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◆FEATURED IN THIS ISSUE◆

◆ALSO IN THIS ISSUE◆

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About this issue . . .

At just over a year after *Dobbs* v. *Jackson*, we are in an epic struggle "to remind people of the underlying moral rightness of laws protecting human life, in the face of huge countervailing cultural forces and interests," writes Thomas Clark in Part 2 of "The Myth of *Dobbs* Losing the Midterms" (p. 35). Huge forces indeed—and getting more absurd. For example: "Trans folks often have to travel further to get a doctor to use their pronouns," says "abortion doula" Ash Williams, explaining to National Public Radio why she works to provide funding, including travel expenses, for transgendered men who want abortions (reported by Anne Hendershott and Lucia Hunt in "The Return of Abortion Tourism," p. 17). The right to *pronouns* trumps the right to *life*? While the mainstream media is piling on stories of how terribly hard it is for "pregnant people" to get abortions since *Dobbs*, how do we get any traction for the truth about what abortion actually *does?*

George McKenna, who we will honor as a Great Defender of Life in October (along with Thomas Brejcha, whose marvelous "Reminiscence of *NOW* v. *Scheidler*" begins on p. 37), writes in "Where Do We Go from *Dobbs*?: Continuing the Conversation" (p. 50): "I firmly believe that the vast majority of Americans are good people," and if the facts about abortion were "widely publicized," especially through ultrasounds, which are truly "baby pictures . . . I can't imagine they would react with anything but shock and anger." The censorship of the truth *does* make one angry, but McKenna also echoes the words of Wesley Smith (from the symposium in our previous issue) that, to be effective, prolifers need to "change the movement's (largely but not totally false) reputation as angry to one recognized as steeped in love."

How do we lead in love? We have an inspiring example in the report starting on p. 54: "The Guadalupe Project at Catholic University," which extends the "hand of loving welcome to mothers in our community, no matter their circumstances; to children; and to fathers." The Guadalupe Project's practical help for pregnant women and their families is a shining example of love in life-saving action, one we think ought to be widely imitated, and we thank Deputy General Counsel Jennie Bradley Lichter for sharing the news of this forward-thinking initiative.

I admit to being more angry than loving as I read the book I review in Booknotes (*Madame Restell: The Life, Death and Resurrection of Old New York's Most Fabulous, Fearless and Infamous Abortionist*, by Jennifer Wright, on p. 79). However, I tempered my reaction with humor, as you will see. (And thanks go as always to cartoonist Nick Downes for the blessed giggles he provides.) You won't want to buy *that* book, but please consider reading *Survivor: A Memoir of Forgiveness*, by Cynthia Toolin-Wilson (En Route Books and Media), reviewed by newcomer to our pages Kiki Latimer on p. 77.

We usually include several excellent pieces in From the Website, but this time we were short on space; I do encourage you to visit our website at www.humanlifereview.com often, so you don't miss the weekly Pastoral Reflections, blogs and NEWSworthy items by our articulate contributors.

Our thanks go to National Review Online and *First Things* for permission to reprint Clarke D. Forsythe's "Congress Funds Coercion When It Funds Abortion" (Appendix A); and Gerard V. Bradley's masterful essay "Life after *Dobbs*" (Appendix B).

For more on what we offer here, turn to Anne Conlon's compelling Introduction and get ready to engage, for life!

Maria McFadden Maffucci
Editor in Chief

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INTRODUCTION

A recent news story got me wondering how much longer sane people will tolerate the devolution of the sexual revolution into farce. The CDC, apparently, is now using its website to instruct transgender men (women) whose breasts have been cut off on how to "chestfeed" their infants and transgender women (men) on medication that will induce lactation "so they can pretend to be women by feeding from their nipples." (No, this is not the *Babylon Bee*—it's the *Washington Examiner*.)

Mary Eberstadt, writes William Murchison in our lead article ("The Moral Clarity of Mary Eberstadt") has trained "an industrial-quality flashlight" on our disheveled culture for decades. Which makes her, he says, perfectly positioned to assess the ongoing effect the sexual revolution has had on "society, politics, and Christianity itself." This isn't a review so much as our senior editor's appreciative take on Eberstadt's latest book, *Adam and Eve After the Pill Revisited*, coupled with his own "supplementary way of looking at human prospects, unencouraging as they seem to be." The sexual revolution, "properly understood," is "the latest instance of uprooting ways and modes displeasing to people who want something more, as they see it, pleasurable and fulfilling." ("Call it the Golden Calf Thing," he quips.) As to why this one took longer to manifest than "other upheavals," perhaps, Murchison posits, because "ancient religious structures and teachings about male-female relationships made intuitive as well as religious sense."

Pace our mad transgenderist moment, could an intuitive if not religious sense be having a cultural resurgence? "Within the past decade," observes Alexandra DeSanctis in our following article ("Feminists and Contraception"), "it seems as if a new generation might be waking up to the harms of both the sexual revolution and the pill that enabled it." They are even questioning "whether the Pill's promise of sexual liberation has actually improved the lives of women." There is, she goes on, a burgeoning market for "do-it-yourself" books like Jolene Brighten's *Beyond the Pill* and Toni Weschler's *Taking Charge of Your Fertility* that teach women to embrace their biology, not pervert it with hormonal contraceptive*s.* And this isn't just a conservative phenomenon: "Critiques of the sexual revolution," says DeSanctis, "are starting to come from inside the [progressive] house." Because no matter what their politics, women "seem not to be thriving in the world that the sexual revolution prepared for them."

Dobbs shook the progressive "house" to the rafters. "When the leak that *Roe* would be overturned emerged from the Court in May 2022," write Anne Hendershott and Lucia Hunt, "abortion providers and their political minions mobilized to confront what they saw as an existential threat to their industry." In "The Return of Abortion Tourism," Hendershott and Hunt look at an under-covered aspect of the decision's impact: Blue-state politicians, they report, are rewarding abortion providers—among their biggest donors—by "allocating taxpayer money to help underwrite out-of-state women's access to abortion." Yes, progressive bastions

like New York, California, and Connecticut are tapping state coffers to fund promotional campaigns online *and* out-of-doors, with "bold invitations to end unwanted pregnancies, strategically placed on billboards on busy highways in states where abortion is restricted." Billboards—still another front in the progressive war to abortionize the nation.

Of course, the first grenade lobbed at *Dobbs* came from the dissenting justices themselves, whose "superficially attractive arguments," as Thomas Clark describes them in Part II of "The Myth of *Dobbs* Losing the Midterms," were deployed "to make the ultimate attack on the most vulnerable members of the human family seem 'progressive' and the defense of those lives seem 'reactionary.'" In Part I of his article (Spring 2023), Clark argued that pro-life initiatives took a beating in the 2022 midterms because Republicans failed "to authentically articulate the evils of abortion" while Democrats spent billions on wildly deceptive messaging that scared the "mushy middle" into voting for extreme measures. Here Clark casts a lawyerly eye on the dissent: "An effective refutation" of its "mischaracterization" of abortion as a progressive good, he says, "will be key to winning the broader cultural struggle for life that is to come." And an effective refutation, fellow "reactionaries," is what he provides us.

Thomas Brejcha, who we will honor in October with our Great Defender of Life Award, is the founder, president, and chief counsel of the Thomas More Society, a Chicago-based network of lawyers celebrating 25 years of protecting "life, family, and religious liberty." But Brejcha's experience as a pro-life litigator, as he relates in our next article, goes back to 1986, when he signed on to help defend the legendary activist Joe Scheidler in what turned out to be a 27-year court case, morphing from a "single count" into "a massive federal racketeering (RICO) and extortion class action claim" that "traced an erratic path of ups and downs through all levels of the federal judiciary" and "triggered three successive appearances before the Supreme Court." The *Review* covered its progress and regress and final success—we are proud to add to our archive "A Reminiscence of *NOW* v. *Scheidler,*" in which Brejcha chronicles as only a true insider could one of the most important episodes in the history of the pro-life movement.

Speaking of our archive, it also holds a trove of important work by George McKenna, professor emeritus of political science at New York's City College and this year's other Great Defender of Life. McKenna's association with the *Review* dates to 1995, when we reprinted his seminal *Atlantic* magazine essay "On Abortion: A Lincolnian Position." Over the years, he has become not only a steady contributor but a cherished friend. His latest article "Getting There"—a thoughtful and thought-provoking argument for how to make the case against abortion to fellow citizens in political campaigns and in state legislatures and courts—was the focus of a symposium ("Where Do We Go from *Dobbs*?") in our last issue. Now McKenna has the floor again: In "Continuing the Conversation," he engages each participant's response: "I've learned a lot from their remarks," he tells us, and "hope to be able to incorporate some of what I've learned into my thinking as this new turn in the abortion debate proceeds."

Now for another conversation: "In the days leading up to the Supreme Court's decision in *Dobbs* v. *Jackson,*" writes Jennie Bradley Lichter in introducing our next offering, "leaders at The Catholic University of America asked ourselves: What can Catholic University do to meet this historic moment?" The answer was *The Guadalupe Project: Building a Culture of Radical Welcome for Moms, Dads, and Babies at Catholic University,* a blueprint for how CU could discourage abortion by being a place where mothers and fathers "are fully supported—and family life is celebrated." It's an unusual reprint for us, but one we consider important to have in the *Review,* as it provides invaluable guidance that can be adapted by other academic institutions, or even corporations, on how to become a community that will "lead with love in [its] response to this watershed decision."

Canada's Supreme Court made a very different watershed decision in 2015 when it declared laws prohibiting assisted suicide unconstitutional, unleashing evil, not love, as Mark Davis Pickup shows in our final article ("Evil Advances in Increments"). The liberal government quickly stepped up, and in 2016, "legalized medically assisted suicide for incurably ill and disabled citizens who were in an advanced state of decline and whose deaths were 'reasonably foreseeable.'" In the short time since then, however, "medical assistance in dying" or MAiD has metastasized. No longer is "reasonably foreseeable" part of the law. In 2021 eligibility was extended to the mentally ill and would have been introduced last March but for unexpected "blow-back" that caused officials to postpone implementation until 2024. Meanwhile, Pickup reports, "earlier this year, a parliamentary committee recommended MAiD for mature minors (children)." Woven throughout this heartfelt—and surprising—article is Pickup's own story as a long-time sufferer of a disabling disease who has "come to understand that assisted suicide and euthanasia have no place in a genuine human family."

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What happens to a "gravely dysfunctional family" when an 11-year-old hears from her mother that she tried to abort her? In Booknotes, Kiki Latimer reviews Cynthia Toolin-Wilson's *Survivor: A Memoir of Forgiveness*—"a physical and spiritual rags to riches journey" affirming the "preciousness of the human person." Not so *Madam Restell: The Life, Death and Resurrection of Old New York's Most Fabulous, Fearless and Infamous Abortionist*. Reviewer Maria McFadden Maffucci concludes that it affirms the appalling cynicism of its author Jennifer Wright, who says she undertook this project "to refine my vague idea that 'someone should write a book about how abortion has always been common.'" It wasn't common before *Roe* (see Thomas Clark's article), but fact-checking doesn't apply to abortion. We finish up this issue with appendices by two of our Great Defenders of Life, Clarke Forsythe (2014) and Gerard Bradley (2022), as we continue to add important work published elsewhere to the *Review*'s unparalleled record of the sanctity-of-life debate.

Anne Conlon
Editor

The Moral Clarity of Mary Eberstadt

William Murchison

Mmmmhhfff, yuck—that decidedly past-prime odor enveloping life in hyper-woke, hyper-amped 21st-century America! What in the world could it be?

What in the world could it *not* be, I meekly inquire about the cow pasture we have come, curiously, to call our culture: a name once invested with dignity and honor, more recently known for its bumper crop of class, ethnic, political, and personal anxieties, not to mention just plain hatreds.

The culture, meaning life in these United States, is a mess, more and more offensive to the useful purposes of human endeavor, as attentive readers of Mary Eberstadt—I cannot imagine another kind—are acutely positioned to understand.

The lady talks to us with force, animation, and a moral clarity hardly known in our time. She focuses sharply on how we managed to get our ideas about sex all wrong, to the impoverishment of our moral resources and the near—near, I said, not complete—ruination of our common life.

Sex, sex, sex—didn't we have it out years ago over repression, feelthy (as cartoonists always rendered the word) pictures of unclad women, and so forth, and didn't we decide somewhere along the line that sex was too lovely and intimate a thing to leave to the oversight of jowly clergymen and, still worse, parents, with all those rules about parking and sparking? You could say we sort of did have it out, and that our steadily decreased interest in the meaning of it all gave us unprecedented rates of family breakup, non-family formation, and the deaths, by abortion, of 63 million unborn children.

Which wasn't the end of it, to be sure. *Adam and Eve after the Pill Revisited* (Ignatius, $19.95)—Mrs. Eberstadt's slightly updated recounting of events and considerations since her original *Adam and Eve after the Pill* (also Ignatius)—sweeps us into the current battle for social mastery not just of action regarding human sex but of human thought, of human expression, of human belief and understanding.

She very correctly, as I see it, sees Americans living in a revolutionary situation. The word "revolutionary" in our time of revolution—a time of turning and churning—has acquired a connotation of destiny: The revolution, a thing

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of virtuous aspiration, always wins; the ancient regime falls to pieces, and nooses adorn every lamppost by way of overdue reckoning. I don't think, for reasons I shall shortly unfold, that we—the holdouts, the sticks-in-the-cultural mud—are in so perilous a case as all that. But the revolutionaries, we have to recognize, have dark designs on our beliefs, our understandings. They lust to make us live their way. They would stuff their notions and doctrines down our throats, not caring whether we gag. That is why we need to know, in as much detail as possible, what they mean to do to us.

Enter Mary Eberstadt, industrial-quality flashlight in hand.

As a guide to the infelicities—putting it mildly—that the revolutionaries would visit upon a society they already have confused and inflicted needlessly with guilt, Mrs. Eberstadt is nonpareil. Few other authors seize our lapels so hard, warning of what's afoot. *Adam and Eve after the Pill Revisited* revisits her abiding concern that the eradication of consequences from sexual misadventure—she dates it from the institutionalization of contraception—is submerging us in moral muck. Have-it-your-way sex? What are we waiting for?!

Maybe we wait for some astute author—Mrs. Eberstadt qualifies beautifully—"to assess the [sexual] revolution's *macroscopic* fallout: its extensive and compounding effects on society, politics, and Christianity itself." How theory works out in practice, in other words. How the worst ideas, once put into play, disclose their own unworthiness.

Take the moral mess called modern politics, whose chief attributes—rancor and aggressiveness, and the unashamed love of power—reduce democratic government to sheer incoherence: a target of ridicule. Can you remember when politics was supposed to take a high view of government's responsibility for peace and justice, each considered as unitive, not divisive? If you do, you likely remember telephone party lines.

With relatively few murmurs from government—more often with whoops of approval—the sexual revolution has gone forward scarcely abated. The new breed of politician asks, just why shouldn't a woman control her own body? And why—given the centrality of sex in our understandings—shouldn't a man transition to womanhood if he wants? Or a woman into manhood? Mrs. Eberstadt is not content to remark the falsity of such assumptions. She wants us to recognize the baneful effects of allowing men to disengage themselves from responsibility for their offspring.

"What is happening to America," she writes, "is an excruciatingly painful truth that life without father, Father [she means God, as if you had to guess] and filial piety toward country are not the socially neutral options that contemporary liberalism holds them to be. The sinkhole into which all three have collapsed is now a public hazard."

Not least because the revolutionaries—while the tearful and fearful look on helplessly—have ruled out dissent from their mighty revelations. We're not going to have none of that white supremacy stuff around here, no, sir! No free speech, no liberty of discussion for the morally backward and depraved, as fingered by the forces of the new righteousness. The new intolerance itself is "a full-blown, quasi-religious substitute faith for Christianity." As for Christians and such, more and more of their leaders, projecting the present onto the screen of the future, make their peace, such as it can be, with the new order.

Mary Eberstadt is an acute critic of the new order, to whom members of the old, apparently dying, order may look with confidence for the leadership their enfeebled institutions seem unable to give. We owe her much on this account.

I want at the same time to suggest a supplementary way of looking at human prospects, unencouraging as they seem to be. I think Mrs. Eberstadt's invocation of Adam and Eve as witnesses to our disorders is right and valuable. We should be grateful to her for unearthing a narrative—that an outdoor, *au naturel* dinner party leads to perdurable human problems—that fewer and fewer humans see as anything but a fairy tale. We cannot doubt that the sexual revolution which engulfed us in the 1960s—the birth control pill as symbol of the New Freedom—has done, and continues to do, immense damage to civilization (a word lately turned into mockery).

I would like all the same not to leave things there. I begin by suggesting that malign tendencies had long been afoot when the '60s began, and were eroding the foundations of belief, pill or no pill. Sexual standards had been seriously weakening at least since the 1920s—standards of relationship between husband and wife, between parents and children, between families and society; standards of duty and responsibility; of behavior; of love. That was it, surely—love, "in the Biblical sense," as the saying used to go; the putting-aside of self; the commitment to another; "to have and to hold from this day forward," as the Book of Common Prayer put it, "for better for worse, for richer for poorer . . ."

It would be pleasant to say, yep, that's what we did all right and ought to get back to doing today: the fly in the ointment—the snake in the underbrush, rather—having been revealed to us in the third chapter of *Genesis.* The creature showed the Creator he liked his own ways better than any imposed alternatives, so there! And so it has been since then, down to Mary Eberstadt's latest publishing deadline, alas: men, women, liking what they like, and perforce doing it. Just not always with the exuberance we see today.

The sexual revolution is properly understood, it seems to me, as the latest instance of uprooting ways and modes displeasing to people who want something more, as they see it, pleasurable and fulfilling. Call it the Golden Calf Thing. We humans—we spiritual descendants of Adam and Eve—have been in the rule-smashing business a long time, and are pretty good at it. We find things that large numbers of folk increasingly dislike—the power of the papacy, say, or the French monarchy, or the perceived powerlessness of women, or the male monopoly in male sports—and we say, stop, enough! We're not doing it that way anymore. A revolution is in train: swallowing up everything identified, falsely or not, with the old oppressors.

We like to think of the people we're rebelling against as oppressors. It makes hanging them easier, or in these supposedly kinder days denying them the right to make their cases in public, or ridiculing those who manage somehow to be heard.

There is nothing in the world new about revolutionists setting out to crush their opponents. Of Oliver Cromwell's Puritans, famous for smashing church windows and outlawing the celebration of Christmas, Yeats wrote: "He that's mounting up must on his neighbor mount, / And we and all the Muses are things of no account."

A relevant question about the sexual revolution is why it took longer than other upheavals. The answer, I suggest, is that the ancient religious structures and teachings about male-female relationships made intuitive as well as religious sense. God had made the human body. He had made it surely for purposes pleasing to Himself, and for the good of all made according to that standard.

It was in the nature of fallible humans, ordained or otherwise, to go too far, or not far enough, in teaching and showing duties attendant on membership in the human race. Error was correctable at least. To teach nothing would have been implicitly to declare the Lord a distant figure of small account, hardly the figure portrayed in Scripture as "the Lord, terrible and mighty."

Americans of earlier generations were buying no hogwash about their position vis-à-vis a God who came to them with such a billing. They knew better in their minds and hearts, and in understandings implanted further back than anyone could tell. I am saying as forthrightly as I know how that religion kept the lid on. The third chapter of Genesis had shown how tricky but also fulfilling is the relationship that Adam and Eve initiated. That which had been accomplished for man's benefit (as pre-feminist women unashamedly put it) was the right way. Leave it alone! Don't muck around! That was of course when "right" and "wrong" had more or less objective meanings for those who used the words.

The keepers, the protectors of that objective status, mostly took Adam and Eve with profound seriousness. That seriousness wore off as the centuries went by and the beauty of personal choice in all matters, not just commercial or economic ones, à la Adam Smith, rose to the top of human understanding. And it followed that bodies were designed for personal enjoyment. The coming of the Pill Regime to which Mary Eberstadt correctly points was the follow-on to that *au naturel* buffet at which human nature succumbed to human desire.

I am tempted myself to add we could never have counted on the U.S. Supreme Court or indeed any body or institution consisting of humans to protect fellow humans from the consequences of their own bad choices. Jurists and senators and presidents are demonstrably as nutty in their own way as the rest of us. They—we—seem to function best within a reasonable and well-informed system of belief, its roots sunk deeply in human attachment to the ideal of divine Authority.

Over just that kind of system, effective to an extent in bridling some of our less attractive instincts, the churches once held a generally responsible sway. That was until, a few hundred years ago, under the influence of restless types like Voltaire and Paine, we began to rub our eyes, wondering how much deference to a familiar but unseen God was, well, more deference than was called for.

In a country—ours—nominally dedicated to personal liberty, no pullback from authority of one kind or another was likely to be seen as inspired by Martians. Still, a pullback from the authority of God . . . wasn't that taking things a little far? It was. And properly still should be. How, then, to account for the overwhelmingly friendly view of so many American churches today to the idea of enjoyment as a human right, never mind its unenjoyable price tag?

And weren't we, by the way, becoming attuned to the idea of "rights" as a gift that came in the same package as life? Our life, our rights? There was, shall we say, sex appeal to such an idea. It opened new human vistas. How could God find fault with that? Shiny new trumpets were blowing brassy new variations on themes from a distant, barely remembered Garden. We *can* do this, we *can* do this, went the lyrics. Sure enough, we could. All we had to do was ignore that dangling price tag. An easy enough feat when you're having fun.

Mary Eberstadt does a considerable service in laying before us the daunting numbers on that tag—the deaths, the tears, the heartaches attendant on adoption of the modern creed: It's *my* life, *my* body! Except, friends, that's only about half right; maybe less. A Creator, a gift-giver has been at work. Merely to gaze on the Creation is to know most of what needs knowing; e.g.,

the goodness of life lived in accordance with the Creator's purpose.

Oh, boy, oh, boy—that old Sunday School stuff we left behind contemporaneously with *I Love Lucy*. It turns out that that old Sunday School stuff might do us a world of good were it to resume the place it formerly occupied in our moral deliberations and reflections. Maybe it will. As a historian I have to say, you never know. The plight that Mary Eberstadt outlines so chillingly could in due course turn hearts and minds to the task of creating new/old understandings, loyalties, allegiances of the sort lying abandoned by the roadside—where they remain very much recoverable. I should not be surprised if God had more, much more to pour into newly opened human ears. I think, in other words, that we humans should not give up, amid the doomsaying that comes with human crises: here, there, everywhere. Things have been better. They can be better again.

"If you will not have God (and He is a jealous God)," T. S. Eliot wrote in the early years of the Second World War, "you should pay your respects to Hitler and Stalin." Such, it seems to me, is the choice facing the time, the era we have made for ourselves, by negligence, by deliberation. Mary Eberstadt's writings splendidly clarify—provided we look in her direction—the dimensions of today's choice; its consequences, its likely outcomes, one way or the other.

Feminists and Contraception

Alexandra DeSanctis

In January 2023, an article by *New York Post* columnist Rikki Schlott surveyed a striking trend: a growing wave of young women opting out of hormonal birth control. The writer herself is one such malcontent. "Recently, after six years on it, I decided to stop taking the pill," she says. "But it isn't just me. Many of my friends are independently doing the same, whether it's driven by concern for their mental health, desire for something more natural—or curiosity about what the world looks like when you're not in a hormonal fog." She argues that an increasing number of her peers are declining oral contraception because they have "an intuitive sense that hormonal birth control might be messing with us, and our brains."

Lest readers dismiss Schlott and her friends as a tiny fraction of today's women, she bolsters her article with input from professionals. "I have noticed that many patients prefer non-hormonal birth control," Dr. Taraneh Shirazian, a gynecologist at New York University's Langone Health and director of the Center for Fibroid Care, told the *Post.* "Many are keen on limiting their body's exposure to outside hormones so that they can feel more natural and like themselves."

Schlott also interviews Sarah Hill, a research psychologist who wrote the 2019 book *This Is Your Brain on Birth Control: The Surprising Science of Women, Hormones, and the Law of Unintended Consequences*, a project she began after her own experience quitting the Pill. "It seems to me that there is this belief that birth control as an issue facing women has been solved: We have the pills, and so what's all the whining and fussing about?" Hill told the *Post*. "Drug companies and others who could be investing in trying to find something better for us are mistaking the fact that so many women are on it for the fact that we don't need something better."

The popularity of do-it-yourself books on hormone regulation and fertility tracking—such as Jolene Brighten's *Beyond the Pill* and Toni Weschler's *Taking Charge of Your Fertility*, both published within the last decade—confirm that this growing discontent is more than a passing fad. The subtitles of these two books are especially revealing: *Beyond the Pill: A 30-Day Program to Balance Your Hormones, Reclaim Your Body, and Reverse the*

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Dangerous Side Effects of the Birth Control Pill and *Taking Charge of Your Fertility: The Definitive Guide to Natural Birth Control, Pregnancy Achievement, and Reproductive Health*. Women feel alone, left to navigate the complicated world of hormones and fertility on their own. They're turning to books such as these because for decades most in the medical profession have relied on the supposed panacea of oral contraception, prescribing it not only for contraceptive purposes—with little concern for its many side effects—but also as a purported treatment for hormonal ailments of all kinds.

