

the HUMAN LIFE REVIEW



SUMMER 2012

Featured in this issue:

William Murchison on A Grassroots Legislative Boom

George McKenna on . . . Bishops Sleeping with the Enemy?

Hiroko Ogisu Clark on Baby-Saving Efforts in Japan

Mary Meehan on How Pregnancy Centers Succeed

HLR's COLLEGE STUDENT ESSAY CONTEST WINNERS

JULIA PRITCHETT (ARKANSAS) • MADELINE WENNER (REGENT)

Gregory J. Roden on The Unknown Scholars of *Roe*

Stephen Vincent on Birds & Bees & In Vitro

Thomas M. Clark on Problems of *Perry*: An Update

Ellen Wilson Fielding on Is Life Worth Living?

Timothy S. Goeglein on Stem Cells Before the Storm

Also in this issue:

Mark Judge • Anna Franzonello • John M. Thorpe, Jr. &
Clarke Forsythe • Paul Greenberg • Greg Pfundstein
and James L. Buckley in **From the Archives** (1985)

Published by:

The Human Life Foundation, Inc.

New York, New York

. . . as I write debate continues over Cardinal Timothy Dolan's decision to invite Barack Obama to this year's Al Smith dinner. I say "decision" because given the two precedents for *not* asking the presidential candidates to dine in an election year—Cardinal O'Connor snubbed Bill Clinton in 1996; Cardinal Egan John Kerry in 2004—it's hard to believe that New York's Archbishop, who is also president of the Bishops Conference, didn't at least consider snubbing Obama. As it happens, George McKenna, in "Sleeping with the Enemy?" (page 12), has interesting—and timely—things to say on the subject of how the Catholic clerical class has interacted with the political class over the last several decades. "It turns out," he observes (with echoes of Ronald Reagan), "that a government big enough to enact social programs favored by the Catholic church is big enough to openly war against centuries of Church teaching."

As also happens, the Human Life Foundation will host its Great Defender of Life dinner on the same evening as the Al Smith affair. James L. Buckley, this year's honoree—along with the law-student group Advocates for Life—alludes in "Sound Doctrine Revisited" (From the Archives, page 25) to a concern many of those who don't want to see Obama feted at a Catholic event raise: that it will receive distorted press coverage. "I know of few policy initiatives," Buckley wrote back in 1985 about the much maligned Mexico City policy, "that have been so poorly reported as the U.S. position and its reception at the population conference."

Thomas M. Clark, who clerked for Judge Buckley on the U.S. Court of Appeals for the D.C. Circuit, and whose analysis of the federal court decision that invalidated California's Proposition 8 ran in our Winter/Spring 2011 issue ("The Problems of *Perry*"), is back here with an "Update" on how California's attempt to define marriage as the union of one man and one woman is faring (page 91). And here for the first time is Hiroko Ogisu Clark ("The Stork's Cradle," page 36), who reports on baby-saving efforts currently being undertaken in Japan. While the "abortion rate is not particularly high compared to other countries," she writes, "what makes Japanese statistics unique is the high ratio of abortions by married people." Welcome to our pages, Mrs. (Thomas) Clark.

We also welcome Timothy S. Goeglein, who served for nearly eight years as deputy director of the White House Office of Public Liaison under President George W. Bush, and thank him for graciously giving us permission to reprint "Stem Cells Before the Storm" (page 110), Chapter 6 of his recently published memoir of that time, *The Man in the Middle*.

Finally, thanks to *RealClearReligion*, *National Review Online*, *First Things*, and last year's Great Defender of Life, our friend Paul Greenberg, for permission to reprint the columns that make up the complement of appendices with which we round out this very packed edition of the *Review*.

ANNE CONLON
MANAGING EDITOR



Editor

Maria McFadden Maffucci

Senior Editors

Ellen Wilson Fielding

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 Editors

J.P. McFadden

Faith Abbott McFadden

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: \$30 per year; Canada and other foreign countries: \$40 (U.S. currency). ISSN 0097-9783.

©2012 by THE HUMAN LIFE FOUNDATION, Inc. New York, N.Y. Printed in the U.S.A.

the HUMAN LIFE REVIEW

Summer 2012

Vol. XXXVIII, No. 3

<i>Introduction</i>	2
Maria McFadden Maffucci	
<i>A Grassroots Legislative Boom</i>	5
William Murchison	
<i>Sleeping with the Enemy?</i>	12
George McKenna	
<i>Sound Doctrine Revisited (1985)</i>	25
James L. Buckley	
<i>The Stork's Cradle</i>	36
Hiroko Ogisu Clark	
<i>How Pregnancy Centers "Love Them to Life"</i>	44
Mary Meehan	
<i>The Unknown Scholars of Roe v. Wade</i>	57
Gregory J. Roden	
<i>HLR College Student Essay Contest</i>	71
Julia Pritchett	72
Madeline Wenner	79
<i>Asexually Speaking</i>	85
Stephen Vincent	
<i>The Problems of Perry: An Update</i>	91
Thomas M. Clark	
<i>Is Life Worth Living?</i>	102
Ellen Wilson Fielding	
<i>Stem Cells Before the Storm</i>	110
Timothy S. Goeglein	
<i>Appendices</i>	119
Mark Judge	
John M. Thorpe, Jr. & Clarke Forsythe	
Anna Franzonello	
Paul Greenberg	
Greg Pfundstein	

INTRODUCTION

“**C**ould it be said with any accuracy that the scaffolding on which the legal right to abortion rests is starting to sway in the wind and not be counted on to last forever?” Senior editor William Murchison poses this question in our lead article, “A Grassroots Legislative Boom.” Despite the tragedy and disgrace of our nation having had for almost four years now the most pro-abortion administration imaginable, what’s been happening in the last decade on the *state* level, Murchison reports, has been a dramatic increase in legislation aimed at *protecting* unborn life (throwing the “seemingly triumphant ‘reproductive freedom’ lobby,” he writes, “into fits of anxiety.”)

Murchison cites a recent Arizona law, signed last April, restricting abortions after 20 weeks; the American Civil Liberties Union called it the “most extreme abortion law in the country” and a New York *Times* editorial, he notes, “undertook to instruct a federal judge in Arizona” to strike down the law as unconstitutional and a “product of right-wing politics.” Despite the *Times*’ bullying, on August 1 the Hon. James A. Teilborg upheld the law—but, since then, as Murchison predicted, it was appealed to the (liberal) 9th Circuit Court of Appeals which has issued a temporary injunction. Still, there are many states with similar laws, so many “new strategies pouring forth from nimble minds,” it’s causing Planned Parenthood President Cecile Richards to wail: “We’re in court and in legislatures in almost every state of the country. It has just gotten crazy.” (Or, to us, approaching sanity?)

I turn next to something I and many of my fellow Catholics and non-Catholic pro-lifers have found perplexing. Cardinal Timothy Dolan, who, as Archbishop of New York and President of the United States Bishops’ Conference has been a fiery, eloquent and powerful leader in the fight for the protection of life and religious liberty, has nonetheless issued an invitation to President Obama (and Mitt Romney) to attend the October Al Smith dinner in New York. Yes, tradition has it that in a presidential year, both candidates are invited to this event, which honors the memory of the first Catholic presidential candidate and supports Catholic charities. But many expected that Cardinal Dolan would follow the example of the late great Cardinal O’Connor, who, in 1996, did *not* invite President Bill Clinton to the dinner, because of his veto of the partial-birth abortion ban; or that of Cardinal Egan in 2004, who did not invite Senator John Kerry because he was a pro-abortion Catholic. In the year when the administration’s Health and Human Services mandate threatens the very *ability* of Catholic charities to function, as well as endangering the religious liberty of all Americans of any faith, in a year when the faithful have been told to gird up for possible civil disobedience, to fast and pray, wouldn’t it have been prudent to announce, politely but firmly, that no such invitation would be issued? That some things, even at a “roast”, just aren’t ever funny?

Professor George McKenna’s masterful article, “Sleeping with the Enemy?” (p. 12) submitted in June and written in response to the HHS mandate crisis, has quickly become all the more relevant. McKenna begins by praising the Bishops for their tremendous leadership against the mandate, and then discusses the claims of their

critics, from the left and the right. To examine the charge that it's too late, that the bishops should have "screamed bloody murder from the beginning" about the *Roe v. Wade* decision, McKenna goes back and examines the facts, reviewing the Bishops' initial reaction to *Roe* and their subsequent actions. After a fascinating look at the history, he concludes that "certain matters should never be on the table, especially those affecting the Church's freedom," and the "cordial relationship" between church and state exemplified by the "Al Smith dinners, where presidents and would-be presidents roast and backslap each other as they confabulate with clergy, pundits, and celebrity lawmakers," ought to be "drawing to a close."

As it happens, the very same evening as the Al Smith dinner, October 18, we will be having our 10th annual Great Defender of Life dinner, honoring former New York Senator and Federal Appeals Court Judge James L. Buckley, whose article in "From the Archives," is next. It is bittersweet to read his "Sound Doctrine Revisited," especially as this week we got the news that Nellie Gray, founder of the March for Life, had died (on August 13, see p. 118). Buckley speaks about what was good news at the time, Ronald Reagan's Mexico City policy, forbidding the use of federal money to promote abortion abroad. We look forward to hearing from Mr. Buckley, author of the first Human Life Amendment, at our dinner.

Hiroko Ogisu Clark, a newcomer to our pages, has provided us with a fascinating look at crisis pregnancies centers in Japan. Clark first profiles a pro-life hero, Dr. Taiji Hasuda, who founded the Stork's Cradle, a program to save the lives of infants at risk of abandonment and infanticide. She then explores Japanese attitudes towards the value of life itself—reporting, for instance, that the suicide rate in Japan is one of the highest in the world, and that, in treatment of the elderly, abuse and abandonment are also widespread. "One reason for Japan's failure to appreciate the sanctity of human life may be the nation's historic tendency to view human life primarily in political or economic terms." Back home in America, countless babies are being saved by the efforts of pregnancy centers, and in our next highly informative article, senior editor Mary Meehan takes readers on a tour of several centers, describing "their strengths and weaknesses, and how they might be more effective." Meehan is not afraid to rock the boat a bit, as you will see; she criticizes the tactics of some centers. But all in all, her article is really a tribute to the dedication and perseverance of so many in the pregnancy-care movement.

We approach, on January 22, 2013, the 40th anniversary of *Roe v. Wade*, the death sentence for many millions of unborn children. Contributor Gregory Roden returns with an historical look at the *Roe* decision itself: One of the "principal propositions" behind the "logic" of the Supreme Court ruling was based on Justice Harry Blackmun's claim that "some scholars doubt that the common law *ever* applied to abortion." Blackmun never names them, but Roden follows the trail of these "unknown scholars" and clearly demonstrates the *appalling* (but not surprising, given the widely acknowledged illogic of *Roe*) lack of substantiation for Blackmun's claim.

Our next article—following a special section in which we publish the winning

entries in our college essay contest (p. 71)—begins as a father’s tale: Just when contributor Stephen Vincent breathed a sigh of relief—he had managed “the talk” with his 11-year-old son—he was “struck with the uneasy knowledge” that there would need to be a “second talk,” to explain asexual reproduction methods which are now facts of life in our brave new world. In “Asexually Speaking,” Vincent looks at the frightening frontiers of asexual reproduction “chic”—including egg and sperm donation. Vincent interviews Jennifer Lahl, President of the Center for Bioethics and Culture, who is the producer of the powerful documentaries *Eggsploitation* and *Anonymous Father’s Day*—the latter revealing the anguish of the children of such anonymous unions.

As with reproduction, so too with marriage—we are in an intense struggle about whether or not to redefine, on a constitutional level, what the institution means. Attorney Thomas Clark, who wrote for the *Review* about the *Perry* decision in our *Winter/Spring* 2011 issue, has returned with an “Update.” This February, a three-judge panel for the U.S. Court of Appeals affirmed the decision of Chief Judge Vaughan Walker of the U.S. District Court for the Northern District of California that California’s Prop 8 violates the federal Equal Protection Clause. It is “all but certain,” Clark writes, that proponents of Prop 8 will appeal to the Supreme Court—and so “the future of marriage itself” will be decided by our nine Justices—or, as we saw with Chief Justice Roberts and Obamacare—by *one*.

We switch gears with our next article, in which senior editor Ellen Wilson Fielding poses the question: “Is Life Worth Living?” Fielding’s essay is not a knee-jerk reaction against the culture of death, a kind “of course it is!” Rather, she contributes a nuanced examination of the most difficult aspects of this question: how attitudes have changed in a post-Christian society, how there are circumstances any of us *can* imagine in which we would not want to continue living.

Our final article is a chapter from a memoir, *The Man in the Middle*, by Timothy S. Goeglein, formerly deputy director of the White House Office of Public Liaison under President George W. Bush. In “Stem Cells Before the Storm,” Goeglein gives us his insider’s view of the process President Bush went through to arrive at his decision—announced August 9, 2001—that he would allow federal funding for stem-cell research on existing stem-cell lines only. As you no doubt recall, there were wide ranges of reaction to this decision, even among pro-lifers; what Goeglein wants the reader to appreciate is the long and arduous road taken by President Bush to gain understanding of the issues and ultimately reach a decision which Goeglein believes was “the most consistently pro-life decision the president could have made.” Soon of course to be eclipsed in the news (and in people’s psyches) by the terrorist attacks a month and two days later.

The five appendices which close the issue offer a rich complement to our articles—and Nick Downes’ cartoons offer some relieving giggles. With much gratitude to our fine contributors, and to our readers . . .

MARIA MCFADDEN MAFFUCCI
EDITOR

A Grassroots Legislative Boom

William Murchison

A well-known line from *Butch Cassidy and the Sundance Kid* comes to mind. The amiable outlaws, hard as they try, can't shake a pursuing posse. "Who *are* these guys?," they keep asking. All that Butch and Sundance can be sure of is some uncomfortable destiny associated with learning the answer to their urgent question.

In like manner, who are the "guys"—and, I might add, the "girls"—on the right-to-life front who just keep acoming when you'd think they'd have given up by now, all lost and tuckered-out? Instead they seem to be throwing the seemingly triumphant "reproductive freedom" lobby into fits of anxiety. Who are they, anyway? Just a few dogged outriders, or an agency capable of restoring in large measure the constitutional rights of the unborn?

I believe the indicated answer is, we'll see. However, what right-to-life folk see, and with some delight, is the burgeoning of grassroots resistance to the doctrine that should you occupy room in the womb, your mom enjoys the right to evict you without notice.

A little distinction-making activity is in order at this point. Never, since *Roe v. Wade* first came down, in 1973, have the so-called grassroots been somnolent concerning the aforesaid right, rightly identified by them as no right at all, rather a violation of a sacred command to save, when possible, that which the Maker has made. There have been since the '70s, protests in front of abortion clinics; there have been vigils, rallies in Washington, face-to-face reasonings with political leaders. There have been lawsuits and sermons and phone banks and polls and magazines (e.g., this one) and everything else you can think of connected to the elusive, as it happens, goal of reclaiming official respect for unborn life.

Is it all, at last, starting to pay off? I want to note evidence that this might just be the case—evidence of something large enough to annoy the New York *Times*' editorial writers, who warned, in July, of a "state-by-state assault on women's rights and the Constitution by Republicans . . ."

The *Times* undertook to instruct a federal judge in Arizona, the Hon. James A. Teilborg, concerning his constitutional duty to swat down a state law imposing "new restrictions on legal abortions, based on medically dubious ideas about when a fetus can begin to feel pain." The law, signed last April

William Murchison writes from Dallas for Creators Syndicate and is a senior editor of the *Human Life Review*. The author of *Mortal Follies: Episcopalians and the Crisis of Mainline Christianity* (Encounter Books), he is working on a book about the moral collapse of secularism.

by Republican Gov. Jan Brewer, was “a product of right-wing politics.” Its constitutional deficiencies should have been “clear to the judge,” who, the *Times* dared to hope, might block “this harmful law from taking effect.”

Which—can you imagine it?—he didn’t. Instead he upheld a statute that the American Civil Liberties Union had called “the most extreme abortion law in the country.” The plaintiffs quickly recovered, obtaining an emergency order from the Ninth Circuit Court of Appeals that blocks enforcement. A reasonable guess is that the Ninth Circuit, the country’s most liberal, won’t like the law any better than the *Times* does. After that, of course, there’s the Supreme Court, at whose majestic door lies proximate responsibility for the aforesaid contentions and anxieties.

Let something else be noted: Arizona’s law isn’t the only law of this character to be enacted at the state level just since 2011. State lawmakers across the country—save, naturally, on the Northeastern and far Western fringes—are bucking orthodox pro-choice opinion in order to ban abortion at about 20 weeks. A federal judge, meanwhile, has squared their intentions with those intuited from study of the medical circumstances that obtain at 20 weeks of pregnancy.

The present point for discussion isn’t prospects, bright or dim, for judicial affirmation of the Arizona law. The point is the law’s existence—years and years and years past the point at which the proponents of “choice” must surely have expected the cause they overwhelmed judicially, in 1973, to have melted like an ice cube in the sun. Instead the cause intensifies. Lawmakers grind out more and more, as opposed to fewer and fewer, laws aimed at limiting the number of abortions. New strategies pour forth from nimble minds. Says Planned Parenthood’s president, Cecile Richards, a hint of desperation in her tone: “We’re in court and in legislatures in almost every state of the country. It has just gotten crazy.”

Who *are* these guys? What’s the matter that nothing seems to knock the legislative opponents of abortion off balance or quench their hope of reducing *Roe* not exactly to a nullity but to something far less grand—and deadly—than envisioned originally? Could it be said with any accuracy that the scaffolding on which the legal right to abortion rests is starting to sway in the wind and might not be counted on to last forever? Informed speculation has it that the Supreme Court itself might be ready to revisit its 1973 doctrine, laid down in *Roe v. Wade* and *Doe v. Bolton*. Hmmmm.

Time, certainly, to inspect what goes on.

A lot, in fact, goes on: an intensification, you might call it, of the wide and deep resistance born of the judicial presumption represented by the *Roe* and *Doe* decisions. For testimony regarding present trends, I call on the

Guttmacher Institute—which, for all its outspokenness concerning “sexual and reproductive health rights,” catalogs with thoroughness and sobriety.

“Over the last decade,” says a Guttmacher report from the start of 2012, “the abortion policy landscape at the state level has shifted dramatically.” It appears that “55 percent of U.S. women of reproductive age now live in one of the 26 states considered hostile to abortion rights.” This compares with a mere third in 2000.

In 2011, says Guttmacher, states adopted 135 new provisions bearing on “reproductive health.” The year before it had been 89, the year before that 77. “A striking 68 percent of the reproductive health provisions from 2011,” according to Guttmacher, “are about restriction, compared with only 26 percent the year before.”

States, in other words, have toughened their approach to the protection of unborn life. They have not all danced to the same tune. States whose leaders share the worldview of the *New York Times* (New England, New York, the Left Coast) have not let up on their commitment to the *Roe* doctrine. Yet the glorious thing about the federal system—one of the many glorious things—is the latitude it provides individual actors to determine, within certain prescribed limits, the policy direction in which they want to go. The federal system is the enemy of uniformity and the straitjacket. Even in the 21st century there remains considerable room for experimentation and the testing of limits.

It seems a fair guess that the sheer tenacity of the right-to-life movement—coupled with wide disgust at the cultural and political climate of Barack Obama’s Washington, D.C.—explains the willingness of state lawmakers to take chances with creative expansions of the claim to immunity from assault-by-abortionist. Elections that have installed conservative and pro-life champions in state legislative chambers are also crucial to understanding the abundance of new laws narrowing the grounds on which a woman may claim the right to an abortion.

Arizona’s law, though stigmatized as extreme by the ACLU and the *Times*, is congruent with laws passed by nine other states—North Carolina, Nebraska, Alabama, Idaho, Indiana, Kansas, Oklahoma, Georgia, and Louisiana over the last couple of years. The idea is to claim, in behalf of unborn life, every ounce of protection available. Arizona’s count of gestational age, starting from the last day of the mother’s menstrual cycle, fills that bill even more strictly than the gestational-age-counts of the other states. The count, Arizona-style, climaxes at about the normal time for an ultrasound procedure, just before viability commences.

Concerning the opportunities for life-protection that arise at this point, a Guttmacher estimate is worth noting—to wit, only 1.5 percent of U.S.

abortions in 2006 took place after 20 weeks. Is it not worth noting at the same time that 1.5 percent is still 1.5 percent? The authors of Arizona's HB 2036 believed so.

Judge Teilborg—a Bill Clinton appointee, by the way—backed them up. He found the bill's escape clauses constitutionally adequate. The ban was no flat prohibition of abortion between 20 weeks and the onset of viability. Arizona had left open the door for 20-week abortions to save the mother's life, or to counter the possibility of "substantial and irreversible impairment of a major bodily function." Yes, the law, as Teilborg acknowledged, could "prompt a few women who are considering abortion as an option to make the ultimate decision earlier than they might otherwise have made it." Still, it prohibited no woman from deciding ultimately to abort.

Why such a law, then? For compassion's sake. Teilborg noted that the legislature had "cited the substantial and well-documented evidence that an unborn child"—I pause to note the judge's word choice: *child*, not *fetus*—"has the capacity to feel pain during an abortion by at least 20 weeks gestational age." Teilborg said the state "presented uncontested and credible evidence to the court that supports this determination." Thus "the court finds that, by seven weeks gestational age, pain sensors develop in the face of the unborn child"—*child*, once more!—"and, by 20 weeks, sensory receptors develop all over the child's body and the children have a full complement of pain receptors." The child reacts, said Teilborg, "to painful stimuli as measured by increases in the child's stress hormones, heart rate, and blood pressure." The state's interest in "limiting abortions past 20 weeks gestational age" was perforce "legitimate."

In Teilborg's deliberations on pain might be heard powerful echoes of contentions during the partial-birth controversies of recent years: the sufferings of the unborn, unrebuked aggression against defenseless life. Not the lightest effect of Arizona's law, and kindred statutes passed elsewhere, is the reconnection they can achieve between now-scattered memories of the things that humans, at their best, owe one another—kindness, for example; generosity; protection. The Arizona statute could be called a classroom for revival of impulses not easy to replicate in the "me" era. Small wonder Planned Parenthood likes it not at all. Too much dwelling on the psychic and moral cost of abortion could shoot down the whole project of rendering the procedure no more notable or significant than a wisdom tooth extraction.

In 2012, thanks to HB 2036 and several other legislative pro-life initiatives, Arizona became, by the Guttmacher Institute's reckoning, a state "hostile" to abortion. No doubt such an assessment suits Gov. Jan Brewer right down to the ground. "Arizona," Guttmacher explains, "moved from supportive

to hostile almost entirely because of the departure of Gov. Janet Napolitano (D), who repeatedly vetoed provisions to limit abortion access . . .” (and subsequently became President Obama’s secretary of Homeland Security). Brewer was eager to proceed in precisely the opposite direction.

And so the great “middle” ground, as the Guttmacher Institute defines it, eroded further—the ground occupied by states with no more than two or three statutory provisions that restrict abortion. “In 2000, 19 states were middle-ground and only 13 states were hostile. By 2011 . . . 26 states were hostile to abortion rights, and the number of middle-ground states had [been] cut in half, to nine.” A statistic that Guttmacher finds discouraging gives heart, by contrast, to the pro-life folk who just keep acoming’, never mind the setbacks they encounter in states where disdain for unborn life is high, not to mention fashionable.

Around the country an intellectual battle goes forward—by political and judicial means, the means modern Americans seem to like best for effecting change of any kind. The 20-week Teilborg opinion is part of the picture, with its affirmation of a right, if not a positive duty, to take into account the pain that abortion inflicts on the life chosen for extinction. There is no mention of such, um, complications in *Roe v. Wade*, whose jurisprudential thrust is all about rights and privileges and personal satisfactions.

On other parts of the battlefield, legislatures “hostile” (in Guttmacher terminology) to abortion enact laws of congruent purpose, meant to carve out, in one way or another, space for the preservation of unborn life. Guttmacher reports, for instance, the passage in nine states of laws requiring counseling on abortion’s mental downsides, including the risk to the mother of suicide or suicidal thoughts.

The day after Teilborg’s Arizona decision, by happy coincidence, the U.S. Court of Appeals for the Eighth Circuit gave a thumbs-up to South Dakota’s counseling law. A three-judge panel had invalidated the law. A subsequent hearing before the full court resulted in a 7-4 decision calling the law “neither an undue burden on abortion rights nor a violation of physicians’ free speech right”—duly horrifying the *New York Times*. Meanwhile eight states restrict abortion by medication (mifepristone). Twenty-one require that ultrasound images of the womb either be shown to a woman seeking abortion or else made available to her. Already 20 states have limited abortion coverage in the health exchanges mandated under ObamaCare.

Then there’s the donnybrook over Planned Parenthood, the celebrated provider of birth control, gynecological exams, and abortions: latterly an adjunct of the Democratic Party by virtue of its one-sided political contributions

and May 30 endorsement of President Obama for reelection. Cecile Richards, 55-year-old daughter of all-purpose feminist and Democratic Texas governor, the late Ann Richards, puts the word out that “the Republican Party leadership is on a crusade to end birth-control access in America.” If Indiana Congressman Mike Pence—a Republican, of course—failed last year to cut off Planned Parenthood’s federal money, various states are happy to essay the defunding job from their own end. Indiana, North Carolina, Kansas, Tennessee, and Texas—not to mention Arizona—are all targets of Planned Parenthood suits claiming state-funding cutoffs punish the organization for providing constitutionally protected services. The claim would seem a slim one. A group providing constitutionally protected services enjoys entitlement to taxpayer funding? Mitt Romney meanwhile promises if elected to do his own bit to push Planned Parenthood off the federal payroll.

Yeah, who *are* these guys—the ones causing the likes of Cecile Richards, it could be supposed, to awaken in a cold sweat, nerves taut and eyes darting into dark corners for signs of the lurking foe? Is opposition to abortion just another Republican dirty trick, as Democratic operatives are prone to suggest? Or is it evidence—whether marshaled by a political party or not—of a new awakening to the truly grave character of that which the Supreme Court, in January, 1973, imposed on the states with barely a nod to competing viewpoints?

That dislike for the *Roe* regime, far from collapsing, should be intensifying after four decades, is the salient feature of the new circumstances at the political and legislative level. Think: What other phenomenon from the early ’70s do we remain angry, agitated, vexed, defensive, aggressive about? The war in Vietnam no longer excites interest or discussion. Lyndon Johnson, who died the same day the Supreme Court handed down *Roe* and *Doe*, is a name without special resonance, an echo of battles past. No one speaks much of Richard Nixon or, for that matter, of Bernstein and Woodward, save when one of them has a new, definitely non-Watergate, book out. The “energy crisis” persists only in diminished form: background noise more than anything else.

The memory of Justice Harry Blackmun’s craft, or lack of it, in *Roe v. Wade*—that is what persists. Why should it not? It changed America, as indeed it was meant to. The biblically based presumption in favor of unborn life had informed thinking and practice in the West for as long as there had been Christianity. It was plain to the fathers of the church, as it had been to the compilers of God’s word in the scriptures, that life was the gift of God. The gift of God was to be handled with care, not to mention reverence and, generally, excitement at the extension of His handiwork in the world. The

gift of God was not to be slapped away for any old reason. The 19th century English historian W. E. H. Lecky noted that no law in the pagan societies of Greece and Rome had ever condemned abortion. The discarding of life was a matter of no great moment to societies with a tenuous grasp, if any at all, of life's origins. Enter at that point the church, which, in Lecky's words, denounced abortion "not simply as inhuman, but as definitely murder. In the penitential discipline of the church, abortion was placed in the same category as infanticide."

To the utilitarian conception of the Greeks and the Romans—life useful if you thought it so, otherwise if you thought it otherwise—the *Roe* and *Doe* decisions returned the United States of America. "It is, in some sense, as though two thousand years had rolled away and the streets again were full of worshipers hastening up the hill to the columned temple of the gods."

I am quoting myself. I wrote those words in the early '90s. Would I—could I—write them today with similar conviction? I can't say. Certainty as to the movements of opinion and circumstance in human societies is not a thing to recommend highly.

The current pushback against the abortion regime of "me first" has likely its political elements: the element of let's get Obama, let's stick it to the Democrats. The necessity of *someone's* governing always suggests to many the necessity of *their* being chosen as the "someones." There is surely some of that in present pushback movement. I make bold to suggest at the same time that the moral vacuity of the abortion regime has begun to tell on minds and consciences. The seven justices—very learned men, yes, of course—who hung *Roe* around their countrymen's necks in 1973 did so with only the most superficial doubts as to the rectitude of their case. It would all work out, they reasoned. We would get used to a regime of Choice: everybody pleasing himself; by which I mean, of course, "herself." It has not worked at all. That is a lot of what goes on here, I think. The abortion regime is a practical as well as a moral flop. Most of us now know it, whether admitting to that knowledge or not.

Any guesses, therefore, as to how long it will take the posse to catch the outlaws? My own guess: The abortion regime's disappearance will coincide with modern culture's re-appropriation of its lost spiritual-ethical norms. That could take a while, to put it mildly. While we wait, nonetheless, another pop culture line brings cheer. Credit Wesley Smith with appropriating the line in a blog post commenting on the Arizona decision. What the decision shows, Smith observed with no small show of satisfaction, is "how the times, they are a changin'."

Sleeping with the Enemy?

George McKenna

“Enlightened statesmen will not always be at the helm.”

—James Madison, Federalist #10

When I write about the killing of innocent human beings through abortion, euthanasia, and destructive stem-cell research, I try to resist the temptation to stray into other social and political issues. But the attempt by the Obama Administration’s Department of Health and Human Services (HHS) to force Catholic institutions to adopt contraceptive insurance for their employees forces us to view the life issue on a larger canvas. Last spring many hoped that the issue would soon become moot when it seemed that the Supreme Court was about to strike down ObamaCare in whole or in part. But the Court’s announcement in June that the act does not violate the U.S. Constitution destroyed that comforting illusion, making it all the more urgent that we look at the broader context of what has been taking place in Washington. It involves questions of civil liberties, long-time political alliances, and, what concerns me most, an issue about the size and scope of the federal government. I want to survey some of these issues and their connections to the current struggle.

Birth Control, Abortion, and Religious Liberty

Administration spokesmen keep saying that its mandate is all about “birth control.” But that is manifestly untrue. It is slightly ridiculous that I have to go back to high school biology to make this point, but that’s the way things are right now; so here goes. Birth control means doing something (or, in the case of natural family planning, refraining from doing something) in order to expect that sperm will not reach an egg during a woman’s fertile period. That is birth control. Whatever you may think of it, it does not kill human beings. But the contraceptive mandate does involve killing, because it also covers abortifacients like Ella, a so-called “morning after” pill. Here we are not talking about sperm and eggs but about the killing of a tiny member of our species who has already been created by the union of a sperm and an egg, even if she’s only a day old.

Both the logic of it and the facts surrounding it go further. If Catholic institutions can be forced to be complicit in killing day-old humans, why not hundred-day-old humans? Anyone who followed the long course of

George McKenna is professor emeritus of political science at City College of New York, author of *The Puritan Origins of American Patriotism* (Yale, 2007), and co-editor of *Taking Sides: Clashing Views on Political Issues* (McGraw-Hill, 2013), now in its eighteenth edition.

ObamaCare sausage-making in the 110th Congress will know how frantically its backers worked to beat back the so-called Stupak amendment, which would have explicitly banned abortion from the health insurance program. In one of the saddest events of this period, the amendment's author, Congressman Bart Stupak, along with his fellow "pro-life Democrats," caved in, settling for a fragile, malleable executive order that some states have already been caught ignoring. It is simply impossible, then, to accept the Administration's oral assurance that it has no intention of using ObamaCare as a vehicle for extending abortion funding nationwide. What other reason could it have had for fighting off a simple no-funding amendment, essentially the same kind that Hillary Clinton had allowed in her health-care bill in 1993? Indeed, the very logic of "preventative services" in ObamaCare points the way to abortion. What better way to prevent babies than killing them *in utero*?

The birth control/abortion mandate is also tied to the religious freedom issue. It is not a recommendation, or an invitation, or a temptation to violate one of the tenets of the Catholic religion. It is a *mandate*. Whatever non-Catholics—or Catholics, for that matter—may think about contraception, the issue is whether a state may compel people to provide it. This is the issue that the United States Conference of Catholic Bishops (USCCB) keeps emphasizing, and it is one that should concern Americans of every religious persuasion. If the state can compel Catholics to pay for birth control, it can ban kosher slaughtering (as it has in some Scandinavian countries), punish Evangelical Protestant ministers for condemning same-sex marriage (as it has in Canada), force any mandate or prohibition down the throat of any religious group. Thoughtful people of all faiths recognize that the Catholic fight is their fight. As former Arkansas governor Mike Huckabee, a Baptist minister, put it, "In many ways, thanks to President Obama, we're all Catholics now." All of us, Catholics and non-Catholics, and whatever our differences on birth control, owe a tremendous debt to the USCCB for sparking widespread resistance to the mandate. In many ways, thanks to them, we're all bishops now.

Left and Right Critics of the Bishops

Alas, some Catholics on the left have opted for neutrality or even sympathy with the other side, and some Catholics on the right seem to take spiteful satisfaction from the whole affair. Washington *Post* writer E.J. Dionne, a self-identified Catholic, at first expressed something like anguish over the mandate ("Obama threw his progressive Catholic allies under the bus"). But he quickly got back in line with the Administration after its empty "accommodation" of February 10, which continued the mandate but said that the insurance

companies had to pay for it (pretending not to notice that the insurance companies would pass back the cost in higher premiums and that many Catholic institutions are self-insured). Now Dionne declared that the Catholic bishops must decide whether they want “to defend the church’s legitimate interest” or “wage an election-year war against President Obama.” Throwing down the gauntlet, he added, “do the most conservative bishops want to junk the Roman Catholic Church as we have known it, with its deep commitment to life and social justice, and turn it into the Tea Party at prayer.” For him, the bishops’ protest really amounts to a threat of partisan political warfare, and he, being a good Democrat before anything else, was fighting back with his own threat: If you bishops don’t shut up, I will hammer you with the charge of being “the Tea Party at prayer.” Does that kind of talk frighten the new generation of Catholic bishops? I don’t think so.

More nuanced was the reaction of the editors of *America*, the nation’s leading Jesuit magazine. “For a brief moment,” the editors wrote, “Catholics on all sides were united in defense of the freedom of the Catholic Church to define for itself what it means to be Catholic in the United States.” But, the editorial continues, the Administration’s “accommodation” of February 10 essentially met the bishops’ objection, and now they should talk with the Administration in “a conciliatory style that keeps Catholics united and cools the national distemper.” Instead, by continuing the struggle and getting into the “fine points” of policy matters, the bishops are involving themselves in matters of prudential judgment, better left to the politicians.

