

the HUMAN LIFE REVIEW



FALL 2007

Featured in this issue:

William Murchison on Our War with Each Other
Clarke D. Forsythe on A Lack of Prudence
Gregory J. Roden on Personhood & Incrementalism
Hortense Cupo on This Bud of Love
Stephen Vincent on *Bella* is Beautiful
Alice Lemos on "What's So Bad about Abortion?"
John F. Quinn on Abolitionists' Perspectives
Mark P. Mostert on . . . Cultures of Death, Old and New
Fernando Mirarchi & Lucia Conti on . . Living Wills & DNR

Also in this issue:

Hadley Arkes • Bill Saunders • Ryan T. Anderson
Wesley J. Smith • Anne McDonald
Kathleen Parker • Amanda Shaw

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ABOUT THIS ISSUE . . .

. . . the sad news of the death of Henry Hyde on November 29 came just as we were getting this issue ready for the printer. We were able, however, to reconfigure our pages to allow for a small tribute to a man who was a giant in the pro-life movement—the “Generalissimo,” as our late editor, Jim McFadden, dubbed the Illinois congressman years ago. *Review* readers were able to follow the progress of Hyde’s long-running anti-abortion campaign as Jim, and then after her father’s death, Maria McFadden undertook to reprint his eloquently persuasive floor speeches insisting on the right of unborn children to be welcomed in law (if not in love). Mr. Hyde was the first recipient of the Human Life Foundation’s Great Defender of Life Award and we shall always be enormously grateful to him for the effort he made to attend our inaugural fundraising dinner in October, 2003. With an important House vote scheduled for the same day, it wasn’t at all certain he would make it. I remember when the call came from his office around three in the afternoon, informing us that Mr. Hyde had just been deposited on the New York-bound train—what a sigh of relief went up from all of us. A few hours later, Ray Lopez (our former production manager), met the congressman at the track at Penn Station—Hyde by then required a wheelchair to get around comfortably—and ushered him over to the Union League Club where 200-aught guests eagerly awaited his (only slightly late) arrival. Such a lovely evening it was, the high point being Mr. Hyde’s heartfelt acceptance speech during which he recited a poem in honor of his late friend and fellow great defender of life, Jim McFadden. He had found the poem, he told the audience, in a “little booklet” that had been printed up for the funeral service a few years before of yet another stalwart in the pro-life movement, Dr. Joseph Stanton of Boston. It was written, Hyde said, “by somebody named CVS. I don’t know who that is. But boy does this apply to Jim McFadden.” We don’t know who CVS is, either (alas, Google was no help). But, boy does the poem apply to Henry Hyde—you will find it reprinted in his honor on page 14. We hope to take a comprehensive look at the congressman’s immeasurable contribution to the baby-saving cause in our next issue. May he and Jim and Dr. Stanton—and all the fallen pro-life soldiers who signed up to defend CVS’s “Lilliputian army”—rest in peace.

ANNE CONLON
MANAGING EDITOR



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INTRODUCTION

We open this issue of the *Review* with senior editor William Murchison's essay on the confounding state of abortion politics one year before the 2008 presidential election. The announcement in November that evangelical leader Pat Robertson would endorse Rudy Giuliani, in spite of Giuliani's "personally opposed, but" stance, is indicative of how, for those who "wish for the legal overthrow of abortion," the "political terrain has been shifting"—in sometimes shocking ways. Pat Robertson said he supported Giuliani as an "acceptable Republican who can win the general election." And Murchison cites a *USA Today* poll showing Robertson is not alone: Many conservatives "of the pro-life, evangelical and God-fearing variety, so far from standing on the promises of their faith, were coming to terms with Caesar" and considering the pro-choice Giuliani, likely driven by the war on terror and fears about American security.

So what's a pro-lifer to do? There are no easy answers: Murchison writes that "for pro-life voters, 2008 poses challenges of a magnitude once only barely imaginable." Problem number one is the "sheer ongoing-ness of the stalemate over abortion: the inability of pro-life people, after so much time and expenditure of treasure, to dent seriously the status quo." Two is our war with . . . each other, as you will read. And problem number four (after number three, Hillary!) is "the defective nature of democratic politics in terms of resolving questions such as the worth of unborn human life." "Electoral politics," he reminds us, "in theory if not always in reality, is notoriously the art of compromise," but "upholders of the pro-life cause are absolutists with absolute reasons for their absolutism." Yes, because abortion is intrinsically wrong, and there ought to be no compromising on the sacredness of human life. But does that translate into throwing up our hands and disengaging from the political process?

Absolutely *not*, says Clarke Forsythe in our next article, "A Lack of Prudence." Forsythe responds here to an "open letter" published last June by a number of anti-abortion groups criticizing James Dobson, founder of Focus on the Family, and others for their "approval" of the Supreme Court's April 18th *Gonzales v. Carhart* decision upholding the constitutionality of the federal Partial-Birth Abortion Ban Act. "The crux of the criticism," Forsythe writes, "seems to be that the *Gonzales* decision was 'brutally wicked,' because the Court didn't prohibit all abortions (or at least D&E abortions)." But, he argues, this open letter (which was "published for millions to read") contained "numerous misstatements" which deserve to be publicly corrected.

The virtue of prudence, Forsythe insists, ought to be employed when engaging in abortion politics. And engage we must: "Opting out" is not an option. "In the American political system of majority rule, 'opting out' of the judicial or political process merely creates or strengthens a pro-abortion majority and eliminates forms of legal or political action that challenge that pro-abortion majority." Prudence, he says, also calls for working for "a policy of legal containment of a social evil when

prohibition is not possible.” Forsythe believes that the Partial-Birth Abortion Ban Act is important because it “served as a legal fence . . . to keep the abortion license from expanding into out-and-out infanticide.”

Forsythe emphatically defends incrementalism, as did Paul Benjamin Linton in our last issue (“Sacred Cows, Whole Hogs & Golden Calves,” *Summer* 2007). Linton’s article provoked a response from our next author, Gregory J. Roden: “Unborn Persons, Incrementalism & the Silence of the Lambs.” Roden, while not arguing against incrementalism, does emphatically disagree with Linton’s criticism of the so-called purists’ goal of establishing the personhood of the unborn, through the Supreme Court or a constitutional amendment. Roden doesn’t see the Court establishing the personhood of the unborn as an impossible dream, as Linton does; rather, he makes the case that the “personhood” of the unborn is a concept which *already* “permeates our legal environment,” as unborn children have long been afforded rights under state and federal law which the U.S. Supreme Court has upheld (in inheritance law, for example). It was Justice Blackmun’s dishonesty about legal precedent in the *Roe* decision that “created a mirage” of non-personhood; *Roe* was a “travesty of justice” which “fabricated a history of law” so as to strip away the personhood of the unborn. Roden believes that if *Roe* were overturned, those protections that already existed for the unborn would again be effective. (Roden has written specifically about the *Roe* decision for the *Review* in “*Roe* Revisited: A Grim Fairy Tale,” *Spring* 2004, and “The Abortion Mythology of *Roe v. Wade*,” *Fall* 2005.)

We now turn from abortion politics and law to portrayals of abortion in art, specifically in fiction and film. “This Bud of Love,” by Hortense Cupo (who we welcome to our journal) is a wrenching fictional account of an abortion that is nonetheless striking in its truthfulness. A story of irrevocable loss—of innocence, and life—it is a sad tale played out all too often in reality. The tragic “choice” of abortion, as opposed to the decision to give a baby up for adoption, is also the central dilemma in the plot of the recent film *Bella*, although as Stephen Vincent writes in his glowing review, the word abortion is never uttered. *Bella* won the People’s Choice Award at the Toronto Film Festival in 2006, but as a small, independent film, its distribution prospects were shaky. Thanks to the energetic support of pro-life and faith groups across the country, however, it was picked up by a major distributor and released nationwide last October. It had a good run here in New York City—six weeks or so, just recently booted out by the holiday-season blockbusters. *Bella* is a quietly powerful and unforgettable film, as you will read in Vincent’s “*Bella* is Beautiful” (as well as in *Appendix G*, Amanda Shaw’s perfectly-pitched review, which originally appeared on the *First Things* website).

It’s impressive that *Bella* lasted in New York for as long as it did, given the cultural climate evident in the report by Alice Lemos which comes next. (Ms. Lemos is also a first-time contributor, as are the three writers who follow—we welcome them all!). Lemos attended a “panel discussion” hosted by the Society

for Ethical Culture in Manhattan titled “What’s So Bad about Abortion?”—which featured “an entirely pro-abortion panel.” The panel chair, writes Lemos, “made no pretense of being unbiased,” and the “discussion” was, as you will read, chillingly extreme, though Kristen Moore, president and CEO of the Reproductive Health Technologies Project began her talk with “pro-choicers are not extreme”! Lemos, though, sees this lack of restraint as a sign of desperation, a reaction to the turning of the tide.

Some pro-abortion women in New York, writes Professor John F. Quinn in our next article, see themselves as akin to the abolitionists: They have organized a “new underground railroad,” opening their homes for a night or more to women from other states who “come to Manhattan seeking late-term abortions.” But it is often the *opponents* of abortion who see parallels between the fight for the unborn and the fight to emancipate the slaves. In “Abolitionists’ Perspectives on Abortion,” Quinn highlights the aspect of this comparison that “anti-abortion forces have failed” thus far to publicize. “While abolitionists were of course principally focused on ending slavery and promoting racial equality, many were also involved in campaigns for women’s suffrage and temperance, and a number worked to oppose abortion and prostitution as well.” In fact, in the 1850s, while “most Americans were caught up in the increasingly rancorous debate over slavery,” a small group of doctors began what “historians have described as the ‘physicians’ crusade against abortion.” At that time, abortions before “quickening” were widely accepted; these doctors worked to reform the law to prohibit abortion at all stages except to save the life of the mother. You may be surprised, as we were, to read Quinn’s account of another movement at this time: abolitionist Henry Clarke Wright’s crusade to get husbands to “control their sensuality.” Wright “lamented that many husbands felt they had a ‘license’ to have sex whenever they wanted. Due to men’s ‘animal indulgence,’ many women were facing unwanted pregnancies. Wright feared that many of the women in turn were resorting to abortion,” which he called “child-murder.”

We turn next to another article about historical parallels, of the most disturbing kind: the “historical catalysts that preceded what later became known as the Holocaust.” In “Cultures of Death, Old and New,” Mark Mostert observes that “long before Hitler murdered the Jews, he killed tens of thousands of Germans with disabilities.” Ideas about “fatal solutions” for the disabled began in late 19th-century Europe, and “gathered critical momentum” in the early 20th century. Mostert, director of the Institute for the Study of Disability and Bioethics at Regent University, shows how wartime and economic hardship transformed people’s views about those with disabilities, making them seem burdens and even criminals. A pro-euthanasia propaganda campaign, of which the notorious film *Ich Klage an! (I Accuse)* was a part, profoundly affected the German public, to the point that parents of disabled children were begging the government to relieve them of their “burden.” Sound familiar? How about “wrongful birth” litigation? And this is Mostert’s point: One need only think of the starvation and dehydration death of Terri Schiavo, or

the deaths of the majority of unborn babies found to have Down Syndrome to see that “similar, if more subtle, problems and conditions face people with disabilities in this new century.”

Lest you think that issues discussed so far cannot apply to us currently non-disabled adults, we conclude the articles section with a valuable wake-up call. Dr. Ferdinando L. Mirarchi, medical director of the Hamot Medical Center in Erie, Pennsylvania, and Lucia Conti, the center’s Manager of Media Relations, have contributed for us life-saving information culled from Dr. Mirarchi’s book, *Understanding Your Living Will* (Addicus Books). Many people now have advance directives, specifically living wills and Do Not Resuscitate orders, as “safety” measures—but did you know that they can actually put your life in danger? The authors write that living wills had not been evaluated with respect to patient safety, and so they did the research and “uncovered serious problems, including a lack of individualization and informed consent that commonly leads to misinterpretation.” Alarming news, but read on: Mirarchi and Conti give us the requirements they believe are crucial for an *ideal* advance directive, and close communication with a physician (one you trust!) is an important component.

* * * * *

Our first appendix is a companion, as it were, to our lead article by William Murchison. Hadley Arkes, writing in *First Things*, also takes as his subject “Abortion Politics 2008,” and the possibility that enough pro-lifers will be motivated by other concerns to vote for pro-choice Giuliani. But “the nomination and election of Rudolph Giuliani would mark the end of the Republican Party as the pro-life party in our politics,” and would offer bleak choices for those “concerned about the life issues.” Arkes says it’s “conceivable” that it might be better to “lose to Hillary Clinton than to win with Rudy Giuliani.”

In *Appendix B*, Bill Saunders reports on another rather terrifying prospect—the creation of human/animal hybrids. This sounds like science fiction, but “science fiction will become science fact very soon.” In England, on September 5th, a government agency “decided to let scientists, mad or otherwise, create human/animal hybrids.” And a bill will be introduced there to make this “a positive right under English law”! He answers the question “Could it happen here?”

Thankfully, there is *great* news to report from the front of the “stem-cell wars”—they’re over! As Ryan T. Anderson writes in his instructive summing-up of the war so far, “leading scientists are telling us that they can pursue the most promising research without using—much less killing—human embryos.” The new research, conducted by two separate teams of scientists, is so promising that even Ian Wilmut, the cloner of Dolly the sheep, has reportedly abandoned his plans to clone human embryos. Scientists on both sides of the wars are united in welcoming this news, as are the ethicists who spoke out against destroying embryos, proving, as Anderson writes, that “those anti-science religious fanatics who used to scold about ‘playing God’ were a media-conjured fantasy.” This new development also vindicates Presi-

dent Bush's stance, holding firm against federal funding being used to destroy embryos, as Wesley Smith remarks in *Appendix D*, "Bush Bears Fruit." Smith, who has been on the forefront of reporting on the issue of cloning and stem-cell research, writes of the President's stem-cell policy: "Even though it was politically unpopular, the President believed wholeheartedly that the raw talent, intelligence, and creativity of the science sector would find a way to obtain pluripotent cells . . . through ethical means." Smith thanks the President for his "stalwart stand," which drove research in the direction of ethical stem-cell research, and is now bearing fruit in "exciting 'alternative' methods."

Back to England, and to some people who just don't get it: In "Survival of the Stupidest," *Appendix E*, Kathleen Parker reports on the hard-to-believe story of a couple who aborted their child to "save the planet." Yes, abortion as environmentally correct—surely a new low, but as Parker writes, the Darwin Awards need a new category: "People Too Narcissistic to Procreate." It wasn't long ago that "eliminating babies to thwart global warming" was absurd, but one must always watch "the deeply caring. . . . Tenderness, it has been said, leads to the gas chambers." An interesting comment in the light of our next appendix, "The other story from a 'Pillow Angel,'" by Anne McDonald. In a story only recently made public, three years ago a severely disabled six-year-old girl was given medical treatment, at the request of her parents—and against the law—to keep her from growing and developing sexually. Ashley cannot walk, talk or feed herself; her parents said they sought this radical treatment to keep her small, so they could continue to carry her around and keep her at home. They named her their "Pillow Angel." Well, Anne McDonald is a fellow sufferer of static encephalopathy, and she once had stopped growing too, though in her case it was because of the neglect she endured in an institution. She cannot talk or walk or feed herself either: Yet she is now a normal size, graduated from university with degrees in the philosophy of science and fine arts, and is an author. Once you read her amazing story, you will understand why she believes that, even trusting in the good intentions of Ashley's parents, their treatment of their own daughter was profoundly unethical.

We close this issue with the previously-mentioned review of *Bella* by Amanda Shaw, "A Decidedly Unsappy *Bella*." Shaw writes that *Bella* is so effective because it avoids the "saccharine trap" of a happily-ever-after "chick-flick": Its ending is happy because it brings peace, "not perfection." If you have not yet seen it, stay tuned for its return to a theatre, or for the release of the DVD—a worthy purchase for you to have and also to donate to youth groups, schools, etc. We had room for a few cartoons from our friend Nick Downes, who we thank as always for sharing his delightful talents. With that we wrap up our 33rd year of publishing. As we look forward to 2008, be sure we'll be here, covering events hopeful—or not—but soldiering on in the struggle.

MARIA MCFADDEN
EDITOR

Our War with Each Other

William Murchison

The moment screamed. And, oh, what a shriek it was! The New York *Times*'s front-page headline read, "In a Surprise/Pat Robertson/Backs Giuliani." And in the story text: "Rudolph W. Giuliani is a supporter of gay and abortion rights . . . Pat Robertson, the Christian conservative broadcaster, once said permissiveness toward homosexuality and abortion led to God's 'lifting his protection' to allow [the 9/11] attacks . . . But there they were Wednesday morning, Mr. Robertson endorsing Mr. Giuliani . . . as 'an acceptable' Republican 'who can win the general election.'"

And there others were, sweeping off the floor such observers of politics as imagined themselves to have seen everything; fetching the smelling salts for these stricken lambs, walking them gingerly to fresh air.

This was in early November 2007—a while back for those now paging through the current issue of *Human Life Review*. I chose to introduce the following remarks with mention of the Robertson endorsement, clearly not for sensation's sake; as the furor will have died down by the time this is read. Rather, I do it for the sake of remarking how remarkable is the present complexion of that politics many still count on to reclaim lost ground for the old moral order.

It might yet happen—the redemption of lost ground. But all who wish for the legal overthrow of abortion need to take account of how the political terrain has been shifting. Rudy Giuliani is part of that shift; likewise Pat Robertson.

What has been called the Reagan coalition shows evidence of splitting: over here, free market, no-regulation, low-taxation types; over there, the social conservatives who entered the political marketplace about the time Ronald Reagan became president.

An incompatibility of interests is the operative allegation: Economic and national-security conservatives are tired (supposedly) of working in harness with people who, when you get down to it, don't mind a little government intervention in a good cause.

Some time before Thanksgiving, a corollary theme emerged: Many conservatives of the pro-life, evangelical, and God-fearing variety, so far from standing on the promises of their faith, were coming to terms with Caesar.

William Murchison writes from Dallas for Creators Syndicate and is a senior editor of the *Human Life Review*. His new book, *Chameleon Churches: Episcopalians and the Crisis of Mainline Christianity*, will be published in 2008 by Encounter Books.

The pro-choice Giuliani was their choice. In a *USA Today* poll, six in 10 Republicans plumped for a presidential candidate from the morally conservative side, yet nine of 10—Robertson, if polled, would have been among their number—were open, like Pat Robertson, to supporting Giuliani.

The seeming oddness of that alignment led the New York *Times*'s fortunately inimitable Op-Ed columnist Frank Rich to gloat that "Inauguration Day 2009 is at the very least Armageddon for the ayatollahs of the American right." (What we value above all, concerning Rich, is the delicacy and subtlety of his language!)

The Rudy/Robertson story epitomizes the self-examination that Republicans of all sorts are undergoing. The story was drawing wide notice as turkeys all over America began measuring the chances of their surviving long enough to learn how this thing turns out. "When I listened to him," one evangelical voter told the New York *Times* in mid-October, "the thought occurred to me for the first time, that I'd consider voting for him."

Well, now wait. How come? Rudy is of the "personally opposed" school of thought when it comes to abortion. "I hate abortion," he has said. What he seems to hate almost as passionately is the idea of stopping the thing he hates. He doesn't want to get in the way of "conscience." On other moral issues, it's needful to note that Rudy has, and has had, a lot of weird things going on in his life. His marital track record—two divorces, three wives—is sufficient cause for old-fashioned scandal ("one too many for most evangelical voters," according to the Rev. Richard Land of the Southern Baptist Convention). On top of which, during the intermission between Wives No. 2 and 3, Rudy bunked with a couple of gay guys (whom, naturally, Frank Rich chose to track down and interview, just for fun). And it's just really too much. Except that apparently it isn't too much at all.

As far back as the spring of 2007, the Pew Forum on Religion and Public Life released a poll indicating that Rudy was "winning 30 percent of the social conservative bloc, compared to 22 percent for [John] McCain," with Mitt Romney at 8 percent. The Pew poll asserted that 44 percent of conservatives regard Giuliani's chances of winning the presidency—a/k/a Beating Hillary—as the best enjoyed by any Republican. At the least they are giving him the once-over, kicking the tires and trying out the dashboard speaker system—acts unthinkable not so many years, or even months, ago.

Giuliani, sensing opportunity, has sought diligently to allay concerns about his principles. Speaking to the Family Research Council's Values Voter Summit in October, he besought the audience to inspect him with the same open-hearted approach he claimed to have brought into their midst. "Please know this," he said. "You have absolutely nothing to fear from me."

Nothing? What about the Supreme Court and hopes of long standing that the justices will at length own up to the error of their ways and overrule *Roe v. Wade*? Giuliani addresses this point by saying he would name to the High Court jurists of strict-constructionist bent: the sort who don't make up the law as they go along, in the manner of the *Roe* court. Whether such a pledge should inspire evangelical leaders to go cartwheeling down Pennsylvania Avenue is another question. Asked earlier last year how he would "feel" should the Supreme Court strike down *Roe*, Giuliani replied: "It would be OK to repeal [sic] it. It would be OK also *if a strict-constructionist judge viewed it as precedent* [italics mine]." So maybe. So maybe not. Hardly the inspirational language of Ronald Reagan.

But, then, Ronald Reagan is dead and buried, in which mortal reality may lie one moral of our story. Though not the only one.

We have to look back, possibly standing on tip-toe, to understand the forces pitting conservative against conservative in the context of terror war, cultural degradation, and frantic analysis of the effects. At the tag end of the 1970s, America seemed to be dissolving as a moral entity, even while a powerful foreign entity—the Soviet Union—stared at America's people down the nose cone of an intercontinental ballistic missile.

If ever there were a man of the hour, that man was Reagan: smarter than almost anyone gave him credit for being; ideologically focused; resolute, genial, and charming, at a time when American prestige and strength were still to be won back after a decade and a half of decay. The story of what happened next has been told so often—by such as Peggy Noonan, Dinesh D'Souza, and Peter Schweizer—as hardly to bear repeating here.

Suffice it to say that in the emergency of that moment, in which the voters chose Reagan over President Jimmy Carter, and opted for a new direction, matters of principle sometimes got papered over. That is to say, those whose deepest concern was defeat of the Soviet threat, those who wanted supply-side tax cuts enacted, those who wanted God reintroduced to the American polity, found it highly convenient to let President Reagan lead, with a minimum of muttering in the ranks. Lead he did, if not to the perfect satisfaction of every group that backed him. (Did not Reagan give the first Supreme Court appointment of his presidency to Sandra Day O'Connor, who spent her tenure frustrating attempts to curb abortion and affirmative action?) The thing was, there were fires to put out. Best not to heckle the fire chief as he directed the work.

The non-congruence of the present moment and at least the early Reagan years helps us, perhaps, to understand the dynamics at work. With

the Soviet Union trounced and the country rescued from economic stagflation, possibilities for conservative unity in the old manner submerge themselves. No present-day conservative leader commends himself to conservatives in quite the way Reagan did at a moment of growing peril for the country. Not John McCain; not Mitt Romney; not Fred Thompson. Not even the former Southern Baptist minister and Arkansas governor, Mike Huckabee.

Nor, from the conservative standpoint, have dividing lines remained as before. We might liken abortion, and the struggle against it, to the Western Front, c. 1916: Huge offensives—e.g., South Dakota's legal onslaught in 2006—gain enough ground to frighten and rally defenders of the trenches opposite; then the attackers, finding themselves over-extended, give ground. In South Dakota, voters rebuked the lawmakers who had undertaken virtually to ban abortion by statute and dare the federal courts to stop them. Voters overturned the measure in a referendum; unready—whatever their personal views—to push the question through to resolution. Polls continue to show voters elsewhere subject to the same indecisiveness: unhappy to see abortion carried on with constitutional sanction, unwilling to do anything decisive about it. Not wholly pleased with the present state of affairs; not wholly displeased either.

Meanwhile another human-life issue—Iraq and the war on terror—helps to drive the presidential polls (and other polls as well). Who can best defend Americans, both here and abroad? Who can stop the blankety-blank terrorists? Everyone in the United States knows what keeps Giuliani's stock so buoyant—namely, the decisive quality of his leadership in the aftermath of the attack on the Twin Towers. National-security conservatives, as in the '80s, when the Soviet Union seemed to be bearing down fast on a hapless, helpless United States, line up behind the candidate likeliest, so far as they can tell, to keep free the land of the free.

Three decades ago, Reagan's bona fides on both these human-life issues—abortion and national defense—sewed up his conservative support. In 2008, as it happens, no conservative enjoys nearly the plausibility on abortion that Reagan did, notwithstanding his signature, as California governor, on a bill loosening restrictions on abortion. McCain's perfect, or near-perfect, voting record on abortion earns him small entree to pro-life circles fearful he might have just been going through the motions.

For pro-life voters, 2008 poses challenges of a magnitude once only barely imaginable. Here is how I rank them.

One. *The sheer ongoing-ness of the stalemate over abortion*: the inability of pro-life people, after so much time and expenditure of treasure, to dent seriously the status quo.

You would think (wouldn't you?) that after so many years of exhibiting the moral defects of the arguments for letting the unborn be killed that by now the tide would have turned. On the contrary. The stalemate goes on—and on—and on—with most Americans positioned ambiguously in the middle between abortion as a human right and abortion as radical disobedience to God the Father Almighty, Maker of Heaven and Earth.

America's often eccentric, usually individualistic politics of religion have rarely sustained conviction on the level necessary to reinstate "right to life" as the law of the land. That the abortion laws struck down by the U.S. Supreme Court in *Roe* had in them a large dimension of pure secular concern for maternal health is a fact worth taking into account as we contemplate religion's failure thus far to halt the killing machines. America as a society remains, as the sociologist Alan Wolfe never fails to point out, hard to convince as to the sacredness of life living inside the womb, rather than outside in the crib.

A tendency grows just to shrug—to acknowledge that this twilight struggle will continue far into the future. Meantime there's . . .

Two. *Our War with Each Other*: an occasion, an event, that, to many intents and purposes—though not all—appears to have replaced the War on Terror as the focus of our activity and energy. What began as American response to an insane act of hatred is redefining American politics. I wouldn't know how sharp and widespread is the expectation of another, bigger, awfuller attack on the United States—certainly the prospect of Iranian nuclear weapons has in many people's eyes raised the stakes—but the need either to stand with President Bush and the troops or against President Bush and with the troops has become our national obsession. Which is where Rudy Giuliani comes in, three wives and all. He's the tough guy who doesn't flinch under attack, who steps up to the mark, who gets the job done while the wimps debate among themselves—or so anyway Giuliani supporters insist. There's probably something to this, even if no candidate is ever as good as his claque contrives to make him—or her, a point to which I'm coming—seem to be.

