

THE HUMAN LIFE REVIEW



VOLUME XLVI No. 3 ♦ SUMMER 2020

♦ FEATURED IN THIS ISSUE ♦

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THE CORONAVIRUS REVOLUTION

Anne Hendershott on
A PRO-LIFE LOOK AT COVID-19 CASUALTIES

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KEEPING UP WITH THE CUOMOS

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John M. Grondelski on
EXTENDING THE ERA AND THE WAGES OF VERBICIDE

Ellen Wilson Fielding on
MAKING PLANS TO ABANDON MOTHER EARTH

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Peter Pavia • Diane Moriarty

Booknotes: Nicholas Frankovich reviews R. R. Reno's *Return of the Strong Gods*



Appendices: Hadley Arkes • O. Carter Snead • Wesley J. Smith • Clark D. Forsythe
Maria McFadden Maffucci • Dmitri Solzhenitsyn

About this issue ...

Last time I wrote that we hoped the Spring issue would be the “first” and “only—of its kind: assembled and edited during a massive international pandemic and quarantine.” Yet here we are, in summer, and Americans from coast to coast, as Peter Pavia writes, are enduring the “toxic trident of the coronavirus pandemic, the specter of economic ruin, and the quaintly dubbed social unrest”—anarchy and violence in our cities. (“Good Humor and the Illusion of Control,” p. 76).

Things *are* blessedly better contagion-wise here in New York; we pray it lasts. We’re still working separately, from our homes, and there are risks to not getting together in person to vet copy, etc. So, a *mea culpa* for our esteemed contributor Brian Caulfield, whose article “Suicide and the Church,” a powerful presence in the issue, is missing from the Spring *Review*’s front cover. (We have corrected it online.)

Several articles here focus on “The Coronavirus Revolution” (William Murchison’s lead essay) that has altered our daily landscape (“Masks. Tests. Reports of Vaccine Trials. Sourdough Bread. Jigsaw puzzles.”). Among the thousands who have died are those who *could have been protected*; Anne Hendershott reports on the deplorable policies that led to tremendous loss of life in nursing homes and abortion clinics. We also explore welcome non-virus topics: the pro-life advocacy of a saint and a near-saint—Patrick Mullaney on Mother Teresa and William Doyno Jr. on Dorothy Day—and the current legal status of the decades old ERA. We even take you, dear reader, to Mars! Ellen Wilson Fielding’s marvelous essay, “Leaving Home: Making Plans to Abandon Mother Earth,” may *read* like science fiction, but it’s an all-too-real report on some high-tech moguls’ master plans.

We welcome three new contributors: Drew Letendre, whose “Keeping Up with the Cuomos” puts sons Andrew and Chris in their proper places; Dmitri Solzhenitsyn (*Appendix F*, reprinted thanks to National Review Online), who writes about the disproportionate maternal mortality rate in the African American community; and Jane Sarah, whose “Good Things Happen When Medicine Gets Personal” is in *From the Website*.

Our thanks to The Catholic Thing, First Things, Newsmax, and National Review Online for their kind permission to reprint the columns in our appendices, some of which discuss the recent demoralizing news from the Supreme Court—ruling *for* the bloody abortion business in *June Medical Services v. Russo*, and against biological reality *re* transgenderism (Hadley Arkes’ *Appendix A*). Setbacks for sure, but as O. Carter Sneed reminds us in *Appendix C*, “quitting is not an option.” The law is not the only front in the greatest struggle of our lifetime, one the *Review* is honored to serve. I’ll end with a prayer from St. Thomas More, whose advice Mr. Pavia urges us to heed: “Grant me, O Lord, a sense of good humor. Allow me the grace to be able to take a joke, to discover in life a bit of joy, and to be able to share it with others.” Cartoonist Nick Downes allows us to share a bit of joy and good humor with you—bless him!

MARIA MCFADDEN MAFFUCCI
EDITOR IN CHIEF



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INTRODUCTION

For months we have been publicly preoccupied with death. Not a common experience for most Americans, culturally conditioned as we are to put death out of mind—and sight. But in late winter came “The Coronavirus Revolution,” as senior editor William Murchison calls it in our lead article, and since then the media have trumpeted the deaths of hundreds of thousands of people worldwide and the infected status of millions more. Before last March, recalls Murchison, we tended to see life as “just more of the same damned thing; more work, more striving, more friends on Facebook.” But “the scourge of coronavirus has caused 21st-century humanity to think hard about life itself.” Just possibly, he muses, we could emerge from this unanticipated mortal encounter “with refreshed understanding of what it means to participate in existence.” And with deeper appreciation, not for the “pride and self-satisfaction” that fueled our former behavior, but for humility, “the sense of one’s own finitude . . . of one’s smallness” in the vast expanse of human endeavor.

Alas, surveying the “war on the deadly Covid-19 virus,” Anne Hendershott sees few signs of a humility reboot among those in charge. While “most of us have had to assume the role of compliant foot soldiers,” she writes in “The Covid-19 Pandemic: A Pro-life Look at the Casualties,” the “majority of decisions on the front lines were made by agenda-driven political leaders.” Something we all thought could unify the country—a new and highly infectious disease threatening Democrats and Republicans alike—has been dangerously politicized, to the point where even a potentially life-saving drug was “denigrated and dismissed,” simply because the president “expressed optimism about [its] virus-fighting potential.” Hendershott, a professor of sociology at Franciscan University of Steubenville, focuses on the actions of governors: “Virginia’s Ralph Northam and Michigan’s Gretchen Whitmer devoted themselves to creating even more casualties by promoting policies to expand abortion,” while “pro-life governors in Alabama, Ohio, Oklahoma, Mississippi, Texas, Alaska, Tennessee, Louisiana, Iowa, and West Virginia . . . all issued orders suspending or postponing abortion during the Covid lockdown and ban on elective surgical procedures.” (Not surprisingly, courts “blocked most of these bans.”)

Hendershott also examines the disastrous policy adopted by New York Governor Andrew Cuomo that “forced nursing homes to admit patients infected with the deadly virus” at the same time the USNS Comfort and the Javits Center field hospital were inexplicably underutilized—a subject touched on by Drew Letendre in “Keeping Up with the Cuomos.” “It is not implausible to suppose,” he writes, that “Andrew Cuomo will be remembered literally as one of the most bloodstained politicians in American history . . . complicit in the killing of hundreds of thousands of unborn New Yorkers and over 6000 . . . of the elderly sick.” Letendre, a freelance writer and new contributor, compares the “narcissistic” behavior of both Andrew Cuomo and CNN anchor Chris Cuomo—on display in the governor’s daily press conferences and his brother’s daily TV show—with the “intellectual sensitivity” and “moral gravitas” of their father Mario, who, he believes, “cut the figure of a statesman.” What would he make, Letendre

wonders, of this “slapstick” brother act? “Jack and Bobbie, they are not.”

Our next article, regarding events that happened over twenty-five years ago, gives readers much to reflect on vis-à-vis unsettling events playing out before us today, especially as they concern “identity politics.” In “Rights, *Roe*, and the Simple Genius of Mother Teresa,” Patrick Mullaney, a lawyer and longtime pro-life advocate, examines an amicus curiae brief Mother Teresa filed with the Supreme Court in 1994 (*State of New Jersey v. Alexander Loce*) in which she “engaged the Court most directly on the issue of the unborn child being a rights-bearing entity,” and, as Mullaney recounts, urged the justices to restore fidelity to America’s founding principles by declaring “the inalienable rights which arise from the existence of life.” She was in effect espousing “a human identity politics,” Mullaney observes, that is “groups of individuals identifying first as human and thereafter acting on the human interests of others.” At a time when our founding principles, indeed the Founders themselves, are being battered by unprincipled revolutionaries ignorant of both, Mother Teresa’s sober pronouncement—that “*Roe v. Wade* has deformed a great nation”—calls to mind the *moral* pandemic that has spread institutional contagion for nearly half a century.

Like Mother Teresa, Dorothy Day gave up worldly possessions to live with and help the poor. (Franciscan University gave both women the school’s Poverello Medal in 1976.) And she too took her mission public, co-founding, along with Peter Maurin, the Catholic Worker Movement in 1933. In “Searching for Dorothy Day,” his evaluation of the latest biography of this acclaimed 20th-century figure (*Dorothy Day: Dissenting Voice of the American Century*), writer William Doyno Jr. gives a comprehensive account of Day’s life as well as an informed critique of “major blind spots” in the book, including “a highly misleading picture of Dorothy’s position on abortion and the Catholic Church’s approach toward women who have had one.” During the Sixties, he writes, Day “welcomed opposition to the Vietnam War, but resisted, with every fiber in her soul, the moral and cultural revolution the young sought to bring about through sex, drugs, and a complete disrespect for the Judeo-Christian mores [she] believed essential for any healthy society.”

Google didn’t turn up any direct hits when I inputted “Dorothy Day” and “Equal Rights Amendment,” but considering her active participation in the Suffragette campaign—including being jailed—we can probably assume Day supported the full emancipation of American women. What she didn’t support was abortion. In “Extending the ERA and the Wages of Verbicide,” John Grondelski, former associate dean of theology at Seton Hall University, reports on “a renewed effort” to ratify the Equal Rights Amendment and what effect its success might have on anti-abortion legislation. While the last deadline for ratification was reached in 1982, with only 34 states signing on, this past January, he notes, “Virginia claimed to be the 38th (and final) state needed to make the ERA part of the Constitution.” Is it possible that the ERA could be resurrected should Democrats take control of Congress in November? “All things are possible when words lose their meaning,” Grondelski points out, and the ERA already has a “history of stretching a seven-year deadline into 48 years.”

In “Leaving Home: Making Plans to Abandon Mother Earth,” senior editor Ellen Wilson Fielding brings us back to the question of humility, specifically as it pertains,

or rather doesn't pertain, to moneybags like Elon Musk, Jeff Bezos, and other technoprophets who, "full of hubristic confidence," have set their sights on "off-loading humans from earth," not just because "space colonization would be exciting and ultimately profitable," but because they think "human survival" might eventually depend on launching "a planetary lifeboat." In a creative and thought-provoking essay, Fielding supplies insight into what "planet hopping and homesteading" might actually require. "Imagine," she asks, "some of the constraints that governors of an engineered environment in a planet inherently inhospitable to human life might need to impose." Space settlers, residents of "planned communities," most likely would be governed "with a heavy hand . . . perhaps verging on the totalitarian." And that of course, "speaks to the tech world's strengths. The capacity to track and trace, to be efficient and elegantly designed, to account for seemingly all eventualities through flow charts and computer simulations." But aside from these strengths, Fielding concludes, these would-be space conquerors seem "silly," and "clueless about what it means to be human." And about the role of the Creator in their calculations.

* * *

In *Return of the Strong Gods: Nationalism, Populism, and the Future of the West*, R. R. Reno, editor of *First Things*, claims that Western post-war efforts to build a global "open society" are breaking down. In this edition of Booknotes, Nickolas Frankovich, a *National Review* editor, gives thoughtful consideration to Reno's argument. From the Website provides keen observations on an array of life issues, from Jane Sarah's account of finding the right doctor for her son who has special needs to Jason Morgan's report on a South Korean television show cruelly using computer-generated animation to convince a distraught mother that her dead seven-year-old daughter was still "alive." Joe Bissonnette and Peter Pavia write about different aspects of the new world of Covid consciousness while W. Ross Blackburn reflects on how unlimited "choice" can lead to "bondage." Diane Moriarty rounds out this section with one of her inimitable commentaries on the nation's ever charged abortion scene. We close the Summer issue with six appendices. Three, by Hadley Arkes, Carter O. Snead, and Maria Maffucci, concern recent Supreme Court decisions (on transgenderism and abortion doctor regulation) in which a member of the conservative majority voted with the four liberals. In another, Dmitri Solzhenitsyn (yes, that Solzhenitsyn), an editorial intern at *National Review*, reports on why the Black infant mortality rate is so high. Finally, we reprint pieces by two longtime *Review* contributors—and Great Defenders of Life—Wesley Smith and Clarke Forsythe. Smith's is a harrowing tale of a disabled Texas resident with Covid-19 whose "doctors did not believe he had a sufficient 'quality of life' to justify curative treatment." And, in an article published on July 4, Forsythe salutes the principles embedded in the Declaration of Independence for being "the moral foundation of democratic government." A precious notion, and one which, as I remarked earlier, is taking a battering in our streets this summer.

ANNE CONLON
EDITOR

The Coronavirus Revolution

William Murchison

Ever thoughtful in these matters, the AARP Bulletin for June 2020 gives its target audience—meaning your servant and all others who would never confuse Jack Benny with an amphetamine tablet—a heads-up as to the kind of world soon to envelop us. It is some world, apparently. AARP wants us relics of an innocent past to understand that things are going to be real different in the post-coronavirus age.

For one thing, we're going to get rid of all the glad-handing and hugging that were common in our looser, friendlier world. That stuff, as we have learned, is dangerous—therefore out of place in a newly health-conscious world. A poll in June showed a third of us to be “germophobic.” I bet it's more by now. Dr. William Hanage recommends to AARP that we replace the handshake with a good ol' “sanitary Star Trek salute.” I will be sure to apply for lessons, wanting to prove that my health knowledge doesn't stop with face masks.

Then watch out for the Saturday night movie habit; it could go away. Your morning newspaper may never reappear. (At least you'll know it's not in the shrubbery.) And we're going to stick around home more: maybe living in “less populated areas in the wake of the pandemic.” Having digested all that vaticinatory wisdom, I brace for “The Unknown Unknowns.” Says AARP: “There's really no predicting what's coming to Americans next. Pick a concern and it's punctuated by question marks.”

Yes, well, OK. And sometimes you wake up glad to know—especially if you're in AARP—that your personal period of adjustment is necessarily briefer than that of your grandchildren. “The more it changes, the more it changes,” must rank with the least appealing pieces of human wisdom on the table, such as “Expect the worst and you'll never be disappointed.”

And yet there may be another side to the—I'll call it the Coronavirus Revolution: an occasion with not necessarily desolating possibilities as to how we see; and how we think about what we see; and what we do with the thoughts that arise in consequence of the various rearrangements and reshufflings now going forward. I will tell you what occurs to me. If I am wrong, well, no harm done, I hope. But we'll see, won't we? This matter abuts the human life question—that great ongoing question—in possibly surprising ways.

William Murchison writes from Dallas for Creators Syndicate and is a senior editor of the *Human Life Review*. He is currently working on *Moral Disarmament*, a book examining the consequences of our moral disagreements. *The Cost of Liberty*, his biography of John Dickinson, an influential but neglected Founding Father of the United States, was published in 2013 by ISI Books.

The world had hardly tip-toed into 2020 when it became useful, not to say downright essential, to talk of life—human life—as something markedly different from a sensual abstraction; a routine rush through commitments from making sales calls to getting ready for a round of mah-jongg. Life, to begin with, was something the government said you needed to work at preserving. We took to that task readily enough. Life in early 2020 was all about *Life!* There was a refreshing element to this. We had grown, many of us, to see it as a task or a challenge. But not quite, or not necessarily, a good thing in and of itself.

The government was not going to let us neglect our duty to Life. We re-ordered Life itself around that duty. Life, life, life—let’s have some more of it. We became supervisors not only of our own lives but of other people’s. The scowls that people would meet with for not staying six feet away from us on the street! That was part of it. As was study of the statistics—how many new people, people like ourselves, infected? Their ages? Their underlying conditions? We desired to compare our own conditions and situations with theirs.

And we began to measure public leaders by what we took as their management skills in directing quarantines and lockdowns. President Donald Trump’s unwillingness to wear a mask diminished his authority in some circles. We gave a daily ear to “the science” that scientists and masters of medical specialties of which we weren’t previously aware dispensed for our presumed benefit (as infrequently as we really understood what they were saying).

Daily life took on a shape formed by the attention we thought was payable to life. Masks. Tests. Reports of vaccine trials. Sourdough bread. Jigsaw puzzles. The new currency of words like “ventilator” and “asymptomatic.” Conversations enlarged for consideration of “safe” as opposed to “risky” behaviors. When did life become a thing hemmed in by cautions of one kind and another; with, maybe most of all, uncertainties and unpredictabilities of a sort never previously imagined? Oh, that was around last March.

The denizens of 2020, and of the antecedent years—I mean you, and I mean me—are not habituated to thinking about life as Life—upper-cased, italicized, bold-faced, in 48-point type, with large implications for today, tomorrow, and next year (just as a beginning). We see lower-cased life, pre-March 2020 life, more as an interim between interims; just more of the same damned thing; more work, more striving; more friends on Facebook. Say, who’s coming over for dinner Saturday?

It takes a disaster of some magnitude—war, plague, an economic catastrophe—to alter our outlook. The scourge of coronavirus, with its unlooked-for severities—is just such a disaster. It has caused 21st-century humanity to think hard about life itself because that is seemingly our mission as a people: to figure out, if we can, what we are meant to do in this place we occupy as grateful tenants, or the reverse. We might—not will, but might isn’t bad—emerge with

refreshed understanding of what it means to participate in existence.

Small, particular modes in the great picture of what we call existence draw unexpected attention to themselves—inhaling, exhaling; coughing, not-coughing; exposed, non-exposed. We look at things we hardly looked at before, hardly gave a second thought to. We notice now. We look. Things barely considered up to now take on meaning and centrality. They signify our participation in life: and the participation of strangers as well as loved ones. It dawns on us, assuming it hadn't done so up to now, that we are all of us involved in something immense; bigger than ourselves, for all the satisfaction we may have invested in personal achievements of one kind and another. For all the money we may have made, all the dreams dreamt and occasionally realized.

Our sharper understanding of existence invites, instead of pride and self-satisfaction, something like . . . let me try out humility as a possibility. Humility—the sense of one's own finitude in human existence; you might say, of one's smallness. Wouldn't that be something—a new understanding of finitude, based on a new, unfamiliar perspective. Together with a sense of responsibilities acquired in respect of that finitude.

I am not saying the human race, in 2020, has opened its eyes with a start, finding the universe a different proposition than it seemed in 2019, when breathing was just breathing and comparatively few of us had heard of Wuhan. I am saying a live possibility has arisen in the midst of death. Humility instructs me on the obligation not to predict with sweeping confidence; the only obligation I am aware of is to suggest intelligently, thoughtfully.

What do we see when we look around? *If* we look around?

We see life in its basic connectedness. Life as a unity. I think readers of this esteemed journal need no reminder of the connectedness factor. Life is connected across the planet, Indians and Brazilians sharing the same peril as Americans and Frenchmen in their exposure to and battle against the plague. If Indians, say, were a different breed, with different breathing apparatus, with different immunities, that would be one thing. It is not so. The consciousness of life's connectedness is furthered by the housekeeping conditions of 2020—by the initial demand of governments everywhere that households—families—keep to themselves. Inside.

A little of this, naturally, went a long way. Amid the bread-baking and the puzzle-solving, not to mention the daily on-screen education process, irritation was bound to grow. Governments overdid, when applying uniform rules and regulations to one and all. Ridiculousness as well as wisdom resided in most households during the lockdowns. A reverse effect was the isolation of the elderly—the most vulnerable human category; the AARP constituency—from less vulnerable if no-less-loved family members. Tales of family members shielded

from one another by plexiglass, even as one or more lay dying in a hospital, became a poignant feature of television news coverage during the early stages of the virus. This was human separation as the overthrow of connectedness—a reminder of dependence as an essential check on that independence which, too much encouraged, can become cruel neglect.

The close contemplation of family shows something more about life. It shows how life begins, goes forward, recreates and refreshes and perpetuates itself: one generation bringing to life a second generation, which in turn bestows life on a third generation, the third calling into being a fourth; on and on to eternity.

The human life issue, so to call it, is in many modern eyes hardly a “life” issue at all. It is a political issue, politics being the means by which one set of humans leaves its impress on other sets: to general benefit if all goes well, but maybe not at all. Politics makes no guarantees. It directs more than suggests, issues orders more often than guidance. Human life is an issue insofar as particular humans desire control of life in one of its aspects or all of them.

Well. We know what we’re talking about here, don’t we? Abortion is what we’re talking about: the creation of life rendered secondary to the wish of its human co-creator for extinction of life.

I do not know that the coronavirus plague is likely to alter modern attitudes of indifference toward the extinction of life, which act usually goes hand in hand with judgments as to the worth or worthlessness of lives not even entered upon the large career of life; the generational story as mentioned above. What *would* the virus tell us in this context? That life isn’t a very big deal—least of all to those who never come into it fully?

Not that, I think. Bidden to exhausting precautions against death by virus, modern folk happily affirm life’s joys and possibilities: including the ones abortion blots out in advance.

Nevertheless: Between abortion as a daily event and the daily human superficialities as rebuked by the coronavirus plague, there is overlap. There is a common motif: My life is my own. I am the captain of my soul. My connection to the rest of you is—that which I desire; until, that is, I experience the connectedness that all along has been a primary feature of life, only . . . well, we’ll see. As may be the case now.

A great irony of the pandemic alarm has been the lockdown of churches throughout the country, and the resort of their ministers to electronic communication in various of its forms: with worshippers rarely invited (at least as I write) to be on hand physically. I call this an irony insofar as the preservation of life has become a goal unlinked, to all intents and purposes, to the source of that life we wish to preserve. To the Creator, in other words; to God.

Where are the cycles of prayer the world formerly could expect in times of great danger? How many calls to prayer have you heard proceeding from high

places around the land—how many appeals to line up the Lord with those working at a lower level to stave off and repel an attack on His creation? (I’m not counting the president’s encounter with the Bible at St. John’s Church, Lafayette Square.) We don’t do that sort of thing, it seems. Might transgress the First Amendment. Might offend the media and the political establishment, wondering how to reconcile the principle of church-state separation with the material need for blessings understood as being in the Lord’s gift.

“O most mighty and merciful God, in this time of grievous sickness, we flee unto thee for succor. Deliver us, we beseech thee, from our peril . . .” Petitions of this sort (in the present case from the Book of Common Prayer) are irrelevant to our human needs? Sideshows amid the seriousness of government lockdowns? Er, um . . .

Mightn’t it be relevant, mightn’t it be useful, to involve the Author of Life intimately once more in the Life questions that once were acknowledged as His special province? It could prove very useful indeed.

Look: We don’t know where this virus thing is going, or how many similar “things” may follow it. Not even AARP’s handshake experts know. The present point, maybe, is to turn all eyes, pained or thankful or anxious or weary, to the contemplation of the very large, very wonderful thing we humans have called Life since our introduction to its mysteries.

I would not be surprised to see one question at this time rise above all others: Where *is* God in this great big thing—a thing too large for anyone to grasp? The God of connectedness; the God of creation; the God of life—what does He want of us who live the lives we once credited Him for, with gladness and thanksgiving? Is this world not, in the end, *His* world? Are not all who live in this world His own—their lives made human by His gift?

The Covid-19 Pandemic:

A Pro-Life Look at the Casualties

Anne Hendershott

Truth is the first casualty of any war—including the current war on the deadly Covid-19 virus. As the casualties continued to climb throughout much of the spring of 2020, it was difficult to determine whether we could actually win this war without massive loss of life. And it was even more difficult to determine whether we were being told the truth about the virus. We knew that death among the elderly was increasing exponentially throughout the early months of the pandemic, but few knew of how deadly our nursing homes had become until it was too late to do much about it. And although it appeared that children and teens would be spared the worst effects of the virus, progressive governors like Virginia’s Ralph Northam and Michigan’s Gretchen Whitmer devoted themselves to creating even more casualties by promoting policies to expand abortion while all other forms of elective surgery were cancelled. Declaring abortion a “life sustaining” service in the midst of the pandemic, Governor Whitmer led the charge in increasing abortion on demand for Michigan residents.¹

Anecdotal evidence from the abortion industry indicates that abortion may have actually increased during the Covid crisis. Meera Shah, Chief Medical Officer for a Planned Parenthood affiliate serving the New York suburbs of Long Island, Westchester, and Rockland, told reporters at BuzzFeed that “everyone is still showing up, you know, because somebody wanting an abortion is still going to want an abortion despite there being a viral outbreak.”² And while a few courageous pro-life governors attempted to protect the lives of unborn children by identifying routine abortion as an “elective procedure” to be postponed along with all other forms of elective surgery, progressive judges overturned most of the governors’ executive orders.

Throughout it all, the media claimed to be bringing us news from the frontlines in the pandemic battles. But it appears that the truth was an early casualty as media reporting became tainted by partisan politics. When a Trump-led initiative succeeded, including the president’s January 2020 decision to stem the spread of the virus by closing down our country to those coming from China, political pundits criticized his action as xenophobic and unnecessary. Once it became obvious that President Trump had been prescient in taking this action, the media simply ignored it. When the president held televised press conferences, many of

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those in the White House press corps devoted themselves to asking hostile questions designed to humiliate him. Statements made by the president were denigrated and dismissed. And he was mocked when he expressed optimism about the virus-fighting potential of the drug Hydroxychloroquine—even though the Association of American Physicians and Surgeons have reported that the drug has helped 91 percent of coronavirus patients.³

In some ways, in what has become the long war on Covid-19, most of us have had to assume the role of compliant foot soldiers hostage to the whims of power-hungry politicians—some of whom seemed indifferent to the mounting economic damage resulting from the shutdown. With “shelter-in-place” mandates extended far beyond the original goal of “flattening the curve” to prevent hospital overcrowding, citizens have seen swelling numbers of small businesses in their states destroyed. While most of us were mandated to stay home, the majority of decisions on the front lines were made by agenda-driven political leaders from both sides of the political aisle.

