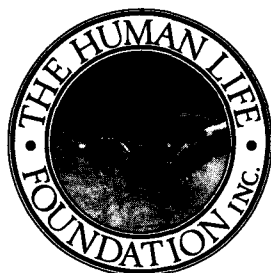


the HUMAN LIFE REVIEW



FALL 2004

Featured in this issue:

William Murchison on . . . The World of *Vera Drake*

Gilbert Meilaender on Stem Cells and Reagan

Stephen J. Heaney on *Goodridge's* Confusions

**The Long Road of Eugenics:
From Rockefeller to *Roe v. Wade***

by Rebecca Messall

Also in this issue:

Shannen W. Coffin • Wesley J. Smith • William McGurn •
and Naomi Schaefer Riley on "Deadly Medicine"

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ABOUT THIS ISSUE . . .

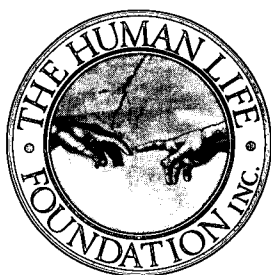
. . . it's not often we publish articles of *considerable* length but it happens we're doing it back to back. Last issue we featured "Justice Blackmun and the Little People" by our longtime contributor (and friend) Mary Meehan, who spent months studying the late Supreme Court Justice's papers to weave a riveting tale that simply could not be spun "short." Rebecca Messall, an attorney who lives and works in Denver, Colorado, shares both Meehan's industry and her penchant for stitching together the historical pieces: "The Long Road of Eugenics: From Rockefeller to *Roe v. Wade*," which begins on page 33, builds on an earlier article of Messall's ("The Evolution of Genocide," Winter, 2000), painstakingly showing how one of the country's most prominent families funded the eugenics movement in America for decades. It's well worth the time you'll invest in reading it.

Naomi Schaefer Riley's "The Legacy of Nazi Medicine" (page 75) follows and complements Messall's report: It's a review of an exhibition titled "Deadly Medicine," mounted by the United States Holocaust Museum in Washington, D.C. and running through Oct. 16, 2005. We thank *The New Atlantis* for permission to reprint both Riley's article and Gilbert Meilaender's "Stem Cells and the Reagan Legacy" (page 14). For more information about this relatively new "Journal of Technology & Society" visit their website at www.TheNewAtlantis.com, or call (202) 682-1200. Thanks also go to National Review Online (nationalreview.com), where Shannen W. Coffin's "Abortion by Any Other Name" (page 82) and Wesley J. Smith's "Noxious Nitschke" (page 84) first appeared. Like Meehan, Smith is a longtime contributor and friend. His invaluable new book is *Consumer's Guide to a Brave New World* (Encounter Books).

William McGurn is yet another longtime contributor. We thank him for sending us "Life of the Party" (page 87), the text of the First Annual Bob Casey Lecture which he gave recently in Denver. We also congratulate him on his new job as chief speechwriter for President George Bush. His predecessor leaves big shoes to fill, but McGurn has talent aplenty for the job.

Alas, another mention of our last (Summer) issue is necessary: Due to a proof-reading lapse (mine and five others'), there is a most egregious error at the end of the first paragraph of George McKenna's splendid article, "Throwing Open the Windows—Again." The quote in the last sentence should have read "racial *segregation* is morally wrong and sinful"—our emphasis—not (egads!) "racial integration." Our apologies to Mr. McKenna who, in addition to being a frequent contributor, is also one of the nicest guys we know—and quite forgiving. And there is good news: Should you wish, you can print out a clean copy of the article at our website, humanlifereview.com.

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Fall 2004

Vol. XXX, No. 4

<i>Introduction</i>	2
Maria McFadden	
<i>The World of Vera Drake</i>	7
William Murchison	
<i>Stem Cells and the Reagan Legacy</i> . . .	14
Gilbert Meilaender	
<i>The Dangerous Confusions</i> <i>of Goodridge</i>	21
Stephen J. Heaney	
<i>The Long Road of Eugenics:</i> <i>From Rockefeller to Roe v. Wade</i>	33
Rebecca Messall	
<i>Appendices</i>	75
Naomi Schaefer Riley	
Shannen W. Coffin	
Wesley J. Smith	
William McGurn	

INTRODUCTION

AS I WRITE THIS, in mid January, the world is reeling from the unfathomable catastrophe in Southeast Asia—the tsunami’s casualties now numbering over 200,000, at least a third of them children. Many thousands more are injured; countless homeless. In the age of global communication, the tragedy has been made real by searing images of destruction and grief—so much so that it seemed for a while almost surreal to be *here*, where tales of miraculous tsunami survivors competed for space in our newspapers with news of the latest celebrity break-up and ads for post-Christmas sales.

Most Americans probably saw the stories about one miraculous survivor: Malawati, from Banda Aceh, Indonesia. Swept out to sea, she was found, five days later, 100 nautical miles from where she was taken. She survived by clinging to a palm tree and eating its fruit. Had the tuna boat that rescued her not been off its regular course due to difficult winds, she might never have been found. Severely dehydrated and weak, Malawati was rushed to the hospital, where her doctors discovered another miracle—she was three months pregnant, and the unborn child was alive and well. “I’m very glad, very happy” she said, and it seemed she too was surprised—but later news reports said she had known she was pregnant, but hadn’t said anything, fearing she’d lost her child. She and her husband, who is among the missing, had been married four years and had no other children.

There are an estimated 150,000 unborn children in tsunami-hit areas, and United Nations officials are worried that their mothers will not be able to carry them safely to term; so UN relief services have spent 3 million dollars on emergency maternity kits, which they have been air-dropping into hard-hit areas along with water and food. The kits include sterile razor blades (to cut umbilical cords) and baby blankets. Of course these babies will be born with many disadvantages—poor, homeless, fatherless, even family-less. Here in “the land of plenty,” children are often aborted for much less dire reasons. But Malawati’s pregnancy was headline-worthy because our first instinct is to *rejoice* that there is new life amidst the staggering numbers of dead. Malawati’s unborn child is a tiny example of human resilience, and we grasp on to such a story, because new life brings hope.

This Fall issue of the *Review* is a collection of articles written before the world-changing events of December 26th. As a reflection of the struggle in *our* culture to protect unborn life, much of it also seems surreal, and tragic. As stories of the tsunami relief efforts get pushed off the front pages, we’re bombarded with more celebrity coverage, including Golden Globe and Oscar buzz. One film getting lots of attention, including a Golden Globe nomination (for Imelda Staunton as Best Actress) and the

prestigious best film prize at the Venice Film festival, is *Vera Drake*, a movie about abortion.

This new film, along with a recent book written by Alexander Sanger (grandson of Margaret), are discussed in Senior Editor William Murchison's lead article. His topic is the "normalization" of abortion, the attempt to quell the controversy by promoting abortion as an acceptable, necessary part of our lives. *Vera Drake* is a story about an average, kind and generous housewife in Britain in the 1950's who also dedicates herself to providing "women in trouble" with illegal abortions (for free!). She is eventually arrested and imprisoned, and there is, as Murchison explains, no question that the director, Mike Leigh, wants the audience to feel that she is the victim of a great injustice. *Vera Drake* is one of several recent films in which abortion figures positively, or at least benignly. Alexander Sanger's book, *Beyond Choice*, also attempts to make abortion a normal and necessary choice: Stop all the fuss, Sanger says, abortion is merely a "reproductive strategy" which is "essential to the survival and well-being of humanity." These attempts to make abortion "normal" pose a great challenge, writes Murchison, to those "involved in keeping the evil of abortion where it belongs—at the forefront of civilized concerns."

Nonetheless, abortion remains a divisive issue, one which played a larger role in the recent election than some expected. A related issue was the use of embryonic stem cells for research. Our next article, by Gilbert Meilaender, who is a member of the President's Council on Bioethics, is a marvelous clarification of what proponents of this "research" are actually advocating, and what the *moral* implications are. He uses as a prism the speech given by Ron Reagan Jr. at the Democratic National Convention last July. As you will recall, our thirtieth anniversary issue (Summer 2004) remembered the great Ronald Reagan, and his pro-life legacy. Unfortunately, his namesake chose to use his father's tragic struggle with Alzheimer's to seize some moments of fame, making news with his sentimental plea for more federal funding for embryonic stem-cell research. His speech, says Meilaender, is not only "an example of the many confusions—moral and scientific, deliberate and inadvertent—that shape public debate over this crucial question," but also, if we take seriously what Ron Reagan said, "we would, I think, be stunned by its hubris, its utter lack of any sense of human limits." The "deeper issue," writes Meilaender, is a commitment to "a limitless war on disease" with no moral limits. Compassion itself has been "isolated entirely from any larger moral framework . . . the debased currency of compassion in our public discourse today is by no means the real virtue itself." True compassion would not include destroying one class of humans for the benefit of another.

Real but misguided compassion has, I would venture, added to the intellectual and moral confusion that marks the current marriage debate, the subject of our next article. In our tolerant, liberal society, we all know and probably love persons who are engaged in non-traditional modes of family living, and we wish them well. But the current debate over what *constitutes* marriage is not about how individuals and couples ought to be treated in a pluralistic society, or about a person's

“right” to be happy—it’s about what has traditionally been considered, by society, the optimal conditions for *children*. In our next article, Professor Stephen J. Heaney writes about *Goodridge v. Department of Public Health*, the Massachusetts Supreme Court decision (November 2003) that concluded same-sex couples had been hitherto “arbitrarily deprived” of the benefits of marriage. Heaney argues that there was nothing “arbitrary” about it—the entire concept of marriage that Western culture has codified into law would necessarily prohibit same-sex marriage. Heaney takes us through the arguments presented on this case, as well as the major arguments currently being made for homosexual marriage. And he argues persuasively that accepting, as the *Goodridge* court recommends, marriage as an “evolving paradigm” will mean the destruction of the institution itself.

We come now to the centerpiece of this issue: Rebecca Messall’s *The Long Road to Eugenics: From Rockefeller to Roe v. Wade*. In a major work of scholarship, Messall presents meticulously researched and substantiated evidence of the enormous and far-reaching influence the 20th century British and American eugenics movement had (and still has) on our reproductive policy. The connections of Darwin-based eugenic theory to Nazi horrors are well-known, and currently in the news: the U.S. Holocaust Museum has a new exhibition, “Deadly Medicine: Creating the Rise of the Master Race,” which chronicles the rise of eugenics in Nazi Germany (see *Appendix A*). But what you won’t find in “popular” sources is the fact that eugenics figures heavily in the *Roe v. Wade* decision, and that our reproductive policies here (and those we export abroad) are based, not on the premise that “all people are created equal,” but on eugenics. And eugenics, writes Messall, is based on the premise that “people are not equal, that some are lesser than others; particularly people who are disabled, but also people who are not white, or who are not well educated, or who are weakened by age or illness.”

Right from the start, the connections between eugenics and the road to legalized abortion are glaring. The 1956 membership records of the American Eugenics Society reveal that Margaret Sanger was a member, as was Alan Guttmacher. This is not shocking: We know that behind the drive to “liberalize” abortion was the primary goal of “better breeding.” Margaret Sanger said that birth control was necessary to “improve the quality of future generations,” that “the most urgent problem today is how to limit the over-fertility of the mentally and physically defective.” What may shock you, however, is the evidence of eugenic advocacy in philanthropists, politicians, and institutions well respected by the culture at large. The prime example being, as the title states, the Rockefellers. Writes Messall: “The Rockefeller’s wealth and social standing gave them indescribable political influence, which, along with their money, they plowed into the eugenics movement around the world.” She focuses on a “central contention: that the *Roe* decision was in great measure the result of a seeming obsession with eugenics by at least two members of the Rockefeller family.”

Frederick Osborn (1889-1981), a banker and the nephew of J.P. Morgan,

became enamored with eugenics after joining the board of the Rockefeller Institute. He was a great admirer of Nazi eugenics programs and lamented the fact that anti-Nazi propaganda had obscured the “importance of the German policy.” He later became the president of the American Eugenics Society. Osborn realized that the general public would not approve of selective breeding so, in a speech in 1956, he urged: “Let’s base our proposal on the desirability of having children born in homes where they will get affectionate and responsible care.” Sound familiar?—“Every child a wanted child.” An indication of the relevance of Messall’s work today can be seen in revisiting Alexander Sanger’s recently-published book, *Beyond Choice*. The approach he advocates has been hailed as “new” and “fresh” because he counsels women to feel no shame about abortion, not even to see it as a “difficult,” much less heart-rending, choice. It’s simply, he says, a necessity, “based on the demands and needs of evolutionary biology.” One reviewer speaks about evolutionary biology itself as new and “trendy,” but it’s the same Darwin-based eugenics exposed by Messall. There are echoes of Frederick Osborn in a speech Sanger gave recently at Wake Forest University: “Darwin’s theory of natural selection favors women who control their childbirth. They maximize their own survival and their children’s survival. Abortion should be used to ensure that a woman can reproduce later at a time when she wants to have the child and can support it.”

* * * * *

“The Führer wanted to explore the problem of people who had no future—whose life was worthless . . . From then on, we wouldn’t have to suffer from this terrible misfortune, because the Führer had granted us the mercy of killing our son. Later, we could have other children, handsome and healthy of whom the Reich could be proud.” This is a quotation from the book *The Nazi Doctors*, by Robert Jay Lifton, which is cited by Naomi Schaefer Riley in her essay (*Appendix A*) about the “Deadly Medicine” exhibit. As Riley writes, the exhibition “traces the rise of ‘positive eugenics’ in Germany’s public health campaigns, to the forced sterilization programs, to the euthanasia of mentally and physically disabled children and adults, to the inhuman experiments on Jews and other prisoners” and to the slaughter of the Final Solution. Many disabled children were euthanized without their parents’ knowledge—they were taken to a “home” for “treatment”—but the quote from Lifton is from a father who supported the state’s decision to kill his disabled son.

Riley writes that this exhibition “could not have come at a better time” to make us think about the eugenics we practice. She calls what we do a “‘soft eugenics’ of personal choice, not a totalitarian eugenics of racial purity and mass slaughter.” *Appendix B*, which follows, is a particularly *hard* example of “soft eugenics,” which, as author Shannen W. Coffin writes, “lays bare the cold utilitarianism and disquieting narcissism of the pro-abortion movement today.” Many were shocked and

INTRODUCTION

sickened by a column titled “When One is Enough” by Amy Richards in the *New York Times Magazine* last July. She writes of her unexpected pregnancy with triplets, and her decision to “selectively reduce” the babies to one “stand-alone.” So, a doctor injected potassium chloride into the hearts of unlucky babies two and three. I won’t give away her reasons here; suffice it to say her piece provoked quite an outcry, even from some “pro-choicers” who thought she was beyond the pale. There were many pro-life responses; we’ve only room here for Mr. Coffin’s excellent rejoinder.

As Wesley J. Smith writes in *Appendix C*, “The international euthanasia movement’s first principle is radical individualism”; however, with radical proponents like the Australian “Dr. Death,” Phillip Nitschke, the “choice” of euthanasia may be one foisted upon the vulnerable, even children as young as twelve. Nitschke is a Dutch euthanasia radical who claims to have come up with a “peaceful pill”—a suicide pill that if he had his way would be available in the supermarket for anyone “old enough to understand death.” He may sound like a “fringe character,” but Smith warns that just the opposite is true. The euthanasia movement, which has “soothing words” about putting strict limitations on legalized euthanasia, not only tolerates someone like Nitschke but enthusiastically embraces him; he is an honored speaker at international conferences. The bottom line, writes Smith, is there is no “safe” way to accept death as an answer to suffering.

We finish up this issue with a compelling speech by William McGurn, who has recently become President Bush’s chief speechwriter. McGurn speaks about the shameful shutting out of Pennsylvania governor Bob Casey at the 1992 Democratic National Convention and about the Democratic Party’s absolutism *re* abortion. He then enters into a major controversy of the fall: Catholic politicians and abortion. Although the election is over, and we do *not* have a pro-abortion Catholic as President, McGurn speaks about broader concerns: “My greatest anxiety is not for the outcome of next week’s election but for the integrity of something so much larger.” He’s speaking about the failure of a “Catholic culture that once contributed so richly to this [Democratic] party but today takes a back seat to NARAL.”

The Democrats are already realizing that their pro-choice extremism may have cost them the election. Will the American leaders of the Catholic Church try to make up for decades of missed opportunities, not only to preach and teach about the intrinsic evil of abortion, but to insist on fidelity on such a grave matter? Perhaps 2005 will bring winds of change. One must start a New Year with hope. And laughter, thank you Nick Downes. With this issue, we wrap up thirty years of publishing—we’ll be back soon with Volume 31.

MARIA MCFADDEN
EDITOR

The World of *Vera Drake*

William Murchison

Know what? Lovers Lane *is* an odd name for a major thoroughfare.

It hadn't struck me so until the other day. Residing in Dallas all my adult life—a considerable span by now, I must confess—I was completely at ease with informational tidbits such as, “They’ve lived on Lovers about 10 years, I think,” or “Oh, you know where it is—intersection of Lovers and Greenville.” Easy. Logical. Factual. I believe maybe that’s it—factual. Lovers Lane—the provenance of the name is just as you suppose—is a fact of life: unquestionable, durable, unassailable. Until someone from out of town, as was the case in my recent hearing, says, “Lovers Lane? Gosh, what an odd name for a street.” Which, when you come down to it, it is, except that usage and familiarity long ago rendered it utterly un-odd, completely natural, the stuff of ordinary discourse.

I am asked, logically enough, what an east-west thoroughfare in Dallas, Texas, has to do with the right to life. And I reply: in the concrete sense, nothing; in the metaphorical sense, much more than we might suppose.

My topic is the normalization of abortion; or, if not the normalization, the routinization—the adoption of abortion into the great family of everyday pursuits, among them the intellectual appropriation of street names.

Could abortion, constitutionally permitted in this country for 34 years now, become so much a part of the landscape of life that it ceases to engage our thoughtful, not to mention our indignant, attention, in the public as in the private sphere? We prefer to believe not, wondering innocently what a society might choose to become indignant over if not over the medical destruction of life in the womb.

And yet . . . and yet you have to look from time to time at how these mental appropriations of fact and circumstance actually play out in the world. That which we laughingly call the culture currently suggests some data worth closer notice, in the form of a movie and a book. The movie is English director-writer Mike Leigh’s *Vera Drake*. The book is Alexander Sanger’s *Beyond Choice: Reproductive Freedom in the 21st Century*. Neither could be called a mega-event, even within the narrow context of the film and book worlds. Yet both correspond to each other in their hope of making abortion seem—you know, normal; everyday; just what people do, OK?

William Murchison is Radford Distinguished Professor of Journalism at Baylor University. He is also a long-time senior editor of the *Review*.

Not OK. Not at all. Which, as it happens, is my point.

I don't suggest a conspiracy afoot—a series of words or gestures intended to bring about, through concerted effort, a particular reordering of societal circumstances. I see (in my mind of course) heads nodding at the same propositions, sparks flying from comparable pieces of steel. I see deep assumptions taking tangible form, reaching out genially to passing spirits.

It might be time to explain.

I went to see *Vera Drake* on a cold, dreary November Sunday afternoon (at a theater, if you must know, about a mile south of Lovers Lane). The theater was anything but crowded. What surprised me was the number of gray heads—same hair color as my own. Senior citizens out for a lark? Or for enlightenment?

Vera Drake abounds with enlightenment of a certain kind. I had seen the previews more than once (my wife and I attend a lot of movies) without, until I read the advance publicity, being absolutely certain what was up. *Vera Drake*, it transpired, is about abortion; specifically abortion as practiced in England more than half a century ago, in that gray postwar time before the complete transvaluation of Victorian values. Abortion, under the Offenses Against the Person Act of 1861, was a crime. But what has that to do with the gentle and dowdy Vera? From her respectable if tacky London flat, shared with husband, son, and daughter, Vera bustles forth to do endless good. We see her visiting shut-ins, checking on her mother, making copious pots of tea; being dear and lovable, in short. What else is she up to, however? I mean, besides making a few quid cleaning the homes of the rich?

“I help young girls out.”

Ah. Do go on. You help them when? “When they can't manage.”

“Manage” . . . meaning? “I help them start their bleeding again.”

And why? “They need help.”

Vera does abortions. Not that she calls her interventions by that name. She thinks of her work as outreach to the distressed. The girls referred to her for help might be her own chicks, so tenderly does she cluck over them. “Take off your knickers,” she instructs them. Just a little discomfort ahead. Soon enough, “[Y]ou'll be right as rain.”

From a wooden box Vera produces syringe and bulb, then goes gently, cheerfully, to work. Exit—in due course and off camera—another of His Majesty's subjects. But the gentle smile on Vera's face lets you, the moviegoer, know that a paradoxical kind of peace has been restored. On, as well as off, camera. There is order again. We are down a bit in population, but life goes on. A nice cup of tea will fix things in due course. Vera—I should not

neglect mention of Imelda Staunton's picture-perfect performance in the role—smiles that motherly smile of hers with abundant conviction as to the rightness of her two-decades-old ministry and ministrations.

Well, just a minute. It's easy enough to smile, is it not, at the touch of a few gold guineas pressed into your hand by the object of your labors. It might be, but not in Vera's case. You see, "I don't take money."

"Don't take money"? When the woman responsible for steering clients to Vera gets her own palm liberally greased? Nothing for the son and daughter at home? Nothing to ease the labors of the upright husband employed at his brother's garage? Nothing. And that makes for something. The temperature of the gentle smile rises until, almost by itself, the dreary room is warm.

In the room we witness mercy in the face of affliction. Not such affliction as we see, of course. But from one of the objects of mercy we hear the stakes blurred out in stark terms. "I can't have it—I'd rather kill myself!"

"Well, I don't think we can allow that to happen, can we?"

Of course not, Vera, bless you. No one would allow such a thing to happen. It wouldn't be right . . .

We are not emotionally prepared, my fellow geezers and I, out there in the audience, when harsh reality pricks the dream. One of the girls Vera has undertaken to help has come near death. The state has asserted its interest in the matter. One day, when the Drake family are celebrating the engagement of the shy, meditative daughter to an obviously good bloke, the police turn up. Though they exercise good English discretion and propriety, the kind to which Alfred Hitchcock accustomed moviegoers, the disruption is like the overthrow of a china cabinet.

Sorry, sir, we'll need to speak privately with your wife. The merry banter and celebration fall away. What is up? Our Vera, what could she possibly have done? Enough, it chances after suspense interminable to the gathered family members, that she is bundled into a waiting police car and driven to headquarters. No anger, no outburst from her. Dignified resignation is all she has to show. There is not much at which to smile serenely. The blue-uniformed, brass-buttoned state has put the stopper in that impulse.

Soon enough, she is back home, bail having been procured. Yet the end of the idyll nears. The white-wigged, black-gowned state will have its reckoning. Two years, six months, in prison. The martyrdom of the fictional Vera has not been costly by the standards of Edmund Campion or Archbishop Cranmer, centuries earlier: slaughtered or burned to a crisp for religious offense to the Crown. Still, such a gentle little woman! With such a large heart! Her smile will not, perhaps, receive frequent exercise for a couple of years. But at this point the camera averts its eye; the story teller falls silent.

We sit stonily in the presence of something larger than we might have expected as we laid down our \$7.50 at the box office.

Just what Mike Leigh intended, I imagine. (He dedicates the movie to his father and mother, a doctor and midwife respectively, without mentioning any commitment they might have had to the ideals he invokes.) No piece of fiery propaganda is *Vera Drake*, despite its attitude toward the destruction of unborn life. An invitation is what you might call it—an invitation to think of “helping young girls,” in Vera’s special manner, as normal and merciful and, when you get to thinking about it, just what decency compels. What’s a poor girl to do, after all, when she gets in the family way? True, Vera’s son, on learning of his mother’s unofficial occupation, exclaims in dismay: “Little babies!”—following with a grunted “Dirty.” But Prospective Son-in-Law sees matters differently: “If you can’t feed ’em, you can’t love ’em, can you?” No other character chooses to open up that assertion for inspection; therefore, buried in the audience’s subconscious, is the connection Leigh has intended, between love and the capacity to provide.

A sort of cinematic aside buries the point still deeper in our consciousnesses. Vera, through cleaning the homes of the rich, knows the rich and their advantages. For their daughters, what we might delicately call “options” exist. There is always the professional, if ethically challenged, doctor standing by to intervene. In London’s back streets, all there is is Vera, ready with her cup of tea, her syringe and bulb; just Vera, standing between suffering girl and despair; an angel of hope. What could be more in accordance with human necessity than the work she undertakes? What could be more natural; more right?

I cannot imagine Alexander Sanger’s having any quarrel with such a notion. The utility, the very ordinariness, of abortion is the point he presses on us in *Beyond Choice*. As Margaret Sanger’s articulate grandson sees things, the choice/no choice argument has ossified, losing resonance and the power to compel agreement. The majority of Americans, as polls indicate, are comfortable with the idea of some abortion—just not too much.

There is the feel and look of trench warfare here: a few hundred yards gained by frontal assault, only to be reclaimed by the adversary. No political bombardments seem to avail much. “Choice” as such—yes I can, no you shouldn’t—lacks the argumentative resonance of bygone days. Why, the young (according to a 2002 poll) are if anything more dubious about abortion than are their baby-boomer parents. Could it be, wonders Sanger, because “We haven’t presented abortion within a framework or a system of ideas that is coherent and makes moral sense”? Well, yes, that might be. What do

we do about it, though? We “shift the focus from rights to reproduction.” Ah. That’s it, then. We “argue for reproductive freedom because it supports successful birth, family, and reproduction.” When we say “choice,” we’re really talking about something “essential to the survival and well-being of humanity.” How else do we reconcile the irreconcilables of choice/no choice than by changing the subject to the larger matter of life itself? “Taking control of reproduction is respectful of life.”

Er . . . how’s that again? Respecting life means taking it? Taking it, yes—for the sake of human survival. “Without this no other human goals are possible. A world without reproductive freedom is the animal world,” one “where whatever nature says will happen will in fact happen.” (Translation: Neither human will nor divine authority is determinative in these matters; we make the rules to accommodate the accidents.)

Accordingly we need to put our trust in “reproductive strategies” as they unfold in individual women’s minds. The woman knows what all this is about. It’s about destiny and survival. “Humanity did not evolve and populate the planet indiscriminately or randomly. It did so by having both sex and children *strategically* (italics mine).” The result: “a dynamic in which healthy children were born and survived.”

For Margaret Sanger’s grandson, please, let’s have no artificiality in the ordering of the human arrangement. Birth control and abortion “are nothing more than strategies that humans use to increase their chances of reproductive success.”

Just the routine: just the ordinary: just what the race has done since Eden—namely, strategize; a thing no more startling, when you get used to it, than Lovers Lane as a major address in a major American city. Once an idea becomes unremarkable, almost unnoticeable, it ceases, by definition, to enage our attention. So Mike Leigh might wish with abortion, just as—no doubt about it—Margaret Sanger’s grandson wishes.

The sheer ordinariness, the downright everydayness, of abortion is a concept you might very well wish to propagate; that is, if you are desirous of annealing anger and smoothing down concerns over a practice our tradition describes as barbarous. Imagine trying to stir up the populace over that grand late 19th century idea, the free and unlimited coinage of silver at the ratio of 16 to 1. You could not expect much success at such an endeavor. Currency questions long ago faded into the wallpaper. We finger the coins in our pockets, careless of their composition. It doesn’t matter. Who cares? Yet Republicans and Democrats once dueled fiercely over the question: firing, reloading, firing, reloading . . .

Will abortion, not now but eventually, slip to the back of the pajamas

drawer, smothered by more fashionable concerns? As I say, I sense no conspiracy to produce such a result; no whispered back-and-forths between Mike Leigh and Alexander Sanger, no coded messages or midnight conferences. Though it seems worth noting that Frances Kissling, of Catholics for a Free Choice, has bestowed her imprimatur on *Vera Drake*, urging that this “working class heroine who provided as safe an abortion as possible could teach the world’s religious leaders a lot about the meaning of compassion and justice—and the complexity of life.” Can we count on the incorporation of clips from *Vera Drake* into CFFC propaganda? Probably.

The sense in which the “normalization” of abortion matters to both sides in the controversy is that normalization precedes disappearance. Lovers Lane the street, that tie you’re wearing, the color of high noon—all so everyday as hardly to invite comment. Only the exceptional draws remark—a gathering storm, a bright red necktie against a green shirt, an American street named Osama bin Laden. So the case once was with abortion. Not just English law but the law of all civilized nations (so far as I am informed) denied the alleged right to exterminate life, whether with coathanger, pessary, or syringe and bulb. Why, yes, there would always be, as there always had been, those who chose to act on their own; but we knew them to be acting outside the sphere not just of good hygiene but of reverent judgment. Then came *Roe v. Wade*.