If nothing else, on September 11, 2001, Giuliani took the test and passed with flying colors. Might his ascent to the presidency send a forceful message, so to speak, to America's enemies—one reading, "Don't Tread on Me"? It could well be the case. There is more: It could be the case that this is how you win if you're a Republican—namely, with a tough guy linked to national-strength issues and conspicuously not linked to "divisive" moral issues like abortion and gay marriage. You lure "security moms," or whatever, into the fold that way. Delicately, gently you set abortion to the side

for now. You resolve to trust Rudy. Not least because you understand the alternative could be . . .

Three. *Hillary*: a name to send chills down the spine of Americans of pro-life conviction. Well, all right (so goes the thinking) Rudy isn't Reagan. It next has to be noted that Hillary sure isn't Rudy, for all the deficiencies in his relationships to the human-life question.

Polls keep evidencing substantial distrust of Mrs. Clinton. Not of her wholehearted, unstinting commitment to *Roe v. Wade*, a commitment she has reaffirmed many times without going out of her way to tell us she would be NARAL Pro-Choice America's woman in the White House. She probably would be; she just doesn't talk about it much, what with Iraq, health care, taxes, and other such issues crowding abortion out of the spotlight; what with pretty much everyone understanding instinctively her indifference to questions touching unborn life. That pro-life folk would share the distrust of Mrs. Clinton that extends even to liberals is so obvious as not to need comment.

What do you want, then: a Republican presidential candidate who says all the right things about pro-life and loses, or one who says some wrong things but at least talks to pro-lifers—and wins? Such is the choice many were envisioning last year as Hillary began retrieving her White House effects from storage. If Rudy could beat her (a feat no one else seemed likely to bring off), didn't that argue for backing Rudy? It was what Pat Robertson seemed to be saying, leaving listeners to decide for themselves whether God made him a prophet or just a pragmatist. As for the evangelical activist James Dobson's warning of a possible third-party presidential campaign against any insufficiently pro-life Republican, few takers were emerging last year. Hillary vs. Rudy vs. Dobson? There was widespread recoil from the idea of getting even worse than Rudy by walking determinedly away from him.

Four. One factor remains unexamined as to the challenges faced this year by pro-life voters. That factor is *the defective nature of democratic politics in terms of resolving questions such as the worth of unborn human life*.

I might have said "the *sacred* worth of unborn human life." That wouldn't fly these days, or else it might cruise for a mere a minute or two before the anti-aircraft batteries of the secular left opened up on it. Politics isn't allowed—seemingly—to factor religious viewpoints into consideration of public issues. Someone might get the idea God had an opinion to which He isn't entitled. Or that there exists a God with opinions. It makes arguing hard when you have to proceed on secular principle alone, inasmuch as secular principles—the kind that modern politicians exist to advance—are the sort

you mold, or un-mold, by activism, fund-raising, and blogs. No revelations wanted!

That's not all. Electoral politics, in theory if not always in reality, is notoriously the art of compromise, of give-and-take and the art of the deal. When the U.S. Supreme Court removed life issues from the rough, raw discipline of politics, the Court immediately disadvantaged those seeking the restoration of respect for the unborn. You see: Nobody in politics gets everything. You do a deal. You split the difference to one degree or another. What you concede, nevertheless, when the context is unborn life, is the principle of uniform respect for the gift of life from the God we're told in any case we can't drag into the public arena. Upholders of the pro-life cause are absolutists with absolute reasons for their absolutism. To pick and choose, legislatively, among candidates for birth, to single out some and not others, is to commit—at a minimum—inconsistency. Rarely if ever does democratic politics countenance the absolute approach. You know going in you won't get everything you want. The bargaining thereupon starts: What'll you give me? What do you want from me? Then, at the presidential level: Rudy? Mitt? McCain? Ron Paul, the pro-life obstetrician? Who? At what political cost? More to the point, at what moral cost?

No one can answer such slippery questions for another—which partly explained in 2007, and likely will explain far past that point, the inability of many to decide how the principle of respect for human life might best be served.

For many, no doubt, another means of deciding comes to mind. If not politics, what? John Paul the Great spoke convincingly, in his encyclical *Evangelium Vitae*: “What is urgently called for is a general mobilization of consciences and a united ethical effort to activate a great campaign in support of life. All together, we must build a new culture of life; new, because it will be able to confront and solve today's unprecedented problems affecting human life; new, because it will be adopted with deeper and more dynamic conviction by all Christians; new, because it will be capable of bringing about a serious and courageous cultural dialogue among all parties.”

The Psalmist had said something quite complementary: “Oh, put not your trust in princes or in any child of man.” One starts to see—a little bit anyway—how long certain perplexities have been hanging around.

Henry J. Hyde, RIP



Traveling from afar he neared the gate
And seeing no one, paused
Dusty, footsore, spent
Bone tired, if the truth were known
And rested on his cane.
The gates swung idly there
Inviting any pilgrim inside,
Where all was cool and still.
He felt a peace enfold him,
And he knew that he was home.
Then, like a great wind they came,
Filling the air with a sound,
A most unlikely regiment of children
As far as the eye could see.
Noisy, babbling, weeping,
A Lilliputian army
Not one, by measure, reached his knee
Calling his name with joy and welcoming
Clutching his coat as if to make him theirs.
Aye, he was theirs
Had been always.
Fought for them all
With blood and bone and nerve
Those dead, dear children.
All our sons and daughters
The smothered secrets of our public shame
And he would weep
Weep and remember
There is no peace while the red river flows
And mourn those lives, written not in water
But in the martyrs' love that stains the rose.
—CVS

A Lack of Prudence

Clarke D. Forsythe

In June, certain anti-abortion activists bought full-page newspaper ads featuring an “open letter” criticizing James Dobson, founder of Focus on the Family, for his “approval” of the Supreme Court’s April 18 decision in *Gonzales v. Carhart*, which upheld the constitutionality of the federal Partial-Birth Abortion Ban Act (PBABA) of 2003. The crux of the criticism seems to be that the *Gonzales* decision was “brutally wicked,” because the Court didn’t prohibit all abortions (or at least D&E abortions). The impact of the “open letter” was multiplied by newspaper reports about the letter in the *Washington Post* on June 5 and the *Los Angeles Times* on June 6.

The letter’s criticism of Dobson (and other organizations) for publicly supporting the Court’s decision contained innumerable misstatements, including misunderstandings about the proper role of the Supreme Court, how the Supreme Court operates, why the PBABA was written, the limits of the PBABA, the Court’s abortion doctrine, the records of Justices Scalia and Thomas, the language of the *Gonzales* opinion, and the future implications of the Court’s decision. Since the “open letter” was published for millions to read, its numerous misstatements deserve a public correction.

The PBABA served several purposes, some of which were fulfilled only with the *Gonzales* decision. First, by highlighting a particular form of abortion, the PBABA brought national public attention to the gruesomeness of abortion *more than all previous educational efforts* (as a recent study by Overbrook Research and previous polling data suggest). Second, by drawing a comparison, it showed the cruelty of partial-birth abortion (PBA) and D&E abortions, as even the pro-abortion justices implicitly conceded. Third, the Act served as a legal fence between abortion and infanticide, to keep the abortion license from expanding into out-and-out infanticide. (Though the *Roe* decision drew the *constitutional* line between abortion and infanticide at birth, *Roe* did nothing to prevent abortionists from erasing that line through new methods or technology.) Fourth, the Act and the debate surrounding it helped the public better understand the true scope of *Roe*—that *Roe* did not legalize abortion simply in the “first trimester,” but up to birth. Fifth, the Act served as a vehicle to prompt a landmark Supreme Court decision gutting (if not explicitly overruling) the Court’s terrible decision in 2000 in *Stenberg v. Carhart*. Other benefits of the Act could be identified.

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In their criticism, the authors of the “open letter” are misguided in several important ways.

First, *the critics do not understand why the Act was written with the limits it has*. The bill was originally written against the severe constraints of the Court’s pro-abortion precedents, a five-justice pro-abortion majority (Justices Breyer, Ginsburg, Stevens, Souter, and O’Connor), and the Court’s *Stenberg* decision of 2000. The pro-abortion majority of justices had declared an almost absolute “right” to abortion from conception to birth, and had previously struck down legislative attempts to prohibit another type of abortion. While precluding any prohibitions between conception and birth, the pro-abortion justices left Congress and the states only minimal room to enact regulations (not prohibitions) in the margins around the abortion license. After prohibitions on PBA were enacted in 30 states, the pro-abortion majority struck down all of those state laws in *Stenberg*, further raising the obstacles to any state or federal abortion regulations. Sponsors in Congress then redrafted the Act more narrowly to fit within the constraints of *Stenberg* while continuing the public debate.

To accomplish the limited but significant goals of the Act under severe constraints, the Act had to define the difference between partial-birth abortion and D&E abortion (which the pro-abortion majority in 2000 supported). The exceptions or limits in the bill were not the preference of the congressional sponsors but were compelled by the pro-abortion Supreme Court majority of Breyer, Souter, Stevens, Ginsburg, and O’Connor. Even if the federal PBABA may be “so narrow that it won’t save many babies” (a questionable premise), that cannot be laid at the door of the authors but is a direct result of the Court’s pro-abortion majority. The Act could not effectively touch the D&E procedure because of *Stenberg*. While the margins that the pro-abortion majority has drawn around the abortion license may be irrational, it’s not irrational for the states (or Congress) to attempt to fence in the abortion license along the margins the Court has drawn. Yes, the PBABA *seems* ineffectively narrow, but it is the pro-abortion justices’ line-drawing that forced the federal PBABA to be so narrow.

Second, *the critics do not understand how the Supreme Court operates*, and fail to understand the dynamics of majority and minority blocs within the nine-justice Court. A majority of five rules and decides cases. Between the time the PBABA was written and the time it was heard by the Court, the justices had changed. Justice Kennedy became the decisive fifth vote, and the decisive fifth vote effectively decides how a majority opinion is written. Justice Kennedy was in the middle of the nine—supporting “abortion rights”

before viability, but supporting a prohibition on PBA. When the case was argued before the Court in November 2006, parties on both sides believed Kennedy to be the decisive fifth vote for either upholding the PBABA or striking it down. By voting to uphold the Act, Kennedy largely determined the language of the opinion. Because of Kennedy's partial support for abortion, Chief Justice Roberts and Justices Scalia, Thomas, and Alito were constrained in shaping the outcome of the opinion.

The critics imply that Roberts, Scalia, Thomas, and Alito should have abstained and walked off the Court, rather than join the limited result with Justice Kennedy. This would have resulted in a 4-1 pro-abortion result, with Justices Breyer, Ginsburg, Souter, and Stevens allied against Justice Kennedy as the sole dissenter, leaving constitutional law in a decidedly more pro-abortion slant, hostile to any regulation. Such a 4-1 decision would have expanded abortion rights even further. The critics suggest that this would have been better, without explaining why or how.

In the American political system of majority rule, "opting out" of the judicial or political process merely creates or strengthens a pro-abortion majority and eliminates forms of legal or political action that challenge that pro-abortion majority. Prudence compels us to be engaged in the system of majority rule. While some may opt out of the political and legislative process, like the Garrisonians of the 1840s, their conscience cannot dictate a similar course for others, especially when prudential engagement is possible and cooperation in evil can be avoided.

Third, *the critics extract certain passages from Justice Kennedy's opinion and read them out of context*. Justice Kennedy's opinion for the majority is divided into five parts. Part I simply distinguishes PBA from D&E abortions and describes the history of the litigation. Part II applies the legal standards from the 1992 *Casey* decision instead of the harsher standards from the 2000 *Stenberg* decision. Part III examines the language of the federal PBABA in detail, its scope and purposes, and rejects the charge that the PBABA is unconstitutional. Part IV affirms that the legal line established by the PBABA is constitutional under *Casey* and—what the critics most seriously miss—responds to the dissent of Justice Ginsburg, often without explicitly referring to her dissent. Part V concludes that the facial challenge to the PBABA should not have been heard by the federal courts.

The passages in the Kennedy opinion quoted out of context are not intended to *approve* of abortion but to respond to the contention in the Ginsburg dissent that the PBABA is so narrow (by focusing on one procedure) that it won't "save any babies." (Ginsburg's charge is, of course, ironic—if not hypocritical—since she was part of the pro-abortion majority on the Court

that so broadly defined the abortion “right” as to push permissible regulations to the narrow margins around the “right.”)

For example, when Kennedy writes that the “medical profession . . . may find different and less shocking methods to abort the fetus,” he’s responding to Ginsburg’s contention that the bill will have no effect. While Kennedy observes that abortionists “may prefer not to disclose precise details of the means” of abortion, he turns around and affirms that legislation *can require* that women get full information. The justices in the majority do not “endorse” an “injection that kills the fetus.” They do not endorse other forms of abortion; they merely acknowledge that the bill leaves some abortions unprohibited. They did not “concur optimistically” that other forms of abortion could replace PBA; they merely describe the limits of the PBABA.

Likewise, by acknowledging that the federal statute is limited in scope to certain abortions (because of the constraints of *Stenberg*), the justices do not thereby “endorse” the limited scope; they uphold it as constitutional. When the justices quote the statutory language, they do not endorse one abortion or another. They do not “rule” that abortions unprohibited by the statute “are legal.” The justices do not “approve” abortions that the statutes do not prohibit. While the critics claim that the justices did not “grant authority to save the life of even a single child,” they did uphold a statute that established a legal fence against abortions during the process of birth. These statements, in context, are either simple descriptions of the language and limits of the PBABA or responses to Justice Ginsburg’s dissenting accusations that the statute would do nothing.

If there was any remaining confusion about the meaning of these passages in Justice Kennedy’s opinion, the fact that Justices Scalia and Thomas joined Kennedy’s opinion should have been enough to allay pro-life confusion, given their record of over 20 years of opposition to *Roe*. Thomas and Scalia obviously saw no necessary inconsistency between their joint concurring opinion (that the Constitution contains no right to abortion) and Kennedy’s opinion. In effect, Justices Thomas and Scalia said (by joining Kennedy’s opinion) that they agree that nothing in the Constitution prohibits the PBABA, but they also said (with their separate opinion) that they would go farther and throw out *Roe* entirely. Unfortunately, the critics don’t give Scalia and Thomas the benefit of the doubt; instead, they attribute to Justices Scalia and Thomas pro-abortion attitudes that are incomprehensible in light of their consistent opinions opposing *Roe*.

Fourth, *the critics impugn Justices Thomas and Scalia for their established position that abortion is a matter to be decided by the people at the state level because the Constitution contains no right to abortion*. Whether

one agrees or disagrees with Thomas and Scalia, their position is simply that the framers of the Constitution in 1787 left the abortion issue to be decided by the states as it had been since colonial times, and that the framers of the 14th Amendment after the Civil War did *not* intend to take this authority away from the states. It is not “legal positivism” to believe that the Constitution’s framers left abortion policy to the states. It is simply a strict reading of the language of the Constitution and of the distribution of powers between the state and federal governments. Since there is no doubt that the framers of the 14th Amendment did *not explicitly* address abortion or the unborn, the position of Justices Thomas and Scalia is entitled to respect, even if it is respectful disagreement.

Fifth, *the critics ignore the broader implications of the Gonzales decision for the future.* The implications were certainly clear to abortion advocates. Nancy Northup, president of the Center for Reproductive Rights, was quoted as saying within days of the decision: “We are going to see a whole new onslaught of restrictions on abortions coming out of this decision.”

Sixth, *the critics assume that the Court can or should redraft federal laws to more fully prohibit a social evil.* That’s not what justices should do in reviewing the constitutionality of congressional laws. That’s the role of the legislature, not judges, as it is with any criminal law. The justices were called upon to decide whether the federal PBABA was consistent with the Constitution, not whether it was fully just or fully moral. It is not the proper role of Supreme Court justices to strike down legislation that is not “fully just” or “fully moral.” Keeping the justices within that limited role is necessary to preserve self-government. Even natural law does not vest judges with a free-wheeling power of judicial review to rewrite or strike down laws. As Princeton professor Robert George has written:

The Constitution . . . places primary authority for giving effect to natural law and protecting natural rights to the institutions of democratic self-government, not to the Courts, in circumstances in which nothing in the text, its structure, logic, or original understanding dictates an answer to a dispute as to proper public policy. It is primarily for state legislatures, and, where power has been duly delegated under the Constitution, to the Congress to fulfill the task of making law in harmony with the requirements of morality (natural law), including respect for valuable and honorable liberties (natural rights).

Seventh, *the critics completely discount the morality and effectiveness of a policy of legal containment of a social evil when prohibition is not possible.* The PBABA established a fence against the abortion license. Laws can establish moral and effective fences around a social evil when the evil cannot be completely prohibited.

Imagine, for example, that you just bought a house. You move in and walk out the back door to discover two vicious pit bulls, belonging to your neighbor, roaming the back yard. How do you protect your two young children? However much you might like to shoot the pit bulls, you decide to build a fence around your yard to protect your children. *Are you thereby complicit in the care and feeding of your neighbor's pit bulls—because you didn't shoot them?* Most people would recognize that they aren't complicit, because countervailing legal authority and obstacles establish where the fence can be built and prevent them from doing more than build the fence. Prudence helps to determine how and where the fence can and should be established.

Containment of a social evil is a moral and prudent objective when the evil cannot be completely prohibited. The morality and effectiveness of such fences is evident in history. William Wilberforce and his allies erected legal fences around the slave trade between 1787 and 1807, when they could not completely prohibit it; those fences reduced the slave trade substantially before the final push of 1805-07. The Whigs and Republicans sought to erect legal fences around slavery in the 1840s and 1850s, when they could not completely prohibit it. Though we think of fences as static, they can be dynamic in provoking public awareness of or opposition to the social evil. It was Republican Party support for the fence against the expansion of slavery into the western territory that provoked Southern secession during the winter of 1860-61.

Eighth, *the critics shortchange the social and legal impact of abortion regulations in general and the PBA bill and debate in particular.* A series of statistical analyses by Professor Michael New, published by the Heritage Foundation, has analyzed the impact of state regulations on abortions during the 1990s, and largely attributes the 17-19 percent drop in abortions in the 1990s to such regulations.¹ In addition, a recent study of public opinion over the past decade by the independent firm Overbrook Research, attributes much of the positive change in the pro-life direction to the PBA bill and public debate.

All of the critics' misunderstandings have a common source in imprudence. Prudence is a word that, unfortunately, has fallen out of our vocabulary. Prudence is the preeminent of the four cardinal virtues. It means practical wisdom and focuses on effective action. It is highly valued in the Greek, Roman, Christian, and Stoic traditions and repeatedly praised in Scripture. When it comes to politics, prudence asks four questions about proposed action: Is the goal a good one, do we exercise wise judgment about what's

possible in the circumstances, do we effectively connect means to ends, and do we preserve the possibility of future improvement when all of the Good cannot be accomplished now?

In exercising wise judgment about what's possible in the circumstances, the moral and intellectual virtue of prudence requires, among other things, that we accurately understand the cause of obstacles that impede our pursuit of the Good and that we devise effective solutions to those obstacles. The consistent error throughout the "open letter" is a failure to understand the political, legal, constitutional, and institutional obstacles to legal protection of the unborn. Because the critics do not have the patience or objectivity to understand the obstacles, they cannot hope to devise any effective solution to them, with the result that they misdirect their criticism from the pro-abortion justices to those whom they should recognize as their allies in the cause for life.

NOTES

1. New, Michael J. 2004, "Analyzing the Effect of State Legislation on the Incidence of Abortion During the 1990s." Heritage Foundation Center for Data Analysis Report #04-01; New, Michael J. 2006, "Using Natural Experiments to Analyze the Impact of State Legislation on the Incidence of Abortion." Heritage Foundation Center for Data Analysis Report #06-01; New, Michael J. 2006, "Getting it Wrong: How The New York Times Misinterprets Abortion Statistics and Arrives at Incorrect Conclusions." Heritage Foundation Center for Data Analysis Report #06-05; New, Michael J. 2007, "Analyzing the Effect of State Legislation on the Incidence of Abortion Among Minors." Heritage Foundation Center for Data Analysis Report #07-01;
<http://www.heritage.org/Research/Family/cda04-01.cfm>
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Unborn Persons, Incrementalism & the Silence of the Lambs

Gregory J. Roden

Paul Benjamin Linton—in his recent *Human Life Review* article, “Sacred Cows, Whole Hogs & Golden Calves” (*Summer 2007*)—writes about the efficacy of “incrementalism,” which, he says, “seeks to reduce the number of (and perceived need for) abortions, while simultaneously chipping away at the foundation of *Roe v. Wade* until the Supreme Court is prepared to discard whatever remains of *Roe*.” Linton sees incrementalism as being opposed to the aims of the “purists,” who want “nothing short of an outright prohibition of all abortions.” To accomplish this goal, Linton writes, purists seek to establish the “personhood” of unborn children through either “a Supreme Court decision or a constitutional amendment.” Linton has two criticisms of the “purist” approach. The first is that he believes purists “will not act to save a single life unless they can save all.” The second addresses the issue of personhood itself: “The notion that the Supreme Court can be forced to recognize that, as a matter of scientific and medical evidence, the unborn child is a human being—*i.e.*, that it is alive, developing, and genetically human—is equally naïve.”

Let me say at the outset, I thank Mr. Linton for his thoughtful article and I appreciate all the efforts incrementalism has made to save the lives of unborn children—any friend of an unborn person is a friend of mine. Yet it seems that Linton has come to see incrementalism as necessarily opposed to the declaration of personhood—when in fact, I believe it can be shown that incremental legal decisions in favor of unborn children are designed to lead to the very same result. If what incrementalism hopes for is “the day when *Roe v. Wade* is overturned and the states (and the federal government) have the authority, once more, to extend the protection of the law to the most vulnerable members of the human family,” then incrementalism, too, has as its ultimate goal the recognition of the personhood of the unborn.

I believe the pro-life movement ought to realize by now that it was being baited by Justice Potter Stewart, when he suggested—in *Roe*’s oral reargument—various theological, philosophical, or medical approaches to “personhood.” When Justice Harry Blackmun adopted a similar tack in the *Roe* opinion, we swallowed that bait hook, line, and sinker. It is this approach Linton (and others) find fruitless, and rightfully so. I believe it is

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time for a more radical approach: looking in a dictionary.

Dictionaries will of course tell us that “person” is synonymous with human being, but they also give us a legal definition—which is more appropriate to use in a discussion of the constitutional status of unborn children. As an example, let’s take one such legal definition of “person” from an Internet dictionary: “[O]ne (as a human being, a partnership, or a corporation) that is recognized by law as the subject of rights and duties.”¹ This definition brings out exactly what persons do in a court of law—they assert their rights and/or demand the duty of other persons to properly observe such rights. Indeed, this was the definition of person that appeared in the popular law dictionary, *Black’s Law Dictionary*, at the time *Roe v. Wade* was written,² and in the authoritative *Oxford Universal Dictionary*.³

Let’s look at some examples of the above definition in action in the state of Minnesota. There, a district attorney may seek the conviction of a defendant for the murder of a 28-day-old embryo, as occurred in *State v. Merrill* (1990).⁴ A plaintiff’s attorney may seek damages from a defendant who was negligent in the death of a stillborn child, as in *Verkennes v. Corniea* (1949).⁵ And, in a probate proceeding, if an unborn child is an heir to the decedent, an attorney may have a guardian ad litem appointed to represent the child.⁶ These examples are in accordance with the historical understanding of the word “person,” as Chief Justice Marshall stated in *United States v. Palmer* (1818): “The words ‘any person or persons,’ are broad enough to comprehend every human being.”⁷

What does this do for us? Well, first of all we avoid tumbling down the rabbit hole of the modern, disingenuous focus on “person” as a subject of some theological, philosophical, or medical inquiry. This inquiry, after all, doesn’t matter to the Court; as Linton stated, “Every justice on the Supreme Court understands that the purpose and effect of an abortion is to kill an unborn child.” Indeed, as a nation we have understood this truth for a long, long time. Consider the following passage from Dr. Theodric Romeyn Beck’s 1823 book *Elements of Medical Jurisprudence*, regarding fetal life:

[B]lood is perceived about the seventeenth day after conception, together with the pulsation of the heart, and not long after the different organs have commenced their development. . . . [T]he fact is certain, that the foetus enjoys life long before the sensation of quickening is felt by the mother. Indeed, no other doctrine appears to be consonant with reason or physiology, but that which admits the embryo to possess *vitality* from the very moment of conception.

Dr. Beck was writing about the inadequacies of the ancient medical standard of “quickening” in an abortion prosecution. “Quickening” was when the mother felt the baby move within her—a standard that Linton fears some

states would go back to if *Roe* were overturned by a “personhood” decision. Yet, instead of quickening, Dr. Beck elaborated on the growing and increasingly undeniable medical evidence that a fetus was *vitalized*, i.e., alive, at conception. Indeed, a number of states then adopted the vitality standard in their common law⁸ and statutory law.⁹

More important, we should recognize that the Supreme Court itself implicitly adopted the vitality standard in *Cruzan v. Director* (1990). In that case, Nancy Cruzan was described as incompetent but alive: “She now lies in a Missouri state hospital in what is commonly referred to as a persistent vegetative state: generally, a condition in which a person exhibits motor reflexes but evinces no indications of significant cognitive function.”¹⁰ Cruzan’s parents wanted to withdraw her artificial nutrition and hydration, which was at the heart of the controversy as it “would cause her death.” Yet, a “persistent vegetative state,” with a lack of any demonstrative movement, is essentially how the law viewed unborn children prior to quickening; at least, that is, before the invention of the stethoscope in 1819. The vitality standard looks to more subtle signs of life, as with Nancy Cruzan, and is the standard now used with regard to all persons in all state and federal jurisdictions (save the unborn as regards abortion).¹¹ As equal protection seeks to ensure that persons in similar situations are treated equally under the law, the failure to apply the vitality standard to the unborn is unconstitutional.

Still, Mr. Linton also made us painfully aware that no justice sitting on the Supreme Court since *Roe* has dissented on the holding that unborn children are not persons: not Rehnquist, Scalia, White, nor Thomas, nada. This is no doubt, on its face, a strong argument against “personhood.” Still, we may ask, which of these justices has even attempted to reconcile the use of the vitality standard in *Cruzan* with the lack of use of that standard with respect to the unborn? This is what I call the Silence of the Lambs syndrome: There are a number of cases, including *Cruzan*, that stand opposed to the denial of “personhood” to the unborn, yet all the justices have been mute on any rationale at all for distinguishing these cases from *Roe*’s result. Their silence is deafening. Essentially, this silence is a failure of the Court to uphold prior precedents, i.e., a failure to fully utilize the principle of *stare decisis*—which, ironically, the Court claimed in *Planned Parenthood v. Casey* as the reason for upholding *Roe*.

