



VOLUME XLIX No. 4 ♦ FALL 2023

◆ FEATURED IN THIS ISSUE ◆

Ellen Wilson Fielding on
DESCENDING FROM PAGANISM

Charles K. Bellinger on
ANOTHER DISQUIETING SUGGESTION

Edward Mechmann on
STEALTH EUGENIC EUTHANASIA OF DISABLED INFANTS

William Doino Jr. on
COURAGE AND CLARITY: A TRIBUTE TO JAMES LIKLOUDIS

Christopher M. Reilly on
THE TRUTH ABOUT HUMAN LIFE IS IN THE HEART

HLR Editors conduct
AN INTERVIEW WITH DR. CHRISTINA FRANCIS

Edward Short on
THE BLESSINGS OF CHILDREN

William Murchison on
LISTENING TO HADLEY ARKES

◆ ALSO IN THIS ISSUE ◆

Booknotes: Wesley Smith on Peter Singer's *Ethics in the Real World*

From the Website: Jason Morgan on the Calligrapher of Life



Appendices: J.P. McFadden ♦ Richard M. Stith ♦ Leah Libresco Sargeant

. . . October 17, 2023, marked 25 years to the day of the death of our founding editor James P. McFadden, at 68 years old. He died suddenly—though not unexpectedly as his cancer was terminal—at 4 am on a Saturday, just about 12 hours after we’d all put the finishing touches on the Fall 1998 *Review* at the office.

Looking back, there are sobering connections between that issue and this one. In 1998, we featured a symposium: “Infanticide Chic II: Professor Singer Goes to Princeton.” Singer, an advocate for *Animal Liberation* (in fact, the title of his first book), abortion and infanticide, had just been awarded a prestigious chair at the Ivy League institution. Twenty-five years later, Singer is still ensconced at Princeton, and has a new book out, *Ethics in the Real World: 90 Essays on Things that Matter*, reviewed by Wesley Smith on p. 71. Smith writes that Singer is both “one of the most villainous thinkers of our age” and (sadly) “one of the most influential.” He has been “particularly successful in smashing the sanctity of life ethic.” J.P. recognized Singer’s evil potential decades ago: In the essay he wrote in 1983, “Toward the New Future” (which we reprint here as Appendix A), he introduced Singer to *Review* readers, appalled that this young Australian professor’s support for the infanticide of disabled babies had been promoted by our own American Academy of Pediatrics. “Singer does represent the New Future,” J.P. wrote. Infanticide “logically follows” abortion, and “as everybody knows, is already a widespread practice.”

Forty years later, it has become horribly routine, as Edward Mechemann describes in “Stealth Eugenic Euthanasia of Disabled Infants,” p. 17, and what a loss to the world! For a beautiful example of a win, in that regard, don’t miss Jason Morgan’s review (p.75) of a Japanese documentary about “the world’s greatest living calligrapher;” the artist Kanazawa Shoko, who has Down syndrome, and who has changed the world with her infectious joy and astounding talent.

In his essay, J.P. gave us his “modest proposal”: that medical professionals be required to “add a few more letters to their shingles: S.L.E. or Q.L.E.—sanctity or quality of life.” We welcome an expert on such matters to the *Review* on p. 50, our interview with Dr. Christina Francis, CEO of the American Association of Pro-Life Obstetricians and Gynecologists. “Every life has inherent value and worth, and this is not dependent on a person’s ability level.” Amen. Yet Dr. Francis lets us know how S.L.E. doctors are attacked for daring to uphold the truth.

Our thanks go to Richard Stith for his important piece on “The Exportable *Dobbs*,” and *National Review* for permission to reprint Leah Libresco Sargeant’s inspiring article on pro-life persuasion. (And thanks as always to Nick Downes for his reviving humor.) On a final note, there was a glimpse of cultural hope in the current *BBC* drama *World on Fire*. Two British soldiers disagree about saving the life of their German prisoner, as all three of them struggle to survive in the African desert during World War II. The more senior soldier is from India—and has been subject to persecution from his white peers—yet he insists on aiding the prisoner: “The value of a life, is the value of a life, is the value of a life.” Would that these true words echo and expand in our troubled times.

MARIA MCFADDEN MAFFUCCI
EDITOR IN CHIEF



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Introduction 2

Anne Conlon

Descending from Paganism

Ellen Wilson Fielding 5

Another Disquieting Suggestion

Charles K. Bellinger 13

Stealth Eugenic Euthanasia of Disabled Infants

Edward Mechmann 17

Courage and Clarity: A Tribute to James Likoudis

William Doino Jr. 35

The Truth about Human Life Is in the Heart

Christopher M. Reilly 44

An Interview with Dr. Christina Francis

HLR Editors 50

The Blessings of Children

Edward Short 59

Listening to Hadley Arkes

William Murchison 65

Booknotes 71

Wesley Smith on Peter Singer's

Ethics in the Real World

From the Website

Jason Morgan 75

Appendices 79

J.P. McFadden

Richard Stith

Leah Libresco Sargeant

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INTRODUCTION

You are perhaps used to seeing Ellen Wilson Fielding's essays bringing up the rear of featured articles; indeed, I am used to placing them there to assure a strong close. But this time our senior editor takes the lead, and what a brilliant one "Descending from Paganism" provides. Here is a writer at the top of her game, grappling with sometimes uncomfortable and little-noticed truths. Like this one: "Some very thoughtful writers and thinkers go partially wrong," Fielding writes, "in speaking of the re-paganization of our formerly Christian civilization. Although they rightly draw our attention to all the major indices of religious, moral, and familial collapse, not all of them seem to sufficiently appreciate how de-Christianizing differs from re-paganizing." And therein begins a bracing review of pagan culture ("pagan" does not mean addicted to orgies") that may have you wishing for an actual pagan revival as the West spurns the Christian ethos and with it "the fecund source of its creativity, vitality, attractiveness, and inspiration."

Our elites are hell-bent on obliterating Christianity—why? Could they be "seeking to fend off their own participation in evil"? In "Another Disquieting Suggestion," longtime theology professor Charles Bellinger conjures up a dystopian tale (after Alasdair MacIntyre in *After Virtue*) about a society where "evil must always be viewed as external to the self," and "the notion that the line dividing good and evil runs through every human heart is the one piece of deep understanding that must never be allowed." Of course, this denial of human nature and agency is the antithesis of the Christian proposition, and to Bellinger's point, produces instead an "'I'm okay, you're okay' mindset," one primed to tune out the selective dehumanization that politicians and other powerbrokers impose on whole classes of people to justify moral aberrations like abortion—and slavery, and the Holocaust.

And euthanasia, which Western elites have brazenly worked to rehabilitate in the decades since, as Edward Mechemann observes in our next article, "it was utterly discredited by the Nazi program to kill people with disabilities." In "Stealth Eugenic Euthanasia of Disabled Infants," Mechemann, an attorney, argues that "eugenic euthanasia of disabled children is already permitted by inadequacies in American law," while "the medical community ignores the federal law that was designed to prevent it." In a study concerning "assessments of quality of life for children with disabilities," he reports, "59 percent of neonatologists and 68 percent of nurses rated some conditions as being worse than death." This is the mindset that opts for so-called mercy killing over humane treatment and hospice care—for infants, and indeed for any of us it deems not "okay."

The extent to which elites are running the cultural show is excruciatingly apparent, but in reality they have been in command of our most formative institution—education—long enough to have pumped out at least two generations of acolytes. The American theologian and author James Likoudis, subject of William Doino

Jr.'s latest profile of a counter-cultural warrior ("Courage and Clarity"), was born in 1928. Doino relates that, while Likoudis was studying history and philosophy at the University of Buffalo in the forties, his "[Christian] beliefs came under sustained attack from professors hostile to organized religion. Traditional faith and values were portrayed as enemies of enlightened thinking, and obstacles to democratic progress." Likoudis, who converted to Catholicism (from Greek Orthodoxy) in 1952, has spent over five decades working to counteract "the long process of moral and cultural decay," which, he believes, "preceded the Woodstock generation . . . and grew out of the social fragmentation and moral disorientation provoked by two World Wars."

Much of what is considered "enlightened thinking" today eschews logic and common sense in favor of morally disoriented, emotion-based arguments that serve individual will. But should emotion be altogether left out of our advocacy for life? Our opponents, writes Christopher Reilly in "The Truth about Human Life Is in the Heart," often disparage emotional appeals as irrational, "overly sentimental," and irrelevant to the issue of abortion; sometimes even those on the pro-life side encourage fellow travelers to stick to the facts and focus on rational debate. But this is a critical mistake, writes Reilly, who turns to the great Catholic moral philosopher Dietrich von Hildebrand's work to explain why. For Hildebrand, a fully conscious and engaged person will be motivated by intellect, will, and the "heart." The heart, "with its deep feelings," is the most important center of the person. We grieve what we know in our heart is the gravely unjust killing of the unborn, and our sorrow motivates us to fight for them.

Christina Francis, president of the American Association of Pro-Life Obstetricians and Gynecologists, is fighting for the unborn in the increasingly hostile world of medicine, where an ascendant quality-of-life ethic is trumping the age-old sanctity-of-life ethic in medical schools and hospitals. "One of the main challenges," she explains in the interview that follows, "is the significant pressure placed on [doctors and other healthcare workers] by medical professional organizations, such as the American Medical Association (AMA) and the American College of Obstetricians and Gynecologists (ACOG) . . . [which] staunchly support unrestricted access to abortion—not because the science demonstrates any health benefits, but rather purely for ideological reasons." According to Dr. Francis, these elite groups are leading "an effort to push pro-life professionals out of health care," one which recently included ACOG barring her own organization from exhibiting at one of its conferences, "a decision they openly admitted was due to our pro-life views." Still, she says, proliferators looking for careers in medicine can take heart, because these "radical agendas . . . do not reflect the views of most medical professionals."

Christianity, as recent popes have insisted, is not an ideology, but a relationship—which explains its rejection by ideology-addled elites, and the concomitant waning of the reverence that Christian culture, modeled on the sonship of Christ, has traditionally shown the child. In our next article, Edward Short writes of "The Blessings of Children"—blessings, he says, "we need to recapture and celebrate in an age in

which the detestation of innocence has become so ubiquitous an evil.” Even the Aztecs, he observes (as does Fielding in her review of pagan culture), “sacrificed their victims as a result of a defective understanding of what would be pleasing to the Godhead, whereas our woke brigade sacrifice theirs out of a mania for power.” As always, readers will appreciate not only Short’s perspicacity, but his refreshingly original way of expressing it.

William Murchison contributes a strong finish to our featured lineup with “Listening to Hadley Arkes,” a review essay on Professor Arkes’ important new book *Mere Natural Law: Originalism and the Anchoring Truths of the Constitution*, which, our senior editor quips, “isn’t Aquinas re-fashioned for James Patterson readers.” He advises “listening intently” to Arkes now that “we’re having at last . . . a good old . . . national scrum over what it means to destroy life in the womb.” *Roe v. Wade* is dead, the legal crowd cleared out, and “what we have got here is a moral issue,” writes Murchison, one Arkes “refers to as ‘that commonsense understanding of ordinary people, in which the Natural Law finds its ground.’” Ordinary people putting elites on notice? About time.

* * * * *

In this edition of Booknotes, Wesley J. Smith reviews a new and “generally uninteresting” collection of essays by Australian philosopher Peter Singer, notable, Smith says, for what the toast of Princeton “*omits*,” that is, “transgressive ideas”—such as his support for post-birth infanticide—“that *made* his career as a writer, professor, and international public speaker.” In From the Website, Jason Morgan introduces Kanazawa Shoko, a highly acclaimed Japanese calligrapher who has Down syndrome, and a persona non grata in Singer’s utilitarian calculus. J.P. McFadden had Singer’s number long before the author of *Animal Liberation* became the darling of the burgeoning field of bioethics. In “Toward the New Future,” the 1983 article we reprint in Appendix A, our late founding editor identified Singer as “the prototype ‘ethicist’” for medical review boards questioning “Who shall live? and Who shall decide?” We close with two articles that discuss the Supreme Court’s *Dobbs* decision: Richard Stith, in an adaptation of a University Faculty for Life talk he gave last spring, focuses on elements of the Court’s opinion that could have worldwide appeal; while Leah Libresco Sargeant, in a piece originally published by *National Review* magazine, reminds us that the “compromise” 15-week ban now being promoted by Donald Trump and other Republican politicians “would leave nearly all children in the womb at risk.” The *Roe* regime is finished, GOP leaders are headed for the exits: “Pro-lifers can win only by making their case on the merits,” Sargeant insists, “directly to their neighbors, not just to judges.” According to a 2020 Notre Dame study, she goes on, most people “have never had a conversation face-to-face about abortion.” We need to change that.

ANNE CONLON
EDITOR

Descending from Paganism

Ellen Wilson Fielding

In the fifty-plus years since the movement to legalize abortion in America began scoring successes, I have grappled with the mystery of how so many women in particular could politically support it with such consistent and sometimes ferocious conviction. Oh, it is easy enough to comprehend how an individual woman boxed into a seemingly impossible situation—pregnant and alone, with no means of support; or pregnant with an abusive partner; or pregnant after rape—could rationalize the aborting of her child as a necessary evil or perhaps even a positive good (“abortion is better than being unwanted,” etc.). It is also easy to comprehend how a woman could in anguish just jettison ethical arguments entirely and run for the nearest exit, like someone shoving aside anyone blocking the exit during a fire. Those reactions are consistent with responses to a variety of situations that trip in us some kind of fight or flight reaction. But despite our sympathies with people who succumb to less heroic alternatives or are blinded to the truth of what they are doing by depression and mental illness, we don’t pin a medal on soldiers who desert or fathers who abandon families—or mothers who sacrifice their children.

Nor would many of those mothers in crisis pin a medal on themselves—many either at the time of afterward recognize the gruesomeness of the exchange that, viewed through the narrow tunnel vision of dread or despair, seemed to be the best of bad options. Many of them are in fact haunted by their choice, and in the months and years afterward need help to climb up from a different kind of despair—despair of finding forgiveness.

But what seems to me much harder to comprehend is the full-throated support of the right to abortion on demand of women who are not in crisis—their politicking and promoting of it, their debating and protesting for it, because these occur, so to speak, in moments of cold blood. To me it resembles the difference between a crime of passion and calculated, first-degree murder. What can perhaps be, if not explained away, explained well enough so that the listener can understand the temptation succumbed to because of a conscience clouded by fear is absent from the standard NARAL or Planned Parenthood member’s brutal assertion that all women should have unrestricted

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life-or-death rights over their children.

But putting it that way suggests an analogy that may make it easier to position today's abortion right in the historical pantheon of moral codes. For Westerners whose moral codes partially descend from classical Greece and Rome, the assertion of a mother's unrestrained rights over her unborn child recalls, after all, the authority of the ancient Roman *paterfamilias* over the life and death of his family members. But the Judeo-Christian conception of human life, its origins, and its value that was grafted onto the classical world and from which our seemingly decaying civilization descends rejected that right to pronounce a death sentence for the newborn—or the unborn—whether hale or handicapped, conceived in marriage or outside it.

Abortion is condemned in one of the very earliest (likely first-century) Christian documents, the *Didache*, and it is condemned throughout all the intervening Christian centuries. Does that mean abortion was unheard-of, throughout all those centuries of the Christian era, in those countries where the Church had gained the upper hand over its variously pagan competitors? Not at all—any more than the Ten Commandments' bans against theft and perjury ever reduced the incidence of those crimes to zero, or its moral strictures against lying and adultery erased those sins from human society. But the consistent condemnation of abortion, deriving from the recognition that all life ultimately has its source in God the Creator, and that among all of his creation, humanity alone has been created “in the image and likeness of God,” eradicated legal toleration and social approval of abortion and infanticide in Christian nations, greatly reduced their incidence, and pushed both to the shadowy corners of human behavior where unsanctioned and shameful activities occur.

There are many threads to the arguments for and against abortion in our time. Depending upon which end you tug at from the great ball of history, you can come up with different partial explanations for where we have ended up, with more than 63 million prenatal Americans dead since 1973 before they could draw in the air of our free country—so very free for the already born, but at a massive cost!

We can perhaps blame our present body count on the invention of modern largely reliable contraceptives. These spawned in those using them a kind of rational expectation of baby-free sex; if a child unaccountably was conceived anyway (an “accident,” because unintended by the couple engaging in the sexual act), then it needed to be eliminated to protect the implied guarantee offered by contraceptives of sex without conception.

But this moves us back to the moral and psychological aspect of the origin story of abortion—since the Pill itself and ancillary forms of contraception

were themselves the product of societal pressures to find more consistently effective forms of birth control. In times past, many people, married and unmarried, for a variety of reasons, have desired easy and effective birth control, but before quite recently and aside from self-treatment with primitive concoctions offering uninspiring rates of success, or unsatisfactory forms of sexual semi-deprivation like withdrawal, these ancestors of ours entertained such contraceptive desires merely as wishes. It took additional developments to transform reliably baby-less sex from something little more than a fantasy to something little less than a demand, thereupon creating pressure to make backup abortion a right. One of these developments was the decline of the sense of the sacred, the numinous, the Mt. Sinai sort of God of thunder and earthquake whose attributes and existence C.S. Lewis insinuated into the figure of Aslan the lion in his *Narnia* books by describing him as good, but “not a *tame* lion.”

The effort to turn God into precisely a tame lion was an Enlightenment project. The time seemed ripe for reducing God to a more controllable being, a leashed and defanged deity that could perhaps residually serve as an unmoved Mover and a posited source of self-evident social and political rights (*pace* the Declaration of Independence or the more progressive French Rights of Man). The wars of religion and the breakup in Europe of a unified Christianity during and after the Protestant Reformation left many thinkers, particularly political philosophers, seeking more terrestrial sources of authority. Over the course of a couple of centuries and influenced by the developments of English political philosophers like Hobbes and Locke and continental ones like Rousseau, the model of God as an omnipotent ruler, actively holding us all in being and intervening in human affairs, came to be seen by political theorists as outmoded. Succeeding centuries saw the affirmation of political rights, including tolerance for religious diversity and free thinking, and the move toward more democratic forms of government, even in nations that technically remained monarchies. Divinely ordained moral codes increasingly appeared to be options rather than the Truth handed down from on high. Instead of being the standard by which we would be judged, such codes were alternatives that *we* judged according to how well they accorded with our ambitions and desires.

Meanwhile, science was hacking away, hither and yon, at all our thickets of ignorance about biology, chemistry, and physics. We can draw an analogy from the Age of Exploration’s enthusiastic mapping of large portions of Earth formerly unknown to Europeans, gradually disclosing the detailed contours of regions once labelled “terra incognita.” Similarly, scientists since the Enlightenment have expected (and in many cases still seem optimistically to

expect someday, down the road apiece) that we will ultimately be able to explain everything. Consider, in fact, the title of Stephen Hawking’s book *The Theory of Everything*. The implicit or explicit question then arises: In a fully explained natural world, why would we need God?

The public reputation of “science” (which usually means “scientists”) took a hit during and after the recent pandemic, with many people concluding that scientists had caved to political and social interests. But far from abandoning all hope in “science” as something capable of advancing our well-being in areas like medicine and technology, most critics are merely calling out particular players for using their professional reputations to advance political or social agendas. Even now, “science” and its practical cousin “technology” are where we place our hopes when we are sick—or when we want to fly to Paris, email a friend, stream a favorite TV show, or settle an argument by consulting Wikipedia.

Despite the Enlightenment’s triumphs, however, the uber-logical, religion-dismissing scientific approach is not the mode that the mass of humanity consciously adopts to explain the great mysteries of life—love and life and death, that sort of thing. But even among many religious believers today, there’s a sort of *lived* agnosticism demonstrated by declining affiliation with distinct religious communions, dwindling acceptance of religious dogma, church authority, and the demands of public worship, and increasing practice of behaviors condemned by traditional religious mores.

My focus here is on Christianity, since Western Civilization was conceived and developed in a Christian womb, so to speak, and since most people in the developed world, including the United States, trace their cultural heritage to Christian roots. Even though what sprouts from those roots nowadays is often ailing, it makes sense to refer to the Christian tradition when discussing modern attitudes in Western countries toward God and morality.

But besides the ailing expression of Christianity in much of the West (in Africa and parts of Asia Christian practice and belief are much more robust), and besides the belief that science is or will be capable of answering our questions and filling our needs, there is a third collection of people loosely associated by thinking and desires that are “thicker,” more imminent, less sunlit and, ultimately, less superficial than the scientific rationalists. Those in the varied domains of this group tend to the occult in more than one sense of the word. Theirs is the domain of the non-technological, Gaia-worshipping wing of the ecological movement; of witches practicing “white” or “black” magic; of pantheistic worshippers of the powers inhabiting nature and natural forces. Among their less ancient ancestors in the West are the Romantic

movement, early popular anthropology of Frazier's *Golden Bough* variety, aspects of Jungian psychology involving archetypes and the collective unconscious, some forms of extreme "blood and soil" nationalism and tribalism, and pantheistic religions. This is the realm of mysticism and emotion, and it can take the visitor down some very weird paths; but it does intuit that meaning cannot always be apprehended in the bright sunshine or revealed under a microscope. Relatively few Westerners plunge deeply or emphatically into the murkiest of these waters, but that doesn't prevent a more general kind of influence from being more widely felt—for example, in the misgivings of those who doubt the technocrats' myth of an uninterruptedly upward stairway to human progress.

But science and technology remain where most people hang their hopes for a better future, and meantime, if the thinning out of meaning from an increasingly more machine-like world renders life less of a pilgrimage or an adventure and more of a cruise-line vacation, there are some compensations for the loss of the grand, the sublime, the awesome in the original sense of that debased word. For instance, there is the pursuit of pleasure, the release from pain, the promised achievement of a more generally spry longevity. If all of this reminds the reader of the drugged-out boredom of *Brave New World*, well, it reminds me of that too.

Of course, we have not yet arrived at even a dystopian utopia. People still suffer pain and sickness, fear and loss, poverty, handicaps, heartbreaks, injustice, and untimely death. The Covid-19 pandemic reminded us that, however quick our learning curve in dealing with a new disease, we are still failing to eliminate death as the punctuation point to life. Though we have traveled much further than our ancestors toward achieving physical comfort for a large proportion of the population, we still spend much of our lives in discomfort, often in the form of emotional and psychological suffering.

Meanwhile we seek comfort and something we call fulfillment in exercising not so much our will as our willfulness—with fewer outward checks upon it, fewer taboos, and (perhaps more significantly) fewer *inward* checks of conscience and moral restraint, than at any time I have read or heard of.

And this is where I think some very thoughtful writers and thinkers go partially wrong, at least without inserting a number of caveats, in speaking of the re-paganization of our formerly Christian civilization. Although they rightly draw our attention to all the major indices of religious, moral, and familial collapse currently apparent in the West, not all of them seem to sufficiently appreciate how de-Christianizing differs from re-paganizing.

Dimly remembered scenes from *Animal House* notwithstanding, "pagan" does not mean addicted to orgies. The upper-class Roman world of the post-prime

Empire—the world of Nero and Caligula and Commodus, to cherry pick the most notoriously abnormal and immoral of the bunch—would have appalled the elite families of the early Roman Republic as greatly as our own hook-up culture, abortion on demand, normalization of single parent families, homosexual marriage, and gender transitioning would appall Christians in the era of the Acts of the Apostles.

It wasn't that truly pagan Romans and Christian disciples of St. Paul, for example, did not sin against their own moral codes; "All have sinned and fallen short of the glory of God," as St. Paul notes, and some, then as now, have sinned egregiously. But they recognized their actions as violations of morality—and they believed that such violations had not merely personal but communal repercussions: harming the family, kinship group, city, and nation (Christians would add the Church, aptly identified by St. Paul as the Body of Christ). The social harm was not an add-on, like a lesser charge that a prosecutor slaps on a defendant to load up the odds of a conviction or persuade the defendant to cop a plea.

For pagan societies such as those from which the West sprang (and to the extent that I know something of non-Western ones), social harm or good was, in fact, the dominant concern. The fortunes of everyone in the family, the tribe, the town, the nation rose or fell on the constituent efforts of its members. And while some pagans around the Mediterranean basin, like the Egyptians, developed elaborate conceptions of an afterlife that, if one fulfilled the proper conditions, might be vouchsafed to those of the deceased whose bodies were correctly preserved, most of those whose civilizations seeded our own entertained fairly vague, formless, and dispiriting, so to speak, conceptions of life after death. That if anything would make them feel doubly justified in focusing on the good of the group, the family or clan or polis, rather than the individual whose span of life was so brief and whose after-story so obscure. The ideas of the great Greek philosophers suggesting that human beings share a divine spark were addressed to elites—and not accepted by all of them. The Athenian experiment of democracy, too, was exceptional—not just limited to certain classes and conditions (and of course, only to men), but further limited in time and space—democracy did not really catch on in ancient Greece or many other places for about 2,000 years.

So your pagan society in its prime—and not in its decadent death throes—was rule-bound and restrictive to a degree that would chafe and astonish not only your average individualistic and rights-touting American or European, but perhaps even some in politically restrictive totalitarian societies. (A closer analogy might be to traditional Muslim societies.) Rarely would you have final say—or very much say at all—in the family elder's deliberations on

the marriage or career choices of children; rarely was much upward mobility available. You did not choose a religion—your people had already made that group choice long ages ago, though privately you might harbor your own doubts or heterodox thoughts. You did not diverge substantially from those around you in pursuits or opinions; you worked most of the time and enjoyed periodic feast days and, if you were lucky, lived to see your children and your children’s children, anxiously hoping that most of them would not die so that you would be supported in your old age. A life largely free from serious disease, blessed with some family and friends, reached the acme of reasonable ambition.

And so it has been for most human beings on most of the planet throughout most of human habitation. But what people today seem to mean by paganism, when they are not merely referencing bacchanalian orgies or a Roman emperor cross-dressing, is something more in the category of that thicker, darker, more magical mode of seeing the world which was indeed shared by paganism but is far from the whole of it, and is unlikely to be reincarnated in toto. One reason for that is how much we have thrown away already by discarding a richly expressed, deeply believed, and orthodoxly practiced Christianity. Another reason is how thoroughly we have adopted the mindset of modernity, with all its individualism, excessive demands, impulsivity, and self-will.

That is why, for the most part, we of the over-developed world mostly seek from either of these modes of perceiving—the thin, clear, consommé of science or the thick, murky, magical stew—sources of power to be explored and used. Neither in that sense is a mainstream pagan way of seeing and acting, though pagan ages also had their examples of magicians, toolmakers, and inquirers into the scientific operations of nature.

This brings me round again to my opening puzzlement over what motivates large numbers of women to press for such an aggressive and unlimited right to abortion. The pro-abortion mentality does not achieve the dignity of ancient Roman or Grecian pagans; it may instead suggest something of the Maenads’ manic bloodlust, the Near Eastern sacrifice of newborn babies to fertility deities, or the self-indulgent and self-interested intellectual speculations of the sophists.

