Or maybe not. But at least they will have been raised. Or as Walker Percy [once wrote]: ‘To pro-abortionists: According to the opinion polls, it looks as if you may get your way. But you’re not going to have it both ways. You’re going to be told what you’re doing.’”

Ladies and gentlemen, please join me tonight in welcoming a great pro-life hero, Paul Greenberg.

Paul Greenberg:

Thank you. All of you. Life is just full of surprises. What’s an old boy from Shreveport, Louisiana, doing speaking at the Union League Club?

Our newspaper—the Arkansas *Democrat-Gazette*—has got to be one of the few dailies in the country, if not the only one, that devotes a full editorial page every January 19th to celebrating the birth



of R.E. Lee, General, which is how he signed his famous General Order No. 9, his Farewell Address finally ending the South's Passion. But here tonight, amid all these portraits of devout Unionists, I feel as if I am among more than friends. Some of you I have read after for years, others I have depended on for years—without ever having met you before this night. Every time a copy of the *Human Life Review* arrives in its plain brown wrapper, like a division of fresh reinforcements arriving at the front, I am grateful again for Maria McFadden Maffucci and her selfless corps of volunteers; her editors like Anne Conlon, her helpers, her subscribers, Grazi, signora!

THANK YOU, all of you, at the *Review*. Praise the Lord and keep passin' the ammunition.

And Charmaine Yoest—and her people at Americans United for Life—those folks know their material, and keep up with every latest development. No wonder AUL has been described as the most influential group on Capitol Hill. Their numbers may be few, but I know their impact is huge, and not just on Capitol Hill. They've demonstrated that, occasionally, even Washington will listen to the voice of reason. Thank you, Charmaine Yoest.

And what a pleasure to finally meet Jack Fowler, through whom I got the rare privilege of actually corresponding with the legendary—if more than a bit reclusive—Florence King about doing a collection of her book reviews, most of which were far superior to the books she was reviewing. She's a lady who tends to keep her own counsel, which is understandable. Hers is so much better than most people's.

Each of us followed his own path to meet here tonight. Some came to the cause early; they were present at the creation of the *Human Life Review* in 1975. Others, like me, the slow learners, arrived late.

When *Roe v. Wade* was first pronounced from on high, I welcomed it. As a young editorial writer in Pine Bluff, Ark., I believed the court's assurances that its ruling was not blanket permission for abortion, but a carefully crafted, limited decision applicable only in rare cases. Even Mr. Justice Blackmun, who wrote the majority opinion, told us that *Roe* did not grant blanket license for the killing of the innocents. He seems to have managed to fool even himself. He certainly fooled me. I swallowed the line whole, and regurgitated it regularly in learned editorials. For years. Though it took more and more effort to rationalize it as the years passed. It can be a strain, sophistry. But editorial writers can acquire a certain affinity for it.

The right to life need not be fully respected from conception, I earnestly explained. It grows with each stage of fetal development until a full human being is formed. (As if any of us even now are still not developing as human beings.) I went into all this in an extended debate in the columns of the Pine Bluff (Ark.) *Commercial*

with a fiery young Baptist minister in town named Mike Huckabee. I kept trying to tell the Reverend Huckabee that life is one thing, personhood quite another. He wouldn't buy it. Though it's an engaging argument. For a fatal while. As if those of us who would confer personhood on others couldn't just as easily revoke it. Over the long course of history, whenever we have decided that some category of human beings is less than fully human, and so their rights need not be fully respected, even their right to life, terrible consequences have followed. That we in this time in this country have grown used to the consequences of *Roe*, that we now pass over them as part of the ordinary backdrop of our lives, does not make those consequences any less terrible. But only more chilling. Call it the banality of evil. It is the oldest of temptations: Eat of the fruit of this tree and you shall be as gods, having the knowledge of good and evil, deciding who shall live and who shall die. Yes, I'd been taught by Mary Warters in her biology and genetics classes at Centenary College in Shreveport that human life was one unbroken continuity from life to death, and the code to its development was present from its very first, microscopic origin. From its conception. But I wanted to believe human rights developed differently, especially the right to life. As if we had not all been endowed with certain unalienable rights. My reasons were compassionate. Who would not want to spare mothers the burden of carrying the deformed? Why not just allow physicians to eliminate the deformity? End of Problem.

I hadn't yet come across Flannery O'Connor's warning that tenderness leads to the gas chambers. Then . . . one day . . . I don't know exactly when . . . Something Happened.

It always does. Eventually. It just takes longer for some of us to catch on. But I couldn't help noticing after a while that the number of abortions in this country had begun to mount year after year—into the millions. Perfectly healthy babies were being aborted for socio-economic reasons. And among ethnic groups, the highest proportions of abortions were being performed on black women. (Last I checked, something like 37 percent of American abortions were being done on African-American women, though they make up less than 13 percent of the U.S. population.) Eugenics was showing its true face again. And it isn't pretty. No matter how hard a later generation has tried to clean up Margaret Sanger's image as the sainted founder of Planned Parenthood. The truth has a way of outing. In this case, in her own self-incriminating words. Abortion was also touted as a preventive for poverty. All you had to do was eliminate the poor. Even before they were born. They were, in the phrase of the advanced, Darwinian thinkers of the last century, surplus population. With a little verbal manipulation, any crime can be rationalized, even promoted. Verbiage precedes homicide. First dehumanize the other, then anything is permitted. The trick is to speak of fetuses, not unborn children. So long as the victims are a faceless abstraction, anything can be done to

them. Vocabulary remains the decisive turning point. Like the Little Round Top, of every political engagement.

Just don't look too closely at those sonograms. The way I studied the first pictures of my first grandson. Astounding. We are indeed strangely and wonderfully made.

By now the toll has reached some 50 million of those wondrous creations aborted in America since 1973. That's not some abstract theory or philosophical argument. It's a fact, and facts are stubborn things. Some even carry their own imperatives with them. And can be ignored only so long. So I changed my mind, and changed sides.

There is something about the miracle that is life, and the moral imperative to respect that dignity . . . that in the end will not be denied. Whether the issue is civil rights in the middle years of the 20th Century or abortion and euthanasia today, a still small voice keeps asking: Whose side are you on? That of life or death? And commands: *Uvacharta b'chayim*. Choose Life. Not just at the beginning but at the end. For beware: You start off opposing abortion and pretty soon you'll be expressing doubts about infanticide and euthanasia, too. One thing leads to another. One realization, one moment of connection, one little detail in a news story, and the light will come on. Be careful. That's all it may take.

When Terri Schiavo—that was her name, remember?—when she was denied food and water by order of the court, it took her 13 long, slow, agonizing days to die. Of dehydration. Thirteen days. It would have been kinder to shoot her. But that would have been against the law, and we all know the law is just. Funny how, long after you've forgotten everything else about some big story at the time, one detail will stick in your mind. Have you ever sat by the bedside of a dying patient—a father or mother, perhaps, or anyone you loved—and given the patient a little chipped ice? And seen, or at least imagined, the relief and inaudible thank you in the drug-dimmed eyes? After all the futile treatments and the succession of helpless doctors, when grief has come long before death, you sit there with a little cracked ice for her parched mouth and throat, and think . . . Well, dammit, at least I can do this one little thing. At least I'm not totally useless. However much or however little the ice might help the patient, it certainly helps the caregiver. You realize why people go into nursing. Can there be any greater satisfaction than this?

But when the law decreed that one Terri Schiavo was to be given no food or water, it meant no food or water. In any form. That's what the court, the sheriff's deputies at the hospital, the whole clanking machinery of the law was there for—to see that the severe decree was carried out. That is what we have come to in this country. That's what the new science of Bioethics at the dawn of the 21st Century had come down to in the end: No cracked ice for Terri Schiavo. The doctors and nurses who

had cared for her for years were now forbidden to give her even a single chip.