To establish the right to abortion, in both *Roe* and *Casey*, Harry Blackmun began his discussion of the right of privacy by referring to the Supreme Court case of *Union Pacific R. Co. v. Botsford*, decided in 1891. In *Botsford*, the Court held that in a *civil* case regarding personal injuries a court did not have the procedural power to order the plaintiff to submit to a surgical

examination without his or her consent. What Blackmun overlooked is that the Court in *Botsford* acknowledged two important common-law exceptions to this rule as they applied to pregnant women.¹²

More conspicuously, *Botsford*'s holding was overturned by Congress in 1934 by Rule 35 of Civil Procedure, giving courts the authority to order "Physical And Mental Examination Of Persons," as the title of that rule reads. Subsequently, Rule 35 was upheld twice by the Supreme Court as *not* being an unconstitutional invasion of privacy.¹³ Moreover, the Court explicitly stated in both cases that the rule in *Botsford* was purely a procedural ruling. And, in each case, both the majority and dissenting opinions agreed that "Rule 35 could not be assailed on constitutional grounds." The Lambs failed to issue so much as a bleat about any of this—which makes one wonder what else they have been mum about. Let's take a look.

Let's suppose you have owned a house for some 40 years and one day a young man knocks at your door, introducing himself as Allen C. McArthur, Jr. Junior proceeds nervously to explain that your house, which you bought from his father, was actually bequeathed to Junior by the last will and testament of his grandfather, General Duncan McArthur. And, as Junior has just turned 21, he is now of legal age to enforce his property rights and will file a suit against you, unless you want to save some attorney's fees and settle out of court. Having studied the *Roe* opinion, you laugh in his face and inform him that he was a non-person at the time you bought the house. You then recite for him the following portion of Blackmun's opinion dealing with the property rights of unborn children (before you slam the door in his face): "Perfection of the interests involved, again, has generally been contingent upon live birth. In short, the unborn have never been recognized in the law as persons in the whole sense."¹⁴

Well, let's hope that never happens to you, because this is essentially what happened to the defendants in *McArthur v. Scott* (1884).¹⁵ Although the defendants won at the trial court, Junior and other grandchildren of General McArthur took their case to the Supreme Court and won. The key to understanding what happened in *McArthur* is contained in the sentence preceding our above quote from *Roe*: "Similarly, unborn children have been recognized as acquiring rights or interests by way of inheritance or other devolution of property, and have been represented by guardians ad litem."

According to this last quote from *Roe*, unborn children have property rights, and if a controversy arises over those rights, they are represented by a guardian ad litem. Which prompts the obvious question: What happens if the unborn child is *not* represented by a guardian ad litem? Problem! More

specifically, a due-process problem. Due process is an important area of constitutional jurisprudence that seeks to ensure that each person is given a fair opportunity to have his side of an issue heard in a court of law before he is deprived of “life, liberty or property.” Without the appointment of a guardian ad litem to represent him in court, the unborn child would have his due-process rights violated because he was never made a party to the suit. As a result, the case that purported to decide those rights would be a nullity.¹⁶ This is essentially what happened in *McArthur v. Scott* and the unborn children were held to have a “vested” right in the property.

The distinction between *Roe*’s “contingent upon live birth” rights of unborn children and *McArthur*’s “vested” rights prior to birth is one of critical constitutional importance. In the fundamental constitutional-law case of *Marbury v. Madison* (1803),¹⁷ whether William Marbury had a vested right to his commission as justice of the peace in the District of Columbia was a deciding factor in his favor; Justice Marshall stated, “To withhold the commission, therefore, is an act deemed by the court not warranted by law, but violative of a vested legal right.”¹⁸ So we see that from the beginning of Supreme Court case law on justiciable rights, the focus has always been on whether or not the right was vested. Accordingly, *McArthur v. Scott* was just a natural extension of this principle to the unborn, affirming their right to due process for vested rights.

Blackmun, to support his unfounded speculation in *Roe* that property rights of unborn children were “contingent upon live birth,” outrageously cited three articles that actually refute this very assertion.¹⁹ One of the articles, written by Professor David W. Louisell, gave examples of rights enforced for the child in the womb, proving beyond a genuine doubt that the unborn are recognized as accruing rights in the womb. These examples include an unborn child becoming a tenant in common with its own mother under the terms of a will,²⁰ a property right in land vesting to an unborn child prior to its birth,²¹ a posthumous child becoming an income recipient in a trust from the date of death of her father, rather than the date of her subsequent birth,²² an action brought by a guardian of an unborn child to compel the father to support the child prior to its birth,²³ the appointment of a special guardian in an action ordering blood transfusions to save a pregnant woman’s life, and that of her unborn child, in spite of her religious objections (the Supreme Court refused to hear the woman’s appeal).²⁴

Professor Louisell made the following observation:

The state of the law in American courts is fairly well summed up in *In re Holthausen’s Will*, where a New York court states that: “It has been the uniform and unvarying decision of all common law courts in respect of estate matters for at least the past

two hundred years that a child en ventre sa mere is ‘born’ and ‘alive’ for all purposes for his benefit.”²⁵

Still, not a peep from our lost sheep.

Another main branch of constitutional jurisprudence is equal protection. Here too we find the Supreme Court has recognized unborn persons as having a right to equal protection. But before we look at that case, let’s examine the Equal Protection Clause itself; textualists, please take note. The Due Process and Equal Protection clauses of the Fourteenth Amendment read, “[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” There is a subtle distinction between the two clauses in that the Equal Protection Clause uses the phrase “any person within its jurisdiction.”

In *U.S. v. Wong Kim Ark*,²⁶ the Court held that “jurisdiction” means within the boundaries of the state. The Court reaffirmed this concept of equal protection belonging to any person within the state’s jurisdiction in *Plyler v. Doe* (1982).²⁷ After a discussion of the congressional debate on the Fourteenth Amendment, Justice Brennan concluded in *Plyler* that the phrase “within its jurisdiction” was satisfied by a person’s “presence within the State’s territorial perimeter.” In *Plyler*, the state of Texas was arguing that undocumented aliens, not being legally admitted into the United States, were technically not within the state’s jurisdiction—an argument that earned the state of Texas a trip behind the woodshed:

To permit a State to employ the phrase “within its jurisdiction” in order to identify subclasses of persons whom it would define as beyond its jurisdiction, thereby relieving itself of the obligation to assure that its laws are designed and applied equally to those persons, would undermine the principal purpose for which the Equal Protection Clause was incorporated in the Fourteenth Amendment. The Equal Protection Clause was intended to work nothing less than the abolition of all caste-based and invidious class-based legislation.²⁸

Yet Blackmun admitted—in the *Roe* opinion—that the states did recognize the unborn as persons under various facets of the law,²⁹ particularly criminal law, before disingenuously asserting; “[T]he unborn have never been recognized in the law as persons in the *whole* sense.” Unborn children have been recognized in every state as being persons in some manner “within its jurisdiction” since *The Lessee of Ashton v. Ashton* in 1760,³⁰ which is far more than can be said for undocumented aliens. How then is *Roe* not an exercise in “caste-based and invidious class-based legislation” directed at unborn persons in violation of the Fourteenth Amendment’s Equal Protection

Clause? The lambs remain silent.

As I mentioned, the Supreme Court decided an equal-protection case involving unborn persons the year before *Roe*, in *Weber v. Aetna Casualty & Surety Co.*³¹ In *Weber*, the Supreme Court held that illegitimate children could not be excluded from sharing equally with other children in the recovery of workmen's compensation benefits for the death of their father. Moreover, the Court also held that this equal protection applied to an illegitimate child *unborn* at the time of the death of its father. The Supreme Court held that there was an equal-protection duty owed to the unborn illegitimate child also: "We think a posthumously born illegitimate child should be treated the same as a posthumously born legitimate child."

Actually, the "personhood" of the unborn child was never an issue in *Weber*. That is because the case involved Louisiana law, which had held since at least 1918 that unborn children were persons under its wrongful-death statute: "[A] child *en ventre sa mere* is in contemplation of law a separate entity, to the extent that a right of action survives to it for injury to its father inflicted during its gestation."³² As in *McArthur v. Scott*, we see that *Weber* was dealing with a right that vested in the womb.

Louisiana was not alone in this regard, as other states held that children in the womb could recover for the death of a parent.³³ Indeed, the federal courts have held likewise regarding Social Security benefits. Four years before *Roe*, in *Wagner v. Finch*, the Fifth Circuit Court of Appeals held that a posthumous illegitimate child was within the definition of "child" of the "insured individual as that term is defined by the Social Security Act."³⁴ And again, the Court characterized the right of the unborn child as one that vested in the womb.³⁵

Under state, federal, and U. S. Supreme Court decisions, unborn children have been afforded equal-protection and due-process rights as persons for the purposes of criminal, tort, property, and inheritance law. Blackmun seemed to imply this was a short list of legal-practice areas, yet, what other aspects of the law affect the rights of unborn children? Few if any. So, we can say that all the various areas of law that dealt with the rights of unborn persons and the duties owed them incrementally established the personhood of unborn children. Linton compared the hope for a Supreme Court decision adopting personhood to "the horizon—you can see it, but you can't get there." Wrong: Personhood of the unborn actually permeates our legal environment, and *Roe v. Wade* is nothing more than a mirage, an image created by Blackmun's smoke and mirrors—you can see it, but there is nothing of substance to grasp.

Still, Mr. Linton fears that even if the Court held unborn children to be persons, such a decision “would *not* require states to enact laws *prohibiting* abortion.” But, first of all, the National Conference of State Legislatures informs us that 37 states already have fetal-homicide laws. These states typically have an exception carved out for abortions performed with the woman’s consent by a licensed abortionist. If the unborn are recognized as persons, by operation of the Equal Protection Clause, we would have 37 states with laws prohibiting abortion for starters—that’s my kind of incrementalism. As for the other states, it is feared that they would enforce murder laws only for born persons and not for unborn persons. Here we could simply apply civil-rights case law to a new “suspect class,” unborn persons. Consequently, a pattern of not prosecuting the murder of unborn persons would clearly be discriminatory law enforcement,³⁶ regardless of whether such laws are non-discriminatory on their face.³⁷

Likewise, Linton fears abortion could not be prohibited as it is “the conduct of private parties” and “private physicians.” Yet abortion is legal only if performed by a licensed physician. If unborn children were recognized once again as persons, then a state physician’s license could no more grant the authority to perform an abortion than a state-issued “burning permit” could grant a Klan member the authority to burn a cross on someone’s lawn.³⁸ Here again we could apply civil-rights case law to the suspect class of unborn persons—case law that has certainly prohibited private discriminatory actions.³⁹

Linton also raises the valid concern that women might not be exempted from criminal prosecution by a “personhood” decision. Here, we should first recognize that local crime is within the exclusive jurisdiction of the states unless a question of federal constitutional rights arises, as acknowledged even by Blackmun in *Roe*.⁴⁰ Also, the Court has already looked at this issue in *U.S. v. Holte* (1915).⁴¹ The Supreme Court tacitly acknowledged it was within the authority of the state in its police power to exempt the woman from prosecution as an accomplice, while at the same time holding her liable for conspiracy. Ergo, it is within the police power of the state to decide on the form of punishment of the woman, if any. Typically, states that exempt the woman from one form of criminal liability or another do so because they view the woman as the victim of the statutory crime described.

It should be pointed out that the Fourteenth Amendment does not require that states not have any classifications of people at all, or that different classifications of people be treated exactly alike. Rather, the states are given the discretion to use classifications in legislation as long as that classification has a valid purpose in light of the situation in which it is used.⁴² Accordingly, another valid purpose that the states have advanced for exempting

women from some abortion laws is that it is only through the women's cooperation and testimony "that the abortionist could be ferreted out and convicted."⁴³

In the final analysis, unborn children were indeed held to be persons "recognized by law as the subject of rights and duties" in any number of state, federal, and Supreme Court decisions. The only thing wanting was a Supreme Court case specifically denying the woman the alleged right to abortion because of the personhood of the unborn child—the ultimate goal of both purists and incrementalists. Unfortunately, *Roe* reached the exact opposite result. In order to allow for this travesty of justice—yet not effectively overturn numerous principles of law, and state, federal, and Supreme Court decisions—the Court fabricated a history of law concerning the unborn in order to strip away their personhood and sweep it under a rug.

Blackmun himself unknowingly showed us what it really will take to overturn *Roe* when he provided us this quote from the report propounded by the AMA's Committee on Criminal Abortion: "We had to deal with human life. In a matter of less importance we could entertain no compromise. An honest judge on the bench would call things by their proper names. We could do no less."⁴⁴

Yes, that's all we need: honest judges to call things by their proper names.

NOTES

1. *Merriam-Webster's Online Dictionary*, <http://www.m-w.com/dictionary/person> (last visited Nov. 23, 2007).
2. "A person is such, not because he is human, but because rights and duties are ascribed to him. The person is the legal subject or substance of which the rights and duties are attributes. An individual human being considered as having such attributes is what lawyers call a *natural* person. Pollock, *First Book of Jurispr.* 110. Gray, *Nature and Sources of Law*, ch. II," *Black's Law Dictionary* 1300 (4th ed. 1951).
3. "Law. A human being (*natural p[erson]*) or body corporate or corporation (*artificial p[erson]*), having rights or duties recognized by law," *The Oxford Universal Dictionary*, p. 1478-79, Third Edition [1944], Revised with addenda (1955).
4. *State v. Merrill*, 450 N.W.2d 318 (1990), cert. denied, 496 U.S. 931 (1990).
5. *Verkennes v. Corniea*, 38 N.W.2d 838 (Minn. 1949).
6. MN. Stat. 501B.19.
7. *United States v. Palmer*, 16 U.S. (3 Wheat.) 610, 631 (1818).
8. *Commonwealth v. Demain*, (Pa. 1846), *Reports of Cases, Judges of the Supreme Court*, Frederick C. Brightly, p.441 (1851); *Mills v. Commonwealth*, 13 Pa. 631, 633 (1850); *State v. Slagle*, 83 N.C. 630 (1880).
9. *Wilbanks v. State*, 41 Ga.App 268, 152 S.E. 619, 621 (Georgia 1930); *State v. Nossaman*, 120 Kan. 177, 243 P. 326, 327 (Kan. 1926); *State v. Patterson*, 105 Kan. 9, 181 P. 609, 610 (Kan. 1919); *State v. Harris*, 90 Kan. 807, 136 P. 264, 267 (Kan. 1913); *Kansas v. Ledbetter*, 183 Kan. 302, 327 P.2d 1039 (Kan. 1958); *Commonwealth v. Wood*, 11 Gray's Reports 85 (77 Mass. Rep. 85) (1858); *Johnson v. State*, 88 Neb. 328, 129 N.W. 281, 282 (Neb. 1911); *Dixon v. State*, 46 Neb. 298, 64 N.W. 961 (Neb. 1895); *Munk v. Frink*, 116 N.W. 525 (Neb. 1908);

- Piercy v. State*, 138 Neb. 301, 293 N.W. 99 (Neb. 1940), (reheard and affirmed) 138 Neb. 905, 297 N.W. 137 (Neb. 1941); *Whitehead v. State*, 147 Neb. 797, 25 N.W.2d 45 (Neb. 1946); *Hans v. State*, 22 N.W.2d 385, 396 (Neb. 1946); *Ohio v. Barker*, 28 Ohio St. 583, 1876 WL 32 (Ohio 1876); *Tabler v. Ohio*, 34 Ohio St. 127, 1877 WL 214 (Ohio 1877); *Ohio v. Harper*, 35 Ohio St. 78, 1878 WL 85 (Ohio 1878); *Tippie v. Ohio*, 1913 WL 389 (Ohio App. 2 Dist. 1913); *Waite v. Ohio*, 1915 WL 854 (Ohio App. 5 Dist.).
10. 497 U.S. 261, 266 (1990).
 11. *Jackson v. Commonwealth*, 100 Ky. 239, 38 S.W. 422 (1886), in which a headless body was found in one state, Kentucky, and there was evidence a poison was administered to the victim in another state. The issue for the murder prosecution in Kentucky was whether or not the death occurred in Kentucky, the state where the head was cut off—if the woman was already dead, then a murder prosecution could not be brought in that state. The court noted that there was no evidence of movement (i.e. quickening) in reaction to having her head cut off. Yet, there was evidence of vitality as she bled profusely, and so the prosecution for murder was allowed.
 12. *Union Pacific R. Co. v. Botsford*, 141 U.S. 250 (1891). The first was under the criminal law, “The writ de ventre inspiciendo, to ascertain whether a woman convicted of a capital crime was quick with child, was allowed by the common law, in order to guard against the taking of the life of an unborn child for the crime of the mother.” *Ibid.* at 253. The second was a use of the writ de ventre inspiciendo in civil cases where a woman, recently widowed, could have been carrying the child of her deceased husband, and therefore his lawful heir: “The only purpose, we believe, for which the like writ was allowed by the common law, in a matter of civil right, was to protect the rightful succession to the property of a deceased person against fraudulent claims of bastards, when a widow was suspected to feign herself with child in order to produce a supposititious heir to the estate, in which case the heir or devisee might have this writ to examine whether she was with child or not, and, if she was, to keep her under proper restraint till delivered. 1 Bl. Comm. 456.” *Ibid.* at 253.
 13. *Sibbach v. Wilson & Co.*, 312 U.S. 1, 8 (1941), *Schlagenhauf v. Holder*, 379 U.S. 104, 112-13 (1964).
 14. 410 U.S. at 162.
 15. *McArthur v. Scott*, 113 U.S. 340 (1884).
 16. 113 U.S. at 404 (“As under the statute of Ohio, as construed by the Supreme Court of that State, a decree annulling the probate of a will is not merely irregular and erroneous, but *absolutely void*, as against persons interested in the will and not parties to the decree, and as these plaintiffs were neither actually nor constructively parties to the decree setting aside the will of their grandfather, it follows that that decree is no bar to the assertion of their rights under the will.”).
 17. 5 U.S. 137 (1 Cranch) (1803).
 18. *Ibid.* at 162. Later, Justice Marshall would add, “The question whether a right has vested or not, is, in its nature, judicial, and must be tried by the judicial authority.” *Ibid.* at 167.
 19. 410 U.S. at 162 n. 66 (“*Louisell, Abortion, The Practice of Medicine and the Due Process of Law*, 16 U. C. L. A. L. Rev. 233, 235-238 (1969); Note, 56 Iowa L. Rev. 994, 999-1000 (1971); Note, *The Law and the Unborn Child*, 46 Notre Dame Law. 349, 351-354 (1971)”).
 20. *Biggs v. McCarty*, 86 Ind. 352 (1882).
 21. *Deal v. Sexton*, 144 N.C. 110, 56 S.E. 691 (1907).
 22. *Industrial Trust Co. v. Wilson*, 61 R.I. 169, 200 A. 467 (1938).
 23. *Kyne v. Kyne*, 38 Cal. App. 2d 122, 100 P.2d 806 (1940).
 24. *Raleigh Fitkin-Paul Morgan Memorial Hosp. v. Anderson*, 42 N.J. 421, 201 A.2d 537, cert. denied, 377 U.S. 985 (1964).
 25. *In re Holthausen’s Will*, 175 Misc. 1022, 26 N.Y.S.2d 140 (Sur. Ct. 1941).
 26. *U.S. v. Wong Kim Ark*, 169 U.S. 649 (1898).
 27. *Plyler v. Doe*, 457 U.S. 202 (1982).
 28. 457 U.S. at 213.
 29. 410 U.S. at 161 (“In areas other than criminal abortion, the law has been reluctant to endorse any theory that life, as we recognize it, begins before live birth or to accord legal rights to the unborn except in narrowly defined situations and except when the rights are contingent upon live birth.”).
 30. *The Lessee of Ashton v. Ashton*, 1 U.S. (1 Dall.) 4 (1760).
 31. *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972).
 32. *Cooper v. Blank.*, 39 So.2d 352, 360 (La. 1923).

33. See *Nelson v. Galveston, H. & S. A. R. Co.*, 78 Tex. 621, 14 S.W. 1021 (1890); *Herndon v. St. Louis & S. F. R. Co.*, 37 Okl. 256, 128 P. 727 (1912). See also, *The George and Richard*, 3 Ad. & El. 466, 111 Eng.Rep. 491 (1871).
34. *Wagner v. Finch*, 413 F.2d 267 (5th Cir. 1969).
35. *Ibid.* at 269 (“[I]n this instance where there is no case law which interprets the ‘living with’ provision of the statute, we agree that the illegitimate child of a deceased father, conceived before, but born after, the father’s death, is sufficiently ‘in being’ to be capable of ‘living with’ the father at the time of his death. The fact that a worker dies before the birth of a child already ‘in being’ is no legal or equitable reason to prohibit that child from benefits.”).
36. *Lombard v. Louisiana*, 373 U.S. 267 (1963).
37. *Yick Wo v. Hopkins*, 118 U.S. 356, 367-68 (1885).
38. *Lombard v. Louisiana*, 373 U.S. 267, 283 (1963) (Douglas, J., concurring) (“There is no constitutional way, as I see it, in which a State can license and supervise a business serving the public and endow it with the authority to manage that business on the basis of apartheid, which is foreign to our Constitution.”); *Shelley v. Kraemer*, 334 U.S. 1 (1948).
39. *Jones v. Mayer Co.*, 392 U.S. 409, 438-39 (1968) (“Thus, the fact that 1982 [42 U.S.C. 1982] operates upon the unofficial acts of private individuals, whether or not sanctioned by state law, presents no constitutional problem. If Congress has power under the Thirteenth Amendment to eradicate conditions that prevent Negroes from buying and renting property because of their race or color, then no federal statute calculated to achieve that objective can be thought to exceed the constitutional power of Congress simply because it reaches beyond state action to regulate the conduct of private individuals.”)
40. 410 U.S. at 126 (“[Dr. Hallford] makes no allegation of any substantial and immediate threat to any federally protected right that cannot be asserted in his defense against the state prosecutions.”)
41. *U.S. v. Holte*, 236 U.S. 140, 144-45 (1915).
42. *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920).
43. *In re Vince*, 67 A.2d 141, 2 N.J. 443 (1949).
44. 410 U.S. at 142.



“He gazed at her through the Ocean Air Blue of dawn. Her skin was a Butter Pecan. Her hair was a tangle of Sunscape Yellow, and her eyes were a flash of Acadia Green.”

This Bud of Love

Hortense Cupo

The new, enlarged photo of her father on the dresser seemed to waver in its walnut frame, the stripes in the American flag behind him buckling as he smiled out at the camera. She hadn't gone to the fundraising luncheon on the day it was taken because it was on a Tuesday morning when she was at school, but she'd imagined the way he drew out his audiences with his wit and charm, his blue eyes searching their faces, his lower lip drooping appealingly. This afternoon, he would be facing his challenger for his seat in the state senate, the debate to be aired on television, and right now he would be readying for the event, going over his notes, adjusting the red tie he considered his talisman, joking with his staff. Before he left this morning he'd reminded her to listen, kissing her on the forehead and telling her to feel better, but now she stared listlessly at the lunch tray her mother had prepared before she left for the eye clinic where her patients went to be examined for retinal diseases, wondering if she would even bother to switch on the television set.

She closed her eyes against the flash of morning sunlight, thinking of the day she knew that Lanny had gone out of her life forever. It happened a month after he left for a job in South Carolina; she was in her English honors class listening to Jim Hanley and Stacy Roberts reading aloud lines from the balcony scene in *Romeo and Juliet* when suddenly the words, "At lovers' perjuries, they say love laughs—" leaped out at her, and she remembered how unexpectedly Lanny had left, how his promise to call her when he arrived had never been kept, and how sparse his letters had been. She had made up reasons for his failure to answer her last letter, but that day in the classroom she'd felt the cold sting of the truth that she would never see him again.

She remembered that moment in Lanny's van when he made love to her; he was three years older than she, his honeyed words pouring over her, making her feel special, and everything she had been told by the priest on retreat about the sinfulness of sex outside of marriage seemed distant and meaningless. Stacey's voice had quivered a little as she read that day in class, "This bud of love, by summer's ripening breath may prove a beauteous flower when next we meet." Over the chalk board the eyes of Christ on the crucifix

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had looked down as if he knew what she was thinking, and she rested her chin on her knuckles, closing her eyes, remembering that her period was late, praying that she wasn't pregnant.

She reached over to the tray and took a gulp of the juice her mother had left with the advice that she drink plenty of liquids and stay in bed for the rest of the day. But she knew all the liquids and rest in the world would never change what had happened to her. That day after school she'd telephoned a clinic for an appointment for a pregnancy test, and the next day she took a bus to the place, waiting in the lounge while they checked the results. She had known even before the counselor talked with her that it was positive, her heart beating wildly as the woman asked her what she intended to do in the future.

She finished the rest of the juice, then reached for the television remote, surfing the channels listlessly, moving through soap operas, talk shows and commercials, the noises drumming in her ears. And then she stopped as a news special came on telling of a teenaged couple who had thrown their newborn baby into a dumpster where its poor shattered body had been found by the superintendent of the motel nearby. An image of the boy and girl appeared fleetingly on the screen as they were led away by the police, the girl's eyes staring blankly into space, and she felt a shudder go through her.

When she had come back from the clinic that day, her brother Kevin was stretched out on the living room couch, the letters of his college emblazoned on his sweater. "You look like hell," he said. "What's the story?" When she didn't answer, he went on in a teasing voice, "By the way, how's your boy Lanny doing in the old south?" Then she had cried out, "I don't know how he is. All I know is that I found out today that I'm pregnant." She hadn't meant to tell him, but all her pent-up fears had burst suddenly, and she heard him answering with a long whistle, "So, it's all in your court now!"

She switched the channel abruptly and saw that someone was announcing her father's debate. His opponent, an angular man with eye-glasses, seemed dwarfed next to her father, who was smiling into the camera, and delivering his opening statement. He was talking about his plans for the economy, his concerns for the children of the state, and the new role of women in the country; urging the voters to re-elect him so he could continue to work for them. She had always been close to her father, admiring his charm and wit, savoring the time she spent with him, proud of the way women seemed to flock around him.

