



. . . If Alfie Evans were a royal, and one had been born the week he died, his parents, the two people who gave him life, would not have been denied dominion over it. Pictures of the beaming prince and duchess greeting the press outside the hospital, their new baby cradled in her arms, were hard to look at, knowing that another young one—and who knows how many others—was at the same time being exterminated in another British hospital by order of that country’s highest court. How did it come to this? Mark Mostert, a professor of special education at Regent University, considers the cases of both Alfie Evans and Charlie Gard, an 11-month-old whose court-ordered death preceded Alfie’s, and posits a different way the highly charged events surrounding both could have played out (“Death as ‘Best Interest’: Charlie Gard, Alfie Evans, and the State,” page 37). Laura Echevarria, mother of two sons with autism, issues a personal plea for rejecting the British “solution” to such terminally ill children in “Who Decides Who Is Worthy of Life?” (page 44).

England has long been an avatar of bioethical mayhem—the country legalized abortion in 1967 and has since disregarded traditional protocols concerning eugenics and euthanasia as well. Now Ireland is embracing her long-time enemy’s casual disdain for life: Senior Editor William Murchison (“The Basic Lesson of the Irish Debacle,” page 5), and Irish contributor David Quinn (“One of Us? Ireland Says No,” page 11) explore why the only country to have added protection of the unborn to its constitution (as Ireland did in 1983) overwhelmingly chose in a referendum this past May to jettison it. Mr. Quinn, and Edward Mechmann, a lawyer and public policy director for the New York Archdiocese (“Escaping from the Bunker,” page 25), are the Human Life Foundation’s 2018 Great Defenders of Life.

Other featured articles include Senior Editor Mary Meehan’s “Anti-Abortion Atheists Speak Out” (page 32), Robert Karrer’s “Pro-Life Benchmarks: 1967-2017” (page 47), and Vincenzina Santoro’s “The Business of Family Planning” (page 56). Senior Editor Ellen Wilson Fielding has graced us with another imaginative and beautifully drawn essay examining our culture’s uneasy understanding of what it means to be human (“Recognizing What Makes Us Human,” page 18).

Reggie Littlejohn, founder and president of Women’s Rights Without Borders, has spent years fighting Chinese culture’s inhuman use of state-mandated abortion to achieve “family planning.” We wish to welcome her to these pages (Interview, page 66). We also wish to thank *First Things* for permission to reprint Hadley Arkes’s “Another Pro-Life Victory?” (page 89), and *National Review* for allowing us to include Jonathan S. Tobin’s “An Inconvenient Amendment” (page 94).

Our late editor, J.P. McFadden (see page 10), once told me he would sometimes be drawn (unwillingly) into heated discussion with a woman about abortion, only to have her end up confessing to her own and weeping on his shoulder. J.P. didn’t know Colleen O’Hara (“The Unfit Mother,” page 87) but she, and others like her who aborted, thinking there would be another pregnancy and another child, are part of the reason he founded the *Human Life Review*.



# the HUMAN LIFE REVIEW

Summer 2018

Vol. XLIV, No. 3

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Published by The Human Life Foundation, Inc. Editorial Office, 271 Madison Avenue, Room 1005, New York, N.Y. 10016. Phone: (212) 685-5210. The editors will consider all manuscripts submitted, but assume no responsibility for unsolicited material. Editorial and subscription inquiries, and requests for reprint permission should be sent directly to our editorial office. Subscription price: \$40 per year; Canada and other foreign countries: \$60 (U.S. currency). ISSN 0097-9783.

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## INTRODUCTION

**T**he last weekend in May brought heartbreaking news from Ireland. On May 25, Irish citizens voted 2 to 1 to repeal the Eighth Amendment to their constitution, which had been adopted in 1983 to protect the lives of the unborn. Rather than learn from the tragic history and carnage of legalized abortion, the Irish chose to “modernize” their nation—up to now one of the world’s safest places for mothers and their babies—with legalized execution of the most vulnerable.

Senior Editor William Murchison grapples with this development in “The Basic Lesson of the Irish Debacle.” He asks how the country of John Ford, W.B. Yeats, and *The Quiet Man*, a “soundly Catholic land,” could go for abortion, and in such a big way. The answer lies in “swift change, to say the very least.” Ireland’s culture today is vastly different from what it was even two decades ago. As Murchison reflects on what brought about the changes, he also suggests that hope for Ireland—and for us—lies in a program of cultural “renewal and refreshment.” What we need are “inspired teachers, inside and out of the church; capable of showing, in religion, and literature, in the workplace and the life of the home”—what we once knew, that life is *good*, and precious.

As director of the pro-life Iona Institute in Dublin, Irish journalist David Quinn was tireless in his efforts to defend the lives of the unborn in Ireland. In “One of Us? Ireland Says No,” he describes what it was like on the ground during the “Save the 8th” campaign. Abortion activists, the Prime Minister, and the press actively downplayed the extreme nature of the “abortion legislation the Government intended” and “consistently highlighted the ‘hard cases’ . . . like rape or so-called ‘fatal fetal abnormalities.’” Quinn also describes the spectacle that appalled “pro-life advocates the world over”: televised scenes of “Irish people in the courtyard of Dublin Castle (a building used for major State occasions) cheering and even crying with happiness” at the news. Yet Quinn is undeterred, urging proliferators in Ireland to “dig in for the long haul” and “ensure that the third of people who voted for the right-to-life does not become an ever-diminishing minority.”

As the West becomes increasingly unmoored from the centuries-old values and beliefs of Christendom, other strange conglomerations of belief have emerged, as Senior Editor Ellen Wilson Fielding brilliantly observes in “Recognizing What Makes Us Human.” Fielding describes the phenomenon of “a rather large number of Westerners” who have “traveled far down the road from their traditional understanding of a God-created hierarchy of being toward a vague kind of New Agey Gnosticism or cobbled-together pantheism.” In this new “ism,” she explains, “carefully, excruciatingly slowly developed ideas of respect for human life and stewardship of creation” (which she calls the Steward model) are replaced by something she names the “Giant Orange” model (you must read her fascinating description) in which the living inhabitants of the earth “and the elements—plants and animals, air, water, and minerals—are parts of

a whole”—and human lives are *not* necessarily more valuable or worthy of protection if they are upsetting the planetary homeostasis. There is a third, “autonomous” model, “recognizing no one in charge, divine or otherwise,” so there is nothing to “assign us responsibilities or call us into account.” These latter two modes of thinking have become woven into the fabric of popular culture and affect views on abortion, assisted suicide and euthanasia, and population control. The current philosophy and practice of law has gone in a similar direction, writes attorney (and Director of Public Policy for the Archdiocese of New York) Edward Mechmann next—it’s been taken over by legal positivism. Deriving from the Enlightenment, positivism dismisses “the relevance or even the existence of any transcendent values—no God, no ultimate lawgiver, no normative human nature, no natural law, only material reality and what passes for human reason.” In “Escaping from the Bunker,” Mechmann looks to an address given by Pope Benedict XVI in 2011 to illustrate the danger of law based solely on human sources: It’s as if we are in “a concrete bunker with no windows, in which we ourselves provide lighting and atmospheric conditions, being no longer willing to obtain either from God’s wide world.”

**I**n an interesting twist, we go from essays insisting on the recognition of a Creator to senior editor Mary Meehan’s engaging “Anti-Abortion Atheists Speak Out.” There may not be an abundance of atheists in the pro-life movement, but those who do engage on our side have a powerful message, based on the rights of a person to have a future. Meehan profiles several groups, like Secular Pro-Life and its young and vibrant leader, Kelsey Hazzard, as well as two “Great Role Models” for secular proliferers, the late Doris Gordon and our own beloved friend, the late Nat Hentoff—both “had great minds and also great hearts—just what every movement needs.” You don’t have to be religious to believe in the right to life and the rights of parents to care for their own children. But in recent cases in the United Kingdom, the courts and medical regime decided that it was in the “best interest” of two sick little boys, Charlie Gard and Alfie Evans, for them to die, even though their parents desperately disagreed. Professor Mark Mostert contributes a balanced and informative overview, focusing on the problems in the law that made these rulings possible. He is followed by Laura Echevarria’s visceral reaction to the cases—she is the mother of two boys on the autism spectrum and wonders what kind of barbarity we commit when we “destroy lives because we can’t ‘cure’ them or make them better.”

With the late June news from the Supreme Court that Justice Anthony Kennedy would be retiring, the future of legal abortion *vis à vis* the Court and the next Justice has whipped both anti- and pro-abortion strategists into a frenzy of entreaties and warnings. How valuable at this point then to have Robert Karrer’s “Pro-Life Benchmarks: 1967-2017,” a useful mini-lesson in pro-life history. It’s been 50 years since the start of the movement, which actually began six years *before* Roe. In 1967 “abortion-friendly lawmakers introduced legislation to reform state anti-abortion laws” and several state pro-life groups were created to stop them.

Also celebrating 50 plus years? “The Business of Family Planning,” which international economist Vincenzina Santoro describes in her important article here. As she writes, “The global contraceptives market was estimated to be 22 billion in 2016” and

“would not have risen nearly so high without decades of ongoing efforts of the United Nations to drastically rein in population.” The UN created the Fund for Population activities (later the Population Fund) in 1969. This overview of UN activities contains many chilling details, like the distribution of “supplies” including manual vacuum aspirators—in other words, do-it-yourself abortion kits. It’s fitting that we follow this with John Grondelski’s excellent and at times heartbreaking interview with Reggie Littlejohn, the founder and president of Women’s Rights Without Frontiers—a non-governmental organization whose purpose is “to expose and oppose forced abortion and gendercide” in China.

In Film/Booknotes, we bring you William Doyno Jr’s review of Greta Gerwig’s highly-acclaimed film *Lady Bird*—perhaps an “imperfect perfect film”; Nicholas Frankovich reviews Patrick J. Dineen’s *Why Liberalism Failed*; and Jason Morgan reviews Ryan T. Anderson’s *When Harry Became Sally: Responding to the Transgender Moment*. From our blog, we reprint three moving reflections revolving around children: Joe Bissonnette’s thoughts about “The Impossible Expectations Placed on Parents”; Ursula Hennessey’s poignant portrait of a family’s journey with a terminally ill child (“Pearl Joy Brown”); and finally, a devastating account by a woman whose only child was aborted (Colleen O’Hara’s “The Unfit Mother”).

\* \* \*

In *Appendix A*, Hadley Arkes reviews the June 26 decision of the Supreme Court in *NIFLA vs. Becerra*—an important win for pregnancy centers and free speech. “Relieved,” he nonetheless bemoans “the irony that the opinions in the case are quite bereft of any premise or reasoning that would help to plant or even support the pro-life argument.” Justices considered the issues of First Amendment rights and free speech—but they could have, insists Arkes, made the distinction between childbirth (life) and abortion (death). We close with “An Inconvenient Amendment,” by Jonathan S. Tobin (*Appendix B*): First Amendment rights, once championed by liberals, are now an obstacle when used to protest abortion. “Liberals believe that those seeking abortion should not only have the right to do so but that the government should act to restrain, and if needs be, silence those who seek to dissuade them, even if it’s in a peaceful manner,” like the peaceful protesters outside a Queens, New York, clinic in a case he describes. We go back to where we opened: William Murchison says America needs to “refresh and renew its presuppositions . . . about the value of free speech, and its vital contribution to democracy, despite what the louder voices say when they see others’ ideas getting in the way of their own.” As we seek such refreshment, we are aided by the wisdom and humor of Nick Downes in the cartoons sprinkled in these pages.

MARIA MCFADDEN MAFFUCCI  
EDITOR

# The Basic Lesson of the Irish Debacle

*William Murchison*

Not that I'm any expert on Ireland, you understand, over and above my gleanings from John Ford, W. B. Yeats, and the Dallas, Texas, St. Patrick's Day Parade.

John Ford. Sure and there's the lad who leaps to mind as I contemplate the carnage from the Irish referendum on abortion: The vote that rendered this soundly Catholic land, as we thought it, wide open for the destruction of unborn human life.

A certain picture of Ireland is fixed in memory on account of Ford's sentimental depiction, in 1952's *The Quiet Man*, of a land of fly-fishing, shillelaghs, and accordions ever ready to give forth. And of Catholic priests—the paradigm being Ward Bond—who commanded authority and respect by their very presence. To whom the locals doffed their hats. Whose word was as good as law, yet who in their eccentric Irish way were profoundly human. One reason I watch *The Quiet Man* around St. Pat's Day almost every year is to drink in, like a shot of Jameson's, the genial structure of life on view therein: greenness, greenness; the whimsicality of Barry Fitzgerald; and balladeers in jodhpurs launching riotously into “The Wild Colonial Boy.”

Then I look east. And I note at a glance the well-patted-down earth on Fr. Ward Bond's symbolic grave, as well as the general lack of resemblance in modern Ireland to, shall we say, the spirit John Ford sought to memorialize, whether as fantasy or half-remembered reality.

Ireland went for abortion. It went for abortion by a popular vote of 2 to 1 on whether to repeal the Eighth Amendment to the Irish Constitution, which prohibits—excuse me, prohibited, past tense—abortion in nearly all circumstances. Ireland went for abortion despite the soft, reasonable counsels of The Church. It hearkened to other voices; among them that of Ireland's youngest-ever prime minister (or Taoiseach), who is simultaneously the country's first openly gay prime minister and the first of Indian parentage. In June 2018, I note as a matter of interest, he welcomed Hillary Clinton to Dublin for some conversation about gender equality. This was prior to Mrs. Clinton's scheduled acceptance of an honorary degree from venerable Trinity College (where she

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would, in due course, laud the collaboration of Irish Millennials in overturning “one of the strictest [abortion] laws in the world”).

You will see where this is going. It is going to be a tale of change—swift change, to say the very least.

In May 2015, Irish voters approved, by a margin of almost 2 to 1, a constitutional amendment legalizing same-sex marriage. The country saw its first same-sex marriages six months later. What? Ireland? Ireland—yes, gathering up its cassock skirts so as to start running. Leo Varadkar was not yet Taoiseach; that would not happen until 2017. Nor can a mere democratically chosen prime minister be credited with cramming revolution down an entire country’s throat.

When the country voted for abortion, in May 2018, Varadkar called the occasion “a culmination of a quiet revolution that’s been taking place in Ireland for the past 10 or 20 years. This has been a great exercise in democracy, and the people . . . have said, ‘We want a modern Constitution for a modern country, and that we trust women and that we respect them to make the right decisions and the right choices about their own health care.’” Hillary Clinton could not have spoken more directly.

What was this quiet revolution? The *New York Times* opined that “The vote followed months of soul-searching in a country where the legacy of the Catholic Church remains powerful. It was the latest, and harshest, in a string of rejections of the church’s authority in recent years. The church lost most of its credibility in the wake of scandals involving pedophile priests and thousands of unwed mothers who were placed into servitude in so-called Magdalene laundries or mental asylums as recently as the mid-1990s.”

In fact, the Constitution’s ban on abortion, dating from 1983, seemed to have lost at some indeterminate point its moral force. It managed not to persuade or prohibit, either one. Thousands of Irish women, prior to the big vote in May, were journeying to Britain to obtain what they could not have legally at home—relief from the burden, once deemed the privilege, or anyway the painful joy, of bringing new life into the world. With such women the church’s moral advice and reproaches went down poorly. The discreditable activities of individual priests and bishops, it appeared, had left smudge marks on the Catholic Church’s ethereal face. According to the *Times*, “Anti-abortion campaigners actively discouraged [the church’s] participation, preferring to emphasize moral values and human rights rather than religion, possibly to avoid being tarnished by the church-related scandals.” Hush now, Fr. Bond. There’s a good priest.

Accusations of priestly pedophilia and cruelty take up more space in today’s media than reports of Marian visitations—a phenomenon hard to weigh alongside the experiences of 100, 300, 900 years ago, in light of how little we know of yesterday and how much of today.

One consideration to be brooded over is the vast difference in the cultures of

yesterday and today. The culture of modern Ireland, as opposed to that of John Ford's mythical "Innisfree," with its culturally embedded ways of talking and acting and believing, is a high-speed world culture, marked by constant comings and goings, by disruptions and destructions, more than by quiet, steady cultivations.

The old Ireland was a poor country, whose chief export for many years was the forebears of people we all know today. That was until the era, referenced by Taoiseach Varadkar, when poor Ireland took on the form and ferocity of the "Celtic Tiger," an engine of extraordinary economic achievement produced by foreign investment. Between 1995 and 2000, Ireland's economy expanded at an average annual rate of 9.5 percent. (The current U.S. rate: 3.8 percent.) This previously ungathered, unnoticed manna joined the Old Sod to the new planet: a producer, a recipient of goods and investment. Somnolent, rural Ireland disappeared for the most part. Suddenly, people the world around wanted to live in Ireland. Your name didn't have to be Sullivan or O'Malley. It could be Varadkar. The Taoiseach's family arrived earlier than the Tiger era, possibly sensing opportunities yet to come.

**B**y recent projections, Ireland's population—in spite of newly acquired abortion rights, we may infer—will add two million people by mid-century, for a total of 6.69 million. Amazon is soon to create a thousand new high-tech jobs at Dublin's projected new headquarters for the company's web services—"a real testament," says the Taoiseach, "to our ability to attract top tech talent." Not tractor-drivers, not new High Street tea shops. Tech talent. This is something completely new. Such comparative uniformity as had marked the old Ireland, for better or worse, such acquiescence in community norms, has gone. How many fine technicians from Poland or the Caribbean could you assemble today in the pub for an impromptu chorus of "The Wild Colonial Boy"?

Here's my point, though—one of a number of points necessary to make in the aftermath of the Irish upheaval, and only related by cousinhood to the question of how Ireland got all those people and all that money. It's a point, I trust, that an elderly Scottish-American without a drop of Irish blood in him (so far as I know) may address without defiling the shamrock crop.

The real point, it seems to me, is, what happens when a once-introspective culture, content with the order of things, finds that change has become normative? Where then are the proper defenses, and who mans them? What measures seem required for the retention of civilized beliefs—among them, children as pleasure and treasure—even as less urgent beliefs, rooted in the norms of the past, depart with hardly a tear of regret from the curbside?

Settled communities have settled convictions—and norms—and habits. They defer to precedent and authority. Around such communities priest or preacher

moves with assurance, knowing the local taste for leadership will stand him in good stead, as it did his predecessor. Then time passes, and onto the scene emerges the like of Leo Varadkar as replacement for Fr. Ward Bond. The economy blossoms. New families move into the neighborhood.

What does it mean? What does it portend for ancient ideas of the good?

I speculate that what it means is upholders of the ancient truths are going to have to give over reliance on folkways and the institutional props of those folkways—if any are left, and there can't be many. They're going to have to do it themselves—through wit and grit. No more over-dependence on Father, who during work hours may or may not have been phoning it in, but who in any case has been sidetracked by Events and hemmed in by multiplying numbers of progressives.

For the Church, whoever's church, to “oppose abortion”; to distribute pro-life leaflets; to channel contributions to pro-life clinics; to pray for abortion's victims; to maintain a pro-life presence in the medical profession; etc.—every bit of this is wonderful. Without being necessarily persuasive or especially convincing as to the worth of lives the Lord Himself has brought into being through His unsearchable mercy.

We need theology to make the case clear. Just saying, listen to the Church!—that's not the same by any means as proclaiming the beauty and mystery of the case for human life.

What if, for interest, you don't like “the Church”—fusty old institution; all those rules; priests and bishops failing to meet the Church's own standards for keeping moral interiors bright and freshly swept. Lots of moderns don't care a rap for the Church. Some despise it.

It takes little enough effort—from either side—to shut the door between potential conversants on the topic. Meanwhile the room is freed from discourse on life as a beautiful gift: broadly contingent, due to crime and disease and depression and war; nonetheless, essential to support in all its fullness precisely due to the beauty of that gift.

I am saying—I think—to expect “the Church” or “the village” or “the culture” to keep at bay the abortion doctors and their collaborators in harm and mischief is to expect the impossible. This result may be what a shrinking minority of pro-church Irishmen expected. “We” won't vote against the Church! “Our” Ireland won't stand for it—the Ireland of running brooks and whimsical characters with accordions. Then came another culture, untaught in the old ways, to insist on the Hillary Clinton way of seeing and doing things. Where are the ballads and accordions then, and the backwards collars that once represented the line of defense?

A culture has from time to time to refresh and renew its presuppositions. For instance, America's presuppositions about the value of free speech, its vital

contribution to democracy, despite what the louder voices say when they see others' ideas getting in the way of their own.

I wonder whether the need for pre-suppositional renewal is not the basic lesson that emerges from the Irish debacle: not, keep out the foreigners; not, listen more obediently to your priest, not, love the land more than you do your iPhone and apps. Refresh, rather; renew. And explain anew. Explain all over again, from Stage 1, to jog memories and sensibilities as to the reasons God made men and women, and what He could possibly have had in mind when He did so; and, latterly, how modern men and women—not the ancient kings of ancient castles but instead their heirs and descendants—can be shown in a loving way what it means to love life. And to honor it. And why they should honor it, when life so often seems unbearable and unfair; such a burden and inconvenience.

**H**ow “our” culture originally fell in love with the ideal of life, even in its stunted forms, as a thing no government enjoys entitlement to touch—such is the narrative in need of renewed advertisement. A tale of man and woman blessed by God as co-creators of existence; and therefore humbled by so great a duty as hardly to need the formal protections of law, which always in the end follow and are shaped by human understandings.

A good law is a good and healthy thing—as is a good, coherent pronouncement by the church. Better still is the antecedent community sense that underlies and forms good law, and defends and preserves it against arguments centered on temporary perceptions of the good.

As I write, I read that, with the retirement of Mr. Justice Anthony Kennedy from the U.S. Supreme Court, hopes have awakened for reversal of *Roe v. Wade*—a very evil decision; possibly the most evil in all jurisprudential history. I am not inclined personally to suppose that even reversal of *Roe* would put unborn life out of danger. I think it would not. I think our culture's presuppositions ascribe marginal value to unborn life.

The old presuppositions—the ones knocked down by *Roe*—have faded from view. They require refreshing in order to take hold once more. They require, most of all, inspired teachers, inside and outside the church; capable of showing, in religion, art, and literature; in the workplace; in the life of the home—as Paul memorably puts it, toward the end of *Philippians*—“whatsoever things are true, whatsoever things are honest, whatsoever things are just, whatsoever things are pure, whatsoever things are lovely, whatsoever things are of good report.”

I do not minimize the Sisyphean nature of such a mission. I merely invite correction if there is a better, more logical route to renewal and refreshment.

# In Memoriam

*We remember J. P.*

*September 25, 1930-October 17, 1998*



“**Jim McFadden** did not build skyscrapers or write his name in Broadway neon. He didn’t run City Hall or preside over a corporate empire.

He was a director of *National Review* magazine, editor of a scholarly quarterly titled *Human Life Review*, and editor and writer of a blazing little newsletter called *Catholic Eye*.

Most of all, he was a rock of a man who served God, family and country. He devoted most of his working life to protecting human life—even as he clung to it by one flimsy thread after another.

Seldom has any man lived closer to his own counsel than Jim McFadden, which is why St. Agnes was jammed yesterday with those who loved him, admired him and mourned his passing.”

Ray Kerrison, “Death Takes a Stubborn Defender of Life,”  
*New York Post*, Thursday, October 22, 1998.

# One of Us? Ireland Says No.

*David Quinn*

**P**ro-life advocates the world over will have witnessed scenes of Irish people in the courtyard of Dublin Castle (a building used for major State occasions), cheering and even crying with happiness at the news that Ireland had voted by a huge margin of two to one to remove the right to life of the unborn from our Constitution. The May 25 vote made us the first electorate ever to do such a thing. We were also the first electorate ever to insert such a protection into our Constitution back in 1983. On that occasion, the margin of victory was also two to one. It took pro-choice campaigners 35 years to reverse the result. A clear pro-life mandate back then has been turned into an equally clear pro-choice mandate now.

How did this happen? The short answer is 35 years of propaganda against the pro-life amendment, known as the Eighth Amendment. From day one, pro-choice campaigners, with the full backing of almost all the Irish media, were set on overturning their defeat. A longer version of the answer is that even then Ireland was transforming itself into a standard Western society. Bit by bit ideas of “choice” and “autonomy” were becoming our primary values. In addition, we had Britain right next door undermining our pro-life culture incrementally. Irish women could go to Britain if they really wanted an abortion and did so. Over the long term, this had its effect on Irish mores.

In 1995, I interviewed then-Cardinal Joseph Ratzinger. Ireland had, by a very narrow margin, just voted to permit divorce. Cardinal Ratzinger was philosophical about what had happened. “Ireland might be geographically an island,” he said, “but it is not an island culturally.” That is, it could not fail to be strongly influenced by trends elsewhere. Despite this, we did manage to preserve a strong culture of life for longer than any other Western country aside from tiny Malta, which is now under massive pressure to go with the tide. Even though Irish women could travel to Britain for an abortion, far fewer Irish women opted for terminations, proportionately speaking, than their British counterparts.

In Britain each year there is one abortion for every four live births. The Irish figure is more like one in twelve, a huge difference. The Eighth Amendment has almost certainly saved tens of thousands of lives. In fact, the irony is that some of the young people who voted in such huge numbers for abortion may have been in a position to do so only because of the pro-life clause they were

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decisively rejecting. They may be alive because of it.

The scale of the victory for the pro-choice side surprised even them. They expected to win, but they believed it would be much tighter than it was. The very worst predictions had them winning by maybe 56-44. As it turned out, Ireland voted in favor of a “right to choose” by an even bigger margin than the vote in favor of same-sex marriage in 2015. On that occasion the vote was 68-38, a 24-point margin, rather than the 33-point margin this time.

It seemed impossible that the pro-life vote would go below that 38 percent. For one thing it is easier to argue for same-sex marriage than for abortion. Abortion ends a life, after all. That shouldn’t be as easy a sale. Secondly, the pro-life side was much better resourced than the pro-traditional-marriage side last time. It had very experienced organizations with lots of volunteers and managed to raise a lot of money, probably a couple of million euro. How could you do worse than 38 percent when you had an easier argument, enthusiastic canvassers, and a lot more money?

In addition, the abortion legislation the Government intended in seeking to repeal the Eighth Amendment was so extreme. The Government pretended otherwise, but the law it has in mind, and which should be passed in the next few months, will permit abortion for any reason in the first 12 weeks of pregnancy. Keep in mind that about nine in ten abortions take place in those first three months. After that, abortion will be allowed where there is a threat to the life or health (physical or mental) of the mother. This is like the law in Britain, which in practice is very permissive even after 12 weeks.