Now *Vera Drake*, and with it, according to Meghan Cox Gurdon in the *Wall Street Journal*, a cinematic ambience of abortion. *Vera* is far from alone, Gurdon observes. For company she has the Jude Law remake of “Alfie” and Ellen Barkin’s upcoming *Palindrome*. That’s on top of 1999’s “The Cider House Rules,” with Michael Caine—the original Alfie—as a physician “helping” young girls, and receiving, as partial reward, the Academy Award for best actor. “[T]he zeitgeist,” Gurdon writes, “is whispering ‘abortion.’”

And more than whispering. The same zeitgeist is demonstrating further the challenge involved in keeping the evil of abortion where it belongs—at the forefront of civilized concerns. It’s no easy task, given artistic enthusiasm for showing us abortion as just one more product of the good works industry: unremarkable except as to our lateness in acknowledging its benefits and blessings. Why did we not see sooner that the abortionist, despite *Vera Drake*’s rejection of the nomenclature, is here to help the helpless? Outlaw those delicate, *Vera*-like interventions, the zeitgeist softly confides, and what have you produced? More desperation, that’s what; more suffering and loneliness, less love and compassion. How complicated can the matter be? Hideously complicated, as it happens—getting more so the longer our

national perplexity over abortion remains a twilight struggle, with neither side able to claim victory.

In advance of the Academy Awards, buzz was loud and prolonged concerning *Vera Drake* and her perplexities. Reviewers were ga-ga (as they might well have been) over Imelda Staunton, as Vera, and appreciative of the movie as a whole, one writer calling it “an utterly compelling and concise drama that shows how even the most forthright, morally composed survivor can be torn down by the State.” *Vera* won the Venice Film Festival’s award for best picture; Staunton won for best actress.

The real art in *Vera Drake* may be its muffling of moral clarities. Ordinary lady, usual dilemma, quiet response: nothing here to remind us of what really happens on those ordinary, usual, quiet occasions when off come the knickers and out comes the syringe.

The sheer ordinariness, the clear benevolence of these occasions! Mike Leigh would clearly love us to see matters thus: calmly, without perturbation save when the state makes a fuss, which happily (we are supposed to notice) it no longer does. Only the stiff and the discontented (we are meant to think) could possibly work themselves up over the Vera Drakes—so simple and kind, so compassionate and obliging; so obtuse in their simplicity, so deadly in their compassion.



Stem Cells and the Reagan Legacy

Gilbert Meilaender

Although it is not likely to be as significant as the war in Iraq or the economy for the November 2004 election, the issue of embryonic stem cell research seems to have political staying power. For now, the debate focuses largely on President Bush's policy of providing federal funding for research on a limited number of embryonic stem cell lines, where the embryos in question have already been destroyed. But the stem cell debate, rightly understood, encompasses much more: Stem cell advocates see it as a referendum on scientific progress, often seeming to forget that the birth of bioethics in the twentieth century was in considerable measure a result of scientific research that seemed unwilling to recognize moral limits. Opponents of embryo research see the issue as just part of a larger question about moral limits to the drive for mastery of nature (and, even, human nature).

The stem cell debate took center stage at the Democratic National Convention in July, where Ron Reagan, son of President Ronald Reagan, delivered a keynote address describing, as he saw it, the future of regenerative medicine and calling for more federal funding for more stem cell lines. Because President Reagan had died of Alzheimer's disease so recently, the moment had special poignancy, and one might think of it as an attempt to make aggressive support of embryonic stem cell research a Reagan legacy. But the speech, examined closely, is actually an example of the many confusions—moral and scientific, deliberate and inadvertent—that shape public debate over this crucial question. It may be useful, therefore, to place the speech into a larger moral framework, and perhaps in the process to set the record straight.

Stem Cell Duplicity

Moments after Ron Reagan had completed his “nonpartisan” speech recommending (though he did not say so) cloning for purposes of embryonic stem cell research, I was channel surfing on my minimal cable package in search of comment on the speech. For my sins I landed on MSNBC, where Campbell Brown was interviewing (on the convention floor) Rep. Diana DeGette, a Democrat from Colorado.

Rep. DeGette earnestly assured Campbell and the rest of us that what Ron

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Reagan had recommended was simply using “spare” embryos that had been produced—but, as it turned out, not needed—for in vitro fertilization procedures. These embryos, destined for destruction anyway, were what Ron Reagan had recommended be used to bring about the cures that Rep. DeGette was confident lay in the future if only we forged ahead with research.

Campbell Brown seemed satisfied; at any rate, she raised no questions about Rep. DeGette’s analysis of and response to the speech. I, however, was amazed, and uncertain which would be the more charitable reaction to Rep. DeGette: Should I assume that she was knowledgeable but duplicitous? Or should I assume that her comments were entirely straightforward, even though utterly mistaken? Probably it is more charitable—and closer to the truth—to conclude that Rep. DeGette simply didn’t know what she was talking about.

Rep. DeGette was probably not alone in failing to understand what Ron Reagan was actually recommending; for, he never used the words that embryonic stem cell research advocates now avoid like the plague. What words? “Cloning.” And “embryo.” Yet, the procedure he described (that would, he implied, within another ten years give each of us our “own personal biological repair kit”) was precisely cloning. One takes an ovum, removes its nucleus and replaces it with the nucleus of the person to be cloned. The resulting product is then stimulated in such a way that it begins the cell division that characterizes the earliest stages of embryonic development of a human being—and then, bingo, we get embryonic stem cells. But, of course, we get them because this procedure results in an embryo, which is destroyed in order to procure those cells.

Clearly, Ron Reagan had been getting some coaching. When stem cell research first became a controverted topic, proponents tended to speak of “therapeutic cloning” (as opposed to “reproductive cloning”), trusting that the positive overtones of “therapeutic” would outweigh public distaste for anything called cloning. When this turned out not to be the case, proponents turned instead to sanitized technical language—speaking of somatic cell nuclear transfer to produce stem cells, but not of cloning or of embryos. That Ron Reagan knows this is deceptive was clear from the rest of his speech. After all, were no embryos involved or destroyed in this process, there would have been no need for him to argue that these “cells” “are not, in and of themselves, human beings.” And were it not a cloning procedure that he was describing and recommending, he could not have stated that it would eliminate the risk of tissue rejection.

Opponents of embryonic stem cell research have regularly noted that its advocates slip back and forth between talking of research carried out with

“spare” IVF embryos and research using cloned embryos created solely and explicitly for research. The reason is simple: What researchers really want is what Ron Reagan recommended—cloned embryos for research. But, sensing that the public may be more receptive for now to research using “spare” embryos (doomed to destruction in any case, as we are always told), proponents often prefer to start there, all the while deriding “slippery slope” arguments which suggest and predict that we will not in fact stop there. At any rate, it should be clear that anyone who wants to join the cause that Ron Reagan set forth—and who, unlike Rep. DeGette, understands what he was saying—is supporting research using *cloned* embryos.

Hype and Hubris

Were we actually to take seriously what Ron Reagan said, we would, I think, be stunned by its hubris, its utter lack of any sense of human limits. (And this speech was delivered, we should recall, at a convention intent on arguing that—with respect to war in Iraq—President Bush lacked the wisdom to sense the limits of what could be done and, instead, placed his trust in technical might alone.) Speaking of “a wide range of fatal and debilitating illnesses: Parkinson’s disease, multiple sclerosis, diabetes, lymphoma, spinal cord injuries and much more,” Ron Reagan opined: “It may be within our power to put an end to this suffering. We only need to try.”

Our inability really to think through such promises was demonstrated almost immediately by a comment made by Andrea Mitchell, serving on a panel moderated—if that can possibly be the right word—by Chris Matthews (MSNBC again). What struck her—and impressed her—was that Ron Reagan had not mentioned Alzheimer’s, the disease that had so recently taken the life of President Reagan. For, she asserted, it was one of the few diseases where embryonic stem cell research had not been helpful (as if it had been helpful with many others). What she should have said, of course, is that researchers doubt that embryonic stem cells will be useful for treating Alzheimer’s and that they have more hope with respect to some (though not all) of the other conditions Ron Reagan had listed, even though research has yet to confirm such hopes. (Nor did she—or Ron Reagan—seem to realize the serious obstacles that stand in the way of using cloning to treat an autoimmune disease such as juvenile diabetes. The immune system that has produced diabetes by destroying the body’s insulin-producing cells is also likely to reject identical cells that have been cloned and reinserted.) But such technical issues do not yet get us to the hopes and fears—pathos mixed with hubris—that generate Ron Reagan’s call for research.

The deeper issue, which begs for analysis and critique, is the commitment

to a kind of limitless war on disease. “We only need to try.” Why is it that those so certain that we cannot remake the world and rid it of political ills by applying American power and technical know-how are equally certain of our ability to wage successful war on one disease after another? Why is it that those so impressed with our need to accept moral limits when waging war, and so critical of American hubris, seem tone-deaf to the possibility that moral limits might rightly be placed upon the experiments by which we wage war against illness and suffering?

Evidently, if one knows oneself to be on the side of what is desirable and good, no moral limits need apply. Whence this confidence? “The tide of history is with us,” Ron Reagan said. This, of course, is an assertion in the name of which great evil can be done. Indeed, it boggles the mind that a son of President Reagan—who set himself so firmly against what seemed to be the tide of history—should suppose that our (quite dim and uncertain) sense of where history is going should be more important than our sense of what is right or wrong, that *how long* we live should be more important than *how* we live.

Along the way to that happy future in which each of us is equipped with his or her “own personal biological repair kit,” we are going to need a lot of ova from which to extract nuclei in order to insert our own DNA (in order to produce embryos that can be disaggregated to obtain stem cells). Ron Reagan said nothing at all about where these eggs are to come from, about the women who will have to “donate” them, or about the possibilities for exploitation and commodification this need for eggs will create. A surprising omission in a speech delivered at a convention packed with people whom one might expect to sniff out the slightest possibility for exploitation.

Ron Reagan also told us nothing about “the theology of a few” that is, he asserts, placing roadblocks in the way of “the health and well-being of the many.” Perhaps, of course, he simply knows very little of the actual arguments used by opponents of embryonic stem cell research (and, more particularly, opponents of cloning for stem cell research). The only argument he made is that we can and must distinguish between those human beings who, at the earliest stages of development, have not yet developed the characteristics that will distinguish them as human adults and those human beings who already have such characteristics (brain, spinal cord, thoughts, fears). He said nothing at all about the implications of this argument for those human beings who may lack many of these qualities or who may have lost the capacities they once had.

Moreover, he said nothing at all about how the cloning he recommends can be done for experimental purposes without opening the door to cloning

more generally. After all, to spell out how he might propose to do this would inevitably open him to powerful counter-arguments. He said nothing at all about how the “theology” he rejects may teach us to value those whose capacities are relatively undeveloped, who are weak in relation to our strength. And how strange it is, once again, that those who are concerned that America use its strength only in ways that clearly serve the disadvantaged and vulnerable, should so rigidly exclude from the scope of their concern embryos in the first stages of human development.

The “Vice” of Compassion

No one can be against compassion, of course, and no one should be against it when it is properly understood. But the debased currency of compassion in our public discourse today is by no means the real virtue itself. The meaning of compassion has been isolated entirely from any larger moral framework which might give it direction and set limits to what can be done in its name. To see what such a moral framework looks like we might turn to a children’s story.

The Magician’s Nephew is one of the seven Chronicles of Narnia written by C.S. Lewis. First in the order of Narnian chronology but sixth in order of publication, it is, among other things, a story about forbidden knowledge and about the temptation to do evil in search of good. Young Digory Kirke, whose mother is dying back in England, is drawn by magic (along with Polly, who lives next door) into the world of Narnia, newly created by the great lion Aslan. It is a land of youth, bursting with life and energy. When Digory realizes this, he begins to hope for a chance to take back some of the fruit of Narnia to his dying mother. Aslan, however, has other plans.

Aslan sends Digory on a journey beyond the borders of Narnia, into the Western Wild, to a place where he will find “a green valley with a blue lake in it, walled round by mountains of ice. At the end of the lake there is a steep, green hill. On top of that hill there is a garden. In the centre of that garden is a tree.” From that tree Digory is to “pluck an apple” and bring it back to Aslan, who intends to use it to plant the Tree of Protection that will keep Narnia safe from the evil witch Jadis for many years.

Digory finds the garden and the tree, picks an apple, and puts it in his pocket. The sweet smell of the fruit is so ravishing that he is tempted to take it for himself. That temptation he resists, but a far more powerful temptation then faces him. Jadis has come to the garden ahead of Digory. Seeing her, he turns to flee, but she stops him. Why, she asks, take the apple of youth to the lion Aslan? Why not eat it himself and live forever? But then Jadis cuts more deeply still. Why not take the apple for his mother?

Use your Magic and go back to your own world. A minute later you can be at your Mother's bedside, giving her the fruit. Five minutes later you will see the color coming back to her face. She will tell you the pain is gone. Soon she will tell you she feels stronger. Then she will fall asleep—think of that; hours of sweet natural sleep, without pain, without drugs. Next day everyone will be saying how wonderfully she has recovered. Soon she will be quite well again. All will be well again. Your home will be happy again.

Digory gasps, realizing that “the most terrible choice lay before him.” Aslan's instructions had been clear: to take one apple from the tree and return with it. And Digory must choose what sort of person he will be, whether the meaning of “compassion” is governed by any other moral goods. He resists, returns with the apple, and hears Aslan's “Well Done.”

Later, when the apple has been planted and the Tree of Protection grown into a towering tree, Aslan gives Digory an apple from it to take to his mother. Aslan explains that had Digory stolen an apple it would indeed have healed his mother, but it would not have brought joy. “The day would have come when both you and she would have looked back and said it would have been better to die in that illness.”

These are hard words for anyone to hear (as Digory's choice is hard), but the vision of life they undergird is noble. Of course, we want to help those who suffer, but we should not suppose that such help is the only good in life—that a “compassion” which knows only that goal is true compassion. Unlimited war against illness can no more be recommended than unlimited war against military enemies. The point is not simply to win, to stay alive, but to live in ways that are worthy of continued existence. Son of President Reagan though Ron was, the apple seems to have fallen quite far from the tree. President Reagan was known for his optimism, for his belief in better days still to come. No doubt he would have brought that optimistic spirit also to the world of medicine, believing and hoping that continued advance would create a better future for many. But he also had a sense of limits, freedom from the hubris which supposes that how long we live is of greater moral significance than the shape of the life we live. He was able, therefore, in the moving letter he wrote to the American people after he had been diagnosed with Alzheimer's, to accept the trajectory of his own life with its coming decline and mortality. He did not see his illness as desirable, as the future he would, given alternatives, have chosen for himself. But he also did not see it simply as something to be avoided. “I now begin the journey that will lead me into the sunset of my life,” he wrote. It was part of life's trajectory, part of the shape of a life that begins in weakness and incapacity and often ends there.

The World We Bequeath

None of us really wants to grow old. None of us wants gradually to lose the powers that characterized us at the height of our flourishing. Nor do we want this for those we love. Evidently we want to exercise our powers fully and completely up to the end—and then suddenly drop off the face of the earth. (But, then, why would we ever find an end acceptable?) It is desperation born of that image of the good life which skews the meaning of compassion and drives the engine of cloning embryos for research and destruction. Hence, it's that image of the good life, not embryos, that we should be destroying. President Reagan's letter might teach us this lesson, but we must be willing to learn.

For Ron Reagan, it seems, the only questions future generations raise for us involve our willingness to do whatever we can to relieve their suffering. They do not, evidently, provoke us to thought about the kind of moral world we bequeath to them. They seem to care only about what we accomplish—not about what we do, or the kind of people we become. In the name of an unrestricted pursuit of scientific research we are given a surprisingly narrow and constricted sense of what counts morally. Perhaps we would do better to see ourselves and others in need not as the “fellow angels” of whom Reagan spoke but, rather, as “fellow human beings.” Sharing alike in the weakness of our embryonic origins, united in our desire to pursue what is good in ways that do not violate our common humanity, prepared to do right whatever the tide of history might seem to be, and able to honor moral limits even in the wars we wage against illness and suffering.

The Dangerous Confusions of *Goodridge*

Stephen J. Heaney

In a perhaps unsurprising, yet nonetheless disturbing, decision the Massachusetts Supreme Judicial Court decided in November 2003 that the marriage of two people of the same sex was not only possible, but a constitutional right under the laws of the Commonwealth of Massachusetts. In *Goodridge v. Department of Public Health*, Chief Justice Margaret Marshall and three of her colleagues concluded that same-sex couples had been hitherto “arbitrarily deprived” of the benefits of marriage, and so the Court gave the legislature six months to remedy this apparently unjust discrimination by adapting current law to contemporary realities.

Much ink was spilled on this debate in the year leading up to the decision, and not a few commentators had something to say immediately after it, so some of the arguments used by the Court are already familiar—and already recognized as problematic. Two examples are typical.

It is an article of faith among sympathizers of homosexual rights that discrimination on the basis of sexual desire is no different from discrimination based on race. There are plenty of arguments against such an equation, of course. Since this case is specifically about marriage, however, the Court needed to appeal to a precedent concerning discrimination in regards to choice of spouse—so it turned to the 1967 decision *Loving v. Virginia* (388 U.S.1), wherein the United States Supreme Court struck down antimiscegenation laws. The argument is that individuals have been denied the right to marry, earlier on the basis of the race of the proposed spouse, and in the present case on the basis of the sex of the proposed spouse. The appeal is inapt for a number of reasons. Properly speaking, neither antimiscegenation laws nor laws assuming that it is impossible for same-sex couples to marry have ever prevented anyone from marrying. In both cases, the laws merely limited the field of eligible candidates from which to choose. The question in *Loving* is whether the limitation by race has any rational relation to the nature and purpose of marriage itself, as that term has been traditionally understood. The U.S. Supreme Court realized that it did not, and thus ruled that the limitation unconstitutionally burdened those wishing to marry interracial. The limitation of marriage to a person of the opposite sex, however, can only be seen as a problem if one changes the very definition of marriage. If the traditional definition of marriage holds, then same-sex couples can no more

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marry than leap tall buildings in a single bound. People with same-sex attraction can, and may, marry anyone of the opposite sex who agrees to the arrangement. However, because of this orientation, they (understandably) choose not to.

Another typical and problematic argument emerges from the decriminalization of sodomy. Andrew Sullivan makes such a case on the pages of the *Wall Street Journal* (Oct. 8, 2003): If homosexual acts can no longer be prosecuted, if it is no longer a crime to be in a sexual relationship with someone of your own sex, then by what justification do we prevent homosexuals from entering into all the other institutions that heterosexuals do? The Massachusetts court appeals to the 2003 Supreme Court decision *Lawrence v. Texas* (123 S. Ct. 2472), but such an appeal cannot take the argument very far. It is one thing to permit an act formerly outlawed—in this case, sodomy. It is another to leap to the conclusion that this somehow means that sodomy is the equivalent of heterosexual marital intercourse. Once again, in order to move from *Lawrence* to same-sex marriage, we would have to accept a new definition of marriage.

The heart of the matter, of course, is precisely this: What is marriage, and who determines the definition? The Massachusetts justices will be able to say that the refusal to accept same-sex couplings as marriages is “arbitrary” only under 1) a certain definition of marriage or 2) a certain notion of liberty. Chief Justice Marshall takes a two-pronged approach: directly arguing for a peculiar definition of marriage, and indirectly arguing for a peculiar definition of liberty. But the arguments leading to her conclusions about marriage and liberty are both deeply flawed, and lead to further conclusions which pose a grave threat to the common good and the rule of law. We need to face these threats with open eyes, and consider what can be done about them.

Defining Marriage

A few years ago, in an essay in *Crisis*—an extended version of which later appeared in *Homosexuality and American Public Life*, edited by Christopher Wolfe—David Coolidge accurately noted that active in the discussion about marriage in this country are three rather different definitions of the institution. He calls them the Complementarity model, the Commitment model, and the Choice model. Complementarity is the model of traditional marriage: one man, one woman, a social institution with a legal status for the protection of the institution and those within it. The main competition over the last century has been the Choice model, under which the views of sex and family driving the traditional model should not be forced on anyone,

and people should be free to join in any sexual relationships they wish, even contractual ones, wherein the state protects the rights of the individuals involved. We have here a value-laden model and a value-neutral one.

The Commitment model, making a show of late, is an attempt to run a middle course between the other two models. It sees human beings as desiring to form intimate relationships, especially sexual ones, and assumes that committed relationships are better than promiscuous ones. Therefore, law protects and encourages any committed relationship. What model does the Massachusetts court employ?

We begin with this simple observation: Marriage has appeared in every human society in history. There have been variations on the theme (e.g., monogamy vs. polygamy), but marriage itself has always been a part of human culture. It is reasonable to say that the institution itself precedes the State—not just the Commonwealth of Massachusetts, but *any* State. This being so, it is equally reasonable to say that it is a natural institution, an institution which expresses a need, the fulfillment of which is basic to human flourishing. This institution is formalized and regulated by society acting in its governmental form, the State. Before the community, two people take vows to treat each other in certain and particular ways; the community agrees to support and protect them in these actions.

The *Goodridge* court does not deny this, although, as we now know, it does take issue with what has throughout history been taken to be fundamental to the nature of this institution. The Court starts with the claim that “the government creates civil marriage.” This would be an odd claim if it were intended to say that the Commonwealth has invented the institution of marriage *ex nihilo*. As the text unfolds, it becomes clearer that the Court is at pains to distinguish the civil from the religious; that is, as far as the State is concerned, civil marriage is a secular institution with secular ends. This seems unobjectionable. It is, of course, easy to see why marriage would have religious significance for as long as it has existed, given that it has always been tied to sex and procreation, which in turn have implications for human flourishing which run to the core of our being. Still, marriage precedes not only the State, but also particular religious practices. But the community, under the auspices of the State, establishes a secular institution.

This discussion requires an answer to a further question: What is the nature of this institution, this vow, this set of acts? More to the point for a legal decision, what does the Commonwealth of Massachusetts believe the nature of marriage to be? The answer is to be found in legislation and case law. There is no way around the fact that the State has always intended

that marriage should be between a man and a woman. Indeed, the Court acknowledges this fact. The question the Court needs to answer, though, is what the State thinks marriage *is*, such that it makes sense that it must always be between a man and a woman. If, in its very nature, marriage is such a thing that it is logically impossible for it to exist between two people of the same sex, then no harm is done same-sex couples by denying them entrance to the institution. If, however, marriage is such a thing that the sex of the partners does not matter, then it would be reasonable to say that the prohibition is arbitrary.

Many of us may have assumed that the several states, including Massachusetts, had to this point taken marriage to be strictly between one man and one woman because they were following the vision of traditional marriage as outlined in the Complementarity model. But the Court argues that this would be a mistake; it concludes that something akin to the Commitment model is correct, and states that the central feature of marriage is nothing more than “the exclusive and permanent commitment of the marriage partners to one another.” The Department of Public Health, in contrast, had argued that there are *three* sound secular reasons—i.e., legitimate governmental interests—for saying that marriage can only be between one man and one woman: a) it is the best setting for procreation; b) it is the best setting for childrearing; and c) it provides rational criteria for the distribution of scarce resources.

The Court disagrees on all three counts; but the arguments employed by Chief Justice Marshall leave aside some evidence, and in any event her premises do not add up to the conclusions stated. Let us look here at the main points of the Court. (I will leave aside some of the lesser arguments, which are often downright silly.)

Chief Justice Marshall argues that the Commonwealth does not view procreation as the primary end of marriage, or marriage as the optimal setting for it. Applicants for marriage licenses, she points out, do not have to show the ability or intention to conceive children. Not even consummation through sexual intercourse is necessary, since impotency does not render the marriage automatically void, but only voidable if the wronged party sues. And of course, the Commonwealth these days has been assisting many people to bring children into their lives to create a family; statutes should make childbearing and the creation of families by non-coital means much more difficult if it really mattered that procreation take place by sexual intercourse within marriage.

Indeed, this last fact, notes Marshall, is part of what makes it hard to speak anymore of the “average American family”: The government has been

responding to “changing realities” such as single-parent adoption and placement with a homosexual parent, even a homosexual parent who is part of a same-sex couple, and all supposedly done in the child’s best interests. At the same time, same-sex couples must submit to the inconvenience of second-parent adoption proceedings, have no marital benefits, and are in a dicey position when they break up without established divorce procedures. This all adds up, not to more security for the children of opposite-sex couples, but to great insecurity for children living in households of same-sex couples.

The use of divorce as a reason for marriage should alert any reader that there is a fundamental problem of perspective in the Court’s line of reasoning. An examination of the arguments quickly uncovers the logical flaws. For example, Marshall has quite missed the point concerning consummation. To recognize a marriage as void due to the inability to consummate is a declarative act, not a performative one; that is, it does not create a state of affairs, but merely recognizes one. The fact that one party must sue means only that the State is not going to devote resources into intrusive marriage-checks. This is equally true for those who can consummate but are otherwise infertile, or who have no intention of having children at all.

The fact that one party is recognized as “wronged,” however, tells something of the utmost importance: A simple “exclusive and permanent commitment” is not enough for marriage. Clearly, there is the further expectation, on the part of both the spouses and the State, that the spouses will engage in sexual intercourse. Which brings us to two questions which the decision never quite brings into focus: 1) What is the point of a couple’s exclusive and permanent commitment to one another? 2) Why would the State care about their commitment? Marshall beats around a fuzzy bush by saying that the commitment “nurtures love and mutual support; it brings stability to our society.” This only leaves us asking again why society wants to strengthen love, support, and stability of this kind; we would expect that the State is going to support, through very particular protections and benefits, relationships that in some way benefit society in return. Indeed, the Massachusetts constitution, at article six, demands that this be so.

The plaintiffs in *Goodridge* want two things: public affirmation of their commitment, and the legal protections and benefits that come more easily, or exclusively, to married couples and, consequently, to their children. But what does the relationship of a same-sex couple have to offer the State in return for this? Same-sex couples, simply as committed, no matter how great their love for one another, can offer the State precisely nothing. Whether their commitment is exclusive and permanent, or promiscuous and temporary, there is nothing in their relationship that the State has any interest in

protecting, let alone positively benefiting. Friendships are wonderful, but society is not in the business of privileging friendship *per se*.

Why, then, should the State privilege friendships within opposite-sex couples? The answer is simple: It is not the friendship the State is protecting or benefiting. Many throughout history have been truly married, though no one would claim they were very much friends. Rather, it is a sexual relationship that the State is protecting. Indeed, one could rightly say, with such notables as British philosopher Roger Scruton, that society creates a space (that is, it *creates privacy*) for a couple to rightly engage in sexual activities; other types of sexual relationships have generally (though not always) been frowned upon, even punished. The laws of the several states until very recently have reflected this view.

Again, why privilege sexual intercourse within opposite-sex couples? Same-sex couples engage in sexual acts. In fact, this is precisely what same-sex couples want recognized: the legitimacy of their sexual encounters. We return to our question: Why should the State care about anyone's sexual relationship, same-sex or opposite-sex? The answer is plain. Sexual intercourse between a man and a woman, by the very nature of the beings involved and the act they perform, *can produce children*, the next generation of society. Two rather different sets of reproductive organs join together to form one complete reproductive system; sperm unites with ovum, and a new human being is conceived. Society has a grave interest in this fact, and therefore in regulating the activity that brings it about, in seeing to it that it is both exclusive and permanent. On the other hand, if sexual acts never produced anything but pleasure for the participants, society would have absolutely no interest in regulating them; *the institution of marriage would never have entered anyone's vaguest thoughts*.

So here are the core facts. Marriage only exists because sex leads to children. Because of this, society has an interest in confining sexual activities to a permanent and exclusive relationship between two people who can actually perform this act and—assuming functioning reproductive organs—bring about this result. No matter how hard they try, no matter what sexual acts they perform, no matter how much they love one another, no matter the permanence or exclusiveness of their relationship, same-sex couples cannot produce children as a result of their love or their sexual acts. The very thing that makes sense of marriage at all—the very thing marriage must be about in order for society to have an interest in privileging it—is *completely impossible for same-sex couples*. The Commitment model of marriage, then, simply makes no legal sense.

