

the HUMAN LIFE REVIEW



FALL 2014

Featured in this issue:

William Murchison on *Roe*-Court Pride and Presumption

George J. Marlin on Cardinal O'Connor vs Gov. Cuomo

Ellen Wilson Fielding on . . . Young Death in Fiction and Fact

Stephen J. Heaney on Hortas, Humans, and *Star Trek*

DOWN SYNDROME: PARENTS SPEAK UP

Letitia Velasquez • Matthew Hennessey • Bruce Barket &
Mary Kay Barket • J.D. Flynn • Michael Bérubé

Donald DeMarco on Why Abortion Devalues *All* Babies

Gregory J. Roden on . . . How *Roe* Collides with We the People

Anne Hendershott on What Students Get from *The Giver*

Jason M. Morgan on Patricia Miller's *Good Catholics*

12TH ANNUAL GREAT DEFENDER OF LIFE DINNER

Maria Maffucci • Kristan Hawkins • Sally Muggeridge • Clarke Forsythe

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. . . it's been forty years since the late J.P. McFadden founded this journal; I came more or less at midpoint. The Summer 1995 issue, my first as managing editor, featured "The Gospel of Life vs 'The Culture of Death,'" a symposium on *Evangelium Vitae*, Pope John Paul II's life-affirming encyclical that had rocked the media earlier that year. A few months later, the Fall issue reprinted George McKenna's "On Abortion: A Lincolnian Position," an essay arguing for robust incrementalism; it set a new record for letters-to-the-editor at the *Atlantic Monthly*. Winter 1996 offered *Review* readers another symposium, this one on "Our Bodies, Our Souls," the much-hyped *New Republic* essay by Naomi Wolf, in which the (then) *enfant terrible* of feminism proclaimed abortion a "necessary evil." Rounding out my first year, the Spring 1996 edition carried an article by Dr. Margaret White, a physician who started the Anna Fund in Britain to promote and foster the work of Jérôme Lejeune, the French doctor who discovered the gene that caused Down syndrome and developed life-altering protocols for its treatment.

Fast forward to today: Another pope is rocking the media, in interviews and press conferences, cautioning against clerical "obsession" with abortion. Incrementalism is being hotly debated among pro-lifers, as "absolutists" put forward "personhood" legislation and referenda then rejected by voters. Naomi Wolf's "terrible evil" has been jettisoned in favor of Katha Pollitt's "moral good." "Pro-choice," too, is out: Pollitt's new book is titled simply *Pro: Reclaiming Abortion Rights*—news to most of us that those "rights" have been lost, no? And concerning Down syndrome: While the vast majority of babies diagnosed in utero with Trisomy 21 are aborted—some estimates put the rate as high as 80 or even 90 percent—calls still sound for their *total* extermination, most recently from the evolutionary biologist and atheist Richard Dawkins.

This issue, which closes out our 40th volume, continues the *Review*'s mission of recording the many and diverse voices in the abortion/euthanasia debate. For instance, journalist William Murchison ("Roe-Court Pride & Presumption," page 7) and lawyer Gregory Roden ("The Sovereign's Remedy," page 56) each examine how *Roe v. Wade* continues to pervert the course of American culture and justice. Political appointee and author George Marlin salutes the fearlessness of the late Cardinal John O'Connor as he took on powerful self-proclaimed Catholic pro-abortion politicians ("Cardinal O'Connor vs Governor Cuomo," page 13). Philosophy professor Stephen Heaney ("Of Hortas and Humans," page 31) revisits a 50-year-old episode of *Star Trek* and the moral consensus since eclipsed by the Supreme Court's *Roe/Doe* decision. And there's much more, including a symposium, "Down Syndrome: Parents Speak Up" (page 37), and transcripts from last October's Great Defender of Life Dinner (page 75) in which honorees Kristan Hawkins and Clarke Forsythe both pay tribute to the *Human Life Review* for being, in Mr. Forsythe's words, the "necessary debate forum" of the pro-life movement.

ANNE CONLON
MANAGING EDITOR



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INTRODUCTION

We open this final issue of our 40th year of publishing in a time of great political upheaval—and renewed hope for the pro-life movement. The life of the unborn should not be a partisan issue, of course, but the shift to a Republican majority in the Senate and an expanded majority in the House bodes well for pro-life legislation that has been stagnating. New Senate Majority Leader Mitch McConnell has promised, for example, to push forward the Pain Capable Unborn Child Protection Act, a bill which passed in the House in June of 2013 but which then-Senate Majority Leader Harry Reid would not bring to the Senate floor. And in an important “messaging” development, the “War on Women” rhetoric, so successful in 2012, was toxic for those who continued to spew it: Mark Udall of Colorado, who lost his Senate seat to Republican Congressman Cory Gardner, focused so heavily on abortion “rights” and contraception in his campaign he was dubbed “Mark Uterus.” Also defeated: Wendy Davis, the famous pink-sneaker filibusterer for late-term abortions who made a bid for governor of Texas.

But Texas was also the focus of disappointing news just a few weeks earlier. The Supreme Court ruled on October 14 that some clinics in Texas, closed due to the 2013 law that Wendy Davis shot to fame trying to prevent, could re-open and resume their bloody business—disallowing restrictions which had been approved by an appeals court while the law is still pending. This is an example, writes Senior Editor William Murchison in our lead—“*Roe* Court Pride and Presumption”—of the federal courts “wrestling mightily with the question of abortion ‘rights.’” And the point Murchison makes in a freshly powerful way is that we should not *be* where we are on this: The federal courts were never meant to “decide” the abortion question, it was the “daring, button-bursting hubris of the *Roe* majority” that brought it about:

Roe v. Wade was among other things a prideful intervention in ancient moral reckonings and reasoning, unworthy of jurists educated in a free society with a strong disposition to see men and women as divinely marked and protected.

“Why bring it up now?” Murchison asks. Because the Court is at it again, taking it upon itself to redefine the ancient institution of marriage.

Major hubris is at play as well in our next article, which is a look back at the public argument in 1984 between a prince of the Church, the late Cardinal John O’Connor, and the then-Governor of New York Mario Cuomo. In a chapter excerpted

from his and Brad Miner's forthcoming book (*The Sons of St. Patrick's: A History of the Archbishops of New York*), author George Marlin writes about the battle that began when O'Connor, then Archbishop of New York, said during a press conference: "I do not see how a Catholic, in good conscience, can vote for an individual expressing himself or herself as favoring abortion." As Marlin writes, "That didn't sit well with Cuomo," and paved the way for Cuomo's infamous address at the University of Notre Dame (that September), when he declared that a Catholic could be personally opposed to abortion but support it in the public square. It's appropriate to think about this in our current day, when New York's currently re-elected governor, Mario's son Andrew, has been pushing with all his might (and wealthy supporters) for his radical abortion expansion bill (see John Burger's "New York Pro-life Coalition Turns Back Cuomo—for Now" in our Spring 2014 issue and on our website).

Another news story this fall was both tragic and terribly frustrating for those aware of the insidious "death with dignity" movement's skill in using emotion and fear to sway the American public. Young, beautiful Brittany Maynard, a woman diagnosed with terminal brain cancer who decided to move to Oregon so she could be assisted in suicide legally, became the poster girl (cover of *People* magazine and all) for the right to "choose" death. Media coverage was overwhelmingly supportive, even as similarly diagnosed sufferers begged her publicly not to preempt her time on earth. Senior editor Ellen Wilson Fielding contributes, on page 22, a masterful essay (as only she can write) on how the death of the young is "handled" in our culture, using Maynard's real story to contrast the "artistic treatment of young death by illness" in contemporary films (the widely popular tearjerkers, *If I Stay* and *The Fault in Our Stars*) with representative literature from 19th-century novelist Louisa May Alcott (in *Little Women* and the lesser known *A Rose in Bloom*). What emerges is a theme running through this issue: hubris versus humility. The latter, as Fielding writes, "is not one of our own era's hallmark virtues. We often distrust the expression of humility as being hypocritical or showing an unhealthy lack of self-esteem." Moderns want to "control" their deaths, they may rage against God and that is only *if* they believe in Him; in the previous age embodied by Alcott's characters, the dying thought of the journey to God, and wondered if they had done enough good in the life God had given them.

Our next article also deals with values portrayed in the popular culture of yesteryear; this time, it's the original *Star Trek* TV series. Philosophy professor Stephen Heaney, in "Of Hortas and Humans, Meditation on a 50-Year-old Episode of *Star Trek*" (page 31), writes about the episode "The Devil in the Dark," where the story of the creature called the Horta was used to give a powerful lesson to viewers about the dignity of the human person. It is "surprising," writes Heaney, to see "how much such shows took for granted about what is moral and what is immoral." In this episode, the themes touched on are "the inherent dignity of a rational creature, about the natural relationship between a mother and her not-yet-

visible offspring, and about the role of the medical profession”—all crucially important issues in our culture today, though surrounded by much different moral assumptions.

Indeed, Heaney exposes our abortion-saturated culture for the utilitarian ethic it embraces, one revealed in a horrifyingly stark manner by atheist and evolutionary biologist Richard Dawkins last August, when he “tweeted” his opinion to a woman who worried her unborn child might have Down syndrome: “Abort the baby and try again. It would be immoral to bring it into the world if you have the choice.” We have in our next section a series of responses which we gathered from the press (see Anne Conlon’s editor’s note on p. 37): We thought it important to have a record of this public debate. The last in the series does not address Dawkins directly; it is a gem of a piece by Michael Bérubé about his son Jamie and the challenges he faces as a young adult with Down syndrome.

Our contributor Donald DeMarco does mention Dawkins in his essay next (p. 51), “This and That,” an article he describes as having a “boring title” which nonetheless describes an “exciting theme and captivating topic”: that is, the “glorious *thisness* of one’s spot in the world.” It’s a beautiful treatment of an important philosophical theme—that the “individual is more real than the species,” and that love itself is directed to a unique person, not, as in Dawkins’s view, a replaceable “commodity.”

Our final article returns to the travesty that was the *Roe v. Wade* decision; this time from the point of view of American history and our “sovereign law.” Historian Gregory Roden looks back in American history at the common law “plea of pregnancy” (*en ventre de sa mere*) which protected the unborn child from death if his or her mother was convicted of a capital crime. “When our Founding Fathers threw off the yoke of the king of England,” Roden writes, “although they delegated many powers to the state and federal governments, they retained ultimate sovereignty for themselves,” including the right to a trial by jury for cases of factual controversies. Whether or not the unborn child is alive is such a controversy, and should have been a matter of “findings of fact by physicians independent of the court,” as it was (Roden cites two cases from the late 1700s) before the sovereign rights of citizens were “trampled upon by the *Roe* legal regime.”

Starting off our *CultureNotes* feature is a review by Professor Anne Hendershott of the book *The Giver*, prompted by the recent release of the film version. Hendershott expands this into a sensitive and sensible discussion of when to educate children about the awful truths of abortion and euthanasia. Next, Jason M. Morgan reviews the book *Good Catholics: The Battle over Abortion in the Catholic Church*, Patricia Miller’s “history of the pro-abortion movement within the Catholic Church.” It is, Morgan writes, “a strange marriage of a conspiracy theory and a hagiography, a union sealed with a blended chrism of disingenuousness and willful obfuscation.”

Beginning on page 76 you will find our special section on the 12th annual Great Defender of Life Dinner, which includes remarks from our honorees, Americans

United for Life Senior Counsel Clarke Forsythe and Students for Life President Kristan Hawkins; and from our Mistress of Ceremonies, Sally Muggeridge, a lay preacher of the Anglican Church and president of the Malcolm Muggeridge Society. With room for only one appendix, we chose to share the Op Ed *National Review Online* published on the day of our dinner, one that reflects well, I think, the reality of hope for the protection of the unborn.

Thanks as always to Nick Downes for his terrific cartoons and especially for our own 40th anniversary cartoon, pictured below.

MARIA MCFADDEN MAFFUCCI
EDITOR



LETTERS

TO THE EDITOR:

In “Evangelicals and Fundamentalists Join the Pro-life Moment” (Spring 2014) Robert N. Karrer wrote that Bob Jones University did not admit black students. My recollection—it is only that, I am not sure—is that Bob Jones University did admit black students and that the controversy was over the school’s policy forbidding inter-racial dating.

The article was obviously exhaustively researched and I would generally trust Mr. Karrer to have gotten the details right. Still, I do seem to recall that the dating policy was at the heart of the dispute with the IRS. There would have been no point in having such a policy if there was not an at least somewhat racially diverse student body. Thank you.

—Albert Alioto (via HLR’s website)
San Francisco

DEAR MR. ALIOTO:

We looked into this . . . Bob Jones University did not enroll black students until 1971, and from 1971 to 1975, admitted only married blacks. So it seems Mr. Karrer was not incorrect but perhaps specific time lines should have been included in the article. Does this answer your question? We really appreciate your comments—we want the *Review* to be as accurate and clear as possible.

—Christina Angelopoulos for the editors

DEAR MS. ANGELOPOULOS:

It more than answers the question. The fact that I can’t begin to imagine any other publication taking this much trouble over such an inquiry underscores why I have been proud to be a *Review* subscriber since 1981 . . . We live in a better world because of the difference your father made. (Not least in the family he and your mother raised who are carrying on his work.) The example he set is an inspiration in trying to make it an even better world tomorrow. And the day after that. And the day after that.

It has been a pleasure to correspond with you. Thank you.

—Albert (Alioto)

Roe-Court Pride and Presumption

William Murchison

The federal courts are wrestling mightily, you say, with the question of abortion “rights”? Indeed they are. My purpose here is to suggest why that is so, when the courts never meant it to be so. See whether you think I am right.

I begin the exercise by noting unhappily but necessarily the basic human dysfunction called pride: *We* know best; *we’re* in charge; shut up and let *us* instruct you in what has to be done. That is the sort of thing I mean here—semi-dictatorial assertion of truth rendered free of charge as a public service; brooking at the same time no contradiction or questioning. The truth as *we* see it. *We!* (And didn’t *we* tell you to raise your hand for permission to talk?) And yet . . . and yet . . . pride reportedly goeth before a fall or a climbdown: occasionally a fight of cosmic proportions over matters that looked routine at the very beginning.

The federal judiciary’s quandary over abortion is case in point: the particular instance, as readers of the *Human Life Review* need no coaching to surmise, being the legal case of *Roe v. Wade*, which pridefully sought to institutionalize abortion as a basic American right.

I have no desire to retrace familiar ground; nor, I suspect, has the reader much desire that I acquire such a desire. We all know about January 22, 1973. It *was* a long time ago. And the event settled nothing—all the daring, button-bursting hubris of the *Roe* majority (7 to 2) notwithstanding. It was a majority that undertook to impose on the United States an understanding of rights and duties nowhere marked out by earlier generations, including the founding generation.

Thus it was that we came, last October, to read of the U.S. Supreme Court’s five-sentence disallowance of Texas’s request for permission to tighten standards on the operation of abortion clinics, in line with continued and persistent objections to the *Roe* regime. Objections? To the seven-man majority’s decree that one of mankind’s great moral dilemmas was herewith settled, and would everyone now just shut up about it?

Er . . . no. No one is shutting up, or intends to. The question the Court majority suggested 41 years ago was now resolved admits of no shutting up or resigned submission to New Forces at work in human affairs.

William Murchison writes from Dallas for Creators Syndicate and is a senior editor of the *Human Life Review*. He is currently working on *Moral Disarmament*, a book examining the consequences of our moral disagreements. *The Cost of Liberty*, his biography of John Dickinson, an influential but neglected Founding Father of the United States, was published last year by ISI Books.

Roe v. Wade was among other things a prideful intervention in ancient moral reckonings and reasonings, unworthy of jurists educated in a free society with a strong disposition to see men and women as divinely marked and protected. The marks of that intervention are upon our public life to this day.

In the Texas case referenced above, a federal district court had originally disallowed a new set of legislatively approved standards for the performance of abortions in Texas. The legislature requires abortion clinics to operate in accordance with standards for “ambulatory surgical centers.” It further directs that doctors using these centers have admitting privileges at a nearby hospital. The court found these requirements would unduly “burden” many women seeking abortions by making them drive long distances in search of a clinic. It stepped the U.S. Court of Appeals for the Fifth Circuit, saying, oh, yes, Texas could, too, impose those standards, inasmuch as they would prevent only about 10 percent of potential patients from needing to travel more than 150 miles in search of an abortion. An appeal ensued. The Supreme Court acted as described above. It decided nothing finally; it postponed judgment.

Lawyers and activists on both sides of the issue will pour forth torrents of words. No matter how the case is decided, fresh torrents will gush forth as the opposed sides shape their responses. We are where we are on abortion, mired in our vocal cords, because in its pride and unwisdom the Supreme Court undertook to settle what it clearly saw as just another legal dispute. Is this starting to sound familiar? It should. I will shortly show you what I mean.

In *Roe v. Wade* the majority knew best—or thought it did. Justice Harry Blackmun’s opinion for the Court was an exercise in the art of talking down to the uninitiated, whose grasp of “the profound problems of the present day” failed to measure up to the *Roe* majority’s own well-deliberated grasp. The state’s interest in restricting abortion—as states were to learn—became “compelling” only at the point of viability. “Only”? Not sooner? Apparently not, though the states were “free to place increasing restrictions on abortion as the period of pregnancy lengthens.” Well, that was something, no doubt; except that the majority grandly failed to explain what kind of theoretical “restrictions” it had in mind—an oversight that keeps the battle going to this day.

Then there was the “privacy” rationale. The right to personal privacy, though not unqualified by other considerations, was “broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.” Right to privacy? Where was that to be found? The *Roe* majority admitted that the Constitution itself “does not explicitly mention any right of privacy.” The right in question proved sort of a deduction from general guarantees of liberty.

Inserting its hand into the recesses of the document that summarized America's principles of government, the Court produced and brandished an insight never before brandished: never before, perhaps, on account of its invisibility to more modest eyes, and therefore fantastically difficult to explain or quantify.

In *Roe*, judicial pride, masquerading as wisdom, fell over a cliff—and shows every tendency to repeat the experience. The majority had defined its task as that of resolving “the issue by constitutional measurement, free of emotion and predilection.” This brief promise, at the start, is likely the most outrageous, philosophically, in the entire opinion. Yes, the Court would straighten out this vexed matter by means of the most rigorous constitutional thinking.

Uh-huh. We see how that little venture in philosophical re-interpretation has worked out.

I have at this point two points to pursue.

1. There was never the slightest chance the Court could “resolve” the competing claims of the parties in *Roe v. Wade*. There was no balancing act that legal reasoning could bring off. The United States, at the time *Roe* came on to be heard by the Court, was more and more divided on the matter. It was the age of feminism. Feminism (widely known in those days as “women’s lib”) asserted boldly that women were right to claim rights they insisted had been denied them by a patriarchal society, its ideas rooted in a past when supposedly the patting of women on the head, the chucking of their chins, was all the affirmation they required or deserved. Feminism prescribed “equal pay for equal work,” access to thitherto closed or mostly closed careers, legal-right equivalent to a man’s rights in borrowing money or signing contracts—all these ideals, and others, feminist thinking advanced as essential to close the gap between male privilege and women’s needs.

The claimants to a right to abort pregnancy were insistent—very much in line with this body of thought—that bearing a child or not bearing one was the woman’s call. Whose womb was it after all? The husband’s? To ask was to answer. No man, or corporation of men, such as husbands or doctors or ministers, could interfere with the woman’s choice in the matter. It had to be her call—all the way. As for the “product of conception” itself, what had that to do with a “rights” question? We were obliged, according to feminist pre-suppositions, to get the “rights” question settled on the front end. We could figure out the rest from there.

Except we couldn’t at all. The matter was complex beyond the imaginings of the abortion lobby and its friends on the Supreme Court. There were deep anxieties wrapped up in the matter. Was abortion just another name for the removal of barriers to female fulfillment? If so, the supposition was new and

fresh. Abortion had been around forever, apparently. Civilizational consensus about it had jelled. It was seen almost universally as a bad thing—even a sinful thing, in spite of the empathy that an unwilling mother, especially if unwed, could at least occasionally excite among friends and family. Enacting a national right to abortion entailed sweeping away these embedded assumptions by means of a judicial opinion full of footnotes and whereases. The Court had baldly to assert, and prove, that existing instincts were right only if en fleshed by, and in the name of, individual actors. There could be no collective duty to absorb these instincts and put them out for general purposes.

Such was the *Roe* majority's viewpoint. To which—understandably, in view of the challenged suppositions—many, many Americans were fully prepared to reply: Oh, yeah? As they did.

The great “Oh, yeah?,” as it might be called—the stubborn consensus that long had reigned concerning the worth and value of unborn life—doomed Supreme Court pretensions from the start and condemned *Roe* to decades of fervent opposition.

The *Roe* majority couldn't see this one coming? Of what strength were the gentlemen's spectacles? Why was it not obvious that those state laws the Court knocked down in *Roe* represented a very general view as to a public duty to protect insofar as possible the lives of those who were our future citizens? Missouri's anti-abortion law dated back to 1835, Louisiana's to 1838. Texas, the state whose law the high court terminated in *Roe v. Wade*, had passed its own statute in 1859. Christian ministers and priests, in this day before the controversy awakened them to the stakes in the controversy, rarely spoke out on abortion and tended to minister sympathetically to Poor Girls Caught in a Predicament Not of Their Choosing.

That abortion was really not much of an issue prior, say, to 1969, hardly meant the “right to choose” had a large constituency in America. The *Roe* Court's two-thirds majority in favor of this new claimed right was far more overwhelming than the support that could have been mustered for abortion among just plain, ordinary people. This was in spite of a noticeable lack of enthusiasm among some in the middle and upper classes for increasing the “surplus population.” (We know more than ever today about the upper-crust, definitely not socially conservative eugenicists who wanted to improve the quality rather than the numbers of the newly born.)

In the end the Supreme Court's pride and presumption in thus addressing itself to problems of culture rather than government invited not only opposition but—well, legislative endeavors of the sort the current Court blocked in Texas, as it has blocked them in other states. The Court and the feminist

lobby had no idea they were creating, then inspiring and egging on, a major force in American public life—the pro-life movement, a force no less determined than those who had called on the Court to sweep away all the abortion laws.

The *Roe* majority grossly, outrageously, miscalculated. It knocked down the abortion prohibitions, only to find a vast proportion of the population enraged by the Court’s act of trespass in deeply moral territory. Seven justices had purported to remove from the American people’s hands the right to final judgment in a matter far more moral than constitutional in nature.

As millions understood—and still understand—the moral law is the decisive factor in matters of life and death. Rights—choices—want-to’s—enjoyed under the civil jurisdiction were not and could not be the issue: not when the issue properly was what responsibilities God had laid upon us via the creation of new life. If the matter was to be arbitrated at all, it was for the people themselves, not their judges, to thrash out. This meant the laws of the states—those laws repudiated by *Roe*—were proper as having emerged from debate and reflection. There was no guarantee such laws accorded with the will of the Lord; the salient point was that, democratically speaking, it sufficed that the protectors of unborn life enjoyed as much standing in the debate as did those desirous of loosening, or removing, the protections.

Equally important, every discrete judgment in the matter was subject to additional reflection—and alteration when that seemed necessary. By contrast, the Supreme Court’s arrogant dismissal of popular oversight in this matter guarantees seemingly perpetual conflict over the contours of an abortion regime the people had no hand in shaping. According to the Guttmacher Institute, “In 2011-13, legislatures in 30 states enacted 205 abortion restrictions—more than the total number enacted in the entire previous decade.” Well, yeah. How about that for meek acceptance of high court pride in promulgating a whole new “fundamental” right? A University of Baltimore law professor, Garrett Epps, comments bleakly in *The Atlantic*: “Forty-one years after the Supreme Court held that women have the right to choose between childbirth and abortion, little remains of what was once a ‘fundamental right.’” Nobody, it appears, is very happy with the state of things vis à vis the asserted right to an abortion. Tell me again why we’re pleased the Supreme Court took upon itself the resolution of this grave matter?

Well, most of this we know—or intuit. Why bring it up now? Because . . .

2. The federal courts are at it again, rampaging through the moral domain, turning over rocks, poking into crevices in search of the warrant they know must be there—the warrant to redefine the ancient institution of marriage.

Polls point to dramatic shifts in favor of affording what is known sanitarily

as “marriage equality,” meaning the equality of LGBT people with heterosexuals in the choosing of marriage partners. Whereas, as everyone knows, marriage has been historically (and theologically) defined as the union of a man and a woman, marriage equality puts before the people the spacious claim that anybody should be able to do it: a man and a man, a woman and a woman; not, so far, an assortment of people, in trio, quartet or quintet form, but these days you never know.