Once the baby is viable, the intention is that a “crisis pregnancy” will be ended by delivery, not abortion. However, the proposed law will permit abortion right up to birth where there is an “emergency” threat to the life or health of the mother. One is left wondering what possible threat to the mental health of the mother might necessitate killing rather than delivering her baby at, say, eight months.

Those of us on the pro-life side believed that if the Irish people were properly informed of what was on offer, they would vote to keep the Eighth Amendment. Journalists often asked me to predict the outcome of the referendum. I said that if people thought they were voting for a small change to the law, it would be carried by a large margin, but that if they believed they were voting for a big change, they would vote No.

The Government—and the pro-choice side in general—must have believed much the same thing, because they consistently highlighted the “hard cases” both during the referendum campaign and in the long run-up to it. They kept focusing the attention of the public on cases like rape or so-called “fatal fetal abnormalities,” that is, tragic cases involving babies who would die soon after birth due to a fatal condition.

The media did the same. The public were treated to story after story of women

who had traveled to England for an abortion after having been told by doctors that their babies would survive only days or maybe weeks after birth. The women would describe what they saw as the cruelty of having to travel to England for an abortion, of having to switch from the doctor they knew back in Ireland to one they didn't know over in England. They described having to work out ways of bringing the bodies of their dead babies back home. (These are babies who are aborted due to a fatal condition that is often diagnosed at 22 or so weeks gestation.)

The public also heard the stories of women and couples who chose to bring these babies to term rather than have them aborted. This might make it seem as though the media were being balanced, but they were not. First, the focus was still on the hard cases, and second, when the public heard these stories they were most likely thinking, "well, you chose to have the baby, and she did not, and it's all about choice." In other words, the stories kept on reinforcing the pro-choice narrative. Indeed, exit polls on the day of the vote revealed that these personal stories were extremely influential.

**P**eople also had in mind the terrible case of Savita Halappanavar when they voted. She was an Indian national, living in Ireland, who died of blood poisoning after being brought into a hospital in Galway while miscarrying. This happened in 2012 and paved the way for Ireland's first piece of abortion legislation the following year.

The Eighth Amendment never prevented doctors from performing an abortion when the life of the mother was at real and substantial risk. But when Mrs. Halappanavar died, the Irish public were led to believe it was because the Eighth Amendment stood in the way of her proper care. When she was brought into the hospital, she requested an abortion rather than let the miscarriage happen naturally. Her medical team did not think her life was in danger and refused her request. A nurse said they could not perform the abortion because "Ireland is a Catholic country." The team looking after her missed multiple signs that she had a deadly infection until it was too late.

This fact only emerged later. Meanwhile most Irish people became convinced she died because of the Eighth Amendment. Some doctors agreed that this was the case, and others denied it. However, almost certainly the Savita Halappanavar case, more than anything else, was the turning point with the public. Voters there and then decided it had to go.

Why, then, did pro-life campaigners believe they had a fighting chance of winning the May referendum? As mentioned, it is because the proposed change to the law went so far. We accepted that most people wanted the Eighth Amendment made less restrictive, but that they were much more doubtful about introducing a British-style abortion law.

Campaigners did their best to draw the public's attention to the nature of the British law. Posters pointed out the fact that one pregnancy in five ends in abortion in Britain. However, many people seemed skeptical of the claim. Pro-choice doctors insisted that the rate was much less than one in five, because it didn't take into account the number of pregnancies that end in miscarriage.

Nevertheless, there was no disputing the fact that in Britain each year there is one abortion for every four live births. But it was hard for us to get this across, especially in the face of a very heavily biased Irish media, in particular the broadcast media. The "one in five posters" were also attacked on the grounds of being offensive to women who had suffered miscarriages. Some posters were near hospitals, and this was also condemned as offensive.

One tiny group did show huge posters of aborted fetuses right outside a maternity hospital, and this drew a lot of media attention. Mainstream pro-life organizations condemned this group, which seemed to believe that showing what an abortion looks like would shock the public into voting No. The fact that the main group campaigning for abortion—Together for Yes—held their launch right beside one of the biggest maternity hospitals in the country was not considered even a bit offensive by most journalists.

The pro-life side also put up posters highlighting the huge percentage of babies with Down syndrome who are aborted in Britain each year. Nine in ten babies diagnosed with Down syndrome in the womb are aborted, a truly horrendous figure, a form of modern eugenics. But once again it was the posters that were condemned as offensive, not the practice. Down Syndrome Ireland, which assists those with the condition, asked that the issue be left out of the campaign. The media were extremely happy to highlight this request. In fact, the one and only time our media highlighted the issue of Down syndrome and abortion was to forbid it as a topic of discussion.

Just as our media have never told the public about the sheer scale of abortion in Britain, likewise they never informed them of the reality of latter-day eugenics. Thus, we were led over several decades to believe that the Eighth Amendment was barbaric, and that British law was not.

In response to the mostly successful attempt to take Down syndrome out of the debate, pro-life groups organized press conferences featuring people with the condition, along with their parents, saying the matter had to be discussed. How could we not talk about it? Why was it "offensive" to highlight a modern reality? How could we say nothing and then wake up one day, a couple of decades hence, and find that there are almost no children with Down syndrome left in Ireland anymore, something that is already a fact in supposedly "enlightened" countries like Denmark?

In another effort to take this topic off the table, the Government said the planned law would not include a disability ground, a ground that exists in British law. This

was really only a fig leaf, though. Disability won't be singled out as a ground, but it won't be forbidden either, and prenatal tests can now detect conditions like Down syndrome before 12 weeks, the time frame during which abortion can take place for any reason.

Again, we tried with only limited success to highlight this fact. Indeed, deep down we wondered whether a lot of the public actually support a right to abort babies with significant genetic abnormalities. Certainly, some of the country's leading obstetricians support such a right.

What of the role of doctors overall in the campaign? Most doctors who publicly took a position were on the pro-choice side, and the media never ceased highlighting them and giving them exceptionally soft interviews. They were simply never challenged, especially if they were obstetricians. They were treated not merely as doctors, but as oracles. When they spoke, it was as if the truth itself was speaking. This was extremely damaging to the pro-life side. We were obviously regarded as partisan, but pro-choice doctors were treated as objective, as "trusted guides."

**P**ro-life doctors did stand up, including some obstetricians. Some of these obstetricians were still in active work, but a majority were retired. Why was that? Perhaps because they grew up in a different era of medicine, an era when medicine was still governed by something like the Hippocratic Oath with its dictum to "first, do no harm."

It will be said that they in fact grew up in Catholic Ireland, and this made them less objective than their pro-choice counterparts. But this is an entirely self-flattering analysis from a pro-choice point of view. Whether Catholic or not, a doctor ought to seek to "first, do no harm." The Hippocratic Oath is pre-Christian and ought not to need Christianity to sustain it. Medicine that violates this dictum isn't really medicine at all, but something very close to its reverse.

Pro-life doctors kept telling the public that in the vast majority of cases abortion ends the life of the healthy baby of a healthy woman, and therefore in no way, shape, or form can be considered medicine. But for the most part people either weren't listening or didn't care.

Americans will be all too aware of the extent to which a philosophy of "choice" now rules the medical profession. Patient autonomy comes first, which sounds very noble and defensible until we realize it is used to justify killing the unborn and, increasingly, the old and the infirm. An ethic of "choice" is, in fact, corrupting the true ends of medicine at the deepest possible level, and now, alas, Ireland is succumbing to it. Irish hospitals that never previously engaged in the act of deliberately killing patients will now begin to do so. Indeed, and this is particularly obnoxious, our Taoiseach (Prime Minister) Leo Varadkar has said that all publicly-funded hospitals must perform abortions under the proposed

law, and that means publicly-funded Catholic hospitals as well.

Of course, if they do that, then they won't be Catholic any longer, no matter how many crucifixes you see in the wards. They should close rather than perform abortions. It is horrifying to think that soon enough there may be no hospitals in Ireland which guarantee, as a matter of basic philosophy, that they will never deliberately kill a patient. We are crossing an ethical Rubicon of the first magnitude.

What's more, we have little excuse. When abortion laws were liberalized in countries like Britain and America decades ago, it was still possible to claim that the unborn baby was only a "bunch of cells," or a "lump of jelly." But today, with ultrasounds, we can see exactly what is being eliminated. We know that from as early as three weeks of pregnancy, the unborn baby has a rudimentary heart. Up and down Ireland every day people are shown the 12-week scan of their little child in the womb. It is undeniably human. But still we voted Yes.

Pro-life campaigners displayed posters on our streets showing the baby at this stage of development, because the media were certainly not going to do it. The Iona Institute, which I run, showed a billboard image of the fetus at 11 weeks with the tag-line, "One of Us." We had to do this because the unborn baby hardly featured at all in the media coverage of the referendum or in the long run-up to it. It was removed from view.

What about the role of the Catholic Church in the campaign? As most readers will know, the Church in Ireland has received a terrible battering in recent years. A lot of this has been self-inflicted because of the abuse scandals and because of the authoritarian manner in which the Church in Ireland held sway for several decades after Independence in 1922.

This meant the Church had to keep a fairly low profile for fear of being counterproductive. Rather than taking part in big set-piece media debates, bishops issued pro-life statements to Mass-goers. Priests sometimes read these out and sometimes did not. Some priests made pro-life statements of their own, and many did not. Some clergy seemed nervous of their own congregations, worried that they might anger them if they were too outspoken. Put together, this made for a mostly lackluster approach. One exit poll showed that about one-third of weekly Mass-goers voted Yes (of the ones who voted, that is, because about a third stayed at home).

The vote in the end was 1.4 million in favor of repeal to half that number against. There are still about 1 million adult weekly Mass-goers in Ireland. As mentioned, around 350,000 of them did not vote, and of the remainder, about 400,000 voted against repeal and about 200,000 voted in favor of repeal. If those 200,000 had voted in favor of the Eighth Amendment, the margin of victory for the repeal side would have been 1.2 million to almost 1 million, which would have been far tighter. If every weekly Mass-goer had turned out, and all had voted No, that would have added another 300,000 or so to the No vote, and

we would have won. Alas, that was never going to happen.

What happened instead was the outcome of years of mainly awful catechetics and a constant bombardment by the media with a very different sort of “catechetics,” that of extreme, liberal individualism.

The result of all this is that Ireland is now in the same position as the pro-life movement in other Western countries. We need to dig in for the long haul and hope we are more like our counterparts in America, rather than in, say, Sweden, where the pro-life voice is almost extinct. In America, as readers of this publication will know, it is very much alive. The pro-choice side are hoping their big win will make us more like Sweden than the U.S. Some of their leaders have already said we should now be deprived of media platforms and basically sent into internal exile.

We have to ensure that the third of people who voted for the right-to-life does not become an ever-diminishing minority. We have to hope that many of those who voted for repeal did so with the hard cases in mind and are genuinely uneasy about a liberal law.

We also have to be confident that no social and moral consensus lasts forever. This one will eventually break apart as well. It took the pro-choice side from 1983 until 2018 to get their way. We have to be prepared for the same decades-long struggle. Eventually Ireland, and hopefully other Western countries as well, will come to see once again that the unborn child is, indeed, one of us and should enjoy proper legal protections.

# Recognizing What Makes Us Human

*Ellen Wilson Fielding*

**H**ow many situations are made more miserable by the lack of an appropriate response from onlookers! How much, for example, the remedy of widows and orphans, the handicapped, the destitute, addicts, prisoners—the whole long list of afflicted human beings—depends upon somehow eliciting sympathetic feelings from those who might do something about their plight. So powerful is human sympathy, and so effective the machinery of modern communications at arousing and enlarging it, that increasingly we have become accustomed to consulting our feelings alone to arrive upon a correct course of action. And, correspondingly, we find it easy to blame seemingly callous or uncharitable decisions on lack of sympathy.

And in fact there is a lot to this. We find it easier to do what is right when our emotions assist us by attracting us to the good or repelling us from the bad. The traditional understanding of the role of emotions in our moral and volitional lives is that they were designed to work in tandem with the mind to lead us to make correct judgments and then act upon them. The Christian understanding of why this does not, to put it mildly, always work seamlessly and successfully draws upon the doctrine of Original Sin and the consequent disordering of the proper relationship of mind, will, and emotions. In brief, because of our fallen and confused human state, both our emotions and our thinking can fail us in a number of ways.

For example, without the guidance of a properly operating mind, our emotions can go rogue and lead us astray. As Southern gothic author Flannery O'Connor put it, "Tenderness leads to the gas chamber." That is, undisciplined and unregulated tenderness can lead us to almost any extreme and immediate action that promises to put an end to someone's pain (Now! Immediately! At whatever cost!), thereby also dousing the onlooker's sympathetic pain. We can see this motivation acting powerfully in the euthanasia and assisted suicide movement: Consider the compassion that prevents the birth of the handicapped or, legally in places like Belgium and covertly but often with tacit support elsewhere, cuts short their lives. We also see it in many people who support abortion. Of course, in the latter case they must ignore or distract themselves from the unborn child's pain, but this is easier to do than to ignore the more visible pregnant teenager, or the abandoned or mistreated or resourceless wife or partner.

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Then there is the emotion of anger, which can be both personally and socially useful in the form of righteous indignation at the ill treatment and subjugation of the disadvantaged. Throughout human history, this emotion has also frequently propelled us badly off course, from the Reign of Terror to the lure of the classless society promised by communism.

Unfortunately, the remedy isn't to reject the emotions and rely wholly on the mind, because it too can lead us astray (not least by devising rationalizations for an ill-formed conscience, sometimes fired by that fuel of emotions). After all, the excesses of the French Revolution cannot be blamed solely on emotional mobs run amok: Leaders and theoreticians of the Revolution were inspired—and allowed their emotions to be stoked by—revolutionary ideas. Some of those ideas shared aspects of the republicanism and commitment to the “laws of Nature” (if not of Nature’s God) actuating the Fathers of the American Revolution. Others—not so much. Sadly, some of these ideas formed a stream-bed of totalitarianism and radical secularism through which the 20th century’s cataract of blood would flow.

In our own time current isms and ideological attachments also evidence the truism that Ideas Have Consequences, and wrongheaded ideas can have staggeringly bad consequences—bad as the gulag, as Auschwitz, as the Cambodian killing fields, as ISIS, as our own million-plus abortions a year.

I began thinking such thoughts after reading the harrowing account of Aron Ralston’s hike gone very bad, *Between a Rock and a Hard Place* (the movie version released several years ago goes by the name *127 Hours*). The protagonist, after a fall while rock climbing, struggles to free his trapped forearm for several days and eventually summons the nerve to save his life by severing the limb.

Now, among the value judgments that Aron needed to make to arrive at his decision was that the loss of a forearm is a small price to pay for a life. And this is surely obvious to us too. It is obvious that, however gruesome and painful and incapacitating the amputation was, if one could summon the nerve, it was both sensible and right to do the deed. Similar judgments occur all the time in more antiseptic venues when various extremities—toes, feet, fingers, hands—become gangrenous or are damaged in warfare or at construction sites or otherwise threaten human survival.

Why does it elicit no moral qualms to sacrifice a limb for a life? There are a number of ways of putting it, but they all lead to the conclusion that the limb is not a life, it is a part of the body—not incidentally, as someone is part of an audience or part of a company’s workforce, but essentially and subordinately. It does not serve the body as a servant serves; it serves the body as a leaf serves a plant. The limb is not capable of existing on its own; it dies with the person’s death; it fails to move, grow, and develop when severed from the body—in fact,

it rots when separated from it.

These are incremental steps in a logical explanation that seems excessively drawn out. They are obvious, after all, and we are likely to become impatient with the recitation. The difference between a limb and the person it is attached to seems clear.

But what if it were just a little less clear? What if we had reason to believe (or “reasons,” that is, motivations, for convincing ourselves) that the distinction between me and my leg was, say, closer to the difference between me and my baby? Would that not add another layer of nail-biting suspense to the decision of the hero of *127 Hours*? At that point the plot would more closely resemble the lifeboat dilemma of whether it is morally acceptable to sacrifice some people if all will otherwise die.

Ideas have consequences; what we think about the world, its inhabitants, ourselves, and our relation to all of the above drives what we do. So consider yet another idea. What happens if (as I think is now pretty much the case) a rather large number of Westerners have traveled far down the road from their traditional understanding of a God-created hierarchy of being toward a vague kind of New Agey Gnosticism or cobbled-together pantheism? One effect of this change is to conceptualize the Earth and all that is on it (including earth, air, and water) as a single (living) entity, Gaia. What begins to happen then to carefully, excruciatingly slowly developed ideas of respect for human life and stewardship of creation? What happens to the precious and increasingly fragile insight that individuals, endowed with immortal souls and created in the image of God, are, though parts of society, greater than any agglomerated “whole,” whether it is called a society, a nation, or a civilization? What begins to happen then to beliefs like the end doesn’t justify the means, or to other ethical rivals of the once-reigning Judeo-Christian framework of absolute morality apprehensible in natural law?

Let’s consider again the protagonist’s dilemma in *127 Hours* if we interpret him and his body parts as stand-ins for Gaia and her constituents, perhaps particularly her human ones. Aron, who has gone off into the wilderness to rock climb alone (cue music of impending doom), slips and falls into a fissure, unable to climb back out because one arm has become trapped by rock. Eventually, unable to pry it loose or to summon aid, he determines to save his life by a drastic but logical and morally defensible choice. He sacrifices the part for the whole; he barter his forearm for survival. Although a highly useful and valued body part, his hand is not *him* (or anyone else). It is not a being in its own right. Any regrets following the amputation flow from considering *his* impoverishment in no longer being able to call upon the assistance of this part of his body. Lacking, however, is the quite different kind of regret one feels if, for example, a cop must shoot a deranged man threatening the life of another, or two people

are about to die and you can save only one, or when any of a host of other scenarios arise necessitating the death of an innocent person.

In *127 Hours*, the protagonist finds his options for life dwindling down to this one, chooses it, suffers, and survives. Our attention is rightly and naturally focused on him. It is not focused on the sacrificed forearm's imaginary pain, physical or emotional, at being separated from the rest of the body, or upon philosophical wrestling with what does or does not constitute self-defense.

But what would happen if our ideas about the relation of body parts to the human being roughly resembled our ideas about the relation between citizens and the state, or between human beings and our planet, or between one life form and the myriad others in our earthly ecosphere? We already know how easily (especially before widespread exposure to sonogram images) women with unwanted pregnancies could be persuaded or persuade themselves that the unborn baby was merely a "mass of cells," a clump of tissue seemingly closer to a tumor than to Aron's forearm, since the pregnant mother neither wanted it nor saw any use for it. How easy it can be, with the help of a mental model, to persuade ourselves of what is not so, particularly if what is in fact so is something we do not want. And this persuasion occurs as much by means of the mind as by means of the heart.

Nowadays, much ecological rhetoric of the waftier sort emphasizes the organic relationship of the living inhabitants of the Earth and the elements—plants and animals, air, water, and minerals—as parts of a whole. Although many scientists think and speak more in the language of systems, the adherents of the pseudo-panteism of Gaia prefer to see our planet and all that inhabits it as a single living being composed of billions of sub-beings. When I try to visualize this, what I come up with is something resembling a giant orange, maybe with large strategically placed mold-like excrescences corresponding to human population centers. Now, one effect of adopting this mental model of Earth is almost bound to be the denouncing of those life forms—the intelligent, planful ones, as it turns out—that keep upsetting homeostasis.

It is true that, particularly and increasingly over the past several hundred years, humans have experimented quite successfully (in our terms) with upsetting planetary homeostasis. However, even those humans who do not consider themselves cells of a giant orange-like organism can also perceive the negative byproducts of such experimentation, such as pollution, deforestation, the extinction of species, and the proliferating mountains of plastics.

Now if the Western Judeo-Christian way of envisioning the relationship of human beings to their home planet had endured in a widespread, vigorous, and morally commanding form, the environmental Savonarolas of our era would be couching Nature's problems in different terms and using different images. First,

viewing human action from the perspective of deputized agents of God in the world, they would regard our environmental depredations in part as evidence of our failure to satisfactorily fulfill those responsibilities.

So from a traditional perspective in which humans are deputized to be wise and responsible stewards of creation, those accepting the Steward model would perceive, well, sin: waste, greed, inhumanity to the poor and to animal life, lack of respect for creation, lack of forethought for future generations, and pride. To some extent, responses might include variants of the exhortations, warnings, and shamings we are bombarded with now, as well as legal restrictions and incentives for environmentally friendly behavior—again, not radically different from the ways folks have been trying to get people to switch from using plastic, recycle, save the rainforest, and otherwise do what we should do and refrain from doing what we should not.

But the discrepancies between the two approaches would be more interesting, because they derive from very different ways of viewing people, the planet, life, and death. The pseudo-patheistic “Giant Orange” model, proposing Earth as an organic unity similar to the body of Aron in *127 Hours*, practically drives its adherents to contemplate sacrificing some—or maybe more than some—of the offending humans that seemingly threaten other earthly life forms. And this is what we hear explicitly expressed by radical sectors of the environmental community. These folks see human beings as cancers multiplying on the body of Mother Earth, and what one does with a cancer is to excise it from the body.

If that is really someone’s implicit or explicit way of thinking about these problems, then he or she is also almost bound to disfavor human population growth. Those contaminated by fears of the effects of further population growth *and also* viewing human life as analogous to Aron’s hand in *127 Hours* will entertain few moral qualms about, say, the Chinese model of one-child-per-family (recently loosened to allow two children) or the foisting of unwanted sterilizations on third-world countries.

How then would those identifying as Stewards-of-Creation react to a similar fact set? To begin with, they would not regard even a misbehaving human—or an inconvenient or (in Zero Population Growth terms) an excessively procreating one—as a planetary cancer, but as a being with a destiny immeasurably greater than a runaway multiplying virus. Despite the possible global repercussions of human sinfulness, such sin does not demote the guilty to the equivalent of bacteria to be eradicated with disinfectant. Therefore it is not only *some* people—the important people, the people in charge—who are invested with the dignity (and the duty) of being stewards of the created world, but every human being, including the ordinary people who often end up being targeted by the Giant Orange people.

Like those adhering to the Giant Orange model, Stewards acknowledge the

interdependency of Earth and its inhabitants. However, they would not agree that global warming or saving the rainforests or even the upcoming challenge of supporting inverted demographic pyramids would justify practices such as abortion, restriction of family size, or accelerating the deaths of inconveniently ailing, aged, or handicapped human beings. While the Giant Orange model encourages us to treat “excessively” needy or useless humans as Aron treated his trapped forearm, the Judeo-Christian ethic admonishes us to accord them the respect of immortal creatures created in God’s image; each therefore deserves greater respect than the rainforests we have been entrusted to care for.

There are of course other ways of viewing humanity’s place in the world besides the Great Orange and Steward models. One of the trendiest is that of our looming Artificial Intelligence overlords, who see human beings seizing immortality by capturing the mind’s contents digitally when the deteriorating body must be jettisoned. Whatever the model, people rarely achieve consistent alignment: Perhaps very few people wholly inhabit the Giant Orange, and those adhering more or less closely to the Steward model often are infiltrated by the surrounding culture.

And many who at times identify with the ideas characterizing the Great Orange model paradoxically also find congenial a much more atomistic model, if it can be dignified with the term. Such people recognize no one in charge, divine or otherwise, and therefore no one credentialed to assign us responsibilities or call us to account. According to this model, there is no inherent and objective moral aspect to the behaviors we pursue. There is just the attempt to achieve a pleasant life for ourselves and then, when pain outweighs pleasure, to die.

This autonomous model, denying or deprecating both outside authorities (Steward model) and organic interdependencies (Great Orange model), appears radically inconsistent with either. However, a surprising number of people seem able to shift back and forth between this third model and the Great Orange. That is, when the Great Orange model seems to get in the way of their going their own way, enjoying their ozone-depleting pleasures and the like, they ignore or argue around it. When it seems to align with their fears of future environmentally based constraints or demands on their time, money, or lifestyle to care for others, they unite with followers of the Great Orange to sound the alarm. But whichever stance they take or from whichever angle they view events, they do not number themselves or their pursuits and possessions among the cells of the Great Orange that might have to be sacrificed to ensure Earth’s survival.

The trajectory of our thinking is to a considerable extent determined by our starting point. Karl Marx attempted to rigorously analyze the history of human capital and social classes according to a Hegelian framework of thesis, antithesis, and synthesis. Accompanying him were many assumptions and partially

digested desired ends, such as the superiority of a classless society, the deleterious effects of private property, the falsity of religion, and the inferiority of the parts to the whole (and thus the inevitability of the parts being sacrificed for the State). Other thinkers start from different premises and also incorporate different biases and assumptions. The explanation for the widely differing places they end up is not primarily a difference in the caliber of their thinking. They may make plain errors in logic or mistake the facts, but the largest determinant of their terminus is usually the ideas and observations they identify as postulates at the outset.

The frustration that proliferates in the current era derives from this poverty of common postulates. You think you are agreeing upon some basic principle and therefore attempt to balance upon it the next building block, and then discover that you mean something quite different—or different enough—to interfere with erecting an argument that will convince you both. In this state of affairs there are branching and tangential ways to pursue persuasion of those we disagree with. Realistically, however, there are relatively few complete pro-life conversions without conversion to, well, something like the Steward model of the world, or at least something that upholds the special status of human beings in the order of creation, and the special status of individuals as more than contributing parts to a whole.

We know that such conversions are possible (though who converts is often not predictable), and strikingly fertile (consider the impact of Dr. Nathanson's *Silent Scream*, for example, or of former Planned Parenthood worker Abby Johnson's And Then There Were None organization). But barring the spectacular victory when it occurs, we work away at more modest aims: We chip away at inconsistencies and try to uncover buried assumptions; or we struggle to identify a shared portion of the Venn diagram of our respective positions—the union of Set A and Set B; or we occupy ourselves with building human bridges by caring for the person we are encountering; or we share a story, an analogy, a picture, that with luck will operate beyond and around the mental models.

Like that of the young man in *127 Hours*, who sacrificed a hand to save his life—but never for a moment considered sacrificing his life to save his hand. Because beyond arguments and beyond confusion, he recognized what a human being is.