She leaned back as she heard her father being asked about his stand on abortion, listening to his reply—that he was personally opposed, but believed in a woman's right to choose, that the state could not violate her

privacy. Her hand tightened on the edge of the sheet as she thought again of the day she'd come home from the clinic. With his usual directness, Kevin had cut to the chase, pushing a long lock of hair from his eyes, looking up at her from the couch, "As I see it, you don't have much of a choice. The old man wouldn't be too thrilled to have a kid of his carrying an out-of-wedlock baby during his campaign."

The debate had turned to the environment, her father talking spiritedly about the pollution of the rivers, the extinction of the spotted owl and other species, the obligation of humans to protect the planet. She moved her hand over her stomach, feeling the flatness of it, recalling that night at the dinner table—neither of her parents noticing her mood, her mother talking about an ophthalmologist's seminar she was planning to attend, her father discussing the campaign, the recent polls showing him far ahead of his opponent. Later she hadn't been able to sleep and had come down to the kitchen for some milk. It was then that Kevin had come in with his saxophone case under his arm, sitting next to her at the table. "Well, have you made up your mind yet? You don't have much time to waste." When she had started to cry, he told her that he would lend her the money and take her to a clinic for an abortion, that it was the only choice she could make.

She turned off the television, and lay back on the pillows, hearing a sound outside the window as if someone were pumping air into a tire. It reminded her of the suction machine in the clinic as it stretched her uterus, the sensation she had of something being inserted into her, the voice of a man sounding through the haze of anesthesia. It was as if she were underwater, her feet caught in a tangle of seaweed, her head trying to rise to the surface, and when it was over she lay for a while gazing up at the picture on the opposite wall. There were yellow flowers ringed around a fountain, a spreading oak tree overshadowing it, and it made her think of the time long ago when her father took her to a sculpture garden, the two of them hand in hand. One of the sculptures was of two stallions locked in battle, the figure of a man sliding down the back of one animal. Frightened by the image, she had drawn closer to her father, and he had bent down to comfort her.

She propped herself up in bed, looking across at her reflection in the long mirror. Her face had been pale since that day at the clinic. She touched her stomach again, distractedly. Then she reached into the drawer of the night table, removing the letter with the Charleston postmark that had come yesterday morning, re-reading the short, hurried note from Lanny telling her how much he liked his new job, how many new friends he'd made. There was nothing in the note about that night in the van, no words that connected

them in any way. She wondered what he would have done if she'd told him about the pregnancy, but it was too late now. It would be like revealing a secret that no longer had any meaning.

She thought of her mother leaving this morning, her blond hair pulled back efficiently from her calm face, and imagined how that calm would have been broken had she told her about the pregnancy, her organized life suddenly disrupted. Kevin was the one she had turned to and now when she tried to talk about it, he had told her to shut the windows on the past and get on with her life. She closed her eyes, her hand reaching out to touch the koala bear that Lanny had given her on one of their dates, and her fingers closed on one of the soft ears. Then she felt herself falling into a half-sleep, hearing the sound of a leaf-blower outside that seemed to mingle with a whirring sound in her ear. And then she heard her father calling her name, shaking her lightly on the arm, "What's the matter, honey? Were you having a bad dream?" She could see the back of his neck reflected in the mirror opposite, his gray-flecked hair springing on the back of his neck. He sat on the edge of the bed, his talisman tie dangling over her, and then he put his hand on her brow, "Do you feel any better? You don't seem to have any temperature."

She forced a dim smile. "I guess I'm feeling better."

Her father nodded, then got up, his voice boyishly eager, "Did you hear the debate, honey? What did you think of your old dad?"

She stared at her hand resting on the coverlet like a limp bird. "I heard most of it. It looked like you creamed the other guy."

He clenched his fist and hit it into the palm of his other hand, "I could feel the audience reacting as if I'd aced a tennis serve. It was fantastic!" Then he came over and lifted her limp hand and kissed it. "What a bash we'll have on election night!"

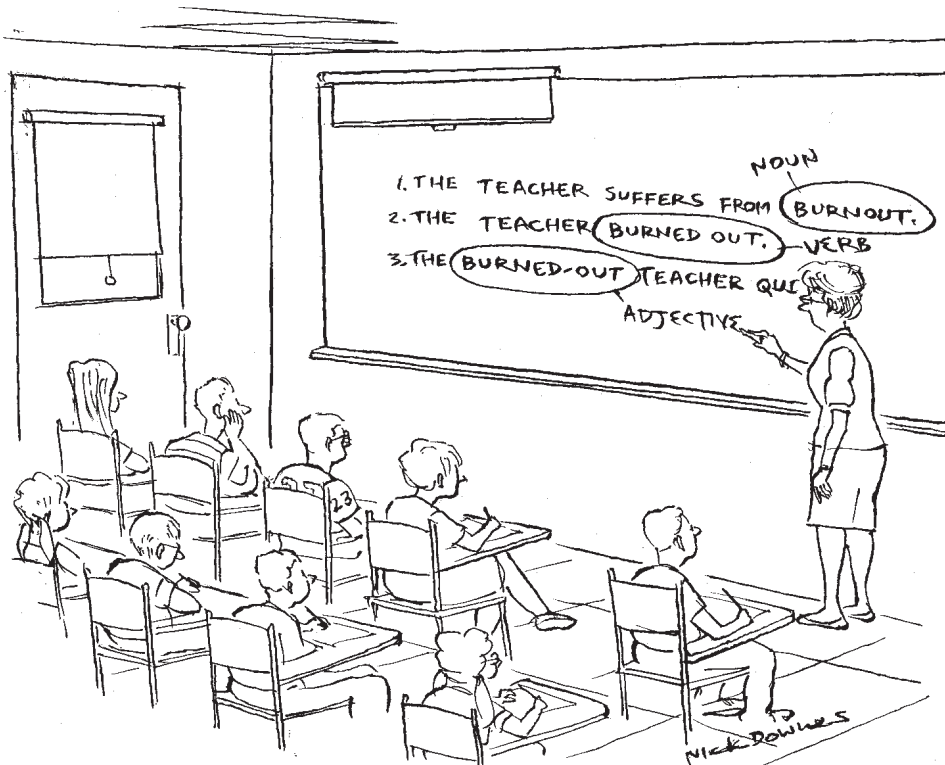
She thought how confident he looked, his blue eyes filled with the warmth she knew he could bestow on anyone he met, making each person feel like a personal friend. "That sounds great," she said in a small voice.

His eyes narrowed for an instant, "You look a little down, honey. How about playing a game of scrabble before dinner?"

She shook her head, wishing he would leave, the charm that had always delighted her seeming to pall suddenly. "If you don't mind, Daddy, I think I'd like to take a little nap."

He made a clapping sound with his hands. "Okay, but I'll be in later. Maybe they'll have a re-run of the debate that we can watch together." The cleft in his chin looked shadowy as he turned and walked toward the door, the mirror reflecting the confident smile, the lower lip that dropped appealingly.

With a flash of truth, she knew that it would never be the same between them—that the secret she held inside her, that was part of her father himself, would be like a wall between them. She thought of her mother who would come home later from the clinic, her face calm with her own confidence, her practiced eyes that could probe through instruments to detect optical diseases, failing to uncover her daughter's secret. And Kevin, who knew her secret, would pretend that nothing had happened, would refuse to talk to her about it, and in time would put it out of his mind forever. She knew now what it was like to be completely alone, and she reached over and pulled the koala bear close to her breast, burying her face in the fur, stroking the tufted ears, waiting for a response that would never come. She touched her stomach, feeling the flatness of it, the emptiness inside, and she wished she could roll time backward and she could be a child again, saying her prayers before sleeping, asking God to protect her from things hidden in the darkness.



Bella Is Beautiful

Stephen Vincent

To watch the film *Bella* is to have one's heart moved, and to see the world with new eyes that are more than likely to have tears in them.

Watch it once, and you will want to watch it again.

The first time, you will wonder—with the intellect of the good modern moviegoer—just how well José knew Nina before the day she was fired and he ran after her through the streets of New York. Or whether “voluntary manslaughter” is the proper charge in a fatal vehicular accident. Or where Nina went for the four or so years between the time she gave birth and then met her little girl on the beach.

The second time you watch the movie, you will understand that these questions could be answered in any number of ways that would not affect the movie's outcome, and what really brought you back to *Bella* was not the plot but the celebration of life and love as very, very difficult gifts that make us the persons we are.

Pro-Life Plus

If you have heard that *Bella* is a pro-life movie, there is something more important you should know. It is, first of all, an excellent movie that won the People's Choice Award at the Toronto Film Festival. It does not stand or fall on its pro-life message, and it appeals beyond the pro-life community. It is also, in the most elemental sense, a radical movie that tells mankind's oldest story, one that the trend of modern art has attacked for generations: the story of new life and the possibility of selfless, sacrificial love.

In this expansive sense, *Bella* is an extraordinary pro-life movie, with one of the strongest anti-abortion messages in film history. Yet the word abortion is never uttered. The moving scene of pregnant Nina in an abortion clinic transcends the media's “pro-life/pro-choice” polemics to describe a very personal, painful situation that abortion simply will not solve. Even abortion advocates will be drawn into the drama and face in a personal way the stark sterility of abortion and the inner human necessity to choose life and become pro-love.

In *Bella*, there is no way abortion could be a right or a choice or a personal good, or anything other than a tear in the fabric of all that is true and beautiful, a rupture in what we all deep down desire from life and from

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love. In addition, adoption is presented as a loving and life-giving option that may not be perfect, and may bring heartache and regret, but is sometimes the best that can be done in difficult circumstances.

Bella is also a very religious movie in which God's presence pervades, though a church service is never shown. People pray in the course of daily life, in crisis and in joy, in whispers and out loud. God is worshiped and respected through the interaction of characters; through food, music, and dancing—which are portrayed as sacramental; and, most of all, in the sacred relationships of family. In *Bella*, there is no other answer to life's problems and changing fortunes, good or ill, than to look beyond oneself for love, for God.

At movie's end, after riding a tide of emotion and a few plot twists for the mind to ponder, the viewer realizes that the message of *Bella* is softly spoken yet powerful—as powerful, provoking, and personal as the hushed utterance of a name. After all, what grabs the attention more than the sound of a name—what can turn your head or your heart with greater power than your own name whispered with intimacy and knowledge? “*I have called you by name*” (Isaiah 43:1). What silence there would be if your name had never been uttered.

How *uplifting* it is to realize, then, that this soft, powerful voice is seducing you, not to take you down to the typical Hollywood trysts, but rather to call you to something greater, to set your sights higher to where truth and beauty matter, and persons are valued as more than objects for pleasure.

Bella turns modern art upside down, to land man and woman on their feet. Rather than the familiar stream of consciousness, *Bella's* form of expression is more stream of *conscience-ness*—a whole soul of intellect, will, and emotion reaching out from itself to find truth in a world not of its making. The trend, from the Romantics to Joyce to Woody Allen, of interpreting experience as personal reflection is given a different spin. Reflection becomes impression; the world as my mirror becomes the world as the reality that *marks me and makes me*. In philosophical terms, this is Thomism come to the screen.

The Beach Scene

Bella aims for the heart of the culture of sexual excess, and turns it—gently, and in terms that are familiar to moviegoers—toward a vision of sanity, approaching sanctity. If the sex-saturated media one day soon exhaust themselves, we may view the *Bella* beach scene as a turning point.

José and Nina are on the beach, after a long day of sharing the most intimate facts and emotions. Nina stretches back in the darkness on the sand, lamenting that no one loves her for herself. José lies back in the sand as well, and the two are inches from each other, relaxed in one another's company yet not touching, as the sea rushes against the shore. You know Nina's no innocent schoolgirl, and the bearded José is clearly a ladies' man. Where most movies would fade to the grey of bodies rolling with the pounding surf, *Bella's* camera moves above, to a heaven's-eye view: to frame the two more clearly in their humanity and dignity. All male viewers, and probably most females, are thinking almost out loud: She's already pregnant; she's attractive and totally vulnerable; why not go for it? Yet the two are next seen walking like two innocents in the sand, fully clothed and not ashamed. The joy of pure love jumps from the screen and you know they made the right choice. They are wrestling with bigger issues than simple sex, engrossed in the dramatic puzzle of life and love.

A great bonus of *Bella* is the acting. Nina (Tammy Blanchard), bone thin, angular, and fresh-faced, moves through most scenes in an overly colorful Mexican dress that was her waitress outfit, looking Hispanic yet talking like a Bronx girl. The sameness of her dress from scene to scene highlights the range of emotional changes in her face. She enters the plot pacing a drugstore's aisles for a pregnancy test, frazzled, confused, and late for work. She pulls angrily at the locked doors of the upscale Mexican restaurant owned by José's brother, where José (Eduardo Verastegui) is head chef. A few moments later, Nina is fired for repeated lateness by José's brother Manny (Manny Perez) and rushes indignantly into the city's crowds.

José runs after her, catches up at the subway turnstile, and suddenly the viewer is invited into a great mystery. She tells him she is pregnant; he sees she is hurting, abandoned, and does not ask who the father is. The simple question, "You want to talk about it?"—a cliché in most settings in our therapeutic age—is spoken as though the whole world hung in the balance. Nina's "yes" opens the door—in this case, the turnstile—to the possibility of new life as she gradually allows José to bring her from the brink of abortion.

The later scene at the sidewalk café is a pro-life classic. Anyone who has spoken to a pregnant woman intent on abortion will recognize this conversation. Nina reveals little by little the reason for her decision. What about the father? asks José. "He's all for 'taking care of it.' Those are the words he used," she responds. What can she do, she continues, she can't even take care of herself, how can she take care of a child . . . she is broke and alone . . . what right does anyone else have to tell her what to do with her body . . . the reasons are familiar, repeated hundreds of times a day by hundreds

of abortion-bound women. Not even aware of the irony, Nina concludes by repeating as her own the words of the man who abandoned her. "Getting it 'taken care of' is what's best for me," she says.

In this subtle scene, the movie portrays what pro-lifers proclaim: Abortion is too often not a choice but an unwanted compromise for a woman, who winds up suffering alone and even taking on the words and the wounds of the irresponsible man. The scene gives dramatic voice to the new feminist perspective: Abortion is what men impose on women for a man's convenience.

The *Bella* Team

Like *The Passion of the Christ*, the Mel Gibson blockbuster that was at first spurned by major distributors, *Bella* is relying on people of faith to make the movie a winner at the box office. The response to prerelease screenings was so positive that a major distributor, Lions Gate, signed on late in the game and moved the release date from August to October. Like Gibson, the makers of *Bella* are seasoned moviemakers who tired of the Hollywood scene and decided to put their Catholic faith into film.

Actor Verastegui, producer Leo Severino, and director Alejandro Monteverde are part of Metanoia Films (the Greek word means "conversion"). Verastegui has traveled the country talking to faith groups about his own conversion and the making of *Bella*. Almost-tall, dark, and handsome, he was a TV star in Mexico before arriving in Hollywood to make it big. He had wandered from his Catholic faith, but in L.A. found himself reading Catholic books and reclaiming his childhood faith with a new maturity. Soon he was attending Mass daily at the same church Severino frequented. The two became friends with a shared vision. When Monteverde joined the crew, they became a triumvirate contra Tinseltown. *Bella* was born from their hearts.

They wanted not just a pro-life film, but one that would address the whole culture of death. An alert viewer versed in the full range of Catholic social-justice issues will notice messages about the dignity of work and of workers, the humanity of immigrants, the importance of intact families, the irreplaceable role of mother and father, the virtue of welcoming the stranger and of loving the sinner but not the sin.

In addition, there is a strong, positive image of Hispanics, especially Mexicans. They are hard-working, family-centered, intelligent, religious, compassionate—just the people you would want to move next door. The message is not only for Anglos in the United States to see Mexican newcomers as their neighbors. The movie also portrays a model for Hispanics, telling them to retain the virtues of their culture when they come to the States and to get along with others and among themselves. Very telling is the fact that José's

parents are a “mixed” Hispanic couple—his mother is Mexican and his father is Puerto Rican.

The Reviews

Yet some industry reviews have hit *Bella* hard. *Variety* called the movie “mediocre,” adding, “*Bella* is a film about selfless love that wants to be loved too much. . . . Manipulative pic trades in fairy-tale views of New York life alongside briefly sustained emotional confessions.”

Maybe to a hardened Hollywooder who is not open to *Bella*’s gentle message, or is offended by Nina’s choice for life at the abortion clinic, it’s a “manipulative pic.” Every film of substance seeks to push the edges of the viewer’s mind and emotions, how he thinks and feels about the situations that the movie portrays. How “manipulative” was the pro-abortion *The Cider House Rules*?

Regarding “fairy-tale views of New York life,” this born-and-bred New Yorker can assure *HLR* readers that the *Variety* reviewer has no idea what New York is really like. The stark, cramped view of Nina’s apartment, the hot and hectic scenes in Manny’s restaurant, and the on-mark sights and sounds of a city that has no time for the troubles of one more single mother are right on target. The *Variety* writer, I suspect, found the life message threatening and the positive portrayal of Hispanics unreal. There’s no foul language, no Latino gangs or macho womanizers.

More accurate are the responses of faith groups. The Knights of Columbus has placed the full weight of its 1.7 million international membership behind the movie, and sponsored a screening at the annual meeting of the organization’s 73 jurisdictional deputies. Supreme Knight Carl Anderson also invited Verastegui to speak at the Knights’ 125th annual convention held in August. “If we can get millions of people to see this film, we are going to save lives,” Anderson wrote, urging K of C councils to sponsor screenings in their areas. “We can get people to understand what we mean when we talk about a culture of life, or what it means to live a Catholic life. Our support of this movie can be the start of something great.”

Political columnist Robert Novak also sang the movie’s praises, saying that it “offers hope for the beleaguered anti-abortion movement to reverse the political tide running against it.” It will do so—by touching hearts and minds and weaving its message of life and love into the media culture.

For more information on the movie or to bring *Bella* to a theater near you, visit www.bellathemovie.com.

“What’s So Bad about Abortion?”

Alice Lemos

On Thursday, August 9, 2007, I attended a panel discussion at the Society for Ethical Culture on West 64th Street in New York City. Apparently, the founder of “Ethical Culture,” which considers itself a religion for the “advancement of social justice,” had “faith in man”; Felix Adler proposed what the Society’s website calls a “new religious movement” that would “further the principles of ethics among adults and children.” (The website features links to *The Nation* magazine, a radical journal that supports unlimited abortion rights and, as far back as 1959, participated in developing the Planned Parenthood Clinic on the Upper West Side of Manhattan.) The evening’s topic was “What’s so bad about abortion?”; and, seeing the names on the entirely pro-abortion panel, I had my doubts about mankind’s goodness and the goals of Ethical Culture.

The chair of the panel, Jean Smith of the NY Salon discussion society, made no pretense of being unbiased; she admitted that she had received several e-mails and phone calls from people who had requested a more “balanced” panel, but had dismissed these requests since, she said, “they could watch television for more balance.” The website of NY Salon, oddly enough, states: “We believe passionately in free speech and discussing ideas robustly. We agree with the quote generally attributed to Voltaire: ‘I disapprove of what you say, but will defend to the death your right to say it.’” Apparently this passion for what NY Salon calls the “battle of ideas” does not necessitate having a balanced panel. (Anyway, what TV “balance” was Smith talking about? In dramas like *Law and Order*, pro-lifers are invariably portrayed as (a) crazy, (b) crazy, and (c) crazy. And as for the news programs, the coverage of the annual March for Life in Washington, D.C., tends to be *non-coverage*.)

The evening’s panel—all female, natch—consisted of Donna Crane, director of governmental relations for NARAL Pro Choice America; Vicki Saporta, president and CEO of the National Abortion Federation; Ann Furedi, CEO of British Pregnancy Advisory Service; and Kirsten Moore, president and CEO of the Reproductive Health Technologies Project. (I learned long ago, by the way, that when pro-abortion people use the word “reproduce” or “reproductive rights,” they do not, in fact, want you to reproduce.)

Before we entered the building, we were handed the usual revolutionary

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newspapers that included an article about “dark days for women under the Bush regime.” In the audience were the usual elderly women with pro-abortion buttons, and some younger people, as well as a smattering of pro-lifers.

Ms. Moore began her presentation by stating that “pro-choicers are not extreme”—this despite the fact that they have consistently opposed *any and all* restrictions on legalized abortion, such as a ban on partial-birth abortion (which the panel called “so-called partial-birth abortion”) or parental notification for underage girls. A member of Columbia University’s Republican Club asked Ms. Moore during the Q & A whether, with advances in genetic testing, she could foresee a world in which babies could be tested in utero for eye color or for the “gay gene” and whether she thought it was okay for a woman to abort a baby with the brown-eyed gene. Moore—who is not, remember, an extremist—responded that while she personally might not abort the brown-eyed baby, she had no problem if another woman did.

Vicki Saporta of the National Abortion Federation repeatedly used the words “back-alley abortions” and “thousands of deaths”—trying to revive a myth that has been thoroughly debunked by Dr. Bernard Nathanson, formerly of NARAL, who admitted that he and the late Betty Friedan had cooked the numbers to impress Congress. Saporta also quoted from Congressman Henry Waxman’s report that states that “87% of crisis pregnancy centers give false medical information to women”; Waxman, of course, is one of the most pro-abortion congressmen alive and hardly an unbiased source. Saporta was outraged that such centers, which operate on shoestring budgets and frequently rely on unpaid volunteers, receive public funding. (She expressed no outrage about the misinformation Planned Parenthood gives to young women, or the \$305 million in “corporate welfare” it received from taxpayers last year.)

Saporta and the other members of the panel disparaged the idea of “post-abortion syndrome.” (In fact, the latest report by David Reardon and the Eliot Institute found that eight weeks after their abortions, “44% [of women] complain of nervous disorders” and “31% had regrets about their decision.”) During the Q & A, Saporta et al. lamely tried to defend themselves when a young social worker explained that her office is filled with couples that have regretted their abortions and are filled with pain and despair.

Fewer than 2 percent of American women will contract ovarian cancer. (Disclosure: I am an ovarian-cancer survivor.) Yet we lobby and pray that Congress will recognize the seriousness of our disease and allocate more money for research, even though there are relatively few of us. I hope the distinguished panelists would not dismiss the real pain of women stricken with ovarian cancer simply because ours is, after all, a “rare disease.”

Ann Furedi of British Pregnancy Advisory Service admitted that the British abortion rate had skyrocketed but said that “this was not necessarily a bad thing, because it means that more people are having more sex.” (She said this in a serious tone.) Later on, however, Furedi was forced to admit that it is a “life that is being terminated.”

Last, but not least, in the propaganda war was Donna Crane, the NARAL lobbyist, who stated that “abortion has been around forever, [so] it should be legal.” (Drunk driving has been around forever, too, and so has wifebeating; yet nobody wants to legalize either of those.) Crane also did not believe that any women were having abortions done in the ninth month. Perhaps she would care to examine the records of one George Tiller, the notorious late-term abortionist of Kansas.

An abortionist in the audience felt obligated to inform people that she “loves children, loves life, and is pro-life.” I think it is significant that even abortionists feel they must adopt the pro-life label in order to defend their grisly trade. (Afterwards, a friend remarked to me, “If she loves children so much, why does she kill them?”)

Given the hatred that the panel displayed towards crisis pregnancy centers; their refusal to acknowledge post-abortion syndrome; their insistence that they are “not extremists,” despite all evidence to the contrary; and their continued reliance on faulty statistics regarding post-abortion syndrome and abortion/gynecological cancers, I would say that the pro-abortion crowd is definitely on the defensive—which means that the tide has been turning in favor of the pro-life side. The abortion supporters in the audience referred repeatedly to “personal and private decision” and “women’s autonomy” without recognizing, as Feminists for Life do, that women deserve better than abortion; that fathers have rights; and that many of us (including this writer) are single parents and fully integrated members of society. I hope that the next time I attend a forum sponsored by NY Salon, it is called “Life—a Beautiful Option.”

The New Underground Railroad and the Old: Abolitionists' Perspectives on Abortion

John F. Quinn

When discussing abortion, activists often draw parallels with slavery to support their views. For abortion supporters, legalizing abortion was a move to emancipate women and thus the *Roe v. Wade* decision should be seen as a modern-day analogue to the Thirteenth Amendment. No doubt with this understanding in mind, a group of New Yorkers have banded together to provide what they consider to be a “new underground railroad”: They open their homes for a night or two to women from other states who come to Manhattan seeking late-term abortions.¹

Some pro-choice scholars seem to see a natural link between these two phenomena. Lawrence Lader, who founded the National Association for the Repeal of the Abortion Laws (NARAL) in 1970, began his publishing career in 1961 with a book on abolitionism: *The Bold Brahmins: New England's War against Slavery, 1831-1863*. Five years later, he produced an influential work on abortion.² In subsequent years, he completed books supporting population control, sterilization, and the legalization of an abortion pill, RU-486. Similarly, David Garrow began his career as a historian in the 1980s with a prize-winning book chronicling Martin Luther King's role in the civil-rights movement. In the 1990s he produced a lengthy account of the legal cases that led up to *Roe v. Wade*.³

Opponents of abortion allude to slavery just as often. For them, the two issues are joined because both practices deny human beings the right to live their lives to their full potential. Two of the more notable proponents of this view are Republican politicians: Lewis Lehrman and Alan Keyes. Lehrman ran for governor of New York in 1982 and narrowly lost to Mario Cuomo; Keyes was a presidential candidate in 2000. Both men have argued that *Roe* is the 20th-century analogue to *Dred Scott*, the Supreme Court's 1857 decision affirming slavery and denying Scott's claims to citizenship. Pope John Paul II drew the same sorts of parallels when he visited St. Louis in 1999. Appearing near the courthouse where the Scott case was first heard, the Pope denounced the Court's decision for declaring “an entire class of human beings . . . outside the boundaries of the national community and the Constitution's protection. Today the conflict is between a culture that affirms, cherishes and celebrates the gift of life, and a culture that seeks to declare entire groups of

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human beings . . . to be outside the boundaries of legal protection.”⁴

What anti-abortion forces have failed to do thus far, though, is publicize the abolitionists’ attitudes towards abortion. While abolitionists were of course principally focused on ending slavery and promoting racial equality, many were also involved in campaigns for women’s suffrage and temperance, and a number worked to oppose abortion and prostitution as well.⁵

Abolitionism’s Advent

American abolitionism dates back to the early 1830s, when some opponents of slavery decided that the efforts then being made to gradually eliminate slavery were simply wrongheaded: If slavery were an evil, then it had to be rooted out at once. The leading spokesman for this view was a young Boston journalist, William Lloyd Garrison. Raised a Baptist, Garrison had embraced a more radical “perfectionist” creed as an adult. Convinced that Gospel principles had to be applied to society as a whole, he called for immediate freedom for the slaves, sobriety for the nation, and peace for the world. While committed to many reforms, Garrison was first and foremost committed to abolitionism.

