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About this issue . . .

. . . The journal you hold is particularly forward looking: The news broke in May that the Supreme Court would hear arguments in *Dobbs* v. *Jackson Women's Health Organization*, regarding Mississippi's proposed 15-week abortion ban, with a decision expected in June 2022. News outlets and social media exploded, predicting—with either panic or joy—the demise of *Roe*. But hyped-up messaging from both sides of the abortion divide obscures the more complex, incremental nature of the case. And so, we bring you indispensable analyses from pro-life leaders in our symposium "Perspectives on the Impending Fate of *Roe*" (p. 34).

We lead with the eminent *Roe* scholar Clarke Forsythe (who gave us permission to reprint his *Wall Street Journal* column). He writes that, despite the media message that "Americans are too polarized" to decide the abortion issue, consistent polling results show that "a large majority of Americans would likely support a decision upholding" Mississippi's law. Kristan Hawkins agrees, reminding us that "Many more Americans support the vague concept of *Roe* (the right to choose) than they do the actual tenets of *Roe* (abortion on demand through all nine months of pregnancy, for any reason and often funded by taxpayers)." Teresa Stanton Collett warns that "prolifers should guard against a pyrrhic victory" by focusing not just on *Roe* but also its companion case *Doe* v. *Bolto*n—which provided the broad health exception necessary for abortion-on-demand. Next, George McKenna hopes that, as the case focuses on the "morally crazy" standard of viability, perhaps the "old slippery slope, this time working in our favor," will *increase* earlier protections for the unborn. Kristen Day sees an opportunity in *Dobbs* for Americans to conquer their fear of talking about abortion: "What better time to dispel the myths about abortion and the pro-life movement?" Helen Alvaré points out that empirical data since *Roe* strongly contradict the notion that abortion leads to accomplishment in "feminist-materialist-equality terms" for women—in fact, legal abortion "has likely held women back." Finally, Kelsey Hazzard—see our back-cover quote—compares abortion advocates to flat-earthers in their rejection of the clear science about life's beginnings.

As editor Anne Conlon writes in her engaging introduction, we also asked the great pro-life legal scholar Hadley Arkes to join the symposium, and "to our delight he gave us an article instead," one of three in this issue on *Dobbs* and the future of *Roe*.

We thank *First Things* for permission to reprint Samuel D. James' take-down of porn "literacy." And thanks, as always, to cartoonist Nick Downes for providing the joy of a great guffaw.

Maria McFadden Maffucci
Editor-in-chief

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INTRODUCTION

Before the Supreme Court announced it would take up *Dobbs* v. *Jackson Women's Health Organization* in its fall session, prolifers were debating—and pro-abortionists blasting—"Abortion Is Unconstitutional," an argument advanced by Notre Dame's John Finnis in the April issue of *First Things*. It's actually an old argument—that fetal personhood is embedded in the 14th Amendment—but obscured in recent decades by sustained efforts to pass incremental legislation (such as the 15-week abortion ban at issue in *Dobbs*). "There is impressive thinking in this elegant essay," writes senior editor William Murchison in our lead article, "Trust Not in Judicial Princes," which "every pro-life advocate ought to read." Murchison, however, is skeptical that any solution to the nation's abortion logjam can come out of today's Court. "The hopes of the parties at law" in the *Dobbs* case, he writes, "are rooted in questions beyond the competency of judicial minds." Americans, he says, "want it kind of both ways: respect in some measure for the unborn, freedom for claimants to personal liberty to get rid of 'accidental' obstacles to the enjoyment of that liberty."

It wasn't always so, as Marvin Olasky, editor of *World* magazine (and the Human Life Foundation's 2021 Great Defender of Life), makes clear in "Abortion and Law before *Roe* v. *Wade*," adapted from the first chapter of his latest book *Abortion at the Crossroads*. In early America, Olasky writes, "humans outside the womb viewed humans in the womb as human life, so general laws against murder applied." Abortion "was so atypical that specific legislation rarely seemed necessary." Its incidence increased, however, "as cities . . . attracted young people moving away from family protection and restrictions." By the 19th century, "sensational cases" were making the news, and "by the end of 1868, at least twenty-seven states" had passed laws "forbidding abortion at any stage of pregnancy." Still, despite mounting restrictions, the demand for abortion continued and urban corruption assured its availability. Wealthy, well-connected abortionists bought off police and politicians and even when charged were rarely convicted in court. "Hiring tough lawyers was just part of the cost of doing business."

Fast forward to the 1970s. As Olasky relates, while doctors were calling for abortion law reform, and states were liberalizing abortion laws, a tough lawyer named Lawrence Lader "discerned that the Supreme Court's 1965 *Griswold* v. *Connecticut* decision, which established a new 'right to privacy,' could extend to abortion." And the rest is infamy. In 1973 the Supreme Court bought Lader's argument—and his "falsified history of abortion acceptance"—with Justice Blackmun "citing him eight times" in his *Roe* opinion. Olasky ends his account by quoting Connie Marshner, "a young conservative in the early 1970s who became a leader of the Free Congress Foundation and then chaired Ronald Reagan's Family Policy Board." Marshner, he writes, told him abortion "wasn't on anybody's radar" when *Roe* was announced.

As it happens, Connie Marshner—who, like Olasky, knows more about abortion history than most of us—authored the article that follows his. "When the abortion

issue first emerged in politics," she reminds us in part one of "From Foe to Friend: How Paul Weyrich Shaped the GOP Agenda," it was "inside the Trojan Horse of Population Explosion hysteria." And that hysteria was fueled by Republicans—Republican philanthropists funded population-control programs; Republican politicians proposed population-control legislation; five Republican-appointed justices supported the *Roe* decision. "Other than a statement from some Catholic cardinals," Marshner recalls, "there was little objection to the decision when it happened." During the 70s, she says, "Republicans at the highest level" were "enemies of life." Yet "by 1980 there was a pro-life plank in the GOP Platform." What happened? In Marshner's lively telling, it was a "Midwestern [and] devout mid-century Catholic," Paul Weyrich (whose biography she recently completed), who made "the pro-life issue inseparable from the Republican agenda."

Hadley Arkes, the indefatigable architect of the Born-Alive Infants Protection Act—vetoed twice by Bill Clinton and signed into law by George W. Bush—has helped craft Republican pro-life legislation for decades. We asked our 2004 Great Defender of Life to participate in the symposium on *Dobbs* we feature here, but to our delight he gave us an article instead. In "The *Dobbs* Case and the Strains of Prudence," Arkes reflects on two options before the Supreme Court—overrule *Roe* "in a single major stroke," no doubt exciting harsh opposition, or "sustain the law in Mississippi without overturning *Roe,*" a ruling where there might be a chance "the opposition can be gently disarmed and forestalled." While Arkes seems to prefer the latter approach, he isn't indifferent to why many prolifers might prefer the former: "The serious concern now," he acknowledges, "is that the disarming approach may disarm no one." Such is the intransigence of abortion defenders—ever "in opposition to the mildest restrictions."

As Arkes observes, "the Supreme Court set off tremors in the land" when it said it would hear *Dobbs*, a case whose progress through the courts only insiders (like him) were watching until then. In "Perspectives on the Impending Fate of *Roe,*" seven pro-life leaders and thinkers contribute illuminating short takes on its significance. We round out our *Dobbs* commentary with "What Happens Should *Roe* Go?"—a probing article by senior editor Ellen Wilson Fielding, who brings the perspective of a logic-driven essayist to the obvious but not often answered question posed by her title. There is "good news and bad news" in the latest Gallup abortion poll, she reports, but nothing in the tea leaves to dispel predictions of a fierce blue-state, red-state abortion divide should the Court overrule *Roe*. Besides the violent upheaval already promised by Democrats, what challenges would a post-*Roe* world present? After nearly a half-century, Fielding writes, "we are still seeking to re-convert that still-large percentage of our electorate who, though repeatedly reporting in polls their desire to see abortion rarer, do not in most states push their legislators to deprive other people of the right to abortion." And our pro-life stance, she fears, might be an increasingly harder sell, founded as it is "on a reality-based way of living and thinking that unfortunately has become less commonplace."

The age-old sanctity-of-life ethic—which protected not only the unborn but the

elderly and the sick and the disabled from wanton extinction—emanated from that "reality-based way of living and thinking." But as Wesley Smith argues in "Covid's Totalitarian Temptation," for decades death-dealing bioethicists have pushed to supplant it with a "quality-of-life" ethic of their own devising. And then last year, "a modern plague . . . created conditions that allowed a crass utilitarianism in health-care to flourish like mushrooms after a rain." Building on his article in our Winter issue ("Defeating Technocracy Is Crucial to Life"), Smith warns of pandemic-empowered "experts" that now have forced vaccination, mandatory vaccine passports, organ-donor euthanasia, even "assisted suicide by Zoom" in their sights. "Blame the Covid crisis," he says, "for unleashing a boldness in the would-be technocrats and at the same time engendering timidity among people who want to be safe."

Our final article, "Coolidge and the Catholics" by Edward Short, begins with a photograph. Take a good look at it. The year is 1924. There, on the speaker's platform, with the archbishops of Boston and Baltimore alongside him, is the Protestant president of the United States, about to address 100,000 members of the Catholic Holy Name Society. (Be sure to see Short's account of its history and mission in footnote one.) Coolidge, writes Short, exhibited in the speech a "truly prophetic grasp of the role church and state play in upholding and sustaining America's constitutional order." This is a scene not easily imagined in 2021, as a Catholic president undermines church doctrine as well as constitutional order. Yet today, Short insists, "when that order is beleaguered as never before," is precisely the time Coolidge's speech "should be read and reread by all who prize liberty." Yes. And when you have finished Short's essay, with its generous quotes from Coolidge's text, you are likely to agree with him that "the speech appeals to all Americans, Catholics and non-Catholics."

* * *

"What is most refreshing about this book," remarks John Grondelski in his review of Christopher Kaczor's *Disputes in Bioethics: Abortion, Euthanasia, and Other Controversies*, "is its unabashed sanctity-of-life perspective, a rare and underrepresented voice in contemporary bioethics." Brian Caulfield highly recommends *Things Worth Dying For: Thoughts on a Life Worth Living*, in which Archbishop Charles J. Chaput "acknowledges the serious earthly issues that each one of us must deal with, yet presents these in the context of a life worthy of eternity." This edition of Book/Filmnotes also includes Maria McFadden Maffucci's deeply moving review of *The Reason I Jump*, "a remarkable film, a powerful documentary . . . that invites viewers to experience autism—from the inside." We follow with From the HLR Website: a blog by Mary Rose Somarriba on an underreported health risk of hormonal birth control and a pastoral reflection on political violence by Rev. Paul Stallsworth. Room for only a single Appendix this time, an important one about an urgent issue demanding our attention. "In not even half a generation," Samuel D. James writes in "The Illusion of Porn 'Literacy,'" "we have gone from protecting kids from smut to protecting smut from ignorant kids."

Anne Conlon
Editor

Trust Not in Judicial Princes

William Murchison

Oddly—or maybe it's not odd after all, given the power of habit—Americans have come to consider the United States Supreme Court as, well, supreme: garlanded, perfumed, raised in immensity over imperfect surroundings. Or—as Ol' Blue Eyes put it in a lustier context—"A-number-one . . . top of the list . . . king of the hill."

Ain't no supremer anyway than "supreme"—an operative factor, no doubt, in the public's appreciation, or non-appreciation, of the Court's heavy influence over our thoughts, words, and actions. And intentions. Thus when the justices announce they will hear arguments in a case (*Dobbs* v. *Jackson Women's Health Organization*) abutting the integrity, so to speak, of *Roe* v. *Wade*, pulses flutter, throats tighten. By gosh, this is a big one. Fasten your seat belts.

Will the Court, scrutinizing a Mississippi statute that outlaws abortions after 15 weeks, show judicial disgust with the handiwork of its predecessor tribunal in 1973, declaring *Roe* a judicial dead letter, along with the key controlling case of *Planned Parenthood* v. *Casey*? Or will the justices merely muss up *Roe* and *Casey* a little bit, leaving them bruised but still standing? The Court will do something; we just don't—obviously—know what.

The present moment was foreordained. What the Court had purported to settle in 1973 was a matter unsettleable by the familiar means of judicial pleadings, recourse to thick statute books, and the earnest knitting of brows at mahogany conference tables. The question at stake was life—unborn life. Men, and nowadays women, of the law are supposed—at the barest minimum—to take deep breaths before overthrowing centuries of law and moral understanding, instructing onlookers, more or less, "Get used to it!"

A reckoning—that favorite term of the "woke" movement—could be at hand. We know Justice Clarence Thomas, an acute critic of *Roe*, would sweep away, if he could, *Roe* and its offspring. Justice Sam Alito would likely join in the effort. A couple more justices—possibly a majority of the Court?—might be enlisted in the cause. Well, not Sotomayor. Not Kagan. Not Breyer. The chief justice? The delicacy of his juridical touch is well known: of which there is maybe no more to be said at present.

William Murchison, a senior editor of the *Human Life Review*, is professor emeritus of journalism at Baylor University. He is currently completing a book on moral restoration in the 21st century.

May a non-lawyer suggest a recess from mind-reading and attendant references to precedents and word meanings? I suggest we might wish to step out of the courtroom and there give attention to the "supremacy" question—a point overdue for some attention.

I put the question thus: What's "supreme" here, a cobbled-together legal viewpoint by the U.S. Supreme Court, with dissents and concurrences appended to the bottom—all on account of this being capital-l *Law,* the handiwork of capital-l *Lawyers*? Or what if all this lawyering and judging can be construed as mere evasion of the actual supremacy question? Which would be, in barest essentials: The supremacy with which we are nominally so concerned in court lies . . . where? In precedents? In statutes? In formalized pleadings before the bench by personages in starched apparel?

Umm . . . not exactly, I would say. Doesn't "supremacy" lie in the wishes and expectations of the culture in whose name, supposedly, judges judge and legislators legislate? Why the general deference over so many years to onetime law-school hotshots pretending to instruct us all in a new theory of the rights or non-rights of unborn citizens of the United States—and of the Kingdom of God if you want to get down to it? No court, howsoever "supreme" in wisdom and authority, seems capable of addressing the profound questions raised by *Roe* and succeeding cases.

Abortion for the sake of getting rid of the bothersome and undesired is only on the surface, I would say, a matter for judges to take on and decide. That is surely one of the reasons the Supreme Court, prior to *Roe,* never asserted its supremacy over a matter conspicuously beyond its competence. Legislatures had legislated the prohibitions the Court overturned in *Roe.*

So. Wasn't that in effect a kind of political "supremacy"—coercion of the unwilling (women desiring abortion) by those (lawmakers) with the power to coerce? Not a bit of it. For two reasons:

1) A democratic legislative body acts with the implied consent of those it governs—with the assistance of the other two branches of government, executive and judicial. Its enactments are subject to change or modification—or outright repeal—at the instance of the people.

What is rightly understood as the tyranny of *Roe* consists partly in the people's inability to overturn it. Only the Supreme Court has, practically speaking, the power to undo its own handiwork. The Court can say, whoops, sorry, we blew it! Or it can say to those parties objecting to its wisdom: Go take a flying leap! Such is the advice the Court majority has for the nearly half-century of the *Roe* regime dished out for those unimpressed by the logic of sure-it's-your-constitutional-right-to-extinguish-your-baby's-life.

2) The larger, broader reason for the intervention of democratic legislatures

in protecting unborn human life—a power taken away from them in *Roe*—has to do with life itself: its origin, its nature, its responsibilities. Legislatures are supposed to represent the people, and the people's ideas, which may vary substantially from the ideas of judges. And do sometimes. And should.

Take abortion: about which there are significant matters to bring up in addition to its claimed effects on the rights of women. Prof. John Finnis of the Notre Dame Law School tackled this immense question head-on in a recent *First Things* article (April 2021) titled "Abortion Is Unconstitutional"—that is to say, as a transgression of ancient understandings of what it means to be a "person," enjoying the protections that follow from that station.

Finnis is a distinguished advocate of the historic premise that humans know, on account of their access to the natural law, what is right and what is, by contrast, wrong. The natural law is natural. It instructs us that life matters, that individuals have absolute rights to personal security, personal liberty, and personal property. Finnis quotes Sir William Blackstone, the great English jurist of the 18th century, writing in observance of these rights. To wit: "Life is the immediate gift of God, a right inherent by nature in every individual; and it begins in contemplation of law as soon as an infant is able to stir in the mother's womb."

An English law of 1803, Finnis relates, "made it a felony to attempt abortion even before the child was provably 'quick.'" The framers of the Fourteenth Amendment (the incorrectly imputed origin of abortion rights) poured Blackstone and natural law into their undertaking. The great majority of legislatures that ratified the amendment understood that "prohibiting the killing of the unborn is a matter of simple justice to the most vulnerable among us." This says to Finnis that "abortion is unconstitutional."

Well. Hmm. There is impressive thinking in this elegant essay which every pro-life advocate ought to read. It seems that way even to the great unwashed who never attended law school, or desired to. The operative question—exhumed from the mound of whereases and therefores that lawyers heap up wherever they go—is what might we expect the Court not just to recognize but actually *to do,* and by what kind of numerical margin. I am of a mind that we should not let our hopes run away with us. And that, in any case, we ought never to be caught putting our trust in judicial princes.

The essential question before the Court isn't so much who's right and who's wrong. "The dictatorship of relativism"—Pope Benedict XVI's telling phrase, characterizing the moral regime that presently has us by the throats—will barely countenance the recognition of simple "right" and simple "wrong." Do not both commodities exist in the eyes of those who behold

them? And isn't that OK? Because what's true for you may not be true for me, and vice versa; and in our great democracy, whose purpose seems to consist in the establishment of new rules for "equity" and "diversity," the musings of the long-dead cut little if any ice.

You will find the *New York Times* and MSNBC, not to mention assorted wokes and progressives, infinitely less interested in William Blackstone and his modern trainbearers than in timelier-seeming questions. Among those questions: How and when are we finally going to break the grip of the white male oppressors? When are we going to acknowledge, as it has come to be recognized, the right of women to control their bodies, the inside as well as the outside—this, over against society's asserted premise of a duty to care for and protect the infant in the womb?

No respecter of unborn life rejoices in the force these questions have lately assumed. I point to them as pointers in turn to the modern understanding of supremacy: which is the understanding we have to get past and over before the unborn regain their lost place on the scales of human compassion and mercy.

A great many—who can hardly be blamed for the aspiration—hope the Supreme Court can yet be turned around, through legal argumentation, in its indifference to the life of the race of which all are a part—the human race; conceived, brought into the light of day, nurtured, sent along on the unending (so far) human journey. Could the Court, by what would certainly prove a narrow margin, actually strike down *Roe*? It could, certainly. Would it? With what effects beyond the removal of judicial approval for abortion? The overthrow of *Roe* would mean, beyond that . . . the Lord only knows what. Would the years roll away and the moral lineaments of the 1940s return? No more Planned Parenthood? No more NARAL? Just billing and cooing over the sweetness of Gerber babies?

Such a conceit—which is all that a kindly notion of this sort deserves to be called—cannot hold water. As we say in Texas, that ol' dog won't hunt. We have to remember the Supreme Court itself was a willing, not to say an enthusiastic, instrument of the moral/sexual revolution. The seven who signed the majority opinion in *Roe* v. *Wade* stormed our moral Bastille, releasing those imprisoned by the prejudices of the past. The seven justices were in a sense "woke" at a time when woke was a mere past-tense verb.

The distinguished constitutional scholar Edward Whelan has taken polite exception to Prof. Finnis's argument that personhood arguments could finish off *Roe,* seeing it as likelier the Court might restore to the states their lost authority over abortion policy. That would be something. Back we would go, nevertheless, to the supremacy question. Who's really supreme around here? Isn't that what we want to know?

Judicial edicts confer only so much legitimacy. If they conveyed more, wouldn't the country have given in long since to the *Roe* regime? The startling, almost unprecedented perseverance of the pro-life movement testifies to the limits of moral aggression. Would there be now without moral resistance a *Dobbs* case awaiting adjudication, with much of the land stirred by a storm of agitation aimed at finding the right way forward, whatever the Court says? I think, whatever opinion the Court delivers, prolifers are entitled to strut a little. Counter-revolutionaries usually succeed only in getting their heads chopped off. Our rebels are in for a different, likely more agreeable, fate.

Still . . . the hopes of the parties at law, in *Dobbs* v. *Jackson Women's Health Organization,* are rooted in questions beyond the competency of judicial minds. The courts don't decide. The culture, in the end, decides. The mighty United States Supreme Court—its nine leather chairs reserved for the well-connected and at least moderately gifted—is supreme mainly on paper. Head of the heap, A-number-one, sure—in our constitutional arrangements. Less so—often much less so—in the discovery and exhibition of the important Truths by which humans live. Let us not deceive ourselves—whatever our hopes regarding the outcome in *Dobbs*—that a Supreme Court dispensation in such a mighty matter as this defines anything other than the preferences of nine more than ordinarily influential lawyers.

Whelan, in *First Things,* quotes Lincoln: "In this age, in this country, public sentiment is everything. With it, nothing can fail; against it, nothing can succeed. Whoever molds public sentiment goes deeper than he who enacts statutes, or pronounces judicial decisions." The problem with American public sentiment on abortion is its present wavering nature. Americans don't know quite what they want. As a people, they want it kind of both ways: respect in some measure for the unborn, freedom for claimants to personal liberty to get rid of "accidental" obstacles to the enjoyment of that liberty.

No assemblage of lawyers can resolve that ambiguity. "Public sentiment" can resolve it, provided sentiment—by teaching, preaching, moral example, the workings of goodness in the heart—can be returned to the older understanding of the unborn as people like the born, only smaller, more helpless, more dependent than ourselves on kindness and compassion. We could bring about this blessed state all by ourselves, with mighty jurists mere guests at a party indifferent to their presence or absence.

Abortion and Law before *Roe* v. *Wade*

Marvin Olasky

As I've shown in previous writing and am now researching further, abortion in colonial America was rare, and its illegality uncontroversial. Popular books carried a pro-life message. One, written by a person who called himself "Aristotle," instructed midwives to refuse "to give directions for such Medicines as will cause abortion," for doing so "is a high degree of wickedness, and may be ranked with Murther." Botanist Nicholas Culpeper, writing about drugs useful for some ailments, told midwives, "Give not any of those to any that is with Child, lest you turn Murtherers. Wilful Murther seldom goes unpunished in this World, never in that to come."

The incidence of abortion in America began to increase as cities, while still small, attracted young people moving away from family protection and restrictions. In 1700, Boston, the largest city, had about 6,700 residents, so it's no surprise that Benjamin Wadsworth, who would become president of Harvard College, thought it necessary to declare in 1712 that those who "purposely endeavor to destroy the Fruit of their Womb" are "guilty of Murder in God's account."

New York City and Philadelphia were tied for second at about 5,000 residents, so it's unsurprising that on July 27, 1716, New York City enacted an ordinance forbidding midwives to aid in or recommend abortion. All midwives had to swear they would "not Give any Counsel or Administer any Herb Medicine or Potion, or any other thing to any Woman being with Child whereby She Should Destroy or Miscarry of that she goeth withall before her time."

Most colonies and cities did not have such an explicit law, but that absence did not mean hearts had grown fonder toward abortion. Humans outside the womb viewed humans in the womb as human life, so general laws against murder applied. Prosecutions for abortion before the fifth month would have been difficult, because prior to pregnancy tests and prenatal checkups, only the mother knew for sure. Still, non-prosecutable via lack of evidence is not the same as legal: It's not legal to murder a person in a distant place as long as no one is looking, and the murderer leaves no footprints.

Marvin Olasky, PhD, is the author of 28 books, including *The Press and Abortion* (1988) and *Abortion Rites* (1992). This article is adapted from the first chapter of *Abortion at the Crossroads,* an overview of American abortion history and current pro-life opportunities recently published by Bombardier Books.

Abortion in early America was so atypical that specific legislation rarely seemed necessary. In 1821, though, a jury decided that Connecticut celebrity pastor Ammi Rogers had added to his list of seductions teenaged Asenath Smith, and then pressured her to abort. The *Norwich Courier* raged that never before was there "a trial in which so much baseness and cold calculating depravity of heart were disclosed." And yet the judge gave Rogers only a two-year sentence, to be served not in the hard-time state prison, but a relaxed local jail.

The Connecticut General Assembly, outraged, became the first state legislature to pass a law specifically targeting abortion. Rogers said the abortion might "have been produced by sickness, infirmity, or accident in the mother," so the legislature said anyone who made a pregnant woman consume an abortion-causing substance, regardless of results, could spend not only two years in jail, but the rest of his life in prison, if the jury and judge so determined.

As cities grew—New York City in 1820 was up to 120,000—more sensational cases emerged. Other states passed laws like Connecticut's, but they all had problems. Prosecutors had to prove the existence of an unborn child, yet pregnancy tests did not exist. The mother, or others who had placed their hands on her body and felt movement (starting in the fifth month of pregnancy), were the only ones who could testify that she was indeed pregnant—until she became "great with child" and everyone knew.

