

the HUMAN LIFE REVIEW



SUMMER 2014

Featured in this issue:

William Murchison on Hillary and Hobby Lobby
Leslie Fain on Abortion Healing for Women Prisoners
Donald DeMarco on Our 3-D Ultrasound Revolution
Rachel Lu examines The Perils of Surrogacy
Thomas D. Sullivan on “Abortion” as a Misnomer
Mary Meehan tells Jeff Bezos How to Fix the D.C. Post
Clarke D. Forsythe on Why *Roe/Casey* Is Still Unsettled
Maria Maffucci reviews *Waiting for Eli* and *Eli’s Reach*
Kristan Hawkins &
Lauren Enriquez on Pro-life Millennials: Polls vs Facts

Also in this issue:

Kevin D. Williamson • Hadley Arkes • Helen Alvaré • Nona
Aguilar • Malcolm Muggeridge in *From the Archives* (1975)

Published by:

The Human Life Foundation, Inc.

New York, New York

. . . Professor Thomas D. Sullivan's first article for us ran in the Summer 1977 issue. Even today we continue to receive requests to reprint "Active and Passive Euthanasia," which over the years has become a classic in the literature on this ever troubling subject; it's been widely taught and anthologized (including in *The Reach of Roe*, the volume of *Human Life Review* essays we published in 2013). We were delighted when he got back in touch several months ago to talk about doing another article—his last for us had been in 1994! That fruitful conversation led to "'Abortion' No More: Straight Talk about Attacking the Unborn" (page 47).

As I write, we are anticipating the Human Life Foundation's 12th annual Great Defender of Life Dinner on Oct. 23rd in New York City. This year the Foundation is honoring the energetic young president of Students for Life of America, Kristan Hawkins, and Clarke Forsythe, Senior Counsel, Americans United for Life, and author of the highly acclaimed *Abuse of Discretion: The Inside Story of Roe v. Wade* (published last year by Encounter Books and reviewed by Kathryn Jean Lopez in our Fall 2013 issue). In his article here ("Why *Roe/Casey* Is Still Unsettled," page 65), Mr. Forsythe, one of the nation's preeminent experts on the Supreme Court's 1973 abortion rulings, confronts the conventional wisdom concerning the legal regime *Roe*—together with a companion case, *Doe v. Bolton*, and later, *Planned Parenthood v. Casey*—have put in place. For her part, Ms. Hawkins, with co-writer Lauren Enriquez, refutes another mistaken bit of conventional wisdom—that the Millennial generation is overwhelmingly pro-abortion ("Pro-life Millennials: The Polls vs the Facts," page 13).

Ms. Hawkins and Ms. Enriquez are new to these pages, as is Rachel Lu, who teaches philosophy at the University of St. Thomas in St. Paul (where Mr. Sullivan is professor emeritus of philosophy). In "The Perils of Surrogacy" (page 35), Ms. Lu addresses a most timely topic—timely even for the *New York Times*, which has run several articles on third-party reproduction this year. Along with these three new contributors, we welcome Nona Aguilar, a long-time friend of the Foundation who was inspired by Wesley J. Smith's article on "brain death" in the last issue to write a commentary, first published on our website and reprinted here in *Appendix D* ("Coming to Peace with Brain Death," page 94).

And speaking of www.humanlifereview.com, have you visited us there recently? It's been three months since we launched our redesigned website. Whether you need information or want to contact us, the new site offers more features and is easier to use than its predecessor. Our Master Index allows visitors to search for articles and authors, and, while about 10% of our 40-year archive is accessible online, we will happily furnish electronic copies of articles that aren't posted.

One thing we don't have online are Nick Downes' cartoons. We only had room for two in this issue—but they are real corkers!

ANNE CONLON
MANAGING EDITOR



the HUMAN LIFE REVIEW

Summer 2014

Vol. XL, No. 3

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Published by THE HUMAN LIFE FOUNDATION, Inc. Editorial Office, 353 Lexington Avenue, Suite 802, New York, N.Y. 10016. Phone: (212) 685-5210. The editors will consider all manuscripts submitted, but assume no responsibility for unsolicited material. Editorial and subscription inquiries, and requests for reprint permission should be sent directly to our editorial office. Subscription price: \$40 per year; Canada and other foreign countries: \$50 (U.S. currency). ISSN 0097-9783.

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Kevin D. Williamson Helen M. Alvaré
Hadley Arkes Nona Aguilar

INTRODUCTION

The wildly opposite reactions to the news of the Supreme Court’s “Hobby Lobby” decision (*Burwell v. Hobby Lobby Stores, Inc.*), handed down June 30th, were evidence both of the great divisions among us about religious liberty and “reproductive rights,” and the power of our hyped-up social and digital media to obscure real issues. In the midst of the elation and despair, it was clear that the majority of citizens did not know the specifics of the case beyond the sound bites.

In contrast, we have well-informed and thoughtful commentary here, beginning with senior editor William Murchison’s lead article on what “Hobby Lobby” is really about. He begins by acknowledging, unexpectedly, Hillary Clinton as one public figure who “smacked the Hobby Lobby nail on the head” and got it right—it’s all about *abortion*. Much of the media has misreported the case by saying that the Green family, owners of the Hobby Lobby chain, did not want to pay for their employees’ contraception, when in fact, 16 out of the 20 forms of contraception “mandated” by Health and Human Services presented them with no moral problem. They objected to the four that can destroy a fertilized egg, including the morning-after-pill and the IUD; the Greens do not want to subsidize abortion.

So it’s about abortion, and, Murchison writes, “abortion is all about religion. . . . If you don’t put much stock in God’s plan for the world, why should you care whether unwanted babies get conceived, and, often enough, aborted?” He sees the deeper problem, that religion itself has been marginalized precisely by questions about procreation: “The decoupling of religion and human life questions—sex questions, if you like—has put upon humanity half the vexations of the modern world. It would be fair, in fact, to say that religion’s fractured and fractious place in the modern world is the consequence of that decoupling.”

In *Appendix B*, Hadley Arkes raises a different argument re Hobby Lobby; while applauding the decision, he nonetheless finds its reasoning flawed, because it reduces “‘religion’ to ‘beliefs’ held ‘sincerely,’ quite detached from the canons of reason and claims of truth.” For Arkes, the truth about unborn life is not one only “religiously held.” Catholics, for example, argue against it not from faith or revelation but using a “weave of embryology and principled reasoning.” The “sincere religious belief” criteria has opened the decision up to such criticisms as Justice Ruth Ginsburg voiced in her (blistering) dissent—what if sincere religious beliefs prohibit blood transfusions, or anti-depressants? But Ginsburg’s main argument, writes Helen Alvaré in *Appendix C*, is that the decision is harmful to women. Ginsburg “spoke of the ‘harm,’ the ‘havoc,’ and the threat to women’s ‘ability to participate equally in the economic and social life of the nation’ posed by the decision.” Alvaré points out the “irrationalities” behind Ginsburg’s claims, for instance that poor women cannot get free or cheap contraception despite this ruling,

and, more importantly, that the Justice speaks for all women when she says contraception and abortion are “foundational to women’s freedom.”

The Supreme Court has a lot to explain when it comes to women’s health, which is one of the powerful points made in Clarke Forsythe’s article, “Why *Roe/Casey* Is Still Unsettled” (p. 65). Forsythe is the author of the acclaimed *Abuse of Discretion: The Inside Story of Roe v. Wade*, and Senior Counsel at Americans United for Life. He will be honored, along with Kristan Hawkins, president of Students for Life of America, at our 12th annual Great Defender of Life Dinner on October 23rd (it’s also our 40th anniversary celebration . . . and it is not too late to get tickets! See information at our website, www.humanlifereview.com). Forsythe writes that in 1973 the Court attempted to “settle” the abortion issue, and “sweep away” state abortion laws, but since then it has been “oblivious” to the real consequences of that decision: The Justices have refused “to hear dozens of abortion cases over the years,” the only means by which they “could monitor their own handiwork.” Forsythe masterfully takes us through several additional compelling reasons why he believes *Roe* and *Casey* “may be more unsettled than at any time since 1973.”

Kristan Hawkins is a first-time contributor; she and Lauren Enriquez have written “Pro-life Millennials: The Polls vs the Facts.” It is good to remember that polling results depend on the way questions are posed and answers grouped: For example, pollsters generally categorize people who would allow abortion in limited cases (like rape and incest) as “pro-choice,” but those people would actually be against 98 percent of abortions! There are other factors, the authors explain, that obscure in polls the really *good* news about Millennials and pro-life activism: The pro-life generation gains momentum from middle school to college campuses across the country, with activists increasing in number and dedication, while “the echoes of pro-choice youth’s last hurrah are so far in the past as to be barely audible anymore.” Perhaps part of the lack of pro-choice passion among the young is their awareness of the true consequences of abortion: the scores of women, men, and children severely wounded by abortion’s aftermath. These are the suffering souls the organization Rachel’s Vineyard seeks to aid. Contributor Leslie Fain is next with a report on a unique program under the Project Rachel umbrella: a ministry to post-abortive women prisoners in Lake Charles, Louisiana. It is estimated that 80 percent of female prisoners have had abortions.

Our next two articles are about the use of new technologies, for good and for ill. In a reflection on the invention of 3-D ultrasound in “A Third Revolution,” Donald DeMarco notes that the “3-D ultrasound may be understood as the technological counterpart to the intuition of the human heart.” The ultrasound opens up to the eye what the heart knows; it brings new knowledge about unborn life to view. It may “convince the masses that the unborn child is truly an unborn child,” if one is willing to look. (And don’t miss DeMarco’s wonderful commentary on the abortion sub-plot in George Orwell’s 1936 novel, *Keep the Aspidochelone Flying*.) While the advent of ultrasound technology has a great potential for protecting life, other new technologies, writes new contributor Rachel Lu, threaten the very fabric of family

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and society as we know it. Lu examines third-party reproduction, specifically surrogacy, which she says represents a significant threat to the dignity of women and especially children: “If parenthood is seen as an ‘entitlement’ regardless of one’s fertility, then children must be gotten from somewhere, children become ‘products,’ and women treated as ‘breeders.’”

On page 47, philosopher Thomas Sullivan does what philosophers often do: question a given. Here, he argues that we should actually “do away with” the word *abortion*, in order to use “Straight Talk about the Unborn.” The distinction he suggests? Whatever word is used, “what counts most is that we make it clear that this is a case where the living cease to be not because of an accident, nor as ‘collateral damage,’ but because death has been built into the plan as a thing or one of the things to be accomplished.” Sullivan writes that words “can change how we perceive a situation”; this is certainly one of the points senior editor Mary Meehan makes in her “Open Letter” to the editor of the *Washington Post*, Jeff Bezos, who bought the *Post* last year and says he wants to improve it. Meehan uses several on-target examples to demonstrate how a pro-abortion, pro-Planned Parenthood, and anti-clinic-regulation bias has been harming the paper’s presumed dedication to covering the facts (most egregiously in the under-reporting of the Kermit Gosnell trial).

Our final article is From the Archives: The late, great Malcolm Muggeridge’s “What the Abortion Argument Is About,” reprinted from the *London Times* in our Spring 1975 issue. One could read it and weep, because of its prescience, and for our failure to heed his wise warnings. But here we are, almost 40 years later, and, as he writes, “to destroy a developing fetus in the womb, sometimes as late as seven months after conception, is considered by the pro-abortionists as an act of compassion.” This is very much the subject of the two books discussed in Booknotes, about a special little boy with spina bifida and the parents who refused to do what the majority of parents in their situation do: “terminate the pregnancy” . . . but let’s use the accurate words: “direct doctors to kill their unborn child.”

Finally, the appendices I’ve yet to mention: *Appendix A*, is a powerful column (“Mother Courage”) by *National Review*’s Kevin Williamson about the news that Miss Pennsylvania USA Valerie Gatto was conceived in a violent rape; *Appendix D* is a reprint of Nona Aguilar’s blog from our website about the brain death of her close friend, Richard, and the dilemmas it presented. This is a fitting finale for an issue which reflects many of the challenges technology poses for the principle of respect for each human life, from conception to natural death.

MARIA MCFADDEN MAFFUCCI
EDITOR

LETTERS

TO THE EDITOR:

The case of Marlise Muñoz (“Total Brain Failure Is Death,” Spring 2014) shares similarities with another tragic situation reported by the media in February 2014 of a Canadian woman named Robyn Benson who was twenty-two weeks pregnant when she was declared brain dead. Although Benson’s husband (unlike Mr. Muñoz) elected to maintain her body on a ventilator until their unborn child could be safely delivered, both men’s decisions were widely lauded as heroic. I was interested—though not surprised—to observe that in comparing the circumstances of Muñoz and Benson the media made great import of the fact that Marlise Muñoz’s baby had been diagnosed with hydrocephalus and lower-limb deformities, whereas the Benson baby was developing normally.

I wish that Wesley J. Smith had wrestled more with the salient ethical implications of cases like these. For example, what obligations, if any, should families and healthcare providers have to the unborn child of a woman who has experienced total irreversible brain failure?

Advancements in medical care have put us in the curious position of being able to support an unborn baby that survives the death of his mother. It’s not obvious to me whether rendering such support via artificial respiration of the deceased woman and otherwise maintaining her organs ought to be considered extraordinary and excessively burdensome or whether instead we might see it as an extension of our obligation to provide for the basic needs (nutrition, hydration, perhaps availability of oxygen) of a vulnerable member of our human family.

Respectfully,
Claire Atwood
Framingham, MA

WESLEY SMITH RESPONDS:

Thanks to Claire Atwood for raising an important issue. Space and purpose only allowed me to focus on the question of whether brain dead is dead, and thus I could not give justice to the question she raises.

We maintain those declared brain dead in order to salvage their organs for use in saving lives, and no one thinks it is undignified or disrespectful of the deceased. Thus, why would we object to doing the same thing—albeit usually for a longer time—to help ensure the birth of a child? Atwood is absolutely correct that such support should not be considered “extraordinary” or “burdensome.” Indeed, I would

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argue it should be the standard of care.

The societal flashpoint of that question, however, is not on whether such maintenance *can* be done, but whether the law can *compel* the unborn child to be saved. Alas, one doesn't have to be deeply insightful to know how that argument would play out in the public square.

—WSJ

The following comments were posted on the Human Life Review's website (www.humanlifereview.com) in reaction to "My Darlings: An Autobiographical Essay" by John Julius Reel, which was published in the Spring issue.

I have not the slightest sympathy for this guy. He kills one child because it's perfectly healthy and another because it's dying. Aren't we all dying? Can I kill him? This guy is a real whiner, and I wouldn't want to be in his shoes in front of God.

—Karen Torres, August 1, 2014 at 10:20 pm

That was one of the best 20 minutes of reading I've had in sometime. It's "my" story. I've never forgiven myself for not being man enough to do the right thing when it mattered the most. When I finished sharing your article with a few of my liberal friends I went to the garage and I cried. Thank you.

—Randy Gibbs, August 2, 2014 at 4:13 pm

The tears made this so difficult to read.

—Chuck Stamford, August 3, 2014 at 1:42 am

I am 65. I am so similar in experience, this feels nearly autobiographical. Except that my father was the one who arranged for the abortion; it was 1968; we flew to Puerto Rico. I wish my father had been like yours. But then I'd no longer be able to shift the blame from myself. Thank you for sharing your soul.

—David Carvin, August 3, 2014 at 7:22 am

Hillary and Hobby Lobby

William Murchison

“**L**ook,” said Hillary Rodham Clinton, “we’re always going to argue about abortion. It’s a hard choice. . . .” And, yes, there was more; with Hillary there always is more. That need not detain us. What I want to draw attention to is how, with seeming inadvertence but amazing precision, Mrs. Clinton smacked the Hobby Lobby nail on the head, driving it into hardwood as she commented on the U.S. Supreme Court’s latest foray into moral arbitration.

We’re always (so far as human imagination can foresee) going to argue about abortion, inasmuch as abortion is the keystone right—or privilege—or whatever you like—in the great edifice of human understandings reconfigured since the 1960s by electoral outcomes, court decisions, and pure-D propaganda. With, to be sure, the assistance of the general public’s acquiescence in the revolutionary agenda of the so-called “women’s movement”: first, the lip curled in disdain, then the wondering shake of the head, finally the shrugging of shoulders at the tendency of odd things to happen in our very odd era.

The Hobby Lobby case—short for *Burwell v. Hobby Lobby Stores, Inc.*—is about religious liberty, an issue of profound importance under our societal commitments. It is also about abortion, as Hillary, her practiced political nose sniffing the air around her, noted immediately.

On June 30, the U.S. Supreme Court affirmed the Hobby Lobby company’s right as a “closely held,” i.e., family owned, operation to exercise the owners’ religious convictions. In other words, said the Court’s 5 to 4 majority, the company could constitutionally refuse, in spite of language in the Affordable Care Act, to cover the cost of the contraceptives Plan B and Ella, along with two different intrauterine devices. The company’s owners, who embed Christianity in their business practices, contend that the four contraceptives in question destroy life in the earliest stages of pregnancy. (Imagine, if I might interrupt the discourse, writing or talking of such matters half a century ago, when a wall of discretion, shall we say, generally fenced off sexual topics and terms of reference from public view! Rape was known as “criminal assault,” and television commercials for hemorrhoidal applications were unimaginable. I know how prim and unmodern this

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.

sounds—and is. That is part of the point I intend to unfold.)

The five justices whose thinking prevailed in the Hobby Lobby matter—Samuel Alito, speaking for himself, Anthony Kennedy, Antonin Scalia, Clarence Thomas, and Chief Justice John Roberts—invoked, rather than the First Amendment, the Religious Freedom Restoration Act of 1993, a measure overwhelmingly approved by Congress and signed into law by the great blue-nose Puritan president Bill Clinton. The act reversed in effect an earlier Supreme Court decision making it hard if not impossible to allow exclusions from general law on account of religious conviction.

In the Hobby Lobby case, religious conviction was written in boldface capital letters. The contraceptives in question have the property of destroying an egg already fertilized by sperm, hence capable of producing human life. Neither the Green family, owners of Hobby Lobby and a family-owned chain of bookstores, nor the Hahn family, owners of a company also involved in the case, Conestoga Wood Specialties, was willing to stand aside from the moral implications of funding, or allowing another to fund, abortion-making contraceptives. Said Hobby Lobby founder and chief executive David Green at the start of the case: “We believe wholeheartedly that it is by God’s grace and provision that Hobby Lobby has been successful. We simply cannot abandon our religious beliefs to comply with this mandate.” There you go—church vs state. “Church” won.

Is that a problem? For the growing movement to sweep aside religious considerations from view in the public arena, the problem is huge. We just can’t have this sort of thing. In our enlightened, laidback era, God is a sort of viewpoint, a maybe-so-maybe-not, take your pick. In commenting on the Hobby Lobby outcome, Sen. Barbara Mikulski, a Maryland Democrat (representing a state founded as a haven for Roman Catholics), made clear her wonderment that the Court should have done such a thing as “put the personal opinion of employers and insurers over the practice of medicine.” Got that? The “opinions” of the employers—equivalent, perhaps, to a preference for fish over beef, for the Yankees over the Red Sox! Goodness gracious, how could government possibly allow some dim metaphysical reasoning from the Dark Ages to prevail over the stated policy of the United States government, armed as the government is understood to be, with the latest insights of “experts”? Speaking for the Court minority, Justice Ruth Bader Ginsburg noted the “extraordinary religious-based exemptions” the Greens and Hahns were claiming; in other words, the “extraordinary” claim to the exercise of a right to maintain the ancient societal conviction, based on theological understanding, that unborn human life deserves protection. Seems we just don’t do that anymore.

Back during the debate over Obamacare, attempts went forward in the Senate to allow, for the sake of “religious beliefs or moral convictions,” exemptions from certain of the plan’s requirements. No, no, no! Wouldn’t fly. The government seemingly is keeper of our consciences: at least when it comes to control of the female body. That is the obvious, indeed the only possible, inference from the minority’s opinion. A vote by Congress has settled the question of a woman’s entitlements respecting the obligations, or non-obligations, of prospective parenthood. Other considerations are off the table. Who says so? Not the Court; not this year, due to the obstructive power of the conservative majority. But once a liberal majority can be fashioned, watch out. Such is the essence of the present minority’s stance. I say “present,” because the projection of judicial orthodoxies, on the basis of existing attitudes, is an activity not to be encouraged. Colorado Democrat Mark Udall, defending his U.S. Senate seat against a determined Republican challenger, warned suggestively after the Hobby Lobby decision came down that “There will be Supreme Court vacancies in the coming years. The 100 senators sit in judgment of [sic] the president’s nominees for the Supreme Court.” Got that, any of you who may suppose the Udall-Cory Gardner race this November to be six-of-one, half-dozen-of-the-other?

None of this is to throw cold water on the Court’s achievement in Hobby Lobby. That achievement is large. Think what would have happened had the decision gone the other way (which is to say, had Justice Kennedy been open to the arguments of Justice Ginsburg). In practical terms, a government victory in Hobby Lobby would have confirmed contraception as a necessity that taxpayers were bound to support. Not a choice—a necessity; part of fundamental American identity. Just as we educate the young, just as at various points we arrest the descent of the poorest into squalor and misery, so we guarantee and underwrite the non-continuation of pregnancy.

From this understanding various postulates grow. There is no importance in pregnancy! It is not an aspect of human destiny to become pregnant! Pregnancy is no blessing—rather, for those who choose to see it that way, pregnancy is a curse, an affliction; and so, too, motherhood; so, too, fatherhood! Between present existence and future life—I mean, lived in the world we inhabit—there is no necessary connection! America doesn’t care—not officially! America has no approved position on the goodness or the value of life! For those who like that sort of thing, that is the sort of thing they like! Such would be our standard affirmations under a regime whose moral predicate—one of those predicates anyway—is indifference to the whole notion of human renewal. In Hobby Lobby we have had a narrow escape

from consequences less reasoned-out and thought-through than is right and proper.

It is time to renew acquaintance with Mrs. Clinton (to the extent the lady lets languish—ever, anywhere—her hold on the public’s attention). Hillary, as I noted above, addresses the perpetual nature of conversations about abortion. She correctly links the issue of abortion with the issue at hand—that of whether employers must cover the cost of such contraceptives as their employees want to use. In both cases, the preeminence of personal choice is on display—choice over considerations traditionally favored by society as an organic whole.

Society had fundamental reasons for rejecting the notion of life-giving as fundamentally a matter of personal preference. Some of the reasons were existential. The human race was smaller; growth, amplification of the species, meant jobs and progress; in particular contexts, it meant more hands to help around the farm. Some of society’s reasons for affirming life were instinctual. In those who collaborated in its creation—mothers and fathers—new life gave pride, gave joy, gave inspiration and a sense of purpose.

To put these matters in the past tense—the gone, the over-and-done-with—is to say more than the facts support. The existential and instinctual reasons for life-creation continue to drive the train; it is the mechanisms of authority that have changed.

Authority in the 21st century is exercised—thanks to popular default, it should be noted—by secular elements that found their voices half a century ago and continue to speak with outrage about awful people who want to impose awful restrictions on individual choice. In that select club of villains, behold the five-man majority in the Hobby Lobby case. The *New York Times* finds the decision “deeply dismaying”—as conferring on the victors, and owners like them, “an unprecedented right to impose their religious views on employees.” The unspoken but clear implication is that employees enjoy the right to impose their own religious views (meaning the view that religion has no place in the discussion) on the employers. The shoe, by this reasoning, belongs properly on a foot other than the one the Court chose.

It *is* all about abortion, as Hillary makes clear. And abortion is all about religion—one kind or another. The religious liberty element in the Hobby Lobby case is central in that the case would never have arisen in an earlier cultural environment: one in which contraception, though hardly unknown—when was it ever unknown?—enjoyed nothing like the benefit of the doubt. The benefit of the doubt, so to call it, belonged to the general supposition that life was good and, being good, deserved protection.

The religious liberty element in the case proceeds from the recognition

that religion makes—at the very least—a respectable argument for the preservation of life; and not just for its preservation, but for its encouragement. Its active and passionate encouragement, you might even say. That would be on account of religion’s moral and intellectual connection to *what is*, as opposed to notions and aspirations more congruent with human tastes, human vagaries. There is no omitting human vagaries from any consideration of religion. Think of the Crystal Cathedral; think of—try hard, even if you don’t want to—Iraq.

The decoupling of religion and human life questions—sex questions, if you like—has put upon humanity half the vexations of the modern world. It would be fair, in fact, to say that religion’s fractured and fractious place in the modern world is the consequence of that decoupling. When people decided to do what they wanted to do, because it was fun or thrilling (never mind any inhibitions from teaching swallowed whole), the priests and preachers who reminded them of the ancient obligations came in for verbal pelting, or the closing of doors in clerical faces. People who know what they want—who know what they downright *deserve!*—don’t want people with theology degrees telling them the reverse. In due course, the people with theology degrees start to catch on. They figure maybe an active, impatient God who “makes all things new” is giving the back of his celestial hand to the old fogies. Let’s party! The recent scramble of mainline bodies such as the Presbyterians and Methodists to reclaim credibility with the gay-rights lobby has brought same-sex marriage almost into the mainstream—irrespective of marriage’s theological bona fides (“ . . . instituted in the time of man’s innocency, signifying unto us the mystical union that is betwixt Christ and his Church; which holy estate Christ adorned and beautified with his presence, and first miracle that he wrought, in Cana of Galilee . . .”).

It cannot go unmentioned that the gay-rights brouhaha is the direct result of that decoupling, previously referred to, of religion and human-life questions. What is the qualitative difference between reinterpreting religious mandates concerning the preservation of unborn life and reinterpreting other mandates as to the desired credentials of husband and wife? There is none. In both cases, human desire trumps celestial plans. Hit the road, Father. Same goes for you, Preacher. Tend to the people paying your salaries. Leave the rest of us alone. To adapt British Prime Minister David Cameron’s slighting remark to the Church of England during the recent contretemps over women’s supposed right to become bishops: We’ve got to “get with the program.” Well, what “program,” then? Not to mention, whose? Such are the questions that pop up in the context of figuring out why “we’re always going to argue about abortion.”