Of all that whole long, confused cruel farrago of law and politics and what all else known as the Schiavo Affair, that's the detail that has stayed with me. Long after I've forgotten even what she looked like. This is the point we have reached in our advanced era, or been reduced to. I suspect most Americans didn't want to think about it all after a while, let alone talk about it. We wanted to Move On. It's been said before: The evils that befall the world are not nearly so often the product of bad people as they are the result of good people who remain silent when they know they should speak out. Well, tonight we're speaking out, and we're not going away. All you people aren't supposed to be here, you know. "There's nothing to see here, Move along." Didn't you know this issue was settled years ago, decades ago? In a definitive decision of the Supreme Court of the United States. It is Settled Law. So we are told every time we express a doubt about this pervasive culture of death. Haven't we heard of *Roe v. Wade*? Don't we know we're fighting for a lost cause? Abortion on demand is the law of the land, and always will be. So we're told. Just as a different generation of Americans was told that *Dred Scott v. Sandford* was the law of the land. The slavery question had been settled once and for all. All the states were now going to be slave states. When it came to having any rights, Negro slaves were but chattel—property like any other. Case closed. To paraphrase my favorite line from a Ring Lardner short story: Shut up, they explained.

Those old-time abolitionists and Republicans and Free-Soil Democrats and Antislavery Whigs—whose portraits now adorn the walls of this hall here at the Union League club—were a motley crew, as variegated as we are tonight. They, too, were fighting for a supposedly hopeless cause, that of freedom. But they understood something the sophisticates of their time didn't: No good cause is forever lost. Because no cause is forever won. That's the nature of politics. Of ideas. Of life.

Pro-lifers? We're supposed to have vanished years ago, you and I. We're all just antiques, holdovers from the past, cultural artifacts, living fossils. That's what Arnold J. Toynbee, the great pseudo-historian of the past century, called us Jews. Just the remains of an earlier day, of an archaic way of thinking that once held life sacred. Why, we're all just a collection of dry bones. Dry bones? These bones live. Reactionaries? You bet we are. We have so many horrors to react against.

Maybe once in a generation a great issue arises—a watershed issue. One that can no longer be put off, compromised, blurred. One that will no longer be denied. But returns again and again. With the obdurate force of a moral conviction. Slavery was such an issue. Civil rights was such an issue, and it led to a Second Reconstruction. If the distinguished jurists of the U.S. Supreme Court thought they could end this discussion, they couldn't. We have only begun to fight; to

Speak, to witness, and we will be heard. Will we prevail some day? I have no idea. But allow me to share a secret: It doesn't matter. Win or lose this case or that case, this election or that election, it doesn't matter.

Whittaker Chambers, the long hard Cold War was just beginning, was convinced he was leaving the winning side for the losing side of history. As an old party man, he knew the iron Laws of History. Resistance was useless. The Party would win in the end. Big Brother would triumph. Forever and ever. It was inevitable. But it didn't matter. He would witness.

In 1982, another witness, Walker Percy, M.D. and writer, wrote an imperishable little essay, "A View of Abortion, With Something to Offend Everybody," a



title that is irresistible to any editorial writer worth his salt. Dr. Percy ended his essay with a few words addressed to the opposition: "To pro-abortionists: According to the opinion polls, it looks as if you may get your way. But you're not going to have it both ways. You're going to be told what you're doing." And that's what matters. To bear witness.

We've become very good at preaching to the converted, we pro-lifers. So good at it we may have forgotten what Martin Luther King Jr. tried to teach us—that we have a hidden ally in the hearts of our opponents. And we must never cease appealing to it. They are not our enemies, but our allies in waiting. They have consciences. They'll come around. I did.

In another publication, the Book of Daniel, it is recorded that the Hebrew children—Meshach, Shadrach and Abednego—were called before the high king of Babylon, the great and mighty Nebuchadnezzar, and told to bow down before the sacred idol he had made—or they would be flung into the fiery furnace. And "they made him an answer: If it be so, our god whom we served is able to deliver us from the burning fiery furnace, and he will deliver us out of thy hand, O King. "But if not, be it known unto thee, O King, that we will not serve thy gods, nor worship the golden image which thou has set up."

Let us trust that the cause of life will yet prevail. BUT IF NOT . . . we will not bow down before their idol, nor sacrifice our children to it. We will witness, and not grow faint. We will be strong and grow stronger. For we will strengthen one another. As on this night.

L'chaim! To Life!

GREAT DEFENDER OF LIFE DINNER



*The Library, adjacent to the Lincoln Room,
Union League Club*



*Charmaine Yoest with
Paul Greenberg*



*Sarah and Charmaine Yoest
with Maria Maffucci*



*Grace and Anna Maffucci holding
Sophia Angelopoulos*



Bobby Schindler and Alice Lemos



*Fr. Rocco C. Danzi, S.J., with students
from St. Peter's College Right to Life*



Pat, Kate, and Mary Louise Monaghan



Msgr. John O'Donnell with Neal Sullivan



*Rachael Angelopoulos and Christina
McFadden Angelopoulos*



*David and Ruth Bernstein with
Brooke Molloy*



David and Hope Mills

APPENDIX A

[Kathryn Jean Lopez is editor-at-large of National Review Online and a nationally syndicated columnist. The following reminiscence was published in the National Catholic Register September 7, 2011, and is reprinted with permission.]

Faith Abbott McFadden's Life of Faith

Kathryn Jean Lopez

NEW YORK—Family, friends and pro-life activists gathered on the first Friday of September in gratitude for the life of Faith Abbott McFadden.

McFadden, 80, died Aug. 30 after a long and recurring battle with cancer. She was the widow of James P. McFadden, who founded the *Human Life Review* in 1975 and was its editor for many years. Mrs. McFadden carried on her husband's work, serving as senior editor of the *Review* and editing a column in a bulletin he'd started, *catholic eye*.

The McFaddens married in 1959, and the couple had five children, one of whom, Robert, died after his own fight with cancer. A daughter, Maria Maffucci, is editor of the *Human Life Review*.

Faith McFadden is remembered on the *Human Life Review*'s website as "beloved matriarch" of the Human Life Foundation, which publishes the journal dedicated to both eradicating abortion and documenting these dark years in our nation's history.

"Matriarch" is the most apt description. She was really the journal's lifeblood—a contributing writer, constant presence, inspiration and motivation. McFadden, who stuck with the typewriter for herself until the end, was a calming presence, the type of person who, plenty engaged herself, made you reflect on what exactly it was you were busy with. Rather than hit the refresh button, like so many of us do all too often, she was herself refreshing, by her love for life and for eternity, reminding us of our purpose.

During an extraordinary form requiem Mass at St. Agnes Church in Manhattan, right down the block from the flurry of Grand Central Station, Father George Rutler remembered Faith, a friend of his, as the "mother of sons and daughters who loved her who loved them, and who spread that maternal bond to many others whom she instructed in the ways of God by writing and by the example of her life, which is the most eloquent literature written on the heart."

He recalled how, upon her husband's death, she unflinchingly took up the work of the *Human Life Review*. "And now," Father Rutler said, "we are left with the impossible task of counting how many of the least little ones, even unborn lives, she defended by her witness to the sacredness of every human life. That witness engaged the most important struggle of our age, defending life in a culture of death."

Father Rutler, pastor of the Church of Our Savior in Manhattan and an author himself (and EWTN host), compared McFadden's commitment as a writer, editor, activist and model for building a culture of life in response to our culture of death to the work of another emancipation in another century.

“In 1862, Abraham Lincoln received Harriet Beecher Stowe in the White House,” Father Rutler recalled. “The president looked down from his height of six feet and four inches at the author of *Uncle Tom’s Cabin*, who was four feet tall. The account says that he feigned surprise and then said, ‘So, you are the little woman who wrote the book that started this great war.’ Faith Abbott McFadden, wife, mother, grandmother, author and friend, did not start any war, but she fought well in the fierce contest between the truth of life and all the lies against it.”

McFadden had a penchant for puns, which she would whip out devoutly at every annual *Human Life Review* fundraising dinner—an “annual celebration of those for whom there are no maybes . . . about saving babies,” as she would rhyme.

Remembering this, Father Rutler continued: “She made it seem easy by ready wit, not disdaining even that most disdained form of humor, the pun. Wise men have believed that there are even divine puns which we pass off as coincidences but which are acts of Providence. To play with words is tribute to the Living Word who plays in the world he made. Such conscious humor is not the vaudeville bravado of those who ‘laugh so as not to cry.’ It is a descant on love, not sentimentality, which gives hope, not vague optimism, and which, in turn, is founded on the first virtuous gift of faith. Faith was named for faith in baptism, and the way she lived made real that precise definition given by God’s lively oracle: ‘Faith is the realization of what is hoped for and evidence of things not seen.’”

