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◆FEATURED IN THIS ISSUE◆

◆ALSO IN THIS ISSUE◆

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About this issue . . .

. . . Abortion: Is there any issue more unsettled in America today? Daily headlines burst with stories on contested state laws, furious skirmishes in bipartisan political battles, looming Supreme Court decisions. Most disturbing, writes senior editor William Murchison in his lead essay ("IVF: The Next Battlefield," p. 5), is that underneath it all is "an atmosphere of profound moral unsettlement." Gone are the shared moral understandings that used to guide us; we now decide for ourselves what life is, what a person is, the very meaning of existence. We more or less live in "Herr Nietzche's 'Beyond Good and Evil,'" says Murchison, where "truth is what your neighbor claims it to be, instead of what many once learned growing up."

In several states, including New York, activists are working to enshrine abortion in state constitutions, creating a nation of "mini-*Roes*." For an excellent analysis of the post-*Dobbs* landscape, see our interview with legal expert Paul Benjamin Linton (p. 68). In our home state of New York, voters in November may say yea or nay to a vaguely worded, revised Equal Rights Amendment, which, if passed, would not only cement abortion in the state constitution but would seriously threaten parental rights and religious liberty—so writes newcomer to the *Review* Donald P. Berens, Jr., a retired attorney and former New York State government lawyer. We have (on p. 75) a deft summary of an original, encompassing and fully cited legal analysis by Mr. Berens now on our website (www.humanlifereview.com). He expertly lays out the damage such an amendment could do. And for some historical perspective, see Appendix A's "Letter to the Women's Lobby," in which the late, great Clare Boothe Luce writes that the ERA she'd spent decades advocating for–for women–was being crippled by the abortion lobby's efforts to include the "unnatural act of induced abortion" as a legal, moral and natural "right"–and this was in 1978! (Plus ça change . . .)

We are pleased to welcome Mr. Berens to this issue along with several other new contributors. Karl Stephan, a professor of engineering at Texas State University, writes in "A Pro-Abortion Epiphany" that coverage of the Kate Cox abortion story involved some pretty twisted theology from a Christian cleric. (Prolifers as Herod? You have to read this to believe it.) Leonard F. Grant III, assistant professor of writing and rhetoric at Syracuse University, gives us an important new way to think about and study post-abortion grief and regret, which is painfully real to many women, despite the promulgated myth that such psychological damage does not exist. Raymond B. Marcin, professor emeritus at Catholic University, articulates clearly what the *Dobbs* decision did not do—declare the unborn child a person under the Constitution—and gives us a novel possible strategy for the way forward. Finally, young (teen) writer Isabelle Flood reviews the movie *Waitress: The Musical*, revealing a surprisingly strong pro-motherhood message.

There is so much more in these pages—turn to editor Anne Conlon's introduction as your expert guide. As we mark our 50th anniversary year, we continue to work to "talk back," as Murchison puts it, to those Nietzcheans and moral relativists who pretend human life is only worth protecting when convenient. Thank you as always to Nick Downes for helping us stay hopeful by remembering that laughter is, in that great phrase by the late sociologist Peter Berger, a "rumor of angels."

Maria McFadden Maffucci
Editor in Chief

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the HUMAN LIFE REVIEW

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INTRODUCTION

"The problems of our world," says William Murchison, "have edges, angles, pull-outs, protrusions, and rusty nails sticking out everywhere." In "IVF: The Next Battlefield," our senior editor ponders the Alabama Supreme Court's "out-of-nowhere" pronouncement last February that disembodied embryos were children—a startling reminder that a million frozen souls reside in storage tanks across the United States. "No conversation on IVF itself," Murchison grants, "can be easy." But "the urgency of moral conversation grows and grows and grows." Because not only is there the fate of all those neglected "spares" to consider—and who decides what will happen to them, politicians?—but also IVF's unchecked progress from basic baby-making to "tailoring the product for higher satisfaction," that is, eugenic baby design.

"Moral discourse about large matters evades us," Murchison contends, "due to our aching lack of moral leadership." Case in point: Reverend Katheryn Barlow-Williams of Central Presbyterian Church in Austin, Texas, a religious leader "of a certain stripe," writes Karl D. Stephan in "A Pro-Abortion Epiphany," who works "pro-abortion messages into the church calendar." In an opinion piece for a local paper, she offered "a modern-day retelling of the flight of the Holy Family into Egypt," casting state attorney general Ken Paxton as Herod—no kidding—because he was seeking "to kill the 'love' that would allow Kate Cox to abort her baby." Stephan is not unsympathetic: "[Cox's] plight of carrying an almost certainly doomed baby was agonizing," he writes, but *pace* the irreverent reverend, Texas abortion law "implicitly recognizes that even deformed fetuses are made in the image of God."

Edward Short is delighted that Ireland, "a country that has known a good deal of moral chaos in the last few years," still officially recognizes the fundamental nature of motherhood. "In an historic landslide," he reports in "Marriage, Motherhood, and the Plain People of Ireland," voters rejected amendments that would have stripped clauses honoring motherhood and marriage from the country's constitution (ratified in a statewide plebiscite in 1937). Comeuppance indeed for pushy elites and their leader Leo Varadker, who abruptly resigned as prime minister following the (surprisingly) sound defeat. "Will the Irish welcome the Mother of God back into their homes," Short asks, "now that they have refused to allow their political class to take mothers out of their constitution?"

Unlike Kate Cox, Mary Rose Somarriba was pressured to abort (but resisted the pressure) at 20 weeks by an OBGYN who appeared concerned about potential fetal genetic damage. However, in retrospect she wonders if the doctor, sensing (rightly as it turned out) Somarriba's potential for suffering post-partum depression after giving birth to her fourth child, and during a pandemic, was "offering abortion as a charitable gift—an escape route from the stress that children in any health condition will necessarily bring, at least into the immediate future of any active parent."

It was, Somarriba relates in "How We Neglect Pregnant Women's Mental Health," a "painfully eye-opening" experience: "Now abortion-centric language sounds to me like hectoring women, at their most vulnerable, into believing their depressed, worst thoughts and acting upon them."

Women acting upon their worst thoughts, observes Leonard F. Grant III in the following article, may make "choices that transgress their own deeply held moral beliefs," and in doing so sustain what is recognized in therapeutic circles as moral injury—a "soul wound" that can overwhelm them with guilt and shame and remorse even years after an abortion. According to an important study Grant cites in "When Abortion Causes Moral Injury," Catholic women who violate their conscience may be more likely to experience this than others. But psychotherapy alone won't restore emotional equilibrium because "moral processes are not mental illnesses, regardless of how troubling and painful they may be." Rather, for these women, "growing in their faith through religious practices and rituals is where healing awaits."

Earlier this year, Jason Morgan co-authored a book on the "comfort women," prostitutes contracted to provide "pleasurable solace" to Japanese soldiers during WWII. It is a "contentious" issue, he writes in his essay here ("The Longest War: Women and Children in the Battle for East Asia")—one South Korean scholar whose work Morgan admires was "criminally indicted" for "trying to tell the full truth about what the comfort women suffered and how they overcame extraordinary hardships in attempting to live human lives amid often unthinkable conditions." While he believes "prostitution is evil," he also recognizes that "we live in a fallen world," and the comfort women, "human beings in a particular place and at a particular time . . . have much to teach us about the human spirit."

Abortion, like prostitution, is not easily grappled with in a fallen world. "It would be vituperative," Raymond Marcin comments in our next article, to fault the *Dobbs* justices who overturned *Roe* v. *Wade* for not addressing "the constitutional right-to-life issue." They "were and are true heroes," for ruling as they did "in the face of death threats and the attempted assassination of one of their number." Those advocating for constitutional protection of the unborn, Marcin continues, can provide a framework for their argument by "taking a close look at the jurisprudential background of the meaning of 'person' and the rights of personhood"—which is precisely what he does in "On the Right to Life in the United States Constitution: An Issue Ignored in *Dobbs*."

The pre-Civil War "model slave owner," argues senior editor Ellen Wilson Fielding, "an otherwise just man schooled to believe that slavery is a natural and licit human institution and that only the abusive treatment of one's slaves is sinful," was nonetheless guilty of "misperceiving the moral universe and his place in it." The "parallels," she notes in "Masters of Misperception," between that slave owner and today's abortion apologist "smack you over the head like a two by four." Misperception, Fielding writes, and the subsequent temptation "to substitute fantasy for reality . . . exact costs," though "the limits of our human vision into space and time restrict us from reading the bottom of the balance sheet for any particular action."

Who anticipated "our gender reimagination project" back when *Roe* disturbed the moral universe a half century ago?

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This issue features an especially timely interview with Paul Benjamin Linton, author of *Abortion Under State Constitutions: A State-by-State Analysis* and foremost authority on the history of state abortion legislation. "Now that *Roe* v. *Wade* has been overruled," he says, "defeating pro-abortion citizen initiatives [at the state constitutional level] should be a priority of the pro-life movement." Donald Berens, in "New York's Dangerous ERA Proposal," warns that a "ninety-six-word" amendment, which may be on the ballot this coming November, threatens to "stymie future democratically elected [New York] state representatives from enacting even the most basic safeguards surrounding the abortion procedure." I quote here from a summary of his article "New York's Equal Rights Amendment," published on our website and accessible at www.humanlifereview.com. [For a brilliant argument about why second-wave feminists never should have tied abortion rights to the (failed) federal ERA, see Clare Boothe Luce's "Letter to the Women's Lobby," an archival treasure reprinted in Appendix A.]

"The appearance of pro-life histories is always welcome," John Grondelski writes in his review of *Pushing* Roe *v.* Wade *Over the Brink*, especially when the subject is Americans United for Life, one of the pro-life movement's "major and most impactful groups," and the authors are "established writers like [Clarke] Forsythe and [Alexandra] DeSanctis." Isabelle Flood isn't an established writer—yet. A recent high school graduate, she contributes to this edition of Book/Filmnotes a lively review of *Waitress: The Musical*—actually, a film, and a rare one, Flood tells us, in that it "highlights the beauty of pregnancy and motherhood."

From the Website also carries a review: "Many film critics have called *The Zone of Interest* timely," observes Jason Morgan about this much-lauded Holocaust story, but not one "has acknowledged . . . the ongoing holocaust that has turned the United States into a living nightmare since 1973." Diane Moriarty reminds giddy gals "dancing the Irish jig" at abortion rallies that "having the right to do something doesn't make it the right thing to do." And in a moving reflection, Tara Jernigan recounts soothing a dying hospice-care patient through song: "It didn't matter that no one had rehearsed and most everyone would not know all the words. What mattered was a family, singing to sleep their wife and the mother and grandmother who once cradled them. 'Amazing Grace,' in the moment, sounded sweet indeed."

Yes, we live in a morally unstable and divisive world with "rusty nails sticking out everywhere." But as Jernigan shows us, we can also know moments of sweet accord—best to keep eyes and ears open for them.

Anne Conlon
Editor

IVF: The Next Battlefield

William Murchison

Who, me? A fresh-faced symbol of youthful aspiration? So much time have I spent shuffling off this mortal coil that Joe Biden and I could have double-dated at the root beer stand—had that eccentric notion seized either of us. That is how I've come to see a lot. Among the more notable sights: a very, very short list of human problems more than partly amenable to expert and reasonable human solutions.

The problems of our world, it strikes me, after a lifetime of sorting them out for pay and other worldly inducements, have edges, angles, pull-outs, protrusions, and rusty nails sticking out everywhere. They're tough and hard to figure, despite all the humans lining up to "fix things."

So much for medicine-cabinet truths. We come today to the dense and perhaps unfixable problem of in vitro fertilization (IVF, for short) and where if anywhere it fits in with Americans' diverse expectations regarding unborn life.

I'm getting ready to tell you that the sheer diversity of our expectations about the meaning and purposes of human life itself is what needs fixing on the front end. I will then make modest (and likely futile) suggestions as to what we might do or consider doing. The size of that enterprise, the longer I think about it, would humble Donald Trump, provided he gave it a thought.

Well, anyway, here goes.

Public opinion, in an age of personal re-invention, where truth is what your neighbor claims it to be, instead of what many once learned growing up, rarely bothers with fine points. Often as not, the point that counts most is what political cause wins and which loses, depending on how things get decided.

Regarding human replication through birth, or non-replication through circumstances or, likelier, abortion, the most common sentiments we see these days are of a *laissez-faire* nature: Who cares, apart from the parties most involved; and who deserves the say-so when doubts and questions arise?

It turns out that the transport and implantation of human sperm through the miracles of science, and the commencement of human pregnancies that were once unthinkable, is the newest battlefield and point of tension in the contest over abortion rights.

William Murchison, a former syndicated columnist, is a senior editor of the *Human Life Review*. He will soon finish his book on moral restoration in our time.

America's first IVF baby, Elizabeth Carr, is today 42 years old, a medical wonder in her own way, affirming the worth of human life in the post-*Roe* v. *Wade* years when the choice between life and no-life had become stark, the divisions angry and explosive. Law and public tolerance alike made room for the choice to give life through means other than those reported in Genesis as involving Adam and Eve and their unpredictable offspring Cain. "I have gotten a man from the LORD," said Cain's proud new mom. "Gotten" in the fleshly, formerly universal manner.

I recall from 1982 no explosions of political concern over the scientific introduction of an embryo into the womb of a woman unable through the natural processes to give birth. Were not Elizabeth Carr's parents, Roger and Judith, exercising what could be pointed to as a responsible choice? We were still then sorting out, in the aftermath of *Roe*, our increasingly flexible views of the fundamental human condition called birth—entry, that is, into human existence. Who had the say-so? Who needed to keep his—or her, as the case might be—mouth tightly closed?

We are four decades past that era. Not much remains of whatever slight consensus we could point to back then concerning life and its varied obligations and expressions. Today we all note opinions, viewpoints, claims to all configurations of personal outlook drawing sustenance from an atmosphere of profound moral unsettlement.

I am going to return shortly to that dusty adjective, "moral," which needs attention of the sort it rarely receives anymore. But first a word about the circumstances that bring us to this point. Last February, out of nowhere, so far as most Americans were concerned, popped the news that Alabama's Supreme Court had found embryos—a biological term used dismissively by advocates of choice in abortion—to be children. Children? What? Like we all used to be? Wait a second here!

The indicated wait has shown Americans divided on a question that is essentially an offshoot of the whole pro-life, pro-choice debate—a likelier word would be battle—over abortion. The judicial overthrow of *Roe* v. *Wade* by the Supreme Court in the *Dobbs* case settled nothing but the question of the Court's formerly assumed right to impose on the country a new constitutional right—that of aborting a pregnancy. It set off a political/legal scramble to discover what comes next. What can be done now? What should be done, say, about frozen embryos in Alabama? Pre-*Roe* questions were simpler, based on plainer, cleaner understandings of the male-female relationship; viz., childbirth belonged in lawful marriage, and there only.

What can it mean, all of a sudden—we have to protect an embryo? We have to protect that which the supporters of choice are accustomed to make

fun of as so minuscule, so non-humanlike as hardly to merit notice? "Non-humanlike" indeed! That life begins upon fertilization is a recognition shared widely outside the labs where 96 percent of biologists, according to Alexandra DeSanctis (https://eppc.org/publication/when-human-life-begins/), affirm the very same thing. Note, as does the *New York Times* (March 25), that growing numbers of couples, "well aware of the challenges of conceiving and carrying a healthy baby to full term, skip sex and go straight to IVF." Don't tell *us* there's no there there—no nexus between sperm and life!

So it's all good, the rush to the freezer? We might wish to hold the applause. The miracle of joint creation, in the Adam/Eve mode, recedes here into the background. The mechanics of the matter rise to the fore: the tests, the procedures and permissions, the vials and needles. It's about getting the job done. Yes? No?

Adam and Eve would likely have said, no, it's not; it's about something connected to the author of life Himself: Who, shall we say, invented the idea of human birth, making up the rules that applied 'til the day humans came up with their own diligent, self-actuating concepts. Not so much here of Noah, and God's instructions to the old salt—"Be fruitful, and multiply, and replenish the earth"—as of what moderns might see as one of the necessities of daily living; only so much time at hand and lots to get done.

Meanwhile the *Wall Street Journal* features the question: How many embryos are needed to make a baby? What if you don't need as many as you think? Where do the rest go? There are currently a million such "spares" at large in the United States. What's the relevant moral teaching here? Is there one?

Americans don't as a matter of course ask such questions. Maybe they will get around to it. The questions are immense and troubling in a culture that constantly touts its humanitarian/human-rights concerns.

A major reason moral analysis gets shelved in the 21st century, as a public duty, has to do with the nature of duties that come into the kitchen trailing spider webs and the look of abandonment and decay. Science and medicine, beginning with the popularization of the contraceptive pill, show us the way around inconveniences such as total reliance on plain old sex for baby-making. A modern moral environment formed on the expectation that people make their own life choices further lessens the need for old rules, old ways, old expectations. You have to think hard to see advantage in the old-fashioned way of populating the earth: all the non-romantic work for many couples; the uncertainties, the fears, the well-here-we-go-agains.

A larger barrier to moral discourse on human life follows from the premise that individuals (read: women, in the present context) are in charge of

their own lives. "Individuals" equals "voters." Voters, told they can't do or have whatever they want, when they want it, get angry and uproarious. They throw things. They are as likely as not to throw particular politicians on the garbage heap for failure to do as they're told. Which, to be sure, is good democratic theory and practice. What you must hope is that good democratic theory and responsible moral considerations can most of the time co-exist.

Hope alone cannot do a job of such immensity. Some degree of moral re-grounding in our national life looks more and more like the precondition for any arrangement—any whatsoever—that joins Americans in fruitful action. Herewith the point to which I have been pointing—the need for some measure of moral renewal. We just can't go on the way we're going.

Let me suggest that such a wild-haired enterprise as moral renewal in a country at odds with itself over ancient questions of right and wrong is even now being shown some important measurements for debate.

Consider a moral division unexpectedly brought to light by the Alabama Supreme Court decision. The human passion to create human life—it can't still be around, can it, in the age of the condom and the whole idea of life as a purely optional affair? It can't? Explain, please, why it can't?

A constitutional affray centered on the rights of embryos reveals the moral stubbornness still resident in a society that has been lectured for half a century on the idea of unborn life as an encumbrance, a barrier to personal freedom and enjoyment.

It's an odd ideal, I'd venture, flaky from the word "go." Isn't life what it's all about: "it's" meaning everything in sight? Isn't life, in other words, properly defined as existence? In which case, how come something so important, so all-encompassing gets passed to politicians for explication? Are not the rest of us obligated to try a little harder and examine their—not legal; not political; their moral premises? Should not they be made to show us something big, not small (like the winning of elections), as proof in their eyes of the comparative unimportance of unborn life?

Make them show us . . . how? How indeed if not through the deliberate rekindling of moral discussion in venues where it has lapsed and waned in the years since Joe Biden and I were on the root beer scene.

The cultural upheavals of the '60s cannot be said to have ruined us as a society, but they badly battered such moral unity as we fallen humans still maintained in the years after the war.

Our joint project as Americans of the 21st century, it seems to me, should be the re-examination and, if possible, the recovery of a number of premises trampled underfoot. Among these premises—obviously—is the worth, the value in abstract as well as personal terms of human life, as taught in

philosophy and Scripture.

No conversation on IVF itself, as another aspect of our perplexities over human life, can be easy. Those who teach and proclaim can differ significantly in approach. The *Catechism of the Catholic Church* (p. 571, No. 2377) teaches that to "dissociate the sexual act from the creative act" is "morally unacceptable." The term "morally" brings to the whole question of life, however initiated, an element that cannot be shunned. But is. And now requires restoration in the name of what was formerly seen as Truth—the thing, you may recall, which is supposed "to make you free."

The urgency of moral conversation grows and grows and grows. Freedom turns out not to be exactly what the politicians sometimes say it is—the successful application of personal desire, the reaching out for . . . well, whatever.

Even within the community of IVF supporters, with their life-affirming hopes and desires, problems arise. A large one is whether to let nature take its well-known course or tailor the product for higher satisfaction. Far from fully explored is the prospect, the possibility, of employing genetic testing to check out possible birth defects. Or intelligence. Even eye color.

A Rutgers law school professor, Kimberly Mutcherson, observed to the *Wall Street Journal*: "We are being asked to decide these deeply difficult and complicated moral and ethical issues that come up in the context of making new people outside of bodies."

Decide on what basis, according to what tests, what comparisons, what authorities? We're not exactly into moral comparisons these days. "Beyond Good and Evil," in Herr Nietzsche's formulation, is where we more or less live today, though not all of us. Not enough of us to let a state or a whole nation bypass embryonic, let us say, questions such as Prof. Mutcherson draws to our attention.

And think of all the other freezer-stored embryos I mentioned earlier. What's one going to do with all of them anyway? Human beings (by court edict) may and do create, but the reversal of creation reveals itself as an entirely different matter. What is easily predictable is the intervention of the political authorities with their laws and injunctions and jail sentences: intended testimonies to the public good. But how good? And designed to what end? By whom? And bearing what responsibility for outcomes?

Nietzsche and his modern acolytes jam the doorways of understanding, refusing access to any but like thinkers.

Moral discourse about large matters evades us due to our aching lack of moral leadership. We have stopped believing, as a people, in principles that formerly, most or much of the time, underlay our life together: principles

like the worth, not to say the sacred nature, of unborn life. We can't talk these things over—figure out how to work through new circumstances such as IVF. We don't start arguing from the same premise—that God-given life is good.

If, as I have argued, our perplexities arise from America's, and the West's, smashing failure over at least the past half century to think—to talk—to reason in any normal, or even eccentric way about human life, we can't delay addressing questions such as the meaning and destination of life.

We don't know what's going on half the time when a new situation involving life presents itself: say, legal cut-off periods for abortion; say, the morality of an abortion pill such as mifepristone; say for certain, without doubt, the imputed status or lack of status of an embryo.

There is no framework for thinking about such things, far less talking about them. We bring to the table only the splenetics no one wants to be dragged through after all the years of judicial opinions, campaign promises, and good old-fashioned name-calling.

If the Nietzscheans, foes of moral standards, jam, as I have said, the doorways of understanding, what is there to do but talk back to them? And more—to batter down their notions, which are nothing at all but notions based on personal opinion, enforced by bile and raw intellectual contempt.

And so you ask, gentle reader, who's going to do all the necessary talking, our intellectual institutions having fallen in on themselves, our churches having developed bad cases of the theological wobbles, our media having dug in with the Nietzscheans? Whose voices can drown out theirs?

We don't know. One thing we know: The job—and it's a job for sure; arduous; unceasing—has been put off long enough. Or we wouldn't be talking about it now, would we?

A Pro-Abortion Epiphany

Karl D. Stephan

At a time when women are encouraged to "shout your abortion," it's no surprise that even religious leaders of a certain stripe will try to work pro-abortion messages into the church calendar. A legal challenge to Texas's new abortion restrictions made its way into the headlines recently, and drew the attention of Rev. Katheryn Barlow-Williams, who pastors Central Presbyterian Church of Austin, Texas. The challenge, and Barlow-Williams's response, show how state legislative efforts permitted by the Supreme Court's *Dobbs* decision revoking *Roe* v. *Wade* are affecting both medical practice surrounding pregnancy and childbirth and attitudes of liberal churches and pastors concerning the issue of abortion.

First, the challenge. Kate Cox, a 31-year-old mother of two children, became pregnant and was looking forward to a third child. Ultrasound tests showed numerous anatomical defects in the fetus, however, and last November an amniocentesis revealed that the baby had Trisomy 18, a genetic disorder that leads to stillbirth in about 95 percent of cases.

Cox asked her doctor if she could abort the baby. She was told that because of the new Texas law prohibiting most types of abortions, it would be hard to find anyone in the state willing to do the procedure. "Texas laws," reported the *Texas Tribune*, "ban all abortions unless 'in the exercise of a reasonable medical judgment,' a doctor determines that the patient is experiencing 'a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function.'"

Although Cox had suffered some cramping and unexplained fluid leakage, she was not at imminent risk of dying or losing a major bodily function. Once she found out what was going on with her baby, she clearly wanted to end the experience as soon as possible: "I do not want to put my body through the risks of continuing this pregnancy," she was quoted in the *Tribune* story. "I do not want to continue until my baby dies in my belly or I have to deliver a stillborn baby or one where life will be measured in hours or days."

Told that she couldn't get an abortion under the prevailing circumstances, Cox allowed the Center for Reproductive Rights, a pro-abortion law organization,

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Karl D. Stephan is a professor of engineering at Texas State University and has published articles on engineering ethics, the history of technology, and atmospheric physics.

to file a lawsuit in Travis County District Court in Austin asking for a temporary restraining order that would allow her to have an abortion. The suit claimed, according to the *Tribune*, that "continuing the pregnancy threatened her health and future fertility," because the necessary caesarean delivery would reduce her chances of becoming pregnant again.

District Judge Maya Guerra Gamble granted the motion, but then Texas Attorney General Ken Paxton petitioned the Texas Supreme Court to overturn her ruling. Before the court could act, Cox's lawyers announced that her medical condition had deteriorated further, and on December 11 she left Texas to obtain an abortion in another state.