One explanation for these shifts is the relentless push by the federal courts to establish marriage equality as another of those fundamental rights we didn’t know we had prior to the courts telling us we had them. I hesitate, on account of writing these words in the fall of 2014, to offer for consumption in 2015 a detailed account of judicial activity on this front. We know the activity in question has been relentless. The lower courts—with Supreme Court “resolution” of the matter still a ways off—have taken it on themselves to instruct the states in the bigotry—at the very least the datedness—of their views concerning heterosexual marriage. As if the states had concocted those views amid campfire smoke and magic potions rather than due to meditation on the deep things of human experience!

The federal courts are poised, it would appear, over deep and wide opposition, to tell us the time has come for new styles in marriage—as a matter of constitutional justice, defined by new, fragrant understandings that have replaced musty old sentiments in grave need of abandonment and repudiation.

We see where this judicial instinct comes from, of course. It is a portion of the legacy of *Roe v. Wade*. We also see where this thing is likely to wind up—in pushback and resentment and cultural division; yes, and in bitterly contested lawsuits. It is all on account of the pride and presumption that go into every mandatory reconfiguring of human arrangements, human understandings, human convictions as old as time itself. Concerning which the *Roe* Court wrote more than a decision; it wrote the book.

Cardinal O'Connor vs Governor Cuomo

George J. Marlin

Shortly after John J. O'Connor became Archbishop of New York in March 1984, he found himself in a battle with the state's governor, Mario M. Cuomo, which not only made national headlines but also had a profound impact on the abortion debate in America.

It began when the archbishop said during a press conference: "I do not see how a Catholic, in good conscience, can vote for an individual expressing himself or herself as favoring abortion." That didn't sit well with Cuomo.

The governor, who in the early 1970s had been publicly pro-life, changed his position after losing a primary for lieutenant governor in 1973 and then a race for mayor in 1977. To advance his career, Cuomo adopted the now familiar line that, as a Catholic, he was personally opposed to abortion. But as an elected official it would be wrong for him to impose his religious beliefs on the general public. He went on the offensive about O'Connor's comment, telling the *New York Times*:

The Church has never been this aggressively involved [in politics]. Now you have the Archbishop of New York saying that no Catholic can vote for Ed Koch [the N.Y.C. mayor], no Catholic can vote for [City Comptroller] Jay Goldin, for [City Council President] Carol Bellamy, for [U.S. Senator] Pat Moynihan or Mario Cuomo—anybody who disagrees with him on abortion. . . . the Archbishop says, "You Mario, are a Catholic who agrees with me that abortion is an evil". . . . The Archbishop says, "OK, now I want you to insist that everybody believe what we believe."

Cuomo did not stop there; he described to *Newsday* what he believed were the potential implications of O'Connor's remark:

So I'm a Catholic governor. I'm going to make you all Catholics—no birth control, you have to go to church on Sunday, no abortion. . . . What happens when an atheist wins? Then what do I do? Then they're going to start drawing and quartering me.

At first, O'Connor appeared to back off. He told the *Brooklyn Tablet* that he had never said, "anywhere, at any time, that 'no Catholic can vote for Ed Koch.' . . . My sole responsibility is to present . . . the formal official teaching of the Catholic Church. I leave to those interested in such teachings [to judge how] the public statements of officeholders and candidates" match up.

In a *New York* magazine interview he further explained:

I think there's a deep disquiet in the national consciousness about this issue. People

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know it's wrong. They know we're killing. It's not a matter of arguing the precise moment when a fetus becomes a baby—people know that thousands of real live human babies are being killed every day . . . and they don't know what to do. They're confused, upset about it. To me, that anguish is the only reasonable explanation of why I can utter a simple statement, a simple answer to a simple question—I don't see how a Catholic in good conscience can vote for a politician who explicitly favors abortion—and immediately it becomes enormous news.

So O'Connor wasn't backing off at all, and for him the debate was far from over.

After the Democratic National Convention nominated the first woman vice-presidential candidate, Congresswoman Geraldine Ferraro of Queens—a so-called pro-choice Catholic—O'Connor publicly criticized her for saying “things about abortion relevant to Catholic teaching which are not true”:

The only thing I know about her is that she has given the world to understand that Catholic teaching is divided on the subject of abortion. . . . As an officially approved teacher of the Catholic Church, all I can judge is that what has been said about Catholic teaching is wrong. . . . I have absolutely nothing against Geraldine Ferraro; I will not tell anybody in the United States you should vote for or against [her] or anybody else. . . . She has given the world to understand that Catholic teaching is divided on the subject of abortion [when there is] no variance, no flexibility, no leeway.

When the Congresswoman denied she had ever misinterpreted Church teaching, O'Connor released a copy of a letter Ferraro had signed and sent two years earlier to fifty Catholic members of Congress concerning a group called “Catholics For a Free Choice.” In it, she wrote that Catholics for a Free Choice “shows us that the Catholic position on abortion is not monolithic and that there can be a range of personal and political responses to the issue.”

This led to a 25-minute phone conversation between Ferraro and O'Connor during which the archbishop reemphasized that there is “simply no room for a ‘free choice’ on the matter of abortion . . . [T]he Second Vatican Council, Pope Paul VI, Pope John Paul II, and the bishops of the United States [have] made that abundantly clear.”

Mrs. Ferraro termed the conversation “cordial, direct and helpful,” but then she added, aping Cuomo, that:

when bishops speak out they are doing their duty as Church officials. . . . [W]hen I speak out I am doing my duty as a public official and my foremost duty as a public official is to uphold the United States Constitution, which guarantees freedom of religion. I cannot fulfill that duty if I seek to impose my own religion on other American citizens. And I am determined to do my duty as a public official.

The liberal establishment was appalled by what it viewed as O'Connor's meddling. The *New York Times* pontificated:

It might as well be said bluntly . . . [the] effort to impose a religious test on the

performance of Catholic politicians threatens the hard-won understanding that finally brought America to elect a Catholic President a generation ago.

Senator Ted Kennedy accused O'Connor of "blatant sectarian appeals" and argued that not "every moral command could become law."

Mario Cuomo refused to sit on the sidelines. On September 13, 1984, he flew to America's best-known Catholic university, Notre Dame, to answer O'Connor in a talk titled "Religious Belief and Public Morality: A Catholic Governor's Perspective." Cuomo described himself to his audience as "an old-fashioned Catholic who sins, regrets, struggles, worries, gets confused, and most of the time feels better after confession."

"The Catholic Church," Cuomo said, "is my spiritual home." He added, "I accept the Church's teaching on abortion," but then asked, "Must I insist you do?":

Our public morality then—the moral standards we maintain for everyone, not just the ones we insist on in our private lives—depends on a consensus view of right and wrong. The values derived from religious belief will not and should not be accepted as part of the public morality unless they are shared by the pluralistic community at large by consensus.

He evoked Cardinal Joseph Bernardin's "seamless garment" argument, saying that abortion "has a unique significance but not a preemptive significance . . . [and] will always be a central concern of Catholics. But so will nuclear weapons. And hunger and homelessness and joblessness, all the forces diminishing human life and threatening to destroy it."

And arguing that a consensus to ban abortion simply did not exist, Cuomo concluded:

I believe that legal interdicting of all abortions by either the federal government or the individual states is not a plausible possibility and, even if it could be obtained, it wouldn't work. Given present attitudes, it would be Prohibition revisited, legislating what couldn't be enforced and in the process creating a disrespect for law in general.

As historian Richard Brookhiser has written, "Cuomo had found, in consensus and prudence, a way of having religion when he wanted it to not having it when he didn't." The consensus argument was even too much for the very liberal Bishop of Albany, Howard Hubbard:

While I support wholeheartedly the governor's position on capital punishment, there is no consensus in our state or nation on this matter. Quite the contrary. The polls show that 60 percent to 70 percent of the population favors the death penalty.

Also polls indicate that the vast majority of the citizens in New York are opposed to recent legislation about the mandatory usage of seat belts. Yet contrary to citizen consensus, the governor supports such legislation because it would save several hundred lives a year. Why not a similar concern about saving the thousands of human lives which are terminated annually through abortion on demand?

And the renowned theologian, Msgr. William B. Smith, dean of St. Joseph's Seminary, agreed:

The governor's style was smooth and slick, but the content was specious and misleading. He is obviously a competent man, but a couple of points were horrendous, one being the complete ignoring of the human rights issue. Human rights do not rest on consensus. Respect for the human rights of blacks, Jewish people—any minority—does not rest on consensus. This is why we call them inalienable rights. He relied on the 15-year-old rhetoric of Planned Parenthood [that] we're trying to impose our morality on others. The Supreme Court didn't establish a consensus; it destroyed one. The laws in the 50 states weren't there because the Catholic Church put them there.

A month later Archbishop O'Connor gave a speech before a Catholic medical group—with Mother Teresa sitting on the stage—in which he challenged the Cuomo thesis: "You have to uphold the law, the Constitution says. It does not say that you must agree with the law, or that you cannot work to change the law."

There are those who argue that we cannot legislate morality. The reality is that we do legislate behavior every day. . . . It is obvious that law is not the entire answer to abortion. Nor is it the entire answer to theft, arson, child abuse, or shooting police officers. Everybody knows that. But who would suggest that we repeal the laws against such crimes because the law is so often broken.

He ended by reasserting his original public stance.

I have the responsibility of spelling out . . . with accuracy and clarity what the Church officially teaches. . . . I have simultaneously the obligation to try to dispel confusion about such teaching wherever it exists, however it has been generated, regardless of who may have generated it. . . . I recognize the dilemma confronted by some Catholics in political life. I cannot resolve that dilemma for them. As I see it, their disagreement, if they do disagree, is not simply with me [but] with the teaching of the Catholic Church.

For many Catholics, John O'Connor became a national hero. After years of bishops sitting on the sidelines, finally here was someone standing up and challenging whether Catholic politicians could separate their personal convictions from their public stance on abortion and still remain Catholic.

"I think," said Patrick Ahern, an auxiliary bishop of New York, "John O'Connor upped the ante on abortion all by himself. He started the ball rolling, and the other bishops have been forced to follow along. I think, too, that it is an act of great courage, because they're going to flay him over this before he's finished."

Flay him they did. The media consensus was that he was shilling for Ronald Reagan's re-election. O'Connor remained unruffled. He told *New York* magazine reporter Joe Klein that he was "surprised by all the fuss," and pointed out that he was only saying what he'd always said:

In fact, when I was consecrated a bishop in Rome. . . . I vowed publicly that from that day on there would be some reference to the dignity of the human person and, in particular, to the defense of the most vulnerable—the unborn—in *every public address I made*. I have done that scrupulously since the day I became a bishop. I am not saying anything new. If that's the case, why all the fuss?

O'Connor told Klein that other social issues also concerned him. For instance, during a September 1984 hospital strike, he said something that received very little press coverage, namely that no "Catholic hospital could hire substitutes for the striking workers or threaten them in any way."

Nonetheless, he rejected the so-called seamless-garment approach. "I simply don't see the rationale in saying that a politician is for better housing, a lower rate of unemployment, a more rational foreign policy—and the only thing wrong is that he supports abortion, so it's okay to vote for him. You have to go back to the basic question: What is abortion? Do you think it's the taking of innocent human life or don't you? If you do, then translate it: How can we talk about a rational foreign policy or the horrors of nuclear war if we hold the position that you can take innocent human life?"

In January 1986, in a letter read at all Masses in the archdiocese on the anniversary of the *Roe v. Wade* decision, O'Connor described that day in 1973 as one of "national infamy." From the pulpit in St. Patrick's Cathedral, he told the faithful, "In 1984, when I talked strongly on the issues, I was accused of doing so because the national election campaign was in progress. I said then, 'I'll be talking about this in 1985 and 1986 and until the day I die.'" And so he did.

And O'Connor continued to critique the thin-skinned Mario Cuomo. In February 1986, he said, "I flat out think [Cuomo's] wrong. I don't think that makes him evil. It makes him wrong. He makes a serious effort to theologize his way through it and I think he's been unsuccessful." O'Connor was referring to Cuomo's argument, repeated ad nauseam, that as an elected official he should not impose his religious views on the electorate.

The cardinal said that while Cuomo "has a great deal to offer on other issues, he [is] misguided about abortion." O'Connor specifically criticized Cuomo for supporting Medicaid funding for abortion "without any constitutional requirement to do so."

The public envelope was pushed further in August 1986 when a routine newsletter signed by the vicar general, Bishop Joseph O'Keefe, arrived at 410 parishes, containing this paragraph, which was directed towards pro-abortion politicians and spokesmen:

Great care and prudence must be exercised in extending invitations to individuals to speak at parish-sponsored events, e.g., Communion breakfasts, graduations, meetings of

parish societies, etc. It is not only inappropriate, it is unacceptable and inconsistent with diocesan policy to invite individuals to speak at such events whose public position is contrary to and in opposition to the clear, unambiguous teaching of the Church. This policy applies, as well, to all Archdiocesan owned or sponsored institutions and organizations.

The pro-abortion crowd and New York's liberal establishment became unhinged over the announcement. Catholics for a Free Choice protested that the archdiocese had "nailed [the door] shut to prevent its members from being heard."

A *New York Times* editorial described the directive as a "revival" of the argument between O'Connor and Cuomo "about how fervently Catholics in public office must oppose abortion."

Initially, Governor Cuomo declined to comment, saying he had not read the statement. But a member of his press office coyly said that it "doesn't seem to apply to the Governor" who "is totally within the confines of Church teaching."

Defending the policy, Bishop O'Keefe said he was not denying free speech. "I'm not saying we shouldn't listen. I'm not afraid to listen to anybody's opinion. But when you are bringing together a church society, it is inappropriate to invite people who divide your community." The bishop added that when he decided to issue the directive, "I never even thought of the Governor."

On September 4, Cuomo, who was in the midst of a re-election campaign, went on the offensive. "We lay people have a right to be heard," he declared. "It is very difficult to see how this [directive] would be implemented." In typical Cuomo fashion he raised a host of questions to confuse the issue. "From what I'm told, it applies to Church teaching. But what is Church teaching? When are you teaching infallibly and when aren't you? What people, which people will decide who agrees with Church teaching? Will you have ecclesiastical courts?"

Reacting, Monsignor Peter Finn, Director of Communications for the archdiocese, dismissed Cuomo's comments, saying they were "nonsense." "I hardly think," Finn continued, "our local synagogue would be about to invite a P.L.O. [member] to their seder any more than a church in Harlem would invite Mr. Botha [the president of South Africa] to their supper. So I don't understand. What's the problem? In a response to a request from many people about what the guidelines should be for inviting people for speaking, a guideline was given. Period. . . . I think it's very clear as far as the Church is concerned, what it means by 'differing with the Church's teachings.'"

Bishop O'Keefe joined the fray, ridiculing Cuomo's Notre Dame speech as "the encyclical by Mario." He also said that "under no circumstances

would I invite [Cuomo] to speak to young people at a graduation” because “he would confuse young people.”

Cuomo did, however, concede to a *Times* reporter that “The Church has the right to make rules for itself, there’s no doubt about that. The Church has the right to make rules. It can say ‘If you want to belong these are the rules.’ But depending on what the rule was, one can say whether it was wise or whether it was unwise.”

The September 11 issue of *Catholic New York* published the cardinal’s response to Church critics in a column titled “A Matter of Common Sense.” O’Connor threw down the gauntlet, asking “how much further are the nonsensical allegations going to go on?”

Imitating Cuomo’s rapid-fire approach, the cardinal asked, “So what is all this furor about? What is all this fuss about? What is the nonsense I read about squelching ‘free speech’? Where is the deep, dark sinister political motivation that some choose to see? When did common sense, or a sense of appropriateness, become unconstitutional or un-American? Why the hysterics that leads a columnist to speak of the ‘thought police’ of the Archdiocese of New York? (A rather nasty Nazi-like implication there, wouldn’t you say?)”

The cardinal also addressed Cuomo’s inquiries as to who decides who will be heard: “Who is supposed to make the judgment in such matters? Our pastors, with the guidance of our Vicar General, are charged by Church law and by my delegation to provide guidance. Are we to have a Church in which everyone’s judgment is equal to everyone else’s? That’s not a Church, it’s chaos.”

The cardinal’s column was not his final word on the subject.

In November 1989, the cardinal took two active steps in support of his words. First, he became chairman of the U.S. Bishops’ Committee for Pro-Life Activities. That same month he urged the founding of a new order of nuns, the Sisters of Life, who would take an additional vow to defend human life against abortion and euthanasia. Nine women took up his challenge in June 1991 and co-founded the order, which thrives to this day.

On January 31, 1990, O’Connor defended his auxiliary bishop, the vicar of Orange County, Austin Vaughan, who had spent ten days in an Albany jail for protesting in front of an abortion clinic. While incarcerated, Vaughan stated that Governor Cuomo was “in serious risk of going to hell” because of his “active support of abortion rights and government financing of abortion.”

In his *Catholic New York* column, the cardinal, describing Vaughan as “one of the finest theologians I know,” continued:

I read in the newspapers that His Excellency, the Auxiliary Bishop of New York, had “cursed” His Excellency, the Governor of New York, “to hell.” Indeed, the Governor

is quoted as saying: "I get condemned to hell for not agreeing [on abortion]."

"Not so," Bishop Vaughan told me, "very much not so," when I spoke with him after his release from prison. He went on to say that he is well aware that he has no power whatsoever to condemn anyone to hell. He would agree with the Governor completely that such an unpleasant task is exclusively the prerogative of a much higher and wiser power.

He told me, too, that despite the newspaper reports, he had never suggested for a moment that he would be happy to see me refuse the Governor Holy Communion. In fact, he says he was asked by the press whether he, Bishop Vaughan, would excommunicate the Governor, and replied that he had no authority to do so and would not think it a good idea anyway.

That out of the way, would anyone deny that the Bishop has the right and even the obligation to warn any Catholic that his soul is at risk if he should die while deliberately pursuing any gravely evil course of action, and that such would certainly include advocating publicly, as the Bishop puts it, "the right of a woman to kill a child." What the Bishop told me he actually said was that the Governor is "quite possibly contributing to the loss of his soul." To me that sounds significantly different from "cursing" or "condemning" the Governor to hell. . . .

I do have one major concern, however, and it's not the highly confused report on who said what in the newspaper stories. It's that such stories tend to distract from the real issue, that abortion, as the Second Vatican Council puts it, is an "abominable crime." That, neither political fortunes nor ecclesiastical sanctions, is the bottom line.

Reacting to O'Connor's column, Cuomo had a terse reply: "The Cardinal says the Bishop was misquoted, I'm glad."

A June 14, 1990, special edition of *Catholic New York* contained a twenty-thousand-word Q&A written by O'Connor that addressed almost every conceivable subject concerning abortion, including suggestions to doctors, lawyers, educators, and parents "to advance the cause of life."

What caused headlines was this statement:

Where Catholics are perceived not only as treating Church teaching on abortion with contempt, but helping to multiply abortions by advocating legislation supporting abortion or by making public funds available for abortion, bishops may decide that . . . such Catholics must be warned that they are at risk of excommunication. If such actions persist, bishops may consider excommunication the only option.

O'Connor went on to state that, at the same time, "the Church does not want to make 'martyrs' of individuals by punishing them. It is up to the local bishop to use his best judgment concerning particular cases."

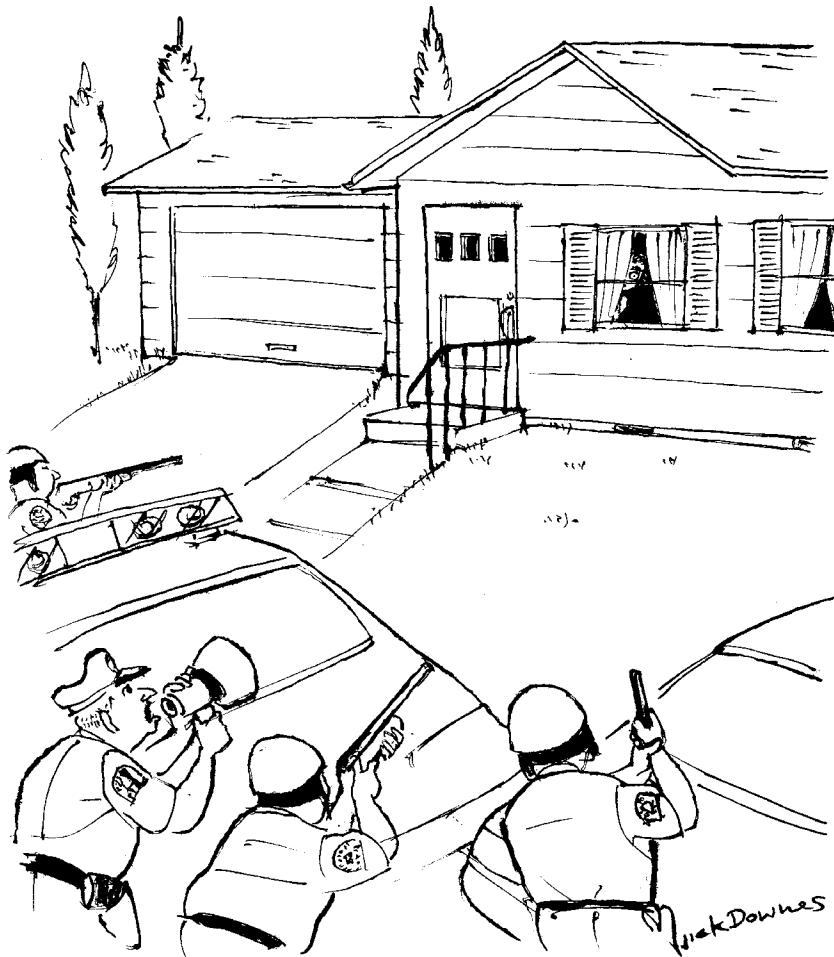
Of the "personally opposed" position, O'Connor stated that it "says, in effect, 'In public life I will act indistinguishably from someone who sees abortion as a positive social good, but please know that I will do so with personal regret.' This regret is hardly effective, since it serves the agenda of those who actively favor abortion."

While the archdiocese's communications director, Joe Zwilling, said that

O'Connor's Q&A was "not written with anyone in mind," the *New York Times* reported that Governor Cuomo "appeared to take it personally." Cuomo told the *Times*, "It is difficult to discuss it. It is upsetting. I don't like to hear it. How could you? This is something very fundamental to our family."

Cardinal O'Connor kept up the battle on abortion for the rest of his life. And when O'Connor lay dying in 2000, his old adversary, Mario Cuomo, conceded in a *New York Times* op-ed piece that the archbishop "was an extraordinary prince of the Church who has always been a priest first."

America could do with such another today.



"We're not angry with you, Briggs—just disappointed."

Young Death in Fiction and Fact

Ellen Wilson Fielding

Death has always been hard to top as artistic high drama. The death of the young (or relatively young) is particularly poignant; artistically, it can carry much of the narrative load for a novelist, scriptwriter, or biographer. Go back a generation or so and find *Love Story*, the tale of star-crossed lovers parted by death (“Who would have thought forever could be severed/By the sharp knife of a short life?” as The Band Perry sang a few years ago in their ballad “If I Die Young”). Go back another generation and find, among many others, *West Side Story* (a gritty 20th-century adaptation of *Romeo and Juliet*). Go back further and find, say, Bette Davis dying in *Dark Victory*. Or, in printed format and absent a romantic relationship, consider journalist John Gunther’s *Death Be Not Proud*, the account of his adolescent son’s death from brain cancer.

Almost innumerable examples could be listed, not generation by generation but year by year, going back to the beginnings of story-telling, although many of these classic tales of young death depict death in battle or (for the women) in active or passive suicide as a result of the grief of losing the beloved (think Dido, for example, or Ophelia, or Juliet).

The death of the young has always been affecting because in such cases their lives are cut short before they can develop and share their gifts, fulfill their promise, and experience the fullness of life, such as a great love or parenthood. As human beings we are meaning-makers: We construct stories, narratives, both out of whole cloth and from the events of our lives, to make of the things we do and the things that are done to us something significant. Even for those who find death an obscene absurdity, a punctuation mark highlighting the pointlessness of all that came before, the crafted narrative of such a death brings out *that* meaning. In the words of Dylan Thomas’s modernist elegy, we can at least “Rage, rage against the dying of the light.”

Many 20th and 21st-century war memoirs, novels, and screen treatments, for example, are written from this angle. There are the war poets of 1914-1918, such as Rupert Brooke and Wilfred Owen, the World-War-I-themed novel *All Quiet on the Western Front*, World War II’s *The Naked and the Dead*, the Korean-War-era depiction in M.A.S.H., the Vietnam era’s *The Deer Hunter* and *Apocalypse Now*. Appalled by the mass ugliness, destruction,

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and sheer waste of war, the authors of such accounts either conclude that the world is senseless or hold segments of society accountable for it—such as the old and middle-aged who stumble into or defend war and the wealthy and powerful, including big businessmen and politicians.