New York's first law, passed in 1828, proved ineffective. Women whose menstrual flow had stopped could say they were the victims of "suppression" in the uterus rather than suppression of morality or honesty. Starting in the 1830s, new printing presses allowed printers to rapidly produce thousands of copies to be sold for one cent rather than six: the profits would come from advertising. Ads for "female monthly regulating pills," abortifacients that could restart the menstrual flow by killing the tiny creature whose existence had stopped it, became revenue centers.

The ads were technically accurate because the leading cause of "stoppage of the menses" was pregnancy. One of the leading New York advertisers, Ann Lohman, who became known as Madame Restell, was the city's most notorious abortionist from the 1830s through 1878. During her ascendancy, the New York legislature enacted, amended, and re-enacted laws concerning abortion eight times, attempting to put her and others out of business.

When potions didn't work, Restell backed up her abortion practice with surgery, so a new New York law in 1846 responded to the increased incidence of surgical abortions by banning use of "any instrument of other means, with intent thereby to destroy such child." The following year, police finally acted and found a woman, Maria Bodine, willing to testify that Restell had operated

on her: "She hurt me so that I halloed out and gripped hold of her hand. She told me to have patience, and I would call her 'mother.'"

Restell, found guilty, went to jail, but money and political connections preserved her from any great misery. She had her own "prison suite"—no hard chair and lumpy prison mattress, but easy chairs, carpeting, and a fancy new featherbed, with her husband allowed to visit her at any time, and "remain alone with her as long as suited his or her pleasure." Once she emerged from prison, she returned to her abortion business and did not see the inside of a cell for the next thirty-two years.

During the 1840s and 1850s alone, legislatures in at least thirteen states passed laws forbidding abortion at any stage of pregnancy. By the end of 1868, at least twenty-seven states had the same. Physicians led the charge toward laws specifically forbidding abortion. They emphasized science, backed it up with theology, and had the support of major publishers.

For example, in 1853 Harper & Brothers published *The Mother and Her Offspring* by Stephen Tracy, who had been a missionary in Singapore and Bangkok, and would become a professor of obstetrics at the New England Female Medical College in Boston. Regarding a creature in the womb, Tracy proclaimed, "Here then is a new individual . . . a human being. It is one of the human family as really and truly as if it had lived six months or six years. . . . Ignorance upon that has resulted in the commission of crimes of the greatest enormity."

Tracy tried to draw for readers a picture of what still was largely invisible: "At forty-five days, the form of the child is very distinct. The head is very large; the eyes, mouth, and nose are to be distinguished; the hands and arms are in the middle of its length—fingers distinct. . . . At two months, all the parts of a child are present. . . . The eyelids may be distinctly traced, and appear very transparent; the heart is very much developed . . . the fingers and toes are distinct. . . . At three months . . . the lips are very distinct, and the mouth closed; the heart pulsates strongly, and the principal vessels carry red blood. Its weight is about one and a half or two ounces, and its length from five to six inches."

Tracy gave a scientific summary: The child's "life commenced at the time of the formation of the embryonic cell—at the moment of conception; and no person has any right to destroy it by any means whatsoever." He then brought in his religious views: "Whoever for the sake of gain, or for any other possible reason, designedly destroys it, excepting in cases (which very seldom occur) where it is certainly and indispensably necessary, in order to save the life of the mother, commits a most awful crime, and will be called to give an account therefor at the judgment on the Great Day. Even in those lamentable

and distressing cases where conception has taken place unlawfully, whatever and however aggravating may have been the circumstances."

Then, as now, some observers pointed to the frequency of miscarriage as an indication that prolifers should not care so much about abortion: both happen. Tracy, though, said, "The life of this new human being is sacred, and no one but God himself either has, or can have, the least shadow of a right or liberty to take it away." Respect for God's sovereignty made the two sad occasions very different. Tracy thought those unconvinced by the Bible's teaching would pay attention to scientific realizations: "The investigations of physiologists have established them as incontrovertible TRUTHS, which should be known, and felt, and regarded by every human being."

During the following decade, every human being did not agree, but the American Medical Association clarified its position in 1865, when it gave a special "Prize Essay" award to Dr. Horatio Storer, who wrote, "Physicians have now arrived at the unanimous opinion that the fetus in utero is alive from the very moment of conception. . . . Before the egg has left the woman's ovary, before impregnation has been effected, it may perhaps be considered as a part and parcel of herself, but not afterwards. When it has reached the womb . . . it has assumed a separate and independent existence, though still dependent upon the mother for subsistence."

The 19th century AMA's position was clear: "The first impregnation of the egg . . . is the birth of the offspring to life." Doctors, though, were frustrated to learn that scientific knowledge only occasionally put abortionists out of business. The *New York Daily Herald* emphasized "the insuperable legal difficulties in the way of obtaining a conviction. The professional abortionist is able to command the most eminent legal talent that money can secure to interpose technical objections, which often befog juries and thus lead to a disagreement, which is tantamount to an acquittal."

Storer in 1866 complained that Massachusetts's thirty-two trials for abortion in the previous eight years had yielded not a single conviction. Frustration extended across the country. A Kentucky case from 1866 focused on a Union-colonel-turned-minister, J. S. Jacques, who allegedly continued the Civil War by seducing Louisa Williams of Georgia and bringing her to an abortionist he had hired. The case was tried in Louisville before a jury mostly made up of Confederates who, as one newspaper put it gently, lacked "any partiality for the defendant." Nevertheless, the jury acquitted Jacques because, "There was no proof that the miscarriage was produced by malpractice of any kind, or that it was not occasioned by accident."

In 1870, Storer complained that the Massachusetts Medical Society harbored

"habitual abortionists," yet some said expelling them "would be but to 'stir a dunghill.'" Because of such apathy, he contended, "the public sentiment has become more and more blunted," and officials did not prosecute offenders because "a jury could not be found in Boston to convict of this crime." Legislatures in the 1870s tinkered with anti-abortion laws, sometimes relaxing the evidence needed to convict and increasing penalties—but tougher laws sometimes backfired. Storer quoted the contention of a Dr. Whittier that district attorneys wouldn't prosecute because the law "was too stringent."

District attorneys often gave women immunity from all prosecution, in exchange for testimony. That policy emerged, in part, for the same reason prosecutors today often let drug sellers walk, in return for their testimony about kingpins. Prolifers also understood that men often push women into aborting, so women are frequently victims rather than primary perpetrators.

A successful New York prosecution in 1880 featured Dr. Herman W. Gedicke, a wealthy former alderman, who was sentenced to two years in prison for criminal abortion. Evidence that he had paid two thousand dollars to bribe the jury also came to light, and the *New York Times* quoted Judge McCarter's characterization of the conviction as "a most signal triumph of the law over power and influence." Sure—but Gedicke gained release from prison after serving only five months of his term.

J. H. Kellogg, author of popular medical guides in the 1880s, was not optimistic about ending abortion: "Only occasionally do cases come near enough to the surface to be dimly discernible; hence the evident inefficiency of any civil legislation." Kellogg knew that Leeuwenhoek's little-man-in-the-sperm view had given way to an understanding that the egg and sperm both had imbedded creativity, but "People work hard to convince themselves and others that a child, while in embryo, has only a sort of vegetative life."

In 1883, the *Wellsboro Gazette* (Pennsylvania) noted that one abortionist was "permitted during a period of more than half a century—for more than an average lifetime—to carry on his criminal practices. . . . His neighbors knew and the public knew it. There was little attempt to conceal the nature of his operations." In 1892, a Dr. Crawford told the *Wilkes-Barre Record*, "I have been astonished at the revelations that have been made to me of the frequency of this crime. . . . I have been told by medical men and clergymen of the frequency of this crime even in remote country districts . . . a conviction is almost impossible at this time."

Sometimes journalists followed the money. The *Hartford Courant* reported in 1894 that Dr. Newton Whitehead paid Detective Frink $550 for immunity; Sergeant O'Toole, $250; lawyer Emanuel Friend, $1,920 (half of which he used to pay police); and lawyer Morris Gottlieb, $100 so he wouldn't procure

important evidence. The *Chicago Tribune* reported that fifty-year-abortionist Dr. Lucy Hagenow had been indicted by a grand jury eleven times from 1901 to 1907, and never convicted. Hiring tough lawyers was just part of the cost of doing business.

Occasionally an abortionist would go to jail for several months. Then he'd go right back to work, sometimes upping his payoffs to police and others. The typical abortionist "laughed at the law," paid off some officials, and blackmailed others. Example: in 1929, a jury found elderly Long Island health officer Edwin Carman guilty of "performing an illegal operation." The *New York Journal* emphasized that Carman was a "socially prominent physician . . . from a prominent old Long Island family," who had fallen upon hard times. The judge handed him a suspended sentence, contingent on his retiring from medicine and abortion.

Corruption went both ways. In 1930, New York Assistant DA William Ryan resigned amid charges of soliciting $10,000 from abortionist Maurice Sturm. The New York *Evening World* said Sturm had "declared to friends in New Jersey that his political pull in New York was so strong that he never would be tried." Surprise: he was tried. No surprise: a jury acquitted him. The *New York Daily News* in 1939 published evidence of politicians extorting $40,700 from six abortionists by threatening to expose them before the Medical Grievance Committee of the State Board of Regents.

From the 1920s through the 1960s, Robert Spencer aborted 40,000 unborn children in Ashland, Pennsylvania, a city of 7,000 (in 1940), located one hundred miles northwest of Philadelphia. With patients coming from throughout the United States via an informal referral network, community business owners (hotel, restaurant, dress shop . . .) who profited from his trade made sure police looked the other way. Spencer was frank about his philosophy: "The religionist believes we were created by a god. The evolutionist believes we evolved. . . . I am an evolutionist, hence I am an atheist."

In the 1960s, Spencer saw abortion as his contribution to solving "the population problem" to which medical advance was contributing: "By overcoming countless fatal diseases and conditions it gave society a low death rate along with unheard-of longevity. The result was wall-to-wall humanity." Police arrested Spencer three times, but juries acquitted him twice. The third trial ended in 1969, when Spencer, hitting eighty, appeared before the divine Judge.

From the 1920s through the 1940s, abortionist Inez Brown Burns performed or oversaw about 150,000 abortions in San Francisco and Oakland. She became one of the wealthiest women in California history. At her Fillmore abortion center, each of three white-tiled surgical rooms included two sinks which fed into an oversized concrete incinerator buried in the

backyard: almost every night, it burned up the remains of unborn babies. Her abortion business was an open secret, with payoffs to police and politicians who might otherwise raise a ruckus.

Burns worked largely unimpeded until 1938, when two *San Francisco News* reporters, Mary Ellen Leary and Joe Sheridan (who masqueraded as Leary's husband), wrote an undercover exposé headlined, "San Francisco Mill operates openly." The problem was abortion and corruption, not cleanliness: a police report described a Burns room as "scrupulously clean and completely outfitted as a hospital." She escaped punishment for two decades, twice because of hung juries. Her payoffs cost $20,000 per month, and she faced pressure to buy 10,000 tickets for the annual policeman's ball, at one dollar each.

Finally, a jury found Burns guilty after her anesthetist, Levina Queen, testified to seeing "the head and face, the arms and legs and genital organs" of babies Burns killed. The bigger legal problem turned out to be income tax evasion: Thirty to forty abortions per day at Fillmore, at $75 to $350 each ($900 to $4,200 in today's dollars), yet Burns claimed a minimal income. She went to prison, even though her attorney pleaded for delay: "Next Sunday is Mother's Day." In 1955, she settled with the IRS by paying it $745,325 ($8 million in today's dollars). She was able to live most of the rest of her life at home. A statue of a little boy stood in front of it.

Overall, the legislative strategy that began in 1821 made abortion less lucrative and more hazardous for abortionists than it otherwise would have been. Some went to jail. Most had to be surreptitious. Illegality made many women and their demanding boyfriends or husbands hesitate before all was lost. But laws were no panacea, and corruption, plus the rarity of convictions, played into the hands of abortion advocates. That corruption was one reason the American Law Institute (ALI), a prestigious society of judges, lawyers, and professors, decided in 1959 to remove abortion from "homicide," and make it an "offense against the family."

Playboy called that decision "the thin edge of the wedge on which the [pro-abortion] movement could begin to hammer." Crucially, ALI also proposed that abortionists could go to work in cases of rape, incest, serious deformity, or whenever the doctor "believes there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother." Making abortion legal, based on the mother's psychology and whatever a doctor "believes," gave abortion proponents the roadmap over the next decade to send an eight-lane highway through the laws of California and New York.

Many doctors called for abortion law reform, but journalist Lawrence Lader—National Organization for Women founder Betty Friedan called him the "father of abortion rights"—pushed for repeal. Lader saw the possibility of working top-down rather than bottom-up. He discerned that the Supreme Court's 1965 *Griswold* v. *Connecticut* decision, which established a new "right to privacy," could extend to abortion. The Court at that time was not the subject of the frequent, intense scrutiny that it now receives. The change in strategy Lader promoted, from legislation to judicial action, meant that the 1960s pro-abortion push could come in under the radar of a Washington fixated first on civil rights—although Planned Parenthood particularly picks on babies guilty of gestating while black—and then the Vietnam War.

Abortion was not an issue in the 1966 California election that made Ronald Reagan governor. Early in 1967, a freshman senator, Anthony Beilenson, introduced the "Therapeutic Abortion" bill. California had 518 legal abortions that year, and the common understanding was that the legislation would regularize procedures for those and a few thousand more. The bill made it out of the Senate Judiciary Committee, seven to six; made it out of the forty-member state Senate with the minimum number of votes, twenty-one; and coasted through the State Assembly.

Ronald Reagan said abortion was "a subject I'd never given much thought to." He signed the bill, which followed the ALI script in allowing abortion for a woman's mental health. From 1967 through 1972, twenty other states liberalized their abortion laws, largely along ALI lines. New York, Alaska, Hawaii, and Washington went all the way to allowing abortion on a mother's request, without a doctor's input. Numbers grew—California's few thousand turned into 100,000 per year—and a backlash could have jeopardized Lader's stealth strategy, except for one factor: journalists who normally hyped stories downplayed these.

Here are three 1970 examples from coast to coast, starting with the *San Francisco Chronicle'*s tale of how a typical young woman "came back from the abortion smiling and saying, 'I feel fine.'" The reporter portrayed the woman putting on "a bright scarf over her hair" and telling her patiently waiting mother, "I'm starved. Let's go to lunch." The reporter added that the abortion "procedure is so simple and over so quick that [women] have no feelings of guilt."

In the nation's midsection, the *Omaha World-Herald* quoted "Betty" describing her abortion experience: "I had to stay quiet for 15 minutes. When I got up, I felt like a brand-new woman. I felt so happy." On the Atlantic, the *Long Island Press* quoted "Susan" telling the abortionist, when the operation was over, "Oh, thank you, thank you." The reporter added, "Within the next

half hour she will have some cookies and a soft drink in the recovery lounge, fill out a few forms, pay a fee of $200 and be on her way home"—probably skipping, the article suggested.

Connie Marshner, a young conservative in the early 1970s who became a leader of the Free Congress Foundation and then chaired Ronald Reagan's Family Policy Board, said abortion "wasn't on anybody's radar" in Washington. The *Roe* v. *Wade* oral arguments at the Supreme Court? "Nobody on the right paid much attention to them."

Justice Harry Blackmun's decision relied on Lader, citing him eight times, and accepting as factual his falsified history of abortion acceptance throughout American history: That became "one of the things I'm proudest of," Lader said. Political conservatives at first ignored the decision, Marshner recalls: "Nobody paid much attention to it except for those who were religiously oriented."

That all changed as the number of abortions soared and defenders of human life rallied.

"My God, it's a werewolfoodle!"

From Foe to Friend:

How Paul Weyrich Shaped the GOP Agenda

Connie Marshner

Now that the pro-life movement is well into its third generation, perhaps it is time to record a forgotten (or hidden) chapter covering its very beginnings, not to criticize, but to make the record complete.

Take a moment to recall the context of the times. When the abortion issue first emerged in politics, it was inside the Trojan horse of Population Explosion hysteria. That was a major media panic, much like the climate change panic of today, and much of it was funded and driven by wealthy Republicans who controlled the Republican Party at the time. The Republican Party was the enemy.

Yet today the pro-life issue is inseparable from the Republican agenda, as is evangelical Protestantism. How did this come about? The odds against it were long, so herewith some chronology.

Problem Number One: Republican Establishment = Population Control

Today the public has grown skeptical of media-induced anxiety about whatever is the best-marketed issue of the day—but in the 1960s such frenzies were still new. Beginning in the late 1960s and gaining steam in the early 70s, the Population Explosion was, with the outsized exception of Vietnam, the world's first televised war—the issue du jour. Climate change was part of it—the fashionable scientists of the day warned that a great Ice Age was coming. Typical of the alarmist rhetoric was this from Paul Ehrlich in 1970 in *Mademoiselle* magazine: "The death rate will increase until at least 100-200 million people per year will be starving to death during the next ten years . . . . Population will inevitably and completely outstrip whatever small increases in food supplies we make."[1]

The issue was everywhere: newspapers, magazines, television and radio news and commentary, women's magazines—all insisting that "something had to be done" to avoid the coming Apocalypse. Public policy had to change. And change it did—but quietly.

Population control overseas became official U.S. policy in 1966 when Democratic President Lyndon Johnson tied foreign aid to India to population

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control,[2] a policy Republican President Richard Nixon[3] made permanent in 1974 with the infamous Kissinger Report, National Security Study Memorandum 200[4] (which was not declassified until 1980). The Report laid out how Less Developed Countries (LDCs) were to be convinced to achieve Kissinger's worldwide goal of 2.0 children per family. Section 33 of the Memorandum acknowledged the optics: "We must take care that our activities should not give the appearance to the LDCs of an industrialized country policy directed against the LDCs." If anybody in the media noticed that the target populations of these official policies and funding from Washington were dark-skinned, nobody said so.

The 91st Congress (1969-1971) saw no fewer than 43 bills introduced about population control. The leading Senate advocate of population control was Republican Bob Packwood (OR). One of his proposals would have denied a tax exemption to more than two children per family. On NBC's *Meet the Press*, Packwood made it clear that if voluntary controls on population did not work, "we may have to resort to mandatory controls."[5] The virtue-signaling of the day was that "this is a crisis. The world cannot survive unless we all do our part to save it from too many more babies." Beginning in 1970, Earth Day was organized on college campuses across the country to spread the message among emerging leaders. In later years, Protestant prolifers remembered being told from the pulpit that they would be bad custodians of the earth if they had more than one or two children.

In that spirit of panic, then, on July 14, 1970, the U.S. Senate passed a billion-dollar birth control and "population research" authorization (Title X of the Public Health Service Act)—with *not a single minute of debate, under a motion of unanimous consent, and with no record vote.* No senator objected when it was brought to the floor with only three senators present. That was what "collegiality" and "cooperation across party lines" looked like in 1970. In remarks inserted afterwards into the *Congressional Record*, Senator Packwood (R-OR) complained that the bill was "not adequate." But since there was no record vote, no senator could ever be held accountable afterwards. It came to the House floor as a result of the skillful "cooperation across party lines" (aka machinations) of a freshman Republican congressman from Texas named George H. W. Bush, whose diplomatic ability overcame long-standing opposition from Democratic (and Catholic) Speaker of the House John McCormack. It passed the House 298-32. There was no national debate, and there was no organized resistance. Nobody was paying attention—except a few Senate and House staffers.

In March 1970, President Richard Nixon signed a bill to create a Commission on Population Growth and the American Future, something he had

promised to do a year earlier. The chairman of the Commission was New York's Republican Governor Nelson Rockefeller, about whom Nixon observed: "Perhaps no person in the world has been more closely or longer identified with this problem."[6] Very true: The Rockefeller Foundation, along with the Ford Foundation, had funded many of the studies and much of the propaganda behind the population control panic, and the Population Council, which Rockefeller founded and of which he was chair, funded the rest. Rockefeller's grandmother Abby Rockefeller had been one of Margaret Sanger's best friends and her largest donor. On the Council's board were some of the most influential eugenicists of the previous generation. "Generating ideas, providing evidence, and delivering solutions that have improved the lives of hundreds of millions of people," the tagline on its website reads today (developing the IUD and Norplant are two of its bragging points). The Rockefeller establishment, in other words, was (and still is) firmly on the side of population control—no matter what it entails. And Nelson Rockefeller and his country club cohort controlled the Republican Party.

The 1964 presidential nomination of "Mr. Conservative," Senator Barry Goldwater (R-AZ), carved the first hole in the Rockefeller Establishment's control of the Party, but most of the college-educated, mostly Northeastern young conservatives who gathered around Goldwater before and after 1964 were motivated more by libertarian than by traditional values: Their issues were national defense, limited government, and fiscal responsibility. For the whole of his career Goldwater remained firmly on the wrong side of the life issue. In 1970 he praised Packwood's population control bill because "it is a must for the immediate future. . . . It makes so much sense."[7]

The Population Growth Commission's report, submitted on March 27, 1972, directed its recommendations toward "increasing the public knowledge of the causes and consequences of population change, maximizing information about human reproduction . . . and enabling individuals to avoid unwanted fertility." The report examined and made recommendations regarding land use policy and hydrocarbon emissions, noted changes in Congressional representation because of population shifts, and urged "that federal, state, and local governments make funds available to support abortion services in states with liberalized statutes, and that abortion be specifically included in comprehensive health insurance benefits, both public and private." It also acknowledged that "to improve the quality of our existence while slowing growth, *will require nothing less than a basic recasting of American values"*[8] (emphasis added).

Read as the announcement of the coming of the Culture War, this may have been the understatement of the century. Less than a year later, *Roe* v. *Wade*

was handed down.

Other than a statement from some Catholic cardinals, there was little objection to the decision when it happened. Remember, the Sixties were just over, and the Sexual Revolution, which began as the playground of affluent college kids and hippies, was moving up the career ladder. Friedan's *Feminine Mystique* had been published in 1963, and her ideas were making their way into academia; inflammatory feminists were in demand on the college lecture circuit,[9] and the message was trickling down into women's magazines. Okies from Muskogee would still marry the girl if she got pregnant, but college-educated women wanted their fun with no consequences. The mainline religious denominations approved of *Roe* v. *Wade,* in part because it would save the world from overpopulation. The South was still solid,[10] and Catholics were Democrats—as they had been since Catholic officialdom had wedded itself to Franklin Roosevelt's New Deal, as they had been since the nineteenth century, when the Democratic Party in Manhattan hired precinct captains who spoke Irish so they could recruit new immigrants into the party.[11] An official Catholic establishment was not yet fully functional in the public policy arena of Washington, D.C.; what there was, was joined at the hip with the Democratic Party and mainly interested in promoting civil rights and the welfare state and opposing the war in Vietnam.

Richard Nixon's presidency was undergoing the agony of Watergate in 1973; Nelson Rockefeller was Vice President of the United States from 1974 to 1977. Throughout the 1970s, Republicans at the highest level were explicit friends of population control and enemies of life. In a 1975 interview on *Sixty Minutes*, Betty Ford, wife of Republican President Gerald Ford, praised *Roe* v. *Wade* as a "great, great decision."[12] Ford's appointee to chair of the Republican National Committee, Mary Louise Smith, was equally pro-choice.[13]

But by 1980 there was a pro-life plank in the GOP Platform. What happened? What changed?

Enter Paul Weyrich

Set aside the question of whether it was a good thing or a bad thing that the pro-life movement became political, and that the Republican Party became the pro-life party. The goal of this article is to answer the following question: Given this active hostility from the Republican quarter, how did "Republican" come to mean "pro-life"? That is where Paul Weyrich enters history.

Back in 1966, when Colorado was the first state to legalize abortion, a young news director at KQXI Denver named Paul Weyrich covered the story.

He was about as serious-minded a young man as could be found. Six years

out of high school, he was married with three children. He was Midwestern, a devout midcentury Catholic, formed in a unique place during a unique period in American Catholic history. In many ways, he was the very model of what Catholic education was meant to be: A high-achieving student who always believed what he learned from the nuns at St. Catherine's High School in Racine, Wisconsin, he never wavered in his faith. His urban ethnic brand of old-fashioned Catholicism has long since disappeared, and Paul personifies its best final fruit.

His father had come to America in search of a better life. Seeking to earn enough money to buy a bicycle, Ignatius Weyrich had hired himself out one summer after World War I to work on a farm near Tauberbischofheim, Germany. At the end of the job, he stopped to buy a beer—and his whole summer's wages went for the price of it. He realized if he stayed in Germany he would never be able to buy a bicycle. He found a book by a priest that urged young men to emigrate to America, and he wrote to the priest. The priest answered, sent him the fare, became his sponsor, and found him a job shoveling coal into the furnace in the basement of Saint Mary's Hospital in Racine in 1923. Ignatius never left Saint Mary's, even later when he could have earned more elsewhere. He was grateful because the nuns kept him on during the Depression—and his loyalty to them and to the church was deep and unchanging.