The *America* editorial has a lighter touch than E.J. Dionne’s piece; there is even a plaintive can’t-we-all-get-along note in it. But its innocence is far more alarming than Dionne’s thuggishness. Citing what it calls “fundamental principles of Catholic political theology,” it holds that, since there are two competing rights claims in the dispute, women’s health and religious freedom, Catholic rights theory “assigns to government the responsibility to coordinate contending rights and interests for the sake of the common good.” And that is what the government did in this case. It did “what Catholic social teaching expects government to do—coordinate contending rights for the good of all.” You may need to reread these quotes. The Jesuit editors of *America* are saying that “government,” i.e., the Obama Administration, should have the sovereign authority to settle the dispute. But the government is one of the parties to the dispute! This is like asking one of the litigants in a legal case to decide the case for the court. Yet the editors insist that this is one of the “fundamental principles of Catholic political theology.”

Paul A. Rahe, a professor of history and political science at Hillsdale College, criticizes the bishops from the opposite end of the political spectrum.

Rahe is one of the main contributors to *Ricochet*, a conservative-libertarian blog. On February 10, the day that the Obama Administration issued its revised version of its contraception mandate, Rahe wrote a long piece in *Ricochet* entitled “American Catholicism’s Pact With the Devil.” As the title suggests, Rahe’s thesis was that “the bishops, nuns, and priests now screaming bloody murder have gotten what they asked for.”

The weapon that Barack Obama has directed at the Church was fashioned to a considerable degree by Catholic churchmen. They welcomed Obamacare. They encouraged Senators and Congressmen who professed to be Catholics to vote for it.

Rahe complained that in his lifetime the American Catholic church has lost much of its moral authority.

It has done so largely because it has subordinated its teaching of Catholic moral doctrine to its ambitions regarding an expansion of the administrative state. In 1973, when the Supreme Court made its decision in *Roe v. Wade*, had the bishops, priests, and nuns screamed bloody murder and declared war, as they have recently done, the decision would have been reversed. Instead, under the leadership of Joseph Bernardin, the Cardinal-Archbishop [sic] of Chicago, they asserted that the social teaching of the Church was a “seamless garment,” and they treated abortion as one concern among many.

Passing over some of the more hyperbolic rhetoric in his piece, his case against the bishops seems to rest on two contentions: *First*, the bishops and the rest of the Catholic clergy should have “screamed bloody murder” immediately after *Roe v. Wade* in 1973. Instead, under the leadership of Joseph Cardinal Bernardin, they came up with the “seamless garment” doctrine, which treated abortion as merely one concern among many. *Second*, decades ago the Catholic clergy concluded a “pact with the devil,” and so now they have “gotten what they asked for” because “the weapon that Barack Obama has directed at the Church was fashioned to a considerable degree by Catholic churchmen.” Let’s examine each of these contentions.

Screaming Bloody Murder

As Timothy A. Byrnes shows in his detailed account of the period (*Catholic Bishops in American Politics*, Princeton, 1991), the Catholic clergy did—quite literally—scream bloody murder after *Roe v. Wade*. Shortly after the decision, the bishops declared “as emphatically as possible, our endorsement and support for a constitutional amendment that will protect the life of the unborn.” In the following year no fewer than four cardinals testified before the Senate Judiciary Committee in support of that amendment. In 1975, in their most ambitious undertaking, the bishops published a “Pastoral Plan for Pro-Life Activities,” an elaborate document setting forth a strategy

of education, pastoral help for women who had had abortions, and a “public policy effort” aimed at curbing them. And in the 1976 presidential elections, the bishops held the feet of both candidates to the fire on the abortion issue. Jimmy Carter, the Democrats’ nominee, tried to wriggle out by arguing that on the whole Democrats were actually more pro-life than Republicans because of their longstanding support for social programs against hunger, disease, drug abuse, and so on. The bishops were having none of that, especially not Archbishop (later Cardinal) Joseph Bernardin, President of the USCCB. (It had a different name at the time.) Bernardin agreed that human life can be threatened in a variety of ways, but added that abortion is different because it is “a direct assault on the lives who are least able to defend themselves.” The politicians, both Democrat and Republican, were clearly intimidated. The planks of both parties were mealy-mouthed on the issue.

Then, four years later, something else happened—and didn’t happen. What happened in 1980 was that the Democrats, who had been waffling, now came out squarely for abortion. Their 1980 platform declared it a “fundamental human right” and called for federal funding of it. What didn’t happen was an expression of outrage from the bishops. They said nothing for three years. The USCCB’s next pastoral letter, in 1983, was not on abortion but arms control. Joseph Bernardin, now a Cardinal, did discuss abortion in two major speeches at Catholic universities in 1983 and 1984, but now folded it into his famous “seamless garment” metaphor, making abortion approximately equal to a variety of other social injustices that did not involve the direct killing of innocent human beings. Bernardin’s new position was not much different from Jimmy Carter’s in 1976—when Carter tried to argue that the Democrats were actually more pro-life than Republicans because they supported more social programs, a sophism that Bernardin stoutly rejected at that time. In sum, Paul Rahe is flat-out wrong in his charge that the bishops had failed to forcefully protest in the immediate aftermath of *Roe*. But his mistake is in his timeline: The bishops had indeed “screamed bloody murder” for six years after *Roe*; then they stopped, and when they started again three years later, it was in a lower key and a softer tone.

Rahe’s second criticism of the Catholic clergy, that they had made some kind of Faustian bargain with liberal politicians and are now reaping the bitter fruits of it, requires a longer answer. We need to take a backward look at the relationship between Catholics and the Democratic Party.

Catholicism and Social Justice

When the first large wave of Irish Catholic immigrants came ashore in New York, Philadelphia, Boston, and other coastal cities in the 1840s, they

were welcomed by Democratic Party functionaries, who recruited them for their votes and their services to the party, rewarding them with food, fellowship, rent money, and sometimes regular paying jobs. Thus began the historic ties between the Catholic Church and the Democratic Party. By the 1960s, even as some of these old ties were becoming historically and economically obsolete, a newer bond was added that found particular favor among younger, better-educated Catholics. It was not ethnicity or the prospect of material reward that bound this new generation to the Democratic Party. It was ideology, in particular the ideology of “social justice.”

Social justice is not the same as “charity,” which (as the root of the term implies) is given out of love. Justice, on the other hand, entails rights. Americans believe that all human beings have the rights to life, liberty, and the pursuit of happiness. It is not charity for government to protect those rights; government must do so, for the rights come from God. But—here is the hard part—what exactly is encompassed within these broadly worded rights? Now we enter the realm of prudential wisdom. Statesmen and citizens must argue out the content in the public square. In the 1950s and early ’60s, the civil rights movement made a compelling case that Southern racial segregation constituted a gross violation of liberty, and that national action was required to amend the situation, since the Southern states were run by segregationists. Also in the ’60s, Michael Harrington and others made the case that the continuation of poverty and hunger in an affluent society constituted a national scandal that required a national solution. By the end of the decade, the American Catholic Church had enthusiastically embraced these and other social-justice causes.

Progressive Democrats

As it happened, during the last century the same theme of social justice had also worked its way into the Democratic Party. It actually started four years before the 20th century, in 1896, when the Democrats fused with the Populist Party and nominated William Jennings Bryan for President. The Populists believed that greedy capitalists, who had gotten rich by cheating and exploiting “the plain people” of America, caused poverty. Bryan’s campaign caused a considerable stir, but he was badly beaten by the Republican, William McKinley, and Populism quickly faded into obscurity. Its main successor as a reform movement was Progressivism, which emerged out of the reform wing of the Republican Party. While the geographical base of the Populists was in the farms and small towns of the South and West, the Progressives appealed mainly to urban intellectuals in the East and upper Midwest. One of those intellectuals, Herbert Croly, wrote an ambitious and

prolix book called *The Promise of American Life* that became the virtual bible of Progressivism. In Croly's view, the Bryan Democrats were right to diagnose the problem of poverty in America as partly the result of America's class divisions. Where they went wrong was in their solution to the problem—a grab-bag of miscellaneous reforms, from direct election of senators to monetary tinkering—that never came to grips with the underlying cause of the problem. The real problem was our decentralized and disorganized political system, a crazy-quilt pattern of differently run state and local governments combined with a weak government in Washington. It was the perfect recipe for political impotence and “drift,” letting the nation be pulled this way and that by clashing interests and the contingencies of history. What America needed was a united, purposeful government in Washington headed by a powerful executive, a president who possessed at once the knowledge of governing and the personal charm to make government interesting to the masses.

The American people are absolutely right in insisting that an aspirant for popular eminence shall be compelled to make himself interesting to them, and shall not be welcomed as a fountain of excellence and enlightenment until he has found some means of forcing his meat and wine down their reluctant throats.

The great corporations and banks were not necessarily enemies of the American people; properly tamed and managed by an administrative state, they could actually serve the public interest; but they needed guidance and leadership. By the early years of the last century, this general thesis was popular among liberal Republicans. Theodore Roosevelt read Croly's book, loved it, and summoned him to his estate on Long Island. In 1912 Roosevelt ran as a Progressive when the Republicans renominated President William Howard Taft. Roosevelt lost, of course, but in the meantime Progressivism had begun migrating away from liberal Republican ranks to the intellectual leadership of the Democratic Party. Woodrow Wilson, the victorious Democrat in the 1912 election, called himself a Progressive, and, though his version of it differed from Roosevelt's in theory, in practice it assumed many of its features, especially during World War I.

After Wilson left office in 1921, the Democrats had to endure more than a decade of conservative Republican rule in Washington, but they made their big comeback in 1932: Franklin Roosevelt was elected president and the Democrats enlarged their majority in Congress. Roosevelt promised a “new deal” for the American people,” but he left the term undefined. Once in office, his New Deal turned out to be an ambitious program of public works, price controls, public assistance, and business regulation. Dozens of government agencies, from the Federal Housing Administration to the National Labor

Relations Board, increased the size of the federal government 90 percent in the first eight years of Roosevelt's presidency. This marked a major turning point for Democrats. They now were committed at once to social justice and to a greatly expanded central-government strategy for achieving it.

By the 1950s then, the need for strong centralized government had become the default position in American politics, occupying what New Deal historian Arthur Schlesinger, Jr. called its "vital center." Even mainstream Republicans accepted it, if rather cryptically. In 1952, Republican Dwight D. Eisenhower, calling himself a champion of "modern Republicanism," won the Republican nomination against conservative Senator Robert A. Taft. Once in office, Eisenhower created a new cabinet department of Health, Education, and Welfare (predecessor of HHS), presided over expansions of New Deal programs such as Social Security, and established a national program of interstate highways.

So the Republicans, at least the moderate wing of the party, went along, but there was never any doubt that the political force driving the expansion of government was the Democratic Party. When they returned to the White House in the 1960s, activist government in Washington came into full flower. The Great Society established a giant welfare-state apparatus that President Lyndon Johnson promised would make poverty obsolete by 1976. In his five years in office, he increased the size of the federal government by 30 percent and presided over a huge increase of entitlements that inflated the size of government for years to come. Stripped to its causal essentials, the Democrats' master narrative was stark and simple: America's destiny is to realize the highest degree of social justice, and that will require the exertions of a strong central government.

Catholics, Democrats, and Abortion

Very much attuned to that narrative were the idea people of the American Catholic Church, especially its new class of leaders. The priests and nuns who had marched in civil-rights demonstrations, the earnest young Catholic writers who rummaged through centuries of Catholic social teaching to give a specifically Catholic inflection to Progressive thought, assumed as a matter of course that the federal government was the only reliable vehicle for wide-scale implementation of social justice, and that the best political engine for powering that vehicle was the Democratic Party. By 1970, when this new class of Catholic men and women reached positions of influence within its hierarchy, the Catholic Church in America could be recognizably caricatured as the Democratic Party at prayer.

But then came *Roe v. Wade*, the snake in the garden. It tempted politicians

to throw up their hands and say, "What can we do? The Supreme Court has spoken." Democrats were especially prone to that temptation because the rising feminist movement had made its home in their party, and the right to abortion was *their* idea of social justice. The point came, then, when many Democratic politicians had to choose between the Catholic Church and mainstream feminism. ("Feminists for Life," a breakaway organization founded in 1972, has attracted many adherents and has a promising outreach program in colleges, but possesses little clout in the Democratic Party.) The Democrats made their decision in 1980: They were now the abortion party. And the bishops fell silent.

Today, with a new generation of John Paul II appointees in control of the USCCB, it looks as though it may have recovered some of its spine. The seamless garment is not much spoken of anymore (except from local pulpits), and in 1998, the bishops' pastoral letter came close to repudiating it. Yes, the bishops wrote, programs addressing racism, poverty, and the like should indeed be pursued. "*But being 'right' in such matters can never excuse a wrong choice regarding a direct attack on human life.*" (Their emphasis.) Still, it will take many years for the bishops of the Catholic Church in America to earn back the respect that was once accorded to them from politicians in both parties, and in the meantime the gigantic state apparatus, the Leviathan fed for more than 70 years on ever-expanding government programs, is turning on them. It would devour them if it could.

The Leviathan State

A few statistics may give us some sense of how big it has grown. Since the beginning of the last recession (December 2007), during which the private sector shed more than 7.5 million jobs, the total federal government workforce (excluding census and postal workers) has grown by 11.7 percent, adding 230,000 jobs. President Obama's 2012 budget proposes an additional 15,000 federal jobs, including 4,182 additional Revenue Service employees, 1,054 of whom will be used to implement ObamaCare alone. In 1960, there were roughly 57,000 employees working in federal regulatory agencies; today there are about 290,000. When the first issue of the *Federal Register*, the official record of new and proposed federal regulations, came off the press on March 14, 1936, it was a 16-page booklet. In 2011, the *Register* came to 80,000 pages; in one account, ObamaCare has already added another 13,000 pages of regulations, and it has hardly begun. The U.S. Tax Code has tripled in the last decade. It now runs to 3.8 million words. The instruction book for the 1040 form now runs to 189 pages; in 1937 it was three pages. The growth of big government has been a bipartisan phenomenon.

As I mentioned earlier, when Republicans finally regained full control of the White House and Congress in 1953, they continued many of the New Deal programs and added some of their own. In the 1970s, President Nixon signed into law new civil-rights and environmental programs. In more recent times President George W. Bush's No Child Left Behind education program federalized K-12 education to an unprecedented degree, and his Medicare prescription-drug benefit was the largest entitlement program created since the time of President Johnson.

When does the government growth reach the point of excess? It is hard to say. All we know with certainty is that, with each administration, government has grown larger, at some periods dramatically, at others more gradually, though it never reverses itself. With Obama's stimulus and other expenditures, it has added five trillion dollars to the national debt, bringing the debt to \$15.1 trillion, more than the entire debt of the Eurozone and the U.K. combined.

Not being an economist, I have no idea whether these increases will bankrupt the nation. What concerns me are the political and moral dangers they pose. Every dollar of revenue collected by taxing or borrowing helps the government hire more bureaucrats to write more pages of regulations. In the process it has a tendency to stoke up their presumption and arrogance. Take the case of Al Armendariz, former South Central Regional Administrator of the Environmental Protection Agency (EPA), overseeing five states. Here he explains the methods he was using to insure compliance with EPA regulations.

It was kind of like how the Romans used to conquer little villages in the Mediterranean. They'd go into a little Turkish town somewhere, they'd find the first five guys they saw and they'd crucify them. And then, you know, that town was really easy to manage for the next few years.

Armendariz is a former administrator because he was fired after a video of these remarks went viral on YouTube, embarrassing the higher-ups at EPA. He's gone but not forgotten, because many of those crucified by him insist that Armendariz was simply giving voice to established EPA policies. One suspects that there are many more like him at work in the federal bureaucracy, who will probably not change their M.O. but keep a tighter leash on their tongues.

There is a place for an active federal government. Racial segregation in the South could not have ended without the strong arm of the Justice Department. Social Security and Medicare have helped older Americans to live out their lives in dignity. The Federal Highway Program enabled millions to escape crowded city apartments for homes in the suburbs. Our air and water are much

cleaner than they were half a century ago because of federal environmental regulations. And so on. No reasonable person should want to go back to nineteenth-century “Social Darwinism,” which the President has accused Republicans of espousing. But all these advances carry costs—not just monetary but political, social, and moral costs. We have to think about the damage done to what sociologists call our “social capital,” the nongovernmental networks of friends and neighbors, parishioners and fellow club members, who work together to benefit the community. Each well-intended law requires executive orders for carrying it out, which in turn leads to the further empowerment of government officials at the expense of private individuals and groups. Individually, the cost may be trivial—a store-owner, for example, may be required to do something that he may or may not have done on his own—and the social benefit may be worth it. But when whole shelves of federal laws and regulations pile up over many decades, they take a toll on the nation’s social capital. When Alexis de Tocqueville came to America in the 1830s he was amazed at the spontaneity of social groups that could be formed instantly to deal with local problems ranging from obstacles to traffic to poverty and illiteracy. In *Democracy in America*, a two-volume work reflecting on his experiences, he wrote, “In no country of the world do the citizens make such exertions for the common weal.” Most of this effort comes spontaneously, without government assistance or uniform codes.

Uniformity or permanence of design, the minute arrangement of details . . . must not be sought for in the United States; what we find there is the presence of a power which, if it is somewhat wild, is at least robust, and an existence checked with accidents, indeed, but full of animation and effort.

Years later, shortly before his death, de Tocqueville wrote *The Old Regime and the French Revolution*, a book about his native France in the late eighteenth century. By that time, he wrote, the central power in France “had succeeded in eliminating all intermediate authorities and since there was a vast gulf between the government and the private citizen, it was accepted as being the only source of energy for the maintenance of the social system, and as such, indispensable to the life of the nation.” He added that such notions had worked their way into the minds of ordinary people “and were implicit in their ways of living It never occurred to anyone that any large-scale enterprise could be put through successfully without the intervention of the state.” Are we at that point in America? Have the “intermediate authorities” in America atrophied to such a degree that it never occurs to us that we can accomplish anything important without the help of the state? Please God not yet, but a number of recent studies, from Robert Putnam’s *Bowling Alone* (Simon & Schuster, 2001) to Charles Murray’s *Coming Apart*

(Crown Publishing, 2012) have documented the steep decline in America's social capital since 1970.

It is cruel and silly for Paul Rahe to charge that the Catholic clergy have "gotten what they asked for." They didn't ask for ObamaCare, and they certainly didn't ask for the contraception mandate. But in their almost single-minded pursuit of a social-justice agenda, especially since the 1960s, they may have inadvertently encouraged the growth of a Leviathan State that now threatens to destroy the vitality and independence of all mediating structures, including those run by the Catholic Church. The present confrontation over the contraception mandate grew out of the fact that the 2008 presidential election put people with post-Christian social views into key positions in the federal government. The agenda of these public officials includes "reproductive freedom," "marriage equality," euthanasia, condoms for kids, eugenic rationing of healthcare, and who knows what else. It turns out, then, that a government big enough to enact social programs favored by the Catholic Church is big enough to openly war against centuries of Church teaching.

Resisting the Leviathan State

There are resources inside the tradition of Catholic philosophy for resisting big government, even if they've suffered neglect in some quarters. The neglect is evident when we have the Jesuit editors of *America* magazine announcing that the "fundamental principles of Catholic political theology" lead us to the conclusion that "government" should be the arbiter of a dispute it is having with the Church. I don't remember that principle of Catholic political theology, but I do remember others. One of them, with the clumsy name of "subsidiarity," was first developed by Pope Leo XIII in the 1891 encyclical *Rerum Novarum*, later encouraged by Pope Pius XI in 1931, and more recently by the bishops themselves. It holds that if a governing activity can be done as well at the local level as by a central authority, the local level should be its preferred locus. Moreover, since humans, being social and political animals, don't always need to be guided by government, the ordering of human relations should be done wherever possible through voluntary associations. As I mentioned earlier, Alexis de Tocqueville thought he saw much of that in the America of the 1830s, especially at the state and local level. Perhaps the editors of *America* should take a fresh look at de Tocqueville's classic work on Jacksonian America, finding in it some glimpses of subsidiarity in action.

The other principle of Catholic political theology I have in mind is a much older one. It began with Jesus' response to the Pharisee who asked whether it is lawful to give tribute to Caesar: "Render unto Caesar the things which

are Caesar's and unto God the things that are God's." For 20 centuries this principle of dual authority has survived repeated attempts to reduce it to a monism. That does not preclude cooperation between church and state in projects of mutual interest—education, medical care, relief of poverty, and so on. But it does mean that representatives of the church must deal very cautiously with those on the other side of the table. It is fine to come to the table with good will and good manners—bishops never err in that respect—but as equals, not as supplicants. And certain matters should never be *on* the table, especially those affecting the Church's freedom.*

It follows from this that a certain kind of etiquette ought to prevail when representatives of church and state meet with each other. The generally philo-Catholic attitude of the last century's Washington politicians may have produced an excessively cordial relationship between the two estates. One thinks of the annual Al Smith dinners, where presidents and would-be presidents roast and backslap each other as they confabulate with clergy, pundits, and celebrity lawmakers. In the current era this may be drawing to a close—on two occasions, in 1996 and 2004, neither presidential candidate got invited, apparently because of flare-ups on the abortion issue. And that is as it should be. Is it possible that Obama thought he could roll the bishops on the mandate because, on the basis of his reception at Georgetown and Notre Dame, his charm would be enough to subdue them? Whatever the case, I would like to see a somewhat cooler atmosphere prevail when prelates meet with politicians. In the language of old-fashioned diplomacy, I would think that a "correct" relationship would be enough. If Jesus was right to draw a distinction between the respective "things" of God and Caesar, it follows that our shepherds need to keep a sharp eye out for people who want to grab things that don't belong to them. This requires great attentiveness and sobriety, because some of those people have learned to wear the clothing of our flock.

* Unfortunately, an exact reversal of that principle occurred at one point after the issuance of the "accommodated" mandate of February 10. In Cardinal Dolan's account, staffers from the bishops' conference met with the White House staff and asked if "the broader concerns of religious freedom—that is, revisiting the straight-jacketing mandates, or broadening the maligned exemption—are all off the table. They were informed that they are." (His emphasis.) It should have been the other way around; it should have been the White House staffers asking the bishops' representatives whether the issue of religious freedom was on the table. To which their immediate and obvious answer should have been "no!"

From the Archives (1985):

Sound Doctrine Revisited

James L. Buckley

There is always a danger in inviting a former member of Congress to address present issues of public policy. The danger is a tendency toward retrospective nostalgia: to speak of what used to be rather than what is at hand; and the past tends to be magnified by the passage of time. The dragons we slew are more monstrous in memory; the molehills we moved have become mountains in the retelling.

Fortunately for you, when I was in the Senate I proved so far in advance of my times that the voters of New York chose not to re-elect me, so I was unable to tend and cultivate all the legislative seeds I had sown—although some of them, such as tax indexation and regulatory reform, were taken over by others and are now written into law.

But six years in the legislative arena did give me insights into the dynamics of democratic societies—or at least American society—that convince me that in God’s good time we too shall overcome. As in the case of volcanic regions, the surface may appear calm and unchangeable for decades on end while subterranean pressures build up that ultimately erupt with a force that transforms the social landscape for all time.

So it was over the long years in which the great civil-rights crusade against racial discrimination gathered strength. The American people came to understand the inherently intolerable nature of the “separate but equal” standard sanctioned by the Supreme Court to justify segregated education. And when the court finally reversed itself, the seismic shocks spread across the continent and brought the remaining barriers tumbling down.

So will it ultimately be with our crusade as more and more Americans come to understand the realities of abortion; as more and more of them are forced to acknowledge what they already intuitively know: that such anti-septic phrases as “terminate a pregnancy” and “freedom of choice” are nothing more than euphemisms for the deliberate destruction not of potential life, but of a living and biologically unique human being that is capable of pain before it leaves the sanctuary of the womb. I make reference to biology because I have always thought it important to defuse the idea that abortion is

James L. Buckley was President of Radio Free Europe/Radio Liberty when he addressed the Delaware Pro-Life Coalition on March 8, 1985. This article, adapted from that speech, appeared in the Summer 1985 issue of the *Review*. Mr. Buckley, who is now retired from public life, also served as a U.S. Senator from New York (1971-77) and as a federal appellate judge (1985-2000).

at heart a religious issue: a misconception which the pro-abortionists have played to their advantage. Religion forbids the taking of an innocent life. It is biology that informs us when that life begins. And it is the increasingly graphic evidence of the realities of life within the womb that will ultimately win the day.

When sufficient numbers of Americans are no longer able to hide from the biological facts of human development, there will arise an irresistible demand to reverse the carnage unleashed by *Roe v. Wade*; and one way or another, whether by judicial action, or constitutional amendment, or legislative restraints, it too will be reversed.

That the pro-life cause is gaining strength is no longer in doubt. When some members of Congress attempted to restrict federal funding of abortion back in the 1970s, we could expect a decisive margin against us in the Senate. It was only the adumbrance of a narrow pro-life majority in the House of Representatives that kept us going, gave us leverage, and eked out compromises year by year. The best we could do, it seemed, was to put cosmetic restrictions upon federal funding of the taking of a child's life, so that both sides could claim victory.

But things did not turn out that way. In this, as in so many battles, final victory belongs to the determined, to those who are not smart enough to know their case is hopeless. Persistence pays, and more and more we are beginning to see tiny but significant gains toward a more distant goal.

I look back this way so that we can see more clearly ahead. I realize that, to all who are still working to secure constitutional protection for children before birth, our current situation is full of frustration. How long must we continue this work, year after year: the same old letter-writing, organizing, fundraising, marching, lobbying, educating, praying? The answer today is the same as it was twelve years ago, when even a halt to federal funding of abortions was beyond our reach. The answer still is: as long as it takes.

Twelve years ago, in the aftermath of the Supreme Court's decision in *Roe v. Wade*, I introduced a constitutional amendment to overturn that ruling. My warning at the time has been amply justified by subsequent events. If I may repeat what I said on the floor of the United States Senate on May 31, 1973:

(The) court not only contravened the express will of every state legislature in the country; it not only removed every vestige of legal protection hitherto enjoyed by the child in the mother's womb; but it reached its result through a curious and confusing chain of reasoning that, logically extended, could apply with equal force to the genetically deficient infant, or the retarded child, or the insane or senile adult.

In 1973, most thought that view alarmist. Today, it is fact. The grisly

consequences of what the Supreme Court did in *Roe v. Wade* are all about us: in Bloomington, Indiana, where retardation amounted to a death sentence by willful starvation for a baby boy; in California, where a young man would have died from neglect had there not been a public outcry—God bless George Will for leading it—an outcry to demand he receive the necessary surgery; and, most recently, in New Jersey, where the state Supreme Court has declared routine intravenous feeding to be unnecessary for terminally ill patients.

Everything we feared in 1973 is already upon us, and with it has come a tide of abortion that embarrasses even those who defend it. The more than 1,500,000 abortions a year are a multi-billion-dollar business, probably the least regulated industry in America, operating entirely under the protection of the Supreme Court.

Twelve years ago, I was under no illusions about the task we were undertaking in attempting to undo the court's incredible decision. We did not fool ourselves. We knew it would not be easily or quickly accomplished. What we did *not* know—what we have discovered since then—is that the pro-life enterprise, launched in shock and outrage against the greatest odds, would have so large an impact on the American political system.

We did not anticipate how opponents of abortion—defenders of children, really—would create one of the most amazing grassroots movements since abolitionism. We did not anticipate how this issue would shatter long-established patterns of political allegiance, how it would wrench millions from their partisan moorings, how it would encourage millions more to participate in our electoral system.

I certainly did not anticipate how the question of abortion would radically change both major parties in this country. In my most partisan moments, I did not expect the leadership of the Democratic Party to allow that venerable institution to become the vehicle for what are euphemistically called “abortion rights.” Nor did I expect the Republican Party, with its own divergence on this issue, to be transformed, willingly or not, into something of an anti-abortion vehicle. Indeed, to be fair to all my Democratic friends, it should be noted that some of the most determined pro-abortion leadership in the Congress still comes from the Republican ranks. But despite that, it is more and more clear that the Republican Party *has* been transformed by the abortion issue.

In the tumultuous sixties, it was faddish to speak of participatory democracy. Legislators tinkered with voting laws and party rules to try to entice more citizens into personal participation in our political system, with little

real effect. But the abortion issue has energized our political life. It has given vast numbers of citizens the impetus for doing things they had never done before: canvassing, volunteering for campaigns, turning out for caucuses and primaries, lobbying, picketing, learning about legislative procedures, and even running for office themselves.

That, certainly, we did not expect back in 1973, when the prevailing wisdom was that pro-life sentiment would gradually flicker out under the moral darkness of our new, judicially imposed reality. And I want to take this opportunity to say to pro-lifers that their incredible determination over twelve years has been both a lesson and an inspiration for many in public life.

When they lost, their ranks grew. When they won, their ranks grew, and they kept at it. When they were scorned as “single-issue people,” their ranks grew and they wielded that single issue more forcefully than ever; and thanks to their single-minded persistence, an awareness of the full implications of legalized abortion is slowly taking hold.

How easy it all seems now, when we hear the unborn championed in a presidential inaugural address and when, to the applause of most members present, the State of the Union Address calls for legislation to protect them. But it was not easy. It was—and it will still be—hellishly difficult to restore protection of the law to our people at all stages of human development: before birth, during senility, after incapacitation, and in lives retarded at birth. But how far we have come! And how noble the journey!

An important part of that progress came last year, when President Reagan advanced an international pro-life standard in the policy statement prepared for the United Nations’ Second Decennial Conference on Population, in Mexico City. That paper sparked international controversy and admirers and critics alike agree that it was a benchmark.

It was my honor to lead the U.S. delegation to that meeting, and that may have something to do with my being invited to speak here this evening. I am delighted to take up the subject, to clarify the record. For even in the often befuddling world of diplomacy, I know of few policy initiatives that have been so poorly reported as the U.S. position and its reception at the population conference.

I am sure you remember the media coverage of the matter. There were editorial cartoons portraying Mr. Reagan lecturing starving masses of Third World children on the merits of free enterprise. There were indignant editorials, in all the important papers that are usually indignant whenever Mr. Reagan does anything, decrying the “know-nothingism”—some called it the “Voodoo Demographics”—of his population policy.

We were reminded that the world is allegedly on the brink of a population

Armageddon. We were told the world is running out of resources: that the planet is about to be overwhelmed in a sea of humanity. On the eve of the conference, Robert McNamara assured a national NBC audience that the American delegation would be laughed out of Mexico City. What the media later failed to report is that we emerged with some significant achievements.

As the result of our initiatives, the conference reaffirmed the primacy of parental rights in determining the size of individual families, condemned the use of coercion to achieve state-defined population objectives, and acknowledged that government is not the sole agency for the achievement of social objectives. Also, given the intensity of the attacks on the U.S. position on abortion, we took considerable satisfaction from the adoption, by a conference consensus, of an almost identical position: namely, that abortion “in no case should be promoted as a method of family planning.”

Where we did not succeed, nor would it have been anything but romantic for us to think we could have succeeded, was in securing an explicit endorsement of the American proposition that the best way for developing nations to achieve the twin objectives of economic advancement and population stability would be through the adoption of freer, market-oriented economic policies as an alternative to the centralized controls that have stultified the economies of so many countries of the developing world. To have succeeded would have required that a significant number of delegations acknowledge the responsibility of their own governments for much of the misery experienced by their people.

Nevertheless, raising the issue of economic policy enabled us to cite the compelling historical linkage between rising income and declining birth rates, and to draw on the examples of such developing countries as Singapore, South Korea, Colombia, and Botswana to demonstrate the linkage between economic freedom and economic growth. And we were not laughed out of town for having made the attempt.

Few historical correlations are so clear as the impact of economic well-being on the number of children couples will choose to have. In Western Europe today, the principal demographic concern is not over a surge in numbers, but over the problems associated with aging populations in societies in which birth rates have fallen below replacement levels. Quite clearly, family-planning programs address only half the population equation.

As the U.N. Fund for Population Activities itself acknowledges, “It has been clear for a long time that family planning campaigns are largely ineffectual in producing a lower rate of population growth.” The Fund concludes that “while family planning programs . . . will help couples to have the number of children they wish, other economic and social factors lie behind their

ideas of desired family size.” On the record, rising income is the most important of those factors. So much for the charge of “Voodoo Demographics.”

At the conference we were also able, through the sheer mobilization of statistics, to pierce the Malthusian gloom with which so many wanted the proceedings to be wrapped. We were able to demonstrate, for example, that over the last thirty years, the birth rates in the developing world had fallen more than halfway toward the goal of population stability, that human life expectancy had dramatically increased, that caloric intake had improved, literacy soared, disease diminished, and *per capita* income grown substantially. At the same time, we helped focus on those nations—particularly in sub-Saharan Africa and portions of the Indian subcontinent—that had not shared in this undoubted progress, and therefore required particular attention. Although these tender rays of sunshine were not universally welcomed, they did help illuminate the true dimensions of the problems that remain to be resolved, and place them in the unhysterical perspective that is essential to intelligent analysis.

In retrospect, this is not a bad track record for what the American press almost unanimously predicted would be an American disaster. But the myths about Mexico City persist, so let me dispel a few of them.

First, there is the curious accusation that Ronald Reagan deliberately used the Mexico City conference as a political ploy to win support from pro-lifers for his re-election. Now, as I recall, the President’s re-election effort was not in any immediate danger at the time, to put it mildly. He was, moreover, already a hero to pro-life voters, who did not have to be reminded, through the Mexico City Conference, of his steadfast opposition to abortion.

But beyond that, can anyone imagine *this* president plotting the exploitation of an international conference—*any* international meeting—for a brief spurt of popularity here at home? I am not saying that Mr. Reagan is naive about these things, only that he is above them.

A second myth about Mexico City is that the U.S. stand on population issues was an abrupt reversal of all previous policy, a repudiation of everything our government had done to date. I have been amazed by the mindless repetition of that assertion both by journalists and by public officials who have not taken the time to read the policy paper upon which they comment. That paper explicitly reaffirmed continuing U.S. support for non-coercive family planning programs in developing nations. It did not propose to end them, or even to cut them back. But it did put them into a fresh context, a reasoned context.

The American position rejected the doomsday analysis that has served to

justify any measure to control population however abhorrent, and proposed instead to focus U.S. funding on programs that, in Ronald Reagan's words, are "truly voluntary, cognizant of the rights and responsibilities of individuals and families, and respectful of religious and cultural values."

The U.S. policy was also an expression of confidence in mankind's continued ability to meet new challenges in a responsible way; and in this we were not alone. As Mexico's President de la Madrid stated when he addressed the conference: "Our planet, inhabited today by 4.8 billion human beings, has the natural resources, production capacity, and different administrative and political skills it needs to fully meet the basic needs of its future population."

A third misconception is that our government—and I as its representative—was blindly insisting that population growth poses no problems, and that a conversion to market economics would bring about instant relief for all the world's ills. That distortion of our message is directly contradicted by the policy paper that guided us. Its initial paragraph declared: "It is sufficiently evident that the current exponential growth in global population cannot continue indefinitely. There is no question of the ultimate need to achieve a condition of population equilibrium. The differences that do exist concern the choice of strategies and methods for achieving the goal."