# Escaping from the Bunker

*Edward Mechmann*

Where positivist reason considers itself the only sufficient culture and banishes all other cultural realities to the status of subcultures, it diminishes man, indeed it threatens his humanity . . . . In its self-proclaimed exclusivity, the positivist reason which recognizes nothing beyond mere functionality resembles a concrete bunker with no windows, in which we ourselves provide lighting and atmospheric conditions, being no longer willing to obtain either from God's wide world.<sup>1</sup>—Pope Benedict XVI

**I**n 2011, Pope Benedict XVI made an apostolic visit to his German homeland. During his journey, he delivered remarks to the Bundestag of great significance. His address was a reflection on the sources of law and the threats to human life and liberty posed by the contemporary philosophy of law.

At the center of his argument was a striking metaphor that put the issues and the stakes in bold terms. Benedict also made a compelling case for the central importance of recognizing the divine source of human dignity and human nature, and thus of law. This case is absolutely indispensable to any effort to establish a lasting rule of law that respects and defends the dignity and life of every human person.

## **The Bunker**

The heart of Benedict's address was a strong critique of legal positivism for its failure to encompass "the full breadth of the human condition." At the climax of his analysis, he used a startling image for the social order that is rooted in positivism, describing it as "a concrete bunker with no windows, in which we ourselves provide lighting and atmospheric conditions, being no longer willing to obtain either from God's wide world."

This must have been an astounding statement for the German lawmakers to hear. They were seated a short walk away from the shattered ruins of the old *Fuhrerbunker*—the last refuge of the regime that perhaps more than any other epitomized positivism as a political and legal model. (The *Fuhrerbunker* now lies beneath a modern housing complex parking lot.) So the Holy Father's analogy could not have been more challenging.

But Benedict was not indicting his native land over its history. Instead, he was taking direct aim at positivism as the source of the modern distortion of law and politics.

Positivism as a legal and political philosophy derives from the Enlightenment dismissal of the relevance or even the existence of any transcendent values—no

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God, no ultimate lawgiver, no normative human nature, no natural law, only material reality and what passes for human reason. Legal positivism asserts that there is no law other than man-made law, which is purely pragmatic and functional and subject solely to the prevailing attitudes of those in power. The validity of a law derives not from its connection to any underlying morality, but purely from its proper enactment by the proper lawmaker in a particular community. In other words, it all depends on the process by which it became a law, and not on its content. That is because the legal positivist is agnostic about the morality of law. In the positivist's view, whether a law has moral content—or even immoral content—is entirely separate from the question of whether the law is valid and must be obeyed.<sup>2</sup>

The fundamental logical problem with positivism is its insistence that only the human sources of law are relevant; this causes it to run afoul of the fallacy of infinite regress—if the validity of a law depends only on a human lawgiver, then where does that lawgiver derive the law's validity, and so on forever?

One leading proponent of legal positivism, Hans Kelsen, tried to answer this dilemma by inventing the notion of a “basic norm,” a final authority that is the ultimate source for the law—in a sense, the “unmoved mover” of a legal system.<sup>3</sup> Other legal positivists have proposed similar principles, such as an “ultimate rule of recognition”<sup>4</sup> or the command of the sovereign.<sup>5</sup> For example, the “basic norm” in the United States would be the Constitution, or perhaps we should say the Supreme Court's interpretation of the Constitution, beyond which there is no appeal to a higher authority. The members of the Bundestag who heard Benedict were no doubt reminded of the *Fuhrerprinzip*, the Nazi theory that the Fuhrer possessed ultimate authority and his word was the highest law.

All these positivist theories were attempts to create a “stop sign” in the infinite regress of authority. But they just beg the question—who established the “basic norm” or the “ultimate rule of recognition” or the “sovereign” as the final authority? The positivists suggest answers to this, but ultimately these answers come down to a bare assertion of the authority of society, consensus, etc.

This tautology leads directly to Benedict's diagnosis of the inherent danger of legal positivism. By denying an appeal to a transcendent authority for law and morality—namely, God—the legal positivists also deny humanity's spiritual nature and its bearing on the way we live or even our common humanity. Because of this, Benedict argues that legal positivism “diminishes man, indeed it threatens his humanity”—in effect, it removes from humanity any dimension beyond the earthbound, reducing us to a shadow of what we really are.

This is how positivism has built a bunker of purely human creation, from which there can be no escape or contact with the larger world. We are trapped in there with each other. And it is a dangerous place.

### Life in the Bunker

To Benedict, it is clear that the danger of life in the bunker is the inevitable consequence of separating law and morality. But even if we accept the positivists' premise that the validity of a law does not depend on its morality, law never loses its role as a teacher. Even positivists recognize that valid laws express some moral value, just by virtue of being valid. But what do they teach?

The most essential lesson taught by legal positivism is (in the words of one of my first-year law professors) that "everything is up for grabs." This is inescapable. With nothing external or transcendent to orient the lawmaker's judgments, there is no way to avoid the slide beyond moral agnosticism into outright moral skepticism and nihilism. In such a regime, the will to power is all that matters, and the only "basic norm" is whatever can gain five votes on the Supreme Court. That bodes ill for anyone who is weak, dependent, vulnerable, outnumbered, or disfavored.

The positivists' moral neutrality also lays the foundation for an environment where radical freedom is elevated to a preeminent position. After all, if there is no objective moral norm, then "anything goes." Pope John Paul II described it aptly:

... some present-day cultural tendencies have given rise to several currents of thought in ethics which centre upon *an alleged conflict between freedom and law*. These doctrines would grant to individuals or social groups the right *to determine what is good or evil*. Human freedom would thus be able to "create values" and would enjoy a primacy over truth, to the point that truth itself would be considered a creation of freedom. Freedom would thus lay claim to a *moral autonomy* which would actually amount to an *absolute sovereignty*.<sup>6</sup>

The privileged position of radical autonomy is a central feature of modern life. The etymology of "autonomy" itself is instructive—it derives from Greek words that mean "self" and "law," and thus when combined it means "having one's own law." So many of our moral/political debates ultimately come down to an appeal to absolute autonomy, with any limit being rejected as denying a person's dignity.<sup>7</sup> The credo of autonomy was never better expressed than by the Supreme Court: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life."<sup>8</sup> That's truly "having one's own law."

The result is that under a shroud of legality "the ground is laid for society to be at the mercy of the unrestrained will of individuals or the oppressive totalitarianism of public authority."<sup>9</sup> This creates what Pope John Paul called the "culture of death":

This view of freedom leads to a serious distortion of life in society. If the promotion of the self is understood in terms of absolute autonomy, people inevitably reach the point

of rejecting one another. Everyone else is considered an enemy from whom one has to defend oneself . . . . In this way, any reference to common values and to a truth absolutely binding on everyone is lost, and social life ventures on to the shifting sands of complete relativism. At that point, everything is negotiable, everything is open to bargaining: even the first of the fundamental rights, the right to life.<sup>10</sup>

The culture of death thrives in an environment of legal positivism. The positivism of “choice” justifies abortion for any reason whatsoever, even if it targets girls and handicapped babies. The positivism of amoral democracy led to the Irish referendum that eliminated the right to life by a majority vote of those lucky enough to have been born. The positivism of utilitarian philosophers like Peter Singer explains why young children can be killed if they are deemed to lack some measure of consciousness or ability. The positivism of Oliver Wendell Holmes’ social Darwinism led to the brutal regime of involuntary eugenic sterilization (“three generations of imbeciles is enough”). The positivism of “compassion” encourages assisted suicide and euthanasia (i.e., murder by doctor) when someone’s abilities fade. The examples are legion.

This results in quite a paradox. Positivism insists on obedience to laws ratified by the “basic norm,” while simultaneously upholding radical freedom from moral restraints. Those who have spent so much effort deconstructing traditional (especially religious) norms immediately turn around to require submission to new ones. For example, rulings on abortion by the Supreme Court are viewed as untouchable “super-precedents”; those who disagree are “tested by following” and are told that “the Court’s interpretation of the Constitution calls the contending sides of a national controversy to end their national division by accepting a common mandate rooted in the Constitution.”<sup>11</sup>

When we challenge these rulings, we are told that our efforts are illegitimate impositions of morality, and our positivist opponents always appeal to autonomy as the absolute ideal—“my body, my choice,” “love wins,” “dying on my own terms,” etc. While our society rightly rejects older legacies of positivism like slavery, segregation, and genocide, these modern exemplars are celebrated as triumphs of enlightenment.

However, when we come to remonstrate with our fellow bunker residents about religious freedom, they are unwilling to acknowledge the legitimacy of our argument from autonomy. In one notorious case, the demand for obedience couldn’t have been made more starkly:

[The history of civil rights legislation is] little comfort to the Huguenins, who now are compelled by law to compromise the very religious beliefs that inspire their lives . . . . The Huguenins are free to think, to say, to believe, as they wish; they may pray to the God of their choice and follow those commandments in their personal lives wherever they lead. The Constitution protects the Huguenins in that respect and much more. But there is a price, one that we all have to pay somewhere in our civic life . . . . In short, I

would say to the Huguenins, with the utmost respect: it is the price of citizenship.<sup>12</sup>

So much for “the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.” Obey, or else.

There is clearly more going on here than the theoretical moral agnosticism of the positivist legal philosophers. It is telling that in our times, the paradox is always resolved in one direction—against the principles of objective morality as found in our legal and political tradition, and in favor of sexual liberation, gender ideology, and utilitarianism. Positivism is thus not just a theory of jurisprudence; it can also be employed as a weapon. Those who wield it do not consider themselves bound by consistency or even rationality, much less tradition: Their goal is to impose an ideology, with the subtext that “error has no rights.” The danger to human life and dignity is palpable.

### **The Escape Plan**

Is there any way to escape? Some have suggested that the dilemma we find ourselves in reveals an inherent and incorrigible flaw in the liberal order. The proposed responses run the gamut from strategic withdrawal to a longing for a confessional state. Although those are nice topics for law professors and bloggers, they offer little hope to those trapped in the bunker.

Fortunately, Pope Benedict not only diagnosed our situation but pointed us to the way out. It is really nothing new—we need to recapture the authentic understanding of law and justice. In fact, we need to remind people that there really are such things as law and justice. This is the patrimony of Western civilization, which holds that all human law is derived ultimately from God and is known to man through revelation and reason—the natural law tradition.

The natural law is utterly rejected in modern jurisprudence.<sup>13</sup> Pope Benedict acknowledged its current status by noting that “The idea of natural law is today viewed as a specifically Catholic doctrine, not worth bringing into the discussion in a non-Catholic environment, so that one feels almost ashamed even to mention the term.” That first-year law professor I mentioned above openly derided the natural law, and his scorn is typical of legal academics. Current ideologies like gender theory actually parody natural law by relying on absolute freedom to redefine human nature according to subjective standards, leading only to solipsism and incoherence.

It was not always so. William Blackstone, the towering figure in Anglo-American legal history, was unequivocal:

This law of nature, being co-eval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.<sup>14</sup>

We need to be as unapologetic about this as Benedict:

At this point Europe's cultural heritage ought to come to our assistance. The conviction that there is a Creator God is what gave rise to the idea of human rights, the idea of the equality of all people before the law, the recognition of the inviolability of human dignity in every single person and the awareness of people's responsibility for their actions. Our cultural memory is shaped by these rational insights. To ignore it or dismiss it as a thing of the past would be to dismember our culture totally and to rob it of its completeness. . . . In the awareness of man's responsibility before God and in the acknowledgment of the inviolable dignity of every single human person, it has established criteria of law: it is these criteria that we are called to defend at this moment in our history.

This understanding of law allows us to see light from outside the bunker. It gives us a glimpse of the provisions of authentic law, which does not depend on the will of any earthly sovereign or the decree of any "basic norm." Blackstone identified them: "These are the eternal, immutable laws of good and evil, to which the creator himself in all his dispensations conforms . . . that we should live honestly, should hurt nobody, and should render to everyone it's [sic] due."<sup>15</sup> An entire legal edifice for a Culture of Life can be constructed on the basis of these three essential principles.

The way to promote the dignity of every human life is to expressly and unapologetically advocate for this understanding of law and justice. It has an inherent persuasive force, since it is written by God into the heart of every person. It also has the advantage of self-interest, since it shows how everyone would like to be treated. Nevertheless, this will be a hard, long battle, and we have very few allies on the bench or in legal academia.

Benedict was not alone in making this appeal, of course. Pope John Paul wrote powerfully about this in *Evangelium Vitae, Veritatis Splendor*, and elsewhere. But Benedict's speech to the Bundestag is a perfect example of how to conduct advocacy in the current environment. He openly confronted the underpinnings of the modern positivist consensus and pointed out its flaws and dangers. And he offered the true solution without being "ashamed even to mention the term" natural law or to appeal to the ultimate authority of God's law.

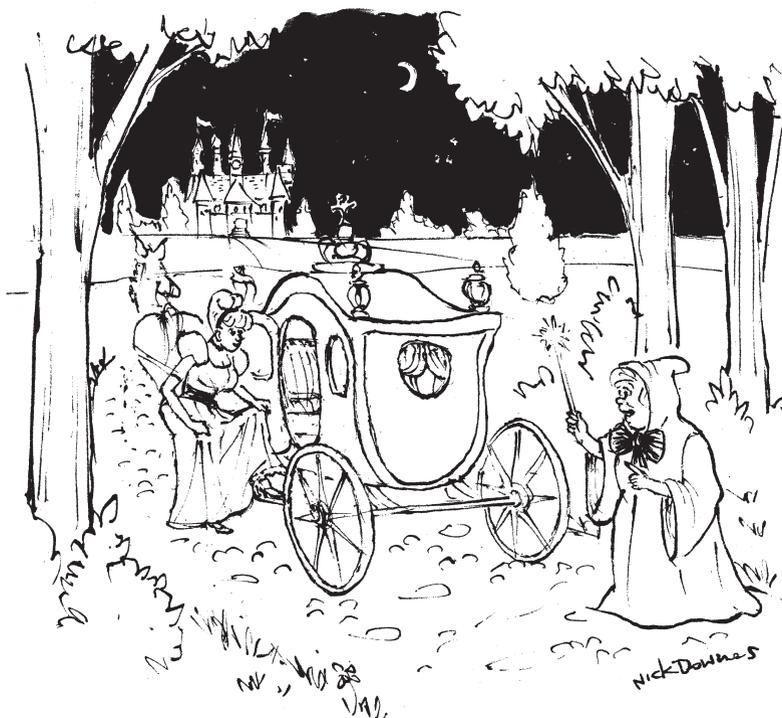
Our fellow denizens of the bunker are much like those who were imprisoned in Plato's cave. They are so immersed in our positivistic culture that they don't realize their vision of law is artificial, limited, and dangerous. The true vision, fortunately, has already been written in our hearts by the ultimate lawgiver, and it is the only way that every human life will be fully protected by law.

#### NOTES

1. This and all subsequent quotations from Pope Benedict XVI are from "The Listening Heart: Reflections on the Foundations of Law," Address to the German Bundestag, September 22, 2011, [https://w2.vatican.va/content/benedict-xvi/en/speeches/2011/september/documents/hf\\_ben-xvi\\_spe\\_20110922\\_reich-](https://w2.vatican.va/content/benedict-xvi/en/speeches/2011/september/documents/hf_ben-xvi_spe_20110922_reich-)

stag-berlin.html

2. John Gardner, "Legal Positivism: 5½ Myths," *American Journal of Jurisprudence* 46:199 (2001).
3. Leslie Green, "Legal Positivism," *The Stanford Encyclopedia of Philosophy* (Spring 2018 Edition), Edward N. Zalta (Ed.), URL = <<https://plato.stanford.edu/archives/spr2018/entries/legal-positivism/>>
4. H.L.A. Hart, *The Concept of Law*, 102.
5. Brian Bix, "John Austin," *The Stanford Encyclopedia of Philosophy* (Spring 2018 Edition), Edward N. Zalta (Ed.), URL = <<https://plato.stanford.edu/archives/spr2018/entries/austin-john/>>
6. *Veritatis Splendor*, 35 (emphasis in original).
7. This very thin legal argument was the basis for the same-sex "marriage" decisions. *United States v. Windsor*, 570 U.S. 744 (2013) and *Obergefell v. Hodges*, 576 U.S. \_\_\_\_ (2015).
8. *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992). These and other sonorous positivistic incantations cited below were rightly derided by Justice Scalia in his dissent. *Id.* at 980, 996-97.
9. *Evangelium Vitae*, 96.
10. *Id.*, 20. St. John Paul had an elegant way of saying "everything is up for grabs." Thomas Hobbes was more blunt about this environment, describing it as a "war of all against all" where life is "solitary, poor, nasty, brutish and short."
11. *Casey*, 505 U.S. at 867-68.
12. *Elane Photography v. Willock*, 309 P.3d 53 (N.M. 2013) (the Huguenins were photographers who declined on religious grounds to provide services to a same-sex ceremony).
13. See, e.g., the Supreme Court's famous dismissal of "a transcendental body of law" as a "fallacy," *Erie Railroad v. Tompkins*, 304 U.S. 79, 94 (1938), or John Austin's ridicule of the "childish fiction" of "a miraculous something made by nobody, existing, I suppose, from eternity." John Austin, *Lectures on Jurisprudence*, Volume II, 655.
14. William Blackstone, *Commentaries on the Laws of England*, Introduction, Section 2.
15. *Id.* (citing Justinian, *Institutes*, Book I, Title I).



"And don't sign any non-disclosure agreements, dear!"

# Anti-Abortion Atheists Speak Out

Mary Meehan

**K**elsey Hazzard is a young Florida lawyer who leads a national group called Secular Pro-Life. Brought up in the Methodist Church, she is now an atheist. She once told *The College Fix*: “It’s not that I have anything against Christian people or the church I grew up in. . . . I’m not a militant atheist.” She said that religion “just isn’t something I believe in.”<sup>1</sup>

In a recent interview, Hazzard told me that, in addition to atheists and agnostics, her group includes “quite a few people from religious minority groups . . . people who are Jewish or Muslim or Wiccan” and who favor Secular Pro-Life “because it’s a place where all of those differences about the supernatural are set aside.” She said her group also has received “a great deal of support from the pro-life Christian community—people who just see the value in taking a secular approach” and who view abortion “as a human-rights issue.” She noted that Secular Pro-Life does not have dues and is “somewhat ad hoc,” adding that members “mostly communicate through our Facebook page, which is about 20,000 strong.” Her leadership group “consists entirely of atheists and agnostics,” but other supporters have varied views on both religion and politics. Leading the group, she said, is “like herding cats sometimes, but you get to meet a lot of really interesting people.”<sup>2</sup>

Hazzard first became involved in pro-life work when she was in college. She said Students for Life of America “was definitely a big part of my growth as an activist and a leader. I owe them a lot.” She and supporters attend the March for Life in Washington every year, carrying their large Secular Pro-Life banner so high that it can’t be missed. Other marchers, she said, “come up to us, wanting to take a picture, thank us for being there,” and some use “our banner as a landmark . . . So it’s been wonderful being at the March for Life. We would never miss it.” At the time of our interview, she was scheduled to speak at the National Right to Life Committee’s annual convention.<sup>3</sup>

One special project of Secular Pro-Life is a website called “Prevent Preterm.” It explains how lack of prenatal care, smoking, and prior abortions can lead to premature births and to long-term health problems for the preemies. The site links to preventive resources—including help in quitting smoking, the pregnancy-aid groups Birthright International and Heartbeat International, and a directory of pro-life obstetricians and gynecologists.<sup>4</sup> Secular Pro-Life celebrated the 40th anniversary of the Hyde Amendment, which bans federal funding of

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abortion, by putting up a “Hello Hyde” website in 2016. The site stressed research by the Charlotte Lozier Institute that estimated the Hyde Amendment had saved the lives of over two million children.<sup>5</sup> A recent Secular Pro-Life project requests signatures on a petition to the White House asking that the next nominee for the U.S. Supreme Court be a pro-life woman ([www.nextnominee.org](http://www.nextnominee.org)). This, the petition says, “will be a living rebuke to those who falsely equate abortion with women’s empowerment.” The website was up well before the latest vacancy on the Supreme Court occurred. After President Trump nominated a man, Judge Brett Kavanaugh, to the Court, Kelsey Hazzard said the website will stay up. “We still encourage people to sign the petition,” she said, “because you never know when the next vacancy will occur.”<sup>6</sup> Despite the occasional setback, Secular Pro-Life—with youthful energy and new approaches—goes from strength to strength.

### **Philosopher Stresses “a Future Like Ours”**

Dr. Donald Marquis is an emeritus professor of philosophy at the University of Kansas. He is also a specialist in medical ethics—and an atheist. In 1989 his article on “Why Abortion is Immoral” was published in *The Journal of Philosophy*. Since reprinted over 100 times, it is often used in introductory ethics classes for college students. Instead of a sanctity-of-life approach, Dr. Marquis stresses how the “loss of one’s life deprives one of all the experiences, activities, projects, and enjoyments that would otherwise have constituted one’s future.” Denying “a valuable future like ours” to the unborn, he says, is what makes killing them wrong.<sup>7</sup>

In an interview, he used the example of someone who has been diagnosed with pancreatic cancer, noting that the five-year survival rate for that disease is only eight percent. This means that “you wouldn’t be able to enjoy the things . . . that you would have enjoyed if you didn’t have the pancreatic cancer. And they can just be lots of different things . . . There will be people who will say, ‘But I wanted to go fishing.’ I would say, ‘I want to listen to more classical music.’ . . . Whatever people get out of life—they can be lots of different things—are things they’re deprived of by premature death.” He said that “a fetus’s death is a misfortune for the same reason.”<sup>8</sup>

In a 2006 debate with bioethicist Peter Singer, Prof. Marquis put it this way: “We were all fetuses once. . . . The valuable futures of these fetuses are nothing more than those aspects of our past and future lives that are now, will be . . . and were valued by *us*.” He added: “If it is wrong to kill us because *we* have futures of value, and killing us would deprive us of our futures of value, then it would have been wrong to have aborted us.” He concluded that “abortion is wrong. And infanticide is wrong for the same reasons.”<sup>9</sup>

Prof. Marquis has other concerns about violence and killing. He said that

he “was very antiwar at the time of Vietnam” because “so many people were being killed. And, you know, it was not just Americans. It was all those poor Southeast Asians where we were bombing jungles and setting them on fire. . . . I think killing another human being should be taken more seriously than most Americans do.”<sup>10</sup>

### **George Will and His Son Jonathan**

Conservative commentator George Will, whose *Washington Post* column is widely syndicated, once told an interviewer: “I’m an amiable, low-voltage atheist. I deeply respect religions and religious people. The great religions reflect something constant and noble in the human character, defensible and admirable yearnings. I am just not persuaded. That’s all.”<sup>11</sup>

Will is a strong opponent of abortion—and especially outspoken against the abortion of handicapped children. The first of his own four children, Jonathan (Jon), was born with Down syndrome. In a piece for *Newsweek* years ago, the senior Will wrote: “Because of Jon’s problems of articulation, I marvel at his casual everyday courage in coping with a world that often is uncomprehending.” He described his son as “gentleness straight through” and “an adornment to a world increasingly stained by anger acted out.” Years later he suggested that, “Judging by Jon, the world would be improved by more people with Down syndrome . . .”<sup>12</sup>

Father and son share a deep fascination with baseball. The senior Will, born in Illinois and a lifetime Chicago Cubs fan, has written three books about the sport. Jon, who is now in his 40s, roots for the Washington Nationals. In a 2012 column, his father wrote: “This year Jon will spend his birthday where every year he spends 81 spring, summer and autumn days and evenings, at Nationals Park, in his seat behind the home team’s dugout. The Phillies will be in town, and Jon will be wishing them ruination, just another man, beer in hand, among equals in the republic of baseball.”<sup>13</sup>

In a column earlier this year, Will defended crisis pregnancy centers against a State of California effort to force them to post signs saying that California provides “immediate free or low-cost access” to abortion. Will declared: “As the Supreme Court has held, freedom of speech means freedom to choose what to say—and what not to say. The pregnancy crisis centers have a right that California’s bullying government also has and that it would do well to exercise more often: the right to remain silent.”<sup>14</sup>

### **Dialogue with Other Atheists on Abortion**

Kristine Kruszelnicki is a Canadian atheist who has offered pro-life literature and conversation at atheist conferences in both Canada and the United States. In a 2012 article for *Life Site News*, she described her experience in assisting

Kelsey Hazzard at an American Atheist Convention in Washington, D.C. She recalled that a “number of pro-life atheists approached us, ecstatic that we were there, and said, ‘Thank you! I thought I was the only one!’” One man told her: “This is the first time I’ve ever heard someone defend [the pro-life] view with reason and rational arguments.”<sup>15</sup>

Kruszelnicki noted, though, that “I have been told by fellow pro-lifers on more than one occasion that I have no business being at a pro-life event if I am not a Catholic. I know of several pro-life friends, including pro-life gays and lesbians, who feel too ostracized from the movement to be able to engage in meaningful activism with the rest of us. . . . The pro-life movement cannot afford to be exclusive, especially given the audience it primarily seeks to reach, and its own minority status.” She added: “My pro-life atheist friends and I are a minority within the pro-life movement, and a minority among atheists. Both movements could do with a little more open-mindedness.”<sup>16</sup>

In a 2014 interview, she noted that “I’ve tried to encourage some groups to make their marches and public events less religious. I’ve been told: ‘If atheists and other religious groups don’t like all the Christian worship songs at our pro-life marches, they’re free to hold their own marches.’” She added that it “baffles me that Christians can work hand-in-hand with all stripes of people to help the hungry, rescue quake victims in Haiti, or build habitats for humanity, but somehow when it comes to saving prenatal children from unjust extermination, they just can’t share a wheelbarrow with anyone outside their creed.”<sup>17</sup> This certainly is not true of all religious proliferers, but it is enough of a problem that all should think about it.

### **Two Great Role Models**

The intellectual and political battles over abortion have never been easy and probably will not be for a long time to come. But it always helps to have good role models, and I want to recommend two atheist pro-life writers who died in recent years after long and very productive lives. I was honored to be a friend of both.

Doris Gordon was the leader of Libertarians for Life, a small group but one with much intellectual heft. Doris used the collegial method in writing her great essay on “Abortion and Rights: Applying Libertarian Principles Correctly.” She sent a draft out to several people whose judgment she trusted, asking for comments and suggestions. Then she revised the piece and sent it around again. After it had gone through several revisions, I started telling her that it was great and she should just go ahead and publish it. But she kept revising until she was satisfied. The result more than justified her patience and determination: It is a brilliant, exceptionally well-written article.<sup>18</sup> It should be included in every anthology on abortion.