Counting the Casualties among the Elderly

According to the CDC, more than 80 percent of all deaths from coronavirus reported in the United States have been of those over 65 years old. And although in the early days of the pandemic there was no federal requirement for nursing homes to report coronavirus outbreaks and death rates, it is clear that the virus has had a disproportionate effect on people who reside or work in long-term care facilities. The Kaiser Family Foundation reported that by the end of May 2020, 1.3 million individuals in nursing homes, 800,000 in assisted-living facilities, and 75,000 in intermediate care facilities had contracted Covid-19. Another three million people who work in skilled nursing or residential care facilities have also tested positive for the virus. Reporting on an analysis of the Covid deaths, *Forbes* revealed in late May that although only 0.62 percent of all Americans were living in nursing homes and assisted living residences at the start of the pandemic, “an astounding 42 percent of all Covid-19 deaths” have occurred in these facilities.⁴ In several states, including Delaware, Massachusetts, Michigan, New Jersey, Oregon, Pennsylvania, Colorado, and Utah, deaths in long-term care facilities accounted for more than 50 percent of all Covid-19 casualties. In Michigan, nursing home residents made up more than two-thirds of all those who died from coronavirus in the state.⁵

Some nursing care facilities experienced much higher mortality rates than others. In the Soldiers Home in Holyoke, Massachusetts—the site of the deadliest known outbreak at a long-term care facility in the United States—68 residents died from the virus within weeks of the first patient diagnosis. In late March, the state-run facility was home to 230 veterans, but by the middle of April only 100 remained, and of those, 90 percent tested positive for the virus.⁶ In Pennsylvania, more than

two-thirds of all state deaths from Covid occurred in nursing homes.⁷ And even though in the early days of the pandemic, Pennsylvania's Secretary of Health Rachel Levine had moved her own 95-year-old mother out of her nursing home and into a hotel, on March 18 Levine implemented a policy stipulating that "nursing care facilities must continue to accept new admissions and receive readmissions for current residents who have been discharged from the hospital who are stable to alleviate the increasing burden in the acute care settings. This may include stable patients who have had the Covid-19 virus."⁸

Like Pennsylvania, New York State also had a policy of mandating nursing homes to accept Covid-infected patients—and suffered similar levels of casualties. By June 3, more than 6,000 residents of the state's 613 nursing homes and 544 adult-care facilities had died of coronavirus.⁹ New York City was the hardest hit, with its nursing homes recording 58 percent of all Covid-19 deaths in the state. There is evidence that the official death rate data may be underreported. The *New York Daily News*, for instance, reported in early June that the Harlem Center for Nursing and Rehabilitation had been cited for failing to report 25 deaths.¹⁰

New York's Governor Cuomo may have contributed to the deaths of the elderly by making the fateful decision to force nursing homes to admit patients infected with the deadly virus. A mid-April analysis of the demographics of the death rates in the 78 nursing homes in New York City revealed that those with the highest percentages of African Americans and Latinos were also the ones with the highest death rates from coronavirus. Seven of the 11 nursing homes with the highest number of deaths were those housing the greatest number of minorities. In the Franklin Center for Rehabilitation and Nursing in Queens, where 80 percent of its 315 residents are Black or Hispanic, there were 45 virus-related deaths. At Kings Harbor Multicare Center in the Bronx, where 83 percent of its 727 residents are Black or Hispanic, there were 45 virus-related deaths. In the Bronx, the Plaza Rehabilitation and Nursing Center, which is 88 percent minority, had 35 virus-related deaths out of 781 residents.¹¹

Governor Cuomo refuses to take responsibility for the decision to admit Covid-infected patients into these nursing homes. In fact, at the same time the governor was using his daily press briefings to berate President Trump for his inability to provide him instantly with 30,000 ventilators—which New York never needed—and to demand the federal government supply sufficient personal protective equipment, Cuomo was ignoring pleas from administrators at his own state's nursing homes for help in stemming the tide of deaths in their facilities. Rather than helping them, the governor implied that greedy health-care-facility owners were to blame for the deaths. As the *New York Post* editorial board wrote in late April: "Governor Andrew Cuomo has taken to answering questions on the subject with insults . . . 'Money' the governor snarked Monday,

suggesting a nonprofit nursing home didn't relocate its infected residents to hospitals because it would then 'no longer be getting paid.'"¹²

Despite Governor Cuomo's attempt to shift the blame to President Trump and the CDC for his state's disastrous nursing home statistics, New York's policy, mandating that these facilities accept and re-admit infected residents, had been publicly declared in a formal order issued on March 25 by the governor's office. Worse still, even when nursing home administrators sought to transfer Covid patients to the field hospital at the Javits Center or the nearly empty USNS Comfort floating hospital nearby, Cuomo refused to consider their requests. According to press reports published in the *New York Post*, one of those administrators, Donny Tuchman, CEO of Cobble Hill Health Center in Brooklyn, emailed four state officials, reporting that his facility had over 50 symptomatic patients and asking for help in getting personal protective equipment for his staff. The response from the state was a form letter offering advice on how to conserve personal protective equipment. Tuchman emailed again the following day, asking specifically if he could send the home's suspected coronavirus cases to the Javits Center or the Comfort. His request was denied.¹³

The costs have been high—especially for Black and Hispanic residents of New York City nursing homes. When asked during his April 20 press briefing about the high death rates in these facilities, Cuomo responded that he “did not know” about the state policy requiring patients who had been diagnosed with Covid-19 to be readmitted to nursing homes.¹⁴ He then turned to his Director of Health Howard Zucker, who acknowledged the policy of readmitting Covid-infected patients into the nursing home population. It is ironic that Governor Cuomo expected the federal government and the Trump administration to supply New York with ventilators and personal protective equipment, insisting on several occasions that “it's not our job” to provide his own state's nursing homes with personal protective equipment when they need it. In fact, the governor has actually threatened to revoke the licenses of nursing homes in the state, saying that “they have to do the job they're getting paid to do, and if they're not doing the job they're getting paid to do, and they're violating state regulations, then that's a different issue—then they should lose their license.”

The governor's apparent disregard for the casualties in the city's nursing homes was especially disappointing for those who initially had put so much faith in the way he was handling the Covid-19 crisis. In those chaotic early days, Governor Cuomo appeared calm, competent, and caring during his press briefings. In March, he announced “Matilda's Law,” named for his 88-year-old mother and intended to protect New York's most vulnerable populations, including individuals age 70 and older. But by early April, as the death toll mounted in the state's nursing homes, Matilda's Law seemed to have been forgotten. In his April 20 press briefing, Cuomo used a house-painting analogy to explain

the state's relationship to the federal government. He said that when you are painting a house, you need a roller and a brush . . . the federal government is the roller, and he (as the leader of the State of New York) is the brush that "gets into the corners" and does the finish work.¹⁵ Seems like a strange analogy but what it tells us is that Cuomo thinks it is someone else's responsibility to do the heavy lifting in protecting the residents of his own state.

The War on Unborn Children Escalated During the War on Covid-19

In the midst of the pandemic, former first lady and secretary of state Hillary Clinton admonished us that "this would be a terrible crisis to waste," insisting that now was the time to usher in an era of universal healthcare with full reproductive rights, including abortion. Most of us recall President Obama's chief of staff Rahm Emanuel using a similar expression to encourage the president to use the 2008 fiscal crisis to greatly expand the power of the government in the redistribution of wealth. The cynical inspiration for "using a crisis" to expand government control and socialize institutions like health care, utilities, and financial organizations is often credited to Saul Alinsky, whose book *Rules for Radicals* teaches that "In the arena of action, a threat or a crisis becomes almost a precondition." Alinsky knew that a crisis creates a sense of urgency that something has to be done. Actions that were once believed to be impossible suddenly become probable. For progressive lawmakers, the expression captures what they see as the perfect opportunity to expand and concentrate their power. The unborn are often the victims of such "health care" expansion.

In fact, the pro-choice side has capitalized on crisis-related opportunities as favored pro-choice governors, hostage to the abortion industry, have attempted to expand abortion rights in their states in the midst of the pandemic. And although Michigan's Governor Whitmer has received national notice for her Covid-19 executive orders banning the purchase of furniture, floor coverings, paint, garden equipment, and planting seeds, few have paid much attention to her proposed legislation expanding abortion rights for any reason up to the moment of birth. The Michigan Reproductive Health Act would eliminate all abortion restrictions in the state—including parental consent and informed consent requirements, allowing underage teenagers to have abortions without their parents' knowledge. It would allow abortion facilities to ignore health and safety regulations that other medical clinics are mandated to follow and would repeal Michigan's ban on tax-funded abortion. Governor Whitmer has also said she would allow walk-in abortions by abolishing all waiting periods. And she has signaled her support for proposed legislation to repeal a 1931 Michigan law that bans abortion but is not enforceable under *Roe v. Wade*. It would surprise no one that elective abortion continued unabated in Michigan throughout the pandemic—even though all other elective surgery was banned.

Likewise, Virginia Governor Ralph Northam conducted what some in the pro-life community called a “signing spree” of pro-abortion legislation during Holy Week, signing into law two bills that will dramatically increase abortion and jeopardize religious liberty in his state. Northam has long made controversial anti-life statements, including expressing his belief that abortion should be allowed up until the moment of birth, and that doctors should be able to refuse to resuscitate an infant born alive after a failed abortion “if that is what the mother desires.” Adding to his state’s already liberal abortion policies, on Good Friday Northam signed Virginia’s own “Reproductive Health Protection Act,” which will loosen several previously enacted protective restrictions, including permitting non-physicians to perform abortions and removing informed consent requirements. Under the new Virginia law, women no longer have the opportunity or the responsibility to view an ultrasound of their unborn child before their abortion. The Act also removes the 24-hour waiting period designed to provide women with sufficient time and information before making the final decision to end their pregnancy.

It is difficult to know whether all this legislative activity contributed to a surge in abortion during the Covid pandemic. Planned Parenthood’s Medical Officer, Meera Shah, claims that she noticed more people making and keeping appointments than usual. “It seems like patients are doing everything they can to get to their appointments at this time Some patients have expressed to me . . . that they were scared that they may not have health insurance in the future, that they may not be able to get their appointments.”¹⁶ Financial concerns should never be a reason to end the life of an unborn child, but during this pandemic, some women may have begun to believe that abortion was the only answer to an unexpected pregnancy. For these women, being forced to wait for a clinic appointment until the end of the emergency stay-at-home period could have resulted in a different outcome. On reflection, they might have seen that even in this extraordinarily disorienting time they had other options, and that they could in fact give birth to their children. This would be especially true if someone reached out to help—someone who offered support and understanding to these women as well as practical assistance. During the pandemic, crisis pregnancy centers may have emerged as the most essential services of all.

Pro-Life Governors and Lawmakers Attempted to Save Lives

While the new anti-life bills passed in Michigan and Virginia during the pandemic removed all waiting periods—allowing same-day abortion on demand without a period of discernment or counseling—several pro-life governors and lawmakers sought to require women to delay their elective abortions during the lockdown orders. In some states, they attempted to delay all elective abortions—mandating penalties to those who defied their executive orders. In other

states, pro-life lawmakers tried to thwart anti-life governors by passing pro-life legislation.

In Kentucky, pro-life lawmakers passed an important bill on April 24, which would have given Kentucky's Attorney General the authority to stop elective abortion "during emergency management orders relating to elective medical procedures," including the Covid-19 pandemic.¹⁷ Unfortunately, the pro-life bill was promptly vetoed by Kentucky's anti-life governor Andy Beshear. According to press reports, during debate on the legislation, Republican State Senator Whitney Westerfield "called Beshear 'a hypocrite' for keeping the state's two abortion facilities open during the pandemic while stopping all other elective medical procedures This governor once again demonstrated his hostility to unborn life."¹⁸

According to an interactive map on the Kaiser Family Foundation website, pro-life governors in Alabama, Ohio, Oklahoma, Mississippi, Texas, Alaska, Tennessee, Louisiana, Iowa, and West Virginia have all issued orders suspending or postponing abortion during the Covid lockdown and ban on elective surgical procedures.¹⁹ Unfortunately, the courts—with help from the ACLU and the abortion lobby—have blocked most of these bans, and in some states pro-life orders by the governor are simply being defied. Although Mississippi's governor issued an executive order requiring that all elective surgeries be suspended, and the attorney general declared that abortion services were banned in the state, the Kaiser Family Foundation reported that abortions were still being provided at Mississippi abortion facilities. Kaiser also noted that the same is the case with abortion clinics in West Virginia, despite the attorney general having asserted that abortion services were included in the state's ban of elective medical procedures.²⁰

Beyond simple defiance of the abortion bans, the abortion industry has had strong support from most federal courts, which have issued temporary restraining orders permitting clinics to continue providing abortion services. For example, on April 12, the federal district court in Alabama issued a preliminary injunction that allowed providers to determine—on a case-by-case basis—whether an abortion was necessary. A temporary restraining order was placed on Ohio's ban, and the Sixth District Court of Appeals denied Ohio's request to overturn the temporary restraining order. The Tenth Circuit Court of Appeals dismissed Oklahoma's appeal, allowing surgical abortions in that state to continue.

There have been some victories for those who wish to protect the unborn during the national crisis in which women faced with unplanned pregnancies may feel that they have no other option but abortion. On March 22, the pro-life governor of Texas issued an executive order directing all health care professionals and facilities to postpone until April 21 all surgeries and procedures that were not immediately medically necessary. During that time abortion services were

suspended as litigation went back and forth several times between the district court and the Fifth Circuit Court of Appeals. On April 22, the attorney general filed a response at the Fifth Circuit Court of Appeals stating that abortion services would be allowed to resume.²¹

One of the greatest disappointments during the pandemic for the pro-life side was the revelation that Judge Charles Goodwin—a recent Trump appointee to the United States District Court for the Western District of Oklahoma—was one of several federal judges willing to strike down states’ attempts to protect the unborn from abortion. Ruling that Governor Kevin Stitt’s ban would cause “irreparable harm” to women unable to get abortions, Judge Goodwin blocked the state from designating elective abortion as a non-essential medical procedure. After declaring that the Oklahoma governor had acted in an “unreasonable, arbitrary and oppressive way” by trying to block access to abortion, Judge Goodwin went even further, claiming that delaying surgical abortion during the Covid pandemic not only violated *Roe v. Wade* and *Planned Parenthood v. Casey*, it also violated the 14th Amendment.²²

Covid Revealed Who We Are

The lockdown resulted in widespread isolation and alienation as many Americans found themselves unexpectedly unemployed and deprived of social interaction. Even our ability to worship was denied. The country’s war on Covid—like all wars—has revealed much about our political leaders and ourselves. We have learned that the most vulnerable—the very young and the very old—were not a priority in this pandemic. We have learned that abortion providers are more eager than ever to rush desperate and isolated women into abortion during these stressful times.

While casualty data indicate that we may have lost the battle to protect the elderly from the coronavirus, there were several nursing homes in New York City and beyond—especially faith-based, non-profit nursing homes—that did not suffer high casualties. The Little Sisters of the Poor, who have been serving the elderly in nursing homes for more than 150 years, reported no Covid outbreak in their Bronx facility.²³ Administrators at several Catholic San Francisco Bay Area nursing homes, including St. Anne’s Home in San Francisco, a ministry of the Little Sisters of the Poor, as well as Nazareth House in San Rafael and Alma Via in San Francisco, have indicated that their facilities have fared better statistically than others. We can learn from them.²⁴

The war on the unborn and the most vulnerable among us continues, and although we are mourning those we have lost in the pandemic, we also need to learn from the past and plan for the next battles. And while there have been losses, the pro-life community must recognize that we have identified allies in the governors’ offices, and in the offices of attorneys general throughout the

country. We can learn from our mistakes, enlist our allies, rally the troops, and vow to fight on. The victories we have experienced in the past should give us confidence that this war can still be won.

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Keeping Up with the Cuomos

Drew Letendre

"I talk and talk and talk, and I haven't taught people in fifty years what my father taught by example in one week."

—Governor Mario Cuomo, quoted in *Time*, 2 June 1986

The public image of Mario Cuomo, late governor of New York, seems to have faded as the big, brash, more proximate figures of his sons, CNN anchor Chris Cuomo and New York Governor Andrew Cuomo, have taken center stage. That is a thing to be lamented. Whatever one may have thought of the elder Cuomo's political commitments and policy decisions, he possessed an intellectual sensitivity, a warm, palpable humanity, and a moral gravitas that his sons frankly lack. Mario Cuomo cut the figure of a statesman. The apples have fallen far from the tree.

I was never persuaded by Mario Cuomo's position on the thorny issue that ultimately came to define him in public memory: how a Catholic politician should comport himself with respect to "settled" American abortion law. Catholic moral teaching had always been—and remains—clear on this point: Under virtually no circumstances is abortion ever a morally licit act. It involves, under all circumstances, the deliberately willed destruction and violent death of an individual human being. Whether measured against the Fifth Commandment of the Decalogue or the secular law, *killing an innocent human being without sufficient reason* was the gravamen of the matter. Opposition to abortion was not, therefore, a "narrow" or sectarian Catholic position, or for that matter, even a broadly theological one. The case against abortion, plainly stated, consists of empirical observations and widely held ethical evaluations that are apprehensible to a much wider audience than Catholics or Christians or even theists. Yet after the 1973 *Roe v. Wade* and *Doe v. Bolton* decisions, Catholic teaching on abortion and, by implication, faithful American Catholics came to be seen as breaching the so-called constitutional wall of separation on the issue.¹

Rather than drawing on—and publicly pointing out—the natural law tradition held in common by Catholicism and the Founders' project, Cuomo insisted (oddly) on treating Catholicism's teaching on abortion as if it were derived from sectarian theological premises, in effect deliberately ghettoizing the Church's position and expelling it from the public square—an action one would

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have thought more suited to Catholicism's detractors. I say "oddly" for two other reasons: First, because the natural law tradition purchased for Cuomo (and American Catholics in general) a gate of entry and a seat at the constitutional table, without having to abandon a pro-life stance. And second, because in spite of having hemmed himself in on the issue of abortion, he did not feel similarly burdened when it came to the death penalty. In that instance, not only did Cuomo override a democratic consensus of the people of New York who wished to legalize capital punishment, he actually invoked his Catholic faith to argue against it (and even though Catholic moral tradition was not "abolitionist" in the matter).

In the case of abortion, Cuomo actually addressed himself to two questions: "Could a Catholic support the legal regime established by *Roe* and remain in good standing with Rome?" and "Could a Catholic remain an American (citizen) in good standing, while opposing that regime?" His answer seemed to be "yes" to both. In support of his position, Cuomo offered up a doctrinal invention of his own design: the "personally opposed, but" defense, which he introduced in a speech at Notre Dame University in 1984. As Cuomo put it—not just for himself, but for all Catholics and Catholic politicians similarly cornered: "I accept my church's teaching. I am personally opposed [to abortion], but cannot impose my Catholic beliefs on others [by giving said beliefs the force of law]."

This was a classic "cake-and-eat-it-too" move: one enthusiastically taken up by other Catholics of a liberal bent as a "get out of Confession" card. Intentionally or not, Cuomo had carved out a protective niche in which other Catholic politicians could shelter . . . and shelter they did. A retinue of "Catholic statesmen" followed, whose membership has included the likes of Edward Kennedy, Geraldine Ferraro, John Kerry, Nancy Pelosi, Joseph Biden, and of course, Andrew Cuomo, all of whom, at one time or another, have huddled under the protective cover woven by Mario Cuomo.

In truth, Catholic politicians don't really have to duck for cover anymore. The awkward challenges of Mario Cuomo's day have been—to the satisfaction of some—dealt with, once and for all. Rarely do they even come up anymore. The Catholic personal opposition defense is a rhetorical fixture so well established—and so blithely accepted—that in some ways it's become a non-issue.

Today, for example, you will see Joe Biden ostentatiously sporting his rosary to make the point, I assume, that he can openly embrace the most sectarian symbols of Catholic worship while championing public legislation that flies in the face of Catholicism's two-thousand-year-old moral tradition, as if these were entirely compatible acts. House Speaker Nancy Pelosi has made a point of letting us know when she's been reading a particular papal encyclical. Recently, she revealed that she "prays for the president," even as she was laboring to impeach him. Senator Tim Kaine, during his 2016 vice presidential run, emphasized the

contribution his Jesuit schooling had made to the formation of his social conscience and his view of political life as a high calling oriented toward realizing the common good. Even Andrew Cuomo has selectively quoted Pope Francis—on child molestation.

All the while these same actors advance a plethora of causes that are in conflict with Church doctrine, even evincing an aggressive anti-Catholic bias: the unlimited expansion of the abortion license and mandatory taxpayer-funding; the imposition of contraceptive mandates on religious institutions; same-sex marriage; legalized physician-assisted suicide and euthanasia; revocation of conscience exemptions for religiously-formed health care workers; the forced adoption of mandated hiring policies and language codes; the overt harassment of Catholic judicial nominees—and on it goes.

All that said, it is not my purpose here to rehearse the flaws in the “personally opposed, but” defense. That ground has been well covered, and long ago. Rather, it is to make the point that Mario Cuomo—unlike his sons—could respectfully deliver and defend a thoughtful argument on a contentious issue and debate his opponents with civility. Giving the elder Cuomo the benefit of the doubt, I don’t think he was seeking to bolster his public image by association with a superficially attractive, widely recognized—and lauded—argument. I think he was sincere in his effort to mark out common ground between seemingly irreconcilable positions on fundamental law, and claim a tenable permanent position for Catholics, and especially for Catholic politicians, in an overtly Protestant—and increasingly secular—culture. He was looking to blaze a trail for Catholic assimilation, and he did so, only at a terrible cost.

In marked contrast, Chris Cuomo, now forty-nine—“buff,” brash, and childish—sporting a bachelor’s degree from Yale likely secured on the basis of family pedigree—is a shamelessly self-smitten talking head and cheeseball of the first rank. Like any full-fledged narcissist, Cuomo seems to think the rest of us are smitten too. Hence, CNN’s “coverage” of his Lazarus-like resurrection from the basement of his posh home in the Hamptons, from which he had been doing his cable show while observing a 14-day Covid-19 quarantine. But most of the country was too distracted by the ravages of the pandemic to pay attention to the antics of this well-heeled buffoon. His own family didn’t seem all that impressed or thrilled by his apotheosis. Cuomo was quick to offer up a psychological explanation for their tepid reaction: “Did you see it? They were spooked. This just goes to show you just how spooked people are by the coronavirus.”

Perhaps his family really was spooked. Or maybe they were just unwilling—and not terribly skilled—actors in a rehearsed drama under Chris Cuomo’s direction. As it turns out, though, Cuomo himself wasn’t all that “spooked” by the virus. His “official reentry,” as he declared it, “cleared by the CDC,” actually

happened one week after this latter-day Lazarus took a break from entombment to take his bicycle out for a spin, in the course of which he found himself “getting into it” with a commoner who had the gall to chastise him for defying his brother’s quarantine rules. Here was Cuomo, the megaphone of his brother Andrew’s New York “lockdown” regimen, telling viewers he was observing self-imposed quarantine while in fact he had gone bike riding with his wife and children—none of them wearing masks or gloves—violating the very federal and state safety guidelines he had been righteously preaching from his Long Island bunker.

When justly criticized for this noncompliance by one David Whelan—a mere citizen—Cuomo unloaded on him. He later described Whelan in an on-air rant as a “jackass, loser, fat-tire biker.” (Apparently, in cycling culture, status is measured by tire width.) Yet another sad day for Yale. Whelan, however, was given the opportunity to relate his side of the story by Tucker Carlson. “I like to say he was like a boiling pot,” Whelan told Carlson. “You could see his head just getting more and more angry.” Indeed. “Who the hell are you,” the CNN anchor shouted at Whelan. “I can do what I want!” Undeterred by his own public outing as a hypocrite and liar, Cuomo continued in a number of “post-resurrection” TV appearances to preach the gospel of self-isolation to the insubordinate masses.

Andrew Cuomo may be slightly less narcissistic than his brother. Admittedly, it’s a tight race. But Americans got a big dose of overweening self-regard in his nationally covered daily press conferences this spring. Cuomo’s public profile is second only to the president’s, and it positively towers over those of his fellow governors. Like his brother, Andrew is not without a temper. His prickliness, kept in check earlier on, was on full display as the weeks went by. To be fair, it could be that his composure began to buckle under the weight of the pandemic. Still, in my view, two episodes from those press conferences define the man.

The first was on March 23, when a Don Quixote-like governor took up arms against a straw man. Ventriloquizing for President Trump, who had speculated about when the country might get back to work, Cuomo erected a false opposition between saving human lives and saving the economy: “My mother is not expendable,” the governor intoned, “and your mother is not expendable and our brothers and sisters are not expendable and we’re not going to accept a premise that human life is disposable and we’re not going to put a dollar sign on human life.”

To hold these ends—economic flourishing and public health and safety—in some kind of fragile equipoise; to wager momentous bets while understanding the inevitable risks; and to try to anticipate the complex “caroms of the ball” with so much at stake, is not only the high calling of political leadership, it is unavoidable in a crisis like the pandemic. But according to the governor of New

York, those who expressed concern about national economic implosion—that is, the president and his fellow Republicans—were people who had essentially lost their humanity and were going to end up killing other people, lots of other people, including Cuomo’s 88-year-old mother.

The irony—both gross and grotesque—was not lost on us. This much-publicized paean to “non-expendable” life came from the same man who signed into law an abortion liberty virtually without limit. Adding insult to injury (and death), Cuomo ordered the 1,776-foot tall Liberty Tower in lower Manhattan to be lit from tip to toe in pink, in lurid celebration of legislation securing the right to physically stab, decapitate, or otherwise dismember a living human being in utero, and then perhaps recycle her “parts” for profit. This for any reason, including motivations arising from the anticipated economic stress that the birth of a child could bring. So much for not putting dollar signs on human life. (In fact, according to a Planned Parenthood website, the value of a single human life is set somewhere between \$435 and \$955, contingent on the method of execution.)

The other episode that defines Andrew Cuomo for me happened on April 22. Protesters, understandably chafing under the yoke of the onerous Covid-19 quarantine, were beginning to question the rationality of specific restrictions and were making their concerns heard, even pounding car horns outside where the daily press conference was taking place. One reporter, who had spoken with some of them, carried their concerns to the governor. Up until this point, Cuomo had exhibited patience and probity—hallmarks of his father’s demeanor. But that came to a halt in the following exchange:

Reporter: I don’t know if you can hear, but there are protestors outside right now, honking their horns and raising signs. We did speak to a few of them before we came in and these are regular people who are not getting a paycheck. Some of them are not getting their unemployment check and they’re saying that they don’t have time to wait for all of this testing, and they need to get back to work in order to feed their families. Their savings [are] running out. They don’t have another week. They’re not getting answers. So, their point is: The cure can’t be worse than the illness itself. What is your response to them?

Cuomo: The illness is death. What is worse than death?

Reporter: But what if somebody commits suicide because they can’t pay their bills?

Cuomo: The illness is maybe my death, as opposed to your death. You said they said the cure is worse than the illness. The illness is death. How can the cure be worse than the illness if the illness is potential death?

Reporter: But what if the economy failing is—

Cuomo: Worse than death?

Reporter:—equals death . . . the mental illness, people stuck at home—

Cuomo: No, it doesn't. It doesn't equal death. Economic hardship [is] very bad. Emotional stress from being locked in a house [is] very bad [but it's] not death. Domestic violence [is] on the increase. [It is] very bad [but it's] *not death* . . . and not death of someone *else*. . . . That's what we have to factor into this equation. [If] it's [just] your life, do whatever you want, but now you're responsible for my life. You have a responsibility to me. It's not just about you. We started here, saying, "It's not about me. It's about We." Get your head around the "We" concept. . . . Also, *I get the economic hardship. Everybody gets it. Everybody feels it.* . . . So, we get the economic anxiety. The question is how do you respond to it? And do you respond to it in a way that jeopardizes public health and possibly causes more people to die? Think about it as if it was your family that might get infected. Right? That's what we're talking about. And when you think about it as your family, you have a different perspective. . . . When I see 484 New Yorkers die, I feel that it's like people in my family and nothing comes before the public health risk of somebody else's life and that's where we are. [Emphasis supplied.]