Nonetheless, we are faced with this fact: People in same-sex relationships have children—from a previous marriage, or as a result of an out-of-wedlock birth, or by adoption, or from in vitro fertilization. Many of these children have been placed in these same-sex households—ostensibly, in many cases, in the child’s best interest. Does this mean that the State no longer views the traditional mother/father/child setting as the ideal one for childrearing? Not at all. No matter how we shake it (though this will become more problematic if cloning ever produces a living child), every child has two parents, *both* of whom are responsible to the child, and to society, for the child’s development. Sometimes, the two parents are unable to be together to do this: death, divorce, or separation interferes. This means an arrangement must be made that looks out for the child, while remembering parental rights and responsibilities. This is why the State permits alternate circumstances for the rearing of children. They are by no means optimal circumstances, though they may be better than the practical alternatives. The fact that we have begun to permit particularly loose arrangements—e.g., in vitro fertilization of single women—does not tell us anything about the State’s understanding of marriage; it does tell us that we as a society have been doing a sloppy job protecting both children and the institution of marriage.

Clearly, this understanding of the institution of marriage offers a rational basis for the distribution of resources—one rational basis, though perhaps not the only rational basis. The Court argues that the dependent children of same-sex couples are no less deserving of the benefits of state support than the children of opposite-sex couples. This, of course, is self-evident. It is also irrelevant, both to the question of what the State understands marriage to be, and to whether the State may reasonably choose an optimal child-rearing arrangement and encourage it through benefits and inheritance rights. This, however, is what the plaintiffs want for themselves: not only legal recognition of their sexual relationship, but marital benefits *for the couple*. Still, we are left wondering: What is it about the couple’s relationship that could warrant society’s interest in protecting and strengthening it through benefits? The answer remains: nothing at all. And this means not only that marriage is not owed to same-sex couples, but also that neither is any form of “civil union” which benefits a couple for the sheer fact that they are committed to one another.

So what is the big deal about seeing marriage as, in the Court’s words, “an evolving paradigm”? Since the plaintiffs do not wish to destroy the institution of marriage, what is there to fear? The answer is that, whatever the wishes of all concerned, the institution of marriage is nonetheless destroyed.

An institution can only evolve so far before it becomes something quite other, a wholly new thing. Once marriage stops being about sex and procreation, there is nothing left in which society has a legitimate public interest, no basis on which to forbid or allow any combination of people to be called “married.” It is merely a contract like every other contract.

Defending Liberty

We have yet to talk about Coolidge’s third model of marriage, the Choice model. As it happens, this model, though not compatible with the Commitment model, is also present in Chief Justice Marshall’s analysis, though not explicitly. It lurks behind the plaintiffs’ claim, and the Court’s agreement, that they have suffered “harm” by not being permitted to marry, and being denied the benefits that ensue.

The argument against the claim that the plaintiffs have been harmed runs as follows: The benefits offered through marriage are given for a particular State-endorsed purpose, and are not a right owed to anyone. Same-sex couples have chosen not to engage in the activity named by the State which brings the benefits. Thus they are not deprived of anything rightfully theirs, and so there is no harm. The Court, as a matter of fact, recognizes the validity of this argument, but claims that it does not apply under the circumstances. One might be tempted to think that this is because the Court has rejected the Complementarity model of marriage, but it is not. Even on a Commitment model, the State might reasonably argue that it has never recognized, and does not now recognize, any other committed relationship as a marriage except that between a man and a woman. That is, the State may impose a limitation even to the Commitment model as long as there is a rational basis for doing so. The Court notes its own precedents for what counts as a rational basis: The statute must have “a substantial relation to the public health, safety, moral, or some other phase of the general welfare.”

Nonetheless, Chief Justice Marshall is arguing that there is a deeper principle at work that forbids the State from limiting the definition of marriage as it does, according to a particular function, i.e., according to heterosexual intercourse and care for any children which result. Defining marriage according to its function carries with it the possible implication that certain sorts of couplings are wrong. If same-sex couplings are immoral, the State could rationally deny them. However, this Court now refuses its own precedents, denying that a substantial relation to morals can be a rational ground for law.

On what basis does Marshall abandon her own state’s precedents? On the basis of *Planned Parenthood of Southeastern Pennsylvania v. Casey*. Marshall

quotes *Casey*: “Our obligation is to define the liberty of all, not to mandate our own moral code.” What, however, is meant by liberty in *Casey*? Here, Marshall avoids a definition; but a now-infamous one is helpfully supplied by the U.S. Supreme Court: “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.”

If we were to take this passage at face value, it might strike us as unremarkable; it apparently describes nothing more than freedom of thought. The context and conclusions of the *Casey* decision, however, make it quite clear that this is not the case: The liberty involved is a liberty of *action* following from one’s beliefs. Russell Hittinger’s article on the *Casey* decision in *First Things* (“When the Court Should Not Be Obeyed,” October 1993) casts a bright light on the frightening implications of this passage. Hittinger points out that if this passage, and the decision as a whole, are to be taken literally, then I cannot be said to define my own concepts of anything important unless I can further act on them; I cannot act on them if the State is imposing definitions that oppose mine. So, in *Casey*, “liberty” means not simply that I am allowed to define for myself that the unborn are not persons and do not count under the law. I must further be authorized to act on my definition, without having to give any reason to anyone.

The logic of *Casey* is straightforwardly applied by the *Goodridge* Court. Human beings have a liberty interest in “whether and whom to marry.” This is one of our “momentous acts of self-definition.” It is an interest that would be meaningless if the State could limit it “without sufficient justification.” And, as is clear from the outcome, there is no sufficient justification; there are no “historical, cultural, religious or other reasons [that] permit the State to impose limits on personal belief concerning whom a person should marry.”

One problem with this line of argument is that it boomerangs back on the *Goodridge* definition itself. Given the logic of the “heart of liberty” passage, and the Court’s own words, there can never be any sufficient justification for the use of even the watered-down definition of marriage of the Commitment model. Even this model has a moral component: There is one state of affairs preferable to others—i.e., two people in a permanent and exclusive relationship—which the State then privileges. This imposition of one moral or religious or cultural preference is precisely what is ruled out in the “heart of liberty” logic, and explicitly by Marshall’s argument. The heart of liberty can only lead to the Choice model of marriage. However, when marriage can mean whatever you want it to mean, then it has no public meaning at all.

There is, of course, the further and much more fundamental problem with

the logic of *Casey*: It is incompatible with the rule of law. In order to get a complete feel for it, one must trace its roots back a bit further to, say, *Roe v. Wade*. Here, we find the criteria for recognizing a situation in which the State may not interfere. First, the situation must involve a personal or intimate area of life; second, people have disagreements about these areas. For example, in *Roe*, the “personal” decision about whether to carry a fetus to term is coupled with the fact that people disagree about whether the fetus is a person with rights. *Ipsso facto*, the State is compelled to avoid having anything to say about the matter. *Goodridge* follows the same course. First, there is the personal decision about whether and whom to marry. Second, there is disagreement about whether only opposite-sex couples may marry. There instantly arises a zone of privacy preventing the State from having its own definition of marriage—it is too important an area of “self-definition.”

These two criteria (which in fact the *Roe* court treats as *sufficient reasons*) turn out, however, to impose a liberty so complete that the very authority of any State is imperiled. If the acts we were talking about were personal decisions without consequences, or with consequences only to the actor, we might be tempted to shrug it off. But the acts we are talking about here are purportedly personal decisions with very important public consequences. Any act can be said to have a personal, self-definitional aspect. If the State is forbidden to impose a definition on anyone for the simple reason that there is some disagreement about some aspect of the definitions involved, then the State is effectively blocked from ever imposing any law ever again. At that point, liberty is no longer well ordered. It turns into chaos, and where there is order of a sort, it comes from the arbitrary imposition of power. This is the antithesis of the rule of law.

The Road Ahead

What is to be done about this situation? The answer is twofold, because the problem is twofold. One part of the problem is cultural, the other political. The way to the objective, however, is not at all clearly marked.

As to the political question, I will not propose any particular legislative act; this is not my area of expertise. Several paths have been suggested; there are up sides and down sides to all of them. Some have recommended leaving the issue in the hands of the states; others have proposed a federal solution. Some think the answer is best solved legislatively; others want to see a constitutional amendment. My inclination is to say, “Do them all!” One thing is certain, however. There is a grave problem in the judiciary, and it needs correcting. The quality of judges depends on the quality of the people who choose them. The marathon Senate session last fall on federal judicial

appointments was useful if for no other reason than its dramatization of the deep philosophical fissure over who is qualified to serve. Senator Edward Kennedy called a number of the current nominees “Neanderthals” and “right-wing turkeys” precisely because they question the logic of the abortion decisions and the validity of throwing out the considered judgment of all of human history concerning marriage. We should take such things very seriously when we vote.

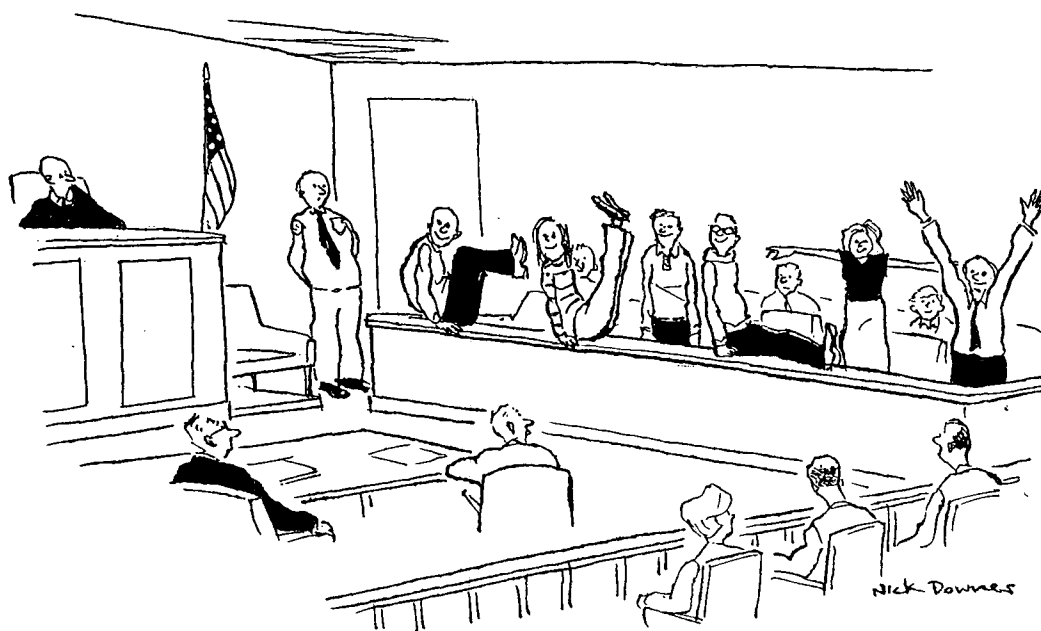
Should a marriage case of the *Goodridge* variety come before the U.S. Supreme Court, there is no guarantee that it would follow its own logic and conclude as the Massachusetts court did. Its history is erratic, blown as it often is by the breezes of culture. For instance, it declined to accept the logic of *Casey* in *Washington v. Glucksberg*, despite its obvious application to the “intimate and personal decision” of physician-assisted suicide. The action to be pursued, said the Court, was not in keeping with our long history and traditions, nor necessary to an ordered liberty. On the other hand, this is equally true of abortion, but that did not prevent *Roe v. Wade*, nor the subsequent *Casey*. Nor will it be enough to stop a decision in favor of same-sex marriage, for the wind of culture blows heavy with the Commitment and Choice models. And if ever there were a club set to knock the pins out from under any religious institution, real or imagined, it is the liberal members of the present Supreme Court. Despite the fact that marriage, in its beginnings, is not a religious institution, but a natural one, the culture has been busy trying to convince us that marriage, like the pro-life message, is a religious ceremony to be kept out of the public square. To stand up to this within the culture will be quite difficult, for we have made many decisions about contraception, extramarital sexual acts, divorce, and serial marriage that have at their heart versions of the Commitment and Choice models.

And these models have deeper implications. Take a look at the “conservative” argument for same-sex marriage put forward by New York *Times* columnist David Brooks. He takes liberals to task for making marriage sound like a benefit plan or a civil-rights issue. But he faults conservatives for not insisting on same-sex marriage. As Brooks sees it, the crisis in marriage generally is a crisis of fidelity: We live in an era of contingency, where the highest value is individual choice, and marriage is, à la Mary Poppins, a piecrust promise—easily made, easily broken. Homosexuals are in the most contingent relationships of all. Conservatives, Brooks contends, should expect that any two people who say they love each other should choose marriage and fidelity.

As we have already argued here, whatever it is that Brooks wants same-sex couples to commit to, it is not marriage. Furthermore, we can reasonably

say that the “heart of liberty” clause is the anthem of the culture of contingency, so that his battle against the culture of contingency is in fact waged against the “heart of liberty” clause. However, his battle is lost from the start. Behind any view about how human beings should behave is a belief about what human beings are. Brooks gives his account: “We are not animals whose lives are bounded by our flesh and by our gender. We’re moral creatures with souls, endowed with the ability to make covenants.” This view of the person is precisely what fuels the “heart of liberty” clause. It is a view that ignores the reality of our bodies, reducing the definition of personhood to our ability to make choices. And, as the *Casey* court said: “Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.”

So a turn of the tide against same-sex marriage is no small task. Much legal precedent, albeit frequently incoherent precedent, is at stake. Many of our decisions, both as individuals and as a society, are at stake. Our very awareness of ourselves, of the kind of being we are, is at stake. Do we have the courage to face ourselves squarely in the mirror? The force of our choices is sweeping us, not to flourishing and happiness, but to chaos. It will be worth it to start with one long, hard look.



The Long Road of Eugenics:

From Rockefeller to *Roe v. Wade*

Rebecca Messall

The infamous *Roe v. Wade*¹ decision relies directly and indirectly on the work of members of the British and American eugenic societies² and of eugenics-related groups and initiatives.³ The evidence that eugenics was a basis for *Roe* helps explain the seemingly irreconcilable contradiction between constitutional theory and current constitutional practice. The inscription on the U.S. Supreme Court building proclaims, “Equal Justice Under Law”—but eugenics is based on the premise that people are *not* equal,⁴ that some are lesser than others: particularly people who are disabled, but also people who are not white, or who are not well educated, or who are weakened by age or illness. In 1999, a *Time* magazine article described the 20th century as “cursed by eugenics”;⁵ in 2004, the Holocaust Museum in Washington, D.C., sponsored an exhibit⁶ about the Darwin-based eugenic theory behind the Nazis’ plans to breed a race of human thoroughbreds.

More than 30 years after *Roe* and 60 years after the Holocaust, the fact that eugenic theory has been an important basis for U.S. policy on reproductive rights continues to have global implications. American foreign policy today legitimizes groups that advocate abortion and other forms of population control in non-white countries.⁷ At the domestic level, abortion has had a disparate effect on African-Americans: The reduction in the number of black voters from the number that would have existed absent *Roe* has diluted their political voice. In 1996, *U.S. News & World Report* reported that “blacks, who make up 14 percent of all childbearing women, have 31 percent of all abortions, and whites, who account for 81 percent of women of childbearing age, have 61 percent.”⁸ In December 2003, the Centers for Disease Control reported that between 1980 and 2002 the African-American fertility rate per one thousand women had been cut from 84.9 to 65.8, while the fertility rate for whites moved down only slightly from 65.6 to 64.8 per one thousand women.⁹

The Nazi Connection

Apart from the evidence of eugenicist influence contained in the *Roe* decision itself, one of the clearest links between the eugenics movement and

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U.S. abortion policy is visible in the American Eugenics Society's 1956 membership records, which reveal that its members included a Planned Parenthood founder, Margaret Sanger, and at least two of its presidents, William Vogt and Alan Guttmacher.¹⁰ This fact alone ought to give abortion-rights advocates second thoughts about their pro-choice politics: The AES had an ugly history of multiple ties to prominent Nazis in Germany, and its members even assisted Hitler in crafting the 1933 German sterilization laws.¹¹ The group retained, while Hitler was in power, top Nazi scientists—Drs. Rudin, Fischer, and Ruttke—as advisers and journal contributors.¹²

Among the AES members—*after* the Holocaust—was Dr. Otmar Freiherr von Verschuer, a co-director of the Rockefeller-funded Kaiser Wilhelm Eugenics Institute in Germany.¹³ Before 1940, Verschuer had founded the Institute for Hereditary Biology and Racial Research at Frankfurt University,¹⁴ and retained Dr. Josef Mengele as his assistant.¹⁵ Verschuer had written a widely circulated paper in which he described the need for a “complete solution to the Jewish question.”¹⁶ At one point, he provided Mengele with a recommendation letter, which praised Mengele’s “reliability, combined background in anthropology and medicine, and capacity for clear verbal presentation of difficult intellectual problems.”¹⁷ It was Verschuer who made the fateful recommendation to Mengele that he request a transfer to Auschwitz, which offered a “unique possibility” for biological research.¹⁸ At Auschwitz, Mengele dissected people after they were tortured and killed, and sent his “research” to Verschuer.¹⁹ Before the Holocaust, the AES had lobbied successfully for the Johnson Act, the restrictive 1924 immigration law that—among other things—caused the steamship *St. Louis* to be refused entry to the U.S. in 1939; the ship returned to Europe, where many of the Jews aboard were killed.²⁰

The AES lobbied, with equal success, for involuntary-sterilization laws in the U.S., which were to claim an estimated 63,000 victims.²¹ The laws were upheld by the U.S. Supreme Court in the 1927 case of *Buck v. Bell*,²² which was cited in *Roe*. Some states—Oregon, Virginia, South Carolina, and California—have recently extended official regrets and/or apologies for those laws.²³

Blackmun, the Rockefellers, and Eugenics

Justice Harry A. Blackmun’s 1973 opinion in *Roe* is traceable to eugenics through his direct and indirect citations of works by members of the British and American eugenics societies. Among the other authorities he cited were lower federal court cases that expressly invoked overpopulation as a basis for legalizing abortion; projects and organizations tinged with eugenics,

including the Rockefellers' Kinsey-based Model Penal Code and the American Public Health Association, which was on record in favor of abortion as a form of population control; Justice Holmes's *Buck v. Bell* decision; and *Roe's* companion decision, *Doe v. Bolton*,²⁴ which effectively swept away the Model Penal Code's state-by-state effort to liberalize abortion, thus realizing one of the stated aims of radical eugenic activists.

To interpret *Roe*, *Buck v. Bell*, and other Supreme Court cases as benchmarks in an organized political effort to establish a eugenic social vision for America may seem counterintuitive, considering current popular rhetoric emphasizing individual rights. But contemporary documents demonstrate the persistent popularity of eugenics among influential social figures and policymakers, which makes its incorporation into constitutional law less surprising.

In terms of U.S. public policy—military and foreign affairs, economics, health care, education, social welfare, commerce, and science—the aftereffects of *Roe* are visible everywhere. The central institution that has acted in opposition to the eugenicists has been the Catholic Church: For a century, the Catholic hierarchy has often been the lone organizational voice denouncing the enactment of eugenic measures, including restrictive immigration laws, sterilization laws, and systems under which the government delivers birth control and abortion.²⁵

Politicians in both political parties have often aligned themselves with a host of eugenic strategies—including human-embryo exploitation (nicknamed embryonic-stem-cell research), trafficking in fetal body parts, and euthanasia.²⁶ In doing so, they have aligned themselves with one of America's most important dynasties: Indeed, one can ask whether *Roe* in America, or the Holocaust in Germany, could have happened at all, were it not for the Rockefeller trusts.

Rockefeller money funded eugenic scientists decades before Hitler put eugenic theories into practice. After Pearl Harbor, the Rockefellers' Standard Oil was still so heavily intertwined with Hitler's powerhouse chemical concern, I. G. Farben, that in 1942 the antitrust section of the Justice Department filed criminal charges against both companies and their officers. By that time, I.G. Farben had already opened slave-labor plants at Auschwitz and Monowitz. In 1941, the Nazis had begun their first purchases of Zyklon B, the asphyxiating agent used in the gas chambers; the only manufacturer of Zyklon B was an I. G. Farben subsidiary, Degesch. Five of I. G.'s board members sat on the board of Degesch. Author Joseph Borkin reported that "I. G.'s dividends on its Degesch investment for the years 1942, 1943, and 1944 were double those of 1940 and 1941."²⁷

The Rockefellers were influential in leading a mainstream coalition in support of eugenic measures. They underwrote Margaret Sanger and her less well-known colleague, Dr. Robert L. Dickinson, another AES member. In fact, the Rockefellers supported the two key men who led the AES for much of the 20th century: Henry Fairfield Osborn and his nephew Frederick Osborn. Numerous wealthy and powerful people, including such public figures as Britain's Sir Julian Huxley, dedicated their lives to putting eugenic theory into public policy, with the Rockefellers playing the role of financier.

The Rockefellers' wealth and social standing gave them indescribable political influence, which, along with their money, they plowed into the eugenics movement around the world. Space does not permit me to cover all aspects of this family's role in promoting eugenics at the state, federal, and global levels, nor to discuss the many other "philanthropists" who promoted eugenics in its various forms. I want to focus, rather, on one central contention: that the *Roe* decision was in great measure the result of a seeming obsession with eugenics by at least two members of the Rockefeller family. I have taken much, but not all, information about the Rockefellers directly from a history of the family titled *The Rockefeller Century*,²⁸ written by two men whose combined years of work for the family totaled 23 years²⁹; quotes not otherwise attributed are from their book.

Mastering Monopoly in Business and Philanthropy

The family patriarch, John D. Rockefeller Sr. (1839-1937), a Baptist, founded Standard Oil in 1870; within a dozen years, it had become "a near monopoly of the oil industry in the United States, a giant combine of scores of companies in many states." The senior Rockefeller's wealth peaked at just under \$1 billion. In 1891, feeling that "the pressure of appeals for philanthropic causes on his time and strength had become too great to be borne," he hired Rev. Frederick T. Gates to assist him in giving away his money. Biographers attribute to Gates the decision to refuse gifts to individuals, local charities, and churches, and to develop a system of "wholesale philanthropy" that channeled money particularly to Baptist initiatives to encourage "the development of large, comprehensive denominational and charitable agencies." By 1897, health problems forced Senior's retirement at the age of 58, and his only son, John D. Rockefeller, Jr., usually called "Junior," was ready to take the reins of Standard Oil.³⁰

Junior (1874-1960) had turned 19 in 1893.³¹ He learned population theory from his 19th-century college professors at Brown University, who were enamored of Thomas Malthus.³² The major intellectual influence on Junior was Brown's president, Elisha Benjamin Andrews, a one-eyed, larger-than-

life Civil War veteran. Andrews influenced Junior directly in the courses he taught, and indirectly in the environment of the institution he shaped. "Alone among contemporary economists, Andrews considered rapid population growth, through both natural increase and immigration, as a serious threat." He exhorted his students to carry out their duty as Christians to solve these problems: "Where are the young men and women of means and leisure who will duly study the social problems of our time and help to their solution?"³³ In 1894, Junior wrote a sophomore essay, "The Dangers to America Arising from Unrestricted Immigration," denouncing immigrants as "the scum of foreign cities; the vagabond, the tramp, the pauper, and the indolent . . . ignorant and hardly better than beasts."³⁴

Junior took over his father's oil empire.³⁵ By 1910, attorney Starr J. Murphy succeeded Gates as head of philanthropy. The biographers describe the Rockefellers during these early years as "institution builders," establishing the great trusts that would do so much to mold the world we know today. These trusts, according to the biographers, were not intended to relieve the needy: People with needs were considered to be displaying symptoms of other problems. Under Junior and Murphy, money was "diverted to . . . innovative groups that were attempting to deal with causes rather than symptoms."³⁶ Among these trusts were the Rockefeller Institute for Medical Research (1901; now Rockefeller University),³⁷ the General Education Board (1903), the Rockefeller Sanitary Commission (1909), the Rockefeller Foundation (1913),³⁸ and the Bureau of Social Hygiene (1913).³⁹

The chairman of the medical-research institute was Dr. William H. Welch, dean of the medical school of Johns Hopkins University and "probably the foremost figure in American Medicine at the time." In 1910, a general manager of the institute was appointed: Jerome D. Greene, who had been secretary to Charles Eliot, president of Harvard University.⁴⁰ Welch, Greene, Eliot: *All* of these men would, like Junior, later belong to the AES. From the early days of the 20th century, Junior surrounded himself with eugenic-minded people; we shall meet more of them below.

In January 1910, Junior was appointed by a New York judge to investigate the traffic in "white slavery": the sale of women and young girls. Junior, unhappy with official apathy toward his recommendations, formed a "Committee of Three," with Jacob Schiff and Paul Warburg, to sponsor "activities among the Jewish immigrant population of the Lower East Side." Schiff and Warburg were allegedly alarmed over the vulnerability of young immigrant girls to the temptations of the procurers and madams; their Committee's effort sparked Junior's interest in the work of Katherine B. Davis, who ran a women's reformatory. In 1912, Junior and the Committee

of Three began funding her work, with most of the money coming from Junior. Davis, too, would become a member of the AES.

Through his work to “institutionalize the ideas and commitment of the Committee of Three in the field of vice control,” Junior met Raymond B. Fosdick, who worked in the office of the mayor investigating graft and corruption. “Fosdick was to become intimately involved in many of Junior’s wide-ranging activities in the years ahead, finally serving as president of the Rockefeller Foundation and as Junior’s biographer.”⁴¹ Fosdick’s older brother, the Reverend Harry Emerson Fosdick (1878-1969),⁴² had already gained “recognition as a reform-oriented minister in Montclair, New Jersey, and was also to become closely associated with Junior.”⁴³

Raymond Fosdick and Rev. Harry Fosdick both were close associates of Junior: They, too, would become members of the AES. Raymond Fosdick was Junior’s “closest and most trusted adviser,” and the fact that President Wilson appointed Raymond to the “senior post reserved for an American in the League of Nations administration”⁴⁴ hints at Junior’s ready access to political power.

In 1922, Rev. Fosdick defined in a sermon the same division in the United States that persists in 2004. His sermon was titled “Shall the Fundamentalists Win?”⁴⁵ He stressed the significance of eugenics: “Few matters are more pressingly important than the application to our social problems of such well-established information in the realm of eugenics as we actually possess. . . . The failure to do this is almost certainly going to put us in the position of endeavoring to cure symptoms while basic causes of social degeneration and disorder go untouched.”⁴⁶

Junior extended his influence over Protestantism, spending \$10 million to build a church for Rev. Fosdick: Riverside Church in New York,⁴⁷ which would become “a landmark of liberal Protestantism.”⁴⁸ Riverside’s main entrance featured 42 statues, including for such saints of secularism as Darwin, Einstein, Kant, and Hegel.⁴⁹ After 1922, Rev. Fosdick reached 2 to 3 million listeners with his weekly radio program, the *National Vespers Hour*; “his contemporaries consistently named him one of the most important Protestants of his age.”⁵⁰

In 1913 Junior incorporated the Bureau of Social Hygiene (BSH), naming as trustees himself, Katherine Davis, Paul Warburg, Starr Murphy, and Junior’s office assistant Charles Heydt. The BSH was Junior’s “first large-scale effort in philanthropy all on his own”; he gave it \$5.4 million over two decades. In the 1920s, the BSH “became a major force in supporting birth control clinics and research,” and played “a pioneering role in many areas, including the modern field of population studies.”⁵¹ In 1920, it “made a five-

year grant to the National Research Council to establish and operate a Committee for Research in Problems of Sex.”⁵² This Committee in turn used the Rockefeller money to fund university research in endocrinology—the study of human hormones—which would assist in the development of the birth-control pill.