At the conference itself, we fully acknowledged that "the current situation in many developing countries is such that relief from population pressures cannot be achieved overnight, even under optimal economic policies." At the same time, however, we noted that "slowing population growth is not a panacea. Without sound and comprehensive development policies, it cannot in itself solve problems of hunger, unemployment, crowding, or potential social disorder."

The same can be said of the impact of population pressures on the environment; and here I speak with some feeling (and I think knowledge) as one who has had a life-long concern for conservation and who, during his Senate term, exercised considerable leadership in the environmental field. Under anyone's scenario, we can anticipate a significant increase in the world's population well into the next century. We cannot defer imperative measures to protect the environment and the world's renewable resources pending the achievement of population equilibrium. The work to arrest soil erosion, protect forests, and preserve watersheds cannot be postponed. With intelligence and the necessary will, we can deal with these problems without imposing draconian measures under the guise of population control. Moreover, the greater the economic well-being of the societies in question, the greater their capacity to manage their environmental problems.

The fact is that population growth has been the most convenient excuse for the dismal failure of bad economic theories and practices over much of the world. State-controlled economies in underdeveloped nations have performed as poorly as state-controlled economies always do, in any circumstances. And the governments of those countries, with encouragement from many in the West, have made their own people the scapegoats.

And so, at Mexico, we rejected the “economic statism” that has inhibited development in so much of the Third World and, in the process, disrupted the natural mechanism for slowing population growth. Our position in this regard was hardly the triumph of ideology over science. It was their conjuncture in common sense.

That leads me to another myth about Mexico City: the report that the U.S. delegation was isolated because it was out of step with the rest of the world. Untrue, as my summary of conference accomplishments has demonstrated.

I grant you that Mr. Reagan’s approach to population problems may have isolated the U.S. delegation from those professional population planners, both in the U.S. and elsewhere, whose careers have been based on Malthusian blinders that require a limit to population at whatever moral cost. And there is no doubt that the tightened controls imposed on the allocation of U.S. family planning funds worried past recipients who funded abortions or resorted to coercion to achieve population goals. The new measures, however, merely tightened restraints already in place—a closing of loopholes, if you will. And if one of the major family planning organizations has refused to accept that condition of eligibility, then it has at last come out of the closet, so to speak, and revealed what many had suspected all along.

It is revealing that this subject of abortion, to which were devoted only a few lines in the President’s policy paper, became the focal point of media attention to our participation in Mexico City. By raising the subject of abortion, we were told, the U.S. delegation would disrupt the conference. We would be repudiated by the world community. We would be viewed as attempting to impose our own morality upon others.

The actual results were more benign. The assembled delegates from every continent included in their final recommendations to the world community a statement that was unambiguous in its rejection of abortion.

First, a word of explanation. The original draft from which the delegates were working had language calling upon governments to protect women from *illegal* abortion. We all know what that means. It is a way of advocating legalization of abortion without quite saying so.

Let me read you the text of that portion of Recommendation 18 as the delegates finally approved it: “Governments are urged . . . to take appropriate steps

to help women *avoid abortion*, which in no case should be promoted as a method of family planning, and whenever possible, to provide for the humane treatment and counseling of women who have had recourse to abortion.” What a transformation!

As if to make perfectly clear that the conference had taken quite an unexpected stand on this subject, the Swedish delegation complained about the change in wording. It preferred the original language, which had referred only to “illegal” abortion. And the Swedes explicitly registered their dissent from the implications of the final text, going on record to insist that abortion must remain legal and universally accessible.

A final myth about Mexico City is that the consequences of President Reagan’s population policy would be devastating. Because the U.S. would no longer contribute to organizations involved in abortion with their own resources, family planning programs would collapse around the globe.

This myth proved to be the most ludicrous of all. Faced with the Presidential ultimatum—dissociate from abortion or do without U.S. funding—most population groups quickly complied. After all, if they meant what they often said—that no one really likes abortion—then it would not hamper their activities to ensure that none of their resources are devoted to its performance or advocacy.

The International Planned Parenthood Federation did not see things that way. To its directors, its involvement with abortion was more important than the millions of dollars they annually received from U.S. taxpayers. So be it. That is their choice. After all, the money is not going to sit in a vault somewhere within the State Department. It will be re-deployed to other family planning organizations and programs around the world.

The net result is that President Reagan effectively established a norm of decency for all international family planning efforts in any way associated with U.S. tax dollars. We do not purport to change abortion laws in other countries; we haven’t yet managed to do that here at home. But we will not contribute to organizations abroad that are involved in that practice.

All of which brings me to an unexpected side effect of the controversy surrounding our work in Mexico City: namely, the tremendous media attention it drew. It made many take more seriously President Reagan’s pro-life commitment. That may be why his recent endorsement of Dr. Bernard Nathanson’s film, *The Silent Scream*, has become national news. Following the President’s example, much of official Washington has viewed the film, with its sonogram photos of an abortion process; and thanks to television, so has much of the nation.

How long did we try to get pictorial coverage of abortion on television? How long have we tried to make people see—not just hear about—the victims of abortion? It was as if the networks had covered the war in Vietnam all those years without showing the wounded, the maimed, the dead, the dismembered.

It may be too much to hope that we have reached a watershed in media coverage of the abortion issue, and that the pro-life cause—or even the simple facts of fetal development—will be given more extensive publicity.

But there is general agreement that the news coverage of the annual March for Life, last January 22, *was* much improved from past years. Even the major pro-abortion newspapers finally accepted the park police estimate of the crowd, instead of coming up with their own much smaller numbers. That sounds like a little thing, but on this issue, it's a real media breakthrough!

Perhaps it was the extraordinary juxtaposition of the 1985 March for Life with the cancelled inaugural parade, scheduled for the day before, that demanded fair play in the press. After all, one day after America's most important procession down Pennsylvania Avenue had to be cancelled because of the most bitter cold in Washington's memory, some 70,000 pro-lifers trekked down the same street, as they have done every year since *Roe v. Wade*.

As always, they demonstrated the diversity that has been the strength of the pro-life movement and that accounts for its endurance and growth. The elderly and the students walked, while others steered their wheelchairs over the patches of ice. A group of rabbis smiled back at the pro-abortion heckler who screamed at them that he wished *they* had all been aborted.

There were the evangelicals who have learned to combine the power of prayer with the force of the ballot, the gospel choir and the folk singers, the regulars and the newcomers.

There were members of what I understand is the fastest-growing pro-life group, WEBA (Women Exploited by Abortion), whose personal testimony in defense of women and their infants has cornered the abortion profiteers in their dens.

I purport to speak *for* none of them, though I used to speak *to* them, from the steps of the Capitol, when I was a member of the Senate. And yet, I venture to say that most of the marchers this year feel as I do: that their goal, so distant for so long, as impossible a dream as Don Quixote ever envisioned, is now quite possible and perhaps nearer than we dare to think.

I do not know whether it will be achieved by legislation or a transformed federal judiciary. One way or another, as we have said all along, we will win the fight we began twelve years ago.

When that finally happens, when the Constitution and our laws again

protect the unborn from slaughter, the aged from euthanasia, and the infirm from extermination, I am sure there will be one last march down Pennsylvania Avenue. But this time, it will be a victory parade.

Perhaps because I now live in Europe as president of Radio Free Europe/Radio Liberty, I am reminded of another dramatic march. Many of you are too young to remember how, after the liberation of Paris from the Nazis, Charles de Gaulle led, it seemed, virtually everyone in Paris down the Champs Élysées. They marched to celebrate the rebirth of the City of Light after years of savage brutality. They marched to let the world know that Western civilization had endured and was resurgent.

And so do I look confidently ahead to the day when we will have one last march down Pennsylvania Avenue, celebrating the liberation of our country, not from an alien army, but from alien ideas, ideas foreign to our Judeo-Christian culture and hostile to the ethical underpinnings of Western civilization. Those ideas have already claimed victims by the millions, sacrificed to the notion that life is not sacred, that the quality of life determines the right to it.

And just as liberated Paris became a symbol and an incitement to those who still fought on, in other lands, against the old barbarism, so will the liberation of our country from the barbarity of abortion inspire women and men around the world in their crusade for life.



"I paint what I foresee."

The Stork's Cradle

Hiroko Ogisu Clark

In 2005, Dr. Taiji Hasuda, gynecologist/obstetrician and president of the board of directors of Jikei Hospital, a Catholic hospital in Kumamoto Prefecture, Japan, heard the horrific news of a newborn baby girl found dead in the sewage tank of an old-fashioned Japanese toilet. A 21-year-old college student was later arrested for the baby's murder. She had gone into labor in the toilet, with the infant dropping into the sewage tank after leaving the birth canal. Dr. Hasuda decided to do something to save babies of unwanted pregnancies from such a heartrending fate. This article first details his tireless efforts to protect the lives of these at-risk babies, then explores some of the deeper issues underlying such cases, and finally considers the existential questions they pose for Japanese society.

Dr. Hasuda was aware of the history of "baby doors" at convents and other religious institutions in Europe, where from medieval times babies could be left without disclosing the parent's identity. To see a modern version of this concept in practice, he visited Germany. There he studied Baby-Klappes (baby drops or hatches), where babies whose parents are unable to raise them may be left anonymously. In 2007, after much research and preparation, including running the predictable gauntlet of bureaucratic approvals, he installed the "Stork's Cradle" in Jikei Hospital. Like the Baby-Klappes, Jikei's facility has a little door through which a parent can anonymously leave a baby on a turntable. Once the door is closed with a baby inside, it cannot be opened again from the outside. As soon as a baby is placed on the table, the sensor gives out an alarm to notify hospital employees. While the baby is being examined, the hospital contacts the local police and the local child-welfare organization. After spending a few days at the hospital, the baby is sent to a local orphanage to be raised.

The name Dr. Hasuda chose for this operation was inspired by the Western folk legend that a stork delivers a new baby to a loving couple. The Stork's Cradle also provides more comprehensive support to troubled pregnancies. These include telephone consultation 24 hours a day for concerns related to pregnancies and raising children. In addition, by the little baby door of the Stork's Cradle is an intercom in case a parent wants to consult with a nurse before deciding to give up a baby. Dr. Hasuda realized that

Hiroko Ogisu Clark, a graduate of Sophia University, lives in Tokyo, Japan, with her husband Tom and their four children. In her spare time, Mrs. Clark volunteers as an English teacher at a local Franciscan orphanage.

there is a need not only to provide emergency solutions for babies at risk, but also to address through education the underlying attitudes that put them at risk. Thus, he visits schools all over Japan to lecture on the sanctity of life. In addition, his team has made an animated movie, titled *Hello, This Is Egg!*, which tells the story of the love between an older brother and his unborn sibling, who is on the verge of being aborted.

By the fifth anniversary of its opening, May 10, 2012, the Stork's Cradle had received a total of 81 children. Seishi Kohyama, the mayor of the City of Kumamoto, supports the effort, saying that the Cradle has "saved lives of babies in situations where they were clearly in danger." The reasons why parents leave their babies at the Cradle range from financial difficulty to teen pregnancies, pregnancies outside of marriage, and difficulty in raising children due to domestic violence.

After five years of effort, Dr. Hasuda believes that the Stork's Cradle has been successful in achieving some increased level of awareness among the public about the problem of unwanted pregnancies. At the same time, he argues that a network of support is needed all over Japan to offer consultations for troubled pregnancies so that more babies can be saved. A parent in poverty may well lack the financial resources to travel to the hospital in Kumamoto, more than 800 kilometers from Tokyo. If other facilities offered similar services, it would be easier for people to get help, and many more babies at risk of infanticide or abortion could be saved. Dr. Hasuda also points out the importance of comprehensive and values-based sex education, noting that many babies received at the hospital were the product of pre- and extramarital relationships.

Another important issue that concerns him is increasing adoptions. Currently, most of the babies saved are sent to orphanages to be raised, despite many offers to adopt them. Certain bureaucratic restrictions have stood in the way of adoptions, such as the need for consent from the biological parents. This makes it particularly difficult for a Cradle baby to be adopted, since the hospital accepts children anonymously. Dr. Hasuda believes anonymity is key to making people feel safe enough to leave their babies, avoiding the social stigma that still attaches to out-of-wedlock pregnancies.

Some of those who oppose Dr. Hasuda's baby-saving initiative argue that it encourages child abandonment. By making it possible for parents to leave babies without risking exposure, they maintain, the Stork's Cradle actually increases the likelihood that people will abandon their babies to avoid the responsibility of raising a child. In response, Dr. Hasuda reminds them of the grim prospect without such an alternative. A mother who has no one to rely upon during pregnancy can become so desperate that she chooses to

give up the baby as a last resort. If the Cradle did not exist, the mother might instead turn to abortion or infanticide. Those opposed to the Cradle need to explain why, in such desperate cases, they consider abortion preferable to abandonment.

Another major argument against the Cradle is that anonymity deprives children of the right to know who their biological parents are. Dr. Hasuda replies that for these children, the couples who have stepped forward to raise them are more significant in their lives than the biological parents who gave them up. If the right to know the biological parents is valued so much that the Cradle is forced to relinquish anonymity, the very children for whom this right is defended may not be born at all.

Dr. Hasuda's work has literally saved the lives of these babies, and we can hope that his educational outreach will meet with increasing success. Yet a more fundamental question remains: What is really going on in a society where such newborns are abandoned? Are there deeper implications about the lack of respect for life and the lack of love within the family? Related data paints a troubling picture.

There seems to be no comprehensive study on the number of murdered newborns in Japan. However, incidents such as the one that triggered Stork's Cradle are becoming more common, though it is difficult to say whether this represents a growing trend or better reporting. Certainly there are more highly publicized cases every year. In May, 2012, a newborn boy was found in a bag left in a parking lot. His umbilical cord was still attached. In late 2011, a 20-year-old single woman gave birth to a baby girl in a convenience store toilet and left her in the trash can, putting a lid on top. Nobody around her had even noticed her pregnancy. In both cases, the babies miraculously survived and are now being raised at an orphanage, but the results are usually more tragic. In April, 2012, a newborn girl's body was found on a beach. In 2010, a high-school student was arrested for murdering her newborn son. She had gone into labor on a toilet in a supermarket. After delivering her baby, she drowned him in the toilet water, and later left his body in a road-side ditch. Her family, teachers, and friends had not noticed the pregnancy. She attended school as usual the day after the incident. When reports came out in May, 2012, that the body of a baby girl was found stuffed in a plastic bag floating in a river, many Japanese reacted, "Again?"

These murders and murders-by-abandonment generate brief, high-profile media coverage, but neither the deaths nor the underlying pathology they represent receive focused national attention. A story makes headlines for a day, but public interest dissipates quickly. What is equally disturbing is that

many people express sympathy toward the parents who commit these crimes, as if they were the primary victims. These incidents show lack of respect for life. What is needed is a morally based understanding of the role of sex and fertility. However, not only is the sanctity of life insufficiently taught to young people, but there is rarely discussion about when human life begins. The incidents of abuse and infanticide also demonstrate a shocking lack of communication, concern, and love in too many families, with parents in a number of cases not even being aware of their daughter's pregnancy, despite living in the same house.

Another troubling aspect of this broader disregard for the sanctity of life and family in Japanese society appears in the demographic details of abortion statistics. While the total number of abortions has declined from 1,000,000 a year in the early 1950s to about 250,000 cases a year, and the abortion rate is not particularly high compared to other countries, what makes Japanese statistics unique is the high ratio of abortions by married people. Relatedly, the ratio of abortions to all pregnancies is almost 70 percent *both* among teenagers and women in their forties. Abortions for health reasons are a tiny minority. Instead, 95 percent of abortions are performed for financial or "social" reasons, which basically means cost or inconvenience. (After the Eugenic Protection Law was enacted in 1949, which accepted "economic difficulty" as a legal reason to have an abortion, the number increased dramatically.)

Considering all these data, we might conclude that abortion is regarded practically as one form of contraception. Those who see abortion and contraception as equivalent are, of course, misguided: Contraception means avoiding conception, not aborting a conceived child. However, because of insufficient and non-comprehensive sex education, there is not even a public discussion about when life begins. Any means by which having a baby is avoided is considered "contraception."

Yet almost as disturbing is a sense that many married couples seem to find their fetus expendable, *even after they have chosen to establish their family and probably have other children*. There seems to be a disconnect between the role of marriage and family in conceiving a life. The interwoven roles of marriage, the unitive and the procreative, are not understood at all. It is a chilling thought that the family—even a family where a new life has already been created and seemingly welcomed—can choose to terminate another life, a new child and sibling, for "convenience."

While abortion statistics make the point most emphatically, the number of child-abuse cases also suggests a more widespread dynamic of disrespect for life. Since 2004, over 50 deaths a year have been officially recorded as due

to abuse. Each week, at least one child loses his life due to abuse somewhere in the country. More than half of these deaths occur among children under the age of one. And more than half of the killings are done by the biological mothers. In many of these cases, a baby is simply doing what babies do, such as crying in the middle of the night, when parents let impatience explode into anger unchecked by a common-sense respect for the life and dignity of their baby.

Among recent cases, in 2011, a three-month-old baby boy was shaken by his father, resulting in serious brain injury; a 6-year-old boy was beaten to death by his father; twin girls less than one-month-old were beaten by their mother, resulting in severe head trauma; a 4-year-old girl was beaten by her mother until head trauma resulted in death; a 22-month-old was beaten to death by his mother; and a 9-year-old boy was beaten to death by his father. Already in 2012, there was a case in which a father hit an 11-month-old boy, resulting in a skull fracture, and another in which a three-year-old girl was beaten by her father, resulting in a broken arm. One of the most gruesome cases in recent years is that of a 23-three-year-old single mother who left her two children, ages 1 and 3, alone in an apartment for a few months so they would die of starvation. All in all, since 2009, the number of reported cases of child abuse has topped 44,000. As of 2008, the number of orphanages specializing in babies younger than one was 121, with more than 3,000 babies living in them. Among these babies, 32 percent had been removed from their parents because they were being abused. There were 569 orphanages for older children, with more than 30,000 residents. Fifty-three percent of them were there due to abuse. In addition, 141 children were living in special facilities for the physically impaired due to disabilities caused by domestic abuse. These facilities currently house more children than their capacity, because an increasing number of children need shelter from abuse in their own homes. For them, the home, which is supposed to be a place of love and nurture, has become a war zone.

It is obvious that the murder and abuse of vulnerable babies indicates a fundamental lack of respect for the sanctity of life, but the broader manifestations of this indifference can also be seen at other stages of life. For example, the suicide rate is another indicator of how life is perceived in some segments of Japanese society. Since 1998, the number of suicides by Japanese has exceeded 30,000 every year, which comes to about 90 cases a day. This number is about five times greater than the number of people dying from traffic accidents annually. It is certainly not uncommon for a Tokyo commuter to experience delays on the way to work or school because someone

has thrown himself in the path of an oncoming train. All this adds up to about 25 out of every 100,000 Japanese committing suicide each year.

If you are wondering how these statistics stack up against those of other countries, here are some comparative figures. Only a few countries have higher suicide rates, such as Lithuania at 34 per 100,000, Korea at 31 per 100,000, and Russia at 30 per 100,000. In contrast, the rate of suicide in the United States is 11 per 100,000. Even more alarming are the statistics for young people in their 20s and 30s: Suicide is the top cause of death for these age groups, at 50 percent and 35 percent of deaths respectively. By 2010, the suicide rate for people in their 20s despondent over failing to find a job had increased 2.7 times from 2007. Among people younger than 60, approximately 25 percent considered committing suicide in 2012.

If anything, people show greater disrespect for human life as it ages, which can fuel increasing abuse and neglect of senior citizens. As of 2008, the number of reported cases of abuse against the elderly topped 21,000. Forty percent of the instances of abuse were committed by the victim's son, 17 percent by the husband, and 15 percent by the daughter. Beyond direct abuse, a related trend is abandonment of the elderly. While there is no comprehensive national study of the number of senior citizens living alone and found dead at home, such deaths in people over 65 in the urban wards of Tokyo have increased from about 1,300 in 2002 to 2,200 in 2008.

Attitudes toward life are exposed not only in the treatment of life once born, but also in the willingness to welcome the possibility of life. What does the Japanese birthrate have to say about openness to life? The Total Fertility Rate (TFR), the number of children one woman bears during her fertile years, has been declining steadily from about 4.5 in the 1950s to 2 in the 1960s to 1.39 in 2010. (In the United States, by contrast, the figure was more than 3.5 in the 1960s and 2 in 2010.) The population of Japanese children under 15 is currently 16.65 million, the lowest since the statistics were first taken in 1950. It has now been decreasing for 31 consecutive years, ever since 1982. Children make up 13 percent of the total national population, compared to 35.4 percent in 1950. The population share of children under 15 in the U.S. has also decreased, but at 19.8 percent is still well above Japan's.

There is a sad irony in this situation for a society that publicly frets about its looming demographic implosion. Despite these concerns, Japan seems tied to a contraceptive mentality that avoids having children that would be "inconvenient" and (if a pregnancy somehow arises nonetheless) relies upon abortion as backup. Those unborn children who escape abortion, as we have seen above, run the risk of abuse and in some cases infanticide, reducing the

number of children even further. However, even surviving early childhood does not eliminate the risk of an abbreviated life, since too many adolescents and young adults, having absorbed false attitudes toward human life, respond to some life challenge by killing themselves. Finally, some of those who persevere and actually reach old age will face abuse by their own family members, or meet death alone. All this while society is supposedly concerned about the implications of low birthrate.

One reason for Japan's failure to appreciate the sanctity of life may be the nation's historic tendency to view human life primarily in political or economic terms. From feudal times, human beings in Japan were the means to build economic power. Before and during World War II, in order to catch up with the developed countries and compete militarily, citizens were encouraged to have many children. Young people were an economic resource to produce more workers and soldiers for the nation. After World War II, Japan felt the need to reduce its population in order to allocate economic resources to rebuilding businesses. Now that the country is in a recession, people feel that they cannot afford to have children, who are seen as too "costly." And for some Japanese, even their own life seems to lack value if they are unable to contribute to economic prosperity, and so suicide seems a "reasonable" option.

Mother Teresa made a much-heralded visit to Japan in April, 1980. Coming from the poverty of the Calcutta slums to the wealthy nation Japan had by that time become, she might have been expected to marvel at Japan's material achievements. Yet she perceived this society's inner problem right away. Rather than encourage Japanese to support her activities in India, she told them that they should prioritize their own poor people. Love, Mother Teresa said, should start from somewhere near. She also perceptively suggested that there is spiritual hunger in wealthy Japan. She talked about the spiritual poverty of not being wanted or not being loved by anyone. She reminded us that spiritual poverty can be much graver than material poverty. Drawing the circle even closer, Mother Teresa reminded her audience that love starts from family; unless your family is filled with love, you cannot love your neighbor.

It remains to be seen whether the earthquake-spawned disasters of March, 2011, will encourage Japanese to recognize something intangible but important in their lives, to rediscover the sacredness of all life and the meaning of selfless love of others (there are some hopeful signs of this among young Japanese), or whether these events merely lead Japanese to despair and deeper nihilism. In this society where most people are non-religious, highly secular, and even skeptical, organized religion has not played a significant role.

Yet, now may be the time for churches and temples to make a unique and decisive contribution, lifting us out of despair and self-centeredness by directing us toward the source and meaning of life, kindling a deeper respect for the preciousness of life at every stage.

Yen-Bryo, a non-profit organization led by Sr. Miyoko Yuhara of Quebec Caritas, has been raising funds since 1993 to provide financial aid to pregnant women in difficulty, accepting donations as small as one yen. As of April, 2012, the organization had supported the birth of 366 babies, including 78 born to survivors of the March 11, 2011, catastrophe. It delivered to pregnant women in disaster-stricken Tohoku more than 14 million yen, but more importantly it brought them hope. Many recipients wrote thank-you notes expressing how encouraged they have been by their precious new life. Their babies gave them hope for the future, even in the face of utter destruction.

Indeed, the religious contribution is not merely material, but grounds acts of charity in a deeper and enduring spiritual mindset. Since the disaster, Japanese painter Miran Fukuda has been working on her version of “Merciful Kannon,” a Buddhist god whose mission is to protect children. Probably the most famous artwork on the same theme is by Hougai Kano, circa 1888. Kano’s artwork depicts a womb-like sphere containing a baby that is being sent down to the earth by Kannon, who floats on a cloud. A long piece of cloth wrapping around the baby resembles an umbilical cord. Art scholars believe that Ernest Francisco Fenollosa, a Harvard-educated scholar of Eastern Asian Studies then teaching at the University of Tokyo, gave Kano the idea of creating a Japanese version of the Madonna and Child. After the apocalyptic disasters of March 2011, Fukuda became increasingly uneasy with the seemingly cool detachment of Kannon in the Kano version. So she has decided to depict Kannon cuddling a baby lovingly. She says she simply felt that “the baby desperately needs to be loved in the arms of Mercy.”

And maybe that is also what the people of Japan now need. The question remains whether they can accept this love and mercy from above, a love and mercy that then secures and kindles respect for the gift of all life. The ability to do so may prove critical to the future of this historically great culture.

How Pregnancy Centers “Love Them to Life”

Mary Meehan

“Denise, you better come and get this kid! I can’t be a mother anymore!” That’s what Denise Cocciolone heard when she answered the phone decades ago when the New Jersey pro-lifer was new to pregnancy counseling. (Later she served as the Birthright USA director for years; now she heads a smaller network of pregnancy centers called 1st Way.) Cocciolone recalled that Betsy, then in her late teens, had been a traveling hippie. Months earlier, she had “come back with a knapsack on her back”—and pregnant. With support from the Birthright center where Cocciolone worked and a host family, she had decided to release her child for adoption. Betsy, though, was hard to work with and had a huge conflict with her adoption caseworker. Changing her mind, she decided to keep her child, but her mothering effort lasted two weeks. Although it was late on a Friday afternoon when Betsy called for help, Cocciolone found a volunteer who could care for the “beautiful little boy.” Betsy went through counseling with another adoption agency; this time, adoption was completed.

On another occasion, one of Cocciolone’s telephone counselors obtained quick police aid for a pregnant woman threatened by her boyfriend. The woman was calling from a phone booth in Baltimore, after midnight, while the counselor was in Oregon. Cocciolone recounted that the counselor could hear the boyfriend “actually trying to beat her” during the phone call. The counselor told her, “Pretend that you’re still talking to me; I’m going to another phone” She got word to the Baltimore police from the other phone, then returned to the first line, where she kept talking to the woman and “heard the police come and get the guy.”

This article describes pregnancy centers in the United States today, their strengths and weaknesses, and how they might be more effective. While their work at times is draining and even heartbreaking, many find it deeply rewarding as well. Janet Durig heads the Capitol Hill Pregnancy Center in Washington, D.C., where most clients are African American. She previously worked in education and insurance. After eight years at her Capitol Hill post, she said: “I hope I die here. I hope I have a ton of energy and I can stay here for a long time. I really do. It’s wonderful work to do and wonderful people to work with.”

Mary Meehan, a freelance writer living in Maryland, is a senior editor of the *Human Life Review*. She can be reached at her website, www.meehanreports.com.

A Bit of Background

The late Canadian pro-lifer Louise Summerhill started a pregnancy center in Toronto in 1968. Believing that “abortion is entirely destructive,” she wanted to help both women and their unborn children. She started what became the large network of Birthright centers while taking care of her own seven children. “No mother ever delivered a more ‘unwanted child,’” she wrote later of Birthright, “nor tried harder to rid herself of what seemed an intolerable burden.”¹ But deliver it she did, and she nurtured it carefully for many years, both in Canada and elsewhere. Birthright now has about 280 centers in the United States.²

Terry Weaver, the Birthright USA director, told me that being a Birthright counselor is “almost like being a new best friend.” Besides helping young women through pregnancy, counselors encourage them “to improve their lot in life” through more education or vocational training. They refer many clients to community agencies for help. “We refer out,” said Weaver, “but then we call them and find out . . . ‘Did you go? What kind of help did you get? Do you still need something?’” Birthright stresses the personal touch and a positive approach. Explaining its policy against use of graphic abortion pictures, Weaver said: “We’re told to love one another. That doesn’t mean scare them to life. It means love them to life.” In her 70s and still going strong, she continues to do some counseling in the Atlanta building that the national Birthright office shares with the local Birthright center.

Robert J. Pearson, a building contractor in Hawaii, fought hard but unsuccessfully against legalization of abortion there in 1970. He offered publicly to support any pregnant woman who needed help. Enough women accepted his offer—about 40 in the first year after legalization—that he added extra rooms to his family’s home to accommodate everyone.³ He also opened some pregnancy centers in Hawaii. Later he moved to the mainland, where he opened many more. In a manual on how to start centers, he urged placing a center close to an abortion clinic, preferably in the same building. He suggested using a name that seemed neutral or even pro-abortion, such as “Pregnancy Problem Center.” He explained that “if the girl who would be going to the abortion chamber sees your office first with a similar name, she will probably come into your center. The best part of this is that the abortion chamber is paying for advertising to bring that girl to you.” In cases where a woman telephoned the center and asked if they did abortions, he advised not answering the question but, instead, taking control of the conversation by asking questions such as “Have you had a pregnancy test?” and persuading her to come to the center. As an alternative, he suggested saying, “Anything you need, we do here.”⁴

Pearson operated for years from St. Louis, then later from Arkansas, where

he still lives at age 82. He may have opened as many as 300 centers over the years, but doesn't know how many there are now. "Many of them have closed," he said, "and many of them have opened other centers . . ." Abortion groups have launched major attacks on "fake clinics" over the years. Often the attacks have tarred all pregnancy centers with the Pearson brush—an issue I will return to later.

Heartbeat International had an unusual combination of founders: Dr. John Hillabrand, an obstetrician; Sister Paula Vandegaer, a Catholic sister and social worker; and Lore Maier, a woman whose pro-life convictions had been forged by the hard experience of growing up in Nazi Germany. Established in 1971, the federation has grown to include over 900 pregnancy centers and clinics—plus some maternity homes and adoption agencies—in the United States and many centers abroad. Heartbeat describes itself as "Christ-centered," but is not affiliated with a specific church.⁵ There is much emphasis on prayer at its conferences, and counselors are encouraged to share a religious message with clients.

Heartbeat now focuses especially on urban and minority areas, helping existing centers there and starting new ones. In a 2011 history of her group, Heartbeat President Margaret Hartshorn emphasized: "In the United States, most abortions are performed in the heart of our major cities (our "NFL cities"). Most pregnancy centers, however, are located in mid-sized cities, small towns, and rural areas." When she met with center leaders in New York City 15 years ago, she learned that Yellow Pages advertising there "was so costly that only a couple of the centers had one-line ads." Heartbeat helped the centers with training and persuaded all of them to join an advertising campaign. The result was full-page ads in every Yellow Pages directory in the city, placing the centers "in competition, for the first time, with the New York City abortion clinics."⁶

In Boston, she worked with Rev. John Ensor, an evangelical pastor who started with one small center and expanded to five. She said both Protestants and Catholics supported Ensor's effort "as volunteers, staff, and board members, prayer partners, and financial partners who pledged \$1.00 per day (the cost of a cup of coffee at that time!) . . ." Ensor later took on Miami, which had 37 abortion clinics and some struggling pregnancy centers. First he made several visits to the area, "setting up an office each time, with his laptop, in Panera Bread." Then he and his wife moved to Miami, where he established two new centers—one in an African American area and the other in a Latino community. He gave many talks at evangelical churches, urging them to be Good Samaritans by supporting the centers. After his talk at one church, a woman approached him and admitted that "I was part of the problem—my

mother and I ran one of the abortion clinics in Miami for several years.” But she added that “now I want to be part of the solution.” She became the director of Heartbeat’s Latino center in Miami.⁷ Hartshorn is increasing the number of minority leaders in her network. She wrote that “about 30 percent of all presentations at the Heartbeat International conferences are now given by Latino and African American leaders.” Such leaders, she said, “can and will take back our major cities for life.”⁸

The Christian Action Council, founded in 1975, was the first major pro-life group of evangelical Protestants. It brought a much-needed voice to the public debate on abortion and also lobbied on Capitol Hill. The Council started many pregnancy centers around the country, increasing them rapidly in the 1980s and ’90s. Eventually deciding to focus exclusively on the centers, the group changed its name to Care Net. It now has more than 1,100 centers and clinics around the U.S.⁹ Its leaders, true to their faith tradition, have always seen evangelism as part of their mission. Centers that affiliate with the group—and their board members, directors, and volunteers—all must agree with its statement of faith.¹⁰ How does evangelism affect clients who are Jewish or Muslim? Care Net President Melinda Delahoyde said there is nothing in the counseling “that would be offensive to their faith tradition in any way.”

Care Net partnered for years with Heartbeat to run Option Line, a national pregnancy counseling hotline. Now Heartbeat runs Option Line, while Care Net has a new online counseling center called Pregnancy Decision Line. Like Heartbeat, Care Net is opening more centers in urban and minority communities. Rev. Dean Nelson, an African American staff member, leads the Care Net effort. He holds “Leaders for Life Summits” for black pastors, bishops, and other community leaders to tell them about “the desperate situation within the black urban communities regarding abortion” and to “engage them to really be advocates for life.”

Concentrating on five cities at a time, Rev. Nelson works with community leaders to open new Care Net Centers. The national Care Net provides training and often gives start-up grants as well. New centers have opened—or should open soon—in Atlanta, Detroit, Hartford, New York, Philadelphia, Richmond, and Washington, D.C. Janet Durig’s Capitol Hill center, a Care Net affiliate, has trained volunteers for the projected new center in Washington. Elsewhere, Rev. Nelson told me, some existing centers see a new one as “a little bit of a threat.” He said that’s “unfortunate, because the situation, in our opinion, is desperate and is dire.” He said Care Net plans “to have, in the next three years, a thousand black and Latino leaders to be proponents and champions for life—specifically highlighting the value of pregnancy centers.”

Attorney Thomas Glessner started and led several pregnancy centers in Seattle during the 1980s, then served as president of what is now Care Net. Keenly aware of attacks on pregnancy centers and their need for good legal advice, he started the National Institute of Family and Life Advocates (NIFLA) in 1993. This group provides legal audits and advice to member centers. Almost 1,250 centers belong to NIFLA, and nearly 800 of them now qualify as medical clinics. The clinics provide ultrasounds, which often convince women they should not have abortions. Some also provide testing for STIs (sexually transmitted infections). A handful, Glessner said, provide “not full prenatal care, but at least a few follow-up appointments with a doctor.” Strongly encouraging older centers to become clinics and offer ultrasound, NIFLA runs regular ultrasound training sessions for doctors and nurses.

Many centers belong both to NIFLA and to Heartbeat and/or Care Net as well. Those networks are the Big Three of the pregnancy-center movement and often work together. Birthright centers, though, generally affiliate only with Birthright, which runs a tight ship and sails alone.