Apart from the governor's prevailing tone of condescension and arrogance, let's pause to call attention to some of his whoppers. It belies common sense to say that domestic violence is very bad but it's not death. Domestic violence never results in fatalities? Everybody "gets" economic hardship? Everybody feels it? Really? *Everybody*? Perhaps everybody "gets it," in the sense of grasping the concept that poverty causes pain. But that's a banal and heartless observation. And, everybody *feels* it? Not so. Andrew Cuomo doesn't, nor does his brother Chris, to name two obvious examples. What this tells us is that the governor has bought into the binary fiction that the Covid-19 virus can kill, but that extreme economic deprivation, and all the ills that attend it, cannot. But let's follow this thread to its frayed end:

Reporter: But they're also saying: if you can't afford to pay unemployment or your system—

Cuomo: You *will be* paid, you will be paid unemployment from the date of—

Reporter: But they can't wait for the money, they can't wait, they're out of money—

Cuomo: Yeah, we're talking about a couple of days lag on the unemployment insurance and they will get the check from the date of unemployment. Does that cost them an extra penny? Now, they can say unemployment insurance isn't enough. I get it. Even with the \$600 check and the \$1,200 check and the unemployment insurance benefit is not enough. I understand the economic hardship. We all feel it. The question is: What do you do about it? And do you put public

health at risk? And do you drive up the number of deaths for it? . . . because you have no idea how to reopen now.

Reporter: But they're saying: Is there a fundamental right to work, if the government cannot get me the money when I need it?

This was apparently too much for the governor to bear. Shedding dignity, he lapsed into a rant in which he sounded more like a thuggish bully than someone who grew up in the governor's mansion:

Cuomo: By the way, if you want to go to work? Go take a job as an essential worker. Do it tomorrow. Right? You're working?

Reporter: I am.

Cuomo: You're an essential worker. So, go take a job as an essential worker.

Reporter: But people aren't hiring because of—(cross talk)—...

Cuomo: No, there *are* people hiring. You can get a job as an essential worker. So, now you can go to work and you can be an essential worker and you're not going to kill anyone.

As the old formula has it, this "performance" was its own rebuke. Cuomo would not brook utterance of a complexity that might vex his lockdown-and-live/open-up-and-die narrative. And note well his choice of the verb "to kill," and his bizarre logic: If you go to work as an essential worker, you—according to Cuomo—will not kill anyone. How is that? However, if you go to work as a non-essential worker, then you will kill someone. By what reckoning are essential workers immune from Covid-19 and therefore non-contagious? And what makes non-essential workers non-immune and presumed carriers, even contagious "killers"? Cuomo's distinction between essential and non-essential workers was a self-serving political fiction, an ad hoc fallacy to shame an honest journalist and shut down dialogue.

As of this writing, I don't know if Cuomo apologized to the reporter he berated, or to the citizens (aka protesters) he disdained. Don't hold your breath. It is not implausible to suppose that when the history of this time is written, long after the author and readers of this essay have gone to our eternal destinations, Andrew Cuomo will be remembered as one of the most blood-stained politicians in American history. By virtue of signed legislation and executive orders, he will have been complicit in the killing of hundreds of thousands of unborn New Yorkers and over 6,000—and counting—of the elderly sick who died in nursing homes after his administration inexplicably ordered these facilities to accept Covid-19 patients during the height of the pandemic.

As these fatalities mounted, in large measure due to the governor's gross political misjudgment, re-enter Chris, newly recovered from Covid-19 and restored to his platform at CNN. While he had been wisely banned from interviewing his brother since 2013, the network had eased up in March because of

the pandemic, and Andrew became a frequent—and popular—guest. With a predictable blend of gall and juvenility, Cuomo the Younger decided that some comic relief was needed to lighten things up and distract from Andrew’s deadly miscalculations. In a season of journalistic transgression, one episode in particular stands out.

On May 21, Cuomo began his show by playing a clip of Andrew bravely undergoing a nasal Covid-19 swab, a demonstration meant to allay New Yorkers’ alleged fear of the procedure and encourage them to get tested. As viewers (some sympathetic, some not) and a fawning media community looked on, Chris introduced two “props,” in the form of giant-sized replicas of Covid-19 test swabs, and proceeded to taunt his brother, teasing him about the size of his nose. This pathetic routine redefined the dumbing down of responsible civic and journalistic behavior. Instead of wearing N-95s—a sin for which they regularly chide the president—in the midst of tragedy the Cuomo Brothers chose to don the mask of Slapstick. Jack and Bobby, they are not.

In fact, they’re not much like Mario either. In what is considered by many his finest speech, Mario Cuomo insisted that Americans must “look past the glitter, beyond the showmanship, to the reality, the hard substance of things.”²² He happened to be referring to Ronald Reagan. What would he make of his sons, were he here to witness their antics today?

NOTES

1. It bears noting that: (1) the word “wall” appears nowhere in the text of the Constitution; and (2) the word “separation” does, but only in reference to the articulation of governmental power into distinct branches. Even the First Amendment, which explicitly addresses the “establishment” and “free exercise” of “religion,” does not use “wall-of-separation” nomenclature, nor even cognates of these terms.
2. Democratic National Convention Keynote Address, 16 July 1984.

Rights, *Roe*, and the Simple Genius of Mother Teresa

Patrick J. Mullaney

Sometimes the view from without is better than the view from within. In February 1994, Mother Teresa of Calcutta filed an amicus curiae brief with the Supreme Court of the United States in the matter of *State of New Jersey v. Alexander Loce*. The brief was filed in support of Loce's contention that the life of the unborn child is entitled to protection under the Due Process Clause of the 14th Amendment, a contention arising out of his conviction for criminal trespass handed down by the Morristown, New Jersey, Municipal Court in April 1992. Loce had unsuccessfully attempted to halt the abortion of his unborn child by occupying the clinic at which the abortion had been scheduled; subsequently, he was prosecuted and convicted. The argument taken to the Supreme Court was that his removal from the premises by the Morristown police had in fact allowed the abortion to take place, making the removal a violation of his unborn child's Due Process right to life and also providing Loce with a defense against the prosecution.¹

As we shall see, Mother Teresa engaged the Court most directly on the issue of the unborn child being a rights-bearing entity. However, she offered much more than this. First, using abortion as context, she considered how fidelity to America's founding principles could well determine what the nature of American life will be. She posited the possibility of a unified nation—one in fidelity with these founding principles—against a nation divided against itself—one adopting the social and moral logic that produced *Roe v. Wade*. She also alluded to more general considerations of the type of rights that are proper within the American founding framework, their proper advocacies, and, most important, the necessary legal resolution of the abortion issue. Her words are both advice and warning, making them worthy of consideration more than a quarter century later.

It's best to consider Mother Teresa's brief step by step. She begins by presenting herself as a non-American, an outsider. Born in Albania, she traveled as a young woman to India, where she found her life's work among its sick and its poor. That work included founding the Missionaries of Charity, a religious order whose efforts have established over 400 missions in over 100 countries

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around the world. Each mission is devoted solely to caring for those most in need, the “poorest of the poor.” Among those were young mothers victimized by “despair” and “neglect.” Mother Teresa learned how these environments, coupled with philosophies and governmental policies promoting the “dehumanization” of human life, resulted in the wholesale “sacrifice” of a portion of humanity particularly relevant to the *Loce* decision, the unborn.

But in America, she found something different: a nation that at its outset had declared in its founding document certain truths about the equality of all men under the law and certain entitlements that follow from this equality. These entitlements, described in the Declaration of Independence as *inalienable* rights, included life, liberty, and the pursuit of happiness. More important, they were not bestowed by acts of government. Rather, they were endowed by the Creator directly, based upon nothing more than the humanity of the persons possessing them.

Within America’s adoption of these truths, Mother Teresa found a kinship with our nation. In contrast to her experience with other nations, she found here a faith-based commitment to realize the underlying ideals of America’s founding. More specifically, she found a commitment to the value of the human person, of humanity itself, a commitment evidenced by the pursuit and realization of the fruits of these ideals: human dignity, brotherhood, and mutual respect. That’s not to say that she was blinded by what opponents of the natural rights tradition might dismiss as natural rights rhetoric. She acknowledged America’s difficulties in realizing these ideals, in particular those concerning the treatment of the African slave. At the same time, she was also aware of the nation’s ongoing efforts to right wrongs through faithfulness to underlying principles. To Mother Teresa this faithfulness—more than America’s wealth or military might—has made our nation “an inspiration to all mankind.”

She then moved on to address the issue before the Court: whether unborn life is entitled to legal protection. For reasons developed later, she states simply that the unborn child, as a member of the human race, is entitled to the same rights as other members. These include the right to life, which is “not contingent upon the pleasure of *anyone* else.” [Emphasis in original.]²

Having conveyed her thoughts about human status as entitlement to the right to life, she notes almost in passing that America’s recognition of humanity as the basis of its most fundamental rights has had an impact broader than just the rights themselves. This recognition is said to have made America as a nation “fuller” and “more embracing,” yielding “an inclusive, not an exclusive society.” In these few short words she suggests that this common ground of humanity not only forms the basis of human rights, but also allows for the possibility of a welcoming and unified nation. As to how *Roe v. Wade* fits within this scope of inclusion and unity, she again states simply that it doesn’t. Describing

the decision as a “sad infidelity” to “America’s highest ideals,” she writes that *Roe*’s “so called right to abortion” has:

. . . pitted mothers against their children and women against men. It has sown violence and discord at the heart of the most intimate human relationships. It has aggravated the derogation of the father’s role in an increasingly fatherless society. *It has portrayed the greatest of gifts—a child—as a competitor, an intrusion, an inconvenience.* [Emphasis supplied.]

So, far from a freedom unifying the most intimate human relationships, *Roe*’s abortion liberty has caused only divisions: between men and women, fathers and children, and children and mothers. Considered by the standard of America’s founding principles, it’s easy to see why. By affording no currency to the unborn child’s humanity, *Roe* leaves nothing to support the human dignity, brotherhood, and mutual respect necessary to possible unity between the affected parties. All that’s left is divisiveness, leaving us to ponder the ominous commentary that “America needs no words from me to see how [the Court’s] decision in *Roe v. Wade* has *deformed* a great nation.” [Emphasis supplied.]³

It’s interesting to note that Mother Teresa uses the word “deformed” to describe *Roe*’s effect. Of course, to be “deformed,” America must have had a prior, proper “form.” The word “form” itself has a long and important history. Plato initially posited the reality of immaterial, universal truths existing independently in what he called “Forms.” Plato’s Forms included objective moral truths such as justice and equality. In fact, these moral Forms, although co-existing with other truths not touching upon moral concerns, such as those contained in mathematics and logic, were said to be the highest in Plato’s hierarchy of universal truths. As such, they formed a part of Plato’s ultimate reality, Universal Goodness, or *The Good*.⁴

Aristotle agreed with Plato on the existence of external moral truths, but believed that they were part of human nature itself. That is, upon self-examination, through use of human reason, human nature reveals these unvarying ethical principles. Similar to Plato, Aristotle maintained that by conforming one’s conduct to these principles of decent behavior, to the laws of human nature or the natural law, one is not only led to the Good Life (*Eudaimanio*) but also contributes to The Good of the community.⁵ So Mother Teresa’s suggestion that America’s “form” is found in its founding principles—its commitment to human value as its Truth—is a similar use of the word. Originating in Antiquity, “form” was used by her to depict the heart of the Christian message, a message grounded in the intrinsic value of the human person. America’s adoption of this message in its founding principles can be said to be its Form. And as *Roe* is destructive of human value, it can truly be said to have “deformed” America.

Having set forth *Roe*’s impact upon America, Mother Teresa goes beyond the

Supreme Court, beyond even the issue of abortion, and speaks to the nation directly:

I have no new teaching for America. I seek only to *recall* you to faithfulness to what you once taught the world. Your nation was founded on the proposition—very old as a moral precept, but startling and innovative as a political insight—that human life is a gift of immeasurable worth and that it deserves always and everywhere to be treated with the utmost dignity and respect. [Emphasis supplied.]

Which raises the question, what exactly is the *recalling* of America? It may be that the answer has already been provided. If Mother Teresa's kinship with America is grounded in the nation's historical commitment to pursue its fundamental principles, since violated by *Roe*, then the response to *Roe* is to once again properly pursue these principles in law. As under *Roe* abortion is a legal matter, the road back is to restore what *Roe* has taken. In other words, we need to recognize in law the humanity of the unborn and grant the class the protection which must flow from that humanity.

How might this be done? As a starting point, what is a proper advocacy for such a goal?

Once again, Mother Teresa's bottom line of humanity may provide the answer. To state the case generally, a proper political (or eventual constitutional) advocacy of any kind may be defined as the pursuit of a human objective that, when achieved, yields what we may call a human effect. Let's consider how a group within the United States goes about the task of effecting any desired political change. The members of the group inevitably share some identifiable common interest or interests. On the surface these interests may be one or more of many kinds; ethnic, racial, gender-based, or others. In their advocacies, these groups are said to *identify* around their common interests, making their advocacies what is generally referred to as *identity politics*.

A good identity politics is really a *human* identity politics, groups of individuals identifying first as human and thereafter acting on behalf of the human interests of others. It may even be said that the group's humanity, which could be called a spiritual identity, binds together advocacy groups more fundamentally than their material identities, such as race or ethnicity. When asked about the relative priority of spirit and matter in genetics, Jérôme Lejeune, the great French geneticist, once said, "Remember, it is the spirit that matters." The same may be said of identity politics.⁶

So, if a proper concern for humanity makes for a good politics and a good system of rights, what can be said about the path to *Roe*? Recall that *Roe* arose from the women's movement of the late 1960s and early 1970s. The movement advocated numerous rights, including some very good ones, such as equal employment opportunities, equal compensation for equal work, and equal chances for advancement. These objectives—and their achievement—can be said to

have constituted good identity politics.

However, when it comes to the advocacy of abortion, the case is different. Given that abortion takes an innocent human life, there is no proper human objective in its advocacy, nor is there a proper human effect. *Roe*'s deformity is thus apparent in its inhumanity. Inhumanity can never be a proper human objective.

If we can now see how we may *recall* America to its prior faithfulness—through pursuit of human objectives and human effects—we can also ask how, since *Roe*, we've done in that regard. How have we embodied the respect for human life in our laws? How have we since contested our law's disregard for life? Certainly, there have been many efforts to recognize and protect the unborn child or its interests in law. Consider, for example, the 1989 Supreme Court decision in *Webster v. Missouri Reproductive Services*.⁷ There the Court considered the constitutionality of a Missouri statute containing a preamble reading, "The life of each human being begins at conception," and "[unborn children] have protectable interests in life, health and well-being."

Although a preamble, Missouri's legislation was directly aimed at recognizing the value of human life and protecting that value in law. Given *Roe*, the language was unenforceable on its own account, but as it was merely precatory and had no restrictive effect on the exercise of the abortion liberty, it was upheld. *Webster* is significant because it is the first post-*Roe* Supreme Court decision specifically recognizing the value of unborn life in any sense.⁸

Along these same lines, the Illinois and Louisiana legislatures enacted statutes declaring life's commencement at conception and actually recognizing a legal "personhood" for state purposes. Again, though properly directed, each statute was ultimately unenforceable.⁹ More recent years have seen similar legislative attempts to recognize other interests of the unborn child.¹⁰

For example, in 2016 Utah Governor Gary Herbert signed SB0234, requiring that anesthesia for the benefit of the child be offered to a woman obtaining an abortion after 20 weeks. Similar types of fetal pain legislation have been introduced in at least 23 states. As of this writing, 21 states have enacted bills restricting abortion after 20 weeks. Congress has considered similar legislation in the Pain Capable Unborn Child Protection Act, which would ban abortion after 20 weeks. The proposed legislation successfully passed the House in 2010, 2013, and again in 2017. It has similarly passed the Senate twice (in 2015 and 2018), although both times it failed to obtain the necessary 60 votes for cloture.

These are just a few of the many examples of attempts to limit *Roe* and further the interests of life. And while *Roe*'s mantle has yet to fall, a few cracks are evident. Consider Justice Ginsburg's dissent in *Gonzales v. Carhart*,¹¹ the Court's 2007 decision upholding Congress's Partial Birth Abortion Act of 2003. Likely disturbed by the majority's reliance upon the State's interest in "promoting respect

for human life” as a basis for upholding Congress’ ban on partial birth abortions (something inconceivable in prior years), Justice Ginsburg expressed her displeasure that a fetus was described as an “unborn child” and as “a baby.” What she found even more troubling was the lack of respect shown by the majority for *Roe* and *Casey*.¹² She wrote: “*Casey*’s principles, confirming the continuing vitality of the essential holdings of *Roe* are ‘merely assumed’ for the moment, rather than ‘retained’ or ‘reaffirmed.’” However, although she seemed to be sensing *Roe*’s slipping away, *Roe* remains, and it is at best doubtful whether it will be overturned any time soon.

But since we’re focusing on Mother Teresa’s plea for America’s return to its prior faithfulness, we should at least contemplate what would be an acceptable reversal of *Roe*. Under current law, a woman’s obtaining of an abortion is a Due Process right, the exercise of which may not be *unduly burdened* by the states.¹³ Overturning *Roe* in this sense would mean that the procuring of an abortion would no longer be constitutionally protected, leaving states free to decide individually how they would like to limit or not limit its practice. One state could ban abortion entirely or impose various restrictions. Another could legalize it and in other ways limit its practice. State Supreme Courts could usurp their legislatures by finding a right to abortion in state constitutions, or, vice versa, a right to life. Women living in banned states could travel to adjoining states to obtain abortions. In the end though, through democratic determination, voters and state judges would control whether or not life would be recognized. And of course Congress could jump in and trump them all.

While all this would certainly be an improvement—or at least a possible improvement—over the current situation, it remains true that life would not be protected on its own account following *Roe*’s reversal. Protection would only be afforded if government decided to act on its behalf. The question thus is raised: Does subjecting the value of life to the shifting sands of politics properly *recall* America to the original principles upon which it was founded?

On this point Mother Teresa weighed in at the conclusion of her brief, writing:

I urge the Court to take the opportunity presented in these cases to consider the fundamental question of when human life begins *and to declare without equivocation the inalienable rights which it possesses*. [Emphasis supplied.]¹⁴

Let’s consider Mother Teresa’s advocacy carefully. It is not a request for *Roe*’s reversal and return of the abortion issue to the states for democratic determination. Nor is it a request for the Court to rule that unborn life be granted 14th Amendment Due Process protection, reversing *Roe*’s holding that declared the unborn “non-persons” for Due Process purposes. As we shall see, such a ruling is the Court’s responsibility. Rather, the Supreme Court is asked to *declare* the *inalienable* rights that arise from the existence of life. Which raises the question,

What is an inalienable right? More specifically, what is the inalienable right to life?

To begin with, the terms inalienable rights and natural rights are generally used interchangeably. There have been various theories of natural rights throughout history. Most theories, such as those advocated by thinkers like Hobbes, Locke, Montesquieu, and Rousseau, have approached natural rights in terms of mankind's rights collectively. That is to say that natural rights have often been considered in terms of mankind's need for governing and the legitimate scope of power granted to those who govern. Hobbes, for example, saw an ungoverned mankind as existing in a brutal state of nature. To remedy these difficulties, "social compacts" were entered into, ceding authority by agreement of the people to central figures—governors—to provide for security and well-being. To Hobbes, the greater the protection given men from this state of nature, the better. Nature being the enemy, the best form of government was the absolute sovereign. The sovereign being absolute, any freedom enjoyed by individuals was granted at the pleasure of the sovereign.

Locke saw mankind differently. He saw men as possessing certain entitlements, which he called natural rights, such as life, liberty, and property. These entitlements are not granted by government, but exist independently and serve to limit the power of the sovereign. Although described in human terms, the rights themselves provided mostly political benefits, such as the right to revolt and establish a new government.

Mother Teresa's request of the Court is different in kind. The inalienable rights to which she refers, rather than dealing with collective political relationships, consider the nature of the individual human person and the "rightness" of what that nature requires. Beginning with Aristotle, this theory has since been developed based upon the nature shared by all members of the human species, a nature defined by the capacity of each person "for reason and responsible action."¹⁵

But some might wonder what value there is in the human subject's ability to "reason to responsible action." Why does that value give rise to an inalienable right; a right so fundamental that it not only exists independently of government, but imposes upon government the obligation to provide for it; a right that exists across all cultures, because human nature is the same across cultures; a right that also may not be altered or denied because human nature never changes?¹⁶

It was John Paul II, in addressing the topic of rights, who confronted the question of the value of human reason on both metaphysical and theological levels. He argued that on the metaphysical level it is reason that allows the human person to recognize the "goods of existence"—those things that reason tells us are undeniably *good*, such as life itself. The ability to recognize life's inherent "goodness" leads immediately to the further recognition of the underlying prin-

ciples—such as simple justice—prohibiting the taking of innocent human life.¹⁷ By our capacity to reason, we attain knowledge of a “universal moral law” concerning the value of life and the respect it must be shown. Therefore, knowledge of this “moral law,” obtained through reason, affords the human person, and only the human person, the capacity for responsible action concerning life.

John Paul II’s consideration of human reason’s value on the theological level centers around the fact that the human person is made in the image and likeness of God. That being so, humans may not only use reason to apprehend moral mandates on the metaphysical level, but also to *choose* between obeying and disobeying those mandates. Thus, reason affords man *freedom*, an ability unique among material beings, to act as a moral and creative agent. Through his rational nature, then, man is capable of gaining insight into the intentions of the Creator. This ability to rationally distinguish between good and evil and to act freely upon it gives humans—and only humans—the power of compliance with or rebellion against the created order of reality.

These unique abilities and freedoms arising from man’s rational nature testify to the special dignity of the human person possessing this nature, and thus form the basis for the right possessed by any human person possessing life—the inalienable right to life.¹⁸

The substance of Mother Teresa’s request to the Supreme Court to declare our inalienable rights can be seen as two-faceted. First, she is declaring her personal commitment to the metaphysical and theological bases evidencing the dignity of the human person. She accepts the truth of the right to life. Next, she is calling upon the Court not only to commit to that dignity, but, also, *in performance of its duties*, to make the political commitment to recognize this human dignity in law in the form of a legal right. Hers is the ultimate identity politics. Identifying as human, she is advocating for both a human objective and a human effect—the recognition and ultimate protection of the dignity of human life. In doing so, Mother Teresa has demonstrated her own faithfulness to America’s founding principles. Her request in her amicus curiae brief is that the Court recall America to these principles as well.¹⁹

She did not, and need not, specify precisely where that political commitment be made, where in our law that right is actually found. That would be the Court’s responsibility. In the Due Process Clauses of the 5th and 14th Amendments, life is embodied as an enumerated right, and therefore it would be most appropriate for the Court to declare that these Clauses do indeed recognize and protect all life, including unborn life. This is not to say that all efforts to combat *Roe* are without value. They are all of great value. However, Due Process protection of unborn life is the proper recognition of the value of that life in American law. To the extent that this recognition is denied, America will retain at least a part of its deformity.

A single theme unifies Mother Teresa's submission to the Court: that there is a right and there is a wrong—a good and an evil—and, as St. Thomas Aquinas said, the good is to be pursued and the evil avoided.²⁰ Her request to the Court and her message to America can be summed up as her application of the Golden Rule—that what we do to others is what we would have done to ourselves—to all acts of the human free will with effects upon others, including rights advocated for and adopted into law. To the extent that such rights or such advocacy violate humanity itself—violate the dignity of the human person—they must be rejected.

There may be reasons why this has become less obvious to Americans in the years leading up to and following *Roe*. Possible causes include skepticism about objective truths, the ever-increasing separation of Church and State, the general secularization of the nation, and even evil itself. In fact, evil may be the most likely candidate.

Still, one person, perhaps more than any other, had the ability to see through all the confusion of our times and the reflected confusion of our politics and jurisprudence. One person had the strength to remain faithful to the truth of life and to advocate publicly for the result that that truth demands. Her commitment is always to humanity. And within that commitment to and love for humanity lies the simple genius of Mother Teresa.

NOTES

1. See Mullaney, "State of New Jersey v. Alexander Loce, A Father's Trial and The Case for Personhood," *Human Life Review* (Summer 2001) for information about the Loce case and the Nature of the Due Process arguments presented. See also Mullaney, "Dancing with the Saints," *Human Life Review* (Summer 2009).
2. It's worth noting that Mother Teresa's thoughts were then being shared. At the same time, Pope John Paul II was noting that the moral measure of a community is determined by how it treats its less fortunate members. See "Pope John Paul II and the Dignity of the Human Being," Rev. John J. Coughlin, O.F.M., 27 *Harv. J L and Pub. Pol.*, 65 (2003-2004). As he also pointed out in his 1994 pastoral visit to the United States, a community has the obligation "to defend the right to life of every human being . . . and all those whom others deem 'inconvenient or undesirable.'" This obligation was described as stemming from the more general obligation of a community to defend the basic goods and rights of the least of its members. See George Weigel, *Witness to Hope: The Biography of Pope John Paul II* at 779. As to America, John Paul II saw that "human dignity is not only the centerpiece for all America's human rights," but that "it lies at the very origins of this nation." *Id.*
3. John Paul II shared similar thoughts on the effect of violating human dignity in the advocacy of abortion. He wrote: [If] the original and inalienable right to life is questioned or denied on the basis of a parliamentary vote or will of the people—even if it is the majority . . . the right ceases to be such, because it is no longer founded in the inviolable dignity of the person but is made subject to the will of the stronger part. In this way democracy, contradicting its own principles, effectively moves towards a form of totalitarianism . . . when this happens the process leading to the breakdown of a genuinely human co-existence and a disintegration of the State itself has already begun. [Emphasis added.] *Evangelium Vitae*, N. 20.
4. For a discussion of Plato's Forms, see Plato, *Republic*, translated by Reeve, C.D.C. Vol. 1, Hackett Publishing (2004).
5. Aristotle, *Rhetoric* 137362-8.
6. Of course, political differences don't always suggest a right and a wrong. We like to believe that the vast majority of political goals are pursued in good faith by both sides, the differences between them being

questions of judgment. However, for political differences of a basic moral nature, such as abortion, right and wrong are the paramount considerations.

7. *Webster v. Missouri Reproductive Services*, 492 U.S. 490 (1989).

8. *Id.* at 504. See also MO Rev. Stat. Sec. 1.205(1) and 1.205(2) (1986).

9. See 720 Ill. Comp. Statute SSTA. 510 F10/1 (2010); repealed by Public Act 100-538 (2017); see also LA Rev.

10. Stat. Sec. 40:1299.35.0 (2009).

11. For an excellent presentation of legislative attempts and strategies to protect unborn life, see Dunaway, "The Personhood Strategy: A State's Prerogative to Take Back Abortion Law," 47 *Willamette Law Review* 327 (2011).

12. *Gonzales v. Carhart*, 550 U.S. 124 (2007).

13. *Id.* at 186-87.

14. *Planned Parenthood of SEPA v. Casey*, 505 U.S. 833 (1992), while rejecting *Roe*'s trimester system, prohibited States from imposing an "undue burden" upon abortion.

15. The scientific fact of life's commencement at conception is no longer a topic of serious discussion. For a discussion of life's commencement at conception for federal Due Process purposes, See Mullaney, "Unborn Life's Protection: Exactly What Constitutes Us?" *Human Life Review* (Summer 2004).

16. See Myers, Visiting Scholar on American Political Thought, The Heritage Foundation, Report: *Progressivism, From Natural Rights to Human Rights—and Beyond*, December 20, 2017, on Pg. 7.