Nat Hentoff, who died last year, was a great writer and great civil libertarian. Like Doris, he was a Jewish atheist—that is, culturally Jewish, but not a believer. In the 1980s, he was appalled by a series of “Baby Doe” cases in which handicapped newborns were denied treatment so they would die. He wrote at length about those cases and made a real difference in gaining protection for little lives at risk. This led him to take a closer look at abortion. He became the best-known anti-abortionist on the political left and a strong advocate of the consistent-life ethic. He made a huge difference through many articles in this journal and elsewhere.<sup>19</sup>

Doris and Nat had great minds and also great hearts—just what every movement needs.

#### NOTES

1. Quoted in Katie England, “Secular Pro-Life Movement Gains Support at College Campuses, Under-30 Crowd,” *The College Fix*, 20 March 2014, [www.thecollegefix.com/post/16783/](http://www.thecollegefix.com/post/16783/).
2. Author’s interview with Kelsey Hazzard, 19 May 2018.
3. *Ibid.*
4. [www.preventpreterm.org](http://www.preventpreterm.org).
5. Michael J. New, “Hyde @ 40: Analyzing the Impact of the Hyde Amendment,” 27 Sept. 2016, <https://lozierinstitute.org/hydeat40/>.
6. K.H., “Nominate a Pro-Life Woman for the Next Supreme Court Vacancy,” <https://petitions.whitehouse.gov/petition/nominate-pro-life-woman-next-supreme-court-vacancy>, accessed 25 June 2018; Kelsey Hazzard, e-mail to Mary Meehan, 11 July, 2018.
7. Donald Marquis, “Why Abortion Is Immoral,” *The Journal of Philosophy*, vol. 86, no. 4 (April 1989), 183-202, 189 & 192.
8. Writer’s telephone interview with Donald Marquis, 6 June 2018.
9. Debate between Peter Singer and Donald Marquis, Princeton University, Princeton, N.J., 29 March 2006, YouTube.
10. Interview with Donald Marquis (n. 8).
11. Quoted in Jamie Weinstein, “George Will: ‘I’m an Amiable, Low-Voltage Atheist,’” *dailycaller.com*, 3 May 2014.
12. George Will, “Jon Will’s Aptitudes,” [www.newsweek.com/jon-wills-aptitudes-193538](http://www.newsweek.com/jon-wills-aptitudes-193538), 2 May 1993; and “Jon Will, 40 Years and Going with Down Syndrome,” *Washington Post*, 2 May 2012.
13. *Ibid.*
14. George Will, “Crisis Pregnancy Centers Have the Right to Remain Silent,” *Washington Post*, 16 March 2018.
15. Kristine Kruszelnicki, “Pro-Life Atheists Invade the American Atheist Convention,” [www.lifesite-news.com](http://www.lifesite-news.com), 29 March 2012.
16. *Ibid.*
17. Kristine Kruszelnicki in “Pro-Life and Atheist: The Secular Case for the Unborn,” [unpleasantaccents.blogspot.com/2014/01/pro-life-and-atheist-secular-case-for.html](http://unpleasantaccents.blogspot.com/2014/01/pro-life-and-atheist-secular-case-for.html).
18. This is available at [www.l4l.org/library/abor-rt.html](http://www.l4l.org/library/abor-rt.html) and also in the *International Journal of Sociology and Social Policy*, vol. 19, No. 3/4 (1999).
19. Many Hentoff articles on abortion and other life-and-death issues may be found in: Nat Hentoff, *Insisting on Life* (New York: Ad Hoc Committee in Defense of Life and Human Life Foundation, 2005).

## Death as “Best Interest”:

# Charlie Gard, Alfie Evans, and the State

*Mark P. Mostert*

There are few circumstances as agonizing as parents having to decide whether their child should live or die. In the midst of the competing pressures and contexts of their tragedy—managing broken hearts and trying to cope with torrents of medical and other relevant information—decisions must be made. And that’s the problem: What is the right decision? How are decisions to be weighed, one against another? Is enough information available to make any decision at all? What if some information contradicts other information? Who has the final say, whatever the decision? Are parents entitled to determine what happens in the end to their child?

Two recent cases in the UK show that what most people take for granted—that is, that loving and caring parents know what’s best for their children—may or may not be respected when medical professionals and courts get involved.

### **Charlie Gard**

Charles Matthew William Gard was born on August 4, 2016, to Chris Gard and Connie Yates. While healthy at birth, his condition soon deteriorated. Charlie was admitted to Great Ormond Street Hospital (GOSH) on October 11, 2016, for failure to thrive and breathing difficulties, and was diagnosed with a very rare genetic anomaly: encephalomyopathic mitochondrial DNA depletion syndrome (MDDS). The condition, which is terminal, is characterized by progressive damage to the brain and other organs, and to the muscles.

While everyone acknowledged Charlie’s plight, his parents desperately hoped that some form of treatment would be administered in an effort to help him, even if chances of success were very small. When the GOSH medical team rejected treatment, the stage was set for two competing ideas of how to deal with this sick little boy to play out. In December 2016, Charlie’s parents contacted Dr. Michio Hirano, an American expert who was experimenting with an approach called nucleoside bypass therapy for conditions similar to MDDS. Hirano reviewed Charlie’s records and, in conjunction with the GOSH medical staff, decided that treatment with the experimental therapy was possible given that an MRI showed Charlie’s brain to be relatively intact. However, by early January 2017, Charlie was having severe and damaging brain seizures, leading

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GOSH to declare that any treatment, including nucleoside bypass therapy, would no longer be in Charlie's "best interest." Chris and Connie disagreed, and determined to take Charlie to the U.S. to be treated by Dr. Hirano, initiating a monumental legal battle in both the British and European courts.

In February 2017, GOSH appealed to the British High Court, claiming that it was in Charlie's best interest to be removed from his ventilator and allowed to die. GOSH argued that taking Charlie to the U.S. for a highly experimental treatment which had never even been tried on laboratory animals, let alone humans, was not appropriate. Charlie's parents subsequently appealed to the British Court of Appeal, the British Supreme Court, and the European Court of Human Rights, all to no avail. At each court hearing the legal message was the same: Charlie had no quality of life, was completely unresponsive, possibly in pain, and had no hope of recovery.

Charlie's story received huge public attention, generated by Chris and Connie's use of social media. Exposure was such that both President Donald Trump and Pope Francis offered to help in any way that they could. An Italian hospital also offered to take Charlie in.

On July 18, 2017, Dr. Hirano finally arrived at GOSH to examine Charlie. His finding was devastating: Whatever infinitesimally small chance there might have been for nucleotide bypass therapy to have been effective, Charlie's brain damage was now so extensive that any further treatment would be futile. Chris and Connie finally accepted that they had no more leverage, and now sought to take Charlie home to breathe his last. GOSH refused, and a judge set a time and date for Charlie to be removed from the ventilator: noon on Thursday, July 27, 2017. Over his parents' objections, Charlie, now eleven months old, was transferred to a hospice, where he died on July 28, 2017.

### **Relevant Issues**

Understandably, Charlie's plight quickly became a national and international cause célèbre. On one hand were the parents' wishes that Charlie be allowed some form of alternative treatment, and, on the other, GOSH petitioning the courts that he be removed from life support and allowed to die "in his best interest," as there was no treatment that would improve his condition. It is understandable that many saw the idea of Charlie's death being "in his best interest" as something of a non sequitur. How could death be best for a living child?

The original intent of "best interest" was crafted to allow courts to step in when parents were either severely neglectful or abusive of their children. In a medical context, for example, a court might rule that parents' rights could be overridden if they refused life-saving medical care for a sick child. Clearly, Charlie's parents were not abusive or neglectful (in fact, the opposite). The "best interest" criterion in fact was applied here to a dispute where parents had

flawlessly good intentions. Given that the courts usually regard medical petitioners as experts, it is unsurprising that they often find against parents, perhaps mistakenly thinking that medicine has all the answers and parents do not. Essentially, the courts held that Charlie's dire medical circumstances meant it was better for him to be allowed to die than to live with no hope of recovery and in a state in which he might even be suffering—nobody was able to say, definitively, that Charlie was not suffering because his brain damage made a clear assessment impossible.

The Gard case was further complicated by the possibility of the highly experimental treatment offered by Dr. Hirano. While we can assume Hirano's good intentions, there is little doubt that his offer was not feasible or reasonable: The treatment he was developing had not been tested, and he had delayed his examination of Charlie until it was too late to implement it.

As these events unfolded, the news media swung into full gear, and Charlie's parents understood that getting their message out via social media was crucial. Unfortunately, this very quickly led to inaccurate information being accepted as factual. For example, some claimed that Charlie's plight was the result of medical rationing by Britain's National Health Service. Others were adamant that Hirano's treatment should be implemented no matter the circumstances.

The key issue was who had the right to decide when and where Charlie should die—his parents or GOSH. Obviously, the courts sided with GOSH, although the courts went to great lengths to recognize and understand how difficult the situation was for Charlie's family and friends. Essentially holding to the "best interest" argument, GOSH claimed that a move home would be very difficult because it could not be medically controlled to the hospital's satisfaction. Charlie's parents, however, were adamant that it would be best for them to take him home, hoping that he would survive the trip and die there surrounded by loved ones.

The question then became: Should the legal system have the final say in whether someone lives or dies?

### **Alfie Evans**

Alfie Evans was born on May 9, 2016, to Tom Evans and Kate James. At six months he was evaluated at the Alder Hey Children's Hospital (AHCH) in Liverpool and determined to be developmentally delayed. On December 14, 2016, he was admitted to AHCH with a serious cough, high temperature, and twitching of his jaw and extremities—and was immediately placed on a ventilator. By the next day he was showing signs of infantile epileptic spasms. On December 16, an EEG showed chaotic brain activity and a similar test in mid-January 2017 revealed that he had few reactive responses. The epileptic seizures continued, and he was diagnosed with some form of severe neurodegenerative disease

which was quickly destroying what was left of his brain. Failing to respond to pain or other touch stimuli, he was considered to be in a severely deteriorating cognitive state. Alfie remained at AHCH throughout 2017, where his condition continued to worsen.

In September 2017, doctors at the Bambino Gesù Hospital<sup>1</sup> in Rome offered to accommodate Alfie, specifying that they would give him ventilator support, provide him with a tracheotomy, and replace his nasal feeding tube with a more comfortable gastric tube. However, the Italians also noted that moving Alfie to Rome might be very stressful and cause further complications. Alfie's parents had a back-up plan with a Munich hospital and decided that only after these two options were exhausted would they fight to have their son brought home to die. AHCH objected to any move on the grounds that the travel would be detrimental to Alfie's already precarious medical state and because any further treatment was futile.

As with Charlie Gard, Alfie's case caught the attention of the wider public. Soon, frustrated advocates had organized themselves into what they termed "Alfie's Army." Others went further, drawing the ire of hospital officials and law enforcement. For example, some protesters were allegedly abusive and threatening to staff entering the hospital.

In late 2017 AHCH appealed to the Family Division of the UK's High Court, claiming that keeping Alfie alive was not in his best interest. The court agreed in early February 2018. Later that month Tom and Kate appealed the court's decision but were denied. Further appeals to the UK's Supreme Court and the European Court of Human Rights also failed. They sought legal relief twice more but were unsuccessful.

Alfie's life support was withdrawn by AHCH on April 23. Against all odds, he continued to breathe on his own, triggering another round of legal appeals to allow the child to be taken to Rome. These appeals were all defeated. In desperation, Tom made allegations of murder against several AHCH staff members, but these were quickly dismissed. On April 26, Tom issued a conciliatory statement to the hospital. Two days later, at 2.30 a.m. on April 28, 2018, Alfie died.

### **Commentary**

As the cases of Charlie Gard and Alfie Evans show, end-of-life issues spawn a host of very difficult scenarios that often contradict one another, leaving all participants bewildered and emotionally overwrought. Knowing that a loved one, especially a child, is terminally ill is an extraordinarily heavy burden, one which can be significantly exacerbated by medical personnel who may have very different ideas about what should happen to the patient. In these two cases there would have been no conflict if the parents had agreed with the position taken by the hospitals, or, alternatively, if the hospitals had acquiesced to the

parents' wishes. Instead, the parents and the hospitals were diametrically opposed as to what should happen to their children/patients.

Two issues are worth exploring.

First, the notion of "best interest." The best interest standard was originally devised in the UK's Children Act of 1989 for, as has already been observed, cases where parents obviously did not have the best interests of their children at heart. In such cases it is necessary, with the requisite safeguards for parental due process, to ensure the safety of the child. There is no question that in these instances the law is useful and effective. However, in the Gard and Evans cases, the parents were anything but abusive. Nobody ever questioned their love and devotion to their sons. Yet the best interest argument was used to deny them what many believe were absolute parental rights.

Further, there was little doubt that once these two cases went to the courts they would be decided in favor of the hospitals. Courts tend to see medical professionals as much more expert concerning the best interests of a terminally ill child than the parents. This is borne out in several of the judgments handed down, where the courts acknowledged at length the heartbreak of Charlie and Alfie's parents but declared that the hospitals' assessments needed to hold sway. The courts permitted the application of the best interest argument to non-abusive parents, a purpose for which the standard was not originally intended, and upheld the hospitals' stance in interpreting "best interest" as both boys being allowed to die. Significantly, the courts did not side with the parents' "best interests," which were to seek additional treatments outside of the hospitals, or to take their children home to die. Thus, the twisted notion emerged that only death was in the boys' best interest.

The law, as written, could have had no other outcome. What was missing was a better law, acknowledging that parents who are obviously loving and caring should have greater weight under the law and that *their* version of best interest should compete evenly with any hospital or medical definition of the term. If this were possible, then the excessive heartbreak and frustration among all parties could be greatly reduced so as to allow what matters most to take place—that children like Charlie and Alfie spend loving time with their parents without the terrible distractions of court battles and sometimes harsh and needless medical decisions. Furthermore, such a law should be crafted to acknowledge that parents, if they are willing and able, should be free to pursue medical treatments, however remote or futile, until they are satisfied that they have done everything possible for their child. Compromise, rather than dissension, should be the goal.

Second, in both cases, understandably, emotions ran high and each side soon felt compelled to win at all costs. These events were further complicated by extensive social media reactions that in at least some instances used misinformation in

unhelpful ways. After initial dealings with the parents and discovering their wishes, the hospitals seemed to rely on one default position: appealing to the legal system. This is both arbitrary and shortsighted in that it generated an adversarial relationship with Alfie's parents that did far more damage to both sides than anything else. Could this adversarial relationship have been avoided? Probably. In all the voluminous news accounts of this double tragedy, there was never a suggestion of good faith mediation by an independent party that could have potentially (a) avoided the adversarial situation that developed, (b) strengthened the parents' best interest claims much more effectively than was possible under the legal system definition of best interest, and (c) allowed the hospital staff to feel that they were still fulfilling their professional obligations. Independent mediation would have meant the close involvement of a trusted, impartial, approachable entity able to provide a calm assessment of competing emotions and facts on all sides. There appeared to be no such effort or persons involved in either Charlie or Alfie's case, the exception being the appeal to hospital ethics committees, which, while often tasked with a mediation role, are notoriously stacked against the patient's loved ones and for the medical facility.

Given the vagaries of the current UK law related to "best interest" and the absence of mediators who might have hammered out a solution more acceptable to all sides, it is perhaps time to suggest that legal minds in the UK turn to fashioning a new law for a new time—a law that recognizes that the "best interest" concept is outdated and only awkwardly applicable in these kinds of cases, that parents' rights hold just as much weight (if not more) than those of medical facilities and personnel, and that in the future, when other Charlies and Alfies are sure to be born, that close and truly impartial mediation will default not to death as best interest, but to life as best interest—that life, in all its imperfect forms, is worthy of deep love, care, and comfort.

#### **Coda**

Charlie and Alfie did not die in vain. For example, Rome's Bambino Gesù Hospital has taken the lead in developing the "Charter of Rights of the Not Curable Child"<sup>2</sup> that will protect those children that are terminally ill but still in need of high levels of comfort care. There have also been calls for affording parents in these situations more legal power and rights, illustrated, most significantly, in the promise of "Charlie's Law." Chris Gard and Connie Yates have said it best:

Since Charlie's passing in July last year, we have been working with pediatric consultants, medical ethicists, senior lawyers, U.K. politicians and other parents who have suffered through similar situations as us, to try and propose a law that will prevent parents experiencing painful and prolonged conflicts with medical professionals. This involves addressing problems around the "best interests" test as well as creating a platform for

transparency and openness so that cases like these can be dealt with before they ever reach the courts. We were calling this “Charlie’s Law. . .” Once cases are public it is difficult for people to be fully aware of the complexities and this often leads to ill-informed judgments on both sides and creates unnecessary conflicts. We have something that is better for everybody—hospitals, healthcare professionals, families with sick children, the NHS, and the reputation of our own government.<sup>3</sup>

They will need all the support we can give them.

### NOTES

1. Bambino Gesù Pediatric Hospital, <http://www.ospedalebambinogesu.it/en/chi-siamo#.WzTT7K-3Mzow>
2. Zenit staff, “Bambino Gesù: Charter of Rights of the Not Curable Child.” <https://zenit.org/articles/bambino-gesu-charter-of-rights-of-the-not-curable-child/>
3. Will Maule, “CHANGE: Charlie Gard’s Parents Get Behind New ‘Alfie’s’ Law After Heartbreaking Battle.” <http://www.faithwire.com/2018/04/27/we-realized-cases-like-these-would-keep-happening-charlie-gards-parents-get-behind-new-law-after-heartbreaking-alfie-evans-battle>



*Chris and Charlie Gard, Connie Yates*

## Alfie Evans:

# Who Decides Who Is Worthy of Life?

Laura Echevarria

I followed the case of Alfie Evans in the United Kingdom almost from the beginning as his parents fought to get him treated for an undetermined medical condition. The hospital where they brought him argued that he was suffering from a degenerative condition for which there was no treatment—even though his illness was undiagnosed. His parents wanted him released to a hospital in Italy that had offered to evaluate him and provide any possible treatment.

The parents *wanted* their son and were willing to accept him in whatever condition he was in.

The hospital won every legal battle over Alfie's care and secured permission from the court to set a date and time to remove the boy's ventilator and, from my understanding, to deprive him of all food and water. According to Tom Evans, Alfie's father, some nutrition was administered after the family requested it.

While children and adults with disabilities are accommodated more easily in society today, there is a dark underside. Ethicists, for example, don't agree on what comprises life-saving treatment versus what they call futile-care treatment in cases like Alfie's. If doctors believe that a patient will not improve, or that a chronic and severe medical condition cannot be cured, very often they will recommend the removal of all life support, including food and fluids. It doesn't matter if the patient is not terminal.

This philosophy has an impact on those with disabilities today and will affect how they are treated in the future.

I have two boys who are on the autism spectrum. One of them is likely to do well in life—with some help along the way. Nathan's communication and social skills are better than his brother's because he was diagnosed earlier and received immediate therapy and services. Peter, however, who was diagnosed just before he turned three, and started receiving therapy then, will always need to live with my husband and me, and after we are gone, with one of his siblings or a caregiver.

Peter, now 15, has limited communication skills, but talks in complete sentences (when he is not repeating dialogue from his favorite children's videos).

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He is perfectly capable of getting into the refrigerator to eat leftover pizza or scrounging through the pantry to find his favorite fish crackers. He can get a bowl of cereal without help and can microwave things like popcorn. But he cannot live independently. Left on his own, Peter would burn down the house by lighting candles or playing with the gas stove, binge on all the ice cream in the freezer and never eat a vegetable again, and would have no means of buying groceries or getting to the store.

So, does this mean he is unworthy of life?

Nazi Germany thought so.

Back in the 1930s, my son would have been branded a “life unworthy of life” because of his disability, a “useless eater.”

“Life unworthy of life.”

Think about that for a moment.

Who determines who is worthy of life and who is not?

If we believe in God, and I do, then we would say He is the ultimate authority, and that life should end on His timetable and not before. But if society removes God from arguments regarding how we treat the disabled, then who decides? Who determines if someone is to be killed or not?

Able-bodied men and women, that’s who. They decide who lives and who dies based on an increasingly sliding scale of what they consider to be a good life—and what is not.

And more and more often, the Alfie Evanses of this world are being euthanized—“put out of their misery”—because someone, somewhere, decides theirs is not a good enough life and that it is “futile” to treat them because their condition cannot be *improved*.

It wasn’t long after Hitler launched a propaganda war on people with disabilities that he authorized the T4 or “mercy death” program. According to the U.S. Holocaust Memorial Museum, from 1939 to the end of the war approximately 275,000 disabled individuals were killed in the program—a stepping stone to the destruction of millions of Jews in the Holocaust.

Once we determine that there are some lives less worthy than others, it’s only a matter of time until someone determines that those with disabilities—physical or mental—are somehow “less than.”

My son is a human being—not a plant, not a machine. He is distinctly human, just like Alfie Evans was, and because of this alone he deserves to live. Peter—and children like Alfie—should be able to live life to the fullest extent they can simply because they *exist*.

Proponents describe euthanasia as merciful and compassionate, but there is nothing compassionate about killing a vulnerable person with a disability. “Compassion” here is defined by healthy people saying to themselves: “I wouldn’t want to live like that.”

To destroy lives because we can't "cure" them or make them better is a barbarity that harkens back to the days of the Roman Empire, when parents would expose a weak and unwanted child to the elements and predators—leaving him to die alone and unloved. Despite our advancements and our talk of living in the Information Age, it seems we can be just as ignorant and barbaric as our ancient ancestors.



*Alfie Evans and his father Tom*

# Pro-Life Benchmarks: 1967-2017

*Robert N. Karrer*

In 2017 the pro-life movement observed its fiftieth anniversary.<sup>1</sup> With nearly 60 million aborted babies strewn across the American landscape, the anniversary was hardly an occasion for celebration. The movement, however, has had a long and consequential history. Following are fifteen benchmarks—landmarks—in its progress through the last five decades. Admittedly, this list is subjective.

## **1967-68: The National Right to Life Committee Is Formed**

In the spring of 1967 abortion-friendly lawmakers introduced legislation to reform state anti-abortion laws enacted a century earlier. In general these reforms would legalize abortion for narrow reasons: rape, incest, or fetal handicap or deformity. Colorado, North Carolina, and California enacted new laws legalizing limited abortion. Early in the year Edward Golden formed New York State Right to Life. Alex and Geline Williams of Richmond organized the Virginia Society for Human Life, establishing chapters across the state and earning the distinction of being the first “state-wide” right-to-life group. In response to the reform laws passed that year, John Archibold established Colorado Right to Life and Los Angeles law professor Walter Trinkaus organized proliferers under the banner of Right to Life League of Southern California. The Catholic Bishops Conference, meeting in April 1967, established the National Right to Life Committee to monitor abortion legislation and appointed Monsignor James McHugh, director of their Family Life Bureau, to head it up. The group organized in 1968 and hired NCCB staffer Michael Taylor to be executive secretary. The four state groups aligned with the infant NRLC as did Minnesota Citizens Concerned for Life, founded by Minneapolis housewife Alice Hartle in 1968 but soon dominated by her neighbors, Fred and Marjory Mecklenburg.<sup>2</sup>

## **1972: The Repeal of New York’s 1970 Abortion Act**

In 1970 the New York State legislature legalized abortion through the 24th week of pregnancy. Because the law did not require residency (like reform statutes in other states) women from all over the nation descended on the Empire State for legal abortions. Over 200,000 were performed in the following 12 months. Ed Golden’s group reawakened with vigor and formed new chapters

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across the state. By 1972 there were 50 chapters with 200,000 members.<sup>3</sup> That year proliferators flexed their muscles and pressured lawmakers to repeal the Abortion Act. In May, New York Right to Life won a huge victory when the State Assembly repealed the law. Although the Senate did the same, Governor Nelson Rockefeller, a staunch supporter of abortion rights, vetoed the bill the next day, thus preserving the law. Despite the loss, proliferators declared Golden a “king-maker,” and the NRLC invited him to join its executive committee.

#### **1972: Michigan and North Dakota Reject Abortion Reform**

Between 1966 and 1972 nineteen states either reformed or repealed anti-abortion laws. Thirty-one states rejected reform. In 1972, abortion-rights activists in Michigan and North Dakota launched petition drives to place the issue on the November ballot. Michigan’s ballot referendum would have allowed abortion through the 20th week of pregnancy with no residency requirement for doctors performing the procedure. That summer, the state’s largest pro-life groups—Grand Rapids Right to Life and Detroit’s People Taking Action Against Abortion (PTAAA)—joined about two dozen smaller, independent groups to form the coalition Voice of the Unborn. Despite opinion polls indicating reform would win by over 55 percent, the pro-life coalition waged an aggressive campaign. Thousands of volunteers handed out Cincinnati doctor Jack Willke’s controversial pamphlet *Life or Death*. The Michigan Catholic Conference launched its own campaign to educate the state’s 950 parishes. Radio and TV commercials targeted select markets. The tide turned in the final three weeks. On Election Day, Voice of the Unborn won 61 to 39 percent in one of the biggest upsets in the state’s political history.<sup>4</sup>

The situation in North Dakota was different. Although abortion reformers collected enough signatures to place a bill on the ballot, the proposal was doomed from the start due to voter conservatism on social issues. Dr. Albert Fortman, a Bismarck vascular surgeon, led the pro-life campaign, securing full cooperation from the state’s Catholic bishops and many Protestant denominations. Volunteers across the state distributed pro-life literature, ran commercials, spoke to church and civic groups, and debated opponents. When voters were given the opportunity to embrace reform, they expressed their will with a resounding “NO,” rejecting the bill by an overwhelming 77 to 23 percent.<sup>5</sup>

#### **1973: *Roe v. Wade***

Less than three months after the Michigan and North Dakota victories the Supreme Court issued its *Roe v. Wade* and *Doe v. Bolton* decisions, effectively legalizing abortion throughout nine months of pregnancy. Like *Dredd Scott* before it, *Roe* denied human rights to a whole category of people. Unlike *Dredd Scott*, *Roe* sanctioned killing on a massive scale. And far from ending debate on

abortion, the Court unwittingly awakened a sleeping giant.<sup>6</sup> Almost overnight millions of Americans joined the pro-life movement, some signing up with existing groups, others forming new ones.