“Faith,” he continued. “It is by the lives we live that what we hope for becomes a fact and what is invisible becomes clear.”

Faithful Mother

Faith McFadden, a convert to Catholicism from the “Moral Re-Armament” movement that began in the 1930s, wrote about her conversion in *Acts of Faith: A Memoir*, which was published by Ignatius Press in 1994.

Recalling her baptismal instruction and apostolic struggles, she wrote: “Being a saint means saving your soul, which sounds selfish and easy; but it isn’t easy, and it’s not a private thing, either, because of that mysterious, imperceptible but definite interrelation between your own life and the lives of many others you know and do not know. If you are a friend of God, you will inevitably make other friends for God—just by *being*.”

By which she meant: “It is the saints’ *presence* that is prophetic. As the saint lived his daily life, he may have felt that he was somehow part of God’s overall plan; but he knew that it was not up to him to interpret or even to understand this plan.”

This spring, her daughter Maria Maffucci, the current editor of the *Human Life Review*, paid tribute to Faith as Maria herself was being honored for her pro-life witness by Good Counsel Homes.

“When my kids ask me what I wanted to be when I grew up,” Maria said at the annual New York Ball for Life, “I tell them that I wanted most of all to be a mom; and so, I have achieved my dreams.” Pointing to the one who demonstrated the joy

APPENDIX A

of motherhood, she talked about her gratitude for having hers a little longer: “All my family is especially blessed this year—exactly five months ago today, on Dec. 6, my mother, Faith, underwent risky and arduous surgery. Her children were huddled in the waiting room at Lenox Hill Hospital, watching anxiously for the surgeon to come out and give us updates. The decision to have the surgery was not an easy one—my siblings and I didn’t want to pressure her to take extraordinary means to save her life if it would involve so much risk and potentially extraordinary suffering—and yet, she knew, and we had to admit, that we wanted her to do all she could.

“My brother Patrick put it best: He wanted her grandchildren—my three and my sister Christina’s enchanting twin girls . . . to have a chance to spend more time with and really know their granny. We kids just wanted our mom—that never really goes away. And so, my mom chose life. After successful surgery and a long recovery, she is doing amazingly well and is here tonight.”

In his homily, Father Rutler recalled: “All faithful mothers bring human life closer to the mystery of eternal life by nurturing it first in the flesh and then in the Spirit. There never was a true mother who was not a good teacher, and the Church in her prophetic role teaches her children mysteries which by their very nature are beyond our invention.”

And so Faith did and continues to through the writing and human legacy she left us.

APPENDIX B

[Fred Barnes is executive editor of the *Weekly Standard*. This essay originally appeared in the November 7, 2011, issue of the magazine and is reprinted with permission.]

Hidden Persuaders

Fred Barnes

Opponents of abortion are rarely interviewed on television these days. “It’s much harder to get on TV than it used to be,” says Charmaine Yoest, who heads Americans United for Life. Bookers of guests for news shows tell her, “We don’t want to talk about abortion. We’re tired of it.”

Perhaps the mainstream media are simply incapable of covering more than one social issue at a time. For the moment, the conflict over gay marriage and gays in the military is monopolizing media coverage, TV and print alike. Abortion is barely an afterthought.

There’s an upside to this for the pro-life movement, a benefit of benign neglect. Foes of gay rights are now seen by the press as fighting the bad war, roughly analogous to Vietnam. Pro-lifers are waging the good war, like World War II. “You get much less grief fighting against abortion than you do fighting to preserve traditional marriage,” says Marjorie Dannenfelser, president of the Susan B. Anthony List.

If only the media knew. They have missed the most important breakthrough in the struggle over abortion in years: the resurgence of the pro-life crusade. The press elite was beaten on the story by publications such as *Christianity Today* (“The New Pro-Life Surge”) and *Baptist Press* (“5 Reasons the Pro-Life Movement is Winning”).

That the pro-life movement is bigger is a given. It’s also younger, increasingly entrepreneurial, more strategic in its thinking, better organized, tougher in dealing with allies and enemies alike, almost wildly ambitious, and more relentless than ever.

All that is dwarfed by an even bigger change. Pro-lifers have captured the high moral ground, chiefly thanks to advances in the quality of sonograms. Once fuzzy, sonograms now provide a high-resolution picture of the unborn child in the womb. Fetuses have become babies.

Abortion advocates were among the first to understand how this would alter the debate. Two pro-choice leaders, Kate Michelman and Frances Kissling, acknowledged three years ago that “antiabortionists” had gained a significant advantage. Supporters of abortion, they wrote in the *Los Angeles Times*, “have had a hard time dealing with the increased visibility of the fetus.” To “regain the moral high ground,” they must deal with “a world that is radically changed from 1973,” when the *Roe v. Wade* decision legalized abortion nationwide.

Pro-life groups, unlike advocates of easy access to abortion, have proved adept in accommodating to this new world. They’ve begun piling up successes. In 2011 alone, 24 states have enacted 52 new restrictions on abortion. Five now require an ultrasound before an abortion, two insisting that the screen be viewable by the

mother. Four bar abortions after the baby is able to feel pain (at approximately 20 weeks). Eight have opted out of Obamacare. Five ban abortions by webcam (in which a doctor, not in person but videoconferencing with the mother, prescribes pills to induce abortion). Six trimmed or eliminated funds for Planned Parenthood, the nation's largest abortion provider. Texas led with a \$64 million cut.

The wave of state action shouldn't be all that surprising. Republicans gained control of 26 legislatures in the 2010 election. Once advised to drop the abortion issue or suffer a certain decline, the GOP is now the nation's pro-life party—and isn't declining. In Congress, the House has passed two pro-life bills this year, one outlawing abortion subsidies in Obamacare, the other imposing a blanket ban on taxpayer-funded abortions. Both measures were deep-sixed in the Democratic-controlled Senate.

Three pro-life trends have spiked in 2011. The first is the rise in opposition to abortion among young people. The under-30 cohort was the most pro-choice in the 1970s, second most in the 1980s and 1990s. Now they're "markedly less pro-choice" than any other age group, scholars Clyde Wilcox and Patrick Carr have written. "Clearly, something is distinctive about the abortion attitudes of the Millennial Generation of Americans."

Indeed there is. Millennials haven't grown more religious, politically conservative, or queasy about gay rights. Nor do they go out of their way to vote for pro-life candidates. But they tend to see abortion as a human rights violation. Thus their resistance to abortion is gradually increasing.

You can see a manifestation of this generational shift at the March on Washington each January 22, the anniversary of the *Roe v. Wade* ruling. For years, the marchers were geezers, initially Catholics, then aging Protestants too. In the past few years, the march has been dominated by teenagers and people in their 20s, often carrying infants.

The second trend is the explosive growth of refuges for pregnant but unmarried women. These safe houses go by a multitude of names: Crisis Pregnancy Center, Pregnancy Resource Center, Pregnancy Health Center, Pregnancy Care Center, or simply Pregnancy Center. In Northern Virginia, Jim Wright, formerly in the commercial real estate business, calls the center he started Birthmothers.

They all do the same thing, nurturing single women during their pregnancy and recommending against abortion. The results are one-sided: 80 to 90 percent of the women who have sonograms at pregnancy centers choose to have their baby.

Today there are nearly three times as many of these centers (2,300) as abortion facilities (800 to 850). One reason for the disparity is that women stay for months in pro-life centers, but only briefly in abortion clinics. The Care Net network reflects the growth: 550 centers in 1999, 1,130 today.

Trend number three: the rejuvenation of old pro-life groups and the sprouting of new ones. Kristan Hawkins was a political appointee at the Department of Health and Human Services in 2006 when she responded to an ad for the newly created job of executive director of Students for Life. The group had been around for two

decades, operating with a minimal staff and fewer than 300 chapters. Now Students for Life has 637 chapters, a full-time staff of 10, and a dozen regional coordinators. "We're almost everywhere," assistant director Tina Whittington says.

Students for Life has branched out. There are Black Students for Life, Medical Students for Life, Business Students for Life, and so on. The goal for its field coordinators is to start 10 new pro-life groups per semester and 20 a year. Students for Life has been revitalized.

David Bereit was a pharmaceutical sales rep when Planned Parenthood built a clinic in his hometown of Bryan/College Station, Texas. He organized a protest. That was just the beginning. In 2004, he created 40 Days for Life, which promotes prayer vigils outside abortion-clinics. He began with a single vigil in downtown College Station. Bereit says the number of abortions in his county fell 28 percent that year. By his count, his group has recruited 400,000 people who participate in hundreds of vigils in nearly 400 cities.