We have not wandered so far as it might seem from the Hobby Lobby case. The case's premises remind us how much everyday confusion grows from the deep moral crevices where human minds and instincts contend over God's claims to sovereignty. This business of, you know, "made in our own image, after our likeness," this stuff about becoming fruitful and multiplying—what are we supposed to call it? Reality? Fantasy? And could you get me a beer while you're on your feet, honey?

If you don't put much stock in God's plan for the world, why should you care whether unwanted babies get conceived and, often enough, aborted? What's all this consternation over Plan B and Ella? Aren't people who prefer a particular use of their bodies entitled to the same consideration from their government as those who prefer another use? It's all about what turns you on, right?

Roe v. Wade, which conferred the constitutional right of elective abortion, rests upon the cultural "discovery" that indeed people should be allowed to do as they like with their bodies. Another kind of discovery—for numerous get-with-the-program types—was the depth and solidity of religious resistance to that very notion of next-to-unlimited choice in bodily matters. The idea of reverence for unborn life as the gift of God barely—and never automatically—occurs to proponents of abortion. Whatever their religious affiliations, or lack thereof, such folk see religious conviction as a choice that should never impede other people's choices.

As with clinical abortion, so with birth control: including, by no accident, birth-control methods believed to produce abortions. Religious beliefs in life's sacredness are subject to suppression in one form or another: in speech or in action. No automatic legal or cultural support comes the way of those who declare the taking of unborn life as contrary to the will of God. Those who do so often find their religious convictions a hindrance rather than a help. They press on notwithstanding.

Friends and foes, defenders and assailants of the Hobby Lobby outcome line up with slight variations, if any at all, as they naturally would on an abortion-rights case: on the one hand, those who say a woman's choice is all that matters; on the other hand, those who insist that religious reality circumscribes that choice, and that, moreover, the right to insist on civilized observance of that religious reality is a key element of constitutional liberty.

That's why Hillary Clinton is so very right. That's why "we're always going to argue about abortion."

Pro-life Millennials: The Polls vs the Facts

Kristan Hawkins & Lauren Enriquez

Poll numbers in recent years have been interpreted to suggest that the majority of Americans are pro-choice, or at least split fairly evenly along pro-life/pro-choice lines. The overall American attitude has certainly become more pro-life over the last generation, but numbers relayed in recent polls appear to reflect a degree of stagnation. The standard question in most major, mainstream polls is worded something like this: “On abortion, do you consider yourself pro-choice or pro-life?” A few polls ask instead whether or not respondents support *Roe v. Wade*.

When Millennials—the approximately 80 million people born in the United States between 1980 and 1995, also known as Generation Y—are asked this question, they answer pretty much as other Americans do. And yet we are seeing huge mobilization among pro-life Millennials, which doesn’t seem to be reflected in most polls. At the same time, pro-choice fervor among young people has virtually fizzled out—another fact that hasn’t shown up in recent polls. The pro-life generation gains momentum on middle school, junior high, high school, and college campuses across the country, while simultaneously the echoes of pro-choice youth’s last hurrah are so far in the past as to be barely audible anymore.

Clearly, the polls don’t reflect the chasm that exists between pro-life and pro-choice activism where Millennials are concerned. Why not? One reason is that most polls lack comprehensive scope. By asking respondents to identify in black-and-white terms on abortion or by siphoning respondents into “pro-choice” and “pro-life” categories based on questionable criteria, pollsters have produced the false impression that Americans at large favor abortion and that these numbers speak for Generation Y. But when we look at the lopsided momentum, with the pro-life side boasting exponentially greater legislative and cultural progress, we see that these polls don’t speak to the reality that is, in fact, the pro-life majority among Millennials.

Pollsters have traditionally categorized people who would allow abortion in limited cases—that is, for such exceptions as rape and incest—as “pro-choice.” A full 50% of respondents told Gallup this year that they believe abortion should be legal only under certain circumstances.^{1,2} Thus, when

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pollsters ask respondents to self-identify as “pro-life” or “pro-choice,” since only about a quarter of them believe abortion should be legal in all circumstances without exception, statistics become skewed.

In reality, the rape and incest exceptions account for less than 1.5% of all abortions procured in the United States. Should Americans who believe that more than 98% of all abortions should be illegal be labeled “pro-choice”? A more nuanced depiction of pro-life versus pro-choice sentiment would be needed in order to gauge the real American attitude toward the issue.

Based on Gallup’s most recent poll—which claims 50% of Millennials are pro-choice compared with 40% who are pro-life—the people who don’t believe abortion should be legal in all circumstances are obviously self-identifying as pro-choice. There would be no confusion over the pro-life dominance that exists among the Millennial generation, however, if polling went into greater depth to capture the true sentiment of the majority of young people—who don’t believe abortion-on-demand through all nine months of pregnancy should be legal.

Furthermore, great problems arise in self-identification due to a lack of definitional knowledge. Anecdotally, when Students for Life of America’s Regional Coordinators go out onto campuses and approach large swaths of the student body simply posing the question, Are you pro-life?, a surprisingly large number of students who engage with team members need the question to be clarified in order to answer. They know that “pro-life” and “pro-choice” are related to the abortion issue, but aren’t sure which epithet refers to which side of the debate. This lack of knowledge affects Millennial perceptions of organizations like Planned Parenthood; studies show, for example, that the majority of college-aged Americans are unaware that Planned Parenthood performs abortions.³

Indeed a great number of Millennials (and other Americans as well) fail to understand the full scope of the abortion regime that took effect with the 1973 *Roe v. Wade* and *Doe v. Bolton* (an accompanying case) decisions. Shockingly, according to Pew Research only 44% of Millennials even know that *Roe v. Wade* (or *Doe*) had anything to do with abortion, much less what exactly these concurrent rulings legalized.⁴ If all Americans who were asked by pollsters whether they support *Roe v. Wade* knew the facts about these cases (that is, that *Roe* legalized abortion-on-demand for essentially any reason until viability—and at any time to save the life or health of the mother—and that *Doe* defined health-of-the-mother so broadly—including her age—as to extend that right throughout the entire nine months of pregnancy) would the same number self-identify as pro-choice? How can the number of young people identifying as pro-choice be greater than the number of those who

don't even know what the term means due to ignorance of abortion laws in America? Without question, we would see many amended responses if they (and other Americans) were actually apprised of the facts.

Supporting this idea is research from the College Republican National Committee, which studied the abortion views of Millennials based on their responses to more specific questions than, "Do you consider yourself pro-life or pro-choice?" Instead, CRNC phrased questions in terms of the degree to which respondents believed abortion should be permissible.⁵ Millennials were asked whether abortion should be "legal in all cases, legal up to a certain point in pregnancy, illegal with exceptions for the health of the mother or in cases of rape or incest, or illegal in all cases."

Only 16% of young voters responding to the CRNC survey believed abortion should be legal in all cases. Thirty-two percent said abortion should be legal up to a certain point. Even if this percentage were added to the 16% that represent the abortion under any circumstances proponents, we are still looking at a *minority* of Millennials who are pro-choice. Thirty-seven percent of Millennials, on the other hand, believed abortion should be legal only in cases where the health of the mother could be compromised by continuing the pregnancy,⁶ or in cases of rape or incest. Fourteen percent thought abortion should be illegal in all circumstances. If we grant that the latter two camps can be considered pro-life, at 51% they comprise the majority. They may not be 100% pro-life (i.e., without exception), but they certainly don't support unrestricted access to abortion through all nine months of pregnancy, which is what *Roe* and *Doe* permit.⁷

Despite the inconsistencies in polling, Millennials are demonstrably more pro-life than preceding generations. They have a firm grasp on the reality of human life in the womb thanks to enormous strides in science and technology. Gone are the days when "unborn baby" or "fetus" conjured up no more than the thought of a fuzzy ultrasound image, at best. Millennials know the chromosomal composition of their pre-born children. They know without a shadow of a doubt the highly-developed human form they possess just weeks after fertilization. Many have seen prenatal surgeries and witnessed the survival of premature babies who live in defiance of the term "non-viable." They may have experienced 4-D ultrasounds and used their smartphones as fetal heart dopplers. The more technology advances, the more the abortion movement's semantics about clumps of cells, masses of tissue, and non-living matter lose their power.

Millennials are also more educated than their parents' generation was at their age thanks to mass media coverage of legislative battles on abortion which doubled as eye-opening medical instruction: Clinton's debacle with

the partial-birth-abortion ban in the 90s—he was forced by a Republican-led Congress to veto it twice—showed America what abortion looked like and how far it had spiraled out of control. The trial of Philadelphia abortionist Kermit Gosnell in 2013 re-opened the late-term abortion book, shining a spotlight not only on the ugly reality of procedures benignly referred to as D&X and D&E, but on actual infanticide as well, shattering the widespread belief that the practice of partially (or in Gosnell’s case, entirely) delivering babies and then scissoring their necks had ended when George W. Bush signed the Partial Birth Abortion Ban Act in 2003.⁸

The ongoing movement to enact fetal-pain legislation at the state level has also educated Millennials (as well as everyone else) about the humanity of the unborn child. Media coverage of fetal-pain laws in states like Texas serve to focus attention on the medical realities associated with the inhumane act of abortion.

Clearly, the ignorance on which the abortion industry relied for so many years to market its mercenary offerings as “services” has lost its insidious power. Not only are Millennials better informed than their parents were, they can engage on social platforms that did not exist a couple of decades ago. Millennials are, at all times, just one click (or OB/GYN visit) away from a host of technological resources capable of instantly supplying them with the facts concerning every aspect of prenatal and fetal science.

While Millennials are less likely to be taken in by the kind of dissembling formerly engaged in by abortion advocates—clumps of cells, etc.—the latter have doubled down on their campaign to enshrine apathy.

Speaking anecdotally once again, Students for Life groups affirm that the biggest challenge pro-life Millennials face among their peers nationwide is apathy. Counter-intuitively, this apathy is a greater obstacle to pro-life activism than any actively engaged pro-abortion student. The young person who simply does not care about the abortion debate is twice as hard to win over as the pro-choice student who clearly cares about the issue and can be compelled to consider how science and technology favor the pro-life cohort. But an apathetic student may have to be shocked into the reality of what abortion is (for example, by viewing graphic images of abortion victims or encountering a field of 3,300 tiny crosses memorializing those who die each day from abortion) or have a personal experience related to abortion before he or she begins to care about the issue.

Also a boon to youth participation in the pro-life movement is its inclusivity. With people of every race, religion, background, and philosophy ascribing to the human-rights values enshrined in the pro-life movement, students are

guaranteed to find kindred spirits with whom they can share their pro-life views. The pro-life movement has been stereotyped by the other side as a white, male-dominated, Evangelical Christian enterprise. But many organizations, including Feminists for Life; the Gay-Lesbian Alliance for Life; and Secular Pro-Life—just to name a few—refute this misconception by their very existence.

The social aspect of the pro-life movement is crucial in college. The pro-abortion movement—the vast majority of which boasts a steady but narrow following of Democrats and politically liberal individuals in the United States—simply lacks the ability to appeal to every student. Its pro-abortion cause, bearing the misnomer “women’s rights,” is a political commitment to liberal legislation on reproductive issues. It lacks the passion that underlies the vastly wider interpretation of the issue within the pro-life movement, which is the belief in human rights and the innate dignity of every human being from fertilization to natural death. For pro-life students, the appeal goes beyond a political agenda, encompassing the innate, humane concern for justice and equality.

The dominance of the pro-life movement among students on campuses nationwide is clearly quantifiable. Students for Life of America currently works with 838 active student pro-life groups across the country. At the time of publication, the nation’s two most notable pro-choice activist groups *combined* report fewer than half the number of active groups as Students for Life.⁹

As we have seen, the pro-life cohort wins hands-down in campus activism. So why isn’t this reflected by polls? In addition to the problematic wording of poll questions, the lack of definitional knowledge, and the pollsters’ practice of absorbing those who support rape and incest exceptions into the “pro-choice” category—all of which we have already discussed—it is also likely that apathetic students tend to poll in favor of abortion because they aren’t motivated to challenge an existing law.

When only given the option to self-identify as pro-life or pro-choice, or as a supporter or non-supporter of *Roe*, it is in the nature of a disinterested party to choose the path of least resistance. With abortion’s longstanding history as a “legal right”—predating all Millennials—any Millennial who self-identifies as pro-life is opting for a counter-legal view. An apathetic young person with a hands-off view of abortion is likely to self-identify as pro-choice because that position demands only that he or she continue to do nothing—exactly as the apathetic young person prefers.

But momentum favors the pro-life movement, because we have reason to believe that the pro-choice self-identification we are seeing in polls today will continue to decrease, although this shift in statistics will likely be slow

if polling continues to serve up—and the media continues to trumpet—more pro-choice sentiment than actually exists. Fortunately, pro-life Millennials are unfazed by inaccurate polling and have shown their commitment to seeing their cause through to the end.

Put simply, the pro-choice movement has already experienced all that it will achieve, and will spend its dying breaths trying to preserve arguments and laws that were made and passed in the now-distant past. And as the pro-choice movement fizzles out, the pro-life movement gains steam at a pace that grows every year. Our efforts are not restricted to one geographical region of the country or one age group or one background—from middle school to high school to college, youth everywhere are joining our efforts in droves. The Students for Life national convention preceding the annual March for Life has grown to such a degree that thousands of young people participate every year. The interest is so strong, however, that long before the conference we have to begin turning away dedicated pro-life students because we simply do not have the means to accommodate all of them. The pro-life movement is where young people want to be.

The pro-choice movement can't boast of even one comparable event. In fact, former NARAL Pro-Choice America president Nancy Keenan revealed her movement's collective sense of doom about the future of pro-choice youth activism when, during the 37th annual March for Life in Washington, DC, she observed the hundreds of thousands of pro-life youth who had flooded the city for the event. *Newsweek* reported:

These [pro-choice] leaders will retire in a decade or so. And what worries Keenan is that she just doesn't see a passion among the post-*Roe* generation—at least, not among those on her side. This past January, when Keenan's train pulled into Washington's Union Station, a few blocks from the Capitol, she was greeted by a swarm of anti-abortion-rights activists. [. . .] "I just thought, my gosh, they are so young," Keenan recalled. "There are so many of them, and they are so young."¹⁰

The piece went on to juxtapose the numbers of actively involved pro-lifers and pro-choicers, noting that over 400,000 activists participated in the March for Life that year (and we are used to the mainstream media wildly lowballing this attendance number), while only 1,300 attended a pro-choice "anti-Stupak rally" a few weeks before. The 1,300 figure is so low as to be scarcely worthy of mention, except to point out how drastically different it is from the pro-life numbers.

Even more embarrassing to the pro-choice Millennial movement (or lack thereof) is the fact that they are so desperate for numbers they have been documented paying people to represent pro-choice beliefs at political events. For example, when unable to attract voluntary activists during the 2013

legislative session in Texas, abortion advocates desperate to preserve late-term abortion in the state posted Craigslist ads offering substantial compensation to individuals who would show up to oppose pro-life legislation.¹¹

Beyond their active involvement in the pro-life movement, Millennials increasingly lead it. This is another fact that promises a bright future for pro-life advocates as opposed to the pro-choice community, whose aging leaders seldomly are replaced by enthusiastic young Millennials. Groups like Live Action, Students for Life of America, New Wave Feminists, the Equal Rights Institute, Secular Pro-Life, and many more are founded—and run—by young Americans. This cannot be said for major pro-abortion organizations like Planned Parenthood, NARAL Pro-Choice America, and the National Abortion Federation. Rallying behind these groups are women who are out-of-touch with the values that Millennials profess, desperate to hold onto a culture that has moved away from them.

Contrary to perceptions about Millennials—and supporting their increasingly pro-life convictions—they have a demonstrably strong respect for the issues of marriage and family. A survey conducted by JWT Intelligence affirmed this fact, asking respondents, “How much respect would you say you have for each of the following institutions?” Between 86% and 91% of 21- to 39-year-olds responded that they had respect for the institution of marriage. Ninety-four percent of them reported having respect for the institution of parenthood, and 90-93% for the institution of monogamy.

Although older generations often confuse today’s young adults with the feminists of yesteryear, who valued “free love” above solid family fundamentals, Millennials have not only seen but also experienced the real consequences of such a philosophy. The pro-choice movement’s out-of-touch attitude towards this generation’s positive regard for marriage, parenthood, and monogamy may contribute to the greying profiles of its leaders and to the lack of enthusiasm among young people to go forward under their banner.

Nevertheless, we are cautioned by sociologists from committing the fallacy of affirming the consequent, by which we would be remiss to say that just because Millennials may be more likely to support strong marriages than their parents, they are also more pro-life. Rather, while these statistics may line up at points, there is more involved in the national explosion of the pro-life movement among Millennials than the fact that they have somewhat different values from their parents’ pro-choice generation. In his book, *The Making of Pro-Life Activists*, sociologist Ziad Munson explains:

One would be hard-pressed, for example, to find differences in the characteristics of Tim and Jerome [two men who have very similar sets of pro-life values, but Tim

became an activist while Jerome did not] that could explain why one is so active in the movement while the other is entirely uninvolved. This problem parallels a similar one in criminology: no matter how many individual traits are correlated with criminal behavior, there will always be more people who share those traits who are not criminals (Sampson and Laub 1993) . . . The causal connection between individual attributes and activism will therefore always be weak, no matter how many individual characteristics we identify or how many people we include.¹²

Rather, Munson calls becoming an activist a “dynamic, multistage process,” whereby, “people with a remarkably wide range of preexisting ideas about abortion” converge to form what we call the pro-life movement. This explains how the pro-life movement continues to explode among all Americans, and not just those with certain political, religious, or cultural backgrounds. Munson acknowledges that,

. . . those who already consider themselves “pro-life” are not the only ones who get involved. My data show that many individuals who become activists are at best ambivalent, and in many cases decidedly pro-choice, in their views on abortion before getting involved. [Their views, however, change] during the actual process of becoming activists—that is, in the process of becoming mobilized.

Because of the vast range of those attracted to the pro-life movement for their own personal reasons, Munson points out that, depending on with whom and with what organizations they interact,¹³ the abortion views of new activists are often “fragmented and contradictory.” Munson traveled the country interviewing pro-life activists as well as proliferators who were not activists, arriving at the conclusion that, counterintuitively, conviction about the pro-life ethic is not a prerequisite for active involvement in the movement. To highlight this discovery, Munson recalls an anecdote about a woman he met in the Twin Cities named Linda who first participated in a pro-life activity when she was invited to do so by a casual acquaintance whom she respected and wanted to please. At the time, Linda leaned more towards the pro-choice side. But after getting involved for social reasons, Linda developed her own pro-life convictions subsequent to her activism. Munson summarizes this phenomenon, writing:

My data on the pro-life movement challenge this conventional wisdom. The link between beliefs and action in social movements must be turned on its head: real action often precedes meaningful beliefs about an issue. Demographic and attitudinal differences between activists and nonactivists cannot explain why some people join the pro-life movement and others do not. Instead, mobilization occurs when people are drawn into activism through organizational and relational ties, not when they form strong beliefs about abortion. Beliefs about abortion are often undeveloped, incoherent, and inconsistent until individuals become actively engaged with the movement. The “process of conviction” (Maxwell 2002) is the result of mobilization, not a necessary prerequisite for it.¹⁴

We can thus credit the explosion of pro-life activism among Millennials, at least in part, to the social aspect of college participation in the movement. Students frequently get involved in a college pro-life group because they are invited by peers. Many have not really determined what their personal view on abortion is prior to their initial engagement. But their interest in the social aspect draws them in, and from there they internalize the information they receive and become convicted pro-life activists who in turn reach out to friends who will continue the cycle.

This firmly established social structure simply doesn't exist nationwide among pro-choice advocates. Unlike Millennials who call themselves "pro-choice," young pro-lifers are involved in their movement in a very hands-on way. They have owned the movement and are successively taking the places of the pro-life leaders who preceded them. They travel in huge groups to statewide and national rallies annually, making Students for Life of America's National Conference the largest pro-life conference in the nation, with over 2,500 students, each year. They attend conferences, organize fundraisers, gather regularly for group meetings and strategy sessions, and volunteer at pregnancy resource centers on a regular basis. Coupled with the overall decline in and absence of pro-choice enthusiasm among Millennials at large, a lack of social engagement has leveled the final blow at the pro-choice movement among young adults.

Traditional poll numbers, therefore, clearly underestimate the true discrepancy that exists between pro-life and pro-choice Millennials. While self-identification as "pro-life" and "pro-choice" on polls produces similar numbers of Millennials on either side, we have seen how traditional survey methods fall short. Furthermore, apathetic sentiment across the board likely inflates the pro-choice label, lending false weight to that side. A lack of knowledge regarding the legislative outcomes of *Roe v. Wade* and *Doe v. Bolton*, and lack of clarity regarding the meanings of "pro-life" and "pro-choice," also suggest that traditional polling questions are incapable of accurately reflecting America's pro-life majority. We have seen that this majority has developed in conjunction with greater scientific knowledge and technological advancement, as well as education stemming from media coverage of abortion debates over the decades. And we have seen how, from a sociological perspective, the pro-life movement dominates in recruitment and activism due to its mastering of the social factor that often precedes personal conviction about abortion ethics. All of these taken together help to explain the explosion in momentum behind pro-life Millennials and to project a promising outcome for the future of the pro-life movement in America.

NOTES

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3. Lauren Enriquez, "5 things you should know about Planned Parenthood," Live Action News, 12 May 2013: <http://liveactionnews.org/5-things-you-should-know-about-planned-parenthood/>
4. Pew Research Center. (2013). Roe v. Wade at 40: Most Oppose Overturning Abortion Decision. Retrieved from <http://www.pewforum.org/files/2013/01/Roe-v-wade-full.pdf>
5. Kristen Soltis Anderson and Alex Shriver, "A Grand Old Party for a Brand New Generation," Report by the College Republicans National Committee, 2013, p. 6.
6. Evidence does not suggest that abortion is ever necessary to save the life of a pregnant mother. <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0036613>
7. These numbers were taken from an poll conducted by The Polling Company, Inc., commissioned by Students for Life of America in 2012.
8. Jon Hurdle and Trip Gabriel, "Philadelphia Abortion Doctor Guilty of Murder in Late-Term Procedures," *New York Times*, 14 May 2013: A12.
9. See self-reported groups from Planned Parenthood campus groups and Feminist Campus, respectively: <http://www.plannedparenthoodaction.org/get-involved/generation/find-your-planned-parenthood-campus-group/> & <http://feministcampus.org/start-a-group/find-a-group/>
10. Analysis: "Why Young Voters Are Lukewarm on Abortion Rights," Susan B. Anthony List. <http://www.sba-list.org/suzy-b-blog/analysis-%E2%80%9Cwhy-young-voters-are-lukewarm-abortion-rights%E2%80%9D>
11. Source: <http://hotair.com/archives/2013/07/01/great-news-being-a-pro-choice-grassroots-protester-pays-a-decent-wage/>
12. Ziad W. Munson. *The Making of Pro-life Activists: How Social Movement Mobilization Works* (2008) University of Chicago Press. Kindle Edition. Locations 81-83.
13. Ibid, location 101.
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Light in the Dark:

Bringing Abortion Healing to Women Prisoners

Leslie Fain

Marjorie Long, the site leader of Rachel's Vineyard for the Diocese of Lake Charles, Louisiana, is not one to back down from a challenge. In 2010, while attending a national conference in Malvern, Penn., she heard Rachel's Vineyard founder Theresa Burke urge site leaders to go out and find post-abortion women who either did not know about Rachel's Vineyard, or had no way to attend its retreats. Long didn't know what Burke meant, but she was determined to find out. Rachel's Vineyard is the country's largest post-abortion healing program, and Long and her team would take the local version of the program where it had never been before.

Barbara Rozas, a Rachel's Vineyard team member who Long refers to as her "assistant, a workhorse, and the mother of the group," was also at the conference but had gone to another workshop. Later that day, when Long told her about Burke's directive, Rozas was nonplussed. "I was thinking, 'Do we have to go to Mexico?' We were already getting retreatants from Texas, Mississippi, and New Orleans. There were no restrictions on who could come."

Over the following months, Long began to get a definite idea of where she and Rozas could find women who needed post-abortion healing, those "unreachables" Burke had referred to. "What began to be placed on my heart was the prison," she said. "That's who can't reach us, that's who is vulnerable." According to Long, statistics show that 80 percent of women in prison have had at least one abortion. Everyone who works with prisoners deals with drug addiction, alcoholism, and sex abuse, but most people don't see the connection between abortion and these other issues.

According to Kevin Burke, husband of Theresa Burke and co-founder of Rachel's Vineyard's national organization, a significant part of the prison population mirrors an especially vulnerable demographic. "The poor pay the highest price for our nation's legalization of abortion," Burke says. "The pro-abortion revolutionaries thought they were bringing relief to families facing the pressure of unplanned pregnancy and economic hardship. But my experience over the years has been that these are the men and women, because of the prevalence of abuse and family disintegration in these poor

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communities, most vulnerable to trauma after abortion.”

Long and Rozas had to jump through many hoops to make the prison program a reality. “I asked people about it and got negative feedback,” recounts Long, “many told me I would never get in.” But she didn’t let the “Noes” discourage her. During that time, Long’s team attended a training workshop in the Dallas area. As she shopped the tables of free booklets, she spotted *The Word Among Us* (TWAU), a Catholic devotional magazine that had a photograph of Mother Teresa on the cover and a booklet geared toward post-abortion prison ministry attached to it. Long, who draws constant inspiration from the life of Mother Teresa, took this as another sign that the Diocese of Lake Charles’ Rachel’s Vineyard should start a post-abortion program for women prisoners.

The booklet, titled *After Abortion*, “was the best I had ever read,” says Long. “It’s short, compassionate, and would be the best, I thought, to bring into the prison.” She called TWAU and was connected to the author, Angela M. Burrin. They had a “fruitful conversation,” and Burrin offered to ship Long both the monthly magazine and the booklet. “After her generosity in shipping booklets,” says Long, “I had to try harder.”