As Grace Emily Stark has chronicled for the *Human Life Review*, the widespread use and over-prescription of birth control has imposed significant costs, both for women's health and for society more broadly. "From the vantage point of 2022," Stark writes, "it is clear that freedom from one's fertility and suppression of one's menstrual symptoms have come with two clear costs: an expectation that women accommodate themselves to the male-normative workforce, and a dearth of effective options to treat the root causes of gynecological and menstrual issues that plague women around the world."

A sampling of the thousands of glowing Amazon reviews for Brighten's and Weschler's books underscores this very problem. "What a tool of important knowledge every woman should know," one *Taking Charge of Your Fertility* reader wrote. "We literally should have a class on this in high school. Women do not know their bodies. We have suppressed our femininity for too long." Countless reviews complain about the steep monetary costs and physical effects of birth control and praise the authors for calling attention to the ways in which oral contraception can wreak havoc on female fertility, sometimes long after a woman has ceased using it.

Many are aware that the Pill can cause unpleasant side effects during its use, but because it masks hormonal imbalances rather than treating them, it also can obscure and even complicate potential underlying issues with a woman's fertility. As Stark explains it, "A woman on hormonal contraception . . . does not experience the natural monthly ebb and flow of endogenous estrogen and progesterone that is responsible for ovulation; the synthetic hormones found in birth control suppress it." When women cease using the Pill—in many cases, because they are sick of its side effects or begin to desire pregnancy—they can find that underlying issues left untreated reappear, complicating the attempt to conceive and taking women back to square one in the effort to improve their health.

Recent reporting has drawn attention to the psychological and relational complications caused by birth control, suggesting that these effects might be underreported. One article explains that it has been difficult for scientists to fully understand and address the mood changes that birth control inflicts

because a study designed to uncover such a link would need to give some participants a placebo, opening up the possibility of pregnancy. In other words, scientists have yet to put sufficient effort into studying whether the mood problems many women report are in fact a significant and widespread problem. Meanwhile, a survey from late last year found that 85 percent of birth-control users say the side effects from hormonal contraception have negatively affected their relationship or marriage.

Those who draw attention to the negative effects of birth control are typically dismissed as at best over-zealous religious conservatives or at worst crusaders to ban birth control. But within the past decade, the conversation has begun to shift, and it seems as if a new generation might be waking up to the harms of both the sexual revolution and the pill that enabled it. As women flock to resources that help them understand their fertility rather than suppress it, a new wave of thinkers, including some who might once have regarded themselves as progressive feminists, are questioning whether the cultural changes of the 1960s and '70s were an entirely positive thing as we're meant to believe—and, more than that, whether the Pill's promise of sexual liberation has actually improved the lives of women.

Critiques of the sexual revolution, in other words, are starting to come from inside the house. In her recent book *Rethinking Sex*, *Washington Post* writer Christine Emba interviewed dozens of young people who expressed deep dissatisfaction with the impersonal, reckless, and often damaging sexual ethic found in today's dating and hookup culture. Heartbreaking anecdotes reveal that the supposed beneficiaries of the sexual revolution's "liberation" are experiencing a great deal of confusion and often suffering for markedly little reward.

Writer Louise Perry, meanwhile, last year published a provocative tome titled *The Case against the Sexual Revolution*, arguing primarily that, far from empowering women, our current sexual landscape is uniquely disadvantageous to women. Another writer who once considered herself more progressive than she is today, Perry began to realize that, instead of creating a social scenario in which women could seek sexual relationships and loving commitment on their own terms—as feminists promised half a century ago—the changes wrought by the sexual revolution have put women in a bind, requiring them to compromise their comfort, satisfaction, security—and all too often their safety—in order to participate in a market oriented toward satisfying male desires.

Both Emba and Perry reach several conclusions that will sound familiar to conservative readers, though it's surprising and encouraging to hear them

from outside the conservative camp: Casual sex is more enjoyable for men than it is for women, pornography encourages objectification and abuse, and consent is not a strong enough moral standard to prevent sexual violence. But neither writer digs deeply enough into the rotten ideological roots of our modern predicament; as a result, neither proposes especially radical solutions.

Both authors are reluctant, it seems, to abandon essential aspects of the sexual revolution's underlying worldview; Perry, for instance, barely addresses whether widespread use of contraception and abortion is actually good for women, instead depicting these changes as a ratchet necessarily moving in only one direction. This limitation makes it far more difficult for their books to envision a radically different world, and they're left proposing modest solutions that work somewhat around the edges of the problem, such as delaying sex or eschewing pornography.

A more radical argument can be found in the recent book *Feminism against Progress* by Mary Harrington, who opens with the striking line, "What started me down the path towards writing this book was feeling like I wasn't a separate person from my baby." A former progressive feminist, Harrington pens a takedown of modern feminism that is particularly strong, because, unlike many critics, she is willing to question the intellectual underpinnings of the entire feminist project, including its origins in progressive political theory. She notes that today's feminists have built their belief system on progressivism's inaccurate conception of the human person: a being with an infinitely malleable nature and a body we can constantly transcend via increasingly powerful technology.

It is because of this foundational argument that Harrington's rejection of feminism in favor of her own "reactionary feminism" is most potent. Unlike other previously progressive or left-leaning critics of the sexual revolution, Harrington goes so far as to reject hormonal birth control, arguing that no truly pro-woman feminism can accept it. "A feminism against progress, in other words, is feminism against the Pill," she writes. Harrington notes the serious health concerns that the Pill poses for women, but she argues too that the widespread embrace of hormonal contraception has harmed women more broadly by creating and enabling a sexual marketplace disadvantageous to women and destructive to human relationships.

She advocates "rewilding sex," by which she means rejecting oral contraception both because of its health risks and because it is a severe obstacle to reclaiming meaningful sex. The Pill, she writes, is "a crucial precondition for bad sex, because it de-risks casual hook-ups. . . . Consensual, genuinely consequential sex is profoundly intimate: not least because a woman who re-

fuses birth control will be highly motivated to be choosy about her partners." Along these lines, Harrington praises modern methods of cycle tracking and natural family planning, commending these methods for their ability to help both women and men increase their awareness of the female body:

> One of the open secrets of "natural family planning" methods is that sex really is better when you don't disrupt it with artificial hormones. Studies have shown that women's sexual libido peaks just before ovulation, a cycle that makes perfect sense from the perspective of what sex is ultimately for—but if the menstrual cycle is disrupted by hormonal birth control, this effect disappears. And if you don't want to conceive a baby, having sex anyway assumes a level of faith in your male partner's self-control that on its own implies real intimacy.

Harrington argues, too, that "rewilding sex" would affirm the reality of human embodiment and would properly reject the notion that male and female bodies are interchangeable and therefore meaningless. "Rejecting birth control is the first and most radical step women can take, in healing the disconnect introduced by technology between us and our own bodies, in the name of freeing us from sex difference," she writes.

On this point among others, Harrington cites the work of scholar Abigail Favale, whose 2022 book *The Genesis of Gender* grappled with similar themes from a Catholic perspective. In one of her most striking chapters, Favale explains how our modern beliefs about "gender reassignment" are entirely dependent on—and, indeed, only make sense because of—contraception's ability to sever human sexuality from procreative potential. She notes that, in the first half of the 20th century, one man who desired to become a woman underwent dangerous procedures to transplant female reproductive organs into his body in a failed effort to eventually carry human life as a woman would. Today, men who wish to pass as women disregard the female capacity for pregnancy entirely, satisfied with mere surface-level changes to make them appear more like women. For this stark shift, Favale argues, we can thank contraception, which has crafted a world in which reproduction is rendered an entirely optional aspect of sex. Empowering a man to "become" a woman seems far more possible in such a social and technological context.

Harrington might be a lonely voice among feminist thinkers, but with much of the argument in her book she locks arms with social conservatives, who have argued for decades that the change in mores brought about by the sexual revolution—enabled primarily by the most effective contraception in history—have altered society for the worse. Particularly interesting is the fact that these criticisms are gaining steam and beginning to come from quarters outside the conservative movement at the same time that an increasing number of women are turning against contraceptive use in their personal lives.

One anecdote that Emba shares in her book underscores that the shift away from the Pill might be fueled by more than the motive of avoiding physical side effects. "The one time we had sex without protection," one interviewee told Emba, "my period was late. And I *freaked out.* My boyfriend offered to pay for Plan B, which, thanks, but . . . fifty dollars is the least of my problems right now. And then he said that he would 'support me in whatever I chose to do,' which, again, thanks, but . . . it kind of made me feel like I was more on my own. But I mean, in the end, I would have had to decide by myself, right? Like, it would be me who was pregnant, not him."

As Toni Weschler puts it in *Taking Charge of Your Fertility*, "While the pill was originally designed to sexually emancipate women, it has also had the effect of burdening the woman with the sole responsibility of birth control." We might take that a step or two further and note that normalizing birth control has also normalized the notion that there's something abnormal or, indeed, dysfunctional about the fact that women become pregnant, when in reality, pregnancy is a normal and natural outcome of sex between a healthy man and woman of reproductive age.

To be sure, the young woman whom Emba interviewed didn't offer any explicit condemnation of contraception, but her discomfort with this experience and her deep sense of lonely responsibility speaks to precisely the problem that Harrington and many critics before her have identified. Far from freeing women from pregnancy, the availability of contraception—bolstered by the backstop of legal abortion—has placed the supposed burden of reproduction even more on women's shoulders. Far from normalizing childbearing or setting women free from responsibility, contraception has helped to foster a society in which the male mode of reproduction is taken as normative, disassociating women from their bodies in the process. Pregnancy, when not explicitly wanted, is conceived of as a disease, with contraception and abortion as health-care solutions.

Perhaps Perry is right to think that the introduction of contraception into society is something like a ratchet, a technological change that we can never quite turn around in the other direction even if we wanted to. But we would be wrong to ignore these growing signs of discontent. For all the talk of liberation and equality, women seem not to be thriving in the world that the sexual revolution prepared for them—and even those who once believed in its promise seem to be giving up hope.

The Return of Abortion Tourism

Anne Hendershott and Lucia Hunt

One of the advantages of having lived through the pre-*Roe* days is that it gives one a sense of the history of abortion in the second half of the twentieth century—especially the dramatic change in attitudes, norms, and behaviors that preceded the momentous 1973 Supreme Court ruling in *Roe* v. *Wade*. Most Baby Boomers can remember the days when abortion was pretty much taboo. In the 1960s, the majority of single young women who became pregnant still married the father of their child. A few others quietly left school to "go away" and wait for the birth, promising to return once the baby was placed with a loving family. Beginning in the late '60s, however, the emerging feminist movement began to influence public opinion on the option of abortion. Some—especially young Catholic girls—were shocked by the growing acceptance of what they had been taught was a serious sin. But nothing could have prepared them for the watershed event of 1970, when New York State laws criminalizing abortion were repealed, giving rise to "abortion tourism." By definition, abortion tourism is travel for the purpose of obtaining an abortion in a state where it is legal.[1] According to the *New York Times*, within two years of its legalization in the Empire State, more than 100,000 women had traveled from their home states to New York City for an abortion. Some came from as far away as Arizona, Idaho, and Nevada. Over half of them traveled more than 500 miles to legally end the life of their unborn child.[2]

Now that the Supreme Court has overturned *Roe*, leading an increasing number of states to implement restrictive abortion laws, New York City is once again the deadly destination of choice, especially for women seeking late-term abortions. Even before *Dobbs* was decided, New York governor Kathy Hochul had assured women in Texas, where a restrictive law was already in place, that "Lady Liberty is here to welcome you with open arms." Shortly after she took over from her disgraced predecessor Andrew Cuomo in 2021, Hochul told MSNBC that "enlightened" New Yorkers would help these women "in any way we can."

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> For women in Texas, they need to know: we will help you find a way to New York and we are right now looking intensely to find what resources we can bring to the table to help you have safe transport here and let you know there are providers who will assist you in this time of your need.[3]

New York, New York, an Abortion Town

As long as abortion was illegal it remained relatively rare. But once New York decriminalized it, attitudes changed dramatically. Women, including some who were Catholic, began to think that since abortion was legally available it was no longer wrong. Many of us who were in college in the '70s heard about acquaintances who were travelling to New York City for abortions. It was a sad and confusing time, as more and more of our peers embraced a new norm: that a woman had the right to destroy her unborn child. Abortion became a wedge issue, threatening friendships and leading people to self-censor as public support for it grew. It seemed little could be done to push back the "pro-choice" juggernaut, especially once the earliest practitioners realized how much money could be made from abortion tourism. Larry Lader and Dr. Bernard Nathanson were pioneers, but savvy entrepreneurial feminists like New York abortionist Merle Hoffman did even more than these better-known activists to routinize the abortion tourism business.

In a 2011 *Forbes* article titled "The Millionaire Abortionist," Hoffman described being on the front lines as young women began traveling to New York City from all over the country to have abortions:

> [W]omen were literally lining up around clinics. The physician I worked for wanted to get involved and I found it extremely romantic. I wasn't political then, I wasn't marching. I was much more internalized and my contribution was practical. But it really fell into my lap, and I just opened my arms and brought it to me . . . Sometimes I look at it and I think, it looks like destiny. Smells like destiny. Was it destiny? I can't really go there. But . . . it's something.[4]

Hoffman is correct when she says the abortion business fell in her lap. She was a graduate student in psychology—with no medical training at all—who happened to be working for a doctor who, as she says, "wanted to get involved." In the spring of 1971, Hoffman opened her own clinic in Queens, New York. One of the first ambulatory abortion facilities in the country, Choices Women's Medical Center, according to all reports—including those in Hoffman's hometown newspaper, the *East Hampton Star*—has made its founder a fortune. Living in a "lavish, waterfront home," the paper notes, "Hoffman is not at all defensive about the profits she has enjoyed from her work."[5]

In an interview for the *Forbes* article, Hoffman said she saw nothing con-

tradictory in being both a feminist and a capitalist. Dismissing those who feel that "a real feminist has to be a socialist," Hoffman said she wasn't "apologetic about the fact that I have created a wonderful medical business that has served hundreds of thousands of women, and I am not apologetic that I have an entrepreneurial spirit."[6]

In a laudatory story published last year in the *New York Times*, accompanied by a 1989 photo of her standing outside of New York's St. Patrick's (Catholic) Cathedral, Hoffman recalled those heady protest days when she "mobilized hundreds of other women," all brandishing coat hangers, to challenge Cardinal John O'Connor's anti-abortion stance.[7] She claimed that "it has been an enormous privilege to be able to spend my life, my life blood, my life's energy working on something that's so vitally important . . . I'll do it as long as I'm walking and talking. I have my hanger, and it's ready to go up." The then 77-year-old Hoffman—whose work as an abortionist has spanned 50 years—also told the *Times* reporter that as the Supreme Court geared up to announce the end of *Roe,* she was "reliving my youth . . . My feeling is that we minimized the strength of the opposition."

Abortion Tourism Ramps Up—Flush with Taxpayer Money

Hoffman may indeed have underestimated the strength of the pro-life movement, but the pro-life movement has never underestimated the tenacity and ruthlessness of the pro-abortion side. Collaborating with the abortion industry, most Democratic politicians have been especially proactive in finding ways to keep abortion available to their constituents, thus ensuring that their campaign efforts will continue to be replenished by the industry's powerful lobby. Even before the *Dobbs* case was filed at the Supreme Court, some politicians had begun publicly to warn justices that they should not consider overturning *Roe*. In 2020, Senate minority leader Chuck Schumer (D-NY) threatened Justices Brett Kavanaugh and Neil Gorsuch, claiming that they would "pay the price" if they voted to overturn *Roe*.[8] When the leak that *Roe* would indeed be overturned emerged from the Court in May 2022, abortion providers and their political minions mobilized to confront what they saw as an existential threat to their industry.[9] By the following October, more than one hundred pro-life pregnancy centers throughout the country had "paid the price" by being vandalized—some even firebombed—while the Department of Justice had failed to make even one arrest.[10]

Violence was not the only reaction to *Dobbs*. In the year since the decision was announced, the abortion tourism industry has returned in force; more organized, more powerful, and more widespread than before. State governments have now become "partners" with providers, allocating taxpayer

money to help underwrite out-of-state women's access to abortion. For example, New York and California, and most recently, Connecticut, have spent hundreds of thousands of dollars promoting their abortion services to out-of-state women. While Merle Hoffman advertised her Choices clinic widely but discreetly in newspapers and women's magazines, today's ads are bold invitations to end unwanted pregnancies, strategically placed on billboards on busy highways in states where abortion is restricted.

California was the first state to use local billboards, each specifically targeted to one of these states: Texas, Indiana, Mississippi, Ohio, South Carolina, South Dakota, and Oklahoma. "Need an Abortion?" the text of the Mississippi ad reads, "California Is Ready to Help . . . Visit abortion.ca.gov to learn more."[11] In a sick nod to those who might have religious objections to the message, the ad includes the biblical enjoinder to "Love Your Neighbor as Yourself." The South Dakota billboard depicts a woman in handcuffs and reads: "South Dakota Doesn't Own Your Body. You Do." On the day the billboards were introduced, Newsom took to Twitter to tweak the seven state governors, posting pictures of the ads and tweeting, "This will be launching in your state today."[12] Governor Kristie Noem, for one, tweeted back that "In South Dakota, we are a destination for FREEDOM and LIFE." Newsom, she went on, should "get to work cleaning up the human feces on the streets of your cities and turning the lights back on."

The billboards, which also carry (in very small print) the line "Paid for by Newsom for California Governor 2022," went up not long after Newsom announced during his reelection campaign the launch of a new $1 million abortion website. The site, abortion.ca.gov, provides information for anyone who wants to access abortion in the state—even non-residents. It offers location information for 166 abortion facilities, along with details on how to get abortion pills by mail, and features links for financial help, including abortion travel details. It also tells minors from out-of-state how to get an abortion in California without their parents' permission, and has a section specifically instructing undocumented immigrants on how they can get Medicaid (taxpayer-funded) coverage for abortion. "I want people to know all around the rest of the country and many parts of the globe, that I hope we're your antidote to your fear, your anxiety," says Newsom in a statement on the site's homepage.[13]

While New York's billboards are not quite as mean-spirited as California's, they are equally blatant about the availability of abortion for out-of-state women. And the City of New York is clearly a partner with the abortion industry in advertising the state's commitment to abortion tourism: Taxpayer money (from the New York City Department of Health and Mental Hygiene

budget) is being used to pay for billboards in Georgia, Florida, and Texas. New York City taxpayers are also funding—to the tune of one million dollars—a phone line or "abortion access hub" that is open twelve hours a day, six days a week, and staffed with bilingual counselors who refer far-flung abortion seekers to local providers.[14]

Connecticut is the latest state to join the abortion tourism industry—replete with government largesse made possible by taxpayers. In a gift to their campaign supporters at Planned Parenthood, state Democratic lawmakers led by Representative Matt Blumenthal, co-chair of the Connecticut General Assembly's Reproductive Rights Caucus, have established a government fund to cover the costs for out-of-state women who travel to Connecticut for abortions. Congratulating his fellow Democrats on their hospitality, pro-abortion Governor Ned Lamont lauded State Treasurer Erick Russell's fledgling Safe Harbor Fund as the "first step" in the state's commitment to abortion tourism. In addition to paying for women's travel-related costs, pro-abortion groups also want the state to fund more abortion training, complaining that "a shortage has led to two-week-plus wait times, according to Planned Parenthood of Southern New England."[15] All such tax-payer-funded initiatives benefit Democratic lawmakers' biggest donors—the state's abortion providers.[16]

"Travel Navigators" and "Abortion Doulas"

As in any tourism industry, there are "travel agents" to help out-of-state abortion seekers with the logistics. But unlike the traditional variety, these travel navigators (as Planned Parenthood calls them) and abortion doulas (as they are known in a growing number of pro-abortion states) not only arrange for the procedure itself—along with travel, hotels, meals, and even childcare—they also help abortion seekers find ways to pay for it all, usually by tapping taxpayer funds. The New York Abortion Access Fund pays clinics directly for low-income patients' abortions. The fund has four separate call lines: one for New York City residents; another for residents of other parts of New York State; a third for out-of-state residents; and a Spanish language line. According to a story in the *New York Times* this past April, the fund has helped people from 29 states and Washington, D.C., as well as six foreign countries. At first most of the calls came in response to a 2022 Ohio law that banned abortion after six weeks (due to a court challenge the law is no longer in effect). Now, the majority of out-of-state callers are from Texas, Florida, Georgia, and Pennsylvania, where abortion is legal but significantly restricted. As the *Times* reported:

> Last year, the New York fund spent $1.2 million to help 1,800 callers compared to just over $500,000 in 2021. Funding comes from the city government. The New York

> City Council in September 2022 announced plans for another $1 million to be split evenly between the New York Abortion Access Fund and the Brigid Alliance, a non-profit that helps people with the logistical costs of an abortion including transportation, meals and child care . . . In the six months after *Dobbs*, the Brigid Alliance saw a nearly sixfold increase in the number of people requesting help traveling to New York City from out of state.[17]

One of the fastest-growing career paths in the abortion tourism industry is that of the abortion doula, or someone who provides support to women before, during, and after their abortions. They have no official certification; most receive on-the-job training as volunteers at Planned Parenthood and other clinics where abortions are performed. Currently, there are only a few abortion doula programs in the country, including New York City's Doula Project, founded in 2007 to provide emotional support to abortion patients. Today, in the midst of the burgeoning abortion tourism industry, the abortion doula's role has expanded to include securing funds for travel and abortion-related expenses. According to an interview with Jenna Brown, program director and lead teacher for a group called Birthing Advocacy Doula Trainings, "the majority of the work that abortion doulas do is in support of logistics preceding care."[18]

There are similar initiatives in Colorado through the Colorado Doula Project. With abortion legal at all stages of pregnancy, Colorado, like New York, was already becoming a sanctuary state before *Roe* was overturned. In fact, abortion tourism is so ubiquitous there, comedian Amy Schumer satirized it in a two-minute video.[19] According to executive director Gina Martinez, as abortion in surrounding states has become more restricted, the Colorado Doula Project has experienced a "massive increase" in business. Volunteer abortion doulas pick up out-of-state clients from airports, arrange for accommodations, and take them to appointments; the organization also helps pay for childcare, hotels and gas.[20] Unlike New York, which funds abortions for out-of-state women with taxpayer money, the majority of such services in Colorado are funded by the non-profit Cobalt Abortion Fund, which claims to have paid for more than 94 percent of all abortions performed on women from out of state. "Cobalt provides funding for clients to cover both procedural costs of abortion and practical costs, including travel, childcare, hotel rooms, etc."[21]

The role of the abortion doula got the attention of Catholics recently when the University of Notre Dame invited a North Carolina doula named Ash Williams to give a lecture. Williams, who claims to be a "transgendered man," but had two abortions while still a woman, told NPR in an interview last fall that she is especially concerned about transgendered men who need abortions: "Trans folks often have to travel farther to get a doctor to use their

pronouns, I might be the only one asking, that's part of the care as well." Williams struggled to find funding for her abortions, receiving help from abortion doulas and her local queer community. This inspired her to focus on funding other "people's" abortions today. "I'm trying to meet people where they are and just make sure that they can have the best abortion. That looks like making sure they have child care and a ride. It looks like making sure they're not choosing between their utility bill and their abortion."[22]

The Future of Abortion Tourism Flush with Public and Private Funds

In addition to state taxpayer funding, more than 60 major U.S. companies have updated their family planning policies to include reimbursements for abortion-related travel.* According to the *Washington Stand*, Amazon and Apple—and a long list of other companies—have "announce[ed] updated 'health care' policies that include thousands of dollars in abortion stipends and travel reimbursement."[23] Dick's Sporting Goods, for example, provides up to $4,000 for an employee's travel costs (including family members). When queried about this, CEO Lauren Hobart told reporters:

> We recognize people feel passionately about this topic and that there are teammates and athletes who will not agree with this decision, however we also recognize that decisions involving health and families are deeply personal and made with thoughtful consideration. We are making this decision so our teammates can access the same healthcare options, regardless of where they live, and choose what is best for them.[24]

According to Reuters, Amazon has offered to pay up to $4,000 in travel expenses annually for abortion if the employee lives in an area with abortion restrictions. The benefit—which became effective January 1, 2023, applies if access to abortion is not available within 100 miles of an employee's home and virtual care is not possible. It is open to U.S. employees or covered dependents of employees enrolled in the Amazon company health plans. And it applies to all employees whether they work in a corporate office or a warehouse.[25]

Trafficking in Abortion Pills

As we have seen, after the Supreme Court overturned *Roe* v. *Wade* last sum-

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* **Companies sponsoring abortion tourism**: Accenture, Adidas, Adobe, AirBnb, Alaska Airlines, Amazon, American Express, Apple, AT&T, Bank of America, Box.com, Bumble, Buzzfeed, Chobani, Citigroup, Comcast, Conde Nast, Dick's Sporting Goods, Disney, DoorDash, Duolingo, General Mills, Goldman Sachs, Google, GrubHub, Gucci, Hewlett-Packard, Hello Bello, Hewett Packard, H&M, HPE, Intuit, Johnson & Johnson, JP Morgan, Kroger's, Levi Strauss, Live Nation, Lyft, Macy's, Mastercard, Match, Meta, Microsoft, Netflix, Nike, Ok Cupid, Paramount, Patagonia, PayPal, Reddit, Salesforce, Sony, Starbucks, Target, Tesla, Uber, Vox Media, Walmart, Warner Bros, Wells Fargo, Yelp, Zillow.

mer, abortion tourism returned from its hiatus—bringing with it an onslaught of innovative tactics that ensure that women anywhere in the country and at any point of gestational development can obtain access to an abortion. An offshoot of this has women in states where abortion is very restricted taking to the mail to obtain abortion pills from providers in liberal states. A Mexican feminist group known as Las Libres is promoting the wholesale distribution of abortion drugs, helping American women defy abortion bans in their own states. Requiring no medical consultation or minimum age, Las Libres claims to provide "support and access to safe abortion for all women, girls, and people who require it."[26] Las Libres is advertised and linked to by Plan C, a website promoting chemical abortion that is sponsored by the nonprofit National Women's Health Network organization. Instructions for receiving pills by mail from Las Libres are kept simple. All that is required is that a woman send an email requesting abortion pills, along with her name, mailing address, and the date of her last menstrual period. There is no evidence that standard medical procedures, which would verify actual gestational development, are followed. The abortion drugs, intended to end the life of the unborn baby, can be used only up to a certain point in the pregnancy. If a woman takes the pills after that point, she is at risk of complications that could land her in an emergency room.