When he started 40 Days, "a lot of wind had left the sails of the pro-life groups," he told me. "Now I see enthusiasm and hope I haven't seen in years. The tide is turning against Planned Parenthood and abortion providers."

In the case of Planned Parenthood (PP), that's true. Killing the federal government's subsidy of PP has long been a top priority for pro-life groups. In 2009, there were 1.2 million abortions in the United States. PP was responsible for 332,278 of them. About one-third of PP's \$1 billion budget comes from government grants and contracts.

But until Lila Rose came along, PP had proved to be an elusive target. The group said that none of the federal money subsidized abortions, an implausible claim. No one in the pro-life movement believes it. Money, after all, is fungible.

Rose, 23, is the newest pro-life star, the exception to the rule that the abortion issue attracts no media attention. (Since Faye Wattleton left PP in 1992, the abortion side has had no stars.) One of eight children of a Catholic family in San Jose, California, Rose became an antiabortion activist at age 14 and continued as a student at UCLA. At 15, she formed Live Action, which produces hidden camera videos exposing PP's willingness to offer abortions to underage girls while avoiding their obligation to report cases where the pregnancies came from statutory rape.

"Lila created the moment," Dannenfelser says. Rose did so by posing as a teenage prostitute impregnated by her much older pimp at a PP clinic in New Jersey. The clinic's manager explained how she could get an abortion by lying about her age. The video became a sensation on the Internet. More important, it was viewed by Republican representative Cliff Stearns of Florida, chairman of a House subcommittee on oversight and investigations.

Stearns was appalled at PP's "manipulating this young 15-year-old girl to get an abortion." He was also impressed by a report on PP by Americans United for Life (AUL). It cited eight areas of "scandal and abuse," including misuse of federal funds, "failure to report criminal child sexual abuse," and aiding people involved in prostitution and sexual trafficking.

On September 15, Stearns launched the first-ever congressional probe of Planned Parenthood. In a letter to Cecile Richards, the embattled PP president, he said his panel has “questions about the policies in place and actions undertaken” by PP and its affiliates, the handling of federal funds, and compliance with “restrictions on the funding of abortion.” He asked for an extensive collection of audits and documents.

Though Democrats were furious at Stearns, he’s treated the PP issue cautiously. He sought the approval of Fred Upton of Michigan, the energy and commerce committee chairman, before sending the letter. And public hearings will be held only if House speaker John Boehner agrees, Stearns told me.

As you might expect, Rose is excited by the impact of her incriminating videos at PP clinics. “You cannot argue with the videos,” she says. “They speak the truth, and they are indisputable.” Young people “are getting the truth about abortion in ways they couldn’t before. This is a movement that is just beginning and can’t be stopped.”

Look across the alley from the fifth floor office of the Susan B. Anthony List (SBA) in downtown Washington and you’ll see two placards. They’ve been posted on the window of the office of a labor union in the adjacent building—for the SBA crowd to see. One says “Stop the War on Women,” the other, “Don’t Take Away My Cancer Screenings.”

These are the response of Planned Parenthood and its allies to attacks on what PP and the abortion industry actually do. Abortion? Forget it. (PP says it mostly does medical tests, and abortions are a sideline.) The “A” word is almost never uttered now by anyone connected to the abortion industry, which claims merely to support “a woman’s right to choose.” Choose what? They don’t say. Their opponents aren’t “pro-lifers,” but anyone who is “anti-choice.”

The language gymnastics and euphemisms reflect the forlorn condition of the pro-choice flock. They’re worn out. Many are in despair. Nancy Keenan, president of NARAL Pro-Choice America, told *Newsweek* of her anguish as she watched last year’s March on Washington. “I just thought, my gosh, they are so young,” she said. “There are so many of them, and they are so young.” Today, zeal and confidence and perseverance in the abortion battle are all on the antiabortion side. “There are more pro-lifers now, and they’re more determined,” says Carol Tobias, president of National Right to Life.

The abortion lobby has found its own target, the pregnancy centers. The aim is to compel centers to post large signs disclosing they don’t offer abortions or make referrals to places like PP that do. The assumption behind the effort is that many women go to the centers for an abortion, then get talked out of it.

This offensive has gotten off to a rocky start, partly because lawyers for the centers have mostly succeeded in blocking the posting requirement. Austin, Texas, is one of the few jurisdictions with a mandate in effect. In the state of Washington, abortion supporters sought an extreme version of a posting law. It would require the no-abortions-here message to be posted in at least five languages. “It didn’t pass, but it was a battle,” says Jeanneane Maxon of Care Net.

The pro-choicers also have pursued a quibble with the Susan B. Anthony List. They argue that Anthony, the leading 19th-century suffragette, was not opposed to abortion and that the SBA “cherry picked” a few quotes as evidence she was. True, Anthony concentrated on winning the right to vote for women. But SBA cites this forthright statement in an Anthony editorial:

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.

Challenging SBA and pregnancy centers shows a bit of resourcefulness by pro-choicers, but those are essentially rear guard actions. They can’t match the right-to-life movement’s imagination and entrepreneurship. Michael New, a soft-spoken political science professor at the University of Michigan-Dearborn, is a leading pro-life thinker. He has studied the effect of state-enacted restrictions on abortion over the past decade and found they reduce the number of abortions. New (Dartmouth B.A., Stanford Ph.D.) hasn’t promoted his evidence through normal pro-life channels. Instead, he followed academic practice and submitted them for peer review.

That took three years, plus another year before his conclusions were published. He tested the impact of three restrictions: no public funding, parental involvement, and informed consent. He determined that all three reduced the abortion rate, particularly parental participation in the case of a minor. His article, “Analyzing the Effect of Anti-Abortion U.S. State Legislation in the Post-Casey Era,” was published in the March issue of *State Politics and Policy Quarterly*.

New’s article is hardly a page-turner. But his findings have been known to state legislators for several years, encouraging them to pursue limitations on abortion. He’s now studying whether involvement of two parents is more effective than one and which pro-life restrictions are the most effective. As unlikely as it sounds, New has become a star of the movement. The abortion side lacks a Michael New.

Fetal pain is another issue that has invigorated the pro-life movement in recent years. Improved ultrasound revealed to doctors that at around 20 weeks an unborn child reacts visibly to pain. “All the neurological equipment is present at 20 weeks,” according to Teresa Collett, a professor at the University of St. Thomas Law School in Minnesota and an expert on fetal pain. Fetal pain was recognized, Collett says, as an “independent basis for a state to protect the life of a child.” In Nebraska last year, the first law was passed barring abortions after an unborn baby begins to sense pain. Mary Balch of National Right to Life (NRL) played a key role in drafting the Nebraska statute. Fetal pain laws won’t have a dramatic lifesaving effect. Still, they’re significant. The incremental strategy pursued by most pro-life groups is based on the idea that antiabortion laws, even if narrow, build on one another. Fetal pain laws focus on the suffering of the baby, an asset in opposing a woman’s right to choose. And who in the pro-choice lobby is eager to gainsay the pain experienced by an unborn child? Dispute it and you’ll come across as cruel.

The ultimate goal of pro-lifers remains what it's always been: overturning *Roe v. Wade*. They're reconciled to jumping through as many hoops as necessary to get there. Americans United for Life specializes in creating model antiabortion laws for states. It also has a strategic plan for "reversing *Roe*" or "rendering it obsolete." It starts with "saving babies now" and preparing states for the "day after *Roe*."

AUL isn't kidding about vitiating *Roe* without overturning it. The key is to burden the abortion industry with intrusive regulations. This amounts to using liberal means to produce a conservative result. "When you regulate something, you get less of it," a pro-life leader reminds me. So precise conditions at abortion clinics would be imposed, as Virginia did this year. New requirements for safety, bookkeeping, record-keeping, and reporting would be applied. That's not all. More laws limiting abortions would be needed, as would cultural efforts to shrink the demand for abortions.

The informal division of labor among pro-life groups leaves SBA with the conventional mission of electing candidates who are pro-life to Congress and defeating those who aren't. The group had a sterling record in 2010, unseating 15 of the 20 Democrats who claimed to oppose abortion but voted for Obamacare. Dannenfelser intends to raise the bar on what's expected from candidates SBA supports: no more toleration of candidates who are "rhetorically pro-life but not operationally pro-life."