Ignatius talked a lot to his son about politics and religion, imparting to Paul an early 20th-century German Catholic perspective. Paul learned very young about sound economic policy: His father would never borrow money, and took a second job rather than get a loan. When neighbors who had escaped from post-World War II Eastern Europe arrived, they told of their lives in Lithuania, and he learned about socialism and Communism at the human level. When he was ten years old, he wore a Robert Taft for President button on his lapel. It was the only one in the school, since most blue-collar Catholics were Democrats, but Paul already knew to distrust creeping socialism—and to follow principle rather than public opinion.

In 1967, this faithful Catholic became Washington press secretary for Colorado Republican Senator Gordon Allott. He saw the population control juggernaut running full steam ahead on Capitol Hill. He had watched the emerging anti-poverty industry do a full-court press on the bills they wanted: He had seen the media operation gear up, and had watched the visitors come to the office to talk to the senator, and had counted the incoming letters from constituents. He knew the National Conference of Catholic Bishops had not even sent a letter to senators objecting to the "Population Research" bill.

He also realized, to his sorrow, that the next generation of young Catholics

was not going to be defending Catholic morality, if they would even be living it. Writing about a 1970 *Who's Who Among American High School Students* survey, Weyrich observed how well the population control propaganda had done its job. Would these high-achieving high school students be willing to limit their families to two children "in order to help population control"? Sixty-four percent said YES. Only 33 percent said NO. Asked whether they would have an abortion, 59 percent of all girls did not answer.

In that survey, 96 percent of Catholic students disapproved of hard drugs like LSD, and 59 percent of Catholic students (and Protestant students as well) had a negative opinion of pre-marital sex—but *49 percent of the Catholic students also favored legalized abortion*. Asked whether they believed "in the use of contraceptives or other means of birth control," only 21 percent of Catholic students said NO. *Humanae Vitae* had come out in 1968, and immediately dissenters had grabbed headlines. Weyrich and some like-minded Catholic laity tried to support D.C. Cardinal O'Boyle's efforts to discipline the dissenting priests in Washington and to enforce loyalty to the magisterium among his clergy. But ultimately Rome told O'Boyle to stand down, and dissent carried that day—to be inherited as the birthright of future generations of American Catholics.

So when Bob Packwood lamented in 1970 that his population control bill wasn't going to pass because "many Senators and Congressmen have given me verbal support but cannot see their way clear to vote favorably for my bill, either because they face re-election or they come from districts or states whose electorate is heavily Roman Catholic or politically very conservative," it didn't pass the smell test for Weyrich.

He knew that the Catholic Church presented no obstacle to the goals of the population controllers. "Great sums are spent to keep the Catholic Conference offices operating in Washington," he wrote in *The Wanderer*[14] after the final vote on Title X, *"*supposedly so that the Bishops will have their men following matters like this one. Not one word was said on this bill. If panic is justified, here is where it should be directed. The Catholics need truly Catholic lobbyists to represent their point of view in Washington."

Writing an article in the weekly Catholic newspaper *The Wanderer* was about all this former journalist could do at the time to warn the faithful about the problems he saw on Capitol Hill. Paul firmly believed that most Americans shared his values—and that their energy in defense of traditional values could win the day in the American system of government—if only a way could be found to educate them and to organize and channel their energy.

Unlike Weyrich, who thought that legal abortion could be prevented if the American people could be educated and activated, others did not have his

confidence in "the system." On June 6, 1970, a group of young men led by L. Brent Bozell, William F. Buckley's brother-in-law and editor of *Triumph* magazine, held a rally for life in downtown Washington and afterwards marched into an abortion clinic and disabled the machines. Weyrich raked Bozell over the coals for it in *The Wanderer*:

> The great legislative battles on population and abortion and other key moral questions are yet to come. We may lose them. But we have not lost them yet. We have not even begun to work on the issue from our side. . . . Despite my belief that the "establishment" is in many ways corrupt, and despite my lack of confidence in representative government in the 1970s, I have nevertheless seen many examples of the "power structure" being turned around, sometimes because just a handful of men with conviction knew what they were doing and acted in such a way as to succeed . . . .[15]

Two years later, he warned: "Those who favor euthanasia, involuntary sterilization, involuntary control of family size, infanticide, and all similar horrors are now beginning to form their strategy, to put together their strange bedfellows, to form public opinion with the clear expectation that they will win in less than five years. By the time these matters get the full and serious attention of the President and the Congress, it will be too late to do anything about them."[16]

Nine months later came *Roe* v. *Wade.*

It wasn't until the end of 1975, almost three years after *Roe* v. *Wade*, that the Catholic Bishops adopted a pastoral plan for pro-life activities.[17] In the meantime, the social gospel ruled the Catholic agenda: loud and clear for civil rights and expansion of the welfare state and against military action—and by the 1980s expending a lot of time, treasure, and talent to criticize the free market and boycott international corporations like Nestlé. Why these curious priorities?

The Catholic Establishment

Long before Weyrich was even born, the Washington Catholic establishment had firmly aligned itself with the American left wing.

The National Conference of Catholic Bishops[18] (NCCB) was officially created only after Vatican II's 1966 requirement to establish national conferences of bishops.[19] However, when the NCCB was established, it eased into the longstanding Catholic-leftwing alliance that went back to World War I. The Catholic War Council had been set up in 1917, then morphed into the National Catholic Welfare Council of 1919.

In 1922, Rome ordered the Welfare Council disbanded due to its sympathy with the Americanist heresy, but influential cardinals rescued it, and it continued as the National Catholic Welfare Conference, with the interesting

proviso that not every bishop had to be a member of it and that the bishops who were involved were not to meet every year![20] For decades then, as it represented "official Catholicism" in Washington, it was a staff-run operation with very little accountability to any but like-minded bishops!

The Welfare Council's Social Action division was led for decades by Msgr. John Ryan, whose 1919 "Bishops' Program of Social Reconstruction" is considered a blueprint for FDR's New Deal. In the 1930s Ryan was FDR's main Catholic cheerleader, giving the invocation at his 1937 and 1945 inaugurations and leading campaigns for social justice, civil rights, and economic reform.[21] When it morphed into the NCCB, the Welfare Council continued to pursue its agenda of welfare and world peace, and adopted the new brand name effortlessly. Republicans had opposed the New Deal, and by the late 1960s were identified with limited government, balanced budgets, and strong national defense—so a deep antipathy to anything Republican was part of the DNA of the official Catholic establishment in Washington from its very beginning.

The race to the left continued apace as the NCCB ramped up. Its first president was Archbishop (later Cardinal) John Dearden of Detroit, who had won fame as a voice for "reform" at Vatican II.[22] One of Dearden's first acts was to bring in Rev. Joseph Bernardin in 1968 to become the NCCB's first General Secretary. Bernardin was a consummate ecclesiastical politician, a protégé of the most progressive bishops in America. He had worked under four bishops in Charleston, S.C., and was appointed auxiliary bishop of Atlanta even before he was ordained as bishop at age 38, the youngest in the country.[23] In addition to Dearden, Bernardin was also mentored by Bishop Paul Hallinan of Atlanta, the national Catholic champion of racial equality and liturgical reform. With these guides, Bernardin's progressive credentials were ensured.[24]

By the time Bernardin left the NCCB in 1972 to become bishop of Cincinnati, he had built it into an infrastructure based on Liberation Theology and community organizing—and had set its course for decades to come. Following the Second Vatican Council's mandate that bishops "jointly exercise their pastoral office,"[25] Bernardin operated through bishops' committees with full-time staff secretariats. He cemented alliances with some of the most radical left-wingers in the country through millions of dollars' worth of gifts from the Catholic Campaign for Human Development (CCHD). CCHD had been founded in 1969 by Msgr. John ("Jack") Egan.[26] It was Egan who persuaded Saul Alinsky to write his manual of urban revolution, *Rules for Radicals,* and arranged the first grant for Alinsky from the diocese of Chicago to start his community organizing career.[27]

Given the NCCB's preoccupation with remaking the social order, protecting the basic human right to have children by opposing the drive for population control was simply not on their priority list. Nor was it politic to cross the Democratic Party on the abortion issue. By the time Bernardin delivered his "seamless garment" speech in 1983, it was clear that Washington's mammoth Catholic bureaucracy was an impregnable fortress of the Left.

But by then there was a pro-life political movement that was well on its way to becoming a part of the Republican Party.

Part II of this article will appear in a subsequent issue.

NOTES

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14. Weyrich, Paul M., "Militancy and Responsibility: Some Reflections," *The Wanderer*, June 18, 1970 and *Eastern Catholic Life*, June 28, 1970.
15. Weyrich, Paul M., "A Strategy Now May Lead to Later Success," *The Wanderer*, April 13, 1972.
16. Winters, Michael Sean, p. 142, *Left at the Altar*, New York: Basic Books, 2008.
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18. Articulated in the motu proprio, Ecclesiae sanctae.
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24. Decree on the Bishops' Pastoral Office in the Church, #38.
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The *Dobbs* Case and the Strains of Prudence

Hadley Arkes

Not long after *Roe* v. *Wade* was decided (1973), a notable figure in medical research opined that the Court had not been liberal enough in fashioning this right to have an abortion virtually through the end of the pregnancy. He suggested that the parents be given four or five more days to gauge any disabilities in the child and whether they wished to keep her alive. Let's imagine a scheme in which the parents were given as much as 30 days to "try out" their comfort with the child. And let's imagine that prolifers persuaded a legislature to cut that down to 15 days. We can readily assume that the pro-choicers would go into panic mode, seeing in this move the portents of sweeping away that right to abortion.

But of course nothing in the shift of 15 days would have marked any difference in the nature, or human standing, of the child.

And yet we have had a kind of replay of this scene over the last few weeks. The Supreme Court set off tremors in the land when it announced that it would take up a case challenging a recent law in Mississippi that would bar abortions after 15 weeks of pregnancy (*Dobbs* v. *Jackson Women's Health Organization*). That move would notably extend the restrictions of the law into a period before the onset of "viability," which has been at about 23-24 weeks these days—and perhaps even earlier. There is a difference, then, of only about eight weeks, and yet that has been enough to stoke the fears and warnings that *Roe* v. *Wade* could now be overruled. But once again, that shift in eight weeks does not mark anything different, anything less than human, in the baby being aborted. Nor would it make a difference if we traced matters back 15 days, or even 15 or 20 weeks back to the point in the pregnancy when the very same being was an embryo. She has never been anything less than human, and never merely a part of her mother's body.

But the Court has firmed up "viability" as the critical marker, for as the judges persist in saying in a convention of imbecility, the State may act then to protect "potential life." Potential life? A pregnancy test marks the fact that something is indeed alive and growing in the womb. If there were not, an abortion would be no more relevant than a tonsillectomy. But if there was something alive and growing there—and not a tumor—it could be nothing other than a child in the making.

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That embryo may be a "potential outfielder" or "potential stockbroker," but he has never been merely a "potential human child."

Chief Justice Rehnquist once made the obvious point that the scheme of "trimesters and viability . . . [is] not found in the Constitution's text." But when Justice Anthony Kennedy made his move to preserve *Roe* v. *Wade* (in *Planned Parenthood* v. *Casey*, 1992), he insisted that there was a need to "draw lines" in the regulating of abortion, and "there is no line other than viability which is more workable." More "workable" for what? Not for determining if that small being in the womb is turning into a human being from something less than human. Kennedy fell back upon the familiar "explanation" that viability marks "the time at which there is a realistic possibility of maintaining and nourishing a life outside the womb." But even ordinary folks, without graduate degrees, readily grasp that people don't lose their standing as human beings when they suddenly fall ill and cannot survive without the care of others. To take the curious line that weakness now works to extinguish any rights to solicitude and care is simply to back into the old doctrine of the Right of the Strong to rule, or Might makes Right. The inscrutable point for me is why no conservative justice over the last 48 years has thought it apt to make that simple argument, to spotlight the moral emptiness of that marker of "viability."

Back in 1989, in the *Webster* case, the Court seemed to have taken a first step in returning the issue of abortion to the political arena, where citizens and legislatures could argue and vote on the question of who is protected under their laws on homicide. Chief Justice Rehnquist, writing for the majority, planted the question of "why the State's interest in protecting potential human life should come into existence only at the point of viability, and that there should therefore be a rigid line allowing state regulation after viability but prohibiting it before viability." A conservative majority now on that same Court clearly understands that "viability" is no serious marker; that the same reasons for barring abortions at 15 weeks would carry all the way down to protect the child in the womb from the beginning. Still, even a conservative majority may be quite cautious about overturning *Roe* in a single major stroke. But the defenders of abortion, in their panic, feigned or real, may have confirmed the alternative path. They have ever put themselves in opposition even to the mildest restrictions on abortion—the Democrats in Congress have been virtually unanimous in resisting even the bill to protect the babies who *survive* abortion. For they see the principle that lies at the heart of the thing: Once the child in the womb is recognized as a human being, on a plane no less than theirs, with a claim to the protections of the law, there is no obvious marker, in age or development, that separates that child from

the rest of us. In other words, the adamant defenders of *Roe* see their whole position unraveling, with no stopping point.

The advantage of moving step by step is that it offers the public the chance to school itself step by step: to consider a string of restrictions on abortion that people would find reasonable at every stage, as in barring late-term abortions, or abortions when the beating heart of the child can be detected. After a while, after a chain of steps that the public has come to see as patently reasonable, it could take just one more to put *Roe*, finally, away. If the Supreme Court settles for that limited decision—the decision simply to sustain the law in Mississippi—that could be the gentle step that puts the right to abortion "in the course of ultimate extinction."

The Democrats in the House, much in need of tranquilizers, have become a party primed now to set off waves of violence in the streets if *Roe* v. *Wade* were overturned in a decisive stroke. We have every reason to expect that the response will be explosive: We will see even fiercer demands to pack the Supreme Court, enact *Roe* v. *Wade* as a statute, and encourage judges in the separate states to find a right to abortion in their own constitutions. Some of us remember the reaction that flared in response to the *Webster* case in 1989, when the Court seemed to be taking the first steps to return the issue to the political arena. At that time pro-life congressman Jim Courter in New Jersey found some of his female constituents inflamed by the notion that they were about to be dispossessed of a freedom they had come to consider as far more fundamental for them than the freedom of religion and speech. Courter did a 180-degree turn overnight into an Eastern pro-choicer politician—and then faded from politics. Given the rising cohesion of the Democrats now on this issue, the outburst of 1989 may come to seem a muted affair.

The question then is whether that opposition can be gently disarmed and forestalled if the Court settles on the less decisive move and sustains the law in Mississippi without overturning *Roe*. And yet the serious concern now is that the disarming approach may disarm no one. For the partisans of abortion know that there is no clear stopping point after the marker of "viability" is left behind as a point of little consequence. In that case they may well treat even the more limited judgment as the move that puts *Roe* in a position of terminal atrophy. That move may not be so incendiary if most of the public sees that more limited decision as a judgment not too astounding at once.

But what might be offered to prepare the public mind in this way? The drafters of the Act had sought to soften the public reception by remarking that, thanks to devices ever more sophisticated, we know far more about the child in the womb than we did in 1973, when *Roe* was decided. But they really offer almost nothing other than what we already knew 50 years ago.

And in the degree of compelling detail, they hardly compare to the points set down by the lawyers for Texas in *Roe* v. *Wade*, drawing on the most up-to-date findings in embryology:

> About seven to nine days after conception, . . . contact with the uterus is made and implantation begins. Blood cells begin at 17 days and a heart as early as 18 days. This embryonic heart which begins as a simple tube starts irregular pulsations at 24 days, which, in about one week, smooth into a rhythmic contraction and expansion. . . . [T]he ECG on a 23 mm embryo (7.5 weeks) presents the existence of a functionally complete cardiac system and the possible existence of a myoneurol or humor regulatory mechanism. All the classic elements of the adult ECG were seen. Occasional contractions of the heart in a 6 mm (2 week) embryo have been observed [along with] the classical elements of the ECG tracing of an adult in a 15 mm embryo (5 weeks).
>
> . . . By the end of the 20th day the foundation of the child's brain, spinal cord and entire nervous system will have been established. By the 6th week after conception this system will have developed so well that it is controlling movement of the baby's muscles, even though the woman may not be aware that she is pregnant.

The case for the Act does not depend, then, on some dramatic new revelation about the nature of that child in the womb. What the sponsors will cling to more firmly is the plea that a limit of 15 weeks stands a better chance of sparing the fetus from excruciating pain; the pain of being poisoned or dismembered. That concern for the pain suffered by the child was most notably raised in the mid-80s in a penetrating essay in the *Human Life Review* ("Pain in the Unborn," Winter 1981) by our late friend, professor and federal judge John Noonan. The piece was relayed to President Reagan, who then mentioned the matter in a State of the Union Address that caught the attention of the public. Hearings were held on fetal pain in the Senate Committee on the Judiciary. In those hearings, my late dear friend Daniel Robinson refuted the claim of one of the pro-choice doctors that a fetus cannot feel pain at 12 weeks. Doctors on the other side testified that fetuses were not as likely to feel pain because their cerebral cortices were not well developed. Robinson pointed out that "'the anatomy of pain' throughout the animal kingdom . . . does not seem to avail itself of any specific region of the cerebral cortex." He recalled cases of brain cancer where it was necessary to remove as much as half of the cerebral cortex, and yet the patients did not lose their sensation of pain. The reaction to pain, he said, is reflexive; it depends on instant recognitions "for which the cerebral cortex may be utterly unnecessary." And "when our hand touches a red-hot object we do not engage in syllogistic modes of deliberation in search of an appropriate response."

But then he quickly brought matters down to solid ground by asking, "What difference would it make? If the human fetus is regarded as a human

being deserving of our solicitude, then we surely would oppose its death even if pain were not involved. After all, what is wrongful in abortion is the taking of a human life and this remains wrongful even if painless methods were developed and adopted."

As everyone understood, the concern to avoid pain to the child in the womb could be met by simply requiring anesthesia. The right of the woman to the abortion would then remain unimpaired. But that was not a counterclaim that defenders of abortion were eager to make, for it simply brought home again the jarring fact that what was being extinguished was a human life. And this was the understanding that had been at work among prolifers for years as they pressed to bar at least late-term abortions, or abortions based on the sex or race of the child. The prolifers have never thought that the onset of pain marked the arrival of the fetus to a human standing. And neither could they have possibly thought that the beating of the heart marked the beginning of life. The beating heart was just another manifestation of an already living being that was powering and integrating the features of its own growth. Rather, these proposals by prolifers over the years have been put forth in the hope of drawing the public into the recognition that what was being killed in these surgeries was a child who has never been anything but human from its first moments, drawing on the genetic pool of the two people who conceived him. The immanent risk in this approach was that a large segment of the public could indeed come to think that any of these moments in development actually marked the emergence of a truly human life—or a human life that was now worthy of being protected.

It is a credit to the legislators in Mississippi that they were willing to post their own awareness of this enduring concern. And so they made this provision:

> Nothing in this section shall be construed as creating or recognizing a right to abortion or as altering generally accepted medical standards. It is not the intention of this section to make lawful an abortion that is otherwise unlawful.

In this muted passage, they anticipate the deliverance held out to us for many years: that *Roe* v. *Wade* will someday be decisively overturned, and in a stroke, all of the laws on abortion, still on the books in the states, will come back into force. For the conservative judges on the Court, that is the promise—and the risk—in overturning *Roe* in a decisive stroke. And we are reminded that, for justices on the Supreme Court, "statecraft" comes with the territory. They may have a passion for coherence and doing the right thing, but they find themselves now enveloped in a political scene that has become far more turbulent. The conservative judges on the Court have long known

what is specious in all of these markers in the development of an unborn child. It is entirely possible that they will lose their patience for playing along further in this moral charade. Given the facts of the case, they may decide that the only coherent option is finally to put *Roe* away. But they also know that a political earthquake can overpower even just and rightful policies and institutions. And they know that a plausible path of prudence may be open. There is the inescapable plight of judges who know that they cannot be entirely detached from political statecraft. But it also supplies the ground of hope: that in the hands of this current Court, something good will yet come.

"That one's for faking the moon landing."

SYMPOSIUM: *Dobbs* v. *Jackson Women's Health Organization*

PERSPECTIVES ON THE IMPENDING FATE OF *ROE*

[*The Supreme Court's ruling in* Dobbs *v.* Jackson Women's Health Organization*, expected to be issued in June 2022, could mean the end of* Roe *v.* Wade*. Or maybe just the beginning of the end. It could even mean the end of the fight to overturn it. Following are keen takes on the significance of the case from prominent pro-life leaders and thinkers, including three of the Human Life Foundation's Great Defenders of Life—Clarke Forsythe, Kristan Hawkins, and Helen Alvaré.—the Editors*]

Clarke Forsythe

The Supreme Court announced Monday that it will hear Mississippi's defense of its limit on abortion after 15 weeks of pregnancy. However the high court rules, it's unlikely to satisfy activists on either side. But a large majority of Americans would likely support a decision upholding the law.

Mississippi's law prohibits abortion when "the probable gestational age of the unborn human being" is "greater than" 15 weeks, "except in a medical emergency or in the case of a severe fetal abnormality," defined as a condition that is "incompatible with life outside the womb." As in previous abortion cases, the law was challenged as unconstitutional in toto by an abortion clinic, Jackson Women's Health Organization.

The state's limit has broad support nationally. As one researcher found, "Polls stretching back for decades show that two-thirds or more of the public believe abortion should generally be illegal in the second trimester." The most recent Gallup poll on the matter in 2018 found that 65 percent thought abortion should be illegal in the second trimester (after 12 weeks). A January 2020 Marist Poll found 7 in 10 Americans support limiting abortion after the first trimester.

There is a notion—repeated throughout the media and implied sometimes even by Supreme Court justices—that Americans are too "polarized" to decide the abortion issue through the democratic process and need the court to do it for them. The Mississippi case and polling on gestational limits obviously demonstrates that there is copious middle ground. The position of activists at both ends of the spectrum shouldn't obscure the broad public agreement on moderate limits and the potential for legislators to write reasonable laws.

Mississippi hasn't asked the Supreme Court to overturn *Planned Parenthood* v. *Casey* or *Roe* v. *Wade*. Instead, the justices will consider "whether all pre-viability prohibitions on elective abortions are unconstitutional," a modest

question. This is one the high court has never addressed directly, though it has bypassed it more than once. The Supreme Court created its "viability rule" in *Roe*—though it was dictum, a point not necessary to its decision. And it merely repeated the rule in *Casey*, also dictum, based on the casual assertion that states have two interests in limiting abortions—in prenatal lives and maternal health—which are "not strong enough" before fetal viability to justify a broad limitation.

Mississippi is challenging those factual assumptions by pointing to evolving understanding of fetal development through ultrasonography, enhanced state legal protection in tort and criminal law for prenatal injury and contemporary data on the medical risks to women from late-term abortions. A well-regarded 2004 study—which Mississippi cites in its legislative findings—found that the risk of maternal mortality increases considerably for late-term abortions. Specifically, "compared with women whose abortions were performed at or before 8 weeks of gestation, women whose abortions were performed in the second trimester were significantly more likely to die of abortion-related causes."

Many Americans might be surprised to know that since *Roe* in 1973, the Supreme Court hasn't addressed an actual abortion prohibition that applied before fetal viability. (The Congressional ban on partial-birth abortion, which the Court upheld in 2007, prohibited one very narrowly defined abortion procedure.) Many scholars on both sides of the abortion issue agree that the high court has never given an adequate rationale for its viability rule.

Mississippi's law also spotlights the embarrassing disparity between U.S. and international law on abortion. A 2011 United Nations survey and other studies show that America—because of *Roe*—is one of only 7 nations, of some 198 across the globe, that allow abortion for any reason after 20 weeks of pregnancy.

Mississippi's law reflects the diversity of approaches that the states have taken on abortion in recent years. Delaware, Hawaii, Illinois, Maine, Massachusetts, New Mexico, New York, Rhode Island, and Vermont have passed laws to codify *Roe.* These would keep abortion legal for nearly any reason, at any time of pregnancy, as the Supreme Court through *Roe* has dictated for 48 years. Six other states had previously passed similar laws.

On the other hand, some 13 states in recent years, including Mississippi, have passed strong limits on abortion. Missouri, North Dakota, South Dakota, Tennessee, and Utah have also passed prohibitions of abortion conditioned on the overruling of *Roe*. None is enforceable now due to injunctions by federal or state courts. Virtually all exclude the women seeking abortions from any legal penalties—Mississippi's are limited to the "physician"—as

state abortion policy generally did for nearly a century before *Roe*.

Like it or not, this diversity is democracy at work. These varied laws embody public opinion much better than the sweeping edict in *Roe* that put the court at the center of abortion politics. Legislators are accountable to the people for their votes, unlike judges. There is democratic legitimacy in laws passed by elected representatives, reflecting the consent of the governed.

If the court loosens its grip on abortion politics, the states have shown that they are ready and able to address the issue in ways that reflect Americans' varying viewpoints, grounded in the science of fetal development and maternal health.