Counseling: The Heart of the Work

Good counseling always involves a great deal of listening. Heartbeat encourages counselors to use open-ended questions and to say, “Tell me more about . . .” It advises asking the woman not only about her needs, but also about her strengths.¹¹ Birthright’s Terry Weaver remarked: “Actually, if you do it right, I think you’re helping her solve her own problem.”

Virginia Clise, director of the 1st Way center in Cumberland, Md., deals mainly with women in their teens or twenties who live in a white, working-class neighborhood where many clients are on welfare. Most do not want abortions, but need practical help and moral support. Some face pressure to have abortions from families or boyfriends. Her clients, Clise said, are “scared to death. Many of them are believing that their life is over because they are pregnant . . . And they need someone to love them, to give them confidence.” Her approach is: “Yes, your old life is over. That’s true. But let’s build a new life.” She refers them to social service agencies for coverage of prenatal care, access to the WIC food program, and other assistance. She encourages older clients who lack high school diplomas to take classes that will qualify them for a general equivalency diploma (GED). She also encourages attendance at the local community college. Clise describes her center as Christian-based and sometimes assures a client who is worried about something that the Lord will “take care of that for you.” She does not press religion on clients, but is happy to speak of faith matters when asked.

Jenny Summers directs the Pregnancy Resource Clinic, a Care Net affiliate in State College, Pa., near the main Penn State campus. She said that when students have “never experienced the joy of raising a child . . . it’s hard for them to make that choice. They know what it’s like not to have them, and they’d rather keep it that way.” A student also worries that her parents “are gonna kill me” when they find she is pregnant. Summers commented: “We encourage them *not* to tell their parents through text message—which this generation just wants to do.” Sometimes a student calls her parents from the counseling room, where she has back-up support. When their response is negative, Summers urges a student to give them a few weeks, predicting that their hearts will soften. She said they usually do. Some parents, though, say, “I’m not gonna pay for your school anymore. I’m not gonna pay for your apartment if you don’t have an abortion.” In such cases, Summers tells the young woman that, under the law, no one can force her to have one. She also says, “You know, this baby’s created by God, and God is ever so near to you now This is when you need him the most.”

Sometimes counselors have to talk to clients about the effects of substance abuse on unborn children. Virginia Clise remarked that “a lot of these girls smell like a chimney and tell me they don’t smoke. But that’s okay.” She has a video to show them: *Stop Smoking Now*. The local drug treatment center sends her pregnant women who have been on cocaine or heroin and are now on methadone. Clise explained that “they do not want the mother to go cold-turkey when she’s pregnant, because that will probably kill the baby. So that’s why they put her on the methadone.” After delivery, “hopefully, then, she will get drug free.” Some of the babies, meanwhile, “have to go through withdrawal from the methadone.” At Penn State, binge drinking of alcohol is a major problem. Some young women, Jenny Summers said, are two boyfriends “removed from the guy that they got pregnant by.” The father of the child “was just a friend”—except that “she doesn’t even know his last name . . . they were drunk and were at a party or whatever.”

Summers acknowledged that sometimes, especially when she knows her efforts to save a life have failed, “I get really sad. I do grieve.” Contrasting the way society devalues life with her own children’s great joy of life makes her “passionate about what we do. And I love what we do, and I can’t imagine doing anything else.”

Other Assistance

Pregnancy centers usually provide direct assistance that may include free baby clothes, maternity clothes, formula, and diapers. Some give away baby

furniture as well. Some items are brand new, others lightly used. The Capitol Hill center in Washington has a whole room devoted to baby and toddler clothing; it also provides children's books. "We've seen changes in lives because we walk with people for a long time," center director Janet Durig remarked. Birthright centers provide clothing, but Terry Weaver said too much emphasis on it means that "you're inundated with baby clothes and you don't have the abortion call." Some Birthright centers used to provide clothing up to school-age, but "we've asked them just to give out infant clothing . . . maybe up to 24 months."

Many centers now have "Earn While You Learn" programs, in which young mothers earn credits or coupons by watching and discussing videos on parenting skills. They can then use their credits to "buy" items ranging from a diaper bag to a bassinet or portable crib. Virginia Clise has such a program in her 1st Way center. Her many videos, obtained from Heritage House '76, cover "Bonding with Your Unborn Baby," "Infant Massage," "Crying, Colic, Sleep," and much more. Some centers have pregnancy and parenting classes where clients watch and discuss videos together, but Clise does video instruction one-on-one. One of her programs has questions about the client's problem areas and what she wants to accomplish in the next one or two years. Clise reported that many clients "just look at me. They never really thought about this." And some say they have no strengths. She responds, "Oh, yes, you do" and helps them find at least one.

In their early years, many pregnancy centers had volunteer families to host young women who had been ousted from their own family homes because they were pregnant. This is no longer common, partly because some women had drug or other problems that host families couldn't cope with. Terry Weaver said some "would run up telephone bills—hundreds of dollars—and remove things that were not theirs." Many centers now refer women in need of housing to maternity homes or other group homes. These work well for some, although Weaver remarked that today "girls don't like to go to places where there are rules." Sometimes their need for housing is only temporary: "A lot of times, it's 'I'm mad at my mother. I can't stand speaking to her anymore, and I'm not gonna stay there.' But when you explain to her that 'you're lucky to have a place,' often they can work that out." Sometimes parents and daughter come to a center together, and the counselor helps them "bring things out in the open" and "say things that they feel but they're not saying out loud to each other."

Other center programs often include abstinence education and abortion healing. There is also much mentoring, formal or informal, by staff and volunteers, who include many mothers and grandmothers.

How do centers pay for everything they do? Donations from individual supporters are a top source, and many have local churches that donate on a regular basis. Jenny Summers said about 50 churches help her center, some with monthly or quarterly donations. Businesses, she said, make donations at fundraisers or provide “a service rather than money.” The Knights of Columbus give both money and volunteer support to pregnancy centers. Denise Cocciolone said Knights raised nearly all the money—and also provided skilled volunteer work—to expand the building that houses both 1st Way’s national office and its Woodbury, N.J., center. The Knights, she said, “were fantastic.” Both the Knights and Focus on the Family make grants to centers for ultrasound machines. Special events also help many centers: an annual banquet, a walk for life, a baby-bottle campaign (asking people to fill baby bottles with coins), a scavenger hunt, a golf tournament.

Some centers receive state funding through “Choose Life” license plates or other state programs. Care Net allows its centers to receive such money, but President Melinda Delahoyde said the group warns them, “Look at the strings attached. Look at the reporting mechanisms . . . And, also, realize that you cannot come to depend on this money.” Peggy Hartshorn, the Heartbeat president, said her group also warns its affiliates about dependency. But she added that state agencies that administer funding “have been very supportive” of the centers and are “sympathetic to the mission.” Terry Weaver of Birthright spoke against government funding, saying that “we don’t want somebody coming in and telling us what to do.” Denise Cocciolone of 1st Way, worried about dependency and control, said that “we strongly recommend against any government money.”

Where Are the Guys?

Sometimes a client tells Janet Durig that her boyfriend hasn’t talked to her “since I told him I thought I might be pregnant.” When a young woman tells Jenny Summers that her boyfriend will “support me whatever I decide,” Summers responds: “Usually, that means ‘I’ll pay for the abortion.’” Then, Summers said, “they just look at me—like, how did I know that?” One girl told Virginia Clise that her boyfriend ordered her to have an abortion and said he would provide the money. “And I told him that I didn’t want to get that abortion. And he said, ‘Well, as far as I’m concerned, that baby’s dead anyway.’” Women who resist such pressures for abortion often are forced to rely on welfare.

Relatively few men come to centers with their girlfriends or wives. The fact that visible center staff and volunteers are overwhelmingly female may have something to do with that. Substantial numbers of men serve as board

members or do painting and repair work for center buildings, but clients usually don't see them. Some centers, though, do have male counselors available to talk with men. Denise Cocciolone has had some who were very good in counseling young women as well. One, the father of several daughters, was "kind and gentle and loving and really very fatherly to them," she said. He was doubly important to many because he was the first "decent father figure" they had ever known.

Care Net and Heartbeat worked in recent years with the National Fatherhood Initiative (NFI), a group that receives both private and public funding, to improve outreach to men. Care Net's Melinda Delahoyde said this involved actually placing "fatherhood coordinators" in pregnancy centers. Margaret Hartshorn said many Heartbeat centers received NFI material and started fatherhood programs. While the federal government made major grants to NFI under the George W. Bush administration, she noted that funding "has dramatically declined" under President Obama. Helpful NFI material, though, is available for purchase at the NFI website, www.fatherhood.org.

Janet Durig has used NFI literature at her Capitol Hill center in Washington. The center also encourages young fathers to attend its childbirth classes along with the young mothers. Durig said 40-60 teenage fathers attended over a two-year period and were staying active in their babies' lives. One childbirth class had a reunion at the center, "and they all brought their babies." Fathers were "showing off their babies to the other boys . . . and then cooing and cuddling . . . and just complimenting them over *their* children." The center encourages dads to attend parenting classes, too.

Although center websites are directed mainly toward women, some have added men's pages. In comparing a men's page from South Dakota with one from Louisiana, I found useful advice on both. But one said that it's "normal to have feelings of anger, frustration and fear" about a pregnancy, and the other added "disappointment" to the list. I was surprised that neither said anything about happiness in having a child. The Louisiana one, though, did include this point: "SHE'S carrying the baby, but you are BOTH parents. You have an obligation to love and support that baby . . ." ¹²

I believe both pregnancy centers and the entire pro-life movement will take a great leap forward if more male pro-lifers—especially pastors and politicians—tell other men: "This is not just a women's issue! Step up to the plate, guys! These are *your* children, too. That doesn't mean just financial support—though that's important—but also *being there* for your children. And if you do it right, you will find that fatherhood is one of the great joys of your life." If they say this publicly and often, millions of women will shout "Amen!"

“Integrity” Is a Many-Splendored Word

Pregnancy centers are bad for the business of Planned Parenthood (the largest single abortion provider in the U.S.) and the National Abortion Federation (a trade group of abortion clinics). Both PP and NAF have attacked the centers bitterly. So have NARAL Pro-Choice America and some of its allies in Congress. The common approach is to imply that most or all pregnancy centers are highly deceptive; to contend that centers make up or exaggerate the adverse effects of abortion on women; and to quote reports from undercover agents who, posing as pregnant women, call or visit centers. In at least one attack and part of another, though, charges cannot be checked because the centers allegedly at fault are not even named. That is an odd practice, to say the least.¹³

Some of abortion’s effects on women, both physical and mental, are highly disputed. People on both sides of the abortion divide are tempted to cite mainly those studies that support their cause. I believe some pregnancy centers do exaggerate some adverse effects. Statements about them should focus on the most common ones and cite recent medical studies. Sometimes a center should go further: When an abortion clinic in its area has been sued successfully over a woman’s injury or death due to malpractice, it’s a public service to mention this and cite court records.

Pretending to be an abortion clinic is not nearly as widespread as some attacks suggest. But it shouldn’t happen at all. Robert Pearson has spent over half of his long life in the defense of unborn children. No one can question his deep commitment. Some younger leaders, also deeply committed, rely on market research about “abortion-prone women” to justify websites that suggest their centers are neutral on abortion. I believe the deception approach is a great mistake, both ethically and practically. It undermines the trust that holds society together, and it gives bad example to young people. It harms the reputation of all pregnancy centers and of the pro-life movement generally. It leads to diversion of time and money from positive programs to defending centers against media attacks and hostile legislation. It also places an unfair burden on staff and volunteers; most of them, after all, were brought up to tell the truth. If an inquiring woman “pinned us right down” on whether a center does abortions, Pearson told me, then “we’d have to say, ‘Well, no, we don’t.’” Why not say that upfront? Here’s what Terry Weaver suggests: “No, we do not do abortions. But we’ve got lots of information I bet you haven’t seen that we could talk to you about. There’s no pressure . . . Free. Confidential. Don’t even need to know your name if you don’t want to tell me. And I bet you we could give you some information

you might find helpful while you're making your decision."

Birthright, Care Net, Heartbeat, and NIFLA are all on record against deception,¹⁴ and many centers now say on their websites that they neither perform nor refer for abortions. Many leaders, though, believe it's all right to divert the inquirer's attention—at least initially—by asking questions and inviting the woman to visit a center. If a woman learns right away that a center doesn't do abortions, they fear, she will simply hang up. Undoubtedly, some women will. But when the person who answers the phone is courteous and friendly, this is less likely to happen—especially now, when people are tired of answering machines and voice mail. Many are delighted to find a real human being at the other end of the line, especially one who is friendly. I think centers should either answer the abortion question the first time or else allow only one attempt at diversion. Repeated failure to answer a simple question is rude to the point of really annoying people. The practice may remind them of high-pressured, flimflam sales talks.

Some centers virtually fly a pro-life banner with their names, but many use names, such as "pregnancy resource center," which are more neutral-sounding yet also accurate. But centers with names such as "Woman's Choice Services" or "Pregnancy Choices" should ask themselves if those names aren't too clever by half. Some centers should also wonder if their efforts to appear neutral on abortion may be changing their own outlook on life and confirming and even spreading attitudes they thought they opposed. Thus an Idaho center says on its home page: "Are You Pregnant? You had plans. A baby wasn't one of them. If you're considering an abortion, you may not even need one." *Need* one? (It explains that possibly the woman is not really pregnant.) Responding to the question, "How far along am I?" it says: "How far along you are will determine what kind of abortion procedure you would be eligible to receive . . ." But its "About Us" page says, "We do not offer, recommend or refer for abortion or abortifacients . . ."¹⁵ A woman who gets that far may wonder, "Well, *why not?*"

Attacks on pregnancy centers from the abortion industry and its political allies are unfair in many respects. But some centers do send mixed messages, and some really are deceptive. Leaders of those centers should ponder what Richard Nixon said about the way his enemies used the Watergate scandal against him: "I gave them a sword, and they stuck it in and they twisted it with relish. And I guess if I had been in their position, I'd have done the same thing."¹⁶ National leaders, besides correcting centers affiliated with their own networks, can try to reason with leaders of centers that are not. They can publicly repudiate any who persist in deception.

Many center websites feature photos of young women who look worried

or upset. I don't know whether this is an effort to stress the need for counseling, to appear neutral or, as one veteran counselor suggested, because that is how women appear "when we get them." But it would be good to balance such photos with ones of happy parents with their children. More sites should also include testimonials from women and couples helped by centers. There are lots of success stories out there, and they can add a great deal to websites and to printed literature as well.

Sometimes the success stories—in person and years later—stop by a center to thank a counselor. Terry Weaver remembers a young woman who stopped by one day to say that her child "was six and that her life was good. She had a good job; she'd finished school . . . everything was a positive thing. And that's just what keeps us here, you know? That's our paycheck." She also remembers a boy who found out, at age 12, that he was alive because of her counseling. The boy "wanted to come and meet me." It was "an awesome moment in my Birthright life, to have that young fellow come in."

AUTHOR'S NOTE

Where quotations are not cited to notes, they are from one of the following interviews by the author. Most were telephone interviews, but the Clise, Durig, and Summers interviews and the first Cocciolone interview were onsite.

Virginia Clise, 1st Way Center, Cumberland, Md., 9 May 2012.

Denise Cocciolone, 1st Way, Woodbury, N.J., 15 Dec. 1992 and 24 April, 2012.

Melinda Delahoyde, Care Net, 17 May 2012.

Janet Durig, Capitol Hill Pregnancy Center, Washington, D.C., 1 Aug. 2011.

Thomas Glessner, National Institute of Family and Life Advocates (NIFLA), 22 May 2012.

Margaret Hartshorn, Heartbeat International, 26 April 2012.

Dean Nelson, Care Net, 23 April 2012.

Robert J. Pearson, 30 May 2012.

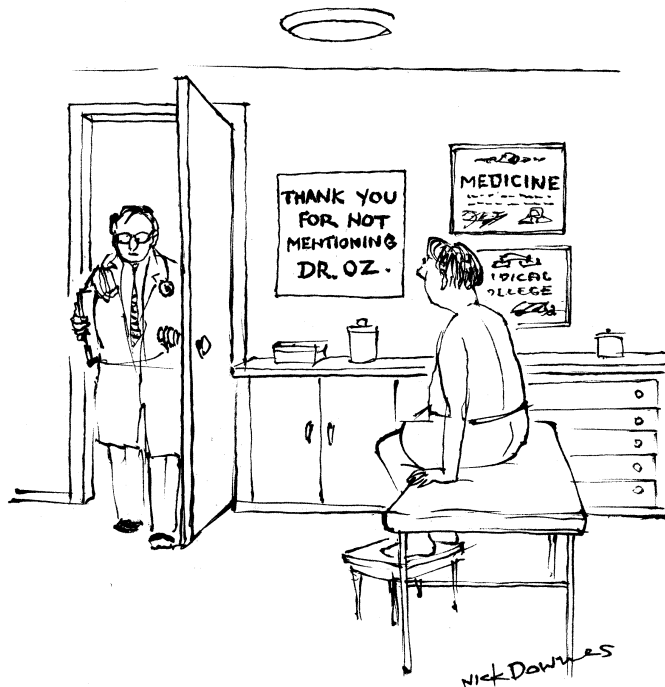
Jenny Summers, Pregnancy Resource Clinic, State College, Pa., April 18, 2012.

Terry Weaver, Birthright USA, 10 April 2012.

NOTES

1. Louise Summerhill, *The Story of Birthright*, rev. ed. (Toronto: Birthright International, 2006), 3.
2. This and later figures on networks' affiliates are based on checks with the networks in May and June, 2012.
3. Patricia G. Steinhoff and Milton Diamond, *Abortion Politics: The Hawaii Experience* (Honolulu: University Press of Hawaii, 1977), 32-34, 187-89, & 226, n. 19.
4. Excerpts from Robert J. Pearson, *How to Start and Operate Your Own Pro-Life Outreach Crisis Pregnancy Center* (St. Louis: The Pearson Foundation, n.d., 4-5 & 18), appended to "Statement of Ann E. Menasche, Attorney for Committee to Defend Reproductive Rights . . . before the Subcommittee on Civil and Constitutional Rights" [U.S. House, Committee on the Judiciary], 15 Dec. 1986.
5. Margaret H. (Peggy) Hartshorn, *Foot Soldiers Armed with Love* (Virginia Beach, Va.: Donning

- Company Publishers, 2011), 17-36 & 58-65. Heartbeat was once called Alternatives to Abortion International.
6. Ibid., 66 & 69-71.
 7. Ibid., 66-67 & 72-73.
 8. Ibid., 73-74.
 9. "History," www.care-net.org/aboutus/history.php.
 10. "Care Net Affiliation Agreement," www.care-net.org/public/file_server.php?id=798; and "Statement of Faith," www.care-net.org/uploads/affiliation_docs/Statement-of-Faith-2-08-C.pdf, both accessed 7 June 2012.
 11. Heartbeat International, "The L.O.V.E. Approach," a one-page handout, n.d.
 12. See www.carenetprc.com/for-men.html (Care Net Pregnancy Resource Center, Rapid City, S.D.); and www.nbrwhc.org/help/justforguys.php (North Baton Rouge Women's Help Center, Baton Rouge, La.), both accessed 13 June 2012.
 13. *The Truth Revealed: North Carolina's Crisis Pregnancy Centers* (Raleigh, N.C.: NARAL Pro-Choice North Carolina Foundation, 2011) does not name any of the centers it accuses. A 2006 congressional report failed to identify centers it accused of providing false information to callers who posed as pregnant teenagers. See U.S. House of Representatives, Committee on Government Reform, Minority Staff, Special Investigations Division, *False and Misleading Health Information Provided by Federally Funded Pregnancy Resource Centers*, 2006.
 14. *A Quick Reference Guide to the Birthright Charter and Directives Relating to the Charter* (Toronto: Birthright International, 2007), 9; and *A Passion to Serve* (Washington: Family Research Council, [2009], 67.
 15. See www.realchoicesclinic.com (Real Choices Clinic of Coeur d'Alene), accessed 15 June 2012. I have seen the same wording on some other pregnancy-center sites.
 16. Richard M. Nixon, interview by David Frost (broadcast in May, 1977), in *The Guardian*, 7 Sept. 2007, <http://www.guardian.co.uk/theguardian/2007/sep/07/greatinterviews1>



The Unknown Scholars of *Roe v. Wade*

Gregory J. Roden

Justice Harry Blackmun noted in *Roe v. Wade* that “some scholars *doubt* that the common law ever was applied to abortion.” Blackmun used the opinion of these scholars to support his more ambitious contention that, “A recent review of the common-law *precedents* argues . . . that even post-quickenings abortion *was never* established as a common-law crime.” This bolder claim was primarily based on the writings of Cyril Means, Jr., NARAL’s counsel at the time *Roe* was written¹; it is the central premise in *Roe v. Wade*—whatever logic the opinion has collapses without this principal proposition. Yet, curiously, Blackmun never revealed the identity of the “some scholars” that he alleged to support this key thesis. The complaint of these “Unknown Scholars,” if you will, was that there was a supposed *lack* of English common-law cases to support the various treatise writers who reported that abortion was a crime. Still, the Unknown Scholars did not contend that there were actual common-law cases holding that abortion was *not* a common-law crime; nor did they contend that abortion was not criminal.

Hardly. Instead, the Unknown Scholars held the view that abortion had been prosecuted in England as an ecclesiastical crime, stating, “There is no doubt that abortion was an ecclesiastical offense as late as 1527.” And then, with the English Reformation and King Henry VIII’s usurpation of the English Catholic Church’s property and hierarchy, the Unknown Scholars believed, “The exact status of abortion in the English law prior to the passage of the first abortion statute in 1803 [was] confused.” However, the Unknown Scholars next noted that under the English statute of 1803, Lord Ellenborough’s act, “Abortion . . . was punishable by death if the woman was ‘quick with child,’ and by transportation or imprisonment if performed prior to quickening.” The Unknown Scholars then concluded their review of English law with this observation: “This statutory adoption of the ecclesiastical distinction based on quickening is good evidence that Parliament continued to regard abortion as a crime against the unborn child.”²

So who exactly are these Unknown Scholars? Blackmun’s reference to them is secondhand. His direct citation is to Lawrence Lader, the founder of NARAL, and Lader’s book *Abortion*. In the passage of *Abortion* referred to by Blackmun, the only citation to a work of legal theory is “‘The Law of

Gregory J. Roden is an attorney licensed to practice in Minnesota and before the U.S. Supreme Court. A member of Minnesota Lawyers for Life, he is also on the Board of Human Life Alliance.

Criminal Abortion,' *Indiana Law Journal*, Vol. 32 (1956-57), pp. 193-94."³ In Lader's citation, the authors are not identified because the reference is to a "Note" in the *Indiana Law Journal*. We may assume, then, that the authors (or author) were student staff members of the *Indiana Law Journal*. For Blackmun to have looked up this "Note" to further investigate this claim, which so crucially supports his *Roe* opinion, would have been as easy as grabbing a copy of the journal from the law library shelf. So why didn't he do so, or, if he did, why didn't he cite this "Note" directly?

After all, the only other support Blackmun could offer for his denigration of abortion as an English common-law crime was from NARAL's founder, Lader, and its legal counsel, Means. Furthermore, Blackmun himself clumsily cited 11 American cases in which abortion of a quickened fetus was affirmed to be criminal without any controversy. Even odder, in the same footnote, he also cited two cases in which abortion was criminal prior to quickening; the declaration "The moment the womb is instinct with embryo life, and gestation has begun, the crime may be perpetrated" appeared in both cases.⁴ Then there are all the historically important common-law treatise writers who held abortion to be criminal (such as Henry de Bracton, "Fleta," Coke, Blackstone, William Hawkins, and Matthew Hale).

So, too, there are any number of English common-law cases for the prosecution of abortion. Indeed, whereas Means alleged that abortion was not criminal under English common law (and this somehow created a right to abortion in America), there are at least three English cases in which women who had suffered abortions resulting from battery used the common-law "plea of felony" procedure to bring criminal actions against their assailants.⁵ The historical precedent for abortion as a common-law crime notwithstanding, Blackmun's contention that it was "doubtful that abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus" is proven to be clearly erroneous and patently absurd by one of Blackmun's cited cases. Blackmun's contention is clearly erroneous because this case held abortion to actually be an operative common-law crime at the time of *Roe v. Wade* decision.

Justice Blackmun cited a number of contemporaneous decisions that in his opinion supported his contention that abortion was a privacy right. One of those cases was decided by the Florida Supreme Court in the year before *Roe* was handed down, *State v. Barquet* (Fla. 1972). In *Barquet*, the Florida Supreme Court struck down for vagueness state statutes that outlawed abortion except when "necessary to preserve the life of such mother" under the Florida Constitution's due process clause. But Blackmun apparently overlooked the fact that some jurisdictions, such as Florida, had not abolished

their common law. Rather, they had amended it and supplemented it. So, when a statute in one of those states is repealed by the legislature or struck down by a court, the old common law is automatically resurrected. Accordingly, the Florida Supreme Court wrote:

Our conclusion creates a tremendous problem in that the common law is now brought into play. It was a crime at common law to operate upon a pregnant woman for the purpose of procuring an abortion if she were actually quick with child . . . “Quick” means “living; alive.” *Black’s Law Dictionary*, (4th Ed. 1957). From the filing of this opinion until a statute is enacted by the Legislature, a person may be charged with the common law offense of abortion.⁶

By this decision, at the very time *Roe v. Wade* was being heard, the question of whether or not abortion was common-law crime was no longer open for speculation—it was in fact a common-law crime! Incredibly, Justice Blackmun used his spurious review of the common-law history of abortion to establish the abortion right of privacy. So it bears repeating: His *Roe v. Wade* opinion is clearly erroneous—it has no basis in fact or law.

Pardon the digression—now, back to our Unknown Scholars. The Unknown Scholars did not intend in any way for their ruminations on the English common law to somehow be a critical inquiry into constitutional rights. Rather, their apparent reason for writing the article was to advocate the strengthening of abortion laws, not to liberalize them. They complained that “[T]he number of these illegal operations has assumed monstrous proportions and, in all but an insignificant number of cases, go unprosecuted.” However, legislation to solve this problem was slow in coming, which prompted them to look deeper into the issues: “In attempting to explain this apparent legislative apathy toward a problem of this magnitude, it seems essential to re-examine the underlying rationale of the abortion laws.”

The Underlying Rationale of the Abortion Laws

The Unknown Scholars then engaged in their historical review of abortion law, and came to this determination of the “underlying rationale”:

Determination of this underlying rationale is of more than academic interest. To the contrary, it has great utility in that it provides a standard by which we may evaluate tentative solutions to the abortion problem. Thus, every hypothetical solution must be reconciled with *the basic purpose of protecting the life of the unborn child*. No solution which ignores this premise, however effectively it may deal with the immediate problem of non-enforcement, is acceptable.

“[P]rotecting the life of the unborn child”! Perhaps we are uncovering the reason why Blackmun omitted any reference to this article. It should be remembered that in *Roe*, the Supreme Court did not strike down all criminal

abortion laws per se, but only 1) those that did not contain a health exception, and 2) laws that did not have increasingly more liberal health exception for the second and first trimesters.⁷ The Texas statute in question already had a life exception, so it was only the health exception that was at issue. Properly understood, *Roe v. Wade* is principally and primarily the imposition of a subjective health exception, as a woman's Fourteenth Amendment substantive due process right, upon the states.

The Fourteenth Amendment reads, "No State . . . shall . . . deprive any person of life, liberty, or property, without due process of law"; its plain meaning is to ensure a fair legal proceeding before anyone is executed, incarcerated, fined, or has property confiscated; i.e., procedural due process. Substantive due process, on the other hand, is a controversial legal theory in which the Supreme Court looks to the nature of the right alleged to be under attack. Then, if it so chooses, the Court may declare the right to be "fundamental" and the state law unconstitutional. Ironically, this substantive *due process* may thereby deny the several states the police power to regulate the associated activity through *any* legal due process proceeding. As Justice Scalia wrote in a dissenting opinion, "The entire practice of using the Due Process Clause to add judicially favored rights to the limitations upon democracy set forth in the Bill of Rights (usually under the rubric of so called 'substantive due process') is in my view judicial usurpation."⁸ And, even in a conciliatory mood, Justice Scalia referred to substantive due process as "an oxymoron"⁹ in a concurring opinion.

In order to impose the substantive due process right to abortion on the states, Justice Blackmun first denied "that abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus." That allowed Blackmun to substitute his own "underlying rationale" for the enactment of abortion statutes. He promoted in *Roe* the claim that the real legislative *intent* of "the enactment of criminal abortion laws in the 19th century" was to protect the health of the mother:

Parties challenging state abortion laws have sharply disputed in some courts the contention that a purpose of these laws, when enacted, was to protect prenatal life. Pointing to the absence of legislative history to support the contention, they claim that most state laws were designed solely to protect the woman.

Although Blackmun also claimed that there was "some scholarly support" for the health of the woman legislative intent argument, his only supporting citations¹⁰ were to two articles by NARAL's Cyril Means, *Cessation*¹¹ and *Phoenix*.¹² Yet, Means, in turn, could only provide a single case citation in alleged support of his thesis, a New Jersey Supreme Court case, *State v. Murphy* (1858).¹³

State v. Murphy

This case is very significant because when Blackmun wrote, “The few state courts called upon to interpret their laws in the late 19th and early 20th centuries did focus on the State’s interest in protecting the woman’s health rather than in preserving the embryo and fetus,” he also had only one supporting citation, *State v. Murphy*.¹⁴ As for our Unknown Scholars, before they came to the conclusion that the basic purpose of abortion laws was “protecting the life of the unborn child,” they examined the idea that the “protection of the mother’s health has, *on occasion*, been a salient *factor* controlling judicial interpretation of the rationale of an abortion statute.” And it just so happened that the Unknown Scholars discussed *State v. Murphy* and the related New Jersey case of *State v. Cooper*:

State v. Cooper, 22 N.J.L. 52 (Sup. Ct. 1849) decided that at common law abortion was not a crime prior to quickening. As a result of this decision the New Jersey legislature enacted a statute which purported to eliminate any distinction based on quickening. This statute was construed in *State v. Murphy*, 27 N.J.L. 112 (Sup. Ct. 1858) where the court, after commenting that at common law abortion was only an offense against the life of the child, went on to say: “The design of the statute was not to prevent the procuring of abortions, so much as to guard the health and life of the mother against the consequences of such attempts.” *Id.* at 114. But at least one section of the New Jersey law is still aimed at protection of the fetus, since by the terms of the 1881 revision the maximum penalty is doubled if the child dies. N.J. Rev. Stat. [Sec.] 2A :87-1 (1951). For an example of a statute rationalized as exclusively for the protection of the fetus, see *Miller v. Bennett*, 190 Va. 162, 168, 56 S.E.2d 217, 221 (1949).¹⁵

The 1881 revision of the New Jersey law and its additional protection for the unborn child were omitted in both Blackmun’s and Means’s analysis of *State v. Murphy*; indeed, there is a lot missing in *Roe*’s legal theory. So Justice Blackmun had the motivation to bury the Unknown Scholars’ “Note.” After all, the Unknown Scholars examined *State v. Murphy*, the only case that Blackmun and Means could offer to support their thesis that the intent of early abortion statutes was to protect the woman’s health, and disagreed with their evaluation of that case and all such statutes in general.

Still, the Unknown Scholars’ analysis of *State v. Murphy* does join Blackmun and Means in failing to note that the New Jersey statute in question did not wholly replace the common law of New Jersey on abortion prosecutions. New Jersey did not abolish common-law crimes until 1979.¹⁶ The New Jersey statute enacted in 1849 *supplemented* their criminal common-law abortion proscriptions, similar to the situation in Florida. Moreover, *State v. Murphy* specifically recognized that the common-law criminality of the mother in perpetrating an abortion of her unborn child remained after the

enactment of the statute—*Murphy* provides one of the clearest statements of the mother’s culpability for harm to her child, that her only exemption from prosecution was for those actions that affected her own body:

Nor does the statute make it criminal for the woman to swallow the potion, or to consent to the operation or other means used to procure an abortion. No act of hers is made criminal by the statute. *Her guilt or innocence remains as at common law. Her offence at the common law is against the life of the child.* The offence of third persons, under the statute, is mainly against her life and health. The statute regards her as the victim of the crime, not as the criminal; as the object of protection, rather than of punishment.

In addition to affirming the woman’s remaining culpability under the common law, *Murphy* clearly states that the reason the woman was exempted from prosecution under the statute was because the law “regards her as the victim of the crime.” In other words, the state’s motivation in enacting the statute was to protect the mother as a victim of the crime, rather than to protect the mother’s exercise of some otherwise dangerous and immoral civil liberty—this was clear to Supreme Court Justice Joseph Rucker Lamar, who cited *Murphy* on this point in his dissent in *U.S. v. Holte*.¹⁷

[I]n prosecutions for abortion, the woman does not stand legally in the situation of an accomplice, for although she no doubt participated in the moral offense imputed to the defendant, she could not have been indicted for that offense. The law regards her as the victim rather than the perpetrator. . . . *State v. Murphy*, 27 N.J.L. 114.

Justice Lamar affirms the principle that although these statutes exempted the woman from prosecution as a victim of the crime, still she no doubt participated in the moral offense. So, a correct reading of *State v. Murphy* dismisses another rationale for the argument based on the health of the woman/legislative intent: the rationale that her exemption from prosecution somehow supported this argument.

The intent of the New Jersey legislature in enacting the statute in question in *State v. Murphy* was to supplement their common law. This is quite clear from the opinion. The statute was enacted immediately after the New Jersey Supreme Court decided under its common law, *State v. Cooper* (1849), and was designed to correct the “mischief” resulting from that opinion. In *Cooper*, the question presented was “whether an attempt to procure an abortion, the mother not quick with child, is an indictable offence at the common law.”¹⁸ In this case, where the mother did survive the abortion, the court held that the indictment was valid only if the mother did not consent to the abortion. The court also defined quickening as “that moment when the embryo gives the first physical proof of life, no matter when it first received it.” So, where there was no evidence that the fetus was alive, and where the mother

consented to the abortion, no indictment could be sustained under New Jersey common law for any injury to the mother. In response to this legal anomaly, a statute was passed to close this loophole.

This brings us to the only sentence Cyril Means, Jr. quoted from the *Murphy* opinion—although in doing so he left out key passages showing the true intent of the law according to the court. Indeed, even the preceding sentence makes that clear; here is the pertinent quote with the sentence omitted by Means in brackets:

[An examination of its provisions will show clearly that the mischief designed to be remedied by the statute was the supposed defect in the common law developed in the case of *The State v. Cooper*, viz., that the procuring of an abortion, or an attempt to procure an abortion, with the assent of the woman, was not an indictable offence, as it affected her, *but only as it affected the life of the fetus*.] The design of the statute was not to prevent the procuring of abortions, so much as to guard the health and life of the mother against the consequences of such attempts.