Long’s persistence paid off. After multiple phone calls to the Calcasieu Sheriff’s Prison in Lake Charles, she finally got through to the chaplain. When Long and Rozas subsequently met with him face to face, he asked, “Where have you been for the last two years? Women have been sharing their grief, and there are no programs to help them.” He immediately gave them permission to start the program. The necessary background checks were completed on the two women and pictures were taken for their badges that very same day. The chaplain also referred Long and Rozas to Open Door, an ecumenical ministry that prepares prisoners for life on the outside. Representatives from Open Door would put them in touch with women prisoners who had had abortions. The plan was to offer the retreat twice a year, around Easter and before Christmas.

Much work, however, had to be done to re-work the Rachel’s Vineyard weekend retreat program so that it could meet the prison’s rules and regulations, and still be effective. Long and Rozas had to re-design the schedule, edit the script to make it shorter, and use different props that were deemed safe for prisoners. Nothing could be brought in that prisoners could use to harm themselves or others. Instead of the bereavement dolls typically used in Rachel’s Vineyard retreats, Long and Rozas would have to use paper dolls with the prisoners. Instead of a lit candle to represent each baby aborted, they would offer retreatants plastic, battery-operated candles. Since they could not bring a glass water font into the prison, they opted to use a blue blanket,

layered on a plastic plate, to represent the water for “floating” candles. Instead of real flowers, the women decided on crocheted flowers sprayed with Febreze. “But,” adds Rozas, “Marjorie promises the ladies that if they make contact with her after they get out, she will give them a rose, the crocheted flower, and a prayer shawl.”

Although Long and Rozas were initially disappointed that they had to limit the retreat time and use different props, they said the important thing was that the program—adapted from the weekend model to one 2-hour session on three consecutive days—worked. “We were doubtful that the pared-down retreat could have a real impact on the women,” says Rozas, but it did.

The Rachel’s Vineyard prison retreat is carefully scripted, including spiritual exercises and Biblical readings. Each core team member plays a certain part. After a chosen section of scripture is read aloud, Long asks the prisoners to close their eyes and put themselves in that scene. “Afterward, we ask them to share how [it] made them feel to be the adulteress about to be stoned, or the woman at the well, or Lazarus.”

“What you realize is that with scripture and meditation and God, it doesn’t matter what kind of props you have there,” says Long. “The Holy Spirit is in control; we are only his instruments.” They have found that participants really lose themselves in the prison retreats. Twice, a woman thought one of the battery-operated candles was setting fire to Long’s jacket, and swatted at the hem, she was so into the meditation. Another mom put paper dolls in her pocket as keepsakes.

Faith is integral to the Rachel’s Vineyard program. And while it is a Catholic retreat, women from all denominations are welcome. “But if you are Catholic, that is where you can bring that out,” says Long. During and after the retreat, her team is able to connect Catholic prisoners with a priest, so the women can receive the sacraments.

Although there are many women prisoners across the country who would benefit from this type of retreat, the Rachel’s Vineyard prison ministry in the Diocese of Lake Charles is the first of its kind, says Kevin Burke. “I know a number of Rachel’s Vineyard locations are exploring this possibility. But it takes time and patience to negotiate the system and develop the right team for this type of ministry.”

Good Girl, Interrupted

Long and her team have run the Lake Charles program since 2010. Vinet Keno is one of the women who definitely found healing by completing the Rachel’s Vineyard prison retreat, but initially it didn’t seem as if it would be that way.

Keno, like many prisoners, took academic and personal growth classes while incarcerated because the justice system looks favorably upon it. She was attending a drug-addiction recovery class when Long walked in to announce an upcoming Rachel's Vineyard retreat. Not paying close attention, and thinking it was just a religious retreat, Keno signed up. Days later, once the retreat started and Keno realized it involved abortion, she became very defensive, sitting at an angle so she didn't have to look at Rozas and Long.

Keno was angry with herself, as well as with Rozas and Long, for getting involved with the retreat. "What in the world was I thinking when I signed up for this crap here?" she says, reflecting on her feelings that day. "I felt like I had been bamboozled for real."

Keno says her background isn't typical of most prisoners: The oldest of five children from an intact family, she's a baptized Catholic and had a Catholic education through elementary school; she never used a drug stronger than Tylenol.

The good life Keno experienced as a child continued into adulthood. She had a successful military career, during which she met and married her first husband. Although things appeared idyllic, their marriage eventually crumbled, and this set her on a disastrous path. "I gave the man two children," she recalls, "and I thought we were very happy, and it turns out he didn't want me at all."

Despite the fact that he wanted out of the marriage, Keno desperately wanted to work on it. "I literally begged this man more than once, 'please let's get back together.' He said, 'I just don't want you anymore.'" That was the last time she saw him. After he left, she tried to overdose on Tylenol. She recovered from the suicide attempt but not from the broken marriage.

Instead she began on a path of self-destruction. After the divorce, she partied a lot and had promiscuous sex, followed by two abortions. The first was in 1994, not long after her father passed away in his sleep. She believes the baby might have been a boy, and had she made a different decision, she would have named him after her father. Her father's death, combined with the abortion, led to further depression and destructive behavior.

The second abortion was easier to rationalize. She had gotten a really good civil service job at Ft. Benjamin Harrison in Indianapolis. Reflecting on her mindset at that time, having an abortion seemed to be "really, really necessary."

Perhaps in an attempt to deal with some underlying guilt, Keno began attending a Pentecostal church. But after experiencing the feeling of being forgiven, she slipped back into her old behaviors. "Once you feel clean, you don't need God anymore," she says. "I started going back to clubs again,

made a new circle of friends, and this circle of friends [were] druggies. They introduced me to the new drug sweeping the nation, crack cocaine.”

The decision to use crack would be the first of several decisions that would eventually lead Keno to prison. The first time she tried crack, she says, she didn't know she was high. “You just feel a rush, and so you keep trying it, because you know what to look for.” During that time, Keno started dating a man with whom she became pregnant with her daughter. Despite her addiction, she managed to stay off drugs during the pregnancy.

By now Keno had three children, but the weight of that responsibility was not enough to keep her from returning to drugs when she encountered periods of emotional pain. When this boyfriend went to jail, she was left lonely and depressed, and turned to drugs again. “I was on welfare and food stamps, and the logical thing when you have no money and three kids, is to spend all the money you do have on drugs,” she quips.

Something maternal in her kicked in, however, and she made the decision to send her two sons to live with their grandmother in Marksville, Louisiana; eventually Keno and her daughter moved in with them. “Mom knew what was going on, and I was old enough not to be chastised. I know she knew.”

Keno says she “went from sun up to sundown doing drugs, from Monday to Sunday doing drugs.” Although she didn't want to live with her mother, she didn't really have another option. The one bright spot in her life, the job she held at a casino in Marksville, would not last for long. She had always been a good employee, but her drug abuse finally caught up with her; she could not perform her work adequately, and was let go.

Keno still had a knack for finding new employment, and was hired as a receptionist at a car dealership. One of her responsibilities was to collect checks and money orders from customers who came in to make payments on their vehicles. One day, a customer gave her a blank money order. Instead of making the car payment for the customer, she used the blank money order to buy drugs. She was arrested and received a two-year suspended sentence, and was required to pay restitution.

The suspended sentence didn't encourage Keno to amend her life. Instead she spent all the money she earned from a new job on drugs, stopped reporting to her probation officer, left Marksville, and moved in with another convicted felon, which is a parole violation. As a result, her probation was revoked, and she was sent to Cottonport Women's prison. After nearly a year, she was let out on a work release program, with a job as a waitress at Pitt Grill, a Lake Charles restaurant chain. Within two weeks, she had a house, furniture, and a car. And she got her daughter back from her mother. (By now her former husband had custody of the boys.)

Keno began putting down roots in Lake Charles. She started a successful home-cleaning business, became active in a local church, and remarried. It looked as if she finally had her life together. Her husband, however, was abusive and eventually abandoned her. At 5:30 one evening she learned he was gone; by 6:30 she was trolling the streets looking for drugs. Realizing she knew nothing about where they were sold in Lake Charles, she decided to fight the urge to do drugs again. She picked up her daughter and went to the movies instead.

The second night, she again felt the urge to do drugs, and again took her daughter out to a movie. The next evening, however, her daughter wasn't home, and Keno was left alone with her pain and her temptations. She stole one of her home-cleaning client's rings, and took it to a pawn shop where she got \$200 for it. Her client quickly reported the theft. Arrested on a Friday, Keno spent Mother's Day in jail, and her arrest was listed for all her clients and fellow churchgoers to see in *The American Press*, the Lake Charles area newspaper. "My clients loved me to death," says Keno. If she had asked them for money, they would have readily given it to her. But as a result of her arrest, she lost her home-cleaning business, was released from her leadership positions at church, and sentenced to two years in prison, and two years' probation.

Facing the Pain and Finding Healing

When the Rachel's Vineyard retreat began, Keno was in an intense state of denial about her abortions, thinking, "This problem has already been fixed. There is nothing wrong with me, there was just never anything wrong with me."

But it was clear to Long and Rozas that she had not dealt with her abortions. "Marjorie saw the look on my face, that I was not interested," says Keno. "During the break, Marjorie said to me, 'You don't seem to be pleased or interested in this. Tell you what, stay until this evening, and if you are still not happy, I will release you.' Then, when the session ended, I went to her, and said I'm going back for the next session."

Through the course of the retreat, Keno gradually began to face the truth, and find healing. Long says she remembers vividly the exercise that really helped Keno confront the reality of her abortions. During the retreat, after Long read the story of Lazarus from the Gospels, the women were given the opportunity to ask the team to wrap any part of their body that had been affected by their abortions. For example, if a woman felt powerless to stop an abortion, she could ask the team to wrap her hands and/or her feet. If she felt her heart had been numbed by abortion, she could have gauze wrapped around her chest, and so on. "Vinet [Keno] asked to have so much of her

body wrapped up, we were concerned we would run out of gauze,” says Long. “Then she just broke down, and you probably could have heard it all down the hall.”

Once the spiritual readings and meditations ended, the Catholic retreatants had the option of going to Confession with Fr. Nathan Long, a priest who happens to be Marjorie Long’s son. All of the women then had the opportunity to name the babies they had aborted, and a memorial service was held for them.

Keno says the retreat helped her connect her abortions to other self-destructive behaviors. “I never realized how much destruction, piling on excuses, procrastinating, covers up the biggest part of your problem,” she says. “Depression is a bad, bad thing, and depression has led to so much destruction in my life. I think that depression I had after losing my dad, and having the abortions led to so many other bad things.”

Kevin Burke believes abortion healing is necessary to get many women back on track. “Healing that abortion loss takes a woman to that very deep place in her heart and soul, and with God’s grace, allows those wounds to be cleansed, and light to shine in this place of darkness,” he says. “This helps strengthen a woman to make the changes in her life that will make her emotionally and spiritually stronger and able over time to move away from those self-destructive actions, and manage her emotions as she recovers and makes healthier choices.”

Keno says going through the retreat made a big difference in the way she treated other people, particularly other prisoners. She is now better able to accept people for who they are. Although she still struggles with having to have things her way, she catches herself better now. “I was a bear. No one could really have a conversation with me,” she says of her life prior to the retreat. “Now that bear is in hibernation most of the time. My temperament has so changed, very much for the better.” And she has no desire to do the kind of self-destructive things she did in the past.

Keno has been out of prison for two-and-a-half years, and is still trying to find work. She currently lives with roommates.* Long says she can tell Keno’s life is different now, because she has heard from her since she left prison. “She makes contact with me once or twice a year. She did call one time for help, and I was able to put her with Catholic Charities. When I told her how to get the help, she did it.”

Not only is the Rachel’s Vineyard prison ministry helping individual women, it’s had other effects as well. For instance, the intake sheet prisoners

*Keno’s daughter is a manager at the Sonic Drive-In restaurant in Marksville. Her older son is working two jobs to support his family and the younger one, about to get out of the military, is looking to start a career as a civilian.

fill out upon incarceration now asks if the women have had any abortions. If the woman reports that she has, she is told about the retreats. In addition, prior to the Rachel's Vineyard program, Catholic women at the prison didn't have easy recourse to the sacraments.

And it's not just women who've had abortions who are benefiting. Dionysa Fenner is a 27-year-old, never-married woman, who has had two stillborn babies due to drug use. She is incarcerated for armed robbery. Also the mother of an 8-year-old boy, who is being raised by a paternal grandmother, Fenner does not want her son to see her in prison or know she is serving time. Fenner's mother died when she was young, and her father has been in prison more than he has been out of it. In addition, she is an only child.

"When I accepted Dionysa into the retreat, she kept saying thank you to everyone for accepting her even though she had not aborted. I knew it would start to awaken her to look at her own self-destruction," says Long. Fenner, she goes on, eventually came to a place during the retreat where she realized she had taken her children's lives, with the difference being she did not pay someone to do it.

"Dionysa is so compassionate to others, she is also so broken, and alone," says Long. She prays that when Fenner is released, she seeks a re-entry program, rather than hit the streets running. "The day I went for the visit was a down day for her, she was very depressed and cried, [but] she also stated that although she did not look so, I had brought her peace and hope with the visit," says Long. "That is why I do what I do!"

Long can see God working in the lives of the women she works with in ways large and small. On one Rachel's Vineyard prison retreat, she and Rozas met a woman who had been involved in prostitution since she was 12. The woman thought she had had six abortions, but she could not really remember. One of the rules the team has to follow is that all items brought into the prison have to be counted and documented beforehand. Long remembers counting six candles before they went into the facility. Once they came to the part of the retreat that involved the candle lighting, Long realized she had one extra candle. Long says she then heard the woman begin to "weep and weep." It happened that the woman had also had a stillborn, and was transferred to another prison immediately after the delivery and not allowed to go to the funeral. The seventh candle represented her stillborn child.

"I had miscounted," says Long, "but God had not."

A Third Revolution

Donald DeMarco

The telescope was revolutionary and helped to dismiss the notion that the earth was located at the center of the universe. When Galileo pointed his telescope at Jupiter, he observed four satellites revolving around it. He called them the Medicean Stars after the Grand Duke of Tuscany, Cosimo II de' Medici, and his three brothers. It could no longer be held that everything in the universe revolved around the earth.

Louis Pasteur helped to inaugurate another revolution with the use of the microscope. He is considered the founder of the science of microbiology and, despite colleagues insisting that “you can *see* that there are no germs,” proved that most infectious diseases are caused by microorganisms that cannot be seen by the naked eye. The germ theory supplanted earlier explanations for disease, such as the miasma or poisonous air theory.

G.K. Chesterton provided an interesting slant on these two inventions when he referred to the impact they had on both object and viewer: “The telescope makes the world smaller; it is only the microscope that makes it larger. Before long the world will be cloven with a war between the telescopists and the microscopists. The first study large things and live in a small world; the second study small things and live in a large world.” A third revolutionary invention makes both the object and the subject just the right size. Moreover, it may intensify a war already underway between obstetricians and abortionists.

This third revolutionary invention, that is just emerging, is three-dimensional ultrasound, also known as volumic sonography. While its revolutionary potential is just getting started, when it enters the mainstream, it very well may convince the masses that the unborn child is truly an unborn child. If so, it will cause misleading words—“product of misconception,” “uterine contents,” “undifferentiated tissue”—to melt away so that the reality of the unborn child is seen in its truth. If there is any “misconception,” it is in the naming of the unborn child, not in its having been conceived.

Roe v. Wade did not mention sonograms, although it cited advances in artificial insemination and the morning-after pill. Dr. Byron Calhoun, president of the American Association of Pro-life Obstetricians and Gynecologists, a

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special-interest group of the American College of Obstetricians and Gynecologists, reports that 3-D ultrasound imaging provides an image that “looks like a baby. Realistically, that’s going to be a powerful tool.”

An advantage of 3-D ultrasound over 2-D is that it produces higher-resolution images that are more accurate. It creates a sense of depth that not only assists in the discernment of the health and development of the unborn but produces a much more recognizable image for parents, relatives, and other non-medical observers to better identify the developing fetus as a fellow human being.

Members of the National Abortion Rights Action League declined to comment about the potential impact of 3-D ultrasound. Gloria Feldt, then-President of Planned Parenthood Federation, however, did comment on the new technology and its proponents, saying that “They’re using medical technology as political propaganda.” While science marches on, it does leave a lot of people behind.

3-D ultrasound may be understood as the technological counterpart to the intuition of the human heart. As Blaise Pascal famously iterated, “The heart has reasons of which reason knows nothing” (*Le coeur a ses raisons que la raison ne connaît point*). In 1936, long before the development of any form of ultrasound technology, George Orwell penned a novel with the curious title *Keep the Aspidistra Flying*. Norman Mailer praised it as “perfect from the first page to the last.” The aspidistra is a hardy, long-living plant used as a house plant in England. It was especially popular during the Victorian Era, in part because it could tolerate not only weak sunlight but also the poor indoor air quality that resulted from the use of oil lamps and coal-gas lamps.

The novel, set in 1930s London, is aptly titled inasmuch as it centers on a character named Gordon Comstock who must survive under extremely disadvantageous circumstances. In a sense, Comstock is Everyman. One day, Rosemary Waterlow, his girlfriend, visits Gordon in his dismal lodgings. They make love, though without any emotion or passion. Sometime later, she drops in on Gordon unexpectedly and informs him that she is pregnant. “Gordon, I’ve a most awful thing to tell you. It’s happened after all,” she says. “What’s happened?” is Gordon’s anxious response. “I’m going to have a baby.”

Since he strongly disapproves of abortion as a way out, Gordon knows that he must choose between marrying her and taking back the job he deplored, or abandoning her to a life of social shame. He reflects deeply on both his child and his own fatherhood: “His baby had seemed real to him from the moment when Rosemary spoke of abortion; but it had been a reality without visual shape—something that happened in the dark and was only important

after it had happened. But here was the actual process taking place. Here was the poor ugly thing, no bigger than a gooseberry, that he had created by his heedless act. Its future, its continued existence perhaps, depended on him. Besides, it was a bit of himself—it *was* himself. Dare one dodge such a responsibility as that?" He thought of lower-middle-class people and how, "behind their lace curtains, with their children and their scraps of furniture and their aspidistras," they managed to maintain their decency. Then he realized that "The aspidistra is the tree of life." Life is difficult and circumstances can be dire, but we can, like the aspidistra, prevail with our decency intact. He marries Rosemary and they have their child.

Something "without visual shape" that "happened in the dark" was nonetheless real. And its stubborn reality was not contingent on anyone's intent. It was seen correctly through the ultrasonic capacities of the human heart. And in recognizing the reality of this unborn child, "no bigger than a gooseberry," he came in touch with his own fatherhood as well as the motherhood of his girlfriend. He could not dodge such a responsibility as that.

George Orwell was remarkably prescient about the relationship between government and morality. In the novel, he makes the comment that if Marxism or Leninism came into power there would be "free abortion clinics on all the corners." At the time he wrote this, there were no abortion clinics in sight.

Like the telescope and the microscope, 3-D ultrasound is an extension of the eye. But, more important, it can also be an extension of the heart.

The telescope opens the mind to previously unseen vistas of the universe. It offers new yet challenging knowledge. There were colleagues of Galileo who, being unwilling to amend their tenaciously held geocentric views of the universe, were reluctant to look through the telescope. In a letter to his friend, Johannes Kepler, Galileo expresses his wish that they could have "one hearty laugh together! Here at Padua is the principal professor of philosophy whom I have repeatedly and urgently requested to look at the moon and planets through my glass which he pertinaciously refuses to do."

The microscope brings what was previously invisible into visibility. It is also a gateway to new and challenging knowledge. Louis Pasteur encountered problems similar to those of Galileo. How could anything as small as microorganisms, thought some of his colleagues, have the power to strike down mature living creatures? Thus, he had to deal with the skepticism of the medical community. Only begrudgingly, during the Franco-Prussian War, did doctors begin the practice of sterilizing instruments before surgery.

In an article in the *New England Journal of Medicine* entitled "Maternal Bonding in Early Fetal Ultrasound Examinations" (Feb. 17, 1983), the authors

found evidence that showing a woman an ultrasound image of her child in the womb facilitates bonding. The doctors, however, expressed reservations about this practice since they feared that it would influence her against abortion. They worried that an ultrasound image might unfairly “violate” a context of neutrality. Yet, it should be said, knowledge does not violate one’s neutrality, but illuminates one’s alternatives. Knowledge is imperative if one wants to do the right thing. Neutrality about decision-making is a deprived condition. Medicine is not obliged to keep patients in a deprived state.

Seldom in the history of science has a scientist made a major breakthrough without attracting the envy, resistance, and calumny of both his or her colleagues and the general public. The revolutionary mathematician Max Planck remarked that “An important scientific innovation rarely makes its way by gradually winning over and converting its opponents. What does happen is that its opponents gradually die out, and that the growing generation is familiarized with the ideas from the beginning.”

Toronto psychiatrist Thomas Verny put together a manuscript about the nature and activities of the unborn child which was, in his words, “the product of six years of intensive study, thought, research and travel.” Yet, at least six Canadian publishers rejected it. “People in this country want nice safe ideas,” said Verny. “They aren’t willing to take any risks.” *The Secret Life of the Unborn Child* was published in 1981 by New York’s Simon & Schuster for a record \$150,000 advance against royalties.

“Gnosiophobia” is the fear of knowledge. New knowledge can challenge previously held prejudices, disturb complacency, come in conflict with comfortable ideologies, and tax mental capacities. Paul Boghossian is a professor of philosophy at New York University. His book *Fear of Knowledge* (2006) takes aim at pseudo-philosophies such as relativism and deconstructionism that deny we can have any real knowledge of the outside world. Had Galileo and Pasteur been stricken by such a fear, their contributions to science and humanity would have been nil. As it turns out, Galileo helped lay the foundation for modern experimental science and furnished a basis for the three laws of motion established by Sir Isaac Newton. His ultimate contribution to humanity is incalculable. Pasteur provided the basis for microbiology, immunology, and stereochemistry. His pioneer work with vaccinations saved the lives of untold millions. The knowledge gained through the telescope and microscope has revolutionized knowledge about ourselves and the universe in which we live. One can hope that 3-D ultrasonography can reap comparable benefits for mankind not only for protection of the unborn, but for the integrity of medicine and the solidarity of the family. Yet, one must first be willing to look.

The Perils of Surrogacy

Rachel Lu

The goal posts keep moving in the legal limbo surrounding artificial human reproduction. We've finally reached the point where the American public is starting to take notice, as evidenced by a recent *New York Times* story on foreign couples who come to the United States to hire surrogates to carry their children. With surrogacy illegal in most Western countries, the United States has become the most attractive destination for wealthy foreign couples looking to obtain a baby through third-party reproduction.

With legislation varying significantly from state to state, so-called "intended parents" must engage in some research to find the kind of legal support that would enable them to commission a baby, confident that the state will give them a significant measure of control over the process. Some states (notably Michigan) still ban surrogacy, while others permit it under "altruistic" conditions, meaning that the birth mother can be compensated only for pregnancy-related expenses. Other states, such as California, have embraced surrogacy as a commercial transaction, allowing a woman to gestate for money while assuring intended parents that the law will back their contractual claim should their surrogate have second thoughts about surrendering the infant postpartum.

Accordingly, the debate about surrogacy takes place on multiple fronts at the same time. Last June, Governor Bobby Jindal was subject to withering criticism when he vetoed a bill that had easily passed the Louisiana state legislature. Although it did not permit commercial transaction, if enacted the law would have provided a legal structure for altruistic surrogacy. This was the second time in two years that Jindal vetoed such a bill. There can be little doubt that surrogacy supporters will try again.

This is only the latest development in what is certain to be an ongoing struggle. Although it is not precisely new, third-party reproduction represents a significant threat to the dignity of women and especially children. Owing to a variety of technological and social changes, the pressures to bring third-party reproduction into the mainstream, along with legal support and perhaps even financial subsidy, are certain to increase.

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New Pressures in Third-party Reproduction

For those not familiar with the term, “third-party reproduction” can describe any situation in which a person deliberately contributes an essential ingredient (either genetic or gestational) to the life of a child, without intending to act as a parent in the child’s upbringing. Third-party reproduction could involve sperm donation, ova donation, embryo donation, or the enlisting of a surrogate to carry a child she does not intend to raise.

Humans have always realized, of course, that it is possible to help beget a child without contributing to the parenting effort. One could argue that there are Biblical examples of third-party reproduction, as, for example, in the Book of Genesis when Leah and Rachel (the wives of Jacob) offer their handmaidens to their husbands in their stead, with the understanding that the wives would have some parental-type relationship to the resulting children. (At the same time, it should be noted that the natural mothers of these children are also part of the family, and are remembered in the genealogical records. Their maternity cannot simply be overridden by their mistresses’ whim.) From ancient times, there has always been a good measure of sympathy for those who desperately desire children and are unable to have them. This generous impulse moves many people today to support third-party reproduction as a means of helping the infertile fulfill their parental dreams.

Generous motivations do not guarantee happy endings, however. Significant social changes almost always have complex ramifications, and so it will be with third-party reproduction. So far it has been a relatively fringe phenomenon. But we are now moving rapidly towards a new threshold, beyond which third-party reproduction could fundamentally transform the way we think about parenthood and family. This transition could pose a far graver threat to human dignity than any of the fertility practices we have seen to date.

It’s only relatively recently that the relevant technologies have become available and (moderately) affordable for ordinary couples. Although artificial insemination is comparatively uncomplicated, in-vitro fertilization (IVF) has opened up whole new vistas when it comes to third-party reproduction. It is now possible, for example, for any couple to employ a woman to carry a child to whom she is not biologically related. It is likewise possible for a woman whose eggs are not viable to combine her husband’s sperm with another woman’s ovum, and then gestate the child herself. With IVF, any viable sperm, ovum, and hospitable womb can be used to produce a child—without the necessity of sexual intercourse. At this point the rate of success is still well shy of 100%. Even so, this is a game-changer in the world of third-party reproduction.