### **1976: The Hyde Amendment**

In the summer of 1976 Illinois freshman congressman Henry Hyde introduced an amendment to an appropriations bill for fiscal 1977 that would prohibit federal funds from paying for abortions through Medicaid. After a brief debate the amendment passed 207 to 167. However, the Senate appropriations bill did not include similar language, so a conference committee met to reconcile the bills. Pro-choice lawmakers intended to kill the amendment in conference, demanding that the House acquiesce to the Senate version. At the same time, pro-life representatives demanded the Senate submit to the House version, with the Hyde language intact. Finally, in September, the impasse broke when another pro-life congressman offered a slightly altered version of the bill. The House approved it 256 to 114; the Senate 47 to 21, with 30 members not voting. Although President Ford vetoed the bill for other reasons, Congress overrode the veto, securing the Hyde Amendment's survival. Pro-choice zealots then challenged the amendment in court. In 1980 the Supreme Court upheld the Hyde Amendment in *Harris v. McRae*—the pro-life movement's first genuine success at the federal level and first substantive win in the grand strategy of incrementalism.

### **1979: Evangelicals Join the Pro-Life Movement**

While the pro-life movement began as a Catholic response to abortion reform at the state level, from early on several Protestants—albeit from mainline denominations—took leadership roles. Very few Evangelicals were involved at that time (including later pro-life leaders such as theologians Harold O.J. Brown and Francis Schaeffer, and Dr. C. Everett Koop, who became Ronald Reagan's surgeon general). This changed in the late-1970s when the Christian Action Council, the first Evangelical pro-life group, was formed. Several developments awakened pro-life Evangelicals. Key were the 1979 publication of the Schaeffer-Koop book, *Whatever Happened to the Human Race?* and the founding of the Moral Majority under Rev. Jerry Falwell the same year.

### **1980: The Election of Ronald Reagan**

Ronald Reagan, who entered the 1980 presidential contest as the GOP front-runner, was the beneficiary of the recent Catholic-Evangelical merger. With Religious Right groups increasingly fearing that the Christian way of life was under attack, the Moral Majority conducted widespread voter registration drives, adding some three million new voters. Many proliferated believed Reagan would

have an opportunity to reshape the Supreme Court. President Jimmy Carter was ultimately defeated for three reasons: The Iranian Hostage Crisis exposed foreign policy weaknesses; the crippling recession of 1979-1980 led to rising unemployment, double-digit inflation, and historically high mortgage rates; and the third-party candidacy of Illinois congressman John Anderson—a pro-choice Republican—siphoned votes from the pro-choice Carter. Reagan won in a landslide—and took 61 percent of the Evangelical vote.

### **1985: *The Silent Scream***

Dr. Bernard Nathanson, an abortion-rights ideologue, was a founding member in 1969 of the National Association for the Repeal of Abortion Laws—now NARAL Pro-choice America—and became its first medical advisor. In 1970 he joined a New York abortion practice which, according to a *New York Times* obituary, he bragged was “the largest abortion clinic in the western world.” However, by 1972 Nathanson was beginning to have doubts about his abortion advocacy, which he expressed in a 1974 article in the *New England Journal of Medicine*.<sup>7</sup> He finally came out as a prolifer in his explosive 1979 book, *Aborting America*.

In 1984 Nathanson was granted permission to record an abortion procedure using the relatively new technology of ultrasound. He produced a 30-minute film, titled *The Silent Scream*, which featured detailed explanations of various abortion methods. Having performed thousands of abortions, Nathanson was no casual observer: “For the first time we have the technology to see abortion from the victim’s vantage point. Ultrasound imaging has allowed us to see this, and for the first time we are going to watch a child being torn apart, dismembered, disarticulated, crushed and destroyed by the unfeeling steel instruments of the abortionist.” In January 1985, Nathanson delivered copies of *The Silent Scream* to the White House and to every member of Congress, creating a storm of publicity and catching the pro-choice movement off guard. Nathanson saw his documentary as an “escalation of the abortion conflict into the high-tech arena, a kind of Star Wars weapon for the pro-life movement against which there can be no effective counter.”<sup>8</sup> While pro-choice leaders cried foul and ramped up their own campaign to discredit the film, the damage was done. Former senator Gordon Humphrey of New Hampshire gave it the highest compliment, calling *The Silent Scream* “the *Uncle Tom’s Cabin* of the pro-life movement.”<sup>9</sup>

### **1986: *The Thornburgh Decision***

In 1982 the Pennsylvania legislature passed the Abortion Control Act,<sup>10</sup> a comprehensive law requiring: that a woman give informed consent before terminating a pregnancy; that she be told the risks involved; and that an abortion clinic provide printed materials concerning prenatal care, childbirth, and neonatal

care, including a list of agencies offering alternatives to abortion, a description of the developing fetus at “two-week gestational increments,” and a series of reporting policies. The law required a physician to make a determination of fetal viability and, in performing a late-term abortion, to use a technique that would best preserve the life of the fetus if it were aborted alive. It also required a second doctor to be present during the procedure and to step in if necessary to assist the baby (if there were a live birth). Republican governor Richard Thornburgh signed the legislation.

As expected, pro-choice groups challenged the bill. In June 1986, the Supreme Court struck down the majority of provisions in a five-to-four decision.<sup>11</sup> For the first time Chief Justice Burger, one of *Roe*’s original supporters, had an epiphany on abortion. His dissent was filled with commonsense arguments. Here is a sampling:

The Court astonishingly goes so far to say that the State may not even require that a woman contemplating an abortion be provided with accurate medical information concerning the risks inherent in the medical procedure . . . Can anyone doubt that the State could impose a similar requirement with respect to other medical procedures? Can anyone doubt that doctors routinely give similar information concerning risks in countless procedures having far less impact on life and health, both physical and emotional than an abortion, and risk a malpractice lawsuit if they fail to do so? Yet the Court concludes that the State cannot impose this simple information-dispensing requirement in the abortion context where the decision is fraught with serious physical, psychological, and moral concerns of the highest order. Can it possibly be that the Court is saying that the Constitution forbids the communication of such critical information to a woman?<sup>12</sup>

Burger concluded that *Roe* should be reexamined.

While *Thornburgh* continued the string of pro-life defeats at the Court, Burger’s vote signaled that the *Roe* firewall had been pierced—a pro-*Roe* justice had changed his mind.

### **1987: The Bork Debacle**

Membership on the Supreme Court was in flux in 1986 and 1987. A week after *Thornburgh* Burger announced his retirement. In July President Reagan nominated Justice Rehnquist to replace him as chief justice. To fill Rehnquist’s spot he nominated federal judge Antonin Scalia. The Rehnquist confirmation hearings were acrimonious, but since Republicans controlled the Senate, the final outcome was assured. He was confirmed 65 to 33. The Scalia hearings were much friendlier and he was confirmed the same day by unanimous vote.

One year later Justice Powell announced his retirement. On July 1, 1987, Reagan nominated Robert Bork, a brilliant yet controversial judge to succeed Powell. Immediately, left-wing, pro-choice, and labor groups organized to derail the nomination. Since Democrats had regained control of the Senate in the 1986 mid-terms, Bork was vulnerable. During grueling questioning by hostile

members of the Judiciary Committee, he openly cast doubt upon the constitutionality of *Roe*, making him odious to pro-choice zealots. The Reagan team was remarkably disengaged in the process, believing that Bork would be confirmed with little complaint. But every week a new batch of Democratic senators announced they would reject the nominee. A few GOP senators did as well. When Bork's defeat was inevitable, Republicans suggested he withdraw his name from consideration to avoid embarrassment. He refused. There would be a vote and he would accept the will of the Senate. In October, Bork was rejected 58 to 42.

Reagan quickly named Douglas Ginsburg only to discover a few days later that his new nominee had smoked marijuana while a Harvard law professor. His name was withdrawn. In November, Reagan nominated Judge Anthony Kennedy. Considered to be a moderate conservative, Kennedy was confirmed 97 to 0 in February, 1988.

### **1992: The *Casey* Decision**

Pennsylvania came to national attention again in 1989 when Robert Casey, the state's pro-life Democratic governor (1987-1995), signed a comprehensive abortion bill he had successfully pushed through the legislature. Planned Parenthood challenged several of the restrictions, including: that a woman must give her informed consent at least 24 hours before her abortion; that she sign a statement indicating that she had informed her husband of her impending procedure; and that a minor must have consent from at least one parent or get a judicial bypass. Planned Parenthood also challenged the extensive reporting requirements that the bill placed on abortion clinics.

With the addition of justices Thomas and Souter to the Supreme Court (replacing pro-choice stalwarts Brennan and Marshall), many observers believed the Court was poised to reverse *Roe*. In fact, six of the nine justices had been appointed by either Reagan or George H.W. Bush. It didn't happen. Three Republican-nominated justices (O'Connor, Kennedy, and Souter) co-authored the majority opinion which reaffirmed *Roe*: "The woman's right to terminate her pregnancy before viability is the most central principle of *Roe v. Wade*. It is a rule of law and a component of liberty we cannot renounce."<sup>13</sup> In the opinion Justice O'Connor introduced "the undue burden standard," a new framework for considering restrictions after viability which she had developed in another abortion case: A regulation or restriction may be deemed constitutional if it does not impose an undue burden on a women's right to procure an abortion. The Court then applied the undue burden rule to the challenged regulations. It struck down spousal notification but upheld the others, giving pro-lifers a partial victory. But the consequence of the Bork defeat was evident. His would have been the fifth vote to nullify *Roe*. Anthony Kennedy saved it.

**1993-2003: Partial-Birth Abortion Ban Campaign**

At a 1992 conference sponsored by the National Abortion Federation, members learned of a new method for late second- and third-trimester abortions. Developed by an Ohio abortionist, D&X (dilation and extraction) involved delivering all but the head of an unborn living child, piercing its neck with scissors, and collapsing the skull of the dead baby so it could pass easily through the birth canal. The procedure soon became known in pro-life circles as “partial-birth abortion.” In 1995 a bill banning D&X abortions passed both chambers of Congress. President Bill Clinton, arguing that the bill lacked “a woman’s health” exception, vetoed it. Although the House overrode the veto, the Senate’s 58 to 40 tally fell short by a handful of votes. GOP lawmakers reintroduced the bill in 1997 with the same result. The Senate override vote this time was 64 to 36, three votes short of the required two-thirds. Another attempt in 1999 yielded a 63 to 34 Senate vote. Congress acknowledged that it did not have the votes to override Clinton’s third veto and reluctantly decided it would wait until the 2000 election to revisit the issue. After George W. Bush was elected, pro-life lawmakers introduced the bill yet again. This time, with an ally in the White House, a “health” exception was unnecessary. However, after the House approved the bill in 2002, Senate Democrats (who controlled the chamber) blocked it. In January, 2003, after Republicans took control of the Senate in the mid-term election, the bill was reintroduced for the fifth and final time. Bush signed the Partial-Birth Abortion Ban Act in November 2003. As expected, pro-choice groups mounted a challenge in federal court. But in 2006, the Supreme Court held, in *Gonzales v. Carhart*, that the ban was constitutional.

**2005: Terri Schiavo’s Death**

Terri Schiavo was a healthy 26-year-old Florida woman who sustained massive brain damage after apparently suffering cardiac arrest in 1990. In a coma for three months, she eventually awakened but was diagnosed as being in a persistent vegetative state. After a few years, during which attempts to rehabilitate and restore awareness were made, two doctors pronounced her condition irreversible. In 1998 her husband Michael requested that her feeding tube be removed, claiming it had been his wife’s wish not to be kept alive by artificial means. Her parents disagreed, and for the next six years both families clashed in a series of court battles and hearings. Michael Schiavo, who had a live-in girlfriend and baby, wanted the tube removed, Robert and Mary Schindler wanted the court to grant them custody of their daughter. The Schiavo case excited much response from the pro-life community, which put pressure on politicians—at one point even the United States Senate intervened on Ms. Schiavo’s behalf—and kept the story alive in the media. When all legal options were exhausted, however, Michael

Schiavo prevailed and the feeding tube was removed on March 18, 2005. Terri Schiavo, who was denied the relief of even ice chips as she slowly expired, died on March 31, 2005, starved to death by court order.

### **2015: Planned Parenthood Videos**

In the summer of 2015 the Center for Medical Progress, an undercover pro-life group led by David Daleiden, released a video of a conversation between him and Dr. Deborah Nucatola, a senior-level director at Planned Parenthood. Nucatola told of selling fetal body parts to medical research procurement companies, bragging that the best specimens were obtained by “crush[ing] above . . . [or] crush[ing] below” to get intact body parts. In a disturbing part of the video, she described using ultrasound to help turn the fetus into a breech position in order to extract most of its body intact. Did this not resemble a partial-birth abortion?

Planned Parenthood hired Fusion GPS—the same group that concocted the discredited Steele/Trump Dossier—to do damage control. The video, it falsely concluded, was inaccurate and had been heavily edited. Armed with this assessment, liberal politicians and media circled the wagons to protect and insulate Planned Parenthood from further scrutiny. By the end of 2015 CMP had posted 11 undercover videos exposing the abortion giant’s gruesome trafficking in baby parts. Outraged lawmakers attempted but failed to pass legislation defunding Planned Parenthood. Meanwhile, David Daleiden became the target of criminal investigations.

### **2016: Election of Donald Trump**

For the overwhelming majority of reporters, pundits, political strategists, and pollsters, the possibility that Donald Trump would be elected president in 2016 was a joke. Nevertheless, the neophyte Republican candidate managed to defeat Hillary Clinton, the seasoned political pro. Formerly a pro-choice businessman, Trump had changed his position on abortion and campaigned as a prolifer.

For most pro-life voters the election hinged on the future of the Supreme Court. Since many of the justices are past the age at which most people retire, President Trump may have the opportunity to reshape the philosophic majority of the Court. In 2017 Trump named conservative appellate court judge Neil Gorsuch to replace Justice Antonin Scalia, who had died the year before. This past July, following Justice Anthony Kennedy’s announcement that he would retire at the end of the term, the president nominated Brett Kavanaugh of the Court of Appeals for the DC Circuit to succeed him. Most Court observers expect a bruising confirmation battle because Kavanaugh could possibly be the fifth deciding vote in affirming pro-life legislation and/or reversing *Roe v. Wade*. Prolifers have already seen the Court shift in their direction: In June 2018

Justice Gorsuch voted with the majority in *NIFLA v. Becerra* to strike down a California law that placed restrictions on pregnancy care centers' First Amendment rights.

Prolifers have faced many disappointments over the last five decades. One very encouraging development is the presence of huge numbers of students and young people, who are bringing new vitality and energy to the pro-life movement. Their participation at the annual March for Life reminds us that the future belongs to them.

#### NOTES

1. While several pro-life doctors and lawyers began publicly protesting abortion before 1967, most historians acknowledge that the movement was "officially" launched that year.
2. Daniel K. Williams, *Defenders of the Unborn: The Pro-Life Movement before Roe v. Wade* (New York: Oxford, 2015). See also Robert N. Karrer, "The National Right to Life Committee: Its Founding, Its History, and the Emergence of the Pro-Life Movement Prior to *Roe v. Wade*," *Catholic Historical Review* 97, no. 3 (July, 2011): 527-557.
3. For brief historical sketches of local chapters, see brochure, "Ordinary People Doing Extraordinary Things," New York State Right to Life Committee, (n.d. 1973?), Box 2, Folder 1, Edward J. Golden Papers, Dinand Library, College of the Holy Cross Archives, Worcester, MA.
4. Robert N. Karrer, "The Formation of Michigan's Anti-Abortion Movement: 1967-1974," *Michigan Historical Review* 22, no. 1, (Spring, 1996): 67-107.
5. More recently, scholars have asserted that the *Roe* decision was not a singular event that shaped the development of the pro-life movement. Rather, they contend that pro-life groups were well-established and their progress was not dependent on the Court's 1973 decision. See Linda Greenhouse and Reva B. Siegel "Before (and After) *Roe v. Wade*: New Questions About Backlash," *Yale Law Journal* 120, no. 8 (June, 2011): 2028-2087. However, the thesis overlooks the stark reality that until *Roe* the pro-life movement was dominated by only a handful of state groups, that it did not have a secure financial base, and that its political influence had only surfaced in 1972. Greenhouse and Siegel also ignore that fact that NRLC affiliates only experienced significant and exponential growth after *Roe*, not before.
6. Bernard N. Nathanson, "Deeper Into Abortion," *New England Journal of Medicine* 291, no. 22 (November 28, 1974): 1189-90, see reprint in his *Aborting America* (Garden City, NY: Doubleday, 1979), 164-67.
7. Don Tanner, *The Silent Scream: The Complete Text of the Documentary Film With an Authoritative Response to the Critics* (Anaheim, CA: American Portrait Films Books, 1985), 14.
8. Bernard Nathanson, "The 'Uncle Tom's Cabin' of the Pro-Life Movement?" *NRL News*, February 14, 1985, 1, 6.
9. *Ibid.*
10. Pennsylvania Abortion Control Act of 1982, see 18 Pa. Cons. Stat. 3201 (1982).
11. *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747.
12. *Ibid.*, at 783 (Burger J. dissenting).
13. *Ibid.*, at 870-71.

# The Business of Family Planning

Vincenzina Santoro

The global contraceptives market was estimated to be \$22 billion in 2016 and projected to rise to \$37 billion by 2025.<sup>1</sup> To promote contraceptive use, especially among youth, manufacturers and other family-planning advocates commemorate World Contraceptive Day on September 26. Arguably, however, contraceptive profits would not have risen nearly so high without the decades-long efforts of the United Nations to drastically rein in population growth by a variety of interventions to prevent conception or to intervene when it has already taken place.

In 1969, the United Nations created the United Nations Fund for Population Activities (later renamed the United Nations Population Fund) to address a broad range of population matters, from assistance with population censuses to various aspects of maternal care. However, with the Sixties' newly developed contraceptive pills and other birth suppression devices creating a synergistic population control wave, UNFPA soon became a major protagonist in family planning. For years now it has employed the slogan: "Every child a wanted child," without explicitly spelling out what one should do in the event of an unanticipated pregnancy.

The "birth of birth control" dates back to the early 1960s, when the "pill" was medically approved as a contraceptive. Now "liberated" women could have sex at will without fear of pregnancy. Due to contraceptive failure, the need for the safety net of legalized abortion soon became apparent. Not surprisingly, therefore, abortion was legalized not only in the United States but in other major countries by the 1970s.

In combination with other factors (including abortion), the contraceptive pill and other forms of pregnancy prevention contributed to a gradual decrease in fertility rates throughout most of the developed world. In the United States, fertility dropped during the 1960s and early 1970s to a level just at or above the population replacement level of 2.1 children per woman.<sup>2</sup> It then remained roughly constant until 2007, when fertility resumed its steady decline. In 2017, the American fertility rate was 1.76 (while the average fertility rate for the 28-member European Union was 1.57 and Japan's fertility rate reached 1.41).

Today the only parts of the world showing high fertility rates are sub-Saharan

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Africa plus Afghanistan. Of the 224 countries, territories, and areas of the world for which there are estimated data, 105 are at or above the 2.1 level. The highest fertility rates are recorded by Niger (6.49), Angola (6.16), and Mali (6.01); at the bottom are Taiwan (1.13), Macau (0.95), and Singapore (0.83).<sup>3</sup> Diagnosing high fertility rates as a chief impediment to health and prosperity, UNFPA moved to ensure sufficient stocks of “high quality” contraceptive products and actively encourage their use among an estimated 225 million women.<sup>4</sup> Thus, UNFPA became a partner in the “Reproductive Health Supplies Coalition.” But first a word about “reproductive.”

### **Introducing the Sustainable Development Goals**

The word “reproductive” enjoys significant status in the documents produced at the United Nations. UNFPA, WHO (World Health Organization), and assorted activists promote “sexual and reproductive health and services and reproductive rights” at every turn. They are especially persistent about including this language in the “outcome documents” produced at annual meetings of the Commission on the Status of Women, the Commission for Social Development, the Commission on Population and Development, and the High Level Political Forum on Sustainable Development. Activists then use these and other documents to persuade countries to fill “the unmet need for family planning” and ensure “safe and legal abortion”—ostensibly to reduce poverty, save women’s lives, and promote their empowerment.

Their biggest victory came in 2015 with the adoption by the United Nations General Assembly of the Sustainable Development Goals,<sup>5</sup> which consisted of 17 goals, 169 targets, and 231 indicators with the ultimate aim of eradicating poverty by 2030. In Goal 3, relating to global health, activists succeeded in including the following language in Target 3.7: “By 2030, ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes.” In addition, under Goal 5, dealing with gender equality and the empowerment of women, Target 5.6 states: “Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences.”

### **The Reproductive Health Supplies Coalition**

UNFPA’s influence on population control extends beyond its individual activities. It is also a partner in the Reproductive Health Supplies Coalition<sup>6</sup> founded in 2004. As of June 2018, this Brussels-based coalition consisted of 458 member organizations from dozens of countries (up from 203 in 2012), including

115 from the United States. Its primary purpose is expressed as follows:

The Coalition is a global partnership of public, private, and non-governmental organizations dedicated to ensuring that everyone in low- and middle-income countries can access and use affordable, high-quality supplies for their better reproductive health. It brings together agencies and groups with critical roles in providing contraceptives and other reproductive health supplies. These include multilateral and bilateral organizations, private foundations, governments, civil society, and private sector representatives.<sup>7</sup>

Non-governmental members include advocacy organizations, funders, manufacturers of pharmaceutical products and medical devices, various non-profits, and assorted academic institutes.

In addition to UNFPA, some of the more prominent members include the International Planned Parenthood Federation (which is headquartered in London), International Planned Parenthood/Western Hemisphere Region (headquartered in New York City), the Bill and Melinda Gates Foundation, Catholics for Choice, CARE USA, David and Lucile Packard Foundation, EngenderHealth, Evofem Biosciences, Family Care International, Female Health Institute, Friends of UNFPA, Guttmacher Institute, International Partnerships for Microbicides, International Consortium for Emergency Contraception, International Youth Alliance for Family Planning, Ipas, Jhpiego (an affiliate of Johns Hopkins University), MacArthur Foundation, John Templeton Foundation, Medicines360, Merck Sharp & Dohme, Male Contraception Initiative, PATH, Pathfinder International, Population Reference Bureau, Population Services International, USAID, United Nations Foundation (founded by Ted Turner), William and Flora Hewlett Foundation, Women Deliver, World Health Partners, the World Bank, and the World Health Organization.

Every few years the Coalition makes estimates for the perceived need and cost of family planning supplies—which are oddly referred to as “commodities”—for 135 low- and middle-income countries (as determined by the World Bank) in what they term the *Commodity Gap Analysis*. In their 2018 report they estimated that contraceptive spending in the prior year totaled \$2.55 billion, of which \$2.1 billion was funded by the private sector and \$463 million by governments. To satisfy perceived future demand, the Coalition estimated that by 2020 there will be 493 million users of various contraceptive forms, requiring \$8.45 billion over the three-year period.<sup>8</sup>

#### “UNFPA Supplies”

The Coalition helps provide “UNFPA Supplies”—the distribution arm of UNFPA—with a market to purchase the “commodities” it needs. For pharmaceutical firms and other manufacturers of birth control devices, what bigger client could there be than the billion-dollar UNFPA with a global reach?

Bolstering the perceived demand for contraceptive commodities is the spurious

concept of an “unmet need for modern methods of family planning” that presumably exists among women in the poorest countries. In somewhat loosely constructed surveys, women are asked elementary questions regarding having and spacing children. The context of “unmet need” is derived from those responses. With strong UNFPA promotion, over time “unmet need” has turned into “unmet demand,” as illustrated in one UNFPA publication: “UNFPA Supplies works in 46 low income countries with high maternal death rates, low contraceptive use and growing unmet **demand** for family planning.” (I have bolded “demand.”)<sup>9</sup> Even the Secretary-General recently referred to progress made in meeting “demand” for “modern” contraception: “Globally, among women of reproductive age who are married or in a union, the proportion whose demand for family planning is satisfied by using modern contraceptive methods increased from 74.9 per cent in 2000 to 77.4 per cent in 2018. Progress has been more significant in the least developed countries, where this proportion increased from 39.4 per cent in 2000 to 58.5 percent in 2018.”<sup>10</sup>

UNFPA has turned itself into a global purveyor of contraceptives under the banner “UNFPA Supplies.”<sup>11</sup> Working mostly in sub-Saharan Africa, UNFPA takes the contraceptive products it purchases (sterilization and implants, intrauterine devices, injectables, pills, male condoms, and “other”) and distributes them for free, billing itself as “The World’s Largest Provider of Donated Contraceptives.”<sup>12</sup>

Several years ago, the Coalition’s website listed a more comprehensive set of “commodities,” presumably part of the “other” category. These included anatomical models (reproductive and sexual health education), manual vacuum aspirators and accessories, emergency reproductive health kits, sampling and inspection services, and condom testing services.<sup>13</sup> (Note that this list included abortion instruments in addition to contraceptive devices.) However, the web page with this expanded list is no longer available. Besides “commodities,” UNFPA purchases various other goods and services to carry out its work, including vehicles (ambulances and mobile clinics), IT equipment, and conference organizing services.

Under “emergency reproductive health kits” are 13 categories of items for use in disaster and humanitarian crisis situations: administration/training supplies, condoms, clean delivery kits, post-rape treatment, oral and injectable contraception, treatment of sexually transmitted infections, clinical delivery assistance, intrauterine devices, management of miscarriage and complications of abortion, suture of cervical and vaginal tears, vacuum extraction delivery, referral level kit for reproductive health, and a blood transfusion kit.<sup>14</sup> Currently, UNFPA is operating with these kits in the refugee camps of the Rohingya people who were expelled from Myanmar and fled to neighboring Bangladesh.<sup>15</sup>

Where does UNFPA get its funding? Primarily from government development

agencies of developed countries and from wealthy foundations. The former include USAID and its counterparts in Denmark, Norway, United Kingdom, France, Germany, and others. It should be noted that government contributions for reproductive supplies count as foreign aid.

