

the HUMAN LIFE REVIEW



SPRING 2010

Featured in this issue:

Ellen Wilson Fielding on The Urge to Knock on Wood
Tim Pawlenty on The Right Thing to Do
John Burger on Pro-lifers & Tea Party Politics
William Murchison on Wesley J. Smith v. Matthew Scully
Stephen Heaney introduces The Visitor
Monica Weigel reviews *Girls in Trouble*
Rita L. Marker on Montana's "Yes" to Assisted Suicide
Stella Morabito on A Teen's Notes from a Nursing Home
Carmen González Marsal on Spain's Abortion Agenda

FROM THE ARCHIVES: FRANCIS CANAVAN ON
THE THEORY OF THE DANFORTH DECISION (1976)

Also in this issue:

Kathryn J. Lopez • William McGurn • Denise Mackura • Joe Carter • Rebecca
Messall • Michael J. New • Christopher Miller & John Stemberger • Bobby
Schindler • Nigel Biggar • Thomas Sowell • The editors of *Public Discourse*

Published by:

The Human Life Foundation, Inc.

New York, New York

. . . the “back of the book” in publishing parlance generally refers to whatever follows a magazine’s featured editorial content, often books and arts reviews. In our case, it’s a selection of Appendices—mostly reprinted material which our editors have decided should be part of the record the *Review* has been compiling (since 1975) of the debate touched off by the 1973 *Roe v. Wade* decision. This issue contains an unusually hefty Appendices section and many “thanks” are in order: to National Review Online for permission to include Kathryn Jean Lopez’s “Michigan’s Cheap Date” (p. 84), and to the *Wall Street Journal* for William McGurn’s “Pro-life Democrats, R.I.P.” (p. 87). The online publication *Public Discourse* has graciously allowed us to share two pieces: an editorial essay titled “Health Care and the Abandonment of Pro-life Principle” (p. 91), and “How Red States Reduce the Abortion Rate” by Michael J. New (p. 100). Joe Carter’s “Four Reasons You Might Be Aborted: An Open Letter to Fetal Humans” (p. 95) first appeared on *First Things’* “First Thoughts” blog, which Mr. Carter edits; and Rebecca Messall’s “Margaret Sanger and the Eugenics Movement” on the website of the *Denver Post*. Americans United for Life originally published on its website “Abortion Jurisprudence and Crist’s Conflicted Court” by John Stemberger and Christopher G. Miller (p. 104), and LifeSiteNews.com published Bobby Schindler’s “New Findings Cast Increasing Doubt on Terri Schiavo’s Death” (p. 117). Our thanks also to the British magazine *Standpoint* which ran Nigel Biggar’s essay, “The Road to Death on Demand” (p. 119), in its March issue, and to Thomas Sowell, whose syndicated column on a similar subject, “A ‘Duty to Die’?” (p. 127) closes out the back of our book.

Unlike all of these, “The Case for Pro-life Democrats” (p. 89) is an original piece by a new contributor, Denise Mackura, an attorney who heads Democrats for Life of Ohio. We placed it with the Appendices because it provides a nice counterpoint to McGurn’s “R.I.P.” Other new contributors featured in this issue are Monica Weigel, a New York teaching artist and director who graciously accepted our invitation to review an off-Broadway play dealing with abortion (“*Girls in Trouble*,” p. 51), and Carmen González Marsal, a Ph.D. student at the Universidad Complutense de Madrid, whose update on “Spain’s Abortion Agenda” (p. 71) came in over our e-mail transom. Welcome to them, and to Governor Tim Pawlenty of Minnesota: “The Right Thing to Do” (p. 17) is adapted from an address he recently gave at a pro-life gala hosted by the Susan B. Anthony List in Washington, D.C.

And now for a *mea culpa*: We regret that the photographer whose pictures ran in the Winter issue—highlighting our Great Defender of Life Dinner—was not identified. His name is Michael Fusco and we look forward to seeing him at this year’s dinner on October 28. For more details about what promises to be another great evening—e.g., who our honoree will be—go immediately to page 16.

ANNE CONLON
MANAGING EDITOR



the HUMAN LIFE REVIEW

Spring 2010
Vol. XXXVI, No. 2

Editor

Maria McFadden

Senior Editors

Ellen Wilson Fielding
Faith Abbott McFadden
Mary Meehan
William Murchison

Managing Editor

Anne Conlon

Consulting Editor, Europe

Mary Kenny, London

Contributors

Lynette Burrows
James Hitchcock
Rita L. Marker
William McGurn
George McKenna
David Quinn
Wesley J. Smith

Business Manager

Rose Flynn DeMaio

Production Manager

Christina McFadden

Publishing Consultant

Edward A. Capano

Founding Editor

J.P. McFadden

Introduction 2

Maria McFadden

*Guilt, Hard Cases, and
the Urge to Knock on Wood* 7

Ellen Wilson Fielding

The Right Thing to Do 17

Tim Pawlenty

The Tea Party and the Pro-Life Cause 24

John Burger

Animal Rights and Wrongs 29

William Murchison

The Visitor 37

Stephen J. Heaney

A Play About Abortion 51

Monica R. Weigel

Assisted Suicide:

The Montana Supreme Court Says Yes 56

Rita L. Marker

A Teenager's Notes from a Nursing Home . . . 65

Stella Morabito

Spain: The Abortion Agenda 71

Carmen González Marsal

From the Archives:

The Theory of the Danforth Case 75

Francis Canavan, S.J.

Appendices 84

Kathryn Jean Lopez Michael J. New
William McGurn J. Stemberger & C. Miller
Denise Mackura Bobby Schindler
Joe Carter Nigel Biggar
Rebecca R. Messall Thomas Sowell

The editors of *Public Discourse*

Published by THE HUMAN LIFE FOUNDATION, INC. Editorial Office, 353 Lexington Avenue, Suite 802, New York, N.Y. 10016. Phone: (212) 685-5210. The editors will consider all manuscripts submitted, but assume no responsibility for unsolicited material. Editorial and subscription inquiries, and requests for reprint permission should be sent directly to our editorial office. Subscription price: \$25 per year; Canada and other foreign countries: \$35 (U.S. currency). ISSN 0097-9783.

©2010 by THE HUMAN LIFE FOUNDATION, INC. New York, N.Y. Printed in the U.S.A.

INTRODUCTION

It is likely that many of us have been in a situation similar to the one described by Ellen Wilson Fielding in our lead article (“Guilt, Hard Cases, and the Urge to Knock on Wood,” p.7). We have been asked a wildly inappropriate question about abortion, or reproduction, at a social occasion—in her case, a “would you have considered an abortion” question about the unborn child who was “there with us in the same room, wriggling and pushing and making his presence felt beneath my skin’s surface.” Though Fielding was at the time “rendered speechless by a kind of inarticulate fury at having my unborn child served up as a political debate topic,” she could not be more articulate here, writing about what she *wished* she had said—and much more—in perhaps her most moving essay to date. With gritty honesty, Fielding refuses to gloss over the harrowing maze of feelings the “hard cases” engender; she steers us through them to the shining heart of the matter, that “in a very intensely personal way, as well as philosophically, you can’t say no to life.”

Fielding points to a pervasive problem in our culture: the sublimation of logic in favor of feelings, sometimes accompanied by the accusation that one can’t speak authentically about something without having experienced it. I was recently asked, after I expressed to a friend my belief that abortion was wrong as a simple matter of human rights, whether I’d had experience with the foster-care system. My friend had been a foster parent, and was understandably emotional about the sad cases she had seen, but her implication was that I couldn’t judge abortion because I hadn’t been willing to take a foster child into my home. It was a nonsensical position, which I tried to point out, but as Fielding so accurately writes, “deploying logic can seem cold and emotionally disengaged” in such situations, and so we sometimes feel inadequate in “moving hearts and minds” for life.

Moving hearts and minds—our mission here at the *Review* for over three-and-a-half decades—was emphasized by Minnesota Governor Tim Pawlenty in a speech he gave at a gala dinner honoring the Susan B. Anthony List—the organization founded to counter the pro-abortion Emily’s List and help get pro-life women elected to Congress. In “The Right Thing to Do” (p. 17), adapted from the governor’s speech, Pawlenty praised the leadership of the organization and their legislative efforts, yet “in the end,” he says, “the laws and the court decisions and the like will change when hearts and minds are changed.” And we must persevere, because:

We are on the right side of history when it comes to protecting and defending life. We’re on the right side of the Constitution. We’re on the right side of the Declaration of Independence. We’re on the right side of the issue in all respects, and in the end, ideas matter, energy matters, persistence matters, determination matters.

There is certainly a great amount of energy and determination in the Tea Party

movement; the question is, is it on the right side of the social issues? Reporter John Burger investigates the matter in “The Tea Party and the Pro-Life Cause” (p. 24). “Like its Colonial-era namesake,” Burger writes, the Tea Party movement “is about being over-taxed, underrepresented, and subject to the overbearing policies of a distant government.” It is a conservative movement, and therefore many members are also pro-life, but as you will see from the varied responses Mr. Burger receives from those he interviewed, the jury is out on how much the two movements will influence each other, for good or even ill; much remains to be seen.

As modern movements go, it’s safe to say that the ferocious nature of the present-day animal-rights movement is unprecedented. Frequent *Review* contributor and bioethicist Wesley J. Smith’s new book, *A Rat Is a Pig Is a Dog Is a Boy: The Human Cost of the Animal Rights Movement*, received a startlingly scathing critique in *National Review* (to which Smith also contributes). The reviewer was Matthew Scully, a conservative animal-rights activist, himself the author of *Dominion: The Power of Man, the Suffering of Animals, and the Call to Mercy*. As senior editor William Murchison tells us in “Animal Rights and Wrongs” (p. 29), Smith “bounces back” in the next issue of *NR* protesting against what he calls Scully’s “cheap demagoguery,” and the “blogs light up” as the two cross swords. While such “intellectual snapping matches” can be tedious, Murchison’s report on this one is riveting: He dissects (if you’ll pardon the word) each man’s gripes, with generosity towards both, and acknowledgment of the hold animals have on our sympathy.

After careful consideration, Murchison finds Smith’s “balanced yet brilliantly executed assault on the liberationists” more compelling than Scully’s promotion of charity towards animals because Smith insists on human exceptionalism. Murchison puts the discussion in the broader context of our “cultural disintegration,” which has led us to “debate the whole issue of what it means to be human—and we confront the fact that many of us don’t think it means all that much. Here the issue of how we think about animals joins the issue of how we think about the unborn.” Though the unborn are not named as part of the Smith-Scully argument, how can the brutality that kills millions of unborn humans a year be beside the point? “Isn’t it plain that generosity to animals can’t flourish where generosity to humans holds no purchase on other humans?”

Neither animal nor human, we introduce you next to an engaging alien from Stephen Heaney’s wonderfully imaginary planet Zootle. In a departure from our usual earth-bound essays, “The Visitor” (p. 37) is an engaging and sometimes hilarious short story. It is also in its unique way a morality tale concerning the issues at the center of the Smith-Scully debate. As a matter of fact, Heaney, a professor of philosophy, wrote “The Visitor” as a fresh way to get his students to understand the implications of what it means to be a human person. We’d say he hit upon a success, as “The Visitor” is a delightful fable.

“Delightful” might not be the word to describe the controversial new drama on abortion, *Girls in Trouble*, reviewed for us here by a newcomer to our pages, Monica Weigel. The play, written by Jonathan Reynolds and “fearlessly” directed by Jim

Simpson, is provocative and at times shocking; Weigel writes that it also “defies categorization as either pro-life or pro-choice,” which is in itself remarkable in the overwhelmingly liberal milieu of New York theater. Brava, writes Weigel: *Girls in Trouble* has impeccable performances and “moments of brilliance,” and does what art should: “Art is meant to provoke people, to jar them out of complacency and make them look at the world more closely.”

While there are encouraging signs that Americans are looking more closely at the abortion issue and embracing the pro-life message, there are at the same time *alarming* signs of the growing acceptance of other forms of legislated killing, especially in the stealthy ascent of pro-assisted-suicide and euthanasia legislation. In our next article, Rita Marker, executive director of the International Task Force on Euthanasia and Assisted Suicide, reports on *Baxter v. Montana*, a decision handed down by the Montana Supreme Court on the last day of 2009 (“The Montana Court Says Yes,” p. 57). In a grave setback for life, the Montana court “gave the green light for doctors to prescribe a lethal dose of drugs” to their patients. “The decision was particularly tragic,” Marker explains, “given the fact that Montana already has the highest suicide rate in the nation, twice the national average”; it is also especially dangerous as a precedent because the court “provided a new basis on which the right for physicians to assist suicides can be argued: as a mere extension of a state’s living will law.” As a matter of fact, the term “assisted suicide” is replaced by “aid-in-dying,” a “catch-all phrase” that advocates have “favored for years,” because, as it was with the legalization of abortion, to get a deadly law passed it must be couched in euphemisms. The ruling in Montana is also the first time, after several failures, that assisted suicide advocates have succeeded through court action. Marker fears such court challenges to “laws across the country may become commonplace.”

As with the hard cases concerning abortion described by Ellen Fielding, powerful emotions infuse situations dealing with the lives of the disabled and the ailing elderly. Those feelings, especially our natural fear of being sick and dependent, are exploited by advocates of a “quality of life” healthcare ethic. In our next essay, Stella Morabito writes about her teenage summer-job experience doing the laundry in a nursing home (“A Teenager’s Notes from a Nursing Home,” p. 65). Like Fielding, Ms. Morabito disarms us with her honesty about the emotions she felt then and her teenage understanding of the world—which, she argues, is the level of the simplistic arguments made now in favor of rationing health care. And yet, even then, her 15-year-old self knew “viscerally” that the state should not be able to have the power to “define the value and the purpose” of the lives she cared for that summer. “I could not articulate it then, but I knew that we diminish ourselves when we diminish the lives of others. . . . A nation that does not appreciate its people as its most precious resource itself suffers from a collective form of dementia.”

We travel abroad next for news from the nation of Spain: Another newcomer to the *Review*, Carmen González Marsal, reports on a law going into effect there on

July 4th, one which represents a “radical change in the legal understanding of abortion in Spain.” The legislation would “guarantee access to the voluntary interruption of pregnancy”—effectively introducing abortion-on-demand, whereas Spain’s current law, with some exceptions, considers abortion a crime. Paradoxically, the controversy over the new law has, she writes, awakened a lot of Spaniards to the necessity of protecting life, and a recent rally in Madrid attracted more than one million people—a large number of them young—marching peacefully under the slogan “For Life, Women and Maternity. Every Life Matters.”

Marsal is a Ph.D. student, full of hope that Spain is mobilizing for life. In his speech, Governor Pawlenty spoke about the importance of young leadership in the pro-life struggle, because, as he put it, “life isn’t a run; it’s a relay race.” As part of our mission to nurture young leaders, we introduced in our last issue a new section, *From the Archives*, in which we reprint articles from past issues that are just as important and instructive as ever—yet were written before our young leaders were born! This time, it is our late friend and former *Review* contributor Father Francis Canavan, S.J., (who died last year at 91) writing in our Fall, 1976 issue about the just-decided Supreme Court case, *Planned Parenthood v. Danforth*.

Father Canavan explains why he believed the “Court’s opinions on abortion are essays in political theory,” not practical interpretations of the Constitution. In the *Danforth* decision, which struck down abortion restrictions proposed by the state of Missouri, the court “subordinated the value of life to the allegedly higher value of an individual’s autonomy.” Consideration of the mother’s wishes trumped any interest the State had in what the “Court’s own terminology said is at least a potential human life.” As Canavan wrote (prophetically) back then: “a legal system that refuses to have, or is not allowed to have, a bias in favor of life winds up with a bias against it.”

Fast forward about thirty years, and we have (as remembered in *Appendix I*) the court-ordered starvation and dehydration death of a young woman, Terri Schiavo. As her brother Bobby Schindler reports, though Terri’s supposed persistent vegetative state (PVS) was used as justification for her death, a recent study published in the *New England Journal of Medicine* found that some patients “believed to be in PVS were actually able to understand and communicate.” This is what Terri’s parents and siblings had been saying all along, and they were willing to take care of Terri, but the court would not listen—because of a bias against the cognitively disabled, and against life.

* * * * *

We have a large number of appendices in this issue, beginning with commentary on: Congressman Bart Stupak’s surrender to Obamacare and the passage of the health-care reform bill (*National Review*’s Kathryn J. Lopez); whether or not pro-life Democrats are dead (“Pro-Life Democrats R.I.P.” by William McGurn of the *Wall Street Journal*, *Appendix B*)—or still alive (Democrats for Life of Ohio’s Denise Mackura, *Appendix C*), and whether or not the health-care bill in fact provides

INTRODUCTION

taxpayer funds for abortion (the editors of the *Public Discourse* respond to the editors of *Commonweal*, *Appendix D*).

Other appendices include: a clever satire from a blogger at *First Things*, “Four Reasons You Might be Aborted: An Open Letter to Fetal Humans” (*Appendix E*); a Mother’s Day reality check on the eugenic legacy of Planned Parenthood founder Margaret Sanger, by Rebecca Messall (*Appendix F*); Michael J. New’s debunking of a claim by Northwestern University Law Professor Andrew Koppelman that “red states and the religious right” actually *increase* the rate of abortions; and an analysis of Florida Governor Charlie Crist’s appointments to the Florida Supreme Court and what they mean for the cause of life.

Finally, we have a trio of appendices about death by demand—or decree: Bobby Schindler’s “New Findings Cast Increasing Doubt on Terri Schiavo’s Death,” discussed above; an essay from the British magazine *Standpoint* on the United Kingdom’s “Road to Death on Demand” (*Appendix J*); and a column by Thomas Sowell (*Appendix K*) that bluntly states where this is all heading, the advocacy of a “Duty to Die.”

As always, Nick Downes’ cartoons help to keep our spirits up—we hope they do the same for you, and that you will continue to find the *Review* a source of information and encouragement to persevere in the great cause for life.

MARIA MCFADDEN
EDITOR

Guilt, Hard Cases & the Urge to Knock on Wood

Ellen Wilson Fielding

By the time I was 28 and pregnant with my first-born, I had already racked up many years of being “pro-life”—years that reached self-awareness roughly with passage of New York State’s liberalized abortion law in 1970, when I was 14, and that eventually ratcheted up from high-school and college debates into a professional career, so to speak, following the *Roe v. Wade* decision and the birth two years later of the *Human Life Review*.

So friends and more acquaintances than might normally be the case knew where I stood on abortion, although it was not a topic I preferred debating non-professionally if given the choice (pardon the loaded word). As a literally life-and-death issue, abortion mattered too much for comfortable dinner-table pyrotechnics; in addition, there was the risk of saying—or hearing from others—the kind of passionate, personal remarks that seldom seem to persuade, are hard to forget, and tend to have a distancing effect on friendly relationships. I write better than I speak; it seemed (and still largely seems) more sensible to refer people to the writing that conveys with accuracy and completeness what I think and feel. For the rest, there was something very attractive to me in St. Francis of Assisi’s advice to his friars: “Preach always. If necessary, use words.”

Still, from time to time all of us are confronted with honest seekers after truth, or unknowing propagators of misinformation, or people making the kind of provocative comment in the face of which silence implies consent. One of those occasions happened on Election Night 1984, a couple of months before my oldest child Peter was born, when we found ourselves at an informal election party in the home of a libertarian/conservative friend in New York City. She—and most of her friends there that evening—were enjoying the Reagan second-term avalanche of electoral votes, the near-monochromatic television map forming a festive backdrop to our mostly political talk. Although the social issues weren’t high on her radar screen and were completely off that of some of the other guests, the topic of abortion backed into our conversation because of her husband’s recent illness. He had just recovered from a case of German measles, and mentioned that as soon as he was diagnosed he anxiously called my husband to determine whether I had had either the disease or the vaccine, so my developing baby would not be vulnerable to a birth defect.

Ellen Wilson Fielding, a longtime senior editor of the *Review*, is the author of *An Even Dozen* (Human Life Press). The mother of four children, she lives in Maryland.

And that prompted someone else to turn to me and challenge me in an intellectually detached sort of way: “What would you have done if it had turned out that you’d been infected with German measles? Would you have gone through with the pregnancy or had an abortion?”

I was rendered speechless by a kind of inarticulate fury at having my unborn child—there with us in the same room, wriggling and pushing and making his presence felt beneath my skin’s surface—served up as a political debate topic. It seemed to me that the questioner was waiting to hear me either admit that my personal hard case would have driven me to abandon abstract principle or piously intone a pro-life commitment that under the circumstances would sound bloodless, unreal, and unconvincing. What was I supposed to do? Declaim, “It is a far, far, better thing I do than I have ever done?”

In fact I can’t recall exactly what I said, except that it was quite brief—a sort of pro-life shorthand, something like, “I hope I would have the baby even so, because he would deserve a shot, however scared I would be about my ability to handle having a handicapped child.”

The thing is, as anyone who has ever been pregnant knows, expectant mothers already spend much too much of those precious nine months worrying about what could go wrong, whether their imaginations are tormented about the likely and serious or about the much less likely and trivial. (One pregnant friend who is normally quite sane once awoke in terror from a nightmare in which—horror of horrors—her unborn child turned out to be a redhead.) I know of no mother-to-be who has ever said, “I hope my baby is handicapped or has a serious health condition.” Even couples who specifically set out to adopt handicapped infants do so because of a deep desire to fill the special needs of those children, rather than because they think it would be better for children to be handicapped even if it were possible to prevent the condition or cure it. It is natural and human to desire health over sickness, sight over blindness, mobility over paralysis for ourselves and our loved ones, and this is true despite what parents and loved ones of handicapped children rightly say about the gifts these children bring to a family, the love they give, and the enjoyment they can derive out of living.

But back to my election-night questioner, who was perhaps playing a game of “Gotcha!” in the belief that my natural fears and my recoil against burdens I hadn’t specifically chosen and felt unfit to handle were more “real” than my conviction that the baby pushing against my abdomen was as human and worthy of love and protection as I. What I could have said at the time—except that we were in the middle of a party, with the TV broadcasting a bunch of talking heads in front of that colored American map, and with my

thoughts and feelings needing shaking down and settling—well, what I should have said was something along these lines:

“You think I don’t know or won’t admit that if the situation you are presenting were true I would be panicked, in a state of dread and denial, and feeling completely overwhelmed and trapped? Of course I know that! Of course you are reaching down into one of the primal mother-to-be fears that prowls around our dreams and haunts those draggy lower-back-pain moments of psychological weakness. [The other great mother-to-be fear, perhaps even more basic, is that I am incapable of successfully mothering even the least handicapped, most normal child around, and that I will therefore manage to ruin that poor normal baby’s life. Unlike the first fear, that fear doesn’t go away with childbirth!]

“I know very well that I’m nothing like the mothers in those uplifting books and TV movies who meet mountainous challenges to wrest cures for their children, or achieve spectacular hitherto unforeseen therapeutic results, form organizations for others in difficulty, make inspiring speeches, raise research money, adopt or foster other handicapped children. If I ever find myself in their place, I figure my marriage will fold, any other children I later give birth to will resent me and each other, and my handicapped child and I will lurch from day to day in an unproductive, ad hoc, hand-to-mouth fashion. That’s the way it honestly looks and feels to me—like something very close to a disaster for all concerned, including my baby.

“And so what? Contemplating that future or something like it may be traumatizing and emotionally debilitating, but it doesn’t change the fact that this baby is almost ready to be born, and has as much right to live as I do. More even than that, he is as much destined to live the life God foresees and fore-wills for him. The kind of little parlor-game thought experiment you are dishing out for my consideration scares me more than open-heart surgery, and I would never in a million years have the sheer gall to volunteer for it, but if this child getting ready to push his way out of the womb has a mental or physical handicap, we’ll all just have to deal with it. That is reality. That—and not merely the fear and the claustrophobic resistance to being trapped in a life you didn’t choose (which is something we all are destined to feel at some or perhaps many points in our lives, whether because of illness, desertion, our children’s troubles, lost jobs, lost savings, old age, or the approach of death).”

Something like that is what I would have said, is what I meant to convey by the abbreviated shorthand of a party sound-bite.

This kind of “Gotcha!” game has always been popular on the other side of the prolife/“prochoice” divide, and if most of us are honest, it always pushes buttons that have little to do with the integrity of our prolife commitment and much to do with simple human self-doubt and revulsion against appearing piously self-righteous.

And it also homes in on a superstitious version of pro-life survivor guilt—not the version that the sibling of an aborted child feels, but the version that someone heretofore unchallenged by the great moral dilemmas and psychological struggles of problem pregnancies, fertility issues, and difficult end-of-life scenarios feels. Relatively few people have endured a rape-induced

pregnancy or lost a job or spouse or home or loved one because of an unplanned pregnancy. Most people have not dealt with the emotional tsunami that follows losing a genetic gamble with heritable conditions like Tay Sachs. And on the opposite frontier of life, many of us have yet to grapple with wrenching end-of-life decisions for a loved one—or for ourselves.

It is not that we necessarily question the steadfastness of our convictions if we were faced with any of these painful situations. Oh, we may have small dark corners of doubt about our ability to hold up, just as devoutly religious people may brood over their fortitude under religious persecution, especially in its most nightmarish forms. But the primary problem is less profound than that. For me—and for at least some like-minded people I have known—the problem is that we rather diffidently feel that we haven’t suffered enough to convincingly and sympathetically speak of the hard cases. This is partly about what we feel, and partly about what we think others may feel.

We see a special case of this diffidence among the pro-life male population. The media and spokesmen for organizations like Planned Parenthood and NARAL portray anti-abortion groups as male-led and dominated, in keeping with the myth that the pro-abortion camp represents women’s interests and defends women’s rights. In reality, much of the anti-abortion leadership has from the outset been female. Consider Nellie Gray’s three-decades-plus leadership of the yearly March for Life in Washington, Judie Brown’s long run at American Life League, the work of Feminists for Life and Rachel’s Vineyard, as well as the many female-founded crisis-pregnancy centers, including Birthright. Consider Rita Marker’s monumental efforts to repel the encroachment of assisted suicide. Men too have worked hard and passionately and selflessly over many difficult years to protect human life. (Founder of the *Human Life Review* and wearer of assorted other pro-life hats J. P. McFadden is an obvious inspiring example, as are legislators like Henry Hyde and the many male winners of the Human Life Foundation’s Defender of Life Award.) However, considering the lingering numerical disproportion of men in high positions in public life and the traditional lifestyles of many pro-life women, it is significant how much of the “manpower” is provided, and the public tone of prolife debate set, by women.

This is not due by and large to male indifference or lack of protective instincts for the unborn. But it seems clear that one motivation for the relative muting of male anti-abortion voices is a reluctance to appear to lay down the law to other people (women) about what to do in painful or dangerous circumstances that males do not directly, immediately, physically undergo.

We don’t need to experience something to form a correct judgment about

it. Those who dictate that we can have nothing relevant to say on any subject we haven't directly experienced condemn all of us to inhabit tiny unconjoined cubicles of individualism rather than a world of nations, churches, communities, associations, families, friendships. Still, advice—especially the kind that tells us not to do something we badly want to do, or tells us to begin doing something we badly don't want to do—provokes less resentment when it comes from someone who has been in a similar situation and has manifestly suffered for the convictions he or she presses upon us. In such situations, especially if no one more qualified is available, we still are obliged to exert ourselves to persuade with reason and compassion. But we encounter a psychological obstacle that must first be surmounted to get a fair hearing. And that obstacle can be especially obstructive if by temperament we are the kind of people prone to imaginatively enter into the other person's point of view; we can then become even more apologetic and uncertain in our approach, not because we doubt the truth and value of what we are saying, but because we doubt our ability to convey it persuasively.

This is not a swipe against rationality and logic. Logic is a good friend. A reasonable argument can move minds immediately, or it can set up a delayed reaction, detonating later, under more advantageous conditions, in the mind of the one we debate. Reason can reach past idiosyncrasies of custom, background, and personality, grounding someone who has been overwhelmed by an emotional earthquake. However, one-on-one, in conversation with people who have already staked out their own partisan ground, reason, though necessary, is likely to be insufficient to win a debate. In addition, those deploying reason can seem cold and emotionally disengaged, untouched by other people's traumatic realities. Recognizing this truth does not in itself do anything to help us surmount it. In fact, perceiving someone's possible adverse reaction to pro-life arguments can siphon off the kind of confidence necessary to get a real exchange of views off the ground. Compared to a pro-abortion advocate's ire or anguish over personally felt hard cases, one can feel (temporarily) cocooned in non-suffering. (Not that crisis pregnancies or end-of-life issues are the only sources of pain—there is plenty of it floating about for all of us to get a share.)

That is why, even when you expose as a logical fallacy the argument that only a pregnant woman has the right to judge her situation, it leaves a residue of inadequacy. How then are we to move minds and hearts honestly, truthfully, legitimately? How are we to respect others as people who draw conclusions from what they have experienced, without merely diminishing those experiences? How do we promote life-giving choices without leaving others feeling that we believe we can dictate all choices from Olympian heights?

All of these feelings and frustrations entered inchoately into that election-day moment in late 1984, as they have entered into many moments in the years following. But all of us also have encountered points of intersection with one another in the course of life, and none of us should really conclude that what we have lived and learned, with both our minds and our hearts, leaves us inadequate to recognize and communicate to others the value of human life.

Late in the winter of 2005, my 18-year-old daughter called me up at work to tell me she wasn't feeling well and could I come home to take her to the doctor. As I entered what she was telling me into WebMD on my computer, I noted that one of the possible diagnoses for her symptoms was an ectopic pregnancy. And then I went home and took her to the doctor.

The doctor brought her into a private treatment room and administered a pregnancy test. It was positive. My daughter cried, I hugged her and told her I loved her, but meanwhile there remained the symptoms that had precipitated our medical visit. The doctor thought it was likely that my daughter was just feeling the hormonal effects of early pregnancy on the uterus, but sent us off to a local emergency room to get a sonogram to rule out an ectopic pregnancy.

So there we were waiting in the emergency room for the usual eternity while more urgently afflicted people came and went, and we were inhabiting a kind of antechamber to a new reality. If it turned out that the pregnancy was not ectopic, then we had a whole lot of planning and adjusting to do. On the other hand, if the sonogram confirmed that the fertilized egg had indeed lodged in a too-narrow-for-survival fallopian tube (which is what an ectopic pregnancy means), no baby would be entering our lives in seven and a half months, and life would subside back into something closer to our version of normal.

And I think it was clear to both of us which of these two possibilities we at that point preferred. We didn't discuss it, but each of us, from our own personal vantage points, understood that the pregnancy-test result was slamming the door on some cherished future plans and would grieve some of the people closest to us. I am being honest here. That was the reality—that this unplanned event was at that point tripping off a very strong gut reaction of dread and psychological pain. Again, I am being honest when I say that what held this reaction partially at bay was the possibility that this baby's extra-uterine life had already been doomed by his or her conception in the tight confines of a fallopian tube. So it should be obvious which possibility was the natural one for me to root for as we waited and waited on

those molded plastic chairs in the emergency room.

And yet, that was the strange part. My gut was very clearly on record as hoping fervently that the fertilized egg had gotten helplessly stuck. But some other part or parts of me—parts equally scared of the new reality my daughter's baby would create for her and for us, parts that saw our situation equally pessimistically, if you will—couldn't quite do that. It was some combination of what I guess I must call my mind and my heart—my mind that named and recognized this human being, this child of my child, as someone who, however dependent, was his own person, and my heart that told me that even hoping the sonogram would show an ectopic pregnancy would somehow constitute rooting against him (or her—for some reason, at that point we were envisioning a girl).

This probably makes what was going on sound clearer than it was to me at the time. What I felt, when I imagined the medical technician giving us the results of the sonogram, was that somehow even wishing for the result that would doom this little one would be like ganging up on him. It would be voting against his existence—and he already did exist, whether or not he had much longer to do so. And if he existed, he was one of us.

What made this experience so strange is that this issue of what I wished for had nothing to do with either of us thinking we might will or choose his death actively, by abortion. I felt not even a temptation to suggest the possibility to my daughter, and in turn was enormously relieved and proud of her for not going that route, for not even beginning to go that route, whatever her then-mixed emotions and uncertainties and grieving for deferred or denied dreams.

Instead, my experience was more like a realization of heart and mind (the gut apparently had its own issues) that in a very intensely personal way as well as philosophically, you can't say no to life. It is deeply wrong—not only morally but maybe we could say ontologically—to reject human life, to deny it, to collude against it, to wish to frustrate and stymie it. I think of Mother Teresa in that famous scene from Malcolm Muggeridge's BBC documentary. She is asked why she bothered to rescue and care for the dying and the unwanted of a Calcutta teeming with dying and unwanted. She holds up a tiny scrap of struggling humanity, a tiny newborn discarded and then rescued by the Missionaries of Charity, and she says, "Look! There's life in her!"

That is a bone-deep basic response. It can be explained and ramified rationally and philosophically and scientifically, but it also resonates all by itself on a bone-deep level. It is the human response that most correctly recognizes both what is going on and what is the moral response to what is

going on. I think that was the kind of reaction, the kind of recognition that I experienced in that hospital emergency room, as we watched people come and go through the curtains surrounding the treatment cubicles.

Well, it turned out that the fertilized egg wasn't located anywhere near the fallopian tubes. Five years later that fertilized egg is my grandson Matthew. Life goes on, sometimes wonderfully and sometimes not so wonderfully, judged by our limited human perspective. The tenacity of my heart and mind's realization of what was going on, and their triumph over my equally real fear, dread, and stubborn dismay at unlooked-for alterations in our lives, owes much to family formation and religious convictions. It also owes much to the sustaining influence of my 30-plus years' association with the *Human Life Review*, its founder, its current editors, and its constellation of many-splendored writers. All of these people and experiences provide a hospitable environment for maintaining the insistent clarity of that basic bone-deep response to the fertilized egg in the emergency room.

We all know that other basic human responses to un-admirable actions such as lying, stealing, murder, racial and ethnic discrimination, and abusive behavior, to name a few, can be obscured, overlaid, and drowned out by the insistencies of our fallen nature. We are often selfish, afraid, angry, ashamed, and in such circumstances it can seem necessary to us to deny or minimize reality. It is a constant struggle to orient ourselves and our destinies toward the good things that can truly sustain us, truly satisfy our deepest desires and apprehensions of human possibility, truly accord with the way things are.

In that struggle, which plays itself out microcosmically in each human heart and macrocosmically in all human societies, we need all the help we can get—for the mind and heart, and maybe even the gut. We need each other's help, and we need to retain the belief that whatever we say to help or encourage or enlighten another is not necessarily doomed to inadequacy and inefficacy, particularly if we are willing to look to the long term. We need faith that the mind's reasoning, when it is honestly and carefully and thoroughly entered into, can enlighten us to the significance of what we feel and experience.

We also need faith that our feelings and moral intuitions (the heart, if you will), when examined and supported by the mind and in the context of the natural law, do not act merely and always as irresponsible antagonists of the mind, as tempters against intellectual honesty. In Pascal's famous formulation, the heart has its reasons, yes, but they can complement the reasons of the mind, rather than provoke internal civil war. The heart and its reasons and its profound movements can sustain us, support us, and nourish us when we are tempted to surrender the arduous effort to reason and persuade. The

heart can remind us that we *are* humanly linked to one another, so that there are, ultimately, pathways by which we are connected, and through which we can (however arduously and incompletely) communicate.