But when it comes to incurable illness, barring instances of medical malpractice, unequal allocation of medical resources, or greed-induced sickness such as careless disposal of dangerous industrial waste, the standard author does not lay the responsibility on human villains. He or she either blames God (perhaps even nowadays a minority option since most of those tempted to blame him don't believe in him) or concludes that life is inherently senseless except for the meaning we choose to impress upon it, as a mold impresses a pattern on clay. One common category, then, of artistic treatments of young death by illness (whether fictional, biographical, or autobiographical) is to show how the doomed person attempts to short-circuit the senselessness, if not the death, by imposing some shape or meaning on the experience.

Consider the recent nonfictional death of Brittany Maynard, the 29-year-old who, diagnosed with terminal brain cancer at the beginning of 2014 and given six months to live, determined to wrest control of her death from the cancer by choosing to end her life when the suffering, seizures, and deterioration of normal functioning reached for her an unacceptable point. She moved from San Francisco to Oregon, where assisted suicide is legal, and set a suicide date of Nov. 1 (a deadline that she suggested at the end of October she might extend, but then met, keeping her “promise,” as the *Washington Post* put it in reporting the death on Nov. 3).

This very public determination on her part was aired on (among many other venues) YouTube, CBS's *This Morning*, CNN, her own online blog, and in *USA Today*, the *Washington Post*, the *New York Daily News*, and *People* magazine. Stories of her life and the bucket list she completed with her visit to the Grand Canyon in late October appeared all over. The pro-assisted-suicide advocacy group Compassion and Choices partnered with her on the YouTube video and released the statement of her death. And in fact, the cause to which she devoted this last stage of her life, the cause that she chose, in a sense, to define her death, was assisted suicide or, as she and the Compassion and Choices folks put it, “death with dignity.” “I didn't launch this campaign because I wanted attention,” she blogged. “I did this because I want to see a world where everyone has access to death with dignity My journey is easier because of this choice.”

Frequent *Human Life Review* contributor Wesley Smith, writing on Maynard's story for National Review Online, noted Compassion and Choices' propagandistic use of Maynard as an ideal poster child for its agenda “because

of her youth, beauty, and the tragedy of her condition.” There is no question that Brittany Maynard received a tough death sentence. She and those now mourning her departure can justly claim our sympathy and commiseration. I think that assisted suicide, the cause to which she devoted the end of her life, is pernicious, but presumably she is less culpable than those in *Compassion and Choices* who essentially egged her on and profited politically from her fear and misery.

Maynard’s is one contemporary account—in this case a true one—of young death. However, her story was as carefully composed as the fictional deaths of characters in novels or screenplays. Consider the plotline of the recent novel-made-movie *If I Stay*.

The protagonist in *If I Stay*, a promising young cellist at odds with her rock-musician boyfriend over, among other things, whether she should attend Juilliard, sustains severe injuries in a car crash that kills her mother, father, and younger brother. As she learns of and begins to assimilate these losses in the hospital where she lies in a coma, hovering between life and death, she is told by both a nurse and her grieving grandfather that she has the choice to let go of life or stay. There is no suggestion that either the nurse or her grandfather are talking about suicide: The implication is that her hold on life is so tenuous that if she relinquishes her will to live she will slip away. The book and movie offer a lot of other information about her life, art, relationships, and feelings about them, but for the scope of this article this summary suffices. At the end (spoiler alert!) as her rock musician love turns up at the hospital and plays an iPod selection of classical music by her bed, she opens her eyes, the implication being that she has opted to stay.

If I Stay is a fairly standard teen tearjerker that did in fact successfully jerk a lot of tears from its intended audience. There is no sense in weighing it down with a freight-load of philosophical or sociological meaning it was not meant to bear. I cite it only to tease out some implicit assumptions, since what a society takes for granted tells a lot about its values and worldview. Here, for instance, the main motivating factors for the protagonist’s decision are feelings: her feelings of wanting to follow her parents and brother to the hereafter versus her feelings for her boyfriend, his for her, and somewhat subsidiarily, her bereaved grandfather’s feelings. And finally, perhaps, her feelings for music.

Let’s consider another current fictional take on the topic of young death before contrasting our own concerns with those of people buying books in the late 1800s. This is the popular teen novel/movie *The Fault in Our Stars*, which focuses on two teens who meet in a cancer support group, fall in love,

and share pain, fear, philosophies of life, adolescent gripes about parents, etc. In the end (spoiler alert!) the boy dies.

Again, I did not select this best-selling book/movie to skewer it, but to note how accurately it depicts some of the ways that we think about young death. Like the human race in general and our own era's humans in particular, I find emotional attachments to be powerful and at times almost irresistible motivators. And like most of my contemporaries, I would like to exercise control over my destiny—or I believe that I would like to. My concern here is how this or that contemporary person or book or play both reflects the power of these emotions or desires for autonomy and perhaps affects how we do in fact view our destiny. And how does this make us different from many of those who preceded us?

The Fault in Our Stars, then, in addition to rather realistically portraying teenagers grappling with love, pain, infliction of emotional pain, and desire to escape suffering and death, pinpoints the major motivators of its protagonist as the search for love and desire for autonomy, the power to choose. The dying Augustus writes to his fellow cancer-stricken love Hazel that we can't avoid being hurt in life, but can choose whom we allow to hurt us. He concludes that he is happy with this choice and asks if she is happy with hers.

In a Chestertonian effort to mentally escape from the tyranny of being a child of the present age, let's turn now to some earlier treatments of young death for comparison. Almost a century and half before John Green set down *The Fault in Our Stars*, Louisa May Alcott was opening her best-selling career as America's mainstream moralist and author of fiction for young people. *Little Women*, like almost all of her later novels (and the work of a good many other 19th-century novelists, among them Dickens) included the death of a young person as an important part of the plot. In *Little Women* the victim was Beth March, the angelic third-born of the four Little Women of the title. Beth's death is foreshadowed about midway through the novel when, in her early teens, she suffers a near-fatal illness that permanently impairs her health. Throughout most of the second part of the book, which opens several years later, her delicate physical condition gradually deteriorates, leading to this affecting but (by today's standards) oddly peaceful demise:

So the spring days came and went, the sky grew clearer, the earth greener, the flowers were up fair and early, and the birds came back in time to say good-by to Beth, who, like a tired but trustful child, clung to the hands that had led her all her life, as father and mother guided her tenderly through the Valley of the Shadow and gave her up to God.

You may have noted that none of the more contemporary examples we looked at earlier interjected the image of a trusting child. None presented parents or other elders as wise guides who could be depended upon to

enlighten the dying adolescent or young adult. None seriously focused on death as predominantly a passage to God.

Does Beth betray no now-obligatory rebellion against God or railing at her fate? Yes, to a degree. When she first realizes that she is declining towards an early death, “She could not say ‘I’m glad to go,’ for life was very sweet to her; she could only sob out ‘I try to be willing,’ while she held fast to [her sister], as the first bitter wave of this great sorrow broke over them together.”

Granted that Beth is an idealized girl (and all but one I think of Alcott’s child victims is similarly idealized), the difference is not so much what the dying young people in her novels are feeling as what their attitude toward death is. Today’s examples of dying young people are largely unreligious or at least unpreoccupied with preparing themselves to meet God, even in the throes of serious illness. The youthful protagonists regret the years and the experiences they will never have, but do not review their lives to determine whether they have spent their time and natural gifts well or question whether they have been loving and productive people, whether they are ready for death in the traditional sense of having done what needed to be done rather than in the more contemporary sense of being emotionally reconciled. For the 19th-century young people who are dying, the idea of “choice” crops up in relation to judging how well they have lived their lives and how consistently they have chosen the good, rather than as a means of establishing a measure of autonomy at the approach of the Grim Reaper.

It may be argued that Alcott’s religiosity, moral seriousness, and (in some cases) affinity for the sentimental disqualify her as a legitimate foil for books like *The Fault in Our Stars*. Two replies come to mind. First, there is a kind of idealization of passionate romance and against-the-world rebellion that contemporary fiction, perhaps especially young adult fiction, often slides into. Because language and situations are graphic, pictures not pretty, relationships with family and friends messy, and romantic entanglements complicated, these novels can strike many readers as boldly realistic when in fact they often belong to their own brand of hard-boiled or shock romanticism. The second and perhaps more important point is that, even if 19th-century readers personally fell far short of the ideal of angelic Beth March (or of Ed in *Jack and Jill*, or, to break out of the Alcott corpus for a moment to an example written for adults, of Little Nell in Dickens’s *Old Curiosity Shop*), these books were hardly force-fed to readers as improving literature; they were wildly popular (with girls, certainly—the primary readership of *If I Stay* and *The Fault in Our Stars* as well). They embodied, therefore, ideals of how people wished to be and to act, just as adventure stories embody ideals of courage, loyalty, and hardiness that males of that time would hope to emulate.

A final death scene, from Alcott's *A Rose in Bloom*, shows Charlie, the failed hero whose last moments have reduced generations of schoolgirls to tears.

His eyes were fixed, as if trying to look into the unseen world whither he was going, and his lips firmly set that no word of complaint should spoil the proof he meant to give that, though he had not known how to live, he did know how to die. It seemed to Rose as if for one brief instant she saw the man that might have been, if early training had taught him how to rule himself . . .

. . . "I'd like to stay a little longer, and try to redeem the past; it seems so wasted now: but, if I can't, don't grieve, Rose . . ."

The most obvious difference that is likely to hit readers of both the current and past deaths lies in the young people's variant reactions. It is the differing object of the dying person's regret. This distinction is not absolute; it is more a matter of emphasis and degree. In contemporary examples we can often discern expressions of regret for wasted opportunities, and in Alcott's examples we can often detect wistfulness at missed experiences of maturity, such as marriage and children, or more time with friends, loved ones, or the world in its beauty. But the proportions are certainly different, if not reversed. The 19th-century protagonists either regret bitterly their wasted talents, affections, and opportunities and express their guilt and repentance for poor stewardship of their lives, or, in the case of the "angelic" characters, are humbly grateful to God for all they have been given and accept that it is time to go home. In fact, humility—either habitual or new-found—may be the strongest difference between the contemporary protagonists and the earlier ones. It certainly is not one of our own era's hallmark virtues. We often distrust the expression of humility as being hypocritical or showing an unhealthy lack of self-esteem, a sense of victimhood or masochism. We prefer all that raging against the dying of the light; it seems both more authentic and also more heroic. We embrace the anger stage of Elisabeth Kubler-Ross's stages of grief, while Alcott's protagonists appear to more readily aim for and achieve the peace of acceptance.

Brittany Maynard, it appears, chose to exercise some control over the terms of her exit through pursuing assisted suicide. This "acceptance" of death on her terms is particularly striking because the date she set for her suicide was shortly after the six-month mark that her doctor had given in April as an estimate of how long she would likely live.

Those who value autonomy in its most extreme form, insisting on controlling the details and parameters of life and death, are naturally major propellers of assisted-suicide legislation. Those who define a successful life or a worthwhile existence largely in terms of ratios of pleasure to pain or

attained goals also tend to support assisted suicide. The ubiquity of the bucket list is perhaps a marker of this mindset: Brittany Maynard, for example, compiled a list that climaxed several days before her Nov. 1 deadline with a trip to the Grand Canyon, which she chronicled on her blog. And of course it makes sense that, if you are the one deciding when to end it all, you might want to work your way through a to-do list before calling it quits.

Let's throw into better relief this choice-filled way of conceiving of life and death through a thought experiment involving people with very different expectations. Consider, for example, ordinary people in the ancient world who approached death through advancing age or illness. In life they had not chosen the tribe or nation or social class they were born into, and likely had only limited selection of "career" or spouse or number of children born to them or number of children surviving to adulthood. Naturally, then, as they neared death, the idea that they could or should determine the timing or manner of their passing—that they should choose to some extent how it would come about—would strike them as odd and even outlandish. The arena of choice in their lives, aside from minor decisions such as patterns to weave on a loom or where to go fishing, encompassed essentially moral choices: decisions on whether or not to fulfill their duties; to be kind to children, strangers, and those subservient to them; to help neighbors, friends, and family; to keep their word; to honor their God or gods.

People who oppose assisted suicide and euthanasia rightly raise the specter of abuse (abuse that has already come to pass, for instance, in both the Netherlands and Belgium, judging from both anecdotal evidence and the statistics on who and how many are experiencing these "mercy killings"). What organizations such as Compassion and Choices campaign for as an extension of the dying or disabled person's autonomy can and in many cases does become an abridgement of people's freedom to continue—without pressure or emotional blackmail—living lives that another may judge unacceptable, or may simply be reluctant to support. We can sympathize with overburdened caregivers or loved ones traumatized by seeing family members descend into the ever-less-accessible realms of Alzheimer's; however, in our sympathy we should also recognize the huge temptation posed by legitimizing the path of premature release for loved ones (and for family members or friends coping with this and other heartrendingly debilitating conditions). Laws exist to protect the innocent—but also to protect some of the innocent from being tempted beyond their moral and psychological strength, in this case under the persuasive guise of mercy.

And in fact some advocates of assisted suicide and euthanasia have added to the appealing arguments of autonomy and mercy less-attractive economic

arguments that are nevertheless likely to appear increasingly compelling. Next to this deadly trio of motives—autonomy, mercy, and cost-saving—in a culture increasingly less comfortable with appeals to traditional moral absolutes, the standard sanctity-of-life and slippery-slope arguments against assisted suicide and euthanasia may continue to cede ground. A moral ebb-tide such as our culture is demonstrating in so many areas affecting how we view and treat human beings (abortion, bioengineering, pornography, marital breakdown and rebranding) necessarily drags with it end-of-life treatment as well.

When we consider the extended history of sanctity-of-life issues, it is difficult to see how, barring broad general belief in the objective reality of a Creator, a society can for long securely protect itself against assisted suicide and euthanasia. Historically, many non-Christian and pre-Christian societies recognized taboos against suicide in general or the routine elimination of the elderly, perhaps related to the ancestor worship also common among them. On the other hand, many pagan societies also permitted exposure of handicapped infants, or other specific categories of suicide or euthanasia, such as the death of the dishonored. It seems that a general recognition of the sanctity of human life (as made in the image of God) *combined with* recognition of human beings' special status in creation and a duty to protect the weak and vulnerable among us is largely reserved to Judeo-Christianity.

That is the broad-brush situation, as I see it. At the level of individuals, some who are non-religious or non-Judeo-Christian (and perhaps also not members of some forms of Islam) recoil from otherwise seemingly pragmatic end-of-life choices for themselves and others due to something akin to the idea of the sanctity of human life. I myself do not know what that term means if it is not religiously based (and if it is not also based on a special status for human beings that, in non-believers, seems contingent on qualities or abilities that can change, decline, or even disappear). The very definition of the word sanctity is bound up with ideas of the holy and the sacred. Perhaps these people are successfully living off the West's dwindling religious capital, or are appalled by totalitarian examples of what can happen to the rights of the weak and minority groups in the absence of religion and adopt sanctity of human life as a kind of noble lie. If they do indeed think so, perhaps they need to work harder at building up an ideological infrastructure that will support the sanctity of human life—including one that will make it part of our popular story-telling as well. Popular movies and novels that engagingly present end-of-life decisions, accommodations, or acceptance on the basis of how you feel and whether you have completed your bucket list will do

nothing to undergird the sanctity of human life. They will instead simply facilitate our acceptance of the sad decision of Brittany Maynard.

Our lives are sacred only if they have been made so by another, by the one who made them. Otherwise, that “sacred” status rests only on a sort of social popularity contest: You are safe because you belong to a group that appeals to us for thus and such reasons of tribal membership, social utility, sentimentality, or mythic status. And it follows that you are not safe if you do not belong to such a group—or if people of certain groups that society once felt sentimental about protecting (say, handicapped children or the clinically depressed), that society later comes to feel sentimental about euthanizing (as in Belgium’s child euthanasia law). As for religiously-derived notions of sanctity of human life, without regard to how human life comes to be regarded as sacred and what that status means, historically it too can be wielded as a two-edged sword: The human sacrifices offered up in many religions, from the priests of Baal to those of the Aztecs, were in their own way sacred, weren’t they?

It does seem, in the end, as though the content of what we believe matters. In other words, neither compassion nor choice are enough to ensure a good—a life-affirming—decision. We need to answer these questions: Compassion expressed how? Choices to do what? And if we believe in human exceptionalism, we need to answer additional questions: Exceptional to whom, and why? To ourselves and the fickle affections of our society? To Peter Singer? To Mensa members? Or to whoever made us exceptional, to a God over and above us, in comparison with whom our mental and physical gifts and attainments are all, from Einstein to a child with Down syndrome, much on the same level? From whom do our lives derive sacred status? From each other, in “I’m okay, you’re okay” fashion? What then if some of us do not seem okay to others of us? To whom do those endangered people appeal?

In the end, the only serious defense I can see against attacks on the sanctity of human life is belief in a benevolent Creator who decrees that my sanctity of life be protected even from myself, if I am tempted to violate it due to pain, disability, or depression. How we think about life inevitably influences how we think about death.

Of Hortas and Humans:

Meditation on a 50-Year-old Episode of *Star Trek*

Stephen J. Heaney

Deep in a planet lives a shaggy creature called a Horta, a silicon-based life form that rather resembles a two-foot-high, six-foot-wide walking toupee. Like a fish in water, it finds nourishment in its subterranean home, cutting paths through the rock by secreting a powerful acid. The life cycle of Hortas is such that every fifty thousand years they all die off—all but one, who is mother to thousands of round, almost pure silicon eggs.

The men who are mining this planet have never encountered a silicon-based life form. As they mine, they run across volleyball-sized silicon nodules—a geological oddity, they assume. Some of these they collect; many others are broken. Then the men start dying from being deep fried in acid.

Those of you familiar with such things will recognize the plot of “The Devil in the Dark,” an episode from the original *Star Trek* series which aired in 1967. It is often a surprise to realize how much such shows took for granted about what is moral and what is immoral, and in this case, about the proper role of the healthcare provider.

When Captain Kirk and Mr. Spock catch up with the Horta in the mine, they shoot it with phasers. This does not stop the creature, but leaves a big wound in its side. Eventually, at an impasse in a small tunnel, Spock mind-melds with what turns out to be a rational, languaged being; he thus learns the truth about Mama Horta and her solitary destiny: She is the mother of her race. At this point, Doctor McCoy is called in and told to help the wounded Horta. McCoy protests: The creature is pure silicon, so what is he supposed to do? When Kirk tells him to think of something, Bones draws himself up: “I’m a doctor, not a bricklayer.” Kirk responds, “You’re a healer. There’s a patient. That’s an order.”

McCoy has some building materials beamed down and fashions a thermo-concrete bandage for the wounded mother. “I’m beginning to think I can cure a rainy day!” he exults. The miners, once they become aware of what they have been doing, feel awful, and return the eggs they have carried off. They come to a workable arrangement for sharing the planet with Hortas and, apparently, they all live happily ever after.

There is much food for thought in this original-series *Star Trek* episode:

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about the inherent dignity of a rational creature, about the natural relationship between a mother and her not-yet-visible offspring, about the role of the medical profession. Even today, nearly half a century after the episode originally aired, people respond to the real human drama portrayed in this story.

The Horta is a creature unlike any the humans have hitherto encountered. It has no discernible head, no recognizable front or back. We never see quite how it moves; it just sort of glides along. Nor does it do any kind of thing we do. It moves through rock, dissolving it with a potent acid its body produces, yet which does not harm the creature itself. It is not even carbon-based, as we are.

Yet when the Horta attacks, there is something about its behavior the humans understand—or at least think they understand. Perhaps this is a beast trying to protect its turf. Perhaps it is a rogue. Or a creature hard-wired to kill whatever crosses its path. Whatever it is, the men are sure of only one thing: The Horta is so different, and so dangerous, it must be killed. And the killing is easy, because as far as they are concerned, it is merely a beast.

The moment of revelation concerning the truth of this creature is a moment of great confusion for the miners. *A rational creature? It doesn't look like any rational creature we have ever heard of. How do you know this?* As the evidence is presented, they waver: *This is a creature so unlike us, and yet, being rational, so importantly like us. We may not kill another rational creature any more than we may kill another human being, at least not without cause, as in self-defense.*

Yet even the evidence of its rational nature seems to be in conflict with another bald fact: This creature has been running around killing miners indiscriminately. What kind of rational creature does that? A mother protecting her unborn offspring, of course. Unable to communicate, enraged at the assault on her children, and—given the unknown character of the monsters doing this horrible thing—afraid, she responded in the only way she could. It is with this realization that the guns and clubs fall to the miners' sides. *Her eggs? We've been taking her eggs? Of course, that explains it. That's what a mother should do—protect her young. Even a beast protects its young instinctively. For a rational creature, we have provided more than a stimulus; we have provided a justification. We didn't know. They don't look like any kind of eggs we've ever seen. How could they be the children of a rational being? But then again, until one minute ago, we didn't recognize the Horta as a rational being, either. Now that we do, we will protect both mother and children.*

It is amazing that a story such as this can still touch the human heart. We

live in a world unimagined even by the science-fiction writers of the 1960s—a world which no longer reflexively shrinks at the thought of destroying the most tiny and defenseless of human beings. We live in a world which considers it an open question whether a mother should allow the new life within her to be torn out. We live in a world of elective abortion through all nine months of pregnancy. We live in a world, we are told, which is more “thoughtful,” more “nuanced,” than the one that produced “The Devil in the Dark.” We have “reasons” for aborting our young.

The main reason, the one that grabs us in the gut, the one the medical professional is closest to on a day-to-day basis, is very simple: People we know and love are in pain, and we want it to stop. This seemingly small destructive act will, we are assured, provide the necessary relief from that pain. Indeed, it may bring big dividends. This is the utilitarian principle, which assumes that pleasure is the good and pain the bad, and so the point of all human action should be to increase pleasure and to decrease pain.

There are some deep-seated problems in this account. For one, there is no way to guarantee that our actions will bring about the results we seek. Another is that it inevitably leads to a struggle between the powerful and the powerless—which, by definition, the powerful will always win. For when the powerless protest that certain actions may never be taken, that they always violate what it means to be human, they are left without an argument: In a consequentialist world, no action is ever ruled out if it brings the “correct” results.

A proper response to such an ethical system requires one to recognize that pleasure, while often good, is not The Good. Rather, human flourishing comes in functioning properly as human beings, living a rational life in accordance with the truth of ourselves. Actions will be fitting or unfitting for us, not insofar as they produce results, but insofar as they are in accordance with the truth of our human nature.

Whenever we seek to operate according to the utilitarian principle—to “bring about the greatest pleasure for the greatest number of people”—it is almost inevitable that some human beings are going to get hurt. Since it is an ethics based on results, it too often entails deliberately inflicting harm to bring about a desired end. This does not mean, however, that utilitarians find it easy to hurt people. They are not monsters. They really do care about human beings, in particular about their pain and suffering.

How, then, do they justify the destruction of children through abortion? The simplest thing to do is to declare that those tiny creatures in the womb—or the petri dish—are not bearers of dignity and rights like the rest of us,

maybe not even human beings at all. Now when it comes to, say, a five-month-old fetus, an appeal to pictures might be sufficient; these look enough like our own baby pictures that we readily say the fetus is like us. But the earlier the stage the images depict, the harder this gets. And when it comes to very early embryos, we really can't appeal to visuals at all: Like the Horta—and even more so like embryonic Hortas in their silicon eggs—blastocysts do not look like you and me.

“Not looking like you and me” is a claim often used to deny the humanity of the embryo. Another is that the embryo does not *act* like you or me. Actually, this is not a bad way to argue. Any good scientist or philosopher is going to say that if A neither looks like nor acts like B, then clearly A is not the same kind of thing as B. But is it true that embryos neither look nor act like us? Superficially, this is true—but not once you scratch the surface.

There is no philosophical or scientific way to sustain the claim that a one-celled zygote, brought into existence by the joining of human sperm and human ovum, is anything other than a living human being. It is clearly alive. It is clearly nothing other than human. It clearly has its own existence, not that of its parents. The question becomes, then, whether this living human being is also, like us, a person, a bearer of rights and dignity.

Our fictional Horta reminds us that we should always be suspicious of any claim that something has neither rights nor dignity just because it does not look like us. The young do not look like the old; children do not look like adults. Men do not look like women. The sick do not look like the healthy. But whether we are men or women, old or young, sick or healthy, every human being begins life in exactly the same way—as a tiny embryo that under the microscope looks more like a Horta than it looks like us. And if I had plucked that embryo—the one which developed into the mature human being who is now reading this essay—out of its watery home in its mother's womb, and crushed it, or dissected it, or just left it to wither, it would not be some “potential” human being who would be dead. It would be you. I would have killed you. When we talk about embryos as being no bigger than the dot over the letter “i,” it is very easy to drift into thinking in abstractions. Like our *Star Trek* miners, utilitarians need to think in abstractions. But killing an embryo is no abstraction. It is very personal.