Writing as general secretary of the BSH, Katherine Davis published an article in *Mental Hygiene*, the organ of the National Committee for Mental Hygiene (whose president was the same Dr. William H. Welch who chaired the Rockefeller Institute). Davis’s article carried a title that—given what is now known about the crimes against children perpetrated by Alfred Kinsey’s Rockefeller-funded sex research in the 1930s and later⁵³—should raise eyebrows: “A Study of Certain Auto-Erotic Practices Based on the Replies of 2,255 Women to Questionnaires Prepared by the Bureau of Social Hygiene with the Advice of a Cooperative Committee—Part I.”⁵⁴

The Eugenics Juggernaut of the 1920s

Junior’s zeal in footing the bill for the work of eugenicists would be felt around the world. By 1922, he had a personal fortune of half a billion dollars,⁵⁵ and “a key role to play in a whole set of major philanthropic organizations, a growing circle of trusted and talented advisers, and goals and interests . . . both overseas and at home, on a wide-ranging scale never before seen and never since equaled.”⁵⁶ In 1921, he helped organize the Council on Foreign Relations, with AES members Elihu Root and Jerome Greene. Junior made significant contributions to the League of Nations⁵⁷ and spent \$28 million to establish the International Education Board, which sought to “identify scientists and institutions of great quality” to be “centers of inspiration and training” for an “international migration of select students.” The IEB funded new biology laboratories at a dozen European universities.⁵⁸

In the U.S., Junior ensured his influence in academia by spending \$41 million between 1922 and 1928 in grants to 25 universities for social-science programs. Five institutions—the University of Chicago, Columbia, the Brookings Institution, and Harvard, along with England’s London School of Economics—received more than half of the money. Others that received “substantial sums” were Yale, Minnesota, Iowa State, Vanderbilt, North Carolina, California, Stanford, and Texas.⁵⁹

As early as 1922, despite the American political animosity against Germany that remained from World War I, the Rockefeller Foundation, through its Paris office, began funneling exorbitant sums to a committee in Germany headed by a leading eugenicist, Heinrich Poll, who was an adviser to the Prussian Ministry of Health and a lecturer on hereditary traits and feeble-mindedness.⁶⁰

Rockefeller money built or supported three Kaiser Wilhelm Institute science centers that “made their mark for medical murder” under the Nazis.⁶¹

- The Institute for Psychiatry, directed by Dr. Ernst Rudin,⁶² whom Hitler honored with a national award, and who was congratulated for being a “meritorious pioneer of the racial-hygienic measures of the Third Reich.”⁶³

- The Institute for Brain Research, which, during part of Hitler’s rule, employed Hermann J. Muller, a Rockefeller-funded American geneticist,⁶⁴ and which later received “brains in batches of 150-250” derived from the victims of the T-4 euthanasia program in Brandenburg.⁶⁵

- The Institute for Anthropology, Human Heredity, and Eugenics, the directors of which were Dr. Eugen Fischer, Dr. Fritz Lenz, and Dr. Otmar Freiherr von Verschuer.⁶⁶ Dr. Fischer, a longtime Carnegie Associate, was a collaborator with Charles B. Davenport,⁶⁷ who in 1912 was head of the Eugenics Record Office (ERO) in the United States. Fritz Lenz had stated in 1923 that euthanasia “definitely had its place in the racial hygiene plan.”⁶⁸

In 1921 Drs. Erwin Bauer, Fischer, and Lenz “jointly published the first edition of their two-volume book, *Human Hereditary Teaching and Racial Hygiene*, which was internationally recognized as a standard textbook.”⁶⁹ In 1931 the famous textbook was translated into English.⁷⁰ In a chapter titled “Racial Psychology,” they wrote: “It is said that the Jews are especially responsible for the circulation of obscene books and pictures, and for carrying on the White Slave Trade. Most of the White Slave Traders are said to be Ashkenazic Jews.”⁷¹ In 1936 the Eugenics Institute listed its activities for the previous year: “the training of SS doctors; racial hygiene training; expert testimony for the Reich Ministry of the Interior on cases of dubious heritage; collecting and classifying skulls from Africa; studies in race crossing; and experimental genetic pathology.”⁷²

Junior also championed eugenics through birth control, by financing the work of Margaret Sanger and her colleague Dr. Robert L. Dickinson. Raymond Fosdick had been general counsel to Sanger’s American Birth Control League; in a 1924 memo, he drew Junior’s attention to birth control by referring to Katherine B. Davis, who had “studied the field in depth and had advised support.”⁷³ Fosdick asserted in the memo: “Personally, I believe that the problem of population constitutes one of the great perils of the future and if something is not done along the lines that these people are suggesting, we shall hand down to our children a world in which the scramble for food and the means of subsistence will be far more bitter than anything we have at present.”⁷⁴

According to the biographers, “Junior immediately authorized grants to Margaret Sanger’s Birth Control Clinical Research Bureau and Dr. Robert

L. Dickinson's newly formed National Committee on Maternal Health." (This Committee would later be headed by Christopher Tietze, a member of the renamed eugenics society. In the *Roe* opinion of 1973—at which time, remember, Planned Parenthood was an *amicus curiae* or friend of the court—Justice Blackmun would rely upon Tietze's work *three times*.) In 1924, Rockefeller's financial support for Sanger and Dickinson was "crucial," and began "more than half a century of involvement of the Rockefeller family in population studies and related issues." Junior and his Bureau of Social Hygiene, which lasted into the 1930s,⁷⁵ were steady supporters of an array of organizations created by Sanger and Dickinson, including groups such as the Birth Control Clinical Research Bureau (1923), the National Committee on Federal Legislation for Birth Control (1929), and the American Gynecological Society (1914).⁷⁶

Before Junior began funding Margaret Sanger in 1924, he must have known of her 1922 book *The Pivot of Civilization*,⁷⁷ in which she contended that "penetrating thinkers" were "coming to see that a qualitative factor as opposed to a quantitative one is of primary importance in dealing with the great masses of humanity. . . . Not until the parents of this world are given control over their reproductive faculties will it be possible to improve the quality of the generations of the future, or even to maintain civilization at its present level" (emphasis added). Sanger railed against the "inferior classes": "The most urgent problem to-day is how to limit and discourage the overfertility of the mentally and physically defective." She hinted at the possibility of coercive force against what she called chaotic human breeding in the U.S.: "Possibly drastic and Spartan methods may be forced upon American society if it continues complacently to encourage the chance and chaotic breeding that has resulted from our stupid, cruel sentimentalism."⁷⁸ She thanked the "neo-Malthusian movement in Great Britain, with its history of undaunted bravery," for coming to her support.⁷⁹ She cited studies by the Galton Laboratory of National Eugenics in Great Britain⁸⁰ and quoted Sir Francis Galton, the founder of eugenics: "Galton's ideal was the rational breeding of human beings. The aim of Eugenics, as defined by its founder, is to bring as many influences as can be reasonably employed, to cause the useful classes of the community to contribute more than their proportion to the next generation."⁸¹ She criticized Galton for being "unable to formulate a definite and practical working program."⁸²

Most significant is Sanger's view of birth control as a method of implementing eugenics. She said the neo-Malthusians considered birth control as "the very pivot of civilization. . . . Birth control, which has been criticized as negative and destructive, is really the greatest and most truly eugenic program."⁸³

In a chapter titled "The Fertility of the Feeble-Minded," Sanger blamed civilization itself for its own deterioration. "Modern conditions of civilization, as we are continually being reminded, furnish the most favorable breeding-ground for the mental defective, the moron, the imbecile." Sanger quoted from the Eugenics Record Office's Charles Davenport: "We protect the members of a weak strain . . . up to the period of reproduction, and let them free upon the community, and encourage them to leave a large progeny of 'feeble-minded': which in turn, protected from mortality and carefully nurtured up to the reproductive period, are again set free to reproduce, and so the stupid work goes on of preserving and increasing our socially unfit strains."⁸⁴

In this 1922 book, many years before the Holocaust, Sanger made a seemingly inexplicable reference to the future: "Nor do we believe that the community could or should send to the *lethal chamber* the defective progeny resulting from irresponsible and unintelligent breeding" (emphasis added).⁸⁵ Were eugenicists thinking about "lethal chambers" as early as 1922?

Sanger argued that "the emergency problem of segregation and sterilization must be faced immediately. Every feeble-minded girl or woman of the hereditary type, especially of the moron class, should be segregated during the reproductive period."⁸⁶ In a chapter titled "The Cruelty of Charity," she said that "lavishing upon the unfit" was "dangerous," "dysgenic," and "blighting."⁸⁷

She also inveighed against the Catholic Church, characterizing a 1921 pastoral letter by New York Archbishop Patrick J. Hayes as "extreme" and as "making this world a vale of tears." She called his orthodoxy a "menace to civilization." The Archbishop had provoked her tirade by writing the following: "Even though some little angels in the flesh, through the physical or mental deformities of their parents, may appear to human eyes hideous, misshapen, a blot on civilized society, we must not lose sight of this Christian thought that under and within such visible malformation, lives an immortal soul to be saved and glorified for all eternity among the blessed in heaven."⁸⁸ Sanger made her own position clear: "Either rational selection must take the place of natural selection, which the modern State will not allow to act, or we must go on deteriorating."⁸⁹

In August 1928, the *Eugenical News* reported on a June meeting of the American Medical Association, at which Sanger's associate, Dr. Dickinson, hosted an exhibit on the surgery of sterilization. "The data for this exhibit were taken from Dr. Harry H. Laughlin's *Eugenical Sterilization*."⁹⁰ Later, writing in a 1934 manual for the National Committee for Maternal Health, Dickinson and his co-author credited Rockefeller's BSH for making possible, "among other work, the laboratory researches undertaken in cooperation

with various hospitals, medical schools, and universities.”⁹¹ Dickinson and his co-author thanked Mr. J. Noah H. Slee and Mrs. Slee (a.k.a. Margaret Sanger) for the privilege of making records of their exhaustive collection of European contraceptive devices.⁹²

The manual clearly stated eugenic philosophy: “All feeble minded women under fifty of whatever level of mentality, should be sterilized . . . the safe procedure is to sterilize any feeble minded girl as close as possible to puberty.”⁹³ As to sterilizing males, the manual continued, “any feeble minded male of whatever grade who is not confined in an institution had best be sterilized, as sudden violent outbreaks are likely to occur in which he will rape any available female, of whatever age.”⁹⁴

The Osborns

Clearly, the Rockefellers were influencing—and were being influenced by—many people in favor of eugenics. From the time of Senior’s generation, the Rockefeller family had been acquainted with the Osborn family, two members of which helped create and then lead the American eugenics movement.⁹⁵ Henry Fairfield Osborn (1857-1935),⁹⁶ president of the American Museum of Natural History from 1908 to 1933, co-founded the AES in 1922.⁹⁷ His AES co-founders, Madison Grant and Harry H. Laughlin, helped develop the ideas that led to the Holocaust. Grant wrote in his 1916 book, *The Passing of the Great Race*, that “indiscriminate efforts to preserve babies among the lower classes often result in serious injury to the race . . . Mistaken regard for what are believed to be divine laws and sentimental belief in the sanctity of life tend to prevent the elimination of defective infants and the sterilization of such adults as are themselves of no value to the community.”⁹⁸

Laughlin contributed to eugenics in various ways. From 1910 to 1921, he was superintendent of the Eugenics Record Office,⁹⁹ which opened in 1905;¹⁰⁰ Junior had helped fund it.¹⁰¹ By 1917 the ERO had become a division of the Department of Genetics, Carnegie Institute, Washington, D.C.¹⁰² Laughlin assisted in intellectualizing eugenics through his work as associate editor of *Eugenical News* from 1916 to at least 1935.¹⁰³ Laughlin testified before Congress in favor of the Johnson Act prior to its enactment.¹⁰⁴ Importantly, Laughlin shaped Supreme Court history by pronouncing that Carrie Buck of *Buck v. Bell* was “part of the shiftless, ignorant, and worthless class of anti-social whites in the South,” and that he therefore deemed her qualified for Virginia’s newly adopted compulsory-sterilization law.¹⁰⁵

Frederick Osborn (1889-1981) had been an investment banker. He was the grandnephew of J. Pierpont Morgan¹⁰⁶ and the nephew of Henry Fairfield

Osborn. Junior got to know Frederick from the latter's work on a park project involving Junior and J. P. Morgan,¹⁰⁷ after which Junior asked Frederick to join the board of the Rockefeller Institute. After 1928 Frederick's life¹⁰⁸ would be devoted to eugenics and population control, in his roles as head of the AES, trustee of the Carnegie Corporation,¹⁰⁹ president of the racist Pioneer Fund,¹¹⁰ and president of the Rockefeller-created Population Council.¹¹¹

Frederick's extensive leadership in the eugenics movement and his early support for German sterilization efforts are alarming facts, when considered in the context of his powerful post at the Population Council. Through this group, Osborn's eugenic goals were legitimized around the world, fueled particularly by the Rockefeller fortune. In 1965, John D. Rockefeller III testified to the Council's power: "Probably the single most important contribution of the Population Council to date has been the creation of a pool of skills that is unparalleled elsewhere. Within the Council are specialists in . . . physiology, gynecology, maternal and child health, public health administration, demography, sociology, psychology, and economics."¹¹²

The significance of appointing a leading eugenicist like Osborn to head the Council is easily illustrated. As JDR3rd testified, the group wielded vast amounts of money under Osborn's command: "In 1952, a group of us in New York founded the Population Council as an agency for constructive citizen action in the broad field of population. . . . Since its establishment the Population Council has put a total of \$20.4 million to work on the population problem."¹¹³

In 1934, Osborn had been elected to the board of the AES. He took an active part "in developing the program of the [AES] which . . . involved an enormous correspondence with leading authorities on population, genetics, psychology, and sociology."¹¹⁴ He was an active leader in the AES, therefore, when the March-April 1936 issue of *Eugenical News*, subtitled *Current Record of Race Hygiene*, listed him as a member of an international advisory board from 27 countries—a board that also included German advisers Eugen Fischer, Ernst Rudin, and Falk Ruttke.¹¹⁵ In the same issue of *Eugenical News*, C. G. Campbell, chairman of the AES Editorial Committee, wrote: "It is unfortunate that the anti-Nazi propaganda with which all countries have been flooded has gone far to obscure the correct understanding and the great importance of the German policy."¹¹⁶

In 1937 Frederick Osborn himself "praised the Nazi eugenic program as the 'most important experiment which has ever been tried.'"¹¹⁷ In 1938 he lamented the fact that the public opposed "the excellent sterilization program in Germany because of its Nazi origin."¹¹⁸ As will be discussed below, Osborn and other eugenicists later renounced German eugenics—while

purposefully deciding that they would continue to pursue eugenics under other names.

The 1930s: Malthus and the Third Rockefeller Generation

Junior's namesake, John D. Rockefeller III, was the oldest of his five sons. JDR3rd would facilitate the continuation of the eugenics movement after World War II by appointing Osborn to head the operations of the Population Council. This Rockefeller scion became known in some circles as "Mr. Population."¹¹⁹ He viewed the task of philanthropy as needing "to be creative, to be venturesome, and to find effective methods of partnership with government and private enterprise."¹²⁰ His family history certainly revealed a knack for these things. He himself created "a scientific and technical assistance organization that became the world's leading resource in its field"; he became "the acknowledged world leader in combating overpopulation."¹²¹

In 1928, Junior put JDR3rd on the board of the BSH.¹²² JDR3rd was then a college senior, majoring in economics at Princeton University. He studied under the head of the economics department, Frank A. Fetter¹²³—who was a member of the AES. (This last fact might explain JDR3rd's speech-class topic: "The final assignment was 'to convince the audience of something they did not believe in particularly.' John's topic was: 'Negroes Should Be Admitted to Princeton.'")¹²⁴

Like his father, JDR3rd studied Malthus. Fetter believed in Malthusian theory, and thought that "democracy and opportunity" were "increasing the mediocre and reducing the excellent strains of stock . . . Progress is threatened unless social institutions can be so adjusted as to reverse this process of multiplying the poorest, and extinguishing the most capable families."¹²⁵

In 1929, after his college graduation, JDR3rd did a global tour. Doors swung open for him at the highest echelons of power. He stopped first in Washington to interview State Department officials, ambassadors from Spain, France, England, Germany and Poland, and officials from China and Japan. In Europe, he had lunch with the King of Spain, and dropped in at The Hague while wartime reparations were being debated.¹²⁶ At The Hague, he met with Rockefeller Foundation trustee Charles Evans Hughes, who was "serving a year as a judge in the Permanent Court of International Justice,"¹²⁷ and who went on to serve on the U.S. Supreme Court.¹²⁸ JDR3rd traveled on to Moscow and Leningrad, meeting with the Acting Commissar for Foreign Affairs; he learned that, because abortion and birth control were practiced in the cities, rapid population growth was mainly a rural problem.¹²⁹ He traveled on to China, and met there with a "war lord" from Manchuria.

“Everywhere [his entourage] went in China, they enjoyed the hospitality, care, and advice of Standard Oil people.”¹³⁰ He had spent more than four months traveling the world and meeting its leaders.

By 1931, JDR3rd had joined the board of the Rockefeller Foundation. Arthur W. Packard, a philanthropic assistant, befriended and mentored him,¹³¹ and, along with Raymond Fosdick, reinforced his interest in population.¹³² JDR3rd became an active member of Junior’s Advisory Committee, and joined the boards of the General Education Board and the Rockefeller Institute.¹³³ He was also to join the board of the American Museum of Natural History, which Henry Fairfield Osborn had led, and to become a trustee of Princeton University.¹³⁴ After 1938, he “continued to work with the American Law Institute and other organizations to promote liberalized and effective laws relating to youthful offenders.”¹³⁵ The Rockefeller Foundation’s financial support for the American Law Institute and its Model Penal Code would assume historic significance in the decisions in *Roe* and *Doe v. Bolton*.

In 1934, JDR3rd composed a memo to Junior, declaring that he wanted to concentrate his financial giving in the field of birth control and “related questions.”¹³⁶ In 1938, when Frederick Osborn was still openly supporting the sterilizations in Germany, JDR3rd met with him, and wrote afterwards: “[Osborn] told me about his work in the fields of population and eugenics. It was all exceedingly interesting. Do feel that he is doing a good job and should be encouraged. His two fields tie in, of course, very directly with birth control.”¹³⁷

In 1940, Osborn received a public-relations boost from *Time* magazine, in an article titled “Eugenics for Democracy.” The article described him as being “among the leaders of the new, environmental eugenics.” In the article, Osborn articulated the meaning of this new eugenics: “An environment equalized at a higher level would show up a superior heredity in great numbers of persons now at a low level of development.” He believed doctors should involuntarily sterilize the feeble-minded, but said a “sound population policy stresses ‘freedom of parenthood’—freedom not to have children unless they are wanted.”¹³⁸ (Would politicians and movie stars continue to proclaim the pro-choice mantra so unashamedly, if they knew *Time* magazine had called it “eugenics for democracy”?)

A Key British Eugenicist of the 1930s

Osborn’s “new, environmental eugenics” of 1940 sounded more polished, but his emphasis on achieving greater numbers of people possessing superior heredity sounded basically the same as the old 1922 eugenics in Margaret Sanger’s *Pivot of Civilization*, in which she quoted Galton’s view of eugenics as

a matter of “proportions” in the population. Moreover, the report in *Time* seemed to echo the same emphasis on social factors contained in the writings of Britain’s leading popularizer of eugenics, Julian Huxley. In 1931 and 1932, Huxley expressed in two layman’s magazines the version of eugenic theory that did not expressly denounce particular races, but that did denounce “defectives.” Huxley’s articles illustrate the high degree of intellectual analysis being poured into the development of eugenics as a “science.” He distinguished—in his 1931 article, “The Vital Importance of Eugenics”¹³⁹—between negative eugenics (methods to prevent degeneration) and positive eugenics (methods to improve the human stock). He also emphasized the difference between short-range eugenics (“altering the proportions of already existing and commonly recurring human types within the total population”) and long-range eugenics (“bringing new [human] types into existence”).¹⁴⁰ He defined long-range eugenics as “the attempt to alter the character of the human race out of its present mold, to lead it on to new evolutionary achievements.”¹⁴¹

It was before the genocide of the Jews in Germany that Huxley stressed the importance of *proportions* within a population: “It matters a great deal whether one quarter or three quarters of the community shall have brains of poor quality or of good quality; whether the *proportion* of those endowed by nature with initiative be halved or doubled” (emphasis added).¹⁴² He emphasized that short-range eugenics is of “utmost importance,” which must be considered “in relation to the much larger aims of long-range eugenics, and to the slow and enormous processes of evolution in general.”

Huxley also wrote that “the purely biological method of keeping the stock up to standard by natural selection is, though effective, cruel and uneconomical. It involves wholesale destruction to make sure that the few types you want destroyed shall be included in the holocaust.” (Like Sanger’s reference in 1922 to a “lethal chamber,” Huxley’s reference to a “holocaust” before the actual Holocaust is chilling to modern ears.) Huxley characterized this method as “haphazard, blind, and wasteful,” and contended: “There is only one immediate thing to be done—to ensure that the mental defectives shall not have children.”

Huxley urged that after defectives are prevented from reproducing, the “next step” is to “diagnose the carriers of defect,” so they could be “discouraged or prevented from reproduction . . . If, by whatever means, defectives can be prevented from reproduction, then, since the considerable majority of mental defect is due to hereditary factors, it will decrease from generation to generation” (emphases added). He said that the number of mental defectives had increased over the previous 25 years, owing to “improvement in our

measures of public health and preventive medicine, especially with regard to infant welfare.”¹⁴³

“Accordingly,” he argued, “if our infant welfare schemes save a thousand babies which otherwise would have died, we are likely to save a disproportionate number of mentally defective children among them. Nine hundred and ninety of them may be fine babies, whose preservation is a national asset; but if the remaining ten are mental defectives, and if ten per thousand is a higher *proportion* of defectives than exists in the population at large, then we are increasing the percentage of defectives in the new generation. By reducing the rigor of natural selection, we are allowing *an undue proportion* of unfit types to survive” (emphasis added).¹⁴⁴

Huxley repeated a “general law” that he attributed to evolutionist R. A. Fisher: Successful people are less fertile. Fisher, in turn, had based his general law on an observation by Francis Galton that “noble (or other) families whose representatives marry heiresses tend to die out with abnormal frequency.” Citing Galton, Huxley asserted that heiresses inherited low fertility along with their wealth. “Thus two factors which are not of necessity interconnected, female wealth and low fertility, are automatically brought into correlation.” Huxley gave credit to Fisher for applying Galton’s discovery to a commercial economy, such that the “two biologically independent variables of those tendencies making for success and those making for low fertility, of social necessity become coupled together.”

Huxley contended, in effect, that the modern structure of the economy was causing a “progressive and cumulative diminution within the population of the *proportion of gene-units* making for success, and therefore, of the successful type of person” (emphasis added). Huxley regarded the state of hereditary affairs in 1931 as “extremely gloomy”; his “ultimate goal” was to alter the “whole economic and social system.” In the meantime, he suggested a scheme of family allowances per child, even for the wealthy, in order to combat the “dysgenic process” that was already at work in the existing system.¹⁴⁵

On the positive side was what Huxley called “constructive” eugenics. He dismissed critics who charged that it would be too dangerous to allow one group to decide “who should be allowed to propagate and who should not.” Ignoring the Nazis, Huxley said that “no eugenist in his senses ever has suggested or ever would suggest that one particular type or standard should be picked out as desirable, and all other types discouraged or prevented from having children.” He went on, however, to say that “all ordinary people would agree that there are certain qualities which it is desirable for the race to possess,” and that the “simple task” was “to encourage the breeding of those

with desirable qualities, even if they also possess defects in other qualities . . . It will be time enough after a thousand or ten thousand years of this to look into further questions such as the precise *proportion* of poets, physicists, and politicians required in a community, or the combination of a number of different desirable qualities in one human frame” (emphasis added).

Huxley said it was difficult to “envisage methods for putting even this limited constructive program into effect,” because of “difficulties inherent in our present social-economic organization” and especially “the absence of a eugenic sense in the public at large.” Huxley called for a change in public opinion, so that eugenics would become “one of the supreme religious duties.” He asserted that man “has become what he is by a process of evolution” and there is “no reason why that evolution should not continue.” He queried, “What may not man do in the future with the aid of conscious reason and deliberate planning?” He argued for man’s birthright “to become the first organism exercising conscious control over its own evolutionary destiny.”¹⁴⁶

In the 1932 article “Heredity and Humanity,”¹⁴⁷ Huxley explained that the eugenics ideal is “a variety of type” (i.e., diversity), though the “practical realization of the eugenic ideal is not easy.”¹⁴⁸ He again urged a long view of the evolutionary goal: “We must educate ourselves to think in terms not of years or decades, but of generations. But once we have resigned ourselves to the idea of slow progress . . . there should be no particular difficulty in raising the *all-round level* of humanity to a very appreciable degree. We might for instance readily raise mankind, as regards physique, health and general intelligence, from its present average to the level of today’s top five per cent. If we did that . . . it can be prophesied with a high degree of probability not only that there would be a greater proportion of what we today would call very exceptional people, but also that the very exceptional people of that day, the geniuses of the future, would transcend in capacity the geniuses of the present and the past. . . . If we bring selection to bear, we should expect hereditary progress”¹⁴⁹ [emphasis added].

The Geneticists’ Manifesto: A Totalist Vision

In 1939, Huxley, Hermann J. Muller, and other eugenicists and biologists who were attending a meeting of the Seventh International Congress of Genetics in Edinburgh, Scotland, seemed to formalize Huxley’s earlier writings in a declaration. They were asked the question, “How could the *world’s* population be improved most effectively genetically?” (emphasis added).¹⁵⁰ Their response was touted as a “biological blueprint for a better humanity.”

The document, which I will refer to here as the Geneticists' Manifesto, was first publicized in 1939 with the headline: "Plan for Improving Population Drawn by Famed Geneticists: All Could Be Geniuses in World Based on Biology; World Federation Needed; Birth Control Advocated."

In June 1946, during Frederick Osborn's tenure as president of the AES, the Geneticists' Manifesto was republished in the AES journal, *Eugenical News*, with the title "Improving Genetically the World Population." Osborn's editorial committee opined that "the statement on genetic improvement deserves some careful consideration in post-war discussions of eugenics programs. It is reprinted in order to make it available to the present generations of students of human eugenics."¹⁵¹

Osborn's 1946 republishing of the 1939 declaration is significant. It establishes that eugenics was not destroyed along with National Socialism, but rather that the eugenics movement was emphasizing global goals instead of national ones. It also shows that JDR3rd's encouragement of Osborn was showing results—in a eugenicist direction.

In the Manifesto, Huxley, Muller, and their coauthors declared that "the question of population improvement is not merely a biological one," because "the worth of individuals can not be compared without economic and social conditions which provide approximately equal opportunities for all members of society."¹⁵² Thus the motive behind eugenicists' arguments for equal opportunity was not an altruistic quest for fairness, but rather a desire "to compare the worth of individuals."

The Manifesto continued: "Birth control, both positive and negative, is . . . a prerequisite to human improvement. The superstitious attitude toward sex and reproduction now prevalent needs to be replaced by a scientific and social attitude. . . . Raising the level of the average of the population nearly to that of the highest now existing is considered possible within a comparatively small number of generations, so far as purely genetic considerations are concerned."

The Manifesto's authors—after calling for equal opportunity—articulated a global, bio-social quest. They called for a world federation that would permit them to pursue their eugenic dreams. They envisioned removing the "conditions which make for war and economic exploitation" through "some effective sort of federation of the whole world." They also held that—because it was important to raise children who could be actively influenced "by considerations of the worth of future generations"—parents must not be financially strained, and women should not be distracted from their "opportunities to participate in the life and work of the community at large." Therefore, there must be "an organization of production primarily for the benefit

of consumer and worker.” They declared that a prerequisite “for effective genetic improvement” was the “legalization, the universal dissemination, and the further development . . . of ever more efficacious means of birth control, both negative and positive, that can be put into effect at all stages of the reproductive process—as by voluntary temporary or permanent sterilization, contraception, *abortion (as a third line of defense)*, control of fertility and of the sexual cycle, artificial insemination, etc.” (emphasis added).