Only a few hours after Cox left the state, the Texas Supreme Court rejected the lower court's temporary restraining order. While acknowledging the difficulties Cox experienced, the judges called on the Texas Medical Board to create guidelines for doctors to decide at what point a problem pregnancy constitutes valid reason for obtaining an abortion. But absent such advice, doctors remain uncertain regarding the exact conditions under which an abortion will be allowed by the new law.

The *Roe* v. *Wade* regime lasted nearly half a century; barely two years have elapsed since it was overthrown in June 2022 by the *Dobbs* decision. Since then, the State of Texas has passed one of the most ambitious abortion bans in the United States. Just as in the original *Roe* case, which involved a woman from Texas, the new abortion ban is being tested vigorously by opponents, who had grown accustomed to the virtually unrestricted abortion license provided by *Roe*. Jurist Oliver Wendell Holmes Jr. is the most well-known source for the legal adage "Hard cases make bad law." Kate Cox's situation was admittedly a hard case. Her plight of carrying an almost certainly doomed baby was agonizing, and she viewed an abortion as the answer to her problems. Aborting a normal, healthy baby is one thing, but aborting a malformed child, most likely to die in utero or not live more than a few days after birth, seemed to her like taking a path of less pain. "I do not want to put my body through the risks of continuing this pregnancy," she said in a court filing. "I do not want my baby to arrive in this world only to watch her suffer a heart attack or suffocation. I need to end my pregnancy now so that I have the best chance for my health and a future pregnancy."

The media, the doctors, and even Cox herself dehumanized the baby once she was discovered to have Trisomy-18. Although she is already a mother of other children and referred to her unborn daughter as a baby, her attitude seemed to parallel that of the owner of a beloved pet dog whose illness is beyond remedy, and for whom euthanasia is the best choice. Most media

accounts didn't mention the sex of the child, referring to the baby only as "it."

Those who oppose restrictions on abortion place their sympathies with the woman seeking an abortion over against any alleged rights of the fetus. Cox's plight so appealed to Rev. Barlow-Williams that she decided to make the case into a modern-day retelling of the flight of the Holy Family into Egypt.

Ordinarily, an opinion piece penned by an obscure pastor and published in a regional newspaper would not merit much attention. But the way Rev. Barlow-Williams constructed her arguments says a great deal about the way pro-abortion religious leaders think.

The Christian feast of Epiphany is celebrated in the Western church on January 6. Rev. Barlow-Williams's piece, titled "An Epiphany for Reproductive Freedom," was carried in the Sunday January 7 edition of the *Austin American-Statesman*. She begins by pointing out that Herod doesn't figure prominently in Christmas images of the Three Wise Men visiting Jesus. She reminds the reader that Herod, "threatened by rumors of a newborn king . . . ordered the murder of all baby boys in Bethlehem." But we err, she says, in ignoring Herod's malevolence, because, in her words, "Anytime love is born, fear threatens to kill it."

In the next paragraph, she casts Texas Attorney General Ken Paxton in the role of a modern-day Herod: "One such Herod recently made national news. Attorney General Ken Paxton has declared all-out war against women who are already injured and battle-weary from grief."

Like Donald Trump, to whom she indirectly likens Paxton, the current attorney general is an ambivalent figure. He is under a long-standing indictment for securities fraud, he recently survived an impeachment attempt, and some of his headline-grabbing lawsuits against the federal government are probably intended more as publicity stunts than as serious legal initiatives. Nevertheless, the attorney general is allowed broad discretion in enforcing laws passed by the Texas legislature, and in a statement issued after the district court's restraining order, which would have permitted Cox to have the abortion, Paxton warned that the judge's order "will not insulate hospitals, doctors or anyone else from civil and criminal liability."

In the absence of any generally accepted moral basis for making decisions, organizations such as hospitals, obstetrical practices, and insurance companies still respect threats to their economic viability in the form of lawsuits and criminal charges. Paxton has mastered that language, which may be the only kind of threat that such institutions understand at this point.

But to Rev. Barlow-Williams, Paxton's success in getting the Texas Supreme Court to overrule the lower court's ruling to allow Cox's abortion is

on a par with Herod's order to kill all male babies under two years old in Bethlehem.

The parallels she cites are superficial: Both Cox and the Virgin Mary were dealing with problem pregnancies. Both women ended up fleeing persecution by entrenched authorities. To Rev. Barlow-Williams, these parallels show that just as Herod tried to kill the love that was born when Jesus Christ came to earth in the form of an innocent baby, Paxton is trying to kill the "love" that would allow Kate Cox to abort her baby.

Toward the end of her piece, Rev. Barlow-Williams deplores Texas's poor maternal health and infant mortality rates and asks why Paxton doesn't concentrate on those problems instead of persecuting pregnant women who want abortions. She finishes with this peroration: "As Cox and all the women like her escape today's Herods, they forge a path of healing and hope for others. They remind us that love doesn't always come in the form of a baby in a manger or a uterus. Sometimes it comes through a wise soul who sees Herod for who he is and travels home by another way."

While hard cases may make for bad law, they can also reveal previously hidden assumptions and worldviews that do not come to light in less extreme circumstances. In the original Epiphany story, the innocents were the Christ Child, then the Virgin Mary, and finally Joseph, who led the Holy Family's flight into Egypt. The heavies were Herod and his troop of enforcers who carried out the holocaust of infant murders in Bethlehem.

In adapting the story to fit her modern sensibilities, Rev. Barlow-Williams casts Cox and the legal staff at the Center for Reproductive Freedom as the innocents, and Ken Paxton as the bad guy. In her retelling, she neglects the person most vitally concerned with the outcome: Cox's baby. Rev. Barlow-Williams applauds what she regards as Cox's wisdom, which led her to flee the domain of Paxton/Herod for an abortion elsewhere.

If, instead of a baby with Trisomy-18, Cox possessed a crippled pet dog, and the State of Texas were persecuting her for wanting to euthanize her pet, it might well have been the wisest and most loving choice to go to another state to find someone willing to put the dog out of its misery. What makes a woman treat her deformed fetus with no more consideration than she would grant to a pet dog? The best answer seems to be that Cox, Rev. Barlow-Williams, the Center for Reproductive Rights, and their sympathizers have lost any sense of the uniqueness of humanity. Whether or not they admit it, they are operating on a philosophical basis of materialism.

If the materialist worldview is correct, there is nothing distinctive or even particularly consequential about human life compared to other kinds of life, or even inanimate nature. This view completes the "abolition of man," as

C. S. Lewis described in his famous 1943 book of that name. If there is no God who impressed His image onto every member of the human race, then there is no ultimate basis for right and wrong or good and bad, despite Rev. Barlow-Williams's efforts to liken Ken Paxton to Herod. But as Lewis says in *Abolition*, "When all that says 'it is good' has been debunked, what says 'I want' remains."

Once Cox discovered her baby's condition, her desire was to be rid of it, and that meant having an abortion. If she and her baby are essentially no different from the other animals, what is good for a disabled dog is good for a disabled baby.

The Texas abortion law rests on a different foundation. It is consistent with the truth that man is made in the image of God, a truth that was well-nigh indisputable in the Western world until a few decades ago. Every person living today was once a baby, and before that a fetus, and before that an embryo. Modern knowledge of genetics, biochemistry, and embryology carries that truth home with a force that was unknown to the ancients, who were uncertain about the spiritual status of the unborn baby simply because they didn't know the details of the gestation process. Now that we know about the unique DNA formed within each fertilized egg, the poetic words of David in Psalm 139—"For you created my inmost being; you knit me together in my mother's womb"—have solid scientific backing. A unique human individual is formed every time a human egg is fertilized, and there is no time afterwards when one can contend that the image is not there.

Carl Trueman, a theologian at Grove City College, has written extensively on what he considers to be the most important cultural and spiritual crisis of our time: the absence of correct anthropology both inside the church and in the world at large. While in the early centuries of the Christian era the church struggled with questions surrounding who God is, today Western culture can no longer answer the question "Who is man?" with confidence or even clarity. When a U.S. Supreme Court candidate can, with a straight face, decline to define the word "woman," matters have reached a point in which ignorance of common-sense things that everyone used to know about the nature of man is no longer something to be ashamed of, but something to be defended and even applauded.

In the absence of certainty that every human being from conception to natural death bears the image of God and thus is entitled to equal respect and protection from violence, other criteria will rush in to fill the void of knowledge. Among these criteria are perceived value to the mother and to society. Disabled persons—those with Down's syndrome and others whose physical state

in the womb is statistically associated with poor outcomes for maturing into a useful adult—are all now judged by these criteria alone, and often found wanting. Once they have been found wanting, disposal often appears to be the most sensible course, especially if the alternative of continuing the pregnancy is dangerous, uncomfortable, or threatening to the mother or other adults.

A society that reifies the avoidance of pain and discomfort and demonizes anyone who stands in the way of such avoidance is going to interpret "love" as acting to ease the immediate discomforts of life, almost regardless of the cost to others with lesser claims to humanity, based upon consequentialist and utilitarian calculations. Rev. Barlow-Williams's dictum, "Whenever love is born, fear threatens to kill it," applies with equal force if we change it to say, "Whenever love is conceived, fear threatens to abort it." Most abortions, including many that are done for medical reasons, are committed because of fear: fear of continuing the pregnancy because of possible harm to the mother or defects in the baby, fear of raising an unwanted child, fear of career or relationship disruptions, and so on.

In prohibiting nearly all abortions, the new Texas law implicitly recognizes that even deformed fetuses are made in the image of God. To unbelievers, we can appeal to the fact that every human being was once a fetus and ask them to apply the Golden Rule: Would you want to have been aborted when you were that age? As the new Texas law takes a stand that American society has not encountered for nearly five decades, there will be further attacks on it and attempts to soften or negate its impact. Attorney General Ken Paxton is a flawed tool in the hands of God, and so are the rest of us. As more cases concerning the new law are tried, perhaps a workable medical consensus will emerge in which doctors do not neglect the claims of the fetus when considering whether an abortion is medically necessary. But such a consensus will never arise if the rights of the fetus are abandoned at the start. And whatever his flaws, Ken Paxton defended those rights. If this gains him the title of Herod in some circles, Paxton has been called a good many things worse than that.

At the first Epiphany, God supernaturally warned the Magi and Joseph to flee Herod in order to protect the Love that came down to save us all. That same Love would die on the cross as a man. God the Father did not protect Jesus from the inexpressible suffering that crucifixion involved. One suspects that the kind of love Rev. Barlow-Williams espouses avoids suffering at almost any cost, including the cost of a baby's life. With such love, she will please many of her fans and members of her congregation. But that kind of love is not the love that led Jesus to the cross, nor is it the kind that will save the lives of infants in the womb.

Marriage, Motherhood, and the Plain People of Ireland

Edward Short

"Herein lies wisdom, beauty and increase;
Without this folly, age and cold decay"

—Shakespeare, Sonnet 11

I

In *King Lear*, Shakespeare sets the scene for what will be his anatomy of a society descending into moral chaos by having his Duke of Gloucester speak of his illegitimate son with casual contempt. The Duke of Kent asks Gloucester, "Is not this your son, my lord," pointing to Edmund, to which the father replies: "His breeding, sir, hath been at my charge. I have so often blushed to acknowledge him that now I am braz'd to it." Kent shows the awkwardness such an avowal causes by admitting "I cannot conceive you," after which Gloucester has his punning answer ready: "Sir, this young fellow's mother could, whereupon she grew round-wombed, and had indeed, sir, a son for her cradle ere she had a husband for her bed." Gloucester then goes further and discloses to Kent that "though this knave came something saucily to the world before he was sent for, yet was his mother fair, there was good sport at his making, and the whoreson must be acknowledged." Thus, in the first few minutes of this greatest of his plays Shakespeare encapsulates the ruin he set himself to dramatize by having marriage and motherhood—two pillars of any proper Christian order—roundly demeaned.

I thought of this opening today when news came over the wires that Ireland—surely a country that has known a good deal of moral chaos in the last few years—rejected its political class's call for the removal of references to motherhood and marriage in its constitution. The Family Amendment would have removed the clause in the constitution upholding the primacy of marriage and family to society and legally redefined "family" as "founded on marriage or on other durable relationships," while the Care Amendment would have removed the clause reaffirming that the "state recognizes that by

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her life within the home, woman gives to the state a support without which the common good cannot be achieved."

In a historic landslide, the Irish rejected the Family Referendum by 67.7 percent and the Care Referendum by 73.9 percent. The Care Amendment result yielded the highest percentage of No votes of any referendum held in Ireland. County Donegal, God bless it, delivered the biggest No vote of all the country's counties, with over 80 percent of voters rejecting the government amendments. Senator Ronan Muller summed up the vote nicely when he wrote: "Faced with secretly drawn-up proposals to dilute the significance of marriage for family life, and to dishonour women and motherhood by removing the only direct reference to their interests [in the constitution], and observing the ruthless way in which debate on these proposals was suppressed in the Dáil and Seanad, the people have—I think it is fair to say—snapped back. They weren't confused. They knew what they were voting for. They didn't like it. And they rejected it massively."

The view of the political class, slavishly rubberstamped by the country's media, was that such clauses should be removed because they are "sexist" and insufficiently "inclusive," as though marriage, motherhood, and the propagation of new life were somehow secondary to the anti-life dictates of the new world order. The pro-life Irish journalist John Waters exposed the government's cynical wiles when he charged it with deploying "the same old 'progressive' bait to lead people to perdition . . . stripping them of their rights as human persons, in the guise of progress." That the Irish people voted to retain the life-affirming clauses, despite the considerable pressure put upon them to excise them, shows that there is something about such deep unbiddable realities that not even the hirelings surrounding Taoiseach Leo Varadkar or the editors of the *Irish Times* can expel.

Ireland would "take a step backwards" if its constitution were not changed to remove a reference extolling women's "duties in the home," Varadkar had said ahead of the vote, which was pointedly scheduled to take place on International Women's Day. After the vote, however, he was constrained to admit: "Clearly we got it wrong. While the old adage is that success has many fathers and failure is an orphan, I think when you lose by this kind of margin, there are a lot of people who got this wrong and I am certainly one of them."

Before it went down to defeat, the referendum was expected to confirm Ireland's evolution from a conservative, overwhelmingly Roman Catholic country in which divorce and abortion were illegal, to an increasingly progressive, agnostic society. According to the Central Statistics Office, the proportion of Catholic residents had fallen from 94.9 percent in 1961 to 69 percent in 2022. While Irish voters legalized divorce in a 1995 referendum,

embraced same-sex marriage in a 2015 vote, and repealed the abortion ban in 2018, they were not ready to put marriage on a par with such a legal absurdity as "other durable relationships" or allow the constitution to blot out the dignity of women in the home.

II

James Joyce certainly understood these matters well enough when he had his character Stephen Daedalus in *Ulysses* (1922) encounter one of his more unpromising students: "Sargent who alone had lingered came forward slowly, showing an open copybook. His tangled hair and scraggy neck gave witness of unreadiness and through his misty glasses weak eyes looked up pleading. On his cheek, dull and bloodless, a soft stain of ink lay, dateshaped, recent and damp as a snail's bed." When the boy opens his book and admits to not knowing how to do his sums, Stephen can only think: "Futility." But then he thinks again and discovers a truth the ruling class of Ireland have sorely forgotten. For all his seeming futility, Sargent hardly merits dismissing. Why? "[S]omeone had loved him, borne him in her arms and in her heart. But for her the race of the world would have trampled him under foot; a squashed boneless snail." For his mother, the boy's vulnerability is not an obstacle, it is the essence of what makes him lovable. Sargent's mother, in other words, knows what Angelo says to Isabella with such terse sagacity in *Measure for Measure*: "We are all frail." And this is precisely why Sargent's mother "had loved his weak watery blood drained from her own."

For the skeptical Stephen, whom we encounter during the early pages of the novel questioning every aspect of life and art, this naturally prompts a fundamental question. "Was that then real? The only true thing in life?" And Stephen's answer is a stinging rebuke to the political ideologues within Ireland today who would trivialize motherhood. "*Amor matris*: subjective and objective genitive," Stephen says to himself, which is to say, the love a mother bears for her son and the love a son bears for his mother—this is indeed a truth that cannot be denied, a truth Stephen's friend Cranly had echoed in Joyce's previous novel, *The Portrait of the Artist as a Young Man* (1916.): There, Cranly says, "Whatever else is unsure in this stinking dunghill of a world a mother's love is not. Your mother brings you into the world, carries you first in her body. What do we know about how she feels? But whatever she feels, it, at least, must be real." And having arrived at this existential epiphany himself, Stephen realizes, with the grace of fellow-feeling, the grace of love, something rarely present in those who live only for the acquisition and retention of power, "Like him was I, those sloping shoulders, this gracelessness. My childhood bends before me."

That Joyce should have written with such tenderness of the primordial bond between mother and child was characteristic. Like Shakespeare, who refers to "Wife and child" in *Macbeth* as constituting "precious motives . . . strong knots of love," Joyce based all his writing on the foundations of family. As all who knew him knew well, he was devoted to his own family. On this score, his biographer Richard Ellmann was eloquent. "In whatever he did, his two profound interests—his family and his writings—kept their place. These passions never dwindled. The intensity of the first gave his work its sympathy and humanity: the intensity of the second raised his life to dignity and high dedication." In "Ecce Puer" (1932), the poet in Joyce wrote movingly of the birth of his grandson and the death of his father with a telling allusion to King Lear, not to mention the Catholic faith that he could never entirely repudiate.

Of the dark past
A child is born;
With joy and grief
My heart is torn.

Calm in his cradle
The living lies.
May love and mercy
Unclose his eyes!

Young life is breathed
On the glass;
The world that was not
Comes to pass.

A child is sleeping:
An old man gone.
O, father forsaken,
Forgive your son!

One can also see the family man in Joyce in something he wrote about his daughter Lucia, who suffered from devastating schizophrenia: "It is terrible to think of a vessel of election as the prey of impulses beyond its control and of natures beneath its comprehension and, fervently as I desire her cure, I ask myself what then will happen when and if she finally withdraws her regard from the lightning-lit reverie of her own clairvoyance and turns it upon that battered cabman's face, the world." To expect the Irish political class to understand such familial solicitude is doubtless asking too much, but it is heartwarming to know

that the Irish themselves understand it. As for the hapless Leo Varadkar, we can only hope that he comes round to Benedict's view of marriage and motherhood in *Much Ado About Nothing*: "The world must be peopled."

III

The critics of the clauses in the constitution often charge that their framers—Ireland's longest-standing Taoiseach Eamon De Valera (1885-1975) and then-President of Blackrock College Fr. Charles McQuaid (1895-1973), who would go on to become Primate of All Ireland—were not only reactionary but misogynistic men. While it is true that they did not know their own mothers, growing up essentially motherless, it is not true that they were somehow hostile to women. On the contrary, they put the clauses honoring motherhood in the constitution precisely because they recognized how essential mothers and motherhood are to the life of any stable social order. In this regard, they understood what Pope John Paul II understood so brilliantly when he wrote in *Redemptoris Mater* (1987):

> It can be said that motherhood in the order of grace preserves the analogy with what in the order of nature characterizes the union between mother and child. In the light of this fact it becomes easier to understand why in Christ's testament on Golgotha his Mother's new motherhood is expressed in the singular, in reference to one man: "Behold your son."

What is striking about Karol Józef Wojtyła's testimony to the significance of Mary's motherhood in the Church is that he, too, grew up without his mother: she died when he was nine years old. Yet, like De Valera and McQuaid, he had a profound appreciation for the power of motherhood. For the Polish pope, "these same words ["Behold your son"] fully show the reason for the Marian dimension of the life of Christ's disciples. This is true not only of John, who at that hour stood at the foot of the Cross together with his Master's Mother, but it is also true of every disciple of Christ, of every Christian." Why?

> The Redeemer entrusts his mother to the disciple, and at the same time he gives her to him as his mother. Mary's motherhood, which becomes man's inheritance, is a gift: a gift which Christ himself makes personally to every individual. The Redeemer entrusts Mary to John because he entrusts John to Mary. At the foot of the Cross there begins that special entrusting of humanity to the Mother of Christ, which in the history of the Church has been practiced and expressed in different ways. The same Apostle and Evangelist, after reporting the words addressed by Jesus on the Cross to his Mother and to himself, adds: "And from that hour the disciple took her to his own home" (Jn. 19:27). This statement certainly means that the role of son was attributed to the disciple and that he assumed responsibility for the Mother of his beloved Master. And since Mary was given as a mother to him personally, the statement indicates, even though indirectly, everything expressed by the intimate relationship of a child

> with its mother. And all of this can be included in the word "entrusting." Such entrusting is the response to a person's love, and in particular to the love of a mother.

Critics of De Valera and McQuaid might not enter into what John Paul II is saying in this meditation on the vitality of the Blessed Mother in the life of Christian discipleship, but it should arrest anyone interested in the future of Catholic Ireland.

> The Marian dimension of the life of a disciple of Christ is expressed in a special way precisely through this filial entrusting to the Mother of Christ, which began with the testament of the Redeemer on Golgotha. Entrusting himself to Mary in a filial manner, the Christian, like the Apostle John, "welcomes" the Mother of Christ "into his own home" and brings her into everything that makes up his inner life, that is to say into his human and Christian "I": he "took her to his own home." Thus the Christian seeks to be taken into that "maternal charity" with which the Redeemer's Mother "cares for the brethren of her Son," in whose birth and development she cooperates in the measure of the gift proper to each one through the power of Christ's Spirit. Thus also is exercised that motherhood in the Spirit which became Mary's role at the foot of the Cross and in the Upper Room.

Will the Irish welcome the Mother of God back into their homes now that they have refused to allow their political class to take mothers out of their constitution? No one captured the stakes of that holy hospitality better than the pope for whom the "Mother of the Redeemer, gate of heaven, star of the sea" meant so much, especially where he speaks of how:

> This filial relationship, this self-entrusting of a child to its mother, not only has its beginning in Christ but can also be said to be definitively directed towards him. Mary can be said to continue to say to each individual the words which she spoke at Cana in Galilee: "Do whatever he tells you." For he, Christ, is the one Mediator between God and mankind; he is "the way, and the truth, and the life" (Jn. 14:6); it is he whom the Father has given to the world, so that man "should not perish but have eternal life" (Jn. 3:16). The Virgin of Nazareth became the first "witness" of this saving love of the Father, and she also wishes to remain its humble handmaid always and everywhere. For every Christian, for every human being, Mary is the one who first "believed," and precisely with her faith as Spouse and Mother she wishes to act upon all those who entrust themselves to her as her children. And it is well known that the more her children persevere and progress in this attitude, the nearer Mary leads them to the "unsearchable riches of Christ" (Eph. 3:8). And to the same degree they recognize more and more clearly the dignity of man in all its fullness and the definitive meaning of his vocation, for "Christ . . . fully reveals man to man himself."

IV

Laoise De Brún, founder of The Countess—an advocacy group for women and children—told reporters at Dublin Castle that the referendum result was a "huge victory for the people of Ireland and it's the first nail in the coffin

for this ideologically captured government." Yes, of course, but the death of progressive Ireland will mean nothing if it does not give rise to the revival of Catholic Ireland.

* * * * *

Postscript: On March 20, 2024, scarcely two weeks after this essay was written, Irish Prime Minister Leo Varadker of the Fine Gael Party unexpectedly resigned. "I know this will come as a surprise to many people and a disappointment to some, but I hope you will understand my decision," Mr. Varadkar told a news conference outside Leinster House in Dublin. "I know that others will—how shall I put it?—cope with the news just fine." As to who will succeed Varadker, readers should keep an eye peeled on whom the Irish bookies see as Ireland's next taoiseach as the race for his successor takes shape. God bless Ireland!

"It appears he was caught in the middle of an interprative dance move."

Big, Little Problems:

How We Neglect Pregnant Women's Mental Health

Mary Rose Somarriba

My world turned upside down in mid-2021, when—in the midst of a pandemic—I welcomed my second baby in two years. Our brood doubled in size from two kids to four, and a lot changed in our home. For one, our cat was displeased with the new young people and went so far as to poop on our master bed to send a message (it was received).

That may have been the least impactful change. As childcare grew scarce and I dropped balls at work and home, a combination of postpartum depression (PPD) and anxiety hit like an avalanche. The challenge with a mental health issue is that it isn't clearly labeled as such; at first it can appear quite convincingly that you have indeed become a failure, and that the future is hopeless. With the encouragement of loved ones, I ultimately got some help and could see my PPD for what it is.

But until then, for months I could hardly see the path in front of me, much less my identity in the mirror. After a while, you just go into survival mode. I had already given birth to three children—surely going from zero to one child was the hardest? But now, as I welcomed our fourth (and I am a fourth child myself), my eyes were opened anew to the selflessness of my mother in welcoming me. That's when I realized that, while some aspects of selflessness are cultivated like virtues, some happen to you as you accept losing parts of yourself, intended or not.

That's what happened as I welcomed my little "Pep." Perpetua, we named her. A girl with the biggest, most expressive eyebrows I've ever seen on a child. (Also with the loudest scream I've ever heard—and I've heard the cries of 15 nieces and nephews!) I ached with how much I loved watching her face light up with delight, eyebrows raised high in surprise or flattened straight across her face when choking with laughter. I crumpled when they furrowed low over her tear-soaked eyes, tightly shutting out any consolation. The incessant noise overpowered any solution-oriented thoughts I could muster. Perpetua. Her name signifies, literally, *it will never stop.* Was this my new normal? Have I lost myself forever?