Significantly, in April 2017, the United States decided to defund UNFPA. According to the 2015 UNFPA Annual Report, the United States had contributed approximately \$75 million that year. In fiscal year ended September 2016, USAID reported spending \$30.7 million on “population and development issues, with an emphasis on reproductive health and gender equality” among various types of allocations made to UNFPA for that period. The spokesperson for United Nations Secretary-General António Guterres issued a statement urging other donors to increase funding to the organization to offset this loss.<sup>16</sup>

### **Conferences for Contraceptives—RHSC, Family Planning 2020, and Women Deliver**

Just about every year the Reproductive Health Supplies Coalition has a general membership meeting. The last conference was held in Brussels in March 2018. This three-day confabulation covered a myriad of family planning topics, including many medical innovations. Coalition President John Skibiak, an anthropologist who has written extensively on development and reproductive health matters, offered this overview of their concerns and activities in his address:

I'd like to round out my review of 2017 by looking back on our growing body of work that explores the linkages between supplies and safe abortion. Last year, we saw the completion of four Innovation Fund grants in Asia, sub-Saharan Africa and Latin America. In Kazakhstan, our member Gynuity heightened provider awareness of a multi-level urine pregnancy test to monitor the successful completion of early medical abortion. In Nigeria, Ipas field-tested a mobile health app to help healthcare providers better track medical abortion and manual vacuum aspiration supplies on their premises, thereby reducing the frequency of stockouts. And in six Latin American countries, our partner CLACAI analyzed factors that have either favored or hindered the registration of mifepristone and misoprostol for safe abortion.<sup>17</sup>

Also of interest was the 2015 Coalition meeting held in Oslo and hosted by the Norwegian Agency for Development Cooperation (NORAD), which sponsored an event on “access to safe and legal abortion.” This is but one example that the promoters of family planning are also proponents of abortion—always framed in carefully worded language, always stressing “safe and legal.”

In addition to the Coalition meetings, the contraceptives market received a major boost from the London Summit on Family Planning, a mega-meeting held in July 2012 that designated 69 countries (a subset of the 135 low- and middle-income countries mentioned previously) as targets for contraception.

Spearheaded by the Bill and Melinda Gates Foundation (which as of 2016 listed assets of \$41.3 billion), a total of \$4.6 billion was pledged for the “unmet

need for contraceptives.” Poor countries “committed” to spend \$2 billion, while the rich donor countries committed \$2.6 billion to make “voluntary family planning” services available by 2020 to 120 million women and girls. Family planning was presented as a “cost saving intervention” beneficial to both families and national governments. Summit participants created yet another United Nations buzz phrase: Family Planning 2020, or FP2020, described as: “. . . global partnership that supports the rights of women and girls to decide, freely, and for themselves, whether, when, and how many children they want to have.”<sup>18</sup>

Additional efforts to boost family planning came from the Women Deliver movement. Between 2007 and 2016 they sponsored four major conferences—in London, Washington, Kuala Lumpur, and Copenhagen—to bring together a diverse group of activists to promote the advancement of women, including through family planning. Attending the meeting were the Gates Foundation, Planned Parenthood, UNFPA and other UN entities, and a great number of NGOs (some 2500 separate organizations) operating in the sexual and reproductive health and rights area.<sup>19</sup>

#### **Philanthropists for Contraception**

Perhaps the strongest global promoter of family planning is the Bill and Melinda Gates Foundation, which has already donated billions of dollars to the cause. They and others also fund research to develop generic, lower cost versions of contraceptives, especially in lesser developed countries such as China, India and Thailand.

The expansive nature of the Gates’ involvement extends to their Bill and Melinda Gates Institute for Population and Reproductive Health at the Johns Hopkins Bloomberg School of Public Health. They pledged at least \$2 billion to the effort, which:

. . . conducts and facilitates cutting-edge research in family planning, reproductive health, and population dynamics and translates science into evidence-informed policies, programs, and practice. The Institute works as an innovator, partner, advocate, and convener to bridge the gap between knowledge and implementation and promote access to universal reproductive health and family planning for all.<sup>20</sup>

Other American billionaire philanthropists also are involved in the contraceptive arena. One little-known effort involved the Susan Thompson Buffett Foundation, named for Warren Buffett’s first wife. One of the largest family foundations, with \$2.6 billion in assets (2016), the Buffett Foundation entered into a multi-year project to develop a cheap, effective and safe IUD. It underwrote research in Colorado, a study in St. Louis, and finally the creation of a non-profit to manufacture the product after securing FDA approval. This very low-profile undertaking was brought to light in 2015 by a diligent financial journalist from *Bloomberg BusinessWeek*, who reported that “In the past decade

the Buffett Foundation has become the most influential supporter of research on IUDs and expanding access to contraception.”<sup>21</sup>

The article also noted that in addition to the IUD development grant, “Much of the [Buffett] foundation’s other grants go to abortion-related work.”<sup>22</sup>

### **Seeking Religious Leaders as Partners**

UNFPA and its fellow travelers aim and claim to be “culturally sensitive” in their approach to family planning. They are aware that their “commodities” are naturally spurned, especially in many countries of Africa where children are regarded as “gifts from God.”

To gain converts, they first seek to win over thought leaders, community elders, or religious hierarchy on the benefits of family planning, arguing that having fewer children means more prosperity for families. These leaders in turn can influence the masses—and open up the market.

Through its extensive global network, UNFPA has had some success in acquiring religious partners, primarily through programs carried out in receptive countries. In 2014, for example, UNFPA held a meeting in Indonesia, the country with the largest Muslim population, to develop a training course based on longstanding successful family planning efforts in that country. The pamphlet promoting the course included this revealing statement: “The endorsements of influential Moslem Leaders to new ideas about family planning have facilitated their adoption by the community.”<sup>23</sup> UNFPA’s website offers the following commentary on relations with the “faith-based” world:

The United Nations is considered one of the world’s most secular institutions, with 193 member states representing peoples of different faiths and cultures and professing religious and agnostic beliefs.

Still, faith-based organisations (FBOs) continue to play a vital role in a wide range of issues on the UN’s political, social and economic agenda, including human rights, population, food, health, education, children, peacekeeping, disarmament and refugees.

UNFPA, The United Nations Population Fund, is perhaps the only UN agency that has invested—heavily and systematically since 2002—in setting up a Global Interfaith Network of over 500 non-governmental organizations (NGOs) reaching out to disenfranchised communities worldwide.

These NGOs include World Vision, Islamic Relief, Caritas, the World Council of Churches, the Young Women’s Christian Association and CAFOD, the official Catholic aid agency for England and Wales.<sup>24</sup>

Some of the organizations mentioned do indeed have extensive networks to carry out corporal works of mercy, but UNFPA is more interested in their “extensive networks” of service providers that would enhance distribution of their “commodities.”

### **Family Planning: A Human Right?**

The United Nations has a habit of taking a “rights-based approach” to nearly everything they do, but especially in the procreative prevention area. However, the United Nations Universal Declaration of Human Rights,<sup>25</sup> which will commemorate its 70th anniversary in December 2018, makes no mention of reproductive rights or family planning rights. Rather, in Article 3, the Declaration states: “Everyone has the right to life, liberty and security of person.” And in Article 16 (3), the Declaration proclaims that “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” These are rights that UNFPA seems no longer to be interested in.

In May 2018, UNFPA issued a little-noted press release entitled: “Fifty years ago, it became official: Family planning is a human right.”<sup>26</sup> This press release referenced a UN International Conference on Human Rights held in Iran in 1968; the resulting “Teheran Proclamation” stated that: “Parents have a basic human right to determine freely and responsibly the number and spacing of their children.” However, the 2018 press release omits mention of a prior significant sentence in the Teheran Proclamation: “The protection of the family and of the child remains the concern of the international community.”

Ignoring the earlier reference to the “protection of the family,” the UN press release warned that, after 50 years, family planning is under attack and declared:

Until family planning is a universally available choice, this human right will not be fully recognized. UNFPA and the World Health Organization have recognized nine standards that must be met in every community, for every individual.

The key word here is “every”—which expresses the universal reach of the UN’s family planning claws. As perhaps the most extreme of the nine standards states:

Contraceptive information and services must be available in sufficient quantity, with sufficient variety, to accommodate everyone in need. This is a human rights necessity, just like access to clean drinking water, adequate sanitation and a minimum standard of health care.

In other words, the entire panoply of family planning services must be available to everyone on earth, rich and poor alike, given that such services are as much of a necessity as drinking water!

### **Rewarding the Outstanding: The United Nations Population Award**

Each year the United Nations gives two (occasionally more) population awards, one to an individual and another to an institution, for outstanding contributions made in raising awareness of population matters and their solutions. The award is considered the “most prestigious” in the United Nations system and consists of a citation, a medal, and an undisclosed monetary amount—all

granted at an elaborate ceremony at headquarters every June. Awardees are selected by a committee of UN member states.

The first awards were granted in 1983 to Prime Minister Indira Gandhi of India and Qian Xinghong of China for their respective population control policies. China's one-child policy created significant demand for contraception and abortifacients. In 1985, the International Planned Parenthood Federation received the award.<sup>27</sup> Some other members of the Reproductive Health Supplies Coalition have also received this award for participating in the reproductive rights agenda and its population implications.

In 2018, three awardees were nominated: Sir Prince Ramsey, a doctor from Antigua and Barbuda for his response to the HIV/AIDS epidemic in the Caribbean; and two institutions, Save a Child's Heart of Israel which specializes in cardiac surgery for children in developing countries and the Guttmacher Institute of the United States, an offshoot of Planned Parenthood. Guttmacher was characterized as "a leading research and policy organization that advances sexual and reproductive health and rights in the United States and globally."<sup>28</sup>

### **Fertility Control: A Growth Industry**

Almost from its creation in 1969, UNFPA has taken aim at population growth and "uncontrolled" fertility as primary obstacles to global health, prosperity, and the empowerment of women. Along the way, it has collaborated with large numbers of government entities, NGOs, and wealthy philanthropists similarly convinced that the key to addressing many of the world's problems, particularly poverty and inequality, is pouring money into family planning initiatives. Not content with making contraceptives available to everyone, UNFPA also works to promote and provide abortion. Nearly fifty years after coming into being, UNFPA has achieved remarkable success in lowering fertility rates worldwide—and shows no signs of easing on the accelerator.

### **NOTES**

1. <https://www.transparencymarketresearch.com/pressrelease/contraceptives-market.htm>
2. <https://fred.stlouisfed.org/series/SPDYNTFRTINUSA>
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*"You said it again—'my smother . . .'"*

## Defending Women's Rights In China:

### An Interview with Reggie Littlejohn

*Reggie Littlejohn is founder and president of Women's Rights Without Frontiers (WRWF), a non-governmental organization that focuses world attention on China's coercive abortion regime and its approach to women, be they unborn girls aborted because they are the "wrong" sex, mothers compelled to abort because of that country's "family planning" policies, or widows left in destitution. An attorney and Yale Law School graduate, she spoke with John Grondelski for the Human Life Review about WRWF's work. Dr. Grondelski is a former associate dean of the School of Theology at Seton Hall University in New Jersey.*

**HUMAN LIFE REVIEW (HLR):** Please describe the work of WRWF: What do you do and what are the limits or dangers you face operating in Mainland China?

**REGGIE LITTLEJOHN:** WRWF has been called the leading voice to expose and oppose forced abortion and gendercide (the sex-selective abortion of baby girls) in China. We operate on two levels: International Advocacy and Direct Aid.

*International Advocacy.* The Chinese Communist Party boasts that they have "prevented" 400 million lives through the brutal one child policy. Our Advocacy campaign exposes these gross violations of women's rights, equipping governmental bodies, the media, and the public to understand these violations, building the political will to end these atrocities. We were the lead organization advocating for years that the U.S. should stop funding the United Nations Fund for Population Activities (UNFPA) and International Planned Parenthood, because of their complicity with coercive population control in China. In 2017, President Trump defunded them.

*Direct Aid to Mothers, Babies, and Widows.* According to one U.N. estimate, there are up to 200 million women missing in the world today due to "gendercide." Our Save a Girl campaign has boots on the ground in China and in two years has saved hundreds of girls from sex-selective abortion or abandonment. We also have begun to save destitute widows in rural China.

WRWF is committed to helping Chinese women at every stage of their lives. We help baby girls to be born, instead of being selectively aborted or abandoned because they are girls. Likewise, we help their mothers defend themselves against the pressure to abort or abandon their baby girls. And now we are extending help to elderly widows, to ease their suffering and give them new hope in the twilight season of their lives.

**HLR:** How did you come to get involved in this work? What has been your greatest reward from this engagement?

**RL:** After my graduation from Yale Law School, I became a litigation attorney in San Francisco and Silicon Valley. In the 1990s, I also represented Chinese refugees in their cases for political asylum in the United States. My first case involved a woman who had been forcibly sterilized under China's one-child policy. I had known that China had a one-child policy. I did not imagine that

this policy was implemented through forced abortion and sterilization. After learning this, I felt compelled to do something to help the women and babies of China.

**HLR:** China imposed a “one child” policy on its people in 1980. Can you describe what the one-child policy entailed and how it was enforced?

**RL:** The implementation of the one-child and, later, two-child policies has been coercive. The Chinese Communist Party has boasted that it has “prevented” over 400 million lives. In March 2013, it revealed it has conducted more than half a billion birth control procedures, including 336 million abortions and 196 million sterilizations. China has 23 million abortions a year. 23 million abortions a year breaks down to 63,013 abortions a day, 2625 abortions an hour, 43 per minute. The United States population is about 320 million, with about 1 million abortions per year. The population of China is almost 1.4 billion, with about 23 million abortions per year. Therefore China, with four times the population of the United States, has 23 times the number of abortions.

**HLR:** The one-child policy supposedly was relaxed in 2016. Has there actually been any relaxation of the policy?

**RL:** The 2017 Report of the Congressional Executive Commission on China contains documentation of continued forced abortion under China’s two-child policy. In addition, the sex ratio at birth reported by the Chinese government indicates that the selective abortion of baby girls continues under the new policy.

Specifically, the “Population Control” section of the report confirms that the two-child policy regulations “include provisions that require couples to be married to have children and limit them to bearing two children.” Coercive population control remains at the center of the new regulations: “Officials continue to enforce compliance with population planning targets using methods including heavy fines, job termination, arbitrary detention, and coerced abortion.” These coercive measures violate various international treaties to which China is a signatory.

**HLR:** What is the status of a child if (s)he somehow manages to be born evading Chinese “family planning” policies?

**RL:** If the mother goes into hiding and gives birth to an illegal child, one of two things can happen. If she can afford it, she may be given the option to pay a fine, known as a “social compensation fee,” for the illegal child. This fine can be up to ten times a person’s annual salary, so most couples cannot afford to pay it. The other option is to hide the child, in which case the child will be denied a *hukou*, or household registration. Without a *hukou*, the child will have no birth certificate and will not be eligible for government education or healthcare. The child will be denied a passport and, when grown, will not be able to officially work or marry. Of course, for the wealthy, there are other options to evade population-control policies, such as giving birth in Hong Kong or overseas.

One favorite place to give birth among pregnant Chinese women is the United States. The very wealthy have even hired American surrogate mothers. Babies born here are U.S. citizens. As such, they are not considered Chinese citizens, so they do not count against the coercive birth limit set by the two-child policy.

**HLR:** The Chinese Government has stated it may end the two-child policy within the next year. What will that mean for Chinese women and girls?

**RL:** According to a Bloomberg report, anonymous sources have stated that the State Council (China's Cabinet) has commissioned research on the impact of ending China's two-child policy, possibly within the next year. "The leadership wants to reduce the pace of aging in China's population and remove a source of international criticism," one of these sources said.

Having dedicated the last ten years of my life to mounting "international criticism" aimed at ending forced abortion and gendercide in China, I would of course rejoice over the end of all coercive birth limits in China. This would be a momentous victory for human rights and a vindication of the application of international pressure as a strategy to affect change within that totalitarian regime.

But I am holding off on this celebration. First, the Chinese government just commissioned a study. It has not yet enacted the new law. I hope it does. Doing so would be a momentous step in the right direction.

As always when dealing with the Chinese Communist Party, there is a catch. The Bloomberg article states that "China is planning to scrap all limits on the number of children *a family* can have . . . ." Many abortions in China are performed on unmarried women. The question remains: Will China "scrap" birth limits for all women, not just married women?

Further, the abolition of coercive birth limits will not end gendercide in China. Many couples in China choose to have small families. Many do not want a second child, because of limited resources of time and money. Because strong son preference remains, baby girls will continue to be selectively aborted and abandoned; people want their only child, or one of their two children, to be a boy. Second daughters, therefore, remain especially vulnerable, even with the abolition of coercive birth limits.

**HLR:** The one-child policy was implemented to limit Chinese population growth, but it has had a different—and deleterious—impact on Chinese demographics: an aging population and sexual imbalance. Can you comment on those factors and how they are affecting Chinese society?

**RL:** Due to gendercide—the sex-selective abortion or abandonment of baby girls—there are tens of millions of Chinese men who will never marry because their future wives were terminated before they were born. This gender imbalance is a powerful, driving force behind trafficking in women and sexual slavery, not only in China, but in neighboring nations as well.

Even if China were to completely abandon all population control now, demographers worry that it might be too little, too late to avert further demographic-related disaster. As one researcher stated, “Even if the family-planning policy were terminated today, it would be too late to solve our rapidly aging population, the drastic shrinkage of the labor force and the gaping hole in social-security funds that the country has already begun struggling with.”<sup>1</sup>

**HLR:** What kind of attention has WRWF’s work received from the United States or other governments?

**RL:** I have testified eight times before the United States Congress, most often at hearings called by Rep. Chris Smith, who is the person on Capitol Hill most committed to Chinese human rights and the end of coercive population control. As well, I have spoken three times to the European Parliament, twice to the British, and also to the Irish and Canadian Parliaments. I have also spoken at the Hague, the United Nations, State Department, White House, and the Vatican.

**HLR:** Describe your campaign to save baby girls from sex-selective abortion in China.

**RL:** In our Save a Girl campaign model, WRWF fieldworkers have developed a network of boots on the ground, through which we are alerted when a woman has gone in for an ultrasound, discovered that she is pregnant with a girl, and scheduled herself for an abortion; or when a woman has given birth to a girl and is being pressured to abandon her newborn daughter. A WRWF fieldworker visits the woman’s home and encourages her not to abort or abandon her baby girl. WRWF pledges to provide the mother with a stipend every month for a year which empowers the woman to resist those who want her to abort or abandon her daughter. WRWF also gives monthly support to women whose families are suffering from such poverty that their daughters are at risk of abandonment. We have an overwhelming success rate in women choosing to keep their daughters—we have saved hundreds of baby girls—and desire to replicate this program in India as well as to extend benefits in China. We are changing cultural perceptions of the value of girls, one family at a time.

**HLR:** Describe your campaign to save destitute widows in China.

**RL:** My heart broke when I learned of the incredibly hard lives of the elderly widows in China’s remote villages. They have nothing, and no one gives them anything. Their husbands are dead, often leaving a mountain of medical bills behind. In some cases, their husbands committed suicide when they learned they had a terminal illness, as they knew that they had no money for treatment. Some of these widows are themselves disabled and confined to a wheelchair. We extend a helping hand through our Save a Widow campaign.

The children of these widows are not helping them. Sometimes the children are disabled and in need of help themselves. One of our widows was so poor that some days, she ate only salt. Now, with our help, she always has vegetables

and often has meat.

How do we offer them hope? A fieldworker will come to their door and tell them that we want to help them because as human beings, they have infinite value. We offer them a monthly food stipend.

These poor women are intensely grateful that someone from the other side of the world believes that they are infinitely valuable and that they have dignity, even though their own families have abandoned them. They cannot believe that someone would help them without asking for anything in return. They have never experienced anything like this in their long, hard lives in the Chinese countryside.

**HLR:** Thank you.

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*"Keep digging!"*

## FILM / BOOKNOTES

### LADY BIRD

Directed by Greta Gerwig

*Reviewed by William Doyno Jr.*

When movie viewers first meet the character of Christine McPherson—who has renamed herself “Lady Bird,” as an act of teen rebellion—we find her sharing a quiet moment with her mother, Marion, as they ride along in their car, visiting potential colleges for Christine.

This tranquility is short-lived, however, as it bursts into an argument, and then reckless bravado—as Lady Bird opens her passenger door and suddenly jumps out of the moving vehicle, ending the argument on *her* terms.

Since Lady Bird only injures her arm (and soon recovers), this jolt of black humor ends with a soft landing. But the sheer zaniness of it is one of the many moments that make *Lady Bird* such an affecting, original film.

Released last year to tremendous acclaim, *Lady Bird* is the creation of the multi-talented Greta Gerwig, who has earned previous accolades for her writing, directing and acting, but never to the degree *Lady Bird* has.

One reason is the film’s authenticity. It is set in Sacramento, the capital of California, where Gerwig grew up, and expertly conveys the rhythms and idiosyncrasies of that endearing but often overlooked city. The movie’s main action takes place at a girls’ Catholic high school—which Gerwig, in real life, also attended (as a grateful non-Catholic). She drew upon those experiences to craft her highly entertaining script and direct it with a sense of mission.

The second reason is the film’s superb cast, led by Saoirse Ronan (of *Brooklyn* fame) as Lady Bird, and Laurie Metcalf as her mother. Just 24, Ronan is one of Ireland’s leading actresses, and has already earned three Academy Award nominations (including one for *Lady Bird*); she may be the next Meryl Streep, given her effortless ability to transform herself into widely diverse personalities. In *Lady Bird*, Ronan not only captures the spirit and mannerisms of a rambunctious seventeen-year-old, she dyed her hair red, refused to wear makeup, and spoke with an impeccable Sacramento accent to make her character all the more believable. It is a brilliant performance.

Metcalf’s turn as Marion, which also garnered an Oscar nomination, is equally accomplished. Though best known for her work in television’s *Roseanne*, Metcalf is a highly regarded stage actress, and *Lady Bird* allows her talents to shine. As the anxious, overburdened, demanding but loving matriarch of the McPhersons, Metcalf is marvelous as she contends with her quirky daughter, unemployed husband, and adopted son. She has a true actress’s gift for conveying messages

with a mere glance or gesture, and her body language is as much a part of her character as are the lively, and often intense, conversations Marion has with her family. She commands our attention as much as Lady Bird.

Sacramento has been called “the Midwest of California,” which is either a compliment or a put-down, depending on one’s perspective. For Lady Bird, it’s the latter, at least on the surface, for she constantly complains about her boring life, and desire to escape it. “I hate California,” she tells Marion, in a typically unvarnished way, “I want to go to the East Coast. I want to go where *culture* is—like New York, or at least Connecticut or New Hampshire where writers live in the woods.” Never mind that Lady Bird doesn’t have the grades to get into an elite college, or that her financially strapped family can scarcely pay for one.

Marion tries to persuade her daughter to attend a local state university, UC Davis, rather than one beyond her family’s means and far from Sacramento, but Lady Bird resists. This mother-daughter conflict simmers and builds throughout the film. Interestingly, the discipline Lady Bird fights at home is more accepted by her at Immaculate High, where Marion has sent her daughter to avoid the hazards of public schools.

At Immaculate, Lady Bird isn’t exactly a model student—and sometimes far from it—but the nuns and priests who instruct her are so kind and forgiving that she learns to respect them, and even become an unlikely disciple—showing genuine reverence when attending Catholic services. The structure and harmony of a good Catholic education clearly benefit her, even though she doesn’t immediately realize it, distracted as she is by other perennial teen temptations—such as cliques and boyfriends.

Lady Bird’s best friend is the shy but charming and bubbly Julie (a wonderful performance by Beanie Feldstein), who loyally stands by her friend until Lady Bird impulsively abandons her, hoping to hook up with the school’s chic crowd. That decision does not fare well for anyone involved.

After meeting Danny O’Neil (Lucas Hedges) during her school play, she begins to date him and has her first romantic kiss—only to discover that Danny likes kissing fellow high school boys, too. Mortified, but on the rebound, Lady Bird allows a slick musician and classic operator named Kyle (Timothée Chalamet) to convince her to have sex with him, since it will be their first time, and no doubt thrilling. But their awkward, fumbling encounter is anything but, and Lady Bird’s acute disappointment is compounded when Kyle admits it wasn’t his first time, after all. The usually self-assured Lady Bird is shaken—not to say shattered—by this revelation, explaining, “I just wanted it to be *special*.” Trying to soothe her anguish, Kyle only makes matters worse: “Why? You’re gonna have so much *unspecial* sex in your life,” so why feel so bad about it this time?

At that point, *Lady Bird* becomes much more than a typical coming-of-age movie, revealing its gravity and emotional depth. It flips the usual script, and instead of extolling premarital sex, cautions against it. The emptiness and pain to which the hook-up culture invariably leads hits home to anyone watching with real dramatic effect.

Lady Bird's third life lesson comes after she drops Julie for Jenna (an aptly cast Odeya Rush), who is considered—and regards herself—as the school's most attractive, affluent, and popular student. So eager is Lady Bird to win Jenna's approval that she tries to impress her with tall tales and lies about being wealthy. When Lady Bird's secret is exposed, however, the status-conscious Jenna immediately drops her, forcing Lady Bird to wonder why she ever left her true friend, Julie, in the first place. As Lady Bird tries to repair that broken relationship, she faces an even greater challenge: seeing eye to eye with her mother, especially about her own future.

After Lady Bird is accepted into nearby UC Davis, Marion is relieved, and appears to be at peace with her daughter. Unbeknownst to Marion, however, Lady Bird, who has no intention of attending that university, continues to secretly apply to colleges in New York, and—with the help of her heart-of-gold dad (a well-played Tracy Letts), and some unexpected financial aid—succeeds in getting into one. But when Marion finds out, she explodes, and refuses to talk to her daughter the rest of the summer, opening up a chasm between them as wide as ever.

By the time Lady Bird leaves for New York, she is barely on speaking terms with her mom, and when she arrives there, college life in the big city is more challenging and less glamorous than she imagined. A series of moving and consequential events, which won't be revealed here, leads Lady Bird to reconsider what she really values about her life, what Sacramento really meant to her, and—most astonishing—what her Catholic education did for her. She gradually moves away from her artificially-created “Lady Bird” persona, and accepts the name her parents gave her, Christine. In the process, she discovers her true self. The ending of the film is as beautiful and transcendent as anything I've seen in recent cinema. It left me uplifted and thankful.

On the whole, *Lady Bird* is so appealing, and has so many flawless scenes, that some critics have described it as “the perfect film.”

In comparison to many others from Hollywood, that may be true, but there are at least two questionable elements about it.