In 1831 Garrison established *The Liberator* to champion the abolitionist cause. Garrison demonstrated his militant mood in the newspaper’s inaugural issue: “I am in earnest—I will not equivocate—I will not excuse—I will not retreat an inch—and I WILL BE HEARD.”⁶ By the mid-1830s, Garrison and his allies were confronting the slaveholders head-on. They printed antislavery pamphlets and shipped them by the thousands to the slaveholding states. Tactics such as these infuriated most Southern whites and many Northern whites as well. Indeed, Garrison was almost lynched by an angry Boston mob in 1835.⁷

Through the 1840s, abolitionists made little headway as the country was led by three slave-holding presidents in succession: John Tyler, James Polk, and Zachary Taylor. Not until the 1850s would a sizeable segment of Northern opinion start to move in an anti-slavery direction. Many were disturbed by two pieces of legislation enacted in the early 1850s to appease slaveholders. The Fugitive Slave Act of 1850 made it easier for slave hunters to catch escaped slaves and return them to their masters, and the Kansas-Nebraska Act of 1854 raised the possibility that all new territories might allow slavery. These laws angered many in the Northern states and led to the creation of an anti-slavery party, the Republicans.⁸

Crusading Physicians

While most Americans were caught up in the increasingly rancorous debate over slavery in the 1850s, a small group of physicians were devoting

themselves to the abortion issue. In 1855, Dr. David Storer, a professor at Harvard Medical School, delivered a much-publicized lecture rejecting the widely held notion that abortion was acceptable if carried out before “quickening,” when the mother felt movement in her womb. He assured his listeners that fetal life began at conception and should never be terminated unless the mother’s life is endangered.

Storer’s address prompted his son, Horatio, who was also a doctor, to involve himself actively in the issue. For the next 15 years, the younger Dr. Storer would lead what historians have described as the “physicians’ crusade against abortion.”⁹ In 1857 Storer enlisted the newly established American Medical Association (AMA) to take up the issue. In 1859 a committee chaired by Storer issued a report on criminal abortion at the AMA’s annual meeting in Louisville. In their report, the committee members called on their fellow doctors to educate the general public about when fetal life really begins. They also urged their colleagues to press their state representatives to enact stricter laws against abortion and to impose stiffer penalties on abortionists. The delegates approved the report unanimously and many returned to their home states ready to lobby for stronger laws.

One of Horatio Storer’s early allies in the AMA was William Henry Brisbane of Wisconsin. Born in South Carolina into a slaveholding family, Brisbane had a change of heart about slavery in his late twenties. Like Angelina and Sarah Grimké and James G. Birney and a handful of other Southerners, Brisbane concluded that slavery was immoral and unchristian and decided to move to the North.¹⁰

By the 1840s Brisbane had become friendly with Garrison and had gained a measure of fame in abolitionist circles by telling his story.¹¹ An ordained Baptist minister, he also lectured and published tracts on the unscriptural nature of slavery.¹² By the 1850s, he had moved his family to Wisconsin, helping to found the village of Arena near Madison. While he remained a committed abolitionist, he spent most of his time trying to earn enough money to support his family. By operating a farm, working as a clerk of the State Senate and having a small medical practice, he was able to cobble together a living.¹³ Although extremely busy, Brisbane found time to press for amendments to the Wisconsin statutes on abortion. Having ready access to the state’s senators, Brisbane helped persuade them to enact a stricter law in 1858.¹⁴ He also corresponded with Storer from time to time and eagerly agreed to co-sign Storer’s 1859 AMA Report on Criminal Abortion.

Henry Clarke Wright: the Universal Reformer

While Dr. Brisbane provided practical assistance to the anti-abortion effort,

another abolitionist, Henry Clarke Wright, offered his philosophical support. Wright was ordained a Presbyterian minister in the 1820s but served only briefly in that capacity. By the 1830s he was finding Presbyterian doctrines too constricting and so he refashioned himself as a Christian reformer.¹⁵ In 1835 he met Garrison and at once became a close friend. For the next decade he would work tirelessly promoting abolition, pacifism, and temperance. From 1842 to 1847 he toured around England, Scotland, and Ireland, raising money for the abolitionists and trying to promote the peace movement.¹⁶

While never abandoning antislavery work or pacifism, Wright began championing reforms in marriage and family life in the 1850s. For the rest of his life these would be the issues that he would emphasize. By the end of the decade he had published two books that advocated gender equality within marriage and a nurturing approach toward child-rearing.

In his first book, *Marriage and Parentage*, Wright warned that parents should not have more children than they could properly care for. He was of the view that husbands often pressured their wives into having sexual relations. Wives then frequently found themselves facing unwanted pregnancies. While sympathizing greatly with women facing this predicament, Wright made clear that abortion, or “child-murder,” was not the solution:

Doctors, instead of urging *men* to control their passions, direct their attention to discover means to prevent conception and procure abortion. To kill her babe, the mother endangers herself, and she resorts to medical advisers to help her destroy her children, with safety to herself. Disguise it as we may, to kill a child before it is born . . . even though it can be done without injury to the mother, is no less a violation of the laws of life, than to kill it after it is born. Those doctors who aid women to destroy their unborn children, instead of urging men to control their sensuality, ought to be treated as the vilest of men.¹⁷

For Wright the solution was clear. Husbands needed to control their sexual passions. For women who were unable to persuade their husbands to restrain themselves, Wright suggested that they consider divorce.¹⁸

Four years later, Wright produced a sequel, *The Unwelcome Child; or the Crime of an Undesigned and Undesired Maternity*. Again, using relatively frank language for the time, Wright lamented that many husbands felt that they had a “license” to have sex whenever they wanted.¹⁹ Due to men’s “animal indulgence,” many women were facing unwanted pregnancies. Wright feared that many of these women in turn were resorting to abortion.²⁰

Wright’s books went through multiple editions in the 1850s and ’60s and were widely reviewed. Some readers like the abolitionist and feminist Lucy Stone were thrilled by Wright’s candid discussion of the problems women faced in marriage, while others were troubled by his seemingly cavalier

endorsement of divorce.²¹ Horatio Storer may very well have been influenced by Wright's books, for in 1867 he produced a tract meant for general readers entitled, *Is It I? A Book for Every Man*. Making many of the same points as Wright, Storer argued that selfish, lustful husbands were putting their wives in very difficult positions, forcing them either to have children in rapid succession or to contemplate abortion. He urged men to treat their wives with more respect, and said he hoped for the day when marital rape would no longer be legal. Storer differed with Wright, however, on divorce, arguing that it was socially destructive.²²

Postwar Victories

While some states and territories had already moved to tighten their abortion statutes by 1860, after the Civil War ended dozens of states enacted new laws. Between 1866 and 1877, thirty new bills were approved.²³ In some states, references to quickening were dropped so that abortions at any stage of pregnancy were henceforth illegal unless performed to save the life of the mother. A number of states banned the advertisement of abortifacients while others increased the penalties imposed on abortionists.

Surely some of the credit for this new wave of legislation must be accorded to Horatio Storer, who produced three influential books on abortion between 1865 to 1870.²⁴ Many others were involved as well: The AMA authorized a follow-up Report on Criminal Abortion in 1870. A three-man committee issued a strongly worded statement on abortion in the following year. Describing abortionists as "modern day Herods," the committee called on the AMA to purge any and all abortionists from their ranks.

A host of doctors wrote articles in medical journals treating various aspects of the abortion issue. Several of these physicians appear to have been motivated to join the "physicians' crusade" because of their experiences in the Civil War.²⁵ Having seen so much carnage during the war, the doctors wanted to help prevent any further killing in the country. One physician/veteran, P. S. Haskell of Maine, declared that abortion and slavery were both grave sins and he worried about the "penalty which a Just God, the avenger of the blood of innocents, will mete out to us."²⁶

Suffragist Support

After the Civil War, Storer and his physician allies also received assistance from Susan B. Anthony, Elizabeth Cady Stanton, and other leaders of the women's suffrage movement. Having worked to support abolitionism and black equality for more than 20 years, Stanton and Anthony were adamant that the Fifteenth Amendment open up the franchise not just to black

men but to all women as well. To publicize their cause, they established a weekly called *The Revolution* in 1868.

During its three years of operation, *The Revolution*'s editors tirelessly promoted women's suffrage and women's equality. They also took up the anti-prostitution, temperance, and anti-abortion causes. Some doctors favored legalizing and regulating prostitution in order to limit the spread of disease. Stanton and Anthony were utterly opposed and argued that prostitution was demeaning to women. Assisted by old-time abolitionists such as Garrison and Wendell Phillips, the feminists campaigned vigorously against any efforts to legalize prostitution. Anthony toured Midwestern states giving lectures to large crowds. In the face of such stiff opposition, the pro-prostitution forces pulled back and stopped trying to revise the legal code.²⁷

On abortion the feminists were equally uncompromising. Anthony wrote an editorial on "Marriage and Maternity," in which she referred to abortion as a "monstrous crime." While acknowledging that women deserved blame for having abortions—"no matter what the motive"—she placed more of the blame on the husbands: "Thrice guilty is he who, for selfish gratification . . . drove her to the desperation which impelled her to the crime."²⁸ Stanton expressed similar views in her essays. In one editorial, "Child Murder," she expressed her disgust at a report from a doctor in rural Maine estimating that there were "*four hundred murders annually produced by abortion* in that county alone." She came to the same conclusion that Anthony, Wright, and Storer had reached: "Forced maternity" was the cause of this "crying evil." However, while Wright and Storer saw male continence as the solution, Stanton and Anthony argued that women's suffrage would play a critical role in the solution. Granting women the vote would empower them both in their homes and in society at large.²⁹

While Anthony and Stanton repeatedly condemned abortion in the harshest possible language, their views have been obscured over time. Although some feminist historians have acknowledged the suffragists' opposition to abortion, others have ignored or misrepresented their views.³⁰ An indicator of the current state of confusion is the op-ed published last October by Stacy Schiff in the *New York Times*. In her essay, Schiff indicated how frustrated she was that Feminists for Life had purchased Anthony's birthplace in Adams, Massachusetts. She wondered, "When exactly did Susan B. Anthony—who fought more tenaciously for women's rights than anyone else in our history—cast her anti-abortion vote?"³¹ Three days later, Lynn Sherr, the CBS news correspondent, seconded Schiff's claims: "There is no evidence about what she believed, no written record that she ever spoke out on this issue."³²

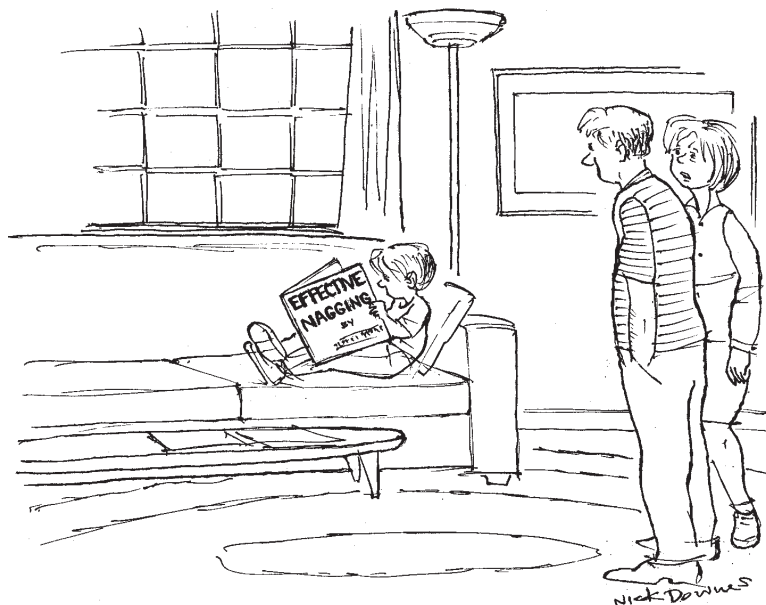
Conclusions

By 1900 the crusading physicians had won a sweeping victory. Every state in the nation—except Kentucky—had enacted stiff anti-abortion statutes.³³ Many doctors remained uneasy because they believed that abortions were still occurring illegally in considerable numbers.³⁴ Nevertheless, Storer and his fellow doctors had much to be glad about. They had helped to shift the nation's laws on abortion and had done much to educate the general public about fetal life. In their efforts the doctors had received a considerable boost over the years from abolitionists and women suffragists alike. For these reformers, abortion was a grave evil—along with slavery, patriarchy, drunkenness, prostitution, and war. These men and women would be quite shocked to learn of the doings of the “new underground railroad.”

NOTES

1. The group, known as the Haven Coalition, was founded in 2001. See Debbie Nathan, “The New Underground Railroad,” *New York Magazine*, December 12, 2005.
2. Lawrence Lader, *Abortion* (New York, 1966).
3. David Garrow, *Bearing the Cross: Martin Luther King, Jr. and the Southern Christian Leadership Conference* (New York, 1986); idem, *Liberty and Sexuality: The Right to Privacy and the Making of Roe v. Wade* (New York, 1994).
4. “Pope Sets Forth a Moral Agenda in St. Louis,” *New York Times*, January 27, 1999.
5. For the connections among the reform movements, see Ronald Walters, *American Reformers, 1815-1860* rev. ed. (New York, 1997).
6. *Liberator*, January 1, 1831, quoted in James Brewer Stewart, *William Lloyd Garrison and the Challenge of Emancipation* (Arlington Heights, IL, 1992), 51.
7. See Henry Mayer, *All on Fire: William Lloyd Garrison and the Abolition of Slavery* (New York, 1998), 200-210, 244-248.
8. See James McPherson, *Battle Cry of Freedom: The Civil War Era* (New York, 1988), 3-169.
9. See Frederick N. Dyer, *The Physicians' Crusade against Abortion* (Sagamore Beach, MA, 2005); James Mohr, *Abortion in America* (New York, 1978), 147-170.
10. Dyer, 302.
11. See William Henry Brisbane to William Lloyd Garrison, March 26, 1852, Anti-Slavery Collection, Boston Public Library, Boston, Massachusetts. Rev. Wm. Henry Brisbane, *Address to the Ladies Anti-Slavery Society of Cincinnati* (Cincinnati, 1840).
12. See William Henry Brisbane, *Slaveholding Examined in the Light of the Holy Bible* (Philadelphia, 1847).
13. At one point money was so tight that he had to cancel his subscription to the AMA journal and the *Frederick Douglass Paper* in order to save money. See William Henry Brisbane Diary, December 18, 1857, Reel 1, William Henry Brisbane Papers, Wisconsin Historical Society.
14. William Henry Brisbane to Horatio Storer, March 19, 1859, Storer Papers, Countway Library of Medicine, Boston, MA; Mohr, 140.
15. Lewis Perry, *Childhood, Marriage and Reform: Henry Clarke Wright, 1797-1870* (Chicago, 1980), 1-25.
16. Ibid., 43-50. See also Clare Taylor, *British and American Abolitionists: An Episode in Transatlantic Understanding* (Edinburgh, 1974); Alan Rice and Martin Crawford, eds., *Liberating Sojourn: Frederick Douglass and Transatlantic Reform* (Athens, GA, 1999).
17. Henry Clarke Wright, *Marriage and Parentage* (Boston, 1854), 100-101.
18. Ibid., 138.
19. Idem, *The Unwelcome Child* (Boston, 1858), 15.

20. Ibid., 28, 101-111.
21. Perry, 250-254, 349-350.
22. Horatio R. Storer, *Is It I? A Book for Every Man* (Boston, 1867), 94-95; Dyer, 131-134; Joseph Dellapenna, *Dispelling the Myths of Abortion History* (Durham, NC, 2006), 369.
23. Mohr, 200.
24. Along with *Is It I?*, Storer's other books were: *Why Not? A Book for Every Woman* (Boston, 1866) and *Criminal Abortion: Its Nature, Its Evidence, Its Law* (Boston, 1868). The last book Storer co-authored with Franklin Fiske Heard, a Boston attorney.
25. Marvin Olasky lists seven physicians/veterans who joined the anti-abortion crusade after the Civil War. See his *Abortion Rites: A Social History of Abortion in America* (Washington, DC, 1992), 119-121.
26. Quoted in *ibid.*, 120.
27. David Pivar, *Purity Crusade: Sexual Morality and Social Control, 1868-1900* (Westport, CT, 1973), 34-36, 50-52. Dellapenna, 408.
28. Susan B. Anthony, "Marriage and Maternity," *The Revolution*, July 7, 1869. See also Dellapenna, 374.
29. Elizabeth Cady Stanton, "Child Murder," *The Revolution*, March 12, 1868, printed in Mary Krane Derr et al., eds, *Prolife Feminism: Yesterday and Today* (New York, 1995), 44.
30. Among the feminist-oriented scholars who note the suffragists' antiabortion views are Linda Gordon, *Woman's Body, Woman's Rights: A Social History of Birth Control in America* (New York, 1976), 109-111; Carl Degler, *At Odds: Women and the Family in America from the Revolution to the Present* (New York, 1980), 243; Mohr, 111-113. In a chapter entitled, "Obfuscating Nineteenth Century Feminist Attitudes," Dellapenna sharply criticizes a number of contemporary feminist scholars, including Reva Siegel, Rosalind Petchesky, and Joan Hoff. He also criticizes Gordon and Mohr for injecting their own pro-choice sympathies into their accounts. See Dellapenna, 387-398.
31. Stacy Schiff, "Desperately Seeking Susan," *New York Times*, October 13, 2006.
32. Lynn Sherr, "Letter to the Editor," *New York Times*, October 16, 2006.
33. Kentucky had effectively banned abortion through state court decisions. See Mohr, 229-230.
34. Dyer, 285-290.



"At least he's reading."

Cultures of Death, Old and New

Mark P. Mostert

Relatively little attention has been paid to significant historical catalysts that preceded what later became known as the Holocaust. Long before Hitler murdered the Jews, he killed tens of thousands of Germans with disabilities. These citizens, deemed socially and economically worthless, were the first victims of state-sanctioned genocide. Once killing techniques had been perfected on German society's most vulnerable, genocide skills were transferred to the death camps where millions more perished.

By the time the Nazis assumed power, disposing of people with disabilities was hardly a new idea. There is ample evidence that in the 19th century both medical and legal debates across Europe included fatal solutions for inmates of asylums and others with physical, emotional, and intellectual disabilities. These discussions gathered critical momentum during the first half of the 20th century.

The Early 20th Century

Care of people with disabilities in late-19th-century Germany was largely provided by private or state custodial institutions. With the outbreak of World War I, the circumstances of care changed significantly. For example, food rationing cut daily caloric intake to near starvation levels, heating and warm clothing were severely limited, and medicine became scarce. In combination with overcrowding, these factors meant marked increases in communicable disease and elevated mortality rates in asylums.

Wartime also changed perceptions of disability among the general public, who increasingly viewed people with disabilities as unable to contribute to the national effort, distinguishing them from those that were able to do so. Unsurprisingly, by the end of WWI public perception attached higher economic worth to people without disabilities and lesser worth to people with disabilities. Compassion had been replaced by cold economic realities.

People with disabilities were also seen as an economic drag in terms of public policy, feeding the notion that the number of asylum inmates had to be drastically reduced. To achieve this aim, many asylum inmates were transferred to outpatient programs, a move that, ironically, helped feed prejudicial stereotypes. Because of their increased public visibility, their infirmities

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and their sometimes inappropriate or undesirable behavior were almost always considered a threat to public decency and social order. Inappropriate public behavior by people with disabilities was often dealt with through legal action and the criminal justice system, thus melding disability and criminality in the public mind.

The juxtaposition of severe economic constraints, levels of economic viability attached to human worth, and the sense that people with disabilities formed a burdensome and often criminal element in society all added significant fuel to concurrent ethical debates about euthanasia and sterilization. By the late 1930s, there was open discussion among many asylum administrators about actually killing inmates, thereby satisfying two pressing needs: First, asylum and outpatient programs would be depopulated, and second, the perceived threat to law and order that these people supposedly posed would be eliminated, thereby restoring public perceptions of safety. Later, the economic worth of human life and the notion of criminality tied to disability under the Nazis proved a key element in creating and sanctioning genocide against people with disabilities—those whose lives were, essentially, worthless.

1920: Life Unworthy of Life and Darwinism

In 1920, the concept of living beings' not being worthy of the life they embodied entered public debate. *Permission for the Destruction of Life Unworthy of Life*,¹ a tract published by university professors Karl Binding and Alfred Hoche, attempted to justify the killing of people with disabilities—they were “incurable idiots” having no human will or sense of living. For Binding and Hoche, the right to live was to be earned, not assumed: “Their life is absolutely pointless, but they do not regard it as being unbearable. They are a terrible, heavy burden upon their relatives and society as a whole. Their death would not create even the smallest gap—except perhaps in the feelings of their mothers or loyal nurses.”²

Binding and Hoche's tract complemented the ideas of Social Darwinism. Darwin's seminal idea related to biological determinism—it held that *biological* traits were genetically passed from one generation to the next. But other scientists soon posited Social Darwinism, which espoused the theory that *social* traits were passed from one generation to the next, thereby reinforcing popular social prejudices as scientific fact. Because Social Darwinism held that all visible traits of human difference, including behavioral traits, were genetically determined, just as eye or hair color was genetically determined, so, therefore, were drunkenness, sexual promiscuity, homosexuality, and any other unsanctioned social behavior.

Predictably, it was a simple extension of these perceptions to the idea that an effective way of controlling or eliminating these social problems was by sterilization, incarceration, or death. Thus, people with disabilities, many of whom displayed inappropriate behavior or abnormal physical appearance, were among the groups of people targeted by the German eugenic movement—a movement that was more radical than similar movements in the U.S. and England, because the political heterogeneity that encouraged diverse views in the U.S. and England was largely absent in Germany.

1933: The Nazis Assume Power

Social Darwinism and eugenics were firmly in place in the professional and lay psyche when the National Socialists under the leadership of Adolf Hitler were elected in January 1933. These two ideas became the bedrock of increasingly coercive official policy, paving the way for enactment in the real world, first by involuntary sterilization.

The Law

One of the first official acts undertaken in this area by the Nazis was the enactment of a sterilization law in 1933, the *Law for the Prevention of Genetically Diseased Offspring*, which decreed compulsory sterilization for persons characterized by a wide variety of disabilities. The mechanism for deciding who should be sterilized resided in 220 three-member regional Hereditary Health Courts consisting of a judge and two physicians. Obviously, people in or recently discharged from institutions were particularly vulnerable to this law. Approximately 30 to 40 percent of those sterilized between 1934 and 1936 were patients in asylums across Germany.³ The sterilization law reached many categories of the “hereditarily sick,” including the sterilization of persons with mental retardation (200,000), schizophrenia (80,000), Huntington’s chorea (600), epilepsy (60,000), blindness (4,000), hereditary deafness (16,000), grave bodily malformation (20,000), hereditary alcoholism (10,000), and other specified groups.⁴

The law was repeatedly amended to close loopholes that might allow some persons with disabilities to escape sterilization. For example, an amendment was added to cover women with a “hereditary disease” who became pregnant prior to sterilization or women who were impregnated by men with such “diseases.” In such cases the law officially sanctioned abortion and simultaneous sterilization.⁵ To make the distinction between the “healthy” and “unhealthy” even clearer, the law stipulated heavy penalties for physicians carrying out such actions on persons or unborn children legally judged to be healthy.

Also in 1933, the Nazis enacted the *Law Against Dangerous Habitual Criminals*, the statutes of which further blurred the distinction between bona fide criminal behavior and inappropriate behavior that characterized many people with disabilities. The law stipulated that these criminal *asozialen* (asocials) could be committed to state asylums, held in indeterminate protective custody, and, in the case of sex offenders, officially castrated.⁶

These and other laws were the precursors of the *Nuremberg Laws* of 1935, which, while directed primarily at Jews, also regulated marriage among people with disabilities. For example, the *Marriage Health Law* prohibited marriage between two people when either party suffered from some form of mental disability, had a “hereditary disease” as previously defined by law, or when one or both partners suffered from a contagious disease, particularly tuberculosis or venereal disease.

To this point, while Nazi law had become increasingly segregationist and isolationist toward people with disabilities, it had not yet sanctioned murder, even though it is clear that as early as 1935 Hitler had indicated that he would use the cover of war to murder psychiatric patients in fulfillment of a long-held belief that he had articulated in *Mein Kampf*.⁷

Propaganda

By 1938, the public mind viewed people with disabilities as a separate, different, often criminalized group of less economic value than their counterparts without disabilities. German literature and art soon celebrated lives unworthy of living in a host of propagandistic projects.⁸ For example, two 1935 silent documentaries produced largely for distribution among Nazi Party functionaries and sympathizers depicted persons with severe physical and intellectual disabilities in staged scenes to show them to their greatest disadvantage.⁹

Other films were produced for wider audiences. A 1935 propaganda sound film, *Das Erbe* (The Inheritance) depicted, in a pseudoscientific format, the medical, social, and economic consequences of hereditary disabilities. More soon followed. 1937’s *Opfer der Vergangenheit* (The Victim of the Past) went much further, comparing healthy, ideal German citizens with institutionalized people with severe disabilities and adding that Jewish mental patients were creations that violated natural law. The film’s solution? Compulsory sterilization.

Propaganda was not limited to film, however, but also appeared in German literature. An exemplar in this area was the novel *Sendung und Gewissen* (Mission and Conscience) which was turned into a very popular film, *Ich*

Klage an! (I Accuse). In this story, a young beautiful woman suffering from multiple sclerosis decides that her life is no longer worth living and requests a “merciful death” at the hand of her husband, a physician. In a grim death-scene climax, he administers the fatal injection to his wife who dies peacefully to the strains of soothing piano music played by a friend in the next room. At his trial, the doctor heroically refuses to allow his colleagues to invent an alibi for the murder, challenging the court by asking: “Would you, if you were a cripple, want to vegetate forever?” Predictably, the court acquits the physician, not only finding him not guilty, but declaring that his actions were merciful—a notion reinforced in the closing scenes, where the words of the Renaissance physician Paracelsus are recalled, that “medicine is love.”¹⁰

This type of propaganda, fueled by then-current perceptions of disability and euthanasia, profoundly affected the German public. By 1938 requests for mercy killing were being received by Nazi officials. For example, requests were received from a woman ill with terminal cancer and from a man who had been severely injured and blinded in a construction accident.¹¹ The state was also receiving similar requests from parents of newborns and young infants with severe physical and intellectual disabilities.¹²

From Implicit to Explicit Killing

To this point Nazi involvement with mercy killing, while implicit, appears to have been muted and uninitiated by the state. However, requests for “mercy” deaths were increasingly considered acceptable. The threshold for beginning official killing of people with disabilities was reached in 1937 and 1938, when publicly reported cases of mercy killing galvanized the population. The first case presented an act of individual commission. In 1937, the *Frankfurter Zeitung* reported the case of a farmer charged with shooting his adolescent, behaviorally disturbed son to death as the boy slept. Charged with murder and facing the death penalty if convicted, the father justified his actions by suggesting that his son’s emotional disabilities made the son “mentally ill in a manner that threatened society.”¹³ At trial, in addition to the harm-to-others defense, the father’s attorneys and Nazi Party officials argued forcefully that the son had been an unnecessarily heavy financial burden on the family. The father was sentenced to only three years in prison, of which he served one.