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Big, Little Worries

Some might say I could have avoided all of this. An ultrasound OBGYN tried to warn me, at my just-before-twenty-week scan, that this child might have a birth defect—cystic fibrosis (CF) to be exact, since I'm a carrier. If my husband got tested and turned out to be a carrier too, there would be a risk of our child having this congenital disease, and I would still have time to do something about it. Never mind that the *New York Times* found that a number of medically prescribed prenatal tests show false positives for genetic abnormalities 85 percent of the time. Never mind that this man was also the father of my three older children, all born without CF, making the risk factor seem slim. I couldn't imagine listening to worries about a possible congenital disease and terminating one of these three sweethearts in the womb.

Since it would make no difference to the prenatal care the child would receive, my husband never got tested; we would love this child either way. Abortion wasn't an acceptable option, because we don't believe certain conditions make certain people "unfit" to live—or raise—in one's family or the world at large.

But I was alarmed at the pressure I felt from the sonogram OBGYN to consider aborting my wanted child. I thought her advice revealed a eugenic line of thinking that's infecting OBGYN medicine—to view certain lives as more valuable than others. And I still think that—there remains an abundance of evidence to support the troubling eugenic trend in abortion pressure. But upon further reflection, I wonder if there was an additional possible motivation behind her pushing me to reconsider letting my child live.

Is it possible she was trying to save *me* the trouble . . . of a fourth child? Of a child during a pandemic? Of any child at all? No doubt she's seen stressed-out moms suffering from postpartum depression and struggling to make it all work. In other words, she's seen *me* in the future. She's seen moms carrying even heavier burdens too, with special-needs children, or with chronic illnesses themselves, with financial hardships, unsupportive partners, the whole gamut of suffering. I remember how much she urged me to think about it a little longer.

She probably sees herself as the mythical Cassandra, offering abortion as a charitable gift—an escape route from the stress that children of any health condition will necessarily bring, at least into the immediate future of any active parent. Perhaps she wanted to impress this on me, woman to woman, while my husband wasn't there, because, after all, I have the authority to pull the trigger. As the mother, I also have the surest burden.

Big, Little Eyebrows

My fourth-born wasn't born with a rare disease, but there *is* something different about Pep. Her huge eyebrows are unlike anyone else's in the world. She roars fiercely to imitate her favorite stuffed animal, a lion. Her loud baby scream has shifted to a voice that belts wordless sounds to the tune of "Million Dreams" from *The Greatest Showman*. And to witness this natural wonder develop in front of my eyes, all it cost me was letting her grow in my body. Never mind my thinning hair and shortened fuse postpartum. No hardship I experienced could excuse removing her from existence. Still, the fuse needed attention, so I noted the warning signs of postpartum depression, sought advice from my doctor, and accepted her referral to a therapist. (What a difference a call makes!) I wasn't alone with these burdens. I felt *helped*.

After the birth of Pep, the *Dobbs* decision was released and *Roe* v. *Wade* was overturned. The public response from abortion supporters stunned me. I had known people believed these things before, but the newly brazen voices in the resistance blew my mind: We're going backward in women's rights and advancements, they'd say . . . as if abortion somehow *helps humanity*? Our mothers and grandmothers had more rights than we do, they'd say . . . as if it was good that our mothers and grandmothers had "rights" to terminate us? Every mantra seemed as half-baked as it was shrill and urgent, as if to discourage thinking it through and encourage the rush to pile onto the bandwagon. Some would exclaim, "Why should anyone care if others have abortions? Don't want an abortion, don't have one." *Really? I don't know*, I'd think to myself, pondering as I made my way down my busy street . . . *why should we care about people we've never met dying in Ukraine? Why should I not drive off the bridge right now? Why should we care about human life at all? If any of us post-birth people matter, then terminating pre-birth people isn't inconsequential.*

Perhaps the most commonly heard battle cry: A woman can do what she wants with her own body . . . as if this entire issue wasn't about giving a separate human body a chance to exist—a body just like those we see in our friends' ultrasound photos, just like those little ones on life support in the NICU, just like our body when we were in our mother's womb. Just like my little Pep in utero was when I was encouraged to abort!

Postpartum depression is a doozie to begin with, but noticing the chasm of assumptions about the value of human life separating me and those in my neighborhood and social media feed was another level of disorienting.

But the most discordant claim of all those I heard during this season of momhood was this: A woman should be able to abort a child if it will cause her mental distress. Giving birth certainly caused me mental distress, and

research shows that's pretty universal, even for those who don't experience clinically significant diagnoses. How could this make sense? I couldn't help but think how horrible it must be for women who might have kept their child if they had received the support they needed.

Wanted: A Helping Hand

The aggressive coarseness of the pro-abortion advocates stunned me. I'm sure many consider abortion to be like bailing a woman out of a pregnancy . . . but *I've been pressured to abort a wanted child, supposedly to reduce my burdens*. That experience was painfully eye-opening. Now abortion-centric language sounds to me like hectoring women, at their most vulnerable, into believing their depressed, worst thoughts and acting upon them.

I contrasted the doctor pushing me to consider abortion with the doctor who helped me postpartum. If a baby stresses you out before birth, why are you encouraged to abort rather than to get through it with mental health support? Meanwhile, after birth, if I am struggling mentally, I'm not encouraged to give up my child, but to get through it with mental health support. Wouldn't it be better for women if we treated mental health needs across the board, both before and after we give birth?

How can we as a culture accept anything less, under the guise of women's health? How can we as a medically advanced society ignore the science of the preborn child's growth? How can we as artists and poets and creatives and family members and human beings (who were once fetuses ourselves) act like it's inconsequential if a child in the womb doesn't make it out? These little people are not make-believe in there—their scientifically verified existence is apparent on any ultrasound or pregnancy app. Their realness is not dependent on whether others opt into acknowledging it.

I for one couldn't accept a world that wouldn't welcome little Pep and her expressive eyebrows, or my niece, whom my sister brought into the world unexpectedly at age 19, and who was born with health issues that trouble her to this day. (You won't find a more encouraging, powerful soul in the world.) None of us are guaranteed a life without struggle. Don't we all need each other to get through it?

Sure, I've struggled with PPD. And my sister, who had an unplanned pregnancy, struggled with a lot more than I did. And my niece struggles with more than anyone I know. And I'm sure my mother shouldered her own burdens by giving birth to me, her fourth-born—yet it's still *right* that we're here. We are needed in this world. We need each other. I think we know this in our hearts, but perhaps we need to hear it again and again, in our stories, in our posts, in our media.

I know and love people who have had abortions; some of them have shared with me their post-abortive pain decades later. They need support, too, and while it's sadly not offered at your average doctor's office, support and resources are available for these people too. We might feel alone at times, but none of us are really ever alone. We shouldn't listen to fear-based voices that suggest as much in our darker moments. And we should take care not to be those voices, either.

When Abortion Causes Moral Injury

Leonard F. Grant III

309.89 Post-traumatic Stress Disorder

The stressor producing this syndrome would be markedly stressing to almost anyone, and is usually experienced with intense fear, terror and helplessness. The characteristic symptoms involve reexperiencing the traumatic event, avoidance of stimuli associated with the event or numbing of general responsiveness, and increased arousal. (APA, Diagnostic and Statistical Manual of Mental Disorders*, Third Edition - Revised, 1987)*[1]

Post-Abortion Syndrome (PAS), by definition then, is a type of Post-Traumatic Stress Disorder that is characterized by the chronic or delayed symptoms resulting from impacted emotional reaction to the perceived physical and emotional trauma of abortion. (RUE, 1994)[2]

[Moral Injury] is the deleterious psychological and spiritual outcomes that occur after engaging in an action that goes against, or transgresses, moral beliefs and values. (Carleton and Snodgrass, 2022)[3]

Halfway through his second term in office, President Ronald Reagan set out a plan to help protect the unborn at a White House Briefing for Right to Life Activists. "Growing numbers of women who've had abortions now say that they have been misled by inaccurate information," he said before instructing the Surgeon General to issue a report on the emotional and physical health effects of abortion.[4] Of course, such a report would enhance a woman's right to choose by ensuring her consent was truly informed. Yet those on all sides of the abortion issue suspected that a report of negative health effects would erode the standing of *Roe* v. *Wade*. Reagan's explicit mention of the "emotional" effects of abortion meant that the report could also settle the decades-long dispute in psychiatric circles over whether a "Post Abortion Syndrome" (PAS) similar to Post Traumatic Stress Disorder was in fact a diagnosable psychiatric condition. A formal diagnosis would offer scientific validity for the suffering of women who experienced depression, grief, guilt, and repressed emotions after choosing to abort.

Days before President Reagan left office, Surgeon General C. Everett Koop delivered a letter summarizing his findings. After a multi-agency assessment of the scientific literature and consultations with 27 professional, political, and patient advocacy groups, the openly anti-abortion Koop offered the nation a

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virtual shoulder shrug: "[T]he data do not support the premise that abortion does or does not cause or contribute to psychological problems."[5] A more definitive answer, he averred, would require a five-year study costing up to $100 million. Fewer than five months into President George H. W. Bush's first term, Koop resigned as surgeon general, taking with him all hopes of the White House conducting a more decisive study.

Abortion advocates in the American Psychiatric Association (APA) took advantage of Koop's uncertainty to assert that PAS was a "myth." Nada L. Stotland, a psychiatrist who would go on to become president of the APA, attempted to have the final word on the subject in a commentary published in the *Journal of the American Medical Association* in 1992. She intoned, "There is no evidence of an abortion trauma syndrome."[6] Her claim was backed by an "extensive search" of "the psychiatric and psychological literature." However, she dismissed research "published under religious auspices and in the nonspecialty literature" that demonstrated negative post-abortion effects. The studies Stotland deemed unacceptable lacked scientific credibility because they privileged the voices of suffering women and the observations of the professionals who helped them. She reduced patient reports of post-abortion adversity and clinical case reports to "anecdotal evidence." But Stotland's review of the scientific literature undermined her hardline position against abortion-related negative mental health effects. She acknowledged, "Significant psychiatric sequelae after abortion are rare, as documented in numerous methodologically sound prospective studies in the United States and in European countries." In fact, those contrary studies found that abortion can cause adverse psychological reactions when women have pre-existing mental health problems, are coerced into abortion, and undergo abortion in "adversive circumstances." All told, Stotland's denial of post-abortion mental health problems amounts to blaming women who did not have perfect lives and the fairy-tale abortion experience promoted by pro-choice activists.

Disregard from the psychiatric establishment did little to dissuade pro-life researchers from seeking to fill gaps in the scientific literature on abortion and mental health. Surgeon General Koop had commented in his 1989 letter to President Reagan that *all* of the nearly 250 studies reviewed in his inquiry "were found to be flawed methodologically."[7] By 1994, Vincent M. Rue and other pro-life researchers had systematically articulated a symptomatology of PAS that demonstrated it met the criteria to be considered a subtype of PTSD.[8] Despite tomes of new research on abortion's negative mental health consequences being published annually by organizations like Elliot Institute, Charlotte Lozier Institute, and others, pro-abortion researchers continued to

dismiss their findings on ostensibly arbitrary scientific grounds—so much so that "flawed methodology" has become a koan recited in social science research on abortion and mental health over the last two decades.

Sadly, a woman seeking information about the side effects of abortion today faces the same problems of misinformation President Reagan sought to ameliorate four decades ago. A visit to The American College of Obstetricians and Gynecologists' oxymoronically titled "Abortion Care" webpage answers the question "Does having an abortion affect your future health?" with the terse and myopic statement: "Abortion does not increase the risk of breast cancer, depression, or infertility."[9] Planned Parenthood also minimizes the psychological impacts of abortion on its "What Facts about Abortion Do I Need to Know?" webpage. They obfuscate potential harms by referring rather casually to them as "emotions": "It's totally normal to have a lot of different emotions after your abortion. Everyone's experience is different, and there's no 'right' or 'wrong' way to feel. Most people are relieved and don't regret their decision. Others may feel sadness, guilt, or regret after an abortion. Lots of people have all these feelings at different times. These feelings aren't unique to having an abortion."[10] Rather than receiving reliable information, visitors to these websites and their innumerable imitators are condescended to with language games.

What seems to have been lost from view on both sides of the abortion and mental health debate is that abortion is first a moral issue. When we talk about abortion in terms of science—whether or not a woman develops a mental pathology in the aftermath of her abortion—we reduce her, her lost child, and the circumstances of the abortion to statistics. By acknowledging the moral dimension of her decision, we acknowledge that she made her decision within a variety of contexts. Sometimes in these complex moral universes, women make choices that transgress their own deeply held moral beliefs. For example, a woman with type-2 diabetes may be told by her physician that her unplanned pregnancy poses a significant threat to her own health, prompting her to consider abortion. Other times, a woman who was satisfied with her decision to abort becomes remorseful years later. As painful as these situations may be, neither category meets the APA's criteria for being a traumatic stressor that could pathologize into PTSD. However, the moral stress women experience hours or years after abortion is the foundation for a different type of emotional and spiritual wound called moral injury.

What Is Moral Injury?

Psychiatrist Jonathan Shay is credited with being the first to articulate a definition of moral injury.[11] In his 1994 book *Achilles in Vietnam: Combat*

Trauma and the Undoing of Character, Shay described how many of the Vietnam veterans he counseled in the Boston, MA, Veterans Affairs clinic suffered from a condition that seemed like PTSD but had a cause that was not recognized in the APA's definition of a traumatic event. Indeed, military combat is rife with traumas that could lead to PTSD. However, the particular sufferings that Shay was attempting to define, he argued, were the consequences of veterans violating conscience, or their sense of "what's right," in the course of carrying out their duties. Through interactions with thousands of veterans, Shay codified a syndrome caused by transgressions of conscience: "Moral Injury is the sum total of the psychological, social, and physiological consequences that a person undergoes, when *all three* of the following are present:

1. Betrayal of what's right (the code of what is praiseworthy and blameworthy, part of culture)
2. By someone who holds legitimate authority (legitimacy and authority are phenomena of the social system)
3. In a high-stakes situation (what is at stake clearly has links to the culture and social system, but must be present in the *mind* of the person suffering the injury)."[12]

These violations are more than emotional disturbances. Shay holds that "the body codes Moral Injury as a physical attack." Moral injury, therefore, is a comprehensive wound that begins in the culture outside the body, makes its way into the victim through his or her social system, and finally lodges in the mind and body.

This early codification of moral injury emphasizes exterior causes. Preventing moral injury begins with leaders of cultural institutions like the military taking responsibility for the potential consequences of their orders before they give them. Equal parts social critique and explanation of the interplay among the psyche and society, Shay's notion of moral injury gained purchase with psychotherapists like Ed Tick, who distilled the condition down to its essence: "soul wound."[13]

While working with veterans of the Global War on Terror, Brett T. Litz and fellow clinicians from the VA developed a more robust model of moral injury. In particular, their definition broadens the spectrum of who can be morally injured and what actions can wound. Their definition of moral injury is

> Perpetrating, failing to prevent, bearing witness to, or learning about acts that transgress deeply held moral beliefs and expectations. This may entail participating in or witnessing inhumane or cruel actions, failing to prevent the immoral acts of others, as well as engaging in subtle acts or experiencing reactions that, upon reflection, transgress a moral code.[14]

Although Litz and colleagues' definition is widely referenced in studies of moral injury, there is no consensus definition of moral injury at this time, according to the Department of Veteran Affairs Moral Injury website.[15]

The first step toward a universally accepted definition is to clarify the language used to distinguish potentially morally injurious events (PMIEs) from the condition of being morally injured. Like PTSD, which requires that a person be exposed to a traumatic stressor, moral injury cannot be diagnosed unless a person is exposed to a PMIE. Mercifully, not everyone who faces a painful betrayal or ethically confusing experience will develop the symptoms of moral injury. In the case of PTSD, George Bonanno, the leading researcher on resilience following traumatic exposure, holds that two-thirds of people exposed to an adverse event either will not be affected or will recover completely in weeks or months.[16] It's the final third who suffer long-term and require significant interventions to heal. Whether the clinical insights and studies gathered over the past fifty years on PTSD can be readily applied to moral injury remains an open question. Distinctions are important. As the VA states, we now can distinguish moral injury "from moral frustration, which is a more transitory reaction to a moral challenge, or moral stress, which is an acute reaction to a moral stressor."[17] More importantly, we know that moral injury can occur alongside PTSD,[18] and, in some cases, make the symptoms of PTSD worse.

In the context of abortion, we can readily draw a parallel with a physician recommending that a woman terminate her pregnancy. The physician's order may accord with local laws and his professional organization's guidelines for best practice. Yet, the woman's moral universe complicates matters. She knows "what's right" and must weigh it against the recommendations of an authority figure. As the soldier relies on the military organization for his or her survival, so too does the woman who consults her physician about her unintended pregnancy rely on the morality of the medical organization. By shifting from a trauma framework to a moral injury framework to understand this situation, we accelerate far beyond clinical studies of whether the abortion procedure itself causes psychopathology into the realm of whether abortion will wound the woman's soul.

Abortion and Moral Injury

The potential moral hazards faced by women who undergo induced abortions, either electively or under coercion, have been acknowledged,[19] but not until recently have researchers investigated the psychological implications those decisions may have for women. Tara C. Carleton and Jill L. Snodgrass offer the first systematic exploration of abortion and moral injury in *Moral Injury after Abortion: Exploring the Psychospiritual Impact on Catholic*

Women. Despite the book's title, the authors did not set out to conduct an examination of Catholic motherhood lost. Thirty women participated in their qualitative (interview-based) study. All experienced their decisions to abort as moral stressors. Yet the only participants who suffered profoundly from the emotions associated with guilt, shame, betrayal, and culpability of moral injury were Catholic.

As researchers, Carleton and Snodgrass set out a framework for understanding moral injury and abortion that borrows generously from researchers like Shay and Litz, among others. Unlike their predecessors, they are theologians first and approach their subject from a religious lens of healing instead of a psychiatric lens of pathologizing moral injury into a diagnosable mental illness, like PTSD. They write, "it is important to consider the connection between moral injury and PTSD and why, from our perspective, moral injury as experienced by women post-abortion, and so many others, does not belong in the *Diagnostic and Statistical Manual*."[20] In short, moral processes are not mental illnesses, regardless of how troubling and painful they may be.

Their approach is even-handed and dodges the political landmines that riddle the discursive battlefield of abortion and mental health. Undoubtedly, interlocutors entrenched on either side will wish for more vim in the authors' assessment of abortion as a medico-legal phenomenon. Any designs on settling that subject are absent from their text, though. The authors occupy polar positions on the spectra of Christianity and the abortion issue itself. Carleton, who holds a doctorate in Counselor Education and Supervision, is a pro-life Catholic. Snodgrass, a PhD in theology, is an ordained minister in the United Church of Christ and "politically pro-choice." The resulting book serves as an answer to longstanding calls from researchers of abortion and mental health to cooperate in exploring the psychological aftermath of abortion. The authors' ultimate concern is helping the marginalized minority of women who suffer spiritually post-abortion to find healing by equipping religious and secular professionals to walk with women through the haunting consequences of their abortions. By declaring their individual standpoints on the subject, the authors both lend credibility to their findings and instill an ethos of care into the recommendations for helping women through their post-abortion struggles, which they present in the book's final chapter.

Moral Injury after Abortion offers an illuminating framework for post-abortion turmoil that focuses on moral processes. Carleton and Snodgrass introduce unplanned pregnancy as a *moral challenge* that may either cause negative emotional experiences like stress and suffering or positive experiences, like personal growth. Those women who choose abortion may transgress their deeply held beliefs and values, and, at some point post-abortion,

experience the guilt and shame of *moral stress*. Women who successfully manage and cope with their moral stress go on to a state of *moral repair*, in which they integrate their decision and actions into their conception of self. Those women who do not or cannot manage or cope with their moral stress experience brief, long-term, or chronic *moral injury*. There is room in this heuristic for women to move along a continuum from challenge to injury to repair. As with Bonanno's rule of thirds, a woman facing the moral challenge of unplanned pregnancy is not guaranteed to develop moral injury. Furthermore, Carleton and Snodgrass portray moral injury as a problem of an individual's coping with lived experience and circumstances. Moral injury is never a foregone conclusion, but it looms on the horizon for those who do not have the spiritual and social resources to come to terms with their transgressions of conscience.

To illustrate the profound impact of moral injury, the authors present ten Catholic women's stories with compassion and accuracy, drawing attention to the circumstances that resulted in their decisions to choose abortion. Like the Vietnam veterans Shay describes who were betrayed by people in power during high-stakes situations, seven of the participants were coerced into aborting their babies by family members or romantic partners. One participant, now in her 30s, recounted her moral stress as a sixteen-year-old telling her mother that she had engaged in sex before marriage and was pregnant. The teenager had transgressed a family value, and to avoid shaming the family, her mother and boyfriend took her to the abortion clinic before others could learn the news. Her Catholic mother's complicity in the abortion profoundly confused her: "Why didn't she stop it? Why didn't she advise me? Why didn't she tell somebody? Had we told one more person out of this little circle, somebody would have stopped that, and I would not have regretted having a baby at that age."[21] The wound from her mother was complicated by her own regrets of not telling her father, whom she believed would have stopped the abortion: "I don't know what he would have said or done, but I know it wasn't that [abortion]." She continued, acknowledging her abandonment of her Catholic mores: "We didn't have the chance to think religiously or faith-wise like 'Is this a sin […] what are my morals?'"[22]

Another woman in her mid-twenties was convinced by her friends to have an abortion because of her financial problems. Beyond their selfish counseling, she testified about the betrayal she felt at the hands of the medical professionals who conducted the procedure. She remembered feeling a coldness when the doctor entered the surgery room and went straight to his task without introducing himself. The feeling compelled her to ask that the procedure be stopped, but a nurse told her it was too late. Summarizing the indignity of

the episode, she stated, "You're treated more as a person when you have a tooth pulled than you are when you have an abortion."[23]

In the authors' final analysis, they conclude that the women's moral injury was caused by their "struggle to cope with the moral stress they experienced from engaging in what they considered to be the morally transgressive act of abortion."[24] These struggles included "negative emotion-focused coping, namely avoidance, and negative religious coping, specifically struggles with the church, God, and self." Participants recall turning to substance abuse, social isolation, and depressive behaviors to deal with the pain of their decisions. One participant who sought psychological therapy was "mocked by the psychiatrist, who called her 'crazy'" and refused to "validate her moral suffering and moral injury," further exacerbating her negative emotions.[25] Certainly Carleton and Snodgrass's analysis will be construed by some as a blanket condemnation of a hypocritical Catholic Church that does not go in search of its lost sheep. As one woman described her damaged relationship with the divine, "I was convinced [after the abortion] that God had to really hate me now. Any chance there had ever been of God wanting me around was gone."[26] The authors, however, argue it is through religion that their participants and other women who are morally injured by abortion will find moral repair.

The final chapter of *Moral Injury after Abortion* is dedicated to guiding helping professionals, like therapists, to counsel women through moral injury to a place of moral repair. They write, "Moral repair can be enhanced when women are able to share about their abortion experience with trusted others, embrace a sense of spiritual connectedness with other women post-abortion, and feel the support of a broader, compassionate community."[27] As moral injury begins with a moral challenge, moral repair begins when women find a *moral resource* in a friend, family member, therapist, or clergy member. With this resource, they then can seek a relationship with God, ask for His forgiveness, make amends, and begin the process of forgiving themselves. Since transgressing their deeply held beliefs was where their moral injuries began, growing in their faith through religious practices and rituals is where healing awaits.

Finding the Right Words

Moral injury represents a promising shift in the discourse of post-abortion suffering. Decades of debate over the scientific veracity of post-abortion syndrome and abortion as a traumatic stressor has ossified shut the supposedly open and objective minds of researchers. Moral injury introduces a new terminology, reanimating old debates, but in an altogether different way. Pro-abortion organizations have already acknowledged the moral dimensions of

post-abortion life for women.

Take, for example, the APA Task Force on Mental Health and Abortion's (TFMHA) 2008 Report.[28] Like Surgeon General Koop's report in 1989, the task force members surveyed the scientific literature and professed that there was "no evidence sufficient to support the claim that an observed association between abortion history and mental health was caused by the abortion per se, as opposed to other factors."[29] But they attest that the same studies show "it is clear that some women do experience sadness, grief, and feelings of loss following termination of a pregnancy, and some experience clinically significant disorders, including depression and anxiety." Such an admonition already debunks claims from decades prior that the connection between abortion and negative mental effects is a myth.

Carleton and Snodgrass's study presents readers with actual moral suffering and moral injury. Indeed, only a third of their small sample experienced moral injury. The TFMHA recognized in its report that "Women's experience of abortion may also vary as a function of their religious, spiritual, and moral beliefs and those of others in their immediate social context."[30] They draw special attention to moral challenges in marginalized groups, too: "[I]t appears that for women of color, moral and religious values intersect with identities conferred by race, class, or ethnicity to influence women's likelihood of obtaining an abortion and, potentially, their psychological experiences following it."[31] Even Planned Parenthood cannot deny the psychospiritual challenges of abortion and the moral dilemmas it poses to vulnerable women before, during, and after their decisions are made. Its website directs women to another website that provides spiritual counseling, albeit of the anti-life kind.[32, 33] We can only hope that the lens of moral injury offered in *Moral Injury after Abortion* will inspire new research that reappraises old psychological facts and takes seriously the potentially chronic suffering abortion causes women who transgress their consciences.