Oh, no, some will try to argue. There is no person there. A person is defined by what he or she can do. Sure, they don't have to look like us. Maybe apes and dolphins are persons; maybe there are even alien persons, like the Horta. The question is whether they act like us. That is, can they engage in specific activities we associate with the fullness of humanity: rational thought,

language, desiring their own future, interpersonal relationships? Embryos cannot do any of these things. They have none of the physical equipment that would allow it. So they cannot be persons.

The claim that the embryo is not a person, but later becomes one, rests on the premise that there is some point in human development when we all step over some line and suddenly become fully capable of these actions. But this view weakens when you push on it. What makes it possible for the human body to develop as it goes toward that point? What controls the movement of the embryo in the particular direction towards full human maturity and rationality?

Those who would posit some new element to establish personhood—viability, brain development, the primitive streak—do not claim that something new is added from outside the embryo. No being, simply from its own resources, can become some new type of being. Those who wish to maintain this position, then, must have it backwards. In order for the body of a person, and the operations of a person, to unfold as they do, the being in question has to be a person to begin with. It must become, to a greater degree, what it already is. It is not that some human beings are persons, and others are not. Rather, to be a human being is to be a particular kind of person. (There may be other kinds.) The dignity and rights that we recognize as proper to a person belong to that being from the beginning, because of the kind of being it is.

When the miners learn that the Horta is a rational being like themselves, they realize in a flash that those round balls of almost pure mineral are in fact every bit as precious as the full grown, shaggy, acid-oozing, rock-eating creature who sits before them begging for her life. They do not look like much, but these nodules are her children, like her in everything but development. To suggest that a mother forsake her relationship with her child for the sake of some result which cannot even be guaranteed, strikes deep into the psyche. Human beings have only a few fundamental, natural inclinations: for example, self-preservation and the sexual urge, the need to know and name things. To care for our offspring is one such fundamental inclination; a deliberate assault on this inclination cannot help but have deleterious effects on those who participate in such an act.

I have not forgotten Dr. McCoy, nor the importance of his moment in both the story and in our discussion. McCoy's protest—"I'm a doctor, not a bricklayer"—shows us that he is aware that the medical profession has a specific object. Every action has a specific object by which you can identify what kind of action it is. The same is true of a professional art or skill: It has a specific end by which you can tell what art is being practiced. Once that

end has been determined, all choices are made in relation to it. To move toward a different end is to be acting in another capacity. When a baseball player sits in the locker room playing cards, he is not performing this activity as a baseball player; baseball does not involve the use of cards. McCoy recognizes—in this episode and others—that he is not an engineer or a moon shuttle conductor. He has a specific end as a doctor, and it is not patching up rocks. It is Kirk, however, who reminds him of exactly what his end is: “You’re a healer; there’s a patient.” *Do what you can, Bones. If there’s nothing you can think of, maybe there’s nothing to be done except to sit with her in sorrow while she dies. Just try.*

The utilitarian mindset of which we have been speaking cannot let medicine be medicine, with its own goal of restoring a patient to health. This is because utilitarianism is results-oriented. The point is to alleviate pain, and any act which brings about that result is permissible. A medical professional, like everyone else, is expected to subordinate his or her acts to this result, even if it means acting in a way that violates the very meaning of medicine. If restoring health relieves pain, then do it; if it does not, then do something else. If abortion, for example, is deemed the method to end a woman’s pain, then the medical professional is supposed to bring his or her technical skill to bear to get the desired result. Never mind that abortion kills another human being; never mind that it tears at the very heart of the natural relationship between mother and child.

The medical professional, however, must say no. And the reason for saying no need not be an appeal to religion or ethical systems. The appeal is much closer to home: *I’m a medical professional, not a mere technician. What you are asking me to do is not medicine. Medicine is about healing. Even the relief of pain is subordinated to that end. Pregnancy is a perfectly normal function; it is not a disease to be treated, especially by killing. Killing is the opposite of medicine.*

If all medical professionals remembered what the goal of medicine is, and refused to do what violated this goal, conscience clauses exempting individuals from participation in abortion (or, for that matter, assisted suicide and contraception) would be unnecessary. Medical professionals affirm life, because their proper end is to restore human beings to their proper functioning, to health. Failure to pursue this end is the antithesis of medicine.

I urge every health care professional to go online to find this episode of *Star Trek*. Watch it. Meditate on what you do. Think about the ways we can easily forget that the creature under our care is another person, like us, with all the rights and dignity that belong to you and me. And remember especially the most hidden ones, the littlest ones, the ones easiest to forget.

Down Syndrome: Parents Speak Up

Readers not familiar with Richard Dawkins, the outspoken British evolutionary biologist who recently insisted in a series of Tweets that unborn children diagnosed with Down syndrome be aborted for “moral” reasons, will hear about him here. The reaction on Twitter and in the media world at large was fast, furious—and non-ideological, much of it coming from parents or other family members deeply hurt by the cavalier dismissal of a loved one’s humanity. The following commentaries speak for themselves. Thanks to all who allowed us to reprint them. Others not included here—either the reprint fee was too high or the author couldn’t be reached in time to give permission—are well worth reading. For instance, Simon Barnes’s story about his son in the London Spectator (<http://www.spectator.co.uk/features/9303832/i-know-that-richard-dawkins-is-wrong-about-downs-syndrome-because-i-know-my-son/>), and Jess Edwards’s about her brother in the British edition of Cosmopolitan (<http://www.cosmopolitan.co.uk/reports/news/a28945/why-richard-dawkins-is-wrong-about-downs-syndrome-twitter/>). Mention must also be made of the New York Times, which ran an excellent op-ed refuting Dawkins on scientific grounds (http://www.nytimes.com/2014/08/29/opinion/the-truth-about-down-syndrome.html?_r=0), and of The Daily Beast, which called him out on his bad philosophy (<http://www.thedailybeast.com/articles/2014/08/28/richard-dawkins-would-fail-philosophy-101.html>). One more note: Michael Bérubé’s story about his 22-year-old son Jamie’s job hunt, which we end with, was written last May. When contacted by rawstory.com about Dawkins, Bérubé said, “I think the lesson of this episode is obvious. We need to do much more rigorous prenatal screening for ignorant [expletives].”—Anne Conlon

Dawkins and Down Syndrome: Rants and Reason

Leticia Velasquez

Author and atheist extraordinaire Richard Dawkins tweeted himself into a morally relativistic corner last week.

In a Twitter debate with a woman over abortion, she brought up the tough case of deciding whether to give birth to a baby diagnosed with Down syndrome. Dawkins replied, “Abort the baby and try again,” adding, “It would be immoral to bring it into the world if you have the choice.”

When queried whether that view held if the baby had autism, Dawkins replied, “People on that spectrum have a great deal to contribute, maybe even an enhanced ability in some respects. DS not enhanced.” In Dawkins’ Godless universe, a baby is only worthy of being born if he or she will “contribute” to society.

Dawkins is often accused of courting controversy, yet after these tweets were shared, he was overcome by a tsunami of negative responses. His increasingly lengthy responses revealed an increasing desperation to quell what he called a “feeding frenzy.”

He first countered with an offensive stance, tweeting, “Apparently I’m a horrid monster for recommending what actually happens to the great majority of Down syndrome fetuses. They are aborted.” Dawkins attempts to justify

his view by claiming his is a majority opinion. With the abortion rate of unborn babies with Down syndrome as high as 93% in the United States and Europe, the professor indeed holds the popular opinion. Siding with the majority is safe? Society has never been wrong on a moral issue, like, say, slavery or the Holocaust?

Dawkins next lashed out against the “haters” in a personal attack on his site, “Letting Slip the Dogs of Twitterwar,” blaming them for overreacting.

“My phraseology may have been tactlessly vulnerable to misunderstanding, but I can’t help feeling that at least half the problem lies in a wanton eagerness to misunderstand,” he said.

He belittled his detractors, relegating them to the following categories of hopelessly biased individuals:

- those who are against abortion under any circumstances;
 - those who thought he was telling women what to do with their own bodies;
 - those who accused him of “advocating a mob rule” or “eugenic policy”;
- and, finally,
- those who felt stirred by an “emotional point” because they love a person with Down syndrome.

Apparently, none of those who objected to his words occupied the objective high ground he claimed, lecturing in a professorial tone: “I have sympathy for this emotional point, but it is an emotional one, not a logical one. . . . It is one of a common family of errors, one that frequently arises in the abortion debate.”

His contemptuous retort only stoked the fires, with repartees from all sides. Dawkins pleaded ignorance, saying he only intended his tweet to go out to the woman who tweeted him and their mutual followers. He has far too much experience on Twitter for this to be credible, with 17K tweets. On his website, he issued this statement,

Here is what I would have said in my reply to this woman, given more than 140 characters: “Obviously the choice would be yours. For what it’s worth, my own choice would be to abort the Down fetus and, assuming you want a baby at all, try again. Given a free choice of having an early abortion or deliberately bringing a Down child into the world, I think the moral and sensible choice would be to abort. And, indeed, that is what the great majority of women, in America and especially in Europe, actually do. I personally would go further and say that, if your morality is based, as mine is, on a desire to increase the sum of happiness and reduce suffering, the decision to deliberately give birth to a Down baby, when you have the choice to abort it early in the pregnancy, might actually be immoral from the point of view of the child’s own welfare.”

For a self-styled devout atheist like Dawkins, the idea of a creator who decides what is moral is ridiculous. Therefore, Dawkins’ facile assumption of the authority to select another moral code, based upon the supreme importance of happiness, is hypocritical. Yet it is widely used by the

proponents of everything from abortion to physician-assisted suicide, those who, like Dawkins, have no qualms against playing God.

Jamie Edgin, professor of psychology at the University of Arizona, and Fabian Fernandez, research assistant at Johns Hopkins University, wrote a rebuttal to Dawkins' poorly formed opinion using hard science in *The New York Times* entitled "The Truth About Down Syndrome," in which they conclude:

The data indicate that people with Down syndrome, and the families who care for them, suffer less than might be supposed. And where Down syndrome does pose undoubted challenges, research into treatment options suggests that there are grounds for cautious optimism. In whatever moral calculation Mr. Dawkins and others wish to make, these facts deserve to be accorded their full weight.

Had Dawkins met with those researchers or interviewed the people with Down syndrome and their families, as Dr. Brian Skotko of Massachusetts General Hospital has, he might have a less-biased, more-informed opinion. In Skotko's 2011 survey of 300 families, 99% responded that they are happy with their son or daughter with Down syndrome, and 99% of those with Down syndrome 12 years or older reported being happy with their lives. Try and find a group of young adults of any demographic with such a percentage of happiness!

Dawkins' doubling and tripling down on his disdain for women who give birth to babies with Down syndrome proves that when one no longer believes in a Supreme Being who gives dignity to each human life, he will forever struggle to plant the flag of his personal morality on the shifting sands of public opinion, bigotry and ignorance. His voice will sound increasingly shrill as he insists on the superiority of his opinion.

—*Leticia Velasquez has three daughters, one of whom has Down syndrome. The author of A Special Mother Is Born, she blogs at CatholicMom.com. Reprinted from the National Catholic Register. Copyright © 2013 EWTN News, Inc. All rights reserved.*

Surprised by Joy

Matthew Hennessey

Every once in a while people let their guard down and say what they really think. For Richard Dawkins, Wednesday was one of those days.

In an extraordinary moment of public honesty, Dawkins, the British evolutionary biologist and militant atheist, wrote on Twitter that "it would be immoral to bring [a child with Down syndrome] into the world if you have the choice." It was a statement that no doubt delighted the utilitarian philosopher Peter Singer, his friend and fellow traveler, who has advocated the killing of disabled infants on the grounds that they are not rational and

self-conscious beings. “We have begun to think in terms of quality of life, instead of all life equally being sacred. That’s why it is logical to now start thinking about severely defective babies, and whether it is always wrong to kill them,” Singer told a journalist in 2004.

Does such talk frighten you? It does me. My eight-year-old daughter Magdalena has Down syndrome. She falls into the category of people Peter Singer would like to see dead. I fall into the category of people Richard Dawkins considers immoral. How upside-down these guys are. It’s like an ethical Bizarro World, where all the cold, heartless, smart guys with the fanciest degrees and the most fashionable eyeglasses look with utter disdain on the slightly different, slightly imperfect, slightly vulnerable people. God save us from utilitarian philosophers and evolutionary biologists.

Richard Dawkins is a man of logic, and his tweet makes sense if you view babies as personal accessories or interchangeable units of economic utility. But logic has its limits. Life is more than survival of the fittest. Sometimes it’s a mysterious and beautiful ballet. Other times it’s a painful and confusing crawl through the darkness. There is sudden despair and surprising joy. Logic can explain only so much.

Do you remember the late Robin Williams’s joke about the duckbill platypus? He said it was God giving Darwin the finger. We humans are more like duckbill platypuses than we are the homogenous and genetically perfect robots that Richard Dawkins wants us to be.

No one can say with certainty exactly how many unborn children with Down syndrome are aborted every year in allegedly civilized countries, including our own, but the estimates are shockingly high. Shocking, that is, if you are like me and don’t think it immoral to bring a baby with Down syndrome into the world. Shocking, that is, if you think we live in a society that places a value on human life that other societies—societies we consider barbarous—don’t.

In 2008, shortly after the Summer Olympics were held in Beijing, Sky News reporter Holly Williams interviewed the director of a Chinese maternity hospital who admitted that her facility counseled expectant mothers to abort babies with “serious deformities,” such as a missing arm or leg. “We don’t let them have the baby,” said the hospital director. “If they have it, it’s a burden to the family, to society, and to the country. We want healthy babies because they make families happy and our society happy too. We’re working to improve the quality of the population.”

You should seek out and watch the video if only to hear the hospital director’s girlish giggling as the interview concludes. You may have heard that evil can be banal. See for yourself just how easily a moral society can be

corrupted by ideas similar to those of Peter Singer and Richard Dawkins. See for yourself just what kind of an ethical universe you get when the evolutionary biologists are in charge.

Mr. Dawkins, you're welcome to come to our house and meet Magdalena. I think you'd really like her, if you could see past her imperfections—if you could see what we see, if you could hear her laughing. But you probably won't come. You're probably too busy. We're probably too simple-minded for you, with our sky God and our ritualistic religious hocus-pocus and our weird belief that even children with Down syndrome should be allowed to live.

So, go ahead and call me immoral, Richard Dawkins. Call my wife immoral. Call the dozens of families around the world we have met and befriended over the last eight years immoral. Many of us had a “choice,” as you call it, and chose life over death. We chose the joy of love over the pain of abortion. We chose the happiness that radiates from Magdalena's soul over the darkness that must cloud your every, empty day.

We chose Magdalena, and we'd do it again. We'd do it again because your scientific morality is cold and dark. It illuminates nothing.

—Matthew Hennessey writes from Connecticut. This commentary was published (8/23/14) on National Review Online. © 2014 by National Review, Inc. Reprinted by permission.

How Maggie Transforms Our Lives

Bruce Barket and Mary Kay Barket

Richard Dawkins, renowned atheist and author, recently asserted that it was immoral to bring a baby with Down syndrome into the world and through Twitter told a woman carrying such a baby to “abort it and try again.”

In the face of blistering criticism, he apologized, blaming the 140-character Twitter limit for the furor his remarks caused. He then defended his position on his website, explaining that his “morality” was based on a desire to increase happiness and reduce suffering. Digging himself an even bigger hole, he asserted that it may be wrong, from the child's perspective, not to abort.

Dawkins, who is a biologist and geneticist, wandered far from his fields of expertise to make remarks that are fundamentally flawed and shockingly offensive to every parent of a child with Down syndrome.

His error is not only in his philosophy, religion or morality. He is wrong because his basic premise, that people with Down syndrome somehow decrease happiness and increase suffering, is wrong.

On an empirical level, the American Journal of Medical Genetics published a research paper revealing that 88 percent of siblings of children with Down syndrome thought they were better people for having a sibling with Down

syndrome. Another survey by the same group revealed that 99 percent of those over age 12 with Down syndrome, are personally happy. It is, therefore, hardly surprising that so many families with children who have Down syndrome were stunned and hurt by Dawkins's statements.

Margaret Rose, the youngest of our four children, has Down syndrome. We love her beyond description and feel blessed to have her in our lives. Her two sisters and brother argue over who gets to hug her first, hold her the longest, and play with her the most. We can't imagine our lives without Maggie. When we were talking about writing this opinion piece, our oldest child, 8-year-old Katie, asked whether we were writing about Maggie "because she is the cutest baby on the planet." We don't need a study or a survey to tell us that she is happy and makes us happy. We get to experience her every day.

Maggie, who will be two next month, is sweet, playful, and affectionate. She possesses a strong, almost stubborn will, and has an abundance of energy. Her smile will melt your heart and her hearty laugh can bring a tear to your eye. If one of us has a rough day, spending a few minutes with Maggie transforms our mood. Her happiness is downright contagious.

The disgraceful suggestion that women should abort other babies because they are like Maggie is a hideous thought born of willful ignorance. Dawkins fueled bigoted fears about people with intellectual disabilities and his words are reminiscent of repugnant philosophies that suggest we can breed a society of perfect people.

Dawkins's error arises from his superficial and almost immature approach to life. His definition of "happiness" is nothing more than self-indulgent pleasure and convenience. It is a deeply and fundamentally flawed philosophy that leads people away from the best life has to offer.

True happiness and joy are discovered when people of any intellectual ability lovingly interact by selflessly assisting others. With love, life's problems don't detract from happiness; they become an avenue through which love finds expression and it is in the act of love that Maggie, like all of us, proves her worth.

We are not blind to the challenges Maggie will face. Indeed, our eyes are open to the challenges all of our children have before them. Maggie has Down syndrome but that is not the sum of her. By focusing on just that, Dawkins misses her beauty and goodness and thus cruelly suggests that she should not have been born.

We did not act immorally by not aborting Maggie because she has Down syndrome. Rather, with God's grace, we brought another person into the world who will add to happiness and joy by being loved and by loving others.

—Bruce and Mary Kay Barket live in Manhasset, New York. Bruce is an attorney and Mary Kay is an actuary who is raising their four children. A slightly different version of this commentary appeared September 14, 2014, on www.newsday.com and is reprinted with the Barket's permission.

An Open Letter to Richard Dawkins

J. D. Flynn

Dear Dr. Dawkins,

Earlier this week, on Twitter, you drew attention to a troubling fact unknown to most people. You pointed out that in the United States and Europe, most children conceived with Down syndrome are aborted. You're right. Some experts put the number as high as 90 percent. Others suggest that only 65 percent, or 70 percent, or 80 percent of children with Down syndrome are aborted. The actual number is probably very difficult to determine. You have a platform, Dr. Dawkins, an audience, and in some real way I'm very grateful that you drew attention to the pre-natal eradication of people with Down syndrome.

But you made your point about the ubiquity of Down syndrome abortion in order to defend a terrible assertion. You suggested on Twitter, Dr. Dawkins, a moral imperative to abort children conceived with Down syndrome. You said that if a woman had the choice to abort such a child, and she failed to do so, she would have acted immorally. I'm troubled by that, and, very honestly, I'm confused.

You've traditionally held a position of moral neutrality regarding abortion. You've asserted that killing animals, with the capacity to experience pain, fear, and suffering, is of greater moral significance than killing fetuses: nascently human, you assert, but without the kind of sentience that gives them moral significance. You've suggested that no carnivore can reasonably hold a position in opposition to abortion. You're not alone in that position, it's become *de rigueur* among most contemporary analytic ethicists.

I disagree with your position. I've long ago concluded that the fetus, the embryo, and in fact, the zygote are human beings—undeveloped, certainly, but possessing the dignity and the rights of sentient adults.

Despite my disagreement, I recognize that you've tried to apply your viewpoint with consistency across a variety of ethical situations.

Until this week. This week, you moved from presenting abortion as a morally neutral act to asserting that the abortion of some people—genetically disabled people—is a moral good. A moral imperative, in fact. You haven't asserted a basis for this position. I suspect you believe that people with Down

syndrome suffer, needlessly, and cause undue suffering to their friends and relatives. And, as a general principle, I believe you're inclined to obviate as much human suffering as possible.

You've often said that people who disagree with you should "go away, and learn how to think." I've tried to learn to think, over the years, but perhaps I am naive in some ways. But one of the things I've concluded is that ethical philosophy can't be done in a sterile environment—that our humanity, our intuition, our empathy, in fact, must be recognized as a source of ethical insight if we want to think well. Perhaps you believe that your position on abortion and Down syndrome is logically valid. But I wonder if you're kept awake at night by the revulsion that comes with being the champion of killing.

Suffering is not a moral evil to be avoided. Suffering can have meaning and value. Ask Viktor Frankl. Or Mohandas Gandhi. Or Martin Luther King, Jr. Or, if you're willing, ask my children.

I have two children with Down syndrome. They're adopted. Their birth-parents faced the choice to abort them, and didn't. Instead the children came to live with us. They're delightful children. They're beautiful. They're happy. One is a cancer survivor, twice-over. I found that in the hospital, as she underwent chemotherapy and we suffered through agony and exhaustion, our daughter Pia was more focused on befriending nurses and stealing stethoscopes. They suffer, my children, but in the context of irrepressible joy.

I wonder, if you spent some time with them, whether you'd feel the same way about suffering, about happiness, about personal dignity. I wonder, if you danced with them in the kitchen, whether you'd think abortion was in their best interest. I wonder, if you played games with them, or shared a joke with them, whether you'd find some worth in their existence.

And so, Dr. Dawkins, I'd like to invite you to dinner. Come spend time with my children. Share a meal with them. Before you advocate their deaths, come find out what's worthwhile in their lives. Find out if the suffering is worth the joy.

I don't want you to come over for a debate. I don't want to condemn you. I want you to experience the joy of children with Down syndrome. I want your heart to be moved to joy as well.

Any day next week is good for us except for Wednesday.

Sincerely yours,
J.D. Flynn

—J.D. Flynn writes from Lincoln, Nebraska. This commentary was published on the website of First Things magazine August 22, 2014, and is reprinted with permission.

For Hire: Dedicated Young Man with Down Syndrome

Michael Bérubé

Jamie is my son. He is 22 years old. He is a bright, gregarious, effervescent young man with an amazing cataloguing memory and an insatiable intellectual curiosity about the world—its people, its creatures, its nations, its languages and (perhaps most of all) its culinary traditions. If it were possible for him to travel everywhere on the inhabited globe, he would do it, and he would try to ingratiate himself with his hosts, just as he does when he greets the owner of our local Indian restaurant by bowing, hands clasped, and saying “namaskar.” (The owner, Sohan, is delighted by this.) Since graduation, he has been looking for work. Jamie also has Down syndrome.

The first time I talked to Jamie about getting a job, he was only 13. But I thought it was a good idea to prepare him, gradually, for the world that would await him after he left school. My wife, Janet, and I had long been warned about that world: By professionals it was usually called “transitioning from high school.” By parents it was usually called “falling off the cliff.” After 21 years of early intervention programs for children with disabilities; a “free appropriate public education in the least restrictive environment,” as mandated by the Individuals with Disabilities Education Act; local after-school programs; the LifeLink PSU initiative that allows high school graduates with intellectual disabilities to take appropriate Penn State classes—after all that, there would be nothing. Or so we were told.

At 13, Jamie reported that he wanted to be a marine biologist. A very tall order, I thought; but he knew the differences between seals and sea lions, he knew that dolphins are pinnipeds, and he knew far more about sharks than most sixth graders. And despite his speech delays, he could say “cartilaginous fish” pretty clearly. Perhaps he could work at an aquarium?

Over the course of the next few years, as Jamie realized (thanks largely to a very disability-friendly seventh-grade science teacher) just how hard it is to master the basics of biology, he scaled back his hopes. He knew he was having trouble naming all the parts of a cell, just as he knew that he could not account for all the components of the gastrointestinal tract. Even in biology class, though, he had some goalpost-moving moments. His teacher had very kindly “adapted” the tests and quizzes for him so that, for instance, he only had to name half the parts of a cell and half the GI tract. (I wondered: When, between the ages of 12 and 21, do the legions of his nondisabled peers forget about vacuoles and mitochondria?) So when we were doing his homework one night, I said, “We can skip the pancreas; I don’t think you know that one.” And he replied, “Lucy the dog had pancreatitis and cannot eat spicy

food.” OK, I thought, maybe you do know about the pancreas. My bad. Goalposts duly adjusted.