Mostly, however, pro-abortionists exalt the value and therefore rights not so much of individuals but of one particular individual: “*My* right trumps others because it is mine.” A pagan woman setting about aborting her baby for any of a variety of reasons would not posit her individual will to do so as a defense, not even in the privacy of her own mind. She would think not of rights but of necessities, like many women that actually undergo abortions.

Likewise, a pagan man pronouncing that his just-born child must die because of deformity or the family's inability to provide for it was not weighing the baby's rights against his own, but judging according to responsibilities, customs, the limits of the family or the community's resources or capacities, the strengthening of the clan. Despite the resemblance in body count of pro-abortionists to the greedy fertility cult goddesses of the Middle East or the human sacrifices of the Aztecs, there are differences, and they do not particularly redound to the pro-abortionists' credit. For instead of offering child sacrifice under a kind of duress, because the gods are powerful and we must placate them, pro-abortion activists nowadays "celebrate" the deaths of the unborn as sacrifices to and for women.

It seems likely enough that Western Civilization is well into its death throes. What will eventually emerge from the corpse—perhaps long after our own time—I don't know. But in rejecting Christianity, the West is rejecting the fecund source of its creativity, vitality, attractiveness, and inspiration.

What is being embraced in preference is not, I think, a re-paganization but something far more individualistic, grasping, and unutterably ugly. Like a man looking wistfully back on his childhood after a badly misspent life, we may be tempted to look back on some forms of paganism almost nostalgically, ruing all the good gifts that we were given at the dawn of maturity but eventually recklessly wasted, particularly in the past few centuries. "Father, forgive them, for they know not what they do." It grows harder in the growing grayness of our own era to believe that is always true.

Another Disquieting Suggestion

Charles K. Bellinger

Philosopher Alasdair MacIntyre's 1981 book *After Virtue* is one of the most widely read and influential academic books of the past 50 years. It begins with a chapter entitled "A Disquieting Suggestion," in which the author asks the reader to imagine a future society in which there has been a cultural catastrophe that led to the destruction of science as we know it. In the wake of this event, people have retained only fragmentary knowledge of how experiments were conducted, without an understanding of theoretical frameworks in which the results would have made sense; they are left with parts of scientific books and pages from articles, torn and charred. MacIntyre uses this dystopian scenario as a parable for the state of moral discourse in the modern world. There has been a catastrophe in the realm of ideas, an explosion into competing ideologies and philosophies, and a consequent loss of a functioning shared moral vocabulary among intellectuals and within society in general. In this chaos the competing camps can do no better than to shout shrill slogans at each other that betray a lack of reflection and little to no capacity to engage meaningfully with those in other camps.

Allow me, if you will, to attempt a similar exercise. Imagine that you are watching one of the many dystopian movies that seem to be so popular these days. The setting is the year 2190; society has become peaceful; one does not hear about another mass shooting every week; the problem of global warming has been solved through technological advances and changes in human behavior; the human population of the planet has stabilized, and everyone has sufficient food and medical care; there are no wars or horrific terrorist attacks; people in general are kind to others, and crime is very rare.

This sounds like the opposite of a dystopia, but there is a catch. No one seems to know what happened between the years of 2132 and 2147. This fifteen-year period is never mentioned in any history book, or in any publication of any kind. Of course, what we call a "book" will not exist in that future time, but there is still communication about various subjects through various electronic forms in the context of education and social life. Students are never told anything about what happened during those fifteen years, and they are taught never to

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ask about them. They have a vague sense that something terrible happened then, probably involving the mass killing of human beings, but it is a very dark subject that they prefer not to know about. The peaceful society they live in seems to have arisen out of the ashes of the catastrophe, and it is best to let that sleeping dog lie.

Those adults who are old enough to remember the dark times maintain a strict code of silence about it. There is a sense of menace hanging in the air, because they know that if they speak or write about what they know in any way, they could be “disappeared” by the government’s secret police; after a period of time, they would return home with their memories erased and their minds reprogrammed to be obedient citizens.

What is the government’s motive for enforcing this blackout of a period of historical knowledge? It seeps through the movie’s plot and dialogue that the government does not want people to truly know the evil that human beings are capable of. It wants people to have positive self-esteem and to live by an “I’m okay, you’re okay” mindset. In *Star Wars* lingo, knowledge of the dark side of the Force is a very dangerous thing that must be kept at bay. Evil must always be viewed as external to the self, as residing somewhere else, in other people, and in an earlier time. The notion that the line dividing good and evil runs through every human heart is the one piece of deep understanding that must never be allowed.

As the movie unfolds, however, the viewer is gradually let in on the reality that the year is not actually 2190, but 2090. All of the state-issued watches, computing devices, and even the free calendars distributed in churches say that it is 2190; there are only a tiny number of government officials who know the true date. Yes, there are churches in that society, though the percentage of the population that attends regularly has fallen to about 5 percent. The believers are tolerated, not persecuted. Most people are content to say they believe in a vague Higher Power or Transcendent Source of the cosmos, but they don’t give much thought to it. The lost years of historical memory are thus actually 2032 to 2047. The hero, or heroine, of the movie is a young person who learns this forbidden truth and seeks out knowledge of what actually happened during those dark years, always staying barely one step ahead of the secret police.

The viewer of the movie, however, comes away from the experience with the realization that the moviemakers have crafted a parable of our time. We are like the happy, contented citizens of the society depicted in the movie. The gap in our historical knowledge is precisely the Holocaust and Nazism: 1932-1947. How can this be, you ask, when there have been thousands of books written about the Holocaust, and the major cities of the Western world all have their Holocaust museums? School children learn about that terrible event, documentaries and dramas depict it, and there is no menacing government forbidding us to know anything about it. And yet . . . and yet . . . There

are many high government officials today who zealously advocate that “*Roe v. Wade* should be codified as national law.”

Pro-life advocates sometimes argue that there is a substantive parallel between slavery, the Holocaust, and legalized abortion. The simplest way of putting this is that slavery was based on a dehumanizing interpretation of the Black slaves, the Holocaust was based on a dehumanizing interpretation of Jews, and abortion-on-demand is based on a dehumanizing interpretation of the unborn child. There are, of course, more sophisticated ways of unpacking this argument that one finds in the pro-life literature, but the simplest way of putting it suffices for our purposes here.

The politicians who support the legalization of abortion must, of necessity, reject this argument of historical analogy. It stretches one’s imagination to the breaking point to try to conceive that a person could think this analogy to be valid and say: “But I’m still pro-choice.” President Joe Biden, in his geriatric befuddledness, cannot be expected to understand the contours of this issue, but there are many pro-choice advocates who have attempted to address it, usually employing one of two approaches. They either say that the analogy is inapt because fetuses do not have the same mental capacities that the slaves and Jews had, or they turn the argument around and assert that it is actually pro-life advocates who have a way of thinking similar to the defenders of slavery and the Nazis. The anti-choicers dehumanize women by not affirming their full moral autonomy, they say.

The first approach fails immediately, because it is based on a straw man. The claim is not being made that the slaves, the Jews, and unborn children are all identical to each other as victims of mistreatment; rather, the claim is that a dehumanizing interpretation is being placed upon the three classes or groups of human beings by those who are in a position of power over them. To assert that “fetuses are inferior and should not have rights” does not disprove the analogy, it demonstrates it in action.

The second approach is no more successful, because it requires pro-choice advocates to claim that physicians who chemically poison, or purée with a vacuum tube, or dismember a child in the womb are today’s analogs to the abolitionists. Gloria Steinem climbed out on a limb that could not support her weight when she argued that pro-life advocates are similar to Hitler because he forbade German women from having abortions, so that the Reich could be built up as quickly as possible.

The real issue at play here is: What does it mean to truly learn the moral lessons that history teaches? We can know the facts about the Holocaust, but if we have not grasped the meaning of the events and allowed ourselves to

be changed by that understanding, then we don't really know history. True knowing entails conversion and growth in moral maturity. If such growth is precisely what we are avoiding, then we will repeat the moral mistakes of our ancestors, but through different behaviors in different cultural circumstances.

In the academic world, there is much talk of "othering," which means interpreting a group or class of human beings as different from and inferior to the one doing the interpreting. "Othering" is a horrible thing in academic circles, but the thought that cannot be thought there is that slavery was based on a Great Chain of Being concept of vertical othering, the Holocaust was based on a group identity horizontal othering, and abortion is based on an individualistic temporal othering. In our time, the discrete individual is the key to all moral and political thought, and those individuals who are older label themselves as "persons" while turning around and labeling unborn children as "nonpersons." I say "turning around" because at the heart of the pro-choice worldview is an unavoidable forgetfulness of being; one cannot take seriously the reality that each adult was at one time an embryo in his or her mother's womb.

That we are avoiding growth in virtue and understanding is precisely what Alasdair MacIntyre was arguing when he said in his "Suggestion" that the language of the order and disorder of the human soul and its potential growth toward virtuous maturity has been lost in our merely pseudo-enlightened age. The academic curriculum of history and other subjects cannot bring into articulation the nature of the cultural catastrophe we are living in, because the form of the curriculum is itself a product of that catastrophe. For those readers who are familiar with the high-level analyses of modernity found in authors such as Eric Voegelin and Charles Taylor, this is all obvious and laid out in great detail. Among the many additional authors who could be mentioned, I will limit myself to just one; I highly commend to your reading Chantal Delsol's *The Unlearned Lessons of the Twentieth Century*.

My disquieting suggestion, to sum up, is that the politicians who support abortion in the Western world, and the millions of voters who place them in office, are seeking to fend off a particular form of knowledge, namely, their own participation in evil. Inwardness, self-examination, awareness of one's own capacity to participate in the "crowd that is untruth" are just as prevalent in our time as they were in Kierkegaard's. We have not turned the corner on evil and moved into a new utopia; evil is simply not in our field of vision because it is always hiding in the back of our minds, while the drumbeat din of self-righteousness sounds in the front of our minds, drowning out the voice of authentic conscience. The pro-life marcher holding up a sign that reads "Stop calling violence feminism" understands this; the pro-choice marcher does not.

Stealth Eugenic Euthanasia of Disabled Infants

Edward Mechmann

In political science, there is a concept known as the “Overton Window.” Named after the professor who first suggested it, the idea is that the public discussion or advocacy of policies must take place within a range of opinions that are generally accepted by society as legitimate. If you argue for ideas outside that range, you are likely to be denounced as an “extremist.”

But the window isn’t fixed forever. Advocates can drag the boundaries in their favored direction; eventually, ideas that once seemed extreme or unthinkable become part of a “new normal.”¹

For decades, arguments in favor of infanticide were well outside the Overton Window and were largely limited to academic circles. The infamous Prof. Peter Singer of Princeton was the most prominent example of a scholar who relied on utilitarian ethics to justify the killing of unwanted infants, particularly those with disabilities.²

For most people outside the ivory tower, infanticide was still unthinkable.

But things are changing in the wake of the increasing pressure to legalize doctor-assisted suicide and euthanasia in the United States, and the revelation of how far things have gone in countries that have already done so.

In October 2022, people were startled to hear the head of an organization of Canadian doctors speak openly and approvingly about eugenic infanticide. In testimony before a parliamentary committee studying “medical aid in dying,” the doctor first focused on “emancipated minors” whose “suffering may become intolerable and it may no longer make sense in certain situations.” That was remarkable enough, but then he added,

The same is true for babies from birth to one year of age who come into the world with severe deformities and very serious syndromes for which the chances of survival are virtually nil, and which will cause so much pain that a decision must be made to not allow the child to suffer. In that respect, the committee highlighted the Netherlands’ and other countries’ experience. This avenue could be explored.³

The Overton Window has clearly shifted.

In fact, without anyone realizing it, eugenic euthanasia of disabled children is already permitted by inadequacies in American law.

This is happening to babies born close to the edge of viability and to full-term

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babies who have a severe disability or require extensive medical care to sustain their life. We are not talking about when an abortion accidentally results in the birth of a living child, who is then left to die from neglect—or directly killed.⁴ These are deliberate “mercy killings” of infants with disabilities, often by denying them nutrition and hydration.

How can it be legal to kill such vulnerable babies? Because there are critical loopholes in the laws protecting disabled newborns. Because the medical community ignores the federal law that was designed to prevent it. Because the government has not strengthened that law despite clear evidence that it hasn’t worked. And because the cultures of medicine and society are rife with anti-disability discrimination and an attitude that all suffering must be eliminated.

Mercy Killing

First, let’s define terms. Euthanasia is the intentional termination of a patient’s life because the doctor believes that death will benefit the patient. The usual justification for this is that the patient is experiencing unacceptable suffering, thus the term “mercy killing.”

Euthanasia can happen in two ways. One is by “passive euthanasia,” the deliberate withholding of life-sustaining treatments with the specific intent of causing death.⁵ The second is by “active euthanasia”—intentionally and directly causing death, for example by giving a lethal dose of sedatives (so-called “terminal sedation”).⁶

Euthanasia is not the same as forgoing life-sustaining treatments that are disproportionate or extraordinary, which may occur when the reasonably expected benefits of the treatment are outweighed by the burdens.⁷ By forgoing disproportionate treatment, the underlying mortal illness is allowed to take its natural course.⁸

The issue of assisted nutrition and hydration is the real test. Nutrition and hydration are different in nature, not merely in kind, from other medical interventions like surgery, because they address a basic human need, something that is essential to life. Fulfilling such needs is inherent in respect for human dignity.⁹ It is thus a category error to treat nutrition and hydration in the same way as other medical treatments.

In the case of the neonate, it is worth remembering that for the past nine months she had been provided with assisted nutrition and hydration in her mother’s womb. And over in the maternity unit, nutrition and hydration are routinely provided by breastfeeding or bottle-feeding. Nobody would consider those to be “life-sustaining treatments,” and everyone would consider it a grave violation of moral and legal duty to withhold them.

These distinctions about duty, causation, and intention are essential to understand how the law can permit infant euthanasia. Legal standards play out very differently in a sanctity of life ethos than they do in a quality-of-life ethos. Under the former, there is a duty to provide nutrition and hydration and to assess treatments based on their burden and benefit to the patient's current condition. Under the latter, any treatment can be withheld or withdrawn in the interest of "quality of life."

Distinctions over causation and intention are critical in applying the law. But laws are not applied in a vacuum. They must be implemented in a context of medical practice and bioethics. That is the problem.

The Corruption of Medical Ethics

Whether euthanasia (or other anti-life acts like abortion) is legally permitted depends on the prevailing theory of medical ethics.

Bioethics based on sanctity of life would be patient-centered and dedicated to preserving life and dignity. This approach is, of course, heavily influenced by the religious teaching of Christianity, but it was also accepted in medical ethics more generally.

In this paradigm, ethical principles like beneficence (do good for the patient) and non-maleficence ("do no harm") would lead doctors to use all reasonable means—short of eliminating the patient—to alleviate suffering. Since all lives are considered to have equal value, every patient would be treated equally without discrimination based on characteristics or capabilities. Basic care like nutrition and hydration would be required as a matter of principle and evaluated differently from other treatments.

Consequently, any deliberate taking of life, either by act or omission, would clearly violate the principle that life is an intrinsic good. This would include suicide and euthanasia (active or passive).

In the last half century, however, bioethics has become thoroughly secularized and now openly rejects any religious influence. As a result, the sanctity of life principle has largely been replaced by a "quality of life" ethos. Life no longer is seen as having intrinsic worth. Instead, the value of a life depends on its perceived quality, particularly on the cognitive and physical ability to have meaningful experiences and relationships. Those who lack certain levels of those characteristics are deemed less worthy of treatment, and in some cases are not even considered "persons."¹⁰

Absolute patient autonomy has become the predominant standard for decision-making. Competent patients have the legal right to accept or reject any kind of medical intervention, including nutrition and hydration—even if it means deliberately committing suicide by starvation or dehydration.¹¹ This

self-euthanasia has already garnered its own euphemism—“voluntary cessation of eating and drinking.” Surrogates are legally permitted to exercise this “right” on behalf of an incapacitated patient—or a minor.¹²

As Prof. Charles Camosy demonstrates in his book *Losing Our Dignity: How Secularized Medicine Is Undermining Fundamental Human Equality*, this has led to a fundamental and dangerous corruption of bioethics.¹³ The result has been that people with disabilities are considered less worthy of care and treatment, and therefore excluded from ordinary legal protections, in violation of their basic human right to equality.

Another development is that bioethicists and the medical profession now consider assisted nutrition and hydration to be indistinguishable from any other life-sustaining treatment.¹⁴ No longer treated as a unique form of care to satisfy basic human needs, assisted nutrition and hydration are evaluated the same way as any other intervention to cure or ameliorate physical dysfunction.¹⁵ As a result, under the quality-of-life ethic, they can be withheld or withdrawn if a decision-maker deems the child’s future to be unduly burdensome to herself or others.

When the quality-of-life ethos combines with ideals of absolute autonomy, the danger to vulnerable people is palpable, and the law does not provide sufficient protection. To see this, we first need to look at the pervasive social bias against people with disabilities.

Ableism and Eugenics

In 2019, the United Nations Special Rapporteur on the Rights of Persons with Disabilities issued a report to the Human Rights Council that focused on how ableism influences medical and scientific practice and bioethical responses to disability. The conclusion is stark:

The hegemony of ableism in society has perpetuated the idea that living with a disability is a life not worth living. There is a deep-rooted belief, carved with fear, stigma and ignorance, that persons with disabilities cannot enjoy a fulfilling life, that their lives are incomplete and unfortunate, and that they cannot attain a good quality of life. . . . While the eugenic programmes of the late nineteenth and early twentieth centuries have disappeared, eugenic aspirations persist in current debates related to medical and scientific practice concerning disability, such as prevention, normalizing therapies and assisted dying.¹⁶

These biases are particularly dangerous when they influence health care decisions. The reality is that many medical professionals do not see the same value in the lives of disabled persons as they do for themselves. In a 2021 survey of American physicians:

82.4% reported that people with significant disability have worse quality of life than nondisabled people. Only 40.7% of physicians were very confident about their ability to provide equal quality care to patients with disability, just 56.5% strongly agreed they welcome disabled patients into their practices, and 18.1% strongly agreed that the health care system often treats these patients unfairly. . . . Potentially biased views among physicians could perhaps contribute to persistent health care disparities affecting people with disability.¹⁷

The National Council on Disabilities, in a 2019 report, summarized the significance of this ableism: “Healthcare providers’ medical futility decisions are impacted by subjective quality-of-life judgments, without requiring education or training in disability competency and, specifically, in the actual life experiences of people with a wide range of disabilities. Many healthcare providers critically undervalue life with a disability.”¹⁸

This attitude directly impacts the quality of care. A 2022 study found that persons with disabilities “often receive substandard care, and in some cases are refused care.” The study concluded that “physicians’ biases and discriminatory attitudes appear to play a significant role” in these disparities.¹⁹

This is not an isolated attitude. In one study about assessments of quality of life for children with disabilities, 59 percent of neonatologists and 68 percent of nurses rated some conditions as being worse than death.²⁰

Even infants without disabilities are routinely disvalued as compared to other children and adults. Numerous studies have shown that “the relative value placed on the life of newborns, in particular the preterm, is less than expected by any objective medical data or any prevailing moral frameworks about the value of individual lives.”²¹

Disability activists are seeing something frighteningly familiar behind these attitudes—what some are calling “the new eugenics.”²²

“Eugenics,” as generally understood, means the judgment that a human life is not worth living or is inherently inferior because of some undesirable characteristic or condition. This attitude was rarely put more bluntly than by Margaret Sanger:

No more children should be born when the parents, though healthy themselves, find that their children are physically or mentally defective. No matter how much they desire children, no man and woman have a right to bring into the world those who are to suffer from mental or physical affliction. It condemns the child to a life of misery and places upon the community the burden of caring for it, probably for its defective descendants for many generations.²³

In her day, this inhumane attitude was socially acceptable and even fashionable. But it was utterly discredited by the Nazi program to kill people with disabilities—“lives unworthy of life.”²⁴

All good people say “Never Again” when it comes to anything associated with the Nazi genocide and would never consider their actions to be motivated by a eugenic attitude. But regardless of intention, there is a clear similarity between prevalent attitudes towards persons with disabilities and decisions about the value of their lives.

For decades, we have seen the result of this attitude towards unborn children with adverse health conditions identified by prenatal diagnosis. The horrific world-wide practice of eugenic abortion openly targets disfavored races, sexes, and physical conditions.²⁵ We often read the “success stories” of the “elimination of Down Syndrome” and other disabilities—an “achievement” always accomplished by killing unborn children who have those conditions.²⁶

But eugenics isn’t limited to pre-birth terminations. The law permits it to take place after birth as well.

Death in the NICU

Decisions are agonizingly difficult to make in the pressure of a neonatal intensive care unit. But death by withdrawal of life-sustaining treatment happens all the time. Numerous studies show that the great majority of deaths in NICUs come after withholding or withdrawing life-sustaining treatment.²⁷ In many of those cases, the infant undoubtedly died of the underlying condition. But there are certainly neonates who are dying by starvation and dehydration.

Studies show that common justifications for withdrawal include low predicted quality of life and suffering.²⁸ This suggests that what is really happening is not a just benefit/burden analysis for specific treatment options, but mercy killing.

It is difficult if not impossible to determine how many are dying this way. Studies typically describe withdrawal of life-sustaining treatment as the “mode” of death, while the underlying condition is considered the “cause.”²⁹ This bears an eerie similarity to assisted suicide statutes, which deceptively insist that death certificates cite the underlying ailment and not suicide as the cause.

It also obfuscates an essential element that has great weight in determining whether there is legal liability for harm to another—causation. We use several different concepts for this, such as whether one’s conduct was the proximate, substantial, or “but for” cause of an injury. Causing death by deliberate dehydration would clearly fall into any one of those categories. But if it is only a “mode” and not a “cause,” then any theory of legal fault is defined away.

These complex legal and medical decisions usually occur far from the view of the public. But not always. This leads us to the Baby Doe Rules.

The Baby Doe Rules

Back in the early 1980s, there were two prominent cases involving newborns with serious disabilities, where hospitals and doctors failed to provide them with life-sustaining treatment. These prompted a great uproar in the public, who saw this as euthanasia. After a complicated regulatory and litigation history, Congress enacted the “Baby Doe Rules” in amendments to the Child Abuse Protection and Treatment Act in 1984.³⁰

The Baby Doe Rules reflect the traditional medical ethic of the sanctity of every human life and insist that newborns with disabilities have equal protection of the law. The Rules thus have a presumption in favor of preserving life, but not at all costs, if the infant does not benefit from treatment.

Life-sustaining treatment can be withheld if the infant’s condition falls within certain exceptions:

- The infant is chronically and irreversibly comatose.
- Treatment would merely prolong dying; it would not be effective in ameliorating or correcting the life-threatening conditions, or it would be futile in terms of the survival of the infant.
- Treatment would be virtually futile in terms of the survival of the infant, and the treatment itself under such circumstances would be inhumane.³¹

The Rules are specific that these exceptions would not permit withholding nutrition and hydration. That must be provided in all cases.

To protect the rights of the disabled infant, the states are required to have an oversight and enforcement mechanism. If a decision regarding life-sustaining treatment violates the Rules, the hospital ethics review board is required to report the case to the state child protection agency as “medical neglect.”³² The state agency can then investigate and take action according to their existing laws.

The Rules are not perfect by any means. But they make the crucial distinction between nutrition and hydration as against other treatments. They also provide helpful criteria for decision-making that are focused on the patient’s condition, and not on perceived future quality of life. And they give the infant some kind of due process before he is deprived of life.

In addition to the Rules, the Department of Health and Human Services issued interpretive guidance that discussed the various terms and definitions.³³ While the doctor was expected to apply his “reasonable medical judgment,” the focus is whether a specific treatment would address the infant’s condition and preserve her life. The department strongly emphasized that the term “withholding medically indicated treatment . . . does not sanction decisions based on subjective opinions about the future ‘quality of life’ of a retarded

[sic] or disabled person.”³⁴

The guidance also affirmed that “it should be clearly recognized that the statute is completely unequivocal in requiring that all infants receive ‘appropriate nutrition, hydration, and medication,’ regardless of their condition or prognosis.”³⁵ Regarding the potentially ambiguous term “inhumane,” the guidance further stated that “consideration of the infant’s future ‘quality of life’ . . . would be inconsistent with the statute.”³⁶

This guidance was not binding and was eventually withdrawn after the Baby Doe Rules were included in statutory law. The Department then issued a new guidance that was much less detailed than the original version.

This new guidance also rejected the idea that treatment or nourishment could be withheld “solely on the basis of present or anticipated physical or mental impairments of an infant,” if it would otherwise “medically benefit” the infant.³⁷ And it maintained the focus on the effect of a treatment on the condition of the infant, and whether the contemplated treatments will provide a “medical benefit.”

The Baby Doe Rules and both of the agency’s sets of guidance are unambiguous in their focus on the preservation of life and on treating immediate conditions. They both embody the ethos of sanctity of life and reject a focus on future quality of life.

One would think that this would ensure that disabled infants would be protected from incidents like the original Baby Doe cases. That would be wrong.

The Failure of the Baby Doe Rules

In 2009, Georgia State University School of Law hosted a symposium to mark the twenty-fifth anniversary of the Baby Doe Rules. Presentations were made by doctors, lawyers, and bioethicists. In the introduction to the publication of the symposium, the editor commented:

. . . the Rules have seemingly become dormant for many clinical practitioners who are actually caring for newborns in neonatal intensive care units across the country . . . [T]he Rules themselves apparently are not necessarily the primary tools that guide medical and parental decision-making about treatment in actual clinical practice today. Indeed, **according to one of the speakers at the symposium, many of the younger, more recently trained neonatal physicians may not even have heard of the Baby Doe Rules** (emphasis added).³⁸

How can this be the case? How is it that a significant federal law, which must be implemented by agencies at the state level, has not had a major—or even any—impact on the actual care of disabled neonates?

We first must acknowledge the inherent flaws in the Baby Doe Rules

themselves. The rules are only binding if the state accepts federal funding. Their proposal that hospitals establish special ethics committees for dealing with these cases is just a recommendation. Only the state child protection agency has standing to bring an action to prevent the abuse or neglect of a disabled infant. There is no private right of action against a health care provider or a hospital, and there is little financial risk for states if they fail to enforce the rules. The federal government has no general jurisdiction over medical decision-making, which has always been governed by state laws. And when questions arise, courts generally defer to parents as surrogates for their children, with some narrow exceptions.³⁹ These flaws seriously hinder the effectiveness of the Rules.

But the problem goes much deeper than the flaws in the Rules themselves. Fast-forward to 2017, when the Baby Doe Rules were thirty-three years old. The American Academy of Pediatrics issued a formal policy statement, “Guidance on Forgoing Life-Sustaining Medical Treatment.”⁴⁰

The Rules are mentioned only once in this document—remarkable for a federal law that has direct relevance to the topic. There is only a brief summary that contains several important legal errors. It cites the wrong originating statute, referring instead to a bill that has nothing to do with the Rules.⁴¹ And it incorrectly states that the Rules fail to “provide direction on what actions state governments and agencies should then take when a possible violation is reported.”⁴² Through such errors, the Academy made its indifference towards the Baby Doe Rules clear.