Moral injury may be exactly the term needed for people across the ideological divide to come together in support of the women who need moral repair after abortion. We can only guess what Surgeon General Koop's report to President Reagan on the emotional and psychological effects of abortion would have said had moral injury research been available in the 1980s. Though Koop's January 9, 1989, report does reference the betrayals of "what's right" by institutions in power during high-stakes situations, "Even among groups committed to confirming a woman's right to legal abortion there was consensus that any abortion represented a failure in some part of society's support system,—individual, family, church, public health, economic, or social."[34]

NOTES

1. American Psychiatric Association. *Diagnostic and Statistical Manual of Mental Disorders* (3rd. Ed. Revised). Washington, DC: 1987.
2. Vincent M. Rue. "The Psychological Realities of Induced Abortion." In *Post-Abortion Aftermath,* edited by Michael T. Mannion (Kansas City, MO: Sheed & Ward, 1994), 30.
3. Tara C. Carleton and Jill L. Snodgrass. *Moral Injury after Abortion: Exploring the Psychospiritual Impact on Catholic Women*. (New York, Routledge, 2022), 2.
4. Ronald Reagan. "Remarks at a White House Briefing for Right to Life Activists." July 30, 1987. https://www.reaganlibrary.gov/archives/speech/remarks-white-house-briefing-right-life-activists
5. CE Koop. Letter to President Reagan. Medical and psychological impact of abortion. Washington, DC: Government Printing Office, 1989.
6. Nada L. Stotland. "The Myth of the Abortion Trauma Syndrome," *JAMA*, 268 no. 15 (1992): 2078-9.
7. Koop, np.
8. Vincent M. Rue. "The Psychological Realities of Induced Abortion."
9. https://www.acog.org/womens-health/faqs/induced-abortion
10. https://www.plannedparenthood.org/learn/abortion/considering-abortion/what-facts-about-abortion-do-i-need-know
11. Jonathan Shay. *Achilles in Vietnam: Combat Trauma and the Undoing of Character*. (New York: Atheneum, 1994).
12. Jonathan Shay. "Moral Leadership Prevents Moral Injury." in *War and Moral Injury: A Reader*, ed. Robert Emmet Meagher and Douglas A Pryer (Eugene, OR: Cascade Books, 2018), 301-306.
13. Edward Tick. *War and the Soul: Healing Our Nation's Heroes from Post-traumatic Stress Disorder.* (Wheaton, IL: Quest Books, 2005).
14. Brett T. Litz, et al., "Moral Injury and Moral Repair in War Veterans: A Preliminary Model and Intervention Strategy." *Clinical Psychology Review* 29, no 8 (2009) 695-706. http://doi.org/10.1016/j.cpr.2009.07.003
15. https://www.mirecc.va.gov/visn17/moralinjury/research.asp
16. George Bonanno. *The End of Trauma: How the New Science of Resilience is Changing How We Think about PTSD.* (New York: Basic Books, 2021).
17. https://www.mirecc.va.gov/visn17/moralinjury/research.asp
18. https://neuro.psychiatryonline.org/doi/10.1176/appi.neuropsych.19020036
19. The following resources acknowledge that abortion could potentially cause moral injury:

    The Shay Moral Injury Research Center, Frequently Asked Questions about Moral Injury (Alexandria: Volunteers of America, n.d.), www.voa.org/moralinjury-faq.;

    Support After Abortion, "Moral Injury: A New Concept for Looking at Abortion Healing," https://supportafterabortion.com/moral-injury-a-new-concept-for-looking-at-abortion-healing/.

    Brandon J. Griffin, Natalie Purcell, Kristine Burkman, Brett T. Litz, Craig J. Bryan, Martha Schmitz, Claudia Villierme, Jessica Walsh, and Shira Maguen, "Moral Injury: An Integrative Review," *Journal of Traumatic Stress* 32, no. 3 (2019): 357.

20. Tara C. Carleton and Jill L. Snodgrass. *Moral Injury after Abortion: Exploring the Psychospiritual Impact on Catholic Women*. (New York, Routledge, 2022), 51.
21. Ibid., 71.
22. Ibid., 71.
23. Ibid., 81.
24. Ibid., 95.
25. Ibid., 75.
26. Ibid., 81.
27. Ibid., 122.
28. American Psychological Association, Task Force on Mental Health and Abortion. (2008). *Report of the Task Force on Mental Health and Abortion.* Washington, DC: Author. Retrieved from http://www.apa.org/pi/wpo/mental-health-abortion-report.pdf
29. Ibid., 4.
30. American Psychological Association, Task Force on Mental Health and Abortion, 10.
31. Ibid., 10.
32. https://www.plannedparenthood.org/learn/abortion/considering-abortion/what-facts-about-abortion-do-i-need-know
33. https://abortionswelcome.org/
34. Koop, np.

The Longest Forever War:
Women and Children in the Battle for East Asia

Jason Morgan

In recent years I have been involved in an academic debate over the comfort women. "Comfort women" is a direct—and too-literal—translation of *ianfu* (慰安婦), a euphemistic Japanese term meaning a woman (*fu*) who provides *ian*, something which might best be expressed in English as "pleasurable solace." The euphemism is obvious in its double entendre, a very thin veil over a very unpleasant reality. Comfort women were prostitutes. They were contracted, usually by Korean brokers or other middlemen, to work at brothels next to Japanese military bases in East and Southeast Asia and elsewhere during World War II. The brothels were extensions of the domestic prostitution licensing system which Japan had institutionalized in law prior to the war.

The debate about the comfort women is, at one level, a rather arcane one. It is in part about the contractual arrangements that structured the prostitutes' travel to and from the brothels and the amount of sex work they were expected to do while there.[1] As far as anyone knows, no comfort women contracts survived the war. However, there are a great many secondary sources—sample contracts, police regulations on how contracts were to be concluded and inspected, army reports on the business specifics of comfort stations, payment details for individual comfort women, diaries written by army doctors (who inspected the women for disease) and brothel brokers, testimonials by surviving former comfort women, and so forth—that attest amply to the contractual nature of comfort station prostitution. Scholars in the United States, South Korea, and Japan who have examined the sources tend to agree on the overall portrait of the comfort women and their milieu. The gist of comfort women work is that it was sex for money during wartime.

At another level, however, the debate is about definitions. This is where scholars go in very different directions.[2] Even if there were contracts, some argue, one must not discount power balances. After all, a contract between an individual woman and a brothel operating on the tacit understanding of the Japanese military is not an agreement between equals. Yet others insist that prostitution should never be considered voluntary, no matter how freely a woman enters into it. This should be especially true of the comfort women,

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such scholars maintain. After all, there was a war on, and many of the comfort women came from desperately poor farming villages. Some were even sold into prostitution by their parents. So, whether or not the comfort women entered into contracts, those involved in the debate often stress that the wider circumstances must be considered when discussing them. What some people call prostitution may very well have been closer to forcible sex work, even rape.

I agree wholeheartedly that one must take in the whole social, economic, cultural, and historical picture when discussing the comfort women. This is one reason I much admire a South Korean scholar named Park Yuha, a Sejong University professor emerita and the author of some richly contextual books about the comfort women.[3] Professor Park was acquitted in late 2023 of criminal defamation for adding nuance to the comfort women debate.[4] She defied the all-too-neat convention that sees comfort women as simply victims of history, refusing to reduce them to a single narrative about power, money, politics, and sex. Instead, Professor Park delved deeply into the comfort women's personal lives to find them striving for better days ahead, longing for their hometowns, enjoying the money they were making, and even falling in love with Japanese soldiers. That Professor Park was criminally indicted for countering the simplistic narrative preferred by many who take part in the comfort women debate gives some idea of how contentious this issue is in East Asia. It also gives some idea of Professor Park's courage in trying to tell the full truth about what the comfort women suffered and how they overcame extraordinary hardships in attempting to live human lives amid often unthinkable conditions. Although economic logic must be included in historical considerations about sex during wartime, what matters most to me about Professor Park's work is her understanding of the women in context, as human beings in a particular place and at a particular time. No matter how awful history was, or how awful (or wonderful) we want it to have been to fit whatever political motives we have in the present, the agents of history are human beings who can never be reduced to their circumstances but who always seek somehow to rise above them. The comfort women have much to teach us about the human spirit, if we have the humility to put our politics and our prejudices to the side and listen to them as Professor Park has done.

In a book I and a colleague published this year on the comfort women, we try to do just that—that is, to understand the comfort women on their own terms, as part of the world in which they lived, however broken that world may have been. We do our best to see the women as individuals, not defined by their world, but always searching for ways to better themselves within it.[5] And yet, truth be told, while I admire the grit and resourcefulness of the women who worked at wartime brothels in Asia, I hate the side of human life

that sees the weak subjected to the designs of the strong. Although we make no normative claims in our book, sticking strictly to the empirical evidence without interjecting our own judgments on what poor young women (and their parents) did in East Asia more than eighty years ago, I do have views of my own. I think prostitution is evil. There is no justification for it. Men should not treat women that way. They do, of course. We live in a fallen world and the reality of societies in every place and time is that some men pay for sex, and some women sell it.[6] It is a hateful reality, and I wish I could make it so that it was not true. But it is true, and as a researcher my job is to find out what happened and tell the truth about it, no matter how distasteful I find that truth to be. In other words, the comfort women have much to teach us, but I often find I lack the stomach for the lessons of that unfortunate past.

Here is the hardest lesson for me yet. It is true that prostitutes follow armies. This has been so since the first war waged by humans and will, I fear, continue until the last war ends us. But while those of us in the debate over the comfort women go back and forth over how best to situate them, historically and otherwise, within the wider scope of World War II in East Asia, I have recently begun to think that focusing too heavily on wartime prostitution may also be a mistake. Some recent volumes by Japanese researchers have helped me see that the comfort women issue is not, strictly speaking, a phenomenon peculiar to World War II. This is historically true in that the comfort women system continued through the Korean War and, arguably, continues today.[7] But it is true in an even bigger sense as well. So much does the suffering of women form a baseline of history that I am beginning to think it makes more sense to speak of war in the context of prostitution than of prostitution in the context of war. An even harder historical reality than the fact that young women volunteered for, or were sold into, prostitution to service troops in East Asia more than three-quarters of a century ago is that the degradation of women goes on long after the men have put down their weapons and the shooting war is declared over.

To put it another way, men who survive wars get to go home, but whether there is a war going on or not, the ugly business of selling the body for sex continues, one way or another, in both war and peace. The real forever war, the longest forever war, is the war against the people who never should have been targeted in the first place. Women—and also children—are hurt by the denial of human dignity, and go on being hurt regardless of whether there is a war going on or not.

To my mind, one of the best examples of someone writing history about East Asia that sees the consequences of wars for individuals, and especially for women and children, is Shimokawa Masaharu, a former Seoul bureau

chief for the *Mainichi Shimbun* newspaper and now the author of two books on the "hikiagesha," the people—mostly women and children—who were evacuated (*hikiage*) from Manchuria, the Korean peninsula, and other parts of the Japanese Empire as World War II ended in defeat for Japan. In his 2017 book *The Forgotten History of Evacuation* (*Bōkyaku no hikiageshi*), Shimokawa tells the story of Izumi Sei'ichi (1915-1970), a scholar and humanitarian who helped set up a shelter in Futsukaichi, not far from the port city of Fukuoka in southern Japan, for women and children who made it back to Japan from the Asian mainland. Tragically, the shelter also arranged abortions for women who had been raped, often by Soviet soldiers, during the flight away from the collapsing Japanese Empire.[8] In a new book, *Senryō to hikiage no shōzō: Beppu 1945-1956* (*Portrait of Evacuation and Occupation: Beppu, 1945-1956*), Shimokawa focuses on Beppu, another city in southern Japan, describing how average Japanese people there negotiated life in a defeated country. Particularly poignant is Shimokawa's research on war orphans (*sensai koji*) and mixed-race children (*konketsuji*), the latter often the product of rape by enemy soldiers. War orphans and mixed-race children were, and remain, part of the nearly forgotten history of the Second World War in East Asia. Shimokawa helps us recover that history, as well as the history of the good men and women who opened their hearts to children in need. Shimokawa's books are good history. They also make me think of even bigger questions. There are statues aplenty to war heroes, for instance, but I wonder why there are few if any statues dedicated to those who work to pick up the pieces of shattered lives once wars are over—especially tiny lives left in ruins by the horrors that adults have visited upon the world.

Shimokawa's work, which is meticulously researched, is not biased against Americans or other groups. The unfortunate reality, however, is that it is painful as an American to read much of what Shimokawa writes. As he explains in *The Forgotten History of Evacuation*, postwar Occupation authorities in Japan were among those pushing the Japanese government to adopt what became known as the Yūsei hogo hō, the Eugenics Protection Law (1948) that, upon amendment the following year, opened the door to virtually unlimited abortion.[9] Brigadier General Crawford Fountain Sams (1902-1994), an army doctor tasked by General Douglas MacArthur (1880-1964), the Supreme Commander for the Allied Powers (SCAP), with overseeing public health in occupied Japan, was one of the forces behind the scenes pushing for the adoption of the 1948 law. Sams stressed the importance of population control in a Japan ravaged by war and the economic and physical suffering that wars always bring to their losers. And there were even darker motives, such as concealing the human proof of sexual violence by American GIs against

Japanese women.

This last subject—how the American occupiers treated (and often mistreated) Japanese women—is taken up in great detail by Hitotsubashi University researcher and author Hirai Kazuko in her 2023 book *Senryōka no joseitachi: Nihon to Manshū no sei bōryoku, sei baibai, 'shinmitsuna kōsai'* (*Women under the Occupation: Sexual Violence, Prostitution, and "Fraternization" in Japan and Manchuria*). From the beginning, women were at the mercy of forces beyond their control. Early in the Occupation, American and Japanese authorities worked together to set up *tokushu iansho*, "special comfort stations," for American servicemen stationed in Japan. The Recreation and Amusement Association (RAA) secured or commandeered buildings for what was essentially the pimping out, by American and Japanese officials working in tandem, of Japanese women for the sexual pleasure of American men.[10] It is jarring in the extreme for those of us raised to admire "the greatest generation" to learn what really goes on during wartime, but, as one anonymous Japan-based GI put it in a letter to *Time* magazine in November 1945, "We, too, are an army of rapists."[11]

The subject matter of Hirai's 2023 work overlaps with Kyoto University researcher Chazono Toshimi's 2014 book *Panpan towa dare nanoka* (*Who Is a Pan-pan Girl?*). The word "pan-pan" is a "derogatory term for the street prostitutes who served the soldiers of the Allied forces, mostly from the USA, during the occupation of Japan from 1945 to 1952, and who sometimes became the local girlfriends of GIs."[12] In a fallen empire, the men bear the humiliation of military defeat, but the women face the very real danger of being driven to prostitution to survive or to feed the children of their husbands who have been killed by the conquering army.[13] The Americans in Japan in 1945 and after used the term "pan-pan" and also sometimes "geisha girl" (betraying a profound ignorance of what a geisha is) to describe the women who were left with little choice but to sacrifice their pride, their reputation, and often their health and even their life in a society that lay ruined by a terrible war. What looked to many on the American side like "liberation" and, of course, victory, was, for the women on the other side of the line, a nightmare.[14] This nightmare continued for many of the women: In a land missing many of its men, women suffered the daily humiliation (to say nothing of the risks) of working as prostitutes for the occupiers, and in this way supported their families and others. Together, the women supported entire communities.[15]

Like Hirai, Chazono also brings up Brig. Gen. Sams, who, as head of the Public Health and Welfare Section (PHW) of the Occupation, in September of 1945 began instructing the Japanese government to carry out testing on women involved in prostitution as a way to protect American servicemen

from contracting venereal disease.[16] This was just one part of a systematic effort by both Japan and the United States to arrange for Japanese women to provide sexual services to GIs. Even before Sams and other GHQ officials began applying pressure, and in many cases even before American troops had landed en masse on the islands of Japan, various regional and local governments in Japan had already started their preparations, virtually press-ganging women into serving as prostitutes as a way to protect the "good families" (*ryōke*) from the ravages of a foreign horde.[17] Incidentally, the Japanese government referred to the places set up to accommodate what must be admitted to be the predatory instincts of men on both sides of the fighting, Japanese and American, by the same name used in East and Southeast Asia and elsewhere: comfort stations. The logic of prostitution had been extended to wartime, and then, when the war was over, the same logic was extended from wartime use back to domestic circumstances again.[18]

Of the many recent books about the effects of the Second World War on individuals in East Asia, the one that has haunted me the most is Enari Tsuneo's 2021 book *Shaohai no Manshū*. The word rendered "shaohai" in Japanese pronunciation is *xiaohai* (小孩) in Chinese. It means "small child." The title of the book translates therefore something like "*Manchuria as Experienced by Small Children*." Japan once ruled Manchuria, or Manchukuo as it was known under Japanese dominion, a vast and fertile land now part of the People's Republic of China (largely comprising the northeast provinces of Heilongjiang, Liaoning, and Jilin). But things fell apart very quickly. When World War II ended in Asia in August of 1945, there was a panicked scramble among Japanese residents of the Asian continent and elsewhere to get back to the Japanese home islands. Some of the harrowing stories of this scramble—rape, murder, group suicide of women and their children—are told in the work of Shimokawa Masaharu, some of whose books I introduced earlier in this essay.[19] Another set of stories from that pitch-black time involves the young Japanese boys and girls—the *xiaohai*—who, for various reasons, got left behind in Manchuria and elsewhere on the Asian mainland when the Japanese Empire collapsed.[20]

Enari's book is both a searing history and a visual reflection. There are photographs on page after page of the people (now adults) who were abandoned to their fates as Japanese children in Manchuria, taken in by Chinese relatives or friends or kind strangers, and raised in China.[21] I have spent a long time looking through the pages of Enari's book, wondering what kinds of lives the people in the photos must have led. As Japanese in China, they suffered discrimination, mockery, racial taunting.[22] There are short biographical

sketches accompanying the photos; many of the people's lives were very hard. In addition to bullying, there was the general problem of poverty—of not having enough to eat or a decent place to live. Many photos in Enari's book show the surroundings of the once-abandoned children who have grown into adults. Tumbledown brick shacks, farms worked with horse-drawn carts and wooden implements, interior house walls of peeling plaster with one or two calendar pictures or advertisement posters tacked up in a sad attempt to brighten a life lived rough and lonely. But for all the vacancy in those lives, for all the thoughts of what might have been and the wishes the men and women express to meet parents and relatives in Japan whom they will probably never see again, something buoys up, unconquerable. I think that something is what we call dignity. There is human dignity in these faces. Someone recognized that dignity when the people in the photos were just babies or toddlers. It comes through no matter how hardscrabble the village or how lined the face with worry and pain.

Worry and pain are not just East Asian phenomena, of course. And there is much more misery out here than just World War II. The books described above are in Japanese, and I know of no plans to translate them. This is a shame, because they are all very much worth reading. My study of the comfort women has opened my eyes to an entire world of pain hidden behind the dates, places, and battle names of modern East Asian history. As armies and empires ranged Asia and the Pacific vying for political and civilizational dominance, women, and children, often got chewed up in the machinery of grandly envisioned history-making. For every general or warship or land campaign whose name makes it into the history books, there are thousands—upon thousands—of nameless noncombatants who often bore the wounds of war long, long after the shooting had stopped. The *xiaohai*, the comfort women, the mothers who fled with their children from advancing invasions—these stories are still continuing, even though World War II is nearly eighty years behind us.

The stories of how war destroys lives differ in detail from place to place, but the story of the longest war, the forever war against women and children, is always the same, no matter what part of the world one examines. When I was in Vietnam a dozen summers ago, I sometimes saw people whose faces were different than the others going by. GIs left behind children in that beautiful, bruised country, too. So did Koreans, who fought alongside the Americans long ago. No one is innocent. And war never ends. The mass rape of Israelis by Hamas, the Uighur women forced to marry Han occupiers, the child brides of Afghanistan, the children trafficked into sex slavery across the southern border of the United States—these and countless other crimes do

not get written down in official histories. Perhaps because there is no book long enough to tell the story of the human race's longest war.

NOTES

1. J. Mark Ramseyer, "Contracting for Sex in the Pacific War," *International Review of Law and Economics,* vol. 65 (2021) https://www.sciencedirect.com/science/article/pii/S0144818820301848
2. There is a good overview of many aspects of the definitional problem in Yamashita Yon'e, *Shinban, Nashonarizumu no kyōkan kara: 'ianfu' mondai to feminizumu no kadai* (Tokyo: Iwanami Shoten, 2022).
3. See, for example, Park Yuha, *Rekishi to mukiau: Nikkan mondai, tairitsu kara taiwa e* (Tokyo: Mainichi Shimbun Shuppan, 2022).
4. Kenji Yoshida, "Park Yuha Acquitted, Wins a Crucial Victory for Academic Freedom," JAPAN Forward, November 1, 2023 https://japan-forward.com/park-yuha-acquitted-wins-a-crucial-victory-for-academic-freedom/
5. J. Mark Ramseyer and Jason M. Morgan, *The Comfort Women Hoax: A Fake Memoir, North Korean Spies, and Hit Squads in the Academic Swamp* (New York, NY: Encounter, 2024).
6. For a history of prostitution over the past four centuries, see Magaly Rodríguez García, Lex Heerma van Noss, and Elise van Nederveen Meerkerk, eds., *Selling Sex in the City: A Global History of Prostitution*, 1600s to 2000s (Leiden: Brill, 2017).
7. See, for example, Tim Shorrock, "Welcome to the Monkey House: Confronting the Ugly Legacy of Military Prostitution in South Korea," *New Republic*, December 2, 2019, and Akemi Johnson, *Night in the American Village: Women in the Shadow of the U.S. Military Bases in Okinawa* (New York, NY: The New Press, 2019).
8. See Jason Morgan, "The History of the Unspeakable: Shimokawa Masaharu's The forgotten history of evacuation," *Inter-Asia Cultural Studies*, vol. 19 (2018), pp. 644-654.
9. Jason Morgan, "Chūzetsu no 'shi no bunka' wo hirogenu tame," *Sankei Shimbun*, May 25, 2022.
10. Hirai Kazuko, *Senryōka no joseitachi: Nihon to Manshū no sei bōryoku, sei baibai, 'shinmitsuna kōsai'* (Tokyo: Iwanami Shoten, 2023), pp. 13-17.
11. Quoted in Terese Svoboda, "US Courts-Martial in Occupation Japan: Rape, Race, and Censorship," *Asia-Pacific Journal: Japan Focus*, vol. 7, issue 21, no. 1 (May 23, 2009), p. 1. See also generally Mary Louise Roberts, *What Soldiers Do: Sex and the American GI in WWII France* (Chicago, IL: University of Chicago Press, 2013).
12. Rumi Sakamoto, "Pan-pan Girls: Humiliating Liberation in Postwar Japanese Literature," *Portal Journal of International Multidisciplinary Studies*, vol. 7, no. 2 (July 2010), p. 1. See also Hirai Kazuko, *Senryōka no joseitachi*, op. cit., p. 172, as well as endnote 1 (p. 200) to the relevant passage, for a definition of "pan-pan" and an explanation of the possible etymologies of the term.
13. Hirai Kazuko, *Senryōka no joseitachi*, op. cit., pp. 143-154.
14. This is hardly limited to Japan. See, for example, Yuri Doolan, "The Camptown Origins of International Adoption and the Hypersexualization of Korean Children," *Journal of Asian American Studies*, vol. 24, no. 3 (2021).
15. Hirai Kazuko, Chapter Four, "'Hataraku onna' ga sasaeru machi: Atami no jūmin to 'panpan' tachi," in *Senryōka no joseitachi*, op. cit., pp. 171-201.
16. Chazono Toshimi, *Panpan towa dare nanoka* (Tokyo: Impact Shuppankai, 2014), pp. 222-224.
17. Hirai Kazuko, *Senryōka no joseitachi*, op. cit., pp. 31-37.
18. The logic goes much deeper into the Japanese past than this, of course. See, e.g., S*one Hiromi, Shōfu to kinsei shakai (shinsōban)* (Tokyo: Yoshikawa Kōbunkan, 2023).
19. See also "(2) Manshū hikiagesha to gaikokujin hanayome ni tsuite," in Nakamura Eri, *Sensō to torauma: fukashika sareta Nihon hei no sensō shinkeishō* (Tokyo: Yoshikawa Kōbunkan, 2018), 286-289.
20. Manchuria was a vibrant part of the Japanese Empire, and was filled with Japanese and other peoples engaged in a variety of pursuits. A good, short, vivid sketch of Manchurian life before the collapse of the Japanese Empire is "(3) ZaiMan Nihonjin no naka no kodomo ya josei," in Tsukase Susumu, *Manshū no Nihonjin (shinsōban)* (Tokyo: Yoshikawa Kōbunkan, 2023), pp. 183-189.
21. Hunger and desperation drove some parents to give their children to Chinese families to raise. See Hirai Kazuko, *Senryōka no joseitachi*, op. cit., pp. 154-157.
22. Enari Tsuneo, *Shaohai no Manshū* (Tokyo: Ronsōsha, 2021), p. 240.