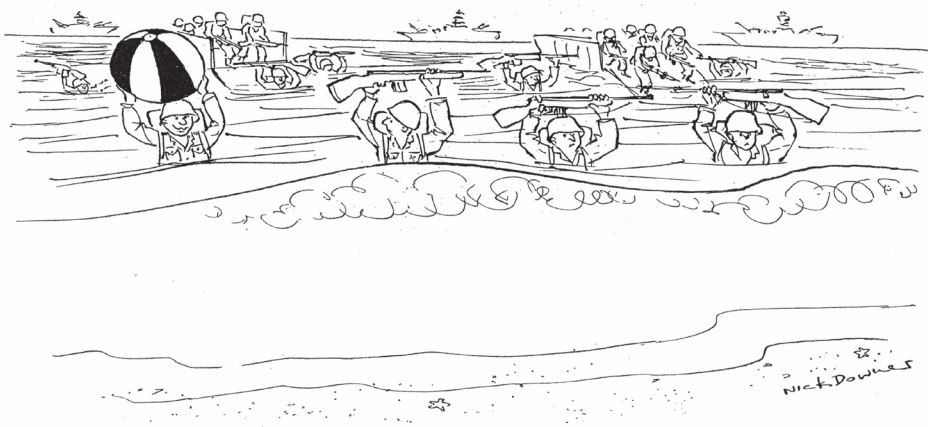
17. See Thomas Jefferson, "Letter to Samuel DuPont de Nemours," *The Essential Jefferson*, Pg. 231.

18. See Coughlin, "John Paul II and the Dignity of the Human Being," *supra*. Pg. 65-69.

19. See Coughlin, "John Paul II and the Dignity of the Human Being," *supra*. Pg. 71-74.

20. Although this basis was not grounded in the human reason, John Paul has noted a second theological basis evidencing the dignity of the human person. This dignity is found in the realities of the Incarnation and the Paschal Mystery. In the Incarnation God so loved humanity that human flesh was divinized, in itself revealing the "greatness, dignity and value" of the human person. More so, it is through the Paschal Mystery that the consequences of original sin and death are overcome and forgiveness granted. This unconditional redemptive love of the Son, in itself restoring the original Divine intent of the Creator, demonstrates the extent of God's love for humanity and as such is evidence of the highest degree of human dignity.

21. St. Thomas Aquinas, *Summa Theologica*, Ia 84, 7, 3; See also, Copleston, *A History of Philosophy* at 393-4, Doubleday.



Searching for Dorothy Day

William Doino Jr.

If ever there was an American defying easy categorization, it was Dorothy Day. She was a quiet child who became a bohemian; a bohemian who became a journalist; a journalist who became a radical; a radical who became an anarchist; an anarchist who became a Catholic; and a Catholic who became an apostle of peace, hope, and charity—and may someday be added to the calendar of saints.¹

Given the fascination surrounding her life, it's no surprise that Day has been the subject of many books and films—the latest book being John Loughery and Blythe Randolph's major new biography *Dorothy Day: Dissenting Voice of the American Century*,² and the latest documentary being Martin Doblmeier's *Revolution of the Heart: The Dorothy Day Story*.³ Both have already won wide acclaim, much of it earned. At the same time, neither quite captures the full dimensions of Dorothy Day's inspiring faith and public witness—which underscores just how difficult it is to find her.

Dorothy's Early Years and Influences

To its credit, the new biography—which I will review here—presents a vivid portrait of Dorothy's earliest years during the dawn of the twentieth century. Loughery and Randolph are accomplished writers, able to evoke the sights and sounds of that era well.

Dorothy was born in Brooklyn, in 1897—the middle of five children—to John and Grace Day, whose marriage was a challenge, to say the least. According to the authors, Dorothy's father:

. . . was a difficult man. A southerner of modest means, he had come North in his early twenties to make a living and find a wife, which he did, but his enthusiasm over the course of his married life was often directed less toward career advancement or family and more toward his race horses, professional sports, gambling . . . and, on occasion, other women.

John was a hard-drinking sportswriter who had trouble holding a job, compelling his family to move often: from New York to Oakland to Chicago, then back to New York. Grace, a gentle and caring woman, deserved far better, as did her children. But she kept the family together, despite John's repeated failings and insensitivities.

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A staunch Republican, John was not happy that “three of his five children—two of them his girls, no less—became as critical of capitalist America, as politically radical, as it was possible in the United States in the early twentieth century.”

Worse, from John’s standpoint, was that Dorothy also rebelled against him on religion. Though her parents had long since given up practicing Christianity, young Dorothy was fascinated by it—reading the Bible, attending church with neighbors, and learning about the saints from her Catholic schoolmates. John and Grace thought Dorothy was simply going through a phase, but when she was 12, she convinced them to have her baptized in the Episcopal Church. Grace, raised an Episcopalian, sympathized with Dorothy, while her father, a lapsed Congregationalist, “grudgingly agreed, if only out of concern that worse yet might happen—namely that his most eccentric child would eventually be lured to the embrace of Rome by her Catholic friends. That thought was intolerable. ‘Only Irish washerwomen and policemen are Roman Catholic,’ he informed his daughter.” Little did he know what lay ahead.

A precocious teenager, Dorothy earned a scholarship to the University of Illinois at Urbana when she was just 16. An avid reader, her social conscience had been stirred by the works of Jack London, Upton Sinclair, and Peter Kropotkin; by the time she arrived at college, she was keenly aware of the appalling conditions of the poor, new immigrants, and the working class. Immersing herself in the great Russian writers—Tolstoy, Dostoevsky, and Chekhov—who highlighted the plight of the oppressed, Dorothy was determined to help them. Her political views became increasingly radical, so much so that they began to clash with her nascent Christian faith. She consciously tried to distance herself from that faith—by smoking, cursing, and listening to atheist professors. After only two years in college, she was ready to leave, filled with passionate and idealistic beliefs about reforming the world.

Moving to New York, she began writing for two socialist journals, *The Call* and then *The Masses*, before the latter was suppressed for opposing America’s entry into World War I. By this time Dorothy had become a fervent activist, joining forces with anyone who shared her social concerns, including Communists, though contrary to legend she never actually became one herself.⁴ She protested the War and picketed the White House for women’s suffrage—an act that landed her in jail for two weeks in 1917, where she was treated brutally. The experience awakened her to the harsh realities of America’s prison system, which she would come into conflict with again.

Back in New York, in Greenwich Village, Dorothy took breaks from these political struggles with her soon-to-be-famous literary friends: Eugene O’Neill, Malcolm Cowley, John Dos Passos, Hart Crane, and later, Katherine Ann Porter. Despite their heady gatherings at a drinking café nicknamed “The Hell Hole,”

Dorothy's religious yearnings began to re-awaken. One night, O'Neill, the fallen-away Catholic, regaled Dorothy with a slightly drunken rendition of Francis Thompson's poem "The Hound of Heaven." Its theme—about God's relentless pursuit of a sinner—spoke to Dorothy directly.

Often, after spending a night carousing at the Hell Hole, she would slip away to attend early morning Mass, just to experience a taste of the divine. Dorothy kept these visits quiet, lest she receive blowback from her avant-garde friends. As Loughery and Randolph perceptively note: "She understood that her curiosity was best kept to herself. Disdain for what friends called superstition and a rejection of conservative institutions, especially the Catholic Church: *that* was the orthodoxy of the Village she knew."

With one foot in the Church, and one in the world, Dorothy alternated between the sacred and profane. Soon she made a decisive choice—exactly the wrong one.

A Double Tragedy

In 1918, while Dorothy was training to be a nurse during the flu pandemic, she fell deeply in love with a reporter named Lionel Moise. Robust, confident, opinionated, and highly attractive, he could have been a character created by Ernest Hemingway—whom Moise actually knew, when they both worked at the *Kansas City Star*. Moise was a "ladies' man," but he didn't really care about women, beyond the sexual intimacy they provided him. He had no interest in getting married, much less in having children, and was surprisingly frank about this. But Dorothy "was in the grip of an obsession she could scarcely control," write Loughery and Randolph, and still thought she could win Moise's lasting affection. After she became pregnant with his child, that illusion quickly disappeared. She worked up the courage to tell Moise about her pregnancy, only to hear his brutal reply that he was leaving for Chicago and wanted nothing more to do with her—the pregnancy be damned. Unwilling to accept this stark rejection, Dorothy followed Moise all the way to Chicago; in a desperate effort to retain him, she underwent a crude, dangerous abortion, which had a lifelong effect on her. It did nothing to change Moise's conviction that the relationship was over, so Dorothy suffered a double tragedy: losing not only the love of her life, but also their child through a traumatic abortion.

Physically and emotionally overwrought by the affair (Moise's cruelty led Dorothy to attempt suicide twice), she then fell for another dubious suitor. In 1920, she met and abruptly wed Berkeley Tobey. Tobey, who was sixteen years Dorothy's senior, is best remembered for founding the Literary Guild book club, and for having married six times (Dorothy was his fourth wife). The couple embarked on a sumptuous tour of Europe, and seemed to enjoy themselves, but the pleasure was fleeting and superficial. Neither was truly in love. By the end of

1921, they were back in Manhattan and ready to part ways. Dorothy took the decisive step, leaving her wedding ring on the bureau one morning before she left, never to return. She always regretted the marriage, believing she had used Tobey as much as he had exploited her as one of his “trophy” wives.

At this point Dorothy was still only 24, but already had an abortion and divorce on her conscience. Even during those dark days, however, the pull of her childhood faith never entirely left her. She began to read more and more about God, the supernatural, and the saints, and wondered whether a miracle would ever grace her life as well.

Forster Batterham and the Hound of Heaven

If there was one ameliorating aspect to these otherwise painful years, it was the unexpected success of Dorothy’s first book, *The Eleventh Virgin*—a thinly disguised autobiographical novel that recounted her early life and loves, right up to her wrenching abortion. In later years Dorothy expressed embarrassment at having written it, but at the time its melodramatic flavor attracted Hollywood, which bought rights to it for a movie (never produced, to Dorothy’s relief). She used the proceeds to purchase a beach cottage in Staten Island, where she sought to build a new life.

Dorothy appeared well on her way to doing so after meeting Forster Batterham, a biologist who provided Dorothy with the most genuine and caring relationship she had ever had, albeit a secular one. They lived happily together for several years in a common-law marriage, but there was one huge catch: As Dorothy was moving closer to Christianity again, Forster, a rugged individualist and atheist, was moving in the opposite direction. At first, their differences were suppressed by their intense physical attraction for one other, but that eventually caught up with them when Dorothy became pregnant in 1925. Overjoyed by the news—having believed she could never again become pregnant after the internal injuries she suffered during her abortion—Dorothy expected Forster to share her delight and want to marry her. But “he was anything but pleased,” write Loughery and Randolph. “He wasn’t brutal in his response in the fashion of Lionel Moise, but he made it known that that was not what he had bargained for.”

Tensions increased after Dorothy gave birth to their daughter, Tamar Teresa, in 1926. She decided to have Tamar baptized, and then—after meeting a no-nonsense nun named Sister Aloysius—Dorothy began receiving instruction in the Catholic faith. This was a bridge too far for Batterham, the proud unbeliever. He left the cottage every time Sister visited to teach Dorothy catechesis, lest he be exposed to organized religion, which he feared and resented.

A “final, fierce argument” between Dorothy and Forster broke out at the end of 1927. According to Loughery and Randolph, “She asked him to leave and not

come back. She would have the locks changed, if that was necessary. Enough was enough. Four days after Christmas, on December 29, 1927, Dorothy Day was baptized—just five months after Tamar had been. “I do love you more than anything in the world,” she wrote to Forster shortly thereafter, “but I cannot help my religious sense, which tortures me, unless I do as I believe right.”

The Lord’s pursuit of Dorothy had finally ended in victory, for which Dorothy was forever grateful—even as she recognized its high price and enormous personal sacrifice.

For the next five years, Dorothy did what she could to raise Tamar, traveling and freelancing her talents. To his credit, as the bitterness of their break-up faded, Forster also helped out. The one thing that kept propelling Dorothy forward, as a struggling single mother, was her Catholic faith. It kept her focused, and maintained her moral and spiritual equilibrium.

During the depths of the Depression, while Dorothy was covering a hunger strike in Washington, DC, she asked herself why the strike wasn’t being led by the Church, if it was truly committed to helping the least among us, as Christ commanded it to do. She then went to the nearby National Shrine on the campus of the Catholic University of America: “There I offered up a special prayer, a prayer which came with tears and with anguish, that some way would open up for me to use what talents I possessed for my fellow workers, for the poor.”

It was December 8, 1932, the Feast of the Immaculate Conception; and what happened next would change Dorothy’s life forever.

When she returned to New York, a man named Peter Maurin was there to greet her; he had been given Dorothy’s address by the editor of *Commonweal*, who thought the two were kindred spirits. They proved much more than that: Peter, a brilliant if somewhat eccentric Catholic layman from France, was the answer to Dorothy’s prayers, as someone who could intellectually kick-start a major Catholic reform movement; and Dorothy was the ideal Catholic to lead it as a writer and speaker. Together they founded the Catholic Worker Movement, which became the most successful lay movement in the history of the modern Church.

From the opening issue of its feisty newspaper in 1933, the Catholic Worker was grounded in Peter and Dorothy’s unswerving Catholic faith and fidelity to the Gospel, which they advanced on the wings of grace. Their only “manifesto” was the Sermon on the Mount, and their guides were the popes, the saints, and the greatest teachers of the Church. The Catholic Worker Movement preached—and practiced—love, forgiveness, voluntary poverty, prayer, moral discipline, pacifism (even when it was most unpopular, during World War II), and social justice for all. It also created “Houses of Hospitality” and communal farms to take care of the poor and dispossessed, or anyone inhibited by age, illness, or the travails of modern life.

By any fair measure, and in spite of the controversies, failures, and criticisms it received, the Catholic Worker Movement succeeded beyond anyone's dreams. Peter and Dorothy sought to "make a world easier to be good in," as Peter would say, and countless people who have had their lives elevated by it are ample evidence of its manifold good fruits.

Throughout a dozen chapters, Loughery and Randolph recount the movement's story in copious detail. One drawback, in fact, is the book's information overload. Another is that the basics of this story have already been told by Dorothy in her four great autobiographical works: *From Union Square to Rome* (1938), *Houses of Hospitality* (1939), *The Long Loneliness* (1952), and *Loaves and Fishes* (1963), not to mention her letters and diaries and countless columns for the Catholic Worker's newspaper—which Loughery and Randolph quote only sparingly. The mistake they make is to assume they can write better about Dorothy's experiences than Dorothy herself. It would have been far wiser for the authors to allow Dorothy to speak in her own voice, and thus enliven this hefty but occasionally tedious volume.

That said, the biography does have its merits, describing, for example, how Dorothy correctly prophesied the catastrophe of a war in Vietnam long before it commenced. The book also details how the Catholic Worker, by its peaceful protests of resistance, helped shame the U.S. government into ending its mandatory civil defense drills during the Fifties, when it tried to lull people into normalizing weapons of mass destruction by pretending they could survive a nuclear war by hiding in a closet or ducking under a school desk. Equally impressive is the authors' handling of Dorothy's Catholic witness during the Sixties, when she welcomed youthful opposition to the Vietnam War but resisted, with every fiber in her soul, the moral and cultural revolution the young sought to bring about through sex, drugs, and a complete disrespect for the Judeo-Christian mores that Dorothy believed essential for any healthy society.

The book is also filled with marvelous little anecdotes about Dorothy that capture her mischievous but good-natured spirit. My favorite involves the visit of Katherine Ann Porter, the great short story writer, after Dorothy became a Catholic:

Dorothy's conversion was a sore point between them. . . . Porter hated it when Dorothy kept expressing her hope that Porter, a lapsed Catholic, might herself return to the fold, and when she placed little religious statues around Porter's bed when she stayed overnight, her houseguest was irate.

That was Dorothy Day: ever the gentle evangelist, always trying to win wandering souls back to the heart of Christ.

When she died, in 1980, after nearly fifty years of devotion to the Catholic Worker, people from every walk of life, rich and poor, Catholic and non-Catholic,

responded to her extraordinary life by coming to pay their last respects, an event movingly captured in the final pages of this book.

Omissions and Errors

For all its strengths, however, the Loughery-Randolph biography contains three major blind spots that cannot go uncorrected:

1. The biography gives a highly misleading picture of Dorothy's position on abortion and the Catholic Church's approach toward women who have had one. In their introduction, the authors write:

[Dorothy] was dismayed by the Supreme Court ruling in *Roe v. Wade*, but was never willing to condemn those women as beyond redemption who had committed that grievous sin and would have been distressed by Cardinal John O'Connor's attempts to enlist her as a "poster child" of the pro-life movement.

However, as her best-known biographer Jim Forest (who worked with Dorothy for nearly twenty years) told me: "Dorothy wasn't simply 'dismayed' by *Roe v. Wade*; she was shaken to the very depths of her soul."⁵ That is why she signed a major pro-life statement against *Roe*, issued by the Catholic Peace Fellowship in 1974, declaring:

The January 22, 1973, Supreme Court Decision on abortion deprives all unborn human beings of any protection whatever against incursions upon their right to life and has thus created a situation we find morally intolerable, and one which we feel obliged to protest. . . . No one has the right to choose life or death for another; to assume such power has always been recognized as the ultimate form of oppression.

"A primary obligation of civil society," the statement went on, "is to protect the innocent. A legal situation such as now exists in the United States, making abortion available upon demand, is an abdication of the state's responsibility to protect the most basic of rights, the right to life."⁶

That same year, in an interview with Boston television reporter Hubert Jesup, Dorothy made an even more striking statement: "We do believe that there is not only the genocide of the War, the genocide that took place in the extermination of Jews, but the whole program—I'm speaking now as a Catholic—of birth control and abortion, is another form of genocide."⁷

Astonishingly, neither one of these statements—among the most powerful Day ever made—appear in Loughery and Randolph's 436-page biography.

Further, the claim that Dorothy would have been "distressed" by Cardinal O'Connor's support for her pro-life convictions is groundless; the CPF statement explicitly stated: "For many years, we have urged upon our spiritual leaders the inter-relatedness of the life issues, war, capital punishment, abortion, euthanasia and economic exploitation. *We welcome the energetic leadership our bishops are giving in the abortion controversy and we are proud to join our*

voices with theirs.” (Emphasis added.)

As Tom Cornell, another long-time associate of Dorothy’s, told me: “Dorothy would have embraced Cardinal O’Connor’s leadership because he too strongly believed in the interrelatedness of the life issues, and was not only a passionate defender of the unborn, but a noted champion of the poor, workers’ rights, and an outspoken opponent of racism, war and the death penalty—just like Dorothy.”⁸

In addition, the suggestion that the Catholic Church believes that those who sin are “beyond redemption” is profoundly wrong. The Catholic Church, along with every other Christian body faithful to the Gospel, teaches the exact opposite—namely, that Jesus Christ came to redeem and save us from our sins through His life, death, and resurrection, and that absolutely no one is beyond His infinite and all-embracing divine mercy. (If that were untrue, Dorothy’s Cause for sainthood would not now be steadily advancing in the Church.) That the authors of this supposedly “definitive” biography on Day could make such a serious error reveals how deeply immersed they are in secular assumptions, and wholly unaware of basic Christian principles.

2. Sadly, the authors are also uninformed about the twentieth-century popes. Loughery and Randolph criticize Pius XI and Pius XII for allegedly facilitating the rise of fascism and even Nazism, and accuse Dorothy of covering up for them. But even a cursory study of the best scholarship on this subject disproves these claims,⁹ as do contemporaneous witnesses. When Pope Pius XI died in 1939, the *Jewish Telegraphic Agency* honored him with the headline, “Jews Mourn Loss of Champion of Human Rights, Foe of Racialism,” followed by a story that began:

Jews throughout the world joined Christianity today in mourning the death of Pope Pius XI who in his lifetime had led the Church in a campaign against anti-Semitism and racialism which placed him among the foremost defenders of human rights, put him in conflict with the Italian fascists and made him the target for abuse in the German press.

Similarly, in 1943, in a cover story on Pope Pius XII, *Time* magazine commented: “No matter what critics might say, it is scarcely deniable that the Church Apostolic, through the encyclicals and other papal pronouncements, has been fighting against totalitarianism more knowingly, devoutly and authoritatively, and for a longer time, than any other organized power.” Instead of violent revolution, *Time* continued, “the Catholic Church wants a conservative reconstruction of society in the name of God, justice, peace. Moreover, it insists on the dignity of the individual whom God created in his own image and for a decade has vigorously protested against the cruel persecution of the Jews as a violation of God’s tabernacle.”

Three years later, after World War II ended, the Conference on Jewish Relations

published *Essays on Anti-Semitism*, leaving no stone unturned in describing the sins of Christians against Jews throughout history, but singling out these two popes as prominent exceptions: “We may agree or disagree with the general lines of political policy of the Vatican. But this much is undisputed fact: never has the papacy spoken in such unmistakable terms against racialism and anti-Semitism as in the words and deeds of the present Pope, Pius XII, and his predecessor Pius XI.”¹⁰ Dorothy’s admiration for both popes was sincere and well-founded.

3. Finally, now that the Church is seriously considering Dorothy for sainthood—a decision this biography is clearly ambivalent about—Loughery and Randolph try to chip away at her reputation for holiness. At least half a dozen times they suggest that Dorothy was an absent, negligent mother, affecting Tamar and her family for the worse. But Tamar’s own children, as well as those who worked with Dorothy and Tamar, emphatically say this is untrue.

Tamar’s daughter Kate, author of *Dorothy Day: The World Will Be Saved by Beauty*, has addressed this charge directly: “My grandmother has been accused of being an indifferent and neglectful mother, and that is just not what my mother experienced. It really is not. Dorothy was heroic in terms of her family obligations—it was really quite extraordinary, how much she was involved.”¹¹

Speaking of Dorothy’s love for her many grandchildren, Martha, Kate’s sister, says: “You have to have a sense of humor when you’ve got nine grandkids running wild. I mean, her willingness to be in the midst of chaos and very gently enjoying it.”¹²

Marj Humphrey, who became a Catholic Worker in 1978 and spent the next two years taking care of the then-elderly Dorothy, told me: “It was a period of great reminiscence for her . . . What she did speak to me about (many times, in fact) was her great love for, and great pride in, Tamar and her grandchildren . . . Likewise, I never heard Tamar speak in any way about not feeling Dorothy was a good mother to her.”¹³

Anne Marie Kaune, who also spent years at the Catholic Worker in New York, and became the managing editor of its newspaper, affirmed: “Dorothy loved her daughter and grandchildren deeply and without reserve. No one should have to defend that position and her grandchildren are the best ones to speak to it. I was with Dorothy and Tamar several times and witnessed the love between them.”¹⁴

With so much compelling and first-hand evidence that Dorothy was a dedicated, loving mother and grandmother, why would Loughery and Randolph depict her as anything less? Did the authors not seek out these witnesses to give their book an alternative perspective?

For all these reasons, *Dorothy Day: Dissenting Voice of the American Century*, cannot be considered Dorothy’s definitive biography. While the book contains a great deal of interesting information and outlines her life, its inability to truly

appreciate Dorothy's dynamic Catholic faith—to find and highlight her inner sanctum—and its serious errors and omissions make it more a missed opportunity than a lasting achievement.

The better news is that, as Dr. Michael Baxter recently observed in *Commonweal*, forty years after Dorothy's death, while there are still many mouths to feed, injustices to end, and souls to comfort, there are also many more Houses of Hospitality than ever. Small farms inspired by the Catholic Worker "have sprouted up in unprecedented numbers," and Dorothy's dedicated followers continue to witness for peace and uphold the principles she embraced and hoped would proliferate: reverence for God and the beauty and dignity of all human beings, as He created them, from conception until natural death.¹⁵

Postscript: A review of Martin Doblmeier's documentary, Revolution of the Heart: The Dorothy Day Story, will appear in William Doino's complementary essay, "Finding Dorothy Day," in the upcoming Fall 2020 Human Life Review.

NOTES

1. The Vatican formally opened Dorothy Day's Cause for Canonization in 2000, and she now has the title, "Servant of God." For updates on the progress of her Cause, see the website of the Dorothy Day Guild: www.dorothydayguild.org
2. Published by Simon and Schuster in 2020 in hardcover.
3. For more about the documentary, see: www.journeyfilms.com.
4. See, "The Catholic Worker, Communism and the Communist Party," by Tom Cornell, *American Catholic Studies*, Spring 2014, pp. 87-101.
5. Interview with Jim Forest, via Skype, June 8, 2020.
6. "Catholic Peace Fellowship Statement on Abortion" (June 28, 1974), available at: www.catholicpeacefellowship.org
7. As cited in, "A Saint who had an Abortion? – Details Revealed in Newly Released Conversation," by Kathleen Gilbert, LifeSite News, July 20, 2011; and "Misunderstanding Day," by David Mills, *First Things* online, July 25, 2011.
8. Telephone interview with Tom Cornell, June 16, 2020.
9. For an excellent overall history of this period, which rebuts charges that Pius XI and Pius XII were passive in the face of fascism and Nazism, see *Sacred Causes* by Michael Burleigh (HarperCollins, 2007); and for more documentation on both popes, especially Pius XII, see, *The Pius War: Responses to the Critics of Pius XII*, edited by Joseph Bottum and David Dalin (Lexington Books, 2004).
10. See, "Jews Mourn Loss of Champion of Human Rights, Foe of Racism," February 12, 1939, Jewish Telegraphic Agency; "Peace and the Papacy," *Time* magazine, August 16, 1943; and *Essays on Anti-Semitism*, edited by Koppel S. Pinson (New York Conference on Jewish Relations, 1946), p. 6.
11. As she states in the aforementioned documentary, *Revolution of the Heart: The Dorothy Day Story*.
12. As she states in *Revolution of the Heart: The Dorothy Day Story*.
13. In an interview with me, via e-mail, June 14, 2020.
14. In an interview with me, via e-mail, June 7, 2020.
15. See, "Still a Sign of Contradiction," by Michael Baxter, in *Commonweal* magazine, online, April 30, 2020.

Extending the ERA and the Wages of Verbicide

John M. Grondelski

Last spring's Supreme Court decision in *Bostock v. Clayton County*,¹ which interpreted "sex" to encompass not only biological sex but also psychological gender identity, has important implications for the proposed Equal Rights Amendment (ERA) to the Constitution. Because of this, both *Bostock* and the ERA pose real challenges for pro-life legislation as well as for the gender, work, and family-related realms on which most commentators have focused.

Let's consider first the history and status of the resuscitated Equal Rights Amendment. Efforts to pass an ERA amendment to the Constitution go back almost a century. An ERA was introduced in Congress in 1923, after successful ratification of the 19th Amendment guaranteeing women the right to vote. The modern ERA was passed in 1972 and sent to the states for ratification, with an end date of 1979. Initially successful, ratification stalled in 1973 (not long after *Roe v. Wade*). Faced with the likelihood that the ERA would not meet the 1979 deadline, in a debatable move Congress purported to extend it until 1982, but when that extended deadline had been reached, the ERA had received no further ratifications.