Going even further, the Academy circumvented the Rules with a definitional sleight of hand by construing the term “reasonable medical judgment” in the Rules to be the equivalent of a “best interests of the child” standard.

This allows a doctor to withhold or withdraw any kind of treatment—even nutrition and hydration—that in his reasonable medical judgment is not in what he considers the best interests of the child. This essentially erases the limitations in the Rules, particularly the special protection of nutrition and hydration. Even critics of the Rules see that this is flatly incompatible with the language of the law.⁴³

This shift towards the “best interests of the child” standard might not matter if bioethics still held to the sanctity of life principle. But under a quality-of-life ethos, it lays the foundation for the ultimate failure of the Rules and a legal opening for infant euthanasia.

The Corruption of the “Best Interests” Standard

The “best interests of the child” standard has long been the gold standard in resolving legal issues affecting children, such as adoption and post-separation custody.⁴⁴

This is not a uniquely American principle. The United Nations Convention on the Rights of the Child states that, “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”⁴⁵

Most parents and doctors would certainly try to make treatment decisions in a way that focuses on what is best for the infant. But the “best interests” standard in contemporary practice is deeply problematic. It gives a decision-maker almost unlimited discretion, with no fixed standards to apply and little or no real oversight.⁴⁶ Laws regarding surrogate decision-making reinforce the unaccountable authority of surrogate decision-makers by immunizing them from any legal liability as long as they act in “good faith.”⁴⁷

The greatest danger is that for many medical professionals and bioethicists the “best interests of the child” has expanded to encompass the potential future “quality of life” of the infant and burdens on caregivers and society.⁴⁸ This is a direct consequence of the rejection of the sanctity of life ethic, which focuses on the immediate medical needs of the infant and the effectiveness of treatments in addressing them.

If one is supposed to be acting in the “best interests of a child,” it is very strange to take into account the interests of anyone else. In the context of child custody and support, where the “best interests” standard is most often used, the law is clear that only the child’s well-being is relevant.⁴⁹ The interests of parents are not even mentioned as a factor.⁵⁰ Indeed, it would be a grave abuse of power if a family court judge were to decide a child custody matter based on the best interest of one of the parents.

But in a recent study of neonatologists and ethicists, over half the neonatologists surveyed rejected the idea that the interests of family members could limit their obligation to treat the infant, and endorsed a best interests standard that exclusively considers the infant’s condition. If the Baby Doe Rules had been taken seriously, there should have been unanimity on those points.⁵¹

On their side, bioethicists agreed most strongly that a determination of an infant’s best interests had to include the effects on their family. It is truly alarming that ethicists are so willing to take the best interests standard and turn it into something completely different. How can it possibly be in the best interests of an infant for their well-being to be subordinated to the interests of others? How is that not a textbook example of exploitation?

This explicit rejection of the Baby Doe Rules opens the door to “quality of life” considerations, which typically involve subjective and speculative predictions of the burdens of long-term care on the caregivers. While those concerns are very real, they should be addressed by ample assistance to the

caregivers, not the elimination of the patient.

The danger to a disabled infant could not be clearer. Largely due to the ubiquity of ableist biases, medical professionals often underestimate both a disabled person's quality of life and the extent to which that person will value it.⁵² So any assessment of potential "quality of life" will inevitably be slanted against the preservation of life as a per se good, which inevitably leads to acceptance of euthanasia.

This is also reflected in the growing interest by the government and insurance industry in the use of "Quality Adjusted Life Years" to inform their decisions about which drugs and treatments will be provided or paid for.⁵³ This concept relies on superficially objective but really subjective assessments of people's health that use an algorithm to compare the effects of treatments against the patients' presumed quality and length of life. It has been sharply criticized as being inherently faulty and dangerous to people with disabilities.⁵⁴

The "best interests" standard has been further corrupted by a troubling evolution of the concept of medical "futility." The original agency guidance for the Baby Doe Rules offered a limited interpretation of that term: "The term 'virtually futile' [means] that the treatment is highly unlikely to prevent death in the near future."⁵⁵ The current guidance, which lacks a definition of "futile treatment," still focuses on the immediate effect of the treatment on the patient's physical condition. While this always involves some subjective judgment, the sole concern is still on preserving the patient's life.

But the term "futile" now has evolved to include a subjective assessment of the patient's possible future "quality of life." Both the American Academy of Pediatrics and the American Medical Association specifically include "future" or "desired" quality of life among the factors when considering discontinuing "futile" or "not medically appropriate" care (the AMA's favored euphemism).⁵⁶ A determination of "futility" would permit the withdrawal of nutrition and hydration, which are not distinguished from other medical treatments.⁵⁷

Every state has a law dealing with medical futility, in most cases permitting the denial of care deemed medically futile even over the objection of the patient's surrogate.⁵⁸ These laws are also interpreted to encompass "quality of life" considerations.

The tragic irony is that under "futile care theory," treatments are rejected not because they don't work, but precisely because they do—they successfully preserve the patient's life, but that life is considered "not worth living."

This corruption of the "best interests" standard thus leaves infants with disabilities in grave danger—not just from their medical condition, but from the misguided thinking of the people who are supposed to be caring for them.

A Thought Experiment

Consider a hypothetical case of a seriously disabled newborn. His conditions would likely be fatal if not treated, and he would have an uncertain prognosis even with treatment.

The doctor makes an assessment of what he considers the best interests of the child. He looks at factors such as the likelihood that the treatment will bring a benefit by alleviating the symptoms and prolonging life, as well as the burdens on the child. But he also forms an opinion about the possible burdens on the family and society, as well as the potential quality of life of the child if he survives. He concludes that further treatments would not lead to a cure and would leave the child with a poor life that would impose serious burdens on the parents and on medical resources. He thus recommends to the parents that they withhold any further treatment, including food and hydration.

If the Baby Doe Rules were operative, this situation should trigger a report of potential medical neglect by the ethics committee. Recall that under the Rules, there is a presumption that life-sustaining treatment will be provided (including food and water) unless one of the statutory exceptions applies: (1) the infant is chronically and irreversibly comatose; (2) the provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or (3) the provision of such treatment would be virtually futile in terms of the survival of the infant, and the treatment itself under such circumstances would be inhumane.⁵⁹

In our hypothetical, the failure to provide food and hydration would certainly be a major problem. The exceptions in the Baby Doe Rules do not permit that to be withheld under any circumstances. The consideration of speculative future "quality of life" also violates the terms of the law itself as well as the agency's original and current interpretive guidance. A major question would be whether treatments would have been "futile in terms of the survival of the infant" within the meaning of the Rules, and not under "medical futility theory." It would certainly make for a challenging case.

But in reality, the Baby Doe Rules are not actually operative, and the doctor and the parents would almost certainly be immune from any negative legal consequences. Indeed, it is doubtful that an investigation would even take place. Consider how it might play out under New York law.⁶⁰

For the doctors, one legal standard would be essentially the same as in a medical malpractice case—you must prove that the doctor breached the applicable standard of care.⁶¹ Another legal standard is whether the doctor has committed "professional misconduct," which requires proof of negligence

or incompetence.⁶² There is no evidence of that, and the doctor followed the advice of the American Academy of Pediatrics, which is approved by many bioethicists. His course of conduct was also approved by the hospital ethics committee. He would certainly face no legal repercussions.

For the parents the case is even easier. As surrogate decision-makers, parents are legally permitted to exercise the patient's unrestricted autonomy to accept or decline medical treatments, as long as they do so in "good faith."⁶³ The elasticity of the "best interests" standard certainly shields them there. When there is an allegation of parental neglect, the legal inquiry is whether they sought accredited medical assistance, were aware of the seriousness of the child's condition, and chose a treatment recommended by their physician that is within the realm of responsible medical authority.⁶⁴ Clearly that is the case here, so the parents would also be held blameless.

Note that things might be different if the parents resisted the doctor's judgment and insisted on treatment. Parents of infants with disabilities have had some successes in litigation to defend their rights under various state laws that permit transfer to another facility, and federal laws that ban discrimination on the basis of disability.⁶⁵ But when they all agree, none of those laws do anything for the infant.

The Overton Window has already stealthily shifted so far that nobody even calls this euthanasia. It may be a tragedy, but it's in the regular course of medical care that is smiled upon by both the law and bioethics. It is only a short and easy slide from this to the position advocated by the Canadian doctor—active euthanasia for disabled infants in order "to not allow the child to suffer."

Euthanized Reform

The weaknesses of the Baby Doe Rules and their failure to provide protection to infants with disabilities have long been known. But nothing has been done to reform them or to make them effective.

In September 2020, President Trump issued an executive order directing the Secretary of the Department of Health and Human Services to take action to protect vulnerable newborn and infant children.⁶⁶ In the last week before the end of the administration, HHS published proposed regulations to address numerous reported instances of discrimination against infants with disabilities.⁶⁷ The new regulations would have prohibited the denial of care to disabled infants whose parents consent to treatments.⁶⁸ They also prohibited "undue influence or steering of individuals toward the withdrawal of life-sustaining care, or toward the provision of life-ending services, on the basis of disability."⁶⁹ And they specified that anti-discrimination laws applied to

any decision to deny care based on “quality of life or burden evaluations, or stereotypes or bias, based on disability.”⁷⁰

If they had gone into effect, these new rules would have gone a long way to correcting some of the flaws in the Baby Doe Rules and might also have had a direct impact on the actual medical decisions that are being made. That would depend on whether bioethicists and health professionals gave them any more respect than they have thus far given the Baby Doe Rules themselves.

Unfortunately, the Biden Administration put this proposed rule on hold pending review. That usually means that the proposal is dead. Indeed, it has now disappeared from the Federal Register and from the HHS website. Even the press release announcing the proposed regulations can no longer be found on the HHS website.⁷¹

A Different Model

So what’s the answer?

The goal is genuine reform that gives robust legal protection to infants with grave disabilities. To do that, we need to change our way of looking at them and their situation.

In the current approach, the child is in a vulnerable situation where all of the caregivers have inherent conflicts of interest. Parents are naturally concerned about the burden of providing care for many years ahead, as well as the impact on their finances, their relationship, and their other family members. Health care providers are concerned about scarce resources and finances, which will be seriously strained by intensive long-term care. Ethics committees are instruments of the hospital that typically lack any representation by persons with disabilities and provide no due process in their deliberations.

To counter this, we have to start viewing a gravely disabled child as a vulnerable person who has a right to be affirmatively protected by society. The direct analogy is to children at risk of abuse or neglect. They have the benefit of mandatory reporting laws and recourse to a neutral and independent body whose duty is to advocate for and protect them. This is what the Baby Doe Rules unsuccessfully tried to accomplish.

All this would entail is applying the same rules to newborns with disabilities that we apply to older children. If parents failed to provide a nine-year-old with food and water, we would certainly expect the government to investigate them for culpable neglect and step in if necessary to preserve the child’s life.

The idea of absolute patient autonomy, exercised by surrogates on behalf of disabled infants, must be limited by tight controls that set clear conditions

on the removal of life-sustaining treatments. Nutrition and hydration must be legally distinct from other forms of treatment, with strong protections against their removal in all but the most exceptional cases. Attention has to be focused on their immediate medical condition, and not on subjective and pejorative judgments about “quality of life.” There also must be some form of due process or independent review as part of the decision to withdraw life-sustaining treatment. And all of this takes place in a society with deep ableist biases and a rejection of any disability and of suffering. Even the person with impeccable good faith and altruism can’t help but be negatively influenced.

Addressing this issue always gets embroiled in abortion politics, because any solution would have to deal with the question of care for infants born alive accidentally during an abortion. Pediatric palliative care also has to be preserved, and medical decision-making and advances in treatment can’t be discouraged by legal uncertainty. But these are not insuperable challenges.

There will also have to be serious engagement with bioethicists and medical professionals. There are many who do not share our full spectrum of beliefs, but who are nevertheless uncomfortable with the contemporary “throw away” culture.⁷² The lessons of the other nations that have already legalized euthanasia for adults have led many secular-minded people to have deep misgivings about where things are leading.

It will also involve protecting and enhancing “safe harbor” institutions that operate according to the sanctity of life ethic. There are many such institutions out there already, and they need support.

Ultimately, we must recognize that we are in this situation because of the radical secularization of medicine and bioethics, which are completely divorced from traditional moral norms. The only real solution is to renew the sanctity of life ethos, reject ableism, and recapture the ideal of the fundamental equality of all people—particularly vulnerable infants who are facing challenges from serious disabilities.

We must push the Overton Window away from infant euthanasia lest it become more and more plausible and acceptable.

NOTES

1. For an excellent explanation of this important concept, see *A Brief Explanation of The Overton Window*, The Mackinac Center for Law and Public Policy, <https://www.mackinac.org/OvertonWindow>.
2. See, e.g., Joe Carter, *The Dangerous Mind of Peter Singer*, *First Things* (June 22, 2011), <https://www.firstthings.com/web-exclusives/2011/06/the-dangerous-mind-of-peter-singer>.
3. Testimony of Dr. Louis Roy on behalf of the Quebec College of Physicians before the House of Commons Special Joint Committee on Medical Assistance in Dying, Oct. 7, 2022, <https://parl.ca/DocumentViewer/en/44-1/AMAD/meeting-19/evidence>.
4. This burst into the headlines in the case of abortionist Kermit Gosnell, and the general reaction was

- disgust and horror. See, e.g., Anne Conlon, *Film/Booknotes: Gosnell: The Trial of America's Biggest Serial Killer*, Directed by Nick Searcy, *Human Life Review*, Fall 2018, p. 66.
5. The intent to cause death by withdrawing treatment is the crucial component of passive euthanasia. See, e.g., Brassington, I. *What passive euthanasia is*, 21 *BMC Med Ethics* 41 (2020).
 6. See, e.g., Udo Schuklenk, *Physicians can justifiably euthanize certain severely impaired neonates*, 149 *J. Thorac. Carioasc. Surg.* 535 (2015).
 7. United States Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services (6th Edition)* (2018), par. 57.
 8. This was extensively analyzed in the Supreme Court decision rejecting a constitutional right to assisted suicide, and, by implication, euthanasia. *Quill v. Vacco*, 521 U.S. 793, 800-805 (1997).
 9. United States Conference of Catholic Bishops, *supra*, at par. 58. See also Pope John Paul II, *Address to the Participants in the International Congress on "Life-Sustaining Treatments and Vegetative State: Scientific Advances and Ethical Dilemmas"* Mar. 20, 2004, https://www.vatican.va/content/john-paul-ii/en/speeches/2004/march/documents/hf_jp-ii_spe_20040320_congress-fiamc.html ("the administration of water and food, even when provided by artificial means, always represents a natural means of preserving life, not a medical act. Its use, furthermore, should be considered, in principle, ordinary and proportionate, and as such morally obligatory").
 10. Wesley J. Smith, "Human Non-Person": *Terri Schiavo, bioethics, and our future* (March 29, 2005), <https://www.discovery.org/a/2488/>.
 11. 3d 1127 (1986).
 12. See, e.g., NY Pub. Health Law Articles 29-C (Health Care Agents and Proxies) and 29-CC (Family Health Care Decisions Act).
 13. Charles C. Camosy, *Losing our Dignity: How Secularized Medicine is Undermining Fundamental Human Equality* (New City Press, 2022).
 14. See, e.g., Kathryn L. Weise, et al., *Guidance on Forgoing Life-Sustaining Medical Treatment*, 140 *Pediatrics* 3 at 5 (Sept. 2017).
 15. President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, *Deciding to Forego Life-sustaining Treatment: A Report on the Ethical, Medical, and Legal Issues in Treatment Decisions (Volume 10)* 90 (1983).
 16. Special Rapporteur on the Rights of Persons with Disabilities, *Rights of persons with disabilities*, 73, Dec. 17, 2019, https://www.ohchr.org/sites/default/files/A_HRC_43_41Easyreadversion.pdf.
 17. Lisa I. Iezzoni, et al., *Physicians' Perceptions of People With Disability and Their Health Care*, 40 *Health Affairs* 297 (Feb. 2021).
 18. National Council on Disability, *Medical Futility and Disability Bias* (Nov. 20, 2019), https://ncd.gov/sites/default/files/NCD_Medical_Futility_Report_508.pdf.
 19. Tara Lagu, et al., "I Am Not the Doctor for You": *Physicians' Attitudes About Caring for People With Disabilities*, 41 *Health Affairs* 1387 (2022).
 20. Saroj Saigal, et al., *Differences in Preferences for Neonatal Outcomes Among Health Care Professionals, Parents, and Adolescents*, 281 *JAMA* 1991 (June 2, 1999).
 21. Annie Janvier, Karen Lynn Bauer, and John D. Lantos, *Are Newborns Morally Different From Older Children?*, 28 *Theoretical Medicine and Bioethics* 413, 417 (2007).
 22. Johannes Reinders et al., *The Quiet Progress of the New Eugenics. Ending the Lives of Persons With Intellectual and Developmental Disabilities for Reasons of Presumed Poor Quality of Life*, 16 *Journal of Policy and Practice in Intellectual Disabilities* 99 (June 2019).
 23. Margaret Sanger, *Woman and the New Race* (1920), <https://www.bartleby.com/1013/7.html>.
 24. The United States Holocaust Museum, *The Murder of People with Disabilities*, <https://encyclopedia.ushmm.org/content/en/article/the-murder-of-people-with-disabilities>.
 25. See, e.g., Mary O'Callaghan, *Teaching Human Dignity: Prenatal Diagnosis & Disability Selective Abortion*, McGrath Inst. for Church Life (2019), <https://perma.cc/XS8Y-JYA3>; see also Justice Clarence Thomas' extensive discussion of eugenic abortion in the case of an Indiana law that prohibited abortion based on a child's race, sex, or disability. *Box v. Planned Parenthood*, 139 S. Ct. 1780, 1782-91 (2019) (Thomas, concurring).
 26. Studies vary as to the number of babies with Down Syndrome are aborted. One estimate is that 67% of babies with a pre-natal diagnosis of Down Syndrome were aborted in the United States. Natoli JL, et al., *Prenatal diagnosis of Down syndrome: a systematic review of termination rates (1995-2011)*, 32 *Prenat Diagn.* 142 (Feb. 2012). The numbers are even higher in Europe—as high as 100% in Iceland. Julian Quinones and Arijeta Lajka, "What kind of society do you want to live in?": *Inside the country where Down syndrome is disappearing* (Aug. 15, 2017), <https://www.cbsnews.com/news/>

down-syndrome-iceland/.

27. See, e.g., See, e.g., Marissa C. Michel, et al., *Causes and circumstances of death in a neonatal unit over 20 years*, 83 *Pediatric Research* 829 (2017) and Matthew Lin et al., *Infant mode of death in the neonatal intensive care unit: A systematic scoping review*, 42 *Journal of Perinatology* 551 (2022).

28. *Id.*

29. Lin, *supra*.

30. P.L. 98-457 (1984). For a good overview of the complicated backstory and history of the Baby Doe Rules, see Jack Resnick, *The Baby Doe Rules (1984)*, *The Embryo Encyclopedia* (2011), <https://embryo.asu.edu/pages/baby-doe-rules-1984>

31. 42 U.S.C. § 5106g(a)(5).

32. 42 U.S.C. § 5106a(b)(2)(C).

33. 45 C.F.R. Pt. 1340, App. These guidelines were later removed on technical grounds that they were obsolete due to the passage of the amendments to CAPTA. 80 FR 16577-03 (2015).

34. *Id.*

35. *Id.*

36. *Id.*

37. 45 C.F.R. Pt. 84, App. C.

38. Charity Scott, *Baby Doe at Twenty-Five: Foreword to the Symposium*, 25 *Ga. St. U. L. Rev.* 801 (2009).

39. Jeannine Wyszowski, *The Legal Rights of Disabled Infants to Receive Life-Sustaining Medical Treatment*, 4 *Conn. Pub. Int. L.J.* 181 (2004). A case recently decided by the Supreme Court, *Health & Hospital Corporation of Marion County v. Talevski*, 143 S.Ct. 1444 (2023), may open the door to private rights of action to enforce or seek damages under the Baby Doe Rules.

40. Weise, *supra*.

41. Contrary to the Policy Statement, the Human Services Amendments of 1994, P.L. 103-252 (May 18, 1994) had nothing to say about the Baby Doe Rules, much less enact them.

42. Weise, *supra*, at 6. In fact, the statute specifically requires that the states have procedures to respond to reports of medical neglect and the authority to pursue legal remedies. 42 U.S.C. § 5106a(b)(2)(C)

43. Loretta M. Kopelman, *The Best Interests Standard for Incompetent or Incapacitated Persons of All Ages*, 35 *J.L. Med. & Ethics* 187, 191 (2007).

44. See, e.g., N.Y. Dom. Rel. Law § 240.

45. The United Nations Convention on the Rights of the Child, Article 3 (1989). Article 23 of the Convention states “States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.” The United States is the only nation in the world that has not ratified the Convention.

46. Nicole Lapsatis, *In the Best Interests of No One: How New York’s “Best Interest of the Child” Law Violates Parents’ Fundamental Right to the Care, Custody, and Control of Their Children*, 86 *St. John’s Law Review* 673 (2012).

47. See, e.g., N.Y. Pub. Health Law § 2994-e and § 2994-o(1).

48. See, e.g., Scott, *supra*.

49. N.Y. Domestic Rel. Law § 240.

50. See, e.g., New York Courts, “Best Interests of the Child,” <https://nycourts.gov/courthelp/Family/bestInterest.shtml>.

51. Frank X. Placencia, et al., *Three Decades after Baby Doe: How Neonatologists and Bioethicists Conceptualize the Best Interests Standard*, 36 *J. Perinatol.* 906 (2016).

52. Charles C. Camosy, *The Right to a Dead Baby? Abortion, Ableism, and the Question of Autonomy*, *Public Discourse* (April 21, 2022), <https://www.thepublicdiscourse.com/2022/04/81840/>.

53. National Council on Disabilities, *Quality-Adjusted Life Years and the Devaluation of Life with Disability* (2019), https://ncd.gov/sites/default/files/NCD_Quality_Adjusted_Life_Report_508.pdf.

54. *Id.*

55. 45 C.F.R. Pt. 1340, App. (1985).

56. Weise, *supra*; American Medical Association, *Code of Medical Ethics Opinion 5.5: Medically Ineffective Interventions*, <https://code-medical-ethics.ama-assn.org/ethics-opinions/medically-ineffective-interventions>.

57. Weise, *supra*, at 5; American Medical Association, *Code of Medical Ethics Opinion 5.3: Withholding or Withdrawing Life Sustaining Treatment*, <https://code-medical-ethics.ama-assn.org/>

ethics-opinions/withholding-or-withdrawing-life-sustaining-treatment.

58. National Council on Disabilities, *supra* note 17, at 47-52.

59. 42 U.S.C. § 5106g(a)(5).

60. New York law is cited not as a model, but as an example of a legal framework with detailed standards for surrogate decision-making. N.Y. Pub. Health Law § 2994-d. Other laws have virtually no procedural or substantive guidelines for these decisions. *See, e.g.*, Uniform Law Commission, *Health Care Decisions Act* (adopted 1993).

61. *Pieter v. Polin*, 148 A.D.3d 1193, 1194 (2nd Dept. 2017).

62. N.Y. Education Law § 6530.

63. N.Y. Pub. Health Law § 2994-e and § 2994-o(1).

64. *Matter of Hofbauer*, 47 N.Y.2d 648, 656 (1979).

65. *See, e.g., In re Baby K.*, 16 F.3d 590 (3d Cir. 1994).

66. Executive Order 13952, *Protecting Vulnerable Newborn and Infant Children*, 85 FR 62187 (Sept. 25, 2020).

67. Department of Health and Human Services, Notice of Proposed Rule-Making, *Special Responsibilities of Medicare Hospitals in Emergency Cases and Discrimination on the Basis of Disability in Critical Health and Human Service Programs or Activities*, Docket No. HHS-OCR-2021-0002, at 8, note 7 (Jan. 14, 2021), <https://www.hhs.gov/sites/default/files/infants-nprm.pdf>.

68. *Id.* at 14-15.

69. *Id.* at 26.

70. *Id.* at 31.

71. The original press release was at <https://www.hhs.gov/about/news/2021/01/15/ocr-publishes-proposed-rule-protecting-infants-born-live-discrimination-basis-disability.html> (attempted access January 23, 2023). It is preserved at https://www.einnews.com/pr_news/534591471/ocr-publishes-proposed-rule-protecting-infants-born-alive-from-discrimination-on-the-basis-of-disability (accessed Jan. 23, 2023).

72. Pope Francis, *Evangelii Gaudium* (2015), par. 53.

Courage and Clarity: A Tribute to James Likoudis

William Doino Jr.

Throughout the history of the pro-life and pro-family movements, many remarkable individuals have played important roles. Among those who may receive less recognition today is James Likoudis, a gifted scholar and speaker whose long-time defense of human life, the nuclear family, quality education, parental rights, and religious liberty has proven strikingly prophetic. While highly respected by his students and colleagues, Likoudis is not currently as well-known as he should be. But as he approaches the centennial of his birth, his work is achieving a new appreciation that may finally bring it the attention it deserves.

Born in Lackawanna, New York, just outside Buffalo, in 1928, James Likoudis was the son of Greek immigrants who came to America seeking a better life. They found it, even in the midst of the Great Depression, as James's father opened a local ice cream parlor that operated for 50 years. Family life was fortified by the Likoudis's Greek Orthodox faith, and James's upbringing has remained a source of strength throughout his life.

After high school, James went to study history and philosophy at the University of Buffalo, where his beliefs came under sustained attack from professors hostile to organized religion. Traditional faith and values were portrayed as enemies of enlightened thinking and obstacles to democratic progress. While he never lost his Christian faith, James was shaken by these attacks, because he didn't know how to answer them.

Then came a fortuitous visit to the University's Newman Club, an on-campus Catholic ministry with a library of works by many of Christianity's greatest thinkers. Theologians like Thomas Aquinas and John Henry Newman, and early twentieth-century Dominicans like Vincent McNabb and Gerald Vann helped develop Likoudis's faith, and historian Christopher Dawson enhanced his understanding of religion and culture. "At a time when my secular courses began to pose all sorts of difficulties regarding historic Christian beliefs," he later wrote, "I found in such writers a treasure trove of arguments, and the genius to challenge intellectually their rationalist and skeptical opponents."¹

Now equipped to defend his beliefs, James was pleasantly surprised to find

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that at least a few of his more thoughtful professors, when presented with the evidence, acknowledged Christianity's pivotal role in advancing Western civilization.²

Likoudis learned several important lessons from his undergraduate years: "Always be prepared to make a defense to anyone who calls you to account for the hope that is within you" (1 Peter 3:15), and never give up faith that you can win over your opponent.

The Christian worldview James inherited from his parents now came to fruition. Its guiding principles were a) there are certain truths about the human condition that are sacred and eternal; b) through reason, divine revelation, and the natural law, these truths are accessible to everyone; and c) objective truth is not an "obstacle" to democracy, but an indispensable asset to it.