—Clarke Forsythe is senior counsel at Americans United for Life and author of Abuse of Discretion: The Inside Story of *Roe* v. *Wade. This piece was originally published in the* Wall Street Journal *and is reprinted with Mr. Forsythe's permission.*

Kristan Hawkins

In *Dobbs* v. *Jackson Women's Health Organization*, the Supreme Court will consider—for the first time since *Roe* v. *Wade*—allowing state abortion bans based on gestational limits. As a tragic consequence of *Roe,* abortion-on-demand has come to operate silently in the background of American life, largely accepted as the status quo by the generations born since 1973. Many say that *Roe* is settled law*,* but what the law is and whether it's actually settled (spoiler: It's not) are questions the abortion industry and its political allies would prefer to leave untouched.

With the Supreme Court potentially on the brink of reversing *Roe* v. *Wade, Roe*'s defenders are in a situation much like that of *The Wizard of Oz*'s "man behind the curtain." They have been operating a powerful-looking propaganda machine churning out innocuous-sounding ideas like "a woman's right to choose" for decades, hoping no one pulls back the curtain to reveal the truth and drain the puppet master of his influence over public opinion. The abortion movement knows that the ground on which it stands is weak, and its worst nightmare is that ordinary Americans will come to *know* the extent of abortion violence permitted under law in the United States. To pave the way toward the public embrace of a victory in *Dobbs*, Americans need to talk about *Roe.*

Polling on American sentiment toward abortion consistently finds a bizarre contradiction: Many more Americans support the vague concept of *Roe* (the "right to choose") than they do the actual tenets of *Roe* (abortion on demand through all nine months of pregnancy, for any reason, and often funded by taxpayers). The most recent Gallup polling finds that 58 percent of Americans oppose overturning *Roe* v. *Wade* (while 32 percent support overturning it), but only 32 percent of the same group believe that abortion should be "legal in all circumstances" (as it is under *Roe*). That means there's a huge discrepancy between Americans saying they support *Roe* and understanding that *Roe* is synonymous with abortion being "legal in all circumstances."

But even the 32 percent statistic appears to be an overestimation of support for *Roe* when contrasted with the same pollster's findings in 2018, when Gallup revealed *that only 13 percent of Americans support abortion in the third trimester*. It is simply not possible for 58 percent of Americans to support *Roe* if only 13 percent of Americans support third-trimester abortions. Skewed polling like this, which fails to ensure that Americans know what they are expressing support for when they endorse *Roe* v. *Wade,* along with a media complicit in the misdirection, have culminated in the propagandistic claim that *Roe* is settled. It is anything but settled.

Those working to win Americans over to the pro-life position are not up against massive support for *Roe* v. *Wade.* Rather, they are up against Americans *not knowing what Roe* v. *Wade permits*—and they need to return the conversation to exposing *Roe* in order to neutralize the *Dobbs* fearmongers.

For proof of how tenuous the abortion industry's grasp on American abortion opinion is, just look to Nancy Pelosi, one of the most ardent acolytes for *Roe* v. *Wade*. Pelosi is so afraid to discuss the realities of the ruling that she refuses to even engage with reporters on the subject. When asked at a press conference whether a 15-week-old preborn child is a human being, Pelosi didn't own up to the Supreme Court decision she claims to embrace by stating that, "Yes, a 15-week-old baby is a human being who can be legally killed for any reason in any state." Instead, Pelosi did what *Roe*'s defenders always do: ignored the damning question and pledged fealty to *Roe*. "Let me just say that I am a big supporter of *Roe* v. *Wade,*" Pelosi said, before citing her own five children as her bizarre credential for taking such a draconian position on the killing of innocent children. She then ignored follow-up questions and called on the next reporter.

By pledging fealty to *Roe* instead of engaging in conversation about it, defenders of the ruling reveal that their kryptonite is exposure of the facts about *Roe*. They don't want Americans to know that the U.S. is among only seven nations permitting the killing of unborn children past 20 weeks of

pregnancy—something that even the *Washington Post* admits is true. Among these fellow governments are the notorious human rights abusers North Korea and Communist China. And in the U.S., *Roe* permits abortion not just past 20 weeks, but up until the very moment of birth.

Leading up to *Dobbs* v. *Jackson Women's Health Organization*, the abortion industry and its mainstream media and pop culture allies will not be objectively analyzing the legal merits of *Roe* (spoiler: There are none). Instead, the pro-life movement should be prepared for frenetic, panic-inducing coverage characterizing *Roe*'s impending demise as the biggest setback for women in modern history—a dystopian nightmare for U.S. women and girls. According to our opponents, rape survivors will be left destitute, women carrying children diagnosed with fetal "anomalies" will be forced to subject them to unnecessary suffering, and the opportunities women have gained over the last century will vanish without the right to kill their children. They'll claim that women will have to forgo career and education goals, and will frame this as a loss of "autonomy" over their bodies and an exertion of "control" by the "religious right." In other words, abortion allies will unleash every trick in their abortion marketing playbook with greater ferocity than Americans have probably ever seen. It will be an onslaught.

Of course, the pro-life movement has debunked these claims *ad nauseam*. Pro-life Americans needn't be overwhelmed by the noise, but they must be prepared to demand accountability on the questions the abortion industry and its allies have spent 48 years deflecting. Remember: The abortion lobby can only argue that reversing *Roe* is bad if Americans first accept the premise that *Roe* itself is good. Rather than trying to play defense against the apocalyptic projections Big Abortion will make about the reversal of *Roe*, pro-life Americans need only bring the conversation back to *Roe* itself, forcing *Roe*'s defenders to actually *defend Roe*.

The Pro-Life Generation has the upper hand in the court of public opinion leading up to the *Dobbs* ruling and the potential end of *Roe*. Now is not the time to squander it by letting the abortion industry dictate the terms of the public conversation around abortion.

—Kristan Hawkins is president of Students for Life of America.

Teresa Stanton Collett

Last month the Supreme Court agreed to review the constitutionality of a Mississippi statute prohibiting most abortions performed after 15 weeks

gestation.[1] The Mississippi prohibition is unremarkable, even liberal, when compared with the laws governing abortion in most European nations, where gestational limits on abortion have been employed for decades,[2] yet it is being discussed in some quarters as the equivalent of imposing a national ban on all abortions. In fact, it is not, and even if the Court goes so far as to declare that the Constitution poses no impediment to any pre-viability prohibition, an important question remains: Does the Constitution require all prohibitions to contain a "health" exception, and if so, how is health to be defined?

To explain the gravity of this question, a brief review of the legal history of abortion is in order.

Jane Roe's case was brought to the courts by abortion rights activists, who had enjoyed some early success in efforts to repeal existing protections for unborn children,[3] but soon suffered numerous defeats in other state legislatures. The pro-life public largely supported the states' abortion restrictions, notwithstanding the shifting views of elite legal[4] and medical professionals.[5] As well documented by Clarke Forsythe, the opinion of *Roe* v. *Wade*[6] was the result of some odd and unforeseeable events combined with judicial maneuvering to achieve a particular legal result.[7] The opinion itself largely reflects the legal imagination of its author, Justice Blackmun, rather than a legal mandate from the people embodied in the text of the Constitution.

Justice Blackmun crafted *Roe* to be seen largely as a "moderate" opinion,[8] an opinion that seemingly limited abortion on demand to the first 12-14 weeks of pregnancy, which the Court identified as the "first trimester." After that period, states had the power to regulate abortion to protect women's health and safety. Laws to protect the child were only permissible after the baby developed to the point of viability, when he or she could live outside the womb. Even then, states would be required to allow the child to be killed through abortion if a doctor deemed it "necessary to protect the woman's life or health."

The deceptiveness of *Roe*'s purportedly constitutional compromise becomes apparent when reading *Roe*'s companion case, *Doe* v. *Bolton*.[9] As prolifers know, but most voters do not, *Doe* defined "health" to include "all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being of the patient." Under this definition, any woman who is distressed by her pregnancy qualifies for an abortion under the "health" exception. The provider need only characterize the abortion as "necessary" for the woman's "psychological health."[10]

This brief legal history illustrates an important point about the possible outcome of *Dobbs*—if a majority of the Court uphold the Mississippi previability prohibition at 15 weeks, it is equally crucial that the Court also

uphold the narrow life and health exceptions contained in the statute:

> [e]xcept in a medical emergency or in the case of a severe fetal abnormality, a person shall not perform, induce, or attempt to perform or induce an abortion of an unborn human being if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks.[11]

Both "severe fetal abnormality" and "medical emergency" are defined in the statute.[12] Unlike the Court's construction of Georgia's "health" exception in *Doe*, recognizing both psychological and social concerns, the Mississippi exceptions are limited to physical conditions.[13]

Pro-life advocates should guard against a pyrrhic victory that directly overrules *Roe* v. *Wade* and *Planned Parenthood of S.E. Penn*. v. *Casey,* while expanding the availability of abortion on demand by imposing the broad health exception of *Doe* v. *Bolton* on every prohibition.

NOTES

1. *Dobbs* v. J*ackson Women's Health Organization*, No. 18-60868 (5th Cir. 2019), cert. granted, Sup. Ct. Dkt. 19-1392 (May 17, 2021).
2. Mary Ann Glendon, *Abortion and Divorce in Western Law* (1989).
3. Alaska, Hawaii, New York, and Washington repealed their prohibitions on abortion, and generally allowed licensed physicians to perform abortions on request before fetal viability. Judith P. Borne et al., *Surveillance of Legal Abortions in the United States, 1970*, J. Ob. Gyn. Neonatal Nursing 17, 18 (Apr. 1971) at https://www.jognn.org/article/S0090-0311(15)30413-0/fulltext.
4. Samuel Walker, *May 21, 1959, A First Step: American Law Institute Proposes Abortion Law Reform*, Today in Civil Rights History at http://todayinclh.com/?event=american-law-institute-proposes-abortion-law-reform.
5. Amicus Brief of the American Association of Pro-Life Obstetricians and Gynecologists in *June Medical LLC* v. *Russo*, 591 US ___, (2016) at https://www.supremecourt.gov/DocketPDF/18/18-1323/126927/20191227154424488_AAPLOG%20Amicus%20Brief.pdf
6. 410 U.S. 113 (1973).
7. Clarke Forsythe, *Abuse of Discretion: The Inside Story of* Roe *v.* Wade (2013).
8. "[A]ppellant and some amici argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree." *Roe* at 153.
9. 410 U.S. 179 (1973).
10. California provides a useful example of the abuse of the "psychological" health standard. After liberalizing the state's abortion laws in the 1960s, California defined "necessary" for the psychological health as the same used for civil commitment, i.e., one had to be a danger to oneself or another, or the property of another. Despite this very, very narrow definition for what would constitute a mental health justification for abortion, in 1970 more than 60,000 women in California obtained an abortion on mental health grounds (representing more than 98 percent of all abortions sought and authorized under the 1967 California Therapeutic Abortion Act). In *People* v. *Barksdale*, 8 Cal. 3d 320, 105 Cal. Rptr. 1, 503 P.2d 257 (1972), the California Supreme Court, noting these statistics, struck down the law, saying that either pregnancy created mental health issues no one normally would anticipate or that doctors who had to approve abortions for mental health reasons did not understand the law.
11. *Jackson Women's Health Org.* v. *Dobbs*, 945 F.3d 265, 269 (5th Cir. 2019).
12. "Severe fetal abnormality" is defined as "a life-threatening physical condition that, in reasonable medical judgment, regardless of the provision of life-saving medical treatment, is incompatible with life outside the womb." "Medical emergency" is defined as a condition in which "an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder,

physical illness, or physical injury, including a life-endangering physical condition arising from the pregnancy itself, or when the continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function." Also, the medical licenses of doctors who violate the Act "shall be suspended or revoked[.]"
13. Dobbs, 945 F.3d at 269, n. 3.

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George McKenna

Decades ago I worked on a project to develop a telecourse on controversial political issues. The project was headed by a former associate of Edward R. Murrow, the famed CBS broadcaster of the 1950s. Like Murrow, he enjoyed debates on hot-button issues and was well-informed on the facts that set the stage for the debates. But on one issue I found a surprising ellipsis in his knowledge base. As he worked over his introduction to the topic of abortion, he tried this out on me: "Now, the Supreme Court's *Roe* v. *Wade* decision struck down all legal bans on abortion for the first trimester of pregnancy, right?" No, I said, its decision in *Roe* and its companion case, *Doe* v. *Bolton,* in effect outlawed bans on abortion for all three trimesters.

He was thunderstruck. He was a thoroughly secular liberal, fine with early abortions but simply could not process the idea of an abortion in the eighth or ninth month.

Here is what *Roe* v. *Wade* has wrought. We have a sitting governor in the State of Virginia, Ralph Northam, a former pediatric neurologist, who has carefully explained what you do after you've aborted a late-term baby who is struggling to stay alive: "The infant would be kept comfortable. The infant would be resuscitated *if that's what the mother and the family desired*. . . ." (My italics) Otherwise "a discussion would ensue between the physician and the mother." Dr. Northam said this on the air, in a radio interview, and was surprised that so many listeners were appalled.

Now we have a challenge to *Roe* v. *Wade* that is expected to be taken up in the fall: an appeal by the state of Mississippi to uphold its ban on abortion after the 15th week of pregnancy. Mississippi's legal team sought answers to three different questions bearing on the case, but the Court narrowed them down to one: *whether all pre-viability bans on elective abortions violate the Constitution.* How will the Court answer that question?

We know that three judges, Stephen Breyer, Sonia Sotomayor, and Elena Kagan, will answer with an emphatic "Yes." I will hazard a probable "no"

from Justices Clarence Thomas and Samuel Alito, and all the rest are question marks. From a pro-life perspective the shakiest question mark may be John Roberts, because of his reluctance to overturn longstanding precedents. The second shakiest, in my opinion, is Brett Kavanaugh, because of apparent assurances he had given to Maine Senator Susan Collins, a "right to choose" supporter, during three hours of private conversation with her before she voted "yes" for his confirmation. (See my article in the Winter 2019 edition of *HLR*.) If, despite my fears, both Roberts and Kavanaugh vote strictly on the constitutionality of Mississippi's ban on abortion, pro-life wins by 6-3. If one of them defects, pro-life wins by 5-4. If both defect, *Roe* v. *Wade* will have barely beaten back its most serious challenge. All of this figuring, by the way, is based on the assumption that Justices Neil Gorsuch and Amy Coney Barrett will vote for life. If that doesn't happen, it could be a blowout 7-2 vote for abortion, and prolifers would probably need a constitutional amendment to get rid of *Roe* v. *Wade.* Which, by the way, is what many of them were asking for right after the case was decided in 1973, until the Catholic Bishops prevailed, backing the modified version of letting the states decide what to do about abortion within their own borders.

How *should* this case be decided? Holding strictly to the issue allowed by the Court, I would vote "no" on the question of whether all pre-viability prohibitions on elective abortion are unconstitutional. I would even hazard an *obiter dictum* that, except to save the life of the mother, *no* such prohibitions should be unconstitutional. I follow the science, which says that human life begins at or around the time sperm fertilizes the egg, and my moral code, which says you're not supposed to kill people.

So I'm a little disappointed with the Mississippi law. It left quite a bit on the table (so to speak) by not banning abortion in the first trimester, when, nationally, more than 90 percent of abortions are performed. Even so, there are reasons for hope. As Hadley Arkes has noted, this case may finally force the Court—and the public—to recognize how morally crazy the "viability" standard is. A child in the womb is only legally human when he or she is able to live outside the womb? By that standard, helpless people are not entitled to our protection.

To which I would add my own hope that sustaining Mississippi's abortion law would go far toward desacralizing *Roe* v. *Wade*. The abortion industry has come to treat *Roe* as a holy writ whose basic structure must never, never be tampered with. If the Court sustained this law, it would reset the time clock for "abortion rights." If Mississippi were allowed to ban the killing of non-viable babies after the first 15 weeks of a woman's pregnancy, then the fact of non-viability would no longer be a shield against a ban. Non-viability

would be irrelevant. But if non-viability becomes irrelevant *after* 15 weeks, why not *before* 15 weeks? Why not 14 weeks, or 13? And so on, down the line. The old slippery slope, this time working in our favor.

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Kristen Day

Democrats for Life of America (DLFA) enthusiastically welcomes the Supreme Court's decision to hear *Dobb*s v. *Jackson Women's Health Organization*. We join the rest of the pro-life movement in urging the Court to overturn *Roe* v. *Wade* or at least curtail the limits *Roe* has imposed on our ability to protect unborn life. DFLA hopes that *Dobb*s will serve as a historic turning point in the way our nation frames the debate around abortion.

The Roberts Court is slow, incrementalist, and concerned about the institutional legitimacy of the Supreme Court. If the decision in *Dobbs* fits that trend—giving the pro-life movement a partial victory but not everything it wants—there will be understandable disappointment within the movement. Yet it is also worth considering the upshot of such a decision. In that scenario, we should take heart and counsel from an unlikely source: the late Justice Ruth Bader Ginsburg. Herself a hero of the pro-choice movement, she unabashedly critiqued *Roe* for being too broad and overreaching; she would have preferred a more incremental approach to legalizing abortion, one that would not have spurred so much backlash.[1] In an incrementalist *Dobbs* decision, the pro-life movement can avoid that pitfall (among the many others) of *Roe*. Such a *Dobbs* decision could be the cornerstone upon which we slowly craft an unshakeable pro-life consensus that lasts generations.

It is helpful to take stock of our country's current abortion debate. During his tenure in the Senate, Joe Biden voted in favor of a federal ban on late-term abortion, regularly supported budgets including the Hyde Amendment, and said that abortion is "always a tragedy."[2] In the course of the presidential primary, Mr. Biden reversed himself and began campaigning to end the Hyde Amendment and codify *Roe* into federal law. Mr. Biden justified his significant shift in substance and tone by indirectly invoking the pro-life movement's success: more state regulation on abortion, a decline in the number of abortion clinics, and of course, more Supreme Court justices likely to overturn *Roe*.[3] Both this platform and this reasoning illustrate a journey toward greater polarization on abortion for our nation, for the Democratic Party, and

for President Biden.

This (oversimplified) history of Mr. Biden's about-face on abortion highlights the symbolic value of the *Roe* case. It can only be assumed that when politicians promise to "codify *Roe,*" they are speaking symbolically; would the pro-choice coalition not prefer to legislate along the lines of *Planned Parenthood* v. *Casey*, or *Whole Woman's Health* v. *Hellerstedt*, or the laws passed in New York and Illinois in 2019? Although subsequent cases have overshadowed *Roe* legally, *Roe* remains firmly rooted in the American imagination as the case that legalized abortion across the entire nation. *Dobbs* has the potential to become similarly lodged in our national conscience. It is imperative—both during litigation and after the Court rules—for the pro-life movement to recognize the symbolic salience of this case and respond accordingly. There is a chance for *Roe* to be superseded not just legally, but symbolically, and thus to chart a course which is more hospitable for the unborn.

Biden's newfound abortion extremism also mirrors the ways in which the "pro-life" and "pro-choice" sides have radicalized each other: each ratcheting up the stakes in response to the other's moves. This dynamic of polarization will likely continue in response to any variety of rulings in *Dobbs*. If the Supreme Court gives the pro-life movement an inch more room for legal restrictions, abortion activists will declare that *Roe* was overturned and attempt to mobilize resistance and win over public opinion.

No matter the legal ramifications of *Dobbs*, there will be plentiful political, intellectual, cultural, and, perhaps above all, social work for the pro-life movement. A groundbreaking 2019 sociological study found that most Americans speak little about abortion, often out of fear of conflict. The same study found that this left people without vocabulary to discuss abortion with scientific, moral, and legal nuance.[4] *Dobbs* will give us ample opportunities to advocate for the lives of the unborn with subtlety, information, and passion. We must use the openings *Dobbs* will create with family members, friends, and colleagues. If they are already pro-life, now is an ideal moment for their increased involvement. If they disagree with us, when better to courageously and respectfully engage in rigorous dialogue?

What better time to dispel the myths about abortion and the pro-life movement? Dobbs will offer fresh chances to prove that our movement is not about propping up patriarchy, that we care for human life at all stages (not just in the womb), and that women will thrive more in a society that restricts abortion than in one that celebrates it. When better to lovingly share the alternatives to abortion? When better to replace the faux hospitality of networks assisting women to get abortions[5] with the extension of our clinics that support and empower women to carry their pregnancies to term?

No matter how the Court ends up ruling in *Dobbs*, any success the pro-life movement achieves against abortion will need to be extended into a whole-life movement. We need an extensive range of options on the table to support mothers, fathers, and children born and unborn. This is one reason DFLA cheers President Biden's child tax credit. The pro-life movement will also need patient, canny alliances as we work with others who may not share our entire outlook or agenda in states that currently enshrine abortion in their laws, budgets, and culture. As we build a culture of life, every victory against one threat to human life helps us dismantle the others. Every victory against the death penalty, racism, and euthanasia is a victory against abortion, and vice versa.

With the clashing symbols of *Roe* and *Dobbs,* our nation could experience a reframing of the abortion debate unlike anything we have experienced in the last half century. *Dobbs* already has generated and will doubtless continue to generate big, front-page headlines and endless conversation across a variety of media. Abortion advocates will have quite an opening. So too will the pro-life movement! Let your friends know that they do not have to choose between being Democrats and being pro-life. DFLA's elected officials have a long, proud history of voting "pro-life for the whole life." The members of our rising generation of incredible activists, candidates, and legislative and executive leaders promise to honor and extend that legacy. Our goal is for both political parties to agree on defense for the unborn and support for their mothers.

DFLA will be on the front steps of the Supreme Court with our megaphones, but we will also be in the trenches: giving witness, persuading others, and making sacrifices to support the most vulnerable in our society. Democrats for Life of America will seize the opportunity provided by *Dobbs* to defend unborn children, empower women, and build a lasting pro-life consensus.

NOTES

1. https://www.law.uchicago.edu/news/justice-ruth-bader-ginsburg-offers-critique-roe-v-wade-during-law-school-visit
2. https://www.politico.com/story/2019/06/21/joe-biden-abortion-hyde-amendment-1543804
3. Ibid.
4. https://churchlife-info.nd.edu/en-us/how-americans-understand-abortion-a-comprehensive-interview-study-of-abortion-attitudes-in-the-u.s?utm_campaign=AAS%20Research%20Report%202020&utm_source=MICL%20Resources%20Page&utm_medium=MICL%20Resources%20Page&utm_content=MICL%20Resources%20Page
5. https://abortionfunds.org/

—Kristen Day is executive director of Democrats for Life.

Helen Alvaré

In *Dobbs,* the Supreme Court will not restore greater protection to unborn life without a credible argument that by so doing, they are not impairing 21st-century women's equal and robust opportunities in every sector of society. This is true even though *Roe* v. *Wade* and *Planned Parenthood* v. *Casey* appeared to rest a constitutional right of abortion in women's "liberty" (freedom from the burdens of pregnancy and mothering) and not their "equality" interests. But no one can forget the *Casey* plurality's ringing claim that "[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by the availability of abortion in the event that contraception should fail." In fact, abortion advocates continue to lean heavily on this claim. It features relentlessly in the legislative histories of several states (RI, IL, NY, VT) recently enshrining abortion on demand throughout pregnancy into law.

Not surprisingly, the *Casey* Court cited no empirical data in support of its conclusion, only footnoting the musings of two committed pro-legal-abortion academics. No such evidence was introduced, either, in the state contests noted above. Instead, legislators and interest groups with a shocking lack of curiosity or intelligence regarding abortion's true impacts upon women rely upon the "intuition" that, without children, women will finish high school or attain higher education. Without children, women will obtain or excel in particular employment.

And they couldn't make the empirical case even if they were genuinely interested in doing so. Dozens of laws since the 1970s have enshrined into law women's equal opportunities in politics, the economy, housing, education, the military, and myriad other domains. Women—with and without children—have grasped these opportunities afforded to them and achieved impressive results in every domain. Today there are more women in college than men. There are more women in many graduate programs too. As of December 2019, women constituted more than half of the U.S. workforce.

Even those knowing the least amount about the sciences of economics and sociology would know how impossible it is—credibly, statistically—to sustain the claim that women's current successes in these and other domains could be *causally* tied to abortion. There are simply too many factors, unfolding through too many decades, and intersecting with too many other phenomena (e.g., the economy generally, developments in technology affecting the labor force) to allow for a reliable conclusion. Furthermore, there is important evidence to the contrary.

First, a meta-analysis of the credible literature about abortion's effects upon women—some by abortion advocates—indicates that, on average,

it has negative physical and psychological effects. Even were there some economic advantages to obtaining an abortion, the negative effects of these harms would have to be netted out.

Furthermore, it is easy enough to point to a raft of empirical data showing that abortion rates and ratios declined at the same time that women's academic, employment, and income data *soared*. In short, there isn't even a *correlation* between women's having abortions and their achievements in these domains. The correlation is the *opposite*. So how could abortion have *caused* improvements?

Third, the women most likely to succeed in feminist-materialist-equality terms are the very women experiencing the *fewest* abortions. These are white women with higher education. Poorer women, women of color, and women with fewer educational opportunities, on the other hand, have highly disproportionate rates of abortion. This suggests that deprivation and tragedy lead to abortion; abortion does not cause accomplishment.