The second case signified a critical shift from individual citizens’ responsibility for and commission of “mercy killing” to these actions by the state, that is, state-approved involuntary killing by others based only on the disability of the victim. The Knauer child was a frail girl with several

severe disabilities. She was blind, without one leg and part of an arm, severely mentally retarded, and subject to chronic convulsions.¹⁴ Her father petitioned the Nazi authorities to grant her a “merciful death” but received no official response. He persisted until in the winter of 1938-39, she was finally admitted to the University of Leipzig’s Pediatric Clinic. Aside from the child’s obvious physical and intellectual disabilities, the father asserted that the child, by remaining at home, was causing his wife significant psychological and emotional stress. He requested that the physicians proceed by “putting it to sleep.” Initially, the doctors refused, reminding the father that such action was illegal. Undaunted, the father, encouraged by the child’s grandmother, petitioned Hitler directly to sanction the child’s death.¹⁵ Arguably, the persistence of this one man became the catalyst for official genocide.

Hitler’s personal attending physician, Karl Brandt, was dispatched to Leipzig to examine the child and to evaluate the extent of the child’s disability. Brandt had prior instructions to meet with the Leipzig consulting physicians to confirm the father’s view of the child. He had further been directed that should the child indeed be severely disabled, he should instruct the attending physicians, in the name of the state, to “carry out euthanasia.”

In his trial testimony after the war, Brandt emphasized that part of the rationale in this approach was to absolve the parents and doctors of any guilt or incrimination that they were responsible for the child’s death. Hitler, on behalf of the state, assumed responsibility for the death of the Knauer child, directing Brandt to assure the physicians that any legal repercussions resulting from their actions would be quashed. Hitler’s personal assurance was also relayed, via his deputy, Martin Bormann, to Franz Guertner, the Minister of Justice.¹⁶ In sum, the child’s death was murder sanctioned by the state, which had now become the adjudicator not only of life and death, but also in the absolution of guilt.

At Nuremberg, Brandt testified that in Leipzig he discovered a “creature . . . born blind, an idiot—at least it seemed to be an idiot—and it lacked one leg and part of an arm.”¹⁷ The attending Leipzig physicians appeared to have offered little resistance, assuring Brandt that the Knauer child should die. Citing their professional experience on the maternity wards, they informed Brandt that it was “quite natural for doctors themselves to perform euthanasia in such a case without anything further being said about it.”¹⁸ Shortly thereafter, a junior physician administered a lethal injection to the child while the nurses were taking a coffee break.

Subsequent to the death of the Knauer child, Hitler authorized high-level officials to formally establish a state-sanctioned program to kill children

suffering from physical and intellectual disabilities.¹⁹

Advances to Organized Explicit Killing

The Knauer child's death demonstrated that social and official precursors to widespread organized homicide of people with disabilities were firmly in place. In May 1939, Hitler ordered the creation of an advisory committee that would pave the way for the widespread killing of children with disabilities. The children-killing program was to report directly to Hitler's Chancellery through a front organization under the pseudoscientific name of the *Committee for the Scientific Treatment of Severe, Genetically Determined Illnesses*.

On August 18, 1939, prior to the German invasion of Poland that began World War II, this committee produced a secret report that was disseminated to all state governments requiring that all midwives and physicians who delivered infants with obvious congenital disabilities were to register these children and the nature of the disability, ostensibly

to clarify certain scientific questions in areas of congenital deformity and mental retardation [such as] idiocy or Mongolism (especially if associated with blindness or deafness); microcephaly or hydrocephaly of a severe or progressive nature; deformities of any kind, especially missing limbs, malformation of the head, or spina bifida; or crippling deformities such as spastics.²⁰

The directive applied to children up to the age of three. Across Germany, these new requirements were officially added to other information routinely required by the state at the birth of any child, such as evidence of venereal or other contagious diseases. As added incentives, midwives were paid for every infant with disabilities so referred. Failure to report these cases resulted in substantial fines. Later this directive would also require teachers to report these disabilities among their students in schools.

By the time the official program ended in 1941, approximately 70,000 people with disabilities had perished at the hand of the state.

Some Historical Implications

The Nazi example makes plain that macro political and social forces can easily be used to harm people with disabilities. It is also a historical touchstone that can inform our understanding of some perceptions of disabilities now largely accepted in advanced technological societies—such as those that allow and/or encourage the abortion of preborn children with identifiable anomalies, and those that propose euthanasia of newborn or even older children with disabilities.

In Germany, several key societal aspects converged in a “perfect storm” that resulted, eventually, in the deliberate deaths of tens of thousands of people with disabilities. Among the primary aspects of this storm of death were the role of science, the power of ideas, the complicity of the medical profession, and the role of propaganda.

The Role of Science

In some ways, Nazi ideology legitimized itself through the pseudoscience of Social Darwinism, driving perceptions of difference from benign recognition to active genocide. Not only was the *pseudoscientific* claimed as *science*, but the pseudoscientific was used as an instrument of deceit to perpetuate murder. On one hand, the appeal to “science” allowed the willing German intelligentsia to be more easily convinced to support and participate in brutality masquerading as research. On the other hand, the claims of Social Darwinism fed the public’s long-held distrust of those who were different, including people with disabilities.²¹

The enchantment of the intelligentsia with pseudoscience and the willingness of the public to seize pseudoscientific claims as legitimate knowledge remain troubling today. For example, there is ample evidence that children with Down Syndrome can live productive and participatory lives, but in most instances where Down Syndrome is detected in utero, the overwhelming medical advice is to abort because of the child’s future medical issues and supposed quality-of-life challenges.²² Further, even relatively minor, and absolutely correctable, birth defects such as cleft plate have been perceived as justification for termination of pregnancy.²³

These events emphasize that it is only by careful attention to canons of converging and replicable experimental evidence over time that we have any hope of rooting out pseudoscience, thereby improving the lives of persons with disabilities by the most effective and efficient means.

The Power of Ideas

The Nazi animus toward people with disabilities demonstrates the power of ideas and their consequences in the real world. In Nazi Germany, harshly prejudicial ideas toward people with disabilities replaced other, less extreme ideas. The idea of eugenics, for example, is not necessarily sinister, but it was quickly co-opted for nefarious ends. What made the idea of eugenics dangerous to people with disabilities was that it propelled action with scant regard for decency and compassion. In the marketplace of ideas, eugenics was embraced largely because it served a wider prejudicial purpose, namely, to control and then rid Germany of people deemed different, inferior, and

asocial. The minority who resisted were soon silenced in the tidal wave of demand for conformity to a master race. Other, less lethal ideas could have been adopted. For example, energy could have been directed to renewed efforts at understanding deviant behavior, especially behavior resulting from physical, emotional, and intellectual disabilities.

Today, there is ample evidence that the culture of death is co-opting ideas that, in and of themselves, may have greater or lesser value for philosophical debate, but that raise serious concerns about significantly negative real-world implications. For example, the quality-of-life argument is often raised as justification for either abortion or euthanasia of children with disabilities, especially those with severe and profound disabilities.²⁴ The argument for death over suffering is powerful, yet perhaps not as convincing as the general public seems to believe it is. The quality-of-life standard almost always ignores the many scientific advances that make the sequelae of many disabilities much more manageable than the culture of death would have us believe.

Convergence of Conditions

Political, intellectual, and social conditions were ripe in late 1930s Germany to translate what, until then, had been a debate over theoretical ideas into practical action. Forced sterilization would have been less likely had it not had the support of the government, medical, and other science professionals, and, at least by their massive silence, the German public. The official act of sterilization, therefore, melded perception of difference, irrational optimism over the possibilities of genetics, a pressing need to curtail inappropriate social behavior, and the willingness to destroy the differences of people with physical, emotional, and intellectual disabilities, resulting in a powerful justification for action against those perceived as different.

There can be little doubt that today, societal forces and other macro social conditions are arranged in ways that have profound implications for persons with disabilities. On one hand, the level and quality of services provided to people with disabilities is perhaps higher than at any other time in history, as is society's acceptance of physical, emotional, and intellectual difference. However, it is equally apparent that perceptions of people with disabilities, especially those with severe and profound disabilities, are increasingly being framed by their social and economic worth. It is clear that the worth of people with disabilities is central to weighty and difficult debates around abortion, stem-cell research, and euthanasia. Rapid advances in genetic and other medical research have ascribed new and different notions

of worth, not always positively, to children with disabilities. Thus, the general social acceptance of abortion, medical biases against those diagnosed as disabled in utero, and the general public's unquestioning acceptance of the quality-of-life standard, together combine to produce a particularly virulent and forceful degree of lethality for preborn and newborn children with disabilities.

Abortion of children with disabilities relates to even broader biomedical issues, such as stem-cell research and organ harvesting.²⁵ It is not unreasonable to posit that coupling the undesirability of some in utero conditions to the potential medical and societal worth of these same fetuses post-abortion may well meld into increased abortion of fetuses deemed imperfect yet usable for other purposes.

In terms of euthanasia, notions of the economic worth of children with disabilities such as those espoused by Singer²⁶ are already well established. In sum, Singer calls for a radical reassessment of what to do with children born with severe and profound disabilities. Largely through quality-of-life and utilitarian arguments, Singer suggests that the value and fate of newborn children with severe disabilities should be decided according to the child's potential communal worth, including the child's economic worth.²⁷ That is, whether the child is allowed to live or not is completely dependent on the parents' and community's judgment of the child's potential to serve the community; the child does not have a right to exist simply by having being born. As with Binding and Hoche, this makes the right to life depend on social usefulness.

At the opposite end of the lifespan, recent developments in the U.S. and Europe are changing the voluntary nature of a "gentle death" still further, also based, in part, on economic worth. In the best-known example, Oregon voters have not only approved the power of the state to support physician-assisted suicide, but have also assigned economic value to who should and who should not receive expensive health care (via its Medicaid health-care rationing). Oregon law, for example, specifies denial of treatment to some late-stage terminal illnesses and very-low-birth-weight babies.²⁸ Irrespective of personal preferences on either side of this debate, the Oregon example clearly shows a shift from strict compassion and ethical obligation in treating individuals to a more dangerously practical medicine based on collective economic viability.

In Europe, the Dutch idea that euthanasia is a citizen's right—which thus legally absolves physicians from criminality—is an unsubtle reincarnation of Nazi doctor Viktor Brack's ghoulish notion that "the needle belongs in the hand of the doctor." In both Oregon and the Netherlands, the state has

become an arbiter of decisions about life and death for its citizens, including persons with disabilities. These issues are in need of urgent discussion among special-education researchers and practitioners alike.

Complicity of the Medical Professions

It is important to note that the enactment of prejudice against people with disabilities in Nazi Germany could not have succeeded without the complicity of the medical professions. Power over life and death was placed firmly in the hands of physicians, who became white-coated executioners, having long abandoned the “do no harm” clause of the Hippocratic Oath.

Currently, there is evidence that at least some in the medical community are again becoming willing agents in hastening the deaths of people deemed not viable, including people with disabilities, through familiar methods such as starvation and death by thirst. Look no further than Terri Schiavo in this regard.

In some ways, “do no harm” is now viewed as a somewhat quaint throw-back to a distant, less sophisticated era. Instead, we have moved in many places to standard hospital treatment protocols’ stipulating that staff physicians may override next-of-kin requests for patient treatment if the physician decides that treatment will likely be ineffective.²⁹ Once again, patients, including those with life-threatening disabilities, now bear the responsibility of justifying their existence and their need for treatment.

Propaganda

The Nazis needed a means of influencing public opinion for more active perpetration of actions already well planned. Propaganda was the useful tool, and was provided by many leading German artists, authors, and other creative persons who, impressed by the Third Reich, lent their credibility and prestige to film, literature, and other highly visible public projects. Inexpert in matters of science, but eager to be on the cutting edge of issues of the day, many high-profile celebrities willingly complied with National Socialist dogma.

This propaganda aspect takes on greater significance in our media-savvy age, in which popular culture is awash with celebrities and socially prominent persons who expend great amounts of time, energy, and resources to advance the culture of death.

Unfortunately, people with disabilities in Nazi Germany were assumed to be useless, subhuman, of no economic value, and certainly incapable of anything resembling a decent quality of life. These aspects won out over the few protests and documented evidence that, indeed, many people with disabilities, all things considered, lived quite fulfilling lives. Those of us who believe in the sanctity of life should examine this historical precedent carefully—and

be aware that similar, if more subtle, problems and conditions face people with disabilities in this new century.

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Living Wills & DNR:

Is Patient Safety Compromised?

Ferdinando L. Mirarchi and Lucia Conti

Do you have a Living Will? Do you know what it says? Could it be a danger to you? These are all important questions as the use of living wills and Do Not Resuscitate (DNR) orders are on the rise. Contrary to the theory that the more something is used the safer it becomes, these advance directives have been accused of compromising patient safety.

Living wills have received national attention as a health-care tool patients can use to communicate their personal wishes regarding treatment, but they have never been evaluated with respect to patient safety. The disconnect between patient safety and living wills has begun to present multiple problems, especially as the percentage of the American population over the age of 65 increases.

The geriatric population will have a huge impact on health resources from 2010 to 2030, and as this happens there will be an increase in the use of living wills and DNR orders. It is important, though, to point out that the living will is not just for the elderly or terminally ill: It is often created as part of an estate plan when people are young and healthy. The aging population is not the only factor driving the increase in living-will use. Resources such as the US Living Will Registry and VeriChip are making it easier for people to create a living will without knowing that it could do them harm.

Our investigations of living-will documents have uncovered serious problems with them, including a lack of individualization and informed consent that commonly leads to misinterpretation. The right medical-care course of action is not always clear, and—even though the point of a living will is to clarify what the patient wants—it may not express the patient's true wishes. In fact, the living will often is automatically interpreted as a DNR order.

The lack of individualization in a living will stems from the fact that living wills are built using a template. They are often created as part of an estate plan instead of with a physician. They also contain language or address situations that are unfamiliar to health-care workers, often leaving out many key factors—including classes of treatments that are used to treat

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critical conditions. The living will is also left on file for years and only used when needed. Often, the patient does not take into consideration that medical treatments change on a continual basis, and that her wishes at the age of 30 may be totally different when she is 60. Living wills and all advance directives need to be continually re-evaluated and updated as conditions in the patient's life and the medical industry change.

Living wills also lack the process of *informed* consent. Informed consent means that the patient has been communicated to about her medical condition and the treatment needed to solve or stabilize that condition. The patient should understand all the risks and benefits involved with the physician's treatment decision and the effects that the treatment will have.

Similarly, when a patient is admitted into a hospital, the hospital is required by law to provide information about living wills to the patient if she does not already have one. However, this information is usually generic and does not offer all of the information and details needed for the patient to fully understand her end-of-life decisions. In most cases, the patient does not have the time to study the form or the options it offers due to the medical emergency that brought her to the hospital. Therefore, when a patient signs her living will while being admitted into the hospital, she is often signing it without *informed* consent.

Not only do you have the issue of living wills not fitting the patient's specific needs, or the fact that most people do not understand what they are agreeing to anyway, but there is still another aspect to consider. There is a possibility that the physician can *misinterpret* the patient's wishes. Living wills often contain terms such as "terminal condition," "incurable illness," and/or "serious injury"—and each of these terms has the potential to be interpreted differently from physician to physician. One physician may understand a term or phrase to mean the patient is requesting aggressive treatment, while another physician may believe the patient is communicating a desire to withdraw treatment. In many situations, as we mentioned before, the living-will document is misinterpreted as simply a DNR order or Do Not Treat order.

In order that the patient communicate her wishes in the clearest possible way, we recommend that she complete the living will *with the assistance of a physician*. By enlisting the help of a doctor, the patient can be reassured that at least *that* physician understands her preferences. Getting the help of a physician will also help the patient understand what a "code status" is, and why she should include the code status in her living will.

There are many code-status designations, including: full code, hospice care/comfort care, slow code, no code, chemical code, DNI, and DNR. A

code status can often be interpreted differently by various physicians and be incorrectly implemented. Which code status is safe for a patient to use, and which clearly communicates her intentions to physicians?

Full Code

A full code is the most extensive course of treatment. It communicates to the physicians that all measures should be taken to keep the patient alive. The patient is considered safe when her code status is full code.

Hospice Care/Comfort Care

A hospice-care/comfort-care code status communicates that the health-care personnel should allow nature to take its course and let the patient die naturally. The main goal of the clinician should be to make the patient as comfortable as possible and relieve any pain or anxiety the patient may be experiencing. When a patient is designated under the hospice-care/comfort-care code, she is presumed to be relatively safe.

Slow Code

The slow-code designation applies in situations where it is easier to delay treatment than to determine what level of treatment the patient desires. Often this code designation is applied to patients who do not appear to benefit from any medical care, and health-care personnel therefore provide comfort care, in the expectation that the patient will die before questions about her health-care wishes arise. This code status is unsafe for patients.

No Code

The no-code designation is similar to a DNR, as it requests that no life-saving measures be taken by the health-care personnel. Often though, the no-code designation is found too vague to be useful, and can be confusing to the clinician. Therefore, the no-code designation is unsafe for patients.

Chemical Code

The chemical code communicates that the patient wants to be treated only with medication, and that therefore no CPR, insertion of tubes, invasive procedures, or other therapies are to be performed. The problem with this code status arises when most medications that need to be given cannot be administered effectively without the use of the other unwanted procedures. Therefore, the chemical code is unsafe for the patient to use.

DNI

Patients who designate their code status as a DNI—do not intubate—are requesting not to be placed on a ventilator for a long period of time. It is a common mistake among clinicians, though, to suppose that the DNI code

status means the patient is requesting *never* to be intubated, even for a short period of time. Therefore, the DNI code status is unsafe for patients.

DNR

As the name implies, the DNR code status communicates to the health-care personnel not to attempt to restart the patient's heart or breathing once they have stopped. Often, the DNR code status is chosen by patients who are nearing death and have expressed that they do not wish to be kept alive by heroic means. The DNR code presents many problems for physicians and health-care personnel and therefore is an unsafe code designation for any patient.

The problems with DNR orders escalate as many clinicians believe that patients with living wills are also of DNR code status. This is not correct; a living will is not the equivalent of a DNR order and furthermore, a DNR order does not mean "do not treat."

Not only should a patient understand and include the code status, but she should also understand when the living will is to be utilized. There is a difference between when a living will is *effective* and when a living will is *enacted*. A patient's living will becomes *effective* when the patient has completed the living will and has signed it in the presence of a witness in compliance with the requirements of the state. The living will's effectiveness means that the living will exists and can then be *enacted* when the specified triggers, outlined in the document, have occurred.

The most common trigger terms used in living wills are *terminal condition* and *persistent vegetative state*. Defining these two triggers can be a challenge for the physician, which in turn can lead to the faulty implementation of the living will. Correctly defined, a *terminal condition* is *any health condition that does not respond to sound medical treatment and will result in the patient's death*, and a *persistent vegetative state* is *a condition in which the patient is not aware of his/her surroundings and has lost the ability to think*.¹ Patients in a persistent vegetative state have lost their ability to speak or respond to commands and therefore cannot communicate their wishes for health-care treatment. A persistent vegetative state is often the result of a metabolic injury. In most states, it is required that two physicians document that the patient has a terminal condition or is in a persistent vegetative state. It is important that those physicians remember that stabilization is the first priority in an emergency situation, therefore providing enough time to assess the patient and diagnose her condition.

That goes for living wills. DNR orders are different, in that *they apply only to the act of resuscitation*—they do not control the acts of any other

life-saving treatments. DNR policy should ensure that the physician understands that when a patient has a DNR code, there are no implied conclusions concerning any other treatment options. A DNR order represents the patient's wishes that no medical interventions be taken if they are found pulseless or apneic; but despite this definition of what a DNR code status implies, many published studies have supported the theory that DNR patients receive less aggressive care than those patients without a DNR code status.

Beach et al. studied the effect of DNR orders on the ability of physicians to make decisions on life-sustaining treatment. The study confirmed that physicians were less aggressive with DNR patients and were less likely to transfuse, transfer their patients to the ICU, order diagnostics tests, intubate, and utilize aggressive critical-care monitoring and procedures.²

Further supporting the theory, Keenan et al. reviewed the influence of DNR orders of patients admitted to surgical intensive-care units at a cancer center and found that the order resulted in less medical interventions and chart documentation.³ Bedell et al. also demonstrated that DNR orders are frequently entered on patient charts by physicians without any discussion with the patient about the order or informed consent from the patient, despite the patient's being competent to discuss the topic.⁴

The physicians' tendency to provide less intensive treatment to DNR patients also carries over to the nursing care. Thibault-Prevost et al. assessed the perceptions of a DNR code status of critical-care nurses and found that 47 percent failed to distinguish the DNR order from other end-of-life decisions, 72 percent felt that a DNR code status translated into the patient not wanting to receive any aggressive medical interventions, and 65 percent felt that a patient with a DNR should not be admitted into the ICU.⁵ Henneman et al. supported these findings by concluding that nurses were significantly less likely to perform physiologic monitoring, modalities, and interventions on patients with a DNR code status.⁶ Other supporting studies have also concluded that a patient's increasing age and DNR order significantly decrease the aggressiveness of nursing care and that nurses delay notifying physicians of significant changes in a patient's clinical status.^{6 7 8}

It is essential that physicians and nurses understand the meaning of a DNR code status and discuss it with their patients. The importance of discussing a chosen code status was clearly demonstrated in the study conducted by Ganzini in 1994 of elderly and depressed patients. It was found that the effects of depression influence the patient's preferences for life-sustaining treatments. Twenty-six percent of severely depressed patients desired more treatment to be used when their depression was treated and they felt better.⁹ This clearly demonstrates that patient preferences can change after discussion

of their DNR code status.

As with the DNR, the living will's effectiveness has been questioned by the medical industry. Standard living wills address the treatments of cardiopulmonary resuscitation, mechanical ventilation, defibrillation, antibiotics, dialysis, and feeding tubes. Patients are able to clarify their wishes further by using the "Medical Living Will with Code Status," which addresses the following treatments:

Cardiopulmonary Resuscitation (CPR)	Intravenous Antibiotics
Advanced Cardiac Life Support Protocols	Organ Donation
Endotracheal Intubation	Long Term Parenteral Nutrition
Long Term Mechanical Intubation	Feeding Tube
Defibrillation	Thrombolytic Medications and Angioplasty
Invasive Procedures	Blood and Blood Products
Invasive Emergency Procedures	Hemodialysis and Peritoneal Dialysis
Invasive Comfort Procedures	Implanted Pacemaker and Defibrillator
Intravenous Fluids	

Yet numerous studies have suggested that physicians often ignore their patient's living wills, and institute unwanted care. This raises the question: Was a particular living will enacted and subsequently neglected, or was it simply ignored from the start? Some in the medical industry believe that the use of the living will has become impractical.

The presence of a patient's living will is commonly assumed by many medical personnel to mean that the patient has a DNR code status. This risk of misinterpretation is real and is supported by a recently published case series, "Does a Living Will Equal a DNR? Is Patient Safety Compromised?" (JEM, Vol. 33, No. 3, pp. 299-305, released October, 2007). To determine what physicians, nurses, and pre-hospital personnel actually understand about living wills versus a DNR code status, "The Realistic Interpretation of Advance Directives" (TRIAD) studies were implemented. The results of these studies, which are pending publication, reveal significant concerns for patient safety and further support the recently published case series.

Another document that attempts to communicate a patient's wishes regarding end-of-life treatment options is the Physician Orders for Life-Sustaining Treatment (POLST) document. This document is based on the patient's wishes after a physician's discussion with the patient or the patient's

surrogate. The POLST is meant to complement an advance directive and should be used in combination with any advance directives the patient may already have provided.

The POLST, however, has some of the same limitations as the living will and DNR. It depends on the physician's involvement and the informed consent of the patient or her surrogate. In addition, its effectiveness depends on the universal understanding and agreement between all members of the patient's medical team, which often involves many specialties.

Overall, the ideal advance directive should meet all of the following requirements. It should:

Contain primary information	Require second physician for confirmation of a terminal condition or persistent vegetative state
Be portable	Contain a Do Not Transfer order
Contain pertinent medical information	Contain a Hold Harmless statement
Contain a resuscitation choice	
Follow state laws	
Involve ethics committees when needed	

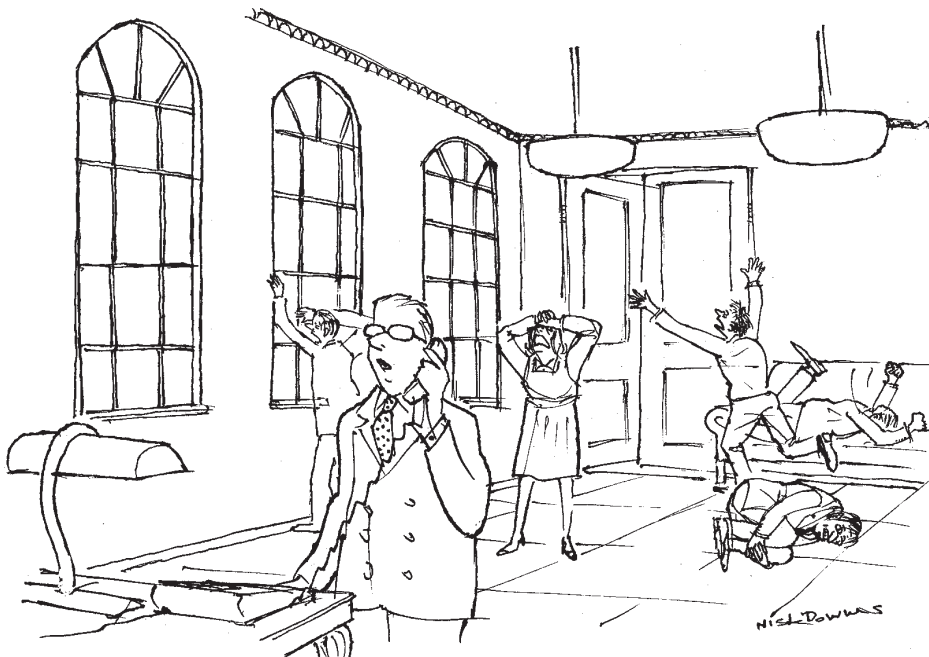
It is recommended that the only code-status designations that should be used by physicians and their patients are the full code, full code except for cardiac arrest, and hospice care/comfort care. These code statuses are the safest for the patient and communicate effectively the patient's wishes for end-of-life treatment.