War, Conversion, and Marriage

By the early 1950s, Likoudis was serving in Korea in the medical corps. His faith had by now matured, but Eastern Orthodoxy would not be his final spiritual home. His appreciation for Roman Catholicism's intellectual tradition, which had played a key role in reinvigorating his faith in college, led him to explore the history of the papacy, the biggest stumbling block between Catholicism and Eastern Orthodoxy. After extensive study, James became a member of the Catholic Church in 1952, but retained his reverence for Eastern Orthodoxy and worked hard to overcome the centuries-old schism separating the two. The search for a Catholic-Orthodox reunion, encouraged by numerous popes, became a consuming passion in Likoudis's life. He eventually wrote four books on the subject that are models of ecumenical scholarship.³

But the greatest impact on James as an adult was undoubtedly his marriage to his wife, Ruth. As a young newlywed, Ruth joined the Catholic Church with James and, like him, "amidst the storms that would beset the Church, never failed in her fidelity to the Church's teachings."⁴ Her relatives and friends remember her as a strong and elegant woman, a beloved wife and mother who loved life and brought joy to everyone she met. By the time of her death in early 2023, her marriage to James had lasted 71 years, producing six children, thirty-five grandchildren, and forty-four great-grandchildren—an extraordinary legacy of their faith and family.

Recently, James agreed to speak with me about his eventful life and the ongoing challenges our nation faces.

An Unseen Tipping Point

In our conversation, Likoudis corrected the widely mistaken assumption

that the upheaval of the 1960s was a sudden, unforeseen eruption. That the Sixties helped destabilize America and undermine its Judeo-Christian heritage cannot be denied. But Likoudis emphasized that this rebellion, far from being a bolt from the blue, was “the culmination of a long process of moral and cultural decay.” In his view, the origins of our present crisis preceded the Woodstock generation, as irresponsible as the latter proved to be, and grew out of the social fragmentation and moral disorientation provoked by two World Wars. Moreover, while the revolt was activated by secularists, “it was accelerated by self-professed Christians who were either too passive to realize what was happening, or too timid to sound the alarm.”

British religious historian Christopher Dawson summed up the situation he already saw in 1942 in his book *Judgement of the Nations*:

The old landmarks of good and evil and truth and falsehood have been swept away, and civilization is driving before the storm of destruction like a dismasted and helmless ship. The evils which the nineteenth century thought it had banished forever . . . have returned and with them new terrors which the past did not know. We have discovered that evil too is a progressive force and that the modern world provides unlimited prospects for its development.⁵

For twenty years, Likoudis combatted these errors in high schools, colleges, and seminaries, as he taught courses on history, government, and Western civilization, exhorting his students to uphold, in Matthew Arnold’s words, “the best that has been thought and said.” James then led Catholics United for the Faith, an influential lay group defending Catholic teaching against its critics. He also served as president of Morality in Media, campaigning against pornography and its myriad evils.⁶ And for over fifty years he has promoted truth, decency, and the common good in lectures, debates, and media appearances.

An Unpopular but Far-Sighted Encyclical

Among Likoudis’s many accomplishments has been his consistent support of *Humanae Vitae*, St. Paul VI’s famous encyclical against artificial birth control.

When *Humanae Vitae* appeared in 1968, it was greeted with widespread dissent, causing even the American Catholic bishops, after an initial defense of it, to retreat into a disengaged silence.⁷ Likoudis, in contrast, traveled the globe to explain that the encyclical’s stand against contraception wasn’t rooted in a narrow-minded puritanism, but in the Church’s elevated teachings on marital love and reverence for human life. Catholicism considers sex a precious gift, Likoudis told me, but it is not an end in itself and can easily be manipulated and abused. Its teaching that contraception is an impairment

of a marriage's natural capacity to procreate, diminishing the selfless love which brings forth children, "is not one the world wanted to hear, but surely could have profited from."

Almost sixty years later, the encyclical and its early, bold supporters like Likoudis now look visionary, as many scholars and leaders have come to recognize.⁸

Humanae Vitae correctly predicted that the pill would increase the objectification of women, lower moral standards, and be employed to coerce population control. On the 50th anniversary of its publication, Archbishop Charles Chaput observed that Paul VI "would not be surprised by the #MeToo movement," for *Humanae Vitae* "identified and rejected the sexual exploitation of women years before that message entered the cultural mainstream." Chaput continued:

"Much of the moral conflict, broken family life, social unraveling, and gender confusion that seems so common today stems—directly or indirectly—from our disordered attitudes toward creation, and our appetite to master, reshape and even deform nature to our will. We want the freedom to decide what reality is. And we insist on the power to make it so."⁹

A Council Misperceived

Likoudis also deserves credit for his support of the Second Vatican Council (1962-1965)—an event of immeasurable importance for the Church and the world. For vastly different reasons, partisans on the left and right consider the Council a charter for revolution. "The controversy over Vatican II," Likoudis told me, is due to "a selective and tendentious reading of its texts, and the failure of too many Catholics to implement its actual teachings."¹⁰

The true value of the Council, argued Likoudis, lies in its vibrant elucidation of developed Catholic teaching for the contemporary world; its call for the laity (not just religious) to pursue lives of holiness; and its promotion of ecumenical and interfaith relations, which has done so much to expand and diversify the pro-life and pro-family movements.

Courage and Clarity

In the tumultuous decade following the Council, the effort to undermine the family and traditional moral values entered a new, more aggressive phase, as educators assaulted the innocence of young children with inappropriate forms of sex education. Likoudis responded with courage and clarity. At a major forum held in 1969, he critiqued the emerging sex education crusade, exposing its errors, incoherence, and contradictions.

The first and most serious error, he said, was the refusal to recognize that "parents, and not school systems," are the primary educators of their children

about sex. Sex education in public schools is “structurally deficient” because it makes it “impossible to meet the needs of individual children.” Worse, it generates “sex talk” without any guardrails, and invariably becomes divorced from the moral and spiritual beliefs of parents—a violation of their God-given rights, not to mention their children’s. Likoudis pointed out that even among ardent sex educators, there is “absolutely no agreement” on the “who, what, where and how of sex education,” creating a chaotic, amoral mess.

For well-informed and faithful Catholics, he explained, “an understanding of sex begins with an understanding of fallen human nature and the resulting sexual temptations it produces.” Yet, he noted, “lust, passion, sexual inclinations, sexual fixations and sin” were entirely absent from the new sex education courses. He emphasized that it was not just Catholics who held these views, but many in the Jewish and Evangelical communities he worked closely with as well.

Likoudis affirmed the need for sex education, but a version that respected parental rights and the sanctity of the family. He refuted the popular myth that classroom sex education “is the panacea to sexual problems” by citing evidence that value-free public sex education was creating far more problems than it solved.¹¹ In response, he and those who shared his concerns were assailed as “religious zealots” trying to impose their “sectarian beliefs” on our pluralistic democracy. But from its inception the sex education industry has given every sign of being a secular religion itself, one obsessively focused on a single topic. “Sexuality,” Likoudis concluded, “is the new religion of these people.”¹²

From “Free Love” to Abortion

With *Roe v. Wade*, America crossed another line into unprecedented darkness. Likoudis was appalled but not shocked, for *Roe* was the logical outcome of an anti-life, recreational culture that separated love from sex, sex from marriage, and marriage from children. Most tragic of all, Likoudis told me, was “the capitulation of so many Americans” to the new abortion license—including members of his own Church. Though the Second Vatican Council had declared that “Life from its very conception must be guarded with the greatest care,” and that “abortion and infanticide are abominable crimes,”¹³ many high-profile Catholics proceeded to minimize, rationalize, justify, and even celebrate the decision.

Likoudis reacted by helping found, along with Jesuit priest Fr. John Hardon, a pro-life ministry—Eternal Life—dedicated to educating Catholics and the broader public about the facts concerning abortion. Members of Eternal Life ventured into unfriendly territory to preach the gospel of life

and helped bring pro-abortion Catholics into line with the Church's authentic teaching. For example, in 1984 a full-page ad in the *New York Times* signed by 25 members of Catholic religious orders appeared, declaring that a "large number" of Catholic theologians believed that abortion "can sometimes be a moral choice." Rejecting the Vatican's clear, consistent, and unwavering opposition to abortion from its earliest times to the present,¹⁴ the signatories asserted, "There is a mistaken belief in American society that this is the only legitimate Catholic position."

Likoudis helped bring this scandal to the attention of the Vatican, and persevered until the Church took action. By 1986, only two nuns of the twenty-five religious who had signed the ad refused to acknowledge the pro-life teachings of the Church and attended pro-abortion rallies in defiance of them. After their superiors told them disciplinary measures were in the works, the nuns left their religious order in 1988. The *Times* published a major story on the matter, highlighting Likoudis's reaction:

"'This is a victory for all pro-life people in the United States,' said James Likoudis, president of Catholics United for the Faith. He saluted the nuns for the 'realization that their pro-abortion stand is incompatible with Catholic religious life and the Catholic faith.'" ¹⁵ Among those grateful for this outcome was Juli Loesch Wiley, then a spokeswoman for Feminists for Life, who responded: "Perhaps what [the nuns] want is a total collapse of Catholic teaching into conformity with the secular lifestyle." She also questioned why they would "defend in theory and practice the killing of children before birth," which so clearly contradicted "the humane traditions of their own Church."¹⁶

An Inspiring Vision of the Family

As a Catholic, Likoudis recognizes a special calling to support the nuclear family, not only because he believes it has been ordained by God, but because it is a bedrock of Western civilization. Commonly defined as two married parents of opposite genders and their biological or adopted children living in the same residence, the nuclear family has been under fire for some time, and Likoudis posits several reasons why.

The first is the corrosive effects of modern, secularized liberalism, which, in Likoudis's words, places "the individual and his selfishness above the family and society and attempts to empty both of any supernatural content." This hostility is compounded by statism, which is determined to replace the traditional family and religion with a Leviathan government, driven by a *de facto* atheism and all-encompassing relativism. When you combine the two, the result is a toxic brew that aims to reshape and create a new human being "just as the worst ideologies of the twentieth century have, with disastrous consequences."¹⁷

In his 1971 monograph *Fashioning Persons for a New Age?*, Likoudis documented and examined this destructive trend and provided healthy and constructive solutions to reverse it. Though only 70 pages long, the monograph was so powerful that Republican Congressman Jack Kemp had lengthy excerpts of it reprinted in the *United States Congressional Record*.¹⁸

In defending the traditional family against those who would jettison or redefine it, Likoudis realizes that even in the best of circumstances, marriages can crumble because of infidelity, abuse, illness, death, financial collapse, and other tragedies of human life. He also knows many exceptional individuals who have dealt with such tragedies without surrendering their moral and religious beliefs. But there is no conflict between acknowledging these realities and upholding traditional families as the ideal. For there is now a wealth of evidence demonstrating that intact families, especially ones guided by biblical faith and values, are far less likely to experience misfortune than members of broken ones.¹⁹

Accolades and Achievements

The value of Likoudis's career becomes clearer by speaking with those he has aided and inspired. Alice Grayson, who heads the Veil of Innocence website, told me that Likoudis was the only person who helped her when her young son was being subjected to objectionable sex-ed material, in both private and parochial schools. "James Likoudis gave me everything I needed to know about my rights as a parent in America and within the Church," she said, "and the situation was repaired almost immediately." Further, "no matter how busy he was, no matter what deadlines he faced, James always made time to answer every one of my questions; and he did the same for many other parents as well."²⁰ Jeffrey Mirus, founder of Trinity Communications and leader of the influential Catholic-culture.org website, calls Likoudis "one of several mentors" whom Mirus learned from when he was struggling in his twenties to become a more effective witness for the gospel. It was rare in those days—and still is today—to locate "a proponent of authentic Catholic renewal," but in James Likoudis, he found one.

Numerous theologians informed me of Likoudis's key role in encouraging the Vatican's document, *Educational Guidance in Human Love* (still the definitive Catholic text on prudent sex education)²¹; while other admirers pointed to his collaborative and fruitful work with EWTN Founder Mother Angelica and philosophers Alice and Dietrich von Hildebrand. James and Dietrich co-wrote a book entitled *Sex Education: The Basic Issues and Related Essays*, which includes a handwritten letter of recommendation, prominently displayed inside the front cover, from none other than Saint Mother

Teresa of Calcutta.

A website has been created with links to James's voluminous writings, and his grandson, Andrew, is in the process of establishing the Likoudis Legacy Foundation, dedicated to preserving and building upon James's accomplishments for a new generation.²²

Charity and Hope

If James Likoudis's life has been marked by courage and clarity, it has also been infused with charity and hope. He has lived long enough to see *Roe v. Wade* overturned and religious liberty affirmed by the Supreme Court. The battles for parental rights and against gender ideology are ongoing, but they are drawing courageous participants both in America and abroad.²³ And throughout all the intense debates and cultural controversies, Likoudis has never resorted to *ad hominem* outbursts or invectives, as so many do today, concentrating on refuting bad ideas rather than excoriating misguided people. At the age of 95, James Likoudis can look back on a long life spent striving to make America a more principled, more thoughtful, more charitable, and more decent nation. That he will leave behind much work still to be done testifies to the tumultuous and challenging times in which he—and we—have been called to live.

NOTES

1. From Likoudis's autobiographical essay, *Eastern Orthodoxy and the See of Peter: A Journey Towards Full Communion* (Park Press, 2006), p. 8.
2. For an acclaimed work on Christianity's beneficial role in world history, written by a non-believer, see *Dominion: How the Christian Revolution Remade the World* (Basic Books, 2019) by Tom Holland.
3. Likoudis's four books on this topic are *Ending the Byzantine Greek Schism*, *The Divine Primacy of the Bishop of Rome and Modern Eastern Orthodoxy*, *Eastern Orthodoxy and the See of Peter*, and *Heralds of a Catholic Russia*, available from used booksellers, until new editions, currently in the works, come into print.
4. From "Ruth Likoudis Obituary," published in the Ann Arbor News, April 18, 2023. One of the couple's sons, Paul, following in James's footsteps, became a notable pro-life writer and editor for *The Wanderer*.
5. See, *The Judgement of the Nations* by Christopher Dawson (2011, The Catholic University of America Press [reprint of the original 1942 edition]), p. 4.
6. Morality in Media, founded in 1968, is now known as the National Center on Sexual Exploitation, and has become one of the most important organizations of its kind. It actively fights pornography, and promotes "legal, corporate and legislative action to build a world free from sexual abuse and exploitation." Its website is: www.endsexualexploitation.org
7. See "Human Life in our Day," a collective pastoral letter of the American Catholic Hierarchy, issued November 15, 1968; but also, "New York Cardinal Dolan says Church Failed to Teach Against Contraception," *Lifesite News*, April 2, 2012.
8. On this issue see Mary Eberstadt's essay, "The Prophetic Power of Humanae Vitae," *First Things*, April 2018. See also, "Humanae Vitae: Affirmation of the Church's Teaching on the Gift of Human Sexuality," signed by dozens of distinguished scholars, which appears on The Catholic University of America's website, at: <https://trs.catholic.edu/humanae-vitae/index.html>
9. See "Archbishop Chaput: Paul VI Would Not be Surprised by the #MeToo movement," *Catholic*

News Agency, April 4, 2018.

10. Likoudis and Kenneth D. Whitehead wrote an entire book in defense of Vatican II and the Church's reformed liturgy, entitled *The Pope, the Council and the Mass* (Emmaus Road Publishing, 2006; reprint of the 1981 original edition). *L'Osservatore Romano*—the Vatican's official newspaper—endorsed it, as did the renowned theologian Hans Urs von Balthasar and Father Richard John Neuhaus, the long-time editor of *First Things*. For more on the book, see, "A Beacon of Christ's Providential Light in the Post Conciliar Church," by Andrew Likoudis, from Andrew's online blog, "Nature and Grace," published on the *Patheos* website, June 12, 2023.

11. See "End of the Mythology of Sex Education," by James Likoudis, *Serviam*, September, 1996; and for a more recent review of over 55 qualitative studies, see "Sex Ed is Negative, Sexist and Out of Touch: Study," by Mandy Oaklander, *Time* magazine online, September 12, 2016.

12. See "Sex Education in Schools is Criticized," by Margaret M. Carlan, *The Saint Louis Review*, June 13, 1969, Section 2, which thoroughly covers Likoudis's address to the forum.

13. See Vatican II's "Pastoral Constitution on the Church in the Modern World," *Gaudium et spes*, section 51.

14. For the historical consistency of the Catholic Church's condemnation of abortion, see "Euthanasia and Abortion: A Catholic View," by Father John Hardon, the *Human Life Review*, Fall 1975, pp. 88-100.

15. See, "2 Nuns Quit Order in Battle with Vatican on Abortion," by Ari L. Goldman, the *New York Times*, July 22, 1988.

16. See "Nuns Air Battle on Abortion," by Lynda Richardson, *The Washington Post*, October 13, 1990.

17. For Likoudis's developed thoughts on this topic, see, "Catholic Thought on Liberalism as Ideology Destructive of the Family," published in *Defending the Family: A Sourcebook*, edited by Paul C. Vitz and Stephen M. Krason, The Catholic Social Science Press, 1998, pp. 32-37.

18. See Kemp's introductory remarks, and the excerpts from Likoudis's monograph, under the title, "Potential Problems Associated with Sensitivity Training," in the *United States Congressional Record*, April 22, 1974, pp. 11229-11230.

19. For considerable evidence about the benefits of the nuclear family, see, "The Nuclear Family is Still Indispensable," by Brad Wilcox and Hal Boyd, *The Atlantic*, February 21, 2020, and the many studies published by the Institute for Family Studies (website: www.ifstudies.org).

20. For further information, consult the Veil of Innocence website: www.veilofinnocence.org.

21. In an interview with me, Robert Fastiggi, a Professor of Dogmatic Theology at Sacred Heart Major Seminary in Detroit, highlighted Likoudis's role in the lead-up to the document's publication. *Educational Guidance in Human Love: Outlines for Sex Education* can be read at: <https://www.ewtn.com/catholicism/library/educational-guidance-in-human-love-1995>

22. For the website, see: jameslikoudispage.com. The projected Likoudis Legacy Foundation has already received the backing of many leading thinkers and writers and will highlight the bountiful impact James Likoudis's work (in areas of morality, ecumenism, liturgy, and doctrine) has had upon religion and society, both at home and abroad.

23. On the expanding role and increasing influence of the parental rights movement, see, "Debate over Parental Rights is the Latest Battle in the Educational Cultural Wars," by Kiara Alfonseca and Mary Kekatos, *ABC News*, September 14, 2023. For Pope Francis's strong opposition to gender ideology, see, "Pope Says Gender Theory Part of 'Global War on Marriage, Family,'" *Reuters*, October 1, 2016; and "Pope Francis: Gender Ideology is 'One of the Most Dangerous Ideological Colonizations' Today," by Courtney Mares, *Catholic News Agency*, March 11, 2023.

The Truth about Human Life Is in the Heart

Christopher M. Reilly

“**F**anatic.” “Hysterical.” “Overly sentimental.” Have you heard these or similar accusations lately?

Opponents frequently paint proliferers as emotionally carried away, even disturbed: An often cynically employed tactic for side-stepping rational debate over the moral “merits” of killing pre-born children and other vulnerable humans. It is an *ad hominem* attack against not only the character of the proliferer, but also against spiritually and deeply felt personhood itself.

Yet this hostility to the pro-life position is also the censure of any kind of moral reasoning informed by emotions. Love is supposedly a chemical imbalance, holding no water in debates that call upon such austere, secular notions as justice, fairness, empathy . . . and ruthless efficiency. Beauty and truth are even more suspect, declared inconstant pseudo-realities founded on individuality, or on culturally or historically relative feelings. (Never mind that insisting on any relativist attitude toward truth is the very height of contradiction; Plato showed us more than two millennia ago that, if truth is relative, the very theory that truth is relative must also be relative and unreliable. Pro-death attitudes are, of course, not fully reasoned but built upon loosely coherent ideologies.)

It is not only our adversaries, however, who either explicitly or implicitly condemn pro-life activists for being emotional. There are those on the religious front who want us to stick to scriptural quotes and sober theology in representing the truths of divine revelation when evangelizing. There are those on the professional and scientific front who want us to dispassionately define our terminology for life and death, embryo or zygote, and various medical procedures, and—if we can’t nail it down—cease use of such eternally contested words as “person.” Even the philosophers have suppressed their own emotional elegance; a quick review of the analytic treatment of the concept of love itself will drive anyone to the poets for more satisfactory testimonies.

We ourselves are frequently anxious to back up our heart-wrenching images of aborted children with sterile statistics or timelines showing when the brain or heart begin to form. It hardly seems enough to reveal that our own

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hearts cry out for such children from the moment they are conceived, if not earlier in the case of a hopeful couple looking to start a family. It doesn't seem enough to express the incomparable loss and sorrow we feel whenever a particularly vulnerable person who is ill, elderly, or depressed is "mercifully" dispatched in euthanasia or physician-assisted suicide, rather than truly loved and cared for in their suffering. More often than not, our tears are shed in solitude or repressed and held painfully deep inside our souls; it seems to be an entirely private affair, not appropriate for sharing in rational discourse.

However, the role of emotion in pro-life attitudes and evangelization is *crucial*. Where would we be if we did *not* feel so deeply for the most vulnerable human beings and their plight at the hands of an often cruel, selfish, and utilitarian world? Who would we be if we did not feel joy in recognizing the dignity of human life?

In this essay, I will review the observations of the philosopher Dietrich von Hildebrand, found primarily in his book *The Heart: An Analysis of Human and Divine Affectivity*, about the boundless need we all have for a rich emotional experience, and about the reasons certain forces in our society try to squash (or squeeze the "life" out of) such affectivity (von Hildebrand uses the term "affective" to refer to the full range of basic emotions and deeper feelings at a person's core).¹ Von Hildebrand provides an especially thorough defense of emotionality—a unique center of the person that he calls "the heart"—that is helpful for thinking about the role of emotions in the pro-life movement.

Heart and Soul

The late von Hildebrand (1889-1997) continues to be a leading light in the philosophical tradition called phenomenology as well as Christian moral scholarship. He saw our ethical life as being oriented to values—moral, aesthetic (oriented to beauty), intellectual (oriented to truth), etc.—which have a real presence and an independent capacity to motivate us regardless of our individual perspectives and desires; only values are truly important in themselves.² As such, they are messages or reflections of God.³ You may note that this is very different from the traditional approach to ethics which suggests we perceive the highest moral principles—usually stated in the form of commands—and deduce practically relevant moral guidance from them.

For von Hildebrand, our responses to the values that beckon to us are crucial exercises in forming appropriate attitudes and actions, including suitable emotions (depending on the particular value and the context) such as reverence, joy, or anger. "The heart" is the deep center of emotional life in the person, and it is uniquely essential to human life alongside a person's

intellect and will. For a properly ordered life, a person must rightly engage their heart, intellect, and will in a coordinated and cooperative manner (69).

Already, you might see how this approach is useful to the prolifer who is uncertain about the validity of an emotional basis for his or her convictions. If the heart with its deep feelings is a powerfully important “center” of the person—the most important center according to von Hildebrand—we must engage it in our responses to values ranging from true justice to mercy as well as the ontological (grounded in Being itself) value of human life. A fully personal response to the dignity of human life, to its truth and beauty, is largely emotional. We could not adequately or sincerely respond to such a value without experience of the appropriate emotions.

For von Hildebrand, true feeling and affectivity is not some shallow sentimentality: “The real antithesis to sentimentality is neither a neutral indifference which excludes feeling, nor the cramped virility of the man who believes every feeling to be a concession to weakness and effeminacy. The real antithesis to sentimentality is the genuine feeling of a noble and deep heart” (32).

Love is, of course, the ultimate and most authentically personal feeling. Von Hildebrand takes Aristotle to task for handing down a legacy of thought—still prominent today—that simultaneously declares our human purpose to be oriented to happiness, yet defines human reason, which guides us in finding that happiness, as entirely comprising intellectual capacities and our self-propelled will. Emotions are considered merely animal features. Such a theory fails to account for the reality of love. “Can anyone doubt that the deepest source of earthly happiness is the authentic, deep mutual love between persons, be it conjugal love or friendship?” (33). We might also note that even Thomas Aquinas, who was heavily Aristotelian in his philosophy, found it necessary to re-interpret Aristotle’s happiness as a final end in true friendship with God—the essence of the virtue of charity.⁴

There is also a more supernatural affectivity, both in its expression of the spiritual nature of the human person and in its dependence on God’s grace for its enjoyment. Christianity is centered around supernatural love and its natural variant. It is the heart, not the intellect or will, that responds to divine love with the appropriate emotion of joy: “Rejoice in the Lord always. I shall say it again: rejoice!” (Philippians 4:4). Von Hildebrand even declares that Scripture, particularly the sorrows and elation of Jesus’ crucifixion and resurrection, would be meaningless to us if we did not listen to our hearts (35).

A truly affective experience is not a simple bodily feeling. All feelings may have such a bodily presence, but such feelings of the human person are not

equivalent to the feelings of all animals, for “everything is radically different by being inserted into the mysteriously deep world of the person, and by being lived and experienced by this one identical self” (39). Psychological feelings are not fully affective experiences because they are at some level caused by the body, and because they are not consciously directed to an object that we want to know or experience. According to von Hildebrand, we are instead motivated by the calls of values to rise above a life dominated by psychological feelings. He calls extremely intense psychological feelings “passions,” and such passionate intensity can overwhelm our reasoning and exercise of free will. The intensity can be momentary, but it can also be “a habitual enslavement by certain violent urges,” such as when we are engrossed in ambition or resentment (48).

The nobility of truly affective responses to values comes from the spiritual majesty of human persons. Through our spiritual feelings, we achieve a kind of transcendence by which we rise above our desires and animal existence. It is important to recognize that such spiritual feelings are responses to particular values:

The fact that our heart conforms to the value, that the important in itself is able to move us, brings about a union with the object which goes even further than in knowledge. For in love the totality of the person is drawn more thoroughly into the union established with the object than in knowledge. We must not forget, moreover, that the type of union proper to knowledge is necessarily incorporated in love (52).

What von Hildebrand is saying here is that the positive values (e.g. kindness, beauty, or courage) found in another person or object motivate us. We heed the call of the values that we see in the other person, and our love is the feeling we experience as we are pulled closer to the other in some kind of real union with them. It is not just a matter of getting close and seeing the other person as they are, but truly joining them in a mutual relationship.

As proliferers, it is our loving unions with others that sustain our work—emotional union with the victims we champion, empathetic union with women and others who strain to cope with enormously difficult situations, solidarity in friendship with those who share our cause, and even union in the struggle for conversion of those who carry anti-life attitudes. Should we feel less and instead think more, or act more, in our striving for a culture of life? On the contrary, if emotions are excluded from the experience, it would limit our fully personal engagement. Even in our thinking and willing, we find that it is the strength of our hearts that carries us forward with reason, fortitude, courage, and hope.