The Las Libres website assures abortion seekers that the medication is "safe," but also warns that, "if you go to a healthcare facility, do not reveal that you took pills to cause an abortion."[27] Instead, women are instructed to lie and say they are having a spontaneous miscarriage. Apparently, this procedure is so "safe" it can be done at home by an underage girl who must lie to physicians if she needs to seek medical attention.

Like Las Libres, New York continues its commitment to find innovative ways to help abortion-seeking women who live in states with abortion restrictions. Acknowledging the fact that medication abortion drugs account for 54 percent of all abortions throughout the country, on June 20, 2023, the New York State Assembly passed legislation designed to protect doctors, medical providers, and facilitators serving patients seeking access to medication abortion through telehealth (Assembly Bill A.01709). Claiming that "New York remains a sanctuary state for access," Speaker of the House Carl Heastie said: "It is our moral obligation to help women across the country with their bodily autonomy by protecting New York doctors from litigation efforts from anti-choice extremists. Telehealth is the future of healthcare, and this bill is simply the next step in making sure our doctors are protected."[28]

The bill, which protects abortion providers when women suffer the inevitable complications of telehealth-provided abortion, is yet another gift to

the abortion industry. Assemblymember Karines Reyes, R.N., a co-sponsor, admitted as much, saying she was "proud to sponsor this critical piece of legislation to fully protect abortion providers using telemedicine."[29] Reyes knows—as all pro-abortion politicians know—that the key to filling their campaign coffers is continuing to support the abortion industry no matter how many women suffer the deadly consequences.

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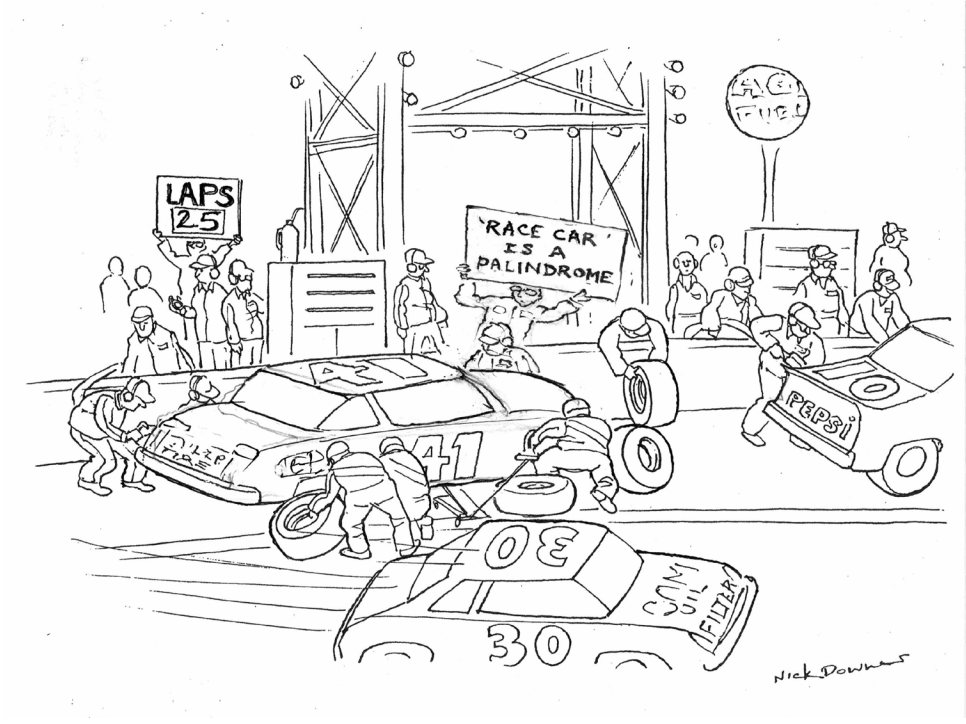

The Myth of *Dobbs* Losing the Midterms (Part II)

Thomas Clark

In Part I of this two-part article we showed that the real burden on Republican campaigns was not the pro-life cause but the failure of many Republicans to authentically articulate the evils of abortion. A corollary of this conclusion is that *Dobbs* was far from being a "loser" for Republicans. Rather, its principled constitutional analysis was excoriated by pro-abortion partisans without receiving an effective response and powerful embrace from supposedly pro-life politicians. Defending the majority opinion in *Dobbs* is, of course, only an interim objective of the pro-life movement, intended to secure the constitutional space to advance and achieve legislative measures to protect life. The ultimate goal is to change the culture to one that values unborn life, and as we argued in Part I, that will require broadening the scope of alliances that the pro-life movement has forged to bring in more progressive elements. Yet, before leaving *Dobbs* behind, it is imperative to appreciate—and refute—the superficially attractive arguments that the dissent in *Dobbs* deployed to make the ultimate attack on the most vulnerable members of the human family seem "progressive" and the defense of those vulnerable lives seem "reactionary." An effective refutation of this mischaracterization will be key to winning the broader cultural struggle for life that is to come.

I. Summary

The dissent exaggerates the majority's deference to the views of abortion in 1868 or earlier, while ignoring the fact that abortion had *never*, not in 1868 *nor at any time in the ensuing century before* Roe *was decided,* been deeply rooted in our nation's traditions. Despite the dissent's claim that the *Dobbs* majority "fail[ed] to recognize that the constitutional 'tradition' of this country is not captured whole in a single moment," the truth is the majority merely refused to create a constitutional "tradition" that had existed at *no moment ever* before *Roe*'s own judicial fiat, and by doing so declined to exercise the "raw judicial power" that *Roe*'s critics have consistently pointed out in it. The dissent further attempted to paint the majority opinion as unconcerned with *any* rights of women to control their own bodies, as if the opinion authorized state-mandated conception or a host of other imagined

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restrictions. Yet the majority makes clear that it is only the *unique nature of abortion* as involving a legislative interest in *protecting a human life in being from direct destruction* that requires deference to the democratic process. As noted above, this does not render that interest illegitimately "theological," any more than other well-accepted legislative prioritizations of one right over another to avoid potential, even theoretical threats to human life. Allowing, in the exceptional case of abortion, democratically enacted laws to curtail otherwise greatly respected liberties of bodily autonomy thus no more evinces a complete disregard for women's control of their own bodies than, say, laws authorizing military conscription in a crisis evinced a *general* disregard for men's control of their bodies *outside* those crisis situations.[1] Indeed, the uniqueness of the asserted interest at stake in abortion simultaneously rebuts both the charge of lack of concern for women's control of their bodies and the suggestion that other rights not implicating the potential destruction of human life are similarly vulnerable.

While engagingly written and rhetorically effective, the dissent's critiques rely on subtle mischaracterizations that undercut their persuasiveness. Employing too well the stratagem that the best defense is a good offense, the dissent's attack on the Court's opinion as a radical departure from precedent in the service of an extreme position tries to shift our gaze from the dissent's *own extreme position*: that some combination of the Fourteenth Amendment Due Process clause and the "long sweep of our history" somehow withdraws from the people the power to pass a law generally prohibiting abortion after 15 weeks (with a broad exception for medical emergencies). Such a law, after all, would be well within the mainstream of, if not more liberal than, the laws of most European democracies. Let us examine these mischaracterizations in more detail.

II. Is the *Dobbs* Majority Obsessed with the Past, and Blind to the "Long Sweep of History"?

The dissent is not lacking in wit and humor: The majority, it claims, says we must read the Constitution "as viewed at the time of ratification (except that we may also check it against the Dark Ages) . . . ." It's easy to lampoon excessive focus on "the 13th century!" or the "Dark Ages," until, of course, one understands that the majority detours into that history *because* Roe *itself does*. The "lenity of the common law" was in fact one of the four historical pillars *Roe* used to support its unprecedented holding, and one which was simply wrong. Justice Blackmun's opinion in *Roe* relied in large part on a historical conclusion that abortion was unlikely to have been "ever established as a common-law crime, even with respect to the destruction of a quick fetus." 410 U.S. at 136. Moreover, in the *Dobbs* case itself, the U.S.

Solicitor General, as amicus curiae for respondents, argues that the common law's failure to criminalize abortion was relevant both in itself and through its effect on expectations of an abortion right at the time of the Founding, thus supporting an abortion right. Justice Alito's care to go over the common law authorities can thus not be seen as some medieval theological excursion to gird his conclusion, but rather the respect to take seriously, and reject, the medieval theological excursion that *Roe* had initiated and the Solicitor General extended. The majority's point is that "lenity of the common law" cannot be a rationale for a constitutional abortion right, in part because the common law was not lenient. The common law is only indirectly relevant for what it says about the understanding of the drafters and state legislatures at the time of the ratification of the Fourteenth Amendment; the majority throughout is focused on the American experience, including *subsequent* American legal tradition, which is every bit as inhospitable to abortion's cause.

Far from being blind to the post-ratification sweep of history, the majority considered the century of American experience from the Fourteenth Amendment until *Roe* and correctly found nothing evincing a "deeply rooted" right to abortion. In the late 1950s, well after women's enfranchisement, it noted, at least 46 states prohibited abortion "however and whenever performed" except as necessary to save the life of the mother. On the eve of *Roe*, there was some liberalization with respect to the earliest abortions, but 30 were still prohibiting abortions at any time with the exception for the life of the mother; the rest had more liberal restrictions, but critically, none allowed abortion as *Roe,* in a bolt from above, required: up to viability at least, but with constitutionally ordained exceptions for life and health that in effect made it all but impossible to prohibit abortion at any time in a pregnancy. If anyone was blind to the "sweep of our history," it was Justice Blackmun when he summarily found the laws of all 50 states violative of a right "deeply rooted in our tradition."[2]

III. Is the Majority Trying to "Have It Both Ways" in How It Uses Post-Ratification Laws?

The dissent is in a difficult position because, as the answer to the last question shows, the "long sweep of history" sweeps in a direction uncongenial to abortion rights. Thus, Justice Alito could write that until the virtual eve of *Roe* no state law, no state constitutional provision, no state or federal court decision, and indeed no scholarly treatise, had asserted or found a constitutional right to abortion in American law. Hard to find the "sweep" in this history that the dissent is postulating.

It is true that post-ratification adoption of laws could not "alter the text"

of the Amendment, but that does not mean that the majority is trying to play it both ways. Rather, these laws, this solid century of laws, are not being introduced to revise or supplant the intent of the framers of the Fourteenth Amendment—that much is clear, as even the dissent admits. Rather, these laws are introduced to rebut the counter-factual suggestion (which is the core argument the dissent makes) that somehow the "sweep of our history" would supplant and revise that understanding. The dissent cites the second Justice Harlan—always a good thing to do!—for the proposition that the constitutional "tradition" is not "captured whole at a single moment."[3] This is true, and thus it would be relevant if the subsequent development of state and federal decisions, and state constitutional provisions, had recognized the abortion right as somehow implicit in the scheme of ordered liberty. But that works both ways: If such new developments would be indications that the "tradition" had evolved, then certainly the absence of those very developments is also relevant, and an indication that, from 1868 until the day *Roe* was decided, the "tradition" did not change with respect to abortion. And this was not for lack of considerable, necessary, and laudable evolution on the equal role of women in society, and in terms of political rights. In other words, the actual evolution had most of the positive aspects the dissent describes about recognition of the equality of women; however, wonder of wonders, that evolution did not encompass the view that that equality required the creation of a new right to destroy prenatal human life.

Another dynamic that works both ways in a manner the dissent would not appreciate is the potential direction of legal evolution from 1868. To hear the dissent, one imagines there is only one way that a departure from the majority's "crimped" reading of the Constitution could go: in a direction that would create and expand the right to abortion at the expense of prenatal life. But an opposite evolution is possible as well, and indeed, perhaps more credibly grounded in extrinsic evidence of definitions of "person" prevailing at the time of the Fourteenth Amendment. John Finnis, for one, has made a highly plausible argument that at the time of the Fourteenth Amendment, the concept of "person" was understood to include unborn life, including in the law of property, tort, and inheritance.[4] This Finnis argument brings forward several important implications. First, it validates Justice Blackmun's observation in *Roe* that if the fetus is human life, then of course abortion is not only proscribable but prohibited under the Constitution, most obviously by the Equal Protection Clause's guarantees. Second, it shows the depth of the error embedded in the "*Dobbs* is theological" critique advanced by Linda Greenhouse and others. Initially, it is obvious that merely returning the question of how to weigh the possible destruction of human life to the People is

not theological, and is a jurisprudential decision based on a theory of constitutional interpretation, i.e., originalism. One might then contrast such a result with a putatively more activist pro-life decision—one that finds, for example, that the Fourteenth Amendment's Equal Protection Clause prohibits allowing unborn human life to be killed, while born human beings have the full protection of laws against murder. This decision, it might be argued, would be theological, since it would adopt a "view of the fetus as a human being" that had to be grounded, so the argument would go, only on theological conceptions about when human life begins. This view would still recognize *Dobbs* itself, however, as non-theological, since it deferred that important question to the legislature. Yet Finnis's insight shows that even such an "activist" decision would still be characterizable as jurisprudential and non-theological, given the credible arguments over the understanding of personhood by the framers of the Fourteenth Amendment.

Now, before our opponents get too anxious, they should note that the Finnis view has no takers among, and is implicitly rejected by, the *Dobbs* majority. This does illustrate a third implication of Finnis's argument: The dissent's dismissal of Justice Kavanaugh's invocation of neutrality may be too cavalier. *Roe* itself recognizes that if a fetus is a person, abortion is unconstitutional. Finnis shows that a fetus may have been considered a constitutional person, at least in some contexts. In this setting, Justice Kavanaugh's concurrence and the majority's repeated claims that "the Constitution does not take sides on the issue of abortion" are not idle rhetoric. There are two plausible lines of constitutional interests that could intersect with abortion. The *Roe* approach looks at bodily autonomy, a constitutional value to be sure, but one that can be weighed by the legislature and deemed outweighed by the potential destruction of human life. The Finnis approach would look at fundamental equality and reject a discrimination that allows the same human being that would be protected fully after birth to be killed with impunity at an earlier stage of development. The Kavanaugh view is that *both* of these lines are too speculative to be bases for mandatory constitutional prohibition. The dissent in *Dobbs* is well aware that a finding of fetal personhood would make abortion bans constitutionally mandated.[5] Perhaps if they think about it more, the dissent may come to see Justice Kavanaugh's constitutional "neutrality" as a deal worth taking.[6]

IV. Is *Dobbs* Illegitimate because the Majority Were New Judges, Politically Selected for Their Animosity Towards *Roe*?

As part of its back-up defense of *Roe* by appeal to the doctrine of *stare decisis*, the dissent argues that, in overruling *Roe,* the *Dobbs* majority was somehow different from the majorities that overruled *Plessy* v. *Ferguson*

(the case that infamously invoked the doctrine of "separate but equal") in *Brown* v. *Board of Education*, and that overruled *Lochner* v. *New York* (the notorious substantive due process case that invalidated minimum wage and maximum hours laws as violations of "freedom to contract") in *West Coast Hotel* v. *Parris*. How was the *Dobbs* majority different? It seems in those cases, where the Supreme Court majority rightly found *stare decisis* interests outweighed, the Great Depression had intervened to show that unregulated "laissez faire" was wrong and unworkable, and decades of Jim Crow laws showed that the "separate but equal" doctrine was inherently unequal.

That is all true, but similarly, couldn't a democratic majority find through decades of experience with *Roe*, along with advances in medical technology and genetic understanding, that *Roe*'s trimester framework was unworkable, and more fundamentally, that the human qualities and even survivability of the fetus undercut the notion of the non-humanity of the fetus that undergirded Justice Blackmun's opinion? The dissent even suggests that the *Dobbs* decision is distinguishable from another famous overruling: the flag salute cases. Here, one key difference for the dissent was that the Court in *West Virginia Board of Education* v. *Barnette*, finding compelled flag salutes in class unconstitutional, consisted of the same justices who decided the earlier case, *Gobitis*, upholding mandatory flag salutes and the Pledge of Allegiance, just three years before. The *same justices changed their minds,* as if that was an inherently more legitimate way for a change to take place than from new justices coming on the Court.

Naivete and disingenuousness are in competition as explanations here. The Court is not supposed to be totally insulated from any political process. If it were, both the Supreme Court and the entire federal judiciary would be a self-replicating institution, with judges selecting new judges (a system some countries have), whereas under the Constitution, an elected official, the President of the United States, nominates federal judges, who are then confirmed by the Senate. For our nation's pro-life citizens opposed to *Roe* to labor over decades to urge the appointment of justices who would recognize the flaws of *Roe* is not illegitimate, but a normal exercise of the popular will under our constitutional system.[7] Finally, if it must fall only to the same judges that decided a bad precedent to legitimately overrule it, then if that precedent is not changed before its authors die, does it become permanent? Dead hand of the law indeed! Alas, this part of the dissent is probably the weakest, struggling without success to respond to the obvious fact that clear error, unworkability of the framework, and changing law and facts are all valid bases to overcome *stare decisis*; *Roe* had not just one but all of those features.

V. Are Other Rights, Like Interracial Marriage or Contraception, at Risk because of *Dobbs*?

This critique is not deserving of much response. The hyperbolic attacks on *Dobbs* always include a *de rigueur* reference to how it will jeopardize the right to interracial marriage. You know that *Loving* v. *Virginia* is a really good decision, because everyone wants to appropriate it, rightly or wrongly. The *Dobbs* dissent, to its credit, seems to recognize that invoking *Loving* is a stretch, and thus after the obligatory reference, spends most of its energy, and indeed with some success, in arguing that other cases that are based solely on substantive due process, notably *Lawrence* v. *Texas* and *Obergefell* v. *Hodges*, are at least undercut.[8] But there should be no such concern about *Loving*. *Loving* is based primarily and independently on the Equal Protection Clause, and of course the anti-miscegenation statutes at issue in *Loving* were clear violations of the Equal Protection Clause, the central purpose of which was to eradicate White Supremacy. Even in the very unlikely event that a future Court carried the logic of *Dobbs* forward and took up Justice Thomas's invitation to do away with the whole line of substantive due process cases back to *Griswold*, this would do nothing to threaten the central basis of *Loving*, which is that explicitly race-based restrictions on marriage were designed for the purpose of enforcing White Supremacy and violate the central purpose of the Equal Protection Clause.

No effective piece of fearmongering would be complete without invoking the risk posed by *Dobbs* to contraception rights. According to the dissent, if the majority is serious about its historical approach, then *Griswold* is in the line of fire too. But a fair reading of the majority opinion should not leave us relying only on their "scout's honor." After all, Justice Alito's (and Kavanaugh's) repeated promises that this decision won't endanger those other precedents would by themselves be scant grounds for comfort for the reasons the dissent notes. Rather, the majority in fact acknowledges a tradition relating to liberty in regard to family and procreation (relying on *Skinner*, *Pierce*, etc.). Critically, none of these pre-*Griswold* cases was ever understood to create a right to kill prenatal life, a point the majority repeatedly comes back to. The dissent's failure to engage the thrust of Justice Alito's argument is reflected in their footnote 7. This footnote's argument is off in wrongly asserting that the reason the majority does not take the "first path" of attacking *Roe*—the path of saying that *Roe* undervalued the state's interest in life—is the majority's fear that such an argument would prevent them from claiming they mean only to leave the issue to the democratic process, and do not have a "dog in this fight." But in fact, the majority does indeed invoke the state's interest in life without any compromise of neutrality. The majority's

whole point is that it does not and should not matter how much *the Court* values fetal life, and thus the point is *not* that *Roe* "undervalued" fetal life in comparison to how Justice Alito would value it. Rather, what matters is how *the People* through their representatives value fetal life; *Roe* is wrong for "undervaluing" fetal life in comparison to how much their representatives have valued such life in the laws of 50 states. Of course, the Court must find the legislature's weighing of that fetal life and the mother's autonomy interest *to be plausible for rational basis analysis*, an analysis for the future that might well find some restrictions on abortion constitutionally infirm (e.g., in the case of a threat to the life of the mother).

Finally, it is legitimate to ask if a weakness of the *Dobbs* analysis is that it would effectively disallow the finding of any new constitutional protections, and, as the dissent implied, lock constitutional rights into an 18th- or 19th-century context that couldn't even imagine the fact patterns and technologies we face in our modern lives. Footnote 5 of the dissent charges the majority with this weakness in a rhetorically plucky way. First, the dissent notes that the majority seems inconsistent in saying that it need not determine if practices at the time of the Fourteenth Amendment "set the outer limits" of constitutional rights, while at the same time saying that legal restriction of abortion at the time of the Fourteenth Amendment "precludes its recognition as a constitutional right." The dissent professes confusion about what the majority could mean by this inconsistency. Then, while disclaiming the power of mind readers, the dissent takes a "best guess" that the majority meant something to do with abortion being an issue that was "not new" and that hence, practice with respect to abortion restrictions at the time of ratification was more dispositive of its constitutionality. But one shouldn't need to be a mind reader to see that is exactly what the majority meant. Yes, if, to take the dissent's witty example, the constitutionality of a ban on time travel were presented to a future Court, there would be a need to analogize and potentially evolve the framework for understanding the scope and application of the right to "liberty" to see whether a right to time travel was implicit in a scheme of ordered liberty.[9] But the fact that the specific balancing on the very question of abortion was done, contemporaneously with the ratification of the Amendment, and there was a supermajority consensus of states both at that time and for the ensuing century up until *Roe* that there was no such right, has to be persuasive in a way that the lack of such a consensus on time travel is not. So, good guess by the dissent. It would be remiss not to add that this doesn't rule out considering an "evolving" consideration of that balance, such as would have been supplied by new laws, cases, state constitutions, etc., recognizing a right to abortion at some point in the intervening century until *Roe,* but none

of that happened. So, the dissent's implicit view is that the *Roe* Court itself could just assert such a right, contrary to all practice, out of thin air. The dissent was right to quote Justice Harlan's pronouncement in *Poe* v. *Ullman* that the sweep of our constitutional tradition "is not captured whole in a single moment." But in the same breath, Justice Harlan said judges are also not free to "roam where unguided speculation might take them." Alas, the authors of *Roe* and their defenders in the *Dobbs* dissent engaged in exactly the type of unguided and counterfactual roaming that Justice Harlan warned against.

Conclusion

The 2022 midterm elections were a sobering wake-up call for the struggle ahead against powerful and well-endowed supporters of the abortion license. The struggle is to remind the American people of the underlying moral rightness of laws protecting unborn life, in the face of huge countervailing cultural forces and interests. The fact that we are even having the struggle, however, is the result of an important victory in *Dobbs*, a victory that at least allows this case to be brought to the people. That *Dobbs* lost the midterms is a myth. The seeming victory of pro-abortion candidates and referenda can be temporary if the pro-life movement redoubles its own education efforts and manages to effectively engage a broader political coalition that can and will speak the truth about abortion clearly and eloquently. *Dobbs* can't lose anything, because it is right. If the proper articulation of how it is the people in our constitutional system that decide fundamental questions like abortion is a loser, then what is lost is not an election, but the system itself, for the people will have lost the effective practice of self-government.

While it is necessary for the pro-life movement to grow beyond the alliance with judicial conservatives that brought the important victory in *Dobbs*, that victory will always remain important, practically and symbolically, for erasing the perverse idea that the American Constitution, the scheme of ordered liberty that has maintained republican government and political freedom for centuries, somehow requires that a woman be able to kill her unborn child. I wish to think that even the two generations of time during which the issue has wrongly been withheld from the people—and during which they have been conditioned to think of this evil as bearing the cherished label of a constitutional right—has not atrophied the moral discernment of the people, and that they will see the murder of defenseless human life for the evil it is. The small catch with *Dobbs* having restored the decision to the people is that they will now be judged by how they respond.