The document called for “a wider spread of knowledge of biological principles,” for “conscious selection” of each generation, and for “an agreed direction selection would take” to raise “the level of the average of the population nearly to that of the highest now existing in isolated individuals.”¹⁵³

The Manifesto’s demands seemed to find an audience. Gunnar Myrdal wrote a book stemming from a 1935 proposal by a trustee of the Carnegie Corporation of a study of “negro education and negro problems.” [sic]¹⁵⁴ In 1944—nine years after the proposal, and eight years after Osborn had become a trustee for the Carnegie Corporation—Myrdal published the highly influential report, *An American Dilemma: The Negro Problem and Modern Democracy*.¹⁵⁵ Myrdal’s massive 1,500-page study was received in the highest circles of power in the U.S.; the U.S. Supreme Court even cited it in its famous school-desegregation decision, *Brown v. Board of Education*.¹⁵⁶

On one hand, Myrdal thoroughly documented the inequality between blacks and whites. He recommended social changes to accomplish equality, as did the Geneticists’ Manifesto. On the other hand, Myrdal openly advised that to “get rid of the Negroes,”¹⁵⁷ the only possible way “is by means of controlling fertility.” Myrdal warned that it would have to be done surreptitiously: “But as we shall find, even birth control—for Negroes as well as for whites—will, in practice, have to be considered primarily as a means to other ends than that of decreasing the Negro problem.”¹⁵⁸ If there were no “caste” differences, there would be “no more need for birth control among Negroes than among whites.” But until reforms are carried out, “and as long as the burden of caste is laid upon American Negroes, even an extreme birth control program is warranted by reasons of individual and social welfare.”¹⁵⁹ Myrdal advised: “A . . . serious difficulty is that of educating Southern Negroes to the advantages of birth control. Negroes, on the whole, have all the prejudices against it that other poor, ignorant, superstitious people have. More serious is . . . that even when they do accept it, they are not very efficient in obeying instructions . . . An intensive educational campaign is needed,

giving special recognition to the prejudices and ignorance of the people . . . The use of Negro doctors and nurses is essential.”¹⁶⁰

The Postwar Fight: Eugenicists vs. the Catholic Church

Frederick Osborn officially became president of the AES on April 1, 1946, but he is listed as president in the March 1946 issue of *Eugenical News*. In that same issue is a twelve-page article, illustrated with tables and charts, titled “The Present Status of Sterilization Legislation in the United States.” The article was written by the president of Birthright, Inc. (not related to the Birthright pregnancy aid centers of today), a group which took “the place of the Human Betterment Foundation of California.”¹⁶¹ The article reports the number of sterilizations per state: “California’s record of 17,835 officially reported sterilizations prior to 1945 is so impressive that it comes as a shock to learn that this program is not given as much protection as Delaware’s 705.” Kansas ranked third¹⁶² among the states in sterilizations performed per 100,000 population: “One Kansas superintendent wrote us, ‘Since the Army took our surgeon and help has been so difficult to secure, we have not been able to do any sterilizations during 1945. We expect, however, to begin very shortly.’”¹⁶³

The state-by-state report on sterilizations also reported on the opposition by Catholic hierarchy, religious, and laity: “The opposition of the Roman Catholic leaders constitutes the greatest obstacle that is encountered in applying, or in acquiring this therapeutic protection. From Maine come complaints that the Catholics of Quebec are moving southward and obstructing the proper use of their sterilization law. From Arizona we hear that no use has been made of their law ‘because of religious objections.’ Three States, Arizona, Arkansas, Nevada, have no institution for the feeble-minded or epileptics, though some are cared for in the mental hospitals. Connecticut’s population has a greater proportion of Catholics than any other State having a sterilization law. This accounts in part for the fact that only an occasional operation is being done there.”¹⁶⁴

The article reported that in Wisconsin,

just before the war there was a group called the Wisconsin Race Conservation Committee actively engaged in trying to get improved sterilization legislation for that State. Their bill was finally defeated by the following tactics: A priest called upon an assemblyman and told him that he controlled 1,200 votes in his parish, that these votes would be necessary for his re-election and that only by voting against the sterilization could he hope to be returned to the Assembly. Another assemblyman was threatened with a boycott of his store by all Catholics in his district if he continued to favor the bill. Another assemblyman who was in the insurance business was told that the policies he had written on a Catholic church would not be renewed if he voted for the

bill. A fourth assemblyman who published a newspaper was told that his Catholic subscribers would drop the paper unless he voted against the bill. This sort of economic pressure is being used in other States, as we shall see . . . those who are dedicated to biological improvement [must] learn to work together before it is too late.”¹⁶⁵

According to the same article, in 1934 Alabama courts had struck down the state’s sterilization law as unconstitutional. In 1939, when the same bill was introduced, it “was killed in committee under Catholic influence.” Again, in 1943, it was killed “under the same influence.” In 1945 Catholics continued their political resistance: “Though the state is non-Catholic (1.2 percent Catholic) there are centers of Catholicism, around Mobile and a few other towns, that form solid blocks of votes. Whenever sterilization bills are introduced the Catholics descend upon the capital in numbers—priests, nuns and laity—and attack the bill as ‘against the will of God’ and ‘an attack on the American home.’”

During the political struggle, a bill for “cancer research funds” became a bargaining point: “The bishop sent an ugly letter resigning from the State cancer control board and threatening the cancer bill. In this instance the legislator refused to be intimidated. Priests all over Alabama preached sermons against the sterilization bill, using as a main argument that it was an opening wedge in a Hitlerian program of mutilation.”¹⁶⁶

The article marched on through the states: In Colorado, a 1945 bill failed passage due to “vigorous Catholic opposition.”¹⁶⁷ In Pennsylvania, “the Cardinal’s office in Philadelphia immediately sent a letter to every legislator directing him to oppose the bill, and they were visited by the parish priests in their home communities. It is known in some instances that they were told that if they had any respect for their political futures they would defeat the bill; that if they favored it, the priests would instruct their people to vote against them at the next election. The bill did not even get a public hearing.”¹⁶⁸

In Canada, an effort in Saskatchewan “was met by strong Catholic protest. Every Catholic church in the capital of Saskatchewan had the Pope’s encyclical read and the cry was heard that this was ‘a beginning in reducing human beings to the category of livestock in a barnyard.’”¹⁶⁹

JDR3rd Marches On

During World War II, John D. Rockefeller III took a job in Washington with the Red Cross, and then joined the Navy—where his uncle, Winthrop Rockefeller, had been “appointed by the Navy, to help in securing officers for specialized jobs.”¹⁷⁰ JDR3rd worked in the main centers of power. He helped draw up the United Nations Relief and Rehabilitation program, and was appointed to a State-War-Navy Coordinating Committee that functioned as

the “focal point at the working level for all political military problems in which the Navy was involved.” Before the Japanese surrendered in 1945, he authored a paper for “the reorientation of the Japanese people.”¹⁷¹ He saw population as “a logical broadening of my interest in the birth control problem,” and believed that the future of world stability was directly linked to population: “I have come to the conclusion that if I am to make a contribution in international affairs, it must be through specialization in some one international problem.”¹⁷²

JDR3rd’s work took place in the context of his family. He had four brothers—Nelson (1908-1979), Laurence (1910-2004), Winthrop (1912-1973), and David (1915-)—with their own spheres of power over Latin America, the governorships of New York and Arkansas, the airline industry, the conservation movement, the New York Metropolitan Museum of Art, and the Chase National Bank (in 1930, the world’s largest bank).¹⁷³ Moreover, “John and Nelson both figured in the successful effort to secure the permanent home of the United Nations in New York.”¹⁷⁴ In 1948, the Rockefellers cemented their influence over mainstream Protestantism by the creation of the National Council of Churches, and by constructing an Interchurch center next to the Riverside Church in New York, “where the four large denominations”—Presbyterians, Methodists, Congregationalists, and Northern Baptists—“make their headquarters.”¹⁷⁵

JDR3rd made many study trips to Europe, the Far East, Africa, and Latin America. The main purpose of these travels was to “ascertain the current status of the population problem.”¹⁷⁶ He once presented his views for two hours to State Department and White House officials.¹⁷⁷ He also worked through the Rockefeller Foundation, which “served as a kind of incubator, holding ground, and financial resource for the ‘establishment.’ This was not a conspiracy of any kind, as frequently alleged by both the left and the right, but a natural convergence . . . a logical center and sponsor of programs and thinking on world affairs.”¹⁷⁸

In 1947, JDR3rd first met Margaret Sanger. Until that year, no Rockefeller had been publicly associated with birth control. “Junior’s support had always been channeled through one or another organization or, when given directly, had been anonymous.” By the late 1940s JDR3rd had two objectives: to stimulate more activity domestically in the birth-control movement, and to use the Rockefeller Foundation to do more internationally.¹⁷⁹ Frederick Osborn and Frank Notestein—yet another member of the AES—would give important aid to JDR3rd as he pursued these goals.¹⁸⁰

Osborn wanted to establish population studies in the academic world “in order to create acceptability for the new field.” The Office of Population Research was established at Princeton, where JDR3rd was a trustee. Frank

Notestein was asked to head the office; his leadership, his research, and his publication of the Population Index soon “constituted a force in the development of demography.”¹⁸¹ When JDR3rd wanted to send a representative of the Rockefeller Foundation to the occupied countries of Japan and Korea “to undertake a survey of the related matters of health and population,” he selected Notestein. To pave the way, JDR3rd talked to the president of Princeton, Harold Dodds, who was conveniently a trustee at the Rockefeller Foundation. To obtain military clearance for Notestein’s mission, JDR3rd met with General William Draper, the undersecretary of war at the Pentagon, who “would soon be possibly the most vocal of all the proponents of population programs.” Raymond Fosdick appointed Marshall Balfour, another AES member, to accompany Notestein, and they were joined by Irene B. Taeuber, also of the AES. The group became known as the Balfour Commission.¹⁸²

In 1946 Notestein worked for the U.N. as first head of its Population Division. He worked with “leading scholars in the field,” whose names will all be important to the years just before *Roe*: Kingsley Davis, Frederick Osborn, Clyde V. Kiser, Pascal Whelpton, Philip Hauser, Frank Lorimer, as well as two members of his own staff, Taeuber and Ansley J. Coale.¹⁸³ All of these names, with the exception of Coale and Taeuber, appear on the 1956 membership list of the AES.

Meanwhile, British eugenicist Julian Huxley became “the first director-general of the U.N. Educational, Scientific and Cultural Organization.” In his second annual report in this position, Huxley wrote: “Somehow or other population must be balanced against resources or civilization will perish. War is a less inevitable threat to civilization than is population increase.”¹⁸⁴

Significantly, Huxley changed his argument from that contained in his 1939 Geneticists’ Manifesto, which had called for birth control as a means to “improve the world population genetically.” He replaced this with an argument that we should protect “resources” by controlling the population. (In this shift there is a harbinger of today’s political alliance between environmental groups and Planned Parenthood’s constituency.) Huxley’s changed rhetoric was consistent with other suggestions that eugenics be conducted secretly, such as Myrdal’s proposal for quietly reducing the number of blacks with birth control, and Osborn’s proposals on several occasions to operate secretly, including in his 1968 book discussed below.

The fact that Notestein and his “leading scholars” were nearly all members of the AES, which advocated the idea of raising the average intelligence of the population through birth control, sterilization, and abortion, ought to provoke a question of possible bias in their demographic studies

and conclusions. Osborn himself had said that “in a period of declining births,” his group should place particular emphasis “on increasing births among parents whose socially valuable qualities rise above their neighbors’ in whatever environment they may be found.”¹⁸⁵ The Rockefeller biographers say that books by Julian Huxley, William Vogt, and Henry Fairfield Osborn contain “dire pronouncements and extremist views.”¹⁸⁶

Frederick Osborn, after assuming day-to-day operational supervision of the Population Council, was invited in 1956 to address the British eugenics society. In his speech, Osborn affirmed his continued belief in “Galton’s dream,” but he expressed dismay that “the very word eugenics is in disrepute in some quarters.” In response to the challenge, Osborn proposed what he called “voluntary unconscious selection” to encourage individuals to exercise choice over childbearing, making use of the idea of “wanted” children. Osborn said: “Let’s base our proposal on the desirability of having children born in homes where they will get affectionate and responsible care.” In this way, the eugenics movement “will move at last towards the high goal which Galton set for it.”¹⁸⁷

In the Population Council’s 1964 annual report, JDR3rd is listed as Chairman of the Board, Notestein as President, Frederick Osborn as Chairman of the Executive Committee, Marshall Balfour as Staff Medical Advisor to the President. Alan Guttmacher, an AES member, and Christopher Tietze were listed as well. If ever one wonders how America was overtaken by eugenicist thought, the list of members of the Population Council’s 1964 Board of Trustees tells the story. On this board sat representatives of the World Health Organization, the Rockefeller Institute, Harvard, the Carnegie Institute of Washington, the New York *Times*, AT&T, and the University of Chicago. The Population Council’s finance committee was made up of representatives from AT&T, Continental Can Company, General Electric, and Chase Manhattan Bank.

Also in the 1964 annual report is the Council’s expression of gratitude to its financial supporters: “From the Ford Foundation, \$5,000,000 over four years, from the Rockefeller Foundation, \$2,000,000 over four years, and from Mrs. Alan M. Scaife and the members of the Rockefeller family, \$1,150,000 for the year.” The Chairman of the board of trustees for the Ford Foundation, according to its 1962 annual report, was John McCloy. In 1949, McCloy had been appointed as high commissioner for Germany, but he had also served on the board of trustees of the Rockefeller Foundation.¹⁸⁸ Other Ford Foundation trustees included Ford family members, together with executives from Time, Inc., Newsday, the Minneapolis *Star and Tribune*, and MIT. Knowing that members of the nation’s largest media concerns and

their advertisers were directing the nation's foremost population-control organization may help explain the media bias in favor of eugenics-oriented candidates and issues, notably abortion and the exploitation of human embryos.

From 1965 to 1968, the Senate Government Operations Subcommittee on Foreign Aid Expenditures, chaired by Alaska senator Ernest Gruening, held 41 days of hearings on a bill to reorganize the Department of State and the Department of Health, Education, and Welfare. The transcripts, in 18 bound volumes titled *Population Crisis*, contain the testimony of 120 witnesses who spoke in favor of population control, and one or two witnesses who spoke against it. Many of the witnesses were employed by or affiliated with Rockefeller-funded universities or organizations (including the Rockefeller Institute, the Brookings Institution, the National Council of Churches, and the Population Council). Many were from Planned Parenthood affiliates, and many were from "population" offices in government agencies.

At these hearings, future president George Herbert Walker Bush, then a congressman from Texas, testified: "I think there is some feeling among some of the more militant civil rights people that any effort in Planned Parenthood is going to try to breed the Negro out of existence, which is absolutely ridiculous."¹⁸⁹ John D. Rockefeller III testified: "If this simple device [IUD] continues to justify expectations, it will represent a major breakthrough in population control, and might even change the history of the world."¹⁹⁰

Seven members of the AES also testified.¹⁹¹ Henry Caulfield, Robert Cook, Alan Guttmacher, Frank Notestein, Irene Taeuber, Phillip M. Hauser, and William Vogt. Robert Cook and his Population Reference Bureau accounted for twelve out of 58 exhibits in the 1965 hearings, and AES members submitted numerous other exhibits in the course of the hearings.

Osborn: *Roe* Minus Five Years

In 1968, as if to belie widespread claims that the American eugenics movement had disappeared, Frederick Osborn published a book, *The Future of Human Heredity: An Introduction to Eugenics in Modern Society*.¹⁹² Theodosius Dobzhansky—a member of the renamed AES and a leader in the field of evolutionary biology, the theory underpinning eugenics—wrote the book's foreword. Dobzhansky reaffirmed the original theory of Francis Galton, with a slight word change. In 1883, Galton had defined eugenics as "the study of agencies under social control that may improve or impair the racial qualities of future generations either physically or mentally." Today, wrote Dobzhansky, "we would use the word 'genetic' in place of Galton's 'racial.'"¹⁹³

Dobzhansky lamented how eugenics had been hampered: "Ironically

enough, eugenics was hindered more often by its overzealous proponents than by its opponents . . . and yet eugenics has a sound core. The real problem which mankind will not be able to evade indefinitely is where the evolutionary process is taking man, and where man wishes to go. Mr. Osborn has for several decades been the clear-sighted leader of the eugenical movement in America, who strove to make the substance of eugenics scientific and its name respectable again."¹⁹⁴ In praising Osborn for helping to overcome "some eugenicists" who had had "excessive enthusiasm,"¹⁹⁵ Dobzhansky insulted the memory of those who had been victimized by the millions of individual atrocities committed in the name of eugenics.

Osborn's book reiterated the goal of raising the "average" intelligence and character of each generation:¹⁹⁶ "If the birth rate of individuals with less than average intelligence is above replacement, an excess of 'poor' [quality] genes will be continued to the detriment of society."¹⁹⁷ He quoted Hermann J. Muller's mad suggestion: "It would in the end be far easier and more sensible to manufacture a complete new man de novo, out of appropriately chosen raw materials, than to try to refashion into human form those pitiful relics which remained."¹⁹⁸

Osborn complained that Hitler had "prostituted eugenics," such that "the American public was ready to drop the word from its vocabulary."¹⁹⁹ He praised Muller's proposals to increase the use of sperm banks that "would make available the sperm of highly qualified donors" and found it "a shocking commentary on public ignorance of genetics that so little concern is shown for quality of the donor in inseminations."²⁰⁰ Yet he questioned Muller's proposal that "we would breed from selected donors, chosen originally by qualified judges, and selected from this group by women desiring children"; he said even Muller thought "there is a danger that it might be misused."²⁰¹

Osborn pointed to studies indicating that, with the proper approach, less-intelligent women can be convinced to reduce their births voluntarily: "A reduction of births at this level would be an important contribution to reducing the frequency of genes which make for mental defect."²⁰² He asserted that birth control for the poor would help improve the population "biologically." As to families whose employment is irregular and who are "well known to all the social and welfare agencies of their community," Osborn said studies showed that half of their children were from pregnancies that were not wanted by one or both parents at the time. "Such couples should not be denied the opportunity to use new methods of contraception that are available to better-off families. *A reduction in the number of their unwanted children would further both the social and biological improvement of the population*" (emphasis added). He used a euphemism for racial minorities

when he explicitly called for “making available the new forms of contraception to the great number of people *at the lower economic and educational levels*” (emphasis added).²⁰³

“The most urgent eugenic policy at this time,” Osborn reiterated, “is to see that birth control is made equally available to all individuals *in every class of society*,” because “there is new evidence that the more successful or high IQ individuals within each group may soon be having more children than *the less intelligent* individuals within the group . . . *these trends are favorable to genetic improvement*” (emphasis added).²⁰⁴ He recommended that the reason for making birth control “equally available” should be disguised: “*Measures for improving the hereditary base of intelligence and character are most likely to be attained under a name other than eugenics . . . Eugenic goals are most likely to be attained under a name other than eugenics*”²⁰⁵ (emphasis added).

Roe: The Fruition of Eugenic Activism

Against the backdrop of the foregoing evidence that the Rockefeller family supported eugenicists before and after World War II, *Roe* represents the culmination of two competing Rockefeller-funded legal efforts toward achieving legalized abortion, the goal the eugenics movement had enumerated as early as 1939 in Huxley and Muller’s Manifesto.

One Rockefeller-funded initiative was the development of the American Law Institute’s Model Penal Code, through which abortion laws were loosened, state by state, on the basis of sex studies by the Kinsey Institute. In *Kinsey: Crimes and Consequences*,²⁰⁶ Dr. Judith Reisman has masterfully documented the criminal conduct and outright fraud perpetrated by the Kinsey Institute in its sex studies. The Rockefeller foundation had also funded the Kinsey Institute.

The Model Penal Code allowed for eugenic abortion to kill disabled babies. It also allowed the killing of healthy babies if they were conceived from incest or rape. The Supreme Court in *Roe* noted that 14 states had already adopted some version of the Model Penal Code.²⁰⁷ The most radical eugenicists advocated the alternative proposal before the Supreme Court in *Roe*: unrestricted abortion. As Mary Meehan points out in her article in the Summer 2004 issue of this journal,²⁰⁸ the outcome of *Roe* and its companion case, *Doe v. Bolton*, was effectively the adoption of the radical position.

Curiously, the first four paragraphs of Justice Harry Blackmun’s introduction in *Roe* mention nothing about the newly decreed right of privacy in support of abortion. Nothing later in the opinion explains Blackmun’s unsupported early comment that “population growth, pollution, poverty, and

racial overtones tend to complicate and not to simplify *the problem*” (emphasis added)²⁰⁹; after the introductory paragraphs, these issues are never raised, and Blackmun never defines “the problem.” The reader wonders: Just which problem *is* the one he perceived would be solved by legal abortion?

Blackmun went on to cite directly two men closely connected to the British and American eugenics societies. Glanville Williams (a Fellow of the British eugenics society) is cited twice, at footnotes 9 and 21 of the opinion, and Christopher Tietze is cited three times. Moreover, Blackmun—by virtue of his heavy reliance on Lawrence Lader’s book *Abortion*,²¹⁰ cited seven times (at footnotes 9, 21, 26, 33, 44, 57, and 58 of the opinion)—indirectly relied on the people and groups to whom Lader’s book expressed profuse gratitude: Glanville Williams, Christopher Tietze, and at least five additional AES members (Alan Guttmacher, the president of Planned Parenthood; Garrett Hardin, professor of biology at the University of California at Santa Barbara; Sheldon Segal of the Population Council of New York; Sophia Robison of the Columbia University School of Social Work; and Dr. Robert Laidlaw of New York’s Roosevelt Hospital).²¹¹ Lader thanked his friend Cyril Means,²¹² an attorney who would later be legal counsel to the National Association for Repeal of Abortion Laws or NARAL. Lader also thanked the officers of England’s leading abortion-rights group, the Abortion Law Reform Association (ALRA)—whose leaders included Julian Huxley, and whose members included 27 members of the British eugenics society. In 1954, the British eugenics society had voted to support the ALRA’s efforts to end restrictions on abortion.²¹³ Blackmun cited the success of that effort in his opinion: “Recently, Parliament enacted a new abortion law. This is the Abortion Act of 1967.”²¹⁴ (Lader’s other books included a biography of Margaret Sanger and one titled *Breeding Ourselves to Death*.²¹⁵)

The mystery of Blackmun’s curious opening paragraphs in *Roe* may indeed be solved by Lader’s *Abortion*. The book begins by declaring the motive behind legalizing abortion, in words that remind us of the work of JDR3rd’s Balfour Commission on Japan: “Each woman who decides whether or not a fetus shall become a child affects the population charts . . . a process strikingly evident in Japan, where legalized abortion has cut the birth rate in half.”²¹⁶ In relying on this book, Blackmun was relying on panicked rhetoric such as the following: “The frightening mathematics of population growth overwhelms piecemeal solutions and timidity. No government, particularly of an underdeveloped nation, can solve a population crisis without *combining legalized abortion with a permanent, intensive contraception campaign*” (emphasis added).²¹⁷

“The ultimate reality [is] that only legalized abortion can cut to the core

of the problem . . . We have reached the point where warnings are no substitute for a decisive population policy . . . As a result of the baby boom after World War II, and a *sharp increase in the number of women of procreative age*, the U.S. population should double in the next forty or fifty years” (emphasis added).²¹⁸

Lader had served on the board of directors for the New York-based Association for Humane Abortion (AHA). Its founders had invoked the Fourteenth Amendment as a possible basis for legalizing abortion;²¹⁹ among the AHA board members were AES members Joseph Fletcher and Alan Guttmacher,²²⁰ making it a fair question whether, for many of the men involved, the women’s rights issue was just another smokescreen issue to advance eugenicist goals. Harriet Pilpel, also on the AHA board,²²¹ was an attorney who later filed an *amicus* brief in the Supreme Court on behalf of Planned Parenthood in *Roe*.²²²

In April 1965, the AHA changed its name to the Association for the Study of Abortion (ASA).²²³ In 1966, New York’s governor, Nelson Rockefeller, called for “abortion reform”; by 1967, Lader was leading legislative initiatives in New York, hoping for a bill with measures more liberal than the Model Penal Code.²²⁴ ASA’s funding came primarily from two members of the Rockefeller family and from Cordelia Scaife May.²²⁵ The group channeled a portion of the money to Cyril Means to write a favorable abortion history;²²⁶ the strategy proved significant, in that Blackmun cited Means in *Roe* (at footnotes 21, 22, 26, 33, 42, and 47). Means had served on Nelson Rockefeller’s 1968 Commission to Review New York State’s Abortion Law.²²⁷

Lader’s 1971 book *Breeding Ourselves to Death* opened with a foreword by Paul Ehrlich, an early population-control advocate.²²⁸ Ehrlich wrote that the book was being published “with the hope that methods and techniques employed by the Hugh Moore Fund may be of use to the growing army of devoted men and women—and organizations—now engaged in the struggle to control the greatest menace of our time. We must check the present unbridled population growth in order to stop the deterioration of our environments.”²²⁹ By 1969, according to Lader, over 1.5 million copies of Hugh Moore’s alarmist pamphlet *The Population Bomb* had been distributed to “leaders throughout the country.”²³⁰ Lader further quoted Frederick Osborn, who had, in 1964, “agreed that the *Bomb* had helped change the climate of public opinion, enabling great foundations like Ford and Rockefeller together to concentrate over \$100,000,000 on the population problem.”²³¹

In 1969, JDR3rd personally addressed Lader’s ASA, and advocated a broad legal loophole to permit many if not all abortions on demand: “Repeal [of abortion restrictions] will inevitably be the long range answer,” but in the

interim, reform statutes have to offer “*a broad interpretation of mental health that would allow many if not all women to qualify under such a provision*” (emphasis added).²³²

In addition to the citations to Lader, *Roe* demonstrates its eugenic roots by citing Glanville Williams, a Fellow of the British eugenics society.²³³ In 1956, Williams was a visiting professor of law at Columbia—where he served as a consultant to the Model Penal Code project. In England he served as president of the Abortion Law Reform Association and vice president of the Voluntary Euthanasia Society; not surprisingly, he was an adviser to Britain’s Birth Control Commission. Presumably, Blackmun read Williams’s book, *The Sanctity of Life and the Criminal Law*,²³⁴ before citing it in *Roe*. If he had, he would have seen the following section, and its heading with explicit reference to eugenics:

Contraception and Eugenics: The problem does not only concern the limits of subsistence, though this in itself is one of sufficient magnitude. There is, in addition, *the problem of eugenic quality*. We now have a large body of evidence that, since industrialization, the upper stratum of society fails to replace itself, while the population as a whole is *increased by excess births among the lower and uneducated classes*. (Emphasis added.)²³⁵

Williams quoted favorably from AES member Robert Cook, who was also director of the Population Reference Bureau: “Economic and educational success works eugenic miracles in reverse in an industrial society. The price for success is a slow, steady, remorseless biological extinction . . . Today, in the United States, the intelligent get degrees, and the diligent and competent get houses and bank accounts and stomach ulcers. But it is the poor and unschooled who beget.”²³⁶ Williams expressed the eugenicists’ view that widespread birth control—of which abortion would be the surest form—would improve the gene pool by lowering the birth rate of the poor and unschooled: “There is evidence the [differential fertility between different social classes] would be radically altered if the number of birth control clinics in the country were made adequate between all classes of people.” This measure, Williams contended, would help prevent the “running down” of the “national stock of favourable genes.”²³⁷

Williams’s book voiced genuinely horrifying suggestions—arguing, for example, that it is not immoral for a mother who has “given birth to a monster or idiot baby” to kill it, just as a bitch would kill her “misshapen puppies.”²³⁸ Williams applauded a father who drowned his daughter because she had tuberculosis.²³⁹ He argued that “human stud farms” can be justified on a “utilitarian basis.”²⁴⁰ He expressed abhorrence for “human fecklessness in our own reproduction” in contrast to “other forms of life under man’s

control” like rose-growing, pigeon breeding, and cattle breeding.²⁴¹

In 1966, prior to the *Roe* decision, Williams’s book had been the subject of a strong reply from future Irish cardinal Cahal B. Daly, in his book, *Morals, Law and Life*²⁴²: “Dr. Glanville Williams does not wish to understand, or to be just to Catholic teaching; he only wishes to destroy it.”²⁴³ Daly detailed Williams’s anti-Catholic rhetoric: “Examples of the technique occur on every alternate page . . . Christian moral teaching is ‘reactionary,’ ‘old-fashioned,’ ‘unimaginative,’ ‘primitive if not blasphemous,’ ‘restrictive,’ ‘irrational,’ ‘out-moded,’ ‘dogmatic,’ ‘doctrinaire,’ ‘authoritarian.’ Contrasted with it are ‘enlightened opinion,’ ‘interesting medico-social experimentation,’ ‘progressive statutes,’ ‘empirical, imaginative humanitarianism.’”²⁴⁴

Still more evidence that *Roe* is a benchmark in eugenic history is its reliance on Christopher Tietze, whom Blackmun cited in footnote 44. Tietze was a member of the British eugenics society,²⁴⁵ and belonged to the American group after its 1973 name change. An Austrian, Tietze started his American career in 1938 as an associate researcher on the “mental hygiene” project at William H. Welch’s Johns Hopkins University.²⁴⁶ (Recall that Welch was president of the National Committee for Mental Hygiene.) Tietze left Johns Hopkins for another Rockefeller-funded organization, Dickinson’s National Committee on Maternal Health (NCMH).²⁴⁷ When Dickinson died, Tietze took over as head of the NCMH.

According to the preface to a 1987 compilation of Tietze’s selected works, “the footnotes and references to [Tietze’s] work in [*Roe*] are testimony to the importance and impact of Tietze’s abortion studies.”²⁴⁸ It can be added that the citations are testimony to the financial and ideological power of the Rockefellers. Indicative of the company Tietze kept, the *Selected Papers* list other eugenicists as co-authors and contributors to the compilation, including Clarence J. Gamble, founder of the Pathfinder Fund; Sheldon Segal of the Population Sciences division of the Rockefeller Foundation; and two members of the Population Council.