Intuition of the Dignity of Human Life

Von Hildebrand points out that, especially after World War I and with the rise of a culture dominated by scientific thinking, there has been a sustained attack on “subjectivity” in fields of knowledge and ethics (56). The idea is that a person cannot be “objective,” or focused solely on the facts, if they show any level of emotion in their perception, judgment, and reasoning. Von Hildebrand turns the tables on such an idea by insisting that focusing solely on facts is actually not often the way to understand an object, whether the object is a physical item, spiritual reality like a human person, experiential reality like resentment or intellectual contemplation, or moral value (61). After all, isn’t truly perceiving and understanding an object what “objectivity” is all about? We cannot understand an object without being fully absorbed in it, and this requires an emotional or otherwise felt response. We must, at least in some sense, love the object to really make the object the focus of our attention; Augustine taught such wisdom back in the fourth century. To simply know facts, on the other hand, is to have a shallow experience of the physical or scientifically lawful characteristics of a thing. “Facts” hardly get us anywhere in knowing significant realities like beauty, divine revelation and grace, personality, evil, etc.

The key lesson for all of us, then, is to avoid being a “subjectivist” who pays too much attention to their own feelings (this is not the same as authentic “subjectivity” in which we express our full selves with freedom and feeling) (62). When we as profilers perceive and explore further understanding of human dignity, for example, we should allow that dignity to appear to us as it truly is, generating the appropriate feelings of reverence and joy, without distorting our understanding with individually relevant feelings like fanaticism, sentimentality, or depressive moods and resignation. As profilers, we can and should communicate our experiences of human life and the dignity of real persons, in writing and speech, with all the emotional richness and force we can muster—not simply with reference to the feelings and desires arising out of our own selves, but even more so with fully absorbed attention to the lives of those whom we strive to defend. As von Hildebrand counsels:

To be neutral, or to remain noncommittal when an object and its value demand an affective response or the intervention of our will, is to be utterly unobjective. Therefore every anti-affective trend is in reality sheer subjectivism because, in responding to the cosmos, it yet fails to conform to the real features and meaning of the cosmos, to the beauty and depth of the created world and its natural mysteries. It is subjectivistic, above all, in failing to conform to the existence of God, who is infinite holiness, infinite beauty, and infinite goodness (62).

Only the person who truly feels for and about the object of their attention can claim to be fully awake, fully conscious.

Here, then, is a challenge to consider: Can we genuinely bring the experiences of fetal and embryonic persons, or of adults vulnerable to despair and discrimination, to the consciousness of others with lavishly emotional—but not shallowly sentimental—written accounts, videos, and other artwork? What values do we want to highlight? How are those values found in such persons, and how can we portray them in a way that communicates truth and beauty (or the profound ugliness of induced death)? Poetic accounts, even though they are not the same as affective responses to value, can also be quite powerful and legitimate. As von Hildebrand describes them, poetical feelings “have a mysterious, secret contact with the rhythm of the universe, and through them the human soul is attuned to this rhythm.”

Another challenge to consider is for each of us to engage with our pro-life convictions by exploring and more fully expressing our related emotions on a daily basis. “These affections of the higher level, then, are truly gifts—natural gifts of God which man cannot give himself by his own power. Coming as they do from the very depth of his person, they are in a specific way voices of his true self, voices of his full personal being.”

An emotionally sophisticated pro-life movement will be more centered, more energized, and more powerfully effective in communicating with others. We will be better persons for it.

NOTES

1. Dietrich von Hildebrand, *The Heart: An Analysis of Human and Divine Affectivity* (South Bend, In.: St. Augustine’s Press, 2007). Page numbers cited are from e-book.
2. Dietrich von Hildebrand, *Ethics* (Steubenville, Oh.: Hildebrand Press, 2020), 25-80.
3. *Ibid.*, 140-141.
4. Thomas Aquinas, *Summa Theologica*, II-II, 23.

American Association of Pro-Life Obstetricians and Gynecologists: **An Interview with Dr. Christina Francis, CEO**

Dr. Christina Francis is CEO of the American Association of Pro-Life Obstetricians and Gynecologists (AAPLOG), a professional medical organization of women's health care professionals committed to practicing medicine according to pro-life principles, and board member of Indiana Right to Life. She has testified before Congress on abortion's impact on the health of her patients. She is a board-certified obstetrician and gynecologist currently working in Fort Wayne, Indiana. She has previously worked with orphans in Romania and Burma and spent three years as the only OB-GYN at a rural mission hospital in Kenya. She addressed the 2023 March for Life in Washington and spoke with the Human Life Review (HLR) about pro-life issues post-Dobbs from a medical professional's perspective.

HLR: Please provide a global overview of the challenges facing pro-life professionals in health care, especially OB-GYNs. Where are the likely flash-points that would present challenges to the convictions of a pro-life health care professional wanting to work in the fields of obstetrics and gynecology?

Dr. Francis: One of the main challenges facing U.S. pro-life medical professionals is the significant pressure placed on them by medical professional organizations, such as the American Medical Association (AMA) and the American College of Obstetricians and Gynecologists (ACOG), to support, refer for, and perform induced abortions. These organizations ignore the fact that when we are caring for pregnant women we have *two* patients. They staunchly support unrestricted access to abortion—not because the science demonstrates any health benefits, but rather purely for ideological reasons.

As a result of these ideological biases, aspiring pro-life medical professionals face challenges at pretty much every step of their career. In undergraduate studies and medical school, they face a general hostility towards pro-life views or even free discussion of the issue and are told that being openly pro-life will hurt their future career options. During medical training, as of 2018 they must actively opt out of participating in procedures that intentionally end the lives of preborn human beings, which results in being perceived as less willing to put in necessary work to complete their OB-GYN training. Many OB-GYN residents have faced a negative, coercive environment as a result of their decision to opt out of performing these procedures. Once they complete their residency, they must deal with continued threats to their ability to practice according to the oath they took to never intentionally harm their patients.

For example, following the *Dobbs* decision, the American Board of Obstetrics and Gynecology (ABOG, the OB-GYN board certification body) released a statement threatening the board certification of any physician

who promotes “misinformation or disinformation” on abortion. Because ABOG has refused to specify their definition of “misinformation,” pro-life OB-GYNs have reasonably extrapolated from ABOG’s history of supporting unrestricted induced abortion that this was a veiled threat against them, designed to have a chilling effect on their willingness to practice or publicly discuss life-affirming medical care and offer their patients evidence-based information about abortion.

In short, being a pro-life medical professional means pushing back against the forces that are turning medicine away from its purpose of promoting and restoring health as well as advocating for the dignity of one’s patients, born and preborn.

HLR: In 1973, Congress enacted the Church Amendment, ostensibly providing conscience protections to medical personnel who did not want to participate in abortions or sterilizations. Why does it seem that what is supposed to be legally protected is under such stress, if not outright subversion?

Dr. Francis: It’s interesting that as soon as *Roe* legalized abortion nationwide, Congress recognized that there would be a danger of medical professionals facing pressure to perform them. That was not mere conjecture: The effort was already in process. Beginning in the early ’70s, a vocal pro-abortion minority within ACOG’s leadership began pushing a change to ACOG’s position, from only supporting medically necessary separations between a pregnant mother and her preborn child (or a “therapeutic abortion”) to endorsing induced abortion for any health reason. By redefining “health” to broadly include emotional, financial, and social health (following *Doe v. Bolton*), ACOG ensured that any abortion that a mother feels she needs is medically necessary and vital to protecting her health. This paved the way to framing abortion as essential health care, a necessary step towards trying to ensure that every physician provide them.

Then, in 2007, ACOG published its Ethics Statement #385, “The Limits of Conscientious Refusal in Reproductive Medicine.”¹ This guidance statement ostensibly sought to answer the question, “what should physicians do when asked to participate in a practice that violates their conscience?” In it, ACOG argues that physicians ought to be required to perform certain procedures against their conscience if the patient requests it or if it is deemed to be essential health care. The paper redefines conscience, reducing it to a personal problem, something physicians only consider in the context of maintaining “personal wholeness or identity.” It ignores the true definition of conscience as one’s awareness of objective right from wrong,² and thus justifies dismissing outright the moral concerns of physicians whose ethical views deviate from the patient’s or the state’s. Rhetoric like this paved the way for the

trampling of conscience rights in the medical community.

Other members of the medical community paid attention. In a 2017 *New England Journal of Medicine* article,³ Drs. Ronit Stahl and Ezekiel Emanuel outline what they see as the “problem” of conscientious objection. You may recognize the name Ezekiel Emanuel—he worked for the Obama Administration and was the architect of the Affordable Care Act. In this article, the authors set up ACOG as the ideal for how other medical associations should combat conscience protections, stating they have “upheld the primacy of the patient” and referring to their 2007 ethics statement. They encourage other medical associations to follow suit, and indeed they have. What is Stahl and Emanuel’s solution for those of us who desire to provide life-affirming care for our patients? “[S]elect an area of medicine, such as radiology, that will not put them in situations that conflict with their personal morality or, if there is no such area, leave the profession.”

HLR: The Accreditation Council for Graduate Medical Education and ACOG claim abortion training should be a “readily available” component of specialist training, leaving the threat that medical education programs in states that restrict abortion under the *Dobbs* decision will be unaccredited, suggesting their graduates are not competently trained doctors. They also assert that such physicians will lack vital skills for uterine evacuation, even in non-abortion contexts. What do you say?

Dr. Francis: Surgical induced abortions are performed using the same procedures that are used to manage miscarriages. The only difference between, for example, a D&C performed to treat a miscarriage and a D&C abortion is that the former is used to evacuate a woman’s uterus when her embryonic or fetal child has already passed away, whereas the latter is used to intentionally end that child’s life, in a very painful way. Every OB-GYN physician receives training in uterine evacuation regardless of whether they obtain additional instruction in induced abortion. It is a vital component of OB-GYN care that every physician in our specialty uses regularly.

For these reasons, physicians can gain competence in these procedures by treating patients experiencing miscarriage, something that is tragically very common. The ACGME only requires that OB-GYNs perform twenty pregnancy-related uterine evacuations before completing residency. That is easily achievable over four years. Thousands of OB-GYNs around the country, including myself, completed their residency training at hospitals that have policies against performing induced abortions and are currently offering excellent health care to patients.

HLR: Many of these groups have been threatening to use accreditation standards as leverage to force young doctors into abortion, particularly since

pro-abortionists claim that the number of doctors willing to do abortions is declining. Can you give us some historical perspective on this issue? What percentage of OB-GYNs actually perform abortions? And how many of those performing abortions are not actually OB-GYNs?

Dr. Francis: Despite the assertion by abortion advocates that it is “essential health care,” the vast majority of OB-GYNs—76 percent in academic practice, 86 to 93 percent in private practice—don’t perform abortions. That number showed a steady decline into the 2010s and has remained relatively stable since, in spite of efforts by various medical bodies to push more OB-GYNs into participating in the practice (one major example being the changing OB-GYN abortion training requirements I explained previously). If, in fact, induced abortion was essential health care for women, these percentages would be significantly higher.

Though I don’t know the exact numbers of abortionists who are not OB-GYNs, I can tell you that this number has likely increased due to endeavors by organizations such as National Academy of Science (NAS)⁴ to encourage ancillary health care workers to start practicing induced abortions. Advanced Practice Registered Nurses (APRN) and Certified Nurse-Midwives (CNM) are now allowed to perform them in some states.

HLR: Doctors enjoy some measure of autonomy compared to, say, other medical personnel like nurses or ultrasound technicians who could get threatened, at the cost of professional credentials or employment, to participate in abortion. Is this legal? What can a nurse or someone in that situation do?

Dr. Francis: No medical professional should ever be coerced into participating in a procedure that violates their conscience or that they see as morally wrong. Thankfully, our federal and many state governments have long recognized this. Through several federal conscience protections, medical professionals who are censured for refusing to violate their conscience or harm their patient can file a case with the Office of Civil Rights (OCR) at the Department of Health and Human Services (HHS). It is their job to protect us. They have shown they are willing to do this, but that has been very administration-dependent. For instance, a Vermont nurse was fired for not assisting in an abortion. Despite the Department of Justice’s (DOJ) finding during the Trump Administration that the hospital had clearly violated federal law when they fired her, the Biden DOJ dismissed⁵ the suit, and the nurse was left with no recourse. Medical professionals need but currently lack a private right of federal action so they can sue on their own behalf. Some states have this in place, and I hope more will follow suit. Until that happens, all medical professionals are dependent for conscience protection on the whims of HHS and DOJ. I always encourage medical professionals

who might be in situations where they could be pressured into participating in induced abortion to be familiar with their hospital's policies on conscientious objection.

HLR: In a bid to “expand abortion access,” some states have legally authorized non-physicians to perform abortions, something you noted NAS has pushed. As an OB-GYN, what is your professional opinion of this? Does this endanger women?

Dr. Francis: This is clearly an example of the push to expand access to abortion at any cost—including patients' health. To put this into perspective, note that OB-GYNs receive over a decade's worth of education and training before qualifying to perform surgical procedures such as those used in induced abortions. They start with a bachelor's degree, followed by medical school, followed by four years of residency. Only at the end of all this are they licensed to perform surgeries. This training prepares them to recognize and manage complications that may arise; at least 1 in 50⁶ surgical abortions require further surgery to treat complications. Many of the common complications of surgical abortion would best be served by people with extensive medical and surgical knowledge.

In contrast to the extensive training OB-GYNs receive before being able to perform surgeries, CNM training programs only require a bachelor's or associate's degree and focus on the normal delivery of term infants. Many APRN training programs only require a three-year associate's degree, and offer one to three years of additional training, none of which is focused on the performance of surgery or management of complications. While ancillary health care workers are essential to the health care system, it is incredibly risky to allow health care professionals to perform surgery beyond their training or administer drugs with the high complication rate (including an approximately 8 percent rate of needing surgery) of abortion pills. No medical body would accept this in any context other than abortion. Our patients deserve better.

HLR: Pro-abortionists also contend that laws requiring those performing abortions to have admitting privileges at a local hospital are really “TRAPs,” i.e., “Targeted Restrictions on Abortion Providers,” having no medical purpose but to provide legal excuses to keep abortionists out of some places. How do you answer this claim? Isn't it sufficient that any woman can go to a local emergency room should she suffer post-abortion complications?

Dr. Francis: Hospital admitting privilege requirements are about ensuring high-quality health care for women undergoing a risky⁷ procedure at an outpatient clinic. As even ACOG admits, accurate communication of patient information from one health care team to the next during a patient handoff is

essential: Breakdowns in such communication are a leading cause of medical error, which can seriously harm patients. Admitting privileges, which would allow physicians to directly admit women to the hospital in the event of complications after or during an abortion, allow for more expeditious care for potentially life-threatening conditions as well as clear handoffs from the abortion provider to the team that will care for the woman in the hospital. Currently, women are either directed to the emergency room or urgent care centers when complications arise or occasionally are transported from the abortion facility to the hospital via ambulance—but with very little, if any, communication between the abortion provider and the receiving medical team. The receiving team typically does not have contact with the abortion providers or access to patient histories, which represents a significant gap in crucial communication. It's interesting that organizations like ACOG recognize the importance of proper patient handoffs but don't apply those standards to women seeking abortion. They do not encourage any form of handoff between abortion providers and emergency personnel, and no standards for such handoff exist.

HLR: Prenatal diagnosis is increasingly being used to identify and eliminate handicapped children prior to birth. Even in those states that outlaw abortion for eugenic reasons, it seems one might evade such restrictions simply by claiming other reasons for an abortion. What is your take on this?

Dr. Francis: Since I am not a policy expert, I can't say much on how policymakers can make restrictions on eugenic abortions more enforceable. As a physician, however, what I can say is that medical professionals can do their part to achieve the goal of such policies: to ensure that all human beings, no matter their level of ability or development, are treated with dignity in the health care system. This includes using life-affirming language when speaking with pregnant women about their preborn child after receiving a difficult prenatal diagnosis. We should avoid using terms like “non-viable,” “lethal,” or “incompatible with life” when describing the child or her diagnosis. Instead, medical professionals can keep in mind that she is still a human being even with her diagnosis, and that we are committed to promoting good outcomes for her as much as possible. Often, patients obtain abortions after receiving adverse diagnoses because their health care team makes termination sound like the easier or even more ethical option. We can combat this trend by rejecting the eugenic framework that often shapes these conversations.

Another thing medical professionals can do to empower their patients to choose life is to talk to them about perinatal palliative care. Often, when faced with a potentially life-limiting prenatal diagnosis, parents choose abortion because they assume it will make the grieving process easier—despite

the lack of evidence for this. Perinatal palliative care gives families support as they walk with their child in her final stage of life when that stage comes much sooner than any parent would want. This service gives them the opportunity to hold and grieve their child if the diagnosis does, in fact, lead to her death, but also allows for the possibility that the diagnosis was wrong or that medical treatment can be provided. It is associated with better mental health outcomes than induced abortion and respects the child's dignity and value in a way that abortion never can. There is no material difference between a child receiving a serious diagnosis prenatally and after birth; both deserve respect for their lives and to know that they are loved.

HLR: Several states have “wrongful life” laws, making OB-GYNs liable if a handicapped child that could have been aborted wasn't. I imagine this contributes in no small measure to OB-GYN malpractice insurance premiums. What's a pro-life doctor to do in these cases?

Dr. Francis: Every life has inherent value and worth, and this is not dependent on a person's ability level. With increasing medical technology, we are now able to diagnose certain genetic conditions prenatally. However, as is common in many other arenas, the ethics have not quite caught up with the technology. As an OB-GYN, my job is to provide *both* my patients with excellent health care. This means never intentionally ending the life of my preborn patient and providing my maternal patient with the support and resources she needs, even in cases of complex prenatal diagnoses.

HLR: Pro-abortionists claim that women do not resort to third-trimester abortions except out of dire medical necessity and that terms like “partial birth abortion” are medically inaccurate mischaracterizations of rare but serious medical situations. Myth or truth?

Dr. Francis: Myth. The implication that women need third-trimester abortion to manage life-threatening pregnancy complications simply isn't true. There is no pregnancy complication that could arise in the third trimester that cannot be treated by delivering the baby. Induced abortion aims to end a pregnancy *specifically by ending the fetus's life*. There is no reason to do that—especially well past the point of viability. In fact, given that it takes several days to prep a woman for a third-trimester abortion versus the thirty minutes or some hours it would take to perform a C-section or deliver via induction of labor (respectively), choosing abortion in a true medical emergency is likely extremely risky for the mother as well. In fact, the medical literature is very clear that the further along in pregnancy an abortion is done, the higher the risk for the mother. The risk of dying from an abortion increases by 38 percent for every week beyond eight weeks an abortion is performed. If mom and baby need to be separated, the physician can do that

via delivery and then treat them both separately.

A handful of studies have been conducted to explore the reasons that women choose second- and third-trimester abortions. One 2022 study⁸ found that a California university aborted an average of 10 fetuses per month at 20 or more weeks that had no fetal anomalies. Recently, a Colorado-based late-term abortionist told *The Atlantic* that at least half of his patients have no fetal or maternal health conditions.⁹ Often, women abort in later weeks for the same reasons that they would do so in earlier weeks: poverty, lack of support, not feeling ready to parent. The only difference is, they have reasons to delay accessing their abortions. Some don't know they are pregnant until later. Some take longer to gather the money.

Recently, the pro-abortion activist organization Physicians for Reproductive Health acknowledged that many later abortions are done for purely social (elective) reasons in an Instagram post, stating “. . . this idea that abortion later in pregnancy is rare and only ever happens in emergency medical situations isn't true . . . there are a myriad of reasons people get abortion at any stage of pregnancy, and they all matter.”

HLR: To what degree do you think this pro-abortion pressure transforms medical personnel from a conscience-bearing health care professional to a provider who supplies what the consumer wants? How does that change the ethos of the vocation?

Dr. Francis: This is a huge issue within our profession—we are increasingly being viewed as “providers,” which has a strong implication that our job is to offer patients what they want rather than making expert recommendations in service of maximizing the patient's health, based on our judgment of the patient's clinical scenario, in a way that aligns with medical ethics and our own conscience. This is one of the forces pushing pro-life professionals out of the profession of medicine and eroding the doctor-patient relationship.

HLR: Given the pressures put on pro-life health care personnel, there's clearly a concerted effort to push such people out of the profession. What would you say to a pro-life young person who is considering such a profession?

Dr. Francis: I would absolutely say there is an effort to push pro-life medical professionals out of health care, led by major medical associations. Especially in the past two years, we have seen deliberate efforts to exclude them from the field. Most recently, AAPLOG was barred from exhibiting at one of ACOG's major medical education conferences, a decision which they openly admitted was due to our pro-life views. A few months prior to that, AAPLOG faced a nearly identical situation with the American College of Nurse-Midwives (ACNM).

To pro-life prospective medical professionals, I would say: Be aware of,

but not deterred by, the challenges that you will face. Remain grounded in the truth that human lives at all stages—from fertilization to natural death—are valuable and worth all the sacrifices you will make. Know that you are not alone; the radical agendas of organizations like ACOG do not reflect the views of most medical professionals or even most of these organizations' members. You are in the company of tens of thousands of health care workers who, like you, entered the field to save, not end, lives. They have no interest in their extremist ideology. Last, you would be working alongside pro-life medical professionals like our members at AAPLOG, who can offer you support, fellowship, and mentorship. AAPLOG exists to support your pro-life practice. If you're interested in getting involved, you can visit our website at www.aaplog.org.

HLR: Thank you, Dr. Francis.

NOTES

1. <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2007/11/the-limits-of-conscientious-refusal-in-reproductive-medicine>
2. https://aaplog.org/wp-content/uploads/2019/07/AAPLOG_1-1.pdf
3. Stahl RY, Emanuel EJ. Physicians, Not Conscripts—Conscientious Objection in Health Care. *N Engl J Med*. 2017 Apr 6; 376(14):1380-1385. <https://www.nejm.org/doi/10.1056/NEJMsb1612472>. PMID: 28379789.S
4. National Academies of Science, Engineering and Medicine. The Safety and Quality of Abortion Care in the United States. Washington DC: The National Academies Press. 2018. DOI: 10.17226/24950.
5. “US Dismisses Suit Against Vermont Hospital Over Abortion.” Associated Press, 2 August 2021. Accessible at <https://apnews.com/article/business-religion-vermont-3ba43d690bad76f3f9680df4ad99bcd3>
6. Niinimäki M, Pouta A, Bloigu A, Gissler M, Hemminki E, Suhonen S, Heikinheimo O. Immediate complications after medical compared with surgical termination of pregnancy. *Obstet Gynecol*. 2009 Oct;114(4):795-804. https://journals.lww.com/greenjournal/Abstract/2009/10000/Immediate_Complications_After_Medical_Compared.14.aspx
7. Risk of abortion-related death increases by 38 percent for every additional week of gestation at which it is performed starting at 8 weeks. Chemical abortion has four times the risk of complications that surgical abortion has. Common complications include hemorrhage, sepsis, and uterine perforation. See more at Bartlett L, Berg C, Shulman H. 2004. “Risk factors for legal induced abortion related mortality” in the U.S. *Obstet Gynecol*. 2004 Apr;103(4):729-37. <https://www.ncbi.nlm.nih.gov/pubmed/?term=Obstet+Gynecol+103%3A729-737>; Niinimäki M, Pouta A, Bloigu A, et al. “Immediate complications after medical compared with surgical termination of pregnancy.” *Obstet Gynecol*. 2009;114(4):795-804. For AAPLOG research on the risk issue, see <https://aaplog.org/wp-content/uploads/2022/07/CO-9-Mifepristone-restrictions-update-Jul-22.pdf> and <https://aaplog.org/wp-content/uploads/2020/01/FINAL-CO-6-Induced-Abortion-Increased-Risks-of-Maternal-Mortality.pdf>
8. Lundberg BR, Tabuyo-Martin A, Ponzini MD, Wilson MD, Creinin MD. “Contraceptive plans before preoperative assessment and at procedure in surgical abortion patients.” *Contraception*. 2022 Mar; 107:48-51. doi: 10.1016/j.contraception.2021.10.008. Epub 2021 Nov 5. PMID: 34748751; PMCID: PMC10091507.
9. Godfrey, Elaine. “Warren Hern: The Abortion Absolutist.” *The Atlantic*, 12 May 2023. Accessible at <https://www.theatlantic.com/politics/archive/2023/05/dr-warren-herm-abortion-post-roe/674000/>

The Blessings of Children

Edward Short

“The Lord said to Cain: ‘What have you done? The voice of your brother’s blood is crying to me from the ground’ (Gen 4:10). The voice of the blood shed by men continues to cry out, from generation to generation, in ever new and different ways. The Lord’s question: ‘What have you done?’, which Cain cannot escape, is addressed also to the people of today, to make them realize the extent and gravity of the attacks against life which continue to mark human history; to make them discover what causes these attacks and feeds them; and to make them ponder seriously the consequences which derive from these attacks...”

—St. John Paul the Great, *Evangelium Vitae* (1995)

Before settling on writing this brief essay on the blessings of children, I had been thinking I would write of child sacrifice. Why? Like so many others, I read almost daily of the mutilation of children in the United States as a result of the diabolical exactions of the *soi-disant* “trans” movement and recoil in horror. This is a new turn of the screw for those who hunger for the destruction of children—aborting them in the womb obviously not sufficing to sate that hunger—and I thought it would be salutary to share with my readers how our own sacrifice of children fits into the history of child sacrifice as a whole. I had thought to quote those appalling passages from William H. Prescott (1796-1859) on the Aztec delight in child sacrifice, in which, as the Harvard-educated author of *The History of the Conquest of Mexico* (1843) recounted:

On some occasions, particularly in seasons of drought, at the festival of the insatiable Tlaloc, the god of rain, children, for the most part infants, were offered up. As they were borne along in open litters, dressed in their festal robes, and decked with the fresh blossoms of spring, they moved the hardest heart to pity, though their cries were drowned in the wild chant of the priests, who read in their tears a favorable augury for their petition. These innocent victims were generally bought by the priests of parents who were poor, but who stifled the voice of nature, probably less at the suggestions of poverty than of a wretched superstition.

To hammer home my macabre theme, I also thought I might include this

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additional piece of information, which Prescott's nineteenth-century Bostonians could not have found easy reading.

The most loathsome part of the story—the manner in which the body of the sacrificed captive was disposed of—remains yet to be told. It was delivered to the warrior who had taken him in battle, and by him, after being dressed, was served up in an entertainment to his friends. This was not the coarse repast of famished cannibals, but a banquet teeming with delicious beverages and delicate viands, prepared with art, and attended by both sexes, who, as we shall see hereafter, conducted themselves with all the decorum of civilized life. Surely, never were refinement and the extreme of barbarism brought so closely in contact with each other.

The conclusion to which Prescott came on the peculiar blood lust of his subjects would have provided an additional parallel to our own sacrifice of children, especially the passage where he says:

Human sacrifices have been practised by many nations, not excepting the most polished nations of antiquity; but never by any, on a scale to be compared with those in Anahuac. The amount of victims immolated on its accursed altars would stagger the faith of the least scrupulous believer. Scarcely any author pretends to estimate the yearly sacrifices throughout the empire at less than twenty thousand, and some carry the number as high as fifty thousand!