More recently, with its proponents contending that both the original and the revised ERA deadlines can be bypassed and that "just three more" ratifications would put it over the top, in 2017 a renewed effort to reach the magic number of 38 states took off, with ratifications by Nevada and Illinois. On January 27, 2020, Virginia claimed to be the 38th (and final) state needed to make the ERA part of the Constitution.

Deadlines: Congress

What effect, if any, would passage of the Equal Rights Amendment have on abortion? Could it in theory lock "abortion rights" into the Constitution by creating a new textual hook on which to hang that liberty, giving it a more solid foundation than the Supreme Court in *Roe v. Wade* and *Planned Parenthood v. Casey*?² First we need to consider whether in fact the current version of the ERA can be ratified at this late date, regardless of expired deadlines. To do so, we must explore the complicated history of deadlines for proposed constitutional amendments.

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Congress proposes constitutional amendments to the states for ratification by joint resolutions, which contain both a legal declaration of Congress putting an amendment forward and the actual text of the amendment. Since 1917, every successful amendment except the 19th has stipulated that states have seven years to ratify it. At first, Congress wrote that cap into the amendment itself, but starting with the 23rd Amendment in 1960, Congress moved it from the amendment's text into the legal declaration of the joint resolution. Most writers agree that Congress made this move to avoid cluttering the Constitution with superfluous language. No one seems to have suggested—until now—that Congress could interpret a deadline expressed in the joint resolution as a mere suggestion that Congress could unilaterally change at will. This would have defeated the plain intent of Congress: Ratification should be accomplished in a timely manner, and not linger indefinitely. (Interestingly, in the one amendment proposed after the ERA—to give the District of Columbia seats in Congress—Congress reverted to its pre-1960 practice and included the seven-year deadline in the amendment itself. That amendment died unratified in 1985.³)

The 1972 joint resolution proposing the ERA said it had to be ratified “within seven years from the date of its submission by the Congress,”⁴ i.e., by March 22, 1979. Initial support for the ERA was overwhelming, passing each chamber of Congress with more than 80 percent in favor. Ratification began with a bang: One state ratified it the same day Congress proposed it, and seven had approved it within a week. Within one year of its proposal, thirty states had ratified the ERA.

By January 1973 (when *Roe* was decided), 22 states had approved the Amendment. Eight more did so in the next two months.

Then it stopped.

No other state ratified it in 1973. Only three more ratified it in 1974, and one each in 1975 and 1977. By the 1979 deadline, only 35 states had ratified the ERA—and four of those had revoked their original ratifications. Therefore the most accurate answer would seem to be that by 1979, only 31 states had approved the ERA.

Seeing it headed for defeat, Congress took the unprecedented step in the fall of 1978 of attempting to extend the ERA's ratification deadline by more than three years, until June 30, 1982. The resolution purporting to extend that time limit was adopted by simple majorities, i.e., it did not attain a two-thirds vote in either house. The fact that the ERA, which had won more than four-fifths support in each chamber just six years before, could not muster the two-thirds vote that would have been needed for a constitutional amendment was telling evidence that the consensus for the amendment had broken down.

Even if we consider the extension from 1978 to 1982 to be valid (*dato non concessio*), it failed to push the ERA past the finish line. No state ratified the

ERA during that four-year period, and one (South Dakota) even rescinded its approval, declaring that its ratification, like the initial terms of the proposal, was only valid for seven years.

Thus, even at the end of Congress' dubious extension, the ERA only had 30-35 ratifications. I say "30-35" because some believe (as I do not) that a state cannot rescind its ratification of an amendment at any time, even before the ratification process is completed. I will present the arguments against that view later, but in either case, the ERA failed to become the law of the land, despite extraordinary means to prolong its life.

In the years following 1982, almost no one suggested that the ERA was anything but dead. The idea that it could still be ratified was not really taken seriously until 2017, forty years after the last state had ratified it. That's when proponents advanced the thesis that "Congress can unilaterally change the rules," based on certain readings of Supreme Court decisions.

Deadlines: The Courts

Congress first capped ratification in 1917 with the 18th Amendment (Prohibition). All subsequent amendments but two (the successful 19th and an unsuccessful 1924 amendment to ban child labor) were time-limited.

The Prohibition time limit generated the first of the very few Supreme Court cases on constitutional amendments: *Dillon v. Gloss*.⁵ Arrested for transporting liquor, Dillon claimed that Prohibition was invalid because Congress had taken the then-novel step of limiting its ratification period. A unanimous Supreme Court rejected the claim, affirming Congress's power to set limits. The argument that Article V did not explicitly mention such a power did not mean it was prohibited.

What is interesting about *Dillon* is that the Court did not just procedurally declare that Congress could *set* limits (which says nothing about its ability subsequently to change them). In addition, the Court in its decision wove that power into a constitutional philosophy: Proposal and ratification of constitutional amendments were part of "a single endeavor, the *natural* inference being that they were not to be widely separated in time."⁶ *Dillon* did not just see the deadline as an exercise of raw congressional power, but offered a principled jurisprudence, deducing rational implications from constitutional rules. The Constitution is hard to change because it is the supreme law of the land. Successful change requires overwhelming political consensus at a given moment, reflected in super-majorities in Congress and the states. It was reasonable, then, for Congress to set time parameters embodying that vision.

For most of American history, ratification quickly followed proposal, usually in one to two years. Before Congress began setting limits, the longest gap between the two steps was three and a half years, in the case of the 16th Amendment

(income tax).⁷ Perhaps that gap, spanning almost two congressional terms, influenced Congress to set a term limit on Prohibition. If an amendment should embody a broad and deep political consensus at a given historical moment, the longer the delay between approval and ratification, the greater the possibility that such a consensus did not really exist.

*Coleman v. Miller*⁸ was the next Supreme Court case about constitutional amendments. Congress proposed an amendment in 1924 giving it the power to regulate child labor, reversing Supreme Court rulings.⁹ That amendment lacked a time limit. Ratification occurred in fits and starts, with periods of approval followed by dormancy. After seven years, only six states had ratified it. At its zenith, 13 years after approval, only 28 states had ratified it, and 12 of the 28 did so after having previously rejected the amendment, indicating a lack of consensus.

One of the rejecters-then-approvers was Kansas. When Kansas finally approved the amendment in 1937, losing state senators sued, claiming too much time had elapsed for the amendment to be capable of ratification.

Unlike *Dillon*, where a time limit was upheld, *Coleman* posed the question of inferring one where none had been set. The Court declined to do so. Approvingly citing *Dillon*'s holding that proposal and ratification are two steps in the same dance, the Court added that amendments should embody "a contemporaneous [process] . . . to reflect the will of the people in all sections at relatively the same period. . . ."¹⁰ Having described those tenets of constitutional faith, the Court declined to further specify what a "contemporaneous" process meant. Whether an amendment was ratified in a "reasonable" time frame when none had been fixed in advance¹¹ was a "political" decision for Congress, not a legal one "justiciable" by the courts.¹²

The *Coleman* court likely did not go further because it saw the case as moot. The amendment was going nowhere, and the Supreme Court in the New Deal era was more receptive to the kind of protective legislation that the child labor amendment was proposed to ensure. Since the amendment appeared redundant, why issue a broader, theoretical ruling?

Since *Coleman*, no precedent-setting cases on time limits have reached the Court. *Idaho v. Freeman and NOW*¹³ raised the question of Congress' power to extend the ERA and whether a state could rescind a prior ratification before the process was completed. The District Court declared the extension "null and void" and upheld the rescissions. The Supreme Court first stayed and then—when June 30, 1982, had passed with ERA unratified—dismissed the case as moot,¹⁴ thus avoiding a precedent. In summary, the Court has held that: Congress can set such limits on amendments in advance; it can do so because an amendment should evidence a contemporaneous consensus at a given historical moment; and if Congress has not set a limit in advance, the decision whether

ratification is consummated is up to Congress, not the courts. It has not addressed the core issue of the ERA: If Congress has set a limit in advance, can it subsequently alter it, decades later, unilaterally and without participation of the states?

A clear trajectory towards a time-bound vision of constitutional change, reflecting an historical political consensus, was thus in train. The 27th Amendment potentially derails that train.

Deadlines and the 27th Amendment

By “Bill of Rights,” Americans usually mean the first ten amendments, adopted in 1791. Congress had in fact initially proposed twelve amendments, but two were not immediately adopted: One of them, prohibiting congressional pay raises from becoming effective until after the next regular House election, became the 27th Amendment in 1992.¹⁵

Today’s 27th Amendment was ratified by six states in the 1790s, and then went into hibernation. One state ratified it in the nineteenth century. However, almost two centuries after the amendment was initially proposed, a University of Texas undergraduate started a letter-writing campaign in the 1980s for its approval. The era’s anti-Washington ethos led to 30 states approving it. In 1992, the National Archivist certified its ratification, and Congress (by practically unanimous votes) affirmed that certification.

Paradoxically driven by anti-government passion, ratification of the 27th Amendment undermines several key principles in earlier Supreme Court jurisprudence, above all, the principle of contemporaneity. Cobbling together ratifications strung out over three centuries, linking legislators from the last quarter of the twentieth century with their long-dead counterparts from the eighteenth (plus a few from Ohio’s 1873 legislature) undermines the idea that a constitutional amendment is more than just a nose count, embodying instead an overwhelming political consensus at a given historical moment. Instead of a principle, we get a procedure: Collect the required number of ratification chits, abstracted from history, and—*voila!*—you have an amendment!

A crucial difference is that the original 1791 proposal that became the 27th Amendment contained no time limit. Such caps were still 126 years in the future. *Dillon* had taken note of four amendments floating around in its day without ratification, including the future 27th Amendment and a last-ditch effort from 1861 to prevent civil war by protecting slavery. *Dillon* asked whether “their ratification in some of the states many years since by representatives of generations now largely forgotten . . . be effectively supplemented in enough more states to make three-fourths by representatives of the present or some future generation. To that view *few would be able to subscribe, and, in our opinion, it is quite untenable.*”¹⁶ The 27th Amendment weakens that logic.

Anti-government activists who pushed the 27th Amendment should ask themselves: What did they really achieve? Had they used the impetus to ratify it in a different way—treating it as a call for a constitutional convention to propose the amendment anew—they could perhaps have achieved their goal while upholding the principle of contemporaneity. In the end, given the power of incumbency, favorable apportionment, and the general lack of congressional turnover, does deferring a pay raise to the next Congress really mean anything? And what was lost to make that practically moot point?

Deadlines and the ERA

As Virginia prepared to ratify the ERA, the National Archivist asked the Department of Justice (DOJ) to determine whether the ERA could still be ratified. On January 6, 2020, DOJ's Office of Legal Counsel issued an opinion¹⁷ holding that Congress can fix a period during which an amendment must be ratified; it had fixed one for the ERA; and the ERA had not been ratified in that period. Alabama, Louisiana, and South Dakota, which all had rejected the ERA, have filed suit to bar the Archivist from certifying it.¹⁸ Massachusetts has filed suit to certify it.¹⁹ The Virginia, Nevada, and Illinois Attorneys General also seek to force recognition of the ERA ratification.²⁰

On February 13, 2020, the House of Representatives passed H.J. Res. 79, purporting retroactively to repeal the ERA's ratification time limit, declaring that the ERA would be adopted "whenever ratified by the legislatures of three-quarters of the several states." The resolution, adopted 232-183, was 45 votes short of the two-thirds majority real amendments need.²¹ Its proponents, however, invoked the dubious and contested 1978 extension as precedent. Although the companion Senate bill (S.J. Res. 6) has 48 cosponsors, it is unlikely to get out of the Judiciary Committee, be scheduled for floor action, or survive a filibuster.

A Contemporary Discussion of the Deadline Debate

To contend that Virginia put the ERA "over the top" involves asserting a number of debatable propositions, the truth of any one of which suffices to vitiate the claim. Specifically, one must hold all of the following:

1. The legally established deadline for the ERA's ratification is not binding. An amendment once proposed, absent explicit contrarian language *in its text itself*, is potentially forever open to approval.
2. Congress can extend that deadline without:
 - a. A two-thirds majority of each house of Congress; and/or
 - b. The consent of the states which had previously ratified the Amendment.
3. Prior to completion of ratification, a state can always and only

change its mind from “nay” to “yea” but can never change its mind from “yea” to “nay.” Rejections are always reversible; approvals are eternal.

4. A state cannot condition the term of its ratification’s validity to match the federal term.

So how does one claim an amendment that died 41 years ago is forever open to ratification?

Proponents invoke *Coleman* as a fig leaf to temper the appearance of overreach for their claim that Congress can extend or eliminate the ERA’s deadline. But *Coleman* was about giving deference to Congress when Congress had not fixed a term, not about Congress changing terms *ex post facto*. ERA advocates claim a congressional authority arguably even broader than that discovered in *Coleman*.²² House Judiciary Committee Chairman Jerome Nadler asserts that “Article V also contemplates that Congress *alone* is responsible for managing the constitutional amendment process, given that it assigns only to Congress an explicit role in the amendment process and does not mention *any* role for the Executive or Judicial Branches.”²³ Their position that Congress can *unilaterally, retroactively, and by a simple majority* wipe out any time limit on ratification is just what the House purported to do in February.

That goes far beyond *Coleman* and is arguably alien to the spirit of the Constitution.

As *Dillon* taught, constitutional amendments are part of a federal dance, in which Congress and state legislatures have at least co-equal parts. Indeed, while Congress has historically led the amendment process, state legislatures may actually have more power than Congress. Congress cannot amend the Constitution without state ratifications, but states theoretically can change the Constitution without congressional approval. Two-thirds of the states can propose an amendment through a constitutional convention that 38 states can then ratify.²⁴

To claim that Congress calls all the shots on ratification, including retroactively changing its terms, ultimately destroys the federal system. The states cease being partners, “succeeding steps in a single endeavor,”²⁵ and become mere provinces. That results in what *Dillon* rejected, i.e., treating proposal and ratification as “unrelated acts” rather than part of the contract.²⁶ What contract can be altered by one party at will, imposing it on the other? Congressional stipulations then become suggestions, guidelines, or salutary thoughts, but not *laws*.

The claim that Congress can change deadlines seems to cheapen the ratification process. Article V requires supermajorities to ensure that the Constitution is not changed lightly: Marshalling 67 Senators, 290 Congresspersons, and majorities in at least 75 of 99 state legislative chambers ensures profound

consensus. If Congress can by simple majorities change the rules, counting rescissions as ratifications even if every ratifying state revoked its consent, we have abandoned constitutional consensus to the whims of a momentary special or partisan interest.

One might suggest that is exactly what is afoot with the ERA's deadline extension.

If the ERA enjoys the overwhelming support its proponents claim, why not be intellectually honest, admit the 1972 amendment is dead, and send a new ERA to the states? The answer is simple: its supporters know they would lose.

To start *ab initio* means confronting abortion, and as long as *Roe*'s subversion of democratic debate subverts political redress of the abortion issue, it will deform everything in its path. ERA proponents can now pretend it has "nothing" to do with abortion. They also know that a new vote on the ERA would precipitate attempts to codify that claim by writing abortion-neutrality language into the amendment itself. Its proponents will never accept that. But without that neutralizing language, it is doubtful that the ERA would garner two-thirds votes in Congress, and it would certainly be blocked during ratification. At least one chamber in at least thirteen pro-life legislatures will defeat ratification.

Starting anew is, therefore, a non-starter. Hence the current game plan, under which a simple majority of both chambers could simply declare the ERA ratified. Undoubtedly some states will sue to block the action, but can one be confident that a majority of the Supreme Court would *reverse* Congress rather than punt?

Another advantage for ERA proponents in keeping with the 1972 ERA is maintaining the ambiguity of language. Among the reasons *Casey* advances for upholding *Roe* was that "[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."²⁷ Can one doubt that the ERA's guarantee of non-discrimination on the basis of "sex" will be seized upon to claim, consistent with feminist orthodoxy, that the abortion license is essential to American women's equal participation "in . . . economic and social life?"

That core claim would be embellished with others, such as striking down the Hyde Amendment or limits on funding Planned Parenthood. When New Mexico's Supreme Court used that state's ERA to strike down a ban on Medicaid payments for abortion, it claimed the restrictions "result in a program that does not apply the same standard of medical necessity to both men and women, and there is no *compelling justification for treating men and women differently* with respect to their medical needs in this instance."²⁸ The current preoccupation with "structural sexism" would probably be used to revisit and probably overturn *Harris v. McRae*,²⁹ which upheld the Hyde Amendment.

Current pro-life laws depend on democracy, that is, normal political policy options within the narrow confines of *Roe*. The Court is still somewhat unsettled

about where the current habitations of the abortion liberty lie: the 9th or 14th Amendments or maybe the Privacy Nebulae. The ERA gives that liberty a textual hook to advance what Mary Ann Glendon calls “rights talk”³⁰ to bludgeon the few remaining pro-life restrictions on the books.

Finally, the ERA threatens to make a permanent and continuing mishmash of “textualism” as a hermeneutic for constitutional interpretation. The key term in the ERA is “sex.” But what does “sex” mean and where do we look for its meaning? Whose understanding counts—the 1972 Kansas legislator who thought it meant biological sex or the 2020 Virginia legislator who thinks it means intentional gender? Or is the meaning of “sex” as fluid as sexual identity is asserted to be, to be perpetually reinterpreted by shifting majorities of five Supreme Court justices? Does “sex” in the ERA have a fixed or evolving meaning? Critics³¹ have claimed that *Bostock* represents just the beginning of never-ending judicial activism to adjudicate claims under the Civil Rights Act. Among the kinds of litigation foreseeable under the ERA’s “sex” non-discrimination requirement is the claim that, because “biological women” alone can become pregnant, a law that bans abortion constitutes discrimination. The difference is that *Bostock*, from which this logic can be extrapolated, involves interpretation of a simple law, whereas the ERA is a constitutional amendment and thus likely to subject all pro-life legislation to the most arduous “strict scrutiny” standard to pass constitutional muster. In short, the ERA is not just a statutory codification of *Roe*; in terms of abortion law, it will likely be used as something like a constitutional amendment adopting *Roe*.

All things are possible when words lose their meaning, which is why Paul Greenberg warned that “verbicide precedes homicide.” That loss of meaning has long been plain to proliferators in the abortion arena, but the ERA history of stretching a seven-year deadline into 48 years seems likely to prove similarly deadly. In this Alice in Wonderland world where words are shorn of meaning, “When I use a word . . . it means just what I choose it to mean—neither more nor less.” Alice’s query about whether “you *can* make words mean so many different things” receives a very postmodern, Derrida-esque reply: “The question is which is to be master.”³² Who would have thought of Humpty Dumpty as master mentor in constitutional interpretation?

All views expressed herein are exclusively those of the author.

NOTES

1. U.S. Supreme Court, No. 17-1618, decided June 15, 2020, opinion here: https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf

2. *Roe et al. v. Wade*, 410 US 113 (1973); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 US 833 (1992).

3. https://en.wikipedia.org/wiki/District_of_Columbia_Voting_Rights_Amendment
4. H.J. Res. 208 (92nd Congress), at <https://www.govinfo.gov/content/pkg/STATUTE-86/pdf/STATUTE-86-Pg1523.pdf>
5. 256 U.S. 368 (1921).
6. *Ibid.*, at 375.
7. Before the 27th Amendment, which deserves special treatment, the record for the longest gap between proposal and ratification of a successful amendment was just under four years in the case of the 22nd Amendment, limiting presidents to two terms.
8. 307 US 433 (1939).
9. https://en.wikipedia.org/wiki/Child_Labor_Amendment I follow this history of the Amendment here.
10. *Coleman*, at 452.
11. The Court is explicit that when a term was set in “advance,” it was controlling: *Dillon* at 454. That point is relevant to the ERA, whose term for ratification *was* set in advance.
12. *Ibid.*
13. 529 F. Supp. 1107 (D. Idaho), 1981.
14. 455 US 918; 459 U.S. 809.
15. https://en.wikipedia.org/wiki/Twenty-seventh_Amendment_to_the_United_States_Constitution
16. *Dillon*, at 375, emphasis added.
17. <https://www.archives.gov/press/press-releases-4>
18. <https://www.archives.gov/files/press/press-releases/2020/alabama-v.-ferriero-era-complaint-as-filed.pdf>
19. <https://www.archives.gov/files/press/press-releases/2020/equal-means-equal-v.-ferriero-era-complaint-01.07.2020.pdf>
20. <https://www.virginiamercury.com/blog-va/virginia-illinois-and-nevada-sue-to-have-era-recognized-as-28th-amendment/#:~:text=Virginia, Illinois and Nevada sue to have ERA recognized as 28th amendment,-By&text=Virginia has joined Nevada and,28th Amendment to the Constitution.>
21. <https://www.congress.gov/bill/116th-congress/house-joint-resolution/79>
22. Congressional Research Service, “The Proposed Equal Rights Amendment: Contemporary Ratification Issues,” December 23, 2019, p. 6, available at <https://fas.org/srg/crs/misc/R42979.pdf>
23. *Ibid.*, quoting Nadler’s November 13, 2019 statement (emphasis added) on markup of H.J. Res. 79, adopted by the House in February 2020, which purports to rescind any time limit to ratify the ERA.
24. Some would contend that a convention cannot be called under Article V without some affirmative act by Congress but, since this method of constitutional amendment has not yet been tried, that question is in dispute. It would clearly seem, however, to raise a constitutional issue that has judicial, and not just political dimensions, further denying Nadler’s claim that the courts have no role in Article V matters. Indeed, if Nadler was correct, *Dillon* stands on shaky ground and ERA proponents should never cite *Coleman*, since the courts have no business on congressional turf.
25. *Dillon*, 374-75.
26. *Ibid.*, 374
27. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992) at 855, emphasis added.
28. *New Mexico Right to Choose et al. v. Johnson*, 975 P.2d 841; 126 NM 788, emphasis added, at <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/NM%20supremem%20court%20decision%2011-25-98.pdf>
29. *Harris v. McRae*, 448 U.S. 297.
30. Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: Free Press, 1991).
31. See Rod Dreher, “Bostock and SOGI: A Christian Waterloo,” *The American Conservative*, June 19, 2020, at <https://www.theamericanconservative.com/dreher/bostock-sogi-waterloo-magnitude-of-christian-defeat-religious-liberty/and> Ross Douthat, “The Tempting of Neil Gorsuch,” *The New York Times*, June 20, 2020, at <https://www.nytimes.com/2020/06/20/opinion/sunday/neil-gorsuch-supreme-court.html?action=click&module=Opinion&pgtype=Homepage>.
32. Lewis Carroll, *Through the Looking Glass* chapter 6, available at: <https://www.gutenberg.org/files/12/12-h/12-h.htm>

Leaving Home:

Making Plans to Abandon Mother Earth

Ellen Wilson Fielding

Many prominent members of the science and technology communities and those who see them as trustworthy oracles have by now given up on Mother Earth as a medium-to-long-range bet for human thriving or even survival. Despite their climate change angst and almost claustrophobic fear of overpopulating the planet, we might at first be surprised that a community of people so attached to the Next New Thing, so sure that old is synonymous with outworn and obsolete, and so full of hubristic confidence in their ability to grapple successfully with any complex problem they are thrown would seemingly throw in the towel so quickly when it comes to their Mother Planet. A Freudian issue, perhaps.

But the explanation more likely lies in their very love of the new and untried. SpaceX entrepreneur and visionary Elon Musk, for example, almost ignites with enthusiasm when he speaks of his plans to have *perhaps a million-person city erected on Mars* in fifty to a hundred years.¹ Musk hopes to launch his first (unmanned) spaceships—packed with machines and other necessities for future trips—in 2022, and talks confidently about eventually compressing the atmosphere there for breathing and producing methane from water and elements of the Martian atmosphere to fuel return trips. Eventually (meaning a decade or so along), he envisions launching about a thousand spaceships every year or two during the window when the Earth and Mars orbits draw closest to each other.

In another issue of Space.com, Samantha Rolfe writes warningly of the potential danger human pioneers to Mars might pose to alien life forms (presumably quite basic life forms, since no beings like the Martians of our imaginations have been discerned by the cameras on our unmanned spacecraft there). She explains, “there is a risk that microbe-ridden humans walking on the red planet could contaminate it with bugs from Earth. And contamination may threaten alien organisms, if they exist. It may also make it impossible to figure out whether any microbes found on Mars later on are Martian or terrestrial in origin.”

By contrast, in the early years of science fiction, including the 1950s space invasion movies, we were more alarmed by the possibility of being conquered, oppressed, destroyed, or otherwise adversely affected by “space aliens.” That was also the era when we were worried about nuclear war and being subverted

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or outmaneuvered by the Soviet Union in the Cold War. Even in the natural realm, we were more inclined than nowadays to brood on the perils that Nature posed to us than those that we posed to Nature. Nowadays, the reverse seems to be true, both intra- and extraterrestrially: The Green among us exercise a preferential option for lower life forms.

Musk sees the settling of the Martian frontier as an inspirational and aspirational endeavor, an investment opportunity (through long-range prospects of mining valuables from Mars and ultimately perhaps from other locations), and (for the human race), a planetary lifeboat—a way of, in author Tom Huddleston’s words, “prolonging human civilization by ‘[building] spaceships to extend the human species’s reach.’”²

Although Musk’s part-Romantic, part-shiny-new-objects fascination with space colonization is in his case not merely that of an interested onlooker or would-be passenger but of a business manager intent on making it happen, he is hardly alone in his commitment to moving beyond our home planet. Amazon founder Jeff Bezos, for example, has poured a hefty portion of his personal fortune into a company called Blue Origin that, as its website (blueorigin.com) states, “is committed to building a road to space so our children can build the future.” In the site’s short video on Blue Origin’s mission, Bezos states:

We face a choice. As we move forward, we’re gonna have to decide: Do we want a civilization of stasis—we will have to cap population, we will have to cap energy usage per capita—or we can fix that problem by moving on into space . . . I wish there could be a bunch of very entrepreneurial startup companies doing amazing things in space.

Unlike Musk, Bezos favors a somewhat more measured approach toward building reusable launch vehicles “so our children can build the future. . . . Slow is smooth, and smooth is fast.” (The motto on the site is “Gradatim ferociter—step by step, ferociously.”)

Bezos’s focus seems centered on the problem that Earth’s population and consumption levels pose for depleting resources. In his view we are only a century or two away from a monumental resource crisis: “The Earth is no longer big,” he has put it. “Humanity is big.” He envisions enormous orbital space habitats (like artificially constructed planets) that could be engineered to simulate any part of Earth we might nostalgically desire to replicate—from historic cities to tropical islands.

Though they may differ on the details, nowadays many scientists, engineers, sci-fi lovers, and devotees of high-tech dream of transplanting themselves extraterrestrially, to other parts of our solar system such as moons or planets or enormous man-made satellites, if not to “a galaxy far, far away.” The idea of camping out on Mars in the protective “tent” of an artificially created biosphere is peculiarly attractive to such folks. In that respect they are perhaps a more

extreme version of the pioneers once attracted to leaving the constricted world of Europe for the dangerous promise of the Americas—a New World that now seems rather tame and tired to adventurous souls several generations down the road from our frontier forefathers.