Of course, those we interact with can still choose to block real communication or let fear, anger, guilt, or self-interest drown out the persuasive arguments of the mind and heart. That is something all of us, as heirs of the same fallen human nature, are prone to. But at least what we have in common makes us, to put it in John Donne's terms, more like peninsulas than like islands: "a piece of the continent, a part of the main." Or perhaps we are like a great archipelago linked by causeways that can fall into disrepair or be submerged by recurrent tides of instinct or temporarily washed out by storms of emotion. The underlying source of connection remains and, theoretically at least, can be reestablished, however difficult or unlikely that may seem in any individual case.

And so we go on, grounded in the basic, bone-deep realities that, no matter how bad things get, will never quite be obscured, will never quite go away.

**THE HUMAN LIFE FOUNDATION
ANNOUNCES**

**THE 8TH ANNUAL
GREAT DEFENDER OF LIFE DINNER**

**HONORING
WILLIAM MCGURN**

We are delighted to tell you that William McGurn, a longtime friend and contributor to the *Human Life Review*, will receive our Great Defender of Life Award on October 28. McGurn, the former chief speechwriter for President George W. Bush who now pens the weekly “Main Street” column for the *Wall Street Journal*, has been for decades a strong and steady voice advocating for the right of the unborn to be welcomed into the nation’s family. He will be introduced by Seth Lipsky, founding editor of the *New York Sun* and author of *The Citizen’s Constitution: An Annotated Guide*.

THURSDAY, OCTOBER 28, 2010

THE UNION LEAGUE CLUB, NEW YORK CITY

Individual Tickets	\$300
Student Tickets	\$200
Sponsor Table	\$3,000
Benefactor Table	\$5,000
Guarantor Table	\$10,000

For more information, or if you would like to receive an invitation, please call 212-685-5210; or e-mail humanlifereview@verizon.net

The Right Thing to Do

Tim Pawlenty

Thank you. I am grateful for Kate [O’Beirne] for that kind introduction. I am really delighted to be here with you this evening. I wish the First Lady of Minnesota could be here with me. . . . Before I left our house in Eagan, Minnesota, today I said to her, “Honey, I am going to speak to the Susan B. Anthony List group and do you have a message you want to share or pass along to them?” And she said, “Yes, tell them that any organization that’s inspired and led by strong women will be successful.” And so . . . (Applause)

I have several strong women in my life, including my two teenage daughters—sometimes they are strong-headed, but, like you, my spouse Mary gives me some great advice and keeps the guardrails up and keeps us going in the right direction.

When I was thinking about running for governor in 2001, Jesse Ventura was in office. He was still kind of a Titan figure in Minnesota politics. It was going to be a three-way race, and the first one to 35 percent would win. I was just finishing up ten years in the legislature, four as the majority leader, and I came home at the end of that and decided I wasn’t going to run for governor. It was just too much of an uphill climb in a deep blue state with an incumbent governor named Jesse Ventura.

And I walked into the house and I said, “Honey, you know I am not going to run, I’ve decided we’ve done what we can here. Ten years we have moved the ball down the field, it’s time to turn the page now and move on to the next chapter in life.” And she came up to me and—I remember as if it were yesterday—she grabbed me by the lapels, literally, and took hold of me and looked me right in the eye and she said, “You can’t quit now, we’ve moved this far, this state needs you, if you leave now we are going to be back in the liberal direction, the wrong direction for Minnesota. You gotta get in there, you gotta fight, you gotta make a difference.”

I thought: I’m Rocky Balboa. (Laughter) I’m Sylvester Stallone. This is Adrian talking to me. And so I said, “I’ll do it. I am going to get in there.” I am going to fight. And, against all odds in an uphill battle, I won in 2002 and became governor of the state of Minnesota. But, about six months into this,

Tim Pawlenty, a Republican, is the governor of Minnesota. This piece is adapted from an address that was given on March 24, 2010 at the Susan B. Anthony List Pro-Life Gala at the Willard Hotel in Washington, D.C.

my schedule was tough: Those of you who are in public life know how this goes. Back then our children were quite young and we were having some tension in our family about scheduling, particularly my schedule, and Mary was properly holding me to account. And I said, “But honey,” in the middle of a disagreement, “don’t you remember, I mean, you gave me that inspiring speech at the house, you told me to get in there and do this, this was kinda your idea.” And there was this awkward pause in the discussion and she looked at me and she said, “Yeah, but I never thought you’d win.” (Laughter)

So, there’s a lot of folks talking about, we can’t win as a movement, maybe our time has passed; and I just want to share a few thoughts with you about that tonight. But let me start by thanking this great organization for your leadership. This is an organization whose hearts and heads are connected and spines are intact and will hopefully be even firmer after this. But the work of this organization is incredibly, incredibly important. I know politicians and advocates get up and make claims, but the organization, in terms of the number of contacts, the mail, the phone contacts, the passion, has been tremendously, tremendously important and I just want to thank you very much for that leadership and that service.

I also want to say a special thank you to my friends from Minnesota—it is kinda Minnesota night. Vin Weber had a chance to speak to the reception earlier, and Vin is fantastic and strong; but Cheryl is even better, by a long shot. To Vin and Cheryl, I know you have been at this for many years and decades for the cause. You have been champions, your leadership and service has been a beacon for us, you’ve been mentors to me in policy and I really appreciate it. Thank you for your friendship and thank you for your leadership as well.

And to Michele Bachmann, Congresswoman Bachmann—you know I come from this state, the land of Eugene McCarthy, the land of Hubert Humphrey, the land of Walter Mondale, the land of Paul Wellstone, the land of Jesse Ventura, the land of United States Senator Al Franken. People talk about Massachusetts being the most liberal state in the country. Massachusetts voted for Ronald Reagan twice. There was an election with Ronald Reagan on the ballot, 49 states voted for Ronald Reagan, and *one* did not. I am really proud to say that my state is the state of Michele Bachmann. (Applause)

Help is on the way. Help is on the way and if we can turn the tide—as Frank Sinatra would sing, if you can make it in New York then you can make it anywhere—if we can turn the tide on life issues, on spending, on other issues in Minnesota, we can do it anywhere. And Michele Bachmann is a big reason for that. I’ve known Michele for a lot of years. We have fought side

by side. We were both in the legislature together, shoulder to shoulder. A lot of important issues at stake, for the values and principles shared in this room. I can give a personal testimony only to what you already know and what you are witnessing on television and the halls of Congress and in advocacy all across this country: This is one of the finest leaders in the country. She has guts, she has brains, she has integrity, she has determination, she has persistence, she has the skills, ability, and passion to change this country and we need your leadership, Congresswoman Bachmann. Thank you so very, very much. (Applause)

Also, one last thing about Michele: Her district is partly Stern County, it's known for, among other things, being the home of some of the most solid, most incredibly strong granite in the world and that's an apt metaphor for Congresswoman Bachmann. Her house, her foundation isn't built on sand, it is built on solid rock. Her district, literally, her views and values literally; and that's why we don't ever have to wonder where she stands, we never have to wonder about Michele, we know she stands for us and she stands for life. So, I just want to share that as well. (Applause)

Now there are some other people who don't share our values and our views. They are President Barack Obama, Senator Harry Reid, Speaker Pelosi, and a cast of other characters who have a very different view of the values and views that are in this room—whether it relates to appointing judges who don't share our view about when life begins, or whether it's repealing the Mexico City Rule, or whether it's the reality of federal funding for abortion. This administration and this Congress are being more hostile and challenging to the pro-life position and values than any have been since *Roe v. Wade*, and that is a direct challenge to those of us who have views and values on the other side of this great cause.

And so we all have to take a look at this, step back and say, “Well, what does this mean? How do we deal with this as a movement going forward?” Well, first of all, again, I thank God for groups like Susan B. Anthony's List. We just finished a health-care debate, where, as I mentioned earlier, this organization poured all of its resources, heart, and soul into it and it was so very close, just a handful of votes would have made the difference. But we also have to realize that this is not just about the tactics. The mail is really important, the phone calls are really important, the social networking is really important, the advocacy is really important. But in the end, the laws and the court decisions and the like will change when hearts are changed and minds are changed. And when we have enough people who share our views and values, that will translate into the change in the laws and in the courts

that we know are right and that we seek by being involved in this movement. And so for me, seeing those young folks up here is really important because, as you know, life is not a hundred-yard sprint down the track, we don't run a hundred yards down the track and hit the tape and say, "Look at me, I'm done. I ran my hundred yards." Life isn't a run; it's a relay race. And all of these values that we share, that we hold dear, are one generation from being extinct, forgotten, or diluted. And so part of this exercise is not just affirming each other in this moment in time for the battles in Congress—though that is very important—but part of this also is getting the baton ready and effectively passing it on to the generation that is coming up behind us, because you know this is not a moment in time, this is a cause and this is a battle that goes on. And so, saying young leadership matters, that mentoring matters, training, role modeling, educating, advocating for the next leadership—the next generation of leadership matters so very, very much.

I learned this as a young person in my hometown of South St. Paul. It was a meat-packing town, home of the world's largest stockyards and the world's largest meat-packing plants. My dad was a truck driver for much of his life. My mom was a homemaker, she died when I was 16. But there were some things we believed in, there were some things we were taught and some things we leaned into in a very profound way; and one was the values and principles of our faith. It's interesting how things get put in front of you. At Bible study this morning we studied Psalm 139, it was brought to me by a friend who didn't even know I was going to be here tonight. It was just kind of a coincidence—one of these interesting coincidences—and of course verse 13 says, "For you created my innermost being, you knit me together in my mother's womb," and so we have the Psalm speaking of when life begins, how it begins, and of course, who its Creator is. And so, on a personal level these things are grounded not in pop psychology, not in some human emotion of the moment, but rooted in the foundation of our values, beliefs, and principles. And people sometimes say, "Pawlenty, don't bring this stuff up, it's politically incorrect, leave your faith out of it." Hogwash. Hogwash. You know if you look back at the founding principles of this country, it was referenced earlier, the Declaration of Independence—signed by Thomas Jefferson and 55 other people who had shared views—said that we are endowed by our Creator with certain unalienable rights. And of course life was amongst the paramount rights we are endowed with, not given to us by Washington, D.C., not given to us by Tim Pawlenty or Michele Bachmann or Congressman Stupak but given to us by our Creator. These are not rights that are divisible. These are not rights that are negotiable. These are not rights to be traded off for some project or program or grant. These are a grant

from God and they need to be respected and protected as such.

So I get on the plane today and I pick up one of my favorite magazines, *The Economist*. I enjoy reading it a lot. It takes a couple of hours to get through, so I use it on the plane rides. But you see on the cover, the most recent *Economist* edition, “Gendercide”; and you open up the article and read about Asian nations that so disrespect life that they are engaged in gendercide through abortive techniques. The stories in the article would bring tears to your eyes. Those are cultural statements about the devaluation of life that is taking place right now. This is a slippery slope that we are on. Once you open the door to say life can be devalued, life is negotiable, life can be bargained away, that is a very, very damaging, corrosive, devaluing direction for our country. It is not what we were founded on, it is not what we believe, it is not what our Creator has endowed us with. Those of us who understand that need to continue to rise up. We need to continue to fight. We need to be courageous and speak the truth to power as you see Congresswoman Bachmann doing. My face just lights up when I see her on *Larry King* or some other place, because she has the courage and the knowledge and the values and the principles to speak truth to power. She looks right in that television camera and calls it like she sees it and tells it like it is. (Applause)

But we know that since *Roe v. Wade*, there are other values and principles being taught, being pushed—and you know what they are. We see chatter. You see it in the debates, it includes things like, you know, economic security is more important than human life and that in the balance between those two things we will push the value of economic security. Or you see it when convenience for your personal situation becomes more important in the eyes of some than the value of human life. And when we talk about being conservatives, you know, people say, “I’m a Reagan Conservative” or “I’m a Common Sense Conservative” or “I’m a Tea Party Conservative” or “I’m a whatever Conservative,” we first and foremost need to be a Constitutional Conservative—and the Constitution speaks to these principles as well. (Applause)

We don’t honor the Constitution when we elevate a vague notion that doesn’t exist in the Constitution—the right to privacy—over the right to life. We don’t honor the Constitution when we do that, we devalue the Constitution when we stretch it and interpret it and manipulate it with those thoughts and words in mind. So as we look to the future, I just want to say we have an opportunity as a movement to now come forward in a different context. We are going to have a chance to remake our case and govern and lead this nation again. And when we do, we need to make sure that we do what we say we are going to do. (Applause)

And we should not be afraid and we should take courage because, as I

mentioned, in Minnesota—again, one of the most liberal states in the country—I proposed, signed, and passed Women’s Right to Know, 24-hour waiting period, fetal-pain legislation, legislation about positive alternatives to abortion. I got elected. I got re-elected. And so, it’s not only politically viable, it’s the right thing to do. And for people who say you have to soften, you have to distract, you have to dilute: That’s not what we believe, it’s not what’s right, and again, if you can do it in Minnesota you can do it anywhere in this country. (Applause)

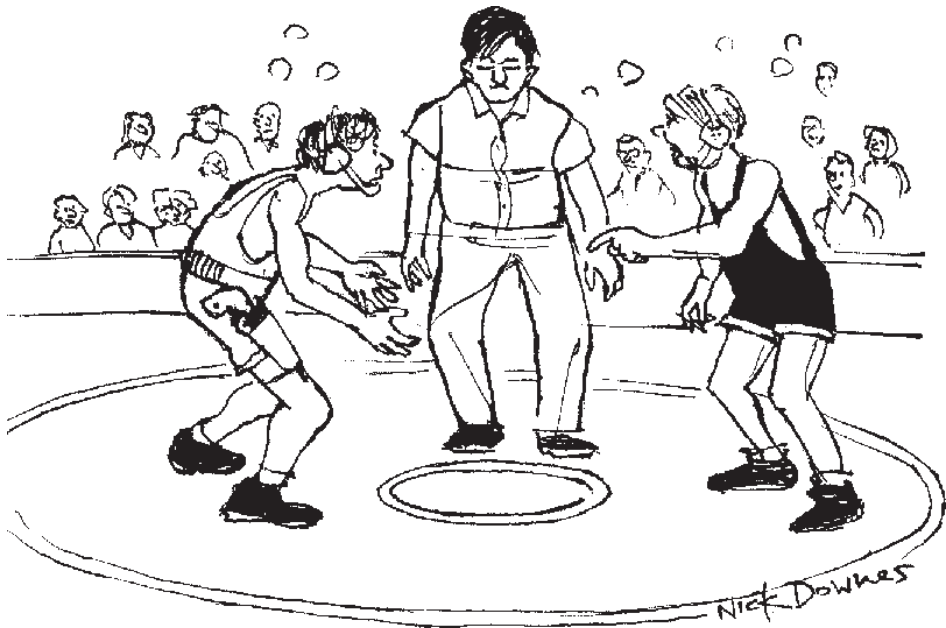
I want to just close by giving you a thought—again, the timing is just so interesting. The pastor came forward a little earlier tonight and he gave us a blessing from a passage that appears in II Chronicles. And at another time in this nation’s history there was a great concern about our national security, there was great concern about the economy, stagflation, unemployment through the roof, there was what people called a malaise. And then an election happened in 1980 and in January of 1981, Ronald Wilson Reagan strolled out of the United States Capitol on the west entrance and he took the podium to be sworn in as the President of the United States. He later described it as a cloudy day, it was dark and kind of dreary as he came out but as he took the podium to take the oath, the clouds parted, literally. And he later described it as this ray of sunshine piercing through and hitting the podium and him, a burst of warmth as he prepared to take the oath. And there of course was Nancy Reagan with the Bible, the family Bible. She held it out, it was open, and he put his hand on the Bible and took the oath. And the Bible was open to II Chronicles and again it says, “If my people, called by my name, will humble themselves and pray and seek my face and turn from their wicked ways, then I will hear from heaven and will forgive their sin and heal their land.” Now what’s not as well known about that story is, this was the Bible of Ronald Reagan’s mom, Nelle—and some years earlier, before she could possibly have envisioned that this Bible would be used to have the President sworn in, she wrote in the margin of that Bible, in her own handwriting, “a great passage for healing the nations.”

Our nation needs healing. America is in trouble. You know it, I know it. We’ve got a financial crisis that seems to be out of control. We have great uncertainty in terms of our international posture and our national-security posture. The values that we share in this room are under attack and under siege. But if you believe what I just read and we keep the faith, we are on the right side of this issue. President Obama likes to lecture the Congress and lecture others about being on the right side of history when it comes to health-care reform. We are on the right side of history when it comes to protecting

and defending life. We're on the right side of the Constitution. We're on the right side of the Declaration of Independence. (Continued applause)

We're on the right side of this issue in all respects and in the end, ideas matter, values matter, principles matter, energy matters, persistence matters, determination matters. And making sure we go out and do all we can and elect people who share our views, defeat those who don't. Make sure we then move the cause forward, pass laws that will protect the unborn, get judges appointed to the courts who actually interpret the law as written instead of making it up on the back of a napkin or legislating from the bench. Then we will see the day when the sun shines again on this nation, and on this movement; and that day is coming, because we are on the right side of history.

Thank you for your passion. Thank you for being here. Thank you for listening. I appreciate it very, very much. (Applause)



"How come he gets a gun?"

The Tea Party and the Pro-Life Cause

John Burger

Like its Colonial-era namesake, the modern Tea Party movement is about being overtaxed (“Taxed Enough Already”), underrepresented, and subject to the overbearing policies of a distant government. It has little to do with social issues like abortion or euthanasia or the homosexual lifestyle. It’s not about the right to life per se, but about the right to live life as one sees fit, without government interference.

But it’s a conservative movement, and, therefore, many members of the Tea Party movement are pro-life. Marjorie Dannenfelser, president of the Susan B. Anthony List, which helps get pro-life women elected to public office, believes that the “vast majority” of tea partiers are pro-life. So does Father Frank Pavone, national director of the Catholic pro-life organization Priests for Life. “Most Tea Party activists are pro-life, and most pro-lifers seem pleased to see the Tea Party movement and expect that it will help them,” said Father Pavone.

“There are a lot of traditional conservatives in the [Tea Party] movement, and most traditional conservatives are pro-life,” says Paul Kengor, who teaches political science at Grove City College in Pennsylvania. “I think you can safely bet that a solid majority of Tea Party people are pro-life.”

This article will explore the possible interactions between the movement that seeks to protect the lives of the unborn and the movement that seeks to protect the livelihoods of Americans. Can the Tea Party movement help the pro-life cause? Might it hurt it? Is it a stretch even to compare the two?

Kengor admits that his judgment that most Tea Party activists are pro-life was based on anecdotal evidence rather than a scientific study. As a matter of fact, although 32 percent of respondents in an April 2010 New York Times poll said abortion should not be permitted, a surprising 40 percent of tea partiers said *Roe v. Wade* was a “good thing.”

Alex Cortes, for one, said he was surprised that number was so high, though he admits “there *are* a lot of independents and libertarians” in the Tea Party movement. Cortes, who founded Born Alive Truth (promoting the Born Alive Infants Protection Act) with pro-life nurse Jill Stanek, was communications manager for the congressional campaign of Laurence Verga (R., Va.) when interviewed in April.

John Burger is news editor of the *National Catholic Register*.

Early Successes

The Tea Party movement emerged in early 2009 in response to the federal-government bailout of failing companies during the last recession and the 2009 stimulus package, President Obama's attempt to spend the country's way out of the recession. The political effects of the Tea Party movement have yet to be completely seen, but it seems at least to have helped elect Republican Scott Brown to the Senate in a special election in early 2010 to fill the seat long held by liberal Democrat Ted Kennedy. In a state, Massachusetts, considered to be among the bluest of the blue, the movement is said to have raised some \$285,000 for Brown. For a while, there was some hope that Brown—the self-declared “41st vote” in a Senate dominated by a Democratic supermajority of 60—could derail Obama's health-care-system overhaul, which not only represents a major government intrusion into people's lives but may very well force Americans—many against their conscience—to foot the bill for abortions.

Opposition to the health-care-reform bill is one issue on which tea partiers and pro-lifers could find common ground, though for different reasons.

Dennis Di Mauro, president of Northern Virginia Lutherans for Life and a board member of the National Pro-Life Religious Council, said the council doesn't have any connection with the Tea Party movement. “The only coincidental connection is the health-care bill,” he said. “The National Pro-Life Religious Council opposed it because it will fund abortions. The Tea Parties seem to have other reasons to oppose the bill: cost, possibly higher taxes, and government control of personal choice. Both groups oppose rationing, but probably for different reasons as well.”

Many of those interviewed for this article in April 2010 felt confident that the Tea Party movement would help elect pro-life candidates to office in this year's midterm elections, at a time when a Democratic majority in Congress has helped ram through much of the Democratic president's wish list, including anti-life legislation and Supreme Court nominees.

“I expect that the same anger at the status quo that is driving the Tea Party movement will put a lot of pro-lifers into office,” said David Freddoso, a Washington political writer. “Perhaps more importantly, it will result in a change to the House leadership, which sets most of the congressional agenda and is responsible for the push toward more government funding of abortion.” The movement will help pro-life candidates “a lot because it will help Republican candidates,” predicted Alex Cortes.

“I think if there's going to be any impact [from the Tea Party movement] it's going to be in that direction [electing pro-life candidates], so I think

people are thinking anew about these elections, and I think part of the whole momentum of that is going to favor the life issues,” said Father Robert Sirico, a Catholic priest who is president of the Acton Institute for the Study of Religion and Liberty. (Acton’s mission is to “promote a free and virtuous society characterized by individual liberty and sustained by religious principles.”) Sirico adds: “But when you stand back and look at it more broadly, that is, not from within the pro-life movement or not from within the Tea Party movement, and just look at who doesn’t like the Tea Party movement, I think that too is an indication that the effect of the Tea Party folks, even if it is not out front, the effect is going to be to tilt it in our direction.”

‘Agree to Disagree’

And yet, the Tea Party movement does not concern itself with social issues, such as abortion or euthanasia, and some interviewed for this article found that just a bit curious. As director of the Family Institute of Connecticut, Peter Wolfgang lobbies in the state capital, Hartford, for public policy that upholds traditional marriage and the right to life. He’s been collaborating with Tea Party activists since the movement sprang up.

Wolfgang agrees with the movement’s basic principles but has reservations. Its “main concern is shrinking the size of government and lowering taxes,” he said. “Because of that, our issues [life and marriage] are considered secondary. They say, ‘We can agree to disagree on life issues.’ . . . Why are social conservatives always the junior partner in these coalitions?”

Tanya Bachand, who organized a Tax Day Tea Party event in New Haven, Conn., and who collaborates with Wolfgang, said there is a “wide variety” of life-issues viewpoints among tea partiers, from pro-life to “pro-choice.”

“We don’t talk too much about social issues,” she said. “We try to find common ground” on things such as partial-birth abortion and parental consent—“things that even a liberal Democrat can agree to.” But, she added, “We all agree on personal responsibility and personal liberty.” Even so, she said that “almost all” of the people her group was recruiting to run for office are pro-life.

Wolfgang, however, was disappointed that the local Tea Party supported Peter Schiff, who was vying for the Republican nomination in Connecticut’s U.S. Senate race. Schiff, said Wolfgang, believes that the federal government does not have a constitutional right to pass restrictions on abortion. But Wolfgang finds Bachand to be a leader who is “ecumenical” and “wants pro-lifers to be heard.”

‘Our Fight Is Your Fight’

And he is not giving up on the Tea Party movement in general. At an April

15 Tea Party rally in Hartford, Wolfgang identified himself to the crowd as a “social conservative” and greeted “my fiscal conservative brothers and sisters,” declaring, “Your fight is our fight, and our fight is your fight.”

He argued that social conservatives should be valued by fiscal conservatives because they have been “the canary in the coal mine” for the past several decades, alerting the nation to the threats to liberty as embodied in the *Roe v. Wade* decision and other instances where the courts or the legislatures have usurped the people’s right to govern themselves.

Father Pavone said he finds members and leaders of the Tea Party movement “very open and enthusiastic about my pro-life message.”

“I have had occasion to speak at a few Tea Party events,” he said. “They wanted me to address the sanctity of life and in fact had those words written on a white board explaining the principles they were standing for.” Father Pavone said his message—similar to Wolfgang’s in Hartford—was that the goals of the pro-life movement very much intersect with the goals of those who want limited government, and want to stop the intrusion and control of government over our lives. “After all,” he said, “*Roe v. Wade* took away two things: protection from the unborn, and the rights of the states to protect them. There can hardly be a more dangerous and audacious claim to control one’s life than to claim to be able to take it. *Roe v. Wade* said that ‘the word person . . . does not include the unborn,’ and at the same time could not declare that the unborn are not human. Therefore, the Court claimed the authority to declare some human beings to be ‘non-persons.’ If you can do this to one group, you can do it to others.”

Undefined Movement

Father Sirico suggested the Tea Party movement might somehow benefit by emphasizing the life issues a bit more. “I can’t understand, prudentially, why the Tea Party people might not want to put [the pro-life issue] forward . . . to present this as a whole new movement and add energy to the conservative movement as a whole, so they might include that among a host of other issues,” Father Sirico said.

Most of those interviewed see the Tea Party movement as a big boost for Republicans. Political scientist Mark Stricherz, author of the 2007 book *Why the Democrats Are Blue*, sees in the Tea Party movement both good and bad for the pro-life movement. The Tea Party movement will help get more people out to vote, and that will help Republicans, he said. But he describes a scenario in which the Tea Party movement actually hurts the pro-life cause. There’s a strain of libertarianism in the movement that opposes expansion of government and government spending. If the libertarians are successful, he

reasons, poor women may very well have more abortions.

“Most women who have abortions are poor and working class,” he said. “They need more government services.”

But Dr. Thomas Mezzetti, a pro-life physician in Alaska who has been active in the Tea Party movement, sees an “association” between a large, centralized federal government and opposition to a culture of life—and so the Tea Party movement as inherently pro-life. “When you take power out of the states, you’re less likely to hear people,” he said. “Right to life is a populist movement. Life issues are gaining on the state level.”

Father Sirico sees the Tea Party movement as “philosophically not defined” and believes it can benefit by coming into contact more with people in the pro-life movement. “What, as far as I can tell, it represents is a broad range of discontentment with the direction of the present policies in the United States,” he said. “I think a lot of those people are kind of autonomous in their concerns. But the second step in this is that there is a wide array of people in this country who have philosophically and intellectually defined what their discontents are and have a set of principles, and it may very well be that the people who are coming to the Tea Party movement will learn something from their associations—how to connect the dots, so to speak,” Father Sirico concluded. “So I think this is a very opportune moment for us who are concerned about life issues and family issues.”

He also sees another possible benefit. While the Republican Party has long had a pro-life plank in its platform, there are plenty of Republican candidates and office-holders who do not agree with that plank. “I think the Republicans still need to have their feet held to the fire on this question because there are a lot of these Republicans who are wobbly or unclear on these issues,” Father Sirico said. “So, hopefully, part of what the Tea Party movement will do is clear out those kinds of Republicans or pull the wavering Republicans to a clear embrace of the economic issues and also the pro-life issues.”

It may be a while before the Tea Party’s full impact is felt. But we can expect to see a clearer picture of what that impact will be, when the returns come in this November.

Wesley J. Smith v. Matthew Scully:

Animal Rights and Wrongs

William Murchison

This boy didn't come to the big city dangling from the bed of a '47 pickup, no, sir. He's been to a county fair or two, it's true, on which occasions he learned the value and necessity of standing delicately aside while rival pitchmen have at each other. This boy, in other words, has better things to do than arbitrate the very public spat over whether Wesley J. Smith, esteemed ethicist and contributor to the *Human Life Review*, hates or loves animals, or loves them insufficiently, or . . . whatever.

We all know, of course, what spat I am talking about. No? Let me reprise. Then we'll get on with the larger business.

My brother Smith, a Discovery Institute fellow and rightly venerated critic of the euthanasia cult, recently published a book titled *A Rat Is a Pig Is a Dog Is a Boy: The Human Cost of the Animal Rights Movement* (Encounter). In it he makes what seems to me the unexceptionable point that the aforesaid animal-rights movement is knocking down mankind “from the exceptional species on earth into merely another animal.” The movement's roots, says Smith, “are in the desire to deny the roundedness of creation and to force upon society a simple and intellectually hollow materialism that reduces man and animal alike to mere meat.”

Smith takes on animal rights—“a dangerous ideology that sometimes amounts to a quasi-religion”—with the tightly controlled exuberance of a linebacker eyeing the signal caller on fourth-and-one. The movement itself he finds not just wrong but pernicious. It attempts to obstruct vital medical research conducted on animals; some of its fringier types go in for explicit terrorism. They participate in violence against researchers, research institutions, fur farmers, and the like. The movement seeks not merely to persuade but, where persuasion fails, to win through intimidation.

Smith can't see any logic behind the supposition that animals have “rights” equivalent in any sense to those that men and women enjoy. Our obligatory care and concern for animals cannot lead us to abandon the principle of human exceptionalism—the principle that human beings, you and me and little sister, stand out above the common, well, herd. What we seek, in all

William Murchison writes from Dallas for Creators Syndicate. A senior editor of the *Review*, his latest book is *Mortal Follies: Episcopalians and the Crisis of Mainline Christianity* (Encounter).

kindness and generosity, is “a better world for people and animals alike from the position of human responsibility.”

A sound enough point, you think? Just wait. Here comes Matthew Scully to suggest, by way of reviewing Smith's book for the March 8 issue of *National Review*, that Smith is presenting “human exceptionalism . . . as some sort of all-purpose absolution for every human excess or iniquity at the expense of animals.” By Scully's lights, those excesses and iniquities are large enough already, apotheosized in the factory farm where cows and pigs and chickens are penned in excruciating discomfort until they succumb to the purposes of the human table and kitchen. Scully, author of the 2002 book *Dominion: The Power of Man, the Suffering of Animals, and the Call to Mercy*, and a onetime speechwriter for President George W. Bush, is ticked. He objects that Smith keeps unjustifiably quiet about “the cognitive and emotional capacities of animals, their nature and needs, their conscious experience of fear and pain.” Animals, it is clear to Scully, don't show up on Smith's hit parade. He arraigns the author for “situational ethics, cold reductionism, and worship of scientific efficiency.” Two thumbs down, in the parlance of Siskel and Ebert. Get the hook!

To understand Scully's indignation, it helps to know that Smith, in *A Rat Is a Pig Is a Dog Is a Boy*, has called his fellow author's advocacy style “hyperemotional and overly strident,” as well as blind to “the good that humans receive from animals.” There was a little bad blood, so to speak, even before that. In a 2002 review of *Dominion*, for *The Weekly Standard*, Smith twanged Scully—“an intelligent man whose big heart has found a just and noble cause”—for failure to distance himself, and the animal movement, from Prof. Peter Singer (of whom more shortly).

Back to 2010. Smith, less than delighted with Scully's review, procures permission from *National Review* (where Scully once served as literary editor) to publish a rebuttal. Back he bounces in the very next issue. He objects in particular to what he sees as Scully's “cheap demagoguery.” “My criticisms are directed not against protecting animals, but against giving them ‘rights’—a distinction with a crucial difference.” Biff! Bam! Around *NR*, it hasn't been like this since M. E. Bradford and Harry Jaffa went after each other with bung starters over the character and reputation of Abe Lincoln.

Next the blogs light up: *National Review's*, and Smith's own forum at *First Things*, where the regular topic is ethics. Back and forth the arguments go. At length the mind starts to consider what's for dinner. (Foie gras? Tofu?)

The intellectual snapping match, however tedious to some, can't disguise the fact that the topic at hand requires attention. Both authors have placed on our public menu (again with the food images!) philosophical questions on

which both books throw light, each in different fashion. In a way it's too bad two intelligent conservatives have had to cross swords—Flynn and Rathbone going after it with grimaces and oaths. In another way, the spectators benefit. It's how we learn. Sparks of anger can throw light and shadow all over the place.

You ask where all this is going. It is time to remark that the dispute before us freezes the blood. The truly chilling point, nonetheless, is that we have come to this point. The necessity of writing a book defending human exceptionalism brings, or I think ought to bring, palm smartly to forehead in a gesture of pure astonishment.

We debate the whole issue of what it means to be human—and we confront the fact that many among us don't think it means all that much. Here the issue of how we think about animals joins the issue of how we think about the unborn. We paint from a single palette, and yet the point takes more establishing than may be automatically evident from the Scully-Smith go-round.

The depth and force and ferocity of the animal-rights movement is the first point with which to reckon. The movement starts from undebatable premises—that humans should be alert and even sympathetic to the needs of animals, who are the creatures of God even if—paradoxically—we eat them under divine dispensation. Our innate sympathy, one with another, is a point any parent recognizes as stemming from 1) pets and 2) stories. The talking animals of *The Wind in the Willows*—Toady and Rat and the rest—would be incredible, but that humans instinctively recognize in animals something familiar—not quite themselves but somehow . . . close. As with Kenneth Grahame's warm-blooded creations, so with Pooh and Eeyore and Piglet and all the denizens of Pooh Corner; so with the beavers and badgers of Narnia; and with Donald Duck, Bugs Bunny, and Mickey Mouse; to say nothing of the Cat in the Hat or the Cow that Jumped Over the Moon. We are made so as to understand and relate to these characters. It helps, naturally, to live with dogs and cats or, on a farm, with horses, mules, cows, pigs, what have you. Proximity is a great enforcer sometimes of boredom but more commonly, I would guess, of sympathy. Scully himself had a dog named Lucky. I have no doubt Lucky was well named. Not to care, to one degree or another, about animals is not to care, period. Animals are embedded deep in our hearts, and in our way of using those hearts as we think and believe.

What, then, about this animal-rights thing—the assertion by loud voices in the culture that animals enjoy rights and status equivalent to those of human beings on the basis of their “sentience,” cognitive capacities, or their capacity to suffer?

With the vast majority of Americans “animal rights” can't pass the smell test. “Rights” for dogs and cats? No way. Smith, replying to Scully in *National Review*, points to “the unique status of human life.” He asks: “After all, what other species in the known history of life has attained the wondrous capacities of human beings? What other species has transcended the tooth-and-claw world of naked natural selection to the point that, at least to some degree, we now control nature instead of being controlled by it? What other species builds civilizations, records history, creates art, makes music, thinks abstractly, envisions and fabricates machinery, improves life through science and engineering, or explores the deeper truths found in philosophy and religion? What other species rescues animals instead of ignoring or eating them?”

Yes, isn't that about the size of it? Smith's account of human exceptionalism should be on its face inarguable. Likewise his varied objections to the animal-liberation cause—the attacks on laboratories, the harassment of researchers and their families, the flat declarations that come from the liberationists' mouths about their own righteous behavior and the iniquity of anyone bold enough to disagree with them. The liberationists are ideologues. They've got this one idea, see, about the comparative triviality of humankind, weighed in the scales against other “kinds.” They make this stuff up. Out of thin air their claims come. Why? And how do they get away with it?

It's all of a piece, isn't it—the depreciation of established credentials as part of the ongoing depreciation of Western Civilization generally and its supposedly outworn claims to our allegiance. The Left started the war in earnest, half a century ago. Everything we thought we knew was (in the Left's recounting) wrong. Males thought they ruled the roost. Ha!—they were plain old sexists. White people oppressed dark-skinned people. Capitalists ground the faces of the poor. Americans threw their weight against the aspirations of non-Americans. What we had received from our forebears (woman-oppressing racists as they were) warranted radical overhaul or the trash can. If so much was wrong with us, why not also our view of the relationship between humanity and animals? Possibly we were as guilty of oppressing pigs and chickens as of working our will on non-Western peoples and nations. I cannot prove that such thoughts run daily through the minds of the animal-liberation fraternity. I can say such thoughts seem wholly consistent with the fraternity's contemptuous treatment of the traditional assumptions concerning management of the human-animal relationship. I mean the foregoing not as a digression from the topic of animal rights; rather, as context for useful consideration of the topic.