In the tradition of its namesake, SBA promises in its campaign for next year to "defend the wave of pro-life women elected in 2010, add to their ranks, and defeat pro-abortion women running for office." By the way, four of the most enterprising and energetic pro-life groups—SBA, AUL, NRL, Live Action—are headed by women.

The big question today among pro-lifers is whether the movement has reached a turning point, with victory over abortion now inevitable. I'm dubious. AUL's Yoest isn't so sure either. She says pro-lifers have yet to win the argument that abortion, rather than empowering women, is harmful to them. New says America's permissive culture is a huge impediment to closing off any right to an abortion. And *Roe v. Wade* stands erect nearly 39 years after it was decided. Who can be sure of its fate?

But real gains have been achieved by the pro-life movement and many, many lives have been saved—in 2011 alone. And bigger gains are bound to come as more babies are spared the abortionist's knife.

APPENDIX C

[Arland K. Nichols is the National Director of HLI America, an educational initiative of Human Life International. The following was first published on publicdiscourse.com and is reprinted with permission. Copyright 2011 the Witherspoon Institute. All rights reserved.]

Promised Objectivity: Americans Receive Planned Parenthood Ideology

Arland K. Nichols

The HHS mandate on contraception is based on insufficient research and betrays the committee's deep pro-contraceptive bias.

The decision by the Department of Health and Human Services (HHS) to mandate coverage of contraception and sterilization is troubling. From unjust discrimination against those who find sterilization or contraception to be morally offensive, to the increasing health costs that this Institute of Medicine (IOM) recommendation will bring, the ramifications of the HHS guideline are far-reaching. Perhaps most startling, however, is the way that the HHS, along with the IOM, has blatantly misled the nation. With the support of inadequate research, these organizations have foisted a policy upon the country that has little to do with protecting the health of the population. Instead, by gathering a committee of aggressively pro-choice advocates, and by hiding behind a shroud of purported scientific objectivity, they have pushed a "health" program that actually furthers a radical political agenda. Such partisanship is not shocking, of course, and would warrant little comment if the effects were less universal or severe.

The center of the controversy surrounding the report lies in the committee's Recommendation 5.5, which reads: "Women will have access to all Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling." Supporters of Recommendation 5.5 have repeatedly claimed that its inclusion was based upon the compelling evidence of science and medicine "that greater use of contraception within the population produces lower unintended pregnancy and abortion rates nationally."

The Guttmacher Institute, for example, claimed that the recommendations were "developed after an exhaustive review of the scientific evidence." Kathleen Sebelius, Secretary of HHS, argued that "these historic guidelines are based on science and existing literature, and will help ensure women get the preventive health benefits they need." Such bald appeals to scientific support highlight the brazenness of the committee's activism. In using this cover, the committee has attempted peremptorily to label its opponents as anti-scientific.

But when we examine the committee's methodology, especially as it touches upon Recommendation 5.5, there is ample evidence that the members of the IOM committee did not, in fact, consider the findings objectively. Indeed, we find that the members were ideologically committed to their outcome, and that Recommendation 5.5 is a skewed representation of the relevant science. Regardless of one's particular stance on the issues at stake in this official mandate, it is a matter of great concern

when those who are charged with the protection of our public health neglect that trust in preference to political activism.

The professional credentials of the Preventive Services Committee members are impeccable, but also ideological. Prior to being appointed to the committee, each member held prestigious positions in universities or in other government committees, and they have published over a thousand articles and scientific studies. It would be irresponsible to dismiss their findings with claims of incompetence. The fact that most of the members of the committee have been actively involved in abortion and contraception advocacy groups, however, did not go unnoticed by critics of the committee's decision. In a letter of July 27, 2011, Michael O'Dea, executive director of Christus Medicus Foundation, wrote to Sebelius, "It is clear that the Institute of Medicine has an agenda. Virtually all of the Women's Preventive Services committee members are affiliated in some way with Planned Parenthood." Further research by HLI America has substantiated O'Dea's concern, revealing that many of the committee members have strong relationships with both Planned Parenthood and NARAL Pro-Choice, and have actively supported pro-abortion candidates for public office.

The vast majority of the committee members demonstrate a more than casual commitment to the goals of the abortion lobby. In fact, according to information available from the public record, these committee members have donated a total of \$116,500 to pro-choice organizations and candidates. Public records show that not one of the fifteen committee members has financially supported a pro-life political candidate. This committee was purportedly assembled for the purpose of providing outside, objective, and expert advice to the HHS policymakers. Whatever one thinks of the relevant issues, one would be hard-pressed to argue that this IOM committee is politically nonpartisan.

Of course the political involvement of the members does not necessarily invalidate the findings of the IOM. Nor does support for a pro-choice candidate necessarily indicate an unalloyed loyalty to a cause. Yet the unbalanced makeup of the IOM's supposedly objective committee—a makeup that does not reflect the distribution of either the lay population or of the medical community in America—should raise questions about the objectivity with which they undertook their mission.

The committee held three "open information-gathering sessions" to receive expert testimony regarding the preventive services that should be mandated and funded. However, nearly all of the invited speakers were known advocates of contraception and abortion on demand. Michael O'Dea notes:

At both meetings, the invited speakers represented organizations which advocate coverage of contraception, without cost sharing of expenses. Those organizations include the Guttmacher Institute, the American Congress of Obstetricians and Gynecologists, and the Association of Women's Health, Obstetric and Neonatal Nurses, Planned Parenthood, The Kaiser Family Foundation and the Society for Family Planning.

Furthermore, there was not one representative from the Catholic health care system, despite the fact that it constitutes the single largest provider of health care in our country. Representatives of the pro-life and pro-family organizations (who were forced to seek permission to speak) were relegated to the brief public comments portion at the end of the day. This relegation is significant, for though the use of contraception by American women during child-bearing years is widespread, support for publicly funded contraception is not. As indicated by a recent Rasmussen poll, 46% of Americans do not support the committee's recommendation, and only 39% of Americans believe that contraception should be covered free-of-charge. This diversity of viewpoints should have been reflected in the makeup both of the committee and of the speakers invited to testify at the hearings. Instead, there was a built-in bias in support of the provision of contraception, sterilization, and abortion-inducing drugs.

This lack of objectivity was confirmed by Dr. Anthony Lo Sasso, the lone member of the committee who dissented from the IOM report. In a recent interview, Dr. Lo Sasso confirmed that "the standards of evidence that were used and put forward by the committee" fell short of a truly comprehensive and objective analysis of the data, which "allowed the committee to bring about what they wanted." In his official dissent, Lo Sasso wrote:

The committee process for evaluation of the evidence lacked transparency and was largely subject to the preferences of the committee's composition. Troublingly, the process tended to result in a mix of objective and subjective determinations filtered through a lens of advocacy. An abiding principle in the evaluation of the evidence and the recommendations put forth as a consequence should be transparency and strict objectivity, but the committee failed to demonstrate these principles in the report.

This critique, from a member of the committee itself, is damaging to the IOM committee's credibility. It confirms the cavalier way in which Sebelius's advisory group used its position to promote an ideology.

Even without the information provided by Dr. Lo Sasso, however, the report itself exhibits its authors' biases. In support of the report's claim "that greater use of contraception within the population produces lower unintended pregnancy and abortion rates nationally," only two sources are cited—one of which is a non-peer-reviewed advocacy report. This spurious source was published by the Guttmacher Institute, the former research arm of Planned Parenthood and a strong advocate for abortion and contraception. One reason for this dearth of evidence is simple: Numerous studies show that greater access to oral contraception and emergency contraception does not, in fact, reduce unintended pregnancies or abortion. Such studies were conducted by the likes of Peter Arcidiacono of Duke University and Chelsea Polis of the Johns Hopkins Bloomberg School of Public Health, and have been published in journals including the *Journal of Health Economics*, *Obstetrics and Gynecology*, and the *Journal of the American Medical Association*.