On the Right to Life in the United States Constitution:
An Issue Ignored in *Dobbs*

Raymond B. Marcin

On June 24, 2022, the United States Supreme Court, ruling in *Dobbs* v. *Jackson Women's Health Organization*,[1] overturned its half-century-old *Roe* v. *Wade* decision,[2] and the pro-life movement rejoiced. Remarkably, however, what the Court in *Roe* v. *Wade* had regarded as the central controlling constitutional issue in its opinion—whether a living, developing, human fetus in her mother's womb is a "person" under the Constitution—was deliberately ignored in *Dobbs* v. *Jackson Women's Health*.

The Right-to-Life Issue in *Roe* and *Dobbs*

More than fifty years ago Justice Blackmun framed that very issue and its controlling centrality quite clearly in his majority opinion in *Roe* v. *Wade*. In Justice Blackmun's words:

> The appellee and certain *amici* argue that the fetus is a "person" within the language and meaning of the Fourteenth Amendment. In support of this, they outline at length and in detail the well-known facts of fetal development. *If this suggestion of personhood is established, the appellant's case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the Amendment*.[3]

Justice Alito, in his opinion for the majority in *Dobbs*, quite clearly announced that he and the four justices who signed on to his opinion were ignoring that very issue. As Justice Alito stated,

> Our opinion is not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth.[4]

Justice Alito's deliberate reticence on the issue of "if and when prenatal life is entitled to any of the rights enjoyed after birth" is difficult to explain. One assumes that there was some felt necessity to ignore so vital an issue as whether the fetus is a "person" within the language and meaning of the Fourteenth Amendment. A likely surmise is that it was necessary to do so in order to hold together the tenuous majority's willingness to overrule *Roe*. If that

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is the case, it would be vituperative to fault any of that tenuous majority of justices for not reaching the constitutional right-to-life issue. Even if some of us might wish that they had done more, they were and are true heroes—they did what could be done, and they did it in the face of death threats and the attempted assassination of one of their number.

Those advocating for the recognition of the constitutional right to life guaranteed to God's littlest children need to take a close look at the jurisprudential background of the meaning of "person" and the rights of personhood under the United States Constitution, and to provide a framework for the argument that a fetal human being, living and growing and developing in her mother's womb, *is* a person with the rights that persons possess under the United States Constitution.

Personhood in *Roe* and *Dred Scott*

It is in the context of the denial of personhood that a telling analogy has been drawn between Justice Blackmun's denial of constitutional personhood to living, developing, prenatal human children in his 1973 *Roe* v. *Wade* opinion and Chief Justice Taney's denial of constitutional personhood to Black human beings, *slave or free*, in his well-known and infamous *Dred Scott* v. *Sandford* opinion in 1857.[5]

The issue in the *Dred Scott* case was slavery, and more specifically whether Black persons, slave or free, had the rights that persons had under the Fifth Amendment to the United States Constitution.[6]

The question of personhood arose in a procedural context in Dred Scott's lawsuit. The technical question involved the diversity-of-citizenship requirement for jurisdiction in the federal court system. The issue for decision was whether Dred Scott, a slave suing for his freedom, could be considered a citizen of Missouri so as to have the legal capacity to sue his "owner" Sandford, a citizen of New York, in a federal court. On that issue, Chief Justice Taney actually held that Black persons could not be considered "citizens" *at all* (not even *free* Black persons) because they could not be considered "people" within the meaning of that word "people" in the Constitution. In Chief Justice Taney's words:

> [N]either the *class of persons* who had been imported as slaves, nor their descendants, *whether they had become free or not*, were then acknowledged as part of the *people*, nor intended to be included in the general words used in that memorable instrument [*i.e.*, the United States Constitution].[7]

Notice that, in the above-quoted language, Chief Justice Taney was *not* denying that Dred Scott and others of his race were "persons." He literally referred to them as a "class of persons."

If the chief justice allowed that Black Africans imported as slaves (whether subsequently freed or not) were "persons," did he nonetheless deny them *constitutional* personhood? A bit later in his opinion, the chief justice discussed the impact of the Fifth Amendment on the issues in the case. Again, in Chief Justice Taney's words:

> [T]he rights of property are united with the rights of person, and placed on the same ground by the fifth amendment to the Constitution, which provides that no person shall be deprived of life, liberty, and property, without due process of law. And an act of Congress which deprives a citizen of the United States of his liberty or property merely because he came himself or brought *his property* into a particular Territory of the United States, and who had committed no offence against the laws, could hardly be dignified with the name of due process of law. . . .
>
> It seems, however, to be supposed that there is a difference between property in a slave and other property and that different rules may be applied to it in expounding the Constitution of the United States. . . . [I]f the Constitution recognises the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen, no tribunal, acting under the authority of the United States, whether it be legislative, executive, or judicial, has a right to draw such a distinction or deny to it the benefit of the provisions and guarantees which have been provided for the protection of private property against the encroachments of the Government.[8]

It is logically impossible to avoid the conclusion that Chief Justice Taney was denying to Dred Scott and all others of his race the rights of "persons" under the Fifth Amendment—one of those rights of persons being the right to *liberty*. Moreover, in the last sentence of the immediately preceding quotation from his opinion, the chief justice clearly regarded enslaved Black persons as "property," with the rights of "persons" belonging—*not* to the enslaved Black persons—but *solely* to their "masters."

Summarizing—Chief Justice Taney's opinion for the Court in the *Dred Scott* case declared that Black persons, slave *or free*, were *not* "part of the people" and were therefore *not* "included in the general words used in" the Constitution. He also concluded that enslaved Black persons were the "property" of their masters and were not entitled to the rights of persons under the Fifth Amendment—those rights instead belonging to their masters.

We see today the weakness—raising an element of strong doubt—in Chief Justice Taney's word usages and attempts at reasoning—recognizing Blacks as "persons," but then treating them as something akin to "nonpersons" (persons without the fundamental rights of personhood that the Constitution guarantees to "persons"). That weakness and element of strong doubt suggests that the chief justice should, perhaps, have applied what is often referred to as the "honest doubt" moral principle—an offshoot of the oft-invoked "Golden

Rule" of doing unto others as you would have them do unto you. In context, it is the basic moral insight that if there is an honest doubt as to whether a given person ought to be regarded as a person or as some lesser entity (e.g., an item of property), any truly humane and civilized society would and should resolve that doubt in favor of "personhood" rather than against it.

Likely, Chief Justice Taney was cowed by (or perhaps a willing participant in) the "political correctness" or "woke" intimidation of his day. It was not as if his opinion that Blacks are persons but not persons under the Constitution and are rather items of property was the universally agreed-upon attitude in the legal and societal climate of the day. In foisting his opinion on American society and on the American legal system, Taney was ignoring the input (and even the existence) of a strong Abolitionist movement in the political and legal thought of the 1850s. The 1850s were a divisive era in which the then-newly formed Republican Party, founded explicitly as an anti-slavery political movement, was emerging as the major rival of the pro-slavery Democratic Party. The Republicans had grown to the point of entering a candidate in the presidential election of 1856, the year before Chief Justice Taney wrote his opinion, and a winning candidate for the presidency in 1860, just three years after Chief Justice Taney wrote his opinion.

Interestingly, there have only been two times in the entire history of the United States Supreme Court when the Court has denied constitutional personhood to any classes of human beings—the *Dred Scott* decision in 1856 and the *Roe* v. *Wade* decision in 1973.

The opprobrium heaped on the *Dred Scott* decision in the decades that followed, marked by the bloody American Civil War and the eventual insertion of the Thirteenth, Fourteenth, and Fifteenth Amendments into the Constitution, bore a lesson for the United States Supreme Court, and bears a lesson for the Court today in the wake of the *Dobbs* decision overturning *Roe*. The lesson stems from the very last sentence of Justice Alito's majority opinion:

> We end this opinion where we began. Abortion presents a profound moral question. The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives.[9]

Thus did the *Dobbs* Court leave the fundamental issue of the right-to-life of God's littlest children to the tender mercies of the fifty state legislatures, and to future decades of divisive chaos among the states and among the citizenry of the nation. And, perhaps more importantly, thus the urgency of the need for a serious reassessment by the *Dobbs* Court of its deliberate choice to avoid deciding whether prenatal life is entitled to the constitutional right to life that persons enjoy.[10] What follows are some suggestions that might be helpful in such a reassessment.

Justice Blackmun's Dismissal of the Fetal Right-to-Life Issue

In his *Roe* v. *Wade* opinion, after acknowledging that if the suggestion of personhood were established, the challenge to liberal abortion laws would collapse, because the prenatal child's right to life would then be guaranteed specifically by the Fourteenth Amendment,[11] Justice Blackmun went on to consider the usages of the word "person" in the Constitution, and drew the conclusion that none of those usages (and these are Justice Blackmun's words) "indicates, *with any assurance*, that it has any possible pre-natal application."[12]

Some may see in Justice Blackmun's use of the hedging expression "with any assurance" an element of doubt, raising the "honest doubt" moral principle—the basic moral insight that was raised earlier in connection with the *Dred Scott* case—that if there is an honest doubt as to whether a given human entity possesses "personhood," any truly humane and civilized society would and should resolve that doubt in favor of "personhood" rather than against it.

Justice Blackmun, however, took the position that, if the personhood of the fetus is not specifically mentioned in the Constitution, it does not exist. An honest-doubt mode of thought might suggest a more inclusive and diverse understanding of constitutional personhood.

Personhood for Fetal Human Beings in the Womb

In addressing Justice Blackmun's contrived demand for "assurance" that the usages of the word "person" in the Constitution might be understood as recognizing personhood in the living, developing human being in her mother's womb, we find that there is some evidence in the basic norms of the Judeo-Christian biblical culture that originally informed the founding of the United States of America, and indeed in the basic grounding norm that found its way into the founding document of the United States of America, the Declaration of Independence.

In the Judeo-Christian biblical culture embedded in the prophetic writings of Jeremiah and David, we learn that we are all God's children from the instant of conception:

The word of the Lord came to me, saying,
"Before I formed you in the womb I knew you."
(Jeremiah 1:4-5)

For you created my inmost being;
you knit me together in my mother's womb.
(Psalms 139:14)

American culture, as embedded in its 1776 founding document, the Declaration of Independence, even before its independence from Great Britain was physically accomplished, conceived itself on that very same premise: that we are all children of the *Creator* God from the moment of our *creation*:

> We hold these truths to be self-evident, that all men are *created* equal, that they are *endowed by their Creator* with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. [Emphasis added.]

If these evidences of American culture's respect for the personhood of the prenatal human being were allowed to inform the meaning of the word "person" in the Constitution, Justice Blackmun's demand for "assurance" could, perhaps, be satisfied. Historical realism, however, unfortunately intrudes.

Caesar and God

In the centuries since 1776, it has long since become clear that our American *legal* culture has abandoned the "self-evident" truth of endowment by our Creator. More than one hundred years ago, Pope Leo XIII prophetically foresaw that abandonment and its cultural implications for the World-at-Large:

> "There is no power but from God." [wrote Pope Leo, citing Romans 13:1] . . . [Yet t]he authority of God is passed over in silence, just as if there were no God; or as if He cared nothing for human society; or as if men, in their individual capacity or bound together in social relations, owed nothing to God; or as if there could be a government of which the whole origin and power and authority did not reside in God Himself. Thus, as is evident, a state becomes nothing but a multitude, which is its own master and ruler.[13]

It must also be admitted that, even with developments within our American Judeo-Christian cultural heritage, we have ways of rationalizing our remarkably odd, dismissive attitude towards God. We raise the doctrine of "Separation of Church and State" (a phrase that appears nowhere in the text of the United States Constitution) to the status of a civil dogma.

Yet, in truth, didn't Jesus Himself suggest the propriety of a separation between the things of the law and the things of God with His injunction, in Matthew 22:21, to render unto Caesar the things that are Caesar's and to God the things that are God's? Law belongs to Caesar; morality belongs to God. Most Americans, if asked, would readily accept that notion as both descriptive and normative of our present mode of social thought—indeed dogmatically so.

If we pause for a moment to think about it, however, we easily realize that the notion of the separation of law and morality—the one belonging to government (Caesar), the other to God—is routinely and consciously violated with our acquiescence every day in practice. We look to our legislatures,

state and federal, to enact laws that comport with decent *moral* principles, and to avoid enacting *immoral* laws. We look to our courts to interpret laws consistently with decent *moral* principles.

Law making and law interpreting, however, are the business of Caesar, and *morality* is the business of God. The fact is that we let our lawmakers and our law interpreters routinely tamper with the business of God. Do we let God tamper with the business of our lawmakers or law interpreters?

The dilemma, scarcely ever faced and seldom recognized in our society, is that we accept a separation between the things of Caesar and the things of God—between law and morality—and yet we operate under a system that authorizes, indeed requires, Caesar to tamper with the business of God—morality—and forbids God to tamper with the business of Caesar. Our society's current operative solution to that dilemma is to make both law and morality the business of Caesar and to wipe God out of the picture. We teach, study, practice, enact, and interpret law and the interactions between law and morality as if God were irrelevant—almost (as Pope Leo XIII put it) as if there were no God at all.

Roe v. *Wade* made obvious use of our cultural consignment of morality to "Caesar" when it engrafted onto the Constitution the right to kill God's littlest children—children whom He knew before He formed them in their mothers' wombs—children whose inmost being He created and whose bodies He knit together in their mothers' wombs—children endowed by their Creator with the right to life.

Chief Justice Taney and Justice Blackmun

The *Dred Scott* decision was indefensibly wrongheaded. But what about Justice Blackmun's denial of personhood to living, developing human babies in their mothers' wombs?

Chief Justice Taney, in his opinion for the Court in the *Dred Scott* case, had to deal with the rights to life, liberty, and property guaranteed to persons in the Fifth Amendment. He did so by denying, or at best ignoring, the personhood of Dred Scott and all others of his race (along with their concomitant, constitutionally guaranteed right to *liberty*).

Justice Blackmun, in his majority opinion in *Roe* v. *Wade*, had to deal with the right to life, liberty, and property guaranteed to persons in the Fourteenth Amendment.[14] He did so by denying the personhood of those prenatal human beings who are living, growing, and developing in their mothers' wombs (along with their concomitant, constitutionally guaranteed right to *life*).

Both decisions seemed to admit a degree of "doubt" (honest or otherwise) as to the personhood of those affected by their rulings—the *Dred Scott*

decision by referring to Blacks as "persons," but denying to them the constitutional right to liberty guaranteed to "persons" under the Fifth Amendment—and the *Roe* v. *Wade* decision by hedging its analysis of the usages of the word "person" in the Constitution with a demand for "*assurance*" that constitutional usages of the word "person" have some specific "pre-natal application."[15]

Are there any indications in the constitutional heritage of the United States of America that might shed some light on Justice Blackmun's contrived quest for "assurance"? In what follows, we attempt an answer to Justice Blackmun's unwarranted demand.

"Posterity" in the Preamble[16]

When Justice Blackmun, in his *Roe* v. *Wade* majority opinion, listed every usage of the word "person" in the Constitution (before concluding that none of those usages "indicates, *with any assurance*, that it has any possible prenatal application"[17]), he actually neglected one usage—a usage that happened, ironically, to be the one seized upon more than a century earlier by Chief Justice Taney in his opinion in the *Dred Scott* case, when he held that Black persons could not be considered as part of the "people" under the Constitution.

Justice Blackmun did indeed find every instance in which the *exact word* "person" appeared, but he neglected one variant of the *plural form* of that word "person"—the word "people." The word "people" is found prominently in the well-known and oft-memorized Preamble of the Constitution:

> We the *People* of the United States, in Order to . . . secure the Blessings of Liberty *to* ourselves *and our Posterity*, do ordain and establish this Constitution for the United States of America.[18]

The well-accepted case law on statutory preambles as well as the case law on the Preamble to the United States Constitution tells us that, although a preamble may not be resorted to as a source of statutory or constitutional rights, it may be resorted to as an aid in interpreting the meaning of rights that are expressly mentioned in the main body of the statute or Constitution—in the context of our inquiry, the meaning of the Rights to Life in the Fifth and Fourteenth Amendments.[19]

The Preamble to the United States Constitution thus contains a clear indication that those who framed the Constitution wanted it to be interpreted in a way that secured the "Blessings of Liberty" (which presumably would presuppose the blessing of life as one of those "Blessings") not only to *themselves* but also to their yet-to-be-born *Posterity*. In other words, those who

framed and those who adopted the Constitution seemed to be saying in the Preamble that if a question should arise as to whether a provision in the main text of the Constitution (the Rights to Life in the Fifth and Fourteenth Amendments, for example) should be interpreted in a way in which the interests of yet-to-be-born *posterity* would be taken protectively into account, or in a way in which those interests would be essentially ignored or even dismissed, the former interpretation should be the one adopted.

That, according to the Preamble of the Constitution, was the intent of the framers of the Constitution and the intent of those who adopted the Constitution, i.e., the People of the United States of America. The framers and those who adopted the Constitution intended to secure the "Blessings of Liberty," including (so our argument goes) the right to life so that those blessings could be enjoyed, by yet-to-be-born "Posterity."[20] If that argument has any merit, then the very text of the Constitution itself may support the pro-life interpretive approach.

But to be practical and to "give the devil its due," one must acknowledge that it would be disingenuous in the extreme to suggest that the word "Posterity" somehow refers *exclusively* to human fetuses. Quite obviously, the framers and adopters of the Constitution intended the word to refer to the generations yet to come—i.e., the descendants of the People of the United States of America (and probably not even in an exclusively biological sense). In that context, however, and even with that practical gloss of understanding, the "Blessings of Liberty" Clause represents a textually specific indication that the Constitution was intended, and presumably should be understood and interpreted, to secure "Blessings of Liberty" to descendants as yet unborn. Indeed, it is not disingenuous to suggest that the Constitution places two classes of people on a par in terms of entitlement to the "Blessings of Liberty," i.e., "ourselves" and "our Posterity," and the word "Posterity"[21] is difficult to define except in terms of yet-to-be-born persons. To put the matter quite simply, from a textualist perspective, the conclusion seems inescapable that one of the purposes for the establishment of our Constitution, identified as such in the Preamble, is to secure the "Blessings of Liberty" to yet-to-be-born persons.

Here is the point: When Justice Blackmun wrote that none of the usages of the word "person" in the Constitution "indicates, *with any assurance*, that it has any possible prenatal application,"[22] he was incorrect. He had neglected the usage of that variant plural of the word "person" that appears in the Preamble—the word "People"—and its association with "Posterity." Justice Blackmun's conclusion that none of the usages of the word "person" in the Constitution "indicates, *with any assurance*, that it has any possible

prenatal application" is incomplete and therefore flawed—he did not analyze the implications of the inclusion of "*Posterity*" in the "We the *People*" formulation in the Preamble—and this harks back to his statement: "If this suggestion of personhood is established, the appellant's case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the Amendment."[23]

In light of the case law on preambles in general and on the Preamble of the United States Constitution in particular, it would seem the "Blessings of Liberty to . . . our Posterity" clause may properly be accessed to shed light on the spirit and reason behind the Fifth and Fourteenth Amendments' rights to life and liberty.[24]

The "Preamble" argument, then, would draw on the rules of interpretation that have evolved in the case law—the oft-used "spirit and reason" rule[25] as well as the more contemporary purposive, narrative, or "evolutive" models of legislative interpretation.[26] The argument might allow that the ordainers and establishers of the Constitution likely did not have the specific problem of the right to life of living-but-not-yet-born "Posterity" specifically in mind in drafting the Preamble, because they simply intended a reference to future generations in a generalized sense.

Even under that allowance, however, the Court, when faced with an interpretive question that could be resolved either by (1) taking the concept of "posterity" positively and protectively into account, that is, adopting an interpretation that is posterity-oriented, at least in part; or (2) ignoring or treating the concept of "posterity" negatively, would in light of the "Blessings of Liberty to . . . our Posterity" Clause ordinarily choose the former. As applied to the *Roe* decision, however, the argument carries some force. In *Roe* the Court was faced with at least two plausible choices. One of these—extending Fourteenth Amendment right-to-life coverage to living human fetuses—was posterity-oriented in that it would have taken the interests of a portion of posterity positively and protectively into account; the other choice—withholding Fourteenth Amendment right-to-life coverage from living human fetuses—could hardly be said to be posterity-oriented or to put "Posterity" on the same level as "selves," in that it recognized no protectable interests of the portion of posterity in question (it did, however, recognize only a severely qualified and conditioned interest of the *government* in "potential" human life). The Court in *Roe* chose that latter interpretation, and (so the argument would go) by doing so chose an interpretation that was not in accord with the spirit and reason behind the Constitution as informed by the "Blessings of Liberty to . . . our Posterity" Clause.

Thomas Paine, the great pamphleteer of the American Revolution, the

champion of Common Sense, and no stranger to the use of the word "posterity" (he used it ten times in his 1776 pamphlet *Common Sense*), once captured the sensibility behind the American people's orientation towards their posterity, albeit in a different but nonetheless highly relevant context, when he retold the following anecdote:

> I once felt that kind of anger, which a man ought to feel, against the mean principles that are held by the tories: A noted one, who kept a tavern at Amboy, was standing at his door, with as pretty a child in his hand, about eight or nine years old, as I ever saw, and after speaking his mind as freely as he thought was prudent, finished with this un fatherly expression, "*Well, give me peace in my day*." Not a man lives on the continent but fully believes that a separation must some time or other finally take place, and a generous parent should have said, "*If there must be trouble, let it be in my own day, that my child may have peace*"; and this single reflection, well applied, is sufficient to awaken every man to duty.[27]

NOTES

1. 597 U. S. ____ (2022), 142 S. Ct. 2228, 213 L. Ed. 545.
2. 410 U.S. 113 (1973).
3. 410 U.S. 113, 156-157 (1973) (emphasis added).
4. 597 U. S. ____ (2022), 142 S. Ct. 2285, 216 L. Ed. 580.
5. *Dred Scott* v. *Sandford*, 60 U.S. (19 How.) 393 (1857).
6. The Fifth Amendment, which became a part of the Constitution in 1791, reads (in pertinent part): "No person shall . . . be deprived of life, liberty, or property, without due process of law . . . ."
7. *Dred Scott* v. *Sandford*, 60 U.S. (19 How.) 393, 407 (1857) (emphasis added).
8. Id., at 450, 451. [Emphasis added.]
9. 597 U. S. ____ (2022), 142 S. Ct. 2285, 213 L. Ed. 606.
10. See the text accompanying footnote 4, supra.
11. See the text accompanying footnote 3, supra.
12. 410 U.S. 113, 157 (1973) (emphasis added).
13. Pope Leo XIII, Encyclical *Immortale Dei*, Nov. 1, 1885, ¶¶ 2, 25.
14. The Fourteenth Amendment, which became a part of the Constitution in reaction to the *Dred Scott* ruling, reads (in pertinent part): "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."
15. See quoted text accompanying footnote 12, supra. (Emphasis added.)
16. Much of the material in the following sections has appeared earlier in Raymond B. Marcin, *"Posterity" in the Preamble and a Positivist Pro-Life Position*, 38 Am. J. Juris. 273, 275-76 (1993). See also Raymond B. Marcin, *God's Littlest Children and the Right to Live*, 25 *Journal of Contemporary Health Law & Policy* 38 (Fall, 2008).
17. *Roe*, 410 U.S., at 157. [Emphasis added.]
18. U.S. Const. Preamble (emphasis added).
19. See Joseph Story, Commentaries on the Constitution of the United States §§ 218, 219, at 163-64 (abridged ed. 1833). See also 2A Norman J. Singer, Statutes and statutory Construction § 47.04, at 126-31 (4th ed. 1984). The first Justice Harlan applied this case law to the Blessings-of-Liberty Clause in the 1905 case of *Jacobson* v. *Massachusetts*:

> Although . . . one of the declared objects of the Constitution was to secure the blessings of liberty to all under the sovereign jurisdiction and authority of the United States, no power can be exerted to that end by the United States unless, apart from the Preamble, it be found in some express delegation of power or in some power to be properly implied therefrom. 1 Story's Const. sec. 462.