But the planet hopping and homesteading are a much more extreme example of this pioneer spirit, despite the “Space—the Last Frontier” slogans we heard during the 1960s space race. All the early emigres from Europe knew they would be confronted by dangers and new challenges; but they also knew they would encounter much that was familiar and hospitable to human beings, such as air that could support life unrefined by machines, naturally food-bearing plants and animals that could be eaten, rain, snow, the familiarly calibrated tug of Earth’s gravity, 24-hour-days, lunar tides. And though travel to the New World long remained perilous and distances were immense by their transportation standards, return was possible.

Yes, Musk and other would-be entrepreneurs of space colonization may conjure up a night sky streaming with the comings and goings of Martian-bound and returning spaceships. However, the subtext of their offloading humans from Earth is not only that space colonization would be exciting and ultimately profitable, but also that relocation would likely prove necessary eventually for human survival—whether because of population growth or because of apocalyptic scenarios involving climate change, nuclear war, or collisions with giant asteroids. If we accept some such plotline (something like the *WALL-E* scenario, though Bezos’ artificial tropical paradises look much more appealing, especially if the Amazon Prime deliveries keep coming), down the road there might be no habitable Earth full of welcoming fellow humans to come back to. Under this scenario, space colonization would not be an escape valve for excess people but a way to prolong an endangered species.

If this sounds strongly reminiscent of a futurist dystopian novel, one reason may be that the people predicting such a terrestrial outcome are well versed in the genre. Unlike the Cold War era novels of post-atomic war struggles for survival, however, space colonization permits its fans to indulge in the best of both worlds: They can be dystopian and utopian at the same time. They can foresee the abandonment of a toxic or exhausted Earth in favor of a sci-fi high-tech playground for human ingenuity elsewhere in the solar system (and eventually, who knows where else?).

However, not all of us would view such a result as a utopia. Imagine some of the constraints that governors of an engineered environment in a planet inherently inhospitable to human life might need to impose. Remember, our space travelers are setting out to eventually colonize other lands, not merely to satisfy their curiosity about Martian or lunar landscapes or conduct scientific studies.

So they will need to erect and safely maintain an artificial environment, provide for the settlers' nourishment, address health issues, maintain order, all in an area so precariously interposed between life and death that, for example, the kind of disagreement between parties that here on Earth would prompt one of them to take up his marbles and go home could not be countenanced. Practically speaking, as foreseeable science stands, there would be no non-suicidal out unless and until passage back (if Earth were still habitable) on one of the perhaps six-to nine-month flights home.

If I were imagining a space colonizing novel, at this point in my cogitations it would become clear that someone or ones would have to be governing this whole project (a project that in Musk's mind could encompass *one million* immigrants to Mars within 50 to 100 years) with a heavy hand. This pioneering adventure would be a far cry from the sagas surrounding the seventeenth- and eighteenth-century settlers planting themselves on the narrow verge of the American coastline, or the somewhat later accounts of frontier towns in the American West, complete with gunfights, cattle rustling, stagecoach robberies, and battles between the farmers and the ranchers. Instead, any extraterrestrial equivalent of the Oregon Trail would have to conform to precise blueprints. These would be very planned communities—perhaps verging on the totalitarian.

And after all, that too speaks to the tech world's strengths. The capacity to track and trace, to be efficient and elegantly designed, to account for seemingly all eventualities through flow charts and computer simulations—that sort of thing is meat and drink to the folks in the engineering and IT departments.

For example, a planned community in a place where food and other supplies could not realistically be ordered within a brief turnaround time would need to calculate consumption with some precision. The sort of accidents that can flow from excessive exercise of free agency over consumption or hoarding—carelessness that leads to spoilage and waste, destruction of property in a fit of rage or a wild weekend—could not be tolerated. Unhealthy lifestyles also could prove dangerous for the whole community. And so too (talk of “planned communities” makes this hard to ignore) might unplanned, unprovided-for births.

In earlier eras, both in the Motherland and on the borders of the then-known world, children were regarded as a good thing. They might strain your resources and your patience initially, but down the road—and not all that far down the road—they could help with the enormous mountains of work that a pre-automated and pre-industrialized society needed to engage in for survival. They also were the primary safety net for their aging parents. Clearly, modern societies even here on our semi-dystopian Earth no longer regard them that way. Less clear is how they would be regarded in a space colony. Of course, to make such a colony permanent and largely self-sustaining, future generations are necessary. But how many and how begotten and raised is a little unclear.

Then there are the complicated questions of relations among colonies, whether these are separate enclaves on shared planets or moons, or separate giant space stations. Not to mention the relationships between such colonies and the nation-states of Earth, so long as Earth continues to support human society. Under the artificial environments of space colonies, foreign as well as domestic threats surely would loom larger given the precariousness of existence under the conditions of living there.

But more basic than all these “how” questions is a “why” question about space colonization that underlies even the seeming rationale of providing the human race with an escape hatch. What *is* the motivation for preparing to abandon a depleted or dysfunctional Earth for another home or homes in our solar system? Is it to preserve a species, an entity, a brand known as humanity, or is it to preserve certain humans (ourselves, our descendants, our family line, our nation or ethnicity, our civilization)? And if the former, why? And if the latter, why?

As we’ve seen, the most commonly encountered argument for space colonization is the possibility that we will exhaust our resources or else encounter a global crisis extreme enough to render the Earth or large portions of it unlivable. The late physicist Stephen Hawking urged us to prepare an alternate home for our species or face extinction. Being a serious theoretical physicist, Hawking was accustomed to playing with long trajectories of time; he gave the human race about a thousand more years before it died out on Earth under the circumstances he could plausibly foresee. But it might take a sizable portion of that thousand years to work out many of the kinks. In addition, human extinction could proceed much more quickly under those doomsday scenarios, such as collision with a large space object or a global nuclear war.

Hence the sense of urgency people like former NASA administrator Michael Griffin have been expressing in recent decades: “In the long run a single-planet species will not survive. . . . If we humans want to survive for hundreds of thousands or millions of years, we must ultimately populate other planets.”³

“If we humans want to survive for hundreds of thousands or millions of years”! Strangely, before reading those lines I had not considered working toward this long-distant endpoint a life goal. As a Christian living a mere two thousand years after the death and resurrection of Christ—a mere blink of an eye in cosmic terms—when I contemplate the end of human life as we know it, I do so in the context of Christ’s Second Coming. Among other things, that means I think of it as something that might happen today, or next month, or next century, or even, if I can wrap my head around it, a hundred thousand million years from now, when we may or may not have colonized moons and planets of our solar system. My attitude toward such widely divergent estimates of our species’ life expectancy is fairly casual, since I leave to God the whole project of determining the optimal “day and hour” to pull the plug on present conditions and usher

in new heavens and a new earth. And who better to make such a decision, after all, since He knows why He made us, what we are meant to accomplish, and for what ultimate purposes? That is why, for the most part, I confine my planning to sorting out how best to live my much more modest likely lifespan and to help the next generation do likewise.

But there are many—including a large number of those eager to stretch the lifespan of our species to hundreds of thousands or millions of years—who do not share my religious beliefs. What confuses me, then, is why, without positing a Creator’s purpose for the “all this” of human history, they choose to assign themselves the task of perpetuating our species as long as possible. It is easier to understand the logic of the explicitly self-loathing camp of human beings who despise human exceptionalism and debate the self-sacrificial choice of extinguishing our species for the sake of lower life forms. Perhaps one of those now-lower life forms, preserved by our human sacrifice, might many hundreds of thousands or millions of years hence evolve into a higher form like us, but one endowed with greater wisdom and a more tender conscience, more altruistic and less self-regarding in its relations toward its own era’s lower life forms.

Ultimately it is hard for me to take seriously the larger goals and plans of the space colonizers. It is not that their concerns about threats to humans’ continued existence may not be validated; it is not even that their colonization plans may not be successfully carried out someday. However, outside of their knowledge of physics and astronomy and math and engineering, these people seem, well, silly—clueless about what it means to be human and about what human attributes, both good and bad, we will carry about with us wherever we go.

Consider the contribution of “conservation biology” to some theorists on space colonizing.⁴ Drawing on their work, these visionaries of distant space travel and colonization have developed mathematical formulas for the number of breeders needed to avoid genetic issues from inbreeding. Others plan to pack up a supply of sperm or haul human embryos across the solar system to implant or (eventually) develop outside the womb, à la *Brave New World*. Such are the routes to rational reproduction discussed by the wonkier sorts of space colonizing proponents. After a while, one recollects why many of these people had trouble getting dates in high school. Their understanding of and appreciation for organically lived human (or even animal) experience seems lacking. In a sense, they are translating to a real-world projected future on other planets the two-dimensional world of a video game: The player faces a series of challenges to be solved, and chooses a video game identity called an avatar in order to solve them. After a while the player may swap out one avatar for another with more desirable energy levels, strength, agility, or weaponry.

But no matter how complex these video games are—and they can be mind-

bogglingly complex—they cannot approach the complexity of real human beings, who are always much more than the sum of their strength and agility points.

It seems likely that someday human beings, God’s free-range children, will venture beyond the expansive playground of Mother Earth. Unless we kill ourselves beforehand or unexpectedly regress to a much more primitive level, or unless that Second Coming is closer than we think, some sort of space settlement will probably begin to happen, perhaps in this century. Let’s hope our new environment is unfriendly to coronaviruses.

But the ways in which this great project is being proposed, the assumptions that are being made about human beings and what they need to thrive (space stations that replicate Hawaii!), the questions that are not being asked, all are warning signs of the same moral and philosophical weaknesses that we run across here on Earth every day in our battles over human life and its nature, value, origins, and destiny.

Why is it important for human beings to live hundreds of thousands or millions of years? It may seem obvious that more is automatically better, but let’s think about it. How, for those of us living today, would things differ if our species had only another thousand years? Unless we posit a destiny—things to be done, a particular place to end up, not because that is where we happened to be when things petered out, but because it was a conclusion to a story—what difference in meaning is there between lasting one interval of time and lasting two times that interval?

Socrates likened those who commit suicide to deserters from an army. But he could only do so because he believed in some sort of Creator, and therefore in some sort of purpose for creation. If we do not also believe in a purpose for our being here (a purpose beyond our own inventions and schemes, which in a non-purposeful, non-intentional, self-subsisting and unconscious universe would merely be a fiction we comfort ourselves with), then beyond our emotional attachments to our children and grandchildren, our enjoyment of this or that, there is no reason for, well, anything. Under those conditions, going or staying, preserving nature or exploiting it, indulging ourselves or sacrificing ourselves for others, are choices made for emotional and essentially solipsistic reasons. In this sense perhaps transgenderism is merely the natural endpoint of our society’s brand of semi-official agnosticism about existence and its purpose: Our values, our identities, our plans, our schemes, are just—ours. We determine them, and no one may deny them, but that is because they only exist in our heads anyway.

One of those mindfulness self-help books a few years back carried the title *Wherever You Go, There You Are*. Whenever or if ever human beings do decide to “slip the surly bonds of earth” in the space-colonizing sense, we will bring with us our human nature, our human history (whether we remember it or

not), our emotions and psyches, our beliefs and desires. And, depending upon whether we then believe ourselves to be creatures created for a purpose, or the emanations of a mindless and uncaring universe, we will act as either carriers of a divinely intended destiny or self-willed and self-conscious organisms seeking impermanent satisfactions.

NOTES

1. Mike Wall, "Elon Musk is still thinking big with SpaceX's Starship Mars-colonizing rocket. Really big," Mike Wall, Space.com, Jan. 18, 2020, <https://www.space.com/elon-musk-starship-spacex-flights-mars-colony.html>
2. Tom Huddleston, "Why SpaceX's historic manned NASA flight is important for Elon Musk's Mars ambitions" (cnbc.com, May 27, 2020; updated June 3, 2020).
3. Michael Griffin, "NASA's Griffin: 'Humans Will Colonize the Solar System,'" *Washington Post*, Sept. 25, 2005, p. B07.
4. Conservation Biology is defined as "the management of nature and or Earth's biodiversity with the aim of protecting species, their habitats, and ecosystems from excessive rates of extinction and the erosion of biotic interactions". See Michael T. Soulé, "What is Conservation Biology?" *BioScience*, American Institute of Biological Sciences, 35(11): 727-34.



"It's Alice Kramden!"

BOOKNOTES

RETURN OF THE STRONG GODS: NATIONALISM, POPULISM, AND THE FUTURE OF THE WEST

R. R. Reno

(New York: Gateway Editions, 2019, 208 pp.)

Reviewed by Nicholas Frankovich

What R. R. Reno calls the “long twentieth century” drags on. He argues both that it should end and that it has ended, or rather that it has outlived its welcome. Aren’t we done with it by now, itching to move on? “We are not living in 1945” any longer, he writes in *Return of the Strong Gods*. “We do not face a totalitarian adversary with world-conquering ambitions.”

Readers who see the words *nationalism* and *populism* in the subtitle and assume that the book is another entry in the growing literature on post-liberalism can be forgiven for their initial misapprehension. The music of Reno’s rhetoric sounds like that of a typical anti-liberal of late, but pay close attention to his lyrics. The origin story of the worldview he pronounces dead, or practically dead, is set not in the Enlightenment and not in the French Revolution but in the immediate aftermath of the Second World War. “Our troubles do not stem from William of Ockham, the Reformation, John Locke,” he explains. They stem from Yalta, Karl Popper, John Rawls. “Let us renounce the twentieth century’s false hold on our imaginations.”

Reno gives due weight to the enormities of fascism and communism, the twin totalitarian ideologies that ravaged Europe last century. He appreciates the force with which they drove political and intellectual elites of Western societies to embrace anti-totalitarianism in the form of “the postwar consensus, the weak gods of openness and weakening.” As is evident from the connotation of his word choice (*weak*, *weakening*), he disapproves of the *anti*-totalitarianism as well, or of our letting it haunt us so late in the day. It has served the purpose for which our grandparents called it into existence. Now it should leave. Although we live in 1945 no longer, the spirit of 1945 lives in us. Reno would exorcise it.

Popper receives the starring role in *Strong Gods*, where he stands for “the postwar consensus,” which Reno identifies repeatedly as a preference for the “open” and the “weak.” *The Open Society and Its Enemies*, Popper’s most influential book, inspired the name of the Open Society Foundations, the philanthropy established by George Soros. Reno stresses the limited value of the “procedural goods” that the open society promises to deliver—“dialogue,” for example, and “free and open debate,” rather than decisiveness, resolve, and passionate loyalties, including patriotism, love for the particular nation into which

one is born or, through immigration and naturalization, incorporated, by choice.

The open society “demands *going small*.” How big would Reno have it go? At the outer limit is the totalitarian state. In our day, though, we’ve drifted so far toward the opposite pole, of dissolution and porous boundaries, “even the one that separates men from women,” that to fret about totalitarianism, particularly of the fascist variety, is “absurd. It is not 1939.”

He thinks we overemphasize form and neglect the matter. We mistake the rules for the game itself. We honor the umpire and misunderstand the aim of the players. We think it’s to provide opportunities for the umpire to demonstrate his fairness and skill. We claim no rooting interest in either team. We feign disinterest in the outcome and stress that we take satisfaction only in the knowledge that the game was well played.

Against all that, which we might call values pluralism, Reno would lodge two objections: Those of us who continue to labor under the burden of the postwar consensus only say we’re impartial. (In fact, we favor the progressive over the traditional side on social issues relating to marriage, family life, and sexuality.) And those of us who are traditional in our ideas about how civil society should be ordered are not partial enough. We should join the side we’re on and declare our love for it. We should fly its colors.

Reno’s *stated* aim is not so much to supplant a reigning liberal or progressive orthodoxy as it is to rouse us from our torpor and impress on us how meager and impoverished is our disenchanted public life. That element of his presentation stands in contrast to the conventional conservative account of our culture war, in which the spirit of the age—leftist, secularist, hostile to organized religion and the transcendent—is felt to be overbearing and oppressive. Instead of huffing and puffing to slay a mighty dragon, Reno belittles a broken-down domesticated beast. He characterizes it as weak, the loser that has already lost but won’t leave the field. It’s beneath us. Fear it not. Despise it.

Here his argument is complicated by a contradiction. He criticizes the postwar consensus for placing supreme value on mere openness, as of a box, and for pretending that the box’s contents are a matter of indifference. The box is our culture. He criticizes its contents, the familiar social and political pieties of the liberal left, and would replace them with traditional values. He has a chance of succeeding in that endeavor precisely because the society is open to his interventions (as well as, of course, to those who have different ideas).

Despite his explicit disavowal that our troubles don’t stem from liberalism, he locates their source in a sensibility that classical liberals prize: a wariness of absolute claims, a small-r republican modesty, which he dismisses as the preference for “small things and ‘little worlds.’” He rejects *laissez-faire* in economic as well as in domestic policy, espousing what is sometimes called left conservatism—left on economics, conservative on social issues. Whereas the social

conservatism of the Reagan era was joined to an ambitious foreign policy made possible through the strength of the U.S. military, Reno advocates a heavier, more self-conscious dose of patriotism, or nationalism, which is inward-facing—"America First." (He uses both terms, *patriotism* and *nationalism*. Perhaps a distinction between them isn't necessary for his purposes.)

Not only is nationalism as a kind of team spirit writ large not necessarily pernicious. It can fulfill much of the need that people have to belong to a tribe. No one can make you love your country, however. The state can compel you to pay your taxes and obey the police but not to feel an emotion, except perhaps fear. You cannot be argued into a romance with your national identity, and Reno does not aspire to achieve the impossible. He attempts to change your mind. His approach and tone imply a respectful recognition of the difference between the blueprint he draws and the artistic beauty that would be capable of changing your heart, although his prose does take wing on occasion, rising to the level of prose poetry, little hymns to the principle of borders and boundaries, to the necessity of making hard distinctions.

Insofar as nationalism is a sentiment, it can't be enforced or coerced. Attempts by the state to coerce it anyway is one definition of fascism, a barbed term often abused. Reno uses it gingerly enough, to describe one of the three main political currents that shaped the West in the period during which, in his view, the seeds of our current troubles were planted. The other two currents are communism and liberalism. After the Second World War, the victors—the communist great power, the Soviet Union, and the liberal great powers, the United States and the United Kingdom—continued to disagree about much but largely shared the same determination to prevent fascism from returning. Reno throughout couples present-day antifascist false alarms (as he regards them) with anti-racism and does so reasonably: The twentieth-century authoritarian movements we classify as fascist did feed on strong populist emotions relating to blood lines and racial purity. Reno writes disapprovingly of anti-anticommunists during the cold war but also of the anti-fascists of our own day, adopting in effect the position of anti-antifascism.

"I sympathize with the postwar figures discussed in these pages," he concedes, in the course of rebutting them, consigning their wisdom to the past, even though nationalism mixed with populism remains a danger in many hotspots around the world, both within nation-states and where opposing nation-states clash. Zionism has always been an awkward request to make of Arab citizens of Israel. In both India and China, to be a Muslim and a citizen has never been more challenging. Meanwhile, the armies of the two nations fight over disputed borders in Kashmir. When Reno says that we can afford to relax our wariness of nationalism because fascism is (for all practical purposes) dead and "we do not

face a totalitarian adversary with world-conquering ambitions,” his blindness to China is notable.

He’s silent on the ambitions of Putin’s Russia, which facilitates dissension in and among Western nations, aiming to weaken the glue that holds together NATO, the European Union, and the polities of their member states. Consider that lately Putin has undertaken to rehabilitate the memory of Stalin. As for the recurring dream of a Eurasian empire ruled from the Kremlin, see Alexander Dugin, the Moscow intellectual and early advocate of Russia’s annexation of Crimea. Hungarian prime minister Viktor Orbán, a leading proponent of Christian nationalism and illiberalism in Europe, includes China and Russia on his short list of “star” nations (the others are Turkey, India, and Singapore) that are “not liberal, not liberal democracies, and perhaps not even democracies.” He offers them as models for the West to emulate, as its “liberal values today” are distorted by “corruption, sex, and violence.”

Nationalist sentiment is a fire, hard to contain and control once it’s set, but harder yet to start where it’s not already burning. The difficulties faced by people of minority nationalities, religions, or language communities in many countries, perhaps most, point to the error of assuming that the largest group to which one should feel a natural loyalty will be the same for everyone living within the borders of the same nation-state. Christians, who are about 30 percent of the world’s population, belong to the universal church, a global society, before they belong to the political entities that grant them their passports. Roman Catholics feel a cultural as well as ecclesiastical solidarity with coreligionists across borders. People of all faiths and of none travel and are mobile to a degree that would have been hard to imagine even a century ago, while technological advances enable us to communicate with one another across the farthest reaches of the globe. If nationalism remains natural for some, for others it’s natural that it has become, at this point in history, more notional than heartfelt.

Reno posits the importance of borders as necessary for the maintenance of national identity. He goes further and makes them the principle underlying a traditional understanding of sexual identity: “A man who cannot affirm the border between male and female will find it difficult to defend a border between nations.” God bless borders and, while he’s at it, the one that separates the biological reality of sexual difference from the artificial lines that people constantly draw, erase, and redraw on maps of the world.

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

FROM THE WEBSITE

GOOD THINGS HAPPEN WHEN MEDICINE GETS PERSONAL

Jane Sarah

“Tell me about your son.”

These were the words I heard over the phone three years ago while searching for a doctor who could give psychological help to my 19-year-old son who has Prader Willi syndrome. In all my years of raising him, this was the first time anyone ever asked me to do this. Surprising? Well, maybe, but true.

Prader Willi syndrome is a life-long complex genetic disorder (Chromosome 15) resulting in a number of physical, psychological, social, and emotional problems. Affecting growth, appetite, cognitive function, and behavior, it is believed to occur in one in every 12,000 -15,000 births.

Most of the doctors I contacted in my quest to find psychiatric treatment didn't return my call; the few that did told me they weren't taking any new patients. But with those wonderful five words, I found myself talking not only to a doctor, but to a person who cared enough about what I was saying to show me what the parent of a special-needs child longs for—concern. We spoke for 30 minutes. I wasn't rushed. I wasn't cut off. My answers weren't assumed, nor talked-over with data or statistics. No, she listened to me, then spoke with understanding and intelligence.

I don't know what I had done right that day or week or month or year, but this had never happened before, and it gave me much-needed hope. I was also shocked that this smart, patient lady didn't have to be convinced to take us on. I didn't have to jump through hoops, cajole, make promises, volunteer skills, or apologize for anything. She wanted to work with us. I began to feel the calming encouragement that having hope brings.

Then we went to meet her. She was everything positive I had sensed over the phone—and a great deal more. In the three years she has cared for my son, we have always left her office having been heard correctly and responded to with clear understanding. We don't sugar-coat our lives in sessions because that just misdirects the conversation and, therefore, treatment. We are real with Dr. S and our realness is accepted; I continue to see my son's improvements and his happiness.

When my son was a baby, I was as determined as most young moms to jump over the moon daily to help him with his many challenges. Over the years, the moon got further and further away, and then, when he was nine, my husband left the family, leaving me to jump alone as a single mom.

The difficulties of raising a child with special needs stemming from a rare

condition are quite often downplayed or misunderstood in everyday life encounters. Folks will volunteer their unsolicited, more-than-third-hand-experience of their neighbor's friend's aunt's stepson's cousin who is "just like your son." Nope, I say. I doubt it. My son has Prader Willi Syndrome. They continue, "Yeah, he's just like him." No, he isn't. I usually interject that my son doesn't have autism, a fact they can't seem to grasp.

I acknowledge that their persistence in linking my son's disorder to the far more common condition of autism is a well-meaning we-all-have-something-to-deal-with-attempt at comfort. They often seem to be pointing out—by their observance that my son isn't melting down in front of them at that moment—that I am so much better off than the aforementioned family. In these encounters, I recognize that people are basically good and want to uplift with kind words, and I view their efforts through a magnanimous lens. But in almost 23 years of guiding my son in his daily navigation through the complex world of Prader Willi syndrome, "Tell me about your son" continues to be the priceless gift that I needed—and continue to need every day.

My fervent, paying-it-forward wish is that doctors and educators routinely make this request—"Tell me about your child"—to parents of special-needs children. And that they listen, as Dr. S. listened to me, in order to understand each child's individual journey. I pray that this gift of hope I cling to, more days than not, will be readily available someday to all the families of special-needs children who need it.

—Jane Sarah writes from New York City.

WHEN FREEDOM IS BONDAGE

W. Ross Blackburn

No one really believes in utterly free, unfettered choice. There are good choices and bad choices, and an enduring challenge in life is to know the difference. There are choices that we forbid ourselves and others to make. For instance, I have a legal right to drive my car whenever I choose, but I do not have the legal right to drive my neighbor's car whenever I choose. While we may disagree about which choices should be legal and which shouldn't be, rare is the person who would argue that we should have no laws at all. This is self-evident. "Choice" sounds wonderful in theory, but when the rubber meets the road, some choices are dark. This is, of course, why the abortion movement calls itself pro-choice, without making it plain that the choice it promotes is the right to kill a child.

What is not always self-evident, however, is the manner in which some choices

are not expressions of freedom, but rather expressions of bondage. For there are some choices that we were never intended to make. This is particularly true of the most important questions, the ones that get to the heart of who we are.

Our culture is enamored of the individual's freedom to define him- or herself. One's true identity, we are meant to believe, is solely a matter of self-definition. While self-definition sounds liberating, it in fact opens one up to a dizzying and overwhelming array of challenges and questions. For instance, I recently watched a TED Talk titled "Ending Gender" by Scott Turner Schofield, born female but self-identifying as a man. During the talk, Schofield showed a PowerPoint slide headlined "Who am I?" that listed a range of questions a person seeking to change his or her gender would likely have to address:

How do you change everything? Will my family disown me? Will this affect my visa? What do I say at the airport about my gender? Will I be sent home for how I'm dressed? What will this cost me? Will I be able to get a job? Will my marriage still be legal? Will I be allowed to parent my kids? Will I take hormones? Can I be all of myself all of the time, or just with certain people in certain places? Will my friends accept me? Will I be fired? Will they use my name at school? Who is going to love me? Am I crazy? Which bathroom can I use? Will I have surgery? Which surgeries? Will I tell people who I was before? Will my faith community expel me? Diplomas? Birth certificates? Social Security Card? Passports? Credit cards?

No one should have to figure out all these things. If Schofield is right, that all of these questions are inevitable for a person seeking to change his gender, should this not tell us something? Is it even possible to answer them? All of them? Some of them? Which ones?

Having to make choices we were never intended to make is not freedom; it is bondage. A young man confused about his gender, and seeking to become a woman, won't find freedom in self-mutilation, whether by knife or by pill. He needs someone to support and encourage him in who God has created him to be, and to walk with him as he tries to discover what it means for him to be a man. This is not to belittle the real struggles some people have concerning gender—it is to take those struggles seriously. It is to say that the way to address such confusion is to press into who we were created to be, and into God, who created us, instead of trying to change who we fundamentally are. That of course is easier said than done, and it will require walking with one another over a long and difficult road. But then love is difficult. Much easier to give someone hormones or encourage an abortion than to walk a long road in solidarity with a struggling person.

Freedom lies not in defining who I am, but in discovering who God made me to be. Conversely, the avalanche of unfettered choice that attends self-definition is crushing. Suicide rates among those desiring to change their gender are heart-wrenching

testament to the weight of that burden. So is the incidence of suicide and depression among those who have undergone abortion. The fact that we encourage such, even legally, bears witness to our cultural darkness.