If Smith's, it seems to me, balanced yet brilliantly executed assault on the

liberationists has a shortcoming, it is from my standpoint the book's omission of the larger cultural context in which the liberationists flourish—the context outlined above. I don't blame him for it. I think he likely thought that particular avenue of investigation penetrated into territory outside and beyond his chosen battlefield. What he wanted to do, and did, with great success, it seems to me, was to throw a penalty flag at the liberationists before they could work their way farther down the field.

Early on, indeed, he opens the pathway to the cultural question by showing us the ideas of Peter Singer, the Princeton University philosopher, at whose doorstep life questions tend to converge from different directions.

Singer's 1990 book, *Animal Liberation*, advises the reader that "beings who are similar in all relevant respects have a similar right to life"—you, me, Jumbo, Fido—not on account of species membership, but rather because of "the interests of the being, whatever those interests may be." A self-aware chimp or dog with capacity for "meaningful relations with others" has at least as good a title to life as do similarly situated human beings.

It all sounds highly genial. Read on. If cognitive qualities outrank mere passive membership in one species or another, where does that leave human infants, unborn or newborn? Where does it leave the physically or mentally depleted elderly, or, for that matter, depleted and worn-out animals? In grave peril, is the answer, provided we let Singerian philosophy define their position. What basic rights can such, human or animal either one, enjoy when they hardly relate to each other, hardly know what goes on around them? "Singer," says Smith, rightly, "is proposing a radical departure in human morality: Those organisms with higher cognitive capacities or abilities have greater moral worth than those with lower acumen."

Scully catches on to the power angle easily enough but with less sense of alarm than Smith. He's essentially no happier with Singer critics such as Dennis Prager than he is with Singer himself for supposedly evading "fairly simple questions of human love and duty and kinship" to focus on power questions. On from here, at considerable and often invigorating length, to the heart of the matter, as he sees it—namely, the heart itself. Can't we see it's not right or fair or kind or generous but rather vicious and ignorant and cruel to treat animals—we used to called them "dumb animals," but that's probably off in our PC era—with whips or knives instead of gentle hands? Scully in these pages emerges as a true lover of animals. (Not that Smith omits his own professions of love for them.) He bleeds for them, weeps for them, wants to lead them from bondage in factory farms, which, on his showing, represent "a complete denial of the animal as a living being, with

his or her own needs and nature.” “[M]y fellow creatures,” he calls animals, “sharing with you and me the breath of life,” and constituting “a test of our character, of mankind's capacity for empathy and for decent, honorable conduct and faithful stewardship.”

I am not concerned here, I have said, with sorting out different arguments for ends—kindness but also common sense—that are of deep interest to all who affirm the value of life. I want to point out—I have to point out—what seems to me the fragility of Scully's premises as over against Smith's.

Imagine having this argument half a century ago! The importance of generosity to animals was a tenet of civilized existence. Likewise the value of unborn and depleted human life. I do not mean sympathetic tears welled up in every eye at the mere mention of human or animal weakness. We know too well how the world is—a mass of competing instincts and actions, the worst of them held back, some of the time, by law and community consensus.

The animal-liberation/animal-welfare fracas of our time are mainly, it seems to me, the consequence of cultural disintegration—our inability for upwards of 40 years to agree on major human cultural premises. What holds the lower instincts in check, to the extent anything does, is religious faith and witness; broad agreement that the human race, created in the image of God, bears particular responsibilities to its creator. If God says Life is good, by God, it's good. So much the pre-secular, pre-World War II culture maintained, if with variant vocabularies and intonations. You couldn't come along with an argument for measuring human worth by a utilitarian yardstick—as Peter Singer does—and expect a positive hearing. That anybody gives Singer an ear rather than the back of his hand (intellectually speaking) is a datum hard to take in. It means in the 21st century we'll listen respectfully to any old intellectual junk, and possibly believe a large portion of it. Singer's junk is rubbish of the highest grade: shiny, over-intellectualized, intensely deceptive.

Scully doesn't care for him either, which is certainly to his credit. Scully's weakness in promoting charity toward animals is his failure to understand all crises that center on the Life question as in fact one big Crisis, a who's-in-charge-here knock-down, drag-out over man's right to do pretty much as he pleases with “his” world. The authentic Christian teaching, of course, is that man isn't the owner of the world, rather just the tenant, with positive responsibilities for his treatment of the property and its other inhabitants.

Scully (who lets readers know he isn't the “pious” sort) quotes plenty of Christians on the duty of treating animals well. Yet he seems to see Christian teaching on the matter as a set of good thoughts and pleasant ideas rather than an organized vision of life. He won't run his trot line—if I may be allowed that predatory image—back to the civilizational crisis that finds the

government of the world's presently leading Christian nation as firm guarantor of the "right" to wipe from the human rolls practically any unborn child, for any reason whatever. We rightly call such a state of affairs moral anarchy. Is it truly wondrous to any lover of animals, the non-pious Scully included, that kindness and generosity to life of any sort does not precisely flourish among us? How could it, with man in charge here, deciding all the important questions with reference chiefly to individual choice?

Isn't it plain that generosity to animals can't flourish where generosity to humans holds no purchase on other humans? Nice actions (to put it another way) require nice people to perform them. Niceness—more like it would be largeness of spirit, depth of character—will not likely inform a society where man does pretty much what he wants, without respect to time-tested injunctions and preferences. Modern society may be the loopiest ever, it's hard to know. Easier to know is that disdain for animals and their welfare walks right along with indifference to the duty to respect human life in its weakest forms.

There is no generally satisfying way to shut down this odd, once-unimaginable slanging match, even if one were inclined (as I am not) to try. Smith and Scully, "conservatives" both, see the human world in such dissimilar ways that reconciliation of their viewpoints lies a good ways off. The former, it seems to me, hits nearer the center of the target than does the latter.

Here's the deal, really: By the lights of the liberation cult that infests modern society, the whole culture wants remaking, according to a likelier pattern, whereby human choice ceases to be the measure of all things. If it feels good, do it, goes the '60s catchphrase. Do what? Kill, brutalize, degrade? Within legal limits, why not? A legal system unhampered by the old, lost understandings of who we are and why we're here is hardly an enemy to human desire: more an encourager, an abettor of desire.

One way or another, a culture always ends up prostrate before the tablets of the law, marking with fearful eyes the words, "Thou shalt have no other gods before me." None, not even yourselves. Whereupon the culture bows in humility, obedience, and gratitude—or rises, brushes off the sand, walks off with a slightly guilty expression on its collective face.



"I begged him not to wear that T-shirt."

The Visitor

Stephen J. Heaney

Incoming

The Visitor came from a ship that had been positioned about 100 million miles above the solar system, looking down on the whole spread of planets and other bodies spinning around this average star. In that ship were the comrades who had made this journey of scientific discovery. They had left the Visitor there to make the last jump to the third planet, in order to pick up another whom they had sent out to investigate the outer edges of the system. The vessel the Visitor was now in was, of course, much smaller than the other one, capable of being handled by one crew member, but with an impressive array of scientific and emergency equipment.

The Visitor (and comrades) came from a planet which they call Zootle, about six light years away: a considerable distance, but tolerable for beings of their kind. It appears to have been really worth the trip, too, for the one thing the crew from Zootle really wanted to find was, for lack of a better term, “intelligent life.”

Now, of course, the Visitor knew from experience that the intelligent life on Zootle is often exhibited in some very silly and baffling behavior. Zoots are usually truthful and honest, but sometimes lie and steal. They perform actions that are risky, even harmful to themselves and others. They do all sorts of things that, all things considered, are not at all conducive to the fulfillment of either the individuals or the group. The Visitor chuckled (or gave the Zootlian equivalent of a chuckle) while recalling a sign once popular on the rear of individual-conveyance devices on Zootle: “Beam me up, Meshak, there’s no intelligent life here.”

What the Zoots really mean by “intelligent life,” of course, is creatures like them: creatures who have reason and logic, language and art, math and science, who wonder about how things are put together and what it all means. As they worked their way over the course of several years to the nearby yellow star, they began to pick up radio signals. The signals seemed to contain information. They set their computers and translation technology to work and discovered to their joy that there are creatures on the third planet who have language! And what a lot of language they have. As the creatures from Zootle got closer to this planet—apparently called “Earth” in one dialect that seemed to dominate—waves and waves of radio signals overwhelmed

Stephen J. Heaney is associate professor of philosophy at the University of St. Thomas in St. Paul, Minnesota.

their ability to keep up, but that did not matter. It was quite clear that on this little planet there are languaged creatures, creatures who name things, tell stories of themselves, discuss great things, build things, work together, fight amongst themselves, do risky, dangerous, and harmful things for the sake of ideas great and ridiculous. There is intelligent life.

As the Visitor approached Earth, he contacted these beings, who referred to themselves as humans. Unfortunately, due to hardware-compatibility issues, sending and receiving video transmissions from Earth was impossible. This caused a bit of a mix-up upon the Visitor's arrival. For, you see, the Visitor was a silicon-based life form, a crystalline entity somewhat reminiscent of an upside-down chandelier. On Zootle, there are life forms that are carbon-based, various vegetative and meat creatures, both large and small, but none of them exhibits the characteristics of intelligent life. There are, of course, plenty of silicon-based compounds which can serve as nourishment, but no other silicon-based life forms. The crystalline entity is truly a unique species on Zootle.

First Contact

In the interests of safety, and in order to have time to become composed before meeting the human hosts, the Visitor landed in a remote area. The Zoot checked the atmosphere for those things that might be harmful: corrosive chemicals, atmospheric pressure, violent winds. All clear on that count. This portion of the planet fairly teemed with life forms, and so the Visitor began to take samples of the flora and, where capturing them was possible, the fauna, putting them in cages and other enclosures for later observation. Given Zootlian technology, Alor (for that was the Visitor's individual designation) was able to nab quite a number of species: some with wings and feathers, some with fur and claws, and this one mostly hairless, featherless pair which at first seemed to be water creatures but were in fact simply frolicking in a lake. They appeared to have each shed a layer of brightly colored skin or fur before entering the water, which Alor also obtained for analysis.

All the creatures set up quite a fuss upon first being caught. After a while, though, most of them calmed down—all except the mostly hairless ones. They kept coming up to the bars and making noises; then they would sit back in the corner and make the same noises to each other. The quality of their noises was different from that of the other fauna, more continuous, more patterned, and somehow familiar. The Visitor was intrigued, and so it spent a little time with them. They pointed at themselves, and said a few sounds over and over; then they pointed at Alor. They came to the bars and pointed at the discarded skins lying on a nearby table. The Visitor decided to

try to calm them down with a friendly gesture by bringing over the skins at which they were pointing. For the first time, it noticed that these skins did not appear to be skins at all, but manufactured from plant or animal. This was puzzling. The Zoot passed these items to the captive animals. They hastily grabbed the skins and put them back on their bodies! “What the fleem . . . ?” Alor muttered. No Zoot had ever seen that before. After checking on the other creatures, it returned to find one of these animals grasping a plastic card, trying to open the cage door. The other one held a little machine with a flame coming out of it, which it used to set fire to a small white stick of vegetable matter. Could it be . . . ? The Visitor ran off to fetch a translating device.

Upon returning, Alor was astonished to hear from the taller, straighter one of the pair, “You let us out of here! I’m a U.S. citizen, you know! I have a right to go skinny dipping on my own property if I want to without being taken captive by a walking light fixture!” The shorter, curvier one kept repeating, “It’s going to do experiments with us! Dear God, get me out of this and I will never cheat on my husband again.”

Could it be that these were the intelligent creatures the Zoots sought? Only crystalline beings have this ability on Zootle. Zoots had always reasoned that it is impossible for a meat or vegetable creature to ever have this ability. Yet here was something made of meat that can think and speak and build as Zoots do. They talk all the time in sounds which name things; they manufacture things; they have property; they have a notion of citizenship; they have a concept of a deity; they can be honest or dishonest. On Zootle, meat creatures are good for decoration or useful as containers, and parts of them are important components in computers. But the facts speak for themselves: *These* meat creatures are intelligent.

Without hesitation, the Visitor freed these creatures from their confinement, offered many apologies, and introduced itself as a Zoot designated Alor. The Visitor assured the newly released captives that they are like Zoots, and that Zoots would never perform experiments on an unwilling Zoot. Alor asked them to stay and talk. The taller one, who called himself Lou, said he was a producer of something called “blockbusters,” claimed he could smell money, and offered to make the Visitor, and himself, rich. The smaller one, named Tawny, was Lou’s assistant, and wanted to leave immediately. Apparently, Tawny prevailed. As he departed, Lou pointed out that, for an alien, the Zoot was “very human.” He left a card and, with an appendage near his head, asked Alor to “call” him.

Within the hour, a large contingent of humans arrived. There was, to be sure, the initial confusion for the human beings; they had never seen a silicon-based life form, and many had thought it impossible. One of them, from

a place called Quebec, already seemed to know the Visitor's name, for he cried it out several times: "Zoot Alor! Zoot Alor!" Perhaps, the Visitor concluded, they had met and spoken with Lou and Tawny.

The group welcomed the Visitor to Earth. Alor explained to them the equal surprise at encountering thinking meat creatures who are quite Zootlike, but who seem to resemble many other animals that are not Zootlike at all. The humans themselves acknowledged that they are animals, although they have a history of calling themselves "rational animals," and also "persons."

This word caught the Visitor's attention. "That's an interesting word, 'person.' What does it mean exactly?" The humans indicated that it means any creature like them in certain respects: beings with reason and logic and self-awareness, who interact continuously using symbols with others of their kind, who have a sense of right and wrong, who have not only desires but an understanding of their desires, who freely choose their own goals. "That means I am a person!" Alor exclaimed. "I guess that is what Lou meant when he said I am human." The others admitted that they were amazed to encounter a thinking, talking, joking, building, artistic, space-traveling stack of glass. They also admitted that they typically used glass and silicon for containers and decorations and as components in computers. However, the facts speak for themselves. The Visitor was indeed as much a person as they were.

No Pain

A few of the welcomers were assigned the task of showing the Visitor around the planet and explaining things as much as possible. They showed the Zoot not only the ocean (so much nutritious sand!) and the mountains (probably more food within *them*), but also cities (which they have on Zootle), farms (which they do not need), factories (impressive), shopping malls ("Is this where they worship?"), churches ("*This* is where they worship!"), art museums (very vivid, but Alor did not yet understand much of the symbolism), orchestral performances (beautiful) and rock concerts (the Visitor thought it would shatter!), dance and athletic events (crystalline beings do not move like that, but both the grace and the competition were admirable). Are there any other creatures on Earth who do these things? the Visitor asked. Not a one, came the reply.

On a busy city street the Visitor found itself on the wrong end of a collision involving a "teenager" who was doing something called "texting" while simultaneously driving a multi-person conveyance device. Though it is in an impenetrable dialect, Alor saved it as a reminder of an important event on the visit.

EM: @ dq 2min frm tu casa

DZ: c u soon

EM: WTH just hit smthng w/ moms car

DZ: not good. r u ok?

EM: omg im on tv 2nite, hit glss alien

DZ: o.O

EM: got tckt :(

DZ: WTG :P

After the young human got the Visitor to pose for a “cellphone” photograph, someone else examined the damage to Alor’s appendage. “That’s gotta hurt,” he said. Puzzled, the Zoot asked, “What do you mean, ‘hurt’?” After a very long and confusing discussion, it became clear that earth animals, including humans, experience something called pleasure and pain, which Zoots apparently do not. Zoots do experience desire, along with its satisfaction and frustration; they also undergo many emotions, all of which they tend to characterize as “light” and “dark,” with corresponding differences in light refraction that a careful observer might detect. Zoots also have sensations of sight, hearing, touch, smell, and, to a very minor degree, taste. The Visitor had no doubt that it was damaged; it had sensed the blow, and sensed the damage, and recognized the extent of the damage and how it could spread if not properly treated. However, the notion of a physical sensation of pleasure and pain was, well, alien.

The Visitor concluded that it must be quite an experience to sense “light” and “dark” in one’s body in this way. It also now realized that this explained the peculiarly violent or mournful reactions of animals on Zootle when they undergo physical damage; Zootlian scientists had only had theories about it. In the end, the Visitor expressed gratitude for the discussion, and especially for the information about pleasure and pain in animals, and requested information on how to prevent pain in animals.

Alor noticed at this moment that one of the “tour guides” (as they called themselves), a female, seemed to want to ask a question. She hesitated, but when encouraged, she asked, “Since you only knew that Lou and Tawny were animals, and you knew nothing about pleasure and pain, why did you let them go so quickly?”

The Visitor replied, “Once it was evident that they were persons like me, the only reasonable conclusion was that they could not be treated as pets or zoological exhibits. I had to treat them in the same way that I would treat any other rational creature: with respect for them as beings who are properly their own masters. If they were to be studied, they had to be studied with their permission.”

The female thought for a moment. Then she asked, “But why would a Zoot

care about the pleasure and pain of other animals at all? I mean, your own argument was that animals aren't their own masters, and so they have only relative value, right? They can be mastered and used by persons for the interests of persons?"

The Visitor replied: "It is correct to say that irrational animals may be used by rational ones, since irrational ones are not their own masters. However, I am a rational being, and subjecting animals to needless distress would be irrational. It might be that sometimes I would need to subject an animal to distress. But what kind of monster would I become if I deliberately caused pointless suffering to helpless beings?"

Mastery and Dignity

Alor announced that it was time to get back to the spacecraft—not with the intention of leaving, but to repair the damaged appendage. It was a load-bearing locomotive appendage, and so unaccustomed stress had been added to other parts of the Zoot's crystalline structure. Alor was now also eager to check on the status of the fauna it had captured, to see whether any of the Earth creatures were suffering pain due to poor handling. On the flight back (not nearly as efficient as the vessels on Zootle, but comfortable enough), the Visitor got into a discussion with a physician. There is also a healing profession on Zootle, and Alor knew several healers. This particular healer confused the Zoot greatly. Rather than asking about methods of healing for crystalline entities, he wished to follow up on the earlier discussion. He lamented the fact that when most animals are in pain, it is permissible to kill them to put them out of their suffering, but it is not permissible to do the same for a human being. To the Visitor's surprise, this physician thought it should be permissible, and admitted that there are some healers who do, in fact, help their patients to kill themselves.

"Why?" asked the Zoot.

"Because the patient has a right to die with dignity."

"Why is that?" asked the Zoot.

"Because they are autonomous beings, and it is in keeping with their desires, and thus their dignity, to do to their bodies what they wish when their bodies and their lives have become useless to them." The physician even hinted that there are some who actually kill patients without their permission.

"Are you suggesting," the Visitor asked, "that just because a person desires to do something, that it is thereby permissible to do it? How do you reconcile this activity with your profession as a healer?"

"The healer's job is to eliminate pain for his patients," he replied.

This claim struck the Visitor as odd. On Zootle, there are healers. However,

Zoots cannot experience pain. If the healer's job is to eliminate pain, then physicians there are living meaningless lives. Clearly, this is nonsense. The healer's job is to heal, to help a fellow creature to be restored to its proper function. The doctor further seemed to be suggesting that human beings are no different in kind from animals, and only have value when their bodies are useful to someone with power over them. But if they only have relative value, what would it mean to say that they have a right to something, including a right to die with dignity? And if they are their own masters, in what sense could they treat themselves as having only relative worth? The Zoot pondered this riddle for the remainder of the flight.

Upon arriving back at the landing site, they found waiting for the Visitor a group claiming to be in favor of "animal rights." The group was kept at bay by police officers. From outside the cordon, the group demanded the immediate release of the captured animals because, as they argued, animals have the right to be free and live their lives in the manner fitting to them. Their main premise seemed to be that animals have feelings, too, that they experience pleasure and pain just like humans, and so should be treated the same way. The Visitor found this amusing, and lightened accordingly.

"By that argument," the Zoot pointed out, "since I do not experience pain and pleasure, and I am clearly different in kind from humans, rather than releasing the other animals, I should treat you the same as I treat them and lock you up with them."

"How would you like it," a voice shouted, "if someone were to lock you up and poke you and prod you and stare at you?"

"I would not like it, even without the pain," the Visitor admitted. "However, the fact that I would not like it would not make it wrong. Nor would it make it right to lock up all of you just because I wanted to. Nor would it be right to do anything I desire to the other animals I have captured just because I desire it. Since humans and Zoots are reasoning creatures, we must have good reasons to do anything, reasons which are in accord with the truth of both the one doing the action and the one being acted upon."

"But that is just our point!" cried another protester. "The animals are frustrated in their desires, and that is not in keeping with their nature. They need their freedom."

The Visitor considered this claim, then asked the police to allow the protesters to proceed to the enclosures. "They are fed; they are protected; they are with others of their kind. They look quite content," the Zoot pointed out. "Beasts who lack intellect are not their own masters. Freedom serves a purpose. If their biological drives are met, what use have they of freedom? The needs of persons, on the other hand, are much greater than that, not least of

which is the need to be one's own master, to be free to dedicate oneself to truth, goodness, and beauty, and to order their world to their own purposes. When the person uses the beast for the person's purposes, that is in keeping with the nature of both the person and the beast."

The two encounters offered the Visitor a sharp contrast. First it had come across people who said that, since humans are no different in kind from other animals, we can treat the humans in the same way we treat the animals—as beings of relative worth. Then had come an encounter with people who said that, since humans are no different in kind from other animals, we should treat the animals as we would treat humans, as persons, with rights, beings who ought not to be treated as things with relative worth. Somewhere in this confusing *mélange* is a position that held that a human being's greatest dignity, the measure of his intrinsic value, is to treat himself as something of relative value! Now, it cannot possibly be the case that all of these positions are right. And since all of them seem to come from the claim that human beings are no different in kind from animals, it seemed likely that the premise itself is incorrect. The Visitor wished to explore this notion at greater length.

Alor returned to the vessel, pulled out an emergency repair kit, and applied various solutions to the appendage injuries that would help them to heal. Some parts would form a crystal lattice that would entirely replace the broken part. Internally, though, there would develop fault lines that would never disappear. Alor then put on a large protective covering to aid in the process. The Visitor's hosts called it a Zoot Suit, then produced the sound that Alor now recognized as the human equivalent of laughter. This caused Alor to grow light with amusement: Only persons have jokes. Perhaps some day the Visitor would understand this one.

Definitely Different

The humans, the Visitor found out, are closely related to a group of animals they call apes. One day, in an attempt to help explain human ancestry, Alor was taken to a zoo. The Zoot observed the gorillas and the chimpanzees, humankind's closest relatives. The process of evolution was apparent among the flora and fauna of Zootle, so the Visitor could see what it would mean to say that humans are evolved from apes, given the close physical resemblance on both the macroscopic and microscopic levels. Some of the people in the group were willing to say that these apes are persons, as human beings are. Others were unwilling to go that far, but agreed that, while human beings are certainly far more developed in degree, they are nonetheless the same in kind. These were the same claims Alor had encountered earlier,

and both still seemed odd.

“Do you think Zoots are the same in kind as other creatures on our planet?” asked the Visitor.

The Zoot’s companions agreed that a silicon-based life form is clearly different in kind from a carbon-based creature.

“Do any apes, or any other animals, have language?” Alor asked.

Someone replied, “All animals communicate their emotional states.”

“Well, yes, of course,” pressed the Visitor, “but do any of them have language: do they name things, do they speak in sentences?”

Several people pointed out that a few gorillas, over the course of years, have been slowly, and with much trial and error, taught a number of hand signals by which they communicate their desires.

“But,” Alor continued, “do you have to teach your young in this way?”

“No,” said one, “our children learn the language just by paying attention.”

“Do the gorillas independently name things, or teach these names to their young?”

“No.”

“Do the gorillas communicate about anything other than their desires for food or companionship or the comfort of their environment?”

“No.”

“Are human young limited to talking about their own comforts? Do they name other things in the world? Can they speak in an infinite number of sentences about their world?”

“Well, yes,” another chimed in, “as they grow, they come to talk about lots of things.”

The Visitor dug deeper. “Do gorillas tell stories and jokes, create art and music, write plays and philosophy, travel just to see new things, worship, build buildings and other works not only for function but for beauty?”

“Not yet,” one stated enthusiastically.

“Is there any community of human beings on Earth that does not do all of these things?”

“Well, no.”

“Let me ask this: Do gorillas, or any animals, feel good in bad environments? If you make their enclosures comfortable, and feed them well, do they thrive?”

“Yes, of course,” they agreed.

“Do they ever do risky things, dangerous things, just to make themselves feel more alive, like stand outside in a bad storm, or pick a fight with someone?”

“Well,” someone piped up, “that would go against their instinct to survive

and thrive physically.”

“Is it the same for humans?” asked the Zoot. “Do human beings operate according to instinct, or do they decide their own goals and purposes? Do you not know human beings who have every creature comfort, yet are quite miserable? Do you not know human beings who, despite great trial and difficulty in their lives, are nonetheless fulfilled and satisfied? Is this ever the case with an animal?”

Someone retorted, “Well, we’ve never seen other animals do these things, but that doesn’t mean they don’t.”

This answer proved especially perplexing. The Visitor asked its hosts: “How many combined hours have human beings spent observing not only gorillas, but other animals? Millions? Billions? In all those observations, designed specifically to uncover what these animals do and how they operate, has anyone ever stumbled across any animal doing any of these things? Is it your suggestion that the animals are deliberately hiding these activities from you, living special secret lives as rational animals, and then practicing a coordinated game of keeping this secret from the human race?”

The Visitor’s companions had no answer.

As they continued through the zoo, they saw exhibits of many beasts, large and small. Alor asked to enter one enclosure. It contained animals called tigers. The humans were confused. “These animals are carnivores, they say. You could get hurt.”

The Zoot reminded them that, being made of silicon, it would smell to the animals like a rock. On the Visitor’s planet, there are no zoos, because Zoots can mingle with the animals without much danger, except that certain animals tend to excrete things on the observers’ locomotive extremities to mark the animal’s territory. This is how Zoots generally study wildlife. A further thought crossed the Visitor’s mind.

“If a human were to enter the enclosure with the tigers, what is the danger?”

The hosts said that the humans might be killed by the animal protecting its territory, and even eaten as food.

“In the wild, what does this animal do for food?” the Zoot asked.

“It eats other animals,” one answered.

“If the tiger kills another animal, is that considered wrong?”

“Of course not,” they agreed.

“What if the tiger kills a human being?”

“No, because the tiger cannot help what it does,” pointed out another. “It is acting on instinct.”

“What if a human being kills, or causes harm to another human being?”

“Now that would be wrong. But what’s your point?” asked the first one

irritably.

The Visitor carried on. “What if a human being were to step into the tiger enclosure and hurt or kill the tiger?”

“Well,” a third one replied after some hesitation, “it would depend on why the person did that.”

”Would the person be responsible for his or her acts? Would the person need a very good reason for having done this?”

They agreed that the answer would be Yes on both counts.

“Human beings may be physically related to apes,” the Visitor pointed out, “but they are nonetheless as different from every other creature on the planet as a Zoot. And persons like us, Zoot and Human, are completely different from every other kind of thing in the known physical universe.”

Always a Person

One of the tour guides, a college professor, invited the Visitor to his home to see a human family “in its native habitat,” as he put it. Upon entering the house, the Zoot found two small creatures playing together on the floor. As it turned out, one was a nine-month-old baby, the other a puppy. These creatures looked somewhat familiar to the Zoot, who had not yet observed Earth creatures enough to know for certain what they were. The man got down on the floor and frolicked with the two creatures for a minute. Alor immediately placed them both in the category of animals. After a few minutes the Visitor came to the conclusion that neither of them was a person, for neither displayed the kind of intelligence the Zoots sought on their visit. The man made many comments to both the creatures, tickled them and rubbed their heads, and asked them questions like “Who loves my little pudgy-wudge?” While these comments and questions and proddings elicited sounds, they did not seem to elicit any conversation.

The man’s “wife” (the equipment could offer no translation of this word, nor of the apparently corresponding term “husband”; the closest correlate was the term “mate”) was startled when she came upstairs from the basement laundry, but after her original expression of surprise—“If I’d known you were bringing over a crystalline entity, I’d have picked up a bit!”—she tried to make the Visitor feel at home by offering it a Snapple. Alor admitted to having brought along nutritional substances, which was just as well, since all Earth food is carbon-based, and would not do a silicon-based life form a bit of good. However, the Zoot remembered from earlier conversations during the tour of a farm that humans raise and eat animals. So Alor said, “I see these two animals are not persons like you and me, so I am wondering if you are going to eat them.”

The couple replied that the fuzzy one with the tail was a pet. Though they eat dogs in other countries, it is not considered a tasteful thing to do in this part of the world. The other one was a human baby, their own offspring.

“So, is it considered tasteful to eat a baby, or is it just a pet as well?” the Visitor asked.

“Neither,” the man replied. “Neither eating a baby nor keeping it as a pet is acceptable. In fact, doing either would be not simply distasteful, but wrong.”

“Why?” the Zoot wanted to know. “On my planet, if a creature is not a person, it can be used by persons for their own purposes. Indeed, you do the same thing here; I have visited your farms. Our young, of course, are produced by breaking off from a larger Zoot, and so they already are able to enter the life of reason and language and wonder and morality. Almost as soon as they begin to emerge as buds, we are aware of them as a separate center of consciousness, even though we share some bodily parts for a short while. We can hold mental conversation very early in their development, so we know right away that they are not things or mere parts of our bodies, but persons separate from us. Clearly this is not the case for you and your baby. So when does your baby become human?”

This is a bit puzzling to the parents. “Well, he’s already human, said the husband. “He comes from human parents. He certainly cannot be any other kind of thing. And he is a separate being from the moment of conception.”

The Visitor replied, “Well, of course. How silly of me. We seem to have a bit of confusion of language here. What I mean is that this little one here does not seem to be human *like you are*—that is, it does not seem to be a ‘rational animal.’ When does its life as a rational animal start? When does it become a person?”

After thinking about this for a moment, the woman asked whether Alor had any offspring. Pleased to show off a bit, Alor pulled out a visual representation that it carried everywhere; the offsprings’ designation was Sims. Some of what the father had been drinking came out of his nose. “You have a young Zoot named Sims?” he asked. He said he liked something called jazz, and would explain later.

The mother returned to the question, asking whether Zootlian offspring are fully functional from the beginning. The Visitor replied that they are not. They cannot yet eat, or see, or walk until they have broken off, and even then there may be a bit of stumbling about. The community has to watch out for them for a while, because young Zoots are a bit fragile.

“Did you ever wonder,” she asked, “whether little Sims is a Zoot, even when it was just a bud?”

“No,” Alor replied.

“Did you ever wonder whether it is a being of the same kind as yourself, because it could not yet operate as fully and completely as you do?”

“Well, no, of course not,” said the Zoot. “It is a being of the same kind, of the same species; it merely needed time to finish developing, but it could never be any other kind of being.”

The parents smiled, but since the Visitor had not yet become proficient at interpreting human facial expressions, the man completed the thought. “It is the same way with human babies. Human babies are the same kind of creature as their parents. It is not only physical development, however, but mental development that takes some time in human beings. They have to learn first of all how to name things, to form sentences about the world, and eventually they learn to control their own lives, to master themselves. Most babies, if there is not something physically wrong with them, will develop the full-blown use of their rational capacities. The puppy, however, no matter how healthy he is, will never develop rational capabilities. He is not that kind of being.”

His wife finished. “From the moment of conception, humans are persons, though they need time to fully develop and demonstrate their rational nature. Puppies are not, and never can be. One cannot become a person; one must be a person from the start in order to develop the functions of a person.”

The Visitor pressed the inquiry a little further, noticing that, like the animals on its own planet, Earth animals, including humans, can become unconscious or mentally incapacitated in a number of ways, the most frequent of which humans call “sleep.” This is not the way of things for Zoots, who maintain awareness and mental function until either they shatter in an accident, or cease functioning after many years of internal cracking which disintegrates the internal processes. The Zoot wanted to know: “Are human beings persons during these periods of unconsciousness?”

The human couple, for their part, could not come up with a reason why the same principle which applied to their baby would not equally apply to any of the other states of awareness and rational function in a human being. “Can a robin stop being a bird? Can a mackerel stop being a fish? Persons are a particular kind of life form. Humans and Zoots are two different kinds of persons. They don’t cease to be Humans or Zoots until they cease functioning entirely. So they cannot cease to be persons until that point either.”

Conclusion

The Visitor was lightened to hear from the rest of the entourage from Zoot, finally returning from their retrieval of their comrade at the far edge of this solar system. Alor was lonely. Well, lonely was not quite the right word.

There was certainly no lack of company; this planet was teeming, not only with life, but with intelligent life. The ensuing encounters had certainly been an opportunity for the Zoot to learn, not only about other creatures, but about what it means to be an intelligent life form, a person, when personhood begins and ends, why it matters.

Still, despite the similarities between Zoots and Humans, he could not help feeling a bit like a stranger in a strange land. Getting back together with the other Zoots would be refreshing: telling the stories of their travels while enjoying some freshly prepared nourishment from home, maybe singing the old songs—what could be more human?

Alor laughed. Lou would have agreed.



“Don’t be unkind—please rewind”

Girls in Trouble:

A Play About Abortion

Monica R. Weigel

There is a fine line between propaganda and art. It happens all too often in the New York theatre scene that you go to a play addressing a hot-button issue, and realize ten minutes in that you are being force-fed one particular political view. Theatergoers lucky enough to see Jonathan Reynolds's new play, *Girls in Trouble*, did not find themselves in that position. The controversial new work about abortion enjoyed its world premiere at the Flea Theatre, with an extended run lasting a full month over the intended schedule. This play defies categorization as either pro-life or pro-choice. Fearlessly directed by artistic director Jim Simpson, and beautifully acted by the Flea's resident acting troupe, The Bats, *Girls in Trouble* proved not only that a play about abortion can have a successful commercial run, but that an artistic endeavor that does not take the easy route can both stimulate and enhance a conversation about an emotional issue.

The press release for *Girls in Trouble* advertised its subject matter as "women's rights and abortion" and proclaimed that it would "explore the controversial history of abortion through its life-changing effect on women across three generations." It is worth noting that even the promotional materials for this play refused to take a side on the issue it was exploring. The phrase "women's rights" is more often utilized by people on the pro-choice side of the abortion debate, but it would be a rare pro-choice tactic to dwell on the "life-changing effect" that abortion has on women. Further muddying the waters was the playbill, which boldly tagged the Flea's current offering as an "infuriating new play." Infuriating for whom? No one seemed to want to tell you. It might seem strange to comment on the advance press and packaging for a play, but part of the allure of *Girls in Trouble* was that its very existence on the Flea's stage was newsworthy in a dominantly liberal theatre culture. Often, when plays address such passionate issues, audience members have a note from the director in their playbill explaining his or her intention and angle. Simpson did not give his audience such an easy way out. Audience members who did not attend a performance that included a post-show talk-back were left to think for themselves. For better or for worse, *Girls in Trouble* is a play that demands to stand on its own and be debated, not merely

Monica R. Weigel is a teaching artist and director in New York City. She holds a Master's Degree in Educational Theatre from New York University's Steinhardt School.

discussed, and the Flea Theatre should be commended for recognizing that.