In fact, legal abortion has likely held women back from even greater gains by disincentivizing lawmakers and corporations from accommodating women with their children more generously. If the whole world—including pro-abortion feminists—proclaims that the "ideal worker" is like a man without parenting responsibilities, then why should public and private policies extend accommodation to women? Or why else is it that only now, in the early 21st century, are corporations and lawmakers seriously considering significant financial assistance for parents, and laws and policies mandating greater flexibility for parents, and paid leave from work with a job guaranteed upon return?

Even though the *Dobbs* case is proceeding within the "liberty" framework established by *Roe* and *Casey*, more than a few amici will likely be making the case to the Supreme Court that abortion does not cause equality between the sexes. In fact it almost certainly impairs it. Whatever the Court actually does in its final opinion, it will need this reassurance.

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Kelsey Hazzard

Dobbs v. *Jackson Women's Health Organization* presents the Supreme Court with an opportunity to save countless lives from the violence of abortion. That is, of course, the primary reason the Court should reverse *Roe* v. *Wade* and *Planned Parenthood* v. *Casey*.

There is a secondary reason, however, which I wish to explore here: Reversing *Roe* and *Casey* will correct an egregious violation of the separation of church and state.

For decades, the abortion industry and its lobbyists have advanced a false narrative that the pro-life position is inherently religious. Speaking as a pro-life atheist, that is hogwash. In fact, nearly 13 million religiously unaffiliated Americans oppose abortion.[1] We accept the overwhelming scientific consensus that human life begins at fertilization.

Scientific consensus, not religion, should inform government policy. But the justices who decided *Roe* v. *Wade* paid no heed to that laudable principle. They relied heavily upon religion and pseudoscience to muddy the waters and strip unborn children of legal recognition:

> We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.
>
> It should be sufficient to note briefly the wide divergence of thinking on this most sensitive and difficult question. There has always been strong support for the view that life does not begin until live birth. This was the belief of the Stoics. It appears to be the predominant, though not the unanimous, attitude of the Jewish faith.
>
> . . . The Aristotelian theory of mediate animation, that held sway throughout the Middle Ages and the Renaissance in Europe, continued to be official Roman Catholic dogma until the 19th century, despite opposition to this ensoulment theory from those in the Church who would recognize the existence of life from the moment of conception. The latter is now, of course, the official belief of the Catholic Church. As one brief amicus discloses, this is a view strongly held by many non-Catholics as well, and by many physicians.[2]

The Court treated the Stoics, Jewish scholars, Aristotle, and modern-day physicians as equally valid, competing sources of wisdom on the question of when a human life begins. They are not. No offense to Aristotle, but he never saw a sonogram. The Stoics lacked the benefit of the scientific method. If the Court had a robust respect for the separation of church and state, the disciplines of philosophy and theology would not have warranted consideration. The Supreme Court would have followed modern medicine—

and *Roe* would have been a very different opinion.

It's worth noting that *Roe* primarily cites beliefs from Western traditions. If the Court had expanded its horizons a bit, the fallacy might have been easier to spot. For instance, Malaysian folklore holds that a child lives for forty days in its father's womb, located in his brain, before making the journey to the mother's womb. Among the Arapesh of Papua New Guinea, it was believed that baby-making required repeated acts of intercourse during the first few weeks of pregnancy. Neither of those beliefs is any more wrong than the "preformationist" hypothesis of 17th-century Europe, which held that each sperm contained a tiny child, called a homunculus. (You may have noticed echoes of that belief from pro-choice internet trolls who say that if abortion is murder, masturbation is a holocaust.) Perhaps we should count ourselves lucky that the Supreme Court didn't cite Spartan philosophy, which encouraged infanticide.

All of those beliefs were potentially defensible in the times and places they arose. But we know better now. My life, your life, and the life of every powerful person in a black robe began when an egg cell fused with a sperm cell.

Alas, the Court's privileging of supernatural nonsense to justify abortion only worsened in *Planned Parenthood* v. *Casey*, when Justice Kennedy infamously declared that "at the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life."[3]

We have freedom of thought in this country. You're at liberty to believe whatever you want to believe. You can believe the earth is flat; we'll all judge you for it, but it's not illegal to believe it. But if your belief that the earth is flat leads you to ignore the curvature of the earth while you're navigating an airplane, we have a problem. And if a person's subjective beliefs about the "mystery of human life" are allowed to trump laws against killing other people, that's not liberty. That's oppression.

The evidence for life before birth is overwhelming. Knowing what we now know, the denial of life's existence in the womb amounts to a religious doctrine—and a particularly destructive one. It has no place in a civilized legal system.

The law at issue in *Dobbs* prohibits abortion after 15 weeks. There is no avoiding the fact that a 15-week-old in the womb is alive: not merely a "mystery" or "potential life," but a living person with recognizably human features. Indeed, a 15-week law is rather modest by international standards. It's high time for the Court to accept the science and restore church-state separation. It's high time for the Court to reverse *Roe* and *Casey*.

NOTES

1. Hazzard, Kelsey. "Non-religious pro-life population grows to 12.8 million." *Secular Pro-Life Perspectives*, 18 Aug. 2018, https://blog.secularprolife.org/2018/08/non-religious-pro-life-population-grows.html
2. *Roe* v. *Wade*, 410 U.S. 113, 160-161 (1973).
3. *Planned Parenthood of Southeastern Pennsylvania* v. *Casey*, 505 U.S. 833, 851 (1992).

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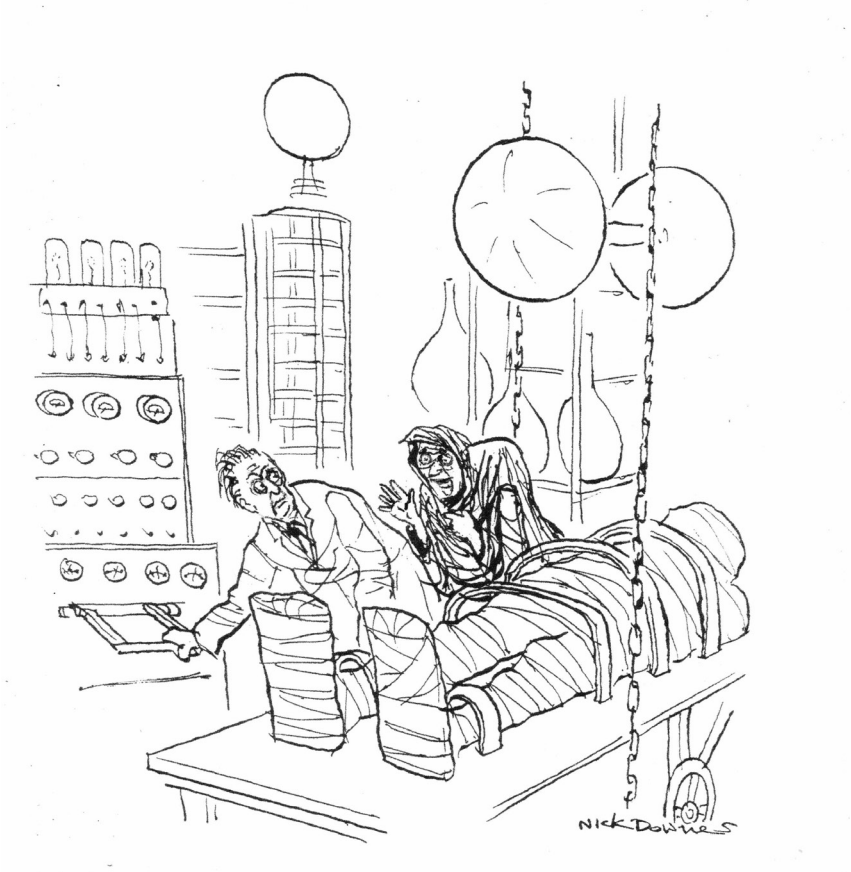

"Maybe you could apply for an evil genius grant."

What Happens Should *Roe* Go?

Ellen Wilson Fielding

The Supreme Court's decision to take up in its next session *Dobbs* v. *Jackson Women's Health Organization*, the suit brought against the 2018 Mississippi law limiting abortions to the first 15 weeks of pregnancy, can't help but raise heady hopes in prolifers eager for good news. It is hard not to fantasize about an end to the nearly 50-year history of nationalized abortion-on-demand in America.

Of course, it is very unlikely that the most extreme of pro-life hopes—an actual reversal of *Roe* v. *Wade*—will come to pass next year. Short of our nation's return to Edenic innocence on the topic of protecting the unborn, however, we may surely hope—that is, it is surely possible (though I am looking about for wood to knock on as I write)—for the Court to agree that the right to abortion hallucinated into existence in *Roe* can in fact be limited (if Mississippians so wish) to the first 15 weeks of pregnancy. It doesn't make much sense biologically or philosophically or morally to permit abortion before that 15-week line, but then, neither does *Roe*'s primitive trimester arrangement make sense. And more power to Mississippi's legislators for daring to try to walk back the right to abortion to a point a little before the onset of quickening, when the already living and moving human being developing in the womb can at last be *felt* living and moving by the mother. The legislation is an intermediate step that not only garnered enough local political support to pass in 2018 but also may squeak past the Court's institutional reluctance to reverse contentious and now-longstanding precedent.

As I write, the latest Gallup poll on American attitudes on abortion has just been published. As usual, this one has good news and bad news. The percentage of respondents who find abortion "morally acceptable" inched up from 44 percent last year to 47 percent this year. And the percentage of those who think abortion is "morally wrong" inched down a point to 46 percent. Those are hardly dramatic moves, and both are within the margin of error, but still those results are not a *good* thing. Good would have been learning that the pro-life percentage jumped eight or ten percentage points. Neither is it good that 49 percent of respondents identify as pro-choice (with those identifying as pro-life coming in a close second at 47 percent). Relatedly,

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you can mull over the 26 percent of Democratic respondents who identified as pro-life. Do they vote for their pro-choice Democratic candidates anyway? Do they try to split their tickets? Do they live in solidly blue (or red) states, where they quiet their consciences by saying that their vote doesn't really matter anyway? It's unclear, as is the response from the 26 percent of Republicans who do not identify as pro-life.

Seeking further elucidation, Gallup asked who thought abortion should be legal "under any circumstances," and found that less than a third favored totally unrestricted abortion. (This is the good news.) Sixty-five percent backed some kind of restrictions, and 33 percent of that 65 percent (meaning about 21 percent of all those surveyed) favored limiting abortion to "only a few" circumstances.

Not surprisingly for a survey on the contentious topic of abortion, there is lots to ponder in this one, particularly in conjunction with laws like Mississippi's being passed or debated in other red states.

To begin with, pulling back from *Roe*'s permission to abort "up to 24 weeks," as the pro-abortion press puts it, but effectively up to birth, hardly places Mississippi in the category of, say, Egypt or Brazil or Iran, however much the rhetoric of pro-abortion activists may lead us to think so. Even New Zealand, for example, long a darling of liberals and politically having little in common with Mississippi, only extended abortion for any reason to 24 weeks in 2020. (It is permitted thereafter for "clinically appropriate" reasons.) In fact, relatively few nations interpret the right to abortion to include the right to abort for any reason throughout the entire pregnancy, so that leaves courts and legislative bodies for all intents and purposes throwing darts at the pregnancy calendar to arrive at the "correct" endpoint.

It is clear from the reactions of the pro-life and pro-abortion camps that activists on both sides regard *Dobbs* as conceivably, if not the beginning of the end for abortion on demand, then (to adapt Churchill's phrase), at least the end of the beginning. In the long decades since 1973, the pro-life movement has several times suffered demoralizing disappointments over anticipated turning points that fell short of expectation, whether these were other Supreme Court decisions, crucial elections, or legislative actions. However, without any legal or political qualifications to prognosticate, I incline towards the view that *something* upholding the constitutionality of gestational limits on abortion may occur in the upcoming Supreme Court term, though that "something" could well be relatively limited and constrained.

Depending upon the wording of the decision (and words and their meaning in the law are crucial, as Thomas More emphasized in *A Man for All Seasons* when he learned he would have to swear an oath regarding Henry

VIII's marriage: ". . . what is the wording?. . . It will mean what the words say!"), a ruling upholding the constitutionality of the Mississippi law would encourage red states to copy or perhaps (again, depending on the wording) inch even further along in the direction of restricting abortion. It would have no direct effect on the laws (or, presumably, the practices) of blue states, unless perhaps to provoke New York's Gov. Andrew Cuomo to sleepless nights attempting to devise a law *even more* lethal to the unborn than the one he pushed through the New York State legislature in early 2019. Purple state legislatures would presumably zigzag a bit depending on the outcome of battles for party ascendancy.

So some lives would be saved in the red states, and a more favorable line in the sand would be drawn. The pro-life movement would be immensely encouraged with even a limited victory at the Supreme Court level—and future congressional and presidential elections would become even more fraught with importance for both sides, if that is possible, given that even a modest win in *Dobbs* would be attributed to the Court's current but precarious pro-life majority. (Depending on the ruling and its margin, this case might also shift more Democrats into the Court-packing camp.)

Obviously, then, prolifers need to hope and pray for *at least* a limited legal imprimatur for Mississippi-style abortion restrictions—though of course, from a praying point of view we should continue petitioning God for that near-miraculous *Roe* reversal.

But even a *Roe* reversal, a half-century after abortion on demand became legal nationally, would not place us in reach of the goal of making America safe for the unborn. In fact, we would be closer to the beginning of our task than to the end, because returning the abortion question to the states would in practice mean very permissive abortion laws in all of the blue ones, restrictive laws in solidly red ones, and a cluster of divided states that would politically resemble bleeding Kansas in the 1850s, see-sawing contentiously back and forth within a certain range of restriction and permission.

One question that raises itself—as it has many times over the years in many contexts—is why our opponents are so opposed to the still-deadly Mississippi law (some 90-plus percent of abortions occur by the 15-week cutoff) and its like? After all, it does not actually bar Mississippi women from obtaining abortions.

The answer is that any receding of the tide of legal abortion arouses fears of further recession in pro-abortionists. And as a safety valve for the Sexual Revolution inaugurated in the Sixties, abortion is necessary—more necessary by the year, perhaps, with marriage rates having declined so greatly

since the Sixties and Seventies. So even if (to exaggerate) we could prove to pro-abortionists that 99 percent of desired abortions would still take place under the Mississippi 15-week limit, they would decry the "injustice" done to the 1 percent who for whatever reasons were therefore being deprived of the right to fertility-free sex.

And I do not mean this flippantly. Whatever the percentage of Mississippians who, in an average year, would find themselves seeking an abortion outside the 15-week limit, many could be classified as hard cases; if we could examine each one with a novelist's penetration, no doubt most would have genuinely sad stories to tell. However, this is likewise the case for many people who do not choose abortion or for one reason and another did not end up getting one, and thus gave birth. And even with pregnancies that are welcomed or accepted, birth can bring to light medical problems, or the mother's relationship with the father can fall apart and with it the financial and emotional supports on which she was relying. In such cases some mothers may be tempted to think, "If only I had known, or this had occurred earlier, I could have aborted the child who is now such a burden and anxiety or whose prospects are so poor."

Why then are those so insistent on the safety valve of legal abortion not equally insistent on a right to infanticide? (Admittedly, a few logically consistent people, such as Princeton's Peter Singer, do insist on this right.)

The Mississippi law excludes from abortion those late-term and more developed fetuses that look, act, and feel more baby-like, and thus are to the imagination more gruesome to abort. In doing so, the law gained acceptance from the large number of ordinary non-activists on either side of this issue who don't want to eliminate abortion entirely or get government into the business of minutely second-guessing the mother's motives for seeking an abortion, but are squeamish about allowing abortions closer to viability.

Above all, however, Mississippi legislators are, some intentionally and some not, demonstrating just how arbitrary a line we must draw in order to legally permit *any* version of abortion on demand. (In this way the Mississippi law is the kind of "teaching moment" abortion restriction that Hadley Arkes has promoted for years in initiatives like the partial-birth abortion ban, fetal pain legislation, and the Born Alive Infants Protection Act.) *Of course* settling on 15 weeks leads anyone who believes abortion is the killing of a human life to ask, "Why not set the limit earlier?" *Of course* that same 15-week limit leads those seeking to maximize the opportunity for ending the unborn's life to ask, "Why not allow abortion later?" Though most women experience quickening within a few weeks of the Mississippi limit, there is no objective significance about that traditional gestational landmark—or any

other marker following conception and preceding birth. There is no point along the pregnancy continuum after conception occurs that logically and biologically forces us to conclude that before then there is no new human being but afterwards there is.

In fact, even birth doesn't make the kind of difference *in the baby* that would allow us to conclude, "Only now is this a human being" or, to adopt the pro-abortionist's more macabre frame of reference, "Even after a late-term aborted child survives, there is no reason why a woman should not have the right to a dead baby."

Over the course of a century or more, at an accelerating speed and with increasing success, progressives without a traditional attachment to family life, sexual mores, or the sacred and life-giving role of sexual relations that take place within a marriage open to human life, have worked to usher in the era of subjective sex—that is, sex confined to its subjective significance of self-satisfaction and self-fulfillment, or at best, mutual self-satisfaction. Though this subjective understanding is not, strictly speaking, solipsistic (in that it generally involves two people rather than one, thereby differing from the consumption of pornography), to the extent that it is self-chosen and self-defined, and it is separated from other ends or motivations or from socially awarded status, we might call it self-referential sex. And by now we are living in its heyday.

The early-to-mid 1900s saw the widening acceptance of birth control by most sectors of society—including most Christian denominations—as a means for married couples to limit family size and postpone or space pregnancies. (The Anglican Church's 1930 Lambeth Conference cave-in on contraception for married couples was the turning point.) Within a matter of decades, and with the development of the contraceptive pill, the use of birth control became morally and socially acceptable for anyone—married or not, in a stable relationship or not—to use when the user's aim was to separate sexual activity from its not-unforeseen reproductive purpose. For, when the natural connection between sexual intercourse and pregnancy is decoupled, so to speak, by contraception, we end up with what we might call sex-on-demand and pregnancy-on-demand. It is not surprising that the failures of contraception and its users then require—abortion-on-demand.

From the psychological point of view, once we expand the moral sphere of sexual activity to include everything from one-night stands through marriage, *and* decouple sexual activity from pregnancy, there is no objective purpose to sexual activity, but only the (genuine but subjective) emotions and desires of those engaging in it. Certainly there is no longer an overarching societal stake in the couple's sexual relationship—no sense that amorous

couples should be demonstrating fidelity or stability or the ability to support a child or the age and maturity required of parents. Parenthood—the decision to become a parent, the determination that a couple are qualified to be parents—is now regarded as something separate from the decision to embark on a sexual relationship—and even separate from the decision to embark on a marriage.

Now, it was not quite inevitable for legalized abortion-on-demand to follow upon sex-on-demand and pregnancy-on-demand. We could perhaps imagine our nation settling for a situation where all but those for whom a child appeared to be a calamity simply accepted the reduced risk afforded by contraception and hoped for the best. Still, the path of least resistance was the one that almost all of the wealthier, more secularized, more progressive nations chose. After all, the path of least resistance is by definition the easiest and therefore the likeliest to take, unless we are strongly motivated toward a more demanding goal. What that counterpull could have been or could now still be is unclear—another Great Awakening, perhaps, a religious revival like those that took place in America in the 18th and 19th centuries? Though "nothing is impossible with God," given the current levels of belief and rising disaffection with our past and its cultural heritage, which for increasing numbers of young people includes Christianity, that particular intervention today would truly be miraculous.

Barring such a divine intervention or its equivalent, today's flight from fixed, objective realities, the ontological demands of our human nature, and the physical world we live in suggest that, however the justices decide regarding Mississippi's effort to shrink the window of legal abortions, we will be battling the cause of the unborn for a great many years to come. We may be fortunate enough, if the decision favors Mississippi, to continue carrying the fight into state legislatures, there to gradually establish relatively abortion-safe beachheads in red states. However, almost 50 years after *Roe*, we are still seeking to re-convert that still-large percentage of our electorate who, though repeatedly reporting in polls their desire to see abortion rarer, do not in most states push their legislators to deprive other people of the right to abortion.

Meanwhile, we can hope that the educational effect of confining the abortion right to 15 weeks will open some eyes to the reality that the unborn are human beings at 12 weeks too—and at 10 weeks, and 8 weeks, and 6 weeks, and at every point along the precarious trajectory from conception to birth. And we must continue our efforts to convince people that, even when they are in crisis, even when they not only never intended to conceive a baby but

find themselves in the worst possible position to do so, they should accept that unborn child as an innocent individual whose own journey through life has just begun.

All this, however, is founded on a reality-based way of living and thinking that unfortunately has become less commonplace. Instead, reality-based thinking is ceding ground to more malleable and fluid concepts of identity and personhood that are not bound to biology or to the physical rules of an obstinately real world whose existence Samuel Johnson once demonstrated to his biographer Boswell by kicking a stone.

Today, for some who seek freedom from the structures of the biologically and physically ordained world and who find ways of ignoring, evading, and overcoming such limits in the multifarious worlds of online existence or augmented reality, Samuel Johnson's proof by collision with fact encounters more resistance from even many ordinary people. Fans of Marvel or DC Comics, for example, might theorize that in another part of the multiverse, rather than a toe colliding with hard rock, the body might be capable of penetrating the rock, or the rock might dissolve before the body. Possibilities, because they can be imagined, are imagined to be as real (or unreal) as the actualities. Few but sophistical philosophers in earlier eras would entertain solipsistic notions or voice doubts about whether the physical world exists or whether it resembles our perceptions of it. Even if entertained as thought experiments in the past, these notions would induce a kind of existential vertigo and an uncomfortable sense of loneliness in an unknowable cosmos. However, today what is likely to strike some as unpleasant and a straitjacket is the effort to disprove those vertiginous experiences of the imagination and refute the doubts about the solidity and dependability and permanency of the world we apprehend through our senses.

It is into this world that the citizens of Mississippi are attempting to usher across the threshold of birth an increased percentage of their unborn.

Covid's Totalitarian Temptation

Wesley J. Smith

The Covid pandemic unleashed a soft totalitarianism in healthcare policy and bioethical advocacy that may not abate with the decline in infections and deaths from the pandemic. In this essay I will explore why the arrival of a modern plague created conditions that allowed a crass utilitarianism in healthcare to flourish like mushrooms after a rain; I will then illustrate how the current mindset forebodes ill for liberty and the sanctity-of-life ethic in coming years.

The Quality-of-Life Ethic Supplants Sanctity of Life

We didn't get here overnight. Indeed, it has taken a lifetime for societal values and medical ethics to decay to the point that some of us—the elderly, seriously ill, disabled, and dying—are in danger of being deemed an expendable caste.

It isn't as if we weren't warned. In 1949, in the wake of the Nuremberg Medical Trials after World War II, Dr. Leo Alexander wrote a prophetic essay in the *New England Journal of Medicine*. A medical examiner at the trials, Alexander wanted to know how Germany could have plunged from being one of the most civilized nations in the world to one in which doctors conducted inhumane experiments on concentration camp prisoners and euthanized disabled babies and adults.

After conducting a thorough and painful analysis, Alexander warned his readers that the cultural pathogen that led to those horrors was not unique to Germany, or indeed to Nazis. He wrote:

> Whatever proportions these crimes finally assumed, it became evident to all who investigated them that they started from small beginnings. The beginnings at first were merely a subtle shift in emphasis in the basic attitudes of physicians. It started with the acceptance of the attitude, basic to the euthanasia movement, that there is such a thing as a life not worthy to be lived. This attitude in its early stages concerned itself merely with the severely and chronically sick. Gradually the sphere of those to be included in this category was enlarged to encompass the socially unproductive, the ideologically unwanted, the racially unwanted and finally all non-Germans.[1]

Dr. Alexander then issued a prophetic warning:

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> In an increasingly utilitarian society these patients [with chronic diseases] are being looked down upon with increasing definiteness as unwanted ballast. A certain amount of rather open contempt for the people who cannot be rehabilitated . . . has developed. This is probably due to a good deal of unconscious hostility, because these people for whom there seem to be no effective remedies have become a threat to newly acquired delusions of omnipotence. . . . At this point, Americans should remember that the enormity of the euthanasia movement is present in their own midst.[2]

What did Alexander's warning mean? That the sanctity-of-life ethic and medical ethics traditions inspired by the Hippocratic Oath were being supplanted by a view that did not deem all humans as having equal moral worth. In contemporary bioethics parlance, this general philosophy is known as the "quality-of-life" ethic.

Please understand. I am not arguing that the bioethics movement is "Nazi," or "like Hitler." Such an analogy would both wildly exaggerate our current situation and diminish the true evil of the medical Holocaust. But there are other ways to engage in morally unacceptable policies and equality-denying advocacy than to go full National Socialist.