By the end of the year, though, Jamie had lowered his sights from “marine biologist” to “marine biologist helper.” And by the end of eighth grade, when we met with all his teachers and aides and paraprofessionals to go over the Individualized Education Program that would chart his way through high school (good news: the high school French teacher agreed to have him in French 1 for two years and French 2 for two years!), when he was asked what he might do for a living when he graduated, he said dejectedly, “Groceries, I guess.”

I’m not sure what I would have felt that day if I had known that he would have to settle for less than that.

When he was about 11 or 12 years old, I told Jamie that if he ever was sad or worried or confused, he could always talk to me. At the time, he blew me off: He was not sad! But he has spoken to me a few times since then—about the time he was feeling that he does everything wrong; about the time he thought French was too hard for him (it was not, in the end); about the time he was crestfallen that his big brother Nick wasn’t coming home for his (Nick’s) birthday; about the time I told him he could hang out with Nick’s friends during some holiday get-together and 10 minutes later he returned, saying gloomily, but with astonishing self-awareness, “I don’t know how to hang out.”

Through his high school and LifeLink PSU years, Jamie held a variety of part-time jobs, most of them on a volunteer basis. He trained in dog and cat care at a local animal shelter; he ushered at the downtown theater; he helped out in the children’s museum; he washed fire trucks for the Alpha Fire Company—itself a volunteer unit. And sometimes he got paid: He worked for minimum wage at one of the Penn State mailrooms (two days a week, two hours a day, transportation provided from school), and in the summer of 2011 he worked a five-week stint at the Penn State recycling plant. That job paid \$10.50 an hour for a four-hour shift, 9 a.m. to 1 p.m., and it was good thing the shifts didn’t run any longer than that, because Jamie spent his first two weeks working outside in 100-degree heat. In boots. And heavy gloves. And long pants. His job coach, a genial British man, kept him hydrated and laughed as Jamie imitated his accent, mixing it with a more northern inflection derived from Ringo.

Jamie loved all his jobs, and his co-workers and supervisors loved him; he is, after all, bright, gregarious and effervescent. He was also very proud of his work, so much so that I taught him two new words to describe himself: “diligent” and “conscientious.” He applied himself fully— he is no slacker—

and he always took care to do his jobs right. In the mailroom, he took very seriously the fact that he was mostly getting care packages from parents to students, and he listened carefully when Janet and I told him how important it was to get the right letters and packages to the right people. “How are you doing with that?” I asked him after his first week. “Good,” he chirped, then added, “cursive is hard.”

Praise for his good work means everything to him; money means almost nothing. Almost nothing, because he was definitely very happy with himself to be pulling down \$200 a week at that recycling job. Today, he loves the fact that I (finally) got him a checking account and a debit card, and he is able to buy himself lunch, snacks, Magic cards and movie tickets.

Jamie knows very well he has a disability, and he identifies readily with his “group”—the couple dozen adults and young adults with intellectual disabilities in Centre County. He knows that these people in these state and county offices are trying to help him, and during his school years he became thoroughly familiar with the Individualized Educational Program drill, where any number of professionals would meet with him and his parents to go over a ream of paperwork. Whenever we talked about his employment prospects after the age of 21, we reminded Jamie that he did not want to live a life of watching YouTube, wrestling videos and Beatles Anthology DVDs in the basement. He always agreed; the idea of watching YouTube in the basement was preposterous. But the ICAP turned out to be a very difficult hurdle for him.

It took about 45 minutes; I talked Jamie through it, and answered most of the questions for him (as I was supposed to do—I was not usurping his role). And as the process dragged on, Jamie became visibly depressed and withdrawn.

First, the questions covered a very wide spectrum of behavior, including some quite severe symptoms of mental illness. They would start mildly—has this person ever been in trouble with the law? (No!)—and mount to a point at which they would begin to get scary: Has this person ever harmed someone? Has this person ever assaulted a police officer? (No! certainly not! how ridiculous!) Since these were things that Jamie could not even conceive of doing, I could tell that he was starting to think, after about 10 minutes, is this my group? Is this the category to which I belong? Worse still, far worse, were the multiple questions to which I had to answer yes; these weren’t disaggregated, so that at one point the exchange went something like this:

MH/ID: Does this person talk to him/herself? Does this person hear voices? Has he/she had any episodes of violent behavior? Is he/she a danger to self or others?

Me: Yes. [Jamie cringes.] He talks to himself. But he has never heard voices or become violent.

I added, also, that he talks to himself because he is imaginative and creative, not because he is delusional. I did not add that he talks to himself because he is lonely.

Jamie's caseworker and the other MH/ID person left the room to tabulate the results and render an assessment of Jamie's eligibility for "competitive employment" (paid work). Jamie curled into himself on his chair. I had never seen him like this; even when he was sad about his brother or his hanging-out skills, he was always feisty. Now he just seemed defeated.

I came over to sit next to him and put my arm around his shoulders. "Jamie, sweetie," I began. "You are such a wonderful kid and I am so proud that you are my son. This is why I always say 'Je suis tres, tres fier.' Because I am.

"And it is OK to talk to yourself! You do, you know. You imagine entire conversations. Like last night, when you came upstairs, I could hear you saying, 'And you know who else was born in Hawaii? Obama!' 'Really, Obama was born in Hawaii? How do you know that?' 'My father told me!' 'That is so cool.' Right? You were thinking about talking to someone who was from Hawaii?"

Jamie nodded sullenly.

"Well, that's totally fine. You know you are never violent and never mean—you are a good, good kid with a sweet, sweet heart. Everybody knows that. That is why everybody you have ever worked with, in school or at work, has enjoyed being with you. You are funny and bright and full of ideas. And I am sure that when [they come] back, that is exactly what they will say. You would be a good employee. That test is really for people who have much more severe disabilities and mental illnesses that make them behave dangerously sometimes. It is not for you."

At this he seemed to cheer up a little, but it took the rest of the afternoon for him to fully recover. And the assessment was very much what I had expected: He is not quite capable of living independently and needs help with various life tasks, especially with things involving small motor skills, but otherwise he is good to go, with appropriate supervision. He was cleared for a Community Based Work Assessment. Now all we had to do was to figure out what kind of job he might be able to do.

That was the hard part. What is Jamie capable of doing for a living? Our first checklist filled us with despair: factory work, nope; food service, nope (not fast enough); hotel maid service, nope; machine and auto repair, nope. (Though Jamie expressed interest in auto repair—not a moment of astonishing self-awareness.) With one agency, Jamie had two CBWAs followed by

detailed five-page write-ups: one doing setup for conferences and meetings (tables, chairs, A/V), the other doing shelving at a supermarket. Neither went well. He had trouble stacking chairs, dealing with the duct tape for the A/V setup, and attaching skirts to tables. At the supermarket he had trouble with the U-boat, the device that carts dozens of boxes out into the aisles—and besides, they were only hiring graveyard shift.

The result? For two months, it was basically YouTube in the basement, as Jamie gradually realized (with what I think was a kind of horror) that I hadn't been kidding about that part. Finally, the local sheltered workshop for people with disabilities offered him an 8:30-2:30 slot twice a week—and then three times a week. On top of that, I sent out a few emails and got him an afternoon of volunteering once a week at the children's museum. And most recently, another agency set up a six-month trial volunteering at the Y, doing janitorial work twice a week in two-and-a-half-hour shifts. If the trial goes well, we are told, he will be hired. They like him enormously at the Y. The only question is whether he will learn how to do the vacuuming, sweeping and cleaning on his own; right now, the people at his agency are very generously and carefully supervising him minute by minute.

Jamie takes public transportation to and from the workshop. He loves riding the bus by himself; not everyone who works at the shelter can do that. He loves being a commuter and being punctual: In six months, Jamie has never been late to work. Twice a week, he has a companion whose time is paid for by the PFDS waiver; twice a week, we pay other companions to hang with him for a couple of hours at a time. It is a life, and he is happy with it; I ask him regularly. Though it is not the life we—and he—wanted to imagine for him.

We are very aware of the debate about sheltered workshops; many nonprofits, charitable organizations and sheltered workshops pay their disabled workers a tiny fraction of the minimum wage. They are, of course, a relic from another time, a time when people with disabilities were segregated from the general population—and a time when it was not considered problematic to exempt such people from the nation's minimum-wage laws. Jamie does piecework there, most often setting up vials for the collection of hazardous materials (which he does not collect himself). He makes about 8 or 10 dollars a week. Together with his Supplemental Security Income (from the branch of Social Security that provides for adults with disabilities) of about \$450 per month, he has enough money to buy himself lunch, snacks, Magic cards, movie tickets—and the occasional T-shirt or DVD.

Needless to say, if he had to support himself, he could not do it: That is the point of the protests against sheltered workshops, a point that is all the sharper

for people with disabilities who are not living in their relatively well-off parents' houses. But for now, that workshop is almost all he has. He does not mind the repetitive and intellectually unstimulating nature of the work; he comes home cheerful every day, happy to be a commuter, happy to have co-workers, happy to be a bit more independent from his parents.

This winter, I had occasion to take Jamie to the Shedd Aquarium in Chicago, and could not help noticing that they were looking for volunteers. For Jamie, that would amount to a dream job, pay or no pay. Perhaps the sheltered-workshop aspect of his life is partly my fault, for not arranging our family in such a way that we could live in a city that has an aquarium.

I knew Jamie would not grow up to be a marine biologist. And I know that there are millions of non-disabled Americans out of work or underemployed, whose lives are less happy than Jamie's. I don't imagine that he has a "right" to a job that supersedes their needs. But I look sometimes at the things he writes in his ubiquitous legal pads when he is bored or trying to amuse himself—like the page festooned with the names of all 67 Pennsylvania counties, written in alphabetical order—and I think, isn't there any place in the economy for a bright, gregarious, effervescent, diligent, conscientious and punctual young man with intellectual disabilities, a love of animals and an amazing cataloguing memory and insatiable intellectual curiosity about the world?

—Michael Bérubé is Edwin Erle Sparks Professor of Literature and Director of the Institute for the Arts and Humanities at Pennsylvania State University. This article was first published on the website of Aljazeera America (<http://america.aljazeera.com>) and is reprinted with Professor Bérubé's permission.

This and That

Donald DeMarco

I commend the reader for the intellectual curiosity that led him to begin reading this article, for I cannot think of a more boring and less attractive title. Yet, not forgetting that you can't judge an article by its title, from the perspective of metaphysics, I cannot think of a more exciting theme or a more captivating topic.

If the reader has not already abandoned ship, allow me to adumbrate the royal significance of *this* in time, space, and eternity. We live *this* moment. We ask bread for *this* day, and are warned against looking back on all those past days that are no longer *this*, but are a collectivity of *thats*. We are told that the evil of *this* day is sufficient thereof. *Carpe diem!*

With regard to space, no one has written of the glorious *thisness* of one's spot in the world more eloquently than William Shakespeare. In *King Richard II*, he writes:

This royal throne of kings, this sceptre'd isle,
This earth of Majesty, this seat of Mars,
This other Eden, demi-paradise,
This fortress built by Nature for herself
Against infection and the hand of war,
This happy breed of men, this little world,
This precious stone set in the silver sea,

...

This blessed plot, this earth, this realm, this England . . .

This sentiment was echoed by Sir Walter Scott in *The Lay of the Last Minstrel* when he wrote: "Breathes there the man, with soul so dead,/Who never to himself hath said,/This is my own, my native land!" For Walt Whitman, "Happiness [is] not in another place but this place . . . not for another hour, but this hour."

Concerning God and eternity, we are commanded to worship *this* God and no other. And how often have people preferred to worship *that* god, the one who promises an easier life? One may wish for tomorrow, and/or desire to leave his country or worship a different god. But one must be warned against failing to appreciate the importance of *this* that has been given to him in time, space, and eternity.

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On the level of the existential, *this* is who I am; I can be no other. Envy is the temptation to despair about who I am along with the concomitant desire to be another. It is a rejection of me as precisely *this* person and not anyone else. A sound morality enlightens me about the radical superiority of *this* over *that*. A man pledges fidelity to *this* woman as she pledges her fidelity to *this* man. We can agree with Freud, despite his icy language, that adultery would be “the overestimation of the unattained sexual object.” *This* is eminently real; *that* is what taunts my imagination. If I forsake all *this*, I have no place to stand. Hell is a place where nothing is *this* to be cherished, and everything is *that* to be envied. Metaphysics, despite its reputation for being unacceptably abstract, actually rescues me from abstractions. My being that is me is far more real than the being I might dream to be.

At the very core of the abortion issue is a fundamental under-evaluation of *this* child and an over-evaluation of *that* one, or the one that arrives not at *this* time. A direct consequence of this attitude is to lose sight of the fact that each human being, because of the radical uniqueness that he possesses, is irreplaceable, unrepeatable, and inviolable. *This* child, precisely because it is *this* child, is untradeable, never to appear again, and eminently worthy of protection against assault.

Richard Dawkins, who is primarily known for his works that deny the existence of God, has stirred a lively controversy in offering his opinion about unborn children diagnosed with Down syndrome: “For what it’s worth, my own choice would be to abort the Down fetus and, assuming you want a baby at all, try again.” This view, despite its newsworthiness, has been proffered by others. Peter Singer, for example, proposed a similar view in his 1995 book, *Rethinking Life and Death: The Collapse of Our Traditional Ethics*. “We may not want a child to start on life’s uncertain voyage if the prospects are clouded,” he wrote. “Instead of going forward and putting all our effort into making the best of the situation, we can still say no, and start again from the beginning.” Dawkins, Singer, and their ilk advocate exchanging *this* child, who exists, for *that* child who may never exist.

Dawkins and Singer would be making perfect sense if they were talking about commodities. It is not ethically problematic to return a defective appliance to the store and have it replaced with one that is in good working condition. When the dessert trolley comes along, the diner might say, “No, I don’t think I will have *this* one. I will have *that* one instead.” But human creatures are not commodities. Each individual human being is *this* human being and not to be compared with any other human being who is also, from his own unique standpoint, *this* human being. There is no replacement human

being, either conceived or yet to be conceived, who can assume the individual identity of the one he is presumed to replace. When God creates a new child, he is giving the parents *this* child. The parents may not want *this* child, but they should recognize that *this* child is one of a kind and cannot be replaced or repeated or rejected. *This* child is sacrosanct.

If we accept the view of Dawkins and Singer, not only is the “defective” child a commodity, but the “replacement” child is as well. In other words, according to this view, no child has an intrinsic right to life. Each person’s life, then, is dependent on the will of someone else, someone who is not God. God does will the existence of the child he creates and in creating that child endows it with an intrinsic worth and right to be. Dawkins and Singer are both atheists, so that the notion of God does not enter into their thinking. But in trying to justify the abortion of defective babies, born or unborn, they, by the same stroke, reduce all others to commodities. In doing injustice to some, they do injustice to all. The “replacement” is just as much a commodity as the “replacee.” Theirs is a philosophy that endangers all of us.

If we are to look for a philosopher who best understood the primordial significance of *this*, we need look no further than to a thirteenth-century Franciscan thinker by the name of Duns Scotus (1265 or 1266 to 1308). Plato, who was enamored of pure, undefiled essences, regarded mere individual examples of essences as “copies” that suffered a kind of contamination as a result of coming into existence. Aristotle, not uninfluenced on this matter by his great teacher, viewed the individual as a feeble incarnation of the species. The human being as a species, of course, does not have real existence. Only individual men and women exist. But are all individuals wounded by the fact that they do not perfectly emulate the ideal essence of which they are but a singular example?

Scotus coined the term *haecceitas* (from the Latin, *haec*, meaning “this”). Its application to the individual human being is most significant. Man as a species, for Scotus, lacks the perfection of unity inasmuch as it is divisible. “Man” can be divided according to sex, race, nationality, etc. But the individual is anchored to his own uniqueness by virtue of his *thisness* (*haecceitas*). As such, the individual has greater unity than the species since, being unique, it cannot be divided into subjective parts. The individual is the only representative of itself. Moreover, the individual is fully real, since it has made its transition from abstract essence to concrete existence. Thus, Efreem Bettoni, O.F.M, Ph.D., states, in his book, *Duns Scotus: The Basic Principles of His Philosophy*, “Individuality, in Scotus’ system, is the ultimate perfection of things: it enables them to receive in themselves the act of existence. Only thus they become *real* in the full sense of the term.”

Since the individual is more real than the species, thanks to its *thisness*, it also has a greater degree of truth and goodness. *Thisness* also appears to be necessary in order to salvage the value of individual personality, a most important postulate of Christianity. We cannot love abstract persons, only those who have real existence, only those who are grounded in reality by their *thisness*. To cite Fr. Bettoni once again, “each individual as such is like a note in the grand symphony of creation and furnishes new evidence of God’s magnificence and bounty.” In the words of Scotus, “Individuals as such are also willed by the first cause, not as ends—for God alone is the end—but as something ordered to the end.”

Metaphysics is not restricted to the province of philosophy, but is used most effectively by good writers. Nathaniel Hawthorne recounts an experience he had in a Liverpool workhouse where he encountered a child whom he described as “a wretched, pale, half-torpid little thing with a humor in its eye which the Governor said was the scurvy.” The child took a fancy to the novelist and in its own silent way bid that he “be taken up and made much of.” “It was as if God had promised the child this favor on my behalf, and that I must fulfill the contract.” Hawthorne, though not without struggle, responded with kindness and affection. “I should never have forgiven myself,” he later wrote in his posthumously published notebooks, “if I had repelled its advances.” Commenting on this passage, Hawthorne’s daughter, better known to the world in religious life as Mother Alphonsa, regarded her father’s account as containing the greatest words he ever wrote. Indeed, for Hawthorne’s character, and no doubt for himself, this “heroic act . . . effected more than he dreamed of toward his final salvation.”

The Liverpool incident parallels, but with a different result, the interaction between two characters in Hawthorne’s short story, “The Birthmark.” Aylmer, a man of science, objects to the birthmark on his wife’s cheek. He claims that the birthmark on her otherwise beautiful countenance “shocks me as being the visible mark of earthly imperfection.” Georgiana, bursting into tears, says, “Then why did you take me from my mother’s side? You cannot love what shocks you.” Against her better judgment, she submits to an unproven chemical treatment that ends her life.

Hawthorne honored the *thisness* of the ugly child he encountered in the Liverpool workhouse. Aylmer could not accept the *thisness* of his very beautiful wife. Poor Aylmer “had devoted himself, however, too unreservedly to scientific studies ever to be weaned from them by any second passion.” In other words, his head inhabited a cloud of Platonic essences that prevented his heart from appreciating the singularity of things, including love for his Georgiana. His wife’s final words to him were these: “. . . with so high and

pure a feeling, you have rejected the best the earth could offer. Aylmer, dearest Aylmer, I am dying!"

The notion of "thisness" needs to be restored. Each one of us is an irreplaceable "this" one. It is my "thisness" that grounds me in reality and gives me my uniqueness. No one can take my place. In baseball, a pinch-hitter may be a better hitter than the batter he replaces, but such a replacement is on the level of an activity, not on the ground of one's being.

A tragic consequence of the Dawkins/Singer philosophy, if it is played out, apart from condemning defective babies to premature death, is that if no one is respected for being truly himself, truly a unique person, then no one can be loved, for love is directed to the unique self, the self that possesses its own *thisness*. The reasons proposed for aborting defective children extend to aborting the dignity of all human beings and leaving them unlovable commodities that may or may not replace others who are their inferior in one way or another. As for me, my only hope is to be a "this," and I cannot be a "that." The Golden Rule obliges me to extend the same courtesy to everyone. I should prefer, then, metaphysics to mythology.



"Is there life on this planet?"

The Sovereign's Remedy

Gregory J. Roden

Once more Angela Barnett was fighting for her life—this time as a result of what happened the first time. Peter Franklin and Jesse Carpenter had apprehended a runaway slave outside her house and suspected her of harboring more. Franklin and Carpenter returned the next night, under no apparent authority of law, to question Angela, a “woman of color,”¹ and a heated conversation ensued between Franklin and Angela. At the trial, witnesses gave conflicting testimony as to who caused the conversation to escalate to violence. Carpenter, the state’s witness, claimed Franklin was “calm & persuasive, until provoked by a torrent of virulent abuse—he threatened to whip her with a cowskin he had in his hand”; though just why he happened to be holding the “cowskin” calmly in his hand up until that point was not made clear.

The witness for Angela Barnett told a different tale: According to his version, Franklin was the abusive one and actually whipped Angela three times. Franklin then asked for and received from Carpenter a bludgeon that the latter had conveniently concealed in his coat. Franklin then approached Angela swearing to kill her. At this point, both witnesses agreed that Angela picked up an iron instrument and struck Franklin on the side of the head, “which occasioned his death.” A jury found Angela guilty of murder and the court sentence was “that she be hanged by the neck until she be dead . . . at the usual place of execution.”

Luckily for Angela Barnett, the year was 1792, the enactment of the Fourteenth Amendment was decades away, and the selective application of the Bill of Rights to the state of Virginia (and other states) by the Supreme Court was even further away, so her “fundamental right of privacy” was not deemed to be violated by the coed prison in which she was incarcerated. This is where Jacob Valentine, incarcerated in prison with her for a time, enters the story. Valentine became the father of the child she conceived in prison. As with Bathsheba Spooner² some 14 years earlier, Angela made a petition under the common-law plea of pregnancy to spare the life of her child *en ventre sa mere* [in the mother’s womb].³

The common-law plea of pregnancy was acknowledged by the United States Supreme Court in, most curiously, the very first case cited by Justice

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Blackmun to support his claim that a woman had a right of privacy to abort her unborn child in *Roe v. Wade*. After admitting that “The Constitution does not explicitly mention any right of privacy,” Justice Blackmun claimed, “In a line of decisions, however, going back perhaps as far as *Union Pacific R. Co. v. Botsford*, 141 U.S. 250, 251 (1891), the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution.”⁴ In the *Botsford* opinion, Justice Horace Gray decided that the power of federal courts did not include the power to order a plaintiff in a personal injury suit to submit to a surgical examination and stated a general rule: “No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.”

Yet, there are instances where the “unquestionable authority of law” allows for such invasions of privacy, and Justice Gray went on to acknowledge one well-known exception applied to pregnant women: “The writ de ventre inspiciendo [inspection of the abdomen], to ascertain whether a woman convicted of a capital crime was quick with child, was allowed by the common law, in order to guard against the taking of the life of an unborn child for the crime of the mother”!⁵ The fact that the first case Blackmun cited to support the idea of the abortion right of privacy contains an explicit pronouncement of the equal protection and due process rights of children en ventre sa mere is truly astonishing and reveals the duplicity of his opinion.

In response to a plea of pregnancy, such as Angela’s, the court or governor to whom it is directed would issue a writ de ventre inspiciendo ordering the examination of the woman “in order to guard against the taking of the life of an unborn child.” Under the common law of England, a jury of 12 matrons would be selected for the examination. In Bathsheba Spooner’s case, her two examinations included the addition of midwives, a deviation from the common-law procedure. Here is Angela Barnett’s plea to the governor of Virginia:

His Excellency Henry Lee, Esquire, Governor, and the Honourable the Executive of Virginia:

The humble petition of Angelia Barnett Showeth that your unhappy petitioner now under sentence of Death, is with child by a certain Jacob Valentine, who was a debtor arrested by the sheriff of Henrico, by virtue of an execution, and committed to the Jail of this city about the first of November last, 1792. That your petitioner about that time was over persuaded, & yielded to the desires of the said Valentine in repeated acts of coition for the term of three weeks, when the said Valentine was discharged by payment of the debt; and again some time in the month of February last, 1793, he was

committed to Jail as aforesaid, and from the connections your petitioner have had with him, she is fully confident of now bearing a live child, and therefore humbly & penitentially implores your generous mercy & Pardon, the more especially for the preservation of the Guiltless infant your unhappy petitioner now carries, which she humbly prays may not be murdered by her execution, but at least to grant her a respite until the child is born, and confiding in the mercy of your Excellencies, she continues to pray.⁶

The governor did indeed grant Angela's petition, but not in the form of a jury of matrons. Instead, the governor had her examined by two doctors, who produced the following "Certificate as to Angelia [sic] Barnett":

Pursuant to the Commands of his Excellency, the Governor, we, the subscribers, attended to the Goal [sic] of the city and examined (per vaginam) Angelia under sentence of Death. We found the uteras in that situation which it generally is, in a gravid State—an enlargement of the Belly—& on external application of the hand we distinctly felt the motion of the Fetus. On these principles, we give it as our opinion that the aforesaid Angelia is in a state of pregnancy.