20. The argument that a fetus might be a member of "posterity" first appeared in James Joseph Lynch, Jr., "Abortion and Inalienable Rights in American Jurisprudence: A Prospective Policy" (Unpublished Lecture, 1987); referred to in James Joseph Lynch, *Posterity: A Constitutional Peg for the Unborn*, 40 Am. J. Juris. 401, 401 (1995). See also Raymond B. Marcin, "Posterity" in the Preamble and a Positivist Pro-Life Position, 38 Am. J. Juris. 273, 293-94 (arguing that attentiveness to the interests of fetuses (yet-to-be-born "posterity") is consistent with John Rawls's "Justice Between Generations" in his *A Theory of Justice* 251-58 (Harvard Univ. Press, rev. ed. 1999) (1971)).
21. *Webster's Third New International Dictionary* defines "posterity" as "the off-spring of one progenitor to the furthest generation" or "descendants," and cites and quotes the "Blessings of Liberty" clause in the Preamble to the Constitution as its example. *Webster's Third New International Dictionary* 1772 (1981).
22. *Roe*, 410 U.S., at 157.
23. *Id*., at 156-57.
24. It is, of course, true that neither the Fifth Amendment's nor the Fourteenth Amendment's Right-to-Life Clause was in the Constitution at the time of its adoption, but the amendatory process itself was laid out in the original text (in Article V), and thus it would be disingenuous to suggest that the Preamble expresses the spirit and reason behind the original body of the document, but not the spirit and reason behind later amendments, unless, of course, the later amendment can be understood as abrogating expressly or impliedly something in the original text.
25. See, e.g., *Holy Trinity Church* v. *United States*, 143 U.S. 457, 459 (1892).
26. See generally William N. Eskridge, Jr. & Philip P. Frickey, *Cases and Materials on Legislation: Statutes and the Creation of Public Policy* 613-18 (1988); William N. Eskridge, Jr. & Philip P. Frickey, *Statutory Interpretation as Practical Reasoning*, 42 Stan. L, Rev. 321 (1990); Dennis M. Patterson, *Law's Pragmatism: Law as Practice & Narrative*, 76 Va. L. Rev. 937 (1990).
27. Thomas Paine, *The Crisis*, Number 1 (1776), reprinted in *Thomas Paine, Political Writings* 44, 45 (Bruce Kulick ed., 1989) (emphasis in original).

Masters of Misperception

Ellen Wilson Fielding

"As I would not be a slave, so I would not be a master. This expresses my idea of democracy. Whatever differs from this, to the extent of the difference, is no democracy."

—Abraham Lincoln, 1858

I first read this quotation from Abraham Lincoln many years ago, and was struck by its lapidary initial sentence. In 1858 Lincoln was (unsuccessfully) battling Stephen Douglas for an Illinois Senate seat. Just a few years before he would win the presidency and South Carolina would respond by seceding from the Union, slavery and its spread were being hotly debated in Illinois and the rest of the country. Here, among other things, Lincoln is arguing that slavery's ill effects extend to everyone, even non-slaves: "As I would not be a slave, so I would not be a master."

What arrested me about his formulation was the upending of the usual vantage point from which we judge slavery's evil. It reminded me of Chesterton's advice on the usefulness of standing on one's head ("any scene such as a landscape can sometimes be more clearly and freshly seen if it is seen upside down"). Those who heard Lincoln's statement could, if they chose, open themselves up to perceive that even a forcibly dispossessed slave owner, if it came to that, might not thereby be a loser. Respect for human rights and dignity is not a zero-sum game: Although extending that respect to a group previously denied it would cost the slaveholder financially and upend the social system in which he lived, the South's slavery-based society did not properly reflect our common human identity as fellow images of God, and so it was not in accord with our rightly understood human nature to avail ourselves of the benefits of slavery. The slaveholder who freed his slaves, whether he did so willingly or ended up being forced to do so, was simultaneously freeing himself from unjustly tyrannizing over a fellow human being. This may not—likely was not—all in Lincoln's mind as he formulated the sentence, but it is what came to my mind as I read it.

Of course, in discussing slavery it is not only natural but right to focus first and foremost on the harm done the slave. But it is worth recognizing after-

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wards that the ripples of the slave master's injustice extend far beyond the slave, or even the family and loved ones of the enslaved, far beyond even their descendants, beyond even those distant in space or time who have suffered through the mere knowledge that such evils exist or existed, and even beyond the approximately 620,000-750,000 soldiers who died in the Civil War, along with the maimed, injured, and civilian casualties.

And those rippling effects of the slaveholder's injustice touched even the slaveholder himself. His ownership of human beings deterred him from honestly acknowledging the immorality of slavery and inclined him to grope among theories of human anthropology and politics, history and religion to justify his denial of human dignity to an entire race of people.

Misperception, whether intentional or unintentional, is almost always dangerous, since we live in a real world rather than a virtual reality that can be shaped and reshaped according to our desires. Unlike conditions in imaginary universes, if you or I step off the curb and fail to observe a car barreling toward us, or if we turn our car into a side street and fail to glimpse a small child darting into traffic, disaster may ensue.

And that disaster will fall on both parties—the doer and the done by, the misperceiver and the misperceived. Sometimes the faulty vision is no one's fault: The driver has not been speeding, is neither drunk nor texting, and could not possibly have reacted in time to prevent a collision. However, the shock, horror, and soul-searching ratchet up significantly if the driver bore responsibility for what happened. "As I would not be a child killed by a drunk driver, so I would not be a drunk driver," Lincoln might well have put it if he were addressing an assembly of Mothers Against Drunk Driving, and his point would be manifest to all.

Does the misperceiver who experiences minimal emotional trauma from the effects of his misperception still suffer in some way from being the innocent instrument of tragedy? Perhaps, at least to the extent that, in John Donne's famous formulation, "No man is an island, entire of itself . . . if a clod be washed away by the sea, Europe is the less"; therefore, "any man's death diminishes me, because I am involved in mankind." Innocence of malice or wrong intent will not protect us from all the negative repercussions of our actions, though such repercussions may be so minor (the child may have escaped unharmed) that "suffering" would be an exaggerated word to use. But surely in all cases where someone should have known better—where someone had been taking a gamble and knew it—some sort of natural consequences ensue for the gambler (and these may even be positive—for example, the gambler

may be shocked into greater prudence).

And I think the same is true for Lincoln's slaveholder. He might be less subjectively guilty than the very worst of slaveholders—he might not beat the field slaves, abuse the female house slaves, or callously tear asunder families to achieve the greatest profit. He might instead be a "model" slave owner: an otherwise just man schooled to believe that slavery is a natural and licit human institution and that only the abusive treatment of one's slaves is sinful. But of course, he would still be wrong in thinking that: He would be misperceiving the moral universe and his place in it. And misperceiving either the moral or physical contours of the world you live in exacts costs.

What kind of costs? Well, in this case they might include a coarsening of moral sensitivity to human suffering, an attenuated sympathy for members of the human race less happily located on Fortune's Wheel, an unconscious or perhaps semiconscious impulse to exaggerate the differences between Black slaves and their masters. The enumeration of these differences would likely begin with the physical—the color of the slaves' skin, their consequent "foreignness"—and then progress to self-serving assumptions about other largely invisible characteristics. Ante-bellum apologists for African American slavery commonly asserted their belief that Blacks were not only less intelligent than Whites but were naturally suited temperamentally to slavery and were less sensitive to pain (which of course would be a consoling thought if you were responsible for inflicting upon them such pain).

If we transfer some of these self-serving beliefs to the sphere of abortion and its defenders, the parallels smack you over the head like a two by four. How many professional apologists for abortion have assured us over many decades that the nervous systems of preborn human beings have not developed enough to feel pain as we outside the womb do! Back when saline abortions were common, we were assured that these chemically scalded unborn human beings could not be suffering from the procedure; such denials are still peddled even to those made squeamish by late-term abortions. And any physical recoiling of the unborn from knives or needles is dismissed as reflexive movement.

It is hard to imagine these explanations convincing even those making them. Could so many people—even those with a strong interest in believing convenient untruths, people profiting personally, politically, or professionally from abortion—really persuade themselves of such rationalizations just to make what occurs in abortion on demand more palatable?

But why not? Intentional misperceptions of reality abound, and are perhaps

easiest to rationalize when applied to a whole class of humanity. Consider the Nazis peddling the lie that Jews are less than human. There is no reason to believe that their deceptions did not often include elements of self-deception. Just because a viewpoint is self-serving does not mean it is not self-deluding. But even self-delusion exacts costs.

Someone staring with unprotected eyes into the sun during a solar eclipse like the one we experienced last April risks damaging the retina whether or not that person realizes it is a dangerous thing to do. We cannot appeal to the sun to soften its effect on the eyes of the reckless or ignorant, any more than we can appeal to gravity to suspend its operations when a ship collides with a column holding up Baltimore's Key Bridge.

Similarly, those who have convinced themselves or others of untruths about the nature of the unborn child and the operation of the brutal methods of abortion cannot by mere words alter reality to conform to their unreality. So the pro-abortionist who sets out on this path of convenient misperception must first darken his heart or intellect or both—and they will then remain darkened, barring a radical and grace-filled intervention of reality such as that which launched early abortion activist and abortionist Dr. Bernard Nathanson on his road to conversion.

Among the abortions Dr. Nathanson performed before his collision with reality was one that should have held special personal significance for him, since it was that of his own child. Reading the account of his pro-abortion career in his book *Aborting America*, it is difficult not to conclude that his campaign to legalize and expand the practice of abortion was perhaps fueled less by misguided compassion for women than by a desire to sand down some of the rough edges of reality that he himself had bumped up against and resented. Hard edges that we find ourselves colliding with are a classic tipoff that we are in contact with reality.

And despite the pain, being in contact with reality is a good thing, considering the alternative. Author Charles Williams's 1937 novel *Descent into Hell* tracks the movement of a self-absorbed, narcissistic, and increasingly solipsistic scholar, Laurence Wentworth, from reality to a self-enclosed fantasy world. A scholar whose work is inferior to that of his rival, a lustful older man seeking adoration and sexual gratification from a young woman with other plans, Wentworth responds to these collisions with unwelcome realities by retreating further and further from real people, real interactions, real demands and attachments. All of these, after all, have proved unwilling to accommodate themselves to his specifications or respond compliantly to his desires. In their place, he fashions a more and more stiflingly complete

fantasy version of his life, turning the woman he has lusted after into an imaginary succubus that anticipates and satisfies his every desire. In the final scene he is spotted by acquaintances at a train station, but their presence cannot penetrate the solipsistic madness he is inhabiting.

Although this book was published in 1937, it is difficult not to discern in current-day internet porn and the developing market for sex robots the technologically driven analogues for his self-absorbed attempts at sexual satisfaction. But the sexual realm is not the only one in which human beings can be tempted to substitute fantasy for reality. Another 21st-century advance over Laurence Wentworth's retreat from reality is our gender reimagination project. And then there are the morbid attempts of plastic surgery addicts to escape the obstinately real by undergoing series of surgeries to transform their facial features into those of a celebrity they idolize.

But in these cases too, misperception and unreality exact costs. As much as hyper-individualists flee from the notion today, and as much as the pandemic period encouraged us to isolate ourselves from non-technologically mediated human companions, and as much as many of the hallmarks of 21st-century life, such as social media, online shopping, contactless delivery, and AI-powered chat boxes, might reinforce that hyper individualism, human beings are meant to affect one another, and do so. We were meant to be born into families, deployed to grow and mature over many years as part of intimate groupings of parents and children and perhaps other extended family all living together, influencing and being influenced by one another, stepping on each other's toes, bumping into one another, grabbing the last slice of roast beef or stealing into the kitchen for the leftover piece of pie, sharing in family chores or ducking as many as possible, learning how to master the unavoidable tasks of daily living and perhaps over time carving out a modest niche of expertise that we are then called upon to perform at need. Cooking, gardening, tinkering with cars or plumbing or computers, hosting parties, decorating living spaces, grouting bathtubs, training recalcitrant dogs, finishing wood floors.

And that's just at home. Next we branch out into local parks and playgrounds and schools and encounter peers born into the same time and place as we were, destined to share with us many of our time and place's common challenges, joys, and sorrows—boom or bust cycles; droughts or earthquakes or epidemics; wars, riots, or terrorist attacks; eras of peace and plenty; revolutions in technology that introduce new modes of living and retire old ones.

All of these events that roll across the changing sky of an individual life

as cloud formations roll across the physical sky are things we share with those who are alive when we are; they are things that not only affect us but that we in turn affect as well. The rains fall on the just and the unjust, and for a lifespan we are members of that great crowd. Together we get soaked, together we suffer the sun's heat, or perhaps we share an umbrella or sit under someone's shade tree or sip someone's lemonade or stagger into a warm living room to escape the snows outside. And through our children and our children's children, and through whatever we have done or left undone, we eventually affect those who live after us too.

There is a thing called the "urban heat island" effect: In cities of more than a million people, temperatures test measurably warmer than in the surrounding rural areas; at times the difference is only a few degrees, but under some circumstances it can be much larger. You can look at this (and many do) as just another black mark against humanity, amplifying global warming and the like. But looked at another way there is something almost cozy about it: As, on the micro level, a couple snuggle under the covers on a cold winter's night to share body heat, so, on the macro level, millions of people are snuggling in the same cityscape, prompting us to consider the awesomely manifold ways in which we human beings act on one another and everything around us.

So in a host of ways, from the heartwarming to the heartbreaking, human beings modify one another just by the serendipity of our shared existence. And we cannot pin down or predict all of the effects of those close encounters. Beyond the immediate ones, most of them cannot even be perceived by us, because they are at too many removes from present actions or are too contingent on too many other factors we are unaware of. Our eyes cannot see the more distant ripples radiating out from every human action.

This is one reason why we need to *both* acknowledge that everything we do inevitably affects others *and* simultaneously admit our insufficiency to base moral and prudential decisions solely on cost-benefit analyses or the swiftest means to the ends we seek to pursue. Every action that human beings knowingly, willingly choose has both intended consequences and an expanding wake of unintended ones. The limits of our human vision into space and time restrict us from reading the bottom of the balance sheet for any particular action. No computer yet devised can total up all the chains of our actions and reactions, which in turn collide into the actions and reactions that other people have set in motion.

And of course we are not meant to do such totaling up anyway. It is not only impossible, but unnecessary and undesirable. Instead, we are merely enjoined to concern ourselves with doing good and avoiding evil—not always easy to

discern, and not always easy to carry out once discerned, but not always or usually impossible either. Doing this will sometimes require us to make the kind of prudential judgments that consider the appropriate means to good ends, and we may or may not end up making those judgments correctly. But questions of ways and means, though they may involve us in error, should not involve us in evil as long as all possible means to a good end that we are contemplating are morally acceptable, meaning we are not relying upon the desired end to justify sleazy or duplicitous or abusive or otherwise immoral means to that end.

In his *Nicomachean Ethics*, Aristotle defines the goal of human life as eudaimonia, a Greek word usually translated as happiness or flourishing, but which more nearly means something like activity expressing virtue. The eudaimonic life is characterized by "virtuous activity in accordance with reason." All ancient thinkers knew that happiness understood in a fatuously superficial sense as a state of never-ending pleasure and the fulfillment of all our desires is not attainable in this life, and that our occasional approximations to such a state are bound to be temporary. Even if we briefly achieve what we consider happiness, we cannot fully enjoy it as such, because we are aware of its evanescence.

But if we habitually attempt to engage in "activity expressing virtue," that launches us in pursuit of rather different subordinate goals, under the guidance of different criteria for the good life. To first identify those subordinate goals, like the Greek philosophers, we would need to explore what we mean by virtue in all its facets—physical, mental, spiritual. We would need to consider what a human being is and what activities best help us thrive, both as individuals and as communities.

According to natural law theorists (of whom Aristotle was one, but so also were great Christian thinkers like Augustine and Aquinas), our ability to identify human virtues and the actions that conform to, confirm, and sustain those virtues is innate in all of us, although we can fail to recognize them or darken our perception of them by repeated bad choices. We call this common inheritance of accessible knowledge about how to act rightly and hence live a life seeking our highest good the natural law. In Christian terms the most complete attainment of that highest good is in the next world, in union with God. But, as many people have pointed out—including C.S. Lewis in *Mere Christianity* and *The Abolition of Man*—the moral codes of all the great civilizations that have left us records bear remarkable resemblance to one another in their categories of encouraged and discouraged actions. Because the distinctions strike us forcefully and (after all) do matter, we may not feel the weight of the similarities unless we try to

imagine a society where stealing and murder, however defined, are not wrong, adultery is not frowned upon, or generosity is accounted a vice.

Of course, almost all of us end up violating our moral codes with some regularity, but it is the natural law itself that reveals to us our broken condition in so frequently failing to live up to "our own" standards. In St. Paul's classic formulation, "For I do not do what I want, but I do what I hate" (Rom. 7:15). Too often we let each other down, betray one another, lie to one another, use and abuse one another. At best the accumulated choices of a life make up a very mixed bag, revealing how painfully difficult we often find it to do the right thing, and how the nature of that pain can also make it difficult to see what the right thing is.

In the last year or so two couples that I am acquainted with each received the terrible news that the deeply desired unborn child whose birth they were eagerly awaiting had a medical condition that would not allow the child to survive more than briefly after birth. One of these anguished couples asked friends and family to pray for a miracle; if that miracle was not granted, however, they asked for prayers that the baby be born alive, so she could be baptized and die cradled in her mother and father's arms. No healing took place, but the child was indeed born alive and baptized, and died cradled in the arms of the grieving but grateful mother and father.

The second couple, advised by their doctor to abort the child, chose to do so rather than carrying the doomed child to term and watching her die. The child's mother and father then mourned their loss in that different way. Both couples had welcomed pregnancy, and both were left with empty cribs. I am grateful I was never placed in their situation—or in many other "hard case" situations that can push human beings to their moral and psychological limits.

But I think the first couple made the better choice, the good choice in a bad situation. They chose rightly because they saw clearly, straight through to the ultimate reality of the situation. They saw the anguish they would have to suffer in carrying their doomed child until birth, and then they elected to embrace their daughter, however short her life, and do for her what a mother and father could do for her. (And yes, our Greek friend Aristotle, that wise but pragmatically pre-Christian pagan, would likely have recommended the second couple's choice. But then, he would also likely have differed from Lincoln on the matter of American slavery, although our own very "peculiar institution" differed in some ways from the kind of slavery Aristotle was accustomed to—among others in being race-based.)

"As I would not be a slave, so I would not be a master." That small and physically defective little girl who died after a brief glimpse of life beyond

the womb was preserved from being a victim. Both sets of parents made painful choices—choices that, whether they were hard or easy to come to, could not fail to cause them pain. A great many human choices do, one way or another, in this world with its sharp edges lying in wait for us. But that's not how we know whether our choice is right or wrong.

"She left me for the guy who stole my identity."

Recent Developments on State Constitutions and Abortion:

An Interview with Paul Benjamin Linton

Paul Benjamin Linton is an Illinois lawyer and the author of Abortion under State Constitutions: A State-by-State Analysis*, now in its third edition (Carolina Academic Press, 2020). Since its first appearance in 2008, it has provided a detailed study of state court jurisprudence related to abortion. Back then, and even through subsequent editions, abortion litigation based on state constitutions was an important but secondary forum for promoting abortion. Although some state courts interpreted their constitutions to go further on abortion than the federal judiciary had (e.g., by finding state-based constitutional "rights" to public funding of abortion or narrowing parental rights to consent or even notification over a minor daughter's abortion), in general federal courts remained the center-of-action for "abortion rights."*

That paradigm came crashing down with the 2022 Supreme Court decision in Dobbs *v.* Jackson Women's Health Organization *(597 US 215). Finding that there was no federally constitutionally guaranteed right to abortion, the Supreme Court's overruling of* Roe *v.* Wade *(410 US 113) shifted the gravamen of decision-making about abortion from the federal courts back to the states. While* Dobbs *was largely assumed to have handed the abortion issue back to the state legislatures, two subsequent phenomena have somewhat challenged that assumption. One is the political effort to codify abortion as a state constitutional right, sometimes through the typical state process of a legislature proposing an amendment that is then normally placed on the ballot, but increasingly through the use of citizen-driven initiative-and-referendum mechanisms to propose constitutional amendments, bypassing in some cases (such as Ohio) pro-life legislatures. The other is a judicial effort to discover abortion rights in state constitutions, using those constitutions to buttress abortion on demand in the absence of a federal constitutional peg. Political mechanisms have so far been prevalent, but recourse to state constitutions through state courts cannot be excluded, especially in states such as Pennsylvania and Wisconsin.*

Mr. Linton spoke with the Human Life Review *on the state of abortion and state-based constitutional "rights" claims.*

Human Life Review (HLR): You are an expert on state constitutional law pertaining to abortion, as well as author and editor of three editions of *Abortion under State Constitutions*. Under *Roe,* state constitutions were used in state courts to expand local "abortion rights" in areas where the federal courts had not ventured, such as mandating government funding. Since *Dobbs*, state constitutions have taken on a whole new significance when it comes to abortion. Can you comment?

Mr. Linton: Since the Supreme Court's decision in *Dobbs*, there is no longer a federal constitutional right to abortion. Abortion advocates, therefore, have turned to state constitutions in an attempt to establish a constitutional right to abortion at the state level that would preclude or overturn state legislation protecting unborn human life—including both prohibitions of abortion and

most regulations of abortion. That effort has been two-pronged: first, to persuade state courts to recognize a state constitutional right to abortion that is at least as broad as the right recognized in *Roe* v. *Wade* (1973), and second, to amend state constitutions to achieve the same objective. Although dozens of state court cases are currently pending, so far abortion advocates have largely failed to persuade state courts, post-*Dobbs*, to recognize a broad right to abortion. Of the five state supreme courts that have considered the issue, two (Idaho and South Carolina) have rejected a state right to abortion, while the other three (Indiana, North Dakota, and Oklahoma) have recognized only a limited right to abortion. Abortion advocates have been far more successful in proposing and obtaining voter approval of abortion rights state constitutional amendments (in California, Michigan, Ohio, and Vermont).

HLR: Previously, state constitutions were primarily used to mine "abortion rights" out of existing texts, but today abortion advocates seem to be using them to re-"codify" *Roe* v. *Wade* at the state level. What do you make of that shift?

Mr. Linton: The difference is between state *litigation* attempting to establish a state constitutional right to abortion that would be even broader than that recognized in *Roe*, and state *legislation* (whether statutes or state constitutional amendments) that codify the right to abortion recognized in *Roe*. Now that *Roe* v. *Wade* has been overruled, there is a much greater effort to create "mini-*Roe* v. *Wade*" decisions at the state constitutional level.

HLR: State constitutions can usually be amended in one of two ways: by action of a state legislature (always requiring a vote of the people to approve the amendment, except in Delaware) or directly by popularly initiated referenda, bypassing the legislature. How are these two methods being used to promote abortion at the state level? Also, do you have any thoughts on the use of popular-initiated referenda as a way of circumventing pro-life legislatures?

Mr. Linton: This is the arena where the abortion battles will be (and are being) fought. It is extremely unlikely that any pro-life state legislature would place an abortion rights state constitutional amendment on the ballot for the voters to consider. The only alternative for abortion advocates in these states (where it is an option) is to use a "citizen initiative" to bypass the state legislature. Abortion advocates have also been successful in using citizen initiatives to overturn abortion legislation in both Michigan and Ohio, and they will be attempting to do so in many other states—among them Arizona, Arkansas, Florida, Missouri, Nebraska, and South Dakota. Defeating pro-abortion citizen initiatives should be a priority of the pro-life movement.

That said, some perspective is called for here. Only a third of the states allow citizen initiatives to be used to propose state constitutional amendments;

two-thirds of the states do not allow citizen initiatives to be used for that purpose, and that includes two-thirds of the eighteen states that have enacted laws prohibiting abortion throughout pregnancy (subject to limited exceptions). Of those eighteen states, a citizen initiative to amend the state constitution is an option in only six—Arizona, Arkansas, Missouri, North Dakota, South Dakota, and Oklahoma. It is not an option in the other twelve—Alabama, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Tennessee, Texas, Utah, West Virginia, Wisconsin, and Wyoming. And of the seven states that prohibit abortion for most, but not all, of pregnancy, only three—Florida, Nebraska, and Ohio—allow citizen initiatives for state constitutional amendments. The other four—Georgia, Iowa, North Carolina, and South Carolina—do not.

HLR: Back in 1973, prolifers initially put their efforts into a federal Human Life Amendment until an "incremental" strategy—seeking smaller legislative victories and changes in the federal courts through judicial nominations—replaced that thrust. Since *Dobbs,* pro-abortionists seem to have gone full force behind state pro-abortion amendments. Compare those two situations.

Mr. Linton: There is an obvious difference in the level of difficulty in proposing a federal constitutional amendment and a state constitutional amendment. The former requires two-thirds of the Senate and the House of Representatives to propose an amendment and three-fourths of the states to ratify any amendment. As former Judge Richard Posner once said, it takes only one committee in one chamber of thirteen state legislatures to defeat a federal constitutional amendment. A "federalism" amendment—returning the issue of abortion to the states—might have been possible at some point after *Roe* was decided, but the conflict in the pro-life movement between a "neutrality" amendment and a "pro-life" amendment helped to doom that effort. [Both "human life" and "state's rights" amendments on abortion were rejected by the Democratic-controlled Senate Judiciary Committee in 1975. With Republican control of the Senate from 1981-87, an amendment by Sen. Orrin Hatch of Utah declaring there is no "right" to abortion but empowering states to regulate it failed on the Senate floor 49-50, on June 28, 1983—Ed.].

At the state level, proposing amendments is far easier. Although there are exceptions, generally speaking a simple majority (not a super-majority) of the legislature is sufficient to propose a state constitutional amendment, and (with the exception of Florida) a simple majority is sufficient to pass an amendment. And, as noted above, a third of the states allow citizen initiatives to be proposed to amend a state constitution, thereby bypassing a state legislature that would be unwilling to consider a particular amendment.

HLR: So far, state constitutional amendments ensconcing abortion-on-

demand have been enacted in several states. Some, like California or Vermont, were to be expected. Others, like Ohio and maybe Michigan, were not. Do you have any general observations about these amendments?