NOTES

1. The comparison between abortion restrictions and the mandatory draft is illuminating. Without doubt, abortion restrictions impose what would, in any context outside of saving potential human life, be unacceptable impositions on bodily autonomy for nine months, and lifestyle impacts for much longer. The draft compels men (and likely in the future, women) to serve in combat for multiple years, and to run material risks of suffering lifelong injury and even death. The state interest in the draft context can, at least at the level of individual combatants, be about avoiding risks that are *highly speculative*, e.g., failure to defeat this enemy in this battle will risk future harm to our national interests or our allies, etc. However, unlike the case of a soldier ordered to charge an enemy position, where achievement of an important state interest may be indirect and speculative, the prevention of an abortion leads directly and certainly to the preservation of an identifiable human life. Of course, the constitutionality of the compulsory draft has been well confirmed by Supreme Court precedent, see, e.g., *Arver et al* v. *United States*, 245 U.S. 366 (1918).
2. The *Dobbs* majority distinguishes *Roe* from *Griswold* v. *Connecticut* on precisely this point. Justice Alito notes that unlike the near unanimity of state laws against abortion at the time of *Roe*, at the time of *Griswold*, "the Connecticut statute at issue was an extreme outlier." *Dobbs* (opinion of the Court at n. 47). In other words, Justice Alito's reassurance that the logic of *Dobbs* applies only to abortion is not lip service, but reflects the historical reality that *Roe* is far more vulnerable in its lack of contemporary support than *Griswold*, *Pierce,* and other pre-*Roe* cases cited.
3. Poe v. *Ullman*, 367 U.S. 497, 542 (1961) (Harlan, J., dissenting).
4. See, John Finnis, "Abortion Is Unconstitutional," *First Things*, April 2021 edition, available at: https://www.firstthings.com/article/2021/04/abortion-is-unconstitutional.
5. See, *Dobbs*, dissenting opinion of JJ Breyer, Sotomayor and Kagan, at n. 7.
6. The concurring opinion of Justice Kavanaugh is thus not merely appropriating the rhetoric of evenhandedness. It *is* neutral to leave to the legislative branch questions that are not definitively resolved by the text, structure, or intent of the Constitution. This neutrality is illustrated by the *Roe* vs. Finnis comparison, showing the "equal and opposite" extremes where a constitutionalization of abortion law can take us, and between which poles the *Dobbs* result is neutral. It is worth reflecting on the dissent's attempt to impugn the majority's neutrality by noting recent cases where members of the *Dobbs* majority have not deferred to the legislature. Yet even the dissenters acknowledge that the examples of gun restrictions, jury composition, and restrictions on church attendance have to be treated somewhat differently as implicating rights explicitly mentioned in the Constitution. As the Court has well recognized, the analysis of when a right is fundamental begins with the text. The *Glucksberg* rule allowing for unenumerated rights that are deeply embedded is itself a necessary concession to the "sweep" of the tradition that Justice Harlan refers to. But surely that sweep cannot be announced out of thin air.
7. Moreover, to the extent that there is bad taste in political efforts to influence judicial selection on the basis of judicial philosophy, the historical record suggests that it was the pro-abortion side that first opened the gates wide to the politicization of judicial nominations with the orchestrated opposition to the otherwise very well-qualified Judge Robert Bork.
8. The dissent acknowledged in passing the prophetic powers of Justice Scalia dissenting in *Lawrence*, which found state anti-sodomy laws unconstitutional. Justice Scalia perceptively noted that a decision recognizing the right to same-sex intimacy did, in the words of Justice Kennedy's majority opinion, "not involve" same-sex marriage, "only if one entertains the belief that principle and logic have nothing to do with the decisions of this Court." The *Dobbs* dissent suggests that they could similarly see a rejection of substantive due process in *Dobbs* leading to an overruling of at least *Obergefell*, and only hopes that they "will not join Justice Scalia in the list of prophets." They may have a point here, but that does little to rebut the critiques of substantive due process, so much as to express dislike of the outcomes. If the logic of *Dobbs* would suggest that *Obergefell* was wrongly decided, that would not, *vel non*, undercut the logic of *Dobbs*. See, e.g., *M. Tenaglia*, "Dignity, Dystopia and the Meaning of Marriage," *Human Life Review*, June 2015, available at https://humanlifereview.com/dignity-dystopia-and-the-meaning-of-marriage/.
9. Personally, I think that the risk of going back in time and upsetting the space-time continuum and all future history probably provides the state with a compelling interest in prohibiting time travel, but that's just my initial sense.

Thomas More Society Turns 25:

A Reminiscence of *NOW* v. *Scheidler*

Thomas Brejcha

Introduction

In November 2023, our Thomas More Society—a non-profit public interest law firm based in Chicago and now blessed with lawyers at offices across the country—will mark a major milestone: 25 years of lawyering for protection of life, family, and religious liberty. We have spent this past quarter century in the pursuit of justice for a host of good people—brave souls and their supportive groups who have become embroiled in legal controversies for having labored in these vineyards.

While the Thomas More Society was incorporated a quarter century ago, my own experience with pro-life litigation goes back earlier. It was 37 years ago, in summer 1986, when I first met Joseph Scheidler, a pro-life leader who lived in Chicago but had achieved nationwide fame (our adversaries would say, notoriety or infamy) for having published a protest manual entitled *Closed: 99 Ways to Stop Abortion* (Ignatius Press, 1985 ed.). Worse (from the perspective of the nation's cash-rich abortion industry and the pro-abortion National Organization for Women or NOW), Scheidler was an activist as well as an author. He had organized a nationwide alliance of like-minded pro-life activists dubbed the Pro-Life Action Network or "PLAN."

The Scheidler book's 99 chapters were largely innocent but bold, covering topics like Sidewalk Counseling, Truth Teams, Picket and Demonstration, Leafleting, Rallies and Marches, etc. Only a single chapter (Chap. 32) advocated lawbreaking (i.e., trespass), namely, "Sit-Ins (The Rescue)."

But Scheidler's major premise, stated forthrightly in his Introduction, caused sparks to fly among pro-abortion advocates: "This book is based on the equation that abortion equals murder. It will make sense only to those who believe without question that abortion is the unjust, premeditated taking of an innocent human life." This stark, sharp-edged proposition was endorsed by the prominent American Evangelical Protestant leader Franky Schaeffer. Schaeffer's Foreword in *Closed* signaled and fostered a powerful

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new alliance between Catholic and Protestant pro-life activists, reflected in a growing roster of PLAN activists.*

The alliance of Scheidler and Schaeffer struck a raw nerve among abortionists and their partisans. Represented by Morris Dees and Richard Cohen of the Southern Poverty Law Center ("SPLC," famous for bankrupting the last Southern remnants of the Klu Klux Klan), NOW and a pair of abortion providers retaliated. They filed a single-count class action complaint charging Scheidler, other named activists in St. Louis and Florida, and unnamed "co-conspirators" allied with PLAN, with unreasonably agreeing and acting to "restrain trade" in abortions in violation of the 1890 Sherman Antitrust Act. Dees and Cohen sought a nationwide injunction suppressing the defendants' and PLAN's campaign of illegal acts.

This case, captioned as *NOW* v. *Scheidler*, would steer my legal career in a new direction—and with it, the fledgling origins of the Thomas More Society began to be written. Our Thomas More Society was "forged in the crucible of courtroom conflict"—namely, in defense of this uniquely peculiar and immensely challenging litigation that traced an erratic path of ups and downs through all levels of the federal judiciary over nearly three decades.

In the summer of 1986, I was a veteran Chicago business litigator, having worked on a pair of cases that reached the U.S. Supreme Court, one of which involved the federal antitrust laws. I had volunteered to play an off-stage, merely advisory role for a group of younger lawyers at Americans United for Life (AUL), a public interest law firm then based in Chicago. AUL had undertaken to defend Scheidler and his Pro-Life Action League against the abortionists' lawsuit spearheaded by Dees and Cohen.

AUL's young lawyers urged a perfectly valid defense that the abortionists' antitrust theory was fatally flawed, given that Scheidler's protest was wholly non-economic, but our early motions to dismiss the antitrust claim on this legal ground were all denied. Thereafter, Scheidler had to testify under oath about his protest activities, whereupon AUL (whose lawyers were superb brief writers but lacking in trial experience) asked me to formally appear in court as his lead counsel. My senior partner, James Fox, Esq.—a devout Catholic prolifer and Chicago's preeminent commodities lawyer—gave me his blessing. So, I filed my formal appearance. Little did I anticipate that this case would dominate my entire professional career; that it would soon morph into a massive federal racketeering (RICO) and extortion class action claim; or that it would trigger three successive appearances before the Supreme Court.

* Franky Schaeffer, son of the late Francis Schaeffer (1912-1984), has since repudiated his anti-abortion activism.

Despite the erratic trajectory of the case over three decades, one key tactic of opposing counsel's strategy was consistent. They tried repeatedly to cast a dark cloud over the pro-life activist movement as indelibly tainted by violence, to stigmatize prolifers and incite others to shun them as unfit for public discourse. In retrospect, I believe that a signal achievement of our *Scheidler* defense—apart from winning a just result—was to counter and repulse this smear narrative. The abortion forces' aim to erase the pro-life issue from public debate was thwarted, as protesters, rescuers, and sidewalk counselors kept the issue "alive."

NOW v. *Scheidler*—the Legal Issues

Our opponents were angling to buttress their dubious legal claims with a flurry of publicity about "anti-abortion violence," namely, their smear campaign linking Scheidler and his Pro-Life Action League to recent arsons and bombings at abortion clinics. The abortionists claimed in press releases—but not in court—that NOW was suing in order to "stop the violence." At Scheidler's deposition, Dees and Cohen dwelt on his controversial remarks—that he didn't shed tears when abortion clinics were shut down, by whatever means. But Scheidler emphatically denied any link to violence, and kept citing *Closed*, in which Chapter 81 was entitled "Violence: Why It Will Not Work."

Scheidler insisted that his tactics and advocacy alike were non-violent. After he elaborated on this theme at his deposition (noting that even midnight arsons or bombings at abortion clinics posed mortal danger to human beings, namely, police and firefighters, not merely damaging inanimate objects), Dees and Cohen suddenly withdrew from the case. They claimed they were "too busy" suing Alabama's state police for racial bias. NOW's general counsel Patricia Ireland and Chicago civil rights lawyer Fay Clayton then took over the reins.

One of Scheidler's young activist recruits was an Evangelical preacher named Randall Terry, from Binghampton, New York. Terry organized a new round of protests called "Operation Rescue," staging mass "rescues" that impeded access to abortion clinics in Cherry Hill, N.J., New York City, and elsewhere. In Chapter 32 of *Closed*, Scheidler endorsed "Sit-Ins (The Rescue)," but he advocated that "rescuers" invoke the common law defense of "Necessity"—contending that the law should excuse trespass violations when human lives were in imminent peril.

Late in 1988, NOW's new lawyers, Ms. Ireland and Ms. Clayton, staged a press conference at the National Press Club, announcing that, because President Reagan would not prosecute "domestic terrorists"—like Terry

and Scheidler—they were adding civil RICO and extortion claims to the *Scheidler* case. They also added Terry and Operation Rescue, among others, as new co-defendants. The RICO claim alleged that Scheidler, Terry, and the other defendants had conducted an "enterprise," that is, PLAN, to force abortion clinics to give up their abortion business through a pattern of "predicate acts of racketeering." The main "predicate act" alleged was "extortion"—that is, that Randall Terry's "rescues" amounted to "threat, force or violence" that coerced abortion providers to "give up their property" by having to close down and thereby forced women to "give up" their rights of access to abortion providers.

Federal extortion law—the Hobbs Act—and state extortion laws modeled on federal law forbid "obtaining" of "property" by forcible or violent means. Yet, no rescuer obtained or even tried to obtain any "property" from the clinics or their patients. Rather, they were trying to save infants' lives. Likewise, the antitrust claim hinged on the defendants' engaging in "anti-competitive practices" by shutting down clinics through illegal "rescues," blocking access to abortion providers.

These contentions were fatally flawed. The plaintiffs misapplied laws designed to protect "property" and to regulate competitive behavior within lawful economic markets by extending their reach to the domain of moral and political rights. Antitrust and unfair competition laws govern the behavior of competitors (actual and prospective) within lawful markets. Extortion laws protect property owners or possessors against others bent on forcible takeover of their property.

On the other hand, society's decisions about whether and to what extent trade in certain products or services should be banned or regulated, and how property should be protected against predators, are political decisions. They are not economic ones. Public policy decisions within the political sphere are governed through the political process. And political debates are governed by First Amendment principles, not antitrust or criminal extortion laws.

Indeed, infants' lives are not "commodities" or items of "property" that may be bought or sold. Whether those lives may be protected or killed on demand is a political question, not an economic one.

In other words, our clients were advocating for the "de-commodification" of abortion. They were not engaging in anti-competitive market practices. They were advocating that the abortion market be declared illegal.

Nor were they trying to acquire anybody's property. Judge James Holderman used our terminology ("de-commodify") in granting our motion to dismiss the plaintiffs' antitrust claim. But it took him all of five years to grant the latest in our string of dismissal motions. He also threw out the

RICO/extortion claims on the similar ground that our clients' motives were political, not economic. The U.S. Court of Appeals for the Seventh Circuit affirmed his rulings with no dissenters.

The Supreme Court Unanimously Snatches Defeat from the Jaws of Our Victory

Alas, our victory celebration proved short-lived. The abortionists' antitrust appeal to the Supreme Court was rejected. But the justices agreed to hear our opponents' appeal of the RICO dismissal. On a cold day in January 1994, we received the bad news that the justices had ruled unanimously to reinstate the RICO and extortion claims, as the RICO law defined the pivotal concept of "enterprise" in terms that encompassed non-economic "associations" misused for criminal purposes.

Yet, there were kernels of hope in the High Court's opinion. In a footnote, Chief Justice Rehnquist said the Court saw no First Amendment issue raised, so that issue remained fully open for further consideration. Justices Souter and Kennedy, in a concurring opinion, "stress[ed] that nothing in the Court's opinion precludes a RICO defendant from raising [the] First Amendment."

NOW and the abortion plaintiffs were emboldened by their Supreme Court victory. A new Clinton appointee, Judge David Coar, took over the case back in the lower court. The plaintiffs now went so far as to allege in an amended complaint that our clients had conspired with murderers and kidnappers of abortion doctors, escorts, and workers. To our chagrin, a few purported "pro-life" activists openly advocated "justifiable homicide." We found ourselves starved for funds while having to defend depositions of many pro-life activists nationwide. Over the next four years we were hanging tough while embarked on what I've grimly recalled as our "pilgrimage through the valley of the shadow of death." We were in desperate straits, with barely enough funds to pay out-of-pocket costs. Violence flared up repeatedly, as abortion doctors, escorts, or workers were assassinated or wounded.

The mystics (and nowadays even existentialists) would say we were going through the dark night of the soul. But we were heartened and even enthralled by the righteousness of our cause. The Scheidlers refused to compromise. We pressed ahead.

My law partners were at wits' end, as the case had devoured huge quantities of my otherwise billable time. After 11 years, any "pro bono" glow had faded. Judge Coar denied summary judgment and certified the case as a national class action, ruling that it would culminate in a widely publicized jury trial targeting our "extortionists" and "racketeers."

Jim Fox had retired from my law firm leadership. My new managing partner told me at a meeting I should either "quit the case or quit the firm." Quitting

the case was not an option.

A Groundswell of Support

We mounted a spirited defense at trial, though the verdict and judgment were adverse. But there were some positive factors at work too. Our loss at the Supreme Court spurred a groundswell of support, some from quarters one would not readily expect.

Most encouraging was a paid *New York Times* advertisement from the Seamless Garment Network that appeared on March 27, 1994, headlined "A Sub-Zero Blast Against Conscientious Protest" and calling the ruling "a draconian measure for strangling social and political dissent."

Among the signatories listed on the ad were Joseph E. Lowery, President of Dr. Martin Luther King Jr.'s organization, the Southern Christian Leadership Conference, or SCLC, and Rev. Bernice King, Dr. King's daughter. A host of other distinguished individuals and groups from protest movements also signed, including PETA, peace activists, environmentalists, civil rights leaders, the American Indian Movement, and more. Suddenly, we had allies!

Just prior to trial, Randall Terry surprised us by secretly negotiating a settlement, on terms never made public. But Terry's lawyers, associates of Jay Sekulow and the American Center for Law & Justice (ACLJ), continued as defense counsel for "Operation Rescue."

Before the trial, Judge Coar ruled that "a plethora of evidence" supported plaintiffs' claims that our clients adversely impacted the "intangible property" of the abortionists and their doctors and patients. He found no support, however, for plaintiffs' smear tactic—the claim that our clients engaged in crimes of violence, such as the RICO "predicate crime of murder" or "kidnapping." Those claims were deemed out of bounds. Nor was there evidence to support any link between defendants and "various acts of arson or robbery."

We received critical help from many defense witnesses. The eminent Congressman Henry Hyde, chair of the House Judiciary Committee, and Fr. Ted Hesburgh, president emeritus of Notre Dame, agreed to testify as character witnesses for Scheidler (although Fr. Hesburgh later was unable to testify, his mere inclusion on our witness list provoked our opponents' wrath). "Miss Norma" McCorvey, the anonymous Roe in *Roe* v. *Wade*, as well as Sandra Cano, the Doe in *Roe*'s companion case, *Doe* v. *Bolton*—both of whom had embraced the pro-life cause—testified on the peaceful nature of pro-life protest.

Among our other defense witnesses was one young mother who had decided—owing to pro-life intercession—not to abort her child. When she identified her baby son sitting on the lap of co-defendant Tim Murphy, and Murphy stood up so the jurors could see him, the pro-abortion lawyers erupted,

calling it "inflammatory" and "prejudicial." But it wasn't a planned tactic, only vivid proof of the truth at the heart of our defense. These nameless "fetuses" were not disposable commodities but live (albeit often unseen) human beings—part of human life as a continuum.

Still, Judge Coar agreed with plaintiffs' theory that wholly passive temporary blocking of physical access to abortion providers' premises constituted "forceful" or even "violent" extortion—even though the rescuers lacked the slightest intent to acquire any "property" from the abortionists whom they blockaded.

The abortionists' legal theory attacked the very concept of non-violent protest, turning Gandhi's notion of *satyagraha* ("soul force" or "truth force") upon its head. Putting one's physical self between a woman seeking "health services"—in NOW's typical euphemistic vocabulary—and the clinic she was trying to enter was said to be an aggressive, violent act. According to this logic, going limp upon being arrested wasn't "non-violent" but rather aggressively "resisting arrest." And pro-life handbills were "thrust" at others as if the very effort to persuade was weaponized.

Recalling NOW's pretrial publicity about "stopping the violence," and in the teeth of Judge Coar's prior ruling that the claims of "violence" including "murder" and "arson" were out of bounds, plaintiffs' lawyers repeatedly brought up "pro-life violence." In our opponents' opening statements alone, shootings and bombings were highlighted no fewer than five times. But motions for mistrial were rebuffed.

Following brief deliberation, the jury returned a verdict, finding all defendants liable for extortion and RICO violations. But it was clear that the case would turn on the critical issue of law, not evidentiary issues. Was Dr. King's tactic of "peaceable, non-violent direct action" (see, *Letter from Birmingham Jail,* April 1963) punishable as "extortion"? Was directing a campaign featuring any "pattern" of such demonstrations "racketeering"? Was sitting on a lunch counter stool an "acquisition" of the owner's "property"?

Our prolifers were not "racketeers," on par with gangsters and hit men! Yet that was the jurors' verdict, given the tight strictures of Judge Coar's instructions on the pivotal legal issues.

After hearing more testimony and argument at the second phase of our trial on whether the court should enter a nationwide injunction, Judge Coar entered his final judgment in July 1999. Damages were assessed and tripled under RICO, up to more than a quarter million dollars. A nationwide injunction barred the conduct or threat of "rescues" throughout the U.S.

We Lost Our Initial Appeal. But We Won (8-1) at the Supreme Court!

We appealed to the Seventh Circuit Court of Appeals, after the Scheidlers

put up their family home equity as collateral to cover the amount required for the appeal bond.

But the Seventh Circuit unanimously affirmed the RICO judgment. Not a single judge voted for rehearing. Our last chance was to seek relief from the same Supreme Court whose justices had unanimously rebuffed our appeal a decade earlier. But *mirabile dictu*, the High Court agreed to review *NOW* v. *Scheidler* a second time, and the result this time was different.

Chief Justice Rehnquist's 8-1 opinion, handed down on February 22, 2003, was decisively in our favor. He concluded his opinion by saying that "the effort to characterize [defendants'] actions here as an 'obtaining of property from' [the abortion providers, women, and doctors] is well beyond" the scope of extortion and RICO. He wrote: "Because all of the predicate acts supporting the jury's findings of a RICO violation must be reversed, the judgment that petitioners violated RICO must also be reversed. Without an underlying RICO violation, the injunction issued by the District Court must necessarily be vacated." And then, in conclusion: "The judgment of the Court of Appeals is accordingly REVERSED." 537 U.S. 393, 411 (2003) (emphasis in original). These directions could not have been any more clear or explicit.

Having joined the chief justice's majority opinion, Justice Ginsburg, along with Justice Breyer, also wrote a separate concurring opinion. She added a footnote memorializing her stunning exchange with Ted Olson, President George Bush's Solicitor General, who was *arguing against us* on the core issue about the scope of the federal extortion law:

> At oral argument, the Government was asked: "[D]o you agree that your interpretation would have been applicable to the civil rights sit-ins?" The Solicitor General responded: "Under some circumstances, it could have if illegal force or threats were used to prevent a business from operating."

In retrospect, I believe this was a pivotal moment for our case and also for pro-life activism. The message sent by our host of *amici curiae*—as Justice Ginsburg's footnote proved—was powerful. This was true especially of the Southern Christian Leadership Conference (SCLC), whose old headquarters on Atlanta's Auburn Avenue (up the street from the famed Ebenezer Baptist Church) I had visited repeatedly. SCLC filed or joined a succession of *amicus* briefs, as did many other *amici* from across the spectrum of social reform movements. The late former U.S. Attorney General Ramsey Clark sat next to me as co-counsel on the last day of our injunction hearing before Judge Coar. Now our "optics" were altered. We were no longer civil society's violent outcasts. Rather, we now held ourselves out as human rights reformers who could plausibly lay claim to the legacy of America's civil rights movement.

The Abortion Forces Try to Overturn the Supreme Court's Ruling

But the abortion forces were adamant in resistance to our victory. The case was far from over. The 8-1 Supreme Court majority, they said, had overlooked four findings by the jury that unnamed perpetrators somehow "associated" with our clients had committed four unidentified acts or threats of violence.

On remand from the Supreme Court, a "settlement clerk" on the Seventh Circuit staff suggested that we should consider some form of "settlement" (provoking our great surprise and concern). We demurred, but in February 2004, our three-judge Court of Appeals panel, headed by Judge Diane Wood, ordered a remand to Judge Coar with directions that he consider resuscitating his earlier RICO decree, to whatever extent necessary. Judge Wood directed that Judge Coar address the fact that the justices had "overlooked" four acts of threats of violence. Then he should also consider adopting a sweepingly new construction of the Hobbs Act, the federal extortion law, as outlawing any acts or threats of violence affecting interstate commerce, even if unconnected to any effort at acquiring "property" by threat, force, or violence.

This was a startling turnabout. On rehearing, Judge Manion, one of only two dissenting judges in active service on the Seventh Circuit, said that the abortion lawyers should have asked the Supreme Court for a rehearing so they could have addressed this supposed mistake, rather than flouting the justices' 8-1 dismissal mandate. This time even the AFL-CIO supported us as an *amicus curiae,* arguing that Judge Wood's suggested new legal interpretation of the Hobbs Act would expose striking unions to ruinous RICO lawsuits whenever a series of scuffles broke out on picket lines.

We Took a Third Long-shot Appeal to the Supreme Court. We Won Again!

Yet again we had to seek Supreme Court review. The odds against securing review by the Supreme Court are over 100:1—even on the first try. Here, we were trying to secure review for an apparently unprecedented third hearing. We believe that Judge Wood's gambit was based on our steeply unfavorable odds. She lost her gambit.

We won review. We also prevailed on the merits, this time unanimously. The Court's third *Scheidler* opinion was issued on February 28, 2006. Justice Breyer quickly disposed of Judge Wood's contrived new legal theory: "Congress did not intend to create a freestanding physical violence offense in the Hobbs Act." The justices were notably silent about our initial argument, that the Seventh Circuit had flouted the High Court's mandate, perhaps in defer-

ence to judicial decorum. But Justice Stevens (the sole dissenter in *Scheidler* II), who was presiding because Justice Rehnquist was ill, made a closing comment at the oral argument that clearly suggested serious resentment on the justices' part that their earlier mandate had been ignored.

Quibbling over Recoverable Costs: 2006 to 2014

NOW v. *Scheidler*'s last eight years were spent in protracted battles over our claim for a fraction of the out-of-pocket costs incurred over the prior two decades. The abortionists fought tooth and nail over every penny. But their last-gasp appeal trying to deny us the meagre amount of costs we could document was finally dismissed in 2014 by a new Seventh Circuit appellate panel, headed by Judge Frank Easterbrook, as "preposterous."

In retrospect, the epithet might well apply to the entire case—a long, arduous, and erratic federal judicial proceeding premised on one fatally flawed claim after another.