It should not escape notice that the New Jersey statute in question in *State v. Murphy* did not contain an actual health exception—the perpetrator could not escape guilt by claiming the abortion was performed for the health of the woman. Instead, as shown, it excused the criminality of the woman as it viewed her as a victim of the crime. Indeed, Justice Blackmun in *Roe* records that the earliest state statute creating a health exception was enacted in 1958; two states and the District of Columbia followed in the 1960s, and several more states enacted such laws in the early 1970s immediately before *Roe*.¹⁹ Therefore, although Blackmun claimed that “the restrictive criminal abortion laws in effect in a majority of States today are of relatively recent vintage,” it was instead the statutory health exception that was the Beaujolais of criminal law.

Justice Blackmun’s argument was not that a health exception existed as a matter of nineteenth century legal history; rather, he was presenting the untenably weak argument that the “intent” of state legislators, in replacing the criminal common law of abortion with statutes, was to protect the woman’s health. Still, if the “intent” of the state legislators was to protect the woman’s health, then why didn’t these state laws contain a health exception, allowing abortion when the woman’s health was at risk?

The Unknown Scholars Consider a *Procedural Due Process* Health Exception

The Unknown Scholars did take note of two twentieth-century state cases in which they believed the state supreme court expanded the state statute to include a health exception. The earliest such case is a 1928 Iowa case, *State v. Dunkleberger*, in which the attending physician, Dr. Wallace, testified that he believed that the fetus was dead; as the doctor testified, “I took hold

of the mouth of the womb, withdrew the speculum, and then took my two fingers and straightened up the womb.” He did this to facilitate a miscarriage, as he feared if he did not act the dead fetus might remain in the womb, resulting in blood poisoning and death.

The Supreme Court of Iowa made two rulings, one “that the State has introduced no evidence to disprove the good faith of the doctor in his diagnosis, or to disprove the diagnosis itself.” The other was that the mortal danger to the patient need not be immediate or certain. Still, the standard was the existence of mortal danger,²⁰ which is a life exception, not a health exception, and the circumstances to which it was applied involved a fetus that was alleged to be already dead.

The later case, *Commonwealth v. Wheeler*, was decided in Massachusetts in 1944 and is the only case that contains some language approximating today’s idea of a health exception. The Unknown Scholars quoted this health exception language in their article, but they left out key phrases by which the state supreme court was making it clear the case was not a controlling precedent in that regard. Here is the pertinent quote with the portions omitted by the Unknown Scholars in brackets:

[For the purpose of this case at least, we may assume that, in general, a] physician may lawfully procure the abortion of a patient if in good faith he believes it to be necessary to save her life or to prevent serious impairment of her health, mental or physical, and if his judgment corresponds with the general opinion of competent practitioners in the community in which he practices. [In *Commonwealth v. Nason*, an instruction along these lines was held “sufficiently full and accurate to protect the rights of the defendants.” Whether this is a complete and exact interpretation of our statute applicable in all cases need not now be decided.]²¹

In *Commonwealth v. Wheeler*, a doctor was found guilty of procuring an abortion from his own wife. He had wanted ruling that, “An abortion is not unlawful if in the *average* judgment of the doctors in the community in which it is performed it is reasonably necessary to preserve the life or health, including mental health, of the person upon whom it is performed.” The ruling was denied at trial and the Supreme Court of Massachusetts affirmed that denial because the requested ruling “omitted all reference to the *good faith and honest belief* of the doctor.” It was the *mental intent* of the doctor in performing the abortion procedure on his wife that was at issue; which is a normal and necessary inquiry in criminal trials. The trial court did not believe his claims of wanting to perform the abortion for reasons other than of avoiding another child; his wife “had successful pregnancies a number of years before,” the court noted. The court also observed: “There was much evidence tending to show an unhappy condition in the defendant’s family

which might have been made worse by the advent of another child.” Still, the *Wheeler* case was not intended by the Massachusetts Supreme Court to set a precedent for a health exception, and no subsequent appellate court cited it for that purpose.

The *Dunkleberger* and *Wheeler* cases illustrate how a health exception, if one existed, would work at the state level as a matter of *procedural* due process. As such, it would be an exercise of the state’s police power to enforce abortion law, while at the same time protecting the “rights of the defendant.” The defendant would be allowed to introduce testimony that the attending physician undertook the abortion procedure under the exception, and the burden of proof would be shifted to the state to disprove it. But, would even such a hypothetical health exception extend to non-physicians?

The case of *Commonwealth v. Nason*, cited in the *Wheeler* case, takes up this very issue. None of the defendants in the *Nason* abortion case were doctors. So when the defendants asked for jury instructions that the abortion was lawful if the fetus had “lost its vitality so that it could never have matured into a living child,” the trial court denied their request; and such jury instructions were held to be “refused rightly” by the Supreme Court of Massachusetts. As the court reasoned, although a physician might have the right to commit an abortion involving a dead fetus “upon the *best* judgment of that doctor and his judgment corresponds with the average judgment of the doctors in the community,” that was a privilege of his professional judgment which did not extend to the lay defendants who performed the abortion in *Nason*. So too, the mother’s consent was ineffective to extend the health exception to persons outside of the medical profession.²²

The Health Exception as Substantive Due Process

With all this in mind, looking at the underlying legal theory of *Roe*’s health exception, the very idea of a health exception as a constitutionally protected substantive due process liberty under the Fourteenth Amendment is problematic.²³ First, the Fourteenth Amendment only protects against state action. As the Court held in *Harris v. McRae*, “although government may not place obstacles in the path of a woman’s exercise of her freedom of choice, it need not remove those not of its own creation.” Obviously, the state did not impregnate the woman. Hence, the Court held in *Harris v. McRae*, “it does *not* follow that a woman’s freedom of choice carries with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices,” and so the government had no responsibility to fund her abortions.²⁴

Second, pregnancy itself is not a pathological state—so how would abortion further the health of the mother *per se*? Blackmun glossed over the

health risks to the mother by claiming that “Mortality rates for women undergoing early abortions, where the procedure is legal, appear to be as low as or lower than the rates for normal childbirth,” ignoring the detrimental health effects to the woman, not to mention the mortality rates for the unborn children. However, the adverse health effects of abortion were known to the Unknown Scholars; in a discussion of the Soviet Union’s abortion experience, they wrote, “Shortly before virtually unrestricted legal abortion was repealed in 1936, medical centers began to report a large incidence of delayed medical complications or ‘late effects.’” Late effects being:

Confinements following a legalized abortion had a higher incidence of such complications as long labors, postpartum bleeding, and adherent placenta. Menstrual disturbances, pelvic disturbances, sterility, and functional neuroses such as hysteria, depression, and loss of libido were also traced to a prior abortion.

It is usually alleged that carrying the child to term will cause various health problems, including mental health problems. As the argument goes, the unborn child is the source of the “health” problems, which, for example, might be anxiety over additional children necessitating a lifestyle of “shopping only at Costco and buying big jars of mayonnaise”²⁵—not exactly the pioneer spirit that built our great nation. But the Fourteenth Amendment does not protect one person from the harm caused by another individual. As Chief Justice Rehnquist wrote in *DeShaney v. Winnebago County Dept. of Social Servs.*, “As a general matter, then, we conclude that a State’s failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause.”²⁶ Likewise, in *U.S. v. Cruikshank*, the Court held, “The fourteenth amendment prohibits a State from depriving any person of life, liberty, or property, without due process of law; but this adds nothing to the rights of one citizen as against another.”²⁷ Hence, the unborn child is not an agent of the state from which the woman could be protected under the Fourteenth Amendment.

Blackmun does not solve any of these problems of constitutional theory in *Roe* or *Doe*. Instead, having engaged in his clearly erroneous history of the common law, Blackmun was able to hypothesize on the state interest in the health of the woman as the real intent of abortion laws back in the day when “Abortion mortality was high.” Concurrently, he disingenuously dismissed the state concern for the life of the unborn child as only hypothetical, since the unborn child only possessed “potential life.” And then, in his conclusion, the *power* held by the state under the Tenth Amendment to legislate for the woman’s health (at its discretion), becomes, “presto change-o,” a constitutional *right* of substantive due process under the Fourteenth Amendment held by the woman—in a word, sophistry.

Potential Life versus Evident Life

Finally, all of the arguments in *Roe* and its legal regime supporting a health exception are premised on the notion that the *other* state interest in health (that being the life and health of the fetus) is limited by the fetus possessing only “potential life,” viability being only a more probable potential life,²⁸ and that “the difficult question of when life begins” is incapable of being legally answered.²⁹ The centuries-old use of a jury of matrons to determine the existence of life in the womb as a fact of law notwithstanding,³⁰ the “potential life” legal fiction was effectively laid to rest in the federal court case *Planned Parenthood Federation of Am. v. Ashcroft* (2004).

The plaintiffs in that case were challenging the federal Partial-Birth Abortion Ban Act of 2003 (hereinafter the “Act”). The Act protects “living” “human” fetuses, and the plaintiffs advanced the argument that “the Act’s use of the term ‘living fetus’ adds to the vagueness of the statute.” Hence, they asserted in court, “[A] previable fetus may nonetheless be ‘living’ if it has a detectable heartbeat or pulsating umbilical cord.”³¹ The District Court for the Northern District of California accepted these arguments and included them in its findings of fact, stating: “The fetus may still have a detectable heartbeat or pulsating umbilical cord when the uterine evacuation begins in any D & E or induction, and may be considered a ‘living fetus.’”³² In its review of that case, the Supreme Court likewise accepted that finding of fact in *Gonzales v. Carhart*:

The Act does apply both previability and postviability because, by common understanding and scientific terminology, a fetus *is a living organism* while within the womb, whether or not it is viable outside the womb. See, e.g., *Planned Parenthood*, 320 F. Supp. 2d, at 971-972. We do not understand this point to be contested by the parties.³³

So there it is—the fetus is a “living” “human.” The plaintiffs in *Planned Parenthood Federation of Am. v. Ashcroft* played the void-for-vagueness card once too often. In their overconfidence, born from the previous effectiveness of this ploy, they shot themselves in the foot by admitting the fetus was alive as a matter of legal fact, which obliterated *Roe*’s “potential life” legal fiction. As in *State v. Barquet*, the void-for-vagueness ploy boomeranged on them, and the full impact of this tactical error has yet to be felt.

Therefore, the health exception should no longer bar state abortion regulations from the point in gestation where there is “a detectable heartbeat,” whether such regulation takes the form of “pain legislation,” “personhood” (beginning at that point), or a prohibition of abortion where a heartbeat is present. As nearly all surgical abortions are performed after a viable fetus

has a beating heart, an application of *Planned Parenthood Federation of Am. v. Ashcroft* consistent with the prior holdings in the *Roe* legal regime would allow for state prohibition of nearly all abortions.

As for the first few weeks before a detectable heartbeat (or other evidence of life), a health exception would still be applicable, as the fetus would only possess “potential life” under the *Roe* legal regime. Still, the constitutional problems of the health exception remain, and even Justice Blackmun admitted that the woman’s right to terminate her abortion is not absolute. Correspondingly, the state interest in her health and in the health of the “potential life” she carries still exists. As the Supreme Court held in *Gonzales v. Carhart*:

The Court has given state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty. This traditional rule is consistent with *Casey*, which confirms the State’s interest in promoting respect for human life *at all stages in the pregnancy*.³⁴

Furthermore, as the late Chief Justice Rehnquist wrote in *Washington v. Glucksberg*, “We begin, as we do in all due process cases, by examining our Nation’s history, legal traditions, and practices.”³⁵ Yet, the health exception has been shown to be absent from our history, legal traditions, and practices. And if it were to exist as an extension of the life exception in Iowa, where a doctor in “good faith” believes “the peril to life” to be at least “potentially present,” and where the fetus is dead, then the health exception would be a procedural due process right held only by a doctor in an abortion criminal prosecution—this is hardly the health exception of the *Roe* regime.

As for substantive due process, Chief Justice Rehnquist also wrote in *Glucksberg*:

Our established method of substantive due process analysis has two primary features: First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, “deeply rooted in this Nation’s history and tradition,” and “implicit in the concept of ordered liberty,” such that “neither liberty nor justice would exist if they were sacrificed.” Second, we have required in substantive due process cases a “careful description” of the asserted fundamental liberty interest.³⁶

In the only American case to come within a light-year of even suggesting the existence of a health exception, *Commonwealth v. Wheeler*, the state supreme court made it clear that it was not setting precedent. Also, the speculated exception was only intended for the medical profession as a *procedural* due process protection in a criminal trial. Dictum in one case, which was never followed as precedent, hardly establishes a fundamental right “deeply rooted in this Nation’s history and tradition.” The Supreme Court has set a higher constitutional bar to substantive due process rights than to

due process rights because labeling some right as such operates to “place the matter outside the arena of public debate and legislative action.”³⁷ The next-to-nonexistent legal history of health exception does not justify its existence as a national due process right (applicable to all the states), let alone a substantive due process right; nevertheless, the Court still has placed abortion “outside the arena of public debate and legislative action.”

Conclusion

According to our Unknown Scholars, the crux of the abortion problem is this: “[E]very hypothetical solution must be reconciled with the basic purpose of protecting the life of the unborn child.” Instead of that noble ambition, our unelected Supreme Court through *Roe v. Wade* has promulgated a degenerate policy of secular hedonism—degradation without representation. State courts had with one accord historically regarded abortion with contempt; as Idaho Chief Justice Quarles derided, “The crime for which appellant has been convicted is one of the worst known to the law.” So it is no wonder that Justice Powell, in referring to *Roe* and *Doe*, stated that they were “the worst opinions I ever joined.”³⁸ Indeed, that is an understatement—*Roe* and *Doe* are the worst opinions any justice ever joined.

NOTES

1. Roden, “*Roe’s Abortion Mythology*,” 31 *Human Life Review*, no. 4, 65 (Fall 2005); Roden, “*Roe Revisited: A Grim Fairy Tale*,” 30 *Human Life Review*, no. 2, 49 (Spring 2004).
2. Note, “The Law of Criminal Abortion: An Analysis of Proposed Reforms,” 32 *Indiana Law Journal*, no. 2, 193, 194-195 (Winter 1957) [hereinafter “*The Note*”].
3. L. Lader, *Abortion*, 185 n7 (1966).
4. *Mills v. Commonwealth*, 13 Pa. 631, 633 (1850); *State v. Slagle*, 83 N.C. 630, 632 (1880).
5. J. Dellapenna, *Dispelling the Myths of Abortion History*, 135-138 (Carolina Academic Press 2006).
6. *State v. Barquet*, 262 So.2d 431, 437 (Fla. 1972).
7. *Roe*, 410 U.S. at 164-165.
8. *Chicago v. Morales*, 527 U.S. 41, 85 (1999), (Scalia, J., dissenting).
9. *U.S. v. Carlton*, 512 U.S. 26, 39 (1994), (Scalia, J., concurring).
10. *Roe*, 410 U.S. at 151 n. 47: “See discussions in Means I [*Cessation*] and Means II [*Phoenix*].”
11. Means, “The Law of New York Concerning Abortion and the Status of the Foetus, 1664-1968: A Case of Cessation of Constitutionality,” 14 N.Y.L.F. 411 (1968) [hereinafter “*Cessation*”]. . .
12. Means, “The Phoenix of Abortional Freedom: Is a Penumbra or Ninth-Amendment Right About to Arise from the Nineteenth-Century Legislative Ashes of a Fourteenth-Century Common-Law Liberty?,” 17 N.Y.L.F. 335, 401-410 (1971) [hereinafter “*Phoenix*”].
13. *Cessation*, at 507; *Phoenix*, at 390.
14. 410 U.S. at 151 n.48: “See, e. g., *State v. Murphy*, 27 N. J. L. 112, 114 (1858).”
15. *The Note*, at 195-196 n.18. *Miller v. Bennett*, 190 Va. 162, 169 (1949): “The Virginia anti-abortion statute, Code (Michie’s 1942), sec. 4401, does not make the woman who consents to the treatment an accomplice. This statute was passed, not for the protection of the woman, but for the protection of society. Unnecessary interruption of pregnancy is universally regarded as highly offensive to public morals and contrary to public interest.... In a criminal prosecution the consent of the pregnant woman is no defense. 1 C. J. S., Abortion, sec. 7, p. 319.”

16. NJSa 2C:1-5.
17. *U.S. v. Holte*, 236 U.S. 140 (1915) (Lamar, J., dissenting).
18. *State v. Cooper*, 22 N.J.L. 52, 53 (1849).
19. *Roe*, 410 U.S. at 139-140.
20. *State v. Dunklebarger*, 206 Iowa 971, 980, 221 N.W. 592, 596 (1928): "In order to justify the act of Dr. Wallace, it was not essential that the peril to life should be imminent. It was enough that it be potentially present, even though its full development might be delayed, to a greater or less extent. Nor was it essential that the doctor should believe that the death of the patient would be otherwise *certain*, in order to justify him in affording present relief."
21. *Commonwealth v. Wheeler*, 315 Mass. 394, 396, 53 N.E.2d 4, 5 (1944).
22. *Commonwealth v. Nason*, 252 Mass. 545, 148 N.E. 110, 1925 Mass. LEXIS 1187 (1925).
23. In trying to make sense out of the health exception, Professor Stephen Gilles observed, "As formulated in *Roe*, the exception turns out to be deeply ambiguous in rationale and scope." And, "Blackmun simply presented *Roe's* life-or-health exception, without explanation, as the rule to which postviability state abortion bans must conform." "*Roe's* Life-Or-Health Exception: Self-Defense or Relative-Safety?", 85 *Notre Dame Law Review* 525, 527, 551 (Feb. 2010). Professor Gilles also expresses the view that *Doe* does not advance any cogent constitutional arguments, a view with which I heartily concur. *Ibid.* at 554-555.
24. *Harris v. McRae*, 448 U.S. 297, 316 (1980) (emphasis added).
25. "LIVES; When One Is Enough," *The Times Magazine* (July 18, 2004). See: <http://www.nytimes.com/2004/07/18/magazine/lives-when-one-is-enough.html> (last visited March 13, 2012).
26. *DeShaney v. Winnebago County Dept. of Social Servs.*, 489 U.S. 189, 197 (1989). Although some would maintain this limitation of the Due Process Clause would act to limit any 14th Amendment application to unborn children should they be recognized as "persons" to unborn persons as a group, the Court in *DeShaney* went on to note, "The State may not, of course, selectively deny its protective services to certain disfavored minorities without violating the Equal Protection Clause." *Ibid.* at 197 n.3.
27. *U.S. v. Cruikshank*, 92 U.S. 542, 554 (1875).
28. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 870 (1992): "[T]he concept of viability, as we noted in *Roe*, is the time at which there is a *realistic possibility* of maintaining and nourishing a life outside the womb" (emphasis added).
29. *Roe*, 410 U.S. at 159, 162.
30. Roden, "Bathsheba Spooner's Plea of Pregnancy and State 'Personhood' Amendments," 37 *Human Life Review*, no. 3, 47 (Summer 2011).
31. *Planned Parenthood Federation of Am. v. Ashcroft*, 320 F. Supp. 2d 957, 977 (2004).
32. *Ibid.* at 971-972.
33. *Gonzales v. Carhart*, 550 U.S. 124, 147 (2007) (emphasis added).
34. *Gonzales v. Carhart*, 550 U.S. 124, 163 (2007).
35. *Washington v. Glucksberg*, 521 U.S. 702, 710 (1997).
36. *Ibid.* at 720-721.
37. *Ibid.* at 720.
38. J. Dellapenna, *Dispelling the Myths of Abortion History*, 686 (citing John Jeffries, Jr., *Justice Lewis F. Powell, Jr.* 341 (1994)).

“What One Person Can Do for Life”

—*from the editors*

In January of 2011, The Human Life Foundation announced its first annual college student essay contest. Open to undergraduates, the topic was: “What One Person Can Do for Life.” We asked for an article “based on an interview with a deeply dedicated, outstanding pro-lifer. It could be someone well-known nationally or someone who works only on a state or local level; or even an unsung hero, someone, for example, who has done side-walk counseling steadily for 10-20 years. It could be someone who runs a first-rate pregnancy care center, or put together a successful lobbying campaign, or designed a terrific educational program. Or perhaps an outstanding scholar or scientist who has made a real difference in the national dialogue and debate.”

We are pleased to present here our two winning entries. Our first prize goes to Julia Pritchett, a senior at the University of Arkansas. Julia chose to write about Julie Beyel, an indefatigable side-walk counselor here in New York City. Madeline Wenner’s subject is Lori Kehoe, the executive director of New York State Right to Life. What struck the editors about both these essays was the evangelical energy: You can feel these young women’s keen admiration for the pro-life soldiers marching on ahead of them, and, while they are both somewhat daunted by the witness of their heroes (you sense them wondering, “Could *I* really do that?”), their faith that this is the battle *God* wants us to win shines through. One has the feeling they too will inspire others with what they will do for life.

Julie Beyel: A Bright, Blazing Light

Julia Pritchett

The black, sticky gunk on the dirty city roads flies under Julie Beyel's car tires. It is just another errand on a seemingly ordinary summer day; at least for Julie, it is. She casually flicks on the radio and begins her monotonous drive.

It is an election year and even the Christian music station isn't sparing listeners from the commentary. The radio host announces boisterously that to be Christian is to vote for the pro-life candidate. Beyel snaps out of her trance-like driving and starts listening closer. "Oh wow, yet another thing that has to change about me," she jokes out loud to herself.

The truth is that Beyel's day is going to be anything but a seemingly ordinary summer day. She doesn't know it yet, but it will be the day God's mighty winds whistle fiercely through the bushel basket of her life to expose a tiny, flickering light in its infancy.

Beyel drives ahead, despite her inner struggle to reconcile her beliefs about abortion with what she just heard. She always told herself that she would abort if she "needed" to. As a self-declared pro-choicer and Christian, she wants to obey God but still has some nagging questions.

"Okay God, so you're against abortion but what about the specifics of why and when, and are you always against it?"

"God, are you really opposed to the morning after pill and the abortion pill? Does it really matter?"

Not long after this fateful moment in Beyel's life, she would find out how much it really did matter. One of her housemates would confide in her that she had taken abortion pills, was in great pain, and felt scared. Beyel would feel overwhelmingly convicted for never pursuing the truth about how God felt about abortion, since in that moment the whole issue would hit home hard for her. Then and there she would promise God to become educated about abortion and volunteer somehow.

In that same moment, I was miles and miles away blissfully unaware of Julie's existence. I was just beginning on my own pro-life journey as a freshman in high school. Beyel's hit-home day would be just another day of school-work and socializing for me. Little did I know that five years later I would be in New York City eating sushi with a woman named Julie Beyel who had saved the lives of over 1,000 children.

Julia Pritchett, first-place winner in the *Review's* first college student essay contest, is a member of the class of 2013 at the University of Arkansas.

I looked nervously at my menu. I'm allergic to seafood and the unusual items listed seemed like hieroglyphics. Julie begins bombarding me with funny questions like, "Hey Jules, you think this whatchamacallit tastes good?" and "What's an udon noodle?"

Smiling broadly in entertainment, I begin rambling off silly answers. When our Japanese-food-banter gets interrupted by a pregnant woman texting Julie for help, I switch the udon noodle conversation to Julie's life.

"How long have you been doing this?" I ask her.

"Well, back in 2004 I began volunteering with Expectant Mother Care as a sidewalk counselor backed up by a mobile unit. Eventually I was asked to also manage the interns and be a pregnancy center director," she divulges.

It's now 2011, so Julie has been true to her promise to God for the last seven years. As our waitress appears with our colorful dishes, I think about Julie's living conditions. She lives in a six-by-six closet with a twin mattress on the floor. There isn't room for her belongings, not that she keeps many. Having been personally exposed to similar living conditions, I can't help but marvel at her persistence for the past seven years.

"How have you managed to deal with your closet for so long?" I half-jokingly ask her.

"God gave me a 'missionary' spirit and He uses me in the mission field created by the legalization of abortion. I'm not called to give up, stay home, or be silent. He called me to fight on the front lines," she replies confidently as she looks questioningly at a flower-shaped fishcake.

There is no doubt that Julie lives the life of a pro-life missionary. She is up before the sun every day. She is out on the sidewalks, despite blistering heat or frigid snowstorms. Yet, she is an attractive 30-something living in a closet in a house bursting with seasonal EMC interns.

Many in Beyel's personal life voice their opinions on her so-called missionary lifestyle. Not only do they fail to support what she does, they ask her belittling questions. "You went to college for this? What about benefits? Won't you just end up in jail? How many of those girls even change their minds? Do you really think you are even making a difference? Why don't you focus on teaching kids to be safe and responsible? When will you have time for your own family?" they routinely probe.

Julie acknowledges that she has put her own dreams and goals on hold, trusting that God holds her future and will provide for her. She once shared with me that God had placed her outside of Dr. Emily's abortion facility for a purpose and that He would move her when it was His time.

“Don’t you ever just have ‘one of those days,’ though?” I inconsiderately ask, as if her cheerful and honest answer hadn’t been enough for me.

Unexpectedly, Julie begins telling me a story. At first I think it’s an attempt to change the subject, but I eventually start to get it.

One day after church I was riding my bike home on a major street in the Bronx when I pleaded with God to please allow me someday the great pleasure of bumping into someone that I had met outside the abortion facility. I asked the Lord to please let me see her happy with her baby. In spontaneous anticipation I began scanning the sidewalks and turning my neck from side-to-side just in case God decided to answer my prayer quickly. Then I saw her. I recognized this lady on the sidewalk pushing her twin boys in a stroller; I had met her twice outside of the abortion facility when she tried to abort at 14 weeks and then again at 20 weeks. I threw my bike down and ran up to them screaming in great joy and shouting her name. She told me she had been looking for me all this time because she wanted me to be the godmother of her twins. She had her two daughters with her too and they all kept hugging me.

“Wow, well that sounds like one of those good days, then!” I exclaim.

Julie lets me know that that particular day had started off as one of those bad days. She had dealt with it like all the others: with prayer.

I felt a deep sense of admiration welling up inside. I thought back to the months I spent training with her. She had been so encouraging as I stumbled my way through learning the ropes. When blisters formed on my feet from standing on the hot concrete in sandals for hours, I only had to look over at Julie to keep myself going. I recalled the clients I had seen her counsel with such finesse and ease that it seemed like she was born with it.

She has a whimsical personality—always living in the moment and letting the future worry about itself. This comfort in her own skin is what draws women to her out on the sidewalk and keeps them engaged. She is able to convey that she understands how serious a woman’s situation is, while still being light-hearted. She’s the type to help save a baby and then go buy the girl a cupcake, all the while cracking jokes. It’s her style—and it works.

On Beyel’s Facebook page you won’t find a company name under “career” because she put “the best job in the world.” On her page you will see pictures of her posted by others. One where she is smiling broadly while snow piles around her outside of the abortion facility. Another where she is cuddling a happy baby she helped save. And yet another of her looking professional as she mans the desk at a New York pregnancy center. Her infectious smile is the focus of each photograph.

As I reach for a fried dumpling, I feel too embarrassed to tell Julie she is one of my heroes. In an attempt to keep the conversation flowing, I ask her who her hero is. Not missing a beat, she tells me yet another story.

Melani is my hero. I met her last year when she was 19 years old. She was shy. Her

baby had received a poor “prenatal diagnosis” and so she was real scared. Doctors told her that the baby had a life-threatening irreversible condition known as anencephaly and that she should abort at 20 weeks in order to save herself. Melani’s family decided to choose abortion because of how serious the situation seemed and they had been crying for days about it. Her godmother came over that day and saw their tears. Once she found out what was going on, she begged the family to spare Melani’s child. Melani was so relieved that her godmother had spoken up. I got to accompany her to all her doctors’ appointments, where she was treated horribly. They called her an “ignorant Mexican girl,” they told her she would regret keeping the baby, they urged her to do “the humane thing.” They mocked her for thinking she knew better than doctors. Melani’s baby was born and never breathed a breath, but Melani loved her and dressed her in different outfits, bathed her, and caressed her. I have never met a more sacrificial, tenacious, committed, humble, loving pro-lifer than Melani. She inspires me and hasn’t even graduated from high school yet. She was unsuccessful in the eyes of the world but courageous in my eyes.

I sat in stunned silence. Even though Julie isn’t a “star-struck” pro-lifer, I still was not expecting such a personal answer. This story stuck with me and I ruminated on it for many days. I realized that Julie was my “Melani.” In the world’s eyes, Julie is as unsuccessful as Melani. In my eyes, and the eyes of all those she has served, she is dedicated. It might seem like Julie has a unique nine-to-five job. In reality, she has a 24/7 life of service.

Despite all the radiant, smiling pictures of her on Facebook, it is astounding that anyone was able to capture pictures of Julie without her phone.

Anyone who has spent time with Julie knows that her phone goes off every two seconds. She has hundreds of women contacting her every day. For some, she might be their only friend. For others, she is their lifeline during a pregnancy that no one around her supports. She receives pictures of babies walking for the first time, baptism invites, advice requests, and so much more. While this seems touching, it is an enormous responsibility. Julie promises women that she’ll be there, and she lives up to that promise—even at three a.m. after a draining day of work.

There is one small example of this in picture form, however. Another sidewalk counselor posted a photo of Julie talking on the phone outside of Dr. Emily’s abortion facility during a blizzard. The caption reads: “Always on the phone that Julie! Even in a blizzard!”

I have personally watched Julie fall asleep on her closet floor in her bathing suit from being so tired, only to wake up moments later to answer a frantic woman’s text message. Her dedication is truly beyond belief. Just as I am remembering this, Julie’s phone goes off. “Sorry, Jules, I gotta take this,” she says apologetically.

Of course, I don’t mind. I like spending time with Julie. Whether I feel burnt out or not, she relights my fire. When Julie is done helping one of her

beloved clients, I think to ask her what to do if I am feeling burned out.

When your lamp is low, share what flame you have with someone else. If you do that then you'll keep your own going in your lamp and help ignite others' flames. Look for young pro-lifers in high schools and college campuses and train them, love them, pour yourself into them, teach others to do your job so that you can take a much-needed vacation. If God has called you to this work, don't leave until it's His appointed time.

"Hey, that's just a fancy way of reframing your motto," I point out accusatorily with a grin on my face. Julie chuckles because she knows it's true. Many a time she has been caught telling others to "make all your plans on your knees and thinking of eternity: you'll always choose right."

I'm sure Julie just wants to finish her newly-discovered udon noodles, but I persist at being a friendly interrogator. After all, it isn't often that I get the pleasure of quality time with her.

"You know one of those escorts hit me the other day when I was on my knees making plans to help save a baby," I challenged bemusedly. She responded:

Before working outside the abortion facility I don't remember having any enemies, but I was challenged to love my enemies when I began working as a sidewalk counselor. I showed up outside of Dr. Emily's and in one minute had enemies because my standing outside their door in opposition to their business had their hearts, minds, and beings stirred up so much with hate that I could only respond with a battle of love stirring within me. I learned not to fear police nor security guards but to give them the respect they deserve as the authorities that God has placed in their positions.

My eyes must have shown my bewilderment, because she continued:

I have been challenged to consider if I would have the courage to choose life and take a risk to step outside of my direct path from car to clinic. *Would I trust someone like me?* These girls have challenged me to be who I want to see in the world. These girls and their situations, the clinic staff, and support people who generally directly oppose us have taught me to pray and trust God more. I learned not to lean on my own understanding, but to trust in God with all my heart.

After sharing a knowing smile, we moved on to other meal-time conversation.

Since I sat down in the tiny Japanese restaurant in Korea Town with Julie, she has begun work for Care Net of Central New York as the director of client services.

There is something deeply alluring about Julie's life and work. There is no pro-life limelight to bask in; only daily physical suffering and sanctification in hopes of lowering an enormous death toll. Beyel's humility and persistence make her a realistic role model.

Pro-life doctors, politicians, organizations, and speakers are all crucial to the pro-life movement. They bring action, cohesiveness, and publicity to our extremely worthy mission of saving lives. However, sidewalk counselors like Julie are our heartbeat. They are the hands and feet that serve women in that last desperate moment before abortion. Without them, our movement would be a shallow and hypocritical shell. They often go unsung, though they work more and in harder conditions than most people. We need these pro-life heroes desperately.

It isn't the easiest job to talk others into either. I wish that anyone who was on the fence about sidewalk counseling could simply see a picture of Beyel's smile. It's a smile that was formed by her precious work. It is a smile that radiates life and servitude. It's the realest smile I have ever encountered.

* * * * *

The black, sticky pieces of gunk on the dirty city sidewalk fly under Jessi's feet. It is just another errand on a seemingly ordinary summer day; at least for Jessi, it is. She reminisces about last June as she pops her iPod earbuds in her ears to distract herself. "It wasn't as bad as I thought last time, so it'll probably be like that today," she thinks to herself.

Jessi casually makes her way into Dr. Emily's abortion facility, where she pays the receptionist and takes a seat. Still listening to music, she flips through old magazines nonchalantly. Tiring of the long wait, Jessi steps outside to smoke. She flicks her lighter and a tiny flame dances for a moment before it catches the cigarette. A faint voice catches Jessi's attention. She listens closer and looks around.

"... This is totally your choice and I'm not here to take that away from you. But what if you had the chance to hear your baby's heartbeat, would you take it?" asks a bright, blazing light named Julie Beyel.

Jessi lowers her cigarette. Beyel asks her what is behind her abortion decision. Jessi starts to talk while Beyel intently listens. Knowing Jessi is beginning to trust her, Beyel uses her intuition and thinks she knows exactly what God wants her to say. "After God envisioned your baby in His mind, He looked far and wide across the entire planet and His eyes gazed upon you. He chose you to be this baby's mother and God doesn't make mistakes. What God says is possible let us not say is impossible."

Jessi is stunned and hooked at the same time. "Would you like a free ultrasound," Beyel softly inquires.

And thus begins a journey of three lights setting off together. Jessi's light glows brighter as she stares at her baby for the first time on the ultrasound screen. Her baby's light is protected instead of snuffed out.

JULIA PRITCHETT

And Beyel's light? It left its bushel basket many moons ago. It fiercely
glows with the radiance of the sun.



What One Person Can Do for Life

Madeline Wenner

When my sister and I arrived at Camp Esther in 2010, a spunky, blonde woman with palpable joy and infectious enthusiasm rushed over to us. She hugged us tightly and said, “Hello, you precious girls! I haven’t seen you since you were babies!” She was Lori Kehoe, the executive director of New York State Right to Life, and she blessed and inspired every camper that weekend. After meeting her, I earnestly wanted to learn more about her personal dedication to protecting life. *Human Life Review*’s essay contest afforded me the opportunity, and the emails and phone calls that followed made me feel very honored and blessed.

At one point, Lori told me a story from her days at the Right to Life League of Southern California. While she worked at an event, a woman with a toddler approached, handed her the boy, and said, “He’s one of yours.”