The game is changing on social fronts as well. These days, more and more married couples are struggling with infertility. There are a number of reasons for this. One is a rise in fertility-related diseases like endometriosis. Another is a move towards late marriage, as young people increasingly wait until their late twenties or thirties before tying the knot. Older couples tend to be less fertile, and by the time these late-marrieds start trying to have children, some are unable to conceive. This has created a sizable market for assisted reproduction.

More significant still is the rise of same-sex marriage. Now that same-sex pairing is widely accepted and even celebrated as an acceptable basis for family formation, homosexual couples increasingly express an interest in raising children. But changing social norms cannot alter the fact that people of the same sex lack the necessary ingredients to make a child together. Some homosexual couples opt for adoption, but our adoption system is messy and filled with pitfalls; moreover, this alternative is at least in principle limited by the number of available adoptive children. Third-party reproduction supplies the reproductive components the couple naturally lacks, thus opening an avenue for family formation that is more firmly under the would-be parents' control. Advocates for the LGBT community (lesbian, gay, bisexual, transgender) thus praise third-party reproduction as an ideal way of enabling same-sex partners to "become a family."

As the demand for children is more firmly established, the market predictably adapts. It is now possible to search for human sperm, human eggs, a surrogate, or an assisted-reproduction lawyer all from the comfort of your home laptop. At present, gestational surrogacy is still prohibitively expensive for many people, costing at least \$60,000 and sometimes much more. Uncertainties in the legal climate also deter many from pursuing this option. Medical costs create additional controversy, since insurance companies are predictably unhappy when they are asked to underwrite the medical expenses for women who gestate for money.

In short, third-party reproduction is still subject to a host of sticky financial and legal issues. These, however, are the sorts of disputes that can be ironed out over time. Should that happen, the Western world is poised to enter a new era in which parenthood is almost entirely unshackled from the realities of human fertility. It may soon be common practice for children to be made to order for any person or combination of persons, according to their specifications and on their preferred timetable. Most unsettling of all is the fact that the United States is in the vanguard of this new development, poised to cross yet another threshold in the area of family formation. The moral ramifications could be enormous.

Looking Back: The Last Moral Threshold

Less than a century ago, Western society stood on the brink of another technological and cultural threshold, one that, when crossed, would shift our paradigms concerning sex and fertility, effectively uncoupling them in the minds of most people. As in the present juncture we face, frowning moralists warned that ethical perils lay ahead, while apologists gently drew the public's attention to the sympathetic cases. The apologists won, but the frowning moralists look quite prescient in retrospect.

Contraceptives and abortion were not advertised as harbingers of sweeping, categorical social change. They were proposed as remedies for relatively select cases and circumstances, and that's what most people expected them to be. Very few were hoping or expecting to see that sex would be detached from all associated mores or attendant obligations. Contraceptives, and especially abortion, were meant to be used in moderation, and only when circumstances truly justified something that almost everyone a century ago would have understood to be morally consequential.

In the abstract, the case for safe and reliable birth control is very sympathetic. Most everyone appreciates that couples can have good reasons for avoiding pregnancy. At the extremes we find women with serious medical concerns, for whom a pregnancy is genuinely life-threatening. Then there are people who stand a strong likelihood of passing on terrible genetic diseases to their potential offspring. Even when all is healthy and normal, it doesn't seem right that people who marry young should simply be expected to have fifteen children, if that's what nature sends. It's entirely reasonable that people should wish to exercise some level of control over the childbearing process.

And they do. There is of course one tried-and-true method that has always enabled couples to avoid (or delay) pregnancy. We know where babies come from, after all. But asking married couples to avoid intercourse indefinitely (in cases where pregnancy would have truly dire consequences) seems cruel. Even in "the normal case" (that is, parents who are simply trying to space births at manageable intervals), healthy marital intimacy is something to encourage. Promoters of artificial birth control promised that these medical advances could improve marriage and make family life more satisfying. All of their intentions seemed admirable.

It's hard to say at this point whether mid-century American culture could have been robust enough in principle to minimize irresponsible contraceptive use over the long term. It didn't get much of a chance. With the issue of *Roe v. Wade*, in 1973, abortion was swept forcefully into mainstream American culture, and the entire picture changed.

As with contraception, abortion for the most part was advertised as a remedy for the exceptional case. Rape and incest have always featured heavily in the conversation about the ethics of abortion, as have horror stories about the young victims of “back alley” butchers. The reality has been far less sympathetic. In the divorce of sex from childbearing, abortion was the final clause. By decisively ending the “risk” of an unwanted child, it revolutionized our whole outlook on sexuality.

Artificial contraceptives, after all, were never completely effective. Condoms can break and women still get pregnant on the pill; even if both methods were used, adulterers, for example, knew there was a possibility they could end up conceiving a baby. By guaranteeing that the unwanted child legally could be killed, abortion provided a fail-safe, ensuring that no woman need ever become a mother against her will. With its procreative potential brought to heel, sex could be enjoyed as an independent good, opening a Pandora’s Box of irresponsible behavior.

Can there be any doubt at this point that the severance of sex from childbearing has catalyzed the deeply disturbing over-sexualization of our society? It’s hard to keep pace with the new forms of sexual depravity that seem to spring out of the grass like locusts, from a booming pornography business to concubine-like relationships between older men and younger women to the mess of issues surrounding the sexually promiscuous campus social scene. Once people internalize the principle that sex need not lead to children, the road can lead to every kind of sexual disorder.

In retrospect, the damage is obvious, but our paradigm is now effectively changed. It’s very difficult to walk such a process back. Sex has become a de facto entitlement in the minds of many Westerners, and a life without it seems impoverished. Given the magnitude of the responsibilities that come with pregnancy and parenthood, it simply seems unfair to many people to suggest that the naturally fertile should be forced to choose between such onerous burdens and the loneliness of abstinence. So long as that mindset exists, abortion will always seem necessary as a last-resort fix for unintentionally fruitful sexual encounters. Artificial contraceptives can alter the probabilities, but without abortion, sex and childbearing would still be (at least tenuously) coupled for naturally fertile people, regardless of their intentions or attitudes.

This is a huge problem for those of us who care deeply about defending the unborn. In the years since *Roe*, the pro-life movement has made real and substantial gains, helping Americans to appreciate the preciousness of unborn life. It has been assisted by ultrasound technology and by better information concerning the remarkable development of the embryo from its earliest weeks. Substantial numbers of young Americans today do recognize the unborn child

as a human being worthy of protection. But if progress on this front has been slow and difficult, there is a readily understandable reason. People today simply aren't willing to re-assume full responsibility for the natural consequences of their sexual choices.

It's a bitter pill to swallow. Having successfully "uncoupled" sex from parenthood (at least in the popular imagination), Americans show little enthusiasm for putting them back together again. This is and will continue to be a major obstacle for the pro-life movement.

The Next Threshold: Parenthood for Sale

If third-party reproduction is accepted fully into the mainstream of American life, another natural social-biological link will be definitively broken. The similarities to contraception are striking.

As in the case with contraception, the relevant biological connection (in this case, between natural fertility and parenthood) was always understood to be normal but not exceptionless. People have normally been expected to beget and raise their own offspring. But there have always been extraneous circumstances that justify some other arrangement. To proponents of third-party reproduction, that crack in the door represents an opportunity. Westerners are already moderately comfortable with adoption, so perhaps they can be persuaded to see surrogacy as just a moderate extension of current social practice.

Almost everyone can appreciate that there are sympathetic reasons for supporting such an expansion. Just as people have always endeavored to avoid pregnancy at inopportune times, so they have endeavored to improve the odds when children were wanted. Boosting fertility has long been recognized as a legitimate medical goal, and everyone appreciates that people can have excellent reasons for seeking medical or technological assistance in their efforts to procreate. Clearly there are many good and loving couples in the world who are unable to conceive children or to sustain a pregnancy to term. All virtuous people are pleased to see the childless discover the joy of parenting.

That being the case, there are some responses to infertility (both medical and social) that virtually no one finds objectionable. Others are more controversial. But, as once happened in the contraceptive case, we are now reaching that threshold where medicine and technology are able to close completely the gap between parental desires and familial realities. Living as we are with the consequences of that first "great divorce," we should consider carefully how our social reality might be affected if we were to undergo yet another massive paradigm shift.

Third-party reproduction can compensate for anything a would-be parent might lack, whether genetic material or means of gestation. On a technological level, the critical juncture has already arrived. There is now no physiological obstacle that can absolutely prevent a fertility-industry customer (whether an individual, a couple, or a group of people) from obtaining a child. Law, custom, and a scarcity of resources have thus far prevented this technological achievement from radically transforming our cultural paradigms. All three of those things are subject to change, however.

What happens if we become accustomed to the idea that children can and should be available to anyone who wants them? On some level, this is a very sympathetic demand. The desire to love and nurture offspring is a deep part of the human experience. Parenthood is also a primary means by which we pass on our culture, beliefs, and traditions. It is our best chance at ensuring that they will survive beyond our death. Some people feel, not unreasonably, that lacking the opportunity to rear children represents a significant hardship, which may materially diminish their potential to live a fulfilled life. If medicine and technology can remedy that hardship, is it not cruel to stand in their way?

The case might seem especially compelling considering that the desire for children is, on some level, generous and socially valuable. Far more than the desire for sexual pleasure, the yearning to nurture seems admirable and good. Entering sympathetically into the frustrations of infertile would-be parents, it is easy to agree that children should be found for those who want them. We might even come to see this as a demand of justice; after all, the naturally fertile have not done anything per se to enable their procreative potential. Some people exercise it in wildly irresponsible ways, under brutally non-optimal conditions, and we still typically allow them to keep their offspring. Who are we to insist that children be allotted according to the tyrannical and sometimes brutally harsh whims of nature?

As with sexuality, however, we should recognize the hazards inherent in snipping these biological ties. We might start by considering the fact that biology does do some real work in “suggesting” promising familial structures. To be sure, it provides no sure-fire safeguard against bad parenting. But at least it favors the young and healthy, thus increasing the likelihood that parents will have life and energy enough to see their offspring to adulthood. It also demands a heterosexual pair of parents, thus “pointing the way” to a family structure that sociological research has shown to be optimal for children’s development and long-term thriving.

Perhaps even more important than this, biology leaves us with regular reminders that childbearing *isn't* entirely under our control. We can’t simply

order up children like packaged goods; our family goals are to a significant extent dependent on contingencies that are beyond our control. The ramifications of that reality can at times be painful. But they can also be salutary insofar as the intrinsic uncertainty deters us from regarding children instrumentally, as mere components of our own personal plans.

Jennifer Lahl has done excellent work in documenting the effects of third-party reproduction on families, on non-parenting participants, and on children. One theme that recurs over and over in her work is the extent to which the entire process focuses on the wishes and demands of intended parents. That is unsurprising given that their dollars are the ones driving the industry. Alana Newman's recent Public Discourse essay, "The Mother-Free Money Tree," gives a window into the world of assisted reproduction, leaving no doubt that the fertility industry is as profit-oriented as any other business. Directors of fertility clinics will discuss at length the best strategies for advertising gestational surrogacy to gay couples. They don't waste much time on the question of whether or not it's ethical to produce children who, from their conception, are never meant to have a mother.

And the market is already substantial. According to the *New York Times*, approximately 2,000 babies will be born in the United States this year through gestational surrogacy, proving that even now, the financial motive is significant. Many foreign couples come to the United States because they want the legal protections that at least some states provide. (For a would-be parent, "legal protection" mostly means that the state will if necessary enforce gestational contracts over and against the wishes of the woman who actually carries and gives birth to the child.) Others, particularly from China, come because they want their children to be born on U.S. soil and to have the benefit of American citizenship, which might then prove useful for the rest of the family.

Clinic directors say that they do turn some clients away; for example, the *Times* piece mentioned the case of a foreign client who hoped to procure six babies in the United States, with the intention of keeping his favorite two and selling the remaining four in his home country. That client was turned away at least once, though it's entirely possible that his demands were met through another clinic. Just in general, a commercialized surrogacy industry is likely to behave like any other market. Money will talk, and people who have it will generally get what they want, regardless of whether this is good for the children they procure.

Modern social trends have been driven largely by the needs and desires of adults, and especially of professionally successful, resource-rich adults. There's no reason to think that third-party reproduction would be different.

But this realization should make us all deeply uneasy about what may happen to children when we become accustomed to regarding them as commodities for purchase.

When Children Become Products

On a philosophical level, the practice of purchasing children is sure to affect the way in which we view them. The *Times* story recorded the case of a Portuguese gay couple who procured a son through surrogacy at great expense, but announced their intention to burn all the bills so that he would never have to think about his “cost.” It was an interesting detail, because it shows that these two men, despite their willing participation in the surrogacy process, do realize on some level that children can be dehumanized when their very existence is the direct result of a legal and financial transaction. There is something touching in their efforts to hide the money trail from the child. Still, their intuition points us towards a disturbing feature of the fertility industry.

One of the most mysterious elements of procreation is the way that, through childbearing, I actually bring into being another person who is my ontological equal. Ordinarily, things I “make” are naturally subordinate or metaphysically inferior to me, the maker. But no matter how many children I bear, every one is another human being whose life is just as precious as mine. To some extent, grappling with that challenging reality is just one of the burdens and blessings of parenthood.

This isn’t the sort of puzzle that demands a cut-and-dried “solution.” But we can make more sense of it when childbearing occurs in a context, and is regarded as a normal stage of life. If our entrance into parenthood is by its nature “beyond us,” and part of a narrative that was not of our making, it becomes more possible to relate to our children as persons rather than projects. We are aware, of course, that we exercised some agency in helping to bring them into being. But the process was to a significant extent beyond our control, and so too are their lives.

When parenthood becomes an option on a pull-down menu, that context is lost, and the problem presents itself again in a more disturbing way. Will parents be able to establish that same ontologically-equal relationship to children whom they quite literally have ordered to specifications from a catalog or off of a website? A whole host of parental pathologies are waiting in the wings (along with corresponding child pathologies).

On the one hand, the purchased child might easily be over-parented to a damaging degree. A host of books and articles have already suggested that American parenting is frenzied and obsessive to everybody’s detriment;

buying children at the cost of a luxury car might well exacerbate this trend. On the other hand, purchased children might be subjected to other kinds of unreasonable expectations. Intended parents can even now choose the biological origins of their offspring, demanding DNA from athletes or Rhodes scholars or supermodels, depending on their preferences. Women who sell their ova can command higher salaries if they can present a resume with specially attractive features like great beauty or high intelligence. Even naturally conceived children sometimes complain that they feel burdened by over-specific parental expectations. How much might that feeling be exacerbated if they know that their parents paid an upcharge for the sperm of a Nobel Prize winner or the ovum of a champion tennis player?

Another interesting case might be seen in childless middle-aged couples, who could very rationally decide to start shopping for babies in their mid-fifties, just in time to raise children who will reach adulthood when their parents need elder care. Parents presumably could not use legal means to force the child to follow through on this expectation, but how will it affect the child's self-understanding if he knows that he was brought into being explicitly for this purpose? Will this make him less able to live a meaningful, independent life?

More examples could easily be imagined, but the general point should be clear. Our sexual relationships have already been negatively affected by a paradigm shift that detached sexuality from its natural moral implications. Now, our parent-child relationships are threatened by a similar paradigm shift. Once we sanction the buying of children, it will not be possible to control to any significant extent the methods and motives of their purchasers. Inevitably, children will be put at grave risk. But as in the contraceptive case, our entire outlook may well shift as these practices come to be seen as normal and acceptable. At that point, we may find it exceedingly difficult to persuade the public to backtrack. Nobody wants to be the person to stand at the door of the clinic, telling a childless couple that, "I'm sorry, but you can't have a family."

The Road Ahead

Prognosticating is a risky business. One hates to delve too far into dystopian futuristic fantasies, for fear of sounding ridiculous. Still, it must be said that there was a time in our not-so-distant past when it would have seemed preposterous that we need to debate whether or not religious people should be forced to violate their own beliefs in order to supply women with free contraceptives. Same-sex marriage morphed in just a few short years from a ludicrous notion into a widely accepted social custom. It's hard to know

what our descendants might or might not find reasonable.

Thus, I will note briefly that the longer-term implications of an “entitlement” to parenthood could be quite frightening. If people are entitled to children regardless of their fertility situation, those children must come from somewhere. Various forms of pressure might thus be used to persuade women to act as surrogates.

As already noted, the United States has become, quite literally, the breeding ground for many of the world’s technologically produced children. In other countries, that industry has been regularized in more obviously exploitative ways. Celebrities like Oprah Winfrey speak in glowing terms of India’s Akanka Clinic, where impoverished women are housed like livestock for seven months while they gestate a baby to be sold to a wealthy foreign couple. They are expected to bring an older child to the clinic with them to serve as an emotional distraction, so that they will not grieve too much over the lost baby. Akanka is effectively a “baby farm,” and the callous disregard it shows for natural maternal feelings is chilling. Americans still feel more comfortable allowing that level of regularization to happen on the other side of the planet, but that might be a temporary expedient.

As the public becomes more comfortable with surrogacy, it’s fairly inevitable that it will also become desensitized to the inherent tragedy of taking a newborn out of the arms of his natural-born mother, and handing him off to someone else. What other possibilities might present themselves as morally acceptable under these conditions?

We can hope and fervently pray that law and custom ultimately halt these practices or at least minimize their impact. Given our recent history, however, we should not be complacent. Third-party reproduction represents a radical re-drawing of the map when it comes to parenthood and family. Changes of this magnitude have consequences.

The Rights of the Child

How might we avert these dystopian possibilities? What could we do to minimize the exploitation of women and children? Perhaps the most promising possibility would be to re-focus the public’s attention on the children, and to engage in a discussion of what they need and deserve.

Of course there will always be children who are raised under sub-optimal circumstances. We can’t control for every tragedy and every irresponsible parental choice. Nevertheless, we can insist that our laws and customs with respect to family-formation should be ordered primarily towards the good of children and not the desires of adults. Considered through that lens, the deficiencies of third-party reproduction become obvious.

Naturally conceived children may suffer all manner of hardships, but at least, under the laws and customs that have traditionally ordered civil society, they are presumptively attached to their natural parents from the time of their birth. They have a mother. They have a father. They have a family heritage. And because their place in the world is established by biology and not by parental intent, their existence can be viewed as a kind of *sui generis* good. Ironically, by (presumptively) attaching children to their biological parents, we give them a measure of freedom from their parents' wishes and demands.

We should work to persuade the public that, regardless of the circumstances of his conception, every child deserves to be viewed as an independently valuable human being. Subordinating children from their very conception to the motives of their would-be parents (even if those motives are basically benevolent) is a violation of their dignity and of their moral freedom. It instrumentalizes them in a morally unacceptable way.

Every child has a right to be a fully respected member of a secure, loving family. The fact that some (war orphans, for example) are denied this through tragic circumstance does not justify the intentional creation of children who are destined to be separated from their natural kin. No amount of money should persuade us to be comfortable with children who are motherless by design.

Here in the United States, third-party reproduction is likely to be a live topic for many years to come. Those of us who have committed ourselves to the defense of life have a responsibility to make the public aware of the disturbing philosophical implications of practices that may initially seem unproblematic. On a legislative level, we can resist the regularization of third-party reproduction, and applaud politicians like Governor Jindal who are willing to take a stand against it. Ultimately, though, no legal victories or losses will be as significant as the cultural paradigms that will either accept or condone the divorce of parenthood from biology. We're already paying a heavy price for our failure to prevent the last dramatic paradigm shift. Let's try to do better the next time around.

“Abortion” No More:

Straight Talk about Attacking the Unborn

Thomas D. Sullivan

1

Let’s drop “abortion.” The word gets in the way, almost guaranteeing misunderstanding. It needs to be replaced, whenever possible, with more concrete language. It’s true that “abortion” is the word everyone uses to talk about a cluster of life issues. To engage the literature on the destruction of unborn life and come to terms with others in conversation, “abortion” must be used—up to a point. But as soon as that point is reached, “abortion” should yield to a more precise description of the actions under discussion. Such descriptions blow away a fog of ambiguity. It then becomes far easier to reach agreement on matters, achieve better understanding of people and of our own minds, and move forward on the issues that still separate us.

We’ve been using “abortion” throughout this decades-long controversy, and everybody seems to think we know what we are referring to. It may seem, then, that even if our meaning can be made more precise by a little semantic work, a verbal shuffle cannot make much of a difference, divided as the two sides are about how to respond to the realities of unwanted pregnancies.

Granted, words can’t change everything, but they can change how we perceive a situation. And changes in perception often lead to a new mind and heart.

What verbal substitutions for “abortion” might work? I can think of many. The key is to use language that makes plain whether or not the procedure is undertaken *to secure death*. That is the language Judith Jarvis Thomson introduces in her classic essay “A Defense of Abortion.”¹ It’s good language. A number of other phrases also work well: “attack the unborn,” “seek to annihilate,” “make death the end or means.” What counts most is that we make it clear that this is a case where the living cease to be not because of an accident, not as “collateral damage,” but because death has been built into the plan as the thing or one of the things to be accomplished.² And if death of the living is not what is intended but only foreseen, then a disclaimer should be added to the description of any procedure. The disclaimer should make

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clear that while destruction of the living being is the likely outcome, the procedure is not designed with a view to producing that result. By substituting more precise language, rather than speaking vaporously about “abortion,” we know what we are talking about.

The pressing need for a change in our linguistic habits becomes plain, as does much else, by rethinking Thomson’s “Defense.” Replete with inventive reasoning, “A Defense” fully merits decades of appearances in the best anthologies on ethics and social theory. It must rank as the most influential philosophical essay ever composed in English on the great problem of our time. Since it furnishes all the materials we need to reconsider a number of issues squeezed together under the heading “Abortion,” we need not go much beyond “A Defense.” Nor do we need to trudge through a page-by-page analysis. What we do need to do is notice something that is often overlooked. For all of its ingenuity, there is something very odd about “A Defense”: *Its principal conclusion in no way conflicts with the traditional pro-life position, as paradigmatically represented by the Roman Catholic Church.*³ One would think a defense of abortion would rebut the Church’s position. After all, the Roman Catholic Church hasn’t exactly been sitting on the sidelines for the last 40 or 50 years. The Church is usually understood to offer the principal institutional opposition to abortion. Of course, many ardent proliferers are not Catholic. And other religious and non-religious organizations raise their voices in protest over what they deem to be the moral and legal crisis of our day. Secular writers can be found among them. These voices all matter enormously. Still, if the principal conclusion of “A Defense of Abortion” is consistent with what the Roman Catholic Church teaches on that point, “A Defense” would not appear to be much of a defense. And its main conclusion is indeed consistent with the Church’s teaching.

My aim here is not to make a pedant’s point, as philosophers sometimes do. “It is often thought that Aristotle rejects Plato’s theory of Forms, but actually” No, the consistency of the main conclusion of Thomson’s famous “Defense” with the teaching of pro-life absolutists such as Rome is not just an interesting footnote in the history of the abortion controversy. It is important because this consistency flags the possibility that seeming opponents are largely talking past each other about life and death.

Let’s investigate if I am right about this, and if so, what to make of it.

2

Thomson launches her “Defense” with a concession to a certain sort of abortion opponent, someone who believes that early embryos are human in the same sense of the term as you and I are. She thinks this is obvious nonsense,

but also believes it is important to assume that embryos are fully human and see where the argument goes. After all, the conceived are human *at some stage* of their development. So the question naturally arises, are there good reasons for thinking that aborting unborn babies in some cases would be unjust. Then Thomson introduces her famous analogy. Imagine that The Society of Music Lovers kidnaps you and plugs a dying violinist's circulatory system into yours. Nobody or nothing else will do. Detaching him will predictably result in his death. Surely it would be morally permissible to cut the bond. Wouldn't it?

Presumably so, but what has that to do with abortion? This. If we assume that at some time during gestation human fetuses are fully human, then removing a human fetus from her mother's body would be relevantly similar to detaching a dependent violinist. Both are fully human. Both will predictably die because of a chosen action. If detaching the violinist is permissible (and it is), then in some cases so is detaching the baby. Detaching a baby is justifiable for exactly the same reason as detaching the violinist: In both cases attachment overburdens the woman supporting dependent life. Hence, abortion in some cases may be justified.

Prolifers typically launch vigorous attacks on the violinist analogy. And rightly so. For starters, the musician is an invader, the child an invited guest brought into her mother's uterus by a natural reproductive process. Thomson responds that some pregnancies are the result of rape, and thus there is no "invited guest." Critics counter in various ways. On and on goes the parade of arguments, counters, analogies, and dis-analogies. But while all this dialectic about the vulnerable violinist and his manipulated host is highly useful, it tends to distract attention from the aforementioned oddity, the widely unnoticed reality that Thomson's main conclusion accords with the traditional position. Indeed, the Catholic Church has itself taught the main proposition, and long before Thomson had dreams about an invasive violinist. Of course no pope ever proclaimed in St. Peter's Square after the noon Angelus that Judith Jarvis Thomson nailed it and deserves to receive the papal Cross of Honor. So far as I know, Rome has never even publicly mentioned Thomson. But what the Church does do through its commissions, theologians, faithful Catholic philosophers, and the like is make assertions tantamount to what Thomson principally argues. One way and another they allow that certain sorts of abortion, in one common sense of the term, are morally permissible.⁴ Indeed the Church has itself taught this for a very long time.

To understand how this can be, we need to recall the highly influential teaching on self-defense articulated by Thomas Aquinas way back in the 13th century. The Church found in his arguments and later developments of them by

others good reason to accept lethal actions that unintentionally lead to the death of a human being. Meditating on the implications of the distinction between intending and foreseeing in such cases, the Church has, over time, framed principles that apply to medical ethics and more specifically to problem pregnancies. For example, the Church has had to think through cases involving uterine cancer, babies having trouble exiting the birth canal, and extrauterine pregnancies. Here is a helpful statement by the U.S. Catholic Bishops on the last topic.

In the case of extrauterine pregnancy, no intervention is morally licit which constitutes a direct abortion.