A survey like this reveals that conclusions are far from unanimous regarding the effect of oral contraceptives on unintended pregnancy and abortion rates. However, the report produced by the IOM reflects neither this uncertainty nor the weight of evidence suggesting that access to oral contraception has little to no effect at a population level. The data *are* homogeneous, however, in regard to emergency contraception, and point to a conclusion directly opposed to that of the IOM committee. All told, the studies reveal that while there are many “professional and editorial opinions” that emergency contraception should be made readily available, and “professional projections” that it could reduce unintended pregnancies, I have been unable to find a single study indicating that it is actually effective in reducing unintended pregnancies or abortions in real population groups.

All of this seems to prove Dr. Lo Sasso’s contention about the lack of transparency in the methodology of the report; because the data were “filtered through a lens of advocacy,” they “allowed the committee to bring about what they wanted.” Such selective research is not worthy of the writer of policy or the representative of a nation.

The HHS report’s Recommendation 5.5—“Women will have access to all Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling”—is the only “preventive service” recommendation in the report that involves the administration of drugs and surgeries. As such, one would expect a host of other considerations to arise around it: specifically, concern for the health risks associated with those drugs or surgeries. Very little attention, however, is given in the report to the risks associated with Recommendation 5.5. In the one paragraph in the 210-page report that addresses them, the committee brushes aside the higher death rates of women who smoke and use oral contraception, despite the fact that one in five American women runs this risk. Instead, the report claims that “side effects are generally considered minimal.” Such a sweeping statement demands detailed argumentation and support; instead, at this point, the report’s slim research becomes threadbare. The evidence for the report’s claim consists of three “educational pamphlets” from the American Congress of Obstetricians and Gynecologists (ACOG) and one other dated study.

This unprofessional documentation should alarm the observant reader on either side of the table. The public was repeatedly assured, upon Sebelius’s passage of the mandates recommended by the IOM, that the report was an “exhaustive review of the scientific evidence.” Yet one of the cruxes of the committee’s argument—and one which directly impacts the health of millions of American women—is sustained by educational pamphlets. Interestingly, the pamphlets themselves state that “the average readability level of the series . . . is grade 6–8.” These promotional brochures do not cite even one study. The report also places a great deal of emphasis on an ongoing study that has not been published and that the committee hopes will show that oral contraceptives can be a primary prevention for ovarian cancer. Selective use of potentially sympathetic findings from ongoing studies is a clear sign of a subjective bias.

The committee should have studied more rigorous peer-reviewed studies

concerning the potential negative side-effects of chemical contraception. For years, medical journals have published studies that indicate the deleterious side effects of oral contraception. Peer-reviewed studies published in the most prestigious medical journals indicate that breast cancer risks are significantly higher for oral contraceptive users, particularly those women who begin contraceptive use before their first full-term pregnancy, women who have a family history of breast cancer, and women who smoke. Stroke risk is also much higher for users of oral contraception, with studies showing a 1.5–4.0 times greater risk of stroke in women who use oral contraceptives. Findings indicating a risk for stroke associated with oral contraceptive use have been published in journals that include *Journal of the American Medical Association* as well as *Stroke: Journal of the American Heart Association*. Blood clots, too, are a significant risk for women who use oral contraception, as the *Physician's Desk Reference* makes clear: “An increased risk of thromboembolic and thrombotic disease associated with the use of oral contraceptives is well established.” Earlier this year, the FDA announced a safety review of the most popular oral contraceptives on the market (Yaz, Yasmin, and Beyaz) in response to recent studies that show that these drugs bring a two-to-three-times greater risk of arterial clots compared to the already high risk associated with other forms of oral contraceptives. Finally, studies prove that oral contraceptive users have a greater risk of heart attack than non-users, and that their arteries develop plaque at a faster rate. If a woman has other contributing risk factors, her susceptibility increases drastically.

Our public health officials have failed us—in the politically uniform committee selected to advise Sebelius and HHS, in the lack of integrity with which it carried out its research, and in the way it has recklessly put the health of millions of American women at risk. The Family Research Council summed up the situation very well: “This decision completely ignores opinion, research and science that do not support a pro-abortion ideology.” Many organizations and individuals have raised similar concerns, but their words have fallen on deaf ears. However, there is compelling evidence that Recommendation 5.5 was all but predetermined, and was motivated by ideology rather than the objective standards of science and medicine or the true health needs of women.

It is, perhaps, not surprising that political maneuvering and ideology have been obstacles to HHS's purported goal of securing the health of the American people; we do not expect completely disinterested policymaking in our democracy. What is surprising, however, is the audacity with which the committee circumvented professional research practices in order to arrive at the conclusions they held at the outset. The officials of the Department of Health and Human Services are appointed to carry out the research that the general citizenry has neither the time nor skill to pursue; they are not appointed to misguide and misinform. We must be able to trust profoundly in the integrity of those to whom we delegate these important tasks. By misrepresenting the relevant data, the IOM committee and HHS Secretary Sebelius have betrayed the trust of the American people, and have potentially put the health of millions of women at risk.

APPENDIX D

[Steven Mosher is the President of the Population Research Institute based in Front Royal, Virginia. This column ran on October 31, 2011, on the Institute's website, www.pop.org and is reprinted with Mr. Mosher's permission.]

Welcome Baby Seven Billion

Steven Mosher

A few seconds after midnight a baby emerged from a mother's womb, drew a first breath, and announced his or her arrival into the world with a tiny cry. This is Baby Seven Billion. Today, 31 October 2011, is this baby's birthday.

As our numbers have grown, incomes have soared. In 1800, when there were only 1 billion of us, per capita income worldwide was a mere \$100. By 1927 our numbers had doubled, but incomes had already increased five times to \$500. By the time we reached 3 billion in 1960, income had tripled again to \$1500. Today, as we pass the 7 billion mark, per capita income has soared to \$9,000.

In 2100, when the population will be between 7 and 8 billion (and falling), it is projected to be \$30,000 in current dollars.

Driving the so-called "population explosion" has been a real explosion in health and longevity. As late as the 19th century, four out of every 10 children died before reaching age five. Today under-five mortality is under 6 percent and falling. Two hundred years ago, human life expectancy was under 30 years. Today it is 69 years and climbing.

As people live longer, naturally there are more of us around at any given time.

By nearly every measure of well-being, from infant mortality and life expectancy to educational level and caloric intake, life in Africa, Asia, and Latin America has been getting dramatically better. According to the World Bank, the average income in the developing world has quadrupled since 1960.

Enough grain is produced for every person on earth to consume 3,500 calories daily. There is no need for anyone to starve in the midst of this plenty.

Population has more than doubled since 1960, but crop yields per hectare have kept pace. World food and resource production has never been higher. Economies continue to expand, productivity is up, and pollution is declining. Life spans are lengthening, poverty is down, and political freedom is growing. The human race has never been so well off.

In fact, underpopulation, not overpopulation, is the real threat that much of the world faces today. Some 80 countries representing over half the world's population suffer from below replacement fertility—defined as less than 2.1 children per woman.

The populations of the developed nations today are static or declining. The UN predicts that, by 2050, Russia's population will have declined by 25 million people, Japan's by 21 million, Italy's by 16 million, and Germany's and Spain's by 9 million each. Europe and Japan are projected to lose half their population by 2100.

Countries with below replacement rate fertility will eventually die out. It's

just a question of time.

Even in the developing world family size has shrunk, from around 5 children per woman in 1960 to less than 3 today. And the decline continues.

According to the UN's "low variant projection"—historically the most accurate—the population of the world will peak at 8 plus billion in 2040 or so, and then begin to decline.

High fertility rates are becoming rare. The UN numbers for 2010 show only 10 countries with population increase rates at or above 3.0 percent.

By 2050, persons aged 65 and above will be almost twice as numerous as children 15 years and younger. The economic consequences of population aging will be closing schools, declining stock markets, and moribund economies.

Ignoring these facts, the population controllers continue to spread their myth of overpopulation.

The UNFPA and other population control organizations are loath to report the truth about falling fertility rates worldwide, since they raise funds by frightening people with the specter of overpopulation. They tell us that too many babies are being born to poor people in developing countries. This is tantamount to saying that only the wealthy should be allowed to have children, and is a new form of global racism.

We should stop funding population control programs, and instead turn our attention to real problems, such as malaria, HIV/AIDS, and infectious diseases. As mortality rates fall, so will birth rates.

Let us also join together in celebrating the birth of Baby Seven Billion. He or she is a sign of our future, our hope and our prosperity.