—*Rev. Dr. W. Ross Blackburn, who writes A Pastor's Reflections for the Review's website, has been Rector of Christ the King, an Anglican Church in Boone, North Carolina, since 2004.*

VIRTUALLY NOWHERE

Jason Morgan

In February, a South Korean television program called *Meeting You* featured a segment that was devastating to watch. A woman named Jang Ji-sung, who had lost her seven-year-old daughter three years before, was asked to don a virtual-reality kit—goggles, earphones, and gloves—and then stand on a stage, facing cameras, in front of a green screen.

Suddenly, the woman's daughter, Nayeon, appeared to emerge from behind computer-generated scenery on the screen. Laughing and skipping, the little girl ran up to Ji-sung, who was suddenly choking on tears. Nayeon greeted her, playfully dancing around and talking as her mother bent down and tried to embrace her. Speaking through sobs, Ji-sung told Nayeon how much she loved her, how pretty she looked, and asked if she had been well.

This was one of the most pitiful sights I have ever seen. The mother, of course, was embracing no one. Nayeon was a figment in a hard drive, a CGI animation. Ji-sung was alone on the stage, wrapping her arms around a brushing of photons and pixels—an illusion with a machine-generated timbre for a voice; an algorithm masquerading as the child she had buried in 2017. When the weeping mother knelt down to hold her daughter, she had nothing in her arms but the sterile studio air. At the end of the segment, Nayeon, now projected on screen as being asleep, was transformed into a luminescent butterfly and flew away, leaving Ji-sung shattered.

For the past few months, many of us have been grasping at holograms, too, looking for our lost loves and companions in the maze of a virtual world. We HangOut, Skype, and Zoom, we FaceTime and Facebook, we Twitter, Snapchat, Instagram, and e-mail. We interact through the phosphorescent wafer of a glass screen, and when our tele-workday is done, we switch to another, bigger screen to stare at images that don't require any response from us. And it's all utterly unsatisfying. Not only are we beset by an alarming pandemic, we also are fighting off a creeping sense of hopelessness—it wears us out to be so terribly alone.

But in fact, we were living in self-isolation long before the coronavirus burst

out of Wuhan last December. For years and years, decades at this point, we have been offshoring our lives to cyberspace. We now realize how badly this has hollowed out our souls, which are not mere ghosts in the machine, as we are often told, but rather who we are, the puffed-out sail of the human person moving through the physical world. We thought we could live in both worlds, software and meatware (as the human component of a computer system is called). But it turns out that it's not so much a both-and as it is an either-or proposition: Are we bodies and souls, or pixels and glass? Can we ever be truly happy if we choose to live as avatars rather than as human persons?

Ours is an age of connectivity, but what is it, exactly, that connects when we video conference across continents and seas? I have participated in more than my share of remote meetings recently, and have seen dozens of nodding busts jostling around in postage-stamp-size rectangles on a glowing screen. Flickering and stuttering like Max Headrooms, blinking in and out as the life-giving WIFI ebbs and flows, these strange visions populate the software platform for twenty minutes, maybe an hour, and then pop back out of existence, virtual particles in a seething quantum field bath between here and not-here. Now I see Jones, now I don't.

Swaying a momentary shower of electrons is not what people do. People are physical beings. Jones is a person with a body and a soul. She shivers when it's cold and sweats in July. She hungers and so puts meat and plants into her belly and is satisfied. She thirsts and so pours iced lemonade down her throat and is relieved. Jones needs blankets and pillows to sleep, because, unlike Jones the Zoom parallelogram, Jones the human person does not stick flat against a plane, and does not lie there indifferent in a draft. And when Jones is happy, her heart is light. Her insides tickle when she's nervous; her face blushes pink when she's ashamed. She feels sick when she becomes too sad, listless when she's distraught, empty when she's alone.

People are not virtual. They don't exist in the narrow, visible band of the electromagnetic spectrum only, the band through which flit the images on our computer screens. People range across the created universe, taking in the whole world through the senses and the imagination, and storing the intellect's bounty in memory—memory, which, depending on what we are calling to mind, has the power to pull our lips up into a smile or pinch our brows together into a grimace.

Ji-sung's first encounter with Nayeon was not computer generated, not even an ultrasound. They first met when Nayeon was all of two cells tall, moving to implant in her mother's uterine wall, bathing in her warm, nourishing blood. Unlike a virtual particle, Nayeon, the person, was furiously and unambiguously alive from the moment of her conception, loved into life in the crucible of two other human bodies becoming one. Her father embraced her mother when

Nayeon was conceived; her mother, with misdirected tenderness, tried to embrace an illusion, long after her daughter had gone to await the resurrection in the body that must—if the universe is not as meaningless as a conference call—be ours to hope for in the end.

This silent spring, this season of lockdown and social distancing, of quarantine and desolation, has taught us many things. But above all, it has shown us that we are human persons, for whom the virtual can never be an acceptable substitute for the real thing. In fact, it doesn't even come close. Yes, we can be instantly present to one another over wires, but we are virtually nowhere without the bodily company of our fellow human beings.

—*Jason Morgan is an associate professor in the Faculty of Foreign Studies at Reitaku University in Chiba, Japan.*

CORONAVIRUS, CONSPIRACY THEORIES, AND CONTINUED PRO-LIFE WITNESS

Joe Bissonnette

My wife and I met 31 years ago, when we were both arrested in front of an abortion clinic during an Operation Rescue protest. Over the years this has become part of family lore, and the coincidence of pro-life activism and romance has not been lost on our children. All of them have been pro-life activists, and all of them have done so with barely concealed romantic hopes.

We tend to weave events together. When you're a hammer, everything looks like a nail, and when you're a prolifer, everything is viewed through that dreadful-hopeful lens. Even now, most of our friends are fellow proliferers, because we work shoulder to shoulder and we share a world-view. A like-minded community tends to self-reinforce.

Of course, proliferers are united by a conviction that we must protect the innocent, but first we are united by scandal. We feel deeply estranged from our culture, which has legalized the killing of unborn babies. At another level we are conflicted, because this after all is the culture in which we live and this is the country we love. We are united with our pro-life friends by cognitive dissonance.

Behavioral economics shows how cognitive dissonance can be a potent starting point for making sense of the world. An "anchoring heuristic" is a foundational perspective, informing our understanding of everything that follows. Real estate agents, for example, might show you a set of three properties, beginning with one they know will not meet your expectations. It's included to establish a low baseline, which will make the second and third properties look much better to you.

But at a deeper level, the first property is an irritant, creating a sense of dissatisfaction and impatience that seeks resolution. The first property propels you to action; it creates an itch requiring a scratch. At first your dissatisfaction with it is subconscious. And then it becomes an intuition. The Oxford Dictionary defines “intuition” as the ability to understand something immediately, without the need for conscious reasoning.

Every prolifer has a baseline sense of dissatisfaction and urgency. We have experienced many moments of great darkness, reflecting on the nightmare that is abortion. We have thought about the brutal deaths of the children, but also about the effects of abortion on mothers and fathers and doctors and society as a whole. We have wondered at the architecture of meaning that is created for surviving children.

Prolifers have an intuition. Many of us are deeply alarmed by the popular fascination with zombies and the undead. The young know that they too might have been aborted, that their being is merely a contingent good. There is an unspoken kinship with the discarded dead and an impending reckoning. Prolifers intuitively understand what Pope John Paul II meant by the culture of death.

But at the same time, we exist in the sunny uplands of modernity. We live and even flourish within this culture. This is no small thing. To live side by side with people requires trust. We trust people to grow and prepare and distribute our food. We enter into contracts that assume mutual good will or at least a solid trust based on enlightened self-interest. We expect that fellow citizens will respect our property and not inflict bodily harm on us. And we trust law enforcement to protect us from vandals and others who would threaten our personal safety.

More than that, we feel affection for other people. We meet with friends and strangers all the time and are surprised and pleased by the basic human sympathy that blossoms among us. We like them. We need them. And yet many of the people we like and need—and sometimes love—do not see abortion as evil. Many of them may well describe themselves as pro-choice. We live in a state of low-resolution emotional conflict.

And then a macro-event like the novel coronavirus occurs. A powerful disruption in the way we had grown accustomed to living, it has created a fork in the road of everyone’s life. It is impossible to continue on as before, in the sleepwalk of untested foundational assumptions and expectations. We are all confronted by an existential crisis, forced to look deeply at the meaning and purpose of life, as well as the goodness and durability of our civilization.

The strangeness of the new normal is breathtaking. For weeks, everyone has witnessed and experienced an unprecedented level of public and personal tension. We’ve come to identify others as either coronavirus zealots or skeptics. Families have been divided, neighbors have reported on neighbors for not social

distancing. People have become much more isolated and much more dependent on government.

Prolifers, already anchored in cognitive dissonance, already in the habit of thinking the unthinkable, go where angels fear to tread and connect the dots. Where there is design, we think, there must be a designer. And where there is a perfect storm that brings civilization to a halt, there must be some Svengali-like evil genius behind it all, pulling the strings.

And now, just as people long confined to their homes by government order are beginning to reenter their communities, we are beset by another crisis—or maybe another chapter in the same crisis—as America convulses with riots. President Trump has identified Antifa as orchestrating the mayhem and is proceeding to designate it a terrorist organization. Demands to defund police departments, which only two weeks ago would have sounded unhinged to the vast majority of citizens, are now being considered by politicians in Los Angeles and New York City, the two most populous cities in the country.

When I began writing this column, I intended it as a caution to proliferers: that we not let our cognitive biases and our predisposition to embrace a crisis narrative lead us to entertain conspiracy theories. Just days later, however, I am far less convinced by my own thesis. In other words, based on evidence everyone is familiar with, I've come to think that the coronavirus and the riots are not just disconnected random events.

But we must not allow ourselves to be paralyzed and overwhelmed by the scope of what is becoming apparent. Nor can we allow ourselves to become mesmerized by fear and confusion as our world seems to become even more disoriented and surreal. We must continue to take time to pray and listen to Our Lord, to listen to and love our families and friends, and to do the pro-life work at hand. For nearly half a century, legal abortion has been an integral part of what threatens Western civilization. And the reality is, our struggle to end it has always been, and will continue to be, a matter of life and death.

—Joe Bissonnette, father of seven children, is a teacher, farmer, and freelance writer.

GOOD HUMOR AND THE ILLUSION OF CONTROL

Peter Pavia

Day-to-day events are moving with the speed of an avalanche, so fast, in fact, that they threaten to bury me right here where I sit scribbling. Our moment cries out for a caveat: Between the time of this writing and the time of your reading some important new “fact” may be brought to bear on the following consideration, rendering it absurd. So let me hold my breath while it seems safe, if not

generous, to say that the toxic trident of the coronavirus pandemic, the specter of economic ruin, and the quaintly dubbed social unrest we're experiencing from coast to coast have been met with cascading failure on every level of government. If Professor Pavia were handing out grades, the federal government would receive an F, New York State also an F, and you, local government, a mark of F minus.

As we're reminded again and again, governments have been relying on science, but science has been laid bare for all its limitations. How long, for example, does the coronavirus survive on surfaces? Forty-five minutes? Eighteen hours? I've encountered both estimations and a half-dozen others besides, and so have you. Since a couple of recent studies (not yet peer-reviewed or published) suggest the likelihood of contracting the virus from any surface may be near zero, we ought to remind ourselves of what "science" is: a method of inquiry. Nothing else but a method of inquiry.

Technocracy, science's digitized bastard, hasn't exactly cloaked itself in glory, either. The data sets and computer models, which are after all no more reliable than the numbers being fed into them, have been unerringly wrong. About halfway through this ongoing nightmare (although who's to say what halfway means at this point?), I heard a smug technocrat declare that we'd just have to get used to staying inside until medicine (also science, but at least as much art) concocts a vaccine that will propel us from our homes. Eventually. Maybe in a year. Maybe two.

The figurative tumbleweeds blowing down the New York streets, the abandoned office towers, the shuttered businesses that haven't closed for good—not officially, although that's a matter of time—all point to the years of striving it's going to take to emerge from this economic pit. Meanwhile, what does everybody plan to do after the unemployment insurance transfers stop fattening our checking accounts?

And then, since things only seem to go one way these days—from bad to worse—a depraved Midwestern cop kneels on a man's neck for nearly nine minutes, and this in front of many witnesses, ending the man's life.

Long-bottled but predictable and justifiable outrage ignited immediately, and hundreds of thousands took to the streets to exercise the right to petition their government for the redress of grievances. Most of these citizens were people of good will. I know a lot of them, and I've known them for a long time. But the movement was just as immediately co-opted by power-driven political actors who catalyzed the protestors into a mob that soon developed a separate, fevered mind of its own. That is the nature of mobs.

In a flash, no questions could be asked, no counter interpretation entertained, no criticism brooked. You were either with them, or you deserved to be lined up against a wall and shot. The revolution, comrade, was on.

Never to be outperformed in their capacity for craven capitulation, our industrial leaders rushed to take the side of the mob with solemn pronouncements. I lost count of the emails I received from executives who had “C” in their titles, in the fervent hope, the avid aspiration, that they would be eaten last.

A fresh biological menace, the threat of economic collapse, the unholy whiff of mob rule, science falling short, political policies and the hapless brows that sprung, all these conspired to hurl a rotten pineapple at the Illusion of Control.

I don’t have much faith in the unalloyed progress of technology, which, based on what I’ve written here, probably goes without saying. But even I am forced to admit that technology has its advantages. So while the purity and the clarity of the light on this bright June morning mocked my blackening thoughts, I received the following, by text message no less, from a brilliant young friend:

**Prayer for Good Humor
by St. Thomas More**

*Grant me, O Lord, good digestion, and also something to digest.
Grant me a healthy body, and the necessary good humor to maintain it.
Grant me a simple soul that knows to treasure all that is good
and that doesn’t frighten easily at the sight of evil,
but rather finds the means to put things back in their place.
Give me a soul that knows not boredom, grumblings, sighs and laments,
nor excess of stress, because of that obstructing thing called “I.”
Grant me, O Lord, a sense of good humor.
Allow me the grace to be able to take a joke to discover in life a bit of joy,
and to be able to share it with others.*

We’ve come to understand humor as the ability to find something comic in just about any situation, but More’s use of “humor” in his prayer probably reflects the older meaning of the word, which refers to disposition or temperament, though he is careful to add the bit about the grace to take a joke.

Because it takes a peculiar brand of arrogance to assume that everybody knows everything, please bear with me. More was a lawyer, writer, and renowned wit in 16th-century London. As far as saints go, he’s famous. A fictionalized version of his life is at the center of Hilary Mantel’s 2009 bestseller *Wolf Hall*, and in the 1960s, More was the subject of the play (and subsequent film) “A Man for All Seasons,” with Paul Scofield in the leading role. Living hundreds of years too early to receive any royalties (pun definitely intended), More filled a number of important offices in the court of King Henry VIII, ending up as Lord High Chancellor of England, a kind of Chief Justice.

A shorthand version of events would show More, after increasingly contentious squabbles with the king, yet unwilling to bestow his blessing on the

monarchy's assumption of powers he rightly believed belonged to the Church. For his refusal to knuckle under, Thomas More was imprisoned in the Tower of London along with his friend John Fisher, Bishop of Rochester, and a number of other churchmen whom he subsequently witnessed being marched to their deaths. Still, he would not budge. Catholic teaching and tradition were right; Henry was wrong. He was beheaded on July 6, 1535.

Some suggest that More wrote his Prayer for Good Humor while he was locked up. I've been unable to verify that to my satisfaction but I would like to believe it. Displaying a charitable and cheerful disposition, More hoped and trusted that he and his judges would be together once again, and for all eternity, enjoying one another's company in heaven.

More enjoyed his position and his place, and he relished a legal argument. But he was committed above all to moral truth, and to doing what was right, regardless of what it might cost him. A loving family, honor among his peers, elevation to an important position, even by one so mighty as a king—More could give these up because he understood that, whatever form it took, the end was inescapable. No temporal disturbance, not even a trial for his life, with the chopping block on the short horizon, had the power to grind him down. He couldn't possibly be deceived by the Illusion of Control.

Here was a man who was, in a word, free. He is reported to have kissed his executioner and forgiven him after he mounted the scaffold, and with his last breaths declared himself "the king's good servant, and God's first," thereby writing the coda to his extraordinary life.

—*Peter Pavia is the author of The Cuba Project and Dutch Uncle, a novel. His work has appeared in the New York Times, GQ, Diner Journal, and many other publications.*

TRUTH AND CUPCAKES

Diane Moriarty

Last December it was reported that the United States Supreme Court had left in place a Kentucky law requiring doctors to show fetal images to patients before they abort. This would be in line with the informed consent section of the 1992 *Planned Parenthood v. Casey* ruling. The Justices refused, however, to review, or comment on, the appeals court ruling that upheld Kentucky's law, one that further requires doctors to describe the ultrasound image in detail while the pregnant woman listens to the fetal heartbeat. So . . . a quick peek is okay but anything more moving is a bridge too far? Is the Supreme Court in fact leaving a path open for future litigation defending the "right" of women not to be made uncomfortable by facts? After all, while the fact that life begins at conception

might be construed by abortion activists as mere philosophical whimsy, a picture is worth a thousand words, and a heartbeat is as real as it gets.

The ACLU, representing the interests of Kentucky's one remaining abortion clinic, argued that making doctors "display and describe" ultrasounds violates their First Amendment speech rights. What a difference a state makes; in New York the so-called Boss Bill, or Senate Bill 660, signed by Governor Cuomo in 2019, tells employers they can't use abortion advocacy as a reason to deny employment—even if the place of business is a pro-life pregnancy center. Is the ACLU nobly defending the free speech of the clinic's doctors, or are they cynically creating a smoke screen to protect a lucrative abortion business? Too many women changing their minds would have a detrimental effect on profits.

The detached opinions of legal experts and vote-hungry declarations of pro-abortion politicians abound, but how can we know what the average person really and truly thinks about abortion? Polls? That practice has degenerated into a propaganda tool. A recent one claimed that 75 percent of Americans are pro-abortion. But what was the polling question? Was it a stilted and manipulative: "Do you want to see women go back to rusty coat hangers and back alleys?" Ummm . . . no. "Great! I'll mark you down as Pro-Abortion!" That type of approach was my polling experience during the 2016 election. Which may explain why liberals were blindsided by Donald Trump's victory. Poll questions are fashioned to get the desired answer, not a comprehensive over-view.

There was, however, an opportunity during the Obama years to get some real numbers on abortion views, but it was torpedoed. This first came to light in May of 2016 when the Supreme Court issued its long-awaited ruling in the case the Little Sisters of the Poor brought against Obamacare, which would have forced them to provide insurance coverage for contraceptives, including abortifacients. During oral arguments, the Obama administration admitted that it could have accommodated the nuns all along but chose not to. So why the hardball legal shenanigans? Why wasn't "choice" allowed from the get-go? Perhaps it was feared that if too many employers opted for the non-abortion policy it would result in the kind of hard numbers that could make abortion look bad. "Bad optics" for the abortion cause. Can't have that!

After the Trump administration issued new regulations protecting religious employers from having to offer contraception coverage, more legal action ensued, with Pennsylvania and New Jersey suing the government and landing the Sisters back at the Supreme Court last month. "This is a nonsensical political battle that has dragged on six years too long," says Mark Rienzi, president of Becket and the lawyer representing the Sisters. "These states have not been able to identify a single person who would lose contraceptive coverage under the new HHS rule, but they won't rest until Catholic nuns are forced to pay for contraceptives." A Supreme Court decision on the latest case is expected by the

end of June.

Many U.S. companies, including Adobe, Bank of America, Clorox, Expedia, Marriott, Delta, and several more, provide funding to Planned Parenthood. Big Business tends to be sensitive about image, so their support for the abortion giant must be a positive gauge about public abortion support overall, right? Except that Planned Parenthood makes a big deal about hyping their mammograms and cancer screenings, which blurs the picture. And attempts to reconsider funding are met with well-organized, vitriolic campaigns accusing the company of being anti-woman and causing the kind of public relations problem shareholders prefer to avoid. (Remember what happened to the Susan B. Komen Foundation several years ago when it tried to part ways with PP? Within days it apologized for its errant ways.) Planned Parenthood did finally have to end its practice of selling organs and tissue from aborted babies after unsuccessfully claiming that David Daleiden's undercover videos exposing their fetal parts trafficking scheme had been selectively edited. The firm PP hired to debunk Daleiden's evidence was Fusion GPS, the same group that created the infamous Steele Dossier for Hillary Clinton's campaign. (A federal appeals court found the videos hadn't been doctored but that message wasn't exactly trumpeted by the media.)

Most women are traumatized with fear that abortion will once again become illegal and make their time on earth feel like an existential prison. And even if it's not an option they would ever use themselves, to have all womankind yoked to biology, while men are free to enjoy, and promote, all the pleasures of the modern sexual revolution, is a pill too bitter to swallow. And so there's this tendency to defend abortion as if it's a dear friend people are being mean to, and to dismiss odious crusades like the Shout Your Abortion campaign and the gleeful I Had an Abortion tee-shirts as inconsequential fringe, when in fact the sentiment behind them is becoming more mainstream every day. From a 1973 Supreme Court stamp of approval, to the Democratic Party labeling it a social good that should be free of stigma, to New York City Mayor Bill de Blasio calling abortion "sacred," to governors Andrew Cuomo (NY) and Ralph Northam (VA) now blessing infanticide—the trickle-down effect is netting more and more people every day. Recently, I was sitting on a subway bench waiting for the train. On my left was a young man, on my right a young woman who was talking on her cell phone making an appointment for an abortion. She was completely nonchalant. It wasn't until she had to pinpoint her last menstrual cycle that she became in any way rattled; voice dropping, shoulders hunching, eyes darting to her bench mates. Apparently discussing her period in public rated a blush, but arranging for an abortion? No problem!

So, what method can be used to help sensitive people who are drowning in misleading information and slick politics that put them at odds with their better angels? How to find out how people really feel about abortion? What puts the

cards on the table? Cupcakes!

If your local Planned Parenthood held an Abortion Bake Sale with signs promoting it out in front of the clinic, how many sane people would stop to buy a box of cupcakes and after the dinner dishes were cleared put them on the table and say: “Enjoy! They’re not only delicious but it’s for a good cause. You’re helping someone abort their baby!” Would a Bank of America executive participate in this kind of fundraiser? Would pro-abortion politicians bring this dessert home to their own families, and, while tussling the children’s hair, say: “Eat up kids! You’re helping rid the world of inconvenient babies!” Would even feminist icons and the nasty-tee-shirt crowd actually order a dozen for their office party? Ooops. On second thought . . . if you have the stomach for it, check out the “Support Abortion Access” bake sale described in this link: <https://medium.com/@ACLUPA/eat-a-vagina-cupcake-and-support-abortion-access-b53e56ba8ec>.

—Diane Moriarty is a freelance writer living in Manhattan.



“I dunno. We don’t know where he’s been.”

APPENDIX A

[Hadley Arkes is the Ney Professor of Jurisprudence Emeritus at Amherst College and the Founder/Director of the James Wilson Institute on Natural Rights & the American Founding. His most recent book is *Constitutional Illusions & Anchoring Truths: The Touchstone of the Natural Law*. The following article appeared on *The Catholic Thing* (www.thecatholicthing.org) on June 30, 2020, and is reprinted with permission.]

Gorsuch Does Transgenderism: Notes on the Wreckage

Hadley Arkes

In my previous column (“The Ebbing of Truth”), I was bracing for the decision that the Supreme Court was about to hand down in a case on transgenderism (*Harris Funeral Homes v. EEOC* and *Bostock v. Clayton County*). Some of us were girding our loins for a shock of seismic force because there had been rumors, now proven so regrettably true, that Justice Neil Gorsuch would defect from the conservative side.

The man who was appointed, with high fanfare, to take the place of Justice Scalia would now make the decisive vote, and write the opinion, in a case that promises to disfigure our laws and our lives, much in the way that *Roe v. Wade* has worked to remake the culture.

If the schools now begin to instruct the young on the even newer, liberated culture set before them, the youngsters may be given now to wonder just how stable are the differences that really distinguish their mothers from their fathers – or themselves, from their brothers and sisters. As Michael Hanby, David Crawford and Maggie McCarthy argued, this case may well have brought, as C.S. Lewis had it, “the abolition of man” –and woman.

The case involved Anthony Stephens, who had been working at the Harris Funeral Homes in Michigan for several years before he informed his employers that he wished to “live and work fully as a woman.” In his opinion for the Court, Justice Gorsuch referred to Stephens as “Aimee” and used feminine pronouns at every point.

Gorsuch remarked that “Aimee” had “presented as a male” when “she first got the job.” From the outset, Gorsuch absorbed the predicate of Stephens’ claim: that in his own understanding, he had in fact become a woman.

Michael Hanby and his colleagues correctly noted that the issue was not the freedom of Stephens to present himself as a woman. To confirm Stephens’ argument was to confirm the obligation of all people around him to respect that claim and treat him as though he were indeed a woman. If they didn’t affirm that lie, they and their employers could be charged with sustaining a “hostile work environment.”

Some of my friends, reading the case closely, insist that Gorsuch never actually affirmed that Stephens had indeed altered his sex, in the strictest understanding of sex, as the objective differences in the ways our bodies are organized for the function of reproduction.

On the surface, that reading of Gorsuch may look and sound plausible. But I think

we can show, with an even closer reading, that this offers, as the saying goes, a “metaphysic without consequence.” That reading will do nothing to dislodge the judgment in this case, and I think it comes apart the closer we look.

Gorsuch remarked that his judgment did not reach the matter of bathrooms and locker rooms, for those situations were not contained in the case at hand. But Justice Alito quickly pointed out that the holding had been, after all, that it was wrong to turn away from anyone—to withhold a job or a benefit—because of an aversion to a person’s *sexual* choice of changing genders. That judgment would presumptively apply to all instances of that discrimination, and indeed the first case has already been pressed on the side of a transgendered high-school girl, seeking admission to a boys’ bathroom.

In the meantime, some of the new, young conservative federal judges may be able to use these cases to resist the sweep of this new principle. They may hope then to induce the Supreme Court to take a sober, second look.

Congress could also make it clear again that the Civil Rights Acts do not bar all-female colleges, and it might deal as well then with female teams and locker rooms. The Trump Administration has already acted in its own sphere—e.g., in denying access of transgendered women to “women’s shelters.” It’s time to remind ourselves of the constitutional role played by the political branches in the past, liberal and conservative, to narrow and counter decisions of the courts.

Gorsuch did not have to say anything conclusive on that question of whether Stephens had in fact become a woman. He could simply use his alchemy of “textualism,” working on the Civil Rights Act of 1964, and settle on this limited point: that if Stephens came to regard himself as a woman, *that is an understanding that the rest of us are obliged to respect* when it comes to “discrimination on the basis of sex.”

But that may also be the key to explain why it will mean nothing in the end to note that Gorsuch had not exactly said that Stephens had changed his biological sex. My friend Gerard Bradley distilled things in this way: In the biological sciences, “sex is *binary, innate, and immutable*.” And it goes beyond anatomical differences to penetrate to the level of cells.