Operations, treatments and medications that have as their direct purpose the cure of a proportionately serious pathological condition of a pregnant woman are permitted when they cannot be safely postponed until the unborn child is viable, even if they will result in the death of the unborn child.⁵

This is just a statement, not an argument. The meaning of “direct abortion” is “death chosen as end or means.” By implication it distinguishes between intending and foreseeing, and it assumes that this distinction between intending and foreseeing is morally significant. All of this has from time to time been denied, the last notably by James Rachels.⁶ Be that as it may, here is a clear admission by the Church that some sorts of abortion—indirect—are morally permissible. Other such statements abound.

Thomson, the Roman Catholic Church, and many proliferers thus agree⁷ on the general proposition that functions as Thomson’s main conclusion: Sometimes it is permissible to perform a procedure on a mother with the expectation that as a result a baby will die. Thomson and the Church still have big differences about the circumstances under which the deadly procedures are allowable, and they also differ in the justifying arguments, but they concur on the general proposition.

So in “A Defense,” we find Thomson vigorously asserting that her opposition must hold a proposition it has long held. Why, then, should it be widely believed that Thomson’s argument refutes irreversible Church teachings on abortion or, for that matter, the position of so many proliferers? One reason for all the confusion is that the title (“A Defense of Abortion”), as well as most of what she says in the first part of her paper, turn on a definition of “abortion” that abstracts from the intention to kill. Thomson has every right to use the term in this way. Excellent dictionaries, such as a recent *American Heritage Dictionary*, assert that “abort” means “induce termination of a pregnancy and expulsion of an embryo or fetus before it is viable.” In this *broad* sense of the term, the action labeled “abortion” might well be justified, as the Church itself asserts. If no distinction is drawn between the different senses of “abort,” it is then assumed that there may be nothing

wrong with aborting a human in cases in which death is the aim.

You may protest, “The Church nowhere speaks of abortion as licit.” That’s correct. The Church may not want to talk in terms of permissible abortions because doing so would bewilder worshippers, and the cultural debate often turns on whether abortion is ever permissible. Instead the Church chooses not to use this incendiary word even in its general sense, unless it must. The Church is no doubt wise to seek ways to avoid perplexing those who listen to it, both the folks in the pews and the most linguistically fastidious philosophers, theologians, politicians, and jurists. But the reality is that if “abortion” is taken in one very legitimate sense, some abortions are approved.

3

So far I have been urging that if “abort” is used in the wide sense, the *American Heritage* sense of the term, then Thomson and the Church agree: Some abortions in that wide sense are not unjust. Each envisions a line of action that does not necessarily involve an intention to kill the person who will foreseeably die.

But that’s not the only sense of “abort” offered by excellent dictionaries. For example, *The New Shorter Oxford English Dictionary* tells us that an “abortion is an induced termination of pregnancy *to destroy a foetus*.” [Emphasis mine.] The definition packs in the intention to destroy.

With the two definitions in mind—the first (*Heritage*) abstracting from deadly intent, the second (*Oxford*) including it—we are now in a position to substitute for “abortion” more specific language. Instead of asking questions such as Thomson’s⁸

(*) “Is abortion always unjust?”

we can reformulate it to read:

(1) Is it always unjust to secure the death of an unborn human being (= act with an intention of bringing its death, seek to destroy, and the like)?

(2) Is it always unjust to use a procedure that predictably leads to the death of an unborn human being (= act without an intention of bringing about death, without seeking to destroy, or the like)?

As we have seen, both Thomson and Rome both answer “No” to Question 2. What about Question 1?

The Church has always and insistently declared that innocents may never be attacked. The Church’s answer to Question 1 is therefore “Yes.” To

secure—with the intent to kill—the death of an unborn human being is a monstrous crime.

And Thomson? After defending throughout the essay the permissibility of abortion in the broad sense, she finally and very briefly takes up Question 1 toward the end of her essay. What she says is striking.

While I am arguing for the permissibility of abortion in some cases, I am not arguing for the right to secure the death of the unborn child. It is easy to confuse these two things in that up to a certain point the fetus is not able to survive outside the mother's body; hence removing it from her body guarantees its death.

Thomson is surely right that it is easy to confuse the two things, both for the reason she gives (they both result in death) and, we might add, because both are called “abortion.” Furthermore, as noted earlier, conflating intending and foreseeing, or denying the moral relevance of the distinction, will result in confusion. But Thomson will have none of this. She sees the differences in the deeds, and she sees that the intend/foresee distinction can make a big difference.

Nonetheless, having drawn the relevant distinctions and having fixed on Question 1, Thomson makes a disturbing statement.

There are some people who will feel dissatisfied by this feature of my argument. A woman may be utterly devastated by the thought of a child, a bit of herself, put out for adoption and never seen or heard of again. She may therefore want not merely that the child be detached from her, but more, that it die. Some opponents of abortion are inclined to regard this as beneath contempt—thereby showing insensitivity to what is surely a powerful source of despair. All the same, I agree that the desire for the child's death is not one which anybody may gratify, should it turn out to be possible to detach the child alive.

Thomson seems to be saying that it may be morally permissible in some cases to gratify the desire for a child's death. She does not exactly assert that proposition, and the proposition is not strictly deducible from what she does assert, but the proposition is conversationally implied. Otherwise, why the qualifying “should it turn out”? Unless I think bank robbing is not always wrong, what's the point of saying, “Desire for the bank's wealth is not one which anybody may gratify by bank robbery, should it turn out there is some other way to get rich”?

In any event, not a scintilla of justification for satisfying the desire for the death of the fetus can be found in “A Defense of Abortion,” other than the reference to a powerful source of despair (of which human life is full.)⁹

So there we have it. Change the words and we change the picture. Disambiguate, and it immediately becomes clear that where there was thought to be a serious difference of opinion about the proposition “Sometimes

abortions (in the broad sense) are not unjust,” there is none. And where there is in fact a serious difference, “A Defense” does nothing to refute the traditional position that abortion (*in the narrower sense*) is always unjust.

4

I’ve heard it said that views like Thomson’s about gratifying deadly desires and more radical views of philosophical champions of infanticide are not widely shared by the general public. Perhaps not. Surveys report that late “abortion” receives little support. Still, if (as Thomson maintains) securing death is hard to distinguish from the expectation of death, and if (as I have here been urging) use of the word “abortion” obscures the realities, who knows what the general public believes?

And who knows, consequently, what a Supreme Court responsive to public opinion may someday soon decide? Perhaps it will come to pass one day that the Supreme Court will discover, in the penumbra of emanations of the Constitution, a New Truth: Neither endowments by a Creator nor insight into the immeasurable worth of human beings bar gratification of the desire for the death of innocents. And should that tragic day arrive, who knows what judicial sophistry will attach to the magnificent promises of equality and inalienable rights in our great Declaration?¹⁰

NOTES

1. Judith Jarvis Thomson, “A Defense of Abortion,” *Philosophy and Public Affairs* 32, no. 1 (1971): 47-61. Thomson’s essay is widely available over the Internet. I omit references to the page numbers of the original essay, since the texts are easy to locate only within these Internet reproductions. Since the abundant literature that favors dispatching the unborn offers nothing as useful as Thomson’s essay (as I see it) for bringing out the central points, I will focus exclusively on her essay. Thomson has written on abortion several times. My concern is not with the body of her work, but only with this extraordinarily well-received essay. This is perhaps the place to say that my claims here are narrow. I am not writing with a view to evaluating all that Thomson has written on the topic.
2. Three further notes on language: (1) “Life” here refers to the living entity that is produced by fertilization of an ovum. It does not necessarily refer to a human being. My topic here is not the issue of when *human beings* come into existence, which in my view is best deferred until the issues we are discussing are cleared up. (2) The word “killing” is also ambiguous between intentional and foreseen. It’s best avoided where ambiguity might affect the argument. (3) I am also not a fan of “direct” v. “indirect” killing, which clogs discussion with worries about causal sequence.
3. I am referring to Thomson’s ultimate conclusion, not several others she draws along her way.
4. In order to avoid misunderstanding, let me stress that the agreement extends on to certain instances of abortion in one common sense of the term. The Church is emphatic about the need to attend to necessary distinctions and attendant qualifications.
5. National Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services* (Washington, DC: NCCB, 1994), n. 28.
6. James Rachels, “Active and Passive Euthanasia,” an essay that originally appeared in *The New England Journal of Medicine* 292 (1975): 78-80, is republished in many anthologies, including *Introducing Ethics*, ed. Justin P. McBrayer and Peter J. Markie (Oxford: Oxford University

- Press, 2013), 563-567. My comments, originally appearing in *Human Life Review*, are reprinted in McBrayer and Markie, 569-573. The HLR article is available on its website.
7. The Church does not stand alone in this. See Christopher Kaczor, *The Ethics of Abortion* (New York: Routledge, 2011), 187. "Among those who affirm the fundamental equality of all human beings, there is widespread acceptance of the idea that some abortions are indirect and justified."
 8. Obviously many other relevant questions about "abortion" merit discussion. A large set concern early stages of pregnancy and, unlike Thomson's, do not presuppose that the issue is treatment of an unborn human being. But the place to start, I believe, is with Thomson-like questions, though this is not the place to argue the point. As for dropping "abortion" in these other contexts, one may ask, "Is it always wrong to attack unborn life?" "Life" can be taken broadly to include any conceived entity.
 9. Unless we count what Thomas says before getting into "securing death" in the last part of her essay. Earlier in "A Defense" she writes, "Some people seem to have thought that these are not further premises which must be added if the conclusion is to be reached, but that they follow from the very fact that an innocent person has a right to life. But this seems to me to be a mistake, and perhaps the simplest way to show this is to bring out that while we must certainly grant that innocent persons have a right to life, the theses in (1) through (4) are all false. [These numbers refer to premises Thomson believes are required by proliferers to make their case.] Take (2), for example. If directly killing an innocent person is murder, and thus is impermissible, then the mother's directly killing the innocent person inside her is murder, and thus is impermissible. But it cannot seriously be thought to be murder if the mother performs an abortion on herself to save her life. It cannot seriously be said that she must refrain, that she must sit passively by and wait for her death. Let us look again at the case of you and the violinist. There you are, in bed with the violinist, and the director of the hospital says to you, 'It's all most distressing, and I deeply sympathize, but you see this is putting an additional strain on your kidneys, and you'll be dead within the month. But you have to stay where you are all the same because unplugging you would be directly killing an innocent violinist, and that's murder, and that's impermissible.' If anything in the world is true, it is that you do not commit murder, you do not do what is impermissible, if you reach around to your back and unplug yourself from that violinist to save your life." But this bit of errant reasoning collapses the intend/foresee distinction she herself later makes. Self-defense does not require intending the death of the one threatening one's life or free movement. Thus, since this non sequitur (on her own principles) fails to support the contention that intentionally killing the innocent is not always wrong, it is better, I think, to say that nothing in "A Defense" provides a scintilla of evidence for the claim rather than assert that her only argument is a blatant non sequitur unmindful of points she elsewhere makes in the essay.
 10. Shortly after his election, Pope Francis cautioned Catholics not to talk exclusively about marriage, euthanasia, and abortion. As a happy papist I am thrilled by Francis's initiatives and eager to learn from his insights about helping the Church spread the news of its deepest and most wonderful teachings about God's mercy and concern for the poor. Yet, I am not only a Catholic. I am an American. I have my duties *qua* each. As I understand my duties as an American, I must at least occasionally speak up about social movements and laws that threaten the foundation of our country. About every 10 years or so I make a public statement on such matters. I hope this does not count as obsessing about these delicate topics.

What, though, of the dedicated souls at *Human Life Review*? They exhaust themselves in the effort to furnish the intellectual wherewithal to protect human life. Thank God. If only the Church could now proudly point to unequivocal Catholic support for a hundred brave journals like this in the Germany of the 30s and 40s. (Alas, can the Church point to even one?) Mindful of an embarrassing history of silence, I trust that the full body of Pope Francis's work should not be read as diminishing the uplifting teachings on public responsibility of his great predecessors in the Chair, from John XXIII on, whose divinely inspired teachings on vulnerable human beings Francis is sure to develop.

How Jeff Bezos Can Fix the *Washington Post*: **An Open Letter**

Mary Meehan

Mr. Jeffrey Bezos
Chairman, President, and CEO
Amazon.com Inc.

Dear Mr. Bezos:

As a longtime *Washington Post* reader, I have watched with great interest your purchase of the *Post* and your efforts to keep it going and make it better. By now you have received truckloads of advice about solving all the problems the *Post* faces. I'm sure much advice deals with making the paper's Internet version profitable. That is clearly a critical need, since the print edition has suffered drastic falls in subscriptions and advertising revenue in recent years.

You, of course, know far more about best use of the Internet than I ever will. Yet I do have experience in journalism. A freelancer, I have done reporting, political commentary, and long articles based on archival research. The *Post* published some of my op-eds and several articles for "Outlook," mainly in 1979-81. A native of Washington, D.C., I have lived in Washington or Maryland for most of my life. This means many decades of reading the *Post*—sometimes in awe, but often in frustration and discontent. I believe that improving its journalism would do much to increase digital subscriptions and advertising revenue. Such improvements can help move the *Post* toward financial stability—and possibly even profits. I will make several suggestions for general improvement in *Post* journalism. Then I'll focus on one of today's most divisive issues and how the *Post* can improve its coverage of it.

Don't Miss the Scoops

After you bought the *Post* last year, it was encouraging to read that you were seeking advice from Bob Woodward, the *Post*'s legendary reporter on Watergate and many stories since. Former Defense Secretary Robert Gates has said that Woodward's "ability to get people to talk about stuff they shouldn't be talking about is extraordinary and maybe unique."¹ His ability to obtain current, secret government documents is also extraordinary.

Good reporting, though, sometimes involves much digging into *old*

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documents in both public and private archives. On February 9 of this year, Alana Goodman of the *Washington Free Beacon*—a conservative, online outlet—scooped the *Post* and other major media by reporting on archival papers of the late Prof. Diane Blair. Prof. Blair, a close friend of Hillary Clinton, taught political science at the University of Arkansas. She also kept fascinating records of White House visits and phone conversations with Clinton when the latter was First Lady. The *Post*, playing catch-up the day after Goodman’s story, offered a brief piece on the “four most notable nuggets” in Prof. Blair’s papers. Yet that report failed to mention the most startling revelation—a comment on a major sexual-harassment case.² In 1992 the *Post* scooped other papers with an exposé about then-Sen. Robert Packwood (R-OR). The report described Packwood’s forcible kissing and groping of women on his Senate staff. There were other Packwood targets, too, including a job applicant, campaign workers, hotel/motel employees. The Senate ethics committee that investigated the matter eventually recommended Packwood’s expulsion from the Senate. He headed that off by resigning in 1995.³ Late in 1993, when Packwood was still fighting for political survival, Prof. Blair discussed him with Hillary Clinton. Blair recorded that her friend was “tired of all those whiney women, and she needs him [Packwood] on health care.”⁴ Whiney women? Voters who see Clinton as a great leader on women’s issues might want to ask her about this.

Mr. Bezos, it might be worth your while to ask *Post* editors whether the Clinton machine pressured the *Post* to downplay the *Washington Free Beacon* story or any others. Last year that formidable machine—with help from Republicans—blocked a planned documentary on Hillary Clinton. Director Charles Ferguson, an Academy Award winner, was working on the project with CNN Films. Ferguson soon ran into an anti-documentary campaign being waged by Clinton’s press secretary, another Clinton operative he called her “media fixer,” and others. Ironically, the Republican Party establishment, fearing the documentary would be pro-Clinton, also came out against it. Charles Ferguson soldiered on, but eventually wrote in the Huffington Post that “when I approached people for interviews, I discovered that nobody, and I mean nobody, was interested in helping me make this film. Not Democrats, not Republicans—and certainly nobody who works with the Clintons, wants access to the Clintons, or dreams of a position in a Hillary Clinton administration. Not even journalists who want access, which can easily be taken away.” Ferguson felt forced to cancel the documentary, and he called that “a victory for the Clintons, and for the money machines that both political parties have now become.”⁵

Although previous *Post* leaders were rightly celebrated for their courage

in printing the Pentagon Papers and for their Watergate coverage, those events occurred roughly 40 years ago. More typically, the *Post* has been too close to government officials, especially on foreign policy, and too close to Democrats generally. If the *Post* is to be a truly great newspaper, you will have to guard against these tendencies. They kill good journalism.

Avoid Knee-jerk Coverage

The *Post* and other media over-cover several areas: the “first” of anything, anniversaries of anything, political dynasties, and celebrities. This leads to super-saturated coverage of some stories, and it diverts resources from more important ones. When two or three favored categories are involved, the coverage can be overwhelming, as in the 50th anniversary of President John Kennedy’s assassination last November. This involved an anniversary, a political dynasty, and a mega-celebrity. By my count, the *Post* ran at least 98 stories related to JFK’s presidency and the assassination in October and November of 2013.

The editors should also take another look at the paper’s hyping of political dynasties. Like other media, the *Post* over-covers dynastic candidates: Kennedys, Bushes, and Clintons. This is deeply unfair to other candidates, who often begin with great financial handicaps and then run into superficial media coverage. The dynastic obsession also goes against the spirit of a republic. The United States, after all, fought a revolution to be free of a royal dynasty. Are dynasties of wealth that much better? Barbara Bush, wife of one president and mother of another, has offered words of wisdom on the dynastic front. Asked last year if “there’s room for another Bush in the White House,” she said that “if we can’t find more than two or three families to run for high office, that’s silly. Because there are great governors and great, eligible people to run. And I think that the Kennedys, Clintons, Bushes—There are just more families than that.”⁶

The *Post* and the media in general over-emphasize celebrities: television and film stars, sports stars, and professional party-goers. This kind of reporting used to be left mainly to the tabloids and gossip columnists. There is much to be said for giving the celebrities back to them, or at least reducing the amount of celebrity coverage. An alternative would be to focus mainly on celebs’ professional lives, which are often more interesting and deeper than their personal lives.

The *Post*, though, should emphasize mainly the key figures in government and politics. It occasionally does interesting articles on such people—for example, Lenny Bernstein’s profile of Secretary of the Interior Sally Jewell last December. Bernstein deftly wove her background and personality into

the difficult policy issues she confronts.⁷ We need more such profiles of major Washington players: other cabinet members, key members of Congress, Supreme Court justices, the Joint Chiefs of Staff, powerful lobbyists, interesting diplomats of the U.S. and other nations. Many good stories are there for the writing. If the *Post* wants to regain its position as the go-to place for national politics, this is one way to do it.

An Issue of Life or Death: The *Post* Can Do Much Better

Let's turn now to *Post* coverage of abortion, one of the most contentious issues our country faces. I do not pretend to be neutral on this subject: I have written against abortion for 35 years—with special emphasis on why liberals, antiwar advocates, and libertarians should oppose it.⁸

The *Post*, on the other hand, has supported abortion editorially for decades. That is its right; yet it still has an obligation to report the issue fairly and accurately. But *Post* reporters who try to do this are handicapped by a long-ago decision that they must use the negative label of “antiabortion” for one side of the controversy and use the positive word “rights”—a word revered throughout U.S. history—for the other side.⁹ Fairness requires that, if one side is called “abortion-rights,” the other should be called “right to life” or “life-rights.” Alternative possibilities are “anti-abortion” and “pro-abortion” or “abortion foes” and “abortion supporters.” I realize that groups such as Planned Parenthood and NARAL Pro-Choice America do not want to be called “pro-abortion.” Yet they fight virtually every proposed restriction on abortion, and they also demand public funding of the practice. (Does anyone object to calling the National Rifle Association “pro-gun”?)

There should be an effort to avoid euphemisms and public-relations terms for abortion practice. Some reporters, at the *Post* and elsewhere, go out of their way to say that a doctor or clinic “offers” or “provides” or “performs” abortions, almost as though they're speaking of a consumer item or a concert. Why not simply say they “do abortions”?

One *Post* writer identified a 2014 Pennsylvania gubernatorial candidate, U.S. Rep. Allyson Schwartz (D-PA), as “the former executive director of a women's health center in Philadelphia now run by Planned Parenthood.” The writer neglected to say that the center, which Schwartz co-founded and ran for years, did surgical abortions when she was in charge. (It doesn't do them now, but refers for them.)¹⁰ Why not just say this? Although initially a leading candidate for governor, Schwartz lost her primary election. As the next section shows, though, her prior occupation had special relevance to the governor's office.

Gosnell Trial: The *Post* Missed the Early Part and Underplayed a Key Problem

Under former Pennsylvania governor Thomas Ridge, and for most of Edward Rendell's two terms as governor, state agencies didn't bother to inspect abortion clinics. This enabled Dr. Kermit Gosnell to run a dirty and dangerous clinic in Philadelphia for many years. He and a colleague did illegal, late-term abortions; they also killed many babies who survived abortion by severing their spinal cords. Gosnell severely injured some women, too. One had to have a hysterectomy after he punctured her uterus; another, with the same injury, died of sepsis. Another woman died because a Gosnell aide gave her a sedative overdose. Despite lawsuits and complaints to state agencies, public authorities didn't intervene until 2010. At that time, a grand jury later said, police raided the Gosnell clinic "to seize evidence of his illegal prescription selling." There they saw evidence of his abortion horrors as well. He was indicted for murder and other crimes, tried from March to May, 2013, and convicted.¹¹

Like other major media, the *Post* failed to cover the early stages of Dr. Gosnell's trial. That changed when commentator Kirsten Powers wrote an opinion piece for *USA Today* on April 11, lambasting media outlets that weren't covering the trial. After describing terrible events in the Gosnell clinic, Powers declared: "The deafening silence of too much of the media, once a force for justice in America, is a disgrace."¹² *Post* media critic Erik Wemple got right on the case, peppering his own and other media outlets with questions and writing short, strong pieces on the under-coverage.¹³ *Post* executive editor Martin Baron promised to cover the trial and acknowledged that "we should have sent a reporter sooner."¹⁴ *Post* writers Jennifer Rubin and Melinda Henneberger rebuked the media in general for failing to cover the Gosnell trial.¹⁵ Sara Kliff, a *Post* reporter who often covers abortion, initially called the Gosnell case a "local crime" story in Philadelphia. But then she looked at the grand jury's report, said she had been "clearly wrong," and described "horrifying crimes committed" at the Gosnell clinic.¹⁶ In short, the *Post* got the message.

The *Post* and other media under-performed, though, on political protection of abortion clinics in Pennsylvania. While they reported that the Gosnell clinic had not been inspected for many years, most said little about *why* it hadn't. The grand jury, citing a key state Department of Health (DOH) staff member, said departmental lawyers "changed their legal opinions and advice to suit the policy preferences of different governors. Under Governor Robert Casey, she said, the department inspected abortion facilities annually. Yet, when Governor Tom Ridge came in [1995] the attorneys interpreted the same

regulations that had permitted annual inspections for years to no longer authorize those inspections.” The grand jury noted that in 1999 there was “a meeting of high-level government officials”; they decided *against* a proposal to restart regular clinic inspections. A senior DOH attorney attributed this to a concern that inspections might reveal that many clinics couldn’t meet requirements for emergency evacuation of patients by wheelchair or stretcher. The officials feared that this, by reducing the number of clinics, would reduce women’s access to abortion.

The grand jury said DOH continued this policy “after Edward Rendell became governor.” Rendell served two terms, from 2003-2011. “The department continued its do-nothing policy until 2010,” the grand jury commented, “when media attention surrounding the raid of the Gosnell clinic exposed the results of years of hands-off ‘oversight.’”¹⁷ Rendell later said he had been “flabbergasted to learn” about the DOH stance and that he immediately told them “to inspect these facilities.” He declared that he’d “had no knowledge” that non-inspection “was the policy of the Ridge administration, nor that the policy was being continued.” He complained that DOH “never reached out to me to discuss what the policy should be.”¹⁸ An alert governor, though, would have inquired about clinic oversight in a state where abortion has been a major issue for many years. And Rendell, a former district attorney and mayor of Philadelphia, knew about the problem of rogue doctors. “When I was district attorney,” he said when interviewed during the Gosnell trial, “I actually prosecuted a doctor for doing exactly what Dr. Gosnell did.”¹⁹

His predecessor, Gov. Thomas Ridge, was very quiet about the grand jury’s statements. At least a few news outlets queried him about the no-inspection policy, but I found no indication that he responded. J.D. Mullane, a Pennsylvania reporter who covered the Gosnell trial very closely, commented while waiting for the verdict that Ridge “has been silent” about the trial. He suggested that the former governor stop by the courtroom “to see how his policy turned out.”²⁰ Given the later and massive publicity for New Jersey Governor Chris Christie’s “Bridgagate” scandal,²¹ reporters should have been sitting on Ridge’s doorstep during the Gosnell trial. They should have asked Rendell, too, many questions about the crimes that took place on his watch.