Given under our hands this 16th May, 1793.⁷

Around the time of Angela Barnett's case, the Bill of Rights—the first ten amendments to the Constitution—was being enacted and adopted. The Sixth and Seventh Amendments, guaranteeing trial by jury, have particular relevance to the plea of pregnancy. In our modern age we take the right to trial by jury for granted and consider jury notices a nuisance, but constraints on that right by the English sovereign during colonial times were deeply resented. The First Congress of the American Colonies (the Stamp Act Congress) and the First Continental Congress adopted resolutions protesting such interference from the Crown. Thomas Jefferson stated, "I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution."⁸ Jefferson, who authored the Declaration of Independence, listed the violation of the right to jury trials as one of the "injuries and usurpations" justifying the Revolution, "depriving us in many cases, of the benefits of Trial by Jury."

Generally speaking, juries decide questions of fact and judges decide questions of law. Yet, since the founding of our nation, it has been the right of juries to decide mixed questions of fact *and* law. It is always the jury that applies the law to the specific facts of a case and renders a general verdict of guilty or not guilty. The judge does not ask the jury to make specific findings of fact and then connect the dots and pronounce the accused innocent or guilty. So it is more precise to say that judges decide questions purely of law and juries decide both questions of fact and mixed questions of fact and law.

It is this role of factfinder that still resides with the sovereign people.

When our Founding Fathers threw off the yoke of the king of England, although they delegated many powers to the state and federal governments, they retained ultimate sovereignty for themselves. Our first chief justice, John Jay, declared, “[T]he people are the sovereign of this country.”⁹ Additionally, the Supreme Court affirmed in 1836, “All powers which properly appertain to sovereignty, which have not been delegated to the federal government, belong to the states and the people.”¹⁰ Still, the sovereign power to be the finder-of-facts in legal controversies and to decide mixed questions of fact and law has never been relinquished by the people under our Constitution.

The rights of the sovereign people to make factual findings and to decide mixed questions of law and fact has been jealously guarded since the American Revolution. In 1995, the Supreme Court again upheld these powers in the unanimous decision of *United States v. Gaudin*. Justice Antonin Scalia wrote the opinion and recounted the historical significance of these rights:

Juries at the time of the framing could not be forced to produce mere “factual findings,” but were entitled to deliver a general verdict pronouncing the defendant’s guilt or innocence. Justice Chase’s defense to one of the charges in his 1805 impeachment trial was that “he well knows that it is the right of juries in criminal cases, to give a general verdict of acquittal, which cannot be set aside on account of its being contrary to law, and that hence results the power of juries, to decide on the law as well as on the facts, in all criminal cases. This power he holds to be a sacred part of our legal privileges . . .” 1 S. Smith & T. Lloyd, *Trial of Samuel Chase* 34 (1805).¹¹

Samuel Chase was found not guilty of the impeachment charges against him. He had argued that some of the charges against him were not impeachable offenses. However, when it came to the charge that he had not allowed a jury the right to determine both the law and fact in a criminal case, he vigorously denied it as a matter of fact. Incidentally, there exists a large body of decisions stretching into the late nineteenth century holding that juries have the right to decide questions of law independent of judges. Justice Hugo Black made that point in his dissent in *Galloway v. United States*: “In 1789, juries occupied the principal place in the administration of justice. They were frequently in both criminal and civil cases the arbiters not only of fact but of law.”¹²

This constitutional power of the sovereign people to make factual findings and to decide mixed questions of law and fact puts Justice Harry Blackmun’s ruling in *Roe v. Wade* (that the Court could “not resolve the difficult question of when life begins”¹³) in a wholly different light. Historically, as evidenced by cases such as Angela Barnett’s and Bathsheba Spooner’s, it never was a question for a judge to resolve. The change from mixed juries of matrons and midwives in Bathsheba Spooner’s case to physicians in Angela Barnett’s

case does not remove this factual finding from the constitutional protections of the Sixth and Seventh Amendments for a number of reasons.

First, even Justice Blackmun admitted that physicians have retained powers independent of the courts to make factual findings under abortion jurisprudence. Indeed, Justice Blackmun asserted that physicians were independent arbiters of the point-in-time at which viability was reached, which was a key determination in abortion jurisprudence:

Viability is reached when, *in the judgment of the attending physician* on the particular facts of the case before him, there is a reasonable likelihood of the fetus' sustained survival outside the womb, with or without artificial support. Because this point may differ with each pregnancy, *neither the legislature nor the courts* may proclaim one of the elements entering into the ascertainment of viability—be it weeks of gestation or fetal weight or any other single factor—as the determinant of when the State has a compelling interest in the life or health of the fetus.¹⁴

Second, the Sixth and the Seventh Amendments protect more than just the form of jury trials. As has already been shown, juries are the arbiters of factual controversies. And, when a jury makes a factual finding, as a rule, that factual finding cannot be set aside arbitrarily by a court—the court is duty bound to honor that factual finding. This is implicitly acknowledged in the operation of criminal trials as encompassed by the Sixth Amendment (e.g., no superior court overturned the findings of the jury at O.J. Simpson's criminal trial), and is quite explicit under the Seventh Amendment.

The Seventh Amendment applies to civil trials and provides, “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.” In reference to this protection of factual findings, Justice Story wrote in the 1830 case *Parsons v. Bedford*, “This is a prohibition to the courts of the United States to re-examine any facts tried by a jury in any other manner.”¹⁵ In the same case, Justice Story also held that the Seventh Amendment protections extended beyond common-law proceedings to “suits in which *legal rights* were to be ascertained and determined.”¹⁶ And in 1968 the Court in a unanimous decision, *Curtis v. Loether*, made it clear that the right protected under the Seventh Amendment included rights created by statute, “The Seventh Amendment does apply to actions enforcing *statutory rights*, and requires a jury trial upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law.”¹⁷

The inclusion of legal and statutory rights is significant, because juries of matrons have been replaced by physicians, starting in Virginia under its

common law, as in Angela Barnett's 1793 petition, and in the various codifications of this common law right. In addition to a number of state statutes protecting the unborn child of a condemned woman, a federal statute enacted in 1994 reads, "A sentence of death shall not be carried out upon a woman while she is pregnant."¹⁸ As Justice Gray succinctly put it in *Union Pacific R. Co. v. Botsford* regarding the purpose of the common-law precursor to these statutes, "The writ de ventre inspiciendo, to ascertain whether a woman convicted of a capital crime was quick with child, was allowed by the common law, in order to guard against the taking of the life of an unborn child for the crime of the mother." Whatever the particular form by which the legal right to life for the child en ventre sa mere is to be ascertained and determined—whether by a jury of matrons or examination by physicians—this finding of fact is by a special procedure independent of the court and is protected by the Seventh Amendment.

Despite the historical practice of drawing from the sovereign people arbiters of fact, independent from the courts, to determine when life began in the womb, Justice Harry Blackmun dissembled in *Roe v. Wade* that the court could "not resolve the difficult question of when life begins." This was his response to the state of Texas' argument "apart from the Fourteenth Amendment [personhood arguments], life begins at conception and is present throughout pregnancy, and that, therefore, the State has a compelling interest in protecting that life from and after conception."¹⁹ Blackmun's legal fiction of "the difficult question of when life begins" and other fallacious arguments allowed him to conclude, "In view of all this, we do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman that are at stake."²⁰

But Blackmun's legal fiction came crashing down in *Gonzales v. Carhart*. In that Supreme Court case the constitutionality of the federal Partial-Birth Abortion Ban Act of 2003 [hereafter the "Act"] was being challenged. The Act protects "living" "human" fetuses and in one of the cases under review, *Planned Parenthood v. Ashcroft*, the pro-abortion plaintiffs argued that the use of the term "living fetus" added to the Act's vagueness because, "[A] previable fetus may nonetheless be 'living' if it has a detectable heartbeat or pulsating umbilical cord."²¹ Judge Phyllis Hamilton of the District Court for the Northern District of California (which had ruled for the plaintiffs) made a finding of fact that "The fetus may still have a detectable heartbeat or pulsating umbilical cord when the uterine evacuation begins in any D & E or induction, and may be considered a 'living fetus.'"²²

The Supreme Court accepted that finding of fact in *Gonzales v. Carhart* and Justice Anthony Kennedy's opinion declares, "[B]y common

understanding and scientific terminology, a fetus *is a living organism* while within the womb, whether or not it is viable outside the womb. We do not understand this point to be contested by the parties.”²³ Justice Kennedy’s use of the word “organism” is curious, as that word is found nowhere in the Act or in *Planned Parenthood v. Ashcroft*. Still, the Supreme Court upheld the Act, which protects the “living”²⁴ “human fetus”; the Act declares “Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years, or both.”²⁵

Consequently, the Supreme Court can no longer hold fast to the legal fiction that “the difficult question of when life begins” cannot be answered. The result in *Gonzales* must have been exactly what Justice Blackmun had wanted to avoid—the recognition that children en ventre sa mere were legally recognized as being alive at some moment prior to birth. For if the child en ventre sa mere is actually alive, then the state has an “unqualified interest in the preservation of human life”²⁶ that would allow for the prosecution of abortion under the several states’ municipal law by virtue of their sovereign police powers. This also raises all sorts of questions that no doubt Blackmun wanted to avoid. For example, if such rights exist at any particular point in pregnancy, then what is the rationale for excluding children en ventre sa mere at earlier stages of pregnancy? And, who gets to decide when children en ventre sa mere possess vital signs of life? Maybe Justice Blackmun actually read the cases and articles he cited in *Roe*, knew the answers to those questions, and so devised his devious “potential life” legal fiction to avoid them.

The fact that the beginning of life can be factually determined is key to asserting rights under the Sixth and Seventh Amendments on behalf of children en ventre sa mere. As explained above, judges decide questions solely of law, and juries decide questions of fact and mixed questions of fact and law. The question of when life begins is a factual inquiry. Juries of matrons had been answering that question for hundreds of years at the time our Constitution was being enacted. The change from the use of matrons to midwives had started with Bathsheba Spooner’s case during the Revolutionary War era; the use of physicians, in response to Angela Barnett’s common-law plea of pregnancy, occurred one year after the enactment of the Sixth and Seventh Amendments.

The fact that the beginning of life can be factually determined also obliterates Justice Blackmun’s argument in *Roe* that the state sovereign municipal law protecting the lives of children en ventre sa mere could be overturned, because it was only based on “one theory of life.” *Roe v. Wade* was indeed “an exercise of raw judicial power”²⁷ that stripped the sovereign

people of their constitutional power to make this factual determination. The only time when the people do not need to make a determination of fact is when there is no fact *in question*; that is to say, when the opposing parties agree to the facts. That is what happened in *Planned Parenthood v. Ashcroft*, in which the pro-abortion plaintiffs argued that children en ventre sa mere were actually alive prior to abortion (before this they had only been admitted to be “potential life”).

Significantly, this resulting finding of fact from *Planned Parenthood v. Ashcroft* was declared to be a matter of “common understanding and scientific terminology” in *Gonzales v. Carhart*. The Supreme Court in *Gonzales* went on to note, “We do not understand this point to be contested by the parties.” Accordingly, under Rule 201 of the Federal Rules of Evidence, the Supreme Court has implicitly given this finding of fact judicial notice, as it was “not subject to reasonable dispute” (“We do not understand this point to be contested by the parties”), it was “generally known” (“by common understanding and scientific terminology”), and it was “capable of accurate and ready determination”²⁸ (either the heart is beating or it isn’t). The practice of courts taking judicial notice of generally known facts predates the Fourteenth Amendment and its Due Process protections. For example, Lincoln used an almanac to help defend William Armstrong against a charge of murder. The almanac showed that the moon was not shining brightly, if at all, on the date and at the time when Armstrong’s accuser claimed to have seen, by the light of the moon, Armstrong land the fatal blow. The court took judicial notice of the facts concerning the phase of the moon as presented in the almanac.²⁹

Justice Cardozo noted in *Ohio Bell Tel. v. Pub. Util. Comm.*, “Courts take judicial notice of matters of *common knowledge*,”³⁰ and Justice Scalia stated in his *Planned Parenthood v. Casey* dissent that courts “should rely only upon the facts that are contained in the record or that are properly subject to judicial notice.”³¹ So, when the Supreme Court declared in *Gonzales* that, “by common understanding and scientific terminology, a fetus is a living organism while within the womb,” this “common knowledge” became a fact that is “properly subject to judicial notice” that courts “should rely . . . upon.” Hence, where the beating of the heart of a child en ventre sa mere is “not subject to reasonable dispute,” a court should make a directed finding that the unborn child is alive and fully enforce the “unqualified interest in the preservation of human life” held by the state, as well as the equal protection and due process rights that are held by a living human. If there is a “reasonable dispute” as to whether the unborn child is alive, then the court ought to defer to the opinion of two physicians on the matter after they have made an

examination. The failure of a judge to do either ought to expose him or her to remedial action under the law.

As noted earlier, for the first hundred years of our country it was widely held that juries in criminal trials also had the power to decide issues of pure law. One reason given for that view was that “the exercise of this power by juries [to decide on issues of pure law] is important to the preservation of the rights and liberties of the citizen.”³² In response, some argued that as long as judges had to answer to the people for their case holdings, the rights and liberties of citizens were secure. Justice Benjamin Curtis (who would later write a devastating dissenting opinion in *Dred Scott*) is noted for making that very argument in a circuit opinion:

As long as the judges of the United States are obliged to express their opinions publicly, to give their reasons for them when called upon in the usual mode, and to stand responsible for them, not only to public opinion, but to a *court of impeachment*, I can apprehend very little danger of the laws being wrested to purposes of injustice.³³

“[L]aws being wrested to purposes of injustice”—if that doesn’t describe *Roe v. Wade*, nothing does. *Roe* is a travesty; the ink was hardly dry on the opinion before even proponents of abortion, such as Lawrence Tribe, criticized the opinion.³⁴ Justice Blackmun’s review of every species of law that applies to children *en ventre sa mere* is wholly erroneous—be it criminal,³⁵ tort,³⁶ or property and inheritance.³⁷ One can even find an acknowledgment in a recent American Bar Association journal that *Roe v. Wade*’s arguments are unworkable. In that publication, the author, taking note of the Unborn Victims of Violence Act (“[T]he term ‘unborn child’ means a child in utero, and the term ‘child in utero’ or ‘child, who is in utero’ means a member of the species *homo sapiens*, at any stage of development, who is carried in the womb”), *McArthur v. Scott* (“the Rule Against Perpetuities gives rights to children not yet conceived”), and *Weber v. Aetna Casualty & Surety* (“We think a posthumously born illegitimate child should be treated the same as a posthumously born legitimate child . . .”), observed:

Both historic and modern courts have recognized the unborn as persons. For instance, consider the property Rule Against Perpetuities, which treats even an unconceived child like a human being, capable of inheriting property. Furthermore, the Supreme Court itself has applied Due Process and Equal Protection rights to the unborn.³⁸

The phrase “children *en ventre sa mere*” is a Law French relic of the common law from the time of the Norman Conquest. It is pregnant with intimations of equal protection and is evidence of a historic treatment of unborn children as “persons” that in fact dates back to the conception of the

common law. As federal district court Justice McGuire declared in a District of Columbia case, “From the viewpoint of the civil law and the law of property, a child *en ventre sa mere* is not only regarded as human being, but as such from the moment of conception—which it is in fact.”³⁹ No small part of this equal protection is the centuries-old legal procedure of jury of matrons to ascertain the existence of, and protection for, life in the womb, replaced in our modern age by findings of fact by physicians independent of the court. These historic legal practices by independent finders of fact to ascertain the existence of life in the womb have been trampled upon by the *Roe* legal regime. Such treatment not only violates the rights of children *en ventre sa mere*, but also vitiates the power of the sovereign people to make such a finding of fact, and the power of the sovereign states to protect such lives in existence. Our legal history affirms the right of the sovereign people, through their representatives in Congress, to pursue a vindication of these rights by means of impeachment. It only requires the will of the sovereign people to use this remedy.

NOTES

1. James Pylant, “Pleading the Belly”—*Angela Barnett Avoided 18th Century Death Sentence* (2005), see <http://www.genealogymagazine.com/plbeanbaav18.html> (last visited January 4, 2014). This author acknowledges, and is indebted to, Mr. Plant for publicizing Angela’s story.
2. Roden, “Bathsheba Spooner’s Plea of Pregnancy and State ‘Personhood’ Amendments,” 37 *Human Life Review*, no. 3, 47 (Summer 2011).
3. W. Blackstone, *Commentaries on the Laws of England* 126 (1st ed.): “An infant *in ventre sa mere*, or in the mother’s womb, is supposed in law to be born for many purposes. It is capable of having a legacy, or a surrender of a copyhold estate made to it. It may have a guardian assigned to it; and it is enabled to have an estate limited to its use, and to take afterwards by such limitation, as if it were then actually born. And in this point the civil law agrees with ours.”
4. *Roe v. Wade*, 410 U.S. 113, 152 (1973).
5. *Union Pacific R. Co. v. Botsford*, 141 U.S. 250, 253 (1891).
6. S. McRae, *Calendar of Virginia State Papers and Other Manuscripts From August 11, 1792, to December 31, 1793, Preserved in the Capitol at Richmond*, 363-364 (Richmond: A. R. Micou, Superintendent of Public Printing, 1886). Where appropriate, the author has retained the original spelling from historical documents to preserve the style of the time-period for the reader’s appreciation.
7. *Ibid.* at 372.
8. *Galloway v. United States*, 319 U.S. 372, 397 n.1 (1943) (Black, J., dissenting) (citing 3 *Writings of Thomas Jefferson* (Washington ed.) 71).
9. *Chisholm v. State of GA.*, 2 U.S. (2 Dall.) 419, 479 (1793) (Jay, C.J.).
10. *Mayor, Aldermen and Inhabitants of New Orleans v. United States*, 35 U.S. 662, 711 (1836) (McLean, J.).
11. *United States v. Gaudin*, 515 U.S. 506, 513 (1995) (Scalia, J., for a unanimous Court).
12. *Galloway v. United States*, 319 U.S. 372, 399 (1943) (Black, J., dissenting).
13. *Roe v. Wade*, 410 U.S. 113, 159 (1973).
14. *Colautti v. Franklin*, 439 U.S. 379, 388-389 (1979) (Blackmun, J.) (emphasis added).
15. *Parsons v. Bedford*, 28 U.S. (3 Pet.) 433, 447-448 (1830) (Story, J.).
16. *Ibid.* at 447 (emphasis added).
17. *Curtis v. Loether*, 415 U.S. 189, 194 (1974) (Marshall, J., for a unanimous Court) (emphasis added).
18. 18 U.S.C.A. SEC. 3596.

19. *Roe v. Wade*, 410 U.S. 113, 159 (1973).
20. *Ibid.* at 162.
21. *Planned Parenthood Federation of Am. v. Ashcroft*, 320 F. Supp. 2d 957, 977 (2004).
22. *Ibid.* at 971.
23. *Gonzales v. Carhart*, 550 U.S. 124, 147 (2007) (Kennedy, J.) (emphasis added, citation omitted).
24. Partial-Birth Abortion Ban Act of 2003 (Act), 18 U. S. C. §1531 (b) (2000 ed., Supp. IV): “[T]he term ‘partial-birth abortion’ means an abortion in which the person performing the abortion—(A) deliberately and intentionally vaginally delivers a *living fetus* . . . for the purpose of performing an overt act that the person knows will kill the partially delivered *living fetus*; and (B) performs the overt act . . . that kills the partially delivered *living fetus*” (emphasis added).
25. Partial-Birth Abortion Ban Act of 2003 (Act), 18 U. S. C. §1531 (a) (2000 ed., Supp. IV).
26. *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997); *Cruzan v. Director*, 497 U.S. 261, 282 (1990).
27. *Doe v. Bolton*, 410 U.S. 179, 222 (1973) (White, J. dissenting);
28. FED. R. EVID. 201(b).
29. *NY Times*, May 14, 1899. See <http://query.nytimes.com/mem/archive-free/pdf?res=9B03E4DC123DE633A25757C1A9639C94689ED7CF> (last visited December 20, 2013).
30. *Ohio Bell Tel. v. Pub. Util. Comm.*, 301 U.S. 292, 301 (1937) (emphasis added).
31. *Planned Parenthood v. Casey*, 505 U.S. 833, 991 (1992) (Scalia, J., dissenting).
32. *United States v. Morris*, Fed. Cas. No. 15,815, p. 26 (1851).
33. *Sparf v. United States*, 156 U.S. 51, 106-107 (1895) (Harlan, J.) (citing *United States v. Morris*, 1 Curt. 62, 63, Fed. Cas. No. 15,815) (emphasis added).
34. L. Tribe, *The Supreme Court, 1972 Term—Forward: Toward a Model of Roles in the Due Process of Life and Law*, 87 Harv. L. Rev. 1, 18-29 (1973).
35. See Roden, “The Unknown Scholars of *Roe v. Wade*,” 38 *Human Life Review*, no. 3, 57 (Summer 2012); Roden, “*Roe v. Wade* and the Common Law: Denying the Blessings of Liberty to our Posterity,” 35 *UWLA Law Review* 212 (2003).
36. See Roden, “Cellulose Persons and Other Straw Men,” 35 *Human Life Review*, no. 4, 47 (Fall 2009); Roden, “Prenatal Tort Law and the Personhood of the Unborn Child: A Separate Legal Existence,” 16 *St. Thomas L. Rev.* 207 (2003).
37. See Roden, “Cellulose Persons and Other Straw Men,” 35 *Human Life Review*, no. 4, 47 (Fall 2009); Roden, “Unborn Children as Constitutional Persons,” 25 *Issues in Law and Medicine*, no. 3, 185 (2010).
38. Hoffman, “You Say Adoption, I Say Objection: Why the Word War Over Embryo Disposition Is More Than Just Semantics,” 46 *Fam. L. Q.*, No. 3, 397, 415 n.104 (Fall 2012); see http://www.americanbar.org/content/dam/aba/publications/family_law_quarterly/vol46/3fall12_hoffman.authcheckdam.pdf (last visited February 25, 2014).
39. *Bonbrest v. Kotz*, F. Supp. 138, 140 (1946).

CULTURENOTES

THE GIVER

Lois Lowry

(Laurel Leaf, 2002), 179 pages

A Review Essay by Anne Hendershott

The release of the film adaptation of *The Giver*, the young-adult novel by Lois Lowry about a dystopian society of the future in which the State has assumed total control over the lives of residents—including all of their decisions—brought back memories of the day nearly two decades ago when my son brought the novel home from his San Diego middle school as part of his summer reading assignment. I remember being unhappy that fifth-graders would be confronted with the themes of infanticide and euthanasia that pervaded the pages of *The Giver*. I anticipated that these themes would inspire further conversations in the classroom about abortion and assisted reproduction; I was not sure that a progressive private middle school was the appropriate place for discussing the reproductive choices our own dystopian society had made in 1973 with the Supreme Court's *Roe v. Wade* ruling.

I convinced my son that it would be “fun” to tackle the futuristic novel together during the summer vacation. As we took turns reading the book to each other and talking about it as we went along, I realized that most of my concerns were unfounded. My son, like most of his fifth-grade classmates, already knew quite a bit about what our society had chosen for those with unplanned pregnancies or imperfect children; he well understood that the State had given women the “right” to decide whether their unborn children would live or die. In fact, by 1996 abortion had become such an integral part of our culture that it was almost taken for granted—even by those San Diego middle schoolers—that the right to choose was a right every woman enjoyed.

The conversation about abortion is one that pro-life parents struggle with, trying to decide when might be the best time for their children to learn about such a horrific act perpetrated on an unborn child. In an article entitled “Speaking to Children about Abortion,” Fr. Frank Pavone, the National Director of Priests for Life, suggests that children need to know the facts about abortion well before middle school. He encourages parents to teach young children that “abortion is a ‘bad thing’ before they learn the mental gymnastics and exercises in denial that are necessary for developing and maintaining a pro-choice position.” Dismissing concerns that youngsters are “too young” to learn about the killing of an unborn child, he advises that the

basis for teaching children about abortion is not to introduce them to sexuality, but rather to affirm the dignity and worth of every human person, “whether that person is big or small, young or old, healthy or sick, wanted or unwanted, convenient or inconvenient” (<http://www.priestsforlife.org/preaching/prchild.html>).

While I have long admired Fr. Pavone’s courageous fight against the culture of death, I disagree that very young children need to hear about abortion. Abortion is a barbaric and violent act of dismemberment. I do not believe second- or third-graders, just beginning to learn that babies grow in their mother’s body, are ready to learn that they live in a country that sanctions the killing of unborn infants. Telling six- or seven-year-olds that our government allows these babies to be killed is traumatizing. They will first wonder how such an act is accomplished, and then may begin to worry that a government that doesn’t protect unborn children might be a threat to “born children” as well. Since even young children are aware of themselves as children, these fears are not unfounded.