She did not specifically mean one of Lori’s. Years before, someone from Right to Life had given a talk at her high school on abortion. When she got pregnant a few years later, she remembered the talk and chose life for her baby. Once she saw the same organization later on, she wanted to thank them for saving her and her baby.

The person who gave the talk does not know God used it to save a baby. Lori told me:

We have no idea what God does with our actions. All the pro-life heroes out on the street counseling women may never see their impact. Sometimes God gives us incredible glimpses into what we do. Sometimes He doesn’t.

There is victory, and there is sadness. One will define your life and the way you see this movement. Your relationship with God is so important because it lets you see and understand the victory throughout.

Lori used to trust God much less. Despite the good foundation her parents and an early Catholic school education gave her, she struggled as a child to combine her faith and private life. That began to change, though, when she was in junior high at a public school and someone gave her the “Life or Death” brochure. No one had ever told her before that we can legally, willfully, kill children. After finding all the information she could about abortion, she went home and cried for days. Her mother asked her to stop saddening herself with it, but Lori replied, “We still have it because nobody wants to deal with it.”

Madeline Wenner, second-place winner in the *Review*’s first college student essay contest, attends Regent University in Virginia (class of 2015).

In high school, she wrote a pro-life speech for class, but her teacher would not let her deliver it because of potential “emotional backlash” from her classmates. After high school, she attended the State University of New York at Geneseo, where she could speak more freely in class about pro-life issues, deepening her knowledge and confidence about abortion.

At the same time, she had a hard time managing her anger. On one occasion, she screamed at a friend about killing babies. Looking back, Lori said, “God had not yet taken me from that anger, that outraged disbelief that people could tolerate this.” Years later, her friend changed her position on the issue, and Lori realized, “That’s awesome. I had nothing to do with it. God did what He did with her heart years after our arguments. My fights were not planted seeds. We should be gentle and kind, and my fights got nowhere.”

After college, Lori got a job in Los Angeles, California. She volunteered at the Right to Life League of Southern California, but when they offered her a job, she turned it down. She thought of all her arguments with people she disliked and did not want to do that every day. But when she went home that night, she pondered what God wanted. All this time, though she was not a committed Christian—like many people, she enjoyed the parties and frats in college—she had always loved God. Now she realized that God had built her for pro-life work. He had put that idea in her heart at a young age, and it was time to make it happen. To live her faith. She took the job, prepared for the worst.

Instead of feeling like a martyr and getting discouraged in her new job, however, she found the opposite. From the outside, she heard the silence and saw the tragedy but never witnessed the great work of amazing pro-lifers. It seemed a movement with little hope. Now she saw the victory, not just the sadness. Many triumphs cannot be seen from the fringes.

“It was pretty scary at first,” she told me.

After all, it’s much easier to be a Christian who just goes to church. This movement has people of every faith and of no faith at all, and it’s a hard place to be without faith. To this day, I don’t know how a non-Christian can do it, how anyone can deal with friends who think it’s okay to kill children. I thank God that people come into the movement despite their lack of faith. That’s what saved me. God used the movement to bring me into a fuller relationship with Him. Once I was in, I was surrounded by people who loved the Lord. He was the reason they did what they did.

Lori saw God work during her time as the Education Director for the Right to Life League of Southern California. One time, she was invited to a televised debate with the director of CARAL, the California arm of NARAL. After Lori answered the moderator’s question, the CARAL representative began screaming, pointing at her, and shaking uncontrollably.

Instead of getting angry or smug at this point, Lori felt the fear of God wash over her. Her anger with the woman changed to sadness and empathy for this poor, lost soul. "I realized then that we'll all stand before the throne of God . . . Our faith allows us to hope for the babies and the opposition. We want them all to repent and be able to go to heaven." God doesn't just want us fighting for the babies' lives. He wants us to fight for their enemies, too.

When we do that, their enemies often become their greatest defenders. On one trip from New York to Los Angeles, Lori boarded her flight before most of the other passengers. A mother with a crying baby was seated in front of her, and Lori had just begun to read a book about abortion when a very young, arrogant New York City stockbroker sat down diagonally in front of the mother. He looked at the wailing baby and remarked to Lori, "Can you believe we have to listen to that all the way to L.A.?"

Lori gave him a scathing look and rejoined, "Do you think *maybe* she feels badly enough?"

The young stockbroker saw her book, realized he should not have made a comment like that to someone like her, and began arguing with her about abortion. Eventually, she broke through to him, and he agreed that abortion was wrong.

They parted ways once they got to L.A., but he knew where she worked. A few days later, he called the office and began swearing at her. Apparently, his ex-girlfriend was pregnant and wanted an abortion. Because of his talk with Lori, however, he now opposed abortion and did not know what to do.

Lori calmed him down and promised to help. She hoped he could sue his girlfriend for custody of his child, so he fought wildly to save the baby in the following weeks. His ex-girlfriend stopped returning his calls when she realized he would not give her the money for the abortion, so he called her family and friends and explained that she was pregnant and abortion-minded. Eventually, he lost track of her entirely and never heard from her again. He never found out what became of his child, or if his girlfriend was ever pregnant at all. He hopes that she had made the whole thing up to get money. He may never know, but one thing is certain. That stockbroker would never have changed his mind about abortion and fought desperately for the life of his child if Lori had not spoken her mind on that plane.

After working in California for a few years, Lori moved back to New York to be closer to her family. She worked first for the Christian and Missionary Alliance and then for Nyack College, where she volunteered to train speakers for a local pro-life group. She called New York State Right to Life for some training materials, and they offered her a job. She accepted, and

she has since become executive director.

Lori has witnessed our opposition's rage and our failed attempts to overturn *Roe v. Wade*, but she does not despair over them. Instead of despairing of the progress of "women's rights," she looks to the early, pro-life feminists, adding her voice to theirs: "The road to victory is not paved with the bodies of our children." She believes that we will overturn *Roe* yet.

The opposition can never really hurt her; she says that we are so clearly right that the other side just is not heartbreaking. The real pain comes from pro-abortion family and friends. That has been the greatest emotional challenge. When you battle the people you truly love, and not just strangers, knowing you are right is small comfort.

When she was younger, she was most pained by the Church's silence. "When you're young," she said, "it doesn't matter that it's the Church. You're idealistic. You see the Church strangely silent, and you cry, 'They're killing babies! How are we not doing anything about it?'" The Church was silent in the Holocaust, too."

Now Lori urges pastors to lead their churches on this issue. A single church is a powerful thing; getting the churches across our country to do petition drives, have calls to prayer, preach sermons, and take up special collections could change the face of the pro-life movement.

Abortion will end when pro-life people begin to inconvenience themselves, when we start to be serious about it and be in the movement on purpose. We believe the unborn are children, but we don't act like it. If we acted like it, we would not rest until this scourge was gone from our land. Make tangible goals. Train up the next generation, pray with your kids, deliver speeches, write articles, start a blog. This should appear in your planner on purpose regularly.

Lori kept repeating Mother Teresa's words, "God has not called me to be successful; He has called me to be faithful." Lori has sown far too many seeds for her to witness the full harvest, but God gives her glimpses. One time, a young girl organized a bake sale at her church and donated all the money to New York State Right to Life. Another time, while Lori picketed with a group in California, a homeless man gave her a dollar. For a moment, she was tempted to frame it, but then she realized he had given up his dinner with that dollar, so she put the money into the account. There were also great legal triumphs, like when she witnessed the entire Senate vote for the Assisted Suicide Funding Restriction Act and when the New York Court of Appeals ruled that the Prenatal Care Assistance Program did not need to include abortion funding.

One of the greatest glimpses God ever gave her came from her years working for the Right to Life League. One day, the phone rang at the office, and for whatever reason, the secretary wasn't there. Instead, a board member, who

was working there on a fundraiser and did not really know the usual phone protocol, answered the phone.

The young man on the other end told her, "My girlfriend will kill my baby."

Now, had Lori or one of the other office workers picked up the phone, they would have counseled the young man, and explained that, legally, the Right to Life League could do nothing. Instead, this board member said, "We can stop that! We'll get you a lawyer!"

They called the legal offices of Sam Casey, who later became head of the Christian Legal Society. Sam was not there, and if he had been, he would have told her they could not do anything about it. Instead, another lawyer answered and suggested they file a temporary restraining order to prevent the abortion.

Once in court, they argued that the young man and his girlfriend had gone to a crisis pregnancy center, where the girl had said that she wanted to keep the baby. Her parents were pressuring her, but she herself did not want the abortion. Amazingly, the judge granted them the temporary restraining order and told them he would stop the abortion until Andrea could appear before him and tell him herself that she wanted the abortion.

The story does not end there. Though they had obtained the restraining order, the girl's parents had taken her to a hotel. No one could find her, and they did not know when or where she would get the abortion done.

Fortunately, she had given her boyfriend the name of the abortionist, so Lori called him and, pretending to be the girl, got the directions. When Lori, the boyfriend, the crisis pregnancy counselors, and the lawyers arrived, the girl was already in the examination room. The lawyers walked in with their restraining order, pulled her off the table, encouraged her with Scripture, and took her home.

Now, this girl and her twin sister had been adopted years before, and when she arrived home that day, she found a letter waiting from her birth mother that said, "I'm so glad I didn't have an abortion." Providence like that could never work in the movies, but it's a real miracle for real life.

She had the baby, and she and her boyfriend got married. This all happened over 20 years ago, and every August, on the baby's birthday, her father writes letters to everyone who helped save her life. When the little girl, Anika, turned five, she sent her own letter. To this day, they all keep in touch.

"That success," Lori told me, "will carry you through all the hard work. This is a movement of victory. We already know Who wins. We know the children are in His hands. God allows this evil now, but it has first been filtered through His hands, and He controls the ultimate outcome."

“I believe that other than the Great Commission, this is the Church’s greatest movement. Abortion really is the crown jewel for Satan. Satan convinces us to kill our children, our gift from God . . . and the Church calls this a political issue.”

Lori finished the interview with a story.

A man was walking home from work when a mugger attacked him. Though his wallet was taken, he arrived home safely, and he sank to his knees and thanked God for three things. First, that the mugger took his money, and not his life. Second, that he had not been carrying a lot of money on him. And third, that he was the one mugged, and not the one doing the mugging.

“Because, Maddi,” she said to me, “we could be having a conversation about why abortion should be legal. But we’re not, and it’s not because of anything in us. God has revealed so much to us. His amazing grace has saved us. Faith is a gift, not something we can achieve. Because of that, thanks be to God, I am a child of His. I forget that the goodness in my works comes from the Holy Spirit. God is working through us.

“So I think I said the word ‘I’ too much, when really, it was all God.”

When I first asked Lori if I could write about her, she said she was grateful, but that I should “choose someone more deserving.” She agreed to the interview, but on condition that I acknowledge all the people who deserve an essay of their own. This I do gladly, and I wish I could submit an entry for each of them. These are a few of the people who inspire Lori because they have “given of their time to such an extent and for so many years—they understand we are killing children.”

Paul and Janet Wenner (whom I am blessed to call my parents), Jeanne Head, Barbara Meara, Jean Naples, Madeleine Derwin, Burke Balch, Mary Balch, Mickey Palmieri, David O’Steen, and Darla St. Martin, Douglas Johnson, and Dale Noble.

To all these people, and to Lori, whether you read this in the *Human Life Review* or just in a computer file, this essay is for you. More than anything, I hope I was able to honor you and your example. I hope that as you read this, you’ll hear God whispering between the lines, “Well done, good and faithful servant! You have been faithful with a few things; I will put you in charge of many things. Come and share your Master’s happiness!” (Matt. 25:23).

For all that you have done, for all the fruits of your labor, seen and unseen, I thank you. None of it has been in vain, and I promise you with the rest of my generation, and the generations to come, that it will never be abandoned.

Thank you for the privilege of writing about you.

Asexually Speaking

Stephen Vincent

It was a clear fall day, and I was ready to give “the talk” to my 11-year-old son. Like most dads, this was a moment I looked forward to, and dreaded. How would I begin to raise the issue, gauge my son’s reaction, give him enough information but not too much? My wife was not too sure this was the right time to explain the “birds and the bees” to her “baby.” But I knew he was hearing things in school and Boy Scout campouts, and I wanted to be the first to pass on the facts about this great human mystery of love, sex and reproduction.

We went to the park, tossed the baseball for some father-son bonding. He had gained height, weight, and muscle over the summer, and I told him that he was throwing harder than ever. Arms tired, we walked through the woods to a stream and sat on the solid cement crossing, watching the water flow beneath as we had done many times before. I had planned this out, telling him at different times over the past week that we would have “that talk” I had promised. The moment had come and I was pretty pleased with myself that all seemed to go well. I talked about God’s design for creation and mankind, placed the physical sexual act within the larger context of love and marriage, and ended by saying what a joyful miracle it was to see the birth of my first son—the boy I was now talking to. He shrugged a lot as I spoke, nodded his head, smiled and frowned, said at one point (I forget when) “Are you sure about that?”—and seemed satisfied to get on with his life of sports, books, food, videos, and teasing his little brother.

Phew, that’s done! Yet I was struck with the uneasy knowledge that not that far down the road there would need to be a second talk. I wasn’t worried over further discussions about love and sex now that the topic had been broached. What concerned me was that at some point I would have to tell him about the strange choices that science has thrust upon us. We had just had the “sex talk,” but soon I would need to give the “asexual talk” about other reproduction methods and why they are wrong. Suddenly the brave new world came crashing into our family life in a very personal way.

I was 21 when Louise Brown was born, and I knew all about IVF, test-tube babies and other ART forms (artificial reproductive technologies); I’d even written about their medical and moral implications. But the issue was more theoretical than real for me since I knew I’d never use the technology.

Stephen Vincent writes from Wallingford, Conn.

But then the couple across the street from us had their first child and told a bunch of neighbors gathered on their lawn that she was conceived in vitro—using their own sperm and egg. Everyone had that frozen look you get when exposed to Too Much Information. “Amazing, wonderful, you don’t say,”—we all had our mindless comments as the cute couple hugged their adorable test-tube baby.

I resolved to have a talk some time in private with the husband, who was raised Catholic, but the occasions for starting such discussions are rare in the suburbs of two-car garages and two-income families. Soon the little IVF bundle of joy was crawling on the lawn, and it would have seemed heartless to tell the dad that they shouldn’t have done what they did. Then before long mom was in a family way again, I assume by similarly asexual means.

Yet even the IVF neighbors did not bring the issue home to me in a personal way. That was happening across the street, in another house, far from my impregnable Catholic castle. It wasn’t until that talk with my son by the stream that I realized that the new ART world had leapt the moat and breached the walls of our family life, and I felt betrayed. Every sentence of my carefully thought out and deeply felt talk with my son about the sacred nature of sex and the miracle of life could be gainsaid and qualified by our brave new technologists. Imagine a nervous dad clearing his throat and starting the talk with his son, with the modern thought police—maybe the school’s biology teacher—whispering a counter narrative.

Ahem . . . when a man and a woman get married (*or two women or two men*) and they want to share their love (*love is however you feel with whom-ever you’re with*), they want to unite their bodies in a special way we call sex (*there are many options besides intercourse, of course*) and even have a baby (*the bonding of gametes is more efficient in a Petri dish*). . . .

This shadow dialogue has invaded our entertainment airwaves with any number of polyamorous prime-time shows and a glut of pop music, in the image of “Born This Way” Lady Gaga. Our elite media makers and entertainers seem determined to refashion the culture in their own shallow images, while self-righteously proclaiming freedom, equality, and, most of all, diversity and tolerance. These are fine words signifying high ideals, but the positive response that most people have to them has been used to reframe values and pressure and shame those with more traditional views. Most of the radical changes center around sexual autonomy or “my body, my choice”—what some have called issues of the pelvic or latex left.

The trouble with this brand of sexual autonomy, however, is that it inevitably pushes against the freedom and rights of those who reject such a view of mankind and society. The debate over the Health and Human Services’

contraception mandate is a perfect example of how this conflict plays out in public. When free and unlimited access to contraceptives is pitted against the First Amendment's freedom of religion, sex is said to conquer all as the ultimate human good. Religion, on the other hand, is a private value that cannot be allowed to impinge on the private or public expression of sex.

Here are the defining lines of our culture, where two sides cannot agree on what is good, better, best—or share a common language to talk about such things. The two sides have very different views of the “reasonable man,” i.e., the one for whom law is written and culture is built. One side believes the reasonable man should see universal access to contraception as a public and private good that will address many of society's ills. The other side believes that contraception is not much of a good at all. There is little common ground between these views, and the HHS mandate has forced everyone to take a stand.

As the father of two preteen boys who is trying, with my wife, to bring them up with decent values and with my Catholic faith, I cannot remain silent, no matter how much popular culture seeks to undercut my message to my kids.

Asexual Chic

Last fall, a *Newsweek* cover story about sperm donors showed an image of a newborn asking, “You Got Your Sperm Where?”—with the subtitle “How to Get Pregnant Fast, Cheap and in Public.” Not surprisingly, the article featured some lesbian couples who obviously have trouble conceiving in the normal way, but also reported on the much larger number of heterosexual couples and single women who are desperately seeking sperm.

So many women today experience infertility that demand for artificial reproductive technologies has soared. But since ART is too expensive for many couples, there is a growing market for cheap sperm donors and home-made pregnancy remedies. As a public service, perhaps, *Newsweek* gives a do-it-yourself guide to finding a donor who will masturbate in a public bathroom and present a cup of his stuff to a woman who then tries to get it in the right spot.

Let us pause here to reflect on what should be the obvious fact that the topic of this cover story in a national newsweekly is disgusting. There is something creepy about the whole process that our culture's contraceptive mindset doesn't seem to get. Even aside from qualms about masturbation and women injecting a stranger's sperm into their vaginas, there's a matter of human dignity and identity. We are sexual beings, bodily beings; our species maintains its very existence through a natural attraction between males and females. Yet like the dualists and gnostics of old, a powerful segment of our population is terrified by our sexual nature—the fact that sexual activity

is linked inextricably to the conception of children. In a bizarre twist that the progenitors of the sexual revolution may not have foreseen, we are moving the human species from the category of sexual to asexual reproduction. The chapter in my son's science book on the asexual reproduction of plants—which caused the usual sniggers and titters in class—may soon need to be rewritten with a footnote: "In some cases this also may include humans."

Cri d'coeur of the Cryokids

Yet as the *Newsweek* article also notes, there is a counter movement to sperm donation, found on websites such as AnonymousUs.org and the Confessions of a Cryokid blog at cryokidconfessions.blogspot.com ("cryo" referring to the deep freezing of embryos before implantation). Lindsay, the 27-year-old former frozen embryo, writes that she "was conceived in 1984 by Xytex sperm donor 2035. I am searching for my biological father and any half-siblings, while advocating and raising awareness about donor conception issues."

Indeed, while the ART industry seeks to portray their activities as another example of better living through science with no victims, it turns out that the "products of conception" grow up to have human faces, voices, and feelings. An estimated 30,000 to 60,000 children are conceived each year this way in the United States alone, and not all of them are happy.

A powerful DVD called "Anonymous Father's Day," featuring adults who were conceived by sperm donors, tells of the heart-wrenching pain and uncertainty they suffer over learning about the method by which they were conceived and not knowing their biological fathers. Many psychological, familial, and legal questions are raised in the film, but there is one haunting issue that hangs unresolved. None of the "anonymous" adults would say he or she should not have been born, yet they state strongly that no one should engage in anonymous sperm donation. There was an injustice involved in their conception that can never be undone.

The producer of the film is Jennifer Lahl, President of the Center for Bioethics and Culture, who also made the equally gripping and informative "Eggsploitation," which details the physical and emotional damage to women who donate their eggs for reproduction. In her efforts to demonstrate the hidden harms of reproductive technology and educate the public, Lahl has to overcome a common attitude—if a baby is born and no one gets hurt, what's the problem? A registered nurse, Lahl has a well-formed response.

"First, fertility drugs are not without risks," she said in an interview.

Short- and long-term health risks are a real danger.

Second, the procedure to get eggs outside of a woman's body carries risks as well. So there are the known and unknown health risks to women. In addition, most

people don't realize just how many IVF cycles fail. Would you spend tens of thousands of dollars on something which has a failure rate of around 70 percent? This is expensive technology that is only available to those with financial means. And these couples often depend on those who are less fortunate financially to sell their eggs, their sperm, or rent their womb.

Third, ART are highly eugenic. Make no mistake, the minute eggs and sperm leave a body, they are graded, just like we grade eggs in the grocery store. Good eggs are kept, bad eggs are tossed. Good embryos are implanted, bad embryos get frozen for later use or discarded. And since this is commercialized conception, the menu options are there. Do you want a girl or a boy? Screened for disease? Certain physical or intellectual attributes? This is designer baby making.

And finally, the verdict is not in yet on the health impact of the children created through these technologies. We are living in the largest social and human experimental exercise of our time.

"Anonymous Father's Day" includes personal testimonies of three adults who were conceived through anonymous sperm donation and are now seeking their biological fathers. Stephanie recalls seeing a family picture when she was young and thinking about the *Sesame Street* song "One of these things does not belong."

Barry, who found that his biological dad was the husband of the female British doctor who artificially inseminated his mom, has located 12 of the many more dozens of his half-siblings. He calls the United States "cowboy country" for its lack of rules on reproductive technology, and insists that anonymous donation should be done away with. He has a cogent response to those who say that he has no right to question sperm donation because he would not be alive without it. "If that were true," he points out, "then anyone who was the product of rape must endorse rape."

Alana has the unique perspective of a mixed family. Her older sister was adopted from Korea, she was conceived through an anonymous donor, and then after her mother got divorced, her mother and her second husband had a third daughter naturally. Alana got to see how a father's attachment to children can vary when in divorce proceedings her mother's first husband sought equal custody for the adopted daughter but not for Alana, who was the product of a stranger's sperm. As she tells the story, you can feel the *ouch* in her voice.

Although reproductive technology is becoming more accepted and mainstream, Lahl is hopeful that the genie can be put back in the bottle through people rejecting it. "As more and more young women see my film, 'Eggsplottation,' they will make the decision *not* to sell their eggs," she said.

And hopefully lawmakers will put tighter restriction on those whom I call egg-poachers, the egg brokers of the industry. Also, older women will think twice about asking a young woman to potentially harm her health and her future fertility. Mothers and

fathers will start talking with their daughters before sending them off to college, telling them to call home for money rather than selling their eggs.

For now, the “cowboy country” of assisted reproductive technology persists, as sperm and eggs are frozen and sold across national boundaries. As Alana points out, any move to regulate or ban the practice will be resisted by a billion-dollar ART industry, as well as affluent couples and single women seeking a child by any means. The voices of those conceived in this way, and the warnings of those such as Jennifer Lahl, have thus far been lost in the larger dynamic of profit and desire for children. In this scenario, Alana says, those conceived by donation are told to be quiet, stop upsetting the parents who raised them and making other couples feel guilty by looking for their biological fathers. Cryokids should just be grateful that they were born at all.

The absurdity of the situation is summarized by Barry, who proposes a thought exercise. Suppose a pregnant woman and her husband travel to a very strange country, where she goes into labor and rushes to the hospital. After a natural birth, she and her husband ask to see their baby, only to be told by the nurse that they will be given “a baby” from the common nursery. When the parents insist on getting their baby, the nurse explains that in this hospital they expect any parent should be satisfied with any baby. If this scenario is so obviously wrong, Barry asks, why is it so difficult to see that donor-conceived children should want to find their biological parents?

We have trod this path with hardly a thought for the results or implications. Those who have been conceived in this way—outside of wedlock or any kind of loving embrace—have suffered the most. But the harm has spread throughout society and even reached the thinking of a father preparing to talk to his son about where babies come from. We have all been betrayed by the seductive propositions that sex can be separated from conception and conception can be separated from sex.

Yet we know the connections in our flesh and our bones and the deep psychological and spiritual bonds that join mother, father, and child. We also should sense that it is wrong to intentionally sever them, even for an apparently good reason. As a father, I have no problem communicating this truth to my sons, because they already know it. My hope is that they will not lose sight of this truth even when confronted by teachers, employers, experts, and government authorities who seek to convince (or coerce) them otherwise.

We must teach our children well, or someone else will.

The Problems of *Perry*: An Update

Thomas M. Clark

Back in August 2010, Chief Judge Vaughn Walker of the U.S. District Court for the Northern District of California found that California's Proposition 8—which defined marriage under the California constitution as a union of one man and one woman—violated the federal Constitution's guarantees of Due Process and Equal Protection.¹ As I wrote in *The Problems of Perry: Exposing the Flaws of its Assault on Traditional Marriage*, in the Winter/Spring 2011 *Human Life Review*, that opinion and its fate on appeal—more than presidential actions on the Defense of Marriage Act (DOMA), high-profile state legislative battles over gay marriage, and the reversal of “don't ask don't tell”—will determine the future of marriage in America.

On February 7, 2012, a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit, in a 2-1 opinion authored by Circuit Judge Stephen Reinhardt, affirmed the District Court's conclusion that Proposition 8 violates the federal Equal Protection Clause.² A petition for the full Ninth Circuit to rehear the case *en banc* was denied on June 5,³ thus setting up an all but certain appeal to the United States Supreme Court by the proponents of Proposition 8. A decision by these nine Justices—but in all likelihood, a decision *by one Justice*—will determine the future of marriage and child-rearing in the United States.

In the past year, important developments have occurred around the margins of marriage policy. New York became the sixth state to pass and implement same-sex-marriage, the third to do so without judicial compulsion. Maryland and Washington State passed same-sex marriage measures that have not gone into effect pending referenda in November. Maine, which in 2009 overturned by popular referendum a same-sex-marriage bill passed by the legislature, will see another referendum on the subject this November, as will Minnesota. And just this spring, North Carolina continued the unbroken string of popular rejections of same-sex marriage, when over 60 percent of voters opted for a constitutional amendment similar to Proposition 8. Finally, President Obama's prolonged “evolution” on same-sex marriage reached its inevitable conclusion as he came out in favor of it (though with the much-overlooked observation that he continues to believe the issue should be resolved by the individual states).

Thomas M. Clark, a former Notes Editor of the *Columbia Law Review* and judicial clerk on the U.S. Court of Appeals for the D.C. Circuit, is currently a corporate counsel in Tokyo, Japan, where he lives with his wife Hiroko and their four children.

Despite these developments, *Perry* remains critical to deciding the future of marriage in America. In my earlier article, I explored the dangers and implications posed by Judge Walker's original decision; I now turn to the judicial tactics that Judge Reinhardt employed to try to maximize the chances of winning over the Supreme Court. I also show how developments since our last consideration of the issue have validated many of the concerns of the proponents of Proposition 8.

All That Work for Nothing

As noted in *The Problems of Perry*, Judge Walker made the breathtaking claim that there is no rational basis, indeed nothing but animus, to justify limiting the legal term "marriage" to a man and a woman. Proponents of Proposition 8 advanced multiple arguments for reserving marriage for one man and one woman. They pointed to the benefits for children of a mother and father, advocated at least as a preferred norm the raising of children by their two biological parents, and argued that same-sex marriage would encourage the deinstitutionalization of marriage. All of these arguments were cast aside by Walker's embrace of dubious social science asserting the irrelevance of a mother and father model to child development. Cambridge University developmental psychologist Michael Lamb assured Judge Walker that the irrelevance of the mother-father model was now "accepted beyond serious debate in the field of developmental psychology," which would have been reassuring if Lamb's research had not, as recently as the late 1980s, concluded exactly the opposite. In an exercise of "raw judicial power" reminiscent of *Roe v. Wade*, Judge Walker rejected any significance to heterosexual couples' unique biological capability to procreate and then substituted the inconsistent and "evolving" views of sociologists for those of the People of California. Yet, it seems we should at least give Judge Walker credit for engaging with the arguments proffered by all the parties, however wrong his conclusions.

Judge Reinhardt, on the other hand, did not even consider these arguments. According to him, "much of the excellent research and detailed argument presented in this case is unnecessary to its disposition."⁴ The voluminous trial record—Judge Walker's parade of experts—was in Reinhardt's view unnecessary. He invested no effort in affirming any of Walker's extensive "findings of fact" on whether mothers and fathers are a preferable family model for childrearing, or any of the social impacts of a further deinstitutionalization of marriage.

Why not? It is difficult to discern a consistent theory running through Reinhardt's opinion. At times, it seems that the major factor rendering the

record irrelevant is that California law has already extended equivalent family and parentage rights to same-sex couples. Therefore, since Proposition 8 does not change these laws, in Reinhardt's opinion, it in no way furthers the goal of channeling reproduction into biological family units.⁵ At other points, he seems to reason that Proposition 8 rescinds a right already granted, rather than failing to proactively afford a new right. Although Reinhardt appears to treat these two "distinctions" interchangeably, let us examine each one in turn.

The Will of the People Thwarted Because of Their Civility

The People of California contemplated other more stringent measures that, in addition to restricting marriage to one man and one woman, would also have prohibited bestowing any "statutory rights, incidents or employment benefits of marriage on unmarried individuals."⁶ However, such an approach did not secure popular backing. One is left with the inevitable conclusion that collectively the People wished to afford many protections to same-sex couples, but at the same time to provide social endorsement to the biological family structure as the preferred means of procreation and child rearing. By limiting Proposition 8's restrictions to "marriage," California voters displayed, if anything, a lack of the "animus" against homosexuals that Reinhardt bases his decision on; in fact, they show a spirit of compromise and civility. Reinhardt, however, turns this very spirit of compromise into a legal liability, arguing that it is "not plausible" for Proposition 8 to actually serve any of the articulated goals of promoting child-raising by opposite-sex couples, because none of same-sex couples' existing protections were restricted.⁷

This wrongly punishes the People for attempting a civil compromise between granting some measure of status and protection to same-sex couples while stopping short of obliterating the relevance of biological family units as the preferred framework for procreation. However, Reinhardt also creates an artificially static construct through which to view the "rationality" of denying marriage rights to same-sex couples. By focusing on the narrow question of whether granting marriage rights to same-sex partners will cause a given opposite-sex couple today to procreate less responsibly, he ignores the *dynamic* question of whether delinking marriage from its biological framework will undercut the social meaning of marriage over time, hastening deinstitutionalization and further destabilizing marriage. For example, the proponents of Proposition 8 introduced argumentation on the "deinstitutionalization" of marriage, meaning the decreasing social perception of the role of marriage as a uniquely procreation-oriented structure. This in turn leads to a lessened sense of the necessity and appropriateness of marriage, which further undercuts social barriers to out-of-wedlock birth and child

rearing. Because Reinhardt's approach fails to consider the normative effect of the law, it wrongly imprisons the People in a kind of tunnel vision, where they are prevented from considering how law changes mores and mores change society—and how these changes play out over time.

In a very bad case of circular reasoning, Reinhardt invalidates an *initiative constitutional amendment* in part because its stated rationale is not consistent with earlier state policies and court decisions that seem to prefer social relationships over biological relationships in parental and family law. Obviously, the most recent and authoritative pronouncement on California's family-law policy is Proposition 8. It may well be that California policy generally affords many rights and benefits to non-biological parents, including same-sex couples, and that in certain circumstances (abuse, adoption, established bonds with a non-biological parent) those interests could even trump the biological relationship. But sensibly affording the flexibility to consider and deal with those hard cases can hardly become a basis for invalidating the People's equally explicit decision to prefer biological parenting as a norm.

Indeed, Reinhardt's whole discussion of the importance of the name "marriage" suffers from a circularity bordering on schizophrenia. In passages, he waxes eloquent on how engrained and central the concept of marriage is in our culture⁸ and hence how harmful its denial is to same-sex couples. Yet often on the very same page, he bases his invalidation of Proposition 8 on the fact that "all it did" was take away the status of marriage, without affecting the remaining incidents or benefits of marriage.

As Reinhardt himself writes, the "status and dignity" of marriage are important apart from its "incidents and benefits." Therefore, providing that marital "status and dignity" exclusively to naturally reproductive couples reinforces the notion that marriage is something opposite-sex couples "should do" before entering into a lifelong relationship, including openness to conceiving and raising children. The People could rationally conclude that if marriage becomes open to couples who are not by nature able to procreate, society might come to perceive marriage as irrelevant to procreation and child rearing. In sum, it is rational to think that sending a strong social message that the biological family structure is preferred will over time strengthen the institution. It is also rational to think that the best situation for children in general is to be raised by their biological parents. As Judge N.R. Smith's dissent points out, the applicable standard of rational basis review does not require the People to prove its case on the optimal parenting theory or on the likelihood that traditional marriage will retard deinstitutionalization. Reinhardt cannot conceive of any reason that denying marriage to same-sex

couples could foster stability of opposite-sex couples. However, that is merely a conclusory assertion on his part, unless (implicitly and contrary to his statement that the trial record was unnecessary) he is taking factual sides against the arguments on deinstitutionalization offered at trial. In a democracy public policy is set by the People, not by a consensus of clinical psychologists. The People rightly need only demonstrate that the optimal parenting model and the risk of exacerbated deinstitutionalization are based on “rational speculation” and “at least debatable.”⁹ Proponents of Proposition 8 have easily met this burden.

It should be noted that David Blankenhorn, one of the expert witnesses called by proponents of Proposition 8 to explain deinstitutionalization, recently “changed his mind” to accept gay marriage.¹⁰ However, Blankenhorn’s switch reflects no basic change in his views on the normative link between marriage and biological parenting, or on gay marriage’s effect on deinstitutionalization, as he makes clear in a statement explaining his reversal:

I opposed gay marriage believing that children have the right, insofar as society makes it possible, to know and to be cared for by the two parents who brought them into this world. I didn’t just dream up this notion: the *United Nations Convention on the Rights of the Child*, which came into force in 1990, guarantees children this right. Marriage is how society recognizes and protects this right. Marriage is the planet’s only institution whose core purpose is to unite the biological, social and legal components of parenthood into one lasting bond. Marriage says to a child: The man and the woman whose sexual union made you will also be there to love and raise you. In this sense, marriage is a gift that society bestows on its children. At the level of first principles, gay marriage effaces that gift. No same-sex couple, married or not, can ever under any circumstances combine biological, social and legal parenthood into one bond. For this and other reasons, gay marriage has become a significant contributor to marriage’s continuing deinstitutionalization, by which I mean marriage’s steady transformation in both law and custom from a structured institution with clear public purposes to the state’s licensing of private relationships that are privately defined. I have written these things in my book and said them in my testimony, and I believe them today. I am not recanting any of it.

Thus, Blankenhorn’s change is driven by a certain despair that opposition to gay marriage has not, contrary to his hopes, led to any revitalization of marriage as an institution. Out-of-wedlock births continue to rise, as does the phenomenon of deinstitutionalization. Absent success on these paramount issues, Blankenhorn yields to what he sees as the need to affirm homosexuals’ dignity and equality as citizens, as well as remorse that some opposition to gay marriage reflects an anti-gay animus.