Does Pro-Life Activism Play a Significant Role in Winning Hearts and Minds?

During the latter years of the *Scheidler* litigation, and more recently in this post-*Dobbs* environment, we have been aggressively engaged, both on offense and defense, in most of the 50 new state battlegrounds where abortion issues are now so hotly contested.

Wholly apart from *Roe*'s patent defects as a matter of legal (and historical) scholarship, the *Dobbs* ruling on June 24, 2022, was also the fruit of more than a half century of sustained, ardent, and indomitable pro-life protest across the entire United States. Time and again, we encountered the abortion forces' refrain that *Roe* was absolutely "entrenched" and "settled" law, and that those of us who recoiled against its abortion-on-demand regime were futile in our opposition and wholly stymied by *Roe*'s pseudo-constitutional mandate. Yet pro-life outcry and protest never faded, let alone ceased.

We've been blessed to have crossed paths with so many of the pro-life heroes who labored in this vineyard. Many of their names have been featured in our recounting the protracted narrative of the *NOW* v. *Scheidler* case. But there were so many others. We salute them, but especially the late Joe Scheidler, his widow Ann, and their helpers Andy Scholberg and Timothy Murphy, who stayed the course and refused to surrender in the teeth of the abortionists' legal onslaught.

Amen!

Where Do We Go from *Dobbs*?

Continuing the Conversation

George McKenna

Last fall our longtime contributor George McKenna sent us "Getting There," in which the seasoned political scientist, with over 20 articles in the Review*'s archive, insisted pro-life politicians sharpen their messaging and deepen their commitment in response to the Supreme Court's controversial (to say the least)* Dobbs *decision overturning* Roe *v.* Wade*. Pro-life leaders, argued McKenna, need to rethink the movement's strategies and tactics—maybe even establish a "central command structure" to determine what worked and what didn't—now that its initiatives will be taken up in 50 state legislatures, the majority of them not ready to seriously restrict abortion and some of them actively hostile to any restrictions at all. In "Where Do We Go from* Dobbs*?," a symposium in our last issue focusing on the ideas McKenna presented in "Getting There," we heard from nine Human Life Foundation Great Defenders of Life: Helen Alvaré, Carl A. Anderson, Gerard V. Bradley, Clarke D. Forsythe, Edward Mechmann, William Murchison, Marvin Olasky, David Quinn, and Wesley J. Smith. Now we hear again from McKenna, who graciously addresses the remarks of each one of them, acknowledging agreement—and answering criticism.*

—The Editors

My deep thanks to Maria Maffucci and Anne Conlon for inviting Helen Alvaré, Carl A. Anderson, Gerard V. Bradley, Clarke D. Forsythe, Edward Mechmann, William Murchison, Marvin Olasky, David Quinn, and Wesley J. Smith to share their thoughts on my article. I thank all of them most heartily for taking the time to do so. I've learned a lot from their remarks, and I hope to be able to incorporate some of what I've learned into my thinking as this new turn in the abortion debate proceeds.

What I liked most about **Helen Alvaré's** contribution to the abortion debate is the way she fits together rights and responsibilities. The two, she writes, are linked, yet the abortion debate seems to turn only on the former, "as if there is no life to consider on the business end of the abortion instruments." Once in a while, she adds, we need "to flip the script," by asking "those on whom vulnerable children completely depend [to] think first about what is due those children." This is just the kind of approach that will help us emerge from our "defensive crouch."

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Carl A. Anderson identifies Ronald Reagan as a president who was firmly pro-life in principle but also willing to move forward incrementally to advance pro-life policies. In 1983, on the tenth anniversary of *Roe* v. *Wade,* Reagan submitted an essay entitled "Abortion and the Conscience of the Nation" to the *Human Life Review*, which as you know was founded by Maria's father, James P. McFadden. As Maria later revealed, her father knew the document to be real when it was delivered by the White House with notes and revisions on its pages, written in the President's own handwriting. On the first page of his lengthy essay, Reagan made it clear where he stood on the issue by noting that "since 1973, more than 15 million children have had their lives snuffed out by legalized abortions." Today when that figure has risen to 63 million, we need more than ever to heed Carl Anderson's witness to the importance of "loving both mother and child."

Gerard V. Bradley rightly observes that "there are many routes to legally protecting the lives of unborn children from the moment of conception," from seeking a constitutional amendment recognizing the personhood of the unborn to seeking relief separately through state legislatures and courts.

Some of this can be pared away. Probably there was never a serious hope for a constitutional amendment, which is one reason the Catholic bishops ultimately rejected that solution in favor of a state-by-state campaign. That is what it comes down to now, and Bradley cites a variety of strategies worth considering. He expresses what sounds like frustration at all the "summits" and "consultations" he has attended that never produced any agreements.

Up to this point I am with him entirely. Yes, we do have an astounding variety of ideas for stopping the killing. But that is just why I pray that the 200-plus pro-life lobbies can find some way, some sort of structure, for bringing together many different minds and ideas, then seeing if they can unite behind a central strategy. Faced with the same facts, though, Bradley draws the opposite conclusion. Because of the successes of the pro-life movement in reversing *Roe*, "no such overarching structure is needed." With respect, I disagree. We have entered a new chapter of the fight now, and a new field of battle in our states. We need some coordination among all those 200 groups now fighting for the unborn. Some time ago I spoke before a large audience of pro-life gays and lesbians, and was received very cordially. If we are able to put aside our viewpoint differences on that fraught issue in order to stand together for life, we can bridge every other issue as well. My opinion is that it's worth a try.

Clarke D. Forsythe begins by focusing on the new set of facts we are confronted with in this second phase of our fight to save unborn children from the knives and poisons of the abortionists. The main thrust of the fight is largely out of the hands of courts and lawyers now, so "the major challenge will be

to *persuade* our fellow Americans that abortion should be prohibited." In this campaign we will face some formidable obstacles—he cites in particular the abortion lobby's ballot initiatives over the next two years designed "to short-circuit the legislative process in the states with 'direct democracy,' aided by multimillion dollar campaigns." These are formidable developments, and he worries that "some pro-life advocates have yet to show a *democratic disposition* to appeal to the public" at large, focusing instead "on rousing 'the base,' demanding complete prohibitions on abortion immediately in every state, and criticizing leaders who propose advancing less-than-complete prohibitions of abortion as an intermediate measure." His own approach is a lot like mine: "Accept as much as you can get in the current context of existing obstacles and work over the long term for a greater good." Hurrah!

Edward Mechmann compares our situation today with that of antebellum America, where there was a patchwork of laws in the various states, none of which granted full legal personhood to blacks. Today, with abortion, some states ban it at six weeks, others at twenty weeks. "And radically pro-abortion states basically hold that unborn children have no rights that born people are bound to respect."

Mechmann agrees with the step-by-step agenda I have laid out, but he adds that there "must be an active, assertive defense" against pro-abortion legislatures and administrative agencies. This is an area I had not covered in my essay but should have. Pro-life pregnancy centers, he notes, have been constantly harassed for "treating unborn children and their mothers like real persons," and "religious hospitals are under constant regulatory pressure because they refuse to treat murder as if it were health care." I have personally heard from Christian doctors about being pressured to withhold treatment from "defective" newborn children. All of this cries out for a determined pushback, a point Mechmann emphasizes in his remarks.

William Murchison is of two minds in reaction to my essay. On the one hand he agrees with me that we don't yet have the votes to ban all abortions in every state but we do have enough to make a start, so we should "take what we can get." On the other hand, he doesn't think it is possible to do that because it's impossible to get the American people to reach "a single viewpoint on anything under the sun."

On its face that can't be true. The American people eventually reached a single viewpoint, or at least a working majority, on slavery, prohibition of alcoholic beverages, fighting the Nazis, and other issues much argued but finally resolved. I would agree with him, though, if what he means is that it takes time, and sometimes great sacrifice, to get enough Americans on the right side of a controversy; he notes that the Civil War cost the lives of

750,000 Americans, no small sacrifice for a great cause.

He rejects my analogy of abortion and slavery on two grounds: first, "Slaves were visible persons," with "faces, bodies, names; all the marks of realized life." While conceding that unborn children also have these features, "the problem is their out-of-sightness." But are they really out of sight in this age of ultrasound? I am looking right now at an ultrasound film of an eight-week fetus. To me it looks very much like a baby. The child has little button eyes and a fat tummy. Her legs are curled up and moving, and so are her arms. I can see her fingers. She seems, indeed, to have "all the marks of realized life," to cite Murchison's first test.

Here I will pause to remind you of what I have called the "weak hand" of the abortion lobby. If an eight-week fetus looks very much like a baby, what about a thirteen-week fetus? Or a twenty-week fetus? If you look at their ultrasound photos, you will basically be seeing baby pictures. Yet, together with their younger counterparts, hundreds of thousands of these children are being killed every year. Nor is this all. Six states and the District of Columbia actually allow *nine-month abortions*. Now, I firmly believe that the vast majority of Americans are good people, and if that is true, I can't imagine that they would react with anything but shock and anger if the facts I have presented here were widely publicized, especially in the states that allow nine-month abortions. Living myself in a nine-month abortion state (New Jersey), I have reason to believe that *they are not aware of this license to kill*. So perhaps it is in *these* states that the fight should begin. It will be a tough fight, because facts do not speak for themselves; you have to make them speak.

Returning to Murchison's argument, his second reason for rejecting the analogy between abortion and slavery is that abortion is inextricably tied up with feminism. The two are "joined together at the hip." But that is not true historically. From what we can gather, most of the suffragettes in the late-nineteenth century shared Susan B. Anthony's firm opposition to abortion. Even if some did not, it still shows that there is no organic connection between feminism and abortion. As for the present, it's worth noting that one of the 200-plus pro-life organizations in America is called "Feminists for Life."

My brother Murchison is on much, much stronger ground in identifying the root of the problem as our "I-want-to" way of life. This reflexive selfishness has embedded itself in our culture, with consequences that do not look good for the survival of the family and the larger community. In spite of this, however, he sees a developing backlash against "the moral soot now enveloping us." What is needed now is "moral inquiry, serious, serious moral teaching—and yes, the earnest prayers of God's faithful." Amen.

Marvin Olasky identifies the main difference between Martin Luther

King's battle against racial segregation and our resistance to the killing of unborn children: "King had nationally prominent journalists on his side, with newspapers, magazines, and television networks amplifying his message, but the national press has been highly pro-abortion for a long time." This is indeed a formidable obstacle, and he spells out in painful detail the near-total support for abortion at any stage of pregnancy by the national press and TV networks. In contrast, the national press was one of King's major allies in his crusade against racial segregation. No American who was alive then will ever forget the respectful coverage they gave to King's "I Have a Dream" speech at the Lincoln Memorial in August of 1963. In contrast, the annual March for Life every January is lucky to get any network coverage—unless the march or its aftermath gets stormed by counter-demonstrators. They love to cover that.

The challenge, then, is to find a way to "circumvent the biases at the top," and Olasky apparently agrees with me about one of the best ways to get around those biases. It stems from what I have called the abortion lobby's "weak hand," a weakness that reveals itself, Olasky notes, "when people see even an 8-week-old unborn child: They say, 'that's a baby.'" Olasky apparently agrees with me that ultrasound is the most powerful weapon we have against those who keep insisting that there's nothing much down there to see. It has already caused a number of abortionists and their aides to throw down their weapons, including, most famously, Dr. Bernard Nathanson, who had performed more than 70,000 abortions and whose opinions were favorably cited in *Roe* v. *Wade*. He was so appalled when he saw on ultrasound the dismembering of an unborn baby—apparently for the first time!—that he became an active pro-life spokesman. He later recalled, "I was shaken to the very roots of my soul by what I saw."

David Quinn begins by recalling Ireland's two-to-one vote in 2018 to repeal his country's constitutional protection of unborn children. He was relieved to some extent four years later when he heard about the U.S. Supreme Court's ruling in *Dobbs* v. *Jackson Women's Health.* Now, however, he knows that *Dobbs* did not end or even limit abortion but simply moved the controversy to our state legislatures. That portends a very long fight "because abortion has become so embedded in our culture."

How to change this lethal mindset? "What we need is a social revolution in what people see as 'the good life.'" In case you think that's putting it too broadly, Quinn narrows it down by citing what is *not* good in modern life besides abortion: "continuing high divorce, a declining marriage rate, growing loneliness . . . and (on the horizon) widespread euthanasia."

When it comes to specific strategies for combatting what he rightly calls

the "embedded" abortion culture in America, he seems to agree with me when he suggests "a very broad-based, well-coordinated campaign by pro-life groups statewide and nationwide guided by good, high-profile leaders." Finally, I was happily surprised by his invocation of Pope St. John Paul II, who summed up in a few words what I argued at length in my essay: "[John Paul II] said that Catholic politicians could in good conscience vote in favor of laws that permitted abortion *so long as the imperfect new law they were supporting was replacing a worse one*" (my emphasis). There it is! I have a Catholic saint on my side.

Wesley J. Smith also invokes that powerful bit of wisdom from John Paul II, adding that the goal should be "saving as many lives as possible." And I would add this ending: "as we move toward victory." But that is emphatically not the language Smith recommends. Why not? Because "the strategic questions with which the pro-life movement grapples are not properly framed as matters of winning or losing, but instead, of saving as many lives as possible."

So we can't talk about winning? That doesn't sound right. Other moral-spiritual campaigns haven't held back from doing so. "We Shall Overcome" sounds to me like an expectation of victory. Martin Luther King, by the way, also got a lot of inspiration from St. Paul, and here is what Paul says on the subject of victory: "Do you not know that in a race all the runners run, but only one gets the prize? . . . . They do it to get a crown that will not last, but we do it to get a crown that will last forever." Smith reminds us that victory will take a long time; it will have to be "measured in decades." Maybe—but I can remember a time when you could get a good laugh if you predicted that black legislators would play decisive roles in governing Southern states and that a black man would be sitting in the White House. It wasn't that many decades ago.

But I will say no more about this difference in outlook. There is so much more I agree with in Smith's presentation. He lays out three initiatives on behalf of human life: First, make the choice of birth easier. This, as he notes, is already well underway, thanks to the numerous pro-life clinics that sprang up during the *Roe* era, providing free pregnancy tests, ultrasound scans, post-natal education, diapers, and social services for mothers. But he would also push some outside-the-box efforts, such as making childbirth "free for every mother in the country" and—this one sounds a bit vaporous but maybe it's worth a try—promoting a national dialogue on "how best to promote a culture of life" regardless of one's views on the legality of abortion.

The other two *suggestions* Smith provides, "Increase Commitment to Oppose Assisted Suicide" and "Protect Medical Conscience," I will deal with briefly here because you can read them at full length in his presentation. I

don't have even a shadow of disagreement with them. In his second suggestion, Smith notes that assisted suicide is rapidly gaining strength in the United States, and we must join forces with any and all groups fighting against it, including those—this is how I would put it—who have not yet recognized the similarity between killing people outside the womb and killing those inside. Smith's third suggestion, "Protect Medical Conscience," is really an extension of the second. By "protecting the right of doctors and other medical professionals to refuse complicity in abortion and assisted suicide," we get a double benefit: We save a life then and there, and by doing so communicate to others the deep truth that killing innocent people is wrong "regardless of legality."

"Finally," he concludes, "to be effective in these and other efforts that will need to be undertaken, prolifers will have to work to change the movement's (largely but not totally false) popular reputation as *angry* [my emphasis] into one recognized as steeped in love." To this I plead guilty. There have been times during this angry controversy when I have let my own Irish temper get the better of me. This happened not long ago after I heard an aging Hollywood celebrity declare that "It's not a baby till you bring it home from the hospital." I need to turn the other cheek, walk the extra mile. But it's hard, Lord, it's hard.

"He's an obvious flight risk, your honor."

The Guadalupe Project at Catholic University

Jennie Bradley Lichter

In the days leading up to the Supreme Court's decision in Dobbs *v.* Jackson Women's Health Organization*, leaders at The Catholic University of America asked ourselves: What can Catholic University do to meet this historic moment? How might we lead with love in our response to this watershed decision? A university is not a social services provider; we don't run a maternity home; it is not our task to lobby extensively for changes in the law. But what we can do, we determined, is make sure that moms and dads are fully supported—and family life is celebrated—at our university. That, therefore, is the task to which we publicly committed ourselves on the day that the* Dobbs *decision was announced.*

The report reproduced on the following pages chronicles the convening and naming of the Guadalupe Project, the process by which the Project team identified actions to implement, and what those action items were as of the time of the report's publication in October 2022. Since then, the Guadalupe Project has continued to grow. We have conducted our first maternity clothing drive, which resulted in generous donations of maternity and baby clothes that are now available, free of charge, to any member of our campus community. Through our campus food pantry, which we call Cardinal Cupboard, we have distributed well over one hundred packages of diapers, wipes, and other baby hygiene items to members of our university community. We have posted stickers in women's restrooms across campus, providing a QR code link to the university's pregnancy resource materials, and we are preparing to install an initial batch of new changing tables in campus restrooms. And this past spring we had the privilege of accompanying an undergraduate mother, ensuring that her needs were met during her pregnancy and working with our Cardinals for Life student group to host a joy-filled baby shower for her shortly before she welcomed her son.

The Guadalupe Project has been embraced by the Catholic University community, whose generous response to the Project—including the willingness of so many offices, groups, and individuals to assist with various aspects of its operation—has been deeply encouraging. We also appreciate the feedback we continue to receive from our students, faculty, and staff about how we can get even better at walking with families and celebrating the gift of life. And we're grateful to the institutions from whom we gathered inspiration and ideas that informed our efforts. We are glad to share our experience in the pages of the Human Life Review*, as our contribution to the ongoing conversation about how we can all continue to answer the Lord's call to share one another's joys and sorrows, challenges and triumphs, in every season—including the seasons of pregnancy and parenthood.*

Jennie Bradley Lichter is currently Deputy General Counsel at The Catholic University of America, and Senior Legal Fellow at the Religious Freedom Institute. She previously served in the White House as a Deputy Assistant to the President and Deputy Director of the White House Domestic Policy Council (DPC).

The Guadalupe Project

THE CATHOLIC UNIVERSITY OF AMERICA

Building a Culture of Radical Welcome for Moms, Dads, and Babies at Catholic University

Introduction

On the façade of our campus's oldest building, Caldwell Hall, are the words of our university motto, ***Deus Lux Mea [Est], God is my light***. These words remind us that we are loved by God and that each one of us possesses incalculable worth, as the light of God shines in and through us. They recall something else as well: Illuminated by this divine light, we are called to let it "shine before others" (Mt. 5:16). Just south of University Mall, we find a bookend to the words *Deus Lux Mea Est*. There sits "Angels Unawares," a sculpture depicting 140 refugees on a skiff headed toward an uncertain future and hoping for a better life. This sculpture reminds us that the light we receive is also a gift we are called to give, especially to those facing challenging circumstances. By offering our love and support to those who need it, our actions testify to the dignity of all human life. The Catholic University of America is committed to making our university a community illuminated by the divine light, a place of radical welcome for all—especially those in need of our help. Today we focus on extending the hand of loving welcome to mothers in our community, no matter their circumstances; to children; and to fathers.

Abortion is a tragedy. And as our nation has been reminded in recent months, it is also among the most difficult topics to grapple with as a community. During a time of intense public conversation and tension about this issue, our response should be the way of love, focused on how to best support mothers, fathers, and children on our campus, in our nation, and in the Church. The great complexity of the matters that have and will arise in connection with this issue is an invitation to become more present to one another. We must learn to be better listeners, more attentive thinkers, and more creative problem solvers. Above all, the moment requires us to become more profound witnesses to the love we receive from God by sharing

that love with others. Through the Guadalupe Project, Catholic University is making a concrete commitment to living as a community that is radically welcoming to life.

A Place of Radical Welcome to Families

Families are, as Pope Saint John Paul II said, "communities of love" built on the principle of mutual self-giving that foster personal dignity and encourage "heartfelt acceptance, encounter and dialogue, disinterested availability, generous service and deep solidarity." Families are a great gift to the world and a source of beauty. At the same time, family life often brings complex challenges. Bringing new life into the world comes with immense responsibility. Pregnancy and childbirth impact every aspect of mothers' lives: physical, emotional, social, and spiritual. New mothers and fathers must marshal resources to care for the life that has been entrusted to them, including financial and medical resources. Providing for a child may require adjustments in housing and transportation and planning for childcare. Later, parents are responsible for providing an education, for faith formation, for helping children to navigate a complicated social world, and for nurturing their children's talents. Eventually children require support in pursuing education and work, and in discerning their own calls to marriage, parenthood, priesthood, religious life, or another vocation. And at every stage along the way, parents pour themselves out in love and care for their children. Even before a child is born, parenthood is financially, intellectually, physically, and emotionally demanding.

No mother, father, or couple should have to take up this immense challenge alone. It is our sacred duty as a Catholic community to journey alongside families as they nourish new life in the womb and outside of it. We approach this vital goal with a profound sense of humility, and an awareness of room for improvement on our campus. We also approach it with a keen sense of hope: this is the moment for love to prevail, as we extend a hand to parents and their children, and especially to those who are most vulnerable as they learn of an unexpected pregnancy.

Living out this call requires not just words but actions; not just advocacy, but accompaniment. Following the Supreme Court's decision in *Dobbs* v. *Jackson*, we have reflected on how we might better serve families on our campus. This report, and the changes it conveys across our University policies and operations, are the fruits of that effort.

Mary, our Mother

In the midst of this process of reflection, we recall that at the very center of our faith is the story of a vulnerable mother facing an unexpected pregnancy, whose choice to say yes to bringing new life into the world allowed divine light to enter the human race.

This story of our salvation reminds us that our Catholic faith teaches us to cherish, honor, and support new life, the mother who bears it, and the father who nurtures it.

As in all things, then, Mary is our guide as we dedicate ourselves to better serving the families in our community. We recall especially the witness of Our Lady of Guadalupe, whom Pope Saint John Paul II named as patroness of the unborn and who gives name to this project. The story of Guadalupe tells of Mary's appearance in 1531 to a Mexican peasant, Juan Diego. In their encounter, she asked him to build a church dedicated to her on the Hill of Tepeyac, and as evidence of her appearance, she offered him fresh roses in the bitterness of winter. This miracle was a gift not only to Juan Diego and the people of Mexico, but to the whole world. The roses that bloomed in winter symbolize Mary's radical hospitality: even in a desolate season, she nurtures a new creation. Our task is to model her, to create an environment of care and support for all families—especially the most vulnerable—so that, like roses in winter, they may thrive and bring new life.

History and Scope of the Guadalupe Project

On June 24, 2022, in the wake of the Supreme Court's decision in *Dobbs* to return the question of the legality of abortion to the legislative process, former University President John Garvey announced an effort to look for ways in which Catholic University can better support families who are part of our University community.

The effort's objective is to create an environment of accompaniment and support on campus from new parenthood on, across all the challenges that arise in family life, for all Catholic University families—from our undergraduate and graduate students, to our faculty and staff, to those in the wider Catholic University community.

To do this work he convened a committee led by Jennie Bradley Lichter (Deputy General Counsel) and joined by Dr. Judi Biggs Garbuio (Vice President for Student Affairs), Matt McNally (Chief Human Resources Officer), Rev. Aquinas Guilbeau, O.P. (University Chaplain), and Elizabeth Kirk (Director of the Center for Law & the Human Person at the Columbus School of Law). The committee later added an undergraduate research intern, Larissa

York ‘24, and an operations manager, Karen Rajnes of the Office of General Counsel. President Garvey asked the committee to report to the University community in October 2022, which is Respect Life Month. He immediately shared news of this effort with then-incoming President Dr. Peter Kilpatrick, who expressed his strong support.

As its first order of business the committee chose to commit its work to Our Lady of Guadalupe, Patroness of the Americas and of the unborn, because of her special care for mothers and babies. Our Lady of Gudalupe also has a particular connection to Catholic University, as the Chapel of Our Lady of Guadalupe is the most-visited chapel within the Basilica of the National Shrine of the Immaculate Conception, which abuts our campus and hosts our University liturgies. The stunning mosaic depiction of Our Lady in that chapel reminds us that Guadalupe is the only Marian apparition in which the Blessed Mother is visibly pregnant. By naming its effort the Guadalupe Project, the members of the committee invoked Our Lady’s ongoing intercession for its work and kept her tender mother’s heart front of mind in searching for ways to provide increased care for babies and their parents in our midst.

From its inception, the committee was oriented towards action. Its composition and small size were deliberately chosen in view of this purpose, and its members have devoted countless hours to the project since late June, with a regular weekly meeting and holding ad hoc meetings as well. The committee’s work has focused on identifying specific action items that will make Catholic University a more hospitable place to mothers, babies, and families who are part of our community.

In the course of its work the committee has received a great deal of input from members of the University community. Specifically, it solicited and received helpful input from key on-campus partners not represented among committee membership, including the Office of the Provost, Facilities Division, Student Health Services, Metropolitan School of Professional Studies, Student Government Association, and Graduate Student Association.