“[Tietze] enlisted an ever-growing network of collaborators and prevailed on them to apply new tools to new issues. As Director of the [NCMH], and later at the Population Council, he became the focal point of a vast network of physicians and family planning professionals, demographers, statisticians, and biological research workers dealing with the problems of human reproduction, and laboratory technicians seeking new, simplified, and effective contraceptives.”²⁴⁹ Based on his “intensive research,” Tietze “announced that it was clear that the maximum effectiveness in the prevention of unwanted births was in the combination of contraceptive use with abortion in those cases where the contraceptive had failed.”²⁵⁰

In *Roe*, Blackmun noted that a majority of states had laws making it a crime to procure an abortion.²⁵¹ He also noted that in seven states and the District of Columbia, courts had overturned restrictions on abortion.²⁵² One of those cases was from the federal district court in Connecticut. In *Abele v. Markle*,²⁵³ the court relied on Tietze's studies for the Population Council in addition to relying on Lawrence Lader's book *Abortion*, and on the eugenicists-developed Rockefeller Report (formally named the Presidential Commission on Population Growth and the American Future.)²⁵⁴ Just as Lader had done, the *Abele* court had invoked a sense of panic, and had elevated the demographic studies before it to the level of "unimpeachable": "The Malthusian specter, only a dim shadow in the past, has caused grave concern in recent years as the world's population has increased beyond all previous estimates. Unimpeachable studies have indicated the importance of slowing or halting population growth. And with the decline in mortality rates, high fertility is no longer necessary to societal survival. . . . In short, population growth must be restricted, not enhanced and thus the state interest in pronatalist statutes such as these is limited."²⁵⁵ The concurring opinion in *Abele* relied heavily on articles by Cyril Means.²⁵⁶

In another of the cases Blackmun cited, *Babbitz v. McCann*,²⁵⁷ a Wisconsin federal district court had seemingly rejected panic-laced arguments about "over-population, ecology and pollution." Nevertheless, even if the embryo is "a human being, as the Wisconsin statute declares," the court accepted the eugenic argument in support of a woman's desire to reject it, such as in the case of a rubella or thalidomide pregnancy, a rape, or an act of incest.

Blackmun cited a case from a Kansas federal district court, *Poe v. Mengheni*, which struck down a requirement that abortions be performed in accredited institutions. The Kansas court quoted from a law-review article: "Procreation is certainly no longer a legitimate or compelling State interest in these days of burgeoning populations."²⁵⁸ Blackmun also cited an Illinois case, *Doe v. Scott*, in which the court had found no state interest to support a statute "which forces the birth of every fetus, no matter how defective or how intensely unwanted."²⁵⁹

Another authority Blackmun cited was the American Public Health Association (APHA),²⁶⁰ which itself had a history of promoting eugenic ideas. In March 1934, it published an article applauding "Germany's Sterilization Program which had gone into effect on January 1, 1934." The article reported: "A government announcement states that approximately some 400,000 are to be sterilized in a short time." The writer observed that "under the present regime orders from the top reach down to the very bottom without the

obstruction, delay, detraction, and dilution which minority and opposition parties contribute.” He contended that the German program merited attention of all public health authorities: “If the objective of eliminating parenthood by those unfit is actually achieved in a thorough but legally and scientifically fair way, Germany will be the first modern nation to have reached a goal toward which other nations are just looking or approaching at a snail’s pace.”²⁶¹

The APHA article explained the “important safeguards” in the German program, such as the creation of “1,700 Hereditary Health Courts” and “27 Hereditary Health Supreme Courts,” whose proceedings are “not public” and whose participants must “maintain secrecy.”²⁶² The author of the article had traveled in Germany for 6 months, and felt he understood the reason behind the sterilization program, which was only part of the government’s racial-hygiene program.²⁶³ The author sounded much like the postwar Huxley: “[German] resources are much depleted. Hence the present load of socially irresponsibles are liabilities which represent a great deal of waste. . . . The state has not determined who shall breed, but in this and other laws it has most definitely stated who shall not become parents, and why.”²⁶⁴

The article reported the Germans’ “widespread, varied, concentrated propaganda”: The German Medical Society was preparing 17 special films, and special magazines on racial hygiene were founded with government aid. The author spoke approvingly of special conferences and training for physicians. “Such training schools are being operated all over the country with great success except in the strongly Catholic areas.” He further reported: “The opposition voiced thus far has centered largely around Catholic church influence. This influence flows through many church organization channels both inside and outside Germany. Open opposition can no longer be voiced by the Catholic party, for this Centrum party in common with all others has been suppressed. Neither the Catholic church nor the German Government is inclined to yield.”²⁶⁵

In 1959, the APHA’s Governing Council adopted a policy statement consistent with the eugenicists’ aims of pervasive birth control, with justification reminiscent of the “depleted resources” argument used to justify Germany’s sterilization laws: “There is today an increase of population which threatens the health and well-being of many millions of people . . . Full freedom should be extended to all population groups for the selection and use of such methods for the regulation of family size as are consistent with creed and mores of the individuals concerned.”²⁶⁶ In 1962, the APHA urged in an editorial: “We cannot afford to be timid in our national approach to the problem of overpopulation . . . We may anticipate that developments in population control and family planning will

expand further the possibilities for dealing with the population problem.”²⁶⁷

In October 1972, just a few months before the announcement of *Roe*, the APHA journal carried an article explicitly tying legalized abortion with population control and preservation of the environment: “It would appear that legalization of abortion is probably the single most effective practical measure that can be taken to lower the birth rate, and by doing so, preserve the environment from further deterioration.”²⁶⁸

Blackmun treated the fact that life begins at the moment of conception as merely a “belief” of the Catholic Church, and of many non-Catholics, including physicians. In rejecting this fact, Blackmun cited articles and notes from law reviews,²⁶⁹ and in the same footnote cited a 1968 book, *The Biological Time Bomb*.²⁷⁰ Chapter 6 of this book includes the subheading “The New Eugenics,”²⁷¹ in which section the author, Gordon Rattray Taylor, cites Hermann J. Muller, Kingsley Davis, and William Shockley—all three of whom seem to have suffered from eugenicist paranoia about a deteriorating human heredity. Muller, one of Huxley’s 1939 Manifesto coauthors, had proposed “germ-cell” banks, containing a variety of semen types, to which people could apply to get their offspring.²⁷² Davis, throughout his career, emphasized the need for socioeconomic measures to reduce the unfit: He contended that, in reducing births, the effectiveness of sterilization and “unnatural forms of sexual intercourse” could not be doubted. In an article published in 1967, Davis criticized the failure of family planners to utilize abortion: “Induced abortion . . . is one of the surest means of controlling reproduction, and one that has been proved capable of reducing birth rates rapidly.”²⁷³ Shockley advocated programs of voluntary sterilization of people with lower than the average IQ score of 100.²⁷⁴

That Blackmun built his new constitutional theory for legal abortion on eugenics is further illustrated in the *The Biological Time Bomb*:

Until the day of gene surgery, therefore, eugenics must be a hit-and-miss business. Even so, it might be advantageous to a country to encourage selection, since subjective judgments are not without value and on the whole the genetic standard would tend to rise (emphasis added).²⁷⁵

The book seems prophetic now, in regard to China’s unspeakable atrocities against the unborn and their parents:

And once the right to bear children comes under regulation, the use of those [scientific] powers to improve the genetic stock rather than to degrade it could follow relatively easily . . . In short, it must be concluded that, sooner or later, genetic regulation will be adapted . . . It seems more likely that some eastern country will be the first to try the experiment—it might well be China. If it is seen to bestow advantages, the countries which are slow to make social experiments may be driven to follow.²⁷⁶

The Biological Time Bomb also contemplates the use of genetic research derived from human embryos to wage war: Viral epidemics could be spread intentionally among people or crops in order to tamper with the genes, and thus with the existence of disfavored gene-types or nations: "If viruses can be used to carry new genetic material into cells, perhaps one could tamper with the genes of another nation without their ever realizing it."²⁷⁷ These were the possibilities being considered in the 1968 book cited in *Roe*; the Court nonetheless—by making human embryos a new form of chattel that could potentially be used for any and every purpose—put the world on the path to legal development of these methods of terror.

In *Roe*'s footnote 62, Blackmun cited an article titled "The New Biology and the Future of Man."²⁷⁸ The article speaks for itself:

Taken together, [artificial gestation, genetic engineering, suspended animation]—they constitute a new phase in human life in which man takes over deliberate control of his own evolution. And the consequence is arresting: There is a qualitative change to progress when man learns to create himself . . . For our appropriate guidance in this new era, a reworking of values is required, which will take into account the new, and which will be as rapid and effective in its evolution as are the new techniques . . . Our task will be easier if we regard value systems as complex adaptations to specific sets of realities, which adaptations must change when the realities change . . . Chastity is not particularly adaptive to a world of effective contraception . . . Respect for elders is less and less adaptive to a world in which life-spans greatly exceed the period during which great-grandchildren find their senior progenitor's wisdom of any interest. Submission to supernatural power is not adaptive to a world in which man himself controls even his own biological future . . . high regard for the dignity of the individual may prove difficult to maintain when new biologic techniques blur his very identity . . . What counts is awareness of the unmistakable new fact that in general new biology is handing over to us the wheel with which to steer directly the future evolution of man."²⁷⁹

In March 1973, two months after *Roe* was handed down, the American Eugenics Society announced that it had changed its name to the Society for the Study of Social Biology. The announcement said: "The change of name of the Society does not coincide with any change of its interests or policies."²⁸⁰ The group had already changed the name of its journal in 1968, from *Eugenics Quarterly* to *Social Biology*.²⁸¹ Commenting on the new title, Osborn remarked: "The name was changed because it became evident that changes of a eugenic nature would be made for reasons other than eugenics, and that tying a eugenic label on them would more often hinder than help their adoption. Birth control and abortion are turning out to be great eugenic advances of our time. If they had been advanced for eugenic reasons it would have retarded or stopped their acceptance."²⁸²

NOTES

1. 410 U.S. 113 (1973).
2. In this article, unless otherwise noted, any reference that identifies a person as a member of a eugenics society is either from the December 1956 membership list of the American Eugenics Society, published in Vol. 3, no. 4 of *Eugenics Quarterly*, or from the compilation of members assembled from the 1956 list and from additional sources noted and posted at the Eugenics Watch website, www.eugenics-watch.com.
3. I continue to thank the discoverers, who introduced me to their field of study. The idea for this article and many of the sources and quotes come from their published and unpublished works: Katharine O'Keefe, Mary Meehan, John Cavanaugh-O'Keefe, Dr. David Reardon, Suzanne Rini, and Elizabeth Liagin.
4. "As Bertrand Russell puts it: 'The ideas of eugenics are based on the assumption that men are unequal, while democracy is based on the assumption that they are equal. It is, therefore, politically very difficult to carry out eugenic ideas in a democratic community when those ideas take the form, not of suggesting that there is a minority of inferior people such as imbeciles, but of admitting that there is a minority of *superior* people. . . . Measures embodying the former fact can therefore win the support of the majority, while measures embodying the latter cannot.'" Glanville Williams, *The Sanctity of Life and the Criminal Law* (New York: Alfred A. Knopf, 1957), 73.
5. *Time*, January 11, 1999: 84.
6. "The Tainted Science of Nazi Atrocities," Edward Rothstein, *New York Times*, January 8, 2005, A13; CNN.com, April 23, 2004, Brian Todd, reporter, "The Deadly Medicine of the Holocaust."
7. *Excessive Force: Power, Politics & Population Control* (Washington, D.C.: The Information Project for Africa, Inc., 1995).
8. *U.S. News & World Report*, August 19, 1996: 8, citing Alan Guttmacher Institute.
9. Vol. 52, No.10, *National Vital Statistics Reports*, Table 5, Dec. 17, 2003, http://www.cdc.gov/nchs/data/nvsr52/nvsr52_10.pdf
10. *Eugenics Quarterly*, Dec. 1956: 243-252.
11. Stefan Kuhl, *The Nazi Connection: Eugenics, American Racism and German National Socialism* (Oxford: Oxford University Press, 1994), 42. ("The leaders in the German sterilization movement state repeatedly that their legislation was formulated only after careful study of the California experiment as reported by Mr. Gosney and Dr. Popenoe. It would have been impossible, they say, to undertake such a venture involving some 1 million people without drawing heavily upon previous experience elsewhere.")
12. *Eugenical News, Current Record of Human Genetics and Race Hygiene*, January-February 1938, inside front cover.
13. *Eugenics Quarterly*, Dec. 1956: 252.
14. Bernard Schreiber, *The Men Behind Hitler: A German Warning to the World*, translated by H. R. Martindale, www.toolan.com/hitler/index.html, chapter 5.
15. Kuhl, 102.
16. James M. Glass, *Life Unworthy of Life: Racial Phobia and Mass Murder in Hitler's Germany* (New York: Basic Books, 1997), 64.
17. Robert Jay Lifton, *The Nazi Doctors: Medical Killing and the Psychology of Genocide* (New York: Basic Books, 1986), 340.
18. Kuhl, 102.
19. *Ibid.*, 103.
20. John Cavanaugh-O'Keefe, *The Roots of Racism and Abortion: An Exploration of Eugenics* (Xlibris Corporation, www.Xlibris.com, 2000), 72-74; Lyrick Wallwork Winik, "The Hunt for Survivors of a Doomed Ship," *Parade* magazine, Dec. 7, 2003:4.
21. Cavanaugh-O'Keefe, 77; Aaron Zitner, *Los Angeles Times*, 16 March, 2003, "Davis' Apology Sheds No Light on Sterilizations in California," www.geocities.com/madelinefelkins/CAeugenics.htm.
22. 274 U.S. 200 (1927).
23. Zitner, fn 21, *supra*; Wyethwire, January 9, 2003, "SC: Hodges Issues Formal Apology for Eugenics," www.polstate.com/archives/000938.html.
24. 410 U.S. 179 (1973).

THE HUMAN LIFE REVIEW

25. Christine Rosen, *Preaching Eugenics* (Oxford: Oxford University Press, 2004).
26. Strategies to reduce population were assembled by Bernard Berelson, "Table 1. Examples of Proposed Measures to Reduce U.S. Fertility, by Universality or Selectivity of Impact," *Journal of Planned Parenthood—World Population, Special Supplement*, Oct., 1970: ix (listing numerous proposals, including: restructure family, put fertility-control agents in water supply, encourage women to work, encourage increased homosexuality).
27. Joseph Borkin, *The Crime and Punishment of I.G. Farben* (New York: Free Press, 1978), 89-93; 118-123.
28. John Ensor Harr and Peter J. Johnson, *The Rockefeller Century: Three Generations of America's Greatest Family* (New York: Scribner's, 1988).
29. According to the book jacket's description of the authors, Mr. Harr worked as an associate of John D. Rockefeller III for eleven years. Harr had been a journalist and a member of the U.S. Foreign Service. He earned a Ph.D. at the University of California at Berkeley. He became vice-president of Capital Cities/ABC, Inc., and had authored four other books. Mr. Johnson worked for the Rockefeller family for twelve years. He earned an advanced degree in American history from the Maxwell School of Citizenship and Public Affairs.
30. Harr and Johnson, 18-31.
31. *Ibid.*, 33.
32. *Ibid.*, 49.
33. *Ibid.*, 45, 49.
34. *Ibid.*, 452-453.
35. *Ibid.*, 56.
36. *Ibid.* 61, 62, 66.
37. *Ibid.*, 62, 70.
38. *Ibid.*, 62. The Rockefeller Foundation absorbed the Rockefeller Sanitary Commission, which had ceased its work by 1914. *Ibid.*, 79.
39. *Ibid.* 362. In 1940, the Rockefeller Brothers Fund was created, and "would gradually succeed to the work of the Davison Fund." *Ibid.*, 393.
40. *Ibid.*, 68, 79.
41. *Ibid.*, 109-113.
42. Rosen, 116.
43. Harr and Johnson, 113.
44. *Ibid.* 160, 161.
45. Rosen, 116.
46. *Ibid.*
47. Harr and Johnson, 178-179.
48. Rosen, 221.
49. Harr and Johnson, 179.
50. Rosen, 117.
51. Harr and Johnson, 113-115.
52. *Ibid.*, 191.
53. Judith Reisman, *Kinsey: Crimes and Consequences* (Arlington, Va.: The Institute for Media Education, Inc., 1998).
54. Katherine B. Davis, *Mental Hygiene*, 1924: 668.
55. Harr and Johnson, 149, 158.
56. *Ibid.*, 149.
57. *Ibid.*, 155-156.
58. *Ibid.*, 169-170.
59. *Ibid.*, 188-189.
60. Edwin Black, *War Against the Weak* (New York: Four Walls Eight Windows, 2003), 284.
61. *Ibid.*, 283.
62. Kuhl, 20.
63. *Ibid.*, 32-33.
64. Black, 302-303; a Rockefeller Foundation grant, together with a grant from the Guggenheim Foundation, permitted Muller to spend eight years in Berlin, the U.S.S.R., and Edinburgh. He returned to the U.S. in 1940 after the outbreak of the war. He felt he would have had to give up his work, "had not the Rockefeller Foundation supported a position for me . . . at Amherst University. Equally critical for my continuance in scientific work was the support which the

REBECCA MESSALL

Rockefeller foundation gave to Indiana University, that allowed me to be appointed a Professor there." Warren Weaver, *U.S. Philanthropic Foundations: The History, Structure, Management and Record* (Harper & Row, 1967), 227.

65. Black, 369.
66. Robert N. Proctor, *Racial Hygiene: Medicine Under the Nazis* (Cambridge: Cambridge University Press, 1988), 52.
67. Black, 286.
68. Schreiber, Chapter 5.
69. Ibid.
70. Ibid.
71. Black, 296.
72. Proctor, 42.
73. Harr and Johnson, 191.
74. Ibid.
75. Ibid., 191-192.
76. Ibid., 455.
77. Margaret Sanger, *The Pivot of Civilization* (Brentano's Inc., 1922, copyright renewed by Margaret Sanger, 1950, reprinted with permission, 1969).
78. Ibid., 22, 25.
79. Ibid., 14.
80. Ibid., 31; 47.
81. Ibid., 171.
82. Ibid., 172.
83. Ibid., 189.
84. Ibid., 81.
85. Ibid., 100-101.
86. Ibid., 101.
87. Ibid., 123.
88. Ibid., 195.
89. Ibid., 201.
90. *Eugenical News*, Aug. 1928: 115.
91. Robert Latou Dickinson and Louise Stevens Bryant, *Control of Conception: An Illustrated Medical Manual* (Baltimore: The Williams & Wilkin Company, 1934), viii.
92. Ibid., vii.
93. Ibid., 164.
94. Ibid., 165.
95. Harr and Johnson, 457: "The Rockefeller and Osborn families had been acquainted since Senior's generation."
96. *Time*, Sept. 9, 1940: 34.
97. Cavanaugh-O'Keefe, 60.
98. Katharine O'Keefe. "Social History and the Eugenics Societies," *Social Justice Review* (Jan./Feb. 1998): 5.
99. Cavanaugh-O'Keefe, 60.
100. Harr and Johnson, 454.
101. Ibid.
102. Vol. 18, *Who's Who in America, 1934-1935* (Chicago: A. N. Marquis, 1934), 1418.
103. Ibid.
104. Cavanaugh-O'Keefe, 71-72.
105. Rosen, 150.
106. Ibid., 167.
107. Harr and Johnson, 457.
108. *Time*, Sept. 9, 1940: 34.
109. Ellen Condiliffe Lagemann, *The Politics of Knowledge: The Carnegie Corporation, Philanthropy, and Public Policy* (Middletown, Ct.: Wesleyan University Press, 1989), 153.
110. Cavanaugh-O'Keefe, 131.
111. Donald T. Critchlow, *Intended Consequences: Birth Control, Abortion, and the Federal Government in Modern America* (Oxford: Oxford University Press, 1999), 24.
112. "Population Crisis," Eighty-Ninth Congress, *U.S. Senate Hearings Before the Subcommittee*

THE HUMAN LIFE REVIEW

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113. Ibid.
114. *Eugenical News*, March 1939:1.
115. *Eugenical News*, March-April 1936: inside front cover.
116. Ibid., 25.
117. Kuhl, 75.
118. Ibid., 76.
119. Harr and Johnson, 5.
120. Ibid., 7.
121. Ibid., 558.
122. Ibid., 269.
123. Ibid., 271.
124. Ibid., 273.
125. Ibid., 272.
126. Ibid., 280-282.
127. Ibid., 286.
128. Ibid., 586, fn9.
129. Ibid., 287.
130. Ibid., 291-292.
131. Ibid., 304-305.
132. Ibid., 369.
133. Ibid., 305.
134. Ibid., 379.
135. Ibid., 380.
136. Ibid., 368.
137. Ibid., 457.
138. *Time*, Sept. 9, 1940, 34.
139. Julian Huxley, "The Vital Importance of Eugenics," *Harper's Monthly*, August, 1931: 324.
140. Ibid.
141. Ibid., 329-330.
142. Ibid., 325.
143. Ibid., 325-326.
144. Ibid., 325.
145. Ibid., 326-328.
146. Ibid., 330-331.
147. Julian Huxley, "Heredity and Humanity," *Woman's Home Companion*, April, 1932: 20.
148. Ibid., 21.
149. Ibid., 138.
150. *Science News Letter*, August 26, 1939: 131.
151. *Eugenical News, A Review of Eugenics, and Related Problems of Human Heredity*, June 1946: 43.
152. *Science News Letter*, 131.
153. Ibid., 131-132.
154. Lagemann, 123.
155. Gunnar Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy* (Twentieth Anniversary Edition; New York: Harper & Row, 1962).
156. 374 U.S. 483 fn. 11 (1954).
157. Myrdal, 170; quote taken from www.africa2000.com/indx/myrdal.htm.
158. Ibid.
159. Ibid., 178.
160. Ibid., 180.
161. *Eugenical News, A Review of Eugenics, and Related Problems of Human Heredity, Population and the Family, With Special Reference to Education and Social Action*, March 1946: 3.
162. Ibid.
163. Ibid., 4.
164. Ibid., 5-6.
165. Ibid., 8.
166. Ibid., 9.

REBECCA MESSALL

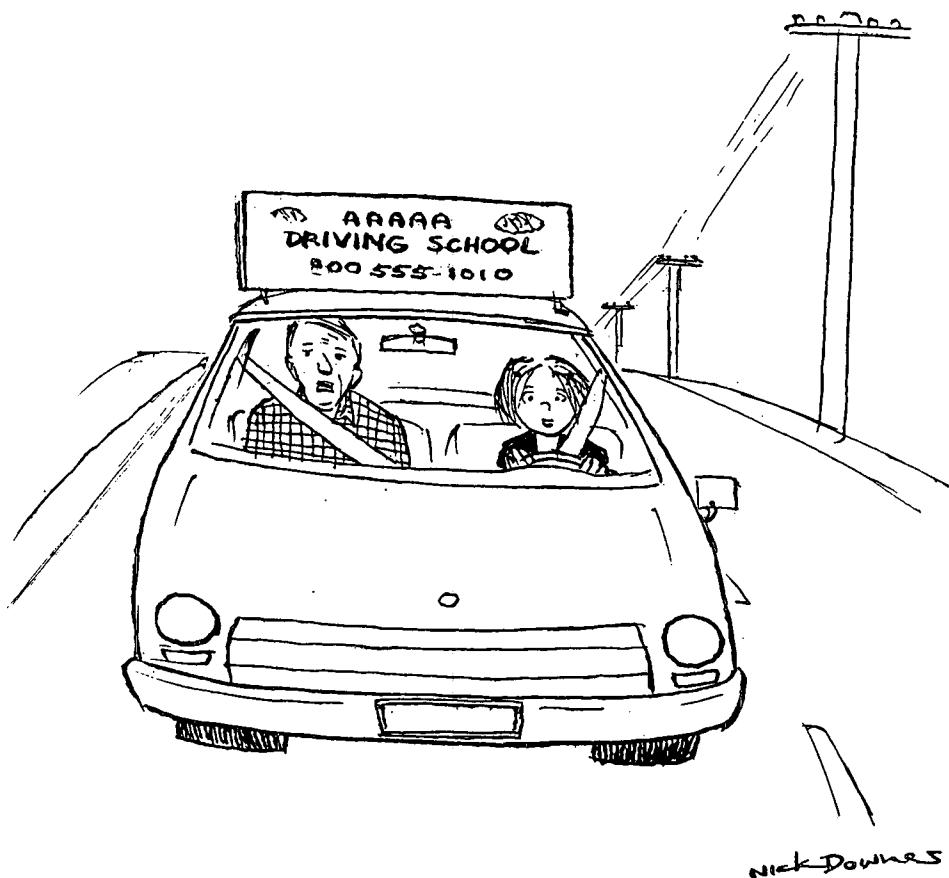
167. Ibid., 10.
168. Ibid.
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171. Ibid., 418-419.
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174. Ibid., 431.
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181. Ibid., 457-458.
182. Ibid., 463.
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184. Ibid.
185. Frederick Osborn, "The American Concept of Eugenics," *Eugenical News*, March 1939: 2.
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190. Ibid., (July 28, 1965): Part 2-A, 835.
191. Ibid., alphabetic list of witnesses for 1965, 1966, 1967-68.
192. Frederick Osborn, *The Future of Human Heredity: An Introduction to Eugenics in Modern Society* (New York: Weybright and Talley, 1968).
193. Ibid., v.
194. Ibid., vi.
195. Ibid., vii.
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198. Ibid., 82.
199. Ibid., 86.
200. Ibid., 87.
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203. Ibid., 94.
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206. Reisman.
207. 410 U.S. at 140.
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211. Ibid., 204.
212. David J. Garrow, *Liberty & Sexuality, The Right to Privacy and the Making of Roe v. Wade* (New York: Macmillan, 1994), 300.
213. Cavanaugh-O'Keefe, 51; 171.
214. 410 U.S. at 137.
215. Lawrence Lader, *Breeding Ourselves to Death* (New York: Ballantine, 1971).
216. Lader, *Abortion*, 2.
217. Ibid., 138-139.
218. Ibid., 142-243.
219. Garrow, 298.
220. Ibid.
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THE HUMAN LIFE REVIEW

222. Critchlow, 135.
223. Garrow, 300.
224. *Ibid.*, 308-310.
225. *Ibid.*, 349.
226. *Ibid.*, 352.
227. Cyril C. Means, "The Phoenix of Abortional Freedom: Is A Penumbral or Ninth Amendment Right About to Arise from the Nineteenth-Century Legislative Ashes of a Fourteenth-Century Common Law Liberty?" *N.Y. Law Forum*, Vol. XVII, no. 2 (1971): 335.
228. Paul Ehrlich, *The Population Bomb* (revised) (New York: Sierra Club/Ballantine, 1968, 1971).
229. Lader, *Breeding*, "Foreword."
230. *Ibid.*, 5; Meehan's article, *supra* footnote 208, confirms that the justices were likely recipients.
231. *Ibid.*, 6.
232. Garrow, 358.
233. *Who's Who 1990* (Gr. Britain: A&C Black, Ltd. 1990): 1955.
234. Glanville Williams, *The Sanctity of Life and the Criminal Law* (New York: Knopf, 1957).
235. *Ibid.*, 70.
236. *Ibid.*
237. *Ibid.*, 71-72.
238. *Ibid.*, 19-20.
239. *Ibid.*, 328.
240. *Ibid.*, 140.
241. *Ibid.*, 82.
242. Cahal B. Daly, *Morals, Law and Life* (Chicago: Scepter, 1966).
243. *Ibid.*, 16.
244. *Ibid.*, 16-17.
245. The source of documentation for Tietze's membership in the American group, after the American Eugenics Society was renamed the Society for the Study of Social Biology: Richard H. Osborne to G. Allen and others, 3 Feb. 1975, with Enclosed Mailing List for Summer 1974 issue of *Social Biology* [4], American Eugenics Society Archives, folder on "Social Biol.: M.L.," American Philosophical Society Library, Philadelphia, Pa. (Osborne, no relation to Frederick Osborn, wrote that the first 25 pages of the list constituted members of the SSSB. Tietze's name appears on the fourth page).
246. See Tietze's curricula vitae, www.eugenics-watch.com.
247. Harr and Johnson, 191, 455, 456.
248. Sarah L. Tietze and Richard Lincoln, ed., *Fertility Regulation and the Public Health: Selected Papers of Christopher Tietze* (New York: Springer-Verlag, 1987).
249. *Ibid.*, ix.
250. *Ibid.*, xi.
251. 410 U.S. at 118, fn 2.
252. *Ibid.*, 154.
253. 342 F. Supp. 800 (D. Conn. 1972).
254. Mary Meehan, "The Road to Abortion—Part II," *Human Life Review*, Winter 1999; 68-82, 77-79.
255. 342 F. Supp. 803-804.
256. 342 F. Supp. 806.
257. 310 F. Supp. 293 (E.D. Wisc. 1970).
258. 339 F. Supp. 986 (E.D. Kan. 1972).
259. 321 F. Supp. 1385, 1391 (E.D. Ill. 1971).
260. 410 U.S. 144-145.
261. W. W. Peter, M.D., "Germany's Sterilization Program," *American Journal of Public Health*, March 1934: 187.
262. *Ibid.*, 188-189.
263. *Ibid.*, 189.
264. *Ibid.*, 190.
265. *Ibid.*, 190-191.
266. *American Journal of Public Health*, Dec. 1959: 1703-1704.
267. *Ibid.*, Nov. 1962: 1930.
268. *Ibid.*, Oct. 1972: 1333.
269. 410 U.S. at 161, fn 62.