So, what is meant by the term "quality of life" as applied to health policy and medical practice?[3] In *Clinical Ethics*, the late bioethicist and historian of the bioethics movement Albert R. Jonsen and his co-authors wrote (my emphasis), "In general, the phrase *expresses a value judgment*: the experience of living, as a whole or in some aspect, is *judged to be 'good' or 'bad,' 'better' or 'worse*.'"[4] Such issues are, of course, a proper part of medical decision-making when deciding whether the potential pain or danger of a procedure is worth the hoped-for benefit.

The problem with the concept of quality of life arises when it ceases to be *a factor in medical decision-making* and becomes, instead, *a determinate of moral worth*. When applied in this manner, it is often called the "quality-of-life ethic," which the Princeton bioethicist Peter Singer describes in his book *Rethinking Life and Death*:

> We should treat human beings in accordance with their ethically relevant characteristics. Some of these are inherent in the nature of being. They include consciousness, the capacity for physical, social, and mental interaction with other beings, having conscious preferences for continued life, and having enjoyable experiences. Other relevant aspects depend on the relationship of the being to others, having relatives for example who will grieve over your death, or being so situated in a group that if you are killed, others will fear for their own lives. All of these things make a difference to the regard and respect we should have for such a being.[5]

The danger of Singer's approach should be obvious to every reader. The standards Singer uses to measure human worth are *his* standards based on

what *he* considers important and "relevant." And therein lies the heart of the problem. *Subjective notions of human worth, in the end, are about raw power and who gets to do the judging*. Quality of life, as a moral measure, strips worth and dignity from people based on age, health, or disability, just as surely as racism does based on skin pigment, hair texture, or eye shape.

The Technocracy Flexes Its Muscles

It isn't just the emergence of a new and (from my perspective) dystopian value system. Those with the power to control society—let's call them the "technocracy"—are both embracing the quality-of-life ethic and wresting control of society from normal democratic deliberation, threatening to impose these values on a society that does not agree with them.

What do I mean by "technocracy?"[6] In essence, the word translates into "rule by experts." But in its currently gestating iteration, it means much more than that. A looming, international technocracy has coalesced that threatens to substantially control most important aspects of life by imposing legal and regulatory policies favored by supposed "experts"—scientists, bioethicists, and societal "influencers"—which when combined with Big Tech's control over social discourse, creates rigidly enforced social orthodoxies.

Technocracy isn't tyranny, but it threatens a softer authoritarianism. There are no gulags established to imprison dissenters or tyrannous executions to punish the rebellious. Instead, a technocracy smothers democratic deliberation by removing most decision-making about essential policies from the people (through their elected representatives) to an expert class based on their education and experience and the data *they think* matter. In other words, rather than laws being passed by representatives of the people, regulations are imposed by bureaucrats based on technocratic opinion and advice. As author John H. Evans wrote several years ago:

> The first characteristic of technocracy . . . is a "deep seated animosity toward politics itself" and toward the public ability to make decisions. But it is not just that with technocracy, experts will rule. The second and more important characteristic of technocracy is that expert rule is justified by making policy decisions seem to be only about facts, which are fixed; not values which vary from group to group. This is accomplished by removing debates about values in politics and making political decisions solely about selecting the most efficacious means for forwarding taken-for-granted values.[7]

How did we get to the point that experts threaten to take effective control of society? Blame the Covid crisis for unleashing a boldness in the would-be technocrats and at the same time engendering timidity among people who want to be safe. Globalists have seized the unique moment to increase their

power on an unprecedented international scale. As Klaus Schwab, founder and executive chairman of the World Economic Forum, explained, the pandemic's "silver lining" was to demonstrate "how quickly we can make radical changes to our lifestyles."[8]

Quality of Life and Covid

The viral blitzkrieg hit at a time when much of society accepted some version of the quality-of-life ethic and when many were willing to bend the knee to the expert consensus—also known by the advocacy slogan "Follow the science!" Indeed, the Covid crisis revealed the insidious nature of the values against which Dr. Alexander warned through the ongoing and seemingly systematic victimization of frail elderly, particularly those who live or are patients in assisted living or skilled nursing facilities.

Covid is an odd disease. It has had a wildly disparate impact on various age groups. For the young and healthy (unlike the Spanish Flu pandemic of 1918), the disease might be asymptomatic or no worse than a mild flu. Indeed, the death rate for Covid among those young has been astonishingly low. The Heritage Foundation reported that as of February 17, 2021, only 45 people had died from the disease who were less than one year old, and only 23 under age 5. In contrast, 99,019 had died between the ages of 65-74, another 128,192 between 75-84, and 146,217 over the age of 85.[9]

That being so, a sanctity/equality-of-life approach would have created pandemic response policies that *prioritized protecting those most at risk* of serious illness and death. But several states—New York, New Jersey, Michigan, and others—instead pursued policies that exacerbated the risk to the elderly.

New York's approach in the early epidemic appears to have been the most egregious. When Governor Andrew Cuomo put out a call for help from the federal government out of fear that hospitals could be overwhelmed, President Donald Trump ordered the Naval hospital ship *Comfort* sent to New York City to aid with any overflow. The government also set up a huge makeshift hospital at the Javits Center. New York now had thousands of extra beds to care for Covid patients in dire need of intensive or acute medical care in a hospital setting.

These facilities were never used more than marginally—meaning there were thousands of beds to which elderly people with Covid could have been assigned for care. Despite this—and in disregard of the heightened risk which was already known—Governor Cuomo instituted a policy requiring *infected Covid patients to be admitted into assisted living and nursing home facilities*—this despite the risk of infection and death to those who did not yet have the disease.

What could justify such a heartless policy? Cuomo has never admitted it, but the quality-of-life ethic provides the only rational basis for such a reckless course, i.e., the frail elderly were deemed by policy makers to be of lesser value than the young. So, it became acceptable to put septuagenarians, octogenarians, and those even older at material risk of serious illness and death in order to preserve hospital space for those perceived as more important, e.g., the young, healthy, and productive—even though the latter categories were at far less risk of dying or experiencing serious morbidity. And when the entirely predictable deaths of elderly patients tore a hole through the hearts of their loved ones, Cuomo—it is charged (though he denies it)—covered up the toll to give himself political cover.[10]

How should New York have handled the emergency of perceived resource shortages ethically? The Catholic bioethicist Charles Camosy explained in an opinion article in the *New York Post*. What we shouldn't do, Camosy wrote, was allow rationing based on an invidious judgment of the patient's "quality of life" or "number of years a patient could enjoy," as opposed to predicting immediate survivability based on each individual patient's condition—which is the essence of ethical "triage." From "Coronavirus Crisis: The Wrong Way to Decide Which Patients Get Hospital Care:"

> It should not be up to physicians to decide whose subjective quality of life deserves to be prolonged. Physicians almost always rate the quality of life of their patients significantly lower than patients do themselves—and miss the fact that their patients often prefer length of life to quality of life (whatever that means). In short, they are terrible deciders about who should live and who should die.[11]

Camosy assured readers that New York State was legally supposed to base care decisions on suitably objective criteria about survivability without regard to membership in an invidious category such as age or disability. But that is not what was actually done. Instead, the elderly were deemed disposable. As a result, thousands died, at least some of whom might have been saved. Indeed, New York's death toll for vulnerable seniors was the worst in the country—even though it wasn't the only state that ordered infected seniors returned from hospitals back into nursing homes—as claims of officials covering up the actual numbers of the elderly who died led to an FBI investigation. The outcome of that investigation remains uncertain as of this writing.[12]

It could have been worse. When the vaccines against Covid received emergency approval for use by the FDA, many notable voices in the bioethics community sought to deny priority to the frail elderly. Instead, influential bioethicists like Ezekiel Emanuel—who was an architect of the Affordable Care Act and a close adviser to now-President Joe Biden on Covid—advocated an approach based on preventing "premature death," as opposed to an

actual assessment of risk to elderly individuals. Writing in the context of opposing "vaccine nationalism"—an issue beyond our scope here—Emanuel and his co-authors argued in favor of a "Fair Priority Model," which would require that vaccine distribution be based on a "standard expected years of life lost" (SEYLL) standard[13]—which "is an indicator of premature mortality." In other words, a patient dying from Covid at 60 would lose more SEYLLs than a patient dying at 85. So, in the context of setting international standards for vaccine distribution, the frail elderly would not be given priority—even though they are most at risk from Covid—because if they died, their SEYLL would not be as high as if someone younger succumbed. Never mind that the younger person was less likely to die!

Why? Essentially, Emanuel thinks that the lives of younger people matter more than those of their elders, writing: "A premature death that prevents someone's exercising their skills or realizing their goals later in life is worse than a death later in life. Ethicists have similarly argued that preventing early deaths—deaths that are more prevalent in poorer countries—is both prudent and ethical." In other words, Emanuel advocates that people with far less chance of falling seriously ill and dying—whether in the United States or overseas—should have priority over the elderly who are most at material risk because their lives are just not as important. But then, he is the guy who wrote that he wants to die at age 75 because, after that, a person will be remembered by loved ones as "feeble, ineffectual, even pathetic."[14]

It wasn't just Emanuel. Over at the *Hastings Center Report*—the most influential bioethics journal in the world—a bioethicist named Larry R. Churchill claimed that elderly people should go to the back of the line for life-saving treatment and vaccines—this even though the elderly were known by the time of the essay to be most at risk of serious health consequences from Covid. Churchill—who is himself 75—advocated a type of duty for the aged to die:

> Does being elderly incur duties others do not have? I believe the answer is, yes, and foremost among these is an obligation for parsimonious use of newly scarce and expensive health care resources.[15]

Here's Churchill's awful idea. The elderly have the *moral duty to go to the back of the line* for receiving life-saving medical treatment and, when available, vaccines. If that causes them to die when they might otherwise have lived, that's fine, because it illuminates "the integrity of elderhood" (whatever that means).

The Technocracy Threatens Authoritarian Control

In addition to unethical—and deadly—quality of life rationing imposed in several states, the Covid crisis also revealed the ambition of "the experts" to assume control over society—justifying planned infringements of liberty as needed to promote "wellness" or prevent disease. More, the "experts" even showed a desire to impose an international technocracy as a means of avoiding future pandemics. Space permits only nutshell descriptions, but each is a serious liberty concern:

Forced Vaccination: There have certainly been state vaccine mandates requiring that children receive inoculations as a condition of attending school. But there has never been a national mandate requiring all Americans to be vaccinated against disease. Not for smallpox and not for polio.

Some wanted to use the Covid threat to change that. Notable public intellectuals in law, medicine, and bioethics argued that the government should force everyone to take the vaccine—without exception, except for health reasons. For example, our friend Ezekiel Emanuel co-authored a call in the *New York Times* for vaccine mandates:

> We need to sharply reduce coronavirus infections to turn the tide and quell the pandemic. The best hope is to maximize the number of people vaccinated, especially among those who interact with many others and are likely to transmit the virus.
>
> How can we increase vaccinations? Mandates.
>
> Vaccines should be required for health care workers and for all students who plan to attend in-person classes this fall—including younger children once the vaccine is authorized for them by the Food and Drug Administration. Employers should also be prepared to make vaccines mandatory for prison guards, E.M.T.s, police officers, firefighters and teachers if overall vaccinations do not reach the level required for herd immunity.[16]

Emanuel was far from alone in endorsing government coercion. Writing in the Oxford University-based *Practical Ethics*, the bioethicist Alberto Giubilini—who once advocated for the propriety of infanticide—urged that government issue binding orders for all citizens to be vaccinated against Covid:

> Unless one thinks that bodily integrity is a quasi-sacred value, it is unreasonable to think that the breach of bodily integrity represented by injecting a vaccine through a thin needle or the small risks of vaccine side effects outweigh the harms of the virus and those of compulsory lockdown.[17]

And here's an irony: Giubilini claims that "the right to life" trumps privacy and autonomy concerns with regard to the vaccine. Let's forget that this is the same Giubilini who, in common with most mainstream bioethicists,

has repeatedly told us that bodily integrity (i.e., autonomy) is a quasi-sacred right in the abortion and assisted suicide contexts.

The most outrageous vaccine mandate statement was made by Harvard Law School Professor Emeritus Alan Dershowitz in a podcast interview. Here is what he said:

> Let me put it very clearly: you have no constitutional right to endanger the public and spread the disease, even if you disagree. You have no right not to be vaccinated.… And if you refuse to be vaccinated, the state has the power to literally take you to a doctor's office and plunge a needle into your arm.[18]

Dershowitz justified that shocking conclusion as settled law under a 1905 Supreme Court case, *Jacobson* v. *Massachusetts*.[19] That seemed like an awfully Draconian decision, so I read it. And what do you know: It isn't nearly as broad in scope as Dershowitz indicated.

The case involved federalism and the power of *local governments* authorized in a law passed by Massachusetts that allowed municipalities to require smallpox vaccinations of all residents during local outbreaks. The Cambridge Health Board issued such an order during a community epidemic. An anti-vaxxer of the time refused, was prosecuted, and ultimately convicted of violating the order. The defendant brought the case to the Supreme Court arguing that the Massachusetts law and Cambridge order violated the U.S. Constitution. The Supreme Court ruled that it did not. From the ruling: "Liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand."

Now, let's apply the *Jacobson* ruling to the current Covid-19 crisis. First: The authority granted Cambridge was *limited in scope* and applied only *within that city*. In other words, the Cambridge order had zero impact on the residents of Cape Cod.

Second: Government cannot just pass any law it wants because there is a health emergency. So, here's a question that must be answered in assessing Dershowitz's claim of a broad power of the government in the current circumstance: Is the Covid-19 pandemic such a "great danger" that it would be "reasonable" to secure "the safety of the general public" for the government to force *everyone in the country* to be vaccinated?

It seems to me that the answer must be no.

Third: Since we can identify the minority most at risk from Covid-19, is it reasonable to *force everyone in the country* to be vaccinated? Absolutely not. The government can deploy far less intrusive means to shield such people with limited quarantine orders and locking down nursing homes, as two examples.

Finally, the pandemic has had widely divergent impact throughout the country. Would it be reasonable to force people in Montana to all be vaccinated because New York and New Jersey were hit by a catastrophe? Surely, the answer has to be no. Given that high-risk populations can be identified and isolated for their protection without materially impacting the freedom of the rest of society, I believe that state or federal laws requiring universal vaccination would be viewed by the courts as an unreasonable overreach of government power.

Our leaders are, of course, free to use persuasive means to convince us to be inoculated should the current vaccines—which, as of this writing, are under an emergency use authorization—ever receive full FDA approval (as seems likely). But in this particular circumstance, and given the exigencies of this specific disease, it would seem unlikely that they will be able to punish us for refusing to accept the jab. And the government, Dershowitz's opinion notwithstanding, certainly doesn't have "the power to literally take you to a doctor's office and plunge a needle into your arm."

Vaccine Passports: The powers that be know the above better than I do, and that may be why there has not been a serious effort by the federal or state governments to force us all to be vaccinated. That fact should not make us sanguine. Because what the government probably cannot do legally, Big Business probably can.

Let's call it "the Corporatocracy." Here's the idea: Rather than have the government pass a law or promulgate regulations requiring all of us to be vaccinated—which would be far easier said than done and be subjected to judicial challenge—corporations will simply do the dirty work.

The process would be frighteningly simple. The government would issue voluntary guidelines urging all citizens to be vaccinated and suggesting ways the private sector could assist in encouraging compliance. White House press secretary Jen Psaki put it this way: "A determination or development of a vaccine passport or whatever you want to call it will be driven by the private sector. Ours will more be focused on guidelines that can be used as a basis, and there are a couple key principles we're working from."[20] In other words, the insidiously clever goal would be to sidestep the usual governing means of enacting public policies and to instead rely on the private sector to coerce vaccination compliance through "free market" mechanisms.

How would the vaccine passport system work? As described in the *Washington Post*,[21] we would all have to download a vaccine "passport app" onto our smartphones—i.e., a scannable code that would prove we had been vaccinated (or for those without a phone, such a code could be printed). Once the system was operational, if you wanted to fly on a plane or get on a train,

you would have to show your "passport." Ditto when you attended a concert or sporting event. Eating dinner in a restaurant might also require proof of vaccination, perhaps even shopping in a mall or grocery store. And the beauty part from the perspective of the technocrats? The government would not be "forcing" anyone to do anything.

Experimenting on the Elderly: One would think that in the midst of an unprecedented pandemic bioethicists would place their dehumanizing advocacy efforts at least on temporary hold. Nope. During the worst of the plague, the *Journal of Medical Ethics* published a piece explicitly aimed at Covid-19 patients by the internationally prominent bioethicists and Oxford professors Julian Savulescu and Dominic Wilkinson.[22] First, the authors urged that seriously ill Covid-19 patients be consensually experimented upon—even if the research is dangerous—if they signed an "advance directive for extreme altruism."

That might seem reasonable—assuming the tests would be aimed at saving their lives. But the bioethicists want to include in the license potentially lethal experimentation that *would not benefit the patient*:

> When a patient will certainly die [Note: Sometimes a mistaken diagnosis], they should be able to consent while competent to experimentation being performed on them for others, even if the experimentation may itself likely or possibly end their life sooner…. even if it would not benefit the patient and may even hasten their death.

The authors then boldly plunge even deeper into the utilitarian swamp to urge "organ donation euthanasia"—meaning killing the patient b**y** taking the organs—of Covid-19 patients in places where hastening death by doctors is legal:

> Organ donation euthanasia could possibly apply to some cases of Covid-19 where life prolonging medical treatment is either withdrawn or withheld. In those jurisdictions where euthanasia is legal (Netherlands, Belgium, etc.), euthanasia could occur by surgical removal of vital organs under deep anaesthesia.

Savulescu and Wilkinson would allow experimentation on nursing home patients—*even if they are not sick*:

> Some residents in nursing homes and care facilities are competent. Some of these may choose to take on significant risks in the war on Covid-19…. They could also be allowed to consent, with full disclosure of risks and no pressure, to take part in risky research which would accelerate the discovery of vaccines or treatments.

To prevent unwanted burdening of medical resources if the patient becomes ill, the authors would restrict the experimentation to patients who had "completed a living will indicating that they would not wish for invasive medical treatments in the event of becoming seriously unwell," meaning

nursing home patients could be intentionally infected with coronavirus and then, if they became seriously ill, simply allowed to die.

Loosening the Euthanasia and Assisted Suicide Rules: It doesn't take a prophet to know that the euthanasia movement would use the pandemic to promote their hastened death agenda. Compassion and Choices—formerly more honestly called the Hemlock Society—put out a fund-raising letter that sought to generate donations from the Covid crisis and loosen existing protective guidelines, stating:

> As always, we are responding quickly to the needs and opportunities of the times. As the workforce grapples with the pandemic, telehealth is gaining prominence as a critical mode of delivering medical care. This provides a unique opportunity to make sure health systems and doctors are using telehealth, where appropriate, for patients trying to access end-of-life care options. These efforts should improve access to medical aid in dying in the short and long-term.[23]

Telehealth? Wesley, you mean assisted suicide by Zoom? Precisely. In the midst of the pandemic, the American Clinicians Academy on Medical Aid in Dying—a newly formed association of doctors who assist suicides—published formal guidelines to permit doctors to write lethal prescriptions after "examining" the patient via the internet. Specifically, the guidelines state that the examination should include a review of medical records and a video meeting via Zoom or Skype. The second opinion can simply be done by phone. This means that assisted suicides will be facilitated by doctors who never actually treated patients for their underlying illness, who may be ignorant of their family situations and personal histories, and who have never met their "patients" in the flesh.[24]

We know of at least one tragic euthanasia death caused by the patient's reaction to the Covid crisis. An elderly Canadian patient named Nancy Russell wasn't sick—there is a positive right in Canada to lethal injection euthanasia, but it is supposed to be limited to circumstances involving a diagnosed medical condition that causes irremediable suffering. Rather, when it looked like the 90-year-old would have to be confined to her room for two weeks, she asked for—and received—the lethal jab due to declining mental health and vitality. From the CTV story:

> Russell, described by her family as exceptionally social and spry, was one such person. Her family says she chose a medically-assisted death (MAID) after she declined so sharply during lockdown that she didn't want to go through more isolation this winter…This time, doctors approved her. Russell would not have to go through another lockdown in her care home. "She just truly did not believe that she wanted to try another one of those two-week confinements into her room," her daughter said.

But note, for her death, she *was* permitted to be surrounded by friends and family!

> When 90-year-old Nancy Russell died last month, she was surrounded by friends and family. They clustered around her bed, singing a song she had chosen to send her off, as a doctor helped her through a medically-assisted death.[25]

So companionship was permitted *to be made dead* but not to remain alive. And her *family thinks this was a fine option*, demonstrating how the social mindset becomes twisted by euthanasia consciousness. And here's a bitter irony. Russell died just before the announcement that Covid vaccines were being approved, giving hope that further nursing home lockdowns would not be necessary.

Conclusion: The Future Looks Disturbingly Like the Present—Only More So

We are often told that adversity brings out the best in us. But it also can be a corrosive that illuminates weaknesses in vital social structures and threats of future erosion of societal norms. Such has been the response in bioethics and among the technocrats to Covid.

And don't think that the threats I have highlighted here will disappear with the end of the Covid threat. To the contrary. The "experts" are already planning to use the threat of potential future pandemics to seize control of society and transfer power to unelected international technocratic "experts."

How do I know? None other than Dr. Anthony Fauci told us so by audaciously declaring that preventing future infections requires the mindboggling task of "rebuilding the infrastructures of human existence." Not only that, but he said that accomplishing these top-to-bottom "radical changes" requires "strengthening the United Nations and its agencies, particularly the World Health Organization (WHO)."

Fauci's advocacy for essentially establishing an international rule-by-experts technocracy—co-authored with his National Institute senior adviser David M. Morens—appeared in the respected scientific journal *Cell*, an important peer-reviewed publication in which scientists usually share discoveries in fields such as stem cell research, genetics, and immunology.

Articles in *Cell* focus mostly on important but arcane technical issues of science and medicine. But with increasing frequency, such journals have lately pushed ideology, too—usually promoting left-wing and internationalist public policy prescriptions, such as that written by Fauci and Morens. To prevent future pandemics, the authors argue that virtually *everything* in society will have to be transformed, "from cities to homes to workplaces, to water and sewer systems, to recreational and gatherings venues."[26]

The scope and breadth of their ambition is stunningly hubristic. "In such a transformation," they write, "we will need to prioritize changes in those human behaviors that constitute risks for the emergence of infectious diseases. Chief among them are reducing crowding at home, work, and in public places as well as minimizing environmental perturbations such as deforestation, intense urbanization, and intensive animal farming."

The authors quickly add, "Equally important are ending global poverty, improving sanitation and hygiene, and reducing unsafe exposure to animals, so that humans and potential human pathogens have limited opportunities for contact." Holy cow!

Think about what *all of that* would take! At the very least, the gargantuan task would require unprecedented and intrusive government regulations and the transferring of policy control from the national to international level—nothing less than an international technocratic and authoritarian supra-governing system—with the power to direct how we interact with each other as family, friends, and in community.

This hyper-state would have to control how the economy operates, where we could build factories and plow farms. It would also determine how and where we live and what we eat, and permanently dictate when and if we can travel. And think about the cost and the means it would take to break inevitable popular resistance. No thanks!

As they say, forewarned is forearmed. My point in writing this essay wasn't merely to highlight the many dehumanizing and invidiously discriminatory proposals—believe me, I have just scratched the surface—that have been made to materially undercut what remains of the sanctity-of-life ethic and strengthen "quality-of-life" approaches to healthcare. Rather, it is a warning of how profoundly the "do no harm" principle of the Hippocratic Oath has been corroded by the so-called experts—meaning that if we yield control of our health-care public policies to a bioethical technocracy, *these are the immoral values* likely to be imposed on all of us.

For our own safety and the safety of those we love—particularly the elderly, people with physical and developmental disabilities, and the seriously ill—we dare not ignore the threat and pretend it can't happen here. Because it can, and—if we are complacent—it will.

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Coolidge and the Catholics

Edward Short

Everett Collection Historical / Alamy Stock Photo

President Coolidge on the speakers' platform before addressing the Holy Name Society on September 21, 1924

I

In September 1924 President Calvin Coolidge gave a speech to over 100,000 Catholics of the Holy Name Society[1] that exhibited his truly prophetic grasp of the role church and state play in upholding and sustaining America's constitutional order. Now, when that order is beleaguered as never before, the speech should be read and reread by all who prize liberty: It has much to teach us.

In its appreciation of the wellsprings of our constitutional blessings, the

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speech is reminiscent of something Samuel Johnson was told by his cousin Cornelius Ford, the dissipated parson, when the 18th-century poet, critic, and lexicographer was a young man: "[S]tudy the principles of everything . . . but grasp the trunk hard only, and you will shake all the branches."[2]

Coolidge grasped the "trunk" of America's constitutional order so firmly that it enabled him to speak brilliantly about the natural bond that church and state have in reaffirming America's liberties. Although addressed to Catholics from a speakers' platform that included William O'Connell, Archbishop of Boston, and Michael Joseph Curley, Archbishop of Baltimore—both powerful prelates who did much to advance the Church in America—the speech appeals to all Americans, Catholics and non-Catholics.