Through the Guadalupe Project email account and informal communication channels, the committee received additional feedback from undergraduate and graduate students, faculty, and staff. Looking beyond our campus borders, the committee also consulted directly with relevant staff or organizations at Georgetown University, University of Notre Dame, University of Maryland, Texas A&M, and George Mason University. Mindful of President Garvey’s charge to consider what Catholic University can do for our neighbors in the Archdiocese of Washington and the District of Columbia, mem-

bers also spoke with the Archdiocese of Washington, Sisters of Life, and St. Ann's Center for Children, Youth, and Families.

The committee's work was further informed by two benchmarking projects carried out primarily by its undergraduate research intern. First, the committee examined policies governing and resources available for pregnant and parenting students at close to 100 institutions of higher education. Of those, the committee's intern independently researched policies and resources at 50 institutions comprising DC-Maryland-Virginia-area schools, the Newman Guide schools, Ivy League schools, and notable Catholic institutions. She supplemented her research with information about an additional 40 institutions gleaned from the college ratings published by Students for Life of America. This research gave the committee a sense of the most common resources and support offered to pregnant and parenting students, as well as creative ideas implemented at one or a few schools that go beyond the typical institutional response.

Second, the committee examined staff parental leave policies at 32 institutions of higher education; here, again, the schools surveyed included institutions in the DC-Maryland-Virginia area, the *Newman Guide* schools, and other Catholic institutions.

A Word to Students: You are Not Alone

Since the Guadalupe Project's inception, the committee heard early and often, both directly and secondhand, of seemingly widespread uncertainty about what the "official" response of the University would be to an unmarried student who is pregnant. The committee was made aware of widely shared concerns that an unmarried pregnant student might face some disciplinary action, even up to being made to leave the University, on account of her pregnancy.

It is important, therefore, to state plainly here that an unmarried pregnant student at Catholic University will not face disciplinary action when she reveals her pregnancy; nor will a male student face disciplinary action on account of his sexual partner becoming pregnant.

To the contrary: we pledge that a pregnant unmarried student at Catholic University will be met with support and with love. The University stands ready to accompany any pregnant student through her pregnancy by assisting her with her material, spiritual, psychological, and physical needs, as well as with continuing to pursue the completion of her academic program. No pregnant mother – and no expectant father – on our campus should feel alone, and none will be alone if they allow the University to walk with them through this season.

Deliverables

In considering how to best serve the families in our community, the committee has outlined three spheres for growth: improvements in family-friendly policies; adjustments to our physical plant; and enhancements to our campus culture. In approaching these three spheres, the committee has also been mindful of the different populations that a successful program must serve: our undergraduate and graduate students; faculty and staff; and our wider community.

All of the Guadalupe Project's action items build on the resources, support, and accommodations already available to students, staff, and faculty at Catholic University. Today, President Kilpatrick and the Guadalupe Project committee are happy to share the following deliverables that have resulted from the committee's work and the contributions of many other members of the Catholic University student body, staff, and faculty. Our hope is that this suite of action items, taken together, will measurably improve the quality of life and peace of mind of the mothers and fathers in our community, and by extension, of their children as well.

Family-Friendly Policy:

1. Staff Paid Parental Leave: Employment policies should make it easier for employees to welcome children and to prioritize family obligations—especially at a Catholic institution. **The Guadalupe Project is delighted to announce a number of changes that expand and improve existing University family leave policies for non-faculty staff**, including:

1. Extend the maximum period of paid parental leave for eligible employees from 8 weeks to 12 weeks.
2. Remove the waiting period for eligibility for paid parental leave. Full-time staff will now be eligible for paid parental leave immediately upon hire, with no waiting period.
3. Allow parents who are both employed as staff by the University to use the maximum amount of individual paid parental leave available under the policy.

These changes will be effective as of December 1, 2022.

2. Faculty Paid Parental Leave: The University provides 8 weeks of paid parental leave to eligible faculty members in which the faculty member is relieved of all obligations to the University. He or she has no teaching obligations for the entirety of the semester during which paid parental leave is taken; research and service obligations will apply before and after the eight

weeks of leave. **Today, Provost Aaron Dominguez is sending a letter to faculty and academic leadership announcing that he is initiating the process to extend faculty parental leave to 12 weeks and reinforcing the University's firm commitment to providing this benefit to faculty members, uniformly and fairly** in accordance with the Faculty Handbook.

3. Supporting Female Faculty Members with Children: The Guadalupe Project received input outlining various challenges that women with children can face in advancing in tenure-track faculty positions. T**he Office of the Provost has committed to convening a working group to better study these challenges and consider innovative ways to support women faculty with children**.

4. Classroom Accommodations for Pregnant Instructors: The committee received input that pregnant instructors would benefit from the ability to request an accessible classroom. **The University currently provides classroom accommodations for instructors who find walking long distances or up stairways to reach their assigned classrooms to be challenging during their pregnancy**. Instructors who desire a classroom accommodation should discuss the requested accommodation with the Office of Human Resources. Once the request is received, Human Resources will notify the Office of Enrollment Services, which will work to find an available classroom that meets the pregnant instructor's specific needs.

5. Child Care Benefits: Input received from the campus community has made it clear that assistance with child care remains one of the top concerns of faculty and staff members with children. To better understand the specific needs of the community and to aid the University in crafting policies responsive to those needs, **the Office of Human Resources has committed to conducting a University-wide survey of child-care priorities this fall, which will inform further steps to support the community's child-care needs**.

Adjustments to Physical Plant:

1. Expectant Mother Parking: Pregnancy can be tiring, and it often brings with it some limitations on the expectant mother's physical capabilities. Navigating our expansive campus may at times present a challenge to some expectant mothers. **To help ease the burden of walking long distances to her workplace or classroom, the University has designated four parking spaces reserved for the exclusive use of expectant mothers who hold University parking permits**. These reserved spaces are clearly indicated with

new signage and located in the Shahan/McGivney, McMahon, and O'Boyle parking lots, and on Divinity Way west of Caldwell.

2. Diaper Changing Stations: Safe, clean diaper changing stations provide a convenient place for parents to care for their children, and their availability sends a message that families are welcome on campus. Demonstrating that hospitality, the University currently provides a total of 12 diaper changing stations in both men's and women's rooms in several buildings throughout campus. **The Facilities Division has committed to managing the addition of 60 to 80 changing tables, at a rate of 10 to 20 per year,** with a particular focus on increasing the number available in men's restrooms.

3. Access to Lactation Space: The University remains committed to respecting the rights and meeting the needs of nursing mothers. **There are currently three wellness rooms, available to be used as lactation spaces, throughout campus**. They are located in McMahon Hall, Gowan Hall, and Maloney Hall. Additional wellness rooms are planned for the new Conway School of Nursing building and the lower level of the Columbus School of Law. **If a nursing mother determines that these locations are not conveniently located or easily accessible for her, and she does not have or does not wish to use her personal office, the University will provide an alternate private location**. To request an alternate location, a mother should contact either her supervisor or the Manager of Employee Relations (x6594 or **HR-EmployeeRelations@cua.edu)** who will work with the Director of Space Management in the Facilities Division to identify suitable space.

4. LONG TERM Family-Friendly Campus: Many campus environments include child-friendly spaces on campus, such as playgrounds and child-friendly study spaces or computer lounges. These spaces help to meet the occasional need of parents who work and study at Catholic University to bring their children with them to campus, and demonstrate that the University is, even in its physical composition, a welcoming place for families. **The Facilities Division has committed to exploring the possibility of adding child-friendly spaces to our campus, with a playground as the first priority.**

Enhanced Campus Culture:

1. Pregnancy Resource Informational Materials: The Guadalupe Project received a great deal of input pointing out that information about the resources and support available to pregnant students at Catholic University is difficult to locate and, as a result, students are often unaware of where to turn. In response to this feedback, **the Guadalupe Project commis-**

sioned the creation of a suite of informational materials to summarize on and off-campus resources available to pregnant students or other members of the university community, as well as to convey the University's support. These materials include an updated pregnancy resource booklet, aimed primarily at students and available electronically as well as in hard copy; posters that will hang around campus as a visible sign of encouragement to pregnant and parenting students; and stickers with a QR code (leading to the e-booklet) affixed to highly visible locations such as bathroom mirrors or doors.

2. Website Hub for Pregnancy and Parenting Resources: A major component of the new communications materials will be **a new landing page on the University website dedicated to pregnancy and parenting resources.** This website, located at parenting.catholic.edu and titled Parenting@Catholic, will serve as the hub for information about all of the University's policies and resources for pregnant and parenting students, faculty, and staff.

3. Baby Items in Cardinal Cupboard: The Cardinal Cupboard, located in the Pryzbyla Center, provides non-perishable food items at no cost to any member of the university community experiencing food insecurity. **Through a generous donation from St. Ann's Center for Children, Youth, and Families, diapers, wipes, baby wash, and lotions are now available through Cardinal Cupboard for any member of the Catholic University community who needs assistance obtaining essentials for his or her baby**. For more information on how to obtain items from the Cupboard, visit **https://service.catholic.edu/cardinal-cupboard/index.html.**

4. Pregnancy Testing: Free, confidential pregnancy tests, already available at Student Health Services, now can be taken home by a student or used in the office. Tests will come with a copy of the pregnancy resource booklet so that every student taking a pregnancy test has ready access to information about available support.

5. Mass for Pregnancy and Early Infant Loss: Pregnancy and early infant loss—whether through miscarriage, stillbirth, abortion, SIDS, or otherwise—is a deep hurt that grieving parents too often feel they must bear alone. **The Office of Campus Ministry, in collaboration with Cardinals for Life, has committed to hosting an annual Mass of Remembrance in honor of the lost little ones loved by members of the University community.** All who have been touched by pregnancy loss or early infant death are invited to gather and commend their children to the Lord. The first annual Mass will be held in November. Campus Ministry will also create a "Book of Little Ones" in which the names of deceased babies will be inscribed and remembered monthly at Mass.

6. Mothers' and Fathers' Groups: For many moms and dads, sharing milestones, joys, and challenges with other parents brings a number of benefits. Being part of a community of parents builds a sense of solidarity and can even be a key resource for practical parenting strategies. **The Office of Campus Ministry has committed to working with faculty and staff organizations to develop and support fellowship groups for mothers and fathers on campus,** through which parents will have the opportunity to receive formation, encouragement, and support from one another and mentors in the community.

7. Welcome Swag for Baby Cardinals!: Welcoming a new baby into the world is cause for celebration. **The University looks forward to celebrating newborn and newly adopted children in faculty and staff families with a welcome basket** to include infant spirit wear, spiritual resources, and other goodies.

8. Cardinals for Life Babysitting Program: As discussed above, it is clear that parents in the University community feel a pressing need for accessible, affordable, quality child care. While the Office of Human Resources explores ways to meet this need, **the Guadalupe Project is grateful to a student group, Cardinals for Life, for offering a babysitting program as a service to the community.** Cardinals for Life maintains a list of students who have expressed interest in volunteering to provide independent child care for faculty, staff, and student parents. Interested parents may contact Cardinals for Life through The Nest.

9. Drop-in Tutoring for Children of Metro Students: The Metropolitan School for Professional Studies serves a nontraditional student population of working adults seeking to complete an undergraduate or graduate degree. Many Metro students are parents and finding reliable and affordable care for their children during their evening classes can become a barrier to finishing their degrees. **The University has committed to exploring the provision of drop-in tutoring services for school-aged children of Metro students on campus during Metro class times.**

10. Support to Pregnant Moms and Children in our Community: St. Ann's Center for Children, Youth, and Families is a local ministry that provides housing and support services to pregnant and parenting mothers at its campus on Eastern Avenue. The historical relationship between Catholic University and St. Ann's is memorialized in stained glass in the chapel at St. Ann's, which depicts the University as part of the visual backdrop of the work of the Daughters of Charity caring for mothers and babies in the DC

area. Campus Ministry leads regular service projects at St. Ann's and **the Guadalupe Project has sought to augment that relationship by identifying additional concrete ways to aid the mothers and children it serves**. Service opportunities for CUA students identified thus far include landscaping and maintenance projects around the St. Ann's campus, hosting baby showers for residents, providing music at a Christmas reception, and offering "life and legal skills" classes to residents. In turn, St. Ann's has offered to be a resource for expectant mothers in the Catholic University student community.

11. LONG TERM Maternity Clothes Closet: Buying an entirely new wardrobe suitable for pregnancy is expensive, particularly when the expectant mother needs some clothing that is appropriate for professional settings. To aid expectant mothers with these needs, **the Guadalupe Project is exploring the creation of a campus maternity clothes closet**, through which community members may donate used maternity clothes in good condition and other community members may obtain them free of charge.

Recommendations for Further Study

1. Housing: Current University policy encourages pregnant undergraduate students to stay in their residence hall if they desire. Other suitable housing options are available off campus; for example, St. Ann's Center invites applications from Catholic University students who are single mothers with demonstrated financial need to live in one of its program residences.

The Guadalupe Project committee has identified several long-term opportunities to enhance the University's housing offerings for pregnant and parenting students. Based on input from the community and its study of housing opportunities offered by other universities, **the committee recommends that the University study the possibilities for University-owned housing for student mothers, and University-subsidized housing for graduate-student families. The committee also recommends that the University consider whether to seek a partner entity to establish an off-campus maternity home** that would serve students from Catholic University and other local universities.

2. Scholarships: Mothers who desire to complete their undergraduate education while caring for their babies face particular financial challenges. **The committee recommends that the University study the possibility of providing scholarships to mothers** pursuing the completion of an undergraduate degree.

3. Tucson Program: Shortly after it was convened, the Guadalupe Project committee opened a dialogue with staff of the University's Tucson Program,

seeking to identify ways to support pregnant and parenting students, staff, and faculty in the extended Catholic University community in Tucson as well. It quickly became evident, however, that directly replicating the work of the Guadalupe Project for the Tucson Program is not feasible. In Tucson, Catholic University occupies a small suite of rooms in a local community college, so it is not within the University's power to make changes to the physical plant there. Many of the other new resources and support put in place by the Guadalupe Project are accessible only to people physically present at our campus here in Washington. The small size of the Tucson Program is another limitation on the resources available there.

Nonetheless, the students and staff of the Tucson Program are part of the Catholic University family. In the spirit of the Guadalupe Project, Tucson staff have connected with the Diocese of Tucson's efforts to support mothers in need, as well as with other local organizations that serve mothers and their children. **The committee recommends that as the Tucson Program continues to grow, the University should study how best to provide resources and support to pregnant and parenting members of the Tucson Program community.**

In addition to the items discussed above, the Guadalupe Project and President Kilpatrick are happy to share two overarching commitments that will ensure the continuation of this work.

At the heart of this effort is a desire to walk with—to accompany—pregnant and parenting students and colleagues, whether they are undergraduates discovering an unplanned pregnancy, graduate students starting a family at the same time as they begin their careers as scholars, or faculty and staff who are as committed to their own family lives as they are to their work at Catholic University. In order to accomplish this objective and truly become a place of radical welcome responsive to the needs of its community, the Guadalupe Project must have a permanent presence.

To that end, **President Kilpatrick is committing to the creation of a Parenting Resource Coordinator staff position**, who would be tasked with ongoing facilitation of established resources and development of new ones in response to the needs of the community. This position is resource-dependent and will be posted as soon as resources permit.

Finally, situated as it is within a university, **the Guadalupe Project would not be complete without a scholarly pillar**. Scholars have a special task, according to *Evangelium Vitae*, to "place themselves at the service of a new culture of life by offering serious and well documented contributions, capable of commanding general respect and interest by reason of their merit."

The Center for Law and the Human Person (CLHP) at the Columbus School of Law,

led by its director and Guadalupe Project committee member Elizabeth Kirk, J.D., is committed to serving as a resource for thinking about how core commitments of the Catholic intellectual tradition, including respect for the inviolability of all human life, ought to inform the study, teaching, and practice of law. For example, in the past year, CLHP hosted a number of conversations about the impact of the *Dobbs* decision, including a symposium on the role of infant adoption in women's decision-making in the case of an unexpected pregnancy. The CLHP will host a conference in spring 2023 on the centrality of the dignity of the human person to a proper understanding of justice.

The committee is grateful to the other faculty members and academic institutes and centers across the University that regularly engage with questions about human dignity, robust family policy, and other related matters from the perspective of a variety of disciplines. It recommends that the University continue to support and encourage this work.

Conclusion

Before us lies an opportunity not only to protect but fully to embrace the sanctity of human life. It is a moment that calls first and foremost for love. Our task is to build a culture of radical hospitality here on our campus that will serve those among us and illuminate the world around us. Our university motto, *Deus Lux Mea Est*, is a reminder not only of the divine gift of human dignity, but of the divine call to charity. We shine with the light of God so that others may see too. As we recommit ourselves to the work of supporting one another we ask for the grace to be that light—to new mothers and fathers who may be alone and afraid; to growing families who are overwhelmed with the demands of family life and who need our love and support; to spouses and parents who are facing crises in their families; to children who should be cherished at every stage of life; and to one another.

The practical measures we have outlined in this report contribute to enhancing a culture of hospitality in our University community, but they alone are not enough. Much of the work to be done rests not in operational or policy changes, but in the reorientation of our hearts. Building a culture of radical hospitality is work we must undertake together. "Now is the time ..." the Catholic bishops of the United States have said, "for healing wounds and repairing social divisions; it is a time for reasoned reflection and civil dialogue, and for coming together to build a society and economy that supports marriages and families, and where every woman has the support and

resources she needs to bring her child into this world in love."

The most important work of the Guadalupe Project is to extend the invitation to live this mission to every member of the Catholic University community. We look forward to continuing to work together to build a community that reflects the most profound commitment of our faith: that God is love.

We close this opening chapter of the Guadalupe Project's work by looking again to Mary, the model of radical hospitality. We recall that in the story of the wedding at Cana (John 2: 1-12) it is Mary who perceives the unvoiced needs of the married couple: "When the wine ran short, the mother of Jesus said to him, 'They have no wine.'" Mary is only a guest at the party, but that doesn't stop her from attending to the needs of those around her.

We witness the same in the account of her visitation to her cousin Elizabeth. Even as she ponders the shocking news of her own pregnancy, perhaps with some trepidation, she turns her attention to the needs of her cousin. Her way is one of generosity, of gentleness, and of accompaniment. In building a culture of radical hospitality, we must make her way our own, and learn from Mary how to offer support by perceiving, listening, assisting, and bringing peace and assurance to those in our midst as they in turn build their families into "communities of love."

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Evil Advances in Increments

Mark Davis Pickup

The first evil step: In 2016, Canada broke with the long history of Western Christian civilization—and common law dating back to the Middle Ages[1]—when it legalized medically assisted suicide for incurably ill and disabled citizens who were in an advanced state of decline and whose deaths were "reasonably foreseeable."[2] The vast majority of government-sanctioned killings were by lethal injection, administered by doctors or nurses. Only a tiny minority were self-administered suicides. Most Canadians were either uneasy or opposed to it. It didn't matter. The Liberal government had a parliamentary majority. They could do what they wanted—and they did. But since the nation's collective conscience needed to be massaged into accepting the government's agenda, the legislation was gently introduced. The original criteria required that Canadians who sought medically assisted suicide be at least eighteen and that:

1. They have a "serious and incurable disease or disability."
2. They are in an advanced state of irreversible decline in capacity.
3. Their illness, disease, or disability and state of decline causes them to endure physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions they consider acceptable.
4. Their natural death has become reasonably foreseeable.[3]

In 2015, Canada's Supreme Court declared that laws prohibiting assisting the suicides of people with terminal conditions and severe disabilities were unconstitutional.[4] This required Parliament to amend the nation's Criminal Code and related laws to allow medically assisted suicides of the terminally and chronically ill, and disabled adults with "irremediable conditions," who requested help to kill themselves. The only additional requirement was that their deaths had to be "reasonably foreseeable."

Justin Trudeau's federal government didn't use the term "assisted suicide." That would have been too direct and honest. Clever government wordsmiths conjured the pleasant-sounding euphemism "medical assistance in dying" (MAiD). It was meant to make the horrible act of killing the dying and disabled sound altruistic.

Canada's disability community saw through it. We opposed it. We could see very real dangers to those with disabilities. We were right. In 2021, after

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Canadians had become accustomed to euthanasia on a limited basis, the criteria that death be "reasonably foreseeable" was removed from the law—the second evil step.

Various disability organizations and individuals made vehement objections to the federal government. Our appeals fell on deaf ears in the corridors of power; the law's parameters were widened to include assisted suicide of non-terminal disabled people.[5] The euphemism *medical assistance in dying* (MAiD) became *medically assisted death* and should have been called MAD (a rather accurate acronym). It required only that a person have an irremediable condition.

* * * * *

I was diagnosed with multiple sclerosis in 1984. It caused significant paralysis and put me in an electric wheelchair. I've been treated for clinical depression for many years. In light of Canada's medically assisted death law, in 2016 I wrote a letter to my physician and asked that it be put in my file.

> Dear Dr. B.,
>
> Should I ever request assisted suicide, I want you to refuse to help me. On this point I am emphatic. Presume that I am speaking out of depression or that multiple sclerosis has begun to affect my mental state. I would not make such a request in my right mind. If, in your judgment, I am suffering from depression, please get me the counselling I need. If the MS is affecting my mind, protect me from myself or others who would take my life before my natural death. Regarding my end-of-life-care, I ask you to provide treatment in accordance with my Roman Catholic faith (see *Catechism of the Catholic Church*, Nos. 2276-2282).
>
> . . . I would not ask you to stop being my healer and become my killer, unless my mental faculties were impaired by depression or disease.

My fears were well placed. In its first year, MS was one of the main conditions for MAiD. The federal government's Interim Update for 2016 stated:

> The most common underlying medical circumstances among those receiving assistance in dying were related to cancer (neoplasm), neurological illness (e.g., multiple sclerosis, amyotrophic lateral sclerosis), and cardiovascular/respiratory disease.[6]

By 2020 people with MS represented nearly 10 percent of all those who received lethal injections.[7] One year later, the percentage of MS deaths rose to 13.9 percent of all MAiD killings![8]

* * * * *

There was much concern in the larger disability community when "reasonably foreseeable death" was removed from MAiD legislation. A coalition of twenty disability rights groups—under the auspices of the Toronto-based

ARCH Disability Law Centre—filed a request for a hearing with the International American Commission on Human Rights (IACHR). The Commission promotes human rights throughout the Americas. In a September 2022 press release, ARCH Executive Director Robert Lattanzio stated:

> Canada has repeatedly dismissed the concerns of people with disabilities. Our clients are deeply concerned that people with disabilities are dying by MAiD not because they want to end their lives, but because the social and economic conditions they live in are so dehumanizing. We have asked the IACHR for a hearing and trust they will take these rights violations seriously.[9]

He was correct. So many Canadians with disabilities live dehumanizing lives. They exist in perpetual poverty. They are unemployed or unemployable. They do not have access to adequate or timely medical and psychiatric care. They may lack proper pain control. They have inadequate social supports. Many are lonely and isolated. No wonder they can become suicidal!

In 2021, Justin Trudeau's "progressive" government had also taken the third incremental step of evil: It extended eligibility for assisted suicide to the mentally ill, to begin on March 17, 2023. The mentally ill! Assisted suicide eligibility would include people with mental challenges as their sole "irremediable" condition. When this was announced, it was clear that many Canadians were reluctant to embrace yet another new "right" to assisted suicide: Only 23 percent were in favour of it.[10]

In December 2022, as the ominous date approached, the Canadian Association for Suicide Prevention (CASP) issued a statement voicing grave concerns about assisting the suicides of people with mental illnesses. They stated, in part:

> CASP is joined by a host of other national organizations and medical societies calling for a pause to the expansion of MAiD, amid concerns of a lack of evidence of "irremediable" mental illness, as well as the absence of necessary public awareness, training, protections and safeguards and evaluation frameworks that must be established to ensure the health and safety of both patients and physicians.[11]

Dr. Valerie Taylor, department head of psychiatry at the University of Calgary, said "Further time is required to increase awareness." Doctor Sonu Gaind, chief of psychiatry at Toronto's Humber Hospital, commented in a radio interview with the Canadian Broadcasting Corporation (CBC): "It's basically impossible to know in cases of mental illness whether the condition is truly 'irremediable,' i.e., cannot be cured or alleviated." Dr. Gaind argued that with the state of the science, "we cannot make these predictions." Psychiatrists knew this legislation would dramatically increase dangers for some of Canada's most vulnerable people, who need care and protection, not death.

Justice Minister David Lametti seemed surprised by the blow-back, partic-

ularly from psychiatrists, the disability community, and, of course, ordinary people of good will. Bowing slightly to the outrage, he postponed implementation of assisted suicide for mental illness until March 2024. In an attempt to save face but not change course, he said:

> We need to be prudent. We need to move step by step, making sure that people within the profession, Canadian society at large, has internalized this step, . . . To be honest, we could have gone forward with the original date, but we want to be sure. We want to be safe. We want everybody to be on the same page.[12] [*Translation: The government jumped the gun. They need to massage the public conscience more to be lulled into accepting a further plunge into the unthinkable.*]

The blow-back simply caused an unexpected delay in culling suicidal mentally ill people from the population. Assisted suicide for the mentally ill will be implemented! There is no stopping it.

* * * * *

There were times when the course of my own disease and disability was so terrible—when wide-eyed terror moved to despair—that I would have been open to suicide (assisted or otherwise). What prevented me from doing it was my faith in God, the love of my family, and a significant community of concern that surrounded me with compassionate support. Other people lifted up my value and natural human dignity when I lost sight of it.