Of course, these are insignificant numbers compared to our own, but, again, the parallel is fairly damning, though, to be fair to the Aztecs, they sacrificed their victims as a result of a defective understanding of what would be pleasing to the Godhead, whereas our woke brigade sacrifice theirs out of a mania for power.

Finally, since five proliferers were recently indicted and jailed in the nation's capital for attempting to call attention to the rank infanticide taking place in an abortion clinic that disposes of the babies it murders in public trash cans, I even thought to include this last passage from Prescott, in which he describes how the Aztecs disposed of their victims.

It was customary to preserve the skulls of the sacrificed, in buildings appropriated to the purpose. The companions of Cortés counted one hundred and thirty-six thousand in one of these edifices! Without attempting a precise calculation, therefore, it is safe to conclude that thousands were yearly offered up, in the different cities of Anahuac, on the bloody altars of the Mexican divinities.

Yet, as I say, after considering the understandably squeamish sensibilities of my gentle readers when it comes to such gruesome barbarities, I thought I would take a different tack and speak of the blessings of children—blessings we need to recapture and celebrate in an age in which the detestation of innocence has become so ubiquitous an evil.

Consequently, here I will begin with a poem by the Jesuit martyr, St. Robert Southwell (1561-1595), which reaffirms how the Child will always be at the heart of our Christian faith.

A Child of My Choice

*Let folly praise that fancy loves, I praise and love that Child
Whose heart no thought, whose tongue no word, whose hand no deed defiled.*

*I praise Him most, I love Him best, all praise and love is His;
While Him I love, in Him I live, and cannot live amiss.*

*Love's sweetest mark, laud's highest theme, man's most desired light,
To love Him life, to leave Him death, to live in Him delight.*

*He mine by gift, I His by debt, thus each to other due;
First friend He was, best friend He is, all times will try Him true.*

*Though young, yet wise; though small, yet strong; though man, yet God He is:
As wise, He knows; as strong, He can; as God, He loves to bless.*

*His knowledge rules, His strength defends, His love doth cherish all;
His birth our joy, His life our light, His death our end of thrall.*

*Alas! He weeps, He sighs, He pants, yet do His angels sing;
Out of His tears, His sighs and throbs, doth bud a joyful spring.*

*Almighty Babe, whose tender arms can force all foes to fly,
Correct my faults, protect my life, direct me when I die!*

This is but one of hundreds of poems that one could cite to show how the Christ Child animates what is most noble and beautiful in our beleaguered but still irreplaceable Christian culture. If we leave poetry and look at the history of painting in both the East and the West, we encounter a like paramountcy in the homage paid to the “Almighty Babe.” What, after all, would the history of art be if we did not have the Christ Child celebrated by Byzantium in its icons or by Cimabue, Duccio, Raphael, and Bellini in their masterly paintings?

Then, again, we see the blessings of children praised by our saints. St. John Henry Newman is as eloquent on these blessings as he is on so many other matters. “This we know full well,” he says in his sermon “The Mind of Little Children” (1833), “—we know it from our own recollections of ourselves and our experience of children—that there is in the infant soul, in the fresh

years of its regenerate state, a discernment of the unseen world in the things that are seen, a realization of what is sovereign and adorable, and an incredulity and ignorance about what is transient and changeable, which mark it as the first outline of the matured Christian, when weaned from things temporal, and living in the intimate conviction of the Divine presence.”

Lest anyone read this and imagine that Newman, in his good-heartedness, had somehow an unduly indulgent view of children and their blessings, I should quote more fully from the sermon, especially the qualification he adds to his paean above, where he writes:

I do not mean of course that a child has any formed principle in his heart, any habits of obedience, any true discrimination between the visible and the unseen, such as God promises to reward for Christ's sake, in those who come to years of discretion. Never must we forget that, in spite of his new birth, evil is within him, though in its seed only; but he has this one great gift, that he seems to have lately come from God's presence, and not to understand the language of this visible scene, or how it is a temptation, how it is a veil interposing itself between the soul and God. The simplicity of a child's ways and notions, his ready belief of everything he is told, his artless love, his frank confidence, his confession of helplessness, his ignorance of evil, his inability to conceal his thoughts, his contentment, his prompt forgetfulness of trouble, his admiring without coveting; and, above all, his reverential spirit, looking at all things about him as wonderful, as tokens and types of the One Invisible, are all evidence of his being lately (as it were) a visitant in a higher state of things. I would only have a person reflect on the earnestness and awe with which a child listens to any description or tale; or again, his freedom from that spirit of proud independence, which discovers itself in the soul as time goes on. And though, doubtless, children are generally of a weak and irritable nature, and all are not equally amiable, yet their passions go and are over like a shower; not interfering with the lesson we may gain to our own profit from their ready faith and guilelessness.

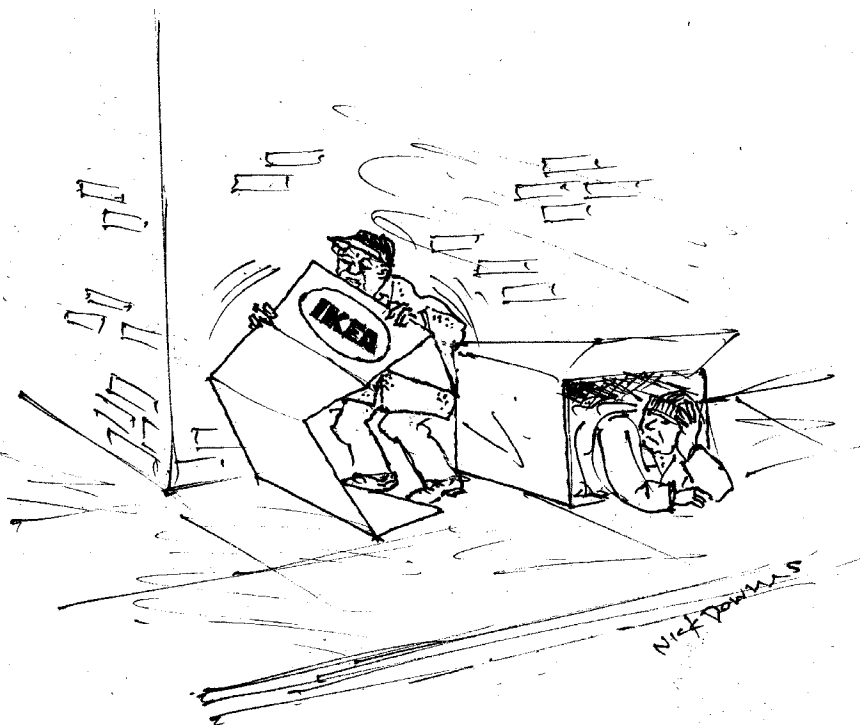
These are some of the great blessings of children; and while we continue to wage the good fight for life in what Saint Mother Teresa rightly called “the war against the child”—the good fight that has been so staunchly advanced over the years by the editors, writers, and donors of the *Human Life Review* and so many others—we should always stop and be thankful for these inestimable blessings.

To conclude, I shall relate something Prescott's private secretary Robert Carter (1819-79) once wrote of the historian, who had lost his beloved daughter Catherine, his firstborn, at the age of four to a childhood illness. Carter, who would go on to become Washington correspondent for Horace Greeley's *New York Tribune*, was walking about Boston at lunchtime before returning to Prescott's house to help him with his work and encountered a poor fellow Irishman, Michael Sullivan, who was in bad straits.

I inquired what ailed him [Carter recalled]. He said he had been sick and out of work, and had no money, and his family was starving with cold. I went with him to the den where he lived, and found his wife and three or four small children in a wretched loft over a warehouse, where they were lying on the floor, huddled in a pile of straw and shavings, with some rags and pieces of old carpet over them. The only furniture in the room was a chair, a broken table, and a small stove in which were the expiring embers of a scanty handful of coal, which they had begged from neighbors equally poor. The mercury was below zero out of doors, and the dilapidated apartment was not much warmer than the street. I had no time to spare, and the detention, slight as it was, prevented me from getting back to Mr. Prescott's till a quarter-past one. His MSS lay on my desk, and he was walking about the room in a state of impatience, I knew, though he showed none, except by looking at his watch. As I warmed my chilled hands over the fire, I told him, by way of apology, what had detained me. Without speaking, he stepped to a drawer where scraps of writing paper were kept, took out a piece, and laying it on my desk, told me to write an order on Mr. (a coal dealer with whom he kept an account always open for such purposes) for a ton of coal, to be delivered without delay to Michael Sullivan, Broad Street. He then went to his bell-rope and gave it a vehement pull. A servant entered as I finished the order. "Take this," he said, "as quick as you can, to Mr., and see that the coal is delivered at once. What is the number of the house in Broad street?" I had neglected to notice the number, though I could find the place readily myself. I therefore suggested to Mr. Prescott, that as there were probably twenty Michael Sullivans in Broad Street, the coal might not reach the right man unless I saw to it in person, which I would do when I went to dinner. . . "Thank you, thank you," he said, "but go at once, there will be time enough lost in getting the coal." I reminded him of the letters. "Go, go! never mind the letters. Gay-angos and Circourt will not freeze if they never get them, and Mrs. O'Sullivan may, if you don't hurry. Stay—can the man be trusted with money? or will he spend it all in drink?" He pulled out his pocketbook. I told him he could be trusted. He handed me five dollars. "See that they are made comfortable, at least while this cold spell lasts. Take time enough to see to them, I shall not want you till six. Don't let them know I sent the money, or all Broad street will be here begging within twenty-four hours." I relieved Mr. O'Sullivan, as Mr. Prescott persisted in calling him, and when I returned at six, I entered in the account-book, *charity*, \$5. [Five dollars in 1848 would have been the equivalent of about \$195 today.] "Always tell me, when you know of such cases," he said, "and I shall be only too happy to do something for them. I cannot go about myself to find them out, but I shall be always ready to contribute." He did not let the matter rest there, but kept playfully inquiring after my friends, Mr. and Mrs. O'Sullivan, until I satisfied him that he had found employment, and could provide for his family.

The need to protect the blessings of children was not lost on the historian of the conquest of Mexico, though it may be worth pointing out that the death of his firstborn did inspire him to question his agnosticism. "The death of my dearest daughter on the first day of this month having made it impossible for me at present to resume the task of composition," he wrote in his diary, "I have been naturally led to more serious reflection than usual, and have occupied myself with reviewing the grounds . . . of the evidences of the

Christian revelation. I have endeavored and shall endeavor to prosecute this examination with perfect impartiality, and to guard against the present state of my feelings influencing my mind any further than by leading it to give to the subject a more serious attention.” The upshot of his “examination,” however, was not what it might have been. According to his biographer, George Ticknor, while Prescott gave his assent to what he regarded as the “moral truths” of Christianity, “he did not find in the Gospels, or in any part of the New Testament, the doctrines commonly accounted orthodox, and he deliberately recorded his rejection of them.” Nevertheless, the loss of his beloved firstborn did induce one striking change in the Bostonian agnostic. “He declared his purpose to avoid all habits of levity on religious topics. And to this purpose, I believe, he adhered rigorously through life. At least, I am satisfied that I never heard him use light expressions or allusions of any kind when speaking of Christianity, or when referring to the Scriptures.” Since Prescott was a great admirer of the sardonic Hume, this was no trifling resolution, even if he was never prepared to accept the lesson of “ready faith” that children so enviably impart.



Listening to Hadley Arkes

William Murchison

Ah! We're having it, we're having it at last—the jabbing, jouncing jugularity of a good old (maybe not actually *good*, but you have to start somewhere) national scrum over what it means to destroy life in the womb. If it means anything at all. To various participants in the scrum, it means at most an irritating interruption in daily affairs.

The proximate cause of it all: that U.S. Supreme Court decision last year (*Dobbs v. Jackson Women's Health Organization*) extinguishing *Roe v. Wade* as a burden on our moral reckonings as to unborn human life. We're jumping up and down, glaring, taunting. We're on the verge of settling absolutely nothing, but the adrenalin has kicked in, and Americans are finding things to say that in a free society need saying. It is how still-free societies function, whether the societies in question like it or not.

The necessity, under these circumstances, of listening intently to Hadley Arkes (professor emeritus at Amherst College) seems to me indisputable. He squeezes the pseudo-jurisprudence out of a matter we had almost convinced ourselves was the sole domain of the lawyers and judges—the *nolens volens, nolle prosequi* set, with their long grave looks and thumbs worn smooth from caressing sheaves of paper. What we have got here is a moral issue.

That's "Moral": capital "M." Heard of it lately? "Right," "wrong," "good," "bad"—that sort of stuff, badly off-key in a society insistent on deciding most matters on a personal-preference basis. It is no wonder we brawl at the funeral rites for *Roe v. Wade* and its successor judicial pronouncements, on whose thousands of pages of ponderosity the concept of morality never appeared; never having been put there in the first place; never having been acknowledged as relevant to the question of whether a pregnant woman bears life in her womb, thus whether that life enjoys constitutional protection.

Abortion is supremely a moral issue—to put it another way, a moral issue disclosed to us by what the incisive Prof. Arkes, presently head of the James Wilson Institute on Natural Rights and the American Founding, refers to as "that commonsense understanding of ordinary people, in which the Natural Law finds its ground." It's, you might say, a people thing, requiring particular kinds of behavior.

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The Natural Law. Hmm. There is a vaguely ecological odor to the enterprise: black elderberry gummies? Faded pages of Thoreau? Yet the Natural Law is the cosmic order itself, formed from time out of mind. Its moral component is unalterable. That which is just and right and truthful never changes; nor that which reeks of cruelty and unfairness. So, anyway, we used to own prior to the slow but insistent embrace, beginning in the 17th century, of the notion that man, as distinguished from God, is the measure of all things—“all” taking on wider and wider and wider implications as the joys of liberation took hold of many minds.

This takes some explaining, which makes Hadley Arkes’s deep dives into the topic over many years so fruitful. His first book in eight years is *Mere Natural Law: Originalism and the Anchoring Truths of the Constitution* (Regnery, 307 pp., \$32.99).

“Mere” tips the hat to the great C. S. Lewis, whose World War II broadcast talks, titled *Mere* [i.e., basic, down-to-the-studs] *Christianity*, won for him his initial celebrity. For my part, I wish Prof. Arkes—than whom there is no more acute proponent of the Natural Law—had sidled up closer, or more explicitly so, to Lewis and his fellow keepers of the Natural Law in its immense, overwhelming religious form. I will have more to say on this point as we move forward.

I want first to suggest that readers of this review—assuming no pre-existing disagreements with my credibility—procure a copy of *Mere Natural Law* and, as the Anglican prayer book Collect would have it, “read, mark, learn, and inwardly digest.” Set aside some time. This isn’t Aquinas re-fashioned for James Patterson readers. A certain amount of re-reading is in prospect. Nor is the book as compact as it might have been. Which of course means it’s thorough. You don’t stop Hadley Arkes when he’s 1) on a roll, 2) expounding on his favorite subject in the world. A book, nevertheless, showing at the end the inadequacy of expectations that we’ll all work this abortion thing out at the state capital or the governor’s office seems to me to be in want of some compression.

The crucial chapter of *Mere Natural Law* is the very last one—“After the Overruling of *Roe*: The Natural Law Moment.” Arkes shows where he has brought us. It is a daunting location: from which a realization breaks over us. To wit, the moral grounds for allowing abortion under any circumstances, or just some—given that the unborn child is human from the start, according to the unrefuted biology and so forth—do not admit of judicial or political compromise. The child is a child is a child. A person. And a person, under the Fourteenth Amendment to the Constitution, deserves governmental protection.

We are not as a society going to get this thing right, right away. Witness the voters of Ohio, who, as I am writing, have turned down by 14 points a constitutional proposal that would have toughened requirements for amending the state constitution—and thus possibly inserting into that charter document this fall the guaranteed right to an abortion. This was post-*Roe* democracy in action. Except that, as Arkes labors to explain in *Mere Natural Law*, the Natural Law doesn't grant this kind of latitude.

Yeah, sure, the overthrow of *Roe* and the commencement of the intellectual joustings we see all around us look—theoretically; very, very theoretically—toward just such circumstances. You win some along the way; you stand to lose just as many, if not more. The *Wall Street Journal*, friendly as a rule to the pro-life cause, advised the GOP—which lost big in Ohio—to find “an abortion message that most voters can accept.” Arkes has no traffic with such a suggestion.

Nevertheless, from a Natural Law standpoint, he can't be astounded at such developments. Arkes rightly considers the jurisprudence of *Roe v. Wade* to have been corrupt all along—a mélange of made-up notions permitting court majorities to say something, anything, in line with the pro-choice trends of the day. From which the matter could be lateraled to Congress, the executive branch, the purely political branches of government, bound far more by polls and fund-raising duties than by the abstraction called “Natural Law.”

Arkes wishes strongly that the court majority in *Dobbs* (led by Justice Sam Alito) had relied on Natural Law principles, eschewing “the insistent theme of conservative jurisprudence” (influenced by the political view of the thing, e.g., “the matter of abortion belongs entirely in the states”—e.g., Ohio!) “because there is no consensus and no clear truths that bear on the question of fetal life.” What about the protection of human life? Wouldn't, shouldn't that have made for an open-and-shut case? A ringing rejection of the anti-human-life *Roe* regime? *Dobbs*, to be sure, was about the best the politics of the matter would have allowed. Try to imagine, under present circumstances, a total judicial overthrow of “rights” regarded by many as more central to life than free speech.

Politics, politics: Are we not loving it in the year of grace 2023? “The indelicate truth that could not speak its name,” writes Arkes, “was that in the conservative jurisprudence at work in [*Dobbs*], the child in the womb did not supply the ground of the constitutional argument or the object of official concern.”

Oh, what a fall there was—a moral tumble requiring centuries to execute, filled with human speculations and assertions as to new, supposedly refreshing

ways of living and looking at life. Whatever you mean by “life.” Can the old ways be put back in place to any meaningful extent, so that the unborn may again receive official protection (irregular as that benefit may have proved over long centuries prior to our own time)?

Arkes shows himself capable of smiles as well as the grimaces that come naturally to wrestlers with the culture’s moral infractions. *Dobbs*, he writes—despite its omission of Natural Law understandings from the final result—“may produce results wondrous beyond anything that any of us has expected.” No lover of Stephen A. Douglas and his non-Natural Law-inspired grapplings with political solutions to the slavery problem, Arkes holds up, hopefully, the Emancipation Proclamation as a reminder of how the human capacity for change can advance the cause of the good and the right and the true. I think it should be taken into account that Mr. Lincoln’s Natural Law war, in which the Emancipation Proclamation figured so heavily, cost the lives of 750,000 Americans and produced the economic ruin, for nearly a century, of an entire American region and its inhabitants, Black as well as White. Will *Dobbs*, in the same way, “as excruciatingly circumscribed as it is . . . be animated by an affirmation of the sacred value of life”? Arkes observes that Mr. Justice Alito, the author of the majority opinion in *Dobbs*, “supplied . . . the rudiments of a principled argument on abortion, and sending them aloft in the world, they may awaken again the powers to think anew, even in the blue states.”

May it prove so. My own hope would be of a complementary sort: to wit, that the fundamental basis of the Natural Law—the Law of God—might regain a measure, at the very least, of its one-time centrality in human affairs. Talk about what’s supposed to be inarguable! Who put the world together in the first place? Chronologically, the tablets that God put into Moses’ hands—beginning, “I am the Lord thy God . . . Thou shalt have no other gods before me”—easily predate the *Republic* of Plato and the *Ethics* of Aristotle and trump the ideas of Rousseau and Hobbes.

The Natural Law and the Law of God—lay aside the ceremonial and doctrinal aspects of the latter—can be called identical: the same claims on the individual; the same calls to virtue and dignity and honor; the calls to respect life, to respect the human creations of the Lord in all their dignity and wonder. The Christian church—long instrumental in the affairs of the American people—took up Natural Law in its own fashion, affirming its understanding of right and, equally, of wrong. Paul, one of history’s greatest figures as viewed from any perspective, spoke simply to the Christians of Rome concerning the work of the law written in the Gentiles’ hearts. St. Augustine saw oughtness as the norm of free moral activity, inscribed in the heart of man so

far as the latter participated in the divine law.

So where's this going? Where are the guys in black robes, with their gavels? I am not sure of their utter centrality to the problem at hand. That's where this is going. Here Prof. Arkes lets me down just a little. Let me explain.

Arkes, who joined the Roman Catholic Church professing admiration for its truth-telling capacity (and who is ten times my intellectual superior; maybe eleven or twelve), might have given a little more space to what I see as the central problem of our times: the beggarly nature of our moral understanding. May I add, the very insufficiency that gives pro-choicers, on the bench and off it, the go-ahead. Aw, what's the big deal about unborn life?, so very many ask. They get away with asking it because the common sense that informs Natural Law understanding operates best when the Law of God looms as a dazzling light on their pathway. It's not just, "Oh, I believe good things"; it's, "Yea, Lord, give us this day our daily bread." That's what's powerful, that's what's dispositive—little as contemporary theologians and way, way too many members of the laity relish the idea of abandoning social justice causes in order to put God metaphorically back on His throne. Which if they'd do, we'd get somewhere with the life-saving business. We may yet. I have hopes.

What we really need is a moral and spiritual overhaul—a point on which Hadley Arkes, I can confidently say without consulting him personally, is in ripe agreement with me: How might we undertake a reshuffle of these worn-out arrangements?

I think we work from within and without the churches: Not all of whom, by any means, have followed the Bad Shepherd into irrelevance. I think we work for spiritual overhaul—rehabilitation of spirits gone weary, empty from contemplation of the present age's sorrows. "[W]e are losing our soul, our sense of purpose as a society, our identity as a civilization," writes the *Wall Street Journal's* Gerard Baker. That sort of thing can sure enough take it out of you. Hadley Arkes brilliantly puts his finger and thumb on this point. Believe the wrong things, do the wrong things—that's how it works out even in the context of all the black-robed gravity on display when powerful jurists gather.

The citizens of Surry County, Virginia, in 1785, declared that "True religion is most friendly to social and political Happiness—That a conscientious regard to the approbation of Almighty God lays the most effective restraint on the vicious passions of Mankind, affords the most powerful incentive to the faithful Discharge of every sacred Duty and is consequently the most solid Basis of private and public Virtue is . . . a Truth sanctioned by the reason and experiences of ages."

Back to *Roe*. Back to *Dobbs*. The Natural Law surely is guide to the complexities of human life in all ages, all places. But if the soul of the Natural Law is belief in the God who “formed man of the dust of the ground, and breathed into his nostrils the breath of life,” I should think that makes the matter utterly decisive.

That way—the way of reanimated faith in the God whom Americans formerly, as a people, worshiped as holy—would seem to me the way of ending all quibbles and quarrels about the rights of unborn life—indeed, life of any kind—whatever jurists and state chairmen venture on one side of the case or the other. I have just the intimation that the time of turnaround could lie not far down the road, inasmuch as on all other supposed routes to virtue and truth and justice no comparable light shines, and darkness engorges.



“Yes, I’m sitting down—what’s the problem?”

BOOKNOTES

ETHICS IN THE REAL WORLD: 90 ESSAYS ON THINGS THAT MATTER

Peter Singer (with some essays co-authored)
(Princeton University Press, 2023, 488 pp., \$18.95)

Reviewed by Wesley Smith

The Princeton bioethicist Peter Singer is one of the most villainous thinkers of our age. Alas, he is also one of the most influential. Singer has been particularly successful at smashing the sanctity of life ethic and replacing it with a faux compassion that bases judgments of “right” or “wrong” on increasing happiness or reducing suffering. Toward that end, Singer grounds what he considers moral judgments on valuing “personhood”—a subjective category he applies to some animals but not to all humans.

I have closely observed Singer’s career and sharply criticized his advocacy for nearly three decades. To little effect, I am afraid: His cultural influence is undeniable, and, if anything, it has grown as time goes on. This unfortunate circumstance derives from a combination of factors that effectively masks the danger of his thinking. Perhaps most important, he does not appear threatening. He is soft-spoken with a charming Australian accent that makes even his most shocking lecture or interview assertions seem amiable. He is also a brilliant writer of passive prose that effectively obscures the crass cruelty of his utilitarian views. There is no question that he is highly intelligent. But perhaps the ultimate reason Singer has been so successful is that his thinking has reflected the zeitgeist of Western civilization as it has slouched into decadence and decline.

Singer is, if nothing else, prolific. Consider his current offering: a book collection of 90 essays (some of which were co-authored) encompassing more than 400 pages in which he opines in bite-size chunks on the “ethics” of “things that matter.” (The book is a revised and updated edition of a previous book consisting of 87 essays, with 37 not in the original version and with all essays updated.) This much I will give Singer. Many of the topics he opines about *do* “matter.” But the essays he has included in this collection are remarkably banal for a person of his international stature; this edition even downplays by omission some of his most controversial views.

Singer broke into the public’s awareness by promoting “animal liberation,” and he devotes ten of his included essays to animal issues. Please note that Singer is not an animal rights advocate. Animal liberation is not synonymous

with animal rights, as Singer does not promote “rights” for people or animals. Rather, he focuses closely on suffering caused to animals, particularly those that we eat. Thus, in “The Case for Going Vegan,” he writes, “Many studies show we can live as healthily or more healthily without it,” meaning meat. “We can also live well on a vegan diet, meaning no meat products at all,” which would require us to eschew nutritious foods such as milk, cheese, and eggs. He also blames meat eating for the Covid pandemic, neglecting to mention it may well have been caused by the virus escaping from the Wuhan Institute of Virology. And, completing his anti-carnivorous jeremiad, one of his essays argues that we should cease eating meat as a means to stop global warming.

Animal welfare is an important ethical issue—particularly the issue of factory farming—but any such discussion should also include the tremendous benefit we receive from food animals. Given that Singer is a strict utilitarian who believes in promoting happiness as well as reducing suffering, it is odd that he does not explore the inexpensive nutrition meat provides, which is unquestionably a significant human good. And, while he argues that foods such as eggs could conceivably be obtained by what he considers ethical means—in other words, using only free-range laying hens—he fails to mention that the difference *in price* between a dozen eggs obtained via industrial methods and those that he would consider ethically produced is substantial. That may not matter much to someone of his (or my) financial means, but it makes a huge difference to the health and nutrition of poor families.

Animal welfare also comes up in “Who Is a Person,” where Singer supports lawsuits filed by the NonHuman Rights Project seeking writs of habeas corpus for chimpanzees and an elephant. These (failed) lawsuits were pursued to further an animal rights/animal liberation policy goal known as “animal standing.” This would open our courtrooms to animals bringing court cases to be freed from being owned (which would really entail opening the courts to animal ideologues pursuing their own obsessions).