First, though not nearly as explicit as many other films in this genre, some of the language is simply too coarse, even for a rebellious teenager, and the love scenes between Lady Bird and Kyle push the envelope too far. Here, Gerwig could have profited from the legendary director Frank Capra's advice about sex and motion pictures: “Less is more.”

Second, in a scene involving a pro-life counselor at the high school, Christine responds with a series of sarcastic quips and *non sequiturs*, leaving us to wonder just what kind of message the movie wants to leave. It is the only major scene in the movie that doesn't quite work, and could have been much better rendered, even in an unconventional way. If Gerwig really wanted to be daring, she could have had Lady Bird ask the pro-life speaker, "But isn't it true that Dorothy Day, one of the Church's great modern women, had an abortion, and if so, why is she now being considered for sainthood?"—which could have led to a fascinating discussion about sin, forgiveness, and the workings of divine grace.

That said, the wonders of grace are never far from this film. Perhaps the greatest miracle of *Lady Bird* is that Gerwig inspired not only Bishop Robert Barron to praise it as a grace-filled film, but even the thoroughly secular *Wall Street Journal* and *New Yorker* to do so as well.

*Lady Bird* is a serious and sometimes uncomfortable film to watch, but one filled with heart and hope, and ultimately redeemed with touching moments of enduring love and affection.

It is not a perfect film, but if there is such a thing as an imperfect perfect film, *Lady Bird* might just be it.

—William Doyno Jr. writes about religion, history, and politics. His work has appeared in many publications, including *Inside the Vatican* and *First Things*.

## WHY LIBERALISM FAILED

*Patrick J. Deneen*

(New Haven, Conn.: Yale University Press, 2018, 248 pages; hardcover, \$30)

*Reviewed by Nicholas Frankovich*

Radical chic, the fashion for anti-establishment sentiment that the New Left introduced into American culture in the 1960s, has arrived on the Right. This development complicates the political life of conservatives for whom true North in civic affairs is old-school, classical liberalism. Insofar as classical liberalism depends on a psychological tendency as much as on a precise philosophy, it's hard to define, although one usually begins by sketching it out in certain broad strokes: lean, limited government, scaled up just enough to ensure national security and public order, while at the same time loathing to restrict anyone's personal liberty, doing so only to the extent of preventing the most flagrant possible clashes between individuals exercising their respective freedoms to do as they please or as they think they ought.

The necessary underpinnings of that political arrangement are a constellation of social and cultural norms, attitudes, and behaviors. Let's call them virtues. At a minimum, they consist of tolerance, which may be seen to imply acceptance

of what we think is immoral, except that we may express our disapproval while at the same time agreeing to refrain from taking it into our own hands, like a vigilante, to put a stop to actions that are legal but, in our judgment, unjust or in error. Related to the liberal virtue of tolerance but a little above it is civility, when we can muster the restraint and discipline to practice it. Finally, if we can reach so high, we treat our neighbor with magnanimity, a matter of putting the most charitable interpretation possible on his motives when we find ourselves contending with him over questions of how best to guarantee justice and thereby achieve the common good.

“Our constitution was made only for a religious and moral people,” John Adams observed, in a letter widely quoted these days because it speaks so directly to how the decline of traditional standards of morality and public comportment in Western societies has coincided with a deterioration of “the liberal order,” which, again, is hard to define, though we know it when we see it, or think we do. Today the contempt in which the term *liberal* is held across the West, including the United States, is greater than at any time since the 1960s.

Patrick Deneen, a political scientist and longstanding critic of classical liberalism, makes his case in one of the year’s must-read books. *Why Liberalism Failed* is a lucid if gloomy—and, in the end, frustrating—attempt to explain his thesis that, unaware, the architects of the liberal order built their edifice on soft ground, into which, centuries later, we watch (some of us in trepidation, others with undisguised glee) the foundation sink and the ramparts collapse.

That’s where the gloom comes in. Deneen piles on example after example of the unintended misery and desperation wrought by “liberalism.” At the level of sentence structure, his tone is measured, but the cumulative effect of his syllabus of liberalism’s errors is rather scolding. It’s reminiscent of big-picture critiques that self-confident radicals were wont to make against the Establishment, the System, and what have you half a century ago.

What makes Deneen’s account frustrating is the expansiveness of his definition of *liberalism*. Can it be stated in a sentence? Let me try. By *liberalism* Deneen means, at bottom, a doctrinaire and excessive individualism. Liberalism in his view is a philosophy according to which the value we place on individual autonomy, or freedom from societal constraints, is out of all proportion to the value we place on the *freedom to* belong to a family, a community, or a society. Our deep, original commitment to “freedoms from” blinds us to the “freedoms to”—the freedoms to enjoy sociality and relationality, whose value socialists and communitarians are given to emphasize (and sometimes to overstate). On this view, liberalism has bodied forth a dizzying menagerie of modern woes, from statism to economic inequality to campus hookup culture. A cynic might quip that, for Deneen, liberalism is the name of whatever you might happen to hate about life in the Western world in the 21st century.

In his telling, the liberal state is charged with the protection of individual liberties. But as the scope of recognized liberties expands, so does the state. It impinges with increasing ferocity on your freedom because you might exercise it in such a manner as to limit mine. That my freedom has come to count for more than yours is a blatant injustice, and that this is what liberalism in its maturity-declining-into-senescence would become was encoded into its genes from the beginning. Liberalism thus conceived was always destined to degenerate into illiberalism. “Liberalism has failed,” Deneen writes, in a typically elegant passage, “not because it fell short, but because it was true to itself. It has failed because it has succeeded. As liberalism has ‘become more fully itself,’ as its inner logic has become more evident and its self-contradictions manifest, it has generated pathologies that are at once deformations of its claims yet realizations of liberal ideology.”

The attribution of agency to abstract nouns is nigh impossible to avoid in any stretch of political theorizing longer than a few pages (for an example, see the first paragraph of this review), so let’s cut Deneen some slack. Nonetheless, the inner logic, as it were, of that rhetorical shortcut is prone to generate error and lead the writer to veer off course, if only by a degree or two—and over the long haul, that can be enough to send him into a ditch. When Deneen says that liberalism has failed, he implies an invisible hand—a “pervasive invisible ideology,” he calls it. It gives rise to “a systemic challenge” that operates in society at first to our apparent benefit but ultimately to our detriment.

Isn’t what he means, however, that so-called liberals have failed liberalism, by neglecting to balance adequately the value of individualism against that of relationality? That, shunning the extreme of collectivism, they have crashed onto the shores of atomism? And that, even on the narrower question of honoring the dignity of the individual, they have succumbed to the temptation to pretend, as in the case of slavery and then of abortion, that human beings with little or no social clout lack the dignity that would entitle them to the protection of their fundamental natural rights? By the “inner logic” of liberalism, or certainly of liberalism strictly understood, the humanity of an unborn child or of an African captured and in chains prevents those who are stronger, or who have the whip hand, from imposing their unfettered will on them.

“Children are increasingly viewed as a limitation upon individual freedom,” Deneen writes, “which contributes to liberalism’s abortion on demand.” Here he adopts a loose, popular usage of *liberalism*. A rigorous usage would demand a frank recognition of the two individuals—a mother and her unborn child—whose interests conflict when the woman seeks to abort him. Even abortion-rights advocates acknowledge his status as a discrete human being when, albeit disingenuously, they assert that it would be an injustice to him to bring him into this world under the conditions in which they assume he would grow up. That

is, they argue, in effect, that his mother is his rightful proxy for the grave medical decision whether he will exercise his putative right to die. The outcome they aim for—license for his life to be taken—is the same as if they had succeeded in persuading the public to maintain the fiction that no human being in the course of his natural life ever passed through the early stage of embryonic and fetal development. To its credit, the public has remained skeptical of such a claim. Most people understand that though the bond between their mothers and themselves in utero could not have been closer, what made that intimate relationship a relationship was that they were two distinct individuals.

Ideas of abortion rights stem not from liberalism but rather from nebulous notions of what we might call “the spirit of liberalism,” much as liturgical abuses and heterodox preaching and teaching in the Catholic Church in the past half century are often baptized in the name of “the spirit of Vatican II.” By “liberalism,” doesn’t Deneen mean rather the hash that we flawed mortals, given to cutting corners in our moral reasoning, have made of what he calls “the liberal project”?

Mary Ann Glendon, in *Abortion and Divorce in Western Law* (1987) and *Rights Talk* (1991), anticipated his view that liberalism in practice overreaches so far in the direction of “lonely individualism” and isolation that it cuts off many possibilities for vital forms of belonging and relationship. Deneen’s *Why Liberalism Failed* rhymes as well with *The Cultural Contradictions of Capitalism* (1976), by Daniel Bell, who offered a cogent description of the conflict between what modern capitalism promises to individuals, which is self-fulfillment, and what it demands of them, which is the subordination of their individuality to the corporation. Neither Glendon nor Bell shows up in Deneen’s book, not even in the bibliography. Their absence is a disappointment.

What does Patrick Deneen want? To judge from his final chapter, some of what he wants is localism, not unlike what the Southern Agrarians of an earlier era pined for, or what in Catholic social teaching comes under the rubric of subsidiarity. It’s not clear how a preference for traditionalism in culture and social mores and for a taming of free-market libertarianism in economics would be inconsistent with liberalism in politics. In prosecuting “liberalism,” he inadvertently gives oxygen to the fashion for trashing virtues—tolerance, civility, magnanimity—that are associated with that term and denigrated by those on the radical Right who regard them as impediments to their struggle against the radical Left. At the level of abstraction at which Deneen constructs his argument, whether one agrees with him or not may come down to a question of semantics. I will assume that what he means by “liberalism” is what I mean by “illiberalism,” and that I should join the effort to hasten its demise and revive its opposite.

—*Nicholas Frankovich is an editor at National Review.*

**WHEN HARRY BECAME SALLY:  
RESPONDING TO THE TRANSGENDER MOMENT**

Ryan T. Anderson

(New York/London: Encounter Books, 2018, 251 pages; hardcover, \$27.99)

*Reviewed by Jason Morgan*

The most pressing social and philosophical question of the past four centuries has been, Who is the human person? Following Rene Descartes' turn to radical skepticism and the general post-Cartesian thrust of Western philosophy towards trying to understand man without God, Western societies have grown increasingly baffled by the question of who people are, and even of why human life matters in the first place. To the dismal list of confusion and obfuscation about the human person—a list including abortion, eugenics, euthanasia, genocide, denigration of marriage, and transhumanism—must now be added, sadly, transgender ideology.

As yet another turning of the Sexual Revolution, the etiology of transgender ideology is fairly simple to map out. In the late nineteenth and twentieth centuries, the high modernism of Freudian psychoanalysis saw in the libido both the source of, and setting for, psychological unease of all kinds. And yet, even though Freud and many of his followers and contemporaries encouraged unbridled sexual expression as a way to counter “repression” and liberate the self, psychology as a discipline continued to maintain that there were certain boundaries and norms against which to measure deviation. Homosexuality, for instance, was listed in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-II) as a “mental disorder” until as late as 1987. And the notion that a man could be trapped in a woman's body, or vice versa, was, like homosexuality, something clearly at odds with plain-to-see anatomy. Even in 2005 the DSM-II understood “gender dysphoria” also as a mental disorder.

In the 1970s, however, some radical clinicians began to challenge even the bodily limits to sexual deviance. For example, John Money (1921-2006) was a New Zealand-born psychologist who helped popularize the notion that “gender” includes sex—in other words, that being male- or female-minded, and not having male or female gametes, is what makes one a man or a woman. Others, such as German physician Harry Benjamin (1885-1986), achieved notoriety by performing high-profile “sex change operations” which shocked the bourgeoisie while titillating the masses with the strange possibilities of a man becoming a woman, and vice versa. Perhaps most famously, a New York man named George William Jorgensen, Jr. (1926-1989) paid a team of doctors—including Dr. Benjamin, as well as an endocrinologist in Copenhagen named Christian Hamburger (1904-1992) and a Manhattan physician named Joseph Angelo—to

provide him with hormone therapy and, eventually, to perform a penectomy and a subsequent vaginoplasty. George Jorgensen lived out the rest of his life as “Christine Jorgensen,” and has achieved fame as one of the heroes of the Sexual Revolution.

Thanks to this teamwork of confused individuals and unethical “doctors,” the biological fences that once hemmed in Freudian “liberation” have been all but bulldozed. With the advent of Cultural Marxism in the 1960s—which melded Freud and Marx to direct the proletarian revolution inside, against the human psyche and soul—the human person was shipwrecked on deep and destructive skepticism. It became increasingly unclear who we really were. This has only worsened with time. *Sybil* was a heartbreaking tale of multiple personality disorder when it was published in 1973 (the same year, incidentally, that the *Roe v. Wade* and *Doe v. Bolton* decisions were handed down by the United States Supreme Court). In 2015, former Olympian Bruce Jenner also confessed to being greatly conflicted between mind and body. The next year, dressed in wig and evening gown, he won the Arthur Ashe Courage Award from ESPN.

Given the full-on Valkyrian screeching of the Sexual Revolution in wild ascendancy, the eventual crowning of transgenderism as *Fad du Jour* seemed all but a given. And yet, even the most fanatical transgender activist must have been taken aback at how quickly their basic arguments went from being met with a bemused grin to being the shibboleth used to separate the knuckle-draggers from the enlightened in the latest phase of the culture wars. How did we go from “sex-change operation” to “gender reassignment surgery,” from “sex” to “sex assigned at birth,” from “heterosexual” to “cisgendered,” from “drag queen” to “genderqueer”? How did transgender ideology sprint from the fringes to become our newest national obsession?

Ryan T. Anderson’s new book, *When Harry Became Sally: Responding to the Transgender Moment*, gives us much of the answer. Here, Anderson sets forth in detail how, in just a few years, transgender ideology has stolen all the oxygen from feminists, pro-abortion lobbyists, and homosexual advocates to become *the* big issue of sexual politicking. Anyone interested in learning the lay of the transgender landscape—who the leaders are, where the ideological divisions run, how the political economy of sexual deviancy works in the United States, and what alarming chasms there are between theory and reality, between science and practice—should buy and read Anderson’s book right away. This is the one indispensable guide to transgenderism as political and policy tool, and as body of specious pseudo-scientific literature.

Anderson’s book is divided into eight thematic chapters. Especially helpful are Chapter Two, “What the Activists Say,” in which Anderson walks us through the array of transgender arguments and how those have changed over time; Chapter Five, “Transgender Identity and Sex ‘Reassignment,’” which is

a good overview of the medical and philosophical debates over this issue; and Chapter Seven, “Gender and Culture,” a history of gender theory’s long march through the institutions, wrecking marriage, the family, and the human person in the process. Heartbreaking to read were Chapter Six, “Childhood Dysphoria and Desistance,” and Chapter Three, “Detransitioners Tell Their Stories,” which show the horrific psychological, emotional, spiritual, and physical scars left by “doctors” who treat human subjects—many of them very small children—as Petri dishes for concocting new mashups of gender-ideology strains.

Anderson’s Virgil-like guide through the dizzying onslaught of transgender ideologies is Dr. Paul McHugh. McHugh, who completed his medical training at Harvard Medical School in the 1950s, abandoned his early Freudian influence and turned to the study of neurology. From 1975 until 2001, McHugh was the chief psychiatrist at Johns Hopkins Hospital and the Director of the Department of Psychiatry and Behavioral Sciences at the Johns Hopkins University School of Medicine. In 1979, McHugh was instrumental in closing Johns Hopkins’ transgender identity clinic, having become convinced that there was no scientific or medical basis for encouraging gender dysphoria and performing hormonal or even surgical procedures designed to transform, to some degree, a male body into a female body, or vice versa. Anderson follows McHugh’s abundant sanity and moral courage as Dr. McHugh almost singlehandedly stands athwart the juggernaut of ideology and galloping bio-political revolution that has swept through most Western institutions and governments over the past forty years. *When Harry Became Sally* is largely a story of the horrifying power of groupthink—a product of the near-universal trait of man as the cowardly political animal—in convincing multitudes to mistrust sober reason and solid fact in preference to believing in a fantasy, even as the human costs of that fantasy mount.

However, while *When Harry Became Sally* is a very useful overview of the transgender moment, it is not, unfortunately, a complete response to that moment. In his other work, for example on marriage (*What Is Marriage? Man and Woman: A Defense* [with Sherif Gergis; 2012] and *Truth Overruled: The Future of Marriage* [2015]), Anderson makes an essentially sociological argument in favor of the nuptial union of one man to one woman. In *When Harry Became Sally*, Anderson argues, not that man and woman are created in the image and likeness of God, but that man and woman are man and woman because of biology. Thus eliding metaphysics surely allows Anderson more freedom to maneuver in what is unquestionably an ultra-secular milieu deeply hostile to what he has to say and to anyone brave enough to say it. But *When Harry Became Sally* shows why, in the end, this approach will fail.

Anderson’s mentor, Princeton professor Robert P. George—a veteran culture warrior who has gone to the mat in defense of cultural sanity perhaps more than any other living American—is quoted in *When Harry Became Sally* saying,

“Changing sexes is a metaphysical impossibility because it is a biological impossibility.” (From “Gnostic Liberalism,” *First Things*, December 2016.) The fuller context of this quote brings out George’s argument:

Sex changes are biologically impossible whenever it becomes true that to change the person’s sexual capacities down to the root would require reversing so many already-differentiated organs and other sexual traits that one wouldn’t end up with the same organism.

In other words, there is a metaphysics of sex, a Platonism—to be blunt—of penises and vaginas, which means that we are integrated wholes with teloses created for a very, very specific purpose. The answer to those suffering from sexual dysphoria is to be found, not in a biology textbook, but in the *Baltimore Catechism*:

**Q. What is man?**

A. Man is a creature composed of body and soul, and made to the image and likeness of God.

**Q. Why did God make you?**

A. God made me to know Him, to love Him, and to serve Him in this world, and to be happy with Him forever in heaven.

However, Anderson’s approach leaves all of this unsaid. To be sure, Anderson’s audience is not the choir but the pitchfork-and-torch-wielding mobs outside the cathedral. Metaphysics, let alone religion, is hardly a popular subject among our atheistic compatriots. And anyway, Supreme Court cases are not fought out on the level of metaphysics or theology, so Anderson and his fellow cultural conservatives must aim where they can have the most effect. This is all true. But what George and Anderson have amply demonstrated in many of their other writings—and I am thinking here most recently of George’s beautiful essay on Aleksander Solzhenitsyn and God (*First Things*, June 2018)—is that what ails the West is not sociological or biological, but philosophical, and ultimately theological. Yes, George’s *Conscience and Its Enemies* (2016) and Anderson’s *What Is Marriage?* are both designed to appeal to agnostic, even atheistic, audiences, sadly a much-needed approach in a fallen age. But the deeper fact remains: We are sick at heart and lost in soul. *This* is why we kick against the biological goads, and why no appeal to biology will soothe the savage rebel in our innermost beings.

In the “Gender and Culture” chapter, Anderson quotes sociologist J. Richard Udry, who in his influential 2000 essay “Biological Limits of Gender Construction” writes, “A social engineering program to de-gender society would require a Maoist approach: continuous renewal of revolutionary resolve and a tolerance for conflict.” Anderson hurries past this, stating only, “Building a society on a sound understanding of gender is simply good for our nature,” seemingly unaware that, with the Mao reference, Prof. Udry has hit upon Anderson’s real subject precisely. Transgender activists are not ultimately in favor of this or

that policy, or this or that treatment, or this or that researcher—no, transgender ideology is yet another trebuchet for demolishing the human person and breaking down all created order. This is a metaphysical assault, and yet we continue to treat transgenderism, as with so many other attacks on human life, largely as something we can resolve with the democratic process, or with “federalism” (Anderson, 203), or with reasoned philosophical discourse.

In his Conclusion, Anderson gives us a two-page “plan of action.” What we need, he says, are clinicians, doctors, and therapists who will resist transgender ideology and offer real, health-giving care to patients, as well as scholars and others willing to “engage the broader culture” and “defend the truth in the public square.” We most certainly need these, and need them in abundance. But it is not until halfway through the action plan that Anderson turns his attention to “religious leaders,” who “can contribute to these efforts in various ways.” Surely it would be nice to see religious leaders teaching the truth about the human person. But unless this involves transforming American society by re-evangelizing a country that has by and large gone to pagan seed, then it is difficult to see how all the doctors, psychologists, and spokespeople in the world will make any difference. Jordan Peterson, the famous Canadian professor who has achieved notoriety for his erudite takedowns of postmodernism, feminism, gender ideology, and the other pseudo-intellectual idols of our age, is perfectly capable of “engag[ing] the broader culture” and “defend[ing] the truth in the public square.” Peterson evinces a profound respect for the Bible and has proven a deft exegete of biblical texts. But the human heart craves more. We are made for something much bigger than biology, much grander than sound psychology and honest intellectual history.

Without metaphysics, we are left with the odd arrangement of cultural conservatives ultimately agreeing with cultural progressives that God has no real place in the debate about who we are. This is most unfortunate, and it hamstring all of our efforts to tell important, albeit lesser, truths. To put it bluntly, the adversary is not fighting us in the Supreme Court, or in policy journals, or in college debate circles, or on the talk shows or the evening news. The real fight is over our souls. Denying this may produce occasional Pyrrhic victories, but failing to address the real problem will not help anyone in the end. *When Harry Became Sally* is a brilliant, well-researched, well-presented overview of transgender ideology’s many errors. Except the biggest one. In arguing that biology should be our guide, Anderson unwittingly cedes the field to the enemy. Conceiving of the human person as body or as mind is the root cause of our ongoing Cartesian plunge into not just sexual dysphoria, but existential dysphoria more broadly. We are body, mind, *and spirit*. Until we can admit that and fight back on those grounds, we had better get used to losing a lot more culture wars into the future. —Jason Morgan is an assistant professor at Reitaku University in Japan.

## FROM THE HLR WEBSITE

### The Impossible Expectations Placed on Parents

*Joe Bissonnette*

“Do Not Let Your Children Do Anything That Makes You Hate Them” is a no-nonsense chapter title from Jordan Peterson’s recent bestseller, *12 Rules for Life: An Antidote to Chaos*. And it exemplifies the sort of clear-eyed truth-telling that has earned Peterson the reputation he so richly deserves.

Peterson begins with an anecdote we all easily can recognize because we have witnessed it play out many times. A three-year-old is throwing a tantrum in a crowded public place, torturing everyone in the area, and humiliating his parents, who lack the confidence to do their job and rein in their child. On the face of it, it would seem that the child has won. But everything has consequences; the bad behavior of the child, but especially the failure of the parents to exercise their authority. Humiliation, confusion, and guilt form into resentment, and later, at an unrelated moment when the child reaches out, his parents will reflexively be cool and indifferent. A downward spiral is inevitable. Parents and child are estranged. Parenting gone bad.

Hailed by the *New York Times* as the most influential public intellectual of our moment, Peterson teaches psychology at the University of Toronto, and until recently also managed a clinical practice. He intermingles accessible anecdotes with subtle psychological theories, arresting insights, and an able recounting of intellectual history. Peterson dismisses the much-celebrated Jean-Jacques Rousseau, who claimed that nothing was as gentle and wonderful as man in his pre-civilized state. As Peterson ruefully notes, “at precisely the same time . . . [Rousseau] abandoned five of his children to the tender and fatal mercies of the orphanages of the time.” Ideology can justify terrible cruelty.

Peterson has no sentimental illusions about human nature or the innocence of children. “[H]uman beings are evil as well as good,” he writes, “and the darkness that dwells forever in our souls is also there in no small part in our younger selves. In general people improve with age, rather than worsening, become kinder, more conscientious, and more emotionally stable as they mature . . . it is not just wrong to attribute all the violent tendencies of human beings to the pathologies of social structure. It’s wrong enough to be virtually backward.”

On creativity and the folly of unstructured indulgence, Peterson observes: “We assume that rules will irremediably inhibit what would otherwise be the boundless and intrinsic creativity of our children, even though the scientific literature clearly indicates, first, that creativity beyond the trivial is shockingly rare, and, second, that strict limitations facilitate rather than inhibit creative

achievement.” With very rare exceptions, our children are not geniuses, but even if they are, they will benefit from structure and orderliness.

Much of what Peterson has to say is bracing, because it flies in the face of what have become foundational assumptions about human nature. But it is not just that. It feels like remembering something that came before. Like the rediscovery of some lost truth. And for no one is this more the case than for young men—and young fathers.

I teach with a gentle young man, perhaps likable to a fault. He is married with two young children. Let’s call him Greg. Greg spent most of the past weekend coaching and watching his two children play soccer. I know this doesn’t sound extraordinary, and that’s exactly the point. It’s commonplace for today’s parents to spend huge amounts of their time catering to their children. It’s commonplace for parents to be attentive, even solicitous of their children, calling them “buddy,” inquiring after their interests and moods in plaintive tones. Many modern parents are guided by a Rousseauian idealization, even as they keep bumping into the hard reality of their children as spoiled, unhappy tyrants.

Irving Kristol said “a conservative is a liberal who has been mugged by reality,” and perhaps Greg and many others are mid-mugging. There can be an awakening, a sort of hyper-attentiveness in moments of crisis. But crisis can lead to extreme, reactive solutions. If we are to avoid a sort of Manichean bifurcation, where the pastel-toned suppression of masculinity gives rise to a *Fight Club* psychotic break, we need the sort of clarity and practicality Peterson provides in his book. And we need it specifically for young parents.

My wife and I have raised seven children. This is not a boast, it’s a confession. We have made all the mistakes. But we have come up with three general principles which should make parenting more enjoyable and more successful.

*Good parents are first of all good as husband and wife.* The most loving thing you can do for your children is to spend less time worrying about them and more time loving your spouse. If children see that their parents love each other, they feel existentially secure. You are the wellspring of their being. You are a force of nature. This is a hugely significant feature of a child’s psyche, but it is undervalued today, because of its unpleasant implications regarding divorce. (Divorce is the declaration that a marriage was a mistake. The children of divorce often experience an existential crisis because, they infer, if the marriage from which they come is a mistake, then they are in some sense a mistake.)

*Children want to look up to their parents.* Children live in a world of primal truths; of predators and prey. Children want their parents to be bona fide members of the super-species known as adults. Children feel secure when parents are confident and take the lead. Overly solicitous parents misunderstand their role. Imagine how you would feel if the pilot came into the cabin and asked if it would be OK if he lowered the landing gear?