More recently, I experienced another deep depression—the worst of my adult life. It wasn't caused by disability or physical pain. It was caused by emotional and spiritual anguish. I sank to my lowest point of personal crisis. Although I would not have asked for assisted suicide, if someone entered my room to give me a fatal injection, I'm not sure I would have resisted. My world was not what I thought it was. I needed to grieve about that, to acknowledge the depth of my emotional pain and even to rage at my loss and disappointment with life. I did not need help ending my life because of what seemed to be an insurmountable wall of grief—I needed psychological and medical support. I needed family and community support. I needed to be reminded of God's presence, to hear that the sun might eventually peak over the wall of emotional and spiritual anguish and drive back my darkness of soul. Any decent psychologist would have known that grief, sorrow, and depression can skew perceptions and lead to despair. I needed care, not death. *Sometimes people must be protected from themselves.*

Several members of my family have been plagued by serious physical and mental disabilities. My daughter and grandson have autism. A granddaughter suffers from obsessive compulsive disorder (OCD). Other relatives have mental challenges such as bipolar disorder. Last year, a mentally ill family

member tried to hang herself. Fortunately, her husband entered the room in time to cut the ligature from her neck and save her from succeeding with her suicide. She was committed to psychiatric care until her crisis passed.

According to Canada's new way of thinking, her civil rights and freedom to choose death were violated. All she would have had to do was wait until March of 2024, when assisted suicide for the mentally ill becomes legal. She could have medical help in killing herself by lethal injection or swallowing a lethal cocktail of poison prescribed by a doctor. *Bon appétit!*

Will my family be culled from the population under the false compassion of Justin Trudeau and his henchmen, and other euthanasia enthusiasts? Canada has entered a dark time of killing off its physically (and soon mentally) disabled. Earlier this year a parliamentary committee recommended MAiD for mature minors (children). That, when it comes, will be the fourth increment of evil.

A perfect storm is brewing that may well usher in wide-spread euthanasia for what Nazi Germany called "useless eaters"—the sick and disabled, the chronically depressed and mentally ill, the elderly, and the indigent population. Canada has a universal healthcare system with mushrooming costs that make up the single largest portion of many provincial government budgets. In my quieter moments I wonder when the right to die will become the duty to die.

Never presume the future. Who knows what is around the next corner? There are unexpected physical or mental scenarios with any disability or disease; who can say with complete certainty what's to come? To presume the future is to play God. We have heard about doctors being notoriously wrong when predicting the life expectancy of sick or terminally ill people; many of those patients have gone on to live years, even decades beyond expectations! I am one of them. For most of my adult life I have wrestled with serious neurological disease and creeping disability. My doctors are surprised I am still alive. In fact, my neurologist recently quipped that he has never seen a patient with MS as severe as mine live so long.

At the risk of losing credibility with readers of this article, I am going to share something that happened to me. My doctors were incredulous. It was and is—do I dare say the word?—a miracle. After more than three decades of aggressive multiple sclerosis that reduced me to triplegia (three limbs were paralysed), I fully expected my next address would be a nursing home. No longer did I have remissions so characteristic of early MS, only slow decline. My disease had moved from exacerbating/remitting in the earlier stages to secondary progressive, in other words, end-stage multiple sclerosis. My brain is riddled with MS lesions.

One evening in 2018, I sat in my electric wheelchair during a beautiful quiet time of Eucharistic Adoration at my parish. In the dim flickering light of

votive candles, I prayed something I had often prayed throughout the years:

> Lord, I pray that if it be your will, raise me from this wheelchair and let me walk again, even with crutches or a walker, or canes, even if only for a short time. Let me dance with my wife once more.

This time, something changed. Over the next couple of weeks, long-lost functions began to awaken. I initially recovered use of my right arm and hand. For the first time in over twenty years, I was able to hold a pen and write. My handwriting was exactly as it had been before the onset of MS. One frosty winter morning I was sitting in my wheelchair at the kitchen table drinking my first cup of coffee. I saw my recently deceased mother-in-law's walker in a corner near the table and suddenly felt prompted, not by words, but rather by a divine understanding that came not from across the room but across the ages: *Stand up and walk with that walker*. I hadn't walked in years, my legs were atrophied from paralysis, but the prompting was so intense that I tried—and did it! Granted, my popsicle stick thin legs were shaking, but I grabbed the walker and took my first steps in years—five of them. Stunned, I did it again, then yelled to my sleeping wife to get up and see what was happening. She came to the door of the bedroom wiping the sleep from her eyes. I took ten steps with the walker. She literally staggered back and began to cry.

Ten steps became twenty, then thirty, and before long I was walking the length of our house. My doctors are dumbfounded. Two neurologists did full physical exams, including a magnetic resonance imaging (MRI) of my brain. The lesions are still there. This should not be happening! Doctors have no explanation. The walker was ditched for two canes, then one. It's been five years and I'm still walking (I use a cane for longer distances). Full function of my right arm and hand have been restored. I even ride a bike. My wheelchair sits in a spare room untouched, gathering dust.

One bitterly cold winter night, my wife and I were sitting in our living room. A log was burning in the fireplace. Music was playing on our stereo. I looked at her with such love; she has been at my side through decades of wide-eyed terrors brought on by my serious neurological disease. Her name is LaRee. She could have left me. She was still young when my disability journey began. She chose to stay for the sake of love. I played the last song we danced to before the wheelchairs, hoists and other contraptions for dealing with paralysing disabilities: "Once, Twice, Three Times a Lady.*"* In the warm shadows of a flickering fire, *we danced*—an unexpected gift from God; something we didn't think we would ever experience again.

Every life is worth protecting for the sake of love (both human and Divine). If I have to return to my wheelchair one day, I will still praise God. He gave

me what I prayed for: I can walk, I can dance with my wife again. I have come to understand that assisted suicide and euthanasia have no place in a genuine human family. If I were to ask for medically assisted death, it would affect my wife, my children, and my grandchildren. It would affect my doctor, because I will have asked her to stop being my healer and become my executioner. It would affect my community and nation by helping to entrench the notion that there are lives not worth living. That is the fifth increment of evil.

No, I do not have that right. I have a responsibility to the whole of the human community, and its most vulnerable, not just to myself. It is only when we encounter divine love that human love can flourish. Love does not kill. Nor does it assist in the suicides of people who have lost hope and sunk beneath the waves of their circumstances. Genuine love lifts the defeated.

NOTES

1. In the 1997 U.S. Supreme Court ruling on assisted suicide (*Washington* v. *Gluck*), Chief Justice William Rehnquist stated: " . . . an examination of our nation's history, legal traditions, and practices demonstrates that Anglo American common law has punished or otherwise disapproved of assisting suicide for over 700 years." Christianity has always been at the root of Common law. In his inaugural address as Dane professor of Law at Harvard University in 1829, Joseph Story said, "There never has been a period in which Common Law did not recognize Christianity as laying at its foundation." (Quoted in Perry Miller, editor, *The Legal Mind in America* (New York: Doubleday, 1962) p. 178.
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10. "Mental Health and MAID: Canadians question looming changes to Canada's assisted-death law." https://angusreid.org/assisted-dying-maid-mental-health/
11. CASP Issues Statement About MAiD for Mental Illness, 14 December, 2022. https://suicideprevention.ca/media/casp-issues-statement-about-maid-for-mental-illness/#:~:text=CASP%20is%20joined%20by%20a,safeguards%20and%20evaluation%20frameworks%20tha
12. Alex Schadenberg, "Canada to delay euthanasia for mental illness until 2024," 2 February 2023, *Euthanasia Prevention Coalition* blog. https://alexschadenberg.blogspot.com/2023/02/canada-to-delay-euthanasia-for-mental.html

BOOKNOTES

SURVIVOR: A MEMOIR OF FORGIVENESS

Cynthia Toolin-Wilson
(En Route Books and Media, 2021, paperback, 194 pages, $14.95)

Reviewed by Kiki Latimer

Survivor: A Memoir of Forgiveness by Dr. Cynthia Toolin-Wilson is a story of human tragedy and sorrow intercepted by divine grace, hope, and ultimately forgiveness. Toolin-Wilson is a Professor of Dogmatic and Moral Theology who taught for over 25 years at Holy Apostles College and Seminary. Her life as a daughter, granddaughter, woman, wife, mother, friend, theologian, and author was almost cut short in utero by an attempted chemical abortion. When Cynthia was 11 years old, her mother sat her down and told her that she had tried to abort her, with drugs procured by her beloved grandfather. Her mother explained that when she started bleeding, she feared for her *own* life, and stopped taking the drugs. Shattered by this disclosure, and already living in a gravely dysfunctional family, Cynthia no longer trusted those who had tried to kill her.

> I didn't have the words to express it then, as I was just a little girl, but I never cared about her again. She told me the story, and I turned off my love like the light leaving a room when someone flips the switch. I had thought that they loved me the way I loved them—Ma, Pa, my grandfather. It had never occurred to me that they saw me as an unwanted inconvenience. I felt devastated and I remained that way for decades.

Abortion is often a sorrowful choice considered in spiritual desolation. Fr. Paul Desmarais, Rhode Island priest and authority on the occult, refers to the three portals to hell as: addiction, abuse, and abortion. Cynthia's childhood family misery revolved around all three. Her parents were both addicted to drink, her father was a serial adulterer addicted to sex, and the environment of these addictions, no doubt, led to the attempted abortion. This was followed by years of emotional child abuse, marital anger, continued infidelity, filthy living conditions, mental illness, and ultimately, misery and despair, which included the untimely and appalling confession by her mother.

Yet out of this familial devastation, Cynthia not only survived, but escaped and moved onward and upward, primarily due to her strong intellectual abilities and her strength of resolve to be a better person than genetics predicted. But these natural human coping skills did not include the ability or understanding of forgiveness. Rather, coping meant sweeping the past under the rug and never looking back.

Cynthia went on to marry a Catholic man, even though she herself had no religious affiliation, and worked at having a normal family life. This went well until Cynthia's compassionate husband felt that her parents needed help in their old age and insisted they move in. This part of the book must be read to be believed, and is not for the squeamish, as the daily behaviors of Cynthia's parents had gone from bad to disgusting. At long last, both parents died, and Cynthia breathed a sigh of relief. There was no consideration of forgiveness or searching for a deeper meaning.

But then, in literally a miraculous moment, grace broke through. While on a visit to Rome with her husband, Cynthia accidently ventured into a tour of one of the ancient catacombs, where God, in no uncertain terms, spoke to her of the Truth to be found in the Church. Cynthia's was an instantaneous conversion to Catholicism. And with that journey set in motion, she eventually came to perceive the need to accept her past and begin the arduous process of forgiveness of her father, her grandfather, and finally her mother. They had all long since died and so there was no hope of hearing them say they were sorry, which meant that the entire burden of forgiveness lay in Cynthia's soul. Such a monumental act of forgiveness can only be the work of grace within the human heart.

Many confuse this kind of *initiating* forgiveness (rather than *responding* to someone being sorrowful for hurting you) with being weak, a doormat, letting the abuser off the hook, and sometimes even allowing abuse to continue. But this kind of forgiveness does not necessarily involve a return to the relationship, and especially if there is any possibility of continued abuse, should not. This radical forgiveness of huge offenses, such as those experienced by Cynthia, is a power of the soul, and rightly exercised by grace, brings freedom, wisdom, and ultimately peace.

Survivor: A Memoir of Forgiveness is the harrowing story of harm done to a child by the very people meant to love and protect her; it is a tale of addiction, abuse, and attempted abortion. But it is also a story of hope, forgiveness, and redemption, a physical and spiritual rags to riches journey that will give you a new understanding of the preciousness of the human person and God's unfathomable love for each one of us. At a time when, state by state, we as a society are deciding the abortion laws that will either protect or allow the killing of the innocent child in the womb, this book calls for a recognition of the horror of abortion. Cynthia's entire life—all that she would accomplish, all those she would love, all the hundreds of students and seminarians she would teach—her entire life was held in the balance between life and death, by someone's choice.

Fr. Paul Desmarais speaks of the two great lies that Satan, the father of lies,

whispers concerning abortion. The first lie, *before* the abortion, is aimed at the death of the child; it whispers slyly that abortion is no big deal, merely a final solution to an unwanted pregnancy. The second lie, *after* the abortion, is aimed at the very soul of the woman; this lie now tells her that she has committed the most unforgiveable of all sins; this lie says that God Himself cannot redeem her. Abortion is a grave objective moral evil, but no one is beyond the reach of God's mercy and forgiveness.

So, allow Cynthia's *Survivor: A Memoir of Forgiveness* to speak to your heart; give her memoir to anyone considering or advocating abortion; give it to anyone struggling to forgive the unforgiveable. Our stories of the workings of God's grace in our lives, however painful, are important to help others on the journey to healing and forgiveness.

—Kiki Latimer is the author of four children's books and co-author of Understanding Abortion and Philosophy Begins in Wonder. *She was a teacher of homiletics for many years at Holy Apostles College & Seminary in Cromwell, Connecticut, and has recently completed and published* Home for the Homily.

MADAME RESTELL: THE LIFE, DEATH AND RESURRECTION OF OLD NEW YORK'S MOST FABULOUS, FEARLESS AND INFAMOUS ABORTIONIST

Jennifer Wright
(Hachette books, New York, 2023, 334 pp.)

Reviewed by Maria McFadden Maffucci

Crawling through this "pop history" book on Madame Restell brought to mind "The Piranha Brothers," a memorable skit from the absurdly hilarious *Monty Python's Flying Circus* program.

The fictional Doug and Dinsdale Piranha in the Monty Python skit are violent criminals who terrorize their victims, as this "interview" of one of Dinsdale's victims reveals:

> Interviewer: I've been told Dinsdale Piranha nailed your head to the floor.
>
> Stig: No. Never. He was a smashing bloke. He used to buy his mother flowers and that. He was like a brother to me.
>
> Interviewer: But the police have film of Dinsdale actually nailing your head to the floor.
>
> Stig: [pause] Oh yeah, he did that.

> Interviewer: Why?
>
> Stig: Well he had to, didn't he? I mean there was nothing else he could do, be fair. I had transgressed the unwritten law.
>
> Interviewer: What had you done?
>
> Stig: Er . . . well he didn't tell me that, but he gave me his word that it was the case, and that's good enough for me with old Dinsy. I mean, he didn't *want* to nail my head to the floor. I had to insist. He wanted to let me off. . . . He was a hard man. Vicious but fair.

By all historical accounts, including this one, Madame Restell was a hard, often vicious woman who lied, cheated, sold sketchy birth control potions, and performed surgical abortions without any medical training, all so she could amass great wealth. She killed hundreds—thousands?—of babies, and along the way gravely injured—probably killed—several women as well. Yet author Jennifer Wright conjures up a feminist hero, as do the gushing endorsements on the book cover, including this one from "award-winning journalist" Katie Couric:

> If she were alive today, Madame Restell might be described as a "badass'"—someone who protected women's reproductive rights decades before they could even vote. [sic]

So how does Wright create a "shero" out of the true accounts of this notorious abortionist? Partly through Monty Python-esque rationalizations—too frequent to list, but I will share a few.

"Madame" (her real name was Ann Trow) was born into poverty in England in 1812. Sent into domestic service early, she married at 16 and had a daughter. Soon, realizing her new husband was a weak alcoholic and not her ticket to better things, she became a seamstress and set off with her family to find fortune in New York City.

They landed in lower Manhattan, near the crime- and disease-ridden Five Points neighborhood, which gives Wright the opening for this bizarre comment:

> It follows then that Ann, a young mother who probably walked through that neighborhood every day, must have been a good deal braver than American folk hero Davy Crockett. (12)

What? Is this supposed to be the "pop" in "pop" history? But Wright's book is peppered with weird observations like this, as well as odd sentences seemingly presented without irony, like "Incest happened in 1846, too" (88) and "… anyone who has given birth can tell you it takes a toll physically" (31).

But back to Ann. Three years after her first husband died, she married Charles Lohman, a printer for the *New York Herald,* who was part of a radi-

cal group espousing population control. Ann apprenticed with a "pill compounder" in her neighborhood, and, realizing there was much money to be made from providing women with "preventative potions," she and her husband "dreamed up" an alias to give consumers confidence: a Frenchwoman, a "female physician who had worked at hospitals in Paris and Vienna" (28).

The newlyweds actively advertised Madame's services in the newspapers, but they faced competitors, whom Restell ruthlessly attacked as con artists. This was, Wright remarks, "short-sighted" (a term she uses frequently in the book, along with "shortcut"): "It seems wildly shortsighted of her" not to have seen that she could have banded together with her competitors to "become a collective of like-minded professionals. . . . But how could Madame Restell have focused on such ideas when she was still just trying to climb her way out of poverty?" (34).

Restell plagiarized texts for her "medical" ads from Robert Dale Owen, a well-known writer who preached the benefits of contraception. "While this is obviously a frustrating shortcut for Madame's fans today," admits Wright, "Owen was at least an excellent choice from whom to plagiarize . . ." (104). Brava, Ann!

By age 29, Restell "was well on her way to creating an empire" (36): In fact, "Throwing herself into single minded empire building may be the most quintessentially American thing Madame Restell ever did!" (173).

Still . . . how to grow that empire further? By performing abortions, of course! Using a whale bone! Although Wright calls the whale bone "eerily reminiscent" of coat hangers, Restell was apparently skilled, and "there is little evidence" that she lost patients (37). Wright spends several paragraphs ruminating about where our entrepreneur got her training, noting (I kid you not) that as a domestic servant in England she had worked for a butcher: "This background would have stood her in good stead" (39). Let that sink in.

Now in the Land of Opportunity, Madame Restell knew she had just what it takes to succeed:

> Madame Restell believed she was smarter than most of the people around her. Although some who fancy themselves to be intellectually superior are narcissistic, that's not true of everyone. A person might simply be acknowledging reality—and in the case of Restell, a woman who ran an underground birth control empire and performed successful operations time after time without any formal medical schooling, it could very well have been true. (85)

And yet, thinking she knew best led to "shortcomings . . . never clearer than when she stole Mary Applegate's baby" (85). Yes, she stole and sold, or got rid of, a servant woman's wanted baby, at the request of the woman's wealthy employer, the father. What a brave move against the patriarchy!

And despite her surgical skills, not all women came through unscathed from her abortions. She was arrested for the deaths or illnesses of several women. Yet she had been like a mother to them! Wright emotes: ". . . her treatment of Maria Bodine, which came into public view in 1857 [when she was arrested for performing a late-term abortion], showed off her best qualities" (113). Bodine wanted an abortion but was 24 weeks pregnant. Restell at first said no, but finally agreed, lowering her price to accommodate her patient. "Overall, Maria's experience with the abortionist seems to have been rather nurturing and empathetic. She would provide the care and compassion that a mother did during this trying time" (121). But "The operation was performed on a floor. Madame Restell did not so much as wash her hands before plunging them inside a woman to extract and dispose of a six month fetus" (122). Maria started bleeding two days later and became intractably, gravely ill. But was that *really* Restell's fault?

Wright spends pages surmising that Maria's illness may have resulted from the faulty care she received *after* the abortion, or perhaps she had already been suffering from syphilis. To be fair: Even real doctors did not wash their hands in those days—which Wright admits caused all sorts of infections. But is this not a possible explanation for Maria's condition?

Restell was convicted and imprisoned several times for her illegal activities, but because of her corrupt friends, she lived in luxury even when she was on the "inside." In the end, however, finally facing serious prison time, she slit her own throat in her bathtub. Yet Wright proposes an alternate "resurrection" theory: Restell may have faked her own death, switched another woman's body for hers in the morgue, and fled to Paris to live out her life in blissful luxury! Why not? How could our great lady die in despair?

Needless to say, Wright wastes no space wondering whether pre-born children have *any rights at all.* She reflexively condemns anti-abortionists then and now as misogynist sexual puritans or white supremacists: ". . . some people in America seem gripped by the fear that there will not be enough American (read white) babies" (285). Ironic, when we know that Margaret Sanger advocated abortion and birth control for precisely *that* reason.

Note well: Madame Restell is hardly an obscure figure: Check her lengthy Wikipedia pages. She has "inspired" or been a character in several novels, and is the subject of a play (*Wickedest Woman*). Her life and activities have been well researched and documented in numerous articles and books by pro-life journalist and historian, Marvin Olasky. So why this book now?

In her Acknowledgments, Wright reveals that her subject was conceived backwards: She thanks her agent for helping her "refine my vague idea that 'someone should write a book about how abortion has always been common'

into this specific book." So Restell herself was a second thought, a subject chosen for the mission.

Not surprisingly for a "cause" book, *Madame Restell* has not been reviewed critically, as Wright's other books have been. For example, a Kirkus review of her 2017 book *Get Well Soon: History's Worst Plagues and the Heroes Who Fought Them* says she should have "banished" her use of "cool" and "fun" in this "lightweight history" and "There's no question that Wright has covered a lot of medical history with good information, if only she had curbed her pontification." But in 2023, she receives lavish praise for her uber pontificating: Her new book (Kirkus again) is "A fresh contribution to women's history," a "sharp, lively biography . . . not only interesting but, sadly, timely."

To sum up, I cannot express better why *not* to read this book than Wright herself does in her Epilogue—though she believes she is bucking the trend she describes:

"By and large, Americans don't like learning history. They like learning propaganda." Bingo.

—*Maria McFadden Maffucci is editor in chief of the* Human Life Review.

APPENDIX A

[*Clarke D. Forsythe is senior counsel at Americans United for Life and the author of* Abuse of Discretion: The Inside Story of *Roe* v. *Wade. This column was posted on July 16, 2023, at National Review Online. © 2023 by National Review. Reprinted by permission.*]

Congress Funds Coercion When It Funds Abortions

Clarke D. Forsythe

When Congress funds abortion, it funds the male partner, the parents, and the trafficker, because abortion clinics never ask and don't want to know.

In a Knights of Columbus–Marist poll in January, 60 percent of Americans said they opposed taxpayer funding of abortion. For years, polling data have shown a clear and consistent majority of Americans supporting restrictions on taxpayer funding.

When Congress spends federal funds for abortion, it can't shrug off responsibility and say that it's a state issue. Congress is responsible for what happens with federal dollars, regardless of what citizens want to do with state dollars. And when Congress spends federal funds, it's responsible for the impact that funding has on real people, including women coerced into abortion.

In his short story "Hills Like White Elephants," Ernest Hemingway conveyed the subtle pressure that men exert on women to have an abortion. Somewhere in Europe, a couple talk while waiting for a train. He wants her to agree to do it and keeps bringing it up. She doesn't want to talk about it. Her agitation increases. At the conclusion, when she protests that she's "fine!" she's obviously not.

Pressure on women to abort plays a role in many abortions. This has been known "for as long as we have recorded history," as Joseph Dellapenna documents in his book *Dispelling the Myths of Abortion History*. It likely got worse after *Roe* v. *Wade*. An early abortion-rights advocate, Daniel Callahan, recognized that *legal abortion* gave men "more choice," because "they now have a potent new weapon in the old business of manipulating and abandoning women."

The right to abortion isolates women in their decision-making—"her choice, her problem," as some say—making them vulnerable to coercion from every direction. Many women are coerced into having an abortion by a male partner, parents, or family members. Coercion can take many forms, from intimate-partner violence (IPV) to subtle pressure to paying for the abortion. Coercion by employers after *Roe* v. *Wade* became so obvious that a bipartisan coalition in Congress enacted the Pregnancy Discrimination Act in 1977. At least 20 states have enacted some limited form of coerced-abortion-prevention law since 1973.

Victims of sex-trafficking may suffer multiple coerced abortions. In an article in *Annals of Health Law* in 2014, Laura Lederer and Christopher A. Wetzel reported that 66 sex-trafficking victims had a total of 114 abortions. The victims, the authors wrote, "reported that they often did not freely choose the abortions they had while being trafficked." A majority indicated "that one or more of their abortions was at

least partly forced upon them."

The reality is there but sometimes not apparent on the surface. In her critically acclaimed book In *A Different Voice: Psychological Theory and Women's Development* (1982), Carol Gilligan devoted a chapter to women's abortion decisions. But, looking closely at her data, Mary Ann Glendon, a professor of law at Harvard, pointed out that many women in the survey experienced pressure or coercion: "The men in their lives were unwilling to give them moral and material support in continuing with pregnancy and childbirth."

Yet for a long time the reality of coercion has been told by women themselves, including Linda Bird Francke, in *The Ambivalence of Abortion* (1977), and Mary Zimmerman, in *Passage Through Abortio*n (1977). In her book *Soul Crisis* (1989), California psychologist Susan Nathanson-Elkind reported the role of her husband's pressure in her decision to abort her fourth child: "If you don't choose to abort this child, I will push you to do it."

These histories and testimonies have been reinforced by decades of surveys. Studies may report differing rates of coercion, ranging from 30 to 70 percent. But the survey evidence continues to be persistent. A 2004 study in the *Medical Science Monitor* found that 64 percent of women in the survey felt "pressured by others" to have an abortion. An extensive literature survey by Catherine T. Coyle and colleagues in 2015 found a "consistently observed association between IPV and abortion." That association resulted in numerous calls by female researchers to "screen women for a history of abuse during abortion counseling." A study published in *BMC Women's Health* in 2020 found that "a majority of women who seek abortion do so because of lack of support from a partner"—in other words, because of abandonment, another form of pressure. A study published by the Charlotte Lozier Institute this year found that "close to 70 percent of the women who had abortions described them as coerced, pressured, or inconsistent with their own values and preferences."