Girls in Trouble follows the issue of abortion through three generations of women. The first story is set in the 1960s. The audience is treated to amusing, if crude, banter between two college buddies, Hutch and Teddy, about how best to “score” with women. This quickly deteriorates into an appallingly glib conversation about the fact that Hutch’s latest one-night stand is pregnant and the revelation that he’s taking her to get an illegal abortion. Hutch is a stereotypical frat boy with an inflated ego; Barb, the first “girl in trouble” the audience meets, is also sadly familiar. She is blonde, pretty, and painfully naïve. She is also completely drunk. When Barb tearfully asks why she and Hutch cannot get married and have the baby together, his answer is to have sex with her on the side of the road and claim they can talk about their future after the abortion. The simulated sex and accompanying masturbation on the part of Teddy escape being gratuitously shocking by forcing the audience to realize that this is not some cautionary tale they’ve heard a thousand times. Yes, this story is familiar, but the provocative choice to stage this sequence so graphically is a stark reminder that the unseemliness of this situation cannot be glossed over with clichéd packaging.

Barb’s illegal abortion is carried out in a rundown apartment in the bad part of town by a black woman named Sandra who learned the trade from her own mother. The audience is also introduced to Cyndy, Sandra’s daughter, who is not as oblivious to what is going on in the apartment as one might hope. Unfortunately for everyone involved, things do not go according to plan. When Barb gets out of the car after returning to college, her bloodied skirt reveals that something has gone terribly wrong. The stage blacks out, and the audience is left with the image of blood and the sound of terrified screams. Naturally, opponents to abortion would come away from this scene lamenting the tragic example of a young, impressionable girl being forced unwillingly into an illegal abortion. At the same time, abortion supporters could find, in this “back-alley” abortion, support for the legalization of abortion to minimize danger to maternal health.

The second story in the play takes place about twenty years later and is communicated entirely through a monologue given by Sunny, the play’s second “girl in trouble.” Sunny turns out to be Cyndy, the daughter of Barb’s abortionist, all grown up and angry to boot. Sunny has gotten pregnant by a slick-talking two-timer who showered her with gifts throughout their affair. And although this man was unfaithful to Sunny, he is apparently thrilled to be a father. What enrages Sunny is that he is willing to love the child, but not her. Unwilling to give a man that has broken her heart the gift of a child to love, she boldly declares that she will not have the baby. Throughout the

monologue, which is written and performed as poetry, Sunny calmly but passionately paints another familiar picture—that of a young, disadvantaged African-American woman wronged by a womanizing man; that of a justifiably angry woman whose hurt has driven her to an extreme choice that is so commonplace to her that it is gleefully turned into a hammer to inflict hurt on others. Sunny could be used as the poster child for a classic abortion-rights scenario—she is unwed, young, poor, and supposedly unable to give a baby any sort of decent life. Also, why should she be saddled with the responsibility of a baby when, odds are, the father is just going to turn around and desert the child in the same way he deserted the mother? But going beyond all the counter-arguments to those assumptions, Sunny blatantly admits that her motive for the abortion is revenge against the man who wronged her. This is hardly noble reasoning, and could tip the scales back to the pro-life side.

The third “girl in trouble” is not actually a girl, but a contemporary, professional woman in her 40s. Amanda is beautiful and wealthy, has a seven-year-old daughter, a dry wit, a successful cooking show, and an unwanted pregnancy, roughly five months along, which the audience later learns is the result of a one-night stand with her ex-husband. Enter Cynthia, who gains entrance to Amanda’s apartment by posing as a helpful, house-calling OB-GYN who will supposedly help Amanda get to the hospital for an abortion. As it turns out, Cynthia is Cyndy-Sunny, the play’s thread through all three scenarios, now become a zealous pro-life activist. She is not, however, a doctor, although she went to medical school. The audience learns that Cynthia changed her mind about her own abortion years earlier, married the father, has a beautiful family, and now sees it as her life’s purpose to help other women decide against abortion.

So begins an act-long ideological duel about the true nature of women’s rights—Cynthia on the pro-life side and Amanda on the pro-choice side. However, once Amanda unapologetically declares she wants the abortion despite her concession that it is murder, Cynthia is caught. In the play’s most shocking twist, Cynthia drugs Amanda and performs a Caesarian section right there in the kitchen, delivering twins in a disturbing, gruesome scene. (It is to the credit of the playwright and the actresses that this dramatized debate remains vital and engaging, and that the extreme actions of the characters remain plausible and artistically relevant.) The play ends with Amanda waking up, pristine in a hospital gown, surrounded by colorful balloons, her family, and two new babies in her arms. Cynthia stands in the background, her arms still covered in blood. As the lights black out, Amanda screams,

leaving the audience with an eerie sense of *déjà vu*—the sight of blood and the sound of anguish once again seared in their brains.

Amanda's story defies classification more than any other part of the play. Her transparent selfishness and callous dismissal of her pregnancy as a mere inconvenience make it hard for her reasoning to stand up to Cynthia's. But Cynthia's arguments, which form a shockingly clear-headed articulation of the pro-life cause for a New York stage, are deeply undermined by her gruesome act. The audience is forced to remember Amanda's earlier argument and draw a comparison with extremists who kill abortion doctors. The grotesque procedure by which the twins are saved stands in sinister contrast with the potential joy in their survival.

As a piece of theatre, not merely a social commentary, the Flea's production of *Girls in Trouble* could not simply rely on powerful content to be successful. From a purely acting standpoint, the production was a triumph. The performances were, for the most part, impeccable despite the challenges presented by the material and the potential for one-dimensional characterization. Andy Gershenzon gave Hutch a gloss of charm over a narcissistic core. Brett Aresco, as Teddy, hit the awkward yet darkly humorous notes of his voyeuristic character perfectly. Betsy Lippitt was heartbreakingly convincing as Barb, and Laurel Holland depicted Amanda with just the right combination of extreme likeability and deeply flawed selfishness. And as Cyndy/Sunny/Cynthia, Eboni Booth tied all three sections of the play together with her unflinchingly sincere portrayal of a deeply passionate woman of constantly morphing perspectives.

Jim Simpson's deft direction led these talented actors through potentially damaging dramatic landmines and smartly allowed Reynolds's many voices and arguments to shine through, without limiting them with a particular political or moral lens. The play is by no means flawless. The full female nudity in the last act seemed unnecessary and less targeted than the other shock tactics employed earlier in the play. The characters throughout could have benefited from a bit more complexity, although Simpson was able to manipulate their one-sidedness into a nuanced whole. The over-use of dramatic asides during the Cynthia-Amanda debate were, however, distracting at best, and annoying at worst. On an ideological level, some members of the pro-life community will be rankled by the cluttering of Cynthia's agenda with the issues of capital punishment, just-war theory, and gay marriage, which serve only to pigeonhole the pro-life argument into a very specific, clichéd box.

But there are moments of brilliance. Reynolds's pacing keeps the audience on its toes at all times and the contrast between the first act and the second is

arresting. The first two stories are staged simply and abstractly, allowing the audience to be lulled into comfort by the assurance that what they are watching is a play. But the incredibly realistic set and contemporary references that appear in the final act jolted them out of that comfort zone and handed everyone the uncomfortable reminder that what was happening in front of them on stage happens in real life all the time.

The uniqueness of *Girls in Trouble* lies in its refusal to take sides, and enables the play to escape the fate of becoming propaganda for either side of the abortion debate. Pro-choice advocates may resist the amount of pro-life material readily accessible throughout the play, and pro-lifers may be upset that it adds yet another pro-choice viewpoint to the artistic spectrum. But people upset with either of those facts miss the point of productions like this. The play put a human face on the reality of abortion, and made it into art. Art is meant to provoke people, to jar them out of complacency and make them look at the world more closely. Neither Barb nor Amanda is allowed to freely decide the fate of her pregnancy. By bracketing his play with these particular stories, Reynolds forces everyone with a stake in the fate of abortion legislation to admit that both sides have demons they have to face. The societal pressure to hide and reject unplanned pregnancies is not limited to any one demographic or age bracket; it exists everywhere. And the pro-choice movement needs to recognize that the idea of free choice is not as cut-and-dried as it may appear. On the other side, the pro-life movement has to deal with the sullying of its message by the actions of extremists and radicals.

All of the stories told in *Girls in Trouble* add up to a gut-wrenching theatrical experience with real-life repercussions. It was impossible to escape *Girls in Trouble* feeling indifferent or blasé. This was a play designed to rattle people's cages, and it delivered on its promise. But its complicated message will resonate successfully only if the people who saw it continue to talk about their experience, and if more theatres become brave enough to follow in the Flea's startling footsteps.

Assisted Suicide:

The Montana Supreme Court Says Yes

Rita L. Marker

“[W]e find nothing in Montana Supreme Court precedent or Montana statutes indicating that physician aid in dying is against public policy.”¹

On the last day of 2009, when the Montana Supreme Court handed down its decision in an assisted-suicide case, it marked the first time a state high court has given the green light for doctors to prescribe a lethal dose of drugs for their patients.

The decision was particularly tragic, given the fact that Montana already has the highest suicide rate in the nation, twice the national average.² This fact has prompted the legislature to spend hundreds of thousands of dollars on suicide-prevention programs.³ But that didn't stop the Court from making Montana the third state, after Oregon and Washington, to transform the crime of assisted suicide into a “medical treatment.” And, in the not-too-distant future, the Court's decision could have a tremendous impact on states across the nation. This is due not only to the formal outcome of the case, but also to the fact that the Court dealt euthanasia and assisted-suicide activists a winning hand in a deadly serious name game: It decided to refer to assisted suicide, not as what it is, but as “aid in dying.”

Furthermore, it provided a new basis on which the right for physicians to assist suicides can be argued: as a mere extension of a state's living-will law.

The Case

The Montana case originated when Robert Baxter, a terminally ill retired truck driver, along with four physicians and the assisted-suicide advocacy organization Compassion and Choices (the former Hemlock Society) brought an action in District Court, challenging the constitutionality of the application of Montana's homicide statutes to physicians who provide drugs for assisted suicide to mentally competent terminally ill patients. The complaint alleged that patients have a right to physician-assisted suicide under the Montana Constitution's guarantee of individual dignity and privacy.⁴

In December 2008, District Court Judge Dorothy McCarter ruled that the Montana Constitution's provisions ensuring the right to privacy and human dignity, taken together, did encompass the right of a competent terminally

Rita L. Marker is an attorney and executive director of the International Task Force on Euthanasia and Assisted Suicide.

ill patient to die with dignity.⁵ Consequently, she declared that a patient may use the assistance of a physician to obtain a prescription for a lethal dose of drugs and that the patient's physician would be protected from prosecution under the state's homicide statutes.

As expected, the case was appealed to the Montana Supreme Court. From the outset, the high court tipped its hand by reframing the question before it:

We rephrase the following issues on appeal: Whether the District Court erred in its decision that competent, terminally ill patients have a constitutional right to die with dignity, which protects physicians who provide *aid in dying* from prosecution under the homicide statutes.⁶

In its decision, the Court did not resolve the question of whether the Montana Constitution provides the right to assisted suicide. Instead, it looked to Montana's consent statute⁷ and found that "a terminally ill patient's consent to physician aid in dying constitutes a statutory defense to a charge of homicide against the aiding physician when no other consent exceptions apply."⁸ In short, if a doctor is charged with the crime of assisted suicide for prescribing drugs for the patient to use in committing suicide, the doctor can use the patient's consent as a defense against the charges. (The old "she asked for it" defense.)

The Court rationale was based primarily on Montana's living-will law, which, it noted, "by its very subject matter, is an apt statutory starting point for understanding the legislature's intent to give terminally ill patients—like Mr. Baxter—end-of-life autonomy, respect and assurance that their life-ending wishes will be followed."⁹ Furthermore, the Court explicitly stated that there was no significant difference between a physician's act of withholding or withdrawing treatment and that of writing a prescription for drugs that will be used to cause death:

The Terminally Ill Act, in short, confers on terminally ill patients a right to have their end-of-life wishes followed, even if it requires *direct* participation by a physician through withdrawing or withholding treatment. Section 50-9-103, MCA. Nothing in the statute indicates it is against public policy to honor those same wishes when the patient is conscious and able to vocalize and carry out the decision himself with self-administered medicine and no immediate or direct physician assistance.¹⁰

The Terminally Ill Act authorizes physicians to commit a direct *act* of withdrawing medical care, which hastens death. In contrast, the physician's involvement in aid in dying consists solely of making the instrument of the "act" available to the terminally ill patient. The patient himself then chooses whether to commit the act that will bring about his own death.¹¹

The Montana decision permits the lethal prescription to be written under expansive circumstances. There, a "terminally ill patient" may seek out a physician and merely "ask him to provide him the means to end his own

life.”¹² Furthermore, Montana’s Rights of the Terminally Ill Act broadly defines “terminal condition” as “an incurable or irreversible condition that, *without* the administration of life-sustaining treatment, will, in the opinion of the attending physician or attending advanced practice nurse, result in death within a *relatively short time*.”¹³

In addition to claiming that Montana’s advance-directive law permits physician-assisted suicide, the Court implied that the state’s education and outreach program on “advance health care planning and end-of-life decision making”¹⁴ encompasses informing patients of the availability of all life-ending actions, including physician-assisted suicide: “[O]utreach and education provisions, and state funding for both, indicate legislative intent to honor and promulgate the rights of terminally ill patients to autonomously choose the direction of their end-of-life medical care. There is no indication in the statutes that another choice—physician aid in dying—is against this legislative ethos of honoring the end-of-life decisions of the terminally ill.”¹⁵

In light of provisions contained in the new federal health-care law,¹⁶ the claim that assisted suicide is just “another choice” in the “ethos of honoring end-of-life decisions” is particularly chilling.

Aid in Dying

“Aid in dying,” the phrase the Court substituted for “physician-assisted suicide,” is a catch-all label that assisted-suicide activists have favored for years. But, until the Montana decision, it hadn’t gained traction.

From 1988 through 1992, during campaigns to legalize euthanasia and assisted suicide in California (1988 and 1992)¹⁷ and in Washington (1991),¹⁸ the phrase of choice among euthanasia proponents was “aid-in-dying.” The words conjured up images of plumping the pillow, wiping the brow, and holding the hand of a patient. But these were not the types of aid that would have been legalized. “Aid-in-dying” was defined in the measures’ small print as “aid” that was to be directly and intentionally provided to “end the life”¹⁹ or “terminate the life”²⁰ of a qualified patient.

Although the exact method for delivering the new death-inducing medical service was not specified, proponents acknowledged that it would probably be a lethal injection or a drug overdose. But they tried to softpedal this fact, to the extent they could. “Try not to go into methods of aid-in-dying such as lethal injections” was the advice given in a speakers packet formulated by the Friends of Initiative 119, an umbrella group for the Washington state measure’s supporters. Instead, speakers were advised to say that Initiative 119 was needed to “protect our rights as patients.” Audiences were to be told that the measure was needed to correct flaws that had been

discovered by members of the medical community in the state's outdated living-will law.²¹ The measure was similarly described on national television, when a news program described the initiative as a proposal "to clarify language in Living Wills."²²

Although the early proposed laws in California and Washington would have permitted euthanasia by lethal injection and assisted suicide by prescribed drug overdoses, each measure categorized such actions as something other than mercy killing or suicide. California's proposal stated that "[r]equesting and receiving aid-in-dying by a qualified patient in accordance with this title shall not, for any purpose, constitute a suicide"²³ and that "nothing in this Act shall be construed to condone, authorize, or approve mercy killing."²⁴

Washington's attempt to carve aid-in-dying out of the definitional suicide-and-euthanasia niche read: "Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying *and to permit death with dignity through the provision of aid-in-dying.*"²⁵ [emphasis added]

However, voters in Washington and California recognized that "aid-in-dying" was merely a deceptively soothing term for the crime of murder under those states' laws, and the proposals failed to gain public approval. The public at large, it seems, did not favor turning the specter of a lethal syringe-wielding physician into a reality, whether called "aid-in-dying" or the more apt description, "killing."

Following the failed attempts in Washington and California, euthanasia and assisted-suicide advocates went back to the drawing board to reframe their rhetoric. In preparation for a new initiative campaign then being formulated for Oregon, a poll was commissioned in 1993 to determine "if euphemisms allow people to come to grips with brutal facts which, stated another way, would be repugnant to them."²⁶

Not surprisingly, results indicated that people would be more inclined to vote for laws that were couched in euphemisms. The poll indicated that the greatest number of respondents (65 percent) would favor a law using the terminology "to die with dignity."²⁷ As the drafting process of what would eventually be known as Measure 16, Oregon's "Death with Dignity Act," went on, information from the poll was incorporated to ensure the greatest possible chance of passage.

The first draft was written in September 1993 by attorney Cheryl K. Smith, who served as a special counsel to the political action group Oregon Right to Die (ORD). Smith had previously served as the National Hemlock Society's

legal adviser from 1989 to 1993 and as top aide to Hemlock director Derek Humphry, until he resigned in 1992.

As a student at the University of Iowa College of Law in 1989, Smith helped draft a “Model Aid-in-Dying Act” that allowed for children’s lives to be terminated either at their own request or, if under six years old, at the request of their parents. In that model law, “aid-in-dying” was defined to include “administration of a qualified drug for the purpose of inducing death.”²⁸

Early drafts of Measure 16 (at first titled “A Bill for an Act—Relating to the Rights of Patients Who Are Terminally Ill to Receive Aid-in-dying”) allowed doctors to directly end the lives of patients by lethal injection. But this was considered a potential stumbling block and was eventually omitted.²⁹ Oregon’s proposal became an assisted-suicide-only bill.

Its final draft provided that a doctor could write a prescription for a patient “for medication to end his or her life in a humane and dignified manner.”³⁰ As a means of placating those who wanted the wording to allow doctors to actually administer the deadly dose, a compromise was reached by which the physician as well as others were granted immunity if they were “present when a qualified patient takes the prescribed medication to end his or her life in a humane and dignified manner.”³¹

As the Oregon measure was evolving, some words and phrases were sacrificed. Others were carefully selected. “Aid-in-dying”—which had become identified with the earlier failed California and Washington attempts—was totally eliminated from the title, the definition section, all subheadings, and even the body of the measure. Other, poll-tested phrases—such as “death with dignity,” “to die a dignified death,” and “humane and dignified”—were substituted. Each word and phrase was meticulously examined for its potential impact on voters. Since polling done to prepare for the bill had shown that “suicide” did not play well with the public (only 44 percent of voters would have favored a law stating that it permitted physician-assisted suicide³²), the word was omitted.

On November 8, 1994, Oregon voters approved Measure 16. It was the nation’s first such law and passed only by the slimmest of margins (51-49 percent). But, as Derek Humphry had said when he viewed his poll’s results, “The euphemisms won.”³³ It took another 14 years before a second state, Washington, joined Oregon with its own assisted-suicide bill. Working from the same playbook, the Washington law³⁴ was virtually identical to Oregon’s.

The Montana court case soon became a potential game changer.

A “Medical Term of Art”?

Having tasted victory in two state-initiative campaigns and in one state court, assisted-suicide activists resurrected the “aid in dying” language and are counting on its having few, if any, remaining negative connotations. Indeed, the label has become the centerpiece of a recent court challenge to Connecticut’s law against assisted suicide.

The Connecticut law making assisted suicide a felony is clear: “A person is guilty of manslaughter in the second degree when he intentionally causes or aids another person, other than by force, duress or deception, to commit suicide.”³⁵ Such clarity, one would expect, would not lead to obfuscation. But, not to be daunted by the clear meaning of the statute, Compassion & Choices initiated a challenge to the law.

The case, *Blick v. Connecticut*, was brought by two Connecticut physicians who are asking the court to 1) declare that the provisions in the state criminal code that categorize assisted suicide as manslaughter do not apply to doctors who prescribe lethal doses of drugs to patients who request them, and 2) prevent prosecution of doctors who prescribe the lethal doses to their patients.

They base their argument on a claim that physician-assisted suicide (although, of course, they don’t use those words) is not assisted suicide. They argue that no Connecticut court has yet construed the meaning of “suicide”³⁶ and that a patient who seeks a “peaceful death” is not seeking suicide. And they assert as fact that “‘Aid in dying’ is a recognized term of medical art.”³⁷

Not many years ago, such claims would have been too ludicrous to consider. However, with the Montana Supreme Court having led the way, such challenges to laws across the country may become commonplace.

Past & Future Court Challenges

The Montana case marked the fifth time that assisted-suicide advocates had sought to achieve their goals through court action. But, until the Montana decision, they had not prevailed. In 1997, the United States Supreme Court issued two decisions on the subject of whether there was a right to assisted suicide under the United States Constitution.³⁸ The Court found no such right and clearly distinguished between the withholding and withdrawal of life-sustaining treatment and the provision of physician-assisted suicide: “The distinction comports with fundamental legal principles of causation and intent. First, when a patient refuses life-sustaining medical treatment, he dies from an underlying fatal disease or pathology; but if a patient ingests lethal medication prescribed by a physician, he is killed by that medication.”³⁹

That same year, the Florida Supreme Court overturned a lower-court

decision which held that Florida's assisted-suicide prohibition violated the privacy guarantee of the Florida Constitution.⁴⁰ (The trial court explained that there was no difference between withholding or withdrawing treatment and assisted suicide.) In overturning the lower-court decision, the Florida Supreme Court, like the U.S. Supreme Court, rejected claims that physician-assisted suicide is not different from removing treatment: "We cannot agree that there is no distinction between the right to refuse medical treatment and the right to commit physician-assisted suicide through self administration of a lethal dose of medication. The assistance sought here is not treatment in the traditional sense of that term. It is an affirmative act designed to cause death—no matter how well-grounded the reasoning behind it."⁴¹ In rejecting the rationale that there was no distinction between refusing treatment and physician-assisted suicide, the court held that there is no right to assisted suicide under a 1980 right-to-privacy provision in a constitutional amendment to Florida's Constitution.⁴²

Four years later, in *Sampson and Doe v. Alaska*,⁴³ the Alaska Supreme Court decided a case in which two competent terminally ill adults sued for an order declaring their physicians exempt from Alaska's manslaughter statute for the purpose of assisting them to commit suicide. They based their claim on the Alaska Constitution's guarantees of privacy and liberty.⁴⁴ In rejecting their claims, the state high court explained: "Sampson and Doe offer nothing from the Alaska Constitution's history suggesting that either suicide or assisted suicide were topics of concern when the privacy and liberty clauses were drafted and adopted. The approach of the Alaska Statutes toward assisted suicide has been consistent since statehood; Alaska law prohibited all forms of assisted suicide and has never recognized an exception for physicians assisting their patients."⁴⁵

As in the cases previously decided by the U.S. and Florida Supreme Courts, *Sampson and Doe* argued that the ban on assisted suicide created an arbitrary distinction between assisted suicide and withholding or withdrawal of medical treatment, because "it allows physicians to hasten the deaths of some patients by passive measures—such as withdrawal of life support or terminal sedation—but forbids them from helping other patients who prefer physician-assisted suicide as a method for hastening death."⁴⁶ And, as in the previous cases, the Alaska Court rejected that argument, stating that it "overlooks an important distinction between a physician's active participation in a patient's suicide and a physician's willingness to honor a patient's request to cease or withdraw treatment. . . . [T]hese two types of conduct are significantly different. Their difference reflects the long-recognized distinction between action and forbearance."⁴⁷

Contrasting a physician's omission of unwanted medical treatment with assisting a suicide, the Alaska Court noted: "In sharp contrast to this situation, when a physician assists a terminally ill patient by prescribing medication to hasten the patient's death, the death is caused by the patient and is abetted by the physician's affirmative actions. The physician thus becomes liable because the physician actively participates in the patient's suicide."⁴⁸

Montana was not the first court to consider whether assisted suicide should be deemed an end-of-life option. Nor will it be the last. Connecticut and other states will have to decide whether to follow the lead of the U.S. Supreme Court, the Florida Supreme Court, and the Alaska Supreme Court or whether, like Montana, they will interpret their advance-directive laws to permit physician-assisted suicide under the label "aid in dying."

NOTES

1. *Baxter v. Montana*, 2009 MT 449 at ¶49.
2. Center for Disease Control and Prevention, *National Vital Statistics Reports*, Vol. 56, No. 10, p. 93.
3. Tristan Scott, "Suicide Rate in Missoula County Up; Montana No. 1 in U.S.," *Billings Gazette*, Feb. 10, 2008.
4. Montana Const. art. II, §§ 4 and 10.
5. *Baxter v. Montana*, 2008 Mont. Dist. LEXIS 482 (2008).
6. *Baxter v. Montana*, 2009 MT 449 at ¶2 and 3 (2009). (Emphasis added.)
7. MCA §45-2-11.
8. *Baxter v. Montana*, 2009 MT 449 at ¶50.
9. *Ibid.*, at ¶27.
10. *Ibid.*, at ¶30. (Emphasis in original.)
11. *Ibid.*, at ¶32. (Emphasis in original.)
12. *Ibid.*, at ¶44.
13. MCA 50-9-102 (16). (Emphasis added.)
14. *Baxter v. Montana*, 2009 MT 449 at ¶37.
15. *Ibid.*
16. "The Patient Protection and Affordable Care Act" was signed into law (Pub. L. No. 111-148) on March 23, 2010.
17. The "Humane and Dignified Death Act," which would have legalized euthanasia and assisted suicide under the name "aid-in-dying," failed to gain enough signatures to be placed on the 1988 California ballot. California's "Death with Dignity Act" (Proposition 161), which also would have permitted both euthanasia and assisted suicide under the same "aid-in-dying" label, did qualify for the ballot, but failed on November 3, 1992, by a vote of 54 to 46 percent.
18. Washington State voters turned down the "Death with Dignity Act" (Initiative 119), which would have legalized "aid-in-dying," on November 5, 1991, by a vote of 54 to 46 percent.
19. Initiative 119, §2 (9).
20. Proposition 161, §2525.2 (k).
21. "Suggestions for Speakers" and "Suggested Format for Speech on Initiative 119," distributed at the July 1, 1991 meeting of Spokane (WA) Friends of Initiative 119. The meeting was chaired by Rob Neils, Spokane County coordinator for Hemlock of Washington State.
22. *Newsday*, CNN, July 31, 1991.
23. Proposition 161, §2525.16.
24. *Ibid.*, §2525.23.
25. Initiative 119, §10. (Emphasis added.)
26. Derek Humphry, "What's in a word?," *Results of Roper Poll conducted for ERGO! in August 1993*, p. 1.

27. *Ibid.*, pp. 2-3.
28. "Model Aid-in-Dying Act," *Iowa Law Review*, vol. 75, no. 1 (1989). The model act is available online at <http://www.uiowa.edu/~sfklaw/euthan.html>. (Last accessed April 29, 2010.)
29. Tom Bates, "Write to Die," *Oregonian*, Dec. 18, 1994.
30. Oregon "Death with Dignity Act," ORS 127.800 §1.01 (11).
31. *Ibid.*, ORS 127.855 §4.01 (1).
32. Derek Humphry, "What's in a word?," *Results of Roper Poll conducted for ERGO! in August 1993*, p. 2.
33. Tom Bates, "Write to Die," *Oregonian*, Dec. 18, 1994.
34. Washington's "Death with Dignity Act," RCW 70.245.010 - .903.
35. Conn. Gen. Stat. §53a-56.
36. *Blick v. Connecticut*, Complaint, ¶41. (The Complaint is available online at http://www.internationaltaskforce.org/pdf/CT_Complaint_200909.pdf)
37. *Ibid.*
38. *Washington v. Glucksberg*, 521 U.S. 702 (1997) and *Vacco v. Quill*, 521 U.S. 793 (1997).
39. *Vacco v. Quill* at 801.
40. Fla. Const. art. I, § 23.
41. *Krischer v. McIver*, 697 So. 2d 97, 102 (Fla. 1997).
42. *Ibid.*
43. *Sampson and Doe v. Alaska*, 31 P. 3d 88 (2001).
44. AK Const. art. 1, §§1 and 22.
45. *Sampson and Doe v. Alaska* at 92.
46. *Ibid.*, at 98-99.
47. *Ibid.*, at 99.
48. *Ibid.*



"I'm not sure what you're trying to say here."

O Come Now, Emanuel:

A Teenager's Notes from a Nursing Home

Stella Morabito

“Unlike allocation by sex or race, allocation by age is not invidious discrimination; every person lives through different life stages rather than being a single age. Even if 25-year-olds receive priority over 65-year-olds, everyone who is 65 years now was previously 25 years old.”

—Ezekiel Emanuel, Hastings Institute bioethicist and health-care advisor to President Obama (*Lancet*, Vol. 373, June 31, 2009)

All by myself, at age 15, I could have explained bioethicist Ezekiel Emanuel's argument about health-care rationing. He may have thought he was being profound when he claimed there is “no invidious discrimination” when favoring 25-year-olds over 65-year-olds in health-care “allocations” because (surprise!) all 65-year-olds were once 25. I knew about all this as a young teen, shortly after I landed my first job: doing laundry in a Southern California nursing home. It was grunt work that got hot and smelly at times, but I was happy to earn the money.

Since those days, I have come to a different understanding. I now see that healthy youths can be just as short-sighted as Mr. Emanuel. My own experience as the laundry-room girl reflected that tendency.

The “ewww” factor

I didn't have enough savvy to hide my undesirable employment from my peers. One day after work, sweating from the summer heat in my polyester whites, I walked into the neighboring Sav-On Drug Store to buy a soda. I was immediately greeted by a familiar voice.

“Hi, Stella. Oh, you have a job! Where are you working?”

It was Lisa, one of those glowy high-school cheerleaders, standing brightly in air-conditioned comfort at her post by the cash register. She caught me off guard, but I was brief, identifying only the location of my employment.

She pressed on: “Oh! Well, what do you *do* there?”

Having ineptly confessed with the single word “laundry,” I was rewarded with that long, lowing syllable of female adolescence: “Eeeeeewwwwwwwww!!!”

Which, I think, illustrates something about the far-reaching social dynamic

Stella Morabito is a Maryland writer who is passionate about life issues.

embedded in Emanuel's position. My shame-by-association in the eyes of Lisa was simply a socially conditioned and superficial kiddy response: nursing-home laundry = old people's incontinence = "eeewww, gross." I wonder if Emanuel consciously wants to discourage us from growing up and shedding this reaction. By providing a scholarly patina to a shallow argument, he helps to rationalize a good part of the Lisa mentality—which makes it easier to lay the groundwork for health-care rationing on the basis of age.

Facing the truth

Lisa's sway on me was limited, though her reaction did discourage me from sharing my experiences with others at the time. Most important for my future were my interactions with the patients themselves, because it was they who directly influenced my ponderings about end-of-life care and "quality of life."

Mr. and Mrs. B., who both lay comatose in their beds, probably had the greatest impact on me as I made my daily rounds collecting and distributing the laundry: A real-life dying couple gave me something to brood upon. Yet at the same time, other patients were always cheerfully greeting me, eager to chat. One was Mr. C., a delightful Italian immigrant, larger than life, who used to wrack the nerves of the nurses by regularly going AWOL. Upon returning, he always confided in me, once showing off the high-top Converse All-Stars (shoe size 14) he purchased on an escapade to the local department store.

Many of the patients lived in a personal twilight zone. Mrs. W., no older than 60, struggled with depression after her only child's death. Yet she tended to cheer up when I came by, especially the day she invited me to pass out on her bed. I had gone woozy and white as a sheet after witnessing the extraction and cleaning of Mrs. H's tracheotomy tube in the room next door. When I recovered, Mrs. W. was more talkative and animated than I had ever seen her.

Then there were Mrs. K's afternoon raids on the laundry room. She was a tall and silent woman with dementia, who always exasperated me by bouncing around and rifling through the clean linens in search of underwear, never her own.

I must also mention Mr. S.—a cantankerous World War I vet in a wheelchair—who habitually urinated in his juice glass and then handed it to me. (If I was lucky, he'd hit on another aide who was around.)

I was fascinated by the fact that everyone in there was once as young as I, and probably once as healthy. Eventually my experiences crystallized in me this thought: Just like those patients, we all possess an inner universe that is lost on the world and ourselves as we live out our days.

Some patients were not so far removed from their former lives. Mrs. T.,

for example, always wanted to talk about her past life as a schoolteacher and dispense friendly advice to me. And Mr. P.—whose occupation now escapes me—often shouted in the hallway “This place is a racket!” and told me he would shut it down if he were still “out there working.”

Even back then, my 15-year-old brain had plenty of opportunity to make comparisons and judgments about who might be a “burden to society” and who was not. Paul Ehrlich’s book *The Population Bomb* had recently been published and was being passed around at school, even as assigned reading for some. Ecology was introduced as a subject to replace history, and many of us dutifully rode our bikes to school on that very first Earth Day, April 22, 1970. So, without any prompting from bioethicists, I made some connections and pondered the costs of keeping non-cognizant patients alive. I may have had no idea of the expense, but I knew my \$1.65-per-hour paycheck could never sustain it. (Nevertheless, there was nothing high-tech or excessively expensive about that small convalescent hospital. Doctors only came in from time to time to check on their specific patients. The payroll consisted of one registered nurse supervising other nurses and aides, plus maybe a daily staff of eight on duty, including kitchen staff, and probably no more than three or four at night. But even Mr. and Mrs. B. did not require much more than simple feeding tubes and catheters.)

Even if I couldn’t have constructed Emanuel’s elegant phrasing about rationing end-of-life care, the gist of it formed in my 15-year-old gut. Just like Emanuel, I felt encouraged to wonder whether one’s age might be a legitimate target for discrimination. As with all simplistic arguments, there is something on the surface of it that seems to make sense. In this case, especially so to a youth-obsessed individual desperate for peer acceptance: “Hmmm, all old people have already passed through younger years—and some people die young. That’s not fair to the young. They didn’t have a chance to get old. It’s not discriminatory to favor the young over the old.” Such “Ethics 101” routines are easy for physically healthy adolescents, even one like me who was brought up to respect all human life.

My experiences seeing the non-cognizant—and less-cognizant—caused me to explore the questions about “quality of life.” I reflected on the “usefulness” of our lives and had all of the predictable thoughts: “I wouldn’t want to just lie there like that day after day.” “Wouldn’t it be better just to die?” I wondered about where to draw the line, the point at which I assumed most people would want to die. I speculated on how long Mr. and Mrs. B. would stay alive in that coma. (Not very long, as I recall. Here’s what I can recollect: They each died within weeks of each other—maybe a month or two after I first started working. He went first, but not before scaring the

living daylights out of one of the nurses by talking clearly and loudly one night just before he died. I wish I had more details, but I only worked the day shift and heard about it third-hand.)

I also rationalized about how Mrs. K. might “get some peace” from her daily compulsion searching for underwear if she just died. In retrospect, I can see how easy it is for us to make that shift in projecting “what’s best” for others. Obviously Mrs. K. was not really in any need of being put out of any misery. She was oblivious. It was I who felt my peace being disturbed. The daily intrusion of someone rummaging through my nicely folded clean laundry, generating more sweat to my brow, was an annoyance to me, not to her. I made the natural, socially acceptable assumption that she would not want to be remembered as debilitated. Just like Emanuel, I fancied I knew what was best for her.

It’s hard to avoid the conclusion that acceptance of Emanuel’s position would cause us to spotlight patients such as Mrs. K. not as victims of rationed care, but as the actual *beneficiaries* of withheld care. And by doing so, it would further force us all into an ever narrowing societal mindset—frozen in teen time—that gives ever less leeway for accepting the natural deterioration of functions. As our society focuses more on valuing our youth, our contempt will grow for any condition of deterioration.

The question of equal opportunity

Emanuel’s position on end-of-life rationing does not fit neatly into his presumed understanding of equal opportunity for all. We can easily turn the tables on Emanuel’s statement by asking the following question: What about the 25-year-old who has accomplished far more in his/her life than the 65-year-old who has not had the privileges, the opportunities, or the family support structure so often required to create dreams, not to mention make dreams come true?