*Your children don't belong to you.* Love them, yes, of course, love them. But the highest form of love is not the discovery or creation of a second self. The highest form of love is to want the best for the other. And the hardest thing about love is accepting that the other is *other*. Our children are not extensions of us, they are different people, and from fairly early on they have their own dreams and are living their own lives. This is not a betrayal of some imaginary friendship covenant. They are not your friends. You are mom and dad. Be confident, be loving, and raise them up to be faithful, strong, hopeful, hard-working, and generous. Then you will be granted the gift which can be found only when it is not looked for—your children will love you back.

—Joe Bissonnette is a religion teacher. He grew up reading his dad's copies of the Human Life Review.

**Pearl Joy Brown**  
**(July 27, 2012-March 29, 2018)**

*Ursula Hennessey*

*. . . the kingdom of heaven is like unto a merchant man, seeking goodly pearls: Who, when he had found one pearl of great price, went and sold all that he had, and bought it.—Mt 13:45-46*

Misery loves company. A cynic might say that's why I became obsessed with Eric Brown's social media posts. Both the Browns and the Hennesseys chose to continue pregnancies despite alarming prenatal diagnoses. But while my daily concerns revolve around teaching life and academic skills to my 12-year-old daughter with Down syndrome—who otherwise lives a full and happy life—the Browns have hovered in survival mode for nearly six years.

In 2012, Eric and his wife Ruth, then the parents of two young children, learned at a 20-week-ultrasound that their third child had alobar holoprosencephaly, a condition in which the brain fails to develop into right and left hemispheres. Only three percent of similarly diagnosed babies survive to birth, and most of those die shortly thereafter.

Naturally, doctors urged the Browns to terminate the pregnancy. They refused. They fretted over the possibility that their baby would die in utero. But as Ruth came to term, they prepared to meet their daughter. They hoped for a few minutes with her. Perhaps an hour. They named her Pearl Joy.

Pearl fought hard and was eventually cleared to leave the hospital. Continuing to defy the odds, she lived to be five-and-a-half years old; she passed away on March 29th of this year after a particularly difficult stretch of ill health.

Since the earliest days of the pregnancy, Eric, a photographer by trade, has chronicled his family's journey. Every day or so, he shares a stunning photo,

often in black and white, of the Browns in an ordinary scene from daily life: Ruth on the phone with the insurance company, Pearl's medical bed decorated with Christmas ornaments, the siblings on the couch watching a movie. Below the photo, in a few crisp sentences, Eric links the mundane and occasionally morbid details of family life with the magnificent. Eric rarely uses the word "pro-life" when writing about Pearl, and his work is blissfully free of politics and moralizing. Yet nothing ever seems as current, prescient, or apt as a new post by Eric Brown.

Pearl, in her short life, never walked, spoke, laughed, or did anything, really, that you or I would expect a small child to do. Breathing through a respirator and fed through a tube, she was what is called "medically fragile." She required round-the-clock care. Whether she recognized her family was a mystery to the Browns. She spent most of her time propped up in a medical bed or chair. Yet, she profoundly changed many lives, including those of the Browns, their immediate community in Nashville, Tennessee, and a larger virtual community that became, as I did, hooked on the details that Eric shared almost daily on Instagram.

Eric's posts infuse me with hope and joy, not because misery loves company or because I compare my life favorably to the Browns. No, there is deep relief in reading, in graphic detail, how a life of incredible compromise, sacrifice, and frustration can be one of great reward. Eric's posts remind me that a life spent in service to another life—particularly a fragile one—is the definition of contentment.

From a recent post, written after Pearl's passing:

She is not here and she was not on the porch tonight. I do feel her in these photos, though. I see the continuous playing out of who she helped us all to become. I see her in the intimacy and the sweetness that we share. I see her in our family's contentment in, or maybe a better phrase would be "preference for," simpler joys and quiet lives. She brought into our home a value system that I didn't even know to want. She taught us to lean on and enjoy each other in ways I'm not sure we would've learned otherwise.

In words and pictures, Eric captures why his daughter's life, like all lives, has worth. Eric never sugarcoats facts or minimizes the difficulties of living with and caring for Pearl. His posts are raw. Eric and Ruth cry tears of frustration, exhaustion, and fear. They rage. They doubt. They surrender.

Some in Eric's position would resort to moralizing or to lashing out. His posts have none of that. They are also devoid of complaint, which is remarkable, considering the hardship and pain he and his family have endured these last few years. He never asks for help or money, yet it is obvious the Browns often need both. Telling the truth, and nothing more, is so hard for so many of us. We embellish. We minimize. We curate. We push secret agendas. Eric never did—or does—any of that.

Of course, Eric has a sense of humor, which helps draw us in and digest some of the unimaginable pain. Here's a post from this past Mother's Day:

Mother's Day is a weird day. For some, their life has been lived thus far without too much trouble and it's just the day they know they'll go to Golden Corral after church and bring flowers for their mom. But for others . . . may I even say most others . . . there are feelings that pop up for a number of different reasons. Mothers, motherhood, the lack of mothers and motherhood, etc. . . . all of it involves feelings and experiences that cut to the core of who we are. It's a mixed bag, this holiday. Brokenness tends to get magnified and felt deeply on these days. And this one is obviously weird in our home. Maybe not as weird as you'd imagine, but Pearl is heavy on our hearts and in our conversations. So it goes, I suppose. Golden Corral kind of sucks anyway.

So, yes, if I'm honest, Eric Brown's Instagram feed helps keep my tendency toward self-pity at bay. The delightful details, the quick wit, the love that seems to fill and spill out of the Brown household—these things keep my spirits up. Selfishly, I crave my daily Brown.

But Eric has lost a child. He and his family are grieving. Whatever's going on at my house seems trivial by comparison. I'm sure Eric and Ruth would gladly take on my troubles and petty concerns if it meant having their daughter back. They gave up a lot for Pearl, but I know they would agree that she was worth the price.

—*Ursula Hennessey, a former sports journalist and elementary school teacher, lives in New York with her husband and five children.*

## The Unfit Mother

*Colleen O'Hara*

Questioning the pro-choice orthodoxy unleashes howls of empty rhetoric, because indoctrinated people cannot listen anymore. “Don't tell me what your religion demands I do with my life!” “You and your ilk . . .” (My ilk?) “Abortion does not murder women's souls!”

Yes, it does.

Thirty years ago, there was a kinetic energy in my belly as I stroked it while looking in the mirror in the Queens apartment of the man I loved. We had spoken about marriage, and I was about to tell him I was pregnant. I was full of hope for a beautiful life with children and the cello recitals I would hear them perform.

But that dream was soon broken. “If you have this baby, I'll leave you!” Only the life inside my body moved—innocently, with no question of its right to exist—as I looked at the man I loved more than God. He had paralyzed time with his threat. I wanted to die.

My father had passed away almost 15 years earlier. My mother, who was suffering

from non-Hodgkin's lymphoma, had a fierce temper, especially when it came to criticizing me. I needed this man. "If you have an abortion, I'll stay, and we'll have another child one day," he promised. I believed him.

On the table at the hospital, legs spread, I cried. "Do you really want to do this?" asked the doctor. "Yes," I said, and they put me under. The man I loved was there to take me home. To punish myself, I gained 60 pounds. We got married. After seven years, I asked for that other child. "No," he said, "You'd be an unfit mother. One day, I'll have to take care of you."

I left him.

For the next 23 years, my life was an improvisation of brilliant moments and heartbreaking failure. I was unfit to take care of myself, unfit to handle money, unfit to maintain a relationship, unfit to make coherent decisions. And then my life crashed. He helps support me now, as he once predicted. I am destitute, save for him and my disability check.

One friend said, "After what he did to you, for you to take money from him disgusts me." Another friend said, "He's redeeming himself." The truth must be in the middle somewhere.

But in all that time, there has not been one day without regret. At age sixty, I can finally say that abortion murdered my soul—because I killed my baby, and it was not my choice.

Post-abortion grief exists. It steals your life. Don't be blind. Don't let anyone make you deny your feelings, conform to a political view, or coerce you into thinking this has anything to do with religion. This is about the life and death of a child, and consequently, the life and death of your own soul.

—*Colleen O'Hara is retired and writes from Nevada.*

## APPENDIX A

[Hadley Arkes is Ney Professor of Jurisprudence Emeritus at Amherst College and founder and director of the James Wilson Institute on Natural Rights & the American Founding. This essay, published June 29, 2018, on the website of First Things, is reprinted with permission.]

### Another Pro-Life Victory?

*Hadley Arkes*

Pro-lifers are celebrating the decision announced by the Supreme Court on Tuesday in *National Institute of Family and Life Advocates v. Becerra*. The State of California had required that pro-life centers that counsel pregnant women put up notices, in large type, blasting the news that the state offered pregnant women free or “low-cost” services, including abortion, along with a phone number. So-called “unlicensed clinics,” which counsel women without such equipment as obstetric ultrasounds and sonograms, were obliged to inform their clients that they were not licensed to provide medical services. What counts as a real medical clinic, or as real medicine, was revealed in the name of the Act: The California Reproductive Freedom, Accountability, Comprehensive Care, and Transparency Act. Clinics that counsel pregnant women on the advantages of giving birth, rather than killing their children, would be stamped faux-clinics, merely pretending to advise on matters medical.

But as Justice Clarence Thomas wrote, speaking for the majority, California could readily “inform low-income women about its services ‘without burdening a speaker with unwanted speech.’” For the unlicensed clinic, he said, the act “imposes a government-scripted, speaker-based disclosure requirement that is wholly disconnected from California’s informational interest.” And so Thomas concluded that the law imposed “an unduly burdensome disclosure requirement that will chill . . . protected speech.” Justice Kennedy put the matter more sharply in his concurring opinion, insisting: “Governments must not be allowed to force persons to express a message contrary to their deepest convictions.”

Many hope that the decision in *NIFLA* will have an influence beyond clinics on abortion. The holding may offer protection to people who are put upon to obey the new political orthodoxies of same-sex marriage and the homosexual life. It may plausibly cover florists and bakers who find their freedom of expression compromised, say, by the demand that they perform their arts and lend their endorsement to same-sex marriage. The logic of the *NIFLA* ruling extends, then, well beyond abortion. But the irony is that the opinions in the case are quite bereft of any premise or reasoning that would help to plant or even support the pro-life argument.

The problem may be unlocked as soon as we begin to recall that it is not unknown in our law to compel people to speak words that may be quite at odds with their convictions. The reverse-image of the current case may be found almost thirty years ago in *Rust v. Sullivan* (1990). The first Bush administration had barred employees of pregnancy centers supported by federal funds under Title X from counseling clients in favor of abortion. This rule was imposed on many doctors and medical workers who bore the firmest convictions on the rightness and desirability of abortion—so much so that they

raised a claim under the First Amendment that they were being muffled from speaking their true convictions and offering their authentic “medical” advice. But Chief Justice Rehnquist drew on the words of a lower court to explain that the employees of medical centers “remain free to say whatever they wish about abortion outside the Title X project.” Or as he put it himself, “the employees’ freedom of expression is limited during the time that they actually work for the project, but this limitation is a consequence of their decision to accept employment in a project, the scope of which is permissibly restricted by the funding authority.” With that reasoning, it could be said quite as well that the employees in *NIFLA* were fully free to speak their pro-life convictions in their lives outside the clinics. It was only within the clinics that they were governed by laws that were not at all anomalous: laws that obliged companies to divulge information about their products, including information they would rather not mention.

We think here readily of tobacco and pharmaceutical companies, which are obliged to warn on their packs of the hazards of their products. Justice Thomas sounded the perennial alarm about restrictions based on the “content” of speech. Yet he also noted “content-based regulations ‘in the field of medicine and public health, where information can save lives.’” Justice Scalia had sounded that theme strongly in the past about restrictions based on the “content” of speech. But he persistently elicited from his colleagues a virtual litany of laws dealing with the content of speech. And so, as Justice Breyer noted in dissent, “Virtually every disclosure law could be considered ‘content-based,’ for virtually every disclosure law requires individuals to ‘speak a particular message.’” Was it “content-based laws” you wanted? Justice Breyer unloaded a hefty sample of them:

These include numerous commonly found disclosure requirements relating to the medical profession: ... requiring hospitals to tell parents about child seat belts; ... requiring hospitals to ask incoming patients if they would like the facility to give their family information about patients’ rights and responsibilities; requiring hospitals to tell parents of newborns about pertussis disease and the available vaccine. These also include numerous disclosure requirements found in other areas. See, e.g., N. Y. C. Rules & Regs., tit. 1, §27–01 (2018) (requiring signs by elevators showing stair locations); San Francisco Dept. of Health, Director’s Rules & Regs., Garbage and Refuse (July 8, 2010) (requiring property owners to inform tenants about garbage disposal procedures).

For his own part, Justice Thomas recognized a battery of requirements that were reasonable parts of the regulation of medical practice. They were of a piece with laws that require doctors to obtain the informed consent of patients before performing surgery, a requirement once described as “firmly entrenched in American tort law.” But that explanation teed up Justice Breyer’s telling response: “The majority . . . does not explain why the Act here, which is justified in part by health and safety considerations, does not fall within its ‘health’ category.” An apt question, if abortion and the guidance of pregnant women to childbirth have equal standing as aspects of health and medicine. On that, more in a moment.

With his accent on “informed consent,” Thomas backed into a surprising trap. *Planned Parenthood v. Casey* (1992) has held a place of infamy among pro-lifers, for it was the case in which three Republican appointees (O’Connor, Kennedy, and Souter)

deserted the conservative side to sustain *Roe v. Wade* when it seemed on the verge of being toppled. Yet people forget that the Court in *Casey* sustained a mandate to provide certain information to patients, even though the information sought to encourage a path away from abortion. As Breyer recalled:

That law required the doctor to tell the woman about the nature of the abortion procedure, the health risks of abortion and of childbirth, the “probable gestational age of the unborn child,” and the availability of printed materials describing the fetus, medical assistance for childbirth, potential child support, and the agencies that would provide adoption services (or other alternatives to abortion).

Even doctors and nurses who strongly favored abortion would be obliged to speak these words. Further, as Breyer noted, the Court in *Casey* overturned several earlier decisions in which it had struck down requirements of this kind. The Court admitted in *Casey* that the law cut against a possible “right of a physician not to provide information about the risks of abortion, and childbirth, in the manner mandated by the State.” But the restrictions on speech were seen as part of the regulation of the medical procedure of abortion. And so the Court concluded: “We see no constitutional infirmity in the requirement that the physician provide the information mandated by the State here.”

For Breyer, that set up the clincher:

If a State can lawfully require a doctor to tell a woman seeking an abortion about adoption services, why should it not be able, as here, to require a medical counselor to tell a woman seeking prenatal care or other reproductive healthcare about childbirth and abortion services? . . . [There] is no convincing reason to distinguish between information about adoption and information about abortion in this context. After all, the rule of law embodies evenhandedness, and “what is sauce for the goose is normally sauce for the gander.”

And that would indeed be the clincher—if one understood abortion and childbirth to stand on the same moral plane as plausible and legitimate parts of “healthcare.” When we strip everything else away, that is the critical point separating the two sides in this case. Breyer’s dissent could not have been refuted unless the majority were willing to address that core question.

We may hear an echo of the line from Judge Jon Newman in one of the early cases after *Roe v. Wade*: that “abortion and childbirth, when stripped of the sensitive moral arguments surrounding the abortion controversy, are simply two alternative medical methods of dealing with pregnancy.” They are “simply two alternative medical methods” if there is nothing of medical or moral significance between the deliberate taking of innocent life and the preservation of it. The judges who have settled in securely with the “right to abortion” have absorbed the notion that abortion is just another legitimate medical procedure. They invoke a concern for equality of treatment when the law seeks to favor childbirth over abortion. The Court in *NIFLA* did nothing to highlight or defend that distinction, or to break the liberal side from its settled conviction here. But was there really nothing that could be said? Returning for a moment to *Rust v. Sullivan*, we find Chief Justice Rehnquist arguing that it was legitimate to bar doctors

from counseling in favor of abortion, because it had been settled at least since *Maier v. Roe* (1977) that abortion may be legitimate as a private choice, but the government may “make a value judgment favoring childbirth over abortion.”

A *value judgment*. Some trace that term back to Nietzsche; it would come into play when people lost the conviction that we could speak seriously of “moral truths.” We explain our moral preferences by saying that we impute “value” to them. In this perspective, liberty is superior to slavery because I impute value to liberty—not because slavery is wrong in principle even for those who don’t mind it. This state of mind was reflected in a speech of Justice Rehnquist from 1973, wherein he famously said that if a society

adopts a constitution and incorporates in that constitution safeguards for individual liberty, these safeguards do indeed take on a generalized moral rightness or goodness. They assume a general acceptance neither because of any *intrinsic worth* nor because of . . . someone’s idea of natural justice but instead simply because they have been incorporated in a constitution by a people. (emphasis added)

Rehnquist was roundly assailed for this speech. To say that liberty has no intrinsic worth, that it has the standing of goodness or rightness only when it has been enacted in the positive law, is to say that there are no intrinsic moral truths. It is chilling to realize that the conservative justices on the Court have mounted no stronger argument than this to explain why innocent life in the womb has a claim to be protected.

Justice Scalia himself said that if legislatures were to make abortion thoroughly legal, he would be obliged as a judge to enforce that law. The conservative justices have never found in the Constitution, or in the principles of moral reasoning lying behind the Constitution, any ground for placing constitutional protections on the child in the womb. The classic conservative response to *Roe v. Wade* has held that we must remove the “constitutional right to abortion” and send the matter back to the states. Scalia was also clear that state legislatures had a traditional authority to shape the morals of the local population, as by barring prostitution and lewd entertainments. He was not entirely convinced that any objective moral truths lay behind those policies and justified them. He was convinced mainly that local majorities had authority to make judgments that reflected the moral sentiments of their communities. But if we follow this reasoning, then the policy chosen by the State of California in *NIFLA* simply reflected the moral judgment of that community—in this case, that abortion is a thoroughly legitimate medical procedure, and that women should suffer no discouragement from choosing it. That would have been quite enough to sustain the law. But the even more sobering recognition is that nothing in the majority holding in *NIFLA* would be altered even if *Roe v. Wade* were overruled tomorrow. By the reigning consensus in conservative jurisprudence, the question would be returned to the states and the Court would presume in favor of the “value judgment” enacted by the California legislature.

But is there nothing more that could have been said here, even by the conservative jurists? Surely Justice Thomas could have offered a slight addition to the words of Chief Justice Rehnquist by saying something as simple as this: that the government may favor childbirth over abortion, because there is the most obvious difference between the taking of innocent life and the protection of life. Or, even more simply: that

death is not a good that can rival the good of life. John Finnis used to illustrate this point with examples from everyday life: We look both ways before crossing a street; we have drives to collect food to relieve starvation; the crew of an ambulance sets off with the goal of rescuing a victim, not of speeding him to his death in order to spare his family hard choices. We can imagine a young woman, daughter of members of the Hemlock Society, babysitting for children and suddenly finding that the house is on fire. She has been schooled on the point that death is a good that may be plausibly chosen. Why should she not choose that “good” for the children in her charge? But would any jury clear a person who offered that account of why she didn’t rescue the children from the burning house? Or would it rather fall back on that part of natural law grounded in a common sense that precedes “theory,” a common sense so firmly woven into our practical judgment that we may hardly be aware of it any longer? Then the jury would simply say, as of old, that death cannot stand as a rival good to life.

It would not have been difficult to weave those lines into the opinion of the Court in *NIFLA*. That could have been done even while the conservative lawyers were being careful not to ask for the overruling of *Roe*. But that simple move would have suggested that a cohort of the judges is alert to the deep premises that call *Roe* into question. And if some of them are truly hoping that *Roe* might someday be overturned, then a move like this would place in the record lines that might later be drawn upon to explain the Court’s restoration of legal protection for life in the womb.

When *Roe v. Wade* was decided, the dissenting opinions by Justices Rehnquist and Byron White were grounded in the mechanistic, positivist argument that abortion was nowhere mentioned in the text of the Constitution. Neither justice drew upon the rich briefs offered in the case, weaving embryology with principled reasoning and dealing with the very substance of abortion. And so we may be moved by *NIFLA* to wonder now: Have the conservative judges become so settled within the premises of that argument, so anchored in the positive law, that they can no longer see beyond it?

In the meantime, with other friends, I’m relieved by the outcome in *NIFLA v. Becerra*, and grateful to those who engaged their wits and treasure in advancing the argument through the courts. But if we ask just what was decisive here, we are led beyond the lines about “coerced speech” and can say with candor that it came down to this: The presidential election of 2016 brought us Justice Gorsuch rather than Justice Garland. We avoided adding one more judge to the cohort who view abortion as just another medical procedure.

## APPENDIX B

[Jonathan S. Tobin is editor in chief of JNS.org and a contributor to National Review. The following column was published on National Review Online on July 24, 2018. © 2018 by National Review. Reprinted by permission.]

### **An Inconvenient Amendment**

*Jonathan S. Tobin*

When former New York State attorney general Eric Schneiderman initiated a lawsuit against a group of pro-life protesters last year, he may have thought it would be easy to shut down their vigil at a clinic in Jamaica, Queens. The attorney general's office set up a camera outside the site, sent in decoys who could serve as bait for those looking to harass or intimidate women seeking abortions, and hid microphones on the women's escorts.

But the evidence from a year's worth of surveillance wasn't enough to convince a federal court that the state had a case. Judge Carol Bagley Amon of the Eastern District of New York ruled on Friday that the 13 defendants Schneiderman (who resigned in disgrace in May after allegations surfaced of him physically abusing women) singled out didn't have "the intent to harass, annoy, or alarm" patients entering the Choices Women's Medical Center. The judge therefore turned down the government's demand that a buffer zone be created that would make it difficult for protesters to speak or hand out pamphlets to those entering the facility.

Judge Amon said the evidence procured from the government's stakeout of the vigil made it clear the pro-lifers had stuck to their practice of offering alternatives to abortion and handing out literature and that they had backed off when rebuffed. As with a recent separate case that concerned a vigil in Queens in which police were illegally ordering protesters not to speak to patients, those involved were not actually violating a New York City law that forbids "following and harassing." They were just exercising their First Amendment rights to free assembly and to voice their views.

Strictly speaking, the ruling has no legal implications for future litigation that might seek to overturn the *Roe v. Wade* decision legalizing abortion or even about rules that protect abortion clinics against violent or intrusive protesters since the judge was careful to state that if those involved did cross the line into harassment of patients, they would be prosecuted.

But the limited nature of the case hasn't prevented liberals from decrying the outcome not merely because it thwarted efforts to spike pro-life vigils but as a harbinger of future judicial defeats. As far as those quoted in a *New York Times* story on the ruling were concerned, the failure of Schneiderman's effort is just one more instance of conservatives "weaponizing" the First Amendment.

As noted here earlier this month, the talk about "weaponizing" speech stems from U.S. Supreme Court Justice Elena Kagan's lament that the ability of conservative plaintiffs to successfully invoke their First Amendment rights in cases ranging from religious freedom, campaign-finance spending, union dues, and pro-life advocacy is causing consternation on the left.

It's not just that liberals suspect the addition of a strict constructionist conservative in the form of Judge Brett Kavanaugh to replace Justice Anthony Kennedy will likely mean that laws imposing restrictions on abortions will get a fair hearing or that *Roe* might be endangered. Their problem is that rulings which extend the Constitution's protections for free speech to people whose opinions they despise might mean that that efforts to use the power of the government to repress such retrograde forces are effectively doomed.

Protests at clinics are a controversial topic because there is a history of violence and harassment by some anti-abortion activists. It is also true, as Judge Amon stated, that patients seeking to avail themselves of the services available at abortion clinics—which also includes women seeking health care unrelated to abortion—have a right to do so without physical harassment or fear of violence. But protecting those rights does not deprive others of their right to free speech so long as they are, as those attending the vigils at the Choices Women's Medical Center were, acting as “sidewalk counselors” rather than actively blocking and harassing patients.

The notion that one group's rights erase another's is a constant theme in liberal jurisprudence these days. A separate *Times* article published Monday presented evidence on whether Kavanaugh will support the precedent set in the *Citizens United* case by harping on his repeated quotation of this phrase from the 1976 *Buckley v. Valeo* decision: “The concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.”

That seemingly unexceptionable idea that was once at the core of liberal ideas about the First Amendment, applied across the board to all sorts of actions or opinions—from radical street protestors and Nazis to pornographers—is now deeply controversial among those who see the Constitution as having become, in the words of leftist scholar Catherine MacKinnon, a “sword for authoritarians, racists and misogynists.”

Having established that behaving in an offensive manner—such as burning an American flag—was constitutionally protected free speech, liberals now shrink from protecting the rights of those with whom they disagree. Today, even the ACLU is forswearing the defense of causes it finds repugnant. Liberals believe that those seeking abortions should not only have the right to do so but that the government should act to restrain and, if needs be, silence, those who seek to dissuade them even if they are acting in a peaceful manner. Abortion-rights supporters who oppose these “sidewalk counselors” aren't so much defending access to clinics, which is not in question at the Queens facilities, as much as they are defending patients from what they believe is offensive speech. Telling someone of alternatives to abortion or about the fetus they are seeking to abort may well be unpopular in certain quarters as well as obnoxious to the patient but the First Amendment does not allow it to be prohibited.

Defending these protesters' rights isn't “weaponizing” an Amendment that was long believed to apply to everyone but which some on the left now think ought to be denied to those who advocate for unpleasant conservative ideas such as the pro-life movement. Now that it is conservative Christians, union dissidents, or profifers rather than radical leftists who are more likely to need a civil-liberties lawyer, the

liberal legal establishment that an activist attorney general like Schneiderman embodied has no more use for the First Amendment. The stakeout he planned demonstrated that he gave no thought to the rights of the protesters.

Cases such as these may be a rallying cry for liberals who fear that their ability to silence opponents is being curtailed. But it ought to be just as important for conservatives since it illustrates that free-speech rights, like those of religious liberty, hang in the balance when federal judges are being nominated and confirmed. As much as the Left is mobilizing to defend *Roe*, conservatives need to understand that keeping a Republican Senate is integral to ensuring that the First Amendment remains a sword defending the rights of all Americans.

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**P**roponents describe euthanasia as merciful and compassionate, but there is nothing compassionate about killing a vulnerable person with a disability. “Compassion” here is defined by healthy people saying to themselves: “I wouldn’t want to live like that.”

—Laura Echevarria, “Who Decides Who Is Worthy of Life?”