Many women suffer intimate-partner violence when pregnant. In a 2014 study published in *PLoS Medicine*, Hall and colleagues wrote that "high rates of physical, sexual, and emotional IPV were found across six continents among women seeking a TOP [termination of pregnancy]." A committee opinion (No. 554) from the American College of Obstetricians and Gynecologists, first published in 2013 and reaffirmed in 2022, found that "the prevalence of intimate partner violence is nearly three times greater for women seeking abortion than for women continuing a pregnancy."

Paying for the woman's abortion has long been a form of subtle coercion. It eliminates one reason a woman may have for resisting the suggestion or demand. It adds to the pressure women feel, by tilting the economics further in favor of abortion.

When a woman visits an abortion clinic with a man gripping her arm, or a girl is accompanied by her parents threatening to cut off her college funding if she doesn't abort, or a trafficker makes the appointment for her, could Congress track the coercion? When Congress funds abortion, it funds the male partner, the parents, and

the trafficker, because abortion clinics never ask and don't want to know. That's not "messaging," that's reality.

This understanding is being tested by the No Taxpayer Funding for Abortion Act (H.R. 7), now stalled in the House. With federal debt exceeding $30 trillion, it makes no sense for Congress to fund abortion with taxpayer dollars, especially when there is, sadly, more than enough *private* funding for abortion. Just ask Alex Soros, Warren Buffett, and Tom Steyer.

Public funding of abortion makes Americans complicit in coercion. Funding restrictions are a necessary safeguard for taxpayers' conscience rights. They also protect the ethical convictions of medical professionals who conscientiously object to supporting or participating in abortions.

Congress may think that it funds autonomy when it funds abortion. More likely than not, it funds coercion. These are some of the reasons why the 47-year bipartisan consensus supporting the Hyde Amendment has held up in Congress and in public opinion.

APPENDIX B

[*Gerard V. Bradley is professor of law at the University of Notre Dame, and the Foundation's Great Defender of Life in 2022. This article first appeared in the August-September issue of* First Things *magazine and is reprinted here with permission.*]

Life after *Dobbs*

Gerard V. Bradley

"The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives." It is now one year, and one full election cycle, since the Supreme Court closed its opinion in *Dobbs* v. *Jackson Women's Health Organization* with those words. That is time enough to gauge how the "people and their elected representatives" have used the authority "return[ed]" to them.

There have been six post-*Dobbs* popular referenda on abortion. All were setbacks for life. The sites of these defeats included red states such as Kansas, Kentucky, and Montana, as well as purplish Michigan. (The others were California and Vermont. No surprises there.)

It is not just the people who have gone wobbly on abortion. Republican politicians were all saber and musket when *Roe* put the substance of abortion liberty beyond political reach. Now it's different. Lindsey Graham introduced in the Senate last September a bill that would nationally prohibit abortions after fifteen weeks of gestation, except in situations involving rape, incest, or risks to the life and physical health of the mother. This was hardly a drastic proposal: Almost 95 percent of abortions take place by fifteen weeks, and Graham's bill permitted some abortions thereafter. His Senate colleagues nonetheless had no stomach for the fight. From Leader Mitch McConnell on down, Republican Senators took the view that abortion was for the states to worry about. They preferred to run against inflation and an underperforming economy. Pro-lifers are now working hard to gain commitments from Republican presidential hopefuls to support a national ban modeled after Graham's bill. We shall see how that goes.

Republican legislators are not the only problem. There is another cadre of public officials now driving the abortion express. High courts in blood-red states have struck down restrictive abortion laws; South Carolina and Montana are two examples. High courts in Wyoming, Florida, and Indiana are sitting on lower-court decisions blocking enforcement of those states' restrictive abortion laws. We shall see what the top judges in those states do.

What grounds have these state judges relied on? An Indiana trial judge cited Article 1 of the 1855 state constitution, which says that "all people are created equal . . . [and] are endowed by their Creator with certain inalienable rights; that among

these are life, liberty, and the pursuit of happiness." Sounds good. But then she held that "forcing pregnancy and childbirth upon thousands of Hoosiers" prevented them from enjoying the Creator's gift to them.

This imaginative jurist is a Republican.

The lead opinion for the South Carolina Supreme Court found a woman's right to abortion in "due process provisions that trace their development back to the Magna Carta," the charter of basic rights that King John and his unruly barons signed at Runnymede Meadow on 15 June 1215. Who knew that the path from Runnymede to *Roe* was so straight and sure?

It's time to take stock. Let's define an abortion law as nearly just when there is no legal elective abortion. The only permitted abortions would be those performed to save the life of the mother or alleviate a grave threat to her physical health, or in cases of pregnancy resulting from rape or incest.

Only twelve states have nearly just abortion laws that they can enforce: Alabama, Arkansas, Idaho, Kentucky, Mississippi, Missouri, Oklahoma, South Dakota, Tennessee, Texas, West Virginia, and Wisconsin. Wisconsin's law will not long survive the April election of Janet Protasiewicz to the state Supreme Court. In a pre-election debate, Protasiewicz advertised her personal support for abortion rights, as well as her backing by pro-abortion rights groups. Lawsuits challenging other states' nearly just laws are pending. In sum: About 22 percent of the U.S. population lives in a state with nearly just abortion laws. That includes Wisconsin.

The Biden administration is devoted to bringing that percentage down to zero. More than half the abortions performed annually in America now are "medical"—that is, non-surgical, accomplished by the ingestion of Mifepristone and Misoprostol. The Food and Drug Administration has approved the abortion-drug cocktail as "safe and effective," and it has done so on the most user-friendly terms. Pro-abortion groups maintain in lawsuits across the country that these FDA protocols preempt all restrictive state laws. They seek nationwide mail-order abortion on demand, notwithstanding a century-and-a-half-old federal law, the Comstock Act, that prohibits precisely such mailings. Some pro-life doctors obtained on April 7 an injunction against this practice from Texas federal trial judge Matthew Kacsmaryk. The main part of his ruling has been stayed pending appeal.

The months since *Dobbs* have revealed a much darker pro-abortion movement. Abortion is no longer a regrettable necessity, a painful but sometimes unavoidable way out for women in desperate circumstances. It is now about empowerment. In abortion proponents' rhetoric, in their "expert" studies of abortion pills, in their legal proposals, in their judicial opinions, the child in the womb is now utterly erased. He or she is invisible, not only worth nothing but not worth noticing: "pregnancy tissue."

These post-*Dobbs* developments are worse than pro-lifers expected, and far worse than most hoped. They cannot but be sobering to pro-life Americans. There are no scientific facts waiting to be discovered, no new legal arguments to make, no more demonstrations of care and compassion for mother and child that will make a real difference in the fight for unborn lives. I do not know whether the pro-abortion

population of America is growing. It seems not to be declining, and it is more militant, and more incorrigible, than ever.

What, then, is to be done? We should keep trying to reach the hearts and minds of opponents, of course. At the same time, justice for the unborn calls for the use of whatever lawful power is at hand to save their lives. Is there some paramount legal authority that could be put to this use?

Congress possesses ample constitutional authority under Section Five of the Fourteenth Amendment to "enforce, by appropriate legislation" the Section One guarantee that no state "deny to any person within its jurisdiction the equal protection of the laws" against, for example, homicide. Maybe soon there will be a Republican Congress. But as the fate of Lindsay Graham's very weak protections of the unborn indicates, it is not likely to be a pro-life one.

The people could of course amend the Constitution to make equal protection of the unborn child's right not to be killed more explicit than it already is in the Fourteenth Amendment. But given the strength of consensus, in both Congress and the states, required for amendments to the Constitution, this course has zero chance of success.

That leaves one more paramount authority to consider: the Supreme Court. *Dobbs* overturned *Roe*, and thank God it did. But does it do more? Is *Dobbs* a *pro-life* decision, one that establishes the basis of a legal strategy for protecting the unborn? The answer is "yes." This is a fact that anyone concerned to defend the sanctity of life must understand.

The Court's majority opinion includes many passages strongly suggesting that it is *not a pro-life decision*. For example:

> In some States, voters may believe that the abortion right should be even more extensive than the right that *Roe* and *Casey* recognized. Voters in other States may wish to impose tight restrictions based on their belief that abortion destroys an "unborn human being." Our Nation's historical understanding of ordered liberty does not prevent the people's elected representatives from deciding how abortion should be regulated.

And (quoting Justice Scalia's *Casey* opinion):

> The permissibility of abortion, and the limitations, upon it, are to be resolved like most important questions in our democracy: by citizens trying to persuade one another and then voting.

In his concurring opinion, Justice Brett Kavanaugh, the necessary fifth vote to the majority in *Dobbs*, used the word "neutral" thirteen times, invariably indicating that the Constitution was neither pro-life nor pro-abortion.

Indeed, if one thinks that our constitutional regime is based on essays comprising legal and constitutional history seasoned with elements of a primer on democratic theory, the *Dobbs* opinion often sounds as though it did no more than release abortion regulation from federal judicial captivity. On this reading, the Court is basically done with abortion. The rest of the story is for the "people and their elected representatives" to write.

But *Dobbs* is not an essay. It is a judicial opinion, and proper understanding re-

quires it to be read in accord with established canons of legal construction. It takes a lawyer's critical analysis, not an essayist's curiosity, to identify what that law is.

One clear canon of interpretation is that what Kavanaugh said in concurrence does not matter. Kavanaugh's concurrence is not the law established in *Dobbs* or any part of it. Sometimes, when a fifth justice's vote is needed to form a majority, that justice does not join in his or her colleagues' opinion and writes separately (in an opinion "concurring in the judgment") about what the law is. In that situation, the grounds of the concurrence shape the law of the case. That would have been true in *Dobbs* if Kavanaugh had dissented. In that hypothetical situation, Chief Justice Roberts's vote would have been the fifth and deciding one. Then his limited constitutional right to abortion, one that (in his words) gave the pregnant woman a "reasonable opportunity" to secure an abortion, would have been the law of the case.

Brett Kavanaugh joined the Court's opinion in full, signing it just as the other four justices in the majority did. The law of *Dobbs* is therefore in the majority opinion.

Another ground rule is that, although the law made in *Dobbs* is found in the majority opinion, not all of the majority opinion is law. Any judicial decision's "holding"—the law made therein—comprises the result and those portions of the opinion necessary to that result. A judicial opinion typically contains much else besides its holding—all sorts of observations, factual suppositions, footnotes, tangents, musings, and polemical exchanges with dissenters or concurring judges (or both, in the case of *Dobbs*). *Dobbs* traffics heavily in the descriptive and predictive: Voters may believe a certain thing and act in a certain way; this or that is the case or is likely to happen. What really matters, though, is the prescriptive: What do public authorities have the constitutional authority to do?

The *Dobbs* result is that "the judgment of the Fifth Circuit" invalidating Mississippi's prohibition of post-fifteen-week abortions "is reversed." Its holding includes two intertwined yet distinguishable major propositions: *Roe* and *Casey* are overruled, and, in *Dobbs*'s words: "The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of *Roe* and *Casey* now chiefly rely—the Due Process Clause of the Fourteenth Amendment." A third leg of the holding is more operational: Going forward, abortion regulations will be subject to the Court's familiar "rational basis" test. The holding of *Dobbs* also includes any premise necessary to support these three propositions. Finally, in an overruling case such as *Dobbs*, not only the earlier holding—here, chiefly *Roe*— but also any premise essential to *Roe* is deprived of authoritative support.

These rules about concurrences and holdings are not technicalities, even though deploying them sometimes requires educated legal reasoning. They are pillars of sound reasoning about judge-made law. Learning these rules is a staple of first-year law school instruction. Mastering them is essential to practicing law. Put simply, the decisive question is not whether *Dobbs* is a pro-life opinion. It is whether *Dobbs* is a pro-life holding.

It is, in the following five ways.

First, *Dobbs* holds that a state law prohibiting all abortions is constitutional. This is no more than another expression of the second main holding, namely, that there is no right to an abortion anywhere in the Constitution. No woman has a constitutional right to abortion.

Dobbs contemplates, even if it does not quite hold, that a woman whose life is at stake could secure an "abortion." But this exception need not be, and should not be, understood as a right to an abortion. It is better understood as a permission of medical procedures undertaken with the intention of saving a life, albeit with the anticipated but unintended effect of the unborn child's death. This "double-effect" feature makes lifesaving "abortion" a reasonable defense of the mother's life.

Second, *Dobbs* does not hold that states may permit abortion, even though several statements in it say or imply as much. Nothing in the result of *Dobbs* or in its three main propositional holdings or in anything essential to those holdings presupposes or implies that the states may do as they wish. The reasoning that leads to the holding that there is no constitutional right to abortion does not rely on premises that require approving abortion permissions.

Late in its opinion, the *Dobbs* Court listed the "legitimate state interests" that justify laws that prohibit or regulate abortion. None of them is a reason for permitting abortion. The six are: "respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability." "Maternal health and safety" is here a reference to the many state laws conditioning abortion access (informed consent requirements, waiting periods, and the like) for the sake of the pregnant woman's health. *Dobbs* does not identify any "legitimate state interest" justifying support of abortion access.

Third, in *Roe* v. *Wade*, the Texas court maintained that human life begins at conception and that the state therefore may ban abortion throughout pregnancy for the sake of that compelling value. In his controlling opinion for *Roe*, Justice Blackmun asserted:

> 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.

In reversing *Roe*, *Dobbs* necessarily reverses this claim, for Blackmun's agnosticism on when life begins was essential to *Roe*'s abortion-liberty holding. To be sure, *Dobbs* is conspicuously coy about the occupant of a pregnant woman's womb. The opinion's opening paragraph is illustrative: "Abortion presents a profound moral issue on which Americans hold sharply conflicting views. Some believe fervently that a human person comes into being at conception and that abortion ends an inno-

cent life." And later: "[A]s both *Roe* and *Casey* acknowledged, [abortion] destroys what those decisions called 'fetal life' and what the law now before us describes as an 'unborn human being.'" Here and elsewhere, the *Dobbs* Court reports what others say about pregnancy without asserting anything in its own voice. The Court repeatedly deploys the imaginary construct of "potential life." According to *Dobbs*, "[w]hat sharply distinguishes the abortion right" from other privacy cases is that abortion "destroys what those decisions call 'potential life'"; likewise, "what is distinctive about abortion" is "its effect on what *Roe* termed 'potential life.'"

Throughout the majority opinion, the Court says in its voice no more than that abortions destroy "prenatal" or "fetal" life. Given the context, one could confidently insert the missing word "human" into the phrase—thus, "prenatal human life." This is not yet to assert that from the moment of conception a whole living human individual comes to be. And yet *Dobbs* holds precisely that, because it requires it as a premise for the holding.

The cogency of the argument in *Dobbs* requires the recognition that a whole individual human being begins at conception. *Dobbs* overrules *Roe* and declares that there is no constitutional right to abortion. To this end, the majority needed to execute two tasks successfully.

The first was to supply a compelling answer to the historical question of whether a right to abortion could be found in our history and tradition, especially around 1868 when the Fourteenth Amendment was ratified. (This test for identifying the existence of judicially enforceable "unenumerated" constitutional rights such as a right to abortion was established in *Washington* v. *Glucksberg* [1997].) The core of the Court's case for a negative answer is this: "By the time of the adoption of the Fourteenth Amendment, three-quarters of the States had made abortion a crime at any stage of pregnancy, and the remaining States would soon follow." *Dobbs* recited this conclusion a half-dozen times. The voluminous *Dobbs* Appendix catalogues the decisive body of older statutes, vindicating the Court's claim that no right to abortion can be found in "history and tradition."

Moreover, the old statutes do not leave the identity or status of abortion victims in a haze. These laws outlaw a very specific act, which the laws explicitly describe. The claim that there ever existed an "abortion" liberty (nineteenth-century laws do not presuppose that "abortion" is a self-evident term and use older concepts such as to "cause" or "obtain" a miscarriage) is negated—the majority insists—by the widespread existence of laws that make it a crime to "administer" to "any pregnant woman" ("with child") anything whatsoever with the "intent to procure the miscarriage of any such woman" (or to "destroy such child"), unless to save the life of the woman.

The concept and term "potential life" are utterly alien to this corpus. Insofar as one could imagine that "abortion" extinguishes something called "potential life," nothing in *Dobbs* tends to deny that there is a constitutional right to obtain one. Unless *Dobbs* affirms that in an abortion a living human individual is deliberately killed, the Court flunks its *Glucksberg* test. And since it claims to pass that test, it

must endorse the premise that abortion terminates a life, full stop.

The Court's second task was made necessary by the first. The *Dobbs* dissenters saw immediately that the majority's answer to the *Glucksberg* test threatened not just abortion rights, but many other Court-minted "privacy" rights, such as to contraception, sodomy, and same-sex civil marriage, none of which rights are rooted in our history and tradition. The *Dobbs* majority took on board the dissenters' premise that these other "rights" should remain untouched: "We have stated unequivocally that '[n]othing in this opinion should be understood to cast doubt on precedents that do not concern abortion.'" (In a separate opinion Justice Thomas indicated a certain willingness to reconsider them.)

What reason did the majority give for distinguishing *Roe* from other decisions that rest on the purported right to privacy? "[C]ontraception and same-sex relationships are inherently different," they argued, because abortion "uniquely involves what *Roe* and *Casey* termed 'potential life.'"

Here again, and in spite of the repeated verbiage, we find that *Dobbs* rests on the premise that life begins at conception. One might appeal to Aristotle to supply an intelligible account of "potential life." He held that the animation of the body with a rational soul occurs six weeks after conception, so that before that point some sort of living organism exists that is only potentially a human being. But there is no rational basis to accept this view, which is at odds with modern science. Everything we know about human biology and reproduction tells us that it is false. Moreover, there existed no concept of "potential life" in the law of abortion from the time the Fourteenth Amendment was adopted until 1973. Harry Blackmun invented the term after he decided not to say when life begins.

Although the zygote and then embryo could fairly be described as almost all "potential" and very little actuality, there is nothing "potential" about the embryo's being alive. "Potential life" therefore does not describe the embryo or the fetus and so has nothing to do with abortion. It is, however, a useful term for understanding contraception and its moral status. Contraception does not destroy any human being already in existence, as abortion does. But it involves envisioning a "potential" child and then acting so as to prevent that "potential" child from coming to be. Contraception is the morally significant choice to "destroy" what could usefully be termed a "potential [human] life," intending that someone who could later exist, not exist.

In other words, if *Dobbs* rests on the concept of "potential life," then it cannot distinguish abortion from contraception. Yet the majority insists on the distinction. It is essential to the *Dobbs* holding that abortion is "unique." Therefore, it cannot involve "potential life." For *Dobbs* to be read coherently, we must adopt the premise that abortion destroys a whole living human individual.

Dobbs is a pro-life holding in a fourth way. Constitutional "personhood" is doomsday for abortion. In *Roe*, Harry Blackmun conceded that, if a "person" within the meaning of the Fourteenth Amendment begins at conception, then the constitutional case for abortion "collapses"—his word. "For [then] the fetus' right to life would

then be guaranteed specifically by the [Fourteenth] Amendment."

Roe infamously held that the unborn do not count as "persons." That constitutional term, Blackmun wrote, has "application only postnatally." He tried to establish this conclusion—the hinge on which the whole constitutional debate about abortion turns—by narrow legal reasoning about texts and precedents. When it sought the meaning of the Fourteenth Amendment guarantee of legal protection to "any person," the *Roe* Court never looked at reality—that is, the truth of the matter about when our lives actually begin.

Dobbs reversed *Roe* and thereby overruled any part of that opinion that was essential to its holding. The proposition that the unborn are not constitutional persons was absolutely necessary, as Blackmun's concession makes clear. No other Supreme Court case (except those following the now canceled *Roe*) has held that the unborn are not "persons." With *Dobbs*, the decisive constitutional question is open for the first time in fifty years.

And so we must ask: On what grounds could public authority maintain that a whole, living human individual is not a person? It is axiomatic in our constitutional order that everyone is equally a "person" with the same right to life at and after the moment of birth. What then could render that same human individual a non-person minutes or days or months earlier? These questions are not merely rhetorical, but suggest a focal point for future litigation.

Dobbs is a pro-life holding in a fifth and final way. Its most practical passage is this: "We must now decide what standard will govern if state abortion regulations undergo constitutional challenge. . . . A law regulating abortion, like other health and welfare laws, is entitled to a 'strong presumption of validity.' It must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests."

Here the Court doubtless had in view laws restricting abortion. "Rational basis" signals unmistakably that the Court will uphold any such law, up to and including total prohibitions. But this "rational basis" standard would also apply to abortion permissions, for the simple reason that it applies to every law, and the quality of being non-arbitrary is the baseline test of constitutional reasonableness.

In today's culture, a "rational basis" for liberal abortion laws would be the promotion of women's autonomy, equality, and empowerment. But nothing about these interests has any tendency to establish the precondition of the constitutionality of those laws, namely, that the unborn child is not a person. After all, as Blackmun wrote in *Roe*, if the unborn child is a person, "the fetus' right to life would then be guaranteed specifically by the [Fourteenth] Amendment." Nothing about anyone's empowerment, freedom, interests, desires, or needs affects the status of another human being as a rights-bearer, as someone whose well-being must be respected.

Dobbs got this exactly right. The Court recognized that whatever it is that gives anyone a right to life, it must be something about that individual and not about some external circumstance, such as "viability." According to *Dobbs*, "[t]he most obvious problem with any [contrary] argument is that viability is heavily dependent on fac-

tors that have nothing to do with the characteristics of a fetus. One is the state of neonatal care at a particular point in time." This is a problem, because "if viability is meant to mark a line having universal moral significance, can it be that a fetus that is viable in a big city in the United States has a privileged moral status not enjoyed by an identical fetus in a remote area of a poor country?"

The Court went on to ask, if "viability" means the ability to survive outside the womb, "why is this the point at which the State's interest becomes compelling? If, as *Roe* held, a State's interest in protecting prenatal life is compelling 'after viability,' why isn't that interest 'equally compelling before viability'?" *Dobbs* reported that "*Roe* did not say, and no explanation is apparent." "Viability" is, the Court concluded, an "arbitrary line."

The Court made a further move. "This arbitrary line," the Court wrote, "has not found much support among philosophers and ethicists who have attempted to justify a right to abortion. Some have argued that a fetus should not be entitled to legal protection until it acquires the characteristics that they regard as defining what it means to be a 'person.'" Characteristics such as "sentience, self-awareness, the ability to reason, or some combination thereof" are suggested as "essential attributes of 'personhood.'" "By this logic," wrote the majority, "it would be an open question whether even born individuals, including young children or those afflicted with certain developmental or medical conditions, merit protection as 'persons.'"

We need to take in the revolutionary import of these passages. *Dobbs* does not treat the question of fetal personhood as a game of mental gymnastics. Much less does *Dobbs* regard it as a question about legal fictions or textual usage or precedent, or even about history. The *Dobbs* Court repudiated fifty years of Supreme Court misdirection and thus tragedy, by recognizing that those "persons" entitled to equal protection of the laws include everyone who really is a person. And the reasoning in *Dobbs* suggests that there exists no rational basis for treating those in the womb as anything other than persons.

Dobbs has opened the way for pro-life litigation. Although it does not connect those dots, the majority has supplied all the elements needed for arguments showing that permissive abortion laws, because they arbitrarily treat the fetus as less than a person, lack a rational basis. Every whole living human individual is, by dint of that fact alone, a human person, and thus cannot be treated arbitrarily by any law, especially not by laws that permit that person's destruction.

Let us not be distracted by the conventional account of what *Dobbs* accomplished by overturning *Roe*—the notion that it merely returned the issue to the people and their representatives. This "power to the people" narrative distracts from what the case actually holds. Many on the pro-life movement's legal side are prone to this distraction. They have long regarded overturning *Roe* as the terminal point for constitutional law reform. From there on, democracy (so to speak) was to ensure equal protection for everyone—or so we were told. Whether this is true as a matter of normative democratic theory is doubtful. Whether it is true of our Constitution is

the subject of this article.

The conservative legal movement is hesitant to take up the cause of life as a positive objective beyond the overturning of *Roe* as "judge-made law." It is wary of having the Court make what it regards as "value judgments." And it is averse to the justices' continuing involvement in this part of the culture war. But whether or not the child in utero is substantially identical with the newborn infant is not a "value judgment." The logic of *Dobbs* suggests that it is a question admitting of a rational answer. And how far the Court should or should not involve itself in the culture war is not a matter of opinion. It depends on what the Constitution, honestly and fearlessly interpreted, requires.

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Never presume the future. Who knows what is around the next corner? There are unexpected physical or mental scenarios with any disability or disease; who can say with complete certainty what's to come? To presume the future is to play God. We have heard about doctors being notoriously wrong when predicting the life expectancy of sick or terminally ill people; many of those patients have gone on to live years, even decades beyond expectations! I am one of them.

—Mark Davis Pickup, "Evil Advances in Increments"