People are our greatest resource. Extraordinarily gifted people have helped to enrich civilization and lengthen life spans. But the fact is, everyone, rich or poor, is a unique creation with something priceless to offer to the rest of us.

Baby Seven Billion, boy or girl, red or yellow, black or white, is not a liability, but an asset. Not a curse, but a blessing. For all of us.

APPENDIX E

[William McGurn, a former chief speechwriter for President George W. Bush, is a VP of NewsCorp, where he writes speeches for Rupert Murdoch. He also pens the weekly Main Street column for The Wall Street Journal. The following appeared in the Journal October 24, 2011, and is reprinted with permission of the author and The Wall Street Journal © 2011 Dow Jones & Company, Inc. All rights reserved.]

And Baby Makes Seven Billion

William McGurn

Nothing brings out the inner Malthus like a newborn baby.

That's especially true when that baby is born to a mother somewhere in Africa or Asia. According to the United Nations Population Fund, some time this coming Monday, probably in India, the world will welcome its seven billionth person. Well, maybe welcome isn't exactly the right word.

At Columbia University's Earth Institute, Prof. Jeffrey Sachs tells CNN "the consequences for humanity could be grim." Earlier this year, a New York Times columnist declared "the earth is full," suggesting that a growing population means "we are eating into our future." And in West Virginia, the Charleston Gazette editorializes about a "human swarm" that is "overbreeding" in a way that "prosperous, well-educated families" from the developed world do not.

The smarter ones acknowledge that Malthus's ominous warnings about a growing population outstripping the food supply were not borne out in his day. The track record for these scares in our own day is not much better. Perhaps the most famous was Paul Ehrlich's 1968 "The Population Bomb," which opened with these sunny sentences: "The battle to feed all humanity is over. In the 1970s, the world will undergo famines—hundreds of millions of people are going to starve to death in spite of any crash programs embarked upon now."

The book was wildly popular, and the assertions large. India was so hopeless he advocated a policy of "triage" that would just let them die. In fact, the mass starvation he predicted never materialized, and the Indians whom he thought could never feed themselves are now eating better than ever despite a population more than twice the size it was when "The Population Bomb" appeared.

The record, alas, doesn't seem to matter. Like so many other articles on population, one in the New Yorker this month concedes that the predictions Malthus made "proved to be wrong." Like so many other articles too, it goes on to conclude that "the premise of [his] work—that there must be some limit to population growth—is hard to argue with."

The truth is that the main flaw in Malthus is precisely his premise. Malthusian fears about population follow from the Malthusian view that human beings are primarily mouths to be fed rather than minds to be unlocked. In this reasoning, when a pig is born in China, the national wealth is thought to go up, but when a Chinese baby is born the national wealth goes down.

Behind this divide between those who worry about limits put on human exchange

and those who worry about limits to growth are two very different views of the human person. The former believe that so long as people are free to trade and use their talents, the more the merrier. The latter treat people as a great mass of more or less interchangeable cogs, hence the worries about “sustainability” and “carrying capacity” and the like.

This latter is a highly static view, one that grossly underestimates the power of an individual to improve life for millions. Perhaps the best example of that power is Norman Borlaug, whose scientific work introduced high-yield varieties of wheat and rice that helped farmers greatly increase their food production. In so doing, the “father of the Green Revolution” helped poor nations feed their people, and give the lie to all those predictions of hopelessness and starvation from Mr. Ehrlich and Co.

The static view of the human person underestimates the dynamism of ordinary men and women going about their business in a free economy. The young people “occupying” Wall Street may decry capitalism, but societies open to risk and initiative and free exchange have always done better by the “99%” than those that do not. That is why a place like Hong Kong, with no natural resources, has prospered while many other countries rich in natural resources (some in Africa) have not.

Matt Ridley, author of “The Rational Optimist,” suggests that human progress is driven when people connect with one another and exchange ideas as well as goods. In our own day, he believes, this interaction has been accelerated by the revolution in technology that has made distance largely irrelevant. It’s one reason he takes a generally benevolent view of population growth.

In a line bound to seem extravagant to the doom and gloom set, he offers his own prediction: “I would go further and say that the mixing of ideas made possible by the Internet makes the drying up of innovations almost impossible to achieve, even if we wanted to, and the improvement in living standards almost inevitable.”

In short, it all comes down to your conception of the human person. Another way of putting it is this: Instead of looking for ways to reduce the number of people at the banquet of life, we would do better to look for ways to lay a better and more bounteous table.

APPENDIX F

[*Sarah Ryan is a Young Scholar of HLI America, an educational initiative of Human Life International. She is from Allen, Texas, and is currently a junior studying social work at Texas State University where she is President of “Bobcats for Life.”*]

It’s Not a Sprint, It’s a Marathon

Sarah Ryan

When I joined the pro-life movement a few years ago as a high school senior, I thought the task at hand was clear, but daunting: overturn *Roe v. Wade*. What I didn’t realize is that the movement to end abortion is just that—a *movement*, a *shift*, a *gradual realignment* of our society’s priorities. This shift not only includes our laws, but the culture we live in—a culture that accepts and promotes acts of violence against the most vulnerable and innocent. I quickly learned that overturning the unconstitutional Supreme Court ruling would not instantly create a life-respecting utopia where every child, planned or unplanned, would be seen as a blessing. I realized that conquering the culture of death is not a sprint; it’s a marathon.

The tireless efforts of the American Pro-Life movement are not going unnoticed. Through our passion and by maintaining a deliberate pace, we are advancing toward the finish line. With eighty abortion restrictions enacted in the first six months of 2011, there is no denying that we are doing something right. The proof is in the report recently released by Planned Parenthood’s research wing, the Guttmacher Institute. The report provides a snapshot of the recently enacted Pro-Life policies which both protect women and children, and hinder the abortion industry’s interests.

Efforts to empower women have been made in nineteen states by introducing bills that require that the sonogram image of the mother’s child be made visible to her. Abortion advocates have rallied against ultrasound requirements, claiming that the sonogram would be an added cost to the procedure. Yet, an ultrasound is necessary to accurately determine the child’s gestational age; when it comes to medicine and surgery, accuracy is always in the patient’s best interest. The ultrasound not only helps the woman by giving her an awareness of her body and the body of her child, but also allows her to give her fully informed consent to the procedure. An ultrasound is not an obstacle to overcome in the process of abortion, but rather a standard cautionary procedure to be considered on behalf of the doctor, mother, and child. If the abortion industry were truly interested in a woman’s reproductive health, they would be more than willing to perform an ultrasound because doing so helps catch any potential reproductive issues, such as uterine cancer, in order to help her when she does feel ready for the “planned parenthood” they promote.

Perhaps the abortion industry fears that ultrasounds will encourage women to choose life and take their money elsewhere. After all, according to a non-profit organization that operates ultrasound-equipped vehicles, ICU Mobile, more than 70% of abortion-minded women choose life after seeing live images of a squirming little baby. The position of abortion advocates against ultrasound legislation rejects the technological advances of modern medicine that allow us a “window to the womb.” They also discount

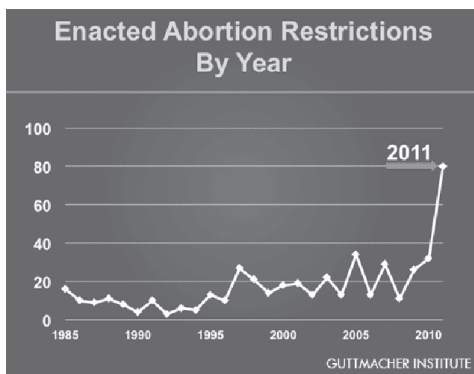
the dignity and capacity of women to make *truly* informed decisions. Currently, ultrasound legislation has been passed and enacted in AL, AZ, FL, IN, KS, and TX.

Another stride we are taking toward ending abortion is legislation that bans abortions after the child reaches 20 weeks, the age at which it can be proven that the child in the womb begins to feel pain. Nebraska successfully passed the “Pain Capable Unborn Child Protection Act” into law in 2010 and many other states are following suit. Fetal pain protection acknowledges the humanity of the unborn child, and recognizes his unique sensory experiences *in utero*. This allows women to relate to the child on a more personal level. The Nebraska law makes exception for two reasons: 1) If a mother has a “condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert death or to avert serious risk of substantial or irreversible physical impairment of a major bodily function,” and 2) if the abortion “is necessary to preserve the life of an unborn child.” The latter exception is quite ironic. It would seem that the author of this exception is unfamiliar with the very nature of abortion; abortion is the *opposite* of life “preservation.” The only conceivable condition that would supposedly demand abortion as a means of unborn life preservation would be in the difficult, and certainly rare, case of multiple child pregnancies where the abortion of one child is deemed necessary for the other(s) to survive. In the first 6 months of this year, fifteen states, including AL, ID, IN, KS, and OK, introduced legislation similar to the Nebraska law.