These concerns are real and valid. As we stated in *The Problems of Perry*, opposition to same-sex marriage should not be motivated by some “naked desire to harm” homosexuals—which would amount to the very kind of

mean-spirited animus many same-sex marriage supporters wrongly perceive in all opponents—but rather by the need to protect “the unique aspect of marriage as cementing the biological family relationship that requires it be limited to opposite-sex couples.” In this light, we noted, it “should not be surprising that many who oppose same-sex marriage also oppose unnecessary and invidious discrimination against homosexuals, in contexts, such as the military or commercial workplace, where gender and sexual orientation simply may not have the relevance that they do in the context of promoting the stability of biological family units.” Thus, a majority of Congress could be in favor of maintaining the Defense of Marriage Act while also repealing “don’t ask don’t tell.” Blankenhorn’s desire to focus on building coalitions between straight marriage supporters and same-sex marriage supporters to create a culture of marriage is understandable, and up to a point laudable and civil. While his change represents his tactical determination that the case for the uniqueness of traditional marriage has not succeeded in revitalizing it; it does not invalidate the real concerns about gay marriage undercutting the function of marriage as a protector of biological family structure.

A Collusion of Activisms

Judge Reinhardt also focused on the technicality that Proposition 8 “took away” the right of same-sex couples to marry rather than merely “failed to afford” them that right. In 2010, Judge Walker had realized the national repercussions of his decision: If his conclusion that the federal Constitution required marriage “equality” was affirmed on appeal, it would render unconstitutional every state marriage system that did not afford full marriage equality to same-sex unions. Wrongheaded and ahistorical as his view was, Judge Walker was intellectually honest about the implications of his decision. But Reinhardt, invoking the doctrine of deciding constitutional cases on the narrowest ground, concluded that there was no reason to gamble on the willingness of Justice Kennedy to explicitly overturn the laws of 44 states when he could do it implicitly under the veneer of a narrower principle. The media focused mostly on Reinhardt’s bottom-line affirmation of Walker’s conclusion, but somewhat lost in the hoopla was Reinhardt’s arriving at that conclusion based on a totally different argument. Reinhardt coyly found it unnecessary to determine whether there was a federal constitutional right to same-sex marriage, because this case was about the “very different” matter of *withdrawing* a right once it has been granted.

Reinhardt’s stroke is genius, for it achieves two tactical objectives at the same time. First, it offers Justice Kennedy a way (should he wish) to affirm the result while seemingly limiting it to the particular facts of California’s

Proposition 8, i.e., that the measure withdrew rights that had already been afforded by the California constitution. Second, it allows Reinhardt to position this case squarely in the context of *Romer v. Evans*, 517 U.S. 620 (1996), an opinion by Justice Kennedy striking down a Colorado constitutional provision that prohibited political subdivisions of Colorado from passing anti-discrimination or civil-rights provisions based on sexual orientation. However, despite its brilliant judicial politics, it is faulty in judicial logic and disingenuous in application.

It is apparent that the people of California *withdrew* the right to same-sex marriage not as an act of unprovoked “animus” against homosexuals, but rather because they believed that the Supreme Court of California, in *In Re Marriage Cases*, 183 P.3d 384 (Cal. 2008), had erred in establishing a “new” right to same-sex marriage in the California constitution. There is little doubt that absent the California Supreme Court’s overturning the long-standing definition of marriage by judicial fiat, no “animus” would have motivated California voters to target same-sex couples. By the same token, if the California Supreme Court’s opinion had gone further and found that polygamous and incestuous marriages were rights guaranteed by the California constitution, it is highly likely that the proponents of Proposition 8, seeking to restore the traditional definition of marriage, would have included measures to prohibit such marriages as well. Indeed, as should be obvious from the wording of Proposition 8, its limitation of marriage to “one man and one woman” *does* prohibit polygamy. Homosexual relationships are not therefore singled out as uniquely “inferior” to those of opposite-sex couples, as prospective polyamorous groupings are affected in the same way. Given that polygamy has been consistently banned by statute throughout California history, however, the scope of what was “withdrawn” by Proposition 8 is governed entirely by the scope of what was wrongly *created* by the California Supreme Court. The “taking away” of the right to the name marriage was thus coextensive with the grant (by the California Supreme Court) of the same right, so, unlike Colorado’s Amendment 2 at issue in *Romer*, the class affected by the change was determined by the court’s own action, and thus readily explainable by bases other than “animus towards a disfavored group.”

Reinhardt’s opinion is replete with references to how “withdrawing from a disfavored group the right to obtain a designation . . . is different from declining to extend that designation in the first place.” No doubt this is meant to convince Justice Kennedy that his can be a very limited holding applicable only to Proposition 8. However, by the end of the opinion, it is clear that this is a distinction without a difference. In Section V.E.1, the charade

begins to falter, as Reinhardt begins to conflate withdrawing rights with not granting them. He is attempting to explain why “new rights may not be stripped away simply because they are new,” but ends up citing *Lawrence v. Texas* for the proposition that history and tradition are not sufficient grounds to uphold a pre-existing law. Reinhardt’s eventual formulation—“if tradition alone is insufficient to justify maintaining a prohibition with a discriminatory effect, then it is necessarily insufficient to justify changing the law to revert to a previous state”—may well be true, but it is hard to imagine a situation where the converse would not be equally true.

Proponents’ characterization of this construct as creating a “one-way ratchet” where rights once given can never be taken away hits the mark. In practice, the key inquiry for the constitutionality of either “rescinding” a right or “failing to afford” a right will be whether that right’s denial serves a “legitimate purpose.” If the inquiry is the same, Reinhardt’s distinction is without a difference.

Reinhardt’s “rescinding/failure to afford” distinction loses any plausible meaning when the actual historical background of this case is considered. In California, the People never extended marriage rights to groups other than one man and one woman. After the passage of the federal Defense of Marriage Act, the people of California passed Proposition 22, an initiative statute, to preserve the traditional understanding of marriage by encoding this understanding in statutory law before there was any change. The Supreme Court of California then invalidated Proposition 22 and “found” a constitutional right to same-sex marriage in *In Re Marriage Cases*. The “recission” represented by Proposition 8, an initiative constitutional amendment, took place only for the purpose, and only to the minimum extent necessary, to negate a purported extension of such rights by the California Supreme Court. Since the Supreme Court’s decision in *In Re Marriage Cases* was a state constitutional decision, there was simply no other way for the People of California to preserve the *status quo ante* than by passing a constitutional amendment. It is thus totally distinguishable from *Romer*, where the sweep of Colorado’s Amendment 2 went well beyond the mere repeal of a local non-discrimination ordinance.

In sum: the California courts imposed a definition of marriage at odds with California’s long-standing statutory definition, as further reconfirmed by the People’s initiative statute enacted Proposition 22. The People then asserted their sovereignty by validly amending the state constitution via Proposition 8 to confirm the earlier and unwavering meaning of marriage. Next the federal courts came along and ruled that while it “need not decide if there is a federal constitutional right to same-sex marriage,” the fact that

California had granted the right, then taken it away (meaning really that the judges had imposed it and only then did the People act to restore the original definition) now locked California into the new definition of marriage as a matter of federal constitutional law. One could forgive the People for thinking they are the victims of collusion between an activist state judiciary and an activist federal judiciary.

Inching towards Brave New World

Given the ugly history of anti-gay discrimination, it is fair for proponents of same-sex marriage to probe the real rationales and motivations of those who oppose it. For many, a “naked desire to harm” gays and lesbians as a class may be a motivation, and this can only be regretted in the strongest terms. Revulsion against this animus is what renders understandable both Blankenhorn’s “switch” and the “evolution” of popular opinion on same-sex marriage among some parts of the population. Yet while there are doubtless many illegitimate reasons to oppose same-sex marriage, there are also legitimate ones. The role of gay marriage in spurring deinstitutionalization is one of them. As we noted in *The Problems of Perry*:

[A] popular majority might rationally determine that there is a risk certain social consequences would follow if marriage and biological reproduction were so definitively decoupled, as they surely would be, by a policy that says marriage, even at the most generalized society-wide level, has nothing to do with natural reproduction. Many, marginally committed to the institution of marriage, might see less of a point in ensuring that natural reproduction took place in marriage, since, after all, under the “new paradigm,” not only need not marriage and reproduction go hand in hand, but it is irrational even to structure marriage as if they should. With such a commitment to marriage goes also a commitment to biological two-parent child raising. This new paradigm, a rational public might think, would be more fuel thrown on the fire that is the current crisis of family-structure breakdown and out-of-wedlock births.

The social consequences of family breakdown and of the general deinstitutionalization of marriage that the “new paradigm” brings have been well described in books like Charles Murray’s recent study *Coming Apart: The State of White America, 1960-2010*. This is one fire that does not need more fuel.

Yet there is a longer-term and perhaps more ominous trend that follows from the logic of same-sex marriage and its sundering of the bond between our biological nature and child rearing and procreation. As noted in *The Problems of Perry*:

Walker’s finding is that “the genetic relationship between a parent and a child is not related to a child’s adjustment outcome.” The whole presumption of the law that a biological father or mother has certain rights because of that biological relationship

is now seriously undermined. If we can treat as unhelpful, or in any event irrelevant, the biological and genetic bond between parents and children, what reasons are there for legal custody to go by default to the biological parents?

Far from being a far-fetched concern, there has been a worrying acceleration in the trend toward viewing the biological aspect of parenthood as irrelevant, and this has tracked with an increase in commercialized surrogacy. Neither should it be surprising that much of this increase is driven by the increasing normalization of same-sex partnering. As one example, *The Telegraph* recently reported:

Revealed: how more and more Britons are paying Indian women to become surrogate mothers.

There are now up to 1,000 clinics, all entirely unregulated, in the country, many specialising in helping Britons become parents. Couples and single people are paying an average of £25,000 a time to have children, getting around rules in the UK which make commercial surrogacy illegal. Dr. Radhey Sharma, who was commissioned by the Indian government to study the boom in fertility treatments in preparation for legislation to regulate the industry, disclosed the findings of his research and said nobody in the country actually knew the scale of the “baby factories.” One clinic in New Delhi, The Birthplace of Joy, said that their patients were “100 per cent foreign” and estimated that as many as half of them were homosexual couples wanting to become parents.¹¹

It might be fair to ask if we really want a society where the unique and complementary nature of man and woman are rendered so irrelevant to procreation and family that those roles become mere commodities that fulfill private desires rather than further the common good. Do we really want a society where, in the not too distant future, we may expect to see wombs rented out to the highest bidder? Will a child be told it has no right to expect a “mother” since whatever females had a role in his or her existence were merely an incubator or an egg donor retained for the task? It indicates no disrespect to gays and lesbians to recoil from the long-term social implications of fully normalizing same-sex relationships as a paradigm for marriage and child rearing. Instead, it is a reasonable judgment that such normalization would be accompanied by a radical dehumanization of procreation.

Marriage as a social and legal institution protects the crucial linkage of biology, love, and procreation in the advancement of society’s common good. While other orderings, such as domestic partnerships, may well be appropriate to protect the legitimate private association rights of committed same-sex couples, this is a different interest than the social, indeed the existential role of marriage between a man and a woman. Perhaps it is with this consideration in mind that former French National Assembly member Michel

Diefenbacher explained the Assembly's rejection in June 2011 of a bill to introduce same-sex marriage. Diefenbacher stated that although he and other conservative legislators were "against homophobia," they "do not want to alter the image and function of marriage in the collective subconscious."¹² That image and function is nothing less than preserving the humanity of reproduction and avoiding the obliteration of meaning in male and female.

The thoughtful and humane Michel Diefenbacher was defeated in the recent Socialist victory in France, the honest and decent David Blankenhorn has despaired of our ability to publicly articulate the fundamental role of marriage, and commercial surrogacy factories are gearing up around the world. In such an adverse climate *Perry* now wends its way to the desk of Justice Kennedy. While a Brave New World seems to loom, we can hope that a reversal of *Perry* can delay that day.

NOTES

1. *Perry v. Schwarzenegger*, 704 F. Supp.2d 921 (N.D. Cal. 2010).
2. *Perry v. Brown*, no. 10-16696 (9th Cir. Feb. 7, 2012) (slip op). This decision is cited herein using the slip opinion which is available at <http://www.ca9.uscourts.gov/datastore/general/2012/02/07/1016696com.pdf>, and is referred to passim as "slip op."
3. *Perry v. Brown*, no. 10-16696 (9th Cir. June 5, 2012) (order), available at http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000580
4. Slip op at 6, citing *Sweatt v. Painter*, 339 U.S. 629, 631 (1950) (internal ellipses omitted). The invocation of *Sweatt* is symbolic of Reinhardt's consistent mishandling of the core issue in this case, as *Sweatt* rejected the need to engage in a detailed analysis of whether a racially segregated State law school run by Texas was equivalent to the University of Texas, to which African-American plaintiffs were denied admission, in determining that that exclusion violated the Equal Protection Law. Given the centrality of eliminating racial discrimination to the core historical purpose of the Equal Protection Clause, it is hardly the analogy from which to approach a case that does not involve any suspect classification.
5. Slip op at 57 (In order to be rationally related to the stated goal, ". . . Proposition 8 would have had to modify these laws in some way. It did not do so.").
6. Slip op at 62, n. 22.
7. Slip op at 60.
8. Slip op at 37-38.
9. Slip op, Dissent at 29, citing *Heller v. Doe*, 509 U.S. 312, 320.
10. D. Blankenhorn, *How My View on Gay Marriage Changed*, *New York Times*, June 22, 2012, available at <http://www.nytimes.com/2012/06/23/opinion/how-my-view-on-gay-marriage-changed.html?hp>.
11. <http://www.telegraph.co.uk/health/healthnews/9292343/Revealed-how-more-and-more-Britons-are-paying-Indian-women-to-become-surrogate-mothers.html>
12. <http://www.thenewamerican.com/world-news/europe/item/8773-french-lawmakers-reject-bill-to-legalize-same-sex-marriage>

Is Life Worth Living?

Ellen Wilson Fielding

Many decades ago, in the infancy of television programming, and long before the word “televangelist” was thought up, Catholic Bishop (later Archbishop) Fulton J. Sheen brought to the air a show that, surprisingly, became a ratings star watched by viewers of all faiths. The title of the show was “Life Is Worth Living.”

On the face of it, this doesn’t seem like a very controversial statement—most people, most of the time, hang onto life with, so to speak, a death grip. Presumably prompted by a strong survival instinct, by and large we seek medical treatment when ill and take shelter during thunderstorms. We avoid war zones and the epicenters of epidemics and check the safety ratings of airlines. In short, by and large, and discounting the allure of fast food and sugar addiction (or the powerful undertow of addictions to alcohol and drugs, or the terrible decompensation of mental illness), we act like people who want to keep on living—who *work* to keep on living.

It is true that most of us also visualize circumstances (some more likely to occur at the end of life, some uncommon at any stage) under which we could not imagine wanting to continue living. Even if we are morally opposed to suicide and euthanasia, and therefore feel bound to resist acting upon such feelings, many of us cringe at the thought of living out our last years with Alzheimer’s, advanced Parkinson’s, Lou Gehrig’s disease, or any other chronic or progressive medical condition that drastically restricts our freedom and mobility, compromises our ability to communicate, inflicts chronic pain, or eats away at our memories and capacity to think.

Dread about one day succumbing to some such condition darkens the late decades of many people’s lives. Assisted-suicide advocates fasten on and magnify these kinds of almost universal fears to gain support for state referenda and legislative efforts to legalize assisted suicide, but they don’t invent these fears. In one form or another, to one degree or another, such apprehensions are common to us all. Perhaps such fears are themselves a tenacious form of the instinct for self-preservation. Perhaps they flow from a naturally occurring desire for health and wholeness, for integrity—for the opposite of the decomposition we face after death and that our diminishing powers presage.

So perhaps, paradoxically, our attachment to life can sometimes make death seem preferable to the partial and imperfect forms life can take as we

Ellen Wilson Fielding, a longtime senior editor of the *Human Life Review*, is the author of *An Even Dozen* (Human Life Press).

encounter age, illness, or accident. That's one mighty motivator for legalizing assisted suicide—maybe the most sympathetic one there is, though life-affirming societies must still resist its allure. (And there are plenty of less defensible motivators that resonate more strongly with, say, the Malthusian types, or the worshippers of youth and beauty.)

But whether or not we can in fact stretch our understanding of the survival instinct to encompass actions that actually shorten life, we need to consider what a society willing to do so is really saying and thinking about. “Life Is Worth Living” affirmed Sheen’s television program, but many of those agreeing with that general statement today—many of those agreeing that *their* particular lives are worth living—mean something rather different from what Bishop Sheen meant.

Because, for post-Christian man, especially that population inhabiting developed countries with conspicuous consumption, “Life Is Worth Living” only under certain conditions, in certain circumstances. In other words, the value of human life (the human lifespan) is conditional; it depends upon what sources of enjoyment, fulfillment, and significance the human being has access to.

Note that we are talking about something a bit different from the value of a human life to this or that *other* person seeking means of using, exploiting, or profiting from it. In other words, just now we are not considering the (also important) cases of unborn babies whose lives are deemed valueless to their parents, or handicapped children judged useless to society and burdensome to those who must care for them. Instead, we are considering the circumstances under which people deem their own lives valueless or at least not worth prolonging (whether prospectively or in the present).

So this is not a question of eliminating unproductive slaves or sloughing off old people onto the nearest ice floe. Those kinds of choices have traditionally, in Judeo-Christian-based societies, been rejected as unworthy of human beings who recognize in their members fellow images of God. For centuries, therefore, such rejection was considered a sign of progress over older, less “sentimental,” pagan societies.

In fact, one can easily imagine the ambulance chasers in many a pagan culture, including Greece and Rome, cooking up something like our own neo-pagan legal concoction—the “wrongful life” suits filed against doctors and medical centers that fail to forestall the birth of prenatally diagnosable handicapped infants. *Pace* Hippocrates, it's hard to identify anything in mainstream Greek and Roman religion, cosmology, or social mores that would have condemned abortion if one could know in advance (as we now can) that the soon-to-be-born child was anencephalic, or fated to die an early,

difficult death, or physically handicapped, or had Down syndrome. The Hippocratic Oath's injunction against abortion would, one feels, have wavered in the face of advance knowledge—advance *diagnosis*—of such cases.

And the reason why is also the reason why Ancient Rome had no real need for diagnostic tools that could invade the uterine sanctuary, and why something like a wrongful life suit was unnecessary. And that is because Ancient Rome, like many pagan societies, acknowledged the almost unlimited rights of the head of the family over the destiny of his family members. They could afford to wait until the child was born, because if that child showed indications of great weakness, disease, dysfunction, or handicap, it could be done away with *after* birth. (It's possible that advanced Western societies would have moved even further in this direction by now—further than the child-euthanizing Dutch, for example, who will “kindly” ease the lot of young severely handicapped or suffering patients through euthanasia—if we did not have the option of diagnosing and aborting many cases earlier down the line. In other words, we stand in somewhat less “need” of infanticide and child euthanasia than the Romans, because we have the early warning system that allows us to abort many human beings that would be judged deficient by an old-time paterfamilias.)

But back to our main topic in this article, which is not what causes the lives of *others* to be less worth living to *us*, but what makes us judge our own lives unworthy of life.

Let's approach this from a different angle. In 1999 an Italian movie called *Life Is Beautiful* won several Academy Awards. It told the story of a Jewish father (Guido) and his young son interned in a Nazi concentration camp in World War II. To protect the innocence and peace of mind of this four-year-old boy in these horrendous circumstances, the father creates an elaborate story, convincing him that all the deprivation and restrictions encountered in the camp are “in reality” a game, the sort of thing that today we might view on a reality TV show like “Survivor.” In this imaginary game (that is, we viewers know it is imaginary, as does the father who fabricates it), boys vie for points to win the ultimate prize, a tank. By means of this story-telling, the father not only seeks to preserve his child's life, but also to safeguard the boy's belief in the goodness of life, in the beauty of life. And to an amazing extent he achieves this, despite in the end losing his own life—and despite, of course, his son's eventual discovery later on that all he underwent held a different meaning, a darker and definitely less benevolent significance.

Now, this film provokes many questions. But among them one is especially pertinent to this article: Is life—life in all situations, under any circumstances—

really beautiful, really good, in some objective sense that subsists beyond and beneath and apart from what the ancient and medieval philosophers would have called its “accidents,” beyond and beneath and apart from evil? Is life a good regardless of our subjective apprehension at times (and perhaps at many times) of pain, loneliness, fear, rejection, incapacity? Or is life good to the extent that we can create it so in our imaginations, to the extent that we experience it as such, whether or not some scientific measuring stick of reality validates that experience? Or is life only sometimes and because of identifiable objective circumstances good?

The first possibility—that life is simply and inalienably a good—seems indefensible. I don’t know if even the father in *Life Is Beautiful* would have affirmed it—he was, after all, both in his last desperate remaking of reality in the camp, and in his earlier, pre-war romanticism, engaged in retouching or refashioning human experience precisely because, as it comes into our hands, much of it is in need of retouching. On the other hand, if we really believe that the goodness of life (and not just the palatability of our experiences) can vary according to how we choose to view the events of our lives, then that too is problematic. We all desire pleasure and shrink from pain, but most of us need more than pleasant experiences to make day after day, year after year seem worthwhile. Many of us will even part with some pleasures or shoulder difficulties willingly if we believe that there is a meaning and a purpose behind the sacrifice.

But the stratagem of creating a more beautiful mental reality to make endurable the pain of the present, though it is a survival mechanism we all engage in with more or less success from time to time, works better as a way of bearing temporary or partial ills or even evils (such as the concentration camp) than as a way of dealing with an ultimately refractory or perhaps malevolent universe.

I don’t know what Guido actually considered the nature of the world he was born into, let alone the moral ugliness of the war and the Nazi concentration camp in which his life ended. However, the circumstances under which the world was created and the nature and intentions of the Creator matter. One obvious sort of college-film-class interpretation that could be slapped onto *Life Is Beautiful* is that life is the concentration camp and we are the internees. If we accept this interpretation, our belief that the world was created by a good God for benevolent purposes or that our sufferings have meaning are fabrications that, like Guido’s stories, help us endure our allotted time here without losing hope.

But as human beings, we naturally seek meaning and purpose and significance in what happens around us. This is obvious from at least the age of

two, when we begin asking all those “Why?” questions. We not only pursue understanding through the sciences, but also through story-telling. Stories are, after all, a way of tying together details and events into a coherent whole. The fact that human beings are animals with something like an addiction to story-telling should tell us that it is our nature to try to make sense of things and tie things together in patterns and combinations that for us hold meaning. We can and often do string together fictitious details into patterns that entertain, illustrate a point, or teach a lesson.

However, the ultimate point of story-telling is truth-telling. Stories may surprise us with an unexpected ending or take us to faraway lands and times, but they are ultimately satisfying only if they somehow strike us as plausible—if the people feel and think and respond like real people, and if natural laws (even the very different-seeming sets of natural laws that may pertain to a distant galaxy or a parallel universe) hold true consistently. Stories stand or fall on the basis of such internal consistency, and this is the case not only for, say, detective fiction, but even for much more playfully imaginative and speculative genres like fantasy and science fiction.

Perhaps this suggests that, so long as we spin a plausible-sounding story to ourselves about the earth’s origins, man’s destiny, and the meaning of life, we will be willing to swallow our own comforting fictions. That certainly is the explanation that thoroughgoing materialists come up with for religious cosmologies and stories about a Creator God. Some of them may acknowledge the powerful psychological power of, say, the Christian myth of the crucified God—they will concede such stories the kind of psychological truth that a great work of literature conveys, the kind that enlarges the range of our minds and hearts. But they will think us deficient if we opt to believe in such myths.

But most religious believers actually *do* believe what they claim they believe. Aside from cases where people are willfully blind to a loved one’s betrayal or guilt, people find it hard to successfully mollify themselves with stories that make sense of the world if they do not really believe them—if they aren’t convinced of the stories’ truth on some level. If it were otherwise, we would soon begin to feel that burr-beneath-the-saddlebag uncomfortableness that tells us there is something wrong, there are unresolved issues we will have to deal with sooner or later.

The father in *Life Is Beautiful* created a story that would seem believable to the son, and therefore satisfy his need for events to be interpreted into a narrative that made sense of his experience. But the narrative that the father told *himself* to make sense of their brutal treatment in the concentration camp could only help *him* if he believed it were true. It might have been as

comprehensive as a belief in a good God who will eventually right all wrongs and square accounts, or as partial and personal as a belief in the inherent value and superiority of love—such as his love for wife and child—over hatred and brutality. However, even the author of his own life’s narrative must believe in the underlying truth of his fiction, or the air goes out of the effervescent soufflé he has whipped up.

And that “underlying truth” needs to support an unconditional belief in the goodness of life.

In his autobiography *Witness*, published in the early 1950s, American journalist and former Communist spy Whittaker Chambers recounted his path into, through, and out of that ideology. Early in his marriage, like most of his fellow committed Communists in the underground, Chambers had resisted having children. As a thoroughgoing Communist materialist he did not believe in God or even in something like an indwelling beneficent intention in the world. Even though he felt a natural urge toward fatherhood, he lacked a conviction that the life he would be bestowing was a blessing. He himself had encountered so much misery while growing up in a spectacularly dysfunctional family as to disbelieve almost passionately in the goodness and essential trustworthiness of life. In particular, he distrusted his own bloodline. From such a vantage point, he thought that bringing children into such a world would do them an injustice.

But when his wife told him that she had become pregnant, and in tears asked him if he would allow her to give birth to their child, Chambers was led by his love for her and by—what should we call it at that point? The life force?—to agree. Gazing at his newborn daughter some months later, he called her: “. . . the child we all yearn for, who, even before her birth, had begun, invisibly, to lead us out of that darkness, which we could not even realize, toward that light, which we could not even see.”

Nothing in his family history had changed, nothing relieved the misery of the early memories he would later capture with great power in *Witness*. But Chambers had been exposed to an experience that would, over time and with other reinforcing experiences, help convince him of the goodness of life. Or (if “convinced” is too suggestive of an intellectual process), the patent goodness of his newborn daughter stirred in him an as yet inchoate apprehension of the goodness of life. Clearly he would need to develop a different explanatory narrative, as time went on, that would balance the pain and unsatisfactoriness of human life in so many respects with the beauty of, well, Life. Eventually, working back from that (some people do it the other way around), he would trace the meaning of life to a good Creator.

We are almost back where we started, but with maybe some insights. Our opening question was: Is life worth living, even when it is handicapped life, aged life, “defective” life, abused life, unwanted life? Even if it’s *our* life, and we feel depressed, enmeshed in addictions, trapped by circumstance, or overwhelmed with the pointlessness of it all?

Earlier in *Witness*, Chambers describes the suicide of his younger brother, who, as a young man overwhelmed by a sense of the meaninglessness of everything, succumbs to drink and despair. His brother had urged Chambers to join him in committing suicide, and for some time after the brother’s death, Chambers would visit his grave, trying to determine whether he had been right, and Chambers should now follow him. At last, he decided, “No, I will live. There is something in me, there is some purpose in my life which I feel but do not understand. I must go on living until it is fulfilled.”

At this point Chambers was not only an atheist, but a member of the Communist party who within a few years would go underground as a spy for the Soviet government. So, looking at the later trajectory of his life, it is in fact pretty clear that he did not yet understand its purpose! Perhaps the nearest he could then have formulated it was that he must help hasten the day of a classless society and a just sharing of the world’s goods. Why this was his purpose, who had given him this purpose, he could not have then said. At this time, and despite the compassion for the poor and powerless that had propelled him to the radically wrong remedy of Communism, he would presumably have been less sure that every human life, in whatever degree of dysfunction or decrepitude, was also worth living.

Human beings often feel bound to fill in the gaps in the story of their own and other’s lives. For example, we see human society enriched by one person’s actions, and then move beyond that partial insight to claim some detailed understanding of each person’s cosmic role. That kind of overreaching then sets us up to feel qualified to reject the value of another person’s life when that person doesn’t meet our standards of efficaciousness. If someone’s ability to do and to achieve is severely curtailed by disability, for instance, we may conclude that his or her life is pointless. A common example is the elderly person suffering from Alzheimer’s or predeceased by family and loved ones. Many of us may conclude that such a person has outlasted his or her time of value and usefulness. Sadly, the person suffering such ills may think the same thing. In fact, in this and other cases many of us wrongly jump to the conclusion that our purpose can be measured by our productivity, even though in our own lives many of our most wonderful moments do not seem to “produce” anything but love, awe, or enlightenment.

But this is to accept without realizing it the fallacy that the purpose of life

is limited to *our* purpose. We are then led by this self-deception to believe that, once our self-assigned purpose is fulfilled, we no longer have a reason for being. But it is the maker of an object that determines its purpose. When we make a chair, we know what we make it for (and even if the chair were conscious we would not expect it to understand as well as we do what we want from it). Our Maker, too, has created us with a certain purpose in mind. Because we are intelligent beings capable to some extent of making sense of things, we want to understand our purpose completely and in detail. Like the two-year-old, we ask “Why?” at every juncture. Asking questions is not the problem; the problem comes when we are tempted to believe we have the answer when in reality what we have is a working hypothesis. Our Maker, however, knows precisely why he made us, in general and in every specific; he also knows why he sustains our existence beyond the point it seems productive to us. To believe that life is worth living, that life is beautiful, even when we subjectively feel unlovely, unloved, old, or useless, is ultimately to trust the purpose of the one who made us.



“That’s the third desperate cry for help this month.”

Stem Cells Before the Storm

Timothy S. Goeglein

The care of human life and happiness, and not their destruction, is the first and only legitimate object of good government.

—Thomas Jefferson, third president of the United States (1809)¹

Summertime in Washington, specifically August, is when the city seems most European. Official Washington flees the city to the Outer Banks in the Carolinas, the Maryland and Delaware and New Jersey beaches—anywhere but hot and humid Washington. The traffic seems magically to dissipate; many tourists with young kids do not come to Washington in August because it is too close to the beginning of the school year; and overall, the tempo and energy of the city regresses to the kind of sleepy southern city Washington was until the fury of World War II fundamentally changed it into a big government town.

August 9, 2001, dawned as one of the most relentlessly hot and humid days of that year in Washington. The congressional recess was underway, so Capitol Hill was desolate. The president and the senior staff departed Washington to the president's Prairie Chapel Ranch in Crawford, Texas. The Supreme Court was already on its summer hiatus. Many of my White House colleagues were taking their vacations so even the "eighteen acres," as the White House is often called by those who work there (so named because the grounds are a national park), seemed quieter than usual. Karl [Rove] asked the week before whether I was planning to be in town that day, and I told him I was, even though I had no idea why he wanted to know.

A colleague in the White House domestic policy office also asked whether I would be at the White House that day, which I confirmed. When I heard the president say he came to a decision on stem cells early that week, I assumed the ninth would be the day of his announcement. That August day deserves to be remembered as one of the most significant dates in the history of the young Bush administration. In a highly anticipated decision and in his first national speech to the country in prime time since his inauguration seven months earlier, President Bush announced he would authorize federal funding of research only on existing stem-cell lines. Having campaigned as a

Timothy S. Goeglein, vice president of External Relations for Focus on the Family, served as deputy director of the White House Office of Public Liaison under President George W. Bush for nearly eight years. The following is Chapter 6 of his recently published memoir of that time, *The Man in the Middle*; it is reprinted here with Mr. Goeglein's permission.

staunch believer in the sanctity of every human life, the president's speech was a confirmation of that commitment. Normally placid and quiet Washington erupted into partisan divisiveness immediately. The speech elicited the cheers of supporters and the jeers of the president's critics as almost no single issue had since the president came to office. I had never had a busier day in the White House. Immediately upon learning the subject of the speech, I began preparing for it by working behind the scenes to reach out and prepare our coalition allies and friends for what was to unfold that evening.

When the dust settled and the emotional tug of that announcement was better understood, the speech came to be viewed as among the most important domestic decisions of Bush's entire presidency and one that, in the long light of history, will be seen as the most important, prime-time pro-life speech ever discharged by a U.S. president.

The president said he made a decision to allow federal funds to be used for human embryonic stem-cell lines, but only on cells already taken from those embryos. He said the federal government would not support new human embryo destruction for research purposes going forward. It was a courageous decision, completely consistent with the pro-life policy he laid down in multiple venues and debates on the campaign trail. The decision had a prudent, pragmatic element: The president made clear that research conducted in the private sector, without government funding, had already produced stem-cell lines with the ability to reproduce themselves repeatedly; and federal funding could be used on those existing stem-cell lines but not on any new human embryos. He said the life-and-death decisions had already been made on those earlier embryos. The new policy, the president said, "allows us to explore the promise and potential of stem-cell research without crossing a fundamental moral line by providing taxpayer funding that would sanction or encourage further destruction of human embryos that have at least the potential for life."²²

It is tempting to say I had a heads-up or insider's view of what was coming down the pike in that speech because, among conservatives and people of faith, the president's pending decision was the single issue I heard more about than any other, day in and day out, for months before the policy was announced. In fact, I had no idea what the policy would be even though I was feeding significant amounts of research, information, input, and other data to my colleagues in the Domestic Policy Council from people who wanted to impact the final decision.

The American pro-life community rightly knew the decision would impact many other related policies for the rest of the administration. Although the president reinstated the Mexico City Agreement as among his first decisions

as president—no taxpayer funding for overseas abortion—and spoke by phone to the massive annual pro-life march after his inauguration, a major question mark hovered over how the president would decide the new stem-cell policy. The heavy lobbying going on in those weeks leading up to the president's announcement was the most intense I had yet witnessed in the new administration. For months before the decision was announced, scholars, public policy experts, researchers, theologians, and others came to the White House to spend significant amounts of time with colleagues of mine in the Domestic Policy Council and with the president himself. In our regular daily meeting with Karl, I would recommend thoughtful men and women who might be worth consulting on the issue of stem-cell research. Over the course of several months, I got excellent feedback from various quarters at the White House that in fact those views were being heard, as were the views of those who did not share the president's pro-life convictions. The consultation process, I came to see, had worked well, and the ability to convey views and information worked as it was intended. Immediately upon learning of the prime-time speech, I asked Karl and a few of the senior staff what the decision would be. Although the trust factor was huge among us, there was a solemn agreement that the decision would remain closely held, for fear of leaks, because the president deserved the right to make his own announcement, a decision which I respected and thought the prudent one. When I was asked repeatedly what the decision would be by many of our outside friends and allies, or for any insight on what the decision might be, I was bold to say that although I truly did not know, I knew the president to be a man of his word, that his pro-life promises in the campaign, and in the early pro-life decisions in the administration on both policy and personnel matters, were proof-positive his stem-cell decision would be consistently pro-life. I said the president respected the bright lines between what the late Pope John Paul II called "the culture of life and the culture of death."³

The whole stem-cell process did something extremely important for me professionally: It helped me sort out what my role was and what it was not in the White House hierarchy, and this proved invaluable in the seven years that followed. My role at the White House was not, at any remove, one of policy making or policy formulating but instead one of information sharing and distribution. The role of being a reliable conduit was critically important to how the White House process worked. If and when I was asked my opinion during the policy formation process, I was happy to offer it. But my role was to be a reliable middleman, to absorb and feed into the White House the best of what was conveyed to me from equally reliable outside stakeholders. In other words, when the proverbial engine was firing on all cylin-

ders in the Office of Public Liaison, the best public service I could render was to impart data points that helped the policy people inside the White House make good choices but also to make sure that, once those decisions were made, I faithfully and accurately transmitted not only how but also why those decisions were made. When this process is running smoothly, key constituencies can in turn convey to their own networks key presidential policy choices.