Mr. Linton: The results in California and Vermont, while regrettable, were not unexpected and of course neither state was going to consider enacting any pro-life legislation of any kind. The results in Michigan and Ohio, however, were devastating, overturning decades of successful pro-life work in both states. There will be many more such challenges going forward, perhaps in as many as a dozen states this year. The difficulty is that abortion advocates have the ability to far outspend pro-life supporters, they have no compunction about misrepresenting what their proposals would actually achieve, and they present their arguments as an "either-or" choice for the voters: Either you support their amendment constitutionalizing abortion rights or the legislature will ban all (or virtually all) abortions. Abortion advocates like to speak in generalities and euphemisms about "reproductive rights" or "reproductive choice." They also like to focus on the "hard case" reasons for abortion, particularly rape, incest, and fetal anomaly, for which many state abortion prohibitions make no exceptions. They assiduously avoid any acknowledgment that their proposals would allow abortion for any reason throughout all (or most) of pregnancy and bar the state from requiring parental consent or notice, imposing a short waiting period, mandating detailed informed consent, regulating abortion facilities, or restricting public funding.

HLR: Pro-abortionists seem to be settling on certain outlines to these state constitutional amendments. All practically guarantee abortion-on-demand through birth. Some speak only of abortion, while others weave abortion into a broader mix of "reproductive decision-making" that almost always mentions contraception. Why the difference? Does "reproductive decision-making" also smuggle artificial reproduction and surrogacy into constitutionally protected territory?

Mr. Linton: Depending upon the language in a given amendment, the answer to the last question is "Yes." The drafters of amendments that specifically mention contraception may wish to convey the (entirely unwarranted) notion that "contraceptive rights" are on the line and that only by approving these amendments will the state be barred from interfering with such rights—even though no state has any interest or intent in doing so, and even though the federal constitutional right to use contraceptives was left untouched by the Supreme Court's decision in *Dobbs*. The February 16 decision of the Alabama Supreme Court, holding that the state's wrongful death statute applies to the wrongful destruction of "frozen embryos," has been misrepresented in the media. The decision does not in any way prohibit *in vitro* fertilization

(IVF) technology and has no application to the law of any other state. Further, the Alabama legislature is likely to amend the state's wrongful death statute to modify or overturn the state's supreme court decision.

HLR: Almost all of these amendments give nominal lip service to "viability," yet in the end that restriction proves meaningless. Why? And if it's nugatory, why go through the Kabuki theater?

Mr. Linton: Abortion advocates want to create the illusion, but not the reality, that their proposed amendments would allow the state to prohibit post-viability abortions. They think that the illusion is necessary (at least in some cases) to convince the public that their amendment is reasonable and an acceptable compromise on the issue of abortion. Of course, even assuming that their amendments did permit meaningful restrictions on post-viability abortions, those abortions account for far less than 1 percent of all abortions. As to the illusion, these amendments do not actually permit the state to restrict post-viability abortions, because they mandate an open-ended "health" exception that swallows the rule. Moreover, some of these amendments employ a very narrow definition of "viability," further limiting the scope of any permissible state legislation.

HLR: Many of these amendments incorporate provisions that make decisions about the necessity of an abortion unreviewable determinations by one's "health care provider." Is there a danger to that, and why the hesitation to speak of "physicians?"

Mr. Linton: Abortion advocates have argued for a long time that health care professionals other than physicians should be allowed to perform abortions. They have had some success in promoting that argument, either by virtue of litigation (as in Montana and other states) or by legislation (as in California and other states). No doubt a strong influencing factor here is that very few physicians, including very few obstetricians and gynecologists, are willing to perform abortions. To address the perceived "problem" of access, abortion advocates want to expand the population of persons permitted to perform abortions to include nurse practitioners, physician assistants, and other health care professionals.

HLR: Many of these amendments have also jettisoned talk of a pregnant "woman" and speak instead of a pregnant "patient," "person," or "individual." What significance should we attribute to the incorporation of this "gender-neutral" language into amendments?

Mr. Linton: This language may be intended to expand the scope of "reproductive" rights (of various sorts) to men as well as women, although it may more likely be simply a result of the "Brave New World" in which "men," as well as "women," are deemed capable of becoming pregnant.

HLR: Ohio prolifers tried to derail last November's pro-abortion constitutional amendment by attempting to adopt an interim amendment, raising the requirement to pass the amendment from a simple to a three-fifths majority, mirroring the threshold required in the legislature to enact amendments. Although formal amending processes usually require some form of super-majority, many initiative-and-referendum amendment processes only demand a simple majority. Do you see problems with this?

Mr. Linton: As I previously noted, for the most part, proposing a state constitutional amendment requires only a simple majority of a state legislature (although sometimes it requires the amendment to be proposed in two separate sessions or with an intervening election in between). Some state constitutions (such as Kansas, Tennessee, and Ohio, to name only three) do require a super-majority, however. And with respect to the public vote, Florida is the only state I am aware of that requires a super-majority (60 percent) to approve an amendment, though some states require that the total votes cast on a proposed amendment meet a certain threshold level. In the case of Ohio, I think the proposal to increase the margin of votes necessary to approve an amendment was viewed as a proxy vote on the abortion amendment itself, and failed for the same reason.

HLR: How far do you think these attempts to nail down *Roe* through state constitutional amendments are likely to go?

Mr. Linton: Keeping in mind, again, that only a third of the states allow citizen initiatives to amend their state constitutions, and that no pro-life legislature is likely to propose an abortion rights amendment, abortion advocates will continue to pursue citizen initiatives in those states where such initiatives are allowed, and in liberal states will seek to have the legislature propose abortion rights amendments (as in the case of California, Maryland, New York, and Vermont). The citizen initiatives are currently the biggest challenge to the pro-life movement.

HLR: Writing fifty years ago about *Roe* in his *Yale Law Review* article "The Wages of Crying Wolf" (reprinted in the Winter 1975 issue of the *Human Life Review*), Prof. John Hart Ely opined that although he thought the ruling was wrongly decided, he also thought it had "staying power." In fact, *Roe* stayed forty-nine years, and arguably these amendments are an effort to prolong it. What do you think is the "staying power" of these amendments and how do they affect the pro-life struggle in those states?

Mr. Linton: An abortion rights amendment, once adopted, would be extremely difficult to overturn (at the state level). Whether such an amendment, once adopted, could be overturned by another amendment that would constitutionalize a right to abortion in the "hard cases" but otherwise allow

the legislature to prohibit abortion is an interesting question, but not one that arises now. As Doug Johnson, the former federal legislative director for the National Right to Life Committee, told me many years ago (long before *Dobbs*), the ultimate solution to state constitutional rights to abortion would be a federal statute prohibiting abortion, which, under the Supremacy Clause, would override contrary state constitutions and statutes. Enacting such a law, of course, is not on the political horizon for the foreseeable future. It would require a strong pro-life majority in the House of Representatives, sixty votes in the Senate, and the support of the president.

HLR: In late January 2024, the Pennsylvania Supreme Court overturned its own precedent and apparently cleared the way for Medicaid funding of abortion in the Keystone State. Separately, the pro-abortion executive branch in Wisconsin is hoping to use that state's supreme court to overturn Wisconsin's former abortion law, which is now enforceable, as well as preclude the pro-life legislature from enacting new restrictions. Any views on either case?

Mr. Linton: In the Pennsylvania case, a three-justice majority of five justices participating in the case overturned a unanimous judgment of seven justices handed down more than thirty-five years ago. The reasoning adopted by the court—rejecting the "unique physical characteristics" test that the earlier case had adopted for interpreting the state equal rights provision—finds almost no support in the law of other states with equal rights guarantees except New Mexico. The overwhelming majority rule followed by virtually all states with equal rights guarantees in their state constitutions is that a classification based upon and directly related to a physical characteristic that is unique to one sex does not violate the state ERA. As for Wisconsin, we will have to wait to see what the Wisconsin Supreme Court does with the case from Dane County, where a trial court judge decided that the nineteenth-century abortion statute does not apply to physicians, an utterly absurd interpretation of the law that is indefensible.

HLR: Thank you.

New York's Dangerous ERA Proposal

Donald P. Berens, Jr.

Note from Maria Maffucci, Editor in Chief: The following is my summary of a fully-cited legal analysis of New York's proposed ERA Amendment, written by Donald P. Berens, Jr., a retired attorney and former New York State government lawyer. Please log into our website at www.humanlifereview.com to read the entire article.

On November 5, 2024, the so-called Equal Rights Amendment (ERA) to New York State's Constitution will be on the ballot for a popular vote, state-wide.

Only ninety-six words in length, the ERA threatens to undermine a myriad of protections for vulnerable populations, including children and the elderly, as well as core parental rights and religious freedoms.

Among other things, the ERA elevates sex, including gender identity and gender expression, age, and reproductive healthcare (abortion) to constitutionally protected categories containing "fundamental rights," rights for all persons, including minors, that will likely supersede current and future statutory safeguards related to these areas.

Here are a few points briefly summarizing this on-line essay—which we hope you will read in full.

The ERA promises to deliver both "deliberate" and "unintended effects" that could "shred common sense legal distinctions based on age and sex"; expand New York abortion policy; erode parental rights and religious liberties; and "endorse government favored discrimination."

Over a span of years, New York has enacted statutory protections against discrimination based on age and sex, in a slew of settings, including employment and housing. New York's anti-discrimination laws, however, carefully carve out common sense exceptions to what would otherwise be considered "unlawful discriminatory practices," including exceptions that allow for restricting the purchase, possession, and consumption of alcohol and marijuana to adults 21-plus years old, senior housing accommodations for persons 55-plus, or 62-plus, and single-sex schools-based admissions or housing arrangements.

Several of New York's criminal and civil laws also contain purposeful age distinctions, designed to protect minor children. New York's laws about statutory rape and driver's licenses are but two examples.

In short, the ERA empowers courts to invalidate statutory age and sex-based distinctions, designed to protect minors from harm, including from adult sexual predators. The proposed amendment also jeopardizes state statutes created to enhance the lives of our elderly and for school kids to benefit from

same-sex academic environments.

According to *New York State's Equal Rights Amendment,* "The ERA would likely wipe out or substantially erase, many of these distinctions, balanced over decades of experience, by creating new strict bans on age and sex discrimination of any kind, for any reason, even good and legitimate reasons."

Regarding abortion, the ERA not only expands New York's already existing "liberal" (radical) abortion laws, but stymies future democratically elected state representatives from enacting even the most basic safeguards surrounding the abortion procedure.

Under the ERA, on-demand abortion would be constitutionally permissible throughout all nine months of pregnancy. Examples of state statutes that would likely be deemed unconstitutional per the ERA, despite having been enacted by freely elected state legislatures, include laws that require parental notice or consent for minors to obtain abortions and that allow only duly licensed physicians to perform second and third trimester abortions.

Further, the ERA threatens to force New York high schools and colleges to permit "trans women" to compete with biological girls or women. Any state statute disallowing such could be deemed unconstitutional under the ERA's guarantee of gender identity and expression for all persons.

Concerning transgender medical interventions for minors and parental rights, the ERA "would tip decision making away from . . . parents" and toward "distressed and vulnerable" minors, bureaucratic ideologues, and courts. The result will likely be "more irreversible psychiatric, hormonal, and surgical damage to children without parental involvement or even knowledge, much less consent."

New York's ERA would also chill religious freedom. The radical gender and reproductive ideology promoted by the ERA runs contrary to the sincerely held beliefs of many religions, and where newly created ERA rights collide with religious rights, the ERA fails to provide any assurances that our freedom to freely exercise our religion will prevail. Will churches be silenced or sanctioned for promoting principles not in lockstep with the ERA?

Perhaps in the most ironic twist in the ERA's supposed quest for equality, Subsection B of the amendment would allow for reverse discrimination. The ERA allows for New York government programs to "discriminate against some majority or even minority groups in order to prevent or dismantle discrimination against another group." But who decides which group deserves favor?

"The ERA promotes arbitrary tyranny, not equal protection of the law."

Editor's Note: As we go to press, we have learned that a NYS Supreme Court judge sitting in Livingston County held that the legislature passed the ERA in violation of the state constitutional requirement to get an opinion from the NYS Attorney General first. The judge declared the concurrent resolution void and ordered the ERA removed from the November 2024 ballot. The AG and some legislative leaders vowed to appeal.

BOOK / FILMNOTES

PUSHING *ROE V. WADE* OVER THE BRINK: THE BATTLE FOR AMERICA'S HEART, THE HUMAN RIGHT TO LIFE, AND A FUTURE FULL OF HOPE

Clarke D. Forsythe and Alexandra DeSanctis
(Americans United for Life, hardcover, 324 pages, $19.95, PB $14.95)

Reviewed by John M. Grondelski

The history of U.S. pro-life activism is woefully under-documented. Compared to the flood of pro-abortion "histories" being published, especially by university presses, pro-life work is underrepresented. Compounding that problem are two things: 1) pro-abortionists who misrepresent pro-life activism (such as Linda Greenhouse and Reva Siegel in *Before Roe v. Wade*) and 2) the danger on the pro-life side of losing primary source materials, because we lack an organized plan for preserving and archiving that material.

The appearance, therefore, of pro-life histories of our movement by pro-life writers is always welcome. This is especially true when the history features one of the major and most impactful of that movement's groups—Americans United for Life—and is written by established writers like Clarke Forsythe and Alexandra DeSanctis. The fact that this book is self-published only emphasizes the problem prolifers have in recording and distributing our story.

Americans United for Life (AUL) has primarily advanced the pro-life movement through legal advocacy. Although the pro-life movement would not be where it is without the substantial role played by its volunteers, AUL has been impactful precisely because of its national reach and its command of the professional resources needed to fight the pro-life fight in the legal, political, and social circles where decision-making occurs. This book documents AUL's work in that field, centering on overturning *Roe* v. *Wade* and its illegitimate progeny.

Americans United for Life was founded in 1971 (predating *Roe* by two years). The book's opening chapter addresses the "bioethical revolution" that led to that decision—because *Roe* did not spring fully grown from the brow of Harry Blackmun. Biomedical developments in the 1950s and especially the 1960s generated legislative and ethical debate over a wide range of issues connected with procreation: That the famous 1970 *California Medicine* editorial discussed the contest between "sanctity" and "quality" of life ethics attests to the reality that bioethical debate was by then already well underway. And though procreation in general and abortion in particular may have

been the lightning rods of that bioethical debate, the authors also take pains to devote space to the euthanasia issues that were already lurking around.

Largely forgotten now was the effort in those early days to talk intellectually across debate lines and to argue the pro-life case *precisely from the perspective of the unborn.* The authors discuss an early project of AUL's: the book *Abortion and Social Justice,* a collection of essays from a distinguished cross-section of credentialed thinkers—lawyers and academics like John Noonan, David Louisell, George H. Williams, Thomas Hilgers, and Dennis Horan. We need a similar public presence today.

That book, by its very title, points to an animating principle of AUL: The abortion fight is a fight for social justice, for the most basic civil and human right of the unborn. That perspective has been largely lost from public consciousness where, to the extent that abortion is seen as a "rights" issue, it is primarily or even exclusively seen from the "right to choose" side. Curiously, even in some pro-life quarters, the focus of pro-life discussions has so turned to the mother and her dilemmas that the question of life itself seems sometimes to have been eclipsed.

As the authors document, this was never the case for AUL. According to AUL, Blackmun was expecting "that states would fill the public-health vacuum created by . . . *Roe* . . . during the 1973 legislative sessions" (p. 61). But if he expected state legislatures to enact abortion-on-demand in light of *Roe*—an outcome its advocates generally dissembled about admitting—he found instead that most state legislatures, once they figured out *Roe*'s true scope, were intent on clawing back some limits to abortion. To summarize the next 49 years, that meant the Supreme Court "splintered." Until *Dobbs,* a slowly shrinking majority tried to sustain *Roe*'s unrestricted abortion license while a growing minority (that eventually became the majority) sought to keep the court from every expansion abortion advocates sought. The upshot was that the court hollowed out democratic discussion of abortion by inserting itself as supervisory super-legislature to monitor abortion policy, a distorted role about which, in 2022, Samuel Alito finally said, "Enough!"

The book traces AUL's participation in all those cases, trying from the 1976 debacle of *Danforth* to progressively chip away at *Roe* through its multiple contradictions, such as its ambiguous standard of "viability." Initial hopes of success by the early 1990s were, unfortunately, dashed by *Casey.* AUL got back into the trenches, again incrementally eroding *Roe* as reincarnated in *Casey* until, finally, victory!

A valuable chapter also details the unsuccessful effort to create a *Roe*-like "right to die" in the mid-1990s. As previously noted, while bioethics issues at the beginning of life occupied the forefront of public attention, many of

the same people were using the same arguments to try to constitutionalize a similar outcome at the end of life.

But while the general lines of the history of the abortion cases are well-known, the value of a book like this is the "insider baseball," reporting on the background, influences, conversations, and personalities that drove decision-making and policy efforts. How decisions were made within AUL and how AUL worked with government—especially when government was friendly, as in the Reagan and Bush administrations—are all valuable historical insights that give us a fuller picture of how the abortion debate played out.

The book opens by putting the abortion debate within the context of bioethics issues in the 1960s. It closes with a chapter on bioethics issues in the 21st century, identifying these challenges to the pro-life vision today: the erosion of robust human rights affirmations by "moral skepticism," the challenges of abortion policy in a post-*Dobbs* environment (compounded by intersection with reproductive technologies and one political party that ties its electoral fortunes to promoting abortion), the growing pressure for assisted suicide, healthcare policy that protects human life, games people play with "informed consent," and the growing suppression of conscience rights of health care personnel.

A valuable addition to pro-life libraries (and one that should find its way into local public libraries—consider donating a copy to yours), *Pushing* Roe *v.* Wade *Over the Brink* is a thorough yet sympathetic history of how and why one leading pro-life group worked for more than half a century to restore civil rights. Consigning *Roe* to the same fate as *Dred Scott* should remind us that pro-life is the legitimate heir of the abolitionist movement, establishing it as today's civil rights movement.

—John Grondelski (Ph.D., Fordham) was former associate dean of the School of Theology, Seton Hall University, South Orange, New Jersey.

WAITRESS: THE MUSICAL

Directed by Diane Paulus and Brett Sullivan
Music by Sara Bareilles

Reviewed by Isabelle Flood

In a culture that believes abortion is necessary and empowering for women, it's refreshing to find a mainstream story that highlights the beauty of pregnancy and motherhood.

Waitress: The Musical, a pro-shot of the Tony-nominated Broadway show written by and starring singer-songwriter Sara Bareilles, and based on the 2007 film starring Keri Russell, opened in movie theaters last December. Some might regard the musical's woke treatment of adultery as impure, but at its heart, *Waitress* is an empowering pro-life story. It is refreshingly and candidly feminine—depicting supportive female friendships and promoting traditional feminine traits that "strong female leads" commonly put down. This leading lady is sensitive, humble, and nurturing. She loves baking. Most importantly, Jenna, who works as a waitress in a diner, is an appealing heroine who ultimately finds strength, identity, and love in becoming a mother.

Finding Strength in Motherhood (Spoilers Ahead!)

Trapped in an abusive and seemingly inescapable marriage, Jenna starts an affair with her obstetrician. She wishes she weren't pregnant and feels little affection for her preborn child, but chooses life for her baby nonetheless. She has no idea what motherhood has in store for her and can't anticipate how having her child will change everything.

According to the Office for National Statistics, more than 1 in 3 people who are abused as a child go on to be abused by a partner as an adult. Often, victims are vulnerable to abusive relationships because they associate the feelings of abuse with love. They believe that they are not worthy of, or don't even know about, healthy love. Jenna's marriage is an example of this. She grew up with an abusive father. Her husband Earl takes all her earnings, yells, pushes, and nearly hits her. He is emotionally manipulative, threatening suicide if Jenna leaves him, and pressuring her to promise that she won't love the baby more than she loves him.

Many would argue that in Jenna's situation an abortion would be better for both her and the baby. Having a baby with Earl forms another tie to a man who would likely subject not only his wife but their child to abuse. Jenna could barely scrape together enough to escape on her own, let alone provide for another. Yet despite what seems a hopeless situation, she is determined to keep her baby.

Secretly planning to leave Earl and her hometown, for months Jenna hides money throughout the house, only to have Earl find and confiscate it, ruining her plan. Shortly afterwards, Jenna goes into labor and delivers a healthy baby girl. When a nurse calls her name, Jenna doesn't respond. The nurse then asks if she wants to hold her baby. After a reluctant pause, she answers, "Give her to me."

A serene instrumental plays as Jenna gazes in awe at her baby, feeling for the first time an overwhelming rush of true and transformative love. When

Earl reminds her not to love the baby more than him, she immediately replies: "I don't love you anymore, Earl. I haven't in a very long time." She firmly declares that she wants a divorce and warns him that if he ever comes near her or the baby, she will seek a restraining order.

This musical depicts the strength motherhood can bestow. Jenna had struggled to escape her abusive marital relationship for some time, but upon giving birth, her eyes were opened to the importance of protecting her priceless treasure. Previously driven by fear, Jenna is driven now by love. She stays in her hometown and subsequently inherits the diner from the late owner. Not only can she provide for her baby, she can also pursue her dreams and have a successful career.

Finding Identity and Love in Motherhood

The show's opening song, "What's Inside," seems to be about baking pies: "Sugar, butter, flour." But listen closely and you see that it introduces a theme: "what's inside" Jenna—both her own identity and her preborn child. She feels a loss of self, but her preborn child will assist in bringing about a newfound identity.

In "She Used to Be Mine," Bareilles' rich vocals powerfully convey Jenna's pain. The abuse she has suffered has led to an identity crisis. She sings about how she can't recognize herself anymore, recalling the girl she once was: "She is messy, but she's kind. She is lonely most of the time. She is all of this, mixed up and baked in a beautiful pie. She is gone, but she used to be mine."

After meeting her baby, who she names Lulu, "everything changes," and, as Jenna sings to her: "Who I was has disappeared. It doesn't matter, now you're here, so innocent. I was lost, for you to find. And now I'm yours, and you are mine." She ends the song with a resolution: "I swear I'll remember to say we were both born today." Now that Jenna has Lulu to care for, it doesn't matter who she was before, because she is now Lulu's mother, and that is everything to her.

Research supports our character's sudden development. *Scientific American* reported in 2006 that "dramatic hormonal fluctuations that occur during pregnancy, birth, and lactation may remodel the female brain, increasing the size of neurons in some regions and producing structural changes in others." According to the *New York Times,* a mother's brain goes through a process of synaptic pruning, which eliminates certain brain connections in order to facilitate new ones. Giving birth is said to enhance a woman's ability to empathize and protect.

Early in the musical, Jenna tells Joe, the diner owner, "I don't have ones I

love, just ones I live with." As she gets to know her doctor, Jim, Jenna begins a relationship that contrasts with the one she has with her abusive husband. For example, Earl admits that when he used to tell her she could open her own pie shop, he "was only trying to get laid." Jim, on the other hand, gushes in a song about the pie she has made for him: "I swear that as those flavors mixed and melted, I could hear the sirens sing." His amazement at Jenna's pies symbolizes his amazement at who Jenna is. "It only takes a taste when you know it's good"—Jim is getting a taste of who Jenna is and quickly falling for her. Unlike Earl, Jim sees and loves Jenna for who she is, not what she can do for him. Jenna, craving something new and exciting, begins an affair with him even though he too is married.

After giving birth, Jenna speaks alone with Jim. The audience might expect a classic rom-com ending: The cute, quirky couple who are destined for each other will run away from commitments they have made to be together. But despite the comfort and affection she receives from Jim, Jenna has seen the way his wife looks at him: with trust. She knows their relationship isn't fair to his wife. Having found true, selfless love with her daughter, Jenna sees everything in a new light and has the prudence to end this ill-advised relationship.

This is not a story that romanticizes adultery and sticks a label of "Love" on it. The true love story here is between a mother and daughter. After spending her entire pregnancy being indifferent to *what's inside* her, Jenna discovers true love when she meets her daughter, an experience that strengthens and transforms her. The show closes with Jenna "opening up to love."

It's easy for us to get caught up in criticism or condemnation of abortion supporters, but this risks creating a greater rift between the pro-choice and pro-life positions. While I commend conservative movie makers for their work, many times a movie that is advertised or labeled as pro-life, or one that is overbearingly political, will repel those who have differing views.

As a secular, mainstream movie, *Waitress* can reach and touch abortion advocates, showing them how beautiful embracing an unwanted pregnancy can be. Meanwhile, it can also bring home to prolifers the struggles that many pregnant women face, and how essential compassion is in our fight for life. More art than advocacy, *Waitress* has the power to unite people of differing beliefs in a positive, beautiful way, reminding all of us of the power of love.

—Isabelle Flood is a recent graduate of The Lyceum, a classical Catholic school where she wrote two theses: "Whether Man Ought to Seek Pleasure" and "Whether the Morality of the Artist Determines the Goodness of the Art." Isabelle works as a nanny and hopes to someday be a mother.

FROM THE WEBSITE

SIMILAR INDIFFERENCES

Jason Morgan

The 2023 cinematic production *The Zone of Interest* won an Academy Award last month for Best International Feature Film. This powerful movie focuses on Schutzstaffel (SS) lieutenant colonel Rudolf Höss during his time as commandant of Auschwitz, the sprawling Nazi concentration camp complex in and around Oświęcim in German-occupied Poland. Auschwitz is the dramatic and psychological backdrop of every scene. The camp's rooftops and chimneys—the latter belching ghoulish flames at night and black smoke during the day as murdered prisoners are incinerated—are visible throughout much of the film.