Conclusion

Living wills and DNR orders *do compromise patient safety*. Physicians and other medical personnel need to understand fully what a living will or DNR code status implies about treatment options. The presence of a living will does *not* mean the patient wishes that no treatment be used when she is in critical condition. Living wills need to communicate a clearly defined code-status designation. Overall, in order for any type of advance directive to be effective and communicate the wishes of the patient, the physician needs to be involved from the drafting of the directive until the time when the patient is receiving treatment.

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"No, you've reached the New York Hysterical Society."

APPENDIX A

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Abortion Politics 2008

Hadley Arkes

For reasons quite plausible, even to people on the pro-life side, Rudolph Giuliani persists in standing well ahead of the pack of the Republican candidates for president. He has sounded the traditional Republican themes: preserving the Bush tax cuts, seeking free-market solutions to problems such as medical care, and standing firm on the war in Iraq.

But there is in his campaign a sobering truth that cannot be evaded: The nomination and election of Rudy Giuliani would mark the end of the Republican party as the pro-life party in our politics. And that would be the case regardless of whether pro-lifers respond to his nomination by refusing to vote for Giuliani, forming a third party, or folding themselves into a coalition that succeeds in electing Giuliani.

I often meet, here in the East, conservatives of an old stripe: eager to vote for a Republican but repelled by what they have seen as a party in which the religious and the pro-lifers have a marked leverage. Are there enough of these voters to convert, say, New Jersey and Connecticut into Red States? There might be if the old-line conservatives see a massive defection from the party on the part of the pro-lifers. For that will be a sign that the party is becoming habitable again for people like themselves, who may come to define again its character.

What is engaged here is a truth about the nature of political parties that has gone remarkably unappreciated: Parties have the means of changing their own constituencies or their composition. By altering their appeals, they drive some groups out and bring others in. If a Republican party, reconstituted in this way, manages to win, the Republican establishment will readily draw the lesson that they can win convincingly without pro-lifers and their bundle of causes: the destruction of embryos in research, assisted suicide, the resistance to same-sex marriage. Indeed, a Republican party shorn of those people and their baggage may seem to offer a stronger, more durable majority than the party that eked out victories by narrow margins in 2000 and 2004.

Pro-life voters may subordinate their concerns and join the new coalition, but the lesson extracted will be the same: "The Republican party can win when the pro-life issue is thrust from the center to the periphery of the party's concerns. Even the pro-lifers do not see themselves as one-issue voters; they will give primacy to other concerns as the crises before us make other issues indeed more urgent. They will content themselves with symbolic gestures or modest measures rationed out to them. For they know that, when their interest collides with others, the party will have to subordinate their concerns to nearly anything that seems more pressing." And, for all practical purposes, nearly any

interest will trump the interests of the pro-life community.

For those concerned about the life issues, the choices offered by a Giuliani nomination are bleak. This melancholy state of things is deepened by the awareness that there are powerful considerations moving the pro-lifers toward accommodation. Since the days of Ronald Reagan, the Republican party has become, ever more clearly, the pro-life party in our politics. And, just as clearly, the “right to abortion,” with its theme of sexual liberation, has become the central peg on which the interests of the Democratic party have been arranged. Under these conditions, the pro-life movement has become bound up inescapably with the fate of the Republican party.

But the White House cannot be preserved for the Republicans—and the pro-life movement—without solving the problem of the war in Iraq. To this task Giuliani brings no military credentials, but he seems to have the tenacity to see the war through to victory and to bring the Republicans through as a party that need not apologize for a war that was undertaken for good reasons. Even the pro-lifers may recognize then that the war claims a certain precedence or preeminence in the issues now pressing. The pro-life issue may have to be submerged at this moment as a matter of high strategy, for the interests of the country and for the survival of the Republican party as the pro-life party.

For years now, the pro-life movement has followed a strategy of moving in incremental steps, unfolding a plan of principle with, to borrow a phrase from Lincoln, the object being to put abortion “in the course of ultimate extinction.” But a successful candidacy by Giuliani would subtly put in place a scheme whose tendency and object would be to put the pro-life movement itself on the course of ultimate extinction.

It is conceivable, then, that from the standpoint of the pro-lifers it might be better to lose to Hillary Clinton than to win with Rudy Giuliani. The Republican party left standing after the defeat would still be a pro-life party. In the film *Ninotchka*, Greta Garbo explains to people in Paris the Stalinist purges back home: “We will have fewer but better Russians.” The Republicans might be diminished, but they would be essentially intact as a pro-life party; and, when the electoral winds shift again, they have a chance of coming back with their character intact.

Giuliani has given a pledge to recruit conservative jurists for the Supreme Court in the cast of John Roberts and Samuel Alito. Yet, what defines that cast? The same process of selection, seeking conservative candidates, once brought forth David Souter, and nothing in the plan of selection diverted Bush from choosing Harriet Miers in a surge of personal intuition. The level of confidence could be raised if, say, Giuliani announced that he would choose as attorney general someone respected by the pro-life cause, who would in turn assemble a crew of conservative lawyers to sift with practiced eyes the candidates for the judiciary.

The Bush administration has been pervaded with pro-lifers in the agencies, the Department of Justice, and even the White House staff. And yet nothing in that force of pro-lifers has produced an administration willing to take initiatives in the

pro-life cause. Nor has there been any move, emanating from the White House, to enforce even the pro-life measures that have been enacted—including, most notably, the Born-Alive Infants' Protection Act, the act that cast the protections of the law on a child who *survived* an abortion. All this from a president who seems earnestly pro-life. Could we really expect more from a president who earnestly believes there is a right to abortion, with the decision finally left to the pregnant woman in collaboration with her doctor?

Besides, the heavy accent placed by Giuliani on the courts merely confirms the vice that has been absorbed now by the Republican establishment as the settled understanding: that this work of dealing with abortion and such vexing issues as marriage is the work mainly of the courts, that it is not in any way part of the main business of the White House or the political leadership.

Giuliani has stressed the point that he favors adoption over abortion. But that is a preference that leaves undisturbed the notion that the decision to destroy an innocent human rests wholly with the pregnant woman, for any reason good enough for her. Or, to put it another way, in the understanding of Giuliani, the nascent life in the womb is the bearer of no rights that the law may be obliged to respect. Nothing said about appointing “strict constructionists” alters this decisive point. And neither is the question answered by announcing the panel of distinguished lawyers who will advise Giuliani, including men like Theodore Olson and Steven Calabresi, whom I count as friends. These estimable lawyers have work to do—or some explaining to do to the rest of us.

During the famous debate between Lincoln and Douglas, Douglas professed to be neutral on the matter of slavery. He professed to have reached no moral judgment. And so, he concluded, people should be free in the separate territories to vote slavery up or down. But, as Lincoln pointed out, he had indeed reached a moral judgment. If he had regarded slavery as a wrong—as Douglas had regarded polygamy—he would have understood that a wrong is that which no one ought to do, that anyone may be properly restrained from doing. To say slavery is something legitimate to choose is to say that slavery stood in the class of things “not wrong.”

In an eerie echo, Giuliani reproduced precisely the same argument in an interview with Charlie Rose. Rose asked, “Don’t you think that abortion is a national issue?” Giuliani replied:

“Sure it’s a national issue. But . . . since it’s an issue of conscience for people, a deep personal issue where some people morally believe it’s wrong and some people strongly morally believe it’s right. My conclusion about that is that government can’t dictate and intervene and make that choice. . . .

Honestly, I think—my own personal view is it’s better off if that is left to people to choose. And then what you do is you do everything you can to correctly limit the number of abortions, encourage adoption instead of abortion. I supported the ban on partial-birth abortion when it passed and when—and the decision of the Supreme Court I agree with. I agree with parental notification, but ultimately I

think this is not the area where government should be completely dictating.”

Lincoln said that Douglas was trying to “blow out the moral lights” among us by teaching a policy of “indifference”—that slavery just did not matter enough to stir such divisions in the country. In a similar way, Giuliani is teaching us, in the style of Douglas, that we should not care overly much, that we should treat as a matter of indifference a right to take a human life for wholly private reasons that need not rise beyond convenience. Not that people choose abortion for the sake of a trifling convenience. The point, rather, is that even a decision taken for the most flippant reasons may not be judged by anyone else.

Before this article went to bed, I was writing that my own side, the pro-life side, should work hard to deliver the nomination either to Sam Brownback (who has been more fully on that side, in all its dimensions, than any of the other candidates) or to Mitt Romney (whose position on the pro-life side I take to be genuine). Now that Brownback has withdrawn from the race, the question is just which of the other candidates, apart from Romney, can actually explain the grounds of his pro-life position. So far, neither McCain nor Thompson has been able to do that. I would back Romney, then, as far as he can go, I would back any of the others as soon as they show that they are speaking more than by rote. If Giuliani became the nominee, and he genuinely wished to preserve the pro-life constituency within his party and his administration, he could select Brownback or Romney as his running mate. He could also offer the assurance that their perspective would have standing, would have a claim to bear on the policies of his new Republican administration.

Faced then with the possibility of a Democratic presidency determined to weave the ethic of abortion rights more firmly into our law and to have its judges install same-sex marriage, a Giuliani candidacy could offer some slender grounds of hope. Under those conditions, I might bite my lip, vote for him, and indulge those hopes. But they would be the hopes of the supplicants. And they will be affected at every point by the awareness of just who has the upper hand, and just who, in this party newly reshaped, does not matter all that much.

APPENDIX B

[Bill Saunders, a lawyer, is senior fellow and director of the Center for Human Life and Bioethics at Family Research Council. The following first appeared in the Washington Times, October 16, 2007, and is reprinted with the author's permission.]

Neither man nor beast

Bill Saunders

Fact, it has been said, is stranger than fiction. And fiction can be pretty strange. Take, for instance, an 1896 novel by famous English thinker, H.G. Wells, "The Island of Dr. Moreau." As one can see from the date of its publication, the book was written on the threshold of a new century, and Wells, famous as a "futuristic" thinker, was trying to look ahead.

The novel continues to fascinate readers, and has spawned three films, including one of the same name that starred Marlon Brando in 1996.

The premise of the novel is that a scientist, on a secluded island, undertakes experiments to combine humans and animals. One might call this simply a wild and crazy idea, but a harmless one for a novel, an idea producing plenty of chills and thrills for readers and for moviegoers. After all, it would never happen in real life.

Well, hold onto your hats. It is about to happen. Not here (at least, not yet), but in England. On Sept. 5, a government agency (called the Human Fertilization and Embryology Agency or HFEA) decided to let scientists, mad or otherwise, create human/animal hybrids. Let me repeat: Science fiction will become science fact very soon; and man and beast will be combined into one.

A bill will be introduced in the British Parliament this fall to make this a positive right under English law, rather than simply the consequence of an administrative interpretation (which the HFEA issued). It is likely to pass, but even if it does not, the administrative interpretation of the HFEA will permit creation of human/animal hybrids to go forward. And go forward it will, for this is no hypothetical possibility—two teams of scientists have already applied to the HFEA to create human/animal hybrids.

The HFEA spent a lot of time in making its decision in drawing distinctions between different kinds of human/animal hybrids—cytoplasmic hybrid embryo research (the creation of cybrids), hybrid embryo research (the mixing of animal and human gametes), human chimera embryo research (human embryos with animal cells added in early development), animal chimera embryo research (animal embryos with human cells added), and transgenic human embryo research (human embryos with animal genes inserted during early development). All five create a living thing that is a mixture of man and beast. Still the HFEA was at pains to note it only approved one type, the creation of cybrids. What's a cybrid?

To create a cybrid, it is necessary to use the most controversial technique in research, that is, cloning (sometimes called "somatic cell nuclear transfer"). A scientist must take an egg (sex) cell from a female animal, remove its nucleus (where

most of its DNA is stored), and replace it with a human nucleus; then give it a jolt of electricity and, as did the creature in "Frankenstein" when struck by lightning, "it lives." It literally comes to life.

Careful readers will note I said "most" of the egg cell's animal DNA is removed. However, there is also DNA in the egg cell outside the nucleus (in what is called the cytoplasm). It is a small bit, but it is important, and plays a crucial part in the development of every living animal and person.

To sum up, after this procedure, there will be living human/animal hybrids, part man, part beast, in England, and very soon. Call it a cybrid if you wish. I call it a nightmare, and no civilized country should permit it.

Why will England permit it? Because it will enable scientists to do research. But does any kind of research justify creation of such monstrosities? Perhaps it is better to forgo certain kinds of research if they can only be conducted by such monstrous means.

And here's the kicker: There's nothing that prevents this from happening in the United States, or rather, in individual states that choose to permit it.

What would such a future hold for us? You might want to go to the video store or the library to see what H.G. Wells thought would happen when we forget the fundamental principle of scientific research: Even scientific curiosity must be ruled by ethical principles and by common-sense restraint. In cases where it isn't, as with human/animal hybrids, fact becomes, indeed, stranger than fiction, and more dangerous to us all.



"Sad and glad, the bipolar bears."

APPENDIX C

[Ryan T. Anderson is an assistant editor at First Things. A Phillips Foundation fellow, he is the assistant director of the Program in Bioethics at the Witherspoon Institute of Princeton, N.J. This essay first appeared in *The Weekly Standard* and is reprinted with permission. ©2007, News Corporation, *Weekly Standard*. All Rights Reserved (issue date: 12/03/07).]

The End of the Stem-Cell Wars

Ryan T. Anderson

The stem cell wars are over. Leading scientists are telling us that they can pursue the most promising stem cell research without using—much less killing—human embryos. This breakthrough enables researchers to create human embryonic stem cells directly from adult cells. In fact, the new method may actually prove superior to embryo-destructive alternatives. This is the biggest stem cell advance since James Thomson became the first scientist to isolate embryonic stem cells, less than a decade ago.

It is a new study by Thomson himself that has caused the present stir, but this time Thomson is not alone. Accounts of independent research by two separate teams of scientists were published on November 20—one in the journal *Cell* and one in the journal *Science*—documenting the production of pluri-potent human stem cells without using embryos or eggs or cloning or any morally questionable method at all.

The new technique is so promising that on November 16, Ian Wilmut announced that he would no longer seek to clone humans. Wilmut, you may remember, is the scientist who cloned Dolly the sheep. He recently sought and received a license from the British government to attempt to clone human embryos for research purposes. Now, citing the new technique, he has abandoned his plans.

It was only in 1998 that Thomson succeeded in isolating human embryonic stem cells. Though other types of human stem cells were known at the time (some were even in clinical trials), embryonic stem cells were thought to be the holy grail because they were believed to be more flexible. They were “pluripotent”—capable, in theory, of developing into any type of body tissue—whereas so-called adult stem cells were thought to be useful for forming a narrower range of tissue types. The problem with producing embryonic stem cells was that human embryos—nascent human beings—had to be destroyed in the process.

Even now, nine years later, embryonic stem cells are thought by many scientists to have greater potential than other types. This reputation persists even though adult stem cells are already used in therapies to treat several diseases and are being tested in hundreds of clinical trials, while not a single embryonic stem cell therapy exists, even in trials.

As anyone familiar with reparative medicine knows, immune rejection is one of the tallest hurdles to clear. The promise of cloning was that therapies could be produced using human embryos cloned directly from the patient—thus resulting in a genetic match. Cloning, it was said, would also provide an unlimited supply of

human embryos. But many people thought human cloning with the sole intention to kill crossed an ethical line. In addition, human cloning would require an enormous number of human eggs—which could be obtained only by subjecting donors to painful and potentially dangerous hormonal-stimulation procedures. The fear was that likely “donors” would be poor women undergoing a distasteful procedure solely for the fee.

On August 9, 2001, President Bush waded into this morass. He issued an executive order that opened human embryonic stem cell research to federal funding for the first time ever. The order also restricted that funding, however, to research using existing embryonic stem cell lines: No more embryos would be created and destroyed for taxpayer-funded research. (Contrary to popular belief, Bush’s order did not *ban* anything.) Opposition was fierce, but Bush stood firm.

Amid this controversy, a number of scientists discussed possible alternative sources of embryonic stem cells. William Hurlbut, a professor at Stanford and a member of the President’s Council on Bioethics, proposed Altered Nuclear Transfer, a process that produced nonembryonic tumor-like entities that could then be harvested for the equivalent of embryonic stem cells. Some ethicists weren’t fully sold, fearing that the tumor-like entities might be deformed embryos. Hurlbut’s proposal was then modified, using oocyte cytoplasm to directly reprogram a cell’s nucleus to make it pluripotent. Still, some critics were unconvinced. Finally, using mice, a Japanese scientist, Shinya Yamanaka, showed that he could create embryonic stem cells directly from adult cells, and within less than a year his study was replicated and significantly expanded by two separate research groups. Yamanaka went to work to make it happen with human cells.

But outside the scientific community, conventional wisdom held that these alternative sources, while interesting, were being proposed only to provide Bush with political cover during the waning years of his presidency. As soon as a new president was inaugurated, federal funds would flow into human cloning and embryo-destructive research. Or so the story went.

That expectation has now been shattered. Whether or not the next president shares Bush’s pro-life convictions, it is highly unlikely that taxpayer funds will go to support embryo destruction, which has become not only unnecessary but also less efficient than the alternatives. That’s the story coming out of *Cell* and *Science*.

In *Cell*, Yamanaka announces that the pluripotent stem cell-producing technique he used on mouse cells works with human cells. The resulting cells—called induced pluripotent stem cells, or iPS cells—are functionally identical to human embryonic stem cells: They possess all of the same properties. The difference is simply in the method of their production.

This new production technique is possible because the difference between a stem cell and an adult cell is not a matter of genetics but of epigenetics: which genes are expressed, how, and to what degree. Different cells have the same genes, expressed differently. So scientists had been searching for a way to remodel the gene expression of adult cells to transform them into stem cells. Yamanaka’s team

discovered a collection of four genes—Oct3/4, Sox2, Klf4, and c-Myc—that does precisely this. When introduced into adult cells, these genes directly reprogram the cells to a pluripotent state.

I asked Maureen Condic, professor of neurobiology and anatomy at the University of Utah School of Medicine, about these cells. “Direct reprogramming of adult cells to pluripotent stem cells is one of the most significant scientific findings of the last quarter century,” she said. “This approach holds tremendous promise for advancing our scientific understanding of stem cells and for advancing the study of regenerative medicine. However, there are concerns regarding the safety of iPS cells for human therapies, due to the use of viral vectors that integrate into the cell’s DNA, potentially causing dangerous mutations, and to the use of c-Myc, a gene that is associated with some forms of human cancer.”

Yamanaka himself notes these pitfalls, but indicates that they should be surmountable: His technique works even when you take c-Myc out of the mix and use only the other three genes (though it achieves its results at a less efficient rate). Moreover, Yamanaka notes that integration of the virus into the DNA will not reduce the usefulness of induced pluripotent stem cells for study of human diseases in the laboratory, and that other nonviral means of introducing the reprogramming factors into cells are likely to be sufficient to generate iPS cells.

The Thomson approach described in *Science* avoided some of these drawbacks by using no c-Myc and optimizing the safety of the induced pluripotent stem cells from the start. His team used a different group of genes—Oct4, Sox2, Nanog, and Lin28—to achieve the same end: direct reprogramming of adult human cells to the pluripotent state. Thomson’s technique is also noteworthy because it uses a lentivirus to introduce the gene group, which is the safest of retroviral integration methods. Work still needs to be done to ensure that viral vectors do not introduce dangerous mutations, but the scientists I spoke with thought this would be achievable with minimal delay.

What does all of this mean? James Thomson explains it best in his *Science* paper:

The human iPS cells described here meet the defining criteria we originally proposed for human embryonic stem cells, with the significant exception that the iPS cells are not derived from embryos. Similar to human embryonic stem cells, human iPS cells should prove useful for studying the development and function of human tissues, for discovering and testing new drugs, and for transplantation medicine. For transplantation therapies based on these cells, with the exception of autoimmune diseases, patient-specific iPS cell lines should largely eliminate the concern of immune rejection.

In short: The new technique produces patient-specific stem cells with all the benefits of stem cells from embryos, but without the production and destruction of human embryos or the use of human eggs.

Because induced pluripotent stem cells, created from a patient’s own body, are a perfect genetic match, they should prove especially useful for both the study of diseases and the development of treatments. Thomson notes, “For drug development,

human iPS cells should make it easier to generate panels of cell lines that more closely reflect the genetic diversity of a population, and should make it possible to generate cell lines from individuals predisposed to specific diseases.”

Wilmut, of Dolly the sheep fame, agrees. Comparing his cloning methods with Yamanaka’s, he said, “The work which was described from Japan of using a technique to change cells from a patient directly into stem cells without making an embryo has got so much more potential.”

Nonetheless, there are serious challenges to overcome before pluripotent stem cells—whatever their source—will be ready for clinical therapies. All pluripotent stem cells carry a risk of tumor formation. And no one has yet figured out how to convert these stem cells into transplantable cells usable for therapies. Markus Grompe, professor in the department of molecular and medical genetics at the Oregon Health and Science University, director of the Oregon Stem Cell Center, and a board member of the International Society for Stem Cell Research, told me that “the therapeutic potential of all human pluripotent stem cells, including those generated by direct reprogramming, remains uncertain. No immediate cures should be expected from human pluripotent stem cell-based therapy, either embryo-derived or iPSC. First, the tumor risk of such cells must be harnessed, and second, the efficient conversion to transplantable cells must be mastered.”

But scientists are hopeful that these hurdles will be overcome. Grompe points out that stem cells have important uses beyond therapy, and for these uses, too,

iPS cells are clearly superior to embryo-derived stem cells. They can be used to study how human organs and tissues form. And the insights gained are likely to lead to the development of new drugs and strategies to benefit human health. Direct reprogramming techniques make it possible to generate pluripotent cells from specific individuals with particular diseases. For example, it will be possible to make pluripotent stem cells from children with Fanconi’s anemia, a devastating genetic disease, and study the effects of candidate drugs on the formation of human blood. Another example, favored by Ian Wilmut, is motor neuron disease (Lou Gehrig’s disease). Here it will be of interest to examine the formation of nerves and motor neurons from patients with the actual disease, in an attempt to discover ways to help the cells survive and function better. These kinds of experiments are now immediately possible and will likely be the first application of iPS cells.

Thus, iPS cells may very well help us discover therapies for some of the most daunting genetic diseases. And they should be able to do so at last without controversy.

The ethicists I spoke with had only praise for the new developments. While some Catholic moral theologians had previously worried that reprogramming methods “mimicked conception” and might produce disabled embryos, the new technique should alleviate all fears. Concerns that scientists might “go too far back” and reprogram a cell to a totipotent stage—making an actual embryo, not a stem cell—are quickly settled once one understands the science. To be an embryo requires not only a particular nuclear state, but also certain organizational factors

that the oocyte cytoplasm provides. But no egg or cytoplasm is used in this method. Furthermore, two of the genes used for reprogramming—Nanog and Sox2—are never found in embryos, only in stem cells. Their expression in reprogramming precludes totipotency.

When I asked Father Thomas Berg, the executive director of the Westchester Institute for Ethics and the Human Person, about this concern, he replied, “From a Catholic perspective, reprogramming clears the bar in terms of reasonable concern for human dignity in biotech research: Never at any point in the process of reprogramming is there ever a danger of involving—even accidentally we might say—techniques that could bring about a human embryo, as would happen in cloning. The science of pluripotent stem cell research can move forward toward therapies and cures in a manner that is free of any ethical concerns.”

What about all of those antiscience religious fanatics who used to scold about “playing God”? They don’t exist. They’re a media-conjured fantasy. Of all the many people I have talked with about stem cells, none has ever expressed any antiscience or antimedicine inclinations.

Princeton’s legal philosopher Robert P. George, who also serves on the President’s Council on Bioethics, told me, “From the beginning we have been arguing that we must do everything we can to advance the cause of stem cell science but without sacrificing our respect for nascent human life and the principle of the inherent and equal dignity of each and every member of the human family. This latest news just goes to show that it is really possible.”

It also is illustrative of the politics of science. Had a President Gore or a President Kerry allowed the science to go forward without regard for moral principle, it would have set a terrible precedent. A Gore or Kerry presidency would have bestowed federal blessing and taxpayer funds on laboratory work predicated on the assumption that embryonic human beings can be treated as spare parts and that cloning to kill is acceptable.

But because President Bush stood his ground, we have avoided that moral catastrophe. Had Bush lost either election, or had he caved to pressure from those who slandered him as “antiscience,” it is very possible that the new method of stem cell production—the new gold standard, in all likelihood—would never have been found. Most likely, science and the public would have accommodated themselves to the mass production and mass killing of human embryos.

Indeed, it is not Bush alone, but the entire pro-life movement, that has been vindicated. For the petition-signers and the direct-mail organizers, the philosophers and the scientists who have defended the sanctity of human life, the *Cell* and *Science* stories come as a reward. When I spoke with Robert George, he praised Leon Kass, the former chairman of the President’s Council, together with William Hurlbut, as the driving intellectual force against embryo-killing and in favor of finding alternative methods of obtaining pluripotent stem cells. “All along,” George reports, “it was Dr. Kass who said that reprogramming methods would, if pursued

vigorously, enable us to realize the full benefits of stem cell science while respecting human dignity.”

George downplays his own role in shaping the president’s thinking. After Congress passed a bill funding embryo-destructive stem cell research, Bush sought counsel. His approval ratings were in the cellar, and the general public largely supported the bill. Shortly before announcing his response to the legislation, the president invited George and Grompe to the Oval Office to discuss it with him. George presented the scientific and philosophical case for respecting the human embryo, while Grompe assured the president that alternatives such as reprogramming, if given time, would win the day. The president agreed and announced his veto. He was right.

And Congress was wrong. Considering the realities of Washington, it is no surprise that the pro-embryo-destruction forces in the House of Representatives actually teamed up to defeat a bill that would have funded research on reprogramming, which they dismissed as a distraction. President Bush then issued another executive order, this one instructing the National Institutes of Health to promote reprogramming research. As it turns out, the breakthrough Thomson study was partially funded by NIH.