It begins with an acknowledgement of the vitality of conscience, that "heaven-nursèd plant," as the poet Marvell called it. "Something in all human beings makes them want to do the right thing," Coolidge says. "Not that this desire always prevails; oftentimes it is overcome and they turn towards evil. But some power is constantly calling them back. Ever there comes a resistance to wrongdoing." What is striking about this is that it takes up the theme of conscience to recommend not "liberty of conscience"—as the Founders often did—but the affinity conscience naturally has for goodness, which is something rather more fundamental. Again, Coolidge took hold of underlying principles. He certainly recognized this affinity in the mission of the Holy Name Society when he applauded it for seeking "to rededicate the minds of the people to a true conception of the sacredness of the name of the Supreme Being," to save "all reference to the Deity," as he says, "from curses and blasphemy, and restore the lips of men to reverence and praise."

"Reverence" is not a word that we often hear in the mouths of statesmen, let alone politicians. Yet Coolidge defines it in a way to reassure his compatriots that he knows what he is about in referring to so solemn and so practical a thing; and, what is more, he does the Holy Name Society the honor of acknowledging that they, too, apprehend the consequential force of the word. Indeed, he stresses that:

> The importance of the lesson which this Society was formed to teach would be hard to overestimate. Its main purpose is to impress upon the people the necessity for reverence. This is the beginning of a proper conception of ourselves, of our relationship to each other, and our relationship to our Creator. Human nature cannot develop very far without it. The mind does not unfold, the creative faculty does not mature, the spirit does not expand, save under the influence of reverence. It is the chief motive of an obedience. It is only by a correct attitude of mind begun early in youth and carried through maturity that these desired results are likely to be secured. It is along the path of reverence and obedience that the race has reached the goal of freedom, of self-government, of a higher morality, and a more abundant spiritual life.

The first thing that impresses us about this passage and many others in the speech is that it has been written by a man who uses words with unusual care and precision: He uses words to speak the truth. Of course, our own political class and their agents in the media use words so imprecisely, so deceitfully, so falsely that it is a balm to encounter Coolidge's conscientious truth telling. "The mind does not unfold, the creative faculty does not mature, the spirit does not expand, save under the influence of reverence. It is the chief motive of an obedience." There is a Johnsonian gravity to that. In his *Dictionary*, the same dictionary on which the Founders battened, Johnson defined the word "reverence" as "veneration; respect; an awful regard." He illustrates it with a quote from Psalm 89: "God is greatly to be feared in the assembly of the saints, and to be had in *reverence* of all about him." He also quotes Sir Francis Bacon: "When quarrels and factions are carried openly, it is a sign the *reverence* of government is lost." Government, in other words, is answerable to the God to whom reverence is due. It is something more than an unaccountable scrimmage for power.

The second thing that strikes us about the passage is that Coolidge links the word "reverence" to "obedience," which Johnson defines as "submission to authority" and illustrates with a quotation from the 17th-century Anglican divine John Tillotson: "Religion hath a good influence upon the people, to make them *obedient* to government, and peaceable one towards another." It is when we read Coolidge's passage in the light of these definitions that we can see what a clear and incisive grasp he had of the truly fundamental relationship between church and state in our Constitution, which goes altogether beyond the ban on established religion instituted by the Founders.[3]

As if to remind his auditors that the proper use of language was not merely an attribute of his own, but a clear and bounden duty of responsible statesmanship, "Silent Cal," as he was known, lays out in the speech a kind of metaphysic of terseness. "We read that 'out of the abundance of the heart the mouth speaketh,'" he says.

> This is a truth which is worthy of much thought. He who gives license to his tongue only discloses the contents of his own mind. By the excess of his words he proclaims his lack of discipline. By his very violence he shows his weakness. The youth or man who by disregarding this principle thinks he is displaying his determination and resolution and emphasizing his statements is in reality only revealing an intellectual poverty, a deficiency in self-control and self-respect, a want of accurate thinking and of spiritual insight, which cannot come save from a reverence for the truth.

If the volubility of most politicians abounds in "intellectual poverty," Coolidge's brevity was the soul of wit. In our current circumstances, we hear a good deal about how essential it is for us to rededicate ourselves to inculcating

the principles of reasoned discourse in the young, surrounded as they are by rabid misologists; but surely Coolidge's brief speech drives that point home more effectively than reams of white papers. "To my mind, the great strength of your Society lies in its recognition of the necessity of discipline," he told his Catholic friends.

> We live in an impatient age. We demand results, and demand them at once. We find a long and laborious process very irksome, and are constantly seeking for a short cut. But there is no easy method of securing discipline. It is axiomatic that there is no royal road to learning. The effort for discipline must be intensive, and to a considerable degree it must be lifelong. But it is absolutely necessary, if there is to be any self-direction or any self-control. The worst evil that could be inflicted upon the youth of the land would be to leave them without restraint and completely at the mercy of their own uncontrolled inclinations. Under such conditions education would be impossible, and all orderly development intellectually or morally would be hopeless. I do not need to picture the result. We know too well what weakness and depravity follow when the ordinary processes of discipline are neglected.

If lack of discipline and false liberty not only impede but vitiate the education of the young, Coolidge was enough of a man of the world to know whence those things come. To show how repulsed the natural man is by anything redolent of discipline or rule, he quotes from Robert Burns' exuberant cantata "The Jolly Beggars" (1799). Like Johnson, he had no hesitation taking his wisdom from unlikely sources.

A fig for those by law protected!
Liberty's a glorious feast!
Courts for cowards were erected,
Churches built to please the priest.

Coolidge's gloss on the lines is incisive: "That character clearly saw no use for discipline, and just as clearly found his reward in the life of an outcast. The principles which he proclaimed could not lead in any other direction. Vice and misery were their natural and inevitable consequences. He refused to recognize or obey any authority, save his own material inclinations. He never rose above his appetites." Coolidge also saw how the Holy Name Society "stands as a protest against this attitude of mind." Church and state, in other words, could always join together where common ground made service to the common good not only possible but imperative.

II

Flaubert once said that "Our ignorance of history makes us libel our own times. People have always been like this." Certainly, we might be tempted

to imagine that our own times suffer from an unprecedented unruliness. Yet Coolidge reminds us that his times were just as liable to misrule. Indeed, he was fully aware that "there are altogether too many in the world who consciously or unconsciously . . . hold [the] views and follow [the] example" set out in Burns' verses, and his response to this lamentable state of affairs had a certain witty lucidity. "I believe such a position arises from a misconception of the meaning of life," he dryly remarked. Those who feel no reverence and will not submit themselves to discipline "seem to think that authority means some kind of an attempt to force action upon them which is not for their own benefit, but for the benefit of others." For Coolidge, there was a commonsensical objectionableness to such intractability: "To me they do not appear to understand the nature of law, and therefore refuse obedience. They misinterpret the meaning of individual liberty, and therefore fail to attain it. They do not recognize the right of property, and therefore do not come into its possession. They rebel at the idea of service, and therefore lack the fellowship and co-operation of others." Again, Coolidge expresses these immemorial truths with refreshing concinnity. "Our conception of authority, of law and liberty, of property and service, ought not to be that they imply rules of action for the mere benefit of someone else, but that they are primarily for the benefit of ourselves. The Government supports them in order that the people may enjoy them."

In a series of lectures that John Henry Newman gave in London in 1850, the future cardinal and saint made observations about church and state that put one in mind of Coolidge's speech to the Holy Name Society. "The great principles of the State are those of the Church, and, if the State would but keep within its own province, it would find the Church its truest ally and best benefactor," Newman wrote. "She upholds obedience to the magistrate; she recognises his office as from God; she is the preacher of peace, the sanction of law, the first element of order, and the safeguard of morality, and that without possible vacillation or failure; she may be fully trusted; she is a sure friend, for she is indefectible and undying." The problem, however, as Newman saw it, was that the state was often not interested in any truly collaborative work with the Church. Why? "It is not enough for the State that things should be done, unless it has the doing of them itself; it abhors a double jurisdiction, and what it calls a divided allegiance; *aut Cæsar aut nullus* is its motto, nor does it willingly accept of any compromise."[4] The great value of Coolidge's speech is that he saw very clearly the ways in which church and state could collaborate to achieve the common good, especially at a time when the enemies of liberty and reason were increasingly agitating against such good.

There was a kind of poetic justice in the fact that the president who went out of

his way to champion the interests of small businessmen should have reaffirmed this truth in terms of property and the liberty that makes property possible.

> When service is performed, the individual performing it is entitled to the compensation for it. His creation becomes a part of himself. It is his property. To attempt to deal with persons or with property in a communistic or socialistic way is to deny what seems to me to be this plain fact. Liberty and equality require that equal compensation shall be paid for equal service to the individual who performs it. Socialism and communism cannot be reconciled with the principles which our institutions represent. They are entirely foreign, entirely un-American. We stand wholly committed to the policy that what the individual produces belongs entirely to him to be used by him for the benefit of himself, to provide for his own family and to enable him to serve his fellow men.

Coolidge could articulate these truths with such commanding clarity precisely because he recognized that "Liberty is not collective, it is personal. All liberty is individual liberty," a truth corroborated not only by those importunate teachers, experience and reason, but by centuries of Catholic moral theology. Coolidge himself was something of a teacher, as one can see from his animadversions on the genuine genius of our constitutional order.

> Coincident with the right of individual liberty under the provisions of our Government is the right of individual property. The position which the individual holds in the conception of American institutions is higher than that ever before attained anywhere else on earth. It is acknowledged and proclaimed that he has sovereign powers. It is declared that he is endowed with inalienable rights which no majority, however great, and no power of the Government, however broad, can ever be justified in violating. The principle of equality is recognized. It follows inevitably from belief in the brotherhood of man through the fatherhood of God. When once the right of the individual to liberty and equality is admitted, there is no escape from the conclusion that he alone is entitled to the rewards of his own industry. Any other conclusion would necessarily imply either privilege or servitude. Here again the right of individual property is for the protection of society.

III

Pope Pius XI, no fan himself of collectivism, rejoiced in Coolidge's speech. Socialism and communism were anathema to him, as they are to all properly formed Catholics. Much of his papacy, extending as it did from 1922 to 1939, was given over to opposing totalitarian evil. He also promoted indigenous Catholicism beyond Europe; in 1926, for example, he personally consecrated China's first six bishops. It was only natural that he should concur with Coolidge's masterly defense of liberty. According to the *New York Times*: "The pope placed the congress in Washington of the Holy Name societies among the things which pleased him the most, and expressed gratification

that it 'culminated in a speech by the President of the Republic himself, who with appropriate words spoke of the respect due to the Name of God, of the ugliness of blasphemy, and of the divine foundation of human authority.'"[5]

Later in his papacy, in his encyclical *Divini Redemptoris* (1937), Pius would attest to the consistency with which he and his predecessors had opposed the tyrannical scourge of communism.

> This Apostolic See, above all, has not refrained from raising its voice, for it knows that its proper and social mission is to defend truth, justice and all those eternal values which Communism ignores or attacks. Ever since the days when groups of "intellectuals" were formed in an arrogant attempt to free civilization from the bonds of morality and religion, Our Predecessors overtly and explicitly drew the attention of the world to the consequences of the dechristianization of human society. With reference to Communism, Our Venerable Predecessor, Pius IX, of holy memory, as early as 1846 pronounced a solemn condemnation, which he confirmed in the words of the Syllabus directed against "that infamous doctrine of so-called Communism which is absolutely contrary to the natural law itself, and if once adopted would utterly destroy the rights, property and possessions of all men, and even society itself." Later on, another of Our Predecessors, the immortal Leo XIII, in his Encyclical *Quod Apostolici Muneris*, defined Communism as "the fatal plague which insinuates itself into the very marrow of human society only to bring about its ruin." With clear intuition he pointed out that the atheistic movements existing among the masses of the Machine Age had their origin in that school of philosophy which for centuries had sought to divorce science from the life of the Faith and of the Church.

Pius himself could not have been clearer about his own opposition to communism. Indeed, he echoes many of the points that Coolidge had made in his speech of 1924.

> Communism . . . strips man of his liberty, robs human personality of all its dignity, and removes all the moral restraints that check the eruptions of blind impulse. There is no recognition of any right of the individual in his relations to the collectivity; no natural right is accorded to human personality, which is a mere cog-wheel in the Communist system. In man's relations with other individuals . . . Communists hold the principle of absolute equality, rejecting all hierarchy and divinely-constituted authority, including the authority of parents. . . . Nor is the individual granted any property rights over material goods or the means of production . . . all forms of private property must be eradicated, for they are at the origin of all economic enslavement.

In light of his own fierce fights with the enemies of liberty, Pius naturally welcomed Coolidge's battle cry against the barbarism inherent in Marxism: "What a wide difference between the American position and that imagined by the vagabond who thought of liberty as a glorious feast unprotected and unregulated by law," the president told the Holy Name Society.

> This is not civilization, but a plain reversion to the life of the jungle. Without the protection of the law, and the imposition of its authority, equality cannot be maintained,

> liberty disappears and property vanishes. This is anarchy. The forces of darkness are traveling in that direction. But the spirit of America turns its face towards the light.

What gave this modest, this unassuming man—the epitome of small-town America—the confidence that his country possessed the light to overcome the "forces of darkness"? Ironically, it was his humility. "The fame of the advantages which accrue to the inhabitants of our country has spread throughout the world," he told his listeners.

> If we doubt the high estimation in which these opportunities are held by other peoples, it is only necessary to remember that they sought them in such numbers as to require our own protection by restrictive immigration.[6] I am aware that our country and its institutions are often the subject of censure. I grieve to see them misrepresented for selfish and destructive aims. But I welcome candid criticism, which is moved by a purpose to promote the public welfare. But while we should always strive for improvement by living in more complete harmony with our ideals, we should not permit incidental failure or unwarranted blame to obscure the fact that the people of our country have secured the greatest success that was ever before experienced in human history.

What Coolidge had to say to the Holy Name Society on that bright September afternoon ninety-seven years ago speaks to us as cogently as it spoke to his contemporaries because it is rooted in the Truth, what Johnson called "the torch of Truth."[7] But when it comes to so eloquent a witness as Coolidge to the great abiding good that church and state can accomplish in the defense of liberty, paraphrase is ill-advised. We must let this good and sensible man tell us what he has to say in his own "appropriate words," to borrow Pius's phrase. "Every mother can rest in the assurance that her children will find here a land of devotion, prosperity and peace," Coolidge told his compatriots of the land he loved. "The institutions of our country stand justified both in reason and in experience. I am aware that they will continue to be assailed. But I know they will continue to stand. We may perish, but they will endure. They are founded on the Rock of Ages."

NOTES

1. The Confraternity of the Holy Name Society promotes reverence for the Sacred Names of God and Jesus Christ, obedience and loyalty to the teachings of the Catholic Church, and the personal sanctification and holiness of its members. Founded at the Council of Lyon in the year 1274, the Society contributes to the evangelizing mission of the Church and makes perpetual acts of reverence and love for our Lord and Savior. The Dominicans, who were actively spreading the Christian message in the thirteenth century in a crusade against the Albigensians, preached the power of the Holy Name of Jesus. They spread the devotion extremely effectively. In every Dominican church, altars, confraternities, and societies were erected in honor of the Holy Name. The first Holy Name Society in the modern sense was founded in the early 15th century by Didacus of Victoria, one of the greatest preachers of the devotion to the Divine Name. He founded the "Society of the Holy Name of God" and created a rule for its governance whose purpose was "to suppress the horrible profanation of the Divine

Name by blasphemers, perjurers, and by men in their ordinary conversation." Long after Didacus's death in 1450, Pope Pius IV approved the Society on April 13, 1564. The apostolate of the Society is to assist in parish ministries by performing the Corporal and the Spiritual Works of Mercy. In seeking God's grace in order to live a holy life, members are called to receive the sacrament of penance, strengthen themselves with the most Holy Eucharist, nourish their souls on Sacred Scripture, increase their desire of divine love through prayer, and lead their families, friends, and coworkers to Christ Jesus by their acts of charity and piety.

2. Samuel Johnson quoted in *Thraliana: The Diary of Mrs. Hester Lynch Thrale* (Later Mrs. Piozzi) 1776-1809 ed. Katherine C. Balderton (Oxford: The Clarendon Press, 1951), i, 171.

3. Apropos these references to Johnson's great Dictionary, the objection might be made that it is anachronistic to cite such definitions. After all, Coolidge was writing in the twentieth century and Johnson published his Dictionary in 1755; but it is precisely because Coolidge was so deeply animated by the principles of America's Constitution that citing Johnson's definitions is in order, since they were the definitions that the Founders themselves consulted in conducting their happy deliberations.

4. John Henry Newman, *Difficulties of Anglicans*, Volume I ed. Edward Short (Leominster: Gracewing, 2020), 207. The Latin tag can be translated: "Caesar's way or the highway."

5. The news item about the pope in *The New York Times* appeared in the Ku Klux Klan paper, *The American Standard*, which assured its readers in the same number that: "Roman Catholicism and Americanism are not compatible. Roman Catholicism is oriental in origin, pagan in conception and destructive in its results. It is a product of orientalism . . . the offspring of the colored, enslaved races of mankind. Can you conceive of Roman Catholicism as being a child of the white race, of the Anglo-Saxon mind or of the Nordic spirit? For a white man to be a Roman Catholic is for him to be a traitor to all of the traditions, social customs, sacred instincts, and ideals of his race." *The American Standard* (1 January 1925), 3, 8.

6. The Immigration Act of 1924 limited the number of immigrants allowed entry into the United States by enforcing a national origins quota. The quota provided immigration visas to two percent of the total number of people of each nationality in the United States as of the 1890 national census, though immigrants from Asia were entirely excluded. Laws dating from 1790 and 1870 excluded people of Asian lineage from becoming naturalized citizens. President Coolidge signed the act into law on 24 May 1924. Majorities in Congress ensured the passage of one of the most astringent immigration laws ever enacted in American history. The popularity of the Johnson-Reed act reflected the concern many Americans had over the negative effect that large-scale immigration would have on wages and job competition. The act was also designed to stop communist agitators from coming into the country from Eastern Europe, the threat of communism being a real threat for Coolidge's contemporaries, not the "red scare" that future liberal historians would deplore. Although nativism was not unprevalent in the country at the time, there was a toughminded recognition that prudence, not bigotry, justified restrictive immigration. In any case, Rushad L. Thomas, editorial associate at the Calvin Coolidge Presidential Foundation, shows how there was nothing nativist about Coolidge's views on immigration. On the foundation's website, Mr. Thomas writes:

> Despite putting his pen to this restrictive law, President Coolidge did not harbor the prejudices and racist attitudes that so often color discussions of migration policy. In his 1926 speech at the dedication of the statue of John Ericsson, the Swede who pioneered the technology for the Monitor class of ships that helped America win the Civil War, he said ". . . when once our feet have touched this soil, when once we have made this land our home, wherever our place of birth, whatever our race, we are all blended in one common country. All artificial distinctions of lineage and rank are cast aside. We all rejoice in the title of Americans." At the 1925 American Legion convention in Omaha, Nebraska, Coolidge said "Whether one traces his Americanism back three centuries to the Mayflower, or three years of the steerage, is not half so important as whether his Americanism of today is real and genuine. No matter by what various crafts we came here, we are all now in the same boat."

7. Samuel Johnson, *The Rambler*, No. 3 (27 March 1750), *The Yale Edition of the Works of Samuel Johnson* (New Haven: Yale University Press, 1969), iii, 17.

BOOK/FILMNOTES

THINGS WORTH DYING FOR: THOUGHTS ON A LIFE WORTH LIVING

Charles J. Chaput, OFM, Cap.
(Henry Holt, 2021, 272 pages, hardcover, $25.99)

Reviewed by Brian Caulfield

When he began writing, Archbishop Charles Chaput could not know that *Things Worth Dying For* would be released in a time of pandemic, when public officials and many religious leaders would place "health and safety" above all else. While it may seem incongruous to address the higher meaning of death as millions worldwide have expired from the coronavirus, the great value of this book is found not in its connection to current events but rather in its expression of timeless truths. Indeed, in all of his writings, as well as in his role as a U.S. Catholic leader, Archbishop Chaput has been less concerned with keeping pace with his times than in preparing his people for life with God—on earth and in heaven.

This book is a twilight-of-life reflection, or *Thoughts on a Life Worth Living*, as the subtitle puts it. Chaput began writing in September 2019, having just completed his eighth year as archbishop of Philadelphia and shortly after his 75th birthday, the age when canon law required him to submit his resignation to Pope Francis. Describing these circumstances in the first chapter, Chaput seems to assume his resignation would be soon accepted, which it was—Francis announced his replacement in January 2020. There was much media speculation about the relatively quick action on America's leading "conservative" archbishop, but Chaput does not delve into those issues. Thinking of his life of service and leadership in the Church, he writes: "Stepping down from that kind of life-giving work brings with it feelings of both gratitude and nostalgia." Rather than longing to hang onto his high ecclesial position, he looks forward to "the time that becomes available for rest and reflection."

We all should be grateful that the good archbishop chose to use that time to such good purpose.

The first reason to read this book is that Chaput is a master writer. His style is deep and eloquent but never showy. He explains difficult concepts without a hint of condescension, inviting the reader into his vast knowledge of theology, literature, history, and philosophy as a friend would bring you into his home. A Capuchin devoted to the spirit of St. Francis, he places the personal over

the theoretical, yet always adheres to the true principles that make friendship with God and neighbor fruitful and, ultimately, salvific. In his mind, there is no conflict between doctrine and mercy; they complement one another.

Here is an example of his incisive writing, taken at random:

> Liberal society is good at many things. Instilling moral coherence, and a shared sense of things worth living and dying for, is not one of them. As "I" has replaced "we" as the favored pronoun of Americans, opportunities for conflict have multiplied and abscessed—with the result that for the modern cynic, as much as for the modern ideologue, contempt for the interior peace and convictions of others is the emotional equivalent of crack cocaine.

There is a balance to his prose that reflects the balance in his world view and in his manner of thought. He can get to the heart of an issue with a gimlet eye and rapier wit, yet there is an admirable reserve in his style that belies a fundamental humility. It is a humility that tells the reader to cast aside quick judgments, question easy assumptions, offer others the benefit of a doubt, and seek to reason with opponents whether in person or in print. Ultimately, it's a humility that says: Love your enemy, pray for those who persecute you; for even the most cogent social or political insight or argument is imperfect, and in taking sides too quickly or rabidly, we may easily be led astray.

A true shepherd of souls, Chaput fully acknowledges the serious earthly issues that each one of us must deal with, yet presents these in the context of a life worthy of eternity with God. He does not pretend that faith makes life easy, or that we can perfect ourselves absent the grace of God. He does insist that faith gives life its only true meaning, and that after all is said and done by the best and worst of humanity, God has the final word. The most an aging, wise soul can do is bestow a blessing on those who come after: "At seventy-five, my part in the tale is ending. But the Church, her mission, and the Christian story we all share: these go on. And so the greatest blessing I can wish for those who might one day read these words is that you take up your part in the tale with all the energy and fire in your hearts. Because it's a life worth living."

—Brian Caulfield writes from Connecticut.

DISPUTES IN BIOETHICS: ABORTION, EUTHANASIA, AND OTHER CONTROVERSIES

Christopher Kaczor
(University of Notre Dame Press, 2020, paperback, 236 pages, $30)

Reviewed by John Grondelski

In his enlightening book *Disputes in Bioethics: Abortion, Euthanasia, and Other Controversies*, Christopher Kaczor, professor of philosophy at Loyola Marymount University in Los Angeles, quotes Richard John Neuhaus's definition of bioethicists as those who "guide the unthinkable on its passage through the debatable on the way to becoming the justifiable until it is finally established as unexceptional."

Lest one think Neuhaus unfair in his assessment, consider the recent news of scientists growing monkey embryos using human cells, which a Case Western Reserve University bioethicist admitted might be "quite shocking" to the masses but having "more background than the average person about this area of science . . . I can understand why they wanted to do it" (https://news.wttw.com/2021/04/22/us-chinese-scientists-grow-monkey-embryo-human-cells-why).

The dominant philosophical schools informing the burgeoning field of secular bioethics are utilitarianism ("the greatest good for the greatest number") and proceduralism ("Did I check all the boxes, especially on 'autonomy?'"). While bioethicists assume some philosophical anthropology—some way of understanding the human person—most don't admit it, a curious omission for a discipline that emerged—in the late Sixties—ostensibly to promote human flourishing.

Professor Kaczor is forthright: "Eschewing the dominant perspectives . . . [I address] recent and influential perspectives in contemporary bioethics from a methodology that maintains the inherent dignity of all human beings who . . . merit protection in their basic human goods." This can also be described as the sanctity-of-life ethic.

Kaczor is no stranger to the field, having authored at least four other books directly dealing with pro-life bioethics, including *Abortion Rights: For and Against* (with Kate Greasley, Cambridge University Press), *A Defense of Dignity* (University of Notre Dame Press), *The Ethics of Abortion* (Routledge), and *The Edge of Life* (Springer).