REBECCA MESSALL

270. Gordon Rattray Taylor, *The Biological Time Bomb* (New York: World, 1968).
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274. Barry Mehler, "In Genes We Trust: When Science Bows to Racism," *Reform Judaism* (Winter 1990).
275. Taylor, 175.
276. Ibid., 180.
277. Ibid., 184.
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281. Diane B. Paul, *Controlling Human Heredity: 1865 to the Present* (Atlantic Highlands, N.J.: Humanities Press International, 1995), 125.
282. Ibid.



"Now this can be tricky—I want you to make a left-hand turn, call your best friend on your cell-phone and put a new CD in the player."

APPENDIX A

[Naomi Schaefer Riley is an adjunct fellow at the Ethics and Public Policy Center and the author of God on the Quad: How Religious Colleges and the Missionary Generation Are Changing America, new from St. Martin's Press. The following originally appeared in the Spring 2004 issue of The New Atlantis (TheNewAtlantis.com); reprinted with permission.]

The Legacy of Nazi Medicine

Naomi Schaefer Riley

Toward the beginning of “Deadly Medicine: Creating the Master Race,” the U.S. Holocaust Memorial Museum’s new exhibit on German eugenics, there is an illustration of Adolf Hitler bending over to face a smiling apron-clad farmgirl. He holds her wrist in what initially seems like an effort to draw the girl near. But a closer look reveals that he is taking her pulse. The caption is startling: “Adolf Hitler as the Doctor of the German Nation.”

The exhibit, which opened this April, focuses on the period from 1933 to 1945. It traces the rise of “positive eugenics” in Germany’s public health campaigns, to the forced sterilization programs, to the euthanasia of mentally and physically disabled children and adults, to the inhuman experiments on Jews and other prisoners in Nazi concentration camps. It shows how the eugenic idea took hold of German scientists and the German public, and how it degenerated to the systematic use and slaughter of the “unfit” in the Final Solution.

The exhibit begins with a life-size, anatomically correct, glass model of a male, whose organs, muscles, and bones can be seen through a clear plastic skin. His arms are outstretched as if in prayer, and his head is tilted upward to appear just the way he would have to visitors of the German Hygiene Museum in the 1930s. This fascination with the workings of the human body—in the original, the different organs lit up as different buttons were pressed—is a consistent theme throughout the exhibit. One video shows a model of the body, sliced up in horizontal sections, moving together and apart in slow motion. Another film, from the 1930s, is about the “miracle” of the human body and ends with invocation—“O Health.” The goal of perfecting and glorifying the human form was a German obsession in the years leading up to the Nazi regime. Its legacy was treating some human beings as animals for experiments—to be poked, prodded, used, and murdered.

The Eugenic Seduction

To understand the rise of eugenics in Germany, one must know something about the miseries of German life between the wars. The exhibit includes pictures of the millions of German graves left after World War I, along with information about the declining birthrate, the economic depression, and the loss of Germany’s colonies in the Treaty of Versailles—all contributing to a sense of doom among the population. In the 1920s and 1930s, science was increasingly seen as a potential savior, able to provide an antidote to the suffering, death, and destruction brought about by the war. Advances in industry, medicine, and the fledgling science of genetics

APPENDIX A

promised extraordinary scientific breakthroughs and new pathways to human improvement. Though many now look back on this period as an ominous sign of things to come, “Deadly Medicine” shows how the new science brought hope to a devastated population, with pictures of crowds flocking to eugenic exhibitions.

At universities and hospitals, researchers in psychology, anthropology, and biology began to play fast and loose with science. They extended theories about individual biology into theories about entire populations, and turned ideas about the evolution of animal species into recipes for better human breeding. These scientists suggested that the “Nordic” population was headed for “extinction,” and that its only chance for survival lay in strengthening and purifying its race. It is alarming to see how quickly these ideas trickled down into high school and college textbooks. In one characteristic textbook page, the heads of individuals from different races are shown in profile, and the descriptions underneath give the distinct impression that these skulls represent different species.

The tools of this trade are scattered throughout the exhibit—calipers for measuring head size, eye and hair color charts, and a device that looks fit for torture that was used to make subjects sit up straight for measurements. During the early part of the century, German scientists used these tools to undertake extensive surveys of different racial populations for general anthropological purposes. Once the Nazis took power, the state even began to sponsor trips to search for the Aryan roots of the population. One trip to Tibet, which was extensively filmed, shows scientists doing face moldings of the natives. They produced highly detailed racial maps, using different colors to show the predominance of different human types in various geographic regions. The eugenic theories of these scholars were accompanied by some actual science, and at times a visitor to the exhibit could be forgiven for mistaking which is which.

The German people were encouraged to diagram their family trees and exhorted not to marry into a “diseased” family. “Don’t Go Blindly into Marriage!” reads the title of a 1924 public health poster showing a man and woman walking blindfolded over the edge of a cliff. The pseudo-religious overtones of the scientific movement reappear in “The Ten Commandments of Marriage,” with instructions to marry only “Nordic people” and avoid mates with hereditary illnesses in their families.

Other posters from the time emphasize the burden that the mentally and physically disabled place upon society as a whole. A picture from a Nazi-era high school biology textbook shows a German man struggling under the weight of a barbell, with a smallish Neanderthal-looking creature on each side. “You Are Sharing the Load,” reads the title. “A hereditarily ill person costs 50,000 reichsmarks on average up to the age of sixty.”

Eugenics, of course, was not only a German phenomenon. A surprising number of countries embraced racial theories, including the goal of creating a more “pure” population. Pictures and movies from Japan, Brazil, and the Soviet Union give some sense of the breadth of the eugenic movement. The Soviet Union held “healthy baby contests” while Great Britain seriously considered a national voluntary ster-

ilization law (patient consent would supposedly have been sought) in the early 1930s.

Another panel in the exhibit displays Supreme Court Justice Oliver Wendell Holmes, Jr.'s famous majority opinion in the 1927 case *Buck v. Bell*, upholding a forced sterilization law in Virginia. Holmes famously concluded that Carrie Buck, who was deemed the "feebleminded" product of a mother who was not of very hearty stock, could be sterilized along with her daughter. As the opinion famously declared, "three generations of imbeciles are enough."

By 1931, 28 states had compulsory sterilization laws—indeed, the image of the blindfolded couple walking over the cliff was first published by the Louisiana Department of Public Health. But there was also opposition from public intellectuals like Clarence Darrow, whose article, "The Eugenics Cult," appears next to Holmes's words in the exhibit. Despite the faith in science he demonstrated at the Scopes Trial a few years earlier, Darrow clearly understood the dangers of eugenics. "Those in power would inevitably direct human breeding in their own interests," he wrote. "It would mean that big business would create a race in its own image. . . . [I]t would mean with men, as it does with animals, that breeding would be controlled for the use and purpose of the powerful and unintelligent."

In Germany, public opposition to eugenics was virtually non-existent, and as the Nazis began to take over in the 1930s, there was little opportunity for dissent. The exhibit even contains a picture of Richard Goldschmidt, a Jewish doctor who left Germany in 1936 to become a eugenicist in the United States. Unlike America, which prized (at least in principle) human equality and human rights, Germany hungered for national greatness and renewal. As Joseph Goebbels declared: "Our starting point is not the individual, and we do not subscribe to the view that one should feed the hungry, give drink to the thirsty, or clothe the naked. . . . Our objectives are entirely different: we must have a healthy people in order to prevail in the world." This obviously anti-Judeo-Christian message is made even more ominous by the presence of the first-person plural pronoun—"we." Eugenics was to become the ideology of the whole German people, and victory was to be shared by the German Reich.

The Corruption of Medicine

The first significant step down this road was the forced sterilization campaign that began in 1933 under the Law for the Prevention of Genetically Diseased Offspring. The law applied to men and women who were afflicted with "feeblemindedness, schizophrenia, manic-depressive disorder, genetic epilepsy, Huntington's chorea, genetic blindness, genetic deafness, severe physical deformity, and chronic alcoholism."

The tools used for the vasectomies of men and the (often fatal) tubal ligations of women are shown in a display designed to look like a hospital room. The cold black and white tiles on the floor and the walls, the dressing screen, and the hospital gurney begin to drive home the very disturbing point that it was physicians and

APPENDIX A

nurses at the forefront of these policies. As Robert Jay Lifton notes in *The Nazi Doctors*: “Psychologically, nothing is darker or more menacing, or harder to accept, than the participation of physicians in mass murder. However technicized or commercial the modern physician may have become, he or she is still supposed to be a healer—and one responsible to a tradition of healing, which all cultures revere and depend upon.”

Things degenerated quickly, as German doctors began to euthanize disabled children. One powerful display shows a picture of Dr. Ernst Wentzler caring for a healthy young child—right next to his signed orders for the killing of disabled children. As part of the campaign to cleanse the race, doctors would do anything to promote the health of the strong, while trying to eliminate the burden of the weak.

There was also a campaign to encourage healthy German mothers to have more children. They were awarded gold, silver, and bronze medals depending on the number of healthy babies they delivered, and paid a stipend as well. Mothers were pressed to take special care of their health while pregnant, and underground abortions were virtually halted. The value of healthy life was elevated to the highest ideal, while any deformity made a person worthless.

Though arguments for the euthanasia of “diseased children” had been advanced during the 1920s and 1930s, it was not until the war began that the Nazi government could distract the population enough to carry them out. Parents were told that their handicapped children were being taken to homes for special treatments, only to be murdered with a gradual overdose of Luminal.

In a small, darkened room of the exhibit, there are pictures of some of the 5,000 boys and girls who were euthanized between 1939 and 1945. The tile of the sterile hospital environment is a poignant contrast to the vibrant faces of these children. Some are smiling, some are screaming. They display the full range of human emotion, and killing them would have seemed like killing any other child. These were German children, too. Even if the doctors and nurses were convinced that Jews or gypsies or blacks were animals, how could they justify the murder of these “Nordic” youth?

One factor was the method of killing. Since Luminal is a sedative that was often administered in small doses to unruly children at the time—there was no other way to treat epilepsy, for instance—nurses often had no way of knowing who was administering the fatal dose. Nor could they tell whether a child was sleeping or entering into a comatose state. The more people who were in on the killing, the less culpability any one individual felt.

Most German parents didn’t realize what was going on until it was too late. Unlike the forced sterilization campaign, the euthanasia policy remained largely secret, with parents receiving letters declaring a false cause of death. In some cases, though, the parents actually supported the murder of their own children. In his book, Lifton offers the horrifying example of a father who proudly sent his child to this fate: “the Führer wanted to explore the problem of people who had no future—whose life was worthless. . . . From then on, we wouldn’t have to suffer from this

terrible misfortune, because the Führer had granted us the mercy of killing our son. Later, we could have other children, handsome and healthy of whom the Reich could be proud.”

This normalization and bureaucratization of murder is displayed throughout “Deadly Medicine,” particularly as the euthanasia of Jewish and handicapped adults became commonplace. The exhibit is littered with forms, questionnaires, letters, testimony, charts, orders—murder became simply a matter of accumulating paper on the desks of state bureaucrats. Just as the eugenic theories had the hint of real science backing them up, so these horrifying orders always had some legitimate paper trail behind them.

There is an entire loose-leaf of expert testimony regarding the case of an Austrian man, who claimed that his biological parents were not Jewish and therefore should not be subject to deportation with the rest of the Jews. Page after page documents his various physical features and those of his family. The Hereditary Health Court, which was founded in 1933 to administer the Law for the Prevention of Genetically Diseased Offspring, processed thousands of such cases and produced reams of documents.

Toward the end of the exhibit, there are letters documenting the sale of human body parts, including one to the director of the anthropology department of the Natural History Museum in Vienna, offering the skulls of Polish and Jewish adults and children. There is an invoice for the receipt of 697 brains, delivered to Dr. Julius Hallervorden, who used them for research.

The most horrific experiments were performed in the concentration camps by Josef Mengele and his minions. At Auschwitz, Mengele and others used human subjects to learn about pain thresholds; they froze prisoners to study the effects of hypothermia; they put prisoners in pressure chambers to test human tolerance for high altitudes. Mengele had a special fascination with twins, which he subjected to perverse (and often deadly) experiments. At Dachau, prisoners were injected with malaria. At Ravensbrück, physicians deliberately infected prisoners’ wounds to test the effectiveness of the drug sulfonamide. At Buchenwald, prisoners were injected with smallpox, cholera, and typhus to test the effectiveness of different treatments. These human lab rats were going to die anyway, the doctors reasoned. Why not get some benefit from their misfortune?

A Reminder of Human Evil

If there is a weakness of the exhibit, it is that Mengele is not even mentioned until the last room. It is surely worthwhile to show the eugenic mindset in its beginning stages, but the creators of the exhibit should have devoted more space to its ghastly end stages, when the great evil of eugenics-gone-mad was most vivid. But this weakness is also, perhaps, its strength. Only by understanding the rise of eugenics in Weimar Germany can we grasp how even a supposedly humanitarian science can end, as Flannery O’Connor put it, “in forced labor camps and in the fumes of the gas chamber.”

APPENDIX A

O'Connor's point was also a warning. What we are discovering in our own time is that nations built on the principles of individual rights and human equality may have their own reasons for pursuing eugenics—a “soft eugenics” of personal choice, not a totalitarian eugenics of racial purity and mass slaughter. In America, parents are free to choose “fit” children and abort the “unfit,” and many defenders of equality seem to believe that we should use our genetic knowledge to ensure that our offspring have the “best genetic endowments.” While it is perverse to compare our own baby-making practices to the German programs of sterilization and euthanasia, the exhibit could not have come at a better time.

Our tools for predicting the likelihood of certain genetic illnesses are much more accurate today, and perhaps even more widely used. Couples with family histories of hereditary disease often consult with geneticists to see whether they should try to have children together. Women who decide to keep a baby with Down syndrome rather than abort it are considered by many to be downright irresponsible. And there are even more extreme voices, like Peter Singer, who believe the mentally or physically handicapped should be killed before they become a burden on the rest of society.

In addition to giving us pause about the kind of physical and genetic manipulation that we now engage in—from amniocentesis to plastic surgery—“Deadly Medicine” should make us think about the rationale we use to separate the acceptable from the well-meaning from the misguided from the downright evil. What is one to think after viewing an exhibit of parents who willingly gave up their children to murderers, doctors who signed execution orders for thousands of children and adults, nurses who administered the fatal doses, and a population that accepted forced sterilization, euthanasia, and mass murder? And what, if anything, does this have to do with current practices?

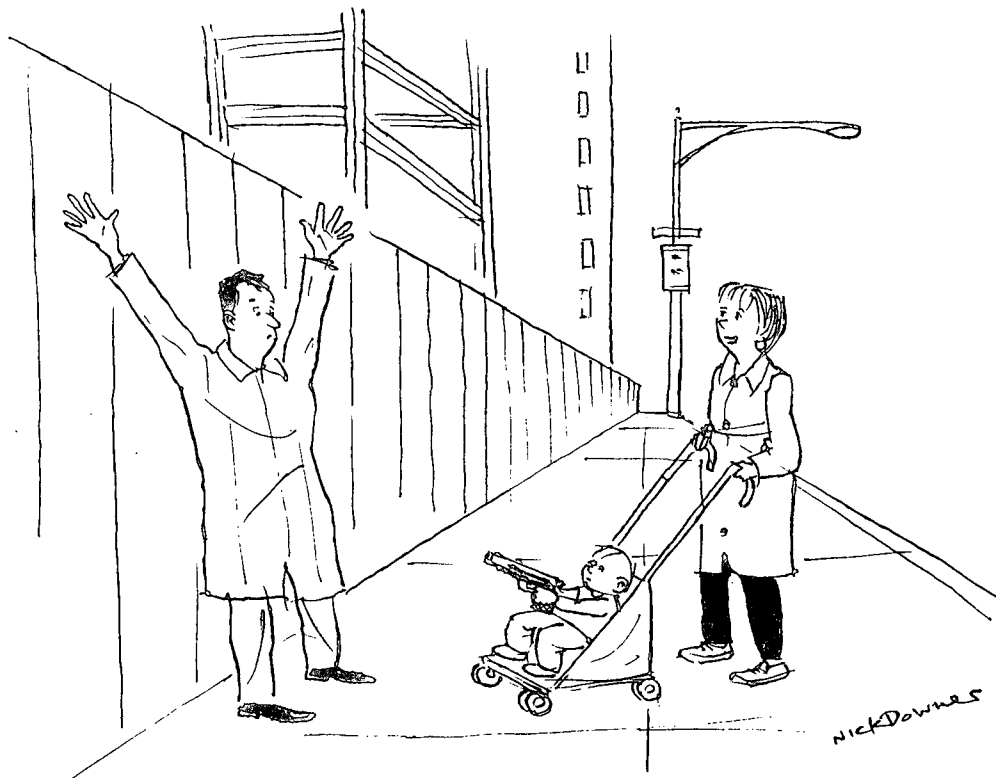
A number of esteemed bioethicists have argued that we can rely to some extent on the moral repugnance that arises naturally in us—“the yuck factor”—when we think about things like human cloning, partial-birth abortion, choosing the traits of our children, or physician-assisted suicide. This argument rests on the idea that certain practices strike all human beings as unnatural violations, regardless of the political or cultural context. But if there is one thing that shows, it is just how far a community can stray from built-in notions of what is morally repugnant. Of course, part of this was the result of the bureaucratization of these eugenic practices—involving as many layers as possible of people and processes. This allowed individuals to feel as though they were not themselves culpable. It made evil deeds, as Hannah Arendt famously argued, seem “banal.”

But in a way, the goals of the German scientists and the Nazi Reich began to make a certain natural moral sense to the population. Loath as we are to admit it, we also have a natural aversion to disability. Parents have to teach their children that the mentally and physically handicapped are worthy of sympathy and respect, not mockery. And for obvious evolutionary reasons, we are not instinctually attracted to individuals who are not “healthy.” Though we can and should teach

ourselves and our children that this is not the proper way to judge other people, there is no doubt that 1930s German scientists and leaders played on this natural “repugnance” to accomplish their aims.

On some level, the desire to perfect future generations is not entirely unnatural. As the ethicist William F. May has described, there are two kinds of love that parents feel for their children, “transforming love” and “accepting love.” Both of these loves are very natural. When they are balanced, we can push our children to accomplish more while accepting their limitations graciously. But transforming love seems to be on the rise, feeding a growing desire for genetically perfect offspring—a desire shared by German parents in the 1920s and early 1930s, and twisted by Nazi leaders to the most horrible ends. This impulse toward transformative “love” extended not just to one’s own children, but to all of one’s countrymen. Accepting love, meanwhile, simply fell by the wayside, as everyone put their trust in the Doctor of the German People.

America, thankfully, will probably never be seduced by such evil delusions. But we are not, as “Deadly Medicine” should remind us, wholly innocent of the eugenic impulse, which may grow more seductive in the years ahead.



“They grow up fast, don’t they?”

APPENDIX B

[Shannen W. Coffin, a Washington, D.C., attorney, is a former deputy assistant attorney general for the civil division of the U.S. Department of Justice. In that capacity, he coordinated the government's defense of the Partial Birth Abortion Ban Act of 2003 in the three recently completed federal trials. This commentary appeared on National Review Online (nationalreview.com) July 21, 2004 and is reprinted with permission.]

Abortion by Any Other Name

Shannen W. Coffin

"Selective reduction." Just when you thought you'd heard every euphemism in the "pro-choice" movement's book (see "The Abortion Distortion," *National Review*, July 12, 2004), along comes a chilling article in this weekend's *New York Times Magazine* entitled "When One is Enough." In it, feminist author Amy Richards tells of her experience with aborting two of three triplets, in a process she calls "selective reduction."

Miss Richards's account of her abortions is disturbing in its candor. A thirty-something freelance writer living with her boyfriend, she described her reaction when told that she was pregnant not with one baby—which she would have accepted—but with three:

My immediate response was, I cannot have triplets. I was not married; I lived in a five-story walk up in the East Village; I worked freelance; and I would have to go on bedrest in March. I lecture at colleges, and my biggest months are March and April. I would have to give up my main income for the rest of the year. There was a part of me that was sure I could work around that. But it was a matter of, Do I want to?

She described other reasons compelling her decision to abort her unborn children, such as having "to be on bed rest at 20 weeks," not being "able to fly after 15," and thinking that she would "have to move to Staten Island," and be doomed to a life of "shopping only at Costco and buying big jars of mayonnaise."

Apparently within moments of finding out about her multiple pregnancy, she found her route to retail salvation. She asked her doctor whether it was "possible to get rid of one of them? Or two of them?" Her article then describes her process of "selective reduction," in which her doctor first did a sonogram "to see if one fetus appears to be struggling." The doctor and mother then choose which of the children are to die by a lethal injection of potassium chloride. In her case, since she wanted to "reduce" the number of children from three to one, that meant two had to be selected for reduction—or as Miss Richards describes, making "two disappear." So after learning from her doctor that she was pregnant with two twins and a "stand alone" that was, in the doctor's view, a few days older, she chose to keep the "stand alone." "There was something psychologically comforting about that," she writes, "since I wanted to have just one."

"Reduction" seems to be a favorite linguistic shroud for abortion advocates—one that has multiple meanings. In recently completed trials challenging the constitutionality of the federal partial-birth-abortion ban, doctors describing the

partial-birth-abortion method described how they “reduced” the “fetal calvarium.” By that clinical terminology, these doctors cloaked from public scrutiny the process by which they crushed a partially born child’s skull in order to complete the delivery of the aborted child. But “selective reduction” reaches a new low in the distortion of the language. Heard in a vacuum, the term could speak to any number of innocuous human experiences—perhaps it describes the process of clearing out deadwood in a forest to prevent forest fires or maybe it depicts a targeted weight-loss program. But spoken by a pro-abortion advocate, watch out. Seemingly harmless terms become lethal.

Having read Miss Richards’s account of her selective reduction, I could not help but wonder whether, in hindsight, my parents might have applied similar criterion in determining which of their six children deserved to live. Did any of us appear to struggle? Well, my oldest brother Jamie is the shortest of the lot, so maybe that would have been a good reason to reduce him. Sure, he’s a brilliant executive with a Ph.D. in quantum chemistry, but he has the least hair of all of us. My brother Chris has plenty of back problems—even had to surgery a few years back. And his sinuses? They are always bothering him. Maybe he should be reduced. Forget that he’s the father of two great kids and an electrical engineer. Tim? Well, he was born the third kid in just over three years. That’s really inconvenient. This Air Force Academy graduate, husband, and father of four could easily be made to “disappear.” Kelly’s the only girl, so maybe she gets a pass. But we were really broke when she came around. Dad was back in college when mom got pregnant with Kelly—in school with four boys and making \$2.50 an hour as a part time cop? Costco would have been Bloomingdales to us back then. So I guess she’s a candidate, terrific nurse or not. Kyle never really had a chance. Mom was in her 40s when she got pregnant with him. She could have started retirement years ago if she had just decided that five is enough. And me? I’m a lawyer—that’s probably enough to qualify me for the “procedure.”

Despite the troubling picture drawn by Miss Richards’s account, she is to be commended for one thing: She does not rely on the favorite pretext of the pro-abortion movement—women’s “health.” The evidence relied upon by pro-abortion advocates in the recent trials challenging the constitutionality of the federal partial-birth-abortion ban was designed to show that nearly every abortion in this country happens to save a woman’s life and that elective abortions are exceedingly rare. But Miss Richards is unapologetic about her “selection,” and her account lays bare the cold utilitarianism and disquieting narcissism of the pro-abortion movement today.

APPENDIX C

[Wesley J. Smith is a senior fellow at the Discovery Institute, an attorney for the International Task Force on Euthanasia and Assisted Suicide, and a special consultant to the Center for Bioethics and Culture. He is the author most recently of *Consumer's Guide to a Brave New World*. The following commentary appeared on National Review Online (nationalreview.com) on November 15, 2004 and is reprinted with permission.]

Noxious Nitschke

Wesley J. Smith

The international euthanasia movement's first principle is radical individualism. The idea is that we each own our own body and hence should be able to do what we choose with our physical self—including destroy it. Not only that, but if we want to die, liberty dictates that we should have ready access to a “good death,” a demise that is peaceful and pain-free.

Most euthanasia advocates are not so blunt about this, of course, since candor about these matters would likely be detrimental to their movement's political health. But there are a few activists whose public advocacy—and their general acceptance by the international euthanasia movement—demonstrates the ultimate place to which legalized euthanasia would likely take us.

Jack Kevorkian was one such activist. In 1992, Kevorkian wrote in the *American Journal of Forensic Psychiatry* that death clinics should be established permitting the dying, disabled, and, eventually, “patients tortured by other than organic diseases” to receive facilitated death, a process he called “medicide.” Despite this clear advocacy of death-on-demand, and despite his having assisted the suicides of scores of disabled rather than dying people (five victims weren't even ill, according to their autopsies), Kevorkian remains wildly popular among euthanasia activists, to the point that he is considered by many a movement martyr (due to his imprisonment).

Phillip Nitschke is another prominent euthanasia advocate who reveals the euthanasia movement's radical individualist mindset. Nitschke is known as the Jack Kevorkian of Australia, and for good reason: He believes in death-on-demand. And like Kevorkian, he has not limited his “death counseling” to the terminally ill. This included, most notoriously, a woman named Nancy Crick who made headlines when she announced on Australian television and internationally through her website that she would commit assisted suicide because she had terminal cancer. But when her autopsy showed she was cancer free, Nitschke admitted he and Crick had known all along that she wasn't dying but pronounced that medical fact “irrelevant” because she wanted to die.

Nitschke's radical individualist mindset was demonstrated most vividly in a June 5, 2001, interview with National Review Online's Kathryn Jean Lopez, in which he asserted that suicide facilitation should be available to “anyone who wants it, including the depressed, the elderly bereaved [and] the troubled teen.” Toward achieving this end, funded abundantly by the Hemlock Society of the United

States (now merged with Compassion in Dying into the newly named Compassion and Choice), Nitschke experimented with developing a “peaceful pill” that could be used to commit a pain-free suicide. According to Nitschke, the peaceful pill was to be for anyone who wanted it, even asserting in NRO that it “should be available in the supermarket so that those old enough to understand death could obtain death peacefully at the time of their choosing.”

In order to understand the scope and depth of the threat posed to vulnerable and depressed people by the euthanasia mindset, it is important to comprehend that Nitschke is not a fringe character within the international euthanasia movement. Indeed, while most euthanasia activists do not advocate suicide facilitation for troubled teens, Nitschke’s death-on-demand ideology has not caused the movement to shun him. Quite the contrary: Nitschke is often an honored speaker at international euthanasia conferences, where, to great applause, he demonstrates various suicide-facilitation contraptions that he has invented. Such actions speak louder than activists’ soothing words promising strict limits on legalized euthanasia.

And now, it appears that Nitschke finally succeeded in inventing his peaceful pill. The November newsletter of Exit International, the premier Australian euthanasia-advocacy group, has announced “The Peanut Project” (symbolized surrealistically by a smiling, dancing peanut icon), which will soon convene Exit members from Australia and other countries to teach participants how to create their own suicide concoction. “At the end of the week-end,” the newsletter crows, “participants will leave with their own, self-made [Peaceful] Pill.”