In the end, centralized power—and a centrally controlled health-care system is no exception—will always manage to perform contortions that serve its purpose. It might work in the following way: First, the government decries the fact that there are huge segments of the aging population who have not had the opportunities to pursue their dreams. In one category are the many creative people who spend more than half of their lives in dead-end jobs. They simply did what they had to do in order to keep food on the table and be of some use to society at large. But they never got the chance to cultivate their own inner spark of genius. In another category, you might place stay-at-home moms, many of whom put on hold their career goals and dreams so that they can pursue the rearing of their own children.

Whenever the Brave New Health Care State makes an allocation in favor of the aged as opposed to the young, it can use that to showcase itself as a system that respects and supports the pursuit of happiness and the American ideals of individuality and individual freedom. Scenarios of equal opportunity for the aged, however far-fetched they might seem now, can provide the state with a plausible way of dictating greater sway in end-of-life decisions. Decisions can become more arbitrary and motives more unprovable. The bureaucracy might allow allocations in the case of a politically expedient 65-year-old, while it might deny them for a politically inexpedient 25-year-old. This would serve many purposes for a centralized health-care state that wishes to enforce compliance while evading allegations of age discrimination.

Quality of life or quality control?

Finally, we need to reject the assumption that Ezekiel Emanuel is, in fact, arguing for quality of life. He does no such thing. He argues for quality *control*: state-defined quality control of human beings. This is most easily justified through scarcity. And scarcity comes about most effectively through central control and planning. Socialist and Communist societies have proven this time and again through the 20th century. Central planning always creates conditions conducive to rationing and “quality control” (such as it is in a centralized state).

The common threads that run through the arguments for assisted suicide are for the most part dictated by artificial standards of socialization. One example is the general fear of not being able to toilet oneself, since it is so widely considered an indignity and a degradation to quality of life. Another common thread is the assumption that “less sentient” individuals—such as the developmentally disabled or very young or comatose—are not capable of defining for themselves their own standards of quality and satisfaction in life.

Yet even a 15-year-old laundry worker viscerally knows that the state will use its new powers to define the value and purpose of those lives. Despite her broodings over the conditions of Mr. and Mrs. B. and Mrs. K., she always felt appreciated and, yes, loved, by Mr. C., Mrs. W., and many of the others there. Sure, she took cues from her peers and the bestsellers of the time. But she became increasingly aware of some things they did not know. She was able to more clearly sense the reality that we grow old much faster than we realize. She learned that human beings are so much more unique than we care to admit. I could not articulate it then, but I knew that we diminish ourselves when we diminish the lives of others.

At some level we must also understand that we diminish ourselves as a nation when we give up and allow for rationed care. A nation that does not

STELLA MORABITO

appreciate its people as its most precious resource itself suffers from a collective form of dementia. It is not capable of offering true dignity to individual citizens. I intend no offense to Mr. S. when I conclude that Mr. Emanuel seems to emulate Mr. S. in one very particular way: In exchange for our blood, sweat, and tears as a nation of unique individuals, Ezekiel Emanuel offers us a warm glass of piss.



"Well, I hope, when I grow up, to be an iconic example of the misspent life."

Spain: The Abortion Agenda

Carmen González Marsal

In November 2009, pro-life leaders from all over the world gathered in Spain for the Fourth Pro-Life World Congress. There were representatives of social organizations that support women and the unborn, scientists and doctors whose work is dedicated to life, jurists and magistrates who denounce the legalization of the killing of the most defenseless human beings, and professors and politicians highly committed to the cause.

What impressed me most at the Congress was the courage and energy of the Latin American pro-life advocates, as well as the decisive action of pro-life organizations from the United States. The clarity and frankness of the delegates from the Americas was truly enviable—and Spain needs to take fresh impetus from these younger nations. We have a lot to learn from the American outlook, and especially the freedom with which Americans express their opinions.

The Congress took place in the right place and at the right time: The Spanish government has recently made public a “sexual and reproductive health national strategy” whose main objective is “universal access to sexual and reproductive health,” including “guaranteed access to the voluntary interruption of pregnancy.” Notice the euphemism: They don’t refer to “termination,” but rather to “interruption”—as if the unborn life, once aborted, could continue some time in the future.

The new abortion law¹ will come into force on July 4, 2010. It provides: (1) abortion-on-demand during the first 14 weeks of pregnancy; (2) abortion until the 22nd week if there is “a serious life or health hazard for the pregnant woman” or if there is “risk of serious fetal anomalies”; and (3) no time limit for abortions when “fetal anomalies incompatible with life” or “an extremely serious and incurable disease” are detected.

This represents a radical change in the legal understanding of abortion in Spain: Its status is going to change from a crime to something that is a “right” during the first weeks of pregnancy, and that will even be made available as a service of the National Health System. Furthermore, if for any reason a public-health-system hospital is unable to provide the abortion, a pregnant woman will have the right to have the abortion at any other authorized center and have it paid for with public funds.

Before this new law, abortion was held to be a crime because it violates

Carmen González Marsal is a Ph.D. student, specializing in human rights, in the philosophy of law department at the Universidad Complutense de Madrid (Spain).

the legal good of the “life of the *nasciturus*”² (“the one to be born”) though it was decriminalized in three situations.³ The three situations are narrowly defined as follows: (1) no restriction for abortions “necessary to avoid a serious risk for a pregnant woman’s life or physical or mental health”; (2) abortion during the first twelve weeks of pregnancy if the pregnancy is the result of rape; and (3) abortion until the 22nd week if “it is presumed that the fetus may be born with serious physical or mental defects.”

In spite of the fact that abortion has until now been considered an offense against the law, there has been, in the past two decades, an alarming increase in the number of abortions: The abortion rate was 4.29 per 1,000 women in 1990, but has risen to 11.78 in 2008. According to official sources, 115,812 abortions were carried out in 2008. The stated reason for 96.96 percent of them was “maternal health,” and 98.09 percent of abortions were performed at private centers.⁴ It has long been clear that this “maternal health” justification is a legal fraud, and our worst suspicions were confirmed in 2006 by the then-president of ACAI (association of clinics authorized for the voluntary interruption of pregnancy): “Even though in Spain there isn’t a law which contemplates abortion as a woman’s voluntary right . . . we interpret that [for] any unwanted pregnancy . . . an abortion can be practiced based on the actual legislation if a medical report signed by a psychiatrist confirms that her mental health is at risk.”⁵

This has given the abortion-rights backers a lot of momentum. Many people in Spain think that we already have abortion-on-demand, simply because if a pregnant woman wants an abortion, the private abortion clinics will just go ahead and perform it, under the pretense of a risk to her mental health. The current disrespect for the life of unborn children is the result of years of passiveness, years of non-observance of the depenalization abortion law. It has brought about the tacit acceptance of abortion.

Since the decriminalization of abortion in the three specific circumstances I mentioned above, in 1985, there has not been a great outcry against abortion. Different parties have controlled the government, but none has taken any action on this matter, because there has been too little public demand—either for strict observance of the law, or for the repeal of decriminalization.

The debate over the new abortion law, however, is changing the situation considerably. It is waking up more and more Spaniards to the reality of abortion, and to society’s responsibility to support pregnant women and to respect the principle “thou shalt not kill.”

In October 2009, more than one million people marched peacefully in Madrid under the slogan “For Life, Women, and Maternity. Every Life Matters.”⁶ It

was the largest demonstration of any kind in the last few decades. What was most surprising—and encouraging—was the large number of young people present, as well as the festive atmosphere. Spain is truly starting to mobilize in favor of life.

The next months and years will be extremely exciting for this mission. The need for a culture of life has never been more urgent. It is time we reflected on the fundamental principle of respect for every human life. That means not abandoning the women who are dealing with unwanted pregnancies—women who, all too often, are abandoned by the men in their lives, and by society as a whole, to bear the entire responsibility of the abortion decision and its harmful physical and emotional consequences.⁷ The pro-life position is first and foremost a pro-solidarity and pro-woman attitude.

The tragedy of abortion is not only the tragedy of the dead, unborn children; it is also that of the deep loneliness of the woman who feels compelled to abort, the tragedy of the father of the aborted baby, and that of a hypersexualized society which erodes people's respect for other persons and indeed for life itself. The underlying idea is that if reality does not agree with one's individual desires, one may simply break away from it. Since an unexpected child does not fit my desires, I put an end to the problem by eliminating it, by killing him. Is this the society we want? Can we really call this progress or modernity?

A nation that permits abortion not only allows mothers to kill their unborn children, but also tries to legitimize this through the creation of a "right" to do so. Thus the violation of the first right—the right to live—is turned into a sadistic right to kill. How can one hope that a legal system that contributes to abortion will be able to guarantee the minimum respect due to any other human life?

Let us work for a future where everyone is respected and accepted, where problems are not solved by killing anyone or by abandoning anyone, where real freedom is clearly identified as an attitude of being open to one another. It is our duty to the unborn, the women, and the community as a whole to warn everyone about the dire consequences of the promotion of abortion. Those who do not want to be accomplices of this tragedy need to spread the culture of life: not only to suggest a different understanding of abortion, but a rediscovery of the beauty of life itself.

NOTES

1. *LO 2/2010, de 3 de marzo, de salud sexual y reproductiva y de la interrupción voluntaria del embarazo* (Law on sexual and reproductive health and the voluntary interruption of pregnancy), BOE, n. 55, sec. I, 04/03/2010, available at <http://www.boe.es/boe/dias/2010/03/04/pdfs/BOE-A-2010-3514.pdf> [ref. 10/03/2010].

2. Constitutional Court Judgment 53/1985, legal foundation 5º, available at http://www.boe.es/aeboe/consultas/bases_datos/doc.php?coleccion=tc&id=SENTENCIA-1985-0053 [ref. 20/11/2009].
3. Art. 417 bis of the Penal Code of 1973, wording according to the LO 9/1985, available at <http://www.boe.es/boe/dias/1985/07/12/pdfs/A22041-22041.pdf> [ref. 20/11/2009].
4. MINISTERIO DE SANIDAD Y CONSUMO: *Interrupción voluntaria del embarazo*, 2008, available at http://www.msc.es/profesionales/saludPublica/prevPromocion/docs/publicacionIVE_2008.pdf [ref. 20/11/2009] and MINISTERIO DE SANIDAD Y CONSUMO and OBSERVATORIO DE SALUD DE LA MUJER: *La interrupción voluntaria del embarazo y los métodos anticonceptivos en jóvenes*, 2006, available at <http://www.msc.es/eu/novedades/docs/interrupcion2006.pdf> [ref. 20/11/2009].
5. BARAMBIO BERMÚDEZ, S.: “Why abortion is performed in Spain until 26 weeks,” *VII FIAPAC Congress*, Rome, 14/10/2006, available at http://www.fiapac.org/media/Roma/FIAPAC_Rome_2006_Sa_1100_Vidot.pdf?phpMyAdmin=LNnPTp9uIV39b-McBypzPD84EE3 [ref. 20/11/2009]. In Spanish: “Por qué en España se practican abortos hasta las 26 semanas,” *VII Congreso de FIAPAC*, Roma, 14/10/2006, available at <http://www.acaive.com/pdf/ Porque%20en%20Espana%20se%20practican%20abortos%20 hasta%20las%2026%20semanas%20FIAPAC%202006.pdf> [ref. 20/11/2009].
6. The demonstration was shown on Intereconomía TV, videos available at <http://www.albadigital.es/2009/10/22/videos/especial-17-o-en-intereconomia-tv-parte-i/> [ref. 20/11/2009].
7. “It is she alone who finally decides whether the child comes into the world. She is the responsible one. For the first time in history, the father and the doctor and the health-insurance actuary can point a finger at her as the person who allowed an inconvenient human being to come into the world. The deepest tragedy may be that there is no way out. By granting to the pregnant woman an unrestrained choice over who will be born, we make her alone to blame for how she exercises her power. Nothing can alter the solidarity-shattering impact of the abortion option.” STITH, R.: “Her choice, her problem: How abortion empowers men,” *First Things*, Aug./Sept. 2009, pp. 7-9.



“How’s that obedience training working out?”

FROM THE ARCHIVES (1976):

The Theory of the Danforth Case

Francis Canavan

The late Justice Felix Frankfurter of the U.S. Supreme Court once remarked that “constitutional law . . . is not at all a science but applied politics.” There is much truth in what he said. Students of constitutional law understand the extent to which it is a part of the process of practical politics. But, after reading the Supreme Court’s latest abortion decision, I am inclined to modify Justice Frankfurter’s dictum slightly and to see the Court’s opinions on abortion as essays in applied political theory. Let me attempt to explain my reasons for so thinking.

On July 1, 1976, the Court decided the case of *Planned Parenthood of Central Missouri et al. v. Danforth, Attorney General of Missouri et al.* Popularly known as the *Danforth* case, it concerned the constitutionality of a law enacted by the State of Missouri to regulate abortions in the aftermath of the Court’s 1973 decision in *Roe v. Wade* (410 U.S. 113). In that case the Court had held that the States could not constitutionally prohibit abortion. In the *Danforth* case, the majority of the Court found five provisions of the Missouri law incompatible with *Roe v. Wade* and therefore unconstitutional. But, for our purposes here, we shall ignore a large part of the Court’s opinion and concentrate on the two most important of the Missouri provisions found unconstitutional.

Section 3 (3) and (4) of the Missouri law provided that no abortion could be performed prior to the end of the first twelve weeks of the pregnancy except with the written consent of the woman’s husband, if she were married, or with the written consent of one parent or person *in loco parentis*, if she were unmarried and under eighteen years of age. In each instance the qualifying phrase was added, “unless the abortion is certified by a licensed physician to be necessary to save the life of the mother.” In *Roe v. Wade* the Court had held that a woman’s freedom to decide to have an abortion was a “fundamental right” protected by the Constitution against State interference; here it held that this freedom cannot be limited by a State requirement that the woman’s husband or parent must consent to the abortion.

Mr. Justice Blackmun wrote the opinion of the Court, as he had in *Roe v.*

Francis Canavan, S.J., who died in 2009 at the age of 91, taught in the political science department at Fordham for many years and authored several books. He was also an early editor-at-large for the *Review*. This article first appeared in our Fall 1976 issue.

Wade. He therefore spoke for the majority of the Court. It remains nonetheless that he wrote the opinion, that he chose its phraseology and its arguments, and that the political theory which it embodies is in the first instance his. I stress this point because Justice Blackmun would surely deny that any theory at all was in his mind when he wrote the opinion of the Court. Unfortunately it would be all too easy to agree with him. He is not a profoundly reflective man and is quite capable of believing that he was only expounding the meaning of the Constitution when he was in fact unconsciously bringing a particular theory to bear on it. The theory is *there* just the same.

But first let us look at Justice Blackmun's reasons for finding the husband's and the parent's consent clauses of the Missouri law unconstitutional. *Roe v. Wade* had determined that during the first trimester of pregnancy the mother and her physician were free to decide upon and carry out an abortion without interference by the State. But it was precisely during this first trimester (or twelve weeks) that the Missouri law required the consent of husband or parent. "Clearly," said Justice Blackmun, "since the State cannot regulate or proscribe abortion during the first stage, when the physician and his patient make that decision, the State cannot delegate authority to any particular person, even the spouse, to prevent abortion during the same period."

A woman's husband is thus presented as an individual whose right to prevent the abortion of his own child can only be a derived right, delegated to him by the State. Justice White commented in his dissenting opinion that Blackmun's argument rested on a misapprehension. White pointed out that under the Missouri law "the State is not . . . delegating to the husband the power to vindicate the *State's* interest in the future life of the fetus. It is instead recognizing that the husband has an interest of his own in the life of the fetus which should not be extinguished by the unilateral decision of the wife." Even if, he continued, we accept the principle that, in regard to an abortion, the mother's interest outweighs the State's interest, it does not follow "that the husband's interest is also outweighed and may not be protected by the State. A father's interest in having a child—perhaps his only child—may be unmatched by any other interest in his life." The husband's right therefore stands on an independent base and is not one delegated to him by the State.

In a footnote to his own opinion, Blackmun answered White, saying that the latter did not understand the implication of the Missouri law: that the State had granted the husband "the right to prevent unilaterally, and for whatever reason, the effectuation of his wife's and her physician's decision to terminate her pregnancy." But the State had no power to do this. As Blackmun

put it in the section of the opinion dealing with the parental consent clause, “the State does not have the constitutional authority to give a third party an absolute and possibly arbitrary veto over the decision of the physician and his patient to terminate the patient’s pregnancy, regardless of the reason for withholding the consent.” This is the essential premise of the Court’s decision in regard to the consent clauses. To require the consent to an abortion of anyone other than the woman and her doctor is to grant a unilateral veto power on the exercise of a constitutional right.

There is, however, an obvious problem with this insistence on the unilateral character of the “veto power.” Justice Blackmun dealt with it in these words:

We recognize, of course, that when a woman, with the approval of her physician but without the approval of her husband, decides to terminate her pregnancy, it could be said that she is acting unilaterally. The obvious fact is that when the wife and the husband disagree on this decision, the view of only one of the two marriage partners can prevail. Since it is the woman who physically bears the child and who is the more directly and immediately affected by the pregnancy, as between the two, the balance weighs in her favor.

But to say this is to admit that the essential flaw of the Missouri law was not that it granted someone a unilateral right, but that it gave such a right to someone other than the mother. Justice Blackmun, and the majority of the Court with him, apparently cannot conceive of the issue posed by laws regulating abortion in any way but as a conflict of rights. In this conflict, one side always wins and, for all practical purposes, wins totally. So far, the winner has always been the woman who wants an abortion.

Thus, in *Roe v. Wade*, the Court considered the conflict between a woman’s right to abort her unborn child and the child’s right to keep his life. Speaking through Justice Blackmun, the Court remarked: “We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man’s knowledge, is not in a position to speculate as to the answer.” With that remark, the mother’s right to abort became absolute and the unborn child became merely a “potential life,” and in no way the subject of a constitutional right to life. From that point on in the Court’s opinion, having lost the battle in the conflict of rights, the child simply faded out of the picture.

This was true to the point where, later in the same opinion, when the Court granted that the State might prohibit the abortion of a viable child—one capable of living outside the womb—the most it would concede was the following: “If the State is interested in protecting fetal life after viability, it

may go so far as to proscribe abortion during that period except when it is necessary to preserve the life or health of the mother.” But this was not to recognize any inherent right of the child as against the mother, since the child would be protected only if the State were interested in protecting it.

Next, still in *Roe v. Wade*, the Court considered the conflict between the woman’s right to abort and the State’s right to proscribe or to regulate abortion. This conflict was resolved in accordance with a doctrine that the Court had worked out since *Griswold v. Connecticut* (381 U.S. 479) in 1965. The doctrine teaches that the Constitution implicitly guarantees to every individual a “right of privacy.” *Roe v. Wade* determined that privacy includes the right to decide upon an abortion. But the doctrine also holds that the right of privacy can be overridden by a “compelling State interest,” and therefore is not an absolute right. But in *Roe v. Wade* the Court found no “compelling” State interest in protecting “the potentiality of human life” prior to the point of viability. Up to that point, therefore, the woman’s right to abort was in effect absolute, not only as against her child but as against the State. The *Danforth* decision merely carried this line of reasoning farther by absolutizing the woman’s right to abort as against the conflicting claims of her husband or her parents. As we said, in *every instance* the issue has been reduced to a conflict of rights, in which the mother’s right is always found superior.

The opinion of the Court in the *Danforth* case therefore deserves the comment that Justice White made on it in his dissent: “It is truly surprising that the majority finds in the United States Constitution, as it must in order to justify the result it reaches, a rule that the State must assign a greater value to a mother’s decision to cut off a potential human life by abortion than to a father’s decision to let it mature into a live child.” Presumably, however, the Court would uphold a mother’s right to bear a live child as against her husband’s alleged right to make her submit to an abortion. In that sense the Court could claim to be neutral about abortion, and could say that all it requires is that the State assign a greater value to a mother’s decision about abortion, whether for it or against it, than to a father’s. Justice White’s comment is nevertheless justified.

Justice White clearly assigns a greater value to human life than to its extinction. He would favor the father, not because he is the father, but because he wants to preserve his child’s life, while the mother wants to destroy it. For Justice White, the content of the decision is important. For the majority of the Court, all that matters is that the mother should make the decision because, as they say in England, she has to carry the baby.

By making the mother’s wishes the controlling consideration, the Court is forcing the State into an attitude of utter indifference toward what, in the

Court's own terminology, is at least a potential human life. The only admissible object of public policy, in the Court's jurisprudence, is protection of the mother's untrammelled right to decide on the life or death of her child. The law may show no bias in favor of life, even if the male parent wants to preserve it, but must zealously safeguard the female parent's right to kill it. But this legal indifference is a specious neutrality: a legal system that refuses to have, or is not allowed to have, a bias in favor of life winds up with a bias against it.

The majority of the Court, in subscribing to the words that Justice Blackmun wrote for them, reveal just such a bias against life. The constitutional flaw they found in the Missouri law, as we saw above, is that it gave "a third party"—husband or parent—the right to exercise an absolute and possibly arbitrary veto over the mother's decision to have an abortion. But the Court thereby only confirmed the mother's absolute right to make a possibly arbitrary decision in favor of abortion. The Court thus subordinated the value of life to the allegedly higher value of an individual's autonomy—her freedom to do her own will. The Court also came very close to regarding the termination of pregnancy as a positive good, since nothing must be allowed to stand in its way, once the mother, with the advice and consent of her physician, has decided on it.

In the mind of the Court, of course, what I have called a bias against life is only a bias in favor of a woman's freedom to make the abortion decision. This freedom was upheld against the State in *Roe v. Wade* and, in the *Danforth* case, against the family. The Court, however, would not accept my way of describing its decision in the *Danforth* case. Its position, rather, was that the family as an institution was simply not involved in the case. Nothing was involved but a conflict between individuals: wife v. husband, unmarried minor v. parent. Given that definition of the issue, the only question before the Court was which individual's right should prevail. But to frame the question in those terms is to deny that any rights in the matter arise out of the marriage or the family relationship. There are only individuals with conflicting claims of rights.

The attorneys for the State of Missouri had tried to make the family a factor in the case. They argued that the clause requiring the husband's consent to an abortion had been enacted in the light of the legislature's "perception of marriage as an institution," and that "any major change in family status is a decision to be made jointly by the marriage partners." Similarly, a Federal district court had upheld the clause requiring the consent of the parent of a minor and unmarried mother because of the State's interest "in

safeguarding the authority of the family relationship.” Justice Blackmun dismissed both arguments and made light of the notion that giving husband or parent a “veto power” over the abortion decision would do anything to strengthen the marriage bond or the family relationship. More significantly, he rejected the premise that the relationship of husband and wife, or of parent and child, furnished any ground for requiring a joint or institutional consent to an abortion. All that he could see was the conflicting wills of distinct individuals, one of whose wills must prevail.

Justice Blackmun was indeed anxious to avoid giving the impression that he had anything but the highest regard for marriage and the family. To demonstrate his true feelings, he inserted a footnote quoting the opinion of the Court in *Griswold v. Connecticut*:

Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

It is worth remembering, however, why the opinion of the Court in the *Griswold* case included this little *paean* in praise of marriage. The issue in that case was a Connecticut law that prohibited the *use* of contraceptives. In order to find the law unconstitutional, the Court stressed the argument that its enforcement would involve an unwarranted intrusion into the “privacy surrounding the marriage relationship.” It was precisely the relationship that was to be defended against the State.

That was in 1965. By 1972, in *Eisenstadt v. Baird* (405 U.S. 438), it turned out that the marriage relationship had little to do with the constitutionality of laws regulating contraception. They were now found unconstitutional whether the persons wishing contraceptive information and devices were married or not. Justice Brennan, speaking for the Court, explained:

It is true that in *Griswold* the right of privacy in question inhered in the marital relationship. Yet the marital couple is not an independent entity with a mind and heart of its own, but an association of individuals each with a separate intellectual and emotional makeup. If the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.

In his opinion in the *Danforth* case, Justice Blackmun quoted the above words (from “the marital couple” on) in the footnote immediately following the one in which he quoted the *Griswold* opinion in praise of marriage. It apparently did not occur to him that what was said in the *Eisenstadt* case

effectively negated what had been said in the *Griswold* case. The right to contraception, it now appeared, in no way arose out of or was conditioned by the marital relationship. The right of privacy belongs to individuals simply as individuals, prior to and independently of such relationships as marriage and the family. This was the doctrine that Justice Blackmun applied to the right to abortion in the *Danforth* case. It is a doctrine whose roots reach much farther back in intellectual history than perhaps he realizes.

The doctrine is ultimately rooted in what is known as the social contract theory of the state. This in turn had its remote origins in the philosophical school of late medieval nominalism, according to which only individual substances are real, while essences or common natures, and the relations that spring from them, are mere constructs of the human mind. As a political philosophy, the social contract theory flowered in the seventeenth century, where it found its classic expression in the writings of Thomas Hobbes and John Locke. In the eighteenth century it became the dominant mode of political thought and strongly influenced the ideologies of the American and French Revolutions.

The main lines of the theory are as follows. The starting point is a “state of nature,” i.e., the state that men are in by their very nature. Men are conceived of as being by nature independent individuals, without inherent or natural political relations to one another; in the more radical versions of the theory, men are thought of as not being by nature even social beings. The state of nature, therefore, is a pre-political state, in which there is no political community, no government and no man-made law.

Every individual in the state of nature is sovereign over himself and subject to no authority but his own. In most versions of the theory the sovereign individual is indeed subject to the “law of nature,” which is the law of God as Author of nature. But the primary function of the law of nature is to confer on the individual his natural rights, which Locke summarized as life, liberty and estate (i.e., property). The only obligation imposed by the law of nature is the derivative one of respecting the rights of other individuals. In this theory, then, the individual is first and foremost a subject of rights, free to do what he will with his person and property (and here we may see foreshadowed a woman’s now-famous “right to control her own body”).

If men would live up to the law of nature and would respect each other’s rights, there would be no need of government and human law. Bad men, however, encroach on the rights of others, and so conflicts arise. Since there is no common authority in society, every individual is the interpreter of the law of nature and the judge of his own natural rights. Consequently, there is

in the state of nature no peaceable way of settling disputes over rights. Men therefore decide to form a civil society with a government empowered to settle disputes among individuals under general and standing laws. Civil society is formed by a social contract by which every individual surrenders to the community and its government his original right to be the judge in his own cause.

In this theory, civil society is not natural in the sense of being needed for the full development of human nature. It is a purely artificial construct, made necessary by men's wickedness and not by the innate needs of human beings. It is brought into existence by the contractual act of individual wills, each of which was originally sovereign, and which surrender their sovereignty only in order to set up a government that can protect their rights more effectively than they can themselves.

Such a theory rests on an atomistic conception of human nature. Man is no longer seen as a social and political animal (as Aristotle and Aquinas had seen him) whose very nature determines his basic relations to other persons in community. Man, as man, is an individual and nothing more. His relations to other individuals, consequently, are external, factitious and contractual, i.e., established by acts of free choice. The relations that are thus established will be consented to by each individual with a view to his own interests alone. There are no truly common interests, only a pooling of individual interests, because there is no natural community and hence no genuine common good of men.

The result is a political theory that divides society between individuals and the state. Individuals have their reserved and guaranteed rights; the state has its necessary and legitimate power as the protector of their rights. The task of political theory is to draw the proper line between these two spheres, much as the Supreme Court draws it between the "right of privacy" and "compelling state interest." In such a theory, all other associations in society are private and voluntary, the product of individuals pooling their interests and rights. There are no natural associations with their own naturally given structures, powers and rights. All the rights and powers of associations are delegations by individuals and/or by the state.

The social contract theory, in its classical form, was a political theory, concerned only with explaining the nature of the political community and the relations between individuals and the state. It generally took marriage and the family for granted. But if one were to carry the logic of the theory through and apply it to marriage, one would come out with a conception of the marriage contract similar to the one now being advocated in certain quarters. That is, the marriage contract not only unites man and woman

in matrimony, it determines the entire content and substance of marriage. Marriage implies no rights and obligations except those specified in the contract. That is to say, the marriage relationship has no given nature; it is whatever the two contracting parties choose to make it (including, for example, sanctioned extramarital larks, if they so specify in the contract).

The U.S. Supreme Court certainly has never gone so far as to put it blessing on that conception of the marriage contract. But one begins to understand the kind of thinking that explains its opinion in the *Danforth* case, and why the social contract theory is relevant to it. As a formal political philosophy, the theory is now out of date, and one no longer expects to find references to the state of nature and the social contract in public documents. But the suppositions of the theory—its atomism, its radical individualism, its obsession with individual autonomy, its tendency to reduce social issues to conflicts of rights—are all powerfully operative in contemporary liberal societies and exercise a profound influence on our thinking today, not least on the thinking of the Supreme Court.

That is why the majority of the Court reduced the issue in the *Danforth* case to a conflict of purely individual rights and to the question: Which individual's right prevails? That is why they could see a woman's husband or parents as having no rights in regard to the abortion decision except as delegates of the State, since no rights in the matter arise out of the marital or family relationship. The majority's basic fault is not that they decided in favor of the mother. If the content of the decision is irrelevant and the only question is which individual has the right to make the decision, it might as well be the mother. Justice Blackmun and the majority erred because they asked the wrong question and thereby ignored the family as a natural community and the basic unit of society. And this they did, not because the Constitution made them do it, but because their minds are still dominated by the suppositions of an outmoded political theory.

APPENDIX A

[*Kathryn Jean Lopez is editor-at-large of National Review Online. The following appeared on NRO (www.nationalreview.com) March 22, 2010, and is reprinted with permission.*]

Michigan's Cheap Date

Kathryn Jean Lopez

“Don’t wait for Bart Stupak to save the day.”

I said that three weeks ago, over and over again. I did it in part to encourage listeners to the radio show I was co-hosting to keep communicating with their congressmen. I said it too, of course, because I believed it. Because it’s unwise to put one’s trust in princes. Because men are men. We’re sometimes weak. We’re sometimes not who we say we are.

I said it, though, while being impressed with Bart Stupak. He stood against his party, and by doing so got life-protective language added into the House health-care legislation in November. He challenged supposed pro-lifers Ben Nelson and Bob Casey to a higher standard than they were willing to fight for in the Senate. He pressed on even while the president and the speaker of the House pretended that abortion funding wasn’t an issue—they claimed it wasn’t in their legislation and called those who said otherwise liars. Well, it *was* an issue. And it’s in the bill that passed last night. If it hadn’t been, the Democratic leadership and the White House wouldn’t have been forced to go through the motions of negotiating with Stupak.

Unfortunately, if Bart Stupak truly wanted to ensure that human dignity was respected in this legislation, he wouldn’t have surrendered. But surrender he did—and then some, declaring the Democratic party the protectors of the unborn on the House floor last night.

The Democratic party is nothing of the sort—which is another reason no one who wanted to defeat the taxpayer funding of abortion in Obamacare should have expected a Stupak-led victory in this Washington environment. It’s the party that will never offend the abortion industry. It’s the party that owns partial-birth abortion.

I have no idea what Bart Stupak was thinking. Perhaps he couldn’t endure the pressure on him, on his staff, and, most intimately, on his family. Perhaps he lacked an appreciation of the power he had to hold up the president’s signature legislation for the sake of the unborn and then got entranced by the pats on the back he got from leadership for saving their day, which he very likely did. A Democrat who wanted to vote for universal health care, in the end, Stupak proved himself the cheapest of dates. He traded all this power—power that had Nancy Pelosi screaming at a pro-life Democrat on the House floor Sunday—for a mess of pottage: for a farce of an executive order that holds no power over the codified statute of Obamacare.

Throughout the whole ordeal—both while Stupak was fighting and after he caved—I couldn’t get the late Pennsylvania governor Robert Casey out of my mind. He was pro-life, and he was a Democrat. And he didn’t actually have a home in the Democratic party. If you’re pro-life and you’re a Democrat, for decades now, you’ve

found yourself empty-handed, duped, angry, or humiliated.

In 1992, Casey won reelection with over a million votes. That and being the governor of Pennsylvania, a key swing state right next door to New York, would normally get you a slot at a Madison Square Garden Democratic convention. But not for Casey. In a move reminiscent of Bill Clinton's refusal even to talk to his own ambassador to the Vatican, who stood outside the president's office for hours trying to deliver a letter from the pope on the president's decision to veto a ban on partial-birth abortion, the White House refused even to respond to Casey's requests for a place on stage during the 1996 national convention. The Democratic party, which claims to be a beacon of tolerance, doesn't have a lot of it when it comes to those who defend the most innocent among us.

Instead, the Democratic party had six pro-choice Republican women speak to the assembled Democrats. But Casey, a confident man of moral conscience, knew what he believed. At the same school where President Obama spoke last year—the University of Notre Dame, which in bestowing an honorary degree on the president struck at the heart of its integrity as a Catholic school—Casey called his party out in 1995. “It was sold to America, this idea [of legal abortion], as a kind of social cure, a resolution,” he said. “Instead, it has left us wounded and divided. We were promised it would broaden the circle of freedom. Instead, it has narrowed the circle of humanity. We were told the whole matter was settled and would soon pass from our minds. Twenty years later, it tears at our souls. And so, it is for me the bitterest of ironies that abortion on demand found refuge, found a home—and it pains me to say this—found a home in the national Democratic party. My party, the party of the weak, the party of the powerless.”

Casey called abortion “inconsistent with our national character, with our national purpose, with all that we've done, and with everything we hope to be.”

Of course, our current president, who claims to be all about hope, went to that same school and tried to wash the conscience of Casey from our political memories. But he can't. And for a while, it looked as if Bart Stupak wouldn't let him.

So much for that.

Not much has changed in the decade since Casey died. “We're members without a party,” Stupak told the *New York Times* recently. “Democrats are mad at you, and Republicans don't trust you.” For good reason, it turns out. But Democrats have no use for them. When Stupak was a freshman in the House, he requested a seat on the Energy and Commerce Committee. He told the *Times* that “I had one or two members tell me I'd never get on because I'm right-to-life.” Pro-life Democrats who weren't fooled by or willing to compromise for the executive-order fig leaf Sunday will be quickly forgotten, defeated, or otherwise deemed useless by their party leadership—except as a vote for Nancy Pelosi as speaker again if the Republicans don't win big in November.

The stories of Casey and Stupak, stories that span decades, prompt an important question: Is there such a thing as a pro-life Democrat? Yes, clearly: Illinois's Dan Lipinski, who did vote no last night and tried to keep the Stupak crowd strong, is

one. But what does that mean in a party whose platform is inimical to his principle on such a key calling of our humanity?

What we saw in the health-care debate is that the Democratic party—as defined by its national leaders—is a party that, when given a choice between abortion and universal health care, as it was on Friday night before Stupak gave in, chooses abortion.

Mark Stricherz explained the situation well in his 2007 book *Why the Democrats Are Blue: Secular Liberalism and the Decline of the People's Party*. As he said to me: “National party leaders have suspect motives and competence. No matter the cost, they fight hardest to prevent unborn infants from having legal protection. After the 2000 election, Stanley Greenberg wrote a post-election analysis in which he partly attributed Al Gore’s defeat to his unlimited support for abortion rights. So what was the first major event for the party’s candidates in 2004? It was a dinner celebrated by NARAL honoring the 30th anniversary of *Roe v. Wade*. After the 2004 election, Greenberg wrote another post-election analysis in which he largely attributed John Kerry’s defeat to his unlimited support for abortion rights and backing of civil unions. So have the party’s top nominees run away from gay-rights groups and the abortion industry? No, they attended events hosted by Planned Parenthood and the Human Rights Campaign.”