Singer premises his support for animal standing by claiming that many animals are “persons,” a concept that he denies is limited to humans and our associations. After all, he writes, Christians believe that God is “three persons in one” and that “only one of those ‘persons’ was ever a human being.” Singer—who it is worth noting is a proud atheist—has never claimed to be a theologian. If he were, he would know that the Christian philosophical concept of “hypostasis” in the Trinity is not synonymous with the concept of human beings as persons. But then, one of Singer’s great strengths as a polemicist is his mastery of sophistry as a technique of argumentation, making false comparisons seem logical.

Singer also uses personhood theory (my term) to defend an unlimited license for abortion, based on his conclusion that the unborn do not qualify as “persons” and therefore matter less than those who do—in this case meaning their mothers. However, in “The Real Abortion Tragedy,” he admits that human fetuses are indeed human beings, but that this fact is irrelevant morally. “Membership in the species *Homo sapiens* is not enough to confer a right to life on a being,” he asserts. “Nor can something like self-awareness or rationality warrant greater protection for the fetus than for, say, a cow, because mental capacities of the fetus are inferior to those of cows. Yet, ‘pro-life’ groups that picket abortion clinics are rarely seen picketing slaughterhouses.” Hence, in a Peter Singer world, so-called human non-persons like fetuses *can be killed*, whereas animal “persons” cannot.

Of course, proliferers reject that thinking out of hand, because the concept of universal human rights as a principle *requires* that each of us be considered of equal moral worth *as an objective concept* simply and merely because we are human. Indeed, without that core understanding, the weak and vulnerable would be left defenseless; after all, if our worth is *subjective* and must be *earned* by possessing relevant capacities, no one is ultimately safe. Though we may qualify as “persons” today, we could lose those capabilities tomorrow, in which case our lives could be forfeit.

Most of Singer’s essays express unremarkable leftist opinions on other topics for which he is less well known than animal issues and abortion. He believes that any sex acts in which consenting adults engage are perfectly fine. This includes adult incest that does not produce children and legalizing prostitution (which he calls “sex work”). As he rhetorically asks (one of his favorite advocacy strategies), “If a form of sexual activity brings satisfaction to those who take part in it, and harms no one, what can be immoral about it?” Apparently the tremendous harm caused to individuals, families, and society by rampant promiscuity (to take one example)—such as sexually transmitted diseases, unwanted pregnancies, depression, abortion, and suicide—are beneath his notice.

Reading the whole collection of essays made me think Singer’s purpose in compiling the collection was to hide his more radical ideas. He’s for altruism and charitable giving, but then, who isn’t? He’s against racism (although his idea of personhood instead of humanhood as the predicate for equality is just as bigoted as was Jim Crow, just with different victims). He opposes Putin’s invasion of Ukraine (but again, who doesn’t?).

More ominously, he applauds the Black Lives Matter riots with faint damnation, writing, “The way to reduce the damage caused by further riots is to

show that we have heard.” He favors civil disobedience—such as “Extinction Rebellion’s” tactics of shutting down roads and impeding public transportation in the cause of fighting climate change. He favors limits on free speech during elections, rejecting the famous principle enunciated by Judge Louis Brandeis that the “remedy to be applied” to published “falsehoods and fallacies” is “more speech, not enforced silence.” Still, that’s pretty much standard leftist fare.

What I find most interesting about this generally uninteresting book are the previous essays that Singer *omits*, transgressive ideas that *made* his career as a writer, professor, and international public speaker. For example, he does not include his many defenses of infanticide, which he based on personhood theory that (along with his book *Animal Liberation*) led to his rising from relative obscurity in Australia to a high-visibility professorship at Princeton University. He also does not include the influential essays in which he equates “speciesism,” i.e., discrimination against animals, with racism. Nor does he mention a notorious book review that he penned some years ago in which he supported the moral propriety of *bestiality*, essentially arguing that proscribing such sex is merely a “taboo” of something that is not “an offence to our status and dignity as human beings.” And he makes no mention of his support for using cognitively disabled human beings in place of chimpanzees or other primates in medical experiments. Those are abhorrent concepts all, but at least they are not boring.

Peter Singer’s influence is undeniable, and proliferators are well advised to be familiar with his work, if only to enable them to rebut it. But *Ethics in the Real World* is not the source for obtaining such knowledge. Better to read Singer’s book-length treatises such as *Practical Ethics* and *Rethinking Life and Death* to get a true understanding of why Peter Singer’s world view is so subversive to the sanctity of life and how implementing his ideas would victimize the weak and corrode the true meaning of human freedom.

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FROM THE WEBSITE

CALLIGRAPHER OF LIFE

Jason Morgan

Recently I attended the world premier of “Tomo ni Ikiru: Shoka Kanazawa Shoko,” a documentary about the life and work of Kanazawa Shoko, the world’s greatest living calligrapher. The title means “Living Side by Side.” During opening remarks, the film’s director Miyazawa Masaaki, who was there along with Kanazawa Shoko and her mother Yasuko, told the audience that originally “Tomo ni Ikiru” was the subtitle, but as filming and editing went on, he decided that “Living Side by Side” should come first. For Kanazawa Shoko is not only an artist, she is also an extraordinarily generous soul.

As an artist, Shoko is highly regarded. The documentary is filled with accolades from the most discerning artists and critics in Japan. Yanagida Taizan, for example, is a fourth-generation member of the famed Yanagida family of calligraphic masters, which stretches back to the Edo Period. People are moved to tears when they see Shoko’s work, he says. Then Taizan’s face bends up ever so slightly into a wry smile as he confesses with remarkable frankness, “Nobody cries when they look at my calligraphy.”

This is where generosity of soul kicks in. Because, boy, do people cry when they see the works of Kanazawa Shoko. I am not ashamed to admit that I do, too. I defy anyone not to. Shoko’s calligraphy is, in a word, extraordinary. I have never seen its like or its equal, not in any of the museums I have visited in East Asia or elsewhere, or in any of the books I have looked through in any library.

To watch Shoko work is to see the art of calligraphy being transformed before one’s eyes. She can use the biggest brushes and fill vast expanses of white with characters that are almost sentient. They dance as they convey the meaning of what they represent in a stylized way. Shoko’s *uma*, “horse,” gallops. Her *yama*, “mountains,” undulates like a moonlit range. Her *raku*, “joy,” does a funny boogie-woogie out of glee. Her *kami*, “divine,” quivers with a power that is alien to this world. Her *hikari*, “light,” bursts forth with luminescence rendered in the midnight-black of *sumi* ink.

Senju Hiroshi, a famous artist in his own right, acknowledges Shoko’s prodigious talent. Former president of Tokyo University of the Arts Miyata Ryohei adds his critical acclaim. A Zen monk lets perhaps a sliver of envy peek through his detachment to exclaim, “Now, that is no-mind—that is

Zen!” Those who see Kanazawa Shoko in action or view her pieces are often awe-struck. Even the coolest critics are won over.

In one scene in the film, Yanagida Taizan, the calligraphic master, standing beside Shoko in front of a piece that features a particularly complex character, asks her whether she had found it hard to draw.

“It was easy!” she replies.

“Are there any hard characters?” Yanagida continues.

“Nope,” Shoko answers, as gamely as you please.

And it’s true. Kanazawa Shoko does calligraphy with an effortlessness that comes as naturally as her breathing. Watch for yourself and see. She has complete freedom as she works. Intense concentration, yes. Hard work, absolutely. She is light years ahead of the rest of the field.

And yet there are some who might be tempted to say that Kanazawa Shoko lags far behind the world. At one point in the documentary, a man named Tamai Hiroshi notes that people have long tended to consider people like Kanazawa Shoko “slow.” Mr. Tamai is the head of the Japan Down Syndrome Society. He wishes to emphasize that there is much, much more to people with Down syndrome than many at first assume. Kanazawa Shoko, he argues, is a splendid case in point.

That’s right. Kanazawa Shoko, the greatest living calligrapher, was born with Down syndrome. And that’s not the only curveball life threw at the Kanazawa family. Shoko’s mother, Yasuko, raised Shoko alone after her husband died suddenly at age fifty-two. Shoko was just fourteen years old. Her father had adored Shoko, calling her a “miracle.” Yasuko was not so sure. I interviewed Yasuko and Shoko a few years ago for JAPAN Forward. Yasuko told me that she had thought, often, of committing suicide and taking Shoko with her.

She also prayed that Shoko would be cured of Down syndrome. “I saw her only in a negative way,” Yasuko says in the documentary. But the more Shoko interacted with people, the more Yasuko began to realize what a gift she had been given. Shoko is infectiously happy. When I went to the Kanazawa home for our interview, Shoko showed me her Michael Jackson dance moves. She loves to ham it up for the camera. She loves to make people smile.

During the premiere of the documentary in Shinjuku, the director, Miyazawa, looked a bit nervous. It was the first time the public would see his work, after all. Shoko, perhaps sensing this, reached out and gave him a fist bump. Twice. The director smiled sheepishly each time and the audience laughed with the warmth of the moment.

The ability to make the world a better place right where she is standing—I have come to call this the “Shoko Effect.” She has brightened, no, revitalized

her neighborhood in suburban Tokyo. She visits nearby cafes and shops. She says hello to people—to everyone, really. She gives spontaneous hugs. She has her own gallery in that neighborhood, a world-famous artist whose pieces have been collected by the Vatican and the former Emperor and Empress of Japan. Unlike many famous artists, however, Shoko doesn't have a pretentious bone in her body. Everything is about other people. Nothing is about her. In the documentary, she welcomes visitors to her gallery—that place of pure aesthetics—by squeezing them and saying how happy she is that they—total strangers—have stopped by.

“What is your dream, Shoko?” an off-camera voice asks as Shoko stands in her gallery among her many creations.

“To live. My dream is to be alive,” she replies.

Indeed. One of her most renowned calligraphic works is *Inochi*, “life-force.” The character itself seems to be struggling to be born and move around in three-dimensional space. It is positively crowded, super-charged, with life.

Life. For Shoko, life is “*tomo ni ikiru*,” living side by side with others. That is what Kanazawa Shoko teaches us. She and her mother Yasuko are inseparable. And before beginning a work, Shoko says a silent prayer asking her father to help her do well. Yasuko, who once thought of ending her own and Shoko's life, is now a supporter of a pro-life group in Japan called Seimei Soncho Center, the Respect Life Center. Every life has value, she stresses. Every life is worth living.

Mothers and fathers with babies who have Down syndrome go to Kanazawa Shoko exhibitions at temples and civic centers across Japan. Shoko and Yasuko have given them hope, they say. It is hard to raise special-needs children, they confess, but seeing Shoko and Yasuko helps them to remember that there is joy in what can often be so hard.

In what was, for me, an unforgettable scene in the documentary, Shoko sits on the tatami mat floor of a Buddhist temple where some of her artworks are on display. She caresses a baby with Down syndrome, the child of someone who has come to admire her calligraphy. A few other small children with Down syndrome crawl nearby. Shoko's face radiates love for these children. I think to myself as I watch this scene that we have been given so many blessings in people, like Shoko, who have Down syndrome. And most of us would just throw these children away. In Japan and the United States, and in so many other countries, the vast majority of children with Down syndrome are aborted. They are treated like burdens before they have even had the chance to draw breath.

Noda Seiko, a high-powered politician in the Diet, stops by the premier in

Shinjuku to take the stage. “I came to say thank you to Yasuko,” Noda says. Noda also has a special-needs child and says that she learned from Yasuko how to live each day to the fullest. How much better the world would be if everyone knew a Kanazawa Shoko. How much happier we all would be if we could learn from people who have Down syndrome how to give love first instead of waiting to receive it.

Ever since the premier of “Tomo ni Ikiru,” I have been thinking about that word, “slow.” It and other unkind words meaning the same thing have often been used to talk about people with Down syndrome. But how completely wrong this now seems to me. How utterly backwards. The conclusion I now find inescapable is that I am the slow one. If I work my fingers to the bone for the rest of my days I will never, ever achieve what Kanazawa Shoko has achieved. Her artistic genius is beyond me, beyond everyone. It is something between her and God. But if I try, and try again, and run as fast as I can to catch up, then, maybe, someday, I might be able to love as the great artist—and even greater human being—Kanazawa Shoko does.

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“What are you waiting for, Harry?”

APPENDIX A

[The following essay, by our founding editor James P. McFadden (1930-1998), was first published in the Fall 1983 issue of the Human Life Review.]

Toward the New Future

J.P. McFadden

“This is not the first time our country has been divided by a Supreme Court decision that denied the value of certain human lives.” That sentence appeared in the article by President Ronald Reagan in the Spring [1983] issue of this review. Mr. Reagan was of course linking the *Roe v. Wade* decision of 1973 to the *Dred Scott* decision of 1857, which held in effect that blacks could have no rights as citizens under the Constitution. The President is by no means the first to draw the obvious parallel between abortion and slavery: in both cases, a discrete class of human beings were denied not only the rights of citizens, but also the fundamental right to life itself. Just as, now, a woman holds life-and-death power over her unborn child, so, then, a Master held the same power over his human “property.”

As Mr. Reagan also noted, his predecessor (in the presidency, as well as in the championing of human rights) Abraham Lincoln struggled long and hard to find a peaceful solution to the slavery dilemma. Admitting that *Dred Scott* had affirmed it as “the law of the land,” Lincoln triumphed, but not peacefully. Yet long before he was president, he had argued that the solution lay not in the Constitution—subject then, and infinitely more so now, to meaning what the Supreme Court says it means—but rather in the Declaration of Independence, the document that truly founded the American nation, and which holds unambiguously, indeed as a “self-evident” truth, that all men are *created* equal.

“Let us re-adopt the Declaration of Independence,” Lincoln said once in Illinois, and with it “the practices and policy which harmonize with it.” Do that, he said, and “we shall not only have saved the Union, but have so saved it, as to keep it forever worthy of saving.”

Certainly the slavery-abortion parallel is strongest at this point: that human beings possess “Unalienable rights” that cannot be rightfully denied; that it is the fundamental duty of government to secure these rights. Thus the purpose of all the serious anti-abortion efforts of the past decade has been to achieve what would amount to citizenship for the unborn (indeed, in certain cases—inheritance, injuries and the like—the courts have long treated the unborn as citizens), because human rights begin at the beginning of life. This, Lincoln said, was the “majestic interpretation” the Founding Fathers wrote in to the Declaration, because “In their enlightened belief, nothing stamped with the divine image and likeness was sent into the world to be trodden on . . .”

Yet these same noble fathers did not eliminate slavery. In fact, they actually wrote it into the original Constitution, albeit not by name, and only to prohibit its prohibition for several decades—their successors were left to deal as they might with this glaring violation of the Declaration’s principles. The final solution was, of course, the bloodiest war in our history, and even that failed to destroy the many lesser injustices that the “peculiar institution” had spawned, many of which remain with us still.

It is well to remember another parallel in the slavery-abortion equation. He who possesses the power of life and death over another feels compelled to justify that power. Just so, the Slave Power was not content to merely defend its practice as a justified evil. No, it must be declared good, even extended into new areas, and accepted by all. In short, slavery claimed its own *ethic*.

Those who now defend the peculiar institution of legalized abortion on demand also have their own ethic. This journal has reprinted several times an editorial—a Declaration, really—that first appeared in 1970 (in *California Medicine*, the official journal of the California medical association). The anonymous editor wrote that “The traditional Western ethic has always placed great emphasis on the intrinsic worth and equal value of every human life” and that this “sanctity of life” ethic—which has had “the blessing of the Judeo-Christian heritage”—has been “the basis for most of our laws and much of our social policy” as well as “the keystone of Western medicine”—all quite true. But, he went on, this “old” ethic was being eroded by a new *quality* of life one which would place only “relative rather than absolute values on *such things as human lives*” [*our emphasis*].

Like a moth around a flame, the editorialist instinctively hovered about abortion as the crucial issue: “Since the old ethic has not yet been fully displaced it has been necessary to separate the idea of abortion from the idea of killing, which continues to be socially abhorrent. The result has been a curious avoidance of the scientific fact, which everyone really knows, that human life begins at conception and is continuous whether intra- or extrauterine until death.” (Just as curiously, the fact of the slave’s humanity was “avoided.”) Not doubting that the old ethic was doomed, he concluded with this counsel for his fellow-doctors: “It is not too early for our profession to examine this new ethic, recognize it for what it is, and will mean for human society, and prepare to apply it in a rational development for the fulfillment and betterment of mankind in what is almost certain to be a biologically oriented society.”

All in all, a remarkable piece of prophecy. About the only thing not predicted was that, just three years later, the Supreme Court would rule that the new ethic had been right there in the Constitution all along (although just *where*, it couldn’t say). Without question, the Court’s *Abortion Cases* overruled the “enlightened belief” of the Declaration of Independence, and put the force of the nation’s fundamental law at the service of that “biologically oriented” New Future.

Predictably, the promoters of that future were not satisfied even with so stunning

(and unexpectedly quick and revolutionary) a victory. The Court had used the fatal words “meaningful life”—hardly precise constitutional terminology, but precisely descriptive of the *goal* of the New Future. Surely if a “mother” and her willing doctor-accomplice may legally kill her unborn child merely because they predict that it will not have a “meaningful life,” this useful principle can and should be extended to the already living? If we can be certain about the meaningless life awaiting an unborn child, surely we can be much more certain of “a life not worth living” in the case of an already-born “imperfect” baby? Infanticide not only follows logically, it has followed in fact and, as everybody knows, is already a widespread practice.

Some are amazed that the leading segments of the medical profession have rushed headlong into the New Future. Doctors have long enjoyed great—indeed excessive—prestige in America. Generations have been raised to promptly open up, bend down, or roll over on command. Such power corrupts: whereas lawyers must argue, and journalists convince, “medical professionals” need merely issue orders and—worse—there is rarely a Superior Officer to countermand them. This reality was one thing when the profession adhered to its traditional first principle “Do no harm,” but it is quite another matter when doctors view themselves as high priests of the New Future cult.

That far too many doctors *have* embraced this new biological religion is beyond dispute, as vividly demonstrated by the response of the major medical associations to the so-called “Baby Doe” controversy. God only knows how widely infanticide has been practiced in recent years; those who read medical publications know that it has long been openly admitted—even recommended—in countless articles and “studies” by both American and foreign practitioners. And although it remains a *crime* to kill a born citizen, we hear nothing from our public prosecutors, nor from the “official” guardians of medical ethics. As far back as 1976, internationally renowned pediatric surgeon C. Everett Koop, in a public address to a meeting of the American Academy of Pediatrics, said “Well, you all know that infanticide is being practiced right *now* in this country and I guess the thing that saddens me most about that is *that* it is being practiced by that very segment of our profession which has always stood in the role of advocate for the lives of children.”

How long such “curious avoidance” of widespread, illegal infanticide would have continued is impossible to say. But it is altogether fitting that it was a “family” pediatrician (the kind of “old-fashioned” doctor who *earned* the prestige the profession enjoys) who finally precipitated the current national controversy. The simple facts of the case are now generally known by all concerned, but a brief recapitulation (in laymen’s language) may be in order.

On April 9, 1982 (Good Friday, as it happened), a baby boy was born in Bloomington, Indiana. The family pediatrician was summoned, and found that the baby evidently had Down’s Syndrome—i.e., he was an “imperfect” child—and that his esophagus was not connected to his stomach. If the latter condition were not corrected, he would certainly die. Few dispute the fact that it could have been easily corrected. The pediatrician, Dr. James Schaffer (he deserves an honorable mention

here) expected that the operation would take place, but the mother's obstetrician—whose job was already done—spoke to the parents, who “agreed” that their baby should die. And little Baby Doe, after six painful days of “treatment” by starvation, did die (he was not even given water; merciful death was hastened by pneumonia caused by corrosive stomach fluids he vomited into his lungs).

Nobody disputes the central truth: Baby Doe was killed because he had Down's Syndrome. Ironically, the hospital pathologist who performed the autopsy flatly stated the truth about *that*: “The potential for mental function and social integration of this child, as of all infants with Down's Syndrome, is unknown.” Thus nobody knows how “imperfect” Doe would have been. But we must assume that his parents decided that his life would not be “meaningful,” at least to them.

Dr. Schaffer and others attempted by legal means to save Doe's life, but were thwarted by a judge, who was, incredibly, supported by the Supreme Court of Indiana, which presumably has never read the Fourteenth Amendment to the U.S. Constitution. But the attempt produced a furor heard by Ronald Reagan and the by now Surgeon General Koop; the President ordered enforcement of federal regulations protecting the handicapped, and Dr. Koop became a key man in seeing that these “Baby Doe regulations” were enforced.

This bare-bones description of the many-faceted Baby Doe case could of course be greatly expanded (this review has already printed many thousands of words on it), but our point here concerns not the facts of the case but rather the medical profession's *reaction* to it.

Virtually all the major medical organizations and associations quickly and adamantly *opposed* enforcement of the Reagan Administration's “regs” led by the same American Academy of Pediatrics (supposedly, as Dr. Koop said, the prime “advocate for the lives of children”), which went straight to court in a so-far successful attempt to halt enforcement.

Here again, the details would fill a large book, but they cannot obfuscate the reality: the New Future advocates who now clearly dominate the American medical profession have declared that the old “sanctity of life” ethic is as dead as Doe; that “good medical practice” now includes life-and-death power over patients, and that *nobody* should interfere with “medical judgments” even when they prescribe what used to be called murder.

Other realities should be stated as well. For instance, every state in the Union has homicide statutes on its books which prohibit infanticide. Even if they did not, the Fourteenth Amendment should provide legal protection to “All persons born” under the jurisdiction of the United States against deprivation of life “without due process of law” and also denial of “equal protection” under state or federal law? The reality is that the laws are not being enforced, certainly not against those “medical professionals” who now believe themselves to be above the law, and entitled, literally, to get away with murder.

All this conjures up some grotesque ironies as well. Did not anti-abortionists predict that *Roe v. Wade* would produce just such lethal results? Have the pro-abortionists—

most of whom publicly deplore the revival of Capital Punishment—noticed that the latest “humane” method of carrying out the execution of those judged guilty—just as in the execution of the innocent unborn—is by “medical professionals” thoroughly practiced in administering lethal injections?

The sad fact is that the Administration’s Baby Doe regulations invoke only the *weakest* sanctions against infanticide. If the courts ever *do* allow enforcement (an unlikely event: as their myriad pro-abortion decisions have demonstrated overwhelmingly, the great majority of our judges are also willing converts to the New Future religion), the “regs” would do more than threaten *possible* cut-offs of federal funds to a hospital or practitioner who denied treatment to an “otherwise qualified handicapped individual”—the entire wording is extremely vague, and could easily be circumvented by any reasonably clever “health care provider,” never mind a *determined* one. And that is the point: the cultists of the new ethic *are* determined to enforce *their* regulations as to who qualifies for a “meaningful life,” and their loud opposition to even ineffectual regulation merely demonstrates their total rejection of any interference whatever.

Too harsh? Well, consider the words of Dr. James E. Strain, the current president of the American Academy of Pediatrics [in the July ’83 issue of the Academy’s own newsletter]. He writes: “It is clear that there are certain infants with handicaps who should have full treatment. There is another group whose handicaps are so severe that any treatment other than supportive care would be inhumane and only prolong pain and suffering. There is a third ‘in between’ group where [*sic*] indications for unusual medical or surgical care are uncertain. It is the management of the third group of infants which should be reviewed by an ethics committee at the local hospital level. A model for this type of review is the institutional review committee that protects the rights of research subjects.”

Medical jargon aside (not that it isn’t worrisome: do you want your doctor to “manage” you in your hour of need?), Dr. Strain is plainly setting up his own *triage* situation, without bothering to mention that the prototype of *triage* was a horror justified (*if* it was justified) by emergency *battlefield* conditions, whereas most American babies are born in the best-equipped and lavishly-funded hospitals known to history.

He is doing a great deal more: he is announcing that “humane” people would condemn to death *severely* handicapped babies—just as, of course, they would save the category deserving “full treatment”—but that we must establish an “ethics committee” to handle a new category of “in-between” babies; all this will be done without reference to a born citizen’s *legal* right to life if he *can* be saved from death.

Now we are again brought face to face with the grim truth. Illegal infanticide is being widely practiced now, with little if any opposition from public prosecutors. Clearly the votaries of the “quality of life” ethic could go *on* with the killing, with little risk of prosecution. They could simply pay lip service to the Administration’s attempt to enforce the weak regulations, while being a little more careful in “hard

cases” like that of poor Baby Doe. Why don’t they?

Well, President Reagan’s intervention has of course focused public attention on infanticide, at least momentarily, thus raising the risk of prosecution and the terrible possibility of losing federal money. But the broad phalanx of “professional” medical opposition is also based on that indignant rejection of any attempt to retard the New Future. More, Dr. Strain, for one, evidently sees in the “regs” controversy an opportunity to take a giant step “forward,” i.e., to vault the whole question right over any legal or governmental barriers and drop it entirely into the hands of extra-legal “professionals” who would dominate his proposed “ethics” committees.

Indeed, the AAP has already issued a proposal for the make-up of such “local” (a nice reassuring note) review boards; the suggested name is Infant Bioethical Review Committee. In typical authoritative language AAP states flatly: “The IBRC shall consist of at least 8 members and include the following”—it then mandates a “practicing physician,” a hospital administrator, a “staff” member and a nurse, so that at *least* half the board can be right there in the hospital—plus representatives from the “legal profession,” the “lay community,” and a “disability group” and, most important of all, “an ethicist or a member of the clergy.”

The inclusion of a “disability group” member is more than merely interesting: as the AAP well knows, it is the Association for Retarded Citizens and allied “disability” organizations that have joined the Administration in the court battles for enforcement of the Baby Doe regs. Needless to say, all “imperfect” Americans have a life-and-death stake in the whole controversy. If today the “professionals” can kill them at birth, what awaits them in the looming New Future? Just as surely as the Supreme Court’s “meaningful life” rationale for abortion is now being applied to infanticide, it can and undoubtedly will be extended (Who would be surprised to discover that it is *already* happening?). Indeed, the AAP qualifies its description of the disability-group representative: he might also be a “developmental disability expert”—read another New Future professional—or a “parent of a disabled child.” In short, the prototype would allow for someone not disabled, such as Baby Doe’s father.

Clearly the AAP intends these extra-legal tribunals to hand down the final solutions to hard cases. Further, AAP-type professionals would control their *actual* makeup *and* have the power to enlarge the “at least 8 members” by additional “safe” members. The possibilities seem limitless, up to and including the kind of murderous “mercy killing” advocated by many German medical professionals *before* Hitler, and which they diligently practiced under the Nazi regime. I know: even to mention the Nazi experience is to invite “extremism” charges. Yet the historical record is clear (cf. the definitive study by Leo Alexander of “Medical Science Under Dictatorship,” which appeared in the July 14, 1949 issue of the *New England Journal of Medicine*). And to say that “it can’t happen here” is fatuous: pre-Hitler Germany was ranked *very* high among civilized nations, and was also the veritable fount of the reigning scholarship and wisdom in many if not *most* sciences, not least medicine. It is indisputable fact that German medical “scholarship” of the 1920s—

in re euthanasia, genetics and more—laid the foundations for Nazi genocide. The Thousand Year Reich’s brief dozen years of power, however malignant in intention, could not have “succeeded” without the groundwork the medical professionals laid for it.