And yet, *The Zone of Interest* is not about Auschwitz. It is about Höss and his wife, Hedwig, whose house is located behind a camp wall that separates them from the horrors unfolding nearby. Mrs. Höss keeps what appears to be a happy home. She has a garden where she grows herbs for cooking and flowers to delight the senses. There is a small pool in the yard where their children, and the young of other Nazi families, frolic at play. Rudolf Höss, although kept busy as the commanding officer of a facility at the twisted heart of the Nazi enterprise, does his part at home, too. He attends garden parties his wife throws. He takes the children on swimming picnics and out on the river in his beautiful wooden canoe. He reads bedtime stories to the youngest of the Höss brood. He and his wife have made, not twenty yards from where innocent people are routinely beaten, raped, shot, and gassed, an idyllic haven for themselves and their family. In one scene, when Rudolf announces he is being transferred from Auschwitz to take on SS duties elsewhere, his wife refuses to leave. Auschwitz is, for the Hösses, a paradise. "Our Lebensraum," Hedwig Höss declares.

This contrast, this impossible distance between what happens in Auschwitz, the concentration camp, and in Auschwitz, the adjacent home of the camp's overseer, is the real subject of the film. How is it possible that on one side of a single wall can be found Hell on earth, and on the other the garden of earthly and gemütlich delights? Are the Hösses monsters? Sadists? Psychopaths? The troubling answer at which the film hints is: no, not exactly. It is from this deeply unsettling observation that the terror the film engenders in the viewer derives.

"I would never do that," I was thinking as I watched *The Zone of Interest.* "I would never be able to live with myself if I were one of the Hösses at Auschwitz."

"Dig a little deeper," the film seemed to be telling me. "The wall between you and the Höss family might not be as thick or as high as you would like to believe."

The disturbing familiarity of the Höss family's home life haunts the viewer as it haunts the film. *The Zone of Interest* screams out—silently, in some scenes, and through nightmarish sounds and strained music in others—that the mechanism which enables the Hösses to live cheek-by-jowl with genocide, namely, their studied indifference to the destruction of innocent human life, is not an accident of history, and not at all foreign.

Hedwig Höss knows perfectly well whither the fur coat and lingerie and other windfall luxuries that she and her Nazi-wife cronies enjoy come from. In one scene, after her mother abruptly ends a visit, apparently in dismay over what her daughter has married into, she takes out her frustration by threatening a nearby Polish servant girl for her imagined insolence, telling her that her husband will spread the girl's ashes across a field. But apart from this one outburst, the fact that the boxcar loads of people brought by train daily to Auschwitz are being systematically exterminated is treated as just another mundane aspect of daily life. Rudolf Höss comes home from his office with blood on his boots, and a servant in patched camp jacket rushes to wash them off. Other prisoners are conscripted as gardeners to maintain the Hösses' greenhouse and rows of roses and kohlrabi. Human ash from the Auschwitz ovens is used to fertilize the flowerbeds in which Hedwig Höss takes much pride. The Höss children show signs of trauma stemming from an inchoate sense of what happens just behind their backyard wall. But, for all this, life goes on as usual. The house is cleaned, and dinner is prepared. The children are sent off to school and welcomed back home again. The seasons change. The beauty of nature is celebrated and enjoyed.

Pretending that all is well while the world goes to Hell around one—that is something that many living in 2024 will recognize. I know this kind of indifference very well. Many film critics have called *The Zone of Interest* timely, noting it has important lessons for our day. The film's director, Jonathan Glazer, made his views on his work's timeliness explicit during his Academy Awards acceptance speech, in which he decried the "dehumanization" surrounding recent events in Israel and Gaza. Much debate has swirled around these comments, and over whether *The Zone of Interest* is applicable to this or that war or persecution in one part of the world or the other.

But I have not seen it mentioned once in press stories about the film that living children are being cut into pieces daily in Planned Parenthood clinics across America. No film critic, to my knowledge, has acknowledged in a review the ongoing holocaust that has turned the United States into a living

nightmare since 1973. In the abortion clinics we drive or walk by, an unfathomable slaughter continues. When pressed, many of us confess to knowing what happens on the other side of those walls. But we explain it away—a necessary evil, an unfortunate circumstance, a tragic necessity.

Rudolf and Hedwig Höss's bifurcated world is not unlike ours. We too have made a home in our indifference to the fate of millions of our fellow human beings. In our aloofness to systematic violence, their mindset and ours are the same.

—Jason Morgan is associate professor at Reitaku University in Kashiwa, Japan

WHERE THERE'S A WILL THERE'S A WAY

Diane Moriarty

The only thing I find even creepier than the women at abortion rights rallies whose faces are so distorted with rage they look like fugitives from a de Kooning painting are the ones who link arms and virtually dance the Irish jig because they've succeeded in enshrining unrestricted abortion up to the moment of birth in their state constitution. Cathleen Kaveny, the Darald and Juliet Libby Professor of Law and Theology at Boston College, says that pro-choice wins in votes across the country are happening because many women think: "We have to choose, and if our only choice is a binary choice between too much permissiveness or too much restriction, we're gonna go with too much permissiveness."

Is the need to be "safe" encoded in female DNA, going back to the time of the Neanderthals when we were running from mastodons? Although both sexes hunted, when it came to facing down a mastodon or woolly rhinoceros, who was more likely to take the lead? Fossil evidence indicates that chores were gender specific; women made clothing, men repaired the stone tools. (Cooking? Something tells me those Neanderthal guys were heavy into grilling.) Although from the dawn of time we've been at a physical disadvantage, it's also true that a boy's first lesson is: Don't hit girls. That is, unless he slaps on some lipstick and a little pink sports bra, calls himself Shirley and joins the women's volleyball team. But more and more states are banning such trans-gression to keep women safe. Yes, there is domestic abuse, but he's never the hero and the rest of society despises him. There *are* guardrails. So, is the "need-to-be-safe" reflex in the voting booth triggered by ancient awareness of our physical disparities, or is what these women need to be

"safe" from more accurately called . . . consequences?

Having said that, when it comes to adjusting to the end of *Roe,* the "We're gonna go with too much permissiveness" thinking is not only the domain of jittery women. It's been much discussed how OB/GYNs are loath to follow the science post *Roe* because of fear they may be breaking the law even if they act in good faith. Penalties can be severe; in Texas doctors could face up to 99 years in prison, fines of $100,000 and more, and the loss of their medical license. That's for performing an illegal abortion. But—the laws are so vague a doctor could conceivably get jail time for treating ruptured membranes or an ectopic pregnancy. Or maybe he's just afraid it's a possibility. Really? So, the good doctor is willing to let a woman bleed out in the parking lot rather than get in Dutch with the sheriff? What happened to Do No Harm? What happened to get a lawyer and present an affirmative defense, i.e., "Technically I may have broken the law, but I did it for a good reason." Is the spectacle of a doctor going to jail for 99 years under such circumstances even believable? And as far as an outright illegal abortion goes—one where no medical emergency exists except in the fantasy world of *Roe* v. *Wade* and *Doe* v. *Bolton* where "emotional distress" about being pregnant is a danger to her "health"—doctors who are too scared to treat real emergencies are going to stick their neck out for that?

With *Roe* v. *Wade*, the Supreme Court did away with an important area of criminal law and public health in one fell swoop. That was easy; restoring the legal framework, as we are seeing now, is complicated. Legislation is slow and ponderous; it could be years before the laws recognize the nuances of obstetric and gynecological care. If *Roe*'s national abortion mandate had never happened, perhaps organic and gradual state-by-state legal adjustments, based on medicine alone, not "abortion is female empowerment" ideologies, would have been the norm. In the meantime, instead of railing against the *Dobbs* decision, people who are smart enough to get through medical school should find ways to cope with the difficult adjustment period. Instead of staying mum while abortion rights lawyers leap at every chance to challenge abortion law in court, doctors could organize a system for scanning all pertinent charts and tests into a database that would document their medical decisions; they could also demand access to an affirmative defense legal team funded by the state should their actions in preventing women from bleeding out be questioned by local authorities.

There does seem to be a strategy of noncompliance afoot. Professionally, the American Medical Association (AMA) and the American College of Obstetricians and Gynecologists (ACOG) have put pressure on pro-life doctors, including veiled threats to withhold board certification from physicians who

promote "misinformation or disinformation" about abortion. (You can read about this in detail in an interview with Dr. Christina Francis, who heads up the American Association of Pro-life Obstetricians and Gynecologists [AAPOG], in the Fall 2023 issue of the *Human Life Review.*) But, risking stepping on toes here, could the "God Complex" some doctors have be a factor in their fear of *Dobbs*? Scientists need not be constrained by the guardrails lesser mortals require? Between restrictions and permissiveness, they, too, are "gonna go with permissiveness"?

Back to being chased by mastodons. And dancing the Irish jig because you feel like you just outran one. Ahem. Instead of justifying all your actions with the cartoon folklore of Alley Oop hitting you on the head with a club and dragging you back to the cave; instead of exhibiting exceedingly bad form, wildly celebrating passage of no-holds-barred legislation on aborting babies … why not approach the microphone at the press event low key and somber. Look into the camera and say: "To all women and girls who are watching this, we've got the law managed, but having the right to do something doesn't make it the right thing to do. Make abortion the very last resort, not your first choice. You have minds and hearts. Use them."

What harm could it do?

— Diane Moriarty is a freelance writer living in Manhattan. She previously wrote an art review column for Able Newspaper as well as articles outside the column. At the close of the last century DISH!, an independent film she wrote, produced, and directed was given a run at Anthology Film Archives by Jonas Mekus.

SING HER TO SLEEP

Tara Jernigan

The gentle summer day my friend made her journey from home to hospice was marked by a little parade of loved ones. As the medics carried her to the ambulance, her sisters, husband, and daughter filed out into the sunshine behind her, and for reasons I cannot explain, I felt the need to sing. Perhaps it was the significance of the moment combined with the warmth of the sun, but more likely it was because I knew my friend's faith and the comfort it would speak to her. So, even though I've never been much of a singer, I unselfconsciously began to discant "St. Patrick's Breastplate": "I bind unto myself today, the strong name of the Trinity, by invocation of the same, the Three in One and One in Three . . ."

Saint Augustine of Hippo is widely credited with the saying "The person

who sings, prays twice." Since all we have is a quotation without context, we don't know what led Augustine to coin that wonderful little phrase. We do know there is something pensive, and sacred, about the process of singing. As we become aware of our every breath, and our words slow to a rhythm not our own, as our voices glide (or sometimes stumble) across notes and sounds that add texture and beauty to ordinary human speech, singing becomes an intimate, and vulnerable, form of prayer.

This may be why so many people who are not in the least shy about their speaking voices will either claim to be unable to sing at all or are demure about singing in public. There is, after all, a shocking intimacy involved in singing, as music massages and undergirds the language of poetry we encounter in the lyrics. So much can fracture the singing voice, so much frailty can reveal itself.

Shyness, in the moment of my friend's final journey, seemed a foolish indulgence and was rendered irrelevant as she was carried out into the bold contrast of a sunny afternoon. It was my voice that sang, but the words I knew were hers. Bound for only a little longer to earthly things—the beauty of creation, the joy of her loved ones—she had long ago bound her life to that of her savior and would journey at last to live only unto the Lord.

Often, when a Christian dies, or at least when he or she has shared their preparations for death, families speak of gathering around the bedside and singing hymns. It's a romantic notion, but in reality, it is one I find most families are ill-prepared to carry out. The logistics of singing together are often too much to orchestrate. Who has the words? Who knows the tune? What was Grandma's favorite hymn anyway? Or perhaps we know her favorite hymn, but it doesn't seem to match the moment. And how on earth can people who aren't used to singing together overcome their own shyness and rise to an occasion like this?

It was not until I was again attending a woman who was preparing to breathe her last, again in a hospice setting, but this time a woman I barely knew, for whom I was present in a pastoral care role, that I began to see what I had overlooked before. The rites of the Church in these situations are startlingly intimate. A person receives a final anointing of oil; human touch is part of the experience. The failing body is blessed—as it has been blessed countless times in a faithful life in the ordinary moments of the Church—and the fullness of the person, body and soul, are commended to the Lord.

During this process, the minimally responsive patient acknowledged with the tiniest of crooked smiles the voices of her grandchildren as they announced themselves to her. Her husband held her hand and patted her arm. She was transformed, in the moment, from a mature woman to seeming almost as an infant. Her family and her faith community were present, not to

watch her die, but to soothe her passing.

In the moment, it seemed right to ask her family if she had a favorite hymn. She did; a familiar one, as most people's favorites are. In the moment, it seemed nothing more than singing an infant to sleep for us to sing what we could of her favorite hymn. In the moment, the frailty of our voices did not matter. No one cared if we had musical skills. It didn't matter that no one had rehearsed and most everyone would not know all the words. What mattered was a family, singing to sleep their wife and the mother and grandmother who once cradled them. "Amazing Grace," in the moment, sounded sweet indeed.

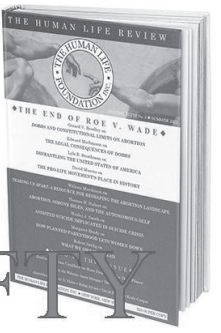
Three days later, a granddaughter played the same song on the flute at her grandmother's funeral. A week later, the family still spoke of singing "Amazing Grace" in that hospice room. For years, perhaps, they will each remember that they gave this last gift of intimate tenderness to this woman who had loved them all their lives.

Somehow, in the act of singing, frailty and intimacy mixed, and another life was offered back to the God who made her. In that moment, that was all that mattered.

—Tara Jernigan, D.Min., is the Archdeacon of the Anglican Diocese of the Southwest. She teaches Biblical Greek and Diaconal Studies as an adjunct professor for Trinity School for Ministry and serves on the Board of Directors at Nashotah House Theological Seminary.

LIFE AT FIFTY

1974 — 2024



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APPENDIX A

[*First reprinted in our Spring 1978 issue, Clare Boothe Luce's "Letter to the Women's Lobby" was an explanation as to why, after decades advocating for the Equal Rights Amendment, she was dismayed that its passage was being jeopardized by the abortion lobby. This letter was entered into the* Congressional Record *on March 7, 1978, by Congressman Henry J. Hyde.*]

A Letter to the Women's Lobby

Clare Boothe Luce

YOUR LETTER of December 19th asking me for a contribution to the Women's Lobby campaign against anti-abortion Congressional candidates was buried under the Christmas and New Year's mail. It has now surfaced in my in-basket.

Having read it, *I must ask you to drop my name from the Women's Lobby list of sponsors . . .*

First, I do not care to be identified with a campaign that has already done so much to jeopardize the passage of [the Equal Rights Amendment]. If ERA fails to pass, as I now fear it will, a large part of the blame must fall on those misguided feminists who have tried to make the extraneous issue of unrestricted and federally-funded abortion the centerpiece of the Equal Rights struggle.

Secondly, I do not accept the extraordinary proposition that women cannot achieve equal rights before the law until all women are given the legal right to empty their wombs at will—and at the expense of the taxpayer.

I have been a supporter of ERA for 55 years. Indeed, I went to work in Washington for Alice Paul, the mother of ERA, the year the Amendment was sent up to the Hill.

ERA was conceived as a bill to wipe out, in one single stroke, all the laws on the books which denied equality before the law to women. In the past half-century, women have won many rights they did not have when ERA was dropped into the hopper. But even so, I believe that the passage of ERA would bring the evolutionary process of legal equality to completion.

If the Amendment fails to secure ratification, I very much doubt that Congress will vote to extend it seven more years of grace.

As you are a sincere and dedicated feminist, I owe it to you and the Women's Lobby to explain why I am for ERA and, at the same time, against legalized unrestricted abortion.

As you so well know, all of the democratic liberties and civil rights Americans enjoy under our Constitution—and indeed, the Constitution itself—rest on the validity of a single proposition, which was first set forth in the Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness."

Now on what facts or circumstantial evidence did the Signers base this extraordinary—and politically revolutionary—assertion? In 1776, anybody with eyes in his head could see that some were masters, others slaves; some were rich, others poor; some fair of form and sound of limb, others ugly, blind or crippled; some wise, and others fools from the cradle. Nothing in 1776 seemed *less* "self-evident" *in fact* than that "all men are created equal." And nothing—*in fact*—is less self-evident today.

But "these truths we hold" were not based on evident facts about the human condition. They were based on philosophical and religious *truths* which transcended what people call "the realities."

The American proposition that created the United States and the Constitution was based—the words of the Signers—on "The Laws of Nature and Nature's God."

The Founding Fathers reasoned thus: All men are born equal in one undeniable respect—they are all born equally human. (No man is any less human than any other.) All men have the same nature. It is in the very nature of Man—it is his "human nature" to desire ("among other things") Life, Liberty and Happiness. (No man naturally desires to die before his time, to be the "creature" or slave of another, or to live a life of suffering or misery.) Life, Liberty and the pursuit of Happiness were "unalienable" rights, because the desire and the need for them had been implanted by Nature, and Nature's God in the minds and hearts of all men. A government that denied these natural human rights to its subjects was an unjust, unnatural and ungodly government. Furthermore, our Founding Fathers reasoned, Nature and Nature's God had also endowed human nature with the capacity to *reason*. Man had the natural capacity to plan, guide and correct his own courses of action. Consequently, the Law of Nature and Nature's God entitled all men to self-government.

I mention all this simply to remind you that the Natural Law (and the Divine Law) is the rock on which the Constitution was founded.

At this point, let me say that the case for the equality of all human beings can be rationally adduced from the Laws of Nature alone. It is not necessary to call on Divine Law or religion, to defend equal rights for women—or to attack unrestricted abortion.

It is a self-evident truth that women are no less human beings than men, and that it is no less in their nature to desire Life, Liberty and Happiness. Women, being equally human, are equally endowed by Nature with the gift of reason. (A gift, by the way, that is best developed in them, as it is in men, by education in the intellectual disciplines.) All this being so, all women are equally entitled with all men to all the rights existing under the Constitution. The purpose of an Equal Rights Amendment to the Constitution is to guarantee that all women will enjoy these rights.

Now what does the Natural Law have to tell Americans about s*exual equality and abortion*?

Well, anybody who isn't altogether an idiot knows that what the Law of Nature has made unequal—or different—neither the laws of men, nor the desires of women, can make equal, or the same.

Men and women, who have the same human nature, have the same instincts for

self-preservation. They display the same human (and animal) emotions—fear, hate, love, etc. They have the same procreative urge. They equally desire to "make love" with a member of their opposite sex. It is the Law of Nature that they should "pair-bond" or mate.

But now we come to the stubborn and quite *unalterable fact*. Men and women are biologically different, or not equal, in respect of their reproductive organs and sexual functions. Nature made man to be the inseminator, woman to be the child-bearer. And the Laws of Nature decreed that the natural—and normal—consequence of the love act, or coitus, is the conception in the womb of woman of a new human being, who is "flesh of the flesh and bone of the bone" of both parents. It is natural—and normal—for the woman who conceives to carry her child in her womb to term, to give birth to her, and her mate's baby. Involuntary abortions, or miscarriages, are also natural, in the sense that they are nature's way of expelling naturally unviable fetuses from the womb of the mother. But voluntary miscarriages are not the norm of nature.

It is not the nature of all women to abort their progeny. If it were, the human race would have long since disappeared from the planet. It is natural and normal for women to bring their unborn children to term, and woman has a natural desire to do what nature intended. It is unnatural for woman to interrupt the natural process of pregnancy, in the only way she can do so—by killing the child in her womb.

Induced abortions are against the nature of woman. They are also against the nature of the unborn child, who, like all living things, instinctively desires to go on living. (Even a cockroach instinctively tries to evade your lethal foot, and if you half-squash it, tries to crawl away for another second of life.)

There is no logical process of thought by which the unnatural act of induced abortion and the destruction of the unborn child in the womb can be deemed to be a natural right of all women.

Induced abortion is against the Law of Nature. There are, to be sure, a great many unnatural things which it is in human nature to desire and to do, even though they are against the Law of Nature. And Man, who was also endowed with the gift of free will, does many of them. Sodomy, homosexuality (defined in the dictionary as "unnatural carnal copulation"), adult sexual intercourse with infants, sexual sadism, masochism, are some of the sexual ways in which people go against the Natural Law, which designed the sexes to copulate with their adult opposites.

But of all the human acts that "go against nature," the killing of a child by its own mother has—throughout human history—been viewed with the most revulsion.

The Supreme Court pointed out in its 1973 abortion decision that "the weight of history is on the side of abortion." And that is true enough. But the Court failed to point out that the weight of history is not only on the side of abortion, it is even more heavily on the side of *infanticide*. The killing of helpless infants has been practiced in many societies, especially in impoverished or overpopulated societies. The "weight of history" is also on the side of theft, murder, torture, war, and above all, tyranny. We ourselves are living in one of those tragic eras in history when the

"weight of history" seems to be very heavily on the side of a great many obscene, cruel, violent and criminal acts which we would not like to see the Supreme Court legalize simply on the grounds that the "weight of history" is on their side. (If the Founding Fathers, who lived at a time when the weight of history was heavily on the side of tyranny, had followed the reasoning of the Supreme Court, they would have acknowledged the right of King George to abort the birth of America.)

Is there no other way to determine the rightness or wrongness of a man-made law than to refer it back to the Laws of Nature? Well, there is what Immanuel Kant called the test of the "categorical imperative." The philosopher wrote, "There is . . . but one categorical imperative, namely this: *Act only on that maxim whereby you can at the same time will that it should become a universal law*."

Consider, for example, the act of murder. Hate, fear, greed—the thirst for revenge, the desire for gain, as well as the desire for *justice*, are powerful human emotions that have again and again led people to commit murder. Indeed, the impulse to kill someone who is destroying one's liberty, or making one's pursuit of happiness impossible, is probably experienced sometime in life by everyone. One might argue that as these emotions and desires are natural, the law should recognize everyone's right to commit murder. Why, on the contrary, are laws against murder *universal*? *Because anyone with a shred of common sense knows that to grant a legal right is to recognize it as a right course of action*. But no one in his (or her) right mind has ever willed that everybody should be free to kill his neighbor.

Does the "right of abortion on demand for all women" pass the test of the categorical imperative? If abortion is a right to which all pregnant women are entitled, then it would be right (and not wrong) if all women aborted their fetuses. It would be the right course of action for all women to take. (There's this to be said for universal abortion. It would soon solve all the problems of mankind by ending the human species.)

Obviously, you do not believe—no one can believe—that abortion is a right course of action which *all women* should pursue. What you believe is that there is no danger whatever that all women will abort their children, because you *instinctively* know that it is not only natural for women to conceive, but natural for them to want to bear the children they conceive. And you think (do you not?) that all women have the right—the natural right—to bring their unborn children to term. And you think (do you not?) that anyone who interfered with this right by aborting a woman against her will would be guilty of a criminal action. What you *really think* (if you stop to think) is that *some women, in some circumstances* should be given the right to abort their unborn children, and that for these women, in these circumstances, abortion would be a right course of action.

The great and historic case that men have made against women is that they are incapable of thinking logically. And logic now requires those feminists who believe that abortion is a natural and right course of action for *some* women, in *some* circumstances, to categorize the women, and describe the circumstances in which the right to abortion is justified.

At this particular moment of history, the American public (and the Congress) are doing a much better job of *thinking about abortion* than the Women's Lobby.

A recent Gallup Poll shows that only 22 percent of Americans think that abortion on demand should be legal. The Gallup study shows that those who hold this view feel that a human fetus is not a "human being" until the *split second* of its birth.

Only 19 percent think that abortion should be illegal in all circumstances. These believe that the fetus is a human being from the moment of conception, and that abortion is, in all circumstances, "murder."

But 55 percent—the majority—think that abortion should be legal, but only in *certain circumstances*. Of this majority, 77 percent would allow abortion during the first three months, providing the woman's life is endangered by the pregnancy. And 65 percent would allow abortion if pregnancy is the result of rape or incest.

A majority of those who would legalize abortion during the first trimester of pregnancy would disallow it in the second and third trimester, *except to save the life of the mother*.

And only 16 percent think that the fact the parents cannot afford a child is grounds for abortion at any time.

The capacity to think (as opposed to the capacity to "feel") involves the ability to make distinctions. The American people, God bless 'em, seem to have it, in the abortion question. Clearly, the Women's Lobby doesn't.

I repeat, I wish to disassociate myself from your campaign to purge Congressmen who do not agree with your misguided efforts to make induced abortion a legal, normal and moral course of action for all women in all circumstances.

I do not doubt that these efforts will be repudiated by the American people. What I regret is that they will succeed only in wrecking the chances of ERA.

With kind personal regards—and from Hawaii, the first state to ratify ERA,

Aloha,

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The media, the doctors, and even Cox herself dehumanized the baby once it was discovered to have Trisomy-18. Although she is already a mother of other children and referred to her unborn daughter as a baby, her attitude seemed to parallel that of the owner of a beloved pet dog whose illness is beyond remedy, and for whom euthanasia is the best choice.

—Karl D. Stephan, "A Pro-Abortion Epiphany"