Does it have to be this way? I suspect this state of affairs can’t go on indefinitely. Take Stricherz’s points. Consider the fact that Barack Obama won *despite* his abortion extremism in 2008 (he lied about abortion then, just as he did about this bill). Realize that the truth of this bill can’t be hidden forever: Soon, the farce that is the executive order Bart Stupak agreed to will undergo the analysis of more observers than just the U.S. Conference of Catholic Bishops. Politics may well wake up the party leadership. If it doesn’t, politicians of conscience are going to have to walk. “Pro-life” is just talk if you’re a vote for Nancy Pelosi as speaker and a vote for the most radical embrace of abortion by a branch of the federal government since *Roe v. Wade*.

In other words, for the moment, “pro-life Democrat” is a category that doesn’t really exist. As for the pro-life Democrat “no” votes left standing alone and useless last night, God bless them.

APPENDIX B

[William McGurn, a former chief speechwriter for George W. Bush, pens the *Main Street* column for the *Wall Street Journal* where the following appeared on March 23, 2010. Reprinted with permission of *The Wall Street Journal* ©2010 Dow Jones & Company. All rights reserved.]

Pro-life Democrats, R.I.P.

William McGurn

And then there were none.

When Bart Stupak announced Sunday he was now a “yes” on the health-care bill, six Democrats stood with him. Even that handful would have been enough to defeat the bill. Instead, they accepted the fig leaf of an executive order—and threw away all the hard-won gains they had made.

Amid the recriminations it’s easy to overlook what Mr. Stupak had cobbled together. His amendment restricting federal funding for abortions, passed in November, marked the only bipartisan vote in this whole health-care mess. For the first time since *Roe v. Wade*, pro-life Democrats had seized the legislative initiative in the teeth of their leadership’s opposition—and brought the party of abortion to heel.

Now Mr. Stupak has thrown it away. By caving at the last hour, he discredited all who stood with him. (What does it say about Ohio’s Marcy Kaptur and Pennsylvania’s Chris Carney that they had already agreed to vote yes even before the fig leaf of the executive order had come through?) In addition to undermining an encouraging partnership with pro-lifers across the congressional aisle, Mr. Stupak signaled that, in the end, you can’t count on pro-life Democrats.

“The peer pressure to be part of the team can be overwhelming,” says Chris Smith, a pro-life GOP congressman from New Jersey. “But sometimes it’s absolutely necessary, regardless of the cost, to bend into the wind, unmovable, committed to what your heart, mind and conscience know to be right.”

“For so long, Bart did that. Then he was like a runner who stopped a hundred feet before the finish line. It’s a sad day for the unborn, a sad day for their mothers, and a serious setback for the culture of life.”

Kristen Day of Democrats for Life doesn’t see it that way. Her official statement “applauds” the executive order. In a phone conversation, she tells me that “at this point in time, the pro-life voice in the Democratic Party is the strongest I’ve ever seen it.” She goes on to suggest that now is a “pivotal moment”—because if the pro-life movement punishes Mr. Stupak and Co. at the polls, the “pro-life voice in the Democratic Party will be diluted.”

She’s right about that last bit: If the Stupak crew goes down, they will probably be replaced by pro-life Republicans or pro-choice Democrats. Either way, it means fewer pro-life Democrats. On the other hand, many who cheered Mr. Stupak will say the “pivotal moment” came Sunday—and he chose liberalism over life.

Even more troubling for Ms. Day is that few accept the idea that the executive

order really adds anything. In fact, on this point National Right to Life, the Catholic bishops and the Susan B. Anthony List are largely on the same page as Planned Parenthood. As are the pro-life Republican leader Mr. Smith and the pro-choice Democrat Diana DeGette of Colorado.

Planned Parenthood calls it a “symbolic gesture,” and says “it is critically important to note that it does not include the Stupak abortion ban.” Rep. DeGette, who screamed so loudly when the Stupak amendment passed, said she had no problem with the executive order because “it doesn’t change anything.” She’s right, because an executive order cannot change the law.

Take the \$7 billion in new federal funding for the community health centers. As my former White House colleague Yuval Levin points out, all that has to happen for these federal dollars to start flowing for abortion is for NARAL Pro-Choice America to sponsor a woman demanding an abortion. The center will initially deny funding, citing the executive order. The woman will then sue, arguing that abortion is a part of health care. Given the legal precedents, and the lack of a specific ban in the actual legislation, the courts will likely agree.

That is part of what makes the consequences of Mr. Stupak’s surrender so far reaching. Not only has he opened the door to this kind of mischief, he has encouraged those who want to get rid of the Hyde amendment itself, which for decades has prevented federal funds from paying for abortions. Because his leadership and collapse were both so high-profile, moreover, he left fellow pro-lifer Illinois Rep. Dan Lipinski (who stood firm) out in the cold, and made nearly invisible the pro-life House Democrats such as Mississippi Rep. Gene Taylor who voted for the Stupak amendment and against the bill both times.

In signing on to this sham order, the Stupak people signed their death warrant as a force within their party. In an America where a majority now describe themselves as pro-life, they have put legislative accommodations on abortion further out of reach. At least in the near future, they have ensured the Democrats will become even more uniformly pro-choice, and our national debate more polarized.

And that’s a tragedy for our politics as well as for our principles.

APPENDIX C

[Denise Mackura, an attorney, is the Executive Director and Legal Counsel of Democrats for Life of Ohio.]

The Case for Pro-Life Democrats

Denise Mackura

Republicans have much to gain from the plight of pro-life Democrats in Congress. Representative Bart Stupak's acceptance of the compromise on the health care legislation—trading a firm, enforceable legislative ban on abortion funding for a dubious executive order leads some to conclude that, in the end, Rep. Stupak and his compatriots were not so pro-life after all. Republicans and others were happy to jump on that bandwagon. If they can convince pro-life voters that there is no such thing as a pro-life Democrat, it will leave nowhere else for those pro-life Democratic voters to go—except to Republican candidates. Yet if all pro-life voters are Republican, then there would be no motivation for the Republicans to take bold steps, such as the nomination and defense of anti-*Roe* Supreme Court justices. Even if pro-life voters became disappointed by their elected officials, all Republican, where else would they go? Without accomplishing the major goal of the pro-life movement, Republicans could string pro-life voters along for years, which is just what they have been doing.

As we learned from the 2008 presidential election, the pro-life vote can provide the margin for victory. This is why, after his defeat, Senator Kerry lamented his lack of attention to pro-life Democrats in his 2004 bid for the White House, and that's why Howard Dean declared a new openness to pro-life Democrats in 2005. George W. Bush won the Catholic vote 52-47 in 2004. Obama won it 54-45 in 2008. Republicans have to recapture the votes of those who were convinced that the Democratic party was open to pro-life people and convictions.

Reliance on Republicans alone will not result in achievement of the major goal of the pro-life movement—overruling *Roe v. Wade*. Consider the evidence. Since *Roe* was decided in 1973, Republicans have had eight opportunities to appoint members of the Supreme Court. Four of those have supported *Roe* (Justices Stevens, O'Connor, Kennedy, Souter). Two have opposed *Roe* (Justices Scalia and Thomas) and the position of two are unknown (Chief Justice Roberts and Justice Alito). In the 1992 case of *Planned Parenthood v. Casey*, which many believed would provide the opportunity to overrule *Roe*, every one of the five-member majority who upheld *Roe* was appointed by a Republican President. This is a terrible track record for the party so many pro-lifers support. Sure, Republican-controlled Congresses (like Democratic-controlled Congresses) have passed some major protections for unborn children, such as the Hyde Amendment and the ban on partial-birth abortion. Republican presidents have adopted pro-life policies on embryonic stem-cell research, overseas funding of abortion and other issues. But these accomplishments pale in comparison to their misguided Supreme Court appointments. Platform statements about *Roe* are great rhetoric but meaningless without action.

APPENDIX C

The recent and continuing health-care bill debate proved that *Roe* and abortion retain their potency and ability to disrupt our American democracy. Removing the abortion issue prematurely from the democratic process, as *Roe* did, caused great polarization in all three branches of government at the local, state and federal levels. The Supreme Court has dealt with the abortion issue more than thirty times. Even Justice Ruth Bader Ginsberg, a supporter of constitutional protection for abortion, has commented that *Roe* prolonged a peaceful settlement of the abortion issue by short-circuiting the legislative battles. She reiterated this view in 2008: “I think the Court bit off more than it could chew. . . . It is dangerous to go to the end of the road when all you see in front of you are a few yards.” Hundreds of articles have documented the decline in public discourse and civility that has accompanied the increasing frustration with finding a resolution to the abortion issue. Throwing out pro-life Democrats will not end the abortion debate, it will only prolong it by increasing partisanship and what divides us as a nation.

Republicans can’t be trusted, by themselves, to bring about the end of *Roe*. If the Republicans refuse to help stop the negative effect of *Roe* on our democracy, the pro-lifers should not reward them with their votes. Pro-life Democratic voices and votes are necessary ingredients to the resolution of our profound abortion debate. The civil rights laws of the 1960’s were only passed with bipartisan support. The last time a major challenge to democracy became a one-party issue we had a civil war. Some claim we’re now in the middle of a cultural civil war, with the abortion license bestowed by *Roe* a major causal factor. The only road out is nonpartisan.

APPENDIX D

[The following editorial, which is reprinted with permission, appeared April 28 in “Public Discourse: Ethics, Law, and the Common Good,” an online publication of the Witherspoon Institute, and can be accessed at www.thepublicdiscourse.com. “The Editors” are Ryan T. Anderson, Editor; Matthew Schmitt, Managing Editor; and David Schaengold, Assistant Editor. Copyright 2010 the Witherspoon Institute. All rights reserved.]

Health Care and the Abandonment of Pro-Life Principle

The Editors

In a first-time feature, the editors of *Public Discourse* respond to the editors of *Commonweal*.

In a recent interview, Representative Bart Stupak accused the National Right to Life Committee and the Catholic bishops of “hypocrisy” and of “just using the life issue to try to bring down health-care reform.” Meanwhile, the editors at the Catholic magazine *Commonweal* piled on, suggesting that pro-life groups, including the U.S. Conference of Catholic Bishops, were “lobbying groups hoping to stop Obamacare.” They praised Stupak for resisting “Republican efforts to sabotage health care reform.” In the heat of the debate, the *Commonweal* blog angrily announced that Americans United for Life “has herewith lost whatever credibility it still had as a nonpartisan prolife organization.” These charges are serious, but are they also true? Did pro-lifers abandon their principles in order to score a partisan victory?

Commonweal claims that the legislation contains no direct taxpayer funding of abortion. They fault other pro-lifers and the Catholic bishops for refusing to recognize this fact and accuse them of opposing the bill for reasons having nothing to do with abortion. Their insinuation is that the bishops’ claim that the bill expands the abortion license was a mere pretext.

Those who can only remember pro-life *opposition* to the health bill would do well to think back to November of 2009. When the Stupak amendment first came to the floor of the House, it met with skepticism or outright opposition from many conservatives. Americans for Prosperity said that it would be best to vote down the pro-life amendment. The conservative blogger Gateway Pundit initially dismissed it as “just a way for blue dogs to save face.”

But pro-life groups—the very ones *Commonweal* accuses of trying to kill health care reform—threatened to revoke the pro-life credentials of any Republican who opposed Stupak’s amendment. In a press release on November 7, National Right to Life declared that “a vote against the Stupak-Pitts Amendment can only be construed as a position-defining vote in favor of establishing a federal government program that will directly fund abortion on demand.” This legislative arm-twisting effectively ensured the passage of the bill, and it did so with the votes of many who had adamantly opposed it. Despite widespread resistance, National Right to Life faced only one conservative defection. If pro-life organizations hadn’t forced GOP members to make this pro-life, pro-reform vote, there would likely be no health care bill today. Congressman Stupak and the editors of *Commonweal* ought to pause

for a moment to give that fact some consideration.

In the wake of the Stupak vote, Republican strategists Erick Erickson and Patrick Ruffini told conservatives to “blame National Right to Life” for the passage of the healthcare; Erickson accused National Right to Life of undercutting conservatives “in order to raise some money.” The Wall Street Journal editorial board said that Stupak had “played pro-lifers like a Stradivarius.” The break flared up again when Marjorie Dannenfelser, head of the pro-life Susan B. Anthony List, upset conservatives with a *Washington Post* editorial threatening to swing grassroots support to pro-life Democrats if Republicans didn’t continue to press the case for life.

Similarly, after the initial passage of the House bill (which received only one Republican vote), the USCCB published a *supportive* letter highlighting the superiority of the House bill to the Senate bill on all three of the bishops’ moral criteria: (1) affordability and improved access for lower-income individuals and families; (2) fairness to immigrants; and (3) protection of (a) human life and (b) the consciences of health care workers and taxpayers. Far from opposing the House bill on partisan conservative grounds, the USCCB faulted the Senate bill (which Obama and Pelosi finally pushed through) for failing in fairness to immigrants.

Clearly, the pro-life organizations’ strategy was independent of a Democratic or Republican agenda. Little surprise, then, that it alienated partisans on both sides—the partisans at *Commonweal* included. Their partisanship is most apparent in their persistent misrepresentation of three essential elements of the health care debate: President Obama’s executive order, the funding of Community Health Centers, and the original Senate compromise language on insurance funding.

The Executive Order

Pro-lifers were rightly concerned that the Senate healthcare bill would undermine the principle of the Hyde Amendment: that no federal taxpayer money be used to fund elective abortions. The *Commonweal* editors touted Congressman Bart Stupak as a pro-life hero for obtaining an executive order purporting to extend the Hyde principle to the final healthcare bill. In their editorial they praised the order for:

clarifying that the Senate bill’s alleged ambiguities would be interpreted according to the principle embodied in the Hyde Amendment ... According to Obama’s order, Hyde will indeed apply to all funding for community health centers, and existing conscience protections will be upheld.

If the *Commonweal* editors believe that this executive order will prevent the public subsidization of abortion or protect taxpayers from funding the killing of unborn children, they are deluding themselves. As law professor Robert A. Destro has noted, for decades the federal courts have held (consistently with the 1977 case *Beal v. Doe*) that the Medicaid statute (and any other general law mandating “family planning” and certain other categories of service) must be construed to require abortion services unless *laws passed by Congress* explicitly rule this out. Executive orders sometimes have teeth, *but not when they conflict with statutory mandates*.

Perhaps we should repeat this point, which has been lost on many, including the *Commonweal* editors: Where an executive order conflicts with what a court interprets a statute to require, *the statutory requirement prevails over the executive order*. That's the law. President George W. Bush learned this when he tried to have civilians suspected of terrorist ties tried by military tribunals after 9/11. Because his executive order conflicted with statutory requirements as interpreted by the federal judiciary, the Supreme Court invalidated the order. The Court did *not* rule that these trials were unconstitutional; rather, it held that the president was powerless to order them if this meant overriding laws passed by Congress as interpreted by the courts.

The *Commonweal* editors are right about one thing, though: the Hyde Amendment works only if it can be extended to cover all the money that HHS spends. To protect the pro-life Hyde principle, any new statute that draws treasury funds for health services must extend the Hyde Amendment to apply to these new independent streams of funding, or else the Amendment—and the pro-life principle—will be reduced to a dead letter.

The new legislation did not extend the Hyde Amendment to new funding streams. The House bill would have done that; the Senate bill did not. No wonder Cecile Richards of Planned Parenthood made no real effort to resist the executive order. The order was, as she put it, merely “symbolic.”

Community Health Centers

Commonweal contends that the new health care legislation does not involve direct taxpayer funding of abortions. This is emphatically false. Longstanding legal precedent will require funding for the Community Health Centers to cover abortions. The new law requires these centers to provide “family planning” and “gynecology” services. The courts, consistent with established precedents, will do the rest by interpreting these terms, in the absence of statutory language to the contrary, to include elective abortions.

HHS Secretary Kathleen Sebelius claims that a little-known 1970's regulation would prevent federal funds from going to cover abortions. But this *regulation* can stand only if it has *statutory* support; like the executive order, it simply cannot prevent federal funding of abortion absent a statute explicitly doing the same.

The drafters of the Senate bill knew this perfectly well. So did major abortion advocacy organizations such as Planned Parenthood and NARAL Pro-Choice America. Why do the editors of *Commonweal* not understand it? Or do they imagine that the federal courts will set aside their decades-long interpretation of laws mandating reproductive health and gynecological services as requiring abortion coverage in the absence of a statutory prohibition of it?

The Hyde Amendment and the Senate Compromise

Commonweal editors have accused pro-lifers of “crying wolf.” Their tirelessly repeated claim is that the health bill's insurance funding mechanism—the so-called

Senate compromise—does not lead to *direct* taxpayer funding of abortion. This is a clever half-truth and so, in its way, more harmful than an outright lie. The original Hyde Amendment contained substantial protections for the unborn. The new language does little more than provide cover for those willing to support an abortion-expanding policy.

How exactly does the new law differ from Hyde? Its section on tax credits and abortion is called a “prohibition of federal funding” and refers to the Hyde Amendment, *but it violates the policy of the Hyde Amendment by leaving out its critically important second clause, which forbids funding a health plan that includes elective abortions*. This makes all the difference.

In each state’s insurance exchange, all health plans but one may cover elective abortions and receive federal subsidies under the new law; that is, only one must not. In that scenario, anyone whose healthcare needs are not met by the one plan not covering abortions will have to live with a plan that fails to meet his or her family’s (possibly urgent) health needs, or be forced by the government to make a separate premium payment every month solely to subsidize abortions.

And it truly does represent a break with the status quo. Private health plans have at least been permitted under our law to make accommodations for those of us who oppose the taking of human life by abortion (and insurers have done just that when enough premium payers demand it). The new legislation, however, forbids them to do so, by requiring that “each enrollee” in such a plan, without exception, pay the abortion fee. If implicating us in abortion by government-mandated payments is indeed “the wolf,” then it is time to note that the wolf is no longer merely at the door—he is in the house.

Supporters of abortion, including pro-abortion leaders in Congress, see the truth of the matter more clearly. California Senator Barbara Boxer, whose advocacy of public funding of abortion is unmatched in either chamber of Congress, reassured those on her side that the bill meets their goal of expanding abortion coverage by pointing out that its segregation of funds is a mere “accounting procedure.” How odd it is that supporters of abortion funding are willing to state the truth candidly, while some who claim to be pro-life insist on ignoring and even denying it. How bizarre that the editors of *Commonweal* accuse their fellow pro-lifers of “crying wolf” even as the avowed friends of the wolf are hailing his arrival.

Over the course of the health care debate, the major pro-life groups and the Catholic bishops faithfully adhered to the cause of life. They recognized the hollowness of Obama’s executive order, anticipated the threat posed by funding of Community Health Centers, and saw through an insurance funding scheme that claims to honor the Hyde Amendment’s principle while gutting its policy and violating its spirit. Their actions sometimes advanced health care reform and sometimes retarded it. The fact that they remained true to their principles—principles that the editors of *Commonweal* purport to share—during such a heated debate is bound to draw criticism from partisans. From pro-lifers, be they liberal, conservative, or in between, it deserves praise.

APPENDIX E

[Joe Carter is the Web Editor at First Things magazine. The following post appeared April 16 on the magazine's online blog "First Thoughts," and is reprinted with permission.]

Four Reasons You Might Be Aborted: An Open Letter to Fetal Humans

Joe Carter

To my fellow humans who are entering that most precarious stage of human development.

Let me begin by congratulating you on making it through the embryonic stage. Too many of our fellow humans don't even make it as far as you have now. Many died of natural causes. Others were cut down prior to implantation by an abortifacient. Still others are trapped in the freezers of IVF clinics, in suspended animation awaiting their fate.

You have made it to the second stage of life. But you're not out of the woods, as they say, until you're out of the womb. In America there are roughly 250 abortions for every 1000 live births, which means that you have (all other things being equal) a one in five chance of still being aborted. Here are four reasons you might be aborted and what you can do to avoid this gruesome fate.

#1. Don't be the unlucky third in series of IVF induced triplets

Many couples who are unable to have a child naturally because of infertility are willing to pay a high price (between \$10,000 – \$20,000) in order to bring a child into this world. However, some are a bit more cost conscious, and are willing to pay an extra cost in human life rather than in dollars.

To save money on *in vitro* fertilization, couples can implant several embryos at one time in order to increase the chances of pregnancy and reduce the cost of multiple procedures. Although it lowers the cost, it increases the chances of multiple pregnancies, which increase the risks to both mother and children. As the *Washington Post* noted several years ago, "Carrying three babies to term would more than double the woman's risk of developing the most severe diseases of pregnancy, such as preeclampsia. The average triplet is born two months premature, significantly raising the risk of disabilities such as cerebral palsy and of lifelong damage to the infant's lungs, eyes, brain and other organs."

Unlike embryos, money can't be created in a Petri dish. Which is why it is less costly (in economic if not in human terms) to just kill you rather than pay for another round of IVF. They euphemistically refer to this as "selective reduction"—your parents have selected to reduce your chances for survival to zero.

If you find yourself bumping into other siblings in the womb, you might hear a conversation similar to this one:

"Triplets," [Sonographer Rachel] Greenbaum said.

"So they tell me," the woman said, her voice hollow.

And, sure enough, on Greenbaum's screen were three little honeycombed chambers

with three fetuses growing in them. The fetuses were moving and waving their limbs; even at this point, approaching 12 weeks of gestation, they were clearly human, at that big-headed-could-be-an-alien-but-definitely-not-a-kitten stage of development. Evans has found this to be the best window of time in which to perform a reduction. Waiting that long provides time to see whether the pregnancy might reduce itself naturally through miscarriage, and lets the fetuses develop to the point where genetic testing can be done to see which are chromosomally normal.

Which leads us to step #2 for how to stay alive until birth:

#2 Don't be anything other than "chromosomally normal"

May our Lord have mercy on your poor fetal soul if you have the misfortune to possess a chromosomal abnormality. Once you make it out of the womb you can be filled to the brim with bile—indeed you can rape, pillage, plunder, and murder—and you'll have people defending your right to live. But right now if they measure the fluid behind your neck using a nuchal scan and discover you have too much—well, you're as good as dead. Such a test reveals that you may have the unforgivable condition of Down syndrome.

Down syndrome itself is not an inherently fatal condition. Indeed, many children with this condition grow to become loving, sweet-natured, and gentle children. Such behavior, however, merely confirms that these children are freaks of nature since "normal" children do not act that way. Therefore, society has decided that it is better for you to be put to death rather than for us to have to suffer the cost and inconvenience of having to love such seemingly imperfect humans. Nothing turns our American hearts to stone faster than seeing the cheerful smile on a "mongoloid" visage. It's a horror that we cannot tolerate.

#3 Don't be a girl

Speaking of chromosomes, be sure you have a Y chromosome to go along with the X. If you have the misfortune of being of the homogametic sex you have an increased risk of being killed. It may not be a concern if your parents are white, black, or Hispanic. But if you're parents are Chinese, Japanese, Indian, or Filipino you may be in trouble.

As demographer Nicholas Eberstadt noted in a report to the United Nations, "Some of the changes in reported sex ratios at birth in the United States over the past generation are deeply disturbing. There has been a notable and substantial increase, for example, in sex ratios at birth for the Chinese-American population, the Japanese-American population, and the Filipino-American population, as well as for the Asian-American population as a whole. All of these American ethnicities now exhibit sex ratios at birth that could be considered biologically impossible."

Of course, just because the sex ratio at birth for Asian Americans is biologically impossible does not mean that they are aborting baby girls. There may be some other reasonable, morally unobjectionable explanation for this unnatural phenomenon. Still, you'll be better off playing it safe and getting that Y chromosome.

#4 Don't squint

Several years ago in England, doctors were given permission to create a baby

free from a genetic disorder which would have caused the child to have a severe squint. According to the *Daily Telegraph*, the license was granted by the Human Fertilisation and Embryology Authority (HFEA) to Prof Geddis Grudzinskas. The good professor said he would seek to screen for any genetic factor at all that would cause a family severe distress.

When asked if he would screen embryos for factors like hair colour, he said: “If there is a cosmetic aspect to an individual case I would assess it on its merits.

“[Hair colour] can be a cause of bullying which can lead to suicide. With the agreement of the HFEA, I would do it.

“If a parent suffered from asthma, and it was possible to detect the genetic factor for this, I would do it.

“It all depends on the family’s distress.”

The good news is that this is not England, where doctors are granted a “license to kill” anyone who might end up looking like Clint Eastwood. The bad news is that this is America. Here a doctor can abort you for any reason at all. We believe in being pro-choice, which means that we respect a mother’s choice to kill you for cosmetic or other eugenic reasons. Therefore, you need to play it safe: when you hear the whirring of the sonogram machine, keep your eyes wide open.

There are other things that would increase your chances of making it through gestation. For example, if you are in the womb of a white 27-year-old happily married Catholic woman who has never had an abortion and has a household income of \$60,000+ a year, you are fairly safe. Unfortunately, while your parents can choose you—even choose to kill you—you can’t choose your parents.

Your best hope is to pray and hope that others are praying for you too. With any luck you’ll survive the fetal stage of development and move on to infancy, adolescence, and adulthood. Once you reach this stage of life you’ll be able to join other Americans in exercising one of our most cherished and incontrovertible rights: the right to kill a fetus for any reason you choose.

APPENDIX F

[*Rebecca R. Messall is a practicing attorney in Denver. She is the author of the article, "The Long Road of Eugenics: From Rockefeller to Roe v. Wade," Fall 2004 Human Life Review (New York). This commentary appeared in the online site of the Denver Post June 3, 2010 and is reprinted with permission.*]

Margaret Sanger and the Eugenics Movement

Rebecca R. Messall

On a Sunday dedicated to honoring motherhood, May 11, 2010, the Denver Post chose to celebrate everything glaringly responsible for preventing or terminating motherhood. And, to someone like me who is slightly older than the "Pill" and who was 18 at the time of *Roe v. Wade*, the appearance of the Post's Mother's Day article was curious because there is much more that people should know about the threesome of Margaret Sanger, the "Pill" and Planned Parenthood, the nation's largest abortion provider.

Margaret Sanger belonged to an organization called the American Eugenics Society, organized in the early 1900's. Members from the American Eugenics Society actually formed Sanger's original group whose name was changed to Planned Parenthood, but even the latter's first three presidents were officers or members in the AES, including Alan Guttmacher. Sanger is listed as a member in 1956 under her then-married name, Mrs. Noah Slee.

Later called social biology, genetics, and population control, eugenics was a "scientific" endeavor born from evolutionary biology. It was never confined to state-sponsorship under Communists and Socialist dictators. Eugenics operated quite openly in the United States, England and around the world. The efforts of the American Eugenics Society resulted in many states passing laws to sterilize more than 63,000 Americans. Several states passed official apologies in the 1990's. The eugenics movement, particularly Margaret Sanger, ranted against the Catholic Church for opposing eugenic legislation and ideology.

Leaders of the American eugenics movement were later troubled that Hitler tarnished the word "eugenics"; however, they did not abandon the quest for a thoroughbred stock of humans, such as Margaret Sanger herself touted. They simply chose new words to describe eugenics. As recently as 1968, one of the leading evolutionary biologists and an officer in the American Eugenics Society, Theodosius Dobzhansky, said that the word "genetics" meant the same thing as "eugenics" and commended the goals of eugenics. The control of reproduction remained the primary goal of eugenics in order to improve the human gene pool. Throughout its existence Planned Parenthood has been a key tool to reduce or eliminate births among blacks, other minorities and the disabled.

The Post's Mother's Day article typifies the popular narrative, which was really a sophisticated marketing campaign so good that no one questions it. Almost never, anyway. It sought to convince women to become customers of a then-unpopular product by convincing them that, prior to the commercial launch of the Pill in the

1960's, our mothers and grandmothers were veritable slaves to their wombs, their husbands and the very concept of marriage.

Coincidentally, of course, legal abortion also covered up the "Pill's" failure rate. In the new movie, "Blood Money," former abortionist Carol Everett says her abortion facility intentionally passed out low dose birth control pills to increase the likelihood of customer pregnancies and those money-making back-up abortions.

In the 70's, one of the messages was that women had a singular duty not to add another child to a polluted, war-torn mad, mad world which would be blown up at any minute by nuclear war. However, the other sub-text, the one where evil should have been blatantly denounced if media, politicians, academia and the rest of us had not been so—to put it charitably—timid, was the pronouncement that disabled and minority children were particularly "unwanted" and specially targeted for elimination through abortion and the parallel development of genetic tests for destructive uses.

Now, nearly all Down Syndrome babies are terminated before they are born, as part of a public policy by the U.S. Supreme Court laid down in Roe and reiterated again and again. Pro-life leader Alveda King, niece of Martin Luther King, Jr. writes, "Abortion and racism stem from the same poisonous root, selfishness."

Largely, the eugenics/population control movement has been powered by huge trusts with billions of dollars in global assets. As investment vehicles, they likely receive income from corporations engaged in a global distribution of birth control pills, IUDs, patches, injections and so forth. If so, their capital holdings, dividends and bonuses are gilded by U.S. taxpayer funding for the system of product distribution, funding appropriated as a quid pro quo from politicians grateful for the campaign donations. Money talks. Blood money.

APPENDIX G

[Michael J. New, an Assistant Professor at the University of Alabama, is a Fellow at the Witherspoon Institute in Princeton, NJ. The following appeared April 13 in “Public Discourse: Ethics, Law, and the Common Good,” an online publication of the Witherspoon Institute (www.thepublicdiscourse.com.) Copyright ©2010 the Witherspoon Institute. All rights reserved.]

How Red States Reduce the Abortion Rate: A Response to Andrew Koppelman

Michael J. New

Andrew Koppelman’s claim that red states and the religious right increase abortions doesn’t stand up to scrutiny.

In recent years the pro-life position has made impressive gains in the court of public opinion. Because of this, a number of political liberals have come to the realization that support for legal abortion is a losing issue politically. As such, many have attempted a clever switch in strategy. Instead of trying to defend abortion rights, they have attempted to seize the moral high ground by claiming that 1) pro-life efforts have been ineffective and that 2) their preferred policy goals offer the best hope for reducing abortion rates. Indeed, over the past few years left-leaning groups have argued that a range of policies will reduce the abortion rate. These include more spending on welfare programs, greater access to contraceptives, and universal health care—in short, everything but providing greater legal protections for unborn children.

This argument occurs once again in a widely circulated essay entitled “How the Religious Right Promotes Abortion” by Northwestern University Law Professor Andrew Koppelman. Koppelman favorably cites Naomi Cahn and June Carbone’s book *Red Families vs. Blue Families: Legal Polarization and the Creation of Culture*. According to Koppelman, the hostility in red states to both contraception and comprehensive sex education leads to a greater incidence of abortion. Conversely, even though blue states are more tolerant of premarital sex, their support for comprehensive sex education and contraception actually lowers abortion rates. Koppelman spends much of the rest of the essay criticizing the religious right for their opposition to both sex education and government funding of contraception.

Unfortunately, Koppelman’s claims are based on rhetorical sleights of hand and a faulty analysis of data. What is unique about this essay is that all three of Koppelman’s arguments are incorrect. First, there is little evidence that more federal funding for contraceptives will reduce abortion rates. Second, there is some evidence that abstinence-only sex education is effective at reducing sexual activity among minors. Finally, red states actually have lower abortion rates, in part because they have placed more legal restrictions on abortion.

Funding for Contraception

Throughout the essay Koppelman axiomatically states that more government funding for contraception will reduce the abortion rate. However, the only evidence he

presents to support his claim is a faulty analysis of abortion trends. In his essay, Koppelman claims that Reagan-era cuts in contraceptive funding in the early 1980s resulted in increasing abortion rates during the rest of the decade. While it is true that abortion rates went up slightly during the 1980s, it should also be noted that abortion rates were rising *much* faster during the 1970s. In fact between 1974 and 1980, the number of abortions performed in the United States nearly doubled at a time when, according to Koppelman, the federal government was funding contraception at historically high levels.

Furthermore, existing research indicates that there is relatively little the government can do to increase contraceptive use among sexually active women. Nine years ago, the Alan Guttmacher Institute, which was Planned Parenthood's research arm and which strongly supports more funding for contraception, surveyed 10,000 women who had abortions. Among those who were not using contraception at the time they conceived, a very small percent cited cost or lack of availability as their reason for not using contraception. Specifically, only 12 percent said that they lacked access to contraceptives due to financial or other reasons.¹ Given all the existing programs, it is by no means clear that more federal spending on contraceptives could increase contraceptive use among this subset of women.

Abstinence Programs

In his essay, Koppelman is quick to attack abstinence education programs. He argues that there is no evidence that such programs either increase the likelihood of abstinence until marriage or produce a decline in teen or non-marital births. However, this February a study which appeared in *The Archives of Pediatrics & Adolescent Medicine* found evidence that abstinence programs were effective in reducing sexual activity among sixth and seventh graders.²

The study involved 662 African-American students from four public middle schools in a city in the Northeastern United States. Students were randomly assigned to one of the following: an eight-hour curriculum that encouraged them to delay having sex; an eight-hour program focused on safe sex; an eight- or 12-hour program that did both; or an eight-hour program focused on teaching them other ways to be healthy.

Over the next two years, about 33 percent of the students who went through the abstinence program had engaged in sexual activity, compared with about 52 percent who were taught only safe sex. About 42 percent of the students who went through the comprehensive program started having sex, and about 47 percent of those who learned about other ways to be healthy did. Notably, contrary to the concerns of Koppelman and other opponents of abstinence education, the abstinence program did not reduce the likelihood of condom use among those students who were sexually active.

Even the group "Advocates for Youth" which is usually very critical of abstinence programs, praised the study, calling it "quality research" and "good science." While there have been other studies which have demonstrated the effectiveness of

abstinence programs, this study garnered more attention because of its unique control mechanism and because it appeared in a very visible peer-reviewed journal.

Abortion Rates

Koppelman's main argument is that policies pursued by religious conservatives are responsible for high abortion rates. Of course, he neglects to mention that many policies supported by social conservatives have been shown to be effective at reducing the incidence of abortion. For instance, a literature review that was published by the Guttmacher Institute during the summer of 2009 found that 20 of 24 academic studies found that state public funding restrictions lowered abortion rates.³ Even Guttmacher acknowledges the best research on this topic indicates that public funding bans reduce the incidence of abortion.

Furthermore, a number of peer-reviewed studies show that pro-life parental involvement laws reduce the incidence of abortion among minors. Two detailed case studies that focused respectively on parental involvement laws passed in Massachusetts⁴ and Texas⁵ found that the in-state decline in the number of abortions performed on minors clearly exceeded any out-of-state increases. Furthermore, both studies also found small, but statistically significant increases in the minor birth rate, indicating that some minors who would have otherwise had abortions, gave birth instead. Finally, there is also research which indicates that pro-life informed consent laws are effective.⁶ In particular, two case studies of Mississippi's informed consent show that it reduced the minor abortion rate.⁷ One of these studies even demonstrates that the decline started in the month the informed consent legislation took effect.⁸

What about Koppelman's arguments about culture, contraception, and sex education? Well, once again the data clearly show that Koppelman is incorrect. Data obtained from the Alan Guttmacher Institute shows that the 31 states that were won by George W. Bush in the 2004 election had an average abortion rate of about 12 abortions per thousand women of childbearing age. The 19 states that John Kerry won had an average abortion rate of over 20. The results were similar when data from the Centers for Disease Control was used.

Furthermore, the five states where John McCain received the highest percentage of votes in 2008 had an average abortion rate of 6.9. The five states where Barack Obama received the highest percentage of votes in 2008 had an average abortion rate of 22.6. Overall, it seems clear that politically conservative states have, on average, lower abortion rates, than their more liberal counterparts.