Editorial Board Needs Better Fact-Checking

The *Post* editorial board has run a campaign against strict regulation of abortion clinics in Texas, North Carolina, and elsewhere.²² The campaign reached a high pitch last year when conservative Ken Cuccinelli was the Republican candidate for governor of Virginia. *Post* editorials thrashed him repeatedly for his role (as the state’s attorney general) in demanding strict

regulations. An April, 2013, *Post* editorial was titled “Virginia’s Abortion Assault Claims a Victim.” The “victim” was Norfolk’s Hillcrest Clinic, which had just closed, claiming that it couldn’t afford renovations that the new rules required. The *Post* declared: “At abortion clinics, the presence of awnings, the width of doorways and the dimensions of janitorial closets have little to do with the health of patients.”²³ It may have been right about the janitorial closets. But doorways—and hallways leading to them—are critical in an emergency evacuation, and awnings are important in a driving rainstorm or a blizzard. The *Post* editorial came just ten days after a *Post* reporter, covering the Gosnell trial, described a patient’s death from an overdose of Demerol. The patient’s brother, he said, “testified that the scene was chaotic as emergency workers rushed to get Mongar [the patient] to the hospital. He said firefighters had to use bolt cutters to open a clinic emergency door.”²⁴ (This makes me wonder, and not for the first time, if editorial board members read their own newspaper.) Dealing with the same incident, the grand jury report stated: “After cutting the locks, responders had to waste precious more minutes to maneuver through the narrow cramped hallways that could not accommodate a stretcher.” Paramedics were able to restore a weak heartbeat for the patient; hospital doctors did the same after her heart stopped again; but in the end they could not save her.²⁵

After the grand jury report, an Associated Press reporter looked at results of the now-resumed clinic inspections in Pennsylvania. He found that regulators had “ordered 14 of the state’s 22 freestanding clinics to remedy problems.” He said the most common problems “were failures to properly report medical conditions that qualify as ‘serious events’ and not keeping resuscitation equipment readily available.”²⁶

The *Post* continued its anti-clinic-regulation campaign in July, 2013, with an editorial that protested “costly and cosmetic” requirements in North Carolina and elsewhere “to widen hallways, doorways and even entrance awnings.”²⁷ Then there was an August editorial that complained about the closing of NOVA Women’s Healthcare in Fairfax City, VA, a clinic that did far more abortions than any other in the state. The *Post* called NOVA “a popular and privately owned women’s health clinic that offered many services besides abortion.” It was correct in suggesting that the new state regulations would have imposed extra costs on NOVA—and that the Fairfax City Council, by amending its zoning law, made it harder for the clinic to relocate. But while it noted that NOVA’s landlord had sued the clinic twice, it didn’t mention that the landlord said clinic clients “had been seen regularly inside the building ‘lying down in corridors . . . and, in some instances, even vomiting.’” An earlier *Post* news story had mentioned that and also had noted that later the

landlord sued the clinic “for failure to pay \$95,000 in back rent.” The clinic “agreed to pay the back rent and surrender the space, court records show.” The *Post* editorial should have given the full story.²⁸

Neither editorial nor news story mentioned that the longtime NOVA owner, Dr. Mi Yong Kim, had been disciplined by the Virginia Board of Medicine for serious failures related to the death of a woman aborted by Kim in 2002. The board described the woman (“Patient A”) as 26 years old, “with a history of anemia and sickle cell disease.” It said Dr. Kim “failed to order appropriate laboratory studies and to document an appropriate history or physical examination” of the patient and that Kim administered a sedative in an improper way. Apparently describing the point when the doctor realized the patient was in great trouble, the board said she told staff to give the woman oxygen and call 911, but “failed to determine whether Patient A was in cardiac arrest, to initiate cardiopulmonary resuscitation or to defibrillate Patient A.” Soon after transport to a hospital, the patient died. The Board of Medicine barred Dr. Kim from administering or supervising “conscious sedation, deep sedation, or general anesthesia.” It required that another doctor or a nurse anesthesia-specialist do such tasks. The board also imposed extra record-keeping requirements on Dr. Kim. This disciplinary action took place in April, 2005. Two years later, the board again found a number of deficiencies in her work. Instead of contesting the board’s findings, Dr. Kim agreed to permanent surrender of her medical license. She continued to own the clinic, but in 2012 sold half her interest in it.²⁹

Planned Parenthood Should Not Have Sacred-Cow Status

In yet another attack on Ken Cuccinelli in June, 2013, the *Post* editorial board also slammed his running mate, E.W. Jackson, for calling Planned Parenthood “far more lethal to black lives” than the Ku Klux Klan. Yet E.W. Jackson was right. According to a summary of lynching statistics at the Tuskegee University Archives, 3,446 African Americans died by lynching between 1882 and 1968. While the Klan wasn’t directly responsible for all lynchings, it created a climate of violence that encouraged murder, and many of its members *were* directly involved. The Tuskegee total does not include the late 1860s and early 1870s, when the Klan was extremely active and violent,³⁰ but scholars are trying to gather more complete statistics. Meanwhile, let’s assume for the sake of argument that the Klan was responsible for 6,000 African American deaths—including those who died in race riots, which the Tuskegee statistics don’t cover. Planned Parenthood clinics did 327,166 abortions in 2012. At least *30 percent* of U.S. abortions are done on African American women. If that figure holds for Planned Parent-

hood clinics, they aborted at least 98,150 African American children in 2012 alone.³¹ And they have been in the abortion business for a very long time.

The *Post* editorial board should hire an independent fact-checker. It also should reject the partisanship shown by one of its members in 2008, when he claimed credit for the electoral victory of U.S. Senator James Webb (D-VA) two years earlier. Noting *Post* editorials critical of Webb's Republican opponent—and Webb's "use of these editorials in his advertising"—editorial board member Lee Hockstader said that "it was Jim Webb's victory that handed control of the Senate to the Democrats in 2006. So in other words, I'm basically taking personal credit for Democratic control of the Senate."³²

Actually, why have editorials at all? *Post* reporters would be freer to do their work, and many sources would be more willing to talk to them, if reporters didn't have such an editorial burden on their backs. *Post* readers would trust the paper more if it offered just news and a rich variety of columnists.

In closing, Mr. Bezos, I wish you the best of luck in making the *Post* a better and a profitable venture. With your fortune and some bold moves, it could become the greatest newspaper in the world.

Sincerely,
Mary Meehan
Cumberland, MD

NOTES

Unless otherwise stated, references are to online versions of the newspapers cited below.

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 14. Erik Wemple, "Washington Post Pledges Gosnell Coverage," *ibid.*, 12 April 2013.
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Why *Roe/Casey* Is Still Unsettled

Clarke D. Forsythe

In his first public criticism of the Supreme Court’s decision in *Dred Scott v. Sanford* in 1857, future U.S. Senate candidate Abraham Lincoln denied that the decision was “settled”:

Judicial decisions have two uses—first, to absolutely determine the case decided, and secondly, to indicate to the public how other similar cases will be decided when they arise. For the latter use, they are called “precedents” and “authorities.” . . . Judicial decisions are of greater or less authority as precedents, according to circumstances. . . . If this important decision [*Dred Scott*] had been made by the unanimous concurrence of the judges, and without any apparent partisan bias, and in accordance with legal public expectation, and with the steady practice of the departments throughout our history, and had been in no part, based on assumed historical facts which are not really true; or, if wanting in some of these, it had been before the court more than once, and had there been affirmed and re-affirmed through a course of years, it then might be, perhaps would be, factious, nay, even revolutionary, to not acquiesce in it as a precedent. But, when, as it is true we find it wanting in all these claims to the public confidence, it is not resistance, it is not factious, it is not even disrespectful, to treat it as not having yet quite established a settled doctrine for the country.¹

Lincoln’s analysis highlights some—but only some—of the reasons why *Roe v. Wade* (along with a companion case, *Doe v. Bolton*) and the Supreme Court’s 1992 decision in *Planned Parenthood v. Casey*, reaffirming *Roe*, may be more unsettled today than at any time since 1973.

In *Planned Parenthood v. Casey* (where the Court upheld all of the abortion regulations passed by the Pennsylvania state legislature except for spousal notification), five Justices declared *Roe v. Wade* to be “settled” law. In 2000 in *Stenberg v. Carhart* (where the Court struck down a partial-birth-abortion ban passed by the Nebraska legislature), a bare majority of five Justices applied *Roe* as though it was settled. But, in the most recent abortion case decided by the Supreme Court, *Gonzales v. Carhart* in 2007 (where the Court upheld the federal Partial Birth Abortion Ban Act of 2003), a different majority of Justices applied the basic rules of *Roe* in a manner deferential to the states, causing some, again, to think that *Roe* was hanging by a thread.

What real evidence is there to think that *Roe* is settled or unsettled? And what legal, social, or political factors cause it to be unsettled?

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Judges refer to the doctrine of *stare decisis* (sticking to precedent), but that doctrine itself is not settled.² How and to what extent Supreme Court constitutional precedents should be given “respect” is still a subject of judicial and academic debate.³ Neither the Justices nor scholars share unanimity as to the weight to be given to precedent. Precedent is entitled to some respect, because of the reliance that society, and businesses, and government and families put on the law (shaped at key points by judicial decisions) to be predictable and reliable over time. There is no precise legal test to determine that precedents are finally settled, which means that judges have considerable wiggle room.

Whether *Roe* was rightly decided is the dispositive issue for many Americans. Clearly, the two sitting Justices who have publicly opposed *Roe*—Scalia and Thomas—consider it central if not dispositive. And only two of nine Justices in *Casey* claimed that *Roe* was rightly decided as an original matter. The Plurality of Justices in *Casey* who joined one opinion (O’Connor, Kennedy, and Souter) did not and could not defend it as rightly decided, and retreated to the position that whether it was rightly decided could not be the sole factor in treating it as settled law. It is therefore all the more important to understand the factors that keep *Roe/Casey* unsettled.

Roe 2.0: Planned Parenthood v. Casey

To understand where we are in 2014, it’s essential to recognize that *Roe 1.0*—the original opinion including the original rationale for *Roe*—is defunct, discarded in 1992.⁴ The two *holdings* (rulings) of *Roe*—that there is a federal (national) right to abortion, and that the unborn are not constitutional “persons” within the protection of the Fourteenth Amendment—are still the “law of the land” because the federal courts and public officials still obey them, and because they haven’t been overturned by legally-recognized means.

But the *rationale* for *Roe* was replaced by a new rationale created by the *Casey* Plurality in 1992. They said that a national right to abortion should be reaffirmed *because women have come to rely on abortion as a back-up to failed contraception*. (A book published in 2006, *What Roe v. Wade Should Have Said*, could find no scholar to defend the original *opinion* in *Roe*; even those who supported the *result* tried to find an alternative rationale to Justice Blackmun’s.) As Professor Michael Paulsen has said, “it is impossible to blame *Roe* for abortion law after 1992. That blame rests with *Casey*.”⁵

Is *Roe/Casey* Legally Settled?

Let’s imagine the strongest “case” that supporters might make that *Roe/Casey* is settled:

Roe is 41 years old. The Plurality in *Casey* “call[ed] the contending sides

of a national controversy to end their national division by accepting a common mandate rooted in the Constitution.” *Casey* clearly reinforced the “right” to abortion, and in fact was an attempt to fix, stabilize, and entrench *Roe*. And in the 22 years since, the federal courts have continued to impose *Roe/Casey*. Recently, federal courts have imposed injunctions against a 20-week gestational limit on abortion in Arizona, a 20-week limit in Idaho, a 12-week limit in Arkansas, and a 6-week limit in North Dakota. Public opinion polls periodically show majority “support” for *Roe*. Women still seek approximately 1.1 million abortions per year and rely on it for reproductive freedom. *Roe* has significant political and social support from the Democratic Party, almost all state-wide Democratic Party officeholders and candidates, TV networks and major newspapers, most medical and legal organizations, and wealthy foundations. The most pro-abortion president in American history, Barack Obama, has been elected and re-elected. The Court has “reaffirmed” a “right” to abortion—if not *Roe*—at least four times: in *Akron* (a 1983 decision striking down Ohio abortion restrictions), *Thornburgh* (a 1986 decision invalidating Pennsylvania’s restrictions), *Casey*, and *Stenberg*.

But Lincoln’s six factors—and others—suggest that *Roe/Casey* is still unsettled. The original vote in *Roe* was not unanimous. (Both *Dred Scott* and *Roe* were decided by 7-2 votes.) Two Justices—Burger and Powell—subsequently recanted their support for the original opinion in *Roe*. The reasoning of *Roe* has been abandoned by Justices and by scholars. Clearly, today, the support for *Roe* is based on “partisan bias” and does not command support from Justices of both parties. *Roe* was not in accord with “legal public expectation.” The abortion “right” and the sweep of that “right” did not have the steady support of executive departments. Without any evidentiary record, it was based on “assumed historical facts” that were not true. And *Roe*, as originally written, has not been affirmed and reaffirmed; instead, it has been repeatedly changed and altered.

But the Plurality in *Casey* did not apply Lincoln’s factors. Instead, the Plurality condensed prior applications of *stare decisis* by the Supreme Court into four factors: workability, reliance, change in law, and change in facts, and emphasized reliance more than the others. They concluded that these justified sticking to *Roe*.

Like the Justices’ original consideration of abortion in *Roe*, the consideration of these four factors in 1992 was not careful or scrupulous. When the Justices agreed to hear *Casey* on January 21, 1992, they expressly limited the questions to be addressed to the validity of the five challenged Pennsylvania regulations.⁶ At some point during the course of briefing and deliberation, however, various Justices decided to preempt the inevitability

of future cases challenging *Roe* and settle the overruling of *Roe* in *Casey*. Since they did not ask for briefing on these factors, or on the doctrine of *stare decisis* generally, their consideration was largely patchwork. The Plurality's treatment of *stare decisis* in *Casey* was lampooned in 2008 as an artificial product, created on the spot in 1992 just to defend *Roe* but not consistently followed by the Court since then.⁷ The logic of these four factors has been criticized and 22 years of experience challenge each of them.

Workability

The Plurality in *Casey* never defined this factor, but casually shrugged it off in a single sentence by saying that *Roe* had just established a “simple limitation beyond which a state law is unenforceable” (the rule that a woman has a right to abortion before fetal viability). For several reasons, this is simply untenable.

As I explain in *Abuse of Discretion*, the Court took the *Roe* and *Doe* cases in April 1971 to decide a rather mundane issue about federal-state court jurisdiction. But after the sudden retirements of Justices Black and Harlan due to ill health in September 1971, a temporary majority of four Justices decided to use *Roe* and *Doe* to settle the abortion issue, declare a right to abortion, and sweep away the abortion laws. Since *Roe* and *Doe* had no trial on abortion, the Justices decided the two cases without a factual record, disregarding numerous past decisions where the Justices said that they would not decide constitutional issues without an adequate record. That evidentiary vacuum tempted the Justices to rely upon their own hunches, experiences, and prejudices to decide the abortion issue, and that led to numerous misunderstandings and miscalculations that have created turmoil over the abortion issue ever since.

Perhaps the most serious of those mistakes was the assumption, adopted without an evidentiary record, that “abortion was safer than childbirth.”⁸ This was contrary to all reliable data in 1973, and it is contrary to the best data today. Unfortunately, this mistaken assumption drove the result in *Roe*. It encouraged the Justices to prohibit health and safety regulations in the first trimester, and to defer to the self-regulation of abortionists, which has caused the public-health vacuum that threatens women's health today.⁹ It also encouraged the Justices to expand the “right” throughout pregnancy.

Another of those mistakes is the viability rule, which has been criticized as arbitrary from Day One. Numerous legal scholars have shown why the viability rule is unworkable,¹⁰ and its illogic has been recognized in prenatal injury, wrongful death, and fetal homicide law, where it has been increasingly discarded.¹¹

The Court has “retreated” from *Roe*, and revised it several times in order

to make *Roe/Casey* “workable.”¹² The Plurality in *Casey* expressly overturned two prior abortion decisions as too-rigid applications of *Roe*, to make it more workable in their eyes.

How can the Justices decide whether *Roe* is “workable” when they have heard only three cases (on the merits) over 22 years (*Stenberg*, *Ayotte*, and *Gonzales*)? Despite assuming the role of the national abortion control board, controlling every aspect of abortion policy in all 50 states, the Justices have been oblivious to what is happening in clinics and have refused to hear dozens of abortion cases over the years, which is the only means by which the Justices could monitor their own handiwork. It’s easy to pronounce something “workable” if you consistently ignore it, and the more you ignore it, the more likely you’ll find it “workable.” (In the 2013 Term, the Court refused to hear three more abortion cases.)

Another way to assess “workability” is to look at how the federal courts have applied *Roe/Casey*. Predictably, the new “undue burden” standard adopted in *Casey* turned out to be unworkable. “Undue burden” was revised in *Gonzales* for the somewhat more specific “substantial obstacle” standard, which *Gonzales* indicates might be more accurately described as a “substantial obstacle to a safe abortion” standard. It is fair to say that, for 41 years, the federal courts have constantly battled over the meaning of *Roe/Casey*. Since 2007, the lower federal courts have been disagreeing over the meaning of *Gonzales*.

Reliance

A very powerful case against *Roe* was presented to the Supreme Court in *Casey*. But this was not enough, at the time, to topple *Roe* and return the issue to the legislative and democratic process in the states. The Plurality retreated to the position that women had come to *rely upon abortion as a backup to failed contraception for equal opportunity in American society*.¹³

It’s important to examine the “reliance interests” rationale for *Roe/Casey*, which lies at the heart of the Court’s—and the public’s—support for legal abortion: *the notion that legal abortion has been good for women*. Careful examination in fact supports the conclusion that the truth is exactly the opposite: If women have come to rely upon abortion, it has been to their detriment. That women rely on abortion was assumed in *Casey*. That such reliance on abortion was good for women was also assumed, *not* documented. In fact, there’s growing data that it is harmful, and there are better alternatives for a woman’s long-term physical and psychic health and relationships. And the public and their elected representatives are better equipped to assess this— as they do other public-health issues—than judges.

The Plurality’s consideration of reliance in *Casey* was based, in large part,

on the factual misunderstanding that overturning *Roe* would result in abortion becoming immediately illegal, abruptly overturning expectations. But the fact of the matter is that, if *Roe/Casey* were overturned tomorrow, abortion would be legal in 40-45 states (up to 20 weeks at least), since there are no *enforceable prohibitions* on the books in those states (before 20 weeks or fetal viability). The Justices' assumption that overruling *Roe* would result in making abortion immediately illegal was completely wrong.¹⁴

And the Justices' consideration of "reliance" in *Casey* was (as in *Roe* and *Doe*) not supported by an evidentiary record. The Plurality in *Casey* spent pages emphasizing judicial integrity and proper judicial process, but ended up reaching a judgment about reliance without an evidentiary record on the questions. Instead, they relied on their hunches, experience, and prejudices about reliance. In support of their conclusion that American women had come to rely upon abortion as a backup to failed contraception for equal opportunity in American society, the Plurality cited just one page in one book, *Abortion and Woman's Choice*, by Rosalind Petchesky. That alone suggests that the foundation for "reliance" is very limited.

There are numerous problems with the assumption of reliance. The Justices assumed both that abortion allows women to control their reproductive lives, and that control of their reproductive lives enables women to achieve equal opportunity in American society. However, reliance of women on abortion as an empirical matter has not been demonstrated. In the two decades since *Casey*, mounting international medical data suggests that abortion has significant long-term risks. In addition, there is a long track record of substandard conditions in clinics. Studies find a negative impact from abortion on relationships. Abortion results in emotional and relational instability with long-term consequences.

As the Supreme Court has failed in its self-appointed role as the national abortion control board, the states have moved in to fill the public-health vacuum, taking advantage of the numerous Supreme Court retreats from *Roe* to enact regulations that weren't possible before 1992—including informed consent laws, ultrasound laws, partial-birth-abortion prohibitions, and clinic regulations. Approximately 13 states have enacted 20-week limits since the Court's 2007 decision in *Gonzales v. Carhart*. (The Court refused to hear the Arizona appeal in January 2014, but other test cases may arise.) States better understand the public-health vacuum created by the Court and, in light of the Court's negligence, have sought to fill it. And these trends have developed while the number of women serving as state representatives has grown. In many states, women are the leaders in sponsoring limits on abortion.

Even if we assume that women have relied on abortion, the Plurality in

Casey admitted that “reproductive planning could take virtually immediate account of any sudden restoration of state authority to ban abortions.” There will be no immediate change. Over the course of one or two years, some states will change; others might not. Men and women would be able to alter their expectations in light of the potentially changing availability of abortion in particular states, and that would most likely contribute positively to women’s physical and psychological health.

Change in Law

What changes in law should be relevant in deciding whether to stick to *Roe*? The most direct legal change has been to the Justices’ own abortion doctrine in order to fix the problems they created in *Roe*.

Changes in law since 1973 have increased women’s rights. The legal disabilities that women experienced before 1973 have been removed by *state or federal legislation*, and these changes do not depend on *Roe*.

American law has not reinforced the Court’s abortion doctrine. Just as abortion is marginalized from American medicine, abortion law is marginalized from American law. *Roe/Casey* is isolated in the law as a rigid national policy that women have a right to abortion before fetal viability.

The law has moved away from the abortion doctrine. Perhaps the only federal law to support abortion is the Federal Access to Clinic Entrances Act (FACE), which is more about preventing violence than supporting abortion. And in fact, few states have passed legislation to support abortion. The California law of 2013 that deregulated abortion stands out by its uniqueness. The Cuomo bill of 2013 in New York State was killed—in New York of all places! Congress did not expressly support abortion by vote in the Affordable Care Act (ACA) in 2010. Congressional leaders denied that the ACA would fund or subsidize abortion. Public funding is denied in most states. The states have enacted all kinds of limits on abortion.

The viability rule of *Roe* has three fundamental problems: Its creation was arbitrary and was dictum in both *Roe* and *Casey*. The line was created by focusing only on the status of the “fetus” and without regard for the health implications for women from late-term abortions. And it is way out of line with American public opinion and international standards. It allows late-term abortions that threaten women’s health, and it leads to live-birth abortions. The viability rule may stand because federal judges insist on it, but the tension is rising.

Finally, property, prenatal injury, wrongful death, and fetal homicide law, all of which more strongly protect prenatal life than was the case in 1973, have created increasing legal schizophrenia. Despite *Roe*, the states have

moved ahead with state legislation and judicial decisions that treat the unborn child as a human being or person from conception.¹⁵

Change in Facts

What facts might be relevant to sticking to *Roe*? In *Casey*, the Justices said that no facts had changed since *Roe* to overrule it. There are substantial reasons to question whether the Justices can be trusted to recognize and identify any “change” in the “facts.”

First, the Justices have often ignored the facts. They issued their sweeping decision in *Roe* despite no trial or evidentiary record in either *Roe* or *Doe*. They repeated this mistake in *Casey*, when they identified a new rationale for *Roe*—the reliance interests of women—without any evidentiary record.

The Justices made numerous assumptions in writing *Roe* that have proven false: who would do abortions, support from the medical profession, clinic standards and safety, short-term risks, long-term risks, legal protection for the unborn child, how the public views the unborn child, how the states would react, the facts of maternal health, whether Congress or the states would fill the public-health vacuum, and many more. These mistaken assumptions have led to persistent substandard conditions in clinics and short-term risks to women, threats to the long-term physical and psychic health of women, and long-term political and social turmoil against the Court and the *Roe* decision.

The medical picture is changing. Since *Casey*, a growing body of international medical data has shown increased long-term medical risks to women after abortion. In recent years, studies from Ireland and Chile have provided evidence that legal abortion prohibitions do not compromise women’s health and that legalizing abortion does not positively impact women’s health.

Second, what qualifies the Justices to say what facts are relevant and whether the facts have changed? The Justices have a certain “conflict of interest” here: The conclusion that changed facts justify the overruling of *Roe/Casey* calls into question the wisdom of their original ruling. Why should the Justices sit in judgment on “changed facts” when, in *Roe*, they issued a sweeping judgment without an evidentiary record, and repeated that mistake 19 years later in *Casey*?

Is *Roe/Casey* Politically Settled?

The four factors considered by the Plurality in *Casey* do not adequately perceive the legal, social, cultural, and political developments and trends that keep *Roe/Casey* in flux.

Does the public support *Roe/Casey*? This question consistently overlooks the fact that the public doesn’t understand *Roe/Casey* (which shouldn’t

surprise anyone, since other polling studies show that the public doesn't understand what the Court does or any of the decisions the Court makes). The Pew Poll in January 2013, at the time of the 40th anniversary, had to distort what *Roe* actually said and did—by describing the abortion “right” created as only legalizing abortion in the first trimester—in order to find majority support.

The abortion issue in 2014 is not the abortion issue of 1973 or even 1992. Abortion has been marginalized from American medicine for decades. The annual number of abortions declined 25 percent between 1992 and 2006, and dropped another 5 percent in the most recent reporting year. The number of abortion providers has dropped considerably. There has been significant growth in legal protection for the unborn child in prenatal injury, wrongful death, and fetal homicide law. Those areas of the law provide stronger legal protection for the unborn child than existed in 1973. A body of international data on the risks to women has grown over the past two decades. The substandard conditions in clinics are becoming more widely publicized. The Supreme Court has retreated at least three times from the harshest application of *Roe v. Wade*—in 1989, 1992, and 2007—and each time the Court has given more deference to the states.

In addition, there is stronger public opinion for reducing and limiting abortion:

- 2003 USA Today/CNN/Gallup poll: Over 70 percent support regulations like informed consent, parental notice, waiting periods.

- 2004 Zogby poll: 56 percent said abortion should be legal only in rape, incest, or to preserve the life of the mother; another 25 percent said abortion should only be allowed during the first 3 months of pregnancy.

- June 2011 Gallup poll: 71 percent v. 24 percent said abortion should be generally illegal in the second trimester.

- August 2011 Gallup Poll: 90 percent of self-described pro-life Americans and 52 percent of self-described pro-choice Americans think “abortion should be illegal in 2d trimester.”

- A consistent majority of 60-70 percent support abortion only in “certain circumstances.”

- Only 7-9 percent of Americans support the result in *Roe*: abortion for any reason, at any time of pregnancy.

- The May 2012 Gallup poll “. . . showed that people were more likely to identify as ‘pro-life’ rather than pro-choice by a 50 to 41 margin.”

What is more relevant than “support for *Roe*” is whether the public supports the scope of *Roe* and what *Roe* allows. Numerous polls show that the public supports abortion only in limited circumstances early in pregnancy.

Conclusion

The mere passage of time does not mean that a case is settled. *Plessy v. Ferguson* was 58 years old when it was overturned in 1954 by *Brown v. Board of Education*. The Court's decision in the *Slaughter House Cases* of 1873 is still criticized by academics and Justices. There's a very real, pragmatic sense in which Supreme Court decisions are settled until they are unsettled.

Roe/Casey is unsettled because it was so poorly put together, without an evidentiary record, based on hunches, assumptions, and prejudices. The hunches, assumptions, and prejudices collided with the medical reality of fetal development. The Justices were fairly blindsided by ultrasound when it appeared on the American commercial market a few years after *Roe*, and ultrasound permanently changed public opinion. They also miscalculated the reactions of doctors and the reactions of legislatures. And the dictates based on those hunches and assumptions have sown discord. *Roe's* fundamental, inherent defects fostered a decision that was out of line with international standards and out of line with public opinion and created a public-health vacuum of substandard care. Despite those problems, the notion that abortion is good for women is the glue that holds *Roe/Casey* together today, with five of the current Justices.