On one level, the constant drive among movement activists to find new and novel suicide methods is just plain silly. Anyone who really wants to die, even those who are seriously ill or disabled; can find a way to end it all without needing help from the likes of Phillip Nitschke. Moreover, suicide pills have existed for a very long time, as evidenced by Nazi bigwig Hermann Goering’s biting on a cyanide capsule hours before his scheduled execution by hanging.

But beneath the weirdness, the shenanigans of Nitschke and his suicide groupies should serve as a warning to the rest of us about the potential consequences of legalizing assisted suicide. United States advocates like to pretend that legalized facilitated death will always be limited to the actively dying when nothing else can be done to alleviate suffering. But this is highly unlikely. Once one accepts the noxious notion that killing is an acceptable answer to the problem of human suffering, how can it possibly be limited to the terminally ill?

After all, disabled people, the elderly, and those with devastating existential grief caused by, say, the sudden death of family members, may suffer more profoundly—and for a longer period of time—than the terminally ill. If “self-deliverance” is, in principle, okay for those who experience *less* suffering for a shorter duration, then how would we justify denying termination to those who would seem to have a greater claim to receiving help to die?

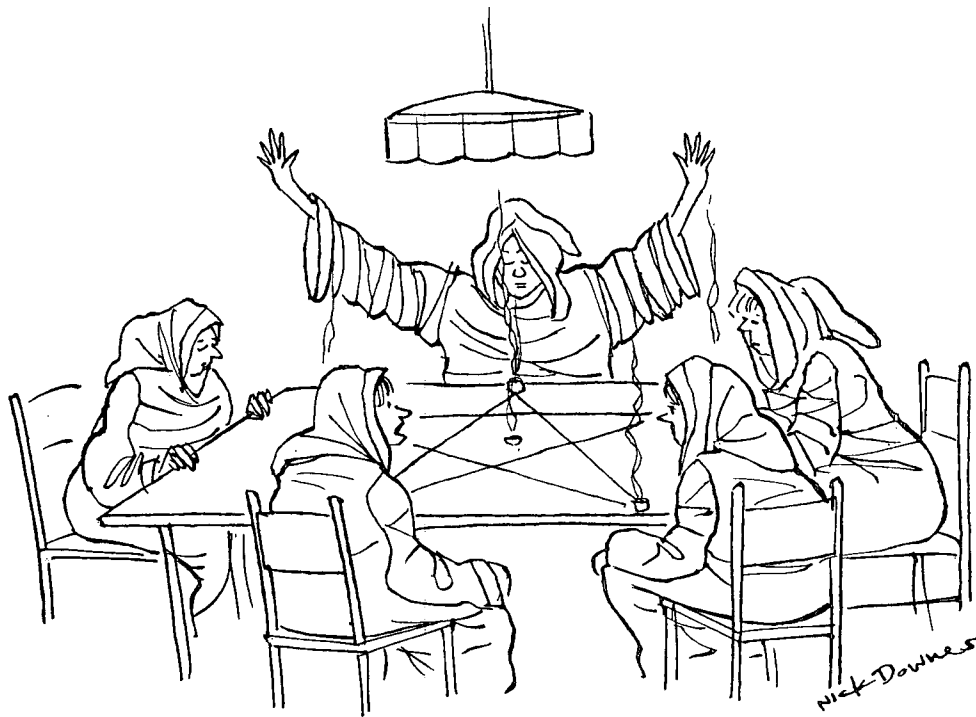
In fact, this is precisely what has happened in the Netherlands. After more than 30 years of permitted euthanasia, the category of the Dutch killable has expanded

APPENDIX C

steadily; it now includes the depressed, the chronically ill, and the disabled, including infants who are born with birth defects. And now, the Dutch parliament seems set on lowering the age of consent to be killed to twelve years old.

This should all be kept firmly in mind as we enter a new legislative year in which several states may see legislation introduced to legalize assisted suicide. In the intense debate to come, we will hear ad nauseum about how assisted suicide will be limited to the dying and how supposedly strict guidelines will protect against abuse.

Talk is cheap. What really counts are first principles and the societal forces that such laws set in motion. For as soon as we accept killing as a legitimate answer to human suffering, it ceases to be a question of *whether* euthanasia practices will expand to accommodate the Nitschke/Kevorkian approach and becomes one of *how long* that process will take.



"Somewhere along the line, our sewing circle took a strange turn."

APPENDIX D

[William McGurn is the new chief speechwriter for President George W. Bush. The following is the text of the first annual Bob Casey Lecture, which he delivered in Denver on October 26, 2004. The lecture is sponsored by the Archdiocese of Denver.]

Life of the Party

William McGurn

How honored I am to be asked to deliver the first of what will be your annual Bob Casey Lectures.

I make no claim for knowing Governor Casey. Nonetheless fate put me within a few feet of the Governor for what may have been his defining moment in public life: In 1992, at Madison Square Garden, for the Democratic National Convention. The night he was humiliated by the party he'd devoted his life to.

Make no mistake: Humiliation is the word. At the time, Governor Casey was coming off a re-election as governor that he'd won by the margin of a million-plus Pennsylvanian votes. Yet the Party officials who refused the Governor his chance at the podium and lacked the courtesy even to respond to his letters seeking a slot—these same officials managed to find room for six pro-choice *Republican* women to speak.

To ensure this message was delivered, one of these women was pro-choice activist Kathy Taylor. Not only did Miss Taylor hail from Pennsylvania, she had worked in the campaign of Governor Casey's Republican opponent.

Later Al Gore would call the Governor to apologize, and to say that neither he nor Bill Clinton had any role in the snub. In his autobiography Governor Casey says that when reporters asked Ms. Taylor how she had been invited, she told them she'd received the invitation from NARAL, after which the Democratic National Committee brought her in as an honored guest. Sort of shows you who rules.

It was an extraordinary thing to watch. I was standing only a few feet from Governor Casey in the Garden. As the Republicans onstage were cheered for their pro-choice positions, what I remember most was the Governor's gritted teeth.

At the time, I confess, I hadn't realized what a watershed moment it would prove. Then it seemed no more than the latest in a long series of indignities heaped upon pro-life politicians. In retrospect, however, it brings to mind the protagonist of "A Man for All Seasons." Faced with a Thomas More who steadfastly refused to give him the answer he wants, a frustrated Thomas Cromwell complains how this silence of More's was "bellowing up and down Europe."

Ladies and gentlemen, the silencing of Bob Casey continues to rattle through our political halls today. It does so because even three decades after the Supreme Court believed it had dispatched the issue once and for all, we see the hubris of the assumption: *Blackmun locuta est; causa finita est.*

The idea that *Roe* is the last word has been echoed in follow-up High Court rulings, and even Attorney General John Ashcroft, during his confirmation,

APPENDIX D

declared *Roe v. Wade* settled law. The problem is that no one believes him. In fact *Roe* is arguably the least settled law in the country. Probably most politicians wish it would disappear, and therefore are happiest when the courts take over for what should rightfully be their responsibility. Which fact is why *Roe* remains at once the most disruptive and brittle force in the life of the American commonweal. Far from fading away, it has now reached our communion rail.

Let me be clear: I do not intend this evening to parse the candidacy of John Kerry any more than any examination of abortion politics in today's Democratic Party makes necessary. Manifestly it simply no longer matters which name is on the Democratic ticket, because on this issue the party has spoken: At Boston the Party spoke of its "pride" of *Roe* in principle, while every day everywhere else it demonstrates that it will brook no dissent. Even the armed forces have a category for conscientious objector. Not so what was once the party of Al Smith. In fact the ground continues to shift, with this year's Democratic platform eliminating even the nod it made last time out to differing opinions.

Senator Kerry is simply a byproduct. And my proposition this evening is that Bob Casey's life and witness suggests it might have been different—that it might still be different.

Notwithstanding Republican accusations of flip-flopping, the Democratic Party is frank about where it stands. Here is the relevant language from the 2004 platform:

"Because we believe in the privacy and equality of women, we stand proudly for a woman's right to choose, consistent with *Roe v. Wade*, and regardless of her ability to pay. We stand firmly against Republican efforts to undermine that right."

I will spare a reading of the contrasting plank from the Republican Party, because my object here is not to declare between Republicans and Democrats but to highlight the cleavage between the Democratic Party whose mission Hubert Humphrey defined as standing for "those in the dawn of life, those in the shadows of life, and those in the twilight of life" and the Democratic Party of this platform, whose first sentence thumps for the most extreme of all abortion positions: abortion on demand with taxpayer funding. Thumps for it clearly and without apology.

The political consequence of this position is evident every day in our headlines: war on anything that threatens this absolutist stance, whether it be restrictions on federal funding or partial-birth abortions, to the maligning and political destruction of judicial nominees deemed to show insufficient piety for the view that *Roe* is sacrosanct while at the same time every other precedent is for grabs depending on the social or political exigencies of the moment.

John Kerry did not create the abortion test that today operates to push faithful Catholics off the public square on the grounds that their Catholicity may be deeply held. But John Kerry, like all national Democratic contenders, must be defined by it or become, à la Governor Casey, a stranger in his own land.

As it happens I find myself mustering a certain sympathy for Senator Kerry. To begin with, he must be wondering why he has attracted such attention from his

clergy today for beliefs, votes and practices that he has enthusiastically pursued with no church sanction for nearly his entire political life. More broadly, at times I wonder if the demand for fidelity to Catholic teaching in politics would be stronger if we saw more of that fidelity in the pulpit.

How easy it is to blame everything on politicians blowing with the wind. Whereas the real question is, How was it this wind gathered such a head?

That wind is what I mean to talk about tonight: the failure not just of Democratic politicians but of a Catholic culture that once contributed so richly to this party but today takes a back seat to NARAL. Republicans, to be sure, are not without their own pro-choice culture, though its character is less NARAL than a tweedy, historic Planned Parenthoodism with all the cold WASPy baggage that implies.

But even among Republican pro-choicers, the position generally shows itself willing to accommodate restrictions favored by large numbers of Americans, notably but not exclusively over the issue of taxpayer funding. In contrast, such is absolutism in the Democratic Party today that Democrats for Life, a tiny group, could not persuade the DNC to include their website among the 200 or so other links on the party page; after a meeting with the party's Catholic chairman, Terry McAuliffe, the Solomonic decision was to have no links at all. Democrats for Life are right to regard this as progress, but it is also true that it is compromise designed to ensure that one good deed would not be allowed to corrupt the whole.

For the most part, the Democratic Party's Catholics, Mr. Kerry included, publicly declare either that they accept that life begins at conception or are otherwise "personally opposed" to abortion, or both. Tonight I shall take them at their word. Yet it is a political fact that, if these same Catholics could bring themselves to act on this belief merely to the extent of protesting, vigorously and publicly, when pro-life voices within that party are squelched, Democratic candidates would not today be at war with their bishops across the country. Ironically it is a distinctly post-Vatican II failure, in that it is one for which we Catholic laymen and women and the institutions we run are as much to blame as our shepherds.

The bishops. Some of you will have read a story in a certain metropolitan newspaper earlier this month featuring an interview with a certain American archbishop. The implication of the article was to suggest that by speaking out on conscience, politics and Catholic teaching, this archbishop was guilty of a rank partisanship that violated the much venerated but almost completely misunderstood "wall of separation" that is located not in the Constitution but in Thomas Jefferson's letter to the Danbury Baptists.

This archbishop deserves more sympathy than he will ever get. Vain it is to attempt to speak to the American press of the integrity of the Eucharist, the considerations that define material cooperation in abortion, the Catholic view of conscience and proportionate response, etc. The reason is not simply that the gentlemen and gentlewomen of today's press generally harbor social views uncongenial

APPENDIX D

to those of the Catholic Church, though that is undeniably the case. It is that the press, especially in an election year, tends to see these issues as its front pages do, that is, from an exclusively politicized angle: Who whom?

The bishops have compounded the dissonance with the press by their past failure to speak clearly when they still had a hearing in the Democratic Party and when American Catholics themselves understood more of their own social and moral vocabulary. The situation today is much like the parents who show up at a pastor's door when their son is 13 and ask Father what might be done about their little spoiled brat. There are answers, but the one that Father longs to say but doesn't is that what the parents need to do needed to be done back when their child was three.

The parallel is to what we saw in the sex abuse scandal. For too many years, American bishops simply closed their eyes, paying off a victim here, transferring a serial abuser there, and above all absolutely refusing to address the culture of dissent that fed and escalated these dysfunctions from individual failings into a crisis that now unfairly maligns every man with a Roman collar. Worse, when the truth of what had been done was finally put before the faithful, we didn't get it from our shepherds. We got it from the *Boston Globe*.

This same dynamic is true on the life issues. For too long the bishops sat on the sidelines as prominent Catholics scandalized the faithful by declaring themselves for *Roe* with no effect on their standing within the church and its institutions: I watched the other night a clip of Senator Tom Daschle enthusiastically telling fellow Democrats that *Roe* was "sacred ground" that he would never surrender—and then he complains about being tagged as pro-choice. We saw the most dismal consequence last year in the Senate, when pro-choice Democratic Catholics provided the margin for the filibuster to defeat a judicial nominee cited as unfit for the bench expressly because of his Catholic beliefs.

And when two men finally stood to complain about the bigotry inherent in that line of argument, it is telling that they were not Catholic Democrats but a Mormon and a Methodist Republican.

In the summer before 9/11, I wrote a column for the *Wall Street Journal* called "Preach to the Choir" pegged to the issue of embryonic stem cells, noting that if our eminences ever hope to make their position on embryonic stem-cell research intelligible to the larger American body politic, they needed first to make it intelligible to the Catholics, beginning with those still—remarkably—sitting in their churches.

Here and there, there have been individual stabs. When Geraldine Ferraro ran for vice president, New York's John Cardinal O'Connor quite correctly pointed out that she was misrepresenting the church's position when she claimed that she could favor abortion rights and remain comfortably within church teaching.

Not long after, the Bishop of Camden, James McHugh, would tussle with New York's Governor Mario Cuomo. Bishop McHugh ultimately would back up his

criticism of pro-choice Catholic politicians with a pastoral sanction, declaring they would henceforth be denied platforms on church property.

But these remained scattered and isolated voices. Throughout the 1980s the bishops issued letter after letter on issues upon which Catholics may in good conscience render very different prudential judgments. But on the great issue of life, the bishops failed America's unborn children at about the same time they were failing the living American children molested by the priests under their charge.

Today it is encouraging to see the bishops beginning to recover. And as they do another unfairness surfaces: As we see, the bishops who do take their duties seriously are the ones who pay the price for the neglect that defined their predecessors.

Among the first signs of the bishops' new engagement was the pastoral letter "Living the Gospel of Life: A Challenge to American Catholics." At one point, in the section devoted to Catholics in public life, the bishops invoke the example of Sir Thomas More, who gave his life rather than betray his faith. As the bishops dryly noted, "in the United States in the late 1990s, elected officials safely keep their heads."

The bishops are right to cite Thomas More, and as a newspaper man I rather envy the lawyers who claim this Englishman for their patron saint. But surely even More is not the whole story.

In September I was at the Tower of London, where More was kept prisoner. Bishop John Fisher was not far away—according to one source, his cell was right below More's—and we know that the two exchanged communication because that fact would later be used against them. At one point, the Catholic bishops who had accommodated themselves to the new English political consensus as defined by Henry VIII, visited Bishop Fisher's cell, hoping to persuade them to come over to their side. His reply was that, had the bishops stuck together, the church and Britain and Henry would not be in the predicament in which they now found themselves. "The fort is now betrayed," he said, "even of them that should have defended it."

Not long after, Bishop Fisher was taken to the scaffold where, some time later, Thomas More too would be deprived of his head. Surely there is a message here about public life in that the church has seen fit to pair the two—one a layman, the other a bishop—with the same feast day.

Yet in their letter on living the Catholic life the bishops did not mention Fisher. As welcome as that letter was, surely America will not have its Thomas Mores and Bob Caseys without more John Fishers.

But we cannot lay all the blame at the feet of our shepherds. Too often we lay Catholics have been equally acquiescent in winking at where the culture of abortion was taking America and, at its most extreme, has now landed the Democratic Party.

We all have our examples.

Tonight I will focus on one. It was not in my original plans; and to cite it now makes for some real personal pain, because it is an institution that for all its faults remains near and dear to me: The University of Notre Dame. There are sound

APPENDIX D

reasons for me to love it still, and sound reasons to look to the future with optimism, which I shall mention in a minute. Yet on this one issue it unhappily provides a metaphor for how it has been the wealthiest and most accomplished segments of our American Catholic culture which have helped bring us to the point where the first Catholic candidate for president in nearly a half century finds himself.

The immediate cause of my attention was, as is so often the case, something that ran in the *New York Times*. This in itself makes for no small irony. The *Times*, of course, is the principal and unrivalled organ of the abortion culture and all it implies for everything from the destruction of embryos for research to same-sex marriage. And yet it is the same people who pride themselves on their disdain for the teaching competence of the bishops who look to the *Times* each day for edification on the grounds that it is “authoritative.”

The article was by the university’s Dean of the College of Arts and Letters. If American Catholics “honestly examine” the issues, he offered, they would find the Democratic ticket more in consonance with Catholic teaching than the Republican alternative. Since Dean Roche has thrown the Notre Dame name into the public arena—and let me be clear, as a former op-ed editor I know all too well that the name the *Times* was eager to have attached to this view is Notre Dame and not Mark Roche—I should not think he would find it amiss to my discussing what he wrote as publicly as he has. The dean’s motivations are beyond my read. And I take his opposition to abortion at his word. I do not even question his right to write.

What I do question is his judgment. And tonight I intend to point to the consequences which I believe are there for all to see.

I need, however, first to point out, as Dean Roche would undoubtedly do himself if he were here, that he does not speak for Notre Dame. There is much I admire about Notre Dame, and with particular regard to these issues I find that—in sharp contrast with my own years there—that the student pro-life movement on the Notre Dame campus today is alive, intelligent and spirited. That augurs great hope, and speaks to the possibilities that still exist in a unique way at Our Lady’s school. It should help explain too why I will be donating tonight’s honorarium, as I do all my speaking fees, to a scholarship at Notre Dame in my father’s name.

However,

Though Dean Roche’s op-ed by no means speaks for all Notre Dame, unfortunately it does speak for more than just one dean. In the three decades since *Roe* rent asunder the laws and legislative compromises that had defined and limited abortion in America, Notre Dame, at its most public on this issue, has sadly been distinguished for an astonishing ability to come up with, at critical moments in this debate, convenient pretexts for the look-the-other-way crowd.

And just as we now see that abortion is not simply a procedure but the lynchpin in an entire culture given to death, the nature of the Democratic argument to American Catholics has shifted steadily downhill, to the point where it has been largely reduced to the They Are Just As Bad As We Are line of attack.

The rationales, which carry the Notre Dame label, are not merely academic musings that disappear in the faculty lounge ether. They may and do irritate those of us who believe differently. But the consequences do not fall on me. They fall heaviest on pro-life Democrats who *are* working, with little internal support and virtually zero favorable publicity, to grow little blades of pro-life grass through the Party concrete. Of articles such as Dean Roche's, Brian Golden, a Massachusetts Democratic state representative, told me, "They cut us off at the knees."

Alas, this is nothing new. Now, I am an admirer of Father Hesburgh. But I well remember the line he liked to feed us back when I was an undergraduate, the gist of which is that while Republicans who were against abortion agreed with only 5 percent of Catholic teaching, Democrats who were pro-choice were on the Catholic side in 95 percent of the other issues.

We see some of this numbers game today in the dean's piece for the *Times*, a crude calculus in which unequivocal Catholic teaching on the intrinsic evil of the taking of most innocent life is weighed against judgment calls on the Iraq war, capital punishment, the environment, etc. On the issue of 40 million American abortions since *Roe*, those who reason this way tell us in one breath that the issue is too complex to be put into categories of right and wrong while in the next presume to know exactly where He would stand on Arctic drilling and Kyoto. Surely it is telling that when Father Ted's 5 percent language is deployed, it is not by those who are interested in advancing Father Ted's values or share his horror at abortion. Frances Kissling, who runs the pro-abortion front group Catholics for a Free Choice, seems to find it particularly useful for her articles, and you can find it today, as I did, up on her website.

Much worse was to come. And when it did, it came in a much more dramatic and public way, when Mario Cuomo delivered a nationally televised address at Notre Dame on more or less the same topic I speak to here in Denver: how the Catholic politician can be true to the legitimate demands of his public service as well as his faith. Again I will leave intentions to others. But the consequence of Governor Cuomo's speech was that it became the rationale of choice—no pun intended—for the "personally opposed but" crowd.

Of course, it is more nuanced than that. The road to today's absolutist Democratic platform on abortion has been paved with nuance. Governor Cuomo's argument is that, in the absence of an American consensus, it would be constitutionally unseemly for him to do anything to see that his views on the evil of abortion were manifested in any public policy.

Needless to say this nuance and reservation was altogether absent when the same Governor Cuomo—in clear opposition to the American consensus—vetoed all death penalty legislation that came to him during his years in Albany. Yet place that aside, for most of us are not asking the Governor to substitute his own views for a public consensus but to help us change that consensus in, say, the way William Wilberforce did over so many years on slavery in Britain. And here what I find most telling is what Governor Cuomo *has* done to advance an abortion consensus

APPENDIX D

more in keeping with what he says is his belief that this is a horrible thing: Nothing.

Again, he has an argument. But the practical effect of this argument was not to reach a conclusion of what might be done within the realm of the possible to mitigate the evil of abortion. To the contrary, the consequence of Governor Cuomo's reasoning was to prolong an argument that would guarantee that nothing would be done—as well as to provide an excuse for Catholic Democrats to stand aside as an aggressive and completely uncompromising culture of abortion raised the Jolly Roger over their party and American law.

And it is an excuse that publicly bears the Notre Dame name, because the truth is that Mario Cuomo's apologia would be forgotten today had it been given at, say, Yale instead of Notre Dame.

Twenty years after Governor Cuomo comes Dean Roche. Unlike Governor Cuomo, he did at least include a line likening abortion to slavery and torture. But once again this piece, timed as it was in the last weeks of a close election, is significant not for its reasoning but for what the *New York Times* was looking for: a Catholic fig leaf—in this case Our Lady's name—on a rationale for Catholics to wink at the Democratic Party's repeatedly declared determination to fight any compromise tempering abortion.

The dean attacks those of us who disagree with him for sacrificing realism to an “abstract desire for moral rectitude.” An interesting phrasing. It is much the same argument the 16th century go-with-the-flow crowd put to Sir Thomas More when he refused the King's Oath.

Former Congressman John LaFalce—a pro-life Democrat—puts it this way. “My problem with the ‘personally opposed, but’ approach,” he told me, “is that the people who make it devote 99 percent of their time talking about the ‘but’.” Read the article and see if the LaFalce formula does not fit: one line on abortion, many many lines about everything else but abortion.

Yes all these positions are arguable. And again I leave intentions out of it. But what of consequences?

One permits a wild thought: Where would their party be today if the Father Hesburghs, Governor Cuomos, and Dean Roches had devoted as much of their public commentary to the “personally opposed” as they have to the “but”?

In the 1970s, after all, when Father Ted was making his 95 percent argument, it was neither clear nor inevitable that the Republicans would seize the pro-life mantle. In 1972, even George McGovern had not embraced legalized abortion, and both his running mates—first Tom Eagleton, then Sargent Shriver—were stout pro-lifers. Four years later, the presidential contest pitted a moderately pro-choice Gerald Ford over a Jimmy Carter who had at least made some welcome pro-life noises and was opposed to the key abortion issue of the day: taxpayer funding.

One wonders: Would there be more Bob Caseys in the Democratic Party if Father Hesburgh had looked at abortion—and its politics—as the beachhead for an alien culture than as a mere 5 percent issue?

Ditto for Governor Cuomo. As late as 1989—five years after his speech—Congressman LaFalce had 50 Democratic House members send a letter to DNC Chairman Ron Brown calling on the party to jettison its “morally indefensible and politically harmful” stand, one that had transformed the Democratic Party into “the party of abortion.”

Again one wonders: Al Gore, Richard Gephardt, even Teddy Kennedy all started out public life in Congress pro-life. There was a day that Jesse Jackson railed against abortion as black genocide. That was, of course, the day before he sought the Democratic nomination for President. And we saw the same from our Catholic brother Dennis Kucinich this year, who switched to the pro-choice position the same moment he too became a candidate for the Democratic nomination. Might they not have remained pro-life had leaders like Governor Cuomo held? As Governor Casey so prophetically put it, “Other causes demand commitment, abortion demands complicity.”

And one wonders: What if Dean Roche had used his platform in the *Times* to draw attention to the efforts of a tiny but determined group called Democrats for Life? What, for example, might have been the effect even at Notre Dame itself, where I read that when the campus pro-life group attempted to take out an ad for a “Mass for Life” in the school newspaper the *Observer*—a newspaper I once had so much joy writing for—it was rejected for being “politically charged.”

Ladies and gentlemen, let me read you the text deemed political:

“You are called to stand up for life! To respect and defend the mystery of life always and everywhere, including the lives of unborn babies.”

The words were a quote from a homily—a *homily*—given by Pope John Paul.

And what of our own platforms?

Yes, Bob Casey was awarded an honorary degree at Notre Dame—and would come back to deliver an extraordinary speech, full of affection for what the institution had meant to his family. Yet when it came to the highest Catholic honor, the Laetare Medal, Governor Casey does not appear on Notre Dame’s rolls. That of Daniel Patrick Moynihan, a staunch abortion supporter, does. And he shares that distinction with Supreme Court Justice William Brennan, whose Laetare Medal at least came before he voted with the majority in *Roe*. This strikes me as out of balance, awaiting as I do the article or speech contending that a Supreme Court vote to upend the restrictions on abortion in all 50 states is in fact more complex, nuanced and arguably more pro-life than a vote to keep those restrictions.

Catholic institutions such as Notre Dame are not going to change the Supreme Court or the New York *Times*. But what would happen if they used their not insignificant platforms to raise the stature and profile of those fighting the good fight?

I don’t even mean recognizing Republicans, although treating pro-life Republicans as though they might actually have a moral claim would be a fabulous thing indeed on Catholic college campuses.

I mean Democrats. Wouldn’t it be nice to see Governor Cuomo castigating his party for the treatment of Joy Hearn, a Palm Beach Democrat who was told to

APPENDIX D

remove her “Choose Life” license plate if she wanted to run for a nonpartisan, nonpolicy-making position of property appraiser?

Or what about seeing Notre Dame or Georgetown raise the profile of Bart Stupak, a Michigan Democrat who has a “0” rating from NARAL, or Kristen Day, the bright young lady with the thankless task of running Democrats for Life?

And far from accepting the assumptions of the 5 percent/95 percent argument, I say it ought to be turned on its head: When people are so obviously blind to the brutal taking of life at its most innocent helpless—and so willing to justify a political war of aggression on anyone who might try to temper the practice—by what logic ought we expect morally superior judgment on any other issue?

I say this with no pleasure and much sadness. For those of us who regard Notre Dame as what its name implies, it is not easy to speak critically about one’s mother in a public forum, even when we believe ourselves right, conscious of the estrangement that often leads us to remain quiet. All I can say is that I hope I have made it clear that my greatest anxiety is not for the outcome of next week’s election but for the integrity of something so much larger.

Let me conclude with a quotation from a politician whose views on the subject of private faith and public policy are much closer to mine:

“More and more people shrink from drawing bright lines and making moral judgments, which are critical to the functioning of a free society. The line between church and state is an important one and has always been critical for us to draw, but in recent years I fear that we have gone far beyond what the Framers ever imagined in separating the two.”

It was part of a speech that in most ways was far superior to the explanation of faith and politics given by John F. Kennedy to the Baptist ministers in Houston. And this was delivered at Notre Dame. But the speaker was not George W. Bush, or even Ronald Reagan. It was Joe Lieberman.

What Senator Lieberman said was remarkable, especially his express disagreement with those who assert the Constitution requires that an American’s religious values must be totally divorced from his public persona. Just as remarkable, however, was what Senator Lieberman could not say: That his party is the only place where the most virulent form of this orthodoxy has found a home. “Devout men and women,” he says, “can and do have disagreements on difficult moral questions.” He’s right. They’re not allowed to have them in the Democratic Party.

In his autobiography, Bob Casey wrote how proud he would be that his epitaph would read “*Planned Parenthood v. Casey*”—a reference to the Supreme Court case upholding the legal restrictions on abortion he helped pass and sign into law in his home state.

In the days ahead, when the issues of Catholicism and public life are discussed, the emphasis will all be on the choice in next Tuesday’s election. But I ask another question: How different might the choice have been if the silencing of Bob Casey had not itself been met with silence, acquiescence and now encouragement by the men and women who share his party and profess to share his faith?

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