Stem cell research wasn’t a prime issue during the 2000 campaign. Politically, the controversy wasn’t yet ripe, though it became so just months into Bush’s first term. Similarly, now, we don’t know what the next biotech breakthrough will be. Whatever it is, we can be certain that some people will demand we pursue it. Having political leaders of principle who insist on ethical standards in scientific research, then, is always of the utmost importance.

At present, people on all sides of the old stem cell debate should be able to celebrate. The recent news gives scientists a better method of producing embryonic stem cells while retaining our nation’s commitment to the equal and inherent dignity of all human beings. Richard Doerflinger of the U.S. Conference of Catholic Bishops pointed out the happy irony: “The scientist who gave us human embryonic stem cell research has helped find the way to go beyond embryo-destructive research, and in response to these new findings, the scientist who gave us cloning tells us that the cloning agenda is on the way to being obsolete.”

APPENDIX D

[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. This essay appeared Nov. 20 on National Review Online (www.nationalreview.com) and is reprinted with permission.]

Bush Bears Fruit

Wesley J. Smith

Throughout his presidency, the Science Intelligentsia has castigated President Bush for placing limits on the federal funding of embryonic-stem-cell research (ESCR). Acting as if he had a banned ESCR, which of course he hadn't, "the scientists" and their camp followers in the media and on Capital Hill accused the president of withholding cures from the ill in order to impose his religious beliefs on a reluctant public.

Little noted in all of the caterwauling, was that ESCR and human-cloning research (SCNT) have been funded bounteously—to the tune of nearly \$2 billion. Not only has the National Institutes of Health put more than \$150 million in recent years into human ESCR (about \$40 annually), but according to a recent report put out by the Rockefeller Institute, to date about *\$1.7 billion* has poured into ESCR and SCNT from philanthropic sources—and this doesn't include the hundreds of millions granted annually by the states for cloning and ESCR experiments.

So what's really going on here? Yes, the president's policies have forced some research centers to set up separate labs for research on Bush-approved- and non-approved, stem-cell-research lines. But what really got under "the scientists" skin was the clarion moral message sent by the president: It is wrong to treat nascent human life as a mere natural resource to be sown, reaped, and consumed.

Big Biotech responded to the Bush policy by mounting a powerful public advocacy campaign aimed at both opening the federal spigots, and breaking the back of the moral opposition to ESCR and human cloning research. Railing against the president and supporters of his policy as "anti-science," ESCR/SCNT advocates accused Bush of denying sick people needed medical breakthroughs. Human cloning via SCNT was redefined from "therapeutic cloning" in the advocates' lexicon to merely "stem-cell research." The change of term constituted a clever ruse that bundled and confused in people's minds, the morally acceptable advances being made in adult stem-cell research, the morally dubious human cloning project, and the use of "spare" embryos for research that were "going to be discarded anyway."

For awhile, the political tide ran powerfully in the cloners' direction. In November 2004, California voters passed Proposition 71, agreeing to borrow \$3 billion over ten years to pay private companies, and their business partners in major university research centers, to conduct human cloning research and ESCR. This was followed with bipartisan votes in Congress passing legislation to overturn Bush's policy. To this, the president responded with his only veto of the first term. This year, with the Democrats in control of both houses of Congress, that bit of Kabuki

Theater was repeated—but the President’s policy held.

Then, almost without being perceived, the tide began to turn. Amendment 2 in Missouri—which established a constitutional right in Missouri to conduct human cloning research—was expected to cruise to an easy victory, proving that even in the Bible Belt, people wanted scientists to pursue ESCR/SCNT. But in the last two weeks of the campaign, public support for the measure plummeted in the face of the sheer power of Rush Limbaugh’s broadcasting voice in the imbroglio over actor Michael J. Fox’s pro ESCR/cloning political ads, and an effective last minute advertising campaign featuring St. Louis Cardinal baseball stars and popular actors which warned voters “don’t be bought, don’t be fooled.” The measure limped home with a bare majority, winning the day politically, but denying its sponsors of the big moral boost they expected to receive from its passage.

Meanwhile, little reported by the mainstream media, adult stem-cell/umbilical-cord blood stem-cell research advanced at an exhilarating pace. Early human trials showed that adult stem cells from olfactory tissues restored feeling to patients paralyzed with spinal-cord injury. Bone-marrow stem cells appeared to prevent the worsening of progressive MS. People with Type-1 diabetes were cured with their own adult stem cells. Increasingly, Big Biotech’s circus barker-call of CURES! CURES! CURES! seemed to be wearing thin. Then, just a few weeks ago, New Jersey voters shocked the science and political worlds by rejecting a \$450 million bond measure that, like California’s Proposition 71, would have funded human cloning and embryonic-stem-cell research.

Returning to President Bush’s stem-cell funding policy; even though it was politically unpopular, the President believed wholeheartedly that the raw talent, intelligence, and creativity of the science sector would find a way to obtain pluripotent stem cells (the ability to become any cell type) through ethical means. In speeches and news conference answers about the stem-cell issue, Bush repeatedly supported existing ethical areas of research, and called upon researchers to find “alternative” methods of developing stem-cell medicine without treating nascent human life “as an experiment.” Toward this end, earlier this year Bush signed an executive order requiring the NIH to identify all sources of human pluripotent stem cells, and invited “scientists to work with the NIH, so we can add new ethically derived stem-cell lines to the list of those eligible for federal funding.”

The Science Establishment pouted and the *New York Times* castigated the president’s call. But other scientists had already taken up the president’s challenge, and their work was paying off. Experiments in mice by Rudolf Jaenisch at Harvard demonstrated proof of principle for “altered nuclear transfer” (ANT), a theoretical method of deriving pluripotent stem cells without creating and destroying embryos. Don Landry, Professor at Columbia University Department of Medicine, developed a way to identify dead embryos for potential use in stem-cell research—which would be no more unethical than researching on cadavers. Perhaps most excitingly, Kyoto University’s Shinya Yamanaka reprogrammed skin cells from the tails of mice, and reverted them back to an embryonic-like stem-cell state—offering tremendous

hope that every therapeutic benefit scientists believed could be derived from therapeutic cloning, could instead be achieved by regressing a patient's own tissues.

Then, last week very big news: Ian Wilmut—who opened the Pandora's Box of human cloning with the creation of Dolly the sheep, and who two years ago obtained a license from the United Kingdom's Human Fertilization and Embryology Authority to create cloned human embryos from the cells of Lou Gehrig's disease patients—stunned the scientific world with the sudden and unexpected announcement that he had rejected human cloning research, in favor of pursuing cell reprogramming as an ethical and uncontroversial means of obtaining pluripotent cells. Wilmut told the *Telegraph*:

The odds are that by the time we make nuclear transfer work in humans, direct reprogramming will work too.

I am anticipating that before too long we will be able to use the Yamanaka approach to achieve the same, without making human embryos. I have no doubt that in the long term, direct reprogramming will be more productive, though we can't be sure exactly when, next year or five years into the future.

Finally, today came the Krakatau of stem-cell announcements: *Reprogramming has been achieved using human cells*. As reported by the journal *Science*, researchers reverted human connective tissue cells back to an embryonic-stem-cell-like state—and then differentiated them into all three of the body's major tissue types. If this work pans out, there will be no need to create human cloned embryos for use in embryonic-stem-cell therapies.

I believe that many of these exciting "alternative" methods would not have been achieved but for President Bush's stalwart stand promoting ethical stem-cell research. Indeed, had the president followed the crowd instead of leading it, most research efforts would have been devoted to trying to perfect ESCR and human-cloning research—which, despite copious funding, have not worked out yet as scientists originally hoped.

So thank you for your courageous leadership, Mr. President. Because of your willingness to absorb the brickbats of the Science Establishment, the Media Elite, and weak-kneed Republican and Democratic politicians alike—we now have the very real potential of developing thriving and robust stem-cell medicine and scientific research sectors that will bridge, rather than exacerbate, our moral differences over the importance and meaning of human life.

APPENDIX E

[Kathleen Parker's syndicated column appears in over 350 newspapers. A member of the Washington Post Writer's Group, she is also a regular guest on "The Chris Matthews Show." This column appeared Nov. 28 and is reprinted with Ms. Parker's permission.]

Survival of the Stupidest

Kathleen Parker

Hey, did you hear the one about the woman who aborted her kid so she could save the planet?

That's no joke, but Darwin must be chuckling somewhere.

Toni Vernelli was one of two women recently featured in a London Daily Mail story about environmentalists who take their carbon footprint very, very seriously.

So seriously, in fact, that Vernelli aborted a pregnancy and, by age 27, had herself sterilized. Baby-making, she says, is "selfish" and "all about maintaining your genetic line at the expense of the planet."

Because Toni and her husband, Ed, are childless and vegan, they say they can justify one long-haul airplane trip per year and still remain carbon neutral.

Sarah Irving is another like-minded nature-nurturer. She and fiancé Mark Hudson decided on him having a vasectomy to prevent the possibility of an inconvenient life interfering with their carbon-perfect ones.

Those of us who have managed to see a pregnancy through to birth recognize the irony of these tales.

If we're not saving the planet for our kids, for whom are we saving it? After we're all sterilized and aborted, who's going to appreciate the fact that global warming is, by golly, under control? Who's going to live to tell the tale?

Tell me: When was the last time you read a good book by a polar bear?

Human beings may unconsciously wish to maintain their genetic line, but that's not the reason most people have children. OK, most of us have children because we get pregnant. But otherwise, the planet—glorious as it is—is simply not that much fun with no one around.

The authors of the newspaper story seemed to have a sense of something gone awry, but I don't share their nostalgia for "innocent eyes gazing up . . . with unconditional love" and "a little hand slipping into hers—and a voice calling her Mummy."

Those little pleasures are for all to cherish in their own private moments. Please.

What I'm nostalgic for is sanity.

The couples who choose abortion and sterilization may not save the planet, but they're saving the gene pool a mess o' trouble by purging their own from the mix. The Darwin Awards folks, who honor those who improve the species by accidentally removing themselves from it, will have to create a new category:

People Too Narcissistic To Procreate.

Far be it from me to suggest that people must have children to be content or to contribute to life on Earth. But abortion should never be confused with a selfless act. It is clearly the ultimate and most-vivid expression of the opposite.

APPENDIX D

Raising children is quantifiably the most persistently unselfish act known to mankind, as millions of veterans of sleepless nights will attest. Parenthood is when “I” takes a backseat to “thou”—when the infant-self submits to adulthood so that the real infant gets a necessary turn at the well of self-importance.

Although I doubt there are many willing to sterilize themselves in order to reduce the size of their carbon footprint, such extreme materialism is the evolutionary product of our gradual commodification of human life.

Suddenly, the unborn is of no greater importance than the contents of our recycling bin. Like Weight Watchers dieters substituting carbs for sugars, we trade off future members of the human race to neutralize insults to Earth’s balance in the present.

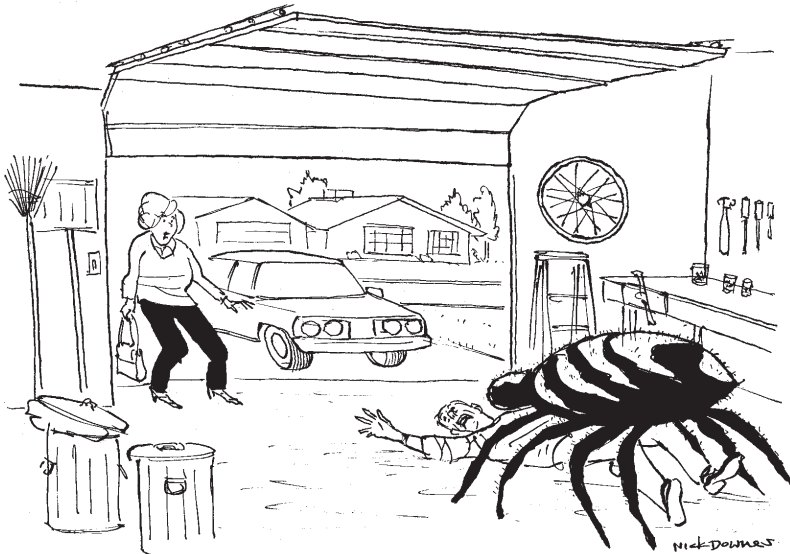
Here’s how the mental calculation goes: *Let’s see, if I abort my child, maybe I can travel first-class to the United Nations Climate Change Conference in Bali.*

Is this the slippery slope that pro-lifers prophesied? Once such utilitarian concerns edge out our humanity—and once human life is deemed to have no greater value than any other life form—how long before we begin tidying up other inconveniences?

Wouldn’t it be helpful to eliminate some of the less productive members of society who, like the cows they no doubt eat, are emitting hazardous methane, one of the greenhouse gases that contribute to global warming?

That seems an absurd projection, but then not long ago, so did the aborting of babies to thwart global warming. The deeply caring, meanwhile, are always the ones to watch. Tenderness, it has been said, leads to the gas chambers.

On a lighter note, we might have avoided all such concerns if only the mothers of Toni, Ed, Sarah and Mark had been as “virtuous” as they are.



“Don’t just stand there—find some curds and whey!”

APPENDIX F

[Anne McDonald lives in Melbourne, Australia, and writes and speaks on disability issues. This essay was first published in the Seattle Post Intelligencer June 17, 2007, and is reprinted with Ms. McDonald's permission.]

The other story from a “Pillow Angel”

Anne McDonald

Three years ago, a 6-year-old Seattle girl called Ashley, who had severe disabilities, was, at her parents' request, given a medical treatment called “growth attenuation” to prevent her growing. She had her uterus removed, had surgery on her breasts so they would not develop and was given hormone treatment. She is now known by the nickname her parents gave her—Pillow Angel.

The case of Ashley hit the media in January after publication of an article in a medical journal about her treatment. It reappeared in the news recently because of the admission by Children's Hospital and Regional Medical Center that the procedures its doctors had performed to stop Ashley from growing and reaching sexual maturity violated state law. In Canada (as in Australia), a child can be sterilized only with the consent of a court.

At the time of the initial publicity about growth attenuation, Ashley's parents wrote on their blog: “In our opinion only parents of special needs children are in a position to fully relate to this topic. Unless you are living the experience, you are speculating and you have no clue what it is like to be the bedridden child or their caregivers.”

I did live the experience. I lived it not as a parent or caregiver but as a bed-ridden growth-attenuated child. My life story is the reverse of Ashley's.

Like Ashley, I, too, have a static encephalopathy. Mine was caused by brain damage at the time of my breech birth. Like Ashley, I can't walk, talk, feed or care for myself. My motor skills are those of a 3-month-old. When I was 3, a doctor assessed me as severely retarded (that is, as having an IQ of less than 35) and I was admitted to a state institution called St. Nicholas Hospital in Melbourne, Australia. As the hospital didn't provide me with a wheelchair, I lay in bed or on the floor for most of the next 14 years. At the age of 12, I was relabeled as profoundly retarded (IQ less than 20) because I still hadn't learned to walk or talk.

Like Ashley, I have experienced growth attenuation. I may be the only person on Earth who can say, “Been there. Done that. Didn't like it. Preferred to grow.”

Unlike Ashley, my growth was “attenuated” not by medical intervention but by medical neglect. My growth stopped because I was starved. St. Nicholas offered little food and little time to eat it—each staff member had 10 children with severe disabilities to feed in an hour. That was the roster set by the state and accepted by the medical profession. Consequently my growth stopped shortly after admission. When I turned 18, I weighed only 35 pounds. I hadn't developed breasts or menstruated. I was 42 inches tall.

My life changed when I was offered a means of communication. At the age of

16, I was taught to spell by pointing to letters on an alphabet board. Two years later, I used spelling to instruct the lawyers who fought the habeas corpus action that enabled me to leave the institution in which I'd lived for 14 years.

In the ultimate Catch-22, the hospital doctors told the Supreme Court that my small stature was evidence of my profound mental retardation. I've learned the hard way that not everything doctors say should be taken at face value.

After I left the institution, an X-ray showed that I had a bone age of about 6, a growth delay almost unheard of in an 18-year-old in the developed world.

I was not only tiny but lacked any secondary sexual characteristics (a significant difference from people with naturally small stature). I was a legal adult, but I couldn't see over a bar, much less convince anyone to serve me a drink. I didn't see small stature as desirable.

My new doctors said that presumably I had the growth potential of a 6-year-old, so my new caregivers and I worked on increasing my size. My contribution was to eat everything I was offered. It worked. I started growing immediately, reaching a final height of 5 feet and weight of 120 pounds. That is, I grew 18 inches after the age of 18. Along the way I lost my milk teeth and reached puberty.

At the age of 19, I attended school for the first time, eventually graduating from university with majors in philosophy of science and fine arts. "Annie's Coming Out," the book about my experiences that I wrote with my teacher, was made into a movie (Best Film, Australian Film Institute Awards, 1984.)

Unlike Ashley, I'm now an ordinary height and weight—but I don't get left out, nonetheless. Though I still can't walk, talk or feed myself, I'm an enthusiastic traveler. My size has never got in the way, though my hip flask of Bundy rum often causes alarm at airport security. I love New York for its galleries, its shops and its theaters; hearing Plácido Domingo at the Met was one of the highlights of my life. Interestingly, Ashley is also reported as enjoying opera—maybe it goes with the turf.

Many otherwise reasonable people think that growth attenuation was an appropriate treatment for Ashley. In an Op-Ed piece in *The New York Times*, for example, moral philosopher Peter Singer wrote: "... there is the issue of treating Ashley with dignity. . . . But why should dignity always go together with species membership, no matter what the characteristics of the individual may be? . . . Lofty talk about human dignity should not stand in the way of children like her getting the treatment that is best both for them and their families."

Ironically, I'm a friend of Peter's, and I've discussed ethics and disability with him previously. Despite this, he obviously didn't call me to mind when he wrote about Ashley.

This may be because Ashley is described as having static encephalopathy, a rather uncommon name for a rather common condition. Static encephalopathy just means "brain damage which isn't going to get worse." It's occasionally used as a euphemism for brain damage caused by maternal intoxication, but the most common form of the condition is cerebral palsy unrelated to maternal intoxication.

Ashley and I both have cerebral palsy. Ashley's doctors may have used the term static encephalopathy to avoid the outcry that would have followed if people realized that it was being suggested that girls with cerebral palsy should have surgery to stunt their growth and prevent puberty.

When Singer wrote that, "Ashley is 9, but her mental age has never progressed beyond that of a 3-month-old. She cannot walk, talk, hold a toy or change her position in bed. Her parents are not sure she recognizes them. She is expected to have a normal lifespan, but her mental condition will never improve," he has accepted the doctors' eyeball assessment of Ashley without asking the obvious questions. What was their assessment based on? Has Ashley ever been offered a way of showing that she knows more than a 3-month-old baby? Only someone like me who has lain in a cot year after year hoping that someone would give her a chance can know the horror of being treated as if you were totally without conscious thought.

Given that Ashley's surgery is irreversible, I can only offer sympathy to her and her parents. For her sake, I hope she does not understand what has happened to her; but I'm afraid she probably does. As one who knows what it's like to be infantilized because I was the size of a 4-year-old at age 18, I don't recommend it.

My ongoing concern is the readiness with which Ashley's parents, doctors and most commentators assumed they could make an accurate estimation of the understanding of a child without speech who has severely restricted movement. Any assessment of intelligence that relies on speech and motor skills cannot conceivably be accurate because the child doesn't have any of the skills required to undertake testing. To equate intelligence with motor skills is as absurd as equating it with height.

The only possible way to find out how much a child who cannot talk actually understands is to develop an alternative means of communication for that child. An entire new discipline of non-speech communication has developed since I was born in 1961, and there are now literally hundreds of non-speech communication strategies available. Once communication is established, education and assessment can follow, in the usual way.

No child should be presumed to be profoundly retarded because she can't talk. All children who can't talk should be given access to communication therapy before any judgments are made about their intelligence.

Ashley's condemned to be a Peter Pan and never grow, but it's not too late for her to learn to communicate. It's profoundly unethical to leave her on that pillow without making every effort to give her a voice of her own.

APPENDIX G

[*Amanda Shaw is a junior fellow at First Things. The following appeared Oct. 31 on the magazine's website (www.firstthings.com) and is reprinted with permission.*]

A Decidedly Unsappy *Bella*

Amanda Shaw

Chick flicks are the caramel-lattés of romantic comedy—sweet and frothy, without much nutritional value. Chick flicks reheat the Cinderella story and serve it up with topping for a cozy evening: Boy meets girl, complications ensue, love saves the day—and in the end, the stepsisters are in the scullery and the princess is at the altar. Or maybe we can skip the vows and go straight to the bedroom.

Bella, unexpected winner of the People's Choice Award at the Toronto International Film Festival, was released in theaters across the United States last weekend—and, despite appearances, a chick flick is exactly what it's not.

In the words of writer and director Alejandro Monteverde, *Bella* is a “love story that breaks the barriers of a traditional romance.” Breaking the barriers of romance and tradition is hardly unique in cinema, of course, but rarely have they been broken with such charm and purpose.

The main action in *Bella* takes place over twenty-four hours, when Nina (Tammy Blanchard), an attractive and significantly single waitress in New York City, learns she is pregnant. Through an unfortunate turn of events, she is fired that same morning from the Mexican restaurant where she works, and one of her coworkers, José (Eduardo Verástegui), deserts his post as chef to run after her. Impulsive, yes, but sometimes the heart has reasons.

Bella has been hailed as a “cinematic jewel,” “a true inspiration,” a small masterpiece that may win an Oscar. But some critics have not been so easily pleased.

“It is not hard to see why *Bella*, a saccharine trifle . . . won the People's Choice Award,” Stephen Holden wrote last week in the *New York Times*. “If *Bella* (the title doesn't make sense until the last scene) is a mediocre cup of mush, the response to it suggests how desperate some people are for an urban fairy tale with a happy ending, no matter how ludicrous.”

“Saccharine trifle” and “mediocre mush” are a little strong. And yet Holden is actually getting at the heart of *Bella*'s message and pointing to its potential, in his convoluted way. While the film may not wow mainstream media critics, it proved in Toronto last year, just as it is proving now in American theaters, that it can touch ordinary people. And that is just what its makers intended.

Bella's pro-life message is inescapable. Yet its producers did not intend it to be Sunday-school entertainment, and there is no trace of Salvation Army drumbeating. The Christian viewer might imagine that providence maps the plot and grace propels the action, but God's name gets just two faint mentions—in a dinnertime blessing and in the opening proverb: “My grandmother used to say, ‘If you want to make God laugh, tell him your plans.’”

God may have laughed—others certainly did—when Monteverde and his lead

actor Verástegui began planning *Bella* in 2004. Both are passionate Christians, and faith prompted them to do something beautiful for God. Verástegui, who once led the fast life of a Latin pop star and heartthrob, will never forget his day of conversion:

“God changed my heart and I had to repent of my past. And from that day on, I promised that I would never do anything that will offend God or my Latino heritage. I would never do anything to compromise my faith. That’s the moment I realized that the purpose of my life was to know and to love God.”

Bella was not made to preach to the choir, however. In fact, it was not made to preach at all. As Monteverde stresses, he took pains “never [to] come across as judgmental. If we come across that way, we lose the whole purpose of the film.”

As the film opens, Nina learns that she is pregnant, unemployed, and very much alone. More than anything, she needs the support of friendship, and José—the chef who follows her out the door—gives that unhesitatingly.

But what could become a dialogue of tears and caresses is kept decidedly unsappy for most of the film. José and Nina elbow onto a subway car where an impromptu rap concert starts up, they pass through a flea market with all its claustrophobic tawdry, and they stop in a bodega and witness a shouting match. All very New York, and more scruffy than saccharine.

Gradually, José learns that Nina plans to “have it taken care of,” because, as she puts it, an abortion is clearly what’s best for her. He does not lecture—just gently suggests adoption—and initially she is unswayed. We follow the couple back to the house of José’s parents and meet his lively but caring Latino family. And with Nina, we discover that adoption can form beautiful relationships. More poignantly, though, we realize that José too has had to suffer—and his suffering is not unlike Nina’s own. For both, however, there is hope: hope of life and hope of love.

In the *New York Times*, Holden criticized the film for its happy, fairy-tale ending. But, at the same time, he complained that it doesn’t give the “slightest suggestion of romance between [José] and Nina.”

As it happens, that’s rather the point—and the way the film escapes the saccharine trap. Having José marry Nina, Nina keep the baby, and both move to a cottage on the beach would have been the tempting pro-life, pro-family conclusion. And it would have left *Bella* indistinguishable from all the other fairy-tale films.

There’s the 1997 romantic comedy *Fools Rush In*, for instance, a kind of pro-life lite: A one-night stand results in pregnancy, the couple decides to forego abortion and get married, and after a string of culture clashes, true love finally blooms. Granted, the father of Nina’s child is out of the picture, but José, with his wide eyes and wider heart, would have made a fine husband.

Or there’s *Love with the Proper Stranger*. This 1963 film depicts a young musician taking his short-term girlfriend to a back-alley abortionist only to be appalled by the gleaming metal instruments. He whisks her away, recognizes his responsibility, and, after much heartache and a little banjo playing, eventually wins her

hand. Happily ever after, The End.

But Bella is different. As Monteverde explains:

“I wanted to write a love story that isn’t just about the romance between a man and a woman, but about self-sacrificial love—and a story about how each other’s pain becomes each other’s redemption. And I wanted to make a film that shows there’s always a choice that doesn’t have to lead to moral pain.”

The ending is happy because the most precious thing is protected: With José’s support, Nina gives her child life. And, at least by the end, that’s what the audience wants. Monteverde never has to say, “Abortion kills children” or “Abortion hurts women,” but we would be callous indeed not to glimpse these realities as the plot glances back to the tragedy of José’s past and ahead to what might unfold. José leads Nina into a women’s clinic in one of these flash-forwards, and her pain—physical and so much more—is razor sharp. Seeing what might be, both Nina and the audience learn to shudder. “If all time is eternally present / All time is unredeemable,” T.S. Eliot once wrote, and I believe this temporal dynamic is key to the film—and key to life. Time, *Bella* shows, is hope.

Bella’s ending is happy because there is peace: not perfection, for Nina, as far as we know, is still struggling to make her way alone, and José, no doubt, still suffers from his past wounds. But real life isn’t about perfection; it is about the day-to-day struggle, which, like Nina’s pregnancy, often comes unasked and unplanned. It is about the love that is given, more than the love that is received. Or, rather, it is about the love—self-sacrificial and redemptive—that is received *in* the very act of giving.

Compelling and beautiful, this sort of love story is no fairy tale.

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