Conclusion

Andrew Koppelman is the latest in a long line of pro-choice commentators to try to make the case that the best strategy for lowering the abortion rate is not greater legal protection for unborn children, but rather, more funding for contraception and comprehensive sex education. Unfortunately, the available research and data do not support his arguments. There is no solid evidence that greater federal funding for

contraceptives lowers abortion rates. Furthermore, contrary to the claims of Koppelman there exists evidence that well designed abstinence education programs are able to reduce teen sexual activity.

However, the best way to empirically test Koppelman's claims is to simply analyze abortion data from the state level. If Koppelman's claims are correct, then sexually permissive, contraceptive friendly blue states should have the lowest abortion rates. However, that is not the case. Data from both the Centers for Disease Control and the Alan Guttmacher clearly indicate that abortion rates are significantly lower in red states than in blue states. Furthermore, the states where Republican Presidential nominees receive the most support have far lower abortion rates than those states where Democratic Presidential nominees perform the best. Simply put, state level data offer no support for Koppelman's argument.

Overall, it should come as no surprise to pro-lifers that sexual restraint and greater legal protection for the unborn has been and will continue to be the best strategy for lowering abortion rates. The pro-life movement would do well to stay the course.

NOTES

1. Jones, Rachel, Jacqueline Darroch, and Stanley K. Henshaw. 2002. "Contraceptive Use Among U.S. Women Having Abortions 2000-2001." *Perspectives on Sexual and Reproductive Health* 34(6): 294-303.
2. Jemmott, John, Loretta S. Jemmott, and Geoffrey T. Fong. 2010. "Efficacy of a Theory-Based Abstinence-Only Intervention Over 24 Months: A Randomized Controlled Trial With Young Adolescents." *Archives of Pediatrics and Adolescent Medicine* 164: 152-159.
3. Henshaw Stanley K. et al. 2009. *Restrictions on Medicaid Funding for Abortions: A Literature Review*. New York: Guttmacher Institute.
4. Cartoof, Virginia and Lorraine Klerman. 1986. "Parental Consent for Abortion: Impact of the Massachusetts Law." *American Journal of Public Health* 76: 397-400.
5. Joyce, Theodore, Robert Kaestner, and Silvie Coleman. 2006. "Changes in Abortions and Births and the Texas Parental Involvement Law." *The New England Journal of Medicine* 354: 1031-1038.
6. 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.
7. Althaus F. and Stanley K. Henshaw. 1994. "The Effects of Mandatory Delay Laws on Abortion Patients and Providers." *Family Planning Perspectives* 26(5):228-231 & 233.
8. Joyce, Ted, Stanley K. Henshaw, and JD Skatrud. 1997. The Impact of Mississippi's Mandatory Delay Law on Abortions and Births." *Journal of the American Medical Association* 278(8): 653-658.

APPENDIX H

[John Stemberger is President of the Florida Family Policy Council and a prominent pro-life activist in Florida. Christopher Miller is a student at Ave Maria School of Law (Naples, Florida) and an associate editor of the Ave Maria Law Review. The following article, which was originally published on the website of Americans United for Life (www.aul.org), is reprinted with the permission of Americans United for Life.]

Abortion Jurisprudence and Crist's Conflicted Court

John Stemberger¹ and Christopher G. Miller²

Governor Crist and Florida's Judiciary

On April 11, 2008 Florida Supreme Court Justice Raoul G. Cantero announced his resignation. Less than two months later, on May 23, 2008, Justice Kenneth B. Bell also announced his resignation. These unanticipated announcements began an unprecedented reshaping of the Florida Supreme Court and put Governor Charlie Crist in the position of having an amazing and unprecedented opportunity to reshape the Florida high court. The Florida Constitution includes a provision that mandates retirement for all justices and judges when they reach the age of 70³ and two justices happened to fall within this requirement during the Crist administration; Justice Harry Lee Anstead retired on January 5, 2009 and Justice Charles Wells retired on March 2, 2009. Since the Florida Supreme Court is a seven-member court, Crist obviously had the opportunity to completely reshape the ideological balance of the court, which had previously leaned left with a 5-2 liberal majority. In less than one year, Governor Crist would appoint four of the seven justices on the Supreme Court of Florida. By the end of this brisk series of appointments, many conservatives believed the opportunity to shift the ideological balance of the court had been squandered. Furthermore, it was obvious to many that Governor Crist made appointments that most likely resulted in maintaining the ideological status quo of the Florida Supreme Court. In addition, Crist cloaked his last two appointments of Cuban-born Jorge Labarga and African-American James Perry, in rhetoric of diversity instead of emphasizing qualifications and judicial philosophy.

When the flurry of Supreme Court appointments had settled, Crist had appointed two conservative justices—Charles Canady and Ricky Polston, and two justices who leaned moderate to liberal—Jorge Labarga and James Perry. While Crist had achieved his political goal of appointing diverse justices, prominent conservatives expressed betrayal and believed the Governor forfeited a real opportunity. Instead, he placed a desire for a racially diverse court over appointing justices who would overturn the flawed precedents of Florida's past, especially those precedents that directly violate the sanctity of human life. After Crist had made his fourth Supreme Court appointment, one conservative activist in Florida, argued that Crist “missed a real opportunity not only to appoint the most qualified candidate, but also to bring the court back into ideological balance . . . [Crist] made an appointment rooted in politics and one which will entrench the Florida high court back into a 5-2, left-leaning majority for at least the next decade.”⁴

On September 2, 2008 Judge Robert Pleus, of the Florida Fifth District Court of Appeal informed Governor Crist of his impending resignation as he approached the mandatory retirement age of 70 as specified in the Florida Constitution. His resignation letter to Governor Crist seemed to anticipate the Governor making political calculations in choosing his successor when he wrote, “It is my fervent hope that you will not let politics control your appointments.”⁵ As events unfolded around the judicial nomination process, Pleus proved to be prescient in his apparent hunch that Governor Crist would play politics instead of employing principle in his nomination to fill the vacant seat of Pleus. The nomination process began with

Crist [asking] the district JNC for up to six nominees, specifying that they should reflect the gender and racial diversity of the region. The commission got 26 applications and sent six to Crist—four men and two women—all of them white. Crist bounced the list back, asking the JNC to consider three black applicants, but panel reconvened and said it was powerless to do so. When Crist insisted, Pleus petitioned the Supreme Court [of Florida] for an order making him use the list.⁶

To the disappointment of Governor Crist and the relief of Pleus “the Florida Supreme Court ruled . . . that Gov. Charlie Crist [had] to fill [the] Central Florida appeals court opening from the original list of six nominees, and [could not] simply reject the names because he wanted a more diverse slate of candidates,”⁷ even for the purpose of “achieving diversity in the judiciary.”⁸ This unanimous decision by the Florida Supreme Court was dripping with irony since four of the seven justices were appointed by Crist, two of which—Labarga and Perry—were nominated by Crist under the banner of diversity.

It is interesting to note that Judge Pleus, in his dissent in *J.D.S.*⁹ formulated a prediction concerning the fate of *Roe v. Wade*¹⁰ when he stated, “Sooner or later, as happened when [*Brown v. Board of Education*¹¹] overturned [*Plessy v. Ferguson*¹²], *Roe*’s unrestricted abortions will be overturned, and the rights of the unborn will be extended to the moment of conception.”¹³ But until this hopeful prediction materializes, what will be the future of the jurisprudence of life and death in The Sunshine State? More specifically, how will this new court, which has been altered so dramatically in a short period of time through four Governor Crist appointments, rule on abortion? Will the court uphold the nearly unrestricted right to abortion in Florida, as set forth in *In re T.W.*?¹⁴ Or will this new majority overturn this bad precedent and rule on the side of upholding restrictions on abortion within the bounds of *Roe*,¹⁵ *Doe*,¹⁶ and *Casey*?¹⁷ Will they stand on the side of life when it comes to deciding cases involving assisted suicide and embryonic stem cell research or will the culture of death pervade the new Florida Supreme Court and result in a jurisprudence of death? More broadly, will these new justices exercise judicial restraint in exercising their proper authority on the bench? The following analysis of the ideological leanings of the current justices on the Supreme Court of Florida will venture to answer these questions. Governor Crist’s four appointments will be analyzed, followed by the remaining three justices.

I. Justice Charles T. Canady

In 1998, in his answer to a questionnaire for the St. Petersburg Times during the run-up to his failed bid for U.S. Senate, state Senator Crist stated, “I am pro-choice, but not pro-abortion. I believe that a woman has the right to choose, but would prefer only after careful consideration and consultation with her family, her physician and her clergy; not her government.”¹⁸ However, by 2006 Crist’s sudden shift in position was revealed when he told the St. Petersburg Times during his successful gubernatorial campaign, “I’m pro-life. I don’t know how else to say it. I’m pro-life.”¹⁹

Governor Crist seemed to be genuine in his pro-life convictions and did not disappoint conservatives when he announced his first pick to the Supreme Court of Florida. His choice was Charles Canady, who “was elected as a Democrat to the Florida Legislature and served for eight years but switched to the Republican Party before he ran for Congress in 1992.”²⁰ Canady “spent eight years in Congress before being named an appeals court judge in 2002 by Gov. Jeb Bush. While in Congress, Mr. Canady was one of the House managers who handled the impeachment case against Mr. Clinton.”²¹ He also “was a staunch opponent of abortion and pushed legislation to aid churches in zoning disputes.”²² During his time in Congress he received an 87% favorable lifetime rating from the American Conservative Union, which bills itself as “the nation’s oldest and largest grassroots conservative lobbying organization.”²³ Notable in his pro-life advocacy was his role in the initial use and formulation of the term “partial-birth abortion.” The term “emerged from a meeting that included . . . Canady and the longtime National Right to Life Committee lobbyist Douglas Johnson.”²⁴ Canady went on to be the first to include “the term as part of a bill he proposed that would make it a federal crime to perform a ‘partial-birth’ abortion.”²⁵ In fact, Canady was so adamant in his opposition to partial birth abortion, that he said these blunt and shocking words, which were quoted widely: “The difference between the partial-birth abortion procedure and homicide is a mere three inches.”²⁶

Justice Canady’s commitment to the pro-life cause is readily seen throughout his record as a legislator, the awards he has received, and the speeches he has delivered. For instance, he was honored with awards from state and national Right to Life organizations four different times from 1996 to 2000.²⁷ He also received the Concerned Women of America Statesman of the Year Award in 1996 and the Family Research Council Family Faith and Freedom Award in 2000.²⁸ In addition to receiving these awards, Canady gave numerous speeches to various audiences, many of which stand out as further evidence of his respect for the sanctity of human life. Several of his speeches also evidence a judicial philosophy that reflects an understanding of the judiciary as defined by the Framers’ notion of the separation of powers. For example, in his application to the Supreme Court of Florida, Canady wrote that he has given many speeches throughout his time in public life. Among rather benign topics that he spoke on were strikingly pro-life topics such as “Speech on Alternative to Abortion,”²⁹ “The Partial Birth Abortion Ban Act,”³⁰

“The Partial-Birth Abortion Ban—Challenging the Conscience of a Nation,”³¹ and “The Importance of Crisis Pregnancy Centers.”³²

Justice Canady has also given eight addresses to members of The Federalist Society³³ which is “a conservative and libertarian intellectual network that extends to all levels of the legal community.”³⁴ The statements Justice Canady made within his application to the Supreme Court of Florida fully support this view. Notable in his statements is this particular one on the proper role of the judiciary:

If nominated and appointed to the Supreme Court of Florida, I would always be mindful of the separation of powers and of the proper, limited role of the judicial branch in our democratic system of government. Taking into account governing precedent, I would always seek to be the “faithful servant” of the text of any statutory or constitutional provisions that were at issue in a pending case. Judges turn aside from their proper role whenever they seek in any way to substitute their own will for the will of the people as reflected in the pertinent statutory and constitutional texts. I would consistently go about the task of judging with awareness that judging in essence is applying decisions that have been previously made by others. Under our constitutional system, judges have an important responsibility to ensure that constitutional limitations and requirements are honored. In meeting that responsibility, however, courts should proceed with a sense of humility, with an awareness of the inherent limitations of the judicial decision-making process, and with an attitude of respect for the determinations of the legislative and executive branches.³⁵

From his statements, associations, and accomplishments it appears clear that Justice Canady will be a reliable and consistent pro-life conservative on the Supreme Court of Florida.

II. Justice Ricky L. Polston

On October 1, 2008 Governor Crist appointed appellate Judge Ricky Polston to the Supreme Court of Florida, replacing Justice Kenneth Bell who resigned in order to return to private practice. At the time of the appointment, it was the consensus of Floridians that the appointment of Polston, and Canady before him, maintained the status quo in regards to the ideological balance of the court. As one Florida newspaper described it, “Polston . . . is Crist’s second appointment in as many months, replacing the court’s two most conservative members . . . Both Canady and Polston are white, registered Republicans and have pushed conservative issues at some point in their careers.”³⁶

One such “conservative” issue Polston engaged in was highlighted in an angry Planned Parenthood press release after Governor Crist appointed Polston to Florida’s highest court. Planned Parenthood laid out their case for opposing Polston when they stated:

The Florida Association of Planned Parenthood Affiliates (FAPPA) today roundly criticized Governor Crist’s appointment of Ricky Polston to the Florida Supreme Court. . . . As a private attorney, Ricky Polston chose to represent the state of Florida in defending the “Choose Life” license plates approved by the Legislature in 1999.

“Choose Life” license plates fund “Crisis Pregnancy Centers” which have been known to use anti-choice propaganda, medically inaccurate or incomplete information, and intimidation tactics to dissuade women from obtaining abortions.³⁷

Polston’s personal life also indicates he truly believes in the causes he advocates for. For instance, after having four biological children, Polston and his wife decided to continue to expand their family and better society by adopting more children.³⁸ When he was appointed to the Supreme Court of Florida he and his wife were the parents of four biological children, five adopted children, and one child that was in the process of being adopted; that makes a total of ten children, ranging in ages from 1 to 25.^{39, 40} The Polstons’ countercultural and heroic family life caught the attention of Governor Crist who honored Mrs. Deborah Polston with the Governor’s Point of Light Award in 2008.⁴¹ This award is designed to recognize Florida residents “who demonstrate exemplary service to the community.”⁴² It is also notable that the information within Polston’s application for the nomination to the Supreme Court of Florida is peppered with his involvement with various Christian churches.⁴³ This information, taken with the other public information relating to Polston, indicates that he is personally a strong social conservative who appears to have a more conservative judicial philosophy, especially in relation to those issues that impact the sanctity of life.

Curiously, Governor Crist seemed to be foreshadowing his next two Supreme Court appointees when he said at the press conference announcing Polston, “the racial diversity of [Polston’s] ten children has given him a deep respect and understanding for diversity.”⁴⁴ This foreshadowing transformed into a virtual guarantee he would chose a woman or ethnic minority candidate for his next two appointments when he said after appointing Justice Polston, “I have two more appointments to make in the next few months, and I would encourage women and minorities to apply . . . I hope that the nominating commissions present names that include minorities because I’m anxious to do it.”⁴⁵ Three months later, Governor Crist followed through with his promise of ethnic diversity in the judiciary.

III. Justice Jorge Labarga

On January 2, 2009 Governor Crist made his third appointment to the Supreme Court of Florida when he chose Jorge Labarga to replace the retired Justice Harry Lee Anstead. This particular appointment was not without controversy, mostly due to Crist’s insistence that diversity play a key role in his third appointment to the Florida high court.

Before Crist decided to appoint Labarga to Florida’s highest court, he had ruled him out for the job and elevated him from a state circuit court judge to an appellate court judge, thus eliminating him from Supreme Court contention even though he was among those nominated by the Judicial Nominating Commission as a finalist for the Supreme Court of Florida.⁴⁶ “Crist then asked the Supreme Court Judicial Nominating Commission to send him more names, noting it can [legally submit] up to six, to make the list more diverse. The panel then added Frank Jimenez, a

politically connected Cuban-American lawyer from Miami.”⁴⁷ But Crist’s diversity overtures began to create a tangled web of problems for the Governor, since Jimenez was well known to be a conservative Hispanic who was immersed in Republican politics. Many in the left-leaning media came out in opposition to Jimenez, with one Florida paper calling him “the least qualified and most ideological nominee available.”⁴⁸ The controversy heightened when retired Florida Supreme Court Justice Raoul Cantero, who happens to be Florida’s first Hispanic Supreme Court Justice, wrote an op-ed defending Jimenez in *The St. Petersburg Times*.⁴⁹ The editorial entitled, *Jimenez has Sterling Court Credentials* blasted those in the media who he believed were mischaracterizing Jimenez as inexperienced, when in fact an opposition to his conservative ideology was what was really at stake.⁵⁰ Cantero plainly made his case:

The *Times* condemns his nomination despite Jimenez’s sterling credentials: distinguished Yale Law School and Wharton Business School graduate, partner at a well-respected Miami law firm, deputy chief of staff and acting general counsel to Gov. Jeb Bush, chief of staff to then-HUD Secretary Mel Martinez, top litigation counsel at the U.S. Defense Department, and now general counsel of the Navy, one of six civilians of four-star rank who help the secretary of the Navy oversee the U.S. Navy and Marine Corps.⁵¹

Governor Crist now faced a dilemma. He could either appoint Jimenez, the Hispanic nominee, and be criticized by the left for picking another conservative Republican, or appoint another non-Hispanic and endure criticism from those that believe that the requirements of diversity demand at least one Hispanic member of Florida’s highest court, which at that time had no Hispanic justice.⁵² Instead, Crist found a third option. After Labarga had served on the Fourth District Court of Appeals for only one day, Governor Crist pulled him from that assignment and appointed him to the Supreme Court of Florida. At Labarga’s swearing in ceremony, Chief Justice Peggy Quince jokingly remarked that Labarga received the “swiftest judicial promotion that we know of.”⁵³ Quince went on to say that Labarga “served on the 4th District for a single day without hearing a single case.”⁵⁴

Through the political lens of Governor Crist, his dilemma had been solved by appointing the Cuban-born Labarga to the Supreme Court in that Labarga was a “diverse” candidate who those on the left side of the political spectrum did not regard as a solid conservative. Conservatives in Florida and around the country were highly critical of this political compromise. One conservative columnist put it bluntly when he said:

Remember when President Bush nominated the politically moderate Harriet Miers for Associate Justice of the U.S. Supreme Court in 2005 and then, under withering pressure from conservatives, reversed course and nominated Samuel Alito instead? Florida Governor Charlie Crist did just the opposite on January 2, 2009, when he gave in to media pressure and turned his back on known conservative Frank Jimenez, then appointed Appellate Justice Jorge Labarga for the Florida Supreme Court.⁵⁵

Indeed, Labarga was not known as a conservative nor was he known as a liberal. But what exactly is his judicial philosophy? It is difficult to predict the way Labarga will rule on certain issues as evidenced from his own public statements: “A good judge, in my opinion, is one who is all over the place . . . I’m all over the place. My judicial philosophy is that every case is different, every case should be judged on the merits of the particular case.”⁵⁶ Labarga has also gone on the record stating, “judges cannot and should not be seen by the public as reliably liberal or conservative.”⁵⁷

However, Labarga’s past does reveal that he has not been indifferent to politics. Prior to serving in the judiciary Labarga was known as an avid Republican, Labarga served as president of a Cuban American Republican Club and campaigned tirelessly during Jeb Bush’s first, unsuccessful run for Florida governor in 1994. Along the way, he hosted parties and helped raise \$100,000 for now-Gov. Bush, the younger brother of Republican presidential candidate George W. Bush. The late Gov. Lawton Chiles, a Democrat, appointed Labarga to the family court bench in 1996, despite concerns over his fund-raising activity. Labarga later changed his registration from Republican to independent and said this week that he could not recall if he gave any of his own money to Jeb Bush. As a judge, he is barred under state law from partisan political activity.⁵⁸

It is yet to be seen if his Republican roots will translate into judicial restraint on Florida’s highest court, but his early record does reveal that this could be the case. During the 2000 Presidential election recount controversy, Labarga found himself in the center of the storm when, as a circuit court judge, he was faced with deciding whether or not a re-vote should occur in Palm Beach County due to the confusing butterfly ballot that was used there. Labarga demonstrated conservative judicial acumen when he relied on the original meaning of the text of the U.S. Constitution and the applicable statute in deciding that a re-vote would be contrary to our nation’s founding document. In his opinion, “Labarga said the U.S. Constitution gives Congress the power to set the times of presidential elections. He said Congress had exercised that power, setting the elections ‘on the Tuesday next after the first Monday in November.’”⁵⁹ Since the statute was “clear and unambiguous,”⁶⁰ Labarga held “that a re-vote [would be] unconstitutional.”⁶¹ To Labarga’s credit, when the eyes of the world were on him, he relied on fundamental principles of conservative jurisprudence to come to a just result in arguably the most contentious case of our nation’s history.

As a Catholic, it is unclear if Labarga’s faith would influence his decision in a case involving the major life issues. When asked by a Florida newspaper how his Catholic faith would influence his future judicial opinions he stated:

Religion is what we believe in and what we practice, but we have to do what we’re required to do. . . . We take an oath to uphold the law of the state of Florida. How can a judge recuse himself because he can’t follow the law he took an oath to uphold? It’s just not a legal possibility.⁶²

One can only speculate as to the exact meaning of this rather enigmatic statement,

but many questions are raised by it. Is Labarga saying that he checks his religion and values at the courthouse door? Does he believe he must uphold all laws as a Supreme Court justice, even those that were created by judicial fiat that are clearly unjust, such as the abortion case *In re T.W., A Minor*,⁶³ in which a virtually unrestricted right to abortion was discovered by the Supreme Court of Florida? Or does Labarga believe in the classic Augustinian formulation that “an unjust law is no law at all,”⁶⁴ therefore unjust laws must be struck down? The difficulty in pinpointing Labarga’s judicial philosophy was presumably one of his strengths to Governor Crist. Since Labarga possessed no appellate court experience, he was also missing a meaningful paper trail and this served as political cover for Crist, in that no one could accuse him of appointing only hard-right conservatives to the bench. Only by monitoring his future decisions on the Supreme Court of Florida will a clearer picture emerge of Labarga’s jurisprudence.

IV. Justice James E.C. Perry

The eyes of the powerbrokers in Florida and throughout the nation were on Governor Crist as he was deciding whom to appoint to Florida’s highest court when Justice Charles Wells was about to retire. Conservatives were eager for Crist to capitalize on this opportunity and see one of their own placed on the court, while liberal organizations were lobbying hard for their preferred nominees. In the end, the liberal organizations would claim victory, but the fight leading up to Governor Crist’s decision was instructive of the ideological leanings and judicial philosophy of Justice James E.C. Perry, who Crist appointed on March 11, 2009. This appointment represented a significant milestone in Crist’s political career in that, with his fourth appointment, he had chosen a majority of justices on Florida’s seven member Supreme Court.

Shortly after the Supreme Court Judicial Nominating Commission announced their nominees for the Supreme Court opening, the battle lines were drawn and various interests groups began picking and advocating for the nominees who they believed would best represent them. As Crist’s decision approached, two nominees emerged from the pack,

a clear conservative and a clear liberal. The conservative was District Court of Appeals Judge Alan Lawson. Crist received an estimated 30,000 e-mails, faxes, phone calls, and letters in support of Lawson, in addition to the endorsements of the Florida Police Benevolent Association, law enforcement officials, the National Rifle Association, Florida Right to Life, Florida Family Action, and dozens of other pro-life and pro-family groups around the state and across the country. The liberal was Judge James Perry, who was heavily supported by Planned Parenthood, the largest abortion provider in the United States; Equality Florida, the leading homosexual activist group in Florida (and the leading opponent of Florida’s recently successful ballot initiative banning gay marriage in Florida); the NAACP; and several other liberal groups.⁶⁵

Many observers believed Lawson was objectively the most qualified candidate.

Lawson was a Rhodes Scholarship Nominee⁶⁶ and appellate judge with a written record while Perry “a trial court judge, [had] absolutely no appellate court experience whatsoever [and almost no criminal court experience]⁶⁷. . .”⁶⁸ But the Democratic and left-leaning nominee was chosen, presumably satisfying Crist’s priority placed upon diversity. Indeed, a statement he made after he chose Justice Perry seems to reveal that this was at the heart of the decision. In the statement he said: “We have a very diverse state, and I think it’s important that our court understand all the different perspectives that make Florida a great place to live.”⁶⁹ Moreover, Crist chose a judge that Planned Parenthood was so pleased with that they proclaimed the appointment “great news!”⁷⁰ They went on to say, “Florida’s pro-choice and pro-family planning voices were heard!”⁷¹ If Justice Perry’s advocacy for abortion rights on the Supreme Court of Florida is even half as enthusiastic as Planned Parenthood’s advocacy in support of Justice Perry, then the existing “abortion rights” under the Florida Constitution will certainly be affirmed.

The fact that Governor Crist appointed a Supreme Court Justice that Planned Parenthood enthusiastically embraced is disappointing enough. But Justice Perry’s record is much more defective than merely receiving an endorsement from an insidious organization. During the appointment process, it was revealed that Perry had a significant professional ethical violation in his past.

In 1995, a state Supreme Court grievance committee admonished Perry over a situation in which Perry’s law partner mishandled a client’s case. Perry said his partner, suffering from clinical depression, took on the case without his knowledge and then failed to work on it. The client sued both lawyers. Perry said he wasn’t responsible legally but nonetheless borrowed money to pay the client a settlement to the client. The lawsuit was dismissed. A letter from the grievance committee chairman admonished Perry, but called the matter “minor and perhaps unintentionally committed.”⁷²

But even if Perry’s ethical violation was minor and unintentional, that fact remains that he violated a basic ethical tenet in the legal profession that every lawyer should know, especially a future state Supreme Court justice. The Florida Bar Rule that he violated is very clear. It states, in pertinent part:

A lawyer shall not make an agreement prospectively limiting the lawyer’s liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement. A lawyer shall not settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.⁷³

In addition to his ethical violation, other problematic factors were present in Perry’s past. Specifically, his failure of the Georgia Bar⁷⁴ and his high reversal rate.⁷⁵ Perry claimed racism was at the heart of his Bar exam failure and sued in Federal Court over the issue.⁷⁶ His case was dismissed and he passed the exam six months later, so it is difficult to speculate whether or not his case had merit.⁷⁷ On the other hand, Perry’s high reversal rate of 57% is solid evidence of Perry’s questionable competence.⁷⁸

Based on his Democratic liberal affiliations and his left-wing boosters, it seems to be a good assumption that Perry will be an entrenched left-wing ideologue on the Supreme Court of Florida. Since Perry was not even on an appellate court prior to being appointed to the Supreme Court, it is difficult to see a clear picture of his stance on the major life issues, or the basic function of the judicial branch for that matter. However, when Planned Parenthood proclaims an appointment “great news,”⁷⁹ it is surely not a good sign for those in Florida who are fighting for a culture of life in law and public policy.

The Way Ahead for the Supreme Court of Florida

A preview of decisions to come from the new Supreme Court of Florida may have been given to the public on June 4, 2009. This preview came in the 5-2 majority opinion which held that “the Family Law Section, a voluntary group within The Florida Bar, should be allowed to file an amicus brief supporting a trial judge’s ruling declaring Florida’s gay adoption ban unconstitutional.”⁸⁰ Not surprisingly, Labarga and Perry joined the majority while Canady and Polston dissented.⁸¹ This was a very narrow and technical issue, but this 5-2 decision that involved a highly contentious cultural issue may portend how this new court will rule on future cases in which so much is at stake for those fighting for pro-life and pro-family values in law and public policy.

After examining the four justices that Governor Crist has placed on the Supreme Court of Florida combined with the three left-leaning justices that were appointed by the late Governor Chiles, it seems that once again the conservatives on the court simply do not have the majority, and therefore will not be able to undo the flawed precedents of the past that devalued human life and inordinately expanded judicial power. In the final analysis, Marco Rubio, former Florida Speaker of the House, summed up the current status of the Supreme Court of Florida when he said, “I think [Crist] has permanently swung the court in Florida to an activist majority for years to come.”⁸²

NOTES

1. John Stemberger, Esq. is the President and General Counsel of the Florida Family Policy Council www.FLfamily.org and has a private practice as a civil trial lawyer in Orlando, Florida. www.OrlandoLawyer.tv. Stemberger has been active in Florida’s pro-life movement for over 25 years and was the primary author of the Amicus Brief submitted to the Florida Supreme Court in 1988 on behalf of a bipartisan group of legislators in the landmark abortion case, *In re T.W.* He was also appointed in 2000 by Governor Jeb Bush to the Judicial Nominating Commission for the Ninth Judicial Circuit of Florida and was reappointed by Governor Bush in 2004.
2. Christopher G. Miller is a Juris Doctor candidate, class of 2011, Ave Maria School of Law, in Naples, Florida. He is also the Vice President of The Federalist Society, Ave Maria Chapter and is an Alliance Defense Fund Blackstone Fellow.
3. FLA. CONST. art. V, § 7 (No justice or judge shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one-half of which has been served).
4. David Decamp, *Gov. Crist names Judge James Perry to Supreme Court, despite conservative opposition*, ST. PETERSBURG TIMES, March 12, 2009, <http://www.tampabay.com/news/politics/gubernatorial/article983276.ece>

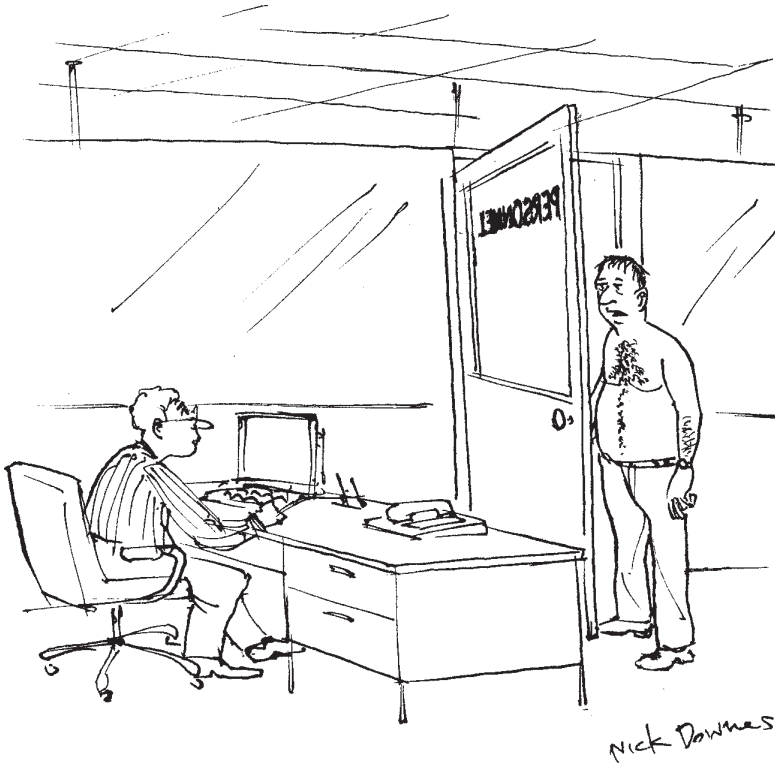
APPENDIX H

5. Letter from Robert Pleus, Fifth District Court of Appeal judge to Charlie Crist, Governor of Florida (Sept. 2, 2008), *available at* http://www.floridasupremecourt.org/pub_info/summaries/briefs/09/09-565/Filed_03-30-2009_Petition.pdf.
6. Bill Cotterell, *Court: Crist must choose from current judicial nominations*, FLORIDA CAPITAL NEWS, July 3, 2009, <http://www.floridacapitalnews.com/article/20090703/CAPITOLNEWS/907030346&theme=>.
7. Aaron Deslatte, *Florida Supreme Court rules against Crist in judicial spat*, ORLANDO SENTINEL, July 2, 2009, <http://www.orlandosentinel.com/news/local/state/orl-bk-crist-must-name-judge070209,0,7134443.story>.
8. Pleus v. Crist, 2009 WL 1884805, 4 (Fla 2009).
9. *In re* Guardianship of J.D.S., 864 So. 2d 534 (Fla. 2004).
10. Roe v. Wade, 410 U.S. 113 (1973).
11. Brown v. Board of Education, 347 U.S. 483 (1954).
12. Plessy v. Ferguson, 163 U.S. 537 (1896).
13. J.D.S., 864 So. 2d at 549.
14. *In re* T.W., A Minor, 551 So. 2d 1186 (Fla. 1989).
15. Roe, 410 U.S. 113.
16. Doe v. Bolton, 410 U.S. 179 (1973).
17. Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992).
18. Steven Ertelt, *Pro-Life Leaders Say John McCain Shouldn't Pick Charlie Crist for VP*, LifeNews.com, May 27, 2008, <http://www.lifenews.com/state3260.html>.
19. *Id.*
20. Christine Jordan Sexton, *Figure in Clinton Impeachment Is Named to Florida Supreme Court*, N.Y. TIMES, August 29, 2008, <http://query.nytimes.com/gst/fullpage.html?res=9C02E5D61538F93AA1575BC0A96E9C8B63>.
21. *Id.*
22. *Id.*
23. The American Conservative Union – Overview, <http://www.conservative.org/about/default.asp>.
24. Cynthia Gorney, *Gambling with abortion: Why both sides think they have everything to lose*, HARPER'S MAGAZINE, Nov. 2004, <http://www.harpers.org/archive/2004/11/0080278>.
25. Julie Rovner, *Partial-Birth Abortion: 'Separating Fact from Spin*, NPR.org, February 21, 2006, <http://www.npr.org/templates/story/story.php?storyId=5168163>.
26. Karen Tumulty, *The Erosion Strategy*, TIME, July 1995, <http://www.time.com/time/magazine/article/0,9171,983109-3,00.html>.
27. Application of Charles T. Canady for the Nomination to the Supreme Court of Florida submitted to the Florida Judicial Nominating Commissions (July 22, 2008) [hereinafter *Application of Canady*] (on file with the Florida Office of Open Government).
28. *Id.*
29. *Application of Canady* (July 22, 2008) (on file with the Florida Office of Open Government).
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.*
34. The Federalist Society – Our Purpose, <http://www.fed-soc.org/aboutus/>.
35. *Application of Canady* (July 22, 2008) (on file with the Florida Office of Open Government).
36. Jennifer Liberto, *Polston to join state Supreme Court*, ST. PETERSBURG TIMES, Oct. 2, 2008, <http://www.tampabay.com/news/politics/state/article835220.ece>.
37. Press Release, Florida Association of Planned Parenthood Affiliates, Inc., *Planned Parenthood Criticizes Crist's Appointment of Ricky Polston to Florida Supreme Court* (Oct. 1, 2008) (available at <http://www.floridaplannedparenthood.org/planned-parenthood-criticizes-crist-s-appointment-of-ricky-polston-to-the-florida-supreme-court>).
38. Joni B. Hannigan, *Gov. Crist names Deborah Polston as Point of Light award winner*, FLORIDA BAPTIST WITNESS, Nov. 27, 2008, <http://www.floridabaptistwitness.com/9661.article>.
39. Joni B. Hannigan, *Gov. Crist names Deborah Polston as Point of Light award winner*, FLORIDA BAPTIST WITNESS, Nov. 27, 2008, <http://www.floridabaptistwitness.com/9661.article>.
40. Application of Ricky L. Polston for the Nomination to the Supreme Court of Florida submitted to the Florida Judicial Nominating Commissions (July 2, 2008) [hereinafter *Application of Polston*] (on file with the Florida Office of Open Government).