What is most refreshing about this book is its unabashed sanctity-of-life perspective, a rare and underrepresented voice in contemporary bioethics. Kaczor is a scholar who wears his erudition lightly in this book: Without watering down his analysis, he writes in a way accessible to educated readers with a general interest in this field.

The book is arranged around 17 bioethical issues framed as questions. For example: "What Are Reproductive Rights?"; "Is *Roe v. Wade* Unquestionably Correct?"; "Why Should the Baby Live?"; "Should We Make Children with Three (Or More) Parents?"; "Is 'Death with Dignity' a Dangerous Euphemism?"; "Should Euthanasia Be Permitted for Children?"; "Does Assisted Suicide Harm

Those Who Do Not Choose to Die?"; "Is Conscientious Objection to Abortion Like Conscientious Objection to Antibiotics?"; "Do Medical Conscientious Objectors Differ from Military Conscientious Objectors?"; and "Should Conscientiously Objecting Institutions Cover Elective Abortions in Their Insurance Plans?"

Kaczor develops most of his arguments in response to positions advanced by other thinkers in the field. In "Is There a Right to the Death of the Fetus?", for instance, he probes the implications of artificial womb technology one day making it possible to terminate a pregnancy without fetal death. While the essay is a response to an article in theoretical philosophy by Joona Räsänen—who defends a woman's right to a dead fetus—Kaczor makes it clear that this isn't just a theoretical question. The legality of third-trimester abortions, which can result in the birth of a live infant, coupled with political opposition to robust and explicit born-alive protections, shows us how it is playing out today.

Kaczor maintains intellectual rigor while tackling these bioethical issues in memorable ways that cut to the chase. Take his criticism of the lack of internal logic behind arbitrarily fixed limits on euthanasia:

> If there is a "right to die," then why should only those at the very end of life be able to exercise it? If the suffering caused by cancer justifies self-killing, why not the suffering by losing the girl of your dreams? After all, given the choice between having cancer or losing Juliet, we all know what Romeo would choose (p. 149).

Or this critique of body-self dualism, exemplified in the contemporary willingness to identify "personhood" with consciousness and mental states:

> Suppose an individual human being has two independent sets of beliefs, desires, goals, and memories. The one human being is Dr. Jekyll and also Mr. Hyde. Now suppose a psychiatrist cures the multiple personality disorder, eliminating the Mr. Hyde set of memories, beliefs, and desires. Has the psychiatrist done an act of compassionate healing for which she deserves praise? Or should the psychiatrist be blamed for "destroying a person" and be subject to criminal prosecution for murder? (P. 127).

As the reader makes his way through Kaczor's exploration of individual questions to tease out broader trends now considered (at least by some) "unexceptional," he may be tempted to ask, "How *did* we reach this point?" By engaging these views from a consistent sanctity-of-life perspective, Kaczor opens our eyes to just how far contemporary bioethics (to borrow Robert Bork's phrase) has slouched towards Gomorrah.

—John M. Grondelski (Ph.D., Fordham) is former associate dean of the School of Theology, Seton Hall University, South Orange, New Jersey. All views herein are exclusively his own.

THE REASON I JUMP
Directed by Jerry Rothwell
Based on the best-selling book by Naoki Higashida

Reviewed by Maria McFadden Maffucci

The Reason I Jump is a remarkable film, a powerful documentary directed by Jerry Rothwell, that invites viewers to experience autism—from the inside.

How is this possible? The idea for the film came from a groundbreaking book of the same name by a 13- year-old severely autistic Japanese boy, Naoki Higashida. Though non-verbal, Naoki's ability to communicate was unleashed by a therapeutic method called rapid prompting, which involves using a letterboard, or "alphabet grid." As Naoki explains, "The alphabet grid makes it possible to form my words by simply pointing to their letters, instead of having to write them out one by one. This also lets me anchor my words, words that would otherwise flutter off as soon as I tried to speak them." He says the method was difficult at first, but "What kept hammering me away at it was the thought that to live my life as a human being nothing is more important than being able to express myself."

The book *The Reason I Jump*, published in Japan in 2007, is laid out as Naoki's answers to a series of questions. British novelist and screenwriter David Mitchell, and his wife Keiko Yoshida, themselves parents of a severely autistic child, translated the book into English in 2013. What resulted, says Mitchell, who is interviewed in the film, felt as if they had been sent "an envoy from another world," and, for the first time, "It felt like our son was talking to us."

Q25. What's the reason you jump?

What do you think I'm feeling when I'm jumping up and down and clapping my hands? I bet you think I'm not really feeling anything much beyond the magic glee all over my face. But when I am jumping, it's as if my feelings are going upward to the sky. Really, my urge to be swallowed up by the sky is enough to make my heart quiver. . . . when I jump, I feel lighter, and I think the reason my body is drawn skyward is that the motion makes me want to change into a bird and fly off to some faraway place.

When director Rothwell became intrigued by the film project, he visited Higashida in Japan. Now 26, Naoki was excited about the prospect of a film, but did not want to be in it. And so Rothwell used Naoki's words themselves as a jumping-off point (pun intended) for a new direction, and the documentary became a trip around the world to visit five severely autistic persons and their families. Two of them, Ben McGann and Emma Budway, great friends

since childhood who live in Virginia, only vocalize with grunts and noises, and yet we witness them using their letterboards to communicate—with their families, with each other, and in class–and it's mind-blowing. They are highly intelligent, keenly aware, articulate—and deeply attached to each other.

Amit Khurana is a young woman in India, whose inner isolation and extreme, persistent anxiety are relieved by what she expresses in her—amazing—art. Joss Dear is a young man in England whose parents Jeremy Dear and Stevie Lee, co-producers of the film, first brought the idea to Rothwell. Joss's story is perhaps the most heart-wrenching, as we see through home movies this beautiful happy boy with a shining love of water, sand, and certain sounds, turn into a young adult so tortured by anxiety that he becomes violent and assaults his parents. They had to make the painful decision to put him in a residential setting. The fifth person is a child, Jestina Penn Timity, who lives in Sierra Leone. Her family speaks of a whole other aspect of autism—that in the culture where they live, disabled children were traditionally considered as demonic! Jestina's family has founded an organization in Sierra Leone to aid disabled children and their families and counter such damaging attitudes.

There is a second powerful way this film portrays autism from the inside. Interspersed with the visits to families are scenes of a young boy, Jim Fujiwara—also autistic and nonverbal—alone in different natural settings, with a voice narrating passages from the book. The film and audio are meant to immerse the viewer in the sensory world of those with autism. Children with autism were once described as "out of it"—as shut off, and unfeeling, lacking both awareness and empathy. We know now that the reason those with autism seem "shut down" is not because they don't feel things, but because they feel things too much. We neurotypicals have a way of integrating our sensory input, so that we can focus, for example, in an office where a fluorescent light may be making a slight buzzing sound and there are also footsteps in the corridor. We can edit those distractions out and focus on the task at hand. Those on the autism spectrum have heightened senses—all five of them—and because of that, sounds, sights, touches, can all assault their senses in cacophonous and alarming ways that make it impossible for them to focus. They retreat into themselves as the only way to stop the assault.

Q 37. Why do you flap your fingers and hands in front of your face?

Flapping our fingers and hands in front of our faces allows the lights to enter our eyes in a pleasant, filtered fashion. Light that reaches us like this feels soft and gentle, like moonlight. But "unfiltered" direct light sort of "needles" its way into the eyeballs of people with autism in sharp straight lines, so we see too many points of light. That actually makes our eyes hurt.

Q 13. Do you prefer to be on your own?

"Ah don't worry about him—he'd rather be on his own."

How many times have we heard this? I can't believe that anyone born as a human being really wants to be left all on their own, not really. No, for people with autism, what we're anxious about is that we're causing trouble for the rest of you, or even getting on your nerves. . . . The truth is, we'd love to be with other people. But because things never, ever go right, we end up getting used to being alone, without ever noticing this is happening. Whenever I overhear someone remark how much I prefer being on my own, it makes me feel desperately lonely.

For families of children with autism, the book and film might be a wake-up call. David Mitchell writes in his Introduction: "Naoki Higashida's writing administered the kick I needed to stop feeling sorry for myself, and start thinking how much tougher life was for my son, and what I could do to make it less tough." I had a similar reaction. And for me, this film, although at times heartbreaking to watch, has a crucial message: We live in a culture that dismisses the disabled as "less-than"—a tragedy, because that is a rejection of the deeply mysterious ways God has created human beings. And there is a universal message, I think, for all parents: Rather than harping and nagging our children to do this or that, to be this or that—enter in first to who they are, and what they might be trying to tell you. Even for neurotypical children, challenging behaviors are an attempt to communicate.

When my son (now 26) James was a toddler, before we realized he had autism, one day I looked at his serene little face and I "saw" Antoine de Saint-Exupéry's "Little Prince." I was giving James a bath after dinner, and he had some pieces of pastina–the tiny star pasta that is often Italian babies' first solid food—in his golden curls, and I suddenly got this overwhelming sense that he was our "Little Prince"—sent to us from beyond, mysterious and otherworldly. I tried several times to write a poem to capture that moment, but, alas, I'm not a poet. Yet the scene flashed to my mind when I read Naoki's answer to question 58:

Q58. What are your thoughts about autism itself?

I think people with autism are born outside the realm of civilization. Sure, this is just my own made-up theory, but I think that, as the result of all the killings in the world and the selfish planet-wrecking that humanity has committed, a deep sense of crisis exists.

Autism has somehow arisen out of this. Although people with autism look like other people physically, we are in fact very different in many ways. We are more like travelers from the distant, distant past. And if, by our being here, we could help the people of the world remember what truly matters for

the Earth, that would give us quiet pleasure.

The Reason I Jump can be viewed on Netflix or by purchasing the DVD.

—Maria McFadden Maffucci is the Editor in Chief of the Human Life Review.

In Loving Memory

Mary Anne Catherine Hayes

September 4, 1931 — July 16, 2021

†

FROM THE *HLR* WEBSITE

The Little Discussed But High Blood Clot Risk of Hormonal Birth Control

Mary Rose Somarriba

In April, the Johnson & Johnson Covid-19 vaccine received scrutiny after six women experienced a rare blood clot condition, causing the United States to pause its distribution "out of an abundance of caution." Immediately, some trying to downplay the risk compared the J&J vaccine to hormonal birth control.

> For perspective, here are some numbers:
>
> - 1 in 1,000,000: J&J vaccine
> - 1 in 3,000: oral contraceptives
> - 1 in 5: hospitalized COVID-19 patients
>
> As someone who got the J&J vaccine 8 days ago, and who took oral contraceptives for 20 years, I'll take these odds.
>
> — Dr. Angela Rasmussen (@angie_rasmussen) April 13, 2021

While the type of blood clot apparently caused by the J&J vaccine and those caused by birth control are different types of clots, I couldn't help but wonder if the comparisons to birth control blood clot risk would bring more attention to the often downplayed but quite serious health risk of the most highly prescribed drugs in the world. Saying birth control causes more life-threatening blood clots than the J&J vaccine isn't quite a ringing endorsement for the vaccine, I thought, since birth control-caused blood clots take a significant number of women's lives yearly!

According to a 2019 systematic review of the scientific literature led by Dr. Lynn Keenan of the University of California, San Francisco, 136 to 260 healthy women die from venous thromboembolism (VTE) caused by hormonal birth control every year. "When that risk is combined with the added risk of stroke and heart attack, between three and four hundred women die every year in the United States due to their choice to use hormonal contraception," Dr. Keenan explains.

Between 300-400 U.S. women die annually because of hormonal birth control.

The stunning numbers of 300-400 U.S. women lost yearly bears repeating, because birth control's connection to blood clot risk is so little known and discussed, both from doctors prescribing the contraceptives and from the

drug manufacturers' inserts themselves. All of the drug inserts in hormonal contraceptive prescriptions mention blood clot risk, but they often do so in ways that obscure the level of risk for the average woman. Many birth control warnings note, for example, that the drug "may increase your risk of blood clot, especially if you are a smoker," leading women to think if they don't smoke, they're safe. But, while smokers do experience a higher risk than non-smokers, all women on hormonal contraceptives experience a higher risk than women not on hormonal contraceptives—a fact that is significantly downplayed. (Birth control providers often compare the risk to pregnancy risk of blood clots, which is higher than birth control's risk; but this isn't a fair comparison since no person is constantly pregnant for ten years straight the way young women commonly take birth control, not to mention how one is a cocktail of synthetic hormones and the other is a natural state of reproductive health.)

It's misinformation like this about birth control side effects and health risks that led a group of physicians to submit a Citizen's Petition to the FDA on May 10, 2019, calling for greater transparency about the risks for women who are prescribed birth control.

As Madeleine Coyne explains at Natural Womanhood, "the goal of the Citizen's Petition is to compel the Food and Drug Administration to better inform all prescribers and consumers of hormonal birth control of its possible (and even likely) evidence-based health risks, whether in the form of a pill, patch, implant, shot, IUD, or vaginal ring."

At the time of this article's publication, the FDA petition is still open for comment for people whose lives have been affected by adverse reactions to hormonal contraceptives. And among the 158 comments currently publicly available, there are some shocking stories.

One woman named Laura posted this comment:

> 2 years ago, my daughter died from a blood clot in her brain caused by the birth control, Yasmin. It was prescribed to her for acne and she believed it was safe. She had no risk factors, no clotting disorders. In the hospital, the doctors told us they see 3-5 patients EVERY WEEK with blood clots from birth control. That's one hospital in a small metropolitan area in Wisconsin. I can't imagine what other hospitals are experiencing. Unfortunately, in the last 2 years, I have met several other mothers who lost their daughters to birth control and many others who almost did. Yasmin is still on the market. WHY?!? So many of these contraceptives need to be removed from the market and further studies need to be done. There needs to be SAFE options for women.

Another woman, named Stacey shared this:

> I had a deep vein clot in my left forearm directly linked to my use of the vaginal ring. . . My only knowledge of blood clots and birth control was that smoking increased the risk of blood clots while on birth control; I am not a smoker. I also

> experienced severe mood swings and depression, and weight gain, on depo-provera, these symptoms being down-played by my doctor as normal during the use of birth control.

Numerous girls and women are exposed to birth control risks as the default of women's healthcare.

While some may view the risks of birth control worth it for the pregnancy protection, such a choice is only possible if the woman has been given full informed consent to the risks. Unfortunately for many young women, they are prescribed the birth control Pill, patch, implant, IUD, vaginal ring, or shot simply as a standard of care for being female, and without full knowledge of the risks. Even for teen girls who are not sexually active, general practitioners and OBGYNs alike will recommend birth control as a means of regulating the menstrual cycle (which it doesn't do), or treat any number of conditions such as acne, cramps, and so on. And the American College of Obstetricians and Gynecologists currently recommends long-acting reversible contraceptives (LARCs) such as the Nexplanon implant or intrauterine device (IUD) for adolescent girls.

Not only are these girls young, impressionable, and influenced by peers also taking these drugs, they can put a lot of weight into their doctor's recommendation, which may not include a full disclosure of the risks. And when they start experiencing common birth control side effects such as depression, anxiety, or other mood disorders, their doctors often dismiss them as non-issues or prescribe antidepressants.

For a long time, women and girls experiencing contraceptive side effects and adverse health risks haven't had their concerns taken seriously. For the 300-400 U.S. women dying annually from blood clot and cardiovascular-related events related to their choice of birth control, their voices are forever silenced. One can only hope that their loved ones' voices shared on the Citizen's Petition to the FDA for greater transparency will be heard.

—Mary Rose Somarriba is editor of Natural Womanhood.

On the Storming of the Capitol: No to Political Violence. Yes to Civil Society

Rev. Paul T. Stallsworth

The one, holy, catholic, and apostolic Church strives to serve the Gospel of Life. Remember that the Gospel of Life is simply the Gospel, and that the Gospel is simply the Gospel of Life. (St. John Paul II and Rev. Richard John

Neuhaus often reminded us of that.) Political violence—assaulting people and property—is open rebellion against the Gospel of Life. Therefore, the Church condemns all such political violence.

On January 6, the United States Capitol in Washington, DC was violently overtaken by a mob. The Church condemns, without qualification and without question, this lawless act of political violence that resulted in a few deaths, many injuries, considerable property damage, interruption of constitutional process, and harm to an already ailing civil society. Whatever their motivations, the perpetrators of this political violence must be brought to justice and pay for their crimes.

The Gospel of Life consistently collides with the culture of death. In the storming of the Capitol, the culture of death was on dramatic display. But the political violence of January 6 on Capitol Hill was not a stand-alone event. It was the culmination of many events and trends in the United States, including: the reduction of everything in public life (and much of private life) to politics; our deepening and destructive political polarization; the stoking of political hatred on social media; the heightening of tensions between identity groups; the normalizing of political violence in cities over the last year.

Our trust in journalistic and political institutions has been diminishing for a while. Now we hear coarsening and "canceling" political speech from presidents, past and present, and their allies and opponents. And from Big Media and Big Tech. Hollywood celebrities and university professors. Commentators behind desks and demonstrators in the streets. Far-off public officials and neighbors nearby. Add to this the strain of the enduring pandemic, which has caused and continues to cause so many deaths, and the unprecedented shutdowns, which have been spiritually, socially, and economically devastating to countless people.

The culture of death and its eruption on January 6 cannot be blamed on one person, one group of people, or one political party. Nor can the culture of death and its future outbursts be ameliorated by one person, one group, or one political party. Restraint of the culture of death requires the best efforts, in word and deed, from all of us. At this time, all Americans, without exception, must rededicate ourselves to the tasks of responsible citizenship—which include upholding the rule of law and practicing civility in public life—as we exercise God-given freedoms.

God's providence provides two gifts that help restrain the culture of death: the rule of law and the virtue of civility. Justice in America requires that laws encourage citizens to do what is good and to avoid what is evil, and that they apply equally to all citizens. Taken together, such laws make for the rule of law. (The rule of law is a legal consequence of the Jewish and Christian belief

in the God who is Lord, who mysteriously rules over history and humanity.) Observance of the rule of law is necessary for justice in America to be approximated and advanced.

The culture of death is also restrained by the practice of civility throughout the land. As citizens exercising God-given freedoms, we must speak and behave in ways that build up, not tear down, civil society. Today, American citizens must relearn how to: respect one another and avoid personal attacks (even in the midst of disagreements); tolerate (not criminalize) political differences; and set aside (not welcome and satisfy) the urge for vengeance.

The Gospel of Life relies upon the rule of law and the practice of civility to rein in the chaos of the culture of death. Though Jesus Christ, in His death on the cross and His resurrection from the grave, defeated the culture of death, it will continue its devastations in this world until Christ's return in glory. When Christ returns and completely destroys the culture of death, He will establish the Gospel of Life as the Kingdom of God, fully and totally. Until then, God's gifts of law and civility will be necessary to restrain the culture of death and protect the Gospel of Life.

The Pledge of Allegiance of the United States concludes: ". . . one nation under God with liberty and justice for all." "[O]ne nation under God" signals that the United States of America is under God's sovereignty, providence, and judgment. Reminded by the Church's Gospel of Life, the American people would be wise to live in liberty under law and with civility—and awakened to God's present and coming judgment.

—Rev. Paul Stallsworth, who is retired from pastoral ministry in United Methodist congregations, is president of the Taskforce of United Methodists on Abortion and Sexuality, and edits its quarterly newsletter Lifewatch.

APPENDIX A

[*Samuel D. James serves as associate acquisitions editor at Crossway Books. The following column was published July 19, 2021, on the website of* First Things *(www.firstthings.com) and is reprinted here with the magazine's permission.*]

The Illusion Of Porn "Literacy"

Samuel D. James

Contemporary progressivism faces a pressing dilemma. It must continue the sexual revolution's legacy of free love and sex-positivity, but it must do so in a Pornhub age, in which maximal sexual liberty has produced not an egalitarian paradise but a brutal human marketplace. For elite liberals, pornography has always been the badge of liberation that wouldn't stay pinned on quite right.

The latest example of this awkwardness comes from (where else?) American schools. Earlier this month, the *New York Times* profiled Justine Ang Fonte, a "sex positive educator," who resigned from a swanky New York prep school after parents of high schoolers expressed dismay at a lecture on "porn literacy." The *Times*'s sympathetic coverage of Fonte frames the backlash as the result of a right-wing media hitjob, but students and parents told the *New York Post* that the material in the class—which included a survey of popular pornography categories and an interview with a female performer—made them uncomfortable.

The *Times*, meanwhile, handled the question of porn classes for minors with all the grace of an elephant on ice skates. Reporter Valeriya Safronova writes of kids using porn as an inescapable reality of modern life. The best response, she concludes, is resignation plus education: "Pornography literacy classes teach students how to critically assess what they see on the screen—for example, how to recognize what is realistic and what is not, how to deconstruct implicit gender roles, and how to identify what types of behavior could be a health or safety risk."

It is rather surprising that anyone who knows the name Harvey Weinstein could believe that progressive gender politics can infuse pornography with virtue. When actress Salma Hayek told journalists that Weinstein forced her to perform an explicit nude scene in order to keep his funding for her film, nobody asked whether there may be systemic exploitation behind much of the gratuitous sexuality in entertainment. Why not, especially since it was the *Times*'s own Nicholas Kristof who blew the lid open on a massive story about sex trafficking and rape on Pornhub, the world's biggest pornographic website?

Among many other things, the push for porn literacy classes reveals just how decadent the liberal dream has become. For decades, media moguls and sex researchers insisted that maintaining a robust market of pornographic content for willing adults was compatible with protecting children from being harmed or victimized. From plastic bags over magazines, to cordoned-off sections of the video store, to FCC-mandated time slots, the narrative was the same: Adult-only desires

can and should be fulfilled.

The Internet utterly destroyed this compromise, and the smartphone delivered the coup d'etat. Extreme forms of pornography are now viewed regularly by 12- and 13-year-olds. Teens are participants, not merely viewers. Sociologists are coy about wondering if the "sex recession" might have something to do with the triumph of online porn, but the lesson from the Japanese demographic crisis, particularly when it comes to young men, seems clear enough. Why would anyone risk rejection, awkwardness, pregnancy, or disease to have sex when limitless masturbatory fantasy is so free and easy? So much for adults only.

Thus, one can sympathize somewhat with the logic behind porn literacy classes. Indeed, the students are watching it. Administrators are facing crises of sexting and exploitation inside their buildings. So why not, as one panelist on "The View" expressed it, let the kids learn about it "from a healthy place"?

But this is a hopeless question. Education is about discernment, yes, but it is also moral formation. No teacher or administrator interested in keeping her career would advocate a curriculum that treated racism the way porn literacy treats smut, as a substance with which to become better acquainted and a more informed consumer. Likewise, any teacher who invited a CEO of Big Tobacco to give a lecture on why his career is satisfying would be sharply rebuked. What we as a society deem harmful and unjust is taught as such. Porn literacy is a technocratic evasion to avoid either approving pornography wholesale, which most parents would find revolting, or condemning it forthrightly, which many on the cultural left would not abide. In the end, "literacy" curricula is likely to be as effective a compromise for schools as adults-only labels and online age gates are.

There's no good reason schools should decline to condemn pornography to their students. It is addictive, misogynistic, desensitizing, and a vehicle for human rights violations. The cost of society's "pornification" falls most heavily on girls, who go to extreme measures to keep up with airbrushed perfection and tolerate rougher, more degrading sexual encounters in their teens. But boys suffer too; addiction warps male sexual responsiveness to real women, as many have discovered. As one user put it in a *Time* essay, "I've wasted years of my life looking for a computer or mobile phone to provide something it is not capable of providing." All of this data is available for educators, and none of it requires an hourlong tour through the porn industry.

Porn literacy, on the other hand, beatifies pornography, and its advocates know this. If proponents of porn literacy believed pornography to be harmful and destructive—as it is—they would teach their students to believe this. The curriculum is a worldview masquerading as critical thinking.

Thus collapses the liberal compromise, wherein the liberty of willing adults is accommodated but the innocence of children is preserved. In the twentieth century, Americans were gifted a trojan horse of moral relativism for all, out of which stormed an army of educators, activists, and Big Tech CEOs. In not even half a generation we have gone from protecting kids from smut to protecting smut from

ignorant kids. Porn literacy is an illusion, a whiff of the sexual revolution's decomposition, and a reminder that our post-Christian schools are nonetheless places of deep spiritual formation.

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We have freedom of thought in this country. You're at liberty to believe whatever you want to believe. You can believe the earth is flat; we'll all judge you for it, but it's not illegal to believe it. But if your belief that the earth is flat leads you to ignore the curvature of the earth while you're navigating an airplane, we have a problem. And if a person's subjective beliefs about the "mystery of human life" are allowed to trump laws against killing other people, that's not liberty. That's oppression. . . .The evidence for life before birth is overwhelming. Knowing what we now know, the denial of life's existence in the womb amounts to a religious doctrine—and a particularly destructive one. It has no place in a civilized legal system.

—Kelsey Hazzard, "*Dobbs* v. *Jackson Women's Health Organization:* Perspectives on the Impending Fate of *Roe*"