But weren’t Nazi atrocities (*including*, remember, forced abortions) condemned for all time at the Nuremberg war-crime trials? Yes indeed.

Malcolm Muggeridge has long contended (several times in the pages of this journal) that the only reason the “advanced” German doctrines on euthanasia and genetics did not spread throughout the Western world is that Hitler “gave them a bad name” and thus inadvertently slowed down the process that the legalization of abortion has now re-accelerated. But charges of extremism will still be leveled at anybody who invokes the Nazi precedent, and understandably so.

The notion that such horrors *will* happen strains ordinary credibility. Who could seriously want to go *that far*? Surely our doctors are still “humane” dedicated men? Surely they would agree. Here, alas, another of those not-to-be-mentioned Nazi precedents is germane. Dr. Karl Brandt was the highest-ranking doctor in Nazi Germany, a well-respected professional who joined the Nazi hierarchy literally by chance. He was tried and convicted for war crimes at Nuremberg, and duly executed. He of course readily admitted that the Nazis had gone too far—but that was his *only* defense. Both before and during Hitler’s regime, Brandt had in fact endorsed (indeed, helped formulate) the basic policies of euthanasia and experimentation on living humans (his argument—familiar?—was that animals were not “adequate subjects”). In his final statement, the condemned man said: “I am fully conscious that when I said ‘Yes’ to euthanasia I did so with the deepest conviction . . .” His defense of the special category of “child euthanasia” is even more relevant here; he based it on the desire to avoid long-term difficulties for the *families* saying, “We wanted to kill and put an end to these deformities as soon as possible after they had been born.”

No, it is not necessarily the case that the new quality-of-life votaries fully understand or intend what they in fact advocate, or all the possible results thereof. After all, it *did* take a Hitler to “overdo” the humane intentions of German doctors. *That* could never happen here. Maybe not. But Hitler “happened” as a result of a disastrous social situation brought on by military defeat. Our nation is now spending far beyond its means on social welfare, much of it *medical* costs. Could we not face, perhaps soon, a disastrous situation that would force cutbacks now unthinkable? And even now, isn’t it sensible to “allocate” scarce monies to saving only “meaningful” lives?

Such “cost-benefit” arguments already appear regularly in the medical journals (Just as, from the beginning, it has been argued that great “savings” result when the “poor” abort their children). Predictably, these arguments will grow with the cost pressures—not least because the medical profession is the prime financial beneficiary of the multi-billions now being spent on “health-care,” abortions, and the rest. Need we add that euthanasia (especially “pulling the plug” on anybody judged near

death) is also openly advocated? As with infanticide, we must assume that such “adult” killing is already widely practiced.

But let us return to Dr. Strain’s review boards, and focus on what will undoubtedly be the key member: “an ethicist or member of the clergy.” Surely his will be the prestigious, persuasive advice? Who will dare go against the sage counsel of the “professional” expert in ethics, especially when the board is already stacked with the hospital’s own staff? The “lay community” member? The whole point is to determine whether it is moral to kill; the resident “ethicist” will be looked to for the “right” answer.

So the crucial point is this: What kind of ethicist is likely to sit on such boards? As it happens, we have a good idea of the type Dr. Strain favors. He is, as noted, current president of the American Academy of Pediatrics (AAP), and thus its official journal, *Pediatrics*, can be presumed to reflect his views (if it does *not*, he has not told us so). Well, in July—while the Reagan Administration was asking for public commentary on its proposed Baby Doe regs—*Pediatrics* did indeed publish an editorial statement strongly attacking the Administration’s proposals. Given both the timing and content of the statement, it must be assumed that it is endorsed by Dr. Strain and the AAP.

The content is simply incredible, and must be read to be believed. Suffice it to say here that it might be aptly described as the “Son of California Medicine”—it starkly repeats the sanctity-of-life v. quality-of-life conflict—with abortion again the key issue—and calls upon us to “put aside the obsolete and erroneous notion of the sanctity of all human life” so that we can “look at human life as it really is: at the quality that each human being has or can achieve. Then it will be possible to approach these difficult questions of life and death with the ethical sensitivity *that each case demands*” [*emphasis added*]. To provide us with an idea of such sensitivity, the author writes: “If we compare a severely defective human infant with a nonhuman animal, a dog or a pig, for example, we will often find the nonhuman to have superior capacities . . .”

Who would write such stuff? *Pediatrics* describes the author as Peter Singer, MA, BPhil, FAHA, of the Centre for Human Bioethics, Monash University, Victoria, Australia. Perhaps we should note in passing that it is odd (or clever?) for the official trade journal of America’s “baby doctors” to employ someone who is not a member of the AAP, not a doctor—not even an American—to promulgate what amounts to an official position of the Academy?

Who is this Professor Singer? Well, no doubt about it, he is a bright young (only 37) man, educated at Oxford, a visiting professor at elite universities, a prolific author of books and articles—plus countless letters-to-editors, and much more. Nor does he tout pigs and dogs by chance. His best-known book is *Animal Liberation*, written in 1975; its main point is that we are guilty of “speciesism,” which he describes as “the tyranny of human over nonhuman animals.”

True, the book contains some noble sentiments, e.g., that “We have to speak up

on behalf of those who cannot speak for themselves” and “The less able a group is to stand up and organize against oppression, the more easily it is oppressed.” The description certainly fits the unborn and Baby Doe perfectly—but of course Singer means animals. (Unfortunately the thing is evidently out of print in this country—understandably, there is only a limited market for such bizarre stuff—but given Singer’s sudden prominence as a spokesperson for the AAP, it deserves wide attention.) Singer also comes out vehemently against inflicting *pain*—on animals, of course.

Yet in his attack on the regs, he says nothing about Baby Doe’s six-day agony. But I think I have the answer to that seeming-contradiction: those who promote infanticide would gladly do the killing not only painlessly but *instantly*; however—as the *California Medicine* editorialist noted about the new ethic itself—they do not think the general public is quite ready for that kind of thing. (Besides, there is an important legal distinction involved: starving Doe was “merely” withholding treatment; giving him a lethal injection would have been another matter.)

The reader will recall that Dr. Strain’s model for an “ethics committee” was the existing type that “protects the rights of research subjects.” As it happens, Prof. Singer got into that controversy too a few years back and, typically, he had some strong views to expound. The whole thing was and remains vastly complicated and, yet again, directly involves abortion, which obviously produces “ideal” living human subjects. Many “old ethicists” cannot condone experimentation on living “fetuses” for *any* reason. Singer wrote a review of several volumes on the subject (for the *New York Review of Books*, August 5, 1976) and of course approved such research, and expected all sensible people would too: “Once we accept that the only interest the aborted fetus has is in not suffering . . .” (As noted, Baby Doe’s case does *not* fit that principle.)

Some, among them Princeton’s noted medical-ethicist Professor Paul Ramsey, wrote letters strongly objecting to Singer’s inhuman views. Singer answered even more strongly (see the *NYRB* of Nov. 11, 1976). Quoting an ethicist who had said “all of us would be horrified” at the idea of dissecting living fetuses, Singer replied that *once* (read here, in the days of the old ethic) “one could have sat” on various commissions and “spoken with equal confidence of the horror ‘all of us’ would feel at the thought of open homosexuality, teenagers using marijuana, complete racial integration, full frontal nudity on stage and screen, and abortion on demand. Now, when people oppose any of these, we demand reasons instead of an appeal to feelings of horror. In particular, we are likely to ask: ‘What harm does it do?’ In the absence of sound arguments to the contrary, many of us have come round to the view that these things are not so terrible after all, and that some of them are positively good.” (He did not specify which ones.)

Obviously Mr. Singer has strong views on a wide variety of controversial questions, and is evidently still adding to the list: back home in Australia, he has recently argued “The Case for Prostitution” (in *The Age* of Sept. 18, 1980); “We should recognize,” he writes, “that those who earn a living by selling sexual services are

fulfilling a socially valuable function.” And, anyway, “Most fundamentally, they do not cease to be people entitled to our respect.”

The really fundamental question is: Why would an official medical journal choose anybody with Singer’s flabbergasting intellectual baggage to put its case against the Baby Doe regs? The obvious answer is—must be—that Dr. Strain and his associates agree with Singer. Oh, but only *in re* Baby Doe, surely not all the rest of it?

Well then, let the AAP officially repudiate Singer. But we do not expect to see any such repudiation. Singer *does* represent the New Future, which is indeed committed to new ethics in all these matters. Consider: it is not enough to merely *have* the “freedom” to abort babies, you must make others agree that it is *good* to do so; leaving homosexuals alone isn’t enough, you must agree that theirs is merely an “alternative life style,” and so on, on and on. The arguments become almost identical in all cases—are we not asked to agree that infanticide is really done for the good of the child?—because all such “social issues” are part and parcel of the new ethic, which is why Singer sees nothing wrong with lumping them all together at every opportunity.

Lest the reader think we exaggerate his views, be sure that there is much more (and worse) available: Singer is on record on just about every “ethical” question known to man (and, of course, if animals could read, he’d hit the best-seller list). But our point here is that he is the *prototype* “ethicist” for those review boards; he holds just the “right” views, and we can expect to see him and his type much sought-after to answer the questions that are the heart of the matter, namely, Who shall live? and Who Shall decide?

The New Future is even more awful than it seems. Even if the majority of Americans *knew* about what is involved, they would find it impossible to transfer Singer’s inhuman notions to their family doctor. The grand strategic factor in the current War Between the Ethics is that the apostles of the New Future *know* precisely what they are doing—never mind what they may *say*—while the mass of Americans don’t yet realize there *is* a war, and those who do can scarcely believe that the enemy could seriously intend the predictable results. To be sure, the “old ethic” will not die: it is indeed based on the Judeo-Christian ethic, and it has been with us for thousands of years because, God knows, it is a *human* ethic. But of course it can be temporarily defeated, as it has been, often enough in history, whenever a militant, determined enemy has caught its defenders unprepared. Communism of course shows the lengths to which New Futurites can go—indeed, how “completely” they can succeed in setting up truly diabolical “utopias” ruled by inhuman New Men. But then Poland reminds us that, in the end, real men will remain to rebuild human society. The urgent need now is to prevent things going as far as they *can* go, while there is still time to do so.

But we stray again. Grand illusions will not do the job. We need practical solutions. Obviously the old ethic—the sanctity of all human life—must be defended, and restored. It is by no means a lost cause as, symbolically at least, President Reagan’s stand *in re* Baby Doe should remind us. The immediate problem is to translate

principles into results.

Here, we make a modest proposal which would undoubtedly sharpen not only the issues, but also the beliefs of the contending warriors. Let us ask our “medical professionals” to add a few more letters to their shingles: after John Jones, MD, let us see either SLE or QLE—sanctity or quality of life, each as he actually professes. It’s only fair, surely, that “patients” know *in advance* what their doctor really thinks about their worth, here and hereafter? Without doubt such an honest owning up to one’s real “views” would become a prime tool in educating the masses to a problem that most certainly concerns them most personally. And of course doctors (all too many) who have been trying hard to straddle the two warring ethics would be forced to choose which side they are really on.

I have no doubt that the inspired reader can supply many more and better reasons for so simple a solution to a problem the greatest evil of which is that it is so hard to *pin down*. We need to know who really believes what. And, since our very lives are at stake, we deserve to know, do we not?

We began here with abortion, and all the evils it has spawned—just as slavery did—how can we end with anything less than a call for a Great Crusade to restore the sanctity of all human life? I am for such a crusade, of course, but I don’t know how to bring it about. Not now, even though the handwriting is on the wall, because the majority of our fellow citizens simply do not read it, or believe it if they do. They are much more likely to do so when it directly affects *them* (as abortion and even infanticide do *not*—we are beyond both). Our modest proposal would at least remind the New Futurites that they too are at risk. When his hour comes, will MD, QLE choose one of his fellows to “manage” his travail? Knowing what he knows about his views? Or will he (or she, of course, sorry) opt for one of the other guys, old-fashioned as he may be? As Dr. Johnson noted, the prospect of execution wonderfully concentrates the mind.

APPENDIX B

[The following is a version of a talk presented at the University Faculty for Life conference in June, 2023, in St. Paul, MN. Richard Stith received both his law degree and a doctorate in ethics from Yale University. Long a member of the board of University Faculty for Life, he continues to be active in the Consistent Life Network (a group opposed to war and the death penalty as well as to abortion and euthanasia). For Prof. Stith's scholarship, go to http://works.bepress.com/richard_stith/]

The Exportable *Dobbs*: Elements Useful in Other Countries

Richard M. Stith

In *Dobbs v. Jackson Women's Health Organization* (June 24, 2022) the United States Supreme Court struck down nearly 50 years of precedent interpreting the Fourteenth Amendment to the U.S. Constitution. Much of its decision was thus necessarily about the non-binding character even of longstanding precedent and also about the correct interpretation of amendments to the U.S. Constitution.

As such, most of the *Dobbs* decision may not be of great interest to legal scholars outside the United States. Why should non-Americans care much about rightly understanding the precise language of our Fourteenth Amendment, or about the nuances of U.S. legal precedent, especially since the Roman Law tradition of most of the rest of the world does not consider judicial precedents to be binding in the first place? Therefore, in order to highlight the part of *Dobbs* that is truly of worldwide significance, I propose here to skip over most of that decision, concentrating only on what is most likely to be relevant to scholars, judges, and legislators in other nations.

In other words, I will focus on what the *Dobbs* decision has to say about the nature and status of life before birth.

Some may be surprised to hear that the *Dobbs* Court expressed any opinions at all about prenatal life. After all, the justices repeatedly emphasized the constitutional permissibility of state and federal laws in favor of abortion as well as against abortion. Nevertheless, although *Dobbs* does not explicitly recognize a prenatal right to life, it provides future legislators and courts, at home and abroad, with strong policy arguments in favor of protecting that life.

Note first that it quotes in detail the “pro-life” findings and conclusions of the Mississippi legislature, without doubting their accuracy anywhere in its opinion. Here, in part, is Mississippi's reasoning, as recounted by the Court:

[The legislature] found that at 5 or 6 weeks' gestational age an “unborn human being's heart begins beating”; at 8 weeks the “unborn human being begins to move about in the womb”; at 9 weeks “all basic physiological functions are present”; at 10 weeks “vital organs begin to function,” and “[h]air, fingernails, and toenails . . . begin to form”; at 11 weeks “an unborn human being's diaphragm is developing,” and he or she [*sic*] may “move about freely in the womb”; and at 12 weeks the “unborn human being” has “taken on ‘the human form’ in all relevant respects.” [The legislature]

found that most abortions after 15 weeks employ “dilation and evacuation procedures which involve the use of surgical instruments to crush and tear the unborn child,” and it concluded that the “intentional commitment of such acts for nontherapeutic or elective reasons is a barbaric practice, dangerous for the maternal patient, and demeaning to the medical profession.” [*Dobbs v. Jackson Women’s Health Organization*, No. 19-1392, slip op. by majority at 6-7 (U.S. Sup. Ct. June 24, 2022)].

At the end of its opinion in *Dobbs*, the Court returns to validate these sorts of legislative determinations as fully “rational” and therefore legitimate under the Fourteenth Amendment’s due process clause. The Court there affirms that a state’s

legitimate interests include 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. [slip op. by majority at 78]

The key words here are “at all stages of development.” The protectability of each prenatal life begins when its “development” begins (i.e., just after fertilization). And each such respect-worthy life has a continuous identity as it goes through various “stages.”

The joint dissent (by Justices Breyer, Sotomayor, and Kagan) appears to accept this central conclusion regarding the nature of the unborn child. It emphasizes that “*Roe* and *Casey* [the main constitutional precedents upholding a right to elective abortion] invoked powerful state interests [in “protecting prenatal life”] operative at every stage of the pregnancy and overriding the woman’s liberty after viability” [slip op. by dissent at 11]. But the dissent argues that those two prior cases rightly found that, *prior* to viability, a pregnant woman’s liberty interests outweigh those acknowledged state interests in protecting prenatal life at all stages.

In other words, although the *Dobbs* dissent recognizes state interests regarding prenatal life to be legitimate “at every stage of the pregnancy,” it goes on to insist that maternal freedom is constitutionally more important than prenatal life before viability. The majority opinion explicitly critiques this dissenting claim that fetal life begins to outweigh maternal freedom only at viability. According to the *Dobbs* majority,

the dissent would impose on the people a particular theory about when the rights of personhood begin. According to the dissent, the Constitution *requires* the States to regard a fetus as lacking even the most basic human right—to live—at least until an arbitrary point in a pregnancy has passed [slip op. by majority at 38, emphasis in original].

Note that the majority makes three striking affirmations in this brief reply to the dissent, affirmations central to the new permission the *Dobbs* Court gives to states to forbid abortion. First, it calls the viability line “arbitrary” (and thus presumably illegitimate under the due process clause of the Fourteenth Amendment). Second, it suggests that states may recognize legal “personhood” in the unborn child prior

to viability, along with the right to life. And, third, it explicitly declares the right to live to be “the most basic human right.”

Furthermore, although the *Dobbs* majority does not explicitly ask that life be legally protected prior to birth, it does provide a strong argument against those who claim a fetus to be unworthy of such protection because a fetus does not yet count as a “person,” pointing out that

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.” Among the characteristics that have been offered as essential attributes of “personhood” are sentience, self-awareness, the ability to reason, or some combination thereof. By this logic, 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.” [slip op. by majority at 51]

As far as maternal freedom rights go, the majority counters that the “goal of preventing abortion” does not constitute “invidiously discriminatory animus” against women, citing a prior Supreme Court finding. [slip op. by majority at 11]

Most amazing to many commentators may well be something left unsaid in the *Dobbs* case: the Court omits any discussion of religion. None of the opinions treats as even worthy of mention the commonplace claim that abortion involves a war between religious theocrats and secular democrats. Nowhere in the majority opinion, the concurring opinions, or the dissenting opinion is there any allegation that opposition to abortion arises from religious doctrine rather than from a rational interpretation of the universally-acknowledged facts of human gestation. The opinions as a group and the case as a whole bespeak not dueling dogmas but a clear choice between liberty and life, with life designated by the Court’s majority, as we have seen, to be “the most basic human right.”

Lastly, let us note the peculiar relevance of *Dobbs* to the world’s enduring post-modern condition, described decades ago by the great comparative law scholar J.H.H. Weiler:

[T]here is no doubt that the notion that all observations are relative to the perception of the observer, that what we have are just competing narratives, has moved from being a philosophic position to a social reality. It is part of political discourse: multiculturalism is premised on it as are the breakdown of authority (political, scientific, social) and the ascendant culture of extreme individualism and subjectivity. Indeed, objectivity itself is considered a constraint on freedom . . .¹

And yet, despite the loss of objective truth as a criterion of validity, the human need for favorable recognition of one’s opinions and actions does not disappear. As the philosopher John Rawls has written, “unless our endeavors are appreciated by our associates it is impossible for us to maintain the conviction that they are worthwhile.”²

It is precisely those most accustomed to doubt all truths who are the least self-sufficient in securing their own self-respect, who must generate a thunderous judicial

mandate in order to feel sure of the rightness of their endeavors. Constitutional authority becomes a surrogate for reason and even for courtesy.³ Self-confident certitude is achieved by the suppression of open opposition, by final victory before the highest legal tribunals of the world.

So it is that exposing prenatal life to elimination has been increasingly sought in many constitutional and international courts, most looking to the others for support. Together with the often-ignored German Constitutional Court's pro-life decisions of 1975 and 1993 (focusing on the continuity of individual identity during prenatal development), the 2022 *Dobbs* case stands as a bulwark against the success of any effort to achieve a worldwide set of holdings that developing life merits no significant legal protection.

An unsinkable ship has sunk. A Berlin wall has fallen. No longer is it likely that the world's judicial leaders will gather together to validate and facilitate death before birth.

NOTES

1. J.H.H. Weiler, To Be a European Citizen: Eros and Civilization, in J.H.H. Weiler, *The Constitution of Europe: "Do the New Clothes Have an Emperor?" and Other Essays on European Integration* 324, 331 (1999).

2. John Rawls, *A Theory of Justice* 441 (1971). See also Richard Stith, Punishment, Invalidation, and Nonvalidation: What H.L.A. Hart Did Not Explain, 14 *Legal Theory* 219 (2008).

3. See Audiencia Pública, 6 de septiembre de 2012: *Caso Artavia Murillo y otros vs. Costa Rica* (fecundación in vitro), parte 4, Vimeo, <http://vimeo.com/49172353> (at 2:14:00 onwards). Case of *Artavia Murillo et al. v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 257 (decided Nov. 28, 2012). (During a public hearing on Sept. 6, 2012, concerning Costa Rica's attempt at embryo protection outside the context of abortion, Inter-American Court of Human Rights Judge Pérez Pérez mocked Costa Rica's argument that personhood begins at fertilization by referring to it as a "magical moment" of sorts. Judge Leonardo Franco expressed concern over Costa Rica's stunted development in terms of "progressive" human rights causes. In addition, Judge Macaulay angrily asked if the state of Costa Rica intended to "ban sex," arguing that nature is as lethal to embryos as are the acts at issue in fertilization in vitro.)

APPENDIX C

[*Leah Libresco Sargent is the author of Building the Benedict Option. She runs the Substack community Other Feminisms. This article first appeared in National Review magazine (October 14); © 2023 by National Review. Reprinted by permission.*]

Pro-life Persuasion Remains Possible and Necessary

Leah Libresco Sargeant

Donald Trump’s imagined compromise deal on abortion isn’t just a bad bargain for the pro-life movement—it’s impossible for him or anyone else to deliver. On *Meet the Press*, Trump came out swinging against the six-week heartbeat bills passed by more than a dozen states and supported by his rival, Florida governor Ron DeSantis. Those early bans are a “terrible thing and a terrible mistake,” according to Trump, who imagines he can find a weeks-based cutoff that will guarantee that “both sides are going to like me.”

Trump is more candid and transactional than other Republican politicians, but he’s not far out of step with many GOP leaders. They want pro-life activists to take the *Dobbs* decision as a sufficient payoff and wait another 50 years before being allowed to make trouble again. Republican strategists are meeting with senators to propose alternative language that would allow politicians to stop describing themselves as “pro-life.” Trump’s tactic is different in tone but not substance from that of former U.N. ambassador Nikki Haley, who said at the first GOP debate, “Let’s find consensus,” and argued that the target was banning late-term abortions and encouraging adoption.

A survey of European abortion law and American opinion-polling might suggest that a *détente* can be achieved if politicians unite behind a 15-week ban. A slim majority (51 percent) of Americans support legal abortion at 15 weeks, with support falling to 27 percent at 24 weeks, according to June 2023 polling from AP-NORC. It’s no wonder politicians are attracted to this compromise position—it sounds survivable for the professionals. For children in the womb, it’s deadly.

Nearly all abortions (93 percent in the 40 states reporting their data) occur in the first trimester (13 weeks). A pro-life “compromise” that sets bans after the first trimester would leave nearly all children in the womb at risk. And contra Haley and Trump, it’s not likely to leave pro-choice activists feeling appeased either. Some activists have reacted with frustration to Democrats’ emphasis on sympathetic plaintiffs and life-threatening pregnancies. Activists don’t want storytelling about “good abortions” to imply a parallel set of “bad abortions.” The American College of Obstetricians and Gynecologists (ACOG) has refused to back laws that clarify “life of the mother” exemptions and create safe harbors for physicians. ACOG policy is to “strongly oppose any effort that impedes access to abortion care and interferes in the relationship between a person and their healthcare professional.”

An abortion compromise isn't likely, as Trump imagined, to leave us "with peace on that issue for the first time in 52 years." Pro-lifers can win only by making their case on the merits, directly to their neighbors, not just to judges. It doesn't make sense to claim you're fighting only for "federalism" or that you care a lot about the exact threshold for state referenda and direct democracy. The instinct to fight by feints and misdirection—for example, through TRAP laws (targeted regulation of abortion providers, like mandating wider hallways)—lost its relevance when *Roe* fell.

I know making the case on the merits can work, because other people did it for me. I grew up reading *The Cider House Rules* and donating to Planned Parenthood. My first protest march was a pro-choice one that my mother says I attended in utero. When I went to college, for the first time I met pro-lifers who talked about being pro-lifers, and I didn't hesitate to pick a fight. When my college's pro-life group began a "Baby Lucy" postering campaign, plastering fetal-development pictures all over the campus every week, I whipped up a counter-protest. I tried to find a fetal-cat ultrasound I could plausibly juxtapose with "Lucy" to suggest that you couldn't tell human from animal. (It was tougher than I anticipated to find a picture that wasn't obviously different.)

I *knew* the pro-lifers—I grappled with some of them every Tuesday and Thursday in our debate group. I didn't make a secret that the new posters were mine. They didn't respond by tearing them down or trying to find a referee to work. They took my confrontation as an invitation to a dialogue—a conversation that lasted for years until I finally changed my mind.

Long before I decided that my pro-life peers were right, I realized they argued in good faith. That's not the message people get when pro-life advocates and putatively pro-life politicians, unless cornered, avoid speaking about the moral worth of unborn babies. It's not the message sent when pro-life advocates prioritize changing the rules for referenda over *winning* referenda. Trying to dodge democracy is an expression of despair.

Notre Dame's 2020 study "How Americans Understand Abortion" found that people hear politicians talk about abortion on the news but that most have never had a conversation face-to-face about abortion. For many of the 217 interviewees, answering the questions of the sociologists administering the study was the most in-depth conversation on abortion they'd had in their lives. When one interviewer, following the script, wrapped up by asking, "Is there anything else you'd like to add or clarify that you think would really help us to understand your views?" a man participating in the study replied, "No, I don't necessarily understand my views. So I will ask you to understand them."

When I've gone to college campuses to lead debates on difficult topics, including abortion, the students have been generous with their willingness to field challenging, good-faith questions from their peers. Persuading our neighbors to see the child in the womb as a person requires us to see *our neighbors* as people. Like me, they want to act rightly, are open to persuasion (even if it may take years), and are capable of—even rejoice in—doing hard things for the sake of the vulnerable and the marginalized.

America will never be able to sustain a compromise that restricts abortion in theory but leaves almost all children in utero at risk. And heartbeat bills will never pass without a sustained campaign of compassion, neighbor to neighbor. Ultrasounds can change minds by showing the face of the child in the womb. Our opponents must also see *our* faces as we make the case personally and do so with love and sorrow.



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And to say that “it can’t happen here” is fatuous: pre-Hitler Germany was ranked *very* high among civilized nations, and was also the veritable fount of the reigning scholarship and wisdom in many if not *most* sciences, not least medicine. It is indisputable fact that German medical “scholarship” of the 1920s—*in re* euthanasia, genetics and more—laid the foundations for Nazi genocide. The Thousand Year Reich’s brief dozen years of power, however malignant in intention, could not have “succeeded” without the groundwork the medical professionals laid for it.

—J.P. McFadden, “Toward the New Future”