As the stem-cell policy unfolded, my role as a communicator came into sharper focus. My duties were to convey the policy in a clear, concise, synthesized, and consistent manner. I had to call upon all those relationships and friendships I had been building for months in order to mobilize them for action on behalf of the president's and administration's decision. All this was accompanied by building alliances that had a specific purpose: to make sure we used every available avenue—social media, e-mail, teleconferences, newsletters—to get the message out. Also I came to see that God had prepared me—as He prepares all of us through various life experiences—how to communicate effectively and efficiently a highly controversial decision with major ramifications. Years of being in forensics at Paul Harding High School, on the radio, and in debates prepared me to convey the policy in substance and tone fitting of a major presidential decision. One of the roles I played in the stem-cell decision was to recommend or suggest the names of well-informed people who could be organized into high-level discussions with the right policy people. The goal was to explore common principles, which was important to the president and his senior team because it was key that everyone who had a stake in the outcome of the president's decision had the ability or opportunity to be heard. Karl gave me license to make recommendations of who those people might be, and that bond of trust is what made working for him such an honor.

I knew that, rightly done, one of the goals would be to influence opinion shapers and formers. In order to do that, we had to tap into preexisting networks of like-minded people. This was an elemental part of my job for the president, and we worked systematically to meet that goal. Two hours before the president's Prairie Chapel announcement, I received a call from a White House colleague who knew how important it was I convey precisely and exactly not only the president's final policy decision but also his reasoning behind it. This colleague asked if we might get dinner together, and of course I said yes. We walked to the nearby Old Ebbitt Grill on Fifteenth Street NW, near the White House, across the street from the U.S. Treasury Building. The Ebbitt is one of the great administration hangouts, regardless of which party is in power. That dinner proved to be a timely gift.

My colleague told me he wanted me to know two things ahead of the announcement. First, foundational principles came up again and again in the policy-formation sessions leading up to the president's decision. One was whether an embryo was in fact a human life. The other was more pragmatic but with an ethical gloss: If those embryos were going to be discarded under any circumstance, should they not be used to possibly discover remedies for various illnesses and diseases?

My colleague told me that, over the course of the preceding months, as the president met with various experts, these two principles came up repeatedly, and the president wanted to hear informed opinion and reasoning on both. Among the most thoughtful and learned people he met with was the University of Chicago bioethicist Leon Kass, who also did a lot of work with the major think tank the American Enterprise Institute. Leon would later become chairman of the newly created President's Council on Bioethics. My colleague told me the president was seeking clarity on both principles and thus deliberated his way through to an ethical, moral decision.

I told my colleague presidents usually used rare prime-time speeches to discuss issues of war and peace, or when a particularly difficult political issue arose, and not to deal with domestic social issues with heavy moral tones. But my colleague told me the president realized the national and international importance of stem-cell research had gained such huge momentum with its heavy matrix of moral, scientific, medical, and research ramifications. He wanted to elevate it to a singular place of importance. My colleague told me the president's announcement would confirm his pro-life stance while welcoming what science could offer to preserve life.

There were a huge number of stakeholders—a word used in Washington to denote people who have a particular interest in a given policy decision—on the stem-cell issue, so we began to work overtime to reach out and explain the policy while providing as much information as we could immediately after the speech concluded and continuing into the next morning. In fact, we worked nonstop to schedule a number of teleconferences and small-group meetings with key constituencies: think tanks, pro-life groups, members of the Catholic community, ethicists, scholars, a number of important medical researchers, and faith-based leaders, both evangelicals and Jews alike. We also made a point to reach out to some who strongly disagreed with the president.

We had an outstanding relationship with the United States Conference of Catholic Bishops, but they let us know they would strongly oppose the new policy. Their president at that time said the policy was “morally

unacceptable” because the policy allowed the use of cells removed from human embryos. But most other conservative Catholics of standing supported the new policy, or at least understood the president’s reasoning and respected his view.

The ministry for which I now work, Focus on the Family, a leader and reliable benchmark for American evangelicals, was pleased with President Bush’s policy. Although Focus would have strongly preferred no funding whatsoever, it saw the utility and moral consistency in what President Bush decided and applauded the fact no taxpayer money would be used to destroy human embryos for research purposes. Focus’s bioethics analyst Carrie Gordon Earll said, “What [the president] is talking about is using cell lines with embryos that have already been killed. We grieve the loss of those embryos, but the truth is they are gone, and we can’t change that. He is not talking about destroying any more with the involvement of federal dollars.”⁴ She captured the policy exactly as the president intended it. I feared some among our conservative base might not make this distinction, but most did, and most came to see the president’s new policy as the triumph it was for this relatively new issue area inside the pro-life movement. Perhaps most surprisingly a number of people in the American medical and scientific communities believed the president’s policy was a good one. They knew allowing for continued federal funding on existing cell lines was a prudent choice. The debate in those communities was mostly centered in whether there were an adequate number of cell lines. At the time the president limited the research to twenty-one such lines. The criticism, however, was razor sharp, bilious, and nearly unrelenting. Most Democrats said full taxpayer funding of all embryonic stem-cell research was the only acceptable policy, skating around any ethical or moral reasoning. Both House Minority Leader Richard Gephardt (D–MO) and Senate Majority Leader Tom Daschle (D–SD) weighed in immediately but struck different notes and tones in their reaction. Daschle chose a prudent rhetoric, thanking the president for realizing the federal government could have a role in funding and research but wanting the Senate to address the policy head-on, presumably to lift the Bush restrictions in some fashion. Gephardt, on the other, chose a lower road. He said the president had “done the bare minimum in order to try and publicly posture himself with the majority of Americans,” which was demonstrably false, and said full funding needed to proceed with “full force.”⁵

Two of the White House pro-life highlights that flowed directly from the president’s new stem-cell policy were the East Room events highlighting the so-called “snowflake children.” Couples from around the country, most of them infertile, adopted frozen embryos, had them implanted in the woman’s

womb, and nurtured them through birth into childhood. These were among the most loving, caring, welcoming young parents I ever met. Their children flourished from the love and attention they received. We invited several of the moms, dads, babies, and young snowflake kids to come and meet the president. They shared with him their stories, with the refrain that “we were all embryos once.” The president successfully put a human face on an otherwise abstract scientific argument about the ethics and consequences of destroying human embryos.

Short of a full ban on all federal funding, this was the most consistently pro-life decision the president could have made. It confirmed the growing view that President Bush was the most pro-life president in American history. That honorific would be borne out over the next eight years through two administrations in a host of policy and personnel decisions. The president said he found himself, in making the stem-cell decision, at a “difficult moral intersection,” but he chose rightly, and that decision prompted his successor, President Obama, not only to overturn the Bush policy but also to use the full force of the Justice Department against a federal judge who ruled not only to uphold the Bush policy but with it Congress’s intent in preventing unethical federal funding of embryonic stem-cell research. On this issue alone the pro-life/pro-choice contrast between George W. Bush and Barack Obama could not be starker, proving that elections have consequences.

The Obama administration reinterpreted existing stem-cell funding laws when the president changed the policy, concluding that research on embryonic stem cells could be separated from the deliberate killing of embryos from which cells for research are extracted and used. The Bush-era law was specifically designed to protect embryonic humans, and Judge Royce Lamberth agreed when he temporarily blocked the Obama administration’s anti-life policy.

Lamberth wrote: “Congress has mandated that the public interest is served by preventing taxpayer funding of research that entails the destruction of human embryos.”⁶ He was correct, and like President Bush before him, was subjected to an immediate round of meretricious character assassination. The judge’s critics called him “brain dead” and “crazy” for merely restating what the clearly stated Bush policy and congressional intent had been. Despite the political wrangling and rhetoric, the Bush era policy was the right one morally and scientifically. For President Bush, faith and reason were not at odds. In fact, he believed they were of a piece. There is not a single known cure using embryonic stem cells, but the ethical use of adult stem cells is showing promise. Stem-cell expert Wesley Smith of the Discovery Institute wrote: “The hype of embryonic stem-cell research, the promise that was so

often made that people would be out of their wheelchairs . . . that Uncle Charlie's Parkinson's will soon be cured—has been busted.”⁷

In his eleven-minute speech to the country that hot August evening, the president said, “At its core, this issue forces us to confront fundamental questions about the beginning of life and the ends of science.”⁸ Indeed it did, and in doing so, the president hewed to his core pro-life convictions and proved his character on one of the foundational moral issues of the new century, of which he was the first president.

The Bush policy recognized the inherent relationship between the necessity of medical research and the immutable principle of human dignity. The policy was rooted in a view that any federal funding for the further destruction of human embryos would be prohibited on ethical grounds. The president navigated this storm with alacrity and faith, and his goodwill and natural prudence shone in that speech. The process of getting the message out, and making sure we blanketed the stakeholders, was a life-affirming chapter of my tenure at the White House; and it confirmed for me that, on the questions of the sanctity and dignity of every human life, I was working for the right man. No one could say he made a brash, unthoughtful, snapshot decision. He was deliberate; his internal moral compass guided him, rooted in his faith. There would be no moral obtuseness in defense of human life. It was a tonic and nourishing decision. All Americans saw the national stem-cell debate as an important test for their new president, and George W. Bush did the right thing.

NOTES

1. “More for Montana!,” <http://moreformontana.com>, accessed December 4, 2010.
2. Corpus Christi Caller Times Caller.com, “Bush OKs Limited . . .,” <http://www.caller2.com/2001/august/10/today/national/7963.html>, accessed December 4, 2010.
3. Pope John Paul II, *Evangelium Vitae*, www.bit.ly/mN1wxe, posted March 25, 1995, accessed June 10, 2011.
4. “The President’s Decision: The Overview,” <http://www.nytimes.com/2001/08/10/us/president-s-decision-overview-bush-gives-his-backing-for-limited-research.html?pagewanted=2>, accessed December 4, 2010.
5. BBC News | AMERICAS | “Bush Facing Stem Cell Storm,” <http://news.bbc.co.uk/2/hi/americas/1484139.stm>, accessed December 4, 2010.
6. “US Judge Refuses to Stay Stem-Cell Ruling” | Real Time Market, http://www.automatedtrader.net/real-time-dow-jones/15485/us-judge-refuses-to-stay-stem_cell-ruling, accessed December 4, 2010.
7. “Illinois Federation for Right to Life: Appeals Court Rules,” <http://ifrl-blog.blogspot.com/2010/09/appeals-court-rules-tax-dollars-for.html>, accessed December 4, 2010.
8. “Decision Time,” <http://www.wnd.com/index.php?pageId=10427>, accessed December 4, 2010.

NELLIE GRAY, R.I.P.

June 24, 1924—August 13, 2012

[The following remembrance originally appeared in a National Review Online symposium, posted August 17, 2012. The entire symposium can be accessed at: <http://www.nationalreview.com/articles/314271/no-shades-gray-nro-symposium>]

From the beginning, the March for Life was an important event in my family. Our lives had changed irrevocably on January 22, 1973, because from then on my father, J.P. McFadden, devoted his energies and passion to the defense of the unborn. In 1974, he opened a lobbying organization in D.C., the Ad Hoc Committee in Defense of Life, and launched a lively newsletter, *Lifeletter*, which—as I saw while looking through the early issues after hearing of Nellie Gray’s death—reported on the first March with such hopeful enthusiasm for the overturn of *Roe v. Wade* it makes one’s heart ache. By the second annual March, in ’75, Nellie Gray emerged in the pages of *Lifeletter* as the clear leader of the march on Washington, who unabashedly demanded that Congress act to stop the slaughter of the innocents.



For years, we older children would go to the March with our parents, sometimes standing in the midst of the crowd to hand out *Lifeletter* or the *Human Life Review* (which J.P. founded in 1975); afterwards, we’d head to the office, where an open house for marchers offered warmth, food, and spirits (both drinkable and in camaraderie). My father often spoke of “Miss Nellie” with fondness, admiring both her chutzpah and her absolute dedication.

J.P. died in 1998, and the Ad Hoc office in D.C. has closed; but the March, with Miss Nellie at the helm, has continued, with strength and fervor. Attending in recent years, I marvel: at the masses of young marchers, at the over-

whelming attitude of joy and hope—no matter how invisible about half a million people are to the press. The 2013 March will mark the 40th anniversary of *Roe*. Miss Gray will be missed, but I believe she’ll be watching, in heavenly freedom from the icy winds of an earthly January.

—MARIA MCFADDEN MAFFUCCI

APPENDIX A

[Mark Judge is a columnist for RealClearReligion (www.realclearreligion.org) and author, most recently, of *A Tremor of Bliss: Sex, Catholicism, and Rock 'n' Roll*. The following article ran on June 3, 2012, and is reprinted with the website's permission.]

Blackballing Nat Hentoff

Mark Judge

A couple weeks ago I got a call from Nat Hentoff. Hentoff, 86, is a legendary civil libertarian and journalist. He's at the point in his career when he should just be sitting back and receiving lifetime achievement awards. But there's one problem.

Nat Hentoff is pro-life. He had called from New York to thank me for some pro-life columns I had written. I was stunned; Hentoff is one of my favorite writers, and him reaching out is a tremendous honor. I'm a jazz fan and have been reading Hentoff's columns for 25 years. (The man actually met Duke Ellington!) We talked about our jazz favorites, including my favorite singer Kurt Elling. Hentoff is still mentally sharp, even if he is doing physical therapy for various age-related issues.

Hentoff's conversion from pro-choice to pro-life, and the fallout that resulted, is explained in an essay in the new book, *The Debate Since Roe: Making the Case Against Abortion 1975-2010*. It's a compendium of essays from the journal *Human Life Review*.

A famous liberal who was a staple at the *Village Voice* and who had a column in the *Washington Post*, in the 1980s Hentoff actually let himself be swayed by evidence about abortion. It happened when Hentoff was reporting on the case of Baby Jane Doe.

Baby Jane Doe was a Long Island infant born with spina bifida and hydrocephalus, which is excess fluid in the cranium. With surgery, spina-bifida babies can grow up to be productive adults. Yet Baby Jane's parents, on their doctor's advice, had refused both surgery to close her spine and a shunt to drain the fluid from her brain. In resisting the federal government's attempt to enforce treatment, the parents pleaded privacy.

As Hentoff told the *Washington Times* in a 1989 profile, his "curiosity was not so much the case itself but the press coverage." Everyone on the media was echoing the same talking points about "women's rights" and "privacy."

"Whenever I see that kind of story, where everybody agrees, I know there's something wrong," Hentoff told the *Times*. "I finally figured out they were listening to the [parents'] lawyer."

Hentoff dug into the case and the abortion industry at large, and what he found shocked him. He came across the published reports of experiments in what doctors at Yale-New Haven Hospital called "early death as a management option" for infants "considered to have little or no hope of achieving meaningful 'humanhood.'" He talked with handicapped people who could have been killed by abortion.

Hentoff's liberal friends didn't appreciate his conversion: "They were saying, 'What's the big fuss about? If the parents had known she was going to come in this

APPENDIX A

way, they would have had an abortion. So why don't you consider it a late abortion and go on to something else?' Here were liberals, decent people, fully convinced themselves that they were for individual rights and liberties but willing to send into eternity these infants because they were imperfect, inconvenient, costly. I saw the same attitude on the part of the same kinds of people toward abortion, and I thought it was pretty horrifying."

The reaction from America's corrupt fourth estate was instant. Hentoff, a Guggenheim fellow and author of dozens of books, was a pariah. Several of his colleagues at the *Village Voice*, which had run his column since the 1950s, stopped talking to him. When the National Press Foundation wanted to give him a lifetime achievement award, there was a bitter debate amongst members whether Hentoff should even be honored (he was). Then they stopped running his columns. You heard his name less and less. In December 2008, the *Village Voice* officially let him go.

When journalist Dan Rather was revealed to have poor news judgment, if not outright malice, for using fake documents to try and change the course of a presidential election, he was given a new TV show and a book deal—not to mention a guest spot on *The Daily Show*. The media has even attempted a resuscitation of anti-Semite Helen Thomas, who was recently interviewed in *Playboy*.

By accepting the truth about abortion, and telling that truth, Nat Hentoff may be met with silence by his peers when he goes to his reward. The shame will be theirs, not his.



"Spreading rose petals before you, sir—couldn't you get an intern for that?"

APPENDIX B

[Anna Franzonello is staff counsel at Americans United for Life. The following column was published on National Review Online (www.nationalreview.com) on July 17, 2012, and is reprinted with NRO's permission.]

Decor No Substitute for Safety

Anna Franzonello

Last week, the *Daily Beast* wanted readers to “meet the woman in charge of the last abortion clinic in Mississippi.” Why the introduction to Diane Derzis, who “embraces the moniker” of “abortion queen”? Her clinic was facing closure for failing to be in compliance with a new Mississippi law.

The piece falls short of helping us to make a true acquaintance, glossing over critical pieces of information for anyone who wants to get to know Derzis and what motivates her. The “abortion queen” is no altruistic champion of women. Derzis, quite literally, profits from abortion. And her Mississippi clinic is not the first to face closure for endangering women’s health.

While the article shares several irrelevant details about Derzis including that she “loves yard sales, [and] thrillers to take her mind off tough days” it makes no effort to describe what is only vaguely referred to as “the law” that threatened to close her clinic. Understandably, Derzis’s failure to meet a health and safety standard designed to protect abortion patients does not exactly fit with the gosh-don’t-you-love-her-and-her-smoker’s-laugh theme. However, a serious piece of journalism would have tackled the issue, not created a sideshow.

The Mississippi law requires that doctors at abortion clinics have admitting privileges at a local hospital. Why? To ensure that women have continued care in the face of an emergency. Abortion is an invasive surgical procedure that can lead to numerous and serious medical complications. Far from being a “small-bore but potent restriction,” as the *Daily Beast* would have readers believe, abortion-clinic regulations, such as Mississippi’s admitting-privileges requirement that Derzis’s clinic fails to comply with, are designed to meet the medical needs of patients and protect women from abortion providers who would place profit over health and safety.

Instead of addressing the merits of the law, the *Daily Beast* praises Derzis for things like her “knack for design.” Readers are told that the clinic’s waiting room is painted with bright purples and yellows, and that red leather furniture helps create a “happy, warm feeling.” According to Derzis, “the ambience of the clinic . . . goes a long way.”

Bright colors and plush chairs may help Derzis sell more abortions, but they do absolutely nothing to ensure the health of her patients. The fact that “her home with its Jacuzzi tub and skyline view was featured in a Birmingham paper recently” suggests Derzis’s business is personally lucrative but offers no assurance that the women who walk into her clinic will go home safely.

The *Daily Beast*’s profile is a classic case of the media’s irresponsible abortion distortion. No other industry, let alone medical office, would be given a free pass to

APPENDIX B

violate a health and safety standard because of “ambience.” There would never be a campaign to defend a dentist failing to comply with a safety regulation because of her top-notch waiting-room reading material. And the *Daily Beast* would (hopefully) not publish an article centered on a theme such as “Who cares that the restaurant is endangering customers by serving expired meat? The lighting in the dining room is exceptional!”

Derzis is no stranger to having a clinic shut down for putting the health and safety of women in jeopardy. Her “New Woman All Woman” clinic in Birmingham, Ala., was closed in May 2012 after a state Department of Public Health investigation found serious problems including two instances where patients were given overdoses of a drug, requiring the women to be rushed to the hospital in an ambulance.

Of course, the *Daily Beast* did not mention any of the details contained in the 76-page deficiency report issued by the Alabama Department of Public Health (which was not the first report finding the abortion queen’s clinic in violation of health and safety standards); it only published Derzis’s account that the closure of her Alabama clinic was “a witch hunt.”

The fate of the Mississippi clinic remains to be seen. While the Mississippi law is technically in effect, a federal judge issued an order on Friday permitting Derzis’s clinic to stay open—for now. However, the order requires the physicians in Derzis’s employ—including those “circuit rider” abortionists traveling from out of state to perform abortions in her clinic—to get admitting privileges. Failure to meet the new law’s requirements within a “reasonable time” (not to exceed six months) could still cause the clinic to close its doors.

No coat of paint or comfy couch will act as a substitute for the important safety measure.



“This must be juvenile court.”

APPENDIX C

[John M. Thorpe, Jr., MD, is Professor and Director of Women's Primary Healthcare in the Department of Obstetrics and Gynecology at the University of North Carolina School of Medicine. Clarke Forsythe is Senior Counsel with Americans United for Life. The following was published on the website of First Things (www.firstthings.com) and is re-printed with the magazine's permission.]

A Fact Ignored by the WHO

John M. Thorpe, Jr. and Clarke Forsythe

The World Health Organization (WHO) recently released *Born Too Soon*, the first country-by-country comparison of national rates of pre-term birth. This 125-page report, funded by dozens of public agencies and private foundations, claims to be “the global action report on pre-term birth.” Hidden in its pages is a story of what must be better understood to help women carry a healthy baby to term.

Pre-term birth (sometimes called premature birth or PTB) is birth before thirty-seven weeks gestation. (“Very pre-term birth” means birth at less than thirty-two weeks.) Pre-term birth carries serious risks for both child and mother. It’s the leading cause of infant morbidity and mortality, and very pre-term birth is associated with cerebral palsy and autism.

Contrary to the conventional wisdom that the United States has the best maternal health in the world, the study reported what data has shown for the last two decades: the U.S. has had a rising rate of pre-term birth. In fact, the rate of preterm birth in the U.S. has increased thirty percent since 1981. While some of this is due to better record-keeping, more aggressive use of newborn intensive care, and wide access to assisted reproduction in the U.S., much of the increase remains unexplained.

Some findings of the WHO report are very troubling. As the *New York Times* reported in its front-page story on the WHO report, “the U.S. is similar to developing countries in the percentage of mothers who give birth before their children are due . . . [The U.S.] does worse than any Western European country and considerably worse than Japan or the Scandinavian countries.”

What is the cause of this thirty percent increase in the U.S. since 1981?

The *Times* mentions a number of possible risk factors—age, cesarean sections, obesity, diabetes, high blood pressure, and smoking. And the authors of the WHO report suggest as a potential cause “the unique American combination of many pregnant teenagers and many women older than 35 who are giving birth, sometimes to twins or triplets implanted after [IVF].”

In the end, the researchers throw up their hands and express confusion: “Experts do not know all the elements that can set off early labor.” The *Times* quoted an author of the WHO report: “Even after controlling for risk factors like age, poverty, smoking, obesity and diabetes, ‘we really don’t have an explanation for what’s behind it.’”

Unfortunately, one significant, and modifiable, risk factor for pre-term birth was completely ignored by the WHO report: prior termination of pregnancy. There is a

large and growing body of scientific data documenting this risk factor for pre-term birth. More than 120 peer-reviewed studies, from more than a dozen countries, have found a statistically significant increased risk of pre-term birth or low-birth weight after a termination of pregnancy.

Some studies have found an almost twofold increased risk of very early deliveries (twenty to thirty weeks gestation) after a pregnancy is terminated. And the risk increases when a woman has had multiple terminations of pregnancy—what researchers call a “dose effect.” The more prior terminations, the greater the increased risk. This is significant because approximately fifty-five percent of terminations in the U.S. each year are “repeat abortions.”

A December 2011 study from the Italian Preterm Network Study Group found that prior terminations of pregnancy almost double the risk of pre-term birth. It reinforces previous studies which implicated abortion as a risk factor in pre-term birth, including:

- A 2006 Institute of Medicine (IOM) report that acknowledged termination of pregnancy is a risk factor for pre-term birth.
- Three 2009 published studies (systematic evidence reviews) which all found an increased risk of pre-term birth after abortion.
- A 2010 study published in *Human Reproduction* that concluded that “prior pregnancy termination is a major risk factor for cervical insufficiency,” noting that black women have an increased risk of cervical insufficiency. The WHO report buries some of these studies in the bibliography, but the findings in these studies never make it into the WHO report.
- A 2003 study in the Obstetrical & Gynecological Survey (OGS) concluded that “women contemplating their first induced abortion early in their reproductive life should be informed [that] their risk of subsequent pre-term birth, particularly of a very low-birth weight infant, will be elevated above their baseline risk in the current pregnancy.” They emphasized that pre-term delivery is an important factor “in women’s health and avoidance of induced abortion has potential as a strategy to reduce [its] prevalence.” The impact isn’t trivial. There are real world costs, both physically and financially, to consider. A study in the October 2007 issue of the *Journal of Reproductive Medicine* concluded that complications of pre-term birth for mother and child after termination of pregnancy cost an estimated \$1.2 billion annually.

The data on the increased risk of pre-term birth after abortion has to be part of informed consent for women and girls considering the termination of pregnancy in order for doctors to consider all the facts, and to enable women to make critical medical decisions.

In a report calling for women to be fully informed, claiming to want all the answers, claiming to be the “global action report,” it’s tragic that the WHO fails to mention this significant risk factor. Women should not be kept in the dark about such a known, well-documented and serious risk factor, and no organization calling for answers and solutions should be complicit in furthering that ignorance.

APPENDIX D

[Paul Greenberg is editorial-page editor of the Arkansas Democrat-Gazette. The following column appeared in that paper on July 1, 2012, and is published here with Mr. Greenberg's permission.]

The Root of Confusion

Paul Greenberg

O judgment! Thou art fled
to brutish beasts,
And men have lost their reason.
—"Julius Caesar," Act III, Scene 2

The other day I saw a syndicated column about sex-selection abortion. That is, a mother's choosing to abort her baby because it's the "wrong" sex, say a girl, when she really wanted a boy.

It happens around the world, particularly in Asia. And the one-child policy in still Communist China has only increased the practice. It would be hard to come up with a clearer example of sexual discrimination.

The pro-life faction in Congress has responded by introducing what's called the Prenatal Non-Discrimination Act to outlaw such abortions.

The columnist—Ken Herman of the Austin American-Statesman in Texas—seemed of two minds, at least, about this issue. He knew he was against unjust discrimination against women, the way any good liberal or just any fair-minded American would be. But he also seemed to be for a woman's right to choose, that is, to have an abortion. Which left him in a quandary.

So the columnist asked Planned Parenthood, that citadel of pro-choice opinion, whether it was for or against sex-selection abortion.

If he was seeking guidance, he got precious little. What he did get in response to his simple question was a load of boilerplate about how Planned Parenthood supported all the right principles when it comes to not discriminating against women. ("Planned Parenthood opposes racism and sexism in all forms; and we work to advance equity and human rights in the delivery of health care. Planned Parenthood condemns sex selection motivated by gender, and urges leaders to challenge the underlying conditions that lead to these beliefs and practices. . . .")

Yadda, yadda, yadda. But was Planned Parenthood for or against this Prenatal Non-discrimination Act?

It wouldn't say, not at first.

But when pressed, it finally came out, like the Obama administration, against the proposed law. In short, Planned Parenthood is against all forms of discrimination on the basis of sex except when it isn't, and on this issue it isn't.

Planned Parenthood might be all against such discrimination in principle, but in practice it couldn't be bothered to save a single baby marked for abortion because of its sex.

Our columnist friend in Austin was left in his self-imposed quandary. He wound

up spending a couple of columns of type deciding not to decide where he himself stood on the issue. He ended up by inviting any readers who disagreed with him to submit their opinions on the matter.

But what was there to disagree with? Or agree with, for that matter? He never took a clear stand himself.

It's the besetting sin of American opinion writing. I've lost count of the number of opinion pieces I see that have no opinion. Instead they weave all around some controversial question—like abortion, for example—without ever taking a clear stand.

Our conflicted columnist's big problem, his ethical dilemma, was symptomatic of those who don't go back to first principles and think the abortion issue through. They don't make the connection between the right to life and all the others subsidiary to it, like the right to equal treatment under the law.

The right to life must come first or all the others can never take root, much less flourish. As in the Declaration of Independence's order of certain unalienable rights, among them "life, liberty and the pursuit of happiness." Note which one is mentioned first. And for good, logical reason. Deprive the most innocent of life and they will never be able to exercise any of the others.

Yet we condone snuffing out human lives so the rest of us can get on with debating Title IX or Affirmative Action and all the rest of the equal-rights agenda. Something seems to have gone terribly wrong with the American capacity for reason itself.

All of which brings me to the story of Ruth Pakaluk of Worcester, Mass., diminutive housewife, homemaker, mother of six, beloved by neighbors and friends and all who ever had the good fortune to come into contact with her. Dead of breast cancer at 41, she left behind a shining memory. She was one of those people who brightened the life of everyone she came into contact with.

Ruth Pakaluk was also a figure in her state's pro-life circles, and stated her position with such eloquent, unpretentious, convincing clarity that after a while pro-choice speakers declined to debate her. A Harvard graduate, she must have had some classical education, too, because she tended to express her position on, or rather against, abortion with the irrefutable simplicity of a Socratic syllogism. As she would sum it up in plain English:

"Human rights are rights that pertain to us simply because we are human, not for any reason above and beyond that; the fundamental human right is the right to life, and if that right is denied, then all human rights are in effect denied; the thing growing in the mother's womb is surely alive (otherwise it would not need to be killed by an abortion), and it is human, thus to deny that it has the right to life is to deny that anyone has any human rights whatsoever."

Q.E.D.

Those who think of abortion as an oh-so-complicated question pitting many equal, competing rights against one another don't see—or maybe just don't want to see—that a society that can abrogate the right to life can abrogate any right. For if we don't have a right to life, we have no rights whatsoever.

APPENDIX E

[Greg Pfundstein is a member of the board of the Patients Rights Council. The following column appeared on National Review Online (www.nationalreview.com) on June 4, 2012, and is reprinted with NRO's permission.]

“Death with Dignity” in Massachusetts

Greg Pfundstein

Abdelbaset al-Megrahi, the Libyan convicted of the 1988 bombing of a Pan Am flight over Lockerbie, Scotland, died of prostate cancer on May 20. Nearly three years earlier, on August 20, 2009, Scottish authorities had released him on compassionate grounds so that he could return home to die. At the time, he was thought to have three months to live. Some think that al-Megrahi's survival of his prognosis undermined whatever grounds there were for his early release. But if we set aside his crimes and consider him as a patient with medical needs, his case sheds light on the current proposal for doctor-prescribed suicide in Massachusetts.

Three days before al-Megrahi died last month, the disability-rights group Second Thoughts submitted a challenge to contest a measure on the November ballot in Massachusetts, arguing that the initiative's language for legalizing doctor-prescribed suicide is “clearly misleading.” Second Thoughts objects in particular to the use of the term “terminally ill.” According to director John Kelly, “People will be encouraged to assume that being ‘terminally ill’ is a biological fact, rather than a human guess.” In the case of al-Megrahi, a human guess resulted in the transfer of a convicted terrorist to his home country of Libya, where, remarkably, he found care superior to what he was receiving in Scotland. The “human guess” that allowed for his release was off by over 1,000 percent.

The Massachusetts initiative proposes that “the public welfare requires a defined and safeguarded process by which an adult Massachusetts resident . . . who has been determined by his or her attending and consulting physicians to be suffering from a terminal disease that will cause death within six months may obtain medication that the patient may self administer to end his or her life in a humane and dignified manner.” The provision that the disease will cause death within six months is central to the proposal. But John Norton, a member of Second Thoughts, points out that “everyone knows someone who has outlived their terminal diagnosis.” As the cases of al-Megrahi and many others make clear, a diagnosis of death within six months is highly speculative—and a weak basis for securing the “public welfare.”

It is important to note that, according to the Wall Street Journal, the U.K.'s National Health Service had denied al-Megrahi “standard docetaxel chemotherapy.” When he was transferred to Libya, he received advanced chemotherapy, radiation, and testosterone inhibitors. To put it plainly, Britain's rationing bureaucracy denied al-Megrahi the treatment that extended his life nearly three years beyond his 2009 prognosis. In an age of increasing bureaucratic control of health-care decisions, shouldn't such rationing concern us, especially when we consider the question of legalizing doctor-prescribed suicide?

It has already been documented in Oregon, where doctor-prescribed suicide is legal, that the Oregon Health Plan has refused patients life-saving cancer treatments but offered “comfort care, including ‘physician aid in dying.’” Nor is the state making good on its purported goal of protecting patients from receiving lethal drugs when their decision is influenced by depression: Oregon’s latest annual report indicates that only one of the 71 persons who killed themselves with drugs in 2011 was referred for psychiatric evaluation, even though, according to a 2008 BMJ study, 25 percent of patients seeking doctor-prescribed suicide were depressed. Moreover, 9 of the 71 patients who killed themselves in 2011 received prescriptions for lethal drugs in “previous years,” making clear that the six-month-terminal-illness provision is a farce: “Death with dignity” laws are no more than efforts to elevate doctor-prescribed suicide to an accepted and inexpensive “treatment” under the pretense of compassion.

At first glance, legalization of doctor-prescribed suicide appeals to the libertarian in us all: If someone wants to end his life, who are we to stand in his way? But the members of Second Thoughts know what it is like for a medical professional to assume that their lives are not worth living, and they help us focus on the relevant question: What happens when death becomes a recognized and reimbursed medical treatment for “terminal” conditions? As a teenager, Norton was diagnosed with “terminal” Lou Gehrig’s Disease, but 50 years later he is alive and well.

What about the “terminal” mother who desperately wants to live but feels obligated to choose “death with dignity” so that her children can wrap up the division of her assets and property? What about the father who, on learning that advanced cancer threatens his life, loses for a time the will to live and is offered by his “compassionate” doctor a poisonous dose of barbiturates to end his life with? What about the patient who, in hope of a cure, is awaiting medical breakthroughs? Do these people deserve to be belittled with the offer of a fistful of lethal pills as a treatment option?

Al-Megrahi probably would have died earlier if he had stayed in Scotland, where his survival was balanced against the cost of his survival. In Libya, he was given state-of-the-art treatment for his disease. The prognosis is best when patients are free from pressure to accept the denial of medical care that they need and want. When care is rationed and the crime of assisting a suicide is redefined as medical treatment, the picture changes. Those who may see themselves as a burden on loved ones feel pressure to consider suicide a “treatment” option. How does that promote the public welfare?

SUBSCRIPTIONS AND BOUND VOLUMES

Subscriptions: the *Human Life Review* accepts regular subscriptions at the rate of \$30 for a full year (four issues). Canadian and all other foreign subscriptions please add \$10 (total: \$40 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. 3 Volume XXXVIII—is available while the supply lasts at \$8 per copy; 10 copies or more at \$5 each. A limited number of back issues from 1996 to this year are also available. 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