In the past six months, states have taken measures to introduce mothers to their own children before making a decision on behalf of an innocent life; expressly informing women of the risks they are being exposed to at the hand of the abortionist; and protect defenseless children from legalized abuse and death. Also, we are even closer to getting our tax dollars out of Planned Parenthood’s pockets. According to the Susan B. Anthony List, states have already successfully defunded Planned Parenthood of 60 million dollars.

Though being a young Pro-Life American may sometimes feel countercultural and even become exhausting, it is important—and motivating—for us to look at the journey that has led us to this time of many successes. We are trying to reverse the

past 38 years of abortion on demand. I take heart because we are heading in the right direction. We have to keep our chins up and take every reasonable step to promote the dignity of every person. These steps may lead us to lobby before Congress, to pray on sidewalks, to teach in the classrooms, or to support a pregnancy center. All of these paths are headed in the right direction and that is towards human dignity, truth, and love. “The truthful witness saves lives . . .” (Prov. 14:25).



Source: Guttmacher Institute

APPENDIX G

[Joan Frawley Desmond, a Maryland-based writer, is a senior editor and weekly contributor at the National Catholic Register. The following appeared in the Register November 2, 2011, and is reprinted with permission.]

Steve Jobs: An “Unwanted” Child

Joan Frawley Desmond

He died a devoted family man, with his wife and children at his bedside. But Steve Jobs didn't come into the world as the object of his parents' devotion. His birth was complicated and all too human in its details, and yet his story upends the notion that “unwanted” children are doomed from the start.

Jobs' death saddened many of his admirers, who developed a firsthand appreciation for his commitment to excellence and viewed Apple's explosive success as a bright spot amid unrelenting economic gloom. But I've always been more intrigued with the backstory of his closely guarded personal life, and thus welcomed Walter Isaacson's newly released biography, *Steve Jobs*.

Isaacson does not disappoint. Not only will techies learn lessons about business leadership and innovation, this portrait provides rich insights into Jobs' struggle to overcome the painful sense of abandonment that contributed to his trademark non-conformism.

From his childhood, Jobs suffered from the emotional wounds inflicted by his unmarried biological parents, who put him up for adoption. Like many such children, he was “unwanted.”

Jobs' personal history testifies to children's need for family stability—even for an individualist like Jobs. However, the reader also learns that, contrary to the gloomy predictions of abortion-rights supporters, “unwanted” children consistently defy set expectations about their ability to succeed and find happiness, and the love of adoptive parents can make all the difference.

Decades later, Jobs would express gratitude that his mother didn't abort him. And his own experience confirms that an unwanted child can ultimately reverse the pattern of male irresponsibility bequeathed to him by his biological father.

Isaacson traces Jobs' effort to find his biological mother, a Midwestern graduate student raised in a Catholic family. “I wanted to meet my biological mother mostly to see if she was okay and to thank her, because I'm glad I didn't end up as an abortion. She was 23 and went through a lot to have me,” Jobs told his biographer.

The founder of Apple had already made his mark when he located his mother, Joanne Simpson. The two had an emotional meeting, and Simpson tearfully apologized for putting him up for adoption. He learned that in 1955, at the time of his birth, she and his biological father had delayed marriage because of the objections of their extended families.

Subsequently, the couple did marry and had a daughter, the novelist Mona Simpson. But by then, Jobs' adoption had been finalized. His biological father soon abandoned the family. As a youngster, Jobs struggled to resolve his feelings of abandonment.

In one childhood experience described in the book, Jobs tells a close friend that he is adopted. She responds that his parents must not have “wanted” him. He rushes home to seek the reassurance of his adoptive parents, Clara and Paul Jobs, who insist that they chose him specifically and that he is very “special.”

In truth, Jobs was “smarter” than his parents, who maintained a modest home for him and a daughter, also adopted. The family attended a Lutheran church, but Jobs, ever the skeptic, questioned how an omnipotent God allowed for suffering in the world and rejected Christianity. His specialness was noted during elementary school, when teachers, impressed with his superior intelligence, suggested he skip several grades.

Paul Jobs cut his son a lot of slack, allowing Steve to ignore parental orders and requirements. Steve chose an expensive private college, despite the family’s limited finances. But after a semester at Reed College, he realized it was too expensive for his parents and dropped out.

As Isaacson tells it, the competing experiences of abandonment and specialness produced a complex personal identity. He was a non-conformist in the business world, which worked to his advantage. But he could also be cruel and destructive.

Like many children who have been abandoned, Jobs would repeat the pattern as an adult.

When he learned that a live-in girlfriend was pregnant, he questioned whether he was the father. And despite a sense of gratitude that his own life had been spared in the womb, he considers an abortion as a solution to the pregnancy.

Once his daughter, Lisa, was born, he initially refused to acknowledge her as his own, but finally agreed to a paternity test and then began to pay child support.

Decades later, Lisa’s mother told Isaacson that “being put up for adoption left Jobs full of broken glass.”

A friend and co-worker at Apple made a similar observation: “The key question about Steve is why he can’t control himself at times from being so reflexively cruel and harmful to some people. That goes back to being abandoned at birth. The real underlying problem was the theme of abandonment in Steve’s life.”

Jobs disputed this diagnosis of his behavior, and he would later marry and have three more children. He and his wife celebrated their 20th wedding anniversary before his death. He came to regret his treatment of Lisa, and during her teenage years, she moved into her father’s household. However, the relationship remained tempestuous, though they patched up their differences before his death.

Jobs didn’t meet his biological sister, Mona Simpson, until both were adults, but the two immediately became close. After his death, Simpson offered a eulogy that reflected on the emotional scars inflicted by their biological father and the healing power of her brother’s love.

“Even as a feminist, my whole life I’d been waiting for a man to love, who could love me. For decades, I’d thought that man would be my father. When I was 25, I met that man, and he was my brother,” said Simpson.

Steve Jobs learned to become a committed husband and father, inspired, no

doubt, by the generous example of his adoptive father. But his story also reveals that an “unwanted” child can choose to end a generational pattern of abandonment. Had he lived longer, perhaps he would have come to understand that abortion is always wrong and not just a personal decision.

Certainly, Jobs proved himself capable of raising a relatively normal and close family as a billionaire. There’s a wonderful scene in the biography when Bill Gates comes to pay his respects to his old nemesis.

While Gates lives in a house that rivals the square footage of Versailles, Jobs consciously chose to reside in a comparatively modest residence that functioned without live-in staff or a security detail. The Jobs family gathered every night at the kitchen table for dinner. When Gates checks out Jobs’ home, he asks in wonderment, “Do you all live here?”

In the course of human history, “unwanted” children have jostled for their place alongside those who were part of their doting parents’ long-term plan.

As Catholics, we believe that children should be brought into the world through a loving one-flesh union of husband and wife, both committed to vows of faithfulness, permanence and fruitfulness. And social-science research confirms that children born to single mothers face multiple hurdles that may derail their success and happiness in adulthood.

As responsible adults, we’re duty-bound to make careful preparations for our future progeny. But hubris also can lead us to make ironclad predictions regarding the future of the “unplanned” children in our midst—as if our earthly visions override God’s providence.

Jobs’ biological mother sought to secure his future well-being by insisting that a college-educated couple adopt her son. Instead, two high-school dropouts provided a loving and secure home—and a garage where Jobs watched his father fix things and make them work. Meanwhile, the well-credentialed biological father left his children in the lurch.

A generation later, after an extended struggle with terminal cancer, Jobs fought to stay alive to witness the high-school graduation of his beloved son, Reed.

In the third installment of *Toy Story*, a Pixar film project that drew Jobs’ intense involvement, the character of Andy heads off to college and bids farewell to his own parents, prompting his mother to say, “I wish I could always be with you.”

“You always will be,” Andy reassures both parents, surely expressing Jobs’ dying wish.

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