But “gender identity,” as he says, “denotes a fluid belief system based on cultural constructs, emotion, experiences.”

Gorsuch and the Court can preserve their detachment on the question of whether a man can become a woman only if they simply ignore that inescapable, objective truth of what constitutes “sex.” To admit *that* truth is to turn the decision into gibberish. For if the meaning of “sex” was indeed so inescapably true, no one could be obliged to respect Stephens’ claim to be regarded as a woman.

The deeper irony is that this truth, as a truth, no more comes into sight for the conservative critics of this decision than it does for Gorsuch and his colleagues. It may be the understanding of “sex” contained in the statutes and in accord with the dictionaries of 1964. But that truth would be there even if the statutes and the dictionaries had said something else.

And conservatives have not counted the ignoring of this truth as the deepest wrong in this decision. For the melancholy fact is that the appeal to anchoring moral truths has long been ruled out of what has been taken, in our own day, as “conservative jurisprudence.”

APPENDIX B

[O. Carter Snead is the Director of the de Nicola Center for Ethics and Culture, Professor of Law, and Concurrent Professor of Political Science at the University of Notre Dame. He is the author of the forthcoming *What It Means to Be Human: The Case for the Body in Public Bioethics*. The following article was published on the website of First Things (www.firstthings.com) on July 4, 2020, and is reprinted with the magazine's permission.]

The Way Forward After *June Medical*

O. Carter Snead

My high school wrestling coach (of blessed memory) had one response whenever wrestlers would complain about injuries, bad calls from referees, or even cheating opponents: “None of it matters. Find a way to win.”

This is good advice for those of us—lawyers, politicians, doctors, concerned citizens—who have devoted our lives to building a legal and cultural landscape in which the intrinsic dignity of every human being, born and unborn, is respected and protected. Yes, the Court’s decision in *June Medical Services v. Russo*, which struck down a Louisiana law requiring abortion providers to have admitting privileges at a local hospital, was a crushing disappointment. Yes, eminent scholars and commentators have powerfully critiqued the legal reasoning in Chief Justice Roberts’s concurring opinion, especially regarding principles of *stare decisis*. And yes, it seems that state lawmakers will need to refine their previous approach to protecting the health and safety of women.

But now is not the moment to dwell on anger or disappointment. Now is the time to get back on our feet and return to the work of building a civilization of love, radical hospitality, and legal protection for unborn children and their mothers. We have no choice but to continue to fight for the lives and dignity of these most vulnerable members of the human family. Quitting is not an option. So, the question before us is this: What in the Chief Justice’s concurrence (which controls as precedent for the lower courts) points a way forward for the legal effort to build a culture of life? A careful reading of his concurrence reveals several points to consider.

First, Roberts acknowledges that *Whole Woman’s Health v. Hellerstedt* (2016), which struck down Texas’s admitting privileges requirement (and clinic regulations), was wrongly decided. Thus, as Justice Kavanaugh points out in dissent, there is currently a majority of five Justices who (correctly) share this view. I would add that given all the publicly available information, it is impossible to imagine that Roberts and the four dissenters in *June* regard *Roe v. Wade* and *Planned Parenthood v. Casey* as correctly decided in the first instance. Indeed, in his concurrence he notes that both parties to the matter agreed that *Casey* is the correct standard to apply and neither side asked that it be reconsidered; he does not here endorse or reaffirm *Casey* as a precedent. However, it is clear that going forward, in order to persuade Roberts to overrule these cases, restore justice, and repair the rule of law, pro-life litigants will have to muster

arguments responsive to his view that the prudential doctrine of *stare decisis* requires additional reasons to do so concerning these precedents’ “administrability, [their] fit with subsequent factual and legal developments, and the reliance interests that [they] have engendered.” The good news is that this case can be readily made. The *Roe/Casey* jurisprudence has never provided a stable, coherent, or predictable legal framework for the political branches; it is built on outdated and dubious factual predicates; it has been retheorized on multiple occasions by various Justices, thus diluting its precedential authority; and there is powerful evidence available that women have not, in fact, structured their lives around the freedom to choose abortion, nor does their flourishing depend on it.

Second, in his concurrence, Roberts rejects the open-ended rule announced by Justice Breyer in *Hellerstedt* (and embraced again by Justice Breyer’s opinion for the four-justice plurality here) that empowers the Court to determine the constitutionality of abortion health and safety regulations by simply balancing, without deference to the political branches, the challenged law’s “benefits” versus its “burdens.” He uses pointed language to suggest that this cost-benefit analysis requires Justices and judges to compare incommensurable goods such as autonomy and self-determination with the state’s interest in protecting unborn human life. This kind of balancing is for the political branches of government, not the courts. The Chief Justice argues (quoting the late Justice Scalia) that this is impossible for judges to do and would lead to the “unanalyzed exercise of judicial will.”

This observation is extremely important, because the right to abortion in *Roe* and *Casey* emerged from precisely the kind of analysis that Roberts here disclaims. That is, Justice Blackmun in *Roe* and later the three-Justice plurality in *Casey* concluded that there is a constitutional right to abortion *because* they deemed the burdens of unwanted pregnancy and parenthood on women to be weightier than the state’s interests in the life of the unborn. Thus, American abortion jurisprudence is rooted in a conceptual foundation that Roberts believes to be lawless and corrupt.

In this way, Roberts nullifies the rule announced in *Hellerstedt* and replaces it with what he takes to be the correct legal framework prescribed by *Casey*, which begins with an easy-to-meet threshold question for the state: namely, whether it is pursuing a legitimate purpose via rational means. Roberts, in another departure from *Hellerstedt*, likewise affirms that states have wide latitude to legislate on abortion (as on other topics), even in the face of disagreement among scientific and medical experts. Once this low bar for “rational basis” is met, the remaining question is whether the abortion regulation in question constitutes a “substantial obstacle” for women seeking an abortion prior to viability. The Chief Justice appears to regard this as a factual question for the trial court, to which he appears inclined to strongly defer. Pro-life litigants must attend carefully to this portion of the concurrence, as it underscores the importance of building a robust factual record at trial both to justify the law in question and to rebut the claim of “substantial obstacle.”

It is worth noting, however, that under the new standard articulated by the Chief Justice, the state need not persuade the trial court that its actions are supported by uncontroverted scientific and medical evidence; they need only be rational, supported by

credible, even if disputed evidence. Chief Justice Roberts does not explain what kinds of state interests, if any, might be sufficient to justify a substantial obstacle to pre-viability abortion, though he notes that the Court is not to apply the nearly insuperable standard of “strict scrutiny,” as prescribed by *Roe*. There are many state laws now on the books to explore this question going forward.

June Medical Services was a grave disappointment and a missed opportunity. But Chief Justice Roberts’s concurrence—the controlling opinion for purposes of precedent—leaves pro-life litigants on a better jurisprudential footing than before. In fact, just this week, the Supreme Court granted certiorari to my home state of Indiana and vacated and remanded for reconsideration two cases in which lower courts had struck down laws requiring parental notice and an ultrasound to be performed eighteen hours prior to obtaining an abortion. There is good reason to believe that these laws will fare better under the new standard articulated by Roberts in *June*.

Most important, *June* is a roadmap for tailoring arguments to the new swing vote on abortion, Chief Justice Roberts. It is certainly tempting to give up because there is still so far to go. But in the face of setbacks in the struggle for the equal protection of the law for every member of the human family, born and unborn, we must remind ourselves that none of it matters. We must find a way to win.



“He’s an obvious flight risk, your honor.”

APPENDIX C

[Wesley J. Smith is a senior fellow at the Discovery Institute and the author of many books, the latest being Culture of Death: The Age of “Do Harm” Medicine. The following article was published on the website of First Things (www.firstthings.com) on July 6, 2020, and is reprinted with the magazine’s permission.]

The Deadly “Quality Of Life” Ethic

Wesley J. Smith

Something evil happened recently in Austin. Michael Hickson, a forty-six-year-old African-American man with quadriplegia and a serious brain injury, was refused treatment at St. David’s Hospital South Austin while ill with Covid-19. The hospital withheld his tube-supplied food and water despite the objections of his wife, Melissa—and even though Michael might have survived the illness with the medical care generally provided Covid patients. Michael died on June 11 because his doctors did not believe he had a sufficient “quality of life” to justify curative treatment, and that because of his disabilities, saving his life was “futile.”

Here’s the backstory: In 2017, Michael experienced brain injury after cardiac arrest. He was quadriplegic and had seizures. But he was conscious and, according to Melissa, able to do math calculations and answer trivia questions. Wasn’t his life as precious as everybody else’s? Not according to Michael’s doctors. When Michael became sick with coronavirus, his doctor informed Melissa that treatment would not improve the quality of his life (meaning, he would remain quadriplegic and cognitively disabled if he survived), so the medical team “and the state,” through a court-appointed guardian, had decided all treatment except hospice comfort care should end.

Melissa was unable *legally* to save her husband’s life by insisting that he receive proper care. Having been appointed Michael’s temporary guardian, she was in a legal struggle with Michael’s sister over his custody, a dispute that predated Michael’s hospitalization. Family Eldercare, a nonprofit agency, had been appointed interim guardian until a final decision could be made about permanent guardianship. Doctors convinced Family Eldercare to approve Michael’s transfer to hospice care even though he was breathing on his own. Michael died of pneumonia after six days on hospice, the withdrawal of artificial nutrition and hydration having no doubt weakened his body’s ability to fight disease. Even without pneumonia, Michael would have soon died of dehydration.

Please note that this wasn’t a case of triage, a sad necessity required by a lack of resources in a time of pandemic emergency. Nor was it a situation of doctor said/wife said. Melissa recorded her conversation with the unnamed physician and posted it on YouTube so we can all hear for ourselves what families in these circumstances too often experience when dealing with the healthcare needs of disabled and elderly patients.

Here’s the substance of the conversation from the YouTube transcript, with my commentary.

Doctor: At this point, the decision is, do we want to be extremely aggressive with his care or do we feel like this will be futile? And the big question of futility is one that we always question. The issue is: Will this help him improve the quality of life, will this help him improve anything, will it ultimately change the outcome? And the thought is the answer is no to all of those.

Melissa: What would make you say no to all of those?

Doctor: As of right now the quality of life, he doesn't have much of one.

Melissa: What do you mean? Because he was paralyzed with a brain injury, he doesn't have a quality of life?

Doctor: Correct.

The doctor did not base his decision on the *seriousness of Michael's illness*, but on *his continuing disability*. This is a classic example of applying the invidious "quality of life" ethic, which deems people with disabilities, the elderly, the chronically ill, and the dying to have a lower moral worth than the healthy, able-bodied, and young; this ethic sometimes translates into denying the weak and vulnerable medical care that others would receive readily.

Back to the conversation:

Melissa: Who gets to make that decision whether somebody's quality of life, if they have a disability that their quality of life is not good?

Doctor: Well, it's definitely not me. I don't make that decision. However, will it affect his quality, will it improve his quality of life, and the answer is no.

Melissa: Why wouldn't it? Being able to live isn't improving the quality of life?

Doctor: There's no improvement with being intubated, with a bunch of lines and tubes in your body and being on a ventilator for more than two weeks. Each of our people here have Covid and they are in respiratory failure. They've been here for more than two weeks.

A bit later, the doctor says that the decision is not Melissa's to make.

Melissa: So the fact that you are killing someone doesn't make sense in your mind?

Doctor: We don't think it's killing. Because I don't know when or if he will die. But at this point I don't think it would be humane or compassionate to put a breathing tube in this man and do the lines and the tubes and all that stuff because I don't think it will benefit him.

Melissa: And I totally agree with you on the intubation part of it. I don't want him intubated. But I also don't think you should just sit him somewhere to be comfortable until he finally just drifts away. That to me is futile too. That's saying you're not trying to save someone's life. You're just watching them go. The ship is sailing. I mean that just doesn't make any sense to me to not try. I don't get that part. I don't like that part.

Melissa is not asking for intubation. She is not asking for “everything possible” to be done. Rather, she wants proper care for Michael, which would presumably have included medicines and tube-supplied food and water.

The doctor becomes increasingly tired of the conversation:

Doctor: But what I’m going to tell you is that this is the decision between the medical community and the state.

Melissa: And the state. Forget about his wife and his family and his five kids.

Doctor: I have nothing to do with that.

The recording ends there.

What can we learn from this? First, people should sign advance directives naming legal surrogates who will make medical decisions for them in the event of incapacity. Michael had apparently not done that. Had Melissa been Michael’s legal surrogate, it is very possible he would be alive today, because she would not have consented to his transfer from acute care to hospice.

Second, the quality of life ethic is deadly. When doctors fail to recognize life itself as a good, and only deem as “good” those lives they perceive to be of sufficient quality, the weak and vulnerable are put at material risk.

Finally, our societal attitudes need adjusting. Rather than upholding a quality of life ethic, we should insist that society generally—and medicine specifically—adhere to the sanctity/equality of life ethic, according to which everyone is considered equally valuable and worthy of living and care. This ethic would not force people to accept medical treatment they do not want. But it would keep the most weak and vulnerable among us, people like Michael Hickson, from being pushed out of the lifeboat by doctors who can’t imagine why anyone with quadriplegia and cognitive incapacities should go on living.

APPENDIX D

[Clarke D. Forsythe is senior counsel at Americans United for Life and the author of Abuse of Discretion: The Inside Story of Roe v. Wade. The following article was published on July 4, 2020, by National Review Online (www.nationalreview.com). Copyright 2020 by National Review. Reprinted by permission.]

Why the Declaration Still Matters for All Americans

Clark D. Forsythe

Our equal creation, rather than our sex, skin, or group, is necessary to ground human dignity and our respect for every individual.

Amid our national dialogue over race and justice, my family's reading of the Declaration of Independence will be even more meaningful than usual this Fourth of July. At the core of the Declaration—the founding political document of America—is the principle that the consent of the governed is the foundation of the moral legitimacy of government.

That principle follows from three preceding propositions in the preamble: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights. . . .” By appealing to *self-evident truths*, the American Founders relied on an extensive philosophical heritage which affirmed certain moral truths that flow logically from their premises once the terms of the proposition are understood. While a belief in moral truth is dismissed today for promoting intolerance, the foundation of tolerance is not moral skepticism, which fosters the will to power, but the humble recognition of transcendent truths that bind all of us, as human beings, equally.

The Declaration declared the objectivity of human rights by affirming that human beings are “endowed” with rights by their Creator. All human beings have been created equal “in the sense of having been given the same nature,” as a historian of the Declaration, Morton White, put it. The Declaration recognized a standard, rooted in that equal creation, by which even the authors of the Declaration and subsequent generations can be judged.

Abraham Lincoln powerfully used the Declaration and its truths to make the case against slavery in the 1850s and during his presidency. In his 1854 speech against the Kansas–Nebraska Act, Lincoln declared, “The doctrine of self-government is right — absolutely and eternally right.” It was this principle that Lincoln relied on to attack slavery: “The relation of master and slaves,” he said, “is . . . a total violation of this principle. The master not only governs the slave without his consent; but he governs him by a set of rules altogether different from those which he prescribes for himself.” In his Gettysburg Address, President Lincoln returned to the principles of the Declaration, noting that, by the Declaration, the nation was “conceived in liberty and dedicated to the proposition that all men are created equal.”

Two hundred and forty-four years after their publication, the Declaration's principles

remain the moral foundation of democratic government. Despite the critics, the arguments today against the Declaration have not proved conclusive and the principles of the Declaration remain trustworthy.

Materialism has also failed to erase the foundation for the equal dignity of human beings. The renowned philosopher Thomas Nagel, in his 2012 book, *Mind & Cosmos: Why the Materialist Neo-Darwinian Conception of Nature is Almost Certainly False*, wrote that “it is *prima facie* highly implausible that life as we know it is the result of a sequence of physical accidents together with the mechanism of natural selection.”

Nagel argued that “the dominance of materialist naturalism is nearing its end” because “the various reductionist programs about mind, value, and meaning” suffer from “inherent implausibility.” Materialism cannot account for human consciousness or the existence of human beings who can govern themselves.

Then there are the arguments from human reason, developed over the past century by a succession of philosophers, including C. S. Lewis, Elizabeth Anscombe, Victor Reppert, and Alvin Plantinga in his 2011 book, *Where the Conflict Really Lies: Science, Religion and Naturalism*. Naturalism undermines the reliability of human reason. Darwin himself saw the problem: “With me the horrid doubt always arises whether the convictions of man’s mind, which has been developed from the mind of the lower animals, are of any value or at all trustworthy.” Yet the foundation of scientific discovery and any thinking about justice assumes the reliability of our reason.

Lincoln taught that the authors of the Declaration “meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life of all people of all colors everywhere.” Our equal creation, rather than our sex, skin, or group, is necessary to ground human dignity and our respect for every individual. The challenge to Americans is that each generation must gain a renewed appreciation for the truths of the Declaration.

APPENDIX E

[Maria McFadden Maffucci is editor in chief of the *Human Life Review* and president of the *Human Life Foundation*. She is also a regular columnist for *Newsmax*, where the following reflection was published on July 15, 2020 (<https://www.newsmax.com/mariamcfaddenmaffucci/roe-v-wade-stare-decisis/2020/07/16/id/977563/>). Reprinted with permission.]

Roe v. Wade—A Precedent to Be Deplored

Maria McFadden Maffucci

In his majority opinion in *June Medical Services v. Russo*, Chief Justice John Roberts wrote: “I joined the dissent in *Whole Woman’s Health* and continue to believe that the case was wrongly decided. The question today however is not whether *Whole Woman’s Health* was right or wrong, but whether to adhere to it in deciding the present case.” He then went on at length to defend the legal doctrine of *stare decisis*, upholding precedent, to support his decision.

In the Spring issue of the *Human Life Review*, senior editor William Murchison cites another controversial Supreme Court decision, *Dred Scott v. Sanford* (1857), which denied Scott, a former slave living in a free state, his freedom. “I used to read more comparisons than I do now between *Roe* and *Dred Scott*, based on the arrogance inherent in both, the pretense of settling a moral question on purely legal/constitutional terms.”

Indeed: In the early days of the anti-abortion cause, *Dred Scott* was consistently invoked as the shameful precedent to the (1973) *Roe v. Wade* ruling. In “Abortion and the Conscience of the Nation,” President Ronald Reagan wrote: “This is not the first time our country has been divided by a Supreme Court decision that denied the value of human lives.” Justice Roger B. Taney, issuing the majority opinion in *Dred Scott*, wrote:

We think . . . that [Black people] are not included, and were not intended to be included, under the word “citizens” in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time [of America’s founding] considered as a subordinate and inferior class of beings who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them. (*Dred Scott*, 60 U.S. at 404–05)

Dred Scott was never overturned; rather, after the devastating Civil War, it was nullified by the 13th and 14th amendments, which abolished slavery and granted rights to all persons born or naturalized in the U.S., including former slaves.

However, in 1927 another Supreme Court decision—also never reversed—found that the 14th Amendment did not apply to some disabled citizens. In *Buck v. Bell*, the Supreme Court ruled that the compulsory sterilization of the “unfit” and intellectually disabled did not violate due process. Writing for the majority, Justice Oliver Wendell Holmes, Jr. declared: “It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can

prevent those who are manifestly unfit from continuing their kind.”

Today, although much progress has been made for the rights of people with disabilities, the eugenic principles reflected in *Buck v. Bell*—as well as remnants of the racism inherent in *Dred Scott*—are alive and well. On June 11, Michael Hickson, a 46-year-old African American man, died at the hands of the state. He had suffered a brain injury three years previously and was quadriplegic. The beloved father of five had, said his wife Melissa, “regained his personality, had memories of past events, loved to do math calculations, and answer trivia questions.” Yet when he contracted Covid-19, his doctor *refused any treatment*, telling Melissa point-blank that because Michael couldn’t “walk and talk” (the conversation was recorded) he had no “quality of life.” The hospital and the state then decided to remove *all food and water*, dehydrating and starving him to death, which took six days. Hickson’s death, “rather than exploding amid our racial-justice moment . . . hardly yielded a peep from those who control our national discourse,” wrote Fordham Professor Charles Camosy.

Back to precedents: One controversial decision, *Korematsu v. U.S.* (which supported the internment of Japanese Americans during World War II), while not explicitly overruled, has been effectively disowned by the Court. Justice Roberts wrote (in *Trump v. Hawaii*, 2018) that “*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history . . .”

How will the “court of history” find the *Roe* decision? Justice Clarence Thomas is clear, in his *June v. Russo* dissent: “*Roe* is grievously wrong for many reasons, but the most fundamental is that its core holding—that the Constitution protects a woman’s right to abort her unborn child—finds no support in the text of the Fourteenth Amendment.”

The Supreme Court’s abortion jurisprudence allows for the killing of humans because of age, location, race, or ability—a precedent to be deplored.

APPENDIX F

[Dmitri Solzhenitsyn is an editorial intern at National Review. The following article was published on National Review Online (www.nationalreview.com) on July 21, 2020. Copyright 2020 by National Review. Reprinted by permission.]

Why the Mortality Rate for Black Infants Is So High

Dmitri Solzhenitsyn

As Americans discuss black livelihood in the context of recent high-profile black deaths at the hands of police officers, a merciless villain is quietly snatching away thousands of black lives each year: infant mortality.

To be sure, medicine has gone a long way toward keeping black babies alive. In 1850, the black infant-mortality rate was 340 per 1,000 (compared with 217 per 1,000 for whites). Still, despite progress, last year over 7,000 black babies died in the United States before reaching one year of age—one baby for every 87 born. Troublingly, the

infant-mortality rate is far higher for blacks than for other races: The CDC reports that non-Hispanic black babies die at a rate of 11.4 per 1,000, while for Hispanic and white babies the figure is 5 per 1,000. For Asian babies, it's 3.6 per 1,000.

Why the discrepancy? In a comprehensive study, the CDC finds that there are five conditions in particular causing high mortality rates for black babies: low birthweight, congenital malformations, maternal complications, unintentional injuries (e.g., accidental suffocation or strangulation in bed), and sudden infant-death syndrome (SIDS). Of these, the two conditions that cause black infants to die at the highest rate relative to non-black infants are low birthweight (which causes four times more black infant deaths per capita than white infant deaths) and maternal complications (a 3.5 factor by the same measure). Both of those conditions happen to be among the top three leading causes of black-infant mortality, which helps to explain why the infant-mortality gap between blacks and other races is so dramatic.

Breaking down the data further, we see that there are two main issues at play: First, conditions deadly to infants are simply more *prevalent* among black babies and their mothers than among babies and mothers of other races. Of black infants, 13.3 percent are of low birthweight, but just 7.1 percent of white infants are. Moreover, black infants are at three times greater risk of accidental death than are white babies, and at more than four times the risk of developing SIDS. Black mothers, too, are more likely to have adverse conditions: They are three times more likely than white mothers to have uterine tumors that induce postpartum hemorrhaging and slightly more likely to have preeclampsia (the sudden rise of blood pressure). And on average, as the *American Journal of Public Health* reports, black mothers are 30 percent more susceptible to physical “weathering,” the premature aging of one’s body due to social stresses. Indeed, these discrepancies help explain why black mothers themselves are at more than twice the risk of dying during pregnancy than white mothers, though it should be noted that the maternal-mortality rate is roughly 30 times lower than the infant-mortality rate.

Second, even when the mortality rate is adjusted for the prevalence of given conditions among black and white people, black babies *still* fare worse than other babies. Here is how this adjustment is made: If one group has a condition twice as often as another group, and dies from the condition *ten* times as often, the prevalence-adjusted mortality rate is 5:1. The prevalence-adjusted black–white infant mortality ratio is 2:1 for low birthweight and 3:2 for congenital malformations. These discrepancies, of course, are partly attributable to the compounding effect of having several adverse conditions at once. (For example, having a low birthweight tends to be more dangerous for black babies than for white babies, given that black babies are more likely to be experiencing other harmful conditions on top of the low birthweight.)

Some might reflexively claim that the infant-mortality issue is easily amendable; after all, deaths by accidental strangulation and suffocation have been linked to uninformed parental practices, which can be corrected through education. Still, accidental deaths such as these account for just 4.5 percent of the black-infant deaths. It is also deeply misguided to write off most black-infant deaths as attributable to unlucky genetics: Study after study has demonstrated that most pregnancy-related deaths are preventable.

Rather, deep structural issues seem to be at play. The CDC observes that 10.2 percent of black mothers receive late prenatal care or none at all—2.3 times higher than the rate for white mothers. In addition, 33.4 percent of black mothers receive no first-trimester care, as opposed to 17.6 percent of white mothers. Given that prenatal care is essential to diagnosing and treating dangerous conditions, as well as to establishing important doctor–patient relationships, this gap is alarming. And even when black mothers receive sufficient medical care, they tend to report being discriminated against or neglected by medical professionals in a way white mothers don’t.

Joedrecka Brown Speights has studied the black–white infant-mortality gap extensively over the decades. She and colleagues highlight many key determinants of the gap, including “socioeconomic status, maternal behaviors, access to health care, nutrition, social capital.” Certainly, lowering black-infant mortality must be tied into broadly improving the health and wealth of black communities, the achievements of which are themselves massive undertakings. But the reports of discrimination and bias tell us that there is an intangible element at play as well, a certain inability of the medical field to connect with black patients and understand their specific problems. This disharmony makes sense: Black people are 13 percent of the population but just 5 percent of doctors, though they are much better represented in nursing.

To solve the problem of poor prenatal care for black women, the Center for American Progress (CAP) suggests several measures—for example, “offer African American women tools to navigate the health care system.” Also, “train providers to address racism and build a more diverse health care workforce.” Finally, “dismantle care barriers with a comprehensive approach.” Striving toward a more diverse health-care system does not mean abandoning merit; it is precisely through facilitating connections with black mothers and saving black babies that diversity could here prove meritocratic. Moreover, expanding access to care for pregnant black women does not mean abandoning fiscal responsibility; even just managing preterm births presents a \$26 billion annual burden on the economy, and investing in proper care could ease much of the problem. Neither do CAP’s strategies necessarily need to come out of a government budget: Bill and Melinda Gates have donated \$100 million toward addressing adverse birth outcomes. Through increased media coverage and heightened societal awareness, other charitable givers as well could also be encouraged to focus their efforts on infant mortality.

The issue of infant mortality directly affects many thousands of people each year in the most devastating way possible. Lowering the infant-mortality rate for blacks even to the level of other racial groups would be a tremendous victory for equity, and it would save the lives of roughly 4,000 babies annually. It is toward this goal, among others, that the truest advocates for black lives in health, public policy, and philanthropy are sure to gravitate in the coming years.

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What effect, if any, would passage of the Equal Rights Amendment have on abortion? Could it in theory lock “abortion rights” into the Constitution by creating a new textual hook on which to hang that liberty, giving it a more solid foundation than the Supreme Court in *Roe v. Wade* and *Planned Parenthood v. Casey*? First we need to consider whether in fact the current version of the ERA can be ratified at this late date, regardless of expired deadlines.

—John M. Grondelski, “Extending the ERA and the Wages of
Verbicide”