This is not to say if a child asks about abortion—perhaps prompted by having seen a sign that says “Abortion Kills Children”—that the parent should avoid the question. But I am reluctant to suggest that parents disclose such troubling news to very young children. Focus on the Family offers some helpful advice in “Talking with Kids about Abortion and Homosexuality” (<http://family.custhelp.com/app/answers/detail/a-id/26455/~talking-with-kids-about-abortion-and-homosexuality>). This article recommends that parents (or ideally the parent of the same sex as the child) consider having a series of conversations about general maturational topics when their pre-pubescent child reaches age ten or eleven. The Focus on the Family website maintains that “this would be the perfect time to broach such subjects as God’s design for human sexuality, the close connection between sex and childbirth, the value of children, and the sanctity of human life.” Focus on the Family advises parents that it is absolutely necessary to discuss abortion with the child at this time—but warns that you should not “overload them with information they haven’t requested.”

In contrast, the pro-choice side seems to believe that it is necessary to “start early” in socializing children to a world in which a woman has the right to “control her reproductive decisions.” For example, in a post on realitycheck.org, an Internet site devoted to “Reproductive and Sexual Health and Justice,” contributor Jessica DelBalzo wrote that her daughter “was two years old the first time we talked about abortion . . . it was a part of a very conscious decision on my part to raise my children with pro-choice values” (<http://rhrealitycheck.org/article/2011/08/19/talk-kids-about-abortionand->

should-talk-yours/). DelBalzo wrote that she told her young daughter that “when a woman gets pregnant, she can either stay pregnant and have a baby, or she can go to a doctor and have him or her get rid of the fetus so that she doesn’t have a baby. That’s called abortion.”

Sarah Buttenwieser also published a blog entry on the realitycheck.org site in which she wrote about her own decision to tell her young child about her abortion. She recalls relating how she felt “grateful” to have been able to make the choice for abortion, so “I had the chance to become a parent on my own terms, once I was an adult ready for the responsibility of childrearing and once I partnered with my wonderful husband whom I loved” (<http://rhrealitycheck.org/article/2013/02/01/birds-bees-abortion-how-do-we-bring-up-complicated-reproductive-issues-with-our/>). Buttenwieser decided to instruct her children about the value of abortion early—well before fifth grade—following what she called the “assassination” of the Kansas abortionist, Dr. George Tiller, in 2009; she claimed that “By then, my kids had progressed far enough beyond kindergarten that they comprehended both what abortion was and what assassination was. I think the direct way they’ve learned about bodies and reproduction also gave them a solid and reasonable platform to discover their own beliefs.”

This is exactly what Fr. Pavone was warning about when he said that if parents don’t introduce the subject of abortion early on, they risk their children first encountering it in the guise of a positive, rights-based presentation in their fifth-grade health-sciences class. Such a curriculum—even one presented in a neutral way focusing on the laws supporting a woman’s right to choose abortion—will confuse children who have never been exposed to the pro-life message. They will learn in school that *Roe v. Wade* and subsequent Supreme Court decisions have made access to abortion throughout an entire pregnancy the law of the land. Children need to learn early that there are compelling counter-arguments to such a law. But the question remains, “How early?”

This is why *The Giver* is truly a gift to parents. The book is probably one of the best ways to teach middle-school children about what can happen to a society in which the dignity and worth of every human person—including the unborn—is no longer a given. In Lowry’s dystopian society there is no real “freedom to choose,” as all members are relieved of the anxiety that accompanies the act of choosing. That burden is given over to the State—through the Elders who make all decisions for the residents. Everyone seems happy in this worry-free environment because the State provides everything: The State chooses your spouse, the two children (one boy and one girl) you will be given to raise, the house you will live in, the uniform you will wear,

and the career you will be allowed to pursue. No one has to think about what to eat for dinner because even your food is chosen for you. The Elders create guidelines for balanced meals to be delivered to the doors of each household unit, and school lunches are carefully calibrated and monitored by the central authority to ensure that each child receives the appropriate nutritional balance.

The film is faithful to the book in its portrayal of the agonizing lack of individuality—and total dismissal of the concept of the dignity of the human person—that permeates Lowry’s State-run society. Meryl Streep plays the role of one of the Senior Elders who makes many of the decisions for the residents. Justifying her role as decision maker, Streep’s character claims that when decisions are left to individuals, “they always choose wrong—every single time.” Believing that the Elders know best, the society they oversee, she says, was “perfect in every way. There was no war, no anger, no envy, no poverty and no wealth. Every material need was met.”

In both the book and the film, the most important decision the Elders made concerned the career each child in the community would pursue. While career designation was based primarily on community need, need was coupled with the acknowledgement that some children were more suited for one job than another. Those with more scientific aptitude would be given training assignments to become doctors or engineers; others, who showed nurturing ability, were funneled into caregiving spots in the nursery or the House of the Old.

One of the careers—described by a main character in the book as a “job without honor”—was the Assignment as Birthmother. This Assignment is depicted as requiring no special talent or ability. It is viewed as lacking in prestige because it is often given to the “laziest” young women of the society—the ones who “would enjoy three years of being pampered” and receiving the best food and easiest tasks. Birthmothers were only expected to give birth to one child; after that they would have to assume the menial role of Laborer for the remainder of their lives. They would never see the child they gave life to, and were never allowed to be part of a family unit. The film reinforces the sadness of the career of the Birthmother who, unlike the others who were assigned a spouse and two children (one boy and one girl), were never assigned children of their own to nurture.

In some ways, it is the Assignment to Birthmother in this society that hits closest to home for those of us who have become increasingly alarmed by the frequency of the use of women as breeders in our own dystopian society. Today’s surrogates, as depicted in Jennifer Lahl’s new documentary, *Breeders*, are not so different from Lowry’s Birthmothers. They, too, are pampered throughout their pregnancies—given the best food to eat and allowed plenty

of rest—but they also face an unfortunate future once they have delivered the child to the new family unit. And, although some would argue that the well-paid surrogates that childless couples today hire to give birth to their children have a choice in accepting the assignment as Birthmothers, many of these women are coerced into assuming that role. The surrogates in Thailand and India—where childless couples are turning to find affordable women to breed their babies—are nearly always coerced into the practice. There is no choice for them.

And, like today, as the women who are employed as surrogates must produce a perfect child, any imperfection in the newborn child in the dystopian society described in *The Giver* results in a quiet “release” of that child.

While it portrays a harsh reality in which infants die, *The Giver* may be the best gift to parents who want to help their middle-school-age children understand what happens when individuals are no longer viewed as human persons with dignity. The film helps us rejoice when Jonas, the young hero of the story, begins to question this oppressive control, and learns to appreciate the dignity of the human person—rejecting a society that facilitates infanticide.

—Anne Hendershott is professor of sociology and director of the Veritas Center for Ethics in Public Life at Franciscan University of Steubenville, Ohio.

GOOD CATHOLICS: THE BATTLE OVER ABORTION IN THE CATHOLIC CHURCH

Patricia Miller

(Berkeley, CA: University of California Press, 2014), 332 pages

Reviewed by Jason M. Morgan

Patricia Miller’s *Good Catholics* is not wholly without merit. Miller presents for the first time in one volume the history of the pro-abortion movement within the Catholic Church. She grounds her narrative in the work of early dissenting feminist theologians Jane Furlong Cahill, Rosemary Radford Ruether, Mary Daly, and Elizabeth Farians, all of whom attempted a theological justification for the postmodern liberalism of the so-called Sexual Revolution. Miller then shows how later pro-abortion activists like Patricia McQuillan and Frances Kissling built on this feminist theology to try to carve out a place for abortion in the lived experience of the Church. This was done, Miller shows, largely by exploiting orthodox Catholicism’s own

theological lacunae regarding the humanity of the unborn (the “quickenning doctrine,” on which the infamous *Roe* trimester paradigm is based, having become outmoded by increasing scientific evidence for the beginning of human life at conception) and the Church’s disastrous dereliction of its catechetical duties in the wake of Vatican II (let us not forget that Miller herself was raised Catholic, and that she confesses to never having heard a single pro-life homily in all of her formative years at Mass). The Church, in short, was caught flatfooted by the lay insurrection of the 1960s and 70s, part of which insisted that Catholicism endow abortion with a kind of populist, quasi-Catholic veneer of apparent religiosity. This history, which Miller deserves due credit for researching with great meticulousness, comprises the worthwhile portion of Miller’s book.

At its heart, though, *Good Catholics* is a strange marriage of a conspiracy theory and a hagiography, a union sealed with a blended chrism of disingenuousness and willful obfuscation. For Miller, the main actor in her history is a group she calls “the bishops,” which denotes the American wing of her Dan Brown-esque caricature of “the Vatican.” Rarely identified by their actual names, “the bishops” in Miller’s estimation are always up to some nefarious trick. They move in a shadowy world, influencing politics, excommunicating heretics, rescinding speaking invitations, and launching pro-life campaigns for no other reason than contempt for women and love of political gamesmanship. The obverse of this is Miller’s hagiographical treatment of her subjects, including the feminist theologians and other activists listed above. One searches nearly in vain for a critical approach to those Miller seems to have written the book to laud. Far from an even-handed account, *Good Catholics* is an extended journalistic fluff piece on Catholics For Free Choice (CFFC, the newsletter of which, *Conscience*, Miller herself formerly edited) and similar organizations that continue to insist that dismembering one’s child should be, if not enshrined in the Catechism, at least exempt from untoward hectoring from the pulpit.

All of this hangs together by dint of Miller’s disingenuous refusal to take the arguments of her heroes’ opponents seriously. St. John Paul the Great and Pope Emeritus Benedict, for example, by her account seem to have deployed the Magisterium in defense of human life, and against the contraceptive mentality, out of an abundance of malicious intolerance. That the Church did not preach against condoms at the time of St. Gregory the Great carries much weight with pro-choice Catholics, but the conclusion to be made is not that later popes and clergy simply created the teaching on human sexuality out of thin air. There is—philosophically, theologically, morally, politically, and historically—much more to the story than Miller

would have us believe. Her book might have worked better if she at least had acknowledged that a sincere desire to protect innocent life, both prenatal and maternal, drove at least some of “the bishops” and those in “the Vatican” to take up the abortion issue with such vehemence. Alas, this kind of multi-dimensionality is not allowed to come through in the pages of *Good Catholics*. Like a field of scarecrows stretching off to the horizon, Miller has populated half of her book with a crowd of rustling straw men. Much to the University of California Press’s shame, Miller is even given editorial leeway to seriously repeat, on page 267, theologian Mary Hunt’s contention that “the hierarchy [code for “the bishops”] blew issues like abortion out of proportion as cover for their long-term duplicity on issues like pedophilia.” One should not expect much depth from a work containing statements such as these.

Miller takes pains to explain away the repeated failure of “the bishops” to win elections and court cases, setting up a farcical dichotomy that is one of the book’s most unfortunate features. When “the bishops” manage to sway public policy, they are virtually a crowd of red, beady eyes peering out from the shadows. But when they lose—as they did with Clinton’s elections, with Obama’s second election, and even with Kerry’s loss (because polls indicated that Catholics broke for Bush on issues other than those near to “the bishops” hearts)—they are out of touch with their flocks, hopelessly behind the times, fading into obscurity, and doomed to go the way of other theological dodos like the Papal States and the selling of indulgences. We are never quite sure which it is: Are the bishops ineffectual sideshows or minatory powerhouses? Are they kingmakers or jesters in tall hats? Miller can’t seem to decide, and her narrative wobbles eccentrically as a result. One thing is for certain: The bishops are all men, and Miller can’t stand (or understand) that they dare offer advice to women on the subject of sexual morality.

This unscholarly pothering is as nothing, though, compared to the underlying mendacity of the book, in which Miller only once actually considers what takes place during the abortions that her subjects are so keen to enable. A partial-birth abortion, Miller assures us on page 176, only “sounds gruesome.” One could be forgiven for thinking so, even by Miller’s own account: “the fetus, which has been partially moved into the birth canal, is extracted by suctioning its brain and compressing its skull.” One struggles to understand how anyone could find this sort of thing anything *but* “gruesome,” but Miller blithely hurries by the reality of her and her subjects’ insistence on a Catholically-permissible freedom of choice. In the very same paragraph, Miller ridicules Doug Johnson of the National Right-to-Life Committee for “labeling it [i.e., partial-birth abortion] as infanticide and gleefully describing it in grisly detail.” If such “grisly details” offend Miller’s refined sensibilities,

imagine how the infants who are allowed to experience only partial birth must feel. If a religion that is centered on the child of an unwed mother whose quality of life surely suffered due to poverty, gender oppression, the utter lack of governmental support, and the certainty of her offspring's crucifixion in the prime of his life is somehow compatible with "choice," then everyone in the pews had better pack up and just go home. For undoubtedly Miller would have convinced the Blessed Mother that the compassionate thing to do was to visit the local Nazarean Planned Parenthood, which, ironically, would have obviated the necessity of Miller's writing *Good Catholics* in the first place.

All of this is lost on Miller, though. *Good Catholics* is a dense exercise in failing to see either the reality of abortion or the finer argumentative points that the other side is trying to convey, which makes Miller's book a kind of synecdoche for the pro-abortion movement as a whole. Nor are these impressions ameliorated by the peppering of misspellings, syntactical errors, run-on sentences, and generally poor proofreading that plagues the book. (The index, to take just one example, puts "K" before "J." Surely pro-lifers and the pro-abortion crowd can at least agree on the order of the alphabet?)

Good Catholics might be of interest to proliferators willing to hold their noses in order to get through a history of pro-abortion Catholics in the United States (and, episodically, in Latin America and Ireland). With little to recommend it save its one-sided recitation of the historical facts convenient to its author, *Good Catholics* will have to do until something better comes along. Let us hope it is replaced by a superior, more scholarly effort very soon.

THE HUMAN LIFE REVIEW



THE HUMAN LIFE FOUNDATION'S

GREAT DEFENDER OF LIFE DINNER

THE UNION LEAGUE CLUB

NEW YORK CITY

OCTOBER 23, 2014

Photographs by Michael Fusco

FALL 2014/75

Maria McFadden Maffucci:

If there is one thing that all Americans *can* agree on about abortion, it is that the issue is far from settled. Our honoree Clarke Forsythe is an expert on why *Roe v. Wade* is *not* settled law: his book *Abuse of Discretion: The Inside Story of Roe v. Wade* is a masterful and revealing study of the Supreme Court's 1973 abortion ruling and why it was an "unfortunate and short-sighted attempt to 'solve'" the divisive issue. Honoree Kristan Hawkins is a young leader who demonstrates that abortion is not at all settled in the culture. Her organization, Students for Life, continues to grow by leaps and bounds. Indeed, for the now four decades since *Roe v. Wade*, abortion has remained a hugely controversial issue, perhaps never before so much as now, with the pro-life



movement gaining important ground in public opinion and in legal victories, while the "pro-choice" movement morphs into a blatantly "pro-abortion" one—attempting to "celebrate" abortion as a way to combat the rise in pro-life sentiment.

When my father, James P. McFadden, founded the *Human Life Review* in 1975, he hoped Americans would come to their senses, and soon; but if not, he wanted the *Review* to help keep the abortion debate (and related issues such as euthanasia and infanticide) in the public square. In 40 years of continuous publishing, we have worked to do

just that; we are dedicated to converting minds and hearts and strengthening those already on the side of life.

And that is *all* because of you, our supporters. I welcome you, and our new friends, to our 12th annual Great Defender of Life dinner, and to our 40th Anniversary celebration!

A special guest tonight, who has come all the way from England, is Sally Muggeridge. Her uncle, the esteemed British journalist and Christian apologist, Malcolm Muggeridge, was an early supporter and contributor to the *Review* and a cherished friend of the McFaddens. I met him in 1979, when he and William F. Buckley Jr. and Judge John T. Noonan gave a testimonial dinner for my father. It was an amazing evening, here at the Union League Club, and I had the privilege of being a surprise speaker.

We have lost many of the people who were in the room that night, and I especially think of my parents, Faith and Jim McFadden, and my dear brother Robert, who worked for several years in DC as a pro-life lobbyist, and died in 1994 at the young age of 34. The preciousness of human life is never more starkly real than when you lose a loved one. It makes our mission at the Human Life Foundation all the more pressing, because each human life is irreplaceable.

And now we look to the future. We think that our 41st year is a good one to make some changes! So coming to you this Winter—the *Human Life Review* gets a bit of a face-lift! Stay tuned. And we have a redesigned website (www.humanlifereview.com), and yes we are on Facebook and Twitter! Please visit our site often, and let us know what you think.

My heartfelt thanks especially to our hardworking and persevering staff: Rose Flynn DeMaio, Anne Conlon, Christina Angelopoulos, and Jane Devanny, and to our priceless volunteers, Patricia O'Brien and Dana Hendershott, and—a young man who gives us hope for the future—our intern, Christopher Hanson.

Heartfelt thanks to all of you for joining us in this celebration and our mission, and may you enjoy the evening!

Kristan Hawkins:

I remember when I was in college and first learned about the *Human Life Review*. What a boost you all were to a college student, scouring the internet for timely, persuasive, and scholarly articles to use in her research papers.

I want to thank Maria and the entire Board at *Human Life Review* for this honor tonight. It means so much to me that our “behind the scenes” work at

Students for Life has not gone unnoticed by such an influential organization such as yours. I am proud to accept on behalf of our entire team at Students for Life of America.

You know, eight years ago when I was hired as the first full-time employee, the head honcho/janitor/IT person/secretary of Students for Life of America, I had no idea what I was getting myself into. I had made one decision to leave my comfortable, fairly well-paying government position for a vision—an idea that had never been tested. And it was a lofty one—organize seemingly unorganize-able and apathetic young people—and convince them to take time out of their already busy school schedules (their exams, work-study jobs, sorority parties, all-night video-game marathons) to show them how to do something never done before on a massive scale—transform our nation, one campus at a time, by starting and leading youth pro-life organizations.

I knew just how difficult a challenge this would be—as I had been there myself just a couple of years earlier—starting pro-life groups in both my high school and college. And to be honest, I think I saw more failures than successes as I tried to lead my peers and get others to care about the one issue no one wants to talk about . . . abortion.

My decision to follow what God had written on my heart was a new start for the youth pro-life movement—to deliver our peers from the Culture of Death that preys on them daily. And it was a mission that many of my colleagues now in the national pro-life movement told me then was impossible, while figuratively patting my head and thanking me for my “passion.”

And yet tonight, I’m here to proudly declare that my one decision, that leap of faith, was the right one and such a blessing as I have been able to see God truly at work through those who submit to His will. Today, our organization that started out with just one person and cheap IKEA furniture has turned into a ministry with 19 employees, spread throughout America, still with the same cheap IKEA furniture. Our team visits over 400 college and high school



campuses every year, starting hundreds of new pro-life groups and consulting with those groups and training thousands of young people who aspire to lead and make abolishing abortion their life's mission. In just eight years, we've gone from a hundred student pro-life organizations to over 838 active groups and counting.

Today, the demand for our time and resources far outpaces our supply. You see, this new generation is rising up and they are pro-life, in fact all of the national polls show that we are the most pro-life generation since the handing down of *Roe* and *Doe*, and we are even more pro-life than our parents' generation.

And I hope you can feel it—as the tide is truly turning in America! More young people now than ever recognize that abortion is wrong and kills an innocent human being. While we were born during the big-hair bands of the 80s and grunge rock of the 90s, we've watched the ultrasounds of our siblings in wonder, we've googled “abortion” and seen the bloody images, and, sadly, many of us have sat with a friend as she cried about her abortion.

We view abortion differently than our parents' generation. And while none of us is against abortion in every circumstance, because of the technological advances of ultrasound and the life-saving surgeries that can be performed on children still in utero, we bring up the question of the humanity of the preborn child when discussing the issue—something that simply wasn't done 20 years ago.

And last January in Washington, D.C. during the March for Life you could see it. In a sea of over 500,000 people, more than three-fourths were under 25. It was incredible. And as we marched up Constitution Avenue with our “We are the Pro-Life Generation” front and center for all of the media photos, I couldn't help but think what Planned Parenthood and NARAL were thinking as they sat in their warm, cozy offices watching the March unfold. Because before their eyes, they saw their fate—a generation of young people who reject their notion that abortion is just a women's rights issue, that abortion is needed to ensure equality in our society.

In fact, they've been seeing it for a while. When Nancy Keenan, the former president of NARAL/Pro-Choice America announced her resignation, she specifically cited the lack of young pro-abortion leaders as her reason for stepping down. And last January, a week before the March, a *Time* magazine cover story dealt with the same problem, stating that 40 years ago the “abortion-rights” advocates won . . . but “they've been losing ever since.”

For the pessimists here this evening who aren't sure if this magazine headline is correct and think, oh . . . consider these facts:

- Read Planned Parenthood's, the nation's largest abortion provider, latest messaging memo where they encourage their affiliates to stop using the word "choice" because it's too associated with abortion.

- Review the statistics, which show that the number of abortion facilities in America is at an all-time low (a 73 percent decline from the highest point), thanks in part to the more than 85 abortion facilities that were shut down in 2013 alone.

- Read the *Huffington Post's* exasperated articles asking how did so many pieces of pro-life legislation pass in the past three years, over 200 laws, more than all of the laws passed in the ten years prior.

- Study the polls from Gallup and others which regularly show that this nation is pro-life, and more than 70 percent favor common-sense restrictions on abortion, like banning abortions after 20 weeks when it's been scientifically proven babies feel pain.

- Look at what our small team at Students for Life of America has been able to accomplish in the past eight years. We've been able to take disorganized, over-committed college and high school students and help them form more than 600 new campus pro-life groups, allowing us to train and work with over 837 active groups today. We hold the nation's largest pro-life conference in Washington every January, selling out with 2,500 young people, and have trained over 13,000 students since 2006. And last summer, when Texas pro-life legislators needed reinforcements in Austin to counteract the media damage being done to their common-sense abortion regulation bill by Planned Parenthood and Wendy Davis, SFLA was the only national organization to be able to answer the call and bus more than 60 students on a 30-hour journey to the Texas state capital for a week.

Yet, our work isn't complete just yet. Yes, we are kicking the abortion industry's "butt" on the campuses—starting more youth groups than they could ever dream of and shifting polls in our favor. However, abortions are still happening, and this new generation, the one that was targeted by the abortion industry when we were in our mother's wombs, are being targeted again—but this time as potential clients.

You see the abortion industry's business model is vicious—it is set up to trap young men and women into a cycle that repeats over and over again.

Planned Parenthood, the nation's largest abortion vendor and annual receiver of over \$500 million in our tax dollars, starts in the schools—offering to take on the "burden" of teaching sex-education classes. Now, here's where they are especially cunning They don't go into schools talking about abortion, because they know young people don't want to hear about it, they don't like it. So, instead, they talk about how abstinence is an impossible

pipe dream, and that when they are ready for sex to come to them for contraception, to be “responsible” for their sexual health. If your parents aren’t okay with what you are doing, don’t worry—everything they provide is confidential. Then after you’ve had your first sexual encounter make sure to return to them for your STD tests. And if, Heaven forbid, the unthinkable happens and you become pregnant . . . well just come back and they can “help” with that too. Do you all see the cycle developing here? Is it any wonder why the Center for Disease Control has said we’re in the midst of a STD epidemic despite having condoms available at every school and every place young people turn?

By now you should be excited about all that is happening in the pro-life movement, our movement that seeks to restore justice and human rights to women and children. But we can’t get ahead of ourselves—there is still much that has to be done if we are going to truly abolish abortion in this lifetime.

We’ve got to keep recruiting, motivating, and training this generation to join our campaign. Every social movement in U.S. history has relied on the passion and idealism of youth. The civil-rights movement wouldn’t have launched without those four students sitting at a lunch counter in Greensboro.

Further, youth is the time activists are made. They are open to dialogue, still forming their beliefs, and, rightly so, believe change is possible. Often they see a friend getting involved, join in for social reasons, and then see their beliefs begin to change in favor of the issue. (Belong. Believe. Behave.) Look at the anti-smoking campaigns of the 1980s and the pro-gay-marriage campaigns of the early 2000s that went to teens first with their messages before we saw a complete reversal on where our nation stands on smoking and gay marriage.

This is why our work at Students for Life is so critical, because we have to get to them first, using language and relevancy, before the other side does. Because make no mistake about it—they are out there. Planned Parenthood relies on this generation for their endless business cycle—faulty contraception, then STD/HIV tests, more contraception, then abortion and then repeat.

To continue reaching and win this generation:

1. We’ve got to overcome moral relativism, address the legality of abortion as well as the mortality.

2. We’ve got to teach our children that elections matter, their votes matter. We’ve got to be the ones framing abortion in elections, not letting our opponents do it for us. Yes, of course we stand against the painful dismemberment of children, don’t you?