41. Joni B. Hannigan, *Gov. Crist names Deborah Polston as Point of Light award winner*, FLORIDA BAPTIST WITNESS, Nov. 27, 2008, <http://www.floridabaptistwitness.com/9661.article>.
42. *Id.*
43. *Application of Polston* (July 2, 2008) (on file with the Florida Office of Open Government).
44. *Crist appoints Polston to the Supreme Court*, THE FLORIDA BAR NEWS, Oct. 15, 2008, <http://www.floridabar.org/DIVCOM/JN/JNNews01.nsf/Articles/B70DDFD1ABC2E7FF852574D5004BCB65>.
45. Jennifer Liberto, *Polston to join state Supreme Court*, ST. PETERSBURG TIMES, Oct. 2, 2008, <http://www.tampabay.com/news/politics/state/article835220.ece>.
46. The Associated Press, Governor names Labarga to Florida Supreme Court, N.Y. DAILY NEWS, Jan. 3, 2009, http://www.nydailynews.com/latino/2009/01/03/2009-01-03_governor_names_labarga_to_florida_suprem.html.
47. *Id.*
48. St. Petersburg Times Editorial Board, *Nominee wrong for high court*, ST. PETERSBURG TIMES, Dec. 19, 2008, <http://www.tampabay.com/opinion/editorials/article942679.ece>.
49. Raoul G. Cantero III, *Jimenez has sterling court credentials*, ST. PETERSBURG TIMES, December 23, 2008, <http://www.tampabay.com/opinion/columns/article946621.ece>.
50. *Id.*
51. *Id.*
52. Susan Spencer-Wendel, *Wellington judge talks with Crist as a finalist for spot on the Florida Supreme Court*, PALM BEACH POST, Dec. 24, 2008, http://www.palmbeachpost.com/localnews/content/local_news/epaper/2008/12/24/a1b_labarga_1225.html.
53. Jordana Mishory, *Labarga sworn in as Fla. high court justice*, DAILY BUSINESS REVIEW, Apr. 6, 2009, http://www.dailybusinessreview.com/Web_Blog_Stories/2009/April/Labarga.html.
54. *Id.*
55. A.W.R. Hawkins, *Governor Charlie Crist: RINO of the Year (so far)*, HUMAN EVENTS, Jan. 5, 2009, <http://www.humanevents.com/article.php?id=30141>.
56. Bud Newman, *Newest Fla. Supreme Court Justice to Spend Just One Day as State District Court Judge*, DAILY BUSINESS REVIEW, Jan. 6, 2009, <http://www.law.com/jsp/law/careercenter/lawArticleCareerCenter.jsp?id=1202427219439>.
57. *Id.*
58. Scott Gold and Bob Drogin, *The Judge at the 'Crossroads'*, LOS ANGELES TIMES, Nov. 23, 2000, <http://articles.latimes.com/2000/nov/23/news/mn-56404?pg=1>.
59. CNN, *Butterfly ballot challengers head back to court today*, CNN.COM, Nov. 27, 2000, <http://archives.cnn.com/2000/ALLPOLITICS/stories/11/27/palmbeach.butterfly/index.html>.
60. *Id.*
61. *Id.*
62. Josh Hafenbrack, *West Palm Beach's Labarga is among finalists for state Supreme Court seat*, SUN SENTINEL, Aug. 14, 2008, http://weblogs.sun-sentinel.com/news/politics/palm/blog/2008/08/west_palm_beachs_labarga_is_am.html.
63. *In re T.W.*, 551 So. 2d 1186.
64. St. Augustine of Hippo, *On Free Choice of the Will* 8 (1993).
65. Jack Thompson, *Gov. Crist Alienates Conservatives With Judicial Misstep*, HUMAN EVENTS, Mar. 13, 2009, <http://www.humanevents.com/article.php?id=31048>.
66. Fifth District Court of Appeal – The Honorable C. Alan Lawson, http://www.5dca.org/Judges/Lawson/Lawson_page.shtml.
67. Application of James E.C. Perry for the Nomination to the Supreme Court of Florida submitted to the Florida Judicial Nominating Commission (Jan.16, 2009) (on file with the Florida Office of Open Government).
68. Jack Thompson, *Gov. Crist Alienates Conservatives With Judicial Misstep*, HUMAN EVENTS, Mar. 13, 2009, <http://www.humanevents.com/article.php?id=31048>.
69. David Decamp, *Gov. Crist names Judge James Perry to Supreme Court, despite conservative opposition*, ST. PETERSBURG TIMES, Mar. 12, 2009, <http://www.tampabay.com/news/politics/gubernatorial/article983276.ece>.
70. E-mail Alert, Florida Association of Planned Parenthood Affiliates, Inc., Thank Gov. Crist for Appointing Judge Perry (available at http://www.ppaction.org/FAPPA/alert-description.html?alert_id=16966751).
71. *Id.*

APPENDIX H

72. William March, *Crist Faces Tough Decision On Supreme Court Judge*, THE TAMPA TRIBUNE, Feb. 24, 2009, <http://www2.tbo.com/content/2009/feb/24/crist-faces-tough-decision-supreme-court-judge/>.
73. 4 Rules Regulating the Florida Bar § 1.8(h) (2009).
74. Leonora LaPeter Anton, *Driven to succeed by father's failings, Circuit Judge James Perry later begins to see a different man*, ST. PETERSBURG TIMES, Mar. 1, 2009, <http://www.tampabay.com/features/humaninterest/article979853.ece>.
75. Internal research memo on nominees to the Supreme Court of Florida (on file with the authors).
76. Leonora LaPeter Anton, *Driven to succeed by father's failings, Circuit Judge James Perry later begins to see a different man*, ST. PETERSBURG TIMES, Mar. 1, 2009, <http://www.tampabay.com/features/humaninterest/article979853.ece>.
77. *Id.*
78. Internal research memo on nominees to the Supreme Court of Florida (on file with the authors).
79. E-mail Alert, Florida Association of Planned Parenthood Affiliates, Inc., Thank Gov. Crist for Appointing Judge Perry (available at http://www.ppaction.org/FAPPA/alert-description.html?alert_id=16966751).
80. Jan Pudlow, *Court allows gay adoption amicus*, THE FLORIDA BAR NEWS, June 15, 2009, <https://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/8736b9dd4dd6b3be852575cf0062a887?OpenDocument>.
81. Jan Pudlow, *Court allows gay adoption amicus*, THE FLORIDA BAR NEWS, June 15, 2009, <https://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/8736b9dd4dd6b3be852575cf0062a887?OpenDocument>.
82. John McCormack, *A Wise Latino Man: Marco Rubio as the Anti-Sotomayor*, THE WEEKLY STANDARD, July 14, 2009, http://www.weeklystandard.com/weblogs/TWSFP/2009/07/a_wise_latino_man_1.asp.



“Before we waste my time and yours, does this job require a shirt?”

APPENDIX I

[Bobby Schindler, the brother of the late Terri Schiavo, now works for the Terri Schindler Schiavo Foundation to help spare disabled and incapacitated patients his sister's fate. The following commentary originally appeared February 19, 2010 on LifeSiteNews.com and is reprinted with Mr. Schindler's permission. Copyright © LifeSiteNews.com]

New Findings Cast Increasing Doubt on Terri Schiavo's Death

Bobby Schindler

During my family's battle to save my sister Terri Schiavo from death by dehydration, a tremendous amount of debate raged over whether or not she was in what the medical profession refers to as a persistent vegetative state (PVS).

Indeed, the PVS diagnosis was used as one of the deciding factors in whether my sister should live or die. It was the core catalyst in the court ordering the removal of Terri's food and water.

When Terri's husband first petitioned the circuit courts to remove her sustenance, my family was naive about PVS and what the diagnosis actually meant, and could not believe a court would ever order her food and water withdrawn. As the battle over my sister's life progressed, however, we learned—the hard way.

The more anecdotal testimony we heard about the diagnosis of PVS, the more my family was convinced that Terri simply didn't fit the profile and was never PVS. We also suspected such a diagnosis (typically made at the bedside) was seriously flawed.

This became very obvious by the way Terri interacted with my mother, not to mention the videos which clearly showed that Terri was able to track objects and follow simple commands.

I was oftentimes rather astonished at the number of different and opposing conclusions I heard from neurologists, physicians, speech therapists and so many other medical professionals who tried to determine whether or not Terri was in a PVS.

This is why a recent study published by the *New England Journal of Medicine*, regarding findings of awareness in patients previously diagnosed in a PVS, may be one of the most important to date.

The *Journal's* report, released on Feb. 3, revealed that some patients who were believed to be in a PVS were actually able to understand and communicate. Through the use of functional magnetic resonance scanning (fMRI), researchers in the United Kingdom estimated that a percentage of those patients suffering from profound brain injuries possessed the capacity to comprehend and communicate in limited ways.

Though the results of this study may bring new hope to patients with severe brain injuries, the latest findings also suggest that the PVS diagnosis may be more flawed than previously believed. Already, documented research has brought into question the veracity of the PVS diagnosis. The *New England Journal of Medicine's* February report may be something of a call to action.

Indeed, it is bittersweet for my family when we read such findings that question

the PVS diagnosis. It exonerated the courageous individuals who placed their careers and reputations on the line to voice opposition to my sister's court-ordered dehydration.

The doctors and neurologists who examined Terri and evidence presented in the legal battle have often been dismissed as “quacks” for suggesting Terri may have been aware, cognizant and functional. For them, such new findings must weigh particularly heavy on their hearts.

Despite the *New England Journal of Medicine's* report, most in the mainstream media obstinately refused to admit that Terri's death was a mistake.

Perhaps that is because they have a stake in the story: Throughout the legal battle, most of the media repeatedly ignored or glossed over the dozens of affidavits from some of the most prominent neurologists and medical professionals in the nation, stating Terri may have been misdiagnosed.

Many pleaded for the judge, George Geer, to permit similar new brain scanning technology to better determine Terri's true neurological condition. They, along with my family, were inexplicably refused.

As we saw in Terri's life and death, what these laws have created is a hostile and often fatal set of circumstances for non-dying patients who live with profound brain injuries and cognitive disabilities—based on tragically suspect diagnoses.

It is utterly vital for disability rights and pro-life advocates to lead the charge that demands our legislators enact appropriate laws to protect the life and liberty interests of vulnerable persons.

It is also because of the results of this latest study and the traditionally high failure rate in the PVS diagnosis that we need to stop using it as a guideline to kill those in these so-called PVS conditions.

There are many in the legal and medical profession who choose not to see what we saw in Terri's behaviors and what these imaging studies reveal about the human brain. It is incumbent upon all of us to ensure that the lives of vulnerable people are not needlessly ended by flawed diagnostic practices, careless legislation or the idea that a person with a disability must prove themselves worthy of life's most ordinary needs: food and water.

APPENDIX J

[Nigel Biggar is Regius Professor of Moral and Pastoral Theology and Director of the McDonald Centre for Theology, Ethics, and Public Life at the University of Oxford. He is also a member of the Royal College of Physicians' Committee on Ethical Issues in Medicine, and the author of *Aiming to Kill: The Ethics of Suicide and Euthanasia* (London: Darton, Longman, and Todd, 2004). The following essay was first published in the March 2010 issue of the British magazine *Standpoint* (www.standpointmag.co.uk) and is reprinted with permission. Copyright © Social Affairs Unit Magazines Limited 2010.]

The Road to Death On Demand

Nigel Biggar

“There should be a booth on every corner where you could get a martini and a medal”. No doubt Martin Amis was exaggerating for stylish effect, but he wasn't joking. After watching Alzheimer's disease reduce Iris Murdoch to spending her days gazing at the Teletubbies and after witnessing his stepfather dying “very horribly”, Amis's support for legalising assisted suicide has stiffened. “There should be a way out for rational people who've decided they're in the negative,” he told the *Sunday Times*. “That should be available, and it should be quite easy”.

Pressed by the relentless stream of cases of “rational” suicide and mercy killing recently publicised by a story-hungry, analysis-shy British media, even long-time defenders of the legal status quo can be forgiven for weakening and wondering if Amis isn't right after all.

The truth is that some of us face dreadful ways of dying. Sufferers from motor neurone disease, for example, might have to look upon the prospect of suffocating to death. Others with obstructive tumours might have to contemplate spending their last days vomiting their own faeces.

But it is not just the dying who have reason to fear. Some of the living are burdened with lives that are severely restricted. Among recent clients of Dignitas (the Swiss clinic for assisted suicide) was a chronically disabled Irishman who could not swallow, whose only means of feeding was a tube inserted into his stomach and whose capacity to communicate was very limited. Another was Daniel James, the young victim of a rugby accident who refused to reconcile himself to life as a tetraplegic. And then there was Sir Edward Downes, the octogenarian conductor who had no appetite for soldiering on alone after the death of his wife.

Under conditions as difficult and miserable as these, how can human life be worth persevering in? Why on earth should we endure it to the bitter end? What could possibly be the point? Yes, palliative care can relieve the distress of most of the terminally ill, but there are always some cases beyond its reach. And it cannot relieve the frustration of the chronically disabled or the despair of the bereaved.

Surely, therefore, compassion obliges the law to let us seek an efficient escape from unbearable suffering, whether through help in killing ourselves (physician-assisted suicide) or through someone else killing us upon our request (voluntary euthanasia). And besides, don't we have a right to autonomy? After all, an individual's life is his own property, for him to use as he sees fit. He is the sole arbiter of its worth,

and he alone is competent to decide when it has become intolerable.

As for opposition to changing the law, that's mainly based on a dogmatic obsession with the absolute "sanctity of life", which makes sense only to the dwindling minority of religious believers. To shore up their case, opponents manufacture the fear that legalising assisted suicide or voluntary euthanasia will send us down a slippery slope to murder, but hard empirical evidence from Oregon and the Netherlands now shows this to be irrational.

In a nutshell, we have a real problem to which there is a rational solution: give mentally competent individuals the legal right to decide that their lives should end, give medical experts the legal right to assist in ending them painlessly and then put in place strict procedural safeguards against abuse.

So, at least, runs the liberalising story. The problem it identifies is real enough, but its solution is not so deeply rational. Closer inspection reveals several flies stuck deep in its ointment. One of the largest is the problem of eligibility. As things stand, the law in England, Wales and Scotland—as in most jurisdictions—prohibits the intentional killing of one person by another, except in proportionate self-defence. Since 1961, it has ceased to regard suicide as a crime, not because it doesn't care whether or not citizens kill themselves, but because it recognises that punishment is not an appropriate response to failed attempts at doing so. Nevertheless, the law has continued to criminalise assistance in suicide, partly to discourage suicide itself and partly to deter malicious help.

If we were to decide to breach the law's current absolute prohibition of intentional killing in order to allow some to assist others to kill themselves, we would then have to decide who should qualify for assistance. We might all agree that dying patients whose suffering is unbearable and beyond adequate relief should be eligible. Beyond that, however, plenty of room would remain for disagreement about when suffering is unbearable and when relief is inadequate. And it wouldn't be very long before someone reminds us that unbearable and irremediable suffering is not confined to the dying. What about the chronically ill and disabled? And then someone else would point out that one doesn't even have to be physically ill or hindered to experience life as an intolerable burden. What about the chronically and severely depressed, the bereaved or the philosophically gloomy? Don't these too deserve the right to die, come the day when they "decide they're in the negative" and conclude that soldiering on simply isn't worth the candle?

Once we have decided on a set of conditions under which people have the right to assistance in suicide, attention will shift to cases that meet those conditions but where the individuals concerned are incapable of killing themselves. Then we will confront the cruel inconsistency of our granting the benefit of a merciful release to the stronger, while withholding it from the weaker. The logic that brought us to assisted suicide will push us towards voluntary euthanasia.

Once we decide to breach the absolute prohibition of intentional killing, we might agree upon the need to limit the conditions under which assistance in suicide and euthanasia are permissible, but we will find that there are no very compelling

reasons to draw the line in one place rather than another. Given the intrinsic difficulty of deciding where to draw the line, given the propensity of the media to focus on graphic personal stories rather than the larger social context and given the popularity of the libertarian rhetoric of arbitrary autonomy, there is good reason to fear that any liberalisation of the law will tend towards granting death on demand.

If this should seem fanciful and alarmist, then consider the Netherlands, which has had over a quarter of a century's worth of experience of trying to design a suitably stringent legal framework for regulating assisted suicide and voluntary euthanasia. Since 1984, Dutch law has in effect permitted doctors to assist patients to die or to be killed upon request under certain conditions. These conditions do not stipulate terminal illness. They do not clearly stipulate physical illness. They only require that the candidate's suffering be unbearable and without hope of improvement. Accordingly, in the Chabot case of 1994 the Dutch Supreme Court ruled that a 50-year-old woman who was physically healthy but in persistent grief over the death of her two sons, was subject to "unbearable suffering" and legally eligible for assisted suicide. Six years later in the Sutorius case, a trial court in Haarlem judged it legal to give assistance in suicide to an elderly patient who felt his life to be "empty and pointless".

Now it is true that an Amsterdam appeal court later overruled the trial court's judgment, arguing that doctors have no competence to judge "existential" suffering resulting from loneliness, emptiness and fear of further decline. It is also true that the Supreme Court denied Dr Sutorius's subsequent appeal to have his conviction quashed, holding that a patient must have "a classifiable physical or mental condition" to be eligible for medical killing.

These judgments have settled nothing, however, and the debate rumbles on. In 2004, the Royal Dutch Medical Association published the Dijkhuis report, which argued that someone who is no longer able to bear living any longer and had a hopeless outlook on their future could be said to be "suffering from life" and should therefore be eligible for assisted suicide or voluntary euthanasia. This view has not yet won the support of a majority of the association's members, but it is being championed by the Dutch Right to Die Society, which is often taken by public bodies to be *the* representative of patients' interests. If the society gets what it wants, then the Netherlands would be well on its way to enshrining in law the principle of arbitrary autonomy. "Suffering from life" is not a medical condition and there are no medical grounds on which doctors would have the authority to contradict an individual's claim that he feels such suffering to be unbearable and hopeless.

Britain is not the Netherlands, of course. We could adopt stricter arrangements here. We could permit only assisted suicide and not voluntary euthanasia and we could limit eligibility to the terminally ill—as they do in Oregon. Indeed, that is exactly what Dignity in Dying is currently campaigning for. However, there are two reasons to think that if we start with the Oregon model, we won't stop there. The first is cultural. Oregonians, being American, are typically allergic to the state

and analogous institutions and zealously protective of individual liberty. So whereas they are willing to grant individuals medical assistance in killing themselves, they refuse doctors the authority to kill their patients under any conditions. Britons, however, are not American. They have a more benign, European view of the state, of state-run healthcare and of those who provide it—just like the Dutch.

The second ground for doubting that this would rest with the Oregon model is logical. The reasons for restricting the right to die to those terminally ill who are capable of suicide are not at all strong. Indeed, one of the liberalising campaign's leading lights, Lord Joffe, has stated in public on several occasions that the rationale for the proposed restrictions in his Bill is simply political: currently, a more cautious Bill has a greater chance of winning sufficient support to become law than a less cautious one. He fully hopes and expects that sooner rather than later the restrictions would be lifted. That he would not long be disappointed is suggested by the fact that, of the recent cases that have been seized upon by much of the British press to promote a change in the law, several *already* fall outside the tactically cautious arrangements proposed by Dignity in Dying. Neither Daniel James nor Sir Edward Downes was terminally ill. Nor were they suffering unbearable physical pain. They were simply “tired of life”.

But why shouldn't we go the whole libertarian hog and grant all rational adults the right to die or be killed on demand, as the director of Dignitas, Dr Ludwig Minelli, enthusiastically recommends? As long as the decision for assisted suicide or euthanasia is made freely by the individual concerned, what reasonable objection could there be?

One objection emerges when we roll libertarian logic out to its logical conclusion. If we were to reform the law so as to allow competent adults absolute, arbitrary autonomy over their own lives, then it would have to permit consensual vivisection and killing. In other words, should an individual consent to being mutilated and killed—say for sexual gratification—then the law would have no objection. In its eyes, the individual would be master of his own life and if he should choose to spend it in what other people consider to be a macabre fashion, then that would be his business and his alone.

In case this sounds just too bizarre to be worth considering, we should remember that in 2004 Armin Meiwes was tried in Germany for mutilating, killing and eating a 43-year-old computer engineer, who consented because, according to the judge, “he wanted to get the kick of his life”, reported the *Guardian*, on 31 January 2004. The fact that Meiwes was convicted of manslaughter, and not just acquitted, is witness to the commitment of German law—as of all traditional Western law—to some concept of the objective worth of human life that is independent of the subjective preferences of individuals. In spite of his consent, the computer engineer's life had a worth that both he and his killer had violated: that is why Meiwes was punished. It follows from this that if English and Scottish law wishes to maintain a commitment to upholding the objective worth of human life, then it can't grant to individuals absolute, arbitrary autonomy over their lives.

I could let this part of the argument rest there. I could presume that every reader agrees that it would not be desirable for Britain to become a society where consensual cannibalism is regarded as a permissible lifestyle and that therefore the principle of arbitrary autonomy is not one that English and Scottish law should incorporate. But let me push the argument one stage further and try to explain my position. First, I appeal to the common sense notion that someone can choose to squander or waste his own life. Such a notion certainly makes sense in terms of my own experience. From what others say and write, it would appear to make sense in terms of theirs, too. But if it does make sense, then that is only because we recognise that our life might actually have an objective worth that we sometimes choose to ignore—that it has an objective worth that can stand over and against us in judgment upon our own free choices. It makes sense only insofar as our autonomy is not arbitrary, but is responsible to a given moral context.

Further, if we were to regard the individual as the sole arbiter of the worth of his or her life, then how could he/she continue to oblige the care and commitment of other people? If the worth of your life is entirely contingent upon your judgment and if I view your judgment as wrong-headed, why should I expend my time and energy in supporting your life? Suppose that you value your life rather more than I value it. Why should I prefer your judgment to my own? Perhaps indifference or self-interest would move me to “respect” your judgment in the thin, negative sense of not interfering with it. But such arm’s-length respect falls a long way short of positive care. One problem with dissolving human worth into individual freedom, instead of making individual freedom serve objective human worth, is that it becomes very hard to see why that worth should command our neighbour’s love. Another problem is that when arbitrary autonomy severs itself from responsibility, it haemorrhages its own value.

A third reason why the law should not incorporate the principle of absolute, arbitrary individual autonomy is because the private and the public realms are not in fact sealed off from each other. What we do and how we form ourselves in our so-called “private” relations *does* inform how we behave toward others in “public”. If society tells its members, through the law, that a life spent in drug addiction or lethal masochism or ended early in suicide is quite as acceptable as any other—so long as it is freely chosen—then those who choose such lives will become prey to passions that will drive them to abuse and violate their neighbours. The drug addict’s passion for a “high”, the suicide’s passion to escape and the sado-cannibal’s erotic passion to penetrate and consume render them incapable of respect for the legitimate claims of other people. The drug addict will assault and rob to get money for his next fix, the suicide will end his own life no matter how many other lives he ruins as a result and the Armin Meiweses of this world will not be as solicitous of their victims’ consent the second time around.

The notion that we are all rational choosers is a flattering lie told us by people who want to sell us something. They want a free hand in making a profit out of our fears and desires. The less flattering truth is that much of the time we are driven by

social and psychic forces that we barely understand—and even less control—and that hinder us from paying attention to other people. We creatures of passion need the support of legal and social constraints to become the kind of people who are capable of looking beyond their own felt needs to heed the claims of their neighbours. The problem with the libertarian principle of arbitrary autonomy is that it would rob us of this support.

The champions of lawful assisted suicide tend to have sunny dispositions. They assume that all is basically well with society. They assume that the legislation they propose will operate in a fundamentally humane social context, where patients can usually rely on the generous support both of health care services and relatives. They assume that procedural safeguards are all that is needed to guarantee genuine patient autonomy. And they assume that one can tell an authentic, free choice by its persistence.

But this is largely well-heeled fantasy. According to Help the Aged, about half a million older people are being abused in Britain at any one time, two-thirds of them at home by someone in a position of trust. More than half the theft and fraud against older people is committed by their own children. The scale of the problem has been confirmed by Britain's most senior police-woman, the former Chief Constable of South Wales Police, Barbara Wilding, who has reported "an increase in abuse of the elderly, which often takes place behind the closed doors of the family home". She said that this would become "the next social explosion".

As for the quality of professional care, Baroness Neuberger wrote in *Not Dead Yet: A Manifesto for Old Age* (Harper, 2008) that those "care-assistants" who delivered most of the hands-on care of the sick and elderly are poorly trained and poorly paid—"short-term employees doing dirty work for little money and no emotional and 'respect' reward". This "miserable reduction of care workers into harried, time-watching automatons—with no time for human interaction—is corroding the quality of care all the time".

This is the actual social environment in which the legal right to assistance in suicide would often operate: one where the elderly and the chronically ill are often neglected, malnourished, isolated and even resented. This is the inhumane social context that would inform the autonomy of ailing individuals and move them to persist in an authentic choice to stop wasting space and die. Formally speaking, of course, such choices would be entirely free; but theirs would be a freedom evacuated of hope by a characteristically impatient, often callous, and sometimes hostile society.

The proponents of the right to assistance in suicide are naive to suppose that the humanity of British society can be taken for granted. They are also naive to infer that the granting of a legal right to die would legislate patient suffering away. It won't. Mistakes will be made, and even assisted suicides will be botched. After all, we're talking about the world of human activity, where perfect solutions are not known to dwell.

In sum, the flies that stain the rational ointment of a mooted right to assisted

suicide are as follows. Very likely it would be just a temporary Oregonian stopp-ing-place on the road to Dutch-style voluntary euthanasia. It would open up intractable arguments about the conditions of eligibility, which would invite the libertarian solution of granting arbitrary individual autonomy and killing on demand. This would serve to undermine positive care for the lives of others, lift legal and social prohibitions that protect individuals from self- and socially-destructive passions and jeopardise such a humane social ethos as we now have. This ethos is neither as extensive, nor as deep, nor as secure as the sunny liberalisers suppose. Nor would their preferred solution to the problem of patient suffering be as perfect as they imply. For sure, the concern to maintain society's commitment to supporting human worth in adversity, which underlies this argument's opposition to changing the law, is one that many religious people will share. But it is also one that fuels majority opposition in non-religious bodies such as the House of Lords, the Royal College of Physicians, the Royal College of General Practitioners and the British Geriatrics Society. Opposition to making assisted suicide lawful really can't be brushed disingenuously aside as the manipulative child of religious conspiracy.

All right, so legalising assisted suicide is seriously problematic, but so is the plight of those who now live and die in distress. If we refuse them the right to assistance in killing themselves or to be killed upon request, what alternative solutions are available? Insofar as the problem is the fear of being kept alive in intolerable circumstances, current law does not oblige patients to strive to stay alive at all costs and it already grants them a right to refuse treatment that doctors must respect. This should not be read as sanctioning suicide. It merely recognises that some may reasonably prefer to conserve their limited energies for the process of dying rather than expend them in straining to stay alive.

It is true that some doctors are overzealous in striving to "save" their patients, which implies a need to reform medical education. Doctors need to be educated to see their proper role as including helping patients to die well, and not simply as fending off death. Certainly, that should involve their being made far more aware of the considerable resources of palliative medicine and care. But it also requires more than technical training.

It requires a spiritual formation in which doctors are made into the kind of people who, when faced with death in the eyes of the dying, have the moral strength to resist the natural instinct of mortal human beings, and not to turn away.

The provision of palliative care in Britain is still very patchy. The availability of in-patient palliative care beds, for example, varies dramatically from region to region-and not because of varying levels of demand. If we really care to improve the conditions under which most people die, then there remains plenty of scope for investing more energy and money in building more hospices, multiplying specialist palliative care teams, and integrating palliative expertise more thoroughly and universally into the healthcare system.

But what about that small minority of patients whose suffering cannot be managed by normal palliative means? In those rare cases recourse can be had to

palliative sedation, which renders patients unconscious. Sometimes doctors fight shy of this, because they fear killing the patient. Given the contemporary sophistication of drug-management, this fear is very largely misplaced. Nevertheless, were sedation to hasten a patient's death, it would raise no moral or legal objection so long as it had been proportioned to the relief of distress.

Together these measures would go a long way towards reducing patients' suffering. But they comprise no perfect solution. They offer no answer to the frustration of a Daniel James or the prospective loneliness of an Edward Downes. Nor do they offer an end to the sufferings of the grievously bereaved, the chronically depressed, the long-term unemployed or the wretchedly poor. Nor do they offer relief to those sentenced to spend the rest of their lives behind prison walls—at least one of whom, according to his personal correspondence, would jump at the chance of assisted suicide, were it on offer. Compassion obliges us to do what we can *and what we may* to relieve human suffering. But there are some things that we could do, which we shouldn't—because they create more problems than they solve or because they jeopardise more people than they relieve. Prudence obliges us no less than pity.

If the law remains as it is, of course, criminal sanctions would continue to threaten those who help others kill themselves. Since assistance in suicide can be malicious or culpably negligent, it is right that the law should continue to seek to deter it. In difficult, grey cases, however, where neither malice nor negligence is evident, the Director of Public Prosecutions has the liberty to decide that prosecution would not be in the public interest. This liberty he has in fact exercised on many recent occasions, with the result that Daniel James's parents and their like have suffered no penalty. The current arrangement is not perfect: well-intentioned helpers in suicide are presumably subject to a measure of anxiety until the DPP reaches his verdict. But precedent should reassure them: none of those accompanying the more than 100 British citizens who have killed themselves with Dignitas's assistance has been prosecuted. And the forthcoming publication of the DPP's criteria should reassure them further. In the end, the law has consistently and wisely refrained from bringing its threats to bear in such fraught cases and it will continue to do so.

The human suffering that assisted suicide proposes to solve needs to be taken seriously. But the relaxation of the law prohibiting intentional killing would give us a radically libertarian society at the cost of a socially humane one. And besides, there is another way—no more perfect, but a lot more prudent.

APPENDIX K

[Thomas Sowell is a senior fellow at the Hoover Institution and a syndicated columnist. The following column was published May 11, 2010 and is reprinted by permission of Thomas Sowell and Creators Syndicate, Inc. © 2010 Creators Syndicate, Inc.]

A ‘Duty to Die’?

Thomas Sowell

There was a time when some desperately poor societies had to abandon the elderly to their fate, but is that where we are today?

One of the many fashionable notions that have caught on among some of the intelligentsia is that old people have “a duty to die” rather than become a burden to others.

This is more than just an idea discussed around a seminar table. Already the government-run medical system in Britain is restricting what medications or treatments it will authorize for the elderly. Moreover, it seems almost certain that similar attempts to contain runaway costs will lead to similar policies when American medical care is taken over by the government.

Make no mistake about it, letting old people die is a lot cheaper than spending the kind of money required to keep them alive and well. If a government-run medical system is going to save any serious amount of money, it is almost certain to do so by sacrificing the elderly.

There was a time—fortunately, now long past—when some desperately poor societies had to abandon old people to their fate, because there was just not enough margin for everyone to survive. Sometimes the elderly themselves would simply go off from their families and communities to face their fate alone.

But is that where we are today?

Talk about “a duty to die” made me think back to my early childhood in the South, during the Great Depression of the 1930s. One day, I was told that an older lady—a relative of ours—was going to come and stay with us for a while, and I was told how to be polite and considerate towards her.

She was called “Aunt Nance Ann,” but I don’t know what her official name was or what her actual biological relationship to us was. Aunt Nance Ann had no home of her own. But she moved around from relative to relative, not spending enough time in any one home to be a real burden.

At that time, we didn’t have things like electricity or central heating or hot running water. But we had a roof over our heads and food on the table—and Aunt Nance Ann was welcome to both.

Poor as we were, I never heard anybody say, or even intimate, that Aunt Nance Ann had “a duty to die.”

I only began to hear that kind of talk decades later, from highly educated people in an affluent age, when even most families living below the official poverty level owned a car or truck and had air conditioning.

It is today, in an age when homes have flat-paneled TVs and most families eat in

APPENDIX K

restaurants regularly or have pizzas and other meals delivered to their homes, that the elites—rather than the masses—have begun talking about “a duty to die.”

Back in the days of Aunt Nance Ann, nobody in our family had ever gone to college. Indeed, none had gone beyond elementary school. Apparently, you need a lot of expensive education, sometimes including courses on ethics, before you can start talking about “a duty to die.”

Many years later, while going through a divorce, I told a friend that I was considering contesting child custody. She immediately urged me not to do it. Why? Because raising a child would interfere with my career.

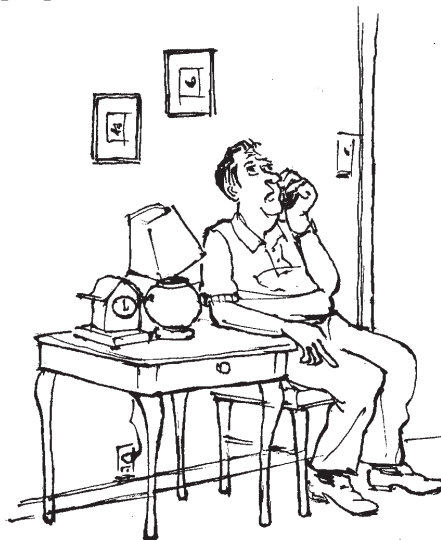
But my son didn’t have a career. He was just a child who needed someone who understood him. I ended up with custody of my son and, although he was not a demanding child, raising him could not help impeding my career a little. But do you just abandon a child when it is inconvenient to raise him?

The lady who gave me this advice had a degree from Harvard Law School. She had more years of education than my whole family had, back in the days of Aunt Nance Ann.

Much of what is taught in our schools and colleges today seeks to break down traditional values and replace them with more fancy and fashionable notions, of which “a duty to die” is just one.

These efforts at changing values used to be called “values clarification,” though the name has had to be changed repeatedly over the years, as more and more parents caught on to what was going on and objected. The values that supposedly needed “clarification” had been clear enough to last for generations, and nobody asked the schools and colleges for this “clarification.”

Nor are we better people because of it.



Nick Downes

“All of our operators are assisting other customers. Due to the unusually high volume of dumb questions, wait time will be longer than usual.”

SUBSCRIPTIONS AND BOUND VOLUMES

Subscriptions: the *Human Life Review* accepts regular subscriptions at the rate of \$25 for a full year (four issues). Canadian and all other foreign subscriptions please add \$10 (total: \$35 U.S. currency). Please address all subscription orders to the address below and enclose payment with order. You may enter gift subscriptions for friends, libraries, or schools at the same rates.

Additional Copies: this issue—No. 2 Volume XXXVI—is available while the supply lasts at \$7 per copy; 10 copies or more at \$5 each. A limited number of back issues from 1996 to this year are also available at the same prices. We will pay all postage and handling.

Bound Volumes: we now have available bound volumes of the years 1992 through 2001 at \$50 each. The volumes are indexed, and bound in permanent library-style hardcovers, complete with gold lettering, etc. (they will make handsome additions to your personal library). Please send payment with order to the address below. We will pay all postage and handling.

Earlier Volumes: while several volumes are now in very short supply, we can still offer some of the volumes for the first 16 years (1975-1989) of this *Review* at \$50 each.

Selected articles from the current issue of the *Review* are available on our website, www.humanlifereview.com. Older articles may be viewed on the site's *archives* page.

Address all orders to our NEW address:

The Human Life Foundation, Inc.

353 Lexington Avenue

Suite 802

New York, New York 10016

Phone: 212-685-5210

humanlifereview@verizon.net