In this world, truth does not always win out. As sociologist James Davison Hunter has pointed out, ideas have consequences "not because those ideas are inherently truthful or obviously correct but rather because of the way they are embedded in very powerful institutions, networks, interests, and symbols." A large, persistent, persevering political movement has challenged *Roe/Casey* since 1973. But powerful social, legal, and political forces are working to prop up *Roe/Casey*. Due to the original miscalculations, the medical realities, and the change in public opinion, the process of future unsettling may be inexorable, but only if a growing political movement presses the case with renewed energy, stronger organizations, greater resources, and political success.

NOTES

1. See generally, Michael Stokes Paulsen, "Lincoln and Judicial Authority," 83 *Notre Dame L. Rev.* 1227 (2008).
2. See generally, Michael Stokes Paulsen, "Abrogating *Stare Decisis* by Statute: May Congress Remove the Precedential Effect of *Roe* and *Casey*?", 109 *Yale L. J.* 1535 (2000).
3. See generally, Randy Beck, "Transtemporal Separation of Powers in the Law of Precedent," 87 *Notre Dame L. Rev.* 1405 (2012); John O. McGinnis & Michael B. Rappaport, "Reconciling Originalism and Precedent," 103 *Nw. U. L. Rev.* 803 (2009).
4. See Paul Benjamin Linton, "*Planned Parenthood v. Casey*: The Flight From Reason in the Supreme Court," 13 *St. Louis U. Pub. L. Rev.* 15 (1993).
5. Michael Stokes Paulsen, "The Worst Constitutional Decision of All Time," 78 *Notre Dame L. Rev.* 995 (2003).

6. 502 U.S. 1056-1057 (1992).
7. Michael Stokes Paulsen, "Does the Supreme Court's Current Doctrine of *Stare Decisis* Require Adherence to the Supreme Court's Current Doctrine of *Stare Decisis*?" 86 N. Carolina L. Rev. 1165 (2008).
8. See Clarke Forsythe, "The Medical Assumption at the Foundation of *Roe v. Wade* and Its Implications for Women's Health," 71 Wash. & Lee L. Rev. 827 (2014).
9. Clarke D. Forsythe & Bradley Kehr, "A Road Map Through the Supreme Court's Back Alley," 57 Villanova L. Rev. 45 (2012).
10. Randy Beck, "*Gonzales, Casey* and the Viability Rule," 103 Nw. U. L. Rev. 249 (2009); Randy Beck, "The Essential Holding of *Casey*: Rethinking Viability," 75 UMKC L. Rev. 713 (2007); Paul Benjamin Linton, "*Planned Parenthood v. Casey*: The Flight From Reason in the Supreme Court," 13 St. Louis U. Pub. L. Rev. 15 (1993).
11. See Paul Benjamin Linton, "The Legal Status of the Unborn Child under State Law," 6 U. St. Thomas J. Law & Pub. Pol. 141 (2012).
12. See Michael F. Moses, "Institutional Integrity and Respect for Precedent: Do They Favor Continued Adherence to an Abortion Right?" 27 Notre Dame J. Law Ethics & Pub. Policy. 541 (2013).
13. See Clarke D. Forsythe & Stephen B. Presser, "The Tragic Failure of *Roe v. Wade*: Why Abortion Should be Returned to the States," 10 Texas Rev. of Law & Pol. 85 (2005).
14. See Paul Benjamin Linton, "The Legal Status of Abortion in the States if *Roe v. Wade* is Overruled," 27 Issues in Law & Med. 181 (2012).
15. See Paul Benjamin Linton, "The Legal Status of the Unborn Child under State Law," 6 U. St. Thomas J. Law & Pub. Pol. 141 (2012).



"You don't think it's too soon for Eversall to go as his recently deceased wife?"

From the Archives (1975):

What the Abortion Argument Is About

Malcolm Muggeridge

Generally, when some drastic readjustment of accepted moral values, such as is involved by legalized abortion, is under consideration, once the decisive legislative step is taken the consequent change in *mores* soon comes to be more or less accepted, and controversy dies down. This happened, for instance, with the legalization of homosexual practices of consenting adults.

Why, then, has it not happened with the legalization of abortion? Surely because the abortion issue raises questions of the very destiny and purpose of life itself; of whether our human society is to be seen in Christian terms as a family with a loving father who is God, or as a factory-farm whose primary consideration must be the physical well-being of the livestock and the material well-being of the collectivity.

This explains why individuals with no very emphatic conscious feelings about abortion one way or the other, react very strongly to particular aspects of it. Thus, nurses who are not anti-abortion zealots cannot bring themselves to participate in abortion operations, though perfectly prepared to take their part in what are ostensibly more gruesome medical experiences.

Again, the practice of using for experiment live fetuses removed from a womb in abortion arouses a sense of horror in nearly everyone quite irrespective of their views on abortion as such.

Why is this, if the fetus is just a lump of jelly, as the pro-abortionists have claimed, and not to be considered a human child until it emerges from its mother's womb? Why does it matter what happens to a lump of jelly? What, for that matter, is the objection to using discarded fetuses in the manufacture of cosmetics—a practice that the most ardent abortionist is liable to find distasteful? We use animal fats for the purpose. Then why not a fetus's which would otherwise just be thrown away with the rest of the contents of a surgical bucket?

It is on the assumption that a fetus does not become a child until it is

Malcolm Muggeridge (1903-1990), the English journalist, television personality, and satirist, authored many works, including *Something Beautiful for God* (1971; reissued 2009, Lion Hudson plc), the book that introduced Mother Teresa to the world. This article originally appeared in the *London Sunday Times*, and was first reprinted in the Summer 1975 issue of the *Human Life Review*.

actually delivered that the whole case for legalized abortion rests. To destroy a developing fetus in the womb, sometimes as late as seven months after conception, is considered by the pro-abortionists an act of compassion. To destroy the same fetus two months later when it has been born, is, in law, murder—*vide* Lord Hailsham's contention that "an embryo which is delivered alive is a human being, and is protected by the law of murder . . . any experiments on it are covered by the law of assault affecting criminal assault on human beings."

Can it be seriously contended that the mere circumstance of being delivered transforms a developing embryo from a lump of jelly with no rights of any kind, and deserving of no consideration of any kind, into a human being with all the legal rights that go therewith? In the case of a pregnant woman injured in a motor accident, damages can be claimed on behalf of the child in her womb. Similarly, in the UN Declaration of Rights of the Child, special mention is made of its entitlement to pre- as well as post-natal care. It is a strange sort of pre-natal care which permits the removal of the child from its mother's womb, to be tossed into an incinerator, or used for "research," rendered down for cosmetics.

Our Western way of life has come to a parting of the ways; time's take-over bid for eternity has reached the point at which irrevocable decisions have to be taken. Either we go on with the process of shaping our own destiny without reference to any higher being than Man, deciding ourselves how many children shall be born, when and in what varieties, which lives are worth continuing and which should be put out, from whom spare-parts—kidneys, hearts, genitals, brainboxes even—shall be taken and to whom allotted.

Or we draw back, seeking to understand and fall in with our Creator's purpose for us rather than to pursue our own; in true humility praying, as the founder of our religion and our civilization taught us: Thy will be done.

This is what the abortion controversy is about, and what the euthanasia controversy will be about when, as must inevitably happen soon, it arises. The logical sequel to the destruction of what are called "unwanted children" will be the elimination of what will be called "unwanted lives"—a legislative measure which so far in all human history only the Nazi Government has ventured to enact.

In this sense the abortion controversy is the most vital and relevant of all. For we can survive energy crises, inflation, wars, revolutions and insurrections, as they have been survived in the past; but if we transgress against the very basis of our mortal existence, becoming our own gods in our own universe, then we shall surely and deservedly perish from the earth.

BOOKNOTES

WAITING FOR ELI: *A Father's Journey from Fear to Faith*

ELI'S REACH: *On the Value of Human Life and the Power of Prayer*

Chad Judice

(Acadian House Publishing, 176pp/160pp, 2010/2012, \$16.95 each)

Reviewed by Maria McFadden Maffucci

Pro-choice critics of the multi-state push for 20-week abortion bans say such bans place an undue and onerous burden on women, because many serious and “lethal” fetal abnormalities are not discovered until ultrasounds performed at about the 20-week mark. According to the Alan Guttmacher Institute (www.guttmacher.org), 10 percent of abortions are done after 12 weeks, and of the less than 2 percent after 20 weeks, many are for medical reasons, including fetal abnormalities. There is a blog dedicated to supporting women who make this obviously painful decision, called “1 in 10: We are the faces of later abortion” (www.1in10wordpress.com), the purpose of which is:

Although our numbers might be relatively small, as we represent only 1 in 10 of all abortions, our stories are powerful and need to be told. Due to the stigma and judgment that persists around abortion (even 40 years after its legalization), many women who undergo a later termination are fearful and hesitant to share their stories, not only with society in general, but sometimes even with their own close family members and friends. But the stigma will never be lifted if we continue to allow ourselves to be ostracized and treated as shameful outcasts.

The site includes “Real stories from real women,” first names only, and each one starts off with a photo—of a woman, a couple, or surviving children. One woman, “Kari, Texas, July 25, 2013, Mother of four (three on earth and one in heaven), military wife,” tells how, during her third pregnancy, she got the news at a second-trimester ultrasound that her son had a neural-tube defect, severe spina bifida; and she explains her decision to abort:

For me, the choice came down to not only the pain and suffering our baby would endure, but also the life that my other children would have. I imagined their happy, carefree childhoods being replaced with childhoods spent in waiting rooms and doctors' offices. I imagined my sick boy in watching his older brothers run and play, something he would never be able to do. It was not the childhood I wanted for any of my children. I also knew that, as older parents, there was always the risk that we would not be alive as this child grew into adulthood and that the burden of his care would fall onto my other children. My husband's reasons were different. He imagined the financial burden, the problems of finding a wheelchair accessible rental

house when we moved every three years, as well as the sadness of our child never being “just another kid on the playground.” I was the first to suggest that we terminate, and my husband agreed.

There are no people in the attached photo; instead there is a lone teddy bear along with a baby blanket. Kari writes: “I now know that nothing will ever fill the hole in my heart, and I will forever grieve for my son regardless of how many healthy babies I have.”

Another website, www.chadjudice.com, was also created because of a real story, one with a similar beginning, but a much different outcome. And this “outcome” has a beautiful face to go along with it, the face of a little boy with spina bifida, Eli Judice.

In his book, *Waiting for Eli*, author Chad Judice, a high-school teacher from Lafayette, Louisiana, recalls the day in 2005 when a student asked him an unexpected question:

“Coach Judice, what is your greatest fear?” I had to stop and think for a minute. I had never been asked that question before. “My greatest fear would be to have a child with a mental or physical handicap.”

A few years later, Chad and his wife Ashley, a neonatal intensive-care nurse, parents of a healthy three-year-old boy named Ephraim, were happily anticipating the routine ultrasound of their second child. But soon into the examination, the cheerful atmosphere changed. The technician could not locate a part of their son’s brain, the cerebellum, and they were referred to a specialist. A few days and tests later, they were given the news that their unborn baby boy had an opening on his spinal cord and hydrocephalus, indicating spina bifida. Chad’s worst fear had become his reality.

When Ashley and Chad read up on the statistics on neural-tube defects—80 percent of parents choose to abort; 75 percent of the babies miscarry before 20 weeks; the child might be paralyzed from the waist down, might never achieve bowel control, and could have severe learning disabilities—they were terrified:

Ashley looked at me through tear-filled eyes in this moment of human weakness. “I’m going to hell. I am actually thinking about aborting this child,” she said. I stood up, held her by the shoulders and looked her in the eye. “This is not your fault. It’s not my fault. It just happened. God has a purpose for this child and he has given him to us. We must trust in Him the way Ephraim trusts in us.”

Together they decided that they would name their son then and there and “now, when we prayed for him, everyone around us would know him by name.” So began the public life, one might say, of Elijah Paul Judice, a child who made a difference in the world from the womb. In *Waiting for Eli* and Chad’s second book, *Eli’s Reach* (which has the adorable face of four-year-

old Eli shining out from the cover), Chad tells how Eli, from before birth, made his presence known to great effect. The Judices reached out to their community and beyond, asking people to pray for their son, and they're convinced that these prayers were heard. Not only did Eli's birth challenge the doctors' most dire predictions—the hole in his back which was to be as big as a softball turned out to be the size of a 50-cent piece, and both medically and developmentally he continues to far exceed expectations—but the lives of *those who prayed for him* changed. The first remarkable event was that the teenagers in Chad's school, typically self-absorbed and usually, he writes, apathetic about prayer at best, prayed fervently for Eli. Both books feature moving stories, and in many cases first-person testimonies, of teens who started to take their faith seriously: a young woman who decided against abortion, a teen with cancer who survived a brain tumor. There is even the story of an incarcerated man, who, after reading *Waiting for Eli*, came back to his Christian faith after 30 years away. All were moved by Eli's fight for life and his parents' faith.

Full disclosure: Eli has reached me too. In my many years as editor of the *Human Life Review*, and as the mother of a young man with special needs, I have encountered many affecting witnesses to the value of each human life and the joy children society deems imperfect can bring. But when I read these two books, and saw the photos of Eli, I found my heart powerfully pulled in a new way. Last January, on the 41st anniversary of *Roe v. Wade*, I met Chad Judice and heard him speak at St. Matthew's Cathedral in Washington, D.C., to a group of young pilgrims on their way to the annual March for Life. He is a tremendously engaging speaker, and his presentation, complete with a slide show and a video of little Eli impishly pulling himself commando style across the floor and walking with his walker in physical therapy, is both poignant and hopeful. There is something so compelling about this child, this family, this story... it communicates the pro-life message in a way that words and logical arguments cannot. Indeed, Chad believes that it will be a *story*, like Eli's story, that will convert the hearts of those who have yet to remain unmoved by pro-life arguments—much as *Uncle Tom's Cabin*, the novel by abolitionist Harriet Beecher Stowe, became a bestseller and changed the public's understanding of the humanity of the black person.

Chad is a devout Catholic, who writes about how his decision to accept God's will brought him closer to Jesus, and how God's grace has made his strength possible. But the story of the *right to life for the disabled child* is not only a religious one. For some, it's a matter of constitutional protections and the rights of the person.

Many years ago, Nat Hentoff, a Jewish, atheist writer at the liberal *Village*

Voice, read about another baby born with spina bifida, Baby Jane Doe of Long Island. Her story became controversial because her parents refused to allow her to have corrective spinal surgery after birth, and right-to-lifers (as they were called then) sought to save her. Pro-life lawyer Lawrence Washburn brought the case to court, asking that a guardian be named so that Baby Jane could get her surgery. Hentoff, in a column entitled “Big Brother and the Killing of Imperfect Babies,” asked: “As a person under the Constitution, has Baby Jane Doe no rights of her own to live as long as she can? No due-process rights? . . . No rights to equal protection under the law?” It was this case that converted Hentoff to the pro-life side. (Interestingly enough, Hentoff wrote later that his initial “curiosity was not so much the case itself but the press coverage,” which he said was “lazy and ignorant” and used the same talking points about “women’s rights” and “privacy” over and over. “Whenever I see that kind of story, where everybody agrees, I know there’s something wrong,” he said in a 1989 profile in the *Washington Times*.)

In researching the Baby Jane Doe case, Hentoff also for the first time faced the abortion issue head on; he became, as the Human Life Foundation named him, a Great Defender of Life (Hentoff was given our annual award in 2005. For more on his story, read “My Controversial Choice to Become Pro-Life,” in *The Debate Since Roe*, a book available on our website at www.humanlifereview.com). Hentoff’s first column about Baby Doe was followed by 6 more in the *Voice*, including one on the “shoddy” and “disgraceful” reporting *60 Minutes* did on the case, and several others on another Baby Doe, the famous “Bloomington Baby,” who was “let die” because he had Down syndrome (“The baby starved to death for his own good.”) This Baby Doe needed a simple gastric surgery at birth; it took six days for him to die.

When Baby Jane was 17 days old, the NY State Supreme Court ruled in favor of her parents, who would release her first name, Kerri-Lynn. As the *New York Times* reported it:

The infant, identified as Baby Jane Doe, was born on Oct. 11 in Port Jefferson, L.I. She suffers from spina bifida—a failure of the spinal cord to close properly—along with hydrocephalus, or excess fluid in the brain. Without surgery, doctors say, she is likely to die within two years; with it, she could survive into her 20’s but would be severely retarded and bedridden. The parents, identified as “Mr. and Mrs. A,” decided to forgo surgery after consulting with neurosurgeons, social workers and clergymen.

The decision was seen as a landmark for the rights of parents to decide treatment for their “imperfect” children. The pro-life movement lost that battle.

Or did it? When I began writing this piece, I assumed Baby Jane Doe,

Kerri-Lynn, had died. But the first result of a Google search was a story from the Long Island paper, *Newsday*, from just a few months ago: “Baby Jane Doe at 30—Happy, Joking, Learning.” And there she is—pictured smiling at her 30th birthday party! Kerri-Lynn turned 30 on October 11, 2013. The article says she is a talkative and smiling young woman, who moved into a nearby group home two years ago, and attends academic and physical therapy classes. She takes medication for seizure control and wears a full body brace. Her mother says, “She’s happy; I’m content. I just take one day at a time. That’s the only way to do it with a child with disabilities.” Another Google search revealed that Lawrence Washburn, the man who tried to save Kerri-Lynn, died two days after her birthday, of complications from Parkinson’s at age 77. His *New York Times* obituary reports that he was fined because of the famous NY State case, but that “The sanction and fine were later stricken because the child’s parents had subsequently sought the surgery that was . . . [the proposed guardian’s] object.” Seems from reports that the hole in Kerri-Lynn’s spine closed up on its own, but her parents *did* agree to have surgery to place a shunt in her brain to relieve pressure. (Of course this did not make the news.)

Because of the publicity surrounding her case, Kerri-Lynn, like Eli, touched many people with her story—and perhaps the prayers of many helped her as well. Because not only did she beat the odds—no one predicted she’d be even interactive much less a happy young adult—but her family was spared the heartache of being responsible for her death.

Little Eli Judice, now four, attends pre-K and is enjoying his life. Yes, he has many challenges, his and his family’s life includes hardships—but he has his whole life ahead of him. Chad believes that his son will walk one day, he believes in the power of prayer to make it so.

But for those who believe in the power of prayer and those who do not, I’d say the take-away is clear: Parents do not own their children. Eli and Kerri-Lynn were persons from the moment of conception, they had the right to life—and no one, not their parents, doctors, courts, or the court of public opinion had the right to take that away from them. Nor to take their inspiring lives away from us.

UPDATE: On July 16, Chad and Ashley Judice welcomed their third son, Ezra Matthew.

—*Maria McFadden Maffucci is editor of the Human Life Review and president of the Human Life Foundation. This piece originally appeared as a blog on the Review’s website (www.humanlifereview.com).*

APPENDIX A

[Kevin D. Williamson is roving correspondent for National Review magazine. The following column appeared on National Review Online (www.nationalreview.com) June 8, 2014. © 2014 by National Review, Inc. Reprinted by permission.]

Mother Courage

Kevin D. Williamson

Valerie Gatto does not want to talk about abortion. That's probably prudent, inasmuch as she very much desires to be the next Miss USA, and contestants in that pageant are expected to have ruthlessly anodyne interests along the lines of reading children's literature to blind dolphins. But she is admirably direct, even bracing, about the aspect of her life that intersects that troublesome issue: She was conceived when her mother, a teenager at the time, was attacked on the streets of Pittsburgh and raped at knifepoint.

Asked by a radio interviewer about whether her mother had considered abortion, Miss Gatto was as scripted as a contestant in a presidential debate (which is, after all, much the same business as hers), saying that her mother had been presented with the possibility but had never seriously considered terminating the pregnancy. Instead, she was determined to put the child up for adoption—until changing her mind the night before her daughter was born. God, Miss Gatto's great-grandmother told her mother, would not give her more than she could handle. In the event, it became a question of what Miss Gatto's mother and grandparents could handle; she had the benefit of being raised in an extended-family household, one that by every indication is composed of extraordinary and kind people.

Miss Gatto, deflecting the question of abortion specifically, said that she did not desire to be the candidate of *Roe v. Wade*. "My story is bigger than that." In a sense, that is true, but in another sense, it isn't.

Miss Gatto is of course under no obligation to be a standard-bearer for either side of the abortion debate; it is only the worst kind of fanatic who cannot accommodate the fact that his own interests and enthusiasms, however sincerely held, need not be universal. And if Miss Gatto's message is scrupulously inoffensive—that life can go on even after enduring an act of horrific personal brutality—it is nonetheless a worthwhile one. There are many kinds of courage in the world, of which a mother's courage is a very specific and demanding variety. Rape is a special kind of cruelty in that it transforms the life-giving act into an act of torture. To suffer the crime and yet cherish the life is an act of transcendence, a perfection of generosity rarely if ever equaled by the merely human.

My own view is that those in the pro-life camp who wish to carve out legal exceptions for cases of rape are undermining their own position. If our desire is to protect the lives of the innocent unborn, then the circumstances of their conception, no matter how horrible, cannot be allowed to overrule their standing as members of the human family. But that is not to say that the circumstances do not matter. We should be fully cognizant of exactly what our position implies, and of

the extraordinary burden such a standard would impose on women who have suffered a particularly heinous kind of assault.

But set aside, for the moment, the question of the legal status of abortion. The fact is that abortion is at the moment legal and widely available. Miss Gatto was born in 1989, well into the age of the universal abortion license. Her mother could have terminated her pregnancy easily, and the matter could have remained entirely private. She chose to do otherwise, and then took the additional step of taking on the burdens and difficulties of raising the child rather than giving her to adoptive parents. This is by no means to denigrate the decisions of women who do give up their children for adoption—I myself am grateful that such a decision was made in my own case, and that abortion remained illegal in Texas in 1972. I have no idea whether my biological mother, whom I have not met, would have been tempted by the availability of legal abortion; still, I object to the notion that my own life should be optional under the law. Miss Gatto's mother must have known that she was not choosing an easy road, even with the support and assistance of her parents.

The remarkable fact is that a not insignificant number of women who become pregnant through rape do not choose to terminate their pregnancies, deciding instead to forgo adding to the sum of violence in the world, even though a portion of it has been cruelly visited upon their own persons. In a culture that treats abortion as barely if at all distinguishable from mere contraception, that is heroic. And it is heroic regardless of our specific political differences on the issue of the legal standing of abortion, important—fundamentally important—as that question is.

That heroic act involves unusual personal endurance. Beyond the usual trials of pregnancy, women who have conceived via rape often have unexpectedly traumatic reactions to the sometimes-invasive medical procedures involved in pregnancy; they frequently experience unsupportive or hostile reactions from friends, family, even churches; many of them are not aware of such resources as may be available to assist them. They worry, inevitably, about what they will someday tell their children. The most common advice given by women who have gone through with rape-conceived pregnancies is to seek counseling and support as early in the pregnancy as possible.

“My story is bigger than that,” Miss Gatto says. And so it is. What's in question in the abortion debate is not the scope or moral color of Miss Gatto's story, but whether she gets to have a story at all. She does, but millions don't. A Miss USA contestant has no special responsibility to wrestle with that issue. But citizens do, whether publicly or privately. We are burdened with that problem; it is more likely that we will arrive at a medical solution, in the form of some universally effective contraception, than a moral consensus. (“The Enlightened One, if he had meditated on it, would not necessarily have rejected a technical solution.”—Michel Houellebecq) And when we are thinking about what sort of citizens we want to be, we might consider the case of Miss Gatto's mother and others in her position, who have endured what few of us will ever suffer and given more than most of us ever will be called upon to give.

APPENDIX B

[*Hadley Arkes is the Ney Professor of American Institutions at Amherst College and Director of the James Wilson Institute on Natural Rights & the American Founding. The following commentary was first published on July 3, 2014, as a Blog on the Online Library of Law & Liberty website (www.libertylawsite.org/2014/07/03/the-new-jurisprudence-of-beliefspeak) and is reprinted with permission.*]

The New Jurisprudence of “Beliefspeak”

Hadley Arkes

Count me as a part of that population that rejoiced over the outcome in the Hobby Lobby case. It was a relief that the Green family, owners of the Hobby Lobby craft stores, and the Hahns, owners of Conestoga Wood Specialties, were delivered from the mandates of Obamacare; the mandates that compelled these families to cover abortifacients in the medical care they funded so generously for their employees. Justice Alito also did a notable service in making clear that a “corporation” is an association of “human persons”: Every association is directed to a purpose; and there is no principle that determines that this kind of corporation, alone among all other associations, may not be committed to moral and religious purposes, apart from the making of money. But the rejoicing over the decision could be amplified as the holding rippled outward quickly in the land: The Eleventh Circuit moved instantly to deliver the Eternal World Television Network (EWTN) from the threat of the mandates and the Little Sisters of the Poor seem safe now as well.

If I had been a member of the Court in the Hobby Lobby case, I would have written a concurring opinion, celebrating the outcome. But I would have registered the gravest reservation over the reasoning by which this good result has been produced for us. Judges such as Janice Rogers Brown in the *Gilardi* case (in the DC Circuit) and Diane Sykes in the *Korte and Grote* cases (in the 7th Circuit) managed to produce the same outcome in comparable disputes; but they did it without engaging in the gratuitous move of reducing “religion” to “beliefs” held “sincerely,” quite detached from the canons of reason and claims of truth. As my own friends have added their commentaries on the case, that dimension of the argument has been amplified, in a manner that only deepens the problem, for it gives us a jurisprudence that cannot give a coherent account of itself. It puts in the mouths of our friends sentences that would otherwise embarrass the urbane, and finally, it accomplishes the inversion of backing the conservatives into the very language and concepts of their adversaries.