3. We need better marketing of our brand and beliefs:
 - Reach women through real stores/narratives.
 - We've got to listen to the other side (people don't care how much you know, until they know how much you care) and speak using a language they understand—human rights, love, compassion.
 - Talk about Planned Parenthood's deceptive business model.
 - We've got to engage in the culture, be where they are.
 - We need to find and support authentic and courageous leaders who are willing to stand for our issue. Like the Texas legislators last summer who refused to back down to Planned Parenthood and Wendy Davis bullies.

4. And finally, we need to begin envisioning a world without abortion. Because, let's face it, no one is going to join a movement that they don't think is actually going to succeed. How many of our friends and family members do we know who are pro-life but say ending abortion is never possible. How many of us here in the room have said the same thing? This is the equivalent of a high school football coach telling his team, moments before they take the field, that they are going to lose. When the one person in all the world who is supposed to believe his team will win tells them instead that they will be defeated, what do you think will happen?

I believe in great, almighty God. Do you?

Friends, by now you know we are winning but I need you to do more than that. I need you to believe in your hearts that abortion will be abolished and tell everyone you know about it. And once you believe, join with us to make a plan for the day abortion is abolished—what resources will we need when no longer send scared, young mothers into the hands of the predatory abortionist?

Thank you for being here this evening and supporting the great work of the *Human Life Review*. However, I hope you won't let tonight be the only time this year you will stand up for the preborn and their mothers.

We need you standing alongside this pro-life generation.

SALLY MUGGERIDGE:

My uncle, Malcolm Muggeridge, has often been described as one of the foremost British writers of the 20th century. Despite the fact that some of his most enduring and admired work deals with the subject of faith, Malcolm Muggeridge did not ever regard himself as a theologian. He was to become, however, a man with an unshakable conviction in a living Jesus, a consciousness of a spirit that animated and guided our existence. Life, he asserted, was a gift of God—including that of the unborn child.

I thought it useful, coming from England at this time, to offer you a personal reflection on the present situation on abortion in the United Kingdom.

Most of the politicians in England and Wales who voted for the 1967 Abortion Act did so in the clear belief that they were making provision for extreme and tragic situations: conception as a result of rape, foetal or perinatal complications threatening a mother's life.

The legislation had broad public consent. Almost fifty years on, many of these same politicians would express considerable dismay at what has happened. Indeed David Steel, then a young leader of the Liberal Party and the prime mover of the original bill, has expressed deep concerns about the way the Abortion Act currently operates. As some of the issues are reopened in connection with the proposed legislation on embryo research, it is important to think about where this unease comes from and whether it has any lessons for us now.

The 1967 Act started from a strong sense of taking for granted the *wrongness* of ending an unborn life—that abortion was a profoundly undesirable thing and that the norm should be a universal presumption of care for the foetus from the moment of conception.

But the statistics of some 200,000 abortions a year in England and Wales today do tell their own story. Clinics are not now dealing with a relatively small number of difficult or extreme cases but a growing walk-in expectation for abortion on demand. One-third of pregnancies in Europe end in abortion and we may well ask what has happened.

There is a growing belief that abortion is essentially a matter of individual decision and not the kind of major moral choice that should involve a sharing of perspective and judgement in a wider social context.

Certain presumptions have changed. Not only has there been an obvious weakening of the feeling that abortion is a last resort, but unfortunately the development of embryo research has brought with it the hint of a more instrumental approach to the human organism in its earliest days.

Meanwhile the understanding of “foetal rights” has strengthened over the

last fifty years, leading to a real tension with this growing normalisation of abortion. Foetal rights today have been widely linked directly to the length of the pregnancy—no rights upon conception stretching to full individual human rights at time of birth. Not perhaps altogether a linear progression as in practice considerable foetal rights have been widely granted to an unborn child at the time that the child is considered viable for survival outside of the womb—generally today around 24 weeks and rapidly coming down with the new advances in medical science.

Very recently I sat next to a woman whose daughter went into labour at 24 weeks. This lady is now a happy grandmother.

The pregnant woman who chooses to smoke or drink heavily—or take drugs—is today widely regarded as guilty of infringing the rights of her unborn child. Yet at the same time, with no apparent sense of incongruity, there is current development of the automatic right in law of the pregnant woman herself to perform actions that will terminate a pregnancy. More worryingly,



there has also been a loosening in England and Wales of the original proposals that two doctors should consent—most usually required to agree that there were mental or physical reasons for an abortion to be carried out. In practice, this decision is increasingly being taken for granted by nurses using pre-signed forms—without the pregnant woman needing to see a doctor at all—the clear intention of the original act has been lost.

The model of competing rights or liberties (the mother’s and the unborn child’s) is not useful in obtaining a coherent moral grasp of the question.

Whether in England and Wales, or here in the U.S. and Canada, we have to accept that in most Western societies there is not a moral or ethical consensus on this issue, even among Christians. I was shocked to be reminded that in Canada abortion has long been legal for no particular reason and at any stage of pregnancy.

The Abortion Act in England and Wales certainly began with clear, perhaps absolute, principles but there can be no escaping the tough decisions. For those on the front line, situations arise each day where no answer will

feel completely right and no option is without cost.

The danger we can appreciate is *drift*—with tough ethical decisions once hurting the conscience becoming so familiar and routine that we stop noticing that there was ever any doubt or difficulty. We start with the presumption that abortion is unavoidably the ending of a life, but then discover there are situations where it is the least awful outcome. So we reluctantly conclude that some provision should be made for these situations—and therefore without realising it we have subtly changed our original assumptions about the life of the unborn child.

The history of the 1967 Act's implementation in England and Wales is certainly an object lesson in how this "slippery slope" occurs. We started by thinking compassionately in Parliament about exceptional cases and then progressively lose the sense of a correct normative position.

This cannot be an argument for making unalterable prohibitions in law against abortion in every possible circumstance but it does provide the argument for us to keep our eyes open. Government legislation or Court decisions have unintended consequences. The eroding of something we once took for granted occurs because we do not keep in focus the fundamental convictions about the nature of our shared humanity.

Before I came to the U.S. this week, I took a look at the Marie Stopes website—a pro-choice organisation facilitating abortion. What struck me forcefully was the phrase used: "remove the pregnancy." Whatever a woman carried in her womb it was not a pregnancy—it was a human life.

I first came across the Marie Stopes organisation in 1973 when, as a married young woman, I found I was falling asleep in my University library. I arranged to visit for a pregnancy test, my finals looming shortly. With scant preamble I tested positively as pregnant and the woman who gave me the test asked me if I would prefer an abortion. Much to the consternation of the nurse, however, I declared my pleasure at the ensuing pregnancy and escaped swiftly from the organisation's premises. Had I gone through with this offer, my daughter Ginny, here with me at the dinner tonight, might well have not had an elder sister!

In December last year the U.K. Government published a consultation with two weeks over Christmas to respond. In broad terms the paper sought to revise the current Abortion Act and to advocate abortion on demand—removing the legal requirement to question a woman's request for abortion. The changes proposed seek to reflect what is currently taking place in many clinics in England and Wales—with 100,000 women each year already obtaining an abortion without ever seeing a doctor.

Interestingly, here in the U.S. many continue to this day to quote my uncle

on the humanity and sanctity of the unborn child, going right to the heart of the matter.

President Reagan in an article for the *Human Life Review* in 1983, on the tenth anniversary of *Roe v. Wade*, quoted Malcolm Muggeridge: “Either life is always and in all circumstances sacred, or intrinsically of no account; it is inconceivable that it should be in some cases the one, and in some the other.”

And as Malcolm memorably wrote in “The Humane Holocaust,” published in the *Human Life Review*: “The sanctity of life, is of course a religious or transcendental concept. If there is no God, life cannot have sanctity.”

As a Minister in the Anglican Church, I have to say he was right. The life of the unborn child is indeed a gift of God.

Clarke Forsythe:

This kind of award is way outside my comfort zone because I keep reminding myself of how much work we have to do, and because—God willing—I hope I have another 15-20 years to work to see that *Roe v. Wade* is overturned and to increase protection for human life in American law.

But I’m honored by this award because of what the *Human Life Review* has meant to the cause for life in America since 1975.

Please allow me to accept this award on behalf of my colleagues at Americans United for Life, who inspire me every day with their skill and wisdom and commitment to protecting human life. Ovide Lamontagne, AUL’s General Counsel, and Bill Saunders, AUL’s Senior Vice President & Senior Counsel, are here with us tonight.



And I could not have done this work for 30 years—and never written *Abuse of Discretion*—without the support and encouragement of the love of my life, my wife, Karen, during years that she home-schooled four girls to college, with a fifth almost there. Three of our daughters are here with us tonight.

Let me give a brief summary of *Abuse of Discretion* and its significance, and then

turn to the future. (So far, I think it's sold more copies than Governor [Andrew] Cuomo's blockbuster memoir.)

I wrote it for non-lawyers, and non-lawyers who have read it have said it's a great read and a shocking story. I started on this journey back in 2008, with a lot of questions. Why did the Justices do it? Why was the decision so sweeping? The book is based on the papers of eight of the nine justices who voted in *Roe*. It makes clear that the Justices had no facts, no evidence, no record to base their decision on. It documents that *Roe* and *Doe* were more an accident than an inevitable outcome of prior decisions. It gives a completely new history of how it happened. And it undermines a major defense of *Roe* by some Justices—the notion that *Roe* was “well-considered.” It highlights permanent weaknesses in the decisions that future cases can attack. I finished the book with greater confidence that *Roe* will be overturned, because the defects are so huge, and the impact on women and American society so bad, that the Court will sooner or later have to deal with them.

I'm touched by this award because of what the *Human Life Review* has meant to me for 30 years. When I started at AUL in 1985, the *Human Life Review* was my teacher. It educated me about the history of the pro-life movement.

In the pages of the *Human Life Review*, you can live the obstacles and opportunities of the pro-life movement, the defeats and victories, the strategies, and the highs and lows of the cause for life in America over the past 40 years.

The *Human Life Review* is the most thoughtful journal in the country focused on protecting human life. (If your father were here tonight, Maria, you know he would be very proud, don't you?)

But the *Human Life Review* is also more than that. It's the historian of the cause for life in America. It's a chronicler of events and a preserver of essential documents. In writing a recent law review article, I went back to speeches given by Judge Buckley (here tonight) in the Senate, proposing a Human Life Amendment after the *Roe* decision. And it is a necessary debate forum that we need. Movements need to debate and discuss strategy.

Contrary to some myths and misunderstandings, this battle has not been a process of blindly taking small increments and steps, but of understanding and effectively overcoming obstacles to the comprehensive protection of human life in American law and culture. I hope you'll generously support the *Human Life Review* tonight, and in coming years.

We gather at a time of great momentum and a time of great anticipation for the upcoming elections. Most of the attention is focused on Congress, and the gridlock in Congress, and the gridlock between the Congress and the

President. But the fact of the matter is that significant progress has been made in the states since the 1990s, and especially since 2010, and the states will always be a critical forum on these issues.

Our goal is comprehensive protection of human life from conception to natural death. But progress toward that goal is the result of a balanced mother-child strategy on the issue of abortion. We've seen significant momentum for several reasons, but let me highlight three. The Supreme Court's decision in 2007 in the *Gonzales* case gave more deference to the states. The 2010 elections gave us working pro-life majorities in 20-30 states. And the mother-child strategy: It's not just the unborn child, it's the mother too. Simply put, abortion is bad for both.

And the *Human Life Review* has been a leader on that theme for decades, and has published pieces on the impact on children and the mother for years. It's intuitive, it's common sense, it's essential to build public support. And it's necessary, in order to address and rebut the reason that the Court holds to *Roe*—the assumption that abortion is good for women.

There are many signs of progress, not least are the state limits on abortion and public opinion.

You've probably heard of the new Katha Pollitt book, *Pro: Reclaiming Abortion Rights*—marketed as something new and powerful. I don't urge you to *buy* the book, perhaps borrow it or get it by inter-library loan. But I think you'll be encouraged by how little is there, mostly warmed-over rhetoric from the 1970s.

We will continue to make progress if we have a balanced message of emphasizing the negative impact on woman and child.

One of the chapters in my first book was on Wilberforce. When Wilberforce began his lonely campaign as a Member of Parliament in 1787, no one could have imagined the impact he and his allies would have on England, and the Western world. This movement is bigger than New York City, bigger than the U.S., because the U.S. leads by example, for better or worse. This movement can change the world. It must change the world. Thank you for this encouragement for the journey.

THE HUMAN LIFE REVIEW



James Buckley, Great Defender of Life 2012, with dinner patron Barbara Ann Connell.



Clarke and Karen Forsythe with daughters Elena, Maria and Lara.



Yearly attendees include Chris Bell of Good Counsel Homes (l) and Jack Fowler (r), publisher of National Review, and HLF Board member.

GREAT DEFENDER OF LIFE DINNER



Sean O'Hare, co-Chair of the Board of Students for Life.



Joe Longo warming up before the cocktail hour begins. At right, the silent auction table.



Father George Rutler, who gave the invocation, chats with David Williams, husband of Sally Muggeridge.



Professor Anne Hendershott, HLR contributor, with Chris Hanson, King's College student and HLR intern.

From Our Archives:



“The legal testimony (still continuing) was especially detailed and voluminous; here again, the editors believe that we can provide interesting and informative examples via the two articles selected. The first, by Prof. John T. Noonan, Jr., is an enlargement of his actual testimony to the Bayh subcommittee (prepared especially for this issue); the second, by Prof. John Hart Ely (who testified the same day) is reprinted from an earlier article in the Yale Law Journal (with kind permission of the author). The two together give, we feel, a panoramic view of the legal difficulties and quandaries involved, as viewed from both sides (Mr. Noonan is strongly opposed to abortion-on-demand, Mr. Ely in favor).

—J.P. McFADDEN, WRITING IN THE INTRODUCTION TO THE FIRST ISSUE OF THE *HUMAN LIFE REVIEW*, WINTER 1975

“An Amendment cannot be foolproof. No form of words conceivable by the human mind is immune from distortion. Who would have imagined in 1868, or even in 1968, that ‘liberty’ in the Fourteenth Amendment meant ‘right to an abortion,’ and that an Amendment designed principally to protect an oppressed minority would itself be read in 1973 to put another minority beyond the law’s protection?”

—JOHN T. NOONAN JR.
 “WHY A CONSTITUTIONAL AMENDMENT?”

“That the mother, unlike the unborn child, has begun to imagine a future for herself strikes me as morally quite significant. But God knows I’m not *happy* with that resolution. Abortion is too much like infanticide on the one hand, and too much like contraception on the other, to leave one comfortable with any answer; and the moral issue it poses is as fiendish as any philosopher’s hypothetical.”

—JOHN HART ELY
 “THE WAGES OF CRYING WOLF”

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WILLIAM F. BUCKLEY, JR.
Editor

MEMORANDUM

June 30, 1988

*File
HLR
scraphood*

TO: Jim McFadden
FROM: Wm. F. Buckley Jr.

Dear Jim:

Absolutely shocking what you demonstrate on Walker Percy in the current issue. Absolutely appalling. What a terrific job you continue to do.

See

the
HUMAN LIFE
REVIEW



SPRING 1988

Featured in this issue:

Mary Meehan on Joan Andrews & Friends
Joseph Sobran on The Prevailing Forces
James Hitchcock on The Politics of Morality
Walker Percy writes A Letter to *The Times*

Special Supplement

Nat Hentoff on
The 'Small Beginnings' of Death

Also in this issue:

An interview with David Alton, MP • John Wauck • Don Bredes
Trevor Lautens • & Stephen Mosher on Female Infanticide in China

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“And, we imagined, the *Times* would be positively delighted to have the opinions of so distinguished a writer? Apparently not. The letter was not published. Its author did not even get a reply. Mr. Percy sent us copies of the one-sided correspondence, which we *are* delighted to print.”

—J.P. McFADDEN, INTRODUCTION
TO HLR’S SPRING, 1988 ISSUE.

“But I do suggest that once the line is crossed, once the principle gains acceptance—juridically, medically, socially—that innocent human life can be destroyed for whatever reason, for the most admirable socio-economic, medical or social reasons—then it does not take a prophet to predict what will happen next, or if not next then sooner or later. At any rate a warning is in order. Depending on the disposition of the majority and the opinion polls—now in favor of allowing women to get rid of unborn and unwanted babies—it is not difficult to imagine an electorate or a court ten years, fifty years from now, who would favor getting rid of useless old people, retarded children, anti-social blacks, illegal Hispanics, gypsies, Jews . . .

Why not?—if that is what is wanted by the majority, the polled opinion, the polity of the time.”

—WALKER PERCY, IN HIS LETTER OF JAN.
22, 1988 TO THE *NEW YORK TIMES*,
WHICH DIDN’T SEE FIT TO PRINT IT.



the HUMAN LIFE REVIEW

Editorial Offices • 215 Lexington Avenue • New York, NY 10016

Thursday morning, August 14 '97

Editor
I. P. McFadden
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John Muggieridge
William Murchison
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Mary Kenny, London
Executive Editor
Mavis McFadden
Managing Editor
Anne Coulter
Assistant to the Editor
Raymond Lopez

FAX to Ann Coulter
Center for Individual Rights

From: Jim McFadden

Good Morning! My hearty thanks for your ... "spirited" (as always!) reply -- I'll explain a bit more re "throat" and textbook via Fed-X later today (I'm sending recent HLR issues) but for the moment my "urgent message" is: Can you do a "decent" piece on the late, un-lamented Justice William Brennan? I mean, it's incredible to see/hear both C. Thomas and A. Scalia spouting eccordiums (!) while I've seen little or nothing about "the truth" -- Can you do one for us? I'm sure you could "over-do it" -- you are the toughest! -- but what we really need/want is an ironic piece about just how "great" the SOB was, the Intellectual ~~Max~~ Gaudfather to Blackmun's Boe (Harry was too dumb to do it on his own?) etc. As I say, I'm flabbergasted that nobody has done it, and naturally thought of you ~~also~~ your TV Guide blurb helped, of course!). Alas, we'd need it pretty soon -- "official" deadline is Sept. 2 -- but if I knew it was coming we'd expand it. Let me hear please? And no, I don't have/use E-mail, I'm fuddy-duddy re The Modern Age, I'm still pounding away (2 fingers) on my Royal Standard.

Herewith dope-sheet from CCRNY re textbook -- you should have been asked, etc., but it happened while I was in hospital (or you would have known) -- as I say, more coming soon. And good to hear from you, I've missed Miss Alan (also saw you on CNN, why are you getting better looking?)

Telephone (212) 685-5210 • FAX (212) 725-9793 Cheers Jim

“On the occasion of Justice William Brennan’s thirtieth year on the Court, his law clerks threw a party with the names of some of Brennan’s most significant opinions festooning the room. When Justice Antonin Scalia dropped in, he looked at the case names and said: “My God, Bill, have you got a lot to answer for!” If the feminists are right, and God is a woman, Dante’s Inferno will look like “Bill and Ted’s Excellent Adventure” compared to what Brennan must be answering for now.”

—ANN COULTER, “WOMEN: PREY FOR BRENNAN”

the HUMAN LIFE REVIEW



FALL 1997

Featured in this issue:
Faith Abbott on Going Out of Business
Malcolm Muggieridge on Meeting Mother Teresa
Margaret White on The Longchamp Generation

Extra: Steve Forbes gives An Ad Hoc Interview

Ann Coulter on Women: Prey for Brennan
Candace C. Crandall on None of Our Business?
William Murchison on Al Gore’s Tobacco Road
Jo McGowan on A Deeper Stillness
J. Budziszewski on Why We Kill the Weak

Also in this issue:
Ray Kerrison • Brad Stetson • Wesley J. Smith • Frederica Mathews-Green

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“In the year when the administration’s Health and Human Services mandate threatens the very *ability* of Catholic charities to function, as well as endangering the religious liberty of all Americans of any faith, in a year when the faithful have been told to gird up for possible civil disobedience, to fast and pray, wouldn’t it have been prudent to announce, politely but firmly, that no such invitation would be issued? That some things, even at a “roast,” just aren’t ever funny?”

—MARIA McFADDEN MAFFUCCI COMMENTING ON THE DECISION TO INVITE BARACK OBAMA TO THE AL SMITH DINNER, INTRODUCTION TO HLR’S SUMMER 2012 ISSUE



Our 2012 Great Defender of Life Dinner, honoring Senator James Buckley, took place on the same evening as the Al Smith Dinner. There was general agreement that Senator Buckley’s address bested the barb-fest uptown.

“The present confrontation over the contraception mandate grew out of the fact that the 2008 presidential election put people with post-Christian social views into key position in the federal government. The agenda of these public officials includes “reproductive freedom,” “marriage equality,” euthanasia, condoms for kids, eugenic rationing of healthcare, and who knows what else. It turns out, then, that a government big enough to enact social programs favored by the Catholic Church is big enough to openly war against centuries of Church teaching.”

—GEORGE MCKENNA, “SLEEPING WITH THE ENEMY?” SUMMER 2012

APPENDIX A

[*Maria McFadden Maffucci is editor of the Human Life Review and president of the Human Life Foundation. This commentary appeared October 23, 2014 on National Review Online (www.nationalreview.com). © 2014 by National Review, Inc. Reprinted by permission.*]

Saluting Young Prolifers

Maria McFadden Maffucci

Contrary to what President Obama and others on the pro-abortion Left might have you believe, being pro-life is inspiring and cool. And as our publication—the *Human Life Review*—completes its 40th year, more young leaders are emerging to keep our movement strong and vibrant.

Thanks to women like Kristan Hawkins of Students for Life, who will be honored this evening at our annual Great Defender of Life Dinner, and Lila Rose of Live Action, young women have role models who aren't afraid to speak out for those who have no voice.

These women exude intelligence, class, and positive energy.

And, next January, when legions of young people descend on Washington, D.C., for the annual protest march against *Roe v. Wade*, their peers will be able to see that defending their unborn sisters and brothers is the countercultural wave of the future.

During last year's 40th anniversary of *Roe v. Wade*, President Obama recorded a video for NARAL Pro-Choice America, saying: "This is a country where the success of all of us depends on the empowerment of each of us, where all Americans should have the freedom and opportunity to reach their potential."

Since 1973, an estimated 54 million human beings have not been empowered or given freedom and opportunity; instead, they lost their one and only chance at life.

Forty years ago, my father, J. P. McFadden, founded the *Human Life Review*, a scholarly quarterly dedicated to the defense of life, especially for the unborn. His own life had suddenly changed with the *Roe* and *Doe v. Bolton* decisions; he couldn't believe the Supreme Court would put the power of its "moral suasion" behind the killing of babies.

He couldn't accept that anyone with honest intelligence could defend abortion, and so he set out to create a journal where the best writers and thinkers could educate Americans more fully about what was at stake.

My father died in 1998, and I became editor of the *Review*. Thanks to our supporters, we have not missed an issue in four decades, holding to our mission of stiffening the backbone of the pro-life movement. But, our arguments have had to shift.

No one with any sense today can claim that what is in a woman's womb is a mere "product of conception" or "a bunch of cells." With the advent of ultrasound technology, we all *see* that a fetus is a live human being.

Now our writers have to argue against the consensus that a particular human being can be killed *solely* on the basis of his or her mother's "choice." Adding

insult to injury is the fact that we who oppose abortion have been coerced into paying for these deaths.

In a 2009 speech to a joint session of Congress about his health-care plan, President Obama said that “under our plan, no federal dollars will be used to fund abortion.” A recent report by the non-partisan Government Accountability Office documents that Obamacare actually funds over 1,000 health-insurance plans that cover abortion on demand.

The unborn have become an expendable class of humans; their worth is completely dependent on how their mothers feel about permitting them to exist. And their extermination is sold to the public (and I do mean *sold*: Abortion is a billion-dollar business) as a privilege.

In my state of New York, Governor Andrew Cuomo insists on holding the nine good-for-women points of his Women’s Equality Act (laws, for example, against workplace discrimination) hostage to the tenth point, “Safeguarding Reproductive Health.”

This would usher in a massive expansion of abortion—in a state already called the nation’s abortion capital—even allowing nondoctors to perform abortions. Is this good for women? Or, is NARAL’s blood money good for Cuomo’s reelection campaign?

But there is good news. I was 13 in 1973, and I don’t remember what I thought about *Roe* then: My eighth-grade memories are stuck in self-involved teenage anxieties—my first intense crush on a boy, and how to deal with mean girls at my school. But my own 13-year-old is thoroughly aware of what I do and why, as is her 17-year-old sister.

My girls routinely share pro-life messages on their social media; they are not afraid to speak up for the unborn at school or with peers—not with anger toward those who disagree, but with an openness to dialogue aided by their compassionate natures.

As a mother, I couldn’t be happier than to see my daughters following in the footsteps of people like Kristan Hawkins and Lila Rose. Their dedication to the pro-life cause in the face of vocal opposition would make my father proud, and they have provided an example for my young daughters and others to emulate.

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