During the litigation over Hobby Lobby in the 10th Circuit, the Green family professed its “sincere belief” that life begins at conception. To which some of us said: Belief? That proposition has been an anchoring axiom in the textbooks on embryology and obstetric gynecology. We should suddenly be hearing again the warning of John Courtney Murray: that the religious would back into the libeling of their religion by reducing religious convictions merely to “beliefs,” uncertain

truths, which claim to be valid only for the people who share them. The Catholic position on abortion has not appealed to faith or revelation. It has been a weave of embryology and principled reasoning. No serious Catholic would come into court and say that he “believes” that life begins at conception. And so we’re faced with this oddity, which I’ve pointed out in my pieces: We may have an owner of a business, who disclaims any religious convictions, but he has reasoned his way to a moral objection to abortion with precisely the same reasoning used by the Church and Catholic writers. We might gather now that he would not be protected by the decision of the Court on Monday: He would not have a claim to be released from the mandates of the Department of Health and Human Services (HHS) in the way that the Greens and the Hahns would, even if he has a closely-held family corporation.

But take it one step further: The serious Catholic, who disdains to argue on the basis merely of “belief”—who insists instead on the “truth” of his conviction that abortion destroys a human life—he too may not be covered apparently by the judgment of the Court. For he offers no “belief,” and invites no one to test his “sincerity.” But when good people, such as the Greens and Hahns offer their beliefs, we are told by the Court that their beliefs will not be scrutinized. For as the Court observed, “it is not for us to say that their religious beliefs are mistaken or insubstantial.”

No one, of course, takes seriously the notion that the law would refrain from judgment when it comes to the sacrifice of widows on a funeral pyre, or the withholding of blood transfusions from a child, even if it were claimed, as a matter of “belief,” that these lives had spiritually ended. These words of the Court, disclaiming judgment, seem part of a Brigadoon-like world: they seem to flare into existence in the magic of the moment—only to evaporate when sedate reflection comes crashing in again.

The mantras of “belief” and “sincerity” are getting baked in already, even though they cannot carry the substance of any serious moral question. Our friends draw upon Justice Alito in assuring us that the federal government, in the management of prisons and other things, has cultivated a certain art in discriminating between sincere and insincere claims. Should we really be spending our legal genius in devising methods or tests to find out how serious or “sincere” people are as they invoke their “sincere” belief that the child in the womb is less than human, and that the laws barring abortion are violating their religious freedom? And we are not conjuring here anything implausible, for have we not in fact heard all of this already? If we are really testing sincerity, some of these cases could be determined with truth serum or a lie detector test. But who would take any of that as a “justification” for releasing people from the obligation to obey any law we regarded as defensible, whether a law that bars the killing of the unborn or racial discrimination?

But in these moments when magic words about “beliefs” are given a new loft, we find serious people backing into constructions that would on other occasions embarrass them. And so, getting with the program, one of my favorite commentators remarked about the Hobby Lobby case that:

The Court did not second-guess any of these beliefs [of the Greens or Hahns], nor did the Court judge whether these beliefs are right or wrong, true or false. The Court merely determined that the beliefs were sincere. In fact, the Court refused to render judgment, as the Obama Administration and Justice Ginsburg seem to have done, on whether the Hahns and the Greens had the “right” beliefs. Justice Alito notes that “HHS and the principal dissent in effect tell the plaintiffs that their beliefs are flawed.” But religious liberty, after all, is about “the right to be wrong” even in the pursuit of religious truth.

But as Aquinas and Lincoln both taught us, there cannot be a coherent claim of a “right to do a wrong.” It is one of those self-refuting propositions, which may be explained quickly in this way: People claim a “right to do a wrong” only when others are pressing on them, threatening to impose a policy they find objectionable. By saying that they have a “right” nevertheless to hold to their position, they are saying that people “ought not” impose their policy on them—which is to say, that it would be “wrong” of them to do it. But their adversaries now turn upon the complainers and point out that they too have this “right to do a wrong.”

When we find polished, accomplished people invoking now a “right to be wrong,” a line that cannot form a coherent ground of argument on any matter, we may see the signs of an argument soaring with metaphor, but now untethered. The concern here is deepened by the awareness that none of this was necessary in order to defend the Greens and Hahns from the imposition of these mandates from HHS. These families were being ordered to bear, at private expense, what the Obama Administration considers a public obligation. And they would become accomplices, at the same time, in policies that violate the principles that command their respect. As Judge Sykes pointed out in the Korte case in the 7th Circuit, the government could well have decided that there was a compelling public interest in diffusing contraceptives through the land. But it could have accomplished that end by offering tax incentives or even purchasing those contraceptives and giving them away. And yet in that case, as Matthew Franck notes in *Public Discourse*, the government would have to take on the constitutional discipline of raising the money and justifying to the public the taxes it would have to levy to raise the money. But it was critical for Mr. Obama and his party to insist that no taxes would be raised in order to provide these vast public benefits. Those benefits would be supplied by shifting the costs to the owners of private businesses. This is the sort of thing that would have sounded in the past all of the bells and whistles: that we are in the presence of “class legislation”—we are transferring assets from Person A to Person B, and in that way circumventing the discipline of the Constitution, and perhaps the Takings Clause of the Fifth Amendment.

It is worth pointing out, in this vein, that this mode of reasoning was available to us—and remains available—even without the Religious Freedom Restoration Act (RFRA). Yes, Judges Sykes and Brown, and Justice Alito, could say in the language of RFRA that the government should seek the “least restrictive means” of accomplishing a legitimate end. But Richard Epstein (and I) would argue that the

same test would come into play when the government restricts freedom in any domain. Judges understood and applied these principles long before RFRA, and they do not need RFRA in order to do it even now.

Years ago, when some of us were arguing for the Defense of Marriage Act, we pointed out that, if marriage were detached from the purpose of begetting, there would be no rationale confining marriage to a coupling. It would be hard to see any principled ground for denying marriage to polygamous and polyamorous ensembles. Some of our opponents sought to meet that argument by insisting that we were being overwrought, for they saw no likely burgeoning of an interest in polygamy. But they were missing our point: We were not making a prediction; we were simply making an argument in principle—namely, that there would be no principled ground any longer for denying those other forms of “marriage.”

I raise the point here because I think some of our friends may be slipping into the same misreading when it comes to Ruth Ginsburg’s dissent in *Hobby Lobby*. Justice Ginsburg drew out these implications that could possibly spring from the decision of the Court as we encountered:

employers with religiously grounded objections to blood transfusions (Jehovah’s Witnesses); antidepressants (Scientologists); medications derived from pigs, including anesthesia, intravenous fluids, and pills coated with gelatin (certain Muslims, Jews, and Hindus); and vaccinations (Christian Scientists, among others)?

Some of our friends have accused Justice Ginsburg of wild speculation here because they doubt these cases will arise. But our friends may be replicating the confusion between predictions and principles: Ruth Ginsburg should be read not as offering a prediction, but daring us to explain the ground of principle on which we would deny these claims, made on the basis of “belief.” I think that my side could well provide an answer for most of these challenges: We would point out that one set of things (abortifacients) involves the taking of a human life, while the others threaten no injury of that magnitude. But we do not say we “believe” that abortifacients destroy a human life; we assert it as a truth, supported by biology and principled reasoning. In other words we answer Ruth Ginsburg by removing the argument from the domain of mere beliefs. We return the argument to the domain of reasons tested for evidence and truth. But we cannot evade the force of Justice Ginsburg’s challenge if we say, as Justice Alito said of the Greens and Hahns, that “it is not for us to say that their religious beliefs are mistaken or insubstantial.” The same thing could be said on the part of the employers conjured up by Justice Ginsburg—unless we move from Justice Alito’s unwillingness to gauge the plausibility of the claims that are offered to us under the banner of “beliefs.”

And there we reach, I think, the final inversion here. For years those of us who have argued the pro-life side have encountered the insistence that our moral objections to abortion involve nothing less than the imposition of our “religious beliefs” on others. In response, we have insisted over the years that a moral argument cannot be reduced to mere beliefs; that it is woven of evidence and principled reasoning and

ever subject in turn to challenge and testing on reasoned grounds. But now, if we take our friends seriously, the Greens and Hahns are to be defended only by insisting that their moral argument is translated into claims of belief, and those claims are not to be tested with the canons of evidence and reason. With that move, I submit, we would be absorbing the upside-down concepts of our adversaries. Legislating on abortion would be done then on the basis of nothing more than “beliefs” held “sincerely.” We would indeed be imposing our religious beliefs on others. What should be expected in return is the same argument over “sincerity” that has been accepted as decisive in the Hobby Lobby case. And we can be sure of this: there will be no need for ingenious scales, subtle and elaborate, to establish that the people who deny the human standing of the child in the womb are fully, incorrigibly “sincere.”

I’m afraid, then, that we have been bedazzled by the outcome in Hobby Lobby, and too reluctant to speak the plain truth: that this is a jurisprudence that cannot give a coherent account of itself. I feel nearly like Brooks Atkinson reviewing a Broadway show years ago and remarking that “I’ve knocked everything in this show but the chorus girls’ legs, and there nature anticipated.” My reservations have run deep, and yet I would post one more warning: Lewis Powell, in the Bakke case, dropped the word “diversity” into our cases, and that word, taking wing, has created a new industry in the academy, spread its corruptions now throughout the land.

I’d beg my friends to take a sober second look, to be far more careful before embedding in our law these claims to “rights” or “rightful liberties” depending on “beliefs” that may not be tested for their truth or coherence—and from those materials fashioning a law for us on a matter of deep moral consequence. This is the kind of thing that may not only disfigure our jurisprudence, but corrode the minds of the next generation of lawyers, who will make it their business to learn this new “beliefspeak.” To mix the metaphors, we may be drawn here to “fool’s gold” and find ourselves playing with fire.

APPENDIX C

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Meanwhile, Outside the Panic Room: Contraception, Hobby Lobby, and Women's Rights

Helen M. Alvaré

Contra Justice Ginsburg, the Hobby Lobby decision is no cause for alarm. Yet we should acknowledge and address a fear she highlights: the serious obstacles women face today in the realms of sex, marriage, and parenthood.

Prior to the 2012 HHS Mandate, there were no “runs” on birth control suppliers, nor were there demonstrations in the streets by women demanding free birth control. Nowhere was there observed a dearth of women willing to work for businesses informed by a religious conscience on matters of contraception or abortion.

This should come as a shock to those predicting the end of women's freedom as a result of the Supreme Court's decisions in Hobby Lobby and Conestoga Wood. It should also shock those protesters screaming about women's ovaries on the steps of the Supreme Court. It should even shock the president of the United States, who took time away from his deliberations concerning Ukraine, Iraq, and Syria, to tweet cleverly against this win for religious freedom. And perhaps it will deliver the biggest shock to Supreme Court Justice Ruth Bader Ginsburg, whose dissent in Hobby Lobby spoke of the “harm,” the “havoc,” and the threat to women's “ability to participate equally in the economic and social life of the nation” posed by the decision. Media reaction has been predictably similar.

Supporters of religious freedom and of women's freedom to speak for themselves shouldn't count on the utter silliness of this line of thinking to cause it to self-destruct. In fact, Ginsburg's way of measuring freedom, including women's freedom, enjoys a lot of support. In the context of the mandate, I am referring to two points that are popular despite their irrationality. First: whenever the government creates a new entitlement, private actors' refusal to provide it constitutes what Justice Ginsburg calls “depriving others of rights.” (One sees this dynamic in the context of same-sex marriage recognition laws as well.) Second: massively available and cheap or free contraception is absolutely foundational to women's freedom.

Undoubtedly, it is difficult to offer pithy responses to these claims. Yet there are two responses that are not only logically necessary, but serve women's flourishing in a superior manner.

These responses are, first, enumerating the myriad reasons that many women won't be joining Justice Ginsburg in the panic room post-Hobby Lobby; and, second,

acknowledging the “nerve” that Justice Ginsburg and her compatriots are plucking when they raise the prospect of women’s loss of control over sex and pregnancy.

Why Women Aren’t Panicked

Justice Ginsburg, like so many feminist activists of her generation, has a tendency to claim to speak for all women when she frames a grievance on women’s behalf. But relatively few women are actually affected by the majority opinion in *Hobby Lobby*. Poor women, and even women at several times the poverty level, already have free or subsidized birth control available from the state. Since 1970, they have been served by the National Family Planning Program (“Title X”). In 2010, Title X-funded sites served more than five million patients—69 percent at or below the poverty level and 31 percent above—at 4,389 service sites across all fifty states and the District of Columbia. Likewise, both Title XIX of the Social Security Act (Medicaid) and Title XX of the Social Security Act provide federal funds to states for pregnancy prevention services available to both adolescents and adults. The federal Maternal and Child Health Block Grant funds 610 school-based or school-linked health clinics. In 2012, Planned Parenthood Federation of America alone received \$540 million of government grants and reimbursements directed largely to providing lower-cost contraception. Then there is all the funding for low-cost Community Health Centers provided via the Affordable Care Act.

Also, generally speaking, the Centers for Disease Control report that cost does not even make the list of “frequently cited reasons for nonuse” among the 11 percent of sexually active women not using contraception. A Guttmacher source claimed that only 3.7 percent of the total sample of women seeking abortions listed cost as a barrier to contraceptive usage. Note that this study’s authors did not even investigate whether these women were eligible for state contraception programs or hand-outs from Planned Parenthood.

Women working in small businesses or those with “grandfathered” health plans were never entitled to free contraception under the mandate. Furthermore, women working for larger businesses nearly always have contraceptive coverage. According to that indefatigable contraception and abortion promoter the Alan Guttmacher Institute, “almost every reversible and permanent contraceptive method available” was covered by 90 percent of health insurance plans before the mandate.

Justice Ginsburg Doesn’t Speak for All Women

There is also a sizable cohort of women who dislike (or even hate) the side effects of some forms of contraception—especially those of hormonal methods such as the pill, Depo-Provera, and IUDs. Ironically, these are the more costly methods that Justice Ginsburg and other activists hope the mandate will most promote. You can find women hating hormonal birth control for decidedly nonreligious reasons in books like Holly Griggs Spall’s *Sweetening the Pill*, or in articles on popular news sites.

Then there is the significant group of women who have suffered some alarming

health effects from their birth control. Think of the 10,000 women suing Bayer Pharmaceuticals for blood clots or strokes related to the Yaz pill (Bayer has paid more than \$1.6 billion in settlements so far), or the 3,800 women suing Merck & Co. for the blood clots, strokes and heart attacks related to the Nuva-Ring. Even birth-control cheerleaders like Vanity Fair, the Washington Post, and the New York Times acknowledge the serious or fatal effects of some methods for some women, or their role in increasing AIDS/HIV transmission. Not to mention the World Health Organization or the American Cancer Society, organizations that label some forms of the pill carcinogenic to some parts of the body, while noting that some forms might mitigate the risk of cancer in others.

There are also women with religious objections to contraception, including not only a surprising number of young Catholics, but also some groups of Evangelicals.

And what of women who are infertile, menopausal, fond of natural methods of fertility management, or not sexually active? What about women who have no moral objection to contraception, but either respect the good of religious freedom in a free society, or even appreciate, substantively, the thoughtful witness religious people offer on matters of sex and marriage? What about women who fear the heavy hand of government and the slippery slope that Justice Ginsburg fervently constructs? That is, they fear the idea that all government mandates become baseline “rights,” impervious to religious or other exemptions.

What about women who are just sick and tired of the obsession with contraception and abortion—women starving for concrete policies allowing them to manage the costs of education and the demands of work, and also to marry and have kids?

This adds up to a lot of women who are not nodding their heads in agreement over the “you can take my free contraception out of my cold, dead hands” tone of the Ginsburg dissent, or other frenzied post-Hobby Lobby laments.

How Birth Control Became a Proxy for Women’s Freedom

But there is an important caution respecting this line of argument. Even though Ginsburg’s voice doesn’t represent many women, there is a sense in which her arguments still have power. For significant and entrenched reasons, birth control has become a proxy for “women’s freedom” in the minds of many women, even if they’re not actually touched by the Hobby Lobby decision.

A significant number of women have good reasons to be anxious about the possibility of becoming pregnant when they are not fully willing and prepared. This is largely due to the situation in the “marketplace” of male-female relationships and the lack of policies helping mothers manage work outside the home.

First, regarding this marketplace, today it fosters non-marital sex, cohabitation, later marriage, abortion, and single parenthood (and thus female poverty). These phenomena are disadvantageous to women, and in the minds of many, can be mitigated or avoided by contraception. The mechanisms by which these results are produced are brilliantly summarized by leading economists.

The all-too-brief summary is as follows: when birth control and abortion

separate sex from kids, non-marital sexual encounters increase as the perceived “risks” (children) appear to decline. Sex easily becomes the “price” of obtaining a romantic relationship, and “shotgun weddings” following a pregnancy disappear because women have the right of access to abortion. But because there are so many more uncommitted sexual encounters, and because contraception regularly fails, and because of continuing aspirations for children and relationships, cohabitation skyrockets, nonmarital births and abortions increase, and marriage is delayed or forgone (despite women’s fertility patterns and persistent desire for children). Single parenthood by women (and therefore poverty) becomes far more common.

It wasn’t just the “technology shocks” of the pill and abortion that shaped this marketplace; the law cooperated. The feminist legal establishment of the latter part of the twentieth century argued (and the Supreme Court agreed) that children imposed serious disadvantages on women. Contraception and abortion were thus achieved as constitutional rights. At the same time, leading feminist voices glamorized paid work and failed to pursue policies harmonizing motherhood with work outside the home. They played down differences between women and men, allowed the “ideal male worker” model to dominate women’s work lives, and let birth control and abortion policy constitute nearly the entire “women’s agenda.”

Truly Compassionate Solutions

In the end, women have all the rights imaginable to avoid children, but few besides “unpaid leave” and paltry tax breaks to support their having children. Poorer women are also less likely to have ongoing male support in rearing their children and more likely to face inflexible work schedules and skyrocketing child-care costs.

Modern women of all income levels face formidable obstacles when it comes to parenting, and birth control is offered as the compassionate solution. Ironically, many of these obstacles are a result of the marketplace for relationships and marriage that birth control and abortion helped to create. Nevertheless, to keep women saturated in this marketplace from falling prey to the “birth control is freedom” argument, we must address it head-on.

We must clearly draw attention to the nature and workings of the marketplace of relationships today. Ask women to honestly confront the question whether it is to their advantage to participate according to this market’s current terms. In particular, point out the good of renewing female solidarity toward relinking sex, commitment, and children for the benefit of women, children, and men as well. Finally, vocally offer to cooperate on public and private policies enabling women to manage the demands and costs of education and employment, in harmony with their aspirations to marry and have children.

How I wish this work were as simple as parroting the simplistic claim that Hobby Lobby harms women. It isn’t. But the alternative—allowing Ginsburg to stand unchallenged—is unacceptable if we are to be fair to women and to preserve religious freedom for both women and men.

APPENDIX D

[Nona Aguilar is an award-winning journalist specializing in family health. In addition to articles that have appeared in major women's magazines, she has written three books, including The New No-Pill, No-Risk Birth Control on natural family planning. The following commentary originally appeared as a Blog on the Human Life Foundation's website: www.humanlifereview.com]

Coming to Peace with Brain Death

Nona Aguilar

This will be personal.

Ten years ago, my best friend had a stroke. He lay unconscious on his bathroom floor for about 20 hours before anyone (me!) realized he wasn't answering his phone.

I called the police before dashing to his house. Officers were there when I arrived; Richard wasn't. He had been rushed to the hospital; I followed.

When I ran through the hospital's swinging doors, signed health care proxy in hand, I learned that Richard was completely non-responsive. Further tests the following day indicated his condition remained unchanged.

In other words, he was brain dead.

A young nurse from the hospital's organ transplant team came into Richard's room to talk to me. Richard's close friend Barbara was also there, so the nurse spoke to both of us. The question: Would I authorize an organ donation? Specifically: Would I authorize removal and donation of Richard's heart?

For a heart transplant to be successful, the donor heart must be alive, throbbing and beating at the time of removal. The problem: The medical people considered Richard to be dead. I didn't.

Despite the nurse's wonderful, calm manner, I became stressed, upset. Could I think about it? Of course, but an answer as soon as possible was important.

I launched a frantic effort to learn about "brain death." Richard's medical reports, which were explained to me in excruciating detail, belied what I saw: a man who appeared to be peacefully asleep, breathing on his own.

Still, a doctor friend assured me that brain dead is dead and heart removal ethical. A theologian with a specialty in life/death issues said the same thing. So did others, Richard's family included.

In the end, and with a heavy heart, I signed the authorization.

Then just before Richard could be wheeled into the OR, machines began to bleat and beep. Doctors and medics flew into the room. They worked hard to save him, but couldn't.

Now brain dead and heart dead, Richard's heart was useless. His family joined me in approving donation of all useful body parts. We were gratified to learn how many people were helped by Richard's organs.

In the weeks that followed, I researched brain death relentlessly. I concluded that I was wrong to have approved the procedure and was grateful that Richard's

actual death (by my lights) had mercifully intervened. My decision to allow removal of his heart remained a painful rebuke, however.

Today I'm not so sure. As a "been there" had-to-make-a-decision "done that" person, I attempt to balance two matters in my (still living) brain. The first is an image; the second, a question. Several questions, actually.

The image: As a child I once watched in horrified fascination as a chicken staggered for some ten seconds in the yard at my uncle's ranch. The bird would be dinner, its head lying barely two yards from its stumbling feet and flapping wings. Because its bodily processes continued after decapitation, one could even believe it was alive, but in the meaningful sense of "being alive," was it?

I suspect the answer to that question may lie in the answer to this one: When does the life principle—the soul, if you will—cease to animate the body?

The concept of "life principle" (or "soul") is how we describe the unifying element of a living, material body. Living human beings have a life principle. As do living animals.

Courtesy of the life principle, your rickety, 13-year-old beagle ambling beside you on her daily walks is the same dog that gamboled in your yard as a four-month-old puppy. Every single cell in Susie's body has been replaced several times over in the decade plus of her life, but she's still the same Susie. Likewise, gentle reader, you are the same person over the span of your lifetime from babyhood to (hopefully) old age. This is the case even if your body receives another person's transplanted organ—you don't become a "split" personality (so to speak).

Indeed, Susie's heart doesn't have one life principle, her liver another, and her lungs and kidneys still others. And neither do human organs. The life principle is a unifying one; it keeps every animal, human and otherwise, alive en toto. Because of this, we can remove one kidney or one lung—paired vital organs—without causing death: Its "mate" continues performing the organ's designated function.

But we can't remove a heart without causing death.

So I ask: Is it because now we know more—all that relentless scientific advance—that signs of death have expanded to include so called brain death? Maybe. But I have a darker question: Has this advance occurred just in time to serve a further medical-scientific interest: the ability to perform heart-transplant operations?

I hope not.

After all, the Catholic Church, reliably stubborn and unyielding in such matters, apparently accepts brain death (according to strict neurological criteria) as a sign that death has occurred. This is why (at this writing) the Church does not stand against removal of a living, beating heart from a brain-dead person's body for transplant into a living person's body (see National Catholic Bioethics Center, "FAQ on 'Brain Death,'" <http://www.ncbcenter.org/page.aspx?pid=1285>).

With all due respect to the Catholic Church, I ask myself this question as I contemplate the concept of brain death: If the life-principle (or soul) is what makes the body alive and is a unifying principle, then is the irreversible loss of brain

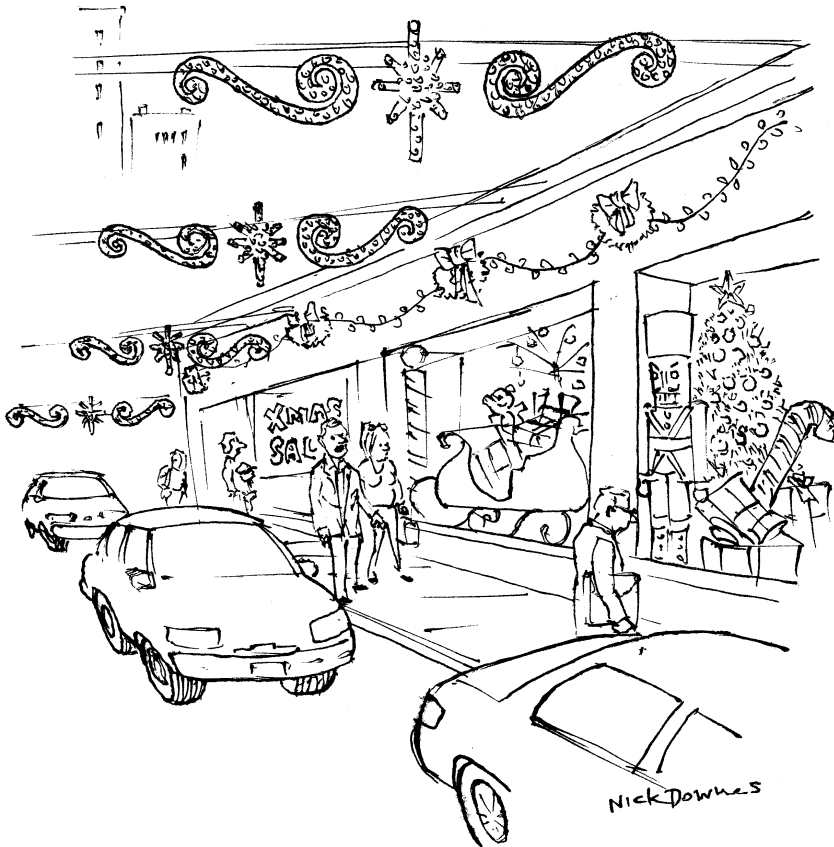
APPENDIX D

function a reliable sign that the body is no longer alive even when breathing continues unaided?

Or put it this way (and reprising that old, tired joke), as I sat by Richard's bed observing a man who appeared to be peacefully asleep, breathing on his own, should I have believed my lying eyes? Or what everyone else was telling me to believe?

The concept of brain death has been a vexing one for decades. Some consider it settled. Some do not. Thinking about Richard's death, I think I know why. We know that Richard died; we don't know when he actually left us. That's still the rub.

And shouldn't it be?



